Electronically Filed
4/29/2019 12:46 PM
Steven D. Grierson
CLERK OF THE COURT

JORDAN P. SCHNITZER, ESQ.
Nevada Bar No. 10744
THE SCHNITZER LAW FIRM
9205 W. Russell Road, Suite 240
Las Vegas, Nevada 89148
Telephone: 702.960.4050
Facsimile: 702.960.4092
Jordan@TheSchnitzerLawFirm.com
*Attorney for Defendant James Song and Defendant Adrienne Song*

Electronically Filed
May 07 2019 08:39 a.m.
Elizabeth A. Brown
Clerk of Supreme Court

**DISTRICT COURT**

**CLARK COUNTY, NEVADA**

SCOTT PENSIVY, Individually,

Plaintiff,

vs.

LONGEVITY WORLDWIDE, LLC, a Nevada Limited Liability Company; JAMES SONG, individually; ADRIENNE SONG, individually; LONGEVITY NETWORK, LTD, A Nevada Limited Liability Company; DOES PERSONS, I-X, inclusive; and ROE COMPANIES XI through XX, inclusive,

Defendants.

Case No.: A-17-749167-C

Dept. No.: XXXI

**NOTICE OF APPEAL**

NOTICE IS HEREBY GIVEN that the above-named Defendants, JAMES SONG and ADRIENNE SONG by and through their attorneys of record, The Schnitzer Law Firm, hereby

//

//

//

//

//

//



Docket 78718 Document 2019-19908

Case Number: A-17-749167-C

appeals to the Supreme Court of Nevada from the Findings of Fact and Conclusions of Law and Judgment entered in the above action on March 29, 2019.

DATED this 29th day of April 2019.

THE SCHNITZER LAW FIRM

By: _____

JORDAN P. SCHNITZER, ESQ.
Nevada Bar No. 10744
9205 W. Russell Rd., Suite 240
Las Vegas, NV 89148
*Attorney for James Song and Adrienne Song*

THE SCHNITZER LAW FIRM

**CERTIFICATE OF SERVICE**

In accordance with Rule 9 of the N.E.F.C.R., I, the undersigned hereby certify that on the 29th day of April 2019, I served a true and correct copy of the foregoing **NOTICE OF APPEAL** to the above-entitled Court for electronic filing and service upon the Court's Service List to the following counsel:

RYAN J. WORKS, ESQ.
Nevada Bar No. 9224
McDONALD CARANO LLP
2300 West Sahara Avenue, Suite 1200
Las Vegas, Nevada 89102
*Attorney for Plaintiff*



An employee of
THE SCHNITZER LAW FIRM

THE SCHNITZER LAW FIRM

Electronically Filed
4/29/2019 10:20 PM
Steven D. Grierson
CLERK OF THE COURT

JORDAN P. SCHNITZER, ESQ.
Nevada Bar No. 10744
THE SCHNITZER LAW FIRM
9205 W. Russell Road, Suite 240
Las Vegas, Nevada 89148
Telephone: 702.960.4050
Facsimile: 702.960.4092
Jordan@TheSchnitzerLawFirm.com
*Attorney for Defendant James Song and Defendant Adrienne Song*

**DISTRICT COURT**

**CLARK COUNTY, NEVADA**

SCOTT PENSIVY, Individually,

Plaintiff,

vs.

LONGEVITY WORLDWIDE, LLC, a Nevada Limited Liability Company; JAMES SONG, individually; ADRIENNE SONG, individually; LONGEVITY NETWORK, LTD, A Nevada Limited Liability Company; DOES PERSONS, I-X, inclusive; and ROE COMPANIES XI through XX, inclusive,

Defendants.

Case No.: A-17-749167-C

Dept. No.: XXXI

**CASE APPEAL STATEMENT**

1. Name of Appellant filing this Appeal Case Statement:

   JAMES SONG and ADRIENNE SONG

2. Identity of judge issuing the decision, judgment or order appealed from:

   The Honorable Joanna S. Kishner

3. Identity of all parties to the proceedings in the District Court:

   Plaintiff: SCOTT PENSIVY

   Defendants: JAMES SONG and ADRIENNE SONG

4. Identity of all parties involved in this appeal:



Case Number: A-17-749167-C

Appellant: JAMES SONG and ADRIENNE SONG

Respondents: SCOTT PENSIVY

5. Name, law firm, address and telephone number of all counsel on Appeal and identity of the party or parties whom they represent:

Appellant: Jordan P. Schnitzer, Esq.
THE SCHNITZER LAW FIRM
9205 W. Russell Road, Suite 240
Las Vegas, Nevada 89148
(702) 960-4050 (Telephone)

Respondent: Ryan J. Works, Esq.
McDONALD CARANO LLP
2300 West Sahara Avenue, Suite 1200
Las Vegas, Nevada 89102
(702) 873-4100 (Telephone)

6. Indicate whether Appellant was represented by appointed or retained counsel in the District Court:

Appellant, JAMES SONG and ADRIENNE SONG, was represented by retained counsel in the District Court.

7. Indicate whether Appellant is represented by appointed or retained counsel on Cross-Appeal:

Appellant, JAMES SONG and ADRIENNE SONG, is represented by retained counsel on Appeal.

8. Indicate whether appellant was granted leave to proceed in forma pauperis, and the date of entry of the District Court Order granting such leave:

Appellant, JAMES SONG and ADRIENNE SONG was not granted leave to proceed in forma pauperis.

9. Date proceeding commenced in the District Court:

January 6, 2017.

10. State a brief description of the nature of the action and result in the district court, including the type of judgment or order being appealed and the relief granted by the district court:

The parties entered into an agreement in February 2015. The agreement was for the



THE SCHNITZER LAW FIRM

purchase of shares in a yet to be formed entity that would sell a toothbrush sanitizer. The dispute arose over whether the money was to be used as a buyout, with the funds belonging to the seller, or if the funds rightfully belonged to the business. A bench trial was conducted. The court entered findings of fact and conclusions of law in favor of the Plaintiff on all causes of action, including intentional torts of fraud and conversion.

11. Indicate whether the case has previously been the subject of an appeal to or original writ proceeding in the Supreme Court and, if so, the caption and Supreme Court docket number of the prior proceeding:

No.

12. Indicate whether the appeal involves child custody or visitation:

No.

13. Indicate whether the appeal involves the possibility of settlement:

Yes.

DATED this 29th day of April 2019.

THE SCHNITZER LAW FIRM

By: _____

JORDAN P. SCHNITZER, ESQ.
Nevada Bar No. 10744
9205 W. Russell Rd., Suite 240
Las Vegas, NV 89148
*Attorney for James Song and Adrienne Song*



THE SCHNITZER LAW FIRM

**CERTIFICATE OF SERVICE**

In accordance with Rule 9 of the N.E.F.C.R., I, the undersigned hereby certify that on the 29th day of April 2019, I served a true and correct copy of the foregoing **CASE APPEAL STATEMENT** to the above-entitled Court for electronic filing and service upon the Court's Service List to the following counsel:

RYAN J. WORKS, ESQ.
Nevada Bar No. 9224
McDONALD CARANO LLP
2300 West Sahara Avenue, Suite 1200
Las Vegas, Nevada 89102
*Attorney for Plaintiff*



An employee of
THE SCHNITZER LAW FIRM

THE SCHNITZER LAW FIRM

Electronically Filed
4/29/2019 10:20 PM
Steven D. Grierson
CLERK OF THE COURT

JORDAN P. SCHNITZER, ESQ.
Nevada Bar No. 10744
THE SCHNITZER LAW FIRM
9205 W. Russell Road, Suite 240
Las Vegas, Nevada 89148
Telephone: 702.960.4050
Facsimile: 702.960.4092
Jordan@TheSchnitzerLawFirm.com
*Attorney for Defendant James Song and Defendant Adrienne Song*

**DISTRICT COURT**

**CLARK COUNTY, NEVADA**

SCOTT PENSIVY, Individually,

Plaintiff,

vs.

