

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

Electronically Filed
Jul 12 2023 10:23 AM
Elizabeth A. Brown
Clerk of Supreme Court

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

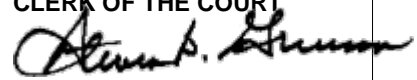
APPELLANT'S APPENDIX

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

VOLUME IV

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Transcript of March 11, 2021 Proceedings	04/15/2021	IV	AA 000777-821



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
Attorneys for *Defendants*

IN THE EIGHTH JUDICIAL DISTRICT COURT

CLARK COUNTY, NEVADA

W L A B INVESTMENT, LLC,

Plaintiff,

vs.

TKNR INC., a California Corporation, ET
AL.

Defendants.

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

AFFIDAVIT IN SUPPORT OF
ATTORNEYS' FEES FOR 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.

Amount Requested: \$128,166.78

And Related Claims

STATE OF NEVADA)
) ss.
COUNTY OF CLARK)

MICHAEL B. LEE, ESQ., being first duly sworn, deposes and says:

1. I, MICHAEL B. LEE, being first duly sworn, deposed, and said, that I have personal knowledge and am competent to testify to the facts below, and that this Declaration is submitted in support of the pleading referenced in the above-matter. The facts stated herein are true to the best of my own personal knowledge, except for those facts stated upon information and belief, and as to those facts, I believe them to be true.

2. This Declaration is made in support of the attorneys' fees related to ORDER ("Order") GRANTING DEFENDANTS' MOTION FOR SUMMARY JUDGMENT, OR IN THE ALTERNATIVE, PARTIAL SUMMARY JUDGMENT ("Motion"). I am an attorney with the law firm of MICHAEL B. LEE, P.C. This law firm represents Defendants.

3. Defendants were awarded attorneys' fees related to the underlying Order and related to the Motion. To date, Defendants incurred attorneys' fees in the total amount of \$100,267.64 from the office of Michael B. Lee, P.C. A true and correct copy of the Invoices are attached as **Exhibit A**. The Firm charged Defendants an hourly rate of \$425.00 per hour. This is a reasonable rate giving that the Firm charges \$475 per hour for business law cases, and was just approved at that rate related to a fee award in business court for an evidentiary hearing. A true and correct copy of the Minute Order is attached as **Exhibit B**.

4. I anticipate an additional twenty hours of work related to this Application, which would be an estimated fee of \$8,500.

5. To date, Defendants incurred attorneys' fees in the total amount of \$10,187.50 from the office of Burdick Law, PLLC. A true and correct copy of the Invoices are attached as **Exhibit C**.

6. Further illustrating the reasonableness of the rate, Plaintiff's counsel, Benjamin Childs, charged Plaintiff \$400 per hour for his representation. A true and correct copy of Childs Retainer Agreement is attached as **Exhibit D**.

7. Defendants are seeking reimbursement of **\$118,955.14** for their attorneys' fees and costs.

Michael B. Lee, P.C.

8. I graduated in the top 25% of my law school class, was on the Dean's List, and achieved a CALI Award. I also did an externship with the Clark County Public Defender's Office and one with the United States District Court, District of Nevada with (then) Chief Judge Phillip M. Pro.

9. I have been practicing law since 2006. I am an AV rated attorney and have been AV rated since 2012. I have several industry awards and recognitions based on peer reviews for being a top lawyer in Southern Nevada from Super Lawyers Magazine, AVVO, Nevada Business Magazine, Desert Companion, and various other publications. Additionally, I have also argued before the Nevada Supreme Court and the Ninth Circuit and have three published opinions in the favor of my clients, and several unpublished opinions. I am licensed in Nevada,

1 California, the United States District Court, District of Nevada, the United States Court of
2 Appeals for the Ninth Circuit, and the Supreme Court of the United States. I have sat on the
3 Executive Council for the Young Lawyers Section of the State Bar of Nevada, the Fee Dispute
4 Arbitration Committee for the State Bar of Nevada, and currently sit on the Discipline Panel for
5 the State Bar of Nevada. I am also a vice-chair of the Business Law Committee, SOLO Law
6 Firms, and Plaintiff's Task Force for the Tort Insurance Practice Section of the America Bar
7 Association, and was previously a vice-chair for the Trial Techniques and Corporate Counsel
8 committees.

9 10. I have the highest level of professional standing and skill. Based on my qualities,
10 ability, training, experience, and professional standing with the Nevada Bar Association, the rate
11 and fees charges by Michael B. Lee, P.C. are reasonable according to the *Brunzell* factors.

12 *Burdick Law, PLLC*

13 11. Mrs. Burdick served as a research assistant for Professor Goodman teaching
14 California Evidence, and student articles editor for the Dispute Resolution Law Journal, and
15 finally as a judicial extern to the Honorable Mark R. Denton. She served as a law clerk to the
16 Honorable Mark R. Denton. During this clerkship, Mrs. Burdick gained extensive exposure to a
17 docket of over 800 complex business litigation cases from both the litigator's perspective and the
18 judge. After her clerkship, Mrs. Burdick joined several prestigious law firms in Las Vegas,
19 Nevada prior to opening Burdick Law, PLLC. Her rate of \$200 per hour is reasonable according
20 to the *Brunzell* factors.

21 *Character of the Work Done*

22 12. The work performed in this matter was reasonably suited to the nature of this
23 dispute. Defendants had to defend a frivolous lawsuit from Plaintiff. To illustrate the frivolous
24 nature of the lawsuit, Plaintiff submitted false, misleading representations to defend the initial
25 motion to dismiss by Defendants. A true and correct copy of Opposition is attached as **Exhibit**
26 **E**. The court minutes demonstrate that Mr. Childs falsely argued that there were issues not
27 disclosed by Defendants, a true and correct copy of Minutes is attached as **Exhibit F**, which the
28 underlying Order denoted as false, misleading.

13. After this Honorable Court permitted Plaintiff leave to amend its pleadings, Plaintiff amended the initial complaint's three causes of action ((1) RECOVERY UNDER NRS CHAPTER 113 [Defendants TKNR and Wong]; (2) CONSTRUCTIVE FRAUD [Defendants Investpro and Nickrandt]; (3) COMMON LAW FRAUD [Defendants Investpro and Nickrandt and Lin]; and (4) FRAUDULENT INDUCEMENT [All Defendants]) to fifteen baseless causes of action: (1) Recovery Under NRS Chapter 113 [Defendants TKNR, Wong, and Investpro Manager LLC]; (2) Constructive Fraud [Defendants Investpro, Nickrandt, and Chen]; (3) Common Law Fraud [Defendants Investpro, Investpro Manager LLC, TKNR, Wong and Lin]; (4) Fraudulent Inducement [Defendants TKNR, Investpro Manager LLC, Wong, Investpro and Lin]; (5) Fraudulent Concealment [Defendants TKNR, Wong, Investpro, Investpro Manager LLC, and Lin]; (6) Breach Of Fiduciary Duty [Defendants Investpro and Nickrandt and Chen]; (7) RICO [Defendants Lin, Cheng, Investpro Manager LLC and Investpro Investments I LLC]; (8) Damages Under NRS 645.257(1) [Defendant Chen, Lin, Investpro and Nickrandt]; (9) Failure To Supervise, Inadequate training and Education [Defendant Investpro, Zhang, and Nickrandt]; (10) Fraudulent Conveyance [TKNR]; (11) Fraudulent Conveyance [Investpro Investments I LLC]; (12) Civil Conspiracy [As To Defendant Man Chau Cheng, Lin, Investpro, Wong, TKNR, Investpro Investments I LLC and Investpro Manager LLC]; (13) Breach Of Contract [As To Defendant Investpro]; (14) Breach Of Implied Covenant of Good Faith and Fair Dealing [As To Defendant Investpro]; and (15) Abuse of Process [As To All Defendants].

14. On November 19, 2020, Defendants proffered an offer of judgment on Plaintiff that illustrated the overall frivolous nature of Plaintiff's case. A true and correct copy of Offer of Judgment is attached as **Exhibit F**. In Response, Plaintiff propounded frivolous discovery requests on Cheng, Investments, Management, Realty, Wong, Manager, and TKNR on November 26, 2020, with actual knowledge that there was no basis for the alleged discovery. This action substantially increased Defendants' cost of defense.

15. More illustrating the improper actions by Plaintiff, on February 4, 2021, counsel responded to an e-mail inquiry from Ariana Reed. I sent a simple response. A true and correct copy of the Email chain is attached as **Exhibit G**. Thereafter, Mr. Childs responded with

misleading information, which I had to correct and provide the corroborating documentation. A true and correct copy of the Email chain is attached as **Exhibit H**. As noted in Mr. Childs' e-mail, Plaintiff used discovery to directly try to circumvent the frivolous nature of the lawsuit ("Defendants' Summary Judgment motion is highly unlikely to be granted given the state of outstanding discovery and Plaintiff has filed an extensive opposition and countermotion"). *Id.* at February 4, 2021 5:39 PM.

Actual Work Done

16. The actual work performed in this matter required expertise and significant time and attention to the work. As noted by the preceding exhibits, counsel had to create an exacting plan to demonstrate the frivolous nature of this lawsuit. After extensive preparation for Frank Miao's ("Miao") deposition, the person most knowledgeable, counsel successfully obtained testimony related to the frivolous nature of this lawsuit. Moreover, this testimony also illustrated that this lawsuit was frivolous from the commencement of the action based on the disclosures made prior to the purchase of the property, Mr. Miao's actual knowledge prior to the purchase, and Mr. Miao's actual knowledge of what due diligence required of him.

Work Performed

17. I actually performed all the work on the case with the requisite skill, time and attention required for the work, other than the work performed by Mrs. Burdick.

The Result

18. Defendants successfully obtained, *inter alia*, orders for summary judgment, an order finding that Plaintiff's case was frivolous and violated Rule 11, and an order granting attorneys' fees under either Rule 11 or for abuse of process.

19. This Application is not made or based to cause any undue harassment, delay, or annoyance.

20. Defendants are seeking reimbursement of **\$118,955.14** for attorneys' fees and costs.

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Memo of Costs

21. Michael Lee, Esq., being duly sworn, states: he has personal knowledge of the costs and disbursements expended below; that the items contained in the memorandum are true and correct to the best of this declarant's knowledge and belief; and that the said disbursements have been necessarily incurred and paid in this action.

1. Odyssey Record attached as **Exhibit I**. The Fees only show the filing fee, but do not show the additional electronic filing fees of \$3.50, the merchant fee for the original filing, etc.
2. Transcript invoices attached as **Exhibit J**.
3. Expert Fee attached as **Exhibit K**.

Pursuant to NRS 18.005, 18.010, and 18.020, Defendants hereby claim the following costs:

Filing Fees:	\$766.00
Photographs:	\$12.97
Transcripts:	\$3,934.14
Expert:	\$5,000
<u>TOTAL:</u>	\$9,211.64

Summary

22. Defendants are seeking \$118,955.14 for attorneys' fees, and \$9,211.64 in costs for a total of \$128,166.78.

23. I declare under penalty of perjury under the laws of the State of Nevada that the foregoing is true and correct.

DATED this 6 day of April, 2021.

/s/ Michael Lee
MICHAEL B. LEE

MICHAEL B. LEE, P.C.
1820 E. SAHARA AVENUE, SUITE 110
LAS VEGAS, NEVADA 89104
TEL – (702) 477.7030; FAX – (702) 477.0096

CERTIFICATE OF MAILING

I HEREBY CERTIFY that on this 6 day of April, 2021, I placed a copy of **AFFIDAVIT IN SUPPORT OF ATTORNEYS' FEES FOR ORDER GRANTING DEFENDANTS' MOTION FOR SUMMARY JUDGMENT, OR IN THE ALTERNATIVE, PARTIAL SUMMARY JUDGMENT** as required by Eighth Judicial District Court Rule 7.26 by delivering a copy or by mailing by United States mail it to the last known address of the parties listed below, facsimile transmission to the number listed, and/or electronic transmission through the Court's electronic filing system to the e-mail address listed below.

BENJAMIN B. CHILDS, ESQ.
318 S. Maryland Parkway
Las Vegas, Nevada 89101
Telephone: (702) 251-0000
Email: ben@benchilds.com

STEVEN L. DAY, ESQ.
DAY & NANCE
1060 Wigwam Parkway
Henderson, NV 89074
Tel – 702.309.3333
Fax – 702.309.1085
sday@daynance.com
Attorneys for Plaintiff

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

Exhibit A

Exhibit A

Michael B. Lee, P.C.
1820 E. Sahara Avenue, Suite 110
Las Vegas, NV 89104

Invoice

Bill To:
Investpro
Kenny Zhong Lin

Invoice #: 1616
Invoice Date: 11/2/2020
Due Date: 11/2/2020
Project: WLAB Invest...
P.O. Number:

Serviced	Description	Hours	Rate	Amount
9/29/2020	Review file to determine scope of discovery necessary and other follow up	2	425.00	850.00
9/30/2020	Review Plaintiff's ROG request and Draft initial response for Nikita's finalization and service	2.5	425.00	1,062.50
9/30/2020	Review Plaintiff's RFA request and Draft initial response for Nikita's finalization and service	1.25	425.00	531.25
9/30/2020	Review Plaintiff's RPD request and Draft initial response for Nikita's finalization and service	1.75	425.00	743.75
9/30/2020	(NO CHARGE) Draft e-mail to Nikita re: discovery responses	0.2	0.00	0.00
10/5/2020	Draft Second Supplemental Disclosure of Documents and Witnesses	1.5	425.00	637.50
10/5/2020	(NO CHARGE) Review and respond to multiple e-mails with N. Burdick re: case status and discovery	0.5	0.00	0.00
10/5/2020	Run comparison to ROG responses drafted by N. Burdick and update response	1	425.00	425.00
10/5/2020	Draft Request for Interrogatories	3	425.00	1,275.00
10/5/2020	Draft Request for Production of Documents	2	425.00	850.00
10/6/2020	(NO CHARGE) Review and respond to multiple e-mails with N. Burdick re: case status and discovery	0.5	0.00	0.00
10/6/2020	Draft Request for Admissions	2	425.00	850.00
10/16/2020	Review minute order re: settlement	0.1	425.00	42.50
10/19/2020	Review discovery responses	1	425.00	425.00
10/19/2020	(NO CHARGE) Draft e-mail to client re: review of discovery responses and next steps	0.4	0.00	0.00
10/21/2020	(NO CHARGE) Conference with Kenny re: [REDACTED]	1	0.00	0.00
10/21/2020	Draft e-mail to N. Opfer (expert) re: retention and scope of work	0.2	425.00	85.00
10/21/2020	Telephone call with N. Opfer (expert) re: retention and scope of work	0.3	425.00	127.50

Total

Payments/Credits

Balance Due

Michael B. Lee, P.C.
1820 E. Sahara Avenue, Suite 110
Las Vegas, NV 89104

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Invoice Date: 11/2/2020
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Project: WLAB Invest...
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Serviced	Description	Hours	Rate	Amount
10/21/2020	(NO CHARGE) Draft multiple e-mails to clients re: [REDACTED]	0.5	0.00	0.00
10/22/2020	Review and Respond to e-mail with N. Opfer (expert) re: retention	0.2	425.00	85.00
10/22/2020	Review brief and opposition in preparation to attend hearing and Attend Hearing	1.5	425.00	637.50
10/22/2020	Draft Notice of Site Inspection	1	425.00	425.00
10/22/2020	Draft multiple e-mails to B. Childs (attorney for Plaintiff) re: settlement conference and leave to amend	0.3	425.00	127.50
10/22/2020	Review e-mail from district court re: minute order	0.1	425.00	42.50
10/22/2020	Draft Order	1.25	425.00	531.25
10/22/2020	Draft Notice of Inspection	0.3	425.00	127.50
10/22/2020	Draft multiple e-mails to B. Childs (attorney for Plaintiff) re: leave to amend, inspection, deposition, settlement conference	0.5	425.00	212.50
10/22/2020	Review and respond to multiple e-mails with B. Childs (attorney for Plaintiff) re: leave to amend, inspection, deposition, settlement conference	0.5	425.00	212.50
10/22/2020	(NO CHARGE) Draft multiple e-mails to client re: [REDACTED]	0.5	0.00	0.00
10/22/2020	(NO CHARGE) Review and Respond to multiple e-mails with client re: [REDACTED]	0.5	0.00	0.00
10/23/2020	Review parties' disclosures	3	425.00	1,275.00
10/23/2020	Prepare Notice of Deposition and Topics	2	425.00	850.00
10/23/2020	Review and respond to multiple e-mails with B. Childs (attorney for Plaintiff) re: leave to amend, inspection, deposition, settlement conference	0.5	425.00	212.50
10/23/2020	(NO CHARGE) Draft multiple e-mails to client re: [REDACTED]	0.5	0.00	0.00

Total

Payments/Credits

Balance Due

Michael B. Lee, P.C.
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Invoice #: 1616
Invoice Date: 11/2/2020
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Serviced	Description	Hours	Rate	Amount
10/23/2020	(NO CHARGE) Review and Respond to multiple e-mails with client re: [REDACTED]	0.5	0.00	0.00
10/26/2020	Finalize notice of deposition	0.1	425.00	42.50
10/26/2020	Review and Respond to multiple e-mails from B. Childs (attorney for Plaintiff) re: deposition and settlement conference	0.5	425.00	212.50
10/26/2020	Draft e-mail to N. Opfer (expert) re: inspection and availability	0.1	425.00	42.50
10/27/2020	Review and Respond to multiple e-mails from N. Opfer (expert) re: inspection	0.3	425.00	127.50
10/27/2020	Amend Notice of Site Inspection	0.2	425.00	85.00
10/29/2020	Review Order setting settlement conference	0.1	425.00	42.50
10/29/2020	Draft e-mail to B. Childs (attorney for Plaintiff) re: order enlarging discovery	0.1	425.00	42.50
10/29/2020	Review and Respond to multiple e-mails from B. Childs (attorney for Plaintiff) re: order	0.2	425.00	85.00
10/30/2020	Review and Respond to multiple e-mails from B. Childs (attorney for Plaintiff) re: order	0.2	425.00	85.00
10/30/2020	Finalize Order	0.2	425.00	85.00
10/30/2020	Draft e-mail to Department 14 re: proposed order	0.2	425.00	85.00
10/30/2020	Draft Second Request for Interrogatories for Lin	2	425.00	850.00
10/30/2020	Draft First set of request for interrogatories for Cheng	2.5	425.00	1,062.50
10/21/2020	Filing Fee for substitution of attorney		3.25	3.25
Total				\$15,494.50
Payments/Credits				-\$15,494.50
Balance Due				\$0.00

Michael B. Lee, P.C.1820 E. Sahara Avenue, Suite 110
Las Vegas, NV 89104**Invoice****Invoice #:** 1628**Invoice Date:** 12/4/2020**Due Date:** 12/4/2020**Project:** WLAB Invest...**P.O. Number:****Bill To:**Investpro
Kenny Zhong Lin

Serviced	Description	Hours	Rate	Amount
10/31/2020	Review pleadings in preparation to Draft Amended Answer, Counterclaim, and Crossclaim	1	425.00	425.00
10/31/2020	Draft Amended Answer and compare with responses by N. Burdick	1.5	425.00	637.50
11/1/2020	Review residential purchase order, disclosures, Air Invoice and papers, etc. in preparation to Draft Counterclaim, and Crossclaim	1.5	425.00	637.50
11/1/2020	Review pleading elements for abuse of process, contribution, and indemnification in preparation to Draft Counterclaim, and Crossclaim	0.5	425.00	212.50
11/1/2020	Draft Counterclaim general allegations	3	425.00	1,275.00
11/2/2020	Review and respond to e-mail from B. Childs (attorney for Plaintiff) re: amended pleading	0.2	425.00	85.00
11/3/2020	Draft Crossclaim	1.5	425.00	637.50
11/3/2020	Review and respond to e-mail from B. Childs (attorney for Plaintiff) re: amended pleading	0.2	425.00	85.00
11/4/2020	Review briefs and attend hearing on Motion to Compel	2	425.00	850.00
11/4/2020	Draft notice vacating deposition	0.2	425.00	85.00
11/4/2020	Draft e-mail to B. Childs (attorney for Plaintiff) re: resetting deposition	0.1	425.00	42.50
11/4/2020	(NO CHARGE) Draft e-mail to client re: [REDACTED]	0.2	0.00	0.00
11/10/2020	Review case law and authority related to amending pleadings and shortening time in preparation to Draft Motion for Leave to File Amended Pleading on Shortened Time	0.5	425.00	212.50
11/10/2020	Review correspondence in preparation to Draft Motion for Leave to File Amended Pleading on Shortened Time	0.2	425.00	85.00
11/10/2020	Draft Motion for Leave to File Amended Pleading on Shortened Time	4	425.00	1,700.00
11/10/2020	Draft e-mail to Department 14 re: request for OST	0.1	425.00	42.50

Total**Payments/Credits****Balance Due**

Michael B. Lee, P.C.
1820 E. Sahara Avenue, Suite 110
Las Vegas, NV 89104

Invoice

Bill To:
Investpro
Kenny Zhong Lin

Invoice #: 1628
Invoice Date: 12/4/2020
Due Date: 12/4/2020
Project: WLAB Invest...
P.O. Number:

Serviced	Description	Hours	Rate	Amount
11/10/2020	Draft notice of depositions for PMK and Zhu	0.5	425.00	212.50
11/12/2020	Draft Exhibits to Motion for Leave to Amend	0.3	425.00	127.50
11/17/2020	Review Opposition to Motion for leave to amend in preparation to Draft Reply Brief	0.5	425.00	212.50
11/17/2020	Review motion and planned disclosures in preparation to Draft Reply Brief	0.5	425.00	212.50
11/17/2020	Draft Reply Brief	2	425.00	850.00
11/17/2020	Draft e-mail to Department 14 re: Reply Brief	0.1	425.00	42.50
11/17/2020	Travel to/from Property to attend inspection and Attend	3	425.00	1,275.00
11/18/2020	Draft e-mail to N. Opfer (expert) re: amended pleading	0.1	425.00	42.50
11/18/2020	Review Zillow page and save, print photos for disclosure	1.5	425.00	637.50
11/18/2020	Draft Third Supplemental Disclosure	1	425.00	425.00
11/18/2020	(NO CHARGE) Review and Respond to multiple e-mails from N. Opfer (expert) re: Zillow	0.2	0.00	0.00
11/18/2020	(NO CHARGE) Draft e-mail to client re: [REDACTED]	0.2	0.00	0.00
11/18/2020	Review minute order granting motion for leave to amend	0.1	425.00	42.50
11/19/2020	Draft Offer of Judgment	0.75	425.00	318.75
11/19/2020	(NO CHARGE) Draft multiple emails to client re: [REDACTED]	0.2	0.00	0.00
11/19/2020	Review correspondence and procedural rules and Draft e-mail to B. Childs (attorney for Plaintiff) re: inspection and spoliation issues	1	425.00	425.00
11/20/2020	Review Plaintiff's motion for leave to amend	0.2	425.00	85.00
11/20/2020	Draft e-mail to B. Childs (attorney for Plaintiff) re: stipulate to amend pleading	0.1	425.00	42.50
11/20/2020	(NO CHARGE) Review and Respond to multiple e-mails from Kenny re: [REDACTED]	0.5	0.00	0.00

Total

Payments/Credits

Balance Due

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Invoice

Bill To:
 Investpro
 Kenny Zhong Lin

Invoice #: 1628
Invoice Date: 12/4/2020
Due Date: 12/4/2020
Project: WLAB Invest...
P.O. Number:

Serviced	Description	Hours	Rate	Amount
11/20/2020	Review and format photographs for disclosure by screen capturing images, cropping, and printing to PDF	3	425.00	1,275.00
11/21/2020	Review and format photographs for disclosure by screen capturing images, cropping, and printing to PDF	3	425.00	1,275.00
11/21/2020	Draft fourth supplemental disclosure	0.5	425.00	212.50
11/21/2020	Review additional client documents related to RFA, addenda, receipts, etc. in both Nikita's file (not disclosed) and additional information provided by Kenny	1.25	425.00	531.25
11/21/2020	Draft e-mail to B. Childs (attorney for Plaintiff) re: 4th Supplement	0.1	425.00	42.50
11/21/2020	Draft e-mail to N. Opfer (expert) re: 4th Supplement	0.1	425.00	42.50
11/22/2020	Review and Respond to multiple e-mails from B. Childs (attorney for Plaintiff) re: amended pleading and stipulation	0.3	425.00	127.50
11/22/2020	Review stipulation and approve	0.2	425.00	85.00
11/23/2020	Review Notice of Entry of Order of SAO for Second Amended Complaint	0.1	425.00	42.50
11/28/2020	Draft Order Granting Motion for Leave to amend	1	425.00	425.00
11/28/2020	Draft e-mail to B. Childs (attorney for Plaintiff) re: leave to amend	0.1	425.00	42.50
11/30/2020	Telephone call with N. Opfer (expert) re: report	0.2	425.00	85.00
11/30/2020	(NO CHARGE) Zoom session with client	0.4	0.00	0.00
11/11/2020	Exhibits for Motion for Leave to Amend		3.50	3.50
11/17/2020	Photo Print from site inspection		12.97	12.97
	Total Reimbursable Expenses			16.47
Total				\$16,166.47
Payments/Credits				-\$16,166.47
Balance Due				\$0.00

Michael B. Lee, P.C.
1820 E. Sahara Avenue, Suite 110
Las Vegas, NV 89104

Invoice

Bill To:
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Kenny Zhong Lin

Invoice #: 1641
Invoice Date: 1/7/2021
Due Date: 1/7/2021
Project: WLAB Invest...
P.O. Number:

Serviced	Description	Hours	Rate	Amount
12/1/2020	Telephone call with N. Opfer re: report	0.2	425.00	85.00
12/2/2020	Review and Respond to e-mail from B. Childs (attorney for Plaintiff) re: proposed order for leave to amend	0.3	425.00	127.50
12/2/2020	Review, Revise, and Finalize proposed order	0.2	425.00	85.00
12/2/2020	Draft e-mail to Department 14 re: Order	0.1	425.00	42.50
12/2/2020	Review Opfer report and photographs, my inspection photographs, and other documents, and prepare Fifth Disclosure of Documents	1.5	425.00	637.50
12/2/2020	Draft e-mail to B. Childs (attorney for Plaintiff) re: Opfer photographs and fifth disclosure	0.1	425.00	42.50
12/7/2020	Draft e-mail to B. Childs (attorney for Plaintiff) re: settlement conference	0.2	425.00	85.00
12/7/2020	Review discovery responses, second amended complaint, disclosures, RPA, amendments, expert reports, permit information, and other documents in preparation to Draft Motion for Summary Judgment	3	425.00	1,275.00
12/7/2020	Review case law and authority related to realtor duties, real estate disclosures, caveat emptor, duty to inspect, and other topics in preparation to Draft Motion for Summary Judgment	3	425.00	1,275.00
12/8/2020	Draft fact section and cross reference to exhibits in support of Motion for Summary Judgment	8	425.00	3,400.00
12/8/2020	Draft statement of procedure and review of Second Amended Complaint in support of Motion for Summary Judgment	1	425.00	425.00
12/9/2020	Draft Discussion Section in support of Motion for Summary Judgment	6	425.00	2,550.00
12/10/2020	Continue Drafting Discussion Section in support of Motion for Summary Judgment	5	425.00	2,125.00
12/10/2020	Draft Declaration of K. Lin in support of Motion for Summary Judgment	1	425.00	425.00

Total

Payments/Credits

Balance Due

Michael B. Lee, P.C.
1820 E. Sahara Avenue, Suite 110
Las Vegas, NV 89104

Invoice

Bill To:
Investpro
Kenny Zhong Lin

Invoice #: 1641
Invoice Date: 1/7/2021
Due Date: 1/7/2021
Project: WLAB Invest...
P.O. Number:

Serviced	Description	Hours	Rate	Amount
12/11/2020	Review Order vacating settlement conference	0.1	425.00	42.50
12/16/2020	Review notice of hearing	0.1	425.00	42.50
12/22/2020	Review Request for Discovery to Cheng and prepare a response	2	425.00	850.00
12/22/2020	Review Request for Discovery (ROG and RPD) to Investments and prepare a response	3	425.00	1,275.00
12/23/2020	Review Request for Discovery to Realty and prepare a response	1.5	425.00	637.50
12/23/2020	Review Request for Discovery to Wong and prepare a response	1.5	425.00	637.50
12/23/2020	Review Request for Discovery to Manager and prepare a response	1.5	425.00	637.50
12/23/2020	Review Request for Discovery to TKNR and prepare a response	1.5	425.00	637.50
12/15/2020	Filing Fee for motion for summary judgment		200.00	200.00
12/15/2020	E Payment Fee		6.00	6.00
12/15/2020	Electronic Filing Fee for motion		3.50	3.50
	Total Reimbursable Expenses			209.50
Total				\$17,549.50
Payments/Credits				-\$17,549.50
Balance Due				\$0.00

Michael B. Lee, P.C.1820 E. Sahara Avenue, Suite 110
Las Vegas, NV 89104**Invoice****Invoice #:** 1642**Invoice Date:** 2/2/2021**Due Date:** 2/2/2021**Project:** WLAB Invest...**P.O. Number:****Bill To:**Investpro
Kenny Zhong Lin

Serviced	Description	Hours	Rate	Amount
1/4/2021	Review and Respond to multiple e-mails from B. Childs (attorney for Plaintiff) re: demand for meet and confer	0.5	425.00	212.50
1/4/2021	Review and Respond to multiple e-mails from B. Childs (attorney for Plaintiff) re: alleged discovery dispute	0.2	425.00	85.00
1/5/2021	Review and Respond to multiple e-mails from B. Childs (attorney for Plaintiff) re: alleged discovery dispute	0.5	425.00	212.50
1/5/2021	Telephone call with B. Childs (attorney for Plaintiff) re: alleged discovery dispute	0.5	425.00	212.50
1/5/2021	Review discovery requests and responses, correspondence, communications, disclosures, and other information in preparation to Draft Motion for Protective Order	2	425.00	850.00
1/5/2021	Review case law and authority related to protective orders, calculation of time, excusable neglect, and other areas in preparation to Draft Motion for Protective Order	1	425.00	425.00
1/5/2021	Draft Motion for Protective Order	6	425.00	2,550.00
1/6/2021	Revise/ Finalize motion for a protective order	1	425.00	425.00
1/7/2021	Review and respond to multiple e-mails with court reporter re: link for deposition and exhibits	0.5	425.00	212.50
1/8/2021	Draft e-mail to B. Childs (attorney for Plaintiff) re: consolidating hearings	0.1	425.00	42.50
1/8/2021	Review exhibits for deposition in preparation for Deposition and prepare outline	8	425.00	3,400.00
1/9/2021	Review exhibits for deposition in preparation for Deposition and prepare outline	5	425.00	2,125.00
1/12/2021	Attend Deposition	7.75	425.00	3,293.75
1/13/2021	Draft e-mail to B. Childs (attorney for Plaintiff) re: deposition of M. Zhu	0.1	425.00	42.50
1/13/2021	Draft Sixth Disclosure of documents	1	425.00	425.00

