

**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 10:26 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**

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**APPELLANT'S APPENDIX**

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

**VOLUME VI**

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<b>Defendants' Motion for Attorney's Fees</b>	<b>08/10/2022</b>	<b>VI</b>	<b>AA 001084-1103</b>

IN THE SUPREME COURT OF THE STATE OF NEVADA

WLAB INVESTMENT, LLC,  
Appellant,

vs.

TKNR, INC., A CALIFORNIA CORPORATION;  
CHI ON WONG, A/K/A CHI KUEN WONG, AN  
INDIVIDUAL; KENNY ZHONG LIN, A/K/A KEN  
ZHONG LIN, A/K/A KENNETH ZHONG LIN,  
A/K/A WHONG K. LIN, A/K/A CHONG KENNY  
LIN, A/K/A ZHONG LIN, AN INDIVIDUAL;  
LIWE HELEN CHEN, A/K/A HELEN CHEN, AN  
INDIVIDUAL; YAN QUI ZHANG, AN  
INDIVIDUAL; INVESTPRO LLC, D/B/A  
INVESTPRO REALTY, A NEVADA LIMITED  
LIABILITY COMPANY; MAN CHAU CHENG,  
AN INDIVIDUAL; JOYCE A. NICKRANDT, AN  
INDIVIDUAL; INVESTPRO INVESTMENTS  
LLC, A NEVADA LIMITED LIABILITY  
COMPANY; INVESTPRO MANAGER LLC, A  
NEVADA LIMITED LIABILITY COMPANY;  
AND JOYCE A. NICKDRANDT, AN  
INDIVIDUAL,  
Respondents.

WLAB INVESTMENT, LLC,  
Appellant,

vs.

TKNR, INC., A CALIFORNIA CORPORATION;  
CHI ON WONG, A/K/A CHI KUEN WONG, AN  
INDIVIDUAL; KENNY ZHONG LIN, A/K/A KEN  
ZHONG LIN, A/K/A KENNETH ZHONG LIN,  
A/K/A WHONG K. LIN, A/K/A CHONG KENNY  
LIN, A/K/A ZHONG LIN, AN INDIVIDUAL;  
LIWE HELEN CHEN, A/K/A HELEN CHEN, AN  
INDIVIDUAL; YAN QUI ZHANG, AN  
INDIVIDUAL; INVESTPRO LLC, D/B/A  
INVESTPRO REALTY, A NEVADA LIMITED  
LIABILITY COMPANY; MAN CHAU CHENG,  
AN INDIVIDUAL; JOYCE A. NICKRANDT, AN  
INDIVIDUAL; INVESTPRO INVESTMENTS  
LLC, A NEVADA LIMITED LIABILITY  
COMPANY; INVESTPRO MANAGER LLC, A  
NEVADA LIMITED LIABILITY COMPANY;

Supreme Court No. 82835/83051

District Court Case No. A785917

**FILED**

JUL 26 2022

*Sharon A. Blum*  
CLERK OF COURT

A-18-785917-C

CCJR

NV Supreme Court Clerks Certificate/Judge  
6000452



AA00<sup>1</sup>070

44

AND JOYCE A. NICKDRANDT, AN  
INDIVIDUAL,  
Respondents.

**CLERK'S CERTIFICATE**

STATE OF NEVADA, ss.

I, Elizabeth A. Brown, the duly appointed and qualified Clerk of the Supreme Court of the State of Nevada, do hereby certify that the following is a full, true and correct copy of the Judgment in this matter.

**JUDGMENT**

The court being fully advised in the premises and the law, it is now ordered, adjudged and decreed, as follows:

"We therefore affirm the district court's summary judgment in Docket No. 82835. We therefore reverse the district court's May 25, 2021, order in Docket No. 83051 insofar as that order awarded respondents attorney fees."

Judgment, as quoted above, entered this 12th day of May, 2022.

**JUDGMENT**

The court being fully advised in the premises and the law, it is now ordered, adjudged and decreed, as follows:

"Rehearing denied."

Judgment, as quoted above, entered this 29th day of June, 2022.

IN WITNESS WHEREOF, I have subscribed  
my name and affixed the seal of the Supreme  
Court at my Office in Carson City, Nevada this  
July 26, 2022.

Elizabeth A. Brown, Supreme Court Clerk

By: Sandy Young  
Deputy Clerk

IN THE SUPREME COURT OF THE STATE OF NEVADA

WLAB INVESTMENT, LLC,  
Appellant,

vs.

TKNR, INC., A CALIFORNIA  
CORPORATION; CHI ON WONG, A/K/A  
CHI KUEN WONG, AN INDIVIDUAL;  
KENNY ZHONG LIN, A/K/A KEN  
ZHONG LIN, A/K/A KENNETH ZHONG  
LIN, A/K/A WHONG K. LIN, A/K/A  
CHONG KENNY LIN, A/K/A ZHONG  
LIN, AN INDIVIDUAL; LIWE HELEN  
CHEN, A/K/A HELEN CHEN, AN  
INDIVIDUAL; YAN QUI ZHANG, AN  
INDIVIDUAL; INVESTPRO LLC, D/B/A  
INVESTPRO REALTY, A NEVADA  
LIMITED LIABILITY COMPANY; MAN  
CHAU CHENG, AN INDIVIDUAL;  
JOYCE A. NICKRANDT, AN  
INDIVIDUAL; INVESTPRO  
INVESTMENTS LLC, A NEVADA  
LIMITED LIABILITY COMPANY; AND  
INVESTPRO MANAGER LLC, A  
NEVADA LIMITED LIABILITY  
COMPANY,

Respondents.

WLAB INVESTMENT, LLC,  
Appellant,

vs.

TKNR, INC., A CALIFORNIA  
CORPORATION; CHI ON WONG, A/K/A  
CHI KUEN WONG, AN INDIVIDUAL;  
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CHONG KENNY LIN, A/K/A ZHONG  
LIN, AN INDIVIDUAL; LIWE HELEN  
CHEN, A/K/A HELEN CHEN, AN  
INDIVIDUAL; YAN QUI ZHANG, AN

No. 82835

**FILED**

MAY 12 2022

ELIZABETH A. BROWN  
CLERK OF SUPREME COURT  
BY S. Young  
DEPUTY CLERK

No. 83051

INDIVIDUAL; INVESTPRO LLC, D/B/A  
INVESTPRO REALTY, A NEVADA  
LIMITED LIABILITY COMPANY; MAN  
CHAU CHENG, AN INDIVIDUAL;  
JOYCE A. NICKRANDT, AN  
INDIVIDUAL; INVESTPRO  
INVESTMENTS LLC, A NEVADA  
LIMITED LIABILITY COMPANY; AND  
INVESTPRO MANAGER LLC, A  
NEVADA LIMITED LIABILITY  
COMPANY,  
Respondents.

