

**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

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

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**APPELLANT'S APPENDIX**

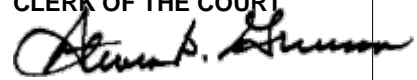
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Michael B. Lee, Esq. (NSB 10122)  
Michael Matthis, Esq. (NSB 14582)  
**MICHAEL B. LEE, P.C.**

**VOLUME III**

**CHRONOLOGICAL INDEX**

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| <b>Supplement to Motion for Summary Judgment, or in the Alternative, Partial Summary Judgment</b>              | <b>01/29/2021</b>        | <b>III</b>         | <b>AA 000427-576</b> |
| <b>Order Granting Defendants' Motion for Summary Judgment, or in the Alternative, Partial Summary Judgment</b> | <b>03/30/2021</b>        | <b>III</b>         | <b>AA 000577-620</b> |



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

**IN THE EIGHTH JUDICIAL DISTRICT COURT**

**CLARK COUNTY, NEVADA**

W L A B INVESTMENT, LLC,

CASE NO.: A-18-785917-C

DEPT. NO.: XIV

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.

**SUPPLEMENT TO DEFENDANTS'**  
**MOTION FOR SUMMARY JUDGMENT**  
**AND OPPOSITION TO**  
**COUNTERMOTION FOR**  
**CONTINUANCE BASED ON NRCP 56(f)**  
**AND COUNTERMOTION FOR**  
**IMPOSITION OF MONETARY**  
**SANCTIONS**

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 ("Manager") (hereinafter collectively referred to as the "Defendants"), by and

1 through their counsel of record, Michael B. Lee, P.C., hereby files this Supplement  
2 (“Supplement”) to Defendants’ Motion for Summary Judgment (“Motion”). This Supplement is  
3 made on the deposition of Frank Miao (“Miao”), the designated 30(b)(6) witness for Plaintiff W  
4 L A B INVESTMENT, LLC (“Plaintiff” or “WLAB”).

5 **MEMORANDUM OF POINTS AND AUTHORITIES**

6 **I. INTRODUCTION**

7 **A. Overview**

8 This supplement includes the testimony of Mr. Miao following his deposition as the  
9 person most knowledgeable (“PMK”) for Plaintiff. Mr. Miao’s testimony confirmed numerous  
10 undisputed facts that are dispositive to Plaintiff’s claims and support granting Summary  
11 Judgment as requested by Defendants’ Motion.

12 **B. Undisputed Facts as Provided by Mr. Miao**

13 **1. Plaintiff is Sophisticated Buyer**

14 Since 2008, Mr. Miao, Ms. Zhu, and/or Plaintiff have been involved in the purchase of  
15 approximately twenty residential properties. Miao Deposition at 129:12-18, 138:6-17 attached  
16 as **Exhibit 1**. In Clark County alone, Ms. Zhu and Mr. Miao were involved with the purchase of  
17 at least eight rental properties starting in 2014. *Id.* at 111:1-25, 114:19-22. Plaintiff understands  
18 the importance of reading contracts. *Id.* at 44:17-24. Additionally, Mr. Miao specified that he  
19 understands that he needs to check public records when conducting his due diligence. *Id.* at  
20 56:21-24.

21 **2. Plaintiff’s Purchase of Property was Part of 1031 Exchange**

22 As to the Property, Plaintiff purchased it as part of a 1031 exchange with four other  
23 properties at that time. *Id.* at 114:23-25-115:1-8, 149:1-8, 149:21-25. Plaintiff had an issue with  
24 financing and the appraisal for the Property, which threatened the 1031 Exchange. *Id.* at 153:12-  
25 25. Interestingly, although the Property failed the appraisal for a value of \$200,000, Plaintiff still  
26 pressed forward with the sale although it has not provided the appraisal or the basis for why the  
27 Property did not apprise for \$200,000. Prior to purchasing it, Plaintiff was aware that TKNR had  
28 purchased it as a foreclosure. *Id.* at 216:22-25.

3. Requirement to Inspect was Known

In terms of the RPA (as defined by the Motion), the terms of the contract were clear to Plaintiff. *Id.* at 156:7-21 (due diligence period), 163:3-11. 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.

*Id.* at 164:9-25-165:1-3.

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

*Id.* 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.

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.

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:

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  
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.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.

16 *Id.* at 179:18-25-180:1-15. Finally, as to the RPA, Mr. Miao agreed that all the terms in it were  
17 conspicuous and understandable, and it was a standard agreement similar to the other agreements  
18 he had used in purchasing the other properties in Clark County, Nevada. *Id.* at 198:19-25-199:1-  
19 2, 200:3-15.

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

22 As to all the properties purchased by Plaintiff, Mr. Miao always does the inspections and  
23 does not believe a professional inspection is necessary. *Id.* at 116:2-9, 119:3-25, 140:5-10.  
24 Based on his own belief, he does not believe that a professional inspection is necessary for multi-  
25 tenant residential properties. *Id.*, 120:6-9 (his own understanding), 120:16-25 (secondhand  
26 information he received). Notably, he does not have any professional license related to being a  
27 general contractor, inspector, appraiser, or project manager. *Id.* at 123:5-16 (no professional  
28 licenses), 123:23-24 (no property management license), 169:7-14 (no licensed or bonded  
inspector), 171:23-25 (have not read the 1952 Uniformed Building Code), 172:17-19 (not an  
electrician), 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). Importantly, he  
has never hired a professional inspector in Clark County, *Id.* at 140:19-21, so does not actually  
know what a professional inspection would encompass here. *Id.* at 143:9-13, 144:8-19. The  
main reason Plaintiff does not use a professional inspector is because of the cost. *Id.* at 147:2-7.  
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<sup>1</sup>, and electrical issues:

<sup>1</sup> The Second Amended Complaint references GFCI at Paragraph 31(a). This illustrates the overall bad faith  
and frivolous nature of the pleading since Mr. Miao is the one who requested TKNR to install these for  
Plaintiff.

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.

7 *Id.* Similarly, he also specified that there was an issue with exposed electrical in Unit C.  
8 175:10-24. He also noted that there could have been a potential asbestos issue as well. *Id.* at  
9 160:7-12. Additionally, he noted that there were cracks in the ceramic floor tiles, *Id.* at 249:22-  
10 25, and he was aware of visible cracks in the concrete foundation, *Id.* at 269:13-22 (aware of slab  
11 cracks), which were open and obvious. *Id.* at 270:14-24. He also admitted that he could also  
12 have seen the dryer vent during his inspection. *Id.* at 269:23-25. As to those issues, Mr. Miao  
13 determined that the aforementioned issues were the only issues that TKNR needed to be fixed  
14 after his inspection. *Id.* at 171:2-9 (was only concerned about the appraisal), *Id.* at 219:13-25-  
15 221:1-2.

16 Moreover, Mr. Miao received the Seller's Real Property Disclosure Form ("SRPDF")  
17 prior to the purchase of the Property. *Id.* at 201:22-25. As to SRPDF, Plaintiff was aware that  
18 TKNR was an investor who had not resided in the Property, and there were issues with the  
19 heating systems, cooling systems, and that there was work done without permits. *Id.* at 201:1-  
20 25-202:1-12. Similarly, it was aware that the Property was 63 years old at that time, *Id.* at 204:4-  
21 7, and all the work was done by a handyman other than the HVAC installation. *Id.* at 205:14-25,  
22 *Id.* at 134:14-25 (understands the difference between a handyman and a licensed contractor),  
23 243:2 ("Yes. They did by the handyman, yes.").

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

25 23. . . Q. . Okay. . So when they disclosed that there  
26 24 was construction and modification, alterations,  
27 25 and/or repairs made without State, City, County  
28 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?

1                   4. . . A. . No, I didn't follow up.

2                   *Id.* at 204:23-25-205:1-4. However, Mr. Miao also admitted that he could have followed up on  
3 the issues identified in the SRPDF that included the HVAC and the permits:

4                   10. . . Q. . Under the disclosure form --  
5                   11. . . A. . Yeah.  
6                   12. . . Q. . --- like, where it specified that there  
7                   13 were heating system/cooling system issues that  
8                   14 they're aware of, that you could have elected to  
9                   15 have an inspection done at that time; correct?  
10                  16. . . A. . Yes.

11                  *Id.* at 206:10-16.

12                  15. . . Q. . Okay. So as your attorney said, you could  
13                  16 have obtained a copy of the permits at any time?  
14                  17 Yes?  
15                  18. . . A. . Yes.  
16                  19. . . Q. . Okay. And then it's fair to say that just  
17                  20 put you on notice of the potential permit issue;  
18                  21 correct?  
19                  22. . . A. . Yes.  
20                  23. . . Q. . It also put you on notice of the issues of  
21                  24 everything that's basically specified on page 38;  
22                  25 correct?  
23                  Page 209  
24                  1. . . A. . Yes.

25                  *Id.* at 208:15-25-209:1, 245:22-25 (could have obtained permit information in 2018).

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

28                  22. . . Q. . Okay. So you understand that for more  
29                  23 information during the diligence process, you should  
30                  24 contact the local building department?  
31                  25. . . A. . Yes.

32                  Page 260

\*\*\*

33                  5. . . Q. . --- it provides you with the address of the  
34                  6 building and safety department; is that correct?  
35                  7. . . A. . Yes.  
36                  8. . . Q. . And the office hours; is that correct?  
37                  9. . . A. . Yes.  
38                  10. . . Q. . And it also provides you with a phone  
39                  11 number; correct?  
40                  12. . . A. . Yes.  
41                  13. . . Q. . And this is information or resources that  
42                  14 you could have used at any time related to finding  
43                  15 information about the permits of the property;  
44                  16 correct?  
45                  17. . . A. . Yes.



1 18. . . Q. . And this would have been true prior to the  
2 19 purchase of the building; correct?  
3 20. . . A. . Yes.  
4 21. . . Q. . And this would also have been true at the  
5 22 time you read the disclosure that specified that  
6 23 some of the improvements or some of the disclosures  
7 24 had been done without a permit; right?  
8 25. . . A. . Yes.

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

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

9 .5. . . Q. . Okay. . And it says, "It's the buyer's duty  
10 .6 to inspect. . Buyer hereby assumes responsibility to  
11 .7 conduct whatever inspections buyer deems necessary  
12 .8 to inspect the property for mold contamination.  
13 .9. . . . "Companies able to perform such  
14 10 inspections can be found in the yellow pages under  
15 11 environmental and ecological services."  
16 12. . . . I read that correctly?. Yes?  
17 13. . . A. . Yes.  
18 14. . . Q. . Okay. . And then you elected not to get a  
19 15 mold inspection; correct?  
20 16. . . A. . Yeah. .

16 *Id.* at 213:5-16.

17 .5. . . Q. . So you relied upon your own determination  
18 .6 related to the potential mold exposure of the  
19 .7 property; correct?  
20 .8. . . A. . Yes.  
21 .9. . . Q. . Okay. . And you elected to proceed with  
22 10 purchasing it without a professional mold  
23 11 inspection; correct?  
24 12. . . A. . Yes.

22 *Id.* at 216:5-12. Despite actual knowledge of these issues, Plaintiff did not elect to have a  
23 professional inspection done. 160:17-20. It would have refused to get a professional inspection  
24 because it believed that Mr. Miao had already performed one. *Id.* at 162:23-25-163:1.

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

27 .2. . . Q. . If we go to page 40 --  
28 .3. . . A. . Mm-hmm.  
.4. . . Q. . --- there's a bunch of Nevada statutes

1 .5 here.  
2 .6 . . . A . . Mm-hmm.  
3 .7 . . . Q . . If you look at NRS 113.140 --  
4 .8 . . . A . . Mm-hmm.  
5 .9 . . . Q . . --- do you see that at the top of the page?  
6 10 "Disclosure of unknown defects not required. Form  
7 11 does not constitute warranty duty of buyer and  
8 12 prospective buyer to exercise reasonable care."  
9 13 . . . . . Do you see that?  
10 14 . . . A . . Yes.  
11 15 . . . Q . . Okay. So this disclosure form gave Marie  
12 16 Zhu, your wife, a copy of the Nevada law that was  
13 17 applicable to the sale of the property; correct?  
14 18 . . . A . . Yeah.  
15 19 . . . Q . . Okay. And under NRS 113.1403, it  
16 20 specifies, "Either this chapter or Chapter 645 of  
17 21 the NRS relieves a buyer or prospective buyer of the  
18 22 duty to exercise reasonable care to protect  
19 23 himself."  
20 24 . . . . . Did I read that correctly?  
21 25 . . . A . . Yes.

12 *Id.* at 209:2-25. As such, no dispute exists that Plaintiff was aware that the Property had the  
13 same issues complained of in the pleadings at the time it put an offer on it, and that Plaintiff  
14 assumed the risk of failing to exercise reasonable care to protect itself.

15 4. *No Dispute a Professional Inspection Could Have Revealed the Alleged*  
16 *Issues*

17 The alleged defects identified by both parties' experts could have been discovered at the  
18 time of the original purchase. As to the ability to inspect, Mr. Miao admitted that he had access  
19 to the entire building. *Id.* at 250:22-25. He had access to the attic and looked at it. *Id.* at 251:4-  
20 14. Mr. Miao admitted that Plaintiff's expert examined the same areas that he did:

21 .6 . . . Q . . Okay. So you walked through the property  
22 .7 with him at the time he did his inspection; correct?  
23 .8 . . . A . . Right.  
24 .9 . . . Q . . Okay. During that time, did he inspect  
25 10 any areas that -- that you did not have access to in  
26 11 2017?  
27 12 . . . A . . Yes. He didn't go to anything I didn't  
28 13 inspect during 2017 too.  
14 .14 . . . Q . . So he inspected the same areas you  
15 15 inspected?  
16 .16 . . . A . . Yes, yes.

27 *Id.* at 291:6-16. Notably, Plaintiff's expert did not do any destructive testing, so the expert's  
28 access was exactly the same as Mr. Miao's original inspection. *Id.* at 291:1-5. Mr. Miao

1 admitted that Plaintiff's expert's inspection of the HVAC, *Id.* at 292:2-5, 293:18-23, and the  
2 plumbing system, *Id.* at 300:19-25-301:1-4, would have been the same as his in 2017. He also  
3 admitted that the pictures attached to Plaintiff's expert report were areas that he could have  
4 inspected in 2017. *Id.* at 302:6-13.

5 Additionally, Mr. Miao accompanied Defendants' expert during his inspection. *Id.* at  
6 320:31-25. As before, Mr. Miao had the same access to the Property in 2017 for the areas  
7 inspected by Defendants' expert. *Id.* at 321:1-6. Mr. Miao agreed with Defendants' expert that  
8 the alleged conditions identified by Plaintiff's expert were "open and obvious":

9 22. . . Q. . And then the second line down, the first  
10 23 sentence begins, "Items complained about in the Sani  
11 24 report were open and obvious in the roof area, attic  
12 25 area, and on the exterior/interior of the property."

11 Page 318

12 \* \* \*

12 .3. . . Q. . Do you agree with this statement?

13 .4. . . A. . Yes.

14 *Id.* at 318:22-25-319:3-4. He also agreed with Defendants' expert's finding that there was no  
15 noticeable sagging in the roof. *Id.* at 333:20-24.

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

19 17. . . Q. . --- midway down the first complete sentence  
20 18 says, "The Sani report does not recognize prior  
21 19 conditions in existence before any work took place  
22 20 by defendants."

21 21. . . . . Do you agree with this statement?

22 Page 321

23 \* \* \*

23 .3. . . . . Yes, yes.

24 .4 BY MR. LEE:

25 .5. . . Q. . You agree with that? Okay.

26 .6. . . A. . Agree.

27 *Id.* at 321:17-21 – 322:3-6. This would have also included any issues with the dryer vent and  
28 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.

///

5. 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. 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  
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.

6. *Plaintiff Desperate to Close on Property to Complete 1031 Exchange*

Plaintiff needed to close on the Property to complete the 1031 Exchange. *Id.* at 286:1-7. Thus, when it could not close on the first RPA, it agreed to the second RPA and waived all inspections. *Id.* at 281:12-16 (Miao did inspections already), 288:22-25-289:1-6. Plaintiff could not meet the close of escrow because its financing fell through for the Property, so it amended the first RPA and agreed to guaranty the purchase price of \$200,000 and put down \$60,000 as earnest money to get TKNR to agree to the second RPA. *Id.* at 285:4-25-286:1-7.

7. *Plaintiff Does not Disclose the Alleged Issues to Potential Tenants*

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.

*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.

Moreover, it 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?

1 .9. . . A. . No.

2 10. . . Q. . Do you ever provide them with any of the  
3 11 pleadings or the first amended complaint, second  
4 12 amended complaint, the complaint itself?

5 13. . . A. . No.

6 \* \* \*

7 22. . . Q. . Okay. . So basically, you just tell them,  
8 23 There's this. . You can inspect the unit if you want;  
9 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.

10 *Id.* at 337:6-13, 337:22-25-338:1-5. This illustrates the lack of merit of Plaintiff's claims, proven  
11 that it has done nothing to correct the allegedly deficient conditions that are clearly not so  
12 dangerous as it does not tell prospective tenants about them.

13 8. *Squatters or Tenants Could Have Damaged the Property*

14 Multiple third parties could have potentially damaged the Property. The Property has a  
15 historic problem with squatters during the time that Plaintiff owned it:

16 12. . . Q. . Do you generally have a squatter problem  
17 13 with the property?

18 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.

19 *Id.* at 110:12-16. He also admitted that tenants could have damaged the Property while they  
20 were occupying it:

21 4. . . Q. . Okay. . So the tenant in this context would  
22 5 have damaged the unit at the time that you owned it;  
23 6 is that fair?

24 7. . . A. . Maybe. . Yes.

25 8. . . Q. . Okay. . So some of the -- so the damage  
26 9 that was to the water heater system, could the  
27 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.

21  
22 *Id.* at 306:4-20, 330:5-7. This could also account for the cracking on the walls. *Id.* at 310:8-12.  
23 Tenants could have also damaged the Property if they hit it with their cars. *Id.* at 332:14-16.

24 9. *No Evidence That Defendants Knew of Alleged Conditions*

25 Plaintiff's case is based on speculation that Defendants knew about the alleged conditions  
26 in the Property; however, Mr. Miao admitted that there is no evidence that shows Defendants  
27 knew about them. *Id.* at 245:1-13 (speculating that InvestPro made changes). The entire case is  
28 based on Mr. Miao's personal belief and speculation. *Id.* at 253:17-19.

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. He also  
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 vent and ducts, *Id.* at  
325:3-20, and when the duct became disconnected. *Id.* at 329:1-16.

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.

///

///

10. No Basis for Claims 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 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. Mr. Miao solely made his statements in the Declaration related to the Flipping Fund based on information he reviewed on a website and alleged conversations at a holiday party. *Id.* at 227:22-25. He also specified that he does not know the structure between the Investpro Defendants and the scope of each's purpose. *Id.* at 230:20-25-231:1.

11. Miao Declaration is Based on Speculation and Hearsay

As to the representations in the Declaration to the Opposition to the Motion, Mr. Miao makes them according to his experience and his speculation:

11. . . Q. . So you're -- when you say your experience,  
12 it's based on you speculating based on your own  
13 belief; correct?  
14. . . A. . Based on my experience.  
15. . . Q. . Okay. So you're still speculating; right?  
16. . . A. . Okay. Yes.

*Id.* at 233:11-16. His additional statements are based on hearsay statements from third parties.

*Id.* at 234:12-24. In terms of the allegations he made as to Defendants' knowledge, those are only based on his personal belief:

17. . . Q. . So no one ever told you that. It's just  
18 based on your own personal belief?  
19. . . A. . Yes.  
20. . . Q. . Okay. And then, "Removal of natural gas  
21 supply line was, which occurred with no permit or  
22 inspection and was not performed by active licensed  
23 contractor as required by law," this is also based  
24 on your personal belief?  
25. . . A. . Yeah



1 *Id.* at 253:17-25, 254:2-7 (electrical system – personal belief), 254:17-25 (personal belief about  
2 HVAC).

3 24. . . . So as it relates to all these items here,  
4 25 no defendant ever came up to you and said, Yes,  
5 Page 255  
1 we're actually aware of these issues; right?  
6 .2. . . A. . No.

7 *Id.* at 255:24-25-256:1-2.

8 19. . . Q. . This is the first time it ever became an  
9 20 issue known to you; right?  
10 21. . . A. . Yeah, for the roof.  
11 22. . . Q. . How do you know that the defendants knew  
12 23 about this issue?  
13 24. . . A. . I don't know -- I don't know the  
14 25 defendant -- no. I don't know the defendant know  
15 Page 256  
16 1 this issue or not.

17 *Id.* at 256:19-25-257:1.

18 9. . . Q. . Like, the violations were hidden behind  
19 10 the drywall, like, what information do you have that  
20 11 the defendants hid it behind the drywall? You know  
21 12 or you don't know?  
22 13. . . A. . I just know behind the drywall that put  
23 14 the vent without -- that is a violation, but I don't  
24 15 know who did that.  
25 16. . . Q. . Okay. So you don't know who did it?  
26 17. . . A. . Yeah, yes.  
27 18. . . Q. . Okay. So it's possible that the  
28 19 defendants did not know about it or hide it; is that  
29 20 fair?  
30 21. . . A. . Yes.

31 *Id.* at 258:9-21.

32 22. . . Q. . Okay. And then you have this other thing  
33 23 about the wood paneling. Same question. How do you  
34 24 know the defendants knew about it?  
35 25. . . A. . I don't know defendants know about it. I  
36 Page 258  
37 .1 only found out this one.  
38 .2. . . Q. . So it's possible they didn't know about  
39 .3 this issue as well; correct?  
40 .4. . . A. . Yes.

41 *Id.* at 258:22-25-259:1-4.

42 .1. . . Q. . So "It's impossible that Defendants, at  
43 .2 least the ones involved in the sale, which are  
44 .3 Defendants TKNR, et cetera, did not know about the

1                   ·4 renovations."  
2                   ·5· . . . . ·So you're basically speculating; right?  
3                   ·6· . . ·A· ·Yeah, yeah, yeah.

4                   *Id.* at 260:1-6.

