

IN THE SUPREME COURT OF THE STATE OF NEVADA

LAW OFFICE OF DAN M. WINDER  
P.C., a domestic professional  
corporation, and DAN M. WINDER,  
an individual,  
Petitioners

Electronically Filed  
Jul 13 2021 09:21 a.m.  
Elizabeth A. Brown  
Clerk of Supreme Court

v.

The Eighth Judicial District Court of  
the State of Nevada, IN AND FOR the  
COUNTY OF CLARK; and the  
Honorable Gloria J. Sturman, District  
Judge Department 26,  
Respondents;

And

Lavelle P. Atkinson and Sheila  
Atkinson, Real Parties in Interest.

PETITION FOR WRIT OF MANDAMUS  
Mandating the Eighth Judicial District Court, Clark County  
The Honorable Gloria J. Sturman District Judge  
Grant Summary Judgment to Petitioners in  
District Court Case No. A-19-804902-C

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**PETITIONERS' APPENDIX VOLUME 1 of 5**

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Nevada Bar No. 810  
LAW OFFICE OF DAN M. WINDER, P.C.  
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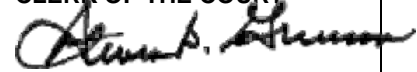
Attorney for the Winder Petitioners

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**COMJD**

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*Attorneys for Plaintiffs*

**DISTRICT COURT**

**CLARK COUNTY, NEVADA**

LAVELLE P. ATKINSON, SHEILA  
ATKINSON, individuals,

Plaintiffs,

vs.

CHARLES BROWN, an individual; STACY  
BROWN, an individual; LAW OFFICE OF DAN  
M WINDER, P.C., a domestic professional  
corporation; DAN M. WINDER, an individual;  
DOES I through X; and ROE CORPORATIONS I  
through X, inclusive.

Defendants.

Case No.:

Dept. No.:

**COMPLAINT**

**DEMAND FOR JURY TRIAL**

**Arbitration Exemption:**

1. **Damages in Excess of \$50,000**
2. **Action Concerning Real Property**

Plaintiffs, LAVELLE P. ATKINSON and SHEILA ATKINSON (“Defendants”), by and  
through their attorneys of record, INTEGRITY LAW FIRM and MAIER GUTIERREZ & ASSOCIATES, hereby  
demand a trial by jury and complain and allege against defendants as follows:

///



1 North Decatur Blvd., Las Vegas, Nevada, 89108, with Assessor's Parcel Number 138-24-511-034  
2 (the "Property").

3 11. On or around July 6, 2017, Charles Brown approached the Atkinsons at their residence  
4 with a prepared Purchase Agreement and offered to buy the Property – which was not listed for sale  
5 – for \$100,000.

6 12. The Atkinsons, who are elderly and were in their mid-70s in July 2017, were hesitant  
7 to sell the Property, but Charles Brown kept showing up at their residence and pressuring them to sign  
8 off on the Purchase Agreement.

9 13. Charles Brown executed the Purchase Agreement on or around July 6, 2017, and the  
10 Atkinsons executed the Purchase Agreement on or around July 20, 2017.

11 14. Upon information and belief, Charles Brown breached the Purchase Agreement by  
12 failing to provide the monetary consideration necessary to purchase the Property.

13 15. Upon information and belief, Charles Brown never deposited any funds into an escrow  
14 account for the Property.

15 16. Upon information and belief, Charles Brown never arranged for any escrow company  
16 to open escrow on the Property.

17 17. Upon information and belief, on or around July 31, 2017, Charles Brown, in  
18 conjunction with his wife, Stacy Brown, fraudulently fabricated "pre-approval letter" indicating that  
19 Kelly Mortgage and Realty had approved Stacy Brown for a loan in the amount of \$200,000 in order  
20 to purchase the Property. The Atkinsons first learned of this activity in November of 2018 after  
21 conducting due diligence to Kelly Mortgage and Realty.

22 18. Upon information and belief, on or around August 7, 2017, Charles Brown, in  
23 conjunction with Law Office of Dan M Winder P.C. and Dan Winder, submitted a check to Keith  
24 Harper of Valuation Consultants for an "appraisal" of the Property during the time Charles Brown  
25 was attempting to purchase the Property from the Atkinsons.

26 19. Upon information and belief, the "appraisal" that Charles Brown, the Law Office of  
27 Dan M Winder P.C. and Dan Winder obtained regarding the Property was based on an inflated  
28 \$250,000 purchase price that Charles Brown, the Law Office of Dan M Winder, and Dan Winder

1 relayed to Keith Harper of Valuation Consultants on or around August 7, 2017 – even though the  
2 agreed-upon purchase price was only \$100,000.

3       20.     Upon information and belief, Charles Brown, the Law Office of Dan M Winder P.C.  
4 and Dan Winder obtained the “appraisal” on the Property by providing a fraudulent letter of intent  
5 allegedly from Plaintiff’s former employer which asserted that they would be renting the Property  
6 upon Defendant’s purchase at an inflated rental rate.

7       21.     The Atkinsons first learned of Charles Brown, Law Office of Dan M Winder P.C. and  
8 Dan Winder paying for an “appraisal” on the Property on or around November 29, 2018.

9       22.     Upon information and belief, on or around August 28, 2017, Charles Brown, in  
10 conjunction with his wife, Stacy Brown, and he Law Office of Dan M Winder P.C. and Dan Winder,  
11 fraudulently obtained expired and unsigned (and therefore ineffective) “proof of financing”  
12 documents in the form of a Conditional Loan Quote and Good Faith Estimate (GFE) from Financial  
13 Solutions & Real Estate Network Group. The Atkinsons first learned of this activity in early  
14 December 2018 after conducting due diligence.

15       23.     Upon information and belief, on or around August 21, 2017, the Law Office of Dan M  
16 Winder P.C. and Dan Winder personally paid Financial Solutions & Real Estate Network Group for  
17 a fraudulent “proof of financing” for Mr. Brown, and after receiving a Conditional Loan Quote and a  
18 Good Faith Estimate (GFE) from Financial Solutions & Real Estate Network Group, Mr. Brown  
19 ceased all communications with Financial Solutions & Real Estate Network Group.

20       24.     The Conditional Loan Quote and Good Faith Estimate (GFE) that Mr. Brown received,  
21 and that the Law Office of Dan M Winder P.C. and Dan Winder paid for, has no legal significance as  
22 it is unsigned and expired.

23       25.     In May 2018, Charles Brown filed a meritless lawsuit against the Atkinsons after  
24 failing to perform his duties under the Purchase Agreement and long after the closing date had expired,  
25 and without signing an amendment to extend the period, as required by law.

26       26.     Upon information and belief, Charles Brown trespassed and caused destruction to the  
27 Property on or around June 5, 2018 by setting the Property on fire, and then continued to demand that  
28 the Atkinsons “sell” Brown the Property in its destructed condition for a much lower price.



27. On or around July 21, 2018, Charles Brown trespassed onto the Property and converted various personal items from the Property, including but not limited to outdoor chairs, a workout bench, planter pots, and a trash can.

28. Upon information and belief, Charles Brown, Law Office of Dan M Winder P.C. and Dan Winder wrongfully initiated litigation against the Atkinsons and wrongfully abused the litigation process by producing numerous fabricated and fraudulent documents during discovery. The litigation process was also abused by the failure to disclose the “appraisal” that Charles Brown, Dan M Winder P.C. and Dan Winder paid for regarding the Property.

29. Charles Brown, Law Office of Dan M Winder P.C. and Dan Winder unsuccessfully attempted to pass off the Conditional Loan Quote and Good Faith Estimate (GFE) that Mr. Brown received from Financial Solutions & Real Estate Network Group as legitimate proof of financing during the litigation.

30. In February 2019, Findings of Fact and Conclusions of Law were entered with respect to Charles Brown's meritless lawsuit against the Atkinsons, which granted summary judgment in favor of the Atkinsons and dismissed all of Mr. Brown's claims.

31. As a result of Charles Brown, Stacy Brown, Law Office of Dan M Winder P.C. and Dan Winder's actions, the Atkinsons were forced to engage the services of an attorney, and have incurred significant damages and attorneys' fees.

**FIRST CLAIM FOR RELIEF**

**(Negligent Misrepresentation – Against Charles Brown)**

32. The Atkinsons repeat, reallege, and incorporate by reference the foregoing paragraphs as if fully set forth herein.

33. Charles Brown failed to exercise reasonable care in communicating information to the Atkinsons.

34. In the course of a business transaction in which Charles Brown had a pecuniary interest, Charles Brown falsely represented to the Atkinsons that he would purchase the Atkinsons' Property for \$100,000 cash.

35. The Atkinsons justifiably relied on Charles Browns' representation.

1           36.     The Atkinsons would not have executed the Purchase Agreement had they known that  
2 Charles Brown never intended on actually paying the Atkinsons any consideration for the Property.

3           37.     The Atkinsons would not have executed the Purchase Agreement had they known that  
4 Stacy Brown would be involved in placing her name on a fabricated loan approval document claiming  
5 that she approved for a loan related to purchase of the Property, nor would they have executed the  
6 Purchase Agreement had they known Stacy Brown would be involved in applying for other loans to  
7 purchase the Property. Charles Brown represented to the Atkinsons that he would be paying cash for  
8 the Property, and neither Charles Brown nor Stacy Brown referenced any loan applications.

9           38.     The Atkinsons never even met Stacy Brown and she was not a party to the Purchase  
10 Agreement.

11           39.     The Atkinsons would not have executed the Purchase Agreement had they known that  
12 Law Office and Winder would be paying for an appraisal of the Property based on an inflated purchase  
13 price of \$250,000 and based on inflated rental rates that upon information and belief were provided  
14 by Brown, Law Office, and Winder.

15           40.     As a direct and proximate result of the aforementioned misrepresentations of Charles  
16 Brown, the Atkinsons have been damaged in an amount in excess of \$15,000.00.

17           41.     As a direct and proximate result of the aforementioned actions and/or omissions of  
18 Charles Brown, the Atkinsons have been required to engage the services of an attorney, incurring  
19 attorneys' fees and costs to bring this action, and the Atkinsons are therefore entitled to reasonable  
20 attorneys' fees and costs incurred in this action.

21                               **SECOND CLAIM FOR RELIEF**

22                               **(Fraudulent Misrepresentation – Against Charles Brown)**

23           42.     The Atkinsons repeat, reallege, and incorporate by reference the foregoing paragraphs  
24 as if fully set forth herein.

25           43.     In the course of a business transaction in which Charles Brown had a pecuniary  
26 interest, Charles Brown falsely represented to the Atkinsons that he would purchase the Atkinsons'  
27 Property for \$100,000 cash.

28           44.     At the time the representation was made, on or around July 6, 2017, Charles Brown

1 knew that the information he provided to the Atkinsons was false, or that he had an insufficient basis  
2 for providing such information.

3 45. Charles Brown intended to induce the Atkinsons to act upon his misrepresentation.

4 46. The Atkinsons justifiably relied upon Charles Browns' misrepresentation, which  
5 resulted in damages.

6 47. As a direct and proximate result of the aforementioned misrepresentations of Charles  
7 Brown, the Atkinsons have been damaged in an amount in excess of \$15,000.00.

8 48. As a direct and proximate result of the aforementioned actions and/or omissions of  
9 Charles Brown, the Atkinsons have been required to engage the services of an attorney, incurring  
10 attorneys' fees and costs to bring this action, and the Atkinsons are therefore entitled to reasonable  
11 attorneys' fees and costs incurred in this action.

12 **THIRD CLAIM FOR RELIEF**

13 **(Violation of NRS 41.1395, Exploitation of Older or Vulnerable Persons Resulting in Injury or**  
14 **Loss – Against Charles Brown)**

15 49. The Atkinsons repeat, reallege, and incorporate by reference the foregoing paragraphs  
16 as if fully set forth herein.

17 50. Throughout 2017, both of the Atkinsons were over 70 years old.

18 51. In July of 2017, Charles Brown gained the trust and confidence of the Atkinsons by  
19 continuing to visit their residence and discuss his desire to purchase the Atkinsons' Property.

20 52. Charles Brown used the trust and confidence of the Atkinsons in order to convert the  
21 Atkinsons' Property to himself – without actually paying any consideration for that Property.

22 53. Charles Brown attempted to have the Atkinsons sign a "Promissory Note" with Stacy  
23 Brown as the "Borrower" and the Atkinsons as the "Lenders", stating that the Atkinsons would finance  
24 the \$100,000 for the property and with very vague terms as to how it would be repaid.

25 54. Upon information and belief, on or around June of 2018, Charles Brown trespassed  
26 and caused destruction to the Property by setting the Property on fire, and then continued to demand  
27 that the Atkinsons "sell" Brown the Property in its destructed condition for a much lower price.

28 55. Charles Brown knew or had reason to know that the Atkinsons were vulnerable people

1 who would fall victim to Brown's scheme of defrauding them out of their Property.

2 56. As a result of the wrongful conduct of Charles Brown, the Atkinsons have incurred the  
3 infliction of pain, injury, and mental anguish, and are therefore entitled to damages.

4 57. Upon information and belief, Charles Brown acted with recklessness, oppression, fraud  
5 or malice against the vulnerable Atkinsons, thus entitling the Atkinsons to an award of attorneys' fees  
6 and costs.

7 58. As a result, the Atkinsons have incurred compensatory damages, which are recoverable  
8 for their fear, anxiety, and mental and emotional distress.

9 59. The Atkinsons have incurred legal fees in connection herewith and are entitled to a  
10 recovery of such legal expenses and fees.

11 **FOURTH CLAIM FOR RELIEF**

12 **(Civil Conspiracy – Against Charles Brown, Stacy Brown, Law Office of Dan M Winder P.C.,**  
13 **and Dan Winder)**

14 60. The Atkinsons repeat, reallege, and incorporate by reference the foregoing paragraphs  
15 as if fully set forth herein.

16 61. Charles Brown, Stacy Brown, Law Office, and Winder, and each of them, worked  
17 together with the intent to accomplish the harmful objective of defrauding the Atkinsons out of the  
18 Property they own, for the purpose of causing harm to the Atkinsons.

19 62. As a direct and proximate result of the aforementioned actions and/or omissions of  
20 Charles Stacy Brown, Law Office, and Winder, the Atkinsons have been damaged in an amount in  
21 excess of \$15,000.00.

22 63. As a direct and proximate result of the aforementioned actions and/or omissions of  
23 Charles Brown, Stacy Brown, Law Office, and Winder, the Atkinsons have been required to engage  
24 the services of an attorney, incurring attorneys' fees and costs to bring this action, and the Atkinsons  
25 are therefore entitled to reasonable attorneys' fees and costs incurred in this action.

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1 **FIFTH CLAIM FOR RELIEF**

2 **(Concert of Action – Against Charles Brown, Stacy Brown, Law Office of Dan M Winder P.C.,**  
3 **and Dan Winder)**

4 64. The Atkinsons repeat, reallege, and incorporate by reference the foregoing paragraphs  
5 as if fully set forth herein.

6 65. As alleged herein, Charles Brown, Stacy Brown, Law Office, and Winder acted in  
7 concert with one another pursuant to the common design of transferring the Property from the  
8 Atkinsons to Charles Brown without any monetary consideration going to the Atkinsons.

9 66. As a direct and proximate result of the aforementioned actions and/or omissions of  
10 Charles Brown, Stacy Brown, Law Office, and Winder, the Atkinsons have been damaged in an  
11 amount in excess of \$15,000.00.

12 67. As a direct and proximate result of the aforementioned actions and/or omissions of  
13 Charles Brown, Stacy Brown, Law Office, and Winder, the Atkinsons have been required to engage  
14 the services of an attorney, incurring attorneys' fees and costs to bring this action, and the Atkinsons  
15 are therefore entitled to reasonable attorneys' fees and costs incurred in this action.

16 **SIXTH CLAIM FOR RELIEF**

17 **(Aiding and Abetting Fraudulent Misrepresentation or in the alternative Aiding and Abetting**  
18 **Negligent Misrepresentation – Against Stacy Brown, Law Office of Dan M Winder P.C., and**  
19 **Dan Winder)**

20 68. The Atkinsons repeat, reallege, and incorporate by reference the foregoing paragraphs  
21 as if fully set forth herein.

22 69. Upon information and belief, Stacy Brown, Law Office, and Winder knew that Charles  
23 Brown's conduct constituted a breach of duty to the Atkinsons.

24 70. Charles Brown defrauded the Atkinsons by representing to them that he would  
25 purchase the Property for \$100,000, knowing that such representation was false at the time it was  
26 made, and making the representation with the intent to induce the Atkinsons to relinquish their  
27 ownership interest in the Property.

28 71. Upon information and belief, Stacy Brown assisted or encouraged Charles Brown's

1 conduct by: allowing her name to be listed on a fraudulent loan application document related to the  
2 Property; applying for other loan(s) for the Property while knowing that neither she nor Charles Brown  
3 would actually be paying for the Property in cash pursuant to the Purchase Agreement.

4 72. Upon information and belief, Law Office and Winder assisted or encouraged Charles  
5 Brown's conduct by: helping Charles Brown pay for a fraudulent appraisal of the Property based on  
6 an inflated purchase price and inflated rental rates; helping Charles Brown pay for fraudulent loan  
7 applications to institutions; and helping Charles Brown initiate a fraudulent litigation against the  
8 Atkinsons in order to wrongfully effectuate the transfer of the Atkinsons' Property to Charles Brown  
9 without Charles Brown paying any consideration for the Property.

10 73. As a direct and proximate result of the aforementioned actions and/or omissions of  
11 Stacy Brown, Law Office, and Winder, the Atkinsons have been damaged in an amount in excess of  
12 \$15,000.00.

13 74. As a direct and proximate result of the aforementioned actions and/or omissions of  
14 Stacy Brown, Law Office, and Winder, the Atkinsons have been required to engage the services of an  
15 attorney, incurring attorneys' fees and costs to bring this action, and the Atkinsons are therefore  
16 entitled to reasonable attorneys' fees and costs incurred in this action.

17 **SEVENTH CLAIM FOR RELIEF**

18 **(Waste and Trespass to Real and Personal Property – Against Charles Brown)**

19 75. The Atkinsons repeat, reallege, and incorporate by reference the foregoing paragraphs  
20 as if fully set forth herein.

21 76. On or around June 5, 2018, Charles Brown trespassed onto the Property and caused  
22 waste and destruction to the Property, including but not limited to fire damage to the Property which  
23 rendered the Property uninhabitable.

24 77. Following the fire, Charles Brown returned to the Property on various occasions,  
25 including on or around July 21, 2018, and converted personal items within the Property. Brown  
26 converted household items and appliances such as outdoor chairs, a workout bench, planter pots, and  
27 a trash can.

28 78. As a direct and proximate result of the aforementioned actions and/or omissions of

1 Charles Brown, the Atkinsons have been damaged in an amount in excess of \$50,000.00.

2 79. As a result of the wrongful conduct of Charles Brown, the Atkinsons have incurred the  
3 infliction of pain, injury, and mental anguish, and are therefore entitled to damages.

4 80. Upon information and belief, Charles Brown acted with recklessness, oppression, fraud  
5 or malice against the vulnerable Atkinsons, thus entitling the Atkinsons to an award of attorneys' fees  
6 and costs.

7 81. As a result, the Atkinsons have incurred compensatory damages, which are recoverable  
8 for their fear, anxiety, and mental and emotional distress.

9 82. The Atkinsons have incurred legal fees in connection herewith and are entitled to a  
10 recovery of such legal expenses and fees.

11 **EIGHTH CLAIM FOR RELIEF**

12 **(Conversion – Against Charles Brown)**

13 83. The Atkinsons repeat, reallege, and incorporate by reference the foregoing paragraphs  
14 as if fully set forth herein.

15 84. Charles Brown committed a distinct act of dominion wrongfully exerted over the  
16 Atkinsons' personal property.

17 85. On or around July 21, 2018, Charles Brown trespassed onto the Atkinsons' Property  
18 and converted personal items within the Property. Brown converted household items and appliances  
19 such as outdoor chairs, a workout bench, planter pots, and a trash can.

20 86. Charles Brown's acts were in derogation, exclusion, or defiance of the Atkinsons'  
21 rights in their personal property.

22 87. As a direct and proximate result of the aforementioned actions and/or omissions of  
23 Charles Brown, the Atkinsons have been damaged in an amount in excess of \$15,000.00.

24 88. As a result of the wrongful conduct of Charles Brown, the Atkinsons have incurred the  
25 infliction of pain, injury, and mental anguish, and are therefore entitled to damages.

26 89. Upon information and belief, Charles Brown acted with recklessness, oppression, fraud  
27 or malice against the vulnerable Atkinsons, thus entitling the Atkinsons to an award of attorneys' fees  
28 and costs.

90. As a result, the Atkinsons have incurred compensatory damages, which are recoverable for their fear, anxiety, and mental and emotional distress.

91. The Atkinsons have incurred legal fees in connection herewith and are entitled to a recovery of such legal expenses and fees.

## PRAYER FOR RELIEF

WHEREFORE, Plaintiffs LaVelle P. Atkinson and Sheila Atkinson hereby pray for judgment against Defendants Charles Brown, Stacy Brown, Law Office of Dan M Winder, P.C., and Dan M. Winder as follows:

1. For a judgment in favor of the Atkinsons and against defendants Charles Brown, Stacy Brown, Law Office of Dan M Winder, P.C., and Dan M. Winder on the complaint and causes of action asserted herein;
2. For an award of general and special damages in an amount in excess of \$15,000.00 to be proven at trial;
3. For an award of compensatory and/or consequential damages in an amount in excess of \$15,000.00, to be proven at trial;
4. For punitive and/or exemplary damages pursuant to NRS 42.005 in an amount appropriate to punish and/or set an example of defendants Charles Brown, Stacy Brown, Law Office of Dan M Winder, P.C., and Dan M. Winder;

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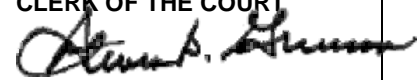
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**SUMM**

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*Attorneys for Plaintiffs*

**DISTRICT COURT**

**CLARK COUNTY, NEVADA**

LAVELLE P. ATKINSON, SHEILA  
ATKINSON, individuals,

Plaintiffs,

vs.

CHARLES BROWN, an individual; STACY  
BROWN, an individual; LAW OFFICE OF DAN  
M WINDER, P.C., a domestic professional  
corporation; DAN M. WINDER, an individual;  
DOES I through X; and ROE CORPORATIONS  
I through X, inclusive.

Defendants.

Case No.:A-19-804902-C

Dept. No.:

**SUMMONS - CIVIL**

**NOTICE! YOU HAVE BEEN SUED. THE COURT MAY DECIDE AGAINST YOU  
WITHOUT YOUR BEING HEARD UNLESS YOU RESPOND WITHIN 20 DAYS. READ  
THE INFORMATION BELOW.**

**LAW OFFICE OF DAN M. WINDER, P.C.**

A civil complaint has been filed by the Plaintiff against you for the relief set forth in the

1 complaint.

2 1. If you intend to defend this lawsuit, within 20 days after this Summons is served on  
3 you, exclusive of the day of service, you must do the following:

4 (a) File with the Clerk of the Court, whose address is shown below, a formal  
5 written response to the Complaint in accordance with the rules of the Court,  
6 with the appropriate filing fee.

7 (b) Serve a copy of your response upon the attorney whose name and address is  
8 shown below.

9 2. Unless you respond, your default will be entered upon application of the Plaintiffs and  
10 failure to so respond will result in a judgment of default against you for the relief demanded in the  
11 complaint, which could result in the taking of money or property or other relief requested in the  
12 complaint.

13 3. If you intend to seek the advice of an attorney in this matter, you should do so promptly  
14 so that your response may be filed on time.

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4. The State of Nevada, its political subdivisions, agencies, officers, employees, board members, commission members and legislators each have 45 days after service of this Summons within which to file and Answer or other responsive pleading to the complaint.

CLERK OF THE COURT STEVEN D. GRIERSON

CLERK OF THE COURT STEVE  


11/6/2019

Deputy Clerk  
Regional Justice Court  
200 Lewis Avenue  
Las Vegas, Nevada 89155

---

Date

# Demonstrations

Respectfully submitted,

**MAIER GUTIERREZ & ASSOCIATES**

/s/ Danielle J. Barraza

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DISTRICT COURT  
CLARK COUNTY, NEVADA

LAVELLE P. ATKINSON, ET AL.  
Plaintiff

vs

CHARLES BROWN, AN INDIVIDUAL, ET AL.  
Defendant

Case Number: A-19-804902-C

Dept:

**PROOF OF SERVICE**

BRENT ALLEN REID, deposes and says: that at all times herein I am a citizen of the United States, over 18 years of age, licensed to serve civil process in the State of Nevada under license #389, and not a party to nor interested in the proceeding in which this statement is made.

Legal Wings, Inc. received on 11/7/2019 a copy of the:  
**SUMMONS; COMPLAINT; CIVIL COVER SHEET**

I served the same on 11/8/2019 at 3:53 PM to:

**Defendant LAW OFFICE OF DAN M WINDER, P.C., A DOMESTIC PROFESSIONAL CORPORATION, BY SERVING DAN M WINDER, REGISTERED AGENT**

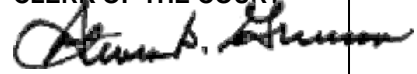
by leaving the copies with or in the presence of **SHERRIE L. MARTIN, PARALEGAL FOR DAN M WINDER**, at 3507 W CHARLESTON BLVD., LAS VEGAS, NV 89102, pursuant to **NRS 14.020**.

Pursuant to NRS 53.045, I declare under penalty of perjury under the law of the State of Nevada that the forgoing is true and correct.

Executed: Wednesday, November 13, 2019



BRENT ALLEN REID  
Registered Work Card R-061962



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**8<sup>TH</sup> JUDICIAL DISTRICT COURT  
CLARK COUNTY, NV**

Lavelle P. Atkinson, Sheila Atkinson,  
individuals,

Plaintiffs

VS.

CHARLES BROWN, and individual; LAW  
OFFICE OF DAN M. WINDER P.C. a domestic  
professional corporation; DAN M. WINDER, an  
individual, et al

Defendants

**CASE NO: A-19-804902-C**

**Dept: 26**

**WINDER DEFENDANTS'  
MOTION TO DISMISS  
FOR  
FAILURE TO STATE A CLAIM  
NRCP 12(b)(5)**

**Hearing Requested**

Defendants Law Office of Dan M. Winder P.C and Dan M. Winder, by and through their attorney Dan M. Winder of The Law Office of Dan M. Winder P.C. hereby move this Court dismiss Plaintiffs' Complaint on the grounds that it fails to state a cause of action pursuant to NRCP 12

**POINTS AND AUTHORITIES**

**1. PROCEDURAL CONTEXT**

This litigation arises out of a failed sales transaction wherein Plaintiffs agreed to sell some real estate to Defendant Charles Brown then failed to do so. That litigation (A-18-774764-C) ended with a summary judgment in favor of Plaintiffs on 02/11/19. Ex. 1 Findings of Fact, Conclusions of Law, and ORDER. As can be seen from the ORDER, these Plaintiffs are trying to assert, in the present action, mandatory counterclaims which should have been asserted in the previous action pursuant to NRCP

1 13(a) and are barred by claim preclusion at least as to Defendant Brown.

2 A careful reading of the Complaint indicates that no facts whatsoever are alleged against the  
3 Winder defendants. Allegations on information and belief are not facts, particularly, as here, where no  
4 effort whatsoever is made to demonstrate any factual basis for the beliefs. Conclusory statements are  
5 not facts.

6 Defendants have brought 3 claims against the Winder Defendants, (4) Civil Conspiracy, (5)  
7 Concert of Action, (6) Aiding and Abetting Fraudulent or Negligent Misrepresentation.

## 8 9 **2. LEGAL ARGUMENT**

### 10 **2.1. PLAINTIFFS' CLAIMS ARE BARRED BY CLAIM PRECLUSION**

11 The Nevada Supreme Court has set forth a 3 part test for determining whether claim preclusion  
12 should apply:

- 13 (1) the parties or their privies are the same,  
14 (2) the final judgment is valid, and  
15 (3) the subsequent action is based on the same claims or any part of them that were or  
16 could have been brought in the first case.

17 These three factors, in varying language, are used by the majority of state and federal courts.<sup>29</sup>  
18 This test maintains the well-established principle that claim preclusion applies to all grounds of  
19 recovery that were or could have been brought in the first case. *Five Star Capital Corp. v. Ruby*, 124  
20 Nev. 1048, 1054–55, 194 P.3d 709, 713 (2008), *holding modified by Weddell v. Sharp*, 131 Nev. 233,  
21 350 P.3d 80 (2015)

#### 22 23 **2.1.1. The Winder Defendants Are Privies According To Plaintiffs' Complaint.**

24 Courts universally recognize privity exists for purposes of claim preclusion when the  
25 defendants are alleged to be co-conspirators. See *Berks on v. LePome*, 126 Nev. Adv. Op. 46, 245  
26 P.3d 560, 566 (2010) (upholding dismissal of conspiracy claim based on claim preclusion, even

1 though some of the defendants were not named in the first action); *Weddell*, 350 P.3d at 84 (citing  
2 cases). Courts hold alleged co-conspirators are in privity with one another for res judicata purposes  
3 to avoid the unfairness of plaintiffs attempting to pursue endless litigation by filing new suits alleging  
4 a conspiracy involving the very same claims and issues that were previously litigated. See *Gambocz*  
5 *v. Yelencsics*, 468 F.2d 837, 842 (3d Cir. 1972); *Discon Inc. v. NYNEX Corp.*, 86 F. Supp. 2d 154,  
6 166 (W.D.N.Y. 2000) (“Courts have held that alleged co-conspirators are ‘in privity’ with one another  
7 for res judicata purposes.”) (internal citation omitted). Other courts have followed *Gambocz* in  
8 emphasizing the unfairness of the plaintiff’s successive lawsuit when finding co-conspirators in  
9 privity.

10 Each of the three claims involving the Winder Defendants make clear that the Winder  
11 Defendants were in privity with unserved Defendant Brown, who was a party to the prior action.

12  
13 **2.1.2. Presumably Plaintiffs Agree The Prior Judgment Is Valid**

14  
15 **2.1.3. The Current Claims Could Have Been Brought In The Prior Case**

16 As can clearly be seen from Exhibit 1, these Plaintiffs could have brought their current claims  
17 as a counter-claim in the prior proceeding. They chose not to. The current claims were compulsory  
18 counter-claims within the meaning of NRCP 13(a) in that they were known to the then Defendants,  
19 now Plaintiffs, before they filed their answer.

20  
21 **2.1.4. Claim Preclusion Requires Plaintiffs’ Complaint Be Dismissed.**

22 By definition Plaintiffs have characterized the Winder Defendants as being in privity with  
23 unserved defendant Brown. The Defendants in the prior case are the Plaintiffs in this case. Unserved  
24 Defendant Brown in this case was the Plaintiff in the prior case. By characterizing the Winder  
25 defendants as co-conspirators of unserved Defendant Brown, Plaintiffs have admitted the Winder  
26 defendants were in privity with unserved Defendant Brown for purposes of claim preclusion. The



1 judgment on which claim preclusion is based is a valid judgment. For these reasons, Plaintiffs Claims  
2 must be dismissed.

3  
4 **2.2. AN ATTORNEY REPRESENTING A CLIENT OWES NO DUTY TO THIRD**  
5 **PARTIES**

6 Since Plaintiffs' complaint is devoid of dates and any facts, ascertaining whether the alleged  
7 wrongdoing arose out of the Winder Defendants representation of unserved Defendant Brown. To the  
8 extent it did, it is absolutely privileged. an attorney providing legal services to a client generally owes  
9 no duty to adverse or third parties. *Fox v. Pollack*, 181 Cal.App.3d 954, 226 Cal.Rptr. 532, 536 (1986);  
10 *Cantey Hanger, LLP v. Byrd*, 467 S.W.3d 477, 481 (Tex. 2015). Whether an attorney is liable under  
11 an agency theory hinges on whether the attorney is acting solely as an agent for the client, i.e., as a debt  
12 collector, or whether the attorney is providing legal services to a client. *Cantey Hanger*, 467 S.W.3d at  
13 481–83. *Dezzani v. Kern & Associates, Ltd.*, 134 Nev. 61, 68, 412 P.3d 56, 62 (2018), *reh'g denied*  
14 (Apr. 27, 2018). Accordingly, since the Winder Defendants were, at all times, acting as attorneys for  
15 unserved defendant Brown, the claims against them must be dismissed.

16  
17 **2.3. THE COMPLAINT DOES NOT CONTAIN SUFFICIENT FACTUAL ALLEGATIONS**  
18 **TO SURVIVE DISMISSAL AS TO THE WINDER DEFENDANTS.**

19 . A motion to dismiss under NRCP 12(b)(5) tests the sufficiency of the pleadings: whether the  
20 plaintiff has **pled facts** supporting all of the elements of at least one proper cause of action that is worth  
21 proceeding to discovery on. It has nothing to do with whether the allegations of the complaint are  
22 credible, supported by evidence, or ultimately true; it asks only whether all of the required allegations  
23 are there in a way that gives sufficient notice to the opposing party of the nature of the action. See *Hall*  
24 *v. SSF, Inc.*, 112 Nev. 1384, 1391, 930 P.2d 94, 98 (1996) (“[A] complaint need only set forth sufficient  
25 **facts** to demonstrate the necessary elements of a claim for relief so that the defending party has  
26 adequate notice of the nature of the claim and the relief sought”). In legal terms, NRCP 12(b)(5) asks

only whether the allegations of a complaint are sufficient, not whether they are true. See *RLP–Ferrell Street LLC v. Franklin American Mortgage Co.*, No. 2:13-CV-1470-RCJ-GWF, 2013 WL 6120047 at 3 (D. Nev. Nov. 19, 2013) (“The issue is not whether a plaintiff will ultimately prevail but whether the claimant is entitled to offer evidence to support the claims”). *MG & S Enter., LLC v. Travelers Cas. Ins. Co. of Am.*, 69622, 2017 WL 4480776, at 7 (Nev. App. Sept. 29, 2017), *aff’d sub nom. MG&S Enter., LLC v. Travelers Cas. Ins. Co. of Am.*, 432 P.3d 742 (Nev. 2018).

With respect to the Winder Defendants, Plaintiffs have pled no facts at all. Even though the claims against the Winder Defendants are subject to the NRCP 9 heightened requirements of fraud claims, they are bare allegations without reference to a single fact. There is no averment as to when these events took place, who behaved in fraudulent conduct, who relied on the representations or how or in what way the Plaintiffs were damaged. If they are claiming special damages, there is no specific averment as required by NRCP 9(g). There are no allegations of time or place as required by NRCP 9(f). In fact, there are no facts at all. Nearly every averment begins with “On information and belief” For there to be a belief there must be a basis (information) for the belief and there are none.

Under Federal Rule of Civil Procedure 9(b), which contains language identical to NRCP 9(b), federal courts have recognized an exception to particularized pleading. When the facts necessary for pleading with particularity “are peculiarly within the defendant's knowledge or are readily obtainable by him,” FRCP 9(b)'s pleading rule is relaxed because the “plaintiff[ ] can not be expected to have personal knowledge of the relevant facts.”<sup>16</sup> In that situation, the plaintiff may make an allegation on information and belief but “must state the factual basis for the belief.” When applying this relaxed standard, the federal courts require the plaintiff to allege more than suspicious circumstances. “Where pleading is permitted on information and belief, a complaint must adduce specific facts supporting a strong inference of fraud or it will not satisfy even a relaxed pleading standard.” *Rocker v. KPMG LLP*, 122 Nev. 1185, 1193, 148 P.3d 703, 708–09 (2006), *abrogated by Buzz Stew, LLC v. City of N. Las Vegas*, 124 Nev. 224, 181 P.3d 670 (2008)

Plaintiffs cite no factual basis for their beliefs. They cite no information on which their beliefs

1 are based. In short, they have manufactured a complaint entirely devoid of facts so that no inferences  
2 may be raised.

3 Accordingly, Plaintiffs' complaint must be dismissed for want of facts, for the failure to cite  
4 time and place, and for the failure to meet the heightened pleading standards. of FRCP 9.

5  
6 **3. CONCLUSION**

7 Plaintiffs' Complaint should be dismissed for the following reasons:

- 8 1. Plaintiffs' Claims are barred by the doctrine of issue preclusion. This cannot be cured by  
9 amendment.
- 10 2. Plaintiffs' Claims are precluded due the lack of duty owed by the Winder Defendants as  
11 attorneys. This cannot be cured by amendment.
- 12 3. Plaintiffs' Claims lack sufficient facts to state a claim. It is unlikely this could be cured by  
13 amendment.

14 Dated this \_\_\_\_ day of, 2019

15 Dan M. Winder

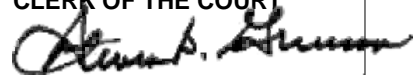
16  
17 /s/ Dan M. Winder  
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25 Attorney for Plaintiff  
26

1 Certificate of Service

2 I certify that on the date stamped hereon by the Court's Electronic Case Filing System, I  
3 served the parties of record via the System.

4 /s/Brittney Reid  
5 An employee of the  
6 Law Office of Dan M. Winder  
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# EXHIBIT A



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*Attorneys for Defendants*

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

CHARLES BROWN, an individual,  
Plaintiff,

vs.

LAVELLE P. ATKINSON, SHEILA  
ATKINSON; DOES I-V; and ROE  
CORPORATIONS I-V,  
Defendants.

Case No.: A-18-774764-C  
Dept. No.: IX

**FINDINGS OF FACT, CONCLUSIONS  
OF LAW, AND ORDER**

Hearing Date: January 17, 2019  
Hearing Time: 8:30 a.m.

This matter came for a hearing before the Court on January 17, 2019, at 8:30 a.m., on the motion for summary judgment, the motion to disqualify Plaintiff's counsel, and the motion for leave to amend the Answer to add additional affirmative defense, counterclaims, and third party claims filed by Defendants Lavelle P. Atkinson and Sheila Atkinson ("Defendants"), along with the countermotion for summary judgment filed by Plaintiff Charles Brown ("Plaintiff"). Defendants were represented by Adriana Pereyra, Esq. of the law firm INTEGRITY LAW FIRM, and Danielle J. Barraza, Esq. of the law firm MAIER GUTIERREZ & ASSOCIATES. Plaintiff was represented by Dan M. Winder, Esq. of the

1 law firm Law Office of DAN M. WINDER, P.C.

2 The Court, having reviewed the pleadings and papers on file herein and considered the  
3 evidence, testimony and oral argument of counsel present at the hearing, hereby makes the following  
4 findings of facts and conclusions of law:

5 **FINDINGS OF FACT**

6 1. The commercial real property at issue in this case is located at 2315 North Decatur  
7 Blvd., Las Vegas, Nevada, 89108, with Assessor's Parcel Number 138-24-511-034 (the "Property").

8 2. Defendants, 75 year-old LaVelle Atkinson and 74 year-old Sheila Atkinson have  
9 owned the Property since at least the year 2000.

10 3. Plaintiff testified in his deposition that in July of 2017, he was driving around the  
11 Property's neighborhood, and when he came across the Property, he "observed it was abandoned,"  
12 which is allegedly how he first became interested in purchasing the Defendants' Property.

13 4. Plaintiff testified in his deposition that on July 6, 2017, Plaintiff showed up at the  
14 Defendants' door with a Purchase Agreement Plaintiff had prepared.

15 5. The Purchase Agreement lists a purchase price of \$100,000 "payable in cash at  
16 Closing."

17 6. Per the Purchase Agreement, within two business days of the "Effective Date," (which  
18 is later defined as the date that the Purchase Agreement is executed by both Purchase and Seller and  
19 delivered to Escrow Agent) Plaintiff was required to deposit a \$1,000 down payment to an Escrow  
20 Agent.

21 7. The full title of the Purchase Agreement is "Purchase Agreement and Joint Escrow  
22 Instructions," however, in the first paragraph of the Purchase Agreement, the "Escrow Agent" is not  
23 actually identified, but is simply listed as "Selected by buyer."

24 8. The Purchase Agreement does not identify an Escrow Agent, nor does it provide any  
25 escrow instructions.

26 9. The Purchase Agreement states that the "Closing of the sale of the Property by Seller  
27 to Purchaser shall occur on or before Thirty (30) days after the Feasibility Period."

28 10. The Purchase Agreement defines the "Feasibility Period" as beginning on the Effective

1 Date and expiring forty-five days thereafter.

2 11. Per the Purchase Agreement, Plaintiff's obligation at the closing of the sale was to "pay  
3 the Purchase Price in cash (or by Certified Check, wire transfer of funds into Escrow, all of which  
4 shall constitute "cash" for purpose of this Agreement)."

5 12. Page 6 of the Purchase Agreement indicates that Plaintiff executed the agreement on  
6 July 6, 2017, and the Defendants executed the agreement on July 20, 2017.

7 13. Plaintiff testified in his deposition that he did not have an investor identified to help  
8 him purchase the Property.

9 14. Plaintiff failed to identify any escrow company, and failed to submit evidence to the  
10 Court indicating that Plaintiff had deposited any funds into an escrow account for the purchase of the  
11 Property.

12 15. Plaintiff did not submit an appraisal to the Court.

13 16. In his initial disclosures, Plaintiff produced what he referred to as a "Pre-Approval  
14 Letter from Kelly Mortgage and Realty." ("Kelly Mortgage Letter").

15 17. The Kelly Mortgage Letter is dated July 31, 2017, contains a logo of some sort at the  
16 top and states "Congratulations, YOU ARE PRE-APPROVED!!!".

17 18. The Kelly Mortgage Letter does not state that Plaintiff Charles Brown was approved  
18 for a loan, but states that a "Stacey Brown" has been pre-approved for a loan with Kelly Mortgage  
19 and Realty, Inc.

20 19. Plaintiff testified during his deposition that a "Stacy Brown" is his wife.

21 20. In his deposition testimony, Plaintiff admitted to having seen the Kelly Mortgage  
22 Letter (that he produced), but then claimed he could not remember when he obtained the letter.

23 21. Plaintiff testified in his deposition that he did supply information to Kelly Mortgage,  
24 saying he spoke to a Veda Williams from Kelly Mortgage and gave her "whatever they asked for,"  
25 and "Whatever she sent, said needed to be signed, I signed it."

26 22. Following Plaintiff's deposition, the Defendants obtained an affidavit from Tracy L.  
27 Kelly (the President and Broker of Kelly Mortgage) regarding the Kelly Mortgage pre-approval letter.  
28 Specifically, Ms. Kelly indicated the following:



- That the Kelly Mortgage Letter produced by Plaintiff “was not produced by my office or anyone affiliated to it. The letterhead and the location of the company address on the letter is clearly forged and different from our true letterhead.”
- That “we have not handled a loan application for Stacy Brown” and further, “Kelly Mortgage and Realty, Inc. closed its doors in 2017,” and at the time the pre-approval was allegedly written, “I was in the process of closing out our existing pipeline of loans in Nevada.”
- That “My assistant’s name is Veda Williams, but she is not a Mortgage Consultant and she did not sign the letter,” and that Ms. Kelly is the “only person who signs pre-approval letters.” That the “signature line of the bottom of the page is a copy and paste job and not the same font as the rest of the document.”
- That “I have never processed a loan for the property located at 2315 N. Decatur Boulevard, in Las Vegas, Nevada,” and “I believe that the [Kelly Mortgage Letter] was falsified and fraudulently submitted as evidence of financing for the property located at 2315 N. Decatur Boulevard, in Las Vegas, Nevada.”

#### CONCLUSIONS OF LAW

1. Entry of summary judgment is proper and “shall be rendered forthwith when the pleadings and other evidence on file demonstrate that no genuine issue as to any material fact remains and that the moving party is entitled to a judgment as a matter of law.” *Wood v. Safeway, Inc.*, 121 Nev. 724, 729, 121 P.3d 1026, 1029 (2005) (quoting Nev. R. Civ. P. 56(c)) (internal quotations and brackets omitted). If the movant’s burden is met, in order to survive a Rule 56 motion, the nonmoving party “must, by affidavit or otherwise, set forth specific facts demonstrating the existence of a genuine issue for trial or have summary judgment entered against him.” *Id.* at 732, 121 P.3d at 1031 (quoting *Bulbman, Inc. v. Nevada Bell*, 108 Nev. 105, 109, 825 P.2d 588, 591 (1992)).

2. “A genuine issue of material fact exists where the evidence is such that a reasonable jury could return a verdict for the nonmoving party.” *Valley Bank of Nevada v. Marble*, 105 Nev. 366, 367, 775 P.2d 1278, 1279 (1989). “[C]onclusory statements along with general allegations do not create an issue of fact.” *Yeager v. Harrah’s Club, Inc.*, 111 Nev. 830, 833, 897 P.2d 1093, 1095

1 (1995).

2 3. Any finding of fact that is more appropriately classified as a conclusion of law shall be  
3 so considered. Any conclusion of law that is more appropriately classified as a finding of fact shall be  
4 so considered.

5 4. Generally, a breach of contract in Nevada requires the following:

- 6 1. Plaintiff and Defendant entered into a valid and existing contract;  
7 2. Plaintiff performed or was excused from performance;  
8 3. Defendant breached; and  
9 4. Plaintiff suffered damages as a result of the breach.

10 *See, Reichert v. Gen. Ins. Co. of Amer.*, 68 Cal 2d Rptr. 321, 442 P.2d 377 (1968); *Calloway v. City*  
11 *of Reno*, 116 Nev. 250, 993 P.2d 1259 (2000). Additionally, "[b]asic contract principles require, for  
12 an enforceable contract, an offer and acceptance, meeting of the minds, and consideration." *May v.*  
13 *Anderson*, 121 Nev. 668, 672, 119 P.3d 1254, 1257 (2005).

