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1 guess --

2 THE COURT: Okay.

3 MR. SHEEHAN: -- point that stuff out.

4 BY MR. SHEEHAN:

5 Q All right. And -- let's put it to you this way.  
6 After April of 2017 you were not willing to continue to do work  
7 at NRS; correct?

8 A Never said that.

9 Q All right. Were you willing to do work at NRS in  
10 November of 2017?

11 A I would if everything wouldn't have happened like it  
12 did, yes.

13 Q Okay. In November of 2017, were you willing to come  
14 back to NRS? Yes or no?

15 A Yes.

16 Q All right. Can you turn to your deposition on  
17 page 32.

18 A Of the deposition; right?

19 Q Yes.

20 A Okay.

21 Q Now, this deposition was taken back in late 2017;  
22 correct?

23 A November 14th, yes.

24 Q All right. And by the way, your memory of all the  
25 events was much better in November of 2014 -- 2017 than it is

1 today in February of 2020; correct?

2 A I don't know how you can say that. No. I'm sorry.  
3 I'm not here to discuss my memory. I don't understand the  
4 question.

5 Q All right. Okay. Ms. Haack, wouldn't you agree that  
6 a person's memory of events is much better when it's six months  
7 removed as opposed to three and a half years removed?

8 A Not necessarily, no.

9 Q Okay. All right. So let's just go back to an answer  
10 that you were willing to come back to NRS in November of 2017.  
11 You see where I asked you the question on line 15?

12 A Yes.

13 Q All right. Now, are you willing to come back and do  
14 work for NRS, line 15, page 32; do you see that?

15 A Yes.

16 Q And what was your answer?

17 A No, absolutely not.

18 Q All right. Now, let's talk about the Balboa meeting.  
19 All right. Do you recall saying that you were having -- that  
20 you sat at home for three work -- three weeks after the Shake  
21 Shack issue and that you were stressed out, that you were upset  
22 about the stress taking a toll on your health and that you had  
23 blood work done, everything was off kilter, and that was  
24 shortly before the meeting at Balboa?

25 A I did go get some blood work done, yes.

1 Q And everything was off kilter?

2 A All my blood things were off kilter, yes.

3 Q Okay.

4 A But that doesn't mean a heart attack.

5 Q All right. And by the way, you did state in the --  
6 in the deposition that Roger was good at recruiting, and you  
7 felt Roger could fill the offices in the expansion side;  
8 correct?

9 A Yes.

10 Q Rogers -- Sean was the broker, you were the  
11 bookkeeper, you trained the agents, you did a lot of things.  
12 What else did you do?

13 A I did all the taxes, all the policies, all the  
14 insurances, all the licensing, all the office management, all  
15 the secretary work, everything. I did clean floors. I washed  
16 toilets. I did everything.

17 Q And you were -- the agents -- how often do agents  
18 come in and have an issue that they have to talk to management  
19 about?

20 A I had a line at my door every single morning.

21 Q Okay. And it stands to reason that after you left  
22 that line at the door continued; right?

23 A Yep.

24 Q And so who --

25 A Probably not, I'm sorry, I can't answer that.

1 Q Okay. Well, who's dealing with the line of the door  
2 now?

3 A I don't know.

4 Q Well, it would stand to reason that it would be Roger  
5 and Sean; correct?

6 A [Indiscernible], come on. No.

7 Q Well, somebody had to --

8 A I don't think so.

9 Q Somebody had to pick up your duties; right?

10 A You'd have to ask them, Mr. Sheehan. I don't know.

11 Q All right. Now, it's actually fair to say you really  
12 didn't have any profits through the end of 2016 because you  
13 kept building, you kept taking every penny you had and putting  
14 it back into expansions; correct?

15 A Almost all the years, yes.

16 Q Okay. And that was -- so you were upset that instead  
17 of paying people for their work they were putting money into  
18 expansions; correct?

19 A Well, that's a little different, but, yes.

20 Q And you believed they deserved some money for their  
21 work, and you deserved some money for the work; correct?

22 A No.

23 Q Okay. Can you turn to your deposition page 52,  
24 please. Can you turn to page -- to line 6, please. Do you see  
25 my question there, okay --

1           A     Yes.

2           Q     So is it fair to say that you really didn't have any  
3 profits for through the end of 2016; do you see that question?

4           A     Yes, I do.

5           Q     And what was your answer?

6           A     No, because we kept building. We kept taking every  
7 penny we had and putting it back into expansions.

8           Q     And then I said, okay. And that was -- and then you  
9 interjected.

10          A     Instead of paying people for their work.

11          Q     Okay. And then I said and meaning you?

12          A     Yes. And them. They deserve some money too.

13          Q     Okay. So you did believe they deserved some money  
14 too?

15          A     Distributions, yes. Not salaries.

16          Q     Well, you said right here instead of paying people  
17 for their work.

18          A     Distributions, Mr. Sheehan, is my answer.

19          Q     All right. No, that wasn't your answer at the  
20 deposition; was it?

21          A     Yes, it is.

22          Q     Do you see where on line 13 you said, yes, and them,  
23 excuse me, line 11, instead of paying people for their work?

24          A     You can interpret it, I'm sorry, I said for the  
25 distributions.

1           Q     Okay. I'm just asking, do you see that that is your  
2 answer?

3           A     Yes.

4           Q     Okay. All right. There's no doubt that you agreed  
5 to the ex -- to expand by leasing the space across the hall;  
6 you agree with that; correct?

7           A     Originally, yes.

8           Q     Okay. So the plan was you were going to -- in  
9 September of '16, the plan was you're going to expand across  
10 the hall and you're going -- and NRS is going to recruit new  
11 agents to put in the space across the hall so that you would  
12 have revenue to pay the rent?

13          A     If my husband didn't have to sign a lease, yes.

14          Q     Okay. Can you turn to page 56, please.

15          A     I'm on that page.

16          Q     Can you look at line 8.

17          A     Okay. Your question on that line?

18          Q     Okay. My question is, okay. So the plan was you  
19 were going to -- in September of 2016 the plan was you're going  
20 to expand across the hall, and you're going -- and NRS is going  
21 to recruit new agents to put in that space across the hall so  
22 that you would have revenue to pay the rent. What was your  
23 answer?

24          A     Yes.

25          Q     And my -- and then I asked, and you agreed to that?

1 A I did.

2 Q And your answer is?

3 A I agreed to that.

4 Q Okay.

5 A For the fourteenth time.

6 Q All right.

7 THE COURT: Ma'am.

8 THE WITNESS: I'm sorry.

9 THE COURT: No editorials, please, ma'am.

10 BY MR. SHEEHAN:

11 Q Do you recall the three weeks that you sat at home  
12 after the issue with the Shake Shack?

13 A I never sat at home, but, yes.

14 Q Okay. So the timing of that is approximately January  
15 10th to January 31st?

16 A It was definitely in that time frame, yes.

17 Q All right. And then at the Balboa meeting -- you sat  
18 at home and you just said to yourself why did I ever do this.  
19 I have a very successful business. I make a lot of money. I'm  
20 retired. I have family. I don't need this anymore.

21 A I don't need the fighting anymore, yes.

22 Q Okay. It's been -- that was what you told them at  
23 the Balboa meeting?

24 A Uh-huh. Yes, I did.

25 Q Okay.



1 MR. HOLIDAY: Your Honor, I'm just going to place a  
2 general objection to things in the deposition that aren't  
3 directly impeachment testimony of something she said earlier.

4 MR. SHEEHAN: Your Honor, I wasn't even in that -- I  
5 didn't even use the deposition for that question.

6 THE COURT: Just continue, please.

7 MR. SHEEHAN: I just asked her the question --

8 THE COURT: Just continue. Objection's overruled.  
9 Just continue, please.

10 BY MR. SHEEHAN:

11 Q All right. Now, isn't it true that you didn't want  
12 to sign the lease?

13 A No.

14 Q All right. Can you turn to page 72, please. Do you  
15 see line 23 there?

16 A Yep. Your question, is that the right one?

17 Q Yep.

18 A Okay.

19 Q So I said, So in other words, you're not going to  
20 sign the lease. You're not going to have any company money be  
21 used for tenant improvements across the hall, but you would  
22 agree to work and that would --

23 A Yes.

24 Q Okay. And what was your answer?

25 A No, no, no, that wasn't it. That's not the offer at

1 all. It's an offer. That could take -- they could take  
2 company money that was going to be ours, but my contribution  
3 wasn't going to be signing the lease because I don't want to  
4 add 10 years on to mine. My contribution was working for free.

5 Q Okay. So do you see where you testified at a time  
6 much closer to the events in question that you didn't want to  
7 sign the lease because you didn't want to add 10 years on to  
8 your --

9 A I --

10 Q Do you see that, yes or no?

11 A I see it. Uh-huh. Yes.

12 Q And at that point forward you wanted them to be  
13 responsible and make all the decisions; correct?

14 A No. I made a suggestion.

15 Q And the suggestion was that they take over the  
16 business and make all the decisions; correct?

17 A Never did I say take over the business.

18 Q Did you tell them to take their own money and do the  
19 expansion across the hall and that they could use Life  
20 Realty -- the name Life Realty?

21 A As a part of my suggestion, yes.

22 Q So what did they do that was wrong if that's what  
23 they did?

24 A They kicked me out.

25 Q Okay. But you do admit that you said, take your own

1 money and build the new office. Use the name Life. You just  
2 have to go over there so we can rent the office, and you can  
3 still be Life Realty. I didn't care or Like, whatever.  
4 Correct?

5 A You didn't read the whole thing. I'm sorry, can you  
6 reread that, please?

7 Q I'm just asking you the question.

8 A Oh, I want to hear what you said.

9 Q Okay. Did you say to them, Take your own money and  
10 build a new office. Use the name Life. You'll still be an  
11 owner at the old place here; you just have to go over there so  
12 we can rent this office, and you can still be Life Realty.  
13 Didn't care or Life whatever.

14 A Yes, I said that as a part of my suggestion, yes.

15 Q Okay. And you felt that way all along?

16 A Once I made the suggestion when I learned that the  
17 landlord wouldn't take my husband off, that was the only way I  
18 could come up with and the attorney to help them move forward.

19 Q Okay. And you felt that way when you had your  
20 deposition taken?

21 A I did feel that way because of the way they treated  
22 me, yes.

23 Q Now, we talked about this earlier. The property  
24 manager did ban you from the property; correct?

25 A No. Never.

1 Q Okay. Can you turn to your deposition page 81.

2 A Okay.

3 Q All right. And my question -- do you see at the top  
4 of the page my question, But the property manager had banned  
5 you from the property; correct?

6 A Yes.

7 Q And what was your answer?

8 A It was, yes -- it was, yeah, but she has no right,  
9 and that was a misunderstanding because it says right below it,  
10 corrected.

11 Q This is the property manager that you used vulgar  
12 terms about in your text messages that we showed yesterday;  
13 correct?

14 A That's right.

15 Q Okay. Did Roger Ayala tell you after the Balboa  
16 meeting, listen, Nan -- in a very nice way. Nancy, I don't  
17 think it's appropriate. I think if you're going to sign -- if  
18 we're going to sign the lease, those guys, and you're still  
19 going to collect a third of the profits you should have more  
20 obligations.

21 A Yes.

22 Q And isn't it true that after that conversation you no  
23 longer wanted to be at the NRS offices?

24 A Never.

25 Q Can you turn to your deposition at page 85, please.

1 All right. We're talking about the Balboa meeting. You see at  
2 the top of the page there?

3 A Yes.

4 Q Okay. And then I said, okay. All right. And then  
5 what happened after the Balboa meeting? And what was your  
6 answer?

7 A It was very uncomfortable going to work every day.

8 Q All right. And then I said, but then I thought you  
9 said two days later Roger called you and said that -- and your  
10 answer?

11 A No, he -- do you want me to finish?

12 Q Okay. And then I wrote, wasn't that the -- what you  
13 offer wasn't acceptable; do you see that?

14 A Yes. And I said --

15 Q And your answer was -- go ahead.

16 A Okay. He emailed me or walked by or texted me or  
17 whatever, I don't have my notes in front of me, but, yeah, he  
18 just said, Nancy, I just don't think it's -- and he was very  
19 nice about it, Roger was always nice. I don't think that it's  
20 appropriate. I think if you're going to sign a lease --

21 Q If we're going to sign a lease.

22 A If we're going to sign a lease -- thank you, and  
23 you're going to still collect a third of the profits you should  
24 have more obligations. And they didn't think my value of  
25 working for free was valuable. So that was -- that's it, I

1 mean, that's where it lasted. They didn't think it was, I  
2 thought it was.

3 Q Okay. And the next question was, Okay. Then what  
4 happened? So this is the days immediately following Balboa;  
5 correct?

6 A Yes. No. No, I'm sorry your timeline is just a  
7 little off, but that's okay.

8 Q All right. Within a couple days. I mean, if you  
9 look at the top -- well, if you look at the top, my question  
10 was, talked about Balboa and then I asked what happened after  
11 Balboa. But anyway --

12 A It's not the same day.

13 MR. HOLIDAY: I'm sorry --

14 MR. SHEEHAN: Not the same day. Okay. A couple days  
15 later. Fair enough.

16 MR. HOLIDAY: All right. I'm sorry, but what page of  
17 the deposition --

18 THE WITNESS: We're at 86.

19 MR. SHEEHAN: 85.

20 THE WITNESS: Now do you want me to go down to 86?

21 BY MR. SHEEHAN:

22 Q Let's see. Okay. Yes, yes. Okay. Then what  
23 happened?

24 A Oh, my gosh. I should have brought my calendar. I  
25 don't remember exactly what took place. All I know it was just

1 very awkward to be at work. I was very depressed. I was  
2 working on taxes. I didn't want to be in the decision. They  
3 were fighting over that. They didn't like what I said, so I  
4 didn't want to be there.

5 Q Okay. That's --

6 A For that day, Mr. Sheehan.

7 Q All right. What you're talking about it was very  
8 uncomfortable period after. All right.

9 Well, Your Honor can read that testimony and figure  
10 out whether it was.

11 A Yeah.

12 Q Okay. Let's continue on now.

13 A Okay.

14 Q So I don't want to be there and then what did you  
15 say?

16 A I don't want to be making the decisions. You want to  
17 pick the colors. You want to pick the signs. You want to  
18 decide where ceilings go. Okay. Because anything -- and then  
19 I'll go down again?

20 Q Sure.

21 A Anything, but none of that was good. So, no, it was  
22 just going to work every day and being very uncomfortable.

23 Q So it wasn't just that day, it was every day?

24 A Well, it was with them. Yes, yes, because they were  
25 yelling at me all the time.

1           Q     All right. But you -- all right. Now, what you said  
2 to them was, keep NRS in business over here. Do the expansion  
3 over there without me being involved, without NRS money being  
4 involved. Use your own money over there; correct?

5           A     In the new office only, yes.

6           Q     In the new office. And then when 2019 came and you  
7 were off the lease for the old space --

8           A     Uh-huh.

9           Q     -- they could merge the two together and they would  
10 own everything.

11          A     It was an option. And there's three options right  
12 there, yes.

13          Q     Okay. That's the key to the whole case, isn't it?

14          A     No.

15          Q     Wait a second, you told them keep NRS open. Use your  
16 own money over here, but keep NRS open until the lease expires  
17 in October 2019. Then they can merge the two together and own  
18 everything.

19          A     I never said that, Mr. Sheehan.

20          Q     Well, first of all, you just said it two seconds ago.

21          A     I never said that.

22          Q     All right. Can you turn to your deposition page 89.  
23 All right. My question was, all right. So you then said,  
24 okay, look at -- I'm not going to sign this lease over here for  
25 the expansion space; correct?



1 A If I didn't sign --

2 Q I'm just asking the testimony.

3 A Oh, okay. Yes.

4 Q But you guys can sign the lease over there.

5 A Is that -- where are you reading?

6 Q Starting at the bottom of page 88. All right. So  
7 you then said, okay. Look at --

8 A Uh-huh.

9 Q I'm not going to sign the lease over there for the  
10 expansion space. But you guys can sign the lease over there.  
11 You guys can be fully responsible for it, but don't take any  
12 NRS.

13 A That's your question.

14 Q That's my question.

15 A Yes. That's your question.

16 Q Okay. And what is your response?

17 A No, no, no. Yeah, right. You can't have the  
18 NRS asset, but you own them still. They're yours and we're  
19 going to work -- work them and make sure you have more money,  
20 and if you want a third of your money to put over there, that's  
21 great. And you want to do all that that's fine. I don't have  
22 a problem with that. I would want them to do it too because  
23 the 2019 all --

24 Q Wait, he says, because -- this is the key to the  
25 whole case here. Because -- what did you say because --

1           A     In 2019 all they had to do was merge them together  
2 and they would own everything. That was my interest. Just get  
3 me off the lease. But that's one suggestion in this same  
4 paragraph.

5           Q     So I'm going to repeat that. You said, in 19 --  
6 2019 all they had to do was merge them together. They would  
7 own everything. That was my interest, just get me off that  
8 lease. That's what you said.

9           A     In 2019, yes.

10          Q     All right.

11          A     It was an option.

12          Q     All right. So you wanted them to keep NRS open long  
13 enough to get your personal guarantee done with the original  
14 lease; right?

15          A     No.

16          Q     All right. Well, let me ask you this, Ms. Haack.  
17 When you said just get me off that lease, the lease you were  
18 referring to was the original lease?

19          A     After I worked it.

20          Q     Ms. Haack. Ms. Haack.

21          A     Yes.

22          Q     All right. And again, you said that they could use  
23 the name Life over at the other space. All you wanted was to  
24 make sure that you didn't have to sign that lease for the new  
25 space?

1           A     If they didn't kick me out, yes.

2           Q     Well, all right. Again, you said they could -- after  
3 the 2019, they could drop NRS and just have the new company?

4           A     Just answered that.

5           Q     And the answer was yes; correct?

6           A     The answer was, yes, as part of the suggestion.

7           Q     Okay. All right. Now, do you recall when my clients  
8 tried to quit and leave their obligations to NRS?

9           A     I remember when Mr. Evenden did, but I don't remember  
10 Mr. Ayala other than in his letter of March 10th.

11          Q     All right. Can you turn to page 97. My question  
12 Number 5, do you see line 5 there?

13          A     Yes, I do.

14          Q     My question was, who wanted to quit?

15          A     Well, Sean wanted to quit twice. Roger wanted to  
16 quit once, but it might have been more. This is over 10 years  
17 or 7 years, not in that week.

18          Q     Okay. Okay. And did you allow them to quit?

19          A     If they wanted to. All they had to do was sign off  
20 their obligation, yes.

21          Q     What did you talk them out of it?

22          A     Because they had an obligation. I don't think Roger  
23 or Sean really would ever want to walk away with that.

24          Q     But you felt since they signed that -- since you had  
25 all agreed to do one third of the obligations that each should

1 do one third of the obligations?

2 A It depends, Mr.-- yes.

3 Q Okay.

4 MR. HOLIDAY: Objection. Judge, again objection to  
5 time frame. Nothing's specified.

6 MR. SHEEHAN: Well what --

7 MR. HOLIDAY: -- I understand that she said many  
8 different things over a period of time, agreed to different  
9 things over this period of time. And when you asked her  
10 questions about indicating time frame you can conflate  
11 something into being a conversation at one --

12 MR. SHEEHAN: This is a speaking objection if I've  
13 ever heard one, and I don't even understand it.

14 MR. HOLIDAY: All right. Well, I just --

15 THE COURT: It is. I'm not sure what the objection  
16 is.

17 MR. HOLIDAY: The objection is that the question is  
18 vague and ambiguous as to time, and it's creating a lot of  
19 confusion, I think, in the answers.

20 MR. SHEEHAN: Okay.

21 MR. HOLIDAY: It's vague and ambiguous as to time.

22 BY MR. SHEEHAN:

23 Q It doesn't matter what time. Anytime that they quit,  
24 you told them, no, you can't quit because you have obligations;  
25 correct?

1           A     No, I told them to think about it. I never told  
2 anyone they can't quit.

3           Q     Okay. Well, you told them, you said -- you talked  
4 them out of it and said you have a responsibility. You signed  
5 a commitment?

6           A     Yes.

7           Q     All right. And that was true whether they quit in  
8 2012 --

9           A     Yes.

10          Q     -- 2015? 2017?

11          A     Yes.

12          Q     And by the way, you think it's important if somebody  
13 makes a commitment that they've honored that commitment;  
14 correct?

15          A     Yes.

16          Q     The same with the lease regarding the expansion;  
17 correct?

18          A     It's one item that was talked about and was lied to  
19 me about.

20          Q     But you made a commitment to expand across the hall,  
21 and you changed your mind about it?

22          A     They -- when they altered the lease, yes.

23          Q     All right. But, ma'am, when you signed the lease  
24 everybody was on it; correct?

25          A     Originally, yes.

1 Q When -- including your husband; correct?

2 MR. HOLIDAY: Objection. Vague and ambiguous as to  
3 which of the two leases.

4 BY MR. SHEEHAN:

5 Q Okay. When you signed the original lease for  
6 NRS your husband was on as a personal guarantor?

7 A Initially, yes. But it's not a future --

8 Q When you signed an amendment for some expansion space  
9 in 2015 --

10 A '15, yes.

11 Q -- your husband signed the personal guarantee?

12 A Yes, he did.

13 Q Okay. All right. Now, you do agree that you've  
14 mentioned this whole March thing and about dissolving the  
15 company, but you do agree that they did not go forward with  
16 that dissolution; they contemplated, but they did not and that  
17 NRS continued to exist all the way through the expiration of  
18 the lease?

19 MR. HOLIDAY: Objection. Calls for legal conclusion.

20 MR. SHEEHAN: Well, let me -- I'll do it another way,  
21 Your Honor, just to make this easy.

22 THE COURT: Sure.

23 BY MR. SHEEHAN:

24 Q All right. When you left the comp -- NRS, how  
25 many -- how many agents were at NRS when you left the company?

1 A About, between 40 and 45.

2 Q All right.

3 A It depends if you count Roger, Sean and I.

4 Q Okay. All right. Now, in November of 2017, how many  
5 agents were with the company?

6 A We had about 50. I don't have the accurate number.

7 Q All right. So following March of 2017, they  
8 continued with about 45 to 50 agents through October of last  
9 year; correct?

10 A Some of those agents in the 50 number were licensed  
11 under Life Realty --

12 Q Okay. Ma'am, the question is did NR --

13 A I don't know.

14 Q Okay. Let me put --

15 A Their contracts were all over the board, so no, I  
16 don't know.

17 Q Okay. Would you agree that NRS had about 40 to 45  
18 agents the day you left the company and had about 50 agents in  
19 November of 2017?

20 A I will agree with you, but I don't know if they were  
21 all Life Realty.

22 Q Well, Life Realty didn't even exist at that point.

23 A Yes, it did. I have contracts for it.

24 Q Okay. All right. Let me -- NRS continued to exist  
25 after March of 2017; correct?

1           A     Correct.

2           Q     NRS continued to exist through October of 2019;  
3 correct?

4           A     Yes. Without me.

5           Q     You personally went into the office several times and  
6 saw agents at the old NRS office; correct?

7           A     I never did. Since the 28th of April --

8           Q     Okay. But the 28th of April you saw agents in the  
9 office?

10          A     Yes.

11          Q     All right. Incidentally, you did go in there several  
12 times with a policemen and --

13          A     No, I didn't. I went in once.

14          Q     Okay. Well, you recall that your attorney and my  
15 attorney had to get on the phone because your attorney had  
16 asked for some documents. We had said, sure, we'll be happy to  
17 give you those documents. You weren't happy, and you went over  
18 to the office without telling your attorney and brought some  
19 large person with you and demanded to have access to our  
20 computers; do you recall that?

21               MR. HOLIDAY: Objection. Very compound.

22               THE WITNESS: No. I never did that.

23               THE COURT: Overruled.

24 BY MR. SHEEHAN:

25          Q     Okay. Did you go to the NRS office?



1           A     I went to the NRS office. A detective suggested I  
2 get a -- what do they call that -- a public assistant because  
3 of how hostile they were to protect me, and I had a letter from  
4 my attorney saying I could go.

5           Q     Really?

6           A     Yes.

7           Q     Do you recall Mr. Van being surprised that you were  
8 at the office during our call?

9           A     Well, he probably forgot the date. He had emails  
10 from me and the letter. I never was told that I couldn't go.

11          Q     All right.

12          A     Mr. Sheehan --

13          Q     And that by the way is not -- that's in addition to  
14 the April 17th when you went there, the April 28th when you  
15 went there; correct?

16          A     I didn't go on the -- oh, at the April 13th, I  
17 didn't go in the office.

18          Q     April 17th, remember with the furniture and -- and  
19 that was -- all right. That's okay.

20               MR. HOLIDAY: Objection.

21               MR. SHEEHAN: And I'll move on. I'll move on.

22               MR. HOLIDAY: Can you clarify again the time that  
23 he's talking about?

24               MR. SHEEHAN: I'll -- I'll move on.

25               MR. HOLIDAY: Okay.

1 MR. SHEEHAN: Okay.

2 BY MR. SHEEHAN:

3 Q All right. So they -- you do agree that they filed a  
4 dissolution, but then they filed a correction shortly  
5 thereafter to [indiscernible] the dissolution?

6 A I did not know that.

7 Q Can you turn to your deposition page 112. Line 5.

8 A Okay.

9 Q Let's back up. When they filed the dissolution you  
10 went to the state and said they can't do that. And your answer  
11 was?

12 A Correct.

13 Q And then my question was, okay. And then your answer  
14 was?

15 A They have to file a correction.

16 Q And then my question was, okay. And then they filed  
17 the correction to undissolve; do you see my question there?

18 A Uh-huh. On November 14th, I knew that, yes.

19 Q Okay. Okay. And you said -- so you do know that as  
20 of -- and we've seen the notice of correction. They filed the  
21 notice of correction about a week later; correct?

22 A Correct.

23 Q Okay.

24 A But I did not get a copy.

25 Q And as a result, NRS was still in -- still remained

1 in business?

2 A Correct.

3 Q Correct?

4 A Yes.

5 Q Okay. And you do agree that the core group of agents  
6 that were there the day you left remained at NRS at least  
7 through November of 2017?

8 A I don't know that.

9 Q Can you turn to your deposition page 113, please.

10 A Yes, I'm there.

11 Q Okay. My question line 7; do you see that?

12 A Yes.

13 Q You do know -- you do know that there are still 50  
14 agents working for NRS including a core group of 40 that were  
15 there when you were there; do you see my question?

16 A Yes.

17 Q And what was your answer?

18 A Uh-huh. You have to say yes.

19 Q And then what did you say?

20 A Yes.

21 Q All right. Now, from the time that you were part of  
22 the management everything at NRS -- just the three of you,  
23 everything was done informally; correct?

24 A No.

25 Q Can you turn to your deposition on page 116, please.

1           A     I'm right there.

2           Q     Okay. My question to you, okay. So from the time  
3 that you were part of the management there was everything was  
4 done informally; correct? What was your answer?

5           A     It says, Yep, sorry I didn't get that. And I said I  
6 didn't get that.

7           Q     But that's the way -- you might not have been happy  
8 about it but that's the way it was done; right?

9           A     Yes. No. I'm sorry, Mr. Sheehan, I think that says  
10 I didn't get that. In other words, I didn't understand your  
11 question. But maybe it's wrong. Whatever.

12          Q     The first answer was yeah.

13          A     Okay. Yeah.

14          Q     If you guys decided to go to lunch, did you have a  
15 meeting?

16          A     Sometimes, yes.

17          Q     Okay. Well, could you guys agree on where to go to  
18 lunch?

19          A     No.

20          Q     So how was it decided?

21          A     Well --

22               MR. HOLIDAY: Objection. Relevance.

23               THE WITNESS: Well, it was on schedule. I mean,  
24 everybody had a schedule. Sean was in lots of meetings. Roger  
25 had family --

1 BY MR. SHEEHAN:

2 Q Okay. What I'm -- what I'm saying is, let's say you  
3 wanted to go to Panera and those two wanted to go to Lucille's.

4 A I would go anywhere.

5 Q Basically, you did things informally?

6 A Not at my choice, yes.

7 Q All right. All right, ma'am, did you agree that once  
8 the company became profitable you would pay each other's  
9 salary?

10 A I never agreed --

11 MR. HOLIDAY: Objection. Vague as to time.

12 THE COURT: Yeah, just ask for a time frame.

13 BY MR. SHEEHAN:

14 Q Did you agree right from the beginning?

15 A No, I -- can I --

16 Q No. That's okay. Let me -- all right, ma'am, the  
17 question is, once the company got up and running, had the  
18 money, then you expected -- did you expect people to either  
19 hire people to do your jobs or if you were doing the jobs pay a  
20 salary?

21 MR. HOLIDAY: Objection, as to time and date.

22 THE COURT: Yeah, can you just --

23 BY MR. SHEEHAN:

24 Q At any point in time?

25 THE COURT: Okay.

1 THE WITNESS: Okay. So say the question again. I'm  
2 sorry.

3 BY MR. SHEEHAN:

4 Q Okay. Once the company got up and running and had  
5 the money, you expected them to, the company to either pay each  
6 of you a salary for your time or hire somebody else to do the  
7 work that you were doing; fair enough?

8 A No.

9 Q All right.

10 A It was --

11 Q Can you turn to your deposition page 117.

12 A I'm there.

13 Q My question to you was at line 24, And alternatively,  
14 if they wanted you to keep doing the books and records then  
15 they would pay you?

16 A Yes.

17 Q Okay. Once the company reached a certain level they  
18 would pay you for your time?

19 A And I asked if I could make a comment.

20 Q And I said, well, answer the question first and your  
21 answer was?

22 A Yes.

23 Q All right. Did my clients ever tell you we're  
24 holding a company meeting and you're not invited?

25 A No.

1           Q     All right. In your complaint in -- in E, you put  
2 that -- you said that they -- well -- I apologize. Let me  
3 strike that.

4                     Do you recall testifying that you wanted -- if you  
5 filed the motion for a receiver you didn't care about NRS; you  
6 just wanted them to have to start over just the way you did?

7           A     At that time, yes, I sure did.

8                     MR. SHEEHAN: I'm sorry, Your Honor, I'm getting  
9 closer I think.

10           BY MR. SHEEHAN:

11           Q     Did you ever -- yesterday we talked about the  
12 operating agreement. You said the first draft came out and it  
13 contained the word majority for not only amending the operating  
14 agreement, but it also said majority for a couple other things  
15 like dissolving the company; do you recall that?

16           A     I recall saying that because you showed me a copy  
17 that said that.

18           Q     Right. And that's what it said?

19           A     Whatever you showed me. I don't remember. I didn't  
20 read it.

21           Q     Okay. But your testimony was then you --

22           A     Yes.

23           Q     -- you called Mr. Schnitzer and you -- or you  
24 contacted Mr. Schnitzer and you asked him to change it from  
25 majority to all?

1 A In 2010, yes.

2 Q 2010. Okay. What if Mr. Schnitzer testified that  
3 there was no further contact with you after the first meeting?

4 MR. HOLIDAY: Objection. Calls for speculation.

5 THE WITNESS: I don't know. What if, I don't know --

6 THE COURT: Sustained.

7 MR. SHEEHAN: Well, I don't -- we'll get to that.

8 That's a hypothetical, but -- all right. All right.

9 BY MR. SHEEHAN:

10 Q And then he changed it to all; correct? That's what  
11 your testimony was?

12 A I got a new contract and we all signed it, yes.

13 Q And it said all?

14 A Yes. I didn't read it.

15 Q All right. All right. Is that the only thing you  
16 ever did to change the language of the operating agreement to  
17 delete the word majority?

18 A No, we changed -- no.

19 Q What else did you do?

20 A We changed the registered agent.

21 Q Okay. Anything else?

22 A No.

23 Q Did you ever contact these people and say you know  
24 what --

25 A Oh, yes, I'm sorry. Yes.



1 Q All right. All right. Did you ever say -- well,  
2 let's go back to the Balboa -- the Balboa meeting. Did you  
3 tell them at the Balboa meeting the decision making is  
4 stressing me out. I no longer want to be part of it?

5 A For the new construction, yes.

6 Q Let me finish.

7 A Oh, I'm sorry.

8 Q The decision-making is stressing me out. I no longer  
9 want to be part of it. I just want -- I don't want to be part  
10 of the expansion across the hall. I just want to keep  
11 NRS running until I'm off on the original lease.

