

IN THE SUPREME COURT OF THE STATE OF NEVADA		Electronically Filed Aug 03 2023 05:25 PM Elizabeth A. Brown Clerk of Supreme Court
TKNR, INC., a California corporation,	Appellant,	Supreme Court Case No. 85620
vs.		District Court Case No. A-18-785917-C
WLAB INVESTMENT, LLC,	Respondent.	

Appeal from the Eighth Judicial District Court
District Court Case No. A-18-785917-C
Adriana Escobar, District Judge

RESPONDENT APPENDIX – Volume 4 of 10

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CERTIFICATE OF SERVICE

I hereby certify that on the date indicated below, I electronically filed the foregoing **RESPONDENT APPENDIX** with the Clerk of the Court for the Supreme Court of the State of Nevada by using the electronic filing system to be delivered to the following registered user:

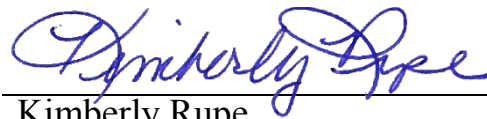
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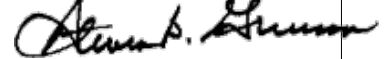
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Settlement Judge

DATED August 3, 2023



Kimberly Rupe
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IN THE EIGHTH JUDICIAL DISTRICT COURT

CLARK COUNTY, NEVADA

W L A B INVESTMENT, LLC,
Plaintiff,

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

vs.

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

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 Actions.

TO: ALL PARTIES

YOU, AND EACH OF YOU, will please take notice that an order in this matter was entered
in this matter on March 30, 2021. A copy of said ORDER is attached hereto and incorporated
herewith by reference.

Dated this 31 day of March, 2021.

/s/ Michael Lee
MICHAEL B. LEE, ESQ. (NSB 10122)
Attorneys for Defendants

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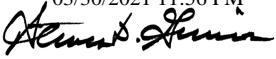
CERTIFICATE OF MAILING

I HEREBY CERTIFY that on this 31 day of March, 2021, I placed a copy of **NOTICE OF ENTRY OF 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.

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


CLERK OF THE COURT

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IN THE EIGHTH JUDICIAL DISTRICT COURT

CLARK COUNTY, NEVADA

W L A B INVESTMENT, LLC,

Plaintiff,

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

vs.

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

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

Defendants.

AND RELATED CLAIMS.

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,

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

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

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

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

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

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

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

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

28 ////

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 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

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

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

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

6 13. Plaintiff understands the importance of reading contracts.

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

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

11 Requirement to Inspect was Known

12 16. In terms of the RPA were clear to Plaintiff.

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

16 19. . . A. . Yes. . Based on -- we bought this -- we go
17 20 to the inspection, then we also talk to the tenant,
18 21 so we thinking this is investment property; right?
19 22 So financial it's looking at the rent, it's
20 23 reasonable, it's not very high compared with the
21 24 surrounding area. . Then also financially, it's good.
22 25. Then I take a look at the -- everything
23 Page 164
24 .1 outside. . Good. . So I said, Fine. . That's satisfied.
25 .2 That's the reason I command my wife to sign the
26 .3 purchase agreement.

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

29 .2. . . Q. . So at the time when you did your
30 .3 diligence, you had a right to conduct noninvasive,
31 .4 nondestructive inspection; correct?
32 .5. . . A. . Yes, I did.
33 .6. . . Q. . And you had the opportunity to inspect all
34 .7 the structures?
35 .8. . . A. . I check the other one -- on the walk, I
36 .9 don't see the new cracking, so the -- some older
37 10 cracking. . I check the neighbor who also have that

11 one. I think it's okay; right? Then the –
Supplement at 166:2-11.

8 Q So you had the right to inspect the
9 structure; correct?

10 A Yes, yes, I did that.

11 Q You had the right to inspect the roof; is
12 that correct?

13 A Yes.

14 Q Okay. Did you do that?

15 A I forgot. I maybe did that because
16 usually I go to the roof.

* * *

22 Q You had the right to inspect the
23 mechanical system; correct?

24 A Right. Yes, yes.

25 Q You had the right to inspect the
Page 167

1 electrical systems; correct?

2 A I check the electrical system, yes.

3 Q You had a right to inspect the plumbing
4 systems; correct?

5 A Yes.

6 Q You had the right to inspect the
7 heating/air conditioning system; correct?

8 A Yes.

* * *

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

6 A Yes, yes.

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

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

13 Q "It is strongly recommended that buyer
14 retain licensed Nevada professionals to conduct
15 inspections."

16 A Yes.

17 Q Yeah. So you were aware of this
18 recommendation at the time --

19 A Yeah, I know.

Id. at 176:13-19.

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

////

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

19 · · · A · · Yeah.

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

24 · · · A · · Yeah · Yeah.

25 · · · Q · · Okay · Then it goes on to say, "If any
Page 179

· 1 inspection is not completed and requested repairs
· 2 are not delivered to seller within the due diligence
· 3 period, buyer is deemed to have waived the right to
· 4 that inspection and seller's liability for the cost
· 5 of all repairs that inspection would have reasonably
· 6 identified had it been conducted."

· 7 · · · · Did I read that correctly?

· 8 · · · A · · Yes, yes.

· 9 · · · Q · · Okay · So we'll eventually get to the
10 issues that, you know, Ms. Chen identified that you
11 wanted corrected in the emails or text messages.

12 · · · · Is that fair to say that those are the
13 only issues that you deemed needed to be resolved to
14 go forward with the purchase?

15 · · · A · · Yeah · After that time, yes.

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

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

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

20 22. As to all the properties purchased by Plaintiff, Mr. Miao always does the
21 inspections and does not believe a professional inspection is necessary. *Id.* at 116:2-9, 119:3-25,
22 140:5-10. Based on his own belief, he does not believe that a professional inspection is
23 necessary for multi-tenant residential properties. *Id.* at 120:6-9 (his own understanding), 120:16-
24 25 (second-hand information he received).

25 23. Notably, he does not have any professional license related to being a general
26 contractor, inspector, appraiser, or project manager. *Id.* at 123:5-16 (no professional licenses),
27 123:23-24 (no property management license), 169:7-14 (no licensed or bonded inspector),
28 171:23-25 (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 outlets¹, and electrical issues:

11 16. . . . A. . . I looked at a lot of things. For example,
12 17 like, the -- I point out some drywall is not
13 18 finished; right? And the -- some of smoke alarm is
14 19 not -- is missing and -- which is law required to
15 20 put in for smoke alarm. Then no carbon monoxide
16 21 alarm, so I ask them to put in.
17 22. . . . Then in the kitchen, lot of electrical,
18 23 the outlet is not a GFCI outlet, so I tell them, I
19 24 said, You need to change this GFCI. Right now this
20 25 outlet is not meet code. You probably have problem.

21 *Id.*

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

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

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

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

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

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

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

12 23 · · · Q · · Okay · So when they disclosed that there
13 24 was construction and modification, alterations,
14 25 and/or repairs made without State, City, County
 Page 205
15 ·1 building permits, which was also work that was done
16 ·2 by owner's handyman, did you ever do any follow-up
 ·3 inquiries to the seller about this issue?
17 ·4 · · · A · · No, I didn't follow up ·

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

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

21 10 · · · Q · · Under the disclosure form --
22 11 · · · A · · Yeah.
23 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?
24 16 · · · A · · Yes.

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

26 15 · · · Q · · Okay · So as your attorney said, you could
27 16 have obtained a copy of the permits at any time?
28 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?

1 22... A... Yes.
2 23... Q... It also put you on notice of the issues of
24 everything that's basically specified on page 38;
25 correct?
3 Page 209
4 1... A... Yes.

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

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

8 22... Q... Okay. So you understand that for more
9 23 information during the diligence process, you should
24 contact the local building department?
10 25... A... Yes.
Page 260

11 * * *
12 5... Q... -- it provides you with the address of the
13 6 building and safety department; is that correct?
14 7... A... Yes.
15 8... Q... And the office hours; is that correct?
16 9... A... Yes.
17 10... Q... And it also provides you with a phone
18 11 number; correct?
19 12... A... Yes.
20 13... Q... And this is information or resources that
21 14 you could have used at any time related to finding
22 15 information about the permits of the property;
23 16 correct?
24 17... A... Yes.
25 18... Q... And this would have been true prior to the
26 19 purchase of the building; correct?
27 20... A... Yes.
28 21... Q... And this would also have been true at the
time you read the disclosure that specified that
some of the improvements or some of the disclosures
had been done without a permit; right?
25... A... Yes.

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

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

25 5... Q... Okay. And it says, "It's the buyer's duty
26 6 to inspect. Buyer hereby assumes responsibility to
27 7 conduct whatever inspections buyer deems necessary
8 to inspect the property for mold contamination.
9... "Companies able to perform such
10 inspections can be found in the yellow pages under
11 environmental and ecological services."

1 12 I read that correctly? Yes?

2 13 . . A . . Yes.

3 14 . . Q . . Okay . And then you elected not to get a
15 mold inspection; correct?

4 16 . . A . . Yeah .

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

6 .5 . . Q . . So you relied upon your own determination
7 related to the potential mold exposure of the
8 property; correct?

9 .8 . . A . . Yes.

10 .9 . . Q . . Okay . And you elected to proceed with
11 purchasing it without a professional mold
12 inspection; correct?

13 .12 . . A . . Yes.

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

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

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

19 .2 . . Q . . If we go to page 40 --

20 .3 . . A . . Mm-hmm.

21 .4 . . Q . . --- there's a bunch of Nevada statutes
22 here.

23 .6 . . A . . Mm-hmm.

24 .7 . . Q . . If you look at NRS 113.140 --

25 .8 . . A . . Mm-hmm.

26 .9 . . Q . . --- do you see that at the top of the page?
27 10 "Disclosure of unknown defects not required. Form
28 11 does not constitute warranty duty of buyer and
12 prospective buyer to exercise reasonable care."

13 .13 Do you see that?

14 .14 . . A . . Yes.

15 .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.

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

2 No Dispute a Professional Inspection Could Have Revealed the Alleged Issues

3 39. The alleged defects identified by both parties' experts could have been discovered
4 at the time of the original purchase. As to the ability to inspect, Mr. Miao admitted that he had
5 access to the entire building. *Id.* at 250:22-25. He had access to the attic and looked at it. *Id.* at
6 251:4-14. Mr. Miao admitted that Plaintiff's expert examined the same areas that he did:

7 ·6· · · Q· ·Okay· So you walked through the property
·7 with him at the time he did his inspection; correct?

8 ·8· · · A· ·Right.

9 ·9· · · Q· ·Okay· During that time, did he inspect
10 any areas that -- that you did not have access to in
11 2017?

12 ·12· · · A· ·Yes· He didn't go to anything I didn't
13 inspect during 2017 too.

14 ·14· · · Q· ·So he inspected the same areas you
15 inspected?

16 ·16· · · A· ·Yes, yes.

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

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

20 41. Mr. Miao admitted that Plaintiff's expert's inspection of the HVAC, *Id.* at 292:2-
21 5, 293:18-23, and the plumbing system, *Id.* at 300:19-25-301:1-4, would have been the same as
22 his in 2017.

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

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

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

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

·3· · · Q· · Do you agree with this statement?

·4· · · A· · Yes.

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

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

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

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

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

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* * *

·3· · · · · Yes, yes.

·4 BY MR. LEE:

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

·6· · · A· · Agree.

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

No Permits Required for Cosmetic Work by TKNR

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

·5· · · Q· · Number 5 says, "Painting, papering,
·6 tiling, carpeting, cabinets, countertops, interior
·7 wall, floor or ceiling covering, and similar finish
·8 work."

·9· · · · · Do you see that?

10· · · A· · Yes.

11· · · Q· · So you agree that no permits are required
12 for any of these types of work; correct?

13· · · A· · Yes.

Id. at 262:5-13.

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

1 4. . . . A. . . Yes.

2 *Id.* at 265:1-4.