14 5. A breach of contract includes a "material failure of performance of a duty arising under  
15 or imposed by agreement." *Id.* at 256, 993 P.2d at 1263 (quoting *Malone v. University of Kansas*  
16 *Medical Center*, 220 Kan. 371, 552 P.2d 885, 888 (1976).

17 6. Here, Plaintiff did not provide sufficient evidence indicating that Plaintiff performed or  
18 was excused from performance, as no evidence was produced indicating that escrow was opened, that  
19 there was any escrow agent, or that Plaintiff had deposited any funds into an escrow account for the  
20 Purchase of the Property. Additionally, there was no evidence produced indicating that Plaintiff had  
21 the funds to purchase the property as required by the agreement.

22 7. Plaintiff also failed to provide sufficient evidence indicating how the Defendants  
23 breached any contract. Therefore, as a matter of law, Plaintiff cannot succeed on his first cause of  
24 action for breach of contract claim against Defendants.

25 8. With Plaintiff failing to succeed on his breach of contract action against Defendants,  
26 and failing to provide any evidence indicating that Plaintiff provided any benefit to Defendants,  
27 Plaintiff's alternative causes of action for unjust enrichment/quasi contract/implied-in-law contract  
28 and implied-in-fact contract also fail as a matter of law.

9. It is well established within Nevada that every contract imposes upon the contracting

1 parties the duty of good faith and fair dealing. *See Hilton Hotels Corp. v. Butch Lewis Prods., Inc.*,  
2 107 Nev. 226, 808 P.2d 919 (1991) ("When one party performs contract in manner that is unfaithful  
3 to purpose of contract and justified expectations of other party are thus denied, damages may be  
4 awarded against party who does not act in good faith.").

5 10. No evidence was submitted indicating that Defendants failed to act in a manner that was  
6 unfaithful to the purpose of the contract. As such, Plaintiff's claim for breach of the duty of good  
7 faith and fair dealing fails as a matter of law.

8 11. To establish promissory estoppel, four elements must exist: (1) the party to be estopped  
9 must be apprised of the true facts; (2) he must intend that his conduct shall be acted upon, or must so  
10 act that the party asserting estoppel has the right to believe it was so intended; (3) the party asserting  
11 the estoppel must be ignorant of the true state of facts; (4) he must have relied to his detriment on the  
12 conduct of the party to be estopped." *Cheger, Inc. v. Painters & Decorators Joint Committee, Inc.*, 98  
13 Nev. 609, 614, 655 P.2d 996, 998-999 (1982).

14 12. No evidence was submitted to the Court indicating the Defendants' conduct (of not  
15 outright giving away the Property to Plaintiff) somehow amounted to a promise to do so that Plaintiff  
16 relied upon. *See Torres v. Nev. Direct Ins. Co.*, 131 Nev. Adv. Op. 54, 353 P.3d 1203, 1209 (2015)  
17 ("The promise giving rise to a cause of action for promissory estoppel must be clear and definite,  
18 unambiguous as to essential terms, and the promise must be made in a contractual sense.").

19 13. Further, the only evidence that has been submitted to the Court of the Defendants'  
20 intentions or conduct has been the Purchase Agreement itself. Plaintiff also has not proven how he  
21 "detrimentally relied" on any promise made by the Defendants, as no evidence has been submitted  
22 indicating that Plaintiff was monetarily damaged in any way from the sale of the Property not going  
23 through. Accordingly, Plaintiff's fifth cause of action for promissory estoppel against Defendants  
24 fails as a matter of law.

### 25 ORDER

26 Based on the foregoing,

27 IT IS HEREBY ORDERED, ADJUDGED, AND DECREED as follows:

28 1. Defendants' motion for summary judgment as to Plaintiff's causes of action for (1)

1 breach of contract; (2) breach of the covenant of good faith and fair dealing; (3) unjust enrichment/  
2 quasi contract/ contract implied-in-law; (4) contract implied-in-fact; and (5) promissory estoppel is  
3 GRANTED in its entirety, and all claims against Defendants are dismissed with prejudice.

4 2. Plaintiff's counter-motion for summary judgment is DENIED in its entirety;

5 3. As a result of the order granting Defendants' motion for summary judgment,  
6 Defendants' motion to disqualify Plaintiff's counsel is moot;

7 4. As a result of the order granting Defendants' motion for summary judgment,  
8 Defendants' motion for leave to amend the Answer to add additional affirmative defense,  
9 counterclaims, and third party claims is moot;

10 5. Plaintiff and his predecessors and/or assignees do not have any estate, right, title, lien,  
11 or interest in the Property or any part of the Property; and


12 6. Plaintiff shall record any Release of Lis Pendens necessary in order to remove the  
13 clouding of title to Plaintiff's Property.

14 IT IS SO ORDERED this 8<sup>th</sup> day of February, 2019.

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DAVID B. BARKER  
SENIOR DISTRICT COURT JUDGE

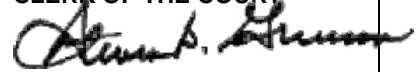
Submitted by:

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**DISTRICT COURT**

**CLARK COUNTY, NEVADA**

LAVELLE P. ATKINSON, SHEILA  
ATKINSON, individuals,

Plaintiffs,

vs.

CHARLES BROWN, an individual; STACY  
BROWN, an individual; LAW OFFICE OF DAN  
M WINDER, P.C., a domestic professional  
corporation; DAN M. WINDER, an individual;  
DOES I through X; and ROE CORPORATIONS I  
through X, inclusive.

Defendants.

Case No.: A-19-804902-C

Dept. No.: 26

**PLAINTIFFS' OPPOSITION TO  
WINDER DEFENDANTS' MOTION TO  
DISMISS FOR FAILURE TO STATE A  
CLAIM**

Date of Hearing: January 14, 2020

Time of Hearing: 9:30 a.m.

Plaintiffs LAVELLE P. ATKINSON and SHEILA ATKINSON ("Plaintiffs"), by and through  
their attorneys of record, INTEGRITY LAW FIRM and MAIER GUTIERREZ & ASSOCIATES, hereby file this  
opposition to the motion to dismiss for failure to state a claim filed by defendants Law Office of Dan

1 M Winder, P.C. and Dan M. Winder (the “Winder Defendants”). This opposition is made and based  
2 upon the following memorandum of points and authorities, the papers and pleadings on file herewith  
3 and any oral argument of counsel at the time of the hearing.

4 DATED this 18th day of December, 2019.

5 Respectfully submitted,

6 **MAIER GUTIERREZ & ASSOCIATES**

7 /s/ Danielle J. Barraza

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20 *Attorneys for Plaintiffs*

21 **MEMORANDUM OF POINTS AND AUTHORITIES**

22 **I. INTRODUCTION**

23 This case involves defendant Charles Brown’s fraudulent attempt to force elderly plaintiffs  
24 Lavelle and Sheila Atkinson to “sell” Mr. Brown the commercial property (“Property”) they own –  
25 without Mr. Brown actually paying any consideration for the property. When the Atkinsons refused  
26 to transfer their property to Mr. Brown for free, Mr. Brown sued them (the “First Litigation”).

27 The discovery period of the First Litigation exposed the many layers of Mr. Brown’s  
28 deception, and the involvement of others who were conspiring with him. This included Mr. Brown  
disclosing fake loan qualification documents that indicated Mr. Brown’s wife, defendant Stacy  
Brown, had approved for a loan in the amount of \$200,000 in order to purchase the Property. The  
Atkinsons obtained an affidavit from the mortgage loan company that supposedly approved the loan,  
which confirmed that the documents Mr. Brown produced in discovery were “clearly forged and  
different from our true letterhead.”

1           Near the end of discovery in the First Litigation, the Atkinsons also obtained evidence  
2 implicating Mr. Brown's attorney, the Winder Defendants, to Mr. Brown's scheme. Specifically, it  
3 was revealed that the Winder Defendants cut a check for an appraisal of the Atkinsons' Property in  
4 2017 when Mr. Brown was in the midst of attempting to "buy" the Property. The check itself indicates  
5 that it is from the "Law Office of Dan M Winder P.C." and it appears that Dan Winder, Esq. (who  
6 was counsel for Mr. Brown in the First Litigation) signed off on the check. Further evidence came to  
7 light showing that the Winder Defendants were also involved in paying for fake "proof of financing"  
8 documents which purported to show Mr. Brown's ability to pay for the Property.

9           At no point in the First Litigation did Mr. Brown or Mr. Winder voluntarily disclose Mr.  
10 Winder's involvement (along his law firm's involvement) in the underlying attempt to legitimize a  
11 fake property purchase transaction. The Atkinsons had to find this out on their own in discovery of  
12 the First Litigation.

13           Upon learning of the Winder Defendants' involvement in Mr. Brown's wrongdoing, the  
14 Atkinsons filed a motion for leave to amend their Answer to add counterclaims and third-party claims  
15 based on the new evidence obtained in discovery, a motion to disqualify the Winder Defendants as  
16 Mr. Brown's counsel, and a motion for summary judgment in the First Litigation. At the hearing, the  
17 Court saw right through Mr. Brown's deceitful conduct and found that Mr. Brown never deposited  
18 any funds into an escrow account for the purchase of the Property. Instead of prolonging the case, the  
19 Court elected to grant the Atkinsons' motion for summary judgment, leaving the Atkinsons free to  
20 pursue any matters against Mr. Brown and his co-conspirators in another action. The Atkinsons have  
21 now done so with this instant litigation.

22           In their motion to dismiss, the Winder Defendants contend that the Atkinsons are using this  
23 litigation to "assert mandatory counterclaims which should have been asserted in the previous action  
24 pursuant to NRCP 13(a) and are barred by claim preclusion at least as to defendant Brown." Mot. at  
25 pp. 1-7. To be clear, at the time that the Atkinsons filed their Answer in the First Litigation, discovery  
26 had not yet commenced, so obviously the Atkinsons did not have the evidence or reasonable basis to  
27 assert counterclaims against Mr. Brown or third-party claims against the Winder Defendants. Thus,  
28 the reference to NRCP 13(a) has no application here.

1 In any event, the Atkinsons attempted to add counterclaims and third-party claims in the First  
2 Litigation promptly after receiving evidence linking Mr. Brown, Stacy Brown, and the Winder  
3 Defendants to the conspiracy to defraud the Atkinsons out of the Property, but the Court elected to  
4 grant summary judgment in favor of the Atkinsons instead based on the case's procedural posture,  
5 which in no way precludes the Atkinsons from pursuing claims that have not yet been litigated against  
6 Mr. Brown, Stacy Brown, and the Winder Defendants.

7 Additionally, the motion to dismiss asserts that "no facts whatsoever are alleged against the  
8 Winder [D]efendants," but that is easily belied by the allegations set forth in the Complaint, which  
9 includes specific allegations as to the Winder Defendants' involvement in helping Mr. Brown try to  
10 create the appearance of a legitimate transaction by paying for an "appraisal" and "proof of financing"  
11 for Mr. Brown. *See generally*, **Exhibit 1**, Compl. at ¶¶ 18-24. The Atkinsons have sufficiently set  
12 forth their allegations against the Winder Defendants with the requisite particularity details.

13 Because the Atkinsons have sufficiently pleaded each of their claims against the Winder  
14 Defendants (none of which are subject to the claim preclusion doctrine), it would be improper for this  
15 Court to dismiss any causes of action at this initial stage of litigation, thus the Court should deny the  
16 Winder Defendants' motion to dismiss in its entirety.

## 17 **II. STATEMENT OF FACTS AND RELEVANT PROCEDURAL HISTORY OF THE** 18 **FIRST LITIGATION**

### 19 **A. THE FIRST LITIGATION**

20 In the First Litigation, on May 18, 2018, Mr. Brown (who had never deposited any funds into  
21 an escrow account for the purchase of the Property) sued the Atkinsons for breach of contract, breach  
22 of the covenant of good faith and fair dealing, unjust enrichment, contract implied in-fact, and  
23 promissory estoppel. *See Exhibit 2*, First Litigation Complaint.

24 The Atkinsons, who at that point were not apprised of the fraudulent activities Mr. Brown and  
25 his co-conspirators (including the Winder Defendants) had engaged in as part of their efforts to  
26 fabricate the appearance of a legitimate property sale transaction, filed their Answer to the Complaint  
27 on June 25, 2018. The matter proceeded to the Arbitration program, with a discovery period taking  
28 place from August 21, 2018 through December 27, 2018. *See Exhibit 3*, First Litigation Arbitration



1 Discovery Order. The Atkinsons aggressively pursued documents and evidence substantiating their  
2 defense to the claims lodged against them in Mr. Brown's Complaint.

3 Shockingly, the documents that the Atkinsons received in response to subpoenas served during  
4 discovery in the First Litigation showed that the Winder Defendants were heavily involved in trying  
5 to create the appearance that Mr. Brown had obtained an appraisal of the Property and had obtained  
6 proper financing to purchase the Property.

7 In his NRCP 16.1 disclosures in the First Litigation, Mr. Brown listed Certified General  
8 Appraiser Keith Harper of Valuation Consultants as a witness, who would ostensibly testify to the  
9 appraisal that Mr. Brown claimed to have obtained for the Property in preparation of purchasing it.  
10 The Atkinsons served a subpoena duces tecum upon Valuation Consultants, seeking all documents  
11 they had relating to the Property.

12 On or around November 29, 2018, Keith Harper provided the check that he received for the  
13 appraisal of the Property. The check is dated August 7, 2017 (which encompasses the time period  
14 Plaintiff claims to have been "in escrow" to purchase the property). The check itself indicates that it  
15 is from the "Law Office of Dan M Winder P.C." and it appears that Dan Winder, Esq. (Mr. Brown's  
16 counsel in the First Litigation) signed off on the check. *See Exhibit 4*, Appraisal Check from Winder  
17 Defendants.

18 On or around December 18, 2018, Mr. Harper provided correspondence indicating that he  
19 never actually completed the appraisal, but rather he only prepared a preliminary letter which was  
20 based on the "false" extraordinary assumption that Mr. Brown's former employer would be renting  
21 the Property for five years at an inflated rental rate of \$4,300 per month, which was never verified  
22 with a formal, legal lease. *Exhibit 5*, Letter from Keith Harper. Nevertheless, Mr. Brown and the  
23 Winder Defendants attempted to pass off that preliminary letter as a legitimate "appraisal" of the  
24 Property in the First Litigation.

25 Mr. Brown also listed "Financial Solutions and Real Estate Network" as a witness in his  
26 NRCP.1 disclosures in the First Litigation, along with disclosing expired and unsigned (and therefore  
27 ineffective) "proof of financing" documents in the form of a Conditional Loan Quote and Good Faith  
28 Estimate (GFE) from Financial Solutions & Real Estate Network Group. The Atkinsons followed up

1 on the legitimacy of these documents by issuing a subpoena duces tecum to Financial Solutions &  
2 Real Estate. In early January 2019, the Atkinsons received an affidavit from a representative of  
3 Financial Solutions & Real Estate Group which states that Mr. Brown “attempted to pay for the  
4 \$1,000.00 application fee with a check from a law firm to apply for the loan,” but they could not  
5 accept checks from a third-party who was not part of the Purchase Agreement, so Mr. Brown ended  
6 up paying the \$1,000 in cash. **Exhibit 6**, Affidavit of Joyce Mack. This affidavit also confirmed that  
7 the loan application was “cancelled” due in part to Mr. Brown’s failure to cooperate with Financial  
8 Solutions & Real Estate Network Group’s requests for additional information. *Id.* Nevertheless, Mr.  
9 Brown, through his counsel Mr. Winder, still tried to pass off the unsigned and expired loan  
10 documents as legitimate evidence of Mr. Brown’s intentions on purchasing the Property.

11 Neither Mr. Brown nor Mr. Winder disclosed Mr. Winder’s undisputed involvement in paying  
12 for certain documents that were deceptively used to create the appearance of Mr. Brown going through  
13 a valid process of purchasing the Property. This is all information that the Atkinsons learned on their  
14 own in the late stages of discovery in the First Litigation.

15 The Atkinsons promptly filed a motion for summary judgment, a motion to amend their  
16 Answer to add counterclaims against Mr. Brown and third-party claims against the Winder  
17 Defendants, and a motion to disqualify the Winder Defendants from serving as Mr. Brown’s counsel  
18 in the First Litigation.

19 At the January 17, 2019 hearing, the Court granted the Atkinsons’ motion for summary  
20 judgment (ignoring Mr. Winder’s request for a continuance so that he could get on the phone with his  
21 client to supposedly gather the evidence that would support Mr. Brown’s claims), and dismissed all  
22 of Mr. Brown’s meritless claims. **Exhibit 7**, Findings of Fact, Conclusions of Law, and Order.  
23 Because the Court granted the Atkinsons’ motion for summary judgment, the Court elected to simply  
24 close the case rather than have the Atkinsons pursue their proposed actions against Mr. Brown and  
25 his co-conspirators (including the Winder Defendants) in the First Litigation. But at no point did the  
26 Court rule on the merits of the Atkinsons’ proposed claims, and at no point did the Atkinsons ever fail  
27 to bring claims that they could have brought in the First Litigation. The Atkinsons attempted to bring  
28 forth such claims as soon as they had information substantiating those claims – the Court simply

1 elected to allow the Atkinsons to pursue those claims in a separate litigation.

2 **B. FACTS ASSERTED AGAINST THE WINDER DEFENDANTS IN THE INSTANT LITIGATION**

3 In this instant litigation, the Atkinsons allege with sufficient detail the Winder Defendants'  
4 involvement in Mr. Brown's scheme to defraud the Atkinsons out of the Property. The Atkinsons  
5 have alleged claims against the Winder Defendants for: civil conspiracy, concert of action, and aiding  
6 and abetting fraudulent misrepresentation or negligent misrepresentation. Ex. 1. The specific  
7 allegations relating to the Winder Defendants' illegal actions are as follows:

8 • On or around August 7, 2017, Charles Brown, in conjunction with Law Office of Dan  
9 M Winder P.C. and Dan Winder, submitted a check to Keith Harper of Valuation Consultants  
10 for an "appraisal" of the Property during the time Charles Brown was attempting to purchase  
11 the Property from the Atkinsons. Ex. 1 at ¶ 18.

12 • The "appraisal" that Charles Brown, the Law Office of Dan M Winder P.C. and Dan  
13 Winder obtained regarding the Property was based on an inflated \$250,000 purchase price that  
14 Charles Brown, the Law Office of Dan M Winder, and Dan Winder relayed to Keith Harper  
15 of Valuation Consultants on or around August 7, 2017 – even though the agreed-upon purchase  
16 price was only \$100,000. Ex. 1 at ¶ 19.

17 • Charles Brown, the Law Office of Dan M Winder P.C. and Dan Winder obtained the  
18 "appraisal" on the Property by providing a fraudulent letter of intent allegedly from Plaintiff's  
19 former employer which asserted that they would be renting the Property upon Defendant's  
20 purchase at an inflated rental rate. Ex. 1 at ¶ 20.

21 • The Atkinsons first learned of Charles Brown, Law Office of Dan M Winder P.C. and  
22 Dan Winder paying for an "appraisal" on the Property on or around November 29, 2018. Ex.  
23 1 at ¶ 21.

24 • On or around August 28, 2017, Charles Brown, in conjunction with his wife, Stacy  
25 Brown, and he Law Office of Dan M Winder P.C. and Dan Winder, fraudulently obtained  
26 expired and unsigned (and therefore ineffective) "proof of financing" documents in the form  
27 of a Conditional Loan Quote and Good Faith Estimate (GFE) from Financial Solutions & Real  
28 Estate Network Group. The Atkinsons first learned of this activity in early December 2018

after conducting due diligence. Ex. 1 at ¶ 22.

- On or around August 21, 2017, the Law Office of Dan M Winder P.C. and Dan Winder personally paid Financial Solutions & Real Estate Network Group for a fraudulent “proof of financing” for Mr. Brown, and after receiving a Conditional Loan Quote and a Good Faith Estimate (GFE) from Financial Solutions & Real Estate Network Group, Mr. Brown ceased all communications with Financial Solutions & Real Estate Network Group. Ex. 1 at ¶ 23.

- The Conditional Loan Quote and Good Faith Estimate (GFE) that Mr. Brown received, and that the Law Office of Dan M Winder P.C. and Dan Winder paid for, has no legal significance as it is unsigned and expired. Ex. 1 at ¶ 24.

- Charles Brown, Law Office of Dan M Winder P.C. and Dan Winder wrongfully initiated litigation against the Atkinsons and wrongfully abused the litigation process by producing numerous fabricated and fraudulent documents during discovery. The litigation process was also abused by the failure to disclose the “appraisal” that Charles Brown, Dan M Winder P.C. and Dan Winder paid for regarding the Property. Ex. 1 at ¶ 25.

- Charles Brown, Law Office of Dan M Winder P.C. and Dan Winder unsuccessfully attempted to pass off the Conditional Loan Quote and Good Faith Estimate (GFE) that Mr. Brown received from Financial Solutions & Real Estate Network Group as legitimate proof of financing during the litigation. Ex. 1 at ¶ 26.

These facts, which must be taken as true at this stage, properly put the Winder Defendants on notice of the nature and basis of the claims lodged against them, none of which could have been brought at the time the Atkinsons filed their Answer in the First Litigation, as the facts are based on information learned during the end of discovery of the First Litigation.

### **III. LEGAL ANALYSIS**

#### **A. LEGAL STANDARD FOR MOTION TO DISMISS**

Nevada Rule of Civil Procedure 12(b)(5) provides for the dismissal of a complaint where a plaintiff has failed to state a claim upon which relief can be granted. For the purpose of considering a Rule 12(b)(5) motion, a court must accept the allegations of the complaint as true, and draw all inferences in favor of the non-moving party. *Buzz Stew, LLC vs. City of North Las Vegas*, 124 Nev.

224, 181 P.3d 670 (2008). On a motion to dismiss, the trial court “is to determine whether or not the challenged pleading sets forth allegations sufficient to make out the elements of a right to relief.” *Pemberton v. Farmers Ins. Exch.*, 109 Nev. 789, 792 (Nev. 1993). Furthermore, “[a] claim should not be dismissed . . . unless it appears to a certainty that the plaintiff is not entitled to relief under any set of facts which could be proved in support of the claim.” *Pemberton* at 792 (quoting *Hale v. Burkhardt*, 104 Nev. 632, 636, 764 P.2d 866, 868 (Nev. 1988)).

“The test for determining whether the allegations of a complaint are sufficient to assert a claim for relief is whether the allegations give fair notice of the nature and basis of a legally sufficient claim and the relief requested.” *Breliant v. Preferred Equities Corp.*, 109 Nev. 842, 846, 858 P.2d 1258, 1260 (1993). The formal sufficiency of a claim is governed by Nev. R. Civ. P. 8(a), which merely requires that the claim shall contain: “(1) a short and plain statement of the claim showing that the pleader is entitled to relief, and (2) a demand for judgment for the relief the pleader seeks.” Nev. R. Civ. P. 8(a). Only claims for fraud, mistake or condition of mind are governed by Nev. R. Civ. P. 9(b), which states that the circumstances constituting such claim shall be stated with particularity. *See* Nev. R. Civ. P. 9(b).

A plaintiff’s “complaint should be dismissed only if it appears **beyond a doubt** that it could prove no set of facts, which, if true, would entitle it to relief. *Buzz Stew*, 124 Nev. at 228; 181 P.3d at 672 (citing *Blackjack Bonding v. Las Vegas Mun. Ct.*, 116 Nev. 1213, 1217, 14 P.3d 1275, 1278 (2000)) (emphasis added). However, when a complaint can be amended to state a claim for relief, leave to amend, rather than dismissal, is the appropriate remedy. *Cohen v. Mirage Resorts, Inc.*, 119 Nev. 1, 22, 62 P.3d 720, 734 (2003).

Further, leave to amend should be freely given when justice requires, and a request to amend need not be made by formal motion. *Id. See Greene v. Dist. Ct.*, 115 Nev. 391, 393-94, 990 P.2d 184, 185 (1999) (The Supreme Court of Nevada interprets its approach to these requests as a “liberal amendment policy”); *see also Balistreri v. Pacifica Police Dep’t*, 901 F.2d 696, 701 (9th Cir. 1988) (“leave to amend should be granted if underlying facts provide proper grounds for relief or if the complaint can be saved by amendment.”); *Breier v. Northern California Bowling Proprietors’ Ass’n*, 316 F.2d 787, 790 (9th Cir.1963) (quoting 3 Moore, Federal Practice, § 15.10 at 838 (2d ed.1948)

1 (“[L]eave to amend should be granted ‘if it appears at all possible that the plaintiff can correct the  
2 defect.’”).

3 **B. THE ATKINSONS’ CLAIMS ARE NOT BARRED BY CLAIM PRECLUSION**

4 For claim preclusion to apply, the defendant seeking dismissal must demonstrate that:

- 5 (1) There has been a valid, final judgment in a previous action;  
6 (2) The subsequent action is based on the same claims or any part of them that were or could  
7 have been brought in the first action; and  
8 (3) The parties or their privies are the same in the instant lawsuit as they were in the previous  
9 lawsuit, *or* the defendant can demonstrate that he or she should have been included as a  
10 defendant in the earlier suit and the plaintiff fails to provide a “good reason” for not having  
11 done so.

12 *Weddell v. Sharp*, 131 Nev. 233, 235, 350 P.3d 80, 81 (2015). “Claim and issue preclusion essentially  
13 bar recovery on or prevent relitigation of previously resolved issues.” *Berkson v. LePome*, 126 Nev.  
14 492, 497, 245 P.3d 560, 564 (2010).

15 Here, while there was a valid final judgment in the First Litigation with respect to the dismissal  
16 of Mr. Brown’s meritless claims against the Atkinsons, that judgment did not relate to any potential  
17 claims the Atkinsons were seeking to bring against the Winder Defendants. Additionally, this action  
18 is not based on the same claims from the First Litigation (as the Atkinsons are not seeking to relitigate  
19 Mr. Brown’s frivolous claims which were rightfully dismissed by the Court). This action is also not  
20 based on claims that could have been brought in the First Litigation, as it has been established that the  
21 Atkinsons did not learn of the facts underlying their claims against the Winder Defendants until late  
22 in the discovery period of the First Litigation, when it was procedurally too late to bring such claims.

23 Accordingly, these claims have never before been litigated in the First Litigation, the  
24 Atkinsons could not have brought them initially when they filed their Answer in the First Litigation,  
25 and the Atkinsons’ prompt efforts to amend their Answer to bring their claims against the Winder  
26 Defendants in the First Litigation were set aside when the Court elected to grant the Atkinsons  
27 summary judgment instead – thus freeing the Atkinsons to pursue their claims against the Winder  
28 Defendants in subsequent litigation. Therefore, claim preclusion does not apply here.

1       The Winder Defendants’ motion relies on inapplicable case law in an attempt to establish a  
2 finding of claim preclusion. *Berkson v. LePome* is cited in support of the Winder Defendants’  
3 contention that privy exists for purposes of claim preclusion when the defendants are alleged to be co-  
4 conspirators. 126 Nev. 492, 495, 245 P.3d 560, 562 (2010). In *Berkson*, litigants attempted to bring  
5 claims of undue influence that they had already previously brought and litigated in a prior lawsuit,  
6 this time trying to add in additional defendants and conspiracy claims. 126 Nev. at 495 (2010). In  
7 this case, the Atkinsons are not trying to add in the Winder Defendants to relitigate claims that they  
8 previously brought or could have brought against Mr. Brown in the First Litigation. As set forth  
9 above, none of the claims could have been brought in the First Litigation because the facts underlying  
10 those claims were not known to the Atkinsons until late in the discovery period, and by that point, the  
11 Court opted to simply grant the Atkinsons summary judgment instead of prolong the litigation, which  
12 means these claims were not and (despite the Atkinsons’ best efforts) *could not* have been brought in  
13 the First Litigation.

14       The Winder Defendants also cite to *Gambocz v. Yelencsics*, 468 F.2d 837 (3d Cir. 1972), but  
15 the facts of that case can also be distinguished from this matter. In *Gambocz*, plaintiffs were trying  
16 to bring essentially the same claim that they had already brought and litigated against different  
17 defendants to new defendants, thus they were trying to relitigate the same causes of action against  
18 different defendants. What was averred in the original action was a conspiracy participated in by  
19 named individuals, and the sole material change in the later suit was the addition of certain defendants,  
20 some of whom had been named in the original complaint as participating in the conspiracy but had  
21 not been named as parties defendant at that time. The Court therefore concluded that “the relationship  
22 of the additional parties to the second complaint was so close to parties to the first that the second  
23 complaint was merely a repetition of the first cause of action and, therefore, it is barred.” 468 F.2d  
24 837, 842 (3d Cir. 1972).

25       This case is easily distinguished from *Gambocz*. The Atkinsons are not attempting to add  
26 additional parties to this second litigation after failing to name them in the first litigation when they  
27 should have. To the contrary, the First Litigation involved only Mr. Brown’s frivolous claims, and  
28 the Atkinsons did not (and could not) immediately assert counterclaims or third-party claims because

1 they did not have the information to do so until late in the discovery period of the First Litigation.  
2 When the Atkinsons tried to bring claims against Mr. Brown and his co-conspirators (including the  
3 Winder Defendants), they were prevented from doing so when the Court elected to instead grant them  
4 summary judgment. Unlike in *Gambocz*, there has been no judgment on the merits of the Atkinsons’  
5 claims involving the same parties or their privies. The Atkinsons are therefore not trying to bring the  
6 “same cause of action” like in *Gambocz*, as they have never brought these causes of action before –  
7 nor could they in the First Litigation.

8 The Winder Defendants’ contention that the Plaintiffs “could have brought their current claims  
9 as a counter-claim in the prior proceeding,” but they “chose not to” is plain wrong and completely  
10 ignores that the Atkinsons *did* choose to bring a motion to amend their Answer and bring the claims  
11 in the First Litigation, but because of the procedural posture of the First Litigation, it made no sense  
12 for the Court to both grant the Atkinsons summary judgment and allow them to amend their Answer.

13 Accordingly, this Court should find that claim preclusion does not apply in this case.

14 **C. THE COMPLAINT ALLEGES SUFFICIENT FACTUAL ALLEGATIONS AGAINST THE**  
15 **WINDER DEFENDANTS**

16 As for the Winder Defendants’ contention that the Atkinsons have “pled no facts at all,” this  
17 is false. Mot. at p. 5. The Winder Defendants have chosen to ignore all of the facts alleged against  
18 them, but this does not mean that the facts do not exist or have not been properly set forth in the  
19 Complaint.

20 The Winder Defendants insist that is no “averment as to when these events took place.” The  
21 Complaint says otherwise. Paragraph 18 of the Complaint provides a specific date (August 7, 2017)  
22 that the winder Defendants submitted their check to Keith Harper for an “appraisal” of the Property.  
23 Ex. 1 at ¶ 18. Paragraph 23 of the Complaint provides a specific date (August 21, 2017) that the  
24 Winder Defendants personally paid for fraudulent “proof of financing” documents for Mr. Brown.  
25 Ex. 1 at ¶ 23. Paragraph 22 of the Complaint provides a specific date (August 28, 2017) that the  
26 Winder Defendants fraudulently obtained expired and the fraudulent proof of financing documents.  
27 Ex. 1 at ¶ 22. The Complaint is sufficiently pled with particularity of dates.

28 The Winder Defendants insist that there are no allegations “as to who behaved in fraudulent



conduct.” Paragraphs 18-31 allege that it was the Winder Defendants who behaved in fraudulent conduct. Ex. 1 at ¶ 18-31.

The Winder Defendants insist that there are no averments with respect to the “place” as required by NRCP 9(f), but all of the “places” that the Winder Defendants engaged in fraudulent misconduct are clearly set forth in the Complaint, which identifies Keith Harper of Valuation Consultants (See Ex. 1 at ¶ 18) and Financial Solutions & Real Estate Network Group (*See* Ex. 1 at ¶ 22).

The Atkinsons have gone above and beyond what is required with respect to the particularity requirements for their claims against the Winder Defendants – these details have just gone ignored.

Finally, the Winder Defendants contend that an “attorney representing a client owes no duty to third parties.” Mot. at p. 4. The Winder Defendants argue that any alleged wrongdoing that arise out of the Winder Defendants’ representation of defendant Brown is “absolutely privileged.” *Id.* at p. 4. But this is a premature argument based on facts that have not been established in evidence, as it has not been established when the Winder Defendants first formed an attorney/client relationship with defendant Brown. It also has not been established whether the Winder Defendants were in fact acting solely as an “agent” for their client. Tellingly, the Winder Defendants fail to submit an affidavit contending that they were at all times merely acting as attorneys for defendant Brown.

Because all of these arguments are premature, unsupported by actual evidence, and inappropriate for a motion to dismiss, they should be disregarded by the Court.

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1 **IV. CONCLUSION**

2 Based on the foregoing, the Atkinsons respectfully request that this Court deny the Winder  
3 Defendants' motion in its entirety.

4 DATED this 18th day of December, 2019.

5 Respectfully submitted,

6 **MAIER GUTIERREZ & ASSOCIATES**

7 /s/ Danielle J. Barraza

8 JOSEPH A. GUTIERREZ, ESQ.  
9 Nevada Bar No. 9046  
10 DANIELLE J. BARRAZA, ESQ.  
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17 **INTEGRITY LAW FIRM**  
18 819 South 6th Street  
19 Las Vegas, Nevada 89101  
20 *Attorneys for Plaintiffs*  
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Dan M. Winder, Esq.  
LAW OFFICE OF DAN M. WINDER, P.C.  
3507 West Charleston Blvd.  
Las Vegas, Nevada 89102  
*Attorney for defendants Dan M. Winder and Law Office of Dan M. Winder P.C.*

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# EXHIBIT 1

# EXHIBIT 1

# DISTRICT COURT CIVIL COVER SHEET

Clark

County, Nevada

CASE NO: A-19-804902-C

Department 26

Case No. \_\_\_\_\_

*Assigned by Clerk's Office*

## I. Party Information *(provide both home and mailing addresses if different)*

Plaintiff(s) (name/address/phone) LAVELLE P. ATKINSON, SHEILA ATKINSON, individuals.	Defendant(s) (name/address/phone) CHARLES BROWN, an individual; STACY BROWN, an individual; LAW OFFICE OF DAN M WINDER, P.C., a domestic professional corporation; DAN M WINDER, an individual; DOES I through X; and ROE CORPORATIONS
Attorney (name/address/phone) Joseph A. Gutierrez, Esq., Danielle J. Barraza, Esq. Maier Gutierrez & Associates, 8816 Spanish Ridge Avenue, Las Vegas, Nevada 89148 (702) 629-7900; Adriann Peraza, Esq., Integrity Law Firm, 819 South 6th Street, Las Vegas, Nevada 89101, (702) 202-4449	Attorney (name/address/phone)

## II. Nature of Controversy *(please select the one most applicable filing type below)*

### Civil Case Filing Types

<b>Real Property</b> <b>Landlord/Tenant</b> <input type="checkbox"/> Unlawful Detainer <input type="checkbox"/> Other Landlord/Tenant <b>Title to Property</b> <input type="checkbox"/> Judicial Foreclosure <input type="checkbox"/> Other Title to Property <b>Other Real Property</b> <input type="checkbox"/> Condemnation/Eminent Domain <input type="checkbox"/> Other Real Property	<b>Negligence</b> <input type="checkbox"/> Auto <input type="checkbox"/> Premises Liability <input type="checkbox"/> Other Negligence <b>Malpractice</b> <input type="checkbox"/> Medical/Dental <input type="checkbox"/> Legal <input type="checkbox"/> Accounting <input type="checkbox"/> Other Malpractice	<b>Torts</b> <b>Other Torts</b> <input type="checkbox"/> Product Liability <input type="checkbox"/> Intentional Misconduct <input type="checkbox"/> Employment Tort <input type="checkbox"/> Insurance Tort <input checked="" type="checkbox"/> Other Tort
<b>Probate</b> <b>Probate</b> <i>(select case type and estate value)</i> <input type="checkbox"/> Summary Administration <input type="checkbox"/> General Administration <input type="checkbox"/> Special Administration <input type="checkbox"/> Set Aside <input type="checkbox"/> Trust/Conservatorship <input type="checkbox"/> Other Probate <b>Estate Value</b> <input type="checkbox"/> Over \$200,000 <input type="checkbox"/> Between \$100,000 and \$200,000 <input type="checkbox"/> Under \$100,000 or Unknown <input type="checkbox"/> Under \$2,500	<b>Construction Defect &amp; Contract</b> <b>Construction Defect</b> <input type="checkbox"/> Chapter 40 <input type="checkbox"/> Other Construction Defect <b>Contract Case</b> <input type="checkbox"/> Uniform Commercial Code <input type="checkbox"/> Building and Construction <input type="checkbox"/> Insurance Carrier <input type="checkbox"/> Commercial Instrument <input type="checkbox"/> Collection of Accounts <input type="checkbox"/> Employment Contract <input type="checkbox"/> Other Contract	<b>Judicial Review/Appeal</b> <b>Judicial Review</b> <input type="checkbox"/> Foreclosure Mediation Case <input type="checkbox"/> Petition to Seal Records <input type="checkbox"/> Mental Competency <b>Nevada State Agency Appeal</b> <input type="checkbox"/> Department of Motor Vehicle <input type="checkbox"/> Worker's Compensation <input type="checkbox"/> Other Nevada State Agency <b>Appeal Other</b> <input type="checkbox"/> Appeal from Lower Court <input type="checkbox"/> Other Judicial Review/Appeal
<b>Civil Writ</b> <b>Civil Writ</b> <input type="checkbox"/> Writ of Habeas Corpus <input type="checkbox"/> Writ of Mandamus <input type="checkbox"/> Writ of Quo Warranto <input type="checkbox"/> Writ of Prohibition <input type="checkbox"/> Other Civil Writ		<b>Other Civil Filing</b> <b>Other Civil Filing</b> <input type="checkbox"/> Compromise of Minor's Claim <input type="checkbox"/> Foreign Judgment <input type="checkbox"/> Other Civil Matters

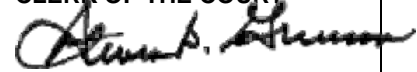
*Business Court filings should be filed using the Business Court civil coversheet.*

November 5, 2019

Date

  
 Signature of initiating party or representative

*See other side for family-related case filings.*



**COMJD**

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Nevada Bar No. 13822

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*Attorneys for Plaintiffs*

**DISTRICT COURT**

**CLARK COUNTY, NEVADA**

LAVELLE P. ATKINSON, SHEILA  
ATKINSON, individuals,

Plaintiffs,

vs.

CHARLES BROWN, an individual; STACY  
BROWN, an individual; LAW OFFICE OF DAN  
M WINDER, P.C., a domestic professional  
corporation; DAN M. WINDER, an individual;  
DOES I through X; and ROE CORPORATIONS I  
through X, inclusive.

Defendants.

Case No.:

Dept. No.:

**COMPLAINT**

**DEMAND FOR JURY TRIAL**

**Arbitration Exemption:**

1. **Damages in Excess of \$50,000**
2. **Action Concerning Real Property**

Plaintiffs, LAVELLE P. ATKINSON and SHEILA ATKINSON (“Defendants”), by and  
through their attorneys of record, INTEGRITY LAW FIRM and MAIER GUTIERREZ & ASSOCIATES, hereby  
demand a trial by jury and complain and allege against defendants as follows:

///



1 North Decatur Blvd., Las Vegas, Nevada, 89108, with Assessor's Parcel Number 138-24-511-034  
2 (the "Property").

3 11. On or around July 6, 2017, Charles Brown approached the Atkinsons at their residence  
4 with a prepared Purchase Agreement and offered to buy the Property – which was not listed for sale  
5 – for \$100,000.

6 12. The Atkinsons, who are elderly and were in their mid-70s in July 2017, were hesitant  
7 to sell the Property, but Charles Brown kept showing up at their residence and pressuring them to sign  
8 off on the Purchase Agreement.

9 13. Charles Brown executed the Purchase Agreement on or around July 6, 2017, and the  
10 Atkinsons executed the Purchase Agreement on or around July 20, 2017.

11 14. Upon information and belief, Charles Brown breached the Purchase Agreement by  
12 failing to provide the monetary consideration necessary to purchase the Property.

13 15. Upon information and belief, Charles Brown never deposited any funds into an escrow  
14 account for the Property.

15 16. Upon information and belief, Charles Brown never arranged for any escrow company  
16 to open escrow on the Property.

17 17. Upon information and belief, on or around July 31, 2017, Charles Brown, in  
18 conjunction with his wife, Stacy Brown, fraudulently fabricated "pre-approval letter" indicating that  
19 Kelly Mortgage and Realty had approved Stacy Brown for a loan in the amount of \$200,000 in order  
20 to purchase the Property. The Atkinsons first learned of this activity in November of 2018 after  
21 conducting due diligence to Kelly Mortgage and Realty.

22 18. Upon information and belief, on or around August 7, 2017, Charles Brown, in  
23 conjunction with Law Office of Dan M Winder P.C. and Dan Winder, submitted a check to Keith  
24 Harper of Valuation Consultants for an "appraisal" of the Property during the time Charles Brown  
25 was attempting to purchase the Property from the Atkinsons.

26 19. Upon information and belief, the "appraisal" that Charles Brown, the Law Office of  
27 Dan M Winder P.C. and Dan Winder obtained regarding the Property was based on an inflated  
28 \$250,000 purchase price that Charles Brown, the Law Office of Dan M Winder, and Dan Winder



1 relayed to Keith Harper of Valuation Consultants on or around August 7, 2017 – even though the  
2 agreed-upon purchase price was only \$100,000.

3       20.     Upon information and belief, Charles Brown, the Law Office of Dan M Winder P.C.  
4 and Dan Winder obtained the “appraisal” on the Property by providing a fraudulent letter of intent  
5 allegedly from Plaintiff’s former employer which asserted that they would be renting the Property  
6 upon Defendant’s purchase at an inflated rental rate.

7       21.     The Atkinsons first learned of Charles Brown, Law Office of Dan M Winder P.C. and  
8 Dan Winder paying for an “appraisal” on the Property on or around November 29, 2018.

9       22.     Upon information and belief, on or around August 28, 2017, Charles Brown, in  
10 conjunction with his wife, Stacy Brown, and he Law Office of Dan M Winder P.C. and Dan Winder,  
11 fraudulently obtained expired and unsigned (and therefore ineffective) “proof of financing”  
12 documents in the form of a Conditional Loan Quote and Good Faith Estimate (GFE) from Financial  
13 Solutions & Real Estate Network Group. The Atkinsons first learned of this activity in early  
14 December 2018 after conducting due diligence.

15       23.     Upon information and belief, on or around August 21, 2017, the Law Office of Dan M  
16 Winder P.C. and Dan Winder personally paid Financial Solutions & Real Estate Network Group for  
17 a fraudulent “proof of financing” for Mr. Brown, and after receiving a Conditional Loan Quote and a  
18 Good Faith Estimate (GFE) from Financial Solutions & Real Estate Network Group, Mr. Brown  
19 ceased all communications with Financial Solutions & Real Estate Network Group.

20       24.     The Conditional Loan Quote and Good Faith Estimate (GFE) that Mr. Brown received,  
21 and that the Law Office of Dan M Winder P.C. and Dan Winder paid for, has no legal significance as  
22 it is unsigned and expired.

23       25.     In May 2018, Charles Brown filed a meritless lawsuit against the Atkinsons after  
24 failing to perform his duties under the Purchase Agreement and long after the closing date had expired,  
25 and without signing an amendment to extend the period, as required by law.

26       26.     Upon information and belief, Charles Brown trespassed and caused destruction to the  
27 Property on or around June 5, 2018 by setting the Property on fire, and then continued to demand that  
28 the Atkinsons “sell” Brown the Property in its destructed condition for a much lower price.

27. On or around July 21, 2018, Charles Brown trespassed onto the Property and converted various personal items from the Property, including but not limited to outdoor chairs, a workout bench, planter pots, and a trash can.

28. Upon information and belief, Charles Brown, Law Office of Dan M Winder P.C. and Dan Winder wrongfully initiated litigation against the Atkinsons and wrongfully abused the litigation process by producing numerous fabricated and fraudulent documents during discovery. The litigation process was also abused by the failure to disclose the “appraisal” that Charles Brown, Dan M Winder P.C. and Dan Winder paid for regarding the Property.

29. Charles Brown, Law Office of Dan M Winder P.C. and Dan Winder unsuccessfully attempted to pass off the Conditional Loan Quote and Good Faith Estimate (GFE) that Mr. Brown received from Financial Solutions & Real Estate Network Group as legitimate proof of financing during the litigation.

30. In February 2019, Findings of Fact and Conclusions of Law were entered with respect to Charles Brown's meritless lawsuit against the Atkinsons, which granted summary judgment in favor of the Atkinsons and dismissed all of Mr. Brown's claims.

31. As a result of Charles Brown, Stacy Brown, Law Office of Dan M Winder P.C. and Dan Winder's actions, the Atkinsons were forced to engage the services of an attorney, and have incurred significant damages and attorneys' fees.

**FIRST CLAIM FOR RELIEF**

**(Negligent Misrepresentation – Against Charles Brown)**

32. The Atkinsons repeat, reallege, and incorporate by reference the foregoing paragraphs as if fully set forth herein.

33. Charles Brown failed to exercise reasonable care in communicating information to the Atkinsons.

34. In the course of a business transaction in which Charles Brown had a pecuniary interest, Charles Brown falsely represented to the Atkinsons that he would purchase the Atkinsons' Property for \$100,000 cash.

35. The Atkinsons justifiably relied on Charles Browns' representation.

1           36.     The Atkinsons would not have executed the Purchase Agreement had they known that  
2 Charles Brown never intended on actually paying the Atkinsons any consideration for the Property.