12 A Yes.

13 MR. HOLIDAY: I'm sorry. What page was that?

14 MR. SHEEHAN: I asked her the question. I didn't --  
15 if she answers it honestly, I don't use the deposition to  
16 impeach her. But for the record, if you want to know it's  
17 page 161. That specific since you raised it Mr. Holiday, I'll  
18 go ahead and have it read into the record.

19 THE WITNESS: Which page again?

20 MR. SHEEHAN: Page 161. So just so -- because  
21 Mr. Holiday has talked about time frames, let's just get the  
22 time frame here.

23 BY MR. SHEEHAN:

24 Q All right. So my question was, question, no, no.  
25 I'm not talking about before. I'm talking about from the

1 meeting that you had at Balboa where you said, this  
2 decision-making is stressing me out. I no longer want to be  
3 part of it. I just want dash, dash, I don't want to be part of  
4 the expansion across the hall. I just want to keep NRS running  
5 until I'm off the lease. Do you recall making that offer to  
6 them?

7 A Yes, after we discussed --

8 Q What -- the answer's, yes; correct? That's all it  
9 says is yes; right?

10 A Yes, but it's a part --

11 Q That's all it says; right?

12 A Yes.

13 Q All right. Now, let's talk about the operating  
14 agreement. Now, you keep mentioning 6.8, because 6.8 says, the  
15 unanimous votes of all of us shall be required unless a lesser  
16 amount is set forth that's in the agreement or by statute; do  
17 you recall that?

18 A I do.

19 Q All right. And so you agreed that if another part of  
20 the operating agreement said less than unanimous then that  
21 would rule?

22 A Yes.

23 Q Okay.

24 A You've got to read the whole paragraph, but, yes.

25 Q Okay. Well, let's -- let's turn to your deposition

1 again. Page 169, line 5. Question, all right. Then voting on  
2 6.8 --

3 MR. SHEEHAN: I apologize, Your Honor, can we take a  
4 brief break --

5 THE COURT: Uh-huh.

6 MR. SHEEHAN: -- to call Mr. Schnitzer's secretary to  
7 confirm that he is in Argentina and unavailable. I'd like to  
8 put that in the record.

9 THE COURT: Yes. That's fine. You want to do it on  
10 the record?

11 MR. SHEEHAN: I would.

12 THE COURT: Okay. Because I think if that is  
13 confirmed, we were looking at the statute again this morning it  
14 would qualify as be able to use the deposition.

15 MR. SHEEHAN: Yeah, you looked it at NRCP 32?

16 THE COURT: Come again? I'm sorry.

17 MR. SHEEHAN: May I approach the bench, Your Honor?

18 THE COURT: Yeah.

19 MR. SHEEHAN: On the top is the phone number for  
20 Mr. Schnitzer's assistant.

21 THE COURT: Okay.

22 MR. SHEEHAN: I told them to call at 10:30 that's why  
23 I asked for the break because I forgot.

24 THE COURT: Oh, yeah, yeah, yeah.

25 Jase, will you call.

1 Maria, just stay on the record, please.

2 MR. HOLIDAY: So, Your Honor, have you had an  
3 opportunity to review the supplemental brief I filed on the  
4 issues?

5 THE COURT: No. Did you give me a copy this morning?

6 MR. HOLIDAY: Oh, I just thought you filed --

7 THE COURT: Because I can't see things immediately.

8 MR. HOLIDAY: Oh. Your Honor, I can send it to an  
9 email.

10 THE COURT: But you know -- okay. So I looked it up  
11 this morning, and I actually looked at the statute on the other  
12 issue as far as failure to name it as a party, right. It can  
13 be brought in any time including during trial. I've just never  
14 seen it, but...

15 MR. SHEEHAN: We can brief that issue later, but I  
16 believe it's way too late and because we didn't have a chance  
17 to amend, but also it doesn't have to do with failure to  
18 [indiscernible] party. It has to do with the legal argument  
19 that's best for the briefing and the -- do the post closing  
20 briefs. But I can file my opposition to it at the time of the  
21 trial brief, Your Honor.

22 THE COURT: Sure.

23 MR. HOLIDAY: Well, Your Honor, can we take a quick  
24 break so you can review the supplemental brief I filed?

25 THE COURT: Yeah. It's just posted. Supplemental

1 brief --

2 MR. SHEEHAN: Well, Your Honor, if --

3 THE COURT: Well, why don't we get the phone call  
4 done.

5 MR. SHEEHAN: Okay. Let's get the phone call done.

6 THE COURT: And why don't we finish up with  
7 Ms. Haack's testimony.

8 MR. SHEEHAN: If we can just do the phone call real  
9 quick just because he's probably waiting.

10 THE COURT: I thought Jason was doing it.

11 (Telephonic communication begins.)

12 Mr. Schnitzer's office.

13 THE MARSHAL: Hey, this is Jason. I'm the deputy  
14 marshal in District Court 23, for Judge Stefany Miley; you're  
15 on an open line.

16 THE ASSISTANT: Okay.

17 MR. SHEEHAN: Thank you very much for taking the  
18 call. I just wanted in open court to confirm Mr. Schnitzer is  
19 in Argentina for this week on a long planned, long scheduled  
20 vacation; is that correct?

21 THE ASSISTANT: Yes. That's correct, Your Honor, he  
22 is in Argentina up until March the 3rd.

23 THE COURT: All right. Thank you. And then when  
24 will he be back in the office?

25 I don't think he can hear me.

1 THE MARSHAL: When will he be back in the office,  
2 sir?

3 MR. SHEEHAN: He said March 3rd.

4 THE ASSISTANT: I'm sorry, when will he be back in  
5 the office?

6 THE MARSHAL: Yes.

7 THE ASSISTANT: Oh, his first day back in the office  
8 is Tuesday, March 3rd.

9 THE COURT: Okay. Thank you.

10 THE MARSHAL: Okay. The Judge says, okay. Thank  
11 you.

12 THE ASSISTANT: All right. Thank you.

13 (Telephonic communication ends.)

14 MR. SHEEHAN: Your Honor, based on that we would  
15 request that his deposition -- and we can have somebody come  
16 and read it, but since it's a Judge only trial, I would ask  
17 that Your Honor simply read it at her --

18 MR. HOLIDAY: Right. Your Honor --

19 MR. SHEEHAN: I'm making that request.

20 THE COURT: I'm reading the motion, actually right  
21 now.

22 MR. SHEEHAN: I have a countermotion that, you know,  
23 I make an opposition to it if you'd like.

24 MR. HOLIDAY: Right. There were two filings; I'm not  
25 sure which one you're talking about.

1 THE COURT: This case with Judge Scotti, it's just a  
2 minute from a case, but it's not -- it hasn't gone up to the  
3 Supreme Court, it was just a May order.

4 MR. HOLIDAY: Right, Your Honor, the -- the standard  
5 of reasonable diligence for that is used in federal court has  
6 never been commented on.

7 THE COURT: This must have been your case because  
8 defense -- plaintiff's counsel indicated he had not read the  
9 deposition, was not in the practice of stipulating to anything  
10 before he reviewed it. Was this your case?

11 MR. HOLIDAY: Yeah.

12 THE COURT: Because this sounds like something you've  
13 said during this trial. Okay.

14 MR. SHEEHAN: Why -- he goes a little further said he  
15 doesn't agree to stipulate to anything or agree to anything.

16 THE COURT: Well, let's not -- I'm not --

17 MR. SHEEHAN: Yeah.

18 THE COURT: I'm not trying to create an issue; it was  
19 just something I noticed during the course of this trial.  
20 Okay.

21 What were you saying, sir?

22 MR. HOLIDAY: So the brief goes over that there is  
23 common law degrees of reasonable diligence that you have to try  
24 to -- you have to make a showing that you used reasonable  
25 diligence to obtain --

1 THE COURT: To the statute, please.

2 MR. HOLIDAY: -- and so that's federal common law.

3 MR. SHEEHAN: I actually just handed -- that's right,  
4 he gave it back.

5 THE COURT: Can you hand it back. I already pulled  
6 it this morning. I just want to see --

7 MR. HOLIDAY: And that's federal common law. The  
8 Rule 32 tracks identically. So there's a standard of  
9 reasonable diligence that you have to show, and it goes through  
10 some of the federal cases that were cited and then how Scotti  
11 applied reasonable diligence standards. In that case -- and it  
12 was my case. When we got to calendar call, you know, I stated  
13 on the record that, you know, we hadn't stipulated to anything,  
14 and then Judge Scotti sua sponte started getting --

15 MR. SHEEHAN: This is totally inappropriate. It's --

16 MR. HOLIDAY: All right. Well, it may not be  
17 precedent. It's an example of a case where they applied the  
18 federal standard of reasonable diligence --

19 MR. SHEEHAN: The opinion from Judge Scotti is of  
20 no -- it should not be cited by the rules. It is not allowed  
21 to be cited.

22 MR. HOLIDAY: Right. Well, it does cite to the  
23 unpublished federal --

24 MR. SHEEHAN: It's in unpublished opinion.

25 MR. HOLIDAY: It cites the federal --



1 THE COURT: One at a time.

2 MR. HOLIDAY: -- standards and shows how there is  
3 this case law in federal courts which say that you can't just  
4 show -- you can't just get a deposition when you didn't make  
5 any reason -- showing of reasonable diligence to try to obtain  
6 that person's attendance. In the other case they started  
7 trying a certain person [indiscernible]. They had evidence  
8 from process servers that he wasn't allowing them into the  
9 gated community.

10 In the case in -- or excuse me. I think in eight  
11 days was the federal case that cited and then that case goes on  
12 to cite other ones. And in all those cases it shows examples  
13 of where there is actually a showing that they tried to obtain  
14 the witness's presence at trial.

15 Here it doesn't appear that there's been made no  
16 showing that there was any attempt to obtain in a trial, and it  
17 wasn't discovered that he wasn't available for trial until  
18 after opening statements. So if the standard of reasonable  
19 diligence is applied at all, then he hasn't met the standards  
20 because there was no attempt to obtain it for trial prior to  
21 the start of trial.

22 THE COURT: Okay. So all right. I was just reading  
23 your motion. So looking at Rule 32 and it talks about using  
24 depositions in court proceedings, and you go down to 32A,  
25 Subsection 4, unavailable witness. And it states as follows:

1 A party may use for any purpose the deposition of a witness  
2 whether or not a party if the Court finds, and then it goes  
3 through various things. A, that the witness is dead, that the  
4 witness -- B, would be what's applicable, that the witness  
5 lives more than 100 miles from the place of hearing or trial or  
6 is out of the state unless it appears that the witness's  
7 absence was procured by the party offering the deposition.

8 So there's no evidence. We do have a confirmation on  
9 the record, and there's no reason for me to believe that it's  
10 not truthful that Mr. Schnitzer is out of the jurisdiction. He  
11 is more than a hundred miles given the fact that he is in  
12 Argentina. There's actually no evidence indicating that the  
13 witness is -- Mr. Schnitzer's absence was procured by  
14 Mr. Sheehan who is the party offering the deposition.

15 And then it goes on to state other times when a  
16 witness is unavailable that the witness cannot attend or  
17 testify because of age, illness, infirmity or imprisonment.  
18 That would not apply.

19 That the party offering the deposition could not  
20 procure the witness's attendance by subpoena. I don't think  
21 that's applicable, or E, on motion and notice that exceptional  
22 circumstances make it desirable in the interest of justice and  
23 with due regard to the importance of live testimony of the  
24 Court to permit the deposition be used.

25 Okay. So I think that he qualifies as an unavailable

1 witness. And the other portion that he has to in order to  
2 utilize it in court would be, A, Subsection 1, in general that  
3 the hearing or trial at all or part of the deposition may be  
4 used against the party under these conditions. A, the party  
5 was present or presented at the time of the deposition or had  
6 reasonable notice of it.

7 I know it wasn't you, sir, or I don't believe it was  
8 you, sir, but there was a counsel representing the plaintiffs  
9 at the time of the deposition, and the -- it is used to the  
10 extent it would be admissible under the Nevada law of evidence  
11 if the deponent were present and testifying and the use is  
12 allowed by Rule 32A(2) through (8).

13 So it does appear that Rule 32 would allow it. I  
14 mean, I understand --

15 MR. HOLIDAY: Can I pull up --

16 THE COURT: -- the Federal Court may make a different  
17 decision, perhaps.

18 MR. HOLIDAY: No, and I understand, Your Honor. I'm  
19 asking for the application of a federal thing, and if you don't  
20 want to apply it, it's not binding precedence.

21 THE COURT: Yeah, it's not binding but certainly  
22 it's -- it's something I can consider, but at this point I'm  
23 going with the language of Rule 32, and I think that it is  
24 admissible because there is a showing of unavailability and  
25 that, you know, it was a counsel at the time of the deposition

1 that were and Mr. Schnitzer was subject to cross-examination by  
2 both the parties --

3 MR. HOLIDAY: Very well. And then can we move on to,  
4 well --

5 THE COURT: You have another motion, let's see --

6 MR. HOLIDAY: Well, actually we had another part of  
7 that motion which was as you said, [indiscernible] to 32A --  
8 A 1 -- the second one is that it still has to be admissible,  
9 and I have objections to relevance as part of his deposition.

10 THE COURT: I don't know that all of it needs to  
11 be -- I don't even what's in it, but are you -- is -- I'm  
12 sorry, I don't feel good. Are you seeking to admit all of it?

13 MR. SHEEHAN: Yes, Your Honor, it's 20 pages and it  
14 contains three -- three things. One, that he never had any  
15 contact with any of us, any of the people after the first  
16 meeting contrary to Ms. Haack's testimony you just heard; so  
17 that's relevant.

18 Two, that because the -- it says majority or all, and  
19 neither was taken out so that means either or and that it's not  
20 vague and ambiguous and therefore it -- the majority is -- the  
21 majority is sufficient.

22 MR. HOLIDAY: I think it --

23 MR. SHEEHAN: Those are the only -- that's the only  
24 thing that's asked in the deposition and that's all relevant.

25 THE WITNESS: That's right.

1           MR. HOLIDAY: All right, Your Honor, and so I don't  
2 object to the relevance of the factual statements. I'll only  
3 object to the relevance as I state in the supplemental brief to  
4 the scope of what opinion you can give as a lay witness. Is  
5 opinion of what the contract means or whether or not it's  
6 ambiguous isn't an admissible opinion because in that sense as  
7 a lawyer trying to give that opinion he is only allowed to do  
8 so if he is a qualified expert. In other words, the language  
9 itself is to be determined as a matter of law as, Your Honor,  
10 determined that it was ambiguous.

11           MR. SHEEHAN: But he's making an argument that he can  
12 make in the brief, I get that, but you -- you can review it and  
13 determine whether you want to consider it or not. But we're  
14 doing trial briefs afterwards. It's in -- he can say, then  
15 don't consider Mr. Schnitzer's deposition for this reason.  
16 That's fine.

17           MR. HOLIDAY: Well, I think since it's so short and  
18 there's so little he wants going I'd rather just read the  
19 sections into the record because I do have very sincere  
20 objections to the relevance of it, and I'd like to argue that  
21 it's such a sincere conviction that I stayed up pretty late to  
22 file a brief on it, and so I'd like those objections relevance  
23 to be heard in full. I understand we have a witness on the  
24 stand so I would suggest that we agree that he can go through  
25 the process of reading those sections.

1 I know he showed me it was part of a page what he  
2 wanted to get in --

3 THE COURT: Can't you just give me the pages that you  
4 need. I can read them faster.

5 MR. SHEEHAN: Your Honor, it's -- it's -- do you want  
6 to take a break right now and we can --

7 MR. HOLIDAY: Well --

8 MR. SHEEHAN: It literally will take you five minutes  
9 to read it.

10 MR. HOLIDAY: No, wait a second. I'm -- what I want  
11 is the opportunity to fully argue the relevance and the ability  
12 to just opine on his reading of the contract as a nonexpert.  
13 We were limited to the four corners of our expert report and  
14 then he was not --

15 THE COURT: Well, hold on though. Is he testifying  
16 expert or just as the drafter of the contract?

17 MR. HOLIDAY: Well, the drafter's intent isn't  
18 technically relevant under the -- under the case law. And  
19 there's a point that I go into in my supplemental brief that I  
20 start off by saying, since when do we interpret a contract in  
21 favor of -- or an ambiguity in favor of the drafter. Because I  
22 think we all understand that there is a canon of instruction  
23 wherein we have always and it's, you can cite 50 different  
24 Nevada Supreme Court cases that mention it, you can interpret  
25 ambiguities against the drafter.

1           Now, I understand that that canon is usually  
2 applied -- oh, and the other thing is you try and enact things  
3 accordingly --

4           THE COURT: When the party's a drafter.

5           MR. HOLIDAY: What's that?

6           THE COURT: Only one of the parties is the drafter.

7           MR. HOLIDAY: Right. And the other one is we're  
8 trying to find the intent of the parties not the intent of the  
9 drafter. In other words the drafter is --

10          MR. SHEEHAN: Now, this is legal argument for  
11 afterwards again.

12          MR. HOLIDAY: Well, then I want to make these legal  
13 arguments, and I don't want to admit the entire thing and say  
14 figure it out yourself. I want --

15          MR. SHEEHAN: We agree that you are reserving your  
16 objection to this, and in the trial brief you can say the Court  
17 should not consider this Schnitzer deposition for these  
18 reasons.

19          MR. HOLIDAY: Well, look, how about we just continue  
20 with the questioning now and then after she has an opportunity  
21 to do what we can do to this issue more formally, I stayed up  
22 pretty late briefing this. I'm very sincere in this conviction  
23 that this is an important distinction, and I feel that my  
24 plaintiff, considering the huge problem that I have with the  
25 deposition which is that they didn't ask him about

1 Section 14.1 --

2 MR. SHEEHAN: Your Honor, what the former counsel did  
3 has nothing to do with -- just because he wasn't there for the  
4 deposition --

5 THE COURT: I understand that.

6 MR. SHEEHAN: His lawyer is the one that noticed the  
7 deposition and asked the questions, the plaintiff's lawyer.

8 THE COURT: They're just -- and that's the  
9 unfortunate part of taking over a case after it's been going  
10 on.

11 Okay. Let's just take a five-minute break so I can  
12 use the rest room and get a throat lozenge. Thank you.

13 I haven't made that decision yet.

14 MR. HOLIDAY: Thank you, Your Honor.

15 THE COURT: I just said that you can use the  
16 deposition in lieu of live testimony based on the ruling.

17 MR. HOLIDAY: Thank you, Your Honor.)

18 (Recess taken 11:07 a.m. to 11:17 a.m.)

19 MR. SHEEHAN: I just need to finish -- having warned  
20 these two reading the deposition -- but we can stipulate to her  
21 just reading the deposition?

22 MR. HOLIDAY: Is this for the record?

23 MR. SHEEHAN: See again the --

24 THE COURT: I'd rather just read it.

25 THE CLERK: Hold on.



1 MR. HOLIDAY: I'd rather just read the smallest part  
2 of it that he's trying to get in and the part that I  
3 received --

4 THE COURT: Well, I'd rather just read it myself.

5 THE CLERK: We're on the record now.

6 MR. SHEEHAN: The reason I bring that up, Your Honor,  
7 is because I have brought somebody from my office here to read  
8 the deposition. I asked Mr. Holiday if he would let somebody  
9 here read the deposition and he said no.

10 MR. HOLIDAY: Well, I think that the bailiff or  
11 anyone else could.

12 THE COURT: Why can't I just read it.

13 THE WITNESS: Yes.

14 MR. HOLIDAY: The whole thing?

15 THE COURT: Where are pages you want to -- me to read  
16 and I'll read those pages.

17 MR. SHEEHAN: It's 20 pages, the whole thing.

18 THE COURT: Okay. Because I'm going to have to go  
19 back -- there's so much stuff here I'm going to have to read  
20 anyways in this case. And I'll be -- I'll be honest with you  
21 I've got to go back and look at these text messages again, look  
22 at the operating agreement again.

23 MR. HOLIDAY: I understand, Your Honor. All right.  
24 Since we're doing closing briefs I'll reserve to argue the  
25 relevance in the closing brief, Your Honor.

1 THE COURT: Okay.

2 MR. SHEEHAN: So then can I excuse my witness to --  
3 you can just read the deposition yourself; correct?

4 THE COURT: I can read it myself.

5 MR. HOLIDAY: Okay.

6 MR. SHEEHAN: Okay.

7 THE COURT: Thank you.

8 MR. SHEEHAN: Thank you for coming over. You are  
9 welcome to stay if you like.

10 THE COURT: Now, I'm warning you as far as moving  
11 this along we've determined that my assistant is patient zero.  
12 She came in sick earlier this week. My son was sick yesterday.  
13 We're sick today so it's heading that way.

14 MR. SHEEHAN: I got -- I probably will finish up  
15 Ms. Haack this afternoon and then I've got, like, 15 minutes  
16 with these guys. So we'll be done by 2:00 o'clock.

17 THE COURT: Okay. We're just giving you fair  
18 warning.

19 MR. SHEEHAN: All right. No problem.

20 So, Your Honor, we were back on 169. I believe you  
21 even had it open there.

22 THE COURT: Uh-huh.

23 THE WITNESS: Of what. Did somebody take my book?

24 MR. SHEEHAN: Oh, shoot the --

25 THE COURT: Here you can use this one as long as we

1 get it back. And I have a lozenge in my mouth.

2 MR. SHEEHAN: No, no. You keep that one. This is  
3 your copy.

4 THE WITNESS: Did I move it on my pile? Did I carry  
5 it with me?

6 MR. HOLIDAY: Mr. Sheehan, the exhibits by the way  
7 weren't attached to any of the deposition transcripts. Is that  
8 just how you do it?

9 (Pause in the proceedings.)

10 BY MR. SHEEHAN:

11 Q Okay. So we're talking at the top of the page there,  
12 and my question --

13 A 169 --

14 Q Line 5.

15 A 169?

16 Q 169.

17 A Hang on a second. Okay.

18 Q Okay. And I said, all right. Then voting on 6.8, I  
19 think this is what you were referring to earlier. The last  
20 sentence says the unanimous vote of all the LLC interests shall  
21 be required to approve any action unless, it says, unless there  
22 is a greater or lesser vote is required pursuant to the  
23 agreement or the statute and correct, and you answered what?

24 A Correct.

25 Q Keep going.

1 A Oh. So if in this section it says --  
2 Q This is your testimony now; right?  
3 A Yes, well, yeah, I guess so.  
4 Q Okay. Okay. So the black is your testimony; right?  
5 A Yeah.  
6 Q Okay.  
7 A So if in a section it says this vote only requires  
8 two thirds like the capital costs, then so be it, but nothing  
9 else does.  
10 Q Okay. So you admitted in there that if a section  
11 says only two thirds then that's all that's required?  
12 A No, that is not my agreement at all.  
13 Q All right. Well, let's read it again.  
14 A It didn't specify without the majority.  
15 Q But, ma'am, did you say -- testify in your  
16 deposition --  
17 A Uh-huh.  
18 Q So if in this section it says this vote only requires  
19 two thirds like the capital costs then so be it?  
20 A Like the capital costs, then so be it.  
21 Q Okay.  
22 A Not blanket.  
23 Q All right.  
24 A Yes.  
25 Q And so then my next question was, so if a section

1 says only two thirds then only two thirds is needed?

2 A Yes, for your first question.

3 Q Yeah. And what did you answer?

4 A Yes. Uh-huh.

5 Q Okay.

6 A Yes.

7 Q And then I said under Section 6.11 which we've gone  
8 through throughout this thing, actually I -- my question is,  
9 under 6.11 actually if something can be done under this  
10 agreement and with only 66 percent of the vote, they actually  
11 don't even have to call a meeting; they can do it with written  
12 consent under 6.11; correct?

13 A I am not a lawyer.

14 MR. HOLIDAY: Objection. Is so far as it calls for a  
15 legal conclusion.

16 MR. SHEEHAN: Okay. No, what's your --

17 THE COURT: Overruled. But just answer, please,  
18 ma'am.

19 BY MR. SHEEHAN:

20 Q Okay. What was your answer --

21 A It says, let's see.

22 Q Okay. And then what's your answer underneath that,  
23 underneath the A?

24 A Mr. Simpson objects to the legal conclusion, and I --  
25 oh, I see. If the action for the meeting is signed by the

1 members holding the LLC interest representing the aggregate  
2 number of voices equal to or greater than the minimum number of  
3 votes they are required, yes.

4 Q Okay. Now, did you say at the Balboa meeting that  
5 you wanted to retire from running the company, doing your one  
6 third share of the work and wanted to retire?

7 A No, I did not say I wanted to retire from doing one  
8 third of the work. I never said that.

9 Q And did you say -- okay. Did you say you wanted to  
10 retire from the running of the company?

11 A From running all the management, yes, by myself, yes.

12 Q Okay. That was at the Balboa meeting in January;  
13 correct?

14 A I don't remember where it was, Mr. Sheehan. It was  
15 one of many suggestions.

16 Q Did you want to retire from running the company so  
17 that you could sell real estate?

18 A I wanted to lessen my work so I had more time to sell  
19 real estate like Roger and Sean do.

20 Q Okay. So the answer is yes?

21 A The answer is exactly what I said.

22 Q Well, for example, you didn't want to do the books  
23 and records anymore; right?

24 A I didn't want to do all the books and records by  
25 myself. I wanted some help.

1 Q All right. Let's turn to your deposition page 177,  
2 please. Do you see where it says there ques -- on line 13 --

3 A 13. Uh-huh. Yes.

4 Q I wanted to retire from running the office so I could  
5 sell real estate and make a lot of money.

6 A Yes. That's what it says.

7 Q And that was you -- what you told them at the Balboa  
8 meeting; right?

9 A I don't remember that it was at the Balboa meeting.

10 Q Okay. Then let's turn to page 178, please.

11 A I meant -- okay.

12 Q And my question to you is, Ms. Haack, my question is,  
13 during the Balboa Park meeting you did use the word retirement  
14 to my clients, and what was your answer?

15 A Retire from running the company, but it wasn't  
16 everything. I'm not surrendering my life there, Mr. Sheehan.

17 Q But you -- the testimony --

18 A It was a part of the discussion, yes.

19 Q Ma'am, ma'am, the question is, I wrote to you because  
20 you just -- every time I say something you try to come up with  
21 something, and just a few minutes ago you said you didn't know  
22 whether you said it at the Balboa meeting.

23 A Okay. So you corrected me.

24 Q Now -- okay. So my question was, Ms. Haack, my  
25 question is during the Balboa Park meeting, and that happened

1 January 31st; correct?

2 A I don't remember.

3 Q Okay. Would you take my word for that it happened  
4 January 31st?

5 MR. HOLIDAY: Objection. Asked and answered. She  
6 doesn't remember.

7 THE COURT: Overruled.

8 MR. HOLIDAY: Okay.

9 BY MR. SHEEHAN:

10 Q Do you have any reason to disagree that the meeting  
11 was on January 31st?

12 A No.

13 Q Okay. So my question is, Ms. Haack, my question is  
14 during the Balboa Park meeting you did use the word retirement  
15 to my clients, and your answer was, retire from running the  
16 company, yes. Do you see that?

17 A As a suggestion, yes.

18 Q That's what you said?

19 A As a suggestion, yes.

20 Q And that is why my clients put in all those text  
21 messages, at the meeting you said you wanted to retire; do you  
22 understand that?

23 MR. HOLIDAY: Objection. Calls for speculation.

24 THE COURT: Overruled.

25 THE WITNESS: For seven days that's what they heard



1 because they misunderstood it, and they didn't ask me, yes.

2 BY MR. SHEEHAN:

3 Q How did they "misunderstood" your statement, I want  
4 to retire from the company -- from running the company?

5 A I have no answer for that.

6 Q Okay. All right. The work that you were doing at  
7 NRS, what was the value of that work, or how much would be a  
8 reasonable salary to pay you for the work that you were doing  
9 at NRS if the company had money and could pay?

10 A I probably would have been happy with 2,000 a month.

11 Q Okay. Can you turn to page 209 of your deposition.  
12 And actually we've got to start over at 208. And on my  
13 question on line 18 on 208 was, Okay. So let me understand  
14 your testimony. Your testimony is, when you went and asked  
15 managing brokers how much they would pay somebody that did the  
16 equivalent work that you did, they told you it would be a lot  
17 of money; do you see that?

18 A I -- yes, I see your question.

19 Q And you said I got numbers, yeah; do you see that?

20 A Yeah, I got that -- I see that.

21 Q All right. And then -- and then we go down a little  
22 bit and I said, and did they -- line 10, And did they tell you  
23 an amount that was; do you see that?

24 A And did they -- I, I don't know who they is; sorry.

25 Q "They" is the other -- the brokers that you asked --

1 let me --

2 A Oh, yes, I see what you're saying.

3 Q Okay. So you asked brokers around town how much  
4 would be the reasonable equivalent for that -- for -- to pay  
5 you for the work that you did?

6 A I did not ask that question. I asked if they paid a  
7 person to do those things in their office, what those people  
8 were making, and I had answers up to a hundred thousand.

9 Q Okay. Ms. Haack, I don't understand -- oh, well, I  
10 don't want to [indiscernible].

11 You didn't answer the question up to a hundred  
12 thousand, you answered the question over a hundred thousand;  
13 didn't you?

14 A To do my work that I was doing as an owner, as a  
15 broker and all the management, all the bookkeeping, all the  
16 accounting, that is not an unusual number. I never said that's  
17 what they should give me.

18 Q Okay. But you did say you did go talk to brokers  
19 around town --

20 A Yes. Uh-huh.

21 Q -- find out what would be the value. You met with  
22 the agents every day that were lined at the door; remember  
23 that?

24 A Yes.

25 Q You -- you told the other brokers, hey, I'm doing

1 this, I'm doing that, I'm doing this, whatever you did, and  
2 they said to you over a hundred thousand; correct?

3 A I never told them the broker side; I just did the job  
4 responsibilities.

5 Q Okay. All right. All right. So whatever job  
6 responsibilities you had --

7 A Uh-huh.

8 Q -- you found out what was the value of that, and the  
9 answer was over a hundred thousand dollars --

10 A Uh-huh.

11 Q A year?

12 A Yes.

13 Q Okay. And then how much -- and then you -- did you  
14 ask, do you have any idea how much a managing broker gets paid?

15 A A managing broker would do all those things.

16 Q Okay. And how much would a managing broker get?

17 A Mr. Sheehan, I don't know those numbers. All I know  
18 is that from the experience of the people who were in those  
19 positions with experience, maybe a real estate license, you  
20 know, those jobs are very, very broad. So in most cases a  
21 managing broker who would do all the accounting and  
22 responsibilities would be at the hundred thousand dollar mark.

23 Q Okay. Actually, in your deposition you said that  
24 they told you the broker's number was \$250,000.

25 A Well, if it was me it would be because I'm a very

1 valuable person. And that's what I think I said, didn't I?  
2 Where is it?

3 Q No. But it's all right.

4 A Oh, okay.

5 Q All right.

6 A And then that would be in a big company.

7 Q Okay. All right. So when you were the managing  
8 broker of NRS Realty Group and assuming that the company was  
9 making money so there was enough money to pay, how much would  
10 you have been entitled to?

11 A Oh, whatever we could afford.

12 Q But can you turn --

13 A I would be in a smaller company so I sure wouldn't  
14 get \$250,000.

15 Q Okay. I'm talking about NRS.

16 A I have no idea. I guess at that time -- oh, let's  
17 find it.

18 Q All right. Page 211.

19 A 211. Okay.

20 Q Line 15. Do you see that?

21 A So when you were the -- okay.

22 Q Okay. So when you were the managing broker of  
23 NRS Realty Group and assuming that the company was making money  
24 so there was enough money to pay; do you see where you say  
25 uh-huh?

1           A     Uh-huh.  Yes, I do, I see your number.  I see where  
2     you're going.

3           Q     In 2012.  Okay.  Uh-huh.  How much would you have  
4     been entitled to; and what was your answer?

5           A     It says a hundred thousand.

6           Q     Once again, Ms. Haack, you can't really answer the  
7     question honestly; can you?

8           A     Oh, I'm sorry.  What did you want me to say?  I'm  
9     sorry.

10          Q     What does it really say there?

11          A     It says over a hundred thousand.

12          Q     All right.

13          A     But I didn't get anything.

14          Q     All right.  Ms. Haack, after my clients changed their  
15     minds and said we're not going to dissolve the company, you  
16     didn't want to work with them anymore; correct?