*ORDER AFFIRMING (DOCKET NO. 82835)  
AND REVERSING (DOCKET NO. 83051)*

These are consolidated appeals from a district court order granting summary judgment in a real property matter (Docket No. 82835) and from an order awarding attorney fees (Docket No. 83051). Eighth Judicial District Court, Clark County; Adriana Escobar, Judge.<sup>1</sup>

Appellant filed the underlying action, alleging generally that respondents had fraudulently induced appellant into purchasing an apartment building that contained numerous defects. Generally speaking, appellant's complaint alleged that respondents concealed the defects and that appellant could not have discovered those defects with due diligence before the purchase was completed. The district court granted summary judgment for respondents, reasoning, among other things, that (1) appellant failed to introduce evidence that respondents were aware of any particular defect that they failed to disclose; and (2) appellant failed to introduce evidence showing that a professionally conducted inspection would not have

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<sup>1</sup>Pursuant to NRAP 34(f)(1), we have determined that oral argument is not warranted.

discovered the complained-of defects. Consequently, the district court granted summary judgment on all 15 of appellant's claims, including its claim for violation of NRS Chapter 113 (Sales of Real Property—Required Disclosures). Appellant then appealed that order (Docket No. 82835). Thereafter, the district court awarded respondents roughly \$128,000 in attorney fees under NRCP 11 based on its perception that appellant's action was frivolous. Appellant then appealed that order (Docket No. 83051), and the appeals were consolidated.

*Summary judgment (Docket No. 82835)*

Appellant contends that summary judgment was improper because it introduced evidence sufficient to create questions of material fact. *See Wood v. Safeway, Inc.*, 121 Nev. 724, 729, 121 P.3d 1026, 1029 (2005) (reviewing de novo a district court's decision to grant summary judgment and recognizing that summary judgment is appropriate "when the pleadings and other evidence on file demonstrate that no genuine issue as to any material fact remains and that the moving party is entitled to a judgment as a matter of law" (internal quotation marks and alterations omitted)). In particular, appellant appears to be contending that there are genuine issues of material fact regarding (1) whether respondents were aware of the complained-of defects, and (2) whether appellant was required to conduct a "professional" inspection to satisfy its due diligence.<sup>2</sup>

We disagree. With respect to appellant's first argument, appellant's opening brief simply reiterates its belief that "[n]umerous issues of fact exist as to what Defendants knew, what they disclosed and what they

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<sup>2</sup>To the extent that appellant has raised other arguments challenging the district court's summary judgment, we are not persuaded that those arguments warrant reversal.

covered up.” But beyond this statement, appellant’s opening brief fails to cite to any evidence in the record that might raise an inference that respondents were aware of a particular complained-of defect, such that a genuine issue of material fact existed regarding the viability of appellant’s NRS Chapter 113 claim or any of the related claims. *See Nelson v. Heer*, 123 Nev. 217, 224, 163 P.3d 420, 425 (2007) (holding that for purposes of a claim under NRS Chapter 113, in order for a seller to be “aware” of a defect such that the seller is obligated to disclose it, the seller must be able to “realize, perceive, or have knowledge of that defect or condition”); *Land Baron Invs. Inc. v. Bonnie Springs Fam. LP*, 131 Nev. 686, 696, 356 P.3d 511, 518 (2015) (“[Common law] [n]ondisclosure arises *where a seller is aware of materially adverse facts* that could not be discovered by the buyer after diligent inquiry.” (Emphasis added and internal quotation marks omitted)). Similarly, appellant’s summary judgment opposition failed to identify any evidence that might raise such an inference. Based on this appellate argument and lack of identifiable record evidence, we are unable to conclude that the district court erred in finding that no genuine issue of material fact existed regarding respondents’ awareness of the complained-of defects. *See* NRAP 28(a)(10)(A) (requiring briefs to cite to relevant portions of the record)<sup>3</sup>; *Schuck v. Signature Flight Support of Nev., Inc.*,

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<sup>3</sup>Appellant’s opening brief *does* cite to an affidavit from appellant’s manager that was submitted in conjunction with appellant’s motion to reconsider the district court’s summary judgment. However, the manager’s affidavit submitted in conjunction with appellant’s summary judgment opposition did not include the statements upon which appellant relies on appeal, and appellant has not argued that the district court improperly denied its motion for reconsideration. Relatedly, although appellant’s reply brief attempts for the first time to identify specific defects of which respondents were aware, we decline to specifically address those

126 Nev. 434, 438, 245 P.3d 542, 545 (2010) (“[A] district court is not obligated to wade through and search the entire record for some specific facts which might support the nonmoving party’s claim.”); *see also Johnson v. Cambridge Indus., Inc.*, 325 F.3d 892, 901 (7th Cir. 2003) (“[S]ummary judgment is the ‘put up or shut up’ moment in a lawsuit, when a party must show what evidence it has that would convince a trier of fact to accept its version of events.”).

With respect to appellant’s second argument, appellant appears to be contending that its manager’s own inspection was sufficient to satisfy the due diligence requirement in the parties’ Residential Purchase Agreement, such that any defect he did not discover was not “within the reach of the diligent attention and observation of the buyer.”<sup>4</sup> *Cf. Frederic*

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arguments. *Francis v. Wynn Las Vegas, LLC*, 127 Nev. 657, 671 n.7, 262 P.3d 705, 715 n.7 (2011) (explaining why this court generally declines to consider arguments raised for the first time in a reply brief).

<sup>4</sup>With the possible exception of its claim for violation of NRS Chapter 645, all the claims in appellant’s operative complaint appear to be based on the allegation that respondents *knowingly* did not disclose the complained-of defects. If so, appellant’s second argument appears to be moot in light of our rejection of appellant’s first argument. *See Wood*, 121 Nev. at 731, 121 P.3d at 1031 (“The substantive law controls which factual disputes are material and will preclude summary judgment; other factual disputes are irrelevant.”); *Bulbman, Inc. v. Nev. Bell*, 108 Nev. 105, 111, 825 P.2d 588, 592 (1992) (observing that “[w]here an essential element of a claim for relief is absent, the facts, disputed or otherwise, as to other elements are rendered immaterial and summary judgment is proper.”). Nonetheless, in the event we are misconstruing appellant’s claims and arguments, we address appellant’s second argument.

As for appellant’s NRS Chapter 645 claim, we affirm the district court’s summary judgment based on its finding that appellant did not rely on any representations from the broker respondents, which is a finding that



*& Barbara Rosenberg Living Tr. v. MacDonald Highlands Realty, LLC*, 134 Nev. 570, 578-79, 427 P.3d 104, 111 (2018) (observing that a seller is not liable for nondisclosure of a known condition materially affecting the property's value if the condition is also "within the reach of the diligent attention and observation of the buyer"). Admittedly, this court has not expanded on the meaning of "within the reach of the diligent attention and observation of the buyer." *Id.* However, appellant's manager acknowledged in his deposition that before appellant purchased the building, the manager had access to the same parts of the building that appellant's own expert had when the expert conducted his own inspection as part of this litigation, with the implication being that a "professional" pre-purchase inspection would have discovered the complained-of defects alleged in appellant's complaint. Thus, absent any authority suggesting that "diligent attention and observation of the buyer" would encompass a non-professional or unlicensed inspection, we are unable to conclude that the "inspection" conducted by appellant's manager—and his failure to discover the complained-of defects—provides a basis for holding respondents liable for nondisclosure of those alleged defects.<sup>5</sup>

Accordingly, and to the extent that appellant's second argument implicates an issue of "material" fact, *Wood*, 121 Nev. at 731, 121 P.3d at 1031 ("The substantive law controls which factual disputes are material and

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appellant does not meaningfully contest on appeal. *Powell v. Liberty Mut. Fire Ins. Co.*, 127 Nev. 156, 161 n.3, 252 P.3d 668, 672 n.3 (2011) (providing that issues not raised by a party on appeal are deemed waived).