5                   12.     *Plaintiff Admitted it Inflated its Cost of Repairs*

6                   Initially, Mr. Miao contacted contractors to bid the potential cost of repair for the  
7                   Property, and determined that it would have been \$102,873.00. *Id.* at 307:6-22. However,  
8                   Plaintiff's expert opined that the cost of repair would have been \$600,000, although he did not  
9                   provide an itemized cost of repair. *Id.* at 334:17-21. This illustrates that the bad faith purposes  
10                  of this lawsuit was to simply harass Defendants.

11                  Mr. Miao perjured himself in his Declaration, Opp'n, Ex. 2. He denied, under the penalty  
12                  of perjury, that he never made an offer to settle this matter for \$10,000. *Id.* at Page 5 of 5.  
13                  However, during his deposition he admitted that he did make this offer. Ex. 1 at 259:5-15 ("so  
14                  maybe I tell Lin, Just pay us \$10,000"). As noted in the Motion, this illustrates the overall bad  
15                  faith of the litigation where Plaintiff admittedly amplified its alleged damages by more than 6x,  
16                  and then trebled the damages, and have run up egregious attorneys' fees for this frivolous action.  
17                  These are undisputed facts that prove abuse of process as a matter of law.

18                  **II.     DISCUSSION**

19                  This Discussion is made in support of the Motion's request for summary judgment and  
20                  broken down into two (2) subparts. Part A identifies the undisputed facts supported by Mr.  
21                  Miao's deposition testimony establishing sufficient basis for the court to grant the Motion. Part  
22                  B illustrates that Plaintiff has engaged in abuse of process by bringing this litigation, supporting  
23                  summary judgment on Defendants' counterclaim for the same.

24                  **A.     Mr. Miao's Admissions Support Summary Judgment in Favor of Defendants**

25                  1.     *Undisputed That No Evidence Shows Defendants' Knowledge of Defects*

26                  Nevada Revised Statute ("NRS") § 113.140 also provides that the Seller does not have to  
27                  disclose any defect that he is unaware of. "Under NRS Chapter 113, residential property sellers  
28                  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

1 113.140(1), however, provides that a seller is not required to ‘disclose a defect in residential  
2 property of which [she] is not aware.’ ” *Id.* (citing NRS 113.100(1)). The Nevada Supreme  
3 Court clarified that:

4 [a]scribing to the term “aware” its plain meaning, we determine  
5 that the seller of residential real property does not have a duty to  
6 disclose a defect or condition that “materially affects the value or  
7 use of residential property in an adverse manner,” if the seller does  
8 not realize, perceive, or have knowledge of that defect or  
9 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.

10 *Id.* at 425 (citations omitted).

11 Here, Mr. Miao admitted that there is no evidence that shows Defendants knew about  
12 them. *Id.* at 245:1-13 (speculating that InvestPro made changes). He admitted that he has no  
13 evidence Defendants knew about the alleged moisture conditions. *Id.* at 293:24-25-294:1-3.  
14 Additionally, he also admitted that there is no evidence that Defendants knew about the alleged  
15 issues with the plumbing system. *Id.* at 301:21-24. He also admitted that he did not know if  
16 Defendants knew about the alleged issues with the duct work when TKNR owned the Property.  
17 *Id.* at 314:5-19. He also recognized the deficiency in Plaintiff’s expert’s report that failed to  
18 differentiate between conditions prior to when TKNR owned the Property, while it owned it, and  
19 those afterwards. *Id.* at 321:17-21 – 322:3-6. He also established that a 63 year old property  
20 could have issues that were not caused by Defendants. *Id.* at 324:6-15. This would have also  
21 included any issues with the dryer vent and ducts, *Id.* at 325:3-20, and when the duct became  
22 disconnected. *Id.* at 329:1-16. Finally, as admitted by Mr. Miao, the long-term tenant of the  
23 Property was very happy with it and still resides there today, never specifying that Defendants  
24 knew or should have known about the alleged issues. *Id.* at 163:12-25-164:1-6.

25 2. *Undisputed That Plaintiff Knew About Issues From SRPDF*

26 “Liability for nondisclosure is generally not imposed where the buyer either knew of or  
27 could have discovered the defects prior to the purchase.” *Land Baron Invs., Inc. v. Bonnie*  
28 *Springs Family LP*, 131 Nev. 686, 696, 356 P.3d 511, 518 (2015). NRS § 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 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).

Here, Plaintiff 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.”).

Despite these disclosures, Mr. Miao never followed up although he acknowledged that he knew about the alleged permit issues. *Id.* at 204:23-25-205:1-4. Mr. Miao admitted that he could have followed up on the issues identified in the SRPDF that included the HVAC and the permits, *Id.* at 206:10-16, and he knew how to investigate the permit issue. *Id.* at 208:15-25-209:1, 245:22-25 (could have obtained permit information in 2018). Similarly, Mr. Miao was aware that he should have contacted the local building department as part of his due diligence. *Id.* at 260:22-25, 261:5-25. Further, he admitted Plaintiff was also on notice of the potential for mold and the requirement to get a mold inspection. *Id.* at 213:5-16. Finally, Plaintiff was also acutely aware of the requirement of Nevada law to protect itself by getting an inspection. *Id.* at 209:2-25. Despite actual knowledge of these issues, Plaintiff did not elect to have a professional inspection done. *Id.* at 160:17-20.

3. *Undisputed That an Inspection Could Have Revealed Alleged Defects*

“Liability 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). Liability for nondisclosure

1 does not apply when such facts are within the reach of the diligent attention and observation of  
2 the buyer. *Mackintosh*, 109 Nev. at 633, 855 P.2d at 552 (alteration in original) (internal  
3 quotation marks omitted). A buyer waives its common law claims of negligent  
4 misrepresentation, fraudulent or intentional misrepresentation, and/or unjust enrichment when it  
5 expressly agreed that it would carry the duty to inspect the property and ensure that all aspects of  
6 it were suitable prior to close of escrow, and the information was reasonably accessible to the  
7 buyer. *Frederic and Barbara Rosenberg Living Tr. v. MacDonald Highlands Realty, LLC*, 427  
8 P.3d 104, 111 (Nev. 2018).

9 Here, the alleged defects identified by both parties' experts could have been discovered at  
10 the time of the original purchase. Mr. Miao admitted that he had access to the entire building  
11 when he originally inspected the Property in 2017. *Id.* at 250:22-25. He had access to the attic  
12 and looked at it. *Id.* at 251:4-14. Mr. Miao admitted that Plaintiff's expert examined the same  
13 areas that he did. *Id.* at 291:6-16. As Plaintiff's expert did not do any destructive testing, the  
14 expert's access was exactly the same as Mr. Miao's original inspection. *Id.* at 291:1-5. In terms  
15 of the Plaintiff's expert's inspection, Mr. Miao admitted that Plaintiff's expert's inspection of the  
16 HVAC, *Id.* at 292:2-5, 293:18-23, and the plumbing system, *Id.* at 300:19-25-301:1-4, would  
17 have been the same as his in 2017, and the pictures attached to Plaintiff's expert report were  
18 areas that he could have inspected in 2017. *Id.* at 302:6-13.

19 Moreover, Mr. Miao had the same access to the Property in 2017 for the areas inspected  
20 by Defendants' expert. *Id.* at 321:1-6. Incredibly, Mr. Miao agreed with Defendants' expert that  
21 the alleged conditions identified by Plaintiff's expert were "open and obvious" in the roof area,  
22 the attic area, and on the exterior/interior of the property. *Id.* at 318:22-25-319:3-4. He also  
23 agreed with Defendants' expert's finding that there was no noticeable sagging in the roof. *Id.* at  
24 333:20-24.

25 **B. Deposition Illustrates Abuse of Process by Plaintiff**

26 Plaintiff inflated its alleged cost of repair for issues known to it at the time it purchased  
27 the Property from \$102,873.00 to \$600,000. *Id.* at 307:6-22. Moreover, Mr. Miao perjured  
28 himself in his Declaration, Opp'n, Ex. 2, when he denied, under the penalty of perjury, that he

1 never made an offer to settle this matter for \$10,000. Ex. 1 at 259:5-15 (“so maybe I tell Lin,  
2 Just pay us \$10,000”). Section II(D)(4) of the Motion illustrates the overall bad faith of the  
3 litigation where Plaintiff admittedly amplified its alleged damages by more than 6x, and then  
4 trebled the damages demanding \$16.25 Million in damages. It also set forth the egregious  
5 attorneys’ fees by Plaintiff, which still continue as evidenced by the Opposition. It is unclear  
6 what the driving force is related to this frivolous lawsuit, but the abuse of process is clear as a  
7 matter of law and summary judgment should be granted accordingly.

### 8 **III. CONCLUSION**

9 Based on the foregoing, Defendants respectfully request that the Motion be granted in its  
10 entirety.

11 Dated this 29 day of January, 2021.

12 MICHAEL B. LEE, P.C.

13 /s/ Michael Lee  
14 MICHAEL B. LEE, ESQ. (NSB 10122)  
15 MICHAEL MATTHIS, ESQ. (NSB 14582)  
16 1820 E. Sahara Avenue, Suite 110  
17 Las Vegas, Nevada 89104  
18 Telephone: (702) 477.7030  
19 Facsimile: (702) 477.0096  
20 [mike@mblnv.com](mailto:mike@mblnv.com)  
21 Attorney for Defendants  
22  
23  
24  
25  
26  
27  
28

MICHAEL B. LEE, P.C.  
1820 E. SAHARA AVENUE, SUITE 110  
LAS VEGAS, NEVADA 89104  
TEL – (702) 546-7055; FAX – (702) 825-4734

**CERTIFICATE OF MAILING**

Pursuant to NRCP 5(b) and NEFCR 9, I hereby certify that I am an employee of  
MICHAEL B. LEE, and that on the 29 day of January, 2021, the foregoing **SUPPLEMENT TO  
DEFENDANTS’ MOTION FOR SUMMARY JUDGMENT AND OPPOSITION TO  
COUNTERMOTION FOR CONTINUANCE BASED ON NRCP 56(f) AND  
COUNTERMOTION FOR IMPOSITION OF MONETARY SANCTIONS** 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:

BENJAMIN B. CHILDS, ESQ.  
Nevada State Bar No. 3946  
318 S. Maryland Parkway  
Las Vegas, Nevada 89101  
Telephone: (702) 251-0000  
Email: [ben@benchilds.com](mailto:ben@benchilds.com)  
Attorneys for *Plaintiff*

/s/ Mindy Pallares  
An employee of Michael B. Lee PC

# EXHIBIT 1



|    |                                       |                          |
|----|---------------------------------------|--------------------------|
| 1  | IN THE EIGHTH JUDICIAL DISTRICT COURT |                          |
| 2  | CLARK COUNTY, NEVADA                  |                          |
| 3  |                                       |                          |
| 4  | WLAB INVESTMENT, LLC,                 | )                        |
|    |                                       | )                        |
| 5  | Plaintiff,                            | )                        |
|    |                                       | )                        |
| 6  | vs.                                   | )CASE NO.: A-18-785917-C |
|    |                                       | )DEPT NO.: 14            |
| 7  | TKNR INC., a California               | )                        |
|    | Corporation, and CHI ON WONG)         |                          |
| 8  | aka CHI KUEN WONG, an                 | )                        |
|    | individual, and KENNY ZHONG )         |                          |
| 9  | LIN, aka KEN ZHONG LIN aka )          |                          |
|    | KENNETH ZHONG LIN aka WHONG )         |                          |
| 10 | K. LIN aka CHING KENNY LIN )          |                          |
|    | aka ZHONG LIN, an )                   |                          |
| 11 | individual, and LIWE HELEN )          |                          |
|    | CHEN aka HELEN CHEN, an )             |                          |
| 12 | individual and YAN QIU )              |                          |
|    | ZHANG, an individual, and )           |                          |
| 13 | INVESTPRO LLC dba INVESTPRO )         |                          |
|    | REALTY, a Nevada Limited )            |                          |
| 14 | Liability Company, and MAN )          |                          |
|    | CHAU CHENG, an individual, )          |                          |
| 15 | and JOYCE A. NICKRANDT, an )          |                          |
|    | individual, and INVESTPRO )           |                          |
| 16 | INVESTMENTS LLC, a Nevada )           |                          |
|    | Limited Liability Company, )          |                          |
| 17 | and INVESTPRO MANAGER LLC, a )        |                          |
|    | Nevada Limited Liability )            |                          |
| 18 | Company, and JOYCE A. )               |                          |
|    | NICKRANDT, an individual and)         |                          |
| 19 | Does 1 through 15 and Roe )           |                          |
|    | Corporation I-XXX, )                  |                          |
| 20 |                                       | )                        |
|    | Defendants.                           | )                        |
| 21 | _____                                 | )                        |

22 Job Number. 697915

23 DEPOSITION OF FRANK MIAO

24

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4

5

DEPOSITION OF FRANK MIAO

6

PERSON MOST KNOWLEDGABLE FOR WLAB INVESTMENT, LLC

7

8

Taken at Litigation Services

9

on Tuesday, January 12, 2021

10

at 9:00 a.m.

11

at 3960 Howard Hughes Parkway, Suite 700

12

Las Vegas, Nevada 89169

13

14

15

16

17

18

19

20

21

22

23

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

25 Job No.: 697915

1 APPEARANCES:

2 For the Defendants via videoconference:

3

MICHAEL B. LEE, ESQ.

4

MICHAEL B. LEE, P.C.

1820 East Sahara Avenue, Suite 110

5

Las Vegas, Nevada 89104

(702) 477-7030

6

mike@mblnv.com

7

For the Plaintiff:

8

9

BENJAMIN B. CHILDS, ESQ.

318 South Maryland Parkway

10

Las Vegas, Nevada 89101

(702) 251-0000

11

ben@benchilds.com

12

13 Also present via videoconference: Helen Chen

14

15

16

17

18

19

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25

## 1 I N D E X

2 WITNESS: PAGE

3 FRANK MIAO

4 Examination by Mr. Michael Lee 7

5

6

## 7 E X H I B I T S

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10 Most Knowledgable for WLAB

11 Investment, LLC

12 EXHIBIT 2 Residential Purchase Agreement 147

13 EXHIBIT 3 Seller's Real Property 200

14 Disclosure Form

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16 EXHIBIT 5 Trustee's Deed Upon Sale 216

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21 Support of Opposition to

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23 Judgment and Countermotions

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|    |                                             |     |
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1 Entry onto Land and for Inspection  
2 of Tangible Things Pursuant  
3 to NRCP 34  
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1 LAS VEGAS, NEVADA, TUESDAY, JANUARY 12, 2021;

2 9:00 A.M.

3 -000-

4

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

10

11 Whereupon,

12 FRANK MIAO,

13 having been first duly sworn to testify to the  
14 truth, the whole truth and nothing but the truth,  
15 was examined and testified as follows:

16

17 EXAMINATION

18 BY MR. LEE:

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

23 A. Yes.

24 Q. And you understand what that term means?

25 A. Yes.

1 firm in Monterey Park, Los Angeles, and working with  
2 this accounting firm to set up the company. Then I  
3 get the seal, all the documents together. Then  
4 accounting firm continued to the accountants.

5           Every year we file the tax returns through  
6 the company firm. I think they called the Southern  
7 California Accounting something company.

8           **Q.     A California accounting company?**

9           A.     Yeah, California company. It's actually  
10 we set up through that company.

11          **Q.     What's the name of the company?**

12          A.     Southern California Accounting.

13          **Q.     Oh, okay.**

14          A.     Yeah. If you go to the Chinese newspaper,  
15 you will see that advertise, yeah, from the Chinese  
16 newspaper, local newspaper.

17          **Q.     So I went through your work history. You**  
18 **know, like, 1990 to 2008, you were working in a, you**  
19 **know -- capacity as an engineer supervisor. Did you**  
20 **have to review many contracts during that time?**

21          A.     Yes, yes. Yeah.

22          **Q.     Okay. And then you understood the**  
23 **importance of reading contracts; is that fair?**

24          A.     Yes, yes.

25          **Q.     How many of these contracts led to the**



1 Legal News, every day, every feature they have a lot  
2 of legal notice and they have one called the Trustee  
3 Sale Calendar; okay?

4           So actually, it's on the trustee sale  
5 calendar that day, so I said, Okay. Maybe I -- so I  
6 actually do a lot of the due diligence for other  
7 property; right? So that I --

8           **Q. Let me pause you for a second. Hold on a**  
9 **second.**

10           **So your due diligence for the properties,**  
11 **what does that include?**

12           A. Okay. So before the auction, I go there.  
13 When they have the lease, I go to check the Zillow,  
14 then I go to the physical site to take a look;  
15 right? Then -- I'm not a real estate agent, so I  
16 cannot access to the title information. So I only  
17 do this. From Zillow, Redfin, and Realtor.com,  
18 after that I do a Google search, then I go to the  
19 site to take a look at that house, inspect the  
20 house.

21           **Q. So do you ever go to County Recorder's**  
22 **page or Assessor's page to look at the property?**

23           A. Yeah, yeah, that one I did some.  
24 Sometimes do the Assessor's page. Not in Nevada.  
25 I'm sorry. In Nevada, I don't know that. In

1 question.

2 THE WITNESS: Yeah.

3 MR. CHILDS: He's asking if you know the  
4 name.

5 THE WITNESS: No. I don't know her name.  
6 BY MR. LEE:

7 Q. So this is just some trespasser that you  
8 called the police on?

9 A. Yeah.

10 Q. Okay. This is 2018?

11 A. I think is 2018, yeah.

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.

17 Q. I mean --

18 A. It's not in this property. It's in  
19 different property. So that's why the reason we put  
20 a fence in this 2132.

21 Q. Have you ever had issues with squatters  
22 since you put the fence up?

23 A. No.

24 Q. What other properties do you own in Las  
25 Vegas?

1 A. We own 905 East Bonanza, 736 North 10th

2 Street, 728 North 11th Street, 732 North 11th

3 Street.

4 Q. Okay. So -- I'm sorry. The first one was

5 905 something or 965?

6 A. Yeah. Bonanza, Bonanza Road, East

7 Bonanza. B-O-N-A-N-Z-A.

8 Q. And I live by East Bonanza, so -- and then

9 you have 728 North 11th Street?

10 A. Yeah.

11 Q. 732 North 11 Street?

12 A. Yeah.

13 Q. There was one other one that I missed.

14 What was that?

15 A. 736 North 10th Street.

16 Q. They're all kind of close to each other,

17 yeah?

18 A. Yeah.

19 Q. And they're all in bad neighborhoods,

20 yeah?

21 A. Yeah. Very bad. I don't know the other

22 one. The reason I got lessons, not -- to be honest

23 with you, I'm ready to sell this one because my wife

24 after this incident, she tell me, Sell this. So I'm

25 interviewing the realtor to sell all this stuff.

1 up really bad.

2 BY MR. LEE:

3 Q. When did you buy 965 East Bonanza?

4 A. I forgot exactly the time. Let me check.

5 Zillow have the number. I forgot right now.

6 Probably 2015 or 2014. You ask all this

7 information. I don't remember details, but you can

8 go to the Zillow to find out.

9 Q. Do you still own the properties?

10 A. Yes.

11 Q. Do you still own the property --

12 A. We probably sell that one. My wife ask me

13 to sell this ASAP.

14 Q. Because it's in a bad neighborhood?

15 A. Because of the incident. She says it's

16 too tough dealing with tenant, this kind of tenant,

17 you know. Anyone can force a claim, something that

18 you can put me in jail, you know, so it's very bad.

19 Q. So 736 North 10th Street, when did you buy  
20 that, your best estimate?

21 A. I think it's 2015, 2014, that range of  
22 time too.

23 Q. What about 728 North 11th Street?

24 A. It's 2017.

25 Q. So was this one part of the 1031 exchange

1 that you used to buy --

2 A. Yes, yes, yes.

3 Q. What about 732?

4 A. It's the same.

5 Q. 2017?

6 A. Yeah.

7 Q. 308 Maryland?

8 A. Same thing, 2017.

9 Q. What about Valley?

10 A. Valley is probably 2014, '15.

11 Q. And Quiet Cove was 2019?

12 A. Yeah, '19.

13 Q. Okay. So everything in 2017 was part of  
14 the same 1031 exchange --

15 A. Right.

16 Q. Okay. And then what about these ones that  
17 were about 2014, 2015, was that --

18 A. Yeah. That is -- I -- I -- because I  
19 was -- at that time, the -- attended some of the  
20 real estate investment seminar training program that  
21 was in Las Vegas. I liked Las Vegas, so I just  
22 bought some rental property there.

23 Q. Have you brought any claims at all related  
24 to any of these properties other than the Houston  
25 property at any time?

1 A. No, no other claim.

2 Q. Did you do the inspections on all these  
3 properties?

4 A. Yes.

5 Q. Except Quiet Cove?

6 A. Yes.

7 Q. And then you did the inspections prior to  
8 purchase; right?

9 A. Yes.

10 Q. Who's your real estate agent that  
11 represented you on these sales?

12 A. Okay. Usually, I doing that one. All the  
13 real estate agency for all the other property is why  
14 I go to the Zillow founder. Then I hire the listing  
15 agent, like a buyer agent. Except --

16 Q. How many properties generally on Zillow --

17 A. Yeah.

18 Q. -- the listing?

19 A. Yeah. Then I just hire the listing agent,  
20 like the buyer agent, to do that. Except this 2132  
21 Houston Drive -- actually, this is -- just yesterday  
22 I was thinking about this. I found out maybe  
23 strange I didn't catch up at that time. This one  
24 originally I found Zillow is Kenny Lin is listing  
25 agent, right, so I contact Kenny Lin based on the

1           A.    I don't think so because -- let me pull  
2 out a list of things.

3                   It's different. Compare with the  
4 commercial multi-family house apartment and the  
5 inspection was to the real estate transition was to  
6 the single-family -- owner occupied the  
7 single-family house. It's quite different.

8                   By now, in the multi-family apartment,  
9 right, that office building, these cannot  
10 transition. They don't need a professional  
11 inspection required. Why?

12           Q.    Is that -- is that based on your  
13 experience or your understanding?

14           A.    Yes. And also this is common knowledge  
15 for the multi-family investor/owner. Imagine -- for  
16 example, in Las Vegas, you have more than a thousand  
17 unit in one apartment complex; right? More than  
18 1,000 unit. How you do the inspection for that  
19 1,000 unit within 30 days? Because some is owner is  
20 already have tenant occupied. How you notify each  
21 tenant to open the door and let you in to inspect?  
22 Impossible and infeasible. Cannot do that.