17          A     That is very ambiguous.

18                THE COURT:  Well, then ask him to restate so you can  
19     understand it.

20                THE WITNESS:  Yes, can you please rephrase that.

21     BY MR. SHEEHAN:

22          Q     Well, I -- I asked the question exactly as I asked it  
23     in the deposition.

24          A     Okay.  So in November after I learned --

25          Q     No, no, no.

1           A     Was it after I learned, I'm sorry. Say it again.

2           Q     No. When they changed -- my clients changed their  
3 minds and said, we're not going to dissolve the company, you  
4 didn't want to work with them anymore; correct?

5           A     In November, no.

6           Q     No, in April, in March.

7           A     Could you show me where the question is, please, so I  
8 can read it.

9           Q     Sure. Page 221, line 4.

10          A     When they changed their minds, hmmm. It says, we're  
11 not going to dissolve the company you didn't want -- they never  
12 told me. How could I, they ripped my heart out.

13          Q     Ma'am, the question is -- okay. My question is --

14          A     I said, how could I, they ripped my heart out.

15          Q     Okay. Now, let me ask you this. Do you think the  
16 business lost valuable agents as a result of the dispute  
17 between the two of you?

18          A     Yes, if they didn't want to be there without me,  
19 sure.

20          Q     Okay. And if for the Court for some reason rules  
21 that you were the cause of this dispute and these agents left  
22 because of you, then you should be responsible for reimbursing  
23 NRS for any monies that were lost as a result of those agents;  
24 correct?

25          A     No. Are you -- those agents could go anywhere any

1 time they want.

2 Q But they would not have left, but for the dispute  
3 your own two witnesses said that.

4 A No, they would not leave if I was there.

5 Q Okay.

6 A So I should be there. I have a letter from March  
7 10th.

8 Q Would you agree that, but for this dispute over the  
9 expansion you guys would probably still be working together?

10 A Oh, I would've loved it, yes.

11 Q Pardon me?

12 A I would have loved it, yes.

13 Q Okay. But because of the dispute over the expansion,  
14 a bunch of agents have left, or some of the agents left, you  
15 left; correct?

16 A I was kicked out. I never left.

17 Q All right. All right. Now, since this dispute over  
18 the expansion took place, you have done everything to prevent  
19 NRS from being successful because you wanted a pound of flesh;  
20 correct?

21 A That was a statement in anger. That's what it says,  
22 but I never tried to stop NRS. That's my company too.

23 Q Okay. But that is exactly what you testified to in  
24 November; correct?

25 A That was your words, and I said yes. I have never

1 used that term before in my life.

2 Q In fact, the question was.

3 Don't you agree that as much of the  
4 business should be kept intact as possible.

5 And you said, No, I don't care. I could  
6 care less. At first I did and then they just  
7 kept digging.

8 So now you'd rather just have a pound of  
9 flesh than the money?

10 And you said, I could care less.

11 The answer to my question is, yes?

12 And you said, Yes; correct?

13 A I don't know where you are, but I do remember the  
14 conversation, and I was so hurt and humiliated that that was a  
15 definite hardship I was feeling.

16 Q Okay. And you have badmouthed my clients around  
17 town; haven't you?

18 A No, I haven't. He's hiring armed guards.

19 Q Do you understand why somebody would have to do that  
20 when you have this attitude?

21 A You're kidding me. I could never answer a question  
22 like that. I'm a very nice person.

23 Q You would agree though at the Balboa you said, Okay.  
24 I don't want to be part of the expansion because you were  
25 unhappy at that time; correct?



1           A     It was a suggestion to meet the needs of the  
2 landlord.

3           Q     Okay. It was because of the stress, wasn't it?

4           A     I -- as a -- because of the stress that I came up  
5 with that idea. What can we do to meet the needs of the  
6 landlord so that I can stop worrying; let's let Mr. Evenden and  
7 Roger put the plans together and go forward, and I'll run NRS.

8           Q     All right. Can you see -- turn to your deposition  
9 page 261, please.

10          A     Okay.

11          Q     Line 9. My question was, okay. When the Balboa  
12 conversation happened, that's when you said, okay. I don't  
13 want to be part of the expansion space. Your answer was A,  
14 yeah. I was very unhappy, and I did not want to be after all  
15 that stress; do you see that?

16          A     I do see that.

17          Q     Okay.

18          A     That's you're interpreting that.

19          Q     And that followed up those heart things and so on and  
20 so forth. The health issue; right?

21          A     I never had a heart issue in 2017.

22          Q     All right. Now, after the meeting where they said  
23 we're not going to dissolve NRS, we're going to keep NRS going,  
24 Crystal called you and told you that; correct?

25          A     Never did I know that they weren't dissolving the

1 information. And if Crystal called me, I probably was so  
2 shocked I wouldn't even remember. I think somebody did, it  
3 might have been Jeff that called and said they're changing  
4 their mind. But they didn't tell me they weren't dissolving.

5 Q Okay.

6 A He called me on, I think, March or somebody did. I  
7 don't remember.

8 Q Can you turn to your deposition page 275. And I  
9 asked you the question on line 19. Do you remember talking to  
10 Crystal and Crystal saying they're not closing NRS. They're  
11 not dissolving it. All the licenses are staying.

12 A Well, Crystal's not in here. I'm sorry.

13 Q And your answer was?

14 A I don't remember who told me. Somebody told me that,  
15 but I can't -- I don't remember if it was Crystal because I  
16 don't know if Crystal told me. Yeah, I don't remember.

17 Q Okay. So you do admit that somebody told you that?

18 A No. I admit that I did say that on this day.

19 MR. HOLIDAY: Objection. Calls for a hearsay  
20 statement.

21 THE COURT: Hold on --

22 THE WITNESS: But I don't know who it was, and I  
23 don't know what they told me.

24 BY MR. SHEEHAN:

25 Q Okay. Well, let me -- let me repeat --

1 MR. HOLIDAY: Can I direct her to take a breath  
2 before she answers, Your Honor.

3 THE COURT: I'm sorry?

4 MR. HOLIDAY: Could you direct the witness to take a  
5 breath before she answers. I'm not able to get a hearsay  
6 objection out in time.

7 THE COURT: Yeah, so what happens when they ask you a  
8 question you can hear your client -- your counsel wanting to  
9 object --

10 THE WITNESS: Yes.

11 THE COURT: -- give him a chance, because I couldn't  
12 even rule on the objection before your answer. Okay.

13 BY MR. SHEEHAN:

14 Q Okay. On line 19, I asked you, Do you remember  
15 talking to Crystal and Crystal saying, so I told you exactly  
16 what Crystal told you. Okay?

17 A Uh-huh.

18 Q They're not closing NRS. They're not dissolving it.  
19 All the licenses are staying. And you said, I don't remember  
20 who told me. Somebody told me that. Do you see that?

21 MR. HOLIDAY: Objection again. It's hearsay. It's  
22 not a party opponent.

23 MR. SHEEHAN: It's a conversation that she was part  
24 of.

25 THE COURT: Just ask the question.

1 MR. SHEEHAN: Okay.

2 THE WITNESS: How would you know if I had a  
3 conversation with Crystal?

4 BY MR. SHEEHAN:

5 Q Because you told me it. I asked you the question,  
6 did you -- I asked you the question, I'm sorry. I asked you  
7 the question, Do you remember talking to Crystal and Crystal  
8 saying they're not closing NRS. They're not dissolving it, all  
9 the licenses are staying. And you said, I don't remember who  
10 told me. Somebody told me that. So somebody told you that;  
11 right?

12 A I didn't answer to all of those things. I'm in  
13 November.

14 Q All right.

15 A My whole life is upside down. I don't remember.

16 THE COURT: Then just answer the question, please.

17 THE WITNESS: I don't know how to -- okay. I don't  
18 remember that conversation.

19 MR. SHEEHAN: No further questions, Your Honor.

20 THE COURT: All right. Thank you. Any questions of  
21 Ms. Haack?

22 MR. HOLIDAY: Yes, there is. A couple of things.

23 REDIRECT EXAMINATION

24 BY MR. HOLIDAY:

25 Q All right. Ms. Haack, are there any exhibits

1 attached to the back of your deposition?

2 A No.

3 Q Not in my binder either.

4 THE CLERK: Do you want these or, I'm sorry. Do  
5 these look like they might be the exhibits?

6 MR. SHEEHAN: It's possible. I really don't know  
7 that.

8 MR. HOLIDAY: It doesn't look like it's --

9 THE CLERK: I have no idea what these are.

10 MR. HOLIDAY: It's all right. I think the one that  
11 concerns me is in her binder as well. [indiscernible]. I  
12 don't know if these were -- if the published version -- was it  
13 in the bag?

14 MR. SHEEHAN: I don't know. She opened the  
15 original --

16 THE CLERK: I did not open it. It was published  
17 yesterday.

18 THE COURT: I think that's on the side of the bar.

19 MR. SHEEHAN: Oh, yeah, that's right. Yeah.

20 THE COURT: [Indiscernible] it was only able to be  
21 the transcript.

22 THE CLERK: Yeah.

23 MR. HOLIDAY: Okay.

24 THE CLERK: But I don't know what that stack of  
25 exhibits are so that's why I was thinking that might be it.

1 MR. SHEEHAN: That very well could be, Kathy. I  
2 don't -- I just hate to make the representation --

3 THE COURT: Oh, you know maybe [indiscernible].

4 MR. SHEEHAN: I guess Mr. Holiday you don't need it;  
5 correct?

6 MR. HOLIDAY: I don't know. It just looks like the  
7 exhibits might not have been attached. I'm not sure, but I'll  
8 just talk about the exhibit that's represented here through her  
9 binder for now.

10 THE COURT: Okay.

11 MR. HOLIDAY: All right.

12 Q Okay. So, Nancy, can you go to Exhibit 4 AA in your  
13 binder.

14 MR. HOLIDAY: And if you can go through your own  
15 records and what I say which exhibit is [indiscernible].

16 MR. SHEEHAN: Fine.

17 MR. HOLIDAY: Okay.

18 MR. SHEEHAN: Hang on so I can get to 4 AA.

19 Your Honor, this again is the settlement proposal by  
20 one lawyer to the other lawyer that I've objected to  
21 throughout.

22 MR. HOLIDAY: Right. In fact, I think Mr. Taylor  
23 since then objected to it in the deposition as well. But --

24 MR. SHEEHAN: Meaning --

25 THE COURT: What's the purpose of introducing it?

1           MR. HOLIDAY: So in the deposition we need to explain  
2 some of the things she was saying, and so Mr. Simpson I'm going  
3 to state an objection to this email in that it contains  
4 settlement information da, da, da. All right. So,  
5 Mr. Sheehan, okay, well go ahead and read it real quick to  
6 yourself. Yes, it's fair to say that you did not believe da,  
7 da, da.

8           So anyway, this review of this email preceded a lot  
9 of this testimony. So in other words they're testifying  
10 about -- asking -- so where I'm going with this is we did the  
11 ruling --

12           MR. SHEEHAN: This isn't the exhibit either by the  
13 way.

14           MR. HOLIDAY: It's not the exhibit?

15           MR. SHEEHAN: No.

16           MR. HOLIDAY: Well, then I don't have any attached to  
17 the deposition so.

18           MR. SHEEHAN: Give me a second. I believe those are  
19 the --

20           Was it Exhibit 1?

21           MR. HOLIDAY: Okay.

22           MR. SHEEHAN: The part in the deposition does it  
23 refer to Exhibit 1?

24           MR. HOLIDAY: Yeah, that one does.

25           MR. SHEEHAN: So that's it right there.

1 MR. HOLIDAY: Okay. All right.

2 MR. SHEEHAN: So we don't get these lost can we put  
3 it back with the original.

4 THE COURT: Oh, sure.

5 THE CLERK: Just put it right there on the counter  
6 waiting for your disposal.

7 MR. SHEEHAN: And you were right.

8 THE COURT: Okay.

9 MR. HOLIDAY: All right. Right. So essentially we  
10 just -- all right.

11 BY MR. HOLIDAY:

12 Q You reviewed -- in this deposition before you gave  
13 your testimony, you were reviewing emails between attorneys  
14 that Mr. Taylor said he objected to because they were talking  
15 about the settlement information; is that right?

16 MR. SHEEHAN: Objection.

17 THE WITNESS: I do remember Mr. Simpson objecting --

18 THE COURT: What's the objection?

19 MR. SHEEHAN: Mischaracterizes what happened.

20 MR. HOLIDAY: Okay.

21 THE COURT: I mean, I don't know if it streamlines  
22 anything for you guys, but I will read everything.

23 MR. HOLIDAY: All right. No, and I understand.  
24 Reading the transcript it's not clear from --

25 THE COURT: I'll read whatever's admitted evidence.



1 I will go through and look at it.

2 MR. HOLIDAY: No, and I understand. All right. Can  
3 you look at Exhibit 4 AA, okay.

4 MR. SHEEHAN: Same objection, Your Honor.

5 THE COURT: The settlement, I don't know why we're  
6 using it, but, okay.

7 BY MR. HOLIDAY:

8 Q All right. So these are two proposals that you were  
9 making to settle the dispute at that time; correct?

10 A Correct.

11 Q Okay. Now, these proposals have a lot of different  
12 terms; is that right?

13 A Yes.

14 Q Okay. And in this you talk about making an agreement  
15 for them to go to the other office at the new company and be  
16 separate from NRS, but that's not -- and we'll agree that's a  
17 term; right?

18 A That's a term, yes.

19 Q Okay. Now, there were other terms; right?

20 A Yes.

21 Q Okay. What were some of those key terms?

22 A So on my side -- can I get clarification on that?  
23 From my offer or from the other side?

24 Q Yeah, let's -- we're talking about your offer right  
25 now.

1           A     Well, first of all because they were proposing to  
2 dissolve NRS, the first proposal was to dissolve it as they  
3 requested, and then I would be the person in charge since they  
4 were causing the dissolution.

5                     The second one was be -- to make me broker of NRS so  
6 they could do all the things we've been talking about with  
7 their own money, use their own -- and then turn the company  
8 over in 2019. And that was a little bit better than my  
9 original proposal.

10          Q     Right. And it's fair to say that that original  
11 proposal at that point had been withdrawn?

12          A     Yes.

13          Q     I hear in a lot of these questions, we keep talking  
14 about you agreed, you agreed, you agreed; right?

15          A     Uh-huh.

16          Q     Now, is there a difference between when you agree to  
17 an entire contract or to -- when you agree to a term of that  
18 contract?

19          A     It's a whole difference.

20          Q     Right.

21          A     Never agreed to items.

22          Q     Right. So whenever they keep asking you if you agree  
23 to a term and you have to say, yes, that doesn't mean you  
24 agreed to a contract; correct?

25          A     Correct.

1           Q     Right. Did you ever, ever, ever agree to have --  
2 well, to sign if your husband had to sign a guarantee on the  
3 lease?

4           A     No, never did.

5           Q     Did you ever or did he ever, ever agree to that term?

6           A     For this extension --

7           Q     For the extension.

8           A     Neither one of us did.

9           Q     For the extension, exactly.

10          A     Because he couldn't so I couldn't.

11          Q     Okay. Now, right in the operating agreement, right,  
12 there's a bunch of different sections?

13          A     Yes.

14          Q     All right. Each one of those sections is a different  
15 promise; right?

16          A     Correct. Yes.

17          Q     Okay. Now, if you go to Article XIV in the operating  
18 agreement -- okay.

19          A     Yes.

20          Q     All right. All right. Do you see anywhere in that  
21 article where it says severability?

22               MR. SHEEHAN: Your Honor, this is way outside the  
23 cross-examination.

24               MR. HOLIDAY: Well, he was claiming they reached this  
25 agreement.

1 MR. SHEEHAN: I never talked about 14.1 at all.

2 MR. HOLIDAY: Well -- all right. You know, we're  
3 talking about the intent, the interpretation of the operating  
4 agreement, you know, every one of my objections gets overruled.  
5 I have a -- somewhere I'm going.

6 THE COURT: Just answer the question.

7 MR. HOLIDAY: All right.

8 THE WITNESS: 14.4 says severability, yes.

9 BY MR. HOLIDAY:

10 Q Okay. And then 14.1 does that look like it's -- it's  
11 what we were calling integration clause, about it being an  
12 entire agreement.

13 A This entire agreement, yes. That's in 14.1.

14 Q That's interesting. So there's a severability clause  
15 if anything's not enforceable and an integration clause; is  
16 that right?

17 A Correct.

18 Q Okay. And in that integration clause can you -- can  
19 you review that and let me know if you can orally waive or  
20 modify anything.

21 A Should I read it out loud?

22 Q Yes.

23 A Okay.

24 Q Anything in the agreement.

25 A Entire agreement, slash, modification.

1                   This agreement contains the entire  
2                   understanding of the parties with respect to  
3                   the subject matter of the agreement, and it  
4                   supersedes all prior understandings and  
5                   agreements whether written or oral in all  
6                   prior dealings of the parties with respect to  
7                   the subject matter hereof.

8                   This agreement in full or in part cannot  
9                   be changed, modified, extended or discharged  
10                  orally and no waiver of compliance with any  
11                  provision or condition hereof and no consent  
12                  provided for herein shall be effective unless  
13                  evidenced by an instrument in writing, duly  
14                  executed by the party against whose  
15                  enforcement of any waiver, change,  
16                  modification, extension or discharge is  
17                  sought.

18                  There's one more sentence. Did you want me to read  
19                  it?

20                  Q     If you'd like.

21                  A     Further and no consent of waiver express or implied  
22                  to or of any breach or default shall constitute a consent or  
23                  waiver to or of any other breach.

24                  Q     Okay. Can you go to Section 10.5 because there was a  
25                  lot of questions about salaries.

1 A Indemnification 10.5?

2 Q Or no -- well, yeah, let's go to --

3 A 2.6?

4 Q No, let's do 10.5 first, just get it out of the way.

5 A Okay.

6 Q Since I already sent everyone there. All right.

7 Now, is that the clause that says they can't -- if  
8 you're a party to a lawsuit you can't vote to indemnify  
9 yourself?

10 A Yes.

11 MR. SHEEHAN: Again, Your Honor, way outside.

12 THE COURT: It is.

13 MR. HOLIDAY: Okay.

14 BY MR. HOLIDAY:

15 Q The operating agreement said you couldn't -- that you  
16 weren't taking salaries; is that right?

17 A I'm sorry, say that again.

18 Q Okay. I think we've covered that in direct. I don't  
19 need to go back to it.

20 During the deposition, by the way, how were you  
21 feeling?

22 A Oh, my gosh. I was devastated. I don't think -- I  
23 just feel -- it's really hard to talk about without --

24 Q All right. Before the March 10th letter did you  
25 consider Sean Evenden and Roger Ayala your best friends?

1 A No.

2 Q Before the -- this happened?

3 A Oh, before this happened, yeah, we were together  
4 every day.

5 Q Right. So it was very, very emotionally affecting to  
6 you that your best friends did this to you; correct?

7 A Yes.

8 Q And would you characterize it as you were emotionally  
9 traumatized by what happened to you and still am emotionally  
10 traumatized when this happened?

11 A Oh, yes. I don't remember a whole lot of the first  
12 year.

13 Q Right. There's -- there's something that doesn't  
14 come across in the transcript, and I want to ask you about it.  
15 Were you sobbing uncontrollably for most of this?

16 A Yes, I was.

17 Q All right.

18 MR. SHEEHAN: Objection.

19 BY MR. HOLIDAY:

20 Q And you believe that that affected --

21 THE COURT: I'm not sure of the relevance, but, oh  
22 you're --

23 BY MR. HOLIDAY:

24 Q Did that affect your testimony in that deposition?

25 A Yes. I was anxious to get done, and I didn't want to

1 sit across the room from them, and I just felt really  
2 uncomfortable.

3 Q Right.

4 A It was seven hours.

5 Q I understand. And, you know, he's talked about how  
6 when you were closer to the incident happening your memory was  
7 better. Do you believe that you were -- still more emotionally  
8 affected closer to the incident as well?

9 A Absolutely. I had no idea what was going on.

10 Q Okay.

11 BY MR. HOLIDAY:

12 Q All right. There were a lot of questions do you  
13 remember in regard to examination about generally relating to  
14 how you wouldn't sign an extension of the lease that was sent  
15 to you; right?

16 A Yes.

17 Q All right. And your lawyer replied that you wouldn't  
18 agree to an extension under those conditions; is that right?

19 A Yes.

20 Q Okay. Was there -- and you remember they were asking  
21 you, can you have an office open as a real estate -- or can you  
22 be a real estate broker without an office; do you remember when  
23 they asked you that?

24 A Yes, I do remember when they asked me that.

25 Q Okay. NRS had two offices; right?



1           A     Yes.

2           Q     All right.  Where's the other office?

3           A     In Chinatown.

4           Q     Okay.

5           A     5300 West Fremont.

6           Q     All right.  Now, aside from the ultimatum that they

7 sent you to sign that lease or not, did they make any other

8 good-faith attempts to negotiate another lease anywhere else?

9           A     Not to my knowledge.

10          Q     Okay.  So you have no reason to believe that there

11 were any good-faith attempts beyond that ultimatum letter to

12 keep NRS open; is that right?

13          A     Correct.

14          Q     Okay.  All right.  And then we talked so much about

15 fairness in your direct examination, I'm just going to talk

16 about it for maybe, you know, two to five minutes max.  How old

17 are Roger and Sean?

18          A     I'm going to guess because it's been a while.  I'm

19 thinking Sean's getting close to his 49th birthday.

20          Q     Okay.

21          A     And Roger is probably 43 or 44 maybe.  He has a

22 birthday this week.

23               MR. HOLIDAY:  Oh.  Well, happy birthday.

24               MR. AYALA:  Thank you.

25   / / /

1 BY MR. HOLIDAY:

2 Q And how old are you?

3 A I am 69.

4 Q Okay.

5 A I'm sorry, 68. What am I saying. I'm 68.

6 Q All right. And you were asked -- now, in regards to  
7 that, in the -- in the membership chapter of the operating  
8 agreement if you -- if you can't remember, you know, we can go  
9 and read it into the record, but when you die, does someone  
10 inherit the position as the member?

11 A Not according to the operating agreement.

12 Q Right. Okay. So in other words, when you die fair  
13 and total control of NRS; is that right?

14 A That's correct.

15 Q Interesting. All right. And there were a lot of  
16 questions to you about whether or not the company was  
17 profitable; right?

18 A Correct.

19 Q Right. And Mr. Sheehan asked you about how the  
20 company was never profitable up until 2016; is that right?

21 A Correct.

22 Q All right. So there were always losses; correct?

23 A Correct.

24 Q Okay. Are you familiar with the -- the business term  
25 of art profitable -- profitless prosperity?

1           A     I'm sure I've talked about it, but I don't think I  
2 understand it totally.

3           Q     Okay.

4           A     Being successful versus financially?

5           Q     Right. In other words, you know, Amazon has never  
6 made a profit.

7           A     Correct.

8           Q     All right. But I think we can argue that it's still  
9 prosperous and growing and Jeff Bezos, is the richest man on  
10 earth; right?

11          A     Yes.

12          Q     Okay. That's what I'm talking about with profitless  
13 prosperity. So they said it never made a profit; correct?

14          A     Yes.

15          Q     All right. And all those years was the money that  
16 you made put back into the business?

17          A     Money that --

18          Q     Through construction projects and marketing --

19          A     Oh, the company?

20          Q     Yes.

21          A     Yes.

22          Q     Building the brand name, all that?

23          A     Yes. Yes.

24          Q     Okay. So it was prosperous, but is it fair to say  
25 that the profits were being reinvested into the value of the

1 business?

2 A Yes.

3 Q That same business that your heirs will not inherit?

4 A Yes.

5 Q All right. And you did at one point have a heart  
6 attack?

7 A Yes, I had a major heart attack.

8 Q All right. And they talked about how this wasn't  
9 fair, that wasn't fair. Is it fair for you to work till you're  
10 free -- for free till you die so that they can inherit all --

11 MR. SHEEHAN: Your Honor, way off outside.

12 THE COURT: It is way outside.

13 MR. HOLIDAY: Okay. All right.

14 BY MR. HOLIDAY:

15 Q So you thought it was fair for you to demand  
16 distribution profits?

17 A Yes.

18 Q Okay.

19 A That was always my expectation.

20 Q Right. And there was a whole line of questioning  
21 about how, you know, is it fair for you to have an ownership  
22 interest and receive a third of the profits and not be liable,  
23 personally liable on the debt?

24 A Explain.

25 Q Do you remember that line of questioning?

1           A     Yes.

2           Q     Right. Referring to Mr. Ayala's angry text messages  
3 about why he thought it wasn't fair. All right. You've had  
4 businesses before; correct?

5           A     Yes.

6           Q     All right. Are you familiar with the basic structure  
7 of a limited liability entity and what it's for?

8           A     Yes.

9           Q     All right. And is it fair to say that the purpose of  
10 a limited liability entity is to have ownership and to be  
11 entitled to the profits and to not be personally liable on the  
12 debts?

13          A     Yes.

14               THE COURT: Hold on. You all are --

15               MR. HOLIDAY: Okay.

16               THE COURT: So she's already testified that --

17               MR. HOLIDAY: All right. I just wanted to clarify.

18               THE COURT: -- she did not think it's fair to get the  
19 profits in the company if she did not have to take any  
20 liability. I mean, it's separate from how it's -- a  
21 Subchapter S corporation works for purposes of --

22               MR. HOLIDAY: No, I understand all these objections,  
23 Your Honor, I made them.

24               THE COURT: The issue was the guarantee for her  
25 husband, and she was questioned at length about that.

1 MR. HOLIDAY: All right. And I understand, I was  
2 just going through. I had the same objections to the line of  
3 questions about fairness. So I'll stop and move on.

4 THE COURT: Okay. They were allowed to get into it  
5 simply because Ms. Haack testified about what was fair and what  
6 wasn't fair.

7 MR. HOLIDAY: And then she just --

8 THE COURT: As far as motivating factors of why  
9 everyone did what they did.

10 MR. HOLIDAY: And I'm limited to the scope of the  
11 re -- or, excuse me to the cross?

12 THE COURT: Cross, yeah.

13 MR. HOLIDAY: Yeah. Okay.

14 THE COURT: Or you're on redirect.

15 MR. HOLIDAY: Or -- well, excuse me, yeah, with some  
16 limited to that scope, I agree. Okay.

17 BY MR. HOLIDAY:

18 Q All right. There were a lot of -- there was a lot of  
19 questioning about whether or not you either ordered them to,  
20 which I don't think is really what we're talking about here,  
21 but they're saying that you granted them permission to do what  
22 they did. All right. First of all, did you grant them  
23 permission to do what they ended up doing?

24 A No.

25 Q Okay. Fair.

1 THE COURT: Wait. There's been so much -- you need  
2 to be clear.

3 MR. HOLIDAY: Don't worry. I'll make them more  
4 clear. That's a little bit vague.

5 THE COURT: It's do what she did as far as expansion  
6 across the hallway, and you've testified that you were fine  
7 with them extending across the hallway so long as you did not  
8 have -- you or your husband did not have any liability.

9 THE WITNESS: No. I want to clarify that. So I  
10 would do it if my husband didn't have to. I couldn't do it if  
11 he -- if they wouldn't waive him.

12 THE COURT: You're right. You did say it like that.  
13 That's correct.

14 BY MR. HOLIDAY:

15 Q All right. Now, if you give someone -- well, let me  
16 put it this way. Did you grant them an irrevocable right to do  
17 that?

18 A No, I never granted them any right.

19 Q Okay. But are any -- but none of the things that  
20 they ever cited to that you said indicated that you granted an  
21 irrevocable --

22 A Correct.

23 Q -- permission; correct?

24 A They couldn't do some; they had to do all.

25 Q All right. And do you understand why they're saying

1 that you couldn't revoke -- flip a text message?

2 A No, I'm sorry. I do not understand --

3 Q Okay.

4 A -- how I could do that or why they wouldn't let me do  
5 that.

6 Q Exactly. Right. Because if you give someone  
7 permission to use your pool whenever, it's okay for them to do  
8 that; right?

9 A Correct.

10 Q Okay. But if you say I don't want you using my pool  
11 anymore, that's your right; right?

12 A Correct.

13 THE COURT: I think we're moving so far astray of the  
14 issue.

15 MR. HOLIDAY: Okay. Well, we --

16 THE COURT: I don't think there's been any dispute  
17 throughout this whole thing that there was an expansion across  
18 the hall, she was agreeable. There was discussion about the  
19 draft lease, she was agreeable with it because it had nothing  
20 to do with personal guarantees by the spouse, and there was a  
21 subsequent lease which did have personal guarantees required by  
22 the spouses. She was not agreeable to that aspect of it. She  
23 asked them or she asked the landlord to make that change and  
24 then by way of the defendants, and she's testified more than a  
25 few times -- I misspoke, I said it improperly that she would



1 have been agreeable to the expansion had her husband not been  
2 required to sign as a guarantor, but that was not the case, and  
3 thus she was not part of the expansion.

4 She's also testified that she didn't think it was  
5 fair to have -- to get the benefits of the business she did not  
6 also have liabilities on. So we've kind of gone over the same  
7 thing over and over and over again.

8 MR. HOLIDAY: I'm -- I'm -- I agree I'm within the  
9 scope of the -- of the cross.

10 THE COURT: Yeah, but I'm saying at some point I got  
11 it. Plus I'm going to go back and read everything.

12 MR. HOLIDAY: Okay. Okay. Well, there's  
13 something --

14 THE COURT: I mean, I know her position is that  
15 she --

16 MR. HOLIDAY: There's something she hasn't been.

17 THE COURT: -- she felt like she was forced out of  
18 NRS.

19 MR. HOLIDAY: Right.

20 THE COURT: She felt like because she was threatened  
21 with being removed from the property and that different things  
22 were -- locks were changed or access to computer systems  
23 were --

24 THE WITNESS: No. I'm sorry --

25 THE COURT: I understand her position is that she

1 feels that she was forced out of the company. Their position  
2 is that she quit the company.

3 MR. HOLIDAY: And that's a good point, Your Honor.

4 BY MR. HOLIDAY:

5 Q Could you go to the April 28th email that they  
6 referenced.

7 A You mean the March 10th letter or --

8 Q No. It's the April 28th email where they invited  
9 you back to talk about it. Or maybe it was right before.

10 A No, it's 4 DD.

11 Q And April 28th is on my --

12 A The eviction one?

13 Q Not the eviction.

14 A I don't have anything for the 28th.

15 MR. HOLIDAY: The one where you kept saying that  
16 she --

17 THE WITNESS: Oh, that's -- yeah, that's the 104DD.

18 MR. SHEEHAN: It's OO.

19 THE WITNESS: OO? Oh, I'm sorry.

20 THE CLERK: I'm sorry, is that the Defense's OO?

21 MR. HOLIDAY: Yeah, this was the Defense's OO.

22 THE WITNESS: Oh, okay. That's why.

23 MR. HOLIDAY: All right.

24 THE WITNESS: Is that Book 1 or?

25 MR. SHEEHAN: Yes. Book -- Defendant's Book 1.

1 THE WITNESS: The little one? I mean, the little  
2 bit?

3 MR. SHEEHAN: No. Can I help her, Your Honor?

4 THE COURT: Sure. That would be fine.

5 THE WITNESS: It must be this one.

6 MR. SHEEHAN: Yeah, that's it.

7 THE WITNESS: That's it? And what was that number  
8 again? DD?

9 MR. SHEEHAN: OO.

10 THE WITNESS: Oh, OO. Oh, yeah, that's the same as  
11 the one I was referring to. Okay.

12 MR. HOLIDAY: Okay.

13 BY MR. HOLIDAY:

14 Q All right. Now, I'd represent that earlier you were  
15 asked a line of questioning about this being a letter saying  
16 you could come back and, you know, come back to NRS. Now, kind  
17 of -- that's not a fair -- is that a fair characterization of  
18 what that email actually says?