<sup>5</sup>In this, we note that the subject property was a 63-year-old apartment building that, by appellant's own admission, "should have been condemned" before appellant purchased it.

will preclude summary judgment . . .”), we conclude that the district court correctly found that no genuine issue of material fact existed to justify denying summary judgment. We therefore affirm the district court’s summary judgment in Docket No. 82835.

*Attorney fee award (Docket No. 83051)*

Appellant contends that the district court’s award of attorney fees as a sanction under NRCP 11 must be reversed because the district court imposed that sanction in contravention of NRCP 11’s explicit and mandatory procedural requirements. We agree. In particular, respondents did not serve notice of their motion at least 21 days before they filed the motion with the district court and the motion was not made separately from their summary judgment motion as required by NRCP 11(c)(2). The purpose of that provision is to allow the offending party to correct or withdraw a problematic pleading, and appellant was not afforded the benefit of that provision, which would have allowed appellant to avoid sanctions under that rule.<sup>6</sup> *Radcliffe v. Rainbow Constr. Co.*, 254 F.3d 772, 789 (9th Cir. 2001) (concluding that a defendant did not comply with the federal analog to NRCP 11 when it sought Rule 11 sanctions as part of a motion for summary judgment and did not serve the motion on the plaintiffs within Rule 11’s 21-day advance service provision); *see also Barber v. Miller*, 146 F.3d 707, 710-11 (9th Cir. 1998) (“[W]arnings [are] not motions . . . , and

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<sup>6</sup>Although the summary judgment originally entered by the district court directed respondents to prepare an order to show cause, the district court’s amended summary judgment removed that provision such that the district court did not order appellant to show cause why it should not be sanctioned. *See* NRCP 11(c)(3) (providing that the court, on its own, may order a party to “show cause why conduct specifically described in the order has not violated Rule 11(b)”).

[Rule 11] requires service of a motion.”). Thus, before sanctions may be imposed against an offending party, that party must be given “notice and a reasonable opportunity to respond.” NRCP 11(c)(1). Here, respondents failed to comply with the mandatory procedural requirements of NRCP 11(c), which precludes the imposition of sanctions under NRCP 11.<sup>7</sup> We therefore reverse the district court's May 25, 2021, order in Docket No. 83051 insofar as that order awarded respondents attorney fees.

It is so ORDERED.<sup>8</sup>

  
Parraguirre, C.J.

  
Herndon, J.

  
Gibbons, Sr. J.

cc: Hon. Adriana Escobar, District Judge  
James A. Kohl, Settlement Judge  
Day & Nance  
Michael B. Lee, P.C.  
Eighth District Court Clerk

<sup>7</sup>Respondents contend that the district court could have awarded the same sanctions under NRS 7.085 or NRS 18.010(2)(b). However, the district court expressly granted “attorneys’ fees and costs pursuant to Rule 11,” which required respondents to follow the appropriate procedures for the award to have been appropriate.

<sup>8</sup>The Honorable Mark Gibbons, Senior Justice, participated in the decision of this matter under a general order of assignment.

IN THE SUPREME COURT OF THE STATE OF NEVADA

WLAB INVESTMENT, LLC,

Appellant,

vs.

TKNR, INC., A CALIFORNIA CORPORATION; CHI ON WONG, A/K/A CHI KUEN WONG, AN INDIVIDUAL; KENNY ZHONG LIN, A/K/A KEN ZHONG LIN, A/K/A KENNETH ZHONG LIN, A/K/A WHONG K. LIN, A/K/A CHONG KENNY LIN, A/K/A ZHONG LIN, AN INDIVIDUAL; LIWE HELEN CHEN, A/K/A HELEN CHEN, AN INDIVIDUAL; YAN QUI ZHANG, AN INDIVIDUAL; INVESTPRO LLC, D/B/A INVESTPRO REALTY, A NEVADA LIMITED LIABILITY COMPANY; MAN CHAU CHENG, AN INDIVIDUAL; JOYCE A. NICKRANDT, AN INDIVIDUAL; INVESTPRO INVESTMENTS LLC, A NEVADA LIMITED LIABILITY COMPANY; INVESTPRO MANAGER LLC, A NEVADA LIMITED LIABILITY COMPANY; AND JOYCE A. NICKDRANDT, AN INDIVIDUAL, Respondents.

WLAB INVESTMENT, LLC,

Appellant,

vs.

TKNR, INC., A CALIFORNIA CORPORATION; CHI ON WONG, A/K/A CHI KUEN WONG, AN INDIVIDUAL; KENNY ZHONG LIN, A/K/A KEN ZHONG LIN, A/K/A KENNETH ZHONG LIN, A/K/A WHONG K. LIN, A/K/A CHONG KENNY LIN, A/K/A ZHONG LIN, AN INDIVIDUAL; LIWE HELEN CHEN, A/K/A HELEN CHEN, AN

No. 82835

**FILED**

JUN 29 2022

ELIZABETH A. BROWN  
CLERK OF SUPREME COURT  
BY *[Signature]*  
DEPUTY CLERK

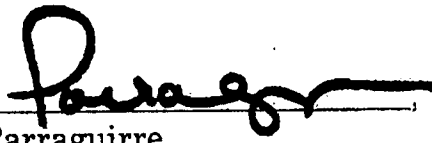
No. 83051


INDIVIDUAL; YAN QUI ZHANG, AN  
INDIVIDUAL; INVESTPRO LLC, D/B/A  
INVESTPRO REALTY, A NEVADA  
LIMITED LIABILITY COMPANY; MAN  
CHAU CHENG, AN INDIVIDUAL;  
JOYCE A. NICKRANDT, AN  
INDIVIDUAL; INVESTPRO  
INVESTMENTS LLC, A NEVADA  
LIMITED LIABILITY COMPANY;  
INVESTPRO MANAGER LLC, A  
NEVADA LIMITED LIABILITY  
COMPANY; AND JOYCE A.  
NICKDRANDT, AN INDIVIDUAL,  
Respondents.


*ORDER DENYING REHEARING*

Rehearing denied. NRAP 40(c).

It is so ORDERED.

  
Parraguirre, C. J.

  
Herndon, J.

  
Gibbons, Sr. J.

cc: Hon. Adriana Escobar, District Judge  
Day & Nance  
Michael B. Lee, P.C.  
Eighth District Court Clerk

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AN INDIVIDUAL; JOYCE A. NICKRANDT, AN  
INDIVIDUAL; INVESTPRO INVESTMENTS  
LLC, A NEVADA LIMITED LIABILITY  
COMPANY; INVESTPRO MANAGER LLC, A  
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AND JOYCE A. NICKDRANDT, AN  
INDIVIDUAL,  
Respondents.

