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| IN THE SUPREME COURT OF THE STATE OF NEVADA |             | Electronically Filed<br>Aug 03 2023 05:30 PM<br>Elizabeth A. Brown<br>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. |  |

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

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**RESPONDENT APPENDIX – Volume 7 of 10**

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KAEMPFER CROWELL  
Lesley Miller, No. 7987  
Elva Castaneda, No. 15717  
1980 Festival Plaza Drive, Suite 650  
Las Vegas, Nevada 89135  
Telephone: (702) 792-7000  
Facsimile: (702) 796-7181  
Email: [lmiller@kcnvlaw.com](mailto:lmiller@kcnvlaw.com)  
Email: [ecastaneda@kcnvlaw.com](mailto:ecastaneda@kcnvlaw.com)

Attorneys for Respondent WLAB Investment, LLC

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KAEMPFER CROWELL




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Lesley B. Miller, No. 7987  
Elva A. Castaneda No. 15717  
1980 Festival Plaza Drive, Suite 650  
Las Vegas, Nevada 89135

Attorneys for Respondent  
WLAB Investment, LLC

## 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:

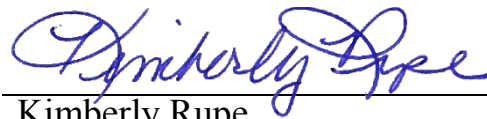
Michael B. Lee, Esq.  
Michael Matthis, Esq.  
**Michael B. Lee, P.C.**  
1820 East Sahara Avenue, Suite 110  
Las Vegas, Nevada 89104  
[mike@mblnv.com](mailto:mike@mblnv.com)  
[matthis@mblnv.com](mailto:matthis@mblnv.com)

Attorney for Appellant

James A. Kohl  
**Howard & Howard Attorneys PLLC**  
3800 Howard Hughes Pkwy, #1000  
Las Vegas, Nevada 89169  
[jkohl@howardandhoward.com](mailto:jkohl@howardandhoward.com)

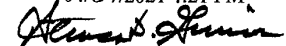
Settlement Judge

DATED August 3, 2023



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Kimberly Rupe  
An employee of Kaempfer Crowell

  
CLERK OF THE COURT

1 MICHAEL B. LEE, ESQ. (NSB 10122)  
2 MICHAEL MATTHIS, ESQ. (NSB 14582)  
3 MICHAEL B. LEE, P.C.  
4 1820 East Sahara Avenue, Suite 110  
5 Las Vegas, Nevada 89104  
6 Telephone: (702) 477.7030  
7 Facsimile: (702) 477.0096  
8 [mike@mblnv.com](mailto:mike@mblnv.com)  
9 Attorney for Defendants

10  
11 **IN THE EIGHTH JUDICIAL DISTRICT COURT**

12 **CLARK COUNTY, NEVADA**

13 W L A B INVESTMENT, LLC,

14 Plaintiff,

15 vs.

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

Defendants.

AND RELATED CLAIMS.

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

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

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

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

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

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

**Findings of Facts**

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

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

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

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

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  
8 completed and requested repairs are not delivered to Seller within  
9 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.

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 ("2<sup>nd</sup> RPA"). As before, the overall purchase price for the Property was \$200,000, but Ms. Zhu changed the contingency for the loan to \$150,000 with earnest money deposit of \$500 and a balance of \$49,500 owed at the close of escrow ("COE" or "Closing"). The COE was set for September 22, 2017.

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

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

1 Addendum 2 to the 2<sup>nd</sup> 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. The 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  
20 to the inspection, then we also talk to the tenant,  
21 so we thinking this is investment property; right?  
22 So financial it's looking at the rent, it's  
23 reasonable, it's not very high compared with the  
24 surrounding area. . . Then also financially, it's good.  
25 . . . . . Then I take a look at the -- everything  
26 Page 164  
27 . 1 outside. . Good. . So I said, Fine. . That's satisfied.  
28 . 2 That's the reason I command my wife to sign the  
3 purchase agreement.

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

24 . 2 . . . Q. . . So at the time when you did your  
25 . 3 diligence, you had a right to conduct noninvasive,  
26 . 4 nondestructive inspection; correct?  
27 . 5 . . . A. . . Yes, I did.  
28 . 6 . . . Q. . . And you had the opportunity to inspect all  
7 the structures?  
8 . 8 . . . A. . . I check the other one -- on the walk, I  
9 don't see the new cracking, so the -- some older  
10 cracking. . I check the neighbor who also have that



1 11 one. I think it's okay; right? Then the --  
2 Supplement at 166:2-11.

3 8... Q... So you had the right to inspect the  
4 9 structure; correct?  
5 10... A... Yes, yes, I did that.  
6 11... Q... You had the right to inspect the roof; is  
7 12 that correct?  
8 13... A... Yes.  
9 14... Q... Okay. Did you do that?  
10 15... A... I forgot. I maybe did that because  
11 16 usually I go to the roof.