Total**Payments/Credits****Balance Due**

Michael B. Lee, P.C.
1820 E. Sahara Avenue, Suite 110
Las Vegas, NV 89104

Invoice

Bill To:
Investpro
Kenny Zhong Lin

Invoice #: 1642
Invoice Date: 2/2/2021
Due Date: 2/2/2021
Project: WLAB Invest...
P.O. Number:

Serviced	Description	Hours	Rate	Amount
1/13/2021	Draft Second request for RPD re: materials related to deposition	1	425.00	425.00
1/19/2021	Review motion to compel in preparation to Draft Opposition to Motion to Compel	0.5	425.00	212.50
1/19/2021	Review prior discovery responses and current requests in preparation to Draft Opposition to Motion to Compel	1.5	425.00	637.50
1/19/2021	Review case law and authority related to motion to compel, unclean hands, excusable neglect, etc. in preparation to Draft Opposition to Motion to Compel	1	425.00	425.00
1/19/2021	Draft Opposition to Motion to Compel	6	425.00	2,550.00
1/19/2021	Revise/Finalize Opposition to Motion to Compel	1	425.00	425.00
1/20/2021	Draft e-mail to B. Childs (attorney for Plaintiff) re: deposition of Marie Zhu	0.1	425.00	42.50
1/20/2021	Draft notice of deposition of Marie Zhu	0.3	425.00	127.50
1/21/2021	Review opposition to motion for summary judgment in preparation to Draft Reply Brief	0.5	425.00	212.50
1/21/2021	Review motion and exhibits to illustrate evidentiary support for summary judgment in preparation to Draft Reply Brief to Opposition	0.5	425.00	212.50
1/21/2021	Review case law and authority related to rule 56(f) in preparation to Draft Reply Brief to Opposition	0.5	425.00	212.50
1/21/2021	Draft Reply Brief to Opposition	5	425.00	2,125.00
1/26/2021	Review transcript and prepare deposition summary	4	425.00	1,700.00
1/27/2021	Review transcript and prepare deposition summary	4	425.00	1,700.00
1/28/2021	Draft third request for production of documents re: appraisals	0.5	425.00	212.50
1/28/2021	Condense deposition summary and prepare working notes for testimony of Frank Miao	4	425.00	1,700.00

Total

Payments/Credits

Balance Due

Michael B. Lee, P.C.
1820 E. Sahara Avenue, Suite 110
Las Vegas, NV 89104

Invoice

Bill To:
Investpro
Kenny Zhong Lin

Invoice #: 1642
Invoice Date: 2/2/2021
Due Date: 2/2/2021
Project: WLAB Invest...
P.O. Number:

Serviced	Description	Hours	Rate	Amount
1/29/2021	Draft Supplement to Motion to dismiss with F. Miao deposition	4	425.00	1,700.00
1/29/2021	Extrapolate deposition testimony and highlight in support of supplement	1.25	425.00	531.25
2/1/2021	Review Opposition to motion for protective order in preparation to Draft Reply	0.5	425.00	212.50
2/1/2021	Draft Reply Brief	4.25	425.00	1,806.25
1/6/2021	Filing Fee for Motion for Protective order		3.50	3.50
1/21/2021	Filing Fee for Reply Brief to Opposition		3.50	3.50
1/29/2021	Filing Fee for Supplement		3.50	3.50
2/1/2021	Filing Fee for Reply Brief		3.50	3.50
2/2/2021	Advanced Client Costs:transcript		2,967.67	2,967.67
	Total Reimbursable Expenses			2,981.67
Total				\$34,665.42
Payments/Credits				-\$34,665.42
Balance Due				\$0.00

Michael B. Lee, P.C.
1820 E. Sahara Avenue, Suite 110
Las Vegas, NV 89104

Invoice

Bill To:
Investpro
Kenny Zhong Lin

Invoice #: 1673
Invoice Date: 3/4/2021
Due Date: 3/4/2021
Project: WLAB Invest...
P.O. Number:

Serviced	Description	Hours	Rate	Amount
2/4/2021	Review and respond to e-mail from Department 14 re: status of case	0.3	425.00	127.50
2/10/2021	Review minute order setting status check	0.1	425.00	42.50
2/10/2021	Review and Respond to e-mail from B. Childs (attorney for Plaintiff) re: depositions	0.3	425.00	127.50
2/10/2021	Draft notice of deposition of Plaintiff's expert and supporting subpoena	1.5	425.00	637.50
				0.00
2/12/2021	Review notice of deposition of Chi On Wong	0.2	425.00	85.00
2/12/2021	Draft e-mail to B. Childs (attorney for Plaintiff) re: depositions	0.1	425.00	42.50
2/12/2021	Draft notice vacating deposition of M. Zhu	0.2	425.00	85.00
2/17/2021	Review Plaintiff's Responses to TKNR's second request for RPD	0.5	425.00	212.50
2/17/2021	Draft e-mail to B. Childs (attorney for Plaintiff) re: Plaintiff's response to TKNR's 2nd RPD	0.5	425.00	212.50
2/18/2021	Review renewed motion to compel and draft opposition and Countermotion	2	425.00	850.00
2/22/2021	Review pleadings and briefs for motion for summary judgment in preparation to attend hearing	1.5	425.00	637.50
2/23/2021	Attend motion for summary judgment	0.5	425.00	212.50
2/23/2021	Review and Respond to e-mail from court re: resetting of hearing	0.2	425.00	85.00
2/24/2021	Draft general notice re: oppositions to all renewed motions	1	425.00	425.00
2/18/2021	Filing Fee for Opposition and Countermotion		3.50	3.50
2/24/2021	Filing Fee for General Opposition		3.50	3.50
	Total Reimbursable Expenses			7.00
Total				\$3,789.50
Payments/Credits				-\$3,789.50
Balance Due				\$0.00

AA000640

Michael B. Lee, P.C.
1820 E. Sahara Avenue, Suite 110
Las Vegas, NV 89104

Invoice

Bill To:
Investpro
Kenny Zhong Lin

Invoice #: 1689
Invoice Date: 4/2/2021
Due Date: 4/2/2021
Project: WLAB Invest...
P.O. Number:

Serviced	Description	Hours	Rate	Amount
2/4/2021	Review and respond to e-mail from Department 14 re: status of case	0.3	425.00	127.50
3/2/2021	Review motions and prepare for discovery hearing and Attend	2	425.00	850.00
3/2/2021	Prepare Seventh Supplemental disclosure	1	425.00	425.00
3/2/2021	Review Plaintiff's Second Supplemental Disclosure	0.2	425.00	85.00
3/3/2021	Telephone call with B. Childs (attorney for Plaintiff) to discuss outstanding discovery	1	425.00	425.00
3/3/2021	Draft e-mail to Discovery Commissioner re: request to vacate hearings	0.1	425.00	42.50
3/3/2021	Review and Respond to multiple e-mails with Discovery and B. Childs (attorney for Plaintiff) re: vacating hearings	0.5	425.00	212.50
3/3/2021	Telephone call with B. Childs (attorney for Plaintiff) re: meet and confer for discovery dispute	1	425.00	425.00
3/3/2021	Draft e-mail to B. Childs (attorney for Plaintiff) re: meet and confer for discovery dispute	0.5	425.00	212.50
3/4/2021	Review and Respond to multiple e-mails with Discovery, B. Childs (attorney for Plaintiff), and F. Miao re: Childs termination and depositions	0.5	425.00	212.50
3/5/2021	Review and Respond to multiple e-mails with Discovery, B. Childs (attorney for Plaintiff), and F. Miao re: Childs termination and depositions	0.5	425.00	212.50
3/5/2021	Review Objection to deposition of A. Sani (expert)	0.1	425.00	42.50
3/5/2021	Review motion to withdraw	0.2	425.00	85.00
3/8/2021	Attend Deposition of A. Sani (Plaintiff's expert)	0.75	425.00	318.75
3/8/2021	Review proposed DCRR for motion to compel and make changes	1	425.00	425.00
3/9/2021	Attend status check	0.5	425.00	212.50
3/9/2021	Draft e-mail to B. Childs (attorney for Plaintiff) re: DCRR	0.2	425.00	85.00

Total

Payments/Credits

Balance Due

Michael B. Lee, P.C.

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

Invoice**Invoice #:** 1689**Invoice Date:** 4/2/2021**Due Date:** 4/2/2021**Project:** WLAB Invest...**P.O. Number:****Bill To:**

Investpro
Kenny Zhong Lin

Serviced	Description	Hours	Rate	Amount
3/9/2021	Review and Respond to multiple e-mails from B. Childs (attorney for Plaintiff) re: DCRR	0.3	425.00	127.50
3/9/2021	Review and Respond to multiple e-mails with S. Day (new attorney) re: new hearing date	0.2	425.00	85.00
3/10/2021	Draft e-mail to Court re: brief continuance of hearing	0.1	425.00	42.50
3/10/2021	Review and Respond to multiple e-mails with Department 14 and S. Day (new attorney) re: new hearing date	0.5	425.00	212.50
3/10/2021	Review and Respond to multiple e-mails with S. Day (new attorney) re: new hearing date	0.3	425.00	127.50
3/10/2021	Review substitution of attorneys	0.1	425.00	42.50
3/11/2021	Review briefs and other materials related to motion for summary judgment	1	425.00	425.00
3/11/2021	Attend hearing on Motion for Summary Judgment	1	425.00	425.00
3/11/2021	Review briefs, exhibits, and other information in preparation to Draft Order granting summary judgment and Rule 11 Sanctions	1	425.00	425.00
3/11/2021	Draft Order granting summary judgment and Rule 11 Sanctions	6	425.00	2,550.00
3/12/2021	Draft Order granting summary judgment and Rule 11 Sanctions	6	425.00	2,550.00
3/12/2021	Draft e-mail to S. Day (attorney for Plaintiff) re: proposed Order	0.2	425.00	85.00
3/16/2021	Review and respond to multiple e-mails from the Discovery Commissioner re: defective DCRR	0.5	425.00	212.50
3/17/2021	Review and Respond to e-mail from S. Day (attorney for Plaintiff) re: defective DCRR	0.2	425.00	85.00
3/17/2021	Draft e-mail to Department 14 re: proposed order	0.2	425.00	85.00
3/17/2021	Finalize Proposed Order	0.3	425.00	127.50
3/31/2021	Draft Notice of Entry of Order	0.3	425.00	127.50
3/4/2021	WLAB v. Lin et al. - Expert Deposition Fee		0.00	0.00

Total**Payments/Credits****Balance Due**

Michael B. Lee, P.C.
1820 E. Sahara Avenue, Suite 110
Las Vegas, NV 89104

Invoice

Bill To:
Investpro
Kenny Zhong Lin

Invoice #: 1689
Invoice Date: 4/2/2021
Due Date: 4/2/2021
Project: WLAB Invest...
P.O. Number:

Serviced	Description	Hours	Rate	Amount
3/16/2021	Deposition of Amin Sani		465.00	465.00
3/30/2021	Filing Fee for Notice of Entry of Order		3.50	3.50
	Total Reimbursable Expenses			468.50
Total				\$12,602.25
Payments/Credits				\$0.00
Balance Due				\$12,602.25

EXHIBIT B

EXHIBIT B

A-18-780627-B

**DISTRICT COURT
CLARK COUNTY, NEVADA**

**Purchase/Sale of Stock, Assets,
or Real Estate**

COURT MINUTES

April 02, 2021

A-18-780627-B Fred Khalilian, Plaintiff(s)
vs.
Monster Products, Inc., Defendant(s)

April 02, 2021 3:00 AM Status Check: Response to Application for Fees

HEARD BY: Gonzalez, Elizabeth **COURTROOM:** Chambers

COURT CLERK: Carina Bracamontez-Munguia/cbm

PARTIES None. Minute order only – no hearing held.
PRESENT:

JOURNAL ENTRIES

- The Court having reviewed the Application for Attorney's Fees following the Rule 37 Evidentiary Hearing and the related briefing and being fully informed, ORDERED request GRANTED IN PART. After evaluation of the Brunzell factors, the Court AWARDS \$43,943.45. Mr. Lee is DIRECTED to submit a proposed order approved by opposing counsel consistent with the foregoing within ten (10) days and distribute a filed copy to all parties involved in this matter. Such order should set forth a synopsis of the supporting reasons proffered to the Court in briefing. This Decision sets forth the Court's intended disposition on the subject but anticipates further order of the Court to make such disposition effective as an order.

CLERK S NOTE: A copy of this minute order was distributed via e-mail to all parties. // cbm
04/02/2021

PRINT DATE: 04/02/2021

Page 1 of 1

Minutes Date: April 02, 2021

AA000645

EXHIBIT C

EXHIBIT C

Burdick Law, PLLC
6625 South Valley View Blvd
Suite 232
Las Vegas, NEVADA (NV) 89118
United States
702-481-9207

Burdick Law, PLLC

Kenny Lin
3553 S Valley View Blvd
Las Vegas, NV 89103
United States

Balance \$2,687.50
Invoice # 00482
Invoice Date April 6, 2021
Payment Terms
Due Date

Litigation: WLAB Investment LLC v. Investpro et. al. (403)

Time Entries

Date	EE	Activity	Description	Rate	Hours	Line Total
01/02/2019	NB	Review and Analyze	Review and analyze documents provided by the client in preparation of responding to the complaint.	\$200.00	3.7	\$740.00
01/03/2019	NB	Review and Analyze	Review and analyze Plaintiff's Complaint in preparation of responding thereto.	\$200.00	1.3	\$260.00
01/07/2019	NB	Draft	Draft, finalize and file Defendant's Motion to Dismiss or in the alternative for Summary Judgment or in the Alternative for a More Definitive Statement.	\$200.00	6.2	\$1,240.00
01/28/2019	NB	Review and Analyze	Review and analyze Plaintiff's Opposition to our Motion to Dismiss.	\$200.00	1.9	\$380.00
02/04/2019	NB	Draft	Draft, finalize and file Reply to Defendant's Motion to Dismiss.	\$200.00	1.3	\$260.00
02/07/2019	NB	Attend hearing	Prepare for, attend hearing and present arguments on Defendant's Motion to Dismiss.	\$200.00	3.4	\$680.00
03/18/2019	NB	Review and Analyze	Review and analyze Amended Complaint in preparation of drafting the answer.	\$200.00	2.1	\$420.00
03/19/2019	NB	Draft	Draft, finalize and file Answer to Plaintiff's Amended Complaint.	\$200.00	1.8	\$360.00
04/12/2019	NB	Draft	Draft, finalize and prepare Initial Disclosures and review documents to disclose.	\$200.00	2.7	\$540.00
04/12/2019	NB	Review and Analyze	Review additional documents provided by the client in preparation of disclosing the same in the initial disclosures.	\$200.00	2.4	\$480.00
05/31/2019	NB	Arbitration	Preparing for and attending Arbitration conference-Early Case Conference	\$200.00	0.8	\$160.00
12/19/2019	NB	Review and Analyze	Review and analyze Court Scheduling Order.	\$200.00	0.3	\$60.00
02/27/2020	NB	Review and Analyze	Review and analyze Request for Admissions and email the client regarding [REDACTED]	\$200.00	0.5	\$100.00

AA000647

02/27/2020	NB	Rev ew and Ana yze	Rev ew and ana yze he F rs Reques for In erroga or es d rec ed a TKNR and ema he c en [REDACTED]	\$200.00	0.7	\$140.00
02/27/2020	NB	Rev ew and Ana yze	Rev ew and ana yze he F rs Reques for Produc on o TKNR and break down he documen s [REDACTED]	\$200.00	1.2	\$240.00
03/25/2020	NB	Rev ew and Ana yze	Rev ew and ana yze he c en's responses o he F rs Reques for Adm ss ons d rec ed a TKNR and ema he c en [REDACTED]	\$200.00	1.2	\$240.00
03/25/2020	NB	Rev ew and Ana yze	Rev ew and ana yze c en's responses o he F rs Se of In erroga or es o TKNR and ema he c en [REDACTED]	\$200.00	0.6	\$120.00
03/25/2020	NB	Rev ew and Ana yze	Rev ew and ana yze he documen s prov ded by he c en n prepara on of draf ng a response o he F rs Reques for Produc on o TKNR.	\$200.00	1.8	\$360.00
04/03/2020	NB	Draf	Draf , f na ze and f e Defendan's Response o P a n ff's F rs Reques s for Adm ss ons o Defendan TKNR.	\$200.00	2.8	\$560.00
04/03/2020	NB	Draf	Draf correspondence o he c en den fyng [REDACTED] [REDACTED] Correspond w h c en regard ng [REDACTED]	\$200.00	1.2	\$240.00
04/05/2020	NB	Rev ew and Ana yze	Rev ew and ana yze documen s prov ded by he c en n prepara on of f ng responses o P a n ff's f rs reques for produc on of documen s o TKNR Inc.	\$200.00	4.3	\$860.00
04/08/2020	NB	Draf	Draf , f na ze and f e Defendan's Responses o P a n ff's F s Se of In erroga or es o Defendan TKNR, Inc.	\$200.00	2.2	\$440.00
04/08/2020	NB	Draf	Draf Response o P a n ff's F rs Se of Reques s for Produc on of Documen s o Defendan TKNR, Inc. Prepare documen s for d sc osure.	\$200.00	4.2	\$840.00
04/08/2020	NB	Draf	Draf , f na ze and f e Responses o P a n ff F rs Reques for Adm ss ons o Defendan Inves pro Manager, LLC.	\$200.00	0.4	\$80.00
10/15/2020	NB	Draf	Draf , f na ze and f e Defendan's Mo on o En arge D sc overy on OST.	\$200.00	0.7	\$140.00

To a s: **49.7** **\$9,940.00**

Expenses

Da e	EE	Ac v y	Descrp on	Cos	Quan y	L ne To a
01/07/2019	NB	Cour F ng	In a Appearance Fee D sc osure Defendan s	\$3.50	1.0	\$3.50
01/07/2019	NB	Cour F ng	Mo on o D sm s	\$3.50	1.0	\$3.50
01/09/2019	NB	Cour F ng	In a Appearance Fee D sc osure	\$3.50	1.0	\$3.50
03/04/2019	NB	Cour F ng	Rep y o Mo on	\$3.50	1.0	\$3.50
03/19/2019	NB	Cour F ng	F ng of Answer	\$226.50	1.0	\$226.50
04/12/2019	NB	Cour F ng	F ng of In a D sc osure	\$3.50	1.0	\$3.50
10/15/2020	NB	Cour F ng	F ng of Mo on o En arge D sc overy	\$3.50	1.0	\$3.50

Expense To a : **\$247.50**

Adjustments

AA000648

Item	Applied To	Type	Description	Bas s	Percen	Line To a
Discount	Sub-To a	\$ - Amount	Re a ner rece ved from c en			(\$7,500.00)

Discount To a : **(\$7,500.00)**

Time Entry Sub-To a :	\$9,940.00
Expense Sub-To a :	\$247.50
Sub-Total:	\$10,187.50
Discounts:	(\$7,500.00)
Total:	\$2,687.50
Amount Paid:	\$0.00
Balance Due:	\$2,687.50

EXHIBIT D

EXHIBIT D

ATTORNEY FEE AGREEMENT

This contract witnesses that Benjamin B. Childs, Esq.(attorney) and W L A B Investment, LLC (client(s)), agree to enter into a binding contract as provided below.

GENERAL PROVISIONS

1. Attorney will represent client's legal interests by taking whatever steps attorney deems necessary and appropriate concerning the following case(s):

1. Failure to disclose defect on 2132 Houston Dr Las Vegas, NV
Case # A-18-785917-C

2. Client will do nothing which could adversely affect the engagement of attorney and will fully cooperate with attorney.

2a. Client acknowledges that failure to cooperate fully with attorney may result in withdrawal of representation if, in the attorney's sole discretion, such failure to cooperate substantially interferes with attorney's ability to provide adequate legal representation.

2b. Client will provide all information required by attorney to effectively represent client's legal interests. Client will be solely responsible for the accuracy and completeness of this information.

2c. Client acknowledges that attorney will send any notices to client's last address. Client is responsible for keeping attorney informed of client's address.

FEES

3. Client will pay a \$ 15,000 retainer. \$15,000 is the minimum amount that attorney will charge for this case. Client has paid \$10,000 by charging to credit card on June 11, 2020 and will pay the remaining \$5,000 balance on or before June 20, 2020.

3A. Attorney will charge \$ 400 per hour for attorney time and \$ 150 per hour for paralegal time billed in 1/10 hour increments. Interest on unpaid invoices is assessed at 1.5 % per month. The client is deemed to have accepted the attorney bill if not disputed within 30 days.

3B. Client will pay all costs associated with attorney's representation. Client agrees to pay \$.10 per copy for all copies required by attorney.

3C. You, as the client, have the right to terminate our attorney-client relationship at any time at will – meaning for any reason or no reason. Because the attorney-client relationship is one of mutual trust and respect, by this agreement you are expressly agreeing that my Firm similarly terminate can the attorney-client relationship at will – that is, at any time and for any reason or no reason. Further, you agree that if my Firm seeks to withdraw from any litigated matter, I may present this paragraph to the tribunal as part of my motion to be relieved as counsel.

Initial EQM

WLAB v. TKNR Page 1 of 2
Case # A-18-785917-C

WLAB written discovery responses 2/16/2021

AA000651

Page 14 of 39

4. Client agrees that the retainer will be replenished by him/her/it in \$3,000 increments within five business days of being notified by attorney that the retainer balance remaining with attorney is less than \$750.
5. This agreement, and/or portions thereof, may be actual or potential interests adverse to you, the client. Accordingly, you need to review this agreement carefully. Further, by signing this agreement you are acknowledging that you have been advised of your right to obtain independent counsel to review this agreement and advise you regarding it.

WE UNDERSIGNED HAVE READ AND UNDERSTAND THE ABOVE AGREEMENT BEFORE SIGNING IT.



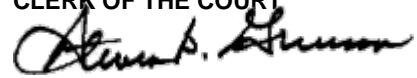
_____ ^{Date}
6/1/10 (CLIENT)

BENJAMIN B. CHILDS, ESQ.

_____ (ATTORNEY)

EXHIBIT E

EXHIBIT E



BENJAMIN B. CHILDS
Nevada Bar # 3946
318 S. Maryland Parkway
Las Vegas, Nevada 89101
(702) 385-3865
Fax 384-1119
ben@benchilds.com
Attorney for Plaintiff

DISTRICT COURT
CLARK COUNTY, NEVADA

W L A B INVESTMENT, LLC

Plaintiff

vs.

TKNR, INC, a California Corporation, and
CHI ON WONG, an individual, and
KENNY ZHONG LIN, an individual, and
INVESTPRO LLC dba INVESTPRO REALTY and
JOYCE A. NICKRANDT, an individual and
Does 1 through 5 and Roe Corporations I - X

Defendants

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

Hearing : 2/7/2019
09:30

=====

OPPOSITION TO DEFENDANTS' MOTION TO DISMISS / ALTERNATIVE FOR
SUMMARY JUDGMENT / ALTERNATIVE FOR A MORE DEFINITE STATEMENT

CONDITIONAL COUNTERMOTION FOR CONTINUANCE BASED ON NRCP
56(f) IF THE COURT TREATS DEFENDANT'S MOTION AS ONE FOR
SUMMARY JUDGMENT

INTRODUCTION

Rather than address the issue of the case, or even deny the allegations of
the complaint, Defendants have filed a frivolous motion to delay the inevitable trial
on the issue of Defendants selling a residential rental property, knowing of the
existence of structural and mechanical defects without disclosing those defects
as required by Nevada law. Defendants knew about the defects because they
had created them during their ownership of the property.

1 A detailed narrative declaration of Frank Miao, and the attached Exhibits A
2 through F¹ are incorporated herein by reference. Defendants KENNY LIN [Lin]
3 and INVESTPRO, LLC are property flippers who owned the Subject Property for
4 about 2 years, during which time they performed multiple major alterations to the
5 property, none of which were permitted. TKNR, INC is the corporate entity that
6 Lin and Investpro used for this particular investment, which is owned and
7 managed by Defendant CHI ON WONG [Wong]. They altered the property to
8 hide the many defects detailed in Miao's declaration, then sold the property
9 without disclosing the defects.
10

11
12 MOTION TO DISMISS CANNOT CONSIDER MATTERS OUTSIDE OF THE
13 PLEADINGS
14

15 It's important to note that pleadings are defined in NRCP 7 as complaints
16 and answers. Motions are not pleadings. Exhibits to Motions are not pleadings.

17 Defendants' Motion must be treated as a Summary Judgement if the Court
18 considers matters outside the pleadings. See Mendenhall v. Tassinari 133 Nev
19 Ad Op 78 (2017) quoted below.
20

21 In deciding a motion to dismiss, if the district court considers
22 matters outside the pleadings—as was the case here—the motion
23 “shall be treated as one for summary judgment and disposed of as
24 provided in Rule 56.” NRCP 12(b); Thompson v. City of N. Las
25 Vegas, 108 Nev. 435, 438, 833 P.2d 1132, 1134 (1992). Pursuant to
26 NRCP 56(c), summary judgment is proper when no genuine issue of
27 material fact remains and the movant is entitled to a judgment as a
28 matter of law. Wood v. Safeway, Inc., 121 Nev. 724, 729, 121 P.3d
29 1026, 1029 (2005).
30

31 ¹ Defendants used numbers for their exhibits contrary to local rules. However, to avoid
32 confusion, Plaintiff has used letters for their exhibits.

1 While Defendants' motion references exhibits, Plaintiff encourages the
2 court to simply review the pleadings and deny the motion because Plaintiff's
3 Complaint sets forth the elements for its causes of action, thus making the prima
4 facie case. See Exhibit D.

5
6 NO CONCISE STATEMENT OF UNDISPUTED FACTS
7

8
9 NRCP 56(c) requires "a concise statement setting forth each fact material
10 to the disposition of the motion which the party claims is or is not genuinely in
11 issue, citing the particular portions of any pleading, affidavit, deposition,
12 interrogatory, answer, admission, or other evidence upon which the party relies."

13 The only statement of fact in Defendants' motion is essentially stating what
14 Plaintiff's allegations are. If Defendants are disputing those facts, there are
15 obviously disputes of material fact which preclude summary judgment.
16

17 EXHIBITS TO DEFENDANTS' MOTION ARE NOT INCORPORATED BY
18 REFERENCE IN AMENDED COMPLAINT
19

20
21 Defendant repeatedly refers to Plaintiff's Complaint. The Complaint
22 contained no attachments and incorporated no documents by reference. The
23 Complaint, which purportedly incorporates all these documents by reference, is
24 noticeably absent as an exhibit to the motion.
25

26 MOTION DISMISS TREATED AS SUMMARY JUDGMENT MOTION IF THE
27 COURT CONSIDERS MATTERS OUTSIDE THE PLEADINGS
28

29 If the Court does consider the attachments to Defendant's Motion,
30 Defendants' motion must be treated as a motion for summary judgment, and the
31

1 following standards apply. John v. Douglas County School District, 125 Nev.
2 746, 754, 219 P.3d 1276, 1284 (2009) addresses the issue as set forth below.

3
4 First, the district court can only grant the special motion to
5 dismiss if there is no genuine issue of material fact and “ ‘the moving
6 party is entitled to a judgment as a matter of law.’ ” Id. (quoting
7 NRCP 56(c)). Second, the nonmoving party cannot overcome the
8 special motion to dismiss “ ‘on the gossamer threads of whimsy,
9 speculation and conjecture.’ ” Id. at 731, 121 P.3d at 1030 (quoting
10 Pegasus v. Reno Newspapers, Inc., 118 Nev. 706, 713-14, 57 P.3d
11 82, 87 (2002)) (other internal quotations omitted). Instead, the
12 nonmoving party must provide more than general allegations and
13 conclusions; it must submit specific factual evidence “ ‘demonstrating
14 the existence of a genuine factual issue.’ ” Id. at 731, 121 P.3d at
15 1030-31 (quoting Pegasus, 118 Nev. at 713, 57 P.3d at 87).

16 NO WAIVER OF REQUIRED DISCLOSURES

17 Defendants do not argue that Plaintiff waived its right to receive required
18 disclosures.

19 Defendants desperately want the Court to ignore their collective and
20 concerted fraudulent actions.

21 There was no waiver of the required disclosures. Further, disclosure of
22 know defects can only be waived if the waiver is “signed by the purchaser **and**
23 **notarized.**” See NRS 113.130(3) and 115.150(6).

24 Further, the “waiver” of the inspection which Defendants essentially rests
25 their entire motion on, Exhibit 3, means nothing because Plaintiff had already
26 inspected the property on August 10, 2019.

28 PLAIN MEANING OF STATUTE

29
30
31 “It is well established that when the language of a statute is plain and
32

1 unambiguous, a court should give that language its ordinary meaning and not go
2 beyond it.” Banegas v. State Indus. Ins. Sys., 117 Nev. 222, 225, 19 P.3d 245,
3 247 (2001). The plain meaning of a statute is generally “ascertained by examining
4 the context and language of the statute as a whole.” Karcher Firestopping v.
5 Meadow Valley Contractors, Inc., 125 Nev. 111, 113, 204 P.3d 1262, 1263
6 (2009).

7
8 NRS 113.130 and 113.150, set forth below, are clear and unambiguous.

9
10 DISCLOSURES REQUIRED BY STATUTE

11
12 NRS 113.130 requires disclosure of know defects by seller of a residential
13 real estate. The relevant portions of that statute are set forth below.

14
15 NRS 113.130 Completion and service of disclosure form before
16 conveyance of property; discovery or worsening of defect after service
17 of form; exceptions; waiver.