23                   So usually for multi-family, this kind of  
24 commercial rental property, when they're doing that,  
25 they doing this because walks-through for common

1 area, right, they rely on the seller, which is owner  
2 for the other property manager to make sure if they  
3 did any repair work or development work, they have  
4 inspection by City safety -- building safety and the  
5 department.

6 Q. Okay. So this is based on your  
7 understanding of what's required related to  
8 inspections of multi-tenant properties?

9 A. Yeah, it's my understanding. I also  
10 the -- I talked to the -- because of the investor,  
11 we had joined this club called the landlord  
12 association when I was in California. They used to  
13 call the landlord association and also Las Vegas,  
14 they also call Las Vegas Landlord Association.  
15 Inside there's people that say it this way.

16 Q. So secondary information you received as  
17 part of these associations?

18 A. Right, right, right.

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



1 landlord to make sure all these building is safe and  
2 in good condition.

3 Q. All right. So East Bonanza, is that a  
4 multi-tenant property or single-tenant?

5 A. All is multi-tenant except the 9101.

6 Q. All of these are multi-tenant?

7 A. Yeah.

8 Q. Like, Houston is more or less a  
9 single-family residence that was converted to  
10 multi-tenant?

11 A. No. It's multi-tenant before all the  
12 time.

13 Q. So are all these other places, like --  
14 like, how many units does East Bonanza have?

15 A. Four units.

16 Q. All of them?

17 A. No. 736 North 10th Street is a six-unit,  
18 and Mar -- then except that one, 2132 is a  
19 three-unit.

20 Q. So 736 is how many units?

21 A. Six.

22 Q. Six units?

23 A. Yeah.

24 Q. And then 728 is how many?

25 A. Four units.

1 Q. Okay. Have you ever declared bankruptcy?

2 A. No.

3 Q. For licenses, you gave a long detailed  
4 history of, you know, your professional experience.

5 What kind of professional -- other than  
6 your driver's license, what kind of licenses do you  
7 have?

8 A. I don't have real estate license. I don't  
9 have that.

10 MR. CHILDS: Any license he's asking.

11 THE WITNESS: Not any license, no.  
12 Driver's license.

13 BY MR. LEE:

14 Q. So no licenses at all, no professional  
15 licenses?

16 A. No.

17 Q. I have a license to practice law. Do you  
18 need any license to practice gasology or whatever  
19 it's called, gasification?

20 A. No.

21 Q. No?

22 A. No.

23 Q. Do you have a property management license?

24 A. No.

25 Q. Did you answer orally?

1 property to do the rental and get the income for the  
2 retirement.

3 Q. Is that residential rentals or commercial  
4 rentals?

5 A. Residential. In California, it's mostly  
6 residential rental.

7 Q. When did WLAB buy its first residential  
8 property in California?

9 A. Since we set up the company, every one or  
10 two year we just do that way. We have some rental  
11 property we bought in California and also sold.

12 Q. Did you already own residential rental  
13 properties prior to forming WLAB?

14 A. Yes, yes.

15 Q. Okay. When did you buy your first  
16 residential home?

17 A. 2009 or 2000 -- yeah, 2009, 2008, that  
18 range of time.

19 Q. And the owner of that property would have  
20 been you and Marie?

21 A. Yes.

22 Q. Okay. What kind of property was it?

23 A. Single-family house.

24 Q. Where was it?

25 A. Single-family house in West LA.

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

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

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

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

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

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

15 Like, handyman?

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

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

25 A. Yes, yes.

1 someone to do the work, you want -- you would

2 usually follow up and ask to see the permit and

3 inspection?

4 A. Yes, I will do that.

5 Q. Okay. So after Bundy, what else did you

6 guys buy?

7 A. We buy a lot of property in California.

8 Q. In general, how many properties do you

9 own?

10 A. A lot. More than ten. But I cannot count

11 exactly right now.

12 Q. More than ten in California or in total?

13 A. In California.

14 Q. So we know you own eight or nine here in

15 Vegas and that you own more than ten in California;

16 right?

17 A. Right, right, right.

18 Q. And then the properties that WLAB owns,

19 are there separate properties that you and Marie own

20 that aren't part of WLAB?

21 A. Yes, yes. We -- we thinking in the --

22 sometimes they use my wife name because she's get a

23 W-2. She can get a loan, so -- but some we change

24 the title. I went to the County recording office

25 and change the title because time to move to the

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

4 A. I did some. One or two. Not much.

5 Because we did some work, buy some property in Yuca  
6 Valley. I think I hired an inspector to do that.  
7 Then later I found out, you know, what later  
8 inspector report is not much different than what I  
9 found. So later, we just didn't hire the  
10 professional inspector doing this work.

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

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

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

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

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

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

25 Q. Do you know if there's professional

1 inspectors that will inspect multi-tenant

2 residential properties that have six units or less?

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

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

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

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

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

1 Q. -- it's also your understanding that --

2 MADAM REPORTER: Sorry. One at a time. I  
3 didn't get any of that.

4 BY MR. LEE:

5 Q. It's also your understanding that the  
6 professional inspection is not much different than  
7 what you would perform?

8 A. Yeah, yeah.

9 Q. Okay. Since you've never had a  
10 professional inspection done in Clark County, how  
11 would you know?

12 A. That's -- that's what I said, I don't  
13 know. What I said is in the -- my understanding is  
14 there is no law in the Clark -- in the Nevada or in  
15 California mandate to do the professional inspection  
16 for the multi-family apartment.

17 Q. Is it fair to say that a professional  
18 inspection may inspect areas that you don't  
19 personally inspect in general when you purchase a  
20 property?

21 MR. CHILDS: I'm going to object to that  
22 because that calls for speculation.

23 MR. LEE: Speculation is not a proper  
24 objection, so go ahead.

25 THE WITNESS: I don't think so. I go



1 through there very detail, and I even go more  
2 detailed than the profession inspection when I was  
3 down with the professional inspector for my summer  
4 house in the property in Yucca Valley; right?

5 BY MR. LEE:

6 Q. Yucca Valley is California? Yes?

7 A. California, yeah, yeah.

8 Q. Okay. And you've never had a professional  
9 inspection done in Nevada; correct?

10 A. I didn't do any professional inspection in  
11 Nevada.

12 Q. And you've never done a professional  
13 inspection in Clark County; correct?

14 A. No. I didn't hire any of the professional  
15 inspection to do the inspection in the Clark County.

16 Q. So it's fair to say you don't know what  
17 the additional areas that a professional inspection  
18 would cover in Clark County?

19 A. Yes. I don't know, but yeah.

20 Q. Do you own any commercial real estate or  
21 is it all residential?

22 A. What?

23 Q. Do you own any commercial real estate?

24 A. I think the multi-family, the apartment,  
25 is commercial too. They call it commercial or --

1 inspector to do the inspection. And I said it this  
2 way -- actually, we did -- the seller. The reason I  
3 found out why I don't need to do the inspection, we  
4 had one duplex in Yucca Valley; right? Before I  
5 purchase, I hired the inspector to do that. They  
6 are priced very high. I think it's about \$2,000 to  
7 do the duplex inspection.

8           After that, I talked to the realtor;  
9 right? The realtor said, You don't need to do that  
10 because this is multi-family, this is rental  
11 property. Seller make sure this -- everything is  
12 good to sell you because you have need tenant to  
13 make sure the safe and well-being for the seller --  
14 tenant. That's just making me think about, Oh, this  
15 is -- this -- this kind of thing. So I just don't  
16 do that in the -- for the multi-family apartment  
17 purchase.

18           **Q. That decision is based on cost and then**  
19 **your belief that the seller makes sure that it's**  
20 **habitable; correct?**

21           A. Right, right, habitable and -- yeah.

22           **Q. Okay. Let's go to the residential**  
23 **purchase agreement that's dated August 11, 2017.**

24           (Exhibit 2 was marked for the record.)

25 ///

1 planning on purchasing this property individually or

2 what was -- you were going to get originally

3 financing for this purchase; right?

4 A. Yes. This is -- I identify the seller

5 property because we sold the one full price in

6 Twentynine Palms (phonetic). So we have some money.

7 We want to use the money to do the 1031 exchange,

8 so --

9 Q. How much did you sell the Twentynine Palms  
10 property for?

11 A. Oh, gosh. I forgot the exact number.

12 Probably more than \$300,000, maybe \$400,000.

13 Q. With the 1031 exchange, you need to  
14 purchase an equivalent amount of real estate;  
15 correct?

16 A. Right, right, right, right.

17 Q. Okay. So whatever your 1031 exchange  
18 would have been would have -- I mean, if you're  
19 going to do a 1031 exchange, why did you need to try  
20 to seek financing?

21 A. No. We do the 1031 exchange and then --

22 so we do that one for down payment. Okay. So we --

23 that's our reason we bought a whole bunch of

24 property. I think I buy four property during that

25 time.

1 A. Right, right.

2 Q. Okay. So let's stay on this document.

3 We're still on the August 11, 2017; okay?

4 A. Okay.

5 Q. Okay. So as part of this agreement, when  
6 you go to page 28 of 166 --

7 A. Yeah.

8 Q. -- it's specified that the close of escrow  
9 for the transaction would have been 30 days from  
10 acceptance; correct?

11 A. Yes, yes.

12 Q. Okay. But, you know, based on your  
13 financing falling through, that's the reason why you  
14 ultimately had to end up canceling this agreement;  
15 right?

16 A. Yes, because of the -- I think the Helen  
17 Chen notified us. They said, you know, this not  
18 closing on time in 30 days. They're going to take  
19 the -- our deposit and then cancel this purchase  
20 agreement. Then we said, Well, we got a problem  
21 because of the 1031, we already filed the 1031  
22 exchange including this property. Also, we don't  
23 want to lose that \$5,000 deposit. So we said, Can  
24 we do that one? Wait put more cash. We try to get  
25 a loan. If we still can't get a loan by end of

1 A. No.

2 Q. No.

3 Okay. So, like, your wife's impressions  
4 would be something I would have to ask her about  
5 individually?

6 A. That's fine, yeah.

7 Q. You understand that the obligations  
8 related to the buyer's due diligence to be done in  
9 14 days of acceptance, though; correct?

10 A. Yes.

11 Q. And that's the reason why you are the  
12 person who generally does the inspection of a  
13 property?

14 A. Yeah. We do the -- I said that --  
15 actually, my wife asked her -- usually I tell them,  
16 I did the inspection. Because before, for the  
17 purchase agreement, I go there personally to inspect  
18 the property and do the very detailed inspection.

19 Then after that, I went to the property  
20 several times too to the tenant and also other  
21 things. Check the --

22 Q. Let's do it this way.

23 A. Okay.

24 Q. On -- when did you find the property? Do  
25 you recall what date?

1 Q. Okay. Then tell me what happened.

2 A. Then I just go over the property all of  
3 detail, surrounding area. I just check the other  
4 building. Then this -- at that time, there's one  
5 tenant there. So other two --

6 Q. So you had -- let me pause you.

7 So you had the ability to walk the  
8 property with Kenny Lin?

9 A. Right, right.

10 Q. Okay. Like, do you recall all the areas  
11 that you looked at?

12 A. Yeah. Actually, I walked the Unit B, C.  
13 I go to there too. Now, Unit --

14 Q. So when you walked through them, what did  
15 you look at?

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.

1 Then the tenant get electrocuted somehow in the one

2 area. So I --

3 Q. What else did you inspect?

4 A. Then I inspected -- I found out there's a

5 lot of cabinets is new, so I said, Well, you got all

6 this new. They said, Yeah, we just did the

7 renovation for the kitchen cabinet and the fixtures

8 on the vanity are new. Then he also point out you

9 see all the shower, the ceramic tile is new shower.

10 Bathtub is new tile, all that one. He said he did

11 all new.

12 Then --

13 Q. Okay.

14 A. So I check that washer/dryer.

15 Q. Was there a sink that was clogged during

16 the time you did your inspection?

17 A. No. No, no clog.

18 Q. So there was never a clogged sink issue at

19 all?

20 A. I was inspect new tenant. Only one

21 tenant. Unit A have people. Other units, B and C,

22 at that time I think is vacant. Then I opened the

23 faucet, the water go through.

24 Okay. Then checked the ceiling --

25 actually, I mention to the Kenny Lin I saw the

1 ceiling, one whole ceiling is popcorn ceiling in  
2 Unit C. I said, Well, you know, this popcorn  
3 ceiling have issue if we have asbestos. They said,  
4 No, no, no, no problem because -- I said, This is  
5 older house. Then he said, If you don't touch that  
6 one, it's okay.

7 Q. So you noticed that the property had  
8 popcorn ceiling. What were you concerned about,  
9 potentially asbestos?

10 A. Yeah, because I have experience when I  
11 build my house in Arcadia, so I told them, If we got  
12 popcorn ceiling there, then they may have asbestos.  
13 Then they said, If you don't expose and disturb  
14 that, that's okay. I said, Okay. I know that is  
15 some people say that way too. So I just said --  
16 ask, We don't disturbing that one, it's okay.

17 Q. But although you had this concern about  
18 potential asbestos, did you do an inspection for  
19 asbestos?

20 A. I didn't do the inspection, but I just  
21 said -- he tell me if we're not disturbing that one,  
22 it's not issue, so I just -- I said -- because he  
23 already rental to tenant, so what's the point for me  
24 to argue that.

25 Q. So Mr. Lin, did he ever tell you to get an



1           A.     Not that we -- we noticed that this is  
2 multi-family house. We don't need to do the  
3 professional inspection. Even they ask us, This  
4 is -- because this is dealing with the tenant --  
5 with the owner or seller issue.

6           Q.     Okay. So my question was: Was it  
7 possible that Ms. Chen had told either you or your  
8 wife that you needed to get a professional  
9 inspection done?

10          A.     Maybe. Maybe. I don't know. I just said  
11 I cannot say on behalf of my wife because my wife,  
12 she maybe received email from Chen.

13          Q.     Okay. And as far as you know, do you  
14 recall or not if she told you that you needed to get  
15 a professional inspection done?

16          A.     I don't think that I recall the memory on  
17 that because I always tell my wife, I said, We  
18 already done the inspection. That's the reason we  
19 decide to buy this property; right?

20          Q.     So if I break it down, you don't remember  
21 if that happened; is that fair?

22          A.     I don't remember, yes.

23          Q.     Okay. And then the second thing is you  
24 told your wife that you had already done the  
25 inspection so you didn't need a professional

1 inspection?

2 A. Yes.

3 Q. Okay. So if we go back to the residential  
4 purchase agreement, which is Exhibit 2, it was  
5 conditioned originally on you having the ability to  
6 complete your due diligence. So is it your  
7 understanding that when you did your inspection on  
8 August 10th, 2017, that that was your -- you doing  
9 your due diligence?

10 A. Yes, yeah. That is on the understanding  
11 we do the due diligence.

12 In addition to the initial inspection in  
13 August 10th, I went to the site a couple of times.  
14 I think another two times. Then take a look at the  
15 surrounding environment, talk to the tenant Unit 1  
16 also.

17 Q. And this is some -- like, can you estimate  
18 the time frame when you talked to the tenants?

19 A. Just between the -- we purchase that one  
20 in the 30 days, the due diligence period. I went to  
21 there.

22 Q. Do you recall what those -- what you  
23 learned during those conversations?

24 A. No. At that time, the tenant is very  
25 happy. He said that, Yeah, I like this. We living

1 very good, and that's the reason he got my phone

2 number.

3 Q. Okay. Do you remember the name of this  
4 tenant?

5 A. Yeah, Nicholas. He's the guy that's still  
6 living there, Unit A. I give his phone number. I  
7 said, Well, if we go to buy this property, I'm the  
8 new owner, so I gave him his phone number.

9 Q. Okay. If we go back to Exhibit B, page  
10 28, 7A, Property Inspection/Conditions, it says,  
11 "During the due diligence period, buyer shall take  
12 the actions buyer deems necessary to determine  
13 whether the property is dissatisfactory to the  
14 buyer." It goes on, but I'm going to stop there.

15 Based on what you've described, you  
16 believe that you took the actions necessary to  
17 determine if a property was satisfactory to you,  
18 WLAB, to purchase it?

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

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.

4 Q. So with the rent that you described, did  
5 you receive rent rolls about what the current rental  
6 rates were for the property --

7 A. At that time only one tenant.

8 Q. One tenant.

9 But around that time, you already received  
10 all the lease agreements and everything; correct?

11 A. I didn't receive leasing agreement until I  
12 purchase it.

13 Q. Okay. So you did receive the lease  
14 agreements that were for the property?

15 A. Yeah, yeah, yeah, yeah. After that, yeah.

16 Q. Okay. So if we keep reading on 7A, it  
17 says -- line 36 on the left-hand side. "During such  
18 period, buyer shall have the right to conduct  
19 noninvasive, nondestructive inspections of all  
20 structural, roofing, mechanical, plumbing,  
21 heating/air conditioning, water/well/septic,  
22 pool/spa, survey square footage, and any other  
23 property or systems through licensed and bonded  
24 contractors or other qualified professionals."

25 Did I read that correctly?

1 A. Yes, yes.

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

12 Q. Okay. So can you spell --

13 A. I can see. I'm the professional at that  
14 time, so --

15 MADAM REPORTER: One at a time, please.

16 BY MR. LEE:

17 Q. Can you spell that last word? You can see  
18 the packing?

19 A. No. I can see. I'm the -- also  
20 professional.

21 Q. Yes.

22 A. So that's -- I'm thinking in here they  
23 said, "Qualified the professional inspection";  
24 right? Other qualified professional, so I'm  
25 thinking, Yeah, we did other one.

1 Q. Okay. So my question related to you had  
2 the opportunity to inspect the structure of the  
3 property; correct?

4 A. Usually inspect the structure, no -- and  
5 the invasive is you just look around the wall, make  
6 sure wall is no big crack there, right, that kind of  
7 thing.

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.

17 Q. Okay. Did -- you had a right to inspect  
18 the mechanical systems; correct?

19 A. That's a Kenny Lin that point out, said  
20 there's a new one, so I didn't go there. It's a  
21 brand-new one.

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

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.

9 Q. You had a right to inspect the  
10 water/well/septic systems; correct?

11 A. Yes. This is not applicable.

12 Q. Yeah. Like, pool or spa, there's no pool  
13 or spa; right?

14 A. Yeah.

15 Q. You didn't do a survey. You didn't go out  
16 there with a little land --

17 A. No, no, no, no. This is nothing land, you  
18 know, yeah.

19 Q. Did you -- I'm sure you didn't -- like,  
20 you had the right to inspect the square footage, but  
21 I'm sure you didn't go out there with a tape  
22 measure.

23 A. No, I didn't. I just -- it's rental  
24 property, you know.

25 Q. Yeah. But you had the right to inspect

1 the square footage if you wanted?

2 A. Yeah.

3 Q. And then you could have inspected any  
4 other property or system within the property itself;  
5 correct?

6 A. Yes, yes.

7 Q. Okay. Now, I understand that you did the  
8 inspection and you think you're a qualified  
9 professional; right?

10 A. Yes.

11 Q. But you're not licensed; is that right?

12 A. Yeah. I'm not licensed, yeah.

13 Q. And you're not bonded; right?

14 A. No. Yes.

15 Q. Okay. Then it also says down here on line  
16 43, "Buyer is advertised to" -- excuse me. "Buyer  
17 is advised to consult with appropriate professionals  
18 regarding neighborhood or property conditions."

19 Did I read that correctly?

20 A. Yes.

21 Q. Okay. Did you consult with any other  
22 appropriate professionals?

23 A. Actually, that is -- I went to the second  
24 time, a third time, I take a look at the  
25 neighborhood surrounding, talk to tenant and talk to



1 the neighborhood.

2 Q. Okay. And everyone was pretty happy with  
3 the neighborhood?

4 A. Right, because of that -- across the  
5 street is apartment. I went to the apartment too,  
6 the seller apartment there.

7 Q. And the tenant who still lives there was  
8 pretty happy at the time?

9 A. Yeah.

10 Q. Okay. Under 7B, it says, "Buyer's right  
11 to cancel or resolve objections."

12 A. Mm-hmm.

13 Q. So under line 55, Roman numeral II, "No  
14 later than the due diligence deadline referenced in  
15 Section 7, resolve in writing with seller any  
16 objections buyer has arising from buyer's due  
17 diligence."

18 Did I read that correctly?

19 A. Yes.

20 Q. We'll get to this in a minute because I  
21 know that Ms. Chen had submitted some changes that  
22 you wanted and I think there's some text messages  
23 about that, so we'll get to that in a minute; okay?

24 A. It's email and text message, yeah.

25 Q. Email and text messages?

1 A. Yeah.

2 Q. So those would have been those issues that  
3 you decided that needed to be resolved prior to you  
4 purchasing it; correct?

5 A. Right, because of the -- I tell them,  
6 based on my experience, this is needed to resolve  
7 before the appraisal inspection because otherwise  
8 they may not approve the appraisal, then I cannot  
9 get loan. Because mostly by law it should be done.

10 Q. Sorry. By law what should be done?

11 A. By the unified building code, it should be  
12 correct.

13 Q. Okay. So by your understanding of what  
14 the building code is for these other applicable  
15 standards, that's what you mean by "the law"; right?

16 A. Okay. Yeah. For example, in the unified  
17 electrical code, very specific it says, Any new or  
18 renovated building near the water, like a garage,  
19 kitchen, bathroom, electric, all that, near the  
20 water need to be done by the GFCI. So that's the  
21 reason I wrote that one. I said, You need to do  
22 that before you get a --

23 Q. I asked you: Have you read the 1952  
24 Uniform Building Code?

25 A. No.

1 Q. Okay. Have you read the National  
2 Electrical Code?

3 A. I read the National Electrical Code long  
4 time ago.

5 Q. So are you familiar with it or understand  
6 everything that's required under the National  
7 Electrical Code?

8 A. New one. Anything the -- new after 2015,  
9 requirement. That is the requirement.

10 Q. Have you ever taken any exams or  
11 licensures related to your competency related to the  
12 National Electric Code?

13 A. I don't recall that I need to do  
14 examination for the code. Even you apply the  
15 electrical permit -- electrician permit -- I don't  
16 know.