\* \* \*

12 22... Q... You had the right to inspect the  
13 23 mechanical system; correct?

14 24... A... Right. Yes, yes.

15 25... Q... You had the right to inspect the  
16 Page 167

17 1 electrical systems; correct?

18 2... A... I check the electrical system, yes.

19 3... Q... You had a right to inspect the plumbing  
20 4 systems; correct?

21 5... A... Yes.

22 6... Q... You had the right to inspect the  
23 7 heating/air conditioning system; correct?

24 8... A... Yes.

\* \* \*

25 3... Q... And then you could have inspected any  
26 4 other property or system within the property itself;  
27 5 correct?

28 6... A... Yes, yes.

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

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

21 13... Q... "It is strongly recommended that buyer  
22 14 retain licensed Nevada professionals to conduct  
23 15 inspections."

24 16... A... Yes.

25 17... Q... Yeah. So you were aware of this  
26 18 recommendation at the time --

27 19... A... Yeah, I know.

28 *Id.* at 176:13-19.

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

28 ////

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.

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

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

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

22 22. As to all the properties purchased by Plaintiff, Mr. Miao always does the  
23 inspections and does not believe a professional inspection is necessary. *Id.* at 116:2-9, 119:3-25,  
24 140:5-10. Based on his own belief, he does not believe that a professional inspection is  
25 necessary for multi-tenant residential properties. *Id.* at 120:6-9 (his own understanding), 120:16-  
26 25 (second-hand information he received).

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

1 172:23-25-1-16 (no general contractor license or qualified under the intentional building code),  
2 174:13-23 (not familiar with the international residential code).

3 24. Mr. Miao has never hired a professional inspector in Clark County, *Id.* at 140:19-  
4 21, so he does not actually know what a professional inspection would encompass here. *Id.* at  
5 143:9-13, 144:8-19.

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

8 26. On or about August 10, 2017, Mr. Miao did an inspection of the Property. *Id.* at  
9 158:1-25-159:1-12. During that time, he admitted that he noticed some issues with the Property  
10 that were not up to code, finishing issues, GFCI outlets, and electrical issues:

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

21 *Id.*

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

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

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

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

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

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

9 23... Q. Okay. So when they disclosed that there  
10 24 was construction and modification, alterations,  
25 and/or repairs made without State, City, County  
Page 205  
11 1 building permits, which was also work that was done  
12 2 by owner's handyman, did you ever do any follow-up  
3 inquiries to the seller about this issue?  
13 4... A. No, I didn't follow up.

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

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

17 10... Q. Under the disclosure form --  
18 11... A. Yeah.  
19 12... Q. -- like, where it specified that there  
20 13 were heating system/cooling system issues that  
14 they're aware of, that you could have elected to  
15 have an inspection done at that time; correct?  
16... A. Yes.

21 Id. at 206:10-16.

22 15... Q. Okay. So as your attorney said, you could  
23 16 have obtained a copy of the permits at any time?  
17 Yes?  
24 18... A. Yes.  
25 19... Q. Okay. And then it's fair to say that just  
20 put you on notice of the potential permit issue;  
21 correct?  
22... A. Yes.  
26 23... Q. It also put you on notice of the issues of  
27 24 everything that's basically specified on page 38;  
25 correct?  
Page 209  
28 1... A. Yes.

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

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

5 22... Q... Okay... So you understand that for more  
6 23 information during the diligence process, you should  
7 24 contact the local building department?

8 25... A... Yes...

9 Page 260

10 \* \* \*

11 5... Q... -- it provides you with the address of the  
12 6 building and safety department; is that correct?

13 7... A... Yes.

14 8... Q... And the office hours; is that correct?

15 9... A... Yes.

16 10... Q... And it also provides you with a phone  
17 11 number; correct?

18 12... A... Yes.

19 13... Q... And this is information or resources that  
20 14 you could have used at any time related to finding  
21 15 information about the permits of the property;  
22 16 correct?

23 17... A... Yes.

24 18... Q... And this would have been true prior to the  
25 19 purchase of the building; correct?

26 20... A... Yes.

27 21... Q... And this would also have been true at the  
28 22 time you read the disclosure that specified that  
29 23 some of the improvements or some of the disclosures  
30 24 had been done without a permit; right?

31 25... A... Yes.

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

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

35 5... Q... Okay... And it says, "It's the buyer's duty  
36 6 to inspect... Buyer hereby assumes responsibility to  
37 7 conduct whatever inspections buyer deems necessary  
38 8 to inspect the property for mold contamination.

39 9... "Companies able to perform such  
40 10 inspections can be found in the yellow pages under  
41 11 environmental and ecological services."

42 12... I read that correctly? Yes?

43 13... A... Yes.

44 14... Q... Okay... And then you elected not to get a  
45 15 mold inspection; correct?