18 1. Except as otherwise provided in subsections 2 and 3:

19 (a) At least 10 days before residential property is conveyed to a
20 purchaser:

21 (1) The seller shall complete a disclosure form regarding the
22 residential property; and

23 (2) The seller or the seller's agent shall serve the purchaser or
24 the purchaser's agent with the completed disclosure form.

25 (b) If, after service of the completed disclosure form but before
26 conveyance of the property to the purchaser, a seller or the seller's
27 agent discovers a new defect in the residential property that was not
28 identified on the completed disclosure form or discovers that a defect
29 identified on the completed disclosure form has become worse than
30 was indicated on the form, the seller or the seller's agent shall inform
31 the purchaser or the purchaser's agent of that fact, in writing, as soon
32 as practicable after the discovery of that fact but in no event later than
the conveyance of the property to the purchaser. If the seller does not
agree to repair or replace the defect, the purchaser may:

(1) Rescind the agreement to purchase the property; or

(2) Close escrow and accept the property with the defect as
revealed by the seller or the seller's agent without further
recourse.

1 2. Subsection 1 does not apply to a sale or intended sale of residential
2 property:

3 (a) By foreclosure pursuant to chapter 107 of NRS.

4 (b) Between any co-owners of the property, spouses or persons related
5 within the third degree of consanguinity.

6 (c) Which is the first sale of a residence that was constructed by a
7 licensed contractor.

8 (d) By a person who takes temporary possession or control of or title to
9 the property solely to facilitate the sale of the property on behalf of a
10 person who relocates to another county, state or country before title to
11 the property is transferred to a purchaser.

12 3. A purchaser of residential property may waive any of the
13 requirements of subsection 1. Any such waiver is effective only if it is
14 made in a written document that is signed by the purchaser and
15 notarized.

16 4. If a sale or intended sale of residential property is exempted from the
17 requirements of subsection 1 pursuant to paragraph (a) of subsection 2,
18 the trustee and the beneficiary of the deed of trust shall, not later than
19 at the time of the conveyance of the property to the purchaser of the
20 residential property, provide written notice to the purchaser of any
21 defects in the property of which the trustee or beneficiary, respectively,
22 is aware.

23 NRS 113.150 - Remedies for seller's delayed disclosure or
24 nondisclosure of defects in property; waiver.

25 1. If a seller or the seller's agent fails to serve a completed disclosure
26 form in accordance with the requirements of NRS 113.130, the
27 purchaser may, at any time before the conveyance of the property to
28 the purchaser, rescind the agreement to purchase the property without
29 any penalties.

30 2. If, before the conveyance of the property to the purchaser, a seller
31 or the seller's agent informs the purchaser or the purchaser's agent,
32 through the disclosure form or another written notice, of a defect in the
property of which the cost of repair or replacement was not limited by
provisions in the agreement to purchase the property, the purchaser
may:

(a) Rescind the agreement to purchase the property at any time before

1 the conveyance of the property to the purchaser; or
2 (b) Close escrow and accept the property with the defect as revealed
3 by the seller or the seller's agent without further recourse.

4 3. Rescission of an agreement pursuant to subsection 2 is effective
5 only if made in writing, notarized and served not later than 4 working
6 days after the date on which the purchaser is informed of the defect:
7 (a) On the holder of any escrow opened for the conveyance; or
8 (b) If an escrow has not been opened for the conveyance, on the seller
9 or the seller's agent.

10 4. Except as otherwise provided in subsection 5, if a seller conveys
11 residential property to a purchaser without complying with the
12 requirements of NRS 113.130 or otherwise providing the purchaser or
13 the purchaser's agent with written notice of all defects in the property
14 of which the seller is aware, and there is a defect in the property of
15 which the seller was aware before the property was conveyed to the
16 purchaser and of which the cost of repair or replacement was not
17 limited by provisions in the agreement to purchase the property, the
18 purchaser is entitled to recover from the seller treble the amount
19 necessary to repair or replace the defective part of the property,
20 together with court costs and reasonable attorney's fees. An action to
21 enforce the provisions of this subsection must be commenced not later
22 than 1 year after the purchaser discovers or reasonably should have
23 discovered the defect or 2 years after the conveyance of the property
24 to the purchaser, whichever occurs later.

25 5. A purchaser may not recover damages from a seller pursuant to
26 subsection 4 on the basis of an error or omission in the disclosure
27 form that was caused by the seller's reliance upon information
28 provided to the seller by:
29 (a) An officer or employee of this State or any political subdivision of
30 this State in the ordinary course of his or her duties; or
31 (b) A contractor, engineer, land surveyor, certified inspector as defined
32 in NRS 645D.040 or pesticide applicator, who was authorized to
practice that profession in this State at the time the information was
provided.

**6. A purchaser of residential property may waive any of his or her
rights under this section. Any such waiver is effective only if it is
made in a written document that is signed by the purchaser and
notarized.**

1 WEBB v. SHULL 128 Nev. Ad Op 8, 270 P.3d 1266 (2012) holds that
2 mental state is not required to impose treble damages pursuant to NRS 113.150
3 (4). There is no requirement of a “finding of willfulness or mental culpability”.
4

5 DEFENDANTS KNEW THE CONDITION OF THE PROPERTY
6

7
8 As outlined in Plaintiff’s narrative affidavit, Lin and Investpro were more
9 than just real estate agents selling property. Lin and Investpro were the
10 manager for the flipping fund which had recruited investor TKNR, they arranged
11 the purchase of this property in September, 2015, they identified the scope of
12 the renovation, managed the renovation project from soliciting bids, to awarding
13 bids to paying contractors, and then sold the Subject Property. They were also
14 managing the property involving obtaining renters. Every condition described in
15 the Complaint was **KNOWN** to Lin and Investpro. Contrary to their argument,
16 the renovations undertaken during TKNR’s ownership were major, including
17 electrical upgrades, installation of three separate HVAC systems, and plumbing
18 issues.
19

20 Thus, it seems that the seminal factual question is what Defendants knew
21 when they sold the property. All Defendants clearly knew about substantial work
22 which they chose not to disclose to Plaintiff. TKNR and Wong had the work
23 performed during their ownership, by their agents Lin, Investpro and JOYCE A.
24 NICKRANDT.²

25 Further, Plaintiff did inspect the property on August 10, 2017, so that the
26 representation in Defendants’ motion that Plaintiff never inspected the property
27 is simply false.
28
29

30
31 ² JOYCE A. NICKRANDT is the licensee of Investpro.
32

1 FACTUAL STATEMENTS IN THE COMPLAINT COMPLY WITH NRCP 9

2
3 The factual allegations in the Complaint comply with the requirements of
4 NRCP 9(b) as to time, place, identity of the parties and the nature of the fraud.

5 See Exhibit D, pages 3 - 4.
6

7 INVESTPRO REPRESENTED BUYER IN THE PURCHASE
8

9
10 Exhibit E is an excerpt from the Offer and Acceptance for the purchase of
11 the Subject Property. Pages 9 and 10 evidence that Investpro represented both
12 the Plaintiff and TKNR in the purchase transaction. Thus, Investpro not only had
13 a fiduciary duty to represent Plaintiff's interests, the very statute cited in
14 Defendants' Motion, NRS 645.259(1) expressly creates liability for
15 misrepresentations that are made by a seller that the broker knows is false.
16 Miao's declaration identifies in detail the construction which was done by
17 Investpro, on behalf of seller TKNR, which was not disclosed.
18

19
20 COUNTERMOTION FOR CONTINUANCE BASED ON NRCP 56(f) IF THE
21 COURT CONSIDERS DEFENDANTS' MOTION FOR SUMMARY JUDGMENT

22 NRCP 56(f) states as follows :

23 (f) When Affidavits Are Unavailable. Should it appear from the affidavits of
24 a party opposing the motion that the party cannot for reasons stated
25 present by affidavit facts essential to justify the party's opposition, the court
26 may refuse the application for judgment or may order a continuance to
27 permit affidavits to be obtained or depositions to be taken or discovery to
be had or may make such other order as is just.

28 Discovery hasn't even commenced. In an abundance of caution, the
29 declaration of Plaintiff's attorney is attached supporting its Countermotion
30 pursuant to NRCP 56(f).
31

1 CONCLUSION

2
3 As set forth above, Defendants' motion serves no purpose other than to
4 unreasonably and vexatiously harass Plaintiff, increase its costs, and waste the
5 Court's time.

6
7 Plaintiff is the purchaser, and was entitled to honest and complete
8 disclosures.. In this case. Investpro and Lin were the organizers of the
9 residential investment property which Plaintiff purchased from TKNR. During the
10 time that TKNR owned the property, significant structural, mechanical, electrical
11 and plumbing alterations were made to the property.

12 Plaintiff has set forth the facts as accurately as possible based on the
13 knowledge that it has at this time.

14 The Court cannot grant summary judgment, if it is inclined to consider
15 exhibits outside the pleadings, without allowing discovery.

16
17 /s/ Benjamin B. Childs, Sr.

18
19

BENJAMIN B. CHILDS, Sr.
20 Nevada Bar # 3946
21 Attorney for Plaintiff

22 CERTIFICATE OF ELECTRONIC SERVICE

23
24 This OPPOSITION and COUNTERMOTION, with attachments, was
25 served through the Odessey File and Serve system. Electronic service is in
26 place of service by mailing.

27
28 /s/ Benjamin B. Childs, Sr.

29
30

BENJAMIN B. CHILDS, Sr. ESQ.
31 NEVADA BAR # 3946

1 Exhibits

- 2
- 3 A Promotional Website for flipping fund
- 4 B Deed to TKNR recorded September, 2015
- 5 C Emails regarding inspection
- 6 D Filed Complaint
- 7 E Excerpt from offer and acceptance for the Subject Property
- 8 F Requirements for permits and inspections
- 9

10

11 DECLARATION OF COUNSEL REGARDING LACK OF DISCOVERY

12

13 I am the attorney for Plaintiff W L A B INVESTMENT, LLC

14 Discovery has not commenced in this case. Testimony, affidavits and

15 other admissible evidence such as responses to written discovery, documents,

16 and inspection of physical items are not possible to be produced by Plaintiff until

17 discovery has been completed. Defendants are believed to have much more

18 significant additional documentation and knowledge than they disclosed in their

19 Motion, which information and knowledge will only be obtained through

20 discovery. Specifically about the alterations to the subject property, which are at

21 issue in the case. Thus, this declaration is made pursuant to NRCP 56(f) in

22 response to Defendants' Motion to Dismiss.

23

24 These statements are made based on my personal knowledge. I

25 declare under penalty of perjury that the foregoing is true and correct.

26

27 Executed on January 25, 2019

28 (date)

29

/s/ Benjamin B. Childs, Sr.

(signature)

30

31

32

DECLARATION OF FRANK MIAO

I am the manager of W L A B INVESTMENT, LLC [WLAB] and I was involved in the purchase of the Subject Property at **2132 Houston Dr Las Vegas, NV**, which is a tri-plex residential rental apartment building. All three rental units are in one building and they are identified as units A, B and C and are under one roof..

I found the property listed on Zillow. Because the Subject Property is a rental property, the landlord and property manager have to provide and maintain a safe, healthy and habitable condition for the tenant. When I inspected on August 10, 2017 Unit A was occupied, but Units B C were on the market for rent. Kenny Lin [Lin] showed me the Subject Property representing that he was the listing agent and that he was also the CEO of Investpro. Later, WLAB hired Lin as the buyer's agent for this transaction. At that time, he told me that Investpro was the property manager for the Subject Property. Later, I found out that Lin is also the manager for the flipping fund which had recruited investors, had purchased this Subject Property, had identified the scope of the renovation, managed the renovation project from soliciting bids, to awarding bids to paying contractors, and was now selling the Subject Property under his supervision and authority. Attached is the promotional website evidencing this fact [Exhibit A], plus the vesting deed when the Subject Property was purchased in September, 2015 had the address for TKNR as 3553 S. Valley View Blvd Las Vegas, NV 89103, which is Investpro's address. [Exhibit B]

Investpro was the property manager and the remodeler of the Subject Property. Investco is also the flipping fund manager; they do the property management, they are directly involved in the renovation, and they are the real estate broker. Investpro makes a 25% profit on each project they renovate and flip, plus the sales commissions to Investpro; the investor makes a 75% profit. Investpro is much more involved than just the normal broker. In addition to selling the property, Investpro finds investors, buys the property from auction, manages the property, identifies the scope of renovation, and manages the renovation project from soliciting bids to awarding bids to paying contractors, along with obtaining the tenants and managing rentals.

In line with it's formula, Investpro bought the Subject Property at a foreclosure auction, found TKNR as the investor, the receipts for the heatpump package unit installation and replacement projects are to Investpro [Exhibit 4], and Investpro managed the renovation, admittedly without using licensed electrical, plumbing and HVAC contractors or having required permits. A licensed electrical contractor and a electrical permit would have required an upgrade of the electrical supply system; note that heatpump system uses 220 volt system but the swamp cooler only needs a 110 volt system. A licensed plumbing contractor and a plumbing permit would have required to remove the water line for the swamp cooler and the natural gas line after the natural gas wall furnace was removed. The HVAC or mechanical permit would have been required to install the heatpump package units and do the load calculations such as weight and wind load for structural evaluation. Specific to the heating and cooling upgrades, when Investpro bought at a bank auction in September, 2015, the Subject Property originally had cooling by swamp coolers and heating by natural gas wall furnaces.

In early March, 2016 Investpro installed one 5 ton heatpump package unit, which does both heating and cooling, on one roof area, but they did not apply for a permit to upgrade the electrical system and there was correspondingly no inspection of the electrical system. [See

Exhibit 4] As part of this process, they dismantled the old natural gas wall furnaces and disconnected the natural supply gas lines, without a permit or inspection or work by a licensed contractor, and then covered with drywall, texture and paint. When the 5 ton heatpump package unit was installed on the roof, apparently they did not do a weight load and a wind load calculation for the roof structure evaluation. Investpro also added larger electrical lines in the ceiling to serve the 5 ton heatpump package unit, without a permit or an inspection done by a licensed electrical contractor. Plus, new air ducts were installed on the roof without permit or inspection. This ducting required being anchored to the roof, which caused new roof leakages. In early 2017, the 5 ton heatpump package unit was too heavy and unstable and caused a lot of noise. The tenant in unit A, Nicholas Quiroz, complained and threatened to call code enforcement. So Investpro installed new two window air conditioning units in Unit A [not by a professional, also without a permit or inspection] and removed the 5 ton one year old heatpump package unit and then installed two new 2 ton heatpump package units on the roof, installed by Air Team, also without a permit or inspection and ran new electrical lines without a permit or an inspection. They opened new big holes in roof when they installed the two new 2 ton units, but again there was no calculation about the weight and wind load calculations and the roof structural evaluation. When they installed the two new 2 ton units there were multiple new roof penetrations for the new air ducts and anchors, which also have resulted in roof leaks. These are the 2 receipts for the repairs attached as Exhibit 4 to Defendants' motion. All these HVAC modifications required an upgrade to electrical system, with a permit and inspection. So all 3 units had air conditioning installed with no permit or inspection of the electrical systems. Plus, the natural gas pipes were removed without a permit or inspection.

I went to the City of Las Vegas and confirmed that there were no permits for Investpro's work on any renovation project, including the plumbing, HVAC, structural or the electrical systems.

During my inspection on August 10, 2017, I pointed out several code violations to Lin such as the smoke alarms were not installed at the right location and some were missing, the outlets near the water faucets in the kitchen, bathroom and laundry room were not GFCI outlets which is required by the UBC electrical code, the CO alarm was missing or not in right location, there was a window broken in one unit, drywall was not complete around the window air conditioning unit installed in Unit A, there were electrical wires exposed and the ceramic floor tiles were cracked, etc. See Exhibit C attached hereto, emails dated August 17 and August 24, 2017. These problems would not pass a city code enforcement inspection. In fact, I told Lin that if tenant called code enforcement at this, the rental unit could be shut down by code enforcement until repaired and corrected. Before WLAB bought the property, WLAB insisted that the code violations that had been identified were repaired and corrected; although they resisted, Investpro did repair part of the code violations that were identified. Investpro had rented to the tenants without meeting the minimum code standards for habitability. WLAB had to spend a lot of money to bring up the Subject Property to code and correct the code violations after the old tenants moved out.

Note that Exhibit 2 is a purchase agreement for a different apartment that WLAB tried to purchase [1917 Yale Street Las Vegas, NV]. This is a different property and is not relevant to the case before the court.

Note that the electrical issues are in unit A of the Subject Property, but Exhibit 4 attached

to Defendants' Motion are invoices for units B & C, including the old 5 ton heatpump unit which they removed in June, 2017 and replaced with the two 2 ton units as I described above. Thus, this does not address the issues raised in WLAB's complaint.

As to Exhibit 3, the waiver of inspection dated September 5, 2017, inspection was waived because I had just inspected it in August, 2017.

At the August 10, 2017 inspection, I could not inspect the dryer vents into the ceiling without destructing the ceiling drywall. WLAB did not waive the inspection; an inspection was conducted on August 10, 2017 with myself and Lin. The complaints outlined in the Complaint were hidden behind drywall.

I note that the Seller's Real Property Disclosure Form [SRPDF] had nothing about the following :

- * Removal of natural gas wall furnace, which occurred with no permit or inspection.
- * Removal of natural gas supply line, which occurred with no permit or inspection.
- * Upgraded electrical system to add additional lines and new power supply with no permit or inspection.
- * Disclosure says there's a problem with cooling, but provides no details about the history or what the problem was.
- * Disclosure says there's a problem with heating and there are no details about the history of the heating system or what the problem was.
- * The two marks about repairs made without permits, but there is no explanation.

Unit A still has no central heat, but uses portable electrical heaters because the related supply gas line was removed.

The renovations by Investpro were not MINOR renovations as argued in their motion. These are major rehabilitation projects. Two bathrooms were completely redone without a permit or inspection. The roof had holes opened. Old swamp coolers and some natural gas furnaces were moved and then hidden by drywall and painted. The HVAC system on the roof was replaced twice, plus plumbing, tile, electrical modifications. These require a permit as set forth in the attached flyers.

I did inspect this Subject Property on August 10, 2017 and SRPDF was dated August 7, 2017. I only performed a non-invasive and non-destructive inspection.

I began investigations in earnest in early July, 2018, after WLAB had bought it, while Investpro was still the property manager and the tenant notified me of an electrical problem in Unit A.

Due to roof structure being damaged, every time it rains the roof leaks. The recent rains in January, 2019 revealed that both bathroom vents were not vented outside, but just into the ceiling attic, which is a violation of the building code. These violations were also hidden behind drywall and could not have been identified without invasive investigation.

The fraud allegations were made as specific as currently known to me at this time.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on 1/24/2019
(date)


(signature)

EXHIBIT A

EXHIBIT A

AA000668

Flipping Fund Iv - InvestPro Realty

[Statement]



FLIPPING FUND
INVESTPRO INVESTMENTS I LLC
PRESENT BY INVESTPRO MANAGER LLC



KENNY LIN
Phone: +1 (702) 726-0000
Email: zhong.kenny@gmail.com
中国境内 9501351558 x 88855
联系电话



恆興地產

AA000669



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

截止日期: 2015年12月31日

1. TERM : 1-3 YEARS
2. MINIMUM UNITS: \$50,000 MINIMUM, \$ 1000 PER UNIT.
3. USE OF FUND: FLIPPING RESIDENTIAL PROPERTIES IN LAS VEGAS.
4. RETURNS: 8 % PREFERRED PER ANNUL PAYS EVERY QUARTER, THEN AFTER ALL MONEY RETURNED TO INVESTORS, THE NET PROCEED SPLIT 75% TO INVESTORS AND 25 % TO MANAGER LLC.
5. WITHDRAW: NO WITHDRAW WITHIN 1ST 12 MONTH , AFTER THAT YOU CAN RESALE YOUR SHARE OR COMPANY WILL BUY IT BACK.

CLOSE OUT DATE: DEC. 31,2015



AA000670

WHAT's FLIPPING FUND?

所谓 | 短炒基金

FLIPPING FUND IS ESTABLISHED BY INVESTPRO INVESTMENTS FOUNDATION. THE FUND WILL BE INVESTED ON PURCHASING VALUE INCREASING REAL ESTATES IN LAS VEGAS. ONCE REACHED THE TERM, THE PROPERTY WILL BE SOLD OUT. PROFITS WILL BE PUT BACK INTO THE FUND FOR INVESTING ANOTHER PROPERTY.

「短炒基金」是由恒

兴投资基金建立的一个投资资金池，用于在拉斯维加斯买入预期升值的房产项目。短期获利后，迅速抛售套现离场，所获利资金再次用于投资其他相似房产项目，以此循环获利。

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04

案例分析
SUCCESSFUL PROJECTS

06

已运作项目
PROJECT LIST

09

短炒周期
FLIPPING TERM

10

资金分配
INVESTMENTS & EXPENSES

11

投资回报
PRO FORMA

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案例分析 SUCCESSFUL PROJECTS

4320 NOLAN LN

LAS VEGAS NV

03/02
2015

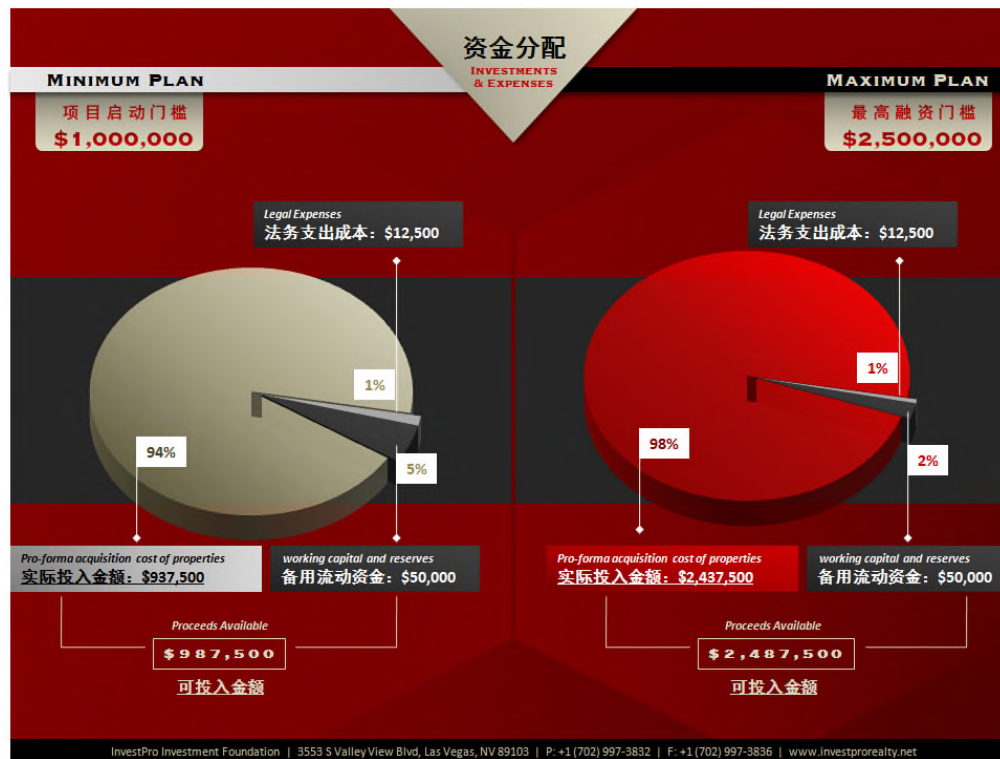
102天/DAY

06/12
2015

增值
INCREASE
IN VALUE

\$55,500.00

AA000671



AA000672



相关政策

TERMS & CONDITIONS

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

截止日期: 2015年12月31日

AA000673

1. TERM : 1-3 YEARS
2. MINIMUM UNITS: \$50,000 MINIMUM, \$1000 PER UNIT.
3. USE OF FUND: FLIPPING RESIDENTIAL PROPERTIES IN LAS VEGAS.
4. RETURNS: 8 % PREFERRED PER ANNUL PAYS EVERY QUARTER, THEN AFTER ALL MONEY RETURNED TO INVESTORS, THE NET PROCEED SPLIT 75% TO INVESTORS AND 25 % TO MANAGER LLC.
5. WITHDRAW: NO WITHDRAW WITHIN 1ST 12 MONTH , AFTER THAT YOU CAN RESALE YOUR SHARE OR COMPANY WILL BUY IT BACK.

CLOSE OUT DATE: DEC. 31,2015

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



CONTACT
联系我们



KENNY LIN
Phone: +1 (702) 726-0000
Email: zhong.kenny@gmail.com
中国境内
联系电话 95013515588 x 88855

InvestPro REALTY 恆興地產

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AA000674



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InvestPro Realty
3553 S Valley View Blvd
Las Vegas NV 89103

Las Vegas Website Design (<https://websitecenter.com/design/>) and Hosting (<https://websitecenter.com/hosting/>) By WebsiteCenter.com
(<https://www.websitecenter.com>)

Office phone: 702-997-3832
Fax: 702-997-3836
Fax: 866-782-3075
Email: info@investprorealty.net
Hours: Mon – Fri 9:00 AM – 6: 00PM
Closed Saturday & Sunday

AA000676

EXHIBIT B

EXHIBIT B

AA000677

3-1

APN 162-01-110-017

RECORDING REQUESTED BY:

WHEN RECORDED MAIL DEED
AND TAX STATEMENT TO:

TKNR INC
3553 South Valley View Boulevard
Las Vegas, NV 89105

Inst #: 20151009-0003684

Fees: \$18.00 N/C Fee: \$0.00

RPTT: \$487.05 Ex: #

10/09/2015 03:16:52 PM

Receipt #: 2577116

Requestor:

INVESTPRO REALTY

Recorded By: RYUD Pgs: 3

DEBBIE CONWAY

CLARK COUNTY RECORDER

Trustee Sale No.
NV08000214-15-1

Title Order No. 97104860

TRUSTEE'S DEED UPON SALE

The undersigned Grantor declares:

- 1) The Grantee herein was not the foreclosing Beneficiary.
- 2) The amount of the unpaid debt together with costs was:
- 3) The amount paid by the Grantee at the Trustee sale was:
- 4) The documentary transfer tax is:
- 5) Said property is in the city of: LAS VEGAS

\$291,608.90

\$95,100.00

\$ 487.05

and **MTC Financial Inc. dba Trustee Corps**, herein called "Trustee", as Trustee (or as Successor Trustee) of the Deed of Trust hereinafter described, hereby grants and conveys, but without covenant or warranty, express or implied, to **TKNR INC**, herein called "Grantee", the real property in the County of Clark, State of Nevada, described as follows:

LOT 9 IN BLOCK 4 OF JUBILEE TRACT, AS SHOWN BY MAP THEREOF ON FILE IN BOOK 4 OF PLATS, PAGE 28 IN THE OFFICE OF THE COUNTY RECORDER OF CLARK COUNTY, NEVADA

This deed is made pursuant to the authority and powers given to Trustee (or to Successor Trustee) by law and by that certain Deed of Trust dated April 4, 2008, made to CECILIA HERNANDEZ, AN UNMARRIED WOMAN, AND FILOMENA HERNANDEZ AND PEDRO JIMENEZ, WIFE AND HUSBAND, ALL AS JOINT TENANTS and recorded on April 14, 2008, as Instrument No. 20080414-0001532, of official records in the Office of the Recorder of Clark County, Nevada, Trustee (or Successor Trustee) having complied with all applicable statutory provisions and having performed all of his duties under the said Deed of Trust.

All requirements of law and of said Deed of Trust relating to this sale and to notice thereof having been complied with. Pursuant to the Notice of Trustee's Sale, the above described property was sold by Trustee (or Successor Trustee) at public auction on **September 25, 2015** at the place specified in said Notice, to Grantee who was the

AA000678

highest bidder therefore, for **\$95,100.00** cash, in lawful money of the United States, which has been paid.

Dated: 9/30/15

TRUSTEE CORP



By: Miguel Ochoa, Authorized Signatory

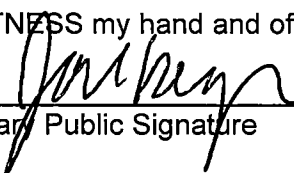
A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document, to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

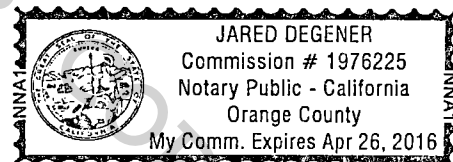
State of CALIFORNIA
County of ORANGE

On 9-30-15 before me, Jared Degener, a notary public personally appeared MIGUEL OCHOA, who proved to me on the basis of satisfactory evidence to be the person whose name is subscribed to the within instrument and acknowledged to me that he/she executed the same in his/her authorized capacity, and that by his/her signature on the instrument the person, or the entity upon behalf of which the person acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of CALIFORNIA that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.


Notary Public Signature



AA000679

**STATE OF NEVADA
DECLARATION OF VALUE FORM**

1. Assessor Parcel Number(s)

a. 162-01-110-017

b.

c.

d.

2. Type of Property:

- a. ☐ Vacant Land b. ☒ Single Fam. Res.
 c. ☐ Condo/Twnhse d. ☐ 2-4 Plex
 e. ☐ Apt. Bldg f. ☐ Comm'l/Ind'l
 g. ☐ Agricultural h. ☐ Mobile Home
☐ Other

FOR RECORDER'S OPTIONAL USE ONLY

Book: _____ Page: _____

Date of Recording: _____

Notes: _____

3. a. Total Value/Sales Price of Property

\$ 95,100.00

b. Deed in Lieu of Foreclosure Only (value of property)

()

c. Transfer Tax Value:

\$ 95,100.00

d. Real Property Transfer Tax Due

\$ 487.05

4. **If Exemption Claimed:**

a. Transfer Tax Exemption per NRS 375.090, Section _____

b. Explain Reason for Exemption: _____

5. Partial Interest: Percentage being transferred: 100%

The undersigned declares and acknowledges, under penalty of perjury, pursuant to NRS 375.060 and NRS 375.110, that the information provided is correct to the best of their information and belief, and can be supported by documentation if called upon to substantiate the information provided herein. Furthermore, the parties agree that disallowance of any claimed exemption, or other determination of additional tax due, may result in a penalty of 10% of the tax due plus interest at 1% per month. Pursuant to NRS 375.030, the Buyer and Seller shall be jointly and severally liable for any additional amount owed.