LONGEVITY WORLDWIDE, LLC, a Nevada Limited Liability Company; JAMES SONG, individually; ADRIENNE SONG, individually; LONGEVITY NETWORK, LTD, A Nevada Limited Liability Company; DOES PERSONS, I-X, inclusive; and ROE COMPANIES XI through XX, inclusive,

Defendants.

Case No.: A-17-749167-C

Dept. No.: XXXI

**NOTICE OF POSTING APPEAL BOND FOR JAMES SONG AND ADRIENNE SONG**

PLEASE TAKE NOTICE that on the 29th day of April 2019, an Appeal Bond for James and Adrienne Song in the amount of FIVE HUNDRED DOLLARS and 00/100 ($500.00) was filed with the Court.

//

//

//

//

//



Case Number: A-17-749167-C

A true and correct copy of the Appeal Bond for James and Adrienne Song is attached hereto and incorporated herein by this reference.

DATED this 29th day of April 2019.

THE SCHNITZER LAW FIRM

By: _____

JORDAN P. SCHNITZER, ESQ.
Nevada Bar No. 10744
9205 W. Russell Rd., Suite 240
Las Vegas, NV 89148
*Attorney for James Song and Adrienne Song*

THE SCHNITZER LAW FIRM

**CERTIFICATE OF SERVICE**

In accordance with Rule 9 of the N.E.F.C.R., I, the undersigned hereby certify that on the 29th day of April 2019, I served a true and correct copy of the foregoing **NOTICE OF APPEAL BOND** to the above-entitled Court for electronic filing and service upon the Court's Service List to the following counsel:

RYAN J. WORKS, ESQ.
Nevada Bar No. 9224
McDONALD CARANO LLP
2300 West Sahara Avenue, Suite 1200
Las Vegas, Nevada 89102
*Attorney for Plaintiff*



An employee of
THE SCHNITZER LAW FIRM

THE SCHNITZER LAW FIRM

# OFFICIAL RECEIPT

## District Court Clerk of the Court 200 Lewis Ave, 3rd Floor Las Vegas, NV 89101

Payor
James Song
c/o The Schnitzer Law Firm
9205 W Russell Road, Suite 240
Las Vegas, NV 89148
(702) 960-4050

Receipt No.
**2019-26193-CCCLK**

Transaction Date
04/29/2019

| Description | Amount Paid |
|---|---|

On Behalf Of Song, James
A-17-749167-C
Scott Pensivy, Plaintiff(s) vs. Longevity Worldwide, LLC, Defendant(s)
Appeal Bond

| | |
|---|---|
| Appeal Bond | 500.00 |
| **SUBTOTAL** | **500.00** |

**PAYMENT TOTAL** **500.00**

| | |
|---|---|
| Cash Tendered | 500.00 |
| Total Tendered | **500.00** |
| Change | 0.00 |

Notice of Appeal filed 4/29/19

| | | |
|---|---|---|
| 04/29/2019 | Cashier | Audit |
| 02:25 PM | Station AIKO | 36439527 |


# OFFICIAL RECEIPT

EIGHTH JUDICIAL DISTRICT COURT

# CASE SUMMARY

## CASE NO. A-17-749167-C

| | | | |
|---|---|---|---|
| **Scott Pensivy, Plaintiff(s)** | § | Location: | **Department 31** |
| **vs.** | § | Judicial Officer: | **Kishner, Joanna S.** |
| **Longevity Worldwide, LLC, Defendant(s)** | § | Filed on: | **01/06/2017** |
| | § | Cross-Reference Case Number: | **A749167** |

### CASE INFORMATION

**Statistical Closures**
04/01/2019 Judgment Reached (bench trial)

Case Type: **Collection of Accounts**

Case Status: **04/01/2019 Closed**

### DATE — CASE ASSIGNMENT

**Current Case Assignment**

| | |
|---|---|
| Case Number | A-17-749167-C |
| Court | Department 31 |
| Date Assigned | 01/06/2017 |
| Judicial Officer | Kishner, Joanna S. |

### PARTY INFORMATION

| | | |
|---|---|---|
| **Plaintiff** | **Pensivy, Scott** | **Works, Ryan J.**<br>*Retained*<br>7028734100(W) |
| **Defendant** | **International Sports Center LLC**<br>Removed: 02/13/2019<br>Dismissed | |
| | **Longevity Network LLC** | |
| | **Longevity Worldwide, LLC** | |
| | **LV Sports & Land Development** | |
| | **LV Sports and Land Development LLC**<br>Removed: 06/06/2017<br>Dismissed | |
| | **Song, Adrienne** | **Schnitzer, Jordan**<br>*Retained*<br>702-960-4050(W) |
| | **Song, James** | **Schnitzer, Jordan**<br>*Retained*<br>702-960-4050(W) |

### DATE — EVENTS & ORDERS OF THE COURT — INDEX

## EVENTS

01/06/2017 Complaint
Filed By: Plaintiff Pensivy, Scott
*Civil Complaint*

02/06/2017 Summons
Filed by: Plaintiff Pensivy, Scott
*Summons & Affidavit of Service*

| | |
|---|---|
| 02/06/2017 | Summons<br>Filed by: Plaintiff Pensivy, Scott<br>*Summons & Affidavit of Service* |
| 02/06/2017 | Summons<br>Filed by: Plaintiff Pensivy, Scott<br>*Summons & Affidavit of Service* |
| 02/09/2017 | Default<br>Filed By: Plaintiff Pensivy, Scott<br>*Clerk's Default as to Defendant Longevity Worldwide, LLC* |
| 02/09/2017 | Default<br>Filed By: Plaintiff Pensivy, Scott<br>*(10/25/17 Set Aside) Clerk's Default as to Defendant Adrienne Song* |
| 02/09/2017 | Default<br>Filed By: Plaintiff Pensivy, Scott<br>*(10/25/17 Set Aside) Clerk's Default as to Defendant James Song* |
| 05/01/2017 | Amended Complaint<br>Filed By: Plaintiff Pensivy, Scott<br>*Amended Complaint* |
| 05/05/2017 | Acceptance of Service<br>Filed By: Plaintiff Pensivy, Scott<br>*Acceptance of Service* |
| 05/10/2017 | Summons<br>Filed by: Defendant Longevity Worldwide, LLC<br>*Summons* |
| 05/10/2017 | Summons<br>Filed by: Defendant Longevity Network LLC<br>*Summons* |
| 05/10/2017 | Summons<br>Filed by: Defendant International Sports Center LLC<br>*Summons* |
| 05/10/2017 | Summons<br>Filed by: Defendant LV Sports and Land Development LLC<br>*Summons* |
| 05/25/2017 | Motion to Dismiss<br>Filed By: Defendant Song, James; Defendant Song, Adrienne<br>*Defendant James Song and Adrienne Song's Motion to Dismiss* |
| 05/25/2017 | Initial Appearance Fee Disclosure<br>Filed By: Defendant Song, James<br>*James Song and Adrienne Song's Initial Appearance Fee Disclosure* |
| 06/06/2017 | |