46 16... A... Yeah...

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

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

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

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

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

15 ·2· · · Q· ·If we go to page 40 --  
16 ·3· · · A· ·Mm-hmm.  
17 ·4· · · Q· ·--- there's a bunch of Nevada statutes  
18 ·5 here.  
19 ·6· · · A· ·Mm-hmm.  
20 ·7· · · Q· ·If you look at NRS 113.140 --  
21 ·8· · · A· ·Mm-hmm.  
22 ·9· · · Q· ·--- do you see that at the top of the page?  
23 10 "Disclosure of unknown defects not required· Form  
24 11 does not constitute warranty duty of buyer and  
25 12 prospective buyer to exercise reasonable care."  
1 ·13· · · · Do you see that?  
2 ·14· · · A· ·Yes.  
3 ·15· · · Q· ·Okay· So this disclosure form gave Marie  
4 16 Zhu, your wife, a copy of the Nevada law that was  
5 17 applicable to the sale of the property; correct?  
6 18· · · A· ·Yeah.  
7 19· · · Q· ·Okay· And under NRS 113.1403, it  
8 20 specifies, "Either this chapter or Chapter 645 of  
9 21 the NRS relieves a buyer or prospective buyer of the  
10 22 duty to exercise reasonable care to protect  
11 23 himself."  
12 24· · · · Did I read that correctly?  
13 25· · · A· ·Yes.

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

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

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

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

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

4 ·6· · · Q· ·Okay· So you walked through the property  
5 ·7 with him at the time he did his inspection; correct?

6 ·8· · · A· ·Right.

7 ·9· · · Q· ·Okay· During that time, did he inspect  
8 10 any areas that -- that you did not have access to in  
9 11 2017?

10 12· · · A· ·Yes· He didn't go to anything I didn't  
11 13 inspect during 2017 too.

12 14· · · Q· ·So he inspected the same areas you  
13 15 inspected?

14 16· · · A· ·Yes, yes.

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

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

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

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

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

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

28 22· · · Q· ·And then the second line down, the first  
23 sentence begins, "Items complained about in the Sani  
24 report were open and obvious in the roof area, attic  
25 area, and on the exterior/interior of the property."

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\* \* \*

26 ·3· · · Q· ·Do you agree with this statement?

27 ·4· · · A· ·Yes.

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

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

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

6 17... Q... -- midway down the first complete sentence  
7 18 says, "The Sani report does not recognize prior  
8 19 conditions in existence before any work took place  
9 20 by defendants."

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

11 Page 321

12 \* \* \*

13 3... Yes, yes.

14 4 BY MR. LEE:

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

16 6... A... Agree.

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

20 *No Permits Required for Cosmetic Work by TKNR*

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

23 5... Q... Number 5 says, "Painting, papering,  
24 6 tiling, carpeting, cabinets, countertops, interior  
25 7 wall, floor or ceiling covering, and similar finish  
26 8 work."

27 9... Do you see that?

28 10... A... Yes.

11 11... Q... So you agree that no permits are required

12 12 for any of these types of work; correct?

13 13... A... Yes.

14 *Id.* at 262:5-13.

15 1 Window Replacements where no structural member -- no  
16 2 structural member is altered or changed," that does  
17 3 not need a permit either; right?

18 4... A... Yes.

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

20 17... Q... Okay. If you turn the page to 82,

21 18 Plumbing Improvements, no permits required to repair



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

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

19 *Plaintiff Does not Disclose the Alleged Issues to Potential Tenants*

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

23 19... Then also in according to the law, and  
24 20 they said it very clearly, because this is  
25 21 residential income property, right, rental income  
26 22 property, multi-family, we need -- landlord need  
27 23 provide housing and well-being and -- for the  
28 24 tenant. The tenant is not going to do all this  
25 inspection. They can't. The burden is on the  
26 Page 120  
27 1 landlord to make sure all these building is safe and  
28 2 in good condition.

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

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

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

9 ··· A. · No.

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

13 ··· A. · No.

14 \* \* \*

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

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

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

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

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

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

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

29 *Squatters or Tenants Could Have Damaged the Property*

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

33 12··· Q. · Do you generally have a squatter problem  
34 13 with the property?

35 14··· A. · Yes. · As a matter of fact, today I just  
36 15 saw the one text message that said one -- some  
37 16 people go to my apartment.

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

1 were occupying it:

2                   ·4· · · Q· · Okay· So the tenant in this context would  
3                   ·5 have damaged the unit at the time that you owned it;  
4                   ·6 is that fair?  
5                   ·7· · · A· · Maybe· Yes.  
6                   ·8· · · Q· · Okay· So some of the -- so the damage  
7                   ·9 that was to the water heater system, could the  
8                   10 tenant have damaged that as well?  
9                   11· · · A· · Yes.  
10                  12· · · Q· · And then he could have damaged the cooler  
11                  13 pump and the valve as well; is that correct?  
12                  14· · · A· · Yes.  
13                  15· · · Q· · Okay· Then on 122, these are all issues  
14                  16 that the tenant could have damaged; is that correct?  
15                  17· · · A· · Yes.  
16                  18· · · Q· · And then the same through for 145; is that  
17                  19 right?  
18                  20· · · A· · Yes.