Signature

Capacity

:

Grantor

Signature

Capacity

:

Grantee

SELLER (GRANTOR) INFORMATION
(REQUIRED)

 Brenda Unruh, Docs Processor
 c/o MTC Financial Inc., dba Trustee

Print Name: Corps

Address: 17100 Gillette Avenue

City: Irvine

State: CA

Zip: 92614

BUYER (GRANTEE) INFORMATION
(REQUIRED)

Print Name: TKNR INC

Address: 3553 South Valley View Boulevard

City: Las Vegas

State: NV

Zip: 89105

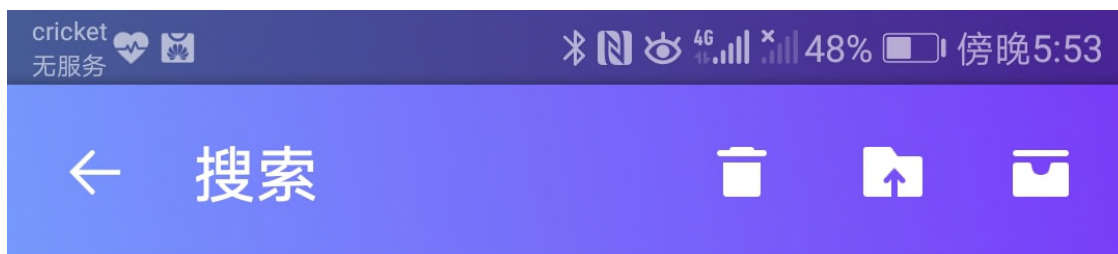
AS A PUBLIC RECORD THIS FORM MAY BE RECORDED/MICROFILMED

AA000680

EXHIBIT C

EXHIBIT C

AA000681

**2132 Houston Dr - urgent attention!**

Helen Chen

我

2017/8/24 上午10:35



Hi Frank and Marie,
Unfortunately, listing agent said seller rejected your new request, seller will only agree to repair the following which agreed last time:
Broken window glass at unit #A;
Repair and refinish the inside drywall around the AC at Unit#A;
Repair or replace the broken thermostat at Unit#B;
Change kitchen and bath room outlets (by the sink) to GFI outlets for all units.
(there will be no more credit offered from seller)
For your information, All above repairs should be completed by now.

Please let me know if you would like to move forward or not.
And please note per contract your due diligence will be end by 8/25/17, if you decide

AA000682

Outlook

BC

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Undo

Folders

Inbox 4624

ae filing 492

Bankruptcy 224

Sent Items

Drafts 119

MarendaCS payments

More

Groups New

(No subject)

FM frank miao <frankmiao@yahoo.com>
Today, 4:58 PM

2132 Houston Dr



Helen Chen

我

2017/8/17 下午5:10



Hi Frank and Marie,
I have send you the disclosures documents
for your signature, it is e-sign, please check.

For the items you requested for repairs, seller
just respond and seller will agree to repair the
following items:

Broken window glass;

Repair and refinish the inside drywall around
the AC;

Repair or replace the broken thermostat;

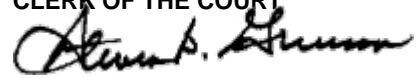
Plus \$300 credit to buyer for any other
repairs.

AA000683

EXHIBIT D

EXHIBIT D

AA000684



BENJAMIN B. CHILDS, ESQ.
Nevada Bar # 3946
318 S. Maryland Parkway
Las Vegas, Nevada 89101
(702) 251 0000
Fax 384 1119
ben@benchilds.com
Attorney for Plaintiff

EIGHTH JUDICIAL DISTRICT COURT
CLARK COUNTY, NEVADA

W L A B INVESTMENT, LLC

Plaintiff

vs.

TKNR, INC, a California Corporation, and
CHI ON WONG, an individual, and
KENNY ZHONG LIN, an individual, and
INVESTPRO LLC dba INVESTPRO REALTY and
JOYCE A. NICKRANDT, an individual and
Does 1 through 5 and Roe Corporations I - X

Defendants

A-18-785917-C

Case #
Dept #

Department 14

COMPLAINT

=====

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

PLAINTIFF'S ALLEGATIONS OF FACT

A. IDENTITY OF DEFENDANTS

- 1 Defendant TKNR, INC, [hereinafter TKNR] was at all relevant times a
2 California Corporation doing business in Clark County, Nevada.
- 3 2. INVESTPRO LLC was at all relevant time a Nevada Limited Liability
4 Company dba INVESTPRO REALTY [hereinafter Investpro]. Investpro is
5 a real estate brokerage holding Nevada license # B.0144660.llc and a
6 property management company holding Nevada license #
7 PM.0166824.bkr, which licenses are registered to JOYCE A. NICKRANDT
8

1 [herinafter Nickrandt]. Nickrandt is a Nevada resident who, during all time
2 relevant hereto, made direct factual representations as both TKNR's agent
3 and Investpro's agent.

4 3. CHI ON WONG [hereinafter Wong] is a California resident who owns and
5 controls TKNR, INC and is the alter ego of TKNR. TKNR was and is
6 influenced and governed by Wong. There must is such a unity of interest
7 and ownership between Wong and TKNR that one is inseparable from the
8 other. Adherence to the fiction of separate entity between Wong and
9 TKNR would sanction a fraud or promote injustice.

10 4. KENNY ZHONG LIN [hereinafter Lin] is a Nevada resident who, during all
11 time relevant hereto, made direct factual representations as both TKNR's
12 agent and Investpro's Chief Executive Officer and agent.

13 5. The true names of Defendants DOES 1 through 5 and ROE
14 CORPORATIONS I - X, inclusive, are unknown to Plaintiff at this time.
15 Plaintiff sues those Defendants by such fictitious names pursuant to NRCP
16 10 (a). Plaintiffs are informed and believe, and based on that information
17 and belief allege, that each of the Defendants designated as a DOE or
18 ROE is legally responsible for the events and happenings referred to in this
19 complaint, and unlawfully caused the injuries and damages to Plaintiff
20 alleged in this complaint, or who have an interest in the subject property
21 as set forth below. When their true names and capacities of Doe or Roe
22 Defendants are ascertained Plaintiff, if appropriate, will amend his
23 Complaint accordingly to insert the correct name and capacity herein.

24 6. This Court has jurisdiction and authority to issue judgment in this matter
25 per NRS 13.010.

26
27
28 ///

1 B. TRANSACTIONS RESULTING IN THIS LAWSUIT

2
3 7. That on or about December 15, 2017 TKNR sold Plaintiff a parcel of real
4 property with a residential triplex on it, specifically the real property located
5 at 2132 Houston Dr Las Vegas, NV, referred to herein as the Subject
6 Property. The Subject Property is a residential rental income property.

7 8. Investpro was at all relevant times the property manager of TKNR for the
8 Subject Property.

9 9. Prior to the sale, Investpro did an extensive renovation of the Subject
10 Property for TKNR, as both a property manager and as agent for TKNR,
11 and was also the real estate broker in the sale, representing both the buyer
12 [WLAB] and the seller [TKNR]. In fact, the Seller's Real Property
13 Disclosure Form was both prepared and initialed by Lin.

14 10. TKNR failed to disclose one or more known condition(s) that materially
15 affects the value or use of the Subject Property in an adverse manner, as
16 required by NRS Chapter 113, in a particular NRS 113.130. TKNR and it's
17 agent Investpro marketed and listed for sale.

18 a. TKNR and it's agent Investpro affirmatively stated in a Real Property
19 Disclosure Form dated August 2, 2017 that there were "no
20 conditions or aspects of the property which materially affect it's value
21 or use in an adverse manner", that there were no "previous or
22 current moisture conditions and/or water damage, there were no
23 problems or defects with the electrical system, there were no
24 structural defects, and there was no fungi or mold on the Subject
25 Property.

26 b. In fact, there was no permit and no inspection by the City of Las
27 Vegas for extensive renovation work which TKNR, through it's
28 property manager and agent Investpro, had performed. The

1 electrical system load for Apartment A was increased due to the
2 installation of two air conditioning units and required 100 amp
3 service, but the electrical service was not upgraded to 100 amp
4 service from the existing 50 amp service. Failure to upgrade the
5 electrical service caused the fuses to be blown out multiple times
6 during the summer of 2018. The tenant in Apartment A could not
7 use air conditioning in the summer of 2018, causing Apartment A to
8 be uninhabitable until the electrical system was upgraded.

9 c. The high moisture exhaust vapor from washer/dryer combination
10 units of Apartment B and Apartment C of the Subject Property were
11 illegally vented into the attics instead of to the outside of the building.
12 Thus, the insulation in the ceiling of the Subject Property is
13 destroyed based on moisture, and the roof plywood of the Subject
14 Property is damaged based on moisture, the electrical system in the
15 attic is damaged based on moisture, and the ceiling is damages
16 based on moisture, and there is fungus and mold in the attic that was
17 caused by the moisture.

18 d. The air conditioning units were expressly represented by TKNR and
19 it's agent Investpro to have been installed by a licensed contractor.
20 However, these air conditioning units were not installed in
21 compliance with the building code, including that the electrical
22 system was not adequate to run the air conditioning units that were
23 installed. There was no permit and no inspection by the City of Las
24 Vegas building and safety department.

25 11. Plaintiff discovered the multiple defects after closing on the property on
26 December 15, 2017.

27 12. Due to the failure of TKNR and Wong, and Lin and Investpro and Nickrandt
28 to disclose the defects set forth above prior to the sale to Plaintiff, Plaintiff

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

4 13. It has been necessary for Plaintiff to retain the services of an attorney and
5 to incur other court costs to prosecute this action. Defendants should be
6 required to pay attorneys' fees and costs incurred by Plaintiff in this action.
7

8 FIRST CAUSE OF ACTION - RECOVERY UNDER NRS CHAPTER 113
9 [Defendants TKNR and Wong]
10

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

13 15. Plaintiff is entitled to recover from TKNR and Wong treble the amount
14 necessary to repair or replace the defective part of the property, together
15 with court costs and reasonable attorney's fees.
16

17 SECOND CAUSE OF ACTION - CONSTRUCTIVE FRAUD
18 [Defendants Investpro and Nickrandt]
19

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

22 17. WLAB was in a fiduciary or confidential relationship with Investpro and
23 Nickrandt for the purchase of the Subject Property.

24 18. Investpro and Nickrandt's representations set forth above were deceptive
25 or violated the confidence placed in them by WLAB.

26 19. WLAB reasonably relied on Investpro and Nickrandt's deceptive
27 representations set forth above or the expected disclosures from Investpro
28 and Nickrandt which they did not provide.

1 20. Due to the constructive fraud of Investpro and Nickrandt set forth above
2 prior to the sale to Plaintiff, Plaintiff has been damaged in an amount in
3 excess of Fifteen Thousand Dollars (\$15,000.00), which amount will be
4 set forth and proven at the time of trial.

5 21. It has been necessary for Plaintiff to retain the services of an attorney and
6 to incur other court costs to prosecute this action. Defendants should be
7 required to pay attorneys' fees and costs incurred by Plaintiff in this action.
8

9 THIRD CAUSE OF ACTION - COMMON LAW FRAUD

10 [Defendants Investpro and Nickrandt and Lin]
11

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

14 23. Defendants Investpro and Nickrandt and Lin made misrepresentations of
15 material fact regarding the Subject Property, as set forth above.

16 24. Defendants Investpro and Nickrandt and Lin had knowledge of the
17 misrepresentations of material fact regarding the Subject Property to
18 WLAB, as set forth above.

19 25. Defendants Investpro and Nickrandt and Lin intended to defraud WLAB.

20 26. WLAB reasonably relied on the misrepresentations of material fact
21 regarding the Subject Property made by Defendants Investpro and
22 Nickrandt and Lin.

23 27. Due to the the misrepresentations of material fact regarding the Subject
24 Property made by Defendants Investpro and Nickrandt and Lin set forth
25 above prior to the sale to Plaintiff, Plaintiff has been damaged in an
26 amount in excess of Fifteen Thousand Dollars (\$15,000.00), which
27 amount will be set forth and proven at the time of trial.

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

1 to incur other court costs to prosecute this action. Defendants Investpro
2 and Nickrandt and Lin should be required to pay attorneys' fees and costs
3 incurred by Plaintiff in this action.
4

5 FOURTH CAUSE OF ACTION - FRAUDULENT INDUCEMENT

6 [All Defendants]
7

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

10 30. Defendant TKNR, through it's agents Investpro and Nickrandt and Lin
11 made misrepresentations of material fact regarding the Subject Property,
12 as set forth above.

13 31. Defendants Investpro and Nickrandt and Lin made misrepresentations of
14 material fact regarding the Subject Property, as set forth above.

15 32. Defendant Wong is the alter ego of TKNR.

16 31. Defendants' actions constitute Fraudulent Inducement because :

17 (1) A false representation was made to WLAB as set forth above;

18 (2) Defendants Investpro and Nickrandt and Lin had knowledge or belief
19 that, as set forth above, the representations were false or they had
20 knowledge that they had insufficient basis for making the representation;

21 (3) Defendants TKNR and it's agents, intended to induce WLAB to
22 complete the purchase of the Subject Property;

23 (4) WLAB justifiably relied upon the misrepresentation of TKNR and it's
24 agents; and

25 (5) WLAB suffered damages resulting from such reliance.

26 32. WLAB has been damaged as a result of Shawn's fraudulent inducement.

27 33. Due to the the misrepresentations of material fact regarding the Subject
28 Property made by Defendants set forth above prior to the sale to Plaintiff,

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

4 34. It has been necessary for Plaintiff to retain the services of an attorney and
5 to incur other court costs to prosecute this action. Defendants should be
6 required to pay attorneys' fees and costs incurred by Plaintiff in this action.
7

8 WHEREFORE, Plaintiff prays for judgment against Defendants, jointly and
9 severally, as follows:
10

- 11 1. For treble the amount necessary to repair or replace the defective part of
12 the property, which amount is in excess of Fifteen Thousand Dollars
13 (\$15,000), plus prejudgment interest from the date of service of the
14 summons and complaint;
- 15 2. For compensatory damages in an amount in excess of \$ 15,000.00 based
16 on WLAB's proof at trial; and
- 17 3. For exemplary and/or punitive damages in the amount of three times the
18 compensatory damages awarded; and
- 19 2. For costs and disbursements of suit;
- 20 3. For reasonable attorneys' fees;
- 21 4. For such other and further relief as the Court may deem just and proper.
22
23

24 /s/ Benjamin B. Childs

25 BENJAMIN B. CHILDS, ESQ.
26 Nevada Bar No. 3946
27 Attorney for Plaintiff
28

EXHIBIT E

EXHIBIT E

AA000693

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

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

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

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

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

28. **ADDITIONAL TERMS:** _____

Buyer's Acknowledgement of Offer

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

Buyer's Broker: <u>Joyce Nickrandt</u>	Agent's Name: <u>Liwei Helen Chen</u>
Company Name: <u>Investpro Realty</u>	Agent's License Number: <u>S.0175520</u>
Broker's License Number: <u>B0144660</u>	Office Address: <u>3553 VALLEY VIEW BLVD</u>
Phone: <u>702-997-3832</u>	City, State, Zip: <u>LAS VEGAS NV 89103</u>
Fax: <u>702-997-3836</u>	Email: <u>helen0510c@gmail.com</u>

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

☒ **DOES NOT** have an interest in a principal to the transaction. -OR-

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

Seller must respond by: 5 (☐AM☒PM) on (month) August, (day) 12, (year) 2017. Unless this

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

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

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

Rev. 06/17

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Page 9 of 10

This form presented by Liwei Chen | Investpro Realty | 702-997-3832 | Helen0510C@gmail.com

InstantFORMS

AA000694

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


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

 Buyer's Signature Buyer's Printed Name Date Time ☐ AM ☐ PM

Seller's Response

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

Seller's Broker: Joyce Nickrandt Agent's Name: Kenny Lin
 Company Name: Investpro Realty Agent's License Number: S.0172460
 Broker's License Number: _____ Office Address: 3553 Valley View Dr
 Phone: 702-997-3832 City, State, Zip: Las Vegas NV 89103
 Fax: 866-782-3075 Email: zhong.kenny@gmail.com

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


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

SELLER DECLARES that he/she ☒ is ☐ CN **is not** **-OR-** _____ is a foreign person therefore subjecting this transaction to FIRPTA withholding. SELLER(S) INITIALS: CN

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

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

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


TKNR Inc
08/11/2017 10:24 PM ☐ AM ☐ PM
 Seller's Signature Seller's Printed Name Date Time

 Seller's Signature Seller's Printed Name Date Time ☐ AM ☐ PM

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

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

EXHIBIT F

EXHIBIT F

AA000696

Got Permits?

PROTECT YOUR HOME IMPROVEMENTS



Residential Building Permits

www.ClarkCountyNV.gov/building

CLARK COUNTY

Permit Application Center
4701 W. Russell Road
Las Vegas, NV 89118

LAUGHLIN

Regional Government Center
101 Civic Way
Laughlin, NV 89029

OVERTON

Clark County Community Center
320 N. Moapa Valley Blvd.
Overton, NV 89040

Thinking about replacing your water heater or converting your garage into an office? Before you open your tool box, ask yourself one simple question: "Got Permits?" Even small home improvement projects may require a building permit. Faulty installations can cause fires, flood damage and other hazards, and also force you to make costly repairs when you sell your home. Permits - and the inspections that come with them - protect your family's safety and the value of your property by ensuring the work meets adopted building codes.

What is a building permit?

A building permit gives you legal permission to start construction of a building project in accordance with approved drawings and specifications. Building permits are required for construction work performed on any portion of a home's structural features, including the roof, frame, walls and foundation. Separate permits may be required for electrical, plumbing and mechanical work related to your project.

What types of home improvement projects

DO require building permits?

If your project involves new construction work or demolition of existing construction, you probably need a building permit. Common projects requiring building permits include:

- Attic, garage and basement conversions.
- Room additions, patio covers, sun rooms, carports and garages.

- Playhouses and sheds if the floor area is 120 square feet or more, or plumbing, mechanical or electrical features are included.
- Cutting new windows or doors, or widening existing openings.
- Removing or adding walls.
- Roofing when the roof load is increased.

What types of home improvement projects

DON'T require building permits?

- Painting and wall papering.
- Replacing or repairing floor coverings, cabinets, moldings and counter tops.
- Replacing stucco or drywall if the area replaced does not exceed 30 square feet.
- Replacing existing doors or windows if the openings aren't widened and/or are not part of a fire-rated wall.



Clark County Building Department

If I plan to do the construction work myself on my home, do I still need a building permit?

Yes. And you must own and occupy the home where you plan to do the work. Work on a home that's being leased or rented must be done by a licensed contractor.

application and any required plans for

The Building Department has several standard building designs available on our website to help in permitting common home improvement projects.





Got Permits?

PROTECT YOUR HOME IMPROVEMENTS



Residential Mechanical Permits

www.AccessClarkCounty.com

CLARK COUNTY

Permit Application Center
4701 W. Russell Road
Las Vegas, NV 89118
Mon. - Fri, 7 a.m. - 5 p.m.
(702) 455-8010

LAUGHLIN

Regional Government Center
101 Civic Way
Laughlin, NV 89029
Mon. - Fri, 6:30 a.m. - 3:30 p.m.
(702) 298-2436

OVERTON

Clark County Community Center
320 N. Moapa Valley Blvd.
Overton, NV 89040
Mon. - Fri, 7 a.m. - 4 p.m.
(702) 397-8087

Thinking about replacing your water heater or converting part of your garage into an office? Before you open your tool box, ask yourself one simple question: "Got Permits?" Clark County's Department of Development Services can help. Even small home improvement projects may require a building permit. Faulty installations can cause fires, flood damage and other hazards, and also force you to make costly repairs when you sell your home. Permits - and the inspections that come with them - protect your family's safety and the value of your property by ensuring the work meets adopted building codes.

What is a mechanical permit?

Mechanical permits refer to construction work performed on any portion of a home's heating, cooling or exhaust systems. Separate permits may be required for building, electrical, and plumbing work involved with your project.

When can work start?

Work can begin after your permit is issued and you receive your approved plans for the project.

What types of home improvement projects

DO require a mechanical permit?

- Installing or Changing Any Part of a Heating or Cooling System
- Installing, Altering or Repairing Gas Piping Between the Meter and an Appliance

- Installing Bath Fans, Dryer Exhausts, Kitchen Range Exhausts and Other Mechanical Equipment

What types of home improvement projects

DON'T require mechanical permits?

- Using Portable Heaters, Ventilating Equipment, Cooling Units, and Evaporative Coolers
- Replacing Any Component of an Appliance Assembly (As long as no alteration occurs to its original installation or Development Services' original approval.)
- Replacing Compressors of the Same Rating



A CENTURY OF SERVICE

Clark County Development Services Department

Clark County Development Services Department

If I plan to do the work myself on my home's mechanical system, do I still need a permit?

Yes. To obtain a mechanical permit as an owner/builder, you must own and occupy the home

outside on a cement slab, a site plan is showing the location of the slab.

If your project involves the addition of square footage



← Plumbing Flye... 🔍 🏠 ⋮

Got Permits?

PROTECT YOUR HOME IMPROVEMENTS



Residential Plumbing Permits

www.AccessClarkCounty.com

CLARK COUNTY

Permit Application Center
4701 W. Russell Road
Las Vegas, NV 89118
Mon. - Fri, 7 a.m. - 5 p.m.
(702) 455-8010

LAUGHLIN

Regional Government Center
101 Civic Way
Laughlin, NV 89029
Mon. - Fri, 6:30 a.m. - 3:30 p.m.
(702) 298-2436

OVERTON

Clark County Community Center
320 N. Moapa Valley Blvd.
Overton, NV 89040
Mon. - Fri, 7 a.m. - 4 p.m.
(702) 397-8087

Thinking about replacing your water heater or converting part of your garage into an office? Before you open your tool box, ask yourself one simple question: "Got Permits?" Clark County's Department of Development Services can help. Even small home improvement projects may require a building permit. Faulty installations can cause fires, flood damage and other hazards, and also force you to make costly repairs when you sell your home. Permits - and the inspections that come with them - protect your family's safety and the value of your property by ensuring the work meets adopted building codes.

What is a plumbing permit?

Plumbing permits refer to construction work performed on a home's plumbing system. Separate permits may be required for building, electrical and mechanical work related to your project.

What types of home improvement projects

DO require plumbing permits?

- Installing or Relocating Water Heaters or Water Softeners (*Permits now available online.*)
- Replacing Any Parts of Concealed Drains, Waste or Vent Pipes to Stop Leaks
- Relocating or Altering Plumbing in Existing Homes, Including Installation of New Sewers, Water Service or Gas Piping
- Gas Lines for Barbeques and Other Outdoor Appliances
- Replacing Bathtubs With Spas

What types of home improvement projects

DON'T require a plumbing permit?

- Replacing Similar Plumbing Fixtures in the Same Location (Provided valves and traps are not replaced or rearranged.)
- Clearing Stoppages or Repairing Leaks in Pipes, Valves or Fixtures (Provided such repairs do not involve or require the replacement or rearrangement of valves, pipes or fixtures.)

When can work start?

Work can begin after your permit is issued. Emergency water heater installations are allowed. In such cases, you must apply for a plumbing permit the next available business day.



Clark County Development Services Department

Clark County Development Services Department

If I plan to do plumbing work myself on my home, do I still need a plumbing permit?

Yes. To obtain a plumbing permit as an owner/builder, you must own and occupy the home where you plan to

plumbing fixtures, such as converting a bathroom or installing an additional sink in an existing bathroom.

Electrical Flyer...

Got Permits?

PROTECT YOUR HOME IMPROVEMENTS



Residential Electrical Permits

www.AccessClarkCounty.com

CLARK COUNTY

Permit Application Center
4701 W. Russell Road
Las Vegas, NV 89118
Mon. - Fri, 7 a.m. - 5 p.m.
(702) 455-8010

LAUGHLIN

Regional Government Center
101 Civic Way
Laughlin, NV 89029
Mon. - Fri, 6:30 a.m. - 3:30 p.m.
(702) 298-2436

OVERTON

Clark County Community Center
320 N. Moapa Valley Blvd.
Overton, NV 89040
Mon. - Fri, 7 a.m. - 4 p.m.
(702) 397-8087

Thinking about replacing your water heater or converting part of your garage into an office? Before you open your tool box, ask yourself one simple question: "Got Permits?" Clark County's Department of Development Services can help. Even small home improvement projects may require a building permit. Faulty installations can cause fires, flood damage and other hazards, and also force you to make costly repairs when you sell your home. Permits - and the inspections that come with them - protect your family's safety and the value of your property by ensuring the work meets adopted building codes.

What is an electrical permit?

Electrical permits refer to construction work performed on a home's electrical system. In addition to an electrical permit, separate permits may be required for building, plumbing and mechanical work related to your project.

What types of home improvement projects

DO require an electrical permit?

- Installation or Alteration of Any Permanent Wiring or Electrical Device
- Additional Wiring to Install Indoor or Outdoor Outlets, Light Fixtures or Fans
- Installation of Receptacles for Garage Door Openers or Conversion From Fuse Box to Circuit Breakers
- Electricity for a Spa

What types of home improvement projects

DON'T require electrical permits?

- Replacing Existing Light Fixtures or Fans
- Repairing or Replacing Switches, Contactors or Control Devices
- Replacing Existing Electrical Installations With Installations of Same Type and Rating in Same Location
- Using Portable Motors or Appliances in Approved Outlets (Some portable heating or heating-cooling units may require an electrical permit if they provide minimum heating.)
- Temporary Decorative Lighting (such as holiday lighting)
- Installation of Low-Voltage (50 volts or less) Security Systems, Audio Speakers and Similar Home Systems



Clark County Development Services Department

Clark County Development Services Department

If I plan to do electrical work myself on my home, do I still need an electrical permit?

Yes. To obtain an electrical permit as an owner/builder, you must own and occupy the home where you plan to

If your project involves the addition of..., you will need to submit an electrical permit application as a sub-permit of a building permit application. See our "Single Family Residence & Guest House" permit

EXHIBIT F

EXHIBIT F

MICHAEL B. LEE, P.C.
1820 E. SAHARA AVENUE, SUITE 110
LAS VEGAS, NEVADA 89104
TEL - (702) 477.7030; FAX - (702) 477.0096

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

IN THE EIGHTH JUDICIAL DISTRICT COURT
CLARK COUNTY, NEVADA

W L A B INVESTMENT, LLC,

Plaintiff,

vs.

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

Defendants.

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

**DEFENDANTS' OFFER OF JUDGMENT
TO PLAINTIFF WLAB INVESTMENT,
LLC**

TO: W L A B INVESTMENT, LLC, Plaintiff; and

BENJAMIN B. CHILDS, ESQ., Attorney for Plaintiff.

Defendants TKNR INC. ("TKNR"), CHI ON WONG ("WONG"), KENNY ZHONG
LIN ("LIN"), LIWE HELEN CHEN ("CHEN"), YAN QIU ZHANG ("ZHANG"), INVESTPRO
LLC ("INVESTPRO"), MAN CHAU CHENG ("CHENG"), JOYCE A. NICKRANDT
("NICKRANDT"), INVESTPRO INVESTMENTS, LLC ("Investments"), and INVESTPRO
MANAGER LLC (hereinafter collectively referred to as the "Defendants"), by and through their

counsel of record, MICHAEL B. LEE, P.C., hereby offers to allow judgment to be taken against them as provided in Rule 68(b) of the Nevada Rules of Civil Procedure and NRS § 17.115 in the above-entitled action in the amount of Five Thousand Dollars (\$5,000.00), which includes any applicable attorneys' fees, liens, costs, and prejudgment interest.

Acceptance by Plaintiff will therefore result in satisfaction of past, present and future damages with respect to Plaintiff's claims in the case against Defendants and will serve to dismiss and bar the bringing of any and all future causes of action against Defendants by Plaintiff arising out of this matter as identified and referenced in the Complaint filed by Plaintiff in this action. If you accept this offer and give written notice thereof within fourteen (14) days, you may file this offer with proof of service of notice of acceptance. In the event this Offer of Judgment is accepted by Plaintiff, Defendants will obtain a dismissal of the claims as provided by N.R.C.P. 68(d), rather than to allow judgment to be entered against Defendants. Accordingly, and pursuant to these rules and statutes, judgment against Defendants cannot be entered unless ordered by the District Court. This Offer of Judgment shall be deemed withdrawn if not accepted by the deadline.

As to the reasonableness of this offer, the underlying evidentiary supports shows that: (1) Plaintiff's action was not brought in good faith as: the Property was originally constructed in 1954; Marie Zhu ("Zhu") executed a residential purchase agreement ("RPA") for the Property waiving her due diligence; Zhu did not do any inspections although she had 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; Zhu waived the Due Diligence condition under Paragraph 7(C) of the RPA; ignored the recommendation to conduct an inspection under Paragraph 7(D) of the RPA; waived the energy audit, pest inspection, roof inspection, septic lid removal inspection, mechanical inspection, soil inspection, and structural inspection; failed to inspect the Property sufficiently as to satisfy her use as required by the RPA; had actual knowledge of TKNR's disclosure that "3 units has brand new AC installed within 3 months," and further that the "owner never resided in

the property and never visited the property”; was also aware that the minor renovations, such as painting, was conducted by the Seller’s “handyman” as disclosed in the Seller’s Disclosures; Zhu agreed that she was not relying upon any representations made by Brokers or Broker’s agent; Zhu agreed to purchase the Property AS-IS, WHERE-IS, without any representations or warranties; Zhu agreed to satisfy herself, as to the condition of the Property, prior to the close of escrow; Zhu waived all claims against Brokers or their agents for defects in the Property and factors related to Zhu’s failure to conduct walk-throughs or inspections; Zhu assumed full responsibility and agreed to conduct such tests, walk-throughs, inspections and research, as she deemed necessary; Nevada Revised Statute (“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; NRS § 113.140 also provides that the Seller does not have to disclose any defect that he is unaware of; NRS § 113.130 does not require a seller to disclose a defect in residential property of which the seller is not aware; a completed disclosure form does not constitute an express or implied warranty regarding any condition of residential property; 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; Zhu did not exercise reasonable care in protecting herself by conducting an inspection of the Subject Property or the newly installed HVAC systems even though the Purchase Agreement allowed her to; Plaintiff owned the Property for more than a year since before making any inspections about the Property; Defendants was aware of any issues with any structural, electrical, plumbing, sewer, mechanical, roof, fungus/mold, flooring, and/or foundation issues with the Property before the time of the sale to Zhu; Defendants were not aware of any issues with any structural, electrical, plumbing, sewer, mechanical, roof, fungus/mold, flooring, and/or foundation issues with the Property at the time of the sale to Zhu; Defendants were not aware of any issues with any structural, electrical, plumbing, sewer, mechanical, roof, fungus/mold, flooring, and/or foundation issues with the Property after the sale to Zhu; any alleged conditions were open, obvious, and could have been discovered by a reasonable inspection; Seller disclosed there were issues with the heating and cooling systems with the Property; Seller disclosed that there were

1 construction, modifications, alterations, and/or repairs made without required state, city, or
2 county building permits; Seller disclosed that the Property was constructed before 1977; Seller
3 disclosed that the kitchen cabinets were brand new; Seller disclosed the sprinklers for the
4 landscaping did not work, all pipes were broken; Seller disclosed that the work, other than the
5 mechanical installation, was done by a handyman; and Seller disclosed that he never resided in
6 the property and/or visited it.

