

IN THE SUPREME COURT OF THE STATE OF NEVADA

SEAN EVENDEN, an individual; *

ROGER AYALA, an individual, *

Appellants, *

V. *

NANCY HAACK, an individual; and *

NRS REALTY GROUP, LLC, a *

Nevada Limited Liability Company, *

d/b/a LIFE REALTY. *

Respondents, *

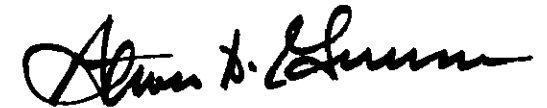
On Appeal from the Eighth Judicial District Court
Clark County, Nevada

APPELLANTS' APPENDIX

Supreme Court Electronically Filed
No. 20-2020 10:32 a.m.
Elizabeth A. Brown
Clerk of Supreme Court

INDEX

Affidavit of Service on Roger Ayala.....	Volume I, Page 19
Affidavit of Service on Sean Evenden	Volume I, Page 20
Answer to Defendants' Counterclaim	Volume I, Page 50
Court Minutes of Pretrial Hearing	Volume I, Page 102
Decision & Order.....	Volume IV, Page 875
Defendants Answer to First Amended Complaint and Counterclaim.....	Volume I, Page 42
Defendants Answer to Second Amended Complaint and First Amended Counterclaim.....	Volume I, Page 80
Defendants Second Amended Counterclaim.....	Volume I, Page 93
First Amended Complaint.....	Volume I, Page 21
Notice of Appeal.....	Volume IV, Page 932
Notice of Entry of Order.....	Volume IV, Page 902
Order Setting Civil Bench Trial.....	Volume I, Page 59
Order Resetting Bench Trial.....	Volume I, Page 99
Plaintiff/Counterdefendant Nancy Haack's Answer to Defendants' First Amended Counterclaim.....	Volume I, Page 88
Plaintiffs' Second Amended Complaint	Volume I, Page 62
Scheduling Order	Volume I, Page 56
Transcript of Trial on February 18, 2020	Volume I, Page 104
Transcript of Trial on February 19, 2020	Volume II, Page 286
Transcript of Trial on February 20, 2020	Volume II, Page 419
Transcript of Trial on February 21, 2020	Volume III, Page 696
Verified Derivative Complaint	Volume I, Page 1



CLERK OF THE COURT

COMP

P. STERLING KERR, ESQ.
Nevada Bar No. 003978
TAYLOR SIMPSON, ESQ.
Nevada Bar No. 13956
LAW OFFICES OF P. STERLING KERR
2450 St. Rose Parkway, Suite 120
Henderson, Nevada 89074
Telephone No. (702) 451-2055
Facsimile No. (702) 451-2077
Email: sterling@sterlingkerrlaw.com
Email: taylor@sterlingkerrlaw.com
Attorneys for Plaintiffs

DISTRICT COURT

CLARK COUNTY, NEVADA

NANCY HAACK, an individual; and NRS
REALTY GROUP, LLC, a Nevada Limited
Liability Company, d/b/a LIFE REALTY,
Plaintiffs,

vs.

SEAN EVENDEN, an individual; ROGER
AYALA; an individual; DOE Individuals I
through X; and ROE CORPORATIONS and
ORGANIZATIONS I through X, inclusive.

Defendants,

Case No.:

A-17-753435-C

Dept. No.:

XXVIII

Exempt from Arbitration

(Member Derivative Action-Equitable Relief,
Amount in Controversy Exceeds \$50,000)

VERIFIED DERIVATIVE COMPLAINT

COMES NOW the Plaintiffs, derivatively on behalf of NRS REALTY GROUP,
LLC d/b/a LIFE REALTY, by and through their attorney of record, P. STERLING KERR,
ESQ., of THE LAW OFFICES OF P. STERLING KERR, and for the Complaint against
Defendants, allege the following based upon the investigation of Plaintiffs and counsel:

///

///

LAW OFFICES OF P. STERLING KERR
ATTORNEYS AT LAW
2450 St. Rose Parkway, Suite 120, Henderson, Nevada 89074
Telephone: (702) 451-2055 Facsimile: (702) 451-2077

I. INTRODUCTION

This is a member derivative action on behalf of Plaintiff NRS REALTY GROUP, LLC, a Nevada Limited Liability Company d/b/a LIFE REALTY (hereinafter "Life Realty") against: SEAN EVENDEN individually and as president of Life Realty, and ROGER AYALA, individually and as vice president of Life Realty. Defendants have breached their contractual obligations under Life Realty's operating agreement which breach has resulted in substantial harm to Plaintiffs.

II. PARTIES

1. Plaintiff NRS REALTY GROUP, LLC, is a Nevada Limited Liability Company d/b/a LIFE REALTY (hereinafter "Life Realty") which is fully licensed with the Nevada Real Estate Division as a real estate brokerage.
2. Plaintiff NANCY HAACK (hereinafter "Haack"), at all times relevant to this action, was a resident of Clark County Nevada. During the relevant time period and at the time of the injurious acts complained of herein, she held and continues to hold membership interest of Life Realty. Haack is also licensed as a broker salesperson with the Nevada Real Estate Division.
3. Defendant SEAN EVENDEN, (hereinafter "Evenden"), at all times relevant to this action, is and was a resident of Nevada. Evenden is and has been the President and a managing member of Life Realty. Evenden is licensed as a broker with the Nevada Real Estate Division and is the designated broker for Life Realty.
4. Defendant ROGER AYALA, (hereinafter "Ayala"), at all times relevant to this action, is and was a resident of Nevada. Ayala is and has been the Vice President and

1 a managing member of Life Realty. Ayala is licensed as a broker salesperson with
2 the Nevada Real Estate Division.

- 3 5. Plaintiffs are ignorant of the true names of Defendants DOE Individuals I-X and
4 ROE CORPORATIONS and ORGANIZATIONS I-X, inclusive, and therefore,
5 Plaintiffs sue these Defendants by such fictitious names. Following further
6 investigations and discovery, Plaintiffs will seek leave of this Court to amend this
7 Complaint to allege their true names and capacities when ascertained. These
8 fictitiously named Defendants may be Rebel Mining's shareholders, officers,
9 directors, other members of management, consultants, and other entities who were
10 involved in the wrongdoing detailed herein. These Defendants aided and abetted,
11 participated with and/or conspired with the named Defendants in the wrongful acts
12 and course of conduct or otherwise caused damages and injuries claimed herein and
13 are responsible in some manner for the acts, occurrences and events alleged in this
14 Complaint.
15
16
17

18 III. FACTUAL ALLEGATIONS

- 19 6. On or about May 5, 2010, Haack and Defendants organized Life Realty by filing the
20 requisite documents with the Nevada Secretary of State.
21 7. On May 5, 2010, the Haack and Defendants executed an operating agreement for
22 Life Realty (hereinafter the "Operating Agreement").
23 8. The Operating Agreement's pertinent provisions are as follows:
24
25 a. **3.5 Withdrawal.** No Member has the right to withdraw from the LLC as a
26 Member except as provided in this Agreement. However, a Member has the
27 power to withdraw but such withdrawal shall be deemed a breach of this
28 Agreement. If a Member does exercise such power of withdrawal in breach
of this Agreement, the Member shall be liable to the LLC and the other
Members for all monetary damages as a result of the breach, including but

1 not limited to direct, indirect, incidental, and consequential damages. The
2 LLC and the other Members shall not have the right to prevent the
3 withdrawing Member from withdrawing through the use of an injunction or
4 others.

5 b. **6.3 Special Meetings.** A special meeting of the Members may be called at
6 any time by one or more Members holding Interests which, in the aggregate,
7 constitute not less than sixty-six percent (66%) of the LLC Interests. A
8 request for a special meeting of the Members shall be in writing, specifying
9 the time and place of the meeting and the general nature of the business
10 proposed to be transacted. The notice shall be delivered in accordance with
11 paragraphs 6.4 and 6.5 below.

12 c. **6.4 Notice of Members' Meetings.** All notices of meetings of Members shall
13 be sent or otherwise given in accordance with paragraph 6.5 below and not
14 less than ten (10) no more than sixty (60) days before the date of the meeting
15 being noticed. The notice shall specify the place, date, and hour of the
16 meeting and (i) in the case of a special meeting, the general nature of the
17 business to be transacted, or (ii) in the case of the annual meeting, those
18 matters which are intended to be presented for action by the Members. If a
19 proposal contains (i) a contract or transaction in which a Member has a
20 direct or indirect Financial Interest, (ii) an amendment of the Articles of
21 Organization, (iii) a reorganization of the LLC, or (iv) a voluntary dissolution
22 of the LLC, the notice shall state the general nature of such proposal.

23 d. **6.5 Manner of Giving Notice; Affidavit of Notice.** Notice of any meeting of
24 Members shall be given either personally, by first class mail, facsimile,
25 telegraphic, or other written communication, charges prepaid, addressed to
26 each Member at the address of each Member appearing on the books of the
27 LLC or more recently given by the Member to the LLC for the purpose of
28 notice. Notice shall be deemed to have been given at the time when delivered
personally, deposited in the mail, or sent by facsimile, telegram, or other
means of written communication. If any notice addressed to a Member at the
address of such Member appearing on the books of the LLC is returned to the
LLC by the United States Postal Service marked to indicate that the United
States Postal Service is unable to deliver the notice to the Member at such
address, all future notices or reports shall be deemed to have been duly given
without further mailing if the same shall be available to the Member upon
written demand of the Member at the principal office of the LLC for a
period of one (1) year from the date of the giving of such notice. An affidavit
of the mailing or other means of giving any notice of any Members' meeting
shall be executed by the Member giving such notice, and shall be filed and
maintained in the books and records of the LLC.

e. **8.3 Inspection and Audit Rights.** Each Member has the right, upon
reasonable request, for purposes reasonably related to the interest of that

Member, to inspect and copy during normal business hours any of the LLC books and records. Such right may be exercised by the Member or his or her agent or attorney. Any Member may require a review and/or audit of the books, records, and reports of the LLC.

f. **12.1 Dissolution.** The LLC shall be dissolved upon the occurrence of any of the following events:

(a) The expiration of the period fixed in the Articles of Organization;

(b) The written consent of a majority (or all) of the LLC Interests;

(c) The death, withdrawal, resignation, expulsion, bankruptcy or dissolution of a Member, or the occurrence of any toher event which terminates the Member's continued membership in the LLC, unless the business of the LLC is continued by the consent of a majority (or all) of the remaining LLC Interests within ninety (90) days of the happening of that even.

g. **12.2 Conduct of Business.** Upon the occurrence of any of the events specified above, a majority of the members (excluding those members who caused the dissolution event) shall appoint one or more of the Members to act as liquidator and wind up all LLC business and affairs. However, the LLC shall continue to exist until Articles of Dissolution have been filed or until a decree dissolving the LLC has been entered by a court of competent jurisdiction.

h. **14.7 Attorney's Fees.** In the event of any litigation, arbitration or other dispute arising as a result of or by reason of this Agreement, the prevailing party in any such litigation, arbitration or other dispute shall be entitled to, in addition to any other damages assessed, its reasonable attorneys' fees, and all other costs and expenses incurred in connection with settling or resolving such dispute.

9. The three parties agreed that Haack was to handle the books and accounting while Evenden was to be the designated broker for the Nevada Real Estate Division's purposes.

10. The parties agreed that Life Realty was to be a small real estate brokerage where the general environment of the business provided a sense of family.

11. Haack and her husband, who is not a party to this lawsuit, personally guaranteed the lease of the building wherein Life Realty maintained its principal place of business.

1 12. Beginning in October of 2015, Defendant Evenden intentionally withheld property
2 management fees due and owing to Life Realty and retained the same for himself.

3 13. Haack approached Defendant Evenden regarding the property management fees
4 owed to Life Realty to which Defendant Evenden only responded with angry
5 outbursts.

6 14. After growing their business for several years, the parties arrived at an impasse with
7 regard to Life Realty's direction forward.

8 15. Specifically, sometime in September of 2016, Defendants wanted to expand Life
9 Realty's office space at its principal place of business despite the fact that the
10 additional office space would result in a significant increase in Life Realty's costs of
11 doing business.

12 16. The parties engaged in intermittent negotiations from September 2016 until March
13 2017.

14 17. During this period, the negotiations became increasingly hostile on Defendants' part.

15 18. Haack simply wanted the expansion to be first reviewed by an attorney, to not have
16 her husband be required to personally guaranty the additional office space, and for
17 the Members to discuss their initial agreement to remain small with a family culture.

18 19. Upon information and belief, while the negotiations became increasingly hostile
19 regarding the expansion and property management issues, Defendants were holding
20 Company meetings without Haack in violation of the Operating Agreement.

21 20. Upon information and belief, at these meetings Defendants began discussing "hostile
22 takeover" options or other means whereby they could exclude Haack from Life
23 Realty.

1 21. On or about March 10, 2017, Defendants sent Haack a letter (hereinafter the
2 "Letter") wherein Defendants stated that they would be dissolving the company.

3 22. The Letter further stated that Defendants were withdrawing Haack's Membership
4 Interest in the Company.

5 23. Enclosed with the Letter was a Cashier's check in the amount of \$32,368.94 which
6 was purported to be Haack's distribution of the company's dissolution.

7 24. The cashier's check represents less than one-third (1/3) of the balance of Life
8 Realty's cash accounts and does not take into consideration any of Life Realty's
9 other assets.

10 25. Finally, the Letter also states that Defendants planned to send Haack's real estate
11 license to the Nevada Real Estate Division, effectively cutting off her ability to buy
12 and sale real property in Nevada.

13 26. Upon information and belief, prior to sending the Letter, Defendants have begun
14 absconding with Life Realty's assets, goodwill, intellectual property, and real estate
15 agents.

16 27. Upon information and belief, Defendants have either organized a separate entity, or
17 are planning to organize a separate entity which Defendants intend to use as a new
18 real estate brokerage.

19 28. Upon information and belief, Defendants have already begun the process of
20 fraudulently transferring Life Realty's assets to the new entity including intellectual
21 property.

1 29. Upon information and belief, Defendants have forced Life Realty's realtors to either
2 sign independent agent contracts with the new entity or be fired, which is a violation
3 of NRS 645.

4 30. Haack responded with a cease and desist letter dated March 10, 2017 wherein Haack
5 set forth Defendants' breaches of the Operating Agreement, demanded Defendants
6 immediately cease and desist any and all dissolution actions, and demanded
7 Defendants cease and desist from using Life Realty's name, branding, property, and
8 other assets in operating a different and/or competing business.
9

10 31. To date, Defendants have not ceased or desisted with their duplicitous behavior and
11 have continued plundering Life Realty's assets.
12

13 32. Most recently, Plaintiffs have removed Haack's name from Life Realty's
14 member/manager information with the Nevada Secretary of State.
15

16 **IV. DERIVATIVE AND DEMAND ALLEGATIONS**

17 33. Plaintiffs bring this derivative action for the benefit of Life Realty to redress injuries
18 suffered and to be suffered by Life Realty as a result of the breaches of contract and
19 duplicitous conduct of Defendants.

20 34. Haack will adequately and fairly represent the interest of Life Realty and its
21 members in enforcing and prosecuting its rights.

22 35. At all times relevant to this action, Haack is a member and holds membership
23 interest of Life Realty.
24

25 36. As a result of the facts set forth herein and pursuant to NRCP 23.1, Haack dispatched
26 a letter dated March 10, 2017 wherein Haack set forth Defendants' breaches of the
27 Operating Agreement, demanded Defendants immediately cease and desist any and
28

1 all dissolution actions, and demanded Defendants cease and desist from using Life
2 Realty's name, branding, property, and other assets in operating a different and/or
3 competing business. To date, Defendants have neither ceased or desisted with their
4 duplicitous behavior and have continued plundering Life Realty's assets. In the
5 alternative, a formal demand before Defendants, who own a combined sixty-six
6 percent (66%) of Life Realty's Membership Interest, to raise the issue of a derivative
7 suit would be futile. Such demand would be futile and useless because Defendants
8 are incapable of making an independent and disinterested decision to institute and
9 vigorously prosecute this action for the following reasons:
10

- 11 a. Due to Defendants' positions and by virtue of the fact that Defendants hold a
12 majority of Life Realty's Membership Interest, Defendants are in a position
13 to and do control the board and the company and its operations.
14
- 15 b. Defendants will not permit a company meeting to occur unless they institute
16 it for matters that they want discussed.
17
- 18 c. Based on the conduct of Defendants as alleged herein, it is obvious that
19 Defendants have seized control of Life Realty and that they would find ways
20 to obstruct a company meeting regarding the filing of a derivative complaint.
21

22 **V. ALTER EGO ALLEGATIONS**

23 37. Haack, upon information and belief, alleges that at all relevant times herein there
24 existed a unity of interest and ownership between Defendants and Life Realty, such
25 that any corporate individuality and separateness between Defendants on the one
26 hand, and Life Realty on the other hand, have ceased and that Defendants are the
27 alter ego of Life Realty in that the business of Life Realty is so completely
28

1 dominated, controlled, managed and operated by Defendants and that Life Realty
2 functions as a mere instrumentality and conduit through which Defendants conduct
3 their business in order to avoid liability and exposure, and in order to perpetrate
4 fraud and circumvent the interests of justice. Adherence to the fiction of the
5 existence of Life Realty as an entity separate and distinct from Defendants would
6 permit an abuse of the corporate privilege and would sanction fraud and promote
7 injustice in that Plaintiff could be denied a full and fair recovery.

8
9 **FIRST CLAIM FOR RELIEF**

10 **Breach of Contract**

11 38. Plaintiffs incorporate by reference the allegations set forth above as though fully
12 restated herein.

13
14 39. On or about May 5, 2010, Haack and the Defendants entered into the Operating
15 Agreement, which is a valid and enforceable contract.

16 40. Defendants breached their duties and obligations under the Operating Agreement
17 with the following non-exclusive acts and/or omissions:

- 18
19 a. Defendants began holding meetings without Haack in violation of the
20 Operating Agreement;
- 21 b. On or about March 10, 2017, Defendants sent Haack a letter (hereinafter the
22 "Letter") wherein Defendants stated that they would be dissolving the
23 company;
- 24
25 c. The Letter stated that Defendants were withdrawing Haack's Membership
26 Interest in the Company;
- 27
28

- 1 d. Defendants have absconded with Life Realty's assets, goodwill, intellectual
2 property, and real estate agents;
- 3 e. Defendants have either organized a separate entity, or are planning to
4 organize a separate entity which Defendants intend to use as a new real estate
5 brokerage and as a receptacle for Life Realty's assets; and
- 6 f. Defendants have forced Life Realty's realtors to either sign new independent
7 agent contracts with the new entity or be fired.

8
9 41. Defendants' aforementioned acts and/or omissions have directly and proximately
10 caused Plaintiffs damage in excess of the statutory minimum.

11 42. Pursuant to NRCP 9(g), Plaintiffs are entitled to attorney's fees as special damages
12 because attorney's fees are a natural and proximate consequence of Defendants'
13 injurious conduct.

14
15 43. It has been necessary for Plaintiffs to retain legal counsel to commence this action
16 and Plaintiffs are entitled to reasonable attorneys' fees and costs of suit to pursue this
17 action.

18
19 **SECOND CLAIM FOR RELIEF**

20 **Breach of the Implied Covenant of Good Faith and Fair Dealing**

21 44. Plaintiffs incorporate by reference the allegations set forth above as though fully
22 restated herein.

23 45. Inherent within every contract entered into in Nevada is a duty of good faith in its
24 performance and enforcement.

25
26 46. On or about May 5, 2010, Haack and the Defendants entered into the Operating
27 Agreement, which is a valid and enforceable contract.

1 47. Defendants breached their duty of good faith and fair dealing under the Operating
2 Agreement with the following non-exclusive acts and/or omissions:

- 3 a. Defendants began holding meetings without Haack in violation of the
4 Operating Agreement;
- 5 b. On or about March 10, 2017, Defendants sent Haack a letter (hereinafter the
6 "Letter") wherein Defendants stated that they would be dissolving the
7 company;
- 8 c. The Letter stated that Defendants were withdrawing Haack's Membership
9 Interest in the Company;
- 10 d. Defendants have absconded with Life Realty's assets, goodwill, intellectual
11 property, and real estate agents;
- 12 e. Defendants have either organized a separate entity, or are planning to
13 organize a separate entity which Defendants intend to use as a new real estate
14 brokerage and as a receptacle for Life Realty's assets; and
- 15 f. Defendants have forced Life Realty's realtors to either sign new independent
16 contracts with the new entity or be fired.

17
18 48. Plaintiffs' justified expectation with regard to Life Realty and the Operating
19 agreement were thus denied.

20 49. Defendants' aforementioned acts and/or omissions have directly and proximately
21 caused Plaintiffs damage in excess of the statutory minimum.

22 50. It has been necessary for Plaintiffs to retain legal counsel to commence this action
23 and Plaintiffs are entitled to reasonable attorneys' fees and costs of suit to pursue this
24 action.

THIRD CLAIM FOR RELIEF

Conversion

51. Plaintiffs incorporate by reference the allegations set forth above as though fully restated herein.

52. Defendants, by means of their aforementioned duplicitous conduct, exerted wrongful dominion over the assets of Life Realty.

53. Defendants' wrongful dominion over the assets of Life Realty is in denial of, or inconsistent with their contractual rights and obligations under the Operating Agreement.

54. Defendants' wrongful dominion was in derogation, exclusion, or in defiance of Haack's title or rights under the Operating Agreement.

55. Defendants' aforementioned acts and/or omissions have directly and proximately caused Plaintiffs damage in excess of the statutory minimum.

56. It has been necessary for Plaintiffs to retain legal counsel to commence this action and Plaintiffs are entitled to reasonable attorneys' fees and costs of suit to pursue this action.

FOURTH CLAIM FOR RELIEF

Indemnity

57. Plaintiffs incorporate by reference the allegations set forth above as though fully restated herein.

58. As a result of Defendants' aforementioned duplicitous acts and/or omissions, Plaintiffs have incurred and will continue to incur damages the exact amount of which is unknown at this time. When the same has been ascertained, Plaintiffs will

1 seek leave of the Court to amend this Complaint to set forth the true nature and
2 amount of said damages and expenses.

3 59. Therefore, Plaintiffs are entitled to be indemnified by Defendants for Plaintiffs'
4 damages as set forth above.

5 60. Plaintiffs allege that Plaintiffs are in no way responsible for the events giving rise to
6 the present Complaint.

7 61. It has been necessary for Plaintiffs to retain legal counsel to commence this action
8 and Plaintiffs are entitled to reasonable attorneys' fees and costs of suit to pursue this
9 action.
10

11 **FIFTH CLAIM FOR RELIEF**

12 **Accounting**

13 62. Plaintiffs incorporate by reference the allegations set forth above as though fully
14 restated herein.

15 63. On or about March 10, 2017, Defendants enclosed with the Letter a check which
16 Defendants represented was Haack's share of Defendants' fraudulent dissolution.

17 64. Pursuant to Section 8.3 of the Operating Agreement, Haack has a right to demand an
18 accounting of Defendants for the assets, intellectual property, good will, etc. that
19 they have absconded from Life Realty.

20 65. It has been necessary for Plaintiffs to retain legal counsel to commence this action
21 and Plaintiffs are entitled to reasonable attorneys' fees and costs of suit to pursue this
22 action.
23

24 ///

25 ///

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

SIXTH CLAIM FOR RELIEF

Interference with Prospective Economic Advantage

66. Plaintiffs incorporate by reference the allegations set forth above as though fully restated herein.

67. Plaintiffs and Defendants entered into an economic relationship when they undertook to do business together in Life Realty.

68. Plaintiffs, by means of their work and contributions to Life Realty's business, fully intended to derive a future economic benefit.

69. Defendants knew of the existence of the economic relationship.

70. Defendants engaged in the aforementioned duplicitous acts and/or omissions which were designed to disrupt the economic relationship.

71. Defendants aforementioned duplicitous acts and/or omissions both directly and proximately caused a disruption of the economic relationship.

72. Defendants aforementioned duplicitous acts and/or omissions both directly and proximately caused Plaintiffs damages in an amount exceeding the statutory minimum.

73. It has been necessary for Plaintiffs to retain legal counsel to commence this action and Plaintiffs are entitled to reasonable attorneys' fees and costs of suit to pursue this action.

SEVENTH CLAIM FOR RELIEF

Usurpation of Corporate Opportunities

74. Plaintiffs incorporate by reference the allegations set forth above as though fully restated herein.

1 75. Haack and Defendants are all equal Members of Life Realty.

2 76. Defendants, by means of the aforementioned duplicitous acts and/or omissions,
3 appropriated for their own use, opportunities that should belong to Life Realty.

4 77. That Defendants' aforementioned duplicitous acts and/or omissions have resulted in
5 detriment to Life Realty and indirectly to Haack.

6 78. Defendants have an interest or expectancy in the misappropriated corporate
7 opportunities.

8 79. It has been necessary for Plaintiffs to retain legal counsel to commence this action
9 and Plaintiffs are entitled to reasonable attorneys' fees and costs of suit to pursue this
10 action.
11

12
13 **PRAYER FOR RELIEF**


14 WHEREFORE, Haack, on behalf of Life Realty, prays for judgment as follows:

- 15 1. Awarding Damages against all Defendants, jointly and severally, and in favor of
16 Plaintiffs for the amount of damages sustained by them as a result of the Defendants'
17 duplicitous acts and/or omissions;
18
- 19 2. Awarding restitution, disgorgement of all illicit proceeds generated as a result of the
20 wrongful conduct alleged herein, and punitive damages;
- 21 3. Awarding appropriate equitable relief as set forth herein;
- 22 4. That Haack be appointed as the liquidator pursuant to the Operating Agreement, to
23 wind down the affairs of Life Realty;
24
- 25 5. That a receiver be appointed;
- 26 6. Awarding pre-judgment interest, as well as reasonable attorneys' fees and other
27 costs; and
28

1 7. Granting such other and further relief as the Court deems just and proper.

2 DATED this 3rd day of April, 2017.

3 LAW OFFICES OF P. STERLING KERR

4 
5 P. STERLING KERR, ESQ.

6 Nevada Bar No. 003978

7 TAYLOR SIMPSON, ESQ.

8 Nevada Bar No. 13956

9 LAW OFFICES OF P. STERLING KERR

10 2450 St. Rose Parkway, Suite 120

11 Henderson, Nevada 89074

12 Telephone No. (702) 451-2055

13 Facsimile No. (702) 451-2077

14 Email: sterling@sterlingkerrlaw.com

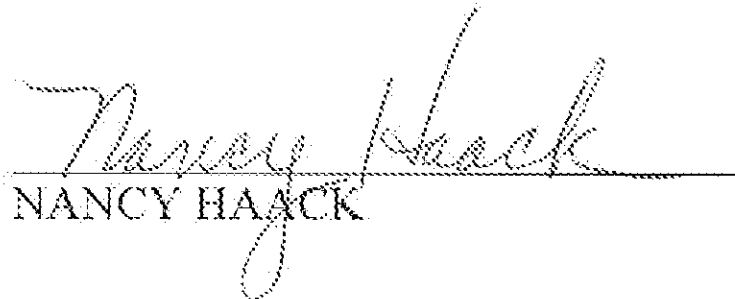
15 Email: taylor@sterlingkerrlaw.com

16 Attorneys for Plaintiffs

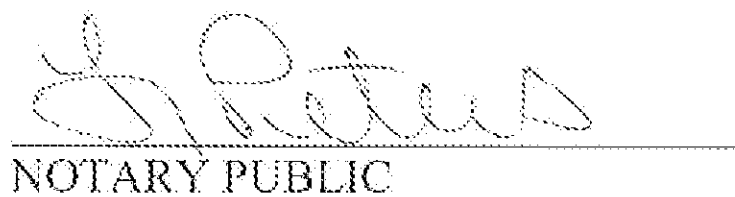
1 STATE OF NEVADA)
2) ss:
3 COUNTY OF CLARK)

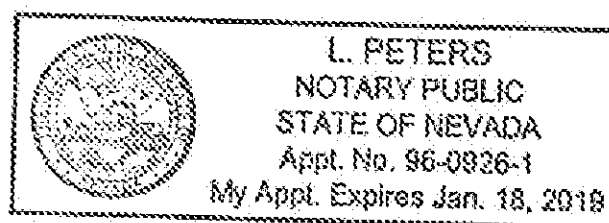
4 VERIFICATION

5 Under penalties of perjury, the undersigned declares that she is a Plaintiff named in
6 the foregoing VERIFIED DERIVATIVE COMPLAINT, and knows the contents thereof,
7 that the pleading is true of her own knowledge, except as to those matters stated on
8 information and belief, and that as to such matters he believes it to be true, and that during
9 all relevant time periods referenced in the VERIFIED DERIVATIVE COMPLAINT, she
10 held and continues to hold a Membership Interest in Life Realty.

11
12 
13 NANCY HAACK
14

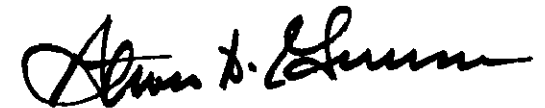
15
16 SIGNED AND SWORN before me on this 3rd day of April, 2017, by
17 Nancy Haack
18

19 
20 NOTARY PUBLIC
21



AOS

**DISTRICT COURT , CLARK COUNTY
CLARK COUNTY, NEVADA**



CLERK OF THE COURT

NANCY HAACK

Plaintiff

VS

SEAN EVENDEN AND ROGER
AYALA

Defendant

CASE NO: A-17-753435-C

HEARING DATE/TIME:

DEPT NO: XXVIII

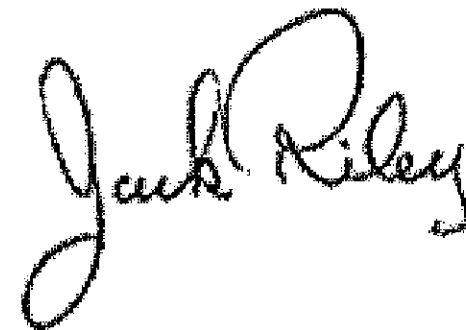
AFFIDAVIT OF SERVICE

JACK RILEY R-045599 being duly sworn says: That at all times herein affiant was and is a citizen of the United States, over 18 years of age, not a party to or interested in the proceedings in which this affidavit is made. That affiant received 1 copy(ies) of the SUMMONS, COMPLAINT, on the 6th day of April, 2017 and served the same on the 7th day of April, 2017, at 14:15 by:

delivering and leaving a copy with the servee ROGER AYALA at (address) NRS REALTY GROUP, 2225 VILLAGE WALK DRIVE #200, HENDERSON NV 89052

Pursuant to NRS 53.045

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

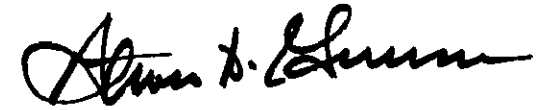


EXECUTED this 07 day of Apr, 2017.

JACK RILEY R-045599

AOS

**DISTRICT COURT , CLARK COUNTY
CLARK COUNTY, NEVADA**



CLERK OF THE COURT

NANCY HAACK

Plaintiff

VS

**SEAN EVENDEN AND ROGER
AYALA**

Defendant

CASE NO: A-17-753435-C

HEARING DATE/TIME:

DEPT NO: XXVIII

AFFIDAVIT OF SERVICE

JACK RILEY R-045599 being duly sworn says: That at all times herein affiant was and is a citizen of the United States, over 18 years of age, not a party to or interested in the proceedings in which this affidavit is made. That affiant received 1 copy(ies) of the SUMMONS, COMPLAINT, on the 6th day of April, 2017 and served the same on the 11th day of April, 2017, at 09:08 by:

delivering and leaving a copy with the servee SEAN EVENDEN at (address) NRS REALTY GROUP, 2225 VILLAGE WALK DRIVE #200, HENDERSON NV 89052

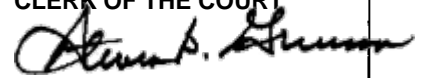
Pursuant to NRS 53.045

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



EXECUTED this 11 day of Apr, 2017.

JACK RILEY R-045599



COMP

P. STERLING KERR, ESQ.
Nevada Bar No. 003978
TAYLOR SIMPSON, ESQ.
Nevada Bar No. 13956
LAW OFFICES OF P. STERLING KERR
2450 St. Rose Parkway, Suite 120
Henderson, Nevada 89074
Telephone No. (702) 451-2055
Facsimile No. (702) 451-2077
Email: sterling@sterlingkerrlaw.com
Email: taylor@sterlingkerrlaw.com
Attorneys for Plaintiffs

DISTRICT COURT

CLARK COUNTY, NEVADA

NANCY HAACK, an individual; and NRS
REALTY GROUP, LLC, a Nevada Limited
Liability Company, d/b/a LIFE REALTY,

Plaintiffs,

vs.

SEAN EVENDEN, an individual; ROGER
AYALA; an individual; DOE Individuals I
through X; and ROE CORPORATIONS and
ORGANIZATIONS I through X, inclusive.

Defendants,

Case No.: A-17-753435-C

Dept. No.: XXIII

Exempt from Arbitration
(Member Derivative Action-Equitable
Relief, Amount in Controversy Exceeds
\$50,000)

FIRST AMENDED COMPLAINT

COMES NOW the Plaintiffs, derivatively on behalf of NRS REALTY GROUP,
LLC d/b/a LIFE REALTY, by and through their attorney of record, P. STERLING KERR,
ESQ., of THE LAW OFFICES OF P. STERLING KERR, and for the Complaint against
Defendants, allege the following based upon the investigation of Plaintiffs and counsel:

///

///

I. INTRODUCTION

This is a member derivative action on behalf of Plaintiff NRS REALTY GROUP, LLC, a Nevada Limited Liability Company d/b/a LIFE REALTY (hereinafter "Life Realty") against: SEAN EVENDEN individually and as president of Life Realty, and ROGER AYALA, individually and as vice president of Life Realty. Defendants have breached their contractual obligations under Life Realty's operating agreement which breach has resulted in substantial harm to Plaintiffs.

II. PARTIES

1. Plaintiff NRS REALTY GROUP, LLC, is a Nevada Limited Liability Company d/b/a LIFE REALTY (hereinafter "Life Realty") which is fully licensed with the Nevada Real Estate Division as a real estate brokerage.
2. Plaintiff NANCY HAACK (hereinafter "Haack"), at all times relevant to this action, was a resident of Clark County Nevada. During the relevant time period and at the time of the injurious acts complained of herein, she held and continues to hold membership interest of Life Realty. Haack is also licensed as a broker salesperson with the Nevada Real Estate Division.
3. Defendant SEAN EVENDEN, (hereinafter "Evenden"), at all times relevant to this action, is and was a resident of Nevada. Evenden is and has been the President and a managing member of Life Realty. Evenden is licensed as a broker with the Nevada Real Estate Division and is the designated broker for Life Realty.
4. Defendant ROGER AYALA, (hereinafter "Ayala"), at all times relevant to this action, is and was a resident of Nevada. Ayala is and has been the Vice President and

1 a managing member of Life Realty. Ayala is licensed as a broker salesperson with
2 the Nevada Real Estate Division.

- 3 5. Plaintiffs are ignorant of the true names of Defendants DOE Individuals I-X and
4 ROE CORPORATIONS and ORGANIZATIONS I-X, inclusive, and therefore,
5 Plaintiffs sue these Defendants by such fictitious names. Following further
6 investigations and discovery, Plaintiffs will seek leave of this Court to amend this
7 Complaint to allege their true names and capacities when ascertained. These
8 fictitiously named Defendants may be Rebel Mining's shareholders, officers,
9 directors, other members of management, consultants, and other entities who were
10 involved in the wrongdoing detailed herein. These Defendants aided and abetted,
11 participated with and/or conspired with the named Defendants in the wrongful acts
12 and course of conduct or otherwise caused damages and injuries claimed herein and
13 are responsible in some manner for the acts, occurrences and events alleged in this
14 Complaint.
15
16

17 III. FACTUAL ALLEGATIONS

- 18
19 6. On or about May 5, 2010, Haack and Defendants organized Life Realty by filing the
20 requisite documents with the Nevada Secretary of State.
21
22 7. On May 5, 2010, the Haack and Defendants executed an operating agreement for
23 Life Realty (hereinafter the "Operating Agreement").
24
25 8. The Operating Agreement's pertinent provisions are as follows:
26
27 a. **3.5 Withdrawal.** No Member has the right to withdraw from the LLC as a
28 Member except as provided in this Agreement. However, a Member has the
power to withdraw but such withdrawal shall be deemed a breach of this
Agreement. If a Member does exercise such power of withdrawal in breach
of this Agreement, the Member shall be liable to the LLC and the other
Members for all monetary damages as a result of the breach, including but

1 not limited to direct, indirect, incidental, and consequential damages. The
2 LLC and the other Members shall not have the right to prevent the
3 withdrawing Member from withdrawing through the use of an injunction or
4 others.

5 b. **6.3 Special Meetings.** A special meeting of the Members may be called at
6 any time by one or more Members holding Interests which, in the aggregate,
7 constitute not less than sixty-six percent (66%) of the LLC Interests. A
8 request for a special meeting of the Members shall be in writing, specifying
9 the time and place of the meeting and the general nature of the business
10 proposed to be transacted. The notice shall be delivered in accordance with
11 paragraphs 6.4 and 6.5 below.

12 c. **6.4 Notice of Members' Meetings.** All notices of meetings of Members shall
13 be sent or otherwise given in accordance with paragraph 6.5 below and not
14 less than ten (10) no more than sixty (60) days before the date of the meeting
15 being noticed. The notice shall specify the place, date, and hour of the
16 meeting and (i) in the case of a special meeting, the general nature of the
17 business to be transacted, or (ii) in the case of the annual meeting, those
18 matters which are intended to be presented for action by the Members. If a
19 peroposal contains (i) a contract or transaction in which a Member has a
20 direct or indirect Financial Interest, (ii) an amendment of the Articles of
21 Organization, (iii) a reorganization of the LLC, or (iv) a voluntary dissolution
22 of the LLC, the notice shall state the general nature of such proposal.

23 d. **6.5 Manner of Giving Notice; Affidavit of Notice.** Notice of any meeting of
24 Members shall be given either personally, by first class mail, facsimile,
25 telegraphic, or other written communication, charges prepaid, addressed to
26 each Member at the address of each Member appearing on the books of the
27 LLC or more recently given by the Member to the LLC for the purpose of
28 notice. Notice shall be deemed to have been given at the time when delivered
personally, deposited in the mail, or sent by facsimile, telegram, or other
means of written communication. If any notice addressed to a Member at the
address of such Member appearing on the books of the LLC is returned to the
LLC by the United States Postal Service marked to indicate that the United
States Postal Service is unable to deliver the notice to the Member at such
address, all future notices or reports shall be deemed to have been duly given
without further mailing if the same shall be available to the Member upon
written demand of the Member at the principal office eof the LLC for a
period of one (1) year from the date of the giving of such notice. An affidavit
of the mailing or other means of giving any notice of any Members' meeting
shall be executed by the Member giving such notice, and shall be filed and
maintained in the books and records of the LLC.

e. **8.3 Inspection and Audit Rights.** Each Member has the right, upon
reasonable request, for purposes reasonably related to the interest of that

1 Member, to inspect and copy during normal business hours any of the LLC
2 books and records. Such right may be exercised by the Member or his or her
3 agent or attorney. Any Member may require a review and/or audit of the
4 books, records, and reports of the LLC.

5 f. **12.1 Dissolution.** The LLC shall be dissolved upon the occurrence of any of
6 the following events:

7 (a) The expiration of the period fixed in the Articles of
8 Organization;

9 (b) The written consent of a majority (or all) of the LLC Interests;

10 (c) The death, withdrawal, resignation, expulsion, bankruptcy or
11 dissolution of a Member, or the occurrence of any toher event
12 which terminates the Member's continued membership in the
13 LLC, unless the business of the LLC is continued by the
14 consent of a majority (or all) of the remaining LLC Interests
15 within ninety (90) days of the happening of that even.