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

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

13 *No Evidence That Defendants Knew of Alleged Conditions*

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

17               53. The entire case is based on Mr. Miao's personal belief and speculation. *Id.* at  
18 253:17-19.

19               54. Mr. Miao admitted that he has no evidence Defendants knew about the alleged  
20 moisture conditions. *Id.* at 293:24-25-294:1-3. Additionally, he also admitted that there is no  
21 evidence that Defendants knew about the alleged issues with the plumbing system. *Id.* at  
22 301:21-24. He also admitted that he did not know if Defendants knew about the alleged issues  
23 with the duct work when they owned the Property. *Id.* at 314:5-19. He also recognized the  
24 deficiency in Plaintiff's expert's report that failed to differentiate between conditions prior to  
25 when TKNR owned the Property, while it owned it, and those afterwards. *Id.* at 321:17-21 –  
26 322:3-6.

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

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

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

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

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

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

15 20... Q... Yeah... So there's no way that you relied  
16 21 upon any flipping fund since it would have been  
17 22 closed at this time; right?  
23... A... Yeah.

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

21 Cost of Repairs

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

26  
27 Allegations in the Second Amended Complaint

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

MICHAEL B. LEE, P.C.  
1820 E. SAHARA AVENUE, SUITE 110  
LAS VEGAS, NEVADA 89104  
TEL - (702) 477-7030; FAX - (702) 477-0096

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

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

8 \* \* \*

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

14 \* \* \*

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

20 \* \* \*

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

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

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

All the electrical supply line addition and removal work

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

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

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

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

12 The fact is that that within two years prior to the sale to  
13 Plaintiff, Investpro Manager LLC removed and plugged  
swamp cooler water supply lines without UBC required  
14 permits and inspections. To save money, minimize flipping  
cost, minimize flipping time, and maximize flipping fund  
15 profits, Investpro Manager LLC used unlicensed and  
unskilled workers who just plugged high pressure water  
16 supply lines at rooftop instead of at ground level and who  
did not remove the water supply lines on top of the roof,  
17 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  
18 the whole building.

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

21 Further, to save money, minimize flipping cost, minimize  
22 flipping time, and maximize flipping fund profits, Investpro  
Manager LLC used unlicensed and unskilled workers with  
little knowledge of natural gas pipe connection  
23 requirements. The unlicensed and unskilled workers used  
the wrong sealing materials and these sealing materials may  
24 degrade and lead to natural gas leaks and accumulation  
inside the drywall and the attic which may cause an  
25 explosion or fire.

26 Further, to save money, minimize flipping cost, minimize  
flipping time, and maximize flipping fund profits, Investpro  
27 Manager LLC used unlicensed and unskilled workers to  
completely renovate all three bathrooms in the Subject  
Property without UBC required permits and inspections.  
28 Some faucets and connections behind tile walls and drywall

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

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

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

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

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

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

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

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

Further, as early as March of 2016, Investro Manager, LLC  
hired Air Supply Cooling to install one five ton new heat  
pump package unit with new rooftop ducting systems on

MICHAEL B. LEE, P.C.  
1820 E. SAHARA AVENUE, SUITE 110  
LAS VEGAS, NEVADA 89104  
TEL - (702) 477-7030; FAX - (702) 477-0096

1 one roof area to supply cooling and heating air to the whole  
2 building consisting of Unit A, Unit B and Unit C without  
3 UBC required weight load and wind load calculations,  
4 permits and inspections. The five ton heat pumps package  
5 unit was too big, too heavy and had control problems. To  
6 save money, minimize flipping cost, minimize flipping  
7 time, and maximize flipping fund profits, Investpro  
8 Manager LLC also used unlicensed and unskilled workers  
9 to remove the one year old five ton heat pump package unit  
10 with ducting system without UBC required permits and  
11 inspections. All of this work was done without UBC  
12 required structural calculation, permits and inspections.

13 Further, in early June, 2017, Investro Manager, LLC hired  
14 The AIRTEAM to install two new two ton heat pump  
15 package units, one each for Unit B and Unit C. Investpro  
16 (sic) Manager, LLC also used unlicensed  
17 and unskilled workers to install two window cooling units  
18 in Unit A's exterior walls. All of the above work was done  
19 without UBC required permits and inspections.