Supreme Court No. 82835/83051

District Court Case No. A785917

WLAB INVESTMENT, LLC,

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vs.

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ZHONG LIN, A/K/A KENNETH ZHONG LIN,  
A/K/A WHONG K. LIN, A/K/A CHONG KENNY  
LIN, A/K/A ZHONG LIN, AN INDIVIDUAL;  
LIWE HELEN CHEN, A/K/A HELEN CHEN, AN  
INDIVIDUAL; YAN QUI ZHANG, AN  
INDIVIDUAL; INVESTPRO LLC, D/B/A  
INVESTPRO REALTY, A NEVADA LIMITED  
LIABILITY COMPANY; MAN CHAU CHENG,  
AN INDIVIDUAL; JOYCE A. NICKRANDT, AN  
INDIVIDUAL; INVESTPRO INVESTMENTS  
LLC, A NEVADA LIMITED LIABILITY  
COMPANY; INVESTPRO MANAGER LLC, A  
NEVADA LIMITED LIABILITY COMPANY;

AND JOYCE A. NICKDRANDT, AN  
INDIVIDUAL,  
Respondents.

**REMITTITUR**

TO: Steven D. Grierson, Eighth District Court Clerk

Pursuant to the rules of this court, enclosed are the following:

Certified copy of Judgment and Opinion/Order.  
Receipt for Remittitur.

DATE: July 25, 2022

Elizabeth A. Brown, Clerk of Court

By: Rory Wunsch  
Deputy Clerk

cc (without enclosures):

Hon. Adriana Escobar, District Judge  
Day & Nance  
Michael B. Lee, P.C.

**RECEIPT FOR REMITTITUR**

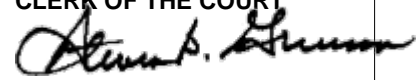
Received of Elizabeth A. Brown, Clerk of the Supreme Court of the State of Nevada, the  
REMITTITUR issued in the above-entitled cause, on JUL 26 2022

**HEATHER UNGERMANN**

**Deputy** District Court Clerk

**RECEIVED  
APPEALS  
JUL 26 2022**

**CLERK OF THE COURT**



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

IN THE EIGHTH JUDICIAL DISTRICT COURT  
CLARK COUNTY, NEVADA

W L A B INVESTMENT, LLC,  
Plaintiff,  
vs.

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

**HEARING REQUESTED**

**DEFENDANTS' MOTION FOR  
ATTORNEY'S FEES**

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

Date of Hearing:  
Time of Hearing:

Defendants.

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 files this Motion for Attorneys' Fees  
("Motion"). This Motion is made on the following Memorandum of Points and Authorities, any



1 affidavits, declarations or exhibits attached hereto, and any oral arguments accepted at the time  
2 of the hearing of this matter. Plaintiff W L A B INVESTMENT, LLC is hereinafter referred to  
3 as “Plaintiff” or “WLAB”.

4 **MEMORANDUM OF POINTS AND AUTHORITIES**

5 **I. INTRODUCTION**

6 **A. Overview**

7 Defendants seek an award of attorney’s fees and costs pursuant to the entry of summary  
8 judgment and the Court’s affirmation of this Honorable Court’s order granting summary  
9 judgment in favor of Defendants on all claims brought by Plaintiff and the counterclaims brought  
10 by Defendants. Although the portion of the Judgment awarding attorney’s fees to Defendant was  
11 reversed, it was done so based on a procedural defect not caused by Defendants. Additionally,  
12 Defendants believe that attorneys’ fees under Rule 11 are appropriate and can be awarded  
13 following an order to show cause, which will provide Plaintiff sufficient notice and ability to  
14 respond before Rule 11 sanctions are imposed.

15 Alternatively, Defendants believe that they are entitled to attorneys’ fees and costs  
16 pursuant to Nevada Revised Statutes (“NRS”) §§ 18.010 and 18.020; NRS § 17.117 and Nevada  
17 Rule of Civil Procedure (“NRCP”) § 68. Here, Defendants offered to allow judgment to be taken  
18 against them as provided in NRS § 17.117 and NRCP §68(b) in the amount of Five Thousand  
19 Dollars (\$5,000), which included a detailed recitation of the facts and circumstances illustrating  
20 the reasonableness of the offer. However, Plaintiff rejected the offer and proceeded to litigate  
21 the case, forcing Defendants to incur fees and costs defending against Plaintiff’s claims.  
22 Defendants ultimately prevailed in this litigation and summary judgment was granted in their  
23 favor on all claims brought by Plaintiff. As such, Defendants are entitled to attorneys’ fees  
24 pursuant to the rejected offer and as the prevailing party pursuant to NRS § 18.010.

25 Finally, Defendants believe they are entitled to attorney’s fees and costs pursuant to their  
26 counterclaim for abuse of process. Here, Plaintiff had express knowledge that there was no  
27 legitimate legal or factual basis for the claims alleged against Defendants. However, Plaintiff  
28 continued the action to harass Defendants, illustrating the basis for an award of fees and costs.

1           **B. Statement of Relevant Facts and Procedure**

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

7           On March 4, 2019, Plaintiff filed the Amended Complaint to include all Defendants  
8 identified in the caption of this pleading, also adding causes of action for: (5) Fraudulent  
9 Concealment [Defendants TKNR, Wong, Investpro, Investpro Manager LLC, and Lin]; (6)  
10 Breach Of Fiduciary Duty [Defendants Investpro and Nickrandt and Chen]; (7) RICO  
11 [Defendants Lin, Cheng, Investpro Manager LLC and Investpro Investments I LLC]; (8)  
12 Damages Under NRS 645.257(1) [Defendant Chen, Lin, Investpro and Nickrandt]; (9) Failure  
13 To Supervise, Inadequate training and Education [Defendant Investpro, Zhang, and Nickrandt];  
14 (10) Fraudulent Conveyance [TKNR]; (11) Fraudulent Conveyance [Investpro Investments I  
15 LLC]; (12) Civil Conspiracy [As To Defendant Man Chau Cheng, Lin, Investpro, Wong, TKNR,  
16 Investpro Investments I LLC and Investpro Manager LLC]; (13) Breach Of Contract [As To  
17 Defendant Investpro]; and (14) Breach Of Implied Covenant of Good Faith and Fair Dealing [As  
18 To Defendant Investpro].

19           On November 19, 2020, Defendants served an Offer of Judgment on Plaintiff that offered  
20 to allow judgment to be taken against Defendants in the amount of \$5,000. See Offer of  
21 Judgment attached hereto as **Exhibit A** [0001-0006]. Notably, the Offer of Judgment included a  
22 detailed recitation of the relevant facts and circumstances illustrating the reasonableness of the  
23 offer.

24           On November 23, 2020, Plaintiff filed its second amended complaint (“SAC”) to include  
25 an additional cause of action for: (15) Abuse of Process [All Defendants]. Notably, the  
26 amendment seemed not to be based in law or fact, but as retaliation following Defendants  
27 inclusion of the counterclaim for abuse of process against Plaintiff. In large part, the SAC  
28 completely failed to acknowledge the waivers by Ms. Zhu related to the inspection of the

1 Property and/or the open and obvious nature of the alleged defects in the then 63-year-old  
2 Property at the time of purchase.

