IN THE SUPREME COURT OF THE STATE OF NEVADA

TKNR, INC., a California Corporation,

Appellant,

v.

W L A B INVESTMENT GROUP, LLC,

Respondent.

SC Case No. 85620
DC Case No.: A-18-785917-C

From the Eighth Judicial District Court
The Honorable Linda Marie Bell, District Judge
District Court Case No. A-18-785917-C

APPELLANT'S APPENDIX

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VOLUME V

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DISTRICT COURT

CLARK COUNTY, NEVADA

WLAB INVESTMENT, LLC,

Plaintiff,

vs.

TKNR INC., a California Corporation; CHI ON WONG aka CHI KUEN WONG; KENNY ZHONG LIN, aka KEN ZHONG LIN aka KENNETH ZHONG LIN aka CHING KENNY LIN aka ZHONG LIN; LIWE HELEN CHEN aka HELEN CHEN; YAN QIU ZHANG; INVESTPRO LLC dba INVESTPRO REALTY, a Nevada Limited Liability Company; MAN CHAU CHENG; JOYCE A NICKRANDT; INVESTPRO INVESTMENTS LLC, a Nevada Limited Liability Company; INVESTPRO MANAGER LLC, a Nevada Limited Liability Company; JOYCE A NICKRANDT; and DOES 1 through 15 and ROE Corporations 1-30,

Defendants.

Case No: A-18-785917-C
Dept No: XIV

HEARING REQUESTED

PLAINTIFF'S MOTION TO RECONSIDER

COMES NOW Plaintiff WLAB INVESTMENT, LLC, by and through its attorneys, DAY & NANCE, and submits, pursuant to EDCR 2.24, the following Motion for Reconsideration of this Court's ruling on Defendants' Motion for Summary Judgment. This

Motion is made and based upon all of the pleadings and papers on file herein, together with the Points and Authorities, the Affidavit and deposition testimony of Frank Miao, the Exhibits attached hereto and any oral argument this Court may entertain at the time of the hearing of this matter.

DATED this 16th day of April, 2021.

DAY & NANCE

By: _____ 13472

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1060 Wigwam Parkway
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Attorneys for Plaintiff

NOTICE OF MOTION

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

YOU, AND EACH OF YOU, WILL PLEASE TAKE NOTICE that the undersigned will bring Plaintiff WLAB Investment, LLC' s Motion to Reconsider on for hearing on the _____ day of _____, 2021, before the above entitled court, located at 200 Lewis Ave., Las Vegas, Nevada, at the hour of _____ .m., or as soon thereafter as counsel may be heard.

DATED this 16th day of April, 2021.

DAY & NANCE

By: _____ 13472

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Attorneys for Plaintiff

SUMMARY OF RELEVANT FACTS

In the case at bar, Defendants submit that Plaintiff waived his right to have the subject property inspected and in so doing waived his right to observe defects which would have been open and obvious upon inspection. Plaintiff argues that he did not waive his right to inspection and that he in fact inspect the subject property himself and with Defendant Kenny Lin on multiple occasions. (*See* affidavit of Frank Miao attached hereto as Exhibit "1", ¶ 2) Defendants submit throughout their motion for summary judgment that Plaintiff waived its right to inspect the subject property. However, as can be seen on page 4 of both the original and amended Residential Purchase Agreements, Plaintiff did not waive their right to inspect. (*See* Exhibit "1", ¶ 3). Residential Purchase Agreement and 2nd Residential Purchase Agreement, p. 4, attached hereto as Exhibit "8"). Nowhere in either Residential Purchase Agreement does Plaintiff waive its right to an inspection. Plaintiff waived due diligence in the second Residential Purchase Agreement as Plaintiff had already inspected the property during August and was ready to close the transaction. It is Plaintiff's contention that Defendant had intentionally covered up numerous substantial defects with the property so as to sell the property to an unsuspecting buyer such as the Plaintiff in this case. Plaintiff submits that there are numerous issues of fact as to what Defendants knew concerning the subject property and were obligated to disclose.

Frank Miao is a member of WLAB Investment, LLC with his wife, Marie Zhu who is also a member of WLAB Investment, LLC. (*See* Exhibit "1", ¶ 2) Mr. Miao, with his wife and through various business entities, owned at the time of this transaction 7 apartments in Las Vegas and more than 10 properties in California. (*See* Frank Miao deposition, p. 138, attached hereto as Exhibit "2"). Mr. Miao and his wife purchased the apartments as part of their retirement plan. (*See* Exhibit "1", ¶ 2) Mr. Miao has a PhD in chemical engineering.

(*See* Exhibit "2", p. 33) His background was designing and building plants. (*See* Exhibit "2", p. 33) Over his career, he has worked for Westinghouse, Siemens, the Gas Research Institute, ASEA Brown Boveri, one of the world's largest power generation equipment companies. (*See* Exhibit "2", p. 34-37) In addition to designing and building plants, he was involved in the construction and renovation of his houses and apartments. (*See* Exhibit "2", p. 45-46)

Mr. Miao became aware of the subject property for sale via Zillow. (*See* Exhibit "1", ¶ 3). During the inspection, he inspected the property with Mr. Kenny Lin during the afternoon of August 10, 2017. (*See* Exhibit "1", ¶ 3). Mr. Miao asked Mr. Lin about a small crack in the outside sidewalk. (*See* Exhibit "1", ¶ 3). Mr. Lin said that they had purchased the property through an auction but that the property had been entirely rehabilitated. (*See* Exhibit "1", ¶ 3). Mr. Miao checked out Mr. Lin's company, InvestPro. (*See* Exhibit "1", ¶ 3). InvestPro reportedly focused on the customer and further represented that their vendors were licensed and professional who complete cleaning, painting and or make repair when necessary which Mr. Miao liked. (*See* Exhibit "1", ¶ 3). InvestPro was according to Lin one of the largest realtors in Chinatown. (*See* Exhibit "1", ¶ 3). After inspecting the property with Mr. Lin and based upon the representations of Mr. Lin, Mr. Miao told his wife to go ahead and sign the purchase agreement after the August 10, 2017 inspection. (*See* Exhibit "1", ¶ 3). Ms. Marie Zhu e-signed the Agreement on August 11, 2017 with the help of Kenny Lin and Le Wei Chen from InvestPro who were the buyer's agents. (*See* Exhibit "1", ¶ 3) (August 11, 2017 Resident Purchase Agreement attached as Exhibit "8" to Plaintiff's Motion for Reconsideration). The form had previously been completely prepared by the InvestPro agents. (*See* Exhibit "1", ¶ 3). During the inspection, Mr. Miao informed Mr. Lin that the units needed to have proper GFCI outlets and that smoke, combustible gas and CO detectors needed to be installed since they were required by law. (*See* Exhibit "1", ¶ 3). When Ms.

Marie Zhu signed the second Residential Purchase Agreement on September 5, 2017, due diligence was waived as Mr. Miao had already completed inspections of the subject property. (September 5, 2017 Residential Purchase Agreement attached as Exhibit "8" to Plaintiff's Motion for Reconsideration).

After the Residential Purchase Agreement was e-signed, Mr. Miao visited and inspected the triplex additional times prior to closing. (*See* Exhibit "1", ¶ 4). Ceramic tile had been laid in the kitchen, living room, hallway and bathrooms. (*See* Exhibit "1", ¶ 4). Laminated wood flooring had been placed in all the bedrooms. (*See* Exhibit "1", ¶ 4). Mr. Miao did not notice any issues with the flooring except for a few small cracks in the ceramic tile in Unit C. (*See* Exhibit "1", ¶ 4). The floor was not buckling in any of the units. (*See* Exhibit "1", ¶ 4). Mr. Miao also did not notice any cracking in the walls inside the triplex during his inspections. (*See* Exhibit "1", ¶ 4). The units did look as that they had been recently renovated. (*See* Exhibit "1", ¶ 4). At no time during Mr. Miao's initial inspection of the triplex did Mr. Lin report that there were significant issues with the foundation and earth movement or that the sewer line was broken causing sewer water backup. (*See* Exhibit "1", ¶ 4).

When considering the purchase of the subject triplex, Mr. Miao asked Kenny Lin to be their buyer's agent. (*See* Exhibit "1", ¶ 5). After the Residential Purchase Agreement was e-signed, Mr. Miao found out Mr. Lin had assigned another agent in his office, Helen Chen, to represent Plaintiff WLAB Investment. (*See* Exhibit "1", ¶ 5). It was Lin's and InvestPro's handyman who had rehabilitated the triplex by covering up the many issues with the building. (*See* Exhibit "1", ¶ 5). In hindsight, understanding that Lin knew too much about the undisclosed problems with the building, he probably wanted nothing to do with representing Mr. Miao's company. (*See* Exhibit "1", ¶ 5).

After WLAB purchased the 2132 Houston Drive property, Mr. Miao retained InvestPro as the property manager as they had been for the seller since they got their triplex in 2015. (*See* Exhibit "1", ¶ 6). Mr. Miao went to the InvestPro Christmas party during December, 2017. (*See* Exhibit "1", ¶ 6). At the party, Lin explained to Mr. Miao that they were buying properties in auctions, then rehabilitate and "flipping" the properties and making large amounts of money. (*See* Exhibit "1", ¶ 6). A number of Lin's investors were present during the party and also confirmed that they were making a lot of money. (*See* Exhibit "1", ¶ 6). Lin explained that he puts investors together to buy properties for the purpose of flipping the properties. (*See* Exhibit "1", ¶ 6). Lin invited Mr. Miao to joint his "flipping fund." (*See* Exhibit "1", ¶ 6). Lin explained that Mr. Miao needed only invest some money and that InvestPro would do everything from buying the properties to remodeling and flipping them. (*See* Exhibit "1", ¶ 6). He described it like a mutual fund where he could get a very good return. (*See* Exhibit "1", ¶ 6). Lin also mentioned that the 2132 Houston Drive property was one of the projects in the "flipping fund." (*See* Exhibit "1", ¶ 6). Investors did not need to know anything about the properties. (*See* Exhibit "1", ¶ 6). They simply invested money and Investpro handled the rest like a mutual fund. (*See* Exhibit "1", ¶ 6). The mutual fund was also referenced in InvestPro advertisements in local newspapers. (*See* Exhibit "1", ¶ 6).

During approximately June of 2018, the tenant in unit A reported that the fuse to Unit A kept burning out. (*See* Exhibit "1", ¶ 7). The tenant reported the issue to InvestPro, the property manager. (*See* Exhibit "1", ¶ 7). InvestPro sent their handyman to fix the problem. (*See* Exhibit "1", ¶ 7). The handyman's fix was apparently to disconnect some of the other circuits to the fuse which result in the tenant not being able to use all outlets. (*See* Exhibit "1", ¶ 7). After complaining to Mr. Miao about the problem, Mr. Miao hired a licensed electrical contractor to look at the issue. (*See* Exhibit "1", ¶ 7). At that time, the

contractor discovered that InvestPro's handyman had disconnected circuits from the fuse. (*See* Exhibit "1", ¶ 7). The contractor also learned that when the window ACs were installed, Defendants had piggybacked the AC circuit onto other circuits causing an overload on the fuse without the required permit. (*See* Exhibit "1", ¶ 7). The electrical panel further did not have sufficient electrical wattage to power the unit with the addition of the AC units. (*See* Exhibit "1", ¶ 7). InvestPro's handyman is not a licensed professional as InvestPro had represented in their website. (*See* Exhibit "1", ¶ 7). None of this was disclosed by Lin to Mr. Miao prior to the purchase of the triplex. (*See* Exhibit "1", ¶ 7). Mr. Miao approached Lin with the contractor's bid asking for $10,000.00 to fix the electrical problem. (*See* Exhibit "1", ¶ 7). Lin said that it was Mr. Miao's problem. (*See* Exhibit "1", ¶ 7). Mr. Miao ended up paying for the repair. (*See* Exhibit "1", ¶ 7).

Around October of 2018, water was dripping from unit C's ceiling during hot sunny days. (*See* Exhibit "1", ¶ 8). The ceiling was opened up which revealed that Defendants had installed a dryer duct dumping high moisture exhaust gas into the attic instead of venting to outside of the building which was required by law. (*See* Exhibit "1", ¶ 8). Mr. Miao also found that the air conditioning ductwork inside the ceiling was not insulated which is also unlawful. (*See* Exhibit "1", ¶ 8). Later, Mr. Miao discovered that when Defendants replaced swamp cooler with AC, they left the uninsulated swamp cooler duct in the attic. (*See* Exhibit "1", ¶ 8). When the highly moist gas from the dryer exhaust cooled with cool air coming from the uninsulated AC duct, condensation occurred causing water dropping onto the unit C ceiling. (*See* Exhibit "1", ¶ 8). The wet insulation in the attic was black and no longer working. (*See* Exhibit "1", ¶ 8). Mr. Miao hired LVAC to put in new insulated ducting and hired Home Depot to reinsulate the attic. (*See* Exhibit "1", ¶ 8). Mr. Miao found that Unit B had the same issue with the dryer vent dumping into the attic. (*See* Exhibit "1", ¶ 8). In Unit A, the dryer vent dumped into the wall between two studs and also eventually dumped into

the attic. (*See* Exhibit "1", ¶ 8). None of this was reported by Lin prior to Plaintiff closing on the triplex. (*See* Exhibit "1", ¶ 8).

During the last several months, Mr. Miao has become aware of the condition of the foundation. (*See* Exhibit "1", ¶ 9). On February 16, 2021, the flooring in one of the bedrooms in Unit B was pulled up. (*See* Exhibit "1", ¶ 9). The laminate wood flooring installed by Kenny Lin/InvestPro's handyman had been buckling which prompted Mr. Miao to pull up the floor. (*See* Exhibit "1", ¶ 9). Upon pulling up the floor, it was observed that the foundation had severely deteriorated and had been covered by laminate flooring so the foundation defects would be concealed. (*See* Exhibit "1", ¶ 9). The photographs attached to Plaintiff's Motion for Reconsideration as Exhibit "3" were taken by Mr. Miao and accurately reflect the condition of the foundation on February 16, 2021. (*See* Exhibit "1", ¶ 9). Upon seeing the condition of the foundation, it explained the severe cracks in the walls that had been appearing through Defendants' pre-sale renovations. (*See* Exhibit "1", ¶ 9). At the time of the pre-purchase inspections of the triplex, there was no serious cracking in the walls. (*See* Exhibit "1", ¶ 9). The walls had been covered the plaster and wall coverings to hide the cracks and other wall defects. (*See* Exhibit "1", ¶ 9). After closing, cracks started developing again. (*See* Exhibit "1", ¶ 9). The photographs of the wall cracks attached to Plaintiff's Motion for Reconsideration as Exhibit "4" were taken by Mr. Miao. (*See* Exhibit "1", ¶ 9).

Before the tenant in Unit C moved out August of 2020, he complained of slow drainage issues with the unit, particularly in the kitchen and bathroom. (*See* Exhibit "1", ¶ 10). The tenants in units B and C had complained about drainage issues as early as May or June of 2020. (*See* Exhibit "1", ¶ 10). When Nicholas Quioz, the tenant in Unit A, moved out, he explained to Mr. Miao that he had moved into the unit during April of 2017. (*See* Exhibit "1", ¶ 10). He reported to InvestPro that sewage water had overflowed into Unit A.

(*See* Exhibit "1", ¶ 10). He reported that InvestPro had spent several weeks trying to open the sewer line. (*See* Exhibit "1", ¶ 10). The handyman working on the sewer line explained to Mr. Quioz that the sewer line was broken. (*See* Exhibit "1", ¶ 10). Attached to Plaintiff's Motion for Reconsideration as Exhibit "7" is a photograph taken by Mr. Miao of sewage backed up into Unit C's bathtub. (*See* Exhibit "1", ¶ 10). Lin said nothing about a broken sewer line prior to or after closing. (*See* Exhibit "1", ¶ 10).

That during the week of March 8, 2021, a next-door neighbor explained to Mr. Miao that he had been a tenant of the building during 2016 or 2017. (*See* Exhibit "1", ¶ 11). After he moved in, the floor buckled, and sewage backed up. (*See* Exhibit "1", ¶ 11). He called InvestPro who did nothing about the problem, so he moved out. (*See* Exhibit "1", ¶ 11).

The property purchased by WLAB Investments was one of the homes purchased by Lin's flipping fund. (*See* Exhibit "1", ¶ 12). TKNR, Inc. who was the seller of the property and which constituted a group of investors who had been put together by Lin and InvestPro. (*See* Exhibit "1", ¶ 12). In the disclosure made by the seller attached to Defendants' Motion for Summary Judgment, the seller states that they have never visited the property. (*See* Exhibit "1", ¶ 12). This is because the property was one of Mr. Lin's flipping fund properties. (*See* Exhibit "1", ¶ 12). Lin handled everything including taking his share of the profit from the sale. (*See* Exhibit "1", ¶ 12). It was Lin/InvestPro's handyman who made the repairs to the subject property. (*See* Exhibit "1", ¶ 12). Lin was aware that the building was cracking. (*See* Exhibit "1", ¶ 12). More importantly, Lin was aware of the condition of the foundation as it was InvestPro's handyman who covered it up. (*See* Exhibit "1", ¶ 12). This is why Lin did not want to represent both the buyer and the seller in this transaction as he was aware of the many undisclosed problems with the property. (*See* Exhibit "1", ¶ 12).

Concerning the condition of the foundation, Lin and InvestPro were more than aware of what was going on. (*See* Exhibit "1", ¶ 13). Mr. Miao had an opportunity to review a number of the handyman receipts which have been produced in the litigation one of which acknowledges that the handyman "remove 2 rooms laminate and level concrete." (DEF 23) This took place on April 19, 2017. (*See* Exhibit "1", ¶ 13). When the flooring began buckling again, Mr. Miao pulled the wood laminate up only to find the condition of the foundation that the handyman had covered to be extremely poor rendering the entire triplex structurally unsound. (*See* Exhibit "1", ¶ 13). The condition of the floor was also consistent with the recent reports of tenants that the sewer line was broken resulting in sewage water leakage backing up under the foundation. (*See* Exhibit "1", ¶ 13). As reported by Defendants' expert Neil Opfer, the triplex sits on expansive clay which swells up when wet and then compresses when dry. (*See* Exhibit "1", ¶ 13). These conditions cause earth movements resulting in foundation and wall cracking. (*See* Exhibit "1", ¶ 13).

Mr. Miao has a PhD in chemical engineering. (*See* Exhibit "1", ¶ 14). Because sewage gases are so dangerous, Mr. Miao removed all tenants from the property immediately and has not leased units to anyone else. (*See* Exhibit "1", ¶ 14). Sewage gas is a complex mixture of toxic and nontoxic gases produced by the decomposition of organic household sewer water. (*See* Exhibit "1", ¶ 14). The gases may include hydrogen sulfide, ammonia, methane, esters, carbon monoxide, sulfur dioxide and nitrogen oxides. (*See* Exhibit "1", ¶ 14). Sewer gases are of concern due to health effects and potential for creating fire or explosions. (*See* Exhibit "1", ¶ 14). Exposure to sewer gas can happen if the gas seeps in via a leaking plumping drain, vent pipe or even through cracks in a building's foundation. (*See* Exhibit "1", ¶ 14). At higher concentrations (> 300 ppm) hydrogen sulfide can cause loss of consciousness and death. Very high concentrations (> 1000 ppm) can result in immediate collapse, occurring after a single breath. (*See* Exhibit "1", ¶ 14). Carbon monoxide is a

colorless, odorless, and tasteless toxic and flammable gas. (*See* Exhibit "1", ¶ 14). At concentrations above 150 to 200 ppm, disorientation, unconsciousness and death are possible. (*See* Exhibit "1", ¶ 14). Sewer gas can contain methane, hydrogen sulfide and carbon monoxide all of which are highly flammable and potentially explosive substances. (*See* Exhibit "1", ¶ 14).

As a result of having a broken sewer line and significant issues with the foundation, as stated, Mr. Miao has refused to lease triplex units to other tenants. (*See* Exhibit "1", ¶ 15). What concerns Mr. Miao is that Lin knowingly put a tenant in the Triplex knowing that the sewage line was broken and presented an extreme health and safety risk to tenants. (*See* Exhibit "1", ¶ 15). Lin also sold the property to Mr. Miao's company without disclosing the condition of the foundation and sewer line. (*See* Exhibit "1", ¶ 15). Lin's knowledge of the broken sewer line explains other actions prior to Plaintiff purchasing the triplex. (*See* Exhibit "1", ¶ 15). During one of his inspections of the subject property with Lin by his side, Mr. Miao noticed that the units did not have smoke, CO or combustible gas detectors. (*See* Exhibit "1", ¶ 15). Mr. Miao reminded Lin that this was against the county law and asked him to install detectors in each of the units. (*See* Exhibit "1", ¶ 15). Lin had CO and smoke detectors installed. (*See* Exhibit "1", ¶ 15). However, after Plaintiff's purchase of the triplex, Mr. Miao noticed that Linn had removed the CO and combustible gas detectors. (*See* Exhibit "1", ¶ 15). Lin has obviously concerned the CO detectors would sound the alarm knowing that the sewer line was broken, and the foundation cracked. (*See* Exhibit "1", ¶ 15). Sewage gas seeps into the bedrooms through the cracked foundation. (*See* Exhibit "1", ¶ 15).

In going through the amended order, Mr. Miao noticed a number of factual representations that he submits are at issue in the case. (*See* Exhibit "1", ¶ 16).

(a) p. 2, ¶ 1. "2132 Houston Drive, Las Vegas, NV 89104 ("Property") was originally constructed in 1954." *On November 18, 1994, Cecilia Hernandez, with her*

family, bought the triplex for $117,000.00. They leased the property out for rental income. Before or during their ownership, the sewage line broke leaking sewage water under the foundation. The soil has expansive clays. As Defendants' expert Opfer wrote in his report:

> The ongoing groundwater condition can impact ground movement particularly with the presence of expansive clays." The point of this discussion is that this then impacts the performance of the walls and concrete floor slabs as to cracking to a significant degree. Cracked floor tile can be replaced in one year only to have the same issues appear again in the next year or year after that as an example. Standard construction materials such as stucco, drywall, floor tile, and concrete will all tend to crack when subjected to these forces. Again, cracking in these materials is seen all over the Las Vegas Valley.

(*See* Opfer report, pp. 9-10).

> *Most likely, clay pipe was used for the sewer system connection. . . . It is a well-known fact that vitrified clay pipe is relatively weak and can be easily penetrated by tree roots.*

(*See* Opfer report, p. 14).

According to Opfer, "the issue with expansive clay is that it can swell up (expand) in the presence of water and then compress when it dries out. Note that expansive clays have created residential-foundation problems in many areas." The expansive clay soil with water leaks from a broken sewage line led to earth under the foundation moving and cracking the foundation. The earth movement broke more sewer line and lead to more water leakage causing more slab cracks. The more tenants they had in the apartments, the more sewage water generated and leaked under the foundation causing more foundation cracks and broken sewage line. The Hernandez family used the property as collateral for a $291,000.00 loan to fix the problems. However, the loan was not sufficient to fix the problems with the property. The tenants moved out, so the owners did not have rental income to make the mortgage payment. The bank found out the triplex units could not be rented out to tenants because the units were dangerous because of the foundation and sewage gas. The sewage line needed to be rebuilt along with the foundation and

everything else. This is why on September 10, 2015, the bank foreclosed and started the auction at $52,000.00 (the land value) in spite of their $291,000.00 loan. Kenny Lin's flipping fund, with TKNR as the buyer, won the auction on 10/9/2015 and listed the triplex for sale three months later at $188,000.00 on 1/9/2016. Lin/InvestPro knew of the apartment major defects and won the apartment at a very deep discount of market value. Lin/InvestPro rehabilitated the property though they did not fix the foundation or sewage problems. They just had the unlicensed InvestPro handyman cover major defects up and put the property back on the market for $188,000.00 to make a huge flipping profit.

(b) p. 3, ¶ 4. "Ms. Zhu waived the Due Diligence condition." Under Paragraph 7(D), "Buyer is deemed to have waived the right to that inspection and Seller's liability for the cost of all repairs that inspection would have reasonably identified had it been conducted, except as otherwise provided by law." *It was Helen Chen and Kenny Lin from InvestPro who prepared the purchase agreement and checked the box for home inspection by Buyer and waiving other inspection. Plaintiff did not waive right to inspect as evident in both the August 11, 2017 and September 14, 2017 Purchase Agreements. In fact, Mr. Miao inspected the property with Kenny Lin on August 10, 2017, before the Purchase Agreement was e-signed on August 11, 2017, pointing out various issues with the Triplex that needed to be fixed before closing. As stated, Mr. Miao could not have uncovered the various defects in the property that are at issue as they were covered up by Lin, acting on behalf of Defendant TKNR. The defects were serious and would have only been revealed during an inspection that allowed destructive opening up of the unit as this purchase agreement did not allow. Further, Mr. Miao's understanding of the law is that an inspection by a licensed inspector is not required for multi-family rental properties and that Lin is not relieved of his responsibility to disclose known conditions which affect the value of the property.*

(c) p. 3, ¶ 5. "Ms. Zhu also waived the energy audit, pest inspection, roof inspection, septic lid removal inspection, mechanical inspection, soil inspection and structural inspection." *As stated, Mr. Miao inspected the subject property on several occasions. No non-destructive inspection would have uncovered the serious cracking and foundations issue in the triplex. Further, this property is not on septic. The waiver checks in the Purchase Agreement were prepared by InvestPro without notifying Mr. Miao.*

(d) p. 3, ¶ 6. "Additionally, Wong, Lin, Chen, Zhang, Cheng, and Nickrandt (collectively, "Broker" or "Broker Defendants") had "no responsibility to assist in the payment of any repair, correction or deferred maintenance on the Property which may have been revealed by the above inspections, agreed upon by the Buyer and Seller or requested by one party." *These individuals are the actual sellers of the property. They are the true sellers behind alternations and "flipping. Attached as Exhibit "5" to Plaintiff's Motion is the Flipping Fund's web page found by Mr. Miao. InvestPro's web page identifies InvestPro as a participant in the Property purchases and not just from a realtor standpoint. The second page of the website talks about splitting profits with the manager LLC. Lin and his company, InvestPpro, put the deal together, sold units to investors, for a 75/25 split at the end. It was InvestPro's Kenny Lin who participated at the auction and bought the subject property. It was InvestPro's Kenny Lin who hired the InvestPro handyman to "rehabilitate" the property. It was InvestPro's handyman who discovered that the sewer line was broken. Not only did Lin push representation for the buyer to another InvestPro realtor but at no time did Lin actually tell Mr. Miao that he had an interest in the subject property; i.e., he was the seller.*

(e) p. 3, ¶ 7. "On August 2, 2017, TKNR submitted Seller's Real Property Disclosure Form ("SRPDF" or "Seller's Disclosures") timely indicating all known conditions of the Subject Property." *Mr. Miao did not meet Lin until August 10, 2017, at the time of*

Mr. Miao's inspection of the Property. There was no communication prior to August 10 with Lin or anyone from InvestPro. Mr. Miao did not decide to go through with the purchase of the Property until August 11, 2017. There is nothing in Seller's disclosures referencing and broken sewer line or the structurally unsound foundation caused by earth movements. Sellers were aware of these conditions as Kenny Lin, their representative, covered them up.

(f) p. 3, ¶ 7. "Despite these disclosures, Plaintiff chose not to inspect the Subject Property, request additional information and/or conduct any reasonable inquires." *During Mr. Miao's inspection of the property with Kenny Lin, Mr. Miao requested information about repairs. Kenny Lin informed Mr. Miao that after they won the auction, they did a complete rehabilitation of the property. Because of Lin's representations prior to closing, Mr. Miao believed that Investpro had fixed all defects during rehabilitation.*

(g) p. 4, ¶ 10. "This is the second time that Ms. Zhu waived inspections for the Property despite the language in the 2nd RPA that strongly advised to get an inspection done." *Mr. Miao inspected the property with Kenny Lin on August 10, 2017. The original Residential Purchase Agreement was e-signed the day after on August 11, 2017, after the agreement had been prepared completely by Helen Chen and Kenny Lin. The Agreement itself does not state that the buyer is waiving the home inspection. Again, the triplex had already been inspected by Frank Miao with Kenny Lin at his side by the time the initial Agreement had been e-signed by Ms. Zhu. The buyer cannot waive an inspection that has already been completed. Mr. Miao inspected the property again after the initial Purchase Agreement was signed. At no time did Mr. Miao or Ms. Zhu waive the right to inspect. Again, both the first and second Purchase Agreements were completed by InvestPro agents allegedly representing Plaintiff at the time of the transaction.*

(h) p. 4, ¶ 10. "Notably, although Ms. Zhu had not initialed the "Failure to Cancel or Resolve Objections" provision in the RPA, she initialed the corresponding provision in the 2nd RPA." *WLAB inspected the property with Kenny Lin on August 10, 2017.*

(i) p. 4, ¶ 11. "Although Ms. Zhu had actual knowledge of the Seller's Disclosures, and the Parties agreed to extend the COE to January 5, 2018, Ms. Zhu still never did any professional inspections." *Frank Miao did inspection with Kenny Kin and put out correction items.*

(j) p. 5, ¶ 15. "Plaintiff was a sophisticated buyer who understood the necessity of getting the properties inspected." *Plaintiff did inspect the property on August 10, 2017, with Mr. Lin. The major defects were covered up and Lin had lied to Mr. Miao about the rehabilitation.*

(k) p. 5, ¶ 17. "As to Paragraph 7(A), Mr. Miao specified that he believe that his inspection and conversations with the tenant constituted the action necessary to deem the Property as satisfactory for Plaintiff's purchase." *Due to defendant Kenny Lin lying to Mr. Miao and covering up major foundation and structural defects by putting laminate wood flooring and ceramic tile over the major defect, Mr. Miao could not discovery these hidden defects during inspection without destructive inspection which the purchase agreement did not allow.*

(l) p. 5, ¶ 18. ". .. Plaintiff had access to inspect the entire property and conduct non-invasive, non-destructive inspections: . . ." *The serious foundational, structural and sewage line issues, which were covered up with laminate wood and ceramic floor tile, would have only been discovered with a destructive open up inspection.*

(m) p. 6, ¶ 19. "Prior to the purchase, Mr. Miao was always aware that the Seller "strongly recommended that buyer retain licensed Nevada professionals to conduct

inspections." *Kenny Lin said nothing about retaining a licensed inspector. He knew that Mr. Miao was inspecting the building. Mr. Lin was also aware that whether the inspector was licensed or not, he had covered up the significant defects in the property which could not have been discovered without pulling up the floors. After Defendants purchased the property at auction, this property was listed more than three times from January 9, 2016 to August 10, 2017. Each time, the property was removed from escrow which meant Sellers had to go back to the drawing board and make a better effort to cover up the significant issues with the property. Defendants did not actually fix the defects. They simply covered them up.*

(n) p. 6, ¶ 20. "Plaintiff was also aware of the language in the RPA under Paragraph 7(D) that limited potential damages that could have been discovered by an inspection." *The key issue is Defendants did unlawful things and covered up problems with the property. They put making money above tenant and investor safety.*

(o) p. 7, ¶ 22. "Based on his own belief, he does not believe that a professional inspection is necessary for multi-tenant residential properties." *Mr. Miao is wondering if summary judgment was granted because the Court believes that professional licensed inspections are required. Mr. Miao is a professional. He knows building and apartments very well. Mr. Miao is not aware of any legal requirement that a buyer is required to retain a licensed inspector before purchasing an apartment, in this case, a triplex. For multi-tenant residential properties in Las Vegas involving many thousands of units, it is virtually impossible to inspect each and every unit in 14 days which is why law requires work on rental units to be done by licensed contractors followed by inspection and permitting by city building and safety departments.*

(p) p. 8, ¶ 26. "During that time, he admitted that he noticed some issues with the Property that were not up to code, finishing issues, GFCI outlets, and electrical

issues:" *As stated, Mr. Miao instructed Kenny Lin to put smoke and CO detectors in the units only to find out that after the purchase, Lin had removed the CO detectors after they were installed. Defendants had hidden some GFCI required outlets by covering up or installing non-functioning GFCI outlets without using a licensed electrician which was dangerous for the tenants. Defendants did not want to use a licensed electrician because a licensed electrician would have asked to pull permits. The city inspector may have found out about the defects and shut down the apartment.*

(q) p. 8, ¶ 28. "Additionally, Mr. Miao noted that there were cracks in the ceramic floor tiles, *Id.* at 249: 22-25, and he was aware of visible cracks in the concrete foundation, *Id.* at 269: 13-22 (aware of slab cracks), which were open and obvious." *Mr. Miao noticed a few cracks in the ceramic floor tiles in Unit C living room. Mr. Miao was not able to see the foundation as it was covered with newly installed flooring. It was at this point Lin explained to Mr. Miao that they had rehabilitated the entire triplex.*

(r) p. 9, ¶ 31. As to SRPDF, Plaintiff was aware that TKNR was an investor who had not resided in the Property, and there were issues with the heating systems, cooling systems, and that there was work done without permits and all the work was done by a handyman other than the HVAC installation." *When Mr. Miao inspected the property the Defendant Lin, Lin explained that InvestPro had rehabilitated the property. There was no defect found at the time of the inspection that would have raised any concern.*

(s) p. 9, ¶ 32. "Despite these disclosures, Mr. Miao never followed up." *There were no defects observed at the time of the inspection. They were all covered up.*

(t) p. 9, ¶ 33. "However, Mr. Miao also admitted that he could have followed up on the issues identified in the SRPDF that included the HVAC and the permits:" *SRPDF only disclosed that there was a new air conditioner but never mentioned that the air conditioners replaced swamp coolers. Mr. Miao later learned after a leak in one of the*

units that the ducting had not been changed from the swamp cooler to air conditioning. This was only learned after opening up the ceiling.

(u) p. 10, ¶ 34. "Similarly, Mr. Miao was aware that he should have contacted the local building department as part of his due diligence:" *There was no reason to contact the building department as Sellers did not disclose any activity that would have required a permit. Specifically, they disclosed a new kitchen cabinet in each unit, brand new AC installed and three bedrooms were redone. There was no mentioned that the air conditioning units were replacing swamp coolers which required new electrical and plumbing which would have required a permit. If the AC units were replacing AC units, permits would not need to be pulled. Based on the information provided by Lin and in Sellers' disclosures, Mr. Miao was not aware of any activity that would have required a permit. It was also learned after the walls were opened that Defendants had not properly wired the AC units leaving wires exposed and presenting a potential fire danger.*

(v) p. 10, ¶ 35. "Plaintiff was on notice of the potential for mold and the requirement to get a mold inspection." *This is a rental property. By law, the seller must provide a safe, habitable apartment to the tenants. No tenant will check mold and have professional mold inspection. Further, mold testing usually requires a destructive inspection to verify in ceiling and behind walls.*

(w) p. 11, ¶ 37. "Disclosure of unknown defects not required. Form does not constitute warranty duty of buyer and prospective buyer to exercise reasonable care." *Mr. Miao's issue with Sellers' disclosures is that they failed to disclose defects that they were aware of. The Handyman's invoice for patching the concrete underscores that the Sellers were aware of the condition of the foundation when they sold the triplex and failed to disclose to Plaintiff.*

(x) p. 12, ¶ 39. "The alleged defects identified by both parties' experts could have been discovered at the time of the original purchase." *Again, the foundation, wall cracks, AC wiring and ducting, dryer venting, were all under flooring or within the ceilings and walls of the units. These defects would have only been uncovered with prohibitive destructive open up inspection.*

(y) p. 13, ¶ 43. "Additionally, Mr. Miao accompanied Defendants' expert during his inspection." *Defendants' expert did not show all of the pictures taken which reflect new cracks.*

(z) p. 12, ¶ 44. "Mr. Miao agreed with Defendants' expert that the alleged conditions identified by Plaintiff's expert were "Open and obvious":" *Mr. Miao was not shown all of the photographs during his deposition. There were many more new cracks observed than in 2017 at the time of Mr. Miao's inspection. The new cracks were hidden by coating materials, dry wall, joint compounds and new floors.*

(aa) p. 13, ¶ 45. "He also agreed with Defendants' expert's finding that there was no noticeable sagging in the roof." *The roof leak was not caused by sagging. It was caused by a broken seal on the roof.*

(bb) p., ¶ 46. "Incredibly, Mr. Miao also recognized the deficiency in Plaintiff's expert's report that failed to differentiate between conditions prior to when TKNR owned the Property, while it owned it and those afterwards." *New cracks appeared after Defendants hid the original cracking. When Mr. Miao inspected the property with Lin, there was not nearly as much cracking as there is now. Defendants hid most of the cracks and defects. There were dryers and washers installed in the units in 2017 were vented to the attic. The vents ran through the walls. The venting cause moisture in the attic which resulted in the ceilings being opened for find the leaks. It was discovered at that time,*

after the ceilings were opened, that the dryer had been vented to the attic. Lin at no time explained how the dryers had been vented.

(cc) p. 13, ¶ 47. "No dispute exists that TKNR did not need permits for the interior work it had done to the Property." *Mr. Miao ultimately learned that the AC units had replaced swamp coolers and that the ducting had not been changed to allow for AC units until after the ceiling was opened up. The new plumbing and electrical for the new AC units would have had to be inspected. Again, Mr. Miao did not know that the new AC units did not replace other AC units. Because these units are for lease, the work should have been performed by licensed contractors which is why the work was not done by Defendants as it should have been. One unit had a window AC unit the installation of which should have been performed by a licensed contractor with permit and inspection by the city.*

(dd) p. 14, ¶ 48. "Since the date it purchased the Property, Plaintiff has always been trying to lease it. . . . According to Mr. Miao, the landlord must provide safe housing for the tenant." *Lin and his company InvestPro were the property managers for the property after Plaintiff's purchase. Lin knowingly leased the property to tenants knowing that the property was unsafe. Once Mr. Miao learned of the foundation and sewage line defects, he removed all tenants until they are fixed.*

(ee) p. 15, ¶ 49. "Moreover, Plaintiff does not provide any notice to the tenants about its expert's report or this litigation." *Since purchasing the property, Mr. Miao has made many repairs as they are discovered with licensed contractors. Specifically, once Mr. Miao found out about the foundation and sewer line defects, he asked the tenants to move out immediately.*

(ff) p. 15, ¶ 50. "This illustrates the lack of merit of Plaintiff's claim, proven that it has done nothing to correct the allegedly deficient conditions that are clearly not so

dangerous as it does not tell prospective tenants about them." *Mr. Miao has repaired many defects with licensed contractors. It is only with the discovery of the foundation and sewer line defects that Mr. Miao had discontinued attempted to repair the triplex.*

(gg) p. 15-16, ¶ 51. "Mr. Miao admitted that multiple third parties could have potentially damaged the Property." *The major cracks in the walls and floors were not done by third parties. The major defects were not done by third parties.*

(hh) p. 16, ¶ 52. "Plaintiff's case is based on speculation that Defendants knew about the alleged conditions in the Property; however, Mr. Miao admitted that there is no evidence that shows Defendants knew about them." *As stated, Mr. Miao believes there is substantial evidence that Defendants knew about the defects.*

(ii) p. 17, ¶ 55. "Mr. Miao also recognized that a 63-year-old property could have issues that were not caused by Defendants." *It is not the fact that Defendants didn't cause the foundation or sewer issues, it is the fact that they did not disclose and hid these issues when they sold the property to Mr. Miao's company.*

(jj) p. 17, ¶ 56. "Plaintiff did not identify any discovery illustrating a genuine issue of material fact that Defendants knew of the alleged issues with the Property that they had not already disclosed on Seller's Disclosures." *Numerous photographs of cracking floors and walls were produced in discovery which reflected cracks not present at the time of Mr. Miao's inspection. Additionally, the floor continues to buckle and as it did, the floor was pulled up which revealed foundation damage as previous mentioned.*

(kk) p. 17, ¶ 58. "The Flipping Fund had nothing to do with Plaintiff's decision to purchase the Property." *The subject triplex was one of the Flipping Fund projects. As stated by Lin, the property was purchased at auction and renovated. The Flipping Fund had everything to do with the alleged rehabilitation of the property as that is what they do, buy, rehabilitate (cover up in this case) and sell for a large profit.*

(ll) p. 17, ¶ 59. "Initially, Mr. Miao contacted contractors to bid the potential cost of repair for the Property and determined that it would have been $102,873.00. . . . However, Plaintiff's expert opined that the cost of repair would have been $600,000.00, although he did not provide an itemized cost of repair." *Initially, the cost of repair to fix the electrical and ductwork inside the ceiling was $102,873.00. However, by the time Plaintiff's expert inspected the property, much more was known about the property and, therefore, the cost of repair was much higher.*

(mm) p. 18, ¶ 60. "He denied, under the penalty of perjury, that he never made an offer to settle this matter for $10,000.00." *This statement completely misrepresents what actually transpired. After Plaintiff purchased the property, the fuses to the AC units kept burning out. Mr. Miao hired an electrician to figure out what the problem was. It was learning that when Defendants installed the air conditioners, there was not sufficient room in the electrical box to wire the air conditioners. Therefore, Defendants' handyman piggy-backed the AC wiring onto another fuse which caused the fuse to overload and fail. The electrician estimated the cost of repair to be $10,000.00. Since the electrical problem was Defendants' doing, Mr. Miao approached Lin about paying $10,000.00 to repair the electrical. Mr. Miao believes this offer to resolve the electrical issue was prior to a lawsuit being filed. The condition of the wiring was not open and obvious as suggested in paragraph 62 of the order as the wiring was hidden behind the wall. The wall had to be opened up to discover the electrical issue.*

(nn) p. 24, ¶ 62. "Additionally, he specified that he noted issues with the electrical system and items not up to code at the time that he did his inspection and/or that any issues with the electrical system were "open and obvious" that a reasonable, professional inspection could have discovered in 2017." *Defendants did not disclose electrical system changes. They are not "open and obvious" as they were hidden behind the wall. As stated,*

when Defendants changed out the swamp cooler for an air conditioner, they simply piggy-backed the AC wiring on already existing wiring on the fuse which caused the fuse to overload and burn out. The electrical panel was insufficient to handle the load which required re-wiring by a licensed electrician. Further, when the AC unit was added, additional electrical wiring was required which required a permit and inspection.

(oo) p. 25, ¶ 63. "Additionally, he specified that he noted issues with the plumbing system were "open and obvious" that a reasonable, profession inspection could have discovered in 2017." *Mr. Miao learned of the septic issue when the tenants left the property and reported issues with the sewage. Sewage had backed up in one of the tubs which was discovered after the tenant left. Residue from the sewage backup was found in the tub (See Exhibit "7"). Mr. Miao further learned from the tenant in Unit A and the former tenant that the sewage issue was something Defendants were aware of as they had previously investigated the problem.*

(pp) p. 25, ¶ 64. "As to 31(c), Mr. Miao admitted that the Seller's Disclosures did disclose the use of a handyman, the lack of permits, and issues with the sprinklers. Additionally, he specified that he noted issues with the sewer system were "open and obvious" that a reasonable, professional inspection could have discovered in 2017." *There is no sprinkler system. The sewer issue was not open and obvious and could not have been discovered with a typical professional inspection. Defendants were aware of the issue and had an obligation to report the sewer problem to Plaintiff.*

(qq) p. 25, ¶ 65. The order suggests that the conditions were open and obvious. *Defendants were aware of these issues and failed to disclose. These issues were not "open and obvious." They were discovered after Mr. Miao opened walls, ceilings and floor coverings.*

(rr) p. 25, ¶ 66. "As to 31(e), Mr. Miao admitted that the Seller's Disclosures did disclose issues with the heating and cooling systems, the use of a handyman, and the lack of permits." *A licensed professional inspection cannot and would not discover all of these defects. The issue with the AC wiring behind the wall was not visible without doing some destructive investigation. At no time did Defendants disclose that their handyman was not licensed, which is unlawful.*

(ss) p. 26, ¶ 67. "As to 31(f), this allegation illustrates the prior knowledge that Plaintiff had before purchasing the Property, and the overall emphasis on the failure to obtain a professional inspection of the Property prior to purchasing it." *31(f) refers to the fact that smoke detectors were missing at the time of the inspection. This allegation says nothing about the serious problems with the Property that Defendants had covered up and that were not readily detectible at the time of Mr. Miao's inspection. Obviously, Mr. Miao did not see the foundation damage at the time of the inspection as it was covered by wood laminate and ceramic flooring. The order implies that an inspection done by a "professional inspector" would have noticed that serious foundation damage without pulling up the flooring. Mr. Miao was also not aware that the HVAC system had been changed three times until the receipts were disclosed in this case. Mr. Miao was not aware of the shoddy and illegal electrical work that had been done and which was hidden behind the walls. It took a tenant complaining about a fuse and the subsequent retention of a licensed electrician to go into the wall to discover what Defendants had done. It was a tenant and former tenant reporting about the sewage problems as well as sewage remnants in a bathtub for Mr. Miao to become aware of that problem. It took a leaking ceiling and opening of the ceiling before Mr. Miao became aware that Defendants had vented the dryer exhaust to the attic and that Defendants had not properly changed out the swamp cooler ducting for insulated air conditioning ducting. Walls had been covered so*

as the time of the inspection by Mr. Miao, very few if any cracks in the walls were observed. However, as the foundation and walls shifted over time, the cracks in the walls reappeared revealing what Defendants had covered up. To suggest that the discovery of missing smoke detectors is somehow indicative of the extent of Mr. Miao's knowledge at the time of the inspection is ridiculous.

(tt) p. 26, ¶ 68. "Notably, Mr. Miao admitted that no evidence showed that Defendants were aware of any of these issues." *The issues were created by the Defendants, so they obviously had knowledge.*

(uu) p. 26. ¶ 69. "Mr. Miao admitted that there was visible cracking on the foundation, walls, and the tiles that were open and obvious at the time that Plaintiff purchased the Property in 2017." *Mr. Miao did not see visible cracking on the foundation at the time of his inspections as the foundation was covered with flooring during the August 2017 inspections.*

(vv) p. 26, ¶ 70. "Mr. Miao admitted that he should have followed up related to the permit issue prior to Plaintiff purchasing the Property." *It's as if Defendants are suggesting that Plaintiff should have put more effort into uncovering Defendants' deceptions. In other words, you knew that the work was done by an unlicensed handyman. You should have assumed that the work was not done correctly or pursuant to the law. Defendant failed to disclose anything of substance like the fact that the wiring was improperly done when the AC units were put in. Defendant failed to disclose anything about the dryer exhaust venting to the attic, the improper ducting after the air conditioners were put in or that the wall coverings and flooring were covering up significant issues with the walls and foundation. Defendants suggest that had an inspection been done, Mr. Miao would have noticed all the problems. However, as stated, Defendants had covered up the problems.*

(ww) p. 26, ¶ 71. "Additionally, he specified that he noted issues were "open and obvious" that a reasonable, professional inspection could have discovered in 2017." *Mr. Miao did not see visible cracking in the foundation at the time of his inspections. Again, Defendants had covered the problems with the foundation with flooring. The only way Mr. Miao would have been aware of the significant issues with the foundation is if Lin told him or if he was allowed to perform a destructive inspection which the Purchase Agreement did not allow. Mr. Miao also did not observe wall cracks as they had been covered up at the time of the inspections. Defendants were aware of the foundation and wall cracks as they had covered them up. Mr. Miao was not aware that the HVAC system had been changed out three times until the receipts were produced during discovery. The roof leak was caused by the failure to seal the roof. The leak had nothing to do with sagging.*

(xx) p. 27, ¶ 72. ""Mr. Miao admitted that there was visible cracking on the foundation, walls, and the tiles that were open and obvious at the time that Plaintiff purchased the Property in 2017. . . . Notably, Mr. Miao admitted that no evidence showed that Defendants were aware of any of these issues and also admitted that squatters and tenants could have damaged the Property." *Squatters and tenants could not have caused the foundation and walls to crack. Even if squatters and tenants did cause the damage, Defendants were aware of the damage and covered it up.*

(yy) p. 27, ¶ 73. "As to the Broker Defendants, Ms. Zhu agreed that she was not relying upon any representations made by Brokers or Broker's agent." *Regardless of the inspections by Mr. Miao and what he discovered during his inspection, Defendants should have warned Mr. Miao and Ms. Zhu about serious conditions which they covered up. Mr. Miao was relying upon his broker to tell him about conditions which could not be seen with a routine inspection. Mr. Miao believes his agents should have told him about the fact that*

they were also financially tied to the sellers in that they were the Flipping Fund, they had put the investors together, they had a financial interest in monies made from the transaction and that it was their handyman who had made the purported repairs.

(zz) p. 28, ¶ 74. Mr. Miao walked the property with Defendants' expert, Neil Opfer. *By the time Mr. Miao walked the property with Mr. Opfer, numerous cracks had appeared in the walls which were not visible at the time of Mr. Miao's inspection on August 10, 2017.*

(aaa) p. 28, ¶ 75. "Mr. Miao agreed with Professor Opfer that the alleged conditions identified by Plaintiff's alleged expert were open and obvious." *Mr. Miao does not agree that the conditions which ultimately appeared in the roof and interior and exterior walls were open and obvious at the time of his pre-purchase inspection.*

(bbb) p. 28, ¶ 76. "Mr. Miao agreed with Professor Opfer that Plaintiff's expert did not do any destructive testing, so the same alleged conditions that the alleged expert notes, would have been made by an inspector at the time of the purchase." *The conditions complained of were not visible at the time of the 2017 inspection as they had been covered up by Defendants.*

Lin's Affidavit

Mr. Lin, in his declaration attached to Defendants' Motion for Summary Judgment, states in ¶ 2 that he submitted seller disclosures on August 2, 2017. Mr. Miao had not even met Mr. Lin before August 10, 2017. (See Exhibit "1", ¶ 17). Mr. Miao first met Mr. Lin on August 10, 2017, at the time of his inspection of the subject property. (See Exhibit "1", ¶ 17). In ¶¶ 3 and 7, Lin states that he told Mr. Miao and Ms. Zhu to get an inspection of the Property. At no time did Lin tell Mr. Miao that he needed to get an inspection of the Property as Mr. Miao had already inspected the property with Lin. (See Exhibit "1", ¶ 17). Mr. Lin was also the seller's agent so after the initial signing of the Residential Purchase

Agreement Mr. Miao only communicated with Ms. Chen, the buyer's agent. (See Exhibit "1", ¶ 17). In ¶ 4, Lin says that Mr. Miao did not inspect the property. (See Exhibit "1", ¶ 17). Again, Mr. Miao inspected the Property on several occasions, the first time with Lin present on August 10, 2017. (See Exhibit "1", ¶ 17). Mr. Lin stated to Mr. Miao that they had entirely rehabilitated the Property including the walls and floors. (See Exhibit "1", ¶ 17). In ¶ 5, Lin states that the rehabilitation done on the Property did not involve opening walls. They had to open the walls to install the window AC units. (See Exhibit "1", ¶ 17). Lin further states that on multiple occasions he disclosed the work on the HVAC units to Mr. Miao. (See Exhibit "1", ¶ 17). Mr. Miao was aware that the HVAC units had been recently put in but he was not aware that the AC units were replacing a swamp cooler. (See Exhibit "1", ¶ 17). Lin did not disclose the installation of the HVAC units to Mr. Miao. (See Exhibit "1", ¶ 17). In ¶ 8, Lin states that TKNR did not reside or visit the property implying that Defendants knew very little about the property. TKNR, Lin and InvestPro were all related. (See Exhibit "1", ¶ 17). TKNR was part of Mr. Lin's flipping fund. (See Exhibit "1", ¶ 17). Lin put the investor's together and purchased the property. (See Exhibit "1", ¶ 17). It was Lin and his handyman who performed the rehabilitation of the Property. (See Exhibit "1", ¶ 17). In ¶ 10, Lin states that original settlement demand was $10,000.00. (See Exhibit "1", ¶ 17). There were no demands made to Defendants after the lawsuit was filed. (See Exhibit "1", ¶ 17). Mr. Miao had approached Lin about the electrical issues he discovered in the wall relating to the installation of the air conditioners. (See Exhibit "1", ¶ 17). Mr. Miao asked Lin to pay the anticipated costs of repairing the electrical wiring which was approximately $10,000.00. (See Exhibit "1", ¶ 17).

A. Defendants were required to submit admissible facts in support of their Motion for Summary Judgment.

Evidence introduced in support of or in opposition to a motion for summary judgment must be based upon admissible evidence. *Collins v. Union Federal Savings and Loan Association*, 99 Nev. 284, 302, 662 P.2d 610, 621 (1983); *Beyene v. Coleman Security Services, Inc.*, 854 F.2d 1179, 1181, 1182 (9th Cir. 1988); *Henry Prods. V. Tarmu*, 114 Nev. 1017, 1019, 967 P.2d 444, 445 (1998). Authentication is a condition precedent to admissibility requiring all evidence presented in support of a motion for summary judgment to be authenticated. *Thomas v. BAC Home Loans Servicing, LP*, 373 P.3d 967, 2011 WL 6743044, 2 (2011); NRS 52.015. A trial court can only consider admissible evidence in ruling on a motion for summary judgment. *Romero v. Nevada Department of Corrections*, 2013 WL 6206705, p. 3 (U.S. Dist. Nev. 2013); *Orr v. Bank of America, NT & SA*, 285 F.3d 764, 773 (9th Cir., 2002).

Defendants reference the Residential Purchase Agreement without laying any foundation for the Agreement. Defendants simply attach the Agreement to their motion and continually reference this hearsay document without laying any foundation for the admissibility of the document. On page 4 of Defendants motion, they again reference a hearsay document, the 2nd Residential Purchase Agreement, without providing any foundation with admissible evidence for the document. Defendants' entire motion for summary judgment is based on hearsay documents. Statements made in Defendants' Motion for Summary Judgment with respect to these unauthenticated documents is nothing more than arguments of counsel.