3           37.     The Atkinsons would not have executed the Purchase Agreement had they known that  
4 Stacy Brown would be involved in placing her name on a fabricated loan approval document claiming  
5 that she approved for a loan related to purchase of the Property, nor would they have executed the  
6 Purchase Agreement had they known Stacy Brown would be involved in applying for other loans to  
7 purchase the Property. Charles Brown represented to the Atkinsons that he would be paying cash for  
8 the Property, and neither Charles Brown nor Stacy Brown referenced any loan applications.

9           38.     The Atkinsons never even met Stacy Brown and she was not a party to the Purchase  
10 Agreement.

11           39.     The Atkinsons would not have executed the Purchase Agreement had they known that  
12 Law Office and Winder would be paying for an appraisal of the Property based on an inflated purchase  
13 price of \$250,000 and based on inflated rental rates that upon information and belief were provided  
14 by Brown, Law Office, and Winder.

15           40.     As a direct and proximate result of the aforementioned misrepresentations of Charles  
16 Brown, the Atkinsons have been damaged in an amount in excess of \$15,000.00.

17           41.     As a direct and proximate result of the aforementioned actions and/or omissions of  
18 Charles Brown, the Atkinsons have been required to engage the services of an attorney, incurring  
19 attorneys' fees and costs to bring this action, and the Atkinsons are therefore entitled to reasonable  
20 attorneys' fees and costs incurred in this action.

21                           **SECOND CLAIM FOR RELIEF**

22                           **(Fraudulent Misrepresentation – Against Charles Brown)**

23           42.     The Atkinsons repeat, reallege, and incorporate by reference the foregoing paragraphs  
24 as if fully set forth herein.

25           43.     In the course of a business transaction in which Charles Brown had a pecuniary  
26 interest, Charles Brown falsely represented to the Atkinsons that he would purchase the Atkinsons'  
27 Property for \$100,000 cash.

28           44.     At the time the representation was made, on or around July 6, 2017, Charles Brown

1 knew that the information he provided to the Atkinsons was false, or that he had an insufficient basis  
2 for providing such information.

3 45. Charles Brown intended to induce the Atkinsons to act upon his misrepresentation.

4 46. The Atkinsons justifiably relied upon Charles Browns' misrepresentation, which  
5 resulted in damages.

6 47. As a direct and proximate result of the aforementioned misrepresentations of Charles  
7 Brown, the Atkinsons have been damaged in an amount in excess of \$15,000.00.

8 48. As a direct and proximate result of the aforementioned actions and/or omissions of  
9 Charles Brown, the Atkinsons have been required to engage the services of an attorney, incurring  
10 attorneys' fees and costs to bring this action, and the Atkinsons are therefore entitled to reasonable  
11 attorneys' fees and costs incurred in this action.

12 **THIRD CLAIM FOR RELIEF**

13 **(Violation of NRS 41.1395, Exploitation of Older or Vulnerable Persons Resulting in Injury or**  
14 **Loss – Against Charles Brown)**

15 49. The Atkinsons repeat, reallege, and incorporate by reference the foregoing paragraphs  
16 as if fully set forth herein.

17 50. Throughout 2017, both of the Atkinsons were over 70 years old.

18 51. In July of 2017, Charles Brown gained the trust and confidence of the Atkinsons by  
19 continuing to visit their residence and discuss his desire to purchase the Atkinsons' Property.

20 52. Charles Brown used the trust and confidence of the Atkinsons in order to convert the  
21 Atkinsons' Property to himself – without actually paying any consideration for that Property.

22 53. Charles Brown attempted to have the Atkinsons sign a "Promissory Note" with Stacy  
23 Brown as the "Borrower" and the Atkinsons as the "Lenders", stating that the Atkinsons would finance  
24 the \$100,000 for the property and with very vague terms as to how it would be repaid.

25 54. Upon information and belief, on or around June of 2018, Charles Brown trespassed  
26 and caused destruction to the Property by setting the Property on fire, and then continued to demand  
27 that the Atkinsons "sell" Brown the Property in its destructed condition for a much lower price.

28 55. Charles Brown knew or had reason to know that the Atkinsons were vulnerable people

1 who would fall victim to Brown's scheme of defrauding them out of their Property.

2 56. As a result of the wrongful conduct of Charles Brown, the Atkinsons have incurred the  
3 infliction of pain, injury, and mental anguish, and are therefore entitled to damages.

4 57. Upon information and belief, Charles Brown acted with recklessness, oppression, fraud  
5 or malice against the vulnerable Atkinsons, thus entitling the Atkinsons to an award of attorneys' fees  
6 and costs.

7 58. As a result, the Atkinsons have incurred compensatory damages, which are recoverable  
8 for their fear, anxiety, and mental and emotional distress.

9 59. The Atkinsons have incurred legal fees in connection herewith and are entitled to a  
10 recovery of such legal expenses and fees.

11 **FOURTH CLAIM FOR RELIEF**

12 **(Civil Conspiracy – Against Charles Brown, Stacy Brown, Law Office of Dan M Winder P.C.,**  
13 **and Dan Winder)**

14 60. The Atkinsons repeat, reallege, and incorporate by reference the foregoing paragraphs  
15 as if fully set forth herein.

16 61. Charles Brown, Stacy Brown, Law Office, and Winder, and each of them, worked  
17 together with the intent to accomplish the harmful objective of defrauding the Atkinsons out of the  
18 Property they own, for the purpose of causing harm to the Atkinsons.

19 62. As a direct and proximate result of the aforementioned actions and/or omissions of  
20 Charles Stacy Brown, Law Office, and Winder, the Atkinsons have been damaged in an amount in  
21 excess of \$15,000.00.

22 63. As a direct and proximate result of the aforementioned actions and/or omissions of  
23 Charles Brown, Stacy Brown, Law Office, and Winder, the Atkinsons have been required to engage  
24 the services of an attorney, incurring attorneys' fees and costs to bring this action, and the Atkinsons  
25 are therefore entitled to reasonable attorneys' fees and costs incurred in this action.

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1 **FIFTH CLAIM FOR RELIEF**

2 **(Concert of Action – Against Charles Brown, Stacy Brown, Law Office of Dan M Winder P.C.,**  
3 **and Dan Winder)**

4 64. The Atkinsons repeat, reallege, and incorporate by reference the foregoing paragraphs  
5 as if fully set forth herein.

6 65. As alleged herein, Charles Brown, Stacy Brown, Law Office, and Winder acted in  
7 concert with one another pursuant to the common design of transferring the Property from the  
8 Atkinsons to Charles Brown without any monetary consideration going to the Atkinsons.

9 66. As a direct and proximate result of the aforementioned actions and/or omissions of  
10 Charles Brown, Stacy Brown, Law Office, and Winder, the Atkinsons have been damaged in an  
11 amount in excess of \$15,000.00.

12 67. As a direct and proximate result of the aforementioned actions and/or omissions of  
13 Charles Brown, Stacy Brown, Law Office, and Winder, the Atkinsons have been required to engage  
14 the services of an attorney, incurring attorneys' fees and costs to bring this action, and the Atkinsons  
15 are therefore entitled to reasonable attorneys' fees and costs incurred in this action.

16 **SIXTH CLAIM FOR RELIEF**

17 **(Aiding and Abetting Fraudulent Misrepresentation or in the alternative Aiding and Abetting**  
18 **Negligent Misrepresentation – Against Stacy Brown, Law Office of Dan M Winder P.C., and**  
19 **Dan Winder)**

20 68. The Atkinsons repeat, reallege, and incorporate by reference the foregoing paragraphs  
21 as if fully set forth herein.

22 69. Upon information and belief, Stacy Brown, Law Office, and Winder knew that Charles  
23 Brown's conduct constituted a breach of duty to the Atkinsons.

24 70. Charles Brown defrauded the Atkinsons by representing to them that he would  
25 purchase the Property for \$100,000, knowing that such representation was false at the time it was  
26 made, and making the representation with the intent to induce the Atkinsons to relinquish their  
27 ownership interest in the Property.

28 71. Upon information and belief, Stacy Brown assisted or encouraged Charles Brown's

1 conduct by: allowing her name to be listed on a fraudulent loan application document related to the  
2 Property; applying for other loan(s) for the Property while knowing that neither she nor Charles Brown  
3 would actually be paying for the Property in cash pursuant to the Purchase Agreement.

4 72. Upon information and belief, Law Office and Winder assisted or encouraged Charles  
5 Brown's conduct by: helping Charles Brown pay for a fraudulent appraisal of the Property based on  
6 an inflated purchase price and inflated rental rates; helping Charles Brown pay for fraudulent loan  
7 applications to institutions; and helping Charles Brown initiate a fraudulent litigation against the  
8 Atkinsons in order to wrongfully effectuate the transfer of the Atkinsons' Property to Charles Brown  
9 without Charles Brown paying any consideration for the Property.

10 73. As a direct and proximate result of the aforementioned actions and/or omissions of  
11 Stacy Brown, Law Office, and Winder, the Atkinsons have been damaged in an amount in excess of  
12 \$15,000.00.

13 74. As a direct and proximate result of the aforementioned actions and/or omissions of  
14 Stacy Brown, Law Office, and Winder, the Atkinsons have been required to engage the services of an  
15 attorney, incurring attorneys' fees and costs to bring this action, and the Atkinsons are therefore  
16 entitled to reasonable attorneys' fees and costs incurred in this action.

17 **SEVENTH CLAIM FOR RELIEF**

18 **(Waste and Trespass to Real and Personal Property – Against Charles Brown)**

19 75. The Atkinsons repeat, reallege, and incorporate by reference the foregoing paragraphs  
20 as if fully set forth herein.

21 76. On or around June 5, 2018, Charles Brown trespassed onto the Property and caused  
22 waste and destruction to the Property, including but not limited to fire damage to the Property which  
23 rendered the Property uninhabitable.

24 77. Following the fire, Charles Brown returned to the Property on various occasions,  
25 including on or around July 21, 2018, and converted personal items within the Property. Brown  
26 converted household items and appliances such as outdoor chairs, a workout bench, planter pots, and  
27 a trash can.

28 78. As a direct and proximate result of the aforementioned actions and/or omissions of

1 Charles Brown, the Atkinsons have been damaged in an amount in excess of \$50,000.00.

2 79. As a result of the wrongful conduct of Charles Brown, the Atkinsons have incurred the  
3 infliction of pain, injury, and mental anguish, and are therefore entitled to damages.

4 80. Upon information and belief, Charles Brown acted with recklessness, oppression, fraud  
5 or malice against the vulnerable Atkinsons, thus entitling the Atkinsons to an award of attorneys' fees  
6 and costs.

7 81. As a result, the Atkinsons have incurred compensatory damages, which are recoverable  
8 for their fear, anxiety, and mental and emotional distress.

9 82. The Atkinsons have incurred legal fees in connection herewith and are entitled to a  
10 recovery of such legal expenses and fees.

11 **EIGHTH CLAIM FOR RELIEF**

12 **(Conversion – Against Charles Brown)**

13 83. The Atkinsons repeat, reallege, and incorporate by reference the foregoing paragraphs  
14 as if fully set forth herein.

15 84. Charles Brown committed a distinct act of dominion wrongfully exerted over the  
16 Atkinsons' personal property.

17 85. On or around July 21, 2018, Charles Brown trespassed onto the Atkinsons' Property  
18 and converted personal items within the Property. Brown converted household items and appliances  
19 such as outdoor chairs, a workout bench, planter pots, and a trash can.

20 86. Charles Brown's acts were in derogation, exclusion, or defiance of the Atkinsons'  
21 rights in their personal property.

22 87. As a direct and proximate result of the aforementioned actions and/or omissions of  
23 Charles Brown, the Atkinsons have been damaged in an amount in excess of \$15,000.00.

24 88. As a result of the wrongful conduct of Charles Brown, the Atkinsons have incurred the  
25 infliction of pain, injury, and mental anguish, and are therefore entitled to damages.

26 89. Upon information and belief, Charles Brown acted with recklessness, oppression, fraud  
27 or malice against the vulnerable Atkinsons, thus entitling the Atkinsons to an award of attorneys' fees  
28 and costs.



90. As a result, the Atkinsons have incurred compensatory damages, which are recoverable for their fear, anxiety, and mental and emotional distress.

91. The Atkinsons have incurred legal fees in connection herewith and are entitled to a recovery of such legal expenses and fees.

## PRAYER FOR RELIEF

WHEREFORE, Plaintiffs LaVelle P. Atkinson and Sheila Atkinson hereby pray for judgment against Defendants Charles Brown, Stacy Brown, Law Office of Dan M Winder, P.C., and Dan M. Winder as follows:

1. For a judgment in favor of the Atkinsons and against defendants Charles Brown, Stacy Brown, Law Office of Dan M Winder, P.C., and Dan M. Winder on the complaint and causes of action asserted herein;
2. For an award of general and special damages in an amount in excess of \$15,000.00 to be proven at trial;
3. For an award of compensatory and/or consequential damages in an amount in excess of \$15,000.00, to be proven at trial;
4. For punitive and/or exemplary damages pursuant to NRS 42.005 in an amount appropriate to punish and/or set an example of defendants Charles Brown, Stacy Brown, Law Office of Dan M Winder, P.C., and Dan M. Winder;

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- 1           5.       For an award of reasonable attorneys' fees and costs incurred in this action; and  
2           6.       For such other relief as the court may deem proper.

3       DATED this 5<sup>th</sup> day of November, 2019.

4                       Respectfully submitted,

5                       **MAIER GUTIERREZ & ASSOCIATES**

6                               /s/ Danielle J. Barraza

7                       JOSEPH A. GUTIERREZ, ESQ.

8                       Nevada Bar No. 9046

9                       DANIELLE J. BARRAZA, ESQ.

10                      Nevada Bar No. 13822

11                      8816 Spanish Ridge Avenue

12                      Las Vegas, Nevada 89148

13                      -and-

14                      ADRIANA PEREYRA, ESQ.

15                      Nevada Bar No. 12263

16                      **INTEGRITY LAW FIRM**

17                      819 South 6th Street

18                      Las Vegas, Nevada 89101

19                      Attorneys for Plaintiffs LaVelle P. Atkinson and  
20                      Sheila Atkinson

# EXHIBIT 2

# EXHIBIT 2



1 **COM**

2 **DAN M. WINDER, ESQ.**

3 Nevada State Bar No. 1569

4 **ARNOLD WEINSTOCK, ESQ.**

5 Nevada State Bar No. 810

6 **LAW OFFICE OF DAN M. WINDER, P.C.**

7 3507 W. Charleston Blvd.

8 Las Vegas, NV 89102

9 Telephone: (702) 878-6000

10 Facsimile: (702) 474-0631

11 Email: winderdanatty@aol.com

12 *Attorney for Plaintiffs*

13 **DISTRICT COURT**  
14 **CLARK COUNTY, NEVADA**

15 **CHARLES BROWN,**

16 Plaintiffs,

17 vs.

18 **LAVELLE P. ATKINSON, SHEILA**  
19 **ATKINSON; DOES I-V; and ROE**  
20 **CORPORATIONS I-V.**

21 Defendants.

Case No: A-18-774764-C

Dept. No: Department 18

22 **COMPLAINT**

23 **(Exempt from Arbitration**  
24 **as the amount in controversy**  
25 **exceeds \$50,000.00)**

26 COMES NOW, Plaintiff, CHARLES BROWN, by and through his attorneys  
27 of record, Dan M. Winder, Esq., of the law firm of DAN M. WINDER, P.C., as and  
28 for their complaint against Defendants, LAVELLE P. ATKINSON and SHEILA  
ATKINSON and hereby complains, alleges and states as follows:

**PARTIES**

PET APP 0064

1 1. Charles Brown (hereinafter "Brown" or Plaintiff) was at all times relevant a  
2 resident of Clark County, Nevada.  
3

4 2. Lavelle P. Atkinson and Sheila Atkinson (hereinafter "Atkinson" or Defendants)  
5 were at all times relevant residents of Clark County, Nevada.  
6

7 3. The true names and capacities, whether individual, corporate, associate or  
8 otherwise of other defendants hereinafter designated as DOES 1-5, and ROE  
9 Corporations 1-5 inclusive, who are in some manner responsible for the injuries  
10 described herein, are unknown at this time. Plaintiff, therefore, sues said  
11 Defendants by such fictitious names and will seek leave of the Court to amend this  
12 Complaint to show their true names and capacities when ascertained.  
13  
14

### 15 VENUE AND JURISDICTION

16 4. Venue is proper in Clark County, Nevada pursuant to NRS 13.040.  
17

18 5. The exercise of jurisdiction by this Court over the Defendants in this civil action  
19 is proper pursuant to NRS 14.065.  
20

21 6. The breach of contract allegations for which Plaintiff complains and for which  
22 Defendants are liable arises out of actions that took place in Clark County, Nevada.  
23 Specifically, the circumstances, which led and caused Brown to sustain the  
24 complaint for damages, all of which occurred, here, in Las Vegas, Nevada.  
25

26 ///

1                                    **GENERAL ALLEGATIONS**

2  
3 7. Plaintiff hereby repleads, realleges and incorporates by reference each and every  
4 allegation contained in paragraphs 1 through 6 above as if fully set forth herein.

5 8. At all times relevant, including July 20, 2017, the Defendants were residents of  
6  
7 Clark County and entered into a Purchase Agreement for the sale of real property.

8 9. Upon information and belief, and at all times relevant to this action, the Purchase  
9  
10 Agreement was for the sale of real property located at 2315 North Decatur Blvd.,  
11 Las Vegas, Nevada.

12 10. Upon information and belief, and at all times relevant to this action the Clark  
13  
14 County Assessor parcel Number for this property is 138-24-511-034 which is  
15 further described as approximately 0.55 acres.

16 11. Plaintiff and Defendants entered into the Purchase Agreement for the sale of  
17  
18 the real property in the amount of one hundred thousand dollars (\$100,000.00).

19 12. Plaintiff and Defendants agreed that there would be a deposit of one thousand  
20  
21 dollars (\$1,000.00) paid by Brown within two (2) business days of the effective  
22 date.

23 13. As a result of Defendants' breach of contract, Plaintiff has sustained damages in  
24  
25 excess \$10,000.00.

26 14. The aforementioned breach of contract and resulting damages continue to effect  
27  
28

1 Plaintiff's financial affairs.

2  
3 **FIRST CAUSE OF ACTION**  
4 **(Breach of Contract-Against Defendants)**

5 15. Plaintiff incorporates by this reference the allegations set forth in each of the  
6 foregoing paragraphs of the Complaint as if fully set forth herein.

7 16. The Purchase Agreement constitutes a valid and enforceable contract between  
8  
9 Brown and Atkinson.

10 17. Brown has fully performed his obligations to Atkinson under the Purchase  
11 Agreement, or else its performance was excused by Atkinson's conduct.

12 18. Atkinson, on the other hand, has not performed and instead has materially  
13  
14 breached their obligations under the Purchase Agreement.

15 19. As a direct and proximate result of Atkinsons' material breaches of the Purchase  
16 Agreement, Brown has been damaged in an amount to be proven at trial, but no less  
17  
18 than \$100,000.00, plus collection costs, attorney's fees, and pre- and post-judgment  
19  
20 interest.

21 20. Brown is therefore entitled to relief as set forth below in the Prayer for Relief.

22  
23 **SECOND CAUSE OF ACTION**  
24 **(Breach of Covenant of Good Faith and Fair Dealing-Against Defendants)**

25 21. Brown incorporates by this reference the allegations set forth in each of the  
26 foregoing paragraphs of the Complaint as if fully set forth herein.

1 22. As a matter of law, the Purchase Agreement between Brown and Atkinson  
2 contains a covenant of good faith and fair dealing requiring Atkinson to not act in such  
3 a way as to injure or destroy Brown's right to receive the benefits of his bargain but  
4 to act in a manner consistent with the law and with Brown's justified expectation that  
5 it would receive the benefit of the parties' bargain.  
6

7  
8 23. Atkinson has breached their obligations under the covenant of good faith and fair  
9 dealing in the Purchase Agreement by, among other things, engaging in the conduct  
10 as set forth in this Complaint, including, without limitation, failing to deliver the said  
11 property located at 2315 North Decatur Blvd., Las Vegas, Nevada.  
12

13  
14 24. As a direct and proximate result of these and Atkinson's other material breaches  
15 of the covenant of good faith and fair dealing, Brown has been damaged in an amount  
16 to be proven at trial, but no less than \$100,000.00, plus collection costs, attorney fees,  
17 and pre- and post-judgment interest.  
18

19 25. Brown is therefore entitled to relief as set forth below in the Prayer for Relief.  
20

21 **THIRD CAUSE OF ACTION**  
22 **(Alternative Claim for Unjust Enrichment, Quasi Contract, and**  
23 **Contract Implied in Law-Against Defendants)**

24 26. Brown incorporates by this reference the allegations set forth in each of the  
25 foregoing paragraphs of the Complaint as if fully set forth herein.

26 27. If for any reason the Court or trier of fact in this case fails to find the existence of  
27



1 a valid and enforceable contract between Brown and Atkinson, Brown asserts this  
2 alternative claim for unjust enrichment, quasi contract, or contract implied in law  
3 against Atkinson.  
4

5 28. Brown conferred numerous benefits on Atkinson by, among other things, buying  
6 the property for above market value.  
7

8 29. Atkinson has not fully and fairly compensated Brown for the loss of profits that  
9 would have been earned by Brown.  
10

11 30. It would be inequitable and unjust for Atkinson to retain the benefits conferred  
12 upon them by Brown without fully and fairly compensating Brown for such benefits.  
13

14 31. Atkinson has, therefore, been unjustly enriched at Brown's expense.

15 32. As a direct and proximate result of this unjust enrichment, Brown has suffered  
16 damages in an amount to be proven at the trial in this matter but no less than  
17 \$100,000.00.  
18

19 33. Brown is therefore entitled to relief as set forth below in the Prayer for Relief.  
20

21 **FOURTH CAUSE OF ACTION**  
22 **(Alternative Claim for Contract Implied in Fact-Against Defendants)**

23 34. Brown incorporates by this reference the allegations set forth in each of the  
24 foregoing paragraphs of the Complaint as if fully set forth herein.  
25

26 35. If for any reason the Court or trier of fact in this case fails to find the existence of  
27  
28

1 an express contract between Brown and Atkinson, Brown asserts this alternative claim  
2 for contract implied in fact against Atkinson.  
3

4 36. The parties' communications, conduct, and business dealings over the course of  
5 their relationship established an implied-in-fact contract pursuant to which Brown  
6 agreed to pay an amount in exchange for delivery of the property located at 2315  
7 North Decatur Blvd. Las Vegas, Nevada, as set forth in this Complaint.  
8

9 37. Accordingly, a contract implied in fact existed between Brown and Atkinson.  
10

11 38. Brown fully performed his obligations under the implied-in-fact contract.  
12

13 39. Atkinson, on the other hand, materially breached their obligations under the  
14 implied-in-fact contract by, among other things, failing to turn over the property as  
15 agreed upon in the Purchase Agreement, and repudiating the contract.  
16

17 40. As a direct and proximate result of Atkinson's material breaches of the Agreement,  
18 Brown has been damaged in an amount to be proven at trial, but no less than  
19 \$100,000.00, plus collection costs, attorneys' fees, and pre- and post-judgment interest.  
20

21 41. Brown is therefore entitled to relief as set forth below in the Prayer for Relief.  
22

23 **FIFTH CAUSE OF ACTION**  
**(Alternative Claim for Promissory Estoppel-Against Defendants)**

24 42. Brown incorporates by this reference the allegations set forth in each of the  
25 foregoing paragraphs of the Complaint as if fully set forth herein.  
26  
27  
28

1 43. If for any reason the trier of fact in this case fails to find the existence of a valid  
2 and enforceable contract between Brown and Atkinson, Brown asserts this alternative  
3 claim for promissory estoppel against Atkinson.  
4

5 44. Atkinson, or their agents or representatives, promised to deliver to Brown real  
6 property located at 2315 North Decatur Blvd., Las Vegas, Nevada.  
7

8 45. Atkinson knew or should have known that Brown would act in reliance on such  
9 promises.  
10

11 46. Brown reasonably and justifiably relied on Atkinson's promises and acted in  
12 accordance with such reliance.  
13

14 47. Atkinson received significant benefits, including monetary benefits, as a result of  
15 Brown's conduct.  
16

17 48. Atkinson, however, has failed to deliver the property to Brown pursuant to the  
18 Purchase Agreement as Atkinson promised.  
19

20 49. As a direct and proximate result of this reasonable and justified reliance, Brown  
21 has suffered damages in an amount to be proven at the trial in this matter but no less  
22 than \$100,000.00.  
23

24 50. Brown is therefore entitled to relief as set forth below in the Prayer for Relief.  
25

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3. On Brown's Third Cause of Action, asserting an alternative claim for unjust enrichment, quasi contract, and contract implied in law against Defendants, for Brown's damages caused by Atkinson's unjust enrichment, quasi contract, and/or breaches of contract implied in law in an amount to be established at the trial, but no less than \$100,000.00, plus pre- and post-judgment interest, costs of collection.

1 attorney fees, and court costs.

2  
3 4. On Brown's Fourth Cause of Action, asserting an alternative claim for breach of  
4 contract implied in fact against Defendants, for Brown's damages caused by Atkinson's  
5 breaches of contract implied in fact in an amount to be established at the trial, but no  
6 less than \$100,000.00, plus pre- and post-judgment interest, costs of collection,  
7 attorney fees, and court costs.  
8

9  
10 5. On Brown's Fifth Cause of Action, asserting an alternative claim for promissory  
11 estoppel against Defendants, for Brown's damages caused by its reliance on Atkinson's  
12 promises in an amount to be established at the trial, but no less than \$100,000.00, plus  
13 pre- and post-judgment interest, costs of collection, attorney fees, and court costs.  
14

15 6. For Brown's attorney fees and costs incurred in bringing this action as provided for  
16 by contract, statute, and/or law.  
17

18 7. For such other and further relief as the Court deems just and proper under the  
19 circumstances.  
20

21 ///

22 ///

23 ///

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25 ///

1                                   **DEMAND FOR JURY TRIAL**

2           Plaintiff demands a trial by jury on all issues so triable.

3  
4 DATED this 18 day of May, 2018.

5                                   LAW OFFICE OF DAN M. WINDER, P.C.

6                                   D. Winder by S. D. Dora (3/08)

7                                   DAN M. WINDER, ESQ.

8                                   Nevada State Bar No. 1569

9                                   ARNOLD WEINSTOCK, ESQ.

10                                  Nevada State Bar No. 810

# EXHIBIT 3

# EXHIBIT 3

1 **ADSCO**  
2 TRACHTMAN LAW LLC  
3 GEORGE G. TRACHTMAN, ESQ.  
4 Nevada Bar No. 5528  
5 520 S. Ninth Street  
6 Las Vegas, NV 89101  
7 Telephone: (702) 474-0404  
8 Facsimile: (702) 474-0445  
9 Arbitrator

DISTRICT COURT  
CLARK COUNTY, NEVADA

CHARLES BROWN

Plaintiff,

vs.

LAVELLE ATKINSON

Defendant(s)

Case No.: A-18-774764-C

Department No.: XVIII

**ARBITRATION DISCOVERY ORDER**

15 TO: ARNOLD WEINSTOCK, ESQ. on behalf of DAN M. WINDER, ESQ. of LAW OFFICE OF  
16 DAN M. WINDER, attorney for Plaintiff Charles Brown; and

17 TO: ADRIANA PEREYRA, ESQ. of INTEGRITY LAW FIRM and JOSEPH A. GUTIERREZ, ESQ.  
18 of MAIER GUTIERREZ & ASSOCIATES, attorneys for Defendant Lavelle P. Atkinson and Sheila  
19 Atkinson.

20 Pursuant to Nevada Arbitration Rule 11, an Early Arbitration Conference was held  
21 telephonically on August 21, 2018. Present were Arnold Weinstock, Esq. on behalf of Dan M. Winder,  
22 Esq. for Plaintiff and Adrian Pereyra, Esq., for Defendants.

23 Arbitrator Trachtman disclosed that about 20 years ago, he worked at the same firm as  
24 Adriana Pereyra, Esq., although she was not an attorney at the time. Additionally, Arbitrator Trachtman  
25 represented an individual opposing Maier Gutierrez & Associates. The Arbitrator can remain fair and  
impartial, but allowed the parties the opportunity to voice any objection for a recusal. The parties did not



1 have an objection and waived any conflict to have Arbitrator Trachtman continue with the matter. As  
2 such, having discussed documents and discovery as required by Rule 11, and good cause appearing  
3 therefore,

4 **IT IS HEREBY ORDERED** the parties will exchange documents and identify known  
5 witnesses as would otherwise be required by N.R.C.P. 16. No copies are required to be  
6 provided to the Arbitrator **prior to the Pre-Hearing Statement.**

7 **IT IS HEREBY FURTHER ORDERED** that each party within thirty (30) days of this  
8 order shall submit the sum of two hundred and fifty dollars (~~\$250.00~~) as an advance toward the  
9 arbitrator's fees and costs. Please make your checks payable to Trachtman Law, LLC. Tax ID number  
10 47-0992542.

11 **IT IS HEREBY FURTHER ORDERED** that discovery shall be limited to the  
12 following:

13 (a) Plaintiff and Defendant may each serve one another ten (10) Interrogatories; ten  
14 (10) Request for Production; and ten (10) Request for Admissions, unless the parties agree otherwise;

15 (b) The parties may take the deposition of the person designated and who is prepared  
16 to provide all the relevant information on matters known or reasonably available to the organization for  
17 each LLC. The designated person must appear in person for the deposition and each deposition is limited  
18 to one (1) hours, unless both parties agree otherwise as to time and/or number of depositions.

19 **IT IS HEREBY FURTHER ORDERED** that the discovery shall be completed by  
20 December 27, 2018.

21 **IT IS HEREBY FURTHER ORDERED** that the Arbitration Pre-Hearing Statements  
22 shall be due on January 8, 2019. Each party must furnish a pre-hearing statement to the Arbitrator  
23 containing the final list of witnesses whom the party intends to call at the arbitration hearing along with a  
24 brief description of the matters about which each witness will testify. Since 16.1 disclosure copies are not  
25

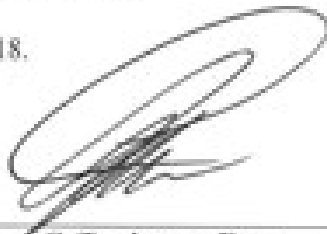
1 required, the parties must also provide the exhibits and documentary evidence anticipated to be  
2 introduced at the Arbitration with the Pre-Hearing Statement.

3 **IT IS HEREBY FURTHER ORDERED** that all documents to be used at the arbitration  
4 must be disclosed to all parties before the discovery cut-off date. Failure to do such can prevent the use  
5 of such documents during the arbitration.

6 **IT IS HEREBY FURTHER ORDERED** as follows:

7 The Arbitration Hearing shall be held on **January 16, 2019 at 2:00 p.m.**, at my office,  
8 located at 520 South 9th Street, Las Vegas, Nevada 89101-7011.

9 DATED this 22<sup>nd</sup> day of August 2018.

10  
11   
12 \_\_\_\_\_  
George G. Trachtman, Esq.  
13 ARBITRATOR  
14  
15  
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25

CERTIFICATE OF MAILING

I HEREBY CERTIFY service that on 22<sup>nd</sup> day of August 2018, a copy of the foregoing ARBITRATION DISCOVERY ORDER was served by:

- [ ] **U.S. MAIL:** by placing the document (s) listed above in a sealed envelope with postage thereon fully prepaid, in Las Vegas, Nevada, addressed as set forth below.
- [X] **ELECTRONIC SERVICE:** by transmitting via the Court's electronic filing services the document(s) listed above to the Counsel set forth on the service list, on this date pursuant to EDCR Rule 7.26(c)(4).
- [ ] **FACSIMILE:** by transmitting via facsimile the document(s) listed above to the fax Number(s) set forth below on this date, before 5:00 PM (PST), pursuant to EDCR Rule 7.26(a). A copy of the transmission record is attached to the file copy of this document.
- [ ] **PERSONAL SERVICE:** by causing personal delivery by a Trachtman Law LLC Employee of the documents(s) listed above to the person(s) at the address(es) set forth below.

Dan M. Winder, Esq.  
Arnold Weinstock, Esq.  
LAW OFFICE OF DAN M. WINDER  
3507 W. Charleston Blvd  
Las Vegas, NV 89102

Facsimile: (702) 474-0631  
[winderdanatty@aol.com](mailto:winderdanatty@aol.com)

Adriana Percyra, Esq.  
INTEGRITY LAW FIRM  
819 S. 6<sup>th</sup> Street  
Las Vegas, NV 89101

Facsimile: (702) 947-2522  
[adriana@integritylawnv.com](mailto:adriana@integritylawnv.com)

Joseph A. Gutierrez, Esq.  
MAIER GUTIERREZ & ASSOCIATES  
8816 Spanish Ridge Ave  
Las Vegas, NV 89148

Facsimile: (702) 629-7925  
[jag@mgalaw.com](mailto:jag@mgalaw.com)  
[docket@mgalaw.com](mailto:docket@mgalaw.com)

*Emails for Arbitrator:*  
[george@nvtlaw.com](mailto:george@nvtlaw.com)  
[maria@nvtlaw.com](mailto:maria@nvtlaw.com)  
[law@nvtlaw.com](mailto:law@nvtlaw.com)

TRACHTMAN LAW, LLC.

  
Employee of Arbitrator.

# EXHIBIT 4

# EXHIBIT 4

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**AFFIDAVIT OF KEITH HARPER**

STATE OF NEVADA        }  
COUNTY OF CLARK        } ss:

KEITH HARPER, being duly sworn, deposes and says that:


1. I am over the age of eighteen (18) and I have personal knowledge of all the facts set forth herein. Except otherwise indicated, all facts set forth in this affidavit are based upon my own personal knowledge. If called to do so, I would competently and truthfully testify to all matters set forth herein, except for those matters specifically stated to be based upon information and belief.

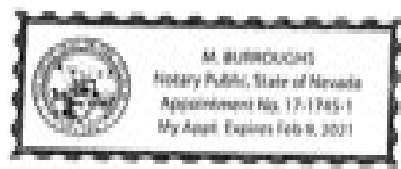
2. I am a Certified General Appraiser with Valuation Consultants, located at 4200 Cannoli Circle, Las Vegas, NV 89103.

3. On or around August 7, 2017, I received a check addressed to Valuation Consultants in the amount of \$1,000, as consideration for an appraisal of the property located at 2315 North Decatur Blvd., Las Vegas, Nevada, 89108, APN 138-24-511-034. Attached hereto as **Exhibit 1** is a true and accurate copy of said check I received for the appraisal.

FURTHER YOUR AFFIANT SAYETH NAUGHT.

  
\_\_\_\_\_  
KEITH HARPER

SUBSCRIBED and SWORN to before me this  
6<sup>th</sup> day of December, 2018.  
  
\_\_\_\_\_  
NOTARY PUBLIC



# **EXHIBIT 1**

# **EXHIBIT 1**

LAW OFFICE OF DAN M WINDER P. C.

3507 W. CHAMPLAIN BLVD  
LAKE WESLEY, NY 11753

16290

84-2004202 16290

DATE Aug 7, 2017

Valuation Consultants

\$ 1,000.00

One Thousand Dollars

DOLLARS



2315

for Appraisal Decatur

Dykhuizen

⑆0000016290⑆ 63212707426 5690923940⑆

# EXHIBIT 5

# EXHIBIT 5





# Valuation Consultants

4200 Cannoli Circle  
Las Vegas, NV 89103  
Phone (702) 222-0018  
Fax (702) 222-0017

December 18, 2018

Adriana Pereyra, Esq.  
Integrity Law Firm  
819 South 6th Street  
Las Vegas, Nevada 89101

And

Joseph A. Gutierrez, Esq.  
Maier Gutierrez & Associates  
8816 Spanish Ridge Avenue  
Las Vegas, Nevada 89148

RE: Letter of Clarification for the preliminary letter for 2315 North Decatur Boulevard, Las Vegas, Clark County, Nevada 89108. This property is also identified as Clark County Assessor's Parcel Number (APN) 138-24-511-034.

Dear Ms. Pereyra and Mr. Gutierrez,

Per the Subpoena Duces Tecum that I have been served in the matter of Charles Brown, an individual, Plaintiff, vs. Lavelle P. Atkinson, Sheila Atkinson; Does I-V; and Roe Corporations I-V, Defendants, I am submitting this letter to clarify the appraisal services that I provided in August of 2017.

First of all, I do not know personally Charles Brown. I have never met him and have only communicated with him via telephone and email. Here is a summary of my recollection about the subject property:

Mr. Brown contacted me via telephone in early August of 2017 and said that he was in the process of buying the property located at 2315 North Decatur Boulevard. He said that he needed an appraisal of the property and he needed it in a hurry. I remember asking him how quick he needed the report and he stated in a "couple of days". I told him that was impossible due to my work load and I could not provide any appraisal in that short of a turn time. I told him that I needed at least two weeks to complete the appraisal. He said that would not work and he was getting a loan through a private, hard money lender in California and he said that all they needed was my opinion of the value of the property. I said that I could drive by and look at the property, do my research of comparable sales and the property itself and provide an oral opinion of the value. He said that he would talk to the lender and see if that would work for their purposes.

PEATKINSON0083

I also remember talking to Mr. Brown about his plans for the property. During our phone conversation, I was looking at the property on Google Earth and the Clark County Open Web and saw that it was a single-family residence, but the property was zoned C-1, Local Business District within the jurisdiction of Clark County. Mr. Brown stated that it was a vacant, former residence and he was purchasing the property to renovate the structures and lease it to a used car dealer. He stated that he had a Letter of Intent with a used car dealer and he could provide that document to me. He also stated that he had plans to renovate the property and convert it for the used car operation for the cost of approximately \$250,000. I stated that I could provide the appraisal and as you will see on the documents that I am disclosing per the terms of the Subpoena that I sent Mr. Brown a formal letter of engagement dated August 2, 2017. It is noted that Mr. Brown never sent me back a copy of the signed letter of engagement.

Mr. Brown called me again several days later and inquired about the status of the appraisal. He also said that the lender would accept a preliminary letter with the values. I stated that I would not provide that letter without receiving a minimum of \$1,000 or 50% of the agreed upon fee of \$2,000 for the appraisal. He said that he would get me a check and you will see that a \$1,000 check made payable to Valuation Consultants, my firm, dated April 7, 2017 was issued on the account of Law Office of Dan M Winder P.C. I believe that this check was dropped off to my office.

As you will see on the string of emails that I have disclosed, I asked Mr. Brown who the lender and my client was. He stated that it was Financial Services & Real Estate Network Group in California. That is who I addressed the preliminary letter to.

I then visited the property on August 11, 2017. I completed the research of comparable sales and rents involving used car lots and auto related properties. This data is contained in my work file and has been disclosed in the attached documents. I proceeded to complete the preliminary letter that is dated August 14, 2017. I emailed the preliminary letter to Mr. Brown on August 14, 2017. I never heard from Mr. Brown again and never completed the appraisal.

In reference to the preliminary letter. Mr. Brown did not ever tell me that he was going to use this letter in a legal proceeding and for any purpose other than to obtain a mortgage in order to purchase the property. This document should NOT be used in any legal matter. In fact, it is clearly stated in the letter that, "Please note that this IS NOT an appraisal that conforms to the *Uniform Standards of Professional Appraisal Practice* (USPAP) as published by the Appraisal Foundation. It is only reporting the final values that will be in the final report that is in the process of being completed and will be provided within the next few days." This letter should not be presented to any trier of fact, i.e. Judge and/or Jury, in any legal case.

Most importantly, the opinions of value that are provided in the preliminary letter are based on the following specific extraordinary assumption:

**\*\*The prospective market value opinion is based upon the following extraordinary assumption:**

That the letter of intent from BTO Unlimited, Inc. dba 1st Class Motors that states they will lease the subject property for five years at the rental rate of \$4,300.00 per month, for full use of property including the garage in back will be converted to a formal, legal lease at those stated terms.

If this extraordinary assumption, which is directly related to this specific assignment, is found to be false, it could alter the final opinions or conclusions."

It is obvious with the luxury of hindsight that the Letter of Intent from BTO Unlimited, Inc. dba 1st Class Motors was never converted to a formal, legal lease. Therefore, the extraordinary assumption was found to be false and the final opinions or conclusions would be significantly altered.

The opinions of value were based on the subject being used at its Highest and Best Use as a commercial property allowable per the C-1 zoning. The opinion of the "as is" market value was based on deducting the costs to renovate and convert the subject to the used car lot from the opinion of the Prospective Market Value "Upon Completion of Renovations" and Based on an *Extraordinary Assumption*.

In conclusion, since the extraordinary assumption was false, the opinions of value in the preliminary letter are not valid and should NOT be relied upon in any legal matter.

If there are further questions concerning this letter, please feel free to contact me.

Sincerely,

VALUATION CONSULTANTS



Keith Harper, MAI  
Certified General Appraiser  
License Number A.0000604-CG  
State of Nevada  
Expires - March 31, 2020

# EXHIBIT 6

# EXHIBIT 6

## AFFIDAVIT OF JOYCE MACK


State of California    )  
                                  )ss.  
County of Orange    )

BEFORE ME, upon this day personally appeared JOYCE MACK, who after being duly sworn, deposes and says the following under oath:

1. My name is Joyce Mack. I am over the age of eighteen (18). I am competent and capable of making this affidavit. I have personal knowledge of the facts set forth herein and such facts are true and correct.
2. I am an employee of in Financial Solutions & Real Estate Network Group, and currently residing in Riverside, California.
3. I have been employed by Financial Solutions & Real Estate Network Group, for twelve (12) years.
4. My title is Broker/Manager.
5. On or around August 1, 2017, I received a referral for a loan from Mortgage Consultant, Amanuel Brooks, for a loan for a Charles Brown ("Mr. Brown"), to obtain a loan to purchase a property located at 2315 N. Decatur Boulevard, in Las Vegas, Nevada.
6. Mr. Brown produced a Purchase Agreement and Joint Escrow Instructions ("Purchase Agreement") dated July 6, 2017, listing his name, Charles Brown, as the "Buyer" and Sheila and LaVell Atkinson as the "Sellers" (See Exhibit "1").
7. On or around August 21, 2017, Mr. Brown attempted to pay for the \$1,000.00 application fee with a check from a law firm to apply for the loan, which we were not able to accept because it came from a third-party who was not part of the Purchase Agreement, so instead, Mr. Brown paid the \$1,000.00 in cash.
8. The Uniform Residential Application ("Application") that Mr. Brown submitted was under a Stacy Brown's name (See attached Exhibit "2").
9. In addition to the loan application, Mr. Brown submitted a letter from Valuation Consultants, containing an "As Is" and a "Prospective Value" of the Property, signed by Keith Harper, MAI (See attached Exhibit "3").
10. Based on the Application and valuations submitted by Mr. Brown, I prepared a Conditional Loan Quote and a Good Faith Estimate (GFE) dated August 28, 2017, that had to be signed by Stacy Brown within two days or it would expire (See attached Exhibit "4").

11. I contacted Mr. Brown numerous times to obtain clarification of the person who was purchasing the Property because there was a discrepancy with the Purchase Agreement listing the Buyer as Charles Brown, and the application for the loan listing the Borrower as Stacy Brown (See Exhibits "1" and "2"). Mr. Brown did not respond to our requests for clarification.
12. I searched for the Seller's contact information through People Search and obtained Sheila Atkinson's phone number. I contacted Mrs. Atkinson to inquire who the Buyer was, Stacy or Charles Brown, at which time Mrs. Atkinson informed me that she was no longer selling the Property at that time and that she had already informed Mr. Brown of this.
13. Mr. Brown never contacted our office again, so the file was closed, and the loan application was cancelled.
14. I never spoke with, or had any contact with Stacy Brown.
15. I only communicated with Mr. Brown through telephone and through Mr. Brooks, who was the real estate agent for Mr. Brown.
16. This company handles loan applications only and does not handle escrow; therefore, Financial Solutions never opened escrow on behalf of Mr. Brown nor received any escrow funds.
17. The attached documents are the type normally kept in the ordinary and normal course of our business.
18. The attached documents are kept under my supervision, custody or control.
19. The attached documents are exact duplicates of the records kept by our office.

Dated this 1<sup>st</sup> day of January, 2019.

  
\_\_\_\_\_  
Joyce Mack

SUBSCRIBED and SWORN before me this  
1<sup>st</sup> day of January, 2019.

\_\_\_\_\_  
Notary Public

*\*see attached documents\**

# EXHIBIT 7

# EXHIBIT 7



**FFCL**  
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*Attorneys for Defendants*

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

CHARLES BROWN, an individual,  
Plaintiff,

vs.

LAVELLE P. ATKINSON, SHEILA  
ATKINSON; DOES I-V; and ROE  
CORPORATIONS I-V,  
Defendants.

Case No.: A-18-774764-C  
Dept. No.: IX

**FINDINGS OF FACT, CONCLUSIONS  
OF LAW, AND ORDER**

Hearing Date: January 17, 2019  
Hearing Time: 8:30 a.m.

This matter came for a hearing before the Court on January 17, 2019, at 8:30 a.m., on the motion for summary judgment, the motion to disqualify Plaintiff's counsel, and the motion for leave to amend the Answer to add additional affirmative defense, counterclaims, and third party claims filed by Defendants Lavelle P. Atkinson and Sheila Atkinson ("Defendants"), along with the countermotion for summary judgment filed by Plaintiff Charles Brown ("Plaintiff"). Defendants were represented by Adriana Pereyra, Esq. of the law firm INTEGRITY LAW FIRM, and Danielle J. Barraza, Esq. of the law firm MAIER GUTIERREZ & ASSOCIATES. Plaintiff was represented by Dan M. Winder, Esq. of the



1 law firm Law Office of DAN M. WINDER, P.C.

