

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

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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 2 of 5**

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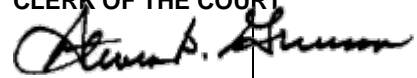
Attorney for the Winder Petitioners

INDEX OF PETITIONER'S  
APPENDIX

DATE	FILED BY	DESCRIPTION	VOL	PAGE
11/15/19	Plaintiffs	Civil Summons	1	14
11/15/19	Plaintiffs	Complaint	1	1
03/20/20	Defendants	Defendants' Answer to Complaint	1	191
05/07/21	Defendants	Defendants' Motion for Summary Judgment	2	249
05/08/21	Defendants	Defendants' Motion for Summary Judgment Combined Exhibits	2	260
12/5/19	Defendants	Defendants' Motion to Dismiss for Failure to State a Claim	1	18
02/05/20	Defendants	Defendants' Reply Motion to Dismiss for Failure to State a Claim	1	105
06/09/21	Defendants	Defendants' Reply Re Defendants' Motion for Summary Judgment Filed 05/07/21	5	916
05/24/21	Plaintiffs	Errata to Plaintiffs' Opposition to Defendants' Motion for Summary Judgment	5	909
02/28/20	Plaintiffs	Notice Of Entry of Order Denying Defendants Motion to Dismiss	1	186
06/18/21	Plaintiffs	Notice of Entry of Order Denying Defendants' Motion for Summary Judgment	5	954

DATE	FILED BY	DESCRIPTION	VOL	PAGE
12/29/20	Plaintiffs	Notice of Entry of Order Granting in part Plaintiffs' Motions to Compel #1, #2, #3	1	216
04/30/21	Plaintiffs	Notice of Entry of Order Granting Plaintiffs' Motion for Protective Order	1	239
01/13/20	Plaintiffs	Notice Of Entry of Stipulation and Order to Continue Hearing	1	99
02/27/20		Order Denying Defendants Motion to Dismiss for Failure to State a Claim NRCP	1	184
10/22/20		Order Granting Defendants' Motion to Add Affirmative Defenses	1	200
12/11/20		Order Granting Plaintiffs Motions to Compel #1; Granting in Part Plaintiff's Motion to Compel #2; and Granting in Part Plaintiff's Motion #3	1	203
04/29/21		Order Granting Protective Order Regarding Deposition Notices of Plaintiffs' Counsel	1	232
06/11/21		Order Re Defendants' Motion for Discovery Sanctions Filed 04/12/21	5	940
06/11/21	Plaintiffs	Order Re Plaintiffs' Motion for an Order to Show cause	5	947

DATE	FILED BY	DESCRIPTION	VOL	PAGE
05/11/21	Plaintiffs	Order Referring to Discovery Commissioner Plaintiff's Motion for an Order to Show Cause as to why Defendant should not be Held in Contempt for Failing to Abide but DCRR Granting Plaintiff's Motion to Compel #1	2	455
05/21/21	Plaintiffs	Plaintiffs' Opposition to Defendants' Motion for Summary Judgment Pt.1	3	458
05/21/21	Plaintiffs	Plaintiffs' Opposition to Defendants' Motion for Summary Judgment Pt.2	4	663
12/18/19	Plaintiffs	Plaintiffs' Opposition to Winder Defendants' Motion to Dismiss for Failure to State a Claim	1	33
09/03/20		Scheduling Order and Order Setting Civil Jury Trial	1	195



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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**

**HEARING REQUESTED**

**WINDER DEFENDANTS' MOTION  
FOR  
SUMMARY JUDGMENT**

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. move this Court grant them

a) Summary judgment on the following grounds:

i) Inability of the plaintiffs to prove defendants intended the harms alleged as set forth in ¶4 below.

ii) Lack of Duty to the Plaintiffs as set forth in ¶6 below.

b) For partial summary judgment dismissing claim for attorney fees on the grounds:

i) Defendants have no admissible evidence by which they can prove their claim for attorney fees.

ii) Res judicata, claim preclusion as set forth in ¶5 below.

1 **POINTS AND AUTHORITIES**

2

3 **1. LAW PERTINENT TO SUMMARY JUDGMENT**

4 Summary judgment is appropriate when the record shows that there is no genuine issue  
5 of material fact and the movant is entitled to judgment as a matter of law. NRCP 56(c)). “A  
6 factual dispute is genuine when the evidence is such that a rational trier of fact could return a  
7 verdict for the nonmoving party.”. All evidence, “and any reasonable inferences drawn from it,  
8 must be viewed in a light most favorable to the nonmoving party. The non-moving party is not  
9 entitled to build its case on the “gossamer threads of whimsy, speculation and conjecture.  
10 *LaMantia v. Redisi*, 118 Nev. 27, 29, 38 P.3d 877, 879 (2002).  
11

12 **2. NON-DISPUTED FACTS**

13 Defendant Law Office of Dan M. Winder, P.C. (WINDER PC) is a Nevada Professional  
14 Corporation. Dan M. Winder (WINDER) is, and at all times relevant, was, the sole owner of  
15 that Corporation. Mr. Winder has been licensed practicing attorney in Nevada for more than 20  
16 years.<sup>1</sup>

17 On or about July 6<sup>th</sup>, 2017, the Plaintiffs signed a Purchase Agreement as Sellers for the  
18 property located at 2315 North Decatur.<sup>2</sup> Winder Defendants were not involved in the drafting,  
19 negotiation, or execution of the Purchase Agreement.<sup>3</sup> of Mr. Brown was named as purchaser.<sup>4</sup>  
20 The price was a fair price.<sup>5</sup> Nobody forced either Plaintiff to enter into the agreement.<sup>6</sup> Neither  
21 Plaintiff has ever met Mr. Winder, heard Mr. Winder speak, or relied on any representations  
22 made by Mr. Winder.<sup>7</sup>  
23

24 <sup>1</sup> Ex. A Winder Declaration, ¶ 1-2.

25 <sup>2</sup> Ex. B Purchase Agreement, Ex. 3 L Atkinson Depo P 16 L1- P17 l6

26 <sup>3</sup> Ex A Winder Declaration ¶3.

<sup>4</sup> Ex. B Purchase Agreement

<sup>5</sup> Ex. C L Atkinson Depo P 12 L4-9

<sup>6</sup> Ex. C L Atkinson Depo P 12 L1-3

<sup>7</sup> Ex C P 13 L112

1 On or about July 23<sup>rd</sup>, 2017, Mr. Winder undertook representing Mr. Brown with respect  
2 to Mr. Brown's purchase of the property.<sup>8</sup> Mr. Weinstock, an attorney with WINDER PC, sent  
3 a letter to Plaintiffs on December 6<sup>th</sup> 2017 demanding they go through with the sale pursuant to  
4 the Purchase Agreement.<sup>9</sup> Plaintiffs did not respond to the letter.

5 On May 18<sup>th</sup>, 2018 Defendants filed suit on behalf of Mr. Brown against the Plaintiffs  
6 seeking damages for the Plaintiffs' breach of the purchase agreement.<sup>10</sup> (The suit is hereafter  
7 referred to as "Brown v Atkinson. The matter went through the discovery process. On December  
8 10<sup>th</sup>, 2018, the Plaintiffs (Defendants in Brown v Atkinson) filed two Motions, a Motion for  
9 Summary Judgment<sup>11</sup> and Motion to Amend Answer, Counterclaim and Third-Party Claims.<sup>12</sup>  
10 The Third-Party Claims in the Atkinson's Proposed Amended Pleading in Brown v Atkinson are  
11 the identical claims in the identical language as the Complaint in the instant matter.<sup>13</sup>

12 On February 11<sup>th</sup>, 2019, the Motion For Summary Judgment was granted; the parties  
13 agreed<sup>14</sup> and the Court ruled the Atkinson's Motion to Amend was moot.<sup>15</sup>

14 The Atkinsons filed no post-judgment claims for attorney fees against Mr. Brown or the  
15 Winder Defendants whether pursuant to NRS 18.010, NRCP 11, or the inherent power to the Court,  
16 or otherwise.

17 Despite having agreed and represented to the Court in Brown v Atkinson that the claims  
18 now brought against the Winder Defendants were moot, the Atkinsons filed the identical claims  
19 against the Winder Defendants in this matter on the November the fifth, 2019, 9 months after the  
20 same claims were disallowed by the Brown v Atkinson court.

21 Plaintiffs have refused to disclose any retainer agreement between themselves and their  
22 attorney, claiming at different times, attorney-client privilege and relevance. See Defendants'

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23 <sup>8</sup> Ex A Winder Declaration ¶3

24 <sup>9</sup> Ex. D Weinstock Atkinson Letter dated 12/06/17

25 <sup>10</sup> Ex. E Brown v Atkinson Complaint

26 <sup>11</sup> Ex F Brown v Atkinson Atkinson Motion for Summary Judgment

<sup>12</sup> Ex G Brown v Atkinson Motion To Amend Answer, Counterclaims and Third-Party Claims

<sup>13</sup> Ex G Exhibit 12 P 7, Adobe Pg. \*\*\*

<sup>14</sup> Ex H Brown v Atkinson MSJ Motion to Amend Hearing Transcript, P7 L2-10

<sup>15</sup> Ex I Brown v Atkinson Order Granting MSJ Ordering claims against Winder and Winder PC Moot, P7 L4.

1 Motion for Discover Sanctions filed April 12<sup>th</sup> 2021. Plaintiffs have named no expert witness to  
2 testify as to the necessity and reasonableness of their fees and the remaining *Brunzell* factors.  
3 Only on the last day of discovery did they provide affidavits from the attorneys for the Plaintiffs  
4 to justify their fees. Striking this affidavit, precluding the witness from testifying and precluding  
5 the admission of the claimed attorney fees in evidence is a subject of Defendants' Motion for  
6 Discovery Sanctions.

7 Plaintiffs have offered no testimony claiming they relied on material representations of  
8 either Mr. Brown or the Winder defendants or suffered any damages because of their reliance.

9 Plaintiffs do not allege they suffered any physical injuries as a consequence of the acts and  
10 omissions complained of.

11 Plaintiffs have not acquired any more evidence to prove their liability allegations than they  
12 had when the Motion to Dismiss was denied.

13  
14 **3. PLAINTIFFS HAVE NO EVIDENCE THAT EITHER CHARLES BROWN OR THE**  
15 **WINDER DEFENDANTS EVER HAD THE INTENTION OR PURPOSE OF**  
16 **DEFRAUDING THEM OUT OF THEIR REAL PROPERTY.**

17 The Complaint contains three causes of action (denominated claims for relief) against the  
18 Winder Defendants.

19 **3.1. FOURTH CAUSE OF ACTION: CIVIL CONSPIRACY.**

20 The Fourth Cause of Action against the Winder Defendants alleges the Winder Defendants  
21 and Brown acted together “with the intent to accomplish the harmful objective of defrauding the  
22 Atkinsons out of the [real]<sup>16</sup> Property they own for the purpose of causing harm to the  
23 Atkinsons.<sup>17</sup>”

24 Actionable civil conspiracy arises where two or more persons undertake some concerted  
25 action with the intent “to accomplish an unlawful objective for the purpose of harming another,”

26 <sup>16</sup> “Property” is defined in the complaint (P3, L1-2). as the real commercial property located at  
2315 North Decatur Blvd, Las Vegas, Nevada 89108.

<sup>17</sup> Complaint, Fourth Claim for Relief P8 ¶61

1 and damage results. *Consol. Generator–Nevada, Inc. v. Cummins Engine Co.*, 114 Nev. 1304,  
2 1311, 971 P.2d 1251, 1256 (1998). Thus, a plaintiff must provide evidence of an explicit or tacit  
3 agreement between the alleged conspirators. \*\*199 *Mahlum*, 114 Nev. at 1489, 970 P.2d at 112.  
4 Summary judgment is appropriate if there is no evidence of an agreement or intent to harm the  
5 plaintiff. *Consol. Generator–Nevada*, 114 Nev. at 1311, 971 P.2d at 1256. *Guilfoyle v. Olde*  
6 *Monmouth Stock Transfer Co., Inc.*, 130 Nev. 801, 813, 335 P.3d 190, 198–99 (2014). The  
7 plaintiff must show a tortious act that Defendants intended to commit. Nothing in the evidence  
8 tends to prove either of the Winder Defendants ever intended to “defrauding the Atkinsons’s out  
9 of their [real] Property...” There is proof that Charles Brown intended to buy the property and  
10 pay for it; there is proof he intended to obtain money damages when he filed *Brown v Atkinson*.  
11 But there is nothing in the facts that either he or the winder Defendants ever intended on  
12 “defrauding the Atkinsons out of the [real]<sup>18</sup> Property they own,”

### 13 14 **3.2. FIFTH CAUSE OF ACTION: CONCERT OF ACTION**

15 Plaintiffs allege<sup>19</sup> “Charles Brown, Stacy Brown, Law Office, and Winder acted in concert  
16 with one another pursuant to the common design of transferring the Property from the Atkinsons  
17 to Charles Brown without any monetary consideration going to the Atkinsons.”

18 “An actionable [civil] conspiracy consists of a combination of two or more persons who,  
19 by some concerted action, intend to accomplish an unlawful objective for \*1489 the purpose of  
20 harming another, and damage results from the act or acts.” *Sutherland v. Gross*, 105 Nev. 192,  
21 196, 772 P.2d 1287, 1290 (1989). *Dow Chem. Co. v. Mahlum*, 114 Nev. 1468, 1488–89, 970 P.2d  
22 98, 112 (1998), *abrogated by GES, Inc. v. Corbitt*, 117 Nev. 265, 21 P.3d 11 (2001)

23 Again, there is absolutely no evidence that any of the Winder defendants or Charles or  
24 Stacy Brown ever intended to transfer “the Property from the Atkinsons to Charles Brown without

25  
26 <sup>18</sup> “Property” is defined in the complaint (P3, L1-2). as the real commercial property located at  
2315 North Decatur Blvd, Las Vegas, Nevada 89108.

<sup>19</sup> Complaint “Fifth Claim for Relief P9 ¶ 65 L6-8.

any monetary consideration going to the Atkinsons.”

**3.3. SIXTH CAUSE OF ACTION: AIDING AND ABETTING FRAUDULENT MISREPRESENTATION OR IN THE ALTERNATIVE AIDING AND ABETTING NEGLIGENT MISREPRESENTATION.**

The sixth cause of action alleges the Winder defendants assisted or encouraged Charles Browns’s conduct...”in order in order to wrongfully effectuate the transfer of the Atkinsons’ Property to Charles Brown without Charles Brown paying any consideration for the Property.”

Once again, there is no proof either Charles Brown or the Winder Defendants ever had any intention or purpose “to wrongfully effectuate the transfer of the Atkinsons’ Property to Charles Brown without Charles Brown paying any consideration for the Property.” Nor is there any evidence that any of their acts could have effectuated that purpose. The Purchase Agreement required an escrow be opened and consideration be exchanged through an escrow agent.

Finally, Defendant is unable to find any authority that Nevada recognizes a tort of “aiding and abetting” in the absence of a fiduciary duty which is here not alleged nor is there any evidence to support.

**3.4. DEFENDANTS ARE ENTITLED TO SUMMARY JUDGMENT BECAUSE THERE IS NO EVIDENCE FROM WHICH A JURY COULD REASONABLY CONCLUDE DEFENDANTS HAD THE INTENT TO ACHIEVE THE WRONGFUL PURPOSES ALLEGED.**

Without any evidence of the intention to commit the wrongful acts alleged or any rational way to attempt to prove that defendants had the purpose or intent to achieve the wrongful acts, Defendants are entitled to summary judgment because Plaintiffs cannot prove the elements they are required to prove.

**4. DEFENDANTS HAVE NO EVIDENCE WHICH CAN BE IN ADMISSABLE FORM TO PROVE THEIR CLAIM FOR ATTORNEY FEES.**

**4.1. BECAUSE THIS IS A CLAIM FOR ATTORNEY FEES AS DAMAGES THE**

1                   **ATTORNEY FEES MUST BE PROVED TO THE JURY IN PLAINTIFFS' CASE**  
2                   **IN CHIEF.**

3                   When a party claims it has incurred attorney fees as foreseeable damages arising from  
4                   tortious conduct or a breach of contract, such fees are considered special damages. They must be  
5                   pleaded as special damages in the complaint pursuant to NRCP 9(g) and proved by competent  
6                   evidence just as any other element of damages. *Sandy Valley Associates v. Sky Ranch Estates*  
7                   *Owners Ass'n*, 117 Nev. 948, 956, 35 P.3d 964, 969 (2001). Because parties always know  
8                   lawsuits are possible when disputes arise, the mere fact that a party was forced to file or defend  
9                   a lawsuit is insufficient to support an award of attorney fees as damages *Sandy Valley Associates*  
10                  *v. Sky Ranch Estates Owners Ass'n*, 117 Nev. 948, 957, 35 P.3d 964, 970 (2001).

11                  Generally, quantities of damages are determined by the jury ... [and] claimants who fail  
12                  to submit the attorney fees issue to the jury, and instead simply request fees in a post-trial motion,  
13                  waive their right to those fees. Additionally, attorney fees requested as an element of damages  
14                  must be specially pleaded and proved "just as any other element of damages.(quotations omitted)  
15                  *Albios v. Horizon Communities, Inc.*, 122 Nev. 409, 427, 132 P.3d 1022, 1034 (2006)

16                  **4.2. PLAINTIFFS HAVE NO WAY OF PROVING THEIR ATTORNEY FEES TO**  
17                  **THE JURY.**

18                  Plaintiffs have disclosed no admissible evidence regarding attorney fees. They have  
19                  refused to produce retainer agreements or engagement letters making a false claim of attorney  
20                  client privilege. This is currently the subject of Defendants. Motion for Sanctions pending before  
21                  the discovery commissioner. Without the retainer agreements or engagement letters, there is no  
22                  way to determine if Plaintiffs have any legal obligation to pay any fees, whether they actually  
23                  owned any fees after the Brown v Atkinson litigation, the basis for their actual fees whether  
24                  hourly and, if so, at what rate, or contingent.

25                  They have disclosed no witness, expert or otherwise, to testify as to the Brunzell factors,  
26

1 factors the jury must consider in determining of fees.<sup>20</sup> Certainly, the Brunzell factors require  
2 and expert as they require information not readily available to the experts. In any event, without  
3 a witness of some sort and any documentation to prove the validity of the attorney fee obligation,  
4 Defendants are entitled to partial summary judgment striking the claim for attorney fees.

## 5 6 **5. RES JUDICATA, CLAIM AND ISSUE PRECLUSION**

7 In *Driscoll v. Humble Oil & Refining Company*, 60 F.R.D. 230, 234 (S.D.N.Y.1973)  
8 (Tenney, J.), aff'd mem., 493 F.2d 1397 (2d Cir.1974), the plaintiff sought to recover its attorney's  
9 fees and litigation expenses incurred during a prior litigation between plaintiff and defendant. In  
10 granting defendant's motion for summary judgment on claim preclusion grounds, Judge Tenney  
11 held that, [a]ttorney's fees are "a part of the cause of action upon which recovery was previously  
12 made," [citation omitted], and thus are barred by res judicata. Similarly, if plaintiff "desired to  
13 recover [its] expenses of litigation in the prior case ... [it was] required to assert such [claim] in  
14 that litigation. See also *Rooney v. U.S.*, 694 F.2d 582, 584 & n. 4 (9th Cir.1982). Likewise, a  
15 claim against attorney for attorney fees must be brought in the same action. *MTS, Inc. v. 200 E.*  
16 *87th St. Associates*, 94 CIV. 9081 (RWS), 1995 WL 561521 (S.D.N.Y. 1995). *A.H. Fox v.*  
17 *Connecticut Fire Ins. Co.*, 380 F.2d 360, 361 (10th Cir.1967) & *Bankers Life and Cas. Co. v.*  
18 *Kirtley*, 338 F.2d 1006, 1011 (8th Cir.1964)) *Burger King Corp. v. New England Hood & Duct*  
19 *Cleaning Co.*, CIV. A. 00-1787, 2001 WL 283161, at \*2 (E.D. Pa. Mar. 21, 2001).

20 As Defendants in the prior action, Plaintiffs could and should, if they thought they were  
21 entitled, have brought a claim for attorney fees by post-judgment motion against the Winder

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22  
23 <sup>20</sup> On the last day of discovery, the provided declarations from attorneys who are attorneys of  
24 record in this case and who have appeared in this matter to the effect that the fees satisfy the  
25 *Brunzell* factors. Defendants' pending Motion for Sanctions seeks prevent the declarants from  
26 testifying and the use of the affidavit on the basis of the late disclosure. In addition, Defendants  
sought to take the depositions of attorneys appearing in this case for the purpose of ascertaining  
the nature of the attorney fees relationship and the Brunzell factors. Plaintiffs sought and obtained  
a protective order precluding the depositions.

1 Defendants in connection based upon NRS 18.010, Rule 11, or the inherent power of the court.

2       *In re El San Juan Hotel Corp.*, 841 F.2d 6 (1st Cir.1988) (holding that trustee's attorney  
3 was in privity with trustee, thus *res judicata* barred a subsequent action against attorney accused  
4 of facilitating a wrongdoing); *Geringer v. Union Elec. Co.*, 731 S.W.2d 859 (Mo.App.1987)  
5 (holding that law firm which represented client in underlying action was in privity with client, thus  
6 law firm could assert collateral estoppel as a bar to relitigation of issue resolved in previous  
7 lawsuit); *Chaara v. Lander*, 132 N.M. 175, 45 P.3d 895 (Ct.App.2002) (holding that wife's divorce  
8 attorney was in \*182 privity with wife, thus *res judicata* barred husband's subsequent suit against  
9 attorney); *Simpson v. Chicago Pneumatic Tool Co.*, 693 N.W.2d 612 (N.D.2005) (holding that tool  
10 company's \*\*284 attorney was in privity with tool company for purposes of *res judicata* ). *Jayel*  
11 *Corp. v. Cochran*, 366 Ark. 175, 181–82 (2006).

12       It is also widely recognized that coconspirators are privies for *res judicata* purposes where,  
13 as here, the alleged conspirator's existence and actions were known to the plaintiff during the prior  
14 litigation. *See generally Discon, Inc. v. Nynex Corp.*, 86 F.Supp.2d 154 (W.D.N.Y.2000);  
15 *Waldman v. Village of Kiryas Joel*, 39 F.Supp.2d 370 (S.D.N.Y.1999); *McIver v. Jones*, 209  
16 Ga.App. 670, 434 S.E.2d 504 (1993); *Press Publ., Ltd. v. Matol Botanical Int'l*, 37 P.3d 1121 (Utah  
17 2001). *Winrock Grass Farm, Inc. v. Affiliated Real Estate Appraisers of Arkansas, Inc.*, 373  
18 S.W.3d 907, 913 (2010)

19       Claim preclusion embraces all grounds of recovery that were asserted in a suit, as well as  
20 those that could have been asserted. *Five Star Capital Corp. v. Ruby*, 124 Nev. 1048, 1053, 194  
21 P.3d 709, 712 (2008), *holding modified by Weddell v. Sharp*, 131 Nev. 233, 350 P.3d 80 (2015).

22       Plaintiffs certainly could have filed a post-judgment motion for attorney fees against the  
23 Winder Defendants in the prior action. The judge in that matter was uniquely situated to assess  
24 the merits of an award of attorney fees. For this purpose, the Winder Defendants and Mr. Brown  
25 were in privy.  
26

1 **6. BECAUSE THE WINDER DEFENDANTS OWED NO DUTY TO THE ATKINSONS**  
2 **IN *BROWN V ATKINSON*; THEY CANNOT BE HELD LIABLE TO THE**  
3 **ATKINSONS.**

4 As the Supreme Court stated in *Dezzani v. Kern & Associates, Ltd.*, 134 Nev. 61, 68–69,  
5 412 P.3d 56, 62 (2018), *reh'g denied* (Apr. 27, 2018):

6 Whether the attorney, as opposed to the client, can be personally  
7 liable as an agent for actions the attorney took in representing his or her  
8 client is distinguishable from cases involving client liability for attorney  
9 actions. It does not follow that because an agency relationship has been  
10 recognized in the context of client liability for attorney actions that the same  
11 notion applies in the context of attorney liability to an adverse or third party  
12 from actions taken in representing a client. **Rather, an attorney providing  
13 legal services to a client generally owes no duty to adverse or third  
14 parties.** *Fox v. Pollack*, 181 Cal.App.3d 954, 226 Cal.Rptr. 532, 536  
15 (1986); *Cantey Hanger, LLP v. Byrd*, 467 S.W.3d 477, 481 (Tex. 2015).  
16 Whether an attorney is liable under an agency theory hinges on whether the  
17 attorney is acting solely as an agent for the client, i.e., as a debt collector,  
18 or whether the attorney is providing legal services to a client. *Cantey  
19 Hanger*, 467 S.W.3d at 481–83.

20 The attorney-client relationship involves much more than mere  
21 agency, and is subject to established professional standards.” *Molezzo  
22 Reporters v. Patt*, 94 Nev. 540, 542, 579 P.2d 1243, 1244 (1978). Courts  
23 treat the attorney-client relationship differently from other agent-principal  
24 relationships based on the unique characteristics of the attorney-client  
25 relationship and the different factual circumstances present in an attorney-  
26 client relationship. *See NC–DSH, Inc.*, 125 Nev. at 656, 218 P.3d at 860  
(observing that courts “do not treat the attorney-client relationship as they  
do other agent-principal relationships” in the context of settlement  
agreements \*69 (quoting Grace M. Giesel, *Client Responsibility for Lawyer  
Conduct: Examining the Agency Nature of the Lawyer–Client Relationship*,  
86 Neb. L. Rev. 346, 348 (2007) )); *see also Rucker v. Schmidt*, 794 N.W.2d  
114, 120 (Minn. 2011) (“[A]lthough attorneys in the discharge of their  
professional duties are, in a restricted sense, agents of their clients, this  
agency is distinguishable from other agency relationships...”). The  
attorney’s role is to not only communicate on behalf of his client, but also  
to counsel, render candid advice, and advocate for his client. RPC 2.1;  
*Greenberg Traurig, LLP v. Frias Holding Co.*, 130 Nev. 627, 631–32, 331  
P.3d 901, 904 (2014). Further, attorneys are limited by ethical obligations  
that are not typically present in other agent-principal relationships. *See* RPC  
1.4(a)(5) (attorney assistance limited by Rules of Professional Conduct);  
*accord* RPC 1.1 (competence); RPC 1.6 (confidentiality).

1 Because the Winder Defendants owed no duty to the Atkinsons, they cannot be held liable  
2 to the Atkinsons.

3  
4 **7. CONCLUSION**

5 Defendants ask this Court grant summary judgment in favor of the Defendants as follows:

6 c) For summary judgment on the following grounds:

7 i) Inability of the plaintiffs to prove defendants intended the harms alleged as set forth in  
8 ¶3 above.

8 ii) Lack of Duty to the Plaintiffs as set forth in #6 above.

9 d) For partial summary judgment dismissing claim for attorney fees pursuant on the grounds:

10 i) Defendants have no admissible evidence by which they can prove their claim for  
11 attorney fees.

11 ii) Res judicata, claim preclusion as set forth in ¶5 above.

12  
13 Respectfully submitted this Seventh day of May, 2021.

14  
15 THE LAW OFFICE OF DAN M. WINDER

16 /s/Dan M Winder

17 Dan M. Winder

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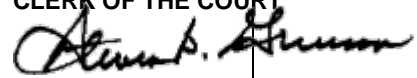
23 Attorney for Winder Defendants

24  
25 **CERTIFICATE OF SERVICE**

26 I certify I served the foregoing on the attorneys of record via the Court's Electronic Filing  
System on the date stamped thereon by the System.

/s/Hamilton Moore

An Employee of the Law Office of Dan M. Winder



Msj  
DAN M. WINDER, ESQ.  
Nevada Bar No. 001569  
ARNOLD WEINSTOCK  
Nevada Bar No. 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; 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**

**HEARING REQUESTED**

**WINDER DEFENDANTS' MOTION  
FOR  
SUMMARY JUDGMENT**

**EXHIBITS**

Respectfully submitted this Seventh day of May, 2021.

THE LAW OFFICE OF DAN M. WINDER

/s/Dan M. Winder  
Nevada Bar No. 1569  
3507 West Charleston Blvd.  
Las Vegas, Nevada 89102  
Telephone (702) 474-0523  
Facsimile (702) 474-0631  
Attorney for Winder Defendants

**CERTIFICATE OF SERVICE**

I certify I served the foregoing on the attorneys of record vis the Court's Electronic Filing System on the date stamped thereon by the System.

/s/Hamilton Moore  
An Employee of the Law Office of Dan M. Winder

# EXHIBIT A

### **DECLARATION OF DAN M. WINDER**

1. Defendant Law Office of Dan M. Winder, P.C. (WINDER PC) is a Nevada Professional Corporation. Dan M. Winder (WINDER) is, and at all times relevant, was, the sole owner of that Corporation.

2. I have been a licensed practicing attorney in Nevada for more than 20 years.

3. The Winder Defendants were not involved in the drafting, negotiation, or execution of the Purchase Agreement.

4. On or about July 23<sup>rd</sup>, 2017 I undertook representing Mr. Brown with respect to the property involved in this litigation, 2314 North Decatur located on the corner of Auburn and Decatur, Las Vegas, Nevada.

5. At the time of and before the Brown v Atkinson litigation I did not know, if it is so, that the Atkinsons were elderly, hesitant to sell the property, or that Charles Brown kept showing up at their residence and pressuring them to sign the Purchase agreement.

6. Prior to filing the Brown v Atkinson litigation, I did not know, have reason to believe, or believe that Charles Brown had breached, the Purchase Agreement, if he did.

7. Prior to filing the Brown v Atkinson litigation, I did not know that Charles Brown had not deposited funds into an escrow account, in fact I believed he had because I had provided him a check for that purpose as a cost involved in representing him

8. Prior to filing the Brown v Atkinson litigation I did not know Charles Brown never arranged for any escrow company to open escrow on the Property. In fact, I provided a check for that purpose.

9. Prior to filing the Brown v Atkinson litigation, I did not know Charles Brown and/or his wife, fabricated, if they did, a pre-approval letter.

10. I never submitted any information to Keith Harper for an appraisal or otherwise and did not know what information was submitted by Mr. Brown to Keith Harper until after the litigation was commenced.

11. I had nothing to do with and did not know anything about the “proof of financing” referred to in paragraph 22 of the complaint until after the litigation commenced.

12. I never intended to pay and did not provide funds to Financial Solutions for the purpose of “proof of financing”; I provided the a check to open an escrow as indicated on the check written to them.

13. At the time the lawsuit was filed, I believed Mr. Brown had complied with his obligations under the Purchase Agreement.

14. I had no intention of abusing the litigation process and believed that every document I provided in the Brown v Atkinson litigation had some relevance to the proceedings.

15. I never had any intention to defraud the Atkinsons out of the property they owned for the purpose of causing them harm. The complaint in Brown v Atkinsons was a complaint for money damages. I had and have no understanding as to how I, or Mr. Brown, could possibly have obtained the Property, without the Atkinsons being paid for it.

16. I never had any intention of transferring the Property form the Atkinsons to Charles Brown without monetary consideration going to the Atkinsons, I don’t know how that would have been possible.

17. I never conspired with Mr. Brown to transfer the Atkinson Property. All I did was file a complaint for money damages for what I believed was a breach of the Purchase Agreement My belief was based, in part, upon the failure of the Atkinsons to respond to the Demand Letter sent them by the firm. Exhibit D to the Motion for Summary Judgment.

18. Before the Brown v Atkinsons litigation was filed, I did not know or believe that Mr. Brown had breached any duties to the Atkinsons.

19. I did not knowingly assist or encourage Charles Brown to, if he did, obtain a

///

///

///

fraudulent appraisal or loan application. At the time the Brown v Atkinson litigation was begun, I did not know or believe there was anything “fraudulent” about the litigation.

I declare under penalty of perjury the foregoing is true and correct.

Dated this 7<sup>th</sup> day of May, 2021.

/s/Dan M. Winder  
Dan M. Winder

# EXHIBIT B

## PURCHASE AGREEMENT AND JOINT ESCROW INSTRUCTIONS

THIS PURCHASE AGREEMENT AND JOINT ESCROW INSTRUCTIONS made 6<sup>th</sup> day of JULY 2017 (this "Agreement") is entered into by ATKINSON LAVELLE P & SHIELA (hereinafter "Seller") and Charles Brown, and/or its assignee (hereinafter "Purchaser"). This Agreement constitutes both an Agreement between Purchaser and Seller and joint escrow instructions to Selected by buyer "Escrow Agent", with respect to the transaction contemplated hereby.

### WITNESSETH:

For and in valuable consideration of the mutual covenants and conditions herein contained, Seller and Purchaser agree as follows:

1. Property. Seller agrees to sell and convey, and Purchaser agrees to purchase and pay for that certain real property located at 2315 N DeCatur, Las Vegas Nevada, which is described as an approximate 0.55 acres, and further described as Clark County Assessor Parcel Number 138-24-511-034 the "Property", shown on and incorporated herein by reference.

Purchase Price. The total purchase price of the Property paid by Purchaser to Seller shall be the amount ONE HUNDRED THOUSAND and 00/100 (\$ 100,000.00) ("Purchase Price") payable in cash at Closing (as hereinafter defined).

3. Deposit. Purchaser shall deliver a deposit, within two (2) business days from the Effective Date, in the amount of one Thousand Dollars (\$ 1,000.00) ("Deposit") in cash, personal check or cashier's check payable to Escrow Agent, or other readily available funds, which Deposit shall be deposited and held in escrow by Escrow Agent during the pendency of this Agreement and shall remain refundable to Purchaser during the Feasibility Period in accordance with the terms herein.

4. Feasibility Period.

a. For a period beginning on the Effective Date and expiring Forty-Five (45) days ("Feasibility Period"), Purchaser shall be, at Purchaser's sole cost and expense, entitled to inspect the Property, to conduct such tests, surveys, analysis and feasibility studies of the Property as Purchaser deems necessary, and to meet with governmental entities regarding the feasibility of Purchaser's intended use of the Property. Without limiting the generality of the foregoing, Purchaser (and persons authorized by Purchaser) shall have the right and authority to go upon the Property, from time to time on one or more occasions, for feasibility determinations including, without limitation: (1) determining the adequacy of access, zoning and other restrictions on the use of the property; (2) performing environmental, soils and subsoil tests, engineering and drainage studies; and (3) obtain any necessary entitlement or permits. Purchaser shall provide reasonable advance notice and coordinate any inspections and site visits by appointment with the Seller and/or Seller's representative.

b. Seller agrees to cooperate with Purchaser in connection with the tests, investigation, license application(s) and inspection of the Property, and agrees to furnish Purchaser, within five (5) business days of the Effective Date, with any and all documents and materials in Seller's possession relating to the Property that may be necessary or appropriate to complete such investigation and inspection.

c. If Purchaser determines, in Purchaser's sole judgment, for any reason or no reason, whatsoever, that the Property is not suitable, Purchaser shall notify Seller and Escrow Agent in writing on or before expiration of the Feasibility Period and upon such notice this Agreement shall terminate, Purchaser shall promptly repair any damage to the Property caused by Purchaser or its agents, officers or employees as necessary to restore the Property to its original condition existing prior to entry or inspection by Purchaser, Escrow Agent shall return the Deposit to Purchaser without instruction from Seller, and neither Purchaser nor Seller shall have any further obligations hereunder.

d. subject to the terms of this Agreement, should Purchaser fail to deliver written notice that the Property is not suitable on or before the expiration of the Feasibility Period, or if Purchaser notifies Seller that the

ALP SA  
Seller Initials

CB  
Purchaser Initials

Property is suitable for the purposes contemplated hereby, Purchaser's right to object pursuant to Section 4.c. shall be waived and of no further force or effect, and the Deposit shall be earned by Seller, non-refundable to Purchaser (subject to an uncured Seller Default) and applicable to the Purchase Price at Closing.

e. Purchaser shall indemnify, hold harmless and defend Seller and Seller's affiliates, partners, agents and employees from any and all liability, loss, cost, damage or expense (including actual attorney's fees and costs), of whatsoever nature relating to or in connection with any injury to persons or damage to property, where such injury or damage arises from or relates to the entry upon, occupation, use or inspection of the Property by Purchaser, its agents, officers or employees. In addition, Purchaser shall keep the Property free from any lien(s) which could arise as a result of the exercise by Purchaser of any of its rights under this Section 4. Notwithstanding anything to the contrary herein, Purchaser's duties and obligations under this Section 4 shall survive any termination of this Agreement or the transfer of title as provided herein.

5. Title Report.

a. Delivery of Title Report. Within five (5) business days after the Effective Date, Seller shall deliver or cause to be delivered to Purchaser a preliminary title report covering the Property issued by the Escrow Agent, together with copies of all documents referred to in such preliminary title report (the preliminary title report and such documents are referred to collectively as "Title Report").

b. Review of Title Report. Purchaser shall have ten (10) business days from Purchaser's receipt of the Title Report in which to examine the Title Report and to specify to Seller those items in the Title Report which Purchaser will accept as permitted exceptions to title ("Permitted Exceptions"), and those items which Purchaser reasonably finds objectionable ("Title Objections"). If Purchaser does not deliver to Seller a written notice specifying those items which are Permitted Exceptions and those items which are Title Objections within the above-stated period, then all of the items reflected on the Title Report shall be considered to be Permitted Exceptions.

c. Uncorrected Title Objections. If Seller, in Seller's sole discretion, elects not to cause the Title Objections to be corrected or removed on or prior to Closing, Seller shall notify Purchaser within five (5) days, in writing, of its intent not to correct or remove said title corrections. If Seller does not so notify Purchaser, or notifies Purchaser that the Title Objections will not be corrected or removed, Purchaser may within five (5) days of Purchaser's receipt of Seller's election not to correct said objections, or within five (5) days after Seller's five (5) day period to respond expires without response, (1) elect to terminate this Agreement and Escrow and the Deposit shall be returned and refunded to Purchaser and, except as provided otherwise hereunder, both parties shall be released from all further obligations under this Agreement (except Purchaser shall remain responsible for duty of indemnification), or (2) elect to purchase the Property and Property thereon subject to any Title Objections not so corrected or removed, which shall then be deemed Permitted Exceptions.

d. Certain Exceptions Deemed Not Permitted. Notwithstanding anything in this Agreement to the contrary, and regardless of whether Purchaser objections to such matters, Seller shall cause all Removable Liens (as defined below) to be satisfied or discharged as of the date of Closing, subject to the provisions of Section 5(c). As used in this Section 5(d), the term "Removable Liens" shall mean any and all title exceptions which can be removed by payment of monies, including without limitation liens and encumbrances, mortgage debt, taxes and assessments which are then delinquent or which are then due and payable, and assessments and bonds, including without limitation special assessments.

6. Condition of Property Purchased. Purchaser is purchasing the Property, Buildings and Fences in an "as-is" and "where is" condition.

7. Closing.

a. Date and Place. The Closing of the sale of the Property by Seller to Purchaser shall occur on or before Thirty (30) days after the Feasibility Period (the "Closing").

b. Seller's Obligations at Closing. At the Closing, Seller shall deliver, or cause to be delivered, to Purchaser the following:

LPA SA  
Seller Initials

CB  
Purchaser Initials

(1) Grant Bargain and Sale Deed. Seller shall execute and deliver to Escrow Agent for recording a Grant, Bargain and Sale Deed in form and substance reasonably satisfactory to Purchaser, fully executed and acknowledged by Seller, conveying the Property to Purchaser.

(2) Owner's Title Policy. Seller shall cause the Escrow Agent to issue and deliver to Purchaser a standard CLTA coverage owner's policy of title insurance ("Owner's Title Policy") in the amount of the Purchase Price, insuring that Purchaser is owner of the Property subject only to such matters as approved by Purchaser. In the event that Purchaser elects to obtain an extended ALTA policy and/or endorsements, Purchaser shall pay for the increased charges above the Owner's Title Policy including an ALTA survey if required.

(3) Other Instruments. Seller shall execute and deliver such other documents as are customarily executed in the State of Nevada in connection with the conveyance of real property, including all required closing statements, releases, affidavits, evidences of authority to execute the documents, and any other instruments that may reasonably be required by the Escrow Agent.

(4) Possession. Purchaser shall have all rights of possession at Closing and shall have the right to collect any rents being paid by any tenants. Seller shall be given a period of 30 days to vacate the property after the Close of Escrow. garage or shed only.

c. Purchaser's Obligations at Closing.

(1) Payment of Purchase Price. At Closing, Purchaser shall pay the Purchase Price in cash (or by Certified Check, Cashier's Check, wire transfer of funds into Escrow, all of which shall constitute "cash" for purpose of this Agreement), less the amount of the Deposit to be paid to Seller at the Closing, and subject to any adjustments for pro-rations and other credits provided for in this Agreement.

(2) Other Instruments. Purchaser shall execute and deliver such other documents as are customarily executed in the State of Nevada in connection with the conveyance of real property, including all required closing statements, releases, affidavits, evidences of authority to execute the documents, and any other instruments that may reasonably be required by the Escrow Agent.

d. Prorations. All real estate taxes relating to the Property for the year of the Closing shall be prorated as of the date of Closing between Seller and Purchaser. Purchaser shall take title to the Property subject to any outstanding unpaid governmental assessments. If the amount of taxes for that year are not known at the time of Closing, the prorations shall be based on an estimate of the taxes for the year of Closing, and when the tax information becomes available, Seller or Purchaser may request reimbursement from the other party for any excess amount charged to that party at the Closing. Likewise, any other amounts normally prorated between Seller and Purchaser, if any, shall be prorated between Seller and Purchaser as of the date of Closing.

e. Closing Costs

(1) Paid by Seller. Seller agrees to pay 0 zero Closing Costs.

(2) Paid by Purchaser. Purchaser agrees to pay all Closing Costs.

8. Default and Liquidated Damages.

a. PURCHASER DEFAULT. IF PURCHASER DEFAULTS UNDER THIS AGREEMENT, SELLER, IN LIEU OF ALL OTHER REMEDIES SELLER MAY HAVE AT LAW OR EQUITY, SHALL BE ENTITLED TO RECEIVE THE DEPOSIT FROM ESCROW AGENT ("LIQUIDATED DAMAGES"). IT IS AGREED BETWEEN PURCHASER AND SELLER THAT THE LIQUIDATED DAMAGES AMOUNT CONSTITUTES THE

SPR SA  
Seller Initials

CB  
Purchaser Initials

AMOUNT OF DAMAGES TO BE INCURRED BY SELLER AS A RESULT OF A DEFAULT BY PURCHASER AND THE LIQUIDATED DAMAGES SHALL BE PAID TO SELLER AS LIQUIDATED DAMAGES FOR A DEFAULT OF PURCHASER UNDER THIS AGREEMENT BECAUSE OF THE DIFFICULTY, INCONVENIENCE AND UNCERTAINTY OF ASCERTAINING ACTUAL DAMAGES FOR SUCH DEFAULT.

b. Seller Default. In the event of a default by Seller, Purchaser shall have available to it any and all applicable remedies at law or in equity.

9. Brokers. No

10. Miscellaneous.

a. Assignment. Purchaser shall be permitted to assign this Agreement to an affiliated entity at any time prior to Closing. This Agreement nor any of Purchaser's rights hereunder may not be assigned or transferred by Purchaser to a non-affiliated party without the prior written consent of Seller.

b. Notices. Any and all notices and demands by any party hereto to any other party or Escrow Agent, required or desired to be given hereunder shall be in writing and shall be validly given or made only if personally delivered, via facsimile and/or email transmission with receipt verification from the receiving party(ies), or deposited in the United States mail, certified or registered, postage prepaid, return receipt requested or if made by FedEx or other similar delivery service keeping records of deliveries and attempted deliveries. Service shall be conclusively deemed made upon receipt if personally delivered or, if delivered by mail or delivery service, on the first business day delivery is attempted or upon receipt, whichever is sooner. Any notice or demand shall be addressed to:

Seller:

ATKINSON LAVELLE P & SHIELA  
5288 AUBURN  
LAS VEGAS NV 89108-3008

Purchaser:

Charles Brown  
3172 N. Rainbow, #330  
Las Vegas, NV 89108  
Phone: (310) 692-0969  
Email: neimanmotors@gmail.com

The parties may change their address for the purpose of receiving notices or demands as herein provided by a written notice given in the manner aforesaid to the others, which notice of change of address shall not become effective, however, until the actual receipt thereof by the others.

SA  
Seller Initials

CB  
Purchaser Initials

c. Parties Bound. This Agreement shall be binding upon and inure to the benefit of the parties to this Agreement and their respective heirs, executors, administrators, estate, legal representatives, successors and assigns.

d. Severability. If any of the terms and conditions hereof shall for any reason be held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect any other of the terms and conditions hereof and the terms and conditions hereof thereafter shall be construed as if such invalid, illegal, or unenforceable terms or conditions had never been contained herein.

e. Entire Agreement. The terms and conditions hereof relating to the subject matter described herein (i) constitute the entire agreement and understanding between the Seller and the Purchaser, (ii) supersede all prior agreements, and understandings, written or oral, between the Purchaser and the Seller, and (iii) may not be modified or amended except by an instrument mutually executed and delivered by the Seller and the Purchaser.

f. Time. Time is of the essence to the performance of any provisions of this Agreement. If the date for performance of any provisions of the Agreement is a Saturday, Sunday, or banking holiday (in the State of Nevada), the date for performance shall be extended until the next "business" day.

g. Interpretation. Words of any gender used in this Agreement shall be held and construed to include any other gender, and words in the singular number shall be held to include the plural, and vice versa, unless the context requires otherwise.

h. Waiver. Either the Purchaser or the Seller may specifically waive any breach of the terms and conditions hereof by the other party, but no waiver specified in this Section shall constitute a continuing waiver of similar or other breaches of the terms and conditions hereof. All remedies, rights, undertaking, obligations, and agreements contained herein shall be cumulative and not mutually exclusive.

i. Attorney's Fees. Should either the Purchaser or the Seller, or the Broker employ an attorney or attorneys to enforce any of the terms and conditions hereof, or to protect any right, title, or interest created or evidenced hereby, the non-prevailing party in any action pursued in courts of competent jurisdiction shall pay to the prevailing party all reasonable costs, damages, and expenses, including attorneys' fees, expended or incurred by the prevailing party.

j. Governing Law. This Agreement shall be governed by and construed in accordance with the substantive and procedural laws of the State of Nevada. The exclusive venue of any action or proceeding arising out of or in connection with this Agreement shall be Clark County, Nevada. Each party hereby consents to the personal jurisdiction of any court of competent subject matter jurisdiction sitting in Clark County, Nevada, and to the service of process in accordance with the laws of the State of Nevada and any rules applicable to any such court.

k. Headings. The headings herein are for reference purposes only and shall not affect the meaning or interpretation of the terms and conditions hereof.

l. Effective Date. The Effective Date shall be the date this Agreement is executed by both Purchaser and Seller and delivered to Escrow Agent.

m. Construction. Both parties hereto have participated in the drafting of this Agreement and any ambiguities shall not be interpreted against either party as being the drafting party.

n. Expiration of Agreement. Unless mutually executed by both parties on or before 5:00 p.m. (PST) NA, this Agreement shall expire and be of no further force or effect and neither party hereto shall be under any obligation to the other.

o. Counterparts. This Agreement may be executed in counterpart. Each counterpart of this Agreement shall constitute an original, and all such counterparts taken together shall constitute one and the same agreement.

SA  
Seller Initials

CB  
Purchaser Initials

p. Telecopy Execution and Delivery. A email transmission of this Agreement may be executed by one or more parties hereto, and an executed copy may be delivered by one or more parties by email transmission pursuant to which the signature of or on behalf of such party can be seen, and such execution and delivery shall be considered valid, binding and effective for all purposes. At the request of any party, all parties agree to execute an original of this Agreement as well as any facsimile, email transmission or other reproduction hereof.

q. 1031 Exchange. Seller and Purchaser hereby agree to cooperate with each other in a tax-deferred exchange should either party so elect. Seller and Purchaser hereby agree to indemnify each other from any and all costs, taxes, assessments and/or liability that may be proximately caused by such tax-deferred exchange. In the event Seller and/or Purchaser affect a tax-deferred exchange, such exchange shall not otherwise delay the Closing nor shall either party be required to take title to any property so as to accommodate such exchange.

r. Proof of Funds: Purchaser shall deliver to Seller written verification, in the form of bank, investment, or lending institution statement(s), funds in the amount of ninety nine thousand 00,000.00 within seven business days of the Effective Date. In the event Purchaser does not provide said written verification of funds, Seller may elect to cancel the Escrow.

AGREED AND ACCEPTED:

SELLER:

ATKINSON LAVELL P & SHEILA

By: Lavell P. Atkinson  
Sheila Atkinson  
Its: Authorized Signatory

Date: July 20, 2017

By: Lavell P. Atkinson  
Sheila Atkinson  
Date: July 20, 2017

PURCHASER:

Charles Brown

By: Charles Brown  
Charles Brown

Date: July 6, 2017

By: \_\_\_\_\_

Date: \_\_\_\_\_

This Agreement and any attached addendum, rider, or exhibit has been prepared for submission to your attorney for his/her approval. No representation or recommendation is made by Colliers International or its agents or employees as to the legal sufficiency, legal effect or tax consequences of this Agreement or the transaction relating thereto.

LP SA  
Seller Initials

CB  
Purchaser Initials

Parcel (125) 138-24-511-034

ASSESSOR DESCRIPTION: CURTIS PARK MANOR UNIT #2 PLAT BOOK 5 PAGE 24 LOT 23  
BLOCK 5

GEOID: PT NE4 NE4 SEC 24 20 60

ACRES:

LPA SA  
Seller Initials

CP  
Purchaser Initials

# EXHIBIT C

LaVell P. Atkinson ~ March 29, 2021  
\* \* \* Remote Videoconference Deposition \* \* \*

Page 1

1 DISTRICT COURT  
2 CLARK COUNTY, NEVADA  
3  
4 LAVELLE P. ATKINSON, )  
5 SHEILA ATKINSON, )  
6 individuals, )  
7 Plaintiffs, ) Case No. A-19-804902-C  
8 vs. ) Dept No. 26  
9 CHARLES BROWN, an )  
10 individual; LAW OFFICE )  
11 OF DAN M. WINDER P.C., a )  
12 domestic professional )  
13 corporation; DAN M. )  
14 WINDER, an individual, )  
15 et al., )  
16 Defendants. )  
17  
18  
19  
20  
21  
22  
23  
24  
25

**CERTIFIED  
COPY**

REMOTE VIDEOCONFERENCE DEPOSITION OF

LaVELL P. ATKINSON

Taken on Monday, March 29, 2021

At 10:13 a.m.

WITNESS APPEARING REMOTELY FROM

Las Vegas, Nevada

REPORTED REMOTELY BY: JO A. SCOTT, RPR, CCR NO. 669

LaVell P. Atkinson ~ March 29, 2021  
\* \* \* Remote Videoconference Deposition \* \* \*

Page 2

1 APPEARANCES:

2 For the Plaintiffs:

3 DANIELLE J. BARRAZA, ESQ. (PRESENT VIA VIDEOCONFERENCE)  
4 Maier Gutierrez & Associates  
8816 Spanish Ridge Avenue  
Las Vegas, Nevada 89148  
5 (702) 629-7900

6 ADRIANA PEREYRA, ESQ. (PRESENT VIA VIDEOCONFERENCE)  
Integrity Law Firm  
7 819 South 6th Street  
Las Vegas, Nevada 89101  
8 (702) 202-4449

9 For the Defendant:

10 ARNOLD WEINSTOCK, ESQ. (PRESENT VIA VIDEOCONFERENCE)  
Law Office of Dan M. Winder  
11 3507 West Charleston Boulevard  
Las Vegas, Nevada 89102  
12 (702) 474-0523

13 Also Present Via Videoconference:

14 ERIKA NITTOLI, ZOOM HOST  
All-American Court Reporters  
15

16 I N D E X

17 WITNESS: LaVELL P. ATKINSON

18 EXAMINATION PAGE

19 BY MR. WEINSTOCK 4

20 BY MS. BARRAZA 92

21 CERTIFIED QUESTION

22 PAGE LINE

23 65 11

24 INDEX TO EXHIBITS

25 (NONE OFFERED)

LaVell P. Atkinson ~ March 29, 2021  
\* \* \* Remote Videoconference Deposition \* \* \*

Page 3

1 LAS VEGAS, NEVADA; MONDAY, MARCH 29, 2021

2 10:13 A.M.

3 -oOo-

4

5 ZOOM HOST: The attorneys participating  
6 in this proceeding acknowledge that the court  
7 reporter is not physically present in the  
8 proceeding room with the deponent or counsel and  
9 that she will be reporting this proceeding  
10 remotely.

11 Counsel, if you are in agreement to the  
12 remote deposition, please state your name and  
13 consent for the record, then the court reporter  
14 will swear in the deponent remotely.

15 MR. WEINSTOCK: Go ahead, ladies.

16 MS. BARRAZA: Hello. Danielle Barraza on  
17 behalf of the plaintiffs, and I have no objection.

18 MS. PEREYRA: Adriana Pereyra on behalf  
19 of plaintiff, and I have no objection.

20 MR. WEINSTOCK: Arnold Weinstock on  
21 behalf of the defendants, and I have no objection.  
22 Whereupon --

23 LaVELL P. ATKINSON

24 was called as a witness, and having been first  
25 duly sworn, was examined and testified as follows:

1 EXAMINATION

2 BY MR. WEINSTOCK:

3 Q. Mr. Atkinson, hello. My name is Arnold  
4 Weinstock, and I'm representing the defendants in  
5 this case.

6 Do you understand that?

7 A. Yeah.

8 Q. Can you please state your full name for  
9 the record, and spell it?

10 A. LaVell P. Atkinson, L-a capital V-e-l-l  
11 P, period, A-t-k-i-n-s-o-n.

12 Q. And, Mr. Atkinson, you are aware that  
13 this is a matter pertaining to a lawsuit you and  
14 your wife Sheila filed against Mr. Charles Brown,  
15 an individual, Stacy Brown, an individual, the Law  
16 Office of Dan M. Winder, a domestic professional  
17 corporation, Dan M. Winder, an individual, Does 1  
18 through 10, and Roe Corporations 1 through 10 back  
19 on November 5th, 2019.

20 Are you familiar with that lawsuit?

21 A. Yes, I am.

22 Q. Let me start, are you familiar with  
23 Mr. Charles Brown?

24 A. Am I familiar with Charlie Brown?

25 Q. Yes.

1           A.    I've met the man, yeah.

2           Q.    On how many occasions have you met the  
3 man?

4           A.    Well, I couldn't tell you exactly how  
5 many, but it's several different times I met him  
6 down at the, yeah, property.

7           Q.    Do you recall the first time you met with  
8 him?

9           A.    I do.

10          Q.    When was that?

11          A.    I don't know the date. I don't know the  
12 exact time. But the first time I met him, he came  
13 down there to the shop and told me he was Charlie  
14 Brown, and I looked him right straight in the eye,  
15 and I said, You don't look like Charlie Brown to  
16 me. And he said, Oh, I know. And I said, Yeah, I  
17 know who you are, you are Charlie Brown, but I  
18 don't believe you -- I didn't tell him I didn't  
19 believe him, but I didn't.

20          Q.    And what was the nature of your  
21 conversations with Mr. Brown the first time you  
22 met with him?

23          A.    When he first came there, he was wanting  
24 to -- he wanted to buy that corner property, that  
25 piece on the corner there, and he wanted -- he

1 told me that he was going to have a car  
2 dealership, kind of a used car sales there, and he  
3 was going to work on the cars in that big building  
4 that we had back behind the house, and that he  
5 was -- he wanted to have -- he wanted to have a  
6 little park-type thing, he told me. He was going  
7 to build a little park so the kids could play  
8 while the folks was in waiting on the car,  
9 whatever that deal was, I don't know.

10 Q. What exactly was the address of that  
11 property?

12 A. 2315 North Decatur.

13 Q. And what's the name of the street that it  
14 crossed?

15 A. Decatur goes north and south, and Auburn  
16 goes east and west.

17 Q. So the property was on the corner of  
18 North Decatur and Auburn, correct?

19 A. Yes, yes, sir.

20 Q. Now, you just testified, the first time  
21 you met with Mr. Brown, he discussed perhaps  
22 purchasing the property, correct?

23 A. Yes, he wanted to --

24 Q. Was anybody else present during the  
25 conversation?

1           A.    No.

2           Q.    Mr. Atkinson, did you hear the question?

3           A.    You better say it again, because I  
4   thought I answered it.

5           Q.    Was anybody else present during this  
6   first conversation?

7           A.    No.

8           Q.    And I guess I ought to go through the  
9   deposition proceeding. Have you ever had your  
10   deposition taken before?

11          A.    No.

12          Q.    So I just want to go through a little bit  
13   about the deposition process. This is an  
14   opportunity for me and your attorney to try to get  
15   information that may help us in the litigation or  
16   resolution of your lawsuit. So I'm going to be  
17   asking you questions here today.

18                You've been placed under oath. This is  
19   the same oath that would apply in a court of law.  
20   And we assume that you are going to be answering  
21   all your questions to the best of your ability,  
22   and truthful. If you don't understand a question,  
23   or you are confused by a question, please let me  
24   know, and I will do my best to rephrase the  
25   question to make sure that you understand it.

1           If you answer a question, we are assuming  
2   you answered it and you understood it prior to  
3   answering it.

4           Do you understand that?

5       A.    Yes.

6       Q.    Now, at some point in time, when this  
7   deposition is completed, you will get a copy of a  
8   transcript of everything that was said at this  
9   deposition, and you will have the opportunity to  
10   review the questions and the answers that you  
11   give.

12           At that time, if you want to, you can  
13   change any answers that you give here today, but I  
14   want to advise you that I will have the  
15   opportunity to comment about any changes you make  
16   in your answers to the deposition to ask, you  
17   know, why you said one thing here today and why  
18   you later changed it.

19           Do you understand that?

20       A.    Yeah, yes.

21       Q.    If at any time you want a break in this  
22   proceeding, that's not a problem. Just make sure  
23   when you ask for it, that there is not a question  
24   pending at that time. Once you complete the  
25   question -- or your answer to the question, if you

1 would like a break, we'll be more than happy to  
2 take a break in the proceeding.

3 Do you understand that?

4 A. Yes.

5 Q. And, Mr. Atkinson, at the present time,  
6 are you under the influence of any medicine, any  
7 legal or nonlegal type of medicine at this time?

8 A. No, I'm not on any medicine, except  
9 vitamin D.

10 Q. And I assume you are not under the  
11 influence of any type of alcohol?

12 A. No.

13 Q. Now, is anybody else present in the room  
14 with you here today?

15 A. Yes.

16 Q. Who is that?

17 A. Who it is?

18 Q. Yes.

19 A. My attorney, Adriana.

20 Q. And anybody else?

21 A. No.

22 Q. Have you had the opportunity to speak  
23 with your wife Sheila about her deposition last  
24 week?

25 A. I have.

1 Q. And did you go over questions that were  
2 asked of her?

3 A. She told me some of the things that was  
4 said, yes.

5 Q. And did she discuss any possible answers  
6 or suggest any answers for you to give?

7 A. No.

8 Q. And have your attorneys given you any  
9 suggestions as to any answers to give?

10 A. No.

11 Q. Do you have any questions about the  
12 deposition process?

13 A. No.

14 Q. So let's go back to the first time you  
15 met with Mr. Brown, you don't remember exactly the  
16 exact date, but you were talking about him  
17 purchasing the property at 2315 North Decatur, the  
18 corner of Decatur and Auburn, correct?

19 A. That's correct.

20 Q. Did that first agreement [sic], did it  
21 end with any agreement between you and Mr. Brown  
22 regarding the purchase of the property?

23 MS. BARRAZA: Objection. Form.

24 THE WITNESS: No, I don't do that  
25 without -- no.

1 BY MR. WEINSTOCK:

2 Q. Do you recall, did you have a second  
3 meeting with Mr. Brown, then?

4 A. Well, I had some other meetings, but I  
5 don't remember when they was, but he was down  
6 there a few times when I was down there mowing the  
7 lawn or whatever, he would stop by.

8 Q. About how long after the first meeting  
9 was the second meeting, if you recall?

10 A. Oh, man, I don't know. I don't even  
11 remember that. That's -- that's too many years  
12 ago.

13 Q. Did there ultimately come a time when you  
14 agreed to sell the property on the corner of  
15 Decatur and Auburn to Mr. Brown?

16 A. Yes.

17 Q. Do you recall when that was?

18 A. I don't remember the year when it was. I  
19 don't know.

20 Q. Did you discuss that agreement to sell  
21 that property with your wife prior to the sale?

22 A. Well, yes.

23 Q. And did the both of you come up with an  
24 agreement to sell the property?

25 A. Yes, we did.

1           Q.    Did anybody force either of you to come  
2   up with an agreement to sell the property?

3           A.    No, nobody forced us.

4           Q.    And did you feel that the price that was  
5   agreed to for the sale of that property was a fair  
6   price?

7           A.    Yes, it was fair.

8           Q.    Did you ultimately sell the property on  
9   Decatur and Auburn to Mr. Brown?

10          A.    No.

11          Q.    Why not?

12          A.    Well, because we never did see any kind  
13   of money or anything, and he never showed us any  
14   escrow money or anything like that, so we never  
15   seen any money from him.

16          Q.    Let me ask you, are you familiar with  
17   Stacy Brown?

18          A.    No. I know who she is. Anyway, he  
19   claims that's his wife, but I never met her. I  
20   don't know anything about her.

21          Q.    It's safe to say, then, you never met  
22   Ms. Stacy Brown?

23          A.    Never.

24          Q.    Have you ever had any conversations with  
25   Stacy Brown?

1 A. No.

2 Q. Are you familiar with Dan M. Winder?

3 A. Yes.

4 Q. Have you ever met Dan Winder?

5 A. No.

6 Q. Have you ever had any discussions with  
7 Dan Winder?

8 A. No.

9 Q. On any of the occasions that you were  
10 meeting with Charles Brown, was Dan M. Winder ever  
11 present?

12 A. No.

13 Q. Was Stacy Winder [sic] ever present --  
14 excuse me -- Stacy Brown ever present?

15 A. No.

16 Q. Was anyone that you are aware of present  
17 with Mr. Brown during your meetings with  
18 Mr. Brown?

19 A. No, I don't remember anybody being there.

20 MR. WEINSTOCK: Now, let me just inquire  
21 of both your counsel, do you guys have copies of  
22 Exhibits A through F?

23 MS. PEREYRA: No, I don't.

24 MR. WEINSTOCK: Danielle, do you?

25 MS. BARRAZA: Since you just mentioned a

1 few minutes ago before they came on that you had  
2 e-mailed them, I think I'm seeing them now in my  
3 e-mails, but I haven't gone through them all, but  
4 I'm seeing an e-mail.

5 MR. WEINSTOCK: Okay.

6 MS. PEREYRA: When were they sent?

7 MR. WEINSTOCK: I'm not aware. I've been  
8 out Thursday and Friday, just got in this morning.  
9 I understand my office sent them -- I know they  
10 sent them to the court reporter, and they thought  
11 they had sent them to both of you. I don't know  
12 if they just sent it to Danielle or not.

13 MS. BARRAZA: I just found the e-mail.  
14 It looks like they were sent yesterday at  
15 8:30 p.m.

16 MR. WEINSTOCK: Certainly possible.

17 MS. PEREYRA: All of them? I'm going  
18 through my e-mail. They were all sent last night?

19 MS. BARRAZA: A through D was sent last  
20 night.

21 Were there any sent this morning.

22 MR. WEINSTOCK: Again, I don't know.  
23 I've been in court until about 15 minutes ago,  
24 so --

25 MS. PEREYRA: Well, this is your

1 deposition, and these are your documents.

2 MR. WEINSTOCK: I understand.

3 MS. PEREYRA: It would help if you told  
4 us what these documents are.

5 MR. WEINSTOCK: Well, we're going to get  
6 into them in a minute.

7 ZOOM HOST: Adriana, this is the Zoom  
8 host, Erika. Would you like me to drop the  
9 exhibits into the chat feature so you can have  
10 those on your end?

11 MS. PEREYRA: Yeah, that would be great.  
12 Thank you.

13 ZOOM HOST: Perfect. No problem. I'll  
14 drop them in there for you.

15 MR. WEINSTOCK: Do you guys want to take  
16 a few minutes and look at them, and we'll pause  
17 the deposition for you guys to both look at them?

18 MS. PEREYRA: So we can all look at them,  
19 yes.

20 MR. WEINSTOCK: Okay. We'll pause.  
21 Whenever you guys are ready to restart, let me  
22 know.

23 MS. PEREYRA: Okay. Thanks.

24 (Whereupon, a recess was taken.)

25 MR. WEINSTOCK: Go back on the record.

1 BY MR. WEINSTOCK:

2 Q. Mr. Atkinson, you understand you are  
3 still under oath?

4 A. Yes.

5 MR. WEINSTOCK: One moment, please.

6 I would ask that we go to Exhibit C,  
7 about ten pages in, it's been Bates stamped D0002.  
8 It's a Purchase Agreement and Joint Escrow  
9 Instructions.

10 Can we put that up?

11 ZOOM HOST: One moment.

12 Are you able to provide the Bates stamp  
13 once again, Mr. Weinstock?

14 MR. WEINSTOCK: It's D0002, and for the  
15 next few pages.

16 ZOOM HOST: Okay. I have that on the  
17 screen.

18 BY MR. WEINSTOCK:

19 Q. Mr. Atkinson, have you ever seen this  
20 agreement before?

21 A. Yes.

22 Q. Do you need us to go through it? It's  
23 about, I believe, seven pages in length. Do you  
24 need to -- do you need to see all seven pages?

25 A. No.

1           Q.    Is that an agreement that you and your  
2    wife signed confirming the sale of the location at  
3    2315 North Decatur, the corner of Decatur and  
4    Auborn, for you and your wife selling that  
5    residence to Mr. Brown?

6           A.    Yes.

7                   MS. PEREYRA:  Mr. Winder [sic], he's kind  
8    of -- I'm sorry, Arnold, he's hard of hearing, so  
9    if you can speak closer to the microphone, please.

10                  MR. WEINSTOCK:  Certainly, I will.

11   BY MR. WEINSTOCK:

12           Q.    And if you are having any problems  
13    hearing, please let me know, okay?

14           A.    Okay.

15           Q.    All right.  I request we go to Page 6 of  
16    7 of that document, Bates stamp D0007.  Go down a  
17    tiny bit more.  Stop right there.

18                  Mr. Atkinson, is that your signature  
19    contained on that document?

20           A.    Yes.

21           Q.    And can you recognize your wife's  
22    signature on that document?

23           A.    It looks like it, yes.

24           Q.    And that was dated July 20th, 2017.  Does  
25    that appear to be the date that you signed it?

1 A. That's what it says.

2 Q. Do you recall signing it?

3 A. I don't know. It's been a long time.

4 Yes, I do.

5 Q. Did anybody force you to sign that

6 document?

7 A. No.

8 Q. Do you believe that it was done for a

9 fair price?

10 A. At that time, yes.

11 Q. And were you and your wife prepared to

12 follow through with that sale had all the terms

13 and conditions been met?

14 A. Yes.

15 Q. I would ask we now go to Exhibit -- well,

16 let me ask you this: Did there come a time when

17 you had entered into an agreement with an entity

18 called GraEagle, G-r-a capital E-a-g-l-e,

19 Construction?

20 A. Yes.

21 Q. Do you recall doing that?

22 A. Yes.

23 Q. When did you do that?

24 A. I don't remember that day.

25 Q. Do you recall why you did that?

1           A.    Well, for the cost we had to -- we had to  
2   board up the building after the fire and all that  
3   kind of stuff and damage upon it.

4           Q.    So that was for boarding up the building  
5   after the fire?

6           A.    Yes.

7           Q.    Did you pay that invoice?

8           A.    Yes.

9           Q.    How did you pay it?

10          A.    I don't know.  Sheila probably wrote out  
11   a check.

12          Q.    Assuming your wife wrote out a check,  
13   would you still have a copy of that check?

14          A.    Yes.

15          Q.    Now I'd ask we go to what's been marked  
16   as Exhibit E.

17                    If we could go back, perhaps, about  
18   12 pages, to Bates stamp ATKINSON00656.

19                    Do you see that document, Mr. Atkinson?

20          A.    Yes.

21          Q.    Have you ever seen this document before?

22          A.    I don't remember it.

23                    Yes.

24          Q.    Do you need us to go through all the  
25   pages of this document?

1           A.    I don't -- I don't know. I can't  
2   remember what it is, so I don't know.

3           Q.    So it's your testimony today that you  
4   don't recall receiving this document, but you may  
5   have?

6           A.    No.

7           Q.    No. What is your testimony?

8           A.    Yes.

9           Q.    Well, when you say no, yes, again, my  
10   question earlier was do you recall receiving this  
11   document?

12          A.    Yes.

13          Q.    Do you recall when you received it?

14          A.    No.

15          Q.    Do you recall how you received it?

16          A.    I don't know that, either, no.

17          Q.    Do you recall ever looking at it?

18          A.    Yes.

19          Q.    And what is your understanding what this  
20   document is?

21          A.    Well, I don't understand all this stuff  
22   that you're putting on the screen and that, what I  
23   received from different people, so I don't know.  
24   The County hired for the bills, you know, on the  
25   fire, maybe.

1           Q.    Did there come a time when a lawsuit was  
2    filed against you and your wife by Mr. Charles  
3    Brown?

4           A.    Yes.

5           Q.    Did you make a decision to go out and  
6    hire an attorney to defend you and your wife on  
7    that lawsuit?

8           A.    Yes.

9           Q.    Was that a decision that you made or your  
10   wife made it, or you made it together?

11                   MS. PEREYRA:  Objection.  Compound  
12   question.

13   BY MR. WEINSTOCK:

14           Q.    Do you understand the question,  
15   Mr. Atkinson?

16           A.    I didn't understand it.

17           Q.    Did the decision to hire an attorney or  
18   attorneys, was that something you did on your own  
19   or did your wife do it on her own or did you do it  
20   in discussions with each other?

21           A.    I don't -- I don't remember that, who  
22   done what on that.  Me and my wife was together on  
23   it.  She told me about it, I'm sure.

24           Q.    Do you recall making a decision to hire  
25   the Integrity Law Firm?

1 A. Yes.

2 Q. Was that your decision?

3 A. Yes.

4 Q. Why was it that you chose to hire the  
5 Integrity Law Firm?

6 A. Well, because we thought -- we didn't  
7 know what was going on. We thought we was in  
8 trouble, so we needed to get somebody that knew  
9 more about what they was doing than us, because  
10 things wasn't going the way we thought they should  
11 be.

12 Q. Did you know somebody at the Integrity  
13 Law Firm?

14 A. Yes.

15 Q. Who was that?

16 A. Adriana.

17 Q. You had known Adriana prior to retaining  
18 her?

19 A. Yes.

20 Q. And how did you know Adriana?

21 A. I knew her personally, because -- because  
22 she was with my son, that was an attorney, that  
23 died, and she was -- she was his girlfriend, I  
24 guess, girlfriend/boyfriend, when -- I don't think  
25 they got married.

1 Q. And I'm very sorry to hear about your son  
2 that died, but what was his name?

3 A. His name was Troy, Troy Atkinson.

4 Q. And he was a member of the Integrity Law  
5 Firm?

6 A. No.

7 Q. Was he?

8 A. No, he wasn't.

9 Q. But he referred you to Adriana?

10 A. He didn't refer her to me, because he was  
11 already gone.

12 Q. Okay.

13 A. Is that what you are saying?

14 Q. I guess that isn't what I'm saying, and,  
15 again, I really don't want to get into this area  
16 very much at all. I know it's painful.

17 So he passed away prior to you and your  
18 wife hiring the Integrity Law Firm, but you were  
19 familiar with that law firm because of Adriana's  
20 relationship with your deceased son?

21 A. Yes.

22 Q. Do you recall entering any type of fee  
23 agreement with the Integrity Law Firm?

24 A. Yes.

25 Q. Do you recall what that agreement was?

1 A. No, no.

2 Q. Was there a set fee that you were told  
3 you were going to have to pay by the hour?

4 A. Yes.

5 Q. Do you recall what that was?

6 A. I don't recall exactly. \$300 or  
7 something, is what this fee here says.

8 Q. I understand what this fee here says, but  
9 I'm asking your recollection as to what you agreed  
10 to, if you did?

11 A. I don't know what to say to you about the  
12 fees. I don't -- my wife does all the book work.  
13 I don't get involved in it, so I don't know. I  
14 don't really know what they was.

15 Q. Do you recall at any time you personally  
16 signing any type of retainer agreement with the  
17 Integrity Law Firm prior -- or subsequent to the  
18 lawsuit filed against you by Charles Brown?

19 A. Yes.

20 Q. You recall personally signing a document?

21 A. Yes.

22 Q. Do you have a copy of that document?

23 A. I don't -- I don't remember. No, I don't  
24 remember.

25 Q. To your knowledge, have you or your wife

1 paid any money to the Integrity Law Firm for  
2 services that they may have rendered to you and  
3 your wife during the lawsuit of Charles Brown  
4 against you and your wife?

5 A. No, I don't remember that.

6 Q. When you say no, you don't remember, do  
7 you think there was any payments made by you or  
8 your wife to the Integrity Law Firm?

9 A. I don't know.

10 MR. WEINSTOCK: I ask that we go to  
11 Exhibit F, and if we can go in probably about  
12 25 pages to a document on top says MGA, it's Bates  
13 stamped ATKINSON0406.

14 Okay. Scroll up a little bit.

15 BY MR. WEINSTOCK:

16 Q. Mr. Atkinson, have you ever seen this  
17 document before?

18 A. Yes.

19 Q. Do you recall when you first saw it?

20 A. No, I don't.

21 Q. What does this document represent to you?

22 A. Bills, a bill that we owed.

23 Q. Who was that a bill to -- from?

24 A. I don't know. I can't remember, because  
25 I don't do the bills. Sheila is the one that does

1     them out, so I can't recall.

2           Q.     Are you familiar with a law firm called  
3     Maier Gutierrez & Associates?

4           A.     Yes.

5           Q.     How did you become familiar with that law  
6     firm?

7           A.     Through Adriana.

8           Q.     Was it Adriana's advice to you to go hire  
9     another attorney?

10           MS. BARRAZA:  Objection.  Calls for  
11     attorney/client privilege, and I'm going to  
12     instruct the witness not to answer that question  
13     the way it's phrased.

14     BY MR. WEINSTOCK:

15           Q.     Let me rephrase it this way:  Did you and  
16     your wife come to a conclusion that you felt you  
17     needed a second law firm to represent --

18           A.     Yes.

19           Q.     -- you and your wife against the lawsuit  
20     filed by Mr. Brown?

21           A.     Yes.

22           Q.     Why did you come to that conclusion?

23           A.     Well, Number 1, because I'm not a lawyer,  
24     and neither is my wife, and we don't know all  
25     these terms that they're using, and so we just

1 decided we better get some more advice on it.

2 Q. Were you not happy with the advice from  
3 Adriana?

4 A. I was happy with it, but we thought we  
5 might have a little more, just because we didn't  
6 understand all the things that was going on.

7 Q. Did you feel that you needed additional  
8 legal help other than what could have been  
9 provided by Adriana in her law firm?

10 A. Yes.

11 Q. And why was that?

12 A. Well, because Adriana was working herself  
13 to death, and she already had a job to do, so we  
14 thought we needed somebody in there to maybe back  
15 her up.

16 Q. Did there come a time when you and your  
17 wife entered into a retainer agreement with the  
18 law firm of Maier Gutierrez & Associates?

19 A. Yes.

20 Q. Do you recall signing a document to that  
21 effect?

22 A. Yes.

23 Q. Do you know what that document called  
24 for?

25 A. I don't remember what was all in it, no.

1 Q. Did you and your wife agree to pay a  
2 second law firm for this litigation?

3 A. Yes, yes.

4 Q. And do you recall how much you were to  
5 pay that other law firm?

6 A. No, I don't.

7 Q. Did they discuss their fee with you prior  
8 to your retaining them?

9 A. Yes.

10 Q. And you don't recall how much they said  
11 they were going to be charging an hour, if they  
12 were going to charge you hourly?

13 A. Well, I didn't -- I don't --

14 Q. Do you recall how much you were billed  
15 for by the Maier Gutierrez & Associates law firm  
16 at the end of the litigation between Mr. Brown and  
17 you and your wife?

18 A. I don't remember that.

19 Q. Have you ever paid the law firm Maier  
20 Gutierrez & Associates any money towards this  
21 bill?

22 A. I don't know that, either.

23 Q. If you had paid any money, who would have  
24 paid that money?

25 A. It would have been Sheila pays the money.

1 She takes care of the bills.

2 Q. So if any money would have been paid to  
3 the law firm of Maier Gutierrez & Associates, it  
4 would have been Sheila paying that by check?

5 A. Usually it's by check.

6 Q. But you're confident that you personally  
7 have never paid them any money, correct?

8 A. I've never paid them any personally, no.

9 Q. Are you aware of any agreement between  
10 you and your wife -- you or your wife with either  
11 of these two law firms regarding any payments to  
12 be made to them?

13 A. I don't know about that, either.

14 Q. Personally, have you ever had any  
15 arrangements with either the Integrity Law Firm or  
16 the Maier Gutierrez & Associates law firm about  
17 paying or not paying them the money that they  
18 claim is owed to them?

19 MS. BARRAZA: Objection. Form.

20 You can answer.

21 THE WITNESS: I don't remember that.

22 BY MR. WEINSTOCK:

23 Q. Now, there came a time, I believe, on  
24 October -- excuse me -- on November 5th, 2019,  
25 when you and your wife decided to file a Complaint

1 against Charles Brown, an individual, Stacy Brown,  
2 an individual, law offices of Dan M. Winder, PC, a  
3 domestic professional corporation, Dan M. Winder,  
4 an individual, Does 1 through 10, and Roe  
5 Corporations 1 through 10.

6 Are you familiar with that?

7 A. Yes.

8 Q. Did you make that decision to file a  
9 lawsuit?

10 A. Yes.

11 Q. Why did you make that decision?

12 A. Well, I thought I answered that with the  
13 money, there was no money showing, they was trying  
14 to steal our property, and they never had no  
15 escrow or anything like that.

16 Q. Well, let me ask you: You said, They are  
17 trying -- were trying to steal your property.

18 Did Charles Brown try to steal your  
19 property?

20 A. Well, yes.

21 Q. And why do you say that?

22 A. Because he never -- he said he had -- was  
23 going to buy it, he never had no escrow opening,  
24 he never had anything to prove that he was going  
25 to be honest in paying it, and he started acting a

1 little shady.

2 Q. But you never turned your property over  
3 to Mr. Brown, did you?

4 A. No.

5 Q. So he never received your property,  
6 correct?

7 A. No, he didn't.

8 Q. Okay.

9 A. No escrow money was opened, no nothing.

10 Q. And you did not end up selling the  
11 property to Mr. Brown, correct?

12 A. That is correct, yes.

13 No, no -- do that question again.

14 Q. You did not end up selling that property  
15 to Mr. Brown, correct?

16 A. No, I didn't.

17 Q. Okay.

18 A. No escrow.

19 Q. Do you still own the property at  
20 2315 North Decatur?

21 A. Yes, yes.

22 Q. So you have not sold that property as of  
23 this date, correct?

24 A. That's correct.

25 Q. And let me take you back to 2018, when

1     you ended up agreeing -- you and your wife agreed  
2     to sell the property at 2315 North Decatur, on the  
3     corner of Decatur and Auburn, to Mr. Brown, where  
4     were you and your wife living at that time?

5           A.     We were living -- we was living on Auburn  
6     Street.

7           Q.     What was the address?

8           A.     5288 Auburn.

9           Q.     5288 Auburn?

10          A.     Uh-huh.

11          Q.     And let me advise you one other thing,  
12     just as a housekeeping matter, when you are  
13     answering questioning, please verbally state yes  
14     or no or I don't know to an answer. Uh-huhs,  
15     huh-uhs, or nods of the head can't be taken down  
16     by the court reporter.

17                 So we're just trying to make a good  
18     record. So as we all do, if you say uh-huh or  
19     huh-uh, like you just did, I'm going to ask you,  
20     Is that a yes or no? So please try to verbally  
21     state yes or no.

22                 Do you understand?

23          A.     Yes.

24          Q.     Thank you.

25                 Now, the residence at 5288 Auburn that

1 you and your wife were living at, did Mr. Brown  
2 ever ask to purchase that residence from you?

3 A. No.

4 Q. Did Stacy Brown ever ask to purchase that  
5 residence from you?

6 A. No.

7 Q. Did Dan Winder ever ask to purchase that  
8 residence from you?

9 A. No.

10 Q. Did anybody from the Law Office of  
11 Dan M. Winder ask to purchase that property from  
12 you?

13 A. No.

14 Q. Do you still have that property?

15 A. No.

16 Q. When did you sell that property?

17 A. I can't remember when it was sold, but --  
18 I can't remember.

19 Q. Do you know when it was sold -- I mean,  
20 do you know why it was sold? Excuse me.

21 A. Well, because we just decided to move on.

22 Q. Was the sale of that property, did that  
23 have anything to do with the decision by Mr. Brown  
24 to try to purchase the property at  
25 2315 North Decatur?

1           A.    Well, we -- our son -- our family got  
2   nervous about us being there with all that's going  
3   on, so he -- they kind of suggested that we move  
4   to a different location.

5           Q.    When you say your family, who in  
6   particular from your family suggested perhaps you  
7   may want to move on?

8           A.    Just the whole family. I've got three,  
9   four -- three kids, and they was all nervous.

10          Q.    What are your children's names that  
11   suggested that?

12          A.    I don't understand what you are saying.

13          Q.    What are the three children of yours that  
14   suggested you may want to move on? What are their  
15   names?

16          A.    What are their names?

17          Q.    Yes.

18          A.    Valarie Mifflin.

19          Q.    Hold on. Hold on.

20                How do you spell that?

21          A.    M-i-f-f-l-i-n.

22          Q.    And is that Valarie, V-a-l-a-r-i-e?

23          A.    Yeah, yes.

24          Q.    And where does Ms. Mifflin reside?

25          A.    Salt Lake City, Utah.

1 Q. Do you have an address for her?

2 A. No, I don't have it. I don't know what  
3 her address is.

4 Q. If I left a blank in this deposition for  
5 you to fill in her address, would you be able to  
6 do that?

7 A. No.

8 Q. Why not?

9 A. Because I don't have it.

10 Q. You don't have it anywhere? You don't  
11 know where your daughter lives?

12 A. I know where she lives.

13 MS. PEREYRA: Objection. Asked and  
14 answered.

15 THE WITNESS: I can go to her house if I  
16 drive to Salt Lake, but the address, I don't know  
17 the numbers on it or anything.

18 BY MR. WEINSTOCK:

19 Q. You don't have any documents with her  
20 address; is that correct?

21 A. I don't have any.

22 Q. And your other child that told you that  
23 you may want to move was?

24 A. James Atkinson.

25 Q. And where does Mr. Atkinson reside right

1 now?

2 A. Well, I don't know if I should be telling  
3 people where he resides. Why wouldn't you need to  
4 know where he's at?

5 Q. Again, I'm not here to answer questions.  
6 But just to let you know, we may want to question  
7 him or confirm this.

8 A. Well, I don't feel comfortable about you  
9 talking to him about it, anyway. It's not -- it's  
10 not them, it's us. They was just worried about  
11 us.

12 Q. Well, it's part of the litigation. You  
13 filed a lawsuit, you got involved in a litigation.

14 So are you willing to give us his --  
15 James Atkinson's address?

16 A. No.

17 Q. Where does he reside, what city?

18 A. Henderson.

19 Q. And what does James Atkinson do for a  
20 living?

21 Mr. Atkinson, please do me a favor, when  
22 I'm asking you questions, don't look at your  
23 attorney for advice or help in these questions or  
24 your answers. If your attorney has an objection,  
25 she is allowed to make that objection on the

1 record, but you still are probably going to be  
2 required to answer.

3 So please try to focus on me and answer  
4 the questions on your own, so --

5 MS. BARRAZA: Objection. I'm just going  
6 to state for the record that he has not been  
7 getting any advice from his attorney during the  
8 course of this deposition, and he's allowed to  
9 look wherever he wants, just as in any deposition  
10 in-person, you can look wherever you want to look.

11 So you can go ahead and answer the  
12 question.

13 BY MR. WEINSTOCK:

14 Q. What does James Atkinson do for a living?

15 A. He's a doctor, surgeon.

16 Q. Congratulations. Great. Okay.

17 And your third child that suggested you  
18 may want to move?

19 A. His name is Brett, Brett Atkinson.

20 Q. B-r-e-t-t?

21 A. Yes.

22 Q. And where does Brett Atkinson reside?

23 A. Las Vegas.

24 Q. And do you have an address for him?

25 A. No.

1 Q. You don't have an address?

2 A. I don't have an address for him.

3 Q. What does Brett Atkinson do for a living?

4 A. He's an -- I don't know what they -- I  
5 don't know what they call him. He works in a car  
6 dealership. He brings people in to get their car  
7 fixed and things like that. I don't know exactly  
8 what his title is.

9 Q. Which dealership does he work for?

10 A. I don't know that, either.

11 Q. Do you speak with Brett Atkinson on a  
12 regular basis?

13 A. I talk to him quite often, yes.

14 Q. Next time you speak with him, can you  
15 find out his address and where he works, and if we  
16 leave a space in the deposition, can you provide  
17 it for us?

18 A. I don't feel comfortable doing that. I  
19 don't know why -- I don't know why you need to  
20 know their addresses.

21 I mean, it's nothing to do with those  
22 kids. They got nervous because they thought maybe  
23 we was going to get in a bad situation on Auburn  
24 Street, and that's all there is to it.

25 Q. Did you think you were going to get in a

1 bad situation on Auburn Street?

2 A. Well, I've -- yes.

3 Q. Why was that?

4 A. Well, because of -- because of the  
5 neighbor -- the neighbors -- the neighborhood,  
6 some of the guys that he had talked to from the  
7 neighborhood had said things that Charlie had told  
8 them, that it made me nervous with my family, with  
9 me and my family being there, and that's why I  
10 don't think it's necessary for people to know  
11 who -- where my family lives, and -- and the cops  
12 told us that, so did some of the neighbor people,  
13 told us that it was a bad situation.

14 Q. You said you had heard from some of the  
15 people in your neighborhood. Who in your  
16 neighborhood did you hear from?

17 A. Well, all the neighbors that I'm friends  
18 with.

19 Q. And what are their names?

20 A. Theresa, Theresa Lange (phonetic), and I  
21 don't know how you spell it.

22 Q. Other than Theresa Lange, did anybody  
23 else in your neighborhood speak to you about the  
24 situation?

25 A. Tex Watkins (phonetic).

1 Q. And other than Ms. Lange and Mr. Watkins,  
2 anybody else?

3 A. There was a lady that lived down next to  
4 the shop down on the corner, but I don't know her  
5 name. I can't remember her name.

6 Q. Anybody else?

7 A. No.

8 Q. When did Ms. Lange speak to you about  
9 what her belief about what was going on in the  
10 neighborhood?

11 A. I don't remember the date.

12 Q. Do you recall approximately how long ago  
13 that was?

14 A. No, I don't know.

15 Q. Was that recently?

16 A. Not too recently.

17 Q. How long after you first had this  
18 conversation with Ms. Lange did you continue to  
19 live at the house on Auburn?

20 A. Well, I don't remember that because I  
21 don't know when the conversation was, so I don't  
22 know.

23 Q. Do you believe it was longer than a year?

24 A. I don't know. I would have to -- I don't  
25 know.

1 Q. What exactly did Ms. Lange tell you?

2 A. She told me that she had been down there  
3 and seen Charlie Brown was taking some stuff out  
4 of the building, and he -- she stopped and said he  
5 shouldn't be doing that because it wasn't his, and  
6 he said that it was his building, and she said, I  
7 know it's not your building, and you shouldn't be  
8 taking stuff out of there.

9 And that was where the -- she got  
10 threatened by a partner that was with him.

11 Q. Other than this incident where Ms. Lange  
12 indicates that she saw Charlie Brown, you said,  
13 taking stuff from your building, did she mention  
14 any other incidents?

15 A. No.

16 Q. That was the one and only incident that  
17 she brought up?

18 A. I don't remember that, and that's the  
19 only one that I can recall.

20 Q. Who was present when Ms. Lange told you  
21 this.

22 A. I don't -- I don't remember if the wife  
23 was present. I don't know.

24 Q. What did Tex Watkins tells you?

25 A. Tex Watkins just told me that he had been

1     there and talked to Charlie a little bit, and that  
2     he thought he was out of line.

3             And he told him -- he told Watkins and  
4     them that the building was his, and he wasn't out  
5     of line. The building belonged to him.

6             Q.    Do you recall when you had this  
7     conversation with Mr. Watkins?

8             A.    I don't remember when it was exactly, no.

9             Q.    Do you remember where it was?

10            A.    Well, it was down at the shop.

11            Q.    When you say "the shop," that --

12            A.    Right on the corner of Auburn and  
13     Decatur.

14            Q.    -- that's the 2315 North Decatur  
15     location?

16            A.    Yes, yes.

17            Q.    So you are telling me that Mr. Watkins  
18     had a conversation with you at that location  
19     saying that he talked to Mr. Brown on one  
20     occasion, and Mr. Brown was out of line, correct?

21            A.    That wasn't at that property.

22            Q.    Where was it at?

23            A.    When I was talking to him, he was my  
24     neighbor, I was talking to him. I don't remember  
25     the date, the time. I just remember what he said.

1 Q. And did him saying that, did that put any  
2 fear into you?

3 A. Well, yes, it put fear into me, when he's  
4 telling people that he owns the property and all  
5 of that kind of stuff, and moving stuff in there.  
6 It would make anybody nervous.

7 Q. But you don't know how long after that  
8 conversation you had with Mr. Watkins that you and  
9 your wife decided to move from the area, do you?

10 A. Not exactly, no.

11 Q. Do you believe you lived there for a  
12 while after the conversation with Mr. Watkins?

13 A. Like I said, I don't remember when the  
14 conversation was. I don't know how long it was.

15 Q. Well, my question was: Do you believe  
16 that you lived at that location for a while after  
17 your conversation with Mr. Watkins?

18 MS. PEREYRA: Objection. Asked and  
19 answered.

20 THE WITNESS: Look, I don't -- I just  
21 don't remember when I talked to my neighbors. I  
22 talked to him about different things, and I don't  
23 remember what day or how long after we talked to  
24 him that we decided to sell.

25 ///

1 BY MR. WEINSTOCK:

2 Q. When you sold the house, did you make  
3 money on the sale?

4 A. I don't know that.

5 Q. Well, do you recall how much you  
6 purchased the house for on Auburn?

7 A. I don't remember what that was, either,  
8 because that was back in the '70s.

9 Q. And do you know how much you sold the  
10 house for on Auburn?

11 A. No.

12 Q. Did you enter into a sales agreement for  
13 the sale of that house?

14 A. Yes.

15 Q. Do you have a copy of that?

16 A. Sheila might. I don't.

17 Q. And can you look and speak with  
18 Ms. Atkinson, your wife, and find that copy of  
19 that and get that to us if we request it?

20 A. I don't -- I don't know what -- what that  
21 has to do with anything. I can get the copy, but  
22 I don't know what that has anything to do with  
23 this case, how much I made off the house.

24 Q. Again, we're in litigation. We're just  
25 trying to figure out what you are deciding --

1 MS. PEREYRA: He's just trying to harass  
2 you, don't worry.

3 BY MR. WEINSTOCK:

4 Q. Mr. Atkinson, do you feel I'm harassing  
5 you?

6 A. Kind of, yeah. You are asking questions  
7 that you have no right to ask.

8 Q. Well, I mean, that is a legal  
9 determination that's going to be made ultimately  
10 by a judge. I don't mean to harass you, okay?

11 I apologize if you feel I'm harassing  
12 you.

13 A. What would you call it, sir?

14 Q. I call it me trying to get information  
15 for the lawsuit you filed.

16 A. I don't remember. I don't remember.

17 MS. PEREYRA: Yeah, if you want to do a  
18 document request, feel free. But for now, this is  
19 just to get his deposition testimony. So any  
20 document requests, you can provide afterwards.

21 BY MR. WEINSTOCK:

22 Q. Going back to the document that you and  
23 your wife caused to be filed on November 5th,  
24 2019, a Complaint against those parties I've  
25 previously read off, did you read that Complaint

1 prior to it being filed?

2 A. Yes.

3 Q. Did you go over it?

4 A. I went over it.

5 Q. Did you discuss it with your attorney?

6 And I don't want to know anything that was said.

7 But did you discuss that Complaint with your

8 attorney?

9 A. Yes, yes.

10 Q. Now, in that Complaint, it lists that

11 there are damages in excess of \$50,000 as a result

12 of that Complaint.

13 Were you aware of that?

14 A. Yes.

15 Q. Tell me what you believe, how you were

16 damaged in excess of \$50,000?

17 A. Well, when they -- when it was on -- set

18 on fire, then they boarded up the building, they

19 put plywood all around all the windows, and then

20 they -- and the building itself, after the fire,

21 that cost us money.

22 Q. All right. Let me ask you about that.

23 You said when it was set on fire. Do you

24 personally know how the house caught on fire?

25 A. No. Not personally, no.

1 Q. Do you have any reports from the fire  
2 department regarding that fire?

3 A. I don't know if I do or not. If it came  
4 here in the mail, I don't know.

5 Q. And you indicated you had -- after the  
6 fire, you had to board up the house, correct?

7 A. Yes. I didn't board it up, they boarded  
8 it up that night, and then sent me a bill.

9 Q. Who boarded it up?

10 A. The firemen, the fire department.

11 Q. Fire department?

12 A. I don't know if the firemen done it or if  
13 they hired somebody to do it, if they do that kind  
14 of stuff. But they said it was a hazard, it had  
15 to be boarded up.

16 Q. Did you get a bill for that?

17 A. Yes.

18 Q. How much was that bill?

19 A. I don't remember what it was. I think  
20 Sheila probably told you. I don't know what it  
21 is -- what it was.

22 Q. Do you still have a copy of that bill?

23 A. I don't know. Probably.

24 Q. Did you or your wife pay anything on that  
25 bill?

1 A. Yes.

2 Q. How much did you pay?

3 A. I don't remember what it was. Expensive.

4 Q. Did you have insurance on that house?

5 A. No. I don't remember about it. I don't  
6 remember insurance on it.

7 Q. You did not have insurance?

8 A. I don't remember for sure if we still had  
9 the insurance on it or not after the -- right at  
10 the time after this. I don't remember.

11 Q. Was the decision to not keep insurance on  
12 the house yours?

13 MS. BARRAZA: Objection. Misstates  
14 testimony.

15 BY MR. WEINSTOCK:

16 Q. Well, let me -- let me clarify that.

17 Is it your testimony that you do not know  
18 whether you did or did not have insurance on the  
19 house?

20 A. No, I don't remember that, because it  
21 was -- I don't remember it.

22 Q. Do you remember that at any time prior to  
23 your contact with Charles Brown, did you have  
24 insurance on that property?

25 A. Yeah, I don't know.

1 Q. You don't know?

2 A. No, I don't know. I don't remember that.  
3 I told you I don't know.

4 Q. Are you usually a person to keep your  
5 properties insured?

6 A. Yes.

7 Q. Are you aware of any other instance or  
8 instances where you may have owned property and it  
9 wasn't insured?

10 A. No, I don't know that.

11 Q. No, you don't know, or no, you don't  
12 believe there are any other instances?

13 A. No, I don't -- I don't know.

14 Q. You don't know or you --

15 A. I don't know if other properties. I  
16 don't know.

17 Q. Okay.

18 A. I don't understand it.

19 Q. Now, when you talked to Ms. Lange on this  
20 one occasion and she mentioned about seeing  
21 Charlie Brown at the location, did she ever  
22 mention the name Stacy Brown to you at that time?

23 A. No.

24 Q. Did she ever mention the name Dan Winder  
25 at that time?

1 A. No.

2 Q. When you talked to Tex Watkins about the  
3 one incident he advised you of, did he ever  
4 mention Stacy Brown at that time?

5 A. No.

6 Q. Did he ever mention Dan M. Winder at that  
7 time?

8 A. I don't remember that, either.

9 Q. Now we're getting back to the \$50,000 of  
10 damages you claimed.

11 MS. BARRAZA: Objection. Form. And  
12 misstates the document.

13 But go ahead.

14 BY MR. WEINSTOCK:

15 Q. Other than -- I previously asked you what  
16 you believe was the basis for your having placed  
17 into the Complaint damages in excess of \$50,000,  
18 and I asked what your damages were, and first  
19 thing you said is when the house was set on fire,  
20 you had to pay for boarding up that house,  
21 correct?

22 A. Yes.

23 Q. What other damages have you suffered as a  
24 result?

25 A. Well, we had to pay for the work fees

1 down there, and we had to pay --

2 Q. Hold on. Hold on.

3 Pay for work fees. What work fees were  
4 done?

5 A. Demolition. They had to cover up all  
6 the -- they put up all that plywood over all the  
7 windows and the doors.

8 Q. I understand. Have you finished telling  
9 me about the boarding of the house that you had  
10 to -- that was done by, you believe, the fireman  
11 or the fire department, and you believe your wife  
12 had to pay?

13 A. Yes.

14 Q. Other than that damage for that, what  
15 other damages are you suing for in excess of  
16 \$50,000?

17 A. Well, we had to demolition it. We had to  
18 demo the building and have it hauled off.

19 Q. Hold on.

20 Do you know when you demoed the building?

21 A. I don't remember that day.

22 Q. Do you know why you demoed the building?

23 A. Because -- because after the firemen  
24 boarded it up, then the County put -- told us we  
25 had to take care of it.

1 Q. Okay.

2 A. Do something with it, because they were  
3 afraid somebody would get in there and get hurt.

4 Q. Do you know who you paid to demo the  
5 building?

6 A. I don't know who they was.

7 Q. Do you know how much you paid to demo the  
8 building?

9 A. I don't remember that.

10 Q. What?

11 A. I don't remember how much we paid.

12 Q. And, again, do you know if you had  
13 insurance to cover the demolition of that  
14 building?

15 A. I don't know.

16 Q. Do you know if you or your wife ever  
17 actually issued a check to somebody for the  
18 demolition of the building?

19 A. Yes.

20 Q. And do you know how much that check was?

21 A. I don't know. I don't remember that.

22 Q. Do you know when it was paid?

23 A. I don't. I don't remember.

24 Q. All right. So is there anything else you  
25 believe you were damaged for regarding the

1 demolition of the building?

2 A. Attorney fees. Well, we had -- we had  
3 some attorney fees.

4 Q. Hold on a second. Let me -- I was asking  
5 if there's anything else regarding the demolition  
6 of the building?

7 A. I don't know. The demolition of the  
8 building, the fees.

9 Q. Okay.

10 A. I don't know how -- I don't remember how  
11 much. I really don't know what you are saying, I  
12 guess.

13 Q. Isn't it true that the demolition of the  
14 building is, again, related back to the fire at  
15 the building, correct?

16 A. Yes.

17 Q. And you previously stated you don't know  
18 how the fire came about, correct?

19 A. Well, I don't -- I don't know how it  
20 started, no.

21 Q. And you don't personally know if somebody  
22 actually started that fire, do you?

23 Please don't look at your attorney. Look  
24 at me.

25 A. She's cuter than you.

1 Q. I know that. There is no doubt about  
2 that.

3 A. Anyway, the -- say that question one more  
4 time.

5 Q. You previously stated you don't know how  
6 the fire got started, correct?

7 MS. BARRAZA: Asked and answered.

8 THE WITNESS: I can -- I can tell you  
9 what the fireman told you, and that's all. I  
10 don't know how it started, but I can tell you the  
11 fireman said it was deliberately started.

12 BY MR. WEINSTOCK:

13 Q. And if that was said, did the fireman  
14 give you any report that documented that?

15 A. I don't remember any report.

16 Q. And did the fireman tell you the name of  
17 any person that the fireman believed may have  
18 started the fire?

19 A. No.

20 Q. And you didn't see anybody start the  
21 fire, correct?

22 A. No.

23 Q. As a matter of fact, had you ever in your  
24 life seen Stacy Brown at 2315 North Decatur and  
25 Auburn?

1           A.    No, I've never seen her.

2           Q.    Have you ever personally seen  
3   Dan M. Winder at the site of 2315 North Decatur  
4   and Auburn?

5           A.    No.

6           Q.    Besides boarding up the building and the  
7   demolition of the building, what other damages do  
8   you have that you believe reach 50,000 -- or  
9   exceeded \$50,000?

10                   Please don't talk to your attorney, talk  
11   to me.

12           A.    We got the attorney fees, and we got  
13   the -- that's it.

14           Q.    And when you say you got the attorneys'  
15   fees, and that's it, is it your statement here  
16   today under oath that other than the boarding of  
17   the house, the demolition of the house, and the  
18   attorneys' fees, those are the only damages you  
19   have?

20                   And please look at me, again, sir.

21                   MS. BARRAZA:  Objection.  Form.

22                   You can answer.

23                   THE WITNESS:  I don't -- I don't really  
24   know what you are trying to get at.  I don't  
25   understand the question at all.

1 BY MR. WEINSTOCK:

2 Q. Well, I'm trying -- you filed a  
3 lawsuit -- you and your wife filed a lawsuit  
4 claiming that you had damages in excess of \$50,000  
5 in this lawsuit, correct?

6 A. Right.

7 Q. You understand that?

8 A. Yes.

9 Q. And I'm asking you what was your basis  
10 for coming up that you had damages in excess of  
11 \$50,000 in your filing of the lawsuit.

12 Do you understand that?

13 A. Yes.

14 Q. And I've asked you to give me all the  
15 reasons why you believe you were damaged in excess  
16 of \$50,000. And you've told me because of the  
17 boarding up of the building and 2315 North  
18 Decatur, because of the demolition of the building  
19 at 2315 North Decatur, and you've indicated that  
20 you believe you and your wife have paid for that,  
21 and because of attorneys' fees. Those are how you  
22 came up with the \$50,000 in excess of figure,  
23 correct?

24 A. Yes.

25 Q. And I asked you, other than those three

1 items, the boarding, the demolition, and the  
2 attorneys' fees, are there any other damages that  
3 you have?

4 And, again, you are looking at your  
5 attorney, and apparently something that's been  
6 written for you. Please look at me.

7 Other than the boarding up of the house,  
8 the demolition of the house, and the attorneys'  
9 fees, is there any other damages that you or your  
10 wife have suffered?

11 A. I don't -- the demo, the fire. I don't  
12 know. I don't think so. I don't remember any.

13 MR. WEINSTOCK: Okay.

14 MS. PEREYRA: Can we take a break?

15 MR. WEINSTOCK: What?

16 MS. PEREYRA: We need to take a break,  
17 please.

18 MR. WEINSTOCK: Do you need ten minutes?

19 MS. PEREYRA: Yes.

20 MR. WEINSTOCK: Okay.

21 (Whereupon, a recess was taken.)

22 MR. WEINSTOCK: Back on the record.

23 THE WITNESS: Yes, we are.

24 BY MR. WEINSTOCK:

25 Q. Mr. Brown [sic] -- I mean, excuse me,

1 Mr. Atkinson, you realize you are still under  
2 oath?

3 A. Yes.

4 Q. Same penalties of perjury still apply?

5 A. Yes.

6 Q. Thank you. Mr. Brown, I want to go over  
7 a few things on your Complaint.

8 Do you have a copy of the Complaint you  
9 filed in front of you?

10 A. Yeah, but I'm not Mr. Brown, I'm  
11 Mr. Atkinson.

12 Q. You are Mr. Atkinson. I very much  
13 apologize for saying that. You've got to give me  
14 a senior moment every once in a while.

15 A. I've got a copy.

16 Q. All right. I apologize, Mr. Atkinson.  
17 You have a copy of that Complaint?

18 A. Yes.

19 Q. I ask that you turn to Page 5 of your  
20 Complaint?

21 A. What am I looking at?

22 MS. PEREYRA: He's going to tell you what  
23 paragraph.

24 THE WITNESS: Okay.

25 ///

1 BY MR. WEINSTOCK:

2 Q. Looking at Paragraph Number 27, do you  
3 see that?

4 A. Yes.

5 Q. It says, On or around July 21, 2018,  
6 Charles Brown trespassed onto the property.

7 Do you see that?

8 A. Yeah, I see that.

9 Q. Do you have any personal knowledge that  
10 on July 21, 2018, Charles Brown trespassed onto  
11 your property?

12 A. Yes.

13 Q. What personal knowledge do you have?

14 A. Because I was there.

15 Q. You were there, and you observed on  
16 July 21st, 2018?

17 A. I don't remember the date.

18 Q. Are you testifying that you were present  
19 when you observed Mr. Brown trespass onto your  
20 property?

21 A. I don't know. I don't understand what is  
22 trespassing onto my property. If he walked onto  
23 my property, then what?

24 MS. PEREYRA: Can you repeat the  
25 question, please?

1 BY MR. WEINSTOCK:

2 Q. My question for you, and, again, you are  
3 looking right at your Complaint, correct,  
4 Paragraph 27?

5 A. Yes.

6 Q. That Complaint alleges, states that on or  
7 around July 21, 2018 Charles Brown trespassed onto  
8 the property, and the property that we are  
9 referring to is the property at 2315 North  
10 Decatur, on the corner of Decatur and Auburn,  
11 correct?

12 A. Yes.

13 Q. Now, you state that -- did you personally  
14 observe Charles Brown trespass onto that property  
15 on or around July 21, 2018?

16 A. No.

17 Q. So you were not there, correct?

18 A. No.

19 Q. To your knowledge --

20 A. It's the same thing.

21 Q. Please, Mr. --

22 A. Okay. I'm looking at you. I'm going to  
23 straighten up here.

24 Q. Thank you. I appreciate it.

25 So you didn't -- you did not see

1 Mr. Brown trespass onto your property on or around  
2 July 21, 2018, correct?

3 MS. BARRAZA: Objection. Asked and  
4 answered.

5 You can answer again.

6 THE WITNESS: Yeah.

7 BY MR. WEINSTOCK:

8 Q. Is that correct?

9 A. No.

10 Q. It's not correct?

11 A. That's correct, I didn't see him.

12 Q. Thank you very much.

13 Okay. So therefore you go on and state  
14 in Paragraph 27 that Mr. Brown converted various  
15 personal items from the property.

16 Did you personally see Charles Brown ever  
17 take any property from your property on Decatur?

18 Please look at me.

19 A. I guess you better hit that question to  
20 me again, because I don't understand what you are  
21 trying to tell me.

22 Q. Your Paragraph 27 --

23 A. Okay.

24 Q. -- states on or around July 21, 2018,  
25 Charles Brown trespassed onto your property and

1 converted various personal items from the  
2 property.

3 Do you see that?

4 A. I see that.

5 Q. Now, if you did not -- you testified you  
6 did not personally see Mr. Brown trespass onto the  
7 property, correct?

8 A. Yes.

9 Q. And so therefore, did you personally see  
10 Mr. Brown convert any items of personal -- any  
11 personal items from the property on that date?

12 A. No.

13 Q. And then it goes on to say, Including but  
14 not limited to, outdoor chairs.

15 Again, I assume you never saw, and please  
16 correct me if I'm wrong, did you ever see Charles  
17 Brown take outdoor chairs from your property on  
18 Decatur?

19 A. No.

20 Q. Did you ever see Mr. Brown take a workout  
21 bench from your property on Decatur?

22 A. No.

23 Q. Did you ever see Mr. Brown take planter  
24 pots from your property on Decatur?

25 A. No.

1 Q. Did you ever see Mr. Brown take a trash  
2 can from your property on Decatur?

3 A. No.

4 Q. Did you ever see anybody, any person take  
5 any of those items from your property on Decatur?

6 A. No.

7 Q. Do you have any personal knowledge that  
8 anybody actually took those items from your  
9 property on Decatur?

10 A. Yes.

11 Q. When did you first come upon personal  
12 knowledge that those items were missing?

13 Please look at me.

14 A. I don't know. I don't remember the dates  
15 that I seen them when they was missing or not. A  
16 lot of them was missing. I don't know.

17 Q. Do you recall, did somebody tell you  
18 those items were missing?

19 A. No, I seen that they was missing.

20 Q. But you don't recall when?

21 A. No, I don't recall.

22 Q. Did you file a claim with your insurance  
23 company?

24 A. No.

25 Q. Did you file a police report?

1 A. Yes.

2 Q. You filed a police report?

3 When did you file that police report?

4 A. I don't remember when we filed it. I  
5 don't remember the date.

6 Q. Do you have a copy of that police report?

7 A. I don't remember that, either.

8 Q. Now look at Paragraph Number 28.

9 Do you see that?

10 A. Yes.

11 Q. Do you see that Paragraph 28 says, Upon  
12 information and belief, Charles Brown, Law Offices  
13 of Dan M. Winder, PC, and Dan Winder wrongfully  
14 initiated litigation against the Atkinsons.

15 Do you see that?

16 A. Yes.

17 Q. What information and belief do you have  
18 to indicate that Dan M. Winder wrongfully  
19 initiated litigation against you and your wife?

20 A. Because there was no escrow opened, there  
21 was no proof of funds, and they was -- there was  
22 just nothing. They -- and they -- they sued us  
23 for no reason that I can think of.

24 Q. And that was the lawsuit that was filed  
25 by Charles Brown against you and your wife,

1 correct?

2 A. Yes.

3 Q. Dan M. Winder or the Law Offices of  
4 Dan M. Winder were not a party to that lawsuit,  
5 were they?

6 A. No.

7 Q. You are aware that you and your wife  
8 ended up prevailing in that lawsuit that Mr. Brown  
9 filed, correct?

10 A. Yes.

11 Q. Did you ever request your attorneys to  
12 seek court ordered attorneys' fees from Mr. Brown  
13 for the filing of that lawsuit?

14 MS. BARRAZA: Objection. Calls for  
15 attorney/client privilege. I'm going to ask the  
16 witness not to answer the question based on the  
17 way it's phrased.

18 BY MR. WEINSTOCK:

19 Q. Now, Mr. Atkinson, your attorney has  
20 advised you not to answer that question. You have  
21 the opportunity to follow her advice or not follow  
22 her advice.

23 I would advise you that if --

24 MS. PEREYRA: You are not his attorney.  
25 You cannot give him any advice.

1 BY MR. WEINSTOCK:

2 Q. -- if -- if you follow your attorney's  
3 advice, and we file a motion with the court  
4 seeking you to answer, and the court agrees with  
5 us, it is possible that you are going to assess --  
6 be assessed the cost -- the cost of a new  
7 deposition and the cost for sanctions if the  
8 court -- the judge agrees.

9 Do you understand that?

10 A. Yes.

11 Q. Knowing all that, is it your desire to  
12 not answer the question?

13 A. Yes.

14 MR. WEINSTOCK: Could you please certify  
15 that?

16 THE WITNESS: I said yes.

17 MR. WEINSTOCK: No, not you, the court  
18 reporter.

19 Can you please certify that?

20 THE COURT REPORTER: Yes.

21 MR. WEINSTOCK: Okay. Thank you.

22 BY MR. WEINSTOCK:

23 Q. Now I'd ask you to look at Paragraph  
24 Number 27.

25 MS. PEREYRA: Again?

1 BY MR. WEINSTOCK:

2 Q. I mean 29. Excuse me.

3 As I said, I'm entitled to some senior  
4 moments.

5 Have you read that, Mr. Atkinson?

6 A. Yeah, I'm reading it.

7 Q. Now, it says on there Charles Brown, Law  
8 Offices of Dan M. Winder, PC, and Dan Winder  
9 unsuccessfully attempted to pass off the  
10 conditional loan quote and good faith estimate  
11 that Mr. Brown received from Financial Solutions  
12 and Real Estate Network Group as legitimate proof  
13 of financing during the litigation.

14 Do you see that?

15 A. Yeah, yes.

16 Q. What information do you have factually  
17 indicating that Dan Winder or the Law Office of  
18 Dan M. Winder, PC, attempted to pass off those  
19 documents?

20 MS. BARRAZA: Objection. Form. Document  
21 speaks for itself.

22 You can answer.

23 THE WITNESS: Do I answer?

24 BY MR. WEINSTOCK:

25 Q. Please answer.

1           A.    Okay.  My attorneys found evidence  
2   showing that Winder was involved.

3           Q.    What evidence do you believe shows that  
4   Winder was involved?

5           A.    We got the checks written by the boy, by  
6   Anthony, showing that he's involved.  The cops  
7   told us they did this to other people, Charlie  
8   Brown and his attorney scared them with legal  
9   stuff.

10          Q.    Now, you said cops told you that.  Did  
11   the cops mention the name of Dan Winder as the  
12   attorney?

13          A.    No.

14          Q.    Did the cops mention the Law Firm of  
15   Dan M. Winder as the attorney?

16          A.    The cops never, no.  I don't remember  
17   them saying anything about him.

18          Q.    And, again, I assume, and please correct  
19   me if I'm wrong, you don't know the name of the  
20   cop that said that?

21          A.    I don't remember his name.  I know where  
22   he's at, down at the police station where we went.

23          Q.    Which police station?

24          A.    It's on Martin Luther King.  That's the  
25   only way I know.  I don't know what the other

1 streets are.

2 Q. Can you describe this cop; was he tall,  
3 short?

4 A. I don't remember if he's tall or short.  
5 I just remember that he was -- asked us to come  
6 in.

7 Q. And do you remember anything else other  
8 than that he asked you to come in, anything about  
9 the cop personally?

10 A. I don't remember him. I don't remember  
11 that.

12 Q. And you are saying a cop told you that --  
13 the cop believes that Mr. Brown has done it before  
14 with an attorney?

15 A. I don't know if he said with attorneys.  
16 I don't remember the attorneys part of it.

17 Q. So you don't have any information or  
18 recollection that anything that Charles Brown did  
19 was in conjunction with any attorneys, correct?

20 MS. BARRAZA: Objection. Form.  
21 Misstates testimony.

22 THE WITNESS: I don't understand.

23 MS. PEREYRA: Tell him that.

24 MR. WEINSTOCK: Please quit talking to  
25 your attorney and answer the question.

1 MS. PEREYRA: He doesn't understand, and  
2 I told him to tell you that. If you just listen,  
3 then you would know.

4 MR. WEINSTOCK: I can't understand when  
5 you are whispering to your client.

6 THE WITNESS: Okay. I don't understand  
7 exactly what you are doing with the cop. I don't  
8 understand the question that you are asking me  
9 about him.

10 BY MR. WEINSTOCK:

11 Q. My question for you is, and, please,  
12 correct me if I'm wrong, you just testified that  
13 to the best of your recollection, you don't  
14 believe that the cop mentioned any attorneys'  
15 names to you, correct?

16 A. Correct.

17 Q. And my question to you is: What  
18 information, if any, did you give to the police  
19 that Charles Brown was acting in concert or in  
20 conspiracy or in connection to the Law Office of  
21 Dan M. Winder or Dan Winder?

22 A. Because the cop told us that there was  
23 other people that Charlie Brown was scaring them  
24 with legal stuff, so I don't know --

25 Q. Okay.

1           A.    -- who it is.

2           Q.    To the extent of your recollection, is it  
3 safe to say that the only thing the cop told you  
4 that you remember now, is you claim this cop told  
5 you that Mr. Brown was acting with other people,  
6 correct?

7                   MS. PEREYRA:  Objection.  Misstates his  
8 testimony.

9           BY MR. WEINSTOCK:

10          Q.    Tell me exactly, to the best of your  
11 recollection, what this police officer told you.

12          A.    I told you, he told me -- he told us that  
13 they did that to other people, that Charlie Brown  
14 and his -- I guess his attorney, I can't remember  
15 him saying his attorney, scared them with legal --  
16 legal stuff.

17          Q.    So your recollection, and, again, I'm not  
18 trying to misstate your testimony, is it safe to  
19 say that both you and your wife were present  
20 during this conversation with this police officer?

21          A.    Yes.

22          Q.    Was it one conversation or several  
23 conversations with the police officer?

24          A.    One time.

25          Q.    But you don't remember when?

1           A.    I don't remember the exact date.  I don't  
2   remember when, but I can remember what we was  
3   called in there for.

4           Q.    And this police officer told you that the  
5   police officer believed Charles Brown was acting  
6   with other people, correct?

7           A.    Yes.

8           Q.    But this police officer never named any  
9   other people that this police officer believed  
10  Mr. Brown was acting with, correct?

11          A.    I don't remember it.  I just don't  
12  remember that.

13          Q.    And is it safe to say that to the best of  
14  your recollection, you do not remember this police  
15  officer ever mentioning the Law Office of  
16  Dan M. Winder or Dan Winder as any attorney that  
17  Charles Brown may have been acting in concert  
18  with?

19          A.    I don't remember that.

20          Q.    I'd ask you to look at Paragraph 34 of  
21  the Complaint on Page 5.

22                   Do you see that?

23          A.    Yes, I can see it.

24          Q.    It says, In the course of a business  
25  transaction in which Charles Brown had a pecuniary

1 interest -- let I ask you, what's your  
2 understanding of what pecuniary interest Mr. Brown  
3 had?

4 A. I don't know. I don't really know what  
5 that means. I don't know what you are saying.

6 Q. Did you discuss what that said with your  
7 attorney before that document was filed?

8 MS. BARRAZA: Objection. The question as  
9 phrased calls for attorney/client privileged  
10 communications, so I'm going to advise the witness  
11 not to answer as it's phrased.

12 BY MR. WEINSTOCK:

13 Q. Well, Mr. Atkinson, you just testified  
14 you don't understand what that phrase means,  
15 correct?

16 A. Yes.

17 Q. And you testified earlier that you read  
18 the Complaint before it was filed, correct?

19 A. Yes.

20 Q. And did you understand at that time what  
21 that phrase meant?

22 A. Yes.

23 Q. What was your understanding at that time  
24 what that phrase meant?

25 A. Like I say, I don't know. I don't

1 remember. But at the time, I did.

2 Q. Now, Paragraph Number 35 indicates that  
3 the Atkinsons justifiably relied on Charles  
4 Brown's representation.

5 Do you see that?

6 A. Yes.

7 Q. You believed that Mr. Brown was going to  
8 go through with the deal, correct?

9 A. Yes.

10 Q. And you were going to go through with the  
11 deal, correct?

12 A. Yes.

13 Q. Now, looking at Paragraph Number 36; do  
14 you see that?

15 A. Yes, I see it.

16 Q. And that says, The Atkinsons would not  
17 have executed the purchase agreement had they  
18 known that Charles Brown never intended on  
19 actually paying the Atkinsons any consideration  
20 for the property, correct?

21 A. Yes, that's what it says.

22 Q. All right. Tell me what factual  
23 knowledge you had or have knowing that Charles  
24 Brown never intended on paying for the property?

25 A. Well, there was no escrow -- no escrow

1 opened, there was no proof of funds, there was  
2 just nothing.

3 Q. Do you know why there was no escrow  
4 opened?

5 A. No, I don't. Probably he didn't have the  
6 money. I don't know.

7 Q. Do you know why there was no proof of  
8 funds shown?

9 A. I don't know. I don't understand what  
10 the proof of funds is.

11 Q. Okay.

12 A. You are asking me proof of funds. It  
13 says no -- there's no proof of funds, whatever is  
14 shown us from Charlie, that he was intending on  
15 buying the property.

16 Q. Do you personally have knowledge that at  
17 the time you and Mr. Brown and your wife entered  
18 into the agreement to enter into the purchase of  
19 your house, do you have any personal knowledge  
20 knowing that Mr. Brown never intended to buy the  
21 house at that time?

22 MS. BARRAZA: Objection. Form.

23 THE WITNESS: I don't know. I don't  
24 know.

25 ///

1 BY MR. WEINSTOCK:

2 Q. Mr. Brown -- at the time you signed the  
3 agreement, Mr. Brown told you he intended to  
4 purchase the property, correct?

5 A. Yes.

6 Q. And you had no reason to believe that  
7 Mr. Brown was lying to you at that time, did you?

8 Please look at me.

9 A. I didn't have any intention that he was  
10 lying to us, but I didn't say any -- no, just no.

11 Q. And, again, you -- going in to -- in  
12 Paragraph 37, you mentioned the name Stacy Brown  
13 again, correct?

14 A. Yes.

15 Q. You mentioned her name a couple times in  
16 that paragraph, correct?

17 A. Yes.

18 Q. And you previously stated you never  
19 talked to Stacy Brown, correct?

20 MS. BARRAZA: Asked and answered.

21 THE WITNESS: I never heard that  
22 question.

23 What did he say? I didn't understand.

24 BY MR. WEINSTOCK:

25 Q. Did you ever -- did you ever talk to

1 Stacy Brown prior to you agreeing with Charles

2 Brown for him to purchase your house?

3 A. No, I don't know her.

4 Q. And did Charles Brown ever tell you that

5 Stacy Brown was involved in the purchase of the

6 house?

7 A. No.

8 Q. Did Charles Brown ever tell you that Dan

9 Winder was involved in the purchase of the house?

10 A. I don't remember that.

11 Q. Did Charles Brown ever tell you that the

12 Law Office of Dan Winder ever was involved in the

13 purchase of the house?

14 A. No. Charles told my wife, his attorney

15 was his partner.

16 Q. What was that? I didn't hear that.

17 What did you just say, sir?

18 A. Charles told my wife, his attorney was

19 his partner.

20 Q. Were you present when that was said?

21 Mr. Atkinson, did you ever hear Charles

22 Brown tell you or your wife that his attorney --

23 that his attorney was involved in purchasing your

24 house?

25 A. I don't remember that about an attorney.

1           Q.    Do you remember your wife ever telling  
2   you that Charles Brown had told her that his  
3   attorney was involved in the purchase of the  
4   house?

5           A.    Yes.

6           Q.    When did your wife tell you that?

7           A.    I tell you, that's a long time ago.  I  
8   don't remember.

9           Q.    Do you remember where you were when she  
10   said it?

11          A.    No, I don't remember that.

12          Q.    Do you remember who else was there, if  
13   anybody?

14          A.    No.

15          Q.    Did you do anything about it when she  
16   told you that?

17          A.    I don't -- I don't know if I would do  
18   anything about it.  What would I do?  I don't  
19   understand the question.

20          Q.    Did you try to back out of the deal when  
21   she told you that?

22          A.    No.

23          Q.    Was the deal already finished when she  
24   told you that?

25          A.    No.

1 MS. BARRAZA: Objection. Asked and  
2 answered.

3 He already said he doesn't remember when  
4 she told him.

5 MR. WEINSTOCK: I can try to jog his  
6 memory a little bit.

7 BY MR. WEINSTOCK:

8 Q. Was it recently that she told you this?

9 A. I don't remember, no.

10 Q. As you sit here today, other than what  
11 your wife may have told you, do you have any  
12 reason to believe that in any way Dan M. Winder or  
13 the Law Office of Dan M. Winder was involved in  
14 the purchase of your house in 2017?

15 MS. BARRAZA: Objection. Asked and  
16 answered.

17 THE WITNESS: I don't know.

18 BY MR. WEINSTOCK:

19 Q. Well, you know what's going on in your  
20 mind. Do you have any basis, other than what your  
21 wife may have told you, to believe that  
22 Dan M. Winder or the Law Office of Dan M. Winder  
23 were involved in any way in the purchase of your  
24 house?

25 MS. BARRAZA: Same objection.

1 THE WITNESS: I don't know.

2 BY MR. WEINSTOCK:

3 Q. In 2018, when you were negotiating the  
4 sale of your house with Charles Brown, did you  
5 ever tell him your age?

6 A. I don't remember telling him, no.

7 Q. Do you know if your wife ever told her  
8 your age in your presence?

9 A. I don't know that, either.

10 Q. I'd ask you to look at Page 8 -- Page 8,  
11 Paragraph 61.

12 MS. PEREYRA: What page was it?

13 MR. WEINSTOCK: Page 8.

14 MS. PEREYRA: Page 8, is that what you  
15 said?

16 MR. WEINSTOCK: Yes.

17 MS. PEREYRA: And what paragraph?

18 MR. WEINSTOCK: 61.

19 MS. PEREYRA: So this one.

20 BY MR. WEINSTOCK:

21 Q. Do you see that?

22 A. Yeah.

23 Q. It says, Charles Brown, Stacy Brown, Law  
24 Office and Winder, and each of them worked  
25 together with the intent to accomplish the harmful

1 objective of defrauding the Atkinsons out of the  
2 property they own for the purpose of causing harm  
3 to the Atkinsons.

4 Do you see that?

5 A. Uh-huh.

6 MS. PEREYRA: Yes?

7 THE WITNESS: Yes.

8 BY MR. WEINSTOCK:

9 Q. Tell me what factual information you know  
10 of that Stacy Brown and Charles Brown in any way  
11 worked together with the intent to accomplish the  
12 harmful objective of defrauding you and your wife?

13 A. Our attorney found the evidence showing  
14 that there was -- they was involved.

15 Q. What evidence do you believe they found  
16 showing it?

17 MS. BARRAZA: Asked and answered.

18 You can answer.

19 THE WITNESS: We got the fake loan  
20 company documents.

21 BY MR. WEINSTOCK:

22 Q. And do you have any idea whether Charles  
23 Brown and Stacy Brown ever spoke together about  
24 arranging that?

25 A. I don't know anything about it.

1 Q. Do you have any information to indicate  
2 that anything that they may have done, they did  
3 with the intent to work together with each other  
4 and the Law Office and Dan Winder?

5 MS. BARRAZA: Objection. Form.

6 THE WITNESS: Yes.

7 BY MR. WEINSTOCK:

8 Q. You can answer.

9 Do you have any factual basis?

10 A. Yes.

11 Q. What is that?

12 A. My attorneys discovered many people  
13 involved in the fraud.

14 Q. So you are relying solely on your  
15 attorneys' information?

16 MS. BARRAZA: Objection. Misstates  
17 testimony.

18 BY MR. WEINSTOCK:

19 Q. Are you relying solely on your attorneys'  
20 information.

21 MS. BARRAZA: Same objection.

22 THE WITNESS: We've got these made-out  
23 checks from that attorney guy, he made out checks,  
24 so that would be -- that would be a fake loan  
25 company.

1 BY MR. WEINSTOCK:

2 Q. Is it your statement that those checks  
3 were done by Dan Winder and the Law Office  
4 intending to defraud you?

5 MS. BARRAZA: Asked and answered.

6 BY MR. WEINSTOCK:

7 Q. Is it your own belief that the checks  
8 that you are referring to were done by the Law  
9 Office of Dan Winder or Dan Winder, intending to  
10 defraud you?

11 A. Yes, I do.

12 Q. What is your basis for that?

13 A. Because I never -- because they never --  
14 Charlie Brown never had any money, no escrow  
15 opened up to get the money to buy the place. And  
16 then this -- then he comes up with this thousand  
17 dollar check from this lawyer, so I just don't  
18 quite understand all the details of what they was  
19 trying to do to us.

20 Q. I understand that you may not understand  
21 the details, but you've made factual allegations,  
22 and I'm trying to ask you about what facts you  
23 have, other than what you may believe, you may  
24 hope, you may wish, you may want. I'm asking  
25 facts.

1 Do you have any facts?

2 MS. BARRAZA: Asked and answered, and  
3 already -- already answered.

4 THE WITNESS: -- attorneys.

5 BY MR. WEINSTOCK:

6 Q. What was that?

7 A. I thought she objected again.

8 Q. What was that?

9 Please answer.

10 MS. PEREYRA: Can you repeat the  
11 question, please?

12 BY MR. WEINSTOCK:

13 Q. I'm asking you what facts, other than  
14 beliefs, hopes, wishes, what facts do you have to  
15 indicate that Charles Brown and Stacy Brown, the  
16 Law Office, and Dan M. Winder worked together  
17 intending to accomplish the harmful objective of  
18 defrauding you and your wife out of the property  
19 you owned?

20 MS. BARRAZA: Objection. Asked and  
21 answered.

22 He literally just answered it, but --

23 MS. PEREYRA: Go ahead.

24 THE WITNESS: Yeah, the checks was  
25 written by the attorney, showing that he was

1 involved. We didn't know anything about the  
2 attorney to start with.

3 BY MR. WEINSTOCK:

4 Q. Do you personally know whether Charles  
5 Brown paid the thousand dollars to Dan Winder, for  
6 him to issue the check for -- don't look at  
7 anybody.

8 A. I'm looking at you. Okay.

9 I don't have any, no. I don't understand  
10 it.

11 Q. You don't understand what? I'm trying to  
12 make sure it's clear.

13 A. I don't know what that means, what you  
14 are trying to say, that if I understood what -- I  
15 didn't even know that there was a lawyer there.

16 Q. My question to you is, do you have any  
17 knowledge whether Charles Brown paid Dan Winder a  
18 thousand dollars for him to issue the check that  
19 you are talking about, yes or no, sir?

20 A. I said no.

21 Q. Do you know if Charles Brown and Dan  
22 Winder had any discussions between themselves  
23 about Mr. Brown -- or Mr. Winder issuing that  
24 thousand dollar check?

25 A. I don't know.

1 Q. Do you know that Dan Winder and the Law  
2 Office of Dan M. Winder issued that check  
3 intending to defraud you out of your house?

4 MS. BARRAZA: Objection. Form.

5 THE WITNESS: Yes.

6 BY MR. WEINSTOCK:

7 Q. How do you know that? What -- what facts  
8 do you have?

9 MS. BARRAZA: Asked and answered.

10 THE WITNESS: The check is written by the  
11 attorney to show that he was involved. And why  
12 would he write it, if they didn't?

13 No, never mind that.

14 BY MR. WEINSTOCK:

15 Q. Is that your basis, is solely because a  
16 check was written from the Law Office of  
17 Dan Winder, that he was involved in intending to  
18 defraud you out of your house?

19 MS. BARRAZA: Objection. Form.

20 THE WITNESS: Loan company documents, I  
21 have that.

22 BY MR. WEINSTOCK:

23 Q. Well, let's get to, is it your belief  
24 that solely the thousand dollar check and the loan  
25 documents were the basis that you are using to

1 believe that the Law Office of Dan M. Winder or  
2 Dan Winder intended to solely -- or intended to  
3 defraud you and your wife out of your house?

4 MS. BARRAZA: Objection. Form.

5 THE WITNESS: I don't know.

6 BY MR. WEINSTOCK:

7 Q. Sir?

8 A. I don't know.

9 Q. Well, what other reasons do you have,  
10 other than that check and the other documents, the  
11 loan documents, for you to believe that  
12 Dan M. Winder or the Law Office of Dan M. Winder  
13 were involved in attempting -- intending to  
14 defraud you and your wife out of your house?

15 MS. BARRAZA: Objection. Form.

16 THE WITNESS: I don't remember.

17 BY MR. WEINSTOCK:

18 Q. And, again, you and your wife have never  
19 been defrauded out of your house, correct?

20 A. No, no.

21 Q. No, that you've never been defrauded; you  
22 still have your house, or sold it, correct?

23 A. I don't understand what question you're  
24 asking about. What house are we talking about?

25 Q. We're talking about the house at

1 2315 North Decatur.

2 A. Okay. I don't know. I don't remember  
3 it.

4 Q. Well, you put in your pleadings, in your  
5 legal paper, that you and your wife factually have  
6 an allegation that Charles Brown, Stacy Brown, Law  
7 Office, and Winder, and each of them worked  
8 together with the intent to accomplish the harmful  
9 objective of defrauding you and your wife out of  
10 the property you guys owned, for the purpose of  
11 harming you and your wife, correct?

12 A. Yes.

13 Q. And I'm asking you your factual basis,  
14 and you said previously, because the Law Office of  
15 Dan Winder issued a check for a thousand dollars,  
16 correct?

17 A. Yes.

18 Q. And because it was, what you had stated,  
19 was a fraudulent document, loan document, correct?

20 A. Yes.

21 Q. And I asked you, other than those two  
22 documents, do you have any other factual basis for  
23 you to believe that the Law Office of  
24 Dan M. Winder and Dan Winder were involved in any  
25 action with the intent to accomplish the harmful

1 objective of defrauding you and your wife out of  
2 your property that you owned and for the purpose  
3 of causing harm to you and your wife; any other  
4 factual basis?

5 MS. BARRAZA: Objection. Form.

6 THE WITNESS: I don't remember it.

7 BY MR. WEINSTOCK:

8 Q. Do you have a problem with your memory,  
9 sir?

10 A. What?

11 Q. Do you have a problem with your memory?

12 A. Do I have a problem with my memory?

13 Q. Yes.

14 A. Do I have to answer that?

15 Q. Yes.

16 A. I don't.

17 Q. Have you ever been to a doctor or a  
18 psychologist or physician for any type of  
19 treatment regarding your memory?

20 A. No, I have not.

21 Q. Have you ever been to any doctor for any  
22 type of stress-related problem?

23 A. No, no stress.

24 Q. I ask you to look at Page 9,  
25 Paragraph 65.

1 Do you see that?

2 A. Yes.

3 Q. And, again, you allege that Charles  
4 Brown, Stacy Brown, Law Office, and Winder acted  
5 in concert with one another pursuant to a -- to  
6 the common design of transferring the property  
7 from the Atkinsons to Charles Brown without any  
8 monetary consideration going to Atkinson.

9 Do you see that?

10 A. No, I don't -- I don't know what that  
11 means.

12 Q. You do see it, correct?

13 A. I seen it.

14 Q. And you read it?

15 A. Yes.

16 Q. And is it your testimony now that you  
17 don't understand today what that means?

18 MS. BARRAZA: Objection. Form.

19 BY MR. WEINSTOCK:

20 Q. Please answer.

21 MS. PEREYRA: Just tell him.

22 BY MR. WEINSTOCK:

23 Q. I know you are talking to your attorney.  
24 Please answer.

25 A. I said, I don't know what that means.

1 Q. And at the time this document was filed,  
2 did you discuss that paragraph with your attorney?

3 A. Yes.

4 Q. And did they explain it to you at that  
5 time?

6 A. Yes.

7 Q. Did you understand it at that time?

8 A. Yes.

9 Q. And it's your testimony that you don't  
10 understand it now?

11 MS. BARRAZA: Objection. Form.

12 THE WITNESS: I don't remember it now.

13 BY MR. WEINSTOCK:

14 Q. You don't remember it now, and you still  
15 don't understand it, correct?

16 A. I don't understand your question. I  
17 don't know what I'm about to say.

18 No, I don't understand it.

19 Can we take a little break?

20 MS. PEREYRA: He would like to take a  
21 break, please.

22 MR. WEINSTOCK: Let's take another ten  
23 minutes, and I'll try to wrap it up.

24 (Whereupon, a recess was taken.)

25 MR. WEINSTOCK: Back on the record.

1                   Mr. Atkinson, I have no further questions  
2   at this time.

3                                   EXAMINATION

4   BY MS. BARRAZA:

5           Q.   This is my opportunity to ask a few  
6   questions. I have just a few.

7                   If we can turn back to Exhibit C, if it  
8   can be shown on the screen, and the Bates stamp I  
9   would like to go to is D0002.

10                  So, Mr. Atkinson, do you recall earlier  
11   you testified that this Purchase Agreement and  
12   Joint Escrow Instructions was the agreement that  
13   you and your wife had executed, along with Charles  
14   Brown, for purchase of that property at 2315 North  
15   Decatur?

16           A.   Yes.

17           Q.   And I want to turn your attention to  
18   Section 1, where it says Purchase Price, and it  
19   mentions the total purchase price of the property  
20   paid by purchaser to seller shall be in the amount  
21   of \$100,000; do you see that?

22           A.   Yes.

23           Q.   Now, was that ever actually paid from  
24   Charles Brown to you and your wife?

25           A.   No.

1           Q.   And in Section 3, where it mentions a  
2   deposit, it says, Purchaser shall deliver a  
3   deposit within two business days from the  
4   effective date in the amount of \$1,000, and then  
5   it goes on to say the deposit shall be deposited  
6   and held in escrow by an escrow agent.

7                   Now, did that ever actually happen?

8           A.   No, no.

9           Q.   And I want to turn your attention to  
10   earlier, if you recall, you were talking about  
11   some of your damages in this case.

12                   Now, has this ordeal of being in that  
13   lawsuit against Charles Brown, where Charles Brown  
14   was suing you and your wife, did that cause you  
15   any kind of distress?

16           A.   Well, naturally, yes, it did. I mean,  
17   it's a lot of -- when you don't understand what's  
18   going on, and somebody is trying to, you know,  
19   force something onto you, tell you they're going  
20   to do this and that, there's always stress there.  
21   That's definitely, yes.

22           Q.   And is that the stress part of why you  
23   and your wife decided to file this lawsuit against  
24   Charles Brown and against Dan Winder?

25           A.   Yes.

1 MR. WEINSTOCK: Objection. Leading.

2 BY MS. BARRAZA:

3 Q. And then I want to -- do you recall  
4 earlier in your deposition you were looking at the  
5 lawsuit that you and your wife had filed against  
6 Charles Brown and Dan Winder, the Complaint; do  
7 you remember looking at that?

8 A. Yes.

9 Q. Now, are you personally -- are you a  
10 lawyer?

11 A. No, I'm not.

12 Q. And do you personally have any kind of  
13 legal background or experience?

14 A. No.

15 Q. And are you well-familiar with legal kind  
16 of jargon?

17 A. No.

18 Q. And is that part of why you ended up  
19 hiring attorneys? Is that because you and your  
20 wife are not capable of things like drafting your  
21 own Complaints and lawsuits?

22 MR. WEINSTOCK: Objection. Leading.

23 Calling for a legal -- calling for a legal  
24 conclusion.

25 THE WITNESS: Yes.

1 BY MS. BARRAZA:

2 Q. And have you ever sued anybody on your  
3 own without hiring an attorney?

4 MR. WEINSTOCK: Objection. Form.

5 BY MS. BARRAZA:

6 Q. Sorry, what was the answer?

7 A. No.

8 MS. BARRAZA: One second.

9 Okay. I have no further questions.

10 MR. WEINSTOCK: Adriana?

11 MS. PEREYRA: I have no further  
12 questions.

13 MR. WEINSTOCK: I have no further  
14 questions. I appreciate your being here, I  
15 appreciate your testimony, and basically we're  
16 done.

17 I need a copy of the video and also the  
18 quickest way to get it.

19 MS. PEREYRA: We're logging off.

20 ZOOM HOST: Mr. Weinstock, I just want to  
21 advise that today's deposition was not being  
22 videotaped or videorecorded.

23 MR. WEINSTOCK: Oh, okay. Well, then I  
24 guess whatever you got.

25 MS. BARRAZA: And we'll take an E-Trans

1 copy. It can be billed to my office. Thank you.

2 THE COURT REPORTER: Do you want him to  
3 read and sign or waive signature?

4 MS. BARRAZA: We'll waive that, that's  
5 fine.

6 MR. WEINSTOCK: No, I want him to sign.

7 MS. BARRAZA: Yeah, we'll waive that.

8 ZOOM HOST: Mr. Weinstock, the exhibits  
9 that we referenced today when we were screen  
10 sharing, would those be attached to the  
11 transcript?

12 MR. WEINSTOCK: They don't need to be,  
13 no.

14 ZOOM HOST: Okay. Thank you very much.

15 (Thereupon, the remote videoconference  
16 deposition concluded at 12:29 p.m.)

17

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1 CERTIFICATE OF DEPONENT

2 PAGE LINE CHANGE REASON

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14 \* \* \* \* \*

15 I, LaVELL P. ATKINSON, deponent herein,  
16 do hereby certify and declare the within and  
17 foregoing transcription to be my deposition in  
18 said action; that I have read, corrected and do  
19 hereby affix my signature to said deposition this  
20 \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_.

18

19 \_\_\_\_\_  
20 LaVELL P. ATKINSON, Deponent

20

21

22

23

24

25

1 CERTIFICATE OF REPORTER

2

3 STATE OF NEVADA)  
4 ) ss:  
5 COUNTY OF CLARK)

6

7 I, Jo A. Scott, a certified court  
8 reporter, State of Nevada, do hereby certify:  
9 That I reported the remote videoconference  
10 deposition of LaVELL P. ATKINSON, commencing on  
11 Monday, March 29, 2021, at 10:13 a.m.

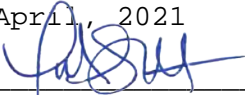
12 That prior to being deposed, the witness  
13 was duly sworn by me to testify to the truth.  
14 That I thereafter transcribed my said shorthand  
15 notes into typewriting and that the typewritten  
16 transcript is a complete, true, and accurate  
17 transcription of my said shorthand notes. That  
18 prior to the conclusion of the proceedings, the  
19 reading and signing of the transcript was  
20 requested by the witness or a party.

21 I further certify that I am not a  
22 relative or employee of counsel of any of the  
23 parties, nor a relative or employee of the parties  
24 involved in said action, nor a person financially  
25 interested in the action.

IN WITNESS WHEREOF, I have set my hand in  
my office in the County of Clark, State of Nevada,  
this 6th day of April, 2021

17

18

  
JO A. SCOTT, CCR NO. 669

19

20

21

22

23

24

25

# EXHIBIT D

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

**3507 W. Charleston, Blvd.**

**Las Vegas, Nevada 89102**

**Telephone: (702) 474-0523**

**Fax: (702) 474-0631**

December 6, 2017

Mr. Lavelle P. Atkinson and Ms. Sheila Atkinson  
5288 Auburn  
Las Vegas, NV 89108-3008

**Re: Property at 2315 N. Decatur  
Parcel No. 138-24-511-034**

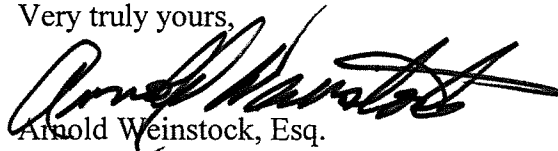
Dear Mr. & Mrs Atkinson:

Please be advised that this office represents Mr. Charles Brown, the purchaser of the above referenced property. On July 20, 2017 you signed the Purchase Agreement and Joint Escrow Instructions documenting the sale of the property. Unfortunately, for reasons unknown the sale of the property has not closed as of this date.

Consider this letter to be a formal demand upon you to finalize the closure of the sale of the property. As a concession to you, at Mr. Brown's insistence, we will allow you until Saturday, December 30, 2017 by 12:00 noon to close on the sale of this property. Normally we would insist on closure within 10 (ten) days of the date of this letter, but Mr. Brown has graciously extended that time. However, if this sale is not finalized and closed prior to December 30, 2017 this office will proceed with litigation to protect Mr. Brown's interest. This action may well include seeking specific performance of the agreed to sale, and also damages, court costs and attorneys fees, as allowable under Nevada law. Therefore, it is imperative that you give this matter your immediate attention.

If you, or your legal counsel, if any, wish to discuss this matter further please feel free to contact me at your convenience. I shall await your prompt response.

Very truly yours,



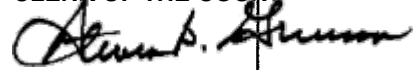
Arnold Weinstock, Esq.

AW/slm

Enclosure

cc: Charles Brown  
file

# EXHIBIT E



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,

14 vs.

15 LAVELLE P. ATKINSON, SHEILA  
16 ATKINSON; DOES I-V; and ROE  
17 CORPORATIONS I-V.

18 Defendants.

Case No: A-18-774764-C

Dept. No: Department 18

**COMPLAINT**

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

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 **PET APP 0376**

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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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  
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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## 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

21 ///

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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. Doran (3/08)

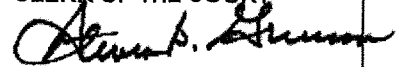
7 DAN M. WINDER, ESQ.

8 Nevada State Bar No. 1569

9 ARNOLD WEINSTOCK, ESQ.

10 Nevada State Bar No. 810

# EXHIBIT F



1 **MSJ**

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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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 Plaintiff,

15 vs.

16 LAVELLE P. ATKINSON, SHEILA  
17 ATKINSON; DOES I-V; and ROE  
18 CORPORATIONS I-V,

19 Defendants.

Case No.: A-18-774764-C

Dept. No.: XVIII

**DEFENDANTS' MOTION FOR  
SUMMARY JUDGMENT**

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  
24 summary judgment as to all claims asserted by Charles Brown ("Plaintiff" or "Mr. Brown") in this  
25 action against the Atkinsons.

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

1 **NOTICE OF MOTION**

2 TO: ALL PARTIES AND ATTORNEYS OF RECORD:

3 YOU AND EACH OF YOU will please take notice that the undersigned will bring the  
4 foregoing **DEFENDANTS' MOTION FOR SUMMARY JUDGMENT** on for hearing before the  
5 District Court, Department XVIII, on the 17 day of January, 2019, ~~2018~~, at  
6 9:00AM, or as soon thereafter as counsel may be heard.

7 DATED this 10<sup>th</sup> day of December, 2018.

8 Respectfully submitted,

9 **INTEGRITY LAW FIRM**

10 /s/ Adriana Pereyra

11 ADRIANA PEREYRA, ESQ.

12 Nevada Bar No. 12263

13 819 South 6th Street

Las Vegas, Nevada 89101

14 -and-

15 JOSEPH A. GUTIERREZ, ESQ.

16 Nevada Bar No. 9046

**MAIER GUTIERREZ & ASSOCIATES**

8816 Spanish Ridge Avenue

17 Las Vegas, Nevada 89148

18 *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. Bewilderingly, during his deposition, Plaintiff kept  
14 saying all of his evidence was "in the file" that was disclosed in this litigation – which is not true.

15 The only "evidence" Plaintiff produced to prove he qualified for a loan was a fabricated  
16 document ostensibly from Kelly Mortgage, Inc. The President and Broker of Record for Kelly  
17 Mortgage, Inc. has since provided an affidavit confirming that the document Plaintiff disclosed is  
18 "clearly forged and different from our true letterhead."

19 What has become abundantly clear is Plaintiff (possibly in conjunction with others) targeted  
20 the vulnerable Atkinsons and pressured them to give up their property without receiving anything in  
21 return. When the Atkinsons ultimately refused to be one of Plaintiff's victims, Plaintiff initiated this  
22 litigation in the hopes that the Atkinsons would not have the resources to defend themselves.  
23 Ultimately, the Atkinsons retained counsel, and numerous holes in the Plaintiff's story have been  
24 uncovered, which Plaintiff has failed to account for in the discovery process.

25 Because there is no issue of material fact as to the meritless nature of Plaintiff's claims against  
26 the Atkinsons, the Atkinsons respectfully move for summary judgment as to all claims asserted by  
27 Plaintiff.

28 ///

1   **II.     STATEMENT OF UNDISPUTED FACTS**

2   **PLAINTIFF APPROACHED THE ATKINSONS ABOUT PURCHASING THE PROPERTY WHICH WAS NOT**  
3                                   **LISTED FOR SALE**

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

7           2.     Defendants, 75 year-old LaVelle Atkinson and 74 year-old Sheila Atkinson have  
8 owned the commercial property located at 2315 North Decatur Blvd., Las Vegas, Nevada, 89108,  
9 with Assessor's Parcel Number 138-24-511-034 (the "Property") since at least the year 2000. See  
10 **Exhibit 1**, Portion of Deed of Trust.<sup>1</sup>

11          3.     Plaintiff is unemployed, has not paid taxes in the last 10 years, does not have a valid  
12 driver's license, and does not have a physical address because he lives in a mobile home. See **Exhibit**  
13 **2**, Deposition Transcript of Charles Brown at pp. 4-5; 7-8; 14-15.

14          4.     Plaintiff has claimed that in July of 2017, he was driving (illegally) around the  
15 Property's neighborhood "to get a sandwich," and when he came across the Property, he "observed it  
16 was abandoned," which is allegedly how he first became interested in purchasing the Atkinsons'  
17 Property. See Ex. 2 at 22-24 and **Exhibit 3**, Plaintiff's Responses to Interrogatories at Resp. No. 7.

18          5.     After first claiming he did not understand how to answer the question of "How did you  
19 know that the property was abandoned?" Plaintiff testified that he assumed the Property was  
20 abandoned because it was "boarded up." Ex. 2 at p. 25.

21          6.     Plaintiff admitted that there was no sign outside the Property indicating it was for sale.  
22 Ex. 2 at p. 22.

23          7.     Nevertheless, Plaintiff testified that he then made a call to his friend Manor  
24

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25                   <sup>1</sup> A party may utilize judicial notice as a method to establish facts where the facts are  
26 "[c]apable of accurate and ready determination by resort to sources whose accuracy cannot reasonably  
27 be questioned, so that the [facts are] not subject to reasonable dispute." NRS 47.130(2). Matter  
28 matters of public record are subject to judicial notice. See, e.g., *Breliaut v. Preferred Equities Corp.*,  
109 Nev. 842, 847, 858 P.2d 1258, 1261 (1993) (holding that a court may consider matters of public  
record).

1 Washington, who is supposedly a “researcher,” and had him run the Property’s address. Ex. 2 at pp.  
2 26-28. Mr. Washington apparently informed Plaintiff that the Atkinsons owned the Property, and  
3 then Plaintiff “made a call” and got the Atkinsons’ residential address. Ex. 2 at p. 29.

4 8. Then on July 6, 2017, Plaintiff showed up at the Atkinsons’ door with a Purchase  
5 Agreement he had prepared. *See* Ex. 2 at p. 29-30; Ex. 3 at Resp. No. 7 (Plaintiff admitting he prepared  
6 the Purchase Agreement). *See also*, **Exhibit 4**, Purchase Agreement Produced by Plaintiff.

7 9. The Purchase Agreement lists a purchase price of \$100,000 “payable in cash at  
8 Closing.” Ex. 4 at JEI\_000002.

9 10. Per the Purchase Agreement, within two business days of the “Effective Date,” (which  
10 is later defined as the date that the Purchase Agreement is executed by both Purchase and Seller and  
11 delivered to Escrow Agent) Plaintiff was required to deposit a \$1,000 down payment to an Escrow  
12 Agent. Ex. 4 at JEI\_000002.

13 11. Page 6 of the Purchase Agreement indicates that Plaintiff executed the agreement on  
14 July 6, 2017, and the Atkinsons executed the agreement on July 20, 2017. Ex. 4.

15 12. Plaintiff admitted in his deposition to going to the Atkinsons’ residence “maybe eight”  
16 times before finally wearing them down and getting them to sign the agreement. Ex. 2 at pp. 31-32.

17 13. The full title of the Purchase Agreement is “Purchase Agreement and Joint Escrow  
18 Instructions”) but in the first paragraph of the Purchase Agreement, the “Escrow Agent” is not actually  
19 identified, but is simply listed as “Selected by buyer.” Ex. 4 at JEI\_000002.

20 14. The Purchase Agreement states that the “Closing of the sale of the Property by Seller  
21 to Purchaser shall occur on or before Thirty (30) days after the Feasibility Period.” Ex. 4 at  
22 JEI\_000003.

23 15. The Purchase Agreement defines the “Feasibility Period” as beginning on the Effective  
24 Date and expiring forty-five days thereafter. Ex. 4 at JEI\_000002.

25 16. As the purchaser, the Plaintiff’s obligation at the closing of the sale was to “pay the  
26 Purchase Price in cash (or by Certified Check, wire transfer of funds into Escrow, all of which shall  
27 constitute “cash” for purpose of this Agreement).” Ex. 4 at JEI\_000004.

28 17. The following is Plaintiff’s testimony about meeting with the Atkinsons to discuss the

1 sale of the Property:

2 Q: Okay. And in that – so then you went to their house; is that correct?

3 A: **Yeah.**

4 Q: Okay. And what did you say?

5 A: **I don't remember.**

6 Q: You don't remember what you said?

7 A: **(Witness shakes head.)**

8 Q: You showed up at their door, and you have no idea what you said?

9 A: **No.**

10 Q: Did you say anything related to the property?

11 A: **Oh. I kind of remember now.**

12 Q: Oh, great.

13 A: **I asked them did they want to sell it.**

14 Q: Okay. And what did they say?

15 A: **"Yes."**

16 Ex. 2 at p. 29.

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

21 19. Plaintiff testified that for the Property in question, he was planning on buying the  
22 Property himself (first saying "I was going to rent it out" and then contradicting himself and saying  
23 "I was going to acquire it and hold it") and that he had "cash on hand to purchase the property." Ex.  
24 2 at pp. 39-40.

25 20. When asked how much cash he had on hand to purchase this Property, Plaintiff  
26 backtracked and responded as follows:

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

28 A: **Yes.**

1 Q: How much cash did you have?  
2 A: **I had investors. So whatever was needed was just a contract that needed to be**  
3 **drawn up.**  
4 Q: Who were your investors?  
5 A: **It's different ones.**  
6 Q: Who were your investors for this particular property?  
7 A: **It's different ones.**  
8 Q: So you're saying that you don't have any specific ones for this property?  
9 A: **No.**  
10 Q: So you hadn't identified an investor yet?  
11 A: **No.**

12 Ex. 2 at pp. 40-41.

13 21. As such, Plaintiff testified that he did not actually have the investors he needed to help  
14 him purchase the Property, even though, per the Purchase Agreement Plaintiff himself prepared,  
15 Plaintiff was required to purchase in cash of \$100,000 at closing. Ex. 4 at JEI\_000004.

16 **PLAINTIFF HAS NOT PRODUCED ANY VALID EVIDENCE SUPPORTING HIS CONTENTION THAT HE**  
17 **FULFILLED HIS OBLIGATIONS UNDER THE PURCHASE AGREEMENT**

18 22. In his initial disclosures, Plaintiff produced what he referred to as a "Pre-Approval  
19 Letter from Kelly Mortgage and Realty." See **Exhibit 5**, Plaintiff's Initial Disclosure Document;  
20 **Exhibit 6**, Kelly Mortgage Letter.

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

24 24. The Kelly Mortgage Letter does not state that Plaintiff Charles Brown approved for a  
25 loan, but states that a "Stacey Brown" has been pre-approved for a loan with Kelly Mortgage and  
26 Realty, Inc. Ex. 6.

27 25. Plaintiff has indicated that a "Stacy Brown" is his wife. Ex. 3 at Resp. No. 2.

28 26. The Kelly Mortgage Letter also curiously lists the Property's address correctly, but

1 then lists the purchase price as \$250,000, and the loan amount as \$200,000. Ex. 6.

2 27. In his deposition, Plaintiff admitted to having seen the Kelly Mortgage Letter (that he  
3 produced), but then claimed he could not remember when he obtained the letter. Ex. 2 at 44-45.

4 28. Plaintiff testified that he did supply information to Kelly Mortgage, saying he spoke to  
5 a Veda Williams from Kelly Mortgage and gave her “whatever they asked for,” and “Whatever she  
6 sent, said needed to be signed, I signed it.” Ex. 2 at pp. 42-44.

7 29. Following Plaintiff’s deposition, the Atkinsons obtained an affidavit from Tracy L.  
8 Kelly (the President and Broker of Kelly Mortgage) which confirmed that Plaintiff was lying in his  
9 deposition about the Kelly Mortgage pre-approval letter. *See Exhibit 7*, Affidavit of Tracy L. Kelly.  
10 Specifically, Ms. Kelly indicated the following:

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

27 **PLAINTIFF HAS NOT PRODUCED ANY EVIDENCE SUPPORTING HIS CLAIM FOR DAMAGES**

28 30. In his responses to Interrogatories, Plaintiff claims that he sustained damages because

1 "I had agreed to buy the house for \$100,000, the appraisal was for \$250,000; the damages are  
2 \$150,000. In addition, I bought paint, carpet, tile, yard equipment which was in the house totaling  
3 about \$2000 when the house was burnt." Ex. 3 at Resp. No. 14.

4 31. It is undisputed that Plaintiff has not produced an appraisal in this litigation.

5 32. It is undisputed that Plaintiff has not produced any receipts or other documents proving  
6 that he paid either the initial \$1,000 deposit or the \$100,000 purchase price for the Property, or that  
7 he put any such funds into any escrow account.

8 33. Plaintiff indicated in his Interrogatories that "I deposited the money to the escrow  
9 company account at Wells Fargo Bank. I notified the Atkinsons I made the deposit." Ex. 3 at Resp.  
10 No. 11. On this subject, Plaintiff testified as follows:

11 Q: And then Interrogatory No. 11, it asks you whether you deposited any money into  
12 escrow. And you stated that, yes, on August 21st, that you deposited the money to the  
13 escrow company account at Wells Fargo Bank. Which Wells Fargo Bank did you  
deposit that into?

14 A: **I don't remember.**

15 Q: Okay. Was it here in Las Vegas?

16 A: **I don't remember. The file – let the file bear witness that it's in escrow . . . I don't**  
17 **remember what was deposited. Let the record reflect whatever it was, it's**  
**whatever's in the record. Escrow has it.**

18 Q: Uh-huh. Did you get any proof of that deposit?

19 A: **Yes. Escrow has it.**

20 Q: But did they give you anything?

21 A: **Yes.**

22 Q: What did they give you?

23 A: **A receipt.**

24 Q: Okay. Do you have that receipt?

25 A: **No ma'am.**

26 Q: What did you do with that receipt?

27 A: **I don't remember.**

28 Ex. 2 at p. 65.

1           34.     With respect to the items Plaintiff allegedly was storing at the Property before the  
2 Property suffered from a fire, Plaintiff testified as follows:

3           Q:     So this \$2,000 that you're claiming in damages, do you have the receipts for any of  
4 this –

5           A:     Yes.

6           Q:     -- stuff? Okay. Can you produce those?

7           A:     Yes.

8           ...

9           Q:     So you're stating that you – this was your stuff?

10          A:     Yes.

11          Q:     And so what type of carpet was it?

12          A:     **It was just carpet. Carpet.**

13          Q:     Was it high brand? What type of brand was it?

14          A:     **Oh, I don't remember. It was just carpet, paint, tile, some other outdoor stuff.**

15          Q:     Uh-huh. Was it indoor or outdoor tile?

16          A:     **I don't recall.**

17          Q:     how much of it was there?

18          A:     **A lot. I don't recall exactly how much.**

19          Q:     Like, how much square footage was there?

20          A:     **I don't remember.**

21         Ex. 2 at pp. 72-73.

22               35.     To date, no actual receipts have been produced with respect to the items Plaintiff claims  
23 he left inside the Property prior to a fire and that he somehow thinks the Atkinsons should have to pay  
24 for.

25         **III.   LEGAL ARGUMENT**

26               **A.   LEGAL AUTHORITY**

27               In Nevada, "[s]ummary judgment is appropriate under NRCP 56 when the pleadings,  
28 depositions, answers to interrogatories, admissions, and affidavits, if any, that are properly before the

1 court demonstrate that no genuine issue of material fact exists, and the moving party is entitled to  
2 judgment as a matter of law.” *Wood v. Safeway, Inc.*, 121 Nev. 724, 731, 121 P.3d 1026, 1031 (Nev.  
3 2005) (citation omitted); *see also* Nev. R. Civ. P. 56(c). “The substantive law controls which factual  
4 disputes are material and will preclude summary judgment; other factual disputes are irrelevant.”  
5 *Wood*, 121 Nev. at 731, *citing Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248, 106 S.Ct. 2505,  
6 2510 (1986). “[C]onclusory statements along with general allegations do not create an issue of fact.”  
7 *Yeager v. Harrah’s Club, Inc.*, 111 Nev. 830, 833, 897 P.2d 1093, 1095 (1995). Rather, a genuine  
8 issue of material fact exists only where the evidence is sufficient for a reasonable jury to return a  
9 verdict for the nonmoving party. *Valley Bank of Nevada v. Marble*, 105 Nev. 366, 367, 775 P.2d  
10 1278, 1279 (1989).

11 While the pleadings and other proof must be construed in the light most favorable to the non-  
12 moving party, that party bears the burden to “do more than simply show that there is some  
13 metaphysical doubt” as to the operative facts in order to avoid summary judgment being entered in  
14 the moving party’s favor. *Wood*, 121 Nev. at 731, 121 P.3d at 1031 (quoting *Matsushita*, 475 U.S. at  
15 586). The non-moving party ““must by affidavit or otherwise, set forth specific facts demonstrating  
16 the existence of a genuine issue for trial or have summary judgment entered against him.”” *Wood*,  
17 121 Nev. At 731, 121 P.3d at 1031 (quoting *Bulbman, Inc. v. Nevada Bell*, 108 Nev. 105, 110, 825  
18 P.2d 588, 591 (1992)). The non-moving party “is not entitled to build a case on the gossamer threads  
19 of whimsy, speculation, and conjecture.” *Id.* Conclusory statements do not create an issue of fact.  
20 *Bond v. Stardust, Inc.*, 82 Nev. 47, 410 P.2d 472 (1966).

21 Here, the material facts are undisputed with respect to Plaintiff’s claims against the Atkinsons,  
22 as there is no disputing that Plaintiff does not have sufficient evidence to succeed on any of his claims  
23 against the Atkinsons.

24 **B. PLAINTIFF CANNOT SUCCEED ON ANY BREACH OF CONTRACT RELATED CLAIM**

25 Plaintiff has initiated causes of action against the Atkinsons for breach of contract as to the  
26 Purchase Agreement, as well as implied-in-fact contract. Regardless of the way he wants to make the  
27 pleading, there was no breach of any sort of contract, implied in fact or law, or otherwise.

28 Generally, a breach of contract in Nevada requires the following:

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

See, *Reichert v. Gen. Ins. Co. of Amer.*, 68 Cal 2d Rptr. 321, 442 P.2d 377 (1968); *Calloway v. City of Reno*, 116 Nev. 250, 993 P.2d 1259 (2000). Additionally, “[b]asic contract principles require, for an enforceable contract, an offer and acceptance, meeting of the minds, and consideration.” *May v. Anderson*, 121 Nev. 668, 672, 119 P.3d 1254, 1257 (2005). A meeting of the minds exists when the parties have agreed upon the contract's essential terms. *Roth v. Scott*, 112 Nev. 1078, 1083, 921 P.2d 1262, 1265 (1996). Which terms are essential “depends on the agreement and its context and also on the subsequent conduct of the parties, including the dispute which arises and the remedy sought.” Restatement (Second) of Contracts § 131 cmt. g (1981).

Contract law enforces the “expectancy interests created by agreement between the parties and seeks to enforce standards of *quality*. ‘This standard of quality must be defined by reference to that which the parties have agreed upon.’” *Calloway v. City of Reno*, 116 Nev. 250, 260, 993 P.2d 1259, 1265 (2000) (emphasis in original), overruled on other grounds, *Jordan v. State ex rel. Dep’t of Motor Veh. & Pub. Saf.*, 116 Nev. 250, 992 P.2d 1250 (2000). A breach of contract includes a “material failure of performance of a duty arising under or imposed by agreement.” *Id.* at 256, 993 P.2d at 1263 (quoting *Malone v. University of Kansas Medical Center*, 220 Kan. 371, 552 P.2d 885, 888 (1976)).

In the absence of a dispute of material fact, a contract’s interpretation is a “legal question subject to de novo review.” *Diaz v. Ferne*, 120 Nev. 70, 73 (2004). If there are no genuine issues of material fact with respect to the actual breach of the contract, the Court should render summary judgment. See *Wood*, 121 Nev. at 729 (“The substantive law controls which factual disputes are material and will preclude summary judgment; other factual disputes are irrelevant. A factual dispute is genuine when the evidence is such that a rational trier of fact could return a verdict for the nonmoving party.”)

Here, Plaintiff’s Complaint insists that “Brown has fully performed his obligations to the Atkinson[s] under the Purchase Agreement, or else [his] performance was excused by [the] Atkinsons’ conduct.” Compl. at ¶ 17. The Complaint does not actually detail how the Atkinsons allegedly

1 breached the Purchase Agreement, and in his deposition, Plaintiff could not even provide an answer  
2 as to how the Atkinsons breached the contract:

3 Q: Okay. So do you know why you have filed a lawsuit against the Atkinsons?

4 A: **Non-performance.**

5 Q: Can you elaborate on that, please?

6 A: **Non-performance. They didn't perform their tasks in the contract that we**  
7 **executed.**

8 Q: And what were they supposed to do?

9 A: **Complete what was agreed in the contract, which was, I was buying the property**  
10 **from them, they were selling it.**

11 Q: Okay. And did they refuse to sell you the property?

12 A: **No.**

13 Q: Okay. So what did they do?

14 A: **Can you repeat the question?**

15 Q: I had asked you if you had filed a lawsuit against the Atkinsons, and I asked you for  
16 what you were suing.

17 A: **Can you ask it another way? I don't understand.**

18 Q: What are you suing the Atkinsons for?

19 A: **Non-performance . . . They didn't perform.**

20 Q: Are you saying that they refused to sell you the property?

21 A: **No.**

22 Ex. 2. At pp. 18-19.

23 There is simply no evidence in the record as to how the Atkinsons allegedly breached the  
24 Purchase Agreement. To the contrary, the discovery process has revealed that *Plaintiff* is the one who  
25 failed to perform and who breached the Purchase and Sale Agreement through his non-performance  
26 – specifically his failure to tender any consideration for the purchase of the Property. There are no  
27 documents proving Plaintiff deposited any money whatsoever in an escrow account. The “Wells  
28 Fargo” escrow account Plaintiff referenced in his deposition has never been disclosed, nor have any  
deposits into that alleged account been disclosed. Plaintiff has not produced any documents from

1 Tracy Williams of Financial Solutions & Real Estate Network, the alleged escrow officer for this  
2 matter that Plaintiff identified in his initial disclosures. Ex. 5.

3 For some reason, Plaintiff disclosed what has been exposed as a fabricated “loan approval”  
4 document as part of his “evidence” in this case (Ex. 6), even though the Purchase Agreement  
5 unambiguously states that Plaintiff was required to produce the purchase funds all in cash to the  
6 escrow account. Ex. 4 at JEI\_000004. There is no evidence that this was actually done.

7 Plaintiff admitted in his deposition that his performance duties were not accomplished because  
8 he was planning on having unnamed “investors” pay for the Property for him, but he never actually  
9 got to that point. Ex. 2 at pp. 40-41. Thus, because of Plaintiff’s own non-performance, summary  
10 judgment should be awarded in the Atkinsons’ favor as to the breach of contract, and the implied-in-  
11 fact and implied in law contract claims.

12 At any rate, even if there was a breach by the Atkinsons (which there was not), Plaintiff has  
13 not proven up any actual damages. “The goal of a damage award for breach of contract is that  
14 “the breaching party must place the non-breaching party in as good a position as if the contract were  
15 performed.” *Lagrange Constr., Inc. v. Kent Corp.*, 88 Nev. 271, 275, 496 P.2d 766, 768 (1972). *See*  
16 *also, Countrywide Home Loans, Inc. v. Thitchener*, 124 Nev. 725, 733, 192 P.3d 243, 248 (2008)  
17 (“With respect to their breach of contract claim, the Thitcheners were required to present ‘an  
18 evidentiary basis for determining a reasonably accurate amount of damages.’”).

19 Plaintiff has done nothing more but make a conclusory allegation that he supposedly got the  
20 property appraised, and the appraisal came to \$250,000, so therefore he should be awarded \$250,000.  
21 This appraisal has never been produced in this litigation, and there is no evidence from the supposed  
22 appraiser indicating how any such appraisal was conducted.