7 (2) This the offer of judgment is reasonable in light of the foregoing analysis providing
8 both the factual basis for the claims and the legal authority showing the lack of merit of the
9 action; (3) your refusal to accept the offer of judgment will be in bad faith and unreasonable; and
10 (4) the fees sought are reasonable in light of the demand to resolve this matter prior to the
11 commencement of heavy litigation. *See Beattie v. Thomas*, 99 Nev. 579, 588-89, 668 P.2d 268,
12 274 (1983).

13 This Offer of Judgment is made solely for the purposes intended by N.R.C.P. 68, and is
14 not to be construed as an admission in any form that Defendants are liable for any of the
15 allegations made by Plaintiff in the Complaint.

16 DATED this 19 day of November, 2020.

17 MICHAEL B. LEE, P.C.

18 /s/ Michael Lee
19 MICHAEL B. LEE, ESQ. (NSB No.: 10122)
20 1820 E. Sahara Avenue, Suite 110
21 Las Vegas, Nevada 89104
22 P: 702.477.7030
23 F: 702.477.0096
24 mike@mblnv.com
25 *Attorney for Plaintiff*
26
27
28

MICHAEL B. LEE, P.C.
1820 E. SAHARA AVENUE, SUITE 110
LAS VEGAS, NEVADA 89104
TEL - (702) 477.7030; FAX - (702) 477.0096

CERTIFICATE OF MAILING

I HEREBY CERTIFY that on this 19 day of November, 2020, I placed a copy of the **DEFENDANTS' OFFER OF JUDGMENT TO PLAINTIFF WLAB INVESTMENT, LLC** as required by Eighth Judicial District Court Rule 7.26 by delivering a copy or by mailing by United States mail it to the last known address of the parties listed below, facsimile transmission to the number listed, and/or electronic transmission through the Court's electronic filing system to the e-mail address listed below:

BENJAMIN B. CHILDS, ESQ.
318 S. Maryland Parkway
Las Vegas, Nevada 89101
Telephone: (702) 251-0000
Email: ben@benchilds.com
Attorneys for *Plaintiff*

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

EXHIBIT G

EXHIBIT G

From: mike@mblnv.com
Sent: Thursday, February 4, 2021 2:29 PM
To: 'Reed, Ariana'; 'Michael Matthis'; 'Benjamin B. Childs'
Cc: 'Nikita Burdick'; 'Abigail McGowan'; 'Powell, Diana'
Subject: RE: A-18-785917-C (W L A B v. TKNR) February 3, 2021, Status Check

Responses below.

CONFIDENTIAL. This e-mail message and the information it contains are intended to be privileged and confidential communications protected from disclosure. Any file(s) or attachment(s) transmitted with it are transmitted based on a reasonable expectation of privacy consistent with ABA Formal Opinion No. 99-413. Any disclosure, distribution, copying, or use of this information by anyone other than the intended recipient, regardless of address or routing, is strictly prohibited. If you have received this e-mail message in error, please notify the sender by e-mail at mike@mblnv.com and permanently delete this message. Personal messages express only the view of the sender and are not attributable to Michael B. Lee, P.C. **IRS Circular 230 Disclosure:** To ensure compliance with requirements imposed by the IRS, we inform you that any U.S. federal tax advice contained in this communication (including any attachments) is not intended or written to be used, and cannot be used, for the purpose of (a) avoiding penalties under the Internal Revenue Code or (b) promoting, marketing, or recommending to another party any transaction or matter addressed herein.

From: Reed, Ariana <dept14lc@clarkcountycourts.us>
Sent: Thursday, February 4, 2021 2:10 PM
To: 'mike@mblnv.com' <mike@mblnv.com>; 'Michael Matthis' <matthis@mblnv.com>; 'Benjamin B. Childs' <ben@benchilds.com>
Cc: 'Nikita Burdick' <nburdick@burdicklawnv.com>; 'Abigail McGowan' <amcgowan@burdicklawnv.com>
Subject: A-18-785917-C (W L A B v. TKNR) February 3, 2021, Status Check

Hello,

Please provide an update on the following:

1. How is discovery going?
 - Defendants have taken one deposition, have a deposition scheduled for February 18, 2021, and will likely schedule a deposition for Plaintiff's expert prior to the close of discovery.
 - Defendants have two outstanding requests for production of documents to Plaintiff.
2. Has this matter settled or have the parties scheduled a settlement conference?
 - No settlement. There was a settlement conference scheduled, but the Parties called it off after informal discussions that were not fruitful.
3. Have the parties attended any ADR proceedings?
 - No.
4. What progress toward settlement have the parties made?
 - None.
5. What is the current status of this case?
 - Likely going to trial if this Court does not grant Defendants' motion for summary judgment.
6. How would the parties like to proceed?
 - Defendants may need to move to briefly enlarge discovery if their motion for summary judgment is not granted related to depositions

Your prompt response is greatly appreciated and will serve as the minutes for this status check.

Include any counsel or parties left out of this email in your response.

Please reply to confirm receipt and include all parties to avoid *ex parte* communications. Please also include Diana Powell, our JEA, on all email correspondence to ensure you receive the most prompt response (PowellD@clarkcountycourts.us). Thank you.

Please review the notes below for further Department 14 protocol and instructions:

****ELECTRONIC SERVICE****

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*****MATTERS ON CALENDAR*****

The Court will hold limited hearings via **Blue Jeans** until further notice. Unless the Court instructs parties to appear via Blue Jeans, **all matters**—except for TROs, preliminary injunctions, record sealing, and default judgment applications exceeding \$50,000.00 in damages—will be decided on the pleadings via Minute Order. This decision will occur in chambers and **no appearances are required**.

Please contact chambers at least two business days prior to your hearing date to confirm how the Court will handle your hearing.

*****STATUS CHECKS ON CALENDAR*****

All **status checks** that are on calendar will be resolved via email and **no appearances are required**.

*****ORDERS*****

Until further notice, all parties must submit **orders** electronically, in **both** PDF version and Word version to the Department 14 inbox at DC14Inbox@clarkcountycourts.us.

All orders must have original signatures from all parties or an email—***appended as the last page(s) of the proposed order***—confirming that the parties approved use of their electronic signatures.

The subject line of the e-mail should identify the full case number, filing code and case caption.

Orders that do not comply with these instructions will be returned for resubmittal.

*****RULE 16 HEARINGS/CONFERENCES*****

All **Rule 16 Conferences** will be heard via Blue Jeans until further notice. Please contact the Department for information about the hearing schedule.***

Be well and stay safe,

Ariana Reed, Esq.

Law Clerk to the Honorable Adriana Escobar

Eighth Judicial District Court, Dept 14

Dept14LC@clarkcountycourts.us

Phone: (702) 671-4423

Fax: (702) 671-4418

EXHIBIT H

EXHIBIT H

From: Ben Childs <ben@benchilds.com>
Sent: Thursday, February 4, 2021 5:39 PM
To: mike@mblnv.com; 'Reed, Ariana'; 'Michael Matthis'
Cc: 'Nikita Burdick'; 'Abigail McGowan'
Subject: Re: A-18-785917-C (W L A B v. TKNR) February 3, 2021, Status Check

Please see my responses to Mr. Lee's email response to my statement of the case. I'm just trying to accurately state what happened and I don't appreciate the personal attack on my honesty.

I don't plan to spend a lot of time searching for email correspondence, because I don't think that productive, but Ms. Zhu is in China and I've cooperated fully in making her available. The last email is attached from January 22 and I presented 3 dates and the original February 17 date.

As I recall the one tenant was not able to move and so was in her apartment when the expert visited. The point is that several options have been presented to Defendants. Implying some form of malice or intentional misconduct is ridiculous.

The reason I didn't think a settlement conference would be productive is because an additional defendant [a 3rd Party defendant] had just been added by Defendants and that new defendant has due process rights and should participate in the settlement conference.

Defendants' Summary Judgment motion is highly unlikely to be granted given the state of outstanding discovery and Plaintiff has filed an extensive opposition and countermotion.

The Court is welcome to contact me with any questions.

BENJAMIN B. CHILDS, ESQ.
318 S. Maryland Parkway
Las Vegas, NV 89101
(702) 251 0000
Fax 385 1847
ben@benchilds.com

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From: mike@mblnv.com <mike@mblnv.com>
Sent: Thursday, February 4, 2021 5:09 PM
To: Ben Childs <ben@benchilds.com>; 'Reed, Ariana' <dept14lc@clarkcountycourts.us>; 'Michael Matthis'

<matthis@mblnv.com>

Cc: 'Nikita Burdick' <nburdick@burdicklawnv.com>; 'Abigail McGowan' <amcgowan@burdicklawnv.com>

Subject: RE: A-18-785917-C (W L A B v. TKNR) February 3, 2021, Status Check

Please see my responses **in highlights** to Mr. Childs' misrepresentations below with the corresponding e-mails / notices showing the misrepresentations.

CONFIDENTIAL. This e-mail message and the information it contains are intended to be privileged and confidential communications protected from disclosure. Any file(s) or attachment(s) transmitted with it are transmitted based on a reasonable expectation of privacy consistent with ABA Formal Opinion No. 99-413. Any disclosure, distribution, copying, or use of this information by anyone other than the intended recipient, regardless of address or routing, is strictly prohibited. If you have received this e-mail message in error, please notify the sender by e-mail at mike@mblnv.com and permanently delete this message. Personal messages express only the view of the sender and are not attributable to Michael B. Lee, P.C. **IRS Circular 230 Disclosure:** To ensure compliance with requirements imposed by the IRS, we inform you that any U.S. federal tax advice contained in this communication (including any attachments) is not intended or written to be used, and cannot be used, for the purpose of (a) avoiding penalties under the Internal Revenue Code or (b) promoting, marketing, or recommending to another party any transaction or matter addressed herein.

From: Ben Childs <ben@benchilds.com>

Sent: Thursday, February 4, 2021 4:02 PM

To: Reed, Ariana <dept14lc@clarkcountycourts.us>; 'mike@mblnv.com' <mike@mblnv.com>; 'Michael Matthis' <matthis@mblnv.com>

Cc: 'Nikita Burdick' <nburdick@burdicklawnv.com>; 'Abigail McGowan' <amcgowan@burdicklawnv.com>

Subject: Re: A-18-785917-C (W L A B v. TKNR) February 3, 2021, Status Check

I hesitate to respond to this quickly because there are a lot of moving parts in this case. But here goes

1. How is discovery going? Lots of issues with written discovery, which will not be decided quickly because the hearing on Plaintiff's motion to compel and effectively Defendants' countermotion which was set for February 9 was vacated by the DC today under ECDR 2.40 because the entire request, and the entire responses were not set forth in full in the motion/countermotion. This will be like a 100 [page motion, but so be it. I just will take some time to complete, then be set for a new hearing, etc. I want to take a couple of depositions, but want to have complete responses to the written discovery first.

Plaintiff has provided several dates for the deposition Ms. Zhu [co-owner of Plaintiff] who is in China. Her deposition has never been scheduled. **This is incorrect. Mr. Childs was playing games related to Ms. Zhu's deposition (see attached e-mail) originally scheduled for January 13, 2021. I agreed to reset it. It does appear that we served the amended notice for February 17, 2021, but Mr. Childs' e-mail from January 22 confirmed the date. I have just noticed it for February 17, 2021.**

Plaintiff has provided several dates to allow Defendant's expert to revisit the property as he could not go into two of the apartments when he did his initial inspection because one tenant was at work and I believe there was a covid issue with the other one. A follow-up visit has never been scheduled by Defendants. **This is also incorrect and was subject to the pending discovery motion. Plaintiff's PMK admitted that Plaintiff set the date for the inspections and specified that they would all be available, but Defendants' expert did not have access on that date and time. We asked Defendants to pay for the cost of the second inspection, and they refused. This is why the second inspection was never scheduled. The second inspection is likely moot as Plaintiff's PMK admitted that all of the alleged conditions were open and obvious and he was aware of the requirement to get an inspection. This will be subject to the pending motion for summary judgment. Defendants filed a supplement that provided the undisputed testimony illustrating why summary judgment should be granted. / During Plaintiff's PMK's deposition, he admitted that he did not disclose documents, had documents / photographs stolen that he had never produced, and was aware that he set the date for the inspection despite not making the property available. Again, this was subject to the discovery motion. The "covid" excuse is novel and raised for the first time today. Depending on what happens with the MSJ, there will be a motion for spoliation from Defendants.**

2. Has this matter settled or have the parties scheduled a settlement conference?
No. I thought the settlement conference which was scheduled for January 8 should be vacated until the new party, which Defendant added by way of motion and the order was filed December 2, 2020. To date the cross-claim has not been filed despite the December 2, 2020 Order. Again, this is misleading. Mr. Childs and I discussed that a settlement conference would not be productive, see attached e-mail and notice to Angela McBride vacating the settlement conference. As to the potential third party, Plaintiff filed an amended pleading (which Defendants stipulated to despite the lack of the same courtesy by Plaintiff) after Defendants received an Order to amend their responsive pleading. Defendants filed a dispositive motion to the Second Amended Complaint that is pending resolution in lieu of filing the responsive pleading.
3. Have the parties attended any ADR proceedings?
No, but once discovery is completed it is probably a good idea if the new 3rd party defendant is added or the claim against the 3rd party defendant is abandoned.
4. What progress toward settlement have the parties made?
Little. Both parties appear to be in entrenched positions.
5. What is the current status of this case?
Set for trial in April. Counsel recognizes the reality of trials proceeding on schedule due to the backlog.
6. How would the parties like to proceed?
Given the discovery issues, likely an extension of discovery for 60 days to allow completion. Agreed.

BENJAMIN B. CHILDS, ESQ.
318 S. Maryland Parkway
Las Vegas, NV 89101
(702) 251 0000
Fax 385 1847
ben@benchilds.com

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From: Reed, Ariana <dept14lc@clarkcountycourts.us>
Sent: Thursday, February 4, 2021 2:09 PM
To: 'mike@mblnv.com' <mike@mblnv.com>; 'Michael Matthis' <matthis@mblnv.com>; Ben Childs <ben@benchilds.com>
Cc: 'Nikita Burdick' <nburdick@burdicklawnv.com>; 'Abigail McGowan' <amcgowan@burdicklawnv.com>
Subject: A-18-785917-C (W L A B v. TKNR) February 3, 2021, Status Check

Hello,

Please provide an update on the following:

1. How is discovery going?
2. Has this matter settled or have the parties scheduled a settlement conference?
3. Have the parties attended any ADR proceedings?
4. What progress toward settlement have the parties made?
5. What is the current status of this case?
6. How would the parties like to proceed?

Your prompt response is greatly appreciated and will serve as the minutes for this status check.

Include any counsel or parties left out of this email in your response.

Please reply to confirm receipt and include all parties to avoid *ex parte* communications. Please also include Diana Powell, our JEA, on all email correspondence to ensure you receive the most prompt response (PowellD@clarkcountycourts.us). Thank you.

Please review the notes below for further Department 14 protocol and instructions:

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Be well and stay safe,

Ariana Reed, Esq.

Law Clerk to the Honorable Adriana Escobar

Eighth Judicial District Court, Dept. 14

Dept14LC@clarkcountycourts.us

Phone: (702) 671-4423

Fax: (702) 671-4418

EXHIBIT I

EXHIBIT I

FINANCIAL INFORMA...

Defendant TKNR Inc Total Financial Assessment 766.00 Total Payments and Credits 766.00 Balance Due as of 04/06/2021 **0.00** 01/09/2019 Transaction Assessment 543.0001/09/2019 Efile Payment Receipt # 2019-01636-CCCLK TKNR Inc (543.00)03/19/2019 Transaction Assessment 223.0003/19/2019 Efile Payment Receipt # 2019-17299-CCCLK TKNR Inc (223.00)

Plaintiff W L A B Investment LLC Total Financial Assessment 561.00 Total Payments and Credits 561.00 Balance Due as of 04/06/2021 **0.00** 12/12/2018 Transaction Assessment 273.5012/12/2018 Efile Payment Receipt # 2018-81817-CCCLK W L A B Investment LLC (273.50)12/26/2018 Transaction Assessment 3.5012/26/2018 Efile Payment Receipt # 2018-84435-CCCLK W L A B Investment LLC (3.50)01/28/2019 Transaction Assessment 3.5001/28/2019 Efile Payment Receipt # 2019-05638-CCCLK W L A B Investment LLC (3.50)03/04/2019 Transaction Assessment 3.5003/04/2019 Efile Payment Receipt # 2019-13541-CCCLK W L A B Investment LLC (3.50)03/29/2019 Transaction Assessment 3.5003/29/2019 Efile Payment Receipt # 2019-19498-CCCLK W L A B Investment LLC (3.50)04/29/2019 Transaction Assessment 3.5004/29/2019 Efile Payment Receipt # 2019-26133-CCCLK W L A B Investment LLC (3.50)06/04/2019 Transaction Assessment 3.5006/04/2019 Efile Payment Receipt # 2019-33809-CCCLK W L A B Investment LLC (3.50)06/05/2019 Transaction Assessment 3.5006/05/2019 Efile Payment Receipt # 2019-34173-CCCLK W L A B Investment LLC (3.50)07/11/2019 Transaction Assessment 3.5007/11/2019 Efile Payment Receipt # 2019-42139-CCCLK W L A B Investment LLC (3.50)06/16/2020 Transaction Assessment 3.5006/16/2020 Efile Payment Receipt # 2020-31837-CCCLK W L A B Investment LLC (3.50)10/19/2020 Transaction Assessment 3.5010/19/2020 Efile Payment Receipt # 2020-58886-CCCLK W L A B Investment LLC (3.50)11/16/2020 Transaction Assessment 3.5011/16/2020 Efile Payment Receipt # 2020-64945-CCCLK W L A B Investment LLC (3.50)11/20/2020 Transaction Assessment 3.5011/20/2020 Efile Payment Receipt # 2020-65934-CCCLK W L A B Investment LLC (3.50)11/23/2020 Transaction Assessment 3.5011/23/2020 Efile Payment Receipt # 2020-66309-CCCLK W L A B Investment LLC (3.50)12/15/2020 Transaction Assessment 200.0012/15/2020 Efile Payment Receipt # 2020-70608-CCCLK W L A B Investment LLC (200.00)12/29/2020 Transaction Assessment 3.5012/29/2020 Efile Payment Receipt # 2020-73001-CCCLK W L A B Investment LLC (3.50)01/06/2021 Transaction Assessment 3.5001/06/2021 Efile Payment Receipt # 2021-00756-CCCLK W L A B Investment LLC (3.50)01/20/2021 Transaction Assessment 3.5001/20/2021 Efile Payment Receipt # 2021-03724-CCCLK W L A B Investment LLC (3.50)02/10/2021 Transaction Assessment 3.5002/10/2021 Efile Payment Receipt # 2021-08154-CCCLK W L A B Investment LLC (3.50)02/11/2021 Transaction Assessment 3.5002/11/2021 Efile Payment Receipt # 2021-08275-CCCLK W L A B Investment LLC (3.50)02/12/2021 Transaction Assessment 3.5002/12/2021 Efile Payment Receipt # 2021-08648-CCCLK W L A B Investment LLC (3.50)02/16/2021 Transaction Assessment 3.5002/16/2021 Efile Payment Receipt # 2021-09258-CCCLK W L A B Investment LLC (3.50)02/24/2021 Transaction Assessment 3.5002/24/2021 Efile Payment Receipt # 2021-11016-CCCLK W L A B Investment LLC (3.50)03/04/2021 Transaction Assessment 3.5003/04/2021 Efile Payment Receipt # 2021-12911-CCCLK W L A B Investment LLC (3.50)03/04/2021 Transaction Assessment 3.5003/04/2021 Efile Payment Receipt # 2021-12954-CCCLK W L A B Investment LLC (3.50)03/05/2021 Transaction Assessment 3.5003/05/2021 Efile Payment Receipt # 2021-12993-CCCLK W L A B Investment LLC (3.50)03/10/2021 Transaction Assessment 3.5003/10/2021 Efile Payment Receipt # 2021-14087-CCCLK W L A B Investment LLC (3.50)

EXHIBIT J

EXHIBIT J



Litigation
SERVICES

3960 Howard Hughes Pkwy
Suite 700
Las Vegas, NV 89169
Phone: 800.330.1112
litigationservices.com

Michael B. Lee, Esq.
Michael B. Lee, Law Office
1820 E. Sahara Ave.
Suite 110
Las Vegas, NV 89104

INVOICE

1 of 1

Invoice No.	Invoice Date	Job No.
1433649	1/25/2021	697915
Job Date	Case No.	
1/12/2021	A-18-785917-C	
Case Name		
WLAB Investment, LLC vs. TKNR, Inc.		
Payment Terms		
Net 30		

ORIGINAL AND 1 CERTIFIED COPY OF TRANSCRIPT OF:
PMK for WLAB Investment, LLC Frank Miao

2,967.67
TOTAL DUE >>> \$2,967.67

Location of Job : Litigation Services
3960 Howard Hughes Parkway, Suite 700
Las Vegas, NV 89169

AFTER 2/24/2021 PAY \$3,264.44

Please note, disputes or refunds will not be honored or issued after 30 days

Tax ID: 27-5114755

Please detach bottom portion and return with payment.

Michael B. Lee, Esq.
Michael B. Lee, Law Office
1820 E. Sahara Ave.
Suite 110
Las Vegas, NV 89104

Invoice No. : 1433649
Invoice Date : 1/25/2021
Total Due : \$2,967.67
AFTER 2/24/2021 PAY \$3,264.44

Remit To: **Litigation Services and Technologies of
Nevada, LLC
P.O. Box 98813
Las Vegas, NV 89193-8813**

Job No. : 697915
BU ID : LV-CR
Case No. : A-18-785917-C
Case Name : WLAB Investment, LLC vs. TKNR, Inc.

AA000720

AA000721



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Michael B. Lee, Law Office
1820 E. Sahara Ave.
Suite 110
Las Vegas, NV 89104

INVOICE

1 of 1

Invoice No.	Invoice Date	Job No.
1445682	3/9/2021	733675
Job Date	Case No.	
3/8/2021	A-18-785917-C	
Case Name		
WLAB Investment, LLC vs. TKNR, Inc.		
Payment Terms		
Net 30		

Statement for the Record:

Nonappearance of Amin Sani

465.00

TOTAL DUE >>>

\$465.00

AFTER 4/8/2021 PAY

\$511.50

Location of Job : Litigation Services
3960 Howard Hughes Parkway, Suite 700
Las Vegas, NV 89169

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Tax ID: 27-5114755

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Michael B. Lee, Law Office
1820 E. Sahara Ave.
Suite 110
Las Vegas, NV 89104

Invoice No. : 1445682
Invoice Date : 3/9/2021
Total Due : \$465.00
AFTER 4/8/2021 PAY \$511.50

Remit To: **Litigation Services and Technologies of
Nevada, LLC
P.O. Box 98813
Las Vegas, NV 89193-8813**

Job No. : 733675
BU ID : LV-CR
Case No. : A-18-785917-C
Case Name : WLAB Investment, LLC vs. TKNR, Inc.

AA000722

AA000723

INVOICE

1 of 1



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Las Vegas, NV 89169
Phone: 800.330.1112
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Michael B. Lee, Esq.
Michael B. Lee, Law Office
1820 E. Sahara Ave.
Suite 110
Las Vegas, NV 89104

Invoice No.	Invoice Date	Job No.
1442656	2/24/2021	728351
Job Date	Case No.	
2/22/2021		
Case Name		
Payment Terms		
Net 30		

^ Evidentiary Hearing

223.56

TOTAL DUE >>>

\$223.56

AFTER 3/26/2021 PAY

\$245.92

Description: Print x 4, assembled in binders with exhibits tabs

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Tax ID: 27-5114755

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Michael B. Lee, Esq.
Michael B. Lee, Law Office
1820 E. Sahara Ave.
Suite 110
Las Vegas, NV 89104

Invoice No. : 1442656
Invoice Date : 2/24/2021
Total Due : \$223.56
AFTER 3/26/2021 PAY \$245.92

Remit To: **Litigation Services and Technologies of
Nevada, LLC
P.O. Box 98813
Las Vegas, NV 89193-8813**

Job No. : 728351
BU ID : LV-TRIAL
Case No. :
Case Name :

AA000724

AA000725

INVOICE

1 of 1

**Litigation**
SERVICES3960 Howard Hughes Pkwy
Suite 700
Las Vegas, NV 89169
Phone: 800.330.1112
litigationservices.comMichael Matthis, Esq
Michael B. Lee, Law Office
1820 E. Sahara Ave.
Suite 110
Las Vegas, NV 89104

Invoice No.	Invoice Date	Job No.
1444355	3/3/2021	713607
Job Date	Case No.	
2/22/2021		
Case Name		
Animal Care Clinic, Inc. vs. Gama, Michaela		
Payment Terms		
Net 30		

ORIGINAL AND 1 CERTIFIED COPY OF TRANSCRIPT OF:
Michaela Gama

884.10

TOTAL DUE >>>**\$884.10**Location of Job : Litigation Services
3960 Howard Hughes Parkway, Suite 700
Las Vegas, NV 89169

AFTER 4/2/2021 PAY

\$972.51

Please note, disputes or refunds will not be honored or issued after 30 days

Tax ID: 27-5114755*Please detach bottom portion and return with payment.*Michael Matthis, Esq
Michael B. Lee, Law Office
1820 E. Sahara Ave.
Suite 110
Las Vegas, NV 89104Invoice No. : 1444355
Invoice Date : 3/3/2021
Total Due : \$884.10
AFTER 4/2/2021 PAY \$972.51Remit To: **Litigation Services and Technologies of
Nevada, LLC
P.O. Box 98813
Las Vegas, NV 89193-8813**Job No. : 713607
BU ID : LV-CR
Case No. :
Case Name : Animal Care Clinic, Inc. vs. Gama, Michaela**AA000726**

AA000727



Litigation
SERVICES

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Suite 700
Las Vegas, NV 89169
Phone: 800.330.1112
litigationservices.com

Michael B. Lee, Esq.
Michael B. Lee, Law Office
1820 E. Sahara Ave.
Suite 110
Las Vegas, NV 89104

INVOICE

1 of 1

Invoice No.	Invoice Date	Job No.
1444451	3/3/2021	713619
Job Date	Case No.	
2/24/2021		
Case Name		
Animal Care Clinic, Inc. vs. Gama, Michaela		
Payment Terms		
Net 30		

ORIGINAL AND 1 CERTIFIED COPY OF TRANSCRIPT OF:

Nancy Smith

Location of Job : Litigation Services
3960 Howard Hughes Parkway, Suite 700
Las Vegas, NV 89169

780.30
TOTAL DUE >>> \$780.30

AFTER 4/2/2021 PAY \$858.33

Please note, disputes or refunds will not be honored or issued after 30 days

Tax ID: 27-5114755

Please detach bottom portion and return with payment.

Michael B. Lee, Esq.
Michael B. Lee, Law Office
1820 E. Sahara Ave.
Suite 110
Las Vegas, NV 89104

Invoice No. : 1444451
Invoice Date : 3/3/2021
Total Due : \$780.30
AFTER 4/2/2021 PAY \$858.33

Remit To: **Litigation Services and Technologies of
Nevada, LLC
P.O. Box 98813
Las Vegas, NV 89193-8813**

Job No. : 713619
BU ID : LV-CR
Case No. :
Case Name : Animal Care Clinic, Inc. vs. Gama, Michaela

AA000728

AA000729



Litigation
SERVICES

3960 Howard Hughes Pkwy
Suite 700
Las Vegas, NV 89169
Phone: 800.330.1112
litigationservices.com

Michael B. Lee, Esq.
Michael B. Lee, Law Office
1820 E. Sahara Ave.
Suite 110
Las Vegas, NV 89104

INVOICE

1 of 1

Invoice No.	Invoice Date	Job No.
1444460	3/3/2021	713613
Job Date	Case No.	
2/23/2021		
Case Name		
Animal Care Clinic, Inc. vs. Gama, Michaela		
Payment Terms		
Net 30		

ORIGINAL AND 1 CERTIFIED COPY OF TRANSCRIPT OF:

Michelle Montoya

658.05

TOTAL DUE >>>

\$658.05

Location of Job : Litigation Services
3960 Howard Hughes Parkway, Suite 700
Las Vegas, NV 89169

AFTER 4/2/2021 PAY

\$723.86

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Tax ID: 27-5114755

Please detach bottom portion and return with payment.