19 A No, I did not feel it said that it all because it  
20 said either or.

21 Q All right. And I understand you kept trying to make  
22 a certain point, and you couldn't get it out. Could you just  
23 read that for the Court so we're all clear about what it  
24 actually says, real quick.

25 A The whole thing. Okay. It's short.

1 Q And it's short.

2 A As you know, you have left NRS and moved your  
3 license, parentheses, we are assuming you have no plans to  
4 return although would be willing to discuss the same if this is  
5 not true. Therefore, end of parentheses, therefore, can you  
6 please remove your personal items you have left behind as soon  
7 as possible. Please feel free to contact Roger or myself to  
8 make arrangements for the time. If you do not retrieve them,  
9 these items within 30 days, we will be forced to do something  
10 with them. Thank you and have a wonderful day.

11 Q Right. So the majority of the letter is about you  
12 coming to get your stuff and get it out, but there's a  
13 parenthetical that says they're willing to discuss; right?

14 A Yes.

15 Q All right. And a willingness to discuss is saying  
16 they're in agreement to negotiate; is that fair to say?

17 A I would think so.

18 Q All right. And so that's not actually a real offer  
19 to come back; is it? Okay.

20 A There was no concession. I didn't know if that meant  
21 I had to keep working for free, they were going to be my boss,  
22 you couldn't have an office. I had no clue what it meant.

23 Q Right. And you did go back to the office one time  
24 after that; right?

25 A Two days later I went back to see what was going on,

1 yes.

2 Q Okay. And as a result they ended up kicking you out?

3 A No, at -- well, no, I left because when I got there  
4 my office was already empty.

5 Q NRS, yes. All right. I'm sorry, I'm actually not  
6 clear on this. Did they -- did Crystal say they were going to  
7 hire an armed guard to keep you out before or after? A lot of  
8 these questions weren't very specific to the time frame.

9 MR. SHEEHAN: Objection again, outside the scope.

10 THE COURT: It is outside the scope.

11 MR. HOLIDAY: All right. Fair.

12 BY MR. HOLIDAY:

13 Q I -- there was a line of questioning about the Balboa  
14 meeting. All these things that kept going back and forth and  
15 we really didn't get an agreement between you Mr. Sheehan on  
16 what word to use; right? Now, we're all in agreement that  
17 there were negotiations going back and forth. There was  
18 waffling, maybe this, maybe that. In other words, all of that  
19 to you represented ongoing negotiations; is that right?

20 A I kept trying. We both -- yeah, I think we all kept  
21 trying.

22 Q Okay. And he kept asking you about everything that  
23 you said to them as you agreed; do you remember that?

24 A Yes.

25 Q Okay. Is that right? Okay. And you kept responding

1 it was a suggestion?

2 A Correct.

3 Q All right. All right. I'd like to ask and point out  
4 to the Court from a lawyer's vocabulary, would you characterize  
5 each suggestion as perhaps an offer; is that fair to say?  
6 They're offers?

7 A I would say they were offers, attempt to offer, yes.

8 Q Okay. Attempts to offer. And you say attempts to  
9 offer because they weren't accepted?

10 A Well, they wouldn't meet with an attorney so I  
11 couldn't -- I didn't feel comfortable with any of it.

12 Q Right. And, you know, they -- they seemed to be  
13 saying because, I mean, you can call every offer an agreement,  
14 right, of every term. So you never came to an agreement as to  
15 all material terms to have a whole agreement regarding that  
16 extra space; is that right?

17 A Correct.

18 Q Right. And they never showed any acceptance of an  
19 offer that they were going to rent out the new space with a new  
20 company?

21 A No.

22 Q Let's say before March 10th?

23 A No, they never, ever -- they thought I was crazy.

24 Q Right. They thought you were crazy. Right? Now, if  
25 an offer is an -- let me put it --

1 MR. SHEEHAN: The whole line of question is well  
2 outside.

3 MR. HOLIDAY: It is exactly in the line of  
4 cross-examination because you went over this over and over  
5 again. And when she tried to answer the way she wanted to  
6 answer he objected --

7 THE COURT: Well, let's just move this along.

8 MR. HOLIDAY: All right.

9 BY MR. HOLIDAY:

10 Q All right. Can you go to Exhibit V.

11 A Are we in my book or the -- which book?

12 Q Exhibit V, the letters are the defendant.

13 A Oh, okay. 1 B; right?

14 Q No. V, V as in Victor.

15 THE COURT: V as in Victor. Okay.

16 BY MR. HOLIDAY:

17 Q All right. Now, of all the text messages we went  
18 through, I'd suggest that Defendant 0120 and Defendant 0121 are  
19 really the only two that say what you're -- they're trying to  
20 say you said in anyway.

21 MR. SHEEHAN: Your Honor, that's not a question; it's  
22 a legal argument.

23 MR. HOLIDAY: And you did it the entire time while  
24 you were doing it. Every time I objected it got overruled.

25 THE COURT: Y'all stop fighting. Just ask the

1 questions, and let's move this along, please.

2 MR. HOLIDAY: All right.

3 BY MR. HOLIDAY:

4 Q All right. Here's the question though. All right.  
5 And just read -- read what you wrote in the second text on  
6 0120.

7 A The then don't use?

8 Q My money, yes.

9 A Okay. Then don't use my money. Look at the list;  
10 that is my investment. Just like your 5 percent in marijuana.  
11 Get an attorney involved.

12 Q All right. So first of all it starts with then;  
13 right? Implying --

14 A Then don't, yes.

15 Q Right. And so there's an implied if for that but --  
16 and that's right?

17 A Yes.

18 Q Okay. And what's the if that you were, can you  
19 clarify?

20 MR. SHEEHAN: Objection. Leading, Your Honor.

21 MR. HOLIDAY: Okay. Fine.

22 BY MR. SHEEHAN:

23 Q What's the -- I'll just move on. So -- all right.  
24 And so then he says -- well, all right. We won't use any of  
25 your many, done then; right?



1           A     Yes.

2           Q     Okay. All right. But did he get an attorney  
3 involved?

4           A     No.

5           Q     Like you -- in the context of this --

6           A     No. I think it would've been very helpful if we  
7 could have gotten an attorney.

8           Q     Right. In fact, you didn't get an attorney involved.  
9 This was followed by the March 10th letter; is that right?

10          A     Yes. I believe we are at -- no, this is before the  
11 March 10th letter.

12          Q     All right. And again we keep talking about how,  
13 like, a lease and an operating agreement, these contracts have  
14 so many different terms that we keep saying, you know, 6.8,  
15 10.5, all these different terms. Get an attorney involved,  
16 does that -- you were implying we need to get an attorney  
17 involved to come up with all of these material terms; right?

18          A     Well, we --

19               MR. SHEEHAN: Objection. Leading, Your Honor.

20               MR. HOLIDAY: Okay. Fine.

21               THE COURT: Sustained.

22 BY MR. HOLIDAY:

23          Q     All right. Fine. But you did say get an attorney  
24 involved and that -- well, let me -- let me calm down so I  
25 don't ask a leading question here. All right.

1           Why was it your requirement to get an attorney  
2 involved?

3           A     Because I thought it was complex. It was the  
4 least -- these are legal issues. We are not experts in  
5 commercial lease. We needed to see if the landlord would be  
6 able to pull some reason to take our spouses, all our spouses  
7 off for other reasons. We didn't know that. We were guessing,  
8 and if we could have at least sat down with somebody who had  
9 some options together, we could have discussed them or look at  
10 other options or, you know, what do you do for planning. You  
11 don't kick a member out if they don't agree. You try to figure  
12 out a way to make it work.

13          Q     Okay. And did it, in fact, turn out to be complex?

14          A     Very complex.

15          Q     All right. Let's go to the next page. All right.  
16 And it says -- can you just read your text right there.

17          A     At the top? No, my attorney did not. He asked you  
18 if you --

19          Q     No, right at Defendant 0121. I'm looking at --

20          A     I'm sorry, okay.

21          Q     Okay.

22          A     Bull. Then move into the new office and make sure  
23 the agents on your side know to call your number and your  
24 training and your payroll, et cetera. Unfortunately for you, I  
25 do not -- I do know what I'm talking about. Have your attorney

1 call me.

2 Q Okay. And did he say okay?

3 A No, they never would do that.

4 Q He didn't say okay. Read in what he said.

5 A Look, I'm done fighting with you. You're being super  
6 effing greedy.

7 Q All right. It didn't say I accept?

8 A No, it didn't say I accept.

9 Q All right. Did any of their actions imply that they  
10 accepted?

11 A No. They were mad at me.

12 Q Okay. All right. And they didn't send you a letter  
13 saying we accept on March 10th; did they?

14 A No, they did not.

15 Q They didn't. And then you sent an extremely formal  
16 cease and demand letter the same day on March 10th?

17 A Correct.

18 Q With its own complex list of grievances, concerns,  
19 and eventually there were negotiations and further offers after  
20 that wasn't accepted; correct?

21 A Prepared by the attorney, yes.

22 Q Exactly.

23 THE COURT: Is that it?

24 MR. HOLIDAY: Yeah, I'll -- go ahead if you want to  
25 recross.

1 MR. SHEEHAN: Real, real quick, Your Honor.

2 RECROSS-EXAMINATION

3 BY MR. SHEEHAN:

4 Q While you're there can you turn to X, behind X.

5 A Yes.

6 Q And there's several of these, but let me ask you  
7 this. Do you see where my -- my client writes behind X, Fine,  
8 we won't use your money. Problem solved.

9 A I do.

10 Q And do you recall yesterday where I had -- there were  
11 several things where he said, fine, we'll do it that way?

12 A No, I don't remember. I remember seeing that.

13 Q All right. I'll save it for the brief. That one --  
14 let's go back to OO. So after you had taken your license to --  
15 picked up the license from NRS and taken it to division, my  
16 clients did say to you, we are assuming -- as you know, you  
17 have left NRS and moved your license. We're assuming you have  
18 no plans to return although we would be willing to discuss the  
19 same; do you see that?

20 A I do.

21 Q So my client did say, hey, you came and picked up  
22 your license, you left, but we'd be willing to discuss you  
23 coming back. Did you ever come back to us and say, yes, I'd  
24 like to discuss that?

25 A Yes.

1 Q Yes or no?

2 A I came in and, yes, and my office was empty.

3 Q Okay.

4 A Two days later I --

5 Q Tell me about the discussion you had with Sean  
6 Evenden -- who did you have that discussion -- by the way,  
7 yesterday I asked you that same question, you said no.

8 A Well, it was the way you asked it.

9 Q All right. So you came in and you discussed with  
10 Sean and Roger --

11 A I did not say I discussed. You said, did I come in  
12 to discuss.

13 Q Oh.

14 A I did.

15 Q Okay.

16 A And my office was empty, and I was furious because  
17 that's not what this letter said.

18 Q Okay. Ms. Haack, do you recall your testimony and  
19 that saying that you had promised Mr. Corey your office --

20 A That had nothing to do with this --

21 Q Well, Corey --

22 A -- March 10th letter.

23 Q Okay. Mark Corey had moved into your office when you  
24 came back; right?

25 A He had not moved into -- my office was empty.

1 Q Okay.

2 A I have a picture right in here.

3 Q Okay. But Corey was in the process of moving into  
4 your office with your permission; correct?

5 A I have no idea.

6 Q All right. Did you discuss with Roger or Sean coming  
7 back to NRS at that point or at any other point?

8 A No. I didn't feel invited.

9 MR. SHEEHAN: Thank you. No further questions, Your  
10 Honor.

11 THE COURT: All right. So, Mr. Sheehan, are you  
12 going to call Ms. Haack in your case in chief?

13 MR. SHEEHAN: Very, very briefly. Very, very briefly  
14 these two.

15 THE COURT: But are you going to call her in your  
16 case in chief?

17 MR. SHEEHAN: No.

18 THE COURT: All right, ma'am. Thank you for  
19 testifying. Please step down.

20 Plaintiff, do you have any other witnesses, sir?

21 MR. HOLIDAY: No, I have no further [indiscernible].  
22 So I have no further witnesses, Your Honor.

23 THE COURT: Are you resting?

24 MR. HOLIDAY: I rest, yes.

25 THE COURT: Okay. Mr. Sheehan, who are we calling?

1 MR. SHEEHAN: Mr. -- let's go with Mr. Ayala real  
2 quick.

3 THE COURT: Sure. Mr. Ayala, you were under oath  
4 previously, so you're still under oath, sir, at this time.

5 **ROGER AYALA**

6 (having been called as a witness and previously sworn,  
7 testified as follows:)

8 DIRECT EXAMINATION

9 BY MR. SHEEHAN:

10 Q Mr. Ayala, was there ever any discussion other than  
11 the decisions would be made by a majority?

12 A No.

13 Q Okay. And did -- the very first issue that came up  
14 between the three of you, was it decided by a majority?

15 A Yes.

16 Q What was that issue?

17 A I don't know if it was the first issue, but it was a  
18 big issue. It was on who are we going to hire as an attorney  
19 to do the operating agreement.

20 Q Okay. And who wanted whom and tell me that.

21 A Sean wanted to hire you. Nancy didn't want to do  
22 that. She wanted to hire a different attorney. She settled on  
23 Schnitzer and I sided with her against Sean.

24 Q Okay. The -- you heard the expert talk about the  
25 lease with Vestar?

1           A     Yes.

2           Q     And you have never paid any of Life Real Estate's  
3 lease payments out of NRS's funds; correct?

4           A     Correct.

5           Q     The reason that there was that one payment was due to  
6 CAM charges being -- that the landlord didn't charge CAM  
7 charges for several months; correct?

8           A     Correct.

9           Q     And you confirmed that with the landlord last night;  
10 correct?

11          A     Correct.

12               MR. HOLIDAY: Objection. Hearsay.

13 BY MR. SHEEHAN:

14          Q     But you know that of your own volition; right?

15          A     Yes, sir.

16          Q     All right. And there was one other issue that came  
17 up with the expert about payments to the IRS on behalf of Sean  
18 Evenden. Was there always an agreement that including when  
19 Ms. Haack was there that Sean Evenden and any other agents  
20 could have commission checks, they could have a percentage of  
21 the commission that was owed to them paid directly to the --  
22 NRS --

23               MR. HOLIDAY: Objection. Foundation as to time.

24               THE COURT: Just ask the time. Just lay the  
25 foundation.



1 MR. SHEEHAN: Okay.

2 BY MR. SHEEHAN:

3 Q Was it true that at the prior company -- the prior  
4 company offered -- well, let me put it this way. And all  
5 points in time, was it okay for agents at NRS to have a portion  
6 of their commission check paid directly to the NRS to the -- to  
7 the NRS so that they didn't get stuck with a huge bill at the  
8 end of the year?

9 A Yes.

10 Q And did Sean take advantage of that?

11 A Yes, he did.

12 Q So the 102,000 that the expert talked about, that was  
13 actually monies taken out of the -- his commissions that were  
14 owed to him to pay for his IRS in advance so he didn't get a  
15 big bill at the end of the year, and you and Nancy and Sean  
16 agreed on that; correct?

17 A Yes. The only objection she made was she didn't like  
18 the business paying for stamps and to write the paper for the  
19 checks. I think it was a joke.

20 Q Okay. Turning to NNN. I'm sorry, that's -- I think I  
21 got that wrong. Do you have that in your booklets? There is a  
22 report that identify all the transactions that are done by real  
23 estate agents in this town; correct?

24 A I think there's a couple of them, but, yes.

25 Q Okay. And this is one of those, and it shows the

1 amount of commissions that were paid -- a lot of deals that  
2 were done from the seven agents that left because of the fight  
3 between you -- the parties; correct?

4 A Yes, it is.

5 Q And as a result of that the -- there were seven  
6 agents that left as a result of the fighting between you and  
7 Nancy; correct?

8 A I believe so.

9 Q And those are listed there; correct?

10 A Yes.

11 Q And that is a chart showing how much money NRS would  
12 have made off those agents had they not left; correct?

13 A Yes.

14 Q And how much money would NRS have made if those  
15 agents had not left?

16 MR. HOLIDAY: Objection. Speculation.

17 MR. SHEEHAN: Well, there's a calculation right there  
18 on the thing.

19 MR. HOLIDAY: Objection. Foundation.

20 THE COURT: Okay. Yeah, just can you lay a  
21 foundation on where he's coming up with that number.

22 BY MR. SHEEHAN:

23 Q All right. NRS gets paid a certain amount of money  
24 per transaction from these agents; correct?

25 A Yes.

1           Q     And based on the -- what NRS would have received  
2 based on their contracts with these agents, the sum of 124,880  
3 would have been done because if you do 223 deals you would have  
4 gotten a transaction fee of \$495.

5           MR. HOLIDAY: Hold on, your Honor. I want to -- want  
6 to point out that this is one of the two exhibits that I didn't  
7 stipulate to as to foundation, so -- or authenticity or  
8 anything like that.

9           THE COURT: I think he's trying to lay the foundation  
10 for how they come up with the numbers.

11          MR. HOLIDAY: Well, before we start going into what  
12 it says, I think properly you authenticate it and explain where  
13 it comes from, how it got there and then you can start talking  
14 about what's in there, just to be a stickler, Your Honor.

15          THE COURT: I don't think he's sure -- I don't think  
16 he's moved -- attempted to move it into evidence, really.

17          MR. SHEEHAN: First of all, Your Honor, Ms. Haack  
18 testified in direct that this was fine yesterday. Second of  
19 all, is it -- it's public record.

20 BY MR. SHEEHAN:

21          Q     You poke and pull up this public record and this is a  
22 public record of all the transactions that were done by these  
23 agents; correct? Anybody can do that?

24          A     Yes.

25          Q     Okay. And the company's deal was that they would

1 give a \$495 per transaction; correct?

2 A I think, as Nancy said in her statement, we did have  
3 different deals with the agents. I think this was computed on  
4 the bare minimum of what we would have made. If there were  
5 additional splits, they are not included in this. If there was  
6 any additional property management fees, they -- it is not seen  
7 as part of this as well.

8 Q This is the bare minimum; fair enough?

9 A This is the bare -- this is the best program that we  
10 have, yes.

11 Q Okay. So the bare minimum is you would get at least  
12 \$495 from every transaction?

13 A That was the bare minimum commission plan we had,  
14 yes.

15 Q And if you times the 223 deals that these people  
16 did -- and this is only from up until 11/14. The date range  
17 that you ran off was 5/1/2017, the day they left to 11/14/2019;  
18 right?

19 A That's what it says, yes.

20 Q So it actually would be more today; correct, because  
21 we are now in February?

22 A Yes.

23 Q All right. But if you just did this 223 deals times  
24 the bare minimum you would get 110,385; correct?

25 A Yes.

1 Q And then you also would make the \$65 insurance fee;  
2 correct?

3 A Yes.

4 Q So the total amount that would be due to NRS if the  
5 Judge rules that the agents that Ms. Haack's conduct caused  
6 these agents to leave the company would be a minimum of  
7 \$124,880; correct?

8 A Yes.

9 MR. SHEEHAN: No further questions for the witness,  
10 Your Honor.

11 MR. HOLIDAY: All right. It's still not admitted,  
12 Your Honor.

13 MR. SHEEHAN: I'll go ahead to move too then, Your  
14 Honor.

15 THE COURT: Any objections?

16 MR. HOLIDAY: Yes. He didn't lay foundation as to  
17 where this came from. I'm not --

18 THE COURT: He said it was public record.

19 MR. HOLIDAY: It's not a public record, Your Honor.

20 MR. SHEEHAN: Is it a public record, sir?

21 THE WITNESS: Title companies can provide it. A  
22 broker of any company can provide it, and I believe you can  
23 research it on --

24 MR. HOLIDAY: And as --

25 / / /

1 BY MR. SHEEHAN:

2 Q You can personally go in there and get this?

3 MR. HOLIDAY: Right. A title company's records are  
4 not public records, Your Honor.

5 THE COURT: I'm sorry, you said you cannot -- how did  
6 you -- how did you obtain that document?

7 THE WITNESS: I believe this is a broker report.

8 THE COURT: And when do you -- how did you obtain  
9 that broker report?

10 THE WITNESS: You log into MLS, and you can enter in  
11 an agent's name with their public ID, and you put their public  
12 ID in and it gives you a report. I believe everything it has  
13 everything they've sold excluding some new homes, some rentals  
14 maybe.

15 THE COURT: And were you the one that obtained that  
16 document?

17 THE WITNESS: I don't believe I obtained this  
18 document, no. I don't think I pulled this out myself.

19 THE COURT: And your objection is to authenticity?

20 MR. HOLIDAY: Objection to foundation and  
21 authenticity, Your Honor. It hasn't been authenticated. And  
22 it's not a public record.

23 THE COURT: It's not a public record. I'm trying to  
24 think of any ways it could be authenticated. I can't think of  
25 anything.

1 MR. SHEEHAN: Well, and did you get this from a title  
2 company?

3 THE COURT: But it doesn't kind of have a affidavit.

4 MR. SHEEHAN: Well, we'll have to get the --

5 MR. HOLIDAY: Well, this is why we reserved to get a  
6 second --

7 MR. SHEEHAN: All right. Let's put it this way.

8 THE COURT: When you originally obtained from the  
9 title company -- well, no, he says he's able to do it.

10 MR. HOLIDAY: But he said he didn't do it, Your  
11 Honor.

12 THE COURT: But he didn't do it. And he doesn't have  
13 an affidavit.

14 BY MR. SHEEHAN:

15 Q Sir, let me ask you this. Is there any doubt that  
16 the seven agents that left, you heard how many deals Ms. --  
17 Crystal said that she did yesterday; correct?

18 A Yes.

19 Q Is there any doubt that the seven agents did at least  
20 200 deals since they left NRS?

21 MR. HOLIDAY: Objection. Foundation.

22 THE COURT: Just, time frame. Just get a time frame  
23 that you're referencing, please.

24 MR. SHEEHAN: Yeah. Okay. The time frame of May --

25 THE COURT: They're asking for foundation that's

1 sustained.

2 BY MR. SHEEHAN:

3 Q The agents left in May; correct?

4 A I believe so.

5 Q You remember that they left right after the -- these  
6 seven agents left -- when did these seven agents leave, sir?

7 A They didn't leave immediate -- some of them didn't  
8 leave immediately, they left a couple weeks.

9 Q Okay. But by -- by May 1st; correct?

10 A I believe so.

11 Q Okay. And from May 1st through today all these  
12 agents are still in business; correct?

13 A I do believe so.

14 Q Okay. And you heard --

15 MR. HOLIDAY: Objection. Foundation for why he  
16 believes that or how he believes that.

17 THE COURT: Yeah, please.

18 BY MR. SHEEHAN:

19 Q Yeah, go ahead.

20 A I believe so and have testified we were still in  
21 business. I know I've seen a couple of these agents have --  
22 I've done a deal recently with Irma, just a couple weeks ago.  
23 So, yes, I believe they're all in business. I heard maybe  
24 Renee who is Nancy's daughter was at a new home community.

25 MR. HOLIDAY: Objection. Hearsay.



1 THE COURT: Sustained. It is hearsay. Just only  
2 testify to your knowledge.

3 THE WITNESS: I've seen her social media that she  
4 works in a new community.

5 BY MR. SHEEHAN:

6 Q You saw Renee on social -- all right. There's no  
7 doubt that Ms. Haack and her daughter are still in business;  
8 correct?

9 A Again, I believe her daughter works at a new  
10 community based on her social media.

11 Q Okay. But Randy Orzoff [phonetic], the address  
12 there, 8275 South Eastern, that's the real estate business that  
13 he's working for; correct? Well, let me put it to you this  
14 way --

15 A It says Whiting and Company.

16 Q Okay. You got -- you saw affidavits from each of  
17 these -- well, let me rephrase that. All right. Is it true  
18 that seven agents left right around that April time frame as a  
19 result of the infighting between the two of you?

20 A Yes.

21 Q Is it true that all of those people have done deals,  
22 you can see from the report there since?

23 A Yes.

24 Q Okay. Is it true that if those seven people would  
25 have stayed, they would have brought in at least a hundred

1 thousand dollars? You can personally say that they would have  
2 brought in at least a hundred thousand dollars if they had  
3 remained at NRS?

4 MR. HOLIDAY: Objection. Speculation and foundation.

5 THE WITNESS: Yes.

6 THE COURT: Yeah, that is speculation. So you'd have  
7 to lay some foundation for that --

8 BY MR. SHEEHAN:

9 Q All right. Did these people how many -- did these  
10 people all do at least between the seven of them combined, at  
11 least 50 deals in the year, with the seven of them combined in  
12 the year prior to them leaving the company?

13 MR. HOLIDAY: Objection. Foundation on how he knows.

14 THE WITNESS: Yes.

15 THE COURT: Well --

16 BY MR. SHEEHAN:

17 Q You -- you were with the company; correct?

18 A Yes.

19 Q Okay. And you can attest that all seven of them  
20 combined would have done at least 50 a year before they left  
21 the company?

22 A Yes.

23 THE COURT: Over -- I'm going to overrule it. I  
24 think there is sufficient foundation as far as their roles in  
25 the company.

1 BY MR. SHEEHAN:

2 Q Okay. So if they had stayed there the following  
3 year, it stands to reason they would have done at least 50;  
4 correct?

5 A Easily.

6 Q Okay. And so in three years they would have done  
7 150?

8 A Easily, I mean some of these agents do that on their  
9 own.

10 Q Okay.

11 A I mean, Jeffery, Irma, Randy, they are very  
12 successful agents.

13 Q Okay. And so that would have equated to at least  
14 \$124,000 worth of income; correct?

15 A Yes.

16 MR. SHEEHAN: No further questions, Your Honor.

17 THE COURT: Do you just want to follow up on the  
18 calculations?

19 MR. HOLIDAY: Well, I'd like to follow up not just on  
20 the calculations. By the way, still not admitted.

21 CROSS-EXAMINATION

22 BY MR. HOLIDAY:

23 Q Did any of these agents leave before you sent the  
24 March 10th, 2017, letter?

25 A I don't believe so.

1 Q Not a single one left before you sent the letter  
2 telling Nancy that you were sending her license to the  
3 division; is that right?

4 A I don't believe so.

5 Q Okay. And you said that they left due to infighting  
6 between you; is that right?

7 A I agree, yes.

8 Q Right. Okay. I just wanted to make sure we're  
9 there. And you're saying that none of the infighting was in  
10 any way your fault?

11 A I didn't say that.

12 Q Okay. Well, I -- let me ask you this. Was any of  
13 the infighting due to decisions and choices that you made when  
14 the negotiations went south?

15 A Was any of the --

16 Q Was any of the infighting due to any of your  
17 positions that you took?

18 A Was any of the fighting to the position I took in  
19 regards to what?

20 Q Well, it seems like the infighting occurred because  
21 you didn't have a signed agreement that went forward with what  
22 you felt was --

23 A Are you asking me if we only fought about this issue;  
24 is that what you're asking me?

25 Q No. I'm asking you if -- I mean, it takes -- it

1 takes two to tango, and it takes -- is it true that it takes  
2 two to tango and it takes two to infight?

3 MR. SHEEHAN: Objection. Sometimes the --

4 THE COURT: All right. Let's --

5 MR. HOLIDAY: Well, he's changed -- this is about  
6 damages and --

7 MR. SHEEHAN: And again this is an objection. It  
8 calls for a legal conclusion. It's up to the Court to decide  
9 who caused the infighting.

10 BY MR. HOLIDAY:

11 Q All right. All right. These questions go towards  
12 causation rather than quantification; okay? If you -- isn't it  
13 true that if you just gave in to Nancy there wouldn't have been  
14 any infighting?

15 A Is it true if we just gave in to Nancy there wouldn't  
16 have been any fighting?

17 Q Yeah, in other words if you took two positions -- if  
18 you gave into her instead of her giving into you, there  
19 wouldn't have been any infighting; right?

20 A I think you could say that if she just gave into us  
21 maybe there wouldn't have been any fighting either.

22 Q Exactly. I agree with that. But why is it that she  
23 is the one who is culpable for not giving into you rather than  
24 the other way around?

25 A I'm sorry, what?

1           Q     Why is it that her not giving in to your demands  
2 makes her culpable rather than you not giving into her demands  
3 makes you culpable?

4           A     I don't understand, I mean, what you're saying.

5           Q     Okay.

6           MR. HOLIDAY: Your Honor, is there a way I should ask  
7 this question? I don't want to just keep asking it over and  
8 over again.

9           THE COURT: I don't understand it.

10          MR. HOLIDAY: Okay.

11          MR. SHEEHAN: I'm happy to help.

12          THE COURT: I mean, I understand the gist of what  
13 you're asking, but --

14          MR. HOLIDAY: Okay. Let me --

15          THE COURT: But I don't have any better way of  
16 asking.

17          MR. SHEEHAN: He's asking, do you believe you caused  
18 the infighting or if she caused the infighting --

19          THE COURT: I got that.

20          MR. HOLIDAY: No, I understand that. I just don't  
21 understand why you think that she had --

22          THE COURT: I think the answers like that.

23 BY MR. HOLIDAY:

24          Q     Yeah. I don't understand why you think the  
25 disagreement -- why is she -- okay. Put it to you this way.

1 Do you believe that she is responsible for disagreeing, but  
2 you're not responsible for disagreeing?

3 A I believe she's responsible for breaching our  
4 original agreement and promise to expand across the hall.

5 Q Okay. And by original agreement, just to clarify,  
6 you mean the -- the agreement that you in my original  
7 questioning, you said it referred to a text message and I think  
8 we've identified those text messages, you're referring to that  
9 agreement?

10 MR. SHEEHAN: Objection. He just answered the  
11 question two seconds ago about --

12 MR. HOLIDAY: Well, you know, I -- I'm being a  
13 stickler about making the record clear.

14 THE COURT: No. No. But I think -- I believe he did  
15 testify to is it's her belief that she breached the agreement,  
16 and then obviously she's been saying all along I didn't breach  
17 anything.

18 MR. HOLIDAY: Okay.

19 THE COURT: That's been an ongoing line of testimony.

20 MR. HOLIDAY: All right. All right.

21 BY MR. HOLIDAY:

22 Q So you do concede though that no one left during that  
23 infighting before you sent the March 10th letter kicking  
24 Nancy out; right?

25 A I said I believe so. I don't know. I don't believe

1 so.

2 Q Okay. All right. Let's see I've got some questions  
3 that have been written down for me just one second. All right.

4 So those -- those rental payments only -- all right.  
5 So on April 10th you suddenly had to pay \$29,000 to your  
6 landlord; correct?

7 A Which year?

8 Q 2017. This would be 31 days after March 10th, and  
9 earlier in your examination I asked you if you paid \$29,000 the  
10 next month; do you remember that question?

11 A Are you asking if I made a payment to Vestar for  
12 29,000?

13 Q Yes.

14 A Yes, I did.

15 Q Okay. And do you remember telling me that you didn't  
16 in your original testimony to me?

17 MR. SHEEHAN: Objection. Mischaracterizes the  
18 testimony.

19 MR. HOLIDAY: Okay. Nevermind.

20 THE COURT: I don't think he understands the question  
21 if you can rephrase it.

22 MR. HOLIDAY: Very well. I'll just -- I'll just cite  
23 to the transcript in the closing brief.

24 BY MR. HOLIDAY:

25 Q Okay. And is it normal to suddenly get charged, what



1 would that be -- the payments before were 75 -- looked to be  
2 75,000.

3 UNIDENTIFIED SPEAKER: Hundred.

4 BY MR. HOLIDAY:

5 Q 7500, excuse me, they obviously weren't 75,000; is  
6 that right?

7 A The first two or three payments were around 7500 or  
8 sorry, yeah, 7500 was for seven months without CAMS.

9 Q Okay. And you went through this case with your  
10 attorney, obviously, beforehand, and you are familiar with the  
11 exhibits; is that fair to say?

12 A Which exhibits?

13 Q All of the exhibits especially the ones that you  
14 produced.

15 A Sure. Yes.

16 Q Okay. So did you produce any written evidence of  
17 your explanation for the 29,000?

18 A Yes, I believe so.

19 Q Okay. We're going to have a closing brief so we'll  
20 see if that's true.

21 And your rent permanently went up to 11,400; is that  
22 right?

23 A I believe the CAMS were varied on a yearly basis, and  
24 then there were increments where the rent went up yearly I  
25 believe.