3 On December 15, 2020, Defendants filed their Motion for Summary Judgment, or in the  
4 Alternative, Partial Summary Judgment (“MSJ”), which was originally set for hearing on  
5 January 28, 2021, but was eventually continued to March 11, 2021. Plaintiff filed its Opposition  
6 to Defendant's Motion for Summary Judgment Countermotion for Continuance Based on NRCP  
7 56(f) and Countermotion for Imposition of Monetary Sanctions (“Opposition”). On January 21,  
8 2021, Defendants filed a Reply to the Opposition (“Reply”) and, on January 29, 2021, provided a  
9 Supplement to the MSJ (“Supplement”) on January 29, 2021.

10 On March 11, 2021, a hearing was held on Defendant’s MSJ and the Opposition. See  
11 Minute Order attached hereto as **Exhibit B** [0007-0009]. This Honorable Court determined that  
12 summary judgment was appropriate and granted the MSJ “as to all claims and attorney’s fees[.]”  
13 *Id.* at 0009; see also Amended Order Granting Defendants’ MSJ (“Amended Order”) attached as  
14 **Exhibit C** [0010-0053]. Notably, the original order that was proposed filed on March 30, 2021,  
15 as proposed by Defendants, included a provision related to the filing of an Order to Show Cause  
16 pursuant to NRCP §11(c)(3). See March 30, 2021, Order attached as **Exhibit D** [0054-0100].  
17 However, that language was removed unilaterally by Honorable Judge Escobar, who then filed  
18 the Amended Order.

19 On April 6, 2021, Defendants filed an Affidavit in Support of Attorneys’ Fees requested  
20 in the MSJ and granted by the March 30, 2021, Order.

21 On April 7, 2021, Honorable Judge Escobar filed the Amended Order, which removed  
22 the order to show cause language that was included in the March 30, 2021, Order pursuant to  
23 NRCP 11(c)(3).

24 On March 16, 2021, Plaintiff filed a Motion to Reconsider the Amended Order.  
25 Defendants filed an Opposition to the Motion for Reconsideration on April 30, 2021. Plaintiff  
26 filed its reply to that opposition on May 11, 2021, and the hearing was held on May 17, 2021, in  
27 chambers. See May 17, 2021, Minute Order attached as **Exhibit E** [0101-0104]; see also Order  
28 Granting, in part, and Denying, in part, Plaintiff’s Motion to Reconsider and Judgment against

1 Plaintiff and Previous Counsel (“Judgment”) as **Exhibit F** [0105-0115]. Notice of Entry of the  
2 Judgment was entered on May 25, 2022.

3 Notably, Plaintiff never opposed the specific amounts requested in the Affidavit in  
4 Support of Attorneys’ Fees filed by Defendants on April 6, 2021. *Id.* at 0110, ¶ 14.

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

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

9 On December 21, 2021, following the Court’s approval of the Petition for Writ of  
10 Mandamus, this Honorable Court entered an Order indicating that the Judgment is amended to  
11 vacate the portion of the Judgment that imposed sanctions against Plaintiff’s former counsel,  
12 Benjamin Childs, Esq. See Order Granting Defendants’ Motion for Reconsideration Vacating the  
13 Court’s Order Entered 12/1/21; and Vacating a Portion of the 5/25/21 Order (“Order Amending  
14 Judgment”) attached hereto as **Exhibit G** [0116-0124]. Notably, there were some other  
15 procedural hurdles leading to the Order Amending the Judgment, but the facts and circumstances  
16 related thereto are not relevant to this Motion.

17 On May 12, 2022, the Court entered its decision affirming this Honorable Court’s  
18 decision to grant summary judgment in favor of Defendants on all of Plaintiff’s claims and  
19 Defendants’ counterclaims, but reversing the Judgment based on procedural concerns. See Order  
20 Affirming and Reversing attached hereto as **Exhibit H** [0125-0133]. The Court concluded that,  
21 “the district court correctly found that no genuine issue of material fact existed to justify denying  
22 summary judgment.” *Id.* at 0132. However, the Court did note that the district court-imposed  
23 sanctions without first giving the offending party “notice and reasonable opportunity to  
24 respond.” *Id.* at 0133, citing Nev. R. Civ. Pro. § 11(c)(1). As such, the Court reversed the award  
25 of Defendants’ attorney’s fees. *Id.*

26 On June 14, 2022, Plaintiff petitioned the Court for rehearing of the Appeal, which was  
27 subsequently denied by the Court on June 29, 2022. See Order Denying Rehearing attached  
28 hereto as **Exhibit I** [0134-0136].

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

## II. DISCUSSION

The following Discussion is organized into six (6) separate parts in support of the Motion’s request for attorneys’ fees and costs. Part A sets forth the case law and statutes allowing for recovery of attorneys’ fees and costs. Part B illustrates that Rule 11 sanctions are appropriate and can be awarded following an order to show cause, which will allow Plaintiff sufficient notice and opportunity to be heard on the matter. Part C provides the legal and factual basis for an award of attorneys’ fees and costs pursuant to NRS §§ 18.010 and 18.020. Part D establishes that the offer of judgment provided by Defendants was reasonable in both its timing and amount to allow for recovery of attorneys’ fees and costs pursuant to NRS § 17.117 and NRCP § 68. Part E requests fees and costs related to Defendants prevailing on the competing claims for abuse of process alleged by the parties. Finally, Part F provides the affidavit of counsel in support of the Motion’s request for attorneys’ fees.

### A. Legal Standards

#### 1. Motion for Attorneys’ Fees

A court may not award fees unless authorized by statute, rule, or contract. *Frank Settlemeyer & Sons, Inc. v. Smith & Harmer, Ltd.*, 124 Nev. 1206, 1219, 197 P.3d 1051, 1059 (2008). When awarding fees in a civil pursuant to a statute or rule, the court must consider various factors, including: the quality of the advocate; the character and difficulty of the work performed; the work actually performed by the attorney; and the result obtained. *Miller v. Wilfong*, 121 Nev. 619, 623, 119 P.3d 727, 730 (2005) (citing *Brunzell v. Golden Gate Nat. Bank*, 85 Nev. 345, 349, 455 P.2d 31, 33 (1969)).

#### 2. Rule 11

Pursuant to Nevada Rule of Civil Procedure 11(c), the court may order a party to show cause why it has not violated the mandates of Rule 11. Rule 11 prevents a party from bringing a lawsuit for an improper purpose, which includes: (1) harassment, causing unnecessary delay, or needless increasing the cost of litigation; or (2) making frivolous claims. NEV. R. CIV. PRO.

1 11(b)(1)-(2). Rule 11 sanctions should be imposed for frivolous actions. *Marshall v. District*  
2 *Court*, 108 Nev. 459, 465, 836 P.2d 47, 52.

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

13 “A claim is groundless if ‘the allegations in the complaint . . . are not supported by any  
14 credible evidence at trial.’” *Barozzi v. Benna*, 112 Nev. 635, 639, 918 P.2d 301, 303 (1996)  
15 (quoting *Western United Realty, Inc. v. Isaacs*, 679 P.2d 1063, 1069 (Colo.1984)).