17 Q. You have an electrician permit?

18 A. I haven't -- I didn't -- I don't have the  
19 license for the electrician license.

20 Q. Have you read the International Building  
21 Code?

22 A. I read it before.

23 Q. Okay. Have you ever taken any licensing  
24 or certifications to qualify you as competent under  
25 the International Building Code?

1           A.     I didn't take exam, but I -- actually, I  
2 take the course. I almost apply the general  
3 contractor license.

4           Q.     So you almost applied for it or you didn't  
5 apply for it?

6           A.     Yeah, I didn't apply for it because what  
7 happened is I found out I need working for some  
8 company to get apprenticeship for several years  
9 before you can apply for general contractor license.

10          Q.     So other than simply just reading some of  
11 these materials, you've never been tested on your  
12 scope of knowledge; is that fair?

13          A.     Yes. I didn't get a testing, yeah.

14          Q.     Never received your contractor's license  
15 that you were thinking about applying for; right?

16          A.     Right, right, yeah.

17                   So I actually pay the money for a lot of  
18 -- take courses for the general contractor license,  
19 that kind of application cost in California.

20          Q.     There's no certifications that show you  
21 actually passed the coursework --

22          A.     Maybe I can find some because they did the  
23 online testing for each course that counts that one.  
24 I accumulated enough credit to apply the general  
25 contractor license. I did some. Maybe online maybe

1 I can find out some result. I just don't remember  
2 one. I know that company before did that, that  
3 school, at Golden Gate Contracting School, something  
4 like that.

5 Q. Okay. So you may have taken some exams --

6 A. Yeah.

7 Q. -- or you may not have taken exams related  
8 to --

9 A. I may take some exam, but I needed find  
10 out the -- it's all online. They give you -- you  
11 buy the book, then they have online courses. I go  
12 to attend on -- do the online exam online.

13 Q. Have you read the International  
14 Residential Code?

15 A. No. I don't know that code.

16 Q. So is it possible that there's codes and  
17 standards related to, I guess, Clark County and  
18 Nevada that you may be unfamiliar with?

19 A. Maybe, but for this GFCI, it's very  
20 common. The reason is a lot of people, when they do  
21 the renovation, right, they think they can continue  
22 using older code. That is false. They have to  
23 use -- adopt a new code to meet new code.

24 Q. Okay.

25 A. So if they doing the renovation, then they

1 have to do the -- meet the new code. They cannot  
2 just use existing older 1950, the code. That's for  
3 sure I know that. That's the reason I tell the  
4 Kenny Lin, I say, You say you're doing the  
5 renovation there. You need to meet the new code.

6           At that time, I remember telling Lin, I  
7 said, Well, if your tenants complain to the code  
8 enforcement, the code enforcement may shut down this  
9 property due to --

10           **Q. On August 10th, 2017, you told Mr. Lin**  
11 **that the building was not up to code; correct?**

12           A. I tell them that area, the electrical code  
13 is not up to code and also no smoke alarm and no  
14 carbon monoxide alarm. It's not going to meet the  
15 code.

16           Oh, there's another thing I tell him. I  
17 found out there's electrical conduit in Unit C  
18 exposed on outside the wall, so I said, Well, you  
19 need to do something to cover that up. I don't know  
20 whether you meet code or not. Then at that time,  
21 Lin also noticed that.

22           **Q. This is around the August 10, 2017, time**  
23 **frame?**

24           A. Yeah. August 10, 2017.

25           **Q. Okay. So you went over the objections.**

1 Resolve any objections. We'll get to that in a  
2 minute when we get to the emails.

3 If we look at page 29, Item D, starting at  
4 line 11, it says, "We strongly recommend that a  
5 buyer retain licensed Nevada professionals to  
6 conduct inspections."

7 Did I read that correctly?

8 A. Which one? Which page?

9 Q. Line 11.

10 A. Yeah.

11 Q. Do you see that? It's in italics.

12 A. Yeah, yeah, yeah.

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.

20 Q. -- when you guys were purchasing the  
21 property?

22 A. But, you know, we found out that later  
23 even professional licensed inspector would not find  
24 this issue that we're currently in the litigation.  
25 I already explained very detailed about that.

1 They put it -- draw the hole, they -- there's  
2 that -- there's new conduit line go to the building,  
3 go to the breaker -- not breaker. At that time,  
4 it's a fuse box. New line go there.

5 Q. So this is the box unit that we're talking  
6 about?

7 A. Yeah. That is unit with two windows AC,  
8 that unit.

9 Q. Okay.

10 A. Unit A, the tenant there. They said when  
11 they move in there before, there's giant heat pump  
12 on the roof. The roof was shaking. Then he call  
13 the InvestPro. Then later, he said he going to call  
14 the code enforcement. Then the InvestPro change the  
15 rules, the bigger AC, the heat pump to the -- to  
16 smaller. Then they put a new conduit, new line for  
17 the window AC.

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



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.

16 Q. Okay. So in terms of the waivers, you  
17 know, waived some of the inspections that's on page  
18 26, lines 18 and 19, do you see that box there?

19 A. Yeah.

20 Q. Okay. You -- like, did you agree to waive  
21 these inspections based on your --

22 A. No.

23 Q. -- issue or did your wife?

24 A. Actually, all this is prepared by the  
25 Helen Chen; okay?

1 A. Which page is that you want me to read?

2 Q. That's page 34, line 1 through 8.

3 A. Yes. Agreed.

4 Q. All right. So you understand that the  
5 prevailing party shall be entitled to their  
6 attorney's fees and costs; correct?

7 A. Right.

8 Q. Then it says this is a legally binding  
9 contract.

10 You understood that?

11 A. Yes.

12 Q. And it was bold and conspicuous?

13 A. Yeah.

14 Q. And it says, "All parties are advised to  
15 seek independent legal and tax advice to review the  
16 terms of this agreement."

17 You saw that? Yes?

18 A. Yes.

19 Q. Do you agree that all the terms that we  
20 discussed in this agreement are conspicuous and  
21 understandable terms?

22 A. I need to check. I thought this is a  
23 standard residential purchase agreement.

24 Q. This is a residential purchase agreement.

25 A. Yeah, yeah, standard one. It's, like, the

1 standard residential agreement with -- so if that is

2 the very standard one, I agree with that.

3 Q. Yeah. I mean, you're talking about, like  
4 standard, GLVAR or whatever the applicable standard  
5 form would be in California; right?

6 A. No. Even in Nevada, this one, I saw  
7 this -- if this is the Nevada standard residential  
8 purchase agreement. So -- because currently they  
9 have InvestPro Realty logo there. So if it's a  
10 standard, then I agree. If it's InvestPro put  
11 themselves, then I'm not agree.

12 Q. So if you go to page -- any page in this  
13 agreement, at the bottom of the page, it says,  
14 "Copyright 2017, Greater Las Vegas Association of  
15 Realtors."

16 Do you see that?

17 A. Yeah. Okay.

18 Q. Okay. So do you know what GLVAR means?

19 A. Yeah.

20 Q. Okay. Would you agree that that's a  
21 standardized business that does standardized forms?

22 A. Yeah, but you see it also says, "This form  
23 is presented by Liwei Chen InvestPro Realty"; right?  
24 Then also here, the logo says the InvestPro Realty.

25 Q. You had purchased several residential

1 properties prior to this; correct?

2 A. Yeah, yeah.

3 Q. Okay. And then you actually purchased  
4 several in Nevada prior to this transaction;  
5 correct?

6 A. Yes.

7 Q. Do you find that this agreement was very  
8 standard related to your other experience related to  
9 those transactions?

10 A. I think at that time I was thinking they  
11 should be the same with other change.

12 Q. Did you find anything that was -- in this  
13 agreement that was different than the other  
14 transactions that you were involved with?

15 A. No, not yet.

16 Q. No? Okay.

17 Let's go on to our next exhibit, which  
18 would be the seller's real property disclosure form.

19 A. Yeah.

20 Q. The Bates on it should be page 36 of 166  
21 to page 40 of 166.

22 Do you see that?

23 A. Right.

24 MR. LEE: Let's mark this next in order.

25 (Exhibit 3 was marked for the record.)

1 BY MR. LEE:

2 Q. So the date of this agreement is

3 August 2nd -- this document is August 2nd, 2017.

4 A. Yeah.

5 Q. The Bates range is page 136 to page 140;

6 is that correct?

7 A. Yeah. So --

8 Q. This is the seller's real property

9 disclosure form?

10 A. Yeah. So that's -- I want to ask real

11 this one -- reason I realize -- actually, they did

12 prepare this one even before we inspect the property

13 and before we even -- actually without the --

14 MR. CHILDS: But there's no question

15 pending, Frank. It will probably go quicker if you

16 wait until he asks a question.

17 THE WITNESS: Oh, okay. Okay.

18 MR. CHILDS: And I apologize for

19 interrupting. I'm just trying to speed it up.

20 THE WITNESS: Okay. Sorry. Okay.

21 BY MR. LEE:

22 Q. So you recall receiving this real property

23 disclosure form; correct?

24 A. Yes.

25 Q. Okay. And then it clearly says that the

1 seller had never occupied the property; right?

2 A. Yes.

3 Q. Okay. And then also indicates that the  
4 type of seller was an investor; correct?

5 A. Yes.

6 Q. Okay. Then down in the middle of the page  
7 where it says, "System/appliances" --

8 A. Uh-huh.

9 Q. -- "Are you aware of any problems and/or  
10 defects with any of the following," and then it has  
11 next to "Heating systems," "Yes, there were problems  
12 or defects."

13 That's correct? Yes?

14 A. Yes, they said this.

15 Q. And then it also shows next to the cooling  
16 system that they were aware of problems with that as  
17 well? Yes?

18 A. Yes, yes.

19 Q. Okay. And then this is initialed by  
20 DocuSign by MZ, which is Marie Zhu; right?

21 A. Yeah. My wife, yeah.

22 Q. Okay. Go to page 37 --

23 A. Mm-hmm.

24 Q. -- under No. 1 where it specifies,  
25 "Property conditions, improvements, and additional

1 "Was the property constructed on or before  
2 December 31st, 1977," and it says "yes"; right?

3 A. Yeah.

4 Q. You knew this was a 63-year-old property  
5 at the time you were purchasing it; right?

6 A. Yes. I remember it's older building, then  
7 they do the renovation. That's what I thought.

8 Q. Okay. So then we turn the page to page  
9 38 --

10 A. Okay.

11 Q. -- "Explanations." "Any 'yes' to the  
12 questions on pages 1 and 2 must be fully explained  
13 here"; right?

14 A. Yes.

15 Q. And then it specified that one of the  
16 units has brand-new kitchen cabinets installed.  
17 It specifies that; right?

18 A. Yes.

19 Q. It says, "All three units have brand-new  
20 AC installed within three months."

21 You see that? Yes?

22 A. Yes.

23 Q. Okay. And it says all three bathrooms are  
24 redone within two years.

25 Do you see that? Yes?

1 A. Yes.

2 Q. You said, "Sprinklers or landscaping

3 doesn't work. All pipes are broken."

4 You see that? Yes.

5 A. Yes.

6 Q. Okay. "Please consider that there are no  
7 sprinkler system."

8 Do you see that? Yes?

9 A. Yes.

10 Q. It says, "AC units are installed by  
11 licensed contractor."

12 You see that? Yes?

13 A. Yes.

14 Q. And it says, "All other work are done by  
15 owner's handyman."

16 You see that? Yes?

17 A. Yes.

18 Q. It says, "Owner never resided in the  
19 property"; right?

20 A. Yes, yeah.

21 Q. And you never visited the property? Yes?

22 A. Yes.

23 Q. Okay. So when they disclosed that there  
24 was construction and modification, alterations,  
25 and/or repairs made without State, City, County



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. I was thinking  
5 that the work is just like regular change to the AC.  
6 And you have existing heat pump that doesn't work,  
7 which we give that -- then we just hired the  
8 licensed AC contract, replace the old one to the new  
9 one. That's my --

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.

17 Q. Okay. When it specified that there were  
18 construction, modification, alterations, and/or  
19 repairs made without any State, City, or County  
20 building or permits, you could have gone through and  
21 had an inspection done on what the permits were for  
22 the property; correct?

23 A. Could you repeat again?

24 Q. Nothing prohibited you from going and  
25 pulling the permits for the property at any time;

1 BY MR. LEE:

2 Q. Do you have an understanding that you  
3 could not get a copy of the permits that were done  
4 on the property as a third party?

5 A. Yes, you can do that.

6 Q. Okay. So you could have pulled a copy of  
7 any of the permits for the property at any time?  
8 Yes?

9 A. Yes.

10 MR. CHILDS: Object as to the same thing  
11 about the "pull." Just obtaining copies of the  
12 permits I think is the confusing --

13 THE WITNESS: Yeah, yeah, this is correct.

14 BY MR. LEE:

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?

1 A. Yes.

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.

1 contaminants; right?

2 A. Exactly, yeah.

3 Q. What did you say?

4 A. Yes, I agree.

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. I just do the preliminary

17 inspection. I didn't see that because of the mold,

18 which is happen if you have wood on the wall and

19 also on the floor. I saw the other one is ceramic

20 tile and the concrete on the wall, so it's no issue

21 about the mold.

22 Q. This would be faster if you just answer

23 the questions I'm asking you; okay?

24 A. Okay. So I said yes, no problem.

25 Q. Okay. All right. So you believe that you

1 a professional of their choice regarding any  
2 questions or concerns before its execution";  
3 correct?

4 A. Yes.

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.

13 Q. The next document, which is the trustee's  
14 deed upon sale.

15 A. Yeah.

16 Q. Okay. This is Bates labeled page 14 of  
17 166, page 15 of 166?

18 A. Yeah.

19 MR. LEE: We'll mark it as Exhibit 5.

20 (Exhibit 5 was marked for the record.)

21 BY MR. LEE:

22 Q. My only question is: Did you know at the  
23 time that you purchased this property that the  
24 investor bought the property at a foreclosure sale?

25 A. I think so. Yes.

1 this email. This email is I. It's me, it's me. I  
2 send it to the Helen Chen. So I think Helen Chen  
3 should disclose that one too. We require all the  
4 email. She didn't disclosure that one.

5 Q. So let's just use Exhibit --

6 A. Yeah. I --

7 MR. CHILDS: Just wait until he asks a  
8 question, Frank.

9 BY MR. LEE:

10 Q. Let's just use Exhibit 7 since it contains  
11 more information; okay?

12 A. Okay.

13 Q. So we had previously talked about as it  
14 related to the August 11th, 2017, residential  
15 purchase agreement that you had asked for some  
16 change order; right?

17 A. Yes. I asked them to change on the email  
18 stuff, yeah.

19 Q. And then after your inspection, you  
20 determined that what you needed to have repaired or  
21 fixed included broken glass; is that fair?

22 A. Yeah.

23 Q. Repair and refinish the inside drywall  
24 around the AC unit?

25 A. Yes.

1 Q. Repair and/or replace the broken  
2 thermostat?

3 A. Yes.

4 Q. You also asked them to change the outlets  
5 in the kitchen and the bathroom to GFI outlets; is  
6 that correct?

7 A. Right, right.

8 Q. And you asked them to install carbon  
9 dioxide alarms; is that right?

10 A. Yes.

11 Q. For a CO alarm, do you mean smoke detector  
12 or carbon monoxide?

13 A. The smoke detector is a fire alarm, but  
14 the CO alarm is sometimes, you know, they running on  
15 the nitro gas appliance, they may have a CO2 -- or  
16 CO can kill people.

17 Q. So monoxide, one oxide?

18 A. Yeah. Carbon monoxide, yeah.

19 Q. Okay. Then you also wanted \$1,000? Yeah?

20 A. Yeah. Then so -- we say, If -- they say  
21 if the seller cannot do so, please provide  
22 additional \$1,000 credit so we will install before  
23 closing.

24 Q. So these are the only items that you  
25 decided that needed to be changed under the original

1 purchase agreement; correct?

2 A. Yes.

3 Q. Okay. And then in response, I guess it's  
4 August 24th, 2017, they rejected it and said they  
5 would only agree to repair the broken glass; is that  
6 correct?

7 A. Yeah, yeah.

8 Q. They would repair and refinish the inside  
9 drywall around the inside AC unit?

10 A. Yeah.

11 Q. They would repair or replace the broken  
12 thermostat?

13 A. Yeah.

14 Q. They would change the outlets that you  
15 requested; correct?

16 A. Yes, yes. They said they change, but in  
17 reality, no.

18 Q. Are you saying they didn't change them?

19 A. They didn't complete. Some still there  
20 not changed. I changed them.

21 Q. Did you do a walk-through prior to the  
22 close of escrow to see if they had changed them or  
23 not?

24 A. That's what I said. The one doing the  
25 walk-through, I point out to Helen Chen. They said



1 through, we didn't do the walk-through, but all  
2 the -- we did a walk-through in December when we  
3 finally purchased the property.

4 Q. Okay. So prior to December, you had a  
5 right to do an additional walk-through at any time;  
6 correct?

7 A. Yes.

8 Q. Okay. And then had you -- well, let me  
9 ask the question.

10 So at any point any time prior to the  
11 purchase, is there any email written communication  
12 that they didn't address any of these issues?

13 A. I think this all address already. I don't  
14 see any additional email.

15 Q. So after the time when you purchased the  
16 property to when InvestPro took over as property  
17 manager, is there any communication between you and  
18 InvestPro that they didn't fix any of these issues?

19 A. No, I didn't.

20 Q. Okay. And is there any documentation or  
21 communication from that time thereafter to the  
22 present specifying that InvestPro didn't fix any of  
23 these issues?

24 A. No. I don't have that document between me  
25 and InvestPro.

1 property, had identified the scope of the  
2 renovation, managed the renovation project from  
3 soliciting bids to awarding bids and paying  
4 contractors, was now selling the property under his  
5 supervision and authority," what is this based on?

6           You have a reference here to the  
7 promotional website. So is the website that you  
8 found related to the flipping fund for this belief?

9           A.   Flipping fund --

10           MR. CHILDS: Hold on, Frank. Don't get  
11 these out of order.

12 BY MR. LEE:

13           Q.   Yeah, you're right. The flipping fund is  
14 eventually one of the exhibits, but what I'm asking  
15 you now is: Did you rely upon the flipping fund in  
16 order to form the basis for this belief?

17           A.   This is -- belief is based on my  
18 experience.

19           Q.   Your experience with what?

20           A.   Project manager doing the building house,  
21 doing the -- you need this kind of scope, the  
22 sequence.

23           Q.   I'm sorry. I didn't understand any of  
24 that.

25           A.   Because of my experience, I build the

1           A.    I believe InvestPro Manager is doing  
2 the -- the -- this work. Then InvestPro Realty is  
3 property manager. That InvestPro --

4           Q.    So Realty is the property manager --

5           A.    Huh?

6           Q.    So Realty is the property manager --

7           A.    Yeah.

8           Q.    -- but Realty is not the flipping fund  
9 manager, correct, or you don't know?

10          A.    I don't know.

11          Q.    Okay. So you don't know the structure of  
12 which entity manages what -- which entity's scope of  
13 work covers what area; right?

14          A.    It's from the -- when I sign the contract  
15 for the property manager contract, it's through the  
16 InvestPro Realty.

17          Q.    Realty, yeah?

18          A.    Yeah. So property manager on this  
19 property for me.

20          Q.    So when you don't have the designation of  
21 which InvestPro is which, are you not clear or you  
22 don't know the role of each organization's structure  
23 as it pertains to remodeling, property management,  
24 flipping fund manager, or property management; is  
25 that fair?

1           A.     Yeah, but if --

2                   MR. CHILDS:   Don't get these out of order,  
3 Frank, please.

4                   THE WITNESS:   Okay, okay, okay.

5                   In the promotion material, I remember  
6 the -- Kenny Lin said InvestPro Manager, right, and  
7 also InvestPro Investment.

8                   Now, the Invest --

9 BY MR. LEE:

10           Q.     The promotional material, is that the  
11 website information that you saw?

12           A.     Right, right, right.

13           Q.     And so then when you have additional  
14 savings here, 25 percent profit, 75 percent  
15 profit --

16           A.     Yeah, yeah.

17           Q.     -- this goes to the website?   Yeah?

18           A.     Yes, yes.

19           Q.     And then here, "In addition to selling the  
20 property, they find investors, buys the property  
21 from auction, manages, identifies the scope of  
22 renovation, manages renovations, paying contractors,  
23 and obtaining the tenants and rentals," what is this  
24 based on?   Where is the foundation for this  
25 statement?

1 the renovation.

2 Q. Fair to say that if it's based on your  
3 experience, you can't say with certainty that that's  
4 the actual process conducted by InvestPro or  
5 whatever?

6 A. Right, right. I don't know what -- how  
7 they conduct. But based on my experience, you need  
8 to know which area need to do the renovation and  
9 what kind of contractor need to hire to do the  
10 renovation.

11 Q. So you're -- when you say your experience,  
12 it's based on you speculating based on your own  
13 belief; correct?

14 A. Based on my experience.

15 Q. Okay. So you're still speculating; right?

16 A. Okay. Yes.

17 Q. Yes.

18 So then you said, "In line with its  
19 formula, InvestPro bought the subject property at a  
20 foreclosure auction for \$95,100, and then found TKNR  
21 as the investor."

22 Is this based on your experience?

23 A. I think that is during the -- I remember  
24 the conversation is like the one during the  
25 Christmas party. They said it's -- you know, they

1 found that Kenny Lin is -- go to they have to pay  
2 the money to buy this apartment. Then they tell the  
3 investor, then put the name of the investor name on  
4 the property.

5 Q. When you write here, "Receipts for the  
6 heat pump, et cetera," then it goes down to,  
7 "Admittedly without using licensed electrical,  
8 plumbing, and HVAC contractors or having required  
9 permits," are you going back to the disclosures that  
10 we had talked about earlier?

11 A. It's -- yes -- yes, yes.

12 Q. Okay. Then, "A licensed electrical  
13 contractor and an electrical permit would have  
14 required an upgrade of the electrical supply  
15 system," is this based on your experience?