1           Q     That's both true. So the -- what appears to be a  
2 permanent increase from 75,000 to 11,400 reflects what's in the  
3 lease that we -- after the original NRS lease, that lease --

4           A     It was 7500 not 75,000.

5           Q     Excuse me. I keep saying 75,000. I'm the worst with  
6 that. Okay. But, yeah, that's reflected in the lease that  
7 Nancy had a copy of according to you?

8           A     It was reflected in the lease and the addendum that  
9 we all signed, yes.

10          Q     Okay. You know what, let's not waste time going back  
11 through this since we have a closing -- a closing brief. Okay.  
12 All right.

13                 Did you kick Nancy out?

14           MR. SHEEHAN: Objection. Outside.

15           MR. HOLIDAY: Okay. All right. You know, he's  
16 right --

17           THE COURT: We've already talked about this too.

18           MR. HOLIDAY: Yeah. Okay.

19           THE COURT: It's sustained, but it's already been  
20 asked and answered.

21 BY MR. HOLIDAY:

22          Q     Okay. Now, I'll just use a neutral term. Had Nancy  
23 not departed, approximately how much would she have made had  
24 March 10th and afterwards not gone the way it did?

25           MR. SHEEHAN: Objection. Way outside and calls for

1 speculation.

2 MR. HOLIDAY: Okay. Fair enough.

3 BY MR. HOLIDAY:

4 Q Approximately, how much was your -- would her share  
5 of the profits have been had you just continued receiving  
6 distributions instead of salaries?

7 A One third.

8 Q One third. Okay.

9 THE COURT: At what point in time?

10 MR. HOLIDAY: From March --

11 THE COURT: I mean, I know it's a third. Are you  
12 asking for a specific dollar amount, if so I want to know from  
13 what date.

14 BY MR. HOLIDAY:

15 Q All right. Let's go from March 10th to present?

16 A Of what year?

17 Q March 10th of 2017, to present, excuse me. Unless  
18 I indicate otherwise when I say March 10th I'm indicating  
19 March 10th, 2017. Okay.

20 A What was the question again?

21 Q So from -- from March 10th, 2017, to present had  
22 NRS not started hiring someone else to do her work, started  
23 paying the two remaining members salaries of \$50,000 a year and  
24 indemnified you for your personal legal fees, can you give us a  
25 rough estimate to, you know, around a thousand dollars about

1 how much would she have received?

2 MR. SHEEHAN: Your Honor, again, this is not part of  
3 my examination. He didn't ask this question when he had the  
4 opportunity on direct examination.

5 MR. HOLIDAY: Well, we're going over --

6 MR. SHEEHAN: It's improper.

7 MR. HOLIDAY: -- his --

8 MR. SHEEHAN: And it calls for speculation.

9 MR. HOLIDAY: Okay. His -- well, a lot of questions  
10 call for speculation.

11 THE COURT: The objection's overruled but --

12 MR. HOLIDAY: Yeah, the question isn't the --

13 THE COURT: What I'm curious on frankly is -- well,  
14 then I'm going to ask it.

15 So at the time back in 2017 you made an offer to buy  
16 Ms. Haack out, and she countered on that offer. But going back  
17 to the offer you made to Ms. Haack to buy her out, how did you  
18 come up with those numbers?

19 THE WITNESS: I believe the text that I sent to her  
20 was a large portion of the cash on hand, and it was an  
21 approximation of what I assumed one third would be of those  
22 projected years.

23 THE COURT: Okay. And the reason I was asking is  
24 because I did not know if you had an accountant or anyone do  
25 evaluation of the business at that time?

1 THE WITNESS: No, we did not.

2 THE COURT: Okay. But at least until 2017 you  
3 would -- and correct me if I'm misstating your testimony -- you  
4 agree that Ms. Haack's ownership interests she'd be entitled to  
5 one third of the value of the NRS at the time in 2017; correct?

6 A Correct.

7 MR. SHEEHAN: Objection. Completely --

8 THE COURT: This is my question. And the reason I'm  
9 asking is there's been -- I don't think there's -- I just want  
10 to make sure I'm clear. There's been really no dispute that up  
11 until some point they all agree that they were equal partners.

12 MR. HOLIDAY: That's correct, Your Honor.

13 THE COURT: Okay. And I have another question that I  
14 wanted to ask.

15 And the other question I have is, and it has not come  
16 up by you guys. There is a point in time where Ms. Haack stops  
17 participating in the company, and I know that the reason for  
18 why she stopped participating is the subject of this case.  
19 Whether it is, you know, she was forced out, she chose out, I  
20 have not made a decision on that, but what is your -- and I'm  
21 just asking your opinion -- do you believe at any point  
22 Ms. Haack gave up her interest in NRS as far as like her  
23 portion of the one third? And I'm not asking this -- I'm not  
24 asking a good question.

25 If in 2017, she would have been entitled -- do you

1 agree she would have been entitled to one third of the value of  
2 the business; correct?

3 THE WITNESS: Yes.

4 THE COURT: And she was never paid out for that one  
5 third value, whatever it would have been; right?

6 A I believe she was.

7 THE COURT: What was she -- what was she paid?

8 THE WITNESS: I think she got a check for 60,000.

9 MS. HAACK: Never did.

10 MR. HOLIDAY: Well, hold on. Don't, Nancy.

11 THE WITNESS: I know we provided her a check for  
12 60,000.

13 THE COURT: And was that for purchase of her share in  
14 the business?

15 THE WITNESS: I believe it was a distribution.

16 MR. SHEEHAN: Your Honor, could I quickly ask couple  
17 of questions I think will clear this up?

18 REDIRECT EXAMINATION

19 BY MR. SHEEHAN:

20 Q Did -- does Nancy Haack remain a one-third owner of  
21 NRS through today?

22 A Yes.

23 Q Has she gotten one third of the distributions from  
24 NRS through today?

25 A Yes.

1 Q So she is still a member of the company; she's always  
2 remained a member of the company?

3 A Yes.

4 THE COURT: So she has continued to receive money?

5 MR. SHEEHAN: Yes.

6 MS. HAACK: No.

7 THE COURT: From 2017 forward.

8 MR. SHEEHAN: Yes, she gets -- she would get -- she  
9 gets all --

10 MS. HAACK: I object.

11 THE COURT: Stop, please. No.

12 MR. SHEEHAN: She's going to get one third of the  
13 profits from whatever's left; correct?

14 THE WITNESS: Correct.

15 THE COURT: But has she received distributions from  
16 2017 up until the company closed last fall of 2019?

17 THE WITNESS: Yes.

18 RECROSS-EXAMINATION

19 BY MR. HOLIDAY:

20 Q All right. How much were those distributions?

21 A I believe in 2017, like I said, it was 60,000,  
22 65,000, something like that.

23 Q All right. And after 2017, nothing; is that right?

24 A I don't believe so. I don't believe we made any -- I  
25 don't believe we had any money.

1 Q Right.

2 MR. HOLIDAY: And I know it wasn't his cross, but  
3 could I ask one follow-up question based on what you asked,  
4 Your Honor?

5 THE COURT: Sure.

6 MR. HOLIDAY: Okay.

7 BY MR. HOLIDAY:

8 Q All right. So first -- so you give a clear answer,  
9 you understand what a receivership is when there's going to be  
10 a dissolution, you went through the whole motion and; correct?

11 A I'm sorry, what?

12 Q You understand that -- you understand that there was  
13 a motion for receivership; do you understand what a  
14 receivership is?

15 A I believe you asked me when we started and --

16 Q Okay. So had a receivership been appointed, and it  
17 was put at a public auction, and you and Mr. Evenden and  
18 Ms. Haack had to bid against each other or find other potential  
19 partners to purchase the business from the three of you, how  
20 much would you have paid to keep the business? Just you and  
21 Sean, no -- she's gone there's no litigation going on.

22 A I don't know.

23 Q You don't know?

24 MR. HOLIDAY: Okay. All right.

25 THE COURT: Is that it?



1 MR. HOLIDAY: That's it, Your Honor.

2 MR. SHEEHAN: Real briefly, Your Honor, just to  
3 follow up on your questions.

4 FURTHER REDIRECT EXAMINATION

5 BY MR. SHEEHAN:

6 Q Sir, you decided not to dissolve NRS; correct?

7 A Correct.

8 Q And so -- and Nancy Haack remains a one-third owner  
9 of NRS today; correct?

10 A Yes.

11 Q And the money that's left in the bank account she's  
12 going to get one third of; correct?

13 A Yes.

14 Q And any distributions that you guys got, any money  
15 that you made she'd get one third of; correct?

16 A Yes.

17 Q And if you're able to sell any assets through  
18 [Indiscernible] from NRS she'll get one third of that; correct?

19 A Yes.

20 THE COURT: But there's value in other things other  
21 than the money in the bank, and that's what I don't know.

22 MR. SHEEHAN: Well, but if any of the other --

23 THE COURT: What is the value of the business? I  
24 mean, there's a lot of things that go into value other than  
25 cash on hand. You know that.

1 MR. SHEEHAN: Yeah, but there's not -- there isn't --  
2 there's no -- not in this business. There's nothing else.

3 THE COURT: But I don't know that. You can't  
4 testify -- I don't know.

5 MR. SHEEHAN: Okay. Well, I get that, Your Honor,  
6 but that's the -- well, we'll have to be deal with that in the  
7 briefs.

8 THE COURT: Okay.

9 MR. SHEEHAN: Talking about the settlement offer  
10 which again I think is totally inappropriate to talk about the  
11 settlement offers, Your Honor, but --

12 THE COURT: No, what we were talking about before is  
13 a offer to buy her out was not -- it was -- it was prior to  
14 this litigation.

15 MR. SHEEHAN: But it was after the lawyers got  
16 involved.

17 BY MR. SHEEHAN:

18 Q But your offer was that she would get her one third  
19 of the cash on hand plus one third of the profits for the next  
20 two years; correct?

21 A Yes.

22 Q And that's what -- that's what she ended up getting;  
23 correct?

24 A That's what she got in 2017, and that was based on  
25 the only year we made any money was in 2017.

1           Q     But the settlement offer was one third of the cash on  
2 hand plus one third of the profits for the following two years;  
3 correct?

4           A     Yes.

5           Q     And she did get one third of the cash and one third  
6 of the profits -- actually for any profits that were made  
7 thereafter she got; correct?

8           A     I believe so, yes.

9           MR. SHEEHAN: Thank you.

10          THE COURT: Do you all have proof of -- is it  
11 contained in these exhibits, proof that she's been paid since  
12 2017 forward?

13          MR. SHEEHAN: She even testified to that.

14          THE COURT: Has she's ever --

15          MS. HAACK: No, I have not.

16          THE COURT: Shush, please.

17          So she's -- she's over there very upset, I mean --

18          MR. SHEEHAN: We can have -- we're happy to provide  
19 that proof again, it's --

20          THE COURT: Just tell me what exhibit it is so I  
21 can --

22          MR. SHEEHAN: I don't believe -- I don't -- is there  
23 exhibit in here --

24          THE COURT: And then we can put her back on under  
25 oath because she's dying to say something and she can --

1 whatever she says over there is not part of the record.

2 MR. SHEEHAN: Your Honor, they closed the case. I  
3 don't understand this, but --

4 THE COURT: What do you mean they -- we're going to  
5 make --

6 BY MR. SHEEHAN:

7 Q Mr. Evenden is -- or Mr. Ayala, is there any doubt  
8 that she received the exact same \$65,000 distribution that --  
9 there was one distribution for 32,000; correct, approximately?

10 A In 2017?

11 Q It doesn't matter when but from -- yes.

12 A I mean, yes.

13 Q 2017.

14 THE COURT: Y'all gotta stop. I'm sorry,  
15 Mr. Sheehan, I didn't mean to cut you off, but just in general,  
16 I can hear your sound, ma'am, I can hear your sound, but when  
17 y'all are doing it, all we're getting is just noise on the  
18 record, and we can't make a record.

19 MR. HOLIDAY: No, I understand, Your Honor --

20 THE COURT: So I just need one at a time. Even if it  
21 just kills you to be quiet if it's not your turn.

22 MR. HOLIDAY: I understand.

23 THE COURT: It goes to all of you. You gotta not  
24 talk or you'll have a lousy record.

25 MR. HOLIDAY: I understand Your Honor, can I --

1 MR. SHEEHAN: I'm not finished.

2 THE COURT: No, you gotta let one person talk.  
3 You'll have a chance.

4 MR. HOLIDAY: All right.

5 THE COURT: I'll let you talk. Just let Mr. Sheehan  
6 please finish his question.

7 BY MR. SHEEHAN:

8 Q Is there any doubt that she received the approximate  
9 60 -- two thirds -- two thousand dollar distributions, the same  
10 as you guys? She's gotten one third of any distribution  
11 NRS has made ever; correct?

12 A Yes.

13 Q And to the best of your memory that was approximately  
14 65,000, 2017 and then she cashed a check for about 32,000 at  
15 the beginning of 2018; correct?

16 A I believe so, yes.

17 THE COURT: Okay.

18 MR. HOLIDAY: Can I have a -- can we take couple  
19 minute break and maybe talk to my client.

20 THE COURT: Yeah, that's fine.

21 MR. HOLIDAY: Outside. Okay.

22 THE COURT: At this point we need to bring this to an  
23 end.

24 MR. SHEEHAN: Well, quite frankly, Your Honor, I --  
25 you know it's again my case now and --

1 THE COURT: It is your case.

2 MR. SHEEHAN: His case has rested. Alls I want to do  
3 is put Mr. Evenden on for three questions, and we'll be done  
4 with the whole trial.

5 MR. HOLIDAY: No, I understand. And I believe you're  
6 proposing to bring her up as a potential impeachment witness?

7 THE COURT: No.

8 MR. HOLIDAY: Okay.

9 THE COURT: At this point -- it's the first time it's  
10 come up. I knew that they had taken monies from the  
11 corporation. I did not know that there was three checks cut  
12 each way.

13 MS. HAACK: There wasn't.

14 THE COURT: Okay.

15 MR. HOLIDAY: No, hold on.

16 THE COURT: So let's just take a short break. Okay.  
17 Let's just to ten minutes.

18 (Recess taken 1:00 p.m. to 1:17 p.m.)

19 THE COURT: Are we back on?

20 MR. HOLIDAY: Yeah, I think we're back on.

21 THE COURT RECORDER: No, we're not on the record yet.

22 THE COURT: Okay. Let's get back on.

23 MR. HOLIDAY: Oh, no.

24 MR. SHEEHAN: This is just --

25 THE COURT RECORDER: Hold on --

1 MR. SHEEHAN: Okay. I can say this and keep it off  
2 the record.

3 So we got a hold of the guy from the title company  
4 that prepared this report. Is it okay for him to testify by  
5 phone, or did we want to take a lunch break and have him come  
6 down here?

7 MR. HOLIDAY: Does he have a --

8 MR. SHEEHAN: He's on -- on the witness stand.

9 MR. HOLIDAY: Okay.

10 MR. SHEEHAN: He's on the pretrial now.

11 THE COURT: I don't care.

12 MR. SHEEHAN: He's literally just going to say yes, I  
13 pulled this report and, yes, it's accurate.

14 THE COURT: It's really up to the plaintiff.

15 MR. HOLIDAY: Yeah, he can do it by phone; that's  
16 fine.

17 THE COURT: That's fine.

18 MR. SHEEHAN: Okay.

19 THE COURT: The only thing and we can start talking  
20 about this -- we on? Well, I'll just start right --

21 So Mark and I went back and we're comparing our notes  
22 while we're back there. So there was testimony about them  
23 taking a salary, the two of them. And then we, Mark and I were  
24 going back through our notes as far as we didn't have any  
25 testimony; there was like one comment made by Ms. Haack about

1 receiving some small payment, and I don't know if it's the  
2 \$60,000 you're referencing, but I don't have anything else  
3 indicating, neither of us do, that there was -- I don't know if  
4 there was continue -- there was multiple distributions or not  
5 between 2017 and the time NRS stopped being in operations in  
6 the fall of 2019. We didn't have anything.

7 MR. SHEEHAN: And that's -- thank you for catching  
8 that, but now we think we've cleared that up with Mr. Ayala's  
9 testimony because she got a 32,000 check once and a \$29,000  
10 check.

11 MR. HOLIDAY: They were both before the receivership  
12 motion. Since the receivership motion she hasn't received  
13 anything. At the end of 2019, there was a lot left over  
14 something I think approximately, it's reflected in the  
15 exhibits, right before fiscal year ending in 2018 all the  
16 surplus got paid [indiscernible] like in a massive bill that  
17 was post discovery. So I -- I mentioned in the trial brief it  
18 looked to me like they had paid for anticipated representation  
19 at trial --

20 MR. SHEEHAN: It was [indiscernible], but anyway now  
21 we're testifying I'll rest.

22 MR. HOLIDAY: I don't understand.

23 MR. SHEEHAN: Mr. Ayala just testified on the stand  
24 she got the 32,000, the 29,000. He just admitted that we both  
25 agreed it was, I think it was before the receivership motion.



1 Those were the two distributions.

2 THE COURT: Okay. Those were the only two since the  
3 whatever happened in 2017 that was the impetus for this  
4 litigation.

5 MR. SHEEHAN: Those are the only profits. We didn't  
6 have any profits at the time.

7 THE COURT: Okay.

8 MR. HOLIDAY: Right. And then -- and then after that  
9 the --

10 MR. SHEEHAN: But again, now we're testifying.

11 MR. HOLIDAY: And, again --

12 THE COURT: I didn't think --

13 MR. SHEEHAN: Nancy wants to point out that those  
14 contributions were from funds that were carried over from 2016.  
15 That's what she's so --

16 THE COURT: She actually made a quick comment on that  
17 that she, I think, she received a check in 2017 for profits in  
18 2016 and it was just that short.

19 MR. HOLIDAY: Right. Okay.

20 THE COURT: Okay. That answers my questions. Okay.

21 MR. SHEEHAN: Is it okay if I call this guy from the  
22 title company?

23 THE COURT: Yes, that's fine. That's fine.

24 (Telephone call.)

25 MR. SHEEHAN: Hi Scott. This is Pat Sheehan and

1 you're in the court with the Honorable Judge Miley and opposing  
2 counsel is an individual by the name of John Holiday. How are  
3 you today?

4 SCOTT: Hey, I'm doing very well. How's everybody  
5 doing in there?

6 MR. SHEEHAN: Good. Thank you. So we just want to  
7 real quickly, in fact, Sean screen shot this to you, but you  
8 had the ability at the title company to pull up, you have a  
9 system that you guys rent or use or whatever that you were able  
10 to pull up the total transactions for seven real estate agents,  
11 Randy Orzoff, Irma [indiscernible], Jeffrey Bolton, Crystal  
12 Ramos, Amy McCarthy, Kevin Connor and René Haack, and you  
13 pulled up a report showing how many deals they had done from  
14 the time period 5/1/2017 to 11/14/2019, and that totaled 223  
15 deals; correct?

16 SCOTT: Correct, yes.

17 MR. SHEEHAN: No further questions.

18 THE COURT: Do you have any questions, Mr. Holiday?

19 MR. HOLIDAY: No, Your Honor.

20 THE COURT: All right. Thank you. Okay. But  
21 that --

22 MR. SHEEHAN: Thanks.

23 SCOTT: Okay, [indiscernible].

24 THE COURT: I'll let it in as far as foundation.

25 MR. SHEEHAN: So we'd move for the admission of --

1 THE COURT: It will be admitted.  
2 MR. SHEEHAN: Okay.  
3 THE COURT: Because it's been authenticated now.  
4 THE CLERK: I'm sorry, which exhibit is that?  
5 MR. SHEEHAN: NNN, four Ns.  
6 MR. HOLIDAY: Oh, wasn't that CCCC too?  
7 MR. SHEEHAN: I think it was. It might have been.  
8 THE CLERK: Yes, four Cs, is the one that had not  
9 been stipulated to, that and Z.  
10 MR. SHEEHAN: Well, I think it's --  
11 MR. HOLIDAY: Oh, so I've never seen this one or --  
12 MR. SHEEHAN: I think it's the same one.  
13 MR. HOLIDAY: All right.  
14 MR. SHEEHAN: But let's see. Four Cs, yeah, it's --  
15 no, NNNN is just little bit -- one month more up to date.  
16 MR. HOLIDAY: Okay. So --  
17 MR. SHEEHAN: And I have given you a copy.  
18 MR. HOLIDAY: Well, now we don't know which one just  
19 got authenticated.  
20 MR. SHEEHAN: Yeah, we did. I made it very clear for  
21 the record. Eleven -- 5/1/2017 to 11/14/2019. That's the  
22 question I asked him. You objected to this one too. You said  
23 I want to object to that went too.  
24 MR. HOLIDAY: Okay. So one of the two is in?  
25 MR. SHEEHAN: NNN just one more month.

1 MR. HOLIDAY: Okay. And they don't ask  
2 [indiscernible] --

3 MR. SHEEHAN: One month -- one month extra time  
4 frame.

5 A last witness, Your Honor --

6 MR. HOLIDAY: Was that -- was the second one  
7 disclosed? Do you have a date?

8 MR. SHEEHAN: It could be 11 -- this is some -- we  
9 disclosed this, an earlier version, but it's more up to date  
10 record.

11 MR. HOLIDAY: Well, does the other one got a date  
12 stamp on it?

13 MR. SHEEHAN: Yeah, there a -- an earlier version.

14 MR. HOLIDAY: All right. So --

15 MR. SHEEHAN: And it's on the pretrial memorandum,  
16 also.

17 MR. HOLIDAY: Okay. I see CCCC has a date -- oh, and  
18 that also goes -- yeah, okay. I -- can we just do CCCC?

19 MR. SHEEHAN: Does it have the exact -- does it go to  
20 the --

21 MR. HOLIDAY: No, that's the like one that starts out  
22 and it looks like October --

23 MR. SHEEHAN: It goes to --

24 THE COURT: Y'all figure it out. Kathy's going to --  
25 I don't want Kathy to have a heart attack over here.

1 MR. HOLIDAY: Okay.

2 THE COURT: So which one?

3 THE CLERK: I was just told at one point that  
4 everything was stipulated to with the exception of Z and 4C.

5 MR. SHEEHAN: It's my fault. NNNN is one month more  
6 time frame, and that's the one he testified to. But it doesn't  
7 matter to us. It's like the difference is minuscule.

8 MR. HOLIDAY: Yes.

9 THE COURT: But it -- it's a big deal here.

10 MR. SHEEHAN: And -- and --

11 THE CLERK: I'm having trouble locating the exhibits  
12 that you gave to the clerk yesterday. So if you'll give me a  
13 moment.

14 MR. HOLIDAY: Yeah, I think the CCCCs goes up to  
15 October and then they make one tiny supplement in October  
16 of 2018, and so I -- I'll take his word that that one was --

17 THE CLERK: I found them. She put them in the wrong  
18 binder.

19 MR. HOLIDAY: -- produced in that supplement, it's  
20 got the stamp on it.

21 THE CLERK: Yeah, I'll put them after --

22 MR. HOLIDAY: The other one doesn't appear to -- it  
23 goes past that date so I don't think that one was produced.

24 THE COURT: So, we're just doing CCCC?

25 MR. HOLIDAY: Yeah, CCCC, we've got no problem. We

1 aren't sure which one he authenticated, but we'll just go with  
2 CCCC. I don't want to have to belabor the point any further.

3 (Defendants' Exhibit No. CCCC admitted.)

4 THE COURT: Okay. Okay. Is Mr. Evenden the next one  
5 coming up?

6 MR. HOLIDAY: Oh, was -- were we done?

7 MR. SHEEHAN: Just one more witness --

8 MR. HOLIDAY: All right.

9 MR. SHEEHAN: -- requested, Mr. Evenden, please --

10 MR. HOLIDAY: I had a -- I have one --

11 THE COURT: Did you have a question of Mr. Ayala?

12 MR. HOLIDAY: Just one.

13 THE COURT: Mr. Ayala, just quick come up here.  
14 You're still under oath, sir.

15 MR. HOLIDAY: Okay. All right. Sorry about the --  
16 And it has to do with CCCC.

17 THE COURT: Sure.

18 MR. HOLIDAY: Okay.

19 FURTHER RECROSS-EXAMINATION

20 BY MR. HOLIDAY:

21 Q All right. On CCCC one of the agents listed on there  
22 is Irma; is that right?

23 A You're talking about this one --

24 Q CCCC.

25 A -- that's also NNNN; right?

1 Q CCCC.

2 MR. SHEEHAN: It's the same thing. You can -- either  
3 way.

4 THE WITNESS: Okay.

5 BY MR. HOLIDAY:

6 Q All right. That reflects there was an agent on there  
7 named Irma; right?

8 A Yes, there is.

9 Q All right. And is she sitting here in the courtroom  
10 right now?

11 A Yes, she is.

12 Q All right. She is? All right. Did you invite her  
13 into your office and tell her she was fired?

14 A Did I invite her into my office and tell her she was  
15 fired?

16 Q Right. He's claimed all these people left because of  
17 Nancy Haack. She's sitting right there -- looking at her do  
18 you remember that you invited her into your office?

19 A I don't recall telling her that she was fired, no.

20 MR. HOLIDAY: Okay. All right. Thank you, that's  
21 all.

22 THE COURT: Okay. Anything else?

23 MR. SHEEHAN: Mr. Evenden.

24 May I approach, Your Honor?

25 THE COURT: Yes.

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**SEAN EVENDEN**

(having been called as a witness and previously sworn,  
testified as follows:)

DIRECT EXAMINATION

BY MR. SHEEHAN:

Q All right. Mr. Evenden, when you went into this  
relationship, of course you hoped that everybody would agree on  
everything unanimously; correct?

A Yes.

Q But you knew that that wasn't going to be the case at  
all times; correct?

A Correct.

Q So the parties agreed, for example, that the  
operating agreement could be amended by a majority; correct?

A Yes.

Q And that's what the operating agreement says?

A Yes.

Q And that's the way that you always operated your  
business?

A Yes.

Q And, in fact, the very first decision that you guys  
made there was a dispute and then two thirds majority ruled;  
correct?

A That's correct.

Q And what was that decision?



1           A     The original, I think, disagreement that we all had  
2 was we were going to hire an attorney to put together the  
3 operating agreement, and I wanted to use you and your services,  
4 and Nancy and Roger wanted to go with Schnitzer -- Switzer to  
5 put it together.

6           THE COURT: Schnitzer?

7           THE WITNESS: I'm sorry?

8           THE COURT: Schnitzer.

9           THE WITNESS: Schnitzer. Thank you, Your Honor.

10           And put the operating agreement -- the operating  
11 agreement together, and I ended up or Nancy and Roger, the  
12 majority ended overruling.

13 BY MR. SHEEHAN:

14           Q     All right. And, sir, you -- with respect to the IRS  
15 issue at your previous company they had allowed agents to take  
16 some of their commission money and pay it directly to the IRS;  
17 correct?

18           A     That's correct.

19           Q     Some agents don't want to get stuck with a huge tax  
20 bill at the end of the year; they like to pay as they go;  
21 correct?

22           A     That's correct.

23           Q     And you did that at NRS; correct?

24           A     That's correct.

25           Q     Okay. And Roger and Nancy agreed although Nancy

1 mentioned that the cost of the stamp should come out of your  
2 pocket?

3 A That's correct.

4 MR. SHEEHAN: No further questions.

5 THE COURT: Are we finished -- any cross?

6 MR. HOLIDAY: Yeah, sure. Can I ask him about that  
7 person being fired?

8 THE COURT: Sure.

9 MR. HOLIDAY: Okay.

10 CROSS-EXAMINATION

11 BY MR. HOLIDAY:

12 Q All right. Is -- you see Irma in the courtroom right  
13 there?

14 A I do.

15 Q Okay. Did you invite her into your office and tell  
16 her she was fired?

17 A No.

18 Q No? Okay. All right. So you said a -- I believe  
19 what you said is you would amend the operating agreement by  
20 majority and that's the way you always did it?

21 A Can you ask that again.

22 Q Okay. I heard you say since you started the company  
23 you had always amended the operating agreement by majority, and  
24 that's the way you always did it; is that right?

25 MR. SHEEHAN: Objection. Mischaracterizes his

1 testimony.

2 MR. HOLIDAY: Okay. Well, can we have it -- read it  
3 back?

4 THE COURT: No, we can't.

5 MR. HOLIDAY: Okay.

6 MR. SHEEHAN: I can do it. I asked him if you had to  
7 amend would it be by a majority.

8 MR. HOLIDAY: Well, I -- his answer -- he put in  
9 there that he amended by a majority. All right. We'll get the  
10 transcript on that so.

11 BY MR. HOLIDAY:

12 Q Did you ever amend the operating agreement before May  
13 1st, 2017?

14 A I don't know if we did or not. I believe, you know,  
15 I don't believe we did.

16 Q Okay. And -- okay. Aside from your testimony, did  
17 you produce any documents substantiating your claim that  
18 your -- the income tax payment was deducted from your  
19 commissions?

20 A Yes.

21 Q Okay. So you -- can you -- you can ask your  
22 attorney, can you indicate where in the exhibits you provided a  
23 proof of --

24 A We went through all of the -- the questions from the  
25 forensic auditor, and we gave supporting documentation on all

1 checks, all money coming in, all money going out to be able to  
2 support the percentage of my commissions that were -- that were  
3 sent to the IRS.

4 Q Okay. So you're -- if those documents were, in fact,  
5 produced, your lawyer -- you have faith in your lawyer; right?

6 A [No audible response.]

7 Q Okay. Your lawyer would have put them in the exhibit  
8 binder?

9 MR. SHEEHAN: Objection, Your Honor.

10 MR. HOLIDAY: Okay. Calls for speculation.

11 Withdrawn.

12 BY MR. HOLIDAY:

13 Q So you can't -- well, very well.

14 MR. HOLIDAY: That's all, Your Honor.

15 MR. SHEEHAN: I think we're done.

16 THE COURT: All right. So you're going to give me  
17 briefs for closings and when are y'all going to get those?

18 MR. HOLIDAY: Let's see. I'd like enough time to not  
19 have to get an expedited transcript.

20 MR. SHEEHAN: I thought you said we weren't going to  
21 get a transcript.

22 MR. HOLIDAY: Well, if we're doing closing briefs  
23 then we definitely need transcripts.

24 MR. SHEEHAN: I can do one without a transcript.

25 MR. HOLIDAY: All right. We will -- so in terms of

1 time. So can we get three weeks because I'm -- on March 1st  
2 time starting another law firm with a friend of mine. So I'm  
3 kind of personally a little busy over the next two weeks, and  
4 it would just really be a courtesy to me if I could have three  
5 weeks.

6 THE COURT: Yeah. No more than that because I have,  
7 I guess, it's not technically under advisement until they get  
8 me the briefs; correct?

9 THE CLERK: They usually set it 60 days from the date  
10 that they are supposed to sign the briefs. So they're split on  
11 time.

12 THE COURT: Okay. So it will start -- and the reason  
13 I'm asking Kathy is they're very strict about how much time  
14 something can be under mission -- submission, but it wouldn't  
15 be under submission until I have the closing briefs. So get  
16 those briefs to me within three weeks from today's date both of  
17 you, please, okay.

18 THE CLERK: And that's March 20th is three weeks  
19 from today.

20 MR. HOLIDAY: All right. Thank you very much.

21 THE COURT: Thank you.

22 / / /

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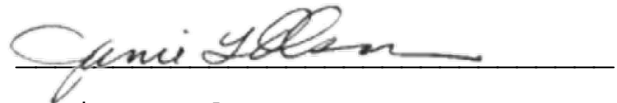
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MR. SHEEHAN: Thank you to the whole court staff.

(Proceedings adjourned 1:33 p.m.)

-oOo-

ATTEST: I do hereby certify that I have truly and correctly  
transcribed the audio/video proceedings in the above-entitled  
case.

A handwritten signature in cursive script, reading "Janie L. Olsen", is written over a horizontal line.