20 Further, to save money, minimize flipping cost, minimize  
21 flipping time, and maximize flipping fund profits, Investro  
22 Manager, LLC did not replace the old, uninsulated swamp  
23 cooler ducts with new insulated HVAC ducts as the UBC  
24 required. This resulted in the heat pump package units  
25 being overloaded and damaged during cooling season  
26 because cool air was heated by uninsulated attic hot air  
27 before delivering the cooled air to the rooms. The old,  
28 uninsulated swamp cooler ducts were also rusted and  
leaked due to high moisture air from the bathroom vent  
fans and the clothes washer/dryer combination unit exhaust  
vents. The heat pumps would run all the time but still could  
not cool the rooms.

f. SRPDF stated that Smoker detector had no problems or  
defects

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

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

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

To saving money, minimize flipping cost, minimize  
flipping time, and maximize flipping fund profits, Investpro  
Manager LLC used unlicensed and unskilled workers to



1 complete renovation to all three bathrooms without UBC  
2 required permits and inspections. Some faucets and  
3 connections behind tile walls and drywall leaks and caused  
4 moisture conditions behind tile walls and drywalls.

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

6 Investpro Manager LLC added one new five ton heat pump  
7 package unit with ducting systems on the one roof top area  
8 for the whole building in early March, 2016 without UBC  
9 required weight load and wind load calculation, permits  
10 and inspections. Due to the five ton heat pump package unit  
11 being too big, too heavy and having control problems to  
12 save money, minimize flipping cost, minimize flipping  
13 time, and maximize flipping fund profits, Investro (sic)  
14 Manager, LLC used unlicensed and unskilled workers to  
15 remove the one year old five ton heat pump package unit  
16 with part of the ducting system again without UBC  
17 required permits and inspections. Investpro Manager LLC  
18 added two new two ton heat pump package units on the two  
19 roof top areas for Unit B and Unit C with new ducting  
20 systems without UBC required weight load and wind loan  
21 calculation, permits and inspections.

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

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

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

Further, Investpro Manager LLC's unlicensed and  
unskilled workers used the space between two building  
support columns as a duct to vent high moisture exhaust  
from the washer/dryer combination unit exhaust vent from  
Unit A without UBC required permits and inspections and  
this damaged the building structure.

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

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

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

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

The roof of the Subject Property was damaged by changing

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

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

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

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

i. Problems with flooring.

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

ii. Problems with the land/foundation.

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

1 cracking.

2 iii. Problems with closet doors.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Plaintiffs Did Not Reply on Broker Agents

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

Mr. Miao Agreed with Defendants' Expert

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

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

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

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

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

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

Conclusions of Law

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

1 interrogatories, admissions, and affidavits, if any, that are properly before the Court demonstrate  
2 that no genuine issue of material fact exist and the moving party is entitled to judgment as a  
3 matter of law. *Pegasus v. Reno Newspapers, Inc.*, 118 Nev. 706, 713, 57 P.3d 82, 87 (2002).  
4 Substantive law controls whether factual disputes are material and will preclude summary  
5 judgment; other factual disputes are irrelevant. *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242,  
6 106 S. Ct. 2505, 91 L.Ed.2d 202 (1986). A genuine issue of material fact is one where the  
7 evidence is such that a reasonable jury could return a verdict for the non-moving party. *Valley*  
8 *Bank v. Marble*, 105 Nev. 366, 367, 775 P.2d 1278, 1282 (1989).

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

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

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

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

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

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

21 [a]scribing to the term "aware" its plain meaning, we determine  
22 that the seller of residential real property does not have a duty to  
23 disclose a defect or condition that "materially affects the value or  
24 use of residential property in an adverse manner," if the seller does  
25 not realize, perceive, or have knowledge of that defect or  
26 condition. Any other interpretation of the statute would be  
unworkable, as it is impossible for a seller to disclose conditions in  
the property of which he or she has no realization, perception, or  
knowledge. The determination of whether a seller is aware of a  
defect, however, is a question of fact to be decided by the trier of  
fact.

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



1 law. *Id.* at 426.

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

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

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

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

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

Plaintiff decide to sign RPA on 8/1/17 after Plaintiff inspected  
 Index with Defendant on 8/10/17. On 8/2/17, Plaintiff has not inspect property  
 and sign RPA yet.

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

8 10. Summary Judgment is appropriate as a matter of law on all of Plaintiff's claims. He  
 9 It is undisputed that the alleged deficiencies were either disclosed by Defendants, could have  
 10 been discovered by an inspection, were open and obvious whereby Plaintiff / Ms. Zhu / Mr.  
 11 Miao had notice of them at the time Plaintiff purchased the Property, or were unknown to  
 12 Defendants at the time of the sale. It is not true. Plaintiff first met and  
 13 11. On August 2, 2017, TKNR submitted its Seller Disclosures timely indicating all known  
 14 known conditions of the Subject Property. TKNR disclosed that "3 units has (sic) brand new AC  
 15 installed within 3 months," and further that the "owner never resided in the property and never  
 16 visited the property." Plaintiff was also aware that the minor renovations, such as painting, was  
 17 conducted by the Seller's "handyman" as disclosed in the Seller's Disclosures. TKNR also  
 18 disclosed that it was aware of issues with the heating and cooling systems, there was  
 19 construction, modification, alterations, or repairs done without permits, and lead-based paints.