3 17. . . . Q. . . Okay. . If you turn the page to 82,
4 18 Plumbing Improvements, no permits required to repair
5 19 or replace the sink; correct?

6 20. . . . A. . . Yes.

7 21. . . . Q. . . To repair or replace a toilet?

8 22. . . . A. . . Yes.

9 23. . . . Q. . . To repair or replace a faucet?

10 24. . . . A. . . Yes.

11 25. . . . Q. . . Resurfacing or replacing countertops?

12 Page 264

13 1. . . . A. . . Yes.

14 2. . . . Q. . . Resurfacing shower walls?

15 3. . . . A. . . Yes.

16 4. . . . Q. . . Repair or replace shower heads?

17 5. . . . A. . . Yes.

18 6. . . . Q. . . Repair or replace rain gutters and down
19 7 spouts?

20 8. . . . A. . . Yes.

21 9. . . . Q. . . Regrouting tile?

22 10. . . . A. . . Yes.

23 11. . . . Q. . . And a hose bib, whatever that is.

24 12. . . . A. . . Water freezer. . It's, like, for the

25 13 filtration of the water.

26 14. . . . Q. . . Okay. . And then for the mechanical, no
27 15 permits required for portable heating appliances;

28 16 correct.

19 17. . . . A. . . Yes.

20 18. . . . Q. . . For portable ventilation appliances?

21 19. . . . A. . . Yes.

22 20. . . . Q. . . Or portable cooling units; correct?

23 21. . . . A. . . Yes.

24 22. . . . Q. . . And for portable evaporative coolers
25 23 installed in windows; correct?

26 24. . . . A. . . Yes.

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

28 Plaintiff Does not Disclose the Alleged Issues to Potential Tenants

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

32 19. Then also in according to the law, and
33 20 they said it very clearly, because this is
34 21 residential income property, right, rental income
35 22 property, multi-family, we need -- landlord need
36 23 provide housing and well-being and -- for the

1 24 tenant. The tenant is not going to do all this
2 25 inspection. They can't. The burden is on the
3 Page 120
·1 landlord to make sure all these building is safe and
·2 in good condition.

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

7 49. Moreover, Plaintiff does not provide any notice to the tenants about its expert's
8 report or this litigation:

9 ·6 · · · Q · All right. In terms of tenants -- renting
10 ·7 out the units to any tenants, do you ever provide
·8 them with a copy of the Sani report?

11 ·9 · · · A · No.

12 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 13 · · · A · No.

14 * * *

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

16 25 · · · A · Yeah. And also we need to tell is a lot
Page 337

17 1 of things report that we don't need to go to the
·2 inside the building. It's wall cracking. It's
·3 outside. You can see.

18 ·4 · · · Q · Okay. So it's open and obvious for them?

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

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

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

23 *Squatters or Tenants Could Have Damaged the Property*

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

27 12 · · · Q · Do you generally have a squatter problem
13 with the property?

28 14 · · · A · Yes. As a matter of fact, today I just

1 15 saw the one text message that said one -- some
2 16 people go to my apartment.

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

5 ·4· · · Q· ·Okay· So the tenant in this context would
6 ·5 have damaged the unit at the time that you owned it;
7 ·6 is that fair?

8 ·7· · · A· ·Maybe· Yes.

9 ·8· · · Q· ·Okay· So some of the -- so the damage
10 ·9 that was to the water heater system, could the
11 ·10 tenant have damaged that as well?

12 ·11· · · A· ·Yes.

13 ·12· · · Q· ·And then he could have damaged the cooler
14 ·13 pump and the valve as well; is that correct?

15 ·14· · · A· ·Yes.

16 ·15· · · Q· ·Okay· Then on 122, these are all issues
17 ·16 that the tenant could have damaged; is that correct?

18 ·17· · · A· ·Yes.

19 ·18· · · Q· ·And then the same through for 145; is that
20 ·19 right?

21 ·20· · · A· ·Yes.

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

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

24 *No Evidence That Defendants Knew of Alleged Conditions*

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

28 53. The entire case is based on Mr. Miao's personal belief and speculation. *Id.* at
29 253:17-19.

30 54. Mr. Miao admitted that he has no evidence Defendants knew about the alleged
31 moisture conditions. *Id.* at 293:24-25-294:1-3. Additionally, he also admitted that there is no
32 evidence that Defendants knew about the alleged issues with the plumbing system. *Id.* at
33 301:21-24. He also admitted that he did not know if Defendants knew about the alleged issues
34 with the duct work when they owned the Property. *Id.* at 314:5-19. He also recognized the
35 deficiency in Plaintiff's expert's report that failed to differentiate between conditions prior to
36 when TKNR owned the Property, while it owned it, and those afterwards. *Id.* at 321:17-21 –

1 322:3-6.

2 55. Mr. Miao also recognized that a 63-year-old property could have issues that were
3 not caused by Defendants. *Id.* at 324:6-15. This would have also included any issues with the
4 dryer vent and ducts, *Id.* at 325:3-20, and when the duct became disconnected. *Id.* at 329:1-16.

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

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

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

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

18 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.

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

24 *Plaintiff Admitted it Inflated its Cost of Repairs*

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

1 of this lawsuit were to simply harass Defendants.

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

9 *Allegations in the Second Amended Complaint*

10 61. On November 23, 2020, Plaintiff filed its Second Amended Complaint ("SAC").
11 Based on the admissions of Mr. Miao and the waivers related to the RPA and the 2nd RPA, these
12 allegations illustrate the overall frivolous nature of this action and why Rule 11 sanctions are
13 appropriate:

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

18 * * *

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

24 * * *

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

* * *

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

a. SRPDF stated that Electrical System had no problems
or defects. The fact is that many new electric lines were
added and many old electric lines were removed by
Investpro Manager LLC. The swamp coolers that were
removed were supplied by 110 volt power supply lines.
Investpro Manager LLC first added one 220v power supply

1 line for one new 5 ton heat pump package unit on one roof
2 top area for the whole building for Unit A. Unit B and Unit
3 C. Investro (sic) Manager, LLC then removed the one year
4 old 5 ton heat pump packaged unit from the roof top with
5 power supply lines and added two new 220v power supply
6 lines for two new 2 ton heart pump package units, one each
7 for Unit B and Unit C.

8 Inestpro (sic) Manager, LLC then added one new 110 volt
9 power supply line for two window cooling units for Unit A.
10 The electrical system load for Unit A was increased due to
11 the installation of two new cooling units and required 100
12 amp service, but the electrical service was not upgraded to
13 100 amp service from the existing 50 amp service. Failure
14 to upgrade the electrical service caused the fuses to be
15 blown out multiple times during the cooling seasons of
16 2018. The tenants in Unit A could not use air conditioning
17 units in cooling seasons of 2018, causing Unit A to be
18 uninhabitable until the Unit A electrical supply panel was
19 upgraded to 100 amp service.

20 All the electrical supply line addition and removal work
21 were performed without code required electrical load
22 calculation, permits and inspections. To save money,
23 minimize flipping cost, minimize flipping time, maximize
24 flipping fund profits, Investpro Manager LLC used
25 unlicensed and unskilled workers to do the electrical work
26 and used low quality materials used inadequate electrical
27 supply lines.

28 Further, to save money, minimize flipping cost, minimize
flipping time, maximize flipping fund profits, Investpro
Manager LLC used unskilled workers who did not know
the UBC requirements to do the electrical work This
substandard work may lead electrical lines to overheat and
cause fires in the attic when tenant electrical load is high.

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

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

The fact is that that within two years prior to the sale to
Plaintiff, Investpro Manager LLC removed and plugged
swamp cooler water supply lines without UBC required
permits and inspections. To save money, minimize flipping
cost, minimize flipping time, and maximize flipping fund
profits, Investpro Manager LLC used unlicensed and
unskilled workers who just plugged high pressure water
supply lines at rooftop instead of at ground level and who
did not remove the water supply lines on top of the roof,
inside the attic and behind the drywall. In cold winter, the
high pressure water line which was left inside the building
may freeze and break the copper line and lead flooding in
the whole building.

1 Further, to save money, minimize flipping cost, minimize
2 flipping time, and maximize flipping fund profits, Investpro
3 Manager LLC used unlicensed and unskilled workers to
4 remove and plug natural gas lines for the natural gas wall
5 furnaces without UBC required permits and inspections.

6 Further, to save money, minimize flipping cost, minimize
7 flipping time, and maximize flipping fund profits, Investpro
8 Manager LLC used unlicensed and unskilled workers with
9 little knowledge of natural gas pipe connection
10 requirements. The unlicensed and unskilled workers used
11 the wrong sealing materials and these sealing materials may
12 degrade and lead to natural gas leaks and accumulation
13 inside the drywall and the attic which may cause an
14 explosion or fire.

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

23 c. SRPDF stated that Sewer System and line had no
24 problems or defects.

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

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

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

Further, Investpro Manager LLC installed two electrical heat pump heating systems without UBC required permits and inspections for Unit B and Unit C. The Unit A does not have an electrical heat pump heating system nor a natural gas wall furnace heating system now. Unit A has to use portable electrical heaters.

e. SRPDF stated that the Cooling System had problems or defects

No full explanation was provided, as required. Investro (sic) Manager, LLC removed old swamp cooler systems without UBC required permits and inspections. To save money, minimize flipping cost, minimize flipping time, and maximize flipping fund profits, Investpro used unlicensed and unskilled workers to disconnect water supply lines, cover swamp cooler ducting holes, and disconnect 110V electrical supply lines.

Further, as early as March of 2016, Investro Manager, LLC hired Air Supply Cooling to install one five ton new heat pump package unit with new rooftop ducting systems on one roof area to supply cooling and heating air to the whole building consisting of Unit A, Unit B and Unit C without UBC required weight load and wind load calculations, permits and inspections. The five ton heat pumps package unit was too big, too heavy and had control problems. To save money, minimize flipping cost, minimize flipping time, and maximize flipping fund profits, Investpro Manager LLC also used unlicensed and unskilled workers to remove the one year old five ton heat pump package unit with ducting system without UBC required permits and inspections. All of this work was done without UBC required structural calculation, permits and inspections.

Further, in early June, 2017, Investro Manager, LLC hired The AIRTEAM to install two new two ton heat pump package units, one each for Unit B and Unit C. Investro (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

1 During Plaintiff's inspection at August 10, 2017 afternoon,
2 some smoke detectors were missing.

3 g. SRPDF stated that no Previous or current moisture
4 conditions and or water damage.

5 To save money, minimize flipping cost, minimize flipping
6 time, and maximize flipping fund profits, Investro
7 Manager, LLC used unlicensed and unskilled workers to
8 vent high moisture bathroom fan exhaust and washer/dryer
9 combination unit exhaust into the ceiling attic area instead
10 of venting outside the building roof without UBC required
11 permits and inspections. The improper ventings caused
12 high moisture conditions in ceiling attic and water damages
13 in ceiling and attic. The high moisture conditions in the
14 ceiling attic destroyed ceiling attic insulations, damaged the
15 roof decking, damaged roof trusses and damaged roof
16 structure supports.

17 To saving money, minimize flipping cost, minimize
18 flipping time, and maximize flipping fund profits, Investpro
19 Manager LLC used unlicensed and unskilled workers to
20 complete renovation to all three bathrooms without UBC
21 required permits and inspections. Some faucets and
22 connections behind tile walls and drywall leaks and caused
23 moisture conditions behind tile walls and drywalls.

24 h. SRPDF stated that there was no structure defect.

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

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

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

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

Further, Investpro Manager LLC's unlicensed and
unskilled workers used the space between two building
support columns as a duct to vent high moisture exhaust

1 from the washer/dryer combination unit exhaust vent from
2 Unit A without UBC required permits and inspections and
3 this damaged the building structure.