2 The Court, having reviewed the pleadings and papers on file herein and considered the  
3 evidence, testimony and oral argument of counsel present at the hearing, hereby makes the following  
4 findings of facts and conclusions of law:

5 **FINDINGS OF FACT**

6 1. The commercial real property at issue in this case is located at 2315 North Decatur  
7 Blvd., Las Vegas, Nevada, 89108, with Assessor's Parcel Number 138-24-511-034 (the "Property").

8 2. Defendants, 75 year-old LaVelle Atkinson and 74 year-old Sheila Atkinson have  
9 owned the Property since at least the year 2000.

10 3. Plaintiff testified in his deposition that in July of 2017, he was driving around the  
11 Property's neighborhood, and when he came across the Property, he "observed it was abandoned,"  
12 which is allegedly how he first became interested in purchasing the Defendants' Property.

13 4. Plaintiff testified in his deposition that on July 6, 2017, Plaintiff showed up at the  
14 Defendants' door with a Purchase Agreement Plaintiff had prepared.

15 5. The Purchase Agreement lists a purchase price of \$100,000 "payable in cash at  
16 Closing."

17 6. Per the Purchase Agreement, within two business days of the "Effective Date," (which  
18 is later defined as the date that the Purchase Agreement is executed by both Purchase and Seller and  
19 delivered to Escrow Agent) Plaintiff was required to deposit a \$1,000 down payment to an Escrow  
20 Agent.

21 7. The full title of the Purchase Agreement is "Purchase Agreement and Joint Escrow  
22 Instructions," however, in the first paragraph of the Purchase Agreement, the "Escrow Agent" is not  
23 actually identified, but is simply listed as "Selected by buyer."

24 8. The Purchase Agreement does not identify an Escrow Agent, nor does it provide any  
25 escrow instructions.

26 9. The Purchase Agreement states that the "Closing of the sale of the Property by Seller  
27 to Purchaser shall occur on or before Thirty (30) days after the Feasibility Period."

28 10. The Purchase Agreement defines the "Feasibility Period" as beginning on the Effective

1 Date and expiring forty-five days thereafter.

2 11. Per the Purchase Agreement, Plaintiff's obligation at the closing of the sale was to "pay  
3 the Purchase Price in cash (or by Certified Check, wire transfer of funds into Escrow, all of which  
4 shall constitute "cash" for purpose of this Agreement)."

5 12. Page 6 of the Purchase Agreement indicates that Plaintiff executed the agreement on  
6 July 6, 2017, and the Defendants executed the agreement on July 20, 2017.

7 13. Plaintiff testified in his deposition that he did not have an investor identified to help  
8 him purchase the Property.

9 14. Plaintiff failed to identify any escrow company, and failed to submit evidence to the  
10 Court indicating that Plaintiff had deposited any funds into an escrow account for the purchase of the  
11 Property.

12 15. Plaintiff did not submit an appraisal to the Court.

13 16. In his initial disclosures, Plaintiff produced what he referred to as a "Pre-Approval  
14 Letter from Kelly Mortgage and Realty." ("Kelly Mortgage Letter").

15 17. The Kelly Mortgage Letter is dated July 31, 2017, contains a logo of some sort at the  
16 top and states "Congratulations, YOU ARE PRE-APPROVED!!!".

17 18. The Kelly Mortgage Letter does not state that Plaintiff Charles Brown was approved  
18 for a loan, but states that a "Stacey Brown" has been pre-approved for a loan with Kelly Mortgage  
19 and Realty, Inc.

20 19. Plaintiff testified during his deposition that a "Stacy Brown" is his wife.

21 20. In his deposition testimony, Plaintiff admitted to having seen the Kelly Mortgage  
22 Letter (that he produced), but then claimed he could not remember when he obtained the letter.

23 21. Plaintiff testified in his deposition that he did supply information to Kelly Mortgage,  
24 saying he spoke to a Veda Williams from Kelly Mortgage and gave her "whatever they asked for,"  
25 and "Whatever she sent, said needed to be signed, I signed it."

26 22. Following Plaintiff's deposition, the Defendants obtained an affidavit from Tracy L.  
27 Kelly (the President and Broker of Kelly Mortgage) regarding the Kelly Mortgage pre-approval letter.  
28 Specifically, Ms. Kelly indicated the following:

- That the Kelly Mortgage Letter produced by Plaintiff “was not produced by my office or anyone affiliated to it. The letterhead and the location of the company address on the letter is clearly forged and different from our true letterhead.”
- That “we have not handled a loan application for Stacy Brown” and further, “Kelly Mortgage and Realty, Inc. closed its doors in 2017,” and at the time the pre-approval was allegedly written, “I was in the process of closing out our existing pipeline of loans in Nevada.”
- That “My assistant’s name is Veda Williams, but she is not a Mortgage Consultant and she did not sign the letter,” and that Ms. Kelly is the “only person who signs pre-approval letters.” That the “signature line of the bottom of the page is a copy and paste job and not the same font as the rest of the document.”
- That “I have never processed a loan for the property located at 2315 N. Decatur Boulevard, in Las Vegas, Nevada,” and “I believe that the [Kelly Mortgage Letter] was falsified and fraudulently submitted as evidence of financing for the property located at 2315 N. Decatur Boulevard, in Las Vegas, Nevada.”

#### CONCLUSIONS OF LAW

1. Entry of summary judgment is proper and “shall be rendered forthwith when the pleadings and other evidence on file demonstrate that no genuine issue as to any material fact remains and that the moving party is entitled to a judgment as a matter of law.” *Wood v. Safeway, Inc.*, 121 Nev. 724, 729, 121 P.3d 1026, 1029 (2005) (quoting Nev. R. Civ. P. 56(c)) (internal quotations and brackets omitted). If the movant’s burden is met, in order to survive a Rule 56 motion, the nonmoving party “must, by affidavit or otherwise, set forth specific facts demonstrating the existence of a genuine issue for trial or have summary judgment entered against him.” *Id.* at 732, 121 P.3d at 1031 (quoting *Bulbman, Inc. v. Nevada Bell*, 108 Nev. 105, 109, 825 P.2d 588, 591 (1992)).

2. “A genuine issue of material fact exists where the evidence is such that a reasonable jury could return a verdict for the nonmoving party.” *Valley Bank of Nevada v. Marble*, 105 Nev. 366, 367, 775 P.2d 1278, 1279 (1989). “[C]onclusory statements along with general allegations do not create an issue of fact.” *Yeager v. Harrah’s Club, Inc.*, 111 Nev. 830, 833, 897 P.2d 1093, 1095

1 (1995).

2 3. Any finding of fact that is more appropriately classified as a conclusion of law shall be  
3 so considered. Any conclusion of law that is more appropriately classified as a finding of fact shall be  
4 so considered.

5 4. Generally, a breach of contract in Nevada requires the following:

- 6 1. Plaintiff and Defendant entered into a valid and existing contract;  
7 2. Plaintiff performed or was excused from performance;  
8 3. Defendant breached; and  
9 4. Plaintiff suffered damages as a result of the breach.

10 *See, Reichert v. Gen. Ins. Co. of Amer.*, 68 Cal 2d Rptr. 321, 442 P.2d 377 (1968); *Calloway v. City*  
11 *of Reno*, 116 Nev. 250, 993 P.2d 1259 (2000). Additionally, "[b]asic contract principles require, for  
12 an enforceable contract, an offer and acceptance, meeting of the minds, and consideration." *May v.*  
13 *Anderson*, 121 Nev. 668, 672, 119 P.3d 1254, 1257 (2005).

14 5. A breach of contract includes a "material failure of performance of a duty arising under  
15 or imposed by agreement." *Id.* at 256, 993 P.2d at 1263 (quoting *Malone v. University of Kansas*  
16 *Medical Center*, 220 Kan. 371, 552 P.2d 885, 888 (1976).

17 6. Here, Plaintiff did not provide sufficient evidence indicating that Plaintiff performed or  
18 was excused from performance, as no evidence was produced indicating that escrow was opened, that  
19 there was any escrow agent, or that Plaintiff had deposited any funds into an escrow account for the  
20 Purchase of the Property. Additionally, there was no evidence produced indicating that Plaintiff had  
21 the funds to purchase the property as required by the agreement.

22 7. Plaintiff also failed to provide sufficient evidence indicating how the Defendants  
23 breached any contract. Therefore, as a matter of law, Plaintiff cannot succeed on his first cause of  
24 action for breach of contract claim against Defendants.

25 8. With Plaintiff failing to succeed on his breach of contract action against Defendants,  
26 and failing to provide any evidence indicating that Plaintiff provided any benefit to Defendants,  
27 Plaintiff's alternative causes of action for unjust enrichment/quasi contract/implied-in-law contract  
28 and implied-in-fact contract also fail as a matter of law.

9. It is well established within Nevada that every contract imposes upon the contracting

1 parties the duty of good faith and fair dealing. *See Hilton Hotels Corp. v. Butch Lewis Prods., Inc.*,  
2 107 Nev. 226, 808 P.2d 919 (1991) ("When one party performs contract in manner that is unfaithful  
3 to purpose of contract and justified expectations of other party are thus denied, damages may be  
4 awarded against party who does not act in good faith.").

5 10. No evidence was submitted indicating that Defendants failed to act in a manner that was  
6 unfaithful to the purpose of the contract. As such, Plaintiff's claim for breach of the duty of good  
7 faith and fair dealing fails as a matter of law.

8 11. To establish promissory estoppel, four elements must exist: (1) the party to be estopped  
9 must be apprised of the true facts; (2) he must intend that his conduct shall be acted upon, or must so  
10 act that the party asserting estoppel has the right to believe it was so intended; (3) the party asserting  
11 the estoppel must be ignorant of the true state of facts; (4) he must have relied to his detriment on the  
12 conduct of the party to be estopped." *Cheger, Inc. v. Painters & Decorators Joint Committee, Inc.*, 98  
13 Nev. 609, 614, 655 P.2d 996, 998-999 (1982).

14 12. No evidence was submitted to the Court indicating the Defendants' conduct (of not  
15 outright giving away the Property to Plaintiff) somehow amounted to a promise to do so that Plaintiff  
16 relied upon. *See Torres v. Nev. Direct Ins. Co.*, 131 Nev. Adv. Op. 54, 353 P.3d 1203, 1209 (2015)  
17 ("The promise giving rise to a cause of action for promissory estoppel must be clear and definite,  
18 unambiguous as to essential terms, and the promise must be made in a contractual sense.").

19 13. Further, the only evidence that has been submitted to the Court of the Defendants'  
20 intentions or conduct has been the Purchase Agreement itself. Plaintiff also has not proven how he  
21 "detrimentally relied" on any promise made by the Defendants, as no evidence has been submitted  
22 indicating that Plaintiff was monetarily damaged in any way from the sale of the Property not going  
23 through. Accordingly, Plaintiff's fifth cause of action for promissory estoppel against Defendants  
24 fails as a matter of law.

### 25 ORDER

26 Based on the foregoing,

27 IT IS HEREBY ORDERED, ADJUDGED, AND DECREED as follows:

28 1. Defendants' motion for summary judgment as to Plaintiff's causes of action for (1)

1 breach of contract; (2) breach of the covenant of good faith and fair dealing; (3) unjust enrichment/  
2 quasi contract/ contract implied-in-law; (4) contract implied-in-fact; and (5) promissory estoppel is  
3 GRANTED in its entirety, and all claims against Defendants are dismissed with prejudice.

4 2. Plaintiff's counter-motion for summary judgment is DENIED in its entirety;

5 3. As a result of the order granting Defendants' motion for summary judgment,  
6 Defendants' motion to disqualify Plaintiff's counsel is moot;

7 4. As a result of the order granting Defendants' motion for summary judgment,  
8 Defendants' motion for leave to amend the Answer to add additional affirmative defense,  
9 counterclaims, and third party claims is moot;

10 5. Plaintiff and his predecessors and/or assignees do not have any estate, right, title, lien,  
11 or interest in the Property or any part of the Property; and


12 6. Plaintiff shall record any Release of Lis Pendens necessary in order to remove the  
13 clouding of title to Plaintiff's Property.

14 IT IS SO ORDERED this 8<sup>th</sup> day of February, 2019.

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DAVID B. BARKER  
SENIOR DISTRICT COURT JUDGE

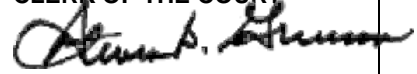
Submitted by:

MAIER GUTIERREZ & ASSOCIATES

20   
21 JOSEPH A. GUTIERREZ, ESQ.  
22 Nevada Bar No. 9046  
23 8816 Spanish Ridge Avenue  
24 Las Vegas, Nevada 89148

-and-

24 ADRIANA PEREYRA, ESQ.  
25 INTEGRITY LAW FIRM  
26 Nevada Bar No. 12263  
27 819 South 6th Street  
28 Las Vegas, Nevada 89101  
*Attorneys for Defendants LaVella P. Atkinson and Shella Atkinson*



**NTSO**

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*Attorneys for Plaintiffs*

**DISTRICT COURT**

**CLARK COUNTY, NEVADA**

LAVELLE P. ATKINSON, SHEILA  
ATKINSON, individuals,

Plaintiffs,

vs.

CHARLES BROWN, an individual; STACY  
BROWN, an individual; LAW OFFICE OF DAN  
M. WINDER, P.C., a domestic professional  
corporation; DAN M. WINDER, an individual;  
DOES I through X; and ROE CORPORATIONS  
I through X, inclusive.

Defendants.

Case No.: A-19-804902-C

Dept. No.: 26

**NOTICE OF ENTRY OF STIPULATION  
AND ORDER**

TO: ALL PARTIES AND THEIR COUNSEL OF RECORD.

YOU AND EACH OF YOU will please take notice that a **STIPULATION AND ORDER  
TO CONTINUE HEARING ON DEFENDANTS, THE LAW OFFICE OF DAN M. WINDER**

1 **AND DAN M. WINDER’S MOTION TO DISMISS FOR FAILURE TO STATE A CLAIM** was  
2 hereby entered on the 13th day of January, 2020. A copy of which is attached hereto.

3 DATED this 13th day of January, 2020.

4 Respectfully submitted,

5 **MAIER GUTIERREZ & ASSOCIATES**

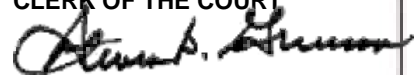
6 /s/ Danielle J. Barraza  
7 JOSEPH A. GUTIERREZ, ESQ.  
8 Nevada Bar No. 9046  
9 DANIELLE J. BARRAZA, ESQ.  
10 Nevada Bar No. 13822  
11 8816 Spanish Ridge Avenue  
12 Las Vegas, Nevada 89148  
13 *Attorneys for Plaintiffs*  
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Dan M. Winder, Esq.  
LAW OFFICE OF DAN M. WINDER, P.C.  
3507 West Charleston Blvd.  
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*Attorney for defendants Dan M. Winder and Law Office of Dan M. Winder P.C.*

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1 **SAO**

2 ADRIANA PEREYRA, ESQ.  
3 NEVADA BAR NO. 12263  
4 **INTEGRITY LAW FIRM**  
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12 DANIELLE J. BARRAZA, ESQ.  
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20 [djb@mgalaw.com](mailto:djb@mgalaw.com)

21 *Attorneys for Plaintiffs*

22 **DISTRICT COURT**  
23 **CLARK COUNTY, NEVADA**

24 **LAVELLE P. ATKINSON, SHEILA**  
25 **ATKINSON, individuals,**

26 **Plaintiffs,**

27 **vs.**

28 **CHARLES BROWN, an individual; STACY**  
29 **BROWN, an individual; LAW OFFICE OF**  
30 **DAN M. WINDER, P.C., a domestic**  
31 **professional corporation; DAN M. WINDER,**  
32 **an individual; DOES I through X; and ROE**  
33 **CORPORATIONS I through X, inclusive.**

34 **Defendants.**

Case No.: A-19-804902-C  
Dept. No.: 26

**STIPULATION AND ORDER TO**  
**CONTINUE HEARING ON**  
**DEFENDANTS, THE LAW OFFICE OF**  
**DAN M. WINDER AND DAN M.**  
**WINDER'S MOTION TO DISMISS FOR**  
**FAILURE TO STATE A CLAIM**

Plaintiffs, Lavelle P. Atkinson and Sheila Atkinson (collectively, "Plaintiffs"), by and through their attorneys, the law firm MAIER GUTIERREZ & ASSOCIATES, and defendants, Law Office of Dan M. Winder, P.C. and Dan M. Winder (collectively "Defendants"), by and through their attorneys, the law firm LAW OFFICE OF DAN M. WINDER, P.C., hereby stipulate and agree as follows:

1 IT IS HEREBY STIPULATED AND AGREED that the hearing on Defendants' motion to  
2 dismiss for failure to state a claim currently scheduled for January 14, 2020, at 9:30 a.m., be  
3 continued to the Court's next available date, due to a trial in another matter for Plaintiffs' counsel  
4 creating a conflict. Plaintiffs' counsel also respectfully advises the Court that January 28, 2020 and  
5 January 29, 2020 also create an unavoidable conflict for Plaintiffs' counsel due to a separate trial  
6 taking place on those days in Department XIII (*First 100, LLC et al v. Joel Just et al*, A-14-705993-  
7 B).


8 IT IS SO ORDERED this \_\_\_\_ day of \_\_\_\_\_, 2020

9  
10   
DISTRICT COURT JUDGE

11 Respectfully submitted,

12 DATED this 9<sup>th</sup> day of January, 2020.

13 MAIER GUTIERREZ & ASSOCIATES

14   
15 JOSEPH A. GUTIERREZ, ESQ.  
16 Nevada Bar No. 9046  
17 DANIELLE J. BARRAZA, ESQ.  
18 Nevada Bar No. 13822  
8816 Spanish Ridge Avenue  
Las Vegas, Nevada 89148

19 ADRIANA PEREYRA, ESQ.  
20 Nevada Bar No. 12263  
21 INTEGRITY LAW FIRM  
819 South 6<sup>th</sup> Street  
Las Vegas, Nevada 89101  
Attorneys for Plaintiffs

DATED this \_\_\_\_ day of January, 2020.

LAW OFFICE OF DAN M. WINDER, P.C.

DAN M. WINDER, ESQ.  
Nevada Bar No. 1569  
3507 West Charleston Boulevard  
Las Vegas, Nevada 89102  
Attorneys for Defendants Law Office of Dan M.  
Winder, P.C. and Dan M. Winder

1 IT IS HEREBY STIPULATED AND AGREED that the hearing on Defendants' motion to  
2 dismiss for failure to state a claim currently scheduled for January 14, 2020, at 9:30 a.m., be  
3 continued to the Court's next available date, due to a trial in another matter for Plaintiffs' counsel  
4 creating a conflict. Plaintiffs' counsel also respectfully advises the Court that January 28, 2020 and  
5 January 29, 2020 also create an unavoidable conflict for Plaintiffs' counsel due to a separate trial  
6 taking place on those days in Department XIII (*First 100, LLC et al v. Joel Just et al*, A-14-705993-  
7 B).

8 IT IS SO ORDERED this 18<sup>th</sup> day of January, 2020 Continued to the 11<sup>th</sup> day of February, 2020 at 9:30 AM

9  
10   
DISTRICT COURT JUDGE

11 Respectfully submitted,


12 DATED this \_\_\_\_ day of January, 2020.

13 MAIER GUTIERREZ & ASSOCIATES

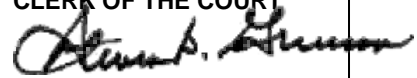
12 DATED this 8<sup>th</sup> day of January, 2020.

13 LAW OFFICE OF DAN M. WINDER, P.C.

14  
15 JOSEPH A. GUTIERREZ, ESQ.  
16 Nevada Bar No. 9046  
17 DANIELLE J. BARRAZA, ESQ.  
18 Nevada Bar No. 13822  
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14  
15   
16 DAN M. WINDER, ESQ.  
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Attorneys for Defendants Law Office of Dan M.  
Winder, P.C. and Dan M. Winder

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20 Nevada Bar No. 12263  
21 INTEGRITY LAW FIRM  
22 819 South 6<sup>th</sup> Street  
23 Las Vegas, Nevada 89101  
24 Attorneys for Plaintiffs  
25  
26  
27  
28



1 RESP  
2 DAN M. WINDER, ESQ.  
3 Nevada Bar No. 001569  
4 LAW OFFICE OF DAN M. WINDER, P.C.  
5 3507 West Charleston Blvd.  
6 Las Vegas, Nevada 89102  
7 Telephone (702) 474-0523  
8 Facsimile (702) 474-0631  
9 Attorney for Winder Defendants

8<sup>TH</sup> JUDICIAL DISTRICT COURT  
CLARK COUNTY, NV

8 Lavelle P. Atkinson, Sheila Atkinson, individuals,

9 Plaintiffs

10 VS.

11 CHARLES BROWN, and individual; LAW  
12 OFFICE OF DAN M. WINDER P.C. a domestic  
13 professional corporation; DAN M. WINDER, an  
14 individual, et al

15 Defendants

CASE NO: A-19-804902-C  
Dept: 26

Hearing Date: 02/11/20  
Time: 9:30 AM

WINDER DEFENDANTS' REPLY  
RE  
MOTION TO DISMISS  
FOR

FAILURE TO STATE A CLAIM (12/05/19)  
NRCp 12(b)(5)

16 Defendants Law Office of Dan M. Winder P.C and Dan M. Winder, by and through their  
17 attorney Dan M. Winder of The Law Office of Dan M. Winder P.C. hereby reply to Plaintiffs'  
18 Opposition to Winder Defendants' Motion to Dismiss for Failure to State A Claim (12/18/19). This  
19 reply is focused on the following grounds:

- 20
- 21 1. ISSUE AND CLAIM PRECLUSION: Plaintiffs are barred by issue and claim preclusion  
22 from bringing these claims against Defendants based upon the following
  - 23 1.1. Plaintiffs' Complaint (Ex 3) in this matter is materially identical to the Proposed  
24 Third Party Complaint (Ex 2) Plaintiffs attempted to bring in the prior case of  
25 Brown v Atkinsons.
  - 26 1.2. The issue in the prior case was whether the Atkinsons should be allowed to pursue  
the instant claims against the Winder Defendants.

1.3. The Court in the prior case ruled that “As a result of the order granting Defendants’ (Atkinson’s) motion for summary judgment, the motion for leave to amend the Answer to add additional affirmative defense, counterclaims, and third part claims is moot.” Ex 1 P7 L7.

1.4. If the Claims are moot they cannot again be raised.

2. MALICIOUS PROSECUTION: Nevada does not recognize the tort of Malicious Prosecution. Plaintiffs, by their complaint, are seeking to obtain malicious prosecution damages under another guise.

3. ATTORNEY FEES BARRED WITHOUT STATUTORY AUTHORITY. Attorney’s fees are only awardable if allowed by statute; Plaintiffs cite no statute by which they may claim attorney fees for the prior litigation.

4. INSUFFICIENT ALLEGATIONS OF FRAUD AND DAMAGES

4.1. Plaintiffs apparently claim damages for attorney fees in defending prior litigation plus other unspecified damages. This is too vague to define what discovery must be conducted and does not state a claim. If they are seeking damages for emotional distress they must allege physical injury

4.2. NO DAMAGES FOR EMOTIONAL DISTRESS WITHOUT PHYSICAL INJURY: in cases where emotional distress damages are not secondary to physical injuries, but rather, precipitate physical symptoms, either a physical impact must have occurred or, in the absence of physical impact, proof of “serious emotional distress” causing physical injury or illness must be presented. *Olivero v. Lowe*, 116 Nev. 395, 399, 995 P.2d 1023, 1026 (2000)

4.3. NO FRAUD WITHOUT RELIANCE: Plaintiffs make no allegation they justifiably relied upon any representations made to them. Without reliance their can be no fraud.

## 5. AN ATTORNEY REPRESENTING A CLIENT OWES NO DUTY TO THIRD PARTIES

Winder Defendants raised this argument in its opening brief. P4 L4 Plaintiffs address this argument briefly (P 13 L10-17). Plaintiffs’ objection seems to turn on their claim the facts supporting the claim of privilege were not sworn to in an affidavit. This is a motion to dismiss. The pleadings in the prior case as well as this case make clear that Mr. Winder was, at all times, acting as an attorney for Mr. Brown, not as a partner in a co-conspiracy. Plaintiffs, based only on the alleged fact that checks were written on Mr. Winder’s account which paid for some services involved in the prior transactions, have made this fanciful and factless leap. This, by itself, is insufficient as a matter of law to support

1 the claims made that Mr. Winder was involved in perpetrating a fraud upon the Atkinsons.

2  
3 **6. PLAINTIFFS CLAIMS ARE BARRED BY CLAIM PRECLUSION**

4 Plaintiffs suggest the false claim that the valid final judgment in the first litigation did not relate  
5 to any potential claims the Atkinsons were seeking to bring against the Winder Defendants. Brf P10  
6 L18. In the prior action the court entered Findings of Fact, Conclusions of Law, and Order on 02/11/19.  
7 Ex 1 The order specifically states:

8 4. As a result of the order granting Defendants' [Atkinson's] motion for  
9 summary judgment Defendants' motion for leave to amend the Answer to  
10 add additional affirmative defense, counterclaims, and third party [sic]  
claims is moot;

11 Attached to Defendant Atkinsons' Motion in the prior action was a copy of the proposed third party  
12 claim naming the Winder Defendants. Ex 2 hereto. An examination of the proposed "third party  
13 complaint" demonstrates the Winder allegations were improperly mixed with then Defendant  
14 Atkinsons' Counter Claims.<sup>1</sup> Nonetheless, though there are subtle and non-material differences, a  
15 comparison of the Proposed Amended Answer, Counter-Claim and Third Party Complaint in the earlier  
16 case (Brown v Atkinson) is identical in all material aspects with the complaint in this matter (Atkinsons  
17 v Winder). The following table demonstrates:

18  
19  
20  
21  
22  
23  
24  
25 <sup>1</sup> For convenience, Defendants have annotated Ex 2, the Proposed Amended Answer and Third Party Complaint from the  
26 prior action and the Complaint in this matter (Ex 3) to demonstrate the similarities. The hand written numbers adjacent to  
the paragraph numbers on each of the documents show the paragraph numbers where the materially identical information  
appears in the other document. Where there changes, additions or omissions, these are marked in yellow.

Claims for Relief against the Winder Defendants					
Brown v Atkinson Ex 2			Atkinson v Winder Ex 3		
Bates & line	Claim #	Claim for Relief Against Winder	Page & Line	Claim#	Claims for Relief Against Mr. Winder
27:6	4	Abuse of Process			
28:10	5	Civil Conspiracy	8:12	4	Civil Conspiracy
28:14	6	Concert of Action	9:1	5	Concert of Action
29:12	7	Aiding and Abetting Fraudulent Misrepresentation	9:16	6	Aiding and Abetting Fraudulent Misrepresentation

The language set forth in the facts and in the claims for relief in the complaint in this matter and in the Proposed Amended Answer and Third party complaint (Ex 2) in the other is materially identical, both involve identical events and allegations.

Furthermore, a comparison of the facts set forth in the Brown v Atkinson Complaint (Ex 4) demonstrates clearly that the complaint in this matter (Ex 3) and the Proposed Amended Third Party Complaint (Ex 2) all arise out of the same facts and circumstances.

Plaintiffs, Defendants in Brown v Atkinson, filed their Motion for Leave to...Add Third Party Claims on 12/10/18. All of the information the Plaintiffs have now they had as defendants in the prior litigation by the time the Motion for Leave to ...Add Third Party Claims was filed on December 12/10/18.

The matter was fully litigated and the Atkinsons lost their right, if any was ever had, to bring a subsequent claim against the Winder defendants when the Court entered its Findings of Fact, Conclusions of Law, and Order on 02/11/19. Plaintiffs are simply trying to get a second bite of the apple after having lost the same claim in the prior litigation.



1       6.1. PRIVIES

2           In Nevada, “[a] privy is one who, after rendition of the judgment, has acquired an interest in  
3 the subject matter affected by the judgment through or under one of the parties as by inheritance,  
4 succession, or purchase.” Paradise Palms Cmty. Ass’n v. Paradise Homes, 505 P.2d 596, 599  
5 (Nev.1973) (quoting Bernhard v. Bank of Am. Nat’l Trust & Sav. Ass’n, 122 P.2d 892 (Cal.1942));  
6 Bower, 215 P.3d at 718.

7           It has also been defined as one “who is directly interested in the subject matter, and had a  
8 right to make defense, or to control the proceeding, and to appeal from the judgment.” Paradise Palms,  
9 505 P.2d at 598.

10          The Nevada Supreme Court recently expanded the definition of privy when it adopted the  
11 Restatement (Second) of Judgments § 41, which states: “A person who is not a party to an action but  
12 who is represented by a party is bound by and entitled to the benefits of a judgment as though he were  
13 a party.” Alcantara, 321 P.3d at 917. “A party’s representation of a nonparty is ‘adequate’ for  
14 preclusion purposes only if, at a minimum: (1) the interests of the nonparty and [its] representative are  
15 aligned and (2) either the party understood [itself] to be acting in a representative capacity or the  
16 original court took care to protect the interests of the nonparty. Taylor, 553 U.S. at 900 (internal  
17 citations omitted). Werbicky v. Green Tree Servicing, LLC, 2:12-CV-01567-JAD, 2015 WL 1806857,  
18 at (D. Nev. Apr. 21, 2015).

19          Privy does not lend itself to a neat definition, thus determining privy for preclusion purposes  
20 requires a close examination of the facts and circumstances of each case. Rucker, 794 N.W.2d at 118;  
21 Citizens for Open Access to Sand & Tide, Inc. v. Seadrift Ass’n, 60 Cal.App.4th 1053, 71 Cal.Rptr.2d  
22 77, 88 (1998); *see also* Weddell v. Sharp, 131 Nev., Adv. Op. 28, 350 P.3d 80 (2015) (modifying the  
23 Five Star test to include claims that fall under a theory of nonmutual claim preclusion). Mendenhall v.  
24 Tassinari, 133 Nev. 614, 619, 403 P.3d 364, 369 (2017)

1 **7. ATKINSONS' CLAIMS ARE BARRED BY ISSUE PRECLUSION**

2 Even if claim preclusion does not apply, certainly issue preclusion does.

3 The following factors are necessary for application of issue preclusion:

- 4 (1) the issue decided in the prior litigation must be identical to the issue presented in  
the current action;
- 5 (2) the initial ruling must have been on the merits and have become final; ...
- 6 (3) the party against whom the judgment is asserted must have been a party or in privity  
7 with a party to the prior litigation"; and
- 8 (4) the issue was actually and necessarily litigated. *Five Star Capital Corp. v. Ruby*,  
124 Nev. 1048, 1055, 194 P.3d 709, 713 (2008), *holding modified by Weddell*  
9 *v. Sharp*, 131 Nev. 233, 350 P.3d 80 (2015)

10 **7.1. IDENTICAL ISSUE:**

11 The issue decided in the prior case was whether the Plaintiffs herein should be able to bring  
12 the claims they now seek to bring against the Winder Defendants. The Court determined that that  
13 those claims were rendered moot by the judgment. Findings of Fact, Conclusions of Law and Order.

14 Ex 1, P7. L7:

- 15 4. As a result of the order granting Defendants' motion for summary judgment,  
16 Defendants' motion for leave to amend the Answer to add additional affirmative  
defense, counterclaims, and third party claims is moot;

17

18 **7.2. THE INITIAL RULING IS ON THE MERITS AND FINAL**

19 Plaintiffs do not dispute the finality of the prior ruling. The prior Court decision that the  
20 Atkinsons' Motion to add the Winder Defendants was rendered moot by the Court's decision on the  
21 Atkinsons' Motion for Summary Judgment is on the merits.

22

23 **7.3. ATKINSONS WERE A PARTY IN THE PRIOR LITIGATION**

24 The Winder Defendants are asserting the judgment in Brown v Atkinson against the Atkinsons  
25 who were parties in the prior litigation.

26

1        7.4. THE ISSUE WAS ACTUALLY AND NECESSARILY LITIGATED

2        The issue in the prior case was whether the Atkinsons could assert the claims they now seek to  
3 assert against the WINDERS. The Court held those claims were rendered moot by the grant of  
4 summary judgment in favor of the Atkinsons.

5  
6        7.5. ATKINSONS ARE PREVENTED BY ISSUE PRECLUSION FROM BRINGING THESE  
7 CLAIMS.

8        Issue preclusion prevents the Atkinsons from bringing these claims against the Winder  
9 Defendants because the prior Court decided, after hearing, these claims were rendered moot by the  
10 Summary Judgment it rendered and because the Atkinsons were a party to and participated in that  
11 litigation. Plaintiffs' assertion that their "prompt efforts to amend their Answer to bring their claims  
12 against the Winder Defendants in the First Litigation were set aside when the Court elected to grant the  
13 Atkinsons' summary judgment instead" is simply false. The Court said the claims were rendered moot.  
14 Ex. 1 P7 L7. Atkinsons might have sought clarification given that all of the claims by both parties  
15 were based on the same facts and circumstances, but they did not. If the court had not intended to  
16 render the Atkinsons' claims moot it would have granted Summary Judgment on Brown's claim and  
17 allowed the other claims to proceed. There was no procedural reason why it could not do so. Judicial  
18 economy required the prior Court determine whether and if the Atkinson claims should proceed in light  
19 of the Summary Judgment and it determined they should not.

20        Atkinsons claim "it made no sense for the Court to both grant the Atkinsons [sic] summary  
21 judgment and allow them to amend their Answer. Brf P12 L11. Actually, the reverse is true. Nearly  
22 all of the issues in the Atkinson's proposed third Party Complaint had already been resolved by the  
23 prior Court. What made sense, in the interest of judicial economy, was to proceed to conclusion of the  
24 Third Party claims, if they were not rendered moot by the summary judgment. Other than the bald  
25 assertion it was a procedural decision, Atkinsons offer no facts or support for their position that the  
26 determination their claims were moot did not mean that they were moot.

1 If any relief from the prior Order were to be granted, it must be granted by the prior Court.

2  
3 **8. ATKINSONS HAVE NOT ADDRESSED THE FAILURE TO MEET THE HEIGHTENED**  
4 **REQUIREMENT FOR THE PLEADING OF FRAUD**

5 Although the Atkinsons did find some dates in their complaint, they didn't list a single one  
6 referring to what dates a fraud was committed on them, by what specific person, and where the  
7 alleged misrepresentation took place. Nor do Atkinsons indicate they relied on any purported  
8 fraudulent representations. Thus, they have no claim for fraud.

9  
10 **9. THE ONLY DAMAGES SOUGHT BY ATKINSONS ARE FOR THEIR ASSERTIONS OF**  
11 **MALICIOUS PROSECUTION WHICH IS DISALLOWED IN NEVADA.**

12 As near as can be fathomed from the vague allegation of damages, all of the Atkinson claims  
13 basically assert in one form or another, claims for malicious prosecution. Although the complaint is  
14 too vague to do anything but guess, Plaintiffs seem to be seeking attorney fees and the emotional  
15 distress arising from the prior litigation. All claims the Atkinsons claim to have suffered appear to be  
16 as a result of the prior litigation, not as a result of any other activities. Simply put, they are attempting  
17 to seek money for malicious prosecution, a claim not recognized under Nevada Law.<sup>2</sup> If they wanted  
18 an award for attorney fees, they should have sought it in the prior action.

19  
20  
21 <sup>2</sup> Previously, in *Dutt v. Kremp*, 111 Nev. 567, 571–75, 894 P.2d 354, 357–59 (1995), a case involving  
22 malicious prosecution and abuse of process claims against an attorney who filed a medical  
23 malpractice lawsuit against a group of physicians, the Supreme Court discussed a malicious  
24 prosecution claim arising from the commencement of a wrongful *civil* proceeding. In *Dutt*, we set  
25 forth the elements of malicious prosecution in terms of a “prior action” rather than a “prior criminal  
26 proceeding.”<sup>12</sup> We overrule *Dutt* to the extent that the opinion suggests that a plaintiff may claim  
malicious prosecution in the absence of a “prior *criminal* proceeding.” *LaMantia v. Redisi*, 118 Nev.  
27, 30–31, 38 P.3d 877, 880 (2002)

1 **10. INDEPENDENT ACTIONS FOR ATTORNEY FEES ARE NOT ALLOWED**

2 To the extent ATKINSONS are seeking fees for defending the prior actions they are barred by  
3 the American Rule. Nevada has followed the general rule that attorney's fees may not be awarded in  
4 the absence of a statute, rule or contract permitting such award. See, e. g., *Sun Realty v. District Court*,  
5 91 Nev. 774, 542 P.2d 1072 (1975); *City of Las Vegas v. Southwest Gas*, supra; *Mariner v. Milisich*,  
6 45 Nev. 193, 200 P. 478 (1921); and *Dixon v. District Court*, 44 Nev. 98, 190 P. 352 (1920). *Consumers*  
7 *League of Nevada v. Sw. Gas Corp.*, 94 Nev. 153, 156, 576 P.2d 737, 739 (1978).

8  
9 **11. BARE ALLEGATIONS, UNSUPPORTED BY FACTS, ARE NOT ENOUGH TO**  
10 **SUSTAIN A COMPLAINT AGAINST A MOTION TO DISMISS.**

11 In their reply, Plaintiffs conflate the concept of facts and inferences. Although Plaintiffs need  
12 not have a factual basis for every inference they make in their complaint, they must state specific facts  
13 known to them which can justifiably give rise to the inferences in their allegations. Plaintiffs have  
14 failed even to assert thin air allegations sufficient to state a claim for fraud and have made no attempt  
15 to specify what acts of the Winder Defendants Plaintiffs claim caused damages or what those damagers  
16 are.

17  
18 11.1. THE ALLEGATIONS OF DAMAGES ARE INSUFFICIENT

19 The allegations cite no facts from which a reasonable inference can be drawn that the Winder  
20 Defendants worked with Brown with the intent to defraud the Atkinsons out of their property. The  
21 facts are silent as to when, or who made any fraudulent representations to anyone. In fact, the Plaintiffs  
22 did not lose any property.

23 The allegations are completely silent as to what damages were suffered. Defendants must  
24 guess; and that is not sufficient pleading. If they seek attorney's fees in connection with the prior  
25 litigation that is prevented by Nevada Law as are all damages for malicious prosecution.

26 NRCP 9 requires the pleading of special damages specifically. The Plaintiffs have not done

1 that. Instead, they have a general allegation, ¶31 which reads as follows:

2 31. As a result of Charles Brown, Stacy Brown, Law Office of Dan M Winder  
3 P.C. and Dan Winder's actions, the Atkinsons were forced to engage the services  
of an attorney, and have incurred significant damages and attorneys' fees.

4 The complaint, taken as a whole, vaguely suggests Plaintiffs seeking attorney fees for the prior  
5 litigation. If that be the case, the claim is barred by the American Rule as set forth above. If for the  
6 present action, that is barred, among other reasons, by the lack of civil remedy for malicious  
7 prosecution. Because the complaint does not seek recoverable damages it fails to state a claim.

8 The complaint is silent as to what the “significant damages” are. Since Plaintiffs were not  
9 defrauded out of anything the damages sought cannot be for fraud. If they are seeking damages for  
10 emotional distress that is barred by the prohibition against malicious prosecution.

11 Since there can be no damages the Plaintiffs can recover and without recoverable damages the  
12 Plaintiffs have failed to state a claim, it appears, beyond a doubt, Plaintiffs can prove no set of facts,  
13 which, if true, would entitle Plaintiffs to relief. Accordingly, the complaint must be dismissed.  
14 Dismissing a complaint is appropriate when it appears beyond a doubt the Plaintiff could prove no set  
15 of facts, which, if true, would entitle the plaintiff to relief. *Neville v. Eighth Judicial Dist. Court in &*  
16 *for County of Clark*, 133 Nev. 777, 779, 406 P.3d 499, 502 (2017).

#### 17 18 11.2. FRAUD ALLEGATIONS INSUFFICIENT

19 Although the Complaint boils over with permutations of the word “fraud,” neither the word  
20 “rely” nor any equivalent phrase, is in the Complaint. Without reliance, there can be no fraud and no  
21 damages. In fact, so far as the allegations go, there is no hint that the Plaintiffs in any way relied on  
22 any representations or omissions made by the Winder Defendants.

1 **12. CONCLUSION**

2 12.1. ISSUE AND CLAIM PRECLUSION: Plaintiffs are barred by issue and claim  
3 preclusion from bringing these claims against Winder Defendants based upon the following:

4 12.1.1. Plaintiffs' Complaint (Ex 3) in this matter is materially identical to the Proposed Third-  
5 Party Complaint (Ex 2) Plaintiffs attempted to bring in the prior case of Brown v  
6 Atkinsons.

7 12.1.2. The issue in the prior case was whether the Atkinsons should be allowed to pursue the  
8 instant claims against the Winder Defendants.

9 12.1.3. The Court in the prior case ruled that "As a result of the order granting Defendants'  
10 (Atkinson's) motion for leave to amend the Answer to add additional affirmative defense,  
11 counterclaims, and third part claims is moot." Ex 1 P7 L7.

12 12.1.4. If the Claims are moot they cannot again be raised.

13 12.2. MALICIOUS PROSECUTION: Nevada does not recognize the tort of Malicious  
14 Prosecution. Plaintiffs, by their complaint, are seeking to obtain malicious prosecution  
15 damages under another guise.

16 12.3. ATTORNEY FEES BARRED WITHOUT STATUTORY AUTHORITY. Attorney's  
17 fees are only awardable if allowed by statute; Plaintiffs cite no statute by which they may claim  
18 attorney fees for the prior litigation.

19 12.4. INSUFFICIENT ALLEGATIONS OF FRAUD AND DAMAGES

20 12.4.1. Plaintiffs apparently claim damages for attorney fees in defending prior litigation plus  
21 other unspecified damages. This is too vague to define what discovery must be conducted  
22 and does not state a claim. If they are seeking damages for emotional distress they must  
23 allege physical injury.

24 12.4.2. NO DAMAGES FOR EMOTIONAL DISTRESS WITHOUT PHYSICAL INJURY:  
25 in cases where emotional distress damages are not secondary to physical injuries, but  
26 rather, precipitate physical symptoms, either a physical impact must have occurred or, in  
the absence of physical impact, proof of "serious emotional distress" causing physical  
injury or illness must be presented. *Olivero v. Lowe*, 116 Nev. 395, 399, 995 P.2d 1023,  
1026 (2000)

12.4.3. NO FRAUD WITHOUT RELIANCE: Plaintiffs make no allegation they justifiably  
relied upon any representations made to them. Without reliance their can be no fraud.

1 Dated this 4<sup>th</sup> day of February, 2020

2  
3 Dan M. Winder

4  
5 /s/ Dan M Winder

6 DAN M. WINDER, ESQ.

7 Nevada Bar No. 001569

8 LAW OFFICE OF DAN M. WINDER, P.C.

9 3507 West Charleston Blvd.

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11 Telephone (702) 474-0523

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13 Attorney for Plaintiff

14  
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26  
CERTIFICATE OF SERVICE

I hereby certify I served the forgoing on the Parties of Record via the Court's Electronic Filing System on the date stamped hereon by the System.

27 /s/Brittney Reid

28 An employee of the Law Office of Dan M. Winder, P.C.



# EXHIBIT 1

Findings of facts from prior case



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18 *Attorneys for Defendants*

19 **DISTRICT COURT**  
20 **CLARK COUNTY, NEVADA**

21 CHARLES BROWN, an individual,  
22  
23 Plaintiff,

24 vs.

25 LAVELLE P. ATKINSON, SHEILA  
26 ATKINSON; DOES I-V; and ROE  
27 CORPORATIONS I-V,  
28 Defendants.

Case No.: A-18-774764-C  
Dept. No.: IX

**FINDINGS OF FACT, CONCLUSIONS  
OF LAW, AND ORDER**

Hearing Date: January 17, 2019  
Hearing Time: 8:30 a.m.

21 This matter came for a hearing before the Court on January 17, 2019, at 8:30 a.m., on the  
22 motion for summary judgment, the motion to disqualify Plaintiff's counsel, and the motion for leave  
23 to amend the Answer to add additional affirmative defense, counterclaims, and third party claims filed  
24 by Defendants Lavelle P. Atkinson and Sheila Atkinson ("Defendants"), along with the countermotion  
25 for summary judgment filed by Plaintiff Charles Brown ("Plaintiff"). Defendants were represented  
26 by Adriana Pereyra, Esq. of the law firm INTEGRITY LAW FIRM, and Danielle J. Barraza, Esq. of the  
27 law firm MAIER GUTIERREZ & ASSOCIATES. Plaintiff was represented by Dan M. Winder, Esq. of the  
28

1 law firm Law Office of DAN M. WINDER, P.C.

2 The Court, having reviewed the pleadings and papers on file herein and considered the  
3 evidence, testimony and oral argument of counsel present at the hearing, hereby makes the following  
4 findings of facts and conclusions of law:

5 **FINDINGS OF FACT**

6 1. The commercial real property at issue in this case is located at 2315 North Decatur  
7 Blvd., Las Vegas, Nevada, 89108, with Assessor's Parcel Number 138-24-511-034 (the "Property").

8 2. Defendants, 75 year-old LaVelle Atkinson and 74 year-old Sheila Atkinson have  
9 owned the Property since at least the year 2000.

10 3. Plaintiff testified in his deposition that in July of 2017, he was driving around the  
11 Property's neighborhood, and when he came across the Property, he "observed it was abandoned,"  
12 which is allegedly how he first became interested in purchasing the Defendants' Property.

13 4. Plaintiff testified in his deposition that on July 6, 2017, Plaintiff showed up at the  
14 Defendants' door with a Purchase Agreement Plaintiff had prepared.

15 5. The Purchase Agreement lists a purchase price of \$100,000 "payable in cash at  
16 Closing."