20 12. On August 11, 2020, through the original RPA, Ms. Zhu waived her due  
 21 diligence, although she had a right to conduct inspections: no waived due diligence  
 22 in original RPA

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

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

It is not true.

Plaintiff inspect the property asked Defendant to correct several  
 items not meet law

*That is not correct. Plaintiff did*

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

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

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

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

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

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

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

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

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

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

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

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

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

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

23 24. On or about August 10, 2017, Mr. Miao inspected Property. During that time,  
24 Mr. Miao noted issues with the Property that were not up to code, finishing issues, GFCI outlets<sup>1</sup>,  
25 and electrical issues.

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

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

1 well as possible asbestos.

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

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

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

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

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

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

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

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

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

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

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

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

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

1 it does not tell prospective tenants about them.

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

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

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

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

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

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

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

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

26 Rule 56(f) is not a shield that can be raised to block a motion for  
27 summary judgment without even the slightest showing by the  
28 opposing party that his opposition is meritorious. A party invoking  
its protections must do so in good faith by affirmatively  
demonstrating why he cannot respond to a movant's affidavits as

1 otherwise required by Rule 56(e) and how postponement of a  
2 ruling on the motion will enable him, by discovery or other means,  
3 to rebut the movant's showing of the absence of a genuine issue of  
4 fact. Where, as here, a party fails to carry his burden under Rule  
5 56(f), postponement of a ruling on a motion for summary judgment  
6 is unjustified.

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

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

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

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

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

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

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

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



1 disposition).

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

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

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

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

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

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

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

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

27 *Id.* "A claim is groundless if 'the allegations in the complaint . . . are not supported by any  
28 credible evidence at trial.'" *Barozzi v. Benna*, 112 Nev. 635, 639, 918 P.2d 301, 303 (1996)

1 (quoting *Western United Realty, Inc. v. Isaacs*, 679 P.2d 1063, 1069 (Colo.1984)).

2 77. The overwhelming facts and law illustrate that Plaintiff's claim is frivolous. The  
3 findings of fact are incorporated by reference.

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

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

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

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

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

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

Civil Procedure 11.

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

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


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

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

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

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

Dated this 7th day of April, 2021



THE HON. ADRIANA ESCOBAR  
DISTRICT COURT JUDGE

158 436 3E2D 40F2  
Adriana Escobar  
District Court Judge

1 CSERV

2 DISTRICT COURT  
3 CLARK COUNTY, NEVADA  
4

5  
6 W L A B Investment LLC,  
7 Plaintiff(s)

CASE NO: A-18-785917-C

8 vs.

DEPT. NO. Department 14

9 TKNR Inc, Defendant(s)

10  
11 **AUTOMATED CERTIFICATE OF SERVICE**

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

14 Service Date: 4/7/2021

|                     |                           |
|---------------------|---------------------------|
| 15 Brinley Richeson | bricheson@daynance.com    |
| 16 Steven Day       | sday@daynance.com         |
| 17 Michael Matthis  | matthis@mblnv.com         |
| 18 BENJAMIN CHILDS  | ben@benchilds.com         |
| 19 Nikita Burdick   | nburdick@burdicklawnv.com |
| 20 Michael Lee      | mike@mblnv.com            |
| 21 Bradley Marx     | brad@marxfirm.com         |
| 22 Frank Miao       | frankmiao@yahoo.com       |

23  
24  
25 If indicated below, a copy of the above mentioned filings were also served by mail  
26 via United States Postal Service, postage prepaid, to the parties listed below at their last  
27 known addresses on 4/8/2021  
28

RA000620

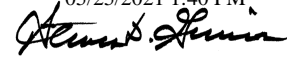
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John Savage

Holley Driggs  
Attn: John Savage, Esq  
400 South Fourth Street, Third Floor  
Las Vegas, NV, 89101

Nikita Pierce

6625 South Valley View Blvd. Suite 232  
Las Vegas, NV, 89118

  
CLERK OF THE COURT

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

IN THE EIGHTH JUDICIAL DISTRICT COURT

CLARK COUNTY, NEVADA

W L A B INVESTMENT, LLC,  
  
Plaintiff,

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

vs.

**ORDER GRANTING, IN PART, AND  
DENYING, IN PART, PLAINTIFF'S  
MOTION TO RECONSIDER  
AND  
JUDGMENT AGAINST PLAINTIFF AND  
PREVIOUS COUNSEL**

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: May 17, 2021  
Time of Hearing: chambers

Defendants.