Michael B. Lee, Esq.
Michael B. Lee, Law Office
1820 E. Sahara Ave.
Suite 110
Las Vegas, NV 89104

Invoice No. : 1444460
Invoice Date : 3/3/2021
Total Due : \$658.05
AFTER 4/2/2021 PAY \$723.86

Remit To: **Litigation Services and Technologies of
Nevada, LLC
P.O. Box 98813
Las Vegas, NV 89193-8813**

Job No. : 713613
BU ID : LV-CR
Case No. :
Case Name : Animal Care Clinic, Inc. vs. Gama, Michaela

AA000730

AA000731

Exhibit K

Exhibit K

INVESTPRO REALTY
3553 S VALLEY VIEW BLVD
LAS VEGAS, NV 89103

WELLS FARGO BANK, N.A.
CALIFORNIA
WELLSFARGO.COM
16-24/1220
16-24/1220

21582

10/23/2020

PAY TO THE
ORDER OF

Neil D Opfer

Five thousand and 00/100*****

\$ **5,000.00

Neil D Opfer

DOLLARS

VOID AFTER 90 DAYS

MEMO

expert materials for Dr. Opfer.-consulting fee retain

INVESTPRO REALTY

10/23/2020

Neil D Opfer

21582

Date
10/23/2020

Type
Bill

Reference

Original Amount
5,000.00

Balance Due
5,000.00

Payment
5,000.00
5,000.00

Check Amount

Office Checking - 683 expert materials for Dr. Opfer.-consulting fee retainer

5,000.00

LMP100 M/P CHECK

AA000733

Heather S. Smith

CLERK OF THE COURT

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

IN THE EIGHTH JUDICIAL DISTRICT COURT

CLARK COUNTY, NEVADA

W L A B INVESTMENT, LLC,

Plaintiff,

vs.

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

Defendants.

AND RELATED CLAIMS.

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

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

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

This matter being set for hearing before the Honorable Court on March 11, 2021 at 9:30
a.m., on Defendants' TKNR INC., CHI ON WONG aka CHI KUEN WONG, KENNY ZHONG
LIN, aka KEN ZHONG LIN aka KENNETH ZHONG LIN aka WHONG K. LIN aka CHONG
KENNY LIN aka ZHONG LIN, LIWE HELEN CHEN aka HELEN CHEN, YAN QIU
ZHANG, INVESTPRO LLC dba INVESTPRO REALTY, MAN CHAU CHENG, JOYCE A.
NICKRANDT, INVESTPRO INVESTMENTS LLC, and INVESTPRO MANAGER LLC,

(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.

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

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

Please note that seller agree the rest of terms and request to add the below term on the contract:

"Buyer agree to pay the difference in cash if appraisal come in lower than purchase price, not to exceed purchase price of \$200k"
I just send you the docs, please review and sign if you are agree.
Thank you!

(Per buyer's request will waive licensed home inspector to do the home inspection)

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

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

11. As noted, Ms. Zhu waived any inspections related to the purchase of the Property in the 2nd RPA. Although Ms. Zhu had actual knowledge of the Seller's Disclosures, and the Parties agreed to extend the COE to January 5, 2018, Ms. Zhu did not conduct professional inspections. Instead, she put down an additional \$60,000 as a non-refundable deposit to the 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 2nd RPA, Ms. Zhu later changed the purchaser to Plaintiff.

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

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

13. Plaintiff understands the importance of reading contracts.

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

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

Requirement to Inspect was Known

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

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

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

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

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

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 19. Prior to the purchase, Mr. Miao was always aware that the Seller “strongly
20 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 20. Plaintiff was also aware of the language in the RPA under Paragraph 7(D) that
21 limited potential damages that could have been discovered by an inspection:

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18 . . . Q . . Okay . So going back to paragraph 7D --

19 . . . A . . Yeah.

20 . . . Q . . -- right, after the language that's in
21 italics, would you admit that because it's in the
22 italics, it's conspicuous, you can see this
23 language?

24 . . . A . . Yeah . Yeah.

25 . . . Q . . Okay . Then it goes on to say, "If any
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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.

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

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

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

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

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

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

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

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
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1 building permits, which was also work that was done
2 by owner's handyman, did you ever do any follow-up
3 inquiries to the seller about this issue?
4 . . . A. . No, I didn't follow up.

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

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

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

Id. at 206:10-16.

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

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."

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.

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

2 ·5· · · Q· ·So you relied upon your own determination
3 ·6 related to the potential mold exposure of the
4 ·7 property; correct?
5 ·8· · · A· ·Yes.
6 ·9· · · Q· ·Okay· And you elected to proceed with
7 10 purchasing it without a professional mold
8 11 inspection; correct?
9 12· · · A· ·Yes.

10 *Id.* at 216:5-12.

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

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

15 ·2· · · Q· ·If we go to page 40 --
16 ·3· · · A· ·Mm-hmm.
17 ·4· · · Q· ·--- there's a bunch of Nevada statutes
18 ·5 here.
19 ·6· · · A· ·Mm-hmm.
20 ·7· · · Q· ·If you look at NRS 113.140 --
21 ·8· · · A· ·Mm-hmm.
22 ·9· · · Q· ·--- do you see that at the top of the page?
23 10 "Disclosure of unknown defects not required· Form
24 11 does not constitute warranty duty of buyer and
25 12 prospective buyer to exercise reasonable care."
26 13· · · · · Do you see that?
27 14· · · A· ·Yes.
28 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 18· · · A· ·Yeah.
19 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 24· · · · · Did I read that correctly?
25 25· · · A· ·Yes.

26 *Id.* at 209:2-25.

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

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

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

1 at the time of the original purchase. As to the ability to inspect, Mr. Miao admitted that he had
2 access to the entire building. *Id.* at 250:22-25. He had access to the attic and looked at it. *Id.* at
3 251:4-14. Mr. Miao admitted that Plaintiff's expert examined the same areas that he did:

4 ·6· · · Q· ·Okay· So you walked through the property
5 ·7 with him at the time he did his inspection; correct?
6 ·8· · · A· ·Right.
7 ·9· · · Q· ·Okay· During that time, did he inspect
8 10 any areas that -- that you did not have access to in
9 11 2017?
10 12· · · A· ·Yes· He didn't go to anything I didn't
11 13 inspect during 2017 too.
12 14· · · Q· ·So he inspected the same areas you
13 15 inspected?
14 16· · · A· ·Yes, yes.

15 *Id.* at 291:6-16.

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

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

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

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

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

28 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."
26 Page 318
27 * * *
28 ·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?

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?
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26 . . . A. . . Yes.
27 . . . Q. . . Resurfacing shower walls?
28 . . . A. . . Yes.
29 . . . Q. . . Repair or replace shower heads?
30 . . . A. . . Yes.
31 . . . Q. . . Repair or replace rain gutters and down
32 spouts?
33 . . . A. . . Yes.
34 . . . Q. . . Regrouting tile?
35 . . . A. . . Yes.
36 . . . Q. . . And a hose bib, whatever that is.
37 . . . A. . . Water freezer. . . It's, like, for the
38 filtration of the water.
39 . . . Q. . . Okay. . . And then for the mechanical, no
40 permits required for portable heating appliances;
41 correct.
42 . . . A. . . Yes.
43 . . . Q. . . For portable ventilation appliances?
44 . . . A. . . Yes.
45 . . . Q. . . Or portable cooling units; correct?
46 . . . A. . . Yes.
47 . . . Q. . . And for portable evaporative coolers
48 installed in windows; correct?
49 . . . A. . . Yes.

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

Plaintiff Does not Disclose the Alleged Issues to Potential Tenants

48. Since the date it purchased the Property, Plaintiff has always been trying to lease
it. *Id.* at 330:19-25-331:1-2. According to Mr. Miao, the landlord must provide safe housing for
the tenant:

19 Then also in according to the law, and
20 they said it very clearly, because this is
21 residential income property, right, rental income
22 property, multi-family, we need -- landlord need
23 provide housing and well-being and -- for the
24 tenant. . . The tenant is not going to do all this
25 inspection. . . They can't. . . The burden is on the
Page 120
26 . . 1 landlord to make sure all these building is safe and
27 . . 2 in good condition.

1 *Id.* at 120:16-25-121:1-2, 140:10-14. However, they have not done any of the repairs listed by
2 Plaintiff's expert. *Id.* at 331:3-12. This illustrates the lack of merit of Plaintiff that there are
3 underlying conditions with the Property.

4 49. Moreover, Plaintiff does not provide any notice to the tenants about its expert's
5 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.

14 * * *

15 22 ··· Q. · Okay. · So basically, you just tell them,
16 23 There's this. · You can inspect the unit if you want;
17 24 is that it?

18 25 ··· A. · Yeah. · And also we need to tell is a lot
19 Page 337

20 1 of things report that we don't need to go to the
21 2 inside the building. · It's wall cracking. · It's
22 3 outside. · You can see.

23 4 ··· Q. · Okay. · So it's open and obvious for them?

24 5 ··· A. · Yeah. · You can see always outside.

25 *Id.* at 337:6-13, 337:22-25-338:1-5.

26 50. This illustrates the lack of merit of Plaintiff's claims, proven that it has done
27 nothing to correct the allegedly deficient conditions that are clearly not so dangerous as it does
28 not tell prospective tenants about them.

Squatters or Tenants Could Have Damaged the Property

51. Mr. Miao admitted that multiple third parties could have potentially damaged the
Property. The Property has a historic problem with squatters during the time that Plaintiff owned
it:

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

14 ··· A. · Yes. · As a matter of fact, today I just
15 saw the one text message that said one -- some
16 people go to my apartment.

Id. at 110:12-16. He also admitted that tenants could have damaged the Property while they

1 were occupying it:

2 ·4· · · Q· ·Okay· So the tenant in this context would
3 ·5 have damaged the unit at the time that you owned it;
4 ·6 is that fair?

5 ·7· · · A· ·Maybe· Yes.

6 ·8· · · Q· ·Okay· So some of the -- so the damage
7 ·9 that was to the water heater system, could the
8 10 tenant have damaged that as well?

9 11· · · A· ·Yes.

10 12· · · Q· ·And then he could have damaged the cooler
11 13 pump and the valve as well; is that correct?

12 14· · · A· ·Yes.

13 15· · · Q· ·Okay· Then on 122, these are all issues
14 16 that the tenant could have damaged; is that correct?

15 17· · · A· ·Yes.

16 18· · · Q· ·And then the same through for 145; is that
17 19 right?

18 20· · · A· ·Yes.

19 *Id.* at 306:4-20, 330:5-7. This could also account for the cracking on the walls. *Id.* at 310:8-12.

20 Tenants could have also damaged the Property if they hit it with their cars. *Id.* at 332:14-16.

21 *No Evidence That Defendants Knew of Alleged Conditions*

22 52. Plaintiff's case is based on assertions that Defendants knew about the alleged
23 conditions in the Property; however, Mr. Miao admitted that there is no evidence that shows
24 Defendants knew about them. *Id.* at 245:1-13 (speculating that InvestPro made changes).

25 53. The entire case is based on Mr. Miao's personal belief and speculation. *Id.* at
26 253:17-19.

27 54. Mr. Miao admitted that he has no evidence Defendants knew about the alleged
28 moisture conditions. *Id.* at 293:24-25-294:1-3. Additionally, he also admitted that there is no
evidence that Defendants knew about the alleged issues with the plumbing system. *Id.* at
301:21-24. He also admitted that he did not know if Defendants knew about the alleged issues
with the duct work when they owned the Property. *Id.* at 314:5-19. He also recognized the
deficiency in Plaintiff's expert's report that failed to differentiate between conditions prior to
when TKNR owned the Property, while it owned it, and those afterwards. *Id.* at 321:17-21 –
322:3-6.

55. Mr. Miao recognized that a 63-year-old property could have issues that were not
caused by Defendants. *Id.* at 324:6-15. This would have also included any issues with the dryer

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

56. Plaintiff did not identify any discovery illustrating a genuine issue of material fact that Defendants knew of the alleged issues with the Property that they had not already disclosed on Seller's Disclosures.

57. Notably, during Mr. Miao's due diligence period, he spoke with the tenants of the Property. *Id.* at 163:12-25-164:1-6. This included a conversation with the long-term tenant of Unit A, who still resides in the Property to this day. *Id.* At that time, the tenant reported being very happy with the Property and had no complaints. *Id.* In fact, the tenant reported still being very happy with the Property. *Id.* at 170:7-9. This illustrates that there is no basis that Defendants should have been aware of any of the issues when Mr. Miao, a self-professed expert, did not even know about them following his inspection.

No Basis for Claims for RICO and/or Related to Flipping Fund

58. The Flipping Fund had nothing to do with Plaintiff's decision to purchase the Property. *Id.* at 223:15-25.

20 · · · Q. · · Yeah. · So there's no way that you relied
21 upon any flipping fund since it would have been
22 closed at this time; right?
23 · · · A. · · Yeah.

Id. at 274:20-23. He also admitted that he never received any pro forma, private placement information, calculations of profit and loss, capital contribution requirements, member share or units, or any such information about the Flipping Fund. *Id.* at 277:7-16.

Cost of Repairs

59. Mr. Miao contacted contractors to bid the potential cost of repair for the Property and determined that it would have been \$102,873.00. *Id.* at 307:6-22. However, Plaintiff's expert opined that the cost of repair would have been \$600,000, although he did not provide an itemized cost of repair. *Id.* at 334:17-21.

Allegations in the Second Amended Complaint

60. On November 23, 2020, Plaintiff filed its Second Amended Complaint ("SAC").

Based on the admissions of Mr. Miao and the waivers related to the RPA and the 2nd RPA, these allegations illustrate the overall frivolous nature of this action and why Rule 11 sanctions are appropriate:

25. TKNR failed to disclose one or more known condition(s) that materially affect(s) the value or use of the Subject Property in an adverse manner, as required by NRS Chapter 113, in a particular NRS 113.130.

* * *

27. Factual statements from the August 7, 2017 Seller Real Property Disclosure Form (SRPDF) are set forth in Paragraph 31 and the subsections thereof state whe (sic) the disclosures were either inadequate or false. The SRPDF states that it was prepared, presented and initialed by Kenny Lin.

* * *

29. Since the Subject Property is a residential rental apartment, to protect tenants and consumers, the applicable local building code requires all renovation, demolition, and construction work must be done by licensed contractors with permits and inspections to ensure compliance with the Uniform Building Code [UBC].

* * *

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

a. SRPDF stated that Electrical System had no problems or defects. The fact is that many new electric lines were added and many old electric lines were removed by Investpro Manager LLC . The swamp coolers that were removed were supplied by 110 volt power supply lines. Investpro Manager LLC first added one 220v power supply line for one new 5 ton heat pump package unit on one roof top area for the whole building for Unit A. Unit B and Unit C. Investro (sic) Manager, LLC then removed the one year old 5 ton heat pump packaged unit from the roof top with power supply lines and added two new 220v power supply lines for two new 2 ton heart pump package units, one each for Unit B and Unit C.

Inestpro (sic) Manager, LLC then added one new 110 volt power supply line for two window cooling units for Unit A. The electrical system load for Unit A was increased due to the installation of two new cooling units and required 100 amp service, but the electrical service was not upgraded to 100 amp service from the existing 50 amp service. Failure to upgrade the electrical service caused the fuses to be blown out multiple times during the cooling seasons of 2018. The tenants in Unit A could not use air conditioning units in cooling seasons of 2018, causing Unit A to be uninhabitable until the Unit A electrical supply panel was upgraded to 100 amp service.

All the electrical supply line addition and removal work

1 were performed without code required electrical load
2 calculation, permits and inspections. To save money,
3 minimize flipping cost, minimize flipping time, maximize
4 flipping fund profits, Investpro Manager LLC used
unlicensed and unskilled workers to do the electrical work
and used low quality materials used inadequate electrical
supply lines.

5 Further, to save money, minimize flipping cost, minimize
6 flipping time, maximize flipping fund profits, Investpro
7 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.

8 Further, to save money, minimize flipping cost, minimize
9 flipping time, maximize flipping fund profits, Investpro
10 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.

11 b. SRPDF stated that Plumbing System had no problems
12 or defects

13 The fact is that that within two years prior to the sale to
14 Plaintiff, Investpro Manager LLC removed and plugged
15 swamp cooler water supply lines without UBC required
16 permits and inspections. To save money, minimize flipping
17 cost, minimize flipping time, and maximize flipping fund
18 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.

19 Further, to save money, minimize flipping cost, minimize
20 flipping time, and maximize flipping fund profits, Investpro
21 Manager LLC used unlicensed and unskilled workers to
22 remove and plug natural gas lines for the natural gas wall
23 furnaces without UBC required permits and inspections.

24 Further, to save money, minimize flipping cost, minimize
25 flipping time, and maximize flipping fund profits, Investpro
26 Manager LLC used unlicensed and unskilled workers with
27 little knowledge of natural gas pipe connection
28 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

1 leak and are causing moisture conditions behind tile walls
2 and drywalls.

3 c. SRPDF stated that Sewer System and line had no
4 problems or defects.

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

21 d. SRPDF stated that Heating System had problems or
22 defects.

23 No full explanation was provided, as required. Investro
24 (sic) Manager, LLC disabled natural gas heating system
25 without UBC required permits and inspections. To save
26 money, minimize flipping cost, minimize flipping time, and
27 maximize flipping fund profits, Investpro Manager LLC
28 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 from the washer/dryer combination unit exhaust vent from Unit A without UBC required permits and inspections and this damaged the building structure.

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

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

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

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

The roof of the Subject Property was damaged by changing

1 roof top HVAC units and ducting systems multiple times
2 from October, 2015 to June, 2017. Investpro Manager LLC
3 removed the existing swamp coolers from roof top and
4 covered the swamp coolers ducting holes. Investpro
5 Manager LLC added a five ton heat pump package unit
6 with a new ducting system on one roof top area in March,
7 2016. Investpro the removed the one year old five ton heat
8 pump package unit with part of the ducting system from the
9 one roof top area in June, 2017. Then Investpro Manager
10 LLC added two two ton heat pump package units on the
11 two roof top areas in June, 2017. The work damaged the
12 roof of the Subject Property to such an extent that when it
13 rains the roof leaks. All of this renovation, demolition, and
14 construction work was done without UBC required weight
15 load and wind load calculations, permits and inspections
16 and this damaged the building roof structure.

17 k. SRPDF stated that no there were not any fungus or
18 mold problems.

19 To save money, minimize flipping cost, minimize flipping
20 time, and maximize flipping fund profits, Investpro
21 Manager LLC vented the bathroom high moisture fans and
22 the washer/dryer combination unit exhaust vents into the
23 ceiling and attic without venting outside of the roof. All of
24 this renovation, demolition, and construction work was
25 done without UBC required permits and inspections and
26 this damaged the building structure. After the purchase of
27 the Subject Property, Plaintiff discovered black color
28 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.

61. As to 31(a), Mr. Miao admitted that the Seller's Disclosures disclosed issues with the heating and cooling systems, the use of a handyman, and the lack of permits. Additionally, he specified that he noted issues with the electrical system and items not up to code at the time that he did his inspection and/or that any issues with the electrical system were "open and obvious" that a reasonable, professional inspection could have discovered in 2017. Despite these issues, Plaintiff chose not to have a professional inspection. Incredibly, Mr. Miao admitted that he was the person who asked for TKNR to install the GFCI outlets, so he was clearly aware of this issue as well. Moreover, Mr. Miao specified that this was a condition that Plaintiff could have inspected at or before the time it had originally purchased the Property. Notably, Mr. Miao admitted that no evidence showed that Defendants were aware of any of these issues.

62. As to 31(b), Mr. Miao admitted that the Seller's Disclosures disclosed issues with the heating and cooling systems, the use of a handyman, the lack of permits, and issues with the sprinklers. Additionally, he specified that he noted issues with the plumbing system were "open and obvious" that a reasonable, professional inspection could have discovered in 2017. Despite these issues, Plaintiff chose not to have a professional inspection. Moreover, Mr. Miao specified that this was a condition that Plaintiff could have inspected at or before the time it had originally purchased the Property. Notably, Mr. Miao admitted that no evidence showed that Defendants were aware of any of these issues.

63. As to 31(c), Mr. Miao admitted that the Seller's Disclosures disclosed the use of a handyman, the lack of permits, and issues with the sprinklers. Additionally, he specified that he noted issues with the sewer system were "open and obvious" that a reasonable, professional inspection could have discovered in 2017. Despite these issues, Plaintiff chose not to have a professional inspection. Moreover, Mr. Miao specified that this was a condition that Plaintiff

1 could have inspected at or before the time it had originally purchased the Property. Notably, Mr.
2 Miao admitted that no evidence showed that Defendants were aware of any of these issues.

3 64. As to 31(d), Mr. Miao admitted that the Seller's Disclosures disclosed issues with
4 the heating and cooling systems, the use of a handyman, and the lack of permits. Additionally,
5 he specified that he did his inspection and/or that any issues with the heating system were "open
6 and obvious" that a reasonable, professional inspection could have discovered in 2017. Despite
7 these issues, Plaintiff chose not to have a professional inspection. Moreover, Mr. Miao specified
8 that this was a condition that Plaintiff could have inspected at or before the time it had originally
9 purchased the Property. Notably, Mr. Miao admitted that no evidence showed that Defendants
10 were aware of any of these issues.

11 65. As to 31(e), Mr. Miao admitted that the Seller's Disclosures disclosed issues with
12 the heating and cooling systems, the use of a handyman, and the lack of permits. Additionally,
13 he specified that he noted issues with the heating and cooling system and items not up to code at
14 the time that he did his inspection and/or that any issues with the heating and cooling system
15 were "open and obvious" that a reasonable, professional inspection could have discovered in
16 2017. Despite these issues, Plaintiff chose not to have a professional inspection. Moreover, Mr.
17 Miao specified that this was a condition that Plaintiff could have inspected at or before the time
18 it had originally purchased the Property. Notably, Mr. Miao admitted that no evidence showed
19 that Defendants were aware of any of these issues.

20 66. As to 31(f), this allegation illustrates that Plaintiff had knowledge before
21 purchasing the Property, and the overall emphasis on the failure to obtain a professional
22 inspection of the Property prior to purchasing it.

23 67. As to 31(g), (k), Mr. Miao admitted Plaintiff executed the mold and moisture
24 waiver, and understood its affirmative duty to have an inspection done prior to the purchase of
25 the Property. He also admitted that the Seller's Disclosures disclosed the use of a
26 handyman, installation of the cabinetry, bathrooms, and the lack of permits. Additionally, he
27 specified that he personally inspected the attic and the dryer vent before Plaintiff purchased the
28 Property. Despite these issues, Plaintiff chose not to have a professional inspection. Moreover,

1 Mr. Miao specified that this was a condition that Plaintiff could have inspected at or before the
2 time it had originally purchased the Property. Notably, Mr. Miao admitted that no evidence
3 showed that Defendants were aware of any of these issues.

4 68. As to 31(h), Mr. Miao admitted that the Seller's Disclosures disclosed issues with
5 the heating and cooling systems, the use of a handyman, and the lack of permits. Mr. Miao
6 admitted that there was visible cracking on the foundation, walls, and the tiles that were open and
7 obvious at the time that Plaintiff purchased the Property in 2017. Moreover, Mr. Miao specified
8 that this was a condition that Plaintiff could have inspected at or before the time it had originally
9 purchased the Property. Notably, Mr. Miao admitted that no evidence showed that Defendants
10 were aware of any of these issues.

11 69. As to 31(i), this allegation illustrates the prior knowledge that Plaintiff had before
12 purchasing the Property, and the overall emphasis on the failure to obtain a professional
13 inspection of the Property prior to purchasing it. Mr. Miao admitted that he should have
14 followed up related to the permit issue prior to Plaintiff purchasing the Property.

15 70. As to 31(j), Mr. Miao admitted that the Seller's Disclosures disclosed issues with
16 the heating and cooling systems, the use of a handyman, and the lack of permits. Additionally,
17 he specified that he noted issues were "open and obvious" that a reasonable, professional
18 inspection could have discovered in 2017. Mr. Miao agreed that there was no noticeable sagging
19 on the roof. Despite these issues, Plaintiff chose not to have a professional inspection.
20 Moreover, Mr. Miao specified that this was a condition that Plaintiff could have inspected at or
21 before the time it had originally purchased the Property. Notably, Mr. Miao admitted that no
22 evidence showed that Defendants were aware of any of these issues.

23 71. As to 31(l), Mr. Miao admitted that the Seller's Disclosures disclosed issues with
24 the heating and cooling systems, the use of a handyman, and the lack of permits. Mr. Miao
25 admitted that there was visible cracking on the foundation, walls, and the tiles that were open and
26 obvious at the time that Plaintiff purchased the Property in 2017. Mr. Miao noted that this
27 condition could have been inspected at or prior to the Property's purchase. Mr. Miao
28 acknowledged there was no evidence that Defendants were aware of these issues.

Plaintiffs Did Not Reply on Broker Agents

72. As to the Broker Defendants, Ms. Zhu agreed that she was not relying upon any representations made by Brokers or Broker's agent. Ms. Zhu agreed to purchase the Property AS-IS, WHERE-IS, without any representations or warranties. Ms. Zhu waived all claims against Brokers or their agents for (a) defects in the Property . . . (h) factors related to Ms. Zhu's failure to conduct walk-throughs or inspections. Ms. Zhu assumed full responsibility and agreed to conduct such tests, walk-throughs, inspections and research, as she deemed necessary. In any event, Broker's liability was limited, under any and all circumstances, to the amount of that Broker's commission/fee received in the transaction.

Mr. Miao Agreed with Defendants' Expert

73. On November 17, 2020, Defendants' expert, Neil D. Opfer, an Associate Professor of Construction Management at UNLV and overqualified expert, conducted an inspection of the Property. At that time, as noted earlier, Mr. Miao walked the Property with Professor Opfer. Supplement at 320:31-25.

74. Mr. Miao agreed with Professor Opfer that the alleged conditions identified by Plaintiff's alleged expert were open and obvious:

[n]ote that the Plaintiff could have hired an inspector or contractor to evaluate this real-estate purchase beforehand but did not. Items complained about in the Sani Report were open and obvious at the roof area, attic area, and on the exterior and interior areas of the Property.

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

75. Mr. Miao agreed with Professor Opfer that Plaintiff's expert did not conduct destructive testing, so the same alleged conditions that the expert noted would have been made by an inspector at the time of the purchase. *Id.* at 291:1-5.

76. Mr. Miao agreed with Professor Opfer that Plaintiff's expert did "not recognize prior conditions in existence before any work took place by the Defendants." *Id.* at 321:17-21 – 322:3-6.

Conclusions of Law

1. Summary judgment is appropriate when the pleadings, depositions, answers to

interrogatories, admissions, and affidavits, if any, that are properly before the Court demonstrate that no genuine issue of material fact exist, and the moving party is entitled to judgment as a matter of law. *Pegasus v. Reno Newspapers, Inc.*, 118 Nev. 706, 713, 57 P.3d 82, 87 (2002). Substantive law controls whether factual disputes are material and will preclude summary judgment; other factual disputes are irrelevant. *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 106 S. Ct. 2505, 91 L.Ed.2d 202 (1986). A genuine issue of material fact is one where the evidence is such that a reasonable jury could return a verdict for the non-moving party. *Valley Bank v. Marble*, 105 Nev. 366, 367, 775 P.2d 1278, 1282 (1989).

2. The Nevada Supreme Court has held that the non-moving party may not defeat a motion for summary judgment by relying “on gossamer threads of whimsy, speculation and conjecture.” *Wood v. Safeway*, 121 Nev. 724, 732, 121 P.3d 1026, 1031 (2005). The Nevada Supreme Court has also made it abundantly clear when a motion for summary judgment is made and supported as required by Nevada Rule of Civil Procedure 56, the non-moving party must not rest upon general allegations and conclusions, but must by affidavit or otherwise set forth specific facts demonstrating the existence of a genuine factual issue. *Id.*

3. Under Nevada Rule of Civil Procedure 56(a), a party may move for summary judgment, or partial summary judgment. “The court shall grant summary judgment if the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law.” The court may rely upon the admissible evidence cited in the moving papers and may also consider other materials in the record as well. *Id.* at 56(c). “If the court does not grant all the relief requested by the motion, it may enter an order stating any material fact — including an item of damages or other relief — that is not genuinely in dispute and treating the fact as established in the case.” *Id.* at 56(g).

4. The pleadings and proof offered in a Motion for Summary Judgment are construed in the light most favorable to the non-moving party. *Hoopes v. Hammargren*, 102 Nev. 425, 429, 725 P.2d 238, 241 (1986). However, the non-moving party still “bears the burden to ‘do more than simply show that there is some metaphysical doubt’ as to the operative facts in order to avoid summary judgment being entered.” *Wood*, 121 Nev. at 732, 121 P.3d at

1 1031. “To successfully defend against a summary judgment motion, ‘the nonmoving party must
2 transcend the pleadings and, by affidavit or other admissible evidence, introduce specific facts
3 that show a genuine issue of material fact.’” *Torrealba v. Kesmetis*, 178 P.3d 716, 720 (Nev.
4 2008) (quoting *Cuzze v. Univ. & Cmty. Coll. Sys. of Nev.*, 172 P.3d 131, 134 (Nev. 2007)).

5 5. The non-moving party bears the burden to set forth specific facts demonstrating
6 the existence of a “genuine” issue for trial or have summary judgment entered against him.
7 *Collins v. Union Federal Savings & Loan*, 99 Nev. 284, 294, 662 P.2d 610, 618-619 (1983).
8 When there is no genuine issue of material fact and the non-moving party provides no admissible
9 evidence to the contrary, summary judgment is “mandated.” *Celotex Corp. v. Catrett*, 477 US
10 317, 322 (1986). When a motion for summary judgment is made and supported, an adversary
11 party who does not set forth specific facts showing a genuine issue to be resolved at trial may
12 have a summary judgment entered against him. *Collins v. Union Federal Sav. & Loan Ass’n*, 99
13 Nev. 284, 294, 662 P.2d 610, 616 (1983) (citing *Van Cleave v. Kietz-Mill Minit Mart*, 97 Nev.
14 414, 633 P.2d 1220 (1981); *Bird v. Casa Royale West*, 97 Nev. 67, 624 P.2d 17 (1981)).

15 6. “Under NRS Chapter 113, residential property sellers are required to disclose any
16 defects to buyers within a specified time before the property is conveyed.” *Nelson v. Heer*, 163
17 P.3d 420, 425 (Nev. 2007) (citing NRS 113.140(1)). “NRS 113.140(1), however, provides that a
18 seller is not required to ‘disclose a defect in residential property of which [she] is not aware.’ A
19 ‘defect’ is defined as “a condition that materially affects the value or use of residential property
20 in an adverse manner.” *Id.* (citing NRS 113.100(1)). The Nevada Supreme Court clarified that:

21 [a]scribing to the term “aware” its plain meaning, we determine
22 that the seller of residential real property does not have a duty to
23 disclose a defect or condition that “materially affects the value or
24 use of residential property in an adverse manner,” if the seller does
25 not realize, perceive, or have knowledge of that defect or
26 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.