17 6. Per the Purchase Agreement, within two business days of the "Effective Date," (which  
18 is later defined as the date that the Purchase Agreement is executed by both Purchase and Seller and  
19 delivered to Escrow Agent) Plaintiff was required to deposit a \$1,000 down payment to an Escrow  
20 Agent.

21 7. The full title of the Purchase Agreement is "Purchase Agreement and Joint Escrow  
22 Instructions," however, in the first paragraph of the Purchase Agreement, the "Escrow Agent" is not  
23 actually identified, but is simply listed as "Selected by buyer."

24 8. The Purchase Agreement does not identify an Escrow Agent, nor does it provide any  
25 escrow instructions.

26 9. The Purchase Agreement states that the "Closing of the sale of the Property by Seller  
27 to Purchaser shall occur on or before Thirty (30) days after the Feasibility Period."

28 10. The Purchase Agreement defines the "Feasibility Period" as beginning on the Effective

1 Date and expiring forty-five days thereafter.

2 11. Per the Purchase Agreement, Plaintiff's obligation at the closing of the sale was to "pay  
3 the Purchase Price in cash (or by Certified Check, wire transfer of funds into Escrow, all of which  
4 shall constitute "cash" for purpose of this Agreement)."

5 12. Page 6 of the Purchase Agreement indicates that Plaintiff executed the agreement on  
6 July 6, 2017, and the Defendants executed the agreement on July 20, 2017.

7 13. Plaintiff testified in his deposition that he did not have an investor identified to help  
8 him purchase the Property.

9 14. Plaintiff failed to identify any escrow company, and failed to submit evidence to the  
10 Court indicating that Plaintiff had deposited any funds into an escrow account for the purchase of the  
11 Property.

12 15. Plaintiff did not submit an appraisal to the Court.

13 16. In his initial disclosures, Plaintiff produced what he referred to as a "Pre-Approval  
14 Letter from Kelly Mortgage and Realty." ("Kelly Mortgage Letter").

15 17. The Kelly Mortgage Letter is dated July 31, 2017, contains a logo of some sort at the  
16 top and states "Congratulations, YOU ARE PRE-APPROVED!!!!".

17 18. The Kelly Mortgage Letter does not state that Plaintiff Charles Brown was approved  
18 for a loan, but states that a "Stacey Brown" has been pre-approved for a loan with Kelly Mortgage  
19 and Realty, Inc.

20 19. Plaintiff testified during his deposition that a "Stacy Brown" is his wife.

21 20. In his deposition testimony, Plaintiff admitted to having seen the Kelly Mortgage  
22 Letter (that he produced), but then claimed he could not remember when he obtained the letter.

23 21. Plaintiff testified in his deposition that he did supply information to Kelly Mortgage,  
24 saying he spoke to a Veda Williams from Kelly Mortgage and gave her "whatever they asked for,"  
25 and "Whatever she sent, said needed to be signed, I signed it."

26 22. Following Plaintiff's deposition, the Defendants obtained an affidavit from Tracy L.  
27 Kelly (the President and Broker of Kelly Mortgage) regarding the Kelly Mortgage pre-approval letter.  
28 Specifically, Ms. Kelly indicated the following:

- That the Kelly Mortgage Letter produced by Plaintiff “was not produced by my office or anyone affiliated to it. The letterhead and the location of the company address on the letter is clearly forged and different from our true letterhead.”
- That “we have not handled a loan application for Stacy Brown” and further, “Kelly Mortgage and Realty, Inc. closed its doors in 2017,” and at the time the pre-approval was allegedly written, “I was in the process of closing out our existing pipeline of loans in Nevada.”
- That “My assistant’s name is Veda Williams, but she is not a Mortgage Consultant and she did not sign the letter,” and that Ms. Kelly is the “only person who signs pre-approval letters.” That the “signature line of the bottom of the page is a copy and paste job and not the same font as the rest of the document.”
- That “I have never processed a loan for the property located at 2315 N. Decatur Boulevard, in Las Vegas, Nevada,” and “I believe that the [Kelly Mortgage Letter] was falsified and fraudulently submitted as evidence of financing for the property located at 2315 N. Decatur Boulevard, in Las Vegas, Nevada.”

### **CONCLUSIONS OF LAW**

1. Entry of summary judgment is proper and “shall be rendered forthwith when the pleadings and other evidence on file demonstrate that no genuine issue as to any material fact remains and that the moving party is entitled to a judgment as a matter of law.” *Wood v. Safeway, Inc.*, 121 Nev. 724, 729, 121 P.3d 1026, 1029 (2005) (quoting Nev. R. Civ. P. 56(c)) (internal quotations and brackets omitted). If the movant’s burden is met, in order to survive a Rule 56 motion, the nonmoving party “must, by affidavit or otherwise, set forth specific facts demonstrating the existence of a genuine issue for trial or have summary judgment entered against him.” *Id.* at 732, 121 P.3d at 1031 (quoting *Bulbman, Inc. v. Nevada Bell*, 108 Nev. 105, 109, 825 P.2d 588, 591 (1992)).

2. “A genuine issue of material fact exists where the evidence is such that a reasonable jury could return a verdict for the nonmoving party.” *Valley Bank of Nevada v. Marble*, 105 Nev. 366, 367, 775 P.2d 1278, 1279 (1989). “[C]onclusory statements along with general allegations do not create an issue of fact.” *Yeager v. Harrah’s Club, Inc.*, 111 Nev. 830, 833, 897 P.2d 1093, 1095

1 (1995).

2 3. Any finding of fact that is more appropriately classified as a conclusion of law shall be  
3 so considered. Any conclusion of law that is more appropriately classified as a finding of fact shall be  
4 so considered.

5 4. Generally, a breach of contract in Nevada requires the following:

- 6 1. Plaintiff and Defendant entered into a valid and existing contract;
- 7 2. Plaintiff performed or was excused from performance;
- 8 3. Defendant breached; and
- 9 4. Plaintiff suffered damages as a result of the breach.

10 *See, Reichert v. Gen. Ins. Co. of Amer.*, 68 Cal 2d Rptr. 321, 442 P.2d 377 (1968); *Calloway v. City*  
11 *of Reno*, 116 Nev. 250, 993 P.2d 1259 (2000). Additionally, "[b]asic contract principles require, for  
12 an enforceable contract, an offer and acceptance, meeting of the minds, and consideration." *May v.*  
13 *Anderson*, 121 Nev. 668, 672, 119 P.3d 1254, 1257 (2005).

14 5. A breach of contract includes a "material failure of performance of a duty arising under  
15 or imposed by agreement." *Id.* at 256, 993 P.2d at 1263 (quoting *Malone v. University of Kansas*  
16 *Medical Center*, 220 Kan. 371, 552 P.2d 885, 888 (1976).

17 6. Here, Plaintiff did not provide sufficient evidence indicating that Plaintiff performed or  
18 was excused from performance, as no evidence was produced indicating that escrow was opened, that  
19 there was any escrow agent, or that Plaintiff had deposited any funds into an escrow account for the  
20 Purchase of the Property. Additionally, there was no evidence produced indicating that Plaintiff had  
21 the funds to purchase the property as required by the agreement.

22 7. Plaintiff also failed to provide sufficient evidence indicating how the Defendants  
23 breached any contract. Therefore, as a matter of law, Plaintiff cannot succeed on his first cause of  
24 action for breach of contract claim against Defendants.

25 8. With Plaintiff failing to succeed on his breach of contract action against Defendants,  
26 and failing to provide any evidence indicating that Plaintiff provided any benefit to Defendants,  
27 Plaintiff's alternative causes of action for unjust enrichment/quasi contract/implied-in-law contract  
28 and implied-in-fact contract also fail as a matter of law.

9. It is well established within Nevada that every contract imposes upon the contracting

1 parties the duty of good faith and fair dealing. *See Hilton Hotels Corp. v. Butch Lewis Prods., Inc.*,  
2 107 Nev. 226, 808 P.2d 919 (1991) ("When one party performs contract in manner that is unfaithful  
3 to purpose of contract and justified expectations of other party are thus denied, damages may be  
4 awarded against party who does not act in good faith.").

5 10. No evidence was submitted indicating that Defendants failed to act in a manner that was  
6 unfaithful to the purpose of the contract. As such, Plaintiff's claim for breach of the duty of good  
7 faith and fair dealing fails as a matter of law.

8 11. To establish promissory estoppel, four elements must exist: (1) the party to be estopped  
9 must be apprised of the true facts; (2) he must intend that his conduct shall be acted upon, or must so  
10 act that the party asserting estoppel has the right to believe it was so intended; (3) the party asserting  
11 the estoppel must be ignorant of the true state of facts; (4) he must have relied to his detriment on the  
12 conduct of the party to be estopped." *Cheger, Inc. v. Painters & Decorators Joint Committee, Inc.*, 98  
13 Nev. 609, 614, 655 P.2d 996, 998-999 (1982).

14 12. No evidence was submitted to the Court indicating the Defendants' conduct (of not  
15 outright giving away the Property to Plaintiff) somehow amounted to a promise to do so that Plaintiff  
16 relied upon. *See Torres v. Nev. Direct Ins. Co.*, 131 Nev. Adv. Op. 54, 353 P.3d 1203, 1209 (2015)  
17 ("The promise giving rise to a cause of action for promissory estoppel must be clear and definite,  
18 unambiguous as to essential terms, and the promise must be made in a contractual sense.").

19 13. Further, the only evidence that has been submitted to the Court of the Defendants'  
20 intentions or conduct has been the Purchase Agreement itself. Plaintiff also has not proven how he  
21 "detrimentally relied" on any promise made by the Defendants, as no evidence has been submitted  
22 indicating that Plaintiff was monetarily damaged in any way from the sale of the Property not going  
23 through. Accordingly, Plaintiff's fifth cause of action for promissory estoppel against Defendants  
24 fails as a matter of law.

## 25 ORDER

26 Based on the foregoing,

27 IT IS HEREBY ORDERED, ADJUDGED, AND DECREED as follows:

28 1. Defendants' motion for summary judgment as to Plaintiff's causes of action for (1)

1 breach of contract; (2) breach of the covenant of good faith and fair dealing; (3) unjust enrichment/  
2 quasi contract/ contract implied-in-law; (4) contract implied-in-fact; and (5) promissory estoppel is  
3 GRANTED in its entirety, and all claims against Defendants are dismissed with prejudice.

4 2. Plaintiff's countermotion for summary judgment is DENIED in its entirety;

5 3. As a result of the order granting Defendants' motion for summary judgment,  
6 Defendants' motion to disqualify Plaintiff's counsel is moot;

7 4. As a result of the order granting Defendants' motion for summary judgment,  
8 Defendants' motion for leave to amend the Answer to add additional affirmative defense,  
9 counterclaims, and third party claims is moot;

10 5. Plaintiff and his predecessors and/or assignees do not have any estate, right, title, lien,  
11 or interest in the Property or any part of the Property; and


12 6. Plaintiff shall record any Release of Lis Pendens necessary in order to remove the  
13 clouding of title to Plaintiff's Property.

14 IT IS SO ORDERED this 8<sup>th</sup> day of February, 2019.

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\_\_\_\_\_  
DAVID B. BARKER  
SENIOR DISTRICT COURT JUDGE

Submitted by:

MAIER GUTIERREZ & ASSOCIATES

20   
21 JOSEPH A. GUTIERREZ, ESQ.  
22 Nevada Bar No. 9046  
23 8816 Spanish Ridge Avenue  
24 Las Vegas, Nevada 89148

-and-

24 ADRIANA PEREYRA, ESQ.  
25 INTEGRITY LAW FIRM  
26 Nevada Bar No. 12263  
27 819 South 6th Street  
28 Las Vegas, Nevada 89101  
*Attorneys for Defendants LaVelle P. Atkinson and Sheila Atkinson*



## EXHIBIT 2

Defendants motion for leave to  
amend answer



1 MLEV  
2 ADRIANA PEREYRA, Esq.  
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18 *Attorneys for Defendants*

19 DISTRICT COURT  
20 CLARK COUNTY, NEVADA

21 CHARLES BROWN, an individual,  
22  
23 Plaintiff,

24 vs.

25 LAVELLE P. ATKINSON, SHEILA  
26 ATKINSON; DOES I-V; and ROE  
27 CORPORATIONS I-V,  
28

Defendants,

Case No.: A-18-774764-C  
Dept. No.: XVIII

DEFENDANTS' MOTION FOR LEAVE  
TO AMEND ANSWER TO ADD AN  
ADDITIONAL AFFIRMATIVE  
DEFENSE, COUNTERCLAIMS, AND  
THIRD-PARTY CLAIMS

Hearing Date:  
Hearing Time:

21 Defendants LAVELLE P. ATKINSON and SHEILA ATKINSON ("Defendants" or "the  
22 Atkinsons"), by and through their attorneys of record, Adriana Pereyra, Esq., of INTEGRITY LAW FIRM  
23 and Joseph A. Gutierrez, Esq., of MAIER GUTIERREZ & ASSOCIATES, hereby file this motion for leave  
24 to amend their Answer to assert counterclaims and third-party claims.

25 This motion is made and based upon the following Memorandum of Points and Authorities,  
26 the affidavits and exhibits attached hereto, the papers and pleadings on file in this matter, and any oral  
27 argument the Court allows.  
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**NOTICE OF MOTION**

TO: ALL PARTIES AND ATTORNEYS OF RECORD:

YOU AND EACH OF YOU will please take notice that the undersigned will bring the foregoing DEFENDANTS' MOTION FOR LEAVE TO AMEND ANSWER TO ADD AN ADDITIONAL AFFIRMATIVE DEFENSE, COUNTERCLAIMS, AND THIRD-PARTY CLAIMS on for hearing before the District Court, Department <sup>XVIII</sup> ~~XV~~, on the 17 day of January, 2019, ~~2018~~, at 9:00AM, or as soon thereafter as counsel may be heard.

DATED this 10th day of December, 2018.

Respectfully submitted,

INTEGRITY LAW FIRM

/s/ Adriana Pereyra

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Nevada Bar No. 12263  
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Las Vegas, Nevada 89101

-and-

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8816 Spanish Ridge Avenue  
Las Vegas, Nevada 89148  
*Attorneys for Defendants LaVelle P. Atkinson  
and Sheila Atkinson*

1 MEMORANDUM OF POINTS AND AUTHORITIES

2 I. INTRODUCTION

3 This case stems from Plaintiff Charles Brown's fraudulent attempt to force elderly Defendants  
4 Lavelle and Sheila Atkinson to "sell" Plaintiff the commercial property they own – without Plaintiff  
5 actually paying any consideration for the property. Plaintiff has filed a lawsuit for breach of contract  
6 (with respect to the purchase agreement that he prepared and breached himself), breach of the  
7 covenant of good faith and fair dealing, unjust enrichment, implied in fact contract, and promissory  
8 estoppel against the Atkinsons.

9 Throughout discovery, Plaintiff has produced no evidence proving that he actually fulfilled  
10 his obligations to purchase the Property. Specifically, Plaintiff has produced no evidence that he  
11 placed the \$1,000 initial deposit in an escrow account. Plaintiff has produced no evidence that he had  
12 \$100,000 in cash payable to the Atkinsons at closing. Plaintiff has produced no evidence that he even  
13 qualified for a loan to purchase the Property.

14 The "evidence" Plaintiff produced to prove he qualified for a loan was a document ostensibly from  
15 Kelly Mortgage, Inc. which stated that a "Stacey Brown" (who Plaintiff has testified is his wife)  
16 qualified for a loan for purchase of the Property. Recently, on November 29, 2018, Tracy L. Kelly,  
17 the President and Broker of Record for Kelly Mortgage, Inc. provided to the Atkinsons an affidavit  
18 confirming that the Kelly Mortgage Letter disclosed by Plaintiff is "clearly forged and different from  
19 our true letterhead." As if that was not enough, in his initial disclosures, Plaintiff listed Keith Harper,  
20 a "Certified General Appraiser" of Valuation Consultants as a witness. In his response to  
21 Interrogatory No. 6, Plaintiff asserted that "I had an appraisal done. The property was appraised at  
22 \$250,000. The property was appraised by Keith Harper of Las Vegas". At his deposition, Plaintiff  
23 also testified to obtaining an appraisal for the Property, although he claimed he did not remember  
24 where that appraisal is now.

25 On or around November 29, 2018, Keith Harper responded to an email request from  
26 undersigned counsel and provided the check that he received for the appraisal of the Property. The  
27 check is dated August 7, 2017 (which encompasses the time period Plaintiff claims to have been "in  
28 escrow" to purchase the property). The check itself indicates that it is from the "Law Office of Dan

1 M Winder P.C." and it appears that Dan Winder, Esq. (who is counsel for Plaintiff in this litigation)  
2 signed off on the check. At no point did Plaintiff or opposing counsel in this case disclose Dan  
3 Winder's involvement (along with Dan Winder's law firm's involvement) in the underlying facts of  
4 this matter.

5 Based on the significance of this newly-discovered evidence, the Atkinsons now have reason  
6 to believe that Plaintiff was involved in a fraudulent scheme to defraud the Atkinsons out of the  
7 Property at issue, and Plaintiff's wife Stacy Brown (who is listed in the fabricated Kelly Mortgage  
8 Letter), along with his counsel of record, the Law Office of Dan M Winder, P.C. and Dan Winder  
9 (who apparently cut the check to the appraiser in 2017 when Plaintiff was in the midst of attempting  
10 to buy the Property), may have been involved in this plan to target the vulnerable Atkinsons.

11 Accordingly, the Atkinsons respectfully request leave to amend their Answer to add  
12 counterclaims against Plaintiff and third-party claims against Stacy Brown, the Law Office of Dan M  
13 Winder, P.C., and Dan Winder, for negligent misrepresentation, intentional misrepresentation,  
14 violation of NRS 41.1395, civil conspiracy, concert of action, and abuse of process. Pursuant to  
15 EDCR 2.30(b), a proposed amended answer is attached as Exhibit 12. The Atkinsons are also seeking  
16 to add an affirmative defense of fraud based on the fraudulent documents produced by Plaintiff.

## 17 **II. STATEMENT OF RELEVANT FACTS**

### 18 **A. PLAINTIFF APPROACHED THE ATKINSONS ABOUT PURCHASING THE PROPERTY** 19 **WHICH WAS NOT LISTED FOR SALE**

20 The commercial real property at issue in this case is located at 2315 North Decatur Blvd., Las  
21 Vegas, Nevada, 89108, with Assessor's Parcel Number 138-24-511-034 (the Property). See  
22 Plaintiff's Complaint at ¶¶ 9-10.

23 Defendants, 75 year-old LaVelle Atkinson and 74 year-old Sheila Atkinson have owned the  
24 commercial property located at 2315 North Decatur Blvd., Las Vegas, Nevada, 89108, with  
25 Assessor's Parcel Number 138-24-511-034 (the "Property"), since at least the year 2000. See Exhibit  
26 1, Portion of Deed of Trust.

27 Plaintiff, by his own representation, is unemployed, has not paid taxes in the last 10 years,  
28 does not have a valid driver's license, and does not have a physical address because he lives in a

1 mobile home. *See Exhibit 2, Deposition Transcript of Charles Brown at pp. 4-5; 7-8; 14-15.* Plaintiff  
2 has claimed that in July of 2017, he was driving (illegally) around the Property's neighborhood "to  
3 get a sandwich," and when he came across the Property, he "observed it was abandoned," which is  
4 allegedly how he first became interested in purchasing the Atkinsons' Property. *See Ex. 2 at 22-24*  
5 *and Exhibit 3, Plaintiff's Responses to Interrogatories at Resp. No. 7.* Plaintiff admitted that there  
6 was no sign outside the Property indicating it was for sale. *Ex. 2 at p. 22.*

7 Nevertheless, Plaintiff testified that he then made a call to his friend Manor Washington, who  
8 is supposedly a "researcher," and had him run the Property's address. *Ex. 2 at pp. 26-28.* Mr.  
9 Washington apparently informed Plaintiff that the Atkinsons owned the Property, and then Plaintiff  
10 "made a call" and got the Atkinsons' residential address. *Ex. 2 at p. 29.*

11 Then on July 6, 2017, Plaintiff showed up at the Atkinsons' door with a Purchase Agreement  
12 he had prepared. *See Ex. 2 at p. 29-30; Ex. 3 at Resp. No. 7 (Plaintiff admitting he prepared the*  
13 *Purchase Agreement). See also, Exhibit 4, Purchase Agreement Produced by Plaintiff.* The Purchase  
14 Agreement lists a purchase price of \$100,000 "payable in cash at Closing". *Ex. 4 at JEL\_000002.*  
15 Page 6 of the Purchase Agreement indicates that Plaintiff executed the agreement on July 6, 2017, and  
16 the Atkinsons executed the agreement on July 20, 2017. *Ex. 4.* Plaintiff admitted in his deposition to  
17 going to the Atkinsons' residence "maybe eight" times before finally wearing them down and getting  
18 them to sign the agreement. *Ex. 2 at pp. 31-32.*

19 Later in his deposition, Plaintiff admitted that he has a pattern and practice of historically  
20 driving around (again, without an actual driver's license) and looking for abandoned properties and  
21 land, and he relays his findings to unnamed "investors" as part of his job. *Ex. 2 at pp. 35-39.*

22 When asked how much cash he had on hand to purchase this Property, Plaintiff backtracked  
23 and responded as follows:

24 Q: Okay. Did you have cash on hand to purchase the property?

25 A: Yes.

26 Q: How much cash did you have?

27 A: I had investors. So whatever was needed was just a contract that needed to be  
28 drawn up.

1 Q: Who were your investors?

2 A: It's different ones.

3 Q: Who were your investors for this particular property?

4 A: It's different ones.

5 Q: So you're saying that you don't have any specific ones for this property?

6 A: No.

7 Q: So you hadn't identified an investor yet?

8 A: No.

9 Ex. 2 at pp. 40-41,

10 As such, Plaintiff testified that he did not actually have the investors he needed to help him  
11 purchase the Property, even though, per the Purchase Agreement that Plaintiff himself prepared,  
12 Plaintiff was required to purchase in cash of \$99,000 at closing. Ex. 4 at JEI\_000004.

13 **B. THE ATKINSONS DISCOVER THAT PLAINTIFF PRODUCED FRAUDULENT**  
14 **DOCUMENTS**

15 In his initial disclosures, Plaintiff produced what he referred to as a "Pre-Approval Letter from  
16 Kelly Mortgage and Realty", and a "Conditional Loan Quote and Good Faith Estimate" Bates-stamped  
17 "P Loan Documents\_000001-000005 See Exhibit 5, Plaintiff's Initial Disclosure Document; Exhibit  
18 6, Kelly Mortgage Letter; and Exhibit "7", respectively.

19 The Kelly Mortgage Letter (which egregiously was not Bates-stamped by Plaintiff's counsel)  
20 is dated July 31, 2017, contains a logo of some sort at the top and states "Congratulations, YOU ARE  
21 PRE-APPROVED!!!" Ex. 6.

22 The Kelly Mortgage Letter does not state that Plaintiff Charles Brown approved for a loan, but  
23 states that a "Stacey Brown" has been pre-approved for a loan with Kelly Mortgage and Realty, Inc.  
24 Ex. 6. Plaintiff has indicated that a "Stacy Brown" is his wife. Ex. 3 at Resp. No. 2.

25 The Kelly Mortgage Letter also curiously lists the Property's address correctly, but then lists  
26 the purchase price as \$250,000, and the loan amount as \$200,000. Ex. 6. In his deposition, Plaintiff  
27 admitted to having seen the Kelly Mortgage Letter (that he produced), but then claimed he could not  
28 remember when he obtained the letter. Ex. 2 at 44-45. Plaintiff testified that he did supply information

1 to Kelly Mortgage, saying he spoke to a Veda Williams from Kelly Mortgage and gave her "whatever  
2 they asked for," and "Whatever she sent, said needed to be signed, I signed it." Ex. 2 at pp. 42-44.

3 Following Plaintiff's deposition, the Atkinsons obtained an affidavit from Tracy L. Kelly (the  
4 President and Broker of Kelly Mortgage) which confirmed that Plaintiff was lying in his deposition  
5 about the Kelly Mortgage pre-approval letter. See Exhibit 8, Affidavit of Tracy L. Kelly. Specifically,  
6 Ms. Kelly indicated the following:

- 7       • That the Kelly Mortgage Letter produced by Plaintiff "was not produced by my office  
8       or anyone affiliated to it. The letterhead and the location of the company address on  
9       the letter is clearly forged and different from our true letterhead." Ex. 8;
- 10      • That "we have not handled a loan application for Stacy Brown" and further, "Kelly  
11      Mortgage and Realty, Inc. closed its doors in 2017," and at the time the pre-approval  
12      was written, "I was in the process of closing out our existing pipeline of loans in  
13      Nevada." Ex. 8;
- 14      • That "My assistant's name is Veda Williams, but she is not a Mortgage Consultant  
15      and she did not sign the letter," and that Ms. Kelly is the "only person who signs pre-  
16      approval letters." Ex. 8;
- 17      • That the "signature line of the bottom of the page is a copy and paste job and not the  
18      same font as the rest of the document." Ex. 8; and
- 19      • That "I have never processed a loan for the property located at 2315 N. Decatur  
20      Boulevard, in Las Vegas, Nevada," and "I believe that the [Kelly Mortgage Letter]  
21      was falsified and fraudulently submitted as evidence of financing for the property  
22      located at 2315 N. Decatur Boulevard, in Las Vegas, Nevada." Ex. 8.

23 The Conditional Loan Quote and Good Faith Estimate (which has also never been  
24 authenticated and is inadmissible hearsay anyway) has also been revealed to be a fraudulent document,  
25 as the Atkinsons have since learned that the Good Faith Estimate form was likely lifted from a sample  
26 form found online, and that the form submitted by Plaintiff was not used by HUD in 2017.

27 ///

28 ///



1           C.     **THE ATKINSONS DISCOVER THAT PLAINTIFF'S COUNSEL PAID FOR AN APPRAISAL**  
2                   **OF THE PROPERTY THAT HAS NOT BEEN DISCLOSED**

3           Plaintiff also claims that "I had an appraisal done. The property was appraised at \$250,000.  
4 The property was appraised by Keith Harper of Las Vegas." Ex. 3 at Resp. No. 12. Plaintiff failed to  
5 produce that appraisal in this litigation, despite the Atkinsons affirmatively requesting its production  
6 in their Requests for Production of Documents.<sup>1</sup>

7           During his deposition, Plaintiff testified to obtaining an appraisal for the Property. Plaintiff  
8 was bizarrely unforthcoming in the details regarding that appraisal, claiming he did not remember  
9 where that appraisal is, who conducted the appraisal, or how much he paid for the appraisal. Ex. 2 at  
10 pp. 48-49; 66-68. While Plaintiff has failed to actually produce the appraisal, he has listed Keith  
11 Harper, a "Certified General Appraiser" from Valuation Consultants in his NRCP 16:1 disclosures.  
12 See Ex. 5.

13           Q:     Do you know who Keith Harper is?

14           A:     Yes.

15           Q:     Who is he?

16           A:     He's the appraiser.

17           Q:     Okay. When did you contact him?

18           A:     I don't remember.

19           Q:     How did you pick Keith Harper as your appraiser?

20           A:     I just Googled.

21           Q:     Did you go to his office?

22           A:     No, not that I remember.

23           Q:     How did you contact him?

24           A:     I don't remember.

25           Q:     How did you obtain the appraisal from him?

26  
27  
28 <sup>1</sup> See Exhibit 9, Responses to Requests for Production of Documents at Resp. No. 6, which correlates  
to Interrogatory No. 12, which relates to whether Plaintiff ever obtained an appraisal for the Property.

1           A:     I don't remember.

2           Q:     How much did the appraisal cost you?

3           A:     I don't remember.

4           Q:     Did you pay anything for it?

5           A:     Yeah.

6     Ex. 2 at pp. 65-66.

7           On or around November 29, 2018, witness Keith Harper responded to an email request from  
8     undersigned counsel and produced the check he received for the appraisal of the Property. The check  
9     itself, which is dated August 7, 2017, indicates it is from the "Law Office of Dan M Winder" and it  
10    appears that Dan Winder, Esq. (who is counsel for Plaintiff in this litigation) signed off on the check.  
11    Exhibit 10, Check.

12          At no point did Plaintiff or opposing counsel in this case voluntarily disclose Dan Winder's  
13    involvement (along with Dan Winder's law firm's involvement) in the underlying facts of this matter.  
14    Indeed, Arnold Weinstein, Esq., an attorney from Dan Winder's law firm, attended Plaintiff's  
15    deposition and sat silent while Plaintiff was being questioned about the details and whereabouts of the  
16    appraisal that (unbeknownst to the Atkinsons at the time) the Law Office of Dan M Winder paid for.

17          There is also no question that this appraisal was obtained in the midst of Plaintiff trying to  
18    acquire the property in the late summer of 2017. The check is dated August 7, 2017, which is just 18  
19    days after the Atkinsons executed the Purchase Agreement, and just 7 days after the date of the  
20    fraudulent Kelly Mortgage Letter. Ex. 4; Ex. 6.

21          Plaintiff himself has claimed that he learned of an IRS lien on the Property "the day the  
22    defendants were supposed to sign to close the deal, on or about September 24<sup>th</sup>, 2017," Ex. 3 at Resp.  
23    No. 13. Plaintiff, who was supposedly still willing to purchase the Property despite an IRS lien, has  
24    claimed that for "weeks and weeks, maybe even months and months" he was waiting and trying to  
25    work with the Atkinsons on getting the deal closed. Ex. 2 at p. 76.

26          It was not until December 6, 2017 (four months after the date of the appraisal check) that The  
27    Law Office of Dan Winder sent correspondence to the Atkinsons threatening to initiate litigation  
28    because the Property had not yet closed by that point, knowing that the Purchase Agreement was

1 defunct because no amendment had been signed by the Atkinsons to extend the closing time, as  
2 required by law. Exhibit 11, Correspondence from Law Office of Dan M. Winder.

3 Based on this new, recently-discovered evidence that the Atkinsons uncovered while  
4 conducting due diligence into the documents and witnesses disclosed by Plaintiff, the Atkinsons are  
5 requesting leave to amend their Answer.

### 6 **III. LEGAL ARGUMENT**

#### 7 **A. LEGAL AUTHORITY**

8 Rule 15(a) of the Nevada Rules of Civil Procedure provides, in pertinent part, that leave to  
9 amend a pleading "shall be freely given when justice so requires." NRCP 15(a). The Supreme Court  
10 of Nevada interprets its approach to these requests as a "liberal amendment policy." *Greene v. Dist.*  
11 *Ct.*, 115 Nev. 391, 393-94, 990 P.2d 184 (1999).

12 In recent years, Nevada courts have largely focused on two factors in determining whether to  
13 grant a motion for leave to amend a pleading: (1) bad faith or dilatory motive; and (2) undue delay in  
14 filing the motion. *Kantor v. Kantor*, 116 Nev. 886, 8 P.3d 825 (2000) (citing *Stephens v. Southern*  
15 *Nevada Music Co.*, 89 Nev. 104, 105, 507 P.2d 138, 139 (1973)). In the absence of one of these  
16 factors or "of any apparent or declared reason ... the leave sought should be freely given." *Id.*

17 A party may also bring a claim against a nonparty if the nonparty can be joined "in accordance  
18 with the provisions of . . . [NRCP] 20." NRCP 13(h). Under NRCP 20, parties may be joined as  
19 defendants in an action if the claims asserted against them (1) arise out of the same transaction or  
20 occurrence and (2) raise at least one common question of law or fact. NRCP 20(a). NRCP 13(H0  
21 should be construed "liberally in an effort to avoid multiplicity of litigation, minimize the circuity of  
22 actions, and foster judicial economy." *Lund v. Eighth Judicial Dist. Court*, 255 P.3d 280, 282 (Nev.  
23 2011).

#### 24 **II. THERE IS NO BAD FAITH OR DILATORY MOTIVE IN DEFENDANTS' MOTION FOR** 25 **LEAVE**

26 This motion is based on recent information that the Atkinsons just acquired in late November  
27 of 2018, thus there is no bad faith or dilatory motive in filing the proposed amended answer.

28 At the time Defendants filed their answer, Defendants were unaware of the following:

- 1       • That the Plaintiff would disclose fraudulent financing and loan documents, as  
2       documented by the Affidavit of the President and Broker of Record for Kelly  
3       Mortgage, Inc.;
- 4       • That the Law Office of Dan M Winder P.C. had apparently cut a check in August of  
5       2017 (signed by Dan Winder) to Keith Harper, the appraiser listed in Plaintiff's initial  
6       disclosures;
- 7       • That the individual listed as being "approved" for a loan on the fraudulent Kelly  
8       Mortgage Letter and financing documents is apparently Plaintiff's wife, Stacy Brown;  
9       and
- 10      • That Plaintiff would be claiming that both he and his wife Stacy Brown have an  
11      interest in the Property. See Ex. 3 at Resp. No. 15.

12       As the Atkinsons are recently in receipt of these facts, this request to amend their answer to  
13      add counterclaims against Plaintiff, and third-party claims against Stacy Brown, the Law Office of  
14      Dan M Winder P.C., and Dan Winder for negligent misrepresentation, intentional misrepresentation,  
15      fraud, civil conspiracy, concert of action, elder abuse, and abuse of process. The Atkinsons are also  
16      seeking to add an affirmative defense of fraud based on the fraudulent Kelly Mortgage Letter, Good  
17      Faith Estimate and Conditional Loan Quote produced by Plaintiff.

18       **C. NO UNDUE DELAY IN FILING THE MOTION**

19       Plaintiff learned about Stacy Brown's status as Plaintiff's wife and Plaintiff's claim that Stacy  
20      Brown may have an interest in the Property in Plaintiff's responses to Interrogatories, which were  
21      finally served on October 26, 2018. Further, Plaintiff just confirmed at his November 19, 2018  
22      deposition that he believes he "assigned" his interest in the Property to Stacy Brown. Ex. 2 at p. 46.

23       Additionally, it was not until late November 2018 that Plaintiff's discovered a multitude of  
24      new information, including that the Kelly Mortgage Letter (claiming Stacy Brown approved for a  
25      loan) was fabricated, as well as the Conditional Loan Quote and Good Faith Estimate, and that the  
26      Law Office of Dan M Winder P.C. had paid for an appraisal for the Property in August 2017, which  
27      was in the midst of Plaintiff attempting to obtain the Property from the Atkinsons. That appraisal has  
28      never been produced by the Plaintiff in this litigation, even though it is the subject of a document

1 request.

2 As such, the Atkinsons filed this motion as soon as feasibly possible based on the timing of  
3 when they learned of the additional information in discovery.

4 **IV. CONCLUSION**

5 Accordingly, Defendants request that this Court grant their motion to amend their Answer to  
6 add an additional affirmative defense of fraud, and to assert counterclaims against Plaintiff, and third-  
7 party claims against Stacy Brown, the Law Office of Dan M Winder P.C., and Dan Winder for  
8 negligent misrepresentation, intentional misrepresentation, fraud, civil conspiracy, concert of action,  
9 and abuse of process. The proposed new answer is attached hereto as Exhibit 12.

10 DATED this 10th day of December, 2018.

11 Respectfully submitted,

12 **INTEGRITY LAW FIRM**

13 /s/ Adriana Pereyra

14 ADRIANA PEREYRA, ESQ.

15 Nevada Bar No. 12263

16 819 South 6th Street

17 Las Vegas, Nevada 89101

18 -and-

19 JOSEPH A. GUTIERREZ, ESQ.

20 Nevada Bar No. 9046

21 MAIER GUTIERREZ & ASSOCIATES

22 8816 Spanish Ridge Avenue

23 Las Vegas, Nevada 89148

24 Attorneys for Defendants LaVelle P. Atkinson  
25 and Sheila Atkinson  
26  
27  
28

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**CERTIFICATE OF SERVICE**

Pursuant to Administrative Order 14-2, DEFENDANTS' MOTION FOR LEAVE TO AMEND ANSWER TO ADD AN ADDITIONAL AFFIRMATIVE DEFENSE, COUNTERCLAIMS, AND THIRD-PARTY CLAIMS was electronically filed on the 10<sup>th</sup> day of December, 2018 and served through the Notice of Electronic Filing automatically generated by the Court's facilities to those parties listed on the Court's Master Service List and by depositing a true and correct copy of the same, enclosed in a sealed envelope upon which first class postage was fully prepaid, in the U.S. Mail at Las Vegas, Nevada, addressed as follows:

Dan M. Winder, Esq.  
Arnold Weinstock, Esq.  
LAW OFFICE OF DAN M. WINDER, P.C.  
3507 W. Charleston Blvd.  
Las Vegas, Nevada 89102  
*Attorneys for Plaintiff Charles Brown*

/s/ Natalie Vazquez  
An employee of MAIER GUTIERREZ & ASSOCIATES

## EXHIBIT 12

## EXHIBIT 12

1 ANS  
2 ADRIANA PEREYRA, Esq.  
3 NEVADA BAR NO. 12263  
4 INTEGRITY LAW FIRM  
5 819 South 6<sup>th</sup> Street  
6 Las Vegas, Nevada 89101  
7 Phone: 702.202.4449  
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9 E-mail: [adriana@integritylawnv.com](mailto:adriana@integritylawnv.com)

10 JOSEPH A. GUTIERREZ, Esq.  
11 Nevada Bar No. 9046  
12 MAIER GUTIERREZ & ASSOCIATES  
13 8816 Spanish Ridge Avenue  
14 Las Vegas, Nevada 89148  
15 Telephone: 702.629.7900  
16 Facsimile: 702.629.7925  
17 E-mail: [jag@mgalaw.com](mailto:jag@mgalaw.com)  
18 Attorneys for Defendants

11 DISTRICT COURT  
12 CLARK COUNTY, NEVADA

13 CHARLES BROWN, an individual,  
14  
15 Plaintiff,

16 vs.

17 LAVELLE P. ATKINSON, SHEILA  
18 ATKINSON; DOES I-V; and ROE  
19 CORPORATIONS I-V,

20 Defendants.

21 LAVELLE P. ATKINSON, SHEILA  
22 ATKINSON, individuals,

23 Counterclaimants,

24 vs.

25 CHARLES BROWN, an individual,

26 Counterdefendant.

Case No.: A-18-774764-C  
Dept. No.: XVIII

[PROPOSED] AMENDED ANSWER TO  
COMPLAINT, COUNTERCLAIMS, AND  
THIRD-PARTY CLAIMS



1 LAVELLE P. ATKINSON, SHEILA  
2 ATKINSON, individuals,

3 Third-Party Plaintiffs,

4 vs.

5 STACY BROWN, an individual; LAW OFFICE  
6 OF DAN M WINDER, P.C., a domestic  
professional corporation; DAN M. WINDER, an  
individual,

7 Third-Party Defendants.  
8

9 COME now Defendants, LAVELLE P. ATKINSON and SHEILA ATKINSON  
10 ("Defendants"), by and through their attorneys of record, Adriana Pereyra, Esq., of INTEGRITY LAW  
11 FIRM and Joseph A. Gutierrez, Esq., of MAIER GUTIERREZ & ASSOCIATES, and in answering the  
12 allegations of Plaintiff's Complaint on file herein allege and state as follows:

13 1. Defendants are without sufficient knowledge or information upon which to form a  
14 belief as to the truth of the allegations contained in said paragraph, and therefore generally and  
15 specifically denies the allegations contained therein.

16 2. Defendants admit this allegation.

17 3. Defendants are without sufficient knowledge or information upon which to form a  
18 belief as to the truth of the allegations contained in said paragraph, and therefore generally and  
19 specifically denies the allegations contained therein.

20 4. Defendants admit this allegation.

21 5. Answering this paragraph of the complaint, to the extent the allegations describe  
22 Plaintiff's legal conclusions, no response is required. To the extent a response is required, Defendants  
23 generally and specifically deny the allegations contained therein.

24 6. Defendants are without sufficient knowledge or information upon which to form a  
25 belief as to the truth of the allegations contained in said paragraph, and therefore generally and  
26 specifically denies the allegations contained therein.

27 7. Defendants are without sufficient knowledge or information upon which to form a  
28 belief as to the truth of the allegations contained in said paragraph, and therefore generally and

1 specifically denies the allegations contained therein.

2 8. Defendants are without sufficient knowledge or information upon which to form a  
3 belief as to the truth of the allegations contained in said paragraph, and therefore generally and  
4 specifically denies the allegations contained therein.

5 9. Defendants are without sufficient knowledge or information upon which to form a  
6 belief as to the truth of the allegations contained in said paragraph, and therefore generally and  
7 specifically denies the allegations contained therein.

8 10. Defendants are without sufficient knowledge or information upon which to form a  
9 belief as to the truth of the allegations contained in said paragraph, and therefore generally and  
10 specifically denies the allegations contained therein.

11 11. Defendants are without sufficient knowledge or information upon which to form a  
12 belief as to the truth of the allegations contained in said paragraph, and therefore generally and  
13 specifically denies the allegations contained therein.

14 12. Defendants are without sufficient knowledge or information upon which to form a  
15 belief as to the truth of the allegations contained in said paragraph, and therefore generally and  
16 specifically denies the allegations contained therein.

17 13. Defendants are without sufficient knowledge or information upon which to form a  
18 belief as to the truth of the allegations contained in said paragraph, and therefore generally and  
19 specifically denies the allegations contained therein.

20 14. Defendants are without sufficient knowledge or information upon which to form a  
21 belief as to the truth of the allegations contained in said paragraph, and therefore generally and  
22 specifically denies the allegations contained therein.

23 15. Defendants are without sufficient knowledge or information upon which to form a  
24 belief as to the truth of the allegations contained in said paragraph, and therefore generally and  
25 specifically denies the allegations contained therein.

26 16. Answering this paragraph of the complaint, to the extent the allegations describe  
27 Plaintiff's legal conclusions, no response is required. To the extent a response is required, Defendants  
28 generally and specifically deny the allegations contained therein.

1           17. Defendants are without sufficient knowledge or information upon which to form a  
2 belief as to the truth of the allegations contained in said paragraph, and therefore generally and  
3 specifically denies the allegations contained therein.

4           18. Defendants deny this allegation.

5           19. Defendants deny this allegation.

6           20. Defendants deny this allegation.

7           21. Defendants are without sufficient knowledge or information upon which to form a  
8 belief as to the truth of the allegations contained in said paragraph, and therefore generally and  
9 specifically denies the allegations contained therein.

10          22. Answering this paragraph of the complaint, to the extent the allegations describe  
11 Plaintiff's legal conclusions, no response is required. To the extent a response is required, Defendants  
12 generally and specifically deny the allegations contained therein.

13          23. Defendants deny this allegation.

14          24. Defendants deny this allegation.

15          25. Defendants deny this allegation.

16          26. Defendants are without sufficient knowledge or information upon which to form a  
17 belief as to the truth of the allegations contained in said paragraph, and therefore generally and  
18 specifically denies the allegations contained therein.

19          27. Answering this paragraph of the complaint, to the extent the allegations describe  
20 Plaintiff's legal conclusions, no response is required. To the extent a response is required, Defendants  
21 generally and specifically deny the allegations contained therein.

22          28. Defendants deny this allegation.

23          29. Defendants deny this allegation.

24          30. Defendants deny this allegation.

25          31. Defendants deny this allegation.

26          32. Defendants deny this allegation.

27          33. Defendants deny this allegation.

28          34. Defendants are without sufficient knowledge or information upon which to form a

1 belief as to the truth of the allegations contained in said paragraph, and therefore generally and  
2 specifically denies the allegations contained therein.

3 35. Answering this paragraph of the complaint, to the extent the allegations describe  
4 Plaintiff's legal conclusions, no response is required. To the extent a response is required, Defendants  
5 generally and specifically deny the allegations contained therein.

6 36. Defendants deny this allegation.

7 37. Defendants deny this allegation.

8 38. Defendants deny this allegation.

9 39. Defendants deny this allegation.

10 40. Defendants deny this allegation.

11 41. Defendants deny this allegation.

12 42. Defendants are without sufficient knowledge or information upon which to form a  
13 belief as to the truth of the allegations contained in said paragraph, and therefore generally and  
14 specifically denies the allegations contained therein.

15 43. Answering this paragraph of the complaint, to the extent the allegations describe  
16 Plaintiff's legal conclusions, no response is required. To the extent a response is required, Defendants  
17 generally and specifically deny the allegations contained therein.

18 44. Defendants deny this allegation.

19 45. Defendants deny this allegation.

20 46. Defendants deny this allegation.

21 47. Defendants deny this allegation.

22 48. Defendants deny this allegation.

23 49. Defendants deny this allegation.

24 50. Defendants deny this allegation.

#### 25 **AFFIRMATIVE DEFENSES**

26 1. Plaintiff's Complaint on file herein fails to state a claim against Defendants upon which  
27 relief can be granted.

28 2. Defendants allege that damages suffered by Plaintiff as alleged in his Complaint were

1 the result of acts and omissions of Plaintiff and not the result of acts or omissions of Defendants.

2 3. Plaintiff, by his own conduct, is estopped from making any claim against Defendants.

3 4. Plaintiff has waived, by his own conduct or otherwise, any claim against Defendants.

4 5. The claims set forth in Plaintiff's Complaint are barred against Defendants by the  
5 doctrine of laches.

6 6. Plaintiff comes to this Court with unclean hands having participated in the acts or  
7 omissions that allegedly caused damage to Plaintiff.

8 7. Plaintiff is barred by the statute of limitations.

9 8. The Complaint, and each of the purported causes of action contained therein against  
10 the Defendant, is barred by the doctrine of waiver.

11 9. The Complaint, and each of the purported causes of action contained therein against  
12 the Defendant, is barred as Plaintiff did not suffer any damages.

13 10. The Complaint, and each of the purported causes of action contained therein against  
14 the Defendant, is barred by the Statute of Frauds.