16 A. Yes, and also the -- when I talked to the  
17 licensed HVAC. Because we did the one in our  
18 current 728 North 11th Street, then they tell me  
19 that actually AC contractor, their scope of work  
20 only need to replace existing older unit to the new  
21 unit. If anything changes the electrical work,  
22 anything changes to the water plumbing work, they  
23 need to hire a separate contractor for the plumbing  
24 contract and electrical contract.

25 Q. I'm sorry. Who are you talking to?

1 don't know or not?

2 A. Yes. They did by the handyman, yes.

3 Q. That was disclosed in the seller's  
4 disclosures; correct?

5 A. No, no.

6 Q. Just the fact that they used some handyman  
7 was disclosed in the disclosures; correct?

8 A. Mm-hmm, yeah.

9 Q. What about the foundation here for -- I  
10 think we already talked about this, about the  
11 electrical lines, that you saw them in the pictures;  
12 right? Is that what you're talking about here for  
13 this next sentence?

14 A. Yeah.

15 MR. CHILDS: Wait, wait.

16 THE WITNESS: Okay. What do you say?

17 MR. CHILDS: He's asking about the next  
18 sentence.

19 Can you start with the first couple of  
20 words so we can get on it?

21 BY MR. LEE:

22 Q. Yeah. It's, like --

23 MR. CHILDS: "They opened new big holes,"  
24 is that...

25 ///

1 potentially someone before InvestPro?

2 A. Well, this is -- I think it got to be  
3 InvestPro otherwise the periods that -- InvestPro,  
4 before they do that, they cannot have people living  
5 there without heating.

6 Q. So you're speculating that it had to be  
7 InvestPro based on your --

8 A. Right, right. Before, they use the swamp  
9 cooler. The heating is rely on the wall heater,  
10 yeah.

11 Q. So you don't know one way or the other; is  
12 that fair?

13 A. Yeah. I'm pretty sure it's done by the  
14 InvestPro.

15 Q. So you're basing that upon your experience  
16 and speculation; right?

17 A. Based on my experience, yes.

18 Q. Without your speculation?

19 A. Yeah. Okay. Yes.

20 Q. Yes. Okay. You're speculating. Okay.  
21 Thank you.

22 So in 2018 -- we already talked about  
23 this. You were able to go and you could pull -- not  
24 pull, to obtain the permit information; right?

25 A. Yes.



1 order.

2 (Exhibit 10 was marked for the record.)

3 BY MR. LEE:

4 Q. So a copy of the website, which we  
5 basically looked at as --

6 A. Yeah, yeah, yeah.

7 Q. Would you agree this is a fair copy of the  
8 website we just looked at?

9 A. Yes, yes.

10 Q. Your next paragraph here, you said during  
11 your inspection, you pointed out several code  
12 violations, which we've already talked about. And  
13 then you have the GFCI outlets; right?

14 A. Yes, yes.

15 Q. That's ultimately a request that you had  
16 made to the seller; correct?

17 A. Yes.

18 Q. And then you also noted that there were  
19 exposed electrical wires at the time when you had  
20 done your initial inspection; right?

21 A. Yes.

22 Q. And then you also noticed that there were  
23 cracks in ceramic floor tiles; right?

24 A. Yeah.

25 Q. Okay. So you were aware of all these

1 issues prior to purchasing the property?

2 A. Yes.

3 Q. And you were also aware at the time that  
4 you purchased the property that these problems would  
5 not pass a City code enforcement inspection;  
6 correct?

7 A. Yes.

8 Q. And you still elected to purchase the  
9 property eventually; correct?

10 A. Yes.

11 Q. Go down to the next paragraph where it  
12 specifies normal transactions. The common spaces is  
13 something that you indicated, but you had the  
14 ability to inspect the entire building; right?

15 A. Yes.

16 Q. Okay. And then you start talking about  
17 the second residential purchase agreement, which is  
18 dated September 5th, 2017, and why you guys have  
19 elected to waive the inspections at that point;  
20 right?

21 A. Yeah.

22 Q. You had access to the attic during your  
23 inspection at any point in time; right?

24 A. No.

25 Q. You're saying you did not have access to

1 the attic?

2 A. We only can see the manhole open the area,

3 but --

4 Q. Did you request access to the attic?

5 A. It's -- we -- we cannot break the ceiling

6 drywall, so we only can see there is a hole, the

7 manhole. So I take out the -- look like the manhole

8 and I cannot see anything.

9 Q. Did you request access to the attic as  
10 part of your inspection?

11 A. I -- Kenny Lin allowed me to go to the  
12 manhole to take a look. I take a look.

13 Q. Okay. So you did have access?

14 A. Yeah, yeah.

15 Q. Okay.

16 A. But it's not the area which is have  
17 problem. We cannot see that area. This is -- the  
18 access is the -- you only see the manhole. Because  
19 of the space, you cannot people go inside. Too  
20 shallow.

21 Q. Do you know if, like, a professional  
22 inspector would use some type of camera to do an  
23 inspection of those type of spaces?

24 A. I don't -- to my knowledge, no. You have  
25 to go inside yourself.

1 not performed by an active licensed contractor as  
2 required by law."

3           How do you know that the defendants knew  
4 about this alleged issue?

5           A.   Well, I -- it's general knowledge. If you  
6 have the rental property, right, you have to provide  
7 the capability. So it means you have to provide the  
8 heating during winter, like this time, or you have  
9 to provide cooling during the summertime. So not  
10 just required.

11           So I was thinking when they buy this  
12 property, they should have this, otherwise they  
13 cannot sale that one by previous owner; right? They  
14 cannot rent as the rental property because Kenny Lin  
15 bought this one as rental property. This is a  
16 rental property.

17           Q.   So no one ever told you that. It's just  
18 based on your own personal belief?

19           A.   Yes.

20           Q.   Okay. And then, "Removal of natural gas  
21 supply line was, which occurred with no permit or  
22 inspection and was not performed by active licensed  
23 contractor as required by law," this is also based  
24 on your personal belief?

25           A.   Yeah, because I don't see any permit

1 inspection result.

2 Q. Okay. And then, "Upgraded electrical  
3 system to add additional lines and new power supply  
4 with no permit or inspection and not performed by an  
5 active licensed contractor as required by law," this  
6 is also based on your personal belief?

7 A. It's based on personal belief and also the  
8 fact we don't see any permit and also no inspection  
9 on the line.

10 Q. No what on the line?

11 A. Inspection on the electrical addition  
12 line, which is you can see on here they require the  
13 permit.

14 Q. I'm sorry. You said -- oh, no permit  
15 inspection on the line?

16 A. Yeah. No permit inspection on the line.

17 Q. It says, like, "The disclosure says  
18 there's a problem with the cooling but provides no  
19 details about the history or what the problem was."  
20 Like, is it your belief, personal belief,  
21 that they had additional information about what the  
22 problem was?

23 A. Yes.

24 Q. And what else is that based on?

25 A. When they changed the swamp cooler and the

1 wall heater to the heat pump, they needed to hire  
2 professional to do the electrical gas line. They  
3 need to hire an electrician to do the -- add  
4 additional electrical line and also --

5 Q. So this is based on your experience and  
6 conversations with those contractors that we  
7 described before; right?

8 A. Right, right, yeah.

9 Q. Okay.

10 A. And also they did this switch from 5-ton  
11 heat pump to the 2-ton heat pump. They need to  
12 disclosure that because all this added stuff need a  
13 lot of calculation and inspection and the permit  
14 review.

15 Q. Okay. Once again, this goes back to your  
16 conversations with the contractors or your  
17 experience; right?

18 A. Yes, yes.

19 Q. So at no point in any of these punch lists  
20 items did any defendant say to you, Yes, we knew  
21 about these things or we didn't do them?

22 A. Could you repeat it what your question?

23 Q. Yeah.

24 So as it relates to all these items here,  
25 no defendant ever came up to you and said, Yes,

1 we're actually aware of these issues; right?

2 A. No.

3 Q. The remainder of this is basically stuff  
4 that you already testified to today at some point or  
5 another.

6 When we look at the bottom of page 4, it  
7 says, "Due to roof structure being damaged, every  
8 time it rains, the roof leaks. The rains in  
9 January 2019 revealed that both bathroom vents were  
10 not vented outside but just into the ceiling attic."

11 So at this point in time, you had  
12 purchased or owned this property for almost two  
13 years? Yeah?

14 Is this the first time that you became  
15 aware of the -- this issue?

16 A. This is only one year.

17 Q. Oh, so you owned it for one year?

18 A. Yeah, yeah.

19 Q. This is the first time it ever became an  
20 issue known to you; right?

21 A. Yeah, for the roof.

22 Q. How do you know that the defendants knew  
23 about this issue?

24 A. I don't know -- I don't know the  
25 defendant -- no. I don't know the defendant know

1 this issue or not.

2 Q. Okay. And then, "These violations were  
3 also hidden behind drywall and could not have been  
4 identified without invasive investigation."

5 Is it also fair to say -- how do you know  
6 that the defendants are the ones who allegedly hid  
7 it behind the drywall?

8 A. This is very strange. I just noticed  
9 recently, right, if you take a look at all other  
10 wall, they don't have wood panel. That, I just  
11 found one room. All of a sudden they have wood  
12 panel there. So out of curiosity so I take out the  
13 wood panel because all other wall don't have wood  
14 panel. Then I found out this big crack behind that  
15 wood panel. I take the picture; right?

16 Q. How do you know that the defendants knew  
17 about that issue?

18 MR. CHILDS: He's asking a different  
19 question.

20 THE WITNESS: Yeah.

21 MR. CHILDS: I think he's asking about the  
22 sentence above that. I think he's asking about  
23 this.

24 But I don't want to tell you what question  
25 you're asking, but I think he's answering about the



1 paragraph below.

2 THE WITNESS: Is that --

3 MR. CHILDS: He's asking about this.

4 THE WITNESS: Could you rephrase?

5 MR. LEE: I'm asking about both of these  
6 issues.

7 MR. CHILDS: Okay.

8 BY MR. LEE:

9 Q. Like, the violations were hidden behind  
10 the drywall, like, what information do you have that  
11 the defendants hid it behind the drywall? You know  
12 or you don't know?

13 A. I just know behind the drywall that put  
14 the vent without -- that is a violation, but I don't  
15 know who did that.

16 Q. Okay. So you don't know who did it?

17 A. Yeah, yes.

18 Q. Okay. So it's possible that the  
19 defendants did not know about it or hide it; is that  
20 fair?

21 A. Yes.

22 Q. Okay. And then you have this other thing  
23 about the wood paneling. Same question. How do you  
24 know the defendants knew about it?

25 A. I don't know defendants know about it. I

1 only found out this one.

2 Q. So it's possible they didn't know about  
3 this issue as well; correct?

4 A. Yes.

5 Q. Okay. So was there ever a settlement  
6 demand in this case for \$10,000?

7 A. No.

8 Q. No? It's just, like -- you never said,  
9 I'll settle this case for ten grand to anybody?

10 A. I maybe tell the Kenny Lin before we  
11 initial it, this litigation. When we first found  
12 out this electrical issue or electrical packing  
13 issue, so maybe I tell Lin, Just pay us \$10,000. We  
14 don't file lawsuit against the electrical. You  
15 sure, you know.

16 Q. Okay. So that's where the potential  
17 conversation could have come from?

18 A. Yeah. That is before we file. After  
19 that, I file this litigation lawsuit. I never talk  
20 to Lin.

21 Q. Yeah. It's my understanding the  
22 conversation was before litigation, so --

23 A. Yeah, before litigation, not the time --  
24 we only have issue is electrical issue. This is  
25 not -- every time we raise, we have more issue.

1 Q. So "It's impossible that Defendants, at  
2 least the ones involved in the sale, which are  
3 Defendants TKNR, et cetera, did not know about the  
4 renovations."

5 So you're basically speculating; right?

6 A. Yeah, yeah, yeah.

7 Q. We already talked about this Christmas  
8 party.

9 Okay. The next exhibit is the one you  
10 keep talking about, this "When do I need a permit?"

11 A. Okay.

12 (Exhibit 11 was marked for the record.)

13 BY MR. LEE:

14 Q. Exhibit 10 [sic] is identified as page 77  
15 of 166 to page 83 of 166. You have page 78 of 166.  
16 It says, of course in the middle of the bottom, "It  
17 is a guide only and is not all inclusive. For more  
18 accurate information, the homeowner should contact  
19 their local building department."

20 Do you see that? Yes?

21 A. Yes.

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. I do went to there a lot of time.

1 Q. And then so you on the next page, page 79,  
2 "Homeowners and Permits, 'When do I need a  
3 permit?'" --

4 A. Mm-hmm.

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.

1 Q. Okay. On page 81, it says, "Homeowners  
2 and Permits, 'What can I do without a permit?'"

3 Do you see that?

4 A. Yes.

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.

14 Q. So if you're installing new kitchen  
15 cabinets, that does not require permits; correct?

16 A. Yes. But if you install the kitchen  
17 countertop with the change of the location of the  
18 sink, you need permit.

19 Q. It says here that countertops doesn't  
20 require it; right?

21 A. Huh?

22 Q. It says countertops do not require a  
23 permit? Yeah?

24 A. No. When you change the location of the  
25 sink with the kitchen --

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.

5 Q. And then -- this is your exhibit, so the  
6 "GFCI protected outlet is required by code and  
7 permit is required," you underlined that; right?

8 A. Yes.

9 Q. Okay. And then I presume that you found  
10 and printed this document; is that fair?

11 A. Yeah. I go to the -- on the -- print out  
12 this one.

13 Q. Okay. And then so this GFCI protected  
14 outlet, this is a request that you actually made for  
15 the seller to change; correct?

16 A. Yes, yes.

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

- 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.
- 25 Q. And then at the bottom of this, once

1 A. Yes. Yes, maybe.

2 Q. Okay. And that includes all the pictures  
3 that were included of the property as well?

4 A. Yes, yes.

5 Q. Okay. If you can go to 112.

6 A. Yeah.

7 Q. 112 shows the concrete slab outside of --  
8 for the property; fair?

9 A. Yes, yes. That is the backyard of Unit A.

10 Q. Okay. And that also showed that there  
11 were cracks in the concrete that were visible in  
12 2017; right?

13 A. Yeah, yes, yeah. That is on the concrete  
14 flat on the floor. That's fine, yeah.

15 Q. Okay. So you're aware that there were  
16 these cracks in the concrete in 2017 prior to your  
17 purchase of the building; right?

18 A. I think so, yes.

19 Q. And then 113 also shows the cracks in the  
20 concrete?

21 A. Yeah. It's on the floor. Concrete on the  
22 floor.

23 Q. Okay. And then 120 shows the dryer and  
24 the dryer vent; right?

25 A. Yes. That is a new one you see.



1 Q. These are the picture of -- as far as I  
2 know, was this picture -- this is a new picture? Is  
3 that what you're saying?

4 A. This is a picture of when they sell that  
5 one, sell the property.

6 Q. When they sold?

7 A. When they sold, put the listing on the  
8 market to try to sell this property to 2017, yeah.

9 Q. This is a picture you would have seen on  
10 or about August 2017 related to the --

11 A. Yeah, yeah. I remember I talk to the Lin.  
12 I said, Hey, this look like washer/dryer.

13 Oh, this is new appliance.

14 Q. And then 133, it also shows the cracks in  
15 the floor of the cement as well?

16 A. Yeah, yes.

17 Q. And then 134 also shows all the cracks?  
18 Yes?

19 A. Yes. Floor is -- crack is -- I don't  
20 consider big issue at that time, yeah.

21 Q. So all those issues were open and obvious  
22 prior to the time you purchased the building? Yeah?

23 A. If the floor issue, I think it's obvious,  
24 yes. The cracking in the floor, yes.

25 Q. What's Exhibit -- we can mark it

1 reporter can't take down hand gestures.

2 THE WITNESS: Okay. Sure, sure. I'm  
3 sorry.

4 MR. CHILDS: No. I'm...

5 BY MR. LEE:

6 Q. Okay. Let's move on.

7 The next exhibit is the flipping fund  
8 website.

9 A. Yeah.

10 (Exhibit 16 was marked for the record.)

11 BY MR. LEE:

12 Q. So I presume you're the one that printed  
13 out this document; right?

14 A. Yes.

15 Q. Okay. And you also note that the closeout  
16 date that's specified on page 3 of 166 indicated  
17 that whatever the flipping fund was would have  
18 closed on December 31st, 2015; right?

19 A. Oh, I just find out today. Yes, yes.

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. That is -- you know, I noticed this  
24 one when the name mentioned that in the Christmas  
25 party in 2017, December 2017. So then I went to the

1 Q. So my question -- you're not listening to  
2 my question; right?

3 Were you provided with any of those  
4 materials? Don't look at the website.

5 A. Mm-hmm. Don't look at the website.

6 Okay. What do you say?

7 Q. Okay. So did you receive any information  
8 about the flipping fund related to the -- you know,  
9 like, a pro forma, the private placement  
10 information, the calculations of profit and losses,  
11 capital contributions, member shares and member  
12 units, did you receive any of that type of  
13 information --

14 A. No.

15 Q. -- at any time?

16 A. No. I didn't receive that.

17 Q. So all the information that you're making  
18 about the flipping fund comes from, one, this  
19 website; right?

20 A. Yeah.

21 Q. And then the conversations that you had at  
22 the Christmas party; right?

23 A. Right, right.

24 Q. But there was never any subsequent  
25 solicitation or anything to you that would have

1 beginning of your deposition? Yeah?

2 A. Yes.

3 Q. Okay. And then also in the parenthetical  
4 she said here, she has, "Per buyer's request, will  
5 waive licensed home inspector to do the home  
6 inspection"? Yeah?

7 A. Which one? Which page you say that one?

8 Q. Like, the last sentence in the email and  
9 then it's in parentheticals.

10 MR. CHILDS: Oh, here.

11 BY MR. LEE:

12 Q. "Per buyer's request, will waive licensed  
13 home inspector to do home the inspection"?

14 A. Yes, yes, because this is Helen Chen write  
15 that one; right? That -- I said I feel that, yes,  
16 because we did the inspection already.

17 Q. Yeah. You did the inspection? Yeah?

18 A. Yeah, yeah.

19 Q. Okay. We already talked about this one;  
20 okay?

21 A. Yes, yes.

22 MR. LEE: So next in order.

23 (Exhibit 18 was marked for the record.)

24 BY MR. LEE:

25 Q. Exhibit 18 is Bates labeled DEF400341,

1 paragraph 28, which was different than the first  
2 residential purchase agreement, was essentially the  
3 same information in the email which specified,

4 "Buyer agree to pay the difference in cash if  
5 appraisal come in lower than purchase price, not to  
6 exceed purchase price of 200,000"; right?

7 A. Yes.

8 Q. So this is consistent with your  
9 understanding that you're guaranteeing \$200,000 for  
10 the purchase?

11 A. Yes, yes.

12 Q. And then we go to Addendum 1, which is  
13 DEF4000365.

14 A. Yeah.

15 Q. And this specifies, you know, a lot of  
16 information where you're changing the close of  
17 escrow to January 5th, 2018; right?

18 A. Right, right.

19 Q. And then from that, did you have to agree  
20 to make an additional deposit of 60,000 subject to  
21 forfeiture?

22 A. Yes.

23 Q. So you're agreeing to guarantee \$60,000 if  
24 you didn't close on time; right?

25 A. Yeah, yeah.

1 Q. So you guys -- you guys really wanted this  
2 property?

3 A. Yes, because we have 1031 already put this  
4 property, so we cannot back out.

5 Q. Yeah. So you would have been subject to  
6 some issues if you didn't get this done?

7 A. Yeah, yeah.

8 Q. And then you also agreed to pay the rent  
9 for one of the units for 650 a month?

10 A. Yes.

11 Q. And then you also agreed to pay a tenant  
12 placement fee -- or a lease fee to the current  
13 property manager for 800 bucks? Yeah?

14 A. Right, right.

15 Q. Okay. And then the next page, 366, is  
16 Addendum 2 and that changed the buyer from Marie Zhu  
17 to WLAB; right?

18 A. Right, because of the -- yeah. The -- my  
19 wife said it's -- you know, since we are not apply  
20 to loan, we should put into the WLAB because we pay  
21 cash to buy this.

22 Q. At one point in time, you tried to get on  
23 the loan; isn't that right?

24 A. Huh?

25 Q. At one point in time, you tried to get on

1 would have asked them to print out, but I don't  
2 think that one --

3 THE WITNESS: Is that one National Title  
4 Corporation Authorization to Close of Escrow?

5 MR. LEE: No. I'll show it to you. I  
6 don't think it made it because of the hiccup that we  
7 had.

8 BY MR. LEE:

9 Q. Do you see the screen right here, Order of  
10 Protection Notice?

11 A. I don't see that.

12 MR. CHILDS: No. It's up there. It's not  
13 here.

14 THE WITNESS: Okay. Let me read. What it  
15 said?

16 BY MR. LEE:

17 Q. This is part of the disclosures that were  
18 done on September 5th, 2017. They're part of the  
19 documents that Marie would have done. It's  
20 disclosed as DEF0019.

21 A. Okay.

22 Q. Okay. Do you recall as part of the  
23 residential purchase agreement that Marie elected to  
24 agree not to have a home inspection performed?

25 A. Yes. I think she signed that one. I

1 agree because the -- I said we already inspect this

2 property so I said we don't need additional

3 inspection.

4 And also, appraisal do the inspection too,

5 so I was thinking, Hey, we already done the

6 inspection.

7 Q. Okay. So the next document in order  
8 should be the National Title Company; is that right?

9 A. Yes.

10 (Exhibit 20 was marked for the record.)

11 BY MR. LEE:

12 Q. And this just makes it clear that Marie  
13 Zhu was the authorized signer on behalf of WLAB as  
14 the buyer of the property; right?

15 A. Yes.

16 MR. LEE: Go to the next in order.

17 What's the next document in order?

18 MADAM REPORTER: Expert testimony report.

19 MR. LEE: Okay. Great.

20 (Exhibit 21 was marked for the record.)

21 BY MR. LEE:

22 Q. Exhibit 21 is your expert's report. I  
23 understand that you're the person who found your  
24 expert; correct?

25 A. Yes.



1 time. And also I think we done some in the weekend.

2 Q. Do you agree that your expert didn't do  
3 any destructive testing when he did his inspection?

4 A. Yeah. We didn't do any of the destructive  
5 testing.

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.

17 Q. Okay. Did you provide him with any  
18 commentary or directions related to his report while  
19 he was doing the inspection?

20 A. Yeah. I tell him some point, yeah. I  
21 point out some areas. I said, Do you see this  
22 crack? I point out the areas, so he take a picture.

23 Q. Were they the same cracks that were  
24 present in 2017?

25 A. Yeah, yeah. No. Some is not. Some is

1 new one.

2 Q. So when he inspected the HVAC, it's  
3 something that you would have inspected in 2017;  
4 right?

5 A. Yes.

6 Q. Okay. Then the fact that, you know,  
7 there's, like, a 2-ton unit or a 5-ton unit is  
8 something you would have also inspected in 2017;  
9 correct?

10 A. No. I just said, in the 2017, we only can  
11 see the 2-ton unit. The 5-ton unit is not there  
12 anymore.

13 Q. In 2017, it's not there but it's there  
14 now?

15 A. No.

16 Q. So your expert somehow inspected a 5-ton  
17 unit that's not there now?

18 A. 5-ton unit is not there. It's after 2017.  
19 They put up 2016, then they remove.

20 Q. Okay. So regardless, you were able to  
21 inspect the same HVAC unit that your inspector did  
22 during his inspection, whenever that happened;  
23 right?

24 A. Yeah, yes. That -- I cleaned out  
25 something.

1 Q. Okay. So this included the HVAC system;  
2 correct?

3 A. Yes.

4 Q. And it would have been the HVAC system  
5 that was installed at the time before purchase;  
6 correct?

7 A. That is a 2-ton unit is installed before  
8 the purchase.

9 Q. Whatever unit was on the property prior to  
10 purchase you would have had -- you would have had  
11 the ability to inspect at that time; right?

12 A. We don't have time to inspect the 5-ton  
13 unit which is already moved.

14 Q. Okay. So whatever he inspected, you were  
15 able to inspect; correct? I'm not asking about the  
16 5-ton unit.

17 A. Yes.

18 Q. Okay. You were also able to inspect the  
19 wall unit for the cooling or heating unit; right?

20 A. Heating unit wall unit, yes.

21 Q. Yeah. That's something you could have  
22 inspected in 2017?

23 A. Yes.

24 Q. Okay. Here he has, "The moisture  
25 condition behind both tile walls."

1 Do you have any information that shows the  
2 defendants knew about this issue in 2017?

3 A. No.

4 Q. He was able to inspect the high-moisture  
5 exhaust bathroom gas at some point in time during  
6 his inspection. Is this something you could have  
7 inspected in 2017?

8 A. No, I cannot.

9 Q. Okay. And that's because of the whole  
10 wall ceiling drooping thing you were talking about?

11 A. Before it's all sealed by the drywall. We  
12 cannot see.

13 Q. Okay. Just so I'm clear, there's nothing  
14 here that shows that the defendants knew about this  
15 issue in 2017; right?

16 A. I don't know, but I suspect that they know  
17 that.

18 Q. But you're not sure?

19 A. I'm not sure. I strong suspect they did  
20 know that.

21 Q. In terms of his findings related to  
22 additional weight calculations, do you know if your  
23 expert had done any calculations at all related to  
24 what the additional weight would be?

25 A. No. I don't think so.

1 actually paid or not paid?

2 A. I haven't paid. Just asked them to give  
3 me the quotation for doing that -- just doing  
4 something using the existing wall.

5 Q. Okay. So the existing -- that I  
6 understand it, it says here for Units A, B, C, it  
7 essentially says \$26,600; right?

8 A. Yeah, yeah.

9 Q. And then your expert brought up that it's  
10 actually going to cost \$70,000 to replace the entire  
11 electrical system; right?

12 A. Yes. Because of the \$70,000, the Sani  
13 tell me because we need to doing the change to the  
14 wall from concrete block to the wood construction,  
15 wood frame, then you need to wire the new wire,  
16 everything. New electrical, all that, new line,  
17 everything. That cost a lot more than just use  
18 existing wall and existing outlet.

19 Q. So your expert goes on to have an opinion  
20 about the plumbing system. Is the plumbing system  
21 something that you could have inspected in 2017?

22 A. Yes or no. No.

23 Q. If you would have a qualified professional  
24 with access to the equipment to inspect it in 2017,  
25 could you have done that?

1 A. No. We didn't do that plumbing.

2 Q. But it's something you could have done in  
3 2017; right?

4 A. Yes, we can do that one.

5 Q. Okay. Then you have no information here  
6 that shows that the defendants knew about any of the  
7 issues with the plumbing; correct?

8 A. I think they have information. He knows  
9 some issue.

10 Q. Well, we know that there's a clogged sink  
11 and it's something that, you know, they told you  
12 about, and there's some type of clogged toilet;  
13 right?

14 A. They didn't mention anything causing --  
15 well, I just found out later -- recently they have  
16 that disclosure, said they hire some handyman to do  
17 the -- for the plumbing -- the sewage line; right?  
18 And at that time, why need inspect? We only have  
19 one tenant. So other building, they don't have use  
20 that extent, like, recently, so we cannot see the --

21 Q. Okay. So there's no evidence here that  
22 you knew that the defendants knew that there was any  
23 cracking in the pipes for the plumbing system?

24 A. That time, I don't know. No.

25 Q. What about presently, do you know that

1 they knew that there was cracking in the plumbing  
2 system?

3 A. According to my tenant, he hired from the  
4 plumbing company, the plumbing company said there's  
5 a cracking under line.

6 Q. If we look at your expert photographs that  
7 are attached to his report, which are on pages 183  
8 to the end of the report, you can see those?

9 A. Yes.

10 Q. Do you agree that these are all areas that  
11 you would have had access to inspect as depicted in  
12 these photographs?

13 A. Yes.

14 Q. And this would have been in 2017; correct?

15 A. Yes, but there's -- no, no, no. You see,  
16 this is -- you talking about this photograph; right?

17 Q. I'm talking about all the photographs.

18 A. Something I pull out from Zillow is why he  
19 inspect. I don't see that.

20 Q. These are your expert's photographs.

21 A. Yeah, but I tell them, I give to the  
22 expert and this is photograph, but some people --  
23 you see the oldest swamp cooler, that is the picture  
24 on the Zillow, then currently is not there.

25 Q. Okay. And the picture of Zillow would

1           A.    I -- I was thinking is pre- -- cause --  
2   tenant cause damage because the pre-existing is it  
3   shouldn't have cracking.

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.

21          Q.    Okay. If we look back at Exhibit --

22          A.    No, no, no. This is -- that one is --  
23   145, that is the -- we doing the -- our own estimate  
24   of initially how much it cost doing that repair,  
25   this one. It's not in relate to the Sani -- the



1 expert report, their estimate. They are the general  
2 contractor. I'm not a general contractor. I just  
3 put a preliminary cost, maybe cost this much. I got  
4 some quotation from the Home Depot, Penny Electric,  
5 ACLV, all that company.

6 Q. Okay. So you're just trying to figure out  
7 the cost for repair for the building on your own;  
8 right?

9 A. Yeah, at that time.

10 Q. And then so your independent estimate,  
11 based on your conversations with subcontractors --

12 A. Right, right.

13 Q. -- would have been \$102,873?

14 A. Right, right.

15 Q. Then your expert opines that the cost to  
16 repair for the building would be --

17 A. About 660,000 -- or \$600,000. Much higher  
18 than this number.

19 Q. Okay. But your estimates are actually  
20 based on your conversations with potential  
21 subcontractors; right?

22 A. Right. It's very small scope. It's not a  
23 big, like -- Sani think it's repair lot of things,  
24 yeah.

25 Q. So in Exhibit 21 with some of these areas

1 Q. But you don't know for sure?

2 A. I'm pretty sure.

3 Q. Okay. So if I was a tenant and I decide  
4 to take a sledgehammer to a wall, that could crack  
5 it; right?

6 A. No. Then we'll see that the sledgehammer,  
7 that mark. No, you cannot --

8 Q. Okay. I'm not going to argue with you  
9 about this anymore, but there's a potential cause  
10 that could cause a wall cracking, you don't know  
11 what the source of it would be?

12 A. Yes.

13 Q. Okay. So the next exhibit is the Larkin  
14 Plumbing and Heating invoice.

15 A. Yeah.

16 Q. No. It's it L -- ACLV.

17 A. Yeah. ACLV, yeah.

18 Q. What is this?

19 A. Okay. That -- that is the one that tenant  
20 notify us there's water -- ceiling dripping the  
21 water during summer. No ring; right?

22 So we all thought strange. We say, What's  
23 happened? So we open that ceiling. Then we found  
24 out when the InvestPro doing the renovation, by now  
25 they supposed to put the new duct in the AC unit

1 THE WITNESS: Yeah. It's the -- put  
2 the -- install the 5-ton heat pump, remove the swamp  
3 cooler. That company is shut down now.

4 BY MR. LEE:

5 Q. How do you know that the defendants were  
6 aware of the existing sheet metal ductwork issue?

7 A. This is common knowledge for the  
8 defendant. If they doing the -- change from the  
9 swamp cooler to the heat pump, by law they need to  
10 do that.

11 Q. So are you speculating that they knew  
12 about it or do you know or you don't know if they  
13 knew about it?

14 A. I don't know what they know about it, but  
15 I -- I -- based on my --

16 Q. You don't know --

17 A. Yeah.

18 Q. -- what they knew; okay?

19 A. Yeah, yeah.

20 Q. All right. This goes a lot faster if you  
21 just simply say you don't know the basis; okay?

22 A. Okay. Yeah.

23 MADAM REPORTER: Counsel, I need a break.  
24 I'm sorry.

25 MR. LEE: It's okay. Let's take a break,

1 Q. Have you read this report before?

2 A. I read this one before, yeah.

3 Q. And for the record, Bates label is  
4 DEF5000367-401.

5 A. Mm-hmm.

6 Q. So on page 372 --

7 A. Okay.

8 Q. -- about the second line down, it says,  
9 "Items complained about in the Sani report were open  
10 and obvious in the roof area, attic area, and the  
11 exterior and interior areas of the property."

12 Do you agree with this statement?

13 A. Which line? Which -- what did you say?

14 Q. On page 372.

15 A. Yeah.

16 Q. Are you there?

17 A. Yeah.

18 Q. Okay. Then under "Waive standard  
19 inspection requirement," there's a section right  
20 there; right?

21 A. Yeah.

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."

1 Do you see that?

2 A. Mm-hmm.

3 Q. Do you agree with this statement?

4 A. Yes.

5 Q. Okay. I'm not going to ask you about the  
6 wall loads. Actually, did you look at the  
7 calculations that Opfer had done in his report?

8 A. Yeah. I think it's not correct.

9 Q. Like, did you do your own calculations or  
10 did you --

11 A. I based on -- I also engineer. I have  
12 background in engineering; right? This wall is not  
13 on the total dead weight. He calculate on the dead  
14 weight. They also need to calculate the wind load  
15 that -- because this is a shear wall cause that  
16 cracking on the wall.

17 Q. So you said you didn't calculate the wind  
18 load?

19 A. Wind load, yeah. And also you need the  
20 shear, the -- force to -- towards the wall is  
21 cracking, yeah.

22 Q. Okay. On page 373 -- actually, 372, same  
23 page, goes to 373, last sentence, first full  
24 sentence says, "There's no indication in the Sani  
25 report that any destructive testing was performed,

1 so therefore an inspector or contractor could have  
2 made the same obligations, albeit often incorrect,  
3 that were made in the Sani report."

4 Do you agree with this?

5 A. No, no.

6 Q. Let's take it piece by piece.

7 Do you agree that there's no indication  
8 that Sani had done any destructive testing?

9 A. Yes.

10 Q. Okay. Do you agree that an inspector or  
11 contractor could have made the same observations?

12 A. No.

13 Q. Okay. Is that because of that attic issue  
14 that we talked about earlier or what's that based  
15 on?

16 A. Based on the outside, the attic issue we  
17 talked about, and also outside the wall have more  
18 cracking. Actually, the -- your defendant's expert,  
19 I point out some wall cracking. He didn't record it  
20 in his report. He take pictures.

21 Q. My expert's report, you accompanied him  
22 during that time -- and I believe your attorney also  
23 accompanied then; right?

24 A. Yeah.

25 Q. So you had access to all the same areas

1 that Dr. Opfer did at the time of his inspection?

2 Yes?

3 A. Yes, yeah.

4 Q. So going back to 2017, you would still

5 have access to all those areas as well; correct?

6 A. Right.

7 Q. Okay.

8 A. But I point out some of the wall crack to  
9 the Dr. Opfer. I don't see his -- in his report.

10 Q. Okay.

11 A. So his report is not in -- is not complete  
12 information.

13 Q. So on page DEF53 -- 5000376 --

14 A. Okay.

15 Q. -- "Structural Defects" --

16 A. Yeah.

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?

22 THE WITNESS: Which one?

23 MR. CHILDS: I don't know.

24 THE WITNESS: Could you tell me which  
25 line?

1 MR. CHILDS: Here.

2 THE WITNESS: (Reading document.)

3 Yes, yes.

4 BY MR. LEE:

5 Q. You agree with that? Okay.

6 A. Agree.

7 Q. Well, you're an engineer, so basically he  
8 said -- further down the page, "While it is true  
9 that there is an opening that was created for this  
10 LG unit in the wall, it was below the window glass,  
11 which, of course, is not carrying a structural load,  
12 therefore there is no structural impact."

13 Do you agree with this statement?

14 A. No.

15 Q. Do you believe that there is a structural  
16 load when it's below the window instead of above it?

17 A. They take out the concrete block on that  
18 window unit. Before, there is a concrete block  
19 underneath and -- underneath the window unit. They  
20 take out the concrete block, which is the change of  
21 the structure.

22 Q. So how do you know they took out a  
23 concrete block?

24 A. Huh?

25 Q. How do you know they took out a concrete



1 A. From the observation, no.

2 Q. Okay. I'm trying to get everybody out of  
3 here. That's why I'm just shortening it.

4 You don't know, you don't know; okay?

5 A. Mm-hmm.

6 Q. Do you agree that a property that is 63  
7 years old would have various issues like plumbing  
8 issues?

9 A. Yes. Maybe.

10 Q. So it's also possible that a property  
11 that's 63 years old may have had issues but wasn't a  
12 direct result of the actions by defendants?

13 A. Maybe.

14 Q. Maybe yes, maybe no, you don't know?

15 A. Yeah.

16 Q. Okay. Then for -- in terms of the vents  
17 into the duct into the attic, do you agree that  
18 he -- with his observation, that there's no  
19 indication that this work was performed by the  
20 defendants if they did not perform any attic work?

21 A. No. I think they did.

22 Q. So you think that they did.

23 A. Yeah.

24 Q. Based on what?

25 A. Based on the new dryer and new duct they

1 put in there. Do you see the picture? It's new  
2 one.

3 Q. So based on your impression of the new  
4 dryer and the new duct?

5 A. Yeah. New duct, brand-new duct put into  
6 the ceiling.

7 Q. Is it possible that someone prior to the  
8 foreclosure had installed a new dryer and a new  
9 duct?

10 A. Before the foreclosure?

11 Q. Do you know one way or the other?

12 A. No. I don't think so. This is done --

13 Q. My question was: Do you know, yes or no,  
14 one way or the other?

15 A. Could you rephrase again? Tell me.

16 Q. Do you know one way or another if someone  
17 other than the defendants could replace the dryer  
18 and the dryer duct?

19 A. I don't know, but -- I don't know what --  
20 yeah.

21 Q. You don't know; okay? I'm trying to get  
22 you out of here; okay?

23 A. Mm-hmm.

24 Q. Generally, you're someone who rents  
25 low-income property; is that fair?

1 A. No.

2 Q. No. I mean, like, a lot of the properties  
3 that you have in Las Vegas are in bad neighborhoods;  
4 fair?

5 A. I don't say that. I don't think all in  
6 bad neighborhood.

7 Q. Do you provide washer and dryers in all  
8 your rental units?

9 A. No.

10 Q. Because the tenants damage them sometimes;  
11 right?

12 A. This is only unit have the washer/dryer.  
13 All my other units, no.

14 Q. So in general, like, you know, with your  
15 properties, there's no benefit to adding a  
16 washer/dryer unit; correct?

17 A. Yeah. Normally we don't provide.

18 Q. Yeah. Okay. And then what was the basis  
19 for that?

20 A. Because you get more liability on that and  
21 also -- no, we don't provide. Cost more and cause  
22 most issue, so we don't provide.

23 Q. So if I represented to you that the  
24 defendants in this context also don't provide  
25 washers and dryers for the same reason, would you be

1 surprised by that?

2 A. I don't surprise they don't provide

3 washer/dryer, but I surprise they provide a

4 washer/dryer.

5 Q. You don't know if they provide the washer

6 and dryer; right?

7 A. Huh?

8 Q. You don't know if they did or didn't?

9 A. I don't know. I say that in this

10 property, when I bought this one, I was saying, Hey,

11 good. You have the washer/dryer in the unit because

12 my other -- all the rental property I have, I don't

13 have a washer/dryer in the unit.

14 Q. Okay. Let's just move on. You already

15 answered my question; okay?

16 A. Okay.

17 Q. You don't know at what point in time the

18 vent duct could have been disconnected from the roof

19 jack outlet; is that fair?

20 A. Huh?

21 Q. You don't know at what point in time the

22 vent duct became disconnected from the roof jack

23 outlet?

24 A. Roof jack outlet? I don't know that. We

25 cannot --

1 Q. Could you have taken the tape off the  
2 wires and seen it?

3 A. No.

4 Q. Do you agree that the defendants had not  
5 done any inside-the-wall plumbing changes to the  
6 property?

7 A. No. I think they did done inside.

8 Q. Do you have any evidence that showed that  
9 they'd done inside work or is this something you're  
10 speculating about?

11 A. When I see the wall and tower -- the  
12 shower tub is all new faucet; right? The other  
13 shower tub, the faucet, if it's new, they have to do  
14 that behind the wall. Otherwise you cannot do that  
15 faucet.

16 Q. Do you know if the faucets were already  
17 there prior to defendants doing the renovations?

18 A. Yeah. That's old one, but that one we saw  
19 is new one.

20 Q. Do you know who installed the new shower  
21 faucets?

22 A. I don't know. I don't know.

23 Q. Do you think that rental properties  
24 experience more severe service issues because of  
25 lack of care of tenants for the property?

1 A. Depend.

2 Q. So you have -- like, there could be good  
3 tenants, there could be bad tenants?

4 A. Yes.

5 Q. So tenants could cause damage to a  
6 property; right?

7 A. Yes. Yeah.

8 Q. At the present time, you're actively  
9 trying to rent out all three units; is that right?

10 A. Huh?

11 Q. You're actively trying to rent out all  
12 three units --

13 A. No.

14 Q. -- for the building?

15 A. No. I needed to fix something right now.  
16 We found out that Unit B, last time your defendant  
17 inspector to inspect, I go to the unit, there's the  
18 sewage issue.

19 Q. Okay. So prior to the sewage issue, were  
20 you actively trying to rent out all three of the  
21 units?

22 A. Yes, I tried. We have tenant there  
23 before.

24 Q. Okay. So from the time that you purchased  
25 the building to the present, you had actively tried

1 to rent out all three of the units; right?

2 A. Yes.

3 Q. Okay. And then had you done all of the  
4 repairs that were noted in the Sani report?

5 A. Yes. Sani report all this. We didn't do  
6 the inside of the repair.

7 Q. Okay. So you haven't done all those  
8 repairs as listed by Sani; correct?

9 A. No. Yes. No. We don't have any report  
10 listed on the Sani one. We don't do anything yet.

11 Q. You haven't done anything?

12 A. Yeah.

13 Q. Okay. I did notice that it showed by  
14 Dr. Neil, that you allowed the tenants to park their  
15 vehicles next to the house -- the property; is that  
16 true?

17 A. I didn't allow it. I don't know that  
18 until I saw the one picture there.

19 Q. Okay. Because when we were there, I  
20 believe there was a car parked right next to the  
21 property when we did our inspection; right?

22 A. It's on the wall on the other side.

23 Q. And then there was a -- wasn't there,  
24 like, a car dolly or a towing --

25 A. A towing truck -- a trailer.

1 Q. Trailer?

2 A. Yeah. That's my trailer.

3 Q. Your trailer. So is it possible that some  
4 of your tenants hit the building?

5 A. No. That is the -- in the wall between my  
6 property to other neighborhood property. It's far  
7 away from building.

8 Q. No, no, no. There are cars that were  
9 parked next to the building that we've seen in some  
10 of the pictures; right?

11 A. This one picture, the -- it's -- I think  
12 the they found from the Google Earth or Google Map,  
13 yeah.

14 Q. Okay. So it's possible that these cars  
15 hit the building; right?

16 A. Hit the building? Possible. But if they  
17 hit the building, the tenant would have notified me  
18 because they will see the damage on their car.

19 Q. Okay. But if they don't notify you, then  
20 you wouldn't know; right?

21 A. Yeah. That I will know that. That's a  
22 weird area. If they hit, then they have crack, dent  
23 in the wall, all that stuff; right?

24 Q. No. If they don't notify you, you  
25 wouldn't notice it unless you actually inspected the



1 area; right?

2 A. Yes, yes.

3 Q. Okay. If someone impacted the building  
4 hard enough, it would just cause the cracks?

5 A. No. They would cause the breaking in the  
6 concrete, the break.

7 Q. So if I hit a building at 40 miles per  
8 hour, is it possible I could cause cracks in the  
9 wall?

10 A. No. You damage the whole concrete block.  
11 Contrate block is broken.

12 Q. Okay. So there would be some type of  
13 damage; right?

14 A. Yeah, yeah. With that impact, you can see  
15 very easy the impact damage. The concrete block can  
16 be the one hole there.

17 Q. You were up on the roof with Dr. Neil;  
18 right?

19 A. Yes.

20 Q. You agree with him saying that during his  
21 inspection, he found no noticeable sagging on the  
22 roof area related to the installation of these  
23 rooftop heat pump units?

24 A. Yeah. I point out that the roof is very  
25 soft. I point out to him there. I said, Do you see

1 this is very soft? It looks like -- because you can  
2 see multiple holes there.

3 Q. Well, what he said is he found no  
4 noticeable sagging.

5 Do you agree with that or disagree?

6 A. What does "sagging" mean? What's  
7 "sagging" means?

8 Q. That means it sags.

9 A. Yeah. No noticeable this one, but it's  
10 soft, very soft.

11 Q. Soft, but you didn't notice any sagging;  
12 right?

13 A. No, no, no.

14 Q. Okay. And just for the record, I was  
15 using my hands and taking them down to show sagging.

16 A. Yeah.

17 Q. Is there a reason why your expert didn't  
18 do an itemized cost for repair and he only did a  
19 lump sum repair cost?

20 A. I don't know. It's very expensive you do  
21 the itemized.

22 MR. LEE: Next in order. We're almost  
23 done. I promise.

24 (Exhibits 28 and 29 were marked for the record.)

25 ///

1 MR. LEE: Let's just go off record for  
2 five minutes and then we should be able to wrap up;  
3 okay?

4 (A short break was taken.)

5 BY MR. LEE:

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.

14 Q. Okay.

15 A. You mean asking the -- my tenant?

16 Q. You give it to them?

17 A. No. I didn't give them these things.

18 Q. Okay. Did you tell them about it?

19 A. We tell them about the -- we have  
20 litigation and the defendant's side want to inspect  
21 that.

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

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.

6 Q. So is there any information that you want

7 to provide that I haven't asked you about?

8 A. No.

9 Q. No? Okay.

10 Would you like to revise or supplement any

11 of your prior answers?

12 A. Yes. I need to read this description,

13 the -- what's it called?

14 MR. CHILDS: Transcript.

15 THE WITNESS: Transcript, yeah.

16 BY MR. LEE:

17 Q. Okay. So I presume you guys are going to

18 buy a copy of the transcript. You'll need to let

19 the court reporter know. If you are, they'll mail

20 you a copy. If not, you're going to have to go to

21 the court reporter's office to review it; okay?

22 A. Yeah. We just buy one.

23 Q. Okay. And then in terms of the areas that

24 we covered that was based on your experience or your

25 speculation, are you planning on offering those

## 1 CERTIFICATE OF WITNESS

2 PAGE LINE CHANGE REASON

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16 \* \* \* \* \*

17

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

24 \_\_\_\_\_

FRANK MIAO

25 Witness

\_\_\_\_\_

Date

## 1 REPORTER'S CERTIFICATE

2 STATE OF NEVADA )  
 ) ss  
3 COUNTY OF CLARK )

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

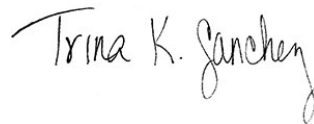
7 That I reported the taking of the  
8 deposition of the witness, FRANK MIAO, at the time  
9 and place aforesaid;

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

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

18 I further certify (1) that I am not a  
19 relative, employee or independent contractor of  
20 counsel or of any of the parties; nor a relative,  
21 employee or independent contractor of the parties  
22 involved in said action; nor a person financially  
23 interested in the action; nor do I have any other  
24 relationship with any of the parties or with counsel  
25 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.

19 IN WITNESS WHEREOF, I have hereunto set my  
20 hand in the County of Clark, State of Nevada, this  
21 23rd day of January, 2021.

22 

23 TRINA K. SANCHEZ, RPR, CCR NO. 933

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19 including but not limited to restrictions on access, storage, use, and

20 disclosure (sharing) of transcripts and transcript exhibits, and

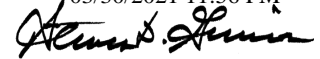
21 applying "minimum necessary" standards where appropriate. It is

22 recommended that your office review its policies regarding sharing of

23 transcripts and exhibits - including access, storage, use, and

24 disclosure - for compliance with Privacy Laws.

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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](mailto: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,



(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,

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 inquiries.

////

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 ("2<sup>nd</sup> 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 2<sup>nd</sup> 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 2<sup>nd</sup> 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 2<sup>nd</sup> 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 still never did any professional inspections. Instead, she put down an additional \$60,000 as a non-refundable deposit to the TKNR. 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 2<sup>nd</sup> 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. In 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

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:

////

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  
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· 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.

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

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

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

22 22. As to all the properties purchased by Plaintiff, Mr. Miao always does the  
23 inspections and does not believe a professional inspection is necessary. *Id.* at 116:2-9, 119:3-25,  
24 140:5-10. Based on his own belief, he does not believe that a professional inspection is  
25 necessary for multi-tenant residential properties. *Id.* at 120:6-9 (his own understanding), 120:16-  
26 25 (second-hand information he received).

27 23. Notably, he does not have any professional license related to being a general  
28 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),

1 172:23-25-1-16 (no general contractor license or qualified under the intentional building code),  
2 174:13-23 (not familiar with the international residential code).

3 24. Mr. Miao has never hired a professional inspector in Clark County, *Id.* at 140:19-  
4 21, so he does not actually know what a professional inspection would encompass here. *Id.* at  
5 143:9-13, 144:8-19.

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

8 26. On or about August 10, 2017, Mr. Miao did an inspection of the Property. *Id.* at  
9 158:1-25-159:1-12. During that time, he admitted that he noticed some issues with the Property  
10 that were not up to code, finishing issues, GFCI outlets<sup>1</sup>, and electrical issues:

11 16 · · · A · I looked at a lot of things · For example,  
12 17 like, the -- I point out some drywall is not  
13 18 finished; right? · And the -- some of smoke alarm is  
14 19 not -- is missing and -- which is law required to  
15 20 put in for smoke alarm · Then no carbon monoxide  
16 21 alarm, so I ask them to put in.  
17 22 · · · · · Then in the kitchen, lot of electrical,  
18 23 the outlet is not a GFCI outlet, so I tell them, I  
19 24 said, You need to change this GFCI · Right now this  
20 25 outlet is not meet code · You probably have problem.

21 *Id.*

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

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

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

<sup>1</sup> The Second Amended Complaint references GFCI at Paragraph 31(a). This illustrates the overall bad faith and frivolous nature of the pleading since Mr. Miao is the one who requested TKNR to install these for Plaintiff.

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.

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?

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1 · · · A. · Yes.

*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.

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\* \* \*

·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."

1 12 . . . . I read that correctly? Yes?  
2 13 . . . A. Yes.  
3 14 . . . Q. Okay. And then you elected not to get a  
4 15 mold inspection; correct?  
5 16 . . . A. Yeah.

6 *Id.* at 213:5-16.

7 5 . . . Q. So you relied upon your own determination  
8 6 related to the potential mold exposure of the  
9 7 property; correct?  
10 8 . . . A. Yes.  
11 9 . . . Q. Okay. And you elected to proceed with  
12 10 purchasing it without a professional mold  
13 11 inspection; correct?  
14 12 . . . A. Yes.

15 *Id.* at 216:5-12.

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

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

20 2 . . . Q. If we go to page 40 --  
21 3 . . . A. Mm-hmm.  
22 4 . . . Q. --- there's a bunch of Nevada statutes  
23 5 here.  
24 6 . . . A. Mm-hmm.  
25 7 . . . Q. If you look at NRS 113.140 --  
26 8 . . . A. Mm-hmm.  
27 9 . . . Q. --- do you see that at the top of the page?  
28 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.

26 *Id.* at 209:2-25.

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

No Dispute a Professional Inspection Could Have Revealed the Alleged Issues

39. 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 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."

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\* \* \*

·3· · · Q· ·Do you agree with this statement?

·4· · · A· ·Yes.

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

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?

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\* \* \*

·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?

1                   4 · · · A · · Yes.

2           *Id.* at 265:1-4.

3                   17 · · · Q · · Okay · If you turn the page to 82,  
4                   18 Plumbing Improvements, no permits required to repair  
5                   19 or replace the sink; correct?  
6                   20 · · · A · · Yes.  
7                   21 · · · Q · · To repair or replace a toilet?  
8                   22 · · · A · · Yes.  
9                   23 · · · Q · · To repair or replace a faucet?  
10                  24 · · · A · · Yes.  
11                  25 · · · Q · · Resurfacing or replacing countertops?  
12                  Page 264  
13                  · 1 · · · A · · Yes.  
14                  · 2 · · · Q · · Resurfacing shower walls?  
15                  · 3 · · · A · · Yes.  
16                  · 4 · · · Q · · Repair or replace shower heads?  
17                  · 5 · · · A · · Yes.  
18                  · 6 · · · Q · · Repair or replace rain gutters and down  
19                  · 7 spouts?  
20                  · 8 · · · A · · Yes.  
21                  · 9 · · · Q · · Regrouting tile?  
22                  10 · · · A · · Yes.  
23                  11 · · · Q · · And a hose bib, whatever that is.  
24                  12 · · · A · · Water freezer · It's, like, for the  
25                  13 filtration of the water.  
26                  14 · · · Q · · Okay · And then for the mechanical, no  
27                  15 permits required for portable heating appliances;  
28                  16 correct.  
29                  17 · · · A · · Yes.  
30                  18 · · · Q · · For portable ventilation appliances?  
31                  19 · · · A · · Yes.  
32                  20 · · · Q · · Or portable cooling units; correct?  
33                  21 · · · A · · Yes.  
34                  22 · · · Q · · And for portable evaporative coolers  
35                  23 installed in windows; correct?  
36                  24 · · · A · · Yes.

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

38                                   *Plaintiff Does not Disclose the Alleged Issues to Potential Tenants*

39                   48.       Since the date it purchased the Property, Plaintiff has always been trying to lease  
40                   it. *Id.* at 330:19-25-331:1-2. According to Mr. Miao, the landlord must provide safe housing for  
41                   the tenant:

42                                   19 · · · · · Then also in according to the law, and  
43                                   20 they said it very clearly, because this is  
44                                   21 residential income property, right, rental income  
45                                   22 property, multi-family, we need -- landlord need  
46                                   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.

*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  
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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.

17 *Id.* at 110:12-16. He also admitted that tenants could have damaged the Property while they  
18 were occupying it:

19 ·4· · · Q· ·Okay· So the tenant in this context would  
20 ·5 have damaged the unit at the time that you owned it;  
21 ·6 is that fair?

22 ·7· · · A· ·Maybe· Yes.

23 ·8· · · Q· ·Okay· So some of the -- so the damage  
24 ·9 that was to the water heater system, could the  
25 10 tenant have damaged that as well?

26 11 · · · A· ·Yes.

27 12 · · · Q· ·And then he could have damaged the cooler  
28 13 pump and the valve as well; is that correct?

29 14 · · · A· ·Yes.

30 15 · · · Q· ·Okay· Then on 122, these are all issues  
31 16 that the tenant could have damaged; is that correct?

32 17 · · · A· ·Yes.

33 18 · · · Q· ·And then the same through for 145; is that  
34 19 right?

35 20 · · · A· ·Yes.

36 *Id.* at 306:4-20, 330:5-7. This could also account for the cracking on the walls. *Id.* at 310:8-12.  
37 Tenants could have also damaged the Property if they hit it with their cars. *Id.* at 332:14-16.

38 *No Evidence That Defendants Knew of Alleged Conditions*

39 52. Plaintiff's case is based on speculation that Defendants knew about the alleged  
40 conditions in the Property; however, Mr. Miao admitted that there is no evidence that shows  
41 Defendants knew about them. *Id.* at 245:1-13 (speculating that InvestPro made changes).

42 53. The entire case is based on Mr. Miao's personal belief and speculation. *Id.* at  
43 253:17-19.

44 54. Mr. Miao admitted that he has no evidence Defendants knew about the alleged  
45 moisture conditions. *Id.* at 293:24-25-294:1-3. Additionally, he also admitted that there is no  
46 evidence that Defendants knew about the alleged issues with the plumbing system. *Id.* at  
47 301:21-24. He also admitted that he did not know if Defendants knew about the alleged issues  
48 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 also 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 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.

*Plaintiff Admitted it Inflated its Cost of Repairs*

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. *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. This illustrates that the bad faith purposes



of this lawsuit were to simply harass Defendants.

60. Mr. Miao perjured himself in his Declaration in support of the Opposition. He denied, under the penalty of perjury, that he never made an offer to settle this matter for \$10,000. However, during his deposition he admitted that he did make this offer. *Id.* at 259:5-15 (“so maybe I tell Lin, Just pay us \$10,000”). 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. These are undisputed facts that prove abuse of process as a matter of law.

*Allegations in the Second Amended Complaint*

61. On November 23, 2020, Plaintiff filed its Second Amended Complaint (“SAC”). Based on the admissions of Mr. Miao and the waivers related to the RPA and the 2<sup>nd</sup> 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

1 line for one new 5 ton heat pump package unit on one roof  
2 top area for the whole building for Unit A. Unit B and Unit  
3 C. Investro (sic) Manager, LLC then removed the one year  
4 old 5 ton heat pump packaged unit from the roof top with  
5 power supply lines and added two new 220v power supply  
6 lines for two new 2 ton heart pump package units, one each  
7 for Unit B and Unit C.

8 Inestpro (sic) Manager, LLC then added one new 110 volt  
9 power supply line for two window cooling units for Unit A.  
10 The electrical system load for Unit A was increased due to  
11 the installation of two new cooling units and required 100  
12 amp service, but the electrical service was not upgraded to  
13 100 amp service from the existing 50 amp service. Failure  
14 to upgrade the electrical service caused the fuses to be  
15 blown out multiple times during the cooling seasons of  
16 2018. The tenants in Unit A could not use air conditioning  
17 units in cooling seasons of 2018, causing Unit A to be  
18 uninhabitable until the Unit A electrical supply panel was  
19 upgraded to 100 amp service.

20 All the electrical supply line addition and removal work  
21 were performed without code required electrical load  
22 calculation, permits and inspections. To save money,  
23 minimize flipping cost, minimize flipping time, maximize  
24 flipping fund profits, Investpro Manager LLC used  
25 unlicensed and unskilled workers to do the electrical work  
26 and used low quality materials used inadequate electrical  
27 supply lines.

28 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 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 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

1 from the washer/dryer combination unit exhaust vent from  
2 Unit A without UBC required permits and inspections and  
3 this damaged the building structure.

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

7 i. SRPDF marked Yes and NO for construction,  
8 modification, alterations or repairs made without required  
9 state, city or county building permits.

10 Defendants Lin, Investpro, as TKNR's agent, TKNR, and  
11 Wong did not provide detailed explanations. All  
12 renovation, demolition, and construction work was done by  
13 Investpro Manager LLC using unlicensed, and unskilled  
14 workers without UBC required weight load and wind load  
15 calculations, permits and inspections.

16 j. SRPDF stated that there were not any problems with  
17 the roof.

18 The roof of the Subject Property was damaged by changing  
19 roof top HVAC units and ducting systems multiple times  
20 from October, 2015 to June, 2017. Investpro Manager LLC  
21 removed the existing swamp coolers from roof top and  
22 covered the swamp coolers ducting holes. Investpro  
23 Manager LLC added a five ton heat pump package unit  
24 with a new ducting system on one roof top area in March,  
25 2016. Investpro the removed the one year old five ton heat  
26 pump package unit with part of the ducting system from the  
27 one roof top area in June, 2017. Then Investpro Manager  
28 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 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.

62. As to 31(a), 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. 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.

63. 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. Additionally, he specified that he noted issues with the plumbing system were

1 “open and obvious” that a reasonable, professional inspection could have discovered in 2017.  
2 Despite these issues, Plaintiff chose not to have a professional inspection. Moreover, Mr. Miao  
3 specified that this was a condition that Plaintiff could have inspected at or before the time it had  
4 originally purchased the Property. Notably, Mr. Miao admitted that no evidence showed that  
5 Defendants were aware of any of these issues.

6 64. As to 31(c), Mr. Miao admitted that the Seller’s Disclosures did disclose the use  
7 of a handyman, the lack of permits, and issues with the sprinklers. Additionally, he specified  
8 that he noted issues with the sewer system were “open and obvious” that a reasonable,  
9 professional inspection could have discovered in 2017. Despite these issues, Plaintiff chose not  
10 to have a professional inspection. Moreover, Mr. Miao specified that this was a condition that  
11 Plaintiff could have inspected at or before the time it had originally purchased the Property.  
12 Notably, Mr. Miao admitted that no evidence showed that Defendants were aware of any of these  
13 issues.

14 65. As to 31(d), Mr. Miao admitted that the Seller’s Disclosures did disclose issues  
15 with the heating and cooling systems, the use of a handyman, and the lack of permits.  
16 Additionally, he specified that he did his inspection and/or that any issues with the heating  
17 system were “open and obvious” that a reasonable, professional inspection could have  
18 discovered in 2017. Despite these issues, Plaintiff chose not to have a professional inspection.  
19 Moreover, Mr. Miao specified that this was a condition that Plaintiff could have inspected at or  
20 before the time it had originally purchased the Property. Notably, Mr. Miao admitted that no  
21 evidence showed that Defendants were aware of any of these issues.

22 66. As to 31(e), Mr. Miao admitted that the Seller’s Disclosures did disclose issues  
23 with the heating and cooling systems, the use of a handyman, and the lack of permits.  
24 Additionally, he specified that he noted issues with the heating and cooling system and items not  
25 up to code at the time that he did his inspection and/or that any issues with the heating and  
26 cooling system were “open and obvious” that a reasonable, professional inspection could have  
27 discovered in 2017. Despite these issues, Plaintiff chose not to have a professional inspection.  
28 Moreover, Mr. Miao specified that this was a condition that Plaintiff could have inspected at or



1 before the time it had originally purchased the Property. Notably, Mr. Miao admitted that no  
2 evidence showed that Defendants were aware of any of these issues.

3 67. As to 31(f), this allegation illustrates the prior knowledge that Plaintiff had before  
4 purchasing the Property, and the overall emphasis on the failure to obtain a professional  
5 inspection of the Property prior to purchasing it.

6 68. As to 31(g), (k), Mr. Miao admitted Plaintiff executed the mold and moisture  
7 waiver, and understood its affirmative duty to have an inspection done prior to the purchase of  
8 the Property. He also admitted that that the Seller's Disclosures did disclose the use of a  
9 handyman, installation of the cabinetry, bathrooms, and the lack of permits. Additionally, he  
10 specified that he personally inspected the attic and the dryer vent before Plaintiff purchased the  
11 Property. Despite these issues, Plaintiff chose not to have a professional inspection. Moreover,  
12 Mr. Miao specified that this was a condition that Plaintiff could have inspected at or before the  
13 time it had originally purchased the Property. Notably, Mr. Miao admitted that no evidence  
14 showed that Defendants were aware of any of these issues.

15 69. As to 31(h), Mr. Miao admitted that the Seller's Disclosures did disclose issues  
16 with the heating and cooling systems, the use of a handyman, and the lack of permits. Mr. Miao  
17 admitted that there was visible cracking on the foundation, walls, and the tiles that were open and  
18 obvious at the time that Plaintiff purchased the Property in 2017. Moreover, Mr. Miao specified  
19 that this was a condition that Plaintiff could have inspected at or before the time it had originally  
20 purchased the Property. Notably, Mr. Miao admitted that no evidence showed that Defendants  
21 were aware of any of these issues.

22 70. As to 31(i), this allegation illustrates the prior knowledge that Plaintiff had before  
23 purchasing the Property, and the overall emphasis on the failure to obtain a professional  
24 inspection of the Property prior to purchasing it. Mr. Miao admitted that he should have  
25 followed up related to the permit issue prior to Plaintiff purchasing the Property.

26 71. As to 31(j), Mr. Miao admitted that the Seller's Disclosures did disclose issues  
27 with the heating and cooling systems, the use of a handyman, and the lack of permits.  
28 Additionally, he specified that he noted issues were "open and obvious" that a reasonable,

1 professional inspection could have discovered in 2017. Mr. Miao agreed that there was no  
2 noticeable sagging on the roof. Despite these issues, Plaintiff chose not to have a professional  
3 inspection. Moreover, Mr. Miao specified that this was a condition that Plaintiff could have  
4 inspected at or before the time it had originally purchased the Property. Notably, Mr. Miao  
5 admitted that no evidence showed that Defendants were aware of any of these issues.

6 72. As to 31(l), Mr. Miao admitted that the Seller's Disclosures did disclose issues  
7 with the heating and cooling systems, the use of a handyman, and the lack of permits. Mr. Miao  
8 admitted that there was visible cracking on the foundation, walls, and the tiles that were open and  
9 obvious at the time that Plaintiff purchased the Property in 2017. Moreover, Mr. Miao specified  
10 that this was a condition that Plaintiff could have inspected at or before the time it had originally  
11 purchased the Property. Notably, Mr. Miao admitted that no evidence showed that Defendants  
12 were aware of any of these issues, and also admitted that squatters and tenants could have  
13 damaged the Property.

14 No Reliance on Broker Agents

15 73. As to the Broker Defendants, Ms. Zhu agreed that she was not relying upon any  
16 representations made by Brokers or Broker's agent. Ms. Zhu agreed to purchase the Property  
17 AS-IS, WHERE-IS, without any representations or warranties. Ms. Zhu agreed to satisfy herself,  
18 as to the condition of the Property, prior to the close of escrow. Ms. Zhu waived all claims  
19 against Brokers or their agents for (a) defects in the Property . . . (h) factors related to Ms. Zhu's  
20 failure to conduct walk-throughs or inspections. Ms. Zhu assumed full responsibility and agreed  
21 to conduct such tests, walk-throughs, inspections and research, as she deemed necessary. In any  
22 event, Broker's liability was limited, under any and all circumstances, to the amount of that  
23 Broker's commission/fee received in the transaction.

24 Mr. Miao Agreed with Defendants' Expert

25 74. On November 17, 2020, Defendants' expert, Neil D. Opfer, an Associate  
26 Professor of Construction Management at UNLV and overqualified expert, conducted an  
27 inspection of the Property. At that time, as noted earlier, Mr. Miao walked the Property with  
28 Professor Opfer. Supplement at 320:31-25.

1           75. Mr. Miao agreed with Professor Opfer that the alleged conditions identified by  
2 Plaintiff's alleged expert were open and obvious:

3                   [n]ote that the Plaintiff could have hired an inspector or contractor  
4 to evaluate this real-estate purchase beforehand but did not. Items  
5 complained about in the Sani Report were open and obvious at the  
6 roof area, attic area, and on the exterior and interior areas of the  
7 Property.