27 *Id.* at 425 (citations omitted). Thus, in the context where the plaintiff cannot demonstrate an
28 omitted disclosure that caused damage, the seller is entitled to summary judgment as a matter of

1 law. *Id.* at 426.

2 7. Generally, “[n]ondisclosure by the seller of adverse information concerning real
3 property . . . will not provide the basis for an action by the buyer to rescind or for damages when
4 property is sold ‘as is.’ ” *Mackintosh v. Jack Matthews & Co.*, 109 Nev. 628, 633, 855 P.2d 549,
5 552 (1993). Moreover, “[l]iability for nondisclosure is generally not imposed where the buyer
6 either knew of or could have discovered the defects prior to the purchase.” *Land Baron Invs.,*
7 *Inc. v. Bonnie Springs Family LP*, 131 Nev. 686, 696, 356 P.3d 511, 518 (2015). The general
8 rule foreclosing liability for nondisclosure when property is purchased as-is does not apply when
9 the seller knows of facts materially affecting the value or desirability of the property which are
10 known or accessible only to [the seller] and also knows that such facts are not known to, or
11 within the reach of the diligent attention and observation of the buyer. *Mackintosh*, 109 Nev. at
12 633, 855 P.2d at 552 (alteration in original) (internal quotation marks omitted).

13 8. A buyer waives its common law claims of negligent misrepresentation, fraudulent
14 or intentional misrepresentation, and/or unjust enrichment when it expressly agreed that it would
15 carry the duty to inspect the property and ensure that all aspects of it were suitable prior to close
16 of escrow, and the information was reasonably accessible to the buyer. *Frederic and Barbara*
17 *Rosenberg Living Tr. v. MacDonald Highlands Realty, LLC*, 427 P.3d 104, 111 (Nev. 2018).
18 Accordingly, the Nevada Supreme Court concluded that an agreement to purchase property as-is
19 foreclosed the buyer’s common law claims, justifying the granting of summary judgment on
20 common law claims. *Id.* (citation omitted).

21 The terms and conditions of the purchase agreement do not create
22 a duty to disclose. Rather, these disclosures are required by NRS
23 Chapter 113, which sets forth specific statutory duties imposed by
24 law independent of the purchase agreement's terms and conditions.
Additionally, the terms of the purchase agreement do not require
[the seller] to do anything other than provide the listed disclosures.

25 *Anderson v. Ford Ranch, LLC*, 78684-COA, 2020 WL 6955438, at *5 (Nev. App. Nov. 25,
26 2020).

27 9. Nevada Revised Statute § 113.140 clearly provides that the Seller Disclosures
28 does not constitute a warranty of the Subject Property and that the Buyer still has a duty to

1 exercise reasonable care to protect himself. Nevada Revised Statute § 113.140 also provides that
2 the Seller does not have to disclose any defect that he is unaware of. Similarly, Nevada Revised
3 Statute § 113.130 does not require a seller to disclose a defect in residential property of which
4 the seller is not aware. A completed disclosure form does not constitute an express or implied
5 warranty regarding any condition of residential property. Nevada Revised Statute § 113.140(2).
6 Chapters 113 and “645 of Nevada Revised Statutes do not relieve a buyer or prospective buyer of
7 the duty to exercise reasonable care to protect himself or herself.” *Id.* at § 113.140(2).

8 10. Summary Judgment is appropriate as a matter of law on all of Plaintiff’s claims.
9 It is undisputed that the alleged deficiencies were either disclosed by Defendants, could have
10 been discovered by an inspection, were open and obvious whereby Plaintiff / Ms. Zhu / Mr.
11 Miao had notice of them at the time Plaintiff purchased the Property, or were unknown to
12 Defendants at the time of the sale.

13 11. On August 2, 2017, TKNR submitted its Seller Disclosures timely indicating all
14 known conditions of the Subject Property. TKNR disclosed that “3 units has (sic) brand new AC
15 installed within 3 months,” and further that the “owner never resided in the property and never
16 visited the property.” Plaintiff was also aware that the minor renovations, such as painting, was
17 conducted by the Seller’s “handyman” as disclosed in the Seller’s Disclosures. TKNR also
18 disclosed that it was aware of issues with the heating and cooling systems, there was
19 construction, modification, alterations, or repairs done without permits, and lead-based paints.

20 12. On August 11, 2020, through the original RPA, Ms. Zhu waived her due
21 diligence, although she had a right to conduct inspections:

22 During such Period, Buyer shall have the right to conduct, non-
23 invasive/non-destructive inspections of all structural, roofing,
24 mechanical, electrical, plumbing, heating/air conditioning,
25 water/well/septic, pool/spa, survey, square footage, and any other
property or systems, through licensed and bonded contractors or
other qualified professionals.

26 13. Section II(B)(1) lists the disclosures by TKNR. Despite these disclosures,
27 Plaintiff did not inspect the Subject Property, request additional information and/or conduct any
28 reasonable inquires. Ms. Zhu cancelled the original RPA, Ex. E, because of an issue related to

her financing, unrelated to the Seller's Disclosures. Notably, she included the explicit waiver of the inspections, which included her initialing the provision that she had not done in the original RPA. Ms. Zhu informed her agent to waive all inspections. Although Ms. Zhu had actual knowledge of the Seller's Disclosures from August 11, 2017, and the Parties agreed to extend the COE to January 5, 2018, Ms. Zhu still never did any professional inspections. Instead, she put down an additional \$60,000 as a non-refundable deposit to the TNKR. Moreover, she also agreed to pay rent in the amount of \$650 per month for one of the units, and to also pay the property manager \$800 for the tenant placement fee. Through Addendum 2 to the 2nd RPA, Ms. Zhu later changed the purchaser to Plaintiff.

14. Ms. Zhu agreed that she was not relying upon any representations made by Brokers or Broker's agent. Ms. Zhu agreed to purchase the Property AS-IS, WHERE-IS, without any representations or warranties. Thus, Ms. Zhu waived all claims against Brokers or their agents for (a) defects in the Property . . . (h) factors related to Ms. Zhu's failure to conduct walk-throughs or inspections. Ms. Zhu assumed full responsibility and agreed to conduct such tests, walk-throughs, inspections and research, as she deemed necessary. In any event, Broker's liability was limited, under any and all circumstances, to the amount of that Broker's commission/fee received in the transaction.

15. As to the waivers, Paragraph 7(D) of the both the RPA and 2nd RPA expressly provided:

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

Nevertheless, Ms. Zhu waived her inspection related to the original RPA and the 2nd RPA, reinforced further by actually initialing next to the waiver in the 2nd RPA. Ms. Zhu also waived the energy audit, pest inspection, roof inspection, septic lid removal inspection, mechanical inspection, soil inspection, and structural inspection. Thereby, Ms. Zhu waived any liability of

1 Defendants for the cost of all repairs that inspection would have reasonably identified had it been
2 conducted. The RPA and the 2nd RPA clearly indicated that Ms. Zhu was purchasing the
3 Property “AS-IS, WHERE-IS without any representations or warranties.”

4 16. Additionally, Ms. Zhu also agreed that the Brokers Defendants had “no
5 responsibility to assist in the payment of any repair, correction or deferred maintenance on the
6 Property which may have been revealed by the above inspections, agreed upon by the Buyer and
7 Seller or requested by one party.” Paragraph 7(D) of the RPA.

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

11 18. Mr. Miao understood the importance to check public records when conducting
12 due diligence.

13 19. Plaintiff was a sophisticated buyer aware of the necessity of property inspection.

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

16 21. Prior to the purchase, Mr. Miao was aware that the Seller “strongly recommended
17 that buyer retain licensed Nevada professionals to conduct inspections”.

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

20 23. As to the RPA, Mr. Miao agreed that all the terms in it were conspicuous and
21 understandable, and it was a standard agreement similar to the other agreements he had used in
22 purchasing the other properties in Clark County, Nevada.

23 24. On or about August 10, 2017, Mr. Miao inspected Property. During that time,
24 Mr. Miao noted issues with the Property that were not up to code, finishing issues, GFCI outlets¹,
25 and electrical issues.

26 25. Mr. Miao acknowledged there was an issue with exposed electrical in Unit C as

27 ¹ The Second Amended Complaint references GFCI at Paragraph 31(a). This illustrates the frivolous nature
28 of the pleading since Mr. Miao requested TKNR to install these for Plaintiff.

1 well as possible asbestos.

2 26. Mr. Miao noted that there were cracks in the ceramic floor tiles and visible cracks
3 in the concrete foundation, which were open and obvious.

4 27. Mr. Miao admitted that he could also have seen the dryer vent during his
5 inspection.

6 28. Mr. Miao admitted that he could have followed up on the issues identified in the
7 SRPDF that included the HVAC and the permits.

8 29. Similarly, Mr. Miao should have contacted the local building department as part
9 of his due diligence.

10 30. Plaintiff was also on notice of the potential for mold and the requirement to get a
11 mold inspection.

12 31. Despite actual knowledge of these issues, Plaintiff did not elect to have a
13 professional inspection done.

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

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

17 34. The alleged defects identified by both parties' experts could have been discovered
18 at the time of the original purchase as they were "open and obvious".

19 35. Plaintiff failed to differentiate between conditions prior to when TKNR owned the
20 Property, while it owned it, and those afterwards.

21 36. No dispute exists that TKNR did not need permits for the interior work it had
22 done to the Property.

23 37. Plaintiff has always been trying to lease the Property despite not doing any of the
24 repairs listed by Plaintiff's expert. This illustrates the lack of merit of Plaintiff that there are
25 underlying conditions with the Property.

26 38. Moreover, Plaintiff does not provide any notice to the tenants about its expert's
27 report or this litigation. This illustrates the lack of merit of Plaintiff's claims and proves that it
28 has done nothing to correct the allegedly deficient conditions that are clearly not so dangerous as

1 it does not tell prospective tenants about them.

2 39. Mr. Miao admitted that multiple third parties could have potentially damaged the
3 Property.

4 40. Plaintiff did not present any evidence related to Defendants' alleged knowledge
5 other than his personal belief and speculation.

6 41. Mr. Miao admitted that he has no evidence Defendants knew about the alleged
7 moisture conditions. Additionally, he also admitted that there is no evidence that Defendants
8 knew about the alleged issues with the plumbing system. He also admitted that he did not know
9 if Defendants knew about the alleged issues with the duct work when they owned the Property.
10 He also recognized the deficiency in Plaintiff's expert's report that failed to differentiate between
11 conditions prior to when TKNR owned the Property, while it owned it, and those afterwards.

12 42. Mr. Miao also recognized that a 63-year-old property could have issues that were
13 not caused by Defendants.

14 43. The Flipping Fund had nothing to do with Plaintiff's decision to purchase the
15 Property.

16 44. Plaintiff admittedly amplified its alleged damages by more than 6x, and then
17 trebled the damages, and have run up egregious attorneys' fees for this frivolous action. These
18 are undisputed facts that prove abuse of process as a matter of law given the known issues with
19 the Property and Plaintiff's waivers related to the inspections. Plaintiff waived the inspections
20 and purchased the property "as is". This shows that Plaintiff had no interest in having a
21 professional inspection done. It shows the behavior of the Plaintiff related to the entire case.

22 45. Plaintiff was encouraged to inspect the property, and they did not do it. It was a
23 63-year-old property. There were specific disclosures that were made by the Seller, and Plaintiff
24 was strongly encouraged to conduct the inspection, and they did not want to.

25 46. This is a 2018 case. Plaintiff has not been diligent in conducting discovery.

26 Rule 56(f) is not a shield that can be raised to block a motion for
27 summary judgment without even the slightest showing by the
28 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.

See *Bakerink v. Orthopaedic Associates, Ltd.*, 581 P.2d 9, 11 (Nev. 1978) (quoting *Willmar Poultry Co. v. Morton-Norwich Products*, 520 F.2d 289, 297 (8th Cir. 1975), Cert. denied, 424 U.S. 915, 96 S.Ct. 1116, 47 L.Ed.2d 320 (1975)).

47. Plaintiff failed to articulate the alleged discovery that it would likely have. Additionally, Plaintiff already opposed enlarging discovery by specifying that any extension of discovery would prejudice it, indicating that it had no need for additional discovery and that Plaintiff would largely rest upon the findings of its expert. See Plaintiff's Opposition to Motion to Enlarge Discovery. Also, Plaintiff's counsel's declaration in the Opposition illustrated that he had additional discussions with Plaintiff's expert related to the MSJ, but Plaintiff's expert did not proffer any additional opinions to counter the Motion. See *Opp.* at p. 18:7-9.

48. As a matter of law, Plaintiff is precluded from seeking damages from Defendants because of her failure to inspect. "Nondisclosure by the seller of adverse information concerning real property . . . will not provide the basis for an action by the buyer to rescind or for damages when property is sold 'as is.' " *Mackintosh v. Jack Matthews & Co.*, 109 Nev. 628, 633, 855 P.2d 549, 552 (1993). Moreover, "[l]iability for nondisclosure is generally not imposed where the buyer either knew of or could have discovered the defects prior to the purchase." *Land Baron Invs., Inc. v. Bonnie Springs Family LP*, 131 Nev. 686, 696, 356 P.3d 511, 518 (2015).

49. Defendants also do not have liability as Ms. Zhu / Plaintiff purchased the Property "as-is" within the reach of the diligent attention and observation of the buyer. *Mackintosh*, 109 Nev. at 633, 855 P.2d at 552. NRS § 113.140 clearly provides that the disclosures do not constitute a warranty of the Property and that the purchaser still has a duty to exercise reasonable care to protect himself. A completed disclosure form does not constitute an express or implied warranty regarding any condition of residential property. NRS § 113.140(2). Chapters 113 and "645 of Nevada Revised Statutes do not relieve a buyer or prospective buyer of the duty to exercise reasonable care to protect himself or herself." *Id.* at § 113.140(2).

1 50. Plaintiff waived its common law claims of negligent misrepresentation, fraudulent
2 or intentional misrepresentation, and/or unjust enrichment when it expressly agreed that it would
3 carry the duty to inspect the property and ensure that all aspects of it were suitable prior to close
4 of escrow, and the information regarding Property was reasonably accessible to the buyer.
5 *Frederic and Barbara Rosenberg Living Tr. v. MacDonald Highlands Realty, LLC*, 427 P.3d
6 104, 111 (Nev. 2018).

7 51. Summary judgment is appropriate under NRS § 113.140(1) (seller is not required
8 to disclose a defect in residential property of which she is not aware). Under this statute,
9 “[a]scribing to the term ‘aware’ its plain meaning, . . . the seller of residential real property does
10 not have a duty to disclose a defect or condition that ‘materially affects the value or use of
11 residential property in an adverse manner,’ if the seller does not realize, perceive, or have
12 knowledge of that defect or condition.” *Nelson v. Heer*, 163 P.3d 420, 425 (Nev. 2007). Thus,
13 as Plaintiff cannot demonstrate an omitted disclosure that caused damage, Defendants are
14 entitled to summary judgment as a matter of law. *Id.* at 426.

15 52. Under NRS § 113.140(1) (seller is not required to disclose a defect in residential
16 property of which she is not aware), *Nelson v. Heer*, 163 P.3d 420, 425 (Nev. 2007), and NRS §
17 645.259(2), Defendants are entitled to Summary Judgment on Plaintiff’s claims for (1) Recovery
18 Under NRS Chapter 113, (2) Constructive Fraud, (3) Common Law Fraud, (4) Fraudulent
19 Inducement, (5) Fraudulent Concealment, (6) Breach Of Fiduciary Duty, (8) Damages Under
20 NRS 645.257(1), (9) Failure To Supervise, Inadequate training and Education, (12) Civil
21 Conspiracy, (13) Breach Of Contract, and (14) Breach Of Implied Covenant of Good Faith and
22 Fair Dealing]. It also eliminates the causes of action for (7) RICO, (10) Fraudulent Conveyance,
23 (11) Fraudulent Conveyance, and (15) Abuse of Process since they have no basis in fact or law.

24 53. Eighth Judicial District Court Rule 2.20(e) provides that, “[f]ailure of the
25 opposing party to serve and file written opposition may be construed as an admission that the
26 motion and/or joinder is meritorious and a consent to granting the same.” Simply filing an
27 opposition does not relieve a party of its duty to actually oppose the issues raised in the motion.
28 See *Benjamin v. Frias Transportation Mgt. Sys., Inc.*, 433 P.3d 1257 (Nev. 2019) (unpublished

1 disposition).

2 54. The Opposition failed to address the Motion’s arguments related to summary
3 judgment in favor of Defendants on Plaintiff’s claims for: (7) RICO; (10) Fraudulent
4 Conveyance; (11) Fraudulent Conveyance; (12) Civil Conspiracy; and (15) Abuse of Process.
5 Additionally, Plaintiff fails to provide any meaningful or competent opposition to the Motion’s
6 argument for summary judgment as to Plaintiff’s claims against the Broker Defendants. As there
7 is no Opposition provided to those arguments made in the Motion, this court should find that
8 those arguments are meritorious and grant the request as to those unopposed issues.

9 55. Pursuant to Nevada Rule of Civil Procedure 11(b), by presenting to the court a
10 pleading or other paper, an attorney or unrepresented party certifies: (1) it is not being presented
11 for any improper purpose, such as to harass, cause unnecessary delay, or needlessly increase the
12 cost of litigation, (2) the claims and other legal contentions are warranted by existing law or by a
13 nonfrivolous argument for extending, modifying, or reversing existing law or for establishing
14 new law, (3) the factual contentions have evidentiary support, and (4) the denials of factual
15 contentions are warranted on the evidence or.

16 56. “If, after notice and a reasonable opportunity to respond, the court determines that
17 Rule 11(b) has been violated, the court may impose an appropriate sanction on any attorney, law
18 firm, or party that violated the rule or is responsible for the violation. Absent exceptional
19 circumstances, a law firm must be held jointly responsible for a violation committed by its
20 partner, associate, or employee.” NEV. R. CIV. PRO. 11(c).

21 57. “On its own, the court may order an attorney, law firm, or party to show cause
22 why conduct specifically described in the order has not violated Rule 11(b).” *Id.* at 11(c)(3). “A
23 sanction imposed under this rule must be limited to what suffices to deter repetition of the
24 conduct or comparable conduct by others similarly situated. The sanction may include
25 nonmonetary directives; an order to pay a penalty into court; or, if imposed on motion and
26 warranted for effective deterrence, an order directing payment to the movant of part or all of the
27 reasonable attorney fees and other expenses directly resulting from the violation.” *Id.* at
28 11(c)(4).

1 58. Rule 11 prevents a party from bringing a lawsuit for an improper purpose, which
2 includes: (1) harassment, causing unnecessary delay, or needless increasing the cost of litigation;
3 or (2) making frivolous claims. NEV. R. CIV. PRO. 11(b)(1)-(2). Rule 11 sanctions should be
4 imposed for frivolous actions. *Marshall v. District Court*, 108 Nev. 459, 465, 836 P.2d 47, 52.

5 59. A frivolous claim is one that is “both baseless and made without a reasonable and
6 competent inquiry.” *Bergmann v. Boyce*, 109 Nev. 670, 676, 856 P.2d 560, 564 (1993) (quoting
7 *Townsend v. Holman Consulting Corp.*, 929 F.2d 1358, 1362 (9th Cir.1990); *Golden Eagle*
8 *Distrib. Corp. v. Burroughs Corp.*, 801 F.2d 1531, 1537 (9th Cir.1986)). A determination of
9 whether a claim is frivolous involves a two-pronged analysis: (1) the court must determine
10 whether the pleading is “well grounded in fact and is warranted by existing law or a good faith
11 argument for the extension, modification or reversal of existing law”; and (2) whether the
12 attorney made a reasonable and competent inquiry. *Bergmann*, 109 Nev. at 676, 856 P.2d at 564.
13 A sanction imposed for violation of Rule 11 shall be limited to what is sufficient to deter
14 repetition of such conduct or comparable conduct by others similarly situated. *Id.* at 11(c)(2).

15 60. Furthermore, a court may award attorneys’ fees to a prevailing party when it finds
16 that the claim was brought or maintained without reasonable ground or to harass the prevailing
17 party. NEV. REV. STAT. § 18.010(2)(b). In other cases, a court may award attorneys’ fees “when
18 it finds that the opposing party brought or maintained a claim without reasonable grounds.”
19 *Rodriguez v. Primadonna Co., LLC*, 216 P.3d 793, 800 (Nev. 2009). “The court shall liberally
20 construe the provisions of this paragraph in favor of awarding attorney’s fees in all appropriate
21 situations.” *Id.* The Nevada Legislature explained that:

22 [i]t is the intent of the Legislature that the court award attorney’s
23 fees pursuant to this paragraph and impose sanctions pursuant to
24 Rule 11 of the Nevada Rules of Civil Procedure in all appropriate
25 situations to punish for and deter frivolous or vexatious claims and
26 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.

27 *Id.* “A claim is groundless if ‘the allegations in the complaint . . . are not supported by any
28 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 77. The overwhelming facts and law illustrate that Plaintiff's claim is frivolous. The
3 findings of fact are incorporated by reference.

4 78. 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 79. 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 80. Under either Rule 11, Plaintiff brought and maintained this action without
20 reasonable ground. NEV. REV. STAT. § 18.010(2)(b). The overwhelming facts and law illustrate
21 that Plaintiff brought or maintained this claim without reasonable grounds, which justifies an
22 award of attorneys' fees. *Rodriguez v. Primadonna Co., LLC*, 216 P.3d 793, 800 (Nev. 2009).

23 81. The court intends to award to the Defendants the reasonable expenses, including
24 attorneys' fees and costs, incurred for defending this lawsuit under Rule 11. This sanction is
25 limited to what suffices to deter repetition of the conduct or comparable conduct by others
26 similarly situated.

27 Based on the foregoing, the Court GRANTS Defendants Motion, DENIES the
28 Counterclaim, and GRANTS attorneys' fees and costs to Defendants pursuant to Nevada Rule of

MICHAEL B. LEE, P.C.
1820 E. SAHARA AVENUE, SUITE 110
LAS VEGAS, NEVADA 89104
TEL - (702) 477.7030; FAX - (702) 477.0096

Civil Procedure 11.

IT IS HEREBY ORDERED, ADJUDICATED, AND DECREED that the Motion is **GRANTED**.

IT IS FURTHER ORDERED, ADJUDICATED, AND DECREED that the Countermotion, including the 56(f) Countermotion, is **DENIED**. This is a 2018 case. Discovery ended October 30, 2020. This Court will not agree to enlarge discovery.

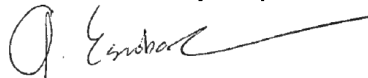
IT IS FURTHER ORDERED, ADJUDICATED, AND DECREED that Defendants are awarded attorneys' fees and costs pursuant to Rule 11. Defendants may file an affidavit in support of requested attorney's fees and costs within 10 days of the entry of Order.

IT IS FURTHER ORDERED, ADJUDICATED, AND DECREED that this is a final order related to the claims and counterclaim. This Court directs entry of a final judgment of all claims.

IT IS FURTHER ORDERED, ADJUDICATED, AND DECREED that any outstanding or pending discovery is quashed as moot.

IT IS FURTHER ORDERED, ADJUDICATED, AND DECREED that any trial dates and/or calendar calls are vacated as moot.

Dated this 7th day of April, 2021



THE HON. ADRIANA ESCOBAR
DISTRICT COURT JUDGE

158 436 3E2D 40F2
Adriana Escobar
District Court Judge

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 Amended Order was served via the court's electronic eFile system to
all recipients registered for e-Service on the above entitled case as listed below:

14 Service Date: 4/7/2021

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

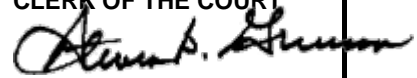
frankmiao@yahoo.com

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24
25 If indicated below, a copy of the above mentioned filings were also served by mail
26 via United States Postal Service, postage prepaid, to the parties listed below at their last
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John Savage	Holley Driggs Attn: John Savage, Esq 400 South Fourth Street, Third Floor Las Vegas, NV, 89101
Nikita Pierce	6625 South Valley View Blvd. Suite 232 Las Vegas, NV, 89118



TRAN

DISTRICT COURT
CLARK COUNTY, NEVADA
* * * * *

WLAB INVESTMENT LLC,)
)
Plaintiff,)
)
vs.)
)
TKNR INC.,)
)
Defendant.)
)
AND RELATED PARTIES)

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

**TRANSCRIPT OF
PROCEEDINGS**

BEFORE THE HONORABLE ADRIANA ESCOBAR, DISTRICT COURT JUDGE

THURSDAY, MARCH 11, 2021

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

**DEFENDANTS MOTION FOR SUMMARY JUDGMENT, OR IN THE
ALTERNATIVE, PARTIAL SUMMARY JUDGMENT**

SETTLEMENT

APPEARANCES:

FOR THE PLAINTIFF: STEVEN L. DAY, ESQ.

FOR THE DEFENDANTS: MICHAEL B. LEE, ESQ.

TRANSCRIBED BY: JD REPORTING, INC.

1 **LAS VEGAS, CLARK COUNTY, NEVADA, MARCH 11, 2021, 9:19 A.M.**

2 * * * * *

3 UNIDENTIFIED SPEAKER: Department 14 is now in
4 session. We're at page 1-2, Your Honor.

5 THE COURT: Okay. Very good. I'd like your
6 appearances for the record, please.

7 MR. LEE: This is Michael Lee on behalf of the
8 defendants.

9 MR. DAY: This is Steven Day on behalf of the
10 plaintiff.

11 THE COURT: Okay. Good morning, Mr. Day and Mr. Lee.
12 All right. I have before me the motion for summary
13 judgment or in the alternative partial summary judgment by the
14 defendant and the opposition and counter motion for continuance
15 pursuant to NRCP 56(f) and by -- Forgive me. The motion for
16 summary judgment is by the defendants. The plaintiff's
17 opposition and also we have -- so let's get going.

18 Why don't you, Mr. Lee, please start.

19 MR. LEE: Thank you, Your Honor.

20 We also filed a supplement to our motion for summary
21 judgment that includes the deposition of plaintiff's person
22 most knowledgeable Frank Miao who is also on the line today.

23 In terms of the supplement, it illustrated several
24 undisputed facts that illustrates why summary judgment is
25 appropriate related to all of plaintiff's claims and our claim

1 for abuse of process. In particular, when we start looking at
2 the background of plaintiff, Mr. Miao, admitted that plaintiff
3 is a sophisticated buyer who has purchased at least 20
4 properties, 8 in Las Vegas.

5 He also specified that the underlining terms of the
6 residential purchase agreement were conspicuous and
7 understandable. He specified it was a similar agreement to the
8 other agreements that he had used purchasing other properties
9 in Clark County. The terms were clear related to the duties --

10 THE COURT: Mr. Lee.

11 MR. LEE: Yes?

12 THE COURT: I'd like you to speak slower, please.

13 MR. LEE: Oh, I apologize.

14 THE COURT: That's okay. Thank you.

15 MR. LEE: He specified that the terms were clear
16 related to the duty to inspect, and he also specified that
17 plaintiff was acutely aware of the requirement under Nevada law
18 to protect itself by getting an inspection.

19 As to the underlying issue of the inspection, what
20 Mr. Miao also testified was that prior to the purchase he was
21 aware that the seller had, quote, "He only recommended that I
22 retain licensed Nevada professionals to conduct inspections,"
23 end quote.

24 He also specified that he had access to inspect the
25 entire property and conduct noninvasive, nondestructive

1 inspections, which he did.

2 During that time, he inspected the structure, the
3 roof, the mechanical systems, the electrical systems, the
4 plumbing, the HVAC and the dryer vent.

5 He noted at that time that there were some issues
6 that were not up to code -- and this was prior to the
7 purchase -- that there were finishing issues; that there were
8 issues with the outlets not being GFCI outlets; electrical
9 issues, including exposed electrical; potential asbestos;
10 cracks on the ceramic floor tiles; visible cracks in the
11 concrete foundation. And he specified that all of these were
12 open and obvious prior to his purchase.

13 He also specified that he received the seller's real
14 property disclosure forms prior to the purchase of the
15 property. As to the disclosure form, prior to the purchase,
16 plaintiff was aware that the seller TKNR was an investor who
17 had never resided in the property; that there were issues with
18 the heating systems, the cooling systems; and that there was
19 work done without permits.

20 He also knew that the property was 63 years old at
21 the time of the purchase and that most of the work done on the
22 property was done by a handyman other than the HVAC
23 installation.

24 Despite these disclosures, Mr. Miao never followed up
25 with the seller at all. He also specified that he could have

1 followed up with these identified issues that included the HVAC
2 and the permits, and he was aware that he should have contacted
3 the local building department and also obtain the permits as
4 part of his due diligence prior to the purchase.

5 He was also aware of the potential for mold and the
6 requirement to get a mold inspection and understood it was his
7 risk that he elected not to get a professional inspection.

8 When we look at the residential purchase agreement,
9 plaintiff was also aware that there were limited damages in
10 this case and that the damages under paragraph 7D limited the
11 potential damages that could have been discovered by an
12 inspection.

13 Now, Mr. Miao had also indicated that he doesn't
14 believe in professional inspections. He does not have a
15 professional license related to being a general contractor, an
16 inspector, an appraiser or a project manager. He has never
17 hired a professional inspector in Clark County, and he doesn't
18 use them because he believes the underlining costs is too
19 expensive, and he just relies upon himself to do the
20 inspections.

21 If we look at the issue of the professional
22 inspection, what Mr. Miao admitted is that he had access to the
23 entire building. He had access to the attic when he looked at
24 it.

25 He also retained an expert in this case. His expert

1 didn't do any destructive or invasive testing. It would've
2 been exactly the same type of inspection that he could have
3 done in 2017. He admitted that the plaintiff examined -- the
4 plaintiff's expert examined exactly the same areas that he had
5 done, that the plaintiff's access was exactly the same as his
6 original inspection in 2017 and that the inspections --

7 THE COURT: Mr. Lee, will you please -- you may be
8 reading, and it's okay. I just need you to speak slower. I've
9 reviewed everything. This is in your motion. But I would like
10 you to speak slower, please.

11 MR. LEE: Yes, Your Honor.

12 THE COURT: Thank you.

13 MR. LEE: And these references that I'm giving you
14 right now are all from our supplement which is Mr. Miao's
15 deposition which includes citation to everything that I'm
16 referencing. So I appreciate that you've had an opportunity to
17 read the briefing and also to review the supplement as well
18 because it's the underlining basis that illustrates that --

19 THE COURT: Right. I have Mr. Miao's deposition.
20 I've reviewed it.

21 MR. LEE: Okay. Great.

22 THE COURT: But I (video interference) make a record,
23 please.

24 MR. LEE: Okay. I'll continue to make a record.

25 THE COURT: Just not so quickly. Just not so fast.

1 MR. LEE: Yeah. I'm sorry, Your Honor.

2 THE COURT: That's okay.

3 MR. LEE: Okay. During the -- he also specified that
4 as to plaintiff's expert the report illustrated all the areas
5 that he could have inspected in 2017 and that the pictures that
6 were also attached to the expert report were areas that he
7 could have inspected in 2017.

8 He also accompanied the defendants' expert during our
9 inspection of the property. As before, Mr. Miao had the same
10 access to the property in 2017 that our expert did during our
11 inspection.

12 He agreed with our expert that the alleged conditions
13 identified by plaintiff's expert were, quote, unquote, "open
14 and obvious."

15 He also agreed with our expert's finding that there
16 were no sagging issues in the roof.

17 And he also recognized the deficiencies in
18 plaintiff's expert report that failed to differentiate when
19 conditions prior to when TKNR owned the property while it owned
20 it and that it was afterwards.

21 When we also look at the underlining issues related
22 to permits, Mr. Miao agreed that the finishing work done by the
23 seller did not need permits.

24 He also specified that although there are these
25 alleged conditions with the property currently, he does not

1 place any notice to tenants, although they have not done any
2 repairs to the property, which illustrates the lack of merit to
3 this action.

4 He also specified that there were potential third
5 parties that could have damaged the property, such as (video
6 interference) or tenants.

7 He also specified that there's no evidence defendants
8 knew about the alleged conditions, that the Flipping Fund,
9 which is a party to this case related to the RICO action, had
10 nothing to do with the sale.

11 And for the abuse of process claim, he indicated that
12 his initial estimate of the cost of repair would've
13 been \$102,000, but their -- plaintiff's expert inflated the
14 cost of the repair to \$600,000.

15 We also noted the perjury in his declaration where he
16 originally did try to settle this case for \$10,000, but he
17 denied making that offer in his declaration.

18 When we turn back and we look at the Second Amended
19 Complaint, the Second Amended Complaint illustrates that based
20 on the undisputed facts from Mr. Miao, there's a lack of merit
21 to this action.

22 Looking at paragraph 25, it reads,

23 TKNR failed to disclose one or more
24 known conditions that materially affects the
25 value or the use of the subject property in

1 an adverse manner.

2 This is not true based on his undisputed facts.

3 We looked at paragraph 27, seller's disclosure form
4 was either inadequate or false.

5 Paragraph 29, construction work must be done by
6 licensed contractors with permits and inspections.

7 Then at paragraph 31 outlines the alleged conditions
8 that they're claiming that were a nondisclosure that they did
9 not know about.

10 Paragraph 31A, the electrical systems, including the
11 GFCI outlets. What's also notable about the GFCI outlets is
12 that Mr. Miao is the one who requested that the sellers install
13 the GFCI outlets at the time when he was purchasing the
14 property.

15 31B relates to the alleged issues with plumbing
16 systems.

17 C, sewer line.

18 D, heating systems.

19 E, cooling systems.

20 F, smoke detectors.

21 G, moisture conditions or water damage venting into
22 the attic.

23 H, structural issues.

24 Notably, Item I admits that plaintiff knew that the
25 construction was done without permits.

1 J, roof and HVAC.

2 K, mold, slash, fungus.

3 And then L.

4 THE COURT: A little bit slower, Mr. Lee, please.

5 I'm following you. So a little bit -- just a teeny bit slower,
6 please.

7 MR. LEE: Yes. I'm sorry, Your Honor.

8 THE COURT: It happens all -- don't worry.

9 MR. LEE: Yeah.

10 THE COURT: Okay.

11 MR. LEE: Yeah.

12 Flooring, land, slash, foundation.

13 Now, the reason I started my presentation talking
14 about the undisputed facts and then went into the underlining
15 Second Amended Complaint was to illustrate that summary
16 judgment is appropriate as to all these issues because there's
17 no dispute that plaintiff was aware of any of these issues
18 prior to plaintiff's purchase of the property or that they were
19 open and obvious or that a reasonable professional inspection
20 could've uncovered them.

21 In terms of the countermotion for additional
22 discovery, Mr. Miao wrote to me directly specifying that he did
23 not want there to be any additional discovery. So there is no
24 basis for the 56(f) request. He wrote to me directly also
25 copying in his counsel, and I asked him not to contact me

1 directly without his attorney's approval.

2 In terms of the law in the case, which is cited
3 throughout the motion, Nevada Revised Statute 113.140 provides
4 that a seller does not have a duty to disclose any defects that
5 he is not aware of.

6 The case law under the *Bonnie Springs* case specifies
7 that liability for nondisclosure is generally not imposed where
8 the buyer either knew or could have discovered the defects
9 prior to the purchase.

10 NRS 113.140 clearly provides that the seller's
11 disclosure does not constitute a warranty and that the buyer
12 still has a duty to exercise reasonable care to protect
13 themselves.

14 A buyer waives their common-law claims for
15 negligent -- negligent misrepresentation, fraudulent or
16 intentional misrepresentation and/or unjust enrichment when
17 they expressly agree that it would carry the duty to inspect
18 the property and ensure that all aspects of it were suitable
19 prior to the close of escrow and that the information was
20 reasonably accessible to the buyer. That's the *McDonald*
21 *Highlands* case.

22 The general rule for foreclosing liability for
23 nondisclosure when a property is purchased as is applies when
24 such facts are within the reach of the diligent attention and
25 observation of the buyer. This is the *Macintosh* (phonetic)

1 case.

2 Importantly, the Nevada Supreme Court included an
3 agreement to purchase property as is foreclosed each of the
4 buyer's common-law claims justifying the granting of summary
5 judgment on all common-law claims.

6 Now, when we look at the underlining complaint and we
7 look at the motion, we are entitled to summary judgment on all
8 the plaintiff's claims for Cause of Action 1, recovery under
9 NRS Chapter 113;

10 For Cause of Action 2, constructive fraud;
11 3, common-law fraud;
12 4, fraudulent inducement;
13 5, fraudulent concealment;
14 6, breach of fiduciary duty;
15 8, damages under NRS 645;
16 9, failure to supervise, inadequate training or
17 education;
18 12, civil conspiracy;
19 13, breach of contract; and
20 14, breach of the covenant of good faith and fair
21 dealing.

22 As to the other causes of action, plaintiff never
23 filed an opposition to those requests. These were included in
24 the Causes of Action 7, RICO;

25 10, fraudulent conveyance;

JD Reporting, Inc.

11, fraudulent conveyance; and
15, their claim for abuse of process.

There's also no dispute that summary judgment is warranted as to all the broker defendants.

On our counterclaim for abuse of process, we are entitled to summary judgment on that claim as the undisputed facts illustrate that plaintiff's action was merely an attempt to extort all the defendants with a meritless claim and abuse of process.

It's undisputed that the property was a 63-year-old home at the time that plaintiff purchased it in 2018, that the purchase price was \$200,000, that plaintiffs now are claiming \$16.25 million in damages, that there's no basis for the claim for RICO or the fraudulent conveyance or any of those other claims where plaintiff didn't even oppose our request for summary judgment; that the original settlement demand by plaintiff was \$10,000.

Now, the only purpose of filing this claim and the related discovery was retaliatory. In that context, summary judgment is appropriate in favor of us related to abuse of process.

In the event that you find that there is somewhat of an disputed fact or there's a material damage issue of material fact, partial summary judgment is appropriate related to the undisputed facts and the unopposed claims.

1 And then we would also ask for attorneys' fees and
2 costs.

3 Unless the Court has any questions, I'll go ahead and
4 turn it over to Mr. Day.

5 THE COURT: Okay. I have no questions at this time.
6 I have so many documents here.

7 Go on, Counsel. Mr. Day.

8 MR. DAY: Your Honor, this is Steven Day for the
9 plaintiff.

10 THE COURT: Okay. And, Mr. Day, before you start,
11 I'd like you to speak a little bit louder, please. For some
12 reason I can't really hear you as well. So will you bring your
13 microphone closer.

14 MR. DAY: Judge, I certainly will.

15 THE COURT: Okay. Thank you.

16 MR. DAY: Is that better?

17 THE COURT: Yeah, a little bit. Yes.

18 MR. DAY: Okay. Well, Judge, I made an appearance in
19 the case yesterday. I looked at the motions for summary
20 judgment, the opposition and the reply yesterday. And whenever
21 I have a case where I have an opposing party that files a
22 motion for summary judgment and that motion includes 33 pages
23 of briefs and over a hundred pages of documents, hearsay
24 documents, none of which were supported by testimony or have
25 any foundation whatsoever, I immediately assumed that there are

1 factual issues in the case.

2 And Mr. Childs filed an opposition to defendants'
3 motion which also included in excess of 30 pages of brief and
4 well over a hundred pages of supporting documents, which would
5 all further suggest that there are not only factual issues, but
6 many factual issues --

7 THE COURT: Mr. Day, please speak louder. Mr. Day,
8 excuse me. You must speak louder, please.

9 MR. DAY: How about this? Is this better?

10 THE COURT: That's better.

11 MR. DAY: Okay. Sorry about that, Judge.

12 THE COURT: No, it's okay. You know, it happens. I
13 have one person speaking too quickly and the other one I can't
14 hear. What you're doing now is better.

15 MR. DAY: Okay. There are -- there are numerous
16 factual issues in this case. The plaintiff's contention is
17 that -- I mean, defendants. Defendants argue that had an
18 inspection of the property been done, the various issues with
19 this triplex would've been discovered. The plaintiffs (sic)
20 are claiming that; however, it's plaintiff's position that when
21 defendants purchased this property, the defendants and their
22 many investors purchased this property, the intent was to
23 immediately flip the property. And when they could not flip
24 the property, they attempted to cover up the numerous problems
25 with the triplex with floor covering, wallcoverings, plaster.

1 And as can be seen in the expert reports, many of the issues
2 are within the walls of the building itself and were not
3 discovered until after the property was purchased.

4 For example, the issues with the foundation were
5 discovered when tile started coming up from the floor after
6 purchase. And when floor covering, which was all placed by the
7 defendants, was removed to reveal what the primary issue with
8 the foundation was.

9 This is a structure that, frankly, just should have
10 been condemned. And instead of it being condemned and knocked
11 down, defendants attempted to cover up the many problems with
12 the triplex which precluded the plaintiff from observing these
13 many problems upon his inspection of the premises.

14 So there are -- the argument that was made by
15 defense, great argument, but that's an argument that should be
16 made to the jury. The jury should be allowed to determine what
17 the plaintiff knew or should have known prior to purchase, what
18 efforts the defendants made to attempt to cover up the many
19 problems with this triplex prior to purchase. And those are
20 all factual issues that should be left to a jury.

21 With respect to the deposition that was included in
22 the reply, you know, that's a little late. The initial motion
23 that was filed included no testimony, no admissible evidence.
24 The defense relied primarily or exclusively upon hearsay
25 documents, documents that had no foundation in plaintiff's --

1 or defendants' presentation with the motion for summary
2 judgment.

3 So plaintiff's contention is that there are numerous
4 factual issues in this case which would preclude summary
5 judgment with respect to all causes of action.

6 And with that, unless the Court has questions, we'll
7 stand submitted.

8 THE COURT: Okay. Thank you, Mr. Day.

9 Mr. Lee, please.

10 MR. LEE: Yes, Your Honor. Thank you. And please
11 slow me down if I start speaking too quickly.

12 THE COURT: All right. You've got to try to control
13 yourself as well. But, yes, I hate to -- I really dislike
14 having to -- to interrupt people, but so please try to speak
15 slower.

16 MR. LEE: Yes.

17 THE COURT: And we're not in a crazy hurry. I'd
18 rather hear everything thoroughly even though I have very
19 thorough pleadings.

20 Go on.

21 MR. LEE: In terms of the very thorough pleadings,
22 just because we have thoroughly briefed the issue doesn't mean
23 that there's a genuine issue of material fact. It's a somewhat
24 novel argument from Mr. Day that we did our job too good. So
25 there has to be a genuine issue of material fact.

1 It's also somewhat of a novel argument that you
2 should discount the deposition of Mr. Miao that illustrates
3 that there were no genuine issues of material fact so that we
4 can avoid summary judgment.

5 The general argument that Mr. Day, and while I
6 appreciate he is new to the case, about the alleged discovery
7 issues is without merit. Miao admitted that there's no
8 evidence that defendant knew about the alleged conditions. And
9 what we have to keep in mind is that the defendants owned the
10 property for a short period of time prior to buying it,
11 improving it, and then selling it to the plaintiff. Then
12 plaintiff operated it for a long period of time utilizing the
13 defendant realtors as a management property.

14 What we'll also note here is that Mr. Day
15 conveniently omitted the fact that there's a long-term tenant
16 who lived in the property prior to the defendants purchasing
17 it, during the time of the improvement and currently resides
18 there to this day and that Mr. Miao also specified in his
19 deposition that that person is very unhappy with the property
20 and still with the conditions living there.

21 We also have the undisputed fact that Mr. Miao
22 admitted that plaintiff's expert failed to differentiate
23 between what happened when the defendants owned the property
24 and what happened thereafter.

25 So plaintiff here has not met any burden to show that

1 the defendants knew about the alleged conditions or what's
2 actually more troubling in terms of the underlining case law is
3 that a reasonable inspection at the time of purchase would have
4 shown any alleged open and obvious conditions that Mr. Miao
5 admitted was on the property.

6 We also have the issue related to the unopposed
7 causes of action that we sought summary judgment on, but also
8 with the underlining claims that Mr. Miao specified related to
9 the GFCI outlets which was an actual condition caused by the
10 plaintiff related to the property that illustrates that this
11 was only -- this lawsuit was brought for a bad-faith purpose
12 with underlying conditions that Mr. Miao knew about.

13 If we look at the deposition alone, it illustrates
14 the undisputed facts that should grant summary judgment to
15 defendants entirely or at least establish these are the
16 undisputed facts in this case. Even if we have the partial
17 finding that these are the undisputed facts within the case,
18 plaintiff can never present any case as a matter of law because
19 the case law is very clear that there is no basis for this case
20 to continue.

21 Unless you have any questions, I'll go ahead and
22 rest.

23 THE COURT: I have a couple of questions.

24 Mr. Day, when you were speaking, you mentioned that
25 the deposition of Mr. Miao or Miao was late, and I'd like to

1 understand what you mean by that.

2 MR. DAY: Well, Your Honor, any evidence that the
3 defendants have in support of their motion for summary judgment
4 should have been included in the original motion.

5 The defendants in their reply included frankly the
6 only admissible evidence that's included in any of their briefs
7 in their reply. The reply should be nothing more than a
8 response to plaintiff's opposition. So if they intended to use
9 Mr. Miao's deposition, it actually should have been included in
10 the original motion for summary judgment.

11 The original motion for summary judgment has no
12 admissible evidence. There is no testimony in the original
13 motion for summary judgment. Defendant simply relied upon
14 documents which essentially are hearsay documents --

15 THE COURT: But, Mr. Day.

16 MR. DAY: -- so there is no foundation for those
17 documents.

18 THE COURT: Let me interrupt you for a moment. When
19 you're talking about the deposition and it's in the reply, can
20 you cite law to this Court that says that, you know -- because
21 I usually look at everything before. In other words, there's
22 been a motion. There's been an opposition. There are exhibits
23 that came first. Then there was a deposition that came in the
24 reply.

25 Is there legally a basis for not allowing something

1 like that to be reviewed, a legal basis that this Court is
2 prohibited from reading something that's included in a reply?

3 MR. DAY: Well, there's nothing preventing the Court
4 from reviewing whatever the Court wants to review.

5 THE COURT: Right.

6 MR. DAY: I am not prepared to cite cases for the
7 Court suggesting the proposition that -- I mean, I was not able
8 to provide or Mr. Childs was not able to respond to their reply
9 to the opposition. So, no, I'm not prepared to give you case
10 law or suggesting that the Court cannot consider evidence that
11 was not originally brought in plaintiff's -- or defendants'
12 initial motion for summary judgment. I'd have to do some
13 research and submit a supplemental brief on that.

14 I just -- Judge, I just find it interesting that
15 their initial motion for summary judgment, as I'm reading the
16 motion for summary judgment that there's no evidence. You
17 know, the defense is arguing that there are no factual issues.
18 They're arguing that there are no factual issues in the case,
19 but they present no admissible evidence, no testimony, no
20 nothing in their original motion for summary judgment other
21 than documents, and they discuss those documents, but they have
22 no testimony in their original motion for summary judgment
23 laying any kind of foundation for any of those documents.

24 Those documents, their presentation would not be
25 admissible at the time of trial in their original motion for

1 summary judgment. And yet they're asking the Court to render
2 summary judgment on factual issues that were -- you know, on
3 their motion for summary judgment, they present no fact -- no
4 admissible facts. They presented no admissible factual issues.
5 And that was my -- that was my point is that not until we get a
6 reply do we even see any testimony, you know.

7 So, you know, we -- the plaintiff did not have an
8 opportunity to respond to the testimony, the actual testimony
9 that was presented by defendants in their motion because it was
10 only included in their reply. Their original motion has no
11 admissible evidence in it.

12 THE COURT: Mr. Lee.

13 MR. LEE: Yeah. While I appreciate that Mr. Day is
14 late to the case, none of that is accurate.

15 Exhibit I to the motion for summary judgment is
16 testimony that he's allegedly saying wasn't in there. It's a
17 declaration from a defendant related to the documents.

18 Exhibit A is the document that was actually produced
19 by -- well, a large portion of the documents in support of the
20 motion for summary judgment were produced by the plaintiff. So
21 they'd be self-authenticating anyway.

22 As it pertains to the supplement that we have with
23 the deposition, it was filed as a supplement, not as a reply
24 brief. Our reply brief did allude to Mr. Miao's deposition,
25 which we took after filing the motion for summary judgment.

1 And then we supplemented on January 29th, 2021.

2 Today is March 11th, 2021. To say that the
3 plaintiff never had an opportunity to respond to the
4 supplemental brief that we provided that included the testimony
5 of Mr. Miao is without merit and has no factual basis. We
6 hadn't filed a motion when we filed a motion for summary
7 judgment based on the deadlines set forth in the case. And on
8 top of that, we were trying to keep this case moving forward.

9 We didn't try to do any ambush litigation tactics
10 here. We didn't do anything that the plaintiff wasn't aware
11 of. While I appreciate that Mr. Day was not the attorney at
12 that time, he inherited the case as it was, and he doesn't get
13 to re-examine the procedural history of the case or try to
14 invent facts that just simply aren't true just because he's new
15 to the case.

16 The underlining supplement that plaintiff had
17 substantial (video interference) to go ahead and try to respond
18 to this. They had substantial opportunity to allegedly do the
19 discovery that they claimed that they needed to do to oppose
20 the summary judgment motion, which they did not do and that
21 Mr. Miao now indicates that he doesn't want there to be.

22 So if I'm Mr. Day, I appreciate that he is trying to
23 avoid the deposition that illustrates the undisputed facts and
24 the relevant testimony that is a hundred percent admissible
25 that relates to the underlying documents that authenticate all

1 the documents that we're discussing here. Even without the
2 documents, we have the undisputed admissible testimony of
3 Mr. Miao, the person most knowledgeable, that illustrates the
4 overwhelming undisputed facts that there is a lack of merit for
5 this underlying action and that summary judgment should be
6 appropriate as a matter of law.

7 Nevada case law is very clear related to a buyer's
8 diligence that they have to do related to buying a piece of
9 property. Mr. Miao admitted that the plaintiff was aware of
10 those laws and those statutes related to the duty to inspect
11 and that had he done a reasonable inspection at the time, they
12 could have been -- they could've been discovered.

13 Even when you look at the opposition and the
14 plaintiff's expert providing a declaration, he doesn't dispute
15 any of the findings related to defense expert's findings that
16 they were open and obvious or could have been discovered at the
17 time of the purchase.

18 Under the plain language of the cases that I cited
19 and the statutes, nothing there would relieve this Honorable
20 Court of granting summary judgment as a matter of law based on
21 those undisputed evidence. Well, whereas Mr. Day continually
22 tries to expound upon the alleged defects in the motion,
23 opposition and reply, omitting the supplement and the
24 opportunity that the plaintiff had to respond to the
25 supplement, the undisputed facts arise from the undisputed

1 testimony of the plaintiff in this case.

2 So while he tries to go out there and raise some
3 generalities about what the alleged discovery would be,
4 discovery is now closed. The plaintiff hasn't done any
5 discovery on those issues. And even if they did do discovery,
6 it would still be no genuine issue of material fact that
7 summary judgment is appropriate as a matter of law.

8 Thank you.

9 MR. DAY: Your Honor.

10 THE COURT: I'll let you have a moment, but Mr. Lee
11 will have the last word. So if you just want to speak to say
12 something quickly, then I'm going to move on, Mr. Day. Okay.

13 MR. DAY: Judge, just one point. And my
14 understanding is that plaintiff attempted to take the
15 deposition of the defendant who failed to appear for a
16 deposition, and that issue still has not been brought before
17 the Court.

18 My understanding as well is there is written
19 discovery that still has not been responded to by the
20 defendant. There was a hearing before the Discovery
21 Commissioner who has ordered defendants to respond to certain
22 outstanding written discovery, which has still not been
23 responded to.

24 So, you know, while we have a discovery cut off,
25 there are -- there's discovery that's been ordered produced.

1 And frankly, the plaintiff still has -- intends to file a
2 motion with the Court to compel defendants' appearance at a
3 deposition.

4 THE COURT: Mr. Lee.

5 MR. LEE: While I appreciate Mr. Day is late in the
6 case, again, it's simply not accurate. The prior attorney did
7 not properly notice the underlying deposition allegedly for my
8 client. But for one of my clients -- noticed two depositions,
9 one that he called off because of a translator issue and
10 inability to get that scheduled properly.

11 As to the second deposition that I wasn't aware of, I
12 agreed to allow plaintiff to go ahead and take the deposition
13 prior to this hearing, but Mr. Miao sent an email saying that
14 no more depositions.

15 What Mr. Miao -- Day is also omitting is that on
16 Monday I had the deposition set for plaintiff's expert.
17 Plaintiff at that time had acknowledged that the plaintiff
18 would appear for the deposition. He knew of the time, knew of
19 the subpoena. And then I told him that his subpoena was
20 available for pickup. He didn't show, and he did a
21 nonappearance.

22 As to the alleged discovery dispute, it's simply not
23 accurate again. The plaintiff -- the defendants in this case
24 have disclosed almost 600 documents. What the Discovery
25 Commissioner ordered is that of those 600 documents he would

1 just like us to put into our responses or this information is
2 not available.

3 As to the underlining issue related to the corporate
4 formalities, the articles of incorporation or those type of
5 documents or business licenses, those will have no impact on
6 this underlining case.

7 So while I appreciate that Mr. Day is late to the
8 case, you know, the information that he presented related to
9 alleged discovery is simply not accurate.

10 THE COURT: All right. I'm ready to give you my
11 decision.

12 All right. So I've reviewed all of the
13 documentation, all of the pleadings. And first, I'd like to
14 start off with respect to while it wasn't the binding purchase
15 agreement, it's the first one. The residential agreement dated
16 September 5th of 2017, clearly shows that the buyer did not
17 condition -- it was not conditioned on the buyer's due
18 diligence as defined in Section 7(a). This condition referred
19 to due diligence condition checked in the affirmative.

20 In other words, the bottom line is in the first
21 residential, and I'm only saying that because one came right
22 after another -- the buyer waived and purchased as is and had
23 no interest apparently in moving forward and having an
24 inspection done. While that residential agreement dated
25 September 5th of '17, is not the binding agreement, it's

1 important because it shows how the -- the behavior of the
2 plaintiff throughout this entire case.

3 Secondly, I have sellers real property disclosure
4 form, August 2nd. It looks like the disclosures are there.
5 And still after that the plaintiffs refused. They were
6 actually encouraged to have -- to have someone review and --
7 excuse me one moment -- inspect this property, and they did not
8 want to do that. And, you know, this is a 63-year-old
9 property. They're purchasing it as is. I'm not going to go
10 into the details, but there are -- there are specific
11 disclosures that were made by the seller, and the buyer was
12 encouraged, strongly encouraged to make sure that they
13 conducted an inspection, and they did not. They did not want
14 to. Okay.

15 So in addition we have Mr. Miao's deposition. But
16 even without the deposition, the deposition obviously
17 references everything in more detail. But this was a waiver.
18 And when it comes -- the discovery here closed October 30th
19 of 2020. Okay. And -- and I -- this is not going -- I'm not
20 going to allow more discovery on this. There's been plenty of
21 time for this because this started, you know, long before
22 COVID. And these cases have to move. You know, they have to
23 be done properly. So let's see.

24 So with respect to this case, I am granting -- this
25 Court grants the motion for summary judgment as to all claims

1 and will also entertain the Rule 11 sanctions.

2 Because, honestly, I don't see in good faith how this
3 can be brought by -- this can be brought by the plaintiffs in
4 good faith when they've waived everything. And in addition,
5 they refused to conduct an inspection knowing that they were
6 purchasing a 63-year-old property. I mean, it's just absurd.

7 Also, I find that in my review that this is not the
8 plaintiff's first purchase of a property. There apparently
9 is -- you know, they've purchased quite a few properties before
10 this one. So they should understand, you know, just like
11 purchasing one home, you understand how important generally an
12 inspection is. And here they are sophisticated in a sense that
13 they should, you know, they knew what the repercussions may be
14 of not holding an inspection.

15 And now, you know, we have a lot of law that has been
16 cited by counsel for defense, Mr. Lee, that I actually think
17 that -- you know, I'm not going to go into it here, but
18 essentially the defendants, in my view, demonstrated that
19 there's no genuine issue of material fact with respect to
20 plaintiff's claims under Chapter 113. Defendants disclosed all
21 of the known defects.

22 Plaintiffs have failed to create a genuine issue of
23 material fact by introducing any evidence that the defendants
24 were aware of the nondisclosed defects. And all of the defects
25 were thoroughly explained by defendants' expert. They show

1 that those defects were discoverable with due diligence, which
2 plaintiffs failed to do. So that is the reason why I'm
3 granting it.

4 I don't take motions for summary judgment lightly at
5 all. But this is one of the clearest cut cases I've seen.
6 There's no evidence from the plaintiff that refutes material
7 facts and introduces material facts. And that's really the key
8 here. And then --

9 MR. MIAO: Excuse me.

10 THE COURT: Just a moment. I'm speaking.

11 Then when you're looking at the residential purchase
12 agreement and signed disclosure, it's clear in my view that
13 this is a baseless lawsuit, and I will grant defendants
14 attorneys' fees under NRCP 11.

15 This Court denies plaintiff's request for Rule 56(f)
16 continuance for more discovery. It's a 2018 case. Discovery
17 closed on October 30th of 2020, and I'm not going to continue
18 to move forward with this because I don't think there's a basis
19 for it. So that's it. That's my decision. That's this
20 Court's decision.

21 And I'd like Mr. Lee to prepare a very detailed order
22 that adopts the information that you included in your motion,
23 in the defendants' motion.

24 Make sure that Mr. Day has a chance to take a look at
25 it as to form and content.

1 And I'd like to mention that, not from you or anyone
2 in particular, but in many cases I've been -- I've been
3 receiving orders, proposed orders really late. And pursuant to
4 EDCR 1.90, they need to be filed with this Court no later than
5 14 days after this decision. Okay. So please make sure that I
6 have -- that everybody starts --

7 And, Mr. Lee, I'm not speaking to you. I have other
8 counsel on the phone. So I'm speaking to everyone. I need my
9 orders sooner. And, frankly, I prefer them within 10 days, but
10 the rule says 14. If you're able to submit them in 10 days,
11 then that's great. And, okay. That's it. That's it for this
12 case.

13 MR. MIAO: Excuse me.

14 THE COURT: Yes? Who's --

15 MR. MIAO: Excuse me. I would (indiscernible).

16 THE COURT: No. No. I'm sorry. No, you may not
17 speak. You're represented by your attorney, and we are done.

18 MR. MIAO: But I really just (indiscernible) the
19 attorney just took over the case.

20 THE COURT: Excuse me.

21 MR. MIAO: A few days ago. I'm sorry.

22 THE COURT: Sir. Sir. This is -- this has been
23 on -- this is not a surprise case. And this is the decision of
24 this Court. Okay. It's a 2018 case. Discovery was closed in
25 October of -- I've already indicated it, and I don't know where

1 I have that note. I believe it was 2020. And --

2 MR. MIAO: Twenty-second.

3 THE COURT: We're done. We're done here. We're
4 done. Please don't speak anymore. I don't want to be
5 disrespectful with you, but you must respect the Court as well.
6 We're done.

7 Counsel, I hope you're being safe out there and your
8 families are well, and --

9 MR. MIAO: But --

10 THE COURT: No. I'd like you to please mute the
11 person who is speaking that is not Mr. Day or Mr. Lee.

12 THE MARSHAL: Mr. Frank has been muted, Your Honor,
13 by the Court.

14 THE COURT: Okay. In any case, we're done now.

15 And I'd like you to call the next case, please,
16 Marshal Ragsdale.

17 THE CLERK: Judge, there's a status check for
18 settlement on this case. Do you want to hear --

19 THE COURT: Oh, wait. Before we go on, before we go
20 on, if you're still on the line, if not, I'd like an email sent
21 to all parties, Ms. Reid (phonetic), that makes sure you tell
22 them to submit the order in PDF format and in Word format, and
23 make sure both parties are -- all of the parties are in the
24 email.

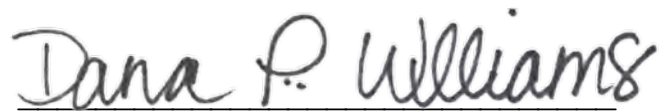
25 And ask them to not submit it twice. Because if they

1 send two copies, we don't get either one of anything. So only
2 one PDF and only one Word document.

3 (Proceedings concluded at 10:26 a.m.)

4 -oOo-

5 ATTEST: I do hereby certify that I have truly and correctly
6 transcribed the audio/video proceedings in the above-entitled
7 case.

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10 Dana L. Williams
11 Transcriber
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