15 11. Defendant is entitled to an offset from any damages alleged by Plaintiff for money paid  
16 or expended on Plaintiff's behalf.

17 12. Plaintiff's claims for relief are barred, in whole or in part, by the doctrines of rescission,  
18 frustration of purpose, and/or unclean hands.

19 13. Plaintiff is not in possession and/or control of the documents and/or witnesses  
20 necessary to prove its alleged causes of action against Defendant.

21 14. The actions of Plaintiff were against public policy barring recovery against Defendant.

22 15. Plaintiff failed to satisfy all of the conditions precedent for bringing suit against  
23 Defendant.

24 16. Plaintiff has failed to allege sufficient facts and cannot carry the burden of proof  
25 imposed on it by law to recover attorney's fees incurred to bring this action.

26 17. Plaintiff materially breached the Agreement excusing any further performance by  
27 Defendant.

28 18. The complaint contains allegations that are so confusing, vague, ambiguous,

1 speculative, and incoherent that it fails to apprise Defendant of the exact misconduct it is alleged to  
2 have committed and therefore, fails to state a cause of action against Defendant upon which relief may  
3 be granted.

4 19. Plaintiff has engaged in fraudulent acts against the Defendants, including by  
5 attempting to purchase the Property without tendering any valid monetary consideration, and by  
6 attempting to submit a fabricated loan approval documents in support of his contention that he was  
7 willing and able to pay for the Property.

8 20. Pursuant to Rule 11 of NRCP, as amended, all possible affirmative defenses may not  
9 have been alleged herein insofar as sufficient facts are not available after reasonable inquiry upon the  
10 filing of the Complaint, and therefore, Defendants reserve the right to amend this Answer to allege  
11 additional affirmative defenses if subsequent investigation warrants. Additionally, some or all of the  
12 affirmative defenses may have been pleaded for the purposes of non-waiver.

13 WHEREFORE, Defendants pray for a judgment as follows:

14 1. That Plaintiff take nothing by virtue of his Complaint on file herein and that the same  
15 be dismissed with prejudice;

16 2. For an award of reasonable attorney's fees and costs of suit incurred as a result of the  
17 defense of this action; and

18 3. For such other and further relief this Court may deem just and proper.

19 **COUNTERCLAIM AND THIRD-PARTY CLAIM**

20 Defendants/Counterclaimants/Third-Party Plaintiffs LAVELLE P. ATKINSON and SHEILA  
21 ATKINSON ("the Atkinsons"), by and through their attorneys of record, Adriana Pereyra, Esq., of  
22 INTEGRITY LAW FIRM and Joseph A. Gutierrez, Esq., of MAIER GUTIERREZ & ASSOCIATES, hereby  
23 submit this counterclaim against Plaintiff/Counterdefendant CHARLES BROWN and Third-Party  
24 Complaint against Third-Party Defendants STACY BROWN, LAW OFFICE OF DAN M WINDER,  
25 P.C., and DAN M. WINDER, as follows:

26 **The Parties**

27 1. Defendants/Counterclaimants/Third-Party Plaintiffs LaVelle P. Atkinson and Sheila  
28 Atkinson are individuals and at all relevant times herein, have been residents of the County of Clark,

1 State of Nevada.

2 2. Plaintiff/Counterdefendant Charles Brown ("Brown") is an individual who at all  
3 relevant times herein, has been a resident of the County of Clark, State of Nevada.

4 3. Upon information and belief, third-Party Defendant Stacy Brown ("Stacy Brown") is  
5 an individual who at all relevant times herein, has been a resident of the County of Clark, State of  
6 Nevada.

7 4. Upon information and belief, third-party defendant Law Office of Dan M Winder, P.C.  
8 ("Law Office") is a domestic professional corporation formed and existing under the laws of the State  
9 of Nevada and authorized to do business in the County of Clark, State of Nevada.

10 5. Upon information and belief, third Party Defendant Dan M. Winder ("Winder") is an  
11 individual who at all relevant times herein, has been a resident of the County of Clark, State of Nevada.

12 8 6. Venue is proper in Clark County, Nevada.

13 9 7. The exercise of jurisdiction over this Court is proper pursuant to NRS 14.065.

14 General Allegations

15 10 8. The Atkinsons are the rightful owners of the real commercial property located at 2315  
16 North Decatur Blvd., Las Vegas, Nevada, 89108, with Assessor's Parcel Number 138-24-511-034  
17 (the Property).

18 11 9. On or around July 6, 2017, Charles Brown approached the Atkinsons at their  
19 residence with a prepared Purchase Agreement and offered to buy the Property - which was not  
20 listed for sale - for \$100,000.

21 12 10. The Atkinsons, who are elderly and were in their mid-70s in July 2017, were hesitant  
22 to sell the Property, but Charles Brown kept showing up at their residence and pressuring them to  
23 sign off on the Purchase Agreement.

24 13 11. Charles Brown executed the Purchase Agreement on or around July 6, 2017, and the  
25 Atkinsons executed the Purchase Agreement on or around July 20, 2017.

26 14 12. Upon information and belief, Charles Brown breached the Purchase Agreement by  
27 failing to provide the monetary consideration necessary to purchase the Property.

28 15 13. Upon information and belief, Charles Brown never deposited any funds into an

1 escrow account for the Property.

2 16 14. Upon information and belief, Charles Brown never arranged for any escrow company  
3 to open up escrow on the Property.

4 17 15. Upon information and belief, on or around July 31, 2017, Charles Brown, in  
5 conjunction with his wife, Stacy Brown, fraudulently created a fabricated "pre-approval letter"  
6 indicating that Kelly Mortgage and Realty had approved Stacy Brown for a loan in the amount of  
7 \$200,000 in order to purchase the Property. The Atkinsons first learned of this activity in November  
8 of 2018 after conducting due diligence to Kelly Mortgage and Realty.

9 18 16. Upon information and belief, on or around August 7, 2017, Charles Brown, in  
10 conjunction with Law Office of Dan M Winder P.C. and Dan Winder, submitted a check to Keith  
11 Harper of Valuation Consultants for an "appraisal" of the Property during the time Charles Brown  
12 was attempting to purchase the Property from the Atkinsons.

13 19 17. Upon information and belief, the appraisal that Charles Brown, the Law Office of  
14 Dan M Winder P.C. and Dan Winder obtained regarding the Property was based on an inflated  
15 \$250,000 purchase price that Charles Brown, the Law Office of Dan M Winder, and Dan Winder  
16 relayed to Keith Harper of Valuation Consultants on or around August 7, 2017 – even though the  
17 agreed-upon purchase price was only \$100,000.

18 20 18. Upon information and belief, Charles Brown, the Law Office of Dan M Winder P.C.  
19 and Dan Winder obtained the appraisal on the Property by providing a fraudulent letter of intent  
20 allegedly from Plaintiff's former employer which asserted inflated rental rates.

21 21 19. The Atkinsons first learned of Charles Brown, Law Office of Dan M Winder P.C. and  
22 Dan Winder paying for an appraisal on the Property on or around November 29, 2018.

23 22 20. Upon information and belief, on or around August 28, 2017, Charles Brown, in  
24 conjunction with his wife, Stacy Brown, fraudulently created proof of financing documents in the  
25 form of a Conditional Loan Quote and a Good Faith Estimate (GFE). The Atkinsons first learned of  
26 this activity in early December 2018 after conducting due diligence.

27 23 21. Charles Brown filed a lawsuit against the Atkinsons after failing to perform his duties  
28 under the Purchase Agreement and long after the closing date had passed, and without signing an



1 amendment to extend the period, as required by law.

2 28 22. Upon information and belief, Charles Brown, Law Office of Dan M Winder P.C. and  
3 Dan Winder wrongfully initiated litigation against the Atkinsons and wrongfully abused the litigation  
4 process by producing numerous fabricated and fraudulent documents during discovery. The  
5 litigation process was also abused by the failure to disclose the appraisal that Charles Brown, Dan  
6 M Winder P.C. and Dan Winder paid for regarding the Property.

7 23. On or around June 22, 2018, Charles Brown, Law Office of Dan M Winder P.C. and  
8 Dan Winder wrongfully clouded title to the Property by filing an improper "Amended Notice of Lis  
9 Pendens" against the Property.

10 31 24. As a result of Charles Brown, Stacy Brown, Law Office of Dan M Winder P.C. and  
11 Dan Winder's actions, the Atkinsons were forced to engage the services of an attorney, and have  
12 incurred attorneys' fees and costs in defending the improper and meritless action brought by Charles  
13 Brown, Law Office of Dan M Winder P.C., and Dan Winder.

#### 14 FIRST COUNTERCLAIM

15 (Negligent Misrepresentation – Against Charles Brown)

16 32 25. The Atkinsons repeat, reallege, and incorporate by reference the foregoing paragraphs  
17 as if fully set forth herein.

18 33 26. Charles Brown failed to exercise reasonable care in communicating information to  
19 the Atkinsons.

20 34 27. In the course of a business transaction in which Charles Brown had a pecuniary  
21 interest, Charles Brown falsely represented to the Atkinsons that he would purchase the Atkinsons'  
22 Property for \$100,000 cash.

23 35 28. The Atkinsons justifiably relied on Charles Browns' representation.

24 36 29. The Atkinsons would not have executed the Purchase Agreement had they known  
25 that Charles Brown never intended on actually paying the Atkinsons any consideration for the  
26 Property.

27 37 30. The Atkinsons would not have executed the Purchase Agreement had they known  
28 that Stacy Brown would be involved in placing her name on a fabricated loan approval document

1 claiming that she approved for a loan related to purchase of the Property, nor would they have  
2 executed the Purchase Agreement had they known Stacy Brown would be involved in applying for  
3 other loans to purchase the Property. Charles Brown represented to the Atkinsons that he would be  
4 paying cash for the Property, and neither Charles Brown nor Stacy Brown referenced any loan  
5 applications.

6 36 31. The Atkinsons never even met Stacy Brown and she was not a party to the Purchase  
7 Agreement.

8 39 32. The Atkinsons would not have executed the Purchase Agreement had they known  
9 that Law Office and Winder would be paying for an appraisal of the Property based on an inflated  
10 purchase price of \$250,000 and based on inflated rental rates that upon information and belief were  
11 provided by Brown, Law Office, and Winder.

12 40 33. As a direct and proximate result of the aforementioned misrepresentations of Charles  
13 Brown, the Atkinsons have been damaged in an amount in excess of \$15,000.00.

14 41 34. As a direct and proximate result of the aforementioned actions and/or omissions of  
15 Charles Brown, the Atkinsons have been required to engage the services of an attorney, incurring  
16 attorneys' fees and costs to bring this action, and the Atkinsons are therefore entitled to reasonable  
17 attorneys' fees and costs incurred in this action.

## 18 SECOND COUNTERCLAIM

### 19 (Fraudulent Misrepresentation – Against Charles Brown)

20 42 35. The Atkinsons repeat, reallege, and incorporate by reference the foregoing paragraphs  
21 as if fully set forth herein.

22 43 36. In the course of a business transaction in which Charles Brown had a pecuniary  
23 interest, Charles Brown falsely represented to the Atkinsons that he would purchase the Atkinsons'  
24 Property for \$100,000 cash.

25 44 37. At the time the representation was made, on or around July 6, 2017, Charles Brown  
26 knew that the information he provided to the Atkinsons was false, or that he had an insufficient basis  
27 for providing such information.

28 45 38. Charles Brown intended to induce the Atkinsons to act upon his misrepresentation.

1 46 39. The Atkinsons justifiably relied upon Charles Browns' misrepresentation, which  
2 resulted in damages.

3 47 40. As a direct and proximate result of the aforementioned misrepresentations of Charles  
4 Brown, the Atkinsons have been damaged in an amount in excess of \$15,000.00.

5 48 41. As a direct and proximate result of the aforementioned actions and/or omissions of  
6 Charles Brown, the Atkinsons have been required to engage the services of an attorney, incurring  
7 attorneys' fees and costs to bring this action, and the Atkinsons are therefore entitled to reasonable  
8 attorneys' fees and costs incurred in this action.

9 **THIRD COUNTERCLAIM** P 7

10 (Violation of NRS 41.1395, Exploitation of Older or Vulnerable Persons Resulting in Injury  
11 or Loss – Against Charles Brown)

12 49 42. The Atkinsons repeat, reallege, and incorporate by reference the foregoing paragraphs  
13 as if fully set forth herein.

14 50 43. In July of 2016, both of the Atkinsons were over 70 years old.

15 51 44. In July of 2017, Charles Brown gained the trust and confidence of the Atkinsons by  
16 continuing to visit their residence and discuss his desire to purchase the Atkinsons' Property.

17 52 45. Charles Brown used the trust and confidence of the Atkinsons in order to convert the  
18 Atkinsons' Property to himself – without actually paying any consideration for that Property.

19 53 46. Charles Brown attempted to have the Atkinsons sign a "Promissory Note" with Stacy  
20 Brown as the "Borrower" and the Atkinsons as the "Lenders", stating that the Atkinsons would  
21 finance the \$100,000 for the property and with very vague terms as to how it would be repaid.

22 55 47. Charles Brown knew or had reason to know that the Atkinsons were vulnerable  
23 people who would fall victim to Brown's scheme of defrauding them out of their Property.

24 56 48. As a result of the wrongful conduct of Charles Brown, the Atkinsons have incurred  
25 damages, as they have been forced to defend themselves in a meritless lawsuit initiated by Charles  
26 Brown, and their Property's title is now clouded through a lis pendens.

27 57 49. Upon information and belief, Charles Brown acted with recklessness, oppression,  
28 fraud or malice against the vulnerable Atkinsons, thus entitling the Atkinsons to an award of

1 attorneys' fees and costs.

2 58 50. As a result, the Atkinsons have incurred compensatory damages, which are  
3 recoverable for their fear, anxiety, and mental and emotional distress.

4 59 51. The Atkinsons have incurred legal fees in connection herewith and are entitled to a  
5 recovery of such legal expenses and fees.

6 **FOURTH COUNTERCLAIM** OMITTED

7 (Abuse of Process – Against Charles Brown, Law Office of Dan M Winder P.C., and Dan  
8 Winder)

9 52. The Atkinsons repeat, reallege, and incorporate by reference the foregoing paragraphs  
10 as if fully set forth herein.

11 53. Charles Brown, Law Office of Dan M Winder P.C. and Dan Winder had an ulterior  
12 purpose other than resolving a legal dispute when they filed this action. Brown, Law Office, and  
13 Winder had an underlying motive of defrauding the Atkinsons out of the Property – without ever  
14 actually paying for the Property.

15 54. Charles Brown, Law Office, and Winder misused the legal system in the following  
16 manner: 1) improperly filing a Complaint against the Atkinsons and clouding title to their Property  
17 while knowing that Brown had never performed on the Purchase Agreement; 2) improperly  
18 disclosing a fraudulent loan approval letter as evidence in support of their claims in this litigation;  
19 3) improperly failing to disclose Law Office and Winder's involvement in the underlying facts of  
20 this litigation; and 4) improperly failing to disclose the check that Law Office and Winder made out  
21 to the appraiser that is listed in Brown's disclosures in this litigation, and failing to disclose the  
22 appraisal itself; 5) improperly failing to disclose the circumstances surrounding any appraisal results;  
23 and 6) improperly failing to produce other details of Law Firm and Winder's involvement in the  
24 underlying facts of this matter, including other payment(s) made to other institution(s).

25 55. Brown, Law Office, and Winder's willful acts in use of process were not proper in  
26 the regular conduct of the proceeding, as it is not proper to produce fraudulent documents in the  
27 course of discovery, nor to fail to disclose documents that are in your possession or readily available  
28 to you through a reasonable search, nor to fail an attorney to disclose pertinent involvement in the

1 underlying facts of a matter.

2 56. Upon information and belief, Brown, Law Office, and Winder have a pattern and  
3 practice of abusing the legal process by initiating fraudulent litigation against elderly victims in an  
4 effort to defraud these victims of their lawfully owned property.

5 57. As a result, the Atkinsons have incurred compensatory damages, which are  
6 recoverable for their fear, anxiety, and mental and emotional distress.

7 58. The Atkinsons have incurred legal fees in connection herewith and are entitled to a  
8 recovery of such legal expenses and fees.

9 **FIFTH COUNTERCLAIM** Fourth claim Pg 8

10 (Civil Conspiracy – Against Charles Brown, Stacy Brown, Law Office of Dan M Winder  
11 P.C., and Dan Winder)

12 60 59. The Atkinsons repeat, reallege, and incorporate by reference the foregoing paragraphs  
13 as if fully set forth herein.

14 61 60. Charles Brown, Stacy Brown, Law office, and Winder, and each of them, worked  
15 together with the intent to accomplish the harmful objective of defrauding the Atkinsons out of the  
16 Property they own, for the purpose of causing harm to the Atkinsons.

17 62 61. As a direct and proximate result of the aforementioned actions and/or omissions of  
18 Charles Stacy Brown, Law Office, and Winder, the Atkinsons have been damaged in an amount in  
19 excess of \$15,000.00.

20 63 62. As a direct and proximate result of the aforementioned actions and/or omissions of  
21 Charles Brown, Stacy Brown, Law Office, and Winder, the Atkinsons have been required to engage  
22 the services of an attorney, incurring attorneys' fees and costs to bring this action, and the Atkinsons  
23 are therefore entitled to reasonable attorneys' fees and costs incurred in this action.

24 **SIXTH COUNTERCLAIM** Fifth claim Pg 9

25 (Concert of Action – Against Charles Brown, Stacy Brown, Law Office of Dan M Winder  
26 P.C., and Dan Winder)

27 64 63. The Atkinsons repeat, reallege, and incorporate by reference the foregoing paragraphs  
28 as if fully set forth herein.

64. As alleged herein, Charles Brown, Stacy Brown, Law Office, and Winder acted in concert with one another pursuant to the common design of transferring the Property from the Atkinsons to Charles Brown without any monetary consideration going to the Atkinsons.

65. As a direct and proximate result of the aforementioned actions and/or omissions of Charles Brown, Stacy Brown, Law Office, and Winder, the Atkinsons have been damaged in an amount in excess of \$15,000.00.

66. As a direct and proximate result of the aforementioned actions and/or omissions of Charles Brown, Stacy Brown, Law Office, and Winder, the Atkinsons have been required to engage the services of an attorney, incurring attorneys' fees and costs to bring this action, and the Atkinsons are therefore entitled to reasonable attorneys' fees and costs incurred in this action.

**SEVENTH COUNTERCLAIM**

(Aiding and Abetting Fraudulent Misrepresentation or in the alternative Aiding and Abetting Negligent Misrepresentation – Against Stacy Brown, Law Office of Dan M Winder P.C., and Dan Winder)

67. The Atkinsons repeat, reallege, and incorporate by reference the foregoing paragraphs as if fully set forth herein.

68. Upon information and belief, Stacy Brown, Law Office, and Winder knew that Charles Brown's conduct constituted a breach of duty to the Atkinsons.

69. Charles Brown defrauded the Atkinsons by representing to them that he would purchase the Property for \$100,000, knowing that such representation was false at the time it was made, and making the representation with the intent to induce the Atkinsons to relinquish their ownership interest in the Property.

70. Upon information and belief, Stacy Brown assisted or encouraged Charles Brown's conduct by: allowing her name to be listed on a fraudulent loan application document related to the Property; applying for other loan(s) for the Property while knowing that neither she nor Charles Brown would actually be paying for the Property in cash pursuant to the Purchase Agreement.

71. Upon information and belief, Law Office and Winder assisted or encouraged Charles Brown's conduct by: helping Charles Brown pay for a fraudulent appraisal of the Property based on

1 an inflated purchase price and inflated rental rates; helping Charles Brown pay for fraudulent loan  
2 applications to institutions; and helping Charles Brown initiate a fraudulent litigation against the  
3 Atkinsons in order to wrongfully effectuate the transfer of the Atkinsons' Property to Charles Brown  
4 without Charles Brown paying any consideration for the Property.

5 72. As a direct and proximate result of the aforementioned actions and/or omissions of  
6 Stacy Brown, Law Office, and Winder, the Atkinsons have been damaged in an amount in excess of  
7 \$15,000.00.

8 74 73. As a direct and proximate result of the aforementioned actions and/or omissions of  
9 Stacy Brown, Law Office, and Winder, the Atkinsons have been required to engage the services of  
10 an attorney; incurring attorneys' fees and costs to bring this action, and the Atkinsons are therefore  
11 entitled to reasonable attorneys' fees and costs incurred in this action.

12 **PRAYER FOR RELIEF**

13 WHEREFORE, Defendant/Counterclaimants/ Third-Party Plaintiffs LaVelle P. Atkinson  
14 and Sheila Atkinson hereby pray for judgment against Plaintiff/Counterdefendant Charles Brown  
15 and Third-Party Defendants Stacy Brown, Law Office of Dan M Winder, P.C., and Dan M. Winder  
16 as follows:

- 17 1. For a judgment in favor of the Atkinsons and against Plaintiff/Counterdefendant  
18 Charles Brown and Third-Party Defendants Stacy Brown, Law Office of Dan M  
19 Winder, P.C., and Dan M. Winder on the counterclaim and causes of action asserted  
20 herein;
- 21 2. For an award of general and special damages in an amount in excess of \$15,000.00  
22 to be proven at trial;
- 23 3. For an award of compensatory and/or consequential damages in an amount in excess  
24 of \$15,000.00, to be proven at trial;
- 25 4. For punitive and/or exemplary damages pursuant to NRS 42.005 in an amount  
26 appropriate to punish and/or set an example of Plaintiff/Counterdefendant Charles  
27 Brown and Third-Party Defendants Stacy Brown, Law Office of Dan M Winder, P.C.,  
28 and Dan M. Winder;

- 1           5.     For injunctive relief ordering Charles Brown and Law Office of Dan M Winder to  
2                 withdraw and/or expunge the lis pendens inappropriately filed against the Property;  
3           6.     For an award of reasonable attorneys' fees and costs incurred in this action; and  
4           7.     For such other relief as the court may deem proper.

5     DATED this \_\_\_\_ day of December, 2018.

6                                 Respectfully submitted,  
7                                 INTEGRITY LAW FIRM

8  
9                                 /s/ Adriana Pereyra  
10                                 ADRIANA PEREYRA, ESQ.  
11                                 Nevada Bar No. 12263  
12                                 819 South 6th Street  
13                                 Las Vegas, Nevada 89101

14                                 -and-

15                                 JOSEPH A. GUTIERREZ, ESQ.  
16                                 Nevada Bar No. 9046  
17                                 MAIER GUTIERREZ & ASSOCIATES  
18                                 8816 Spanish Ridge Avenue  
19                                 Las Vegas, Nevada 89148  
20                                 Attorneys for Defendants LaVelle P. Atkinson  
21                                 and Sheila Atkinson  
22  
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**CERTIFICATE OF SERVICE**

Pursuant to Administrative Order 14-2, **AMENDED ANSWER TO COMPLAINT** was electronically filed on the \_\_\_\_ day of December, 2018 and served through the Notice of Electronic Filing automatically generated by the Court's facilities to those parties listed on the Court's Master Service List and by depositing a true and correct copy of the same, enclosed in a sealed envelope upon which first class postage was fully prepaid, in the U.S. Mail at Las Vegas, Nevada, addressed as follows:

Dan M. Winder, Esq.  
Arnold Weinstock, Esq.  
LAW OFFICE OF DAN M. WINDER, P.C.  
3507 W. Charleston Blvd.  
Las Vegas, Nevada 89102  
*Attorneys for Plaintiff Charles Brown*

/s/ Charity Johnson  
An employee of MAIER GUTIERREZ & ASSOCIATES

## EXHIBIT 3

Complaint in this matter



CASE NO: A-19-804902-G  
Department 26

**COMJD**

ADRIANA PEREYRA, ESQ.  
NEVADA BAR NO. 12263  
INTEGRITY LAW FIRM  
819 South 6<sup>th</sup> Street  
Las Vegas, Nevada 89101  
Phone: 702.202.4449  
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JOSEPH A. GUTIERREZ, ESQ.  
Nevada Bar No. 9046  
DANIELLE J. BARRAZA, ESQ.  
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[djb@mgalaw.com](mailto:djb@mgalaw.com)

*Attorneys for Plaintiffs*

**DISTRICT COURT  
CLARK COUNTY, NEVADA**

LAVELLE P. ATKINSON, SHEILA  
ATKINSON, individuals,

*Plaintiffs,*

*vs.*

CHARLES BROWN, an individual; STACY  
BROWN, an individual; LAW OFFICE OF DAN  
M WINDER, P.C., a domestic professional  
corporation; DAN M. WINDER, an individual;  
DOES I through X; and ROE CORPORATIONS I  
through X, inclusive.

*Defendants.*

Case No.:  
Dept. No.:

**COMPLAINT**

**DEMAND FOR JURY TRIAL**

**Arbitration Exemption:**

1. Damages in Excess of \$50,000
2. Action Concerning Real Property

Plaintiffs, LAVELLE P. ATKINSON and SHEILA ATKINSON ("Defendants"), by and  
through their attorneys of record, INTEGRITY LAW FIRM and MAIER GUTIERREZ & ASSOCIATES, hereby  
demand a trial by jury and complain and allege against defendants as follows:

///

**PARTIES, JURISDICTION, AND VENUE**

1. Plaintiffs LaVelle P. Atkinson and Sheila Atkinson are individuals and at all relevant times herein, have been residents of the County of Clark, State of Nevada.

2. Defendant Charles Brown ("Brown") is an individual who at all relevant times herein, has been a resident of the County of Clark, State of Nevada.

3. Upon information and belief, defendant Stacy Brown ("Stacy Brown") is an individual who at all relevant times herein, has been a resident of the County of Clark, State of Nevada.

4. Upon information and belief, defendant Law Office of Dan M Winder, P.C. ("Law Office") is a domestic professional corporation formed and existing under the laws of the State of Nevada and authorized to do business in the County of Clark, State of Nevada.

5. Upon information and belief, defendant Dan M. Winder ("Winder") is an individual who at all relevant times herein, has been a resident of the County of Clark, State of Nevada.

6. Upon information and belief, each of the defendants sued herein as defendants DOES I-X, inclusive, are responsible in some manner for the events and happenings herein referred to, which thereby proximately caused the injuries and damages to Plaintiffs as alleged herein; that when the true names and capacities of such defendants become known, Plaintiffs will ask leave of this Court to amend this complaint to insert the true names, identities and capacities together with proper charges and allegations.

7. Upon information and belief, each of the defendants sued herein as ROE CORPORATIONS I-X, inclusive, are responsible in same manner for the events and happenings herein referred to, which thereby proximately caused the injuries and damages to Plaintiffs as alleged herein; that when the true names and capacities of such defendants become known, Plaintiffs will ask leave of this Court to amend this complaint to insert the true names, identities and capacities together with proper charges and allegations.

8. Venue is proper in Clark County, Nevada.

9. The exercise of jurisdiction over this Court is proper pursuant to NRS 14.065.

**GENERAL ALLEGATIONS**

10. The Atkinsons are the rightful owners of the real commercial property located at 2315

1 North Decatur Blvd., Las Vegas, Nevada, 89108, with Assessor's Parcel Number 138-24-511-034  
2 (the "Property").

3 9 11. On or around July 6, 2017, Charles Brown approached the Atkinsons at their residence  
4 with a prepared Purchase Agreement and offered to buy the Property – which was not listed for sale  
5 – for \$100,000.

6 10 12. The Atkinsons, who are elderly and were in their mid-70s in July 2017, were hesitant  
7 to sell the Property, but Charles Brown kept showing up at their residence and pressuring them to sign  
8 off on the Purchase Agreement.

9 11 13. Charles Brown executed the Purchase Agreement on or around July 6, 2017, and the  
10 Atkinsons executed the Purchase Agreement on or around July 20, 2017.

11 12 14. Upon information and belief, Charles Brown breached the Purchase Agreement by  
12 failing to provide the monetary consideration necessary to purchase the Property.

13 13 15. Upon information and belief, Charles Brown never deposited any funds into an escrow  
14 account for the Property.

15 14 16. Upon information and belief, Charles Brown never arranged for any escrow company  
16 to open escrow on the Property.

17 15 17. Upon information and belief, on or around July 31, 2017, Charles Brown, in  
18 conjunction with his wife, Stacy Brown, **fraudulently fabricated** "pre-approval letter" indicating that  
19 Kelly Mortgage and Realty had approved Stacy Brown for a loan in the amount of \$200,000 in order  
20 to purchase the Property. The Atkinsons first learned of this activity in November of 2018 after  
21 conducting due diligence to Kelly Mortgage and Realty.

22 16 18. Upon information and belief, on or around August 7, 2017, Charles Brown, in  
23 conjunction with Law Office of Dan M Winder P.C. and Dan Winder, submitted a check to Keith  
24 Harper of Valuation Consultants for an "appraisal" of the Property during the time Charles Brown  
25 was attempting to purchase the Property from the Atkinsons.

26 17 19. Upon information and belief, the "appraisal" that Charles Brown, the Law Office of  
27 Dan M Winder P.C. and Dan Winder obtained regarding the Property was based on an inflated  
28 \$250,000 purchase price that Charles Brown, the Law Office of Dan M Winder, and Dan Winder

1 relayed to Keith Harper of Valuation Consultants on or around August 7, 2017 – even though the  
2 agreed-upon purchase price was only \$100,000.

3 18 20. Upon information and belief, Charles Brown, the Law Office of Dan M Winder P.C.  
4 and Dan Winder obtained the “appraisal” on the Property by providing a fraudulent letter of intent  
5 allegedly from Plaintiff’s former employer which asserted that they would be renting the Property  
6 upon Defendant’s purchase at an inflated rental rate.

7 19 21. The Atkinsons first learned of Charles Brown, Law Office of Dan M Winder P.C. and  
8 Dan Winder paying for an “appraisal” on the Property on or around November 29, 2018.

9 20 22. Upon information and belief, on or around August 28, 2017, Charles Brown, in  
10 conjunction with his wife, Stacy Brown, and he Law Office of Dan M Winder P.C. and Dan Winder,  
11 fraudulently obtained expired and unsigned (and therefore ineffective) “proof of financing”  
12 documents in the form of a Conditional Loan Quote and Good Faith Estimate (GFE) from Financial  
13 Solutions & Real Estate Network Group. The Atkinsons first learned of this activity in early  
14 December 2018 after conducting due diligence.

15 23. Upon information and belief, on or around August 21, 2017, the Law Office of Dan M  
16 Winder P.C. and Dan Winder personally paid Financial Solutions & Real Estate Network Group for  
17 a fraudulent “proof of financing” for Mr. Brown, and after receiving a Conditional Loan Quote and a  
18 Good Faith Estimate (GFE) from Financial Solutions & Real Estate Network Group, Mr. Brown  
19 ceased all communications with Financial Solutions & Real Estate Network Group.

20 24. The Conditional Loan Quote and Good Faith Estimate (GFE) that Mr. Brown received,  
21 and that the Law Office of Dan M Winder P.C. and Dan Winder paid for, has no legal significance as  
22 it is unsigned and expired.

23 21 25. In May 2018, Charles Brown filed a meritless lawsuit against the Atkinsons after  
24 failing to perform his duties under the Purchase Agreement and long after the closing date had expired,  
25 and without signing an amendment to extend the period, as required by law.

26 26. Upon information and belief, Charles Brown trespassed and caused destruction to the  
27 Property on or around June 5, 2018 by setting the Property on fire, and then continued to demand that  
28 the Atkinsons “sell” Brown the Property in its destructed condition for a much lower price.

1 27. On or around July 21, 2018, Charles Brown trespassed onto the Property and converted  
2 various personal items from the Property, including but not limited to outdoor chairs, a workout bench,  
3 planter pots, and a trash can.

4 22 28. Upon information and belief, Charles Brown, Law Office of Dan M Winder P.C. and  
5 Dan Winder wrongfully initiated litigation against the Atkinsons and wrongfully abused the litigation  
6 process by producing numerous fabricated and fraudulent documents during discovery. The litigation  
7 process was also abused by the failure to disclose the "appraisal" that Charles Brown, Dan M Winder  
8 P.C. and Dan Winder paid for regarding the Property.

9 29. Charles Brown, Law Office of Dan M Winder P.C. and Dan Winder unsuccessfully  
10 attempted to pass off the Conditional Loan Quote and Good Faith Estimate (GFE) that Mr. Brown  
11 received from Financial Solutions & Real Estate Network Group as legitimate proof of financing  
12 during the litigation.

13 30. In February 2019, Findings of Fact and Conclusions of Law were entered with respect  
14 to Charles Brown's meritless lawsuit against the Atkinsons, which granted summary judgment in  
15 favor of the Atkinsons and dismissed all of Mr. Brown's claims.

16 24 31. As a result of Charles Brown, Stacy Brown, Law Office of Dan M Winder P.C. and  
17 Dan Winder's actions, the Atkinsons were forced to engage the services of an attorney, and have  
18 incurred significant damages and attorneys' fees.

19 **FIRST CLAIM FOR RELIEF**

20 **(Negligent Misrepresentation – Against Charles Brown)**

21 25 32. The Atkinsons repeat, reallege, and incorporate by reference the foregoing paragraphs  
22 as if fully set forth herein.

23 24 33. Charles Brown failed to exercise reasonable care in communicating information to the  
24 Atkinsons.

25 27 34. In the course of a business transaction in which Charles Brown had a pecuniary  
26 interest, Charles Brown falsely represented to the Atkinsons that he would purchase the Atkinsons'  
27 Property for \$100,000 cash.

28 26 35. The Atkinsons justifiably relied on Charles Browns' representation.

1 36. The Atkinsons would not have executed the Purchase Agreement had they known that  
2 Charles Brown never intended on actually paying the Atkinsons any consideration for the Property.

3 37. The Atkinsons would not have executed the Purchase Agreement had they known that  
4 Stacy Brown would be involved in placing her name on a fabricated loan approval document claiming  
5 that she approved for a loan related to purchase of the Property, nor would they have executed the  
6 Purchase Agreement had they known Stacy Brown would be involved in applying for other loans to  
7 purchase the Property. Charles Brown represented to the Atkinsons that he would be paying cash for  
8 the Property, and neither Charles Brown nor Stacy Brown referenced any loan applications.

9 38. The Atkinsons never even met Stacy Brown and she was not a party to the Purchase  
10 Agreement.

11 39. The Atkinsons would not have executed the Purchase Agreement had they known that  
12 Law Office and Winder would be paying for an appraisal of the Property based on an inflated purchase  
13 price of \$250,000 and based on inflated rental rates that upon information and belief were provided  
14 by Brown, Law Office, and Winder.

15 40. As a direct and proximate result of the aforementioned misrepresentations of Charles  
16 Brown, the Atkinsons have been damaged in an amount in excess of \$15,000.00.

17 41. As a direct and proximate result of the aforementioned actions and/or omissions of  
18 Charles Brown, the Atkinsons have been required to engage the services of an attorney, incurring  
19 attorneys' fees and costs to bring this action, and the Atkinsons are therefore entitled to reasonable  
20 attorneys' fees and costs incurred in this action.

21 **SECOND CLAIM FOR RELIEF**

22 **(Fraudulent Misrepresentation – Against Charles Brown)**

23 42. The Atkinsons repeat, reallege, and incorporate by reference the foregoing paragraphs  
24 as if fully set forth herein.

25 43. In the course of a business transaction in which Charles Brown had a pecuniary  
26 interest, Charles Brown falsely represented to the Atkinsons that he would purchase the Atkinsons'  
27 Property for \$100,000 cash.

28 44. At the time the representation was made, on or around July 6, 2017, Charles Brown



1 knew that the information he provided to the Atkinsons was false, or that he had an insufficient basis  
2 for providing such information.

3 45. Charles Brown intended to induce the Atkinsons to act upon his misrepresentation.

4 46. The Atkinsons justifiably relied upon Charles Browns' misrepresentation, which  
5 resulted in damages.

6 47. As a direct and proximate result of the aforementioned misrepresentations of Charles  
7 Brown, the Atkinsons have been damaged in an amount in excess of \$15,000.00.

8 48. As a direct and proximate result of the aforementioned actions and/or omissions of  
9 Charles Brown, the Atkinsons have been required to engage the services of an attorney, incurring  
10 attorneys' fees and costs to bring this action, and the Atkinsons are therefore entitled to reasonable  
11 attorneys' fees and costs incurred in this action.

12 **THIRD CLAIM FOR RELIEF** P. 12

13 (Violation of NRS 41.1395, Exploitation of Older or Vulnerable Persons Resulting in Injury or  
14 Loss - Against Charles Brown)

15 49. The Atkinsons repeat, reallege, and incorporate by reference the foregoing paragraphs  
16 as if fully set forth herein.

17 50. Throughout 2017, both of the Atkinsons were over 70 years old.

18 51. In July of 2017, Charles Brown gained the trust and confidence of the Atkinsons by  
19 continuing to visit their residence and discuss his desire to purchase the Atkinsons' Property.

20 52. Charles Brown used the trust and confidence of the Atkinsons in order to convert the  
21 Atkinsons' Property to himself - without actually paying any consideration for that Property.

22 53. Charles Brown attempted to have the Atkinsons sign a "Promissory Note" with Stacy  
23 Brown as the "Borrower" and the Atkinsons as the "Lenders", stating that the Atkinsons would finance  
24 the \$100,000 for the property and with very vague terms as to how it would be repaid.

25 54. Upon information and belief, on or around June of 2018, Charles Brown trespassed  
26 and caused destruction to the Property by setting the Property on fire, and then continued to demand  
27 that the Atkinsons "sell" Brown the Property in its destructed condition for a much lower price.

28 55. Charles Brown knew or had reason to know that the Atkinsons were vulnerable people

1 who would fall victim to Brown's scheme of defrauding them out of their Property.

2 56. As a result of the wrongful conduct of Charles Brown, the Atkinsons have incurred the  
3 infliction of pain, injury, and mental anguish, and are therefore entitled to damages.

4 57. Upon information and belief, Charles Brown acted with recklessness, oppression, fraud  
5 or malice against the vulnerable Atkinsons, thus entitling the Atkinsons to an award of attorneys' fees  
6 and costs.

7 58. As a result, the Atkinsons have incurred compensatory damages, which are recoverable  
8 for their fear, anxiety, and mental and emotional distress.

9 59. The Atkinsons have incurred legal fees in connection herewith and are entitled to a  
10 recovery of such legal expenses and fees.

11 FOURTH CLAIM FOR RELIEF

FIFTH CLAIM P.N.

12 (Civil Conspiracy – Against Charles Brown, Stacy Brown, Law Office of Dan M Winder P.C.,  
13 and Dan Winder)

14 60. The Atkinsons repeat, reallege, and incorporate by reference the foregoing paragraphs  
15 as if fully set forth herein.

16 61. Charles Brown, Stacy Brown, Law Office, and Winder, and each of them, worked  
17 together with the intent to accomplish the harmful objective of defrauding the Atkinsons out of the  
18 Property they own, for the purpose of causing harm to the Atkinsons.

19 62. As a direct and proximate result of the aforementioned actions and/or omissions of  
20 Charles Stacy Brown, Law Office, and Winder, the Atkinsons have been damaged in an amount in  
21 excess of \$15,000.00.

22 63. As a direct and proximate result of the aforementioned actions and/or omissions of  
23 Charles Brown, Stacy Brown, Law Office, and Winder, the Atkinsons have been required to engage  
24 the services of an attorney, incurring attorneys' fees and costs to bring this action, and the Atkinsons  
25 are therefore entitled to reasonable attorneys' fees and costs incurred in this action.

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28 ///

**FIFTH CLAIM FOR RELIEF**

*Sixth claim P 14*

**(Concert of Action – Against Charles Brown, Stacy Brown, Law Office of Dan M Winder P.C., and Dan Winder)**

64. The Atkinsons repeat, reallege, and incorporate by reference the foregoing paragraphs as if fully set forth herein.

65. As alleged herein, Charles Brown, Stacy Brown, Law Office, and Winder acted in concert with one another pursuant to the common design of transferring the Property from the Atkinsons to Charles Brown without any monetary consideration going to the Atkinsons.

66. As a direct and proximate result of the aforementioned actions and/or omissions of Charles Brown, Stacy Brown, Law Office, and Winder, the Atkinsons have been damaged in an amount in excess of \$15,000.00.

67. As a direct and proximate result of the aforementioned actions and/or omissions of Charles Brown, Stacy Brown, Law Office, and Winder, the Atkinsons have been required to engage the services of an attorney, incurring attorneys' fees and costs to bring this action, and the Atkinsons are therefore entitled to reasonable attorneys' fees and costs incurred in this action.

**SIXTH CLAIM FOR RELIEF**

*Seventh claim P 15*

**(Aiding and Abetting Fraudulent Misrepresentation or in the alternative Aiding and Abetting Negligent Misrepresentation – Against Stacy Brown, Law Office of Dan M Winder P.C., and Dan Winder)**

68. The Atkinsons repeat, reallege, and incorporate by reference the foregoing paragraphs as if fully set forth herein.

69. Upon information and belief, Stacy Brown, Law Office, and Winder knew that Charles Brown's conduct constituted a breach of duty to the Atkinsons.

70. Charles Brown defrauded the Atkinsons by representing to them that he would purchase the Property for \$100,000, knowing that such representation was false at the time it was made, and making the representation with the intent to induce the Atkinsons to relinquish their ownership interest in the Property.

71. Upon information and belief, Stacy Brown assisted or encouraged Charles Brown's

1 conduct by: allowing her name to be listed on a fraudulent loan application document related to the  
2 Property; applying for other loan(s) for the Property while knowing that neither she nor Charles Brown  
3 would actually be paying for the Property in cash pursuant to the Purchase Agreement.

4 72. Upon information and belief, Law Office and Winder assisted or encouraged Charles  
5 Brown's conduct by: helping Charles Brown pay for a fraudulent appraisal of the Property based on  
6 an inflated purchase price and inflated rental rates; helping Charles Brown pay for fraudulent loan  
7 applications to institutions; and helping Charles Brown initiate a fraudulent litigation against the  
8 Atkinsons in order to wrongfully effectuate the transfer of the Atkinsons' Property to Charles Brown  
9 without Charles Brown paying any consideration for the Property.

10 73. As a direct and proximate result of the aforementioned actions and/or omissions of  
11 Stacy Brown, Law Office, and Winder, the Atkinsons have been damaged in an amount in excess of  
12 \$15,000.00.

13 74. As a direct and proximate result of the aforementioned actions and/or omissions of  
14 Stacy Brown, Law Office, and Winder, the Atkinsons have been required to engage the services of an  
15 attorney, incurring attorneys' fees and costs to bring this action, and the Atkinsons are therefore  
16 entitled to reasonable attorneys' fees and costs incurred in this action.

#### 17 SEVENTH CLAIM FOR RELIEF

##### 18 (Waste and Trespass to Real and Personal Property – Against Charles Brown)

19 75. The Atkinsons repeat, reallege, and incorporate by reference the foregoing paragraphs  
20 as if fully set forth herein.

21 76. On or around June 5, 2018, Charles Brown trespassed onto the Property and caused  
22 waste and destruction to the Property, including but not limited to fire damage to the Property which  
23 rendered the Property uninhabitable.

24 77. Following the fire, Charles Brown returned to the Property on various occasions,  
25 including on or around July 21, 2018, and converted personal items within the Property. Brown  
26 converted household items and appliances such as outdoor chairs, a workout bench, planter pots, and  
27 a trash can.

28 78. As a direct and proximate result of the aforementioned actions and/or omissions of

1 Charles Brown, the Atkinsons have been damaged in an amount in excess of \$50,000.00.

2 79. As a result of the wrongful conduct of Charles Brown, the Atkinsons have incurred the  
3 infliction of pain, injury, and mental anguish, and are therefore entitled to damages.

4 80. Upon information and belief, Charles Brown acted with recklessness, oppression, fraud  
5 or malice against the vulnerable Atkinsons, thus entitling the Atkinsons to an award of attorneys' fees  
6 and costs.

7 81. As a result, the Atkinsons have incurred compensatory damages, which are recoverable  
8 for their fear, anxiety, and mental and emotional distress.

9 82. The Atkinsons have incurred legal fees in connection herewith and are entitled to a  
10 recovery of such legal expenses and fees.

11 **EIGHTH CLAIM FOR RELIEF**

12 **(Conversion – Against Charles Brown)**

13 83. The Atkinsons repeat, reallege, and incorporate by reference the foregoing paragraphs  
14 as if fully set forth herein.

15 84. Charles Brown committed a distinct act of dominion wrongfully exerted over the  
16 Atkinsons' personal property.

17 85. On or around July 21, 2018, Charles Brown trespassed onto the Atkinsons' Property  
18 and converted personal items within the Property. Brown converted household items and appliances  
19 such as outdoor chairs, a workout bench, planter pots, and a trash can.

20 86. Charles Brown's acts were in derogation, exclusion, or defiance of the Atkinsons'  
21 rights in their personal property.

22 87. As a direct and proximate result of the aforementioned actions and/or omissions of  
23 Charles Brown, the Atkinsons have been damaged in an amount in excess of \$15,000.00.

24 88. As a result of the wrongful conduct of Charles Brown, the Atkinsons have incurred the  
25 infliction of pain, injury, and mental anguish, and are therefore entitled to damages.

26 89. Upon information and belief, Charles Brown acted with recklessness, oppression, fraud  
27 or malice against the vulnerable Atkinsons, thus entitling the Atkinsons to an award of attorneys' fees  
28 and costs.

1           90.     As a result, the Atkinsons have incurred compensatory damages, which are recoverable  
2 for their fear, anxiety, and mental and emotional distress.

3           91.     The Atkinsons have incurred legal fees in connection herewith and are entitled to a  
4 recovery of such legal expenses and fees.

5                               **PRAYER FOR RELIEF**

6           WHEREFORE, Plaintiffs LaVelle P. Atkinson and Sheila Atkinson hereby pray for judgment  
7 against Defendants Charles Brown, Stacy Brown, Law Office of Dan M Winder, P.C., and Dan M.  
8 Winder as follows:

- 9           1.     For a judgment in favor of the Atkinsons and against defendants Charles Brown, Stacy  
10           Brown, Law Office of Dan M Winder, P.C., and Dan M. Winder on the complaint and  
11           causes of action asserted herein;
- 12           2.     For an award of general and special damages in an amount in excess of \$15,000.00 to  
13           be proven at trial;
- 14           3.     For an award of compensatory and/or consequential damages in an amount in excess  
15           of \$15,000.00, to be proven at trial;
- 16           4.     For punitive and/or exemplary damages pursuant to NRS 42.005 in an amount  
17           appropriate to punish and/or set an example of defendants Charles Brown, Stacy  
18           Brown, Law Office of Dan M Winder, P.C., and Dan M. Winder;

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20    ///

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- 1       5.     For an award of reasonable attorneys' fees and costs incurred in this action; and  
2       6.     For such other relief as the court may deem proper.

3     DATED this 5<sup>th</sup> day of November, 2019.

4                     Respectfully submitted,

5                     **MAIER GUTIERREZ & ASSOCIATES**

6  
7                     /s/ Danielle J. Barraza

8                     JOSEPH A. GUTIERREZ, ESQ.  
9                     Nevada Bar No. 9046  
10                    DANIELLE J. BARRAZA, ESQ.  
11                    Nevada Bar No. 13822  
12                    8816 Spanish Ridge Avenue  
13                    Las Vegas, Nevada 89148

14                    -and-

15                    ADRIANA PEREYRA, ESQ.  
16                    Nevada Bar No. 12263  
17                    INTEGRITY LAW FIRM  
18                    819 South 6th Street  
19                    Las Vegas, Nevada 89101  
20                    Attorneys for Plaintiffs LaVelle P. Atkinson and  
21                    Sheila Atkinson  
22  
23  
24  
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28

## EXHIBIT 4

Complaint in prior matter





1 COM

2 DAN M. WINDER, ESQ.

3 Nevada State Bar No. 1569

4 ARNOLD WEINSTOCK, ESQ.

5 Nevada State Bar No. 810

6 LAW OFFICE OF DAN M. WINDER, P.C.

7 3507 W. Charleston Blvd.

8 Las Vegas, NV 89102

9 Telephone: (702) 878-6000

Facsimile: (702) 474-0631

Email: winderdanatty@aol.com

Attorney for Plaintiffs

10 DISTRICT COURT  
11 CLARK COUNTY, NEVADA

12 CHARLES BROWN,

13 Plaintiffs,

Case No: A-18-774764-C

14 vs.

Dept. No: Department 18

15 LAVELLE P. ATKINSON, SHEILA  
16 ATKINSON; DOES I-V; and ROE  
17 CORPORATIONS I-V.

18 Defendants.

**COMPLAINT**  
(Exempt from Arbitration  
as the amount in controversy  
exceeds \$50,000.00)

19  
20  
21 COMES NOW, Plaintiff, CHARLES BROWN, by and through his attorneys  
22 of record, Dan M. Winder, Esq., of the law firm of DAN M. WINDER, P.C., as and  
23 for their complaint against Defendants, LAVELLE P. ATKINSON and SHEILA  
24 ATKINSON and hereby complains, alleges and states as follows:  
25

26 **PARTIES**  
27  
28

1 1. Charles Brown (hereinafter "Brown" or Plaintiff) was at all times relevant a  
2 resident of Clark County, Nevada.  
3

4 2. Lavelle P. Atkinson and Sheila Atkinson (hereinafter "Atkinson" or Defendants)  
5 were at all times relevant residents of Clark County, Nevada.  
6

7 3. The true names and capacities, whether individual, corporate, associate or  
8 otherwise of other defendants hereinafter designated as DOES 1-5, and ROE  
9 Corporations 1-5 inclusive, who are in some manner responsible for the injuries  
10 described herein, are unknown at this time. Plaintiff, therefore, sues said  
11 Defendants by such fictitious names and will seek leave of the Court to amend this  
12 Complaint to show their true names and capacities when ascertained.  
13  
14

#### 15 VENUE AND JURISDICTION

16 4. Venue is proper in Clark County, Nevada pursuant to NRS 13.040.  
17

18 5. The exercise of jurisdiction by this Court over the Defendants in this civil action  
19 is proper pursuant to NRS 14.065.  
20

21 6. The breach of contract allegations for which Plaintiff complains and for which  
22 Defendants are liable arises out of actions that took place in Clark County, Nevada.  
23 Specifically, the circumstances, which led and caused Brown to sustain the  
24 complaint for damages, all of which occurred, here, in Las Vegas, Nevada.  
25

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8. At all times relevant, including July 20, 2017, the Defendants were residents of Clark County and entered into a Purchase Agreement for the sale of real property.

10. Upon information and belief, and at all times relevant to this action the Clark County Assessor parcel Number for this property is 138-24-511-034 which is further described as approximately 0.55 acres.

12. Plaintiff and Defendants agreed that there would be a deposit of one thousand dollars (\$1,000.00) paid by Brown within two (2) business days of the effective date.

**14. The aforementioned breach of contract and resulting damages continue to effect**

1 Plaintiff's financial affairs.

2  
3 **FIRST CAUSE OF ACTION**  
4 **(Breach of Contract-Against Defendants)**

5 15. Plaintiff incorporates by this reference the allegations set forth in each of the  
6 foregoing paragraphs of the Complaint as if fully set forth herein.

7 16. The Purchase Agreement constitutes a valid and enforceable contract between  
8 Brown and Atkinson.

9 17. Brown has fully performed his obligations to Atkinson under the Purchase  
10 Agreement, or else its performance was excused by Atkinson's conduct.

11 18. Atkinson, on the other hand, has not performed and instead has materially  
12 breached their obligations under the Purchase Agreement.

13 19. As a direct and proximate result of Atkinsons' material breaches of the Purchase  
14 Agreement, Brown has been damaged in an amount to be proven at trial, but no less  
15 than \$100,000.00, plus collection costs, attorney's fees, and pre- and post-judgment  
16 interest.

17 20. Brown is therefore entitled to relief as set forth below in the Prayer for Relief.

18  
19 **SECOND CAUSE OF ACTION**  
20 **(Breach of Covenant of Good Faith and Fair Dealing-Against Defendants)**

21 21. Brown incorporates by this reference the allegations set forth in each of the  
22 foregoing paragraphs of the Complaint as if fully set forth herein.

1 22. As a matter of law, the Purchase Agreement between Brown and Atkinson  
2 contains a covenant of good faith and fair dealing requiring Atkinson to not act in such  
3 a way as to injure or destroy Brown's right to receive the benefits of his bargain but  
4 to act in a manner consistent with the law and with Brown's justified expectation that  
5 it would receive the benefit of the parties' bargain.  
6

7  
8 23. Atkinson has breached their obligations under the covenant of good faith and fair  
9 dealing in the Purchase Agreement by, among other things, engaging in the conduct  
10 as set forth in this Complaint, including, without limitation, failing to deliver the said  
11 property located at 2315 North Decatur Blvd., Las Vegas, Nevada.  
12

13  
14 24. As a direct and proximate result of these and Atkinson's other material breaches  
15 of the covenant of good faith and fair dealing, Brown has been damaged in an amount  
16 to be proven at trial, but no less than \$100,000.00, plus collection costs, attorney fees,  
17 and pre- and post-judgment interest.  
18

19 25. Brown is therefore entitled to relief as set forth below in the Prayer for Relief.  
20

21 **THIRD CAUSE OF ACTION**  
22 **(Alternative Claim for Unjust Enrichment, Quasi Contract, and**  
23 **Contract Implied in Law-Against Defendants)**

24 26. Brown incorporates by this reference the allegations set forth in each of the  
25 foregoing paragraphs of the Complaint as if fully set forth herein.

26 27. If for any reason the Court or trier of fact in this case fails to find the existence of  
27

1 a valid and enforceable contract between Brown and Atkinson, Brown asserts this  
2 alternative claim for unjust enrichment, quasi contract, or contract implied in law  
3 against Atkinson.  
4

5 28. Brown conferred numerous benefits on Atkinson by, among other things, buying  
6 the property for above market value.  
7

8 29. Atkinson has not fully and fairly compensated Brown for the loss of profits that  
9 would have been earned by Brown.  
10

11 30. It would be inequitable and unjust for Atkinson to retain the benefits conferred  
12 upon them by Brown without fully and fairly compensating Brown for such benefits.  
13

14 31. Atkinson has, therefore, been unjustly enriched at Brown's expense.

15 32. As a direct and proximate result of this unjust enrichment, Brown has suffered  
16 damages in an amount to be proven at the trial in this matter but no less than  
17 \$100,000.00.  
18

19 33. Brown is therefore entitled to relief as set forth below in the Prayer for Relief.  
20

21 **FOURTH CAUSE OF ACTION**  
22 **(Alternative Claim for Contract Implied in Fact-Against Defendants)**

23 34. Brown incorporates by this reference the allegations set forth in each of the  
24 foregoing paragraphs of the Complaint as if fully set forth herein.  
25

26 35. If for any reason the Court or trier of fact in this case fails to find the existence of  
27  
28

1 an express contract between Brown and Atkinson, Brown asserts this alternative claim  
2 for contract implied in fact against Atkinson.  
3

4 36. The parties' communications, conduct, and business dealings over the course of  
5 their relationship established an implied-in-fact contract pursuant to which Brown  
6 agreed to pay an amount in exchange for delivery of the property located at 2315  
7 North Decatur Blvd. Las Vegas, Nevada, as set forth in this Complaint.  
8

9 37. Accordingly, a contract implied in fact existed between Brown and Atkinson.  
10

11 38. Brown fully performed his obligations under the implied-in-fact contract.  
12

13 39. Atkinson, on the other hand, materially breached their obligations under the  
14 implied-in-fact contract by, among other things, failing to turn over the property as  
15 agreed upon in the Purchase Agreement, and repudiating the contract.  
16

17 40. As a direct and proximate result of Atkinson's material breaches of the Agreement,  
18 Brown has been damaged in an amount to be proven at trial, but no less than  
19 \$100,000.00, plus collection costs, attorneys' fees, and pre- and post-judgment interest.  
20

21 41. Brown is therefore entitled to relief as set forth below in the Prayer for Relief.  
22

23 **FIFTH CAUSE OF ACTION**  
24 **(Alternative Claim for Promissory Estoppel-Against Defendants)**

25 42. Brown incorporates by this reference the allegations set forth in each of the  
26 foregoing paragraphs of the Complaint as if fully set forth herein.  
27

1 43. If for any reason the trier of fact in this case fails to find the existence of a valid  
2 and enforceable contract between Brown and Atkinson, Brown asserts this alternative  
3 claim for promissory estoppel against Atkinson.  
4

5 44. Atkinson, or their agents or representatives, promised to deliver to Brown real  
6 property located at 2315 North Decatur Blvd., Las Vegas, Nevada.  
7

8 45. Atkinson knew or should have known that Brown would act in reliance on such  
9 promises.  
10

11 46. Brown reasonably and justifiably relied on Atkinson's promises and acted in  
12 accordance with such reliance.  
13

14 47. Atkinson received significant benefits, including monetary benefits, as a result of  
15 Brown's conduct.  
16

17 48. Atkinson, however, has failed to deliver the property to Brown pursuant to the  
18 Purchase Agreement as Atkinson promised.  
19

20 49. As a direct and proximate result of this reasonable and justified reliance, Brown  
21 has suffered damages in an amount to be proven at the trial in this matter but no less  
22 than \$100,000.00.  
23

24 50. Brown is therefore entitled to relief as set forth below in the Prayer for Relief.  
25

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**PRAYER FOR RELIEF**

WHEREFORE, Brown prays for judgment and equitable relief against Defendants as follows:

1. On Brown's First Cause of Action, asserting a claim for breach of contract against Defendants, for Brown's general, compensatory, and consequential damages caused by Defendants' breaches of the Purchase Agreement in an amount to be established at trial, but no less than \$100,000.00, plus pre- and post-judgment interest, costs of collection, attorney fees, and court costs.

2. On Brown's Second Cause of Action, asserting a claim for breach of the covenant of good faith and fair dealing against Defendants, for Brown's general, compensatory, and consequential damages caused by Defendants' breaches of the covenant of good faith and fair dealing in an amount to be established at the trial, but no less than \$100,000.00, plus pre- and post-judgment interest, costs of collection, attorney fees, and court costs.

3. On Brown's Third Cause of Action, asserting an alternative claim for unjust enrichment, quasi contract, and contract implied in law against Defendants, for Brown's damages caused by Atkinson's unjust enrichment, quasi contract, and/or breaches of contract implied in law in an amount to be established at the trial, but no less than \$100,000.00, plus pre- and post-judgment interest, costs of collection,

1 attorney fees, and court costs.

2  
3 4. On Brown's Fourth Cause of Action, asserting an alternative claim for breach of  
4 contract implied in fact against Defendants, for Brown's damages caused by Atkinson's  
5 breaches of contract implied in fact in an amount to be established at the trial, but no  
6 less than \$100,000.00, plus pre- and post-judgment interest, costs of collection,  
7 attorney fees, and court costs.  
8

9  
10 5. On Brown's Fifth Cause of Action, asserting an alternative claim for promissory  
11 estoppel against Defendants, for Brown's damages caused by its reliance on Atkinson's  
12 promises in an amount to be established at the trial, but no less than \$100,000.00, plus  
13 pre- and post-judgment interest, costs of collection, attorney fees, and court costs.  
14

15 6. For Brown's attorney fees and costs incurred in bringing this action as provided for  
16 by contract, statute, and/or law.  
17

18 7. For such other and further relief as the Court deems just and proper under the  
19 circumstances.  
20

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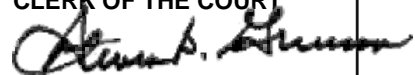
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DATED this 18 day of May, 2018.

D. Warden by S. Diner (3/08)

Nevada State Bar No. 1569

Nevada State Bar No. 810



**ORDER**

ADRIANA PEREYRA, ESQ.  
NEVADA BAR NO. 12263  
**INTEGRITY LAW FIRM**  
819 South 6<sup>th</sup> Street  
Las Vegas, Nevada 89101  
Phone: 702.202.4449  
Fax: 702.947.2522  
E-mail: [adriana@integritylawnv.com](mailto:adriana@integritylawnv.com)

JOSEPH A. GUTIERREZ, ESQ.  
Nevada Bar No. 9046  
DANIELLE J. BARRAZA, ESQ.  
Nevada Bar No. 13822  
**MAIER GUTIERREZ & ASSOCIATES**  
8816 Spanish Ridge Avenue  
Las Vegas, Nevada 89148  
Telephone: 702.629.7900  
Facsimile: 702.629.7925  
E-mail: [jag@mgalaw.com](mailto:jag@mgalaw.com)  
[djb@mgalaw.com](mailto:djb@mgalaw.com)

*Attorneys for Plaintiffs*

**DISTRICT COURT**

**CLARK COUNTY, NEVADA**

LAVELLE P. ATKINSON, SHEILA  
ATKINSON, individuals,

Plaintiffs,

vs.

CHARLES BROWN, an individual; STACY  
BROWN, an individual; LAW OFFICE OF  
DAN M. WINDER, P.C., a domestic  
professional corporation; DAN M. WINDER, an  
individual; DOES I through X; and ROE  
CORPORATIONS I through X, inclusive.

Defendants.

Case No.: A-19-804902-C  
Dept. No.: XXVI

**ORDER DENYING DEFENDANTS, LAW  
OFFICE OF DAN M. WINDER, P.C. AND  
DAN M. WINDER'S MOTION TO  
DISMISS FOR FAILURE TO STATE A  
CLAIM NRCP 12(b)(5)**

Hearing Date: February 11, 2020  
Hearing Time: 9:30 a.m.

This matter came on for hearing before the Court on February 11, 2020, at 9:30 a.m., on Defendants, Law Office of Dan M. Winder, P.C. and Dan M. Winder's (collectively "Winder Defendants") motion to dismiss for failure to state a claim NRCP 12(b)(5) (the "Motion").

Plaintiffs, Lavelle P. Atkinson and Sheila Atkinson, were represented by Joseph A. Gutierrez,

1 Esq., of the law firm MAIER GUTIERREZ & ASSOCIATES and Adriana Pereyra, Esq. of the law firm  
2 INTEGRITY LAW FIRM. Winder Defendants were represented by Arnold Weinstock, Esq., of the law  
3 firm LAW OFFICE OF DAN M. WINDER, P.C.

4 The court, having reviewed the pleadings and papers on file herein relative to the Motion and  
5 having heard the arguments of counsel present at the hearing, and for good cause appearing, hereby  
6 finds the Motion should be denied, and further finds, as follows:

7 Accordingly:

8 IT IS HEREBY ORDERED that Winder Defendants' Motion to Dismiss be, and same is  
9 hereby, DENIED.

10 IT IS FURTHER ORDERED that Winder Defendants have 21 days from the notice of entry  
11 of this order to file their answer to plaintiffs' complaint.

12 DATED this 25 day of February, 2020.

13  
14   
15 DISTRICT COURT JUDGE

16 Respectfully submitted,

Approved as to form and content,

17 DATED this \_\_\_\_ day of February, 2020.

DATED this \_\_\_\_ day of February, 2020.

18 MAIER GUTIERREZ & ASSOCIATES

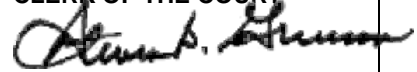
LAW OFFICE OF DAN M. WINDER, P.C.

19 

20 

21 JOSEPH A. GUTIERREZ, ESQ.  
22 Nevada Bar No. 9046  
23 DANIELLE J. BARRAZA, ESQ.  
24 Nevada Bar No. 13822  
25 8816 Spanish Ridge Avenue  
26 Las Vegas, Nevada 89148  
27 Attorneys for Plaintiffs  
28

DAN M. WINDER, ESQ.  
Nevada Bar No. 1569  
3507 West Charleston Boulevard  
Las Vegas, Nevada 89102  
Attorneys for Defendants Law Office of Dan M.  
Winder, P.C. and Dan M. Winder



**NEOJ**

ADRIANA PEREYRA, ESQ.

NEVADA BAR NO. 12263

**INTEGRITY LAW FIRM**

819 South 6<sup>th</sup> Street

Las Vegas, Nevada 89101

Phone: 702.202.4449

Fax: 702.947.2522

E-mail: [adriana@integritylawnv.com](mailto:adriana@integritylawnv.com)

JOSEPH A. GUTIERREZ, ESQ.

Nevada Bar No. 9046

DANIELLE J. BARRAZA, ESQ.

Nevada Bar No. 13822

**MAIER GUTIERREZ & ASSOCIATES**

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Las Vegas, Nevada 89148

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E-mail: [jag@mgalaw.com](mailto:jag@mgalaw.com)

[djb@mgalaw.com](mailto:djb@mgalaw.com)

*Attorneys for Plaintiffs*

**DISTRICT COURT**

**CLARK COUNTY, NEVADA**

LAVELLE P. ATKINSON, SHEILA  
ATKINSON, individuals,

Plaintiffs,

vs.

CHARLES BROWN, an individual; STACY  
BROWN, an individual; LAW OFFICE OF DAN  
M. WINDER, P.C., a domestic professional  
corporation; DAN M. WINDER, an individual;  
DOES I through X; and ROE CORPORATIONS  
I through X, inclusive.

Defendants.

Case No.: A-19-804902-C

Dept. No.: 26

**NOTICE OF ENTRY OF ORDER**

TO: ALL PARTIES AND THEIR COUNSEL OF RECORD.

YOU AND EACH OF YOU will please take notice that an **ORDER DENYING  
DEFENDANTS, LAW OFFICE OF DAN M. WINDER, P.C. AND DAN M. WINDER'S**

1 **MOTION TO DISMISS FOR FAILURE TO STATE A CLAIM NRCP 12(b)(5)** was hereby  
2 entered on the 27th day of February, 2020. A copy of which is attached hereto.

3 DATED this 28th day of February, 2020.

4 Respectfully submitted,

5 **MAIER GUTIERREZ & ASSOCIATES**

6 /s/ Danielle J. Barraza

7 JOSEPH A. GUTIERREZ, ESQ.

8 Nevada Bar No. 9046

9 DANIELLE J. BARRAZA, ESQ.

10 Nevada Bar No. 13822

11 8816 Spanish Ridge Avenue

12 Las Vegas, Nevada 89148

13 *Attorneys for Plaintiffs*

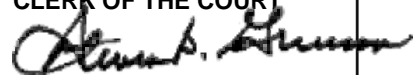
1 **CERTIFICATE OF SERVICE**

2 Pursuant to Administrative Order 14-2, a copy of the **NOTICE OF ENTRY OF ORDER**  
3 was electronically filed on the 28th day of February, 2020, and served through the Notice of  
4 Electronic Filing automatically generated by the Court's facilities to those parties listed on the  
5 Court's Master Service List as follows:

6 Dan M. Winder, Esq.  
7 LAW OFFICE OF DAN M. WINDER, P.C.  
8 3507 West Charleston Blvd.  
9 Las Vegas, Nevada 89102  
10 *Attorney for defendants Dan M. Winder and Law Office of Dan M. Winder P.C.*

11 /s/ Natalie Vazquez  
12 An Employee of MAIER GUTIERREZ & ASSOCIATES  
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**ORDER**

ADRIANA PEREYRA, ESQ.  
NEVADA BAR NO. 12263  
**INTEGRITY LAW FIRM**  
819 South 6<sup>th</sup> Street  
Las Vegas, Nevada 89101  
Phone: 702.202.4449  
Fax: 702.947.2522  
E-mail: [adriana@integritylawnv.com](mailto:adriana@integritylawnv.com)

JOSEPH A. GUTIERREZ, ESQ.  
Nevada Bar No. 9046  
DANIELLE J. BARRAZA, ESQ.  
Nevada Bar No. 13822  
**MAIER GUTIERREZ & ASSOCIATES**  
8816 Spanish Ridge Avenue  
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Telephone: 702.629.7900  
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E-mail: [jag@mgalaw.com](mailto:jag@mgalaw.com)  
[djb@mgalaw.com](mailto:djb@mgalaw.com)

*Attorneys for Plaintiffs*

**DISTRICT COURT**

**CLARK COUNTY, NEVADA**

LAVELLE P. ATKINSON, SHEILA  
ATKINSON, individuals,

Plaintiffs,

vs.

CHARLES BROWN, an individual; STACY  
BROWN, an individual; LAW OFFICE OF  
DAN M. WINDER, P.C., a domestic  
professional corporation; DAN M. WINDER, an  
individual; DOES I through X; and ROE  
CORPORATIONS I through X, inclusive.

Defendants.

Case No.: A-19-804902-C  
Dept. No.: XXVI

**ORDER DENYING DEFENDANTS, LAW  
OFFICE OF DAN M. WINDER, P.C. AND  
DAN M. WINDER'S MOTION TO  
DISMISS FOR FAILURE TO STATE A  
CLAIM NRCP 12(b)(5)**

Hearing Date: February 11, 2020  
Hearing Time: 9:30 a.m.

This matter came on for hearing before the Court on February 11, 2020, at 9:30 a.m., on Defendants, Law Office of Dan M. Winder, P.C. and Dan M. Winder's (collectively "Winder Defendants") motion to dismiss for failure to state a claim NRCP 12(b)(5) (the "Motion").

Plaintiffs, Lavelle P. Atkinson and Sheila Atkinson, were represented by Joseph A. Gutierrez,

1 Esq., of the law firm MAIER GUTIERREZ & ASSOCIATES and Adriana Pereyra, Esq. of the law firm  
2 INTEGRITY LAW FIRM. Winder Defendants were represented by Arnold Weinstock, Esq., of the law  
3 firm LAW OFFICE OF DAN M. WINDER, P.C.

4 The court, having reviewed the pleadings and papers on file herein relative to the Motion and  
5 having heard the arguments of counsel present at the hearing, and for good cause appearing, hereby  
6 finds the Motion should be denied, and further finds, as follows:

7 Accordingly:

8 IT IS HEREBY ORDERED that Winder Defendants' Motion to Dismiss be, and same is  
9 hereby, DENIED.

10 IT IS FURTHER ORDERED that Winder Defendants have 21 days from the notice of entry  
11 of this order to file their answer to plaintiffs' complaint.

12 DATED this 25 day of February, 2020.

13  
14   
15 DISTRICT COURT JUDGE

16 Respectfully submitted,


Approved as to form and content,


17 DATED this \_\_\_\_ day of February, 2020.

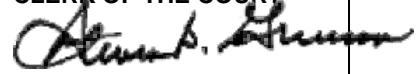
DATED this \_\_\_\_ day of February, 2020.

18 MAIER GUTIERREZ & ASSOCIATES

LAW OFFICE OF DAN M. WINDER, P.C.

19   
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21 Nevada Bar No. 9046  
22 DANIELLE J. BARRAZA, ESQ.  
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25 DAN M. WINDER, ESQ.  
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Winder, P.C. and Dan M. Winder



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Attorney for Plaintiff

**8<sup>TH</sup> JUDICIAL DISTRICT COURT  
CLARK COUNTY, NV**

Lavelle P. Atkinson, Sheila Atkinson,  
individuals,

Plaintiffs

VS.

CHARLES BROWN, and individual; LAW  
OFFICE OF DAN M. WINDER P.C. a domestic  
professional corporation; DAN M. WINDER, an  
individual, et al

Defendants

**CASE NO: A-19-804902-C  
Dept: 26**

**WINDER DEFENDANTS'  
ANSWER  
TO COMPLAINT**

Defendants Law Office of Dan M. Winder P.C and Dan M. Winder, by and through their  
attorney Dan M. Winder of The Law Office of Dan M. Winder P.C. answer Plaintiffs' Complaint.

1. Defendants Deny the Following Paragraphs: 10, 18, 19-25, 28, 29, 31, 59-74, 91
2. Defendants Deny the Following Paragraphs because they are not, upon reasonable investigation  
able to determine the truth or falsity of the paragraphs: 1-3, 6, 7, 11-17, 26-27, 33-41, 43-58, 76-90
3. Defendants admit the following paragraphs: 4-5, 8, 9, 30,

1 AFFIRMATIVE DEFENSES

2  
3 1. FAILURE TO STATE CLAIM: Plaintiff has failed to state a claim against this answering  
4 Defendant upon which relief may be granted.

5 2. UNCLEAN HANDS: Plaintiff's claims against this answering Defendant are barred by  
6 the Doctrine of Unclean Hands.

7 3. ESTOPPEL: Plaintiff's claims against this answering Defendant are barred by  
8 the Doctrine of Estoppel.

9 4. LACHES: Plaintiff's claims against this answering Defendant are barred by  
10 the Doctrine of Laches.

11 5. THIRD PARTY CAUSATION: The damages allegedly suffered by Plaintiff, if  
12 any, were caused in whole or in part by the acts and omissions of third parties over whom this answering  
13 Defendant has, and had, no control.

14 6. CONTRIBUTORY NEGLIGENCE: Whatever injuries and damages were sustained by  
15 Plaintiff as the result of the alleged acts of Defendant were caused in whole or in part or were  
16 contributed to by reason of the negligence of Plaintiff.

17 7. COMPARATIVE NEGLIGENCE: The incident alleged in Plaintiff's complaint, and  
18 resulting damages, if any, to Plaintiff, were caused or contributed to by Plaintiff's own negligence, and  
19 such negligence was greater than the negligence, which is expressly denied, of this answering  
20 Defendant.

21 8. INTERVENING CAUSE: Even if Plaintiff's allegations are correct as to the  
22 damages sustained by the property, intervening cause may be the reason for those asserted damages  
23 due to the delay in the Plaintiff's pursuing his prayers for judicial relief.

24 9. MITIGATION: Plaintiffs failed to mitigate their damages.

25 10. RES JUDICATA: Plaintiffs' claims are barred by claim and issue preclusion as all  
26 of the claims and issues raised in the prior litigation were or should have been raised in prior litigation

1 between the parties or their privies which has already been decided.

2  
3 11. Pursuant to NRCP 11, all possible affirmative defenses may not have been alleged herein,  
4 insofar as sufficient facts were not available, after reasonable inquiry, upon the filing of this Answer  
5 and, therefore, Defendants reserve the right to amend this Answer to allege additional affirmative  
6 defenses if subsequent investigation warrants. These answering Defendants reserve the right to amend  
7 the Answer to the Complaint as discovery proceeds in this matter.

8  
9 12. All affirmative defenses set forth in NRCP 8 are incorporated herein for the specific purpose of  
10 not waiving same.

11  
12 WHEREFORE, this answering Defendants pray Plaintiffs take nothing by way of this Complaint, and  
13 that they be awarded their fees and costs.

14  
15 DATED this 20<sup>th</sup> Day of March, 2020.

16 /s/Dan M. Winder  
17 DAN M. WINDER, ESQ.  
18 Nevada Bar No. 001569  
19 LAW OFFICE OF DAN M. WINDER, P.C.  
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CERTIFICATE OF SERVICE

I certify I served the parties of record with the foregoing document via the Court's Electronic Case  
Filing System on the date stamped thereon by the system.

/s/Hamilton Moore

An employee of the Law Office of Dan M. Winder, P.C.

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SCHTO

DISTRICT COURT  
CLARK COUNTY, NEVADA

LAVELLE ATKINSON, Plaintiff(s)  
vs.  
CHARLES BROWN, Defendant(s)

CASE NO.: A-19-804902-C

Department XXVI

**SCHEDULING ORDER and ORDER  
SETTING CIVIL JURY TRIAL**

This Scheduling Order and Order Setting Civil Jury Trial is entered following the filing of a Joint Case Conference Report or Individual Case Conference Report. This Order may be amended or modified by the Court upon good cause shown.

**IT IS HEREBY ORDERED** that the parties will comply with the following deadlines:

Discovery Cut Off Date: **4.7.21**

Last Day to file motion to amend or add parties: **1.7.21**

Initial expert disclosures due: **1.7.21**

Rebuttal expert disclosures due: **2.8.21**

Final Date to file Motions in Limine or Dispositive Motions **5.7.21**

**IT IS FURTHER ORDERED THAT:**

A. The above entitled case is set to be tried by a jury on a FOUR week STACK to begin **JULY 6, 2021 at 9:00AM.**

B. A Calendar Call will be held **JUNE 17, 2021, at 9:00AM.** Trial Counsel (and any party in proper person) must appear.

C. A Status Check is scheduled for **DECEMBER 1, 2020, at 9:00AM** to confirm progress of trial preparation.

PET APP 0195

1 D. A **Pre-Trial Conference** will be set at the time of calendar call. Parties must  
2 have the following ready at the final Pre Trial Conference:

- 3 1. Two (2) sets of Exhibits, three-hole punched placed in three ring binders  
4 along with the exhibit list with all stipulated exhibits marked;
- 5 2. Agreed hard-copy set of Jury instructions and proposed verdict form(s), along  
6 with any additional proposed jury instructions with authoritative citations, and  
7 with an electronic copy in Word format;
- 8 3. Proposed voir dire questions;
- 9 4. Original depositions;
- 10 5. Courtesy copies of legal briefs on trial issues.

11 E. The **Pretrial Memorandum** must be filed prior to and a courtesy copy delivered  
12 at the Pre-Trial Conference. All parties, (Attorneys and parties in proper person) must  
13 comply with all requirements of E.D.C.R. 2.67, 2.68 and 2.69. Counsel should include in  
14 the Memorandum an identification of orders on all motions in limine or motions for  
15 partial summary judgment previously made, a summary of any anticipated legal issues  
16 remaining, a brief summary of the opinions to be offered by any witness to be called to  
17 offer opinion testimony as well as any objections to the opinion testimony.

18 F. **Motions in Limine** are limited to TEN (10) each per side and must be filed by the  
19 date shown above to be heard before the trial stack. If the Court determines that oral  
20 argument is not needed, an advance decision minute order will be issued prior to the  
21 motion in limine hearing.

22 G. **Motion to Continue Trial** due to any discovery issues or deadlines must be  
23 made before this department, pursuant to EDCR 2.35.

24 H. **Orders Shortening Time** will not be signed except in extreme emergencies. *An*  
25 *upcoming trial date or vacation is not an extreme emergency – court requires all*  
26 *parties to be ready anytime of this stack.*

27 I. **Failure to Appear** by the designated trial attorney or any party appearing in  
proper person to appear for any court appearances or to comply with this Order shall  
result in any of the following: (1) dismissal of the action (2) default judgment; (3)  
monetary sanctions; (4) vacation of trial date; and/or any other appropriate remedy or  
sanction.



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

5 Dated this 3rd day of September, 2020



---

6 DE8 D3B 9B34 E09D  
7 Gloria Sturman  
8 District Court Judge  
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1 **CSERV**

2  
3 DISTRICT COURT  
CLARK COUNTY, NEVADA

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6 Lavelle Atkinson, Plaintiff(s) | CASE NO: A-19-804902-C  
7 vs. | DEPT. NO. Department 26  
8 Charles Brown, Defendant(s)  
9

10 **AUTOMATED CERTIFICATE OF SERVICE**

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

14 Service Date: 9/3/2020

15 MGA Docketing docket@mgalaw.com  
16 Case Manager Casemanager@attorneydanwinder.com  
17 Adriana Pereyra adriana@integritylawnv.com  
18 Dan Winder winderdanatty@aol.com  
19

20 If indicated below, a copy of the above mentioned filings were also served by mail  
21 via United States Postal Service, postage prepaid, to the parties listed below at their last  
known addresses on 9/4/2020

22 Dan Winder Law Offices of Dan M. Winder.  
23 Attn: Dan M. Winder  
24 3507 W. Charleston Blvd.  
Las Vegas, NV, 89102

25 Danielle Barraza Maier Gutierrez & Associates  
26 Attn: Danielle J. Barraza  
27 8816 Spanish Ridge Avenue  
Las Vegas, NV, 89148  
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*Heather S. Linn*  
CLERK OF THE COURT

DAN M. WINDER, ESQ.  
Nevada Bar No. 1569  
ARNOLD WEINSTOCK  
Nevada Bar # 810  
LAW OFFICE OF DAN M. WINDER, P.C.  
3507 West Charleston Blvd.  
Las Vegas, Nevada 89102  
Telephone (702) 474-0523  
Facsimile (702) 474-0631  
Attorney for Winder Defendants

**8<sup>TH</sup> JUDICIAL DISTRICT COURT  
CLARK COUNTY, NV**

LAVELLE P. ATKINSON, SHEILA  
ATKINSON, individuals,

Plaintiffs

VS.

CHARLES BROWN, and individual; STACY  
BROWN, an individual; LAW OFFICE OF DAN  
M. WINDER, P.C. a domestic professional  
corporation; DAN M. WINDER, an individual;  
DOES I through X; and ROE CORPORATION I  
through X, inclusive,

Defendants

CASE NO: A-19-804902-C  
Dept.: 26

Date of Hearing: September 29, 2020  
Time of Hearing: 9:00 a.m.

**ORDER GRANTING  
WINDER DEFENDANTS' MOTION  
TO  
ADD AFFIRMATIVE DEFENSES**

The Court, having considered Winder Defendants' Motion to Add Affirmative Defenses filed on August the 26<sup>th</sup>, 2020, the Opposition and Reply thereto, and considered the papers and pleadings on file in this matter, and having listened to the arguments of Counsel at hearing and good cause appearing therefor,

**IT IS HEREBY ORDERED ADJUDGED AND DECREED that:**

1. Winder Defendants' Motion to Add Affirmative Defenses filed on August the 26<sup>th</sup>, 2020 is granted.
2. Winder Defendants are to file an Amended Answer setting forth the affirmative defenses they requested.

1 3. Plaintiffs may conduct additional discovery on matters related to those  
2 affirmative defenses.

3 Dated, this \_\_\_\_ day of \_\_\_\_\_, 2020.

4 Dated this 22nd day of October, 2020

5 

6 **DISTRICT COURT JUDGE**

7 B58 FAB C46B 640E  
Gloria Sturman  
District Court Judge

8 Respectfully submitted,

Approved as to form and content:

9 Arnold Weinstock, Esq.

MAIER GUTIERREZ & ASSOCIATES

10 



11 ARNOLD WEINSTOCK, ESQ.

JOSEPH A. GUTIERREZ, ESQ.

12 Nevada State Bar No.: 000810

Nevada Bar No. 9046

13 DAN M. WINDER, ESQ.

DANIELLE J. BARRAZA, ESQ.

14 Nevada State Bar No.: 001569

Nevada Bar No. 13822

15 LAW OFFICE OF DAN M. WINDER, P.C.

8816 Spanish Ridge Avenue

16 3507 West Charleston Blvd.

Las Vegas, Nevada 89148

17 Las Vegas, Nevada 89102

Attorneys for Plaintiffs

18 Telephone (702) 474-0523

19 Facsimile (702) 474-0631

20 Attorney for Winder Defendants

1 **CSERV**

2  
3 DISTRICT COURT  
CLARK COUNTY, NEVADA

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5  
6 Lavelle Atkinson, Plaintiff(s)

CASE NO: A-19-804902-C

7 vs.

DEPT. NO. Department 26

8 Charles Brown, Defendant(s)

9  
10 **AUTOMATED CERTIFICATE OF SERVICE**

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

14 Service Date: 10/22/2020

15 MGA Docketing

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16 Case Manager

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17 Adriana Pereyra

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18 Dan Winder

winderdanatty@aol.com

*Heather S. Smith*  
CLERK OF THE COURT

**ORDR**

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[djb@mgalaw.com](mailto:djb@mgalaw.com)

*Attorneys for Plaintiffs*

**DISTRICT COURT**

**CLARK COUNTY, NEVADA**

LAVELLE P. ATKINSON, SHEILA  
ATKINSON, individuals,

Plaintiffs,

vs.

CHARLES BROWN, an individual; STACY  
BROWN, an individual; LAW OFFICE OF DAN  
M WINDER, P.C., a domestic professional  
corporation; DAN M. WINDER, an individual;  
DOES I through X; and ROE CORPORATIONS  
I through X, inclusive.

Defendants.

Case No.: A-19-804902-C  
Dept. No.: 26

Hearing Date: October 27, 2020  
Hearing Time: 9:00 a.m.

**ORDER**

The Court, having reviewed the above Report and Recommendations prepared by the  
Discovery Commissioner and,

X No timely objection having been filed,

After reviewing the objections to the Report and Recommendations and good cause appearing,

AND

X IT IS HEREBY ORDERED, the Discovery Commissioner's Report and Recommendations are affirmed and adopted.

IT IS HEREBY ORDERED, the Discovery Commissioner's Report and Recommendations are affirmed and adopted as modified in the following matter.  
(Attached hereto.)

IT IS HEREBY ORDERED, that a hearing on the Discovery Commissioner's Report is set for \_\_\_\_\_, 2020, at \_\_\_\_ : \_\_\_\_ .m.

DATED this \_\_\_\_ day of \_\_\_\_\_, 2020.

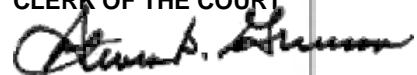
Dated this 11th day of December, 2020



DISTRICT COURT JUDGE

BCB OAE 2A50 5690  
Gloria Sturman  
District Court Judge





1 **DCRR**  
2 ADRIANA PEREYRA, ESQ.  
3 Nevada Bar No. 12263  
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20 [djb@mgalaw.com](mailto:djb@mgalaw.com)

21 *Attorneys for Plaintiffs*

22 **DISTRICT COURT**  
23 **CLARK COUNTY, NEVADA**

24 LAVELLE P. ATKINSON, SHEILA  
25 ATKINSON, individuals,

26 Plaintiffs,

27 vs.

28 CHARLES BROWN, an individual; STACY  
BROWN, an individual; LAW OFFICE OF DAN  
M. WINDER, P.C., a domestic professional  
corporation; DAN M. WINDER, an individual;  
DOES I through X; and ROE CORPORATIONS  
I through X, inclusive.

Defendants.

Case No.: A-19-804902-C  
Dept. No.: 26

**DISCOVERY COMMISSIONER'S  
REPORT AND RECOMMENDATION  
GRANTING PLAINTIFF'S MOTION TO  
COMPEL #1; GRANTING IN PART  
PLAINTIFF'S MOTION TO COMPEL  
#2; AND GRANTING IN PART  
PLAINTIFF'S MOTION TO COMPEL #3**

**DISCOVERY COMMISSIONER'S REPORT AND RECOMMENDATIONS**

DATE OF HEARING: October 27, 2020

TIME OF HEARING: 9:00 a.m.

APPEARANCES:

Plaintiff: Danielle J. Barraza, Esq., of the law firm MAIER GUTIERREZ & ASSOCIATES, on behalf of *Plaintiffs Lavelle P. Atkinson and Sheila Atkinson*

Defendants: Arnold Weinstock, Esq., of the law firm LAW OFFICE OF DAN M. WINDER, P.C., on behalf of *Defendants Law Office of Dan M. Winder, P.C. and Dan M. Winder*

I. FINDINGS

This matter came on for hearing before the Discovery Commissioner on October 27, 2020, at 9:00 a.m., on: (1) plaintiffs' motion to compel #1 to require defendant Law Office of Dan M. Winder, P.C. to respond to Interrogatory Nos. 12-38 issued by plaintiff Lavelle P. Atkinson; (2) plaintiffs' motion to compel #2 to require defendant Dan M. Winder to respond to Interrogatory Nos. 6, 10, 11, and 13, and RFP Nos. 3, 15-18 and 29-30 issued by plaintiff Lavelle P. Atkinson; and (3) plaintiffs' motion to compel #3 to require defendant Law Office of Dan M. Winder, P.C. to respond to Interrogatory Nos. 2, 8, and 10, and RFP Nos. 3, 5-6, 8-9, 12, 17-18, 35, 37, and 43-44 issued by plaintiff Lavelle P. Atkinson.

Plaintiffs Lavelle P. Atkinson and Sheila Atkinson were represented by Danielle J. Barraza, Esq., of the law firm MAIER GUTIERREZ & ASSOCIATES. Defendants Law Office of Dan M. Winder, P.C. and Dan M. Winder were represented by Arnold Weinstock, Esq., of the law firm LAW OFFICE OF DAN M. WINDER, P.C.

II. RECOMMENDATIONS

The Discovery Commissioner, having reviewed the pleadings and papers on file herein relative to the motions, having heard the representations of those present at the hearing, and for good cause appearing, hereby makes the following recommendations:

A. Motion to Compel #1

IT IS HEREBY RECOMMENDED that plaintiffs' motion to compel #1 to require defendant Law Office of Dan M. Winder, P.C. to respond to Interrogatory Nos. 12-38 issued by Lavelle P. Atkinson is GRANTED, as pursuant to NRCP 33(a)(1), "a party may serve on any other party no

more than 40 written interrogatories, including all discrete subparts,” and plaintiff Lavelle P. Atkinson has only served 38 interrogatories upon defendant Law Office of Dan M. Winder, P.C.

**B. Motion to Compel #2**

IT IS HEREBY RECOMMENDED that plaintiffs’ motion to compel #2 to require defendant Dan M. Winder to respond to Interrogatory Nos. 6, 10, 11, and 13, and RFP Nos. 3, 15-18 and 29-30 issued by plaintiff Lavelle P. Atkinson is GRANTED IN PART and DENIED IN PART, as follows:

- Interrogatory No. 6: Defendant Dan M. Winder is required to amend his response to indicate how long he has been a practicing lawyer.
- Interrogatory No. 10: Defendant Dan M. Winder is required to disclose each legal entity, law office, or real estate entity that he has owned or worked for from May 18, 2013 to present day.
- Interrogatory No. 11: Defendant Dan M. Winder is required to disclose each legal entity, law office, or real estate entity business venture that he has been involved in from May 18, 2013 to present day.
- Interrogatory No. 13: Defendant Dan M. Winder is required to disclose the name and addresses of the bookkeepers, accountants, or accounting firms who have done accounting work for Dan M. Winder or the Law Office of Dan M. Winder, P.C. as it relates to a legal business venture or real estate venture.
- RFP No. 3: Defendant Dan M. Winder is required to amend his response to indicate the Bates-numbers of the documents that support, refute, or in any way relate to the incidents described in Plaintiffs’ complaint in this litigation.
- RFP No. 15: Defendant Dan M. Winder is required to produce documents evidencing Mr. Winder’s ownership interest in any legal or real estate entities from May 1, 2013 through present day.
- RFP No. 16: The motion to compel is denied as it relates to RFP No. 16, due to the overbroad nature of the request.

- RFP No. 17: Defendant Dan M. Winder is required to produce documents evidencing all real estate or legal entities that he has worked for from May 1, 2013 through present day.
- RFP No. 18: The motion to compel is denied as it relates to RFP No. 18, due to this request not being proportional to the needs of the case.
- RFP No. 29: The motion to compel is denied as it relates to RFP No. 29 as it is written; however, Plaintiff may issue a modified RFP (within 15 days of the hearing date) regarding defendant Dan M. Winder's correspondence with witnesses from this litigation which identifies the specific time period and specific individuals whose correspondence with Dan M. Winder the Plaintiff is seeking.
- RFP No. 30: The motion to compel is denied as it relates to RFP No. 30 as it is written; however, Plaintiff may request in interrogatories information regarding phone information and data.