This matter being set for hearing before the Honorable Court on May 18, 2021 at 10:00  
a.m., on W L A B INVESTMENT, LLC ("WLAB" or "Plaintiff"), Motion to Reconsider  
("Motion"), by and through its attorney of record, DAY & NANCE. Defendants' TKNR INC.,  
CHI ON WONG aka CHI KUEN WONG, KENNY ZHONG LIN, aka KEN ZHONG LIN aka  
KENNETH ZHONG LIN aka WHONG K. LIN aka CHONG KENNY LIN aka ZHONG LIN,  
LIWE HELEN CHEN aka HELEN CHEN, YAN QIU ZHANG, INVESTPRO LLC dba  
INVESTPRO REALTY, MAN CHAU CHENG, JOYCE A. NICKRANDT, INVESTPRO

1 INVESTMENTS LLC, and INVESTPRO MANAGER LLC, (collectively, the “Defendants”)  
2 filed an Opposition to the Motion and appeared by and through its counsel of record, MICHAEL  
3 B. LEE, P.C.

4 Pursuant to Administrative Order 21-03 and preceding administrative orders, this matter  
5 may be decided after a hearing, decided on the pleadings, or continued. In an effort to comply  
6 with Covid-19 restrictions, and to avoid the need for hearings when possible, this Court has  
7 determined that it was appropriate to decide this matter based on the pleadings submitted. Upon  
8 thorough review of the pleadings, the Court issues the following order:

9 1. Leave for reconsideration of motions is within this Court’s discretion under  
10 EDCR 2.24.

11 2. A district court may reconsider a previously decided issue if substantially  
12 different evidence is subsequently introduced or the decision is clearly erroneous. See *Masonry*  
13 *& Tile Contractors v. Jolley, Urga & Wirth*, 113 Nev. 737, 741 (1997).

14 3. Plaintiff seeks reconsideration of this Court’s April 7, 2021, Amended Order  
15 Granting Defendants Motion for Summary Judgment, or in the Alternative, Partial Summary  
16 Judgment (“Amended Order”).

17 4. Although Defendants argue that Plaintiff’s Notice of Appeal divests this Court of  
18 jurisdiction to rule on the Motion, this Court disagrees because the Amended Order was not final  
19 and appealable by virtue of Plaintiff filing the Motion. Therefore, the appeal was premature, and  
20 the court is not divested of jurisdiction on the filing of a premature notice of appeal, allowing the  
21 court to rule on the Motion. See NRAP 4(a)(6).

22 5. The Motion was timely filed within fourteen (14) days of the Notice of Entry of  
23 the Amended Order.

24 6. Plaintiff spends a majority of its Motion rehashing the facts of the underlying  
25 dispute. Plaintiff argues that exhibits the Court relied on in granting Defendants underlying  
26 motion for summary judgment namely, the Residential Purchase Agreement and the Second  
27 Residential Purchase Agreement were not properly authenticated. Plaintiff additionally argues  
28 that Defendants discussed an email from Chen to Ms. Zhu without providing a foundation for the



1 email. Plaintiff's argument is that this Court committed clear error by relying on unauthenticated  
2 documents, or hearsay, in ruling on Defendants' motion for summary judgment.

3 7. In opposing summary judgment, Plaintiff was required to point to specific facts  
4 creating a genuine issue of material fact. See *LaMantia v. Redisi*, 118 Nev. 27, 29 (2002).  
5 Plaintiff did not do so.

6 8. Defendants were not required to authenticate the first and second Residential  
7 Purchase Agreement before this Court could rely on those documents in granting summary  
8 judgment.

9 9. Plaintiff did not contest the authenticity of the disputed documents in opposing  
10 summary judgment.

11 10. Plaintiff could have objected that these documents, which were Defendants  
12 repeatedly cite to in their motion for summary judgment, cannot be presented in a form that  
13 would be admissible in evidence. See NRCp 56(b)(2). However, Plaintiff did not so object.

14 11. The summary judgment hearing was not a trial. Authentication is for purposes of  
15 introducing evidence at trial; therefore, Plaintiff's authentication argument lacks merit.

16 12. Plaintiff has not demonstrated that this Court's ruling was clearly erroneous.

17 13. Plaintiff has not demonstrated that this Court's decision to grant Rule 11 sanctions  
18 was clearly erroneous. However, this Court does clarify that the sanctions are awarded against  
19 Plaintiff's former counsel, Ben Childs, and not Plaintiff's current counsel, Mr. Day.

20 14. Defendants also ask that this Court issue an award of attorney fees and costs in  
21 the amount of **\$128,166.78** related to the Courts' April 7, 2021 Order this Court granting  
22 Defendants' attorney fees and costs pursuant to Rule 11. Plaintiff, through its former or new  
23 counsel, does not oppose the specific amounts requested.

24 15. As such, this Court grants the amount Defendants seek and enters judgment  
25 against Plaintiff and their former counsel, Ben Childs, Esq. in the amount of One Hundred  
26 Twenty-Eight Thousand One Hundred Sixty-Six Dollars and Seventy-Eight cents **(\$128,166.78)**.