16 3. NRS §§ 18.010 and 18.020

17 “[T]he court may make an allowance of attorney’s fees to a prevailing party[, w]hen the  
18 prevailing party has not recovered more than \$20,000.” See NEV. REV. STAT. 18.010(2)(a).

19 Also, a court may award attorneys’ fees to a prevailing party when it finds that the claim  
20 was brought or maintained without reasonable ground or to harass the prevailing party. See NEV.  
21 REV. STAT. § 18.010(2)(b); see also *Rodriguez v. Primadonna Co., LLC*, 216 P.3d 793, 800  
22 (Nev. 2009). “The court shall liberally construe the provisions of this paragraph in favor of  
23 awarding attorney’s fees in all appropriate situations.” *Id.* The Nevada Legislature explained  
24 that:

25 [i]t is the intent of the Legislature that the court award attorney’s  
26 fees pursuant to this paragraph and impose sanctions pursuant to  
27 Rule 11 of the Nevada Rules of Civil Procedure in all appropriate  
28 situations to punish for and deter frivolous or vexatious claims and  
defenses because such claims and defenses overburden limited  
judicial resources, hinder the timely resolution of meritorious  
claims and increase the costs of engaging in business and

providing professional services to the public.

*Id.*

“Costs must be allowed of course to the prevailing party against any adverse party against whom judgment is rendered [...] in an action for the recovery of money damages, where the plaintiff seeks to recover more than \$2,500.” See NEV. REV. STAT. 18.020(3).

“[T]he term ‘prevailing party’ is broadly construed so as to encompass plaintiffs, counterclaimants, and defendants.” *Valley Elec. Ass’n v. Overfield*, 121 Nev. 7, 10, 106 P.3d 1198, 1200 (2005) (citing *Smith v. Crown Financial Services*, 111 Nev. 277, 284, 890 P.2d 769, 773 (1995)). “To be a prevailing party, a party need not succeed on every issue.” *LVMPD v. Blackjack Bonding*, 131 Nev. Adv. Op. 10, 343 P.3d 608, 615 (2015), reh’g denied (May 29, 2015), reconsideration en banc denied (July 6, 2015) (citing *Hensley v. Eckerhart*, 461 U.S. 424, 434, 103 S.Ct. 1933, 76 L.Ed.2d 40 (1983) (observing that “a plaintiff [can be] deemed ‘prevailing’ even though he succeeded on only some of his claims for relief”)).

#### 4. Offer of Judgment

“At any time more than 10 days before trial, any party may serve an offer in writing to allow judgment to be taken in accordance with its terms and conditions.” Nev. R. Civ. Pro 68(a). “If the offer is not accepted within 10 days after service, it shall be considered rejected by the offeree and deemed withdrawn by the offeror.” *Id.* at § 68(e). “If the offeree rejects an offer and fails to obtain a more favorable judgment,”

(2) “the offeree shall pay the offeror’s post-offer costs, applicable interest on the judgment from the time of the offer to the time of entry of the judgment and reasonable attorney’s fees, if any be allowed, actually incurred by the offeror from the time of the offer. If the offeror’s attorney is collecting a contingent fee, the amount of any attorney’s fees awarded to the party for whom the offer is made must be deducted from that contingent fee.”

*Id.* at § 68(f)(2)

In exercising its discretion to award attorneys’ fees under NRCP 68, the Court must evaluate the following factors: (1) whether the plaintiff’s claim was brought in good faith; (2) whether the offer of judgment was reasonable and in good faith in both its timing and amount; (3) whether the offeree’s decision to reject the offer and proceed to trial was grossly

unreasonable or in bad faith; and (4) whether the fees sought by the offeror are reasonable and justified in amount. *Wynn v. Smith*, 117 Nev. 6, 13, 16 P.3d 424, 428 (2001) (citing *Beattie v. Thomas*, 99 Nev. 579, 588-89, 668 P.2d 268, 274 (1983)).

**B. Attorneys’ Fees and Costs Pursuant to Rule 11**

At this point it cannot be disputed that this action was frivolously maintained by Plaintiff. This Honorable Court made that fact as clear as possible when granting Defendants’ MSJ. See Ex. B at 0009 (“motion granted as to all claims and attorney’s fees”); see also Ex. C at 0050, ¶ 77 (“The overwhelming facts and law illustrate that Plaintiff’s claim is frivolous. The findings of fact are incorporated by reference”). Not only did Plaintiff intentionally omit the waiver of inspections from the pleadings, they also egregiously claimed damages in excess of \$16.25 Million related to the Property. See Transcript from MSJ Proceedings attached hereto as **Exhibit J** [0137-0176] at 0166, lines 2-6 (“I don’t see in good faith how this can be brought – this can be brought by the plaintiffs in good faith when they’ve waived everything. And in addition, they refused to conduct an inspection knowing that they were purchasing a 63-year-old property. I mean it’s just absurd.”). In fact, this Honorable Court advised that, “this is one of the clearest cut cases [for summary judgment] I’ve seen.” *Id.* at 0167, line 5. Further determining that, “when you’re looking at the residential purchase agreement and signed disclosure, its’s clear in my view that this is a baseless lawsuit, and I will grant attorneys’ fees under NRCP 11.” *Id.* at 0167, lines 11-14.

Additionally, Plaintiff challenged the Amended Order granting summary judgment and Rule 11 sanctions by filing a Motion to Reconsider; however, that motion was unsuccessful. See Exs. E-F. In denying Plaintiff’s motion to reconsider, in part, this Honorable Court determined that, “Plaintiff has not demonstrated that this Court’s decision to grant Rule 11 sanctions was clearly erroneous.” See Ex. E at 0103; see also Ex. F at 0110, ¶ 13.

Moreover, the Court was very clear in its Decision “that the district court correctly found that no genuine issue of material fact existed to justify denying summary judgment.” See Ex. H at 0132. As such, summary judgment was affirmed. *Id.* Notably, although the portion of the Judgment awarding attorneys’ fees pursuant to Rule 11 was reversed, the reversal was based



solely on a procedural defect. *Id.* at 0132-0133. As such, the fact that Plaintiff frivolously maintained this action has been unequivocally established, which should result in the imposition of monetary sanctions against Plaintiff pursuant to the purpose and intent behind Rule 11. See NEV. REV. STAT. § 18.010(2)(b) (“It is the intent of the Legislature that the court award attorney’s fees pursuant to this paragraph and impose sanctions pursuant to Rule 11 of the Nevada Rules of Civil Procedure in all appropriate situations to punish for and deter frivolous or vexatious claims[.]”).