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

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

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

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

18 The roof of the Subject Property was damaged by changing
19 roof top HVAC units and ducting systems multiple times
20 from October, 2015 to June, 2017. Investpro Manager LLC
21 removed the existing swamp coolers from roof top and
22 covered the swamp coolers ducting holes. Investpro
23 Manager LLC added a five ton heat pump package unit
24 with a new ducting system on one roof top area in March,
25 2016. Investpro the removed the one year old five ton heat
26 pump package unit with part of the ducting system from the
27 one roof top area in June, 2017. Then Investpro Manager
28 LLC added two two ton heat pump package units on the
two roof top areas in June, 2017. The work damaged the
roof of the Subject Property to such an extent that when it
rains the roof leaks. All of this renovation, demolition, and
construction work was done without UBC required weight
load and wind load calculations, permits and inspections
and this damaged the building roof structure.

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

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

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

i. Problems with flooring.

To save money, minimize flipping cost, minimize
flipping time, and maximize flipping fund profits,

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

ii. Problems with the land/foundation.

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

iii. Problems with closet doors.

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

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

63. As to 31(b), Mr. Miao admitted that the Seller's Disclosures did disclose issues with the heating and cooling systems, the use of a handyman, the lack of permits, and issues with the sprinklers. Additionally, he specified that he noted issues with the plumbing system were

1 “open and obvious” that a reasonable, professional inspection could have discovered in 2017.
2 Despite these issues, Plaintiff chose not to have a professional inspection. Moreover, Mr. Miao
3 specified that this was a condition that Plaintiff could have inspected at or before the time it had
4 originally purchased the Property. Notably, Mr. Miao admitted that no evidence showed that
5 Defendants were aware of any of these issues.

6 64. As to 31(c), Mr. Miao admitted that the Seller’s Disclosures did disclose the use
7 of a handyman, the lack of permits, and issues with the sprinklers. Additionally, he specified
8 that he noted issues with the sewer system were “open and obvious” that a reasonable,
9 professional inspection could have discovered in 2017. Despite these issues, Plaintiff chose not
10 to have a professional inspection. Moreover, Mr. Miao specified that this was a condition that
11 Plaintiff could have inspected at or before the time it had originally purchased the Property.
12 Notably, Mr. Miao admitted that no evidence showed that Defendants were aware of any of these
13 issues.

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

22 66. As to 31(e), Mr. Miao admitted that the Seller’s Disclosures did disclose issues
23 with the heating and cooling systems, the use of a handyman, and the lack of permits.
24 Additionally, he specified that he noted issues with the heating and cooling system and items not
25 up to code at the time that he did his inspection and/or that any issues with the heating and
26 cooling system were “open and obvious” that a reasonable, professional inspection could have
27 discovered in 2017. Despite these issues, Plaintiff chose not to have a professional inspection.
28 Moreover, Mr. Miao specified that this was a condition that Plaintiff could have inspected at or

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

3 67. As to 31(f), this allegation illustrates the prior knowledge that Plaintiff had before
4 purchasing the Property, and the overall emphasis on the failure to obtain a professional
5 inspection of the Property prior to purchasing it.

6 68. As to 31(g), (k), Mr. Miao admitted Plaintiff executed the mold and moisture
7 waiver, and understood its affirmative duty to have an inspection done prior to the purchase of
8 the Property. He also admitted that that the Seller's Disclosures did disclose the use of a
9 handyman, installation of the cabinetry, bathrooms, and the lack of permits. Additionally, he
10 specified that he personally inspected the attic and the dryer vent before Plaintiff purchased the
11 Property. Despite these issues, Plaintiff chose not to have a professional inspection. Moreover,
12 Mr. Miao specified that this was a condition that Plaintiff could have inspected at or before the
13 time it had originally purchased the Property. Notably, Mr. Miao admitted that no evidence
14 showed that Defendants were aware of any of these issues.

15 69. As to 31(h), Mr. Miao admitted that the Seller's Disclosures did disclose issues
16 with the heating and cooling systems, the use of a handyman, and the lack of permits. Mr. Miao
17 admitted that there was visible cracking on the foundation, walls, and the tiles that were open and
18 obvious at the time that Plaintiff purchased the Property in 2017. Moreover, Mr. Miao specified
19 that this was a condition that Plaintiff could have inspected at or before the time it had originally
20 purchased the Property. Notably, Mr. Miao admitted that no evidence showed that Defendants
21 were aware of any of these issues.

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

26 71. As to 31(j), Mr. Miao admitted that the Seller's Disclosures did disclose issues
27 with the heating and cooling systems, the use of a handyman, and the lack of permits.
28 Additionally, he specified that he noted issues were "open and obvious" that a reasonable,

1 professional inspection could have discovered in 2017. Mr. Miao agreed that there was no
2 noticeable sagging on the roof. Despite these issues, Plaintiff chose not to have a professional
3 inspection. Moreover, Mr. Miao specified that this was a condition that Plaintiff could have
4 inspected at or before the time it had originally purchased the Property. Notably, Mr. Miao
5 admitted that no evidence showed that Defendants were aware of any of these issues.

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

14 No Reliance on Broker Agents

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

24 Mr. Miao Agreed with Defendants' Expert

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

1 75. Mr. Miao agreed with Professor Opfer that the alleged conditions identified by
2 Plaintiff’s alleged expert were open and obvious:

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

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

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

12 77. Mr. Miao agreed with Professor Opfer that Plaintiff’s alleged expert did “not
13 recognize prior conditions in existence before any work took place by the Defendants.” *Id.* at
14 321:17-21 – 322:3-6.

15 Conclusions of Law

16 1. Summary judgment is appropriate when the pleadings, depositions, answers to
17 interrogatories, admissions, and affidavits, if any, that are properly before the Court demonstrate
18 that no genuine issue of material fact exist, and the moving party is entitled to judgment as a
19 matter of law. *Pegasus v. Reno Newspapers, Inc.*, 118 Nev. 706, 713, 57 P.3d 82, 87 (2002).
20 Substantive law controls whether factual disputes are material and will preclude summary
21 judgment; other factual disputes are irrelevant. *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242,
22 106 S. Ct. 2505, 91 L.Ed.2d 202 (1986). A genuine issue of material fact is one where the
23 evidence is such that a reasonable jury could return a verdict for the non-moving party. *Valley*
24 *Bank v. Marble*, 105 Nev. 366, 367, 775 P.2d 1278, 1282 (1989).

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

1 specific facts demonstrating the existence of a genuine factual issue. *Id.*

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

10 4. The pleadings and proof offered in a Motion for Summary Judgment are
11 construed in the light most favorable to the non-moving party. *Hoopes v. Hammargren*, 102
12 Nev. 425, 429, 725 P.2d 238, 241 (1986). However, the non-moving party still “bears the
13 burden to ‘do more than simply show that there is some metaphysical doubt’ as to the operative
14 facts in order to avoid summary judgment being entered.” *Wood*, 121 Nev. at 732, 121 P.3d at
15 1031. “To successfully defend against a summary judgment motion, ‘the nonmoving party must
16 transcend the pleadings and, by affidavit or other admissible evidence, introduce specific facts
17 that show a genuine issue of material fact.’” *Torrealba v. Kesmetis*, 178 P.3d 716, 720 (Nev.
18 2008) (quoting *Cuzze v. Univ. & Cmty. Coll. Sys. of Nev.*, 172 P.3d 131, 134 (Nev. 2007)).

19 5. The non-moving party bears the burden to set forth specific facts demonstrating
20 the existence of a “genuine” issue for trial or have summary judgment entered against him.
21 *Collins v. Union Federal Savings & Loan*, 99 Nev. 284, 294, 662 P.2d 610, 618-619 (1983).
22 When there is no genuine issue of material fact and the non-moving party provides no admissible
23 evidence to the contrary, summary judgment is “mandated.” *Celotex Corp. v. Catrett*, 477 US
24 317, 322 (1986). When a motion for summary judgment is made and supported, an adversary
25 party who does not set forth specific facts showing a genuine issue to be resolved at trial may
26 have a summary judgment entered against him. *Collins v. Union Federal Sav. & Loan Ass’n*, 99
27 Nev. 284, 294, 662 P.2d 610, 616 (1983) (citing *Van Cleave v. Kietz-Mill Minit Mart*, 97 Nev.
28 414, 633 P.2d 1220 (1981); *Bird v. Casa Royale West*, 97 Nev. 67, 624 P.2d 17 (1981)).

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

7 [a]scribing to the term “aware” its plain meaning, we determine
8 that the seller of residential real property does not have a duty to
9 disclose a defect or condition that “materially affects the value or
10 use of residential property in an adverse manner,” if the seller does
11 not realize, perceive, or have knowledge of that defect or
12 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.

13 *Id.* at 425 (citations omitted). Thus, in the context where the plaintiff cannot demonstrate an
14 omitted disclosure that caused damage, the seller is entitled to summary judgment as a matter of
15 law. *Id.* at 426.

16 7. Generally, “[n]ondisclosure by the seller of adverse information concerning real
17 property . . . will not provide the basis for an action by the buyer to rescind or for damages when
18 property is sold ‘as is.’ ” *Mackintosh v. Jack Matthews & Co.*, 109 Nev. 628, 633, 855 P.2d 549,
19 552 (1993). Moreover, “[l]iability for nondisclosure is generally not imposed where the buyer
20 either knew of or could have discovered the defects prior to the purchase.” *Land Baron Invs.,*
21 *Inc. v. Bonnie Springs Family LP*, 131 Nev. 686, 696, 356 P.3d 511, 518 (2015). The general
22 rule foreclosing liability for nondisclosure when property is purchased as-is does not apply when
23 the seller knows of facts materially affecting the value or desirability of the property which are
24 known or accessible only to [the seller] and also knows that such facts are not known to, or
25 within the reach of the diligent attention and observation of the buyer. *Mackintosh*, 109 Nev. at
26 633, 855 P.2d at 552 (alteration in original) (internal quotation marks omitted).

27 8. A buyer waives its common law claims of negligent misrepresentation, fraudulent
28 or intentional misrepresentation, and/or unjust enrichment when it expressly agreed that it would

1 carry the duty to inspect the property and ensure that all aspects of it were suitable prior to close
2 of escrow, and the information was reasonably accessible to the buyer. *Frederic and Barbara*
3 *Rosenberg Living Tr. v. MacDonald Highlands Realty, LLC*, 427 P.3d 104, 111 (Nev. 2018).
4 Accordingly, the Nevada Supreme Court concluded that an agreement to purchase property as-is
5 foreclosed the buyer's common law claims, justifying the granting of summary judgment on
6 common law claims. *Id.* (citation omitted).

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

13 *Anderson v. Ford Ranch, LLC*, 78684-COA, 2020 WL 6955438, at *5 (Nev. App. Nov. 25,
14 2020).

15 9. Nevada Revised Statute § 113.140 clearly provides that the Seller Disclosures
16 does not constitute a warranty of the Subject Property and that the Buyer still has a duty to
17 exercise reasonable care to protect himself. Nevada Revised Statute § 113.140 also provides that
18 the Seller does not have to disclose any defect that he is unaware of. Similarly, Nevada Revised
19 Statute § 113.130 does not require a seller to disclose a defect in residential property of which
20 the seller is not aware. A completed disclosure form does not constitute an express or implied
21 warranty regarding any condition of residential property. Nevada Revised Statute § 113.140(2).
22 Chapters 113 and "645 of Nevada Revised Statutes do not relieve a buyer or prospective buyer of
23 the duty to exercise reasonable care to protect himself or herself." *Id.* at § 113.140(2).

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

11. On August 2, 2017, TKNR submitted its Seller Disclosures timely indicating all
known conditions of the Subject Property. TKNR disclosed that "3 units has (sic) brand new AC

1 installed within 3 months,” and further that the “owner never resided in the property and never
2 visited the property.” Plaintiff was also aware that the minor renovations, such as painting, was
3 conducted by the Seller’s “handyman” as disclosed in the Seller’s Disclosures. TNKR also
4 disclosed that it was aware of issues with the heating and cooling systems, there was
5 construction, modification, alterations, or repairs done without permits, and lead-based paints.

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

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

12 13. Section II(B)(1) lists the disclosures by TKNR. Despite these disclosures,
13 Plaintiff chose not to inspect the Subject Property, request additional information and/or conduct
14 any reasonable inquiries. In fact, Ms. Zhu only cancelled the original RPA, Ex. E, because of an
15 issue related to her financing, not because of any concerns related to the Seller’s Disclosures.
16 Notably, she included the explicit waiver of the inspections, which included her initialing the
17 provision that she had not done in the original RPA. Ms. Zhu even directly informed her agent
18 to waive all inspections. Although Ms. Zhu had actual knowledge of the Seller’s Disclosures
19 from August 11, 2017, and the Parties agreed to extend the COE to January 5, 2018, Ms. Zhu
20 still never did any professional inspections. Instead, she put down an additional \$60,000 as a
21 non-refundable deposit to the TNKR. Moreover, she also agreed to pay rent in the amount of
22 \$650 per month for one of the units, and to also pay the property manager \$800 for the tenant
23 placement fee. Through Addendum 2 to the 2nd RPA, Ms. Zhu later changed the purchaser to
24 Plaintiff.

25 14. As to the Brokers Defendants, Ms. Zhu agreed that she was not relying upon any
26 representations made by Brokers or Broker’s agent. Ms. Zhu agreed to purchase the Property
27 AS-IS, WHERE-IS, without any representations or warranties. Ms. Zhu agreed to satisfy herself,
28 as to the condition of the Property, prior to the close of escrow. Ms. Zhu waived all claims

1 against Brokers or their agents for (a) defects in the Property . . . (h) factors related to Ms. Zhu's
2 failure to conduct walk-throughs or inspections. Ms. Zhu assumed full responsibility and agreed
3 to conduct such tests, walk-throughs, inspections and research, as she deemed necessary. In any
4 event, Broker's liability was limited, under any and all circumstances, to the amount of that
5 Broker's commission/fee received in the transaction.

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

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

12 Under Paragraph 7(F), it was Ms. Zhu's responsibility to inspect the Property sufficiently as to
13 satisfy her use. Nevertheless, Ms. Zhu waived her inspection related to the original RPA and the
14 2nd RPA, reinforced further by actually initialing next to the waiver in the 2nd RPA. Ms. Zhu
15 also waived the energy audit, pest inspection, roof inspection, septic lid removal inspection,
16 mechanical inspection, soil inspection, and structural inspection. Thereby, Ms. Zhu waived any
17 liability of Defendants for the cost of all repairs that inspection would have reasonably identified
18 had it been conducted. The RPA and the 2nd RPA clearly indicated that Ms. Zhu was purchasing
19 the Property "AS-IS, WHERE-IS without any representations or warranties."

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

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

27 18. Plaintiff understands the importance of reading contracts.

28 ////

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

3 20. Plaintiff was a sophisticated buyer who understood the necessity of getting
4 properties inspected.

5 21. The terms of the RPA were clear to Plaintiff.

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

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

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

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

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

18 27. On or about August 10, 2017, Mr. Miao did an inspection of the Property. During
19 that time, he admitted that he noticed some issues with the Property that were not up to code,
20 finishing issues, GFCI outlets², and electrical issues.

21 28. Similarly, he also specified that there was an issue with exposed electrical in Unit
22 C. He also noted that there could have been a potential asbestos issue as well.

23 29. Additionally, Mr. Miao noted that there were cracks in the ceramic floor tiles, and
24 he was aware of visible cracks in the concrete foundation, which were open and obvious.

25 ////

26 _____
27 ² The Second Amended Complaint references GFCI at Paragraph 31(a). This illustrates the overall bad faith
28 and frivolous nature of the pleading since Mr. Miao is the one who requested TKNR to install these for
Plaintiff.

1 30. Mr. Miao also admitted that he could also have seen the dryer vent during his
2 inspection.

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

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

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

9 34. Despite actual knowledge of these issues, Plaintiff did not elect to have a
10 professional inspection done.

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

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

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

16 38. Plaintiff failed to differentiate between conditions prior to when TKNR owned the
17 Property, while it owned it, and those afterwards.

18 39. No dispute exists that TKNR did not need permits for the interior work it had
19 done to the Property.

20 40. Plaintiff has always been trying to lease the Property despite not doing any of the
21 repairs listed by Plaintiff's expert. This illustrates the lack of merit of Plaintiff that there are
22 underlying conditions with the Property.

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

27 42. Mr. Miao admitted that multiple third parties could have potentially damaged the
28 Property.

1 43. Plaintiff did not present any evidence related to Defendants’ alleged knowledge
2 other than his personal belief and speculation.

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

9 45. Mr. Miao also recognized that a 63-year-old property could have issues that were
10 not caused by Defendants.

11 46. The Flipping Fund had nothing to do with Plaintiff’s decision to purchase the
12 Property.

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

19 48. Plaintiff were encouraged to inspect the property, and they did not do it. It was a
20 63-year-old property. There were specific disclosures that were made by the Seller, and Plaintiff
21 was strongly encouraged to conduct the inspection, and they did not want to.

22 49. This is a 2018 case. Plaintiff has not been diligent in conducting discovery.

23 Rule 56(f) is not a shield that can be raised to block a motion for
24 summary judgment without even the slightest showing by the
25 opposing party that his opposition is meritorious. A party invoking
26 its protections must do so in good faith by affirmatively
27 demonstrating why he cannot respond to a movant's affidavits as
28 otherwise required by Rule 56(e) and how postponement of a
 ruling on the motion will enable him, by discovery or other means,
 to rebut the movant's showing of the absence of a genuine issue of
 fact. Where, as here, a party fails to carry his burden under Rule
 56(f), postponement of a ruling on a motion for summary judgment
 is unjustified.

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

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

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

18 52. Defendants also do not have liability as Ms. Zhu / Plaintiff purchased the Property
19 "as-is" within the reach of the diligent attention and observation of the buyer. *Mackintosh*, 109
20 Nev. at 633, 855 P.2d at 552. NRS § 113.140 clearly provides that the disclosures do not
21 constitute a warranty of the Property and that the purchaser still has a duty to exercise reasonable
22 care to protect himself. A completed disclosure form does not constitute an express or implied
23 warranty regarding any condition of residential property. NRS § 113.140(2). Chapters 113 and
24 "645 of Nevada Revised Statutes do not relieve a buyer or prospective buyer of the duty to
25 exercise reasonable care to protect himself or herself." *Id.* at § 113.140(2).

26 53. Plaintiff waived its common law claims of negligent misrepresentation, fraudulent
27 or intentional misrepresentation, and/or unjust enrichment when it expressly agreed that it would
28 carry the duty to inspect the property and ensure that all aspects of it were suitable prior to close

1 of escrow, and the information regarding Property was reasonably accessible to the buyer.
2 *Frederic and Barbara Rosenberg Living Tr. v. MacDonald Highlands Realty, LLC*, 427 P.3d
3 104, 111 (Nev. 2018).

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

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

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

28 ////

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

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

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

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

28 ////

1 61. 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 62. 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 63. 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 78. The overwhelming facts and law illustrate that Plaintiff's claim is frivolous. The
3 findings of fact are incorporated by reference.

4 79. Plaintiff's claim is clearly frivolous: (1) where the pleading was not "well
5 grounded in fact and is warranted by existing law or a good faith argument for the extension,
6 modification or reversal of existing law", and (2) Plaintiff's attorney continued to make frivolous
7 claims. *Bergmann*, 109 Nev. at 676, 856 P.2d at 564. Sanctions are warranted against Plaintiff
8 and its counsel, which includes an award attorneys' fees to Defendants.

9 80. Alternatively, the elements of an abuse of process claim are: "(1) an ulterior
10 purpose by the defendants other than resolving a legal dispute, and (2) a willful act in the use of
11 the legal process not proper in the regular conduct of the proceeding." *Posadas v. City of Reno*,
12 109 Nev. 448, 452, 851 P.2d 438, 441-42 (1993). Abuse of process can arise from both civil and
13 criminal proceedings. *LaMantia v. Redisi*, 118 Nev. 27, 30, 38 P.3d 877, 879 (2002). Malice,
14 want of probable cause, and termination in favor of the person initiating or instituting
15 proceedings are not necessary elements for a prima facie abuse of process claim. *Nevada Credit*
16 *Rating Bur. v. Williams*, 88 Nev. 601, 606, 503 P.2d 9, 12 (1972); Restatement (Second) of Torts
17 § 682 cmt. a (1977). The mere filing of a complaint is insufficient to establish the tort of abuse
18 of process. *Laxalt v. McClatchy*, 622 F. Supp. 737, 751 (1985).

19 81. Under either Rule 11 or Defendants' counterclaim for abuse of process, Plaintiff
20 brought or maintained this action without reasonable ground and only to harass Defendants.
21 NEV. REV. STAT. § 18.010(2)(b). The overwhelming facts and law also show that Plaintiff
22 brought or maintained this claim without reasonable grounds, which justifies an award of
23 attorneys' fees. *Rodriguez v. Primadonna Co., LLC*, 216 P.3d 793, 800 (Nev. 2009).

24 82. Defendants are directed to file a separate order to show cause pursuant to Nevada
25 Rule of Civil Procedure 11(c)(3) on Plaintiff and Plaintiff's prior counsel, Benjamin Childs, as
26 this Honorable Court determined that Plaintiff has violated Rule 11(b). The court will impose an
27 appropriate sanction on any attorney, law firm, or party that violated the rule or is responsible for
28 the violation. The court intends to award to the Defendants the reasonable expenses, including

1 attorneys' fees and costs, incurred for defending this frivolous lawsuit, either under Rule 11 or as
2 damages for Defendants' counterclaim for abuse of process. This sanction will be limited to
3 what suffices to deter repetition of the conduct or comparable conduct by others similarly
4 situated. The Court may also consider sanctions including nonmonetary directives, an order to
5 pay a penalty into court, or, an order directing payment to Defendants for part or all of the
6 reasonable attorney fees and other expenses directly resulting from the violation.

7 Based on the foregoing, the Court GRANTS Defendants Motion, DENIES the
8 Counterclaim, and GRANTS attorneys' fees and costs to Defendants pursuant to Nevada Rule of
9 Civil Procedure 11.

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

12 **IT IS FURTHER ORDERED, ADJUDICATED, AND DECREED** that the
13 Countermotion, including the 56(f) Countermotion, is **DENIED**. This is a 2018 case. This
14 Honorable Court will not agree to enlarge discovery.

15 **IT IS FURTHER ORDERED, ADJUDICATED, AND DECREED** that Defendants
16 are awarded attorneys' fees and costs pursuant to Rule 11 and/or under the abuse of process
17 counterclaim. Defendants may file an affidavit in support of requested attorney's fees and costs
18 within 10 days of the entry of Order and the Order to Show Cause. Plaintiff may file an
19 objection to any portion of the attorney's fees by filing an objection within five judicial days of
20 service of the affidavit and/or the Order to Show Cause. After the fees are granted, Plaintiff will
21 have ten (10) days of entry of this Order to provide proof of payment to be noticed and filed with
22 the Court.

23 **IT IS FURTHER ORDERED, ADJUDICATED, AND DECREED** that this is a final
24 order related to the claims and counterclaim. This Honorable Court directs entry of a final
25 judgment of all claims. To the extent that post-judgment award of attorneys' fees are pending,
26 Defendants may make the claim as set forth in Nevada Rule of Civil Procedure 54(d)(D) (claims
27 for attorney fees as sanctions).

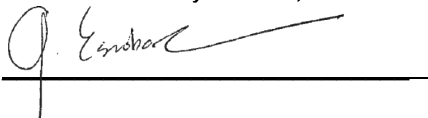
28 **////**

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

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

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

Dated this 30th day of March, 2021



159 FDE 147E 8F8F

Adriana Escobar

District Court Judge

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9 Date: March 12, 2021.

Date: March 12, 2021.

10 Respectfully Submitted By:

Approved of as to Form and Content By:

11 MICHAEL B. LEE, P.C.

DAY & NANCY

12 /s/ Michael Lee

NO RESPONSE

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24 Tel – 702.309.3333
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26 sday@daynance.com
27 Attorneys for Plaintiff
28

1 **CSERV**

2
3 DISTRICT COURT
CLARK COUNTY, NEVADA

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

CASE NO: A-18-785917-C

7 vs.

DEPT. NO. Department 14

8
9 TKNR Inc, Defendant(s)

10
11 **AUTOMATED CERTIFICATE OF SERVICE**

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

14 Service Date: 3/30/2021

15 Brinley Richeson

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16 Steven Day

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17 Michael Matthis

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18 BENJAMIN CHILDS

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19 Nikita Burdick

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20 Michael Lee

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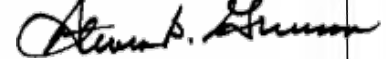
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22 Frank Miao

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10 *Attorneys for Plaintiff*

11
12
13 **DISTRICT COURT**
14
15 **CLARK COUNTY, NEVADA**

16 WLAB INVESTMENT, LLC,
17
18 Plaintiff,

19 vs.

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

Defendants.

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

HEARING REQUESTED

**PLAINTIFF'S MOTION TO
RECONSIDER**

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

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

5 DATED this 16th day of April, 2021.

6 **DAY & NANCE**

7
8 By:  13472

9 Steven Day, Esq.
10 Nevada Bar No. 3708
11 1060 Wigwam Parkway
12 Henderson, NV 89074
13 702-309-3333 – Phone
14 702-309-1085 – Fax
15 *Attorneys for Plaintiff*

16 **NOTICE OF MOTION**

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

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

23 DATED this 16th day of April, 2021.

24 **DAY & NANCE**

25 By:  13472

26 Steven Day, Esq.
27 Nevada Bar No. 3708
28 1060 Wigwam Parkway
Henderson, NV 89074
702-309-3333 – Phone
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Attorneys for Plaintiff

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SUMMARY OF RELEVANT FACTS

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

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

1 (See Exhibit "2", p. 33) His background was designing and building plants. (See Exhibit "2",
2 p. 33) Over his career, he has worked for Westinghouse, Siemens, the Gas Research
3 Institute, ASEA Brown Boveri, one of the world's largest power generation equipment
4 companies. (See Exhibit "2", p. 34-37) In addition to designing and building plants, he was
5 involved in the construction and renovation of his houses and apartments. (See Exhibit "2",
6 p. 45-46)
7

8 Mr. Miao became aware of the subject property for sale via Zillow. (See Exhibit "1", ¶
9 3). During the inspection, he inspected the property with Mr. Kenny Lin during the
10 afternoon of August 10, 2017. (See Exhibit "1", ¶ 3). Mr. Miao asked Mr. Lin about a small
11 crack in the outside sidewalk. (See Exhibit "1", ¶ 3). Mr. Lin said that they had purchased
12 the property through an auction but that the property had been entirely rehabilitated. (See
13 Exhibit "1", ¶ 3). Mr. Miao checked out Mr. Lin's company, InvestPro. (See Exhibit "1", ¶ 3).
14 InvestPro reportedly focused on the customer and further represented that their vendors
15 were licensed and professional who complete cleaning, painting and or make repair when
16 necessary which Mr. Miao liked. (See Exhibit "1", ¶ 3). InvestPro was according to Lin one
17 of the largest realtors in Chinatown. (See Exhibit "1", ¶ 3). After inspecting the property
18 with Mr. Lin and based upon the representations of Mr. Lin, Mr. Miao told his wife to go
19 ahead and sign the purchase agreement after the August 10, 2017 inspection. (See Exhibit
20 "1", ¶ 3). Ms. Marie Zhu e-signed the Agreement on August 11, 2017 with the help of Kenny
21 Lin and Le Wei Chen from InvestPro who were the buyer's agents. (See Exhibit "1", ¶ 3)
22 (August 11, 2017 Resident Purchase Agreement attached as Exhibit "8" to Plaintiff's Motion
23 for Reconsideration). The form had previously been completely prepared by the InvestPro
24 agents. (See Exhibit "1", ¶ 3). During the inspection, Mr. Miao informed Mr. Lin that the
25 units needed to have proper GFCI outlets and that smoke, combustible gas and CO detectors
26 needed to be installed since they were required by law. (See Exhibit "1", ¶ 3). When Ms.
27
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1 Marie Zhu signed the second Residential Purchase Agreement on September 5, 2017, due
2 diligence was waived as Mr. Miao had already completed inspections of the subject property.
3 (September 5, 2017 Residential Purchase Agreement attached as Exhibit "8" to Plaintiff's
4 Motion for Reconsideration).

5 After the Residential Purchase Agreement was e-signed, Mr. Miao visited and
6 inspected the triplex additional times prior to closing. (See Exhibit "1", ¶ 4). Ceramic tile
7 had been laid in the kitchen, living room, hallway and bathrooms. (See Exhibit "1", ¶ 4).
8 Laminated wood flooring had been placed in all the bedrooms. (See Exhibit "1", ¶ 4). Mr.
9 Miao did not notice any issues with the flooring except for a few small cracks in the ceramic
10 tile in Unit C. (See Exhibit "1", ¶ 4). The floor was not buckling in any of the units. (See
11 Exhibit "1", ¶ 4). Mr. Miao also did not notice any cracking in the walls inside the triplex
12 during his inspections. (See Exhibit "1", ¶ 4). The units did look as that they had been
13 recently renovated. (See Exhibit "1", ¶ 4). At no time during Mr. Miao's initial inspection of
14 the triplex did Mr. Lin report that there were significant issues with the foundation and
15 earth movement or that the sewer line was broken causing sewer water backup. (See Exhibit
16 "1", ¶ 4).

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

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

21 During approximately June of 2018, the tenant in unit A reported that the fuse to
22 Unit A kept burning out. (See Exhibit "1", ¶ 7). The tenant reported the issue to InvestPro,
23 the property manager. (See Exhibit "1", ¶ 7). InvestPro sent their handyman to fix the
24 problem. (See Exhibit "1", ¶ 7). The handyman's fix was apparently to disconnect some of
25 the other circuits to the fuse which result in the tenant not being able to use all outlets. (See
26 Exhibit "1", ¶ 7). After complaining to Mr. Miao about the problem, Mr. Miao hired a
27 licensed electrical contractor to look at the issue. (See Exhibit "1", ¶ 7). At that time, the
28

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

12
13 Around October of 2018, water was dripping from unit C's ceiling during hot sunny
14 days. (See Exhibit "1", ¶ 8). The ceiling was opened up which revealed that Defendants had
15 installed a dryer duct dumping high moisture exhaust gas into the attic instead of venting to
16 outside of the building which was required by law. (See Exhibit "1", ¶ 8). Mr. Miao also
17 found that the air conditioning ductwork inside the ceiling was not insulated which is also
18 unlawful. (See Exhibit "1", ¶ 8). Later, Mr. Miao discovered that when Defendants replaced
19 swamp cooler with AC, they left the uninsulated swamp cooler duct in the attic. (See Exhibit
20 "1", ¶ 8). When the highly moist gas from the dryer exhaust cooled with cool air coming
21 from the uninsulated AC duct, condensation occurred causing water dropping onto the unit
22 C ceiling. (See Exhibit "1", ¶ 8). The wet insulation in the attic was black and no longer
23 working. (See Exhibit "1", ¶ 8). Mr. Miao hired LVAC to put in new insulated ducting and
24 hired Home Depot to reinsulate the attic. (See Exhibit "1", ¶ 8). Mr. Miao found that Unit B
25 had the same issue with the dryer vent dumping into the attic. (See Exhibit "1", ¶ 8). In Unit
26 A, the dryer vent dumped into the wall between two studs and also eventually dumped into
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1 the attic. (See Exhibit "1", ¶ 8). None of this was reported by Lin prior to Plaintiff closing on
2 the triplex. (See Exhibit "1", ¶ 8).

3 During the last several months, Mr. Miao has become aware of the condition of the
4 foundation. (See Exhibit "1", ¶ 9). On February 16, 2021, the flooring in one of the
5 bedrooms in Unit B was pulled up. (See Exhibit "1", ¶ 9). The laminate wood flooring
6 installed by Kenny Lin/InvestPro's handyman had been buckling which prompted Mr. Miao
7 to pull up the floor. (See Exhibit "1", ¶ 9). Upon pulling up the floor, it was observed that
8 the foundation had severely deteriorated and had been covered by laminate flooring so the
9 foundation defects would be concealed. (See Exhibit "1", ¶ 9). The photographs attached to
10 Plaintiff's Motion for Reconsideration as Exhibit "3" were taken by Mr. Miao and accurately
11 reflect the condition of the foundation on February 16, 2021. (See Exhibit "1", ¶ 9). Upon
12 seeing the condition of the foundation, it explained the severe cracks in the walls that had
13 been appearing through Defendants' pre-sale renovations. (See Exhibit "1", ¶ 9). At the
14 time of the pre-purchase inspections of the triplex, there was no serious cracking in the
15 walls. (See Exhibit "1", ¶ 9). The walls had been covered the plaster and wall coverings to
16 hide the cracks and other wall defects. (See Exhibit "1", ¶ 9). After closing, cracks started
17 developing again. (See Exhibit "1", ¶ 9). The photographs of the wall cracks attached to
18 Plaintiff's Motion for Reconsideration as Exhibit "4" were taken by Mr. Miao. (See Exhibit
19 "1", ¶ 9).

22 Before the tenant in Unit C moved out August of 2020, he complained of slow
23 drainage issues with the unit, particularly in the kitchen and bathroom. (See Exhibit "1", ¶
24 10). The tenants in units B and C had complained about drainage issues as early as May or
25 June of 2020. (See Exhibit "1", ¶ 10). When Nicholas Quioz, the tenant in Unit A, moved
26 out, he explained to Mr. Miao that he had moved into the unit during April of 2017. (See
27 Exhibit "1", ¶ 10). He reported to InvestPro that sewage water had overflowed into Unit A.
28

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

8 That during the week of March 8, 2021, a next-door neighbor explained to Mr. Miao
9 that he had been a tenant of the building during 2016 or 2017. (See Exhibit "1", ¶ 11). After
10 he moved in, the floor buckled, and sewage backed up. (See Exhibit "1", ¶ 11). He called
11 InvestPro who did nothing about the problem, so he moved out. (See Exhibit "1", ¶ 11).
12

13 The property purchased by WLAB Investments was one of the homes purchased by
14 Lin's flipping fund. (See Exhibit "1", ¶ 12). TKNR, Inc. who was the seller of the property
15 and which constituted a group of investors who had been put together by Lin and InvestPro.
16 (See Exhibit "1", ¶ 12). In the disclosure made by the seller attached to Defendants' Motion
17 for Summary Judgment, the seller states that they have never visited the property. (See
18 Exhibit "1", ¶ 12). This is because the property was one of Mr. Lin's flipping fund properties.
19 (See Exhibit "1", ¶ 12). Lin handled everything including taking his share of the profit from
20 the sale. (See Exhibit "1", ¶ 12). It was Lin/InvestPro's handyman who made the repairs to
21 the subject property. (See Exhibit "1", ¶ 12). Lin was aware that the building was cracking.
22 (See Exhibit "1", ¶ 12). More importantly, Lin was aware of the condition of the foundation
23 as it was InvestPro's handyman who covered it up. (See Exhibit "1", ¶ 12). This is why Lin
24 did not want to represent both the buyer and the seller in this transaction as he was aware of
25 the many undisclosed problems with the property. (See Exhibit "1", ¶ 12).
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1 Concerning the condition of the foundation, Lin and InvestPro were more than aware
2 of what was going on. (See Exhibit "1", ¶ 13). Mr. Miao had an opportunity to review a
3 number of the handyman receipts which have been produced in the litigation one of which
4 acknowledges that the handyman "remove 2 rooms laminate and level concrete." (DEF 23)
5 This took place on April 19, 2017. (See Exhibit "1", ¶ 13). When the flooring began buckling
6 again, Mr. Miao pulled the wood laminate up only to find the condition of the foundation
7 that the handyman had covered to be extremely poor rendering the entire triplex
8 structurally unsound. (See Exhibit "1", ¶ 13). The condition of the floor was also consistent
9 with the recent reports of tenants that the sewer line was broken resulting in sewage water
10 leakage backing up under the foundation. (See Exhibit "1", ¶ 13). As reported by
11 Defendants' expert Neil Opfer, the triplex sits on expansive clay which swells up when wet
12 and then compresses when dry. (See Exhibit "1", ¶ 13). These conditions cause earth
13 movements resulting in foundation and wall cracking. (See Exhibit "1", ¶ 13).

14 Mr. Miao has a PhD in chemical engineering. (See Exhibit "1", ¶ 14). Because sewage
15 gases are so dangerous, Mr. Miao removed all tenants from the property immediately and
16 has not leased units to anyone else. (See Exhibit "1", ¶ 14). Sewage gas is a complex mixture
17 of toxic and nontoxic gases produced by the decomposition of organic household sewer
18 water. (See Exhibit "1", ¶ 14). The gases may include hydrogen sulfide, ammonia, methane,
19 esters, carbon monoxide, sulfur dioxide and nitrogen oxides. (See Exhibit "1", ¶ 14). Sewer
20 gases are of concern due to health effects and potential for creating fire or explosions. (See
21 Exhibit "1", ¶ 14). Exposure to sewer gas can happen if the gas seeps in via a leaking
22 plumbing drain, vent pipe or even through cracks in a building's foundation. (See Exhibit
23 "1", ¶ 14). At higher concentrations (> 300 ppm) hydrogen sulfide can cause loss of
24 consciousness and death. Very high concentrations (> 1000 ppm) can result in immediate
25 collapse, occurring after a single breath. (See Exhibit "1", ¶ 14). Carbon monoxide is a
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1 colorless, odorless, and tasteless toxic and flammable gas. (See Exhibit "1", ¶ 14). At
2 concentrations above 150 to 200 ppm, disorientation, unconsciousness and death are
3 possible. (See Exhibit "1", ¶ 14). Sewer gas can contain methane, hydrogen sulfide and
4 carbon monoxide all of which are highly flammable and potentially explosive substances.
5 (See Exhibit "1", ¶ 14).
6

7 As a result of having a broken sewer line and significant issues with the foundation,
8 as stated, Mr. Miao has refused to lease triplex units to other tenants. (See Exhibit "1", ¶
9 15). What concerns Mr. Miao is that Lin knowingly put a tenant in the Triplex knowing that
10 the sewage line was broken and presented an extreme health and safety risk to tenants. (See
11 Exhibit "1", ¶ 15). Lin also sold the property to Mr. Miao's company without disclosing the
12 condition of the foundation and sewer line. (See Exhibit "1", ¶ 15). Lin's knowledge of the
13 broken sewer line explains other actions prior to Plaintiff purchasing the triplex. (See
14 Exhibit "1", ¶ 15). During one of his inspections of the subject property with Lin by his side,
15 Mr. Miao noticed that the units did not have smoke, CO or combustible gas detectors. (See
16 Exhibit "1", ¶ 15). Mr. Miao reminded Lin that this was against the county law and asked
17 him to install detectors in each of the units. (See Exhibit "1", ¶ 15). Lin had CO and smoke
18 detectors installed. (See Exhibit "1", ¶ 15). However, after Plaintiff's purchase of the triplex,
19 Mr. Miao noticed that Linn had removed the CO and combustible gas detectors. (See
20 Exhibit "1", ¶ 15). Lin has obviously concerned the CO detectors would sound the alarm
21 knowing that the sewer line was broken, and the foundation cracked. (See Exhibit "1", ¶ 15).
22 Sewage gas seeps into the bedrooms through the cracked foundation. (See Exhibit "1", ¶ 15).
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25 In going through the amended order, Mr. Miao noticed a number of factual
26 representations that he submits are at issue in the case. (See Exhibit "1", ¶ 16).

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

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

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

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

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

16 (See Opfer report, p. 14).

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

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

10 (b) p. 3, ¶ 4. "Ms. Zhu waived the Due Diligence condition." Under
11 Paragraph 7(D), "Buyer is deemed to have waived the right to that inspection and Seller's
12 liability for the cost of all repairs that inspection would have reasonably identified had it
13 been conducted, except as otherwise provided by law." It was Helen Chen and Kenny Lin
14 from InvestPro who prepared the purchase agreement and checked the box for home
15 inspection by Buyer and waiving other inspection. Plaintiff did not waive right to inspect
16 as evident in both the August 11, 2017 and September 14, 2017 Purchase Agreements. In
17 fact, Mr. Miao inspected the property with Kenny Lin on August 10, 2017, before the
18 Purchase Agreement was e-signed on August 11, 2017, pointing out various issues with the
19 Triplex that needed to be fixed before closing. As stated, Mr. Miao could not have
20 uncovered the various defects in the property that are at issue as they were covered up by
21 Lin, acting on behalf of Defendant TKNR. The defects were serious and would have only
22 been revealed during an inspection that allowed destructive opening up of the unit as this
23 purchase agreement did not allow. Further, Mr. Miao's understanding of the law is that
24 an inspection by a licensed inspector is not required for multi-family rental properties and
25 that Lin is not relieved of his responsibility to disclose known conditions which affect the
26 value of the property.
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1 (c) p. 3, ¶ 5. "Ms. Zhu also waived the energy audit, pest inspection, roof
2 inspection, septic lid removal inspection, mechanical inspection, soil inspection and
3 structural inspection." *As stated, Mr. Miao inspected the subject property on several*
4 *occasions. No non-destructive inspection would have uncovered the serious cracking and*
5 *foundations issue in the triplex. Further, this property is not on septic. The waiver checks*
6 *in the Purchase Agreement were prepared by InvestPro without notifying Mr. Miao.*

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

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

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

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

14 (g) p. 4, ¶ 10. "This is the second time that Ms. Zhu waived inspections for
15 the Property despite the language in the 2nd RPA that strongly advised to get an inspection
16 done." *Mr. Miao inspected the property with Kenny Lin on August 10, 2017. The original*
17 *Residential Purchase Agreement was e-signed the day after on August 11, 2017, after the*
18 *agreement had been prepared completely by Helen Chen and Kenny Lin. The Agreement*
19 *itself does not state that the buyer is waiving the home inspection. Again, the triplex had*
20 *already been inspected by Frank Miao with Kenny Lin at his side by the time the initial*
21 *Agreement had been e-signed by Ms. Zhu. The buyer cannot waive an inspection that has*
22 *already been completed. Mr. Miao inspected the property again after the initial Purchase*
23 *Agreement was signed. At no time did Mr. Miao or Ms. Zhu waive the right to inspect.*
24 *Again, both the first and second Purchase Agreements were completed by InvestPro agents*
25 *allegedly representing Plaintiff at the time of the transaction.*
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1 (h) p. 4, ¶ 10. “Notably, although Ms. Zhu had not initialed the “Failure to
2 Cancel or Resolve Objections” provision in the RPA, she initialed the corresponding
3 provision in the 2nd RPA.” *WLAB inspected the property with Kenny Lin on August 10,*
4 *2017.*

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

9 (j) p. 5, ¶ 15. “Plaintiff was a sophisticated buyer who understood the
10 necessity of getting the properties inspected.” *Plaintiff did inspect the property on August*
11 *10, 2017, with Mr. Lin. The major defects were covered up and Lin had lied to Mr. Miao*
12 *about the rehabilitation.*

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

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

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

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

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

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

1 issues.” As stated, Mr. Miao instructed Kenny Lin to put smoke and CO detectors in the
2 units only to find out that after the purchase, Lin had removed the CO detectors after they
3 were installed. Defendants had hidden some GFCI required outlets by covering up or
4 installing non-functioning GFCI outlets without using a licensed electrician which was
5 dangerous for the tenants. Defendants did not want to use a licensed electrician because a
6 licensed electrician would have asked to pull permits. The city inspector may have found
7 out about the defects and shut down the apartment.
8

9 (q) p. 8, ¶ 28. “Additionally, Mr. Miao noted that there were cracks in the
10 ceramic floor tiles, *Id.* at 249: 22-25, and he was aware of visible cracks in the concrete
11 foundation, *Id.* at 269: 13-22 (aware of slab cracks), which were open and obvious.” Mr.
12 Miao noticed a few cracks in the ceramic floor tiles in Unit C living room. Mr. Miao was
13 not able to see the foundation as it was covered with newly installed flooring. It was at
14 this point Lin explained to Mr. Miao that they had rehabilitated the entire triplex.
15

16 (r) p. 9, ¶ 31. As to SRPDF, Plaintiff was aware that TKNR was an investor
17 who had not resided in the Property, and there were issues with the heating systems, cooling
18 systems, and that there was work done without permits and all the work was done by a
19 handyman other than the HVAC installation.” When Mr. Miao inspected the property the
20 Defendant Lin, Lin explained that InvestPro had rehabilitated the property. There was no
21 defect found at the time of the inspection that would have raised any concern.
22

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

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

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

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

14
15
16 (v) p. 10, ¶ 35. "Plaintiff was on notice of the potential for mold and the
17 requirement to get a mold inspection." *This is a rental property. By law, the seller must*
18 *provide a safe, habitable apartment to the tenants. No tenant will check mold and have*
19 *professional mold inspection. Further, mold testing usually requires a destructive*
20 *inspection to verify in ceiling and behind walls.*

21
22 (w) p. 11, ¶ 37. "Disclosure of unknown defects not required. Form does not
23 constitute warranty duty of buyer and prospective buyer to exercise reasonable care." *Mr.*
24 *Miao's issue with Sellers' disclosures is that they failed to disclose defects that they were*
25 *aware of. The Handyman's invoice for patching the concrete underscores that the Sellers*
26 *were aware of the condition of the foundation when they sold the triplex and failed to*
27 *disclose to Plaintiff.*
28

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

6
7 (y) p. 13, ¶ 43. "Additionally, Mr. Miao accompanied Defendants' expert
8 during his inspection." *Defendants' expert did not show all of the pictures taken which*
9 *reflect new cracks.*

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

15
16 (aa) p. 13, ¶ 45. "He also agreed with Defendants' expert's finding that there
17 was no noticeable sagging in the roof." *The roof leak was not caused by sagging. It was*
18 *caused by a broken seal on the roof.*

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

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

14 (dd) p. 14, ¶ 48. “Since the date it purchased the Property, Plaintiff has always
15 been trying to lease it. . . . According to Mr. Miao, the landlord must provide safe housing
16 for the tenant.” Lin and his company InvestPro were the property managers for the
17 property after Plaintiff’s purchase. Lin knowingly leased the property to tenants knowing
18 that the property was unsafe. Once Mr. Miao learned of the foundation and sewage line
19 defects, he removed all tenants until they are fixed.
20

21 (ee) p. 15, ¶ 49. “Moreover, Plaintiff does not provide any notice to the
22 tenants about its expert’s report or this litigation.” Since purchasing the property, Mr.
23 Miao has made many repairs as they are discovered with licensed contractors.
24 Specifically, once Mr. Miao found out about the foundation and sewer line defects, he
25 asked the tenants to move out immediately.
26

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

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

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

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

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

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

21 (kk) p. 17, ¶ 58. “The Flipping Fund had nothing to do with Plaintiff’s
22 decision to purchase the Property.” *The subject triplex was one of the Flipping Fund*
23 *projects. As stated by Lin, the property was purchased at auction and renovated. The*
24 *Flipping Fund had everything to do with the alleged rehabilitation of the property as that*
25 *is what they do, buy, rehabilitate (cover up in this case) and sell for a large profit.*
26
27
28