16 g. **12.2 Conduct of Business.** Upon the occurrence of any of the events
17 specified above, a majority of the members (excluding those members who
18 caused the dissolution event) shall appoint one or more of the Members to act
19 as liquidator and wind up all LLC business and affairs. However, the LLC
20 shall continue to exist until Articles of Dissolution have been filed or until a
21 decree dissolving the LLC has been entered by a court of competent
22 jurisdiction.

23 h. **14.7 Attorney's Fees.** In the event of any litigation, arbitration or other
24 dispute arising as a result of or by reason of this Agreement, the prevailing
25 party in any such litigation, arbitration or other dispute shall be entitled to, in
26 addition to any other damages assessed, its reasonable attorneys' fees, and all
27 other costs and expenses incurred in connection with settling or resolving
28 such dispute.

9. The three parties agreed that Haack was to handle the books and accounting while
Evenden was to be the designated broker for the Nevada Real Estate Division's
purposes.

10. The parties agreed that Life Realty was to be a small real estate brokerage where the
general environment of the business provided a sense of family.

11. Haack and her husband, who is not a party to this lawsuit, personally guaranteed the
lease of the building wherein Life Realty maintained its principal place of business.

- 1 12. Beginning in October of 2015, Defendant Evenden intentionally withheld property
2 management fees due and owing to Life Realty and retained the same for himself.
- 3 13. Haack approached Defendant Evenden regarding the property management fees
4 owed to Life Realty to which Defendant Evenden only responded with angry
5 outbursts.
- 6 14. After growing their business for several years, the parties arrived at an impasse with
7 regard to Life Realty's direction forward.
- 8 15. Specifically, sometime in September of 2016, Defendants wanted to expand Life
9 Realty's office space at its principal place of business despite the fact that the
10 additional office space would result in a significant increase in Life Realty's costs of
11 doing business.
- 12 16. The parties engaged in intermittent negotiations from September 2016 until March
13 2017.
- 14 17. During this period, the negotiations became increasingly hostile on Defendants' part.
- 15 18. Haack simply wanted the expansion to be first reviewed by an attorney, to not have
16 her husband be required to personally guaranty the additional office space, and for
17 the Members to discuss their initial agreement to remain small with a family culture.
- 18 19. Upon information and belief, while the negotiations became increasingly hostile
19 regarding the expansion and property management issues, Defendants were holding
20 Company meetings without Haack in violation of the Operating Agreement.
- 21 20. Upon information and belief, at these meetings Defendants began discussing "hostile
22 takeover" options or other means whereby they could exclude Haack from Life
23 Realty.
- 24
25
26
27
28

- 1 21. On or about March 10, 2017, Defendants sent Haack a letter (hereinafter the
2 "Letter") wherein Defendants stated that they would be dissolving the company.
- 3 22. The Letter further stated that Defendants were withdrawing Haack's Membership
4 Interest in the Company.
- 5 23. Enclosed with the Letter was a Cashier's check in the amount of \$32,368.94 which
6 was purported to be Haack's distribution of the company's dissolution.
- 7 24. The cashier's check represents less than one-third (1/3) of the balance of Life
8 Realty's cash accounts and does not take into consideration any of Life Realty's
9 other assets.
- 10 25. Finally, the Letter also states that Defendants planned to send Haack's real estate
11 license to the Nevada Real Estate Division, effectively cutting off her ability to buy
12 and sale real property in Nevada.
- 13 26. Upon information and belief, prior to sending the Letter, Defendants have begun
14 absconding with Life Realty's assets, goodwill, intellectual property, and real estate
15 agents.
- 16 27. Upon information and belief, Defendants have either organized a separate entity, or
17 are planning to organize a separate entity which Defendants intend to use as a new
18 real estate brokerage.
- 19 28. Upon information and belief, Defendants have already begun the process of
20 fraudulently transferring Life Realty's assets to the new entity including intellectual
21 property.
- 22
23
24
25
26
27
28

1 29. Upon information and belief, Defendants have forced Life Realty's realtors to either
2 sign independent agent contracts with the new entity or be fired, which is a violation
3 of NRS 645.

4 30. Haack responded with a cease and desist letter dated March 10, 2017 wherein Haack
5 set forth Defendants' breaches of the Operating Agreement, demanded Defendants
6 immediately cease and desist any and all dissolution actions, and demanded
7 Defendants cease and desist from using Life Realty's name, branding, property, and
8 other assets in operating a different and/or competing business.
9

10 31. To date, Defendants have not ceased or desisted with their duplicitous behavior and
11 have continued plundering Life Realty's assets.

12 32. Most recently, Plaintiffs have removed Haack's name from Life Realty's
13 member/manager information with the Nevada Secretary of State.
14

15 33. Since Defendants' erroneous dissolution, Defendants have held meetings of Life
16 Realty wherein Defendants have amended the Operating Agreement to include
17 capital call provisions, have resolved to remove Haack from Life Realty's bank
18 accounts, and excluded Haack from Life Realty's office space.
19

20 34. In said meetings, Defendants have also approved the expansion of NRS into the
21 additional office space described above. However, to do so, Life Realty's landlord
22 requires a deposit in the amount of \$200,000.
23

24 35. Defendants have held additional meetings of NRS ratifying a capital call in the
25 amount of \$200,000.
26
27
28

1 36. Upon information and belief, Defendants intend to oust Haack from Life Realty by
2 penalizing her for failing to meet the capital call requirements that Defendants have
3 erroneously put into place.

4 **IV. DERIVATIVE AND DEMAND ALLEGATIONS**

5 37. Plaintiffs bring this derivative action for the benefit of Life Realty to redress injuries
6 suffered and to be suffered by Life Realty as a result of the breaches of contract and
7 duplicitous conduct of Defendants.
8

9 38. Haack will adequately and fairly represent the interest of Life Realty and its
10 members in enforcing and prosecuting its rights.

11 39. At all times relevant to this action, Haack is a member and holds membership
12 interest of Life Realty.
13

14 40. As a result of the facts set forth herein and pursuant to NRCP 23.1, Haack dispatched
15 a letter dated March 10, 2017 wherein Haack set forth Defendants' breaches of the
16 Operating Agreement, demanded Defendants immediately cease and desist any and
17 all dissolution actions, and demanded Defendants cease and desist from using Life
18 Realty's name, branding, property, and other assets in operating a different and/or
19 competing business. To date, Defendants have neither ceased or desisted with their
20 duplicitous behavior and have continued plundering Life Realty's assets. In the
21 alternative, a formal demand before Defendants, who own a combined sixty-six
22 percent (66%) of Life Realty's Membership Interest, to raise the issue of a derivative
23 suit would be futile. Such demand would be futile and useless because Defendants
24 are incapable of making an independent and disinterested decision to institute and
25 vigorously prosecute this action for the following reasons:
26
27
28

- 1 a. Due to Defendants' positions and by virtue of the fact that Defendants hold a
2 majority of Life Realty's Membership Interest, Defendants are in a position
3 to and do control the board and the company and its operations.
4
5 b. Defendants will not permit a company meeting to occur unless they institute
6 it for matters that they want discussed.
7
8 c. Based on the conduct of Defendants as alleged herein, it is obvious that
9 Defendants have seized control of Life Realty and that they would find ways
10 to obstruct a company meeting regarding the filing of a derivative complaint.

11 **V. ALTER EGO ALLEGATIONS**

12 41. Haack, upon information and belief, alleges that at all relevant times herein there
13 existed a unity of interest and ownership between Defendants and Life Realty, such
14 that any corporate individuality and separateness between Defendants on the one
15 hand, and Life Realty on the other hand, have ceased and that Defendants are the
16 alter ego of Life Realty in that the business of Life Realty is so completely
17 dominated, controlled, managed and operated by Defendants and that Life Realty
18 functions as a mere instrumentality and conduit through which Defendants conduct
19 their business in order to avoid liability and exposure, and in order to perpetrate
20 fraud and circumvent the interests of justice. Adherence to the fiction of the
21 existence of Life Realty as an entity separate and distinct from Defendants would
22 permit an abuse of the corporate privilege and would sanction fraud and promote
23 injustice in that Plaintiff could be denied a full and fair recovery.
24
25

26 ///

27 ///

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

FIRST CLAIM FOR RELIEF

Breach of Contract

42. Plaintiffs incorporate by reference the allegations set forth above as though fully restated herein.

43. On or about May 5, 2010, Haack and the Defendants entered into the Operating Agreement, which is a valid and enforceable contract.

44. Defendants breached their duties and obligations under the Operating Agreement with the following non-exclusive acts and/or omissions:

- a. Defendants began holding meetings without Haack in violation of the Operating Agreement;
- b. On or about March 10, 2017, Defendants sent Haack a letter (hereinafter the "Letter") wherein Defendants stated that they would be dissolving the company;
- c. The Letter stated that Defendants were withdrawing Haack's Membership Interest in the Company;
- d. Defendants have absconded with Life Realty's assets, goodwill, intellectual property, and real estate agents;
- e. Defendants have either organized a separate entity, or are planning to organize a separate entity which Defendants intend to use as a new real estate brokerage and as a receptacle for Life Realty's assets; and
- f. Defendants have forced Life Realty's realtors to either sign new independent agent contracts with the new entity or be fired.

1 g. Defendants have held meetings of Life Realty wherein Defendants have
2 amended the Operating Agreement to include capital call provisions, have
3 resolved to remove Haack from Life Realty's bank accounts, and excluded
4 Haack from Life Realty's office space.

5 h. In said meetings, Defendants have also approved the expansion of NRS into
6 the additional office space described above. However, to do so, Life Realty's
7 landlord requires a deposit in the amount of \$200,000.

8 i. Defendants have held additional meetings of NRS ratifying a capital call in
9 the amount of \$200,000.

10 j. Defendants intend to oust Haack from Life Realty by penalizing her for
11 failing to meet the capital call requirements that Defendants have erroneously
12 put into place.

13
14
15 45. Defendants' aforementioned acts and/or omissions have directly and proximately
16 caused Plaintiffs damage in excess of the statutory minimum.

17
18 46. Pursuant to NRCP 9(g), Plaintiffs are entitled to attorney's fees as special damages
19 because attorney's fees are a natural and proximate consequence of Defendants'
20 injurious conduct.

21 47. It has been necessary for Plaintiffs to retain legal counsel to commence this action
22 and Plaintiffs are entitled to reasonable attorneys' fees and costs of suit to pursue this
23 action.

24
25 ///

26 ///

SECOND CLAIM FOR RELIEF

Breach of the Implied Covenant of Good Faith and Fair Dealing

48. Plaintiffs incorporate by reference the allegations set forth above as though fully restated herein.

49. Inherent within every contract entered into in Nevada is a duty of good faith in its performance and enforcement.

50. On or about May 5, 2010, Haack and the Defendants entered into the Operating Agreement, which is a valid and enforceable contract.

51. Defendants breached their duty of good faith and fair dealing under the Operating Agreement with the following non-exclusive acts and/or omissions:

- a. Defendants began holding meetings without Haack in violation of the Operating Agreement;
- b. On or about March 10, 2017, Defendants sent Haack a letter (hereinafter the "Letter") wherein Defendants stated that they would be dissolving the company;
- c. The Letter stated that Defendants were withdrawing Haack's Membership Interest in the Company;
- d. Defendants have absconded with Life Realty's assets, goodwill, intellectual property, and real estate agents;
- e. Defendants have either organized a separate entity, or are planning to organize a separate entity which Defendants intend to use as a new real estate brokerage and as a receptacle for Life Realty's assets; and

- 1 f. Defendants have forced Life Realty's realtors to either sign new independent
2 contracts with the new entity or be fired.
- 3 g. Defendants have held meetings of Life Realty wherein Defendants have
4 amended the Operating Agreement to include capital call provisions, have
5 resolved to remove Haack from Life Realty's bank accounts, and excluded
6 Haack from Life Realty's office space.
- 7
- 8 h. In said meetings, Defendants have also approved the expansion of NRS into
9 the additional office space described above. However, to do so, Life Realty's
10 landlord requires a deposit in the amount of \$200,000.
- 11
- 12 i. Defendants have held additional meetings of NRS ratifying a capital call in
13 the amount of \$200,000.
- 14
- 15 j. Defendants intend to oust Haack from Life Realty by penalizing her for
16 failing to meet the capital call requirements that Defendants have erroneously
17 put into place.

18 52. Plaintiffs' justified expectation with regard to Life Realty and the Operating
19 agreement were thus denied.

20 53. Defendants' aforementioned acts and/or omissions have directly and proximately
21 caused Plaintiffs damage in excess of the statutory minimum.

22 54. It has been necessary for Plaintiffs to retain legal counsel to commence this action
23 and Plaintiffs are entitled to reasonable attorneys' fees and costs of suit to pursue this
24 action.
25

26 ///

27 ///

THIRD CLAIM FOR RELIEF

Breach of Fiduciary Duty

55. Plaintiffs incorporate by reference the allegations set forth above as though fully restated herein.

56. Pursuant to Nevada law, Defendants, in positions of trust and confidence with respect to Life Realty and Haack, owed to Life Realty and to Haack fiduciary duties, including but not limited to a duty not to misuse or abuse their controlling power in a manner that would conflict with the proper conduct of Life Realty's business, to benefit themselves alone, or in a self-dealing manner detrimental to Haack, as well as a duty to act in good faith, to deal fairly, and to communicate with candor in the best interests of Haack as a member of Life Realty.

57. Defendants, acting in concert and separately of their own accord, and in betrayal of the confidence and trust imposed upon them in said positions and relationships, each acting for his own profit, benefit, personal advantage, and financial gain, undertook various acts in violation of their fiduciary duties to Life Realty and to Haack that have been set forth above.

58. Life Realty and Haack have been injured and continue to suffer damage as a result of wrongful acts and breaches of fiduciary duties of Defendants.

59. Defendants have engaged in intentional, reckless, and grossly negligent conduct to oppress Haack as a minority membership interest holder in Life Realty in breach of fiduciary duties owed by Defendants to her.

1 60. Defendants are jointly and severally liable for damages to Haack and Life Realty
2 resulting from Defendants' wrongful acts and breaches of Defendants' fiduciary
3 duties.

4 61. It has been necessary for Plaintiffs to retain legal counsel to commence this action
5 and Plaintiffs are entitled to reasonable attorneys' fees and costs of suit to pursue this
6 action.
7

8 **FOURTH CLAIM FOR RELIEF**

9 **Conversion**

10 62. Plaintiffs incorporate by reference the allegations set forth above as though fully
11 restated herein.

12 63. Defendants, by means of their aforementioned duplicitous conduct, exerted wrongful
13 dominion over the assets of Life Realty.
14

15 64. Defendants' wrongful dominion over the assets of Life Realty is in denial of, or
16 inconsistent with their contractual rights and obligations under the Operating
17 Agreement.
18

19 65. Defendants' wrongful dominion was in derogation, exclusion, or in defiance of
20 Haack's title or rights under the Operating Agreement.

21 66. Defendants' aforementioned acts and/or omissions have directly and proximately
22 caused Plaintiffs damage in excess of the statutory minimum.
23

24 67. It has been necessary for Plaintiffs to retain legal counsel to commence this action
25 and Plaintiffs are entitled to reasonable attorneys' fees and costs of suit to pursue this
26 action.
27

28 ///

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

FIFTH CLAIM FOR RELIEF

Indemnity

68. Plaintiffs incorporate by reference the allegations set forth above as though fully restated herein.

69. As a result of Defendants' aforementioned duplicitous acts and/or omissions, Plaintiffs have incurred and will continue to incur damages the exact amount of which is unknown at this time. When the same has been ascertained, Plaintiffs will seek leave of the Court to amend this Complaint to set forth the true nature and amount of said damages and expenses.

70. Therefore, Plaintiffs are entitled to be indemnified by Defendants for Plaintiffs' damages as set forth above.

71. Plaintiffs allege that Plaintiffs are in no way responsible for the events giving rise to the present Complaint.

72. It has been necessary for Plaintiffs to retain legal counsel to commence this action and Plaintiffs are entitled to reasonable attorneys' fees and costs of suit to pursue this action.

SIXTH CLAIM FOR RELIEF

Accounting

73. Plaintiffs incorporate by reference the allegations set forth above as though fully restated herein.

74. On or about March 10, 2017, Defendants enclosed with the Letter a check which Defendants represented was Haack's share of Defendants' fraudulent dissolution.

1 75. Pursuant to Section 8.3 of the Operating Agreement, Haack has a right to demand an
2 accounting of Defendants for the assets, intellectual property, good will, etc. that
3 they have absconded from Life Realty.

4 76. It has been necessary for Plaintiffs to retain legal counsel to commence this action
5 and Plaintiffs are entitled to reasonable attorneys' fees and costs of suit to pursue this
6 action.
7

8 **SEVENTH CLAIM FOR RELIEF**

9 **Interference with Prospective Economic Advantage**

10 77. Plaintiffs incorporate by reference the allegations set forth above as though fully
11 restated herein.

12 78. Plaintiffs and Defendants entered into an economic relationship when they undertook
13 to do business together in Life Realty.
14

15 79. Plaintiffs, by means of their work and contributions to Life Realty's business, fully
16 intended to derive a future economic benefit.
17

18 80. Defendants knew of the existence of the economic relationship.

19 81. Defendants engaged in the aforementioned duplicitous acts and/or omissions which
20 were designed to disrupt the economic relationship.

21 82. Defendants aforementioned duplicitous acts and/or omissions both directly and
22 proximately caused a disruption of the economic relationship.
23

24 83. Defendants aforementioned duplicitous acts and/or omissions both directly and
25 proximately caused Plaintiffs damages in an amount exceeding the statutory
26 minimum.
27
28

1 84. It has been necessary for Plaintiffs to retain legal counsel to commence this action
2 and Plaintiffs are entitled to reasonable attorneys' fees and costs of suit to pursue this
3 action.

4 **EIGHTH CLAIM FOR RELIEF**

5 **Usurpation of Corporate Opportunities**

6
7 85. Plaintiffs incorporate by reference the allegations set forth above as though fully
8 restated herein.

9 86. Haack and Defendants are all equal Members of Life Realty.

10 87. Defendants, by means of the aforementioned duplicitous acts and/or omissions,
11 appropriated for their own use, opportunities that should belong to Life Realty.

12
13 88. That Defendants' aforementioned duplicitous acts and/or omissions have resulted in
14 detriment to Life Realty and indirectly to Haack.

15 89. Defendants have an interest or expectancy in the misappropriated corporate
16 opportunities.

17
18 90. It has been necessary for Plaintiffs to retain legal counsel to commence this action
19 and Plaintiffs are entitled to reasonable attorneys' fees and costs of suit to pursue this
20 action.

21 **PRAYER FOR RELIEF**

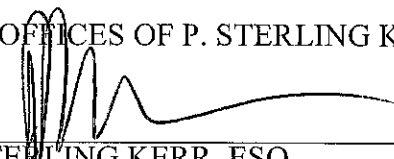
22 WHEREFORE, Haack, on behalf of Life Realty, prays for judgment as follows:

- 23
24 1. Awarding Damages against all Defendants, jointly and severally, and in favor of
25 Plaintiffs for the amount of damages sustained by them as a result of the Defendants'
26 duplicitous acts and/or omissions;

2. Awarding restitution, disgorgement of all illicit proceeds generated as a result of the wrongful conduct alleged herein, and punitive damages;
3. Awarding appropriate equitable relief as set forth herein;
4. That Haack be appointed as the liquidator pursuant to the Operating Agreement, to wind down the affairs of Life Realty;
5. That a receiver be appointed;
6. Awarding pre-judgment interest, as well as reasonable attorneys' fees and other costs; and
7. Granting such other and further relief as the Court deems just and proper.

DATED this 5th day of July, 2017.

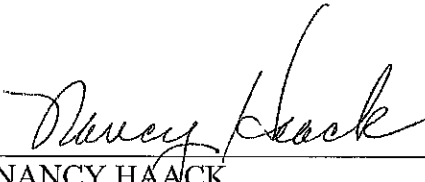
LAW OFFICES OF P. STERLING KERR


P. STERLING KERR, ESQ.
Nevada Bar No. 003978
TAYLOR SIMPSON, ESQ.
Nevada Bar No. 13956
LAW OFFICES OF P. STERLING KERR
2450 St. Rose Parkway, Suite 120
Henderson, Nevada 89074
Telephone No. (702) 451-2055
Facsimile No. (702) 451-2077
Email: sterling@sterlingkerrlaw.com
Email: taylor@sterlingkerrlaw.com
Attorneys for Plaintiffs

1 STATE OF NEVADA)
2) ss:
3 COUNTY OF CLARK)

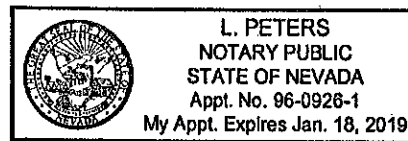
4 **VERIFICATION**

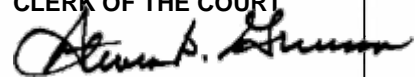
5 Under penalties of perjury, the undersigned declares that she is a Plaintiff named in
6 the foregoing FIRST AMENDED COMPLAINT, and knows the contents thereof, that the
7 pleading is true of her own knowledge, except as to those matters stated on information and
8 belief, and that as to such matters she believes it to be true, and that during all relevant time
9 periods referenced in the FIRST AMENDED COMPLAINT, she held and continues to hold
10 a Membership Interest in Life Realty.

11
12 
13 _____
14 NANCY HAACK

15
16 SIGNED AND SWORN before me on this 30 day of June, 2017, by
17 Nancy Haack

18
19 
20 _____
21 NOTARY PUBLIC





1 **ANSW**

2 Patrick J. Sheehan, Esq. (Bar No. 3812)
3 FENNEMORE CRAIG, P.C.
300 South Fourth Street, 14th Floor
4 Las Vegas, Nevada 89101
Telephone: (702) 692-8000
5 Facsimile: (702) 692-8099
Email: psheehan@fclaw.com
6 *Attorneys for Defendants/Counterclaimants*
7 *Sean Evenden and Roger Ayala*

8 **DISTRICT COURT**

9 **CLARK COUNTY, NEVADA**

10 NANCY HAACK, an individual; and NRS
11 REALTY GROUP, LLC, a Nevada Limited
12 Liability Company, d/b/a LIFE REALTY,

13 Plaintiff,

14 vs.

15 SEAN EVENDEN, an individual; ROGER
16 AYALA; an individual; DOE Individuals I
17 through X; and ROE CORPORATIONS and
18 ORGANIZATIONS I through X, inclusive,

19 Defendants,

20 SEAN EVENDEN, an individual; ROGER
21 AYALA; an individual, and NRS REALTY
22 GROUP, LLC, a Nevada Limited Liability
23 Company d/b/a LIFE REALTY,

24 Counterclaimants,

25 vs.

26 NANCY HAACK, an individual.

27 Counterdefendants.

Case No.: A-17-753435-C

Dept. No.: XXVIII

DEFENDANTS ANSWER TO FIRST
AMENDED COMPLAINT AND
COUNTERCLAIM

28 Defendants, SEAN EVENDEN and ROGER AYALA, by and through their attorney of
29 record, Patrick J. Sheehan, Esq. of the law firm of Fennemore Craig, P.C., hereby files their
30 Answer to Plaintiff's First Amended Complaint as follows:

31 1. Defendants admit the allegations contained in Paragraphs 1, 3, 4, 11, 14, 15 and
32 49.

1 2. Defendants are without sufficient information to form a belief as to the truth of
2 allegations contained in Paragraphs 2, 5, 24, 32, 39, 78, 79 and 80, and thus denies the same.

3 3. In Answering Paragraphs 6, 7, 8 (a-h), 9, 21, 22, 25 and 30, Defendants state that
4 the documents speak for themselves.

5 4. Defendants deny the allegations contained in Paragraphs 12, 13, 17, 18, 19, 20, 23,
6 26, 27, 28, 29, 31, 33 37, 38, 40 (a-b), 44 (a-j), 45, 46, 47, 51 (a-j), 52, 53, 54, 57, 58, 59, 60, 61,
7 63, 64, 65, 66, 67, 69, 70, 71, 72, 74, 75, 76, 81, 82, 83, 84, 87, 88, 89 and 90.

8 5. In Answering Paragraph 10, Defendants deny as to size and admit that the general
9 environment of the business was to provide a sense of family.

10 6 In Answering Paragraph 16, Defendants assert that Haack agreed from September
11 through at least a portion of January and then reneged on her agreement to expand the business
12 and the parties began negotiations regarding buyout.

13 7. In Answering Paragraphs 34 and 35, the minutes for the meetings referred to
14 therein speak for themselves.

15 8. In Answering Paragraph 36, the Defendants intend to follow the amended
16 operating agreement.

17 9. In Answering Paragraph 43, Defendants believe that Haack has breached that
18 agreement, terminating her interest in the same.

19 10. In Answering Paragraph 50, Defendants believe Haack has breached the operating
20 agreement, terminating her interest in the same.

21 11. In Answering Paragraph 56, Defendants have denied that they have abused their
22 power. Furthermore, they believe that as forth in the Counterclaim, that Haack has breached the
23 parties agreement terminating her interest.

24 12. In Answering Paragraph 86, Defendants believe that Haack has breached her
25 agreement and is no longer of LifeRealty due to the Breach.

26 **AFFIRMATIVE DEFENSES**

27 **FIRST AFFIRMATIVE DEFENSE**

28 Plaintiff fails to state a claim upon which relief can be granted.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

SECOND AFFIRMATIVE DEFENSE

Plaintiff lacks the authority to name Realty Group as a Plaintiff.

THIRD AFFIRMATIVE DEFENSE

Plaintiff lacks standing to bring a suit.

FOURTH AFFIRMATIVE DEFENSE

Plaintiff's Complaint should be dismissed since she failed to make a demand.

FIFTH AFFIRMATIVE DEFENSE

Plaintiff's Complaint is not a proper derivative action and she has not met the prerequisites for same.

SIXTH AFFIRMATIVE DEFENSE

Plaintiff's claims are waived under the doctrines of waiver, laches and estoppel.

SEVENTH AFFIRMATIVE DEFENSE

Plaintiff breached the parties agreement and is not entitled to any relief.

EIGHTH AFFIRMATIVE DEFENSE

Plaintiff's claims are barred under the doctrine of unclean hands.

PRAYER FOR RELIEF

WHEREFORE, Defendants hereby pray for judgment as follows:

- a. Plaintiffs take nothing by reason of their Complaint;
- b. Plaintiffs' Complaint be dismissed in its entirety with prejudice;
- c. For an award of attorneys' fees and costs incurred in this matter; and
- d. For such further or other relief as the Court deems just or proper.

COUNTERCLAIM

SEAN EVENDEN, an individual, ROGER AYALA, an individual, and NRS REALTY GROUP, LLC d/b/a LIFE REALTY, a Nevada Limited Liability Company (collectively "Counterclaimants") and for its counterclaim allege against Nancy Haack ("Counterdefendnt") as follows:

1 **FIRST CLAIM FOR RELIEF**

2 **Breach of Contract**

3 1. In or about mid-2016, the Defendant agreed with Evenden and Ayala to expand
4 NRS Realty Group, LLC dba LifeRealty ("Life").

5 2. Pursuant to that agreement, the parties would rent additional space across the hall.

6 3. They would recruit additional agents and expand the realty agency.

7 4. That steps were taken in this regard based on the agreements and promises by
8 Counterdefendant Haack.

9 5. That in violation of the terms of the parties agreement, Haack in or about January
10 2017 informed Evenden and Ayala that she was reneging on her promises and agreement to
11 expand Life and rent additional space across the hall.

12 6. That as a direct and proximate result of these breaches, Haack has caused damages
13 to the Counterclaimants in an amount in excess of \$10,000 to be proven at Trial.

14 7. Evenden and Ayala can represent NRS because they have the best interest of NRS
15 in mind.

16 8. They represent 2/3 owners of NRS, unless they're authorized to do the same.

17 9. It has been necessary to hire an attorney to prosecute this action and they're
18 entitled to their reasonable attorney's fees therefore.

19 **SECOND CLAIM FOR RELIEF**

20 **Breach of the Implied Covenant of Good Faith and Fair Dealing both Tortious and**

21 **Contractual**

22 10. There was a special relationship between the three members of the LLC (Evenden,
23 Ayala and Haack). That there was an implied covenant of good faith and fair dealing contained in
24 the parties agreements.

25 11. That Counterclaimants relied upon Haack to live up to her promises and
26 obligations pursuant to the agreements.

27 12. Specifically, that Haack would do what was in the best interest of the partnership
28 and Company.

1 the relationship between them and the Counterclaimants. Also to harm the relationship with
2 potential new agents.

3 23. As a direct and proximate result of the tortious interference, Counterclaimants are
4 entitled to damages in an amount to be proven at Trial in excess of \$10,000.

5 24. The aforementioned conduct of Counterdefendant (including causing damages
6 involving the relationship with the GLVAR and the Nevada Real Estate Division) was so wanton
7 and reckless that Counterclaimants are entitled to punitive and exemplary damages.

8 25. It has been necessary to hire an attorney to prosecute this action and they're
9 entitled to their reasonable attorney's fees therefore.

10 **FOURTH CLAIM FOR RELIEF**

11 **Declaratory Relief**

12 26. There is a justiciable controversy between the parties.

13 27. Specifically, Haack abandoned NRS/Life.

14 28. She has made it clear that she no longer wants to be a part of NRS/Life.

15 29. She reneged on her promises to expand NRS/Life and expand the business and
16 take the space across the hall.

17 30. Further, after agreeing to sign a personal guarantee for the space across the hall
18 along with her husband as required by the Landlord (this is what they did in the first Lease), she
19 failed and refused to do the same.

20 31. As a result of the same, Counterclaimants believe that Haack has resigned or given
21 up the position in NRS.

22 32. Haack apparently believes otherwise.

23 33. Accordingly, the Counterclaimants request declaratory relief from the Court that
24 Haack has abandoned and left the Company and is no longer entitled to any interest in the
25 Company.

26 34. It has been necessary to hire an attorney to prosecute this action and they're
27 entitled to their reasonable attorney's fees therefore.

28 ///

1 WHEREFORE, Counterclaimants pray for relief as follows:

- 2 1. for damages in amount to be proven at Trial in excess of \$10,000.00.
- 3 2. for an Order declaring that Haack is no longer a member of the LLC.
- 4 3. for punitive or exemplary damages.
- 5 4. for such other and further relief as the court may allow.
- 6 5. for its reasonable costs and attorney's fees.

7 Dated this 14th day of August, 2017.

8 **FENNEMORE CRAIG, P.C.**

9 */s/Patrick J. Sheehan, Esq.*

10 By:

Patrick J. Sheehan, Esq. (Bar No. 3812)
300 South Fourth Street, 14th Floor
Las Vegas, Nevada 89101
Telephone: (702) 692-8000
Facsimile: (702) 692-8099
Email: psheehan@fclaw.com
Attorneys for Defendants/Counterclaimants
Sean Evenden and Roger Ayala

1 **CERTIFICATE OF SERVICE**

2 Pursuant to NRCP 5(b), I hereby certify that I am an employee of Fennemore Craig, P.C.
3 and that on August 14, 2017, service of the **DEFENDANTS ANSWER TO FIRST AMENDED**
4 **COMPLAINT AND COUNTERCLAIM** was made on the following counsel of record and/or
5 parties by (1) depositing a true and correct copy of the same in the U.S. Mail, postage pre-paid,
6 addressed below, and (2) electronic transmission to all parties appearing on the electronic service
7 list in Odyssey E-File & Serve (Wiznet):

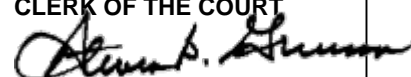
8 **E-Service Master List**
9 **For Case**

10 **Law Offices of P. Sterling Kerr**

Contact	Email
Jennifer Hogan, Legal Assistant	jennifer@sterlingkerrlaw.com
Lisa Peters, Paralegal	lisa@sterlingkerrlaw.com
Sterling Kerr, Esq	sterling@sterlingkerrlaw.com
Taylor Simpson, Esq.	taylor@sterlingkerrlaw.com

14
15 */s/Trista Day*

16 _____
17 An Employee of Fennemore Craig, P.C.
18
19
20
21
22
23
24
25
26
27
28



P. STERLING KERR, ESQ.
Nevada Bar No. 003978
TAYLOR SIMPSON, ESQ.
Nevada Bar No. 13956
LAW OFFICES OF P. STERLING KERR
2450 St. Rose Parkway, Suite 120
Henderson, Nevada 89074
Telephone No. (702) 451-2055
Facsimile No. (702) 451-2077
Email: sterling@sterlingkerrlaw.com
Email: taylor@sterlingkerrlaw.com
Attorneys for Plaintiffs

**DISTRICT COURT
CLARK COUNTY, NEVADA**

NANCY HAACK, an individual; and NRS
REALTY GROUP, LLC, a Nevada Limited
Liability Company, d/b/a LIFE REALTY,
Plaintiffs,

vs.

SEAN EVENDEN, an individual; ROGER
AYALA; an individual; DOE Individuals I
through X; and ROE CORPORATIONS and
ORGANIZATIONS I through X, inclusive
Defendants

SEAN EVENDEN, an individual; ROGER
AYALA; an individual, and NRS REALTY
GROUP, LLC, a Nevada Limited Liability
Company d/b/a LIFE REALTY,
Counterclaimants,

vs.

NANCY HAACK, an individual.
Counterdefendants.

Case No.: A-17-753435-C

Dept. No.: XXIII

ANSWER TO DEFENDANTS' COUNTERCLAIM

COME NOW Plaintiffs NANCY HAACK and NRS REALTY GROUP, LLC, an; by and
through their attorneys of record, the LAW OFFICES OF P. STERLING KERR and hereby files
this Answer to Defendants' Counterclaim, as follows:

1. Answering paragraphs 1, 2, 3, 4, 5, 6, 7, 8, 9, 11, 12, 13, 14, 15, 16, 17, 18, 19, 21, 22,
23, 24, 25, 27, 28, 29, 30, 31, 32, 33, and 34 of Defendants/Counterclaimants'
Counterclaim, Plaintiffs DENY each and every allegation contained therein.

1 2. Answering paragraphs 10, 20, and 26, Plaintiffs ADMIT each and every allegation
2 contained therein.

3 As to those matters, if any, not herein answered, Answering Plaintiffs expressly DENY
4 any and all allegations relating thereto.

5 **AFFIRMATIVE DEFENSES**

6 **FIRST AFFIRMATIVE DEFENSE**

7
8 Defendants' Counterclaim fails to state a claim against Plaintiffs upon which relief may
9 be granted.

10 **SECOND AFFIRMATIVE DEFENSE**

11 Defendants failed to mitigate any damages allegedly sustained. As such, any damages
12 actually sustained by the Defendants should be reduced proportionally for the failure to mitigate
13 such losses.

14 **THIRD AFFIRMATIVE DEFENSE**

15
16 Plaintiffs are informed and believe, and thereon allege that, as to each alleged cause of
17 action, Defendants have failed, refused, and neglected to take reasonable steps to mitigate their
18 alleged damages, thus barring or diminishing Defendants' recovery herein.

19 **FOURTH AFFIRMATIVE DEFENSE**

20 Plaintiffs are informed and believe that the Complaint, and each purported cause of action
21 alleged therein, is barred by the doctrine of unclean hands.

22 **FIFTH AFFIRMATIVE DEFENSE**

23
24 The Counterclaim, and each purported cause of action alleged therein, is barred because
25 Defendants' conduct concerning the matters alleged in the Counterclaim constituted
26 carelessness, negligence, and/or misconduct, and the resulting injuries, if any, sustained by
27
28

1 Defendants were proximately caused and contributed to, in whole or in part, by the conduct of
2 Defendants.

3 **SIXTH AFFIRMATIVE DEFENSE**

4 Plaintiffs are informed and believe that the Counterclaim, and each purported cause of
5 action alleged therein, is barred by Defendants' consent to the conduct alleged in the
6 Counterclaim.
7

8 **SEVENTH AFFIRMATIVE DEFENSE**

9 Plaintiffs are informed and believe that the Counterclaim, and each purported cause of
10 action alleged therein, is barred by the doctrine of unjust enrichment.

11 **EIGHTH AFFIRMATIVE DEFENSE**

12 Plaintiffs are informed and believe that the Counterclaim, and each purported cause of
13 action alleged therein, is barred by the doctrine of laches.
14

15 **NINTH AFFIRMATIVE DEFENSE**

16 Plaintiffs are informed and believe that the Counterclaim, and each purported cause of
17 action alleged therein, is barred by the statute of frauds and applicable Nevada Revised Statutes
18 as to same.

19 **TENTH AFFIRMATIVE DEFENSE**

20 Plaintiffs are informed and believe that the Counterclaim, and each purported cause of
21 action alleged therein, is barred by the doctrine of judicial estoppel.
22

23 **ELEVENTH AFFIRMATIVE DEFENSE**

24 Plaintiffs are informed and believe that the Counterclaim, and each purported cause of
25 action alleged therein, is barred due to its lack of equity to the parties to this action.

26 ///

27 ///

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

TWELFTH AFFIRMATIVE DEFENSE

Plaintiffs are informed and believe that the Counterclaim, and each purported cause of action alleged therein, is barred due to the doctrine of accord and satisfaction.

THIRTEENTH AFFIRMATIVE DEFENSE

Plaintiffs are informed and believe that the Counterclaim, and each purported cause of action alleged therein, is barred due to Defendants' lack of standing.

FOURTEENTH AFFIRMATIVE DEFENSE

Plaintiffs are informed and believe that the Counterclaim, and each purported damage allegedly suffered therein if any, should be offset by the amounts Defendants owe Plaintiffs.

FIFTEENTH AFFIRMATIVE DEFENSE

Plaintiffs are informed and believe that the Counterclaim, and each purported cause of action alleged therein, is barred based on the theory of contribution.

SIXTEENTH AFFIRMATIVE DEFENSE

It has been necessary for these answering Plaintiffs to employ the services of their attorneys to defend this action, and a reasonable sum should be allowed these answering Plaintiffs for attorney's fees and costs.

///


///

1 **RESERVATION OF RIGHT TO SUPPLEMENT DEFENSES**

2 Pursuant to Rule 11 of NRCP as amended, all possible affirmative defenses may not have
3 been alleged herein insofar as sufficient facts are not available after reasonable inquiry from the
4 filing of Defendants' Counterclaim, and therefore, Plaintiffs reserve the right to amend the
5 Answer to allege additional affirmative defenses, delete or change the same as subsequent
6 investigation warrants.
7

8 DATED this 8th day of September 2017.

10 LAW OFFICES OF P. STERLING KERR

11 BY:  #13956
12 P. STERLING KERR, ESQ.
13 Nevada Bar No. 003978
14 AUSTIN J. KALMES, ESQ.
15 Nevada Bar No. 14384
16 LAW OFFICES OF P. STERLING KERR
17 2450 St. Rose Parkway, Suite 120
18 Henderson, Nevada 89074
19 Telephone No. (702) 451-2055
20 Facsimile No. (702) 451-2077
21 Email: sterling@sterlingkerrlaw.com
22 Email: taylor@sterlingkerrlaw.com
23 *Attorneys for Plaintiffs*
24
25
26
27
28

1 **CERTIFICATE OF SERVICE**

2 The undersigned hereby certifies on September 8, 2017, a true and correct copy of
3 the above and foregoing was served to the following at their last known address(es), facsimile
4 numbers and/or e-mail/other electronic means, pursuant to:

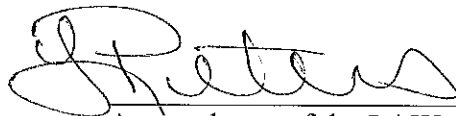
5 _____ **BY MAIL:** N.R.C.P. 5(b), I deposited by first class United States
6 mailing, postage prepaid at Henderson Nevada;

7 _____ **BY FAX:** E.D.C.R. 7.26(a), I served via facsimile at the
8 telephone number provided for such transmissions.