23 Plaintiff has also made a conclusory allegation that he supposedly had \$2,000 worth of items  
24 stored inside the Property when the Property burned down. The Atkinsons have no idea what cause  
25 of action that allegation even goes to but regardless, Plaintiff has disclosed no evidence to prove up  
26 those damages.

27 Indeed, Plaintiff cannot even prove that he is entitled to \$100,000, the amount he should have  
28 deposited into an escrow account, as there was never any evidence produced indicating he actually

1 made that payment.

2 Accordingly, because Plaintiff has not proven how the Atkinsons have supposedly breached  
3 the Purchase Agreement, and because Plaintiff himself breached the Purchase Agreement by failing  
4 to tender the consideration and failing to prove up any actual damages, summary judgment should be  
5 awarded in favor of the Atkinsons as to the causes of action 1, 3, and 4, which are breach of contract,  
6 unjust enrichment/quasi contract, and implied-in-fact contract, respectively.

7 **C. PLAINTIFF CANNOT SUCCEED ON ANY BREACH OF THE COVENANT OF GOOD FAITH**  
8 **AND FAIR DEALING CLAIM**

9 It is well established within Nevada that every contract imposes upon the contracting parties  
10 the duty of good faith and fair dealing. *See Hilton Hotels Corp. v. Butch Lewis Prods., Inc.*, 107 Nev.  
11 226, 808 P.2d 919 (1991) (“When one party performs contract in manner that is unfaithful to purpose  
12 of contract and justified expectations of other party are thus denied, damages may be awarded against  
13 party who does not act in good faith.”).

14 Here, if anyone has acted in bad faith it is Plaintiff, as he refused to act in a transparent fashion  
15 from the start of negotiations to purchase the Property. Plaintiff failed to even identify the escrow  
16 agent in the Purchase Agreement. Ex. 4. Plaintiff has blamed the Atkinsons for failing to close on  
17 the sale of the Property, but Plaintiff apparently never even deposited any of the consideration for the  
18 Property into an escrow account, as was his duty. Plaintiff (who is unemployed and has not done his  
19 taxes in the last 10 years) failed to reveal during the negotiations that he did not actually have cash  
20 on-hand to buy the Property, he was going to be asking some “investors” to buy it for him, and he  
21 never actually got any investors. Ex. 2 at pp. 40-41.

22 Not to mention, Plaintiff somehow acquired a forged document indicating that a “Stacey  
23 Brown” (ostensibly Plaintiff’s wife) had approved for a loan to purchase the Property. Ex. 4. The  
24 President and Broker of Record for Kelly Mortgage, Inc. has since provided an affidavit confirming  
25 that the document Plaintiff disclosed is “clearly forged and different from our true letterhead.” Ex. 7.

26 Accordingly, as a matter of law, the Atkinsons certainly have not breached the covenant of  
27 good faith and fair dealing, so summary judgment should be granted in favor of the Atkinsons on  
28 Plaintiff’s second cause of action.

1           **D.     PLAINTIFF CANNOT SUCCEED ON ANY PROMISSORY ESTOPPEL CLAIM**

2           Plaintiff's fifth cause of action is for promissory estoppel, which states that the Atkinsons  
3 promised to deliver to Plaintiff the real Property, the Atkinsons knew or should have known that  
4 Plaintiff would rely on that promise, Brown did rely on that promise, and the Atkinsons received  
5 "significant benefits, including monetary benefits, as a result of Brown's conduct." Compl. at ¶¶ 44-  
6 47.

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

13           Zero evidence has been disclosed indicating the Atkinsons' conduct (of not outright giving  
14 away the Property to Plaintiff) somehow amounted to a promise to do so that Plaintiff relied upon.  
15 *See Torres v. Nev. Direct Ins. Co.*, 131 Nev. Adv. Op. 54, 353 P.3d 1203, 1209 (2015) ("The promise  
16 giving rise to a cause of action for promissory estoppel must be clear and definite, unambiguous as to  
17 essential terms, and the promise must be made in a contractual sense.").

18           Further, the only evidence that has been disclosed of the Atkinsons' intentions or conduct has  
19 been the Purchase Agreement itself. Ex. 4. In any event, Plaintiff also has not proven how he  
20 supposedly "detrimentally relied" on any promise made by the Atkinsons, as zero evidence has been  
21 produced indicating that Plaintiff was monetarily damaged in any way from the sale of the Property  
22 not going through.

23           Thus, this Court should also grant summary judgment in the Atkinsons' favor as to the  
24 Plaintiff's fifth cause of action for promissory estoppel.

25           **IV.     CONCLUSION**

26           Accordingly, Defendants request that this Court grant their motion for summary judgment in  
27 their favor as to all five causes of action Plaintiff has asserted against Defendants, as there are no  
28 genuine issues of material fact, and Plaintiff has failed to provide evidence supporting any of his

1 claims against the Atkinsons.

2 DATED this 10th day of December, 2018.

3 Respectfully submitted,

4 **INTEGRITY LAW FIRM**

5 /s/ Adriana Pereyra

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10 -and-

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17 *and Sheila Atkinson*  
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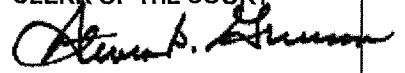
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# EXHIBIT G



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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 ~~XV~~<sup>XVIII</sup>, 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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8816 Spanish Ridge Avenue  
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*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 JEI\_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 Bate-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” form 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?

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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 Weinstock, 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

defunct because no amendment had been signed by the Atkinsons to extend the closing time, as required by law. **Exhibit 11**, Correspondence from Law Office of Dan M. Winder.

Based on this new, recently-discovered evidence that the Atkinsons uncovered while conducting due diligence into the documents and witnesses disclosed by Plaintiff, the Atkinsons are requesting leave to amend their Answer.

### **III. LEGAL ARGUMENT**

#### **A. LEGAL AUTHORITY**

Rule 15(a) of the Nevada Rules of Civil Procedure provides, in pertinent part, that leave to amend a pleading “shall be freely given when justice so requires.” NRCP 15(a). The Supreme Court of Nevada interprets its approach to these requests as a “liberal amendment policy.” *Greene v. Dist. Ct.*, 115 Nev. 391, 393-94, 990 P.2d 184 (1999).

In recent years, Nevada courts have largely focused on two factors in determining whether to grant a motion for leave to amend a pleading: (1) bad faith or dilatory motive; and (2) undue delay in filing the motion. *Kantor v. Kantor*, 116 Nev. 886, 8 P.3d 825 (2000) (citing *Stephens v. Southern Nevada Music Co.*, 89 Nev. 104, 105, 507 P.2d 138, 139 (1973)). In the absence of one of these factors or “of any apparent or declared reason ... the leave sought should be freely given.” *Id.*

A party may also bring a claim against a nonparty if the nonparty can be joined “in accordance with the provisions of . . . [NRCP] 20.” NRCP 13(h). Under NRCP 20, parties may be joined as defendants in an action if the claims asserted against them (1) arise out of the same transaction or occurrence and (2) raise at least one common question of law or fact. NRCP 20(a). NRCP 13(H0 should be construed “liberally in an effort to avoid multiplicity of litigation, minimize the circuitry of actions, and foster judicial economy.” *Lund v. Eighth Judicial Dist. Court*, 255 P.3d 280, 282 (Nev. 2011).

#### **B. THERE IS NO BAD FAITH OR DILATORY MOTIVE IN DEFENDANTS’ MOTION FOR LEAVE**

This motion is based on recent information that the Atkinsons just acquired in late November of 2018, thus there is no bad faith or dilatory motive in filing the proposed amended answer.

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  
Las Vegas, Nevada 89101

17 -and-

18 JOSEPH A. GUTIERREZ, ESQ.  
19 Nevada Bar No. 9046  
20 **MAIER GUTIERREZ & ASSOCIATES**  
21 8816 Spanish Ridge Avenue  
22 Las Vegas, Nevada 89148  
23 *Attorneys for Defendants LaVelle P. Atkinson*  
24 *and Sheila Atkinson*  
25  
26  
27  
28

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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**  
ADRIANA PEREYRA, ESQ.  
2 NEVADA BAR NO. 12263  
**INTEGRITY LAW FIRM**  
3 819 South 6<sup>th</sup> Street  
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4 Phone: 702.202.4449  
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6 JOSEPH A. GUTIERREZ, ESQ.  
Nevada Bar No. 9046  
7 **MAIER GUTIERREZ & ASSOCIATES**  
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8 Las Vegas, Nevada 89148  
Telephone: 702.629.7900  
9 Facsimile: 702.629.7925  
E-mail: [jag@mgalaw.com](mailto:jag@mgalaw.com)  
10 *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  
ATKINSON; DOES I-V; and ROE  
18 CORPORATIONS I-V,  
19 Defendants.

20 LAVELLE P. ATKINSON, SHEILA  
ATKINSON, individuals,

21 Counterclaimants,

22 vs.

23 CHARLES BROWN, an individual,

24 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 6. Venue is proper in Clark County, Nevada.

13 7. The exercise of jurisdiction over this Court is proper pursuant to NRS 14.065.

14 **General Allegations**

15 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 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 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 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 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 13. Upon information and belief, Charles Brown never deposited any funds into an

1 escrow account for the Property.

2 14. Upon information and belief, Charles Brown never arranged for any escrow company  
3 to open up escrow on the Property.

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

18 26. Charles Brown failed to exercise reasonable care in communicating information to  
19 the Atkinsons.

20 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 28. The Atkinsons justifiably relied on Charles Browns' representation.

24 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 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 31. The Atkinsons never even met Stacy Brown and she was not a party to the Purchase  
7 Agreement.

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

22 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 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 38. Charles Brown intended to induce the Atkinsons to act upon his misrepresentation.

39. The Atkinsons justifiably relied upon Charles Browns' misrepresentation, which resulted in damages.

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

41. As a direct and proximate result of the aforementioned actions and/or omissions of Charles Brown, 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.

### **THIRD COUNTERCLAIM**

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

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

43. In July of 2016, both of the Atkinsons were over 70 years old.

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

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

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

47. Charles Brown knew or had reason to know that the Atkinsons were vulnerable people who would fall victim to Brown's scheme of defrauding them out of their Property.

48. As a result of the wrongful conduct of Charles Brown, the Atkinsons have incurred damages, as they have been forced to defend themselves in a meritless lawsuit initiated by Charles Brown, and their Property's title is now clouded through a lis pendens.

49. Upon information and belief, Charles Brown acted with recklessness, oppression, fraud or malice against the vulnerable Atkinsons, thus entitling the Atkinsons to an award of

1 attorneys' fees and costs.

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

4 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**

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**

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

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

14 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 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 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**

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

27 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 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                               /s/ Adriana Pereyra

9                               ADRIANA PEREYRA, ESQ.  
10                              Nevada Bar No. 12263  
11                              819 South 6th Street  
                                 Las Vegas, Nevada 89101

12                              -and-

13                              JOSEPH A. GUTIERREZ, ESQ.  
14                              Nevada Bar No. 9046

15                              **MAIER GUTIERREZ & ASSOCIATES**  
16                              8816 Spanish Ridge Avenue  
17                              Las Vegas, Nevada 89148

18                              Attorneys for Defendants LaVelle P. Atkinson  
19                              and Sheila Atkinson  
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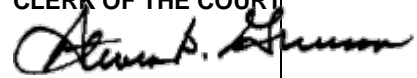
**CERTIFICATE OF SERVICE**

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 H



1 **RTRAN**

2  
3  
4  
5 **DISTRICT COURT**  
6 **CLARK COUNTY, NEVADA**

7  
8 **CHARLES BROWN,**  
9 **Plaintiff,**

**CASE#: A-18-774764-C**  
**DEPT. VIII**

10 **vs.**

11 **LAVELLE ATKINSON,**  
12 **Defendant,**

13  
14 **BEFORE THE HONORABLE CHARLES THOMPSON,**  
15 **SENIOR DISTRICT COURT JUDGE**  
16 **THURSDAY, JANUARY 17, 2019**

17 ***RECORDER'S TRANSCRIPT OF HEARING:***  
18 ***ALL PENDING MOTIONS***

19 **APPEARANCES:**

20 **For the Plaintiff: DAN M. WINDER, ESQ.**

21  
22 **For the Defendant: ADRIANA PEREYRA, ESQ.**  
23 **DANIELLE J. BARRAZA, ESQ.**

24  
25 **RECORDED BY: ROBIN PAGE, COURT RECORDER**

1 Las Vegas, Nevada, Thursday, January 17, 2019

2  
3 [Hearing began at 10:05 a.m.]

4 THE COURT: All right, Brown versus Atkinson.

5 MS. PEREYRA: Good morning, Your Honor, Adriana Pereyra  
6 for defendants, bar number 12263.

7 MS. BARRAZA: Good morning, Your Honor, Danielle Barraza  
8 on behalf of the defendants.

9 MR. WINDER: Good morning, Your Honor, Dan Winder on  
10 behalf of the plaintiff, bar umber 1569.

11 THE COURT: Let's do the motion for summary judgment first.

12 MS. BARRAZA: Perfect. I'm sure the Court's read  
13 everything. I'll be briefly. Very brief factual background, the plaintiff has  
14 contended that what he does is he drives around looking for abandoned  
15 properties and that's what happened here. He was driving around and  
16 came across the Atkinson's commercial property which was not listed for  
17 sale, no sign out front saying it was for sale. He determined it was  
18 abandoned, did some research and then discovered the Atkinson's  
19 residential address, which he then went to and in some way they agreed  
20 to sell the property to him.

21 It's undisputed that there was a document entitled purchase  
22 agreement and joint escrow instructions, which was signed by  
23 everybody. But the ultimate issue here is despite the title of that  
24 document there are no actual escrow instructions anywhere in that  
25 document. The document specifically says the escrow agent will be

1 determined by buyer. Discovery has not come up with any kind of  
2 escrow agent. That burden has not been met. And that's pertinent  
3 because the contract specifically states that it only becomes effective  
4 upon the contract being delivered to the escrow agent. And so despite  
5 the parties signing the document it wasn't ever delivered to an escrow  
6 agent. Evidence -- there has been zero evidence indicating it has.

7           The Court has read our arguments regarding even if the  
8 contract was somehow effective, plaintiff simply did not perform and did  
9 not meet his burden of proving that he did perform in any way. I'm sure  
10 the Court's seen the attempt to produce evidence in the form of a Kelly  
11 Mortgage Loan approval letter, which was proven to be false.

12           THE COURT: Well that's a fraudulent document.

13           MS. BARRAZA: Exactly. And I don't think that's even  
14 disputed, because thereafter the story was changed and --

15           THE COURT: He said he had the money anyway from an  
16 investor.

17           MS. BARRAZA: Exactly. He said he had the money from an  
18 investor, which wasn't even consistent in his deposition because at one  
19 point he said I did not -- he did not identify any specific investors. And  
20 so, that's kind of a new angle that we're seeing being taken now. And I  
21 don't know if the Court has reviewed the document that was just filed  
22 yesterday by the plaintiff?

23           THE COURT: Yeah, I just go it this morning.

24           MS. BARRAZA: Right, and so that's kind of the new angle  
25 they're taking with this supposed new investor. Even if the Court wants

1 to consider that beyond the discovery cut off, even if the Court wants to  
2 consider that, if you look at the actual documents it's supposed bank  
3 records from March or I think May of 2016. And this agreement,  
4 purchase agreement was being done in July of 2017. And so any sort of  
5 bank documents, even if all that is, you know, true authenticated, which  
6 we still dispute, doesn't in any way show proof of funds. So, there's  
7 simply no evidence and if the Court has any questions.

8 THE COURT: Okay. Mr. Winder.

9 MR. WINDER: Your Honor, I don't dispute that there should  
10 be summary judgment granted, but it should be granted in favor of my  
11 client, Your Honor. There was a contract, a purchase agreement, there  
12 were escrow instructions, there were escrow --

13 THE COURT: Was the escrow ever opened?

14 MR. WINDER: Yes, Your Honor.

15 THE COURT: Where?

16 MR. WINDER: And I believe that there's the --

17 THE COURT: Where? Just give me the title company.

18 MR. WINDER: I don't have the name of that offhand, Your  
19 Honor. I mean, I apologize. I can --

20 THE COURT: Well your client never -- there was an earnest  
21 money deposit of \$1000, right?

22 MR. WINDER: Correct, Your Honor.

23 THE COURT: Did he put that in escrow?

24 MR. WINDER: Yes, Your Honor.

25 THE COURT: Where?

1 MR. WINDER: And I don't have that name offhand, Your  
2 Honor, I can recall but I --

3 THE COURT: He never put \$1000 in escrow, did he?

4 MR. WINDER: I'm almost positive he did, Your Honor, and  
5 we can -- the --

6 THE COURT: I haven't seen any evidence of that \$1000  
7 being deposited and you don't know where it was.

8 MR. WINDER: There's the Exhibit 4, Your Honor, attached to  
9 the defendant's brief which has a copy of the check from escrow. Let  
10 me grab that, Your Honor.

11 THE COURT: Maybe I misunderstood. I thought that there  
12 was never an escrow opened and that the \$1000 was never paid.

13 MR. WINDER: No, Your Honor.

14 THE COURT: And that -- I know in your last document that  
15 you -- I handed -- was handed this morning, you said that the \$1000 was  
16 in escrow and I didn't see any evidence of that. Maybe I'm  
17 misunderstand, but I --

18 MR. WINDER: No, the \$1000 was not deposited. The cash  
19 was not deposited into escrow, Your Honor.

20 THE COURT: Well what did you say in your --

21 MR. WINDER: That he indicates the he has investors and he  
22 had the ability to pay \$100 -- \$1000; that the \$1000 was deposited into  
23 an escrow account and then they never followed through.

24 THE COURT: Okay on page 3 of the document that I was  
25 handed this morning, it says in short defendants agreed to sell the

1 property to plaintiff. That's true. Escrow instructions were signed and a  
2 deposit made to escrow. Now I haven't seen any evidence of that.  
3 Plaintiffs secured funding but defendants after they learned there was a  
4 tax lien they failed to follow through.

5 MR. WINDER: That's correct, Your Honor. And so my client  
6 had the ability to pay the hundred -- the balance of the \$99,000. They  
7 failed to follow through. They failed to provide title.

8 THE COURT: So the -- the \$1000 was in the escrow?

9 MR. WINDER: Yes, Your Honor, and I -

10 THE COURT: You're sure of that?

11 MR. WINDER: Well, I'm pretty sure of it, Your Honor. If we --

12 THE COURT: Because I didn't see any evidence of \$1000 in  
13 an escrow. Matter of fact I'm not sure an escrow was ever set up.

14 MR. WINDER: Okay.

15 THE COURT: You don't know the name of the title company  
16 where the --

17 MR. WINDER: No, I don't, Your Honor, and if we could trail  
18 this 10 minutes I will get the name of that -- exact name of that, Your  
19 Honor.

20 THE COURT: Well, you don't need it. It's got to be in the  
21 papers.

22 MR. WINDER: Okay.

23 THE COURT: C'mon.

24 MR. WINDER: Yes, Your Honor.

25 THE COURT: Counsel, anything further?

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MS. BARRAZA: No, Your Honor.

THE COURT: I don't see a contract here that's enforceable.  
You never opened an escrow, you never put the money up. I'm going to  
grant the motion for the defense.

MS. BARRAZA: Thank you, Your Honor.

MR. WINDER: Thank you.

THE COURT: And that makes moot the other pending  
matters.

MS. BARRAZA: Yes, Your Honor.

MR. WINDER: Thank you.

THE COURT: And the arbitration hearing that's scheduled for  
January 24 is off calendar.

MS. BARRAZA: Thank you.

THE COURT: Prepare an appropriate order with findings  
please.

MS. BARRAZA: Yes, thank you.

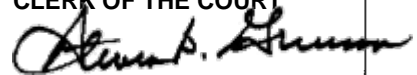
[Hearing concluded at 10:12 a.m.]

\* \* \* \* \*

**ATTEST:** I do hereby certify that I have truly and correctly transcribed the  
audio/video proceedings in the above-entitled case to the best of my ability.

  
\_\_\_\_\_  
Jessica Kirkpatrick  
Court Recorder/Transcriber

# EXHIBIT I



**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:

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

#### 16 CONCLUSIONS OF LAW

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

25 2. “A genuine issue of material fact exists where the evidence is such that a reasonable  
26 jury could return a verdict for the nonmoving party.” *Valley Bank of Nevada v. Marble*, 105 Nev.  
27 366, 367, 775 P.2d 1278, 1279 (1989). “[C]onclusory statements along with general allegations do  
28 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

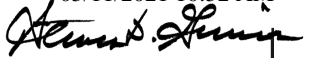
Submitted by:

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-and-

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

  
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.: XXVI

**ORDER REFERRING TO DISCOVERY  
COMMISSIONER PLAINTIFFS' MOTION  
FOR AN ORDER TO SHOW CAUSE AS  
TO WHY DEFENDANT LAW OFFICE OF  
DAN M WINDER, P.C. SHOULD NOT BE  
HELD IN CONTEMPT FOR FAILING TO  
ABIDE BY DCRR GRANTING  
PLAINTIFFS' MOTION TO COMPEL #1**

Hearing Date: May 4, 2021  
Hearing Time: 9:00 a.m.

This matter came on for hearing before the Court on May 4, 2021, at 9:00 a.m., on Plaintiffs Lavelle P. Atkinson and Sheila Atkinson's ("Plaintiffs") motion for an order to show cause as to why defendant Law Office of Dan M Winder, P.C. ("Winder Law Office") should not be held in contempt of Court and punished for its failure to comply with the Discovery Commissioner's Report and

1 Recommendation dated November 16, 2020, which granted in full Plaintiff's motion to compel #1  
2 (the "Motion for OSC").

3 Plaintiffs, Lavelle P. Atkinson and Sheila Atkinson, were represented by Danielle J. Barraza,  
4 Esq., of the law firm MAIER GUTIERREZ & ASSOCIATES and Adriana Pereyra, Esq. of the law firm  
5 INTEGRITY LAW FIRM. Winder Law Office was represented by Arnold Weinstock, Esq., of the law  
6 firm LAW OFFICE OF DAN M. WINDER, P.C.

7 The Court, having reviewed the pleadings and papers on file herein relative to the Motion for  
8 OSC and having heard the arguments of counsel present at the hearing, and for good cause appearing,  
9 hereby orders as follows:

10 IT IS HEREBY ORDERED that Plaintiffs' Motion for OSC shall be REFERRED back to the  
11 Discovery Commissioner on May 13, 2021 to determine: (1) whether or not the answers to the  
12 interrogatories that were subject to Plaintiffs' Motion to Compel #1 are sufficient to meet the direction  
13 of the Discovery Commissioner in the DCRR on Plaintiffs' Motion to Compel #1; and (2) whether or  
14 not the objections as propounded in the supplemental responses should be stricken.

15 DATED this \_\_\_\_ day of \_\_\_\_\_, 2021.

Dated this 11th day of May, 2021

DISTRICT COURT JUDGE

For Sr. Judge David Barker **D1B BA1 64A8 F56A**  
**Gloria Sturman**  
District Court Judge

19 Respectfully submitted,

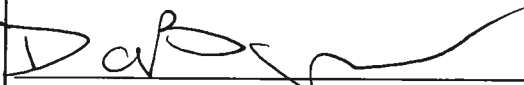
Approved as to form and content,

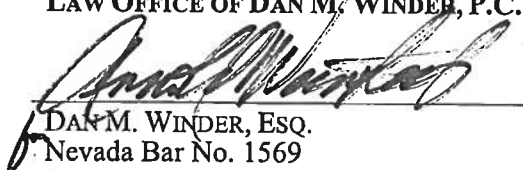
20 DATED this 10th day of May, 2021.

DATED this 10th day of May, 2021.

21 MAIER GUTIERREZ & ASSOCIATES

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

22   
23 JOSEPH A. GUTIERREZ, ESQ.  
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Attorneys for Defendants Law Office of Dan M.  
Winder, P.C. and Dan M. Winder

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 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: 5/11/2021

15 MGA Docketing docket@mgalaw.com  
16 Case Manager Casemanager@attorneydanwinder.com  
17 Adriana Pereyra adriana@integritylawnv.com  
18 Dan Winder winderdanatty@aol.com  
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**PET APP 0457**