

IN THE SUPREME COURT OF THE STATE OF NEVADA

TKNR, INC., a California corporation,
Appellant,
vs.
WLAB INVESTMENT, LLC,
Respondent.

Supreme Court Case No. 85620
District Court Case No. A-18-785917-C

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Elizabeth A. Brown
Clerk of Supreme Court

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

RESPONDENT APPENDIX – Volume 10 of 10

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CERTIFICATE OF SERVICE

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

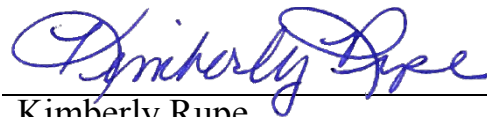
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Settlement Judge

DATED August 3, 2023



Kimberly Rupe
An employee of Kaempfer Crowell

EXHIBIT “5”



SELLER'S REAL PROPERTY DISCLOSURE FORM

In accordance with Nevada Law, a seller of residential real property in Nevada must disclose any and all known conditions and aspects of the property which materially affect the value or use of residential property in an adverse manner (see NRS 113.130 and 113.140).

Date August 2nd, 2017

Do you currently occupy or have you ever occupied this property? ☐ YES ☒ NO

Property address 2132 HOUSTON DR

LAS VEGAS NV 89104

Effective October 1, 2011: A purchaser may not waive the requirement to provide this form and a seller may not require a purchaser to waive this form. (NRS 113.130(3))

Type of Seller: ☐ Bank (financial institution); ☐ Asset Management Company; ☐ Owner-occupier; ☒ Other: Investor

Purpose of Statement: (1) This statement is a disclosure of the condition of the property in compliance with the Seller Real Property Disclosure Act, effective January 1, 1996. (2) This statement is a disclosure of the condition and information concerning the property known by the Seller which materially affects the value of the property. Unless otherwise advised, the Seller does not possess any expertise in construction, architecture, engineering or any other specific area related to the construction or condition of the improvements on the property or the land. Also, unless otherwise advised, the Seller has not conducted any inspection of generally inaccessible areas such as the foundation or roof. This statement is not a warranty of any kind by the Seller or by any Agent representing the Seller in this transaction and is not a substitute for any inspections or warranties the Buyer may wish to obtain. Systems and appliances addressed on this form by the seller are not part of the contractual agreement as to the inclusion of any system or appliance as part of the binding agreement.

Instructions to the Seller: (1) ANSWER ALL QUESTIONS. (2) REPORT KNOWN CONDITIONS AFFECTING THE PROPERTY. (3) ATTACH ADDITIONAL PAGES WITH YOUR SIGNATURE IF ADDITIONAL SPACE IS REQUIRED. (4) COMPLETE THIS FORM YOURSELF. (5) IF SOME ITEMS DO NOT APPLY TO YOUR PROPERTY, CHECK N/A (NOT APPLICABLE). EFFECTIVE JANUARY 1, 1996, FAILURE TO PROVIDE A PURCHASER WITH A SIGNED DISCLOSURE STATEMENT WILL ENABLE THE PURCHASER TO TERMINATE AN OTHERWISE BINDING PURCHASE AGREEMENT AND SEEK OTHER REMEDIES AS PROVIDED BY THE LAW (see NRS 113.150).

Systems / Appliances: Are you aware of any problems and/or defects with any of the following:

	YES	NO	N/A
Electrical System	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Plumbing	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Sewer System & line	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Septic tank & leach field	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Well & pump	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Yard sprinkler system(s)	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Fountain(s)	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Heating system	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Cooling system	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Solar heating system	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Fireplace & chimney	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Wood burning system	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Garage door opener	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Water treatment system(s)	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
owned.. <input type="checkbox"/> leased.. <input type="checkbox"/>			
Water heater	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Toilet(s)	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Bathub(s)	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Shower(s)	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Sink(s)	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Sauna / hot tub(s)	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Built-in microwave	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Range / oven / hood-fan	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Dishwasher	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Garbage disposal	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Trash compactor	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Central vacuum	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Alarm system	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
owned.. <input type="checkbox"/> leased.. <input type="checkbox"/>			
Smoke detector	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Intercom	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Data Communication line(s)	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Satellite dish(es)	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
owned.. <input type="checkbox"/> leased.. <input type="checkbox"/>			
Other	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

EXPLANATIONS: Any "Yes" must be fully explained on page 3 of this form.

Kenny Lin
Seller(s) Initials

MZ

Buyer(s) Initials

Nevada Real Estate Division
Replaces all previous versions

Page 1 of 5

Seller Real Property Disclosure Form 547
Revised 07/25/2017

This form presented by Kenny Lin | Investpro Realty | 702-997-3832 | zhong.kenny@gmail.com

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RA000873

Property conditions, improvements and additional information:

Are you aware of any of the following?:

YES NO N/A

1. Structure:

- (a) Previous or current moisture conditions and/or water damage? ☐ YES ☒ NO
- (b) Any structural defect? ☐ YES ☒ NO
- (c) Any construction, modification, alterations, or repairs made without required state, city or county building permits? ☒ YES ☒ NO
- (d) Whether the property is or has been the subject of a claim governed by NRS 40.600 to 40.695 (construction defect claims)? ☐ YES ☒ NO
(If seller answers yes, FURTHER DISCLOSURE IS REQUIRED)

2. Land / Foundation:

- (a) Any of the improvements being located on unstable or expansive soil? ☐ YES ☒ NO
- (b) Any foundation sliding, settling, movement, upheaval, or earth stability problems that have occurred on the property? ☐ YES ☒ NO
- (c) Any drainage, flooding, water seepage, or high water table? ☐ YES ☒ NO
- (d) The property being located in a designated flood plain? ☐ YES ☒ NO
- (e) Whether the property is located next to or near any known future development? ☐ YES ☒ NO
- (f) Any encroachments, easements, zoning violations or nonconforming uses? ☐ YES ☒ NO
- (g) Is the property adjacent to "open range" land? ☐ YES ☒ NO
(If seller answers yes, FURTHER DISCLOSURE IS REQUIRED under NRS 113.065)

3. Roof: Any problems with the roof? ☐ YES ☒ NO**4. Pool/spa:** Any problems with structure, wall, liner, or equipment? ☐ YES ☒ NO**5. Infestation:** Any history of infestation (termites, carpenter ants, etc.)? ☐ YES ☒ NO**6. Environmental:**

- (a) Any substances, materials, or products which may be an environmental hazard such as but not limited to, asbestos, radon gas, urea formaldehyde, fuel or chemical storage tanks, contaminated water or soil on the property? ☐ YES ☒ NO
- (b) Has property been the site of a crime involving the previous manufacture of Methamphetamine where the substances have not been removed from or remediated on the Property by a certified entity or has not been deemed safe for habitation by the Board of Health? ☐ YES ☒ NO

7. Fungi / Mold: Any previous or current fungus or mold? ☐ YES ☒ NO**8. Any features of the property shared in common with adjoining landowners such as walls, fences, road, driveways or other features whose use or responsibility for maintenance may have an effect on the property?** ☐ YES ☒ NO**9. Common Interest Communities:** Any "common areas" (facilities like pools, tennis courts, walkways or other areas co-owned with others) or a homeowner association which has any authority over the property? ☐ YES ☒ NO

- (a) Common Interest Community Declaration and Bylaws available? ☐ YES ☒ NO
- (b) Any periodic or recurring association fees? ☐ YES ☒ NO
- (c) Any unpaid assessments, fines or liens, and any warnings or notices that may give rise to an assessment, fine or lien? ☐ YES ☒ NO
- (d) Any litigation, arbitration, or mediation related to property or common area? ☐ YES ☒ NO
- (e) Any assessments associated with the property (excluding property taxes)? ☐ YES ☒ NO
- (f) Any construction, modification, alterations, or repairs made without required approval from the appropriate Common Interest Community board or committee? ☐ YES ☒ NO

10. Any problems with water quality or water supply? ☐ YES ☒ NO**11. Any other conditions or aspects of the property which materially affect its value or use in an adverse manner?** ☐ YES ☒ NO**12. Lead-Based Paint:** Was the property constructed on or before 12/31/77? ☒ YES ☐ NO
(If yes, additional Federal EPA notification and disclosure documents are required)**13. Water source:** Municipal ☒ Community Well ☐ Domestic Well ☐ Other ☐

If Community Well: State Engineer Well Permit # _____

Revocable ☐ Permanent ☐ Cancelled ☐

Use of community and domestic wells may be subject to change. Contact the Nevada Division of Water Resources for more information regarding the future use of this well.

14. Conservation Easements such as the SNWA's Water Smart Landscape Program: Is the property a participant? ☐ YES ☒ NO**15. Solar panels:** Are any installed on the property? ☐ YES ☒ NOIf yes, are the solar panels: Owned... ☐ Leased... ☐ or Financed... ☐**16. Wastewater disposal:** Municipal Sewer ☒ Septic System ☐ Other ☐**17. This property is subject to a Private Transfer Fee Obligation?** ☐ YES ☒ NO

EXPLANATIONS: Any "Yes" must be fully explained on page 3 of this form.

Seller(s) Initials

Buyer(s) Initials

EXPLANATIONS: Any "Yes" to questions on pages 1 and 2 must be fully explained here.
Attach additional pages if needed.

one of the unit has brand new kitchen cabinet installed
all 3 Units has brand new AC installed within 3 months.
all 3 bathrooms are redone within 2 years.
sprinkler for landscaping doesn't work, all pipes are broken;
Please consider that there are no sprinkler system.
AC units are installed by Licensed contractor, all other work
are done by owner's handyman.
owner never reside in the property, and never ~~live~~ visited
the property. @


Seller(s) Initials


Buyer(s) Initials

EXHIBIT “6”

1 IN THE EIGHTH JUDICIAL DISTRICT COURT

2 CLARK COUNTY, NEVADA

3

4 WLAB INVESTMENT, LLC,)

5 Plaintiff,)

6 vs.)CASE NO.: A-18-785917-C

)DEPT NO.: 14

7 TKNR INC., a California)

8 Corporation, and CHI ON WONG))

9 aka CHI KUEN WONG, an)

10 individual, and KENNY ZHONG)

11 LIN, aka KEN ZHONG LIN aka)

12 KENNETH ZHONG LIN aka WHONG)

13 K. LIN aka CHING KENNY LIN)

14 aka ZHONG LIN, an)

15 individual, and LIWE HELEN)

16 CHEN aka HELEN CHEN, an)

17 individual and YAN QIU)

18 ZHANG, an individual, and)

19 INVESTPRO LLC dba INVESTPRO)

20 REALTY, a Nevada Limited)

21 Liability Company, and MAN)

22 CHAU CHENG, an individual,)

23 and JOYCE A. NICKRANDT, an)

24 individual, and INVESTPRO)

25 INVESTMENTS LLC, a Nevada)

26 Limited Liability Company,)

27 and INVESTPRO MANAGER LLC, a)

28 Nevada Limited Liability)

29 Company, and JOYCE A.)

30 NICKRANDT, an individual and))

31 Does 1 through 15 and Roe)

32 Corporation I-XXX,)

33 Defendants.)

34 _____)

35 Job Number. 697915

36 DEPOSITION OF FRANK MIAO

37

38

39

FRANK MIAO - 01/12/2021

<p style="text-align: right;">Page 2</p> <p>1</p> <p>2</p> <p>3</p> <p>4</p> <p>5 DEPOSITION OF FRANK MIAO</p> <p>6 PERSON MOST KNOWLEDGABLE FOR WLAB INVESTMENT, LLC</p> <p>7</p> <p>8 Taken at Litigation Services</p> <p>9 on Tuesday, January 12, 2021</p> <p>10 at 9:00 a.m.</p> <p>11 at 3960 Howard Hughes Parkway, Suite 700</p> <p>12 Las Vegas, Nevada 89169</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24 Reported by: Trina K. Sanchez, CCR No. 933, RPR</p> <p>25 Job No.: 697915</p>	<p style="text-align: right;">Page 3</p> <p>1 APPEARANCES:</p> <p>2 For the Defendants via videoconference:</p> <p>3</p> <p>4 MICHAEL B. LEE, ESQ.</p> <p>5 MICHAEL B. LEE, P.C.</p> <p>6 1820 East Sahara Avenue, Suite 110</p> <p>7 Las Vegas, Nevada 89104</p> <p>8 (702) 477-7030</p> <p>9 mike@mblnv.com</p> <p>10</p> <p>11 For the Plaintiff:</p> <p>12</p> <p>13 BENJAMIN B. CHILDS, ESQ.</p> <p>14 318 South Maryland Parkway</p> <p>15 Las Vegas, Nevada 89101</p> <p>16 (702) 251-0000</p> <p>17 ben@benchilds.com</p> <p>18</p> <p>19 Also present via videoconference: Helen Chen</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>
<p style="text-align: right;">Page 4</p> <p>1 I N D E X</p> <p>2 WITNESS: PAGE</p> <p>3 FRANK MIAO</p> <p>4 Examination by Mr. Michael Lee 7</p> <p>5</p> <p>6</p> <p>7 E X H I B I T S</p> <p>8 EXHIBITS DESCRIPTION PAGE</p> <p>9 EXHIBIT 1 Notice of Deposition of Person 10</p> <p>10 Most Knowledgeable for WLAB</p> <p>11 Investment, LLC</p> <p>12 EXHIBIT 2 Residential Purchase Agreement 147</p> <p>13 EXHIBIT 3 Seller's Real Property 200</p> <p>14 Disclosure Form</p> <p>15 EXHIBIT 4 Mold Notice & Waiver 212</p> <p>16 EXHIBIT 5 Trustee's Deed Upon Sale 216</p> <p>17 EXHIBIT 6 Email dated August 24, 2017 217</p> <p>18 EXHIBIT 7 Email chain dated August 17, 2017 217</p> <p>19 EXHIBIT 8 Invoice 0335107 224</p> <p>20 EXHIBIT 9 Declaration of Frank Miao in 224</p> <p>21 Support of Opposition to</p> <p>22 Defendant's Motion for Summary</p> <p>23 Judgment and Countermotions</p> <p>24 EXHIBIT 10 Permit/Application Status 249</p> <p>25 EXHIBIT 11 When do I need a permit? 260</p>	<p style="text-align: right;">Page 5</p> <p>1 A Homeowner's Guide</p> <p>2 EXHIBIT 12 Declaration of Amin Sani 266</p> <p>3 EXHIBIT 13 Photographs from GLVAR 268</p> <p>4 of 2132 Houston Drive</p> <p>5 EXHIBIT 14 HVAC Service Order Invoice 271</p> <p>6 EXHIBIT 15 Letter 272</p> <p>7 EXHIBIT 16 Flipping Fund - InvestPro Realty 274</p> <p>8 EXHIBIT 17 Email dated September 5, 2017 280</p> <p>9 EXHIBIT 18 Addendum No. 1 to Purchase 281</p> <p>10 Agreement</p> <p>11 EXHIBIT 19 Residential Purchase Agreement 282</p> <p>12 EXHIBIT 20 Authorization to Close Escrow 289</p> <p>13 EXHIBIT 21 Expert Testimony Report 289</p> <p>14 EXHIBIT 22 Penny Electric Estimate 298</p> <p>15 EXHIBIT 23 Cost to Repair documents 303</p> <p>16 EXHIBIT 24 ACLV Proposal 315</p> <p>17 EXHIBIT 25 Larkin Plumbing & Heating 315</p> <p>18 Proposal & Contract</p> <p>19 EXHIBIT 26 Home Depot Quote 316</p> <p>20 EXHIBIT 27 Neil D. Opfer Report 317</p> <p>21 EXHIBIT 28 Defendants' Request for Entry 334</p> <p>22 onto Land and for Inspection</p> <p>23 of Tangible Things Pursuant</p> <p>24 to NRCP 34</p> <p>25 EXHIBIT 29 Defendants' Amended Request for 334</p>

<p style="text-align: right;">Page 6</p> <p>1 Entry onto Land and for Inspection 2 of Tangible Things Pursuant 3 to NRCP 34 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25</p>	<p style="text-align: right;">Page 7</p> <p>1 LAS VEGAS, NEVADA, TUESDAY, JANUARY 12, 2021; 2 9:00 A.M. 3 -000- 4 5 (In an off-the-record discussion held prior to the 6 commencement of the deposition proceedings, counsel 7 agreed to waive the court reporter requirements 8 under Rule 30(b)(5) of the Nevada Rules of Civil 9 Procedure.) 10 11 Whereupon, 12 FRANK MIAO, 13 having been first duly sworn to testify to the 14 truth, the whole truth and nothing but the truth, 15 was examined and testified as follows: 16 17 EXAMINATION 18 BY MR. LEE: 19 Q. Good morning, sir. Thank you for 20 appearing for your deposition today. You're 21 appearing as the 30(b)(6) or the person most 22 knowledgeable for this deposition; is that correct? 23 A. Yes. 24 Q. And you understand what that term means? 25 A. Yes.</p>
<p style="text-align: right;">Page 8</p> <p>1 Q. I think I saw you going through the 2 deposition exhibits. The top of the pile should 3 have been the 30(b)(6) notice. 4 Do you see that? 5 A. 30(b)(6)? I don't know what that -- what 6 document? 7 MR. LEE: For the record, Helen Chen, the 8 defendant, has just joined us for the deposition. 9 THE WITNESS: I haven't read that one yet. 10 MR. LEE: Ms. Court Reporter, can you help 11 him? 12 MADAM REPORTER: Yes. Let's go off the 13 record. 14 (A discussion was held of the record.) 15 BY MR. LEE: 16 Q. We're back on the record. It appears the 17 exhibits didn't get printed, but we'll go ahead and 18 wait for them to get printed. 19 During the interim, I'll just share my 20 screen so you can see what the exhibits are; okay? 21 A. Okay. 22 Q. Then I'll go over the rules of the 23 deposition. You're doing a good job right now. I 24 just want to get this PMK notice out of the way; 25 okay?</p>	<p style="text-align: right;">Page 9</p> <p>1 Did you have an audible response? 2 MADAM REPORTER: No. 3 BY MR. LEE: 4 Q. You need to say "yes" or "no." 5 Do you understand? 6 THE WITNESS: What did he ask? 7 MADAM REPORTER: He's -- 8 BY MR. LEE: 9 Q. "Audible" means out loud. 10 A. Can you speak a little slowly? Because if 11 you speak too quick, I -- I cannot catch up. 12 Q. Okay. So I just -- I'll go over the rules 13 of the deposition with you after I just do this PMK 14 notice; okay? 15 A. Okay. What's a "PMK" mean? 16 Q. "PMK" means person most knowledgeable. 17 A. Oh, okay. Okay. Yes. 18 Q. See right where I highlighted it, person 19 most knowledgeable? 20 A. Yeah, yeah, yeah. 21 Q. Okay. So for the record, what I'm doing 22 is showing you what will eventually be proposed 23 Exhibit 1 to the deposition, which is the notice of 24 deposition of the person most knowledgeable for WLAB 25 Investments, LLC.</p>

<p style="text-align: right;">Page 30</p> <p>1 now.</p> <p>2 Q. You were born in 1963 in Nanjing, China.</p> <p>3 A. Yeah.</p> <p>4 Q. Did you go to high school there?</p> <p>5 A. Yes, in China.</p> <p>6 Q. Did you -- what kind of education did you</p> <p>7 have after high school?</p> <p>8 A. I got a bachelor degree in chemical</p> <p>9 engineering in Beijing in Chemical University --</p> <p>10 Chemical Technology University.</p> <p>11 Then after that, I come to U.S. to pursue</p> <p>12 the advance degree, then I got the Ph.D. at Illinois</p> <p>13 Institute of Technology all in the engineering</p> <p>14 background.</p> <p>15 Q. Now, you got your bachelor's degree in</p> <p>16 Beijing in chemical engineering?</p> <p>17 A. Chemical Technology University, I think</p> <p>18 they call it, right.</p> <p>19 Q. Technology.</p> <p>20 What year?</p> <p>21 A. 1985. Then I come to U.S. 1986.</p> <p>22 Q. Okay. So you went to high school. Is</p> <p>23 that a four-year program or how long is it?</p> <p>24 A. Where?</p> <p>25 Q. In China --</p>	<p style="text-align: right;">Page 31</p> <p>1 A. In China, it's four-year bachelor degree.</p> <p>2 Q. Okay. So you went from high school, then</p> <p>3 you went to this college program in Beijing; is that</p> <p>4 correct?</p> <p>5 A. Beijing, yes, yes.</p> <p>6 Q. Okay. Then what year did you go to the</p> <p>7 Illinois Institute of Technology?</p> <p>8 A. I think it was 1986. 1986 to 19 -- oh,</p> <p>9 I'm sorry. 1987, January.</p> <p>10 Q. What?</p> <p>11 A. 1987.</p> <p>12 Q. To when?</p> <p>13 A. To all the way to the 1990, I guess.</p> <p>14 Q. You said this was a Ph.D. program?</p> <p>15 A. Yeah, yeah. I think it's only been four</p> <p>16 years to get my Ph.D. degree without master degree.</p> <p>17 Q. So you skipped the master's and just got a</p> <p>18 Ph.D. in three years?</p> <p>19 A. Four years. Around four years, yeah. By</p> <p>20 that time, they said I set a record for Chinese</p> <p>21 student at that time for fastest --</p> <p>22 Q. So between 1985 and 1987, what were you</p> <p>23 doing?</p> <p>24 A. I -- first, before I went to get some</p> <p>25 education for foreign language, study English a</p>
<p style="text-align: right;">Page 32</p> <p>1 little bit before come to U.S. Prepare English.</p> <p>2 When I first come to U.S. in 1986, I went</p> <p>3 to Ohio University. Then when I found out Ohio</p> <p>4 University in a small town, so very difficult to get</p> <p>5 some job employment for students enrolled in the</p> <p>6 school, so I moved to transfer to IIT, Illinois</p> <p>7 Institute of Technology. At that time, the</p> <p>8 professor have some of the Department of Energy</p> <p>9 program, the grant money, so they are looking for</p> <p>10 some research assistants, so I went --</p> <p>11 Q. What's the name of the college where you</p> <p>12 studied in Ohio?</p> <p>13 A. Called Ohio University.</p> <p>14 Q. Oh, just Ohio University --</p> <p>15 A. Yeah.</p> <p>16 Q. -- not, like, you know, any city, like</p> <p>17 Columbus?</p> <p>18 A. In Athens, Ohio.</p> <p>19 Q. I'm sorry, what city?</p> <p>20 A. Athens, just like -- A-N-T-H-E-N-S [sic],</p> <p>21 Athens.</p> <p>22 Q. Anthem?</p> <p>23 A. Athens, yeah.</p> <p>24 Q. Okay. When you got your Ph.D. from</p> <p>25 Illinois Institute, what was the Ph.D. in?</p>	<p style="text-align: right;">Page 33</p> <p>1 A. Huh?</p> <p>2 Q. What was the Ph.D. in?</p> <p>3 A. In engineering.</p> <p>4 Q. Chemical engineering?</p> <p>5 A. Yeah, engineering. Chemical and the</p> <p>6 mechanical both. It's, like -- also, they said is</p> <p>7 chemical but mostly is mechanical side.</p> <p>8 Q. And what was the course of your study</p> <p>9 work?</p> <p>10 A. Oh, study lot of work. Chemistry and also</p> <p>11 mechanical science, structure. Basically, my</p> <p>12 background is, like, in building the factory system</p> <p>13 design, engineering, that kind of thing.</p> <p>14 Q. So a large commercial building?</p> <p>15 A. Commercial building, factory, like a</p> <p>16 chemical plant, refinery plant, power plant. Build</p> <p>17 the power plant. Mostly power plant.</p> <p>18 So after that, most of my career is power</p> <p>19 plant.</p> <p>20 Q. So after 1990, what did you do?</p> <p>21 A. Huh? After the --</p> <p>22 Q. Like, in terms of work after 1990.</p> <p>23 A. After 1990, I working for the one company</p> <p>24 called the Gas Research Institute.</p> <p>25 Q. Gas Research Institute?</p>

<p style="text-align: right;">Page 34</p> <p>1 A. Yeah. There is the company is sponsored 2 by the American gas company, like the Southwest Gas 3 Company or the Edison or the so called gas company. 4 They all contribute to many to do the research and 5 technology developed at that branch. So I working 6 for them. 7 Q. I recently reviewed a document related to 8 the Edison group in California. 9 A. Yeah. 10 Q. So -- 11 A. Yeah. 12 Q. -- how long did you work at the -- 13 A. I working there and here in 1995. 14 Q. What was your job title? 15 A. I was engineer and -- research engineer 16 and research -- 17 Q. What were you researching? 18 A. Huh? 19 Q. What were you researching? 20 A. I was researching two fields. One is 21 gasification. It's to convert the natural -- 22 convert the coal to the natural gas. So it's a 23 program, you know. Sometimes before they shorten 24 the natural gas, so they think it can work from the 25 coal through the coal gasification to make the gas.</p>	<p style="text-align: right;">Page 35</p> <p>1 Q. I'm going to circle back. 2 When you went to the Illinois Institute of 3 Technology, did you get a degree or a certificate 4 from there? 5 A. Ph.D. degree. 6 Q. Okay. 7 A. Yeah, Ph.D. degree. It's highest 8 engineering degree. And actually, it's a field, the 9 gasification. 10 Q. So after 1995, what did you do? 11 A. Then I went to the company called the 12 Westinghouse, which is later the Siemens. The 13 German company called Siemens acquired the 14 Westinghouse Power Generation Group. That was 15 there. I was working -- I ended up working for the 16 Siemens corporation, which is one of the -- 17 Q. How long did you work there for? 18 A. Huh? 19 Q. How long did you work there for? 20 A. I working for there for two years. 21 Q. In 1997? 22 A. Yeah. Then I moved -- that is -- 23 Q. Hold on one second. 24 A. Mm-hmm. 25 Q. One second.</p>
<p style="text-align: right;">Page 36</p> <p>1 What was your job title with Siemens? 2 A. Siemens engineer. 3 Q. What were your job duties? 4 A. Our duties is just design the coal 5 gasification power plants and design the natural gas 6 combined circle power plant. 7 Q. Then in 1997 -- let me go back. 8 Why did you leave your position? What was 9 the name of the company you worked for in 1990? 10 A. Gas Research Institute. Presently they're 11 called -- yeah, Gas Research. Before they call the 12 Institute of Gas Technology. It's also called IGT, 13 but it's Institute of Gas Technology. 14 Then later, they change the name called 15 Gas Research Institute. 16 Q. Why did you leave the Gas Research 17 Institute to go work for Siemens? 18 A. Because I don't want to work in the 19 research academic; right? That is research 20 organization. I want to do the real -- build the 21 real plant, real commercial company, so I went to 22 the company, which is build the power plant, build 23 all the power system. 24 Q. 1997, what did you do after that? 25 A. Then I joined the company called the --</p>	<p style="text-align: right;">Page 37</p> <p>1 original they called it Combustion Engineering, then 2 they later called it ABB, ASEA Brown Boveri, which 3 is a Swiss and Sweden company. It is one of the 4 largest -- at that time, it was the largest power 5 generation company in the world. 6 Q. How long did you work there for? 7 A. I working there until -- later, this ABB 8 been acquired -- the power generation people is 9 acquired by the company -- French company called 10 Alstom, A-L-S-T-O-M. 11 Then General Electric bought this Alstom. 12 So later, before I left -- it's General Electric. 13 So after that, I working for them until 2004 -- 14 2004. 15 Q. So in 1997 to 2004, you started with ABB 16 who got acquired by other companies -- 17 A. Right. 18 Q. -- until 2004? 19 A. Yeah, 2004. 20 Q. What was your position when you started? 21 A. I was starting as a senior consulting 22 engineer, then later as a technical fellow, then as 23 a project manager and project director. 24 Q. And what were your job duties? 25 A. Was supervisor, build the power plant,</p>

<p style="text-align: right;">Page 38</p> <p>1 commercial power plant; training the licensee in 2 Asia; and mostly doing the competitive bid for the 3 new power plant in U.S. worldwide. 4 Q. These are gas or coal power plants? 5 A. Gas. Mostly it's combined cycle power 6 plant. 7 Q. So you mean gas. Does that mean, like, 8 natural gas or is there another type of gas? 9 A. One is coal gasification gas or natural 10 gas. Sometimes they also use diesel. Build a 11 diesel plant for the -- we call it peaker. It's a 12 simple cycle. Like the Las Vegas or the NV Energy, 13 they have some plant. On the 215, you'll see that 14 small plant. That is a simple cycle peaker. We 15 called it peaker. During the high demand season, 16 they running that kind of plant. 17 Q. Okay. 18 A. Yeah. 19 MADAM REPORTER: I'm sorry, Counsel. 20 Are you saying peak, P-E-A-K? 21 THE WITNESS: P-E-A-K, yeah. 22 MADAM REPORTER: Okay. Thanks. 23 THE WITNESS: Yeah, yeah. Because when in 24 the summer the electricity demand is high, so they 25 have running some simple cycle plant, yeah.</p>	<p style="text-align: right;">Page 39</p> <p>1 BY MR. LEE: 2 Q. Okay. This is 2004. What did you do 3 after that? 4 A. Then I come to California. I come to 5 California working with a company called Parsons 6 Engineering. 7 Q. Parson, P-A-R-S-O-N? 8 A. Yeah, P-A-R-S-O-N. Which at that time is 9 world's largest engineering company in West Coast 10 for the power generation and the refinery and the 11 chemical. 12 Q. How long did you work there for? 13 A. Until the 2008, I think. 2010. We do all 14 kinds. We design the power plant and we do the 15 refinery engineering. We do chemical plant 16 engineering. We do mining company engineering, 17 design. 18 Q. So what was your job title? 19 A. I was the supervisor -- senior supervisor. 20 Q. Did you provide (inaudible) -- 21 A. Huh? 22 Q. You were supervising? 23 A. Yeah. Supervise a whole bunch of 24 engineering doing this kind of design and also 25 project management. Project manager, project</p>
<p style="text-align: right;">Page 40</p> <p>1 director kind of, yeah. 2 Q. Okay. Then 2008, the recession, what did 3 you do after that? 4 A. After that, I just -- I don't want to work 5 for other people. I just working for myself. 6 Q. Okay. So what does that mean? 7 A. That means WLAB. We bought a lot of land 8 and a rental house, so we just collected rent. 9 Q. 2008 to the present, that's when you 10 formed and -- 11 A. Yeah, yeah, yeah. 12 Q. -- still are involved with WLAB; right? 13 A. Yeah, yeah, yeah, yeah. I forgot exactly 14 when we set up this WLAB lab, but we starting since 15 2008, 2010, that range. Not I -- exactly I don't 16 know when I start working for company. 17 The reason why the -- I stopped working at 18 company is the company want to assign me to the 19 Saudi for the supervisor design the one refinery in 20 Saudi. Then I found out, they said in the middle of 21 nowhere in the desert. 22 So at that time, my kids were too small in 23 the education, so I don't want to go there. So I 24 tell them I just rather working for myself. 25 Q. You don't want to go to Saudi Arabia, so</p>	<p style="text-align: right;">Page 41</p> <p>1 you decided to start your own business? 2 A. Yeah, yeah, yeah. 3 Q. Okay. Then you're already in California, 4 so you just stayed in California; correct? 5 A. Right, right, yeah. 6 Q. Okay. WLAB, what does WLAB stand for? 7 A. I forgot why it's called the name of WLAB, 8 you know. To be honest, maybe my wife choose the 9 name and -- yeah. I don't know why we call that 10 name. 11 Q. So your wife would be a little bit more 12 knowledgable related to some of the formation of 13 WLAB? 14 A. I think so. We both -- we have 15 50/50 percent share for that LLC right now, yeah. 16 Q. Okay. As part of the PMK notice, it does 17 specify Topic 13, which is formation of Plaintiff. 18 This would be something else that your wife would be 19 more knowledgable about? 20 A. Yeah. Maybe for that company, yeah. 21 MADAM REPORTER: Sorry. You broke up 22 there. 23 BY MR. LEE: 24 Q. You and your wife are the only partners or 25 members of WLAB; is that right?</p>

<p style="text-align: right;">Page 42</p> <p>1 A. At this moment, yes.</p> <p>2 Q. Okay. I believe that you presented an</p> <p>3 operating agreement related to eventually doing a</p> <p>4 1031 exchange for the property.</p> <p>5 Do you recall if that's the same operating</p> <p>6 agreement that you have in place today?</p> <p>7 A. Yes, yes.</p> <p>8 Q. Have you ever amended your operating</p> <p>9 agreement?</p> <p>10 A. I don't know. My wife usually doing that</p> <p>11 kind of hard work, you know. I'm not sure.</p> <p>12 Q. Is your wife a little bit better -- what</p> <p>13 does your wife do?</p> <p>14 A. My wife, well, she's also engineering</p> <p>15 background. Actually, we met in Chicago. Then</p> <p>16 she -- she's an engineering Ph.D. too, but she's</p> <p>17 more focused on the biotech side. So later, she</p> <p>18 just -- when we purchase this property, she's the</p> <p>19 CEO for the company in San Diego.</p> <p>20 Q. I'm sorry. You said you purchased a</p> <p>21 company. What company did you purchase?</p> <p>22 A. No. We purchased the property, the --</p> <p>23 the -- currently the 2132 Houston Drive. At that</p> <p>24 time, she's the CEO of the one biotech company in</p> <p>25 San Diego.</p>	<p style="text-align: right;">Page 43</p> <p>1 Q. What's the name of the biotech company?</p> <p>2 A. I don't know. You got to -- in Chinese is</p> <p>3 MabPlex, MabPlex, MabPlex, yeah.</p> <p>4 MADAM REPORTER: What is it?</p> <p>5 THE WITNESS: It's MabPlex, M-I -- I don't</p> <p>6 know how to spell that. Her company is in China</p> <p>7 company, and one branch is subsidiary in San Diego.</p> <p>8 She own -- the CEO for that company.</p> <p>9 BY MR. LEE:</p> <p>10 Q. Okay. So in 2017 or so, 2018, she was the</p> <p>11 CEO of this biotech company in San Diego; correct?</p> <p>12 A. Right, right, yeah.</p> <p>13 Q. And at the same time, she was also a</p> <p>14 managing member of WLAB; is that correct?</p> <p>15 A. Right, right. She's the managing member</p> <p>16 of this WLAB, but she don't do the daily operation.</p> <p>17 I'm the mostly person doing the daily operation.</p> <p>18 Q. Okay. But she's the one who handled,</p> <p>19 like, the underlying transactional documents for</p> <p>20 WLAB such as your operating agreement; is that fair?</p> <p>21 A. I think so. Maybe, yeah.</p> <p>22 Q. Did you -- were you also involved in the</p> <p>23 drafting of the operating agreement?</p> <p>24 A. Yes, yes. I -- I cannot remember very</p> <p>25 clearly. Actually, we went to the one accounting</p>
<p style="text-align: right;">Page 44</p> <p>1 firm in Monterey Park, Los Angeles, and working with</p> <p>2 this accounting firm to set up the company. Then I</p> <p>3 get the seal, all the documents together. Then</p> <p>4 accounting firm continued to the accountants.</p> <p>5 Every year we file the tax returns through</p> <p>6 the company firm. I think they called the Southern</p> <p>7 California Accounting something company.</p> <p>8 Q. A California accounting company?</p> <p>9 A. Yeah, California company. It's actually</p> <p>10 we set up through that company.</p> <p>11 Q. What's the name of the company?</p> <p>12 A. Southern California Accounting.</p> <p>13 Q. Oh, okay.</p> <p>14 A. Yeah. If you go to the Chinese newspaper,</p> <p>15 you will see that advertise, yeah, from the Chinese</p> <p>16 newspaper, local newspaper.</p> <p>17 Q. So I went through your work history. You</p> <p>18 know, like, 1990 to 2008, you were working in a, you</p> <p>19 know -- capacity as an engineer supervisor. Did you</p> <p>20 have to review many contracts during that time?</p> <p>21 A. Yes, yes. Yeah.</p> <p>22 Q. Okay. And then you understood the</p> <p>23 importance of reading contracts; is that fair?</p> <p>24 A. Yes, yes.</p> <p>25 Q. How many of these contracts led to the</p>	<p style="text-align: right;">Page 45</p> <p>1 development or building of buildings?</p> <p>2 A. I'll be very honest with you, I like</p> <p>3 building, building the house. My family, all my</p> <p>4 kids, my wife live in the house I build. So since</p> <p>5 the one we have ability to buy the house, instead of</p> <p>6 buying or leasing a house, we always build the</p> <p>7 house, so we --</p> <p>8 Q. So this is the Sewanee --</p> <p>9 A. Yeah. I build that house too. That house</p> <p>10 I build. That one in Connecticut, we build the</p> <p>11 house too. So we go through all this document.</p> <p>12 And the Sewanee name, the house, I bought</p> <p>13 all the house that he tear down immediately, then I</p> <p>14 build that house.</p> <p>15 Q. So Sewanee is a house that you built and</p> <p>16 constructed.</p> <p>17 A. Yeah.</p> <p>18 Q. Did you act as the general contractor?</p> <p>19 A. Yes, yes.</p> <p>20 Q. You acted as the project manager?</p> <p>21 A. Yes, yeah.</p> <p>22 Q. Did you hire contractors to help you</p> <p>23 construct it?</p> <p>24 A. Yeah. We hire -- we negotiate the -- we</p> <p>25 doing the -- first we solicited the subcontract and</p>

<p style="text-align: right;">Page 46</p> <p>1 then we evaluate the subcontractor code and also the 2 qualification and then submit to the subcontract 3 doing the work, then doing the quality control. 4 Q. Quality control. 5 During that process, this was -- how many 6 homes have you constructed? 7 A. Huh? 8 Q. How many homes have you constructed? 9 MADAM REPORTER: You keep breaking up, 10 Counsel. 11 THE WITNESS: I cannot hear you. 12 BY MR. LEE: 13 Q. How many homes have you constructed? 14 A. Oh, boy. Probably three or four. Yes, 15 because -- yeah, because some houses we completed 16 from starting all the way together I do my own. But 17 at the beginning, we build a house. It's through 18 the Nacka ne ma (phonetic) or some other company; 19 right? So we sign the contract after the company to 20 build the house. 21 Just like in Las Vegas from the home 22 builder, you go to their site -- community, you sign 23 the contract, you participate in the building 24 together, then they build it for you. 25 Q. Okay. So let's do this: With the Quiet</p>	<p style="text-align: right;">Page 47</p> <p>1 Cove property in Las Vegas, is it a residential 2 property? 3 A. Yes, yeah. 4 Q. Okay. Did you improve upon it or it's as 5 is? 6 A. I bought this one. Actually, it's from 7 auction. What happened -- done the remodeling. I 8 bought this one from the homeowners association 9 auction. 10 Q. When did you buy this? 11 A. October 2019. 12 Q. Recently? 13 A. Yeah. 14 Q. It was a foreclosure; correct? 15 A. Yes, yeah. 16 Q. Did it have damage or it was just a 17 foreclosure? 18 A. Damage. It's -- the second floor, one 19 room is burned. 20 Q. You were living in a burned home? 21 A. The second floor. 22 Q. Okay. So you're just living in the -- 23 A. First floor. 24 Q. The habitable places is where you're 25 residing?</p>
<p style="text-align: right;">Page 48</p> <p>1 A. Right, right, right. Right now I put in 2 the second floor. I clean the second floor, all the 3 burned stuff, and started doing the remodeling. 4 Q. You're doing that yourself? 5 A. No. It's also through some people. 6 Q. Who are you contracting? 7 A. Right now it's -- I interview contractor, 8 yeah. I haven't done the -- complete the remodeling 9 yet because we -- last year we have some issue and 10 the -- for the company homeowners association hired 11 the attorney to do foreclosure. Then we have some 12 issues. So we waiting for the -- until that one 13 settle down, then we can do... 14 Q. So you bought this by an HOA foreclosure 15 or a bank foreclosure? 16 A. HOA foreclosure. 17 Q. Okay. So it was, like, a superpriority 18 lien? Do you understand what that means? 19 A. I don't know. I tell you what's happened 20 we found out last year. It's -- actually, HOA 21 only -- that house own -- actually, previous owner 22 owe actually about \$6,000. Actually put in auction 23 for that property. That I pay 85,000 cash for that 24 property. 25 Then we found out this lien about \$70,000.</p>	<p style="text-align: right;">Page 49</p> <p>1 That legal -- the County and the City are going to 2 foreclose on the house again, so we are trying to 3 use that, actually gather the \$85,000 so they have 4 access to proceeding. So want to use that access of 5 proceedings to pay off for the County and the City 6 name. That's -- 7 Q. Do you have an attorney that's 8 representing you for this action right now? 9 A. Yeah, yeah. It's Mr. Lee -- Ben. 10 Q. Ben Childs. I'm Mr. Lee. 11 A. Yeah, yeah. 12 Q. That's your attorney; right? 13 A. Yeah. 14 Q. Okay. It sounds like basically the public 15 works utility liens is something that he's trying to 16 help you resolve; is that fair? 17 A. Yes, yeah. 18 Q. Mr. Childs is shaking his head no. 19 A. Huh? 20 Q. Maybe you guys can confer about that 21 later. 22 MR. CHILDS: It's tax liens. 23 THE WITNESS: Tax lien. 24 BY MR. LEE: 25 Q. A tax lien. Thank you.</p>

<p style="text-align: right;">Page 134</p> <p>1 heating -- or heater is not light up, so I call the 2 AC company -- or they call the AC company then to 3 fix the other one. They give me the receipt. Then 4 I just keep the receipt, then I pay them. 5 Q. Do you have a property management company 6 that manages the property for you or do you do it? 7 A. No. That one, no. No property manager. 8 Just I do it. 9 Q. And then for the handyman work or the 10 maintenance of it, how do you resolve that? 11 A. I just hire the -- from the -- the yellow 12 page or the Google, found the local people and call 13 them, ask them to go there to fix things. 14 Q. Are they -- like, what kind of people? 15 Like, handyman? 16 A. No. Usually it's a company. Licensed 17 contractor, not a handyman. I never hire handyman. 18 Mostly it's go to the yellow pages, found the 19 plumber. Go to the local plumber, licensed plumber 20 to do that. Actually, I say call the licensed -- 21 actually, I say to do that. 22 Q. Well, like, in 2009, it's fair to say that 23 you understood the difference between a licensed 24 contractor and a handyman? 25 A. Yes, yes.</p>	<p style="text-align: right;">Page 135</p> <p>1 Q. How many times do you think you have to 2 hire a contractor to address issues with the Bundy 3 property on a yearly basis? 4 A. Not very many. Maybe one year one time. 5 I currently have a tenant living there for more than 6 three years. They only call me one time. 7 Q. And what was that issue? 8 A. They said it's a -- water heater is not 9 light up, so he text me and said that the -- he 10 needed me to come over and take a look and fix that. 11 I said, Go ahead and fix that and send me the bill, 12 and we just deduct from the rent. 13 Q. For the water heater, did you hire a 14 plumber or did you just hire, like, a company to 15 give you a new water heater and install -- 16 A. Plumber, plumber. In California, usually 17 you hire the plumber. They sell you the -- they go 18 to replace the water heater. 19 Q. Do you have an understanding that a water 20 heater requires permit work for replacement? 21 A. I don't think so. Water heater don't need 22 a permit. In California, no, no permit. 23 (Two speakers at once.) 24 Q. Okay. Clark County -- it should be 25 subject to a permit. Would you insist on a</p>
<p style="text-align: right;">Page 136</p> <p>1 contractor showing you a permit? 2 A. In California, that one, I don't think so. 3 They don't apply the permit. Because this is -- 4 since they need to do immediately, how you get a 5 permit? You know, the tenant said today, I don't 6 have hot water. I need to replace. So I call the 7 plumber go there to the place. How you get a tenant 8 the permit even in the weekend? No, I don't think 9 so. 10 Q. So if you hire, like, a contractor, you 11 understand that they'll take care of any permitting 12 issues that there will be? 13 A. Depends. Sometimes with the contractor 14 need me to work with them to get the permit. They 15 cannot directly by themselves. But my understanding 16 for the water heater in California, no permit is 17 required. 18 Q. Well, if a permit was required, would you 19 expect that the contractor will take care of that 20 for you? 21 A. Yes, but usually I know that sometimes the 22 permit -- I need to apply for permit, they need my 23 information from contractor. Contractor need my 24 information, and my -- some documents that they can 25 apply the permit. I gave them my authority.</p>	<p style="text-align: right;">Page 137</p> <p>1 Q. After the work is performed, do you ever 2 ask the contractor to show you the permits they 3 obtained? 4 A. Yes. Sometimes I need. I ask for it 5 before. 6 Q. Does that also mean sometimes you don't 7 ask for one? 8 A. Some -- in California, that house, I just 9 said -- you asked me in California, the house, I 10 didn't -- I don't think I asked them to permit for 11 the -- for water heater replacement. 12 Q. So just in general, not just for water 13 heaters, but if a contractor does work for you, are 14 there times where you don't ask to see any related 15 permits? 16 A. To my knowledge, I don't think so. I 17 probably doing that. If they required a permit, I 18 will ask them to show me permit and also ask them to 19 show me the inspection and the inspection result. 20 Because that is your duty, you know. You pay the 21 contractor to do the work. Then when they performed 22 the work, you need to gather the certain party to 23 inspect, make sure they're doing it safely and meet 24 law requirement; right? 25 Q. Okay. So when you asked, you know, for</p>

<p style="text-align: right;">Page 138</p> <p>1 someone to do the work, you want -- you would 2 usually follow up and ask to see the permit and 3 inspection? 4 A. Yes, I will do that. 5 Q. Okay. So after Bundy, what else did you 6 guys buy? 7 A. We buy a lot of property in California. 8 Q. In general, how many properties do you 9 own? 10 A. A lot. More than ten. But I cannot count 11 exactly right now. 12 Q. More than ten in California or in total? 13 A. In California. 14 Q. So we know you own eight or nine here in 15 Vegas and that you own more than ten in California; 16 right? 17 A. Right, right, right. 18 Q. And then the properties that WLAB owns, 19 are there separate properties that you and Marie own 20 that aren't part of WLAB? 21 A. Yes, yes. We -- we thinking in the -- 22 sometimes they use my wife name because she's get a 23 W-2. She can get a loan, so -- but some we change 24 the title. I went to the County recording office 25 and change the title because time to move to the</p>	<p style="text-align: right;">Page 139</p> <p>1 WLAB now. Some haven't -- 2 Q. How many properties do you and Marie own 3 that are outside of what WLAB owns? 4 A. I don't -- I don't know. Usually when my 5 wife file the tax return, they think it's mostly 6 WLAB for rental property. 7 Q. So this is an area that Marie would know 8 better than you would? 9 A. I think so. She's the person involved in 10 more that. 11 Q. In general with the properties that you 12 purchased, walk me through the process of how you go 13 through it. Like, do you find it on Zillow? Do you 14 find it on some type of listing agreement? How does 15 this work? 16 A. In general, it's I found the property from 17 the Redfin or Zillow; right? Then I contact the 18 listing agent, then I make the listing agent 19 appointment with the listing agent, then go to the 20 property, take a look at the property, do some 21 inspection, then I recording all that by myself and 22 say what's the -- and that property. 23 Then after that, I make the offer to 24 the -- ask my wife make the offer, then sign the 25 purchase agreement after negotiation the price.</p>
<p style="text-align: right;">Page 140</p> <p>1 Q. So in terms of the inspection, like, in 2 general, have you ever used a professional 3 inspection company to do those for you? 4 A. I did some. One or two. Not much. 5 Because we did some work, buy some property in Yuca 6 Valley. I think I hired an inspector to do that. 7 Then later I found out, you know, what later 8 inspector report is not much different than what I 9 found. So later, we just didn't hire the 10 professional inspector doing this work. 11 Q. Can you spell Yucca Valley? Is that 12 Y-U-C-C-A? 13 A. Yeah, Y-U-C-C-A. Yeah. 14 Q. So you've only hired a professional 15 inspector once or twice. Do you recall which years 16 that would have been when you did that? 17 A. 2014, something like that. It's -- yeah, 18 early 2014, 2015. Let me see. 19 Q. Have you ever hired a professional 20 inspection company in Clark County, Nevada? 21 A. No. That's -- like I said, in the Nevada, 22 all the property is multi-family rental property, 23 so -- multi-family rental property usually don't 24 need professional inspector to do that. 25 Q. Do you know if there's professional</p>	<p style="text-align: right;">Page 141</p> <p>1 inspectors that will inspect multi-tenant 2 residential properties that have six units or less? 3 A. I -- I think some of the advertisement 4 they can do that, but I contact the -- they tried to 5 log money, but also we found out that you don't need 6 to do that. According to -- I talk to the other 7 landlord, them said it's a -- you know, if you have 8 lot of unit in that apartment, you cannot do the 9 inspection. 10 Then also the law is -- what they said for 11 the multi-family rental property, the seller must 12 provide a good, safe, and healthy environment for 13 tenant. So that is a burden is on the seller to 14 make sure that everything is safe. 15 The tenant is not going to inspect -- hire 16 an inspector to do the inspection before they rented 17 the building or the room; right? Then it's also -- 18 Q. First of all, what is the law that you're 19 referencing in your discussion? 20 A. This is -- even you take a look at the -- 21 here on this one, what's the deed of permit 22 inspection, is on the tenant and the landlord they 23 said this way. Yeah, they said you -- you have to 24 provide in the tenant. You have to provide healthy, 25 well-being facility for the tenant.</p>

<p style="text-align: right;">Page 338</p> <p>1 of things report that we don't need to go to the 2 inside the building. It's wall cracking. It's 3 outside. You can see. 4 Q. Okay. So it's open and obvious for them? 5 A. Yeah. You can see always outside. 6 Q. So is there any information that you want 7 to provide that I haven't asked you about? 8 A. No. 9 Q. No? Okay. 10 Would you like to revise or supplement any 11 of your prior answers? 12 A. Yes. I need to read this description, 13 the -- what's it called? 14 MR. CHILDS: Transcript. 15 THE WITNESS: Transcript, yeah. 16 BY MR. LEE: 17 Q. Okay. So I presume you guys are going to 18 buy a copy of the transcript. You'll need to let 19 the court reporter know. If you are, they'll mail 20 you a copy. If not, you're going to have to go to 21 the court reporter's office to review it; okay? 22 A. Yeah. We just buy one. 23 Q. Okay. And then in terms of the areas that 24 we covered that was based on your experience or your 25 speculation, are you planning on offering those</p>	<p style="text-align: right;">Page 339</p> <p>1 opinions at the time of trial? 2 A. Yes, yes. 3 Q. Okay. 4 MR. LEE: I don't have any further 5 questions, so we can go off record and -- or 6 actually, I pass the witness. How about that? 7 MR. CHILDS: No questions. 8 THE WITNESS: No questions. 9 MR. LEE: Okay. Then I'll release you 10 subject to any disclosure of any additional 11 documents that we haven't received at this time, but 12 I thank you for your time today; okay? 13 THE WITNESS: Thank you. 14 MADAM REPORTER: Counsel, would you like a 15 copy of the transcript? 16 MR. CHILDS: Yeah, I think -- 17 THE WITNESS: Yeah, yeah. 18 MADAM REPORTER: Do you want electronic? 19 MR. CHILDS: Sure. 20 MR. LEE: I only want an e-copy with 21 exhibits. 22 MADAM REPORTER: Okay. 23 (The deposition concluded at 5:26 p.m.) 24 25</p>
<p style="text-align: right;">Page 340</p> <p>1 CERTIFICATE OF WITNESS 2 PAGE LINE CHANGE REASON 3 _____ 4 _____ 5 _____ 6 _____ 7 _____ 8 _____ 9 _____ 10 _____ 11 _____ 12 _____ 13 _____ 14 _____ 15 _____ 16 * * * * * 17 18 I, FRANK MIAO, witness herein, do hereby 19 certify and declare under the penalty of perjury the 20 within and foregoing transcription to be my 21 deposition in said action; that I have read, 22 corrected and do hereby affix my signature to said 23 deposition. 24 _____ 25 FRANK MIAO Witness Date</p>	<p style="text-align: right;">Page 341</p> <p>1 REPORTER'S CERTIFICATE 2 STATE OF NEVADA) 3) ss 4 COUNTY OF CLARK) 5 I, Trina K. Sanchez, a duly certified 6 court reporter licensed in and for the State of 7 Nevada, do hereby certify: 8 That I reported the taking of the 9 deposition of the witness, FRANK MIAO, at the time 10 and place aforesaid; 11 That prior to being examined, the witness 12 was by me duly sworn to testify to the truth, the 13 whole truth, and nothing but the truth; 14 That I thereafter transcribed my shorthand 15 notes into typewriting and that the typewritten 16 transcript of said deposition is a complete, true 17 and accurate record of testimony provided by the 18 witness at said time to the best of my ability. 19 I further certify (1) that I am not a 20 relative, employee or independent contractor of 21 counsel or of any of the parties; nor a relative, 22 employee or independent contractor of the parties 23 involved in said action; nor a person financially 24 interested in the action; nor do I have any other 25 relationship with any of the parties or with counsel of any of the parties involved in the action that may reasonably cause my impartiality to be questioned; and (2) that transcript review pursuant to NRCPC 30(e) was requested. IN WITNESS WHEREOF, I have hereunto set my hand in the County of Clark, State of Nevada, this 23rd day of January, 2021. <i>Trina K. Sanchez</i> TRINA K. SANCHEZ, RPR, CCR NO. 933</p>

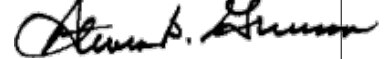
<p>Page 342</p> <p>1 HEALTH INFORMATION PRIVACY & SECURITY: CAUTIONARY NOTICE</p> <p>2 Litigation Services is committed to compliance with applicable federal</p> <p>3 and state laws and regulations ("Privacy Laws") governing the</p> <p>4 protection and security of patient health information. Notice is</p> <p>5 hereby given to all parties that transcripts of depositions and legal</p> <p>6 proceedings, and transcript exhibits, may contain patient health</p> <p>7 information that is protected from unauthorized access, use and</p> <p>8 disclosure by Privacy Laws. Litigation Services requires that access,</p> <p>9 maintenance, use, and disclosure (including but not limited to</p> <p>10 electronic database maintenance and access, storage, distribution/</p> <p>11 dissemination and communication) of transcripts/exhibits containing</p> <p>12 patient information be performed in compliance with Privacy Laws.</p> <p>13 No transcript or exhibit containing protected patient health</p> <p>14 information may be further disclosed except as permitted by Privacy</p> <p>15 Laws. Litigation Services expects that all parties, parties'</p> <p>16 attorneys, and their HIPAA Business Associates and Subcontractors will</p> <p>17 make every reasonable effort to protect and secure patient health</p> <p>18 information, and to comply with applicable Privacy Law mandates,</p> <p>19 including but not limited to restrictions on access, storage, use, and</p> <p>20 disclosure (sharing) of transcripts and transcript exhibits, and</p> <p>21 applying "minimum necessary" standards where appropriate. It is</p> <p>22 recommended that your office review its policies regarding sharing of</p> <p>23 transcripts and exhibits - including access, storage, use, and</p> <p>24 disclosure - for compliance with Privacy Laws.</p> <p>25 © All Rights Reserved. Litigation Services (rev. 6/1/2019)</p>	

EXHIBIT “7”



RA000890

EXHIBIT “8”



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IN THE EIGHTH JUDICIAL DISTRICT COURT

CLARK COUNTY, NEVADA

W L A B INVESTMENT, LLC,

Plaintiff,

vs.

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

HEARING REQUESTED

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

Date of Hearing:
Time of Hearing:

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

Defendants.

Defendants TKNR INC. ("TKNR"), CHI ON WONG ("WONG"), KENNY ZHONG
LIN ("LIN"), LIWE HELEN CHEN ("CHEN"), YAN QIU ZHANG ("ZHANG"), INVESTPRO
LLC ("INVESTPRO"), MAN CHAU CHENG ("CHENG"), JOYCE A. NICKRANDT
("NICKRANDT"), INVESTPRO INVESTMENTS, LLC ("Investments"), and INVESTPRO
MANAGER LLC (hereinafter collectively referred to as the "Defendants"), by and through their
counsel of record, MICHAEL B. LEE, P.C., hereby files this Motion for Summary Judgment, or in
the Alternative, Partial Summary Judgment ("Motion"). This Motion is made on the following

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

MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

A. Overview

Summary Judgment is appropriate as a matter of law. The overwhelming case law in Nevada applies the doctrine of caveat emptor on buyers of real property. Notably, the Property was 63 years old at the time of purchase and being used as a rental property. Nevertheless, Plaintiff waived her inspections twice as it relates to the Property, defined below, as she cancelled her original purchase agreement and entered into a new one. Despite the clear statements that she needed to get an inspection done, and clear disclosures related to the conditions of the Property, Plaintiff still waived her inspection and forged ahead with the purchase. The entire crux of Plaintiff’s action is premised that that there was alleged work done without permits, but TKNR disclosed that it the Seller’s Disclosures. Additionally, permit work is publicly available on the City of Las Vegas’ website, which illustrates that Plaintiff should have known about this issue at the time of purchase, absolving Defendants of any liability.

Moreover, alleged conditions identified by Plaintiff’s alleged expert were all open and obvious, and would have been uncovered by an inspection. Plaintiff’s alleged expert never did any destructive testing, so an inspector would have had the same opportunity to observe everything that he did. Importantly, Plaintiff is a sophisticated commercial buyer who has purchased and renovated several similar properties, so it has a higher burden to demonstrate why it waived inspections. As Defendants disclosed all conditions known to them at the time of the sale, Nevada law does not permit this action to continue. This justifies Summary Judgment on all of Plaintiff’s claims, including the frivolous claims for RICO, fraudulent conveyance, and abuse of process.

Finally, sanctions are also justified against Plaintiff. Astonishingly, Plaintiff is claiming \$16.25 Million in damages related to the purchase of the Property (original purchase price -

1 \$200,000). Incredibly, the original demand by Plaintiff for settlement was \$10,000. Regardless
2 of whether Plaintiff or Plaintiff’s counsel, who have charged Plaintiff approximately \$64,000 for
3 this matter so far, are responsible for the violation of Rule 11 in prosecuting this frivolous claim,
4 Rule 11 permits sanctions against both, which should include an award of attorneys’ fees and
5 costs to Defendants.

6 **B. Statement of Facts**

7 1. *First Residential Purchase Agreement and Waiver of Inspections,*
8 *Contractual Broker Limitations*

9 The Property (defining as 2132 Houston Drive, Las Vegas, NV 89104) was originally
10 constructed in 1954. MLS Listing attached as **Exhibit A**. On or about August 11, 2017, Marie
11 Zhu (“Zhu”), the original purchaser, executed a residential purchase agreement (“RPA”) for the
12 Property. Residential Purchase Agreement attached as **Exhibit B** (Plaintiff’s Disclosure) 26 of
13 166. At all times relevant, Ms. Zhu and Frank Miao (“Miao”), the managing member of
14 Plaintiff, were sophisticated buyers related to “property management, property acquisition, and
15 property maintenance.” ROG Response (excerpt) at 3:3-4 attached as **Exhibit N**. The purchase
16 price for the property was \$200,000. *Id.* Through the RPA, Ms. Zhu waived her due diligence,
17 although she had a right to conduct inspections:

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

22 *Id.* at 28 of 166 at 7(A) lines 36-39.

23 Ms. Zhu did not cancel the contract related to any issues with the Property. *Id.* Under
24 Paragraph 7(C) of the RPA, Ms. Zhu waived the Due Diligence condition. *Id.* Under Paragraph
25 7(D) of the RPA, it provided:

26 *It is strongly recommended that Buyer retain licensed Nevada*
27 *professionals to conduct inspections. If any inspection is not*
28 *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.

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

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

On August 2, 2017, TKNR submitted its Seller Disclosures timely indicating all known conditions of the Subject Property. Plaintiff's Disclosure Page 36 of 166 attached as **Exhibit C**. In fact, TKNR disclosed that "3 units has (sic) brand new AC installed within 3 months," and further that the "owner never resided in the property and never visited the property." *Id.* at Page 38. Plaintiff was also aware that the minor renovations, such as painting, was conducted by the Seller's "handyman" as disclosed in the Seller's Disclosures. *Id.* Seller also disclosed that it had done construction, modification, alterations, or repairs without permits. *Id.* at 37. Despite these disclosures, Plaintiff chose not to inspect the Subject Property, request additional information and/or conduct any reasonable inquiries. *Id.*

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

On or before December 5, 2017, Ms. Zhu had issues related to the financing for the Property because of an appraisal. Chen-Ms. Zhu email attached as **Exhibit D**. As such, Ms. Chen confirmed that Ms. Zhu would do 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

1 lower than purchase price, not to exceed purchase price of \$200k"
2 I just send you the docs, please review and sign if you are agree.
3 Thank you!

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

6 *Id.* (emphasis added).

7 On the same day, Ms. Zhu and TKNR agreed to Addendum No. 1 to cancel the RPA
8 dated August 11, 2017, Addendum No. 1 attached as **Exhibit E**, and entered into a new
9 Residential Purchase Agreement dated September 5, 2017 ("2nd RPA"). 2nd RPA attached as
10 **Exhibit F**. As before, the overall purchase price for the Property was \$200,000, but Ms. Zhu
11 changed the contingency for the loan to \$150,000 with earnest money deposit of \$500 and a
12 balance of \$49,500 owed at the close of escrow ("COE" or "Closing"). *Id.* at DEF4000355.
13 The COE was set for September 22, 2017. *Id.* at DEF4000357 at ¶ 5C.

14 Notably, although Ms. Zhu had not initialed the "Failure to Cancel or Resolve
15 Objections" provision in the RPA, Ex. B. at Page 29 at ¶ 7(c), she initialed the corresponding
16 provision in the 2nd RPA. Ex. F at DEF4000358 at ¶ 7(c). This was consistent with Ms. Zhu's
17 instructions to Ms. Chen. Ex. D. This is the second time that Ms. Zhu waived inspections for
18 the Property despite the language in the 2nd RPA that strongly advised to get an inspection done.

19 As noted, Ms. Zhu waived any inspections related to the purchase of the Property in the
20 2nd RPA. *Id.* at DEF4000357 at ¶ 7. Although Ms. Zhu had actual knowledge of the Seller's
21 Disclosures, Ex. C, from August 11, 2017, and the Parties agreed to extend the COE to January
22 5, 2018, Ex. F at Addendum 1 at DEF4000365, Ms. Zhu still never did any inspections. Instead,
23 she put down an additional \$60,000 as a non-refundable deposit to the TNKR. *Id.* Moreover,
24 she also agreed to pay rent in the amount of \$650 per month for one of the units, and to also pay
25 the property manager \$800 for the tenant placement fee. *Id.* Through Addendum 2 to the 2nd
26 RPA, Ms. Zhu later changed the purchaser to Plaintiff. *Id.* at DEF4000366.

27 3. **No Reliance on Broker Agents**

28 As to the Brokers, Ms. Zhu agreed that she was not relying upon any representations
made by Brokers or Broker's agent. *Id.* at DEF4000361 ¶ 22. Ms. Zhu agreed to purchase the
Property AS-IS, WHERE-IS, without any representations or warranties. *Id.* Ms. Zhu agreed to

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

7 4. *Inspection Would Have Revealed Alleged Conditions*

8 On November 17, 2020, Defendants' expert, Neil D. Opfer, an Associate Professor of
9 Construction Management at UNLV and overqualified expert, conducted an inspection of the
10 Property. Opfer Report attached as **Exhibit G**. At that time, while he only had interior access to
11 one of the three units due to the failure of Plaintiff to accommodate the request for the
12 inspection, he did a visual inspection of all the areas specified in Plaintiff's expert's report. *Id.*
13 Moreover, he also found pictures of the Property from 2017 that depicted the condition of the
14 Property prior to August 11, 2017. *Id.* at DEF5000368. While Professor Opfer illustrated the
15 dubious findings by Plaintiff's expert with citations showing the actual misstatements of the
16 building code requirements as it relates to permits, he noted that TNKR did disclose that it did
17 the work without permits through its disclosures. *Id.* at DEF5000371.

18 As to the alleged issues, Professor Opfer noted that the alleged conditions identified by
19 Plaintiff's alleged expert were open and obvious:

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

25 Ex. G at DEF5000372.

26 Professor Opfer also noted that Plaintiff's expert did not do any destructive testing, so the
27 same alleged conditions that the alleged expert noted, would have been made by an inspector at
28 the time of the purchase. *Id.* at DEF5000372-373. Similarly, he later noted:

it is the fault of the Plaintiffs for not conducting requisite
inspections of the Property prior to its purchase. Since this issue is
apparently open and obvious as per the Sani Report, it would have

1 been open and obvious as well during a pre-purchase inspection.
2 *Id.* at DEF5000380. Moreover, he also noted that Plaintiff's alleged expert did "not recognize
3 prior conditions in existence before any work took place by the Defendants." *Id.* at
4 DEF5000376.

5 As to the open and obvious nature of the alleged issues, Professor Opfer noted the
6 following:

- 7 1. the photographs from 2017 showed extensive cracking to
8 the stucco and slab to the Property prior to any work by
9 Defendants and/or the licensed contractor it hired to install
10 the HVAC. *Id.*
- 11 2. the alleged attic issues could have been inspected at the
12 time of the purchase. *Id.* at DEF5000378
- 13 3. "any deficient electrical work related to this 220-volt
14 service situation could have been readily ascertained by an
15 inspection at the time of purchase by the Plaintiff". *Id.* at
16 DEF5000379
- 17 4. the alleged HVAC issues were open and obvious. *Id.* at
18 DEF5000381
- 19 5. "the conditions complained about as to venting and ducting
20 were present at the Property prior to Defendants owning the
21 Property". *Id.* at DEF5000388,
- 22 6. Plaintiff could have conducted an online search related to
23 the permits or lack of permits for the Property. *Id.* at
24 DEF5000389.
- 25 7. The basis of the Sani Estimate is nonsensical in the first
26 place and there is nothing seen from this Sani Report that
27 was not present at the time of sale of the Triplex Property.
28 There were cracks in the stucco system and concrete slab
29 system existing in 2017. Roof venting/duct venting had not
30 been changed by Defendants and was existing in 2017 and
31 could have been inspected by Plaintiff. *Id.* at DEF5000391.
- 32 8. Any deficiencies with this electrical installation were open,
33 obvious and could have been inspected prior to purchase as
34 with all other items with this Triplex Property. Any cracks
35 such as wall or floor cracks subsequent to the purchase
36 would obviously be new but again this occurs even on new
37 homes across the Las Vegas Valley and elsewhere. *Id.* at
38 DEF5000392.

39 Professor Opfer also noted that it was well known at the time of the purchase that the
40 Property was a 63 year old rental property that was subject to potential renter abuse:

Rental properties experience more-severe-service requirements due to many factors often including a lack of knowledge in order to care for a Property on the part of tenants along with often an uncaring attitude as well.

Id. at DEF5000379.

C. Statement of Procedure

On November 23, 2020, Plaintiff filed its second amended complaint (“SAC”). In large part, the SAC completely failed to acknowledge the waivers by Ms. Zhu related to the inspection of the Property and/or the open and obvious nature of the alleged defects in the then-63 year old Property at the time of purchase. That said, the SAC alleges fifteen causes of action: (1) Recovery Under NRS Chapter 113 [Defendants TKNR, Wong, and Investpro Manager LLC]; (2) Constructive Fraud [Defendants Investpro, Nickrandt, and Chen]; (3) Common Law Fraud [Defendants Investpro, Investpro Manager LLC, TKNR, Wong and Lin]; (4) Fraudulent Inducement [Defendants TKNR, Investpro Manager LLC, Wong, Investpro and Lin]; (5) Fraudulent Concealment [Defendants TKNR, Wong, Investpro, Investpro Manager LLC, and Lin]; (6) Breach Of Fiduciary Duty [Defendants Investpro and Nickrandt and Chen]; (7) RICO [Defendants Lin, Cheng, Investpro Manager LLC and Investpro Investments I LLC]; (8) Damages Under NRS 645.257(1) [Defendant Chen, Lin, Investpro and Nickrandt]; (9) Failure To Supervise, Inadequate training and Education [Defendant Investpro, Zhang, and Nickrandt]; (10) Fraudulent Conveyance [TKNR]; (11) Fraudulent Conveyance [Investpro Investments I LLC]; (12) Civil Conspiracy [As To Defendant Man Chau Cheng, Lin, Investpro, Wong, TKNR, Investpro Investments I LLC and Investpro Manager LLC]; (13) Breach Of Contract [As To Defendant Investpro]; (14) Breach Of Implied Covenant of Good Faith and Fair Dealing [As To Defendant Investpro]; and (15) Abuse of Process [As To All Defendants].

II. DISCUSSION

The following Discussion is organized into six Parts. Part A sets forth the legal standards for summary judgment and real estate disclosures. Part B provides the supporting facts and application of the law to illustrate that the waiver of inspections is fatal to Plaintiff’s case as a matter of law. In four subparts, it provides an analysis of (1) the disclosures by TKNR, (2) the

1 waiver of inspections, (3) the alleged deficiencies were open and obvious, and (4) Defendants
2 did not know about any of those conditions. Part C asserts Nevada law does not permit any
3 claims against the Broker Defendants. Part D, in four parts, specifies the lack of merit of the
4 ancillary claims for (1) RICO, (2) Fraudulent Conveyance, (3) Civil Conspiracy, and (4) Abuse
5 of Process. Part E, in the alternatively, requests partial summary judgment of the uncontested
6 facts and law if Summary Judgment is not awarded. Finally, Part F requests Rule 11 sanctions.

7 **A. Legal Standards**

8 1. Summary Judgment

9 Summary judgment is appropriate when the pleadings, depositions, answers to
10 interrogatories, admissions, and affidavits, if any, that are properly before the Court demonstrate
11 that no genuine issue of material fact exist, and the moving party is entitled to judgment as a
12 matter of law. *Pegasus v. Reno Newspapers, Inc.*, 118 Nev. 706, 713, 57 P.3d 82, 87 (2002).
13 Substantive law controls whether factual disputes are material and will preclude summary
14 judgment; other factual disputes are irrelevant. *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242,
15 106 S. Ct. 2505, 91 L.Ed.2d 202 (1986). A genuine issue of material fact is one where the
16 evidence is such that a reasonable jury could return a verdict for the non-moving party. *Valley*
17 *Bank v. Marble*, 105 Nev. 366, 367, 775 P.2d 1278, 1282 (1989).

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

25 Under Nevada Rule of Civil Procedure 56(a), a party may move for summary judgment,
26 or partial summary judgment. “The court shall grant summary judgment if the movant shows
27 that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a
28 matter of law.” The court may rely upon the admissible evidence cited in the moving papers

1 and may also consider other materials in the record as well. *Id.* at 56(c). “If the court does not
2 grant all the relief requested by the motion, it may enter an order stating any material fact —
3 including an item of damages or other relief — that is not genuinely in dispute and treating the
4 fact as established in the case.” *Id.* at 56(g).

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

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

24 2. Real Estate Disclosures

25 “Under NRS Chapter 113, residential property sellers are required to disclose any defects
26 to buyers within a specified time before the property is conveyed.” *Nelson v. Heer*, 163 P.3d
27 420, 425 (Nev. 2007) (citing NRS 113.140(1)). “NRS 113.140(1), however, provides that a
28 seller is not required to ‘disclose a defect in residential property of which [she] is not aware.’ A

1 ‘defect’ is defined as “a condition that materially affects the value or use of residential property
2 in an adverse manner.” *Id.* (citing NRS 113.100(1)). The Nevada Supreme Court clarified that:

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

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

12 Generally, “[n]ondisclosure by the seller of adverse information concerning real property
13 . . . will not provide the basis for an action by the buyer to rescind or for damages when property
14 is sold ‘as is.’ ” *Mackintosh v. Jack Matthews & Co.*, 109 Nev. 628, 633, 855 P.2d 549, 552
15 (1993). Moreover, “[l]iability for nondisclosure is generally not imposed where the buyer either
16 knew of or could have discovered the defects prior to the purchase.” *Land Baron Invs., Inc. v.*
17 *Bonnie Springs Family LP*, 131 Nev. 686, 696, 356 P.3d 511, 518 (2015). The general rule
18 foreclosing liability for nondisclosure when property is purchased as-is does not apply when the
19 seller knows of facts materially affecting the value or desirability of the property which are
20 known or accessible only to [the seller] and also knows that such facts are not known to, or
21 within the reach of the diligent attention and observation of the buyer. *Mackintosh*, 109 Nev. at
22 633, 855 P.2d at 552 (alteration in original) (internal quotation marks omitted).

23 A buyer waives its common law claims of negligent misrepresentation, fraudulent or
24 intentional misrepresentation, and/or unjust enrichment when it expressly agreed that it would
25 carry the duty to inspect the property and ensure that all aspects of it were suitable prior to close
26 of escrow, and the information was reasonably accessible to the buyer. *Frederic and Barbara*
27 *Rosenberg Living Tr. v. MacDonald Highlands Realty, LLC*, 427 P.3d 104, 111 (Nev. 2018).
28 Accordingly, the Nevada Supreme Court concluded that an agreement to purchase property as-is

1 foreclosed the buyer’s common law claims, justifying the granting of summary judgment on
2 common law claims. *Id.* (citation omitted).

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

9 *Anderson v. Ford Ranch, LLC*, 78684-COA, 2020 WL 6955438, at *5 (Nev. App. Nov. 25,
10 2020).

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

20 **B. The Two Waivers of Inspection and the Open and Obvious Nature of the**
21 **Alleged Deficiencies are Fatal to Plaintiff’s Claims as a Matter of Law**

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

27 **1. Disclosures by Seller**

28 On August 2, 2017, TKNR submitted its Seller Disclosures timely indicating all known
conditions of the Subject Property. Ex. C. TKNR disclosed that “3 units has (sic) brand new AC
installed within 3 months,” and further that the “owner never resided in the property and never

1 visited the property.” *Id.* at Page 38. Plaintiff was also aware that the minor renovations, such as
2 painting, was conducted by the Seller’s “handyman” as disclosed in the Seller’s Disclosures. *Id.*
3 TNKR also disclosed that it was aware of issues with the heating and cooling systems, *Id.* at 36,
4 there was construction, modification, alterations, or repairs done without permits, *Id.* at 37, and
5 lead-based paints. *Id.*

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

14 Moreover, information related to permits is publicly available. The City of Las Vegas
15 has a website¹ that allows anyone in the public to search for permits. Permit Search for Property
16 attached as **Exhibit H**. NRS § 645.259(2) precludes any liability for misrepresentation or under
17 Chapter 113 if the information is a public record:

18 [e]xcept as otherwise provided in this subsection, the failure of the
19 seller to make the disclosures required by NRS 113.130 and
20 113.135 if the information that would have been disclosed pursuant
to NRS 113.130 and 113.135 **is a public record which is readily
available to the client.**

21 (Emphasis Added). As the SAC is largely premised on the allegation that TNKR allegedly did
22 not disclose that it did not use licensed contractors who obtained permits, SAC at ¶ 29, NRS
23 645.259(2) precludes any of these claims as a matter of law. As such, Summary Judgment is
24 appropriate as TNKR disclosed that it did not have permits and the information was publicly
25 available.

26 In total, under NRS § 113.140(1) (seller is not required to disclose a defect in residential

27 ¹ <https://www.lasvegasnevada.gov/Business/Permits-Licenses/Building-Permits/Permit-Application-Status?search=address&addrkey=237304>
28

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

2. Waiver of Inspections

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

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

Ex. B at 28 of 166 at 7(A) lines 36-39.

Section II(B)(1) lists the disclosures by TKNR. Despite these disclosures, Plaintiff chose not to inspect the Subject Property, request additional information and/or conduct any reasonable inquiries. *Id.* In fact, Ms. Zhu only cancelled the original RPA, Ex. E, because of an issue related to her financing, not because of any concerns related 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. Ex. F. Ms. Zhu even directly informed her agent to waive all inspections. Ex. D. Although Ms. Zhu had actual knowledge of the Seller's Disclosures, Ex. C, from August 11, 2017, and the Parties agreed to extend the COE to January 5, 2018, Ex. F at Addendum 1 at DEF4000365, Ms. Zhu still never did any inspections. Instead, she put down an additional \$60,000 as a non-refundable deposit to the TNKR. *Id.* 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. *Id.* Through Addendum 2 to the 2nd RPA, Ms. Zhu

1 later changed the purchaser to Plaintiff. *Id.* at DEF4000366.

2 As to the Brokers, Ms. Zhu agreed that she was not relying upon any representations
3 made by Brokers or Broker's agent. *Id.* at DEF4000361 ¶ 22. Ms. Zhu agreed to purchase the
4 Property AS-IS, WHERE-IS, without any representations or warranties. *Id.* Ms. Zhu agreed to
5 satisfy herself, as to the condition of the Property, prior to the close of escrow. *Id.* Ms. Zhu
6 waived all claims against Brokers or their agents for (a) defects in the Property . . . (h) factors
7 related to Ms. Zhu's failure to conduct walk-throughs or inspections. *Id.* Ms. Zhu assumed full
8 responsibility and agreed to conduct such tests, walk-throughs, inspections and research, as she
9 deemed necessary. *Id.* In any event, Broker's liability was limited, under any and all
10 circumstances, to the amount of that Broker's commission/fee received in the transaction. *Id.*

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

12 *It is strongly recommended that Buyer retain licensed Nevada*
13 *professionals to conduct inspections. If any inspection is not*
14 *completed and requested repairs are not delivered to Seller within*
15 *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.

16 *Id.* Under Paragraph 7(F), it was Ms. Zhu's responsibility to inspect the Property sufficiently as
17 to satisfy her use. *Id.* Nevertheless, Ms. Zhu waived her inspection related to the original RPA
18 and the 2nd RPA, reinforced further by actually initialing next to the waiver in the 2nd RPA. Ex.
19 F. Ms. Zhu also waived the energy audit, pest inspection, roof inspection, septic lid removal
20 inspection, mechanical inspection, soil inspection, and structural inspection. *Id.* Thereby, Ms.
21 Zhu waived any liability of Defendants for the cost of all repairs that inspection would have
22 reasonably identified had it been conducted. *Id.* The RPA and the 2nd RPA clearly indicated that
23 Ms. Zhu was purchasing the Property "AS-IS, WHERE-IS without any representations or
24 warranties." *Id.* at DEF4000361 at ¶ 22.

25 Additionally, Ms. Zhu also agreed that the Brokers Defendants had "no responsibility to
26 assist in the payment of any repair, correction or deferred maintenance on the Property which
27 may have been revealed by the above inspections, agreed upon by the Buyer and Seller or
28 requested by one party." *Id.*

1 As a matter of law, Plaintiff is precluded from seeking damages from Defendants because
2 of her failure to inspect. “Nondisclosure 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). Defendants
8 also do not have liability as Ms. Zhu / Plaintiff purchased the Property “as-is” within the reach of
9 the diligent attention and observation of the buyer. *Mackintosh*, 109 Nev. at 633, 855 P.2d at
10 552. NRS § 113.140 clearly provides that the disclosures do not constitute a warranty of the
11 Property and that the purchaser still has a duty to exercise reasonable care to protect himself. A
12 completed disclosure form does not constitute an express or implied warranty regarding any
13 condition of residential property. NRS § 113.140(2). Chapters 113 and “645 of Nevada Revised
14 Statutes do not relieve a buyer or prospective buyer of the duty to exercise reasonable care to
15 protect himself or herself.” *Id.* at § 113.140(2).

16 Thus, Plaintiff waived its common law claims of negligent misrepresentation, fraudulent
17 or intentional misrepresentation, and/or unjust enrichment when it expressly agreed that it would
18 carry the duty to inspect the property and ensure that all aspects of it were suitable prior to close
19 of escrow, and the information regarding Property was reasonably accessible to the buyer.
20 *Frederic and Barbara Rosenberg Living Tr. v. MacDonald Highlands Realty, LLC*, 427 P.3d
21 104, 111 (Nev. 2018).

22 In this context, Summary Judgment is appropriate as a matter of law. *Id.* (citation
23 omitted). Defendants are entitled to Summary Judgment as to Plaintiff’s claims for (1) Recovery
24 Under NRS Chapter 113, (2) Constructive Fraud, (3) Common Law Fraud, (4) Fraudulent
25 Inducement, (5) Fraudulent Concealment, (6) Breach Of Fiduciary Duty, (8) Damages Under
26 NRS 645.257(1), (9) Failure To Supervise, Inadequate training and Education, (12) Civil
27 Conspiracy, (13) Breach Of Contract, and (14) Breach Of Implied Covenant of Good Faith and
28 Fair Dealing. It also eliminates the causes of action for (7) RICO, (10) Fraudulent Conveyance,

(11) Fraudulent Conveyance, and (15) Abuse of Process since they have no basis in fact or law.

3. Alleged Deficiencies Open and Obvious

The alleged conditions identified by Plaintiff's alleged expert in the Property 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.

Ex. G at DEF5000372.

Plaintiff's expert did not do any destructive testing, so the same alleged conditions that the alleged expert noted, would have been made by an inspector at the time of the purchase. *Id.* at DEF5000372-373. Similarly, Professor Opfer noted:

it is the fault of the Plaintiffs for not conducting requisite inspections of the Property prior to its purchase. Since this issue is apparently open and obvious as per the Sani Report, it would have been open and obvious as well during a pre-purchase inspection.

Id. at DEF5000380. The open and obvious nature of the alleged issues include the following:

1. the photographs from 2017 showed extensive cracking to the stucco and slab to the Property prior to any work by Defendants and/or the licensed contractor it hired to install the HVAC. *Id.*
2. the alleged attic issues could have been inspected at the time of the purchase. *Id.* at DEF5000378
3. "any deficient electrical work related to this 220-volt service situation could have been readily ascertained by an inspection at the time of purchase by the Plaintiff". *Id.* at DEF5000379
4. the alleged HVAC issues were open and obvious. *Id.* at DEF5000381
5. "the conditions complained about as to venting and ducting were present at the Property prior to Defendants owning the Property". *Id.* at DEF5000388,
6. Plaintiff could have conducted an online search related to the permits or lack of permits for the Property. *Id.* at DEF5000389.

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7. The basis of the Sani Estimate is nonsensical in the first place and there is nothing seen from this Sani Report that was not present at the time of sale of the Triplex Property. There were cracks in the stucco system and concrete slab system existing in 2017. Roof venting/duct venting had not been changed by Defendants and was existing in 2017 and could have been inspected by Plaintiff. *Id.* at DEF5000391.
8. Any deficiencies with this electrical installation were open, obvious and could have been inspected prior to purchase as with all other items with this Triplex Property. Any cracks such as wall or floor cracks subsequent to the purchase would obviously be new but again this occurs even on new homes across the Las Vegas Valley and elsewhere. *Id.* at DEF5000392.
9. Rental properties experience more-severe-service requirements due to many factors often including a lack of knowledge in order to care for a Property on the part of tenants along with often an uncaring attitude as well. *Id.* at DEF5000379.

Summary Judgment is appropriate as Plaintiff either knew of or could have discovered the defects prior to the purchase. *Land Baron Invs., Inc. v. Bonnie Springs Family LP*, 131 Nev. 686, 696, 356 P.3d 511, 518 (2015). Clearly, the open and obvious issues were within the reach of the diligent attention and observation of the buyer. *Mackintosh*, 109 Nev. at 633, 855 P.2d at 552 (alteration in original) (internal quotation marks omitted). In this context, Summary Judgment is appropriate as a matter of law. *Id.* (citation omitted). Defendants are entitled to Summary Judgment as to Plaintiff's claims for (1) Recovery Under NRS Chapter 113, (2) Constructive Fraud, (3) Common Law Fraud, (4) Fraudulent Inducement, (5) Fraudulent Concealment, (6) Breach Of Fiduciary Duty, (8) Damages Under NRS 645.257(1), (9) Failure To Supervise, Inadequate training and Education, (12) Civil Conspiracy, (13) Breach Of Contract, and (14) Breach Of Implied Covenant of Good Faith and Fair Dealing.

4. Unknown to any Defendant

At all times relevant, no Defendant was aware of any issues related to any of the alleged complaints raised by Plaintiff and/or Plaintiff's alleged expert. Declaration of Kenny Lin attached as **Exhibit I**. The only issues that Defendants were aware of were properly disclosed with an explanation. No Defendant was aware of any issues with any structural, electrical, plumbing, sewer, mechanical, roof, fungus/mold, flooring, and/or foundation issues with the

1 Property before the time of the sale to Ms. Zhu. *Id.* Nor was any Defendant aware of any issues
2 with any structural, electrical, plumbing, sewer, mechanical, roof, fungus/mold, flooring, and/or
3 foundation issues with the Property at the time of the sale to Ms. Zhu. *Id.* As to the HVAC
4 issue, Defendants were aware that tenants of the Property complained about the cooling of the
5 Property, which is why TKNR paid to have the system upgraded by a licensed contractor. Air
6 Team Invoice attached as **Exhibit J**.

7 At all times relevant, during the Due Diligence Period, Plaintiff had access to inspect: the
8 mechanical systems, the structure of the Property, the windows, for mold / fungus, the electrical
9 systems, the plumbing systems, the gas lines, the attic, the bathroom exhaust vent / washer /dryer
10 exhaust vent, the ceiling insulation, the roof decking, the roof trusses, the roof support structures,
11 the duct system, and the flooring and tiles. Ex. G. At all times relevant, Plaintiff knew that the
12 Property was originally constructed in 1954. *Id.* at ¶ 70.

13 NRS § 113.140 provides that the Seller does not have to disclose any defect that he is
14 unaware of. Similarly, NRS § 113.130 does not require a seller to disclose a defect in residential
15 property of which the seller is not aware. The Nevada Supreme Court has also made it
16 abundantly clear that a seller does not have any liability for unknown defects and/or where the
17 diligent buyer should have done an inspection. *Nelson v. Heer*, 163 P.3d 420, 425 (Nev. 2007)
18 (citing NRS 113.140(1)); *Mackintosh v. Jack Matthews & Co.*, 109 Nev. 628, 633, 855 P.2d 549,
19 552 (1993) (nondisclosure by the seller of adverse information concerning real property will not
20 provide the basis for an action by the buyer for damages when property is sold as is); *Land*
21 *Baron Invs., Inc. v. Bonnie Springs Family LP*, 131 Nev. 686, 696, 356 P.3d 511, 518 (2015)
22 (“[I]liability for nondisclosure is generally not imposed where the buyer either knew of or could
23 have discovered the defects prior to the purchase.”); *Frederic and Barbara Rosenberg Living Tr.*
24 *v. MacDonald Highlands Realty, LLC*, 427 P.3d 104, 111 (Nev. 2018) (buyer waives its common
25 law claims of negligent misrepresentation, fraudulent or intentional misrepresentation, and/or
26 unjust enrichment when it expressly agreed that it would carry the duty to inspect the property
27 and ensure that all aspects of it were suitable prior to close of escrow, and the information was
28 reasonably accessible to the buyer); *Anderson v. Ford Ranch, LLC*, 78684-COA, 2020 WL

6955438, at *5 (Nev. App. Nov. 25, 2020) (the terms of the purchase agreement do not require the seller to do anything other than provide the listed disclosures).

Therefore, the overwhelming authority demands Summary Judgment in favor of Defendants as a matter of law. As such, Summary Judgment is appropriate as a matter of law. *Id.* (citation omitted). Defendants are entitled to Summary Judgment as to Plaintiff's claims for (1) Recovery Under NRS Chapter 113, (2) Constructive Fraud, (3) Common Law Fraud, (4) Fraudulent Inducement, (5) Fraudulent Concealment, (6) Breach Of Fiduciary Duty, (8) Damages Under NRS 645.257(1), (9) Failure To Supervise, Inadequate training and Education, (12) Civil Conspiracy, (13) Breach Of Contract, and (14) Breach Of Implied Covenant of Good Faith and Fair Dealing. It also eliminates the causes of action for (7) RICO, (10) Fraudulent Conveyance, (11) Fraudulent Conveyance, and (15) Abuse of Process since they have no basis in fact or law. It also eliminates the causes of action for (7) RICO, (10) Fraudulent Conveyance, (11) Fraudulent Conveyance, and (15) Abuse of Process since they have no basis in fact or law.

C. Summary Judgment is Warranted as to Broker Defendants

As to the Brokers, Ms. Zhu agreed that she was not relying upon any representations made by Brokers or Broker's agent. *Id.* at DEF4000361 ¶ 22. Ms. Zhu agreed to purchase the Property AS-IS, WHERE-IS, without any representations or warranties. *Id.* Ms. Zhu agreed to satisfy herself, as to the condition of the Property, prior to the close of escrow. *Id.* 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. *Id.* Ms. Zhu assumed full responsibility and agreed to conduct such tests, walk-throughs, inspections and research, as she deemed necessary. *Id.* 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. *Id.* Additionally, Ms. Zhu also agreed that the Brokers Defendants had "no responsibility to assist in the payment of any repair, correction or deferred maintenance on the Property which may have been revealed by the above inspections, agreed upon by the Buyer and Seller or requested by one party." *Id.*

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1 NRS 645.252 sets forth the duties of real estate agents. Based on the Seller's
2 Disclosures, the RPA, and the 2nd RPA, Defendants clearly do not have any liability to Plaintiff
3 under Nevada law. Plaintiff had a separate agent representing them for the purchase of the
4 Property. As noted earlier, Plaintiff cancelled the first RPA and entered into the second with
5 actual knowledge of the Seller's Disclosures and the roles of all Defendants. Exs. A-F. NRS
6 645.252(4) clearly specifies that agents do not owe a duty to "(a) [i]ndependently verify the
7 accuracy of a statement made by an inspector certified pursuant to chapter 645D of NRS or
8 another appropriate licensed or certified expert" or "(c) [c]onduct an investigation of the
9 condition of the property which is the subject of the real estate transaction."

10 In addition to the authority cited above, Summary Judgment is appropriate as a matter of
11 law on Plaintiff's claims for (1) Recovery Under NRS Chapter 113, (2) Constructive Fraud, (3)
12 Common Law Fraud, (4) Fraudulent Inducement, (5) Fraudulent Concealment, (6) Breach Of
13 Fiduciary Duty, (8) Damages Under NRS 645.257(1), (9) Failure To Supervise, Inadequate
14 training and Education, (12) Civil Conspiracy, (13) Breach Of Contract, and (14) Breach Of
15 Implied Covenant of Good Faith and Fair Dealing]. It also eliminates the causes of action for (7)
16 RICO, (10) Fraudulent Conveyance, (11) Fraudulent Conveyance, and (15) Abuse of Process
17 since they have no basis in fact or law.

18 **D. No Basis for Extraneous Claims**

19 The SAC contains claims that appear to be loosely associated with the alleged non-
20 disclosure claims related to the sale of the Property: (7) RICO; (10) Fraudulent Conveyance; (11)
21 Fraudulent Conveyance; (12) Civil Conspiracy; and (15) Abuse of Process. As noted in the prior
22 sections, each of these claims fall as a matter of law based on the aforementioned authority and
23 facts. Nevertheless, this Section will address the lack of merit of each of these claims.

24 **1. RICO**

25 In 1970, the United States Congress passed the Racketeer Influenced and Corrupt
26 Organizations Act, 18 U.S.C. §§ 1961-1968 ("RICO"), as a portion of the Organized Crime
27 Control Act of 1970. In passing RICO, "Congress created a wide array of novel civil and
28 criminal weapons to use against crime and corruption." *Chappell v. Robbins*, 73 F.3d 918, 919

1 (9th Cir. 1996). Similarly, “Congress created a private claim under RICO at least in part to
2 compensate victims of racketeering.” *Id.* at 1153 (citing *Petro-Tech, Inc. v. Western Co. of*
3 *North America*, 824 F.2d 1349, 1358 (3d Cir.1987)). Nevertheless, “RICO was intended to
4 combat organized crime, not to provide a federal cause of action and treble damages to every tort
5 plaintiff.” *Oscar v. University Students Co-op. Ass’n*, 965 F.2d 783, 786 (9th Cir. 1992). “[A]s
6 a matter of law, personal injury, including emotional distress, is not compensable under section
7 1964(c) of RICO.” *Berg v. First State Ins. Co.*, 915 F.2d 460, 464 (9th Cir. 1990). RICO
8 “provides compensation only for damages caused by racketeering activity.” *Oscar*, 965 F.2d at
9 813.

10 “Nevada’s anti-racketeering statutes . . . are patterned after the federal [RICO] statutes.”
11 *Hale v. Burkhardt*, 104 Nev. 632, 634, 764 P.2d 866, 867 (1988). Nevada codified its own
12 version of RICO under NRS §§ 207.350-207.520. NRS 207.400(1)(a) specifies that it is
13 unlawful for a person **with criminal intent** received any proceeds derived, directly or indirectly,
14 **from racketeering activity**. (Emphasis added). For a federal RICO claim, a plaintiff must
15 allege the following elements to prevail on a RICO claim under a pattern of racketeering activity:
16 (1) the conduct; (2) of an enterprise; (3) through a pattern; (4) of racketeering activity. *See Sun*
17 *Sav. & Loan Ass’n v. Dierdorff*, 825 F.2d 187, 191 (9th Cir.1987).

18 However, “Nevada’s civil RICO statute differs in some respects from the federal civil
19 RICO statute.” *Hale*, at 635, 764 P.2d at 868. One critical distinction is found in comparing the
20 language of 18 U.S.C. § 1961(5) with that of NRS 207.390. The federal statute provides that a
21 claimant must plead a pattern of racketeering activity and that such a pattern requires at least two
22 predicate acts; Nevada’s RICO statute does not speak in terms of a “pattern of racketeering” and
23 provides that racketeering activity means two predicate acts of the type described in NRS
24 207.390 and NRS 207.360. Thus, there is no pattern/continuity requirement as is required under
25 federal law. *Siragusa v. Brown*, 971 P.2d 801, 811 (Nev. 1998).

26 a. **An Enterprise**

27 Under RICO, an “enterprise” includes any individual, partnership, corporation,
28 association, or other legal entity, and any union or group of individuals associated in fact

1 although not a legal entity. 18 U.S.C. § 1961(4). It is “ ‘a being different from, not the same as
2 or part of, the person whose behavior the act was designed to prohibit.’ ” *Rae v. Union Bank*,
3 725 F.2d 478, 481 (9th Cir.1984) (quotation omitted). For the purposes of a single action, a
4 corporate defendant cannot be both the RICO person and the RICO enterprise under section
5 1962(c). *See Wilcox v. First Interstate Bank of Oregon*, 815 F.2d 522, 529 (9th Cir.1987). In
6 terms of a pleading, problems arise when the named defendant is both the “person” and the
7 “enterprise.” *Sever v. Alaska Pulp Corp.*, 978 F.2d 1529, 1534 (9th Cir. 1992).

8 b. Racketeering Activity

9 “[R]acketeering activity” is any act indictable under several provisions of Title 18 of the
10 United States Code, and includes the predicate acts of mail fraud, wire fraud and obstruction of
11 justice. . . .” *Turner v. Cook*, 362 F.3d 1219, 1229 (9th Cir. 2004) (citing 18 U.S.C. § 1961(1)).
12 It includes general crimes involving acts or threats of murder, kidnapping, gambling, arson,
13 robbery, bribery, extortion, dealing in obscene matter, or dealing in a controlled substance. *Id.* at
14 § 1961(1)(A). It also includes specific enumerated federal crimes related to various crimes
15 involving theft, fraud, immigration violations, and obstruction of justice. *Id.* at § 1961(1)(B)-
16 (G).

17 “Continuity” is both a closed and open-ended concept, referring either to a closed period
18 of repeated conduct, or to past conduct that by its nature projects into the future with a threat of
19 repetition. A party alleging a RICO violation may demonstrate continuity over a closed period
20 by proving a series of related predicates extending over a substantial period of time. Predicate
21 acts extending over a few weeks or months and threatening no future criminal conduct do not
22 satisfy this requirement[.]

23 c. No Basis for RICO Claim

24 Incorporating the prior sections related to the lack of merit of any of the other claims,
25 there is no “racketeering” or form of predicate misconduct that “by its nature projects into the
26 future with a threat of repetition”, *Religious Tech. Ctr. v. Wollersheim*, 971 F.2d 364, 366 (9th
27 Cir.1992), related to the sale of the Property to Plaintiff. First, there is no “Racketeering
28 Activity” as it is legal to sell real property to a third party. Also, since the sale to Plaintiff

1 concluded after the sale, there was no continuity. If there was any potential action for the alleged
2 non-disclosure of known defects, then the action would fall under recognized torts specified in
3 this brief, not RICO. As such, Summary Judgment is appropriate as (1) the other claims fail as a
4 matter of law, (2) there was no criminal intent, (3) or a “racketeering activity”.

5 2. No Action for Fraudulent Conveyance

6 Fraudulent Conveyance is governed by NRS §§ 112.180(1), 112.190(1). This requires a
7 transfer made or obligation incurred by a debtor is fraudulent as to a creditor, whether the
8 creditor’s claim arose before or after the transfer was made or the obligation was incurred, if the
9 debtor made the transfer or incurred the obligation (a) with actual intent to hinder, delay or
10 defraud any creditor of the debtor; or (b) without receiving a reasonably equivalent value in
11 exchange for the transfer or obligation, and the debtor. NEV. REV. STAT. § 112.180(1)(a-b).
12 Alternatively, NRS § 112.190(1) specifies that a transfer made, or obligation incurred, by a
13 debtor is fraudulent as to a creditor whose claim arose before the transfer was made or the
14 obligation was incurred if the debtor made the transfer or incurred the obligation without
15 receiving a reasonably equivalent value in exchange for the transfer or obligation and the debtor
16 was insolvent at that time or the debtor became insolvent as a result of the transfer or obligation.

17 Here, Plaintiff failed to identify what the alleged transfer was and who the alleged
18 creditor was that was defrauded. First, this claim lacks any merit as Summary Judgment is
19 already appropriate as to the supporting claim for alleged liability by Defendants to Plaintiff.
20 Second, this claim is premature since Plaintiff is not a creditor. Third, there has not been a
21 showing that Defendants transferred anything. As Plaintiff will not be able to show any transfer
22 was made “with actual intent to hinder, delay or defraud any creditor of the debtor”, *Id.* at
23 §112.180(1)(a), and Plaintiff does not have any basis for the claims in this matter, Summary
24 Judgment is appropriate as a matter of law.

25 3. Civil Conspiracy

26 Under Nevada law, to establish a civil conspiracy claim, a plaintiff must show (1) the
27 commission of an underlying tort; and (2) an agreement between the defendants to commit that
28 tort. *Jordan v. State ex rel. Dep’t of Motor Vehicles & Pub. Safety*, 121 Nev. 44, 110 P.3d 30, 51

(2005) (per curiam) (stating that “an underlying cause of action for fraud is a necessary predicate to a cause of action for conspiracy to defraud”), abrogated on other grounds *Buzz Stew, LLC v. City of N. Las Vegas*, 124 Nev. 224, 228, 181 P.3d 670, 672 n. 6 (2008); *GES, Inc. v. Corbitt*, 117 Nev. 265, 21 P.3d 11, 15 (2001). “[I]t suffices under Nevada law to allege that Defendants . . . owed a duty to Plaintiffs not to conspire with those who do owe fiduciary duties to Plaintiffs to breach those duties.” *Boorman v. Nev. Mem’l Cremation Soc’y, Inc.*, 772 F. Supp. 2d 1309, 1315 (D. Nev. 2011).

Here, incorporating the preceding arguments illustrating that Summary Judgment is appropriate as a matter of law, Plaintiff cannot demonstrate (1) the commission of an underlying tort or (2) an agreement amongst the defendants to commit that tort. This illustrates that Summary Judgment is appropriate as a matter of law.

4. Abuse of Process

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

Here, Plaintiff illustrated the overall lack of merit related to the abuse of process claim in its limited opposition to Defendants’ motion to file amended answer, counterclaim, and third-party claim

If Defendants are allowed to file the proposed Counterclaim, Plaintiff will likely file it’s (sic) own motion to file a Second Amended Complaint and allege an additional cause of action for abuse of process based on the Defendants’ cause of action for abuse of process.

Opposition (brief only) at 6:10-13 attached as **Exhibit K**. Notably, this Honorable Court found the totality of the Opposition meritless. Order at 2:20-21 attached as **Exhibit L**.

Clearly, the totality of the legal and factual arguments in this Motion illustrate the bad faith nature of Plaintiff's claim. First, it is clear that Plaintiff's action is merely an attempt to extort Defendants with a meritless claim in abuse of the legal process. Second, the Property was a then-63 year old home that Plaintiff purchased in 2018. Third, the purchase price was \$200,000. Fourth, illustrating the abuse of process, Plaintiff are claiming \$16.25 Million in damages:

Damage No.	Amount
1	1,950,000
2	2,600,000
3	2,600,000
4	2,600,000
5	650,000
6	650,000
7	650,000
8	650,000
9	650,000
10	2,600,000
11	Omitted
12	Omitted
13	650,000
	16,250,000

Plaintiff's First Supplemental Disclosure (excerpt) attached as **Exhibit M**. Fourth, Plaintiff also made bad faith claims under RICO and other baseless claims as part of this action. Fifth, Plaintiff's counsel has charged Plaintiff approximately \$64,000 in attorneys' fees to prosecute these worthless claims. Ex. N. Sixth, the original settlement demand from Plaintiff was \$10,000. Ex. I.

As Plaintiff admitted the only purpose in filing the claim for abuse of process was retaliatory, and the overwhelming facts and law illustrate the abuse of process by Plaintiff in bringing this action, Summary Judgment is appropriate as a matter of law.

E. Partial Summary Judgment

Under Nevada Rule of Civil Procedure 56(a), a party may move for summary judgment or partial summary judgment. "If the court does not grant all the relief requested by the motion,

1 it may enter an order stating any material fact — including an item of damages or other relief —
2 that is not genuinely in dispute and treating the fact as established in the case.” *Id.* at 56(g).
3 “[A]n admitting party is barred from denying that which it has already admitted. *La-Tex Partn.*
4 *v. Deters*, 893 P.2d 361, 365 (Nev. 1995) (citing *Wagner v. Carex Investigations & Sec. Inc.*, 93
5 Nev. 627, 632, 572 P.2d 921, 924 (1977) (commenting on the application of Nev. R. Civ. Pro.
6 36).

7 Here, if this Honorable Court does not grant Summary Judgment on all claims, then
8 Defendants respectfully request that It grant partial Summary Judgment as to the following
9 undisputed facts:

- 10 1. The Property was originally constructed in 1954.
- 11 2. On or about August 11, 2017, Ms. Zhu executed the RPA for the Property.
- 12 3. The purchase price for the property was \$200,000.
- 13 4. Through the RPA, Ms. Zhu waived her due diligence, although she had a right to
14 conduct inspections.
- 15 5. Ms. Zhu did not cancel the contract related to any issues with the Property.
- 16 6. Under Paragraph 7(C) of the RPA, Ms. Zhu waived the Due Diligence condition.
- 17 7. Under Paragraph 7(D) of the RPA, it provided:
18 *It is strongly recommended that Buyer retain*
19 *licensed Nevada professionals to conduct*
20 *inspections.* If any inspection is not completed and
21 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.
- 22 8. Ms. Zhu waived any liability of Defendants for the cost of all repairs that
23 inspection would have reasonably identified had it been conducted.
- 24 9. Ms. Zhu also waived the energy audit, pest inspection, roof inspection, septic lid
25 removal inspection, mechanical inspection, soil inspection, and structural
inspection.
- 26 10. Under Paragraph 7(F), it was Ms. Zhu’s responsibility to inspect the Property
sufficiently as to satisfy her use.
- 27 11. The Brokers had “no responsibility to assist in the payment of any repair,
28 correction or deferred maintenance on the Property which may have been
revealed by the above inspections, agreed upon by the Buyer and Seller or

requested by one party.”

12. On August 2, 2017, TKNR submitted its Seller Disclosures timely indicating all known conditions of the Subject Property. In fact, TKNR disclosed that “3 units has (sic) brand new AC installed within 3 months,” and further that the “owner never resided in the property and never visited the property.” Plaintiff was also aware that the minor renovations, such as painting, was conducted by the Seller’s “handyman” as disclosed in the Seller’s Disclosures. Seller also disclosed that it had construction, modification, alterations, or repairs done without permits. Despite these disclosures, Plaintiff chose not to inspect the Subject Property, request additional information and/or conduct any reasonable inquiries.
13. On or before December 5, 2017, Ms. Zhu had issues related to the financing for the Property because of an appraisal. As such, Ms. Chen confirmed that Ms. Zhu would do 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.
14. On the same day, Ms. Zhu and TKNR agreed to Addendum No. 1 to cancel the RPA dated August 11, 2017, and entered into the 2nd RPA. As before, the overall purchase price for the Property was \$200,000, but Ms. Zhu changed the contingency for the loan to \$150,000 with earnest money deposit of \$500 and a balance of \$49,500 owed at the COE.
15. Although Ms. Zhu had not initialed the “Failure to Cancel or Resolve Objections” provision in the RPA, she initialed the corresponding provision in the 2nd RPA. This was consistent with Ms. Zhu’s instructions to Ms. Chen. This is the second time that Ms. Zhu waived inspections for the Property despite the language in the 2nd RPA that strongly advised to get an inspection done.
16. Ms. Zhu waived any inspections related to the purchase of the Property in the 2nd RPA. Although Ms. Zhu had actual knowledge of the Seller’s Disclosures from August 11, 2017, and the Parties agreed to extend the COE to January 5, 2018, Ms. Zhu still never did any inspections. Instead, she put down an additional \$60,000 as a non-refundable deposit to the TKNR. Moreover, she also agreed to pay rent in the amount of \$650 per month for one the units, and to also pay the property manager \$800 for the tenant placement fee.
17. Through Addendum 2 to the 2nd RPA, Ms. Zhu later changed the purchaser to Plaintiff.
18. As to the Brokers, Ms. Zhu agreed that she was not relying upon any representations made by Brokers or Broker’s agent.
19. Ms. Zhu agreed to purchase the Property AS-IS, WHERE-IS, without any representations or warranties.
20. Ms. Zhu agreed to satisfy herself, as to the condition of the Property, prior to the close of escrow.
21. 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.

22. Information related to permits is publicly available. The City of Las Vegas has a website that permits anyone in the public to search for permits.
23. NRS § 645.259(2) precludes any liability for misrepresentation or under Chapter 113 if the information is a public record.
24. 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.
25. Plaintiff's expert did not do any destructive testing, so the same alleged conditions that the alleged expert noted, would have been made by an inspector at the time of the purchase.
26. It is the fault of the Plaintiffs for not conducting requisite inspections of the Property prior to its purchase. Since this issue is apparently open and obvious as per the Sani Report, it would have been open and obvious as well during a pre-purchase inspection.
27. The photographs from 2017 showed extensive cracking to the stucco and slab to the Property prior to any work by Defendants and/or the licensed contractor it hired to install the HVAC.
28. The alleged attic issues could have been inspected at the time of the purchase.
29. Any deficient electrical work related to this 220-volt service situation could have been readily ascertained by an inspection at the time of purchase by the Plaintiff'.
30. The alleged HVAC issues were open and obvious.
31. The conditions complained about as to venting and ducting were present at the Property prior to Defendants owning the Property.
32. Plaintiff could have conducted an online search related to the permits or lack of permits for the Property.
33. The basis of the Sani Estimate is nonsensical in the first place and there is nothing seen from this Sani Report that was not present at the time of sale of the Triplex Property. There were cracks in the stucco system and concrete slab system existing in 2017. Roof venting/duct venting had not been changed by Defendants and was existing in 2017 and could have been inspected by Plaintiff.
34. Any deficiencies with this electrical installation were open, obvious and could have been inspected prior to purchase as with all other items with this Triplex Property. Any cracks such as wall or floor cracks subsequent to the purchase would obviously be new but again this occurs even on new homes across the Las Vegas Valley and elsewhere.
35. It was well known at the time of the purchase that the Property was a 63 year old rental property that was subject to potential renter abuse.
36. At all times relevant, no Defendant was aware of any issues related to any of the alleged complaints raised by Plaintiff and/or Plaintiff's alleged expert. The only issues that Defendants were aware of were properly disclosed with an

1 explanation. No Defendant was aware of any issues with any structural,
2 electrical, plumbing, sewer, mechanical, roof, fungus/mold, flooring, and/or
3 foundation issues with the Property before the time of the sale to Ms. Zhu. Nor
4 was any Defendant aware of any issues with any structural, electrical, plumbing,
5 sewer, mechanical, roof, fungus/mold, flooring, and/or foundation issues with the
6 Property at the time of the sale to Ms. Zhu. As to the issue HVAC issue,
7 Defendants were aware that tenants of the Property complained about the cooling
8 of the Property, which is why TKNR paid to have the system upgraded by a
9 licensed contractor.

6 37. At all times relevant, during the Due Diligence Period, Plaintiff had access to
7 inspect: the mechanical systems, the structure of the Property, the windows, for
8 mold / fungus, the electrical systems, the plumbing systems, the gas lines, the
9 attic, the bathroom exhaust vent / washer /dryer exhaust vent, the ceiling
10 insulation, the roof decking, the roof trusses, the roof support structures, the duct
11 system, and the flooring and tiles.

12 38. NRS 645.252(4) clearly specifies that agents do not owe a duty to “(a)
13 [i]ndependently verify the accuracy of a statement made by an inspector certified
14 pursuant to chapter 645D of NRS or another appropriate licensed or certified
15 expert” or “(c) [c]onduct an investigation of the condition of the property which
16 is the subject of the real estate transaction.”

13 **F. Attorneys’ Fees and Costs**

14 Pursuant to Nevada Rule of Civil Procedure 11(c), the court may order a party to show
15 cause why it has not violated the mandates of Rule 11. Rule 11 prevents a party from bringing a
16 lawsuit for an improper purpose, which includes: (1) harassment, causing unnecessary delay, or
17 needless increasing the cost of litigation; or (2) making frivolous claims. NEV. R. CIV. PRO.
18 11(b)(1)-(2). Rule 11 sanctions should be imposed for frivolous actions. *Marshall v. District*
19 *Court*, 108 Nev. 459, 465, 836 P.2d 47, 52.

20 A frivolous claim is one that is “both baseless and made without a reasonable and
21 competent inquiry.” *Bergmann v. Boyce*, 109 Nev. 670, 676, 856 P.2d 560, 564 (1993) (quoting
22 *Townsend v. Holman Consulting Corp.*, 929 F.2d 1358, 1362 (9th Cir.1990); *Golden Eagle*
23 *Distrib. Corp. v. Burroughs Corp.*, 801 F.2d 1531, 1537 (9th Cir.1986)). A determination of
24 whether a claim is frivolous involves a two-pronged analysis: (1) the court must determine
25 whether the pleading is “well grounded in fact and is warranted by existing law or a good faith
26 argument for the extension, modification or reversal of existing law”; and (2) whether the
27 attorney made a reasonable and competent inquiry. *Bergmann*, 109 Nev. at 676, 856 P.2d at 564.
28 A sanction imposed for violation of Rule 11 shall be limited to what is sufficient to deter

1 repetition of such conduct or comparable conduct by others similarly situated. *Id.* at 11(c)(2).

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

9 [i]t is the intent of the Legislature that the court award attorney's
10 fees pursuant to this paragraph and impose sanctions pursuant to
11 Rule 11 of the Nevada Rules of Civil Procedure in all appropriate
12 situations to punish for and deter frivolous or vexatious claims and
13 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.

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

17 As noted in Section II(D)(4), the overwhelming facts and law illustrate that Plaintiff's
18 claim is frivolous. Not only did Plaintiff intentionally omit the waiver of inspections from the
19 pleadings, they also egregiously claimed damages in excess of \$16.25 Million related to the
20 Property. Plaintiff's claim is clearly frivolous: (1) where the pleading was not "well grounded in
21 fact and is warranted by existing law or a good faith argument for the extension, modification or
22 reversal of existing law", and (2) Plaintiff's attorney continued to make frivolous claims.
23 *Bergmann*, 109 Nev. at 676, 856 P.2d at 564. Sanctions are warranted against Plaintiff and its
24 counsel, which should include an award attorneys' fees to Defendants. Plaintiff brought or
25 maintained this action without reasonable ground and only to harass Defendants. NEV. REV.
26 STAT. § 18.010(2)(b). The overwhelming facts and law also show that Plaintiff brought or
27 maintained this claim without reasonable grounds, which justifies an award of attorneys' fees.
28 *Rodriguez v. Primadonna Co., LLC*, 216 P.3d 793, 800 (Nev. 2009).

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1 **III. CONCLUSION**

2 For the aforementioned reasons, this Honorable Court should grant the Motion.

3 DATED this 15 day of December, 2020.

4 MICHAEL B. LEE, P.C.

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CERTIFICATE OF MAILING

I HEREBY CERTIFY that on this 15 day of December, 2020, I placed a copy of the **DEFENDANTS' MOTION FOR SUMMARY JUDGMENT, OR IN THE ALTERNATIVE, PARTIAL SUMMARY JUDGMENT** as required by Eighth Judicial District Court Rule 7.26 by delivering a copy or by mailing by United States mail it to the last known address of the parties listed below, facsimile transmission to the number listed, and/or electronic transmission through the Court's electronic filing system to the e-mail address listed below:

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EIGHTH JUDICIAL DISTRICT COURT
CLARK COUNTY, NEVADA

WLAB INVESTMENT, LLC,

Plaintiff,

vs.

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

Defendants.

Case No. A-18-785917-C
Dept No. VII

DECISION AND ORDER

This case arises from WLAB Investment alleging that the TKNR Defendants had fraudulently induced WLAB into purchasing an apartment building that contained numerous defects. Now before the Court is the TKNR Defendants’ Motion for Attorneys’ Fees. WLAB filed an Opposition to the TKNR Defendants’ Motion on August 24, 2022. The parties came before this Court for oral argument on September 14, 2022. After review of the papers filed and consideration of oral arguments, the TKNR Defendants’ Motion for Attorneys’ Fees is denied.

I. Factual and Procedural Background

WLAB filed their initial complaint on December 11, 2018 against the TKNR Defendants for:
(1) Recovery under NRS Chapter 113; (2) Construct Fraud; (3) Common Law Fraud; and (4) Fraudulent Inducement. After two years of litigation, the TKNR Defendants filed their Motion for

LINDA MARIE BELL
DISTRICT JUDGE
DEPARTMENT VII

1 Summary Judgment, or in the alternative, Partial Summary Judgment. In the TKNR Defendants'
2 original Motion for Attorney's Fees which was incorporated in their December 15, 2020, Motion for
3 Summary Judgment, the TKNR Defendants petitioned the District Court for attorney's fees pursuant
4 to Rule 11 and NRS 18.010(2)(b). WLAB filed a timely Opposition as well as a Countermotion for
5 continuance based on NRCP 56(f), and a Countermotion for Imposition of Monetary Sanctions.

6 On March 11, 2021, a hearing was held regarding the TKNR Defendants' Motion for
7 Summary Judgment. The Court granted Summary Judgment as to all claims and awarded the TKNR
8 Defendants attorney's fees as well as Rule 11 Sanctions. On March 31, 2021, the original order
9 granting summary judgment in favor of the TKNR Defendants was filed along with a hearing to show
10 cause related to the violation of Rule 11 by WLAB. However, the then-presiding Judge unilaterally
11 amended the original order, removing the order to show cause language, instead requesting the TKNR
12 Defendants to file an affidavit in support of the requested attorney's fees and costs. The TKNR
13 Defendants filed the Affidavit in support of Attorneys' Fees and Costs indicating that the requested
14 fees and costs were appropriate under either Rule 11 or for abuse of process.

15 On March 16, 2021, WLAB filed a Motion to Reconsider the Amended Order. The Court
16 granted in part and denied in part WLAB's Motion. On May 25, 2021, Judgment was entered awarding
17 the TKNR Defendants the sum of \$128,166.78 in attorneys' fees and costs from WLAB.

18 WLAB later filed a Notice of Appeal arguing that factual issues existed which precluded the
19 District Court from granting summary judgment. WLAB further argued that this matter did not warrant
20 Rule 11 sanctions. On May 12, 2022, the Nevada Supreme Court affirmed in part and reversed in part
21 the TKNR Defendants' Motion for Summary Judgment. The Nevada Supreme Court found that issues
22 of fact did not exist in the record and affirmed the District Court's granting of summary judgment. In
23 regards to the Rule 11 sanctions, the Nevada Supreme Court found that the TKNR Defendants' had
24 not complied with Rule 11 procedural rules. The Court concluded that the District Court imposed
25 sanctions without first giving the offending party notice and reasonable opportunity to respond. As
26 such, the Court reversed the award of the TKNR Defendants' attorney's fees. On August 16, 2022,
27 the Remittitur was filed with the Court.

28 On August 10, 2022, the TKNR Defendants filed the instant motion arguing that recovery of

1 attorneys' fees and costs is appropriate under NRS § 18.010(2)(a), NRS § 17.117, Nev. R. Civ. P. 68.
2 The TKNR Defendants later filed a Supplement arguing they were entitled to attorney fees under the
3 Residential Purchase Agreement entered into between the parties. WLAB later filed an Opposition to
4 the TKNR Defendants' Motion for Attorney Fees and Costs arguing that the TKNR Defendants'
5 Motion should be denied for failing to follow procedural requirements and as untimely pursuant to
6 NRCP 54(d)(B)(i).

7
8 **II. The TKNR Defendants are not entitled to attorney fees and costs under NRCP 11.**

9 Rule 11 requires any motion for sanctions to be made "separately from any other motion and
10 must describe the specific conduct that allegedly violates Rule 11(b)." Nev. R. Civ. P. 11(c)(1)(a). The
11 motion must describe the specific conduct that allegedly violates section 11(b). Id.

12 The requirement of a separate Rule 11 motion is mandatory. Radcliffe v. Rainbow Constr. Co.,
13 254 F.3d 772, 789 (9th Cir. 2001). A request for Rule 11 sanctions cannot be contained within any
14 other motion. Id. The court in Nuwesra v. Merrill Lynch, Fenner & Smith, Inc., rejected defendants'
15 argument to treat their affidavit of service and reply affidavit as a motion for Rule 11 sanctions because
16 a motion must "be made separately from other motions or requests." Nuwesra v. Merrill Lynch, Fenner
17 & Smith, Inc., 174 F.3d 87, 94 (2d Cir. 1999). In Barber v. Miller, the court acknowledged that
18 defendant gave plaintiff multiple warnings but concluded that such warnings were not motions "and
19 the Rule requires service of a motion." Barber v. Miller, 146 F.3d 707, 710 (9th Cir. 1998)

20 The Rule 11 motion must be served on opposing counsel but not filed with the court. Id. This
21 is the 21 day "safe harbor" provision which allows the targeted attorney and party the opportunity to
22 correct or withdraw the alleged wrongful claim or assertion. The 21-day safe harbor provision is also
23 considered a mandatory step. Radcliffe at 788. Other federal appellate courts concur. Tompkins v.
24 Cyr, 202 F.3d 770, 788 (5th Cir.2000); Elliott v. Tilton, 64 F.3d 213, 216 (5th Cir. 1995); Penn, LLC
25 v. Prosper Bus. Dev. Corp., 773 F.3d 764 (6th Cir. 2014). In Corley v. Rosewood Care Ctr., Inc., 142
26 F.3d 1041, 1058 (7th Cir. 1998), the defendants conceded that rule 11 sanctions were improper where
27 they had failed to comply with the separate motion and safe harbor provisions of Rule 11.

28 Here, the TKNR Defendants' Motion for Rule 11 sanctions is combined with their motion for

1 attorney fees. Defendants' Motion further fails to describe WLAB's specific conduct that allegedly
2 violates section 11(b). WLAB was served on August 10, 2022, with the TKNR Defendants' Motion
3 for Attorney Fees. WLAB had not, prior to filing the motion, been served with TKNR's Motion for
4 Rule 11 sanctions. WLAB was served a second time with TKNR's filed motion for attorney fees on
5 August 22, 2022. This again is a direct violation of the procedural requirements of NRCP 11(c)(2)
6 requiring a 21 day safe harbor before a motion for Rule 11 sanctions. Furthermore, this was
7 specifically the Nevada Supreme Court's finding with the last Rule 11 motion previously filed for the
8 TKNR Defendants. On May 12, 2022, The Nevada Supreme Court found that the TKNR Defendants'
9 motion for Rule 11 sanctions did not meet the rule's "Mandatory procedural requirements" and
10 reversed the district court's order awarding attorney fees:

11 In particular, respondents did not serve notice of their motion at least
12 21 days before they filed the motion with the district court and the motion was
13 not made separately from their summary judgment motion as required by NRCP 11(c)(2).

14 See Supreme Court Order, May 12, 2022, p.7

15 The targeted party of Rule 11 sanctions must be given an opportunity to respond. In this case,
16 no such opportunity was given and the TKNR Defendants' again failed to follow Rule 11 procedures.
17 Therefore, The TKNR Defendants' request for attorney fees under Rule 11 is denied.

18 **III. TKNR's request for attorney fees based on NRS 18.010, NRS 17.117 and NRCP 68 is**
19 **denied as untimely.**

20 NRCP 54(d)(B)(i) states that a motion for attorney fees must be filed within 21 days of notice
21 of entry of order of judgment. Pursuant to NRCP 54(d)(B)(i), The TKNR Defendants' instant motion
22 for attorney fees based on NRS 18.010, NRS 17.117 and NRCP 68 is denied as untimely. Here, the
23 TKNR Defendants in their December 15, 2020, Motion for Summary Judgment, requested attorney
24 fees pursuant to NRS 18.010(2)(b) and Rule 11. The then-presiding Judge chose to award attorney
25 fees pursuant to Rule 11. The TKNR Defendants did not appeal the denial of their request for fees
26 pursuant to NRS 18.010(2)(b). The TKNR Defendants instead decided to request fees pursuant to
27 NRS 18.010(2)(b) over one year post judgment.

28 In the TKNR Defendants' Motion for Summary Judgment, TKNR argued they were entitled

1 to attorney fees based on Rule 11 and NRS 18.010(2)(b). See TKNR Defendants' Motion for Summary
2 Judgment, pp. 30-31. The TKNR Defendants never requested fees pursuant to NRS 17.117 or NRCP
3 68. Id. The TKNR Defendants have argued for the first time, over 400 days after notice of entry of
4 judgment, that they are entitled to fees pursuant to NRS 17.117 and NRCP 68. The 21 day window to
5 file a motion for attorney fees under NRCP 54(d)(B)(i) has passed. Therefore, the TKNR Defendants'
6 request for attorney fees pursuant to NRS 18.010, NRS 17.117 and NRCP 68 is denied as untimely.

7
8 **IV. TKNR's request for attorney fees based on the Residential Purchase Agreement is denied as untimely.**

9 On August 25, 2022, The TKNR Defendants filed a supplement to their original Motion
10 arguing that pursuant to the terms of the Residential Purchase Agreement signed by the parties in this
11 matter, the TKNR Defendants are entitled to their attorney fees and costs. The Supplement includes
12 citation to the provision of the Residential Purchase Agreement between the Parties that provide for
13 recovery of attorneys' fees and costs by the prevailing party.

14 Here, the TKNR Defendants had 21 days to file their motion for attorney fees to specify "the
15 judgment and the statute, rule, or other grounds entitling the movant to the award." Nev. R. Civ. P
16 54(d)(2)(B)(i)(ii). The TKNR Defendants filed this supplement to their original Motion for Attorney
17 Fees approximately a year and a half after notice of the entry of judgment. The TKNR Defendants did
18 not mention The Residential Purchase Agreement entered into between both parties as a ground that
19 entitled them to attorney fees when they filed their original motion on December 15, 2020. The TKNR
20 Defendants' request for attorney fees based on the supplement filed on August 25, 2022 is untimely
21 under NRCP 54(d)(2)(B)(i)(ii). Therefore, the Motion for Attorney Fees and Costs pursuant to the
22 Residential Purchase Agreement is denied.

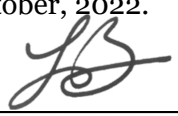
23 **V. Conclusion**

24 In regards to the request for attorney fees under Rule 11, the TKNR Defendants have again
25 failed to follow procedural requirements. Furthermore, Pursuant to NRCP 54(d)(B)(i), The TKNR
26 Defendants' Motion for Attorney Fees and Costs pursuant to NRS 18.010, NRS 17.117, NRCP 68,
27 and the Residential Purchase Agreement is denied as untimely. Based on the foregoing, the TKNR
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Defendants' Motion for Attorneys' Fees and Costs is denied. The October 19, 2022 status check is
VACATED.

Dated this 18th day of October, 2022
DATED this _____ day of October, 2022.



LINDA MARIE BELL
DISTRICT COURT JUDGE
CD# 61679706BB8
Linda Marie Bell
District Court Judge

LINDA MARIE BELL
DISTRICT JUDGE
DEPARTMENT VII

1 **CSERV**

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3 DISTRICT COURT
CLARK COUNTY, NEVADA

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

CASE NO: A-18-785917-C

7 vs.

DEPT. NO. Department 7

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9 TKNR Inc, Defendant(s)

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11 **AUTOMATED CERTIFICATE OF SERVICE**

12 This automated certificate of service was generated by the Eighth Judicial District
13 Court. The foregoing Decision and 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: 10/18/2022

15 Brinley Richeson bricheson@daynance.com

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19 Michael Lee mike@mblnv.com

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21 Frank Miao frankmiao@yahoo.com

22 Benjamin Childs ben@benchilds.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
known addresses on 10/19/2022

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