**C. Motion to Compel #3**

IT IS HEREBY RECOMMENDED that plaintiffs' motion to compel #3 to require defendant Law Office of Dan M. Winder, P.C. to respond to Interrogatory Nos. 2, 8, and 10, and RFP Nos. 3, 5-6, 8-9, 12, 17-18, 35, 37, and 43-44 issued by plaintiff Lavelle P. Atkinson is GRANTED IN PART and DENIED IN PART, as follows:

- Interrogatory No. 2: Defendant Law Office of Dan M. Winder, P.C. is required to state the name, address, and telephone number of each person having knowledge of facts material to this action and indicate the <sup>anticipated</sup> content of their knowledge.
- Interrogatory No. 8: The motion to compel is denied as it relates to Interrogatory No. 8 as written; however, Plaintiff may issue a modified RFP (within 15 days of the hearing date) which limits this request to other lawsuits that defendant Law Office of Dan M. Winder, P.C. to has initiated on behalf of any of the defendants named in this litigation from May 18, 2013 to the present day.

- Interrogatory No. 10: The motion to compel is denied as it relates to Interrogatory No. 10 as written; however, Plaintiff may issue a modified RFP (within 15 days of the hearing date) asking defendant Law Office of Dan M. Winder, P.C. to identify every cell phone or landline that it has used to communicate with Mr. Brown or any other witnesses disclosed in this litigation from the time the Law Office of Dan M. Winder, P.C. became involved in the underlying case involving the Property to today.
- RFP No. 3: Defendant Law Office of Dan M. Winder, P.C. is required to amend his response to indicate the Bates-numbers of the documents that support, refute, or in any way relate to the incidents described in Plaintiffs' complaint in this litigation.
- RFP No. 5: The motion to compel is denied as it relates to RFP No. 5 as written; however, Plaintiff may issue a modified RFP (within 15 days of the hearing date) to request communications that defendant Law Office of Dan M. Winder, P.C. has had with Charles Brown as it relates to the subject property before Charles Brown retained Dan M. Winder, P.C.'s legal services.
- RFP No. 6: The motion to compel is denied as it relates to RFP No. 6 as written; however, Plaintiff may issue a modified RFP (within 15 days of the hearing date) to request communications that defendant Law Office of Dan M. Winder, P.C. has had with Mrs. Brown as it relates to the subject property before Mrs. Brown retained Dan M. Winder, P.C.'s legal services. If Mrs. Brown did not obtain Dan Mr. Winder, P.C.'s legal services, then defendant Dan Mr. Winder, P.C. needs to indicate that and produce any communications between Dan Mr. Winder, P.C. and Mrs. Brown.
- RFP No. 8: Defendant Law Office of Dan M. Winder P.C. is required to amend his response to indicate the Bates-numbers of the documents that it has received from third parties for purposes of this litigation, including but not limited to documents received by way of subpoena.
- RFP No. 9: Defendant Law Office of Dan M. Winder P.C. is required to amend his

response to indicate the Bates-numbers of the documents in any way referencing or relating to any appraisal that defendant Law Office of Dan M. Winder P.C. has obtained as it relates to the subject property.

- RFP No. 12: The motion to compel is denied as it relates to RFP No. 12 as written; however, Plaintiff may issue a modified RFP (within 15 days of the hearing date) to request documents relating to other real estate-related lawsuits that have been made against the Law Office of Dan M. Winder, P.C. or any or the attorneys of record for the Brown Litigation from 2013 through the present.
- RFP No. 17: Defendant Law Office of Dan M. Winder P.C. is required to amend his response to indicate if documents responsive to this request exist or not.
- RFP No. 18: The motion to compel is denied as it relates to RFP No. 18 as written; however, Plaintiff may issue a modified RFP (within 15 days of the hearing date) to request documents of checking, savings, or other types of accounts that defendant Law Office of Dan M. Winder, P.C. maintained with any type of financial institution that specifically relate to transactions associated with the subject property at issue.
- RFP No. 35: The motion to compel is denied as it relates to RFP No. 35 as written; however, Plaintiff may issue a modified RFP (within 15 days of the hearing date) to request documents, including phone records, showing the times that defendant Law Office of Dan M. Winder, P.C. <sup>communicated</sup> ~~corresponded~~ with Charles Brown telephonically prior to Charles Brown retaining the Law Office of Dan M. Winder, P.C. for the underlying litigation involving the subject property.
- RFP No. 37: The motion to compel is denied as it relates to RFP No. 37 as written; however, Plaintiff may issue a modified RFP (within 15 days of the hearing date) to request documents evidencing any check that defendant Law Office of Dan M. Winder, P.C. wrote and/or issued to any other entity or person as it relates to the subject property or the transaction at issue prior to the underlying litigation involving

the subject property, which does not include checks issued to litigation consultants.

- RFP No. 43: The motion to compel is denied as it relates to RFP No. 43, due to this request not being proportional to the needs of the case.
- RFP No. 44: The motion to compel is denied as it relates to RFP No. 44 as written; however, Plaintiff may issue a modified RFP (within 15 days of the hearing date) to request documents evidencing defendant Law Office of Dan M. Winder, P.C.'s ownership interest in any real estate or legal entity at any point from May 1, 2013 through present day.

**D. Timing of Production**

IT IS HEREBY RECOMMENDED that with respect to motions to compel 1-3, plaintiff Lavelle P. Atkinson has 15 days from the date of the hearing to revise and re-serve the requests that need to be modified.

IT IS HEREBY RECOMMENDED that with respect to motions to compel 1-3, defendants Law Office of Dan M. Winder, P.C. and Dan M. Winder have 30 days from the date of the hearing to respond to requests that have been compelled, and 30 days from the date of receipt of modified requests to respond to those modified requests.

IT IS HEREBY RECOMMENDED that counsel must have an additional EDCR 2.34 conference if additional disputes arise with respect to the requests at issue in motions to compel 1-3.

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IT IS HEREBY RECOMMENDED that a status check shall be set for January 8, 2021 at 9:30 a.m., and if the issues are resolved, counsel can contact the Discovery office and ask to have the status check hearing vacated.

DATED this 12<sup>th</sup> day of November, 2020.

  
DISCOVERY COMMISSIONER

Respectfully submitted,


MAIER GUTIERREZ & ASSOCIATES

  
JOSEPH A. GUTIERREZ, ESQ.  
Nevada Bar No. 9046  
DANIELLE J. BARRAZA, ESQ.  
Nevada Bar No. 13822  
8816 Spanish Ridge Avenue  
Las Vegas, Nevada 89148

ADRIANA PEREYRA, ESQ.  
Nevada Bar No. 12263  
INTEGRITY LAW FIRM  
819 South 6<sup>th</sup> Street  
Las Vegas, Nevada 89101  
*Attorneys for Plaintiffs*

Approved of as to form and content,

LAW OFFICE OF DAN M. WINDER, P.C.

  
DAN M. WINDER, ESQ.  
Nevada Bar No. 1569  
ARNOLD WEINSTOCK, ESQ.  
Nevada Bar No. 810  
3507 West Charleston Boulevard  
Las Vegas, Nevada 89102  
*Attorneys for Defendants Law Office of Dan M. Winder, P.C. and Dan M. Winder*



**NOTICE**

Pursuant to NRCP 16.3(c)(2), you are hereby notified that within fourteen (14) days after being served with a report any party may file and serve written objections to the recommendations. Written authorities may be filed with objections, but are not mandatory. If written authorities are filed, any other party may file and serve responding authorities within seven (7) days after being served with objections.

Objection time will expire on November 30 2020.

A copy of the foregoing Discovery Commissioner's Report was:

\_\_\_\_\_ Mailed to Plaintiff/Defendant at the following address on the \_\_\_\_ day of \_\_\_\_\_, 2020:

✓  
\_\_\_\_\_ Electronically filed and served counsel on November 16, 2020, pursuant to N.E.F.C.R. Rule 9.

By Natilie Simonetti  
COMMISSIONER DESIGNEE

1 **CSERV**

2  
3 DISTRICT COURT  
CLARK COUNTY, NEVADA

4  
5  
6 Lavelle Atkinson, Plaintiff(s) CASE NO: A-19-804902-C  
7 vs. DEPT. NO. Department 26  
8 Charles Brown, Defendant(s)  
9

10 **AUTOMATED CERTIFICATE OF SERVICE**

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

14 Service Date: 12/11/2020

15 MGA Docketing docket@mgalaw.com  
16 Case Manager Casemanager@attorneydanwinder.com  
17 Adriana Pereyra adriana@integritylawnv.com  
18 Dan Winder winderdanatty@aol.com  
19

20 If indicated below, a copy of the above mentioned filings were also served by mail  
21 via United States Postal Service, postage prepaid, to the parties listed below at their last  
known addresses on 12/14/2020

22 Dan Winder Law Offices of Dan M. Winder.  
23 Attn: Dan M. Winder  
24 3507 W. Charleston Blvd.  
Las Vegas, NV, 89102

25 Danielle Barraza Maier Gutierrez & Associates  
26 Attn: Danielle J. Barraza  
27 8816 Spanish Ridge Avenue  
Las Vegas, NV, 89148  
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**NEO**

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*Attorneys for Plaintiffs*

**DISTRICT COURT**

**CLARK COUNTY, NEVADA**

LAVELLE P. ATKINSON, SHEILA  
ATKINSON, individuals,

Plaintiffs,

vs.

CHARLES BROWN, an individual; STACY  
BROWN, an individual; LAW OFFICE OF DAN  
M WINDER, P.C., a domestic professional  
corporation; DAN M. WINDER, an individual;  
DOES I through X; and ROE CORPORATIONS  
I through X, inclusive.

Defendants.

Case No.: A-19-804902-C

Dept. No.: 26

**NOTICE OF ENTRY OF ORDER OF  
DISCOVERY COMMISSIONER'S  
REPORT AND RECOMMENDATIONS**

TO: ALL PARTIES AND THEIR COUNSEL OF RECORD.

YOU AND EACH OF YOU will please take notice that an **ORDER RE: DISCOVERY  
COMMISSIONER'S REPORT AND RECOMMENDATION GRANTING PLAINTIFF'S  
MOTION TO COMPEL #1; GRANTING IN PART PLAINTIFF'S MOTION TO COMPEL**

1 **#2; AND GRANTING IN PART PLAINTIFF'S MOTION TO COMPEL #3** was hereby entered  
2 on the 11th day of December, 2020. A copy of which is attached hereto.

3 DATED this 29<sup>th</sup> day of December, 2020.

4 **MAIER GUTIERREZ & ASSOCIATES**

5  
6 /s/ Danielle J. Barraza

7 JOSEPH A. GUTIERREZ, ESQ.  
8 Nevada Bar No. 9046  
9 DANIELLE J. BARRAZA, ESQ.  
10 Nevada Bar No. 13822  
11 8816 Spanish Ridge Avenue  
12 Las Vegas, Nevada 89148

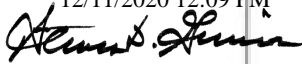
13 -and-

14 ADRIANA PEREYRA, ESQ.  
15 Nevada Bar No. 12263  
16 **INTEGRITY LAW FIRM**  
17 819 South 6th Street  
18 Las Vegas, Nevada 89101  
19 *Attorneys for Plaintiffs*  
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Dan M. Winder, Esq.  
LAW OFFICE OF DAN M. WINDER, P.C.  
3507 West Charleston Blvd.  
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*Attorney for defendants Dan M. Winder and Law Office of Dan M. Winder P.C.*

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CLERK OF THE COURT

**ORDR**

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*Attorneys for Plaintiffs*

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**CLARK COUNTY, NEVADA**

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ATKINSON, individuals,

Plaintiffs,

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CHARLES BROWN, an individual; STACY  
BROWN, an individual; LAW OFFICE OF DAN  
M WINDER, P.C., a domestic professional  
corporation; DAN M. WINDER, an individual;  
DOES I through X; and ROE CORPORATIONS  
I through X, inclusive.

Defendants.

Case No.: A-19-804902-C  
Dept. No.: 26

Hearing Date: October 27, 2020  
Hearing Time: 9:00 a.m.

**ORDER**

The Court, having reviewed the above Report and Recommendations prepared by the  
Discovery Commissioner and,

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X No timely objection having been filed,

After reviewing the objections to the Report and Recommendations and good cause appearing,

AND

X IT IS HEREBY ORDERED, the Discovery Commissioner's Report and Recommendations are affirmed and adopted.

IT IS HEREBY ORDERED, the Discovery Commissioner's Report and Recommendations are affirmed and adopted as modified in the following matter.  
(Attached hereto.)

IT IS HEREBY ORDERED, that a hearing on the Discovery Commissioner's Report is set for \_\_\_\_\_, 2020, at \_\_\_\_ : \_\_\_\_ .m.

DATED this \_\_\_\_ day of \_\_\_\_\_, 2020.

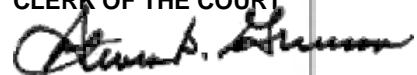
Dated this 11th day of December, 2020



DISTRICT COURT JUDGE

BCB OAE 2A50 5690  
Gloria Sturman  
District Court Judge





1 **DCRR**  
2 ADRIANA PEREYRA, ESQ.  
3 Nevada Bar No. 12263  
4 INTEGRITY LAW FIRM  
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6 Las Vegas, Nevada 89101  
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20 [djb@mgalaw.com](mailto:djb@mgalaw.com)

21 *Attorneys for Plaintiffs*

22 **DISTRICT COURT**  
23 **CLARK COUNTY, NEVADA**

24 LAVELLE P. ATKINSON, SHEILA  
25 ATKINSON, individuals,

26 Plaintiffs,

27 vs.

28 CHARLES BROWN, an individual; STACY  
BROWN, an individual; LAW OFFICE OF DAN  
M. WINDER, P.C., a domestic professional  
corporation; DAN M. WINDER, an individual;  
DOES I through X; and ROE CORPORATIONS  
I through X, inclusive.

Defendants.

Case No.: A-19-804902-C  
Dept. No.: 26

**DISCOVERY COMMISSIONER'S  
REPORT AND RECOMMENDATION  
GRANTING PLAINTIFF'S MOTION TO  
COMPEL #1; GRANTING IN PART  
PLAINTIFF'S MOTION TO COMPEL  
#2; AND GRANTING IN PART  
PLAINTIFF'S MOTION TO COMPEL #3**

**DISCOVERY COMMISSIONER'S REPORT AND RECOMMENDATIONS**

DATE OF HEARING: October 27, 2020

TIME OF HEARING: 9:00 a.m.

APPEARANCES:

Plaintiff: Danielle J. Barraza, Esq., of the law firm MAIER GUTIERREZ & ASSOCIATES, on behalf of *Plaintiffs Lavelle P. Atkinson and Sheila Atkinson*

Defendants: Arnold Weinstock, Esq., of the law firm LAW OFFICE OF DAN M. WINDER, P.C., on behalf of *Defendants Law Office of Dan M. Winder, P.C. and Dan M. Winder*

I. FINDINGS

This matter came on for hearing before the Discovery Commissioner on October 27, 2020, at 9:00 a.m., on: (1) plaintiffs' motion to compel #1 to require defendant Law Office of Dan M. Winder, P.C. to respond to Interrogatory Nos. 12-38 issued by plaintiff Lavelle P. Atkinson; (2) plaintiffs' motion to compel #2 to require defendant Dan M. Winder to respond to Interrogatory Nos. 6, 10, 11, and 13, and RFP Nos. 3, 15-18 and 29-30 issued by plaintiff Lavelle P. Atkinson; and (3) plaintiffs' motion to compel #3 to require defendant Law Office of Dan M. Winder, P.C. to respond to Interrogatory Nos. 2, 8, and 10, and RFP Nos. 3, 5-6, 8-9, 12, 17-18, 35, 37, and 43-44 issued by plaintiff Lavelle P. Atkinson.

Plaintiffs Lavelle P. Atkinson and Sheila Atkinson were represented by Danielle J. Barraza, Esq., of the law firm MAIER GUTIERREZ & ASSOCIATES. Defendants Law Office of Dan M. Winder, P.C. and Dan M. Winder were represented by Arnold Weinstock, Esq., of the law firm LAW OFFICE OF DAN M. WINDER, P.C.

II. RECOMMENDATIONS

The Discovery Commissioner, having reviewed the pleadings and papers on file herein relative to the motions, having heard the representations of those present at the hearing, and for good cause appearing, hereby makes the following recommendations:

A. Motion to Compel #1

IT IS HEREBY RECOMMENDED that plaintiffs' motion to compel #1 to require defendant Law Office of Dan M. Winder, P.C. to respond to Interrogatory Nos. 12-38 issued by Lavelle P. Atkinson is GRANTED, as pursuant to NRCP 33(a)(1), "a party may serve on any other party no

more than 40 written interrogatories, including all discrete subparts,” and plaintiff Lavelle P. Atkinson has only served 38 interrogatories upon defendant Law Office of Dan M. Winder, P.C.

**B. Motion to Compel #2**

IT IS HEREBY RECOMMENDED that plaintiffs’ motion to compel #2 to require defendant Dan M. Winder to respond to Interrogatory Nos. 6, 10, 11, and 13, and RFP Nos. 3, 15-18 and 29-30 issued by plaintiff Lavelle P. Atkinson is GRANTED IN PART and DENIED IN PART, as follows:

- Interrogatory No. 6: Defendant Dan M. Winder is required to amend his response to indicate how long he has been a practicing lawyer.
- Interrogatory No. 10: Defendant Dan M. Winder is required to disclose each legal entity, law office, or real estate entity that he has owned or worked for from May 18, 2013 to present day.
- Interrogatory No. 11: Defendant Dan M. Winder is required to disclose each legal entity, law office, or real estate entity business venture that he has been involved in from May 18, 2013 to present day.
- Interrogatory No. 13: Defendant Dan M. Winder is required to disclose the name and addresses of the bookkeepers, accountants, or accounting firms who have done accounting work for Dan M. Winder or the Law Office of Dan M. Winder, P.C. as it relates to a legal business venture or real estate venture.
- RFP No. 3: Defendant Dan M. Winder is required to amend his response to indicate the Bates-numbers of the documents that support, refute, or in any way relate to the incidents described in Plaintiffs’ complaint in this litigation.
- RFP No. 15: Defendant Dan M. Winder is required to produce documents evidencing Mr. Winder’s ownership interest in any legal or real estate entities from May 1, 2013 through present day.
- RFP No. 16: The motion to compel is denied as it relates to RFP No. 16, due to the overbroad nature of the request.

- RFP No. 17: Defendant Dan M. Winder is required to produce documents evidencing all real estate or legal entities that he has worked for from May 1, 2013 through present day.
- RFP No. 18: The motion to compel is denied as it relates to RFP No. 18, due to this request not being proportional to the needs of the case.
- RFP No. 29: The motion to compel is denied as it relates to RFP No. 29 as it is written; however, Plaintiff may issue a modified RFP (within 15 days of the hearing date) regarding defendant Dan M. Winder's correspondence with witnesses from this litigation which identifies the specific time period and specific individuals whose correspondence with Dan M. Winder the Plaintiff is seeking.
- RFP No. 30: The motion to compel is denied as it relates to RFP No. 30 as it is written; however, Plaintiff may request in interrogatories information regarding phone information and data.

**C. Motion to Compel #3**

IT IS HEREBY RECOMMENDED that plaintiffs' motion to compel #3 to require defendant Law Office of Dan M. Winder, P.C. to respond to Interrogatory Nos. 2, 8, and 10, and RFP Nos. 3, 5-6, 8-9, 12, 17-18, 35, 37, and 43-44 issued by plaintiff Lavelle P. Atkinson is GRANTED IN PART and DENIED IN PART, as follows:

- Interrogatory No. 2: Defendant Law Office of Dan M. Winder, P.C. is required to state the name, address, and telephone number of each person having knowledge of facts material to this action and indicate the <sup>anticipated</sup> content of their knowledge.
- Interrogatory No. 8: The motion to compel is denied as it relates to Interrogatory No. 8 as written; however, Plaintiff may issue a modified RFP (within 15 days of the hearing date) which limits this request to other lawsuits that defendant Law Office of Dan M. Winder, P.C. to has initiated on behalf of any of the defendants named in this litigation from May 18, 2013 to the present day.

- Interrogatory No. 10: The motion to compel is denied as it relates to Interrogatory No. 10 as written; however, Plaintiff may issue a modified RFP (within 15 days of the hearing date) asking defendant Law Office of Dan M. Winder, P.C. to identify every cell phone or landline that it has used to communicate with Mr. Brown or any other witnesses disclosed in this litigation from the time the Law Office of Dan M. Winder, P.C. became involved in the underlying case involving the Property to today.
- RFP No. 3: Defendant Law Office of Dan M. Winder, P.C. is required to amend his response to indicate the Bates-numbers of the documents that support, refute, or in any way relate to the incidents described in Plaintiffs' complaint in this litigation.
- RFP No. 5: The motion to compel is denied as it relates to RFP No. 5 as written; however, Plaintiff may issue a modified RFP (within 15 days of the hearing date) to request communications that defendant Law Office of Dan M. Winder, P.C. has had with Charles Brown as it relates to the subject property before Charles Brown retained Dan M. Winder, P.C.'s legal services.
- RFP No. 6: The motion to compel is denied as it relates to RFP No. 6 as written; however, Plaintiff may issue a modified RFP (within 15 days of the hearing date) to request communications that defendant Law Office of Dan M. Winder, P.C. has had with Mrs. Brown as it relates to the subject property before Mrs. Brown retained Dan M. Winder, P.C.'s legal services. If Mrs. Brown did not obtain Dan Mr. Winder, P.C.'s legal services, then defendant Dan Mr. Winder, P.C. needs to indicate that and produce any communications between Dan Mr. Winder, P.C. and Mrs. Brown.
- RFP No. 8: Defendant Law Office of Dan M. Winder P.C. is required to amend his response to indicate the Bates-numbers of the documents that it has received from third parties for purposes of this litigation, including but not limited to documents received by way of subpoena.
- RFP No. 9: Defendant Law Office of Dan M. Winder P.C. is required to amend his

response to indicate the Bates-numbers of the documents in any way referencing or relating to any appraisal that defendant Law Office of Dan M. Winder P.C. has obtained as it relates to the subject property.

- RFP No. 12: The motion to compel is denied as it relates to RFP No. 12 as written; however, Plaintiff may issue a modified RFP (within 15 days of the hearing date) to request documents relating to other real estate-related lawsuits that have been made against the Law Office of Dan M. Winder, P.C. or any or the attorneys of record for the Brown Litigation from 2013 through the present.
- RFP No. 17: Defendant Law Office of Dan M. Winder P.C. is required to amend his response to indicate if documents responsive to this request exist or not.
- RFP No. 18: The motion to compel is denied as it relates to RFP No. 18 as written; however, Plaintiff may issue a modified RFP (within 15 days of the hearing date) to request documents of checking, savings, or other types of accounts that defendant Law Office of Dan M. Winder, P.C. maintained with any type of financial institution that specifically relate to transactions associated with the subject property at issue.
- RFP No. 35: The motion to compel is denied as it relates to RFP No. 35 as written; however, Plaintiff may issue a modified RFP (within 15 days of the hearing date) to request documents, including phone records, showing the times that defendant Law Office of Dan M. Winder, P.C. <sup>communicated</sup> ~~corresponded~~ with Charles Brown telephonically prior to Charles Brown retaining the Law Office of Dan M. Winder, P.C. for the underlying litigation involving the subject property.
- RFP No. 37: The motion to compel is denied as it relates to RFP No. 37 as written; however, Plaintiff may issue a modified RFP (within 15 days of the hearing date) to request documents evidencing any check that defendant Law Office of Dan M. Winder, P.C. wrote and/or issued to any other entity or person as it relates to the subject property or the transaction at issue prior to the underlying litigation involving

the subject property, which does not include checks issued to litigation consultants.

- RFP No. 43: The motion to compel is denied as it relates to RFP No. 43, due to this request not being proportional to the needs of the case.
- RFP No. 44: The motion to compel is denied as it relates to RFP No. 44 as written; however, Plaintiff may issue a modified RFP (within 15 days of the hearing date) to request documents evidencing defendant Law Office of Dan M. Winder, P.C.'s ownership interest in any real estate or legal entity at any point from May 1, 2013 through present day.

**D. Timing of Production**

IT IS HEREBY RECOMMENDED that with respect to motions to compel 1-3, plaintiff Lavelle P. Atkinson has 15 days from the date of the hearing to revise and re-serve the requests that need to be modified.

IT IS HEREBY RECOMMENDED that with respect to motions to compel 1-3, defendants Law Office of Dan M. Winder, P.C. and Dan M. Winder have 30 days from the date of the hearing to respond to requests that have been compelled, and 30 days from the date of receipt of modified requests to respond to those modified requests.

IT IS HEREBY RECOMMENDED that counsel must have an additional EDCR 2.34 conference if additional disputes arise with respect to the requests at issue in motions to compel 1-3.

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IT IS HEREBY RECOMMENDED that a status check shall be set for January 8, 2021 at 9:30 a.m., and if the issues are resolved, counsel can contact the Discovery office and ask to have the status check hearing vacated.

DATED this 12<sup>th</sup> day of November, 2020.

  
DISCOVERY COMMISSIONER

Respectfully submitted,


MAIER GUTIERREZ & ASSOCIATES

  
JOSEPH A. GUTIERREZ, ESQ.  
Nevada Bar No. 9046  
DANIELLE J. BARRAZA, ESQ.  
Nevada Bar No. 13822  
8816 Spanish Ridge Avenue  
Las Vegas, Nevada 89148

ADRIANA PEREYRA, ESQ.  
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819 South 6<sup>th</sup> Street  
Las Vegas, Nevada 89101  
*Attorneys for Plaintiffs*

Approved of as to form and content,

LAW OFFICE OF DAN M. WINDER, P.C.

  
DAN M. WINDER, ESQ.  
Nevada Bar No. 1569  
ARNOLD WEINSTOCK, ESQ.  
Nevada Bar No. 810  
3507 West Charleston Boulevard  
Las Vegas, Nevada 89102  
*Attorneys for Defendants Law Office of Dan M. Winder, P.C. and Dan M. Winder*



**NOTICE**

Pursuant to NRCP 16.3(c)(2), you are hereby notified that within fourteen (14) days after being served with a report any party may file and serve written objections to the recommendations. Written authorities may be filed with objections, but are not mandatory. If written authorities are filed, any other party may file and serve responding authorities within seven (7) days after being served with objections.

Objection time will expire on November 30 2020.

A copy of the foregoing Discovery Commissioner's Report was:

\_\_\_\_\_ Mailed to Plaintiff/Defendant at the following address on the \_\_\_\_ day of \_\_\_\_\_, 2020:

✓  
\_\_\_\_\_ Electronically filed and served counsel on November 16, 2020, pursuant to N.E.F.C.R. Rule 9.

By Natilie Simonetti  
COMMISSIONER DESIGNEE

1 **CSERV**

2  
3 DISTRICT COURT  
CLARK COUNTY, NEVADA

4  
5  
6 Lavelle Atkinson, Plaintiff(s) CASE NO: A-19-804902-C  
7 vs. DEPT. NO. Department 26  
8 Charles Brown, Defendant(s)  
9

10 **AUTOMATED CERTIFICATE OF SERVICE**

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

14 Service Date: 12/11/2020

15 MGA Docketing docket@mgalaw.com  
16 Case Manager Casemanager@attorneydanwinder.com  
17 Adriana Pereyra adriana@integritylawnv.com  
18 Dan Winder winderdanatty@aol.com  
19

20 If indicated below, a copy of the above mentioned filings were also served by mail  
21 via United States Postal Service, postage prepaid, to the parties listed below at their last  
known addresses on 12/14/2020

22 Dan Winder Law Offices of Dan M. Winder.  
23 Attn: Dan M. Winder  
24 3507 W. Charleston Blvd.  
Las Vegas, NV, 89102

25 Danielle Barraza Maier Gutierrez & Associates  
26 Attn: Danielle J. Barraza  
27 8816 Spanish Ridge Avenue  
Las Vegas, NV, 89148  
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*Heather S. Lumin*  
CLERK OF THE COURT

**ORDR**

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*Attorneys for Plaintiffs*

**DISTRICT COURT**

**CLARK COUNTY, NEVADA**

LAVELLE P. ATKINSON, SHEILA  
ATKINSON, individuals,

Plaintiffs,

vs.

CHARLES BROWN, an individual; STACY  
BROWN, an individual; LAW OFFICE OF DAN  
M WINDER, P.C., a domestic professional  
corporation; DAN M. WINDER, an individual;  
DOES I through X; and ROE CORPORATIONS  
I through X, inclusive.

Defendants.

Case No.: A-19-804902-C  
Dept. No.: 26

Hearing Date: March 25, 2021  
Hearing Time: 9:30 a.m.

**ORDER**

The Court, having reviewed the above Report and Recommendations prepared by the  
Discovery Commissioner and,

X No timely objection having been filed,

After reviewing the objections to the Report and Recommendations and good cause appearing,

AND

X IT IS HEREBY ORDERED, the Discovery Commissioner's Report and Recommendations are affirmed and adopted.

IT IS HEREBY ORDERED, the Discovery Commissioner's Report and Recommendations are affirmed and adopted as modified in the following matter.  
(Attached hereto.)

IT IS HEREBY ORDERED, that a hearing on the Discovery Commissioner's Report is set for \_\_\_\_\_, 2021, at \_\_\_\_\_m.

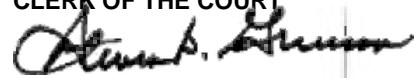
DATED this \_\_\_\_\_ day of \_\_\_\_\_, 2021.

Dated this 29th day of April, 2021



DISTRICT COURT JUDGE

138 3AF DCB8 4C69  
Gloria Sturman  
District Court Judge



**DCRR**

ADRIANA PEREYRA, ESQ.  
Nevada Bar No. 12263  
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[djb@mgalaw.com](mailto:djb@mgalaw.com)

*Attorneys for Plaintiffs*

**DISTRICT COURT  
CLARK COUNTY, NEVADA**

LAVELLE P. ATKINSON, SHEILA  
ATKINSON, individuals,

Plaintiffs,

vs.

CHARLES BROWN, an individual; STACY  
BROWN, an individual; LAW OFFICE OF DAN  
M WINDER, P.C., a domestic professional  
corporation; DAN M. WINDER, an individual;  
DOES I through X; and ROE CORPORATIONS  
I through X, inclusive,

Defendants.

Case No.: A-19-804902-C  
Dept. No.: 26

**DISCOVERY COMMISSIONER'S  
REPORT AND RECOMMENDATIONS  
GRANTING PLAINTIFFS' MOTION  
FOR PROTECTIVE ORDER  
REGARDING DEPOSITION NOTICES  
OF PLAINTIFFS' COUNSEL**

**DISCOVERY COMMISSIONER'S REPORT AND RECOMMENDATIONS**

DATE OF HEARING: March 25, 2021

TIME OF HEARING: 9:30 a.m.

APPEARANCES:

Plaintiff: Joseph A. Gutierrez, Esq., of the law firm MAIER GUTIERREZ & ASSOCIATES, and Adriana Pereyra, Esq., of the law firm INTEGRITY LAW FIRM, on behalf of *Plaintiffs Lavelle P. Atkinson and Sheila Atkinson*

Defendants: Arnold Weinstock, Esq., of the law firm LAW OFFICE OF DAN M. WINDER, P.C., on behalf of *Defendants Law Office of Dan M. Winder, P.C. and Dan M. Winder*

I.FINDINGS

This matter came on for hearing before the Discovery Commissioner on March 25, 2021, at 9:00 a.m., on plaintiffs' <sup>motion</sup> for protective order and for sanctions regarding defendant Dan M. Winder's unilateral notice of deposing plaintiffs' counsel of record, Danielle J. Barraza, Esq. and Adriana Pereyra, Esq.

Plaintiffs Lavelle P. Atkinson and Sheila Atkinson were represented by Joseph A. Gutierrez Esq., of the law firm MAIER GUTIERREZ & ASSOCIATES. Defendants Law Office of Dan M. Winder, P.C. and Dan M. Winder were represented by Arnold Weinstock, Esq., of the law firm LAW OFFICE OF DAN M. WINDER, P.C.

II.RECOMMENDATIONS

The Discovery Commissioner, having reviewed the pleadings and papers on file herein relative to the motions, having heard the representations of those present at the hearing, and for good cause appearing, hereby makes the following recommendations:

IT IS HEREBY RECOMMENDED that plaintiffs' motion for protective order is GRANTED, as defendant Dan M. Winder has failed to meet his burden of satisfying the three-factor test under *Club Vista Fin. Servs. v. Dist. Ct.*, 128 Nev. 224, 230, 276 P.3d 246, 250 (2012) as to why plaintiff's counsel would need to be deposed. Such factors consist of: "(1) no other means exist to obtain the information than to depose opposing counsel; (2) the information sought is relevant and nonprivileged; and (3) the information is crucial to the preparation of the case. *Id.* As

1 such, plaintiffs' counsel are not <sup>currently (EO)</sup> required to sit for depositions in this matter.

2 *Lavelle P. Atkinson, et al v. Charles Brown, et al*


3 Case No. A-19-804902-C

4 IT IS FURTHER RECOMMENDED that no sanctions will be ordered with respect to  
5 plaintiffs' motion for protective order.

6 DATED this 7<sup>th</sup> day of April, 2021.

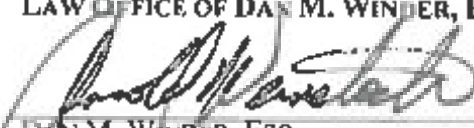
7   
8 DISCOVERY COMMISSIONER

9  
10 Respectfully submitted,  
11 MAIER GUTIERREZ & ASSOCIATES

12   
13 JOSEPH A. GUTIERREZ, ESQ.  
14 Nevada Bar No. 9046  
15 DANIELLE J. BARRAZA, ESQ.  
16 Nevada Bar No. 13822  
17 8816 Spanish Ridge Avenue  
18 Las Vegas, Nevada 89148

19 ADRIANA PEREYRA, ESQ.  
20 Nevada Bar No. 12263  
21 INTEGRITY LAW FIRM  
22 819 South 6<sup>th</sup> Street  
23 Las Vegas, Nevada 89101  
24 Attorneys for Plaintiffs

25 Approved of as to form and content,  
26 LAW OFFICE OF DAN M. WINDER, P.C.

27   
28 DAN M. WINDER, ESQ.  
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ARNOLD WEINSTOCK, ESQ.  
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Attorneys for Defendants Law Office of Dan M.  
Winder, P.C. and Dan M. Winder



**NOTICE**

Pursuant to NRCP 16.3(c)(2), you are hereby notified that within fourteen (14) days after being served with a report any party may file and serve written objections to the recommendations. Written authorities may be filed with objections, but are not mandatory. If written authorities are filed, any other party may file and serve responding authorities within seven (7) days after being served with objections.

Objection time will expire on April 20, 2021.

A copy of the foregoing Discovery Commissioner's Report was:

\_\_\_\_\_ Mailed to Plaintiff/Defendant at the following address on the \_\_\_\_\_ day of \_\_\_\_\_, 2021:

\_\_\_\_\_ Electronically filed and served counsel on April 12, 2021,  
Pursuant to N.E.F.C.R. Rule 9.

By:

Natilie Simonnet  
COMMISSIONER DESIGNEE

1 **CSERV**

2  
3 DISTRICT COURT  
CLARK COUNTY, NEVADA

4  
5  
6 Lavelle Atkinson, Plaintiff(s) CASE NO: A-19-804902-C  
7 vs. DEPT. NO. Department 26  
8 Charles Brown, Defendant(s)  
9

10 **AUTOMATED CERTIFICATE OF SERVICE**

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

14 Service Date: 4/29/2021

15 MGA Docketing docket@mgalaw.com  
16 Case Manager Casemanager@attorneydanwinder.com  
17 Adriana Pereyra adriana@integritylawnv.com  
18 Dan Winder winderdanatty@aol.com  
19

20 If indicated below, a copy of the above mentioned filings were also served by mail  
21 via United States Postal Service, postage prepaid, to the parties listed below at their last  
known addresses on 4/30/2021

22 Danielle Barraza Maier Gutierrez & Associates  
23 Attn: Danielle J. Barraza  
24 8816 Spanish Ridge Avenue  
Las Vegas, NV, 89148  
25  
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PET APP 0238



**NEO**

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*Attorneys for Plaintiffs*

**DISTRICT COURT**

**CLARK COUNTY, NEVADA**

LAVELLE P. ATKINSON, SHEILA  
ATKINSON, individuals,

Plaintiffs,

vs.

CHARLES BROWN, an individual; STACY  
BROWN, an individual; LAW OFFICE OF DAN  
M WINDER, P.C., a domestic professional  
corporation; DAN M. WINDER, an individual;  
DOES I through X; and ROE CORPORATIONS  
I through X, inclusive.

Defendants.

Case No.: A-19-804902-C

Dept. No.: XXVI

**NOTICE OF ENTRY OF DISCOVERY  
COMMISSIONER'S REPORT AND  
RECOMMENDATIONS ORDER**

TO: ALL PARTIES AND THEIR COUNSEL OF RECORD.

YOU AND EACH OF YOU will please take notice that a **DISCOVERY**

///

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1 **COMMISSIONER'S REPORT AND RECOMMENDATIONS ORDER** was hereby entered on  
2 the 29<sup>th</sup> day of April, 2021. A copy of which is attached hereto.

3 DATED this 30th day of April, 2021.

4 Respectfully submitted,

5 **MAIER GUTIERREZ & ASSOCIATES**

6 /s/ Danielle J. Barraza

7 JOSEPH A. GUTIERREZ, ESQ.

8 Nevada Bar No. 9046

9 DANIELLE J. BARRAZA, ESQ.

10 Nevada Bar No. 13822

11 8816 Spanish Ridge Avenue

12 Las Vegas, Nevada 89148

13 *Attorneys for Plaintiffs*

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Dan M. Winder, Esq.  
Arnold Weinstock, Esq.  
LAW OFFICE OF DAN M. WINDER, P.C.  
3507 West Charleston Blvd.  
Las Vegas, Nevada 89102  
*Attorney for defendants Dan M. Winder and Law Office of Dan M. Winder P.C.*

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*Heather S. Lumin*  
CLERK OF THE COURT

**ORDR**

ADRIANA PEREYRA, ESQ.  
Nevada Bar No. 12263  
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*Attorneys for Plaintiffs*

**DISTRICT COURT**

**CLARK COUNTY, NEVADA**

LAVELLE P. ATKINSON, SHEILA  
ATKINSON, individuals,

Plaintiffs,

vs.

CHARLES BROWN, an individual; STACY  
BROWN, an individual; LAW OFFICE OF DAN  
M WINDER, P.C., a domestic professional  
corporation; DAN M. WINDER, an individual;  
DOES I through X; and ROE CORPORATIONS  
I through X, inclusive.

Defendants.

Case No.: A-19-804902-C  
Dept. No.: 26

Hearing Date: March 25, 2021  
Hearing Time: 9:30 a.m.

**ORDER**

The Court, having reviewed the above Report and Recommendations prepared by the  
Discovery Commissioner and,

X No timely objection having been filed,

After reviewing the objections to the Report and Recommendations and good cause appearing,

AND

X IT IS HEREBY ORDERED, the Discovery Commissioner's Report and Recommendations are affirmed and adopted.

IT IS HEREBY ORDERED, the Discovery Commissioner's Report and Recommendations are affirmed and adopted as modified in the following matter.  
(Attached hereto.)

IT IS HEREBY ORDERED, that a hearing on the Discovery Commissioner's Report is set for \_\_\_\_\_, 2021, at \_\_\_\_\_m.

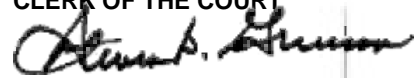
DATED this \_\_\_\_\_ day of \_\_\_\_\_, 2021.

Dated this 29th day of April, 2021



DISTRICT COURT JUDGE

138 3AF DCB8 4C69  
Gloria Sturman  
District Court Judge



**DCRR**

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*Attorneys for Plaintiffs*

**DISTRICT COURT  
CLARK COUNTY, NEVADA**

LAVELLE P. ATKINSON, SHEILA  
ATKINSON, individuals,

Plaintiffs,

vs.

CHARLES BROWN, an individual; STACY  
BROWN, an individual; LAW OFFICE OF DAN  
M WINDER, P.C., a domestic professional  
corporation; DAN M. WINDER, an individual;  
DOES I through X; and ROE CORPORATIONS  
I through X, inclusive.

Defendants.

Case No.: A-19-804902-C  
Dept. No.: 26

**DISCOVERY COMMISSIONER'S  
REPORT AND RECOMMENDATIONS  
GRANTING PLAINTIFFS' MOTION  
FOR PROTECTIVE ORDER  
REGARDING DEPOSITION NOTICES  
OF PLAINTIFFS' COUNSEL**

**DISCOVERY COMMISSIONER'S REPORT AND RECOMMENDATIONS**

DATE OF HEARING: March 25, 2021

TIME OF HEARING: 9:30 a.m.



APPEARANCES:

Plaintiff: Joseph A. Gutierrez, Esq., of the law firm MAIER GUTIERREZ & ASSOCIATES, and Adriana Pereyra, Esq., of the law firm INTEGRITY LAW FIRM, on behalf of *Plaintiffs Lavelle P. Atkinson and Sheila Atkinson*

Defendants: Arnold Weinstock, Esq., of the law firm LAW OFFICE OF DAN M. WINDER, P.C., on behalf of *Defendants Law Office of Dan M. Winder, P.C. and Dan M. Winder*

I. FINDINGS

This matter came on for hearing before the Discovery Commissioner on March 25, 2021, at 9:00 a.m., on plaintiffs' <sup>motion</sup> for protective order and for sanctions regarding defendant Dan M. Winder's unilateral notice of deposing plaintiffs' counsel of record, Danielle J. Barraza, Esq. and Adriana Pereyra, Esq.

Plaintiffs Lavelle P. Atkinson and Sheila Atkinson were represented by Joseph A. Gutierrez Esq., of the law firm MAIER GUTIERREZ & ASSOCIATES. Defendants Law Office of Dan M. Winder, P.C. and Dan M. Winder were represented by Arnold Weinstock, Esq., of the law firm LAW OFFICE OF DAN M. WINDER, P.C.

II. RECOMMENDATIONS

The Discovery Commissioner, having reviewed the pleadings and papers on file herein relative to the motions, having heard the representations of those present at the hearing, and for good cause appearing, hereby makes the following recommendations:

IT IS HEREBY RECOMMENDED that plaintiffs' motion for protective order is GRANTED, as defendant Dan M. Winder has failed to meet his burden of satisfying the three-factor test under *Club Vista Fin. Servs. v. Dist. Ct.*, 128 Nev. 224, 230, 276 P.3d 246, 250 (2012) as to why plaintiff's counsel would need to be deposed. Such factors consist of: "(1) no other means exist to obtain the information than to depose opposing counsel; (2) the information sought is relevant and nonprivileged; and (3) the information is crucial to the preparation of the case. *Id.* As

1 such, plaintiffs' counsel are not <sup>currently (EO)</sup> required to sit for depositions in this matter.

2 *Lavelle P. Atkinson, et al v. Charles Brown, et al*


3 Case No. A-19-804902-C

4 IT IS FURTHER RECOMMENDED that no sanctions will be ordered with respect to  
5 plaintiffs' motion for protective order.

6 DATED this 7<sup>th</sup> day of April, 2021.

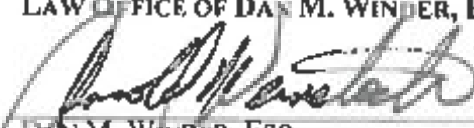
7   
8 DISCOVERY COMMISSIONER

9  
10 Respectfully submitted,  
11 MAIER GUTIERREZ & ASSOCIATES

12   
13 JOSEPH A. GUTIERREZ, ESQ.  
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23 Las Vegas, Nevada 89101  
24 Attorneys for Plaintiffs

25 Approved of as to form and content,  
26 LAW OFFICE OF DAN M. WINDER, P.C.

27   
28 DAN M. WINDER, ESQ.  
Nevada Bar No. 1569  
ARNOLD WEINSTOCK, ESQ.  
Nevada Bar No. 810  
3507 West Charleston Boulevard  
Las Vegas, Nevada 89102  
Attorneys for Defendants Law Office of Dan M.  
Winder, P.C. and Dan M. Winder

**NOTICE**

Pursuant to NRCP 16.3(c)(2), you are hereby notified that within fourteen (14) days after being served with a report any party may file and serve written objections to the recommendations. Written authorities may be filed with objections, but are not mandatory. If written authorities are filed, any other party may file and serve responding authorities within seven (7) days after being served with objections.

Objection time will expire on April 20, 2021.

A copy of the foregoing Discovery Commissioner's Report was:

\_\_\_\_\_ Mailed to Plaintiff/Defendant at the following address on the \_\_\_\_\_ day of \_\_\_\_\_, 2021:

\_\_\_\_\_ Electronically filed and served counsel on April 12, 2021,  
Pursuant to N.E.F.C.R. Rule 9.

By:

Natilie Simonnet  
COMMISSIONER DESIGNEE

1 **CSERV**

2  
3 **DISTRICT COURT**  
4 **CLARK COUNTY, NEVADA**

5	
6 Lavelle Atkinson, Plaintiff(s)	CASE NO: A-19-804902-C
7 vs.	DEPT. NO. Department 26
8 Charles Brown, Defendant(s)	
9	

10 **AUTOMATED CERTIFICATE OF SERVICE**

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

14 Service Date: 4/29/2021

15 MGA Docketing	docket@mgalaw.com
16 Case Manager	Casemanager@attorneydanwinder.com
17 Adriana Pereyra	adriana@integritylawnv.com
18 Dan Winder	winderdanatty@aol.com
19	

20 If indicated below, a copy of the above mentioned filings were also served by mail  
21 via United States Postal Service, postage prepaid, to the parties listed below at their last  
22 known addresses on 4/30/2021

22 Danielle Barraza	Maier Gutierrez & Associates
23	Attn: Danielle J. Barraza
24	8816 Spanish Ridge Avenue
25	Las Vegas, NV, 89148
26	
27	
28	

PET APP 0248