27 16. Defendants' counter-motion for additional Rule 11 sanctions against Plaintiff for  
28 filing the Motion is denied.

1           **IT IS HEREBY ORDERED, ADJUDICATED, AND DECREED** that the Motion is  
2 GRANTED, in part, and DENIED, in part, as the Court’s ruling was not clearly erroneous but  
3 clarifies the attorney fees and costs is awarded against Plaintiff and its former counsel Ben  
4 Childs, Esq.

5           **IT IS FURTHER ORDERED, ADJUDICATED, AND DECREED** that Judgment is  
6 entered in favor of Defendants against Plaintiff, and its former counsel, Benjamin Childs,  
7 individually, and Benjamin B. Childs, Esq, the law firm, jointly and severally, in the amount of  
8 One Hundred Twenty-Eight Thousand One Hundred Sixty-Six Dollars and Seventy-Eight cents  
9 **(\$128,166.78)** and that they pay Defendants the following amounts:

- 10           1.       The principal sum of \$118,955.014 in attorneys’ fees;
- 11           2.       The principal sum of \$9,211.64 for costs incurred to date; and
- 12           3.       Post-judgment interest from the date of the entry of the underlying Order for the  
13 attorneys’ fees and costs be granted at the statutory rate of 5.25% per annum.

14           A total Judgment in favor of Defendants, and against Plaintiff, and its former counsel,  
15 Benjamin Childs, individually, and Benjamin B. Childs, Esq, the law firm, jointly and severally,  
16 in the amount of **\$128,166.78**, all to bear interest at the statutory rate of 5.25% per annum until  
17 paid in full.

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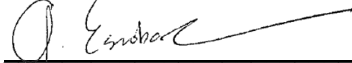
28       ////

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

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**IT IS FURTHER ORDERED, ADJUDICATED, AND DECREED** that this Order and Judgment shall be considered a final for all purposes.

Dated this 25th day of May, 2021

  
\_\_\_\_\_

**C78 3DB 37F8 7A17**  
**Adriana Escobar**  
**District Court Judge**

Date: May 18, 2021.

Respectfully Submitted By:

MICHAEL B. LEE, P.C.

Approved of as to Form and Content By:

DAY & NANCE

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

/s/ Stephen Day  
STEPHEN DAY, ESQ. (NSB 3708)  
1060 Wigwam Pkwy  
Las Vegas, Nevada 89074  
Tel - (702) 309.3333  
Fax - (702) 309.1085  
[sday@daynance.com](mailto:sday@daynance.com)  
*Attorney for Plaintiff*

## RE: WLAB v. TKNR, et al.; A-18-785917-C; Proposed Order

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From: Steve Day (sday@dayattorneys.com)

To: matthis@mblnv.com

Date: Wednesday, May 19, 2021, 02:20 PM PDT

---

Looks okay. Okay to use my e-sig. Correct name: Steven L. Day

Steve

Steven L. Day, Esq.

**DAY&ASSOCIATES**

1060 Wigwam Parkway

Henderson, NV 89074

Tel. (702) 309-3333

Fax (702) 309-1085

Mobile (702) 596-5350

sday@dayattorneys.com

---

**From:** Michael Matthis <matthis@mblnv.com>

**Sent:** Wednesday, May 19, 2021 2:06 PM

**To:** Steve Day <sday@dayattorneys.com>

**Cc:** Mike Lee <mike@mblnv.com>

**Subject:** WLAB v. TKNR, et al.; A-18-785917-C; Proposed Order

Dear Mr. Day,

Please see the attached proposed order denying Plaintiff's Motion to Reconsider and advise if I can affix your e-signature. If not, I have left the proposed order in word and would ask that you track any proposed edits in redline. If we do not receive a response by 3:00 p.m. on Monday, May 24, we will submit absent your signature.

Sincerely,

Mike Matthis, Esq.

[matthis@mblnv.com](mailto:matthis@mblnv.com)



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

Main Line: 702.477.7030 Fax: 702.477.0096

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1 **CSERV**

2  
3 DISTRICT COURT  
CLARK COUNTY, NEVADA

4  
5  
6 W L A B Investment LLC,  
Plaintiff(s)

CASE NO: A-18-785917-C

7 vs.

DEPT. NO. Department 14

8  
9 TKNR Inc, Defendant(s)

10  
11 **AUTOMATED CERTIFICATE OF SERVICE**

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

14 Service Date: 5/25/2021

15 Brinley Richeson

bricheson@daynance.com

16 Steven Day

sday@daynance.com

17 Michael Matthis

matthis@mblnv.com

18 Nikita Burdick

nburdick@burdicklawnv.com

19 Michael Lee

mike@mblnv.com

20 Bradley Marx

brad@marxfirm.com

21 Frank Miao

frankmiao@yahoo.com

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RA000629