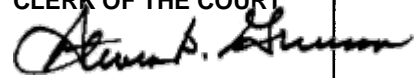
9 _____ **BY MAIL AND FAX:** N.R.C.P 5(b), I deposited by first class
10 United States mail, postage prepaid in Henderson, Nevada; and via
11 facsimile pursuant to E.D.C.R. 7.26(a)

12 ✓ _____ **BY E-MAIL AND/OR ELECTRONIC MEANS:** N.R.C.P.
13 5(b)(2)(D) and addresses (s) having consented to electronic service, I
14 via e-mail or other electronic means to the e-mail address(es) of the
15 addressee(s).

14 Patrick J. Sheehan
15 FENNEMORE CRAIG
16 300 South Fourth Street, 14th Floor
17 Las Vegas, NV 89101
18 *Attorneys for Defendants*

17 

18 An employee of the LAW OFFICES OF
19 P. STERLING KERR



DSO

DISTRICT COURT
CLARK COUNTY, NEVADA

NANCY HAACK, et al.,
Plaintiffs,
v.
SEAN EVENDEN, et al.,
Defendants.

CASE NO. A-17-753435-C
DEPT NO. XXIII

AND RELATED COUNTERCLAIM.

SCHEDULING ORDER

(Discovery/Dispositive Motions/Motions to Amend or Add Parties)

NATURE OF ACTION: **Breach of contract**

DATE OF FILING JOINT CASE CONFERENCE REPORT(S): **10/2/17**

TIME REQUIRED FOR TRIAL: **5 days**

DATES FOR SETTLEMENT CONFERENCE: **None requested**

Counsel for Plaintiffs:

Taylor Simpson, Esq., Law Offices of P. Sterling Kerr

Counsel for Defendants:

Patrick J. Sheehan, Esq., Fennemore Craig

Counsel representing all parties have been heard and after
consideration by the Discovery Commissioner,

IT IS HEREBY ORDERED:

1. all parties shall complete discovery on or before
5/25/18.

1 2. all parties shall file motions to amend pleadings or
2 add parties on or before 2/23/18.

3 3. all parties shall make initial expert disclosures
4 pursuant to N.R.C.P. 16.1(a)(2) on or before 2/23/18.

5 4. all parties shall make rebuttal expert disclosures
6 pursuant to N.R.C.P. 16.1(a)(2) on or before 3/26/18.

7 5. all parties shall file dispositive motions on or
8 before 6/25/18.

9
10 Certain dates from your case conference report(s) may have
11 been changed to bring them into compliance with N.R.C.P. 16.1.

12 Within 60 days from the date of this Scheduling Order, the
13 Court shall notify counsel for the parties as to the date of
14 trial, as well as any further pretrial requirements in addition
15 to those set forth above.
16

17 Unless otherwise directed by the court, all pretrial
18 disclosures pursuant to N.R.C.P. 16.1(a)(3) must be made at
19 least 30 days before trial.
20


21 Motions for extensions of discovery shall be made to the
22 Discovery Commissioner in strict accordance with E.D.C.R. 2.35.
23 Discovery is completed on the day responses are due or the day a
24 deposition begins.
25

26 . . .

27 . . .
28

1 Unless otherwise ordered, all discovery disputes (except
2 disputes presented at a pre-trial conference or at trial) must
3 first be heard by the Discovery Commissioner.
4

5 Date: November 21, 2017

6
7 
DISCOVERY COMMISSIONER

8
9 **CERTIFICATE OF SERVICE**

10 I hereby certify that on the date filed, I placed a copy of
11 the foregoing SCHEDULING ORDER in the attorney folder(s), mailed
or e-served as follows:

12 Taylor Simpson, Esq.
13 Patrick J. Sheehan, Esq.

14
15 
COMMISSIONER DESIGNEE
16
17
18
19
20
21
22
23
24
25
26
27
28

DISTRICT COURT
CLARK COUNTY, NEVADA

Electronically Filed
12/27/2017 1:39 PM
Steven D. Grierson
CLERK OF THE COURT

Steven D. Grierson

NANCY HAACK

Plaintiff(s),

CASE NO. A753435

vs.

DEPT NO. 23

SEAN EVENDEN

Defendant(s),

ORDER SETTING CIVIL BENCH TRIAL

IT IS HEREBY ORDERED THAT:

A. The above entitled case is set to be tried for FIVE days to begin on a five week stack on **Tuesday, September 4, 2018 at 1:00 pm.**

B. A Calendar Call will be held on **Tuesday, August 28, 2018 at 11:00 a.m.**

Trial Counsel (and any party in proper person) must appear. ***Trial Counsel*** must appear at the calendar call and bring the following:

- (1) Typed exhibit lists and exhibits;
- (2) Original, certified, unopened depositions;
- (3) List of equipment needed for trial;

C. The Pre-trial Memorandum must be filed no later than **August 22, 2018**, with a courtesy copy delivered to chambers. EDCR 2.67 must be complied with.

D. All discovery deadlines, deadlines for filing dispositive motions and motions to amend the pleadings or add parties are controlled by the previously issued Scheduling Order, and/or any amendments or subsequent orders, or Special Hearing Master Case Agenda. If no Scheduling Order or Special Hearing Master Case Agenda addresses these or other motions, paragraph E applies.

E. Pursuant to EDCR 2.47(b), counsel shall meet and confer in good-faith no later than **TWO WEEKS** prior to the filing date of all Motions in Limine. All Motions in Limine must be

61-#
MC1
CLERK OF THE COURT

RECEIVED

DEC 27 2017

STEFANY A. MILEY
DISTRICT JUDGE

DEPARTMENT TWENTY THREE
LAS VEGAS NV 89101-2408

1 in writing and filed no later than 45 days prior to trial start date. All pretrial motions shall be
2 heard and decided no later than 14 days before the date scheduled for trial. Any Oppositions to
3 Pre-Trial Motions and Motions in Limine have to be filed 25 days before trial. The Replies to
4 Oppositions have to be filed 20 days before trial.

5 F. Stipulations to continue a trial date will not be considered by the Court. Pursuant to
6 EDCR 2.35, a motion to continue trial due to any discovery issues or deadlines must be made
7 before the Discovery Commissioner.

8 Counsel is asked to notify the Court Recorder at least two weeks in advance if they
9 are going to require daily copies of the transcripts or CDs of this trial. Failure to do so
10 may result in a delay in the production of the transcripts and/or CDs.

11 G. Orders shortening time will not be signed except in extreme emergencies.

12 ***AN UPCOMING TRIAL DATE IS NOT AN EXTREME EMERGENCY***

13 Failure of the designated trial attorney or any party appearing in proper person to appear
14 for any court appearances or to comply with this Order shall result in any of the following:

15 (1) dismissal of the action (2) default judgment; (3) monetary sanctions; (4) vacation of trial
16 date; and/or any other appropriate remedy or sanction.

17 Counsel must advise the Court immediately when the case settles or is otherwise
18 resolved prior to trial. A stipulation which terminates a case by dismissal shall indicate
19 whether a Scheduling Order has been filed and, if a trial date has been set, the date of that trial.

20 If the parties are interested in a settlement conference conducted by a District Court
21 Judge sitting as a Mediator, please contact Judge Scotti's Judicial Executive Assistant, at
22 (702) 671-4318.

23 DATED: December 15, 2017.

24 
25
26 HONORABLE STEFANY A. MILEY
27 DISTRICT COURT JUDGE

28 ///

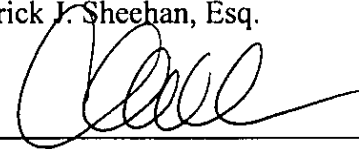
STEFANY A. MILEY
DISTRICT JUDGE

DEPARTMENT TWENTY THREE
LAS VEGAS NV 89101-2408

CERTIFICATE OF SERVICE

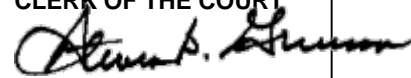
I hereby certify that on this 15th day of December, 2017, I caused a copy of the within Order Setting Civil Bench Trial to be placed in the attorney's folder in the Clerks' Office, faxed, mailed, or e-served to Taylor Simpson, Esq. and Patrick J. Sheehan, Esq.

By: _____


Carmen Alper
Judicial Executive Assistant

STEFANY A. MILEY
DISTRICT JUDGE

DEPARTMENT TWENTY THREE
LAS VEGAS NV 89101-2408



1 **ACOM**
2 MICHAEL C. VAN, ESQ.
3 Nevada Bar No. 3876,
4 KARL A. SHELTON, ESQ.
5 Nevada Bar No. 12868
6 GARRETT R. CHASE, ESQ.
7 Nevada Bar No. 14498
8 **SHUMWAY • VAN**
9 8985 South Eastern Avenue, Suite 100
10 Las Vegas, Nevada 89123
11 Telephone: (702) 478-7770
12 Facsimile: (702) 478-7779
13 Email: michael@shumwayvan.com
14 karl@shumwayvan.com
15 garrett@shumwayvan.com
16 *Attorneys for Plaintiffs*

17
18
19
20
21
22
23
24
25
26
27
28

**EIGHTH JUDICIAL DISTRICT COURT
CLARK COUNTY, NEVADA**

NANCY L. HAACK, an individual; and NRS
REALTY GROUP, LLC, a Nevada Limited
Liability Company, d/b/a LIFE REALTY,

Plaintiffs,

vs.

SEAN EVENDEN, an individual, ROGER
AYALA, an individual, DOE Individuals I
through X inclusive, and ROE
CORPORATIONS and ORGANIZATIONS I
through X inclusive.

Defendants.

Case No.: A-17-753435-C
Dept. No.: XXIII

**PLAINTIFFS' SECOND AMENDED
COMPLAINT**

Exempt from Arbitration
(Member Derivative Action-Equitable Relief,
Amount in Controversy Exceeds \$50,000)

COMES NOW the Plaintiffs, derivatively on behalf of NRS REALTY GROUP, LLC d/b/a
LIFE REALTY, by and through their attorneys of record, the law firm of Shumway Van, hereby
complain and aver against Defendants as follows:

INTRODUCTION

This is a member derivative action on behalf of Plaintiff NRS REALTY GROUP, LLC, a
Nevada Limited Liability Company d/b/a LIFE REALTY (hereinafter "Life Realty") against
SEAN EVENDEN individually and as managing member of Life Realty, and ROGER AYALA,
individually and as managing member of Life Realty. Defendants have breached their contractual
obligations under Life Realty's operating agreement which breach has resulted in substantial harm
to Plaintiffs.

SHUMWAY • VAN

8985 South Eastern Avenue, Suite 100
Las Vegas, Nevada 89123
Telephone: (702) 478-7770 Facsimile: (702) 478-7779

PARTIES

1. Plaintiff NRS REALTY GROUP, LLC, is a Nevada Limited Liability Company d/b/a LIFE REALTY (hereinafter "Life Realty") which is fully licensed with the Nevada Real Estate Division as a real estate brokerage.
2. Plaintiff NANCY HAACK (hereinafter "Ms. Haack"), at all times relevant to this action, was a resident of Clark County Nevada. During the relevant time period and at the time of the injurious acts complained of herein, she held, and continues to hold, managing membership interest of Life Realty. Ms. Haack is also licensed as a broker salesperson with the Nevada Real Estate Division.
3. Defendant SEAN EVENDEN (hereinafter "Evenden"), at all times relevant to this action, is and was a resident of Nevada. Evenden is and has been a managing member of Life Realty. Evenden is also licensed as a broker with the Nevada Real Estate Division and was a designated broker for Life Realty.
4. Defendant ROGER AYALA (hereinafter "Ayala"), at all times relevant to this action, is and was a resident of Nevada. Ayala is and has been a managing member of Life Realty. Ayala is also licensed as a broker salesperson with the Nevada Real Estate Division.
5. Upon information and belief, Defendant Does I through X are and were, at all times material herein, individuals residing in Clark County, Nevada, with sufficient minimum contacts to Clark County, Nevada to subject them to the jurisdiction of this Court. Currently, the names of Does I through X are unknown to the Plaintiff at the present time, but Plaintiff reserves the right to amend its Complaint once these names are known.
6. Upon information and belief, Defendant Roes I through X are and were, at all times material herein, corporations and/or companies doing business in Clark County, Nevada, with sufficient minimum contacts to Clark County, Nevada to subject them to the jurisdiction of this Court. Currently, the names of Roes I through V are unknown to Plaintiff at the present time, but Plaintiff reserves the right to amend its Complaint once these names are known.

...

JURISDICTION AND VENUE

7. This Court has jurisdiction over this matter because the acts, transactions and operations giving rise to this Second Amended Complaint took place in Clark County, Nevada, and involved a Nevada Limited Liability Company.
8. Additionally, this Court has subject matter jurisdiction and personal jurisdiction over Defendants.
9. Venue is proper based on the terms of the agreements of the parties hereto, and based on relevant Nevada statutory authority, because the acts, transactions and operations giving rise to this Complaint took place in Clark County, Nevada.

GENERAL ALLEGATIONS

10. On or about May 5, 2010, Ms. Haack, along with Evenden and Ayala (collectively hereinafter, "Defendants") organized Life Realty by filing the requisite documents with the Nevada Secretary of State.
11. On May 5, 2010, Ms. Haack and Defendants executed an operating agreement for Life Realty (hereinafter, the "Operating Agreement").
12. The Operating Agreement contained the following pertinent provisions:

3.5 Withdrawal. No Member has the right to withdraw from the LLC as a Member except as provided in this Agreement. However, a Member has the power to withdraw but such withdrawal shall be deemed a breach of this Agreement. If a Member does exercise such power of withdrawal in breach of this Agreement, the Member shall be liable to the LLC and the other Members for all monetary damages as a result of the breach, including but not limited to direct, indirect, incidental, and consequential damages. The LLC and the other Members shall not have the right to prevent the withdrawing Member from withdrawing through the use of an injunction or otherwise.

6.3 Special Meetings. A special meeting of the Members may be called at any time by one or more Members holdings Interests which, in the aggregate, constitute not less than sixty-six percent (66%) of the LLC interests. A request for a special meeting of the Members shall be in writing, specifying the time and place of the meeting and the general nature of the business proposed to be transacted. The notice shall be delivered in accordance with paragraphs 6.4 and 6.5 below.

6.4 Notice of Members' Meetings. All notices of meetings of Members shall be sent or otherwise given in accordance with paragraph 6.5 below and

not less than ten (10) no more than sixty (60) days before the date of the meeting being noticed. The notice shall specify the place, date, and hour of the meeting and (i) in the case of a special meeting, the general nature of the business to be transacted, or (ii) in the case of the annual meeting, those matters which are intended to be presented for action by the Members. If a proposal contains (i) a contract or transaction in which a Member has a direct or indirect Financial interest, (ii) an amendment of the Articles of Organization, (iii) a reorganization of the LLC, or (iv) a voluntary dissolution of the LLC, the notice shall state the general nature of such proposal.

6.5 Manner of Giving Notice; Affidavit of Notice. Notice of any meeting of Members shall be given either personally, by first class mail, facsimile, telegraphic, or other written communication, charges prepaid, addressed to each Member at the address of each Member appearing on the books of the LLC or more recently given by the Member to the LLC for the purpose of notice. Notice shall be deemed to have been given at the time when delivered personally, deposited in the man, or sent by facsimile, telegran1, or other means of written communication. If any notice addressed to a Member at the address of such Member appearing on the books of the LLC is returned to the LLC by the United States Postal Service marked to indicate that the United States Postal Service is unable to deliver the notice to the Member at such address, all future notices or reports shall be deemed to have been duly given without further mailing if the same shall be available to the Member upon written demand of the Member at the principal office of the LLC for a period of one (1) year from the date of the giving of such notice. An affidavit of the mailing or other means of giving any notice of any Members' meeting shall be executed by the Member giving such notice, and shall be filed and maintained in the books and records of the LLC.

8.3 Inspection and Audit Rights. Each member has the right, upon reasonable request, for purposes reasonably related to the interest of that Member, to inspect and copy during normal business hours any of the LLC books and records. Such right may be exercised by the Member or his or her agent or attorney. Any Member may require a review and/or audit of the books, records, and reports of the LLC.

12.1 Dissolution. The LLC shall be dissolved upon the occurrence of any of the following events:

- (a) The expiration of the period fixed in the Articles of Organization;
- (b) The written consent of a majority (or all) of the LLC Interest;
- (c) The death, withdrawal, resignation, expulsion, bankruptcy or other dissolution of a Member, or the occurrence of any other event which terminates the Member's continued membership in the LLC, unless the business of the LLC is continued by the consent of a majority (or all) of the remaining LLC Interests within ninety (90) days of the happening of that event.

1 **12.2 Conduct of Business.** Upon the occurrence of any of the events
2 specified above, a majority of the members (excluding those members who
3 caused the dissolution event) shall appoint one or more of the Members to
4 act as liquidator and wind up all LLC business and affairs. However, the
5 LLC shall continue to exist until Articles of Dissolution have been filed or
6 until a decree dissolving the LLC has been entered by a court of competent
7 jurisdiction.

8 **14.7 Attorney's Fees.** In the event of any litigation, arbitration or other
9 dispute arising as a result of or by reason of this Agreement, the prevailing
10 party in any such litigation, arbitration or other dispute shall be entitled to,
11 in addition to any other damages assessed, its reasonable attorney's fees,
12 and all other costs and expenses incurred in connection with settling or
13 resolving such dispute.

- 14 13. The three parties agreed that Ms. Haack was to handle the books and accounting while
15 Evenden was to be the designated broker for the Nevada Real Estate Division's purposes.
16 14. The parties agreed that Life Realty was to be a small real estate brokerage that promoted a
17 close and familial work environment.
18 15. Ms. Haack and her husband, who is not a party to this lawsuit, personally guaranteed the
19 lease of the building wherein Life Realty maintained its principal place of business.
20 16. Beginning in October of 2015, Defendant Evenden intentionally withheld property
21 management fees due to Life Realty and retained the same for himself.
22 17. When Ms. Haack approached Evenden concerning the property management fees owed to
23 Life Realty, Evenden only responded with angry outbursts.
24 18. After growing Life Realty for several years, the parties arrived at an impasse with regard
25 to Life Realty's direction forward.
26 19. Specifically, sometime in September of 2016, Defendants wanted to expand Life Realty's
27 office space at its principal place of business despite the fact that the additional office space
28 would result in a significant increase in Life Realty's costs of doing business.
29 20. The parties engaged in intermittent negotiations from September 2016 until March 2017.
30 21. During this period, the negotiations became increasingly hostile on Defendants' part.
31 22. Throughout negotiations, Ms. Haack maintained that any expansion should first be
32 reviewed by an attorney, that she did not want to have to personally guarantee the lease for

1 the additional office space, and that the members should discuss the initial agreement to
2 remain a small family-oriented business.

3 23. Upon information and belief, while the negotiations between Ms. Haack, Evenden, and
4 Ayala became increasingly hostile regarding the expansion and property management
5 issues, Defendants were holding company meetings without Ms. Haack in violation of the
6 Operating Agreement.

7 24. Upon information and belief, at those meetings, Defendants began discussing hostile
8 takeover options and other means whereby they could exclude or otherwise force Ms.
9 Haack out of Life Realty.

10 25. On or about March 10, 2017, Defendants sent Ms. Haack a letter (hereinafter, the "Letter")
11 wherein Defendants stated that they would be dissolving the company.

12 26. The Letter further stated that Defendants were withdrawing Ms. Haack's Membership
13 interest in the company.

14 27. Enclosed with the Letter was a cashier's check in the amount of \$32,368.94 which
15 Defendants purported to be Ms. Haack's distribution of the company's assets at dissolution.

16 28. However, the cashier's check represented less than one-third (1/3) of the balance of Life
17 Realty's cash accounts and did not take into consideration any of Life Realty's other assets
18 or interests.

19 29. The Letter also stated that Defendants planned to send Ms. Haack's real estate license to
20 the Nevada Real Estate Division, effectively cutting off her ability to buy and sell real
21 property in Nevada.

22 30. Upon information and belief, prior to sending the Letter, Defendants had begun absconding
23 with Life Realty's assets, goodwill, intellectual property, and/or real estate agents.

24 31. Upon information and belief, Defendants organized a separate entity or entities to use as a
25 new real estate brokerage.

26 32. Upon information and belief, Defendants have fraudulently transferred Life Realty's assets
27 to the new entity, including but not limited to, Life Realty's intellectual property.

28 ...

33. Upon information and belief, Defendants have forced Life Realty's agents to either sign independent agent contracts with the new entity or be terminated, in violation of NRS 645.

34. Ms. Haack sent Defendants a cease and desist letter dated March 10, 2017 wherein Ms. Haack set forth Defendants' numerous breaches of the Operating Agreement, demanded that Defendants immediately cease and desist any and all dissolution actions, and demanded that Defendants cease and desist from using Life Realty's name, branding, property and other assets in operating a different and/or competing business.

35. Upon information and belief, Defendants have not ceased or desisted with their duplicitous behavior and have continued plundering Life Realty's assets.

36. By way of example, Defendants have removed Ms. Haack's name from Life Realty's member/manager information with the Nevada Secretary of State.

37. Additionally, on or about April 4, 2017, Defendants filed a Dissolution of Limited-Liability Company with the Nevada Secretary of State (the "Dissolution").

38. Defendants subsequently filed a Certificate of Correction on April 12, 2017, reversing the April 4, 2017 dissolution.

39. Since Defendants' erroneous Dissolution, Defendants have held meetings wherein Defendants have amended the Operating Agreement to include capital call provisions, have resolved to remove Ms. Haack from Life Realty's bank accounts and accounting software, and excluded Ms. Haack from Life Realty's office space.

40. In said meetings, Defendants have also approved the expansion of Life Realty into the additional office space discussed above. However, Defendants were required to pay a deposit in the amount of \$200,000 to secure that office space.

41. Defendants have held additional meetings of Life Realty ratifying a capital call in the amount of \$200,000.

42. Upon information and belief, Defendants intend to oust Ms. Haack from Life Realty by penalizing her for failing to meet the capital call requirements that Defendants have erroneously put into place.

...

DERIVATIVE AND DEMAND ALLEGATIONS

43. Plaintiffs bring this derivative action for the benefit of Life Realty to redress injuries suffered and to be suffered by Life Realty as a result of the breaches of contract and duplicitous conduct of Defendants.

44. Ms. Haack will adequately and fairly represent the interest of Life Realty and its members in enforcing and prosecuting its rights.

45. Ms. Haack is, and was at all times relevant to this action, a member of Life Realty, and holds membership interest of Life Realty.

46. As a result of the facts set forth herein and pursuant to NRCP 23.1, Ms. Haack dispatched a letter dated March 10, 2017 wherein Ms. Haack set forth Defendants' breaches of the Operating Agreement, demanded Defendants immediately cease and desist any and all dissolution actions, and demanded Defendants cease and desist from using Life Realty's name, branding, property, and other assets in operating a different and/or competing business. To date, Defendants have neither ceased or desisted with their duplicitous behavior and have continued plundering Life Realty's assets. In the alternative, a formal demand before Defendants, who own a combined sixty-six percent (66%) of Life Realty's Membership Interest, to raise the issue of a derivative suit would be futile. Such demand would be futile and useless because Defendants are incapable of making an independent and disinterested decision to institute and vigorously prosecute this action for the following reasons:

- a. Due to Defendants' positions and by virtue of the fact that Defendants hold a majority of Life Realty's Membership Interest, Defendants are in a position to and do control the board and the company and its operations.
- b. Defendants will not permit a company meeting to occur unless they institute it for matters that they want discussed.
- c. Based on the conduct of Defendants as alleged herein, it is obvious that Defendants have seized control of Life Realty and that they would find ways to obstruct a company meeting regarding the filing of a derivative complaint.

ALTER EGO ALLEGATIONS

47. Upon information and belief, at all relevant times herein there existed a unity of interest and ownership between Defendants and Life Realty, such that any corporate individuality and separateness between Defendants on the one hand; and Life Realty on the other hand, have ceased and that Defendants are the alter ego of Life Realty in that the business of Life Realty is so completely dominated, controlled, managed and operated by Defendants and that Life Realty functions as a mere instrumentality and conduit through which Defendants conduct their business in order to avoid liability and exposure, and in order to perpetrate fraud and circumvent the interests of justice. Adherence to the fiction of the existence of Life Realty as an entity separate and distinct from Defendants would permit an abuse of the corporate privilege and would sanction fraud and promote injustice in that Plaintiff could be denied a full and fair recovery.

FIRST CLAIM FOR RELIEF (Breach of Contract Against All Defendants)

48. Plaintiffs incorporate by reference the allegations set forth above as though fully restated herein.

49. On or about May 5, 2010, Ms. Haack and the Defendants entered into the Operating Agreement, which is a valid and enforceable contract.

50. Defendants breached their duties and obligations under the Operating Agreement with the following non-exclusive acts and/or omissions:

- a. Defendants began holding meetings without Ms. Haack in violation of the Operating Agreement;
- b. On or about March 10, 2017, Defendants sent Ms. Haack a letter (hereinafter the "Letter") wherein Defendants stated that they would be dissolving Life Realty.
- c. The Letter stated that Defendants were withdrawing Ms. Haack's Membership interest in the company.
- d. Defendants have absconded with Life Realty's assets, goodwill, intellectual property, and real estate agents;

- 1 e. Defendants have either organized a separate entity, or are planning to organize a
2 separate entity which Defendants intend to use as a new real estate brokerage and
3 as a receptacle for Life Realty's assets; and
4 f. Defendants have forced Life Realty's realtors to either sign new independent agent
5 contracts with the new entity or be fired.
6 g. Defendants have held meetings of Life Realty wherein Defendants have amended
7 the Operating Agreement to include capital call provisions, have resolved to
8 remove Ms. Haack from Life Realty's bank accounts, and excluded Ms. Haack from
9 Life Realty's office space.
10 h. In said meetings, Defendants have also approved the expansion of NRS into the
11 additional office space described above. However, to do so, Life Realty's landlord
12 requires a deposit in the amount of \$200,000.
13 i. Defendants have held additional meetings of NRS ratifying a capital call in the
14 amount of \$200,000.
15 j. Defendants intend to oust Ms. Haack from Life Realty by penalizing her for failing
16 to meet the capital call requirements that Defendants have erroneously put into
17 place.

18 51. Defendants' aforementioned acts and/or omissions have directly and proximately caused
19 Plaintiffs damage in excess of \$15,000.00.

20 52. Pursuant to NRCP 9(g), Plaintiffs are entitled to attorney's fees as special damages because
21 attorney's fees are a natural and proximate consequence of Defendants' injurious conduct.

22 53. It has been necessary for Plaintiffs to retain legal counsel to commence this action and
23 Plaintiffs are entitled to reasonable attorneys' fees and costs of suit to pursue this action.

24 **SECOND CLAIM FOR RELIEF**

25 **(Breach of the Implied Covenant of Good Faith and Fair Dealing Against All Defendants)**

26 54. Plaintiffs incorporate by reference the allegations set forth above as though fully restated
27 herein.

28 ...

1 55. Inherent within every contract entered into in Nevada is a duty of good faith in its
2 performance and enforcement.

3 56. On or about May 5, 2010, Ms. Haack and the Defendants entered into the Operating
4 Agreement, which is a valid and enforceable contract.

5 57. Defendants breached their duty of good faith and fair dealing under the Operating
6 Agreement with the following non-exclusive acts and/or omissions:

- 7 a. Defendants began holding meetings without Ms. Haack in violation of the
8 Operating Agreement;
- 9 b. On or about March 10, 2017, Defendants sent Ms. Haack the Letter, wherein
10 Defendants stated that they would be dissolving Life Realty.
- 11 c. The Letter stated that Defendants were withdrawing Ms. Haack's Membership
12 interest in the company.
- 13 d. Defendants have absconded with Life Realty's assets, goodwill, intellectual
14 property, and real estate agents;
- 15 e. Defendants have either organized a separate entity, or are planning to organize a
16 separate entity which Defendants intend to use as a new real estate brokerage and
17 as a receptacle for Life Realty's assets; and
- 18 f. Defendants have forced Life Realty's realtors to either sign new independent agent
19 contracts with the new entity or be fired.
- 20 g. Defendants have held meetings of Life Realty wherein Defendants have amended
21 the Operating Agreement to include capital call provisions, have resolved to
22 remove Ms. Haack from Life Realty's bank accounts, and excluded Ms. Haack from
23 Life Realty's office space.
- 24 h. In said meetings, Defendants have also approved the expansion of NRS into the
25 additional office space described above. However, to do so, Life Realty's landlord
26 requires a deposit in the amount of \$200,000.
- 27 i. Defendants have held additional meetings of NRS ratifying a capital call in the
28 amount of \$200,000.

1 j. Defendants intend to oust Ms. Haack from Life Realty by penalizing her for failing
2 to meet the capital call requirements that Defendants have erroneously put into
3 place.

4 58. Plaintiffs' justified expectations with regard to Life Realty and the Operating Agreement
5 were thus denied.

6 59. Defendants aforementioned acts and/or omissions have directly and proximately caused
7 Plaintiffs damage in excess of \$15,000.00.

8 60. It has been necessary for Plaintiffs to retain legal counsel to commence this action and
9 Plaintiffs are entitled to reasonable attorneys' fees and costs of suit to pursue this action.

10 **THIRD CLAIM FOR RELIEF**
11 **(Breach of Fiduciary Duty Against All Defendants)**

12 61. Plaintiffs incorporate by reference the allegations set forth above as though fully restated
13 herein.

14 62. Pursuant to Nevada law, Defendants, in positions of trust and confidence with respect to
15 Life Realty and Ms. Haack, owed to Life Realty and to Ms. Haack fiduciary duties,
16 including but not limited to a duty not to misuse or abuse their controlling power in a
17 manner that would conflict with the proper conduct of Life Realty's business, to benefit
18 themselves alone, or in a self-dealing manner detrimental to Ms. Haack, as well as a duty
19 to act in good faith, to deal fairly, and to communicate with candor in the best interests of
20 Ms. Haack as a member of Life Realty.

21 63. Defendants, acting in concert and separately of their own accord, and in betrayal of the
22 confidence and trust imposed upon them in said positions and relationships, each acting for
23 his own profit, benefit, personal advantage, and financial gain, undertook various acts in
24 violation of their fiduciary duties to Life Realty and to Ms. Haack that have been set forth
25 above.

26 64. Life Realty and Ms. Haack have been injured and continue to suffer damage as a result of
27 wrongful acts and breaches of fiduciary duties of Defendants.

28 ...

65. Defendants have engaged in intentional, reckless, and grossly negligent conduct to oppress Ms. Haack as a minority membership interest holder in Life Realty in breach of fiduciary duties owed by Defendants to her.

66. Defendants are jointly and severally liable for damages to Ms. Haack and Life Realty resulting from Defendants' wrongful acts and breaches of Defendants' fiduciary duties.

67. It has been necessary for Plaintiffs to retain legal counsel to commence this action and Plaintiffs are entitled to reasonable attorneys' fees and costs of suit to pursue this action.

FOURTH CLAIM FOR RELIEF
(Conversion Against All Defendants)

68. Plaintiffs incorporate by reference the allegations set forth above as though fully restated herein.

69. Defendants, by means of their aforementioned duplicitous conduct, exerted wrongful dominion over the assets of Life Realty.

70. Defendants' wrongful dominion over the assets of Life Realty is in denial of, or inconsistent with their contractual rights and obligations under the Operating Agreement.

71. Defendants' wrongful dominion was in derogation, exclusion, or in defiance of Ms. Haack's title or rights under the Operating Agreement.

72. Defendants' aforementioned acts and/or omissions have directly and proximately caused Plaintiffs damage in excess of \$15,000.00.

73. It has been necessary for Plaintiffs to retain legal counsel to commence this action and Plaintiffs are entitled to reasonable attorneys' fees and costs of suit to pursue this action.

FIFTH CLAIM FOR RELIEF
(Indemnity Against All Defendants)

74. Plaintiffs incorporate by reference the allegations set forth above as though fully restated herein.

75. As a result of Defendants' aforementioned duplicitous acts and/or omissions, Plaintiffs have incurred and will continue to incur damages the exact amount of which is unknown at this time. When the same has been ascertained, Plaintiffs will seek leave of the Court to amend this Complaint to set forth the true nature and amount of said damages and expenses.

1 76. Therefore, Plaintiffs are entitled to be indemnified by Defendants for Plaintiffs' damages
2 as set forth above.

3 77. Plaintiffs are in no way responsible for the events giving rise to the present complaint.

4 78. It has been necessary for Plaintiffs to retain legal counsel to commence this action and
5 Plaintiffs are entitled to reasonable attorneys' fees and costs of suit to pursue this action.

6 **SIXTH CLAIM FOR RELIEF**
7 **(Accounting Against All Defendants)**

8 79. Plaintiffs incorporate by reference the allegations set forth above as though fully restated
9 herein.

10 80. On or about March 10, 2017, Defendants enclosed with the Letter a check which
11 Defendants represented was Ms. Haack's share of Life Realty's assets at the time of
12 Defendants' attempted dissolution.

13 81. Pursuant to Section 8.3 of the Operating Agreement, Ms. Haack has a right to demand an
14 accounting of Defendants for the assets, intellectual property, good will, etc. that they have
15 absconded from Life Realty.

16 82. It has been necessary for Plaintiffs to retain legal counsel to commence this action and
17 Plaintiffs are entitled to reasonable attorneys' fees and costs of suit to pursue this action.

18 **SEVENTH CLAIM FOR RELIEF**
19 **(Interference with Prospective Economic Advantage Against All Defendants)**

20 83. Plaintiffs incorporate by reference the allegations set forth above as though fully restated
21 herein.

22 84. Plaintiffs and Defendants entered into an economic relationship when they undertook to do
23 business together in Life Realty.

24 85. Plaintiffs, by means of their work and contributions to Life Realty's business, fully
25 intended to derive a future economic benefit.

26 86. Defendants knew of the existence of the economic relationship.

27 87. Defendants engaged in the aforementioned duplicitous acts and/or omissions which were
28 designed to disrupt the economic relationship.

1 88. Defendants' aforementioned duplicitous acts and/or omissions both directly and
2 proximately caused a disruption of the economic relationship between Plaintiffs and Life
3 Realty.

4 89. Defendants' aforementioned duplicitous acts and/or omissions both directly and
5 proximately caused Plaintiffs damages in an amount in excess of \$15,000.00.

6 90. It has been necessary for Plaintiffs to retain legal counsel to commence this action and
7 Plaintiffs are entitled to reasonable attorneys' fees and costs of suit to pursue this action.

8 **EIGHTH CLAIM FOR RELIEF**
9 **(Usurpation of Corporate Opportunities Against All Defendants)**

10 91. Plaintiffs incorporate by reference the allegations set forth above as though fully restated
11 herein.

12 92. Ms. Haack and Defendants are all equal Members of Life Realty.

13 93. Defendants, by means of the aforementioned duplicitous acts and/or omissions,
14 appropriated for their own use, opportunities that should belong to Life Realty.

15 94. That Defendants' aforementioned duplicitous acts and/or omissions have resulted in
16 detriment to Life Realty and indirectly to Ms. Haack.

17 95. Defendants have an interest or expectancy in the misappropriated corporate opportunities.

18 96. It has been necessary for Plaintiffs to retain legal counsel to commence this action and
19 Plaintiffs are entitled to reasonable attorneys' fees and costs of suit to pursue this action.

20 **NINTH CLAIM FOR RELIEF**
21 **(Declaratory Relief Against All Defendants)**

22 97. Plaintiffs incorporate by reference the allegations set forth above as though fully restated
23 herein.

24 98. On or about May 5, 2010, Ms. Haack and the Defendants entered into the Operating
25 Agreement, which is a valid and enforceable contract.

26 99. Defendants have violated the Operating Agreement by taking the following non-exclusive
27 actions and/or omissions:

28 a. Defendants began holding meetings without Ms. Haack.

- b. On or about March 10, 2017, Defendants sent Ms. Haack the Letter, wherein Defendants stated that they would be dissolving Life Realty, despite failing to allow Ms. Haack to vote on the matter.
 - c. The Letter also stated that Defendants were withdrawing Ms. Haack's Membership interest in the company.
 - d. Defendants absconded with Life Realty's assets, goodwill, intellectual property, and real estate agents.
 - e. Defendants organized a separate entity and/or are planning to organize a separate entity which Defendants intend to use as a new real estate brokerage and as a receptacle for Life Realty's assets.
 - f. Defendants forced Life Realty's realtors to either sign new independent agent contracts with the new entity or be fired.
 - g. Defendants have held meetings of Life Realty wherein Defendants have purportedly amended the Operating Agreement to include capital call provisions, have resolved to remove Ms. Haack from Life Realty's bank accounts, and excluded Ms. Haack from Life Realty's office space.
 - h. In said meetings, Defendants have also purportedly approved the expansion of NRS into the additional office space described above. However, to do so, Life Realty's landlord requires a deposit in the amount of \$200,000.
 - i. Defendants have held additional meetings of NRS ratifying a capital call in the amount of \$200,000.
 - j. Defendants intend to oust Ms. Haack from Life Realty by penalizing her for failing to meet the capital call requirements that Defendants have erroneously attempted to put into place.
100. Many of the issues in this matter arise from Defendants' faulty interpretation of their rights and obligations under the Operating Agreement.
101. An actual and justiciable controversy exists between Defendants and Plaintiffs concerning the parties' rights and obligations under the Operating Agreement.

102. Because of the claims and defenses asserted in this matter, and the nature of the Company, this issue is ripe for judicial determination.

103. Plaintiffs request that this Court issue an order declaring the rights and obligations of the parties under the Operating Agreement and with respect to Life Realty.

104. Plaintiffs additionally request that this Court order Defendants to cease any and all conduct that violates the Operating Agreement, as originally agreed upon by Defendants and Ms. Haack, including but not limited to holding meetings without giving proper notice, attempting to amend the Operating Agreement without unanimous consent of the Members, voting on matters in which the Operating Agreement prohibits personal voting (i.e. salary), and otherwise attempting to take any substantial action on behalf of Life Realty without following the protocol and/or procedures established by the original Operating Agreement.

105. Finally, Plaintiffs request that this Court order that any and all action taken by Defendants that violates or otherwise contravenes the provisions of the original Operating Agreement is deemed void and/or otherwise ineffective to alter any rights or obligations under the original Operating Agreement.

106. It has been necessary for Plaintiffs to retain legal counsel to commence this action and Plaintiffs are entitled to reasonable attorneys' fees and costs of suit to pursue this action.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs respectfully pray for the following relief from this Court:

1. An award of damages against all Defendants, jointly and severally, and in favor of Plaintiffs for the amount of damages sustained by Plaintiffs as a result of Defendants' duplicitous acts and/or omissions;
2. And award of restitution, disgorgement of all illicit proceeds generated as a result of the wrongful conduct alleged herein, and punitive damages;
3. An award of appropriate equitable relief as set forth herein;
4. An award of pre-judgment interest, as well as reasonable attorneys' fees and other costs;

- 1 5. An order declaring the rights and obligations of the parties hereto with respect to Life
2 Realty and the Operating agreement, unwinding and voiding any action taken by
3 Defendants that is violative of or inconsistent with the original Operating Agreement, and
4 prohibiting Defendants from taking any further action which would violate, contravene,
5 or be inconsistent with the original Operating Agreement; and
6 6. For such other and further relief as the Court deems just and proper.