Plaintiff should not escape sanctions because of a procedural defect not caused by Defendants. See Ex. H at 0132, fn. 6. The overwhelming facts and law also show that Plaintiff brought or maintained this claim without reasonable grounds, which justifies an award of attorneys’ fees. *Rodriguez v. Primadonna Co., LLC*, 216 P.3d 793, 800 (Nev. 2009). Unfortunately, the order to show cause language was removed in the Amended Order, which created the issue that Plaintiff was not given “notice and reasonable opportunity to respond” under Rule 11. See NRCP § 11(c)(1). This Honorable Court has the authority to unilaterally set an order to show cause why the conduct described in the Amended Order has not violated Rule 11(b), which would alleviate the concerns raised by the Court in reversing the attorney’s fees portion of the Judgment. *Id.* at § 11(c)(3); see also Ex. H. Additionally, an order to show cause will further the intent of Rule 11, which is to punish and deter frivolous claims. For these reasons, this Honorable Court should exercise its authority under Rule 11(c)(3) and issue an order to show cause.

C. **Attorneys’ Fees and Costs Pursuant to NRS §§ 18.010 and 18.020**

Here, Defendants are also entitled to recovery of attorneys’ fees and costs as the prevailing party in this litigation. Similar to the preceding section, it cannot be disputed that Defendants are the prevailing party in this litigation. See Exs. B-I. Defendants were granted summary judgment on each one of the claims brought by Plaintiff, as well as their own counterclaim for abuse of process. *Id.* Notably, Defendants, as the prevailing party, has not recovered more than \$20,000, which triggers the attorneys’ fees provision of NRS 18.010(2)(a). Moreover, because Plaintiff sought recovery over \$2,500, Defendants are also entitled to

reimbursement of costs pursuant to NRS 18.020(3).

Alternatively, this Honorable Court may award Defendants attorneys’ fee under NRS § 18.010(2)(b) for the frivolous nature of the action brought by Plaintiff. Again, the overwhelming facts and law establish that Plaintiffs brought and maintained this action frivolously, for which they should be sanctioned. This statute does not have the same order to show cause requirement as Rule 11 and allows for imposition of attorneys’ fees as a sanction “when the court finds that the claim [...] was brought or maintained without reasonable ground or to harass the prevailing party.” Here, this Honorable Court has already found that the action was frivolously maintained, allowing for the award of attorneys’ fees to Defendants as the prevailing party. Again, the statute advises that the legislative intent is to “liberally construe the provisions of this paragraph in favor of awarding attorneys’ fees in all appropriate situations.” See NRS § 18.010(2)(b). Moreover, the purpose behind the statute is “to punish for and deter frivolous or vexatious claims and defenses because such claims and defenses overburden limited judicial resources, hinder the timely resolution of meritorious claims and increase the costs of engaging in business and providing professional services to the public.” *Id.*

For these reasons, Defendants respectfully request recovery of attorneys’ fees and costs pursuant to their successful defense of the frivolous claims brought by Plaintiff. Defendants were forced to expend significant resources defending against this baseless litigation and, although Defendants are unequivocally the prevailing party in this matter, they have nothing to show for it other than a massive litigation bill. This is the exact scenario in which NRS § 18.020(2) was implemented to redress.

**D. Attorneys’ Fees and Costs Pursuant to NRCP § 68 and NRS § 17.117**

Defendants are also entitled to attorneys’ fees and costs pursuant to NRCP § 68 and NRS § 17.117 based on offer of judgment served on Plaintiff, which was ultimately rejected. See Ex. A. After evaluating the *Beattie* factors, it is clear that Plaintiff’s decision to reject the offer and proceed with litigation was grossly unreasonable, allowing for recovery of attorneys’ fees and costs by Defendants.

///

1 First, the preceding sections illustrate that Plaintiff's claims were not brought in good  
2 faith. See Ex. J at 0166, lines 2-6 ("I don't see in good faith how this can be brought – this can  
3 be brought by the plaintiffs in good faith when they've waived everything. And in addition, they  
4 refused to conduct an inspection knowing that they were purchasing a 63-year-old property. I  
5 mean it's just absurd."). In fact, this Honorable Court advised that, "this is one of the clearest cut  
6 cases [for summary judgment] I've seen." *Id.* at 0167, line 5. Further determining that, "when  
7 you're looking at the residential purchase agreement and signed disclosure, it's clear in my view  
8 that this is a baseless lawsuit, and I will grant attorneys' fees under NRCP 11." *Id.* at 0167, lines  
9 11-14.

10 Second, the offer was reasonable in both its timing and amount based on the facts known  
11 by the parties at the time the offer was made. See Ex. A. The offer includes a detailed recitation  
12 of the facts and circumstances related to Plaintiff's waiver of inspections and an analysis of those  
13 facts in relation to the statutes supporting the defenses raised by Defendants. *Id.* at 0003-0005.  
14 Defendants' analysis alluded to all of the same points and issues addresses by this Honorable  
15 Court in granting summary judgment, further illustrating the reasonableness of the offer.  
16 Additionally, the amount of the offer was objectively reasonable considering the lack of factual  
17 or legal support for Plaintiff's claims, as illustrated by the summary judgment determination in  
18 favor of Defendants.

19 Third, and similar to the points made above, Plaintiff's decision to reject the offer was  
20 not reasonable in light of the aforementioned defects surrounding Plaintiff's claims. Again,  
21 Defendants provided a very clear analysis that illustrated the likelihood that Plaintiff would not  
22 be successful in this action. Plaintiff not only chose to be remiss in its duty to make a competent  
23 inquiry, but even doubled down and filed an amended complaint including additional causes of  
24 actions and additional parties.

25 Finally, the fees sought are reasonable in light of the work required and actually  
26 completed. The fees requested are supported by affidavit of counsel [subsection F of this brief],  
27 which includes analysis of the *Brunzell* factors.

28 ///

1           **E. Attorneys’ Fees related to Abuse of Process**

2           Defendants have already prevailed on the competing claims for abuse of process. See Ex.  
3 B (“motion granted as to all claims”); see also Ex. C at 0047-0048, ¶¶ 53-54 (advising that  
4 Plaintiff did not oppose Defendants arguments related to abuse of process leading to granting of  
5 summary judgment in Defendants favor on those claims); also Ex. C. at 0051, lines 10-12 (“It is  
6 further ordered, adjudicated, and decreed that this is a final order related to the claims and  
7 counterclaim. This Court directs entry of a final judgment of all claims.”); and Ex. H (affirming  
8 summary judgment). As such, Defendants believe they are entitled to recovery of compensatory  
9 damages, which would include attorneys’ fees. See *Bull v. McCuskey*, 96 Nev. 706, 710, 615  
10 P.2d 957, 960 (1980), abrogated on other grounds by *Ace Truck & Equip. Rentals, Inc. v. Kahn*,  
11 103 Nev. 503, 746 P.2d 132 (1987) (“The compensatory damages recoverable in an action for  
12 abuse of process are the same as in an action for malicious prosecution, Prosser, Law of Torts at  
13 858 (4th ed. 1971), and include compensation for fears, anxiety, mental and emotional  
14 distress.”).

15           **F. Affidavit of Michael B. Lee, Esq.**

16 STATE OF NEVADA            )  
17 COUNTY OF CLARK         ) ss.

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

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

24           2. This Declaration is made in support of the attorneys’ fees and costs requested in  
25 the foregoing Motion. I am an attorney with the law firm of MICHAEL B. LEE, P.C. This law  
26 firm represents Defendants.