1 (ll) p. 17, ¶ 59. "Initially, Mr. Miao contacted contractors to bid the
2 potential cost of repair for the Property and determined that it would have been
3 \$102,873.00. . . . However, Plaintiff's expert opined that the cost of repair would have been
4 \$600,000.00, although he did not provide an itemized cost of repair." *Initially, the cost of*
5 *repair to fix the electrical and ductwork inside the ceiling was \$102,873.00. However, by*
6 *the time Plaintiff's expert inspected the property, much more was known about the*
7 *property and, therefore, the cost of repair was much higher.*

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

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

1 *when Defendants changed out the swamp cooler for an air conditioner, they simply piggy-*
2 *backed the AC wiring on already existing wiring on the fuse which caused the fuse to*
3 *overload and burn out. The electrical panel was insufficient to handle the load which*
4 *required re-wiring by a licensed electrician. Further, when the AC unit was added,*
5 *additional electrical wiring was required which required a permit and inspection.*
6

7 (oo) p. 25, ¶ 63. “Additionally, he specified that he noted issues with the
8 plumbing system were “open and obvious” that a reasonable, profession inspection could
9 have discovered in 2017.” *Mr. Miao learned of the septic issue when the tenants left the*
10 *property and reported issues with the sewage. Sewage had backed up in one of the tubs*
11 *which was discovered after the tenant left. Residue from the sewage backup was found in*
12 *the tub (See Exhibit “7”). Mr. Miao further learned from the tenant in Unit A and the*
13 *former tenant that the sewage issue was something Defendants were aware of as they had*
14 *previously investigated the problem.*
15

16 (pp) p. 25, ¶ 64. “As to 31(c), Mr. Miao admitted that the Seller’s Disclosures
17 did disclose the use of a handyman, the lack of permits, and issues with the sprinklers.
18 Additionally, he specified that he noted issues with the sewer system were “open and
19 obvious” that a reasonable, professional inspection could have discovered in 2017.” *There is*
20 *no sprinkler system. The sewer issue was not open and obvious and could not have been*
21 *discovered with a typical professional inspection. Defendants were aware of the issue and*
22 *had an obligation to report the sewer problem to Plaintiff.*
23

24 (qq) p. 25, ¶ 65. The order suggests that the conditions were open and
25 obvious. *Defendants were aware of these issues and failed to disclose. These issues were*
26 *not “open and obvious.” They were discovered after Mr. Miao opened walls, ceilings and*
27 *floor coverings.*
28

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

8 (ss) p. 26, ¶ 67. "As to 31(f), this allegation illustrates the prior knowledge
9 that Plaintiff had before purchasing the Property, and the overall emphasis on the failure to
10 obtain a professional inspection of the Property prior to purchasing it." *31(f) refers to the*
11 *fact that smoke detectors were missing at the time of the inspection. This allegation says*
12 *nothing about the serious problems with the Property that Defendants had covered up and*
13 *that were not readily detectible at the time of Mr. Miao's inspection. Obviously, Mr. Miao*
14 *did not see the foundation damage at the time of the inspection as it was covered by wood*
15 *laminated and ceramic flooring. The order implies that an inspection done by a*
16 *"professional inspector" would have noticed that serious foundation damage without*
17 *pulling up the flooring. Mr. Miao was also not aware that the HVAC system had been*
18 *changed three times until the receipts were disclosed in this case. Mr. Miao was not aware*
19 *of the shoddy and illegal electrical work that had been done and which was hidden behind*
20 *the walls. It took a tenant complaining about a fuse and the subsequent retention of a*
21 *licensed electrician to go into the wall to discover what Defendants had done. It was a*
22 *tenant and former tenant reporting about the sewage problems as well as sewage*
23 *remnants in a bathtub for Mr. Miao to become aware of that problem. It took a leaking*
24 *ceiling and opening of the ceiling before Mr. Miao became aware that Defendants had*
25 *vented the dryer exhaust to the attic and that Defendants had not properly changed out the*
26 *swamp cooler ducting for insulated air conditioning ducting. Walls had been covered so*
27
28

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

6
7 (tt) p. 26, ¶ 68. "Notably, Mr. Miao admitted that no evidence showed that
8 Defendants were aware of any of these issues." *The issues were created by the Defendants,*
9 *so they obviously had knowledge.*

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

15
16 (vv) p. 26, ¶ 70. "Mr. Miao admitted that he should have followed up related
17 to the permit issue prior to Plaintiff purchasing the Property." *It's as if Defendants are*
18 *suggesting that Plaintiff should have put more effort into uncovering Defendants'*
19 *deceptions. In other words, you knew that the work was done by an unlicensed*
20 *handyman. You should have assumed that the work was not done correctly or pursuant to*
21 *the law. Defendant failed to disclose anything of substance like the fact that the wiring*
22 *was improperly done when the AC units were put in. Defendant failed to disclose anything*
23 *about the dryer exhaust venting to the attic, the improper ducting after the air*
24 *conditioners were put in or that the wall coverings and flooring were covering up*
25 *significant issues with the walls and foundation. Defendants suggest that had an*
26 *inspection been done, Mr. Miao would have noticed all the problems. However, as stated,*
27 *Defendants had covered up the problems.*
28

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

13
14
15 (xx) p. 27, ¶ 72. “Mr. Miao admitted that there was visible cracking on the
16 foundation, walls, and the tiles that were open and obvious at the time that Plaintiff
17 purchased the Property in 2017. . . . Notably, Mr. Miao admitted that no evidence showed
18 that Defendants were aware of any of these issues and also admitted that squatters and
19 tenants could have damaged the Property.” *Squatters and tenants could not have caused*
20 *the foundation and walls to crack. Even if squatters and tenants did cause the damage,*
21 *Defendants were aware of the damage and covered it up.*

22
23 (yy) p. 27, ¶ 73. “As to the Broker Defendants, Ms. Zhu agreed that she was
24 not relying upon any representations made by Brokers or Broker’s agent.” *Regardless of the*
25 *inspections by Mr. Miao and what he discovered during his inspection, Defendants should*
26 *have warned Mr. Miao and Ms. Zhu about serious conditions which they covered up. Mr.*
27 *Miao was relying upon his broker to tell him about conditions which could not be seen with*
28 *a routine inspection. Mr. Miao believes his agents should have told him about the fact that*

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

4 (zz) p. 28, ¶ 74. Mr. Miao walked the property with Defendants' expert, Neil
5 Opfer. *By the time Mr. Miao walked the property with Mr. Opfer, numerous cracks had*
6 *appeared in the walls which were not visible at the time of Mr. Miao's inspection on August*
7 *10, 2017.*

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

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

18
19 **Lin's Affidavit**

20 Mr. Lin, in his declaration attached to Defendants' Motion for Summary Judgment,
21 states in ¶ 2 that he submitted seller disclosures on August 2, 2017. Mr. Miao had not even
22 met Mr. Lin before August 10, 2017. (See Exhibit "1", ¶ 17). Mr. Miao first met Mr. Lin on
23 August 10, 2017, at the time of his inspection of the subject property. (See Exhibit "1", ¶ 17).
24 In ¶¶ 3 and 7, Lin states that he told Mr. Miao and Ms. Zhu to get an inspection of the
25 Property. At no time did Lin tell Mr. Miao that he needed to get an inspection of the
26 Property as Mr. Miao had already inspected the property with Lin. (See Exhibit "1", ¶ 17).
27 Mr. Lin was also the seller's agent so after the initial signing of the Residential Purchase
28

1 Agreement Mr. Miao only communicated with Ms. Chen, the buyer's agent. (See Exhibit "1",
2 ¶ 17). In ¶ 4, Lin says that Mr. Miao did not inspect the property. (See Exhibit "1", ¶ 17).
3 Again, Mr. Miao inspected the Property on several occasions, the first time with Lin present
4 on August 10, 2017. (See Exhibit "1", ¶ 17). Mr. Lin stated to Mr. Miao that they had entirely
5 rehabilitated the Property including the walls and floors. (See Exhibit "1", ¶ 17). In ¶ 5, Lin
6 states that the rehabilitation done on the Property did not involve opening walls. They had
7 to open the walls to install the window AC units. (See Exhibit "1", ¶ 17). Lin further states
8 that on multiple occasions he disclosed the work on the HVAC units to Mr. Miao. (See
9 Exhibit "1", ¶ 17). Mr. Miao was aware that the HVAC units had been recently put in but he
10 was not aware that the AC units were replacing a swamp cooler. (See Exhibit "1", ¶ 17). Lin
11 did not disclose the installation of the HVAC units to Mr. Miao. (See Exhibit "1", ¶ 17). In ¶
12 8, Lin states that TKNR did not reside or visit the property implying that Defendants knew
13 very little about the property. TKNR, Lin and InvestPro were all related. (See Exhibit "1", ¶
14 17). TKNR was part of Mr. Lin's flipping fund. (See Exhibit "1", ¶ 17). Lin put the investor's
15 together and purchased the property. (See Exhibit "1", ¶ 17). It was Lin and his handyman
16 who performed the rehabilitation of the Property. (See Exhibit "1", ¶ 17). In ¶ 10, Lin states
17 that original settlement demand was \$10,000.00. (See Exhibit "1", ¶ 17). There were no
18 demands made to Defendants after the lawsuit was filed. (See Exhibit "1", ¶ 17). Mr. Miao
19 had approached Lin about the electrical issues he discovered in the wall relating to the
20 installation of the air conditioners. (See Exhibit "1", ¶ 17). Mr. Miao asked Lin to pay the
21 anticipated costs of repairing the electrical wiring which was approximately \$10,000.00.
22 (See Exhibit "1", ¶ 17).
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1 **A. Defendants were required to submit admissible facts in support of their**
2 **Motion for Summary Judgment.**

3 Evidence introduced in support of or in opposition to a motion for summary
4 judgment must be based upon admissible evidence. *Collins v. Union Federal Savings and*
5 *Loan Association*, 99 Nev. 284, 302, 662 P.2d 610, 621 (1983); *Beyene v. Coleman Security*
6 *Services, Inc.*, 854 F.2d 1179, 1181, 1182 (9th Cir. 1988); *Henry Prods. V. Tarmu*, 114 Nev.
7 1017, 1019, 967 P.2d 444, 445 (1998). Authentication is a condition precedent to
8 admissibility requiring all evidence presented in support of a motion for summary judgment
9 to be authenticated. *Thomas v. BAC Home Loans Servicing, LP*, 373 P.3d 967, 2011 WL
10 6743044, 2 (2011); NRS 52.015. A trial court can only consider admissible evidence in
11 ruling on a motion for summary judgment. *Romero v. Nevada Department of Corrections*,
12 2013 WL 6206705, p. 3 (U.S. Dist. Nev. 2013); *Orr v. Bank of America, NT & SA*, 285 F.3d
13 764, 773 (9th Cir., 2002).

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

25 On page 4 of Defendants' motion, Defendants attach and discuss an email from Chen
26 to Ms. Zhu again without providing any foundation for the email. The email in and of itself
27 is nothing more than inadmissible hearsay. On page 5, Defendants refer to the addendum to
28

1 Exhibit E, the new Residential Purchase Agreement dated September 5, 2017, and again fail
2 to provide any foundation. There is not one iota of sworn statements or affidavits
3 authenticating anything in Defendants' original brief supporting their Motion for Summary
4 Judgment. The Opfer report is referred to on Page 6. Again, the report is a hearsay
5 document completely lacking any foundation. The report is not a sworn statement.
6 Defendants refer to various entries in the report, all of which constitute inadmissible
7 evidence without any foundation. The order granting Defendants' Motion for Summary
8 Judgment contains Findings of Fact in paragraphs 1 through 11 which were not supported by
9 any admissible evidence. The findings contained in these paragraphs were nothing more
10 than arguments of counsel in Defendants' Motion for Summary Judgment. Defendants did
11 not present anything admissible until they submitted their Reply to Plaintiff's Opposition
12 when they referenced Mr. Miao's deposition testimony.
13

14 It is axiomatic that the party moving for summary judgment has the burden of
15 demonstrating clearly that there are no genuine issues of material fact to be determined.
16 *City of Boulder City v. State*, 106 Nev. 390, 793 P.2d 845 (1990). Once the movant has
17 made a prima facie demonstration of no issues of fact, the party opposing summary
18 judgment has the burden of coming forward with evidence in the form of specific facts to
19 show the existence of a material fact. A failure to do so requires the court to enter judgment
20 as a matter of law. NRCP 56(e); *Dredge Corp. v. Husite Co.*, 78 Nev. 69, 369 P.2d 676
21 (1962); *Bulbman, Inc. v. Nevada Bell*, 108 Nev. 105, 852 P.2d 588 (1992). The moving party
22 has the initial burden of identifying the portions of the materials on file that it believes
23 demonstrate the absence of a genuine issue of material fact. *Id.*; *T.W. Elec. Serv., Inc. v.*
24 *Pacific Elec. Contractors Ass'n*, 809 F.2d 626, 630 (C.A.9, 1987). Arguably, Plaintiff was not
25 required to submit any admissible facts in response to Defendants' motion as Defendants'
26 had not referenced one original admissible fact in their initial brief.
27
28

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

4 **B. Numerous factual issues exist as to what Defendants knew, what they**
5 **attempted to cover up and what they were required to disclose.**

6 In ¶ 7 of the Amended Order dated April 7, 2021, the Court cites *Mackintosh v. Jack*
7 *Matthews and Company*, 109 Nev. 628, 633, 855 P.2d 549, 552 (1993), as standing for the
8 proposition that nondisclosures by Sellers are not actionable when the property is sold "as
9 is." However, like Nevada, most states do not shield sellers with "as is" clauses who have
10 fraudulently misrepresented the condition of property or who have intentionally concealed
11 known defects. *Mackintosh v. Jack Matthews and Company*, 109 Nev. 628, 632, 855 P.2d
12 549, 552 (1993).

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

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

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

3 The Court, in ¶ 9, references NRS 113.130-140 stating that the seller does not have a
4 duty to disclose defects of which it is unaware. That is the point of this case. Plaintiff contends
5 that there were numerous defects in the property that Defendants were aware of which they
6 not only had a duty to disclose but that they covered up so Plaintiff could not find the defects
7 prior to closing. Whether or not any of this is true is for a jury to decide. Specifically, what
8 did Defendants know, what did Defendants cover up and what were Defendants required to
9 disclose? Plaintiff would further submit that what an inspection by Mr. Miao or anyone else
10 would have uncovered considering what Defendants were hiding is also at issue and should
11 be decided by a jury.
12

13 After purchasing the subject property, Defendants obviously realized they were stuck
14 with a property that should have been condemned. Because they were in the business of
15 “flipping” properties, certain things had to be done to hide the dilapidated condition of the
16 triplex before it could be sold. The foundation to the triplex was structurally unsound. As
17 can be seen from the photographs in Exhibit “3”, Defendants attempted to patch the
18 foundation so that flooring could be laid to hide the condition of the foundation. As per the
19 purchase agreement, Mr. Miao could inspect the property so long as it did not involve “non-
20 invasive/non-destructive” inspections. *See* ¶ 7(A) of Residential Purchase Agreement
21 attached hereto as Exhibit “5”. In other words, Mr. Miao was not allowed to pull up sections
22 of the floor or pull-down wall coverings to see what Defendants were hiding in the floor and
23 walls.
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1 In the Seller's Real Property Disclosure Form attached hereto as Exhibit "6",
2 Defendants checked "no" to the following:

3 1(a) Previous or current moisture conditions and/or water damage? (*This*
4 *property has had a history of sewage backup and a broken sewer line that has left the*
5 *foundation to the property inundated with raw sewage and water.*)

6
7 1(b) Any structural defect? (*A trier of fact would have to look no further than*
8 *photographs of the foundation taken within the last 30 days by Mr. Miao after pulling up*
9 *the buckled floor installed by Defendants' handyman to ascertain the condition of the*
10 *foundation.*)

11 1(c) Any construction, modification, alterations, or repairs made without required
12 state, city or county building permits? (*Defendants checked "no" initially and then thought*
13 *better of it after considering all of the changes they had made to the property to cover up*
14 *building defects. Defendants' description of what was done without a license was*
15 *installing kitchen cabinets and three AC units. Defendants further state "all work done by*
16 *owner's handyman, owner never reside in the property and never visited the property."*
17 *Defendants were obviously trying to cover up what they had done to the property with this*
18 *incredibly suspicious statement. Even though their "handyman" patched the foundation,*
19 *laid laminate flooring through-out all three units, painted, put up wall coverings, installed*
20 *a dryer duct to the attic and installed two air conditioner units, Defendants wanted the*
21 *buyer to believe that they "never visited the property" and "never reside in the property" as*
22 *if to lay foundation for deniability when it was discovered what they were hiding – in*
23 *other words, blame it on the handyman. Defendants apparently wanted the buyer to*
24 *believe that they purchased a triplex without ever seeing or visiting the property.)*

25
26
27 2(b) Any foundation sliding, settling, movement, upheaval, or earth stability
28 problems that have occurred on the property? (*See photographs in Exhibit "3"*)

1 2(c) Any drainage, flooding, water seepage, or high water table? (*Defendants*
2 *checked this box “no” with the knowledge that sewage had been backing up as a result of a*
3 *broken sewer line.*)

4 6(a) Any substances, materials, or products which may be an environmental hazard
5 such as but not limited to, asbestos, radon gas, urea formaldehyde, fuel or chemical storage
6 tanks, contaminated water or soil on the property? (*Defendants were aware that the sewer*
7 *line was broken causing sewage to backup under the foundation and into the plumbing.*)

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

12 Summary Judgment must be rendered if there is no genuine issue as to any material
13 fact and the moving party is entitled to judgment as a matter of law. *Id.*; NRCP 56(c); *See*
14 *also Bird v. Casa Royal W.*, 97 Nev. 67, 624 P.2d 17 (1981); *Montgomery v. Ponderosa*
15 *Construction, Inc.*, 101 Nev. 416, 705 P.2d 652 (1985); *Pegasus v. Reno Newspapers, Inc.*,
16 118 Nev. 706, 57 P.3d 82 (2002). Plaintiff has identified numerous factual issues in its’
17 opposition and in this motion for reconsideration, especially the recent discovery of the
18 condition of the triplex foundation, which would preclude summary judgment in this case.
19 As stated, those issues go to what Defendants knew, what Defendants attempted to hide and
20 what disclosures should Defendants have made prior to closing as compared with the
21 disclosures they actually made.
22

23
24 **C. Plaintiff’s pleadings are not worthy of Rule 11 sanctions.**

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

1 opportunity for further discovery. (*See* NRCP 11(b)(2)(3)). Rule 11 further requires that any
2 motion for sanctions be made “separately from another other motion and must describe the
3 specific conduct that allegedly violates Rule 11(b).” NRCP 11(c)(2). Finally, a rule 11
4 sanction should only be imposed “to deter repetition of the conduct or comparable conduct
5 by other similarly situated.” NRCP 11(c)(4). There are further limitations on monetary
6 sanctions as the court is ordered in this case “against a represented party for violating Rule
7 11(b)(2). In awarding sanctions to Defendants, The Court has implied that Plaintiff’s action
8 is frivolous in that “the pleading was not “well grounded in fact and is warranted by existing
9 law or a good faith argument for the extension, modification or reversal of existing law” and
10 “Plaintiff’s attorney continued to make frivolous claims.” *See* Amended Order dated April 7,
11 2021, ¶ 78. The Court accordingly awarded sanctions: “Sanctions are warranted against
12 Plaintiff and its counsel, which includes an award attorneys’ fees to Defendants.” Amended
13 Order, ¶ 78. Since Steven Day was Plaintiff’s counsel at the time of the hearing having
14 substituted in for Mr. Childs the day prior to the hearing, the Order seems to include Mr.
15 Day and his firm for simply arguing (advocating) on behalf of the Plaintiff. It would be
16 breaking new ground if an attorney were sanctioned for simply arguing a motion after
17 making an appearance the day before and otherwise advocating for a client. Mr. Day asks
18 the Court for clarification if he and his firm and to be included in the sanctions. NRCP
19 11(c)(5)(A) seems to preclude the court from awarding monetary sanctions against the
20 Plaintiff based upon the Court’s justification for sanctions.
21
22
23

24 As stated in this motion, Plaintiff’s case is based on its belief that it was fraudulently
25 induced in buying a triplex that should have been condemned. Plaintiff’s argument is that
26 Defendants hid evidence of which it was aware and of which it had an obligation to disclose
27 to Plaintiff.
28

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

4 1. Except as otherwise provided in subsection 2:

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

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

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

10 (b) If, after service of the completed disclosure form but before conveyance of
11 the property to the purchaser, a seller or the seller's agent discovers a new
12 defect in the residential property that was not identified on the completed
13 disclosure form or discovers that a defect identified on the completed
14 disclosure form has become worse than was indicated on the form, the seller
15 or the seller's agent shall inform the purchaser or the purchaser's agent of that
16 fact, in writing, as soon as practicable after the discovery of that fact but in no
17 event later than the conveyance of the property to the purchaser. If the seller
18 does not agree to repair or replace the defect, the purchaser may:

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

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

22 NRS 113.140 (1) does not impose a requirement on a seller to disclose a defect of which the
23 seller is not aware. Determination of whether a seller was aware of a defect which would
24 trigger the statutory duty to disclose "is a question of fact to be decided by the trier of fact."

25 *Nelson v. Heer*, 123 Nev. 217, 224, 163 P.3d 420, 425 (2007).

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

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

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

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

22 Plaintiff has a cause of action for breach of fiduciary duty against InvestPro, Lin,
23 Nickrandt and Chen. Real estate agents occupy a fiduciary relationship to their clients.
24 *Hamby v. St. Paul Mercury Indemn. Co.*, 217 F.2d 78 (4th Cir., 1954). Clearly a fiduciary
25 relationship exists between Plaintiff and InvestPro, Chen, Lin, etc. If Defendants committed
26
27
28

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

4 Plaintiff has a cause of action under NRS 645.252(1)(a) which is a duty, as a licensee
5 acting as an agent in a real estate transaction, to disclose material and relevant facts relating
6 to the subject property. Plaintiff obviously submits that Defendants InvestPro, Lin, Chen,
7 etc., violated this particular statute. This is up to the trier of fact to decide. This is not a
8 frivolous claim.
9

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

13 CONCLUSION

14 There are obvious factual issues to be considered by a jury. Those factual issues
15 include:
16

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

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

23 3. Were the conditions of the property and Defendants' knowledge of the
24 conditions such that Defendants had a duty to disclose those conditions to Plaintiff at the
25 time of the transaction?
26
27
28

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

4 DATED this 16th day of April, 2021.

5 **DAY & NANCE**

6
7
8 By:


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1060 Wigwam Parkway
Henderson, NV 89074
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Attorneys for Plaintiff

13472

12 **CERTIFICATE OF SERVICE**

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

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18 Michael Mathis, Esq.
19 Michael B. Lee, P.C.
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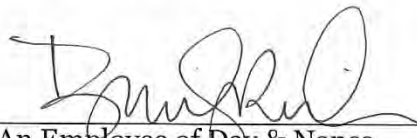
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An Employee of Day & Nance

EXHIBIT “1”

AFFIDAVIT OF FRANK MIAO

COUNTY OF CLARK)
) ss.
STATE OF NEVADA)

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(See Opfer report, p. 14).

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

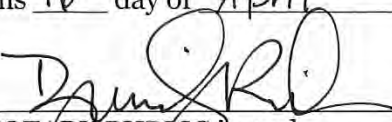
17. Mr. Lin, in his declaration attached to Defendants' Motion for Summary Judgment, states in ¶ 2 that he submitted seller disclosures on August 2, 2017. Affiant had not even met Mr. Lin before August 10, 2017. Affiant first met Mr. Lin on August 10, 2017, at the time of his inspection of the subject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

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

FURTHER AFFIANT SAYETH NAUGHT.


FRANK MIAO

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


NOTARY PUBLIC in and
for said County and State.