7
8 DATED this 25th day of May, 2018

9 SHUMWAY VAN

10
11 By 

12 MICHAEL C. VAN, ESQ.

13 Nevada Bar No. 3876

14 KARL A. SHELTON, ESQ.

15 Nevada Bar No. 12868

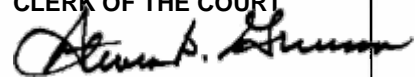
16 GARRETT R. CHASE, ESQ.

17 Nevada Bar No. 14498

18 8985 South Eastern Avenue, Suite 100

19 Las Vegas, Nevada 89123

20 *Attorneys for Plaintiff*



1 **ANSW**

Patrick J. Sheehan, Esq. (Bar No. 3812)

2 FENNEMORE CRAIG, P.C.

300 South Fourth Street, 14th Floor

3 Las Vegas, Nevada 89101

Telephone: (702) 692-8000

4 Facsimile: (702) 692-8099

Email: psheehan@fclaw.com

5 *Attorneys for Defendants/Counterclaimants*

Sean Evenden and Roger Ayala

6 **DISTRICT COURT**

7 **CLARK COUNTY, NEVADA**

8 NANCY HAACK, an individual; and NRS
9 REALTY GROUP, LLC, a Nevada Limited
Liability Company, d/b/a LIFE REALTY,

10 Plaintiff,

11 vs.

12 SEAN EVENDEN, an individual; ROGER
13 AYALA; an individual; DOE Individuals I
through X; and ROE CORPORATIONS and
14 ORGANIZATIONS I through X, inclusive,

15 Defendants,

16 SEAN EVENDEN, an individual; ROGER
17 AYALA; an individual, and NRS REALTY
GROUP, LLC, a Nevada Limited Liability
18 Company d/b/a LIFE REALTY,

19 Counterclaimants,

20 vs.

21 NANCY HAACK, an individual.

22 Counterdefendants.

Case No.: A-17-753435-C

Dept. No.: XXVIII

**DEFENDANTS ANSWER TO SECOND
AMENDED COMPLAINT AND FIRST
AMENDED COUNTERCLAIM**

23 Defendants, SEAN EVENDEN and ROGER AYALA, by and through their attorney of
24 record, Patrick J. Sheehan, Esq. of the law firm of Fennemore Craig, P.C., hereby files their
25 Answer to Plaintiff's Second Amended Complaint.

26 Plaintiff has represented that the only additions to the Complaint is the Ninth Claim for
27 Relief. The Defendants Answer that Ninth Claim for Relief as follows.

28 1. Defendant is without sufficient information to form a belief as to the truth of the

1 allegations contained in Paragraph 97.

2 2. In Answering Paragraph 98, Defendants state that the documents referenced
3 therein speaks for itself.

4 3. Defendants deny the allegations contained in Paragraph 99, 100, 101, 102, 103,
5 104, 105 and 106.

6 4. Defendants Answers remain the same to the other allegations.

7 **AFFIRMATIVE DEFENSES**

8 **FIRST AFFIRMATIVE DEFENSE**

9 Plaintiff fails to state a claim upon which relief can be granted.

10 **SECOND AFFIRMATIVE DEFENSE**

11 Plaintiff lacks the authority to name Realty Group as a Plaintiff.

12 **THIRD AFFIRMATIVE DEFENSE**

13 Plaintiff lacks standing to bring a suit.

14 **FOURTH AFFIRMATIVE DEFENSE**

15 Plaintiff's Complaint should be dismissed since she failed to make a demand.

16 **FIFTH AFFIRMATIVE DEFENSE**

17 Plaintiff's Complaint is not a proper derivative action and she has not met the
18 prerequisites for same.

19 **SIXTH AFFIRMATIVE DEFENSE**

20 Plaintiff's claims are waived under the doctrines of waiver, laches and estoppel.

21 **SEVENTH AFFIRMATIVE DEFENSE**

22 Plaintiff breached the parties agreement and is not entitled to any relief.

23 **EIGHTH AFFIRMATIVE DEFENSE**

24 Plaintiff's claims are barred under the doctrine of unclean hands.

25 **PRAYER FOR RELIEF**

26 WHEREFORE, Defendants hereby pray for judgment as follows:

- 27 a. Plaintiffs take nothing by reason of their Complaint;
28 b. Plaintiffs' Complaint be dismissed in its entirety with prejudice;

- 1 c. For an award of attorneys' fees and costs incurred in this matter; and
2 d. For such further or other relief as the Court deems just or proper.

3 **FIRST AMENDED COUNTERCLAIM**

4 SEAN EVENDEN, an individual, ROGER AYALA, an individual, and NRS REALTY
5 GROUP, LLC d/b/a LIFE REALTY, a Nevada Limited Liability Company (collectively
6 "Counterclaimants") and for its First Amended Counterclaim allege against Nancy Haack
7 ("Counterdefendant") as follows:

8 **FIRST CLAIM FOR RELIEF**

9 **Breach of Contract**

10 **(Direct Claim)**

11 1. In or about mid-2016, the Defendant agreed with Evenden and Ayala to expand
12 NRS Realty Group, LLC dba LifeRealty ("Life").

13 2. Pursuant to that agreement, the parties would rent additional space across the hall.

14 3. They would recruit additional agents and expand the realty agency.

15 4. That steps were taken in this regard based on the agreements and promises by
16 Counterdefendant Haack.

17 5. That in violation of the terms of the parties agreement, Haack in or about January
18 2017 informed Evenden and Ayala that she was reneging on her promises and agreement to
19 expand Life and rent additional space across the hall.

20 6. That as a direct and proximate result of these breaches, Haack has caused damages
21 to the Counterclaimants in an amount in excess of \$10,000 to be proven at Trial including but not
22 limited to: lost agents, lost revenue from the agents, lost profits, dissention within the company
23 and loss of business reputation.

24 7. It has been necessary to hire an attorney to prosecute this action and they're
25 entitled to their reasonable attorney's fees therefore.

26 ///

27 ///

28 ///

1 **SECOND CLAIM FOR RELIEF**

2 **Breach of the Implied Covenant of Good Faith and Fair Dealing both Tortious and**
3 **Contractual**

4 8. There was a special relationship between the three members of the LLC (Evenden,
5 Ayala and Haack). That there was an implied covenant of good faith and fair dealing contained in
6 the parties agreements.

7 9. That Counterclaimants relied upon Haack to live up to her promises and
8 obligations pursuant to the agreements.

9 10. Specifically, that Haack would do what was in the best interest of the partnership
10 and Company.

11 11. Further, that she would live up to her promises to expand the Company and take
12 the space across the hall.

13 12. That the Counterclaimants relied upon these promises and representations to
14 expand the business, get new agents and enter into negotiations to take the space across the hall.

15 13. That in violation of the implied covenant of good faith and fair dealing, Haack
16 reneged on her promises to expand the business and take the space across the hall.

17 14. This caused the Counterclaimants damages in an amount to be proven at Trial,
18 including but not limited to: lost agents, potential loss of the space across the hall, lost profits,
19 dissension within the Company and loss of business reputation.

20 15. That as a direct and proximate result of these breaches, Haack has caused damages
21 to the Counterclaimants in an amount be proven at Trial.

22 16. Furthermore, as a result of the tortious nature of the breach of implied covenant of
23 good faith and fair dealing due to the special relationship and element of reliance by the
24 Counterclaimants, Counterclaimants are entitled to punitive or exemplary damages in an amount
25 to be proven at Trial.

26 17. It has been necessary to hire an attorney to prosecute this action and they're
27 entitled to their reasonable attorney's fees therefore.

28 ///

1 **THIRD CLAIM FOR RELIEF**

2 **Breach of Contract**

3 **(Derivative)**

4 18. Plaintiffs bring the same breach of contract claim set forth above on behalf of
5 NRS/Life Realty to address injuries suffered by NRS/Life Realty as a result of the breaches of
6 contract and wrongful conduct of Haack.

7 19. Evenden and Ayala have a 2/3 majority and can bring the claim.

8 20. They will adequately and fairly represent the interests of NRS/Life Realty and its
9 members in enforcing and prosecuting its rights.

10 21. It would be unnecessary and fruitless for Ayala and Evenden to include Haack in
11 the decision to bring the claims since the claims are directly against Haack.

12 22. Accordingly, for the same reasons set forth above, NRS/Life Realty is entitled to
13 recover from Haack from her breach of contract also.

14 23. It has been necessary to hire an attorney to prosecute this action and they're
15 entitled to their reasonable attorney's fees therefore.

16 **FOURTH CLAIM FOR RELIEF**

17 **Breach of Implied Covenant of Good Faith and Fair Dealing**

18 **(Derivative)**

19 24. Plaintiffs bring the same breach of implied covenant of good faith and fair dealing
20 claim set forth above on behalf of NRS/Life Realty to address injuries suffered by NRS/Life
21 Realty as a result of the breaches of implied covenant of good faith and fair dealing and wrongful
22 conduct of Haack.

23 25. Evenden and Ayala have a 2/3 majority and can bring the claim.

24 26. They will adequately and fairly represent the interests of NRS/Life Realty and its
25 members in enforcing and prosecuting its rights.

26 27. It would be unnecessary and fruitless for Ayala and Evenden to include Haack in
27 the decision to bring the claims since the claims are directly against Haack.

28 28. Accordingly, for the same reasons set forth above, NRS/Life Realty is entitled to

1 recover from Haack from her breach of implied covenant of good faith and fair dealing also.

2 29. It has been necessary to hire an attorney to prosecute this action and they're
3 entitled to their reasonable attorney's fees therefore.

4 **FIFTH CLAIM FOR RELIEF**

5 **Tortious Interference with Contract and Prospective Economic Advantage**

6 30. At all times, Counterdefendant knew that Counterclaimant NRS had contracts with
7 its agents and that the individual Counterclaimants had relations with the agents and potential
8 agents.

9 31. That despite this, she tried to interfere with these contracts and agents by:

- 10 a) reneging on her promises with respect the business as explained below;
- 11 b) badmouthing the Counterclaimants;
- 12 c) filing a Complaint with the Nevada Real Estate Division and the GLVAR;
- 13 d) going into the office, throwing temper tantrums and disrupting the
14 business;
- 15 e) trying to get agents to move their licenses.

16 32. All of this was designed to cause the agents to leave the employ of Life and ruin
17 the relationship between them and the Counterclaimants. Also to harm the relationship with
18 potential new agents.

19 33. As a direct and proximate result of the tortious interference, Counterclaimants are
20 entitled to damages in an amount to be proven at Trial in excess of \$10,000.

21 34. The aforementioned conduct of Counterdefendant (including causing damages
22 involving the relationship with the GLVAR and the Nevada Real Estate Division) was so wanton
23 and reckless that Counterclaimants are entitled to punitive and exemplary damages.

24 35. It has been necessary to hire an attorney to prosecute this action and they're
25 entitled to their reasonable attorney's fees therefore.

26 **SIXTH CLAIM FOR RELIEF**

27 **Declaratory Relief**

28 36. There is a justiciable controversy between the parties.

37. Specifically, Haack abandoned NRS/Life.

38. She has made it clear that she no longer wants to be a part of NRS/Life.

39. She reneged on her promises to expand NRS/Life and expand the business and take the space across the hall.

40. Further, after agreeing to sign a personal guarantee for the space across the hall along with her husband as required by the Landlord (this is what they did in the first Lease), she failed and refused to do the same.

41. As a result of the same, Counterclaimants believe that Haack has resigned or given up the position in NRS.

42. Haack apparently believes otherwise.

43. Accordingly, the Counterclaimants request declaratory relief from the Court that Haack has abandoned and left the Company and is no longer entitled to any interest in the Company.

44. It has been necessary to hire an attorney to prosecute this action and they're entitled to their reasonable attorney's fees therefore.

WHEREFORE, Counterclaimants pray for relief as follows:

1. for damages in amount to be proven at Trial in excess of \$10,000.00.
2. for an Order declaring that Haack is no longer a member of the LLC.
3. for punitive or exemplary damages.
4. for such other and further relief as the court may allow.
5. for its reasonable costs and attorney's fees.

Dated this 18th day of June, 2018.

FENNEMORE CRAIG, P.C.

/s/ Patrick J. Sheehan, Esq.

By: Patrick J. Sheehan, Esq. (Bar No. 3812)
300 South Fourth Street, 14th Floor
Las Vegas, Nevada 89101
Attorneys for Defendants/Counterclaimants
Sean Evenden and Roger Ayala

1 **CERTIFICATE OF SERVICE**

2 Pursuant to NRCP 5(b), I hereby certify that I am an employee of Fennemore Craig, P.C.
3 and that on June 18, 2018, service of the **DEFENDANTS ANSWER TO SECOND AMENDED**
4 **COMPLAINT AND FIRST AMENDED COUNTERCLAIM** was made on the following
5 counsel of record and/or parties by (1) depositing a true and correct copy of the same in the U.S.
6 Mail, postage pre-paid, addressed below, and (2) electronic transmission to all parties appearing on
7 the electronic service list in Odyssey E-File & Serve (Wiznet):

8 "Jennifer Hogan, Legal Assistant" . (jennifer@sterlingkerrlaw.com)

9 "Lisa Peters, Paralegal" . (lisa@sterlingkerrlaw.com)

10 "Sterling Kerr, Esq" . (sterling@sterlingkerrlaw.com)

11 "Taylor Simpson, Esq." . (taylor@sterlingkerrlaw.com)

12 -and-

13 Michael V. Van, Esq.

14 Karl A. Shelton, Esq.

15 Shumway Van

16 8985 S. Eastern Ave. Suite 100

17 Las Vegas, NV 89123

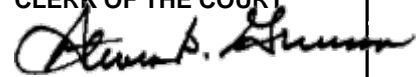
18 Michael C. Van (michael@shumwayvan.com)

19 Karl A. Shelton (karl@shumwayvan.com)

20 /s/Trista Day

21

An Employee of Fennemore Craig, P.C.



1 CCAN
2 MICHAEL C. VAN, ESQ.
3 Nevada Bar No. 3876,
4 KARL A. SHELTON, ESQ.
5 Nevada Bar No. 12868
6 GARRETT R. CHASE, ESQ.
7 Nevada Bar No. 14498
8 SHUMWAY • VAN
9 8985 South Eastern Avenue, Suite 100
10 Las Vegas, Nevada 89123
11 Telephone: (702) 478-7770
12 Facsimile: (702) 478-7779
13 Email: michael@shumwayvan.com
14 karl@shumwayvan.com
15 garrett@shumwayvan.com
16 *Attorneys for Plaintiffs*

11 EIGHTH JUDICIAL DISTRICT COURT
12 CLARK COUNTY, NEVADA

11 NANCY L. HAACK, an individual; and NRS
12 REALTY GROUP, LLC, a Nevada Limited
13 Liability Company, d/b/a LIFE REALTY,

14 Plaintiffs,

15 vs.

15 SEAN EVENDEN, an individual, ROGER
16 AYALA, an individual, DOE Individuals I
17 through X inclusive, and ROE
18 CORPORATIONS and ORGANIZATIONS I
19 through X inclusive.

20 Defendants.

19 SEAN EVENDEN, an individual, ROGER
20 AYALA, an individual, and NRS REALTY
21 GROUP, LLC, a Nevada Limited Liability
22 Company, d/b/a LIFE REALTY,

23 Counterclaimants,

24 vs.

25 NANCY L. HAACK, an individual,

26 Counterdefendant.

Case No.: A-17-753435-C
Dept. No.: XXIII

PLAINTIFF/COUNTERDEFENDANT
NANCY HAACK'S ANSWER TO
DEFENDANTS' FIRST AMENDED
COUNTERCLAIM

26 Plaintiff/Counterdefendant NANCY L. HAACK ("Plaintiff"), by and through her attorneys
27 of record, the law firm of Shumway Van, hereby answers Defendants' First Amended
28 Counterclaim ("Counterclaim") as follows:

1 **ANSWER TO FIRST AMENDED COUNTERCLAIM**

2 **FIRST CLAIM FOR RELIEF**

3 **Breach of Contract (Direct Claim)**

4 1. In answering the allegations set forth in Paragraphs 1 through 7 of the
5 Counterclaim, Plaintiff/Counterdefendant denies the allegations contained herein.

6 **SECOND CLAIM FOR RELIEF**

7 **Breach of the Implied Covenant of Good Faith and Fair Dealing both Tortious and**
8 **Contractual**

9 2. In answering the allegations set forth in Paragraph 8 of the Counterclaim,
10 Plaintiff/Counterdefendant states the allegations contained therein consist of a statement of law
11 requiring no response, to the extent the allegations require a response, this Answering Counter-
12 Defendant denies the allegations contained therein to the extent they conflict with the law.

13 3. In answering the allegations set forth in Paragraphs 9 through 17 of the
14 Counterclaim, Plaintiff/Counterdefendant denies the allegations contained herein.

15 **THIRD CLAIM FOR RELIEF**

16 **Breach of Contract (Derivative)**

17 4. In answering the allegations set forth in Paragraphs 18 through 23 of the
18 Counterclaim, Plaintiff/Counterdefendant states that this cause of action is procedurally defective
19 as more thoroughly described in Plaintiffs' Motion to Strike Claims in Defendants' First Amended
20 Counterclaim ("Plaintiffs' Motion to Strike") filed herewith. Plaintiff/Counterdefendant hereby
21 incorporates by reference the entirety of Plaintiffs' Motion to Strike herein. To the extent any
22 Answer is required, Plaintiff/Counterdefendant denies the allegations contained in Paragraphs 18
23 through 23 of the Counterclaim in their entirety.

24 **FOURTH CLAIM FOR RELIEF**

25 **Breach of the Implied Covenant of Good Faith and Fair Dealing (Derivative)**

26 5. In answering the allegations set forth in Paragraphs 24 through 29 of the
27 Counterclaim, Plaintiff/Counterdefendant states that this cause of action is procedurally defective
28 as thoroughly described in Plaintiffs' Motion to Strike Claims in Defendants' First Amended

1 Counterclaim ("Plaintiffs' Motion to Strike") filed herewith. Plaintiff/Counterdefendant hereby
2 incorporates by reference the entirety of Plaintiffs' Motion to Strike herein. To the extent any
3 Answer is required, Plaintiff/Counterdefendant denies the allegations contained in Paragraphs 18
4 through 23 of the Counterclaim in their entirety.

5 **FIFTH CLAIM FOR RELIEF**

6 **Tortious Interference with Contract and Prospective Economic Advantage**

7 6. In answering the allegations set forth in Paragraph 30 through 35 of the
8 Counterclaim, Plaintiff/Counterdefendant denies the allegations contained therein.

9 **SIXTH CLAIM FOR RELIEF**

10 **Declaratory Relief**

11 7. In answering the allegations set forth in Paragraph 36 of the Counterclaim,
12 Plaintiff/Counterdefendant admits the allegations contained herein.

13 8. In answering the allegations set forth in Paragraph 37 through 44 of the
14 Counterclaim, Plaintiff/Counterdefendant denies the allegations contained herein.

15 **AFFIRMATIVE DEFENSES**

16 1. Defendants' Counterclaim fails to state a claim against Plaintiff upon which relief
17 can be granted.

18 2. Defendants failed to mitigate any damages allegedly sustained. As such, any
19 damages actually sustained by the Defendants should be reduced proportionally for the fail to
20 mitigate such losses.

21 3. Plaintiff is informed and believes, and thereon alleges that, as to each alleged cause
22 of action, Defendants have failed, refused, and neglected to take reasonable steps to mitigate their
23 alleged damages, thus barring or diminishing Defendants' recovery herein.

24 4. Plaintiff is informed and believes that the Counterclaim, and each purported cause
25 of action alleged therein, is barred by the doctrine of unclean hands.

26 5. The Counterclaim, and each purported cause of action alleged therein, is barred
27 because Defendants' conduct concerning the matters alleged in the Counterclaim constituted
28 carelessness, negligence, and/or misconduct, and the resulting injuries, if any, sustained by

1 Defendants were proximately caused and contributed to, in whole or in part, by the conduct of
2 Defendants.

3 6. Plaintiff is informed and believes that the Counterclaim, and each purported cause
4 of action therein, is barred by Defendants' consent to the conduct alleged in the Counterclaim.

5 7. Plaintiff is informed and believes that the Counterclaim, and each purported cause
6 of action therein, is barred by the doctrine of unjust enrichment.

7 8. Plaintiff is informed and believes that the Counterclaim, and each purported cause
8 of action therein, is barred by the doctrine of laches.

9 9. Plaintiff is informed and believes that the Counterclaim, and each purported cause
10 of action therein, is barred by the statute of frauds and applicable Nevada Revised Statutes as to
11 same.

12 10. Plaintiff is informed and believes that the Counterclaim, and each purported cause
13 of action therein, is barred by the doctrine of judicial estoppel.

14 11. Plaintiff is informed and believes that the Counterclaim, and each purported cause
15 of action therein, is barred due to its lack of equity to the parties to this action.

16 12. Plaintiff is informed and believes that the Counterclaim, and each purported cause
17 of action therein, is barred due to the doctrine of accord and satisfaction.

18 13. Plaintiff is informed and believes that the Counterclaim, and each purported cause
19 of action therein, is barred due to Defendants' lack of standing.

20 14. Plaintiff is informed and believes that the Counterclaim, and each purported
21 damage allegedly suffered therein if any, should be offset by the amounts Defendants owe
22 Plaintiffs.

23 15. Plaintiff is informed and believes that the Counterclaim, and each purported cause
24 of action therein, is barred based on the theory of contribution.

25 16. It has been necessary for this answering Plaintiff to employ the services of her
26 attorney to defend this action, and a reasonable sum should be allowed to this answering Plaintiff
27 for attorney's fees and costs.

28 ...

17. Pursuant to Rule 11 of NRCP as amended, all possible affirmative defenses may not have been alleged herein insofar as sufficient facts are not available after reasonable inquiry from the filing of Defendants' Counterclaim, and therefore, Plaintiff reserves the right to amend the Answer to allege additional affirmative defenses, delete or change the same as subsequent investigation warrants.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff respectfully prays for the following relief from this Court:

1. That Defendants take nothing by way of their Counterclaim;
2. That the Counterclaim be dismissed in its entirety as against Plaintiff;
3. That Plaintiff be awarded reasonable attorney fees and the cost of suit incurred in defending this action; and
4. For such other and further relief as the Court deems just and proper.

DATED this 11th day of July, 2018

SHUMWAY VAN

By: 

MICHAEL C. VAN, ESQ.

Nevada Bar No. 3876

KARL A. SHELTON, ESQ.

Nevada Bar No. 12868

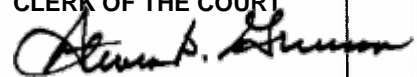
GARRETT R. CHASE, ESQ.

Nevada Bar No. 14498

8985 South Eastern Avenue, Suite 100

Las Vegas, Nevada 89123

Attorneys for Plaintiff



1 **AMND**
Patrick J. Sheehan, Esq. (Bar No. 3812)
2 **FENNEMORE CRAIG, P.C.**
300 South Fourth Street, 14th Floor
3 Las Vegas, Nevada 89101
Telephone: (702) 692-8000
4 Facsimile: (702) 692-8099
Email: psheehan@fclaw.com
5 *Attorneys for Defendants/Counterclaimants*
Sean Evenden and Roger Ayala

6 **DISTRICT COURT**
7 **CLARK COUNTY, NEVADA**

8 **NANCY HAACK, an individual; and NRS**
9 **REALTY GROUP, LLC, a Nevada Limited**
10 **Liability Company, d/b/a LIFE REALTY,**

11 **Plaintiff,**

12 **vs.**

13 **SEAN EVENDEN, an individual; ROGER**
14 **AYALA; an individual; DOE Individuals I**
15 **through X; and ROE CORPORATIONS and**
16 **ORGANIZATIONS I through X, inclusive,**

17 **Defendants,**

18 **SEAN EVENDEN, an individual; ROGER**
19 **AYALA; an individual, and NRS REALTY**
20 **GROUP, LLC, a Nevada Limited Liability**
21 **Company d/b/a LIFE REALTY,**

22 **Counterclaimants,**

23 **vs.**

24 **NANCY HAACK, an individual.**

25 **Counterdefendants.**

Case No.: A-17-753435-C

Dept. No.: XXVIII

DEFENDANTS SECOND AMENDED
COUNTERCLAIM

26 Defendants, SEAN EVENDEN and ROGER AYALA, by and through their attorney of
27 record, Patrick J. Sheehan, Esq. of the law firm of Fennemore Craig, P.C., hereby files their
28 Second Amended Counterclaim as follows:

29 SEAN EVENDEN, an individual, ROGER AYALA, an individual, and NRS REALTY
30 GROUP, LLC d/b/a LIFE REALTY, a Nevada Limited Liability Company (collectively
31 "Counterclaimants") and for its Second Amended Counterclaim allege against Nancy Haack

1 ("Counterdefendant") as follows:

2 **FIRST CLAIM FOR RELIEF**

3 **Breach of Contract**

4 **(Direct Claim)**

5 1. In or about mid-2016, the Defendant agreed with Evenden and Ayala to expand
6 NRS Realty Group, LLC dba LifeRealty ("Life").

7 2. Pursuant to that agreement, the parties would rent additional space across the hall.

8 3. They would recruit additional agents and expand the realty agency.

9 4. That steps were taken in this regard based on the agreements and promises by
10 Counterdefendant Haack.

11 5. That in violation of the terms of the parties agreement, Haack in or about January
12 2017 informed Evenden and Ayala that she was reneging on her promises and agreement to
13 expand Life and rent additional space across the hall.

14 6. That as a direct and proximate result of these breaches, Haack has caused damages
15 to the Counterclaimants in an amount in excess of \$10,000 to be proven at Trial including but not
16 limited to: lost agents, lost revenue from the agents, lost profits, dissention within the company
17 and loss of business reputation.

18 7. It has been necessary to hire an attorney to prosecute this action and they're
19 entitled to their reasonable attorney's fees therefore.

20 **SECOND CLAIM FOR RELIEF**

21 **Breach of the Implied Covenant of Good Faith and Fair Dealing both Tortious and**

22 **Contractual**

23 8. There was a special relationship between the three members of the LLC (Evenden,
24 Ayala and Haack). That there was an implied covenant of good faith and fair dealing contained in
25 the parties agreements.

26 9. That Counterclaimants relied upon Haack to live up to her promises and
27 obligations pursuant to the agreements.

28 10. Specifically, that Haack would do what was in the best interest of the partnership

1 and Company.

2 11. Further, that she would live up to her promises to expand the Company and take
3 the space across the hall.

4 12. That the Counterclaimants relied upon these promises and representations to
5 expand the business, get new agents and enter into negotiations to take the space across the hall.

6 13. That in violation of the implied covenant of good faith and fair dealing, Haack
7 reneged on her promises to expand the business and take the space across the hall.

8 14. This caused the Counterclaimants damages in an amount to be proven at Trial,
9 including but not limited to: lost agents, potential loss of the space across the hall, lost profits,
10 dissension within the Company and loss of business reputation.

11 15. That as a direct and proximate result of these breaches, Haack has caused damages
12 to the Counterclaimants in an amount be proven at Trial.

13 16. Furthermore, as a result of the tortious nature of the breach of implied covenant of
14 good faith and fair dealing due to the special relationship and element of reliance by the
15 Counterclaimants, Counterclaimants are entitled to punitive or exemplary damages in an amount
16 to be proven at Trial.

17 17. It has been necessary to hire an attorney to prosecute this action and they're
18 entitled to their reasonable attorney's fees therefore.

19 **THIRD CLAIM FOR RELIEF**

20 **Breach of Contract**

21 **(By NRS)**

22 18. Plaintiffs bring the same breach of contract claim set forth above on behalf of
23 NRS/Life Realty to address injuries suffered by NRS/Life Realty as a result of the breaches of
24 contract and wrongful conduct of Haack.

25 19. Evenden and Ayala have a 2/3 majority and have authorized NRS to bring the
26 claim.

27 20. Accordingly, for the same reasons set forth above, NRS/Life Realty is entitled to
28 recover from Haack from her breach of contract also.

1 21. It has been necessary to hire an attorney to prosecute this action and they're
2 entitled to their reasonable attorney's fees therefore.

3 **FOURTH CLAIM FOR RELIEF**

4 **Breach of Implied Covenant of Good Faith and Fair Dealing**

5 **(By NRS)**

6 22 Plaintiffs bring the same breach of implied covenant of good faith and fair dealing
7 claim set forth above on behalf of NRS/Life Realty to address injuries suffered by NRS/Life
8 Realty as a result of the breaches of implied covenant of good faith and fair dealing and wrongful
9 conduct of Haack.

10 23. Evenden and Ayala have a 2/3 majority and have authorized NRS to bring the
11 claim.

12 24. Accordingly, for the same reasons set forth above, NRS/Life Realty is entitled to
13 recover from Haack from her breach of implied covenant of good faith and fair dealing also.

14 25. It has been necessary to hire an attorney to prosecute this action and they're
15 entitled to their reasonable attorney's fees therefore.

16 **FIFTH CLAIM FOR RELIEF**

17 **Declaratory Relief**

18 26. There is a justiciable controversy between the parties.

19 27. Specifically, Haack abandoned NRS/Life.

20 28. She has made it clear that she no longer wants to be a part of NRS/Life.

21 29. She reneged on her promises to expand NRS/Life and expand the business and
22 take the space across the hall.

23 30. Further, after agreeing to sign a personal guarantee for the space across the hall as
24 required by the Landlord (this is what they did in the first Lease), she failed and refused to do the
25 same.

26 31. As a result of the same, Counterclaimants believe that Haack has resigned or given
27 up the position in NRS.

28 32. Haack apparently believes otherwise.

33. Accordingly, the Counterclaimants request declaratory relief from the Court that Haack has abandoned and left the Company and is no longer entitled to any interest in the Company.

34. It has been necessary to hire an attorney to prosecute this action and they're entitled to their reasonable attorney's fees therefore.

WHEREFORE, Counterclaimants pray for relief as follows:

1. for damages in amount to be proven at Trial in excess of \$10,000.00.
2. for an Order declaring that Haack is no longer a member of the LLC.
3. for punitive or exemplary damages.
4. for such other and further relief as the court may allow.
5. for its reasonable costs and attorney's fees.

Dated this 9th day of November, 2018.

FENNEMORE CRAIG, P.C.

/s/ Patrick J. Sheehan, Esq.

By:

Patrick J. Sheehan, Esq. (Bar No. 3812)
300 South Fourth Street, 14th Floor
Las Vegas, Nevada 89101
Attorneys for Defendants/Counterclaimants
Sean Evenden and Roger Ayala

1 **CERTIFICATE OF SERVICE**

2 Pursuant to NRCP 5(b), I hereby certify that I am an employee of Fennemore Craig, P.C.
3 and that on November 9, 2018, service of the **DEFENDANTS SECOND AMENDED**
4 **COUNTERCLAIM** was made on the following counsel of record and/or parties by (1) electronic
5 transmission to all parties appearing on the electronic service list in Odyssey E-File & Serve
6 (Wiznet):

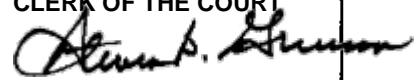
7 Michael V. Van, Esq.
8 Karl A. Shelton, Esq.
9 Shumway Van
10 8985 S. Eastern Ave. Suite 100
11 Las Vegas, NV 89123
12 Michael C. Van (michael@shumwayvan.com)
13 Karl A. Shelton (karl@shumwayvan.com)

14 */s/Trista Day*

15 _____
16 An Employee of Fennemore Craig, P.C.
17
18
19
20
21
22
23
24
25
26
27
28

DISTRICT COURT
CLARK COUNTY, NEVADA

Electronically Filed
12/14/2018 7:53 PM
Steven D. Grierson
CLERK OF THE COURT



NANCY HAACK

Plaintiff(s),

vs.

CASE NO. A753435

DEPT NO. 23

SEAN EVENDEN

Defendant(s),
_____ /

ORDER RE-SETTING CIVIL BENCH TRIAL

IT IS HEREBY ORDERED that:

The trial date previously set in this matter for **November 6, 2018**, and all dates associated therewith are hereby **VACATED**; and

IT IS FURTHER ORDERED that:

A. The above entitled case is set to be tried for FIVE days to begin on a five week stack on **Monday, April 15, 2019 at 1:00 pm.**

B. A Calendar Call will be held on **Tuesday, April 9, 2019 at 11:00 a.m.**

Trial Counsel (and any party in proper person) must appear. ***Trial Counsel*** must appear at the calendar call and bring the following:

- (1) Typed exhibit lists and exhibits;
- (2) Original, certified, unopened depositions;
- (3) List of equipment needed for trial;

C. The Pre-trial Memorandum must be filed no later than **April 9, 2019**, with a courtesy copy delivered to chambers. EDCR 2.67 must be complied with.

D. All discovery deadlines, deadlines for filing dispositive motions and motions to amend the pleadings or add parties are controlled by the previously issued Scheduling Order,

STEFANY A. MILEY
DISTRICT JUDGE

DEPARTMENT TWENTY THREE
LAS VEGAS NV 89101-2408

Volume I, Page 000099

and/or any amendments or subsequent orders, or Special Hearing Master Case Agenda. If no Scheduling Order or Special Hearing Master Case Agenda addresses these or other motions, paragraph E applies.

E. Pursuant to EDCR 2.47(b), counsel shall meet and confer in good-faith no later than TWO WEEKS prior to the filing date of all Motions in Limine. All Motions in Limine must be in writing and filed no later than 45 days prior to trial start date. All pretrial motions shall be heard and decided no later than 14 days before the date scheduled for trial. Any Oppositions to Pre-Trial Motions and Motions in Limine have to be filed 25 days before trial. The Replies to Oppositions have to be filed 20 days before trial.

F. Stipulations to continue a trial date will not be considered by the Court. Pursuant to EDCR 2.35, a motion to continue trial due to any discovery issues or deadlines must be made before the Discovery Commissioner.

Counsel is asked to notify the Court Recorder at least two weeks in advance if they are going to require daily copies of the transcripts or CDs of this trial. Failure to do so may result in a delay in the production of the transcripts and/or CDs.

G. Orders shortening time will not be signed except in extreme emergencies.

AN UPCOMING TRIAL DATE IS NOT AN EXTREME EMERGENCY

Failure of the designated trial attorney or any party appearing in proper person to appear for any court appearances or to comply with this Order shall result in any of the following:

(1) dismissal of the action (2) default judgment; (3) monetary sanctions; (4) vacation of trial date; and/or any other appropriate remedy or sanction.

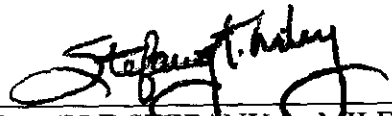
Counsel must advise the Court immediately when the case settles or is otherwise resolved prior to trial. A stipulation which terminates a case by dismissal shall indicate whether a Scheduling Order has been filed and, if a trial date has been set, the date of that trial.

///

///

1 If the parties are interested in a settlement conference conducted by a District Court
2 Judge sitting as a Mediator, please contact Judge Wiese's Judicial Executive Assistant, at
3 (702) 671-3633.
4

5 DATED: December 13, 2018.
6

7 
8 HONORABLE STEFANY A. MILEY
9 DISTRICT COURT JUDGE
10

11
12 **CERTIFICATE OF SERVICE**

13 I hereby certify that on this 13th day of December, 2018, I caused a copy of the within
14 Order Re-Setting Civil Bench Trial to be placed in the attorney's folder in the Clerks' Office,
15 faxed, mailed, or e-served to Michael C. Van, Esq., Garrett R. Chase, Esq., Karl A. Shelton,
16 Esq., and Patrick J. Sheehan, Esq.

17 By: 

18 Carmen Alper
19 Judicial Executive Assistant
20
21
22
23
24
25
26
27
28

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Other Tort

COURT MINUTES

January 14, 2020

A-17-753435-C Nancy Haack, Plaintiff(s)
vs.
Sean Evenden, Defendant(s)

January 14, 2020	9:30 AM	All Pending Motions	Show Cause Hearing; Motion for Order to Show Cause why Sean Evenden and Roger Ayala Should Not Be Held in Contempt and to Compel Defendants to Make Mandatory Supplemental Disclosures Pursuant to NRCP 26(e)(1)
-------------------------	----------------	----------------------------	---

HEARD BY: Miley, Stefany

COURTROOM: RJC Courtroom 12C

COURT CLERK: Katherine Streuber

RECORDER: Maria Garibay

PARTIES

PRESENT:	Ayala, Roger	Defendant Counter Claimant
	Evenden, Sean	Defendant Counter Claimant
	Haack, Nancy	Plaintiff Counter Defendant
	Holiday, John	Attorney for Plaintiffs
	Sheehan, Patrick J.	Attorney for Defendants

JOURNAL ENTRIES

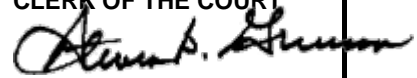
- Court stated the two biggest concerns: Discovery and Plaintiff's counsel making himself a witness

PRINT DATE: 01/31/2020

Page 1 of 2

Minutes Date: January 14, 2020

which would effect representing the Plaintiffs. Argument by Mr. Holiday. Statement by the Court reiterating its concerns. Further argument by Mr. Holiday regarding Defendants paying fees for alter ego business and requested amendment of the order so they can access financial. Court reiterated it goes back to counsel becoming a percipient witness. Mr. Holiday stated they had an expert. Argument by Mr. Sheehan. Argument by Mr. Holiday. Court pointed out discovery is long been closed. Further argument by Mr. Holiday. Statement by the Court. Additional argument by Mr. Holiday. Court stated counsel does not see the ethical issues, admonished counsel stating he is treading/or violated ethical obligation and reiterated discovery deadlines are closed. Continued argument by Mr. Holiday. Further argument by Mr. Sheehan. COURT ORDERED, Motion for Show Cause is DENIED. Mr. Holiday demanded defense's invoices. Court directed counsel to follow the rules and to review 16.1. Argument by Mr. Holiday. Court admonished Plaintiff's counsel and directed counsel to leave the court room. Mr. Sheehan to prepare the order and provide to opposing counsel for review prior to submitting to the Court for signature.



TRAN

DISTRICT COURT
CLARK COUNTY, NEVADA
* * * * *

NANCY HAACK,)
)
Plaintiff,)
)
vs.)
)
SEAN EVENDEN,)
)
Defendant.)
)
AND RELATED PARTIES)

CASE NO. A-17-753435-C
DEPT NO. XXIII

**TRANSCRIPT OF
PROCEEDINGS**

BEFORE THE HONORABLE STEFANY MILEY, DISTRICT COURT JUDGE

TUESDAY, FEBRUARY 18, 2020

BENCH TRIAL - FIRM - DAY 1

APPEARANCES:

FOR THE PLAINTIFF: JOHN R. HOLIDAY, ESQ.

FOR NANCY HAACK: Pro Se

FOR THE DEFENDANTS: PATRICK J. SHEEHAN, ESQ.

RECORDED BY: MARIA GARIBAY, COURT RECORDER
TRANSCRIBED BY: JD REPORTING, INC.

I N D E X

Opening statement for the Plaintiff by Mr. Holiday	9
Opening statement for the Defense by Mr. Sheehan	15

W I T N E S S E S

WITNESSES FOR THE PLAINTIFF:

SEAN EVENDEN

Direct Examination by Ms. Haack	42
Direct Examination by Mr. Holiday	152

E X H I B I T S

EXHIBITS ADMITTED:

1	68
2A-2D	67
3A-3F	108
4S	55
4N	104
9A-9F	87
12	57
HAA0016	55

1 LAS VEGAS, CLARK COUNTY, NEVADA, FEBRUARY 18, 2020, 1:07 P.M.

2 * * * * *

3 THE COURT: Good afternoon.

4 THE COURT: Do -- these people in the courtroom are
5 they witnesses?

6 MR. HOLIDAY: They are not, Your Honor.

7 MS. HAACK: No.

8 THE COURT: They're just --

9 MS. HAACK: Family.

10 THE COURT: -- observers. Okay. If anyone's going
11 to be a witness, they need to step out.

12 MS. HAACK: Yeah, they won't -- none of them will be.

13 UNIDENTIFIED SPEAKER: Judge to start Trial A-753435,
14 Haack verses Evenden.

15 THE COURT: Hi. Okay. So everyone is here for
16 trial. Is there anything we need to address before we start on
17 the trial?

18 MR. HOLIDAY: I don't think so, Your Honor, other
19 than just how it's going to work with Nancy representing
20 herself pro se. As I understand it, she wants to ask most of
21 the questions, and I was going to follow up at the end --

22 THE COURT: Okay.

23 MR. HOLIDAY: -- if there was, like, an element she
24 missed.

25 THE COURT: Yeah. You all are workers in different

JD Reporting, Inc.

1 entities. A lot of times we have pro se -- I mean, y'all both
2 can give a -- y'all are two different entities. So you can
3 both give an opening statement. You just can't help her out if
4 she's representing herself.

5 Is there anything else?

6 MR. HOLIDAY: So on for instance, like, evidentiary
7 objections when she's asking questions, if I could help her
8 through that?

9 THE COURT: Can't really. Let's just see how it
10 goes. I mean, it's just me. It's not a jury.

11 MR. HOLIDAY: Understood, Your Honor.

12 THE COURT: A lot of times I -- it's easier when it's
13 not a jury trial because unless -- you know, we don't have to
14 worry about the jury getting prejudiced.

15 Is there anything else? Y'all have questions?

16 MR. SHEEHAN: We -- they had produced exhibits the
17 last go around. We had in this thing five binders. Basically
18 it was all their -- it was one big exhibit, all the
19 documents --

20 THE COURT: Yeah.

21 MR. SHEEHAN: -- that were produced in this case. It
22 was Bates stamped up to I think 1187 or something like that --

23 THE COURT: Yep. Okay.

24 MR. SHEEHAN: We agreed -- he wanted to bring in 35
25 additional pages that he Bates stamped that we agreed at the

1 last evidentiary hearing. Fine, they can come in too.

2 THE COURT: Okay.

3 MR. SHEEHAN: Friday we got Ms. Haack herself
4 apparently put together her exhibits, and many of them are not
5 Bates stamped. I haven't seen them before. So I'm going to be
6 objecting to those as we go through just as a heads up.

7 THE COURT: Is there kind of, like, overlap between
8 Ms. Haack's and the ones you have for --

9 MR. HOLIDAY: Well, what happened is she wanted --
10 since she wanted to do the questioning she wanted to rearrange
11 the binders. I outsourced and had them done professionally
12 before, and she took them and rearranged them to be more in a
13 chronological order that she wanted to go through. I didn't --
14 you know, she took a lot of initiative on it, and she turned
15 them into the Court on Wednesday before I knew that they were
16 done --

17 THE COURT: Uh-huh.

18 MR. HOLIDAY: -- and then I ended up getting my copy
19 on Friday and took it over to him. So there was -- the tabs
20 could have been done a little bit better, and she was doing it
21 with a copy machine at Staples. My understanding is that they
22 were all the same things that have been produced. I've got --

23 THE COURT: So they'll may be already in -- did y'all
24 stipulate to exhibits? Do you have any stipulated exhibits?

25 MR. SHEEHAN: No, I'm happy to stipulate to exhibits

1 if he'll stipulate to exhibits that on anything that has a
2 Bates stamp on it.

3 THE COURT: Okay. Because it sounds like what
4 Ms. Haack has and what you Bates stamped there's overlap; is
5 that right?

6 MR. HOLIDAY: There is, but it's almost the same. I
7 think in that regard I would just do this like a criminal trial
8 where you have to go in one by one, go through exhibit by
9 exhibit and then, you know, offer, admit it. When we come to
10 certain exhibits if they aren't Bates stamped, then I'll try to
11 find them in the Bates productions to show that they were
12 disclosed. It's an awkward time-consuming process. I think a
13 lot of them if it's, for instance, a copy of the check that,
14 you know, Mr. Evenden authenticates as being his signature, it
15 should have been in the disclosures that we already had,
16 there's no reason to believe it's new.

17 THE COURT: Well --

18 MR. HOLIDAY: I don't know how -- how we'll get
19 through it. I just see it being extremely time-consuming
20 because it does look like some of the Bates stamps got cut off
21 at the bottom of the page when she was making her copies.

22 THE COURT: Well, can you --

23 MR. SHEEHAN: I --

24 THE COURT: -- but if ya'll are going to have
25 stipulated exhibits, why don't you just stipulate them and move

1 them into evidence because I'm going to have to share a written
2 decision anyways.

3 MR. SHEEHAN: Well, I'll stipulate and hopefully
4 he'll stipulate to the admission of anything with the Bates
5 stamp. But I can tell you that the number of documents that I
6 got this morning that I saw for the first time this morning
7 have never been produced in this case. And so obviously I'm
8 going to object to anything that's never been produced in this
9 case. We -- my clients have not -- and I have never gone over
10 these documents.

11 THE COURT: That's a separate issue, yes.

12 MR. SHEEHAN: Right. But I will certainly stipulate,
13 and hopefully Mr. Holiday will stipulate that anything with a
14 Bates stamp number on it is admissible in evidence.

15 Would you stipulate to that?

16 MR. HOLIDAY: Let's just go exhibit by exhibit is the
17 only way I can see us going through it --

18 THE COURT: You don't think it's easier just to
19 stipulate to all of your exhibits because all of yours sound
20 like they're Bates stamped because it will move it along a lot
21 faster.

22 MR. HOLIDAY: Like, I'll stipulate to the 35 pages in
23 terms of --

24 MR. SHEEHAN: Of course you'll stipulate to yours,
25 but will you stipulate to mine that have Bates stamps on them?

1 MS. HAACK: May I, Your Honor?

2 MR. HOLIDAY: Yeah, we'll just --

3 MS. HAACK: Today's won't affect any of that. It
4 won't have any documents that aren't Bates stamped. If I
5 slipped one in there, I'll be happy to take it out.

6 THE COURT: Okay.

7 MR. HOLIDAY: Right.

8 MR. SHEEHAN: Then let's just stipulate to any
9 exhibit that has a Bates stamp on it, I'm happy to do that.

10 MR. HOLIDAY: Yeah, I'm -- I can't do a blanket
11 stipulation like that, so I'm just going to -- let's just get
12 started. Now, may I --

13 THE COURT: Okay.

14 MR. SHEEHAN: Let me ask you this. Can we do a
15 stipulation to anything that has a Bates stamp on it unless
16 one-party or the other objects to it at the time it's
17 presented?

18 MR. HOLIDAY: Yeah, I just don't feel comfortable.

19 THE COURT: Okay. Well, that's impossible for Kathy
20 to keep track of.

21 THE CLERK: Yeah.

22 MR. HOLIDAY: Yeah.

23 THE COURT: Because once they're admitted, they're
24 admitted unless they're with -- yeah, it's a pain in the neck
25 for that.

1 Okay. Well, then let's start.

2 Do you want to -- does plaintiff -- so y'all are two
3 separate entities. So do each of you want to do a closing, I
4 mean, an opening statement with respect to -- your respected
5 entity or person?

6 MS. HAACK: Okay. I mean, I asked you to do it so if
7 could --

8 MR. HOLIDAY: Yeah, I -- I'll just keep it brief.

9 MR. HOLIDAY: So this case concerns a partnership
10 dispute between three individuals who formed a real estate
11 brokerage in 2010 as equal partners. It was pretty successful.
12 Over seven years they all worked for free or they didn't take
13 salaries rather. And then they came to a head.

14 They grew from the initial five agents to
15 approximately 40 agents. And my client as her responsibilities
16 was doing all the bookkeeping. It had gotten up to, you know,
17 eight times more than it had been and was keeping her from
18 being able to do any real estate business. And at the same
19 time they were negotiating to do an expansion into an adjoining
20 office space in the same building. This led to the dispute
21 that caused this case to happen.

22 In terms of what we're going to show, Nancy never
23 abandoned the company. She never quit. They were upset with
24 her because she wouldn't sign a personal guarantee on a lease
25 and therefore wouldn't sign a lease for the adjoining space on

1 behalf of NRS because of the statute of frauds there's no
2 allegation that the negotiation ever didn't include this lease
3 of material term. And because it was for more than a year and
4 a personal guarantee under the Nevada Statute of Frauds you'll
5 see that there was no agreement that could have been breached.
6 The requirement is that it's ascribed if it's not signed, then
7 the statute of frauds says there was no agreement. So there
8 wasn't an agreement there.

9 And she did ask if she was going to continue doing
10 her duties to get a salary. It resulted in a May -- or in a
11 March 10th letter after they went behind her -- without
12 advising her they formed a new company called Life Real Estate
13 LLC. The trademark that was used by NRS was Life Reality. And
14 they wrote this letter saying, You quit and we're firing you
15 and we're dissolving.

16 And then proceeded to kick her out of the office,
17 told all of the agents that they had to move to this new LLC,
18 and that occasioned this case to be brought which was initially
19 brought for preliminary injunctive relief namely a receiver.

20 They did file a dissolution of NRS, but then filed a
21 correction undoing that dissolution presumably after they
22 realized that the way that they were attempting to do this,
23 quote unquote, hostile takeover didn't comport with either the
24 operating agreement or the law.

25 Now, that brings us to what this case ends up being

1 about. It's basically a breach of fiduciary duty and a case
2 for conversion. Originally we were seeking relief in equity,
3 but at this point they've completely shut down the business of
4 NRS and transferred it all to this other Life Real Estate LLC.
5 It's taken over the same space. It's using the same furniture.
6 They didn't even change the signs. Essentially, they breached
7 their fiduciary duties. They didn't use the best judgment
8 rule. They didn't operate NRS to make a profit. They
9 purposely competed with it, siphoned off everything to this
10 other one.

11 In the motion for receiver, Nancy Haack and NRS
12 threatened that they were going to convert all these assets
13 into Life Real Estate as a receptacle for all of NRS's assets;
14 that has happened. The lease expired in November. Life Real
15 Estate, LLC is operating under the trademark in the same spot,
16 all of the agents have moved over.

17 And so why did they think they could do this? Well,
18 sort of the central mischief in this case that we're going to
19 go over is the operating agreement. And aside from the statute
20 of frauds I'm bringing up one other thing to this Court's
21 attention for the first time which is Section 14.1 in the
22 operating agreement. So the mischief comes from 13.1 where it
23 looks like they accidentally left majority or all when they're
24 supposed to delete one in the draft operating agreement.

25 In Section 14.1 they didn't miss it. They didn't

1 forget, and they put in there that any modification to the
2 agreement didn't -- had no effect if they didn't get written
3 permission from Nancy Haack. And it's not in the summary
4 judgment motions. It's about 3 inches away in the same
5 operating agreement. It just seems to have gotten missed until
6 trial.

7 So we say that we're going to argue first that 14.1
8 resolves the ambiguity of the majority or all. And then beyond
9 that, reading the contract as a whole, they agreed under
10 regular voting that any action of NRS would require a unanimous
11 vote. And where they claim authority to have done all these
12 things that they did was that using the majority or all they
13 amended the requirement for unanimous action with the majority
14 vote. So we'll go over in closing arguments the canons of
15 construction and how to resolve this.

16 First we're arguing that 14.1 kind of resolves the
17 ambiguity, but beyond that, right as a whole they managed the
18 company with unanimous vote the entire time. So that being
19 said, they couldn't force Nancy to --

20 MR. SHEEHAN: Real briefly, Your Honor, I don't mind
21 this; this is obviously argument in an opening. I don't mind
22 that. I'll do argument too. We're in front of the Judge.
23 Just as long as what's good for the goose, is good for the
24 gander.

25 THE COURT: Of course.

1 MR. HOLIDAY: All right. So the motion for
2 receivership gets denied. Then they're both operating Life
3 Real Estate, LLC there appear to be -- we'll show that there's
4 payments that have been made directly to Life Real Estate, LLC.
5 They started operating under the same trademark in the
6 adjoining office space and all growth and profit was siphoned
7 off.

8 We're going to through evidence show that there was a
9 scheme that NRS wasn't going to make a profit. They also paid
10 themselves salaries which we were saying they couldn't do with
11 the majority vote according to the operating agreement. And
12 they identified themselves for their legal fees directly
13 through there.

14 So on November 1st, they wrapped up NRS as a
15 business and essentially transferred everything to Life Real
16 Estate. NRS just was making -- had millions in revenue and
17 it's got a -- we don't know if they turned the bank accounts
18 off again, but somewhere in the four digits in their bank
19 account the last time we could see. It's an empty shell.
20 Everything has been transferred.

21 And so at this point our damages aren't really to
22 regain control of this empty shell of NRS. NRS is entitled to
23 damages for its directors, its managers, directly transferring
24 literally the entire business to another LLC that they owned on
25 their own.

1 There -- the evidence will show that they didn't
2 follow their duty of care. And it will show that they didn't
3 follow their duty of loyalty to manage the LLC in a way that
4 was in the best interest and in good faith in the best
5 interests of the company. So our damages are the salaries.
6 Our damages are the attorney's fees. And our damages are for
7 NRS the value of the entire business that got transferred to
8 Life Real Estate, LLC.

9 Also, most importantly it will be showed that NRS did
10 not receive a dime in compensation for transferring its entire
11 business over to another entity. They just ran it until it
12 didn't exist anymore, and everything from the trademark to the
13 agents has moved over to this new agency.

14 In terms of the detailed damages we'll have to pull
15 some of that out in testimony for the first time.

16 And in summation, they've basically stolen the entire
17 company after the motion for a receivership was denied. Every
18 irreparable harm that was warned of in the motion that was
19 denied has occurred, and it's a completed conversion. That
20 being said, basically they just stole the entire business
21 without even changing the sign, and they're saying that they
22 could do it. We're going to say that the evidence shows that
23 they couldn't do what they did and that we're entitled to
24 damages as a result. Thank you.

25 THE COURT: Okay.

1 MR. SHEEHAN: Good afternoon, Your Honor. Hopefully
2 you've had a chance to review the trial brief that we
3 submitted. If not, I would ask that --

4 THE COURT: I did.

5 MR. SHEEHAN: Great.

6 This is a long story at this point because this
7 happened quite some time ago. As you know this trial has been
8 continued many times. And the whole genesis of this has
9 nothing to do with where we're at right now. But we'll deal
10 with everything because we've had to.

11 The story begins in the summer of 2016. These three
12 actually started a business prior to that, the three agreed
13 that they would be one third, one third, one third owner and
14 one third, one third, one third worker. That each would have
15 their responsibilities. Ms. Haack quite frankly did a lot of
16 things in addition to accounting. She helped with the agents.
17 She was -- when agents had problems, they would come to her,
18 and she quite frankly did a lot of good things for the company.

19 But the truth is the company didn't make any money,
20 it was for the first six years that it was in business. And so
21 they felt like, okay, we're starting to see the light of day
22 here, but we need to expand because we need more agents. If we
23 get more agents we can, you know, make the fixed costs spread
24 out over more, and we can make some money. They had filled up
25 all of the desks and space at the location that they were in.

1 So, Your Honor, I'm going to call it the old space,
2 NRS or the original space. So there's the original space where
3 NRS was operating out of. It had between 40 and 45 agents, and
4 it's over in The District above a place called the Shake Shack.
5 I'm sure you've been to The District before, but it's a nice
6 office up there. So they've got 40 to 45 agents, and they
7 realized they want to expand, but they don't have any space for
8 any more agents.

9 So the space across the hall opens up; of course,
10 that's perfect, so you can have agents across the hall. All
11 three agree let's expand into that space across the hall
12 because we need more agents. The division of responsibilities
13 was -- it included Mr. Roger Ayala here, one of the defendants,
14 he was a recruiter, the marketer, and he was very good. And
15 Nancy will testify to this that he was very good at recruiting
16 agents.

17 Again, that's how you make money. Because what
18 happens is the agents give a transaction fee of say \$450 per
19 transaction and that goes to the business. They pay insurance,
20 and that was a moneymaker for the business. And so the more
21 agents you have the more money that you make.

22 Well, so they -- Nancy and Sean and Roger said, yes,
23 let's expand across the hall. Roger, go recruit more agents.
24 So Roger goes out and recruits a bunch of new agents for this
25 new space across the hall. And they're working on this, and as

1 a matter of fact, they took the office over to the new space
2 across the hall. Nancy Haack did and said, this is the new
3 space we are expanding in, and she did that in about October of
4 2016.

5 Well, in January of 2017, they're still waiting for
6 this lease for this new space. They had been dealing with
7 contractors, what it's going to cost to build it out. They're
8 trying to get that cost down and so on and so forth.

9 And another issue comes up, Your Honor. And that
10 issue is that the Shake Shack was moving in downstairs and they
11 had a smokestack that was going to go through the space that
12 NRS was renting, and it was going to take, you know, six square
13 feet, you know, of space, and lo and behold where's that space
14 going to come from? Ms. Haack's office.

15 So Ms. Haack was upset that they were going to be
16 taking space from her office and also --but she decided she was
17 going to write a letter to the landlord and say dear
18 landlord -- she was going to use this as leverage, we need that
19 lease for the new space because -- proof that she agreed to the
20 new space she writes a letter to the landlord saying, before we
21 talk about you taking my space for my office give us the lease
22 for the new space.

23 The landlord writes back, I'm taking this to
24 corporate. And then Ms. Haack gets into a very big argument
25 with the landlord's agent, a woman by the name of Michelle

1 Brown. And the landlord had said, first of all, it's in your
2 lease that we can take it. Second of all, we're going to
3 compensate you \$300 a month off of your lease so that we can
4 take this square of space for the Shake Shack thing.

5 She gets very upset about it, gets into a verbal
6 confrontation with Michelle Brown. These two guys say wait a
7 second, Nancy, what are you doing. Here we were trying to get
8 the landlord to lease us the space across the hall on good
9 terms, and you're throwing a fit about this 6 inches -- six
10 square feet of space, and let's just give in on that and let
11 them give us the lease over there.

12 She gets very upset with them. She said I want to
13 take it to a lawyer. And they're, like, why do you want to
14 take this to a lawyer and get lawyers involved fighting the
15 landlord. It doesn't pay to fight the landlord we're trying to
16 get this extra space from. So she gets very upset with them,
17 and they exchange all these nasty grams and they use some
18 colorful language.

19 And finally Ms. Haack says, all right, guys, you're
20 right. I'll play ball here. I'll let you give them, you know,
21 cooperate and let them do their -- whatever they have to to get
22 that smoke stack through and --but I'm not going to be in the
23 office for the next couple of weeks while that thing's going
24 on. I'm moving out, and so she leaves in a huff. All right.

25 January 26 the lease for the new space comes along.

1 The lease for the new space -- the lease for the old space it
2 was an amendment for some other space they all had personal
3 guarantees from each of these three and their spouses. It was
4 well known that that was a term for the -- for the lease.
5 'Cause again, the original lease included all six personal
6 guarantors. The first amendment all six guarantors and the
7 second amendment draft all six guarantors. And that new space
8 is going to be someplace between 7 and 10 years.

9 So January 26 comes, the new lease comes, she doesn't
10 sign.

11 So these guys say, we've got to have a meeting about
12 this. They meet at a place called Balboa, Balboa restaurant
13 over at the District. And she says, guys, I had a heart
14 problem. I had to go to the doctor. It was a very tough
15 scare. I've been fighting with you -- fighting with you guys
16 about everything, the stress is killing me. I no longer want
17 to be part of the running of this company anymore, and also I'm
18 not going to put -- sign -- I'm not going to sign the
19 guarantee. I don't want to be tied to a lease for seven more
20 years till I'm 72 years old. And also, I'm not going to be
21 responsible for any losses. If the company loses money --
22 because again it had lost money most of its career -- I'm not
23 going to be responsible for any of these losses.

24 These guys are totally taken back saying, wait a
25 second, Nancy, you agreed for the last six months we even

1 showed the people the space over there, you even negotiated
2 with the contractor, you even told the landlord we need this
3 lease, now all of a sudden you're breaching your agreement to
4 expand in the space across the way.

5 And by the way, with respect to that statute of
6 frauds argument, there's no statute of frauds with respect of
7 the partners agreeing that their company's going to expand,
8 that's not statute of frauds. The statute of frauds would be
9 between NRS and the landlord that's for the lease of this -- of
10 the real estate. So the statute of frauds is a red herring.

11 But anyway, she says, I'm not going to go forward
12 with my agreement. Now, quite frankly, you know, it's clear
13 that there was an agreement, but whether there was an agreement
14 or not agreement it doesn't matter for purposes of what we're
15 here for today. The bottom line it was all caused by her
16 changing her mind.

17 All right. So now what are we going to do? We
18 promised a bunch of people space across the hall, told the
19 landlord we're going to take the space across the hall. All of
20 a sudden Nancy doesn't want to be part of the expansion across
21 the hall to the point where she won't sign on the lease, says
22 she doesn't want any of the risk. She won't pay for any losses
23 that they're associated, and she's just not going to do it.

24 So they send back a bunch of e-mails back and forth.
25 And the e-mails say -- and she says, you know, instead of me

1 being on the lease for -- I don't want to be on the lease for
2 seven more years. Instead of me putting in any more money,
3 instead of all of this stuff, my contribution is I'll be a
4 consultant of some type for the next seven years for free, and,
5 you know, my portion of any monies that come from current
6 available funds for the tenant improvements I'll agree to that.
7 My clients said, no -- ridiculous, no risk, no liability, no
8 profits, that's what we say. Obviously, just common sense.
9 Why would we agree to let her get a free ride and get one third
10 of the profits.

11 So she writes back and she says, fine, then do it
12 without me. That means don't use any of the NRS money. You
13 put in your own money for the tenant improvements, and you be
14 responsible for that. And you can use the name Life Realty or
15 some derivative thereof -- we formed Life Realty at The
16 District, but I want you to keep the original space in
17 operation until the lease over there -- because she's got a
18 personal guarantee of the original lease. And that original
19 lease is going to expire on October 31st, 2019. So this again
20 is in January of 2017 or February, in that time frame. So she
21 says in other words, do it without me. Do it without me over
22 there.

23 Now, how can you have a claim for usurpation when we
24 wanted her to be involved, asked her to be involved, begged her
25 to be involved, but she said no, she doesn't want to be

1 involved. You can't win a usurpation claim when we offered her
2 and she said, no. But so our folks get so frustrated because
3 we kept back and forth day after day saying what are you going
4 to do, maybe I'll sign a lease, maybe I won't, she keeps going
5 back and forth. We're talking buyouts so on and so forth, but
6 one thing's clear she's not going to sign for the space over
7 there and so on and so forth.

8 They hired an attorney. The attorney says, you know
9 what, she reached her agreement to take on half -- to do one
10 third of the work because she said she's leaving the company.
11 She's going to no longer be responsible for the day-to-day
12 operations. She's breeched her obligation to do that. The
13 offering means that nobody can do it you have to be -- do
14 that --

15 MR. HOLIDAY: Objection, Your Honor. In so far as
16 he's talking about this attorney. If the evidence is going to
17 show this, that's fine, but I'm not looking for a hearsay of
18 some attorney's advice that's not going to be a witness.

19 MR. SHEEHAN: Fine, you know, that's fine.

20 So the facts are that --

21 THE COURT: Okay.

22 MR. SHEEHAN: -- so my clients said, okay, she's
23 breached her obligation to continue her one third duties of the
24 company and responsibilities. She's saying she's going to
25 retire from the responsibilities of the company, the day-to-day

1 running of the company. She's breached her agreement to expand
2 across the hall. She's told us she's no longer responsible for
3 one third of the losses of the company. So she's breached that
4 too. So she's in breach. Let's just form a new company and
5 move on without her.

6 So they did as Mr. Holiday put in the brief though,
7 and they did take actions toward that. They even sent a letter
8 out to the agent saying we're going to take this path and they
9 filed a dissolution, and they wrote her a letter saying, you
10 know, we're going to dissolve it.

11 But then they said, you know what, let's take the
12 high road here. We won't do any of that. So they quickly
13 changed their mind, and they said you know what, all the
14 agents, we're going to do what Nancy said. We're not going to
15 take -- we're not going to dissolve the company. We're going
16 to keep Nancy in the company. She's going to get one third of
17 the profits for the -- for the NRS original space until she
18 gets off -- until we get off this lease, and we figure out what
19 happens October 31st, 2019. We gave her her one third of the
20 profits when there were profits which admittedly was only for
21 the first year or two because after that the attorneys' fees
22 and the costs of trying to keep this together.

23 She did everything she could to tube this company
24 including filing a motion for dissolution and all the rest.
25 We've got a lease with, you know, till October 31st of 2019.

1 We had to keep this company together to finish off that lease,
2 get everybody off that guarantee, that's exactly what Nancy
3 asked for.

4 And you're going to see her deposition testimony --
5 you probably saw in the trial brief where she said, alls I want
6 from you guys is keep NRS, the original NRS in business over
7 here until that lease is up, my guarantee of that is up. After
8 that you can do whatever you want, but -- and you can form a
9 new company over here. You can use Life Real Estate, just use
10 your own money for that and have two separate companies and run
11 this one over here until such time as that lease is up in the
12 old space.

13 And you know what we said, fine. Rather than get
14 into a lawsuit, rather than dissolve the company, have them
15 file this claim and all the rest, let's take the high road
16 here. Let's keep all the NRS agents in the old space. And she
17 said we could take a -- many NRS agents that came and were
18 promised office in the new space she said we could move those
19 over, but keep the rest over there which is exactly what we
20 did. And we kept that business going until October 31st,
21 2019.

22 Her own words, her own testimony is, alls I wanted
23 was for them to get -- keep NRS in business until October
24 31st, 2019, when our guarantee was up. That was up, and I
25 was off. That's exactly what we've done. There's no claims

1 here whatsoever.

2 But, Your Honor, let's not lose focus of she's the
3 one that breached. She's the first breaching party. After
4 that -- everything is on her. We cannot be found liable. Your
5 own honor after seeing the quotes even offered a quote during
6 an earlier hearing said, The allegations in the complaint do
7 not match the facts as shown by her own sworn testimony.
8 And -- and that's the truth.

9 We did everything imaginable to take the high road
10 here. And guess what, Your Honor, it wasn't very easy because
11 every time she turned around she told everybody in town that we
12 were bad this, bad that. She went into the agents -- we had
13 to, you know, give -- every couple of months tell the agents,
14 no, she's not going to steal your commissions because she had
15 threatened -- one of the reasons we thought about dissolving
16 the company is she had threatened to go to the bank accounts
17 and, you know, freeze them and do all this stuff. So all the
18 agents in the office were like wait a second, you know, Nancy
19 Haack and you guys are fighting and --

20 MR. HOLIDAY: Objection.

21 THE COURT: What's the objection, Counsel?

22 MR. HOLIDAY: Is he saying that the evidence is going
23 to show these things?

24 MR. SHEEHAN: Yes --

25 THE COURT: Yes --

1 MR. SHEEHAN: -- absolutely.

2 THE COURT: -- I'm assuming.

3 MR. SHEEHAN: Yes.

4 And so they -- but they were going to dissolve it;
5 they didn't dissolve it. They kept all of the agents. All the
6 agents remained there. So all the claims are -- in the
7 complaint are untrue. Those are the claims that are in the
8 complaint and we're -- I'm going to go over those with you at
9 the end of my argument.

10 Now, as a result of this continuances and all the
11 rest, what were their claims in March of 2017 -- they quickly
12 realized by the way, and Mr. Holiday put it in his brief, we
13 didn't go forward with the dissolution. We kept the company
14 afloat. We kept the agents over there. We didn't take the
15 agents at that time.

16 But what Mr. Holiday just brought up in his argument
17 is, okay, yes, it's true that our allegations to the complaint
18 didn't happen the way we said back in, you know, March of 2017,
19 but it's happened now. Because October 31st of 2019, they
20 closed NRS, and now NRS is no more, and a bunch of those agents
21 are with the new entity, Life Real Estate. That's not part of
22 this complaint, Your Honor. That's not part of this lawsuit,
23 but nevertheless, I'm going to go ahead and defend it anyway.
24 Because once again my clients took the high road.

25 Now, first of all, Your Honor, it should be pointed

1 out that when we didn't dissolve the company and we kept the
2 NRS over here afloat so that she would have no claims against
3 us, we then did form a new company to take the new space over
4 here like she suggested, like she told us to do using our own
5 money.

6 We had to put up \$200,000 each for the tenant
7 improvements over here, none of which came from NRS. We didn't
8 move any NRS agents over there that weren't already promised an
9 office that Nancy said we could move over there, the NRS agents
10 remained in the old space. But before we did that, Your Honor,
11 get this -- get this. So not only did we offer her in January
12 because she agreed not only did we want her to, not only did we
13 give her the opportunity in March, not only did she tell us no,
14 no, no, I don't want to be in the space, but we didn't get the
15 lease -- finalize the lease. We went back and forth. We
16 didn't finalize the lease for the new space with the new
17 company until August 22nd after the lawsuit had been going on
18 for several months.

19 August 22nd we wrote them a letter and we said,
20 okay, Ms. Haack, we are going to take the new space across the
21 hall in a new entity's name, but before we do that, we want to
22 give you one last chance. And there's a letter that we're
23 going to show you that says, we have -- we are -- the lease for
24 that new space is available; do you want to be a part of it?
25 We can do it one of two ways. If you don't want to sign a

1 personal guarantee, the landlord will agree if you put a
2 \$200,000 deposit down then you don't have to sign a personal
3 guarantee.

4 So we tied again to take the high road. She doesn't
5 want to sign the personal guarantee then we'll put \$200,000
6 down, each puts up one third, and we can do it that way. But
7 we offered her one more time, do you want to be part of the
8 expansion space? Her attorney wrote back, no, do not want to
9 be a part of the expansion space.

10 Again, how can you say when you assert a corporate
11 opportunity when you're the one that breached by not signing
12 the lease back in January when we could've just done this by
13 telling us in February, March you weren't going to sign the
14 lease. And then when we offer it to you in August, you still
15 say no. I mean, this isn't something where we hid this from
16 her, and we went behind her back and stole a corporate
17 opportunity behind her back. We offered it to her. We wanted
18 her to be part of it. We have lost a ton of money because of a
19 result of her breach in not doing it. It's her that breached.

20 All right. Fast-forward. On October 31st, 2019, NRS
21 company is leasing space in the old space. That lease is up at
22 that time. You have to do -- and by the way, NRS cannot exist
23 without a physical location. There's a -- and it just --
24 practically you can't exist because if you don't have a space
25 for your agents you can't exist. And second of all, there's a

1 statute that says that a real estate company has to have a
2 physical space, okay.

3 So the time to exercise that option is six months
4 before. So October 31st, six months before that we've got to
5 exercise our option if we want to exercise our option to extend
6 the lease in that space. Again, she's already told us that
7 once that lease is up do whatever we want with it. She doesn't
8 care as long as we pay all the bills and get her off that
9 personal guarantee up there.

10 Once again though, let's take the high road. Wrote
11 her a letter, February, the lease for that space is coming up
12 October 31st; what do you want to do? Do you want to extend
13 the lease, and we'll all sign additional personal guarantees
14 for an additional 7 to 10 years? What do you want to do? Her
15 lawyer writes back a letter and says, no, that space we don't
16 like the landlord. We don't like anything, absolutely not. We
17 will not be part of extending that lease. So they wrote a
18 letter to us and said, no, you cannot extend the lease for the
19 old NRS space.

20 At that point, Your Honor, NRS can't exist past
21 October 31st. What do we do on October -- before
22 October 31st? Okay. So now we now know NRS is going out of
23 business because they would not agree to extend the lease for
24 the old space. So what do we do? Again, we take the high
25 road. We write all the agents a letter, and we say, Dear

1 Agent, the lease for the space is up. We cannot -- NRS can no
2 longer operate without that lease. You have the opportunity to
3 move your license to Ms. Haack, and we gave her information,
4 contact information; she was number 1. You can move it to Life
5 Real Estate, our company, or you can move it to any other
6 company. That's the only thing we could do, Your Honor. NRS
7 was out of business, but again that's not a claim that's in
8 this suit.

9 So let's talk about the claims that are. May I
10 approach the bench, Your Honor?

11 THE COURT: Yeah.

12 Thank you.

13 MR. SHEEHAN: Thank you.

14 Your Honor, this is the relevant document for today
15 along with our counterclaim. We have a counterclaim for her
16 breaching the lease because as a result of her breaching the
17 lease we lost several agents who couldn't put up with the
18 firestorm between them, and so we lost that revenue, and that
19 is our counterclaim.

20 But as far as their claim against us, this is it.
21 And Your Honor will notice that it is the Second Amended
22 Complaint. Why is it the Second Amended Complaint? Because
23 when they filed the complaint, I called -- we called up the
24 opposing lawyer and we said, look at -- your allegations in
25 here aren't true. We didn't dissolve the company. We didn't

1 take the agents and form a competing company. NRS old still
2 exists. So you might want to, you know -- and he said, can we
3 amend the complaint? Fine, amend the complaint. We had
4 stipulated to amend the first time.

5 Then they said they wanted more claims. Fine.
6 Stipulated. Amend a second time so that they could bring
7 whatever claims they want so that we would be here today with
8 what they have.

9 All right. Let's see what they did. If you would
10 indulge me and turn to page 9, Your Honor.

11 THE COURT: Okay.

12 MR. SHEEHAN: This is it. This first claim on page
13 9, this is all the claims that they have here. Okay.

14 A -- because I'm going to show you that all of the
15 other claims are based on these bullet points.

16 Defendants began holding meetings without Ms. Haack
17 in violation of the operating agreement. She won't be able to
18 name any such meetings. This is a three-person entity. When
19 they had a meeting they just sat down in their offices and they
20 said should we get money -- should we, you know, let -- charge
21 the agents for coffee or not charge the agents for coffee, but
22 there's no -- there was no claim for that. There's no -- we
23 didn't do it, A, but there's no harm, no damage, and there's no
24 proof that any of those happened.

25 All right. Next one. We sent her a letter saying

1 we'd be dissolving Life Realty. We did send the letter, but
2 the undisputed facts as shown by Mr. Holiday's own brief this
3 morning is we never did dissolve it. We filed a dissolution
4 and within a week we filed a dissolution and we never dissolved
5 the company. In fact, it's still in existence today. She's
6 still a one-third owner. She's gotten her one third of the
7 profits until the business had to close because she wouldn't
8 agree to extend the lease; so that one's not true.

9 The letter stated defendants were withdrawing
10 Ms. Haack's membership interest in the company. Never did.
11 She still owns it today. Again, we contemplated doing that,
12 never did. Mr. Holiday admits that now.

13 Next one, defendant [indiscernible] of Life Realty's
14 assets, goodwill, intellectual property and real estate agent.
15 Again no, we did not do that. We kept the business afloat
16 until the lease expired, and when the lease expired she told us
17 not to extend the lease. At that point obviously the business
18 died. So that's not true.

19 Next one, defendants have either organized a separate
20 entity or planning to organize a separate entity which
21 defendants intend to use as a new real estate brokerage and is
22 a receptacle of Life Realty's assets. Again, we formed the new
23 company for the space across the hall not because we wanted to
24 because she breached the agreement. But we didn't take any of
25 the NRS assets and move those into the new -- to the new space

1 until after NRS went out of business because she wouldn't
2 extend the lease, so that's untrue.

3 Next one. We've had meetings where we amended the
4 operating agreement to include capital call provisions have
5 resolved to remove from the bank accounts and exclude Ms. Haack
6 from Life Realty's office space. All right.

7 We never -- we did do a meeting to include provisions
8 for a capital call if it was necessary. If she was going to be
9 a part of the expansion across the hall and we were all going
10 to have to chip in for the tenant improvements or the deposit,
11 we had a capital call provision, but we never -- it never
12 happened because she didn't -- when we offered her to be a part
13 of the space, she said no, she didn't want to do it. So no
14 capital call was ever issued, Your Honor. No, capital call was
15 ever issued. My clients came out of pocket for their own --
16 own money for the space across the hall.

17 Next she says that remove her from the bank accounts.
18 We had to remove her from the bank accounts because -- I don't
19 know if Your Honor will recall from the motion for a receiver,
20 but she said I don't give a blank about NRS. Alls I want is a
21 pound of flesh from Roger Ayala and Sean Evenden. I'm going to
22 do everything I can to ruin this company. She threw temper
23 tantrums. She went into the office --

24 MR. HOLIDAY: Objection, Your Honor --

25 MR. SHEEHAN: -- the evidence is going to show she

1 came in --

2 MR. HOLIDAY: -- this is --

3 THE COURT: Hold on.

4 What?

5 MR. HOLIDAY: So he's starting to quote the
6 deposition transcript in his opening. I just don't think
7 that's appropriate considering it's only admissible as
8 impeachment evidence.

9 MR. SHEEHAN: I think it's a very good indication of
10 what the evidence is going to show, her own sworn testimony.

11 THE COURT: Are you going to -- it's okay. Just go
12 ahead. I'm going to give y'all -- both of you leeway.

13 MR. SHEEHAN: Okay. And then it says precluded
14 Ms. Haack from the Life Realty office space. No, we didn't.
15 In fact, we even wrote an email to her saying she can come back
16 as long as she wants to, you know, play nice in the sandbox.

17 And then the next one said -- it said under H,
18 defendants also approved the expansion of NRS into the
19 additional office space described above; however, to do so Life
20 Realty's landlord requires a deposit in the amount of 200,000.
21 Again, Life -- the landlord did say, look, if you don't want to
22 sign -- we're trying to accommodate Ms. Haack. She don't want
23 to sign a personal guarantee, we said, okay, if we -- instead
24 of personal guarantees to the landlord what can we do. They
25 said put up the \$200,000 deposit. So if we're going to have to

1 do that -- but again that was -- again try to get this lawsuit
2 over with and just say, Ms. Haack, fine let's -- you be part of
3 the expansion. You go with your deal. You don't have to sign
4 a personal guarantee. Let's just have the \$200,000 deposit
5 instead. Complained about that, wouldn't do that either.

6 Next one. I've had a capital call; we've already
7 covered that. There was no capital call.

8 And then J, same thing, capital call.

9 So that's it, Your Honor. That's all you need to do
10 at the end of the day is say she did not prove any of those
11 things, her complaint is dismissed.

12 Now -- and it's undisputed that none of those things
13 are true because again we contemplated doing some of those
14 things, but we never did, and they knew that, and they've
15 admitted that. Ms. Haack admitted it in her deposition.
16 Mr. Holiday admitted it in his trial brief this morning that we
17 did not dissolve the company. We did not take the agents over
18 there until after October 31st this year when the company had
19 to close because it didn't have the space.

20 To show you that those are the only things though,
21 Your Honor, that are in this complaint, if you turn to the
22 second claim for relief -- and hopefully I marked it on yours,
23 but you'll see that the second claim for relief has the same
24 exact bullet points for the guts of it.

25 THE COURT: Uh-huh.

1 MR. SHEEHAN: You'll see in -- on page 12 of 18,
2 Paragraph 63 last few words there. Everything else all the
3 other claims as they've been set forth above. In other words,
4 they're all based on what's been set forth above. If you went
5 to -- if you go to every one of their other claims for relief,
6 they all rely on those same bullet points I just showed you
7 were totally false.

8 Which again is why Your Honor stated at the previous
9 hearing, Just reading the different exerts that defendant
10 pointed out as far as it seems like by her own statements they
11 don't support her claims for relief. That was Your Honor at an
12 earlier hearing. And guess what --

13 MR. HOLIDAY: Your Honor --

14 MR. SHEEHAN: -- because that's the truth. The
15 evidence has shown that --

16 MR. HOLIDAY: We only have --

17 THE COURT: Hold on.

18 MR. HOLIDAY: -- the equivalent two and a half days
19 for trial. If we're just going to read this entire thing and
20 start citing to earlier hearings as well as depositions, I just
21 think that we're not going to have enough time to get the
22 questions in that we want to do so.

23 THE COURT: I -- okay --

24 MR. SHEEHAN: Is that an objection?

25 THE COURT: -- go ahead. Finish up.

1 MR. SHEEHAN: I actually believe I was finished.

2 THE COURT: Okay.

3 MR. SHEEHAN: Oh, no, I'm not. I'm sorry.

4 So I do have to address a couple of things that are
5 not in the complaint that should not be considered by the Court
6 because they don't fall within those things. But they talk
7 about this amendment of the -- of the operating agreement to
8 allow to pay salaries to us, ourselves. By the way those
9 salaries were \$50,000 each which Ms. Haack personally testified
10 was way under. And it's only because Ms. Haack left the
11 company and stopped doing her one third of the share of the
12 things, but it's more -- it's less than half of what the market
13 would be.

14 But let me add to that. The evidence is going to
15 show that that -- they didn't want their \$50,000, trust me.
16 They make money that would lead you and I to believe we got
17 into the wrong profession. They are terrific real estate
18 agents that make hundreds of thousands of dollars doing deals.
19 They do not want to have to manage 45 prima donna agents. They
20 do not want to have to do -- to oversee the books and records.
21 They do not want to have to oversee the accountant and all the
22 employees and all the rest, and deal with the problems that
23 come in on a day-to-day basis. In all candor, Ms. Haack was
24 very good at that stuff, but when she left then they got stuck
25 with it. So it was only fair that they paid themselves a

1 reasonable salary. The operating -- so they had to amend the
2 operating agreement to do that.

3 Your Honor, it's Section 13 of the operating
4 agreement. This agreement may be adopted, amended, altered or
5 repealed by the vote or written consent of a majority or all,
6 in parentheses, of the LLC interest at a meeting of the
7 members, okay. So it says it can be amended by a majority. We
8 are a majority. We're two thirds. To say that this is
9 ambiguous is ridiculous. It says majority and then parentheses
10 or all so that means a majority can do it unless you cross it
11 out. We took the deposition of Gary Schnitzer who drafted this
12 document. We have stipulated that rather than bring
13 Mr. Schnitzer in here we can -- both sides can use his
14 deposition.

15 MR. HOLIDAY: I never stipulated to that.

16 MR. SHEEHAN: You absolutely did.

17 THE COURT: Did you all stipulate in writing?

18 MR. SHEEHAN: We did not stipulate in writing, but
19 he -- absolutely told me that we would stipulate to Gary
20 Schnitzer's deposition coming in.

21 MR. HOLIDAY: I absolutely did not. I had not read
22 the deposition at the time --

23 MR. SHEEHAN: That is --

24 MR. HOLIDAY: -- that we had that conversation, and I
25 told him I would have to take a look at it.

1 MR. SHEEHAN: That is ridiculous, but are you telling
2 me that I'm going have to bring Mr. Schnitzer in?

3 MR. HOLIDAY: Just finish your opening.

4 MR. SHEEHAN: Mr. Schnitzer testified that a majority
5 could amend this agreement in his deposition, but the writing
6 itself says it.

7 In addition, by the way, even though we did have
8 properly noticed meetings and all the rest, the agreement --
9 the operating agreement also provides that member action by
10 written consent without a meeting, any action which may be
11 taken in an annual meeting may be taken without a meeting and
12 without prior notice if consent in writing setting forth the
13 action so taken and agreed to by the same number that would
14 need be needed at a meeting. So the agreement says it can be
15 amended through a majority. We actually had a meeting, noticed
16 her, put it on the door, did all the things, hired corporate
17 counsel to do that, but incidentally, we could have done it
18 without a meeting also.

19 But we didn't pay ourselves huge salaries. We paid
20 ourself \$50,000 each to make up for her deserting the company.
21 Attorney's fees that there is a provision in here that says
22 that you can have the company pay for attorney's fees for the
23 members. Advance of expenses it says, expenses incurred in
24 defending any proceeding may be advanced by the LLC before
25 final disposition of the proceeding upon receipt of an

1 undertaking by or on behalf of the agent to repay the amount of
2 the advance. Okay.

3 So it says that we can advance the legal fees as long
4 as we agree to pay them back if we lose. They did the
5 undertaking; it will be introduced in the evidence. They are
6 both financially stable people. But again, it's neither here
7 nor there because if Your Honor rules in our favor, then the
8 attorney's fees were properly paid by the company, and she
9 would actually owe attorney's fees. If, Your Honor, rules
10 against us and says that we should not have gotten those fees,
11 then we have to pay them back. And so that's really not -- not
12 an issue in this case.

13 The issue in this case is did we usurp a corporate
14 opportunity, and we obviously did not since we offered her to
15 be a part of it, wanted her to be a part of it and she breached
16 her obligation to be a part of it. Thank you.

17 THE COURT: All right. Does plaintiff have their
18 first witness?

19 MR. HOLIDAY: We do, Your Honor. She's asked that I
20 call the witness, but she wants to ask the questions.

21 THE COURT: Of herself?

22 MR. HOLIDAY: She wants to ask the questions, yes,
23 Your Honor.

24 MS. HAACK: No, of Sean, Mr. Evenden.

25 MR. HOLIDAY: So I'm --

1 MS. HAACK: I just asked him to call him up so that
2 it was done properly.

3 MR. HOLIDAY: Right. So, yeah, just following
4 that --

5 THE COURT: Oh, I'm sorry. I thought -- it took me a
6 second --

7 MR. HOLIDAY: Yeah, this is my first time having a --

8 THE COURT: -- I'm looking at you like -- for some
9 reason when you pointed to Mr. Holiday I thought you were
10 crying him up, okay. It took me a second.

11 MS. HAACK: No.

12 THE COURT: Mr. Evenden, yeah, come on up, sir.

13 MR. HOLIDAY: All right. And before --

14 THE COURT: Please raise your hand to be sworn in.

15 MR. HOLIDAY: -- they get started I wanted to point
16 out two things. One, is I just wanted to put on the record
17 that we're not agreeing to try by consent, promissory estoppel
18 or detrimental reliance since there was no contract formation
19 in their counterclaim.

20 And Number 2 is that we're not -- given the chain of
21 circumstances we're no longer suing the case under usurpation
22 of corporate opportunity theory.

23 THE COURT: So what theories are you going with?

24 MR. HOLIDAY: Breach of fiduciary duty and
25 conversion.

1 THE COURT: And what?

2 MR. HOLIDAY: And conversion.

3 THE COURT: Okay. Hold on.

4 Sir, you want to come up and raise your hand.

5 **SEAN EVENDEN**

6 [having been called as a witness and being first duly sworn,
7 testified as follows:]

8 THE CLERK: Please be seated. Sir, would you please
9 state and spell your first and last name for the record.

10 THE WITNESS: Sean Evenden. S-e-a-n, Evenden,
11 E-v-e-n-d-e-n.

12 THE CLERK: Thank you.

13 THE COURT: All right. Please start, Ms. Haack. Are
14 you questioning him?

15 MS. HAACK: Thank you very much.

16 DIRECT EXAMINATION

17 BY MS. HAACK:

18 Q Hi, Sean.

19 A Hello.

20 Q Long time. So you -- I wanted to go through a couple
21 of things just to make sure we all agree that you saying --
22 you're a party to this -- to this lawsuit.

23 Are you an owner of NRS Realty Group, LLC today?

24 A Yes.

25 Q Have you read the NRS Operating Agreement?

1 A Yes.

2 Q Actually I should go a little closer.

3 Is this operating agreement here --

4 MR. HOLIDAY: He has a copy.

5 MS. HAACK: Oh, okay.

6 BY MS. HAACK:

7 Q So Exhibit 1 in the document -- the book you have
8 there is that your operating agreement?

9 THE CLERK: You have to direct him to the binder,
10 Ms. Haack.

11 MS. HAACK: Okay. So let me go up there and see if
12 it's there, okay.

13 MR. HOLIDAY: Permission to approach?

14 MS. HAACK: Permission --

15 THE COURT: Yeah, that's fine.

16 MS. HAACK: I have a lot to learn.

17 THE COURT: To the extent you can, you used the NRS
18 Realty ones right there.

19 THE CLERK: Oh, I think it's Ms. Haack's.

20 THE COURT: Oh, it's her exhibits. Those are the
21 ones that aren't Bates stamped.

22 Is a copy of the operating agreement in the NRS
23 Realty --

24 MR. HOLIDAY: We --

25 MR. SHEEHAN: We don't -- we don't have a problem

1 with the operating agreement, Your Honor. That's clearly been
2 produced by everybody.

3 THE COURT: Okay.

4 MR. HOLIDAY: Right.

5 MR. SHEEHAN: And I believe that the one she produced
6 in that book is Bates stamped.

7 THE COURT: Okay.

8 MS. HAACK: Yeah, I tried to take everything that was
9 Bates stamped.

10 BY MS. HAACK:

11 Q So on Number 1 -- so you've read this operating -- is
12 this the copy of the operating agreement that you remember?

13 A It looks like it.

14 Q Is that your signature on the last page?

15 A Yes.

16 MR. SHEEHAN: Your Honor, I've got to get back to the
17 ground rules of Ms. Haack questioning this witness. Ms. Haack
18 is the lawyer for herself. I don't even know what claim she
19 has. But I -- so I don't want to have both. I know we're
20 given some leeway here, but I have no idea how Ms. Haack can
21 claim any of these questions relate to -- or individual claims.

22 MR. HOLIDAY: Your Honor, Ms. Haack is a -- if I
23 could just argue the law for this. Ms. Haack is a party to the
24 operating agreement, right, NRS. My client is the object of
25 that contract, but not necessarily a party to that contract.

1 And insofar as she has conversion claims that they were
2 wrongfully exercising exclusive dominion over NRS to the
3 exclusion of her rights under the operating agreement, that
4 absolutely goes towards her breach of contract claim, Your
5 Honor.

6 MR. SHEEHAN: I believe that --

7 MR. HOLIDAY: Moreover, we might want to ask -- wait
8 till there's actually a question asked that you can object to.

9 THE COURT: Well, hold on. Let's -- can we just --
10 for my -- make sure I'm on the same page as you guys.

11 So I have a copy of Plaintiffs' Second Amended
12 Complaint, and the first claim of relief is breach of contract
13 against all of them, the defendants; that one you're dropping;
14 right?

15 MR. HOLIDAY: No.

16 MR. SHEEHAN: No.

17 MR. HOLIDAY: I'm only dropping the last two in
18 the -- as noted in the trial brief. There is breach of
19 contract as to, you know --

20 THE COURT: Hold on a second. Hold on. So you're
21 getting rid of the eighth claim for relief?

22 MR. HOLIDAY: Let me double check, but usurpation --

23 THE COURT: Which is usurpation of corporate
24 opportunities, is that one you're getting rid of?

25 MR. HOLIDAY: Right --

1 THE COURT: Or just missing?

2 MR. HOLIDAY: -- instead we're just pursuing it under
3 the breach of their fiduciary duties of due care and loyalty --

4 THE COURT: Okay. So hold on --

5 MR. HOLIDAY: -- and conversion.

6 THE COURT: -- so you're getting rid of 8 and which
7 other claims for relief?

8 MR. HOLIDAY: 8th and 7th. We really aren't just
9 going to waste time going over those.

10 THE COURT: Okay.

11 MR. HOLIDAY: Basically they used their exclusive
12 control of the company to move everything from one LLC to
13 another LLC that they owned exclusively. We're just trying to
14 keep it simple.

15 THE COURT: Okay. So you're going 1, 3 -- only --
16 there's only two claims for relief which you're dismissing
17 which is 7 and 8; right?

18 MR. HOLIDAY: 7 and 8.

19 THE COURT: Okay.

20 MR. HOLIDAY: The other claims are still there.
21 Obviously they read a little bit differently. You know, once
22 you pass the date where you can amend the complaint, that
23 doesn't mean that you get a green light to be a bad actor or to
24 act in bad faith. Obviously your fiduciary duties still carry
25 over. So basically we're going over what their duties were to

1 NRS when they were managing it exclusively, that they breached
2 the operating agreement, and that they've converted the entire
3 business to a business that they own exclusively.

4 THE COURT: I'm just going to allow some leeway just
5 to move this along in answering -- asking questions. Just
6 don't ask the same questions, please.

7 MS. HAACK: Yes. Okay.

8 THE COURT: Okay.

9 MS. HAACK: And what is --

10 MR. SHEEHAN: Just for the record. So I've objected
11 that I believe all these claims belong to NRS, but go ahead.

12 THE COURT: It looks like they belong to NRS, but I
13 just want to move this along.

14 Okay. So just ask your questions again.

15 MS. HAACK: Okay.

16 BY MS. HAACK:

17 Q So what is the year on that operating agreement,
18 Sean?

19 A It looks like 2010.

20 Q Okay. How many years have you been a licensed
21 Realtor?

22 A 24, 25.

23 Q As a Realtor are you required to continue your
24 education for law, ethics and contracts?

25 A Yes.

1 Q What would you say are the elements of a contract?

2 A How so --

3 MR. SHEEHAN: Objection, Your Honor. Calls for a
4 legal conclusion and way outside the boundary of a complaint.

5 MS. HAACK: We're all experts here. We're all
6 educated in contract law. I think it's a very simple question.
7 It would be offer, consideration and acceptance; would you
8 agree with me?

9 THE COURT: Are you asking me?

10 MS. HAACK: Yeah, I mean why would that be an
11 objection?

12 THE COURT: It is all for --

13 MR. HOLIDAY: Nancy, you -- yeah, just --

14 THE COURT: Okay. Look --

15 MS. HAACK: Okay.

16 BY MS. HAACK:

17 Q Sean, would you agree that it's an offer,
18 consideration and acceptance?

19 MR. SHEEHAN: Same objection.

20 THE COURT: Okay. Noted. Overruled.

21 MS. HAACK: Those would be the elements of a
22 contract, okay.

23 BY MS. HAACK:

24 Q So let's see. Do you believe the operating agreement
25 is a valid contract?

1 A Yes.

2 Q The first section -- I'm going to look at this
3 operating agreement and not at great detail, but I do want to
4 go through a few of the sections. Section 1.6 is the
5 definition for financial interest. Financial interest -- let's
6 see here. The right to share in the profits, losses, incomes,
7 expenses or other monetary items and receive distribution as
8 allocated from the LLC; is that what you read?

9 A It's what it reads.

10 Q Thank you. And then Section 8 -- 1.8, I'm sorry. It
11 says, LLC interest as an ownership interest in the LLC which
12 includes the financial interest, the right to vote, the right
13 to participate in management and the right to obtain
14 information concerning the LLC and other rights granted to a
15 member, and I shortened that; is that correct?

16 A That's what it reads.

17 Q And then Section 1.10 states, Property means any and
18 all assets in whole or in part of the LLC both tangible and
19 intangible. Do you see any reference to majority or all on any
20 of those three items?

21 A No.

22 Q As a valid contract, are these three sections we just
23 reviewed a part of consideration for the owners?

24 A I guess so.

25 Q Do you agree that these three -- that these

1 considerations still apply to all the three owners of NRS
2 today?

3 A Yes, as an owner.

4 Q Thank you.

5 THE COURT: Hold on. How are you using
6 consideration? Usually --

7 MS. HAACK: Well, you get something for offering
8 something, I mean --

9 THE COURT: Okay.

10 MS. HAACK: -- right?

11 THE COURT: I see what you're going -- okay. Thanks.

12 BY MS. HAACK:

13 Q So those would be the considerations. Would you
14 consider software an intangible asset of a product of an asset?
15 When it says tangible or intangible, would you consider
16 software an intangible or a tangible asset?

17 A Depends on how it's used.

18 Q Well, we don't own it; would it be intangible?

19 A You can buy software.

20 Q I know. Okay. That's good.

21 Would you consider contracts for agents and
22 properties an asset of the company?

23 A Depends on if they were conducted when the agent was
24 at the company.

25 Q Would you consider furniture an asset?

1 A Yes.

2 Q And would you consider lease for an office space
3 or -- equipment an asset of the company?

4 A Yes.

5 Q Thank you. 4.1 of the operating agreement what it's
6 doing it says, Initial contributions were Sean Evenden at 33
7 and a third, Nancy Haack at 33 and a third and Roger Ayala at
8 33 and a third; is that correct?

9 A That's what it reads.

10 Q Do you see any reference here to majority or all?

11 A No.

12 Q And then only one more right now. 5.6 Distribution
13 states, Distribution shall be made among the members as follows
14 in proportion to the member's LLC interest. Do you see
15 anything there that references majority or all?

16 A No.

17 Q Thank you.

18 MS. HAACK: I am going to your book on page --
19 Section 4, Your Honor, it's S4-S.

20 BY MS. HAACK:

21 Q On the second page on 4-S is a letter; I want to know
22 if you recognize that letter?

23 A What page?

24 Q 4-S. It goes from A through Z and then AA, ZZ.

25 MR. HOLIDAY: Need a -- you need to move past those

1 you want to move to admit them. Just --

2 MS. HAACK: I'm going to do -- yeah, I'm going to
3 show the Court what I need to do. I waited three years to do
4 this so --

5 MR. SHEEHAN: What -- what --

6 BY MS. HAACK:

7 Q Do you see that letter, Mr. --

8 MR. SHEEHAN: Where are we at? I'm sorry.

9 MS. HAACK: 4S.

10 MR. SHEEHAN: 4 what?

11 THE CLERK: You said Exhibit 4?

12 MS. HAACK: Exhibit 4 letter S. Thank you. As in
13 Sam. And it's Bates stamped.

14 BY MS. HAACK:

15 Q Do you recognize that letter?

16 A I do.

17 Q And what's the date of that letter?

18 A It looks like March 10th, 2017.

19 Q And who is it addressed to?

20 A Nancy.

21 Q Would that be me?

22 A That would be you.

23 Q Thank you. Did you help prepare this letter?

24 A This email or --

25 Q No, no, this is a letter.

1 A -- or what's in the --
2 Q I'm sorry. Did you help --
3 A -- on your desk --
4 Q This is a --
5 A -- I see a picture.
6 MR. HOLIDAY: It's the next page over.
7 BY MS. HAACK:
8 Q No, the second page, Sean, I'm sorry. My apologies.
9 Did you help prepare that letter?
10 A Our former counsel prepared the letter.
11 Q You did not help prepare that; did you read that
12 letter before --
13 THE COURT: Hold on. You need -- look at -- hold on.
14 We're going to have a real problem here because this needs to
15 be -- there's so many exhibits and they need to be properly
16 identified.
17 MS. HAACK: Tab 4S as in Sam, it's alphabetical.
18 THE COURT: Yeah, we have that one.
19 MS. HAACK: And then the second page.
20 THE COURT: Is that the one with Bates stamps
21 HAA0016?
22 MS. HAACK: Yes.
23 THE COURT: Okay. Keep going.
24 MS. HAACK: Okay.
25 / / /

1 BY MS. HAACK:

2 Q Did you help prepare that letter?

3 A My former counsel prepared the letter.

4 Q Your former counsel did that. Did you read it before
5 you distributed it?

6 A I did read it.

7 Q And did you approve it?

8 A Our former counsel prepared it, and I read through it
9 and presented it to you.

10 Q Okay. I have a text from you -- so just so you know
11 here's where I'm going with this. So I have Section 4 --

12 MR. SHEEHAN: Your Honor, this is hard to -- this is
13 not a --

14 BY MS. HAACK:

15 Q Sean, I have Section 4 --

16 MR. HOLIDAY: Right. He has to object to it and then
17 you get to explain, Nancy.

18 MS. HAACK: I'm sorry. Oh, I was going to go to
19 another page to show his text that confirms that letter.

20 MR. HOLIDAY: All right. So when you're doing these
21 things you're going to need to say move to admit.

22 MS. HAACK: Oh, okay. I remember that. Okay.

23 MR. HOLIDAY: All right. Do that first.

24 MS. HAACK: So I need to move to admit this letter
25 from Exhibit 4-S on page 2.

1 THE COURT: Okay. Any objections?

2 MR. SHEEHAN: No objection.

3 THE COURT: That'll be admitted.

4 (Exhibit No. 4S admitted.)

5 MS. HAACK: The whole document was three pages, but
6 the second page is all I'm worried about.

7 THE COURT: Okay. Hold on a second. Okay. So why
8 don't we admit -- it's marked 4-S and then there's a 2 at the
9 next one, and it's Bates stamped HAA0016, I'll admit that also.

10 (Plaintiffs' Exhibit Bates No. HAA0016 admitted.)

11 THE COURT: All right. What else?

12 MS. HAACK: Okay.

13 BY MS. HAACK:

14 Q Under Tab 12, Sean, I have -- copies of texts that we
15 had in discussions --

16 THE COURT: You've got to help me out here, ma'am.

17 MS. HAACK: Section 12.

18 THE COURT: Okay.

19 MS. HAACK: Exhibit 12, I'm sorry.

20 MR. SHEEHAN: I actually don't have tabs in my book
21 which is going to be a little --

22 MS. HAACK: Well, I wrote them in there for you.

23 MR. HOLIDAY: He means the tabs that stick out the
24 side.

25 MS. HAACK: I have all those I put them -- oh, you

1 did that, sorry.

2 Do you want to switch books?

3 MR. SHEEHAN: No, just give me time to get there
4 though. Twelve -- what are we at now?

5 MS. HAACK: It's Section 12. It's -- the whole
6 section is going to be on texts, texts that went between the
7 three owners including discussions about the letter on March
8 10th or referencing the letter on March 10th.

9 THE COURT: Are these texts that have been produced
10 during the course of discovery?

11 MS. HAACK: Yes.

12 THE COURT: Hold on. Let Mr. Sheehan look at it.

13 MS. HAACK: Oh, okay.

14 MR. SHEEHAN: Your Honor, I -- I don't know one way
15 or the other, but I'm not going to have a problem with these
16 texts.

17 THE COURT: Okay. So we'll just admit all of Tab 12.
18 Okay. Hold on a second.

19 MS. HAACK: Are yours all tabbed, Sean?
20 Yeah. I mean, you have 18 tabs on your book? Okay.

21 THE COURT: Do you have tabs on yours?

22 UNIDENTIFIED SPEAKER: I do.

23 THE COURT: Okay.

24 UNIDENTIFIED SPEAKER: They should be all tabbed.

25 THE COURT: Yeah, that's what you're supposed to be

1 looking at, yes. Yeah, all of 12 is admitted --

2 (Exhibit No. 12 admitted.)

3 MS. HAACK: Okay.

4 THE COURT: -- so that would CAT -- shoot. It goes
5 from 12 A -- 12-A to 12-ZZ. Okay.

6 MS. HAACK: And I'm not going take you through all of
7 that, Sean.

8 BY MS. HAACK:

9 Q Okay. So, but on Exhibit 12-R there is a
10 communication between the three of you where you reference --
11 towards the bottom you say in your text, I have already met
12 with a lawyer and I think Roger has so let's get this done.

13 Is that the same lawyer that you brought in to write
14 this letter on March 10th?

15 A It could have been.

16 Q Did you have a meeting of the members of the company
17 to discuss hiring a lawyer to prepare this letter?

18 A I don't recall.

19 Q Did you discuss this letter with anybody else?

20 A The one on --

21 Q March 10th.

22 A Like who? Like the attorney?

23 Q The attorney, Roger, me?

24 A Roger and I and you obviously.

25 Q You discussed this with me before you gave it to me?

1 A No.

2 Q Okay. Did you have a meeting to discuss the letter
3 you gave to Ms. Haack dated March 10th?

4 A A formal meeting?

5 Q Any meeting.

6 A With the previous counsel?

7 Q What I'm trying to show the Court is what --

8 MR. SHEEHAN: Objection, Your Honor. This is legal
9 argument in the middle of questioning.

10 BY MS. HAACK:

11 Q Did you have --

12 THE COURT: Okay. Sustained.

13 MS. HAACK: I'll move on.

14 BY MS. HAACK:

15 Q Did you have a meeting without Ms. Haack to discuss
16 this letter?

17 A You told us numerous times to discuss it with our
18 attorney.

19 Q Did you invite Ms. Haack to that meeting?

20 A I don't recall.

21 Q I just want to make sure that we know when Ms. Haack
22 is being invited.

23 MR. SHEEHAN: Your Honor --

24 BY MS. HAACK:

25 Q Ms. Haack on November 6th, I've got to refer to a

1 transcript --

2 THE COURT: Which transcript, ma'am?

3 MS. HAACK: November 6th pretrial, page 13, line 7.

4 THE COURT: I'm sorry. Is it in your exhibits?

5 MS. HAACK: No. I asked if I needed to bring them in
6 and I was told not, but I do have them with me if you want me
7 to get them.

8 THE COURT: I have no idea what you're talking about,
9 ma'am, so --

10 MS. HAACK: Okay. So we had a hearing on January
11 23rd for a receivership which they didn't mention, and I do
12 reference that transcript, and then we had a pretrial November
13 6th, 2018. If you want to give me some -- from the Court
14 some direction and me start tomorrow I'd be happy to do that.

15 THE COURT: No, you're actually doing pretty well.

16 MS. HAACK: Okay.

17 THE COURT: I just -- I'm just trying -- there's a
18 lot of exhibits so I'm --

19 MS. HAACK: Yeah, so they wouldn't be in here because
20 we thought the Court would already have them.

21 MR. HOLIDAY: Could -- could the Court take judicial
22 notice of its docket?

23 THE COURT: Sure.

24 MR. HOLIDAY: Thank you, Your Honor.

25 MR. SHEEHAN: Your Honor, I have no copy.

1 THE COURT: I just need to know what you're
2 referencing so that if I have to go back and look --

3 MS. HAACK: Okay.

4 THE COURT: -- so just give me a date, please.

5 MS. HAACK: Okay. This is the November 6th
6 transcript, 2018.

7 THE COURT: Is it the day of the hearing?

8 MS. HAACK: Yes.

9 THE COURT: Okay.

10 MS. HAACK: And it's on page 13, line 7.

11 THE COURT: But are you referencing something I said?

12 MS. HAACK: Nope.

13 THE COURT: Is it something he --

14 MS. HAACK: Mr. Sheehan states that -- it's a
15 quote --

16 MR. SHEEHAN: Objection, Your Honor.

17 THE COURT: Hold on. Well, okay, so you're going to
18 ask him about something Mr. Sheehan stated?

19 MS. HAACK: Because he just said he didn't invite me
20 to a meeting that he said I was never missed from a meeting,
21 and I have a lot of them.

22 THE COURT: Well, why don't you just -- just ask.

23 MS. HAACK: I didn't know how else to argue that
24 because they had several meetings without me.

25 THE COURT: Why don't you just go through the

1 questions and ask if you were invited or --

2 MS. HAACK: Okay.

3 THE COURT: -- if you were there.

4 MS. HAACK: I missed that, okay --

5 THE COURT: Okay.

6 MS. HAACK: -- I'll do that. No problem.

7 BY MS. HAACK:

8 Q Was the lawyer you hired to prepare this letter for
9 March 10th, hired for you and Roger or for NRS?

10 A I don't recall.

11 MS. HAACK: And I'm going to move everybody to
12 Exhibit 2 --

13 THE COURT: Have you --

14 MS. HAACK: -- I have checks in here that are --

15 THE COURT: Okay. Hold on a second, ma'am. Let me
16 get to Exhibit 2, please.

17 And yours aren't tabbed, Mr. Sheehan, is that right?

18 MS. HAACK: It's right behind the operating
19 agreement. There you go.

20 THE COURT: Evidence of bank activity.

21 MS. HAACK: Yeah. And I'm referring to some tab
22 checks, I mean, dates Bates stamped. That's a tongue twister.

23 THE COURT: Okay. So we're going to Exhibit 2 --

24 MS. HAACK: 2.

25 THE COURT: Mr. Sheehan needs to get there.

1 MR. SHEEHAN: I'm sorry. Where are we at -- exhibit?

2 MS. HAACK: 2. It's right behind --

3 MR. HOLIDAY: Yeah, so it's in the upper right-hand
4 corner is where she --

5 MR. SHEEHAN: Exhibit 2A?

6 THE COURT: 2A?

7 MS. HAACK: No, I am going to -- we'll start on 2B;
8 it's Bates stamped.

9 I just asked Mr. Evenden if he knew if he hired the
10 lawyer to work for him and Roger or for NRS. On page --
11 Exhibit 2B I'd like to submit, if I said that correctly, this
12 check that is paid to Sean, and on the comment line it says
13 reimburse for Brennan Legal Counsel for NRS \$1,000.

14 THE COURT: I don't think there's a dispute that
15 monies were used from NRS for legal fees.

16 MS. HAACK: Well, that attorney -- okay, well -- the
17 attorney needs -- they need to have a hundred percent -- a
18 unanimous consent of the owners to hire an attorney for the
19 company.

20 THE COURT: Okay. So that might be your next
21 question.

22 MS. HAACK: Okay.

23 BY MS. HAACK:

24 Q Did you have the unanimous consent of the owners of
25 NRS to hire an attorney to represent NRS?

1 A I don't know if it's required or not.

2 Q Section 6.8 of the operating agreement requires
3 unanimous vote.

4 THE COURT: You can't -- you can't testify --

5 MS. HAACK: Okay. So I can ask the question.

6 BY MS. HAACK:

7 Q Does -- Section 6 of the operating agreement has 13
8 sections on management; Section 6.8 is on voting, in that
9 section the last sentence says, the unanimous consent of all of
10 the members is required when a vote is needed for the business?

11 MR. SHEEHAN: Objection, Your Honor, Section 6.8 says
12 the unanimous vote of all (indiscernible) shall be required to
13 approve any action unless a greater or lesser vote is required
14 pursuant to this agreement or by statute.

15 MS. HAACK: And it says it's unanimous so there's
16 nothing greater or lesser.

17 THE COURT: Okay. But hold on. What's your -- okay,
18 the things that you're speaking of really should come by way of
19 your testimony.

20 Are you going to question Ms. Haack, Counsel?

21 MR. HOLIDAY: I'm planning on doing that last.

22 THE COURT: Can we just take a quick break to use the
23 rest room, please.

24 MS. HAACK: That would be great.

25 THE COURT: Okay. And then I'll ask my question when

1 we come back.

2 MS. HAACK: Okay.

3 THE COURT: Okay. So just, like, however long you
4 need to use the rest room.

5 (Proceedings recessed 2:24 p.m. to 2:38 p.m.)

6 THE COURT: Sorry. I get into my office and there's
7 things I need to do.

8 Sir, you're still under oath, Mr. Evenden.

9 THE RECORDER: We're not on the record yet.

10 MS. HAACK: Okay.

11 THE COURT: Okay.

12 THE RECORDER: Okay. We're on the record.

13 THE COURT: And, sir, you're still under oath.

14 Ms. Haack, if you'd like to continue.

15 MS. HAACK: Yeah, I'm going to try to correct my
16 roadmap a little bit better so that we're not moving around so
17 much. So I'm going to take us back to Exhibit 2 -- I mean, 1
18 I'm sorry, the operating agreement.

19 THE COURT: Hold on. Let me get -- before you do
20 that you referenced some pages in Exhibit 2 --

21 MS. HAACK: Yes.

22 THE COURT: -- are you going to move those -- try to
23 move those into evidence?

24 MS. HAACK: Yes, I did want to move those into
25 evidence.

1 THE COURT: All of 2 or just --

2 MS. HAACK: No -- let's see -- I don't think -- these
3 all have Bates stamps, but the ones in our book do not. Mine
4 is the same as yours. They're just --

5 THE COURT: Thank you.

6 MS. HAACK: -- probably the copies I had.

7 THE COURT: Did you just want 2B, is that the only
8 one?

9 MS. HAACK: I definitely want 2B for now, yes.

10 THE COURT: Any objection -- I'll have to check
11 page -- shown evidence, I'm assuming you have it. It says
12 reimbursement for something legal counsel.

13 MS. HAACK: Brennan Legal Counsel.

14 THE COURT: So that will be admitted, page only.

15 MR. HOLIDAY: In terms of they did a subpoena of
16 Chase which was entirely produced to both parties. So anything
17 before the close of discovery date generally was definitely
18 produced and Bates stamped.

19 THE COURT: Well, I just don't know if she wants to
20 move everything in.

21 MR. HOLIDAY: Right.

22 THE COURT: So I know 2B she wants to move in.

23 MS. HAACK: Uh-huh, yes.

24 THE COURT: Is there anything else you want to move
25 in?

1 MS. HAACK: I would be willing to put all of them in
2 if that's okay with everybody. These are all Chase checks made
3 payable to Life Real Estate or to the defendants that will be
4 brought up, and they were done in 2017.

5 MR. SHEEHAN: I would object to anything that's not
6 Bates stamped. I have no idea where these things came from. I
7 haven't seen quite frankly some of them. It's hard for me to
8 remember every single document, but I quite frankly haven't
9 seen several of these checks.

10 MR. HOLIDAY: All right. So --

11 MS. HAACK: That's okay. We can take them out.

12 MR. HOLIDAY: I don't -- well --

13 MR. SHEEHAN: But I will stipulate to anything with a
14 Bates stamp.

15 MR. HOLIDAY: Right. Some of these do have Bates
16 stamps. The --

17 THE COURT: Hold on.

18 MR. SHEEHAN: Your Honor, she just agreed she'd take
19 out everything without a Bates stamp, that's fine.

20 MS. HAACK: Well, there will be -- if I may say so
21 they're all going to be addressed with the forensic accountant,
22 so I'd be okay.

23 MR. HOLIDAY: Right.

24 THE COURT: All right. So --

25 MS. HAACK: So we do 2B and 2C.

1 THE COURT: You know what, hold on. Hold on a
2 second.

3 MS. HAACK: Actually 2A, 2B, 2C see, yeah, A, B, C,
4 and D are all Bates Stamped. The rest will come through
5 forensics.

6 THE COURT: Yeah, so -- okay. Hold up.

7 So, Kathy, I'll mark these for you.

8 THE CLERK: So it's A through C?

9 MS. HAACK: A, B and C, yes.

10 THE COURT: Yeah. And the 2A through C.

11 MS. HAACK: Yes.

12 THE COURT: 2A through 2C.

13 MS. HAACK: And I see 2V as in Victor is also Bates
14 stamped.

15 THE COURT: Just -- hold on.

16 MS. HAACK: I'll wait.

17 THE COURT: No, you have Bates stamps on 2A through
18 2D which would be admitted by way of stipulation, okay.

19 (Exhibit Nos. 2A-2D admitted.)

20 MS. HAACK: Okay. Thanks.

21 THE COURT: Okay. Ms. Haack, onward, please.

22 MS. HAACK: I'm sorry?

23 THE COURT: Continue, please.

24 MS. HAACK: Okay. Thank you.

25 So what I'm going to do is go back to the operating

1 agreement. We were looking at the Section 1 which was
2 definitions.

3 THE COURT: What tab is that under, Section 1?

4 MS. HAACK: And that is tab 1.

5 THE COURT: That was moved in already.

6 MS. HAACK: Yes.

7 THE COURT: Okay. So, Ms. Haack Exhibit 1 is
8 admitted by way of stipulation. Be admitted to allowing the
9 operating agreement in.

10 (Exhibit No. 1 admitted.)

11 BY MS. HAACK:

12 Q We just looked at sections 1.6, 1.8, and 1.10, and I
13 asked you a question if you would think those were part of
14 consideration of an agreement.

15 MR. SHEEHAN: Objection to the extent it calls for a
16 legal conclusion.

17 THE COURT: Hold on. Please ask your question again.

18 MS. HAACK: I said we just reviewed Sections 1.6,
19 1.8, and 1.10, and I asked Sean if he believed those were
20 consideration of this agreement that we all signed.

21 MR. SHEEHAN: Objection. Vague and ambiguous and
22 calls for a legal conclusion.

23 THE COURT: You're talking about the operating
24 agreement we went over earlier?

25 MS. HAACK: Yes, uh-huh.

1 THE COURT: Why don't you --
2 Sir, what was the consideration for entering into
3 that operating agreement?
4 THE WITNESS: What was the consideration entering
5 into?
6 THE COURT: Yeah. So what did y'all get?
7 THE WITNESS: The money amount or the time effort?
8 THE COURT: I don't know how to explain this
9 differently.
10 MR. HOLIDAY: So --
11 THE COURT: Why don't you just follow up on it,
12 Mr. Holiday, please.
13 MR. HOLIDAY: Okay.
14 THE COURT: Okay. So the operating agreements and
15 Mr. Holiday can follow up on some things since he's
16 representing NRS anyways. Okay.
17 So why don't you ask your next question, please.
18 MS. HAACK: Okay.
19 BY MS. HAACK:
20 Q And then I move to Section 4.1 in the operating
21 agreement which is on page 4 where it --
22 THE COURT: Exhibit 1-4.1?
23 MS. HAACK: 1 and then section 4.1, yes.
24 THE COURT: Okay. Okay.
25 / / /

1 BY MS. HAACK:

2 Q Initial contributions show Sean Evenden 33 and a
3 third, Nancy Haack 33 and a third, and Roger Ayala 33 and a
4 third; is that correct?

5 A It's what it reads.

6 Q Is that a yes or a no?

7 A Yes.

8 Q Okay. Is it true that there is no reference in that
9 section to a majority or all?

10 MR. SHEEHAN: Objection, asked and answered.

11 MS. HAACK: Okay.

12 THE COURT: Overruled.

13 MS. HAACK: That's fine.

14 THE COURT: Which section, are you talking about
15 Section 4.1?

16 MS. HAACK: Yes.

17 THE COURT: Just say yes or no. Answer question --
18 she asked if there's any in 4.1, the language of 4.1 of whether
19 there's any reference to --

20 What was it?

21 MS. HAACK: Majority or all.

22 THE COURT: Majority or all?

23 THE WITNESS: No.

24 MS. HAACK: Okay.

25 And then I'm asking you to move to Section 5.6 under

1 distribution.

2 THE COURT: Is 5.6 the operating agreement?

3 MS. HAACK: On the operating agreement.

4 THE COURT: Okay.

5 BY MS. HAACK:

6 Q Are we there --

7 Distributions of LLC assets and property
8 shall be made at such times and in such
9 amounts as the members determine subject to
10 any restrictions in this agreement.
11 Distributions shall be made among the members
12 as follows in proportion to the members LLC
13 interest.

14 Do you see any reference to majority or all in that
15 section?

16 A No.

17 Q Okay. On the next page it's Section 6 which is on
18 Management -- actually, I'm going to go two pages over to 6.8.
19 6.8 is Voting. Is it true that the unanimous vote of all the
20 LLC interests shall be required to approve any action unless a
21 greater or lesser vote is required pursuant to this agreement
22 or by statute? It would be on the last sentence, Sean.

23 A So what was the question?

24 Q Is that true what I read that the unanimous vote of
25 all the LLC interests shall be required to approve any action

1 unless a greater or lesser vote is required pursuant to this
2 agreement or by statute?

3 A That's what it reads.

4 Q Yes or no?

5 THE COURT: He agreed, ma'am --

6 MS. HAACK: Okay. That's good, okay.

7 THE COURT: -- that that's what it says.

8 BY MS. HAACK:

9 Q All right. Is there any reference there to majority
10 or all?

11 A I think it's pretty vague.

12 Q Pretty what?

13 A Vague because it's a unanimous vote greater or
14 lesser.

15 Q Unless a greater or lesser vote is required pursuant
16 to this agreement. It doesn't say if a greater or lesser; it
17 says unless there's another section that refers to something.
18 I don't want to interpret it so --

19 A It -- I think that --

20 Q -- I'll move on unless you want to answer that.

21 A I'd say I think it -- would have to talk to the
22 attorney that drafted it.

23 Q Does the attorney work in your office?

24 A (No audible response.)

25 Q Is the attorney who drafted this operating agreement

1 an employee of NRS?

2 A At the time he was.

3 Q Okay. Let's go to 6.10, it says, waiver of notice or
4 consent by absent members. In your letter of March 10th,
5 it's the only ones I'm hitting.

6 The transaction of any meeting of
7 members either annual or special however
8 called and noticed and whenever held shall be
9 as valid as if it occurred at a meeting held
10 after all regular call and notice if a quorum
11 be present in person or by proxy and if
12 either before or after the meeting each
13 person entitled to vote, but not present in
14 person or by proxy, signs a written waiver of
15 notice of consent to the holding of the
16 meeting or any approval of the minutes
17 thereof.

18 Do you agree that that's what statement says?

19 A It's what it reads.

20 Q Okay. Do you see any reference there to majority or
21 all?

22 A No.

23 Q Okay. And then Section 6.11.

24 Member action by written consent without
25 a meeting any action which may be taken at

1 any annual or special meeting of members may
2 be taken without a meeting and without prior
3 notice if consent in writing setting forth
4 the actions are taken are signed by the
5 members holding LLC interest representing the
6 aggregate number of votes equal to or greater
7 than the minimum at which all LLC interests
8 entitled to vote thereon were present and
9 voted.

10 Is that what that reads?

11 A It's what it reads.

12 Q Do you see any reference to majority or all?

13 A No.

14 Q Okay. Thank you. Next page, Section 7.1 is Transfer
15 or assignment of members interest.

16 No member may transfer and/or assign in
17 whole or in part his or her LLC interest at
18 any time.

19 Do you agree to that sentence?

20 A If that's what it reads. I'm -- I'm not the attorney
21 who drafted this.

22 Q Well, you signed it. Did you sign this operating
23 agreement?

24 A Yeah.

25 Q Is it true that you assigned members interest to

1 another person outside the company owners in July of 2017?

2 A I don't recall.

3 Q (Indiscernible) was this signed -- was Kevin Difiore
4 [phonetic] assigned a membership interest for the LLC in July
5 of 2013?

6 A He may have been.

7 Q I just want to make it clear for the record that 7.1
8 states --

9 MR. SHEEHAN: Your Honor, she's again testifying.

10 THE COURT: Yeah, just --

11 BY MS. HAACK:

12 Q Do you -- do you -- is it -- excuse me. Is it true
13 that 7.1 states, no member may transfer and/or assign in whole
14 or in part his or her LLC interest at any time?

15 A I believe this is talking about the special meeting
16 that we had to add Kevin Difiore and his team to the company.

17 Q I am asking you if you agree that this section
18 states, no member may transfer and/or assign in whole or a part
19 his or her LLC interest at any time?

20 A I don't believe we transferred any interest in the
21 sense of voting or anything within the company. We had a
22 meeting a special meeting --

23 Q I just want a yes or a no, Sean.

24 THE COURT: Why don't you reask the question.

25 / / /

1 BY MS. HAACK:

2 Q Is it true that the Section 7.1 of the operating
3 agreement says no member may transfer and/or assign in whole or
4 in part his or her LLC interest at any time?

5 A It's what it reads, yes.

6 Q Did you -- is it true that at the July -- June 30th
7 meeting in 2017 you added Mr. Difiore to the members of the
8 business?

9 A I believe we had a meeting and we did add him to add
10 as a team to our company.

11 Q Okay.

12 THE COURT: As a what, team?

13 THE WITNESS: There's a large real estate team coming
14 over to our company and to be a broker of a company, the State
15 of Nevada Real Estate Division requires him to be on as one of
16 the signers or something along those lines, but we had him sign
17 a document stating that he had no membership, no voting, no
18 rights whatsoever; he was just being added on as a broker.

19 MS. HAACK: Right.

20 THE COURT: So his only ownership interest would be
21 so that he could carry out his duties as a broker?

22 THE WITNESS: For his own business and his team that
23 he brought over.

24 THE COURT: Okay.

25 MS. HAACK: That I object to because he's

1 interpreting the law, and I do know that law.

2 THE COURT: Okay.

3 MR. SHEEHAN: You're --

4 MS. HAACK: Okay. I'm a broker.

5 THE COURT: Well, I was just -- okay. So why don't
6 you finish asking your question. That was really more for my
7 own clarification --

8 MS. HAACK: Okay.

9 THE COURT: -- as to the role this gentleman --

10 BY MS. HAACK:

11 Q Well, are you familiar with NRS 645.370?

12 A (No audible response.)

13 Q Are you familiar with NRS 645.380 as a broker?

14 A (No audible response.)

15 Q Okay. That's all I wanted to know.

16 THE COURT RECORDER: Was that a no?

17 THE WITNESS: No.

18 MS. HAACK: I'm going to turn to Section 10. That's
19 I think two pages over in the operating agreement -- oh, I'm
20 sorry, 10.5 that's three pages over.

21 Everybody there?

22 BY MS. HAACK:

23 Q Is it true that 10.5 states,

24 The required approval that any

25 indemnification under this section shall be

1 made by the LLC only if authorized upon the
2 determination by a majority vote of the LLC
3 interests of members who were not parties to
4 the proceeding at a duly held meeting of the
5 members at which a quorum is present?

6 A (No audible response.)

7 Q Did I misread that, is it true?

8 A 10.5, that's what it states.

9 Q Is that a yes, I'm assuming. So is it true that you
10 had a meeting to vote for yourself and Mr. Ayala to receive
11 legal fees from NRS?

12 A I believe so.

13 Q Are you a party to the proceeding for the legal fees
14 you are using? Is it true that you are part of the proceeding
15 to the fees that you were taking?

16 A I believe so.

17 Q Did you think this operating agreement was designed
18 to protect just two owners or all the owners?

19 A Nancy, when you breached our operating agreement --

20 Q I'm not asking you that, Sean. I am going to go
21 through my questions, and I'm asking you if that's what you
22 did, yes or no?

23 A What was the question?

24 Q Did you think the operating agreement -- did you --
25 is it true that you believe the operating agreement was

1 designed to protect just two owners or all the owners?

2 A I don't know how talk to legal counsel about that.

3 Q Did you hold -- or is it true that you scheduled a
4 meeting on June 30th or May 1st and June 30th without the
5 written consent of all the members who were entitled to vote to
6 award yourself legal fees for this proceeding?

7 A If that's when we held the meeting, yes; I don't know
8 the exact dates.

9 Q Did you have a -- is it true that you did not have
10 the consent of equal owner Nancy Haack in writing to hold those
11 meetings?

12 A We noticed you of those meetings, and then after your
13 breach of our operating agreement we hired counsel to explain.

14 Q I just want a yes or a no, Sean.

15 A (No audible response.)

16 Q Okay. Did you do -- is it true that you never told
17 Ms. Haack that you withdrew your accusations in any
18 documentation prior to the meeting on May 1st?

19 A Which meeting are you talking about? I don't recall.

20 Q May 1st. Did you --

21 A I don't recall the meeting.

22 MR. HOLIDAY: Can you say the year too, Nancy.

23 MS. HAACK: Uh-huh.

24 MR. HOLIDAY: Say the year too for the meeting date.

25 MS. HAACK: Oh, the year 2017.

1 THE WITNESS: I don't recall the meeting.

2 MS. HAACK: Okay. Let me pull it up. If you go to
3 Exhibit 9 -- 9A, may I submit that?

4 THE COURT: What do you want to do, ma'am?

5 MS. HAACK: Go to Section 9A.

6 THE COURT: Section 9?

7 MS. HAACK: Exhibit 9 number -- the first one is A.

8 BY MS. HAACK:

9 Q Do you recognize this document as minutes -- as a
10 meeting you scheduled for NRS on May 1st, 2017?

11 A I do.

12 Q Okay.

13 THE COURT: Are you moving -- are you going through
14 the whole section, ma'am?

15 MS. HAACK: The whole section of the meeting?

16 THE COURT: Of Exhibit 9?

17 MS. HAACK: Yes.

18 THE COURT: Okay. Okay.

19 MS. HAACK: Okay.

20 THE COURT: You can continue, yeah.

21 BY MS. HAACK:

22 Q And then the next meeting additional -- I'm not going
23 to go through the agenda now. And then the other meeting in
24 this section is June -- is the next one which is June 30th
25 and that is 9B. On June 30th, 2017, is it true that you held

1 another meeting on June 30, 2017? It's Exhibit 9B.

2 A I need the right number.

3 Q It's at the top corner.

4 A 9B, okay. What was the question?

5 Q Okay. Do you remember calling this meeting on June
6 30th, 2017? Is it true that you called this meeting?

7 A Yes.

8 Q Did you have the consent of Ms. Haack to have this
9 meeting with her written notice in the agenda items as stated
10 in 6.10 of our operating agreement?

11 MR. SHEEHAN: Objection, Your Honor, to that last
12 reference to 6.10. I don't -- I don't even know what she's
13 talking about there.

14 MS. HAACK: All right. I will go back to six --

15 MR. SHEEHAN: It's fine. I withdraw my objection.

16 MS. HAACK: Okay. Do I need to clarify that?

17 THE COURT: Yes, please that would help.

18 BY MS. HAACK:

19 Q 6.10 on the operating agreement, is it true that 6.10
20 waiver of notice or consent by absent member -- I guess I did
21 forget that, I'm sorry.

22 6.10 of the operating agreement says, waiver of
23 notice or consent by absent members. Is it true that this
24 section was referenced in your letter of March 10th to
25 Ms. Haack?

1 A (No audible response.)

2 Q I'm going to read that to you so you know why I'm --

3 A Of 9B? It says 6.3.

4 Q 6.3 is, but your letter to Ms. Haack said you had the
5 right to do these things without consent of absent members.

6 A And you're saying it's on this notice that it was
7 6.10?

8 Q That you didn't have my written consent to holding
9 this meeting?

10 A To have a special meeting?

11 Q Any meeting.

12 MR. SHEEHAN: Your Honor, she's referring to a
13 section that says that notice -- about not noticing her on a
14 meeting, and now she's trying to say that she had to have --
15 it's totally apples and oranges here.

16 MR. HOLIDAY: Your Honor, if I may intervene --

17 THE COURT: Sure.

18 MR. HOLIDAY: -- and offer my translation of what
19 she's saying. Going back to the March 10th letter the --
20 dated in the letter that --

21 MR. SHEEHAN: Well, now he's testifying, Your Honor.

22 MR. HOLIDAY: No, just -- they quoted to that section
23 as she claiming that they had written consent from her and
24 that's what she's trying to get at is that she didn't actually
25 sign the written consent required. So these actions taken in

1 her absence were ultra vires of the operating agreement is
2 essentially where she's trying to go, Your Honor --

3 MS. HAACK: Yes, so the --

4 MR. HOLIDAY: -- that's my translation to save us
5 some time into the legalese that would be used.

6 MS. HAACK: If you look at 6-point --

7 THE COURT: Why don't you just ask her -- basically
8 ask him the same questions that your lawyer just --

9 BY MS. HAACK:

10 Q Sean, is it true that Section 6.10 of the operating
11 agreement regarding waiver of notice of consent by members
12 requires the written consent of any absent members for the
13 meeting?

14 MR. SHEEHAN: Objection. Misstates --

15 MS. HAACK: Just a minute, please --

16 MR. SHEEHAN: -- misstates what 6 and 6.10 -- 6.10 is
17 waiver of notice.

18 MS. HAACK: Okay. I'm sorry.

19 THE COURT: Okay. Can y'all -- I need one thing at a
20 time.

21 MS. HAACK: He's right.

22 THE COURT: Going back -- so you referenced
23 Exhibit 9. Are you moving to admit those?

24 MS. HAACK: I did.

25 MR. SHEEHAN: And I object to all of the non Bates

1 stamp numbers, 9 I'll -- I'll -- I'm fine with the notices in
2 the questioning, but there's a bunch of documents at the end
3 that I know have never been produced in this -- well, I'm
4 pretty sure --

5 THE COURT: Which ones do you think --

6 MR. HOLIDAY: Wait, which exhibits haven't been --

7 MR. SHEEHAN: -- they haven't been produced in this
8 case.

9 THE COURT: Which ones at the end do you think you
10 haven't seen in 9?

11 MR. HOLIDAY: The order --

12 MR. SHEEHAN: Again, I don't even know why these are
13 in 9, you know --

14 THE COURT: Just which ones do you think you haven't
15 seen, sir?

16 MR. SHEEHAN: Okay. The ones after the order.

17 MR. HOLIDAY: I don't have any after the order in
18 mine.

19 THE COURT: The ones after the order granted granting
20 TRO?

21 MR. SHEEHAN: In mine I have a bunch of invoices from
22 nova time.

23 THE COURT: I don't know what you have.

24 MS. HAACK: Here.

25 MR. HOLIDAY: I don't have any invoices in --

1 MS. HAACK: It's there -- it's their alterations to
2 the operating agreement, it's all there. They submitted it not
3 me.

4 MR. HOLIDAY: All right. So I have --

5 MR. SHEEHAN: My book -- look at my book --

6 MR. HOLIDAY: -- I have an Exhibit 10, and then it
7 starts in these other ones.

8 MR. SHEEHAN: (Indiscernible) give a book total.
9 Look at mine.

10 MS. HAACK: Let me if I may ask -- let me go back --

11 THE COURT: Hold on. They're looking.

12 MS. HAACK: Okay.

13 MR. HOLIDAY: I think that I'd just take out the nova
14 time invoices --

15 THE COURT: What are the nova --

16 MR. SHEEHAN: That's fine.

17 MR. HOLIDAY: -- and the ADP.

18 MS. HAACK: Well, I don't know (inaudible) --

19 MR. SHEEHAN: I mean, after the -- we'll stipulate to
20 afterwards --

21 MR. HOLIDAY: There's a temporary restraining order
22 so --

23 MR. SHEEHAN: Which again I don't think is a proper
24 exhibit either that's a --

25 THE COURT: Why don't you show me the ones that y'all

1 are in agreement to because I'm not so sure. I see a bunch of
2 notices of special meeting at the very end. There's a copy of
3 the TRO order.

4 MS. HAACK: That's right.

5 MR. SHEEHAN: Yeah. And in my book he accidentally
6 put in a bunch of extra documents.

7 Is that what you were going to say?

8 MR. HOLIDAY: Yeah, I didn't (inaudible)-- but, yeah.

9 MR. SHEEHAN: Yours ends at that the temporary
10 restraining order, Your Honor?

11 THE COURT: Yeah. Here, look at this --

12 MS. HAACK: Yeah, they might have been from my notes.

13 MR. SHEEHAN: Okay. That's fine then. That's fine
14 we'll stipulate to those.

15 MS. HAACK: Okay.

16 THE COURT: Oh, okay. Hold on.

17 MS. HAACK: Yeah, those are probably my notes.

18 THE COURT: Please, one second, please.

19 [Pause in the proceedings.]

20 THE COURT: I guess all of 9 will be admitted.

21 THE CLERK: Even through 9F or --

22 THE COURT: Yeah.

23 THE CLERK: -- remove 9F?

24 THE COURT: Yeah -- no, just keep it there --

25 THE CLERK: Okay.

1 THE COURT: -- it's something that's already in the
2 court record.

3 THE CLERK: Okay.

4 THE COURT: So we can take judicial notice of it so,
5 put, I guess the clip on all of it, please.

6 THE CLERK: I'm just writing it down. So I'll do A
7 through F.

8 THE COURT: Okay. Thanks.

9 (Exhibit Nos. 9A-9F admitted.)

10 MS. HAACK: Thank you.

11 THE COURT: All right. Next thing, please.

12 BY MS. HAACK:

13 Q So I'm back at that meeting notice at 9A and then
14 there was the June. My question to you is did you have -- is
15 it true that you did not have a written consent from Ms. Haack
16 to the holding of this meeting in its agenda?

17 A I don't believe we had to have a written consent --

18 Q Okay.

19 A -- to have a meeting.

20 Q Okay.

21 THE COURT: You know what, I -- are you going to ask
22 the same question through all these notice of meetings?

23 MS. HAACK: No. No.

24 THE COURT: Okay.

25 MS. HAACK: No, because I went to all the ones after

1 that.

2 THE COURT: Okay.

3 MS. HAACK: I had a proxy, yes. There were just too
4 when they altered the operating agreement.

5 THE COURT: Okay.

6 BY MS. HAACK:

7 Q So back to the operating agreement in Section 1. Let
8 me clarify those two that I skipped 6.10 and 6.11. So just so
9 you understand, I'm going to read 6.10 Waiver of Notice or
10 Consent By Absent Members,

11 The transaction of any meetings of
12 members either annual or special however,
13 called and noticed and whenever held, shall
14 be as valid as if it had occurred at a
15 meeting duly held after regular roll call and
16 notice. If a quorum be present either in
17 person or by proxy and if either before or
18 after the meeting each person entitled to
19 vote, but not present in person or by proxy
20 signs a written waiver of notice, a consent
21 to the holding of the meeting or any approval
22 of the minutes thereof.

23 Is it true that this statement requires the written
24 consent of all the members to hold a meeting or an approved
25 agenda?

1 MR. SHEEHAN: What section?

2 MS. HAACK: 6.10.

3 MR. SHEEHAN: Your Honor, objection. Misstates the
4 evidence, calls for a legal conclusion. Again, this section is
5 about waiver of notice.

6 MS. HAACK: Oh, I'm sorry, yes, I'm sorry.

7 Well, it's an absent member.

8 BY MS. HAACK:

9 Q Was Ms. Haack at that attendance, you have it marked
10 as absent?

11 A You chose not to show up.

12 Q Is it true that Ms. Haack was not at that meeting?

13 A You chose not to show up.

14 THE COURT: Which meeting?

15 MS. HAACK: On both May 1st and June 30th.

16 THE COURT: Okay.

17 MR. SHEEHAN: Can you repeat your answer.

18 THE WITNESS: You chose not to show up.

19 BY MS. HAACK:

20 Q Did you have written consent of Ms. Haack to the
21 agenda or the minutes thereof for the meeting held on June --
22 on May 1st, 2017, and June 30th, 2017?

23 A Did we have written consent?

24 Q That's what the operating agreement says, yes.

25 MR. SHEEHAN: Your Honor, I again object. She keeps

1 saying the operating agreement says it. The operating
2 agreement says that if she's not going to get noticed, she has
3 to --

4 MS. HAACK: It does not say.

5 MR. SHEEHAN: -- she was provided notice to the
6 meeting.

7 THE COURT: Okay, but this is more argument.

8 MR. SHEEHAN: Okay.

9 MS. HAACK: It says --

10 THE COURT: Let me ask it this way.

11 For the two meetings that Ms. Haack did not attend,
12 was she notified of those meetings?

13 THE WITNESS: Yes.

14 THE COURT: How was she notified of those meetings?

15 THE WITNESS: I believe she received an email. We
16 posted it on her door at her house, gave her the letter, and I
17 believe we might have even texted her.

18 THE COURT: Okay. So the email was that sent to a
19 personal email address or a business?

20 THE WITNESS: Her only email that I had at the time.

21 THE COURT: Okay. And did Ms. Haack give you any
22 kind of notification that she would -- did not intend to attend
23 those meetings?

24 THE WITNESS: No.

25 THE COURT: Okay. Did she send you a letter?

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

THE WITNESS: No.

THE COURT: Did she email you back?

THE WITNESS: No.

THE COURT: Did she call you?

THE WITNESS: No.

THE COURT: Did she text you?

THE WITNESS: No.

THE COURT: Did she just not -- did she simply just not show up?

THE WITNESS: She simply did not show up.

THE COURT: Okay. Thank you.

MS. HAACK: Okay.

THE COURT: Let's continue.

BY MS. HAACK:

Q All right. And let's go to 6.11.

Member Action By Written Consent Without A Meeting. Any action which may be taken at any annual or special meeting of members may be taken without a meeting and without prior notice if consent in writing setting forth the action so taken are signed by members holding LLC interests representing the aggregate number of votes equal to or greater than the minimum number of votes that would be necessary to authorize or take such action

1 at a meeting at which all LLC interests
2 entitled to vote thereon were present and
3 voted.

4 Did you have the written consent by Ms. Haack at
5 these meetings for any action that you were taking?

6 A As it pertains to this paragraph or is that just a
7 question you're asking me now not in regards to this paragraph?

8 Q Do you have any written consent of Ms. Haack in
9 writing to hold either of those two meetings and take action?

10 A No, we did not have written consent from Ms. Haack to
11 hold those two meetings.

12 Q Okay. That's what I want.

13 Let's see, the other one was 10.5 on the Required
14 Approval For Indemnification.

15 MR. SHEEHAN: Objection, Your Honor. We just went
16 over this 20 minutes ago.

17 THE COURT: We did.

18 MS. HAACK: Okay. Then we'll go on.

19 THE COURT: Okay.

20 BY MS. HAACK:

21 Q Oh, yes, I asked you a question, and I'm sorry I
22 don't remember the answer. Is it true that this states you are
23 not allowed to vote if you're party to the proceeding?

24 A If that's what 10.5 reads.

25 Q Yes or no, Sean?

1 A Am I -- am I allowed -- rephrase -- can you ask the
2 question again.

3 Q Sure. Is it true that this statement states that if
4 you're a party to the proceeding, you do not get to vote to
5 award legal fees to yourself?

6 A I believe that my answer before was I had to talk to
7 my counsel on that.

8 Q Turn to the next page to Section 13. Is it true that
9 amendments by members this agreement may be adapted, amended,
10 altered or repealed by the vote or written consent of a
11 majority or all of the LLC interests at a meeting of the
12 members at which a quorum is present?

13 A Is it true?

14 Q Is it true?

15 A Yes.

16 Q Is it true that when a majority vote rules that only
17 the voters get the benefit?

18 MR. SHEEHAN: Objection. Vague and ambiguous.

19 BY MS. HAACK:

20 Q When you take a majority vote at a meeting --

21 THE COURT: Sustained.

22 MS. HAACK: Okay.

23 THE COURT: I don't know, just reask it a different
24 way --

25 MS. HAACK: Okay.

1 THE COURT: -- because I'm not even sure even I
2 understand what you're talking about.

3 MS. HAACK: Okay.

4 BY MS. HAACK:

5 Q Is it true that this operating agreement was designed
6 to protect three owners?

7 A Yes.

8 Q Is it true that Section 13 says you can vote with a
9 majority of the members at a quorum, with just a quorum?

10 A Yes.

11 Q Does it say --

12 MS. HAACK: Can I say that?

13 MR. SHEEHAN: (No audible response.)

14 BY MS. HAACK:

15 Q Does it -- does this section allow you to distribute
16 any changes to the operating agreement to just the two members
17 who vote?

18 MR. SHEEHAN: Objection. Vague and ambiguous.

19 BY MS. HAACK:

20 Q Do any of the changes made from Section 13 become
21 available to all the members or just the voters?

22 MR. SHEEHAN: Same objection to the extent it
23 calls --

24 THE COURT: I don't understand what you're trying to
25 ask, ma'am.

1 MS. HAACK: Well --
2 THE COURT: Are you asking if in order to amend or
3 alter --
4 MS. HAACK: They already said that --
5 THE COURT: -- the LLC that all the members must vote
6 or because --
7 MS. HAACK: No, I'm saying that whatever the decision
8 is that passes all the members would receive. You don't have a
9 majority --
10 THE COURT: Would what, I'm sorry?
11 MS. HAACK: Would get whatever they voted to change.
12 Everybody would have to recognize the change not just the two
13 people who voted.
14 MR. HOLIDAY: Your Honor, can I offer a translation?
15 MS. HAACK: Please.
16 THE COURT: Well -- yeah.
17 MR. SHEEHAN: Well, how about just asking another
18 question.
19 THE COURT: Well, before she moves on I want to make
20 sure that I don't have any questions.
21 MS. HAACK: All right. Well, I can bring it to
22 another point if that might help.
23 THE COURT: Sure. Ask another question.
24 MS. HAACK: All right.
25 / / /

1 BY MS. HAACK:

2 Q On May 1st, 2017, is it true that you voted to
3 award a salary for just yourself and Roger by altering the
4 operating agreement with a majority vote?

5 A Yes.

6 Q Does that vote mean just two members get the benefit
7 or do all the members get the benefit?

8 A I think it's a loaded question in the sense that if
9 you came back to work, you would have got paid for your time as
10 well --

11 Q Did you --

12 A -- we all agreed that once NRS became profitable we
13 would take a salary.

14 Q Is it --

15 THE COURT: I think she -- hold on a second. I think
16 I understand you now.

17 So I think she's alluding to the fact of, if I
18 understand correctly, only you and Mr. Ayala received the
19 \$50,000 salary; is that accurate?

20 THE WITNESS: Correct.

21 MS. HAACK: Uh-huh.

22 THE COURT: Okay. And she is asking of basically why
23 she wasn't given the 50,000 in it also.

24 THE WITNESS: Yes. Do you want me to answer?

25 THE COURT: Yes, please.

1 THE WITNESS: It only seems fair when you have three
2 members of an LLC working and one member breaches the operating
3 agreement and leaves the company and gives her 33rd percent of
4 the work to the other two then they should be compensated for
5 it. We all agreed when we put the company together that once
6 it became profitable, NRS Realty Group would start dispersing
7 funds and paying us as owners. But in her own testimony NRS --
8 or NRS Realty Group was never profitable up until this time,
9 and so when she ended up leaving --

10 MS. HAACK: I object, Your Honor.

11 THE COURT: Hold on. Please.

12 THE WITNESS: -- when she ended up leaving and trying
13 to do everything within her power to destroy the company --

14 THE COURT: Yeah.

15 THE WITNESS: -- and we had to keep it together, keep
16 the agents happy, keep all the threats that were made against
17 us about suing us and destroying the company --

18 MR. HOLIDAY: Objection. Narrative.

19 THE WITNESS: -- it was only fair that --

20 THE COURT: Hold on, please.

21 THE WITNESS: -- we get paid for trying to keep the
22 company together, do the day-to-day operations and recruiting
23 agents, doing everything that we had to do to keep the company
24 going.

25 THE COURT: Okay. So let me break it down a little

1 bit more into a couple of questions.

2 So reading that provision based upon the plain
3 language of that provision, is it your understanding that the
4 three owners would all be entitled to the salary if a
5 determination was made that the company was profitable?

6 THE WITNESS: Yes.

7 THE COURT: And is the reason that you did not allot
8 this salary from Ms. Haack is because you felt that she was in
9 breach of the operating agreement at the time the salaries were
10 decided upon?

11 THE WITNESS: Yes.

12 THE COURT: Okay.

13 MS. HAACK: Okay.

14 THE COURT: If you want to continue, please.

15 MS. HAACK: Yes.

16 MR. SHEEHAN: Your Honor -- Your Honor, his answer
17 was a lot more than that just two seconds ago --

18 MS. HAACK: I -- I --

19 MR. SHEEHAN: -- as to why he said that --

20 THE COURT: I understand the why I just needed a
21 specific point.

22 MR. SHEEHAN: Well, the specific was that she was
23 no -- she wasn't able to work.

24 THE COURT: Are you --

25 MR. SHEEHAN: Well, I --

1 MS. HAACK: Mr. --

2 MR. SHEEHAN: -- I'm just -- you took his answer and
3 he just gave it to you and then you've got --

4 MR. HOLIDAY: Well, I know it's his --

5 THE COURT: Okay. Stop.

6 MR. SHEEHAN: I'll ask him on redirect.

7 MR. HOLIDAY: Right.

8 THE COURT: Okay, but hold on. I heard everything he
9 said before --

10 MR. SHEEHAN: Okay.

11 THE COURT: -- I just wanted clarification for myself
12 I'm not, like, deaf.

13 MR. HOLIDAY: Right.

14 THE COURT: Okay.

15 MR. HOLIDAY: I'm biting my tongue this whole time
16 too; it's tough but, you know --

17 MS. HAACK: I want to go back --

18 THE COURT: Well, the bottom line is I'm the
19 decision-maker, and so if there's a clarification I need on
20 points then I'm going to ask those questions, okay.

21 BY MS. HAACK:

22 Q I'm going to leave that exhibit, and I'm going to go
23 back to Exhibit 4. It's 4-S the letter we opened discussion on
24 on March 10th.

25 The letter starts out, In response to your demand,

1 please be advised that pursuant to the operating agreement no
2 member shall receive compensation for services rendered to the
3 LLC, Section 3.6.

4 Do you remember -- is it true that there was a
5 section in the operating agreement called 3.6 that did not
6 allow salaries to be distributed?

7 A We talked about it.

8 Q Did you, Sean? Okay. Therefore, you have no right
9 to demand to be compensated for the time spent as an owner, in
10 fact, we all contributed our time to this business; that's what
11 it says; correct? Is that true?

12 A Yes.

13 Q This has always been a real estate business where the
14 income was made from commissions and fees by the real estate
15 licensee working on the transaction with income for the
16 business to pay rent and overhead resulting in little or no net
17 profit to the company; is that true?

18 A Yes.

19 Q You know better than anyone because you were
20 responsible for the bookkeeping; is that true?

21 A You are.

22 Q After giving -- well, first I -- before I go on. Did
23 you have a written demand from Ms. Haack to pay her a salary?

24 A I don't recall.

25 Q Okay. Is it -- okay, after -- after giving us your

1 formal resignation, we offered a fair buyout of which you did
2 not accept; is that true?

3 A Yes.

4 MR. SHEEHAN: Objection to the extent it calls for
5 settlement.

6 THE COURT: Hold on a second.

7 MS. HAACK: We're going to go over the buyout. Don't
8 worry.

9 MR. SHEEHAN: Well, objection it's a --

10 MR. HOLIDAY: That's the March 10th letter. I
11 think we're definitely admitting that one; right?

12 THE COURT: Hold on. What are you guys -- what are
13 you referencing the buyout? Is that part of the settlement --

14 MS. HAACK: Because they have -- okay. If I may
15 speak?

16 THE COURT: Well, no --

17 MS. HAACK: They have many ways said you're out. I
18 never quit, Your Honor. So I'm trying to show --

19 THE COURT: Okay. But you --

20 MS. HAACK: -- that to the Court.

21 THE COURT: Okay. So what you can't talk about are
22 things that you guys did outside of court in order to get this
23 settled.

24 MS. HAACK: Well, we didn't do it out -- this is a
25 letter that's in here a few days before. And he's referring to

1 it in the letter as a buyout. He's saying we gave you a fair
2 buyout; you didn't except it.

3 MR. HOLIDAY: Your Honor, so she's referencing a
4 March 10th letter which there hasn't been any request to
5 redact that. The March 10th, 2017, letter is the letter
6 where they said you're out, and there's a lot of stuff in
7 there, and there's, frankly, some self-serving hearsay that,
8 you know, they put into letter that I could object to coming
9 in, but I'm just letting the whole thing in. That letter is an
10 act, and it's before this case was filed. They didn't say it
11 was in an attempt to settle. There's a mention of a potential
12 buyout offer --

13 MS. HAACK: [Indiscernible.]

14 MR. HOLIDAY: -- but this was them alerting her --
15 well, he understands what the March 10th letter is. I think
16 the March 10th letter is coming in --

17 MR. SHEEHAN: Yeah, I have no problem --

18 MS. HAACK: 4N. 4N.

19 MR. SHEEHAN: -- it's undisputed that there were
20 buyout offers going back and forth that --

21 MS. HAACK: No.

22 MR. SHEEHAN: -- neither party agreed to. I just
23 don't want the sum and substance shouldn't come in under the
24 rules quite frankly, but.

25 MS. HAACK: Your Honor --

1 THE COURT: Okay. Just ask your next question --

2 MS. HAACK: Okay.

3 THE COURT: -- I don't think they're objecting --

4 BY MS. HAACK:

5 Q So let's go back a page to letter -- on 4N.

6 Exhibit 4N dated February 27th. Are you familiar with that
7 letter?

8 THE CLERK: I'm sorry was that -- was that -- I'm
9 sorry was that 4M or N?

10 MS. HAACK: N.

11 THE CLERK: N.

12 MS. HAACK: Uh-huh.

13 THE COURT: 4 N as in Nancy. Which I just --

14 MR. SHEEHAN: Again, Your Honor, this is the exact
15 document I'm talking about that it's settlement terms.

16 MS. HAACK: It's Bates stamped, yeah.

17 MR. HOLIDAY: The 4 -- this is the --

18 MS. HAACK: 4N.

19 MR. HOLIDAY: -- is it the March 10th letter or
20 the --

21 MS. HAACK: The February 27th.

22 MR. HOLIDAY: The -- so -- for which one?

23 MS. HAACK: 4N as in Nancy.

24 MR. HOLIDAY: Okay. So 4N --

25 MS. HAACK: Can I submit that or what do I need to

1 do?

2 THE COURT: I'm assuming --

3 MR. SHEEHAN: You know what, I mean --

4 THE COURT: -- this is Bates stamped.

5 MS. HAACK: Uh-huh.

6 MR. SHEEHAN: I don't care. It really -- it's a
7 formal settlement letter that should not come in -- a
8 settlement offer, but I don't care. There's nothing in it
9 that --

10 THE COURT: So 4N, it's two pages, will be admitted.

11 (Exhibit Number(s) 4N admitted.)

12 MR. SHEEHAN: Well, actually, Your Honor, I am going
13 to object. I just don't think that --

14 THE COURT: It's Bates stamped.

15 MR. SHEEHAN: Yeah, but it's a -- it's a formal
16 settlement that contains terms.

17 MS. HAACK: No, it's not.

18 MR. HOLIDAY: Right, Your Honor, I don't -- I don't
19 think there's been a foundation laid that at this point they
20 were contemplating litigation --

21 THE COURT: You can get -- I think it kind of goes to
22 the defense's position anyways --

23 MR. SHEEHAN: Okay.

24 THE COURT: -- because it's -- what -- well, who's it
25 by -- it's to Nancy Haack. I don't know who it's written by;

1 it's not signed, but it appears to be written by the defendant
2 because it says Nancy at the lunch meeting at Balboa Pizza, you
3 told us I'm assuming the S is the two defendants in this case.

4 MR. HOLIDAY: Right, Your Honor. Well, the --

5 MR. SHEEHAN: Go ahead and let her ask the questions,
6 Your Honor.

7 MR. HOLIDAY: -- like, that's a -- right. Okay.

8 THE COURT: Yes, so, Kathy, that's admitted. It's 4N
9 which is two pages, pages 1 and 2.

10 MR. HOLIDAY: Right. And that's where some of the
11 self-serving hearsay is because --

12 THE CLERK: (Inaudible.)

13 THE COURT: The what?

14 THE CLERK: (Inaudible) --

15 MR. HOLIDAY: -- we dispute the facts recounted in
16 that letter so --

17 THE CLERK: -- (inaudible.)

18 THE COURT: Yes.

19 Sorry I can't hear you. What?

20 MR. HOLIDAY: Yeah, I've never had this situation
21 come in. Court's indulgence. So --

22 THE COURT: It's admitted.

23 MR. SHEEHAN: Go ahead and ask the question.

24 MR. HOLIDAY: All right.

25 THE COURT: Did you not want it admitted?

1 MR. HOLIDAY: Well, it -- it's okay. I can -- I'll
2 just wait and ask about it.

3 THE COURT: Okay.

4 BY MS. HAACK:

5 Q Did you have a meeting with all the owners of the
6 company to discuss the buyout for Nancy Haack?

7 A Nancy, we had numerous meetings.

8 Q Did you have a discussion that Nancy wasn't invited
9 to including a lawyer to prepare this letter on February 27th
10 as a buyout?

11 A I don't know if this is the time when you advised us
12 to talk to attorneys --

13 Q Do you have anything in writing --

14 A -- I don't know where you're --

15 Q -- Mr. Evenden, I'm not sure?

16 A -- the text messages --

17 MR. SHEEHAN: Can he finish his answer, Your Honor.

18 THE COURT: Yeah, please let him finish.

19 MS. HAACK: Okay.

20 THE COURT: You can go.

21 THE WITNESS: Because with numerous text messages
22 going back and forth with us, and you kept on demanding we talk
23 to an attorney. So I don't know if we took you up on what you
24 told us to do and talked to an attorney to construct this
25 letter. I don't know; it was three years ago.

1 BY MS. HAACK:

2 Q This is an extremely generous offer you said. Are
3 you qualified -- is it true that you are qualified to write a
4 value of a business in a buyout letter to an owner of the
5 company?

6 A On a company that doesn't make profits for the last
7 six years.

8 Q Okay. Is it true that you were as responsible for
9 the property income as any of the other owners?

10 A All three of us worked together.

11 MS. HAACK: So with that I'm going to ask the Court
12 if I can turn you to Exhibit 3, and if I can submit those?

13 THE COURT: All of Exhibit 3?

14 MS. HAACK: Mr. Sheehan, you might not (inaudible).

15 MR. SHEEHAN: Yeah, the last one's clearly not.

16 MS. HAACK: That's okay.

17 THE COURT: So pages 3A through 3F are tax returns
18 for Life Realty --

19 MS. HAACK: Yes, 3A through 3F, and the number's cut
20 off but they're all the company taxes.

21 THE COURT: All right. And NRS Realty Group, any
22 objections?

23 MR. SHEEHAN: Well, I'm not NRS Realty Group, but we
24 don't have any objections, Sean Evenden and Roger Ayala.

25 MR. HOLIDAY: No.

1 MR. SHEEHAN: Oh, I'm sorry, Your Honor, you were --
2 are you asking Mr. Holiday?

3 THE COURT: Both of you.

4 MR. SHEEHAN: No objection.

5 MR. HOLIDAY: No objection, Your Honor.

6 MS. HAACK: Okay.

7 THE COURT: Okay. So pages 3A to 3F will be
8 admitted.

9 (Exhibit No. 3A-3F admitted.)

10 MS. HAACK: Okay.

11 BY MS. HAACK:

12 Q So on the first page I just have the page with the
13 income of the company on these pages. Is it true, Mr. Evenden,
14 that line 21 under Ordinary Business Income for 2014 says
15 negative \$27,385? It was Exhibit 3, Sean, E.

16 A That's what it reads.

17 Q Yes -- yes or no, please.

18 A Yes.

19 Q Is it true that NRS Realty Group did a construction
20 project in 2014?

21 A We could have if --

22 Q What year -- is it true that you moved into 2225
23 Village Walk Drive in 2014?

24 A Okay. If you say so, yes --

25 Q No, I don't want an answer like that.

1 A -- I don't recall the exact year.

2 Q Mr. Evenden --

3 A Yes.

4 Q Is it true that NRS Realty Group had an expansion
5 project in 2014?

6 A I don't know if it was or not because we had a
7 five-year lease at our previous location, and that would put us
8 at 2015. So I -- the question you're asking me if we moved in
9 on -- to The District in 2014, I don't know if we did or not.

10 Q Okay. In 2015, is it true that the Ordinary Business
11 Income on the taxes for NRS is a negative \$37,699?

12 A Yes.

13 Q Is it true that you had a construction project in
14 2015 for NRS?

15 A If that's when we moved into the District, yes.

16 Q The next page is 2016. Is it true, Mr. Evenden, that
17 the Ordinary Business Income for 2016 was \$167,000 -- 478 --
18 \$467,478?

19 A That's what it states here, yes.

20 Q Did you have a construction project in 2016?

21 A I don't know if we expanded next door at that
22 timeframe or not --

23 Q Okay. In --

24 A -- in the little -- sorry.

25 Q In 2017, 3B -- well, let's go to 3E because it looks

1 like I have them backwards. 3E the tax income, Ordinary
2 Business Income for 2017 was \$177,000 -- \$177,404 and that
3 was -- is it true that 2017 is the year that you removed
4 Ms. Haack's membership interest?

5 MR. SHEEHAN: Objection. Mischaracterizes the
6 evidence.

7 MS. HAACK: I don't think so but, okay.

8 THE COURT: Overruled. Just ask it.

9 THE WITNESS: Answer?

10 THE COURT: Yes, please.

11 THE WITNESS: You are still a member of NRS Realty
12 Group today, so we did not remove you.

13 BY MS. HAACK:

14 Q Is 2017 -- okay. Go back to 3D, and there's an
15 amended return for 2017. Is it true that the Ordinary Business
16 Income for 2017 after amended went down to \$92,965?

17 A Yes.

18 Q So from 2016 to 2017 the company lost more than
19 \$70,000; is that correct, Mr. Evenden?

20 A On paper, yes, it looks like that.

21 Q And on 2018 on 3F the taxes have a net income of
22 \$955; is that what this says, Mr. Evenden?

23 A Yes.

24 Q So from 2017 to 2018 you went down \$92,000; correct?

25 A Yes.

1 Q Were you -- is it true that NRS management was under
2 you and Mr. Ayala from March 10th, 2017, to December 31st?

3 A Yes.

4 Q Is it true that in 2019 the management of NRS was
5 under your management and Mr. Ayala's?

6 A Yes.

7 Q So in -- is it true then in 2016 under Ms. Haack's
8 management the company made a substantial profit?

9 A (No audible response.)

10 Q It's C.

11 A That's what it looks like.

12 Q Okay. So when Ms. Haack was asked to leave in your
13 March 10th letter, you -- is it true that you awarded
14 salaries to people, more employees, yourself included that may
15 have impacted the income of NRS in 2017?

16 A Yes, along with legal fees.

17 Q Did you pay Ms. Haack any salary, any compensation
18 prior to March 10th, 2017?

19 A No, I don't think any of us received it.

20 Q Did you award compensation to Ms. Haack since 2010 at
21 all?

22 A I don't recall overall.

23 Q Okay. That's fine.

24 Let's see. I want to go to Exhibit 6. It should be
25 Bates stamped.

1 MS. HAACK: Is it Bates stamped -- is yours --
2 MR. HOLIDAY: I'll look.
3 MS. HAACK: Is yours, Sean?
4 THE WITNESS: Not Bates stamped. Well, it depends on
5 which one you're looking at.
6 MS. HAACK: The first -- the affidavit. The
7 affidavit, I'm sorry. The first two pages.
8 THE WITNESS: It doesn't look like it's Bates
9 stamped.
10 MS. HAACK: Oh, okay.
11 Is yours Bates stamped?
12 MR. SHEEHAN: It is not.
13 MS. HAACK: It is not, okay. I know we have a Bates
14 stamp so maybe I can bring it back tomorrow and we can talk
15 about this.
16 MR. SHEEHAN: What's -- what's the number letter
17 again?
18 MS. HAACK: It's 6A.
19 BY MS. HAACK:
20 Q Well, I can ask you questions without that though, so
21 let's just move along and I'll bring a -- see if I can find the
22 Bates stamp tomorrow.
23 This -- so let's see. Was Nancy -- since 2010, did
24 Nancy act as the office manager for NRS?
25 A Yes.

1 Q Did Nancy -- is it true that Nancy maintained the
2 company records with the Nevada Secretary of State?

3 A I think so.

4 Q Is it true that she was responsible for all the
5 business licenses?

6 A I think so.

7 Q Was Nancy -- is it true that Nancy was responsible
8 for maintaining the bookkeeping records?

9 A Yes.

10 Q Is it true that Nancy was responsible for the
11 payroll?

12 A A portion of it, yes.

13 Q Is it true that Nancy was responsible for the taxes
14 of the company?

15 A You took the taxes over. I tried to in 2014, and you
16 said I didn't do it correctly.

17 Q Sean, I'm asking you a yes or no question. Is it
18 true that Nancy was responsible for the taxes for the company?
19 If you want to say no, that's fine.

20 A Up through 2016 or '15 when you breached.

21 Q Is it true that on December -- in December of 2015
22 NRS opened a second office in Chinatown?

23 A Yes.

24 Q Is it true that Nancy was responsible for managing
25 the second office in Chinatown?

1 A Yes, to a certain extent.

2 Q Is it true that Nancy was also responsible for the
3 office management and the licensing and bookkeeping for the
4 second office in Chinatown?

5 A The office management?

6 Q Uh-huh.

7 A Yes, and no because you told the division that you
8 didn't have anything to do with that office, and you opened up
9 a whole complaint against me --

10 Q Okay. I'm just asking you --

11 A -- so that's a loaded question.

12 Q -- if that's true, Sean?

13 A I don't know how to answer that because with your
14 written statement to the State of Nevada --

15 Q Okay. So let's see.

16 A -- with your day-to-day management of that office is
17 completely contradicting what you're just asking me to say yes
18 to.

19 Q Is it true that you opened the second office in
20 Chinatown to hold just meetings?

21 A To open a second office just to hold meetings?

22 Q Uh-huh. Answer yes or no, please.

23 A No.

24 Q Okay. Is it true that Nancy was the only licensed
25 Realtor working in that office, Nancy Haack?

1 A And your license was the only one hanging over there.
2 We didn't transfer the other couple agents over -- agents'
3 licenses over there.

4 Q Were there any other licensed agents -- is it true --
5 I'm trying to use that correctly. Is it true that there were
6 agents who were licensed with the real estate division were
7 fluent in Chinese that worked from that office?

8 A Yes.

9 Q Is it true that there was a lease for that office
10 space?

11 A Yes.

12 Q Were the spouses of the owners required to sign the
13 lease for that office space?

14 A No.

15 Q Is it true that your first office was on Horizon
16 Ridge?

17 A Yes.

18 Q Is it true that the spouses were not required to sign
19 the lease on Horizon Ridge?

20 A I don't recall.

21 Q Is it true that you had an office for five years on
22 Arroyo Grande?

23 A Yes.

24 Q Is it true that the spouses were not required to sign
25 the lease on Arroyo Grande?

1 A I don't recall.

2 Q Is it true that you have an office on Eastern Avenue
3 today?

4 A Eastern Avenue, no.

5 Q Is it true that the Chinatown office was a part of
6 NRS?

7 A Yes.

8 Q Is it true that that office was still open on
9 November 1st, 2019, when you closed the office in Green
10 Valley?

11 A Yes.

12 Q Okay. I'm going to go back to Exhibit 12.

13 MR. HOLIDAY: You've got about five minutes.

14 MS. HAACK: Okay. Do you want to wrap it up? Should
15 I just wrap up now or should I step --

16 MR. SHEEHAN: Why do they only have five minutes?

17 MR. HOLIDAY: They stop at 4:45 -- oh, that's three.
18 I'm sorry, I'm blind.

19 MS. HAACK: Oh, okay, thank you.

20 THE COURT: No, we -- we'll go to 5:00.

21 BY MS. HAACK:

22 Q I want you to go to -- sorry, there's a lot of them
23 here, I have most of them for Roger.

24 Okay. On 12G I want to know if you recognize that
25 text. The text I want to know if you recognize the text that

1 starts with, if you don't want to meet, Nancy?

2 MR. SHEEHAN: Mine -- some of them are upside down,
3 so give me --

4 MR. HOLIDAY: Yeah, it was put together with -- by
5 him so.

6 MR. SHEEHAN: Is this -- which one is 12G?

7 BY MS. HAACK:

8 Q Do you recognize that text?

9 A I do.

10 Q Did you prepare that text?

11 A I believe so.

12 Q In that text there was a statement that says, I tried
13 to leave last year because of the same thing. It's time for us
14 to buy you out, Nancy, or let me leave; is that correct what I
15 just read, Mr. Evenden?

16 A At the time, yeah, all we did was you and I argued.
17 I tried to leave and you said no.

18 Q On January 17th you wrote this text to Nancy to
19 resign and to Roger; it's a group text; correct?

20 A I don't see a date on this.

21 Q Well, I have my phone here with it so we can pull it
22 up if you want?

23 A January 17th?

24 Q 2017.

25 A Okay. And what was the question?

1 Q Okay. So it's a group message.

2 A Uh-huh.

3 Q When you wrote your resignation on January 17th,
4 2017, did Roger and Nancy offer you a buyout?

5 MR. SHEEHAN: Your Honor, I'm going to object.

6 THE COURT: Hold on. What's the objection?

7 MR. SHEEHAN: I don't believe that this was written
8 in January 17, 2017, I've never seen this before --

9 MS. HAACK: Do you have my phone?

10 MR. SHEEHAN: -- I don't believe that this is --

11 MS. HAACK: Can you grab the other phone?

12 MR. SHEEHAN: -- it's not Bates stamped I know that.
13 I don't believe I've ever seen it before but.

14 MS. HAACK: I have the phone where it's originated
15 from, and I'm sorry I thought somebody grabbed it for me. I'll
16 bring it in tomorrow, so I'll skip over that for now.

17 THE COURT: Okay. Great.

18 MR. HOLIDAY: Or we don't necessarily have to
19 admit -- admit this -- I'm not coaching Ms. Haack, but to save
20 time she could just ask him using that as something to refresh
21 his recollection as to whether or not he sent that text.

22 BY MS. HAACK:

23 Q Well, when do you think you wrote this text?

24 A I don't think it was then. I think it was
25 probably -- I don't know.

1 THE COURT: Well, hold on a second. Yeah, all of 12
2 was admitted; you're right. So it's in evidence.

3 MR. SHEEHAN: Well, except, Your Honor, I think
4 Ms. Haack would admit this, and she'll get this tomorrow. She
5 wrote 1/17/17 up there, but that's not the date. His -- this
6 was in 2015.

7 MS. HAACK: No, it wasn't.

8 MR. SHEEHAN: Well, I -- I'm going to object unless
9 we get some foundation for this.

10 MS. HAACK: I'll be happy to do that, Your Honor.

11 THE COURT: I think you're going to have to do the
12 foundation, Ms. Haack, because --

13 MS. HAACK: Yes.

14 THE COURT: -- when they --

15 MS. HAACK: I have the phone.

16 THE COURT: -- when you testified because -- well,
17 no. You're going to have to lay the foundation because it's
18 from you at least according to the top left-hand corner of the
19 exhibit.

20 MR. HOLIDAY: Are we no longer on if you don't want
21 to meet, Nancy, previous?

22 THE COURT: Which one am I on?

23 MS. HAACK: Well, the date -- the page before --

24 THE COURT: Sure. Page -- this one?

25 MS. HAACK: It does state January 17th, 11F.

1 THE COURT: 11F, okay.

2 MR. SHEEHAN: I don't even have that one that she's
3 talking about in my book. I don't even have the exhibit in my
4 book.

5 THE COURT: You don't?

6 MR. SHEEHAN: Which exhibit are we talking about?

7 THE COURT: 11F. 12F? 12F, I'm sorry. 12F, you're
8 correct.

9 MR. HOLIDAY: So 12F (inaudible).

10 MS. HAACK: Why are these all upside down?

11 MR. SHEEHAN: Turn it over. Just that one is upside
12 down.

13 MS. HAACK: Okay.

14 Here's the date -- well, you can't see it. It's
15 right here.

16 MR. SHEEHAN: You didn't tell me it was on here.

17 MS. HAACK: Yeah, you're (inaudible) did.

18 MR. SHEEHAN: He didn't. 2015 not '17.

19 MS. HAACK: I had it in writing. No, he did three
20 times.

21 So I will bring in the original phone that it's in.
22 I saved it all these -- because I never knew at that time three
23 years ago if we could even use texts. I've always saved it,
24 and I have all the screens and everything in there, and it will
25 show the date.

1 MR. SHEEHAN: I'll be happy to go through it with her
2 tomorrow and see if we can get it straightened out.

3 MS. HAACK: Yes, absolutely.

4 THE COURT: That's fine. I appreciate it.

5 MS. HAACK: Yes. In fact, in that one he said it was
6 a different year, yes, trying to resign several years -- so
7 okay.

8 BY MS. HAACK:

9 Q We're going to go past that, Sean. Let's see. On
10 page 12M in the group message there's a date February 8th,
11 2017, for the text.

12 MS. HAACK: Do you have that one?

13 MR. SHEEHAN: Is this it?

14 MS. HAACK: Looks like it. Yes.

15 MR. SHEEHAN: Where's the text with the date?

16 MS. HAACK: You can't see it on your page. Yeah, I
17 did theirs all in color.

18 MR. SHEEHAN: Oh, okay. No, I see February 8th,
19 2017.

20 MS. HAACK: Okay. Good. Okay.

21 BY MS. HAACK:

22 Q Right above the date there's a text that's from me
23 that says -- and I want to know if you agree with what it says,
24 I'll be at the attorney's office with you tomorrow. If you
25 don't like him we can pick another one; is that correct, with

1 my typos?

2 A Yes.

3 Q And then below it on February 8th I say, Hi, guys.
4 Here's the address. I'm in Summerlin showing houses, but
5 should be there in plenty of time; is that correct?

6 A Yep.

7 Q And there's a response from Roger that says, I'm
8 probably not going to make it. There's a little discussion,
9 and if you turn to the next page I say at the bottom, Sean, do
10 you have time? Yoo hoo, are you going to meet the lawyer? And
11 you respond, no. Do you remember that day?

12 A (No audible response.)

13 Q Okay. That was February 8th. That's one week
14 after the Balboa meeting --

15 A Okay.

16 Q -- and you did not want to attend -- is it true that
17 you did not have the time to attend a meeting with an attorney?

18 A I said it here, no.

19 Q Okay. I asked if you remembered, but that's good
20 enough.

21 If you turn a couple more pages to 12-0 dated
22 February 13, Mr. Ayala says in the group text, how does the
23 lease look, guys?

24 THE COURT: Excuse me.

25 MS. HAACK: Bless you.

1 THE COURT: Thank you.

2 BY MS. HAACK:

3 Q I just finished, didn't see anything about commission
4 stuff. Did you believe on February 13th that Ms. Haack was
5 going forward with the construction project?

6 A Per this text message?

7 Q Uh-huh.

8 A It looks like you could have been.

9 Q On the next page Roger asks, what are you saying, and
10 I reply, where's the sign? I didn't see that, and you said
11 they had no problem taking us off. Do you remember who us is?

12 A I said it?

13 Q No, Nancy --

14 MR. SHEEHAN: I'm going to object. I don't believe
15 that that's not Sean -- well --

16 THE WITNESS: It's not me.

17 BY MS. HAACK:

18 Q I know. But do you remember -- you're in the group
19 text, Sean. Did you read the group text or were you not paying
20 attention to the texts?

21 A I don't recall.

22 Q Okay. On page 12-R which is following that
23 February --

24 MS. HAACK: And it is not dated again, Your Honor,
25 but you can see I carry over the last sentence of one page to

1 the next.

2 BY MS. HAACK:

3 Q -- you respond in a text that says --

4 THE COURT: 12R?

5 MS. HAACK: It's 12R for Robert.

6 THE COURT: Okay.

7 BY MS. HAACK:

8 Q It says, We cannot operate a business this way. We
9 have to meet to get this straightened out. Nancy, if you need
10 your lawyer, bring him, but this needs to happen within the
11 next couple of days to be able to move forward. When I say
12 move forward, that is removing you from NRS. I have already
13 met with an attorney and I think Roger has. Do you remember
14 that text, Mr. Evenden?

15 A Yeah, I typed it.

16 Q Is this date -- is it true that you are telling
17 Ms. Haack you're going to remove her from the company?

18 A I don't know exactly without having the whole text.

19 Q Okay. I'll bring it all tomorrow. This is a
20 complete set of the texts. We'll go over one page on 12S --
21 no, let's see. I'm going to go to 12-T another group text.
22 And I have the top cut off because it's different -- it's not
23 nice. And it says, I share in the profits if I do a bad job
24 and the company makes no money or little money I get none. Was
25 I speaking in a foreign language, but you have made it very

1 clear that I am a liability at this point so it's not going to
2 be the same. I will not continue to take your insults. I will
3 see if Mr. Katz [phonetic] can recommend an attorney for me and
4 that person can get you -- get to call your information.

5 I've got clients today so please don't bother me.

6 Do you believe Ms. Haack had an attorney when you met
7 at Balboa that she was going to bring any type of a buyout
8 arrangement to you, any type of settlement for your
9 accusations?

10 A I don't recall the dates. I do recall numerous times
11 you kept on saying that you have something, your attorney was
12 going to prepare something for us because when you told us you
13 were retiring --

14 Q I never said that.

15 A -- and we wanted to move forward it took us off
16 guard.

17 Q Okay. Good. Let's go to the next page 11 -- I mean,
18 12U, February 14th, Mr. Evenden. When you're done with your
19 clients, Nancy, read this. Let's sit down the three of us, no
20 lawyers and come up with a solution to remove you from the
21 company. It needs to work for all three of us. If you want to
22 have it adversarial, it will cost us much more.

23 Are you suggesting in this text -- is it true that
24 you're suggesting in this text to remove Ms. Haack from NRS?

25 A This text, Nancy --

1 Q Uh-huh.

2 A -- you told us that you were planning on retiring,
3 and I was trying to come up with a solution --

4 Q Yes or no, please, Sean.

5 MR. SHEEHAN: Can he please answer the question, Your
6 Honor.

7 MS. HAACK: I asked a yes or no question.

8 THE COURT: Well, you can't just cut him off
9 because --

10 MS. HAACK: Okay.

11 THE COURT: -- in order to keep -- we're trying to
12 make a record.

13 MS. HAACK: Okay.

14 BY MS. HAACK:

15 Q Did -- go ahead finish, or are you finished?

16 A (No audible response.)

17 Q Okay. Do you have a document of any kind that shows
18 Ms. Haack submitted a resignation?

19 A You verbally told us.

20 Q Do you have any documentation since your verbal
21 conversation to back up anything you thought Ms. Haack said she
22 would do?

23 A There is a text message out there, Nancy --

24 Q Uh-huh.

25 A -- that you demanded --

1 Q Okay. I've got that.

2 A -- like over \$400,000 enough to bankrupt the company.

3 Q What did I demand? I'm sorry, I don't hear you.

4 What did I demand?

5 A \$400,000 in well of excess of it you wanted X amount
6 for the one year. You wanted X amount the next year, if we
7 made money -- we did make money, and I don't know exactly which
8 text message that is or if it was an email and --

9 Q Well, you would have submitted it into --

10 A -- that's why I believe we said, hey, can we sit down
11 and make this fair for all of us because obviously we wouldn't
12 be here today if you didn't breach the operating agreement and
13 told us --

14 MR. HOLIDAY: Objection. Narrative. He's going
15 beyond the scope of the original question, Your Honor.

16 MS. HAACK: Yeah.

17 BY MS. HAACK:

18 Q Did you have any evidence in writing of a formal
19 resignation of Ms. Haack?

20 A Nothing in writing.

21 Q Just for the heck of it, you mentioned the statement.
22 So would you please turn to 12-DD, D as in David, D as in
23 David. It's a group text by you and it states, Nancy, you make
24 no sense. You tell us you're retiring; you're going to have
25 something from an attorney for us three weeks later. You are

1 telling us to speak to an attorney. What is it you want; that
2 is all we are asking. Your seven statements on your desk don't
3 say anything. They are statements. They are not asking for
4 anything nor are they demands. What do they mean? Do you
5 think you have --

6 Do you recall anything in writing from Ms. Haack that
7 demands anything?

8 A Not up here. I can give you the text message and
9 show you --

10 Q This is -- okay.

11 A -- that -- or the email stating that you were
12 demanding --

13 Q Okay.

14 A -- was a formal letter, email, a text stating that
15 you wanted --

16 Q Okay. Is it in discovery?

17 A -- X amount of money today. You wanted X amount of
18 money in 2017. You wanted X amount of money in 2018. You did
19 ask us for it.

20 Q Okay. Do you have that submitted in discovery?

21 A I believe so.

22 Q Well, that's good. Then I should have it; right?

23 A (No audible response.)

24 Q If you move to 12-FF, Frank, Frank. Roger is texting
25 and says, what do you want; why are we going through this? And

1 I respond, I said up to seven years with no decision-making
2 about your operations with finance only.

3 Did you read that text when you got it, Mr. Evenden?

4 A Possibly.

5 Q Then you texted -- you texted, you said you were
6 working with your attorney to draw something up. I never
7 imagined anything and you dot, dot, dot. And I respond with, I
8 never did. You did not listen.

9 Is it possible, Mr. Evenden, that you misinterpreted
10 the conversation at the Balboa meeting?

11 A No.

12 Q Did you ever get anything in writing from Ms. Haack
13 telling her -- telling you she would be resigning?

14 A We did a lot of things as a company, and most the
15 time we verbally communicated, and you never gave us anything
16 in writing, but I know you told us that you were stepping back,
17 didn't want to be a part of NRS, didn't want to be liable for
18 the lease. You didn't want to have the day-to-day operation.
19 Ever since that meeting you haven't done anything in NRS.

20 Q Oh, Mr. Evenden, did you prepare the 1099s for NRS
21 employees and agents in 2017?

22 A I don't think so.

23 Q Mr. Evenden, did you prepare the taxes for 2016
24 before March 10th, 2017?

25 A I don't think so.

1 Q Mr. Evenden, did Ms. Haack get removed from her
2 office for three weeks while construction took 16 square feet
3 from her office, not 6, 16?

4 A Did I what?

5 Q Did you see Ms. Haack or did you expect Ms. Haack to
6 be working in the office when she was gone for three weeks
7 during construction from January 1st to March 10th?

8 A Did I expect to see you? You told us you were
9 leaving.

10 Q I told you I was leaving, okay.

11 Did you know Ms. Haack was working from home to
12 prepare the taxes for NRS in 2017?

13 A No.

14 Q Okay. We'll find that.

15 You said -- I just read on page 12 -- let's see here,
16 I've got to go back. You said you were working with your
17 attorney to draw something up, I did not imagine anything. And
18 then the next page 12-GG I said, in a text --

19 MS. HAACK: Are you on that page, Your Honor, 12-GG?

20 THE COURT: Uh-huh.

21 BY MS. HAACK:

22 Q I have two more years and then I'm off personally off
23 the extended lease. I'm not going to stop working for the
24 agents or handling the work I do. Is that a resignation,
25 Mr. Evenden?

1 A You didn't say anything about a resignation in that
2 text, but I do recall what the conversation the three of us had
3 had at Balboa.

4 Q Okay. Good. Still have your resignation.

5 So on the next page 12-HH, I said, I said the
6 attorney had a paper for you to sign so he could do the work on
7 the operating agreement; do you remember that text,
8 Mr. Evenden?

9 A Is that from me?

10 Q It was in your group text. I would think you would
11 have read it.

12 A Oh, you asked if I read it?

13 Q Do you remember that text?

14 A I don't recall what it was in regards to.

15 Q And on the next page 12-II, in the group text same
16 conversation, I will agree to make all contributions as
17 currently being done without carrying the lease for seven more
18 years personally. Of course, the company money is used to pay
19 everything, but if it fails, I do not want to contribute when I
20 make a fraction of what you two make. Why is that so hard to
21 understand. I have two more years, and then I'm personally off
22 the lease; does that sound like a resignation?

23 A Nancy, this whole time you were waffling back and
24 forth --

25 Q Roger -- Sean, answer yes or no.

1 A And --

2 Q So let me get this -- okay, wait. No, that's --

3 THE COURT: Hold on. Did he even get to answer?

4 MS. HAACK: I'm sorry, yeah. I want a yes or no, but
5 he won't do that so, go ahead.

6 THE COURT: Well, he still has to answer.

7 MS. HAACK: All right.

8 THE WITNESS: This was not a resignation.

9 MS. HAACK: Okay.

10 BY MS. HAACK:

11 Q Let's see. On page 12-KK, kite, kite -- oh, I'm
12 sorry we need to go back one page. It's 12-JJ. Mr. Evenden,
13 says, you mean what we work for and earn, right; you have every
14 right to earn as well. We have not put any limitations on you
15 working here and earning. That's what this is all about; do
16 you remember that, Mr. Evenden?

17 A You were --yeah, in regards to this text you were
18 trying to explain to Roger and I that we limited your ability
19 to earn as a real estate agent and that the work that you
20 were -- your third of the work was overpowering your ability to
21 work, and I was saying, no, we haven't told you you cannot work
22 as a real estate agent. You have every right to work and to
23 earn just like Roger and I do.

24 Q Okay. Well, with my paper tomorrow I'll bring the
25 charts that I had prepared for today and I decided not to bring

1 them.

2 So earlier you testified that Ms. Haack was
3 responsible for two offices, for managing the offices for
4 payroll, for taxes, for accounting, for bookkeeping. You
5 accused her -- well, I won't go into that. And you're saying
6 that she had enough time to conduct her own business just like
7 you and Roger did; is that correct?

8 A Exactly.

9 Q Okay. Mr. Evenden -- I've got to remember who I'm
10 talking to. How many people do you pay since March 10th to
11 do the work Ms. Haack did for free -- without compensation?
12 How many people today are you paying a salary to to do the work
13 Ms. Haack did for seven years without compensation?

14 A One.

15 Q You, you get a salary. You testified that you were
16 getting a salary for what Ms. Haack left, Roger's getting a
17 salary --

18 A You asked how many people and --

19 Q Uh-huh. Are you getting a salary?

20 A You asked how people are getting paid for what you
21 were doing and of your portion of the bookkeeping was the
22 portion of that we're paying Jessica to do the bookkeeping for
23 NRS. And then we are also paying a tax person just like you
24 had paid when you hired a tax person.

25 Q Is that tax person an employee, Sean?

1 THE COURT: Are we digressing?

2 MS. HAACK: No, because --

3 THE COURT: How does this go --

4 MS. HAACK: -- I'm sorry. I'm trying to show that
5 they tried -- that they intended to move me out because I asked
6 for a salary, and I didn't. I asked to hire somebody; I want
7 to prove that. And that they're paying people over \$180,000 a
8 year now to do the work I did for free, and they wanted me to
9 leave. So I just need to clarify that, Your Honor.

10 THE COURT: Okay.

11 BY MS. HAACK:

12 Q So if you already testified that you authorized
13 yourself a payroll -- to get a salary after March 10th
14 because you needed to do the work Nancy was doing with agents
15 and so does Roger, and that was \$50,000 apiece and plus your
16 minutes also said a \$5,000 a year bonus. And then you hired
17 Jessica. Who is Jessica, Sean?

18 A She's my sister-in-law.

19 Q So Jessica is getting paid a salary to do the work
20 that Ms. Haack did without compensation for seven years; is
21 that correct?

22 A She is one of the people. And for many years when
23 you were still at the company she was doing the work, the
24 bookkeeping for the property management on my dime.

25 Q Okay.

1 A I paid her 100 percent --

2 Q Okay.

3 A -- because you thought it was unfair --

4 Q Uh-huh.

5 A -- that I had to pay, and so NRS benefited from me

6 paying a salary for her --

7 Q Well, I'm glad you brought that up.

8 A -- and it wasn't until after you decided to leave and

9 breach the company -- or breach your operating agreement --

10 Q Uh-huh.

11 A -- that we had a meeting and which we invited you

12 to --

13 Q Uh-huh.

14 A -- to attend to change the operating agreement to pay

15 us a salary which we felt was only fair when one person of the

16 three decides to leave her obligation to the other two to

17 fill-in. And on your own testimony you said \$100,000 was

18 fair --

19 Q Did I say that?

20 A -- we took 50,000 for doing the job.

21 Q Okay. Well, you said that I said you should get paid

22 \$100,000. Mr. Evenden, is that what Ms. Haack said in the

23 deposition that you should get \$100,000 a year? Is that what

24 Ms. Haack said?

25 A If I -- if I remember right, you said anybody in a

1 broker position should be paid \$100,000 a year.

2 Q Well, I do have that statement from the deposition if
3 you want to bring it in. And Mr. Sheehan asked --in fact, I
4 might have it here. If I start a real estate brokerage and I
5 hire a broker, do you think I should pay the broker, and I said
6 absolutely if you hire someone, you have to pay a salary. Were
7 you a hired broker with NRS, Mr. Evenden?

8 A I was nominated. I think you were one of the two
9 that nominated me to be the broker of record --

10 Q Did you want --

11 A -- and to take the division complaints filed by you
12 against me and the brokerage NRS Realty Group.

13 MR. HOLIDAY: Objection, Your Honor. I'm not sure
14 how to -- there's a lot of narrative and a lot of questions --

15 THE COURT: There's a lot of narrative from everyone
16 in here --

17 MR. HOLIDAY: -- Nancy and I are on --

18 MS. HAACK: Yet there's no evidence.

19 MR. HOLIDAY: -- the same side, but yeah.

20 THE COURT: Can we just take a little break?

21 MS. HAACK: Yeah, that would be really helpful.

22 THE COURT: I think everyone needs a little break.

23 MS. HAACK: Thank you.

24 THE COURT: Like, come back at 15 after.

25 (Proceedings recessed 4:07 p.m. to 4:18 p.m.)

1 THE COURT: Okay. Sir, you're still under oath.

2 Ms. Haack, please continue.

3 MS. HAACK: Okay.

4 BY MS. HAACK:

5 Q So I'm going to go back to a transcript on November
6 6th, 2018, page 31 line 9-11. You don't have a copy; I'm
7 just going to read this to you.

8 Mr. Sheehan explained to the Court that Ms. Haack
9 confirmed in her deposition that NRS always decided NRS -- once
10 NRS was profitable salaries would be paid.

11 Was NRS profitable, Mr. Evenden, in 2016?

12 A Yes.

13 Q In your response -- in your letter dated March 10 in
14 Exhibit 4-S, your first paragraph says, In response to your
15 demand, please be advised that pursuant to the operating
16 agreement no member shall receive compensation; is that
17 correct? Is that what it reads?

18 A (No audible response.)

19 Q Okay.

20 MR. HOLIDAY: Is that the March 10th letter?

21 MS. HAACK: Yes.

22 BY MS. HAACK:

23 Q In Paragraph 2 it starts out with, and I want to make
24 sure I'm correct I think is the right question, after giving us
25 your formal resignation, we offered a fair buyout. Did you

1 receive a formal resignation from Ms. Haack?

2 A A verbal one.

3 Q Did you receive a written formal resignation from
4 Ms. Haack?

5 A Not written.

6 THE COURT: I'm sorry, I just -- I lost you --

7 MS. HAACK: Oh, I'm sorry.

8 THE COURT: -- I thought you were reading the
9 transcript and then you changed to an exhibit I think.

10 MS. HAACK: Yeah, because he's referencing --

11 MR. HOLIDAY: Yeah, I think we're on a --

12 MS. HAACK: -- I'm sorry, yeah.

13 MR. HOLIDAY: Do you got the --

14 MS. HAACK: 4-S is the letter.

15 MR. HOLIDAY: What number did you put it is?

16 THE COURT: 4S?

17 MS. HAACK: Yes.

18 MR. HOLIDAY: 4S.

19 THE COURT: Okay, 4 --

20 MS. HAACK: S. And the first page there's -- page 2
21 of S.

22 THE COURT: Oh, this was already admitted. Gotcha.

23 MS. HAACK: Yes.

24 THE CLERK: Yes.

25 MS. HAACK: And in the --

1 MR. HOLIDAY: Did we do all of 4?

2 THE COURT: No.

3 MS. HAACK: No.

4 BY MS. HAACK:

5 Q At November 6th hearing Mr. Sheehan explained to
6 the Court that I said in my deposition that once NRS was
7 profitable salaries would be paid. And then in his letter from
8 March 10th, 2017, I asked Mr. Evenden if the first paragraph
9 says in response to your demand, please be advised no member
10 shall receive compensation. So in a contradiction to this he
11 said, no.

12 The next paragraph on 4S, after giving us your formal
13 resignation and I asked Mr. Evenden, did you get a formal
14 resignation?

15 A Verbally.

16 Q Is -- Mr. Evenden, if you got a verbal resignation
17 why would you even have to write this letter?

18 A Nancy, at the time you were waffling back and forth,
19 and you were quitting, you were staying, you were quitting, you
20 were staying, and --

21 Q Mr. Evenden I just want a yes or a no because I'm not
22 going to keep taking that same story because it's not true,
23 okay --

24 A Well --

25 Q -- so just answer the question, please. That's what

1 I'm asked to do is ask a yes or a no and you to be answering.
2 If you got a formal resignation --

3 MR. SHEEHAN: Your Honor, he has the right to answer
4 the question --

5 THE COURT: I know.

6 BY MS. HAACK:

7 Q -- from Ms. Haack why did you need to write this
8 letter -- did you need to write this letter?

9 MR. HOLIDAY: Court's -- Court's indulgence. Can I
10 talk to the -- my cocounsel for a second?

11 THE COURT: Yeah, you can talk to Ms. Haack. Uh-huh.

12 (Pause in the proceedings)

13 MS. HAACK: You answered (inaudible) to say that.

14 THE COURT: I can't hear you, did you ask a question?

15 MS. HAACK: My question -- and I'll correct it I
16 guess.

17 BY MS. HAACK:

18 Q So I already asked you if you received a formal
19 resignation from Ms. Haack and you said it was a verbal one.
20 And my question is, if you received a verbal resignation, did
21 you have to still write this letter?

22 A When we consulted with our attorney the --

23 MR. HOLIDAY: Objection. Hearsay.

24 THE COURT: You have to let him --

25 I know.

1 -- but you have to let him finish because the way you
2 phrased it did not call for only a yes-or-no answer.

3 MS. HAACK: Okay.

4 THE COURT: But you can't just stop him midstream.

5 MS. HAACK: Okay.

6 MR. HOLIDAY: Right. Just remember is it true.

7 MS. HAACK: Oh, I see --

8 THE COURT: Let him finish at this point, please.

9 MS. HAACK: -- okay. I got it. Yes. I'm sorry.

10 MR. HOLIDAY: And also I was just going to object as
11 to any hearsay as to advice an attorney told him one way or the
12 other.

13 BY MS. HAACK:

14 Q I'm sorry, Sean. Go ahead.

15 A When we had spoke to an attorney we -- we discussed
16 everything that went back and forth, and since that Balboa
17 meeting we had heard so many different things that you were
18 going to sign the lease, you weren't going to sign the lease,
19 you weren't going to put money in, you were going to put money
20 in; there was so many contradictions, and for us I think we
21 wanted just to have everything put out on the table and be able
22 to say, and so when we had hired this attorney she ended up
23 drafting this letter and Roger and I gave it to you.

24 Q Did you -- where's my little card here.

25 Is it true that you told Ms. Haack that spouses were

1 not required to sign extensions of leases going further?

2 A I might have.

3 Q Is it true that when you found out the landlord would
4 not allow Ms. Haack to sign unless her husband signed that we
5 discussed suggestions to correct that problem? Did we ever
6 discuss problems any way to correct that problem?

7 A I'm not following you.

8 Q Do you think -- well, is Mr. Haack named in the
9 operating agreement of the LLC?

10 A No, I don't think so.

11 Q Is Mr. Haack an owner of the company?

12 A No, I don't think so.

13 Q Is Mr. Haack a Realtor?

14 A No, I don't think so.

15 Q Is Mr. Haack an employee?

16 A No, I don't think so.

17 Q So when Mr. Haack said or if Mr. Haack told Nancy
18 that he would not sign extended leases, did the group meet to
19 talk about ways we could correct that problem?

20 A I believe we did, and that's when we discussed with
21 the property manager about having the \$200,000 deposit so we
22 wouldn't have to have personal guarantees.

23 Q Mr. Evenden, did you ever tell Ms. Haack that there
24 was an option to put a \$200,000 deposit down to remove her
25 husband from signing a lease of an LLC that he does not own?

1 A Did I ever tell you --

2 Q Uh-huh.

3 A -- that was an option for -- I believe so.

4 Q Mr. Evenden, did the landlord discuss removing
5 Ms. Haack's spouse from the lease so the company could move
6 forward?

7 A I think there was some conversation with Roger and
8 the landlord about that, but it wouldn't be fair if my spouse
9 and Roger's spouse was on the lease and you weren't required to
10 have your spouse on the lease. It was a requirement from the
11 property manager for us to have the space in The District. It
12 wasn't an NRS -- it wasn't an NRS obligation or, you know,
13 responsibility. It was something that we as family and as NRS
14 agreed. And just like Bob had signed the original lease with
15 him honoring the lease --

16 MS. HAACK: I don't know how to stop him.

17 BY MS. HAACK:

18 Q Mr. Evenden, did Mr. Haack agree to sign any extended
19 leases after the one that was signed in 2015?

20 A I have no idea.

21 Q Okay. Mr. Evenden, is this a marital property state,
22 Nevada, where licenses and LLC?

23 MR. HOLIDAY: Objection. Relevance.

24 MS. HAACK: Okay.

25 MR. SHEEHAN: Wait a second. It is -- I agree with

1 that objection. We are way digressing --

2 MS. HAACK: No.

3 MR. SHEEHAN: -- but is it strange to have your own
4 lawyer object.

5 MS. HAACK: Mr. Evenden -- Mr. Evenden and Mr. Ayala
6 are saying that I would not sign the lease.

7 THE COURT: I'll just sustain all of you.

8 MS. HAACK: Okay.

9 THE COURT: Okay. Keep going. So you can ask
10 another question.

11 MS. HAACK: Okay.

12 BY MS. HAACK:

13 Q Mr. Ayala and Mr. Evenden accused me -- threatened to
14 throw me out because my spouse would not sign a lease. Did I
15 come to you with suggestions from an attorney to address the
16 lease issues?

17 A I don't honestly recall.

18 Q Okay. Did you agree to meet with an attorney that
19 Ms. Haack had scheduled for appointments to discuss the lease?

20 A Did I agree to meet or did I go and meet?

21 Q Either one. Give me both. I've got it right here.

22 A I don't think I ever met with them, and I think it
23 was the time that you wanted to meet with the attorney was
24 because you were furious about the property manager taking the
25 square footage out of your office --

1 Q Uh-huh.

2 A -- and you kept on throwing it into Roger's and my
3 face we have to meet, we have to meet. They can't do this --

4 Q Okay, Sean --

5 A -- at the same time we're trying to negotiate space
6 across the hall --

7 Q -- that's all I want.

8 A -- so that's the only conversation.

9 Q Mr. Evenden, did you -- are you a property manager --
10 licensed property manager?

11 A I am.

12 Q Mr. Evenden, did you ever own properties of your own
13 that you rented out to tenants?

14 A Yes.

15 Q Mr. Evenden, did you ever go to a paying tenant who
16 had a contract and tell them you were going to take away the
17 garage for your own personal use?

18 THE COURT: What does this have to do with anything?

19 MS. HAACK: Because he's saying I wouldn't sign a
20 lease. Our lease says you cannot take away space.

21 THE COURT: Okay. But you get to testify when you're
22 on that stand.

23 MS. HAACK: Oh, okay. All right. Okay. I got you.
24 I'm sorry.

25 THE COURT: Okay.

1 MS. HAACK: Yeah. So all right. I just wanted to
2 clarify if he understood that, but that's fine. All right.

3 I'm going to turn to page 4X. And I'm almost done,
4 Your Honor.

5 THE COURT: Okay. Great.

6 MS. HAACK: Oh, my goodness, I can't even talk. It's
7 not Bates stamped. I'll get the Bates stamped, I'm sorry.
8 I'll put it on my questions. I'm so sorry. It looks like it's
9 cut off on mine. Okay. I'll go to a different page. Let's go
10 to 4Y, you're right there. It is Bates stamped.

11 BY MS. HAACK:

12 Q Do you know what this is, Mr. Evenden?

13 A (No audible response.)

14 Q Okay. It's a document from Cox Cable for the
15 business of NRS to provide services. I have a question here.
16 It -- can you tell me the date at the bottom of the page that
17 it was signed?

18 A 3/17/17.

19 Q Can you tell me who signed that document?

20 A It looks like you did.

21 Q Is that Ms. Haack's signature, Sean Evenden?

22 A It looks like a signature of yours.

23 Q Was Ms. Haack in the office on March 17th?

24 A I don't recall.

25 MS. HAACK: Thank you. That's all.