27           3. To date, Defendants incurred attorneys’ fees in the total amount of \$160,320.14  
28 from the office of Michael B. Lee, P.C. A true and correct copy of the Invoices are attached as

1 **Exhibit K** [0177-0195]. The Firm charged Defendants an hourly rate of \$425.00 per hour. This  
2 is a reasonable rate giving that the Firm charges \$475 per hour for business law cases, and was  
3 just approved at that rate related to a fee award in business court for an evidentiary hearing. A  
4 true and correct copy of the Minute Order is attached as **Exhibit L** [0196-0197].

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

7 5. To date, Defendants incurred attorneys' fees in the total amount of \$10,187.50  
8 from the office of Burdick Law, PLLC. A true and correct copy of the Invoices are attached as  
9 **Exhibit M** [0198-0201].

10 6. Further illustrating the reasonableness of the rate, Plaintiff's counsel, Benjamin  
11 Childs, charged Plaintiff \$400 per hour for his representation. A true and correct copy of Childs  
12 Retainer Agreement is attached as **Exhibit N** [0202-0204].

13 7. Defendants are seeking reimbursement of **\$179,007.64** for their attorneys' fees.

14 Michael B. Lee, P.C.

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

19 9. I have been practicing law since 2006. I am an AV rated attorney and have been  
20 AV rated since 2012. I have several industry awards and recognitions based on peer reviews for  
21 being a top lawyer in Southern Nevada from Super Lawyers Magazine, AVVO, Nevada  
22 Business Magazine, Desert Companion, and various other publications. Additionally, I have also  
23 argued before the Nevada Supreme Court and the Ninth Circuit and have three published  
24 opinions in the favor of my clients, and several unpublished opinions. I am licensed in Nevada,  
25 California, the United States District Court, District of Nevada, the United States Court of  
26 Appeals for the Ninth Circuit, and the Supreme Court of the United States. I have sat on the  
27 Executive Council for the Young Lawyers Section of the State Bar of Nevada, the Fee Dispute  
28 Arbitration Committee for the State Bar of Nevada, and currently sit on the Discipline Panel for

1 the State Bar of Nevada. I am also a vice-chair of the Business Law Committee, SOLO Law  
2 Firms, and Plaintiff's Task Force for the Tort Insurance Practice Section of the America Bar  
3 Association, and was previously a vice-chair for the Trial Techniques and Corporate Counsel  
4 committees.

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

8 *Burdick Law, PLLC*

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

17 *Character of the Work Done*

18 12. The work performed in this matter was reasonably suited to the nature of this  
19 dispute. Defendants had to defend a frivolous lawsuit from Plaintiff. To illustrate the frivolous  
20 nature of the lawsuit, Plaintiff submitted false, misleading representations to defend the initial  
21 motion to dismiss by Defendants. The court minutes demonstrate that Mr. Childs falsely argued  
22 that there were issues not disclosed by Defendants, a true and correct copy of Minutes is attached  
23 as **Exhibit O** [0205-0207], which the underlying Order denoted as false, misleading.

24 13. After this Honorable Court permitted Plaintiff leave to amend its pleadings,  
25 Plaintiff amended the initial complaint's three causes of action ((1) RECOVERY UNDER NRS  
26 CHAPTER 113 [Defendants TKNR and Wong]; (2) CONSTRUCTIVE FRAUD [Defendants  
27 Investpro and Nickrandt]; (3) COMMON LAW FRAUD [Defendants Investpro and Nickrandt  
28 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. See Ex. A. 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 P** [0208-0210]. 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 Q** [0211-0216]. As noted in Mr. Childs' e-mail, Plaintiff used discovery to directly try to circumvent the frivolous nature of the lawsuit. *Id.* at 0212 ("Defendants' Summary Judgment motion is highly unlikely to be granted given the state of outstanding discovery and Plaintiff has filed an extensive opposition and counter-motion").

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.

17. Additionally, counsel had to expend significant time and effort in responding to the appeals filed by Plaintiff.

Work Performed

18. 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

19. 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.

20. Additionally, this Honorable Court's decision to grant summary judgment in favor of Defendants on all claims was affirmed by the Court. While the Judgment was reversed, it was done so because of a procedural defect not caused by Defendants.

21. Ultimately, Defendants succeeded on every aspect of their Motion for Summary Judgment, leading to a ruling in favor of Defendants on all claims. That decision survived Plaintiff's Motion for reconsideration and the subsequent appeal.

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

23. Defendants are seeking reimbursement of \$179,007.64 for their attorneys' fees.

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Memo of Costs

24. 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 R** [0217-0218]. 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 S** [0219-0225].
3. Expert Fee attached as **Exhibit T** [0226-0227].
4. Invoice for Copying Costs is attached as **Exhibit U** [0228-0229].

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
Copies:	\$501.66

**TOTAL:** **\$10,214.77**

**Summary**

25. Defendants previously submitted an Affidavit in Support of Attorneys’ Fees on April 6, 2021, as a result of this Honorable Court granting the MSJ. See Ex. C at 0051, lines 8-9 (“Defendants may file an affidavit in support of requested attorneys’ fees and costs within 10 days of the entry of Order.”).

26. However, although Plaintiff filed the Motion to Reconsider the Amended Order that included request for clarification as to who was subject to pay the attorneys’ fees award, Plaintiff never provided any opposition or argument challenging the specific amount requested by Plaintiff in the Affidavit in Support of Attorneys’ Fees filed on April 6, 2021. See Ex. F at 0110, lines 22-23.

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27. As such, the **\$128,166.78** [0178-0192] in attorneys' fees and costs requested by the April 6, 2021, Affidavit in Support of Attorneys' Fees, and subsequently granted by this Honorable Court, is undisputed.

28. Defendants request an additional **\$60,052.50** [0193-0195] in attorneys' fees and **\$1,003.13** in costs that were incurred after the filing of the April 6, 2021, Affidavit in Support of Attorneys' fees.

29. The additional fees and costs were all reasonably and necessarily incurred by Defendants in their successful defense of this action and should be awarded in addition to the undisputed attorneys' fees and costs provided in the previous Affidavit in support of Attorneys' Fees.

30. As such, Defendants are seeking \$179,007.64 for attorneys' fees, and \$10,214.77 in costs for a total of **\$189,222.41**.

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

DATED this 10th day of August, 2022.

/s/ Michael Lee  
MICHAEL B. LEE

### III. CONCLUSION

For the aforementioned reasons, this Honorable Court should grant the Motion and award attorneys' fees in the amount of **\$179,007.64** and costs of **\$10,214.77**, for a total award of **\$189,222.41** to Defendants.

DATED this 10th day of August, 2022.

MICHAEL B. LEE, P.C.

/s/ Michael Lee  
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**CERTIFICATE OF MAILING**

I HEREBY CERTIFY that on this 10th day of August, 2022, I placed a copy of the **DEFENDANTS’ MOTION FOR ATTORNEYS’ FEES AND COSTS** as required by Eighth Judicial District Court Rule 7.26 by delivering a copy or by mailing by United States mail it to the last known address of the parties listed below, facsimile transmission to the number listed, and/or electronic transmission through the Court’s electronic filing system to the e-mail address listed below:

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