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

9           76. Mr. Miao agreed with Professor Opfer that Plaintiff's expert did not do any  
10 destructive testing, so the same alleged conditions that the alleged expert noted, would have been  
11 made by an inspector at the time of the purchase. *Id.* at 291:1-5.

12           77. Mr. Miao agreed with Professor Opfer that Plaintiff's alleged expert did "not  
13 recognize prior conditions in existence before any work took place by the Defendants." *Id.* at  
14 321:17-21 – 322:3-6.

### 15 Conclusions of Law

16           1. Summary judgment is appropriate when the pleadings, depositions, answers to  
17 interrogatories, admissions, and affidavits, if any, that are properly before the Court demonstrate  
18 that no genuine issue of material fact exist, and the moving party is entitled to judgment as a  
19 matter of law. *Pegasus v. Reno Newspapers, Inc.*, 118 Nev. 706, 713, 57 P.3d 82, 87 (2002).  
20 Substantive law controls whether factual disputes are material and will preclude summary  
21 judgment; other factual disputes are irrelevant. *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242,  
22 106 S. Ct. 2505, 91 L.Ed.2d 202 (1986). A genuine issue of material fact is one where the  
23 evidence is such that a reasonable jury could return a verdict for the non-moving party. *Valley*  
24 *Bank v. Marble*, 105 Nev. 366, 367, 775 P.2d 1278, 1282 (1989).

25           2. The Nevada Supreme Court has held that the non-moving party may not defeat a  
26 motion for summary judgment by relying "on gossamer threads of whimsy, speculation and  
27 conjecture." *Wood v. Safeway*, 121 Nev. 724, 732, 121 P.3d 1026, 1031 (2005). The Nevada  
28 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 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 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

1 carry the duty to inspect the property and ensure that all aspects of it were suitable prior to close  
2 of escrow, and the information was reasonably accessible to the buyer. *Frederic and Barbara*  
3 *Rosenberg Living Tr. v. MacDonald Highlands Realty, LLC*, 427 P.3d 104, 111 (Nev. 2018).  
4 Accordingly, the Nevada Supreme Court concluded that an agreement to purchase property as-is  
5 foreclosed the buyer’s common law claims, justifying the granting of summary judgment on  
6 common law claims. *Id.* (citation omitted).

7 The terms and conditions of the purchase agreement do not create  
8 a duty to disclose. Rather, these disclosures are required by NRS  
9 Chapter 113, which sets forth specific statutory duties imposed by  
10 law independent of the purchase agreement's terms and conditions.  
11 Additionally, the terms of the purchase agreement do not require  
12 [the seller] to do anything other than provide the listed disclosures.

13 *Anderson v. Ford Ranch, LLC*, 78684-COA, 2020 WL 6955438, at \*5 (Nev. App. Nov. 25,  
14 2020).

15 9. Nevada Revised Statute § 113.140 clearly provides that the Seller Disclosures  
16 does not constitute a warranty of the Subject Property and that the Buyer still has a duty to  
17 exercise reasonable care to protect himself. Nevada Revised Statute § 113.140 also provides that  
18 the Seller does not have to disclose any defect that he is unaware of. Similarly, Nevada Revised  
19 Statute § 113.130 does not require a seller to disclose a defect in residential property of which  
20 the seller is not aware. A completed disclosure form does not constitute an express or implied  
21 warranty regarding any condition of residential property. Nevada Revised Statute § 113.140(2).  
22 Chapters 113 and “645 of Nevada Revised Statutes do not relieve a buyer or prospective buyer of  
23 the duty to exercise reasonable care to protect himself or herself.” *Id.* at § 113.140(2).

24 10. Summary Judgment is appropriate as a matter of law on all of Plaintiff’s claims.  
25 It is undisputed that the alleged deficiencies were either disclosed by Defendants, could have  
26 been discovered by an inspection, were open and obvious whereby Plaintiff / Ms. Zhu / Mr.  
27 Miao had notice of them at the time Plaintiff purchased the Property, or were unknown to  
28 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

1 installed within 3 months,” and further that the “owner never resided in the property and never  
2 visited the property.” Plaintiff was also aware that the minor renovations, such as painting, was  
3 conducted by the Seller’s “handyman” as disclosed in the Seller’s Disclosures. TNKR also  
4 disclosed that it was aware of issues with the heating and cooling systems, there was  
5 construction, modification, alterations, or repairs done without permits, and lead-based paints.

6 12. On August 11, 2020, through the original RPA, Ms. Zhu waived her due  
7 diligence, although she had a right to conduct inspections:

8 During such Period, Buyer shall have the right to conduct, non-  
9 invasive/non-destructive inspections of all structural, roofing,  
10 mechanical, electrical, plumbing, heating/air conditioning,  
11 water/well/septic, pool/spa, survey, square footage, and any other  
property or systems, through licensed and bonded contractors or  
other qualified professionals.

12 13. Section II(B)(1) lists the disclosures by TKNR. Despite these disclosures,  
13 Plaintiff chose not to inspect the Subject Property, request additional information and/or conduct  
14 any reasonable inquiries. In fact, Ms. Zhu only cancelled the original RPA, Ex. E, because of an  
15 issue related to her financing, not because of any concerns related to the Seller’s Disclosures.  
16 Notably, she included the explicit waiver of the inspections, which included her initialing the  
17 provision that she had not done in the original RPA. Ms. Zhu even directly informed her agent  
18 to waive all inspections. Although Ms. Zhu had actual knowledge of the Seller’s Disclosures  
19 from August 11, 2017, and the Parties agreed to extend the COE to January 5, 2018, Ms. Zhu  
20 still never did any professional inspections. Instead, she put down an additional \$60,000 as a  
21 non-refundable deposit to the TNKR. Moreover, she also agreed to pay rent in the amount of  
22 \$650 per month for one of the units, and to also pay the property manager \$800 for the tenant  
23 placement fee. Through Addendum 2 to the 2<sup>nd</sup> RPA, Ms. Zhu later changed the purchaser to  
24 Plaintiff.

25 14. As to the Brokers Defendants, Ms. Zhu agreed that she was not relying upon any  
26 representations made by Brokers or Broker’s agent. Ms. Zhu agreed to purchase the Property  
27 AS-IS, WHERE-IS, without any representations or warranties. Ms. Zhu agreed to satisfy herself,  
28 as to the condition of the Property, prior to the close of escrow. Ms. Zhu waived all claims

1 against Brokers or their agents for (a) defects in the Property . . . (h) factors related to Ms. Zhu's  
2 failure to conduct walk-throughs or inspections. Ms. Zhu assumed full responsibility and agreed  
3 to conduct such tests, walk-throughs, inspections and research, as she deemed necessary. In any  
4 event, Broker's liability was limited, under any and all circumstances, to the amount of that  
5 Broker's commission/fee received in the transaction.

6 15. As to the waivers, Paragraph 7(D) of the both the RPA and 2<sup>nd</sup> RPA expressly  
7 provided:

8 *It is strongly recommended that Buyer retain licensed Nevada*  
9 *professionals to conduct inspections.* If any inspection is not  
10 completed and requested repairs are not delivered to Seller within  
11 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.

12 Under Paragraph 7(F), it was Ms. Zhu's responsibility to inspect the Property sufficiently as to  
13 satisfy her use. Nevertheless, Ms. Zhu waived her inspection related to the original RPA and the  
14 2<sup>nd</sup> RPA, reinforced further by actually initialing next to the waiver in the 2<sup>nd</sup> RPA. Ms. Zhu  
15 also waived the energy audit, pest inspection, roof inspection, septic lid removal inspection,  
16 mechanical inspection, soil inspection, and structural inspection. Thereby, Ms. Zhu waived any  
17 liability of Defendants for the cost of all repairs that inspection would have reasonably identified  
18 had it been conducted. The RPA and the 2<sup>nd</sup> RPA clearly indicated that Ms. Zhu was purchasing  
19 the Property "AS-IS, WHERE-IS without any representations or warranties."

20 16. Additionally, Ms. Zhu also agreed that the Brokers Defendants had "no  
21 responsibility to assist in the payment of any repair, correction or deferred maintenance on the  
22 Property which may have been revealed by the above inspections, agreed upon by the Buyer and  
23 Seller or requested by one party." Paragraph 7(D) of the RPA.

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

27 18. Plaintiff understands the importance of reading contracts.

28 ////



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

3 20. Plaintiff was a sophisticated buyer who understood the necessity of getting  
4 properties inspected.

5 21. The terms of the RPA were clear to Plaintiff.

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

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

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

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

15 26. As to the RPA, Mr. Miao agreed that all the terms in it were conspicuous and  
16 understandable, and it was a standard agreement similar to the other agreements he had used in  
17 purchasing the other properties in Clark County, Nevada.

18 27. On or about August 10, 2017, Mr. Miao did an inspection of the Property. During  
19 that time, he admitted that he noticed some issues with the Property that were not up to code,  
20 finishing issues, GFCI outlets<sup>2</sup>, and electrical issues.

21 28. Similarly, he also specified that there was an issue with exposed electrical in Unit  
22 C. He also noted that there could have been a potential asbestos issue as well.

23 29. Additionally, Mr. Miao noted that there were cracks in the ceramic floor tiles, and  
24 he was aware of visible cracks in the concrete foundation, which were open and obvious.

25 ////

26  
27 <sup>2</sup> The Second Amended Complaint references GFCI at Paragraph 31(a). This illustrates the overall bad faith  
28 and frivolous nature of the pleading since Mr. Miao is the one who requested TKNR to install these for  
Plaintiff.

1           30.     Mr. Miao also admitted that he could also have seen the dryer vent during his  
2 inspection.

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

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

7           33.     Plaintiff was also on notice of the potential for mold and the requirement to get a  
8 mold inspection.

9           34.     Despite actual knowledge of these issues, Plaintiff did not elect to have a  
10 professional inspection done.

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

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

14          37.     The alleged defects identified by both parties' experts could have been discovered  
15 at the time of the original purchase as they were "open and obvious".

16          38.     Plaintiff failed to differentiate between conditions prior to when TKNR owned the  
17 Property, while it owned it, and those afterwards.

18          39.     No dispute exists that TKNR did not need permits for the interior work it had  
19 done to the Property.

20          40.     Plaintiff has always been trying to lease the Property despite not doing any of the  
21 repairs listed by Plaintiff's expert. This illustrates the lack of merit of Plaintiff that there are  
22 underlying conditions with the Property.

23          41.     Moreover, Plaintiff does not provide any notice to the tenants about its expert's  
24 report or this litigation. This illustrates the lack of merit of Plaintiff's claims and proves that it  
25 has done nothing to correct the allegedly deficient conditions that are clearly not so dangerous as  
26 it does not tell prospective tenants about them.

27          42.     Mr. Miao admitted that multiple third parties could have potentially damaged the  
28 Property.

43. Plaintiff did not present any evidence related to Defendants' alleged knowledge other than his personal belief and speculation.

44. 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.

45. Mr. Miao also recognized that a 63-year-old property could have issues that were not caused by Defendants.

46. The Flipping Fund had nothing to do with Plaintiff's decision to purchase the Property.

47. 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.

48. Plaintiff were 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.

49. 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 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.

1 See *Bakerink v. Orthopaedic Associates, Ltd.*, 581 P.2d 9, 11 (Nev. 1978) (quoting *Willmar*  
2 *Poultry Co. v. Morton-Norwich Products*, 520 F.2d 289, 297 (8th Cir. 1975), Cert. denied, 424  
3 U.S. 915, 96 S.Ct. 1116, 47 L.Ed.2d 320 (1975).

4 50. Plaintiff failed to articulate the alleged discovery that it would likely have.  
5 Additionally, Plaintiff already opposed enlarging discovery by specifying that any extension of  
6 discovery would prejudice it, indicating that it had no need for additional discovery and that  
7 Plaintiff would largely rest upon the findings of its expert. See Plaintiff's Opposition to Motion  
8 to Enlarge Discovery. Also, Plaintiff's counsel's declaration in the Opposition illustrated that he  
9 had additional discussions with Plaintiff's expert related to the MSJ, but Plaintiff's expert did not  
10 proffer any additional opinions to counter the Motion. See *Opp.* at p. 18:7-9.

11 51. As a matter of law, Plaintiff is precluded from seeking damages from Defendants  
12 because of her failure to inspect. "Nondisclosure by the seller of adverse information concerning  
13 real property . . . will not provide the basis for an action by the buyer to rescind or for damages  
14 when property is sold 'as is.' " *Mackintosh v. Jack Matthews & Co.*, 109 Nev. 628, 633, 855  
15 P.2d 549, 552 (1993). Moreover, "[l]iability for nondisclosure is generally not imposed where  
16 the buyer either knew of or could have discovered the defects prior to the purchase." *Land*  
17 *Baron Invs., Inc. v. Bonnie Springs Family LP*, 131 Nev. 686, 696, 356 P.3d 511, 518 (2015).

18 52. Defendants also do not have liability as Ms. Zhu / Plaintiff purchased the Property  
19 "as-is" within the reach of the diligent attention and observation of the buyer. *Mackintosh*, 109  
20 Nev. at 633, 855 P.2d at 552. NRS § 113.140 clearly provides that the disclosures do not  
21 constitute a warranty of the Property and that the purchaser still has a duty to exercise reasonable  
22 care to protect himself. A completed disclosure form does not constitute an express or implied  
23 warranty regarding any condition of residential property. NRS § 113.140(2). Chapters 113 and  
24 "645 of Nevada Revised Statutes do not relieve a buyer or prospective buyer of the duty to  
25 exercise reasonable care to protect himself or herself." *Id.* at § 113.140(2).

26 53. Plaintiff waived its common law claims of negligent misrepresentation, fraudulent  
27 or intentional misrepresentation, and/or unjust enrichment when it expressly agreed that it would  
28 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).

54. As such, 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.

55. In total, 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.

56. 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 disposition).

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1           57.     The Opposition failed to address the Motion's arguments related to summary  
2 judgment in favor of Defendants on Plaintiff's claims for: (7) RICO; (10) Fraudulent  
3 Conveyance; (11) Fraudulent Conveyance; (12) Civil Conspiracy; and (15) Abuse of Process.  
4 Additionally, Plaintiff fails to provide any meaningful or competent opposition to the Motion's  
5 argument for summary judgment as to Plaintiff's claims against the Broker Defendants. As there  
6 is no Opposition provided to those arguments made in the Motion, this court should find that  
7 those arguments are meritorious and grant the request as to those unopposed issues.

8           58.     Pursuant to Nevada Rule of Civil Procedure 11(b), by presenting to the court a  
9 pleading or other paper, an attorney or unrepresented party certifies: (1) it is not being presented  
10 for any improper purpose, such as to harass, cause unnecessary delay, or needlessly increase the  
11 cost of litigation, (2) the claims and other legal contentions are warranted by existing law or by a  
12 nonfrivolous argument for extending, modifying, or reversing existing law or for establishing  
13 new law, (3) the factual contentions have evidentiary support, and (4) the denials of factual  
14 contentions are warranted on the evidence or.

15           59.     "If, after notice and a reasonable opportunity to respond, the court determines that  
16 Rule 11(b) has been violated, the court may impose an appropriate sanction on any attorney, law  
17 firm, or party that violated the rule or is responsible for the violation. Absent exceptional  
18 circumstances, a law firm must be held jointly responsible for a violation committed by its  
19 partner, associate, or employee." NEV. R. CIV. PRO. 11(c).

20           60.     "On its own, the court may order an attorney, law firm, or party to show cause  
21 why conduct specifically described in the order has not violated Rule 11(b)." *Id.* at 11(c)(3). "A  
22 sanction imposed under this rule must be limited to what suffices to deter repetition of the  
23 conduct or comparable conduct by others similarly situated. The sanction may include  
24 nonmonetary directives; an order to pay a penalty into court; or, if imposed on motion and  
25 warranted for effective deterrence, an order directing payment to the movant of part or all of the  
26 reasonable attorney fees and other expenses directly resulting from the violation." *Id.* at  
27 11(c)(4).

28     ////

61. 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.

62. 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).

63. 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)

1 (quoting *Western United Realty, Inc. v. Isaacs*, 679 P.2d 1063, 1069 (Colo.1984)).

2 78. The overwhelming facts and law illustrate that Plaintiff's claim is frivolous. The  
3 findings of fact are incorporated by reference.

4 79. Plaintiff's claim is clearly frivolous: (1) where the pleading was not "well  
5 grounded in fact and is warranted by existing law or a good faith argument for the extension,  
6 modification or reversal of existing law", and (2) Plaintiff's attorney continued to make frivolous  
7 claims. *Bergmann*, 109 Nev. at 676, 856 P.2d at 564. Sanctions are warranted against Plaintiff  
8 and its counsel, which includes an award attorneys' fees to Defendants.

9 80. Alternatively, the elements of an abuse of process claim are: "(1) an ulterior  
10 purpose by the defendants other than resolving a legal dispute, and (2) a willful act in the use of  
11 the legal process not proper in the regular conduct of the proceeding." *Posadas v. City of Reno*,  
12 109 Nev. 448, 452, 851 P.2d 438, 441-42 (1993). Abuse of process can arise from both civil and  
13 criminal proceedings. *LaMantia v. Redisi*, 118 Nev. 27, 30, 38 P.3d 877, 879 (2002). Malice,  
14 want of probable cause, and termination in favor of the person initiating or instituting  
15 proceedings are not necessary elements for a prima facie abuse of process claim. *Nevada Credit*  
16 *Rating Bur. v. Williams*, 88 Nev. 601, 606, 503 P.2d 9, 12 (1972); Restatement (Second) of Torts  
17 § 682 cmt. a (1977). The mere filing of a complaint is insufficient to establish the tort of abuse  
18 of process. *Laxalt v. McClatchy*, 622 F. Supp. 737, 751 (1985).

19 81. Under either Rule 11 or Defendants' counterclaim for abuse of process, Plaintiff  
20 brought or maintained this action without reasonable ground and only to harass Defendants.  
21 NEV. REV. STAT. § 18.010(2)(b). The overwhelming facts and law also show that Plaintiff  
22 brought or maintained this claim without reasonable grounds, which justifies an award of  
23 attorneys' fees. *Rodriguez v. Primadonna Co., LLC*, 216 P.3d 793, 800 (Nev. 2009).

24 82. Defendants are directed to file a separate order to show cause pursuant to Nevada  
25 Rule of Civil Procedure 11(c)(3) on Plaintiff and Plaintiff's prior counsel, Benjamin Childs, as  
26 this Honorable Court determined that Plaintiff has violated Rule 11(b). The court will impose an  
27 appropriate sanction on any attorney, law firm, or party that violated the rule or is responsible for  
28 the violation. The court intends to award to the Defendants the reasonable expenses, including



attorneys' fees and costs, incurred for defending this frivolous lawsuit, either under Rule 11 or as damages for Defendants' counterclaim for abuse of process. This sanction will be limited to what suffices to deter repetition of the conduct or comparable conduct by others similarly situated. The Court may also consider sanctions including nonmonetary directives, an order to pay a penalty into court, or, an order directing payment to Defendants for part or all of the reasonable attorney fees and other expenses directly resulting from the violation.

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 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. This Honorable 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 and/or under the abuse of process counterclaim. Defendants may file an affidavit in support of requested attorney's fees and costs within 10 days of the entry of Order and the Order to Show Cause. Plaintiff may file an objection to any portion of the attorney's fees by filing an objection within five judicial days of service of the affidavit and/or the Order to Show Cause. After the fees are granted, Plaintiff will have ten (10) days of entry of this Order to provide proof of payment to be noticed and filed with the Court.

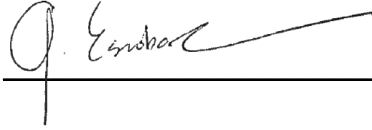
**IT IS FURTHER ORDERED, ADJUDICATED, AND DECREED** that this is a final order related to the claims and counterclaim. This Honorable Court directs entry of a final judgment of all claims. To the extent that post-judgment award of attorneys' fees are pending, Defendants may make the claim as set forth in Nevada Rule of Civil Procedure 54(d)(D) (claims for attorney fees as sanctions).

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1 IT IS FURTHER ORDERED, ADJUDICATED, AND DECREED that any  
2 outstanding or pending discovery is quashed as moot.

3 IT IS FURTHER ORDERED, ADJUDICATED, AND DECREED that any trial dates  
4 and/or calendar calls are vacated as moot.

Dated this 30th day of March, 2021

  
\_\_\_\_\_

159 FDE 147E 8F8F

Adriana Escobar

District Court Judge  
Date: March 30, 2021.

5  
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8  
9 Date: March 12, 2021.

10 Respectfully Submitted By:

11 MICHAEL B. LEE, P.C.

12 /s/ Michael Lee  
13 MICHAEL B. LEE, ESQ. (NSB 10122)  
14 MICHAEL MATTHIS, ESQ. (NSB 14582)  
15 1820 E. Sahara Avenue, Suite 110  
16 Las Vegas, Nevada 89104  
Telephone: (702) 477.7030  
Facsimile: (702) 477.0096  
[mike@mblnv.com](mailto:mike@mblnv.com)  
*Attorneys for Defendants*

Approved of as to Form and Content By:

DAY & NANCY

NO RESPONSE  
STEVEN L. DAY, ESQ. (NSB 3708)  
1060 Wigwam Parkway  
Henderson, NV 89074  
Tel – 702.309.3333  
Fax – 702.309.1085  
[sday@daynance.com](mailto:sday@daynance.com)  
Attorneys for Plaintiff

1 **CSERV**

2  
3 DISTRICT COURT  
CLARK COUNTY, NEVADA

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

CASE NO: A-18-785917-C

7 vs.

DEPT. NO. Department 14

8  
9 TKNR Inc, Defendant(s)

10  
11 **AUTOMATED CERTIFICATE OF SERVICE**

12 This automated certificate of service was generated by the Eighth Judicial District  
13 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:

14 Service Date: 3/30/2021

15 Brinley Richeson

bricheson@daynance.com

16 Steven Day

sday@daynance.com

17 Michael Matthis

matthis@mblnv.com

18 BENJAMIN CHILDS

ben@benchilds.com

19 Nikita Burdick

nburdick@burdicklawnv.com

20 Michael Lee

mike@mblnv.com

21 Bradley Marx

brad@marxfirm.com

22 Frank Miao

frankmiao@yahoo.com

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AA000620