| | |
|---|---|
| | Notice of Voluntary Dismissal Without Prejudice<br>Filed by: Plaintiff Pensivy, Scott<br>*Notice of Voluntary Dismissal of Defendant LV Sports & Land Development, LLC* |
| 06/08/2017 | Default<br>Filed By: Plaintiff Pensivy, Scott<br>*Clerk's Default as to Defendant Longevity Network, LTD* |
| 06/09/2017 | Default<br>Filed By: Plaintiff Pensivy, Scott<br>*Clerk's Default as to Defendant Longevity Worldwide, LLC* |
| 06/13/2017 | Initial Appearance Fee Disclosure<br>*Defendant International Sports Center, LLC d/b/a Longevity Sports Center's Initial Appearance Fee Disclosure* |
| 06/13/2017 | Opposition to Motion to Dismiss<br>Filed By: Plaintiff Pensivy, Scott<br>*Plaintiff's Opposition to Defendant James Song and Adrienne Song's Motion to Dismiss* |
| 06/13/2017 | Motion to Dismiss<br>Filed By: Defendant International Sports Center LLC<br>*Defendant International Sports Center, LLC d/b/a Longevity Sports Center's Motion to Dismiss* |
| 07/07/2017 | Opposition to Motion<br>Filed By: Plaintiff Pensivy, Scott<br>*Plaintiff's Opposition to Defendant International Sports Center, LLC d/b/a Longevity Sports Center's Motion to Dismiss* |
| 07/13/2017 | Stipulation and Order<br>Filed by: Defendant International Sports Center LLC<br>*Stipulation and Order to Continue Hearings Regarding Defendants' Motions to Dismiss* |
| 07/13/2017 | Notice of Entry<br>Filed By: Defendant International Sports Center LLC<br>*Notice of Entry of Stipulation and Order to Continue Hearings Regarding Defendants' Motions to Dismiss* |
| 07/26/2017 | Reply in Support<br>Filed By: Defendant International Sports Center LLC<br>*Defendant International Sports Center, LLC d/b/a Longevity Sports Center's Reply in Support of Motion to Dismiss Plaintiff's Complaint* |
| 07/27/2017 | Reply to Opposition<br>Filed by: Defendant Song, James; Defendant Song, Adrienne<br>*Defendant James Song And Adrienne Song s Reply To Plaintiff s Opposition To Motion To Dismiss* |
| 08/24/2017 | Notice of Bankruptcy<br>Filed By: Defendant Song, James; Defendant Song, Adrienne<br>*Notice of Bankruptcy* |
| 09/12/2017 | Order Denying Motion<br>Filed By: Plaintiff Pensivy, Scott |

*Order Denying Defendants James Song's Motion to Dismiss and Defendant International Sports Center, LLC D/B/A Longevity Sports Center's Motion to Dismiss*

09/12/2017 Notice of Entry of Order
Filed By: Plaintiff Pensivy, Scott
*Notice of Entry of Order*

10/25/2017 Notice of Intent to Take Default
Party: Plaintiff Pensivy, Scott
*Three Day Notice of Intent to Enter Default as to Defendant Adrienne Song*

10/25/2017 Notice of Intent to Take Default
Party: Plaintiff Pensivy, Scott
*Three Day Notice of Intent to Enter Default as to Defendant James Song*

10/25/2017 Stipulation and Order
Filed by: Defendant Song, James; Defendant Song, Adrienne
*Stipulation and Order to Set Aside Default*

10/30/2017 Answer
Filed By: Defendant Song, James; Defendant Song, Adrienne
*Answer*

10/30/2017 Answer
*Defendant International Sports Center d/b/a Longevity Sports Center's Answer to Complaint*

12/14/2017 Commissioners Decision on Request for Exemption - Granted
*Commissioner's Decision on Request for Exemption - Granted*

01/22/2018 Substitution of Attorney
Filed by: Plaintiff Pensivy, Scott
*Substitution of Atty*

03/30/2018 Motion to Dismiss
Filed By: Defendant Song, James; Defendant Song, Adrienne
*Defendants James Song and Adrienne Song Motion to Dismiss*

04/03/2018 Notice of Early Case Conference
Filed By: Plaintiff Pensivy, Scott
*Notice of Early Case Conference*

04/04/2018 Joinder To Motion
Filed By: Defendant International Sports Center LLC
*Defendant International Sports Center, dba Longevity Sports Center's Substantive Joinder to Defendants James Song and Adrienne Song's Motion to Dismiss*

04/12/2018 Joint Case Conference Report
Filed By: Plaintiff Pensivy, Scott
*Joint Case Conference Report*

04/19/2018 Opposition to Motion to Dismiss
Filed By: Plaintiff Pensivy, Scott
*Opposition to (A) Song Defendants' Motion to Dismiss; and (B) ISC's Substantive Joinder to Motion to Dismiss*

| | |
|---|---|
| 04/23/2018 | Reply to Opposition<br>Filed by: Defendant Song, James; Defendant Song, Adrienne<br>*Reply to Plaintiff's Opposition to Defendants James Song and Adrienne Song Motion to Dismiss* |
| 05/04/2018 | Objection<br>Filed By: Defendant International Sports Center LLC<br>*Objection to Subpoena Duces Tecum of the Custodian of Records for Wells Fargo Bank, Nation Association* |
| 05/07/2018 | Objection<br>Filed By: Defendant Song, James; Defendant Song, Adrienne<br>*Objection to Subpoena Duces Tecum of the Custodian of Records for Wells Fargo, NA* |
| 05/14/2018 | Scheduling Order<br>*Scheduling Order* |
| 06/06/2018 | Order<br>Filed By: Plaintiff Pensivy, Scott<br>*Order Denying Defendants' Motion to Dismiss; and ISC's Substantive Joinder Thereto* |
| 06/14/2018 | Order Setting Civil Jury Trial and Calendar Call<br>*Order Setting Civil Non-Jury Trial, Pre-Trial Conference, Calendar Call, and Status Check* |
| 07/03/2018 | Motion to Amend Complaint<br>Filed By: Plaintiff Pensivy, Scott<br>*Motion for Leave to File Amended Complaint* |
| 07/31/2018 | Non Opposition<br>Filed By: Defendant Song, James; Defendant Song, Adrienne<br>*Defendants, James Song And Adrienne Song s Non-Opposition To Plaintiff s Motion For Leave To File Amended Complaint* |
| 08/27/2018 | Order<br>Filed By: Plaintiff Pensivy, Scott<br>*Order Granting Plaintiff Scott Pensivy's Motion for Leave to File Amended Complaint* |
| 08/28/2018 | Notice of Entry of Order<br>Filed By: Plaintiff Pensivy, Scott<br>*Notice of Entry of Order Granting Plaintiff Scott Pensivy's Motion for Leave to File Amended Complaint* |
| 08/29/2018 | Amended Complaint<br>Filed By: Plaintiff Pensivy, Scott<br>*Second Amended Complaint* |
| 09/18/2018 | Answer to Amended Complaint<br>Filed By: Defendant International Sports Center LLC<br>*Defendant International Sports Center dba Longevity Sports Center's Answer to Plaintiff's Second Amended Complaint* |
| 10/03/2018 | Answer to Amended Complaint<br>Filed By: Defendant Song, James; Defendant Song, Adrienne |

*Defendants' James and Adrienne Song's Answer to Plaintiff's Second Amended Complaint*

10/12/2018 Motion to Compel
Filed By: Plaintiff Pensivy, Scott
*Motion (1) Compelling The Song Defendants Responses to Written Discovery Requests, (2) Overruling Defendants Objection to Subpoena; and (3) Requesting Additional Time for The Deposition of James Song*

10/15/2018 Stipulation and Order
Filed by: Defendant International Sports Center LLC
*Stipulation and Order to Extend Discovery (First Request)*

10/16/2018 Notice of Entry of Stipulation and Order
Filed By: Defendant International Sports Center LLC
*Notice of Entry of Stipulation and Order to Extend Discovery (First Request)*

10/26/2018 Opposition to Motion to Compel
Filed By: Defendant Song, James; Defendant Song, Adrienne
*Defendant James Song And Adrienne Song s Opposition To Plaintiff s Motion (1) Compelling The Song Defendants Responses To Written Discovery Requests, (2) Overruling Defendants Objection To Subpoena; And (3) Requesting Additional Time For The Deposition Of James Song*

11/01/2018 Motion for Summary Judgment
Filed By: Defendant Song, James; Defendant Song, Adrienne
*Defendant James and Adrienne Song's Motion for Summary Judgment*

11/07/2018 Reply in Support
Filed By: Plaintiff Pensivy, Scott
*Reply In Support of Plaintiff's Motion (1) Compelling the Song Defendants' Response to Written Discovery Requests, (2) Overruling Defendants' Objection to Subpoena; and (3) Requesting Additional Time for the Deposition of James Song*

11/16/2018 Opposition to Motion For Summary Judgment
Filed By: Plaintiff Pensivy, Scott
*Opposition to Defendant James Song and Adrienne Song's Motion for Summary Judgment and Countermotion for Partial Summary Judgment*

11/16/2018 Declaration
Filed By: Plaintiff Pensivy, Scott
*Declaration of Scott R. Pensivy In Support of Opposition to Defendant James Song and Adrienne Song's Motion for Summary Judgment and Countermotion*