Janie L. Olsen  
Transcriber

	\$	177 [1] 65/1	32 [7] 12/17 13/14	79/20 108/6 121/9
<b>BY MR. HOLIDAY:</b>	\$124,000 [1] 125/14	178 [1] 65/10	45/15 50/8 51/23 53/13	139/17 148/9 158/1
<b>[35] 78/24 82/11 83/7</b>	\$124,880 [1] 119/7	17th [2] 35/14 35/18	53/23	<b>about [98] 3/24 5/7</b>
86/9 88/14 89/19 89/23	\$250,000 [2] 69/24	18 [1] 67/13	32,000 [4] 142/9	5/15 5/21 13/18 13/22
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<b>BY MR. SHEEHAN:</b>	'	20 [2] 54/13 59/17	45 [3] 33/1 33/8 33/17	81/10 82/15 83/14
<b>[51] 3/23 8/13 9/14</b>	'15 [1] 32/10	200 [1] 121/20	49th [1] 91/19	83/24 84/6 84/14 86/1
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<b>MR. HOLIDAY: [227]</b>	10:30 [1] 45/22	134/15 135/2 135/5	6.8 [5] 44/14 44/14	145/25 152/15 152/23
<b>MR. SHEEHAN: [205]</b>	10th [22] 6/19 18/15	135/25 137/7 137/16	45/2 61/18 107/14	156/6 159/13
<b>MS. HAACK: [5] 136/9</b>	29/10 73/7 88/24 100/7	137/21 137/23 140/24	60 [2] 143/9 159/9	<b>above [1] 160/5</b>
137/6 137/10 141/15	104/22 107/9 107/11	140/25 141/12 142/10	60,000 [3] 136/8	<b>above-entitled [1]</b>
144/13	109/13 109/16 111/22	142/13 143/14 146/5	136/12 137/21	160/5
<b>SCOTT: [3] 148/4</b>	125/24 129/23 130/5	147/3 147/17 148/14	65,000 [2] 137/22	<b>absence [2] 52/7 52/13</b>
148/16 148/23	130/8 132/24 133/15	149/21 157/13	143/14	<b>absolutely [2] 13/17</b>
<b>THE CLERK: [18] 8/3</b>	133/17 133/18 133/19	2018 [3] 143/15 146/15	66 percent [1] 63/10	90/9
58/25 59/5 79/4 79/9	133/21	151/16	68 [2] 92/5 92/5	<b>accept [3] 109/7 109/8</b>
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151/21 159/9 159/18	11/14 [1] 118/16	137/16 146/6 146/13	75 [1] 131/1	<b>accepted [3] 104/9</b>
<b>THE COURT</b>	11/14/2019 [3] 118/17	148/14 149/21	75,000 [5] 131/2 131/5	109/10 109/20
<b>RECORDER: [2]</b>	148/14 149/21	2020 [3] 1/13 3/1 13/1	132/2 132/4 132/5	<b>access [2] 34/19 99/22</b>
144/21 144/25	110,385 [1] 118/24	208 [2] 67/12 67/13	7500 [4] 131/5 131/7	<b>according [2] 92/11</b>
<b>THE COURT: [260]</b>	112 [1] 36/7	209 [1] 67/11	131/8 132/4	132/7
<b>THE MARSHAL: [4]</b>	113 [1] 37/9	20th [1] 159/18	8	<b>accordingly [1] 57/3</b>
47/13 48/1 48/6 48/10	116 [1] 37/25	21 [2] 1/13 3/1	81 [1] 22/1	<b>account [1] 139/11</b>
<b>THE WITNESS: [62]</b>	117 [1] 40/11	211 [2] 70/18 70/19	8275 [1] 123/12	<b>accountant [1] 134/24</b>
3/17 4/14 4/20 5/1 5/4	11:07 [1] 58/18	221 [1] 72/9	85 [2] 22/25 24/19	<b>accounting [2] 68/16</b>
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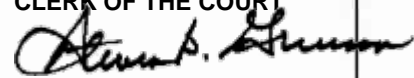
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19/19 19/20 22/17 22/18 23/20 23/23 25/7 40/24 47/14 48/25 68/2 71/2 74/21 75/18 88/8 89/22 94/9 96/14 97/12 105/19 109/5 110/4 113/4 121/23 126/9 126/24 128/4 128/13 129/2 129/8 139/17 144/5 146/2 148/1 152/14 152/23 158/4 158/16</p> <p><b>you've [8]</b> 5/13 5/25 6/4 32/13 44/24 49/12 95/3 97/6</p> <p><b>your [271]</b></p> <p><b>yours [1]</b> 27/18</p> <p><b>yourself [5]</b> 18/18 57/14 60/3 81/6 88/9</p> <hr/> <p><b>Z</b></p> <hr/> <p><b>zero [1]</b> 60/11</p>
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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,

v.

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; DOE Individuals  
I through X; and ROE CORPORATIONS  
and ORGANIZATIONS I through X,  
inclusive,

Counterclaimants,

v.

NANCY HAACK, an individual.

Counter-defendants.

CASE NO.: A-17-753435-C

DEPARTMENT XXIII

DECISION & ORDER

I. INTRODUCTION

THIS MATTER having been scheduled for bench trial before this Court from  
February 18, 2020 through February 21, 2020 with Plaintiff Nancy Haack representing  
herself in pro per, John R. Holiday, Esq. appearing on behalf of Plaintiff NRS Realty  
Group, LLC, Patrick J. Sheehan, Esq. appearing on behalf of Defendants Sean Evenden  
and Roger Ayala. Plaintiff pled the following claims against Defendants: (1) Breach of

1 Contract; (2) Breach of the Implied Covenant of Good Faith and Fair Dealing; (3) Breach  
2 of Fiduciary Duty; (4) Conversion; (5) Indemnity; and (6) Accounting. At the start of trial,  
3 Plaintiff withdrew her claims of (7) Interference with Prospective Economic Advantage  
4 Against All Defendant; and (8) Usurpation of Corporate Opportunities. Defendants pled  
5 the following counterclaims against Plaintiff: (1) Breach of Contract; (2) Breach of the  
6 Implied Covenant of Good Faith and Faith Dealing Both Tortious and Contractual, (3)  
7 Tortious Interference with Contract and Prospective Economic Advantage; and (4)  
8 Declaratory Relief. The first and second counterclaims were also brought as derivative  
9 actions against Nancy Haack on behalf of NRS Realty Group, LLC.  
10  
11

12 Having considered the testimony of the witnesses, having reviewed the exhibits,  
13 and having heard the arguments of counsel, the Court enters the following Decision and  
14 Order.  
15

## 16 II. STATEMENT OF FACTS AND PROCEDURAL HISTORY

17 1. Nancy L. Haack ("Haack"), Sean Evenden ("Evenden"), and Roger Ayala ("Ayala")  
18 (Collectively "members") formed a real estate brokerage firm, NRS Realty Group, LLC  
19 ("NRS"), in May 2010.

20 2. Each member owns an equal 1/3 interest in NRS.

21 3. When the members formed NRS, they agreed that they would pay themselves a  
22 salary when NRS became profitable.

23 4. NRS's Operating Agreement ("Agreement") was executed by all members on  
24 August 5, 2010.

25 5. NRS's primarily generates its revenue through: (1) office rental fees from its  
26 agents, (2) transaction fees on its agents' real estate sales, and (3) commission splits on  
27 property management fees.  
28



1  
2 6. NRS maintained bank accounts for its operations; most of the funds in these  
3 accounts were commissions owed to agents and other third parties.

4 7. NRS achieved profitability for the first time in 2016.

5 8. In 2016, the members began negotiations to expand NRS by leasing an office  
6 across the hall from their original office.

7 9. Multiple agents, including existing agents as well as new agents, were shown the  
8 new space and informed about the members' plan to expand NRS.

9 10. Certain NRS agents were promised offices at the new location.

10 11. Nancy Haack, Sean Evenden, Roger Ayala, and their spouses would have to sign  
11 personal guarantees to lease the new office; they also originally had to sign personal  
12 guarantees to lease NRS's original office.

13 12. In January 2017, NRS's landlord provided Defendants with a copy of the lease for  
14 the new office.

15 13. The members met at Balboa Pizza on January 31, 2017. The nature of the  
16 discussions at Balboa were disputed at trial.

17 14. After the Balboa meeting, Haack told Defendants via text message that they could  
18 form a separate company without her so long as they moved to the new office and did not  
19 use NRS's assets.

20 15. Defendants limited Haack's access to the bank accounts but ultimately gave her  
21 view-only access.

22 16. Defendants initially filed dissolution papers with the Secretary of State for NRS  
23 but decided to unwind the dissolution and form a new company.

24 17. Defendants created Life Real Estate around February 2017 across the hall from  
25 NRS.  
26  
27  
28

1  
2 18. Defendants met to amend the Agreement to pay themselves a salary in April 2017.  
3 Haack was not present at the meeting.

4 19. Defendants passed a resolution to pay themselves a salary of \$50,000.00 each.  
5 Haack did not receive a salary.

6 20. Plaintiff filed the Complaint in this matter on April 3, 2017.

7 21. Before signing the new lease in August 2017, Defendants wrote to Haack and  
8 asked her if she wanted NRS to take over the new space with her involvement. Through  
9 her attorney, Haack declined the offer and stated that NRS was not permitted to sign a  
10 lease for the new space.  
11

12 22. More than \$200,000.00 was spent to build out the new office. The source of the  
13 funds was disputed at trial although it was undisputed that Haack never contributed to the  
14 new company.

15 23. NRS continued to operate after Defendants formed the new company; Haack  
16 remained a member of NRS and received a share of the profits.  
17

18 24. Haack sought from this Court an appointment of a receiver to protect the safety and  
19 well-being of NRS' assets. In a Decision issued on January 26, 2018, this Court denied  
20 Haack's Motion but held that beginning February 1, 2018, Defendants were to provide  
21 Haack with monthly disclosures of any and all financial documents relating to NRS Realty  
22 Group, LLC.

23 25. On September 13, 2018, Plaintiff filed two Motions for Partial Summary  
24 Judgment; one motion was as to her claims and the other as to Defendants' counterclaims.  
25 On October 8, 2018, Defendants submitted their opposition as well as a Countermotion for  
26 Summary Judgment on all claims. In a decision issued December 17, 2018, this Court  
27 denied all the pending motions finding that there remained genuine issues of material fact  
28

1  
2 regarding all claims for both parties, especially those involving the Agreement between  
3 the parties.

### 4 III. TESTIMONY FROM WITNESSES

5 Six witnesses testified in this Matter. The following witnesses testified at the bench  
6 trial.

#### 7 A. Sean Evenden

8 NRS was formed in 2010 by Plaintiff Haack and Defendants Ayala and Evenden.  
9  
10 Evenden testified that each of the parties owned one-third of NRS per the Partnership  
11 Agreement ("Agreement"). Evenden was asked numerous questions about his  
12 understanding of the Agreement. On direct examination, Evenden acknowledged that  
13 Section 6.8 (Voting) of the Agreement in states "[T]he unanimous vote of all of the LLC  
14 interests shall be required to approve any action, unless a greater or lesser vote is required  
15 pursuant to this Agreement or by Statute." However, Evenden testified this section is  
16 vague to him and questions on interpretations would need to be referred to the drafting  
17 attorney.  
18

19 Regarding meetings, Evenden acknowledged that the language of Section 6.10  
20 (Waiver of Notice or Consent by Absent Members) of the Agreement requires an  
21 individual entitled to vote, but who is not present, to sign a "written waiver of notice, a  
22 consent to the holding of the meeting, or any approval of the minutes thereof." Further,  
23 pursuant to Section 6.11 (Member Action by Written Consent Without a Meeting), if all  
24 the members give written permission, any action may be taken without a meeting and  
25 without formal notice. Evenden testified that at a May 2017 meeting he and Ayala  
26 amended the Agreement, pursuant to Section 13's language requiring a "majority (or all)  
27 of the LLC interests" to allow for he and Ayala to begin receiving a \$50,000.00 annual  
28



1 salary. He stated that because Haack breached the contract and abandoned her duties that  
2 she was not entitled to receive the salary.  
3

4 Evenden testified that per Section 10 (Indemnification) of the Agreement he and  
5 Ayala held a meeting to award them both legal fees. Evenden agreed that Section 10.5  
6 (Required Approval) states there must be a majority vote of members to approve  
7 indemnification however he never received consent from Plaintiff for the meetings on  
8 indemnification. Evenden testified that he notified Haack of the meetings by email, by  
9 placing notices on her home, and by possibly even texting her. Per Evenden, Haack never  
10 responded to any of these notifications.  
11

12 Evenden testified that there was a substantial profit for NRS in 2016. After 2016  
13 the numbers began to drop, including a drop of \$70,000.00 in profit in 2017, and an  
14 additional drop of about \$92,000.00 in profit in 2018. He acknowledged that the salaries  
15 provided for Evenden and Ayala, as well as legal fees for this matter, could have led to the  
16 drop in profits in 2017.  
17

18 Evenden testified that until 2016 Plaintiff Haack maintained the books and paid  
19 payroll and taxes. Haack was also responsible for the business licenses of the two NRS  
20 offices and was the only licensed realtor at the China Town office and was responsible to a  
21 certain extent for the operation of this second office.  
22

23 Evenden, Ayala, and Haack had a meeting at Balboa Pizza on January 31, 2017  
24 regarding the plan to expand NRS into the space across the hall from the current office.  
25 Following the January 31, 2017 Balboa meeting there were a flurry of text messages that  
26 were sent between the parties. He acknowledged there was a text message to Haack stating  
27 that it was time for them to buy her out as well as one trying to get her to meet with them  
28 to remove her from NRS. He testified that he had originally wanted the three of them to

1 meet during this time without lawyers and to figure out a solution that mutually worked  
2 for all three parties, but that Haack wanted to have her attorney involved in the process.  
3 Although Evenden testified repeatedly that Haack verbally stated she was resigning at the  
4 Balboa meeting, he acknowledged that there was no evidence in writing. Although Haack  
5 was not prevented from working as an agent during this time, after the Balboa meeting she  
6 no longer wanted to put money into the business or be a part of its operations.  
7

8 Evenden stated that Haack breached the Operating Agreement when she failed to  
9 follow up on her promise to move the company forward and expand. Evenden testified  
10 that once Haack breached the Agreement, he and Ayala began noticing themselves and  
11 Haack for special meetings. This was not common practice prior to Haack's breach but she  
12 was noticed for the special meeting in May. It was at the meeting in May 2017 where  
13 Evenden and Ayala amended the Agreement; Haack never showed up to the meeting and  
14 thus written consent was never received. Further, Haack's breach, along with a cease and  
15 desist letter she sent, led to Evenden and Ayala deciding it would be best to dissolve the  
16 company before they ultimately decided to unwind that decision.  
17

18 In May 2017, NRS had between 30 and 40 agents. The new entity, Life Real  
19 Estate, had about 104 agents at the time of the trial. Evenden noted that the agents Haack  
20 recruited were at NRS until that entity's lease expired.  
21

22 Once Haack was no longer handling the bookkeeping for NRS, the books were  
23 audited to ensure that Life Real Estate employees were not paid out of NRS. Evenden was  
24 unsure if NRS paid the Secretary of State fees for Life Real Estate. However, Evenden and  
25 Ayala did vote to pay the legal fees out of NRS funds for this action. Further, while  
26 Evenden testified that he did not specifically know why certain checks were paid to  
27 himself directly, he asserted that he would sometimes pay for business expenses out of his  
28



own pocket and reimburse himself from NRS. To this day, Evenden asserted, Haack is still a one-third owner of the NRS entity.

**B. Jefrie Felton**

Jefrie Felton ("Felton") is a realtor who had been with NRS since 2010 but has since left. He testified that he was under the impression that Haack left the company because she was tired and ready to retire for health reasons. Felton testified that in April 2017 he attended a meeting and received an email NRS was being dissolved. Thereafter, a contract with the new company was placed on his desk with a 10-day deadline of March 26, 2017 saying that licenses would be returned to the agents if they chose not to sign.

Felton acknowledged that he ultimately left NRS because of infighting among the partners and worried about the viability of the company. He testified that he is unaware of who caused the issues but was aware that the intent was for NRS to expand across the hall.

**C. Roger Ayala**

Defendant Roger Ayala, like Evenden, testified that sometimes he would be reimbursed for expenses that he incurred on behalf of the company. This could include charitable contributions in addition to other business expenses.

Regarding the space across the hall from NRS, Ayala testified that he remembered Haack giving permission to open the new office in early 2017. Ayala sent the March 10, 2017 letter threatening to send Haack's license back to the Real Estate Division because she continuously changed her mind on whether Evenden and Ayala could open the new business without her.

When asked about the March 10, 2017 letter Evenden and Ayala sent to Haack stating that Haack had been removed from NRS, Ayala testified that he never fully understood the contents of it at the time and still does not today. He noted that they

1  
2 presented the circumstances to their attorney, they paid the attorney with NRS funds, and  
3 the attorney drafted the letter. It was the fear of litigation, Ayala testified, that ultimately  
4 led he and Evenden to withdraw the dissolution.

5 Ayala testified that he believes he told the agents at NRS that they had to move to  
6 Life Real Estate because Evenden was stepping down as broker of NRS to assume that  
7 role at Life Real Estate. However, Ayala did not believe that any of NRS's agents left  
8 before the March 10, 2017 letter to Haack.  
9

10 Ayala ended up becoming the broker of record for NRS. Ayala testified that during  
11 his time as broker of record for NRS he is unsure about how much money NRS made. He  
12 did note, however, that lease payments for the Life Real Estate location have never been  
13 paid out of the NRS funds and that one particular large payment had to be paid out of NRS  
14 to pay the back dues of about seven months of CAMs for the NRS location.

15 Regarding Haack's share of the distribution, Ayala testified that she was given one  
16 check for \$32,000.00 and one check for \$29,000. The original offer to her was for one-  
17 third of the cash on hand and one-third of the profits going forward. He acknowledged that  
18 this was not based on a formal evaluation of the company.  
19

20 **D. Nancy Haack**

21 Plaintiff Nancy Haack testified that negotiations for the expansion began in 2016  
22 and continued into 2017. She acknowledged that her husband did not want to sign a  
23 personal guarantee for either the new space across the hall or to extend the current NRS  
24 lease beyond its expiration<sup>1</sup>. Haack testified that her husband was worried about her  
25  
26  
27

28 <sup>1</sup> Sean Evenden, Roger Ayala, Nancy Haack, and their spouses had to sign personal guarantees for the NRS lease. To extend the NRS lease beyond its expiration would again require personal guarantees from all of the parties.



1 health, due to a previous heart attack, and that she was doing too much work for the NRS  
2 business without being properly compensated.  
3

4 Haack testified that she was originally told by Evenden that their spouses would  
5 only need to sign a two year personal guarantee but that she later found out the guarantee  
6 was for the length of the contract. She stated that she had originally wanted a lawyer to  
7 look at the lease but that Evenden and Ayala felt that was unnecessary. Following the  
8 contentious negotiations during and after the Balboa meeting, Haack's attorney advised  
9 her to have them open the new company in the space across from NRS while she would  
10 stay on at NRS; eventually the two entities would merge after two years. One of her  
11 concerns was that after seven years of not making money she did not want to use the  
12 profits NRS finally made and invest that into a new location.  
13

14 Haack asserted that she never wanted to leave NRS and wanted to maintain her  
15 role at NRS but would not be an owner of the new company across the hall. She was  
16 worried about Evenden and Ayala removing her from NRS. However, at her deposition,  
17 Haack testified that she would not go back to NRS. Haack denied ever saying she would  
18 quit at the Balboa meeting but testified that it was uncomfortable going into work after  
19 that meeting and that she "didn't want to be there." Haack wanted to keep NRS running  
20 until she was off the lease.  
21

22 Haack also asserted that after she started this litigation she was never given access  
23 to all of the accounting records that she needed. The forensic accountant had access, but  
24 Haack testified that January 2020 was the first time she got access to the information and  
25 was only given a login for QuickBooks, rather than for the other software including  
26 Loanwolf and ADP. ADP was used for payroll while Loanwolf was used for tax purposes.  
27  
28

1 And while she did receive a distribution in 2017, based on 2016 being profitable, there  
2 have been no further distributions after January 2018.  
3

4 Haack testified that the Agreement always required unanimous consent for major  
5 changes as well as decisions related to finances and ownership. She acknowledged that it  
6 says majority in the Agreement but that is not her interpretation of the Agreement. Further,  
7 Haack asserted that Section 10.5 (Required Approval) of the Agreement prohibited  
8 members from voting for indemnification if they are parties to the proceeding. She further  
9 testified that she never saw the May 2017 amendment so she could not have agreed on the  
10 change but did acknowledge that she received the notices posted on her home. Haack  
11 testified, "Why would I go to a meeting if every item is against me." Haack stated that she  
12 did not believe the Agreement could be amended to benefit only two of the members.  
13

14 Haack stated that she always envisioned the members would get salaries once the  
15 company was profitable. She also testified that she initially agreed to expand NRS across  
16 the hall because the current office lacked sufficient offices and desk space for all of the  
17 agents. Haack asserted that while she was fine signing the personal agreement on the new  
18 space, it was her husband who did not want to sign himself. However, in a text message  
19 Haack sent on February 6, 2017 she mentioned that she wanted to ensure she "wasn't tied  
20 to a lease until I was 72 years old." On February 8, 2017, Haack had her lawyer send a  
21 letter to Ayala and Evenden stating that she had no interest in renewing the lease for the  
22 NRS location. Haack did not dispute saying she was going to retire at one point, but noted  
23 that Evenden had regularly threatened to leave the business as well. She acknowledged  
24 that she told them to just create the new business across the hall but that they were not to  
25 use any of her or NRS's money for the project.  
26  
27  
28



1  
2 NRS had about 40-45 agents the day Haack left the company and about 50 agents  
3 in November 2017 per Haack. NRS existed through October 2019 up to the expiration of  
4 its lease. She testified that she went to the office in 2019 to retrieve her possessions and  
5 that the core group of agents were still at NRS.

6 **E. Crystal Elijah-Ramos**

7  
8 Crystal Elijah-Ramos ("Elijah-Ramos") is a realtor who started with NRS in  
9 January 2016. She testified that she moved her license to NRS because of a good rapport  
10 she had with Haack when they met. Elijah-Ramos stated that when she was presented with  
11 the offer to go over to the new space or have her license returned to the division, she felt  
12 like she was being intimidated but nonetheless signed the new agreement with Life Real  
13 Estate.

14 **F. Joseph Leauanae**

15  
16 Joseph Leauanae ("Leauanae") is a forensic accountant, accredited in business  
17 evaluation and accounting forensics. He was retained by Plaintiff in May 2018 for the  
18 purpose of calculating the economic damages incurred by NRS and/or Haack.

19 When analyzing the seven bank accounts attached to NRS, Leauanae testified that  
20 transfers were seen between accounts he did not have access to. He noted that two  
21 accounts had been opened after Haack's departure and that this is unusual. After  
22 completing his report at some point in 2019 his online access to the databases was stopped.

23  
24 Leauanae stated that he was provided statements from January 2016 up through  
25 May 2018 that was missing some information. Over 23,000 transactions were compared to  
26 the flow of funds through the accounts. He noted transactions to the US Treasury for  
27 approximately \$102,694 paid by NRS on behalf of Evenden. Leauanae testified that these  
28 payments would be for tax obligations by or on behalf of Evenden and while the

1 Quickbooks account referenced the amount, it did not specify how it was recorded. A  
2 company like NRS, per Leauanae, would require the individual rather than the company  
3 be responsible for the tax obligations. While Leauanae noted in his expert report that there  
4 may be (1) damages related to alleged accounting/Operating Agreement-based  
5 improprieties as well as (2) damages related to defendants' alleged misappropriation of  
6 corporate assets and the formation of Life Real Estate, a competing entity, Leauanae  
7 testified he did not have all the information he needed to formulate a final conclusion on  
8 many of the allegations. Further, Leauanae was unable to reconcile the differences  
9 between the profit and losses shown in Quickbooks and Loanwolf<sup>2</sup>.  
10  
11

12 Leauanae noted that the salaries paid to Evenden and Ayala, along with various  
13 payments to Evenden and the landlord Vestar Property Management were transactions that  
14 caught his attention. The payments to Vestar had been \$7,500 per month before Haack's  
15 departure and that went up to \$11,000.00 following her departure. Leauanae testified that  
16 the increase in payments could have been for the missing CAM payments but he has no  
17 information to agree or disagree with that assessment.  
18

#### 19 IV. FINDINGS OF FACT AND CONCLUSIONS OF LAW

20 Ultimately, what came before this Court were the intimate details of a business  
21 relationship that had rotted to its core. As disagreement arose between the members  
22 regarding how to properly move the business forward, evidence was presented to this  
23 Court that showed resentment had set in, threats were made to one another, and the parties  
24 all made comments evincing their desires to go their separate ways. Beyond the mere  
25 words of the parties, their respective actions among one another are critical to this Court.  
26

27 ///

28 <sup>2</sup> In 2017 NRS showed income of \$709,021.00 in Loanwolf and \$214,000.00 in Quickbooks. In 2018 the numbers showed \$709,000.00 in Loanwolf and a loss of \$121,000.00 in Quickbooks.



1  
2 **A. Plaintiff's Breach of Contract Claim**

3 To prevail on a breach of contract claim, the plaintiff must demonstrate: (1) the  
4 existence of a valid contract; (2) a breach by the defendant; and (3) damages caused by the  
5 breach. *Cohen-Breen v. Gray Television Grp., Inc.*, 661 F. Supp. 2d 1158, 1171 (D. Nev.  
6 2009). A person breaches a contract when they fail to perform a "duty arising under or  
7 imposed by an agreement." *State Dep't of Transportation v. Eighth Judicial Dist. Court in*  
8 *& for Cty. Of Clark*, 133 Nev. 549, 554 (2017). A party does not have to perform under a  
9 contract if the other party materially breaches their duty to perform first. *Cain v. Price*, 134  
10 Nev. 193, 196 (2018). Here, both plaintiff and defendants have asserted claims for breach  
11 of contract.  
12

13 Plaintiff claimed Defendants breached the Agreement in a myriad of ways.  
14 Meetings were conducted without Haack. Amendments to the Agreement were made  
15 without her written consent, including an amendment providing salaries to Evenden and  
16 Ayala, but not Haack, and an amendment that was made involving the addition of a  
17 provision for capital calls that was never exercised. Plaintiff also claimed that Defendants  
18 breached the Agreement when they dissolved NRS, however, that dissolution was  
19 promptly reversed, as noted by Defendants. Most critical to Plaintiff's arguments is the  
20 assertion that Defendants breached the Agreement by forming the new company, Life Real  
21 Estate, and appropriating NRS's assets, goodwill, intellectual property, and real estate  
22 agents.  
23

24 Further compounding the issues at NRS, Plaintiff alleged that Defendants breached  
25 the contract when they excluded Haack from the office. Plaintiff also asserted that  
26 Defendants' threats to fire NRS's agents if they did not sign independent contract with  
27 Life Real estate constituted a breach. Per Haack, this amounted to taking NRS's agents to  
28

1  
2 better the new company. Plaintiff's damages are from the loss of agents, resulting in a loss  
3 of transactions and diminished profitability for NRS.

4 Defendants noted that Section 6.3 of the Agreement allowed for special meetings  
5 as long as two-thirds of the holding interests are represented and all of NRS's members are  
6 notified of the special meeting. Haack was notified of the meetings. She acknowledged at  
7 trial the notices that were left at her home. Further, Section 6.11 of the Agreement allows  
8 for actions to be taken on behalf of the corporation through a vote of a majority of the  
9 members. Defendants again noted that Evenden and Ayala make up a majority of the  
10 members.  
11

12 Regarding the creation of Life Real Estate, Defendants asserted that Haack  
13 expressly authorized Defendants to start their own company as evidenced by text  
14 messages, deposition testimony, and Haack's own testimony at trial. Defendants noted that  
15 this did not alter Haack's one-third interest in NRS, an interest that still remains today.  
16 Defendants argued that because they funded the company independently, not relying on  
17 any of NRS's assets, that their actions were consistent with the Agreement and with  
18 Haack's own demands. In addition, Haack has received over \$60,000.00 in profits from  
19 her share of NRS since the alleged breaches. Furthermore, in conjunction with Haack's  
20 undisputed distribution profits, Plaintiff never proved any damages<sup>3</sup>. The Forensic  
21 Accountant was unable to specify damages due to his repeated testimony that he needed  
22 more documents and information to make a conclusion. His report only noted possible  
23 areas of misappropriation.  
24  
25

26 Defendants noted that only a few agents ultimately left NRS. Further, those that  
27 left because of the dispute between the members was caused by Haack and a number of  
28

---

<sup>3</sup> Defendants argued that Plaintiff failed to prove damages on each of her claims.



1 those agents who left went with Haack to the competing brokerage she formed.

2 Defendants felt they had to restrict Haack's access to the office and to the bank accounts  
3 because her vindictive behavior towards Defendants threatened NRS and its agents. Her  
4 testimony that she preferred a "pound of flesh" to money is evidence of this. Further, it  
5 was only after Haack breached the Agreement by reneging on her promise to help expand  
6 NRS that Defendants chose to restrict her access to the bank accounts.  
7

8 COURT FINDS, Defendants Sean Evenden and Roger Ayala did not breach their  
9 contract with Plaintiff Nancy Haack. There undisputedly was a contract between the  
10 parties in the form of the Operating Agreement for NRS. While amending the Agreement  
11 without Plaintiff Nancy Haack's signature may have been done to better their positions, it  
12 was compliant with the language of the Agreement only requiring a majority vote.  
13

14 Further, COURT FINDS, the correspondence between Defendants and the NRS  
15 agents did not constitute a breach of contract. Defendants were acting on the express  
16 consent of Nancy Haack to open the new space across the hall and provided the agents an  
17 alternative option to moving their license to the new space. While Defendants did initially  
18 begin dissolution of NRS, they promptly reversed that action and the action did not rise to  
19 a breach of contract.  
20

21 **B. Plaintiff's Breach of the Implied Covenant of Good Faith and Fair Dealing**

22 Pursuant to Nevada Revised Statute § 104.1304, every contract in Nevada contains  
23 an implied covenant that requires all parties to act in good faith. Nev. Rev. Stat. §  
24 104.1304. A party acts in good faith by acting honestly and by observing reasonable  
25 commercial standards of fair dealing. Nev. Rev. Stat. § 104.1201(t). To establish a claim  
26 for breach of the implied covenant of good faith and fair dealing, a plaintiff must prove:  
27 (1) existence of a valid contract; (2) plaintiff had a justifiable expectation to receive certain  
28

1 benefits consistent with the spirit of the contract; (3) defendant performed in a manner that  
2 violated or was unfaithful to the spirit of the contract; (4) the defendant's unfaithful action  
3 was deliberate; and (5) causation and damages. *Hilton Hotels Corp. v. Butch Lewis*  
4 *Productions, Inc.*, 107 Nev. 226, (1991). A party can breach the implied covenant of good  
5 faith and fair dealing even if they comply with all the terms of the contract in question. *Id.*  
6 *at 233*. Again, both parties have asserted a claim for breach of contract against one  
7 another.  
8

9  
10 Plaintiff asserted the same arguments for this cause of action as she did for the  
11 breach of contract claim. She argued that Defendants breached the implied covenant by  
12 breaching the Agreement. Defendants asserted that they never breached the Agreement in  
13 the first place; Haack was the breaching party.

14 COURT FINDS, Defendants did breach the implied covenant of good faith and fair  
15 dealing. The actions of the Defendants in this matter violated the spirit of the Agreement  
16 between themselves and Nancy Haack, even if they did not technically violate the terms of  
17 the Agreement. While Plaintiff may not have originally pled the loss of salary in her  
18 Second Amended Complaint, the salary taken by Sean Evenden and Roger Ayala is  
19 evidence of damages suffered by Nancy Haack in this matter. They deliberately amended  
20 the Agreement to provide a salary for themselves on account of the work they had to do  
21 for NRS after Nancy Haack was no longer involved in the office. The parties agreed that  
22 salaries would be appropriate once the business was profitable. The business was  
23 profitable, Nancy Haack was and is still a member of NRS, and she was entitled to any  
24 salary that Sean Evenden and Roger Ayala amended the Agreement to provide.  
25  
26

27 ///

28 ///



1  
2 **C. Plaintiff's Breach of Fiduciary Duty Claim**

3 To prevail on a breach of fiduciary duty claim a Plaintiff must prove the following  
4 elements at trial: (1) the defendant had a fiduciary duty; (2) the defendant breached the  
5 duty; and (3) the breach caused the plaintiff damages. *Klein v. Freedom Strategic*  
6 *Partners, LLC*, 595 F. Supp. 2d 1152, 1162 (D. Nev. 2009). Among partners, there is a  
7 fiduciary duty to provide full and frank disclosure of all relevant information. *Clark v.*  
8 *Lubritz*, 95 Nev. 45, 48 (1979). Excessive salaries taken by corporate officers is a breach  
9 of those officers' fiduciary duty. *Bedore v. Familian*, 122 Nev. 5, 12 (2006).  
10

11 Plaintiff argued that Defendants breached their fiduciary duty by forming the new  
12 business Life Real Estate and using the Life Realty Trademark. At trial, Plaintiff also  
13 raised the issue of Defendants taking a salary for themselves and not extending that salary  
14 to Haack. Those actions, Plaintiff asserted, breached the fiduciary duty that Evenden and  
15 Ayala had to Haack and to NRS.  
16

17 Defendants noted the correspondence from Haack to Evenden and Ayala that she  
18 consented to Defendants' use of the Life Realty Trademark so long as they did not use any  
19 NRS assets. They argued that this showed consent on Haack's behalf and thus, they did  
20 not breach their fiduciary duty<sup>4</sup>. Regarding the allegation that the amendment to the  
21 Agreement providing salary to Evenden and Ayala, but not Haack, breached Defendants'  
22 fiduciary duties, Defendants first noted that this claim was never part of Plaintiff's  
23 complaint and should not be considered by this Court. Further, they argued that this action  
24 complied with Section 13 of the Agreement because only a majority is needed to amend  
25 the Agreement. This was confirmed, under oath, by the drafter of the Agreement.  
26

27 Defendants argued that they had a right to pay themselves a salary so long as it was  
28

<sup>4</sup> See *Doe v. Round Valley Unified School Dist.*, 873 F. Supp. 2d 1124, 1130 (D. Ariz. 2012) (Citing Restatement (Second) of Torts § 892 (1965) to note that consent is a defense to tort claims.)

1 reasonable and commiserate with the market. Defendants noted Haack's own testimony  
2 that the industry standard was above the \$50,000.00 salary Defendants provided for  
3 themselves. Further, once Haack left the Company and no longer provided her one-third of  
4 the services to NRS, she was no longer entitled to the compensation.  
5

6 COURT FINDS, Defendants breached their fiduciary duty to Nancy Haack.  
7 Plaintiff did testify that the amount of salary taken by Defendants was below the industry  
8 standard, but it was excessive in comparison to her allotted salary of zero dollars. While  
9 Defendants did provide notice to Nancy Haack of the special meeting, this Court looks at  
10 the totality of Defendants' actions once conflict began among the parties and concludes  
11 that Defendants intended to provide themselves a benefit that they were unwilling to  
12 provide to Nancy Haack.  
13

#### 14 **D. Plaintiff's Conversion Claim**

15 The elements a Plaintiff must prove on a conversion claim are: (1) defendant  
16 wrongfully exerted a distinct and intentional act of dominion over plaintiff's property; (2)  
17 defendant acted in denial of or inconsistent with the plaintiff's use and enjoyment of the  
18 property, or in derogation, exclusion, or defiance of the plaintiff's rights or title in the  
19 property; and (3) causation and damages. *See M.C. Multi-Family Dev., L.L.C. v. Crestdale*  
20 *Assocs., Ltd.*, 124 Nev. 901, 910 (2008). Consent is a defense to conversion *Rajala v.*  
21 *Allied Corp.*, 919 F.2d 610 632 (10th Cir. 1990) (citing Restatement (Second) of Torts §  
22 252 (1965)).  
23

24 Plaintiff argued that Defendants converted the assets of NRS, and deprived Haack  
25 of her rights under the Agreement. By opening up Life Real Estate across the hall from  
26 NRS, and restricting Haack from the NRS premises, Defendants exerted dominion over  
27  
28



1 Haack's membership in NRS. Further, Plaintiff argued that Defendants Evenden and  
2  
3 Ayala used NRS funds to finance Life Real Estate.

4 Defendants again noted that Haack consented to opening the new company and  
5 using the Life name. She gave sworn testimony that she wanted Evenden and Ayala to run  
6 their own separate company in the new space while allowing NRS to continue running in  
7 its space until that lease expired. More importantly, they asserted that Haack's  
8 membership was never interfered with as she remained a member of NRS and still does to  
9 this day.  
10

11 COURT FINDS, Defendants did not convert any assets from NRS. The forensic  
12 accountant was unable to specify damages for this Court during his testimony or in his  
13 report. He laid out potential misappropriations but admitted that in at least one of these  
14 alleged misappropriations the money could have been used to pay the owed CAM fees for  
15 the NRS space.  
16

#### 17 **E. Plaintiff's Indemnity Claim**

18 Where two or more parties agree on a contractual provision that one party will  
19 reimburse the other party for liability resulting from one party's work there is contractual  
20 indemnity. *United Rentals Hwy. Techs. v. Wells Cargo*, 128 Nev. 666, 673 (2012). "When  
21 the duty to indemnify arises from contractual language, it generally is not subject to  
22 equitable considerations; rather it is enforced in accordance with the terms of the  
23 contracting parties agreement." *Id.* This Court must strictly construe indemnity clauses. *Id.*  
24

25 Here, Plaintiff argued that Defendants wrongfully used NRS funds to pay for these  
26 legal proceedings in violation of the Agreement. Plaintiff noted that Section 10.5 of the  
27 Agreement states that any indemnification requires a majority vote of the "LLC Interests  
28 of Members who were not parties to the proceeding at a duly held meeting of the Members

1 at which a quorum is present.” Here, the only members who voted in favor of  
2 Indemnification, Evenden and Ayala, are both parties to this proceeding and thus  
3 improperly indemnified themselves. Defendants’ argument against this claim was that the  
4 legal fees were properly advanced and that Defendants are only required to reimburse  
5 NRS if they lose.  
6

7 COURT FINDS, pursuant to Section 10 of the Agreement, and consistent with  
8 Defendants’ own concessions, Defendants are responsible to reimburse NRS for the funds  
9 utilized to pay for the legal defense of Sean Evenden and Roger Ayala as they breached  
10 the implied covenant of good faith and fair dealing as well as their fiduciary duties.  
11

#### 12 **F. Plaintiff’s Accounting Claim**

13 “Before a claim for accounting can be pursued, Nevada law requires that the  
14 parties to such a claim must first and foremost be partners.” *G.K. Las Vegas Limited*  
15 *P’ship v. Simon Prop. Grp., Inc.*, 460 F. Supp.2d 1246, 1262 (D. Nev. 2006). Every  
16 partner in a business is entitled to an accounting. *State v. Elsbury*, 63 Nev. 463, 467-68  
17 (1946). Here, there is no dispute among the parties that Haack, Evenden, and Ayala were  
18 partners of NRS.  
19

20 Plaintiff argued that she was never provided all the books and records of NRS.  
21 Haack asserted that she needed a proper accounting to ensure she was given a proper  
22 distribution based on NRS’s profits. Further, a true accounting was necessary to show  
23 whether Defendants converted the assets, intellectual property, good will, etc. from NRS.  
24

25 Defendants argued that they have fully complied with their duty to provide Haack  
26 with an accounting. She was given full access to NRS’s books and records and her  
27 independent forensic accountant could review all of NRS’s records. They note that the  
28 accountant failed to find any monies that were wrongfully taken from the Company.



1 Rather, the forensic accountant only noted discrepancies and possible areas of  
2 misappropriation.  
3

4 COURT FINDS, Defendants did provide a proper accounting of NRS to Plaintiff  
5 during the course of discovery. While Plaintiff regularly challenged the sufficiency of the  
6 documentation up and through trial, Plaintiff's own forensic accounting expert testified  
7 that he received the information from NRS's accounts. What he lacked was information on  
8 the unknown accounts outside of the sphere of NRS itself. He even acknowledged in his  
9 testimony that he was provided follow up information from Sean Evenden when he  
10 requested it.  
11

12 However, COURT FINDS, this Court is not able to make a valuation of the  
13 company or assess whether the profit distributions were paid proportionately. An  
14 independent accounting of the company, at Defendants' expense, is necessary to establish  
15 whether Nancy Haack was paid appropriately. This accounting should cover 2016 until the  
16 close of NRS. The reimbursement of Defendants' legal fees must be accounted for to  
17 determine what the profitability of the company would have been without this matter  
18 solely based on the inclusion of those fees and not any collateral impact from the law suit.  
19

#### 20 **G. Defendants' Breach of Contract Counterclaim**

21 Defendants' counterclaim alleged that it was Haack who initially breached the  
22 Agreement by reneging on her promise to expand NRS. She specifically reneged on  
23 signing the new lease, refused to allow NRS money to be used for the build out of the new  
24 space, and refused to be responsible for her share of any losses at the new space.  
25 Regarding the new lease, Defendants asserted that it was both Haack and her husband who  
26 did not want to sign the personal guarantee. The rift between the members, Defendants  
27  
28

1 argued, led to the loss of agents at NRS and the inevitable income and profits that would  
2 have been received had they stayed with NRS.

3  
4 Plaintiff asserted that despite the need for additional space to accommodate NRS's  
5 growing business, there was never a formal agreement between the parties to expand into  
6 the new space. Haack, Evenden, and Ayala agreed that expansion was necessary but the  
7 offer on the new space was not amenable to Haack or her husband. Haack did not breach  
8 the Agreement when she and her husband refused to sign a lease they found unpalatable.  
9

10 COURT FINDS, Plaintiff Nancy Haack did not breach her contract with  
11 Defendants. There was substantial testimony from all three parties that involved threats to  
12 quit NRS at some point in time and threats against one another, including Defendants'  
13 threat to deliver Haack's license back to the Real Estate Division. Further, while Haack  
14 testified that she did originally intend to expand NRS, this Court is not convinced that her  
15 refusal to sign a personal guarantee on a new lease is a breach of contract. Whether it was  
16 her concern about signing a personal guarantee that would last into her seventies, or  
17 whether it was her husband's refusal to sign the personal guarantee, she was not  
18 contractually obligated to sign a personal guarantee for a lease in an effort to grow NRS.  
19

20 **H. Defendants' Breach of the Implied Covenant of Good Faith and Fair Dealing**  
21 **Counterclaim**

22 Defendants also asserted the same arguments in their counterclaim. In addition to  
23 those arguments, Defendants argued that Haack violated her duties when she filed multiple  
24 complaints against Defendants with the Real Estate Division. Her behavior towards the  
25 Defendants was another example of Haack violating her duty under the covenant.  
26 Defendants argued that this behavior was deliberate and hindered their ability to perform  
27 under the Agreement.  
28



1 Haack acknowledged that she filed complaints against Defendants Evenden and  
2 Ayala. Her testimony noted that she was angry with them, but it was because of their  
3 actions towards her. Haack also denied her behavior in the office rose to the level  
4 described by Defendants and argued that she was simply responding to their behavior and  
5 actions towards her.  
6

7 COURT FINDS, both parties demonstrated a lack of civility towards one another  
8 and one party was not more responsible than the other for the loss of current and  
9 prospective agents at NRS. The two former NRS agents who testified said that it was  
10 infighting among the members that led to their departure. This Court does not find that  
11 Defendants or Plaintiff Nancy Haack deserve more responsibility for the loss of agents in  
12 NRS. Based on the disruptive and threatening behavior of all the named parties in this  
13 matter, COURT FINDS, Nancy Haack did not breach the implied covenant of good faith  
14 and fair dealing.  
15

16 **I. Defendants' Tortious Interference with Contract and Prospective Economic**  
17 **Advantage Counterclaim**

18 To prevail on a claim for tortious interference with prospective economic  
19 advantage a plaintiff must prove: (1) plaintiff had a prospective contractual relationship  
20 with a third party; (2) defendant knew of the prospective relationship; (3) defendant  
21 intended to harm the plaintiff by preventing the prospective relationship; (4) defendant's  
22 interference with the relationship was not privileged or justified; and (5) defendant's  
23 interference caused plaintiff actual harm. *In re Amerco Derivative Litig.*, 127 Nev. 196,  
24 226 (2011).  
25

26 For this counterclaim, Defendants argued that Haack's actions interfered with  
27 Defendants' prospective contractual relationships with the agents they would have hired  
28

1 had NRS expanded. They asserted that Haack knew about these relationships and note that  
2 she even showed prospective agents the new office. Once Haack reneged on her promise  
3 to expand NRS with Defendants she prevented these relationships from materializing.  
4 Further, Defendants argued that Haack's statements that she was trying to "get back at"  
5 Defendants and that she wanted them to "start over like she had to" is evidence of their  
6 counterclaim.  
7

8 Plaintiff asserted at trial that while she had intended to expand the NRS space,  
9 Haack's husband's refusal to sign the personal guarantee resulted in Haack's refusal to  
10 sign the new lease<sup>5</sup>. Further, she argued that it was the actions by the Defendants that led  
11 to the tension in the office and ultimately harmed NRS.  
12

13 COURT FINDS, Haack's actions were no more responsible for any loss of agents  
14 than those actions of the Defendants. The former NRS agents who testified at trial both  
15 noted that infighting among the members led to their departure, not any specific actions of  
16 Haack. Further, COURT FINDS, Defendants moved forward with their plans to open the  
17 new company in the space across from NRS and any prospective agents still had the  
18 opportunity to join the company in the new space.  
19

#### 20 **J. Defendants' Declaratory Relief Counterclaim**

21 Defendants' final counterclaim asked this Court to declare that Haack abandoned  
22 NRS based on her statements and actions. She reneged on her promise to expand NRS,  
23 including refusing to sign the lease and personal guarantee for the new space belonging to  
24 Life Real Estate. Defendants pled that Haack resigned her position in NRS.  
25  
26  
27  
28

---

<sup>5</sup> Nancy Haack's husband has never been a party to this matter.



1 COURT FINDS, Plaintiff did not resign her position in NRS. Defendants testified  
2 at trial that Haack is still a member of NRS contradicting the claim that she resigned her  
3 position in NRS.  
4

5 **V. ORDER**

6 For the foregoing reasons, IT IS HEREBY ORDERED, judgement shall be  
7 awarded in favor of Plaintiff Nancy Haack on her claims of (1) breach of the implied  
8 covenant of good faith and fair dealing and (2) breach of fiduciary duty against Defendants  
9 Sean Evenden and Roger Ayala. Defendants Sean Evenden and Roger Ayala are required  
10 to pay Nancy Haack an equivalent amount of money in salary that they were paid after  
11 amending the Operating Agreement of NRS Realty Group, LLC.  
12

13 IT IS FURTHER ORDERED, pursuant to the Operating Agreement, Defendants  
14 shall reimburse NRS Realty Group, LLC any monies provided by NRS Realty Group,  
15 LLC, used towards Defendants' legal representation in this matter.  
16

17 IT IS FURTHER ORDERED, Plaintiff shall submit a list of three proposed  
18 independent accountants to Defendants who will choose one of the proposed accountants  
19 to provide an independent accounting of NRS Realty Group, LLC, including but not  
20 limited to, the profitability of the company from 2016 until the closing of NRS. The  
21 accountant shall also determine the value of NRS Realty Group, LLC at the time of its  
22 closing. The expense of the independent accountants shall be paid by Defendants. Further,  
23 Sean Evenden and Roger Ayala shall pay Nancy Haack one-third of the profits and value,  
24 minus any distribution that Haack already received, based on the independent accounting.  
25

26 IT IS SO ORDERED.  
27  
28

1  
2 Dated this 17th day of June, 2020.

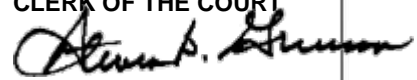
3  
4   
5 HONORABLE STEFANY A. MILEY  
6 DISTRICT COURT JUDGE  
7 DEPARTMENT XXIII

8 **CERTIFICATE OF SERVICE**

9 I hereby certify that on or about the date signed, a copy of this Decision and Order was  
10 electronically served and/or placed in the attorney's folders maintained by the Clerk of the  
11 Court and/or transmitted via facsimile and/or mailed, postage prepaid, by United States  
12 mail to the proper parties as follows: Nancy L. Haack, 1870 Morganton Dr., Henderson,  
13 NV, 89052, John Holiday, Esq. and Patrick J. Sheehan, Esq.

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15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28 By: 

Carmen Alper  
Judicial Executive Assistant  
Department XXIII



1 **SHUMWAY VAN**  
KARL A. SHELTON, ESQ.  
2 Nevada Bar No. 12868  
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6 Email: [michael@shumwayvan.com](mailto:michael@shumwayvan.com)  
*Attorney for Plaintiffs and Counterdefendant.*

7  
8 **EIGHTH JUDICIAL DISTRICT COURT**  
**CLARK COUNTY, NEVADA**

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

11 Plaintiffs,

12 vs.

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

15 Defendants.

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

18 Counterclaimants,

19 vs.

20 NANCY HAACK, an individual.

21 Counterdefendant.

Case No.: A-17-753435-C

Dept No.: 23

**NOTICE OF ENTRY OF ORDER**

22 ...

23 ...

24 ...

25 ...

26 ...

27

SHUMWAY VAN  
8985 South Eastern Avenue, Suite 100  
Las Vegas, Nevada 89123  
Tel (702) 478-7770 Fax (702) 478-7779

1 PLEASE TAKE NOTICE that on June 17<sup>th</sup>, 2020 the DECISION AND ORDER was  
2 entered by the Court in the above-entitled action, a true and correct copy of which is attached  
3 hereto.

4  
5 DATED this 5<sup>th</sup> day of July, 2020

6  
7 SHUMWAY VAN

8  
9 By: 

10 MICHAEL C. VAN, ESQ.  
11 Nevada Bar No. 3876  
12 KARL A. SHELTON, ESQ.  
13 Nevada Bar No. 12868  
14 8985 South Eastern Avenue, Suite 100  
15 Las Vegas, Nevada 89123  
16 *Attorneys for Plaintiff and*  
17 *Counterdefendant*  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27

SHUMWAY VAN  
8985 South Eastern Avenue, Suite 100  
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**CERTIFICATE OF SERVICE**

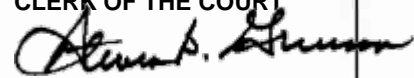
I hereby certify that the foregoing **NOTICE OF ENTRY OF ORDER** was submitted electronically for filing and service upon those persons designated by the parties in the E-Service Master List for the above-referenced matter in the Eighth Judicial District Court e-Filing System on the 9 day of July, 2020. I FURTHER CERTIFY that I served a copy of this pleading, to the following:

NANCY HAACK  
701 N. Green Valley Pkwy., #200  
Henderson, Nevada 89074  
nhaacklv@gmail.com

PATRICK J. SHEEHAN, ESQ.  
Fennemore Craig, P.C.  
300 South Fourth Street, 14<sup>th</sup> Floor  
Las Vegas, Nevada 89101  
Email: psheehan@fclaw.com  
Attorneys for Defendants/Counterclaimants  
Sean Evenden and Roger Ayala

  
An employee of Shumway





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,

v.

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; DOE Individuals  
I through X; and ROE CORPORATIONS  
and ORGANIZATIONS I through X,  
inclusive,

Counterclaimants,

v.

NANCY HAACK, an individual.

Counter-defendants.

CASE NO.: A-17-753435-C

DEPARTMENT XXIII

DECISION & ORDER

I. INTRODUCTION

THIS MATTER having been scheduled for bench trial before this Court from  
February 18, 2020 through February 21, 2020 with Plaintiff Nancy Haack representing  
herself in pro per, John R. Holiday, Esq. appearing on behalf of Plaintiff NRS Realty  
Group, LLC, Patrick J. Sheehan, Esq. appearing on behalf of Defendants Sean Evenden  
and Roger Ayala. Plaintiff pled the following claims against Defendants: (1) Breach of



1 Contract; (2) Breach of the Implied Covenant of Good Faith and Fair Dealing; (3) Breach  
2 of Fiduciary Duty; (4) Conversion; (5) Indemnity; and (6) Accounting. At the start of trial,  
3 Plaintiff withdrew her claims of (7) Interference with Prospective Economic Advantage  
4 Against All Defendant; and (8) Usurpation of Corporate Opportunities. Defendants pled  
5 the following counterclaims against Plaintiff: (1) Breach of Contract; (2) Breach of the  
6 Implied Covenant of Good Faith and Faith Dealing Both Tortious and Contractual, (3)  
7 Tortious Interference with Contract and Prospective Economic Advantage; and (4)  
8 Declaratory Relief. The first and second counterclaims were also brought as derivative  
9 actions against Nancy Haack on behalf of NRS Realty Group, LLC.  
10  
11

12 Having considered the testimony of the witnesses, having reviewed the exhibits,  
13 and having heard the arguments of counsel, the Court enters the following Decision and  
14 Order.  
15

## 16 II. STATEMENT OF FACTS AND PROCEDURAL HISTORY

17 1. Nancy L. Haack ("Haack"), Sean Evenden ("Evenden"), and Roger Ayala ("Ayala")  
18 (Collectively "members") formed a real estate brokerage firm, NRS Realty Group, LLC  
19 ("NRS"), in May 2010.

20 2. Each member owns an equal 1/3 interest in NRS.

21 3. When the members formed NRS, they agreed that they would pay themselves a  
22 salary when NRS became profitable.

23 4. NRS's Operating Agreement ("Agreement") was executed by all members on  
24 August 5, 2010.

25 5. NRS's primarily generates its revenue through: (1) office rental fees from its  
26 agents, (2) transaction fees on its agents' real estate sales, and (3) commission splits on  
27 property management fees.  
28

1  
2 6. NRS maintained bank accounts for its operations; most of the funds in these  
3 accounts were commissions owed to agents and other third parties.

4 7. NRS achieved profitability for the first time in 2016.

5 8. In 2016, the members began negotiations to expand NRS by leasing an office  
6 across the hall from their original office.

7 9. Multiple agents, including existing agents as well as new agents, were shown the  
8 new space and informed about the members' plan to expand NRS.

9 10. Certain NRS agents were promised offices at the new location.

10 11. Nancy Haack, Sean Evenden, Roger Ayala, and their spouses would have to sign  
11 personal guarantees to lease the new office; they also originally had to sign personal  
12 guarantees to lease NRS's original office.

13 12. In January 2017, NRS's landlord provided Defendants with a copy of the lease for  
14 the new office.

15 13. The members met at Balboa Pizza on January 31, 2017. The nature of the  
16 discussions at Balboa were disputed at trial.

17 14. After the Balboa meeting, Haack told Defendants via text message that they could  
18 form a separate company without her so long as they moved to the new office and did not  
19 use NRS's assets.

20 15. Defendants limited Haack's access to the bank accounts but ultimately gave her  
21 view-only access.

22 16. Defendants initially filed dissolution papers with the Secretary of State for NRS  
23 but decided to unwind the dissolution and form a new company.

24 17. Defendants created Life Real Estate around February 2017 across the hall from  
25 NRS.  
26  
27  
28

1  
2 18. Defendants met to amend the Agreement to pay themselves a salary in April 2017.  
3 Haack was not present at the meeting.

4 19. Defendants passed a resolution to pay themselves a salary of \$50,000.00 each.  
5 Haack did not receive a salary.

6 20. Plaintiff filed the Complaint in this matter on April 3, 2017.

7 21. Before signing the new lease in August 2017, Defendants wrote to Haack and  
8 asked her if she wanted NRS to take over the new space with her involvement. Through  
9 her attorney, Haack declined the offer and stated that NRS was not permitted to sign a  
10 lease for the new space.  
11

12 22. More than \$200,000.00 was spent to build out the new office. The source of the  
13 funds was disputed at trial although it was undisputed that Haack never contributed to the  
14 new company.  
15

16 23. NRS continued to operate after Defendants formed the new company; Haack  
17 remained a member of NRS and received a share of the profits.

18 24. Haack sought from this Court an appointment of a receiver to protect the safety and  
19 well-being of NRS' assets. In a Decision issued on January 26, 2018, this Court denied  
20 Haack's Motion but held that beginning February 1, 2018, Defendants were to provide  
21 Haack with monthly disclosures of any and all financial documents relating to NRS Realty  
22 Group, LLC.  
23

24 25. On September 13, 2018, Plaintiff filed two Motions for Partial Summary  
25 Judgment; one motion was as to her claims and the other as to Defendants' counterclaims.  
26 On October 8, 2018, Defendants submitted their opposition as well as a Countermotion for  
27 Summary Judgment on all claims. In a decision issued December 17, 2018, this Court  
28 denied all the pending motions finding that there remained genuine issues of material fact



1  
2 regarding all claims for both parties, especially those involving the Agreement between  
3 the parties.

### 4 III. TESTIMONY FROM WITNESSES

5 Six witnesses testified in this Matter. The following witnesses testified at the bench  
6 trial.

#### 7 A. Sean Evenden

8 NRS was formed in 2010 by Plaintiff Haack and Defendants Ayala and Evenden.  
9  
10 Evenden testified that each of the parties owned one-third of NRS per the Partnership  
11 Agreement ("Agreement"). Evenden was asked numerous questions about his  
12 understanding of the Agreement. On direct examination, Evenden acknowledged that  
13 Section 6.8 (Voting) of the Agreement in states "[T]he unanimous vote of all of the LLC  
14 interests shall be required to approve any action, unless a greater or lesser vote is required  
15 pursuant to this Agreement or by Statute." However, Evenden testified this section is  
16 vague to him and questions on interpretations would need to be referred to the drafting  
17 attorney.  
18

19 Regarding meetings, Evenden acknowledged that the language of Section 6.10  
20 (Waiver of Notice or Consent by Absent Members) of the Agreement requires an  
21 individual entitled to vote, but who is not present, to sign a "written waiver of notice, a  
22 consent to the holding of the meeting, or any approval of the minutes thereof." Further,  
23 pursuant to Section 6.11 (Member Action by Written Consent Without a Meeting), if all  
24 the members give written permission, any action may be taken without a meeting and  
25 without formal notice. Evenden testified that at a May 2017 meeting he and Ayala  
26 amended the Agreement, pursuant to Section 13's language requiring a "majority (or all)  
27 of the LLC interests" to allow for he and Ayala to begin receiving a \$50,000.00 annual  
28

1 salary. He stated that because Haack breached the contract and abandoned her duties that  
2 she was not entitled to receive the salary.  
3

4 Evenden testified that per Section 10 (Indemnification) of the Agreement he and  
5 Ayala held a meeting to award them both legal fees. Evenden agreed that Section 10.5  
6 (Required Approval) states there must be a majority vote of members to approve  
7 indemnification however he never received consent from Plaintiff for the meetings on  
8 indemnification. Evenden testified that he notified Haack of the meetings by email, by  
9 placing notices on her home, and by possibly even texting her. Per Evenden, Haack never  
10 responded to any of these notifications.  
11

12 Evenden testified that there was a substantial profit for NRS in 2016. After 2016  
13 the numbers began to drop, including a drop of \$70,000.00 in profit in 2017, and an  
14 additional drop of about \$92,000.00 in profit in 2018. He acknowledged that the salaries  
15 provided for Evenden and Ayala, as well as legal fees for this matter, could have led to the  
16 drop in profits in 2017.  
17

18 Evenden testified that until 2016 Plaintiff Haack maintained the books and paid  
19 payroll and taxes. Haack was also responsible for the business licenses of the two NRS  
20 offices and was the only licensed realtor at the China Town office and was responsible to a  
21 certain extent for the operation of this second office.  
22

23 Evenden, Ayala, and Haack had a meeting at Balboa Pizza on January 31, 2017  
24 regarding the plan to expand NRS into the space across the hall from the current office.  
25 Following the January 31, 2017 Balboa meeting there were a flurry of text messages that  
26 were sent between the parties. He acknowledged there was a text message to Haack stating  
27 that it was time for them to buy her out as well as one trying to get her to meet with them  
28 to remove her from NRS. He testified that he had originally wanted the three of them to



1 meet during this time without lawyers and to figure out a solution that mutually worked  
2 for all three parties, but that Haack wanted to have her attorney involved in the process.  
3 Although Evenden testified repeatedly that Haack verbally stated she was resigning at the  
4 Balboa meeting, he acknowledged that there was no evidence in writing. Although Haack  
5 was not prevented from working as an agent during this time, after the Balboa meeting she  
6 no longer wanted to put money into the business or be a part of its operations.  
7

8 Evenden stated that Haack breached the Operating Agreement when she failed to  
9 follow up on her promise to move the company forward and expand. Evenden testified  
10 that once Haack breached the Agreement, he and Ayala began noticing themselves and  
11 Haack for special meetings. This was not common practice prior to Haack's breach but she  
12 was noticed for the special meeting in May. It was at the meeting in May 2017 where  
13 Evenden and Ayala amended the Agreement; Haack never showed up to the meeting and  
14 thus written consent was never received. Further, Haack's breach, along with a cease and  
15 desist letter she sent, led to Evenden and Ayala deciding it would be best to dissolve the  
16 company before they ultimately decided to unwind that decision.  
17

18 In May 2017, NRS had between 30 and 40 agents. The new entity, Life Real  
19 Estate, had about 104 agents at the time of the trial. Evenden noted that the agents Haack  
20 recruited were at NRS until that entity's lease expired.  
21

22 Once Haack was no longer handling the bookkeeping for NRS, the books were  
23 audited to ensure that Life Real Estate employees were not paid out of NRS. Evenden was  
24 unsure if NRS paid the Secretary of State fees for Life Real Estate. However, Evenden and  
25 Ayala did vote to pay the legal fees out of NRS funds for this action. Further, while  
26 Evenden testified that he did not specifically know why certain checks were paid to  
27 himself directly, he asserted that he would sometimes pay for business expenses out of his  
28

1  
2 own pocket and reimburse himself from NRS. To this day, Evenden asserted, Haack is still  
3 a one-third owner of the NRS entity.

4 **B. Jefrie Felton**

5 Jefrie Felton ("Felton") is a realtor who had been with NRS since 2010 but has  
6 since left. He testified that he was under the impression that Haack left the company  
7 because she was tired and ready to retire for health reasons. Felton testified that in April  
8 2017 he attended a meeting and received an email NRS was being dissolved. Thereafter, a  
9 contract with the new company was placed on his desk with a 10-day deadline of March  
10 26, 2017 saying that licenses would be returned to the agents if they chose not to sign.  
11

12 Felton acknowledged that he ultimately left NRS because of infighting among the  
13 partners and worried about the viability of the company. He testified that he is unaware of  
14 who caused the issues but was aware that the intent was for NRS to expand across the hall.  
15

16 **C. Roger Ayala**

17 Defendant Roger Ayala, like Evenden, testified that sometimes he would be  
18 reimbursed for expenses that he incurred on behalf of the company. This could include  
19 charitable contributions in addition to other business expenses.

20 Regarding the space across the hall from NRS, Ayala testified that he remembered  
21 Haack giving permission to open the new office in early 2017. Ayala sent the March 10,  
22 2017 letter threatening to send Haack's license back to the Real Estate Division because  
23 she continuously changed her mind on whether Evenden and Ayala could open the new  
24 business without her.  
25

26 When asked about the March 10, 2017 letter Evenden and Ayala sent to Haack  
27 stating that Haack had been removed from NRS, Ayala testified that he never fully  
28 understood the contents of it at the time and still does not today. He noted that they



1  
2 presented the circumstances to their attorney, they paid the attorney with NRS funds, and  
3 the attorney drafted the letter. It was the fear of litigation, Ayala testified, that ultimately  
4 led he and Evenden to withdraw the dissolution.

5 Ayala testified that he believes he told the agents at NRS that they had to move to  
6 Life Real Estate because Evenden was stepping down as broker of NRS to assume that  
7 role at Life Real Estate. However, Ayala did not believe that any of NRS's agents left  
8 before the March 10, 2017 letter to Haack.  
9

10 Ayala ended up becoming the broker of record for NRS. Ayala testified that during  
11 his time as broker of record for NRS he is unsure about how much money NRS made. He  
12 did note, however, that lease payments for the Life Real Estate location have never been  
13 paid out of the NRS funds and that one particular large payment had to be paid out of NRS  
14 to pay the back dues of about seven months of CAMs for the NRS location.

15 Regarding Haack's share of the distribution, Ayala testified that she was given one  
16 check for \$32,000.00 and one check for \$29,000. The original offer to her was for one-  
17 third of the cash on hand and one-third of the profits going forward. He acknowledged that  
18 this was not based on a formal evaluation of the company.  
19

20 **D. Nancy Haack**

21 Plaintiff Nancy Haack testified that negotiations for the expansion began in 2016  
22 and continued into 2017. She acknowledged that her husband did not want to sign a  
23 personal guarantee for either the new space across the hall or to extend the current NRS  
24 lease beyond its expiration<sup>1</sup>. Haack testified that her husband was worried about her  
25  
26  
27

28 <sup>1</sup> Sean Evenden, Roger Ayala, Nancy Haack, and their spouses had to sign personal guarantees for the NRS lease. To extend the NRS lease beyond its expiration would again require personal guarantees from all of the parties.



1 health, due to a previous heart attack, and that she was doing too much work for the NRS  
2 business without being properly compensated.  
3

4 Haack testified that she was originally told by Evenden that their spouses would  
5 only need to sign a two year personal guarantee but that she later found out the guarantee  
6 was for the length of the contract. She stated that she had originally wanted a lawyer to  
7 look at the lease but that Evenden and Ayala felt that was unnecessary. Following the  
8 contentious negotiations during and after the Balboa meeting, Haack's attorney advised  
9 her to have them open the new company in the space across from NRS while she would  
10 stay on at NRS; eventually the two entities would merge after two years. One of her  
11 concerns was that after seven years of not making money she did not want to use the  
12 profits NRS finally made and invest that into a new location.  
13

14 Haack asserted that she never wanted to leave NRS and wanted to maintain her  
15 role at NRS but would not be an owner of the new company across the hall. She was  
16 worried about Evenden and Ayala removing her from NRS. However, at her deposition,  
17 Haack testified that she would not go back to NRS. Haack denied ever saying she would  
18 quit at the Balboa meeting but testified that it was uncomfortable going into work after  
19 that meeting and that she "didn't want to be there." Haack wanted to keep NRS running  
20 until she was off the lease.  
21

22 Haack also asserted that after she started this litigation she was never given access  
23 to all of the accounting records that she needed. The forensic accountant had access, but  
24 Haack testified that January 2020 was the first time she got access to the information and  
25 was only given a login for QuickBooks, rather than for the other software including  
26 Loanwolf and ADP. ADP was used for payroll while Loanwolf was used for tax purposes.  
27  
28

1 And while she did receive a distribution in 2017, based on 2016 being profitable, there  
2 have been no further distributions after January 2018.  
3

4 Haack testified that the Agreement always required unanimous consent for major  
5 changes as well as decisions related to finances and ownership. She acknowledged that it  
6 says majority in the Agreement but that is not her interpretation of the Agreement. Further,  
7 Haack asserted that Section 10.5 (Required Approval) of the Agreement prohibited  
8 members from voting for indemnification if they are parties to the proceeding. She further  
9 testified that she never saw the May 2017 amendment so she could not have agreed on the  
10 change but did acknowledge that she received the notices posted on her home. Haack  
11 testified, "Why would I go to a meeting if every item is against me." Haack stated that she  
12 did not believe the Agreement could be amended to benefit only two of the members.  
13

14 Haack stated that she always envisioned the members would get salaries once the  
15 company was profitable. She also testified that she initially agreed to expand NRS across  
16 the hall because the current office lacked sufficient offices and desk space for all of the  
17 agents. Haack asserted that while she was fine signing the personal agreement on the new  
18 space, it was her husband who did not want to sign himself. However, in a text message  
19 Haack sent on February 6, 2017 she mentioned that she wanted to ensure she "wasn't tied  
20 to a lease until I was 72 years old." On February 8, 2017, Haack had her lawyer send a  
21 letter to Ayala and Evenden stating that she had no interest in renewing the lease for the  
22 NRS location. Haack did not dispute saying she was going to retire at one point, but noted  
23 that Evenden had regularly threatened to leave the business as well. She acknowledged  
24 that she told them to just create the new business across the hall but that they were not to  
25 use any of her or NRS's money for the project.  
26  
27  
28



1  
2 NRS had about 40-45 agents the day Haack left the company and about 50 agents  
3 in November 2017 per Haack. NRS existed through October 2019 up to the expiration of  
4 its lease. She testified that she went to the office in 2019 to retrieve her possessions and  
5 that the core group of agents were still at NRS.

6 **E. Crystal Elijah-Ramos**

7  
8 Crystal Elijah-Ramos ("Elijah-Ramos") is a realtor who started with NRS in  
9 January 2016. She testified that she moved her license to NRS because of a good rapport  
10 she had with Haack when they met. Elijah-Ramos stated that when she was presented with  
11 the offer to go over to the new space or have her license returned to the division, she felt  
12 like she was being intimidated but nonetheless signed the new agreement with Life Real  
13 Estate.

14 **F. Joseph Leauanae**

15 Joseph Leauanae ("Leauanae") is a forensic accountant, accredited in business  
16 evaluation and accounting forensics. He was retained by Plaintiff in May 2018 for the  
17 purpose of calculating the economic damages incurred by NRS and/or Haack.  
18

19 When analyzing the seven bank accounts attached to NRS, Leauanae testified that  
20 transfers were seen between accounts he did not have access to. He noted that two  
21 accounts had been opened after Haack's departure and that this is unusual. After  
22 completing his report at some point in 2019 his online access to the databases was stopped.  
23

24 Leauanae stated that he was provided statements from January 2016 up through  
25 May 2018 that was missing some information. Over 23,000 transactions were compared to  
26 the flow of funds through the accounts. He noted transactions to the US Treasury for  
27 approximately \$102,694 paid by NRS on behalf of Evenden. Leauanae testified that these  
28 payments would be for tax obligations by or on behalf of Evenden and while the

1 Quickbooks account referenced the amount, it did not specify how it was recorded. A  
2 company like NRS, per Leauanae, would require the individual rather than the company  
3 be responsible for the tax obligations. While Leauanae noted in his expert report that there  
4 may be (1) damages related to alleged accounting/Operating Agreement-based  
5 improprieties as well as (2) damages related to defendants' alleged misappropriation of  
6 corporate assets and the formation of Life Real Estate, a competing entity, Leauanae  
7 testified he did not have all the information he needed to formulate a final conclusion on  
8 many of the allegations. Further, Leauanae was unable to reconcile the differences  
9 between the profit and losses shown in Quickbooks and Loanwolf<sup>2</sup>.  
10  
11

12 Leauanae noted that the salaries paid to Evenden and Ayala, along with various  
13 payments to Evenden and the landlord Vestar Property Management were transactions that  
14 caught his attention. The payments to Vestar had been \$7,500 per month before Haack's  
15 departure and that went up to \$11,000.00 following her departure. Leauanae testified that  
16 the increase in payments could have been for the missing CAM payments but he has no  
17 information to agree or disagree with that assessment.  
18

#### 19 IV. FINDINGS OF FACT AND CONCLUSIONS OF LAW

20 Ultimately, what came before this Court were the intimate details of a business  
21 relationship that had rotted to its core. As disagreement arose between the members  
22 regarding how to properly move the business forward, evidence was presented to this  
23 Court that showed resentment had set in, threats were made to one another, and the parties  
24 all made comments evincing their desires to go their separate ways. Beyond the mere  
25 words of the parties, their respective actions among one another are critical to this Court.  
26  
27

28 ///

<sup>2</sup> In 2017 NRS showed income of \$709,021.00 in Loanwolf and \$214,000.00 in Quickbooks. In 2018 the numbers showed \$709,000.00 in Loanwolf and a loss of \$121,000.00 in Quickbooks.



1  
2 **A. Plaintiff's Breach of Contract Claim**

3 To prevail on a breach of contract claim, the plaintiff must demonstrate: (1) the  
4 existence of a valid contract; (2) a breach by the defendant; and (3) damages caused by the  
5 breach. *Cohen-Breen v. Gray Television Grp., Inc.*, 661 F. Supp. 2d 1158, 1171 (D. Nev.  
6 2009). A person breaches a contract when they fail to perform a "duty arising under or  
7 imposed by an agreement." *State Dep't of Transportation v. Eighth Judicial Dist. Court in*  
8 *& for Cty. Of Clark*, 133 Nev. 549, 554 (2017). A party does not have to perform under a  
9 contract if the other party materially breaches their duty to perform first. *Cain v. Price*, 134  
10 Nev. 193, 196 (2018). Here, both plaintiff and defendants have asserted claims for breach  
11 of contract.  
12

13 Plaintiff claimed Defendants breached the Agreement in a myriad of ways.  
14 Meetings were conducted without Haack. Amendments to the Agreement were made  
15 without her written consent, including an amendment providing salaries to Evenden and  
16 Ayala, but not Haack, and an amendment that was made involving the addition of a  
17 provision for capital calls that was never exercised. Plaintiff also claimed that Defendants  
18 breached the Agreement when they dissolved NRS, however, that dissolution was  
19 promptly reversed, as noted by Defendants. Most critical to Plaintiff's arguments is the  
20 assertion that Defendants breached the Agreement by forming the new company, Life Real  
21 Estate, and appropriating NRS's assets, goodwill, intellectual property, and real estate  
22 agents.  
23

24 Further compounding the issues at NRS, Plaintiff alleged that Defendants breached  
25 the contract when they excluded Haack from the office. Plaintiff also asserted that  
26 Defendants' threats to fire NRS's agents if they did not sign independent contract with  
27 Life Real estate constituted a breach. Per Haack, this amounted to taking NRS's agents to  
28

1  
2 better the new company. Plaintiff's damages are from the loss of agents, resulting in a loss  
3 of transactions and diminished profitability for NRS.

4 Defendants noted that Section 6.3 of the Agreement allowed for special meetings  
5 as long as two-thirds of the holding interests are represented and all of NRS's members are  
6 notified of the special meeting. Haack was notified of the meetings. She acknowledged at  
7 trial the notices that were left at her home. Further, Section 6.11 of the Agreement allows  
8 for actions to be taken on behalf of the corporation through a vote of a majority of the  
9 members. Defendants again noted that Evenden and Ayala make up a majority of the  
10 members.  
11

12 Regarding the creation of Life Real Estate, Defendants asserted that Haack  
13 expressly authorized Defendants to start their own company as evidenced by text  
14 messages, deposition testimony, and Haack's own testimony at trial. Defendants noted that  
15 this did not alter Haack's one-third interest in NRS, an interest that still remains today.  
16 Defendants argued that because they funded the company independently, not relying on  
17 any of NRS's assets, that their actions were consistent with the Agreement and with  
18 Haack's own demands. In addition, Haack has received over \$60,000.00 in profits from  
19 her share of NRS since the alleged breaches. Furthermore, in conjunction with Haack's  
20 undisputed distribution profits, Plaintiff never proved any damages<sup>3</sup>. The Forensic  
21 Accountant was unable to specify damages due to his repeated testimony that he needed  
22 more documents and information to make a conclusion. His report only noted possible  
23 areas of misappropriation.  
24  
25

26 Defendants noted that only a few agents ultimately left NRS. Further, those that  
27 left because of the dispute between the members was caused by Haack and a number of  
28

---

<sup>3</sup> Defendants argued that Plaintiff failed to prove damages on each of her claims.



1 those agents who left went with Haack to the competing brokerage she formed.  
2  
3 Defendants felt they had to restrict Haack's access to the office and to the bank accounts  
4 because her vindictive behavior towards Defendants threatened NRS and its agents. Her  
5 testimony that she preferred a "pound of flesh" to money is evidence of this. Further, it  
6 was only after Haack breached the Agreement by reneging on her promise to help expand  
7 NRS that Defendants chose to restrict her access to the bank accounts.

8  
9 COURT FINDS, Defendants Sean Evenden and Roger Ayala did not breach their  
10 contract with Plaintiff Nancy Haack. There undisputedly was a contract between the  
11 parties in the form of the Operating Agreement for NRS. While amending the Agreement  
12 without Plaintiff Nancy Haack's signature may have been done to better their positions, it  
13 was compliant with the language of the Agreement only requiring a majority vote.

14  
15 Further, COURT FINDS, the correspondence between Defendants and the NRS  
16 agents did not constitute a breach of contract. Defendants were acting on the express  
17 consent of Nancy Haack to open the new space across the hall and provided the agents an  
18 alternative option to moving their license to the new space. While Defendants did initially  
19 begin dissolution of NRS, they promptly reversed that action and the action did not rise to  
20 a breach of contract.

21 **B. Plaintiff's Breach of the Implied Covenant of Good Faith and Fair Dealing**

22 Pursuant to Nevada Revised Statute § 104.1304, every contract in Nevada contains  
23 an implied covenant that requires all parties to act in good faith. Nev. Rev. Stat. §  
24 104.1304. A party acts in good faith by acting honestly and by observing reasonable  
25 commercial standards of fair dealing. Nev. Rev. Stat. § 104.1201(t). To establish a claim  
26 for breach of the implied covenant of good faith and fair dealing, a plaintiff must prove:  
27 (1) existence of a valid contract; (2) plaintiff had a justifiable expectation to receive certain  
28

1 benefits consistent with the spirit of the contract; (3) defendant performed in a manner that  
2 violated or was unfaithful to the spirit of the contract; (4) the defendant's unfaithful action  
3 was deliberate; and (5) causation and damages. *Hilton Hotels Corp. v. Butch Lewis*  
4 *Productions, Inc.*, 107 Nev. 226, (1991). A party can breach the implied covenant of good  
5 faith and fair dealing even if they comply with all the terms of the contract in question. *Id.*  
6 *at 233*. Again, both parties have asserted a claim for breach of contract against one  
7 another.  
8

9  
10 Plaintiff asserted the same arguments for this cause of action as she did for the  
11 breach of contract claim. She argued that Defendants breached the implied covenant by  
12 breaching the Agreement. Defendants asserted that they never breached the Agreement in  
13 the first place; Haack was the breaching party.

14 COURT FINDS, Defendants did breach the implied covenant of good faith and fair  
15 dealing. The actions of the Defendants in this matter violated the spirit of the Agreement  
16 between themselves and Nancy Haack, even if they did not technically violate the terms of  
17 the Agreement. While Plaintiff may not have originally pled the loss of salary in her  
18 Second Amended Complaint, the salary taken by Sean Evenden and Roger Ayala is  
19 evidence of damages suffered by Nancy Haack in this matter. They deliberately amended  
20 the Agreement to provide a salary for themselves on account of the work they had to do  
21 for NRS after Nancy Haack was no longer involved in the office. The parties agreed that  
22 salaries would be appropriate once the business was profitable. The business was  
23 profitable, Nancy Haack was and is still a member of NRS, and she was entitled to any  
24 salary that Sean Evenden and Roger Ayala amended the Agreement to provide.  
25  
26

27 ///

28 ///



1  
2 **C. Plaintiff's Breach of Fiduciary Duty Claim**

3 To prevail on a breach of fiduciary duty claim a Plaintiff must prove the following  
4 elements at trial: (1) the defendant had a fiduciary duty; (2) the defendant breached the  
5 duty; and (3) the breach caused the plaintiff damages. *Klein v. Freedom Strategic*  
6 *Partners, LLC*, 595 F. Supp. 2d 1152, 1162 (D. Nev. 2009). Among partners, there is a  
7 fiduciary duty to provide full and frank disclosure of all relevant information. *Clark v.*  
8 *Lubritz*, 95 Nev. 45, 48 (1979). Excessive salaries taken by corporate officers is a breach  
9 of those officers' fiduciary duty. *Bedore v. Familian*, 122 Nev. 5, 12 (2006).

10  
11 Plaintiff argued that Defendants breached their fiduciary duty by forming the new  
12 business Life Real Estate and using the Life Realty Trademark. At trial, Plaintiff also  
13 raised the issue of Defendants taking a salary for themselves and not extending that salary  
14 to Haack. Those actions, Plaintiff asserted, breached the fiduciary duty that Evenden and  
15 Ayala had to Haack and to NRS.

16  
17 Defendants noted the correspondence from Haack to Evenden and Ayala that she  
18 consented to Defendants' use of the Life Realty Trademark so long as they did not use any  
19 NRS assets. They argued that this showed consent on Haack's behalf and thus, they did  
20 not breach their fiduciary duty<sup>4</sup>. Regarding the allegation that the amendment to the  
21 Agreement providing salary to Evenden and Ayala, but not Haack, breached Defendants'  
22 fiduciary duties, Defendants first noted that this claim was never part of Plaintiff's  
23 complaint and should not be considered by this Court. Further, they argued that this action  
24 complied with Section 13 of the Agreement because only a majority is needed to amend  
25 the Agreement. This was confirmed, under oath, by the drafter of the Agreement.  
26  
27 Defendants argued that they had a right to pay themselves a salary so long as it was

28  
<sup>4</sup> See *Doe v. Round Valley Unified School Dist.*, 873 F. Supp. 2d 1124, 1130 (D. Ariz. 2012) (Citing  
Restatement (Second) of Torts § 892 (1965) to note that consent is a defense to tort claims.)

1 reasonable and commiserate with the market. Defendants noted Haack's own testimony  
2 that the industry standard was above the \$50,000.00 salary Defendants provided for  
3 themselves. Further, once Haack left the Company and no longer provided her one-third of  
4 the services to NRS, she was no longer entitled to the compensation.  
5

6 COURT FINDS, Defendants breached their fiduciary duty to Nancy Haack.  
7 Plaintiff did testify that the amount of salary taken by Defendants was below the industry  
8 standard, but it was excessive in comparison to her allotted salary of zero dollars. While  
9 Defendants did provide notice to Nancy Haack of the special meeting, this Court looks at  
10 the totality of Defendants' actions once conflict began among the parties and concludes  
11 that Defendants intended to provide themselves a benefit that they were unwilling to  
12 provide to Nancy Haack.  
13

#### 14 **D. Plaintiff's Conversion Claim**

15 The elements a Plaintiff must prove on a conversion claim are: (1) defendant  
16 wrongfully exerted a distinct and intentional act of dominion over plaintiff's property; (2)  
17 defendant acted in denial of or inconsistent with the plaintiff's use and enjoyment of the  
18 property, or in derogation, exclusion, or defiance of the plaintiff's rights or title in the  
19 property; and (3) causation and damages. *See M.C. Multi-Family Dev., L.L.C. v. Crestdale*  
20 *Assocs., Ltd.*, 124 Nev. 901, 910 (2008). Consent is a defense to conversion *Rajala v.*  
21 *Allied Corp.*, 919 F.2d 610 632 (10th Cir. 1990) (citing Restatement (Second) of Torts §  
22 252 (1965)).  
23

24 Plaintiff argued that Defendants converted the assets of NRS, and deprived Haack  
25 of her rights under the Agreement. By opening up Life Real Estate across the hall from  
26 NRS, and restricting Haack from the NRS premises, Defendants exerted dominion over  
27  
28



1 Haack's membership in NRS. Further, Plaintiff argued that Defendants Evenden and  
2  
3 Ayala used NRS funds to finance Life Real Estate.

4 Defendants again noted that Haack consented to opening the new company and  
5 using the Life name. She gave sworn testimony that she wanted Evenden and Ayala to run  
6 their own separate company in the new space while allowing NRS to continue running in  
7 its space until that lease expired. More importantly, they asserted that Haack's  
8 membership was never interfered with as she remained a member of NRS and still does to  
9 this day.  
10

11 COURT FINDS, Defendants did not convert any assets from NRS. The forensic  
12 accountant was unable to specify damages for this Court during his testimony or in his  
13 report. He laid out potential misappropriations but admitted that in at least one of these  
14 alleged misappropriations the money could have been used to pay the owed CAM fees for  
15 the NRS space.  
16

#### 17 **E. Plaintiff's Indemnity Claim**

18 Where two or more parties agree on a contractual provision that one party will  
19 reimburse the other party for liability resulting from one party's work there is contractual  
20 indemnity. *United Rentals Hwy. Techs. v. Wells Cargo*, 128 Nev. 666, 673 (2012). "When  
21 the duty to indemnify arises from contractual language, it generally is not subject to  
22 equitable considerations; rather it is enforced in accordance with the terms of the  
23 contracting parties agreement." *Id.* This Court must strictly construe indemnity clauses. *Id.*  
24

25 Here, Plaintiff argued that Defendants wrongfully used NRS funds to pay for these  
26 legal proceedings in violation of the Agreement. Plaintiff noted that Section 10.5 of the  
27 Agreement states that any indemnification requires a majority vote of the "LLC Interests  
28 of Members who were not parties to the proceeding at a duly held meeting of the Members

1 at which a quorum is present.” Here, the only members who voted in favor of  
2 Indemnification, Evenden and Ayala, are both parties to this proceeding and thus  
3 improperly indemnified themselves. Defendants’ argument against this claim was that the  
4 legal fees were properly advanced and that Defendants are only required to reimburse  
5 NRS if they lose.  
6

7 COURT FINDS, pursuant to Section 10 of the Agreement, and consistent with  
8 Defendants’ own concessions, Defendants are responsible to reimburse NRS for the funds  
9 utilized to pay for the legal defense of Sean Evenden and Roger Ayala as they breached  
10 the implied covenant of good faith and fair dealing as well as their fiduciary duties.  
11

#### 12 **F. Plaintiff’s Accounting Claim**

13 “Before a claim for accounting can be pursued, Nevada law requires that the  
14 parties to such a claim must first and foremost be partners.” *G.K. Las Vegas Limited*  
15 *P’ship v. Simon Prop. Grp., Inc.*, 460 F. Supp.2d 1246, 1262 (D. Nev. 2006). Every  
16 partner in a business is entitled to an accounting. *State v. Elsbury*, 63 Nev. 463, 467-68  
17 (1946). Here, there is no dispute among the parties that Haack, Evenden, and Ayala were  
18 partners of NRS.  
19

20 Plaintiff argued that she was never provided all the books and records of NRS.  
21 Haack asserted that she needed a proper accounting to ensure she was given a proper  
22 distribution based on NRS’s profits. Further, a true accounting was necessary to show  
23 whether Defendants converted the assets, intellectual property, good will, etc. from NRS.  
24

25 Defendants argued that they have fully complied with their duty to provide Haack  
26 with an accounting. She was given full access to NRS’s books and records and her  
27 independent forensic accountant could review all of NRS’s records. They note that the  
28 accountant failed to find any monies that were wrongfully taken from the Company.



1  
2 Rather, the forensic accountant only noted discrepancies and possible areas of  
3 misappropriation.

4 COURT FINDS, Defendants did provide a proper accounting of NRS to Plaintiff  
5 during the course of discovery. While Plaintiff regularly challenged the sufficiency of the  
6 documentation up and through trial, Plaintiff's own forensic accounting expert testified  
7 that he received the information from NRS's accounts. What he lacked was information on  
8 the unknown accounts outside of the sphere of NRS itself. He even acknowledged in his  
9 testimony that he was provided follow up information from Sean Evenden when he  
10 requested it.  
11

12 However, COURT FINDS, this Court is not able to make a valuation of the  
13 company or assess whether the profit distributions were paid proportionately. An  
14 independent accounting of the company, at Defendants' expense, is necessary to establish  
15 whether Nancy Haack was paid appropriately. This accounting should cover 2016 until the  
16 close of NRS. The reimbursement of Defendants' legal fees must be accounted for to  
17 determine what the profitability of the company would have been without this matter  
18 solely based on the inclusion of those fees and not any collateral impact from the law suit.  
19

20 **G. Defendants' Breach of Contract Counterclaim**

21 Defendants' counterclaim alleged that it was Haack who initially breached the  
22 Agreement by reneging on her promise to expand NRS. She specifically reneged on  
23 signing the new lease, refused to allow NRS money to be used for the build out of the new  
24 space, and refused to be responsible for her share of any losses at the new space.  
25 Regarding the new lease, Defendants asserted that it was both Haack and her husband who  
26 did not want to sign the personal guarantee. The rift between the members, Defendants  
27  
28

1 argued, led to the loss of agents at NRS and the inevitable income and profits that would  
2 have been received had they stayed with NRS.

3  
4 Plaintiff asserted that despite the need for additional space to accommodate NRS's  
5 growing business, there was never a formal agreement between the parties to expand into  
6 the new space. Haack, Evenden, and Ayala agreed that expansion was necessary but the  
7 offer on the new space was not amenable to Haack or her husband. Haack did not breach  
8 the Agreement when she and her husband refused to sign a lease they found unpalatable.  
9

10 COURT FINDS, Plaintiff Nancy Haack did not breach her contract with  
11 Defendants. There was substantial testimony from all three parties that involved threats to  
12 quit NRS at some point in time and threats against one another, including Defendants'  
13 threat to deliver Haack's license back to the Real Estate Division. Further, while Haack  
14 testified that she did originally intend to expand NRS, this Court is not convinced that her  
15 refusal to sign a personal guarantee on a new lease is a breach of contract. Whether it was  
16 her concern about signing a personal guarantee that would last into her seventies, or  
17 whether it was her husband's refusal to sign the personal guarantee, she was not  
18 contractually obligated to sign a personal guarantee for a lease in an effort to grow NRS.  
19

20 **H. Defendants' Breach of the Implied Covenant of Good Faith and Fair Dealing**  
21 **Counterclaim**

22 Defendants also asserted the same arguments in their counterclaim. In addition to  
23 those arguments, Defendants argued that Haack violated her duties when she filed multiple  
24 complaints against Defendants with the Real Estate Division. Her behavior towards the  
25 Defendants was another example of Haack violating her duty under the covenant.  
26 Defendants argued that this behavior was deliberate and hindered their ability to perform  
27 under the Agreement.  
28



1  
2 Haack acknowledged that she filed complaints against Defendants Evenden and  
3 Ayala. Her testimony noted that she was angry with them, but it was because of their  
4 actions towards her. Haack also denied her behavior in the office rose to the level  
5 described by Defendants and argued that she was simply responding to their behavior and  
6 actions towards her.

7  
8 COURT FINDS, both parties demonstrated a lack of civility towards one another  
9 and one party was not more responsible than the other for the loss of current and  
10 prospective agents at NRS. The two former NRS agents who testified said that it was  
11 infighting among the members that led to their departure. This Court does not find that  
12 Defendants or Plaintiff Nancy Haack deserve more responsibility for the loss of agents in  
13 NRS. Based on the disruptive and threatening behavior of all the named parties in this  
14 matter, COURT FINDS, Nancy Haack did not breach the implied covenant of good faith  
15 and fair dealing.

16  
17 **I. Defendants' Tortious Interference with Contract and Prospective Economic  
18 Advantage Counterclaim**

19 To prevail on a claim for tortious interference with prospective economic  
20 advantage a plaintiff must prove: (1) plaintiff had a prospective contractual relationship  
21 with a third party; (2) defendant knew of the prospective relationship; (3) defendant  
22 intended to harm the plaintiff by preventing the prospective relationship; (4) defendant's  
23 interference with the relationship was not privileged or justified; and (5) defendant's  
24 interference caused plaintiff actual harm. *In re Amerco Derivative Litig.*, 127 Nev. 196,  
25 226 (2011).

26 For this counterclaim, Defendants argued that Haack's actions interfered with  
27 Defendants' prospective contractual relationships with the agents they would have hired  
28

1 had NRS expanded. They asserted that Haack knew about these relationships and note that  
2 she even showed prospective agents the new office. Once Haack reneged on her promise  
3 to expand NRS with Defendants she prevented these relationships from materializing.  
4 Further, Defendants argued that Haack's statements that she was trying to "get back at"  
5 Defendants and that she wanted them to "start over like she had to" is evidence of their  
6 counterclaim.  
7

8 Plaintiff asserted at trial that while she had intended to expand the NRS space,  
9 Haack's husband's refusal to sign the personal guarantee resulted in Haack's refusal to  
10 sign the new lease<sup>5</sup>. Further, she argued that it was the actions by the Defendants that led  
11 to the tension in the office and ultimately harmed NRS.  
12

13 COURT FINDS, Haack's actions were no more responsible for any loss of agents  
14 than those actions of the Defendants. The former NRS agents who testified at trial both  
15 noted that infighting among the members led to their departure, not any specific actions of  
16 Haack. Further, COURT FINDS, Defendants moved forward with their plans to open the  
17 new company in the space across from NRS and any prospective agents still had the  
18 opportunity to join the company in the new space.  
19

#### 20 **J. Defendants' Declaratory Relief Counterclaim**

21 Defendants' final counterclaim asked this Court to declare that Haack abandoned  
22 NRS based on her statements and actions. She reneged on her promise to expand NRS,  
23 including refusing to sign the lease and personal guarantee for the new space belonging to  
24 Life Real Estate. Defendants pled that Haack resigned her position in NRS.  
25  
26  
27  
28

---

<sup>5</sup> Nancy Haack's husband has never been a party to this matter.



1 COURT FINDS, Plaintiff did not resign her position in NRS. Defendants testified  
2 at trial that Haack is still a member of NRS contradicting the claim that she resigned her  
3 position in NRS.  
4

5 **V. ORDER**

6 For the foregoing reasons, IT IS HEREBY ORDERED, judgement shall be  
7 awarded in favor of Plaintiff Nancy Haack on her claims of (1) breach of the implied  
8 covenant of good faith and fair dealing and (2) breach of fiduciary duty against Defendants  
9 Sean Evenden and Roger Ayala. Defendants Sean Evenden and Roger Ayala are required  
10 to pay Nancy Haack an equivalent amount of money in salary that they were paid after  
11 amending the Operating Agreement of NRS Realty Group, LLC.  
12

13 IT IS FURTHER ORDERED, pursuant to the Operating Agreement, Defendants  
14 shall reimburse NRS Realty Group, LLC any monies provided by NRS Realty Group,  
15 LLC, used towards Defendants' legal representation in this matter.  
16

17 IT IS FURTHER ORDERED, Plaintiff shall submit a list of three proposed  
18 independent accountants to Defendants who will choose one of the proposed accountants  
19 to provide an independent accounting of NRS Realty Group, LLC, including but not  
20 limited to, the profitability of the company from 2016 until the closing of NRS. The  
21 accountant shall also determine the value of NRS Realty Group, LLC at the time of its  
22 closing. The expense of the independent accountants shall be paid by Defendants. Further,  
23 Sean Evenden and Roger Ayala shall pay Nancy Haack one-third of the profits and value,  
24 minus any distribution that Haack already received, based on the independent accounting.  
25

26 IT IS SO ORDERED.  
27  
28

1  
2 Dated this 17th day of June, 2020.

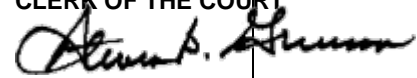
3   
4 HONORABLE STEFANY A. MILEY  
5 DISTRICT COURT JUDGE  
6 DEPARTMENT XXIII

7 **CERTIFICATE OF SERVICE**

8 I hereby certify that on or about the date signed, a copy of this Decision and Order was  
9 electronically served and/or placed in the attorney's folders maintained by the Clerk of the  
10 Court and/or transmitted via facsimile and/or mailed, postage prepaid, by United States  
11 mail to the proper parties as follows: Nancy L. Haack, 1870 Morganton Dr., Henderson,  
12 NV, 89052, John Holiday, Esq. and Patrick J. Sheehan, Esq.

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26  
27  
28 By: 

Carmen Alper  
Judicial Executive Assistant  
Department XXIII



**NOAS (CIV)**

Maurice VerStandig, Esq. (Bar No.: 15346)

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*Appellate Counsel for the Defendants/Counterclaimants*

**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,

v.

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

Defendants,

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

Counterclaimants,

v.

NANCY HAACK, an individual,

Counter-defendant.

Notice is hereby given that Sean Evenden and Roger Ayala, defendants and  
counterclaimants in the above-captioned matter, hereby appeal to the Supreme Court of Nevada  
from the Decision & Order entered in this action on the 17th day of June, 2020.

NOTICE OF APPEAL - 1

1  
2 Respectfully submitted,

3 /s/ Maurice B. VerStandig  
4 Maurice B. VerStandig, Esq.  
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9 Telephone: 301-444-4600  
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11 Electronic Mail: mac@mbvesq.com  
12 *Appellate Counsel for the*  
13 *Defendants/Counterclaimants*

14  
15 **CERTIFICATE OF SERVICE**

16 I hereby certify that on this 10th day of July, 2020, I caused a true and correct copy of the  
17 foregoing paper to be served on all counsel of record herein through this Honorable Court's  
18 electronic filing system, in conformity with Nevada Rule of Civil Procedure 5(b)(2)(E).  
19

20  
21 /s/ Maurice B. VerStandig  
22 Maurice B. VerStandig, Esq.  
23  
24  
25  
26  
27  
28