On page 4 of Defendants' motion, Defendants attach and discuss an email from Chen to Ms. Zhu again without providing any foundation for the email. The email in and of itself is nothing more than inadmissible hearsay. On page 5, Defendants refer to the addendum to

Exhibit E, the new Residential Purchase Agreement dated September 5, 2017, and again fail to provide any foundation. There is not one iota of sworn statements or affidavits authenticating anything in Defendants' original brief supporting their Motion for Summary Judgment. The Opfer report is referred to on Page 6. Again, the report is a hearsay document completely lacking any foundation. The report is not a sworn statement. Defendants refer to various entries in the report, all of which constitute inadmissible evidence without any foundation. The order granting Defendants' Motion for Summary Judgment contains Findings of Fact in paragraphs 1 through 11 which were not supported by any admissible evidence. The findings contained in these paragraphs were nothing more than arguments of counsel in Defendants' Motion for Summary Judgment. Defendants did not present anything admissible until they submitted their Reply to Plaintiff's Opposition when they referenced Mr. Miao's deposition testimony.

It is axiomatic that the party moving for summary judgment has the burden of demonstrating clearly that there are no genuine issues of material fact to be determined. *City of Boulder City v. State*, 106 Nev. 390, 793 P.2d 845 (1990). Once the movant has made a prima facie demonstration of no issues of fact, the party opposing summary judgment has the burden of coming forward with evidence in the form of specific facts to show the existence of a material fact. A failure to do so requires the court to enter judgment as a matter of law. NRCP 56(e); *Dredge Corp. v. Husite Co.*, 78 Nev. 69, 369 P.2d 676 (1962); *Bulbman, Inc. v. Nevada Bell*, 108 Nev. 105, 852 P.2d 588 (1992). The moving party has the initial burden of identifying the portions of the materials on file that it believes demonstrate the absence of a genuine issue of material fact. *Id.*; *T.W. Elec. Serv., Inc. v. Pacific Elec. Contractors Ass'n*, 809 F.2d 626, 630 (C.A.9, 1987). Arguably, Plaintiff was not required to submit any admissible facts in response to Defendants' motion as Defendants' had not referenced one original admissible fact in their initial brief.

Based upon Defendants' failure to submit any admissible evidence in their opening brief to Motion for Summary Judgment, Plaintiff respectfully requests an order reconsidering the granting of Defendants' Motion for Summary Judgment.

B. <u>Numerous factual issues exist as to what Defendants knew, what they attempted to cover up and what they were required to disclose</u>.

In ¶ 7 of the Amended Order dated April 7, 2021, the Court cites *Mackintosh v. Jack Matthews and Company*, 109 Nev. 628, 633, 855 P.2d 549, 552 (1993), as standing for the proposition that nondisclosures by Sellers are not actionable when the property is sold "as is." However, like Nevada, most states do not shield sellers with "as is" clauses who have fraudulently misrepresented the condition of property or who have intentionally concealed known defects. *Mackintosh v. Jack Matthews and Company*, 109 Nev. 628, 632, 855 P.2d 549, 552 (1993).

> Other Courts have followed this rule and recognized that an "as is" provision in a contract for the sale of realty does not preclude an action by the buyer for nondisclosure. *See, e.g., Rayner v. Wise Realty Co.*, 504 So.2d 1361 (Fla.Dist.Ct.App.1987) (holding "as is" clause does not bar a claim for nondisclosure against real estate agency that failed to inform buyer of damage to home from prior termite infestation); *Silva v. Stevens,* 156 Vt. 94, 589 A.2d 852 (1991) (finding a seller of a home has a duty to speak based on superior knowledge of material facts and he knows them not to be within reach of the diligent attention, observation, and judgment of the purchaser); *Stemple v. Dobson,* 184 W.Va. 317, 400 S.E.2d 561 (1990) ("as is" clause does not relieve vendor of the obligation to disclose a condition that substantially affects the value or habitability of property which was known to the vendor, and unknown to the buyer, and would not be disclosed by reasonable inspection.)

Id. at 633, 553. Even in cases not involving "as is" clauses, actions for fraud will arise from nondisclosure when the seller has knowledge of material facts that are not available to the buyer. *Epperson v. Roloff*, 102 Nev. 206, 213, 719 P.2d 799, 804 (1986) The Nevada Supreme Court in *Epperson* further submitted that a defendant may be liable for misrepresentation even when the Defendant did not make an express misrepresentation but instead made

representations which were misleading because they partially suppressed or concealed information. *Id.*

The Court, in ¶ 9, references NRS 113.130-140 stating that the seller does not have a duty to disclose defects of which it is unaware. That is the point of this case. Plaintiff contends that there were numerous defects in the property that Defendants were aware of which they not only had a duty to disclose but that they covered up so Plaintiff could not find the defects prior to closing. Whether or not any of this is true is for a jury to decide. Specifically, what did Defendants know, what did Defendants cover up and what were Defendants required to disclose? Plaintiff would further submit that what an inspection by Mr. Miao or anyone else would have uncovered considering what Defendants were hiding is also at issue and should be decided by a jury.

After purchasing the subject property, Defendants obviously realized they were stuck with a property that should have been condemned. Because they were in the business of "flipping" properties, certain things had to be done to hide the dilapidated condition of the triplex before it could be sold. The foundation to the triplex was structurally unsound. As can be seen from the photographs in Exhibit "3", Defendants attempted to patch the foundation so that flooring could be laid to hide the condition of the foundation. As per the purchase agreement, Mr. Miao could inspect the property so long as it did not involve "non-invasive/non-destructive" inspections. *See* ¶ 7(A) of Residential Purchase Agreement attached hereto as Exhibit "5". In other words, Mr. Miao was not allowed to pull up sections of the floor or pull-down wall coverings to see what Defendants were hiding in the floor and walls.

In the Seller's Real Property Disclosure Form attached hereto as Exhibit "6", Defendants checked "no" to the following:

1(a) Previous or current moisture conditions and/or water damage? (*This property has had a history of sewage backup and a broken sewer line that has left the foundation to the property inundated with raw sewage and water.)*

1(b) Any structural defect? (*A trier of fact would have to look no further than photographs of the foundation taken within the last 30 days by Mr. Miao after pulling up the buckled floor installed by Defendants' handyman to ascertain the condition of the foundation.*)

1(c) Any construction, modification, alterations, or repairs made without required state, city or county building permits? (*Defendants checked "no" initially and then thought better of it after considering all of the changes they had made to the property to cover up building defects. Defendants' description of what was done without a license was installing kitchen cabinets and three AC units. Defendants further state "all work done by owner's handyman, owner never reside in the property and never visited the property." Defendants were obviously trying to cover up what they had done to the property with this incredibly suspicious statement. Even though their "handyman" patched the foundation, laid laminate flooring through-out all three units, painted, put up wall coverings, installed a dryer duct to the attic and installed two air conditioner units, Defendants wanted the buyer to believe that they "never visited the property" and "never reside in the property" as if to lay foundation for deniability when it was discovered what they were hiding – in other words, blame it on the handyman. Defendants apparently wanted the buyer to believe that they purchased a triplex without ever seeing or visiting the property.)*

2(b) Any foundation sliding, settling, movement, upheaval, or earth stability problems that have occurred on the property? (*See photographs in Exhibit "3")*

2(c) Any drainage, flooding, water seepage, or high water table? (*Defendants checked this box "no" with the knowledge that sewage had been backing up as a result of a broken sewer line.*)

6(a) Any substances, materials, or products which may be an environmental hazard such as but not limited to, asbestos, radon gas, urea formaldehyde, fuel or chemical storage tanks, contaminated water or soil on the property? (*Defendants were aware that the sewer line was broken causing sewage to backup under the foundation and into the plumbing.*)

As can be seen from Defendants' disclosures, Defendants not only failed to make necessary disclosures concerning the serious condition of the property, they made material misrepresentations when they checked "no" to conditions found in the triplex.

Summary Judgment must be rendered if there is no genuine issue as to any material fact and the moving party is entitled to judgment as a matter of law. *Id.*; NRCP 56(c); *See also Bird v. Casa Royal W.*, 97 Nev. 67, 624 P.2d 17 (1981); *Montgomery v. Ponderosa Construction, Inc.*, 101 Nev. 416, 705 P.2d 652 (1985); *Pegasus v. Reno Newspapers, Inc.*, 118 Nev. 706, 57 P.3d 82 (2002). Plaintiff has identified numerous factual issues in its' opposition and in this motion for reconsideration, especially the recent discovery of the condition of the triplex foundation, which would preclude summary judgment in this case. As stated, those issues go to what Defendants knew, what Defendants attempted to hide and what disclosures should Defendants have made prior to closing as compared with the disclosures they actually made.

C. <u>Plaintiff's pleadings are not worthy of Rule 11 sanctions.</u>

In this case, the Plaintiff, an LLC, was represented by counsel, Mr. Benjamin Childs. In signing the pleadings, Mr. Childs was representing to the Court that Plaintiff's claims were warranted by existing law and were not frivolous and that the factual contentions had evidentiary support and would likely have evidentiary support after a reasonable

opportunity for further discovery. (*See* NRCP 11(b)(2)(3)). Rule 11 further requires that any motion for sanctions be made "separately from another other motion and must describe the specific conduct that allegedly violates Rule 11(b)." NRCP 11(c)(2). Finally, a rule 11 sanction should only be imposed "to deter repetition of the conduct or comparable conduct by other similarly situated." NRCP 11(c)(4). There are further limitations on monetary sanctions as the court is ordered in this case "against a represented party for violating Rule 11(b)(2). In awarding sanctions to Defendants, The Court has implied that Plaintiff's action is frivolous in that "the pleading was not "well grounded in fact and is warranted by existing law or a good faith argument for the extension, modification or reversal of existing law" and "Plaintiff's attorney continued to make frivolous claims." *See* Amended Order dated April 7, 2021, ¶ 78. The Court accordingly awarded sanctions: "Sanctions are warranted against Plaintiff and its counsel, which includes an award attorneys' fees to Defendants." Amended Order, ¶ 78. Since Steven Day was Plaintiff's counsel at the time of the hearing having substituted in for Mr. Childs the day prior to the hearing, the Order seems to include Mr. Day and his firm for simply arguing (advocating) on behalf of the Plaintiff. It would be breaking new ground if an attorney were sanctioned for simply arguing a motion after making an appearance the day before and otherwise advocating for a client. Mr. Day asks the Court for clarification if he and his firm and to be included in the sanctions. NRCP 11(c)(5)(A) seems to preclude the court from awarding monetary sanctions against the Plaintiff based upon the Court's justification for sanctions.

As stated in this motion, Plaintiff's case is based on its belief that it was fraudulently induced in buying a triplex that should have been condemned. Plaintiff's argument is that Defendants hid evidence of which it was aware and of which it had an obligation to disclose to Plaintiff.

Plaintiff's causes of action include fraud, breach of contract, breach of fiduciary duty and violations of NRS chapters 645 and 113. NRS 113.130(b) requires the seller to disclose defects of which the seller is aware:

> 1. Except as otherwise provided in subsection 2:
>
> (a) At least 10 days before residential property is conveyed to a purchaser:
>
> (1) The seller shall complete a disclosure form regarding the residential property; and
>
> (2) The seller or the seller's agent shall serve the purchaser or the purchaser's agent with the completed disclosure form.
>
> (b) If, after service of the completed disclosure form but before conveyance of the property to the purchaser, a seller or the seller's agent discovers a new defect in the residential property that was not identified on the completed disclosure form or discovers that a defect identified on the completed disclosure form has become worse than was indicated on the form, the seller or the seller's agent shall inform the purchaser or the purchaser's agent of that fact, in writing, as soon as practicable after the discovery of that fact but in no event later than the conveyance of the property to the purchaser. If the seller does not agree to repair or replace the defect, the purchaser may:
>
> (1) Rescind the agreement to purchase the property; or
>
> (2) Close escrow and accept the property with the defect as revealed by the seller or the seller's agent without further recourse.

NRS 113.140 (1) does not impose a requirement on a seller to disclose a defect of which the seller is not aware. Determination of whether a seller was aware of a defect which would trigger the statutory duty to disclose "is a question of fact to be decided by the trier of fact." *Nelson v. Heer*, 123 Nev. 217, 224, 163 P.3d 420, 425 (2007).

Defendants' disclosure was essentially that the property was purchased at auction and it has been completely rehabilitated. Plaintiff has discussed Defendants' disclosure above which says nothing about defective wiring, dryer venting, ductwork, foundation, wall cracking and sewer. Plaintiff's position is that Defendants were aware of these conditions and failed to

disclose as required by NRS 113.130. Further, whether or not Defendants were aware of these defects and, therefore, required to disclose is a question of fact.

Plaintiff has causes of action for constructive fraud, common law fraud, fraudulent inducement and fraudulent concealment. Constructive fraud does not require fraudulent intent or in other words, the fraud was committed without regard to motive. It is the breach of some legal or equitable duty which, irrespective of moral guilt, the law declares as fraudulent because of its tendency to deceive others. The duty arises out of a fiduciary or confidential relationship. *Long v. Towne*, 98 Nev. 11, 13, 639 P.2d 528, 530 (1982). Plaintiff submits that the duty arises out of Defendants Lin and InvestPro's duty to Plaintiff as its agent. Plaintiff alleges that InvestPro had a duty to let Plaintiff know that it was part of the deal; i.e., it put Sellers' deal together, brought the investors into the deal and was going to receive 25% of the profit from the deal at closing. Lin and InvestPro had a duty to let Plaintiff know about hidden defects in the subject property that were hidden because of the efforts of Defendants. There is nothing frivolous about this claim, if true. It is up to a trier of fact to determine the truth of Plaintiff's factual allegations.

As the court is aware, the elements of fraud are a false statement made with the intent of inducing another's reliance and damages resulting from that reliance. *Nelson* at 225, 426. Plaintiff has presented facts which create issues as to truth of Defendants' representations at the time of the transactions, Plaintiff's reliance upon those representations and damages. Plaintiff further claims that Defendants intended to induce Plaintiff to purchase the subject property and that the fraudulently concealed known defects.

Plaintiff has a cause of action for breach of fiduciary duty against InvestPro, Lin, Nickrandt and Chen. Real estate agents occupy a fiduciary relationship to their clients. *Hamby v. St. Paul Mercury Indemn. Co.*, 217 F.2d 78 (4th Cir., 1954). Clearly a fiduciary relationship exists between Plaintiff and InvestPro, Chen, Lin, etc. If Defendants committed

fraudulent acts against Plaintiff which induced Plaintiff to buy the subject property, Plaintiff is entitled to judgment against these Defendants. Factual issues exist as to whether Defendants breached their obvious fiduciary duty to Plaintiff.

Plaintiff has a cause of action under NRS 645.252(1)(a) which is a duty, as a licensee acting as an agent in a real estate transaction, to disclose material and relevant facts relating to the subject property. Plaintiff obviously submits that Defendants InvestPro, Lin, Chen, etc., violated this particular statute. This is up to the trier of fact to decide. This is not a frivolous claim.

Plaintiff's claims as argued above are not frivolous and certainly not worthy of Rule 11 sanctions. Plaintiff would ask the Court to reconsider its Rule 11 sanctions against Plaintiff and counsel.

CONCLUSION

There are obvious factual issues to be considered by a jury. Those factual issues include:

1. What did Defendants know with respect to the condition of the property at the time of the subject real estate transaction?

2. Did Defendants attempt to cover-up the condition of the property by installing laminate flooring and wall coverings throughout the complex, by failing to disclose serious structural issues and by making representations that did not accurately reflect the status of the property at the time of sale?

3. Were the conditions of the property and Defendants' knowledge of the conditions such that Defendants had a duty to disclose those conditions to Plaintiff at the time of the transaction?

Based on the foregoing, Plaintiff respectfully asks this Court to reconsider the granting of Defendants' Motion for Summary Judgment. Plaintiff and counsel further ask the Court to reconsider its Rule 11 sanctions order.

DATED this 16th day of April, 2021.

DAY & NANCE

By: _____ 13472

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CERTIFICATE OF SERVICE

Pursuant to NRCP 5(b), on the 16th day of April, 2021, service of this MOTION TO RECONSIDER was made upon each of the parties listed below, via electronic service through the Eighth Judicial District Court's Odyssey E-File and Serve system:

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_____
An Employee of Day & Nance

EXHIBIT “1"

AFFIDAVIT OF FRANK MIAO

COUNTY OF CLARK)
) ss.
STATE OF NEVADA)

FRANK MIAO, being first duly sworn upon his oath, deposes and says:

1. That affiant is a member of WLAB Investment, LLC, the Plaintiff in Nevada Eighth Judicial District Court Case No. A-18-785917-C styled *WLAB Investment, LLC v. TKNR, Inc., et al.*

2. That affiant is a member of WLAB Investment, LLC, with his wife, Marie Zhu who is also a member of WLAB Investment, LLC. Their intent was to purchase the subject property as part of their retirement plan. This property along with other properties affiant has purchased over time in Southern California and Southern Nevada was meant to provide retirement income.

3. Affiant became aware of the subject property for sale via Zillow. During the inspection, affiant inspected the property with Mr. Kenny Lin during the afternoon of August 10, 2017. Affiant asked Mr. Lin about a small crack in the outside sidewalk. Mr. Lin said that they had purchased the property through an auction but that the property had been entirely rehabilitated. Affiant checked out Mr. Lin's company, InvestPro. InvestPro reportedly focused on the customer and further represented that their vendors were licensed and professional who complete cleaning, painting and or make repair when necessary which affiant liked. InvestPro was according to Lin one of the largest realtors in Chinatown. After inspecting the property with Mr. Lin and based upon the representations of Mr. Lin, affiant told his wife to go ahead and sign the purchase agreement after the August 10, 2017 inspection. Ms. Marie Zhu e-signed the Agreement

on August 11, 2017 with the help of Kenny Lin and Le Wei Chen from InvestPro who were the buyer's agents. (August 11, 2017 Resident Purchase Agreement attached as Exhibit "8" to Plaintiff's Motion for Reconsideration). The form had been previously completely prepared by the InvestPro agents. In the August 11, 2017 Residential Purchase Agreement, there is no waiver of due diligence. Affiant had inspected the Property with Lin. During the inspection, affiant informed Mr. Lin that the units needed to have proper GFCI outlets and that smoke, combustible gas and CO detectors needed to be installed since they were required by law. When Ms. Marie Zhu signed the second Residential Purchase Agreement on September 5, 2017, due diligence was waived as affiant had already completed inspections of the subject property. (September 5, 2017 Residential Purchase Agreement attached as Exhibit "8" to Plaintiff's Motion for Reconsideration).

4. After the Residential Purchase Agreement was e-signed, affiant visited and inspected the triplex additional times prior to closing. Ceramic tile had been laid in the kitchen, living room, hallway and bathrooms. Laminated wood flooring had been placed in all the bedrooms. Affiant did not notice any issues with the flooring except for a few small cracks in the ceramic tile in Unit C. The floor was not buckling in any of the units. Affiant also did not notice any cracking in the walls inside the triplex during his inspections. The units did look as that they had been recently renovated. At no time during affiant's initial inspection of the triplex did Mr. Lin report that there were significant issues with the foundation and earth movement or that the sewer line was broken causing sewer water backup.

5. When considering the purchase of the subject triplex, affiant asked Kenny Lin to be their buyer's agent. After the Residential Purchase Agreement was e-signed, affiant found out Mr. Lin had assigned another agent in his office, Helen Chen, to

represent Plaintiff WLAB Investment. It was Lin's and InvestPro's handyman who had rehabilitated the triplex by covering up the many issues with the building. In hindsight, understanding that Lin knew too much about the undisclosed problems with the building, he probably wanted nothing to do with representing affiant's company.

6. After WLAB purchased the 2132 Houston Drive property, affiant retained InvestPro as the property manager as they had been for the seller since they got this triplex in 2015. Affiant went to the InvestPro Christmas party during December, 2017. At the party, Lin explained to affiant that they were buying properties in auctions, then rehabilitate and "flipping" the properties and making large amounts of money. A number of Lin's investors were present during the party and also confirmed that they were making a lot of money. Lin explained that he puts investors together to buy properties for the purpose of flipping the properties. Lin invited affiant to joint his "flipping fund." Lin explained that affiant needed only invest some money and that InvestPro would do everything from buying the properties to remodeling and flipping them. He described it like a mutual fund where he could get a very good return. Lin also mentioned that the 2132 Houston Drive property was one of the projects in the "flipping fund." Investors did not need to know anything about the properties. They simply invested money and Investpro handled the rest like a mutual fund. The mutual fund was also referenced in InvestPro advertisements in local newspapers.

7. During approximately June of 2018, the tenant in unit A reported that the fuse to Unit A kept burning out. The tenant reported the issue to InvestPro, the property manager. InvestPro sent their handyman to fix the problem. The handyman's fix was apparently to disconnect some of the other circuits to the fuse which result in the tenant not being able to use all outlets. After complaining to affiant about the problem, affiant

hired a licensed electrical contractor to look at the issue. At that time, the contractor discovered that InvestPro's handyman had disconnected circuits from the fuse. The contractor also learned that when the window ACs were installed, Defendants had piggybacked the AC circuit onto other circuits causing an overload on the fuse without the required permit. The electrical panel further did not have sufficient electrical wattage to power the unit with the addition of the AC units. InvestPro's handyman is not a licensed professional as InvestPro had represented in their website. None of this was disclosed by Lin to affiant prior to the purchase of the triplex. Affiant approached Lin with the contractor's bid asking for $10,000.00 to fix the electrical problem. Lin said that it was affiant's problem. Affiant ended up paying for the repair.

8. Around October of 2018, water was dripping from unit C's ceiling during hot sunny days. The ceiling was opened up which revealed that Defendants had installed a dryer duct dumping high moisture exhaust gas into the attic instead of venting to outside of the building which was required by law. Affiant also found that the air conditioning ductwork inside the ceiling was not insulated which is also unlawful. Later, affiant discovered that when Defendants replaced swamp cooler with AC, they left the uninsulated swamp cooler duct in the attic. When the highly moist gas from the dryer exhaust cooled with cool air coming from the uninsulated AC duct, condensation occurred causing water dropping onto the unit C ceiling. The wet insulation in the attic was black and no longer working. Affiant hired LVAC to put in new insulated ducting and hired Home Depot to reinsulate the attic. Affiant found that Unit B had the same issue with the dryer vent dumping into the attic. In Unit A, the dryer vent dumped into the wall between two studs and also eventually dumped into the attic. None of this was reported by Linn prior to Plaintiff closing on the triplex.

9. During the last several months, affiant has become aware of the condition of the foundation. On February 16, 2021, the flooring in one of the bedrooms in Unit B was pulled up. The laminate wood flooring installed by Kenny Lin/InvestPro's handman had been buckling which prompted affiant to pull up the floor. Upon pulling up the floor, it was observed that the foundation had severely deteriorated and had been covered by laminate flooring so the foundation defects would be concealed. The photographs attached to Plaintiff's Motion for Reconsideration as Exhibit "3" were taken by affiant and accurately reflect the condition of the foundation on February 16, 2021. Upon seeing the condition of the foundation, it explained the severe cracks in the walls that had been appearing through Defendants' pre-sale renovations. At the time of the pre-purchase inspections of the triplex, there was no serious cracking in the walls. The walls had been covered the plaster and wall coverings to hide the cracks and other wall defects. After closing, cracks started developing again. The photographs of the wall cracks attached to Plaintiff's Motion for Reconsideration as Exhibit "4" were taken by affiant.

10. Before the tenant in Unit C moved out August of 2020, he complained of slow drainage issues with the unit, particularly in the kitchen and bathroom. The tenants in units B and C had complained about drainage issues as early as May or June of 2020. When Nicholas Quioz, the tenant in Unit A, moved out, he explained to affiant that he had moved into the unit during April of 2017. He reported to InvestPro that sewage water had overflowed into Unit A. He reported that InvestPro had spent several weeks trying to open the sewer line. The handyman working on the sewer line explained to Mr. Quioz that the sewer line was broken. Attached to Plaintiff's Motion for Reconsideration as Exhibit "6" is a photograph taken by affiant of sewage backed up into Unit C's bathtub. Lin said nothing about a broken sewer line prior to or after closing.

11. That during the week of March 8, 2021, a next-door neighbor explained to affiant that he had been a tenant of the building during 2016 or 2017. After he moved in, the floor buckled and sewage backed up. He called InvestPro who did nothing about the problem so he moved out.

12. The property purchased by WLAB Investments was one of the homes purchased by Lin's flipping fund. TKNR, Inc. who was the seller of the property and which constituted a group of investors who had been put together by Lin and InvestPro. In the disclosure made by the seller attached to Defendants' Motion for Summary Judgment, the seller states that they have never visited the property. This is because the property was one of Mr. Lin's flipping fund properties. Lin handled everything including taking his share of the profit from the sale. It was Lin/InvestPro's handyman who made the repairs to the subject property. Lin was aware that the building was cracking. More importantly, Linn was aware of the condition of the foundation as it was InvestPro's handyman who covered it up. This is why Lin did not want to represent both the buyer and the seller in this transaction as he was aware of the many undisclosed problems with the property.

13. Concerning the condition of the foundation, Lin and InvestPro were more than aware of what was going on. Affiant had an opportunity to review a number of the handyman receipts which have been produced in the litigation one of which acknowledges that the handyman "remove 2 rooms laminate and level concrete." (DEF 23) This took place on April 19, 2017. When the flooring began buckling again, affiant pulled the wood laminate up only to find the condition of the foundation that the handyman had covered to be extremely poor rendering the entire triplex structurally unsound. The condition of the floor was also consistent with the recent reports of tenants that the sewer line was

broken resulting in sewage water leakage backing up under the foundation. As reported by Defendants' expert Neil Opfer, the triplex sits on expansive clay which swells up when wet and then compresses when dry. These conditions cause earth movements resulting in foundation and wall cracking.

14. Affiant has a PhD in chemical engineering. Because sewage gases are so dangerous, affiant removed all tenants from the property immediately and has not leased units to anyone else. Sewage gas is a complex mixture of toxic and nontoxic gases produced by the decomposition of organic household sewer water. The gases may include hydrogen sulfide, ammonia, methane, esters, carbon monoxide, sulfur dioxide and nitrogen oxides. Sewer gases are of concern due to health effects and potential for creating fire or explosions. Exposure to sewer gas can happen if the gas seeps in via a leaking plumping drain, vent pipe or even through cracks in a building's foundation. At higher concentrations (> 300 ppm) hydrogen sulfide can cause loss of consciousness and death. Very high concentrations (> 1000 ppm) can result in immediate collapse, occurring after a single breath. Carbon monoxide is a colorless, odorless, and tasteless toxic and flammable gas. At concentrations above 150 to 200 ppm, disorientation, unconsciousness and death are possible. Sewer gas can contain methane, hydrogen sulfide and carbon monoxide all of which are highly flammable and potentially explosive substances.

15. As a result of having a broken sewer line and significant issues with the foundation, as stated, affiant has refused to lease triplex units to other tenants. What concerns affiant is that Lin knowingly put a tenant in the Triplex knowing that the sewage line was broken and presented an extreme health and safety risk to tenants. Lin also sold the property to affiant's company without disclosing the condition of the foundation and

sewer line. Lin's knowledge of the broken sewer line explains other actions prior to Plaintiff purchasing the triplex. During one of his inspections of the subject property with Lin by his side, affiant noticed that the units did not have smoke, CO or combustible gas detectors. Affiant reminded Lin that this was against the county law and asked him to install detectors in each of the units. Lin had CO and smoke detectors installed. However, after Plaintiff's purchase of the triplex, affiant noticed that Linn had removed the CO and combustible gas detectors. Lin has obviously concerned the CO detectors would sound the alarm knowing that the sewer line was broken and the foundation cracked. Sewage gas seeps into the bedrooms through the cracked foundation.

16. In going through the amended order, affiant noticed a number of factual representations that he submits are at issue in the case.

(a) p. 2, ¶ 1. "2132 Houston Drive, Las Vegas, NV 89104 ("Property") was originally constructed in 1954." *On November 18, 1994, Cecilia Hernandez, with her family, bought the triplex for $117,000.00. They leased the property out for rental income. Before or during their ownership, the sewage line broke leaking sewage water under the foundation. The soil has expansive clays. As Defendants' expert Opfer wrote in his report:*

> The ongoing groundwater condition can impact ground movement particularly with the presence of expansive clays." The point of this discussion is that this then impacts the performance of the walls and concrete floor slabs as to cracking to a significant degree. Cracked floor tile can be replaced in one year only to have the same issues appear again in the next year or year after that as an example. Standard construction materials such as stucco, drywall, floor tile, and concrete will all tend to crack when subjected to these forces. Again, cracking in these materials is seen all over the Las Vegas Valley.

(*See* Opfer report, pp. 9-10).

> *Most likely, clay pipe was used for the sewer system connection. . . . It is a well-known fact that vitrified clay pipe is relatively weak and can be easily penetrated by tree roots.*

(*See* Opfer report, p. 14).

According to Opfer, "the issue with expansive clay is that it can swell up (expand) in the presence of water and then compress when it dries out. Note that expansive clays have created residential-foundation problems in many areas." The expansive clay soil with water leaks from a broken sewage line led to earth under the foundation moving and cracking the foundation. The earth movement broke more sewer line and lead to more water leakage causing more slab cracks. The more tenants they had in the apartments, the more sewage water generated and leaked under the foundation causing more foundation cracks and broken sewage line. The Hernandez family used the property as collateral for a $291,000.00 loan to fix the problems. However, the loan was not sufficient to fix the problems with the property. The tenants moved out so the owners did not have rental income to make the mortgage payment. The bank found out the triplex units could not be rented out to tenants because the units were dangerous because of the foundation and sewage gas. The sewage line needed to be rebuilt along with the foundation and everything else. This is why on September 10, 2015, the bank foreclosed and started the auction at $52,000.00 (the land value) in spite of their $291,000.00 loan. Kenny Lin's flipping fund, with TKNR as the buyer, won the auction on 10/9/2015 and listed the triplex for sale three months later at $188,000.00 on 1/9/2016. Lin/InvestPro knew of the apartment major defects and won the apartment at a very deep discount of market value. Lin/InvestPro rehabilitated the property though they did not fix the foundation or sewage problems. They just had the unlicensed InvestPro

handyman cover major defects up and put the property back on the market for $188,000.00 to make a huge flipping profit.

(b) p. 3, ¶ 4. "Ms. Zhu waived the Due Diligence condition." Under Paragraph 7(D), "Buyer is deemed to have waived the right to that inspection and Seller's liability for the cost of all repairs that inspection would have reasonably identified had it been conducted, except as otherwise provided by law." *It was Helen Chen and Kenny Lin from InvestPro who prepared the purchase agreement and checked the box for home inspection by Buyer and waiving other inspection. Plaintiff did not waive right to inspect as evident in both the August 11, 2017 and September 14, 2017 Purchase Agreements. In fact, affiant inspected the property with Kenny Lin on August 10, 2017, before the Purchase Agreement was e-signed on August 11, 2017, pointing out various issues with the Triplex that needed to be fixed before closing. As stated, affiant could not have uncovered the various defects in the property that are at issue as they were covered up by Lin, acting on behalf of Defendant TKNR. The defects were serious and would have only been revealed during an inspection that allowed destructive opening up of the unit as this purchase agreement did not allow. Further, affiant's understanding of the law is that an inspection by a licensed inspector is not required for multi-family rental properties and that Lin is not relieved of his responsibility to disclose known conditions which affect the value of the property.*

(c) p. 3, ¶ 5. "Ms. Zhu also waived the energy audit, pest inspection, roof inspection, septic lid removal inspection, mechanical inspection, soil inspection and structural inspection." *As stated, affiant inspected the subject property on several occasions. No non-destructive inspection would have uncovered the serious cracking and foundations issue in the triplex. Further, this property is not on septic. The waiver*

checks in the Purchase Agreement were prepared by InvestPro without notifying affiant.

(d) p. 3, ¶ 6. "Additionally, Wong, Lin, Chen, Zhang, Cheng, and Nickrandt (collectively, "Broker" or "Broker Defendants") had "no responsibility to assist in the payment of any repair, correction or deferred maintenance on the Property which may have been revealed by the above inspections, agreed upon by the Buyer and Seller or requested by one party." *These individuals are the actual sellers of the property. They are the true sellers behind alternations and "flipping. Attached as Exhibit "5" to Plaintiff's Motion is the Flipping Fund's web page found by affiant. InvestPro's web page identifies InvestPro as a participant in the Property purchases and not just from a realtor standpoint. The second page of the website talks about splitting profits with the manager LLC. Lin and his company, InvesPpro, put the deal together, sold units to investors, for a 75/25 split at the end. It was InvestPro's Kenny Lin who participated at the auction and bought the subject property. It was InvestPro's Kenny Lin who hired the InvestPro handyman to "rehabilitate" the property. It was InvestPro's handyman who discovered that the sewer line was broken. Not only did Lin push representation for the buyer to another InvestPro realtor but at no time did Lin actually tell affiant that he had an interest in the subject property; i.e., he was the seller.*

(e) p. 3, ¶ 7. "On August 2, 2017, TKNR submitted Seller's Real Property Disclosure Form ("SRPDF" or "Seller's Disclosures") timely indicating all known conditions of the Subject Property." *Affiant did not meet Lin until August 10, 2017, at the time of affiant's inspection of the Property. There was no communication prior to August 10 with Lin or anyone from InvestPro. Affiant did not decide to go through with the purchase of the Property until August 11, 2017. There is nothing in Seller's*

disclosures referencing and broken sewer line or the structurally unsound foundation caused by earth movements. Sellers were aware of these conditions as Kenny Lin, their representative, covered them up.

(f) p. 3, ¶ 7. "Despite these disclosures, Plaintiff chose not to inspect the Subject Property, request additional information and/or conduct any reasonable inquires." *During affiant's inspection of the property with Kenny Lin, affiant requested information about repairs. Kenny Lin informed affiant that after they won the auction, they did a complete rehabilitation of the property. Because of Lin's representations prior to closing, affiant believed that Investpro had fixed all defects during rehabilitation.*

(g) p. 4, ¶ 10. "This is the second time that Ms. Zhu waived inspections for the Property despite the language in the 2nd RPA that strongly advised to get an inspection done." *Affiant inspected the property with Kenny Lin on August 10, 2017. The original Residential Purchase Agreement was e-signed the day after on August 11, 2017, after the agreement had been prepared completely by Helen Chen and Kenny Lin. The Agreement itself does not state that the buyer is waiving the home inspection. Again, the triplex had already been inspected by Frank Miao with Kenny Lin at his side by the time the initial Agreement had been e-signed by Ms. Zhu. The buyer cannot waive an inspection that has already been completed. Affiant inspected the property again after the initial Purchase Agreement was signed. At no time did affiant or Ms. Zhu waive the right to inspect. Again, both the first and second Purchase Agreements were completed by InvestPro agents allegedly representing Plaintiff at the time of the transaction.*

(h) p. 4, ¶ 10. "Notably, although Ms. Zhu had not initialed the "Failure to Cancel or Resolve Objections" provision in the RPA, she initialed the corresponding provision in the 2nd RPA." *WLAB inspected the property with Kenny Lin on August 10, 2017.*

(i) p. 4, ¶ 11. "Although Ms. Zhu had actual knowledge of the Slle's Disclosures, and the Parties agreed to extend the COE to January 5, 2018, Ms. Zhu still never did any professional inspections." *Frank Miao did inspection with Kenny Kin and put out correction items.*

(j) p. 5, ¶ 15. "Plaintiff was a sophisticated buyer who understood the necessity of getting the properties inspected." *Plaintiff did inspect the property on August 10, 2017, with Mr. Lin. The major defects were covered up and Lin had lied to affiant about the rehabilitation.*

(k) p. 5, ¶ 17. "As to Paragraph 7(A), Mr. Miao specified that he believe that his inspection and conversations with the tenant constituted the action necessary to deem the Property as satisfactory for Plaintiff's purchase." *Due to defendant Kenny Lin lying to affiant and covering up major foundation and structural defects by putting laminate wood flooring and ceramic tile over the major defect, affiant could not discovery these hidden defects during inspection without destructive inspection which the purchase agreement did not allow.*

(l) p. 5, ¶ 18. ". .. Plaintiff had access to inspect the entire property and conduct non-invasive, non-destructive inspections: . . ." *The serious foundational, structural and sewage line issues, which were covered up with laminate wood and ceramic floor tile, would have only been discovered with a destructive open up inspection.*

(m) p. 6, ¶ 19. "Prior to the purchase, Mr. Miao was always aware that the Seller "strongly recommended that buyer retain licensed Nevada professionals to conduct inspections." *Kenny Lin said nothing about retaining a licensed inspector. He knew that affiant was inspecting the building. Mr. Lin was also aware that whether the inspector was licensed or not, he had covered up the significant defects in the property which could not have been discovered without pulling up the floors. After Defendants purchased the property at auction, this property was listed more than three times from January 9, 2016 to August 10, 2017. Each time, the property was removed from escrow which meant Sellers had to go back to the drawing board and make a better effort to cover up the significant issues with the property. Defendants did not actually fix the defects. They simply covered them up.*

(n) p. 6, ¶ 20. "Plaintiff was also aware of the language in the RPA under Paragraph 7(D) that limited potential damages that could have been discovered by an inspection." *The key issue is Defendants did unlawful things and covered up problems with the property. They put making money above tenant and investor safety.*

(o) p. 7, ¶ 22. "Based on his own belief, he does not believe that a professional inspection is necessary for multi-tenant residential properties." *Affiant is wondering if summary judgment was granted because the Court believes that professional licensed inspections are required. Affiant is a professional. He knows building and apartments very well. Affiant is not aware of any legal requirement that a buyer is required to retain a licensed inspector before purchasing an apartment, in this case, a triplex. For multi-tenant residential properties in Las Vegas involving many thousands of units, it is virtually impossible to inspect each and every unit in 14 days*

which is why law requires work on rental units to be done by licensed contractors followed by inspection and permitting by city building and safety departments.

(p) p. 8, ¶ 26. "During that time, he admitted that he noticed some issues with the Property that were not up to code, finishing issues, GFCI outlets, and electrical issues:" *As stated, affiant instructed Kenny Lin to put smoke and CO detectors in the units only to find out that after the purchase, Lin had removed the CO detectors after they were installed. Defendants had hidden some GFCI required outlets by covering up or installing non-functioning GFCI outlets without using a licensed electrician which was dangerous for the tenants. Defendants did not want to use a licensed electrician because a licensed electrician would have asked to pull permits. The city inspector may have found out about the defects and shut down the apartment.*

(q) p. 8, ¶ 28. "Additionally, Mr. Miao noted that there were cracks in the ceramic floor tiles, *Id.* at 249: 22-25, and he was aware of visible cracks in the concrete foundation, *Id.* at 269: 13-22 (aware of slab cracks), which were open and obvious." *Affiant noticed a few cracks in the ceramic floor tiles in Unit C living room. Affiant was not able to see the foundation as it was covered with newly installed flooring. It was at this point with Lin explained to affiant that they had rehabilitated the entire triplex.*

(r) p. 9, ¶ 31. As to SRPDF, Plaintiff was aware that TKNR was an investor who had not resided in the Property, and there were issues with the heating systems, cooling systems, and that there was work done without permits and all the work was done by a handyman other than the HVAC installation." *When affiant inspected the property the Defendant Lin, Lin explained that Investpro had rehabilitated the*

property. There was no defect found at the time of the inspection that would have raised any concern.

(s) p. 9, ¶ 32. "Despite these disclosures, Mr. Miao never followed up." *There were no defects observed at the time of the inspection. They were all covered up.*

(t) p. 9, ¶ 33. "However, Mr. Miao also admitted that he could have followed up on the issues identified in the SRPDF that included the HVAC and the permits:" *SRPDF only disclosed that there was a new air conditioner but never mentioned that the air conditioners replaced swamp coolers. Affiant later learned after a leak in one of the units that the ducting had not been changed from the swamp cooler to air conditioning. This was only learned after opening up the ceiling.*

(u) p. 10, ¶ 34. "Similarly, Mr. Miao was aware that he should have contacted the local building department as part of his due diligence:" *There was no reason to contact the building department as Sellers did not disclose any activity that would have required a permit. Specifically, they disclosed a new kitchen cabinet in each unit, brand new AC installed and three bedrooms were redone. There was no mentioned that the air conditioning units were replacing swamp coolers which required new electrical and plumbing which would have required a permit. If the AC units were replacing AC units, permits would not need to be pulled. Based on the information provided by Lin and in Sellers' disclosures, affiant was not aware of any activity that would have required a permit. It was also learned after the walls were opened that Defendants had not properly wired the AC units leaving wires exposed and presenting a potential fire danger.*

(v) p. 10, ¶ 35. "Plaintiff was on notice of the potential for mold and the requirement to get a mold inspection." *This is a rental property. By law, the seller must*

provide a safe, habitable apartment to the tenants. No tenant will check mold and have professional mold inspection. Further, mold testing usually requires a destructive inspection to verify in ceiling and behind walls.

(w) p. 11, ¶ 37. "Disclosure of unknown defects not required. Form does not constitute warranty duty of buyer and prospective buyer to exercise reasonable care." *Affiant's issue with Sellers' disclosures is that they failed to disclose defects that they were aware of. The Handyman's invoice for patching the concrete underscores that the Sellers were aware of the condition of the foundation when they sold the triplex and failed to disclose to affiant.*

(x) p. 12, ¶ 39. "The alleged defects identified by both parties' experts could have been discovered at the time of the original purchase." *Again, the foundation, wall cracks, AC wiring and ducting, dryer venting, were all under flooring or within the ceilings and walls of the units. These defects would have only been uncovered with prohibitive destructive open up inspection.*

(y) p. 13, ¶ 43. "Additionally, Mr. Miao accompanied Defendants' expert during his inspection." *Defendants' expert did not show all of the pictures taken which reflect new cracks.*

(z) p. 12, ¶ 44. "Mr. Miao agreed with Defendants' expert that the alleged conditions identified by Plaintiff's expert were "Open and obvious":" *Affiant was not shown all of the photographs during his deposition. There were many more new cracks observed than in 2017 at the time of affiant's inspection. The new cracks were hidden by coating materials, dry wall, joint compounds and new floors.*

(aa) p. 13, ¶ 45. "He also agreed with Defendants' expert's finding that there was no noticeable sagging in the roof." *The rook leak was not caused by sagging. It was caused by a broken seal on the roof.*

(bb) p., ¶ 46. "Incredibly, Mr. Miao also recognized the deficiency in Plaintiff's expert's report that failed to differentiate between conditions prior to when TKNR owned the Property, while it owned it and those afterwards." *New cracks appears after Defendants hid the original cracking. When affiant inspected the property with Lin, there was not nearly as much cracking as there is now. Defendants hid most of the cracks and defects. There were dryers and washers installed in the units in 2017 were vented to the attic. The vents ran through the walls. The venting cause moisture in the attic which resulted in the ceilings being opened for find the leaks. It was discovered at that time, after the ceilings were opened, that the dryer had been vented to the attic. Lin at no time explained how the dryers had been vented.*

(cc) p. 13, ¶ 47. "No dispute exists that TKNR did not need permits for the interior work it had done to the Property." *Affiant ultimately learned that the AC units had replaced swamp coolers and that the ducting had not been changed to allow for AC units until after the ceiling was opened up. The new plumbing and electrical for the new AC units would have had to be inspected. Again, affiant did not know that the new AC units did not replace other AC units. Because these units are for lease, the work should have been performed by licensed contractors which is why the work was not done by Defendants as it should have been. One unit had a window AC unit the installation of which should have been performed by a licensed contractor with permit and inspection by the city.*

(dd) p. 14, ¶ 48. "Since the date it purchased the Property, Plaintiff has always been trying to lease it. . . . According to Mr. Miao, the landlord must provide safe housing for the tenant." *Lin and his company InvestPro were the property managers for the property after Plaintiff's purchase. Lin knowingly leased the property to tenants knowing that the property was unsafe. Once affiant learned of the foundation and sewage line defects, he removed all tenants until they are fixed.*

(ee) p. 15, ¶ 49. "Moreover, Plaintiff does not provide any notice to the tenants about its expert's report or this litigation." *Since purchasing the property, affiant has made many repairs as they are discovered with licensed contractors. Specifically, once affiant found out about the foundation and sewer line defects, he asked the tenants to move out immediately.*

(ff) p. 15, ¶ 50. "This illustrates the lack of merit of Plaintiff's claim, proven that it has done nothing to correct the allegedly deficient conditions that are clearly not so dangerous as it does not tell prospective tenants about them." *Affiant has repaired many defects with licensed contractors. It is only with the discovery of the foundation and sewer line defects that affiant had discontinued attempted to repair the triplex.*

(gg) p. 15-16, ¶ 51. "Mr. Miao admitted that multiple third parties could have potentially damaged the Property." *The major cracks in the walls and floors were not done by third parties. The major defects were not done by third parties.*

(hh) p. 16, ¶ 52. "Plaintiff's case is based on speculation that Defendants knew about the alleged conditions in the Property; however, Mr. Miao admitted that there is no evidence that shows Defendants knew about them." *As stated, affiant believes there is substantial evidence that Defendants knew about the defects.*

(ii) p. 17, ¶ 55. "Mr. Miao also recognized that a 63-year-old property could have issues that were not caused by Defendants." *It is not the fact that Defendants didn't cause the foundation or sewer issues, it is the fact that they did not disclose and hid these issues when they sold the property to affiant's company.*

(jj) p. 17, ¶ 56. "Plaintiff did not identify any discovery illustrating a genuine issue of material fact that Defendants knew of the alleged issues with the Property that they had not already disclosed on Seller's Disclosures." *Numerous photographs of cracking floors and walls were produced in discovery which reflected cracks not present at the time of affiant's inspection. Additionally, the floor continues to buckle and as it did, the floor was pulled up which revealed foundation damage as previous mentioned.*

(kk) p. 17, ¶ 58. "The Flipping Fund had nothing to do with Plaintiff's decision to purchase the Property." *The subject triplex was one of the Flipping Fund projects. As stated by Lin, the property was purchased at auction and renovated. The Flipping Fund had everything to do with the alleged rehabilitation of the property as that is what they do, buy, rehabilitate (cover up in this case) and sell for a large profit.*

(ll) p. 17, ¶ 59. "Initially, Mr. Miao contacted contractors to bid the potential cost of repair for the Property and determined that it would have been $102,873.00. . . . However, Plaintiff's expert opined that the cost of repair would have been $600,000.00, although he did not provide an itemized cost of repair." *Initially, the cost of repair to fix the electrical and ductwork inside the ceiling was $102,873.00. However, by the time Plaintiff's expert inspected the property, much more was known about the property and, therefore, the cost of repair was much higher.*

(mm) p. 18, ¶ 60. "He denied, under the penalty of perjury, that he never made an offer to settle this matter for $10,000.00." *This statement completely*

misrepresents what actually transpired. After Plaintiff purchased the property, the fuses to the AC units kept burning out. Affiant hired an electrician to figure out what the problem was. It was learning that when Defendants installed the air conditioners, there was not sufficient room in the electrical box to wire the air conditioners. Therefore, Defendants' handyman piggy-backed the AC wiring onto another fuse which caused the fuse to overload and fail. The electrician estimated the cost of repair to be $10,000.00. Since the electrical problem was Defendants' doing, affiant approached Lin about paying $10,000.00 to repair the electrical. Affiant believes this offer to resolve the electrical issue was prior to a lawsuit being filed. The condition of the wiring was not open and obvious as suggested in paragraph 62 of the order as the wiring was hidden behind the wall. The wall had to be opened up to discovery the electrical issue.

(nn) p. 24, ¶ 62. "Additionally, he specified that he noted issues with the electrical system and items not up to code at the time that he did his inspection and/or that any issues with the electrical system were "open and obvious" that a reasonable, professional inspection could have discovered in 2017." *Defendants did not disclose electrical system changes. They are not "open and obvious" as they were hidden behind the wall. As stated, when Defendants changed out the swamp cooler for an air conditioner, they simply piggy-backed the AC wiring on already existing wiring on the fuse which caused the fuse to overload and burn out. The electrical panel was insufficient to handle the load which required re-wiring by a licensed electrician. Further, when the AC unit was added, additional electrical wiring was required which required a permit and inspection.*

(oo) p. 25, ¶ 63. "Additionally, he specified that he noted issues with the plumbing system were "open and obvious" that a reasonable, profession inspection could

have discovered in 2017." *Affiant learned of the septic issue when the tenants left the property and reported issues with the sewage. Sewage had backed up in one of the tubs which was discovered after the tenant left. Residue from the sewage backup was found in the tub. Affiant further learned from the tenant in Unit A and the former tenant that the sewage issue was something Defendants were aware of as they had previously investigated the problem.*

(pp) p. 25, ¶ 64. "As to 31(c), Mr. Miao admitted that the Seller's Disclosures did disclose the use of a handyman, the lack of permits, and issues with the sprinklers. Additionally, he specified that he noted issues with the sewer system were "open and obvious" that a reasonable, professional inspection could have discovered in 2017." *There is no sprinkler system. The sewer issue was not open and obvious and could not have been discovered with a typical professional inspection. Defendants were aware of the issue and had an obligation to report the sewer problem to Plaintiff.*

(qq) p. 25, ¶ 65. The order suggests that the conditions were open and obvious. *Defendants were aware of these issues and failed to disclose. These issues were not "open and obvious." They were discovered after affiant opened walls and ceilings and floor coverings.*

(rr) p. 25, ¶ 66. "As to 31(e), Mr. Miao admitted that the Seller's Disclosures did disclose issues with the heating and cooling systems, the use of a handyman, and the lack of permits." *A licensed professional inspection cannot and would not discover all of these defects. The issue with the AC wiring behind the wall was not visible without doing some destructive investigation. At no time did Defendants disclose that their handman was not licensed which is unlawful.*

(ss) p. 26, ¶ 67. "As to 31(f), this allegation illustrates the prior knowledge that Plaintiff had before purchasing the Property, and the overall emphasis on the failure to obtain a professional inspection of the Property prior to purchasing it." *31(f) refers to the fact that smoke detectors were missing at the time of the inspection. This allegation says nothing about the serious problems with the Property that Defendants had covered up and that were not readily detectible at the time of affiant's inspection. Obviously, affiant did not see the foundation damage at the time of the inspection as it was covered by wood laminate and ceramic flooring. The order implies that an inspection done by a "professional inspector" would have noticed that serious foundation damage without pulling up the flooring. Affiant was also not aware that the HVAC system had been changed three times until the receipts were disclosed in this case. Affiant was not aware of the shoddy and illegal electrical work that had been done and which was hidden behind the walls. It took a tenant complaining about a fuse and the subsequent retention of a licensed electrician to go into the wall to discover what Defendants had done. It was a tenant and former tenant reporting about the sewage problems as well as sewage remnants in a bathtub for affiant to become aware of that problem. It took a leaking ceiling and opening the ceiling before affiant became aware that Defendants had vented the dryer exhaust to the attic and that Defendants had not properly changed out the swamp cooler ducting for insulated air conditioning ducting. Walls had been covered so as the time of the inspection by affiant, very few if any cracks in the walls were observed. However, as the foundation and walls shifted over time, the cracks in the walls reappeared revealing what Defendants had covered up. To suggest that the discovery of missing smoke detectors is somehow indicative of the extent of affiant's knowledge at the time of the inspection is ridiculous.*

only way affiant would have been aware of the significant issues with the foundation is if Lin told him or if he was allowed to perform a destructive inspection which the Purchase Agreement did not allow. Affiant also did not observe wall cracks as they had been covered up at the time of the inspections. Defendants were aware of the foundation and wall cracks as they had covered them up. Affiant was not aware that the HVAC system had been changed out three times until the receipts were produced during discovery. The roof leak was caused by the failure to seal the roof. The leak had nothing to do with sagging.

(xx) p. 27, ¶ 72. ""Mr. Miao admitted that there was visible cracking on the foundation, walls, and the tiles that were open and obvious at the time that Plaintiff purchased the Property in 2017. . . . Notably, Mr. Miao admitted that no evidence showed that Defendants were aware of any of these issues and also admitted that squatters and tenants could have damaged the Property." *Squatters and tenants could not have caused the foundation and walls to crack. Even if squatters and tenants did cause the damage, Defendants were aware of the damage and covered it up.*

(yy) p. 27, ¶ 73. "As to the Broker Defendants, Ms. Zhu agreed that she was not relying upon any representations made by Brokers or Broker's agent." *Regardless of the inspections by affiant and what affiant discovered during his inspection, Defendants should have warned affiant and Ms. Zhu about serious conditions which they covered up. Affiant was relying upon his broker to tell him about conditions which could not be seen with a routine inspection. Affiant believes his agents should have told him about the fact that they were also financially tied to the sellers in that they were the Flipping Fund, they had put the investors together, they had a*

financial interest in monies made from the transaction and that it was their handyman who had made the purported repairs.

(zz) p. 28, ¶ 74. Mr. Miao walked the property with Defendants' expert, Neil Opfer. *By the time affiant walked the property with Mr. Opfer, numerous cracks had appeared in the walls which were not visible at the time of affiant's inspection on August 10, 2017.*

(aaa) p. 28, ¶ 75. "Mr. Miao agreed with Professor Opfer that the alleged conditions identified by Plaintiff's alleged expert were open and obvious." *Affiant does not agree that the conditions which ultimately appeared in the roof and interior and exterior walls were open and obvious at the time of his pre-purchase inspection.*

(bbb) p. 28, ¶ 76. "Mr. Miao agreed with Professor Opfer that Plaintiff's expert did not do any destructive testing, so the same alleged conditions that the alleged expert notes, would have been made by an inspector at the time of the purchase." *The conditions complained of were not visible at the time of the 2017 inspection as they had been covered up by Defendants.*

17. Mr. Lin, in his declaration attached to Defendants' Motion for Summary Judgment, states in ¶ 2 that he submitted seller disclosures on August 2, 2017. Affiant had not even met Mr. Lin before August 10, 2017. Affiant first met Mr. Lin on August 10, 2017, at the time of his inspection of the subject property. In ¶¶ 3 and 7, Lin states that he told affiant and Ms. Zhu to get an inspection of the Property. At no time did Lin tell affiant that affiant needed to get an inspection of the Property as affiant had already inspected the property with Lin. Mr. Lin was also the seller's agent so after the initial signing of the Residential Purchase Agreement affiant only communicated with Ms. Chen, the buyer's agent. In ¶ 4, Lin says that affiant did not inspect the property. Again, affiant

inspected the Property on several occasions, the first time with Lin present on August 10, 2017. Mr. Lin stated to affiant that they had entirely rehabilitated the Property including the walls and floors. In ¶ 5, Lin states that the rehabilitation done on the Property did not involve opening walls. They had to open the walls to install the window AC units. Lin further states that on multiple occasions he disclosed the work on the HVAC units to affiant. Affiant was aware that the HVAC units had been recently put in but he was not aware that the AC units were replacing a swamp cooler. Lin did not disclose the installation of the HVAC units to affiant. In ¶ 8, Lin states that TKNR did not reside or visit the property implying that Defendants knew very little about the property. TKNR, Lin and InvestPro were all related. TKNR was part of Mr. Lin's flipping fund. Lin put the investor's together and purchased the property. It was Lin and his handyman who performed the rehabilitation of the Property. In ¶ 10, Lin states that original settlement demand was $10,000.00. There were no demands made to Defendants after the lawsuit was filed. Affiant had approached Lin about the electrical issues he discovered the wall relating to the installation of the air conditioners. Affiant asked Lin to pay the anticipated costs of repairing the electrical wiring which was approximately $10,000.00.

FURTHER AFFIANT SAYETH NAUGHT.

FRANK MIAO

SUBSCRIBED AND SWORN to before me
this 16 day of April, 2021.

NOTARY PUBLIC in and
for said County and State.

BRINLEY RICHESON
NOTARY PUBLIC
STATE OF NEVADA
My Commission Expires: 07-22-23
Certificate No: 11-5428-1

EXHIBIT “2"

IN THE EIGHTH JUDICIAL DISTRICT COURT

CLARK COUNTY, NEVADA

WLAB INVESTMENT, LLC, Plaintiff, vs. 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 CHING 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.	CASE NO.: A-18-785917-C DEPT NO.: 14

Job Number. 697915

DEPOSITION OF FRANK MIAO

DEPOSITION OF FRANK MIAO
PERSON MOST KNOWLEDGABLE FOR WLAB INVESTMENT, LLC

Taken at Litigation Services
on Tuesday, January 12, 2021
at 9:00 a.m.
at 3960 Howard Hughes Parkway, Suite 700
Las Vegas, Nevada 89169

Reported by: Trina K. Sanchez, CCR No. 933, RPR
Job No.: 697915

APPEARANCES:
For the Defendants via videoconference:

MICHAEL B. LEE, ESQ.
MICHAEL B. LEE, P.C.
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Las Vegas, Nevada 89104
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For the Plaintiff:

BENJAMIN B. CHILDS, ESQ.
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Las Vegas, Nevada 89101
(702) 251-0000
ben@benchilds.com

Also present via videoconference: Helen Chen

I N D E X

E X H I B I T S

Entry onto Land and for Inspection
of Tangible Things Pursuant
to NRCP 34

LAS VEGAS, NEVADA, TUESDAY, JANUARY 12, 2021;
9:00 A.M.
-OOO-

(In an off-the-record discussion held prior to the commencement of the deposition proceedings, counsel agreed to waive the court reporter requirements under Rule 30(b)(5) of the Nevada Rules of Civil Procedure.)

Whereupon,
FRANK MIAO,
having been first duly sworn to testify to the truth, the whole truth and nothing but the truth, was examined and testified as follows:

EXAMINATION

BY MR. LEE:

Q. Good morning, sir. Thank you for appearing for your deposition today. You're appearing as the 30(b)(6) or the person most knowledgable for this deposition; is that correct?

A. Yes.

Q. And you understand what that term means?

A. Yes.

Q. I think I saw you going through the deposition exhibits. The top of the pile should have been the 30(b)(6) notice.

Do you see that?

A. 30(b)(6)? I don't know what that -- what document?

MR. LEE: For the record, Helen Chen, the defendant, has just joined us for the deposition.

THE WITNESS: I haven't read that one yet.

MR. LEE: Ms. Court Reporter, can you help him?

MADAM REPORTER: Yes. Let's go off the record.

(A discussion was held of the record.)

BY MR. LEE:

Q. We're back on the record. It appears the exhibits didn't get printed, but we'll go ahead and wait for them to get printed.

During the interim, I'll just share my screen so you can see what the exhibits are; okay?

A. Okay.

Q. Then I'll go over the rules of the deposition. You're doing a good job right now. I just want to get this PMK notice out of the way; okay?

Did you have an audible response?

MADAM REPORTER: No.

BY MR. LEE:

Q. You need to say "yes" or "no."

Do you understand?

THE WITNESS: What did he ask?

MADAM REPORTER: He's --

BY MR. LEE:

Q. "Audible" means out loud.

A. Can you speak a little slowly? Because if you speak too quick, I -- I cannot catch up.

Q. Okay. So I just -- I'll go over the rules of the deposition with you after I just do this PMK notice; okay?

A. Okay. What's a "PMK" mean?

Q. "PMK" means person most knowledgable.

A. Oh, okay. Okay. Yes.

Q. See right where I highlighted it, person most knowledgable?

A. Yeah, yeah, yeah.

Q. Okay. So for the record, what I'm doing is showing you what will eventually be proposed Exhibit 1 to the deposition, which is the notice of deposition of the person most knowledgable for WLAB Investments, LLC.

now.

Q. You were born in 1963 in Nanjing, China.

A. Yeah.

Q. Did you go to high school there?

A. Yes, in China.

Q. Did you -- what kind of education did you have after high school?

A. I got a bachelor degree in chemical engineering in Beijing in Chemical University -- Chemical Technology University.

Then after that, I come to U.S. to pursue the advance degree, then I got the Ph.D. at Illinois Institute of Technology all in the engineering background.

Q. Now, you got your bachelor's degree in Beijing in chemical engineering?

A. Chemical Technology University, I think they call it, right.

Q. Technology.

What year?

A. 1985. Then I come to U.S. 1986.

Q. Okay. So you went to high school. Is that a four-year program or how long is it?

A. Where?

Q. In China --

A. In China, it's four-year bachelor degree.

Q. Okay. So you went from high school, then you went to this college program in Beijing; is that correct?

A. Beijing, yes, yes.

Q. Okay. Then what year did you go to the Illinois Institute of Technology?

A. I think it was 1986. 1986 to 19 -- oh, I'm sorry. 1987, January.

Q. What?

A. 1987.

Q. To when?

A. To all the way to the 1990, I guess.

Q. You said this was a Ph.D. program?

A. Yeah, yeah. I think it's only been four years to get my Ph.D. degree without master degree.

Q. So you skipped the master's and just got a Ph.D. in three years?

A. Four years. Around four years, yeah. By that time, they said I set a record for Chinese student at that time for fastest --

Q. So between 1985 and 1987, what were you doing?

A. I -- first, before I went to get some education for foreign language, study English a

little bit before come to U.S. Prepare English.

When I first come to U.S. in 1986, I went to Ohio University. Then when I found out Ohio University in a small town, so very difficult to get some job employment for students enrolled in the school, so I moved to transfer to IIT, Illinois Institute of Technology. At that time, the professor have some of the Department of Energy program, the grant money, so they are looking for some research assistants, so I went --

Q. What's the name of the college where you studied in Ohio?

A. Called Ohio University.

Q. Oh, just Ohio University --

A. Yeah.

Q. -- not, like, you know, any city, like Columbus?

A. In Athens, Ohio.

Q. I'm sorry, what city?

A. Athens, just like -- A-N-T-H-E-N-S [sic], Athens.

Q. Anthem?

A. Athens, yeah.

Q. Okay. When you got your Ph.D. from Illinois Institute, what was the Ph.D. in?

A. Huh?

Q. What was the Ph.D. in?

A. In engineering.

Q. Chemical engineering?

A. Yeah, engineering. Chemical and the mechanical both. It's, like -- also, they said is chemical but mostly is mechanical side.

Q. And what was the course of your study work?

A. Oh, study lot of work. Chemistry and also mechanical science, structure. Basically, my background is, like, in building the factory system design, engineering, that kind of thing.

Q. So a large commercial building?

A. Commercial building, factory, like a chemical plant, refinery plant, power plant. Build the power plant. Mostly power plant.

So after that, most of my career is power plant.

Q. So after 1990, what did you do?

A. Huh? After the --

Q. Like, in terms of work after 1990.

A. After 1990, I working for the one company called the Gas Research Institute.

Q. Gas Research Institute?

A. Yeah. There is the company is sponsored by the American gas company, like the Southwest Gas Company or the Edison or the so called gas company. They all contribute to many to do the research and technology developed at that branch. So I working for them.

Q. I recently reviewed a document related to the Edison group in California.

A. Yeah.

Q. So --

A. Yeah.

Q. -- how long did you work at the --

A. I working there and here in 1995.

Q. What was your job title?

A. I was engineer and -- research engineer and research --

Q. What were you researching?

A. Huh?

Q. What were you researching?

A. I was researching two fields. One is gasification. It's to convert the natural -- convert the coal to the natural gas. So it's a program, you know. Sometimes before they shorten the natural gas, so they think it can work from the coal through the coal gasification to make the gas.

Q. I'm going to circle back.

When you went to the Illinois Institute of Technology, did you get a degree or a certificate from there?

A. Ph.D. degree.

Q. Okay.

A. Yeah, Ph.D. degree. It's highest engineering degree. And actually, it's a field, the gasification.

Q. So after 1995, what did you do?

A. Then I went to the company called the Westinghouse, which is later the Siemens. The German company called Siemens acquired the Westinghouse Power Generation Group. That was there. I was working -- I ended up working for the Siemens corporation, which is one of the --

Q. How long did you work there for?

A. Huh?

Q. How long did you work there for?

A. I working for there for two years.

Q. In 1997?

A. Yeah. Then I moved -- that is --

Q. Hold on one second.

A. Mm-hmm.

Q. One second.

What was your job title with Siemens?

A. Siemens engineer.

Q. What were your job duties?

A. Our duties is just design the coal gasification power plants and design the natural gas combined circle power plant.

Q. Then in 1997 -- let me go back.

Why did you leave your position? What was the name of the company you worked for in 1990?

A. Gas Research Institute. Presently they're called -- yeah, Gas Research. Before they call the Institute of Gas Technology. It's also called IGT, but it's Institute of Gas Technology.

Then later, they change the name called Gas Research Institute.

Q. Why did you leave the Gas Research Institute to go work for Siemens?

A. Because I don't want to work in the research academic; right? That is research organization. I want to do the real -- build the real plant, real commercial company, so I went to the company, which is build the power plant, build all the power system.

Q. 1997, what did you do after that?

A. Then I joined the company called the --

original they called it Combustion Engineering, then they later called it ABB, ASEA Brown Boveri, which is a Swiss and Sweden company. It is one of the largest -- at that time, it was the largest power generation company in the world.

Q. How long did you work there for?

A. I working there until -- later, this ABB been acquired -- the power generation people is acquired by the company -- French company called Alstom, A-L-S-T-O-M.

Then General Electric bought this Alstom. So later, before I left -- it's General Electric. So after that, I working for them until 2004 -- 2004.

Q. So in 1997 to 2004, you started with ABB who got acquired by other companies --

A. Right.

Q. -- until 2004?

A. Yeah, 2004.

Q. What was your position when you started?

A. I was starting as a senior consulting engineer, then later as a technical fellow, then as a project manager and project director.

Q. And what were your job duties?

A. Was supervisor, build the power plant,

commercial power plant; training the licensee in Asia; and mostly doing the competitive bid for the new power plant in U.S. worldwide.

Q. These are gas or coal power plants?

A. Gas. Mostly it's combined cycle power plant.

Q. So you mean gas. Does that mean, like, natural gas or is there another type of gas?

A. One is coal gasification gas or natural gas. Sometimes they also use diesel. Build a diesel plant for the -- we call it peaker. It's a simple cycle. Like the Las Vegas or the NV Energy, they have some plant. On the 215, you'll see that small plant. That is a simple cycle peaker. We called it peaker. During the high demand season, they running that kind of plant.

Q. Okay.

A. Yeah.

MADAM REPORTER: I'm sorry, Counsel. Are you saying peak, P-E-A-K?

THE WITNESS: P-E-A-K, yeah.

MADAM REPORTER: Okay. Thanks.

THE WITNESS: Yeah, yeah. Because when in the summer the electricity demand is high, so they have running some simple cycle plant, yeah.

BY MR. LEE:

Q. Okay. This is 2004. What did you do after that?

A. Then I come to California. I come to California working with a company called Parsons Engineering.

Q. Parson, P-A-R-S-O-N?

A. Yeah, P-A-R-S-O-N. Which at that time is world's largest engineering company in West Coast for the power generation and the refinery and the chemical.

Q. How long did you work there for?

A. Until the 2008, I think. 2010. We do all kinds. We design the power plant and we do the refinery engineering. We do chemical plant engineering. We do mining company engineering, design.

Q. So what was your job title?

A. I was the supervisor -- senior supervisor.

Q. Did you provide (inaudible) --

A. Huh?

Q. You were supervising?

A. Yeah. Supervise a whole bunch of engineering doing this kind of design and also project management. Project manager, project

director kind of, yeah.

Q. Okay. Then 2008, the recession, what did you do after that?

A. After that, I just -- I don't want to work for other people. I just working for myself.

Q. Okay. So what does that mean?

A. That means WLAB. We bought a lot of land and a rental house, so we just collected rent.

Q. 2008 to the present, that's when you formed and --

A. Yeah, yeah, yeah.

Q. -- still are involved with WLAB; right?

A. Yeah, yeah, yeah, yeah. I forgot exactly when we set up this WLAB lab, but we starting since 2008, 2010, that range. Not I -- exactly I don't know when I start working for company.

The reason why the -- I stopped working at company is the company want to assign me to the Saudi for the supervisor design the one refinery in Saudi. Then I found out, they said in the middle of nowhere in the desert.

So at that time, my kids were too small in the education, so I don't want to go there. So I tell them I just rather working for myself.

Q. You don't want to go to Saudi Arabia, so

you decided to start your own business?

A. Yeah, yeah, yeah.

Q. Okay. Then you're already in California, so you just stayed in California; correct?

A. Right, right, yeah.

Q. Okay. WLAB, what does WLAB stand for?

A. I forgot why it's called the name of WLAB, you know. To be honest, maybe my wife choose the name and -- yeah. I don't know why we call that name.

Q. So your wife would be a little bit more knowledgable related to some of the formation of WLAB?

A. I think so. We both -- we have 50/50 percent share for that LLC right now, yeah.

Q. Okay. As part of the PMK notice, it does specify Topic 13, which is formation of Plaintiff. This would be something else that your wife would be more knowledgable about?

A. Yeah. Maybe for that company, yeah.

MADAM REPORTER: Sorry. You broke up there.

BY MR. LEE:

Q. You and your wife are the only partners or members of WLAB; is that right?

A. At this moment, yes.
Q. Okay. I believe that you presented an operating agreement related to eventually doing a 1031 exchange for the property.
Do you recall if that's the same operating agreement that you have in place today?
A. Yes, yes.
Q. Have you ever amended your operating agreement?
A. I don't know. My wife usually doing that kind of hard work, you know. I'm not sure.
Q. Is your wife a little bit better -- what does your wife do?
A. My wife, well, she's also engineering background. Actually, we met in Chicago. Then she -- she's an engineering Ph.D. too, but she's more focused on the biotech side. So later, she just -- when we purchase this property, she's the CEO for the company in San Diego.
Q. I'm sorry. You said you purchased a company. What company did you purchase?
A. No. We purchased the property, the -- the -- currently the 2132 Houston Drive. At that time, she's the CEO of the one biotech company in San Diego.

Q. What's the name of the biotech company?
A. I don't know. You got to -- in Chinese is MabPlex, MabPlex, MabPlex, yeah.
MADAM REPORTER: What is it?
THE WITNESS: It's MabPlex, M-I -- I don't know how to spell that. Her company is in China company, and one branch is subsidiary in San Diego. She own -- the CEO for that company.
BY MR. LEE:
Q. Okay. So in 2017 or so, 2018, she was the CEO of this biotech company in San Diego; correct?
A. Right, right, yeah.
Q. And at the same time, she was also a managing member of WLAB; is that correct?
A. Right, right. She's the managing member of this WLAB, but she don't do the daily operation. I'm the mostly person doing the daily operation.
Q. Okay. But she's the one who handled, like, the underlying transactional documents for WLAB such as your operating agreement; is that fair?
A. I think so. Maybe, yeah.
Q. Did you -- were you also involved in the drafting of the operating agreement?
A. Yes, yes. I -- I cannot remember very clearly. Actually, we went to the one accounting

firm in Monterey Park, Los Angeles, and working with this accounting firm to set up the company. Then I get the seal, all the documents together. Then accounting firm continued to the accountants.
Every year we file the tax returns through the company firm. I think they called the Southern California Accounting something company.
Q. A California accounting company?
A. Yeah, California company. It's actually we set up through that company.
Q. What's the name of the company?
A. Southern California Accounting.
Q. Oh, okay.
A. Yeah. If you go to the Chinese newspaper, you will see that advertise, yeah, from the Chinese newspaper, local newspaper.
Q. So I went through your work history. You know, like, 1990 to 2008, you were working in a, you know -- capacity as an engineer supervisor. Did you have to review many contracts during that time?
A. Yes, yes. Yeah.
Q. Okay. And then you understood the importance of reading contracts; is that fair?
A. Yes, yes.
Q. How many of these contracts led to the

development or building of buildings?
A. I'll be very honest with you, I like building, building the house. My family, all my kids, my wife live in the house I build. So since the one we have ability to buy the house, instead of buying or leasing a house, we always build the house, so we --
Q. So this is the Sewanee --
A. Yeah. I build that house too. That house I build. That one in Connecticut, we build the house too. So we go through all this document.
And the Sewanee name, the house, I bought all the house that he tear down immediately, then I build that house.
Q. So Sewanee is a house that you built and constructed.
A. Yeah.
Q. Did you act as the general contractor?
A. Yes, yes.
Q. You acted as the project manager?
A. Yes, yeah.
Q. Did you hire contractors to help you construct it?
A. Yeah. We hire -- we negotiate the -- we doing the -- first we solicited the subcontract and

then we evaluate the subcontractor code and also the qualification and then submit to the subcontract doing the work, then doing the quality control.

Q. Quality control.

During that process, this was -- how many homes have you constructed?

A. Huh?

Q. How many homes have you constructed?

MADAM REPORTER: You keep breaking up, Counsel.

THE WITNESS: I cannot hear you.

BY MR. LEE:

Q. How many homes have you constructed?

A. Oh, boy. Probably three or four. Yes, because -- yeah, because some houses we completed from starting all the way together I do my own. But at the beginning, we build a house. It's through the Nacka ne ma (phonetic) or some other company; right? So we sign the contract after the company to build the house.

Just like in Las Vegas from the home builder, you go to their site -- community, you sign the contract, you participate in the building together, then they build it for you.

Q. Okay. So let's do this: With the Quiet

Cove property in Las Vegas, is it a residential property?

A. Yes, yeah.

Q. Okay. Did you improve upon it or it's as is?

A. I bought this one. Actually, it's from auction. What happened -- done the remodeling. I bought this one from the homeowners association auction.

Q. When did you buy this?

A. October 2019.

Q. Recently?

A. Yeah.

Q. It was a foreclosure; correct?

A. Yes, yeah.

Q. Did it have damage or it was just a foreclosure?

A. Damage. It's -- the second floor, one room is burned.

Q. You were living in a burned home?

A. The second floor.

Q. Okay. So you're just living in the --

A. First floor.

Q. The habitable places is where you're residing?

A. Right, right, right. Right now I put in the second floor. I clean the second floor, all the burned stuff, and started doing the remodeling.

Q. You're doing that yourself?

A. No. It's also through some people.

Q. Who are you contracting?

A. Right now it's -- I interview contractor, yeah. I haven't done the -- complete the remodeling yet because we -- last year we have some issue and the -- for the company homeowners association hired the attorney to do foreclosure. Then we have some issues. So we waiting for the -- until that one settle down, then we can do...

Q. So you bought this by an HOA foreclosure or a bank foreclosure?

A. HOA foreclosure.

Q. Okay. So it was, like, a superpriority lien? Do you understand what that means?

A. I don't know. I tell you what's happened we found out last year. It's -- actually, HOA only -- that house own -- actually, previous owner owe actually about $6,000. Actually put in auction for that property. That I pay 85,000 cash for that property.

Then we found out this lien about $70,000.

That legal -- the County and the City are going to foreclose on the house again, so we are trying to use that, actually gather the $85,000 so they have access to proceeding. So want to use that access of proceedings to pay off for the County and the City name. That's --

Q. Do you have an attorney that's representing you for this action right now?

A. Yeah, yeah. It's Mr. Lee -- Ben.

Q. Ben Childs. I'm Mr. Lee.

A. Yeah, yeah.

Q. That's your attorney; right?

A. Yeah.

Q. Okay. It sounds like basically the public works utility liens is something that he's trying to help you resolve; is that fair?

A. Yes, yeah.

Q. Mr. Childs is shaking his head no.

A. Huh?

Q. Maybe you guys can confer about that later.

MR. CHILDS: It's tax liens.

THE WITNESS: Tax lien.

BY MR. LEE:

Q. A tax lien. Thank you.

heating -- or heater is not light up, so I call the AC company -- or they call the AC company then to fix the other one. They give me the receipt. Then I just keep the receipt, then I pay them.

Q. Do you have a property management company that manages the property for you or do you do it?

A. No. That one, no. No property manager. Just I do it.

Q. And then for the handyman work or the maintenance of it, how do you resolve that?

A. I just hire the -- from the -- the yellow page or the Google, found the local people and call them, ask them to go there to fix things.

Q. Are they -- like, what kind of people? Like, handyman?

A. No. Usually it's a company. Licensed contractor, not a handyman. I never hire handyman. Mostly it's go to the yellow pages, found the plumber. Go to the local plumber, licensed plumber to do that. Actually, I say call the licensed -- actually, I say to do that.

Q. Well, like, in 2009, it's fair to say that you understood the difference between a licensed contractor and a handyman?

A. Yes, yes.

Q. How many times do you think you have to hire a contractor to address issues with the Bundy property on a yearly basis?

A. Not very many. Maybe one year one time. I currently have a tenant living there for more than three years. They only call me one time.

Q. And what was that issue?

A. They said it's a -- water heater is not light up, so he text me and said that the -- he needed me to come over and take a look and fix that. I said, Go ahead and fix that and send me the bill, and we just deduct from the rent.

Q. For the water heater, did you hire a plumber or did you just hire, like, a company to give you a new water heater and install --

A. Plumber, plumber. In California, usually you hire the plumber. They sell you the -- they go to replace the water heater.

Q. Do you have an understanding that a water heater requires permit work for replacement?

A. I don't think so. Water heater don't need a permit. In California, no, no permit.

(Two speakers at once.)

Q. Okay. Clark County -- it should be subject to a permit. Would you insist on a

contractor showing you a permit?

A. In California, that one, I don't think so. They don't apply the permit. Because this is -- since they need to do immediately, how you get a permit? You know, the tenant said today, I don't have hot water. I need to replace. So I call the plumper go there to the place. How you get a tenant the permit even in the weekend? No, I don't think so.

Q. So if you hire, like, a contractor, you understand that they'll take care of any permitting issues that there will be?

A. Depends. Sometimes with the contractor need me to work with them to get the permit. They cannot directly by themself. But my understanding for the water heater in California, no permit is required.

Q. Well, if a permit was required, would you expect that the contractor will take care of that for you?

A. Yes, but usually I know that sometimes the permit -- I need to apply for permit, they need my information from contractor. Contractor need my information, and my -- some documents that they can apply the permit. I gave them my authority.

Q. After the work is performed, do you ever ask the contractor to show you the permits they obtained?

A. Yes. Sometimes I need. I ask for it before.

Q. Does that also mean sometimes you don't ask for one?

A. Some -- in California, that house, I just said -- you asked me in California, the house, I didn't -- I don't think I asked them to permit for the -- for water heater replacement.

Q. So just in general, not just for water heaters, but if a contractor does work for you, are there times where you don't ask to see any related permits?

A. To my knowledge, I don't think so. I probably doing that. If they required a permit, I will ask them to show me permit and also ask them to show me the inspection and the inspection result. Because that is your duty, you know. You pay the contractor to do the work. Then when they performed the work, you need to gather the certain party to inspect, make sure they're doing it safely and meet law requirement; right?

Q. Okay. So when you asked, you know, for

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someone to do the work, you want -- you would usually follow up and ask to see the permit and inspection?

A. Yes, I will do that.

Q. Okay. So after Bundy, what else did you guys buy?

A. We buy a lot of property in California.

Q. In general, how many properties do you own?

A. A lot. More than ten. But I cannot count exactly right now.

Q. More than ten in California or in total?

A. In California.

Q. So we know you own eight or nine here in Vegas and that you own more than ten in California; right?

A. Right, right, right.

Q. And then the properties that WLAB owns, are there separate properties that you and Marie own that aren't part of WLAB?

A. Yes, yes. We -- we thinking in the -- sometimes they use my wife name because she's get a W-2. She can get a loan, so -- but some we change the title. I went to the County recording office and change the title because time to move to the

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WLAB now. Some haven't --

Q. How many properties do you and Marie own that are outside of what WLAB owns?

A. I don't -- I don't know. Usually when my wife file the tax return, they think it's mostly WLAB for rental property.

Q. So this is an area that Marie would know better than you would?

A. I think so. She's the person involved in more that.

Q. In general with the properties that you purchased, walk me through the process of how you go through it. Like, do you find it on Zillow? Do you find it on some type of listing agreement? How does this work?

A. In general, it's I found the property from the Redfin or Zillow; right? Then I contact the listing agent, then I make the listing agent appointment with the listing agent, then go to the property, take a look at the property, do some inspection, then I recording all that by myself and say what's the -- and that property.

Then after that, I make the offer to the -- ask my wife make the offer, then sign the purchase agreement after negotiation the price.

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Q. So in terms of the inspection, like, in general, have you ever used a professional inspection company to do those for you?

A. I did some. One or two. Not much. Because we did some work, buy some property in Yuca Valley. I think I hired an inspector to do that. Then later I found out, you know, what later inspector report is not much different than what I found. So later, we just didn't hire the professional inspector doing this work.

Q. Can you spell Yucca Valley? Is that Y-U-C-C-A?

A. Yeah, Y-U-C-C-A. Yeah.

Q. So you've only hired a professional inspector once or twice. Do you recall which years that would have been when you did that?

A. 2014, something like that. It's -- yeah, early 2014, 2015. Let me see.

Q. Have you ever hired a professional inspection company in Clark County, Nevada?

A. No. That's -- like I said, in the Nevada, all the property is multi-family rental property, so -- multi-family rental property usually don't need professional inspector to do that.

Q. Do you know if there's professional

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inspectors that will inspect multi-tenant residential properties that have six units or less?

A. I -- I think some of the advertisement they can do that, but I contact the -- they tried to log money, but also we found out that you don't need to do that. According to -- I talk to the other landlord, them said it's a -- you know, if you have lot of unit in that apartment, you cannot do the inspection.

Then also the law is -- what they said for the multi-family rental property, the seller must provide a good, safe, and healthy environment for tenant. So that is a burden is on the seller to make sure that everything is safe.

The tenant is not going to inspect -- hire an inspector to do the inspection before they rented the building or the room; right? Then it's also --

Q. First of all, what is the law that you're referencing in your discussion?

A. This is -- even you take a look at the -- here on this one, what's the deed of permit inspection, is on the tenant and the landlord they said this way. Yeah, they said you -- you have to provide in the tenant. You have to provide healthy, well-being facility for the tenant.

of things report that we don't need to go to the inside the building. It's wall cracking. It's outside. You can see.

Q. Okay. So it's open and obvious for them?

A. Yeah. You can see always outside.

Q. So is there any information that you want to provide that I haven't asked you about?

A. No.

Q. No? Okay.

Would you like to revise or supplement any of your prior answers?

A. Yes. I need to read this description, the -- what's it called?

MR. CHILDS: Transcript.

THE WITNESS: Transcript, yeah.

BY MR. LEE:

Q. Okay. So I presume you guys are going to buy a copy of the transcript. You'll need to let the court reporter know. If you are, they'll mail you a copy. If not, you're going to have to go to the court reporter's office to review it; okay?

A. Yeah. We just buy one.

Q. Okay. And then in terms of the areas that we covered that was based on your experience or your speculation, are you planning on offering those

opinions at the time of trial?

A. Yes, yes.

Q. Okay.

MR. LEE: I don't have any further questions, so we can go off record and -- or actually, I pass the witness. How about that?

MR. CHILDS: No questions.

THE WITNESS: No questions.

MR. LEE: Okay. Then I'll release you subject to any disclosure of any additional documents that we haven't received at this time, but I thank you for your time today; okay?

THE WITNESS: Thank you.

MADAM REPORTER: Counsel, would you like a copy of the transcript?

MR. CHILDS: Yeah, I think --

THE WITNESS: Yeah, yeah.

MADAM REPORTER: Do you want electronic?

MR. CHILDS: Sure.

MR. LEE: I only want an e-copy with exhibits.

MADAM REPORTER: Okay.

(The deposition concluded at 5:26 p.m.)

CERTIFICATE OF WITNESS

PAGE	LINE	CHANGE	REASON

* * * * *

I, FRANK MIAO, witness herein, do hereby certify and declare under the penalty of perjury the within and foregoing transcription to be my deposition in said action; that I have read, corrected and do hereby affix my signature to said deposition.

_____ _____

FRANK MIAO

Witness Date

REPORTER'S CERTIFICATE

STATE OF NEVADA)
) ss
COUNTY OF CLARK)

I, Trina K. Sanchez, a duly certified court reporter licensed in and for the State of Nevada, do hereby certify:

That I reported the taking of the deposition of the witness, FRANK MIAO, at the time and place aforesaid;

That prior to being examined, the witness was by me duly sworn to testify to the truth, the whole truth, and nothing but the truth;

That I thereafter transcribed my shorthand notes into typewriting and that the typewritten transcript of said deposition is a complete, true and accurate record of testimony provided by the witness at said time to the best of my ability.

I further certify (1) that I am not a relative, employee or independent contractor of counsel or of any of the parties; nor a relative, employee or independent contractor of the parties involved in said action; nor a person financially interested in the action; nor do I have any other relationship with any of the parties or with counsel of any of the parties involved in the action that may reasonably cause my impartiality to be questioned; and (2) that transcript review pursuant to NRCP 30(e) was requested.

IN WITNESS WHEREOF, I have hereunto set my hand in the County of Clark, State of Nevada, this 23rd day of January, 2021.

Trina K. Sanchez

_____

TRINA K. SANCHEZ, RPR, CCR NO. 933

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EXHIBIT “3"


AA000903

AA000904

AA000905

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AA000910

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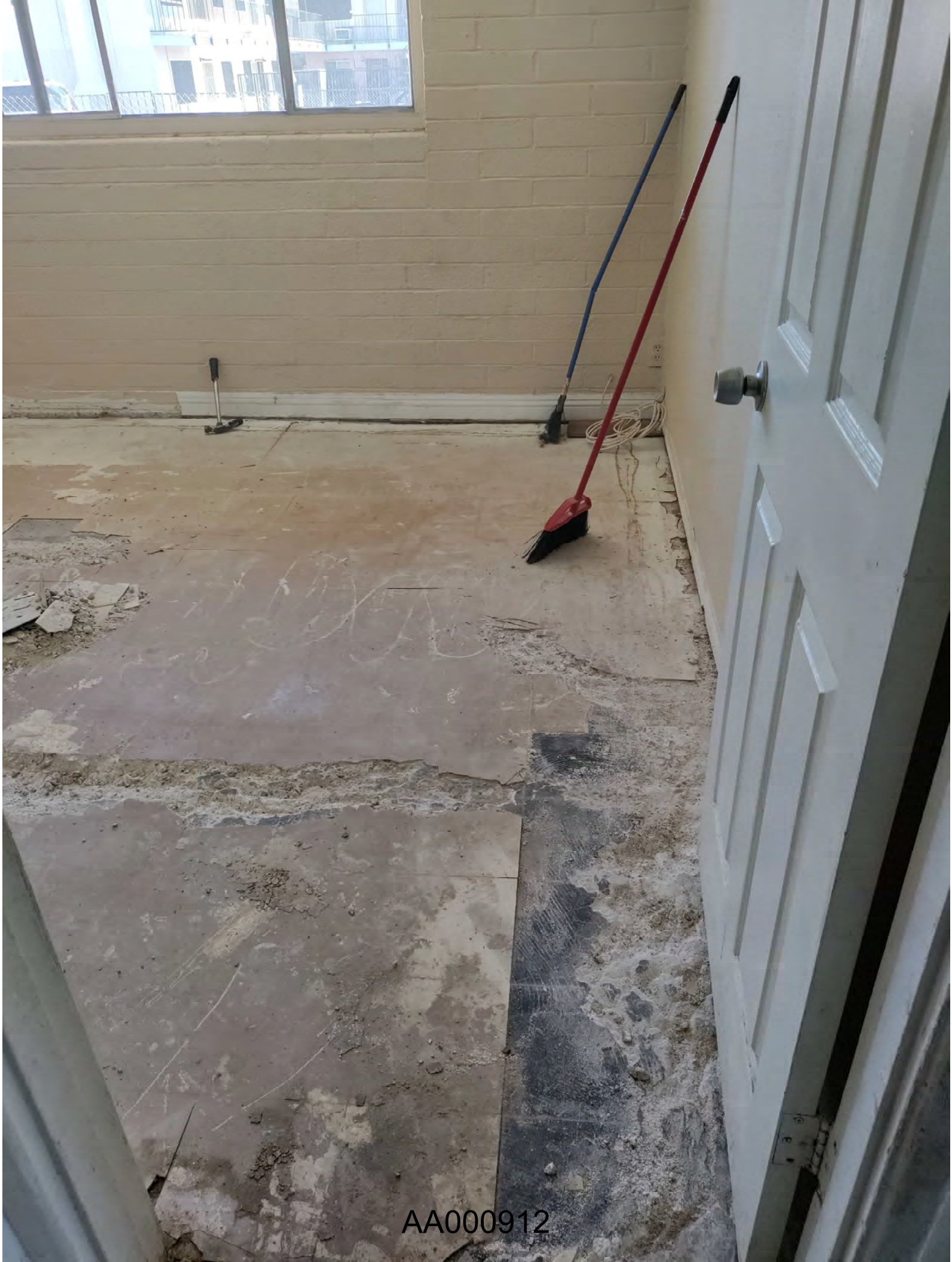

AA000912

EXHIBIT “4"

AA000915

EXHIBIT “5"

Flipping Fund lv - InvestPro Realty

Search

[Statement]

Investment Op

InvestPro REALTY

1. **周期**: 1-3 年。
2. 投资门槛：最少$5万，每股$1000。
2. **用途**: 在拉斯维加斯短炒住宅。
3. **回报**：每年先付8%的红利，按季度付，然后在所有本金收回后，纯利润的75%给投资人，25%给管理公司。
5. **退出**：头12 个月不可退出，过后可以自行买卖或由公司买回。

截止日期：2015年12月31日

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, THEN 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?
所谓 | 短炒基金
FLIPPING FUND IS ESTABLISHED BY INVESTPRO INVESTMENTS FOUNDATION. THE FUND WILL BE INVESTED 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.
「短炒基金」是由恒兴投资基金建立的一个投资资金池，用于在拉斯维加斯买入预期升值的房产项目。短期获利后，迅速抛售套现离场，所获利资金再次用于投资其他相似房产项目，以此循环获利。
InvestPro Investment Foundation | 3553 S Valley View Blvd, Las Vegas, NV 89103 | P: +1 (702) 997-3832 | F: +1 (702) 997-3836 | www.investprorealty.net


04 案例分析 SUCCESSFUL PROJECTS
06 已运作项目 PROJECT LIST
09 短炒周期 FLIPPING TERM
10 资金分配 INVESTMENTS & EXPENSES
11 投资回报 PRO FORMA
InvestPro Investment Foundation | 3553 S Valley View Blvd, Las Vegas, NV 89103 | P: +1 (702) 997-3832 | F: +1 (702) 997-3836 | www.investprorealty.net


案例分析
SUCCESSFUL PROJECTS
4320 NOLAN LN
LAS VEGAS NV
03/02
2015
102天/DAY
06/12
2015
增值 INCREASE IN VALUE


HOW LONG's THE FLIPPING TERM?
多久 | 短炒周期
134 DAY. WE SET THE FLIPPING TERM AS 130 DAYS. IT IS A ESTIMATED NUMBER BASED ON THE PROPERTIES WE ARE OPERATING NOW. WE AVERAGE THE TERM BETWEEN PURCHASE AND SOLD, THEN PLUS 15 ACQUISITION DAYS. THEREFORE IN 365 DAYS, ALL OF FUNDS WILL BE FLIPPED FOR 2.72 TIMES
「134天」我们将短炒周期设定为134天，这是以我们目前已运作房产项目，从买入至卖出所用天数的平均值（119天）加上购置周期（15天），所得出的一个平均短炒周期数。若全年以365天计，资金将用于短炒2.72次/年
年盈利率
COMPOUND RATE
PROFIT PER FLIP 每次利润 8.71% x FLIPS PER YEAR 年短炒次数 2.72 = 23.69%
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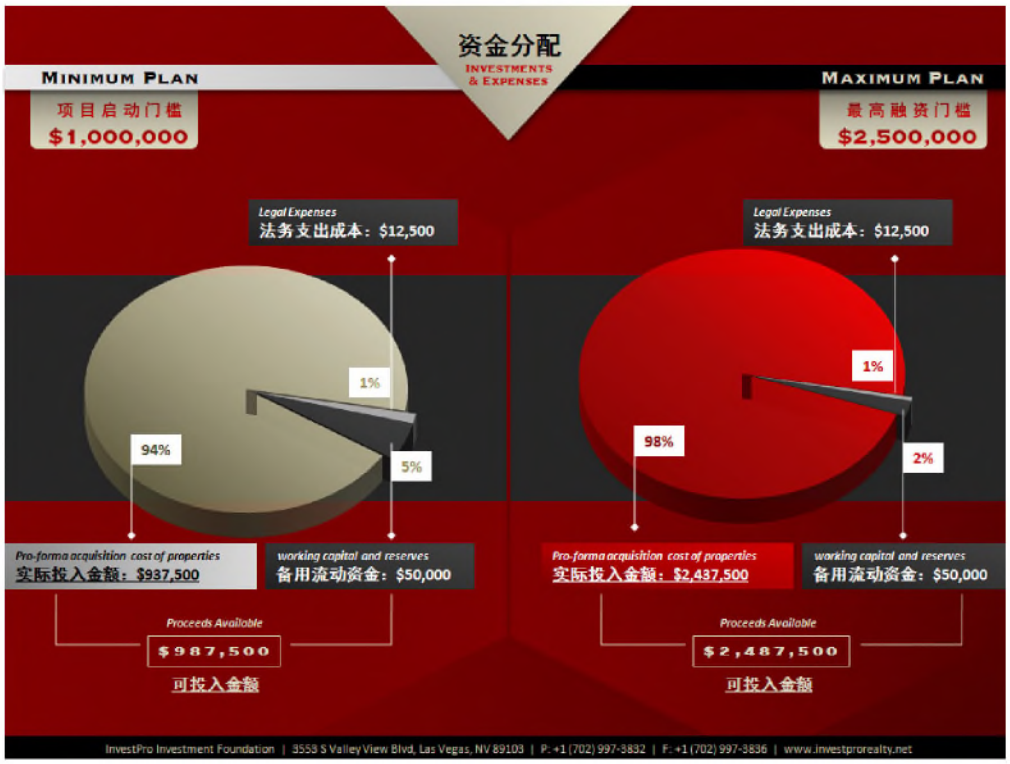
资金分配
INVESTMENTS & EXPENSES
MINIMUM PLAN
项目启动门槛
$1,000,000
MAXIMUM PLAN
最高融资门槛
$2,500,000
Legal Expenses
法务支出成本：$12,500
94%
1%
5%
Pro-forma acquisition cost of properties
实际投入金额：$937,500
working capital and reserves
备用流动资金：$50,000
Proceeds Available
$987,500
可投入金额
Legal Expenses
法务支出成本：$12,500
98%
1%
2%
Pro-forma acquisition cost of properties
实际投入金额：$2,437,500
working capital and reserves
备用流动资金：$50,000
Proceeds Available
$2,487,500
可投入金额
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投资回报率
PRO FORMA
MINIMUM PLAN
项目启动门槛
$1,000,000
可投入金额
年盈利率
资金成长
年固定回报额
基金管理年费
总剩余资本


第一年 $937,500 $1,159,594 $1,029,594
第二年 $1,029,594 x (1+23.69%) x $1,273,505 - $80,000 - $50,000 = $1,143,505
第三年 $1,143,505 $1,414,401 $1,334,401
Working Capital & Reserves + $50,000 备用资金
Proceeds Available -$987,500 可投入金额
备用资金 : + $50,000
3年固定回报额 [$80,000 x 3] : + $240,000
25%基金公司分成 [$346,901 x 25%] : - $86,725.18
Total Profit 3 Years 三年复利回报
3年资金增长 TOTAL CAPITAL GROWTH FOR 3 YEAR 49 %
TOTAL RETURN OF CAPITAL TO INVESTORS 3年总回收金额 $1,487,676
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PRO FORMA
MAXIMUM PLAN
最高融资门槛
$2,500,000
可投入金额 年盈利率 资金成长 年固定回报额 基金管理年费 总剩余资本
第一年 $2,437,500 $3,014,944 $2,718,944
第二年 $2,718,944 x (1+23.69%) = $3,363,062 - $200,000 - $96,000 = $3,067,062
第三年 $3,067,062 $3,793,648 $3,497,648
Working Capital & Reserves + $50,000 备用资金
Proceeds Available -$2,487,500 可投入金额
备用资金 : + $50,000
3年固定回报额 [$200,000 x 3] : + $600,000
25%基金公司分成 [$1,060,148 x 25%] : - $265,037.10
Total Profit 3 Years 三年复利回报
3年资金增长 TOTAL CAPITAL GROWTH FOR 3 YEAR 55 %
TOTAL RETURN OF CAPITAL TO INVESTORS 3年总回收金额 $3,882,611
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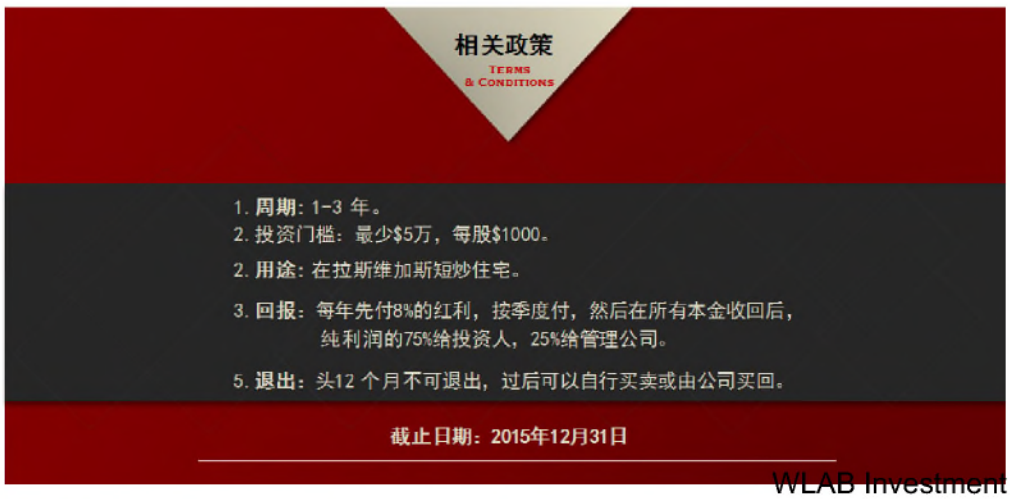
相关政策
TERMS & CONDITIONS
1. 周期：1-3 年。
2. 投资门槛：最少$5万，每股$1000。
2. 用途：在拉斯维加斯短炒住宅。
3. 回报：每年先付8%的红利，按季度付，然后在所有本金收回后，纯利润的75%给投资人，25%给管理公司。
5. 退出：头12 个月不可退出，过后可以自行买卖或由公司买回。
截止日期：2015年12月31日

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, THEN 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

(http://investprorealty.net/wp/wp-content/uploads/2015/12/13.jpg)

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Professional team
to optimize your fund

Kenny Lin more>

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Languages: English, Mandarin, Cantonese, Fuzhou dialect
Service Area: Las Vegas NV, Summerlin NV, Henderson NV

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EXHIBIT “6"

InvestPro REALTY

SELLER'S REAL PROPERTY DISCLOSURE FORM

In accordance with Nevada Law, a seller of residential real property in Nevada must disclose any and all known conditions and aspects of the property which materially affect the value or use of residential property in an adverse manner *(see NRS 113.130 and 113.140).*

Date August 2nd, 2017

Do you currently occupy or have you ever occupied this property? YES ☐ NO ☒

Property address 2132 HOUSTON DR LASVEGAS NV 89104

Effective October 1, 2011: A purchaser may not waive the requirement to provide this form and a seller may not require a purchaser to waive this form. *(NRS 113.130(3))*

Type of Seller: ☐Bank (financial institution); ☐Asset Management Company; ☐Owner-occupier; ☒Other: Investor

Purpose of Statement: (1) This statement is a disclosure of the condition of the property in compliance with the Seller Real Property Disclosure Act, effective January 1, 1996. (2) This statement is a disclosure of the condition and information concerning the property known by the Seller which materially affects the value of the property. Unless otherwise advised, the Seller does not possess any expertise in construction, architecture, engineering or any other specific area related to the construction or condition of the improvements on the property or the land. Also, unless otherwise advised, the Seller has not conducted any inspection of generally inaccessible areas such as the foundation or roof. This statement is not a warranty of any kind by the Seller or by any Agent representing the Seller in this transaction and is not a substitute for any inspections or warranties the Buyer may wish to obtain. Systems and appliances addressed on this form by the seller are not part of the contractual agreement as to the inclusion of any system or appliance as part of the binding agreement.

Instructions to the Seller: (1) ANSWER ALL QUESTIONS. (2) REPORT KNOWN CONDITIONS AFFECTING THE PROPERTY. (3) ATTACH ADDITIONAL PAGES WITH YOUR SIGNATURE IF ADDITIONAL SPACE IS REQUIRED. (4) COMPLETE THIS FORM YOURSELF. (5) IF SOME ITEMS DO NOT APPLY TO YOUR PROPERTY, CHECK N/A (NOT APPLICABLE). EFFECTIVE JANUARY 1, 1996, FAILURE TO PROVIDE A PURCHASER WITH A SIGNED DISCLOSURE STATEMENT WILL ENABLE THE PURCHASER TO TERMINATE AN OTHERWISE BINDING PURCHASE AGREEMENT AND SEEK OTHER REMEDIES AS PROVIDED BY THE LAW *(see NRS 113.150).*

Systems / Appliances: Are you aware of any problems and/or defects with any of the following:

	YES	NO	N/A
Electrical System	☐	☒	☐
Plumbing	☐	☒	☐
Sewer System & line	☐	☒	☐
Septic tank & leach field	☐	☐	☒
Well & pump	☐	☐	☒
Yard sprinkler system(s)	☐	☐	☒
Fountain(s)	☐	☐	☒
Heating system	☒	☐	☐
Cooling system	☒	☐	☐
Solar heating system	☐	☐	☒
Fireplace & chimney	☐	☐	☒
Wood burning system	☐	☐	☒
Garage door opener	☐	☐	☒
Water treatment system(s)	☐	☐	☒
owned.. ☐ leased.. ☐			
Water heater	☐	☒	☐
Toilet(s)	☐	☒	☐
Bathtub(s)	☐	☒	☐

	YES	NO	N/A
Shower(s)	☐	☒	☐
Sink(s)	☐	☒	☐
Sauna / hot tub(s)	☐	☐	☒
Built-in microwave	☐	☐	☒
Range / oven / hood-fan	☐	☐	☒
Dishwasher	☐	☒	☐
Garbage disposal	☐	☒	☐
Trash compactor	☐	☐	☒
Central vacuum	☐	☐	☒
Alarm system	☐	☐	☒
owned.. ☐ leased.. ☐			
Smoke detector	☐	☒	☐
Intercom	☐	☐	☒
Data Communication line(s)	☐	☐	☒
Satellite dish(es)	☐	☐	☒
owned.. ☐ leased.. ☐			
Other _____	☐	☐	☐

EXPLANATIONS: Any "Yes" must be fully explained on page 3 of this form.

_____ _____ [MZ] _____ _____

Seller(s) Initials *Buyer(s) Initials*

Property conditions, improvements and additional information: Are you aware of any of the following?:

	YES	NO	N/A
1. Structure:			
(a) Previous or current moisture conditions and/or water damage?	☐	☒	
(b) Any structural defect?	☐	☒	
(c) Any construction, modification, alterations, or repairs made without required state, city or county building permits?	☒	☒	
(d) Whether the property is or has been the subject of a claim governed by NRS 40.600 to 40.695 (construction defect claims)? (If seller answers yes, FURTHER DISCLOSURE IS REQUIRED)	☐	☒	
2. Land / Foundation:			
(a) Any of the improvements being located on unstable or expansive soil?	☐	☒	
(b) Any foundation sliding, settling, movement, upheaval, or earth stability problems that have occurred on the property?	☐	☒	
(c) Any drainage, flooding, water seepage, or high water table?	☐	☒	
(d) The property being located in a designated flood plain?	☐	☒	
(e) Whether the property is located next to or near any known future development?	☐	☒	
(f) Any encroachments, easements, zoning violations or nonconforming uses?	☐	☒	
(g) Is the property adjacent to "open range" land? (If seller answers yes, FURTHER DISCLOSURE IS REQUIRED under NRS 113.065)	☐	☒	
3. Roof: Any problems with the roof?	☐	☒	
4. Pool/spa: Any problems with structure, wall, liner, or equipment	☐	☒	
5. Infestation: Any history of infestation (termites, carpenter ants, etc.)?	☐	☒	
6. Environmental:			
(a) Any substances, materials, or products which may be an environmental hazard such as but not limited to, asbestos, radon gas, urea formaldehyde, fuel or chemical storage tanks, contaminated water or soil on the property?	☐	☒	
(b) Has property been the site of a crime involving the previous manufacture of Methamphetamine where the substances have not been removed from or remediated on the Property by a certified entity or has not been deemed safe for habitation by the Board of Heath?	☐	☒	
7. Fungi / Mold: Any previous or current fungus or mold?	☐	☒	
8. Any features of the property shared in common with adjoining landowners such as walls, fences, road, driveways or other features whose use or responsibility for maintenance may have an effect on the property?	☐	☒	
9. Common Interest Communities: Any "common areas" (facilities like pools, tennis courts, walkways or other areas co-owned with others) or a homeowner association which has any authority over the property?	☐	☒	
(a) Common Interest Community Declaration and Bylaws available?	☐	☒	
(b) Any periodic or recurring association fees?	☐	☒	
(c) Any unpaid assessments, fines or liens, and any warnings or notices that may give rise to an assessment, fine or lien?	☐	☒	
(d) Any litigation, arbitration, or mediation related to property or common area?	☐	☒	
(e) Any assessments associated with the property (excluding property taxes)?	☐	☒	
(f) Any construction, modification, alterations, or repairs made without required approval from the appropriate Common Interest Community board or committee?	☐	☒	
10. Any problems with water quality or water supply?	☐	☒	
11. Any other conditions or aspects of the property which materially affect its value or use in an adverse manner?	☐	☒	
12. Lead-Based Paint: Was the property constructed on or before 12/31/77? (If yes, additional Federal EPA notification and disclosure documents are required)	☒	☐	

13. Water source: Municipal ☒ Community Well ☐ Domestic Well ☐ Other ☐
If Community Well: State Engineer Well Permit # _____ Revocable ☐ Permanent ☐ Cancelled ☐
Use of community and domestic wells may be subject to change. Contact the Nevada Division of Water Resources for more information regarding the future use of this well.

14. Conservation Easements such as the SNWA's Water Smart Landscape Program: Is the property a participant?	☐	☒	
15. Solar panels: Are any installed on the property? If yes, are the solar panels: Owned...☐ Leased...☐ or Financed...☐	☐	☒	
16. Wastewater disposal: ☒ Municipal Sewer ☐ Septic System ☐ Other ☐			
17. This property is subject to a Private Transfer Fee Obligation?	☐	☒	

EXPLANATIONS: Any "Yes" must be fully explained on page 3 of this form.

CL / MZ

Seller(s) Initials *Buyer(s) Initials*

EXPLANATIONS: Any "Yes" to questions on pages 1 and 2 must be fully explained here. Attach additional pages if needed.

one of the unit has brand new kitchen cabinet installed
all 3 Units has brand new AC installed within 3 months.
all 3 bathrooms are realone within 2 years.
sprinkler for landscaping desn't work, all pipes are broken.
please consider that there are no sprinkler system.
AC units are installed by Licensed contractor, all other work are done by owner's handyman.
owner never reside in the property, and never visited the property.

Seller(s) Initials

MZ
Buyer(s) Initials

EXHIBIT “7"

AA000933

EXHIBIT “8"

RESIDENTIAL PURCHASE AGREEMENT

(Joint Escrow Instructions)

Date: 09/05/17

Marie Zhu ("Buyer"), hereby offers to purchase 2132 HOUSTON DR ("Property"), within the city or unincorporated area of LASVEGAS, County of CLARK, State of Nevada, Zip 89104, A.P.N. # 162-01-110-017 for the purchase price of $ 200,000.00 (Two Hundred Thousand dollars) ("Purchase Price") on the terms and conditions contained herein: BUYER ☐ does –OR– ☒ does not intend to occupy the Property as a residence.

Buyer's Offer

1. FINANCIAL TERMS & CONDITIONS:

$ 500.00 **A. EARNEST MONEY DEPOSIT** ("EMD") is ☐ presented with this offer –OR– ☒ will wire to escrow upon acceptance. Upon Acceptance, Earnest Money to be deposited within one (1) business day from acceptance of offer (as defined in Section 23 herein) or 2 business days if wired to: ☒ Escrow Holder, ☐ Buyer's Broker's Trust Account, –OR– ☐ Seller's Broker's Trust Account. *(NOTE: It is a felony in the State of Nevada—punishable by up to four years in prison and a $5,000 fine—to write a check for which there are insufficient funds. NRS 193.130(2)(d).)*

$ 0.00 **B. ADDITIONAL DEPOSIT** to be placed in escrow on or before (date) _____. The additional deposit ☐ will –OR– ☐ will not be considered part of the EMD. (Any conditions on the additional deposit should be set forth in Section 28 herein.)

$ 150,000.00 **C. THIS AGREEMENT IS CONTINGENT UPON BUYER QUALIFYING FOR A NEW LOAN:** ☒ Conventional, ☐ FHA, ☐ VA, ☐ Other (specify) _____.

$ 0.00 **D. THIS AGREEMENT IS CONTINGENT UPON BUYER QUALIFYING TO ASSUME THE FOLLOWING EXISTING LOAN(S):** ☐ Conventional, ☐ FHA, ☐ VA, ☐ Other (specify) _____. Interest: ☐ Fixed rate, _____ years – OR – ☐ Adjustable Rate, _____ years. Seller further agrees to provide the Promissory Note and the most recent monthly statement of all loans to be assumed by Buyer within FIVE (5) calendar days of acceptance of offer.

$ 0.00 **E. BUYER TO EXECUTE A PROMISSORY NOTE SECURED BY DEED OF TRUST PER TERMS IN"FINANCING ADDENDUM" which is attached hereto.**

$ 49,500.00 **F. BALANCE OF PURCHASE PRICE** (Balance of Down Payment) in Good Funds to be paid prior to Close of Escrow ("COE").

$ 200,000.00 **G. TOTAL PURCHASE PRICE.** (This price DOES NOT include closing costs, prorations, or other fees and costs associated with the purchase of the Property as defined herein.)

2. ADDITIONAL FINANCIAL TERMS & CONTINGENCIES:

A. **NEW LOAN APPLICATION:** Within 2 business days of Acceptance, Buyer agrees to (1) submit a

completed loan application to a lender of Buyer's choice and (2) furnish a preapproval letter to Seller based upon a standard factual credit report and review of debt to income ratios. If Buyer fails to complete any of these conditions within the applicable time frame, Seller reserves the right to terminate this Agreement. In such event, both parties agree to cancel the escrow and return EMD to Buyer. Buyer shall use Buyer's best efforts to obtain financing under the terms and conditions outlined in this Agreement.

B. APPRAISAL CONTINGENCY: Buyer's obligation to purchase the property is contingent upon the property appraising for not less than the Purchase Price. If after the completion of an appraisal by a licensed appraiser, Buyer receives written notice from the lender or the appraiser that the Property has appraised for less than the purchase price (a "Notice of Appraised Value") Buyer may attempt to renegotiate or cancel the RPA by providing written notice to the Seller (with a copy of the Appraisal) no later than 7 calendar days after Acceptance of the RPA; whereupon the EMD shall be released to the Buyer without the requirement of written authorization from Seller. **IF this Residential Purchase Agreement is not cancelled, in writing on or before the Appraisal Deadline, Buyer shall be deemed to have waived the appraisal contingency.**

C. LOAN CONTINGENCY: Buyer's obligation to purchase the property is contingent upon Buyer obtaining the loan referenced in Section 1(C) or 1(D) of the RPA unless otherwise agreed in writing. Buyer shall remove the loan contingency in writing, attempt to renegotiate, or cancel the RPA by providing written notice to the Seller no later than 0 calendar days after Acceptance of the RPA; whereupon the EMD shall be released to the Buyer without the requirement of written authorization from Seller. **IF this Residential Purchase Agreement is not cancelled, in writing on or before the Loan Contingency Deadline, Buyer shall be deemed to have waived the loan contingency.**

D. CASH PURCHASE: Within n/a business days of Acceptance, Buyer agrees to provide written evidence from a bona fide financial institution of sufficient cash available to complete this purchase. If Buyer does not submit the written evidence within the above period, Seller reserves the right to terminate this Agreement.

3. SALE OF OTHER PROPERTY: This Agreement ☒ **is not** –OR– ☐ **is** contingent upon the sale (and closing) of another property which address is _____.
Said Property ☐ **is** ☒ **is not currently listed** –OR-☐ **is** presently in escrow with _____.
Escrow Number: _____. Proposed Closing Date: _____.

When Buyer has accepted an offer on the sale of this other property, Buyer will promptly deliver a written notice of the sale to Seller. If Buyer's escrow on this other property is terminated, abandoned, or does not close on time, this Agreement will terminate without further notice unless the parties agree otherwise in writing. If Seller accepts a bona fide written offer from a third party prior to Buyer's delivery of notice of acceptance of an offer on the sale of Buyer's property, Seller shall give Buyer written notice of that fact. Within three (3) calendar days of receipt of the notice, Buyer will waive the contingency of the sale and closing of Buyer's other property, or this Agreement will terminate without further notice. In order to be effective, the waiver of contingency must be accompanied by reasonable evidence that funds needed to close escrow will be available and Buyer's ability to obtain financing is not contingent upon the sale and/or close of any other property.

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

The following additional items of personal property: _____

_____

5. ESCROW:

A. OPENING OF ESCROW: The purchase of the Property shall be consummated through Escrow ("Escrow"). Opening of Escrow shall take place by the end of one (1) business day after Acceptance of this Agreement

("Opening of Escrow"), at National Title title or escrow company ("Escrow Company" or "ESCROW HOLDER") with Lynnette Marrujo ("Escrow Officer") (or such other escrow officer as Escrow Company may assign). Opening of Escrow shall occur upon Escrow Company's receipt of this fully accepted Agreement. ESCROW HOLDER is instructed to notify the Parties (through their respective Agents) of the opening date and the Escrow Number.

B. EARNEST MONEY: Upon Acceptance, Buyer's EMD as shown in Section 1(A), and 1(B) if applicable, of this Agreement, shall be deposited pursuant to the language in Section 1(A) and 1(B) if applicable.

C. CLOSE OF ESCROW: Close of Escrow ("COE") shall be on or before: 09/22/17 (date). If the designated date falls on a weekend or holiday, COE shall be the next business day.

D. IRS DISCLOSURE: Seller is hereby made aware that there is a regulation that requires all ESCROW HOLDERS to complete a modified 1099 form, based upon specific information known only between parties in this transaction and the ESCROW HOLDER. Seller is also made aware that ESCROW HOLDER is required by federal law to provide this information to the Internal Revenue Service after COE in the manner prescribed by federal law.

6. TITLE INSURANCE: This Purchase Agreement is contingent upon the Seller's ability to deliver, good and marketable title as evidenced by a policy of title insurance, naming Buyer as the insured in an amount equal to the purchase price, furnished by the title company identified in Section 5(A). Said policy shall be in the form necessary to effectuate marketable title or its equivalent and shall be paid for as set forth in Section 8(A).

7. BUYER'S DUE DILIGENCE: Buyer's obligation **is** ____ **is not** __X__ conditioned on the Buyer's Due Diligence as defined in this section 7(A) below. This condition is referred to as the "Due Diligence Condition" if checked in the affirmative, Sections 7 (A) through (C) shall apply; otherwise they do not. Buyer shall have 0 calendar days from Acceptance (as defined in Section 23 herein) to complete Buyer's Due Diligence. Seller agrees to cooperate with Buyer's Due Diligence. **Seller shall ensure that all necessary utilities (gas, power and water) and all operable pilot lights are on for Buyer's investigations and through the close of escrow.**

A. PROPERTY INSPECTION/CONDITION: During the Due Diligence Period, Buyer shall take such action as Buyer deems necessary to determine whether the Property is satisfactory to Buyer including, but not limited to, whether the Property is insurable to Buyer's satisfaction, whether there are unsatisfactory conditions surrounding or otherwise affecting the Property (such as location of flood zones, airport noise, noxious fumes or odors, environmental substances or hazards, whether the Property is properly zoned, locality to freeways, railroads, places of worship, schools, etc.) or any other concerns Buyer may have related to the Property. During such Period, Buyer shall have the right to conduct, non-invasive/ non-destructive inspections of all structural, roofing, mechanical, electrical, plumbing, heating/air conditioning, water/well/septic, pool/spa, survey, square footage, and any other property or systems, through licensed and bonded contractors or other qualified professionals. Seller agrees to provide reasonable access to the Property to Buyer and Buyer's inspectors. Buyer agrees to indemnify and hold Seller harmless with respect to any injuries suffered by Buyer or third parties present at Buyer's request while on Seller's Property conducting such inspections, tests or walk-throughs. Buyer's indemnity shall not apply to any injuries suffered by Buyer or third parties present at Buyer's request that are the result of an intentional tort, gross negligence or any misconduct or omission by Seller, Seller's Agent or other third parties on the Property. Buyer is advised to consult with appropriate professionals regarding neighborhood or Property conditions, including but not limited to: schools; proximity and adequacy of law enforcement; proximity to commercial, industrial, or agricultural activities; crime statistics; fire protection; other governmental services; existing and proposed transportation; construction and development; noise or odor from any source; and other nuisances, hazards or circumstances. If Buyer cancels this Agreement due to a specific inspection report, Buyer shall provide Seller at the time of cancellation with a copy of the report containing the name, address, and telephone number of the inspector.

B. BUYER'S RIGHT TO CANCEL OR RESOLVE OBJECTIONS: If Buyer determines, in Buyer's sole discretion, that the results of the Due Diligence are unacceptable, Buyer may either: (i) no later than the Due Diligence Deadline referenced in Section 7, cancel the Residential Purchase Agreement by providing written notice to the Seller, whereupon the Earnest Money Deposit referenced in Section 1(A) shall be released to the Buyer without the requirement of further written authorization from Seller; or (ii) no later than the Due Diligence Deadline referenced in Section 7, resolve in

writing with Seller any objections Buyer has arising from Buyer's Due Diligence.

C. FAILURE TO CANCEL OR RESOLVE OBJECTIONS: If Buyer fails to cancel the Residential Purchase Agreement or fails to resolve in writing with Seller any objections Buyer has arising from Buyer's Due Diligence, as provided in Section 7, **Buyer shall be deemed to have waived the Due Diligence Condition.**

MZ **Buyer's Initials** _____ **Buyer's Initials**

D. INSPECTIONS: Acceptance of this offer is subject to the following reserved right. Buyer may have the Property inspected and select the licensed contractors, certified building inspectors and/or other qualified professionals who will inspect the Property. Seller will ensure that necessary utilities (gas, power and water and all operable pilot lights) are turned on and supplied to the Property within two (2) business days after Acceptance of this Agreement, to remain on until COE. *It is strongly recommended that Buyer retain licensed Nevada professionals to conduct inspections.* If any inspection is not completed and requested repairs are not delivered to Seller within the Due Diligence Period, Buyer is deemed to have waived the right to that inspection and Seller's liability for the cost of all repairs that inspection would have reasonably identified had it been conducted, except as otherwise provided by law. The foregoing expenses for inspections will be paid outside of Escrow unless the Parties present instructions to the contrary prior to COE, along with the applicable invoice.

(Identify which party shall pay for the inspection noted below either: SELLER, BUYER, 50/50, WAIVED or N/A.)

Type	Paid By	Type	Paid By	Type	Paid By
Energy Audit	Waived	Fungal Contaminant Inspection	Waived	Well Inspection (Quantity)	N/A
Home Inspection	Buyer	Mechanical Inspection	Waived	Well Inspection (Quality)	N/A
Termite/Pest Inspection	Waived	Pool/Spa Inspection	N/A	Wood-Burning Device/ Chimney Inspection	N/A
Roof Inspection	Waived	Soils Inspection	Waived	Septic Inspection	N/A
Septic Lid Removal	Waived	Septic Pumping	N/A	Structural Inspection	Waived
Survey (type):	N/A	Other:		Other:	

E. CERTIFICATIONS: In the event an inspection reveals areas of concern with the roof, septic system, well, wood burning device/chimney or the possible presence of a fungal contaminant, Buyer reserves the right to require a certification. The expenses for certifications will be paid outside of Escrow unless the Parties present instructions to the contrary prior to COE (along with the applicable invoice). A certification is not a warranty.

F. BUYER'S REQUEST FOR REPAIRS: It is Buyer's responsibility to inspect the Property sufficiently as to satisfy Buyer's use. Buyer reserves the right to request repairs, based upon the Seller's Real Property Disclosure or items which materially affect value or use of the Property revealed by an inspection, certification or appraisal. Items of a general maintenance or cosmetic nature which do not materially affect value or use of the Property, which existed at the time of Acceptance and which are not expressly addressed in this Agreement are deemed accepted by the Buyer, except as otherwise provided in this Agreement. The Brokers herein have no responsibility to assist in the payment of any repair, correction or deferred maintenance on the Property which may have been revealed by the above inspections, agreed upon by the Buyer and Seller or requested by one party.

8. FEES, AND PRORATIONS (Identify which party shall pay the costs noted below either: SELLER, BUYER, 50/50, WAIVED or N/A.)

A. TITLE, ESCROW & APPRAISAL FEES:

Type	Paid By	Type	Paid By	Type	Paid By
Escrow Fees	50/50	Lender's Title Policy	Buyer	Owner's Title Policy	Seller
Real Property Transfer Tax	Seller	Appraisal	Buyer	Other:	

B. PRORATIONS: Any and all rents, taxes, interest, homeowner association fees, trash service fees, payments on bonds, SIDs, LIDs, and assessments assumed by the Buyer, and other expenses of the property shall be prorated as of the date of the recordation of the deed. Security deposits, advance rentals or considerations involving future lease credits shall be

credited to the Buyer. All prorations will be based on a 30-day month and will be calculated as of COE. Prorations will be based upon figures available at closing. Any supplementals or adjustments that occur after COE will be handled by the parties outside of Escrow.

C. PRELIMINARY TITLE REPORT: Within ten (10) business days of Opening of Escrow, Title Company shall provide Buyer with a Preliminary Title Report ("PTR") to review, which must be approved or rejected within five (5) business days of receipt thereof. If Buyer does not object to the PTR within the period specified above, the PTR shall be deemed accepted. If Buyer makes an objection to any item(s) contained within the PTR, Seller shall have five (5) business days after receipt of objections to correct or address the objections. If, within the time specified, Seller fails to have each such exception removed or to correct each such objection, Buyer shall have the option to: (a) terminate this Agreement by providing notice to Seller and Escrow Officer, entitling Buyer to a refund of the EMD or (b) elect to accept title to the Property as is. All title exceptions approved or deemed accepted are hereafter collectively referred to as the "Permitted Exceptions."

D. LENDER AND CLOSING FEES: In addition to Seller's expenses identified herein, Seller will contribute $\$$ 5000 to Buyer's Lender's Fees and/or Buyer's Title and Escrow Fees ☒ **including** –OR– ☐ **excluding** costs which Seller must pay pursuant to loan program requirements. Different loan types (e.g., FHA, VA, conventional) have different appraisal and financing requirements, which will affect the parties' rights and costs under this Agreement.

E. HOME PROTECTION PLAN: Buyer and Seller acknowledge that they have been made aware of Home Protection Plans that provide coverage to Buyer after COE. **Buyer** ☒ **waives** –OR– ☐ **requires** a Home Protection Plan with N/A. ☒ **Seller** –OR– ☐ **Buyer** will pay for the Home Protection Plan at a price not to exceed $\$$ 0. **Buyer** will order the Home Protection Plan. Neither Seller nor Brokers make any representation as to the extent of coverage or deductibles of such plans.

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

10. COMMON-INTEREST COMMUNITIES: If the Property is subject to a Common Interest Community ("CIC"), **Seller shall provide AT SELLER's EXPENSE the CIC documents as required by NRS 116.4109** (collectively, the "resale package"). Seller shall request the resale package within two (2) business days of Acceptance and provide the same to Buyer within one (1) business day of Seller's receipt thereof.

- **Pursuant to NRS 116.4109, Buyer may cancel this Agreement without penalty until midnight of the fifth (5th) calendar day following the date of receipt of the resale package.** If Buyer elects to cancel this Agreement pursuant to this statute, he/she must deliver, via hand delivery, prepaid U.S. mail, or electronic transmission, a written notice of cancellation to Seller or his or her authorized agent.
- **If Buyer does not receive the resale package within fifteen (15) calendar days of Acceptance, this Agreement may be cancelled in full by Buyer without penalty.** Notice of cancellation shall be delivered pursuant to Section 24 of the RPA.
- Upon such written cancellation, Buyer shall promptly receive a refund of the EMD. The parties agree to execute any documents requested by ESCROW HOLDER to facilitate the refund. If written cancellation is not received within the specified time period, the resale package will be deemed approved. Seller shall pay all outstanding CIC fines or penalties at COE.

A. CIC RELATED EXPENSES: (Identify which party shall pay the costs noted below either: SELLER, BUYER, 50/50, WAIVED or N/A.)

Type	Paid By	Type	Paid By	Type	Paid By
CIC Demand	Seller	CIC Capital Contribution	Seller	CIC Transfer Fees	Seller
Other: _____					

11. DISCLOSURES: Within five (5) calendar days of Acceptance of this Agreement, Seller will provide the following Disclosures and/or documents. **Check applicable boxes.**

☒ **Seller Real Property Disclosure Form:** (NRS 113.130) ☐ **Open Range Disclosure:** (NRS 113.065)

☐ **Construction Defect Claims Disclosure:** If Seller has marked "Yes" to Paragraph 1(d) of the Sellers Real Property Disclosure Form (NRS 40.688)

☒ **Lead-Based Paint Disclosure and Acknowledgment:** required if constructed before 1978 (24 CFR 745.113)

☐ **Other:** (list) _____.

12. FEDERAL FAIR HOUSING COMPLIANCE AND DISCLOSURES: All properties are offered without regard to race, color, religion, sex, national origin, age, gender identity or expression, familial status, sexual orientation, ancestry, or handicap and any other current requirements of federal or state fair housing laws.

13. WALK-THROUGH INSPECTION OF PROPERTY: Buyer is entitled under this Agreement to a walk-through of the Property within 3 calendar days prior to COE to ensure the Property and all major systems, appliances, heating/cooling, plumbing and electrical systems and mechanical fixtures are as stated in Seller's Real Property Disclosure Statement, and that the Property and improvements are in the same general condition as when this Agreement was Accepted by Seller and Buyer. To facilitate Buyer's walk-through, Seller is responsible for keeping all necessary utilities on, including all operable pilot lights. If any systems cannot be checked by Buyer on walk-through due to non-access or no power/gas/water, then Buyer reserves the right to hold Seller responsible for defects which could not be detected on walk-through because of lack of such access or power/gas/water. The purpose of the walk-through is to confirm (a) the Property is being maintained (b) repairs, if any, have been completed as agreed, and (c) Seller has complied with Seller's other obligations. **If Buyer elects not to conduct a walk-through inspection prior to COE, then all systems, items and aspects of the Property are deemed satisfactory, and Buyer releases Seller's liability for costs of any repair that would have reasonably been identified by a walk-through inspection, except as otherwise provided by law.**

14. DELIVERY OF POSSESSION: Seller shall deliver the Property along with any keys, alarm codes, garage door opener/controls and, if freely transferable, parking permits and gate transponders outside of Escrow, upon COE. Seller agrees to vacate the Property and leave the Property in a neat and orderly, broom-clean condition and tender possession no later than ☒**COE –OR–** ☐_____. In the event Seller does not vacate the Property by this time, Seller shall be considered a trespasser in addition to Buyer's other legal and equitable remedies. Any personal property left on the Property after the date indicated in this section shall be considered abandoned by Seller.

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

16. ASSIGNMENT OF THIS AGREEMENT: Unless otherwise stated herein, this Agreement is non-assignable unless agreed upon in writing by all parties.

17. CANCELLATION OF AGREEMENT: In the event this Agreement is properly cancelled in accordance with the terms contained herein, then Buyer will be entitled to a refund of the EMD. Neither Buyer nor Seller will be reimbursed for any expenses incurred in conjunction with due diligence, inspections, appraisals or any other matters pertaining to this transaction (unless otherwise provided herein or except as otherwise provided by law).

18. DEFAULT:

A. MEDIATION: Before any legal action is taken to enforce any term or condition under this Agreement, the parties agree to engage in mediation, a dispute resolution process, through GLVAR. Notwithstanding the foregoing, in the event the Buyer finds it necessary to file a claim for specific performance, this section shall not apply. Each party is encouraged to have an independent lawyer of their choice review this mediation provision before agreeing thereto. By initialing below, the parties confirm that they have read and understand this section and voluntarily agree to the provisions thereof.

BUYER(S) INITIALS: MZ / _____ **SELLER(S) INITIALS:** CW / _____

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

Buyer's Name: Marie Zhu BUYER(S) INITIALS: MZ / _____

Property Address: 2132 HOUSTON DR SELLER(S) INITIALS: CW / _____

B. IF SELLER DEFAULTS: If Seller defaults in performance under this Agreement, Buyer reserves all legal and/or equitable rights (such as specific performance) against Seller, and Buyer may seek to recover Buyer's actual damages incurred by Buyer due to Seller's default.

C. IF BUYER DEFAULTS: If Buyer defaults in performance under this Agreement, as Seller's sole legal recourse, Seller may retain, as liquidated damages, the EMD. In this respect, the Parties agree that Seller's actual damages would be difficult to measure and that the EMD is in fact a reasonable estimate of the damages that Seller would suffer as a result of Buyer's default. Seller understands that any additional deposit not considered part of the EMD in Section 1(B) herein will be immediately released by ESCROW HOLDER to Buyer.

Instructions to Escrow

19. ESCROW: If this Agreement or any matter relating hereto shall become the subject of any litigation or controversy, Buyer and Seller agree, jointly and severally, to hold ESCROW HOLDER free and harmless from any loss or expense, except losses or expenses as may arise from ESCROW HOLDER'S negligence or willful misconduct. If conflicting demands are made or notices served upon ESCROW HOLDER with respect to this Agreement, the parties expressly agree that Escrow is entitled to file a suit in interpleader and obtain an order from the Court authorizing ESCROW HOLDER to deposit all such documents and monies with the Court, and obtain an order from the Court requiring the parties to interplead and litigate their several claims and rights among themselves. Upon the entry of an order authorizing such Interpleader, ESCROW HOLDER shall be fully released and discharged from any obligations imposed upon it by this Agreement; and ESCROW HOLDER shall not be liable for the sufficiency or correctness as to form, manner, execution or validity of any instrument deposited with it, nor as to the identity, authority or rights of any person executing such instrument, nor for failure of Buyer or Seller to comply with any of the provisions of any agreement, contract or other instrument filed with ESCROW HOLDER or referred to herein. ESCROW HOLDER'S duties hereunder shall be limited to the safekeeping of all monies, instruments or other documents received by it as ESCROW HOLDER, and for their disposition in accordance with the terms of this Agreement. In the event an action is instituted in connection with this escrow, in which ESCROW HOLDER is named as a party or is otherwise compelled to make an appearance, all costs, expenses, attorney fees, and judgments ESCROW HOLDER may expend or incur in said action, shall be the responsibility of the parties hereto.

20. UNCLAIMED FUNDS: In the event that funds from this transaction remain in an account, held by ESCROW HOLDER, for such a period of time that they are deemed "abandoned" under the provisions of Chapter 120A of the Nevada Revised Statutes, ESCROW HOLDER is hereby authorized to impose a charge upon the dormant escrow account. Said charge shall be no less than $5.00 per month and may not exceed the highest rate of charge permitted by statute or regulation. ESCROW HOLDER is further authorized and directed to deduct the charge from the dormant escrow account for as long as the funds are held by ESCROW HOLDER.

Brokers

21. BROKER'S COMPENSATION/FEES: Buyer herein requires, and Seller agrees, as a condition of this Agreement, that Seller will pay Listing Broker and Buyer's Broker, who becomes by this clause a third party beneficiary to this Agreement, that certain sum and/or percentage of the Purchase Price (commission), that Seller, or Seller's Broker, offered for the procurement of ready, willing and able Buyer via the Multiple Listing Service, any other advertisement or written offer. Seller understands and agrees that if Seller defaults hereunder, Buyer's Broker, as a third-party beneficiary of this Agreement, has the right to pursue all legal recourse against Seller for any commission due. **In addition to any amount due to Buyer's Broker from Seller or Seller's Broker, Buyer ☒ will –OR– ☐ will not pay Buyer's Broker additional compensation in an amount determined between the Buyer and Buyer's Broker.**

22. WAIVER OF CLAIMS: Buyer and Seller agree that they are not relying upon any representations made by Brokers or Broker's agent. Buyer acknowledges that at COE, the Property will be sold AS-IS, WHERE-IS without any representations or warranties, unless expressly stated herein. Buyer agrees to satisfy himself/herself, as to the condition of the Property, prior to COE. Buyer acknowledges that any statements of acreage or square footage by Brokers are simply estimates, and Buyer agrees to make such measurements, as Buyer deems necessary, to ascertain actual acreage or square footage. Buyer waives all

claims against Brokers or their agents for (a) defects in the Property; (b) inaccurate estimates of acreage or square footage; (c) environmental waste or hazards on the Property; (d) the fact that the Property may be in a flood zone; (e) the Property's proximity to freeways, airports or other nuisances; (f) the zoning of the Property; (g) tax consequences; or (h) factors related to Buyer's failure to conduct walk-throughs or inspections. Buyer assumes full responsibility for the foregoing and agrees to conduct such tests, walk-throughs, inspections and research, as Buyer deems necessary. In any event, Broker's liability is limited, under any and all circumstances, to the amount of that Broker's commission/fee received in this transaction.

Other Matters

23. DEFINITIONS: **"Acceptance"** means the date that both parties have consented to a final, binding contract by affixing their signatures to this Agreement and all counteroffers and said Agreement and all counteroffers have been delivered to both parties pursuant to Section 24 herein. **"Agent"** means a licensee working under a Broker or licensees working under a developer. **"Agreement"** includes this document as well as all accepted counteroffers and addenda. "**Appraisal**" means a written appraisal or Notice of Value as required by any lending institution prepared by a licensed or certified professional. "**Bona Fide**" means genuine. **"Buyer"** means one or more individuals or the entity that intends to purchase the Property. "**Broker**" means the Nevada licensed real estate broker listed herein representing Seller and/or Buyer (and all real estate agents associated therewith). "**Business Day**" excludes Saturdays, Sundays, and legal holidays. "**Calendar Day**" means a calendar day from/to midnight unless otherwise specified. **"CFR"** means the Code of Federal Regulations. **"CIC"** means Common Interest Community (formerly known as "HOA" or homeowners associations). "**CIC Capital Contribution**" means a one-time non-administrative fee, cost or assessment charged by the CIC upon change of ownership. "**CIC Transfer Fees**" means the administrative service fee charged by a CIC to transfer ownership records. **"Close of Escrow (COE)"** means the time of recordation of the deed in Buyer's name. **"Default"** means the failure of a Party to observe or perform any of its material obligations under this Agreement. **"Delivered"** means personally delivered to Parties or respective Agents, transmitted by facsimile machine, electronic means, overnight delivery, or mailed by regular mail. **"Down Payment"** is the Purchase Price less loan amount(s). **"EMD"** means Buyer's earnest money deposit. **"Escrow Holder"** means the neutral party that will handle the closing. **"FHA"** is the U.S. Federal Housing Administration. **"GLVAR"** means the Greater Las Vegas Association of REALTORS®. **"Good Funds"** means an acceptable form of payment determined by ESCROW HOLDER in accordance with NRS 645A.171. **"IRC"** means the Internal Revenue Code (tax code). **"LID"** means Limited Improvement District. **"N/A"** means not applicable. **"NAC"** means Nevada Administrative Code. "**NRS**" means Nevada Revised Statues as Amended. **"Party"** or **"Parties"** means Buyer and Seller. **"PITI"** means principal, interest, taxes, and hazard insurance. "**PMI**" means private mortgage insurance. "**PST**" means Pacific Standard Time, and includes daylight savings time if in effect on the date specified. **"PTR"** means Preliminary Title Report. **"Property"** means the real property and any personal property included in the sale as provided herein. **"Receipt"** means delivery to the party or the party's agent. **"RPA"** means Residential Purchase Agreement. **"Seller"** means one or more individuals or the entity that is the owner of the Property. **"SID"** means Special Improvement District. **"Title Company"** means the company that will provide title insurance. "**USC**" is the United States Code. "**VA**" is the Veterans Administration.

24. SIGNATURES, DELIVERY, AND NOTICES:

A. This Agreement may be signed by the parties on more than one copy, which, when taken together, each signed copy shall be read as one complete form. This Agreement (and documents related to any resulting transaction) may be signed by the parties manually or digitally. Facsimile signatures may be accepted as original.

B. When a Party wishes to provide notice as required in this Agreement, such notice shall be sent regular mail, personal delivery, overnight delivery, by facsimile, and/or by electronic transmission to the Agent for that Party. The notification shall be effective when postmarked, received, faxed, delivery confirmed, and/or read receipt confirmed in the case of email. Delivery of all instruments or documents associated with this Agreement shall be delivered to the Agent for Seller or Buyer if represented. Any cancellation notice shall be contemporaneously delivered to Escrow in the same manner.

25. IRC 1031 EXCHANGE: Seller and/or Buyer may make this transaction part of an IRC 1031 exchange. The party electing to make this transaction part of an IRC 1031 exchange will pay all additional expenses associated therewith, at no cost to the other party. The other party agrees to execute any and all documents necessary to effectuate such an exchange.

26. OTHER ESSENTIAL TERMS: Time is of the essence. No change, modification or amendment of this Agreement

shall be valid or binding unless such change, modification or amendment shall be in writing and signed by each party. This Agreement will be binding upon the heirs, beneficiaries and devisees of the parties hereto. This Agreement is executed and intended to be performed in the State of Nevada, and the laws of that state shall govern its interpretation and effect. The parties agree that the county and state in which the Property is located is the appropriate forum for any action relating to this Agreement. Should any party hereto retain counsel for the purpose of initiating litigation to enforce or prevent the breach of any provision hereof, or for any other judicial remedy, then the prevailing party shall be entitled to be reimbursed by the losing party for all costs and expenses incurred thereby, including, but not limited to, reasonable attorney's fees and costs incurred by such prevailing party.

THIS IS A LEGALLY BINDING CONTRACT. All parties are advised to seek independent legal and tax advice to review the terms of this Agreement.

THIS FORM HAS BEEN APPROVED BY THE GREATER LAS VEGAS ASSOCIATION OF REALTORS® (GLVAR). NO REPRESENTATION IS MADE AS TO THE LEGAL VALIDITY OR ADEQUACY OF ANY PROVISION IN ANY SPECIFIC TRANSACTION. A REAL ESTATE BROKER IS THE PERSON QUALIFIED TO ADVISE ON REAL ESTATE TRANSACTIONS. IF YOU DESIRE LEGAL OR TAX ADVICE, CONSULT AN APPROPRIATE PROFESSIONAL.

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27. **ADDENDUM(S) ATTACHED:** _____

_____

28. **ADDITIONAL TERMS:**
Buyer agree to pay the difference in cash if appraisal come in lower than purchase price, not to exceed purchase price of $200k.

Buyer's Acknowledgement of Offer

Confirmation of Representation: The Buyer is represented in this transaction by:

Buyer's Broker: Joyce Nickrandt
Company Name: Investpro Realty
Broker's License Number: B0144660
Phone: 702-997-3832
Fax: 702-997-3836

Agent's Name: Liwei Helen Chen
Agent's License Number: S.0175520
Office Address: 3553 VALLEY VIEW BLVD
City, State, Zip: LAS VEGAS NV 89103
Email: helen0510c@gmail.com

BUYER LICENSEE DISCLOSURE OF INTEREST: Pursuant to NRS 645.252(1)(c), a real estate licensee must disclose if he/she is a principal in a transaction or has an interest in a principal to the transaction. Licensee declares that he/she:
X DOES NOT have an interest in a principal to the transaction. **–OR–**
___ **DOES** have the following interest, direct or indirect, in this transaction: ☐ Principal (Buyer) **–OR–** ☐ family or firm relationship with Buyer or ownership interest in Buyer (if Buyer is an entity): (specify relationship) _____.

Seller must respond by: 5 (☐AM☒PM) **on (month)** September, **(day)** 6, **(year)** 2017. **Unless this**

Agreement is accepted, rejected or countered below and delivered to the Buyer's Broker before the above date and time, this offer shall lapse and be of no further force and effect. Upon Acceptance, Buyer agrees to be bound by each provision of this Agreement, and all signed addenda, disclosures, and attachments.

Buyer's Signature	Buyer's Printed Name	Date	Time
Marie Zhu	Marie Zhu	09/05/2017	4:05 PM ☐AM/☐PM
			☐AM/☐PM

Seller's Response

Confirmation of Representation: The Seller is represented in this transaction by:

Seller's Broker: Joyce Nickrandt
Company Name: Investpro Realty
Broker's License Number: B0144660
Phone:
Fax: 866-782-3075

Agent's Name: Liwei Helen Chen
Agent's License Number: S.0172460
Office Address: 3553 Valley View Dr
City, State, Zip: Las Vegas NV 89103
Email: zhong.kenny@gmail.com

SELLER LICENSEE DISCLOSURE OF INTEREST: Pursuant to NRS 645.252(1)(c), a real estate licensee must disclose if he/she is a principal in a transaction or has an interest in a principal to the transaction. Licensee declares that he/she:
_X_ **DOES NOT** have an interest in a principal to the transaction. **–OR–**
___ **DOES** have the following interest, direct or indirect, in this transaction: ☐ Principal (Seller) **–OR–** ☐ family or firm relationship with Seller or ownership interest in Seller (if Seller is an entity): (specify relationship)

_____.

FIRPTA: If applicable (as designated in the Seller's Response herein), Seller agrees to complete, sign, and deliver to Buyer's FIRPTA Designee a certificate indicating whether Seller is a foreign person or a nonresident alien pursuant to the Foreign Investment in Real Property Tax Act (FIRPTA). A foreign person is a nonresident alien individual; a foreign corporation not treated as a domestic corporation; or a foreign partnership, trust or estate. A resident alien is not considered a foreign person under FIRPTA. Additional information for determining status may be found at www.irs.gov. Buyer and Seller understand that if Seller is a foreign person then the Buyer must withhold a tax in an amount to be determined by Buyer's FIRPTA Designee in accordance with FIRPTA, unless an exemption applies. Seller agrees to sign and deliver to the Buyer's FIRPTA Designee the necessary documents, to be provided by the Buyer's FIRPTA Designee, to determine if withholding is required. (See 26 USC Section 1445).

SELLER DECLARES that he/she _X_ **is not** **–OR–** ___ is a foreign person therefore subjecting this transaction to FIRPTA withholding. **SELLER(S) INITIALS:** CW / _____

_X_ **ACCEPTANCE:** Seller(s) acknowledges that he/she accepts and agrees to be bound by each provision of this Agreement, and all signed addenda, disclosures, and attachments.

___ **COUNTER OFFER:** Seller accepts the terms of this Agreement subject to the attached Counter Offer #1.

___ **REJECTION:** In accordance with NAC 645.632, Seller hereby informs Buyer the offer presented herein **is not** accepted.

Seller's Signature	Seller's Printed Name	Date	Time
[redacted]	TKNR INC	09/05/2017	4:53 PM ☐AM/☐PM
			☐AM/☐PM

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

Buyer's Name: Marie Zhu
Property Address: 2132 HOUSTON DR

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

InvestPro REALTY

ADDENDUM NO. 1
TO PURCHASE AGREEMENT

In reference to the Purchase Agreement executed by Marie Zhu as Buyer(s) and TKNR INC as Seller(s), dated 09/05/17 covering the real property at 2132 HOUSTON DR LASVEGAS NV 89104, the [x] Buyer [ ] Seller hereby proposes that the Purchase Agreement be amended as follows:

1.buyer and seller agree to extend the COE to 1/5/18.
2.buyer to make an immediate additional deposit of $60,000 (sixty thousand dollars) to escrow , and the escrow to release the entire $60,000 (sixty thousands dollars) to seller immediately, and become non-refundable. If this transfer is not completed within 48 hours of execution of this addendum , this addendum will become invalid immediately,either buyer and seller have any obligations to each other.
3.Total of $60,000 will be applied to purchase price as buyer's credit at COE. All other terms on the existing RPA and addendum to stay the same and effective .
4. Buyer also agree to pay for the rent on one of 2 bedroom unit at the rate of $650 per month until seller place a tenant in the unit ,the rent will be paid by buyer to seller at successful COE .in the event that seller place a tenant in the unit , buyer will no longer be paying the rent to seller , and buyer will pay $800 tenant placement fee (leasing fee) to current PM immediately, which is none refundable and to be prorated at successful COE.
5. Time is essence on this addendum.
6. Seller has the right to cancel the escrow without any obligation to the buyer only if the buyer fails to close the escrow for any reason what so ever by Jan 5th, 2018.
7. Buyer agrees to hold harmless against the seller, listing agent and its broker, selling agent and its broker if the buyer fails the close by Jan 5th, 2018 per RPA and this addendum.

Authentisign
Joyce Nickrandt
witness: Joyce Nickrandt

[ ] **ADDITIONAL PAGE(S) ATTACHED. This Addendum is not complete without the additional terms on the attached ________ page(s).**

When executed by both parties, this Addendum is made an integral part of the aforementioned Purchase Agreement.

WHEN PROPERLY COMPLETED, THIS IS A BINDING CONTRACT. IF YOU DO NOT FULLY UNDERSTAND ITS CONTENTS, YOU SHOULD SEEK COMPETENT LEGAL COUNSEL BEFORE SIGNING.

Authentisign
Marie Zhu
9/26/2017 7:48:07 PM PDT

[x] Buyer [ ] Seller — Date: 09/26/2017

[ ] Buyer [ ] Seller — Time: 7:48 PM

Acceptance:

Authentisign
[signature]
9/27/2017 11:06:14 AM PDT

[ ] Buyer [x] Seller — Date: 09/27/2017

[ ] Buyer [ ] Seller — Time: 11:06 AM

Prepared by: Liwei Helen Chen
Agent's Printed Name

Phone

InvestPro REALTY

ADDENDUM NO. 2
TO PURCHASE AGREEMENT

REALTOR® EQUAL HOUSING OPPORTUNITY

In reference to the Purchase Agreement executed by Marie Zhu as Buyer(s) and TKNR INC as Seller(s), dated 09/05/17 covering the real property at 2132 HOUSTON DR LASVEGAS NV 89104, the ☒ Buyer ☐ Seller hereby proposes that the Purchase Agreement be amended as follows:

1. Buyer's name amend to WLAB INVESTMENT GROUP LLC

☐ **ADDITIONAL PAGE(S) ATTACHED. This Addendum is not complete without the additional terms on the attached _____ page(s).**

When executed by both parties, this Addendum is made an integral part of the aforementioned Purchase Agreement.

WHEN PROPERLY COMPLETED, THIS IS A BINDING CONTRACT. IF YOU DO NOT FULLY UNDERSTAND ITS CONTENTS, YOU SHOULD SEEK COMPETENT LEGAL COUNSEL BEFORE SIGNING.

Authentisign Marie Zhu — 12/12/2017
12/12/2017 1:39:33 PM PST
☒ Buyer ☐ Seller — Date

1:39 PM
☐ Buyer ☐ Seller — Time

Acceptance:

Authentisign [redacted] — 12/12/2017
12/12/2017 2:45:12 PM PST
☐ Buyer ☒ Seller — Date

2:45 PM
☐ Buyer ☐ Seller — Time

Prepared by: Liwei Helen Chen — Agent's Printed Name — Phone

InvestPro REALTY

REALTOR®

EQUAL HOUSING OPPORTUNITY

RESIDENTIAL PURCHASE AGREEMENT

(Joint Escrow Instructions)

Date: 08/11/17

Marie Zhu ("Buyer"), hereby offers to purchase 2132 HOUSTON DR ("Property"), within the city or unincorporated area of LASVEGAS, County of CLARK, State of Nevada, Zip 89104, A.P.N. # 162-01-110-017 for the purchase price of $ 200,000.00 (Two Hundred Thousand dollars) ("Purchase Price") on the terms and conditions contained herein: BUYER ☐ does –OR– ☒ does not intend to occupy the Property as a residence.

Buyer's Offer

1. FINANCIAL TERMS & CONDITIONS:

$ 5,000.00 **A. EARNEST MONEY DEPOSIT** ("EMD") is ☒ presented with this offer –OR– ☐ ________________ . Upon Acceptance, Earnest Money to be deposited within one (1) business day from acceptance of offer (as defined in Section 23 herein) or 2 business days if wired to: ☒ Escrow Holder, ☐ Buyer's Broker's Trust Account, –OR– ☐ Seller's Broker's Trust Account. *(NOTE: It is a felony in the State of Nevada—punishable by up to four years in prison and a $5,000 fine—to write a check for which there are insufficient funds. NRS 193.130(2)(d).)*

$ 0.00 **B. ADDITIONAL DEPOSIT** to be placed in escrow on or before (date) ________________. The additional deposit ☐ will –OR– ☐ will not be considered part of the EMD. (Any conditions on the additional deposit should be set forth in Section 28 herein.)

$ 150,000.00 **C. THIS AGREEMENT IS CONTINGENT UPON BUYER QUALIFYING FOR A NEW LOAN:** ☒ Conventional, ☐ FHA, ☐ VA, ☐ Other (specify) ________________.

$ 0.00 **D. THIS AGREEMENT IS CONTINGENT UPON BUYER QUALIFYING TO ASSUME THE FOLLOWING EXISTING LOAN(S):** ☐ Conventional, ☐ FHA, ☐ VA, ☐ Other (specify) ________________. Interest: ☐ Fixed rate, _____ years – OR – ☐ Adjustable Rate, _____ years. Seller further agrees to provide the Promissory Note and the most recent monthly statement of all loans to be assumed by Buyer within FIVE (5) calendar days of acceptance of offer.

$ 0 **E. BUYER TO EXECUTE A PROMISSORY NOTE SECURED BY DEED OF TRUST PER TERMS IN "FINANCING ADDENDUM" which is attached hereto.**

$ 45,000.00 **F. BALANCE OF PURCHASE PRICE** (Balance of Down Payment) in Good Funds to be paid prior to Close of Escrow ("COE").

$ 200,000.00 **G. TOTAL PURCHASE PRICE.** (This price DOES NOT include closing costs, prorations, or other fees and costs associated with the purchase of the Property as defined herein.)

2. ADDITIONAL FINANCIAL TERMS & CONTINGENCIES:

A. NEW LOAN APPLICATION: Within 2 business days of Acceptance, Buyer agrees to (1) submit a

completed loan application to a lender of Buyer's choice and (2) furnish a preapproval letter to Seller based upon a standard factual credit report and review of debt to income ratios. If Buyer fails to complete any of these conditions within the applicable time frame, Seller reserves the right to terminate this Agreement. In such event, both parties agree to cancel the escrow and return EMD to Buyer. Buyer shall use Buyer's best efforts to obtain financing under the terms and conditions outlined in this Agreement.

B. APPRAISAL CONTINGENCY: Buyer's obligation to purchase the property is contingent upon the property appraising for not less than the Purchase Price. If after the completion of an appraisal by a licensed appraiser, Buyer receives written notice from the lender or the appraiser that the Property has appraised for less than the purchase price (a "Notice of Appraised Value") Buyer may attempt to renegotiate or cancel the RPA by providing written notice to the Seller (with a copy of the Appraisal) no later than 14 calendar days after Acceptance of the RPA; whereupon the EMD shall be released to the Buyer without the requirement of written authorization from Seller. **IF this Residential Purchase Agreement is not cancelled, in writing on or before the Appraisal Deadline, Buyer shall be deemed to have waived the appraisal contingency.**

C. LOAN CONTINGENCY: Buyer's obligation to purchase the property is contingent upon Buyer obtaining the loan referenced in Section 1(C) or 1(D) of the RPA unless otherwise agreed in writing. Buyer shall remove the loan contingency in writing, attempt to renegotiate, or cancel the RPA by providing written notice to the Seller no later than 21 calendar days after Acceptance of the RPA; whereupon the EMD shall be released to the Buyer without the requirement of written authorization from Seller. **IF this Residential Purchase Agreement is not cancelled, in writing on or before the Loan Contingency Deadline, Buyer shall be deemed to have waived the loan contingency.**

D. CASH PURCHASE: Within n/a business days of Acceptance, Buyer agrees to provide written evidence from a bona fide financial institution of sufficient cash available to complete this purchase. If Buyer does not submit the written evidence within the above period, Seller reserves the right to terminate this Agreement.

3. SALE OF OTHER PROPERTY: This Agreement ☒ **is not –OR–** ☐ **is** contingent upon the sale (and closing) of another property which address is ______________________.
Said Property ☐ **is** ☒ **is not currently listed –OR–**☐ **is** presently in escrow with ______________________.
Escrow Number: ____________. Proposed Closing Date: ____________.

When Buyer has accepted an offer on the sale of this other property, Buyer will promptly deliver a written notice of the sale to Seller. If Buyer's escrow on this other property is terminated, abandoned, or does not close on time, this Agreement will terminate without further notice unless the parties agree otherwise in writing. If Seller accepts a bona fide written offer from a third party prior to Buyer's delivery of notice of acceptance of an offer on the sale of Buyer's property, Seller shall give Buyer written notice of that fact. Within three (3) calendar days of receipt of the notice, Buyer will waive the contingency of the sale and closing of Buyer's other property, or this Agreement will terminate without further notice. In order to be effective, the waiver of contingency must be accompanied by reasonable evidence that funds needed to close escrow will be available and Buyer's ability to obtain financing is not contingent upon the sale and/or close of any other property.

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

The following additional items of personal property: ______________________

____

5. ESCROW:

A. OPENING OF ESCROW: The purchase of the Property shall be consummated through Escrow ("Escrow"). Opening of Escrow shall take place by the end of one (1) business day after Acceptance of this Agreement

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

Buyer's Name: Marie Zhu BUYER(S) INITIALS: MZ
Property Address: 2132 HOUSTON DR SELLER(S) INITIALS: CN

("Opening of Escrow"), at Nevada Title title or escrow company ("Escrow Company" or "ESCROW HOLDER") with Michele Eaton ("Escrow Officer") (or such other escrow officer as Escrow Company may assign). Opening of Escrow shall occur upon Escrow Company's receipt of this fully accepted Agreement. ESCROW HOLDER is instructed to notify the Parties (through their respective Agents) of the opening date and the Escrow Number.

B. EARNEST MONEY: Upon Acceptance, Buyer's EMD as shown in Section 1(A), and 1(B) if applicable, of this Agreement, shall be deposited pursuant to the language in Section 1(A) and 1(B) if applicable.

C. CLOSE OF ESCROW: Close of Escrow ("COE") shall be on or before: 30 days upon acceptance (date). If the designated date falls on a weekend or holiday, COE shall be the next business day.

D. IRS DISCLOSURE: Seller is hereby made aware that there is a regulation that requires all ESCROW HOLDERS to complete a modified 1099 form, based upon specific information known only between parties in this transaction and the ESCROW HOLDER. Seller is also made aware that ESCROW HOLDER is required by federal law to provide this information to the Internal Revenue Service after COE in the manner prescribed by federal law.

6. TITLE INSURANCE: This Purchase Agreement is contingent upon the Seller's ability to deliver, good and marketable title as evidenced by a policy of title insurance, naming Buyer as the insured in an amount equal to the purchase price, furnished by the title company identified in Section 5(A). Said policy shall be in the form necessary to effectuate marketable title or its equivalent and shall be paid for as set forth in Section 8(A).

7. BUYER'S DUE DILIGENCE: Buyer's obligation is [MZ] **is not** ____ conditioned on the Buyer's Due Diligence as defined in this section 7(A) below. This condition is referred to as the "Due Diligence Condition" if checked in the affirmative, Sections 7 (A) through (C) shall apply; otherwise they do not. Buyer shall have 14 calendar days from Acceptance (as defined in Section 23 herein) to complete Buyer's Due Diligence. Seller agrees to cooperate with Buyer's Due Diligence. **Seller shall ensure that all necessary utilities (gas, power and water) and all operable pilot lights are on for Buyer's investigations and through the close of escrow.**

A. PROPERTY INSPECTION/CONDITION: During the Due Diligence Period, Buyer shall take such action as Buyer deems necessary to determine whether the Property is satisfactory to Buyer including, but not limited to, whether the Property is insurable to Buyer's satisfaction, whether there are unsatisfactory conditions surrounding or otherwise affecting the Property (such as location of flood zones, airport noise, noxious fumes or odors, environmental substances or hazards, whether the Property is properly zoned, locality to freeways, railroads, places of worship, schools, etc.) or any other concerns Buyer may have related to the Property. During such Period, Buyer shall have the right to conduct, non-invasive/ non-destructive inspections of all structural, roofing, mechanical, electrical, plumbing, heating/air conditioning, water/well/septic, pool/spa, survey, square footage, and any other property or systems, through licensed and bonded contractors or other qualified professionals. Seller agrees to provide reasonable access to the Property to Buyer and Buyer's inspectors. Buyer agrees to indemnify and hold Seller harmless with respect to any injuries suffered by Buyer or third parties present at Buyer's request while on Seller's Property conducting such inspections, tests or walk-throughs. Buyer's indemnity shall not apply to any injuries suffered by Buyer or third parties present at Buyer's request that are the result of an intentional tort, gross negligence or any misconduct or omission by Seller, Seller's Agent or other third parties on the Property. Buyer is advised to consult with appropriate professionals regarding neighborhood or Property conditions, including but not limited to: schools; proximity and adequacy of law enforcement; proximity to commercial, industrial, or agricultural activities; crime statistics; fire protection; other governmental services; existing and proposed transportation; construction and development; noise or odor from any source; and other nuisances, hazards or circumstances. If Buyer cancels this Agreement due to a specific inspection report, Buyer shall provide Seller at the time of cancellation with a copy of the report containing the name, address, and telephone number of the inspector.

B. BUYER'S RIGHT TO CANCEL OR RESOLVE OBJECTIONS: If Buyer determines, in Buyer's sole discretion, that the results of the Due Diligence are unacceptable, Buyer may either: (i) no later than the Due Diligence Deadline referenced in Section 7, cancel the Residential Purchase Agreement by providing written notice to the Seller, whereupon the Earnest Money Deposit referenced in Section 1(A) shall be released to the Buyer without the requirement of further written authorization from Seller; or (ii) no later than the Due Diligence Deadline referenced in Section 7, resolve in

writing with Seller any objections Buyer has arising from Buyer's Due Diligence.

C. **FAILURE TO CANCEL OR RESOLVE OBJECTIONS**: If Buyer fails to cancel the Residential Purchase Agreement or fails to resolve in writing with Seller any objections Buyer has arising from Buyer's Due Diligence, as provided in Section 7, **Buyer shall be deemed to have waived the Due Diligence Condition.**

__________________ **Buyer's Initials** ______________ **Buyer's Initials**

D. **INSPECTIONS:** Acceptance of this offer is subject to the following reserved right. Buyer may have the Property inspected and select the licensed contractors, certified building inspectors and/or other qualified professionals who will inspect the Property. Seller will ensure that necessary utilities (gas, power and water and all operable pilot lights) are turned on and supplied to the Property within two (2) business days after Acceptance of this Agreement, to remain on until COE. *It is strongly recommended that Buyer retain licensed Nevada professionals to conduct inspections.* If any inspection is not completed and requested repairs are not delivered to Seller within the Due Diligence Period, Buyer is deemed to have waived the right to that inspection and Seller's liability for the cost of all repairs that inspection would have reasonably identified had it been conducted, except as otherwise provided by law. The foregoing expenses for inspections will be paid outside of Escrow unless the Parties present instructions to the contrary prior to COE, along with the applicable invoice.

(Identify which party shall pay for the inspection noted below either: SELLER, BUYER, 50/50, WAIVED or N/A.)

Type	Paid By	Type	Paid By	Type	Paid By
Energy Audit	Waived	Fungal Contaminant Inspection	Waived	Well Inspection (Quantity)	N/A
Home Inspection	Buyer	Mechanical Inspection	Waived	Well Inspection (Quality)	N/A
Termite/Pest Inspection	Waived	Pool/Spa Inspection	N/A	Wood-Burning Device/ Chimney Inspection	N/A
Roof Inspection	Waived	Soils Inspection	Waived	Septic Inspection	N/A
Septic Lid Removal	Waived	Septic Pumping	N/A	Structural Inspection	Waived
Survey (type):	N/A	Other:		Other:	

E. **CERTIFICATIONS:** In the event an inspection reveals areas of concern with the roof, septic system, well, wood burning device/chimney or the possible presence of a fungal contaminant, Buyer reserves the right to require a certification. The expenses for certifications will be paid outside of Escrow unless the Parties present instructions to the contrary prior to COE (along with the applicable invoice). A certification is not a warranty.

F. **BUYER'S REQUEST FOR REPAIRS:** It is Buyer's responsibility to inspect the Property sufficiently as to satisfy Buyer's use. Buyer reserves the right to request repairs, based upon the Seller's Real Property Disclosure or items which materially affect value or use of the Property revealed by an inspection, certification or appraisal. Items of a general maintenance or cosmetic nature which do not materially affect value or use of the Property, which existed at the time of Acceptance and which are not expressly addressed in this Agreement are deemed accepted by the Buyer, except as otherwise provided in this Agreement. The Brokers herein have no responsibility to assist in the payment of any repair, correction or deferred maintenance on the Property which may have been revealed by the above inspections, agreed upon by the Buyer and Seller or requested by one party.

8. FEES, AND PRORATIONS (Identify which party shall pay the costs noted below either: SELLER, BUYER, 50/50, WAIVED or N/A.)

A. **TITLE, ESCROW & APPRAISAL FEES:**

Type	Paid By	Type	Paid By	Type	Paid By
Escrow Fees	50/50	Lender's Title Policy	Buyer	Owner's Title Policy	Seller
Real Property Transfer Tax	Seller	Appraisal	Buyer	Other:	

B. **PRORATIONS:** Any and all rents, taxes, interest, homeowner association fees, trash service fees, payments on bonds, SIDs, LIDs, and assessments assumed by the Buyer, and other expenses of the property shall be prorated as of the date of the recordation of the deed. Security deposits, advance rentals or considerations involving future lease credits shall be

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

Buyer's Name: Marie Zhu BUYER(S) INITIALS: MZ /

Property Address: 2132 HOUSTON DR SELLER(S) INITIALS: CW /

credited to the Buyer. All prorations will be based on a 30-day month and will be calculated as of COE. Prorations will be based upon figures available at closing. Any supplementals or adjustments that occur after COE will be handled by the parties outside of Escrow.

C. PRELIMINARY TITLE REPORT: Within ten (10) business days of Opening of Escrow, Title Company shall provide Buyer with a Preliminary Title Report ("PTR") to review, which must be approved or rejected within five (5) business days of receipt thereof. If Buyer does not object to the PTR within the period specified above, the PTR shall be deemed accepted. If Buyer makes an objection to any item(s) contained within the PTR, Seller shall have five (5) business days after receipt of objections to correct or address the objections. If, within the time specified, Seller fails to have each such exception removed or to correct each such objection, Buyer shall have the option to: (a) terminate this Agreement by providing notice to Seller and Escrow Officer, entitling Buyer to a refund of the EMD or (b) elect to accept title to the Property as is. All title exceptions approved or deemed accepted are hereafter collectively referred to as the "Permitted Exceptions."

D. LENDER AND CLOSING FEES: In addition to Seller's expenses identified herein, Seller will contribute $____0____ to Buyer's Lender's Fees and/or Buyer's Title and Escrow Fees ☒ **including –OR–** ☐ **excluding** costs which Seller must pay pursuant to loan program requirements. Different loan types (e.g., FHA, VA, conventional) have different appraisal and financing requirements, which will affect the parties' rights and costs under this Agreement.

E. HOME PROTECTION PLAN: Buyer and Seller acknowledge that they have been made aware of Home Protection Plans that provide coverage to Buyer after COE. **Buyer** ☒ **waives –OR–** ☐ **requires** a Home Protection Plan with ____. ☒ **Seller –OR–** ☐ **Buyer** will pay for the Home Protection Plan at a price not to exceed $______________. **Buyer** will order the Home Protection Plan. Neither Seller nor Brokers make any representation as to the extent of coverage or deductibles of such plans.

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

10. COMMON-INTEREST COMMUNITIES: If the Property is subject to a Common Interest Community ("CIC"), **Seller shall provide AT SELLER's EXPENSE the CIC documents as required by NRS 116.4109** (collectively, the "resale package"). Seller shall request the resale package within two (2) business days of Acceptance and provide the same to Buyer within one (1) business day of Seller's receipt thereof.

- **Pursuant to NRS 116.4109, Buyer may cancel this Agreement without penalty until midnight of the fifth (5th) calendar day following the date of receipt of the resale package.** If Buyer elects to cancel this Agreement pursuant to this statute, he/she must deliver, via hand delivery, prepaid U.S. mail, or electronic transmission, a written notice of cancellation to Seller or his or her authorized agent.
- **If Buyer does not receive the resale package within fifteen (15) calendar days of Acceptance, this Agreement may be cancelled in full by Buyer without penalty.** Notice of cancellation shall be delivered pursuant to Section 24 of the RPA.
- Upon such written cancellation, Buyer shall promptly receive a refund of the EMD. The parties agree to execute any documents requested by ESCROW HOLDER to facilitate the refund. If written cancellation is not received within the specified time period, the resale package will be deemed approved. Seller shall pay all outstanding CIC fines or penalties at COE.

A. CIC RELATED EXPENSES: (Identify which party shall pay the costs noted below either: SELLER, BUYER, 50/50, WAIVED or N/A.)

Type	Paid By	Type	Paid By	Type	Paid By
CIC Demand	Seller	CIC Capital Contribution	Seller	CIC Transfer Fees	Seller
Other: __________					

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

Buyer's Name: Marie Zhu BUYER(S) INITIALS: MZ / ____

Property Address: 2132 HOUSTON DR SELLER(S) INITIALS: CW

11. DISCLOSURES: Within five (5) calendar days of Acceptance of this Agreement, Seller will provide the following Disclosures and/or documents. **Check applicable boxes.**

☒ **Seller Real Property Disclosure Form:** (NRS 113.130) ☐ **Open Range Disclosure:** (NRS 113.065)

☐ **Construction Defect Claims Disclosure:** If Seller has marked "Yes" to Paragraph 1(d) of the Sellers Real Property Disclosure Form (NRS 40.688)

☒ **Lead-Based Paint Disclosure and Acknowledgment:** required if constructed before 1978 (24 CFR 745.113)

☐ **Other:** (list) ______________________________.

12. FEDERAL FAIR HOUSING COMPLIANCE AND DISCLOSURES: All properties are offered without regard to race, color, religion, sex, national origin, age, gender identity or expression, familial status, sexual orientation, ancestry, or handicap and any other current requirements of federal or state fair housing laws.

13. WALK-THROUGH INSPECTION OF PROPERTY: Buyer is entitled under this Agreement to a walk-through of the Property within __3__ calendar days prior to COE to ensure the Property and all major systems, appliances, heating/cooling, plumbing and electrical systems and mechanical fixtures are as stated in Seller's Real Property Disclosure Statement, and that the Property and improvements are in the same general condition as when this Agreement was Accepted by Seller and Buyer. To facilitate Buyer's walk-through, Seller is responsible for keeping all necessary utilities on, including all operable pilot lights. If any systems cannot be checked by Buyer on walk-through due to non-access or no power/gas/water, then Buyer reserves the right to hold Seller responsible for defects which could not be detected on walk-through because of lack of such access or power/gas/water. The purpose of the walk-through is to confirm (a) the Property is being maintained (b) repairs, if any, have been completed as agreed, and (c) Seller has complied with Seller's other obligations. **If Buyer elects not to conduct a walk-through inspection prior to COE, then all systems, items and aspects of the Property are deemed satisfactory, and Buyer releases Seller's liability for costs of any repair that would have reasonably been identified by a walk-through inspection, except as otherwise provided by law.**

14. DELIVERY OF POSSESSION: Seller shall deliver the Property along with any keys, alarm codes, garage door opener/controls and, if freely transferable, parking permits and gate transponders outside of Escrow, upon COE. Seller agrees to vacate the Property and leave the Property in a neat and orderly, broom-clean condition and tender possession no later than ☒**COE –OR–**☐______________. In the event Seller does not vacate the Property by this time, Seller shall be considered a trespasser in addition to Buyer's other legal and equitable remedies. Any personal property left on the Property after the date indicated in this section shall be considered abandoned by Seller.

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

16. ASSIGNMENT OF THIS AGREEMENT: Unless otherwise stated herein, this Agreement is non-assignable unless agreed upon in writing by all parties.

17. CANCELLATION OF AGREEMENT: In the event this Agreement is properly cancelled in accordance with the terms contained herein, then Buyer will be entitled to a refund of the EMD. Neither Buyer nor Seller will be reimbursed for any expenses incurred in conjunction with due diligence, inspections, appraisals or any other matters pertaining to this transaction (unless otherwise provided herein or except as otherwise provided by law).

18. DEFAULT:

A. MEDIATION: Before any legal action is taken to enforce any term or condition under this Agreement, the parties agree to engage in mediation, a dispute resolution process, through GLVAR. Notwithstanding the foregoing, in the event the Buyer finds it necessary to file a claim for specific performance, this section shall not apply. Each party is encouraged to have an independent lawyer of their choice review this mediation provision before agreeing thereto. By initialing below, the parties confirm that they have read and understand this section and voluntarily agree to the provisions thereof.

BUYER(S) INITIALS: MZ / ______ **SELLER(S) INITIALS:** CW / ______

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

Buyer's Name: Marie Zhu BUYER(S) INITIALS: MZ / ______

Property Address: 2132 HOUSTON DR SELLER(S) INITIALS: CW / ______

B. IF SELLER DEFAULTS: If Seller defaults in performance under this Agreement, Buyer reserves all legal and/or equitable rights (such as specific performance) against Seller, and Buyer may seek to recover Buyer's actual damages incurred by Buyer due to Seller's default.

C. IF BUYER DEFAULTS: If Buyer defaults in performance under this Agreement, as Seller's sole legal recourse, Seller may retain, as liquidated damages, the EMD. In this respect, the Parties agree that Seller's actual damages would be difficult to measure and that the EMD is in fact a reasonable estimate of the damages that Seller would suffer as a result of Buyer's default. Seller understands that any additional deposit not considered part of the EMD in Section 1(B) herein will be immediately released by ESCROW HOLDER to Buyer.

Instructions to Escrow

19. ESCROW: If this Agreement or any matter relating hereto shall become the subject of any litigation or controversy, Buyer and Seller agree, jointly and severally, to hold ESCROW HOLDER free and harmless from any loss or expense, except losses or expenses as may arise from ESCROW HOLDER'S negligence or willful misconduct. If conflicting demands are made or notices served upon ESCROW HOLDER with respect to this Agreement, the parties expressly agree that Escrow is entitled to file a suit in interpleader and obtain an order from the Court authorizing ESCROW HOLDER to deposit all such documents and monies with the Court, and obtain an order from the Court requiring the parties to interplead and litigate their several claims and rights among themselves. Upon the entry of an order authorizing such Interpleader, ESCROW HOLDER shall be fully released and discharged from any obligations imposed upon it by this Agreement; and ESCROW HOLDER shall not be liable for the sufficiency or correctness as to form, manner, execution or validity of any instrument deposited with it, nor as to the identity, authority or rights of any person executing such instrument, nor for failure of Buyer or Seller to comply with any of the provisions of any agreement, contract or other instrument filed with ESCROW HOLDER or referred to herein. ESCROW HOLDER'S duties hereunder shall be limited to the safekeeping of all monies, instruments or other documents received by it as ESCROW HOLDER, and for their disposition in accordance with the terms of this Agreement. In the event an action is instituted in connection with this escrow, in which ESCROW HOLDER is named as a party or is otherwise compelled to make an appearance, all costs, expenses, attorney fees, and judgments ESCROW HOLDER may expend or incur in said action, shall be the responsibility of the parties hereto.

20. UNCLAIMED FUNDS: In the event that funds from this transaction remain in an account, held by ESCROW HOLDER, for such a period of time that they are deemed "abandoned" under the provisions of Chapter 120A of the Nevada Revised Statutes, ESCROW HOLDER is hereby authorized to impose a charge upon the dormant escrow account. Said charge shall be no less than $5.00 per month and may not exceed the highest rate of charge permitted by statute or regulation. ESCROW HOLDER is further authorized and directed to deduct the charge from the dormant escrow account for as long as the funds are held by ESCROW HOLDER.

Brokers

21. BROKER'S COMPENSATION/FEES: Buyer herein requires, and Seller agrees, as a condition of this Agreement, that Seller will pay Listing Broker and Buyer's Broker, who becomes by this clause a third party beneficiary to this Agreement, that certain sum and/or percentage of the Purchase Price (commission), that Seller, or Seller's Broker, offered for the procurement of ready, willing and able Buyer via the Multiple Listing Service, any other advertisement or written offer. Seller understands and agrees that if Seller defaults hereunder, Buyer's Broker, as a third-party beneficiary of this Agreement, has the right to pursue all legal recourse against Seller for any commission due. **In addition to any amount due to Buyer's Broker from Seller or Seller's Broker, Buyer ☐ will –OR– ☐ will not pay Buyer's Broker additional compensation in an amount determined between the Buyer and Buyer's Broker.**

22. WAIVER OF CLAIMS: Buyer and Seller agree that they are not relying upon any representations made by Brokers or Broker's agent. Buyer acknowledges that at COE, the Property will be sold AS-IS, WHERE-IS without any representations or warranties, unless expressly stated herein. Buyer agrees to satisfy himself/herself, as to the condition of the Property, prior to COE. Buyer acknowledges that any statements of acreage or square footage by Brokers are simply estimates, and Buyer agrees to make such measurements, as Buyer deems necessary, to ascertain actual acreage or square footage. Buyer waives all

claims against Brokers or their agents for (a) defects in the Property; (b) inaccurate estimates of acreage or square footage; (c) environmental waste or hazards on the Property; (d) the fact that the Property may be in a flood zone; (e) the Property's proximity to freeways, airports or other nuisances; (f) the zoning of the Property; (g) tax consequences; or (h) factors related to Buyer's failure to conduct walk-throughs or inspections. Buyer assumes full responsibility for the foregoing and agrees to conduct such tests, walk-throughs, inspections and research, as Buyer deems necessary. In any event, Broker's liability is limited, under any and all circumstances, to the amount of that Broker's commission/fee received in this transaction.

Other Matters

23. DEFINITIONS: **"Acceptance"** means the date that both parties have consented to a final, binding contract by affixing their signatures to this Agreement and all counteroffers and said Agreement and all counteroffers have been delivered to both parties pursuant to Section 24 herein. **"Agent"** means a licensee working under a Broker or licensees working under a developer. **"Agreement"** includes this document as well as all accepted counteroffers and addenda. **"Appraisal"** means a written appraisal or Notice of Value as required by any lending institution prepared by a licensed or certified professional. **"Bona Fide"** means genuine. **"Buyer"** means one or more individuals or the entity that intends to purchase the Property. **"Broker"** means the Nevada licensed real estate broker listed herein representing Seller and/or Buyer (and all real estate agents associated therewith). **"Business Day"** excludes Saturdays, Sundays, and legal holidays. **"Calendar Day"** means a calendar day from/to midnight unless otherwise specified. **"CFR"** means the Code of Federal Regulations. **"CIC"** means Common Interest Community (formerly known as "HOA" or homeowners associations). **"CIC Capital Contribution"** means a one-time non-administrative fee, cost or assessment charged by the CIC upon change of ownership. **"CIC Transfer Fees"** means the administrative service fee charged by a CIC to transfer ownership records. **"Close of Escrow (COE)"** means the time of recordation of the deed in Buyer's name. **"Default"** means the failure of a Party to observe or perform any of its material obligations under this Agreement. **"Delivered"** means personally delivered to Parties or respective Agents, transmitted by facsimile machine, electronic means, overnight delivery, or mailed by regular mail. **"Down Payment"** is the Purchase Price less loan amount(s). **"EMD"** means Buyer's earnest money deposit. **"Escrow Holder"** means the neutral party that will handle the closing. **"FHA"** is the U.S. Federal Housing Administration. **"GLVAR"** means the Greater Las Vegas Association of REALTORS®. **"Good Funds"** means an acceptable form of payment determined by ESCROW HOLDER in accordance with NRS 645A.171. **"IRC"** means the Internal Revenue Code (tax code). **"LID"** means Limited Improvement District. **"N/A"** means not applicable. **"NAC"** means Nevada Administrative Code. **"NRS"** means Nevada Revised Statues as Amended. **"Party"** or **"Parties"** means Buyer and Seller. **"PITI"** means principal, interest, taxes, and hazard insurance. **"PMI"** means private mortgage insurance. **"PST"** means Pacific Standard Time, and includes daylight savings time if in effect on the date specified. **"PTR"** means Preliminary Title Report. **"Property"** means the real property and any personal property included in the sale as provided herein. **"Receipt"** means delivery to the party or the party's agent. **"RPA"** means Residential Purchase Agreement. **"Seller"** means one or more individuals or the entity that is the owner of the Property. **"SID"** means Special Improvement District. **"Title Company"** means the company that will provide title insurance. **"USC"** is the United States Code. **"VA"** is the Veterans Administration.

24. SIGNATURES, DELIVERY, AND NOTICES:

A. This Agreement may be signed by the parties on more than one copy, which, when taken together, each signed copy shall be read as one complete form. This Agreement (and documents related to any resulting transaction) may be signed by the parties manually or digitally. Facsimile signatures may be accepted as original.

B. When a Party wishes to provide notice as required in this Agreement, such notice shall be sent regular mail, personal delivery, overnight delivery, by facsimile, and/or by electronic transmission to the Agent for that Party. The notification shall be effective when postmarked, received, faxed, delivery confirmed, and/or read receipt confirmed in the case of email. Delivery of all instruments or documents associated with this Agreement shall be delivered to the Agent for Seller or Buyer if represented. Any cancellation notice shall be contemporaneously delivered to Escrow in the same manner.

25. IRC 1031 EXCHANGE: Seller and/or Buyer may make this transaction part of an IRC 1031 exchange. The party electing to make this transaction part of an IRC 1031 exchange will pay all additional expenses associated therewith, at no cost to the other party. The other party agrees to execute any and all documents necessary to effectuate such an exchange.

26. OTHER ESSENTIAL TERMS: Time is of the essence. No change, modification or amendment of this Agreement

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

Buyer's Name: Marie Zhu BUYER(S) INITIALS: MZ

Property Address: 2132 HOUSTON DR SELLER(S) INITIALS: CW

shall be valid or binding unless such change, modification or amendment shall be in writing and signed by each party. This Agreement will be binding upon the heirs, beneficiaries and devisees of the parties hereto. This Agreement is executed and intended to be performed in the State of Nevada, and the laws of that state shall govern its interpretation and effect. The parties agree that the county and state in which the Property is located is the appropriate forum for any action relating to this Agreement. Should any party hereto retain counsel for the purpose of initiating litigation to enforce or prevent the breach of any provision hereof, or for any other judicial remedy, then the prevailing party shall be entitled to be reimbursed by the losing party for all costs and expenses incurred thereby, including, but not limited to, reasonable attorney's fees and costs incurred by such prevailing party.

THIS IS A LEGALLY BINDING CONTRACT. All parties are advised to seek independent legal and tax advice to review the terms of this Agreement.

THIS FORM HAS BEEN APPROVED BY THE GREATER LAS VEGAS ASSOCIATION OF REALTORS® (GLVAR). NO REPRESENTATION IS MADE AS TO THE LEGAL VALIDITY OR ADEQUACY OF ANY PROVISION IN ANY SPECIFIC TRANSACTION. A REAL ESTATE BROKER IS THE PERSON QUALIFIED TO ADVISE ON REAL ESTATE TRANSACTIONS. IF YOU DESIRE LEGAL OR TAX ADVICE, CONSULT AN APPROPRIATE PROFESSIONAL.

This form is available for use by the real estate industry. It is not intended to identify the user as a REALTOR®. REALTOR® is a registered collective membership mark which may be used only by members of the NATIONAL ASSOCIATION OF REALTORS® who subscribe to its Code of Ethics.

27. ADDENDUM(S) ATTACHED: ______________________________

____

28. ADDITIONAL TERMS: ______________________________

____

____

____

____

Buyer's Acknowledgement of Offer

Confirmation of Representation: The Buyer is represented in this transaction by:

Buyer's Broker: Joyce Nickrandt
Company Name: Investpro Realty
Broker's License Number: B0144660
Phone: 702-997-3832
Fax: 702-997-3836

Agent's Name: Liwei Helen Chen
Agent's License Number: S.0175520
Office Address: 3553 VALLEY VIEW BLVD
City, State, Zip: LAS VEGAS NV 89103
Email: helen0510c@gmail.com

BUYER LICENSEE DISCLOSURE OF INTEREST: Pursuant to NRS 645.252(1)(c), a real estate licensee must disclose if he/she is a principal in a transaction or has an interest in a principal to the transaction. Licensee declares that he/she:

_X_ **DOES NOT** have an interest in a principal to the transaction. **–OR–**

___ **DOES** have the following interest, direct or indirect, in this transaction: ☐ Principal (Buyer) **–OR–** ☐ family or firm relationship with Buyer or ownership interest in Buyer (if Buyer is an entity): (specify relationship) ______________________________.

Seller must respond by: _5_ **(☐AM☒PM) on (month)** _August_, **(day)** _12_, **(year)** _2017_. **Unless this**

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

Buyer's Name: Marie Zhu — BUYER(S) INITIALS: MZ

Property Address: 2132 HOUSTON DR — SELLER(S) INITIALS: CW

Agreement is accepted, rejected or countered below and delivered to the Buyer's Broker before the above date and time, this offer shall lapse and be of no further force and effect. Upon Acceptance, Buyer agrees to be bound by each provision of this Agreement, and all signed addenda, disclosures, and attachments.

Authentisign *Marie Zhu*	Marie Zhu	08/11/2017	2:23 PM ☐AM/☐PM
Buyer's Signature	Buyer's Printed Name	Date	Time
			☐AM/☐PM
Buyer's Signature	Buyer's Printed Name	Date	Time

Seller's Response

Confirmation of Representation: The Seller is represented in this transaction by:

Seller's Broker: Joyce Nickrandt
Company Name: Investpro Realty
Broker's License Number: ____________
Phone: 702-997-3832
Fax: 866-782-3075

Agent's Name: Kenny Lin
Agent's License Number: S.0172460
Office Address: 3553 Valley View Dr
City, State, Zip: Las Vegas NV 89103
Email: zhong.kenny@gmail.com

SELLER LICENSEE DISCLOSURE OF INTEREST: Pursuant to NRS 645.252(1)(c), a real estate licensee must disclose if he/she is a principal in a transaction or has an interest in a principal to the transaction. Licensee declares that he/she:

_X_ **DOES NOT** have an interest in a principal to the transaction. **–OR–**

___ **DOES** have the following interest, direct or indirect, in this transaction: ☐ Principal (Seller) **–OR–** ☐ family or firm relationship with Seller or ownership interest in Seller (if Seller is an entity): (specify relationship)

____.

FIRPTA: If applicable (as designated in the Seller's Response herein), Seller agrees to complete, sign, and deliver to Buyer's FIRPTA Designee a certificate indicating whether Seller is a foreign person or a nonresident alien pursuant to the Foreign Investment in Real Property Tax Act (FIRPTA). A foreign person is a nonresident alien individual; a foreign corporation not treated as a domestic corporation; or a foreign partnership, trust or estate. A resident alien is not considered a foreign person under FIRPTA. Additional information for determining status may be found at www.irs.gov. Buyer and Seller understand that if Seller is a foreign person then the Buyer must withhold a tax in an amount to be determined by Buyer's FIRPTA Designee in accordance with FIRPTA, unless an exemption applies. Seller agrees to sign and deliver to the Buyer's FIRPTA Designee the necessary documents, to be provided by the Buyer's FIRPTA Designee, to determine if withholding is required. (See 26 USC Section 1445).

SELLER DECLARES that he/she _X_ is not –OR– ___ is a foreign person therefore subjecting this transaction to FIRPTA withholding. **SELLER(S) INITIALS:** CN / ______

_X_ **ACCEPTANCE:** Seller(s) acknowledges that he/she accepts and agrees to be bound by each provision of this Agreement, and all signed addenda, disclosures, and attachments.

___ **COUNTER OFFER:** Seller accepts the terms of this Agreement subject to the attached Counter Offer #1.

___ **REJECTION:** In accordance with NAC 645.632, Seller hereby informs Buyer the offer presented herein **is not** accepted.

Authentisign [signature] 8/11/2017 10:24:00 PM PDT	TKNR Inc	08/11/2017	10:24 PM ☐AM/☐PM
Seller's Signature	Seller's Printed Name	Date	Time
			☐AM/☐PM
Seller's Signature	Seller's Printed Name	Date	Time

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

Buyer's Name: Marie Zhu — BUYER(S) INITIALS: MZ / ____

Property Address: 2132 HOUSTON DR — SELLER(S) INITIALS: CN / ____

EXHIBIT “9"

ELECTRONICALLY SERVED
4/7/2021 4:39 PM

Electronically Filed
04/07/2021 4:21 PM
CLERK OF THE COURT

MICHAEL B. LEE, ESQ. (NSB 10122)
MICHAEL MATTHIS, ESQ. (NSB 14582)
MICHAEL B. LEE, P.C.
1820 East Sahara Avenue, Suite 110
Las Vegas, Nevada 89104
Telephone: (702) 477.7030
Facsimile: (702) 477.0096
mike@mblnv.com
Attorney for Defendants

IN THE EIGHTH JUDICIAL DISTRICT COURT

CLARK COUNTY, NEVADA

W L A B INVESTMENT, LLC,

Plaintiff,

vs.

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.

AND RELATED CLAIMS.

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

ORDER GRANTING DEFENDANTS' MOTION FOR SUMMARY JUDGMENT, OR IN THE ALTERNATIVE, PARTIAL SUMMARY JUDGMENT

Date of Hearing: March 11, 2021
Time of Hearing: 9:30 a.m.

This matter being set for hearing before the Honorable Court on March 11, 2021 at 9:30 a.m., on 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, and INVESTPRO MANAGER LLC,

MICHAEL B. LEE, P.C.
1820 E. SAHARA AVENUE, SUITE 110
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(collectively, the "Defendants"), Motion for Summary Judgment, or in the Alternative, Partial Summary Judgment ("Motion"), by and through their attorney of record, MICHAEL B. LEE, P.C. Plaintiff W L A B INVESTMENT, LLC appeared on and through its counsel of record, DAY & NANCE. Defendants filed the Motion on December 15, 2020. Plaintiff filed an Opposition to the Motion ("Opposition"), Countermotion for Continuance Based on NRCP 56(f) ("56(f) Countermotion"), and Countermotion for Imposition of Monetary Sanctions (collectively, "Countermotion") on December 29, 2020. On January 20, 2021, Defendants filed a Reply brief. On January 29, 2021, Defendants filed a Supplement ("Supplement") to Defendants' Motion for Summary Judgment. The Supplement included the deposition of Frank Miao ("Miao"), the designated person most knowledgeable for Plaintiff, from January 12, 2021. Plaintiff did not file a response to the Supplement. Mr. Miao attended the hearing.

After considering the pleadings of counsel, the Court enters the following order **GRANTING** the Motion, **DENYING** the 56(f) Countermotion, and Countermotion, and **GRANTING** attorneys' fees and costs to Defendants pursuant to Nevada Rule of Civil Procedure 11:

Findings of Facts

First Residential Purchase Agreement and Waiver of Inspections, Contractual Broker Limitations

1. 2132 Houston Drive, Las Vegas, NV 89104 ("Property") was originally constructed in 1954. On or about August 11, 2017, Marie Zhu ("Zhu"), the original purchaser, executed a residential purchase agreement ("RPA") for the Property. At all times relevant, Ms. Zhu and Mr. Miao, the managing member of Plaintiff, were sophisticated buyers related to "property management, property acquisition, and property maintenance." The purchase price for the property was $200,000.

2. Through the RPA, Ms. Zhu waived her due diligence, although she had a right to conduct inspections:

> During such Period, Buyer shall have the right to conduct, non-invasive/non-destructive inspections of all structural, roofing, mechanical, electrical, plumbing, heating/air conditioning,

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> water/well/septic, pool/spa, survey, square footage, and any other property or systems, through licensed and bonded contractors or other qualified professionals.

3. Ms. Zhu did not cancel the contract related to any issues with the Property.

4. Under Paragraph 7(C) of the RPA, Ms. Zhu waived the Due Diligence condition.

Id. Under Paragraph 7(D) of the RPA, it provided:

> *It is strongly recommended that Buyer retain licensed Nevada professionals to conduct inspections*. If any inspection is not completed and requested repairs are not delivered to Seller within the Due Diligence Period, Buyer is deemed to have waived the right to that inspection and Seller's liability for the cost of all repairs that inspection would have reasonably identified had it been conducted, except as otherwise provided by law.

5. Ms. Zhu waived any liability of Defendants for the cost of all repairs that inspection would have reasonably identified had it been conducted. Ms. Zhu also waived the energy audit, pest inspection, roof inspection, septic lid removal inspection, mechanical inspection, soil inspection, and structural inspection.

6. Under Paragraph 7(F), it was Ms. Zhu's responsibility to inspect the Property sufficiently as to satisfy her use. Additionally, Wong, Lin, Chen, Zhang, Cheng, and Nickrandt (collectively, "Brokers" or "Broker Defendants") had "no responsibility to assist in the payment of any repair, correction or deferred maintenance on the Property which may have been revealed by the above inspections, agreed upon by the Buyer and Seller or requested by one party."

7. On August 2, 2017, TKNR submitted Seller's Real Property Disclosure Form ("SRPDF" or "Seller's Disclosures") timely indicating all known conditions of the Subject Property. In fact, TKNR disclosed that "3 units has (sic) brand new AC installed within 3 months," and further that the "owner never resided in the property and never visited the property." It also disclosed that the minor renovations, such as painting, were conducted by the Seller's "handyman" as disclosed in the Seller's Disclosures. Seller also disclosed that it had done construction, modification, alterations, or repairs without permits. Despite these disclosures, Plaintiff chose not to inspect the Subject Property, request additional information and/or conduct any reasonable inquires.

/ / / /

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Second Residential Purchase Agreement and Waiver of Inspections, Contractual Broker Limitations

8. On or before September 5, 2017, Ms. Zhu had issues related to the financing for the Property because of an appraisal, so Ms. Zhu executed a new purchase agreement, and would agree to pay the difference in an appraisal with a lower value than the purchase price, and waive inspections:

> Please note that seller agree the rest of terms and request to add the below term on the contract:
> "Buyer agree to pay the difference in cash if appraisal come in lower than purchase price, not to exceed purchase price of $200k"
> I just send you the docs, please review and sign if you are agree. Thank you!
> **(Per buyer's request will waive licensed home inspector to do the home inspection)**

9. On the same day, Ms. Zhu and TKNR agreed to Addendum No. 1 to cancel the RPA dated August 11, 2017 and entered into a new Residential Purchase Agreement dated September 5, 2017 ("2nd RPA"). As before, the overall purchase price for the Property was $200,000, but Ms. Zhu changed the contingency for the loan to $150,000 with earnest money deposit of $500 and a balance of $49,500 owed at the close of escrow ("COE" or "Closing"). The COE was set for September 22, 2017.

10. Notably, although Ms. Zhu had not initialed the "Failure to Cancel or Resolve Objections" provision in the RPA, she initialed the corresponding provision in the 2nd RPA. This was consistent with Ms. Zhu's instructions to Ms. Chen. Ex. D. This is the second time that Ms. Zhu waived inspections for the Property despite the language in the 2nd RPA that strongly advised to get an inspection done.

11. As noted, Ms. Zhu waived any inspections related to the purchase of the Property in the 2nd RPA. Although Ms. Zhu had actual knowledge of the Seller's Disclosures, and the Parties agreed to extend the COE to January 5, 2018, Ms. Zhu did not conduct professional inspections. Instead, she put down an additional $60,000 as a non-refundable deposit to the TNKR. Moreover, she also agreed to pay rent in the amount of $650 per month for one of the units, and to also pay the property manager $800 for the tenant placement fee. Through

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Addendum 2 to the 2nd RPA, Ms. Zhu later changed the purchaser to Plaintiff.

Deposition of Plaintiff's Person Most Knowledgeable – Mr. Miao

12. Since 2008, Mr. Miao, Ms. Zhu, and/or Plaintiff have been involved in the purchase of approximately twenty residential properties. In Clark County alone, Ms. Zhu and Mr. Miao were involved with the purchase of at least eight rental properties starting in 2014.

13. Plaintiff understands the importance of reading contracts.

14. Mr. Miao specified that he understands that he needs to check public records when conducting his due diligence.

15. Plaintiff was a sophisticated buyer who understood the necessity of getting properties inspected.

Requirement to Inspect was Known

16. The terms of the RPA were clear to Plaintiff.

17. As to Paragraph 7(A), Mr. Miao specified that he believed that his inspection and conversations with the tenant constituted the actions necessary to deem the Property as satisfactory for Plaintiff's purchase.

> 19· · · A.· ·Yes.· Based on -- we bought this -- we go
> 20 to the inspection, then we also talk to the tenant,
> 21 so we thinking this is investment property; right?
> 22 So financial it's looking at the rent, it's
> 23 reasonable, it's not very high compared with the
> 24 surrounding area.· Then also financially, it's good.
> 25· · · · · ·Then I take a look at the – everything
> Page 164
> ·1 outside.· Good.· So I said, Fine.· That's satisfied.
> ·2 That's the reason I command my wife to sign the
> ·3 purchase agreement.

18. At all times relevant prior to the purchase of the Property, Plaintiff had access to inspect the entire property and conduct non-invasive, non-destructive inspections:

> ·2· · · Q.· ·So at the time when you did your
> ·3 diligence, you had a right to conduct noninvasive,
> ·4 nondestructive inspection; correct?
> ·5· · · A.· ·Yes, I did.
> ·6· · · Q.· ·And you had the opportunity to inspect all
> ·7 the structures?
> ·8· · · A.· ·I check the other one -- on the walk, I
> ·9 don't see the new cracking, so the -- some older
> 10 cracking.· I check the neighbor who also have that

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11 one.· I think it's okay; right?· Then the –

Supplement at 166:2-11.

8· · · Q.· ·So you had the right to inspect the
·9 structure; correct?
10· · · A.· ·Yes, yes, I did that.
11· · · Q.· ·You had the right to inspect the roof; is
12 that correct?
13· · · A.· ·Yes.
14· · · Q.· ·Okay.· Did you do that?
15· · · A.· ·I forgot.· I maybe did that because
16 usually I go to the roof.
* * *
22· · · Q.· ·You had the right to inspect the
23 mechanical system; correct?
24· · · A.· ·Right.· Yes, yes.
25· · · Q.· ·You had the right to inspect the
Page 167
·1 electrical systems; correct?
·2· · · A.· ·I check the electrical system, yes.
·3· · · Q.· ·You had a right to inspect the plumbing
·4 systems; correct?
·5· · · A.· ·Yes.
·6· · · Q.· ·You had the right to inspect the
·7 heating/air conditioning system; correct?
·8· · · A.· ·Yes.
* * *
·3· · · Q.· ·And then you could have inspected any
·4 other property or system within the property itself;
·5 correct?
·6· · · A.· ·Yes, yes.

Id. at 167:8-16, 167:22-25-168:1-11, 168:25-169:1-6.

19. Prior to the purchase, Mr. Miao was always aware that the Seller "strongly recommended that buyer retain licensed Nevada professionals to conduct inspections":

13· · · Q.· ·"It is strongly recommended that buyer
14 retain licensed Nevada professionals to conduct
15 inspections."
16· · · A.· ·Yes.
17· · · Q.· ·Yeah.· So you were aware of this
18 recommendation at the time --
19· · · A.· ·Yeah, I know.

Id. at 176:13-19.

20. Plaintiff was also aware of the language in the RPA under Paragraph 7(D) that limited potential damages that could have been discovered by an inspection:

/ / / /

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18· · · Q.· ·Okay.· So going back to paragraph 7D --
19· · · A.· ·Yeah.
20· · · Q.· ·-- right, after the language that's in
21 italics, would you admit that because it's in the
22 italics, it's conspicuous, you can see this
23 language?
24· · · A.· ·Yeah.· Yeah.
25· · · Q.· ·Okay.· Then it goes on to say, "If any
Page 179
·1 inspection is not completed and requested repairs
·2 are not delivered to seller within the due diligence
·3 period, buyer is deemed to have waived the right to
·4 that inspection and seller's liability for the cost
·5 of all repairs that inspection would have reasonably
·6 identified had it been conducted."
·7· · · · ·Did I read that correctly?
·8· · · A.· ·Yes, yes.
·9· · · Q.· ·Okay.· So we'll eventually get to the
10 issues that, you know, Ms. Chen identified that you
11 wanted corrected in the emails or text messages.
12· · · · ·Is that fair to say that those are the
13 only issues that you deemed needed to be resolved to
14 go forward with the purchase?
15· · · A.· ·Yeah.· After that time, yes.

Id. at 179:18-25-180:1-15.

21. Finally, as to the RPA, Mr. Miao agreed that all the terms in it were conspicuous and understandable, and it was a standard agreement similar to the other agreements he had used in purchasing the other properties in Clark County, Nevada. *Id*. at 198:19-25-199:1-2, 200:3-15.

Mr. Miao Does Inspections for Plaintiff Although he is not a Licensed, Bonded Professional Inspector

22. As to all the properties purchased by Plaintiff, Mr. Miao always does the inspections and does not believe a professional inspection is necessary. *Id*. at 116:2-9, 119:3-25, 140:5-10. Based on his own belief, he does not believe that a professional inspection is necessary for multi-tenant residential properties. *Id*. at 120:6-9 (his own understanding), 120:16-25 (second-hand information he received).

23. Notably, he does not have any professional license related to being a general contractor, inspector, appraiser, or project manager. *Id*. at 123:5-16 (no professional licenses), 123:23-24 (no property management license), 169:7-14 (no licensed or bonded inspector), 171:23-25 (have not read the 1952 Uninformed Building Code), 172:17-19 (not an electrician),

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172:23-25-1-16 (no general contractor license or qualified under the intentional building code), 174:13-23 (not familiar with the international residential code).

24. Mr. Miao has never hired a professional inspector in Clark County, *Id*. at 140:19-21, so he does not actually know what a professional inspection would encompass here. *Id*. at 143:9-13, 144:8-19.

25. The main reason Plaintiff does not use a professional inspector is because of the cost. *Id*. at 147:2-7.

26. On or about August 10, 2017, Mr. Miao did an inspection of the Property. *Id*. at 158:1-25-159:1-12. During that time, he admitted that he noticed some issues with the Property that were not up to code, finishing issues, GFCI outlets, and electrical issues:

> 16· · · A.· ·I looked at a lot of things.· For example,
> 17 like, the -- I point out some drywall is not
> 18 finished; right?· And the -- some of smoke alarm is
> 19 not -- is missing and -- which is law required to
> 20 put in for smoke alarm.· Then no carbon monoxide
> 21 alarm, so I ask them to put in.
> 22· · · · · ·Then in the kitchen, lot of electrical,
> 23 the outlet is not a GFCI outlet, so I tell them, I
> 24 said, You need to change this GFCI.· Right now this
> 25 outlet is not meet code.· You probably have problem.

Id.

27. Similarly, he also specified that there was an issue with exposed electrical in Unit C. *Id*. at 175:10-24. He also noted that there could have been a potential asbestos issue as well. *Id*. at 160:7-12.

28. Additionally, Mr. Miao noted that there were cracks in the ceramic floor tiles, *Id*. at 249:22-25, and he was aware of visible cracks in the concrete foundation, *Id*. at 269:13-22 (aware of slab cracks), which were open and obvious. *Id*. at 270:14-24.

29. Mr. Miao admitted that he could also have seen the dryer vent during his inspection. *Id*. at 269:23-25.

30. As to those issues, Mr. Miao determined that the aforementioned issues were the only issues that TKNR needed to fix after his inspection. *Id*. at 171:2-9 (was only concerned about the appraisal), *Id*. at 219:13-25-221:1-2.

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31. Moreover, Mr. Miao received the SRPDF prior to the purchase of the Property. Id. at 201:22-25. As to SRPDF, Plaintiff was aware that TKNR was an investor who had not resided in the Property, and there were issues with the heating systems, cooling systems, and that there was work done without permits. *Id*. at 201:1-25-202:1-12. Similarly, it was aware that the Property was 63 years old at that time, *Id*. at 204:4-7, and all the work was done by a handyman other than the HVAC installation. *Id*. at 205:14-25, *Id*. at 134:14-25 (understands the difference between a handyman and a licensed contractor), 243:2 ("Yes. They did by the handyman, yes.").

32. Despite these disclosures, Mr. Miao never followed up:

> 23· · · Q.· ·Okay.· So when they disclosed that there
> 24 was construction and modification, alterations,
> 25 and/or repairs made without State, City, County
> Page 205
> ·1 building permits, which was also work that was done
> ·2 by owner's handyman, did you ever do any follow-up
> ·3 inquiries to the seller about this issue?
> ·4· · · A.· ·No, I didn't follow up.·

Id. at 204:23-25-205:1-4.

33. However, Mr. Miao also admitted that he could have followed up on the issues identified in the SRPDF that included the HVAC and the permits:

> 10· · · Q.· ·Under the disclosure form --
> 11· · · A.· ·Yeah.
> 12· · · Q.· ·-- like, where it specified that there
> 13 were heating system/cooling system issues that
> 14 they're aware of, that you could have elected to
> 15 have an inspection done at that time; correct?
> 16· · · A.· ·Yes.

Id. at 206:10-16.

> 15· · · Q.· ·Okay.· So as your attorney said, you could
> 16 have obtained a copy of the permits at any time?
> 17 Yes?
> 18· · · A.· ·Yes.
> 19· · · Q.· ·Okay.· And then it's fair to say that just
> 20 put you on notice of the potential permit issue;
> 21 correct?
> 22· · · A.· ·Yes.
> 23· · · Q.· ·It also put you on notice of the issues of
> 24 everything that's basically specified on page 38;
> 25 correct?
> Page 209
> 1· · · A.· ·Yes.

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Id. at 209:15-25-210:1, 245:22-25 (could have obtained permit information in 2018).

34. Similarly, Mr. Miao was aware that he should have contacted the local building department as part of his due diligence:

> 22· · · Q.· ·Okay.· So you understand that for more
> 23 information during the diligence process, you should
> 24 contact the local building department?
> 25· · · A.· ·Yes.·
> Page 260
> * * *
> ·5· · · Q.· ·-- it provides you with the address of the
> ·6 building and safety department; is that correct?
> ·7· · · A.· ·Yes.
> ·8· · · Q.· ·And the office hours; is that correct?
> ·9· · · A.· ·Yes.
> 10· · · Q.· ·And it also provides you with a phone
> 11 number; correct?
> 12· · · A.· ·Yes.
> 13· · · Q.· ·And this is information or resources that
> 14 you could have used at any time related to finding
> 15 information about the permits of the property;
> 16 correct?
> 17· · · A.· ·Yes.
> 18· · · Q.· ·And this would have been true prior to the
> 19 purchase of the building; correct?
> 20· · · A.· ·Yes.
> 21· · · Q.· ·And this would also have been true at the
> 22 time you read the disclosure that specified that
> 23 some of the improvements or some of the disclosures
> 24 had been done without a permit; right?
> 25· · · A.· ·Yes.

Id. at 260:22-25, 261:5-25.

35. Plaintiff was also on notice of the potential for mold and the requirement to get a mold inspection:

> ·5· · · Q.· ·Okay.· And it says, "It's the buyer's duty
> ·6 to inspect.· Buyer hereby assumes responsibility to
> ·7 conduct whatever inspections buyer deems necessary
> ·8 to inspect the property for mold contamination.
> ·9· · · · · ·"Companies able to perform such
> 10 inspections can be found in the yellow pages under
> 11 environmental and ecological services."
> 12· · · · · ·I read that correctly?· Yes?
> 13· · · A.· ·Yes.
> 14· · · Q.· ·Okay.· And then you elected not to get a
> 15 mold inspection; correct?
> 16· · · A.· ·Yeah.·

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Id. at 213:5-16.

> ·5· · · Q.· ·So you relied upon your own determination
> ·6 related to the potential mold exposure of the
> ·7 property; correct?
> ·8· · · A.· ·Yes.
> ·9· · · Q.· ·Okay.· And you elected to proceed with
> 10 purchasing it without a professional mold
> 11 inspection; correct?
> 12· · · A.· ·Yes.

Id. at 216:5-12.

36. Despite actual knowledge of these issues, Plaintiff did not elect to have a professional inspection done. 160:17-20.

37. Finally, Plaintiff was also acutely aware of the requirement of Nevada law to protect itself by getting an inspection:

> ·2· · · Q.· ·If we go to page 40 --
> ·3· · · A.· ·Mm-hmm.
> ·4· · · Q.· ·-- there's a bunch of Nevada statutes
> ·5 here.
> ·6· · · A.· ·Mm-hmm.
> ·7· · · Q.· ·If you look at NRS 113.140 --
> ·8· · · A.· ·Mm-hmm.
> ·9· · · Q.· ·-- do you see that at the top of the page?
> 10 "Disclosure of unknown defects not required.· Form
> 11 does not constitute warranty duty of buyer and
> 12 prospective buyer to exercise reasonable care."
> 13· · · · · ·Do you see that?
> 14· · · A.· ·Yes.
> 15· · · Q.· ·Okay.· So this disclosure form gave Marie
> 16 Zhu, your wife, a copy of the Nevada law that was
> 17 applicable to the sale of the property; correct?
> 18· · · A.· ·Yeah.
> 19· · · Q.· ·Okay.· And under NRS 113.1403, it
> 20 specifies, "Either this chapter or Chapter 645 of
> 21 the NRS relieves a buyer or prospective buyer of the
> 22 duty to exercise reasonable care to protect
> 23 himself."
> 24· · · · · ·Did I read that correctly?
> 25· · · A.· ·Yes.

Id. at 209:2-25.

38. Plaintiff assumed the risk of failing to exercise reasonable care to protect itself.

There Is No Dispute a Professional Inspection Could Have Revealed the Alleged Issues

39. The alleged defects identified by both parties' experts could have been discovered

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at the time of the original purchase. As to the ability to inspect, Mr. Miao admitted that he had access to the entire building. *Id*. at 250:22-25. He had access to the attic and looked at it. *Id*. at 251:4-14. Mr. Miao admitted that Plaintiff's expert examined the same areas that he did:

> ·6· · · Q.· ·Okay.· So you walked through the property
> ·7 with him at the time he did his inspection; correct?
> ·8· · · A.· ·Right.
> ·9· · · Q.· ·Okay.· During that time, did he inspect
> 10 any areas that -- that you did not have access to in
> 11 2017?
> 12· · · A.· ·Yes.· He didn't go to anything I didn't
> 13 inspect during 2017 too.
> 14· · · Q.· ·So he inspected the same areas you
> 15 inspected?
> 16· · · A.· ·Yes, yes.

Id. at 291:6-16.

40. Notably, Plaintiff's expert did not do any destructive testing, so the expert's access was exactly the same as Mr. Miao's original inspection. *Id*. at 291:1-5.

41. Mr. Miao admitted that Plaintiff's expert's inspection of the HVAC, *Id*. at 292:2-5, 293:18-23, and the plumbing system, *Id*. at 300:19-25-301:1-4, would have been the same as his in 2017.

42. Mr. Miao also admitted that the pictures attached to Plaintiff's expert report were areas that he could have inspected in 2017. *Id*. at 302:6-13.

43. Additionally, Mr. Miao accompanied Defendants' expert during his inspection. *Id*. at 320:31-25. As before, Mr. Miao had the same access to the Property in 2017 for the areas inspected by Defendants' expert. *Id*. at 321:1-6.

44. Mr. Miao agreed with Defendants' expert that the alleged conditions identified by Plaintiff's expert were "open and obvious":

> 22· · · Q.· ·And then the second line down, the first
> 23 sentence begins, "Items complained about in the Sani
> 24 report were open and obvious in the roof area, attic
> 25 area, and on the exterior/interior of the property."
> Page 318
> * * *
> ·3· · · Q.· ·Do you agree with this statement?
> ·4· · · A.· ·Yes.

Id. at 318:22-25-319:3-4.

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45. He also agreed with Defendants' expert's finding that there was no noticeable sagging in the roof. *Id*. at 333:20-24.

46. Incredibly, Mr. Miao also recognized the deficiency in Plaintiff's expert's report that failed to differentiate between conditions prior to when TKNR owned the Property, while it owned it, and those afterwards:

> 17· · · Q.· ·-- midway down the first complete sentence
> 18 says, "The Sani report does not recognize prior
> 19 conditions in existence before any work took place
> 20 by defendants."
> 21· · · · · ·Do you agree with this statement?
> Page 321
> * * *
> ·3· · · · · ·Yes, yes.
> ·4 BY MR. LEE:
> ·5· · · Q.· ·You agree with that?· Okay.
> ·6· · · A.· ·Agree.

Id. at 321:17-21 – 322:3-6. This would have also included any issues with the dryer vent and ducts, *Id*. at 325:3-20, as he recognized that most rentals do not include washer / dryer units. *Id*. at 326:7-25-327:1-9.

No Permits Required for Cosmetic Work by TKNR

47. No dispute exists that TKNR did not need permits for the interior work it had done to the Property. Mr. Miao admitted the following:

> ·5· · · Q.· ·Number 5 says, "Painting, papering,
> ·6 tiling, carpeting, cabinets, countertops, interior
> ·7 wall, floor or ceiling covering, and similar finish
> ·8 work."
> ·9· · · · · ·Do you see that?
> 10· · · A.· ·Yes.
> 11· · · Q.· ·So you agree that no permits are required
> 12 for any of these types of work; correct?
> 13· · · A.· ·Yes.

Id. at 262:5-13.

> ·1 Window Replacements where no structural member -- no
> ·2 structural member is altered or changed," that does
> ·3 not need a permit either; right?
> ·4· · · A.· ·Yes.

Id. at 265:1-4.

> 17· · · Q.· ·Okay.· If you turn the page to 82,
> 18 Plumbing Improvements, no permits required to repair

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19 or replace the sink; correct?
20· · · A.· ·Yes.
21· · · Q.· ·To repair or replace a toilet?
22· · · A.· ·Yes.
23· · · Q.· ·To repair or replace a faucet?
24· · · A.· ·Yes.
25· · · Q.· ·Resurfacing or replacing countertops?
Page 264
·1· · · A.· ·Yes.
·2· · · Q.· ·Resurfacing shower walls?
·3· · · A.· ·Yes.
·4· · · Q.· ·Repair or replace shower heads?
·5· · · A.· ·Yes.
·6· · · Q.· ·Repair or replace rain gutters and down
·7 spouts?
·8· · · A.· ·Yes.
·9· · · Q.· ·Regrouting tile?
10· · · A.· ·Yes.
11· · · Q.· ·And a hose bib, whatever that is.
12· · · A.· ·Water freezer.· It's, like, for the
13 filtration of the water.
14· · · Q.· ·Okay.· And then for the mechanical, no
15 permits required for portable heating appliances;
16 correct.
17· · · A.· ·Yes.
18· · · Q.· ·For portable ventilation appliances?
19· · · A.· ·Yes.
20· · · Q.· ·Or portable cooling units; correct?
21· · · A.· ·Yes.
22· · · Q.· ·And for portable evaporative coolers
23 installed in windows; correct?
24· · · A.· ·Yes.

Id. at 264:17-25-265:1-24.

Plaintiff Does not Disclose the Alleged Issues to Potential Tenants

48. Since the date it purchased the Property, Plaintiff has always been trying to lease it. *Id*. at 330:19-25-331:1-2. According to Mr. Miao, the landlord must provide safe housing for the tenant:

19· · · · ·Then also in according to the law, and
20 they said it very clearly, because this is
21 residential income property, right, rental income
22 property, multi-family, we need -- landlord need
23 provide housing and well-being and -- for the
24 tenant.· The tenant is not going to do all this
25 inspection.· They can't.· The burden is on the
Page 120
·1 landlord to make sure all these building is safe and
·2 in good condition.

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Id. at 120:16-25-121:1-2, 140:10-14. However, they have not done any of the repairs listed by Plaintiff's expert. *Id*. at 331:3-12. This illustrates the lack of merit of Plaintiff that there are underlying conditions with the Property.

49. Moreover, Plaintiff does not provide any notice to the tenants about its expert's report or this litigation:

> ·6· · · Q.· ·All right.· In terms of tenants -- renting
> ·7 out the units to any tenants, do you ever provide
> ·8 them with a copy of the Sani report?
> ·9· · · A.· ·No.
> 10· · · Q.· ·Do you ever provide them with any of the
> 11 pleadings or the first amended complaint, second
> 12 amended complaint, the complaint itself?
> 13· · · A.· ·No.
> * * *
> 22· · · Q.· ·Okay.· So basically, you just tell them,
> 23 There's this.· You can inspect the unit if you want;
> 24 is that it?
> 25· · · A.· ·Yeah.· And also we need to tell is a lot
> Page 337
> 1 of things report that we don't need to go to the
> ·2 inside the building.· It's wall cracking.· It's
> ·3 outside.· You can see.
> ·4· · · Q.· ·Okay.· So it's open and obvious for them?
> ·5· · · A.· ·Yeah.· You can see always outside.

Id. at 337:6-13, 337:22-25-338:1-5.

50. This illustrates the lack of merit of Plaintiff's claims, proven that it has done nothing to correct the allegedly deficient conditions that are clearly not so dangerous as it does not tell prospective tenants about them.

Squatters or Tenants Could Have Damaged the Property

51. Mr. Miao admitted that multiple third parties could have potentially damaged the Property. The Property has a historic problem with squatters during the time that Plaintiff owned it:

> 12· · · Q.· ·Do you generally have a squatter problem
> 13 with the property?
> 14· · · A.· ·Yes.· As a matter of fact, today I just
> 15 saw the one text message that said one -- some
> 16 people go to my apartment.

Id. at 110:12-16. He also admitted that tenants could have damaged the Property while they

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were occupying it:

> ·4· · · Q.· ·Okay.· So the tenant in this context would
> ·5 have damaged the unit at the time that you owned it;
> ·6 is that fair?
> ·7· · · A.· ·Maybe.· Yes.
> ·8· · · Q.· ·Okay.· So some of the -- so the damage
> ·9 that was to the water heater system, could the
> 10 tenant have damaged that as well?
> 11· · · A.· ·Yes.
> 12· · · Q.· ·And then he could have damaged the cooler
> 13 pump and the valve as well; is that correct?
> 14· · · A.· ·Yes.
> 15· · · Q.· ·Okay.· Then on 122, these are all issues
> 16 that the tenant could have damaged; is that correct?
> 17· · · A.· ·Yes.
> 18· · · Q.· ·And then the same through for 145; is that
> 19 right?
> 20· · · A.· ·Yes.

Id. at 306:4-20, 330:5-7. This could also account for the cracking on the walls. *Id*. at 310:8-12. Tenants could have also damaged the Property if they hit it with their cars. *Id*. at 332:14-16.

No Evidence That Defendants Knew of Alleged Conditions

52. Plaintiff's case is based on assertions that Defendants knew about the alleged conditions in the Property; however, Mr. Miao admitted that there is no evidence that shows Defendants knew about them. *Id*. at 245:1-13 (speculating that InvestPro made changes).

53. The entire case is based on Mr. Miao's personal belief and speculation. *Id*. at 253:17-19.

54. Mr. Miao admitted that he has no evidence Defendants knew about the alleged moisture conditions. *Id*. at 293:24-25-294:1-3. Additionally, he also admitted that there is no evidence that Defendants knew about the alleged issues with the plumbing system. *Id*. at 301:21-24. He also admitted that he did not know if Defendants knew about the alleged issues with the duct work when they owned the Property. *Id*. at 314:5-19. He also recognized the deficiency in Plaintiff's expert's report that failed to differentiate between conditions prior to when TKNR owned the Property, while it owned it, and those afterwards. *Id*. at 321:17-21 – 322:3-6.

55. Mr. Miao recognized that a 63-year-old property could have issues that were not caused by Defendants. *Id*. at 324:6-15. This would have also included any issues with the dryer

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vent and ducts, *Id*. at 325:3-20, and when the duct became disconnected. *Id*. at 329:1-16.

56. Plaintiff did not identify any discovery illustrating a genuine issue of material fact that Defendants knew of the alleged issues with the Property that they had not already disclosed on Seller's Disclosures.

57. Notably, during Mr. Miao's due diligence period, he spoke with the tenants of the Property. *Id*. at 163:12-25-164:1-6. This included a conversation with the long-term tenant of Unit A, who still resides in the Property to this day. *Id*. At that time, the tenant reported being very happy with the Property and had no complaints. *Id*. In fact, the tenant reported still being very happy with the Property. *Id*. at 170:7-9. This illustrates that there is no basis that Defendants should have been aware of any of the issues when Mr. Miao, a self-professed expert, did not even know about them following his inspection.

No Basis for Claims for RICO and/or Related to Flipping Fund

58. The Flipping Fund had nothing to do with Plaintiff's decision to purchase the Property. *Id*. at 223:15-25.

> 20· · · Q.· ·Yeah.· So there's no way that you relied
> 21 upon any flipping fund since it would have been
> 22 closed at this time; right?
> 23· · · A.· ·Yeah.

Id. at 274:20-23. He also admitted that he never received any pro forma, private placement information, calculations of profit and loss, capital contribution requirements, member share or units, or any such information about the Flipping Fund. *Id*. at 277:7-16.

Cost of Repairs

59. Mr. Miao contacted contractors to bid the potential cost of repair for the Property and determined that it would have been $102,873.00. *Id*. at 307:6-22. However, Plaintiff's expert opined that the cost of repair would have been $600,000, although he did not provide an itemized cost of repair. *Id*. at 334:17-21.

Allegations in the Second Amended Complaint

60. On November 23, 2020, Plaintiff filed its Second Amended Complaint ("SAC").

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Based on the admissions of Mr. Miao and the waivers related to the RPA and the 2nd RPA, these allegations illustrate the overall frivolous nature of this action and why Rule 11 sanctions are appropriate:

> 25. TKNR failed to disclose one or more known condition(s) that materially affect(s) the value or use of the Subject Property in an adverse manner, as required by NRS Chapter 113, in a particular NRS 113.130.
>
> * * *
>
> 27. Factual statements from the August 7, 2017 Seller Real Property Disclosure Form (SRPDF) are set forth in Paragraph 31 and the subsections thereof state whe (sic) the disclosures were either inadequate or false. The SRPDF states that it was prepared, presented and initialed by Kenny Lin.
>
> * * *
>
> 29. Since the Subject Property is a residential rental apartment, to protect tenants and consumers, the applicable local building code requires all renovation, demolition, and construction work must be done by licensed contractors with permits and inspections to ensure compliance with the Uniform Building Code [UBC].
>
> * * *
>
> 31. Defendants Lin, Investpro, as TKNR's agent, TKNR, Wong and INVESTPRO MANAGER LLC, as the true owner of the Subject Property, did not disclose any and all known conditions and aspects of the property which materially affect the value or use of residential property in an adverse manner, as itemized below.
>
> > a. SRPDF stated that Electrical System had no problems or defects. The fact is that many new electric lines were added and many old electric lines were removed by Investpro Manager LLC . The swamp coolers that were removed were supplied by 110 volt power supply lines. Investpro Manager LLC first added one 220v power supply line for one new 5 ton heat pump package unit on one roof top area for the whole building for Unit A. Unit B and Unit C. Investro (sic) Manager, LLC then removed the one year old 5 ton heat pump packaged unit from the roof top with power supply lines and added two new 220v power supply lines for two new 2 ton heart pump package units, one each for Unit B and Unit C.
> > Inestpro (sic) Manager, LLC then added one new 110 volt power supply line for two window cooling units for Unit A. The electrical system load for Unit A was increased due to the installation of two new cooling units and required 100 amp service, but the electrical service was not upgraded to 100 amp service from the existing 50 amp service. Failure to upgrade the electrical service caused the fuses to be blown out multiple times during the cooling seasons of 2018. The tenants in Unit A could not use air conditioning units in cooling seasons of 2018, causing Unit A to be uninhabitable until the Unit A electrical supply panel was upgraded to 100 amp service.
> > All the electrical supply line addition and removal work

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were performed without code required electrical load calculation, permits and inspections. To save money, minimize flipping cost, minimize flipping time, maximize flipping fund profits, Investpro Manager LLC used unlicensed and unskilled workers to do the electrical work and used low quality materials used inadequate electrical supply lines.

Further, to save money, minimize flipping cost, minimize flipping time, maximize flipping fund profits, Investpro Manager LLC used unskilled workers who did not know the UBC requirements to do the electrical work This substandard work may lead electrical lines to overheat and cause fires in the attic when tenant electrical load is high.

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

b. SRPDF stated that Plumbing System had no problems or defects

The fact is that that within two years prior to the sale to Plaintiff, Investpro Manager LLC removed and plugged swamp cooler water supply lines without UBC required permits and inspections. To save money, minimize flipping cost, minimize flipping time, and maximize flipping fund profits, Investpro Manager LLC used unlicensed and unskilled workers who just plugged high pressure water supply lines at rooftop instead of at ground level and who did not remove the water supply lines on top of the roof, inside the attic and behind the drywall. In cold winter, the high pressure water line which was left inside the building may freeze and break the copper line and lead flooding in the whole building.

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

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

Further, to save money, minimize flipping cost, minimize flipping time, and maximize flipping fund profits, Investpro Manager LLC used unlicensed and unskilled workers to completely renovate all three bathrooms in the Subject Property without UBC required permits and inspections. Some faucets and connections behind tile walls and drywall

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leak and are causing moisture conditions behind tile walls and drywalls.

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

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

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

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

Further, Investpro Manager LLC installed two electrical heat pump heating systems without UBC required permits and inspections for Unit B and Unit C. The Unit A does not have an electrical heat pump heating system nor a natural gas wall furnace heating system now. Unit A has to use portable electrical heaters.

e. SRPDF stated that the Cooling System had problems or defects

No full explanation was provided, as required. Investro (sic) Manager, LLC removed old swamp cooler systems without UBC required permits and inspections. To save money, minimize flipping cost, minimize flipping time, and maximize flipping fund profits, Investpro used unlicensed and unskilled workers to disconnect water supply lines, cover swamp cooler ducting holes, and disconnect 110V electrical supply lines.

Further, as early as March of 2016, Investro Manager, LLC hired Air Supply Cooling to install one five ton new heat pump package unit with new rooftop ducting systems on

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one roof area to supply cooling and heating air to the whole building consisting of Unit A, Unit B and Unit C without UBC required weight load and wind load calculations, permits and inspections. The five ton heat pumps package unit was too big, too heavy and had control problems. To save money, minimize flipping cost, minimize flipping time, and maximize flipping fund profits, Investpro Manager LLC also used unlicensed and unskilled workers to remove the one year old five ton heat pump package unit with ducting system without UBC required permits and inspections. All of this work was done without UBC required structural calculation, permits and inspections.

Further, in early June, 2017, Investro Manager, LLC hired The AIRTEAM to install two new two ton heat pump package units, one each for Unit B and Unit C. Invespro (sic) Manager, LLC also used unlicensed and unskilled workers to install two window cooling units in Unit A's exterior walls. All of the above work was done without UBC required permits and inspections.

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

f. SRPDF stated that Smoker detector had no problems or defects

During Plaintiff's inspection at August 10, 2017 afternoon, some smoke detectors were missing.

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

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

To saving money, minimize flipping cost, minimize flipping time, and maximize flipping fund profits, Investpro Manager LLC used unlicensed and unskilled workers to

complete renovation to all three bathrooms without UBC required permits and inspections. Some faucets and connections behind tile walls and drywall leaks and caused moisture conditions behind tile walls and drywalls.

h. SRPDF stated that there was no structure defect.
Investpro Manager LLC added one new five ton heat pump package unit with ducting systems on the one roof top area for the whole building in early March, 2016 without UBC required weight load and wind load calculation, permits and inspections. Due to the five ton heat pump package unit being too big, too heavy and having control problems to save money, minimize flipping cost, minimize flipping time, and maximize flipping fund profits, Investro (sic) Manager, LLC used unlicensed and unskilled workers to remove the one year old five ton heat pump package unit with part of the ducting system again without UBC required permits and inspections. Investpro Manager LLC added two new two ton heat pump package units on the two roof top areas for Unit B and Unit C with new ducting systems without UBC required weight load and wind loan calculation, permits and inspections.
Further, to save money, minimize flipping cost, minimize flipping time, and maximize flipping fund profits, Investpro Manager LLC used unlicensed and unskilled workers to open two new window holes on
exterior walls for two window cooling units in Unit A without UBC required structure calculation, permits and inspections. This work damaged the building structure.
Further, the moisture condition behind tile walls and drywall due to faucets leaking damaged the building structure.
Further, Investpro Manager LLC's unlicensed and unskilled workers used the space between two building support columns as a duct to vent high moisture exhaust from the washer/dryer combination unit exhaust vent from Unit A without UBC required permits and inspections and this damaged the building structure.
The recent inspection of the exterior wall found multiple cracks which indicates structural problems caused by the heavy load on the roof.

i. SRPDF marked Yes and NO for construction, modification, alterations or repairs made without required state. city or county building permits.
Defendants Lin, Investpro, as TKNR's agent, TKNR, and Wong did not provide detailed explanations. All renovation, demolition, and construction work was done by Investpro Manager LLC using unlicensed, and unskilled workers without UBC required weight load and wind load calculations, permits and inspections.

j. SRPDF stated that there were not any problems with the roof.
The roof of the Subject Property was damaged by changing

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roof top HVAC units and ducting systems multiple times from October, 2015to June, 2017. Investpro Manager LLC removed the existing swamp coolers from roof top and covered the swamp coolers ducting holes. Investpro Manager LLC added a five ton heat pump package unit with a new ducting system on one roof top area in March, 2016. Investpro the removed the one year old five ton heat pump package unit with part of the ducting system from the one roof top area in June,2017. Then Investpro Manager LLC added two two ton heat pump package units on the two roof top areas in June, 2017. The work damaged the roof of the Subject Property to such an extent that when it rains the roof leaks. All of this renovation, demolition, and construction work was done without UBC required weight load and wind load calculations, permits and inspections and this damaged the building roof structure.

k. SRPDF stated that no there were not any fungus or mold problems.

To save money, minimize flipping cost, minimize flipping time, and maximize flipping fund profits, Investpro Manager LLC vented the bathroom high moisture fans and the washer/dryer combination unit exhaust vents into the ceiling and attic without venting outside of the roof. All of this renovation, demolition, and construction work was done without UBC required permits and inspections and this damaged the building structure. After the purchase of the Subject Property, Plaintiff discovered black color fungus mold was found inside ceiling and attic.

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

i. Problems with flooring.

To save money, minimize flipping cost, minimize flipping time, and maximize flipping fund profits, Investpro Manager LLC used unlicensed and unskilled workers to lay low quality cheap ceramic tiles on the loose sandy ground rather than on a strong, smooth, concrete floor base. Within few months after tenants moving into the Subject Property, mass quantities of floor ceramic tiles cracked and the floor buckled. These cracked ceramic tiles may cut tenants' toes and create a trip and fall hazard. These are code violations had to be repaired before the units could be rented to tenants. The plaintiff has to spend lot money to replace all ceramic tile floor in Unit C with vinyl tile floor.

ii. Problems with the land/foundation.

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

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

61. As to 31(a), Mr. Miao admitted that the Seller's Disclosures disclosed issues with the heating and cooling systems, the use of a handyman, and the lack of permits. Additionally, he specified that he noted issues with the electrical system and items not up to code at the time that he did his inspection and/or that any issues with the electrical system were "open and obvious" that a reasonable, professional inspection could have discovered in 2017. Despite these issues, Plaintiff chose not to have a professional inspection. Incredibly, Mr. Miao admitted that he was the person who asked for TKNR to install the GFCI outlets, so he was clearly aware of this issue as well. Moreover, Mr. Miao specified that this was a condition that Plaintiff could have inspected at or before the time it had originally purchased the Property. Notably, Mr. Miao admitted that no evidence showed that Defendants were aware of any of these issues.

62. As to 31(b), Mr. Miao admitted that the Seller's Disclosures disclosed issues with the heating and cooling systems, the use of a handyman, the lack of permits, and issues with the sprinklers. Additionally, he specified that he noted issues with the plumbing system were "open and obvious" that a reasonable, professional inspection could have discovered in 2017. Despite these issues, Plaintiff chose not to have a professional inspection. Moreover, Mr. Miao specified that this was a condition that Plaintiff could have inspected at or before the time it had originally purchased the Property. Notably, Mr. Miao admitted that no evidence showed that Defendants were aware of any of these issues.

63. As to 31(c), Mr. Miao admitted that the Seller's Disclosures disclosed the use of a handyman, the lack of permits, and issues with the sprinklers. Additionally, he specified that he noted issues with the sewer system were "open and obvious" that a reasonable, professional inspection could have discovered in 2017. Despite these issues, Plaintiff chose not to have a professional inspection. Moreover, Mr. Miao specified that this was a condition that Plaintiff

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could have inspected at or before the time it had originally purchased the Property. Notably, Mr. Miao admitted that no evidence showed that Defendants were aware of any of these issues.

64. As to 31(d), Mr. Miao admitted that the Seller's Disclosures disclosed issues with the heating and cooling systems, the use of a handyman, and the lack of permits. Additionally, he specified that he did his inspection and/or that any issues with the heating system were "open and obvious" that a reasonable, professional inspection could have discovered in 2017. Despite these issues, Plaintiff chose not to have a professional inspection. Moreover, Mr. Miao specified that this was a condition that Plaintiff could have inspected at or before the time it had originally purchased the Property. Notably, Mr. Miao admitted that no evidence showed that Defendants were aware of any of these issues.

65. As to 31(e), Mr. Miao admitted that the Seller's Disclosures disclosed issues with the heating and cooling systems, the use of a handyman, and the lack of permits. Additionally, he specified that he noted issues with the heating and cooling system and items not up to code at the time that he did his inspection and/or that any issues with the heating and cooling system were "open and obvious" that a reasonable, professional inspection could have discovered in 2017. Despite these issues, Plaintiff chose not to have a professional inspection. Moreover, Mr. Miao specified that this was a condition that Plaintiff could have inspected at or before the time it had originally purchased the Property. Notably, Mr. Miao admitted that no evidence showed that Defendants were aware of any of these issues.

66. As to 31(f), this allegation illustrates that Plaintiff had knowledge before purchasing the Property, and the overall emphasis on the failure to obtain a professional inspection of the Property prior to purchasing it.

67. As to 31(g), (k), Mr. Miao admitted Plaintiff executed the mold and moisture waiver, and understood its affirmative duty to have an inspection done prior to the purchase of the Property. He also admitted that that the Seller's Disclosures disclosed the use of a handyman, installation of the cabinetry, bathrooms, and the lack of permits. Additionally, he specified that he personally inspected the attic and the dryer vent before Plaintiff purchased the Property. Despite these issues, Plaintiff chose not to have a professional inspection. Moreover,

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Mr. Miao specified that this was a condition that Plaintiff could have inspected at or before the time it had originally purchased the Property. Notably, Mr. Miao admitted that no evidence showed that Defendants were aware of any of these issues.

68. As to 31(h), Mr. Miao admitted that the Seller's Disclosures disclosed issues with the heating and cooling systems, the use of a handyman, and the lack of permits. Mr. Miao admitted that there was visible cracking on the foundation, walls, and the tiles that were open and obvious at the time that Plaintiff purchased the Property in 2017. Moreover, Mr. Miao specified that this was a condition that Plaintiff could have inspected at or before the time it had originally purchased the Property. Notably, Mr. Miao admitted that no evidence showed that Defendants were aware of any of these issues.

69. As to 31(i), this allegation illustrates the prior knowledge that Plaintiff had before purchasing the Property, and the overall emphasis on the failure to obtain a professional inspection of the Property prior to purchasing it. Mr. Miao admitted that he should have followed up related to the permit issue prior to Plaintiff purchasing the Property.

70. As to 31(j), Mr. Miao admitted that the Seller's Disclosures disclosed issues with the heating and cooling systems, the use of a handyman, and the lack of permits. Additionally, he specified that he noted issues were "open and obvious" that a reasonable, professional inspection could have discovered in 2017. Mr. Miao agreed that there was no noticeable sagging on the roof. Despite these issues, Plaintiff chose not to have a professional inspection. Moreover, Mr. Miao specified that this was a condition that Plaintiff could have inspected at or before the time it had originally purchased the Property. Notably, Mr. Miao admitted that no evidence showed that Defendants were aware of any of these issues.

71. As to 31(l), Mr. Miao admitted that the Seller's Disclosures disclosed issues with the heating and cooling systems, the use of a handyman, and the lack of permits. Mr. Miao admitted that there was visible cracking on the foundation, walls, and the tiles that were open and obvious at the time that Plaintiff purchased the Property in 2017. Mr. Miao noted that this condition could have been inspected at or prior to the Property's purchase. Mr. Miao acknowledged there was no evidence that Defendants were aware of these issues.

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Plaintiffs Did Not Reply on Broker Agents

72. As to the Broker Defendants, Ms. Zhu agreed that she was not relying upon any representations made by Brokers or Broker's agent. Ms. Zhu agreed to purchase the Property AS-IS, WHERE-IS, without any representations or warranties. Ms. Zhu waived all claims against Brokers or their agents for (a) defects in the Property . . . (h) factors related to Ms. Zhu's failure to conduct walk-throughs or inspections. Ms. Zhu assumed full responsibility and agreed to conduct such tests, walk-throughs, inspections and research, as she deemed necessary. In any event, Broker's liability was limited, under any and all circumstances, to the amount of that Broker's commission/fee received in the transaction.

Mr. Miao Agreed with Defendants' Expert

73. On November 17, 2020, Defendants' expert, Neil D. Opfer, an Associate Professor of Construction Management at UNLV and overqualified expert, conducted an inspection of the Property. At that time, as noted earlier, Mr. Miao walked the Property with Professor Opfer. Supplement at 320:31-25.

74. Mr. Miao agreed with Professor Opfer that the alleged conditions identified by Plaintiff's alleged expert were open and obvious:

> [n]ote that the Plaintiff could have hired an inspector or contractor to evaluate this real-estate purchase beforehand but did not. Items complained about in the Sani Report were open and obvious at the roof area, attic area, and on the exterior and interior areas of the Property.

Id. at 318:22-25-319:3-4.

75. Mr. Miao agreed with Professor Opfer that Plaintiff's expert did not conduct destructive testing, so the same alleged conditions that the expert noted would have been made by an inspector at the time of the purchase. *Id*. at 291:1-5.

76. Mr. Miao agreed with Professor Opfer that Plaintiff's expert did "not recognize prior conditions in existence before any work took place by the Defendants." *Id*. at 321:17-21 – 322:3-6.

Conclusions of Law

1. Summary judgment is appropriate when the pleadings, depositions, answers to

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interrogatories, admissions, and affidavits, if any, that are properly before the Court demonstrate that no genuine issue of material fact exist, and the moving party is entitled to judgment as a matter of law. *Pegasus v. Reno Newspapers, Inc.*, 118 Nev. 706, 713, 57 P.3d 82, 87 (2002). Substantive law controls whether factual disputes are material and will preclude summary judgment; other factual disputes are irrelevant. *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 106 S. Ct. 2505, 91 L.Ed.2d 202 (1986). A genuine issue of material fact is one where the evidence is such that a reasonable jury could return a verdict for the non-moving party. *Valley Bank v. Marble*, 105 Nev. 366, 367, 775 P.2d 1278, 1282 (1989).

2. The Nevada Supreme Court has held that the non-moving party may not defeat a motion for summary judgment by relying "on gossamer threads of whimsy, speculation and conjecture." *Wood v. Safeway*, 121 Nev. 724, 732, 121 P.3d 1026, 1031 (2005). The Nevada Supreme Court has also made it abundantly clear when a motion for summary judgment is made and supported as required by Nevada Rule of Civil Procedure 56, the non-moving party must not rest upon general allegations and conclusions, but must by affidavit or otherwise set forth specific facts demonstrating the existence of a genuine factual issue. *Id.*

3. Under Nevada Rule of Civil Procedure 56(a), a party may move for summary judgment, or partial summary judgment. "The court shall grant summary judgment if the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law." The court may rely upon the admissible evidence cited in the moving papers and may also consider other materials in the record as well. *Id*. at 56(c). "If the court does not grant all the relief requested by the motion, it may enter an order stating any material fact — including an item of damages or other relief — that is not genuinely in dispute and treating the fact as established in the case." *Id*. at 56(g).

4. The pleadings and proof offered in a Motion for Summary Judgment are construed in the light most favorable to the non-moving party. *Hoopes v. Hammargren*, 102 Nev. 425, 429, 725 P.2d 238, 241 (1986). However, the non-moving party still "bears the burden to 'do more than simply show that there is some metaphysical doubt' as to the operative facts in order to avoid summary judgment being entered." *Wood*, 121 Nev. at 732, 121 P.3d at

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1031. "To successfully defend against a summary judgment motion, 'the nonmoving party must transcend the pleadings and, by affidavit or other admissible evidence, introduce specific facts that show a genuine issue of material fact.'" *Torrealba v. Kesmetis*, 178 P.3d 716, 720 (Nev. 2008) (quoting *Cuzze v. Univ. & Cmty. Coll. Sys. of Nev.*, 172 P.3d 131, 134 (Nev. 2007).

5. The non-moving party bears the burden to set forth specific facts demonstrating the existence of a "genuine" issue for trial or have summary judgment entered against him. *Collins v. Union Federal Savings & Loan,* 99 Nev. 284, 294, 662 P.2d 610, 618-619 (1983). When there is no genuine issue of material fact and the non-moving party provides no admissible evidence to the contrary, summary judgment is "mandated." *Celotex Corp. v. Catrett*, 477 US 317, 322 (1986). When a motion for summary judgment is made and supported, an adversary party who does not set forth specific facts showing a genuine issue to be resolved at trial may have a summary judgment entered against him. *Collins v. Union Federal Sav. & Loan Ass'n*, 99 Nev. 284, 294, 662 P.2d 610, 616 (1983) (citing *Van Cleave v. Kietz-Mill Minit Mart*, 97 Nev. 414, 633 P.2d 1220 (1981); *Bird v. Casa Royale West*, 97 Nev. 67, 624 P.2d 17 (1981)).

6. "Under NRS Chapter 113, residential property sellers are required to disclose any defects to buyers within a specified time before the property is conveyed." *Nelson v. Heer*, 163 P.3d 420, 425 (Nev. 2007) (citing NRS 113.140(1)). "NRS 113.140(1), however, provides that a seller is not required to 'disclose a defect in residential property of which [she] is not aware.' A 'defect' is defined as "a condition that materially affects the value or use of residential property in an adverse manner." *Id*. (citing NRS 113.100(1)). The Nevada Supreme Court clarified that:

> [a]scribing to the term "aware" its plain meaning, we determine that the seller of residential real property does not have a duty to disclose a defect or condition that "materially affects the value or use of residential property in an adverse manner," if the seller does not realize, perceive, or have knowledge of that defect or condition. Any other interpretation of the statute would be unworkable, as it is impossible for a seller to disclose conditions in the property of which he or she has no realization, perception, or knowledge. The determination of whether a seller is aware of a defect, however, is a question of fact to be decided by the trier of fact.

Id. at 425 (citations omitted). Thus, in the context where the plaintiff cannot demonstrate an omitted disclosure that caused damage, the seller is entitled to summary judgment as a matter of

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law. *Id*. at 426.

7. Generally, "[n]ondisclosure by the seller of adverse information concerning real property . . . will not provide the basis for an action by the buyer to rescind or for damages when property is sold 'as is.' " *Mackintosh v. Jack Matthews & Co*., 109 Nev. 628, 633, 855 P.2d 549, 552 (1993). Moreover, "[l]iability for nondisclosure is generally not imposed where the buyer either knew of or could have discovered the defects prior to the purchase." *Land Baron Invs., Inc. v. Bonnie Springs Family LP*, 131 Nev. 686, 696, 356 P.3d 511, 518 (2015). The general rule foreclosing liability for nondisclosure when property is purchased as-is does not apply when the seller knows of facts materially affecting the value or desirability of the property which are known or accessible only to [the seller] and also knows that such facts are not known to, or within the reach of the diligent attention and observation of the buyer. *Mackintosh*, 109 Nev. at 633, 855 P.2d at 552 (alteration in original) (internal quotation marks omitted).

8. A buyer waives its common law claims of negligent misrepresentation, fraudulent or intentional misrepresentation, and/or unjust enrichment when it expressly agreed that it would carry the duty to inspect the property and ensure that all aspects of it were suitable prior to close of escrow, and the information was reasonably accessible to the buyer. *Frederic and Barbara Rosenberg Living Tr. v. MacDonald Highlands Realty, LLC*, 427 P.3d 104, 111 (Nev. 2018). Accordingly, the Nevada Supreme Court concluded that an agreement to purchase property as-is foreclosed the buyer's common law claims, justifying the granting of summary judgment on common law claims. *Id*. (citation omitted).

> The terms and conditions of the purchase agreement do not create a duty to disclose. Rather, these disclosures are required by NRS Chapter 113, which sets forth specific statutory duties imposed by law independent of the purchase agreement's terms and conditions. Additionally, the terms of the purchase agreement do not require [the seller] to do anything other than provide the listed disclosures.

Anderson v. Ford Ranch, LLC, 78684-COA, 2020 WL 6955438, at *5 (Nev. App. Nov. 25, 2020).

9. Nevada Revised Statute § 113.140 clearly provides that the Seller Disclosures does not constitute a warranty of the Subject Property and that the Buyer still has a duty to

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exercise reasonable care to protect himself. Nevada Revised Statute § 113.140 also provides that the Seller does not have to disclose any defect that he is unaware of. Similarly, Nevada Revised Statute § 113.130 does not require a seller to disclose a defect in residential property of which the seller is not aware. A completed disclosure form does not constitute an express or implied warranty regarding any condition of residential property. Nevada Revised Statute § 113.140(2). Chapters 113 and "645 of Nevada Revised Statutes do not relieve a buyer or prospective buyer of the duty to exercise reasonable care to protect himself or herself." *Id*. at § 113.140(2).

10. Summary Judgment is appropriate as a matter of law on all of Plaintiff's claims. It is undisputed that the alleged deficiencies were either disclosed by Defendants, could have been discovered by an inspection, were open and obvious whereby Plaintiff / Ms. Zhu / Mr. Miao had notice of them at the time Plaintiff purchased the Property, or were unknown to Defendants at the time of the sale.

11. On August 2, 2017, TKNR submitted its Seller Disclosures timely indicating all known conditions of the Subject Property. TKNR disclosed that "3 units has (sic) brand new AC installed within 3 months," and further that the "owner never resided in the property and never visited the property." Plaintiff was also aware that the minor renovations, such as painting, was conducted by the Seller's "handyman" as disclosed in the Seller's Disclosures. TNKR also disclosed that it was aware of issues with the heating and cooling systems, there was construction, modification, alterations, or repairs done without permits, and lead-based paints.

12. On August 11, 2020, through the original RPA, Ms. Zhu waived her due diligence, although she had a right to conduct inspections:

> During such Period, Buyer shall have the right to conduct, non-invasive/non-destructive inspections of all structural, roofing, mechanical, electrical, plumbing, heating/air conditioning, water/well/septic, pool/spa, survey, square footage, and any other property or systems, through licensed and bonded contractors or other qualified professionals.

13. Section II(B)(1) lists the disclosures by TKNR. Despite these disclosures, Plaintiff did not inspect the Subject Property, request additional information and/or conduct any reasonable inquires. Ms. Zhu cancelled the original RPA, Ex. E, because of an issue related to

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her financing, unrelated to the Seller's Disclosures. Notably, she included the explicit waiver of the inspections, which included her initialing the provision that she had not done in the original RPA. Ms. Zhu informed her agent to waive all inspections. Although Ms. Zhu had actual knowledge of the Seller's Disclosures from August 11, 2017, and the Parties agreed to extend the COE to January 5, 2018, Ms. Zhu still never did any professional inspections. Instead, she put down an additional $60,000 as a non-refundable deposit to the TNKR. Moreover, she also agreed to pay rent in the amount of $650 per month for one of the units, and to also pay the property manager $800 for the tenant placement fee. Through Addendum 2 to the 2nd RPA, Ms. Zhu later changed the purchaser to Plaintiff.

14. Ms. Zhu agreed that she was not relying upon any representations made by Brokers or Broker's agent. Ms. Zhu agreed to purchase the Property AS-IS, WHERE-IS, without any representations or warranties. Thus, Ms. Zhu waived all claims against Brokers or their agents for (a) defects in the Property . . . (h) factors related to Ms. Zhu's failure to conduct walk-throughs or inspections. Ms. Zhu assumed full responsibility and agreed to conduct such tests, walk-throughs, inspections and research, as she deemed necessary. In any event, Broker's liability was limited, under any and all circumstances, to the amount of that Broker's commission/fee received in the transaction.

15. As to the waivers, Paragraph 7(D) of the both the RPA and 2nd RPA expressly provided:

> *It is strongly recommended that Buyer retain licensed Nevada professionals to conduct inspections*. If any inspection is not completed and requested repairs are not delivered to Seller within the Due Diligence Period, Buyer is deemed to have waived the right to that inspection and Seller's liability for the cost of all repairs that inspection would have reasonably identified had it been conducted, except as otherwise provided by law.

Nevertheless, Ms. Zhu waived her inspection related to the original RPA and the 2nd RPA, reinforced further by actually initialing next to the waiver in the 2nd RPA. Ms. Zhu also waived the energy audit, pest inspection, roof inspection, septic lid removal inspection, mechanical inspection, soil inspection, and structural inspection. Thereby, Ms. Zhu waived any liability of

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Defendants for the cost of all repairs that inspection would have reasonably identified had it been conducted. The RPA and the 2nd RPA clearly indicated that Ms. Zhu was purchasing the Property "AS-IS, WHERE-IS without any representations or warranties."

16. Additionally, Ms. Zhu also agreed that the Brokers Defendants had "no responsibility to assist in the payment of any repair, correction or deferred maintenance on the Property which may have been revealed by the above inspections, agreed upon by the Buyer and Seller or requested by one party." Paragraph 7(D) of the RPA.

17. Since 2008, Mr. Miao, Ms. Zhu, and/or Plaintiff have been involved in the purchase of approximately twenty residential properties. In Clark County alone, Ms. Zhu and Mr. Miao were involved with the purchase of at least eight rental properties starting in 2014.

18. Mr. Miao understood the importance to check public records when conducting due diligence.

19. Plaintiff was a sophisticated buyer aware of the necessity of property inspection.

20. At all times relevant prior to the purchase of the Property, Plaintiff had access to inspect the entire property and conduct non-invasive, non-destructive inspections.

21. Prior to the purchase, Mr. Miao was aware that the Seller "strongly recommended that buyer retain licensed Nevada professionals to conduct inspections".

22. Plaintiff was also aware of the language in the RPA under Paragraph 7(D) that limited potential damages that could have been discovered by an inspection.

23. As to the RPA, Mr. Miao agreed that all the terms in it were conspicuous and understandable, and it was a standard agreement similar to the other agreements he had used in purchasing the other properties in Clark County, Nevada.

24. On or about August 10, 2017, Mr. Miao inspected Property. During that time, Mr. Miao noted issues with the Property that were not up to code, finishing issues, GFCI outlets[1], and electrical issues.

25. Mr. Miao acknowledged there was an issue with exposed electrical in Unit C as

[1] The Second Amended Complaint references GFCI at Paragraph 31(a). This illustrates the frivolous nature of the pleading since Mr. Miao requested TKNR to install these for Plaintiff.

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well as possible asbestos.

26. Mr. Miao noted that there were cracks in the ceramic floor tiles and visible cracks in the concrete foundation, which were open and obvious.

27. Mr. Miao admitted that he could also have seen the dryer vent during his inspection.

28. Mr. Miao admitted that he could have followed up on the issues identified in the SRPDF that included the HVAC and the permits.

29. Similarly, Mr. Miao should have contacted the local building department as part of his due diligence.

30. Plaintiff was also on notice of the potential for mold and the requirement to get a mold inspection.

31. Despite actual knowledge of these issues, Plaintiff did not elect to have a professional inspection done.

32. Finally, Plaintiff was also acutely aware of the requirement of Nevada law to protect itself by getting an inspection.

33. Plaintiff assumed the risk of failing to exercise reasonable care to protect itself.

34. The alleged defects identified by both parties' experts could have been discovered at the time of the original purchase as they were "open and obvious".

35. Plaintiff failed to differentiate between conditions prior to when TKNR owned the Property, while it owned it, and those afterwards.

36. No dispute exists that TKNR did not need permits for the interior work it had done to the Property.

37. Plaintiff has always been trying to lease the Property despite not doing any of the repairs listed by Plaintiff's expert. This illustrates the lack of merit of Plaintiff that there are underlying conditions with the Property.

38. Moreover, Plaintiff does not provide any notice to the tenants about its expert's report or this litigation. This illustrates the lack of merit of Plaintiff's claims and proves that it has done nothing to correct the allegedly deficient conditions that are clearly not so dangerous as

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it does not tell prospective tenants about them.

39. Mr. Miao admitted that multiple third parties could have potentially damaged the Property.

40. Plaintiff did not present any evidence related to Defendants' alleged knowledge other than his personal belief and speculation.

41. Mr. Miao admitted that he has no evidence Defendants knew about the alleged moisture conditions. Additionally, he also admitted that there is no evidence that Defendants knew about the alleged issues with the plumbing system. He also admitted that he did not know if Defendants knew about the alleged issues with the duct work when they owned the Property. He also recognized the deficiency in Plaintiff's expert's report that failed to differentiate between conditions prior to when TKNR owned the Property, while it owned it, and those afterwards.

42. Mr. Miao also recognized that a 63-year-old property could have issues that were not caused by Defendants.

43. The Flipping Fund had nothing to do with Plaintiff's decision to purchase the Property.

44. Plaintiff admittedly amplified its alleged damages by more than 6x, and then trebled the damages, and have run up egregious attorneys' fees for this frivolous action. These are undisputed facts that prove abuse of process as a matter of law given the known issues with the Property and Plaintiff's waivers related to the inspections. Plaintiff waived the inspections and purchased the property "as is". This shows that Plaintiff had no interest in having a professional inspection done. It shows the behavior of the Plaintiff related to the entire case.

45. Plaintiff was encouraged to inspect the property, and they did not do it. It was a 63-year-old property. There were specific disclosures that were made by the Seller, and Plaintiff was strongly encouraged to conduct the inspection, and they did not want to.

46. This is a 2018 case. Plaintiff has not been diligent in conducting discovery.

> Rule 56(f) is not a shield that can be raised to block a motion for summary judgment without even the slightest showing by the opposing party that his opposition is meritorious. A party invoking its protections must do so in good faith by affirmatively demonstrating why he cannot respond to a movant's affidavits as

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> otherwise required by Rule 56(e) and how postponement of a ruling on the motion will enable him, by discovery or other means, to rebut the movant's showing of the absence of a genuine issue of fact. Where, as here, a party fails to carry his burden under Rule 56(f), postponement of a ruling on a motion for summary judgment is unjustified.

See *Bakerink v. Orthopaedic Associates*, Ltd., 581 P.2d 9, 11 (Nev. 1978) (quoting *Willmar Poultry Co. v. Morton-Norwich Products*, 520 F.2d 289, 297 (8th Cir. 1975), Cert. denied, 424 U.S. 915, 96 S.Ct. 1116, 47 L.Ed.2d 320 (1975).

47. Plaintiff failed to articulate the alleged discovery that it would likely have. Additionally, Plaintiff already opposed enlarging discovery by specifying that any extension of discovery would prejudice it, indicating that it had no need for additional discovery and that Plaintiff would largely rest upon the findings of its expert. See Plaintiff's Opposition to Motion to Enlarge Discovery. Also, Plaintiff's counsel's declaration in the Opposition illustrated that he had additional discussions with Plaintiff's expert related to the MSJ, but Plaintiff's expert did not proffer any additional opinions to counter the Motion. See *Opp.* at p. 18:7-9.

48. As a matter of law, Plaintiff is precluded from seeking damages from Defendants because of her failure to inspect. "Nondisclosure by the seller of adverse information concerning real property . . . will not provide the basis for an action by the buyer to rescind or for damages when property is sold 'as is.' " *Mackintosh v. Jack Matthews & Co*., 109 Nev. 628, 633, 855 P.2d 549, 552 (1993). Moreover, "[l]iability for nondisclosure is generally not imposed where the buyer either knew of or could have discovered the defects prior to the purchase." *Land Baron Invs., Inc. v. Bonnie Springs Family LP*, 131 Nev. 686, 696, 356 P.3d 511, 518 (2015).

49. Defendants also do not have liability as Ms. Zhu / Plaintiff purchased the Property "as-is" within the reach of the diligent attention and observation of the buyer. *Mackintosh*, 109 Nev. at 633, 855 P.2d at 552. NRS § 113.140 clearly provides that the disclosures do not constitute a warranty of the Property and that the purchaser still has a duty to exercise reasonable care to protect himself. A completed disclosure form does not constitute an express or implied warranty regarding any condition of residential property. NRS § 113.140(2). Chapters 113 and "645 of Nevada Revised Statutes do not relieve a buyer or prospective buyer of the duty to exercise reasonable care to protect himself or herself." *Id*. at § 113.140(2).

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50. Plaintiff waived its common law claims of negligent misrepresentation, fraudulent or intentional misrepresentation, and/or unjust enrichment when it expressly agreed that it would carry the duty to inspect the property and ensure that all aspects of it were suitable prior to close of escrow, and the information regarding Property was reasonably accessible to the buyer. *Frederic and Barbara Rosenberg Living Tr. v. MacDonald Highlands Realty, LLC*, 427 P.3d 104, 111 (Nev. 2018).

51. Summary judgment is appropriate under NRS § 113.140(1) (seller is not required to disclose a defect in residential property of which she is not aware). Under this statute, "[a]scribing to the term 'aware' its plain meaning, . . . the seller of residential real property does not have a duty to disclose a defect or condition that 'materially affects the value or use of residential property in an adverse manner,' if the seller does not realize, perceive, or have knowledge of that defect or condition." *Nelson v. Heer*, 163 P.3d 420, 425 (Nev. 2007). Thus, as Plaintiff cannot demonstrate an omitted disclosure that caused damage, Defendants are entitled to summary judgment as a matter of law. *Id*. at 426.

52. Under NRS § 113.140(1) (seller is not required to disclose a defect in residential property of which she is not aware), *Nelson v. Heer*, 163 P.3d 420, 425 (Nev. 2007), and NRS § 645.259(2), Defendants are entitled to Summary Judgment on Plaintiff's claims for (1) Recovery Under NRS Chapter 113, (2) Constructive Fraud, (3) Common Law Fraud, (4) Fraudulent Inducement, (5) Fraudulent Concealment, (6) Breach Of Fiduciary Duty, (8) Damages Under NRS 645.257(1), (9) Failure To Supervise, Inadequate training and Education, (12) Civil Conspiracy, (13) Breach Of Contract, and (14) Breach Of Implied Covenant of Good Faith and Fair Dealing]. It also eliminates the causes of action for (7) RICO, (10) Fraudulent Conveyance, (11) Fraudulent Conveyance, and (15) Abuse of Process since they have no basis in fact or law.

53. Eighth Judicial District Court Rule 2.20(e) provides that, "[f]ailure of the opposing party to serve and file written opposition may be construed as an admission that the motion and/or joinder is meritorious and a consent to granting the same." Simply filing an opposition does not relieve a party of its duty to actually oppose the issues raised in the motion. See *Benjamin v. Frias Transportation Mgt. Sys., Inc*., 433 P.3d 1257 (Nev. 2019) (unpublished

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disposition).

54. The Opposition failed to address the Motion's arguments related to summary judgment in favor of Defendants on Plaintiff's claims for: (7) RICO; (10) Fraudulent Conveyance; (11) Fraudulent Conveyance; (12) Civil Conspiracy; and (15) Abuse of Process. Additionally, Plaintiff fails to provide any meaningful or competent opposition to the Motion's argument for summary judgment as to Plaintiff's claims against the Broker Defendants. As there is no Opposition provided to those arguments made in the Motion, this court should find that those arguments are meritorious and grant the request as to those unopposed issues.

55. Pursuant to Nevada Rule of Civil Procedure 11(b), by presenting to the court a pleading or other paper, an attorney or unrepresented party certifies: (1) it is not being presented for any improper purpose, such as to harass, cause unnecessary delay, or needlessly increase the cost of litigation, (2) the claims and other legal contentions are warranted by existing law or by a nonfrivolous argument for extending, modifying, or reversing existing law or for establishing new law, (3) the factual contentions have evidentiary support, and (4) the denials of factual contentions are warranted on the evidence or.

56. "If, after notice and a reasonable opportunity to respond, the court determines that Rule 11(b) has been violated, the court may impose an appropriate sanction on any attorney, law firm, or party that violated the rule or is responsible for the violation. Absent exceptional circumstances, a law firm must be held jointly responsible for a violation committed by its partner, associate, or employee." NEV. R. CIV. PRO. 11(c).

57. "On its own, the court may order an attorney, law firm, or party to show cause why conduct specifically described in the order has not violated Rule 11(b)." *Id*. at 11(c)(3). "A sanction imposed under this rule must be limited to what suffices to deter repetition of the conduct or comparable conduct by others similarly situated. The sanction may include nonmonetary directives; an order to pay a penalty into court; or, if imposed on motion and warranted for effective deterrence, an order directing payment to the movant of part or all of the reasonable attorney fees and other expenses directly resulting from the violation." *Id*. at 11(c)(4).

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58. Rule 11 prevents a party from bringing a lawsuit for an improper purpose, which includes: (1) harassment, causing unnecessary delay, or needless increasing the cost of litigation; or (2) making frivolous claims. NEV. R. CIV. PRO. 11(b)(1)-(2). Rule 11 sanctions should be imposed for frivolous actions. *Marshall v. District Court*, 108 Nev. 459, 465, 836 P.2d 47, 52.

59. A frivolous claim is one that is "both baseless and made without a reasonable and competent inquiry." *Bergmann v. Boyce*, 109 Nev. 670, 676, 856 P.2d 560, 564 (1993) (quoting *Townsend v. Holman Consulting Corp.*, 929 F.2d 1358, 1362 (9th Cir.1990); *Golden Eagle Distrib. Corp. v. Burroughs Corp.*, 801 F.2d 1531, 1537 (9th Cir.1986)). A determination of whether a claim is frivolous involves a two-pronged analysis: (1) the court must determine whether the pleading is "well grounded in fact and is warranted by existing law or a good faith argument for the extension, modification or reversal of existing law"; and (2) whether the attorney made a reasonable and competent inquiry. *Bergmann*, 109 Nev. at 676, 856 P.2d at 564. A sanction imposed for violation of Rule 11 shall be limited to what is sufficient to deter repetition of such conduct or comparable conduct by others similarly situated. *Id.* at 11(c)(2).

60. Furthermore, a court may award attorneys' fees to a prevailing party when it finds that the claim was brought or maintained without reasonable ground or to harass the prevailing party. NEV. REV. STAT. § 18.010(2)(b). In other cases, a court may award attorneys' fees "when it finds that the opposing party brought or maintained a claim without reasonable grounds." *Rodriguez v. Primadonna Co., LLC*, 216 P.3d 793, 800 (Nev. 2009). "The court shall liberally construe the provisions of this paragraph in favor of awarding attorney's fees in all appropriate situations." *Id.* The Nevada Legislature explained that:

> [i]t is the intent of the Legislature that the court award attorney's fees pursuant to this paragraph and impose sanctions pursuant to Rule 11 of the Nevada Rules of Civil Procedure in all appropriate situations to punish for and deter frivolous or vexatious claims and defenses because such claims and defenses overburden limited judicial resources, hinder the timely resolution of meritorious claims and increase the costs of engaging in business and providing professional services to the public.

Id. "A claim is groundless if 'the allegations in the complaint . . . are not supported by any credible evidence at trial.'" *Barozzi v. Benna*, 112 Nev. 635, 639, 918 P.2d 301, 303 (1996)

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(quoting *Western United Realty, Inc. v. Isaacs*, 679 P.2d 1063, 1069 (Colo.1984)).

77. The overwhelming facts and law illustrate that Plaintiff's claim is frivolous. The findings of fact are incorporated by reference.

78. Plaintiff's claim is clearly frivolous: (1) where the pleading was not "well grounded in fact and is warranted by existing law or a good faith argument for the extension, modification or reversal of existing law", and (2) Plaintiff's attorney continued to make frivolous claims. *Bergmann*, 109 Nev. at 676, 856 P.2d at 564. Sanctions are warranted against Plaintiff and its counsel, which includes an award attorneys' fees to Defendants.

79. Alternatively, the elements of an abuse of process claim are: "(1) an ulterior purpose by the defendants 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). Abuse of process can arise from both civil and criminal proceedings. *LaMantia v. Redisi*, 118 Nev. 27, 30, 38 P.3d 877, 879 (2002). Malice, want of probable cause, and termination in favor of the person initiating or instituting proceedings are not necessary elements for a prima facie abuse of process claim. *Nevada Credit Rating Bur. v. Williams*, 88 Nev. 601, 606, 503 P.2d 9, 12 (1972); Restatement (Second) of Torts § 682 cmt. a (1977). The mere filing of a complaint is insufficient to establish the tort of abuse of process. *Laxalt v. McClatchy*, 622 F. Supp. 737, 751 (1985).

80. Under either Rule 11, Plaintiff brought and maintained this action without reasonable ground. NEV. REV. STAT. § 18.010(2)(b). The overwhelming facts and law illustrate that Plaintiff brought or maintained this claim without reasonable grounds, which justifies an award of attorneys' fees. *Rodriguez v. Primadonna Co., LLC*, 216 P.3d 793, 800 (Nev. 2009).

81. The court intends to award to the Defendants the reasonable expenses, including attorneys' fees and costs, incurred for defending this lawsuit under Rule 11. This sanction is limited to what suffices to deter repetition of the conduct or comparable conduct by others similarly situated.

Based on the foregoing, the Court GRANTS Defendants Motion, DENIES the Counterclaim, and GRANTS attorneys' fees and costs to Defendants pursuant to Nevada Rule of

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Civil Procedure 11.

IT IS HEREBY ORDERED, ADJUDICATED, AND DECREED that the Motion is **GRANTED**.

IT IS FURTHER ORDERED, ADJUDICATED, AND DECREED that the Countermotion, including the 56(f) Countermotion, is **DENIED**. This is a 2018 case. Discovery ended October 30, 2020. This Court will not agree to enlarge discovery.

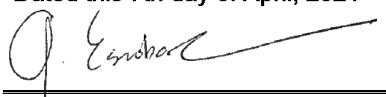
IT IS FURTHER ORDERED, ADJUDICATED, AND DECREED that Defendants are awarded attorneys' fees and costs pursuant to Rule 11. Defendants may file an affidavit in support of requested attorney's fees and costs within 10 days of the entry of Order.

IT IS FURTHER ORDERED, ADJUDICATED, AND DECREED that this is a final order related to the claims and counterclaim. This Court directs entry of a final judgment of all claims.

IT IS FURTHER ORDERED, ADJUDICATED, AND DECREED that any outstanding or pending discovery is quashed as moot.

IT IS FURTHER ORDERED, ADJUDICATED, AND DECREED that any trial dates and/or calendar calls are vacated as moot.

Dated this 7th day of April, 2021



THE HON. ADRIANA ESCOBAR
DISTRICT COURT JUDGE

158 436 3E2D 40F2
Adriana Escobar
District Court Judge

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CSERV

DISTRICT COURT
CLARK COUNTY, NEVADA

W L A B Investment LLC, Plaintiff(s) vs. TKNR Inc, Defendant(s)	CASE NO: A-18-785917-C DEPT. NO. Department 14

AUTOMATED CERTIFICATE OF SERVICE

This automated certificate of service was generated by the Eighth Judicial District Court. The foregoing Amended 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:

Service Date: 4/7/2021

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If indicated below, a copy of the above mentioned filings were also served by mail via United States Postal Service, postage prepaid, to the parties listed below at their last known addresses on 4/8/2021

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IN THE EIGHTH JUDICIAL DISTRICT COURT

CLARK COUNTY, NEVADA

W L A B INVESTMENT, LLC,

Plaintiff,

vs.

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.

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

DEFENDANTS' OPPOSITION TO PLAINTIFF'S MOTION FOR RECONSIDERATION

Defendants TKNR INC. ("TKNR"), CHI ON WONG ("WONG"), KENNY ZHONG LIN ("LIN"), LIWE HELEN CHEN ("CHEN"), YAN QIU ZHANG ("ZHANG"), INVESTPRO LLC ("INVESTPRO"), MAN CHAU CHENG ("CHENG"), JOYCE A. NICKRANDT ("NICKRANDT"), INVESTPRO INVESTMENTS, LLC ("Investments"), and INVESTPRO MANAGER LLC (hereinafter collectively referred to as the "Defendants"), by and through their

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counsel of record, Michael B. Lee, P.C., hereby files this Opposition ("Opposition") to Plaintiff's Motion to Reconsider ("Motion"). This Opposition is made on the following Memorandum of Points and Authorities, any affidavits, declarations or exhibits attached hereto, and any oral arguments accepted at the time of the hearing of this matter. Plaintiff W L A B INVESTMENT, LLC is hereinafter referred to as "Plaintiff" or "WLAB".

MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

A. Overview

The Motion should be denied for both procedural and factual concerns. First, the Motion was filed 16 days after the Notice of Entry of Order Granting Defendants' Motion for Summary Judgment, which is untimely pursuant to Eighth Judicial District Court Rule ("EDCR") § 2.24(b) and must not be considered. Second, Plaintiff has filed a notice of appeal in this matter, divesting the district court of jurisdiction in this matter. Finally, the Motion relies entirely on Mr. Miao's affidavit to contradict or refute the facts he admitted to in his own deposition testimony, which is inappropriate and eviscerates the purpose of summary judgment.

To the extent, the Motion argues that exhibits should have been authenticated, that is nothing more than harmless error, which Defendants have corrected through the Declaration of Mr. Kenny Lin. Additionally, the argument lacks merit as Plaintiffs disclosed some of the documents that they argue were not authenticated.

B. Statement of Facts

The following facts are taken from the "Findings of Fact" portion of the Order Granting Defendants' Motion for Summary Judgment, or in the alternative, Partial Summary Judgment ("Order"); however, for length and clarity, the citations to Mr. Miao's deposition have been removed from the below recitation.

1. *First Residential Purchase Agreement and Waiver of Inspections, Contractual Broker Limitations*

The Property (defining as 2132 Houston Drive, Las Vegas, NV 89104) was originally constructed in 1954. On or about August 11, 2017, Marie Zhu ("Zhu"), the original purchaser,

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executed a residential purchase agreement ("RPA") for the Property. See Order at ¶ 1. At all times relevant, Ms. Zhu and Mr. Miao, the managing member of Plaintiff, were sophisticated buyers related to "property management, property acquisition, and property maintenance." *Id.* The purchase price for the property was $200,000. *Id.*

Through the RPA, Ms. Zhu waived her due diligence, although she had a right to conduct inspections:

> During such Period, Buyer shall have the right to conduct, non-invasive/non-destructive inspections of all structural, roofing, mechanical, electrical, plumbing, heating/air conditioning, water/well/septic, pool/spa, survey, square footage, and any other property or systems, through licensed and bonded contractors or other qualified professionals.

Id. at ¶ 2.

Ms. Zhu did not cancel the contract related to any issues with the Property. *Id.* at ¶ 3. Under Paragraph 7(C) of the RPA, Ms. Zhu waived the Due Diligence condition. *Id.* at 4. Under Paragraph 7(D) of the RPA, it provided:

> *It is strongly recommended that Buyer retain licensed Nevada professionals to conduct inspections*. If any inspection is not completed and requested repairs are not delivered to Seller within the Due Diligence Period, Buyer is deemed to have waived the right to that inspection and Seller's liability for the cost of all repairs that inspection would have reasonably identified had it been conducted, except as otherwise provided by law.

Id.

Ms. Zhu waived any liability of Defendants for the cost of all repairs that inspection would have reasonably identified had it been conducted. *Id.* at ¶ 5. Ms. Zhu also waived the energy audit, pest inspection, roof inspection, septic lid removal inspection, mechanical inspection, soil inspection, and structural inspection. *Id.*

Under Paragraph 7(F), it was Ms. Zhu's responsibility to inspect the Property sufficiently as to satisfy her use. *Id.* at ¶ 6. Additionally, Wong, Lin, Chen, Zhang, Cheng, and Nickrandt (collectively, "Brokers" or "Broker Defendants") had "no responsibility to assist in the payment of any repair, correction or deferred maintenance on the Property which may have been revealed by the above inspections, agreed upon by the Buyer and Seller or requested by one party." *Id.*

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On August 2, 2017, TKNR submitted its Seller Disclosures timely indicating all known conditions of the Subject Property. Plaintiff's Disclosure. *Id.* at ¶ 7. In fact, TKNR disclosed that "3 units has (sic) brand new AC installed within 3 months," and further that the "owner never resided in the property and never visited the property." *Id.* It also disclosed that the minor renovations, such as painting, was conducted by the Seller's "handyman" as disclosed in the Seller's Disclosures. *Id.* Seller also disclosed that it had done construction, modification, alterations, or repairs without permits. *Id*. Despite these disclosures, Plaintiff chose not to have a professional inspect the Subject Property, request additional information and/or conduct any reasonable inquires. *Id.*

2. *Second Residential Purchase Agreement and Waiver of Inspections, Contractual Broker Limitations*

On or before September 5, 2017, Ms. Zhu had issues related to the financing for the Property because of an appraisal. Chen-Ms. Zhu email. As such, Ms. Chen confirmed that Ms. Zhu would do a new purchase agreement, and would agree to pay the difference in an appraisal with a lower value than the purchase price, and waive inspections:

> Please note that seller agree the rest of terms and request to add the below term on the contract:
> "Buyer agree to pay the difference in cash if appraisal come in lower than purchase price, not to exceed purchase price of $200k"
> I just send you the docs, please review and sign if you are agree. Thank you!
> **(Per buyer's request will waive licensed home inspector to do the home inspection)**

Id. at ¶ 8.

On the same day, Ms. Zhu and TKNR agreed to Addendum No. 1 to cancel the RPA dated August 11, 2017, Addendum No. 1, and entered into a new Residential Purchase Agreement dated September 5, 2017 ("2nd RPA"). *Id.* at ¶ 9. As before, the overall purchase price for the Property was $200,000, but Ms. Zhu changed the contingency for the loan to $150,000 with earnest money deposit of $500 and a balance of $49,500 owed at the close of escrow ("COE" or "Closing"). *Id*. The COE was set for September 22, 2017. *Id*.

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Notably, although Ms. Zhu had not initialed the "Failure to Cancel or Resolve Objections" provision in the RPA, she initialed the corresponding provision in the 2nd RPA. *Id.* at ¶ 10. This was consistent with Ms. Zhu's instructions to Ms. Chen. *Id*. This is the second time that Ms. Zhu waived inspections for the Property despite the language in the 2nd RPA that strongly advised to get an inspection done. *Id.*

As noted, Ms. Zhu waived any inspections related to the purchase of the Property in the 2nd RPA. *Id*. at ¶ 11. Although Ms. Zhu had actual knowledge of the Seller's Disclosures, and the Parties agreed to extend the COE to January 5, 2018, Ms. Zhu still never did any professional inspections. *Id.* Instead, she put down an additional $60,000 as a non-refundable deposit to the TNKR. *Id*. Moreover, she also agreed to pay rent in the amount of $650 per month for one of the units, and to also pay the property manager $800 for the tenant placement fee. *Id*. Through Addendum 2 to the 2nd RPA, Ms. Zhu later changed the purchaser to Plaintiff. *Id*.

3. *Deposition of Plaintiff's Person Most Knowledgeable – Mr. Miao*

Since 2008, Mr. Miao, Ms. Zhu, and/or Plaintiff have been involved in the purchase of approximately twenty properties. *Id.* at ¶ 12. In Clark County alone, Ms. Zhu and Mr. Miao were involved with the purchase of at least eight rental properties starting in 2014. *Id.* Plaintiff understands the importance of reading contracts. *Id.* at ¶ 13. Mr. Miao specified that he understands the needs to check public records when conducting his due diligence. *Id.* at ¶ 14. Plaintiff was a sophisticated buyer who understands the necessity of getting properties inspected. *Id.* at ¶ 15.

4. *Requirement to Inspect was Known*

The terms of the RPA were clear to Plaintiff. *Id.* at ¶ 16. As to Paragraph 7(A), Mr. Miao specified that he believed that his inspection and conversations with the tenant constituted the actions necessary to deem the Property as satisfactory for Plaintiff's purchase. *Id.* at ¶ 17. At all times relevant prior to the purchase of the Property, Plaintiff had access to inspect the entire property and conduct non-invasive, non-destructive inspections. *Id.* at ¶ 18. Prior to the purchase, Mr. Miao was always aware that the Seller "strongly recommended that buyer retain licensed Nevada professionals to conduct inspections". *Id.* at ¶ 19. Plaintiff was also aware of

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the language in the RPA under Paragraph 7(D) that limited potential damages that could have been discovered by an inspection. *Id.* at ¶ 20. Finally, as to the RPA, Mr. Miao agreed that all the terms in it were conspicuous and understandable, and it was a standard agreement similar to the other agreements he had used in purchasing the other properties in Clark County, Nevada. *Id.* at ¶ 21.

5. *Mr. Miao does Inspections for Plaintiff Although he is not a Licensed, Bonded Professional Inspector*

As to all the properties purchased by Plaintiff, Mr. Miao always does the inspections and does not believe a professional inspection is necessary. *Id.* at 22. Based on his own belief, he does not believe that a professional inspection is necessary for multi-tenant residential properties. *Id.* Notably, he does not have any professional license related to being a general contractor, inspector, appraiser, or project manager. *Id.* at ¶ 23. Mr. Miao has never hired a professional inspector in Clark County, so he does not actually know what a professional inspection would encompass here. *Id.* at ¶ 24. The main reason Plaintiff does not use a professional inspector is because of the cost. *Id.* at ¶ 25.

On or about August 10, 2017, Mr. Miao did an inspection of the Property. *Id.* at ¶ 26. During that time, he admitted that he noticed some issues with the Property that were not up to code, finishing issues, GFCI outlets, and electrical issues. *Id.* Similarly, he also specified that there was an issue with exposed electrical in Unit C. *Id.* at ¶ 27. He also noted that there could have been a potential asbestos issue as well. *Id.* Additionally, Mr. Miao noted that there were cracks in the ceramic floor tiles, and he was aware of visible cracks in the concrete foundation, which were open and obvious. *Id.* at ¶ 28. Mr. Miao also admitted that he could also have seen the dryer vent during his inspection. *Id.* at ¶ 29. As to those issues, Mr. Miao determined that they were the only issues that TKNR needed to fix after his inspection. *Id.* at ¶ 30.

Moreover, Mr. Miao received the SRPDF prior to the purchase of the Property. *Id.* at ¶ 31. As to SRPDF, Plaintiff was aware that TKNR was an investor who had not resided in the Property, and there were issues with the heating systems, cooling systems, and that there was work done without permits. *Id.* at 31. Similarly, it was aware that the Property was 63 years old

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at that time and all the work was done by a handyman other than the HVAC installation. *Id*. at ¶ 31. Despite these disclosures, Mr. Miao never followed up. *Id.* at ¶ 32. However, Mr. Miao also admitted that he could have followed up on the issues identified in the SRPDF that included the HVAC and the permits. *Id.* at ¶ 33. Similarly, Mr. Miao was aware that he should have contacted the local building department as part of his due diligence. *Id.* at ¶ 34.

Plaintiff was also on notice of the potential for mold and the requirement to get a mold inspection. *Id.* at ¶ 35. Despite actual knowledge of these issues, Plaintiff did not elect to have a professional inspection done. *Id.* at ¶ 36. Finally, Plaintiff was also acutely aware of the requirement of Nevada law to protect itself by getting an inspection. *Id.* at ¶ 37. Ultimately, Plaintiff assumed the risk of failing to exercise reasonable care to protect itself. *Id.* at ¶ 38.

6. *No Dispute a Professional Inspection Could Have Revealed the Alleged Issues*

The alleged defects identified by both parties' experts could have been discovered at the time of the original purchase. As to the ability to inspect, Mr. Miao admitted that he had access to the entire building. *Id*. at ¶ 39. He had access to the attic and looked at it. *Id*. Mr. Miao admitted that Plaintiff's expert examined the same areas that he did. *Id.* Notably, Plaintiff's expert did not do any destructive testing, so the expert's access was exactly the same as Mr. Miao's original inspection. *Id.* at ¶ 40. Mr. Miao admitted that Plaintiff's expert's inspection of the HVAC and the plumbing system would have been the same as his in 2017. *Id.* at ¶ 41. Mr. Miao also admitted that the pictures attached to Plaintiff's expert report were areas that he could have inspected in 2017. *Id.* at ¶ 42.

Additionally, Mr. Miao accompanied Defendants' expert during his inspection. *Id.* at ¶ 43. As before, Mr. Miao had the same access to the Property in 2017 for the areas inspected by Defendants' expert. *Id*. Mr. Miao agreed with Defendants' expert that the alleged conditions identified by Plaintiff's expert were "open and obvious." *Id.* at ¶ 44. He also agreed with Defendants' expert's finding that there was no noticeable sagging in the roof. *Id.* at ¶ 45. Incredibly, Mr. Miao also recognized the deficiency in Plaintiff's expert's report that failed to differentiate between conditions prior to when TKNR owned the Property, while it owned it, and

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those afterwards. *Id.* at ¶ 46. This would have also included any issues with the dryer vent and ducts, as he recognized that most rentals do not include washer / dryer units. *Id.*

7. *No Permits Required for Cosmetic Work by TKNR*

No dispute exists that TKNR did not need permits for the interior work it had done to the Property. *Id.* at ¶ 47. Mr. Miao admitted no permits are required for: painting, papering, tiling, carpeting, cabinets, countertops, interior wall, floor or ceiling covering, and similar finish work. *Id.* Also, no permit was needed for: window replacement without structural change or alteration, replace or repair the sink, faucet, countertops, shower walls, shower heads, rain gutters and down spouts, regrouting tile, a hose bib, portable heating appliances, portable ventilation appliances, portable cooling units, and/or portable evaporative coolers installed in windows. *Id.*

8. *Plaintiff does not Disclose Alleged Issues to Potential Tenants*

Since the date it purchased the Property, Plaintiff has always been trying to lease it. *Id.* at ¶ 48. According to Mr. Miao, the landlord must provide safe housing for the tenant. *Id.* However, they have not done any of the repairs listed by Plaintiff's expert. *Id*. This illustrates the lack of merit of Plaintiff that there are underlying conditions with the Property. *Id.* Moreover, Plaintiff does not provide any notice to the tenants about its expert's report or this litigation. *Id.* at ¶ 49. This illustrates the lack of merit of Plaintiff's claims, proven that it has done nothing to correct the allegedly deficient conditions that are clearly not so dangerous as it does not tell prospective tenants about them. *Id.* at ¶ 50.

9. *Squatters or Tenants could have Damaged the Property*

Mr. Miao admitted that multiple third parties could have potentially damaged the Property. *Id.* at ¶ 51. The Property has a historic problem with squatters during the time that Plaintiff owned it. *Id.* He also admitted that tenants could have damaged the Property while they were occupying it. *Id.* This could also account for the cracking on the walls. *Id.* Tenants could have also damaged the Property if they hit it with their cars. *Id.*

10. *No Evidence that Defendants Knew of Alleged Conditions*

Plaintiff's case is based on speculation that Defendants knew about the alleged conditions in the Property; however, Mr. Miao admitted that there is no evidence that shows Defendants

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knew about them. *Id*. at ¶ 52. The entire case is based on Mr. Miao's personal belief and speculation. *Id.* at ¶ 53. Mr. Miao admitted that he has no evidence Defendants knew about the alleged moisture conditions. *Id.* at ¶ 54. Additionally, he also admitted that there is no evidence that Defendants knew about the alleged issues with the plumbing system. *Id.* He also admitted that he did not know if Defendants knew about the alleged issues with the duct work when they owned the Property. *Id.* He also recognized the deficiency in Plaintiff's expert's report that failed to differentiate between conditions prior to when TKNR owned the Property, while it owned it, and those afterwards. *Id*.

Mr. Miao also recognized that a 63-year-old property could have issues that were not caused by Defendants. *Id*. at ¶ 55. This would have also included any issues with the dryer vent and ducts, and when the duct became disconnected. *Id.* Plaintiff did not identify any discovery illustrating a genuine issue of material fact that Defendants knew of the alleged issues with the Property that they had not already disclosed on Seller's Disclosures. *Id.* at ¶ 56. Notably, during Mr. Miao's due diligence period, he spoke with the tenants of the Property. *Id.* at ¶ 57. This included a conversation with the long-term tenant of Unit A, who still resides in the Property to this day. *Id.* At that time, the tenant reported being very happy with the Property and had no complaints. *Id.* In fact, the tenant reported still being very happy with the Property. *Id*. This illustrates that there is no basis that Defendants should have been aware of any of the issues when Mr. Miao, a self-professed expert, did not even know about them following his inspection. *Id.*

11. *No Basis for RICO and/or Related to Flipping Fund*

The Flipping Fund had nothing to do with Plaintiff's decision to purchase the Property. *Id.* at ¶ 58. He also admitted that he never received any pro forma, private placement information, calculations of profit and loss, capital contribution requirements, member share or units, or any such information about the Flipping Fund. *Id*.

12. *Plaintiff Admitted it Inflated its Cost of Repair*

Initially, Mr. Miao contacted contractors to bid the potential cost of repair for the Property and determined that it would have been $102,873.00. Id. at ¶ 59. However, Plaintiff's

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expert opined that the cost of repair would have been $600,000, although he did not provide an itemized cost of repair. *Id.* This illustrates that the bad faith purposes of this lawsuit were to simply harass Defendants. *Id.* Mr. Miao perjured himself in his Declaration in support of the Opposition. *Id.* at ¶ 60. He denied, under the penalty of perjury, that he never made an offer to settle this matter for $10,000. *Id.* However, during his deposition he admitted that he did make this offer. *Id*. As noted in the Motion, this illustrates the overall bad faith of the litigation where Plaintiff admittedly amplified its alleged damages by more than 6x, and then trebled the damages, and have run up egregious attorneys' fees for this frivolous action. *Id.* These are undisputed facts that prove abuse of process as a matter of law. *Id.*

13. *Allegation in the Second Amended Complaint*

On November 23, 2020, Plaintiff filed its Second Amended Complaint ("SAC"). *Id.* at ¶ 61. Based on the admissions of Mr. Miao and the waivers related to the RPA and the 2nd RPA, these allegations illustrate the overall frivolous nature of this action and why Rule 11 sanctions are appropriate. *Id.*

As to paragraph 31(a) of the SAC, Mr. Miao admitted that the Seller's Disclosures did disclose issues with the heating and cooling systems, the use of a handyman, and the lack of permits. *Id.* at ¶ 62. Additionally, he specified that he noted issues with the electrical system and items not up to code at the time that he did his inspection and/or that any issues with the electrical system were "open and obvious" that a reasonable, professional inspection could have discovered in 2017. *Id.* Despite these issues, Plaintiff chose not to have a professional inspection. *Id.* Incredibly, Mr. Miao admitted that he was the person who asked for TKNR to install the GFCI outlets, so he was clearly aware of this issue as well. *Id.* Moreover, Mr. Miao specified that this was a condition that Plaintiff could have inspected at or before the time it had originally purchased the Property. *Id.* Notably, Mr. Miao admitted that no evidence showed that Defendants were aware of any of these issues. *Id.*

As to 31(b), Mr. Miao admitted that the Seller's Disclosures did disclose issues with the heating and cooling systems, the use of a handyman, the lack of permits, and issues with the sprinklers. *Id.* at ¶ 63. Additionally, he specified that he noted issues with the plumbing system

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were "open and obvious" that a reasonable, professional inspection could have discovered in 2017. *Id.* Despite these issues, Plaintiff chose not to have a professional inspection. *Id.* Moreover, Mr. Miao specified that this was a condition that Plaintiff could have inspected at or before the time it had originally purchased the Property. *Id.* Notably, Mr. Miao admitted that no evidence showed that Defendants were aware of any of these issues. *Id.*

As to 31(c), Mr. Miao admitted that the Seller's Disclosures did disclose the use of a handyman, the lack of permits, and issues with the sprinklers. *Id.* at ¶ 64. Additionally, he specified that he noted issues with the sewer system were "open and obvious" that a reasonable, professional inspection could have discovered in 2017. *Id.* Despite these issues, Plaintiff chose not to have a professional inspection. *Id.* Moreover, Mr. Miao specified that this was a condition that Plaintiff could have inspected at or before the time it had originally purchased the Property. *Id.* Notably, Mr. Miao admitted that no evidence showed that Defendants were aware of any of these issues. *Id.*

As to 31(d), Mr. Miao admitted that the Seller's Disclosures did disclose issues with the heating and cooling systems, the use of a handyman, and the lack of permits. *Id.* at ¶ 65. Additionally, he specified that he did his inspection and/or that any issues with the heating system were "open and obvious" that a reasonable, professional inspection could have discovered in 2017. *Id.* Despite these issues, Plaintiff chose not to have a professional inspection. *Id.* Moreover, Mr. Miao specified that this was a condition that Plaintiff could have inspected at or before the time it had originally purchased the Property. *Id.* Notably, Mr. Miao admitted that no evidence showed that Defendants were aware of any of these issues. *Id.*

As to 31(e), Mr. Miao admitted that the Seller's Disclosures did disclose issues with the heating and cooling systems, the use of a handyman, and the lack of permits. *Id.* at ¶ 66. Additionally, he specified that he noted issues with the heating and cooling system and items not up to code at the time that he did his inspection and/or that any issues with the heating and cooling system were "open and obvious" that a reasonable, professional inspection could have discovered in 2017. *Id.* Despite these issues, Plaintiff chose not to have a professional inspection. *Id.* Moreover, Mr. Miao specified that this was a condition that Plaintiff could have

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inspected at or before the time it had originally purchased the Property. *Id.* Notably, Mr. Miao admitted that no evidence showed that Defendants were aware of any of these issues. *Id.*

As to 31(f), this allegation illustrates the prior knowledge that Plaintiff had before purchasing the Property, and the overall emphasis on the failure to obtain a professional inspection of the Property prior to purchasing it. *Id.* at ¶ 67.

As to 31(g), (k), Mr. Miao admitted Plaintiff executed the mold and moisture waiver, and understood its affirmative duty to have an inspection done prior to the purchase of the Property. *Id.* at ¶ 68. He also admitted that that the Seller's Disclosures did disclose the use of a handyman, installation of the cabinetry, bathrooms, and the lack of permits. *Id.* Additionally, he specified that he personally inspected the attic and the dryer vent before Plaintiff purchased the Property. *Id.* Despite these issues, Plaintiff chose not to have a professional inspection. *Id.* Moreover, Mr. Miao specified that this was a condition that Plaintiff could have inspected at or before the time it had originally purchased the Property. *Id.* Notably, Mr. Miao admitted that no evidence showed that Defendants were aware of any of these issues. *Id.*

As to 31(h), Mr. Miao admitted that the Seller's Disclosures did disclose issues with the heating and cooling systems, the use of a handyman, and the lack of permits. *Id.* at ¶ 69. Mr. Miao admitted that there was visible cracking on the foundation, walls, and the tiles that were open and obvious at the time that Plaintiff purchased the Property in 2017. *Id.* Moreover, Mr. Miao specified that this was a condition that Plaintiff could have inspected at or before the time it had originally purchased the Property. *Id.* Notably, Mr. Miao admitted that no evidence showed that Defendants were aware of any of these issues. *Id.*

As to 31(i), this allegation illustrates the prior knowledge that Plaintiff had before purchasing the Property, and the overall emphasis on the failure to obtain a professional inspection of the Property prior to purchasing it. Mr. Miao admitted that he should have followed up related to the permit issue prior to Plaintiff purchasing the Property. *Id.* at 70.

As to 31(j), Mr. Miao admitted that the Seller's Disclosures did disclose issues with the heating and cooling systems, the use of a handyman, and the lack of permits. *Id.* at ¶ 71. Additionally, he specified that he noted issues were "open and obvious" that a reasonable,

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professional inspection could have discovered in 2017. *Id.* Mr. Miao agreed that there was no noticeable sagging on the roof. *Id.* Despite these issues, Plaintiff chose not to have a professional inspection. *Id.* Moreover, Mr. Miao specified that this was a condition that Plaintiff could have inspected at or before the time it had originally purchased the Property. *Id.* Notably, Mr. Miao admitted that no evidence showed that Defendants were aware of any of these issues. *Id.*

As to 31(l), Mr. Miao admitted that the Seller's Disclosures did disclose issues with the heating and cooling systems, the use of a handyman, and the lack of permits. *Id.* at ¶ 72. Mr. Miao admitted that there was visible cracking on the foundation, walls, and the tiles that were open and obvious at the time that Plaintiff purchased the Property in 2017. *Id.* Moreover, Mr. Miao specified that this was a condition that Plaintiff could have inspected at or before the time it had originally purchased the Property. *Id.* Notably, Mr. Miao admitted that no evidence showed that Defendants were aware of any of these issues, and also admitted that squatters and tenants could have damaged the Property. *Id.*

14. *No Reliance on Broker Agents*

As to the Brokers, Ms. Zhu agreed that she was not relying upon any representations made by Brokers or Broker's agent. *Id.* at ¶ 73. Ms. Zhu agreed to purchase the Property AS-IS, WHERE-IS, without any representations or warranties. *Id.* Ms. Zhu agreed to satisfy herself, as to the condition of the Property, prior to the close of escrow. *Id.* Ms. Zhu waived all claims against Brokers or their agents for (a) defects in the Property . . . (h) factors related to Ms. Zhu's failure to conduct walk-throughs or inspections. *Id.* Ms. Zhu assumed full responsibility and agreed to conduct such tests, walk-throughs, inspections and research, as she deemed necessary. *Id.* In any event, Broker's liability was limited, under any and all circumstances, to the amount of that Broker's commission/fee received in the transaction. *Id.*

15. *Mr. Miao Agreed with Defendants' Expert*

On November 17, 2020, Defendants' expert, Neil D. Opfer, an Associate Professor of Construction Management at UNLV and overqualified expert, conducted an inspection of the Property. *Id.* at ¶ 74. At that time, as noted earlier, Mr. Miao walked the Property with Professor

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Opfer. *Id*. Mr. Miao agreed with Professor Opfer that the alleged conditions identified by Plaintiff's alleged expert were open and obvious. *Id.* at ¶ 75. Mr. Miao also agreed with Professor Opfer that Plaintiff's expert did not do any destructive testing, so the same alleged conditions that the alleged expert noted, would have been made by an inspector at the time of the purchase. *Id.* at ¶ 76. Additionally, Mr. Miao agreed with Professor Opfer that Plaintiff's alleged expert did "not recognize prior conditions in existence before any work took place by the Defendants." *Id.* at ¶ 77.

II. DISCUSSION

The following Discussion is organized into four (4) Parts. Part A sets forth the legal standards related to the Motion's requested relief. Part B illustrates that there are procedural issues that bar the court from granting the Motion. Part C explains that the Motion relies solely on the affidavit of Mr. Miao to contradict his previous deposition testimony in an attempt to create an issue of fact, which is improper. Part D sets forth that the lack of authentication of the documents is harmless error and does not require reconsideration. Part E establishes that there was no evidence in the record to support Plaintiff's claims. Part F requests sanctions for the frivolous nature of the Motion. Finally, Part G provides that the deadline to object to the award of attorneys' fees has expired and therefore should be issued in full to Defendants.

A. Legal Standards

1. *Reconsideration*

"No motions once heard and disposed of may be renewed in the same cause, nor may the same matters therein embraced be reheard, unless by leave of the court granted upon motion therefor, after notice of such motion to the adverse parties." See EDCR § 2.24(a). "A party seeking reconsideration of a ruling of the court, other than any order that may be addressed by motion pursuant to NRCP 50(b), 52(b), 59 or 60, must file a motion for such relief within 14 days after service of written notice of the order or judgment unless the time is shortened or enlarged by order." *Id.* at § 2.24(b) (in pertinent part).

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2. *Appeal Divests District Court of Jurisdiction*

The timely filing of a notice of appeal "divests the district court of jurisdiction to act and vests jurisdiction in [the Supreme Court]." See *Mack-Manley v. Manley*, 122 Nev. 849, 855, 1387 P.3d 525, 529 (2006) (quoting *Rust v. Clark Cty. School District*, 103 Nev. 686, 688, 747 P.2d 1380, 1382 (1987)). "[W]hen an appeal is perfected, the district court is divested of jurisdiction to revisit issues that are pending before this court, [but] the district court retains jurisdiction to enter orders on matters that are collateral to and independent from the appealed order, i.e., matters that in no way affect the appeal's merits. *Id.* at 855, 529-30.

3. *Prior Deposition Testimony*

"[A]n admitting party is barred from denying that which it has already admitted. *La-Tex Partn. v. Deters*, 893 P.2d 361, 365 (Nev. 1995) (citing *Wagner v. Carex Investigations & Sec. Inc.*, 93 Nev. 627, 632, 572 P.2d 921, 924 (1977) (commenting on the application of Nev. R. Civ. Pro. 36). The general rule "is that a party cannot create an issue of fact by an affidavit contradicting his prior deposition testimony." *Kennedy v. Allied Mut. Ins. Co.*, 952 F.2d 262, 266 (9th Cir. 1991) (citations omitted). "[I]f a party who has been examined at length on deposition could raise an issue of fact simply by submitting an affidavit contradicting his own prior testimony, this would greatly diminish the utility of summary judgment as a procedure for screening out sham issues of fact." *Id.* (quoting *Foster v. Arcata Associates*, 772 F.2d 1453, 1462 (9th Cir.1985), cert. denied, 475 U.S. 1048, 106 S.Ct. 1267, 89 L.Ed.2d 576 (1986) (additional citations omitted)).

"[A] 'genuine' issue of material fact within the intendment of NRCP 56 may not be created by the conflicting sworn statements of the party against whom summary judgment was entered, and that it was permissible for the court to prefer one statement over the other in deciding a summary judgment motion." See *Bank of Las Vegas v. Hoopes*, 84 Nev. 585, 586, 445 P.2d 937, 938, 1968 Nev. LEXIS 414, 3 (Nev. 1968) (citing *Aldabe v. Adams*, 81 Nev. 280, 402 P.2d 34 (1965)). A party's conflicting statements do not create a genuine issue of material fact because Rule 56 contemplates conflicts created by adversaries. *Id.* In circumstances where the

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party is contradicting its own factual statement, the court is not required to accept the affidavit as true. *Id*.

B. The Motion should be Denied for Procedural Concerns

The Motion is untimely and should be denied for that reason. The Notice of Entry of the Order was filed on March 31, 2021. However, the Motion was not filed until April 16, 2021, two days after the deadline to file the Motion had ran. See EDCR § 2.24(b) (party has 14 days after Notice of Entry of Order to file a motion to reconsider). Notably, the Notice of Entry of Order was filed electronically, and Plaintiff is well aware form previous briefing in this matter that there is no longer an additional three days tacked on to filing deadlines that arise from documents served through the court's electronic filing system. See Nev. R. Civ. Pro. § 9(f)(2). As such, there is no excuse for the late filing, and the Motion should not be considered.

Additionally, Plaintiff filed a notice of appeal in this matter on April 26, 2021, appealing the Order that is the subject of the Motion's request for reconsideration. As such, this Honorable Court has been divested of jurisdiction to rule on the Motion. See *Mack-Manley v. Manley*, 122 Nev. 849, 855, 1387 P.3d 525, 529-30 (2006). The Motion is clearly not collateral or independent from the appealed Order and thus cannot be considered by the court at this time. *Id.*

Therefore, based on the aforementioned procedural issues, the Motion must be denied as the court lacks jurisdiction to grant the Motion based on the untimely filing of the Motion and the timely filing of the notice of appeal.

C. Mr. Miao cannot Create an Issue of Fact through Affidavit that Contradicts his Prior Deposition Testimony

The Order that is the subject of the Motion's request for reconsideration includes numerous direct citations to the deposition testimony of Mr. Miao to establish that there is no genuine of material fact that would keep the court from granting Defendants' Motion for Summary Judgment. See Order, generally. Plaintiff clearly understood that the deposition testimony of Mr. Miao was a substantial factor in the court's determination to grant Defendants' Motion for Summary Judgment because Plaintiff uses the first thirty (30) pages of the Motion to contradict Mr. Miao's deposition testimony through a subsequent affidavit signed by Mr. Miao.

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See *Motion* at pp. 1-30, and *Motion* at Ex. 1. Instead of bolstering its arguments by using the deposition testimony of Mr. Miao, Plaintiff attempts to completely ignore the undisputed facts gathered from Mr. Miao's deposition testimony and tries to rewrite history through the new affidavit of Mr. Miao. However, the court has previously determined that it will not consider affidavits from a party that contradicts the party's own prior testimony when determining if there is a genuine issue of material fact. See *Kennedy v. Allied Mut. Ins. Co.*, 952 F.2d 262, 266 (9th Cir. 1991) (citations omitted).

Here, the Motion provides no reasonable argument that the court's determination to grant summary judgment based on the evidence presented was in error. Instead, Plaintiff relies solely on the self-serving testimony of Mr. Miao's April 16, 2021 Affidavit (attached as Exhibit 1 to the Motion). Incredibly, Plaintiff does not even attempt to camouflage the deleterious purpose of Mr. Miao's affidavit as it quite literally goes line by line through court's factual findings and tries to contradict / explain away each finding made through the use of the affidavit. This is the exact type of conduct that the court found to be disfavored as "it would greatly diminish the utility of summary judgment as a procedure for screening out sham issues of fact." See *Kennedy*, 952 F.2d at 266.

Similar to *Hoopes*, this court does not have to accept the averments in the affidavit as true and can disregard any alleged issue of fact created by the affidavit because of the clear contradictory nature of the affidavit to the previous deposition testimony. See *Bank of Las Vegas v. Hoopes*, 84 Nev. 585, 586, 445 P.2d 937, 938, 1968 Nev. LEXIS 414, 3 (Nev. 1968). In *Hoopes*, the vice-president of the bank signed a satisfaction of debt that was acknowledged by the court, but later signed an affidavit stating the debt was not paid. *Id.* The court determined that it would not accept the affidavit as true and would not disregard the prior satisfaction of debt. *Id.* The same result should follow here as the April 16, 2021 affidavit is nothing more than self-serving testimony of Mr. Miao to contradict and rewrite the testimony he previously gave at the time of his deposition under oath, for which he had every opportunity to review and correct at the time of the deposition, and/or shortly thereafter. Incredibly, Mr. Miao did make corrections following review of his deposition transcript; however, none of the corrections were substantial

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in nature, nor was did it include any of the information included in Mr. Miao's new affidavit, illustrating the Motion and the new affidavit are in bad faith and lack substance. See Correction Sheet attached as **Exhibit A**.

Ultimately, the Motion fails to address the deposition testimony of Mr. Miao that the court utilized in making its determination. Instead, Plaintiff tries to rewrite history though the April 16, 2021 affidavit of Mr. Miao that is in direct contention with his previous deposition testimony. Plaintiff cannot manifest its own alleged issues of material fact to survive summary judgment, which is exactly what the Motion intends to do. As such, the Motion should be denied in its entirety.

D. Lack of Authentication of Exhibits is Harmless Error that does not Require Reconsideration

"Any error, defect, irregularity or variance which does not affect substantial rights shall be disregarded." See Nev. Rev. Stat. § 178.598. The determination of whether an error is harmless depends on whether it had a substantial and an injurious effect or influence . . . .' " See *Tavares v. State*, 117 Nev. 725, 732, 30 P.3d 1128, 1132 (2001) (quoting *Kotteakos v. U.S.*, 328 U.S. 750, 776 (1946). Here, any failure to authenticate the exhibits and/or documents utilized by the court in reaching its decision to grant summary judgment was a harmless error that can be cured through the affidavit of Kenny Lin, which is attached as **Exhibit B** to this Opposition.

Additionally, certain documents used were actually produced and/or generated by Plaintiff, illustrating no real issue of authenticity of those documents. Specifically, those documents include:

1. Exhibit B to Motion for Summary Judgment ("MSJ") – RPA that was disclosed in Plaintiff's 16.1 Early Case Conference Disclosures Exhibit 5, p. 26 – 35.
2. Exhibit C to MSJ – Seller Disclosures Form disclosed by Plaintiff's 16.1 Early Case Conference Disclosures, Exhibit 5, p. 36 – 40.
3. Exhibit M to MSJ – Plaintiff's Calculation of Damages contained in Plaintiff's 16.1 Early Case Conference Disclosures, and all supplements thereto.
4. Exhibit N to MSJ – Plaintiff's Answers to Kenny Lin's Second Set of Interrogatories.

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Moreover, the court's decision was largely based off the deposition testimony of Mr. Miao which does not carry any issues of authentication. As discussed above, Mr. Miao had every opportunity to review his testimony and correct any statements in his deposition transcript at the time of his deposition and shortly thereafter, but he chose not to. Only after the MSJ was granted did Plaintiff scramble to produce the competing affidavit contradicting the admissions made by Mr. Miao. As such, any lack of authentication prior to the MSJ being granted is harmless error that is cured by the Affidavit of Kenny Lin attached as **Exhibit B**.

E. No Evidence in Record to Establish Plaintiff's Claims

The Motion should be denied because Plaintiffs have failed to provide any evidence to illustrate that Defendants knew of any alleged defects or conditions in the Property that had to be disclosed. The lack of evidence is fatal to Plaintiff's claims because discovery has no closed and Plaintiff cannot bring any new evidence or discovery to try and support its claims. Additionally, Plaintiff, through Mr. Miao, expressly admitted that he should have followed up on the known disclosed issues. As such, any failure to do so is not the fault of Defendants, but unequivocally Plaintiff's fault. Moreover, it is undisputed that all alleged defects were open and obvious conditions did not require disclosure by Defendants.

Here, the Motion is nothing more than an attempt to subvert the discovery deadline and introduce new evidence that is in direct contradiction to the evidence already in the record. Specifically, Mr. Miao's April 16, 2021 Affidavit is clearly a deleterious attempt by Plaintiff to rewrite the facts of this case and muddy the waters to manifest an issue of fact that does not actually exist. Ultimately, the discovery in this matter has closed and all evidence in record, including the admissions of facts contained in Mr. Miao's affidavit, established that there was no basis for Plaintiff's claims to survive summary judgment.

F. Rule 11 Sanctions are Warranted

The Motion should be subject to Rule 11 sanctions for lack of any factual or legal merit. Under Rule 11, Plaintiff and its attorney have a duty to ensure: (1) "[the Motion] is not being presented for any improper purpose, such as to harass, cause unnecessary delay, or needlessly increase the cost of litigation;" and, (2) "the factual contentions have evidentiary support or, if

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specifically so identified, will likely have evidentiary support after a reasonable opportunity for further investigation or discovery[.]" See Nev. R. Civ Pro. § 11(b)(1) and (3).

As discussed at length above, the primary argument of the Motion is centered around the April 16, 2021 Affidavit of Mr. Miao, proffered for the sole purpose of refuting and contradicting Mr. Miao's own previous testimony to mislead the court. This type of conduct is clearly inappropriate. Notably, Mr. Miao had already reviewed his deposition testimony and made corrections to his deposition transcript prior to signing the newly created affidavit that the Motion is based on. See Ex. A. The correction sheet made only minor changes, none of which were substantive, nor did they amount to the sweeping changes to the testimony that is shown in the April 16, 2021 Affidavit. *Id.* This illustrates the lack of candor on behalf of Plaintiff in bringing the affidavit and the Motion.

Moreover, based on the contradictory nature of the April 16 Affidavit to Mr. Miao's deposition testimony, one or the other contains false statements of fact. As such, it is obvious that Mr. Miao has lied either in his deposition while under oath, or in his affidavit that was signed under oath and penalty of perjury. Considering the self-serving nature of the affidavit and the Motion's failure to address the deposition testimony in the Motion, it is likely that the affidavit and Motion contain deliberately false and misleading information, which is subject to sanctions under Rule 11.

G. Attorneys' Fees Award should Issue in Full

Following the Order, Defendants' counsel was directed to provide an affidavit in support of the attorneys' fees requested in light of the Order's decision to grant fees and costs. See Order at p. 41 ("Defendants may file an affidavit in support of requested attorneys' fees and costs within 10 days of the entry of Order."). Here, Defendants' counsel filed its Affidavit in Support of Attorneys' Fees on April 6, 2021. As of the filing of this Opposition, Plaintiff has yet to file and objection, opposition, or any type of response to the Affidavit in Support of Attorneys' Fees. It has been over 20 days since the filing of the Affidavit in Support of Attorneys' Fees has been filed, illustrating that the deadline to object to the Affidavit has expired and that the fees should issue in full as requested in the Affidavit.

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III. CONCLUSION

Based on the foregoing, Defendants respectfully request that the Motion be denied in its entirety for both procedural and factual concerns.

Dated this 30th day of April, 2021.

MICHAEL B. LEE, P.C.

/s/ Michael Lee
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CERTIFICATE OF MAILING

Pursuant to NRCP 5(b) and NEFCR 9, I hereby certify that I am an employee of MICHAEL B. LEE, and that on the 30th day of April, 2021, the foregoing **DEFENDANTS' OPPOSITION TO PLAINTIFF'S MOTION FOR RECONSIDERATION** was served via the Court's electronic filing and/or service system and/or via facsimile and/or U.S. Mail first class postage pre-paid to all parties addressed as follows:

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EXHIBIT A

CERTIFICATE OF WITNESS

PAGE	LINE	CHANGE	REASON
52	15	"fleeting" should be "flipping"	wrong word transcribed
63	5 & 6	I don't remember is there is a written estimate	clarify statement
75	12	"manufacture" should be "manufactured"	wrong word transcribed
75	23 & 25	"work hall" is "walk out"	wrong words transcribed
76	2		
75	22	"cabinetry" should be "foundation"	used wrong word
83	12, 13 & 14	"side" should be "site"	wrong word transcribed
119	8	"now" should be "law"	wrong word transcribed
128	7	"mold" should be "more"	wrong word transcribed
141	21	"deed" should be "need"	wrong word transcribed
149	5	"full price" should be "four-plex"	wrong words transcribed
150	3	add "we did 1031 exchange"	clarify the answer
160	23	"rental" should be "rented"	wrong word transcribed
177	24	"circle" should be "circuit".	wrong line transcribed
178	8	add "in winter"	clarify the answer
179	15	delete "rules"	clarify the answer
212	20	"real" should be "rare"	wrong word transcribed
228	11	"bribe" should be "boast"	wrong word transcribed
232	6	delete first "not"	clarify answer
251	19	delete "people"	clarify answer
255	2	delete "gas"	clarify answer
275	10	delete "not" and add " a lot"	transcription error
296	19	delete "handy"	transcription error
297	13	delete "pay that one" should be "paid by me"	clarify answer
	14	add "Tenant" before "Cannot"	clarify answer
	15	add "good" at end	answer was cut off
310	21	* * * * * replace "no ring" with "not raining"	transcription error
	24	replace "now" with "law"	transcription error
319	15	replace "wall" with "force"	transcription error

I, FRANK MIAO, witness herein, do hereby certify and declare under the penalty of perjury the within and foregoing transcription to be my deposition in said action; that I have read, corrected and do hereby affix my signature to said deposition.

FRANK MIAO
Witness

2/23/2021
Date

EXHIBIT B

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DECLARATION OF KENNY LIN

KENNY LIN, being first duly sworn, deposes and says that he has personal knowledge and is competent to testify to the facts below. The facts stated herein are true to the best of my own personal knowledge, except for those facts stated upon information and belief, and as to those facts, I believe them to be true.

1. I have personal knowledge of the events related to WLAB Investment, LLC's ("Plaintiff") case against Defendants TKNR INC. ("TKNR"), CHI ON WONG ("WONG"), KENNY ZHONG LIN ("LIN"), LIWE HELEN CHEN ("CHEN"), YAN QIU ZHANG ("ZHANG"), INVESTPRO LLC ("INVESTPRO"), MAN CHAU CHENG ("CHENG"), JOYCE A. NICKRANDT ("NICKRANDT"), INVESTPRO INVESTMENTS, LLC ("Investments"), and INVESTPRO MANAGER LLC (hereinafter collectively referred to as the "Defendants") related to the purchase of 2132 Houston Drive, Las Vegas, NV 89104 ("Property").

2. I personally reviewed the Motion for Summary Judgment, or in the alternative, Partial Summary Judgment ("MSJ") including the exhibits attached thereto.

3. Exhibit A to the MSJ is a true and correct copy of the MLS Listing for the Property.

4. Exhibit B to the MSJ is a true and correct copy of the Residential Purchase Agreement for the Property.

5. Exhibit C to the MSJ is a true and correct copy of the Seller's Disclosures for the sale of the Property.

6. Exhibit D to the MSJ is a true and correct copy of the September 5, 2017 Email Chain between Helen Chen and Frank Miao.

7. Exhibit E to the MSJ is a true and correct copy of the September 5, 2017 Cancellation Addendum.

8. Exhibit F to the MSJ is a true and correct copy of the second Residential Purchase Agreement for the Property, including all addendums, dated September 5, 2017.

9. Exhibit G to the MSJ is a true and correct copy of Defendant's Expert Report.

10. Exhibit H to the MSJ is a true and correct copy of the Air Team Invoice.

11. Exhibit I to the MSJ is a true and correct copy of my declaration in support of the MSJ.

12. Exhibit J to the MSJ is a true and correct copy of a permit search conducted online for the Property.

13. Exhibit K to the MSJ is a true and correct copy of the Limited Opposition to Defendants' Motion to File Amended Answer, Counterclaim and Third-Party Claim filed with the court on November 16, 2020.

14. Exhibit L to the MSJ is a true and correct copy of the Order granting Defendants' Motion for Leave to File Amended Answer, Counterclaim and Third-Party Claim filed on December 2, 2020.

15. Exhibit M to the MSJ is a true and correct copy of Plaintiff's Calculation of Damages.

16. Exhibit N to the MSJ is a true and correct copy of Plaintiff's Answers to Kenny Lin's Second Set of Interrogatories.

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

FURTHER DECLARANT SAYETH NAUGHT
DATED this 29th day of April, 2021.

KENNY LIN

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DISTRICT COURT

CLARK COUNTY, NEVADA

W L A B INVESTMENT, LLC,

Plaintiff,

v.

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. NICKDRANDT, an individual and does 1 through 15 and roe corporation I-XXX,

Defendants.

Case No: A-18-785917-C
Dept No: 14

PLAINTIFF'S REPLY TO DEFENDANTS' OPPOSITION TO MOTION FOR RECONSIDERATION

Hearing Date: May 18, 2021
Hearing Time: 10:00 a.m.

COMES NOW Plaintiff, by and through his attorneys, Day & Nance, and submits the following Reply to Defendants' Opposition to Plaintiff's Motion for Reconsideration.

ARGUMENT

A. **Plaintiff's Motion for Reconsideration** was timely as it was filed within 10 **days of Notice of Entry of Amended Order Granting Defendants' Motion** for Summary Judgment.

Defendants submit that Plaintiff's motion is untimely as it was filed 16 days after Notice of Entry of Order Granting Defendants' Motion for Summary Judgment. (*See* Defendants' Opposition to Plaintiff's Motion for Reconsideration, p. 2, ll. 9-12). However, as Defendants have conveniently omitted and as the Court is aware, an Amended Order was filed with Notice of Entry of Order on April 8th. Plaintiff's Motion for Reconsideration was filed April 16th, well within the time allotted in EDCR § 2.24(b). It is the Amended Order that Plaintiff is asking this Court to reconsider and from which Plaintiff has filed its appeal.

B. **As illustrated in Defendants' opposition, there are numerous issues of** fact which should preclude the granting of summary judgment in this case.

1. Defendants' contend that Plaintiff waived the due diligence condition by failing to inspect the subject property. However, as Plaintiff has pointed out, this property was inspected on multiple occasions. The property was inspected prior to Ms. Zhu signing the Purchase Agreement.

> Q. Do you recall if this was the same day that you viewed the property on Zillow?
>
> A. I don't know exactly same day or maybe couple of days later I saw property. Anyway, I set up appointment with the Kenny Lin, then we went together in the one afternoon – whole afternoon with Kenny Lin. I think the August 10th.
>
> . . .
>
> Q. So you go. He meets you at the property; is that fair?
>
> A. Right, right, right.
>
> Q. Okay. Then tell me what happened.

A. Then I just go over the property all of detail, surrounding area. I just check the other building. Then this – at that time, there's one tenant there. So other two --

Q. So you had the ability to walk through the property with Kenny Lin?

A. Right, right.

Q. Okay. Like, do you recall all the areas that you looked at?

A. I looked at a lot of things. For example, like, the – I point out some drywall is not finished; right? And the – some of the smoke alarm is not – is missing and – which is law required to put in for smoke alarm. Then no carbon monoxide alarm, so I ask them to put in.
Then in the kitchen, lot of electrical, the outlet is not a GFCI outlet, so I tell them I said, you need to change this GFCI. Right now this outlet is not meet code. You probably have problem. Then the tenant get electrocuted somehow in the one area. So I –

Q. What else did you inspect.

A. Then I inspected – I found out there's a lot of cabinets is new, so I said, Well, you got all this new. They said, yeah, we just did the renovation for the kitchen cabinet and the fixtures on the vanity are new. Then he also point out you see all the shower, the ceramic tile is new shower. Bathtub is new tile, all that one. He said he did all new. Then –

Q. Okay.

A. So I check that washer/dryer.

Q. Was there a sink that was clogged during the time you did your inspection?

A. No. No, no clog.

Q. So there was never a clogged sink issue at all?

A. I was inspect new tenant. Only one tenant. Unit A have people. Other units, B and C, at that time I think is vacant. Then I opened the faucet, the water go through. Okay. then checked the ceiling – actually, I mention to the Kenny Lin I saw the ceiling, one whole ceiling is popcorn ceiling in Unit C. I said, Well, you know, this popcorn ceiling have issue if we have asbestos. They said, no, no, no, no problem because – I said, this is older house. Then he said, if you don't touch that one, it's okay.

(*See* Frank Miao deposition, p. 157, ll. 11-25; p. 158-160 attached hereto as Exhibit "1").

Mr. Miao also inspected the home several other times during the due diligence period. (*See* Exhibit "1", p. 163). Mr. Miao spoke with the tenant about his unit. (Exhibit "1", p. 163). He inspected all structures and did recall seeing only a few cracks. (Exhibit "1", p. 166). He checked the electrical system, plumbing, heating/air conditioning and the roof. (Exhibit "1", pp. 166-168). As stated, several items that needed repair were pointed out to Mr. Lin including the proper installation of GFCI outlets and combustible gas and CO detectors. (*See* Miao affidavit, ¶ 3, attached to Plaintiff's Motion for Reconsideration). Mr. Miao inspected the property with Mr. Lin on August 10, 2017. (*See* Miao affidavit, ¶ 3). The Purchase Agreement, which was prepared beforehand by Kenny Lin and Le Wei Chen of InvestPro, was e-signed on August 11, 2017, by Ms. Zhu. (*See* Miao affidavit, ¶ 3). Due diligence was not waived as the property had already been inspected. **Again, Plaintiff's** issue with Defendants is not what was discoverable during the inspection but what was hidden by Defendants which they had an obligation to disclose.

Defendants seem to rely upon their belief that due diligence was waived and the property was not inspected. While this is not true, whether or not due diligence was waived is not the entire issue in this case. Even if Plaintiff had waived due diligence, this does not alleviate Defendants of their responsibility to disclose conditions in the property of which they are aware. NRS 113.130.

2. Defendants' contend that Seller disclosed all known conditions with the property. By way of example, they point out that they disclosed that three air conditioning units were installed within three months of the sale. (*See* Defendants' Opposition to Motion for Reconsideration, p. 4, ll. 2-5). However, what Defendants failed to disclose was that proper insulated air conditioning ducting had not been installed and the AC electrical wiring had been piggybacked on an electrical circuit in one of the units so that the electrical fuse kept failing. (*See* Miao affidavit, ¶ 7). In an attempt to insulate them from any issues with

the property, Defendants add that the "owner never resided in the property and never visited the property." However, what Mr. Lin further failed to disclose to Mr. Miao or Ms. Zhu is that the "owner" was actually a group of investors put together by Mr. Lin as part of a "flipping fund." Mr. Lin further failed to disclose that he had an interest in the property as well as he was to receive a percentage of the profit from the sale. Suggesting that the "seller" never visited the property in the Purchase Agreement is an intentional misrepresentation as it was "seller" who allegedly renovated the property prior to sale and it was the "seller" who covered up issues with the property that should have been disclosed to the buyer.

3. On page 5, lines 24-26, Defendants assert that Plaintiff had access to inspect the entire property and conduct non-invasive, non-destructive inspections. Defendants seem to rest their case on what would have been and what was discoverable during Mr. Miao's inspection of the property. However, again as Plaintiff points out, it is what was not discoverable during the non-destructive inspection that is at issue. The following are some of the items of which Defendants were aware which were not discoverable during Mr. Miao's non-destructive, non-invasive inspection of the property.

a. The piggybacked AC wiring which was only discoverable after the electrical panel was pulled from the wall. The tenant had complained that the fuse kept blowing. Mr. Miao hired an electrical contractor who learned of the piggybacked wiring when attempting to resolve the electrical issue. The wiring which was a code violation was completed by seller's handyman. When the tenant complained to InvestPro, the property manager, the handyman's fix was to disconnect other circuits to the fuse which resulted in the tenant not being able to use all outlets. (*See* Miao affidavit, ¶ 7). When the licensed electrician was hired by Mr. Miao to fix the problem, it was discovered that the electrical panel did not have sufficient electrical wattage to power the AC units. (*See* Miao affidavit, ¶ 7). None of this was disclosed by sellers. After discovering the electrical issue and what it

would cost to fix the problem, Mr. Miao approached Mr. Linn requesting that Linn and InvestPro pay $10,000.00 to fix the problem. (*See* Miao affidavit, ¶ 16(mm)).

b. Sellers had vented high moisture dryer exhaust to the attic instead of outside the building as was required by law. Sellers had also used the uninsulated swamp cooler ducting for the AC units installed. The combination of these two unlawful acts resulted in water leaking through the unit C ceiling from condensation in the attic. Sellers failure to install insulated ducting along with the dryer venting into the attic was not discovered until the ceiling was opened up in an effort to finding the source of the water leak. (*See* Miao affidavit, ¶ 8). Sellers failure to properly vent the dryers and install insulated ducting with the installation of the AC units was not disclosed to Plaintiff.

c. Sellers had installed laminate and ceramic flooring throughout the units. In doing so, Sellers covered up significant foundation issues with the building. After Plaintiff's purchase of the triplex, the flooring in the units began buckling. During February and March of 2021, Mr. Miao pulled up the flooring in an attempt to determine the cause of the buckling. (*See* Miao affidavit, ¶ 9). What he discovered were significant foundation issues with the building which Sellers had attempted to hide by installing new flooring throughout the building. (*See* photographs attached as Exhibit "3" to Plaintiff's Motion for Reconsideration). The severe foundation issues explained the cracking that began appearing in the walls after the purchase of the property. Sellers/Defendants had covered up the cracking during the "renovation" but the cracks again appeared over time because of the issues with the foundation. (*See* Miao affidavit, ¶ 9). Sellers/Defendants failed to disclose the issues with the foundation to the Buyer/Plaintiff.

d. As early as May or June of 2020, the tenants in units B and C had complained of drainage issues. Nicholas Quioz, the tenant in Unit A, explained to Mr. Miao that he had reported to InvestPro that sewage water had overflowed into his unit. InvestPro

had spent weeks trying to open the sewer line. The handyman report to Mr. Quioz that the sewer line was broken. The next-door neighbor reported to Mr. Miao that when he was a tenant of the building during 2016 or 2017, the floor to his unit had buckled and sewage had backed up. When InvestPro failed to fix the problem, he moved out. (*See* Miao affidavit, ¶ 10). Sellers/Defendants failed to disclose the broken sewer line to the Buyer/Plaintiff.

On page 7, lines 13-14, Defendants suggest that the defects could have been discovered at the time of the original purchase. As stated, Plaintiff suggests and argues otherwise. Whether or not the stated defects could have been discovered during **Mr. Miao's** inspections of the subject property is an issue of fact.

Defendants point to Mr. Miao's deposition testimony that the conditions identified by Defendants' expert were "open and obvious." Plaintiff acknowledges that the conditions observed by Mr. Opfer were "open and obvious" but contends that those conditions were not "open and obvious" or present at the time of Mr. Miao's inspection during August of 2017.

Defendants argue that permits were not required for the cosmetic work completed by Sellers' handyman. (Defendants' Opposition, p. 8, ll. 4-10). While this may be true, Plaintiff contends that permits were required when the electrical wiring and plumbing were changed when the AC units were originally installed by Sellers. These changes should have been performed by a licensed electrician and plumber.

Defendants again refer to Mr. Miao's deposition testimony wherein Mr. Miao admits that third parties could have damaged the property. (Defendants' Opposition, p. 8, ll. 21-25). However, Plaintiff submits that third parties did not cause the improper installation of dryer venting, air conditioning ducting, air conditioning electrical wiring nor did they cause the sewer line to fail or the present condition of the foundation.

Defendants argue that there is no evidence suggesting that Defendants knew about the conditions of the property. (Defendants' Opposition, p. 8, ll. 27-28). Mr. Lin reported to

Mr. Miao that the entire property had been renovated. Walls had been painted and plastered. New flooring had been laid throughout all units. Dryer venting had been installed. AC units had been installed which had replaced swamp coolers. There is an invoice from the handyman for patching the floor; "remove 2 rooms laminate and level concrete. (DEF 23). Tenants had complained to InvestPro years prior about the drainage problems and sewage back-up. Defendants' handyman had investigated and concluded that the sewer line was broken. Defendants were more than aware of the condition of the property. The extent of Defendants' knowledge of the condition of the property prior to the sale to Plaintiff is an issue of fact.

Defendants are critical of Plaintiff's expert and the expert's cost of repair. The cost of repair is again an issue of fact for a jury to decide.

Defendants refer to Plaintiff's offer to settle the matter for $10,000.00 early on after the purchase of the property as an example of bad faith. What Defendants failed to tell the Court is that the $10,000.00 offer was after Mr. Miao discovered the problem with the electrical wiring. The $10,000.00 offer was to pay an electrician to fix the electrical wiring installed by Defendants. Plaintiff was not aware at the time of the numerous other issues with the building. (*See* Miao affidavit, ¶ 16(mm)).

Defendants contend that Sellers disclosed issues with, among other things, the heating and cooling systems. (Defendants' Opposition, p. 10, ll. 26-28). However, a close examination of Sellers' disclosure would suggest otherwise. Specifically, Defendants had checked "no" to, among other things, structural defects, moisture condition and/or water damage, modifications made without required permits, foundation "sliding, settling, movement, upheaval or earth stability problems," drainage issues or environmental hazards. The sum total of Defendants' disclosure concerning the air conditioning units was "3 units has brand new AC installed within 3 months. . . . AC units are installed by licensed

contractor, all other work are done by owner's handyman." (*See* Exhibit "6" attached to Plaintiff's Motion for Reconsideration). There is nothing in this disclosure about the failure to properly duct the AC units. There is nothing in this disclosure stating that the electrical wiring was piggybacked onto an electrical circuit that did not have sufficient electrical wattage to power the installed unit. An inspector would have been required to pull the electrical paneling off the wall at the time of inspection to find the faulty electrical wiring.

Defendants seem to rest their defense on their belief that a professional inspection would have uncovered the many issues with this building that had been covered up by Defendants. Defendants suggest that a professional inspection would have discovered the condition of the foundation that had been covered up with laminate and ceramic flooring. Defendants contend that a professional inspection would have discovered the faulty AC wiring in the wall, would have uncovered the fact that the sewer line was broken, would have revealed that the AC was installed with uninsulated ducting, would have found cracks in the walls that had been covered with plaster, would have discovered that Defendants had vented dryer exhaust into the attic, etc. What a professional inspection would have uncovered versus what Mr. Miao found during his inspection is also an issue of fact for a jury to decide. What Defendants knew about the building, what Defendants were obligated to disclose, what a professional inspection would have revealed versus what Mr. Miao found during his inspection are all issues of fact.

Defendants characterize Mr. Miao's affidavit as "self-serving testimony." Plaintiff is not sure exactly what is meant by this and would submit that any testimony offered by Mr. Miao is "self-serving" from the standpoint of supporting Plaintiff's case. Mr. Miao's affidavit is not "deleterious" as Defendants suggest but is offered simply to show that numerous factual issues exist in the case. Plaintiff simply submits that there were significant issues with the subject property later discovered by Plaintiff and that Defendants were aware of

these issues and had an obligation to disclose to Plaintiff before Plaintiff purchased the property. Plaintiff further submits that there is nothing in Mr. Miao's affidavit which contradicts his deposition testimony.

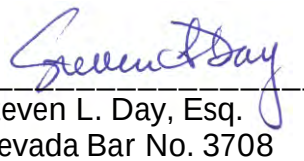
Defendants again ask for Rule 11 sanctions. Apparently, it is the opinion of Defendants that any time an attorney advocates for Plaintiff in this case, Defendants are entitled to Rule 11 sanctions. Counsel for Plaintiff has been litigating in the Nevada Eighth Judicial District and in other jurisdictions around the country for over 32 years and has never been the subject of Rule 11 sanctions nor has he previously dealt with opposing counsel that continually asks for Rule 11 sanctions as defense counsel has done in this case. (*See* affidavit of Steven L. Day, Esq., attached hereto as Exhibit "2"). The fact that counsel for the Defendants asks for Rule 11 sanctions in response to counsel advocating for the Plaintiff in Plaintiff's Motion for Reconsideration is offensive and should be ignored by the Court.

CONCLUSION

Based on the foregoing, Plaintiff respectfully asks this Court to reconsider the granting of Defendants' Motion for Summary Judgment. Plaintiff and counsel further ask the Court to reconsider its Rule 11 sanctions order.

DATED this 11th day of May, 2021.

DAY & NANCE



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Attorneys for Plaintiff

CERTIFICATE OF SERVICE

Pursuant to NRCP 5(b), on the 11th day of May, 2021, service of this PLAINTIFF'S REPLY TO DEFENDANTS' OPPOSITION TO MOTION FOR RECONSIDERATION made upon each of the parties listed below, via electronic service through the Eighth Judicial District Court's Odyssey E-File and Serve system:

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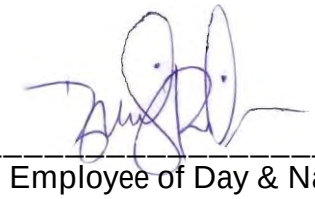

_____
An Employee of Day & Nance

EXHIBIT “1"

IN THE EIGHTH JUDICIAL DISTRICT COURT

CLARK COUNTY, NEVADA

WLAB INVESTMENT, LLC, Plaintiff, vs. 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 CHING 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.	CASE NO.: A-18-785917-C DEPT NO.: 14

Job Number. 697915

DEPOSITION OF FRANK MIAO

DEPOSITION OF FRANK MIAO
PERSON MOST KNOWLEDGABLE FOR WLAB INVESTMENT, LLC

Taken at Litigation Services
on Tuesday, January 12, 2021
at 9:00 a.m.
at 3960 Howard Hughes Parkway, Suite 700
Las Vegas, Nevada 89169

Reported by: Trina K. Sanchez, CCR No. 933, RPR
Job No.: 697915

APPEARANCES:
For the Defendants via videoconference:

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For the Plaintiff:

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Also present via videoconference: Helen Chen

I N D E X

E X H I B I T S

Entry onto Land and for Inspection
of Tangible Things Pursuant
to NRCP 34

LAS VEGAS, NEVADA, TUESDAY, JANUARY 12, 2021;
9:00 A.M.
-OOO-

(In an off-the-record discussion held prior to the commencement of the deposition proceedings, counsel agreed to waive the court reporter requirements under Rule 30(b)(5) of the Nevada Rules of Civil Procedure.)

Whereupon,

FRANK MIAO,

having been first duly sworn to testify to the truth, the whole truth and nothing but the truth, was examined and testified as follows:

EXAMINATION

BY MR. LEE:

Q. Good morning, sir. Thank you for appearing for your deposition today. You're appearing as the 30(b)(6) or the person most knowledgable for this deposition; is that correct?

A. Yes.

Q. And you understand what that term means?

A. Yes.

Q. I think I saw you going through the deposition exhibits. The top of the pile should have been the 30(b)(6) notice.

Do you see that?

A. 30(b)(6)? I don't know what that -- what document?

MR. LEE: For the record, Helen Chen, the defendant, has just joined us for the deposition.

THE WITNESS: I haven't read that one yet.

MR. LEE: Ms. Court Reporter, can you help him?

MADAM REPORTER: Yes. Let's go off the record.

(A discussion was held of the record.)

BY MR. LEE:

Q. We're back on the record. It appears the exhibits didn't get printed, but we'll go ahead and wait for them to get printed.

During the interim, I'll just share my screen so you can see what the exhibits are; okay?

A. Okay.

Q. Then I'll go over the rules of the deposition. You're doing a good job right now. I just want to get this PMK notice out of the way; okay?

Did you have an audible response?

MADAM REPORTER: No.

BY MR. LEE:

Q. You need to say "yes" or "no."

Do you understand?

THE WITNESS: What did he ask?

MADAM REPORTER: He's --

BY MR. LEE:

Q. "Audible" means out loud.

A. Can you speak a little slowly? Because if you speak too quick, I -- I cannot catch up.

Q. Okay. So I just -- I'll go over the rules of the deposition with you after I just do this PMK notice; okay?

A. Okay. What's a "PMK" mean?

Q. "PMK" means person most knowledgable.

A. Oh, okay. Okay. Yes.

Q. See right where I highlighted it, person most knowledgable?

A. Yeah, yeah, yeah.

Q. Okay. So for the record, what I'm doing is showing you what will eventually be proposed Exhibit 1 to the deposition, which is the notice of deposition of the person most knowledgable for WLAB Investments, LLC.

year, definitely we have cash to buy that.

Q. Okay. So it's very important for you, you understood you weren't going to make the close of escrow, but you wanted to preserve your earnest money deposit in the purchase of this property for the tax purposes?

A. Yeah. Yes, yes.

Q. Okay. So part of this paragraph says that the buyer's obligation is conditioned on the buyer's due diligence as defined in Section 7A below; correct?

A. Yeah. Which page?

Q. It's Item 7. There's, like, a line 24 that's right next to it.

A. Yeah.

Q. Yeah.

So then your wife, I presume, used DocuSign --

A. Yes.

Q. -- which is why it's her initials that are computer print; right?

A. Yes, yes, yeah. She's in San Diego so she can't --

Q. Did you read this document with your wife at any time?

A. What?

Q. Did you read this document with your wife or did she do this on her own?

A. I think the docs sign she do on her own.

Q. No, no, no. Did you read this with your wife or did you read it independently or did she read it by herself? Who read this document?

A. This document is prepared by the Helen Chen.

Q. Okay. So you used DocuSign before; correct?

A. Right. So she signed in San Diego. I was in Vegas -- at that time I was not in the Vegas. I was in Barstow.

Q. Okay. So my question is: When your wife was using DocuSign to read this document, right, like, do you know if she actually was reading it?

A. I think so. She read that.

Q. Okay. Did you read the document as well?

A. I think so.

Q. Okay. Did you guys read it together at any point in time?

A. I don't think so.

Q. No.

Did you guys discuss the document?

A. No.

Q. No.

Okay. So, like, your wife's impressions would be something I would have to ask her about individually?

A. That's fine, yeah.

Q. You understand that the obligations related to the buyer's due diligence to be done in 14 days of acceptance, though; correct?

A. Yes.

Q. And that's the reason why you are the person who generally does the inspection of a property?

A. Yeah. We do the -- I said that -- actually, my wife asked her -- usually I tell them, I did the inspection. Because before, for the purchase agreement, I go there personally to inspect the property and do the very detailed inspection.

Then after that, I went to the property several times too to the tenant and also other things. Check the --

Q. Let's do it this way.

A. Okay.

Q. On -- when did you find the property? Do you recall what date?

A. No. I don't recall date. But I set appointment, I think, is August 10th.

Q. Where did you find the property? Did you find it on Zillow?

A. Yes.

Q. Okay. And then when you found it on Zillow, then what did you do?

A. Then the phone number on the listing agent, right, so I called the listing agent, set up appointment. Then go to see the property.

Q. Do you recall if this was the same day that you viewed the property on Zillow?

A. I don't know exactly same day or maybe couple of days later I saw property. Anyway, I set up appointment with the Kenny Lin, then we went to together in the one afternoon -- whole afternoon with Kenny Lin. I think the August 10th.

Q. Okay. So on August 10th, you set up an appointment with Kenny. Do you remember the time of day that was?

A. I think is afternoon.

Q. Afternoon.

So you go. He meets you at the property; is that fair?

A. Right, right, right.

Q. Okay. Then tell me what happened.
A. Then I just go over the property all of detail, surrounding area. I just check the other building. Then this -- at that time, there's one tenant there. So other two --
Q. So you had -- let me pause you.
So you had the ability to walk the property with Kenny Lin?
A. Right, right.
Q. Okay. Like, do you recall all the areas that you looked at?
A. Yeah. Actually, I walked the Unit B, C. I go to there too. Now, Unit --
Q. So when you walked through them, what did you look at?
A. I looked at a lot of things. For example, like, the -- I point out some drywall is not finished; right? And the -- some of smoke alarm is not -- is missing and -- which is law required to put in for smoke alarm. Then no carbon monoxide alarm, so I ask them to put in.
Then in the kitchen, lot of electrical, the outlet is not a GFCI outlet, so I tell them, I said, You need to change this GFCI. Right now this outlet is not meet code. You probably have problem.

Then the tenant get electrocuted somehow in the one area. So I --
Q. What else did you inspect?
A. Then I inspected -- I found out there's a lot of cabinets is new, so I said, Well, you got all this new. They said, Yeah, we just did the renovation for the kitchen cabinet and the fixtures on the vanity are new. Then he also point out you see all the shower, the ceramic tile is new shower. Bathtub is new tile, all that one. He said he did all new.
Then --
Q. Okay.
A. So I check that washer/dryer.
Q. Was there a sink that was clogged during the time you did your inspection?
A. No. No, no clog.
Q. So there was never a clogged sink issue at all?
A. I was inspect new tenant. Only one tenant. Unit A have people. Other units, B and C, at that time I think is vacant. Then I opened the faucet, the water go through.
Okay. Then checked the ceiling -- actually, I mention to the Kenny Lin I saw the

ceiling, one whole ceiling is popcorn ceiling in Unit C. I said, Well, you know, this popcorn ceiling have issue if we have asbestos. They said, No, no, no, no problem because -- I said, This is older house. Then he said, If you don't touch that one, it's okay.
Q. So you noticed that the property had popcorn ceiling. What were you concerned about, potentially asbestos?
A. Yeah, because I have experience when I build my house in Arcadia, so I told them, If we got popcorn ceiling there, then they may have asbestos. Then they said, If you don't expose and disturb that, that's okay. I said, Okay. I know that is some people say that way too. So I just said -- ask, We don't disturbing that one, it's okay.
Q. But although you had this concern about potential asbestos, did you do an inspection for asbestos?
A. I didn't do the inspection, but I just said -- he tell me if we're not disturbing that one, it's not issue, so I just -- I said -- because he already rental to tenant, so what's the point for me to argue that.
Q. So Mr. Lin, did he ever tell you to get an

inspection done on the property?
A. I was -- Lin's thinking, sir. I was doing the inspection there.
Q. But did he tell you you needed to get a professional inspection done?
A. I don't think so. Because after that, after the -- Lin assigned this property to the Helen Chen. Helen Chen become the contact. After that, I don't talk to the Lin. Mostly it's Helen Chen with us to communicate with each other.
Q. So when you say you don't think so, is it possible that Mr. Lin told you to get a professional inspection done on or about August --
A. I don't think so. I don't think it's possible because usually we have email communication; right? And I don't think we receive the Mr. Lin email said we need to do the professional inspection.
Q. So are you also saying that Ms. Chen never told you to do a professional inspection?
A. I don't know exactly because most time she's the communicator with my wife.
Q. So it's possible that she told your wife or you that you need to get a professional inspection done?

A. Not that we -- we noticed that this is multi-family house. We don't need to do the professional inspection. Even they ask us, This is -- because this is dealing with the tenant -- with the owner or seller issue.

Q. Okay. So my question was: Was it possible that Ms. Chen had told either you or your wife that you needed to get a professional inspection done?

A. Maybe. Maybe. I don't know. I just said I cannot say on behalf of my wife because my wife, she maybe received email from Chen.

Q. Okay. And as far as you know, do you recall or not if she told you that you needed to get a professional inspection done?

A. I don't think that I recall the memory on that because I always tell my wife, I said, We already done the inspection. That's the reason we decide to buy this property; right?

Q. So if I break it down, you don't remember if that happened; is that fair?

A. I don't remember, yes.

Q. Okay. And then the second thing is you told your wife that you had already done the inspection so you didn't need a professional

inspection?

A. Yes.

Q. Okay. So if we go back to the residential purchase agreement, which is Exhibit 2, it was conditioned originally on you having the ability to complete your due diligence. So is it your understanding that when you did your inspection on August 10th, 2017, that that was your -- you doing your due diligence?

A. Yes, yeah. That is on the understanding we do the due diligence.

In addition to the initial inspection in August 10th, I went to the site a couple of times. I think another two times. Then take a look at the surrounding environment, talk to the tenant Unit 1 also.

Q. And this is some -- like, can you estimate the time frame when you talked to the tenants?

A. Just between the -- we purchase that one in the 30 days, the due diligence period. I went to there.

Q. Do you recall what those -- what you learned during those conversations?

A. No. At that time, the tenant is very happy. He said that, Yeah, I like this. We living

very good, and that's the reason he got my phone number.

Q. Okay. Do you remember the name of this tenant?

A. Yeah, Nicholas. He's the guy that's still living there, Unit A. I give his phone number. I said, Well, if we go to buy this property, I'm the new owner, so I gave him his phone number.

Q. Okay. If we go back to Exhibit B, page 28, 7A, Property Inspection/Conditions, it says, "During the due diligence period, buyer shall take the actions buyer deems necessary to determine whether the property is dissatisfactory to the buyer." It goes on, but I'm going to stop there.

Based on what you've described, you believe that you took the actions necessary to determine if a property was satisfactory to you, WLAB, to purchase it?

A. Yes. Based on -- we bought this -- we go to the inspection, then we also talk to the tenant, so we thinking this is investment property; right? So financial it's looking at the rent, it's reasonable, it's not very high compared with the surrounding area. Then also financially, it's good.

Then I take a look at the -- everything

outside. Good. So I said, Fine. That's satisfied. That's the reason I command my wife to sign the purchase agreement.

Q. So with the rent that you described, did you receive rent rolls about what the current rental rates were for the property --

A. At that time only one tenant.

Q. One tenant.

But around that time, you already received all the lease agreements and everything; correct?

A. I didn't receive leasing agreement until I purchase it.

Q. Okay. So you did receive the lease agreements that were for the property?

A. Yeah, yeah, yeah, yeah. After that, yeah.

Q. Okay. So if we keep reading on 7A, it says -- line 36 on the left-hand side. "During such period, buyer shall have the right to conduct noninvasive, nondestructive inspections of all structural, roofing, mechanical, plumbing, heating/air conditioning, water/well/septic, pool/spa, survey square footage, and any other property or systems through licensed and bonded contractors or other qualified professionals."

Did I read that correctly?

A. Yes, yes.
Q. So at the time when you did your diligence, you had a right to conduct noninvasive, nondestructive inspection; correct?
A. Yes, I did.
Q. And you had the opportunity to inspect all the structures?
A. I check the other one -- on the walk, I don't see the new cracking, so the -- some older cracking. I check the neighbor who also have that one. I think it's okay; right? Then the --
Q. Okay. So can you spell --
A. I can see. I'm the professional at that time, so --
MADAM REPORTER: One at a time, please.
BY MR. LEE:
Q. Can you spell that last word? You can see the packing?
A. No. I can see. I'm the -- also professional.
Q. Yes.
A. So that's -- I'm thinking in here they said, "Qualified the professional inspection"; right? Other qualified professional, so I'm thinking, Yeah, we did other one.

Q. Okay. So my question related to you had the opportunity to inspect the structure of the property; correct?
A. Usually inspect the structure, no -- and the invasive is you just look around the wall, make sure wall is no big crack there, right, that kind of thing.
Q. So you had the right to inspect the structure; correct?
A. Yes, yes, I did that.
Q. You had the right to inspect the roof; is that correct?
A. Yes.
Q. Okay. Did you do that?
A. I forgot. I maybe did that because usually I go to the roof.
Q. Okay. Did -- you had a right to inspect the mechanical systems; correct?
A. That's a Kenny Lin that point out, said there's a new one, so I didn't go there. It's a brand-new one.
Q. You had the right to inspect the mechanical system; correct?
A. Right. Yes, yes.
Q. You had the right to inspect the

electrical systems; correct?
A. I check the electrical system, yes.
Q. You had a right to inspect the plumbing systems; correct?
A. Yes.
Q. You had the right to inspect the heating/air conditioning system; correct?
A. Yes.
Q. You had a right to inspect the water/well/septic systems; correct?
A. Yes. This is not applicable.
Q. Yeah. Like, pool or spa, there's no pool or spa; right?
A. Yeah.
Q. You didn't do a survey. You didn't go out there with a little land --
A. No, no, no, no. This is nothing land, you know, yeah.
Q. Did you -- I'm sure you didn't -- like, you had the right to inspect the square footage, but I'm sure you didn't go out there with a tape measure.
A. No, I didn't. I just -- it's rental property, you know.
Q. Yeah. But you had the right to inspect

the square footage if you wanted?
A. Yeah.
Q. And then you could have inspected any other property or system within the property itself; correct?
A. Yes, yes.
Q. Okay. Now, I understand that you did the inspection and you think you're a qualified professional; right?
A. Yes.
Q. But you're not licensed; is that right?
A. Yeah. I'm not licensed, yeah.
Q. And you're not bonded; right?
A. No. Yes.
Q. Okay. Then it also says down here on line 43, "Buyer is advertised to" -- excuse me. "Buyer is advised to consult with appropriate professionals regarding neighborhood or property conditions."
Did I read that correctly?
A. Yes.
Q. Okay. Did you consult with any other appropriate professionals?
A. Actually, that is -- I went to the second time, a third time, I take a look at the neighborhood surrounding, talk to tenant and talk to

of things report that we don't need to go to the inside the building. It's wall cracking. It's outside. You can see.

Q. Okay. So it's open and obvious for them?

A. Yeah. You can see always outside.

Q. So is there any information that you want to provide that I haven't asked you about?

A. No.

Q. No? Okay.

Would you like to revise or supplement any of your prior answers?

A. Yes. I need to read this description, the -- what's it called?

MR. CHILDS: Transcript.

THE WITNESS: Transcript, yeah.

BY MR. LEE:

Q. Okay. So I presume you guys are going to buy a copy of the transcript. You'll need to let the court reporter know. If you are, they'll mail you a copy. If not, you're going to have to go to the court reporter's office to review it; okay?

A. Yeah. We just buy one.

Q. Okay. And then in terms of the areas that we covered that was based on your experience or your speculation, are you planning on offering those

opinions at the time of trial?

A. Yes, yes.

Q. Okay.

MR. LEE: I don't have any further questions, so we can go off record and -- or actually, I pass the witness. How about that?

MR. CHILDS: No questions.

THE WITNESS: No questions.

MR. LEE: Okay. Then I'll release you subject to any disclosure of any additional documents that we haven't received at this time, but I thank you for your time today; okay?

THE WITNESS: Thank you.

MADAM REPORTER: Counsel, would you like a copy of the transcript?

MR. CHILDS: Yeah, I think --

THE WITNESS: Yeah, yeah.

MADAM REPORTER: Do you want electronic?

MR. CHILDS: Sure.

MR. LEE: I only want an e-copy with exhibits.

MADAM REPORTER: Okay.

(The deposition concluded at 5:26 p.m.)

CERTIFICATE OF WITNESS

PAGE	LINE	CHANGE	REASON

* * * * *

I, FRANK MIAO, witness herein, do hereby certify and declare under the penalty of perjury the within and foregoing transcription to be my deposition in said action; that I have read, corrected and do hereby affix my signature to said deposition.

_____ _____

FRANK MIAO

Witness Date

REPORTER'S CERTIFICATE

STATE OF NEVADA)
) ss
COUNTY OF CLARK)

I, Trina K. Sanchez, a duly certified court reporter licensed in and for the State of Nevada, do hereby certify:

That I reported the taking of the deposition of the witness, FRANK MIAO, at the time and place aforesaid;

That prior to being examined, the witness was by me duly sworn to testify to the truth, the whole truth, and nothing but the truth;

That I thereafter transcribed my shorthand notes into typewriting and that the typewritten transcript of said deposition is a complete, true and accurate record of testimony provided by the witness at said time to the best of my ability.

I further certify (1) that I am not a relative, employee or independent contractor of counsel or of any of the parties; nor a relative, employee or independent contractor of the parties involved in said action; nor a person financially interested in the action; nor do I have any other relationship with any of the parties or with counsel of any of the parties involved in the action that may reasonably cause my impartiality to be questioned; and (2) that transcript review pursuant to NRCP 30(e) was requested.

IN WITNESS WHEREOF, I have hereunto set my hand in the County of Clark, State of Nevada, this 23rd day of January, 2021.

Trina K. Sanchez

_____

TRINA K. SANCHEZ, RPR, CCR NO. 933

HEALTH INFORMATION PRIVACY & SECURITY: CAUTIONARY NOTICE

Litigation Services is committed to compliance with applicable federal and state laws and regulations ("Privacy Laws") governing the protection andsecurity of patient health information.Notice is herebygiven to all parties that transcripts of depositions and legal proceedings, and transcript exhibits, may contain patient health information that is protected from unauthorized access, use and disclosure by Privacy Laws. Litigation Services requires that access, maintenance, use, and disclosure (including but not limited to electronic database maintenance and access, storage, distribution/ dissemination and communication) of transcripts/exhibits containing patient information be performed in compliance with Privacy Laws. No transcript or exhibit containing protected patient health information may be further disclosed except as permitted by Privacy Laws. Litigation Services expects that all parties, parties' attorneys, and their HIPAA Business Associates and Subcontractors will make every reasonable effort to protect and secure patient health information, and to comply with applicable Privacy Law mandates, including but not limited to restrictions on access, storage, use, and disclosure (sharing) of transcripts and transcript exhibits, and applying "minimum necessary" standards where appropriate. It is recommended that your office review its policies regarding sharing of transcripts and exhibits - including access, storage, use, and disclosure - for compliance with Privacy Laws.

EXHIBIT “2"

AFFIDAVIT OF STEVEN L. DAY

COUNTY OF CLARK)
) ss.
STATE OF NEVADA)

STEVEN L. DAY, being first duly sworn upon his oath, deposes and says:

1. That affiant was prior counsel for the Plaintiff in Eighth Judicial District Court Case No. A-18-785917-C styled *WLAB Investment, LLC v. TKNR, Inc., et al.*

2. Affiant was retained by Plaintiff on March 10, 2021, one day prior to the hearing on Defendants' Motion for Summary Judgment. Affiant argued the opposition to Defendants' motion and has subsequently filed Plaintiff's Motion for Reconsideration.

3. That affiant takes the responsibility of advocating for his clients very seriously. In over 32 years of litigating in the Eighth Judicial District and in other jurisdictions around the United States and while advocating for literally thousands of clients, affiant has never been subjected to Rule 11 sanctions.

4. That affiant in this case in the preparation and filing of Plaintiff's Motion for Reconsideration believes that the arguments made on behalf of Plaintiff are presented with a proper purpose and not for the purpose of causing unnecessary delay or harassment.

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5. That is this case, affiant is simply advocating on behalf of his client.

FURTHER AFFIANT SAYETH NAUGHT.

STEVEN L. DAY

SUBSCRIBED AND SWORN to before me
this 11th day of May, 2021.

NOTARY PUBLIC in and
for said County and State.

BRINLEY RICHESON
NOTARY PUBLIC
STATE OF NEVADA
My Commission Expires: 07-22-23
Certificate No: 11-5428-1

ELECTRONICALLY SERVED
5/25/2021 1:41 PM

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05/25/2021 1:40 PM
CLERK OF THE COURT

MICHAEL B. LEE, ESQ. (NSB 10122)
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Attorney for Defendants

IN THE EIGHTH JUDICIAL DISTRICT COURT

CLARK COUNTY, NEVADA

W L A B INVESTMENT, LLC,

Plaintiff,

vs.

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.

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

ORDER GRANTING, IN PART, AND DENYING, IN PART, PLAINTIFF'S MOTION TO RECONSIDER AND JUDGMENT AGAINST PLAINTIFF AND PREVIOUS COUNSEL

Date of Hearing: May 17, 2021
Time of Hearing: chambers

This matter being set for hearing before the Honorable Court on May 18, 2021 at 10:00 a.m., on W L A B INVESTMENT, LLC ("WLAB" or "Plaintiff"), Motion to Reconsider ("Motion"), by and through its attorney of record, DAY & NANCE. 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

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INVESTMENTS LLC, and INVESTPRO MANAGER LLC, (collectively, the "Defendants") filed an Opposition to the Motion and appeared by and through its counsel of record, MICHAEL B. LEE, P.C.

Pursuant to Administrative Order 21-03 and preceding administrative orders, this matter may be decided after a hearing, decided on the pleadings, or continued. In an effort to comply with Covid-19 restrictions, and to avoid the need for hearings when possible, this Court has determined that it was appropriate to decide this matter based on the pleadings submitted. Upon thorough review of the pleadings, the Court issues the following order:

1. Leave for reconsideration of motions is within this Court's discretion under EDCR 2.24.

2. A district court may reconsider a previously decided issue if substantially different evidence is subsequently introduced or the decision is clearly erroneous. See *Masonry & Tile Contractors v. Jolley, Urga & Wirth*, 113 Nev. 737, 741 (1997).

3. Plaintiff seeks reconsideration of this Court's April 7, 2021, Amended Order Granting Defendants Motion for Summary Judgment, or in the Alternative, Partial Summary Judgment ("Amended Order").

4. Although Defendants argue that Plaintiff's Notice of Appeal divests this Court of jurisdiction to rule on the Motion, this Court disagrees because the Amended Order was not final and appealable by virtue of Plaintiff filing the Motion. Therefore, the appeal was premature, and the court is not divested of jurisdiction on the filing of a premature notice of appeal, allowing the court to rule on the Motion. See NRAP 4(a)(6).

5. The Motion was timely filed within fourteen (14) days of the Notice of Entry of the Amended Order.

6. Plaintiff spends a majority of its Motion rehashing the facts of the underlying dispute. Plaintiff argues that exhibits the Court relied on in granting Defendants underlying motion for summary judgment namely, the Residential Purchase Agreement and the Second Residential Purchase Agreement were not properly authenticated. Plaintiff additionally argues that Defendants discussed an email from Chen to Ms. Zhu without providing a foundation for the

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email. Plaintiff's argument is that this Court committed clear error by relying on unauthenticated documents, or hearsay, in ruling on Defendants' motion for summary judgment.

7. In opposing summary judgment, Plaintiff was required to point to specific facts creating a genuine issue of material fact. See *LaMantia v. Redisi*, 118 Nev. 27, 29 (2002). Plaintiff did not do so.

8. Defendants were not required to authenticate the first and second Residential Purchase Agreement before this Court could rely on those documents in granting summary judgment.

9. Plaintiff did not contest the authenticity of the disputed documents in opposing summary judgment.

10. Plaintiff could have objected that these documents, which were Defendants repeatedly cite to in their motion for summary judgment, cannot be presented in a form that would be admissible in evidence. See NRCP 56(b)(2). However, Plaintiff did not so object.

11. The summary judgment hearing was not a trial. Authentication is for purposes of introducing evidence at trial; therefore, Plaintiff's authentication argument lacks merit.

12. Plaintiff has not demonstrated that this Court's ruling was clearly erroneous.

13. Plaintiff has not demonstrated that this Court's decision to grant Rule 11 sanctions was clearly erroneous. However, this Court does clarify that the sanctions are awarded against Plaintiff's former counsel, Ben Childs, and not Plaintiff s current counsel, Mr. Day.

14. Defendants also ask that this Court issue an award of attorney fees and costs in the amount of **$128,166.78** related to the Courts' April 7, 2021 Order this Court granting Defendants' attorney fees and costs pursuant to Rule 11. Plaintiff, through its former or new counsel, does not oppose the specific amounts requested.

15. As such, this Court grants the amount Defendants seek and enters judgment against Plaintiff and their former counsel, Ben Childs, Esq. in the amount of One Hundred Twenty-Eight Thousand One Hundred Sixty-Six Dollars and Seventy-Eight cents **($128,166.78)**.

16. Defendants' countermotion for additional Rule 11 sanctions against Plaintiff for filing the Motion is denied.

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IT IS HEREBY ORDERED, ADJUDICATED, AND DECREED that the Motion is GRANTED, in part, and DENIED, in part, as the Court's ruling was not clearly erroneous but clarifies the attorney fees and costs is awarded against Plaintiff and its former counsel Ben Childs, Esq.

IT IS FURTHER ORDERED, ADJUDICATED, AND DECREED that Judgment is entered in favor of Defendants against Plaintiff, and its former counsel, Benjamin Childs, individually, and Benjamin B. Childs, Esq, the law firm, jointly and severally, in the amount of One Hundred Twenty-Eight Thousand One Hundred Sixty-Six Dollars and Seventy-Eight cents (**$128,166.78**) and that they pay Defendants the following amounts:

1. The principal sum of $118,955.014 in attorneys' fees;

2. The principal sum of $9,211.64 for costs incurred to date; and

3. Post-judgment interest from the date of the entry of the underlying Order for the attorneys' fees and costs be granted at the statutory rate of 5.25% per annum.

A total Judgment in favor of Defendants, and against Plaintiff, and its former counsel, Benjamin Childs, individually, and Benjamin B. Childs, Esq, the law firm, jointly and severally, in the amount of **$128,166.78**, all to bear interest at the statutory rate of 5.25% per annum until paid in full.

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IT IS FURTHER ORDERED, ADJUDICATED, AND DECREED that this Order and Judgment shall be considered a final for all purposes.

Dated this 25th day of May, 2021

C78 3DB 37F8 7A17
Adriana Escobar
District Court Judge

Date: May 18, 2021.

Respectfully Submitted By:

MICHAEL B. LEE, P.C.

/s/ Michael Lee
MICHAEL B. LEE, ESQ. (NSB 10122)
MICHAEL MATTHIS, ESQ. (NSB 14582)
1820 E. Sahara Avenue, Suite 110
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Telephone: (702) 477.7030
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Attorneys for Defendants

Approved of as to Form and Content By:

DAY & NANCE

/s/ Stephen Day
STEPHEN DAY, ESQ. (NSB 3708)
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RE: WLAB v. TKNR, et al.; A-18-785917-C; Proposed Order

From: Steve Day (sday@dayattorneys.com)

To: matthis@mblnv.com

Date: Wednesday, May 19, 2021, 02:20 PM PDT

Looks okay. Okay to use my e-sig. Correct name: Steven L. Day

Steve

Steven L. Day, Esq.

DAY&ASSOCIATES

1060 Wigwam Parkway

Henderson, NV 89074

Tel. (702) 309-3333

Fax (702) 309-1085

Mobile (702) 596-5350

sday@dayattorneys.com

From: Michael Matthis <matthis@mblnv.com>
Sent: Wednesday, May 19, 2021 2:06 PM
To: Steve Day <sday@dayattorneys.com>
Cc: Mike Lee <mike@mblnv.com>
Subject: WLAB v. TKNR, et al.; A-18-785917-C; Proposed Order

Dear Mr. Day,

Please see the attached proposed order denying Plaintiff's Motion to Reconsider and advise if I can affix your e-signature. If not, I have left the proposed order in word and would ask that you track any proposed edits in redline. If we do not receive a response by 3:00 p.m. on Monday, May 24, we will submit absent your signature.

Sincerely,

Mike Matthis, Esq.

matthis@mblnv.com

MICHAEL B. LEE, PC
LAW FIRM

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

Main Line: 702.477.7030 Fax: 702.477.0096

CSERV

DISTRICT COURT
CLARK COUNTY, NEVADA

W L A B Investment LLC, Plaintiff(s) vs. TKNR Inc, Defendant(s)	CASE NO: A-18-785917-C DEPT. NO. Department 14

AUTOMATED CERTIFICATE OF SERVICE

This automated certificate of service was generated by the Eighth Judicial District Court. The foregoing 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:

Service Date: 5/25/2021

Brinley Richeson	bricheson@daynance.com
Steven Day	sday@daynance.com
Michael Matthis	matthis@mblnv.com
Nikita Burdick	nburdick@burdicklawnv.com
Michael Lee	mike@mblnv.com
Bradley Marx	brad@marxfirm.com
Frank Miao	frankmiao@yahoo.com

IN THE SUPREME COURT OF THE STATE OF NEVADA

WLAB INVESTMENT, LLC,
Appellant,
vs.
TKNR, INC., A CALIFORNIA CORPORATION; CHI ON WONG, A/K/A CHI KUEN WONG, AN INDIVIDUAL; KENNY ZHONG LIN, A/K/A KEN ZHONG LIN, A/K/A KENNETH ZHONG LIN, A/K/A WHONG K. LIN, A/K/A CHONG KENNY LIN, A/K/A ZHONG LIN, AN INDIVIDUAL; LIWE HELEN CHEN, A/K/A HELEN CHEN, AN INDIVIDUAL; YAN QUI ZHANG, AN INDIVIDUAL; INVESTPRO LLC, D/B/A INVESTPRO REALTY, A NEVADA LIMITED LIABILITY COMPANY; MAN CHAU CHENG, AN INDIVIDUAL; JOYCE A. NICKRANDT, AN INDIVIDUAL; INVESTPRO INVESTMENTS LLC, A NEVADA LIMITED LIABILITY COMPANY; AND INVESTPRO MANAGER LLC, A NEVADA LIMITED LIABILITY COMPANY,
Respondents.

No. 82835

FILED
MAY 12 2022
ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY S. Young
DEPUTY CLERK

WLAB INVESTMENT, LLC,
Appellant,
vs.
TKNR, INC., A CALIFORNIA CORPORATION; CHI ON WONG, A/K/A CHI KUEN WONG, AN INDIVIDUAL; KENNY ZHONG LIN, A/K/A KEN ZHONG LIN, A/K/A KENNETH ZHONG LIN, A/K/A WHONG K. LIN, A/K/A CHONG KENNY LIN, A/K/A ZHONG LIN, AN INDIVIDUAL; LIWE HELEN CHEN, A/K/A HELEN CHEN, AN INDIVIDUAL; YAN QUI ZHANG, AN

No. 83051

INDIVIDUAL; INVESTPRO LLC, D/B/A INVESTPRO REALTY, A NEVADA LIMITED LIABILITY COMPANY; MAN CHAU CHENG, AN INDIVIDUAL; JOYCE A. NICKRANDT, AN INDIVIDUAL; INVESTPRO INVESTMENTS LLC, A NEVADA LIMITED LIABILITY COMPANY; AND INVESTPRO MANAGER LLC, A NEVADA LIMITED LIABILITY COMPANY,
Respondents.

ORDER AFFIRMING (DOCKET NO. 82835) AND REVERSING (DOCKET NO. 83051)

These are consolidated appeals from a district court order granting summary judgment in a real property matter (Docket No. 82835) and from an order awarding attorney fees (Docket No. 83051). Eighth Judicial District Court, Clark County; Adriana Escobar, Judge.[1]

Appellant filed the underlying action, alleging generally that respondents had fraudulently induced appellant into purchasing an apartment building that contained numerous defects. Generally speaking, appellant's complaint alleged that respondents concealed the defects and that appellant could not have discovered those defects with due diligence before the purchase was completed. The district court granted summary judgment for respondents, reasoning, among other things, that (1) appellant failed to introduce evidence that respondents were aware of any particular defect that they failed to disclose; and (2) appellant failed to introduce evidence showing that a professionally conducted inspection would not have

[1]Pursuant to NRAP 34(f)(1), we have determined that oral argument is not warranted.

discovered the complained-of defects. Consequently, the district court granted summary judgment on all 15 of appellant's claims, including its claim for violation of NRS Chapter 113 (Sales of Real Property—Required Disclosures). Appellant then appealed that order (Docket No. 82835). Thereafter, the district court awarded respondents roughly $128,000 in attorney fees under NRCP 11 based on its perception that appellant's action was frivolous. Appellant then appealed that order (Docket No. 83051), and the appeals were consolidated.

Summary judgment (Docket No. 82835)

Appellant contends that summary judgment was improper because it introduced evidence sufficient to create questions of material fact. *See Wood v. Safeway, Inc.*, 121 Nev. 724, 729, 121 P.3d 1026, 1029 (2005) (reviewing de novo a district court's decision to grant summary judgment and recognizing that summary judgment is appropriate "when the pleadings and other evidence on file demonstrate that no genuine issue as to any material fact remains and that the moving party is entitled to a judgment as a matter of law" (internal quotation marks and alterations omitted)). In particular, appellant appears to be contending that there are genuine issues of material fact regarding (1) whether respondents were aware of the complained-of defects, and (2) whether appellant was required to conduct a "professional" inspection to satisfy its due diligence.[2]

We disagree. With respect to appellant's first argument, appellant's opening brief simply reiterates its belief that "[n]umerous issues of fact exist as to what Defendants knew, what they disclosed and what they

[2]To the extent that appellant has raised other arguments challenging the district court's summary judgment, we are not persuaded that those arguments warrant reversal.

covered up." But beyond this statement, appellant's opening brief fails to cite to any evidence in the record that might raise an inference that respondents were aware of a particular complained-of defect, such that a genuine issue of material fact existed regarding the viability of appellant's NRS Chapter 113 claim or any of the related claims. *See Nelson v. Heer*, 123 Nev. 217, 224, 163 P.3d 420, 425 (2007) (holding that for purposes of a claim under NRS Chapter 113, in order for a seller to be "aware" of a defect such that the seller is obligated to disclose it, the seller must be able to "realize, perceive, or have knowledge of that defect or condition"); *Land Baron Invs. Inc. v. Bonnie Springs Fam. LP*, 131 Nev. 686, 696, 356 P.3d 511, 518 (2015) ("[Common law] [n]ondisclosure arises *where a seller is aware of materially adverse facts* that could not be discovered by the buyer after diligent inquiry." (Emphasis added and internal quotation marks omitted)). Similarly, appellant's summary judgment opposition failed to identify any evidence that might raise such an inference. Based on this appellate argument and lack of identifiable record evidence, we are unable to conclude that the district court erred in finding that no genuine issue of material fact existed regarding respondents' awareness of the complained-of defects. *See* NRAP 28(a)(10)(A) (requiring briefs to cite to relevant portions of the record)[3]; *Schuck v. Signature Flight Support of Nev., Inc.*,

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[3]Appellant's opening brief *does* cite to an affidavit from appellant's manager that was submitted in conjunction with appellant's motion to reconsider the district court's summary judgment. However, the manager's affidavit submitted in conjunction with appellant's summary judgment opposition did not include the statements upon which appellant relies on appeal, and appellant has not argued that the district court improperly denied its motion for reconsideration. Relatedly, although appellant's reply brief attempts for the first time to identify specific defects of which respondents were aware, we decline to specifically address those

126 Nev. 434, 438, 245 P.3d 542, 545 (2010) ("[A] district court is not obligated to wade through and search the entire record for some specific facts which might support the nonmoving party's claim."); *see also Johnson v. Cambridge Indus., Inc.*, 325 F.3d 892, 901 (7th Cir. 2003) ("[S]ummary judgment is the 'put up or shut up' moment in a lawsuit, when a party must show what evidence it has that would convince a trier of fact to accept its version of events.").

With respect to appellant's second argument, appellant appears to be contending that its manager's own inspection was sufficient to satisfy the due diligence requirement in the parties' Residential Purchase Agreement, such that any defect he did not discover was not "within the reach of the diligent attention and observation of the buyer."[4] *Cf. Frederic*

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arguments. *Francis v. Wynn Las Vegas, LLC*, 127 Nev. 657, 671 n.7, 262 P.3d 705, 715 n.7 (2011) (explaining why this court generally declines to consider arguments raised for the first time in a reply brief).

[4]With the possible exception of its claim for violation of NRS Chapter 645, all the claims in appellant's operative complaint appear to be based on the allegation that respondents *knowingly* did not disclose the complained-of defects. If so, appellant's second argument appears to be moot in light of our rejection of appellant's first argument. *See Wood*, 121 Nev. at 731, 121 P.3d at 1031 ("The substantive law controls which factual disputes are material and will preclude summary judgment; other factual disputes are irrelevant."); *Bulbman, Inc. v. Nev. Bell*, 108 Nev. 105, 111, 825 P.2d 588, 592 (1992) (observing that "[w]here an essential element of a claim for relief is absent, the facts, disputed or otherwise, as to other elements are rendered immaterial and summary judgment is proper."). Nonetheless, in the event we are misconstruing appellant's claims and arguments, we address appellant's second argument.

As for appellant's NRS Chapter 645 claim, we affirm the district court's summary judgment based on its finding that appellant did not rely on any representations from the broker respondents, which is a finding that

& Barbara Rosenberg Living Tr. v. MacDonald Highlands Realty, LLC, 134 Nev. 570, 578-79, 427 P.3d 104, 111 (2018) (observing that a seller is not liable for nondisclosure of a known condition materially affecting the property's value if the condition is also "within the reach of the diligent attention and observation of the buyer"). Admittedly, this court has not expanded on the meaning of "within the reach of the diligent attention and observation of the buyer." *Id.* However, appellant's manager acknowledged in his deposition that before appellant purchased the building, the manager had access to the same parts of the building that appellant's own expert had when the expert conducted his own inspection as part of this litigation, with the implication being that a "professional" pre-purchase inspection would have discovered the complained-of defects alleged in appellant's complaint. Thus, absent any authority suggesting that "diligent attention and observation of the buyer" would encompass a non-professional or unlicensed inspection, we are unable to conclude that the "inspection" conducted by appellant's manager—and his failure to discover the complained-of defects—provides a basis for holding respondents liable for nondisclosure of those alleged defects.[5]

Accordingly, and to the extent that appellant's second argument implicates an issue of "material" fact, *Wood*, 121 Nev. at 731, 121 P.3d at 1031 ("The substantive law controls which factual disputes are material and

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appellant does not meaningfully contest on appeal. *Powell v. Liberty Mut. Fire Ins. Co.*, 127 Nev. 156, 161 n.3, 252 P.3d 668, 672 n.3 (2011) (providing that issues not raised by a party on appeal are deemed waived).

[5]In this, we note that the subject property was a 63-year-old apartment building that, by appellant's own admission, "should have been condemned" before appellant purchased it.

will preclude summary judgment . . . ."), we conclude that the district court correctly found that no genuine issue of material fact existed to justify denying summary judgment. We therefore affirm the district court's summary judgment in Docket No. 82835.

Attorney fee award (Docket No. 83051)

Appellant contends that the district court's award of attorney fees as a sanction under NRCP 11 must be reversed because the district court imposed that sanction in contravention of NRCP 11's explicit and mandatory procedural requirements. We agree. In particular, respondents did not serve notice of their motion at least 21 days before they filed the motion with the district court and the motion was not made separately from their summary judgment motion as required by NRCP 11(c)(2). The purpose of that provision is to allow the offending party to correct or withdraw a problematic pleading, and appellant was not afforded the benefit of that provision, which would have allowed appellant to avoid sanctions under that rule.[6] *Radcliffe v. Rainbow Constr. Co.*, 254 F.3d 772, 789 (9th Cir. 2001) (concluding that a defendant did not comply with the federal analog to NRCP 11 when it sought Rule 11 sanctions as part of a motion for summary judgment and did not serve the motion on the plaintiffs within Rule 11's 21-day advance service provision); *see also Barber v. Miller*, 146 F.3d 707, 710-11 (9th Cir. 1998) ("[W]arnings [are] not motions . . . , and

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[6]Although the summary judgment originally entered by the district court directed respondents to prepare an order to show cause, the district court's amended summary judgment removed that provision such that the district court did not order appellant to show cause why it should not be sanctioned. *See* NRCP 11(c)(3) (providing that the court, on its own, may order a party to "show cause why conduct specifically described in the order has not violated Rule 11(b)").

[Rule 11] requires service of a motion."). Thus, before sanctions may be imposed against an offending party, that party must be given "notice and a reasonable opportunity to respond." NRCP 11(c)(1). Here, respondents failed to comply with the mandatory procedural requirements of NRCP 11(c), which precludes the imposition of sanctions under NRCP 11.[7] We therefore reverse the district court's May 25, 2021, order in Docket No. 83051 insofar as that order awarded respondents attorney fees.

It is so ORDERED.[8]

_____, C.J.
Parraguirre

_____, J.
Herndon

_____, Sr. J.
Gibbons

cc: Hon. Adriana Escobar, District Judge
James A. Kohl, Settlement Judge
Day & Nance
Michael B. Lee, P.C.
Eighth District Court Clerk

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[7]Respondents contend that the district court could have awarded the same sanctions under NRS 7.085 or NRS 18.010(2)(b). However, the district court expressly granted "attorneys' fees and costs pursuant to Rule 11," which required respondents to follow the appropriate procedures for the award to have been appropriate.

[8]The Honorable Mark Gibbons, Senior Justice, participated in the decision of this matter under a general order of assignment.

IN THE SUPREME COURT OF THE STATE OF NEVADA

WLAB INVESTMENT, LLC, Appellant, vs. TKNR, INC., A CALIFORNIA CORPORATION; CHI ON WONG, A/K/A CHI KUEN WONG, AN INDIVIDUAL; KENNY ZHONG LIN, A/K/A KEN ZHONG LIN, A/K/A KENNETH ZHONG LIN, A/K/A WHONG K. LIN, A/K/A CHONG KENNY LIN, A/K/A ZHONG LIN, AN INDIVIDUAL; LIWE HELEN CHEN, A/K/A HELEN CHEN, AN INDIVIDUAL; YAN QUI ZHANG, AN INDIVIDUAL; INVESTPRO LLC, D/B/A INVESTPRO REALTY, A NEVADA LIMITED LIABILITY COMPANY; MAN CHAU CHENG, AN INDIVIDUAL; JOYCE A. NICKRANDT, AN INDIVIDUAL; INVESTPRO INVESTMENTS LLC, A NEVADA LIMITED LIABILITY COMPANY; INVESTPRO MANAGER LLC, A NEVADA LIMITED LIABILITY COMPANY; AND JOYCE A. NICKDRANDT, AN INDIVIDUAL, Respondents.	No. 82835
WLAB INVESTMENT, LLC, Appellant, vs. TKNR, INC., A CALIFORNIA CORPORATION; CHI ON WONG, A/K/A CHI KUEN WONG, AN INDIVIDUAL; KENNY ZHONG LIN, A/K/A KEN ZHONG LIN, A/K/A KENNETH ZHONG LIN, A/K/A WHONG K. LIN, A/K/A CHONG KENNY LIN, A/K/A ZHONG LIN, AN INDIVIDUAL; LIWE HELEN CHEN, A/K/A HELEN CHEN, AN	No. 83051

FILED

JUN 29 2022

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY
DEPUTY CLERK

INDIVIDUAL; YAN QUI ZHANG, AN INDIVIDUAL; INVESTPRO LLC, D/B/A INVESTPRO REALTY, A NEVADA LIMITED LIABILITY COMPANY; MAN CHAU CHENG, AN INDIVIDUAL; JOYCE A. NICKRANDT, AN INDIVIDUAL; INVESTPRO INVESTMENTS LLC, A NEVADA LIMITED LIABILITY COMPANY; INVESTPRO MANAGER LLC, A NEVADA LIMITED LIABILITY COMPANY; AND JOYCE A. NICKDRANDT, AN INDIVIDUAL,
Respondents.

ORDER DENYING REHEARING

Rehearing denied. NRAP 40(c).

It is so ORDERED.


_____, C. J.
Parraguirre


_____, J.
Herndon


_____, Sr. J.
Gibbons

cc: Hon. Adriana Escobar, District Judge
Day & Nance
Michael B. Lee, P.C.
Eighth District Court Clerk