11/20/2018 Initial Appearance Fee Disclosure
Filed By: Plaintiff Pensivy, Scott
*Initial Appearance Fee Disclosure*

11/26/2018 Reply in Support
Filed By: Defendant Song, James; Defendant Song, Adrienne
*Reply in Support of Defendants' Motion for Summary Judgment and Objection to Plaintiff's Countermotion for Summary Judgment*

11/27/2018 Errata
Filed By: Plaintiff Pensivy, Scott
*Errata to Opposition to Defendant James Song and Adrienne Song's Motion for Summary Judgment and Countermotion for Partial Summary Judgment*

| | |
|---|---|
| 11/29/2018 | Objection<br>Filed By: Defendant Song, James<br>*Objection to Plaintiff's Errata to Opposition to Defendant James and Adrienne Song's Motion for Summary Judgment and Countermotion for Partial Summary Judgment* |
| 12/10/2018 | Objection to Commissioner's Report and Recommendation<br>Filed by: Defendant Song, James; Defendant Song, Adrienne<br>*Defendants, James Song and Adrienne Song's Objection to Discovery Commissioner's Report and Re Commendations on Motion to Compel* |
| 12/19/2018 | Response<br>Filed by: Plaintiff Pensivy, Scott<br>*Response to Defendants, James Song and Adrienne Song's Objection to Discovery Commissioner's Report and Recommendations on Motion to Compel* |
| 12/21/2018 | Discovery Commissioners Report and Recommendations<br>Filed By: Plaintiff Pensivy, Scott<br>*Discovery Commissioner's Report and Recommendations* |
| 01/16/2019 | Order<br>Filed By: Plaintiff Pensivy, Scott<br>*Order 1) Denying Defendant James Song's and Adrienne Song's Motion for Summary Judgment and 2) Denying Countermotion for Partial Summary Judgment* |
| 01/17/2019 | Notice of Entry of Order<br>Filed By: Plaintiff Pensivy, Scott<br>*Notice of Entry of Order 1) Denying Defendant James Song s and Adrienne Song s Motion for Summary Judgment and 2) Denying Countermotion for Partial Summary Judgment* |
| 01/17/2019 | Order<br>Filed By: Plaintiff Pensivy, Scott<br>*Order Affirming and Adopting Discovery Commissioner's Report and Recommendation and Overruling Objection* |
| 01/18/2019 | Trial Subpoena<br>Filed by: Plaintiff Pensivy, Scott<br>*Trial Subpoena to James Song* |
| 01/18/2019 | Trial Subpoena<br>Filed by: Plaintiff Pensivy, Scott<br>*Trial Subpoena to Adrienne Song* |
| 01/18/2019 | Trial Subpoena<br>Filed by: Plaintiff Pensivy, Scott<br>*Trial Subpoena to Heidi Freitas* |
| 01/18/2019 | Trial Subpoena<br>Filed by: Plaintiff Pensivy, Scott<br>*Trial Subpoena to Sean Freitas* |
| 01/18/2019 | Notice of Entry of Order<br>Filed By: Plaintiff Pensivy, Scott<br>*Notice of Entry of Order Affirming and Adopting Discovery Commissioner's Report and Recommendation and Overruling Objection* |

| | |
|---|---|
| 01/22/2019 | Pre-trial Memorandum<br>Filed by: Defendant Song, James; Defendant Song, Adrienne<br>*Defendants, James Song and Adrienne Song s Individual Pre-Trial Memorandum* |
| 01/24/2019 | Stipulated Protective Order<br>Filed By: Plaintiff Pensivy, Scott<br>*Stipulated Confidentiality Agreement and Protective Order* |
| 01/25/2019 | Notice of Entry of Stipulation and Order<br>Filed By: Plaintiff Pensivy, Scott<br>*Notice of Entry of Stipulated Confidentiality Agreement and Protective Order* |
| 02/05/2019 | Pre-trial Memorandum<br>Filed by: Plaintiff Pensivy, Scott<br>*Joint Pre-Trial Memorandum* |
| 02/11/2019 | Trial Brief<br>Filed By: Defendant Song, James; Defendant Song, Adrienne<br>*Defendants, James and Adrienne Song's Trial Brief Regarding Evidentary Objections and Video* |
| 02/12/2019 | Trial Brief<br>Filed By: Plaintiff Pensivy, Scott<br>*Plaintiff Scott Pensivy's Trial Brief Regarding Direct and Cross-Examination of Adverse Witnesses* |
| 02/12/2019 | Finding of Fact and Conclusions of Law<br>Filed By: Defendant Song, James; Defendant Song, Adrienne<br>*Defendant James and Adrienne Song's Proposed Findings of Fact and Conclusions of Law* |
| 02/13/2019 | Finding of Fact and Conclusions of Law<br>Filed By: Plaintiff Pensivy, Scott<br>*Plaintiff Scott Pensivy's Proposed Findings of Fact and Conclusion of Law* |
| 02/13/2019 | Amended Order<br>*First Amended Stipulated Confidentiality Agreement and Protective Order* |
| 02/13/2019 | Stipulation and Order<br>Filed by: Plaintiff Pensivy, Scott<br>*Stipulation and Order Dismissing Claims Against Defendant International Sports Center, LLC With Prejudice* |
| 03/04/2019 | Miscellaneous Filing<br>Filed by: Plaintiff Pensivy, Scott<br>*Plaintiff Scott Pensivy's Supplemental Proposed Findings of Fact and Conclusions of Law* |
| 03/04/2019 | Finding of Fact and Conclusions of Law<br>Filed By: Defendant Song, James; Defendant Song, Adrienne<br>*Supplemental / Amended Proposed Finding of Fact and Conclusions of Law* |
| 03/07/2019 | Notice of Entry of Stipulation and Order<br>Filed By: Plaintiff Pensivy, Scott<br>*Notice of Entry of Stipulation and Order Dismissing Claims Against Defendant International* |

| | |
|---|---|
| | *Sports Center, LLC with Prejudice* |
| 03/29/2019 | Findings of Fact, Conclusions of Law and Judgment<br>*Findings of Fact, Conclusions of Law and Judgment* |
| 03/29/2019 | Order to Statistically Close Case<br>*Civil Order to Statistically Close Case* |
| 04/01/2019 | Notice of Entry of Judgment<br>Filed By: Plaintiff Pensivy, Scott<br>*Notice of Entry of Findings of Fact and Conclusions of Law and Judgment* |
| 04/03/2019 | Memorandum of Costs and Disbursements<br>Filed By: Plaintiff Pensivy, Scott<br>*Plaintiff's Memorandum of Costs and Disbursements* |
| 04/03/2019 | Appendix<br>Filed By: Plaintiff Pensivy, Scott<br>*Appendix of Exhibits to Plaintiff's Memorandum of Costs and Disbursements* |
| 04/08/2019 | Motion to Retax<br>Filed By: Defendant Song, James; Defendant Song, Adrienne<br>*Motion to Retax* |
| 04/09/2019 | Opposition to Motion<br>Filed By: Plaintiff Pensivy, Scott<br>*Opposition to Defendant James Song and Adrienne Song's Motion to Retax* |
| 04/09/2019 | Clerk's Notice of Hearing<br>*Notice of Hearing* |
| 04/15/2019 | Application for Examination of Judgment Debtor<br>Filed By: Plaintiff Pensivy, Scott<br>*Application for an Order Allowing the Examination of Judgment Debtors* |
| 04/17/2019 | Motion for Attorney Fees<br>Filed By: Plaintiff Pensivy, Scott<br>*Motion for Attorneys' Fees* |
| 04/18/2019 | Clerk's Notice of Hearing<br>*Notice of Hearing* |
| 04/22/2019 | Objection<br>Filed By: Defendant Song, James; Defendant Song, Adrienne<br>*DEFENDANT JAMES SONG S AND DEFENDANT ADRIENNE SONG S OBJECTION TO APPLICATION FOR AN ORDER ALLOWING THE EXAMINATION OF JUDGMENT DEBTORS* |
| 04/25/2019 | Response<br>Filed by: Plaintiff Pensivy, Scott<br>*Response to the Song Defendants' Objection to Plaintiff's Application for an Order Allowing the Examination of Judgment Debtors and for an Award of Attorneys' Fees* |
| 04/29/2019 | Notice of Appeal |

Filed By: Defendant Song, James; Defendant Song, Adrienne
*Notice of Appeal*

04/29/2019 Motion to Amend Judgment
Filed By: Plaintiff Pensivy, Scott
*Motion to Amend Judgment*

04/29/2019 Case Appeal Statement
Filed By: Defendant Song, James; Defendant Song, Adrienne
*Case Appeal Statement*

04/29/2019 Notice of Posting Bond
Filed By: Defendant Song, James; Defendant Song, Adrienne
*Notice of Posting Appeal Bond*

04/29/2019 Motion to Amend
Filed By: Defendant Song, James; Defendant Song, Adrienne
*Motion to Amend Findings of Fact and Conclusions of law*

04/30/2019 Clerk's Notice of Hearing
*Clerk's Notice of Hearing*

04/30/2019 Clerk's Notice of Hearing
*Notice of Hearing*

05/01/2019 Stipulation and Order
Filed by: Defendant Song, James; Defendant Song, Adrienne
*Stipulation and Order to Extend Defendants' Opposition Deadline, Plaintiff's Reply Deadline, and Continue Hearing on Plaintiff's Motion for Attorneys' Fees*

## DISPOSITIONS

06/06/2017 **Voluntary Dismissal** (Judicial Officer: Kishner, Joanna S.)
Debtors: LV Sports and Land Development LLC (Defendant)
Creditors: Scott Pensivy (Plaintiff)
Judgment: 06/06/2017, Docketed: 06/06/2017

02/13/2019 **Order of Dismissal With Prejudice** (Judicial Officer: Kishner, Joanna S.)
Debtors: International Sports Center LLC (Defendant)
Creditors: Scott Pensivy (Plaintiff)
Judgment: 02/13/2019, Docketed: 02/14/2019

03/29/2019 **Judgment Plus Legal Interest** (Judicial Officer: Kishner, Joanna S.)
Debtors: James Song (Defendant), Adrienne Song (Defendant)
Creditors: Scott Pensivy (Plaintiff)
Judgment: 03/29/2019, Docketed: 04/01/2019
Total Judgment: 400,000.00
Comment: Certain Causes
Debtors: James Song (Defendant)
Creditors: Scott Pensivy (Plaintiff)
Judgment: 03/29/2019, Docketed: 04/01/2019
Total Judgment: 100,000.00
Comment: Certain Cause

## HEARINGS

08/03/2017 **Motion to Dismiss** (9:30 AM) (Judicial Officer: Kishner, Joanna S.)
*Defendant International Sports Center, LLC d/b/a Longevity Sports Center's Motion to Dismiss*

Denied Without Prejudice; Defendant International Sports Center, LLC d/b/a Longevity Sports Center's Motion to Dismiss

08/03/2017 **Motion to Dismiss** (9:30 AM) (Judicial Officer: Kishner, Joanna S.)
*Defendant James Song and Adrienne Song's Motion to Dismiss*
Denied Without Prejudice; Defendant James Song and Adrienne Song's Motion to Dismiss

08/03/2017 **All Pending Motions** (9:30 AM) (Judicial Officer: Kishner, Joanna S.)
Matter Heard;
Journal Entry Details:
*DEFENDANT JAMES SONG AND ADRIENNE SONG'S MOTION TO DISMISS...DEFENDANT INTERNATIONAL SPORTS CENTER, LLC D/B/A LOGEVITY SPORTS CENTER'S MOTION TO DISMISS Court noted that Defendant James Song and Adrienne Song's Motion to Dismiss was not set for hearing as there was no Notice of Hearing filed and counsel stipulated to allow the matter to be heard today. After the Court's consideration of the papers submitted by counsel in connection with this matter, and, having heard the oral arguments presented by Mr. Schnitzer, Ms. Works, and Ms. Hyson, COURT FINDS it appropriate to rule on the motions on a Motion to Dismiss standards because that is the way the parties filed these motions and because it is so early in the litigation that it would not be appropriate to treat the motions and Motions for Summary Judgments. COURT FURTHER FINDS an ambiguity exists as to who were the parties to the agreement and ORDERED, Defendant James Song and Adrienne Song's Motion to Dismiss is DENIED WITHOUT PREJUDICE. The COURT ADDITIONALLY FINDS an ambiguity as to who are the parties to the agreement and ORDERED, Defendant International Sports Center, LLC d/b/a Longevity Sports Center's Motion to Dismiss is similarly DENIED WITHOUT PREJUDICE. Ms. Works is to prepare the order and circulate it to counsel within ten (10) days pursuant to EDCR 7.21.;*

05/01/2018 **Motion to Dismiss** (9:30 AM) (Judicial Officer: Kishner, Joanna S.)
*Defendants James Song and Adrienne Song Motion to Dismiss*
Denied Without Prejudice; Defendants James Song and Adrienne Song Motion to Dismiss

05/01/2018 **Joinder** (9:30 AM) (Judicial Officer: Kishner, Joanna S.)
*Defendant International Sports Center, dba Longevity Sports Center's Substantive Joinder to Defendants James Song and Adrienne Song's Motion to Dismiss*
Denied Without Prejudice; Defendant International Sports Center, dba Longevity Sports Center's Substantive Joinder to Defendants James Song and Adrienne Song's Motion to Dismiss

05/01/2018 **All Pending Motions** (9:30 AM) (Judicial Officer: Kishner, Joanna S.)
Matter Heard;
Journal Entry Details:
*DEFENDANT JAMES SONG AND ADRIENNE SONG'S MOTION TO DISMISS...DEFENDANT INTERNATIONAL SPORTS CENTER, DBA LONGEVITY SPORTS CENTER'S SUBSTANTIVE JOINDER TO DEFENDANTS JAMES SONG AND ADRIENNE SONG'S MOTION TO DISMISS After the Court's consideration of the papers submitted by counsel in connection with this matter, and, having heard the oral arguments presented by Mr. Schnitzer, Ms. Hyson and Mr. Works, COURT ORDERED, Defendant James Song and Adrienne Song's Motion to Dismiss and Joinder thereto DENIED WITHOUT PREJUDICE. Mr. Works to prepare the Order pursuant to EDCR 7.21. Colloquy regarding possible voluntary dismissal. COURT FURTHER ORDERED, matter SET for Status Check regarding possible dismissal. 6/26/18 9:00 AM STATUS CHECK RE: POSSIBLE VOLUNTARY DISMISSAL;*

06/26/2018 **Status Check** (9:00 AM) (Judicial Officer: Kishner, Joanna S.)
*Status Check: Possible Voluntary Dismissal*
Matter Heard; Status Check: Possible Voluntary Dismissal
Journal Entry Details:

*Mr. Works indicated that after conducting discovery, counsel intends on filing a motion for leave to amend the complaint. The Court advised counsel regarding the docket changes taking place on July 2, 2018, and indicated this case may be reassigned. Upon the Court's inquiry if counsel thought a Settlement Conference would be helpful, all counsel agreed and Mr.*

*Schnitzer indicated he would have to contact his client first. The Court DIRECTED counsel to notify Chambers if they wanted a settlement conference.;*

08/07/2018 **Motion for Leave** (9:00 AM) (Judicial Officer: Kishner, Joanna S.)

*Plaintiff's Motion for Leave to File Amended Complaint*
Motion Granted;
Journal Entry Details:
*The being no written opposition and counsel present having confirmed the matter was unopposed, COURT ORDERED, Plaintiff's Motion for Leave to File Amended Complaint GRANTED; Plaintiff will have ten (10) days from Notice of Entry of Order to file its Amended Complaint. Mr. Sifers to prepare the Order pursuant to EDCR 7.21.;*

10/16/2018 **Status Check** (9:00 AM) (Judicial Officer: Kishner, Joanna S.)

Matter Heard;
Journal Entry Details:
*Mr. Works indicated their is a pending motion to compel documents and perhaps an additional deposition scheduled for mid-November and announced ready and anticipated 2-3 days for Trial. Mr. Schnitzer concurred with Mr. Works' representations and anticipates summary judgment motion practice in early November from each defendant. Mr. Works indicated he was unsure what the dispositive motion from the other defendant would be as they have agreed to dismiss them. The Court stated it would wait to receive the parties' briefing.;*

11/14/2018 **Motion to Compel** (10:00 AM) (Judicial Officer: Bulla, Bonnie)

*Plaintiff's Motion (1) Compelling The Song Defendants Responses to Written Discovery Requests, (2) Overruling Defendants Objection to Subpoena; and (3) Requesting Additional Time for The Deposition of James Song*
Granted in Part; Plaintiff's Motion (1) Compelling The Song Defendants Responses to Written Discovery Requests, (2) Overruling Defendants Objection to Subpoena; and (3) Requesting Additional Time for The Deposition of James Song
Journal Entry Details:
*Commissioner is concerned about the Bankruptcy issue. Mr. Works is only involved in this case because he is Bankruptcy counsel, and that case was closed. Entities cannot be Discharged under Chapter 7. This Motion relates to Mr. and Mrs. Song, and they are not protected in any way by an automatic stay or Discharge. Colloquy re: discovery. Colloquy re: RTP 1 to 6 is somewhat overly broad; RTP 7 to 9 is MOOT; for RTP 10 to 11, Commissioner requested a basis for why information is relevant. Argument by Mr. Works; counsel Subpoenaed Wells Fargo. Mr. Schnitzer doesn't know the bank accounts, but he believed individual bank accounts are with Wells Fargo. Colloquy re: timeline of records from Wells Fargo. The Subpoena will go forward and see what you get before pursuing written requests. Mr. Works preferred a COR Affidavit; based on communication with Wells Fargo, they may be ready to produce the records with a Court Order. Mr. Schnitzer stated the financial documents are not relevant; argument by counsel. Tracing of funds to the extent it is relevant to any claims, COMMISSIONER RECOMMENDED, motion is GRANTED IN PART and DENIED IN PART WITHOUT PREJUDICE; produce documents from January 1, 2015 to the present for Mr. Song, Mrs. Song, and Longevity Network LLC; Wells Fargo is REQUIRED to comply with the Subpoena; information placed under a Protective Order pursuant to Rule 26(c) within the confines of litigation until otherwise ordered by the District Court Judge; maintain documents as ATTORNEYS EYES ONLY until it is determined that information Is Not Relevant, then destroy documents or return them to Defense counsel. Prepare a separate Protective Order to be signed by the District Court Judge (in advance of the Subpoena). Upon Mr. Schnitzer's request, COMMISSIONER RECOMMENDED, 2.34(e) relief provided, and there is no compliance with the Subpoena until three business days after Report and Recommendation is signed by the Judge; Request for Production 1 to 11 are DENIED WITHOUT PREJUDICE; Motion is GRANTED to re-depose Mr. Song limited to 2 1/2 hours (112 pages of texts recently produced by Deft); discovery cutoff EXTENDED to 12-14-18 to re-depose Mr. Song; discovery extended for Wells Fargo to comply with the Subpoena once the District Court Judge deems it appropriate. However, there is no end date on compliance with the Subpoena. Contact Commissioner by conference call if necessary. Trial date is 1-7-19. Mr. Works requested fees and costs. COMMISSIONER RECOMMENDED, Request is DENIED WITHOUT PREJUDICE. Mr. Works to prepare the Report and Recommendations, and Mr. Schnitzer to approve as to form and content. A proper report must be timely submitted within 10 days of the hearing. Otherwise, counsel will pay a contribution.;*

| | |
|---|---|
| 12/04/2018 | **Pre Trial Conference** (9:30 AM) (Judicial Officer: Kishner, Joanna S.)<br>Trial Date Set; |
| 12/04/2018 | **Motion for Summary Judgment** (9:30 AM) (Judicial Officer: Kishner, Joanna S.)<br>*Defendant James and Adrienne Song's Motion for Summary Judgment*<br>Motion Denied; |
| 12/04/2018 | **Opposition and Countermotion** (9:30 AM) (Judicial Officer: Kishner, Joanna S.)<br>*Opposition to Defendant James Song and Adrienne Song's Motion for Summary Judgment and Countermotion for Partial Summary Judgment*<br>Motion Denied; |
| 12/04/2018 | **All Pending Motions** (9:30 AM) (Judicial Officer: Kishner, Joanna S.)<br>Matter Heard;<br>Journal Entry Details:<br>*DEFENDANT JAMES AND ADRIENNE SONG'S MOTION FOR SUMMARY JUDGMENT...OPPOSITION TO DEFENDANT JAMES SONG AND ADRIENNE SONG'S MOTION FOR SUMMARY JUDGMENT AND COUNTERMOTION FOR PARTIAL SUMMARY JUDGMENT Following arguments by both Mr. Schnitzer and Mr. Works, COURT FINDS material issues of fact remain and ORDERED Defendant James and Adrienne Song's Motion for Summary Judgment DENIED. COURT FURTHER ORDERED, Plaintiff's Countermotion for Partial Summary Judgment DENIED both procedurally as there were no supporting Memorandum of Points and Authorities and substantially due to the lack of clarity in the deal agreement. PRE TRIAL CONFERENCE At the request of counsel COURT ORDERED, matter ADVANCED from December 6, 2018. Counsel anticipate 2 days for trial. Colloquy regarding trial setting. COURT ORDERED Trial Dates SET. 1/29/19 9:00 AM CALENDAR CALL 2/6/19 10:00 AM BENCH TRIAL;* |
| 12/18/2018 | *CANCELED* **Calendar Call** (9:00 AM) (Judicial Officer: Kishner, Joanna S.)<br>*Vacated - per Judge* |
| 01/07/2019 | *CANCELED* **Bench Trial** (9:00 AM) (Judicial Officer: Kishner, Joanna S.)<br>*Vacated - per Judge* |
| 01/10/2019 | *CANCELED* **Status Check: Compliance** (3:00 AM) (Judicial Officer: Truman, Erin)<br>*Vacated - per Commissioner* |
| 01/10/2019 | **Objection to Discovery Commissioner's Report** (9:30 AM) (Judicial Officer: Kishner, Joanna S.)<br>Affirmed and Adopted;<br>Journal Entry Details:<br>*Following arguments by Mr. Schnitzer and Mr. Works, COURT ORDERED, Discovery Commissioner's Report and Recommendations AFFIRMED on the underlying merits and on substance. Mr. Works to prepare the Order, circulating to opposing counsel and provide it back to the Court in accordance with EDCR 7.21. Mr. Works indicated his concern that any delay in obtaining the third party records may affect the current trial date. The Court DIRECTED counsel to contact the Court to set up a telephone conference with all counsel, if necessary.;* |
| 01/24/2019 | **Telephonic Conference** (1:30 PM) (Judicial Officer: Kishner, Joanna S.)<br>Matter Heard;<br>Journal Entry Details:<br>*The Court stated there were issues regarding the Confidentiality and Attorneys Eyes Only Stipulation and Order submitted and inquired whether the current trial setting was going to meet the parties needs in light of the issues of obtaining the third party documents and a possible subsequent deposition. Mr. Works indicated he did not think there would be a need for a subsequent deposition, that the only thing outstanding was obtaining the subpoenaed records once the Confidentiality Stipulation and Order was entered on the docket; that depending on when he received the documents, he would not like to see the trial continued too far out. Mr. Schnitzer concurred and announced ready for trial. Addressing the proposed Confidentiality Stipulation, the Court stated it was unable to sign the Confidentiality Order as presented. The Court stated the challenges with the Confidentiality Order was it was not on pleading paper,* |

*did not cite the Supreme Court Part 7, Rule 3, and the linguistics as to the storage provision that the Discovery Commissioner or District Court could rule, but did not include any applicable appellate authority. Colloquy regarding the changes to be made and the parties agreed that Mr. Works would submit a revised Stipulation and Order; that pursuant to EDCR 7.50, Mr. Schnitzer agreed that his original signature on page 4 will be incorporated with the resubmitted revised Confidentiality Stipulation containing Mr. Schnitzer's electronic signature to be compliant regarding original signatures. The Court then addressed the Court's availability to confirm the dates set for the trial. Counsel would prefer to retain the current trial date and requested the Calendar Call be continued from January 29 to January 31, 2019 and hold a status check on January 29, 2019. At the request of counsel, COURT ORDERED Calendar Call RESET and matter SET for a further Status Check regarding Third Party Document Production. The parties' Joint Pretrial Memorandum is DUE by 4:00 p.m. January 30, 2019. 1/29/19 9:00 AM STATUS CHECK: THIRD PARTY RECORDS PRODUCTION 1/31/19 9:00 AM CALENDAR CALL ;*

01/29/2019 **Status Check** (9:00 AM) (Judicial Officer: Kishner, Joanna S.)

*Status Check: Third Party Records Production*
Matter Continued;
Journal Entry Details:
*Upon the Court's inquiry if the third party records had been produced and if the Trial scheduled for February 6, 2019 would proceed, Mr. Works indicated he did not expect the documents would be produced prior to next Thursday or Friday, February 7th or 8th. Colloquy regarding trial setting. At the parties request and the Court finding good cause existed, COURT ORDERED, Trial Dates VACATED and RESET as #2 Trial Setting to February 13 and 15, 2019; Calendar Call RESET to February 11, 2019; and Telephonic Conference SET for February 7, 2019. The Court stated it would issue a Memorandum from Chambers on February 5, 2019 following the Calendar Calls to advise the parties if their case can proceed on February 13, 2019. 2/7/19 4:00 PM TELEPHONIC STATUS CHECK: THIRD PARTY RECORDS PRODUCTION/POSSIBLE TRIAL RESETTING 2/11/19 9:00 AM CALENDAR CALL 2/13/19 9:00 AM BENCH TRIAL;*

02/07/2019 **Telephonic Conference** (4:00 PM) (Judicial Officer: Kishner, Joanna S.)

*Telephonic Status Check: Third Party Records Production/Possible Trial Resetting*
Matter Heard;
Journal Entry Details:
*Mr. Works advised that he should have the Wells Fargo Bank records no later than 5:00 p.m. tonight pursuant to an email confirmation from Wells Fargo that he would receive them February 7, 2019. Mr. Works indicated he will be following up first thing in the morning if he does not receive them today. Colloquy regarding trial schedule. Pursuant to the agreement of the parties, COURT ORDERED Trial Dates RESET. Colloquy regarding possibly resolving proposed exhibits and counsel's objections prior to the commencement of trial. Court determined it would need to hear testimony from Mr. Song in order to rule and the exhibits will be addressed in the ordinary course of the trial. 2/13/19 8:15 AM BENCH TRIAL 2/19/19 10:15 AM BENCH TRIAL;*

02/11/2019 **Calendar Call** (9:00 AM) (Judicial Officer: Kishner, Joanna S.)

Matter Heard;
Journal Entry Details:
*The Court confirmed receipt of the parties' Joint Pretrial Memorandum. Counsel announced ready for trial. Two sets of proposed joint exhibits and original deposition transcripts were provided to the Clerk. Counsel agree that those identified as Stipulated are stipulated admitted for all purposes. Mr. Works confirmed he received the Wells Fargo records late Friday night consisting of approximately 1,295 pages (proposed Exhibit 15); that he would be providing defense with an electronic copy of the records and will be delivering to the Court later today hard copies. Colloquy regarding the parties' Stipulation regarding confidentiality agreement (for attorneys' eyes only) as to the Wells Fargo bank records. Mr. Works indicated he would need to review the bank records with his client in preparation for trial. By stipulation of the parties, Mr. Works will submit a new order to include that Mr. Pensivy agrees to be bound by the parties' confidentiality agreement.;*

02/13/2019 **Bench Trial - FIRM** (8:15 AM) (Judicial Officer: Kishner, Joanna S.)
**02/13/2019, 02/19/2019-02/21/2019**

Trial Continues;
Trial Continues;
Trial Continues;
Continued for Chambers Decision;
Trial Continues;
Trial Continues;
Trial Continues;
Continued for Chambers Decision;
Trial Continues;
Trial Continues;
Trial Continues;
Continued for Chambers Decision;
Trial Continues;
Trial Continues;
Trial Continues;
Continued for Chambers Decision;
Journal Entry Details:
*EXCLUSIONARY RULE INVOKED. Colloquy regarding Rule 7.27 briefs. Upon Court's inquiry, traditional trial order; parties do not wish to take their adverse witnesses on direct until their respective case-in-chief. Court notes evidentiary objection on the videos is deferred until Defense's case-in-chief. Excerpts of exhibit 15 have been pulled by Plaintiff on what portions Plaintiff is seeking to admit. Court finds WF000001 - WF 002067 has been redacted to relevant portions. Colloquy regarding Supreme Court Rule 3 motion. First Amended Stipulated Confidentiality Agreement and Protective Order SIGNED & FILED IN OPEN COURT and is effective Nunc Pro Tunc to February 11, 2019. Argument by counsel on exhibit 15 regarding production of documents not within the scope of the subpoena. Offer of proof by Mr. Works. Further argument. Court Finds credit card information not an issue at this time. Further, Court is going to Reserve Ruling until proper foundation has been laid as to its admission. Court provided original subpoenas to review. Court Finds ruling on request to have exhibit 15 sealed in its entirety is DEFERRED. Plaintiff Waived opening statement. Opening Statement by Defense. Testimony and exhibits presented. (See worksheets) Depositions PUBLISHED & FILED IN OPEN COURT. Further testimony and exhibits presented. (See worksheets) Pending Matters submitted. COURT FINDS Defendants' Motion to Strike Complaint is DENIED. FURTHER FINDS in the Alternative Defendants' Motion for Mistrial to Allow Counsel to Brief the Matter and for Evidentiary Hearing is DENIED. Court Finds it is not necessary to do an evidentiary hearing seeing that Court's exhibit 1, the October, 26, 2016 letter was not produced, however there is a certified receipt of mailing signed by the UPS Store that received it; there was testimony on the stand that Defense maintained a mailbox at that UPS Store. This Court can take Judicial Notice that it was mailed with certified return receipt requested signifying it would have been delivered to the UPS Store at that location. Further, whether or not the letter was placed in the box or picked up by Defense is unknown, yet the letter arrived at that location. Court Finds the letter is specifically referenced in Plaintiff's operative complaint to put opposing party on notice of the claim; and, there could have been some discovery requests related to that issue had Defense chosen to do so. Court notes the operative complaint is not specifically seeking a remedy as for that $100,000.00. Court Finds no prejudice and ORDERS, Motion and Alternative Motion DENIED. Colloquy regarding scheduling. TRIAL CONTINUED. Evening recess taken. CONTINUED TO: 02/19/19 10:30 A.M.;*

05/14/2019 **Motion to Retax** (10:00 AM) (Judicial Officer: Kishner, Joanna S.)
*Defendant James Song and Adrienne Song's Motion to Retax*

05/30/2019 **Motion to Amend** (9:00 AM) (Judicial Officer: Kishner, Joanna S.)
*Defendant James Song and Adrienne Song's Motion for Amendment to Findings of Fact and Conclusions of Law*

05/30/2019 **Motion for Attorney Fees** (10:00 AM) (Judicial Officer: Kishner, Joanna S.)
*Motion for Attorney Fees*

06/04/2019 **Motion to Amend Judgment** (9:00 AM) (Judicial Officer: Kishner, Joanna S.)
*Motion to Amend Judgment*

| DATE | FINANCIAL INFORMATION |
|---|---|

| | |
|---|---|
| **Defendant** International Sports Center LLC | |
| Total Charges | 223.00 |
| Total Payments and Credits | 223.00 |
| **Balance Due as of 5/1/2019** | **0.00** |
| | |
| **Defendant** Song, James | |
| Total Charges | 730.00 |
| Total Payments and Credits | 730.00 |
| **Balance Due as of 5/1/2019** | **0.00** |
| | |
| **Plaintiff** Pensivy, Scott | |
| Total Charges | 470.00 |
| Total Payments and Credits | 470.00 |
| **Balance Due as of 5/1/2019** | **0.00** |
| | |
| **Defendant** Song, James | |
| Appeal Bond Balance as of 5/1/2019 | **500.00** |

A-17-749167-C

# DISTRICT COURT CIVIL COVER SHEET

XXXI

_____ County, Nevada

Case No _____
*(Assigned by Clerk's Office)*

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

| Plaintiff(s) (name/address/phone): | Defendant(s) (name/address/phone): |
|---|---|
| Scott Pensivy | Longevity Worldwide, LLC, et al. |
| | |
| | |
| | |
| Attorney (name/address/phone): | Attorney (name/address/phone): |
| Peter S. Christiansen, Esq. | |
| 810 S. Casino Center Blvd., Suite 104 | |
| Las Vegas, NV 89101 | |
| (702) 240-7979 | |

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

### Civil Case Filing Types

**Real Property**

**Landlord/Tenant**
- ☐ Unlawful Detainer
- ☐ Other Landlord/Tenant

**Title to Property**
- ☐ Judicial Foreclosure
- ☐ Other Title to Property

**Other Real Property**
- ☐ Condemnation/Eminent Domain
- ☐ Other Real Property

**Torts**

**Negligence**
- ☐ Auto
- ☐ Premises Liability
- ☐ Other Negligence

**Malpractice**
- ☐ Medical/Dental
- ☐ Legal
- ☐ Accounting
- ☐ Other Malpractice

**Other Torts**
- ☐ Product Liability
- ☐ Intentional Misconduct
- ☐ Employment Tort
- ☐ Insurance Tort
- ☐ Other Tort

**Probate**

**Probate** *(select case type and estate value)*
- ☐ Summary Administration
- ☐ General Administration
- ☐ Special Administration
- ☐ Set Aside
- ☐ Trust/Conservatorship
- ☐ Other Probate

**Estate Value**
- ☐ Over $200,000
- ☐ Between $100,000 and $200,000
- ☐ Under $100,000 or Unknown
- ☐ Under $2,500

**Construction Defect & Contract**

**Construction Defect**
- ☐ Chapter 40
- ☐ Other Construction Defect

**Contract Case**
- ☐ Uniform Commercial Code
- ☐ Building and Construction
- ☐ Insurance Carrier
- ☐ Commercial Instrument
- ☒ Collection of Accounts
- ☐ Employment Contract
- ☐ Other Contract

**Judicial Review/Appeal**

**Judicial Review**
- ☐ Foreclosure Mediation Case
- ☐ Petition to Seal Records
- ☐ Mental Competency

**Nevada State Agency Appeal**
- ☐ Department of Motor Vehicle
- ☐ Worker's Compensation
- ☐ Other Nevada State Agency

**Appeal Other**
- ☐ Appeal from Lower Court
- ☐ Other Judicial Review/Appeal

**Civil Writ**

**Civil Writ**
- ☐ Writ of Habeas Corpus
- ☐ Writ of Mandamus
- ☐ Writ of Quo Warrant
- ☐ Writ of Prohibition
- ☐ Other Civil Writ

**Other Civil Filing**

**Other Civil Filing**
- ☐ Compromise of Minor's Claim
- ☐ Foreign Judgment
- ☐ Other Civil Matters

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

01/06/2017
Date

Signature of initiating party or representative

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

Electronically Filed
3/29/2019 6:09 PM
Steven D. Grierson
CLERK OF THE COURT

FFCL

**DISTRICT COURT**

**CLARK COUNTY, NEVADA**

SCOTT PENSIVY, Individually,

Plaintiff,

v.

LONGEVITY WORLDWIDE, LLC, a Nevada Limited Liability Company; JAMES SONG, Individually; ADRIENNE SONG, Individually; LONGEVITY NETWORK, LTD, a Nevada Limited Liability Company; INTERNATIONAL SPORTS CENTER, LLC, a Nevada Limited Liability Company, d/b/a LONGEVITY SPORTS CENTER; DOE PERONS, I through X, inclusive; and ROE CORPORATIONS, XI through XX, inclusive,

Defendants.

CASE NO.: A-17-749167-C
DEPT. NO.: XXXI

**FINDINGS OF FACT AND CONCLUSIONS OF LAW AND JUDGMENT**

The above-referenced matter came on for a Bench Trial before the Honorable Judge Joanna S. Kishner, in Department XXXI, on February 13, 19, 20, and 21, 2019. Having reviewed the record, the witnesses' testimony, the documentary evidence, stipulations of counsel, the papers submitted by the parties and considered counsels' argument at trial in this matter, the Court now renders the following Findings of Fact and Conclusions of Law and Judgment[1]:

[1] The parties also requested and filed supplemental proposed findings.

JOANNA S. KISHNER
DISTRICT JUDGE
DEPARTMENT XXXI
LAS VEGAS, NEVADA 89155

## I. PROCEDURAL HISTORY

1. On January 6, 2017, the Plaintiff, Scott Pensivy (" Plaintiff" or " Mr. Pensivy"), filed a Complaint against several defendants including Defendants Longevity Worldwide LLC, ("Longevity Worldwide"), James Song ("Mr. Song") and Adrienne Song ("Ms. Song" collectively "Song Defendants").

2. Plaintiff amended his Complaint on August 29, 2018, and added a claim for intentional misrepresentation and/or fraud against Mr. Song. The *Second Amended Complaint* alleges counts of: (1) breach of contract against Defendants Mr. Song, Mrs. Song, and Longevity Worldwide; (2) breach of the implied covenant of good faith and fair dealing against Defendants Mr. Song, Mrs. Song, and Longevity Worldwide; (3) alter-ego against Defendants Mr. Song, Mrs. Song, Longevity Network, International Sports Center, and LV Sports & Land Development; (4) conversion against Defendants Mr. Song, Mrs. Song, and Longevity Worldwide; (5) negligent misrepresentation and/or concealment against Defendants Mr. Song, Mrs. Song, and Longevity Worldwide; (6) unjust enrichment (plead in the alternative) against Defendants Mr. Song, Mrs. Song, and Longevity Worldwide; (7) declaratory relief against all Defendants; (8) accounting against all Defendants; (9) constructive trust against all Defendants; and (10) intentional misrepresentation and/or fraud against Defendant Mr. Song.

3. The Second Amended Complaint included allegations against, International Sports Center, LLC, DBA Longevity Sports Center which were later voluntarily dismissed with prejudice prior to trial, including the entirety of the

JOANNA S. KISHNER
DISTRICT JUDGE
DEPARTMENT XXXI
LAS VEGAS, NEVADA 89155

constructive trust claim. On February 21, 2019, Plaintiff waived the Declaratory Relief cause of action.

4. On February 21, 2019, the Court denied Defendants' oral Rule 52 Motion without prejudice setting forth its oral detailed analysis on the Record.

## II. FINDINGS OF FACT

1. This case arises out of the "Deal Agreement" fully executed on February 13, 2015, and entered into by and between Mr. Pensivy in his individual capacity, and by Mr. and Mrs. Song as CEO and President respectively of Longevity Worldwide. **Exhibit 1**. The evidence presented demonstrated that the intention of the Deal Agreement was for the Plaintiff, Mr. Pensivy's, $100,000.00 investment to be in exchange for a 5 percent (5%) ownership interest in Longevity Worldwide. The $100,000.00 was to be used as start-up capital and for the growth of Longevity Worldwide to manufacture, distribute, and sell a portable toothbrush sanitizer. Longevity Worldwide was exchanging 1 percent (1%) membership units for $20,000.00 each as part of its initial capital fundraiser as set forth in the exhibits and supported by testimony. **Exhibit 1**.

2. The Deal Agreement states, "In exchange for a cash contribution to the capital and growth of Longevity Worldwide of $100,000 (One-hundred thousand dollars), Jim & Adi do transfer a 5% ownership interest to Scott." **Exhibit 1**.

3. Plaintiff met his burden of establishing that neither of the Song Defendants told Mr. Pensivy that they were transferring their own personal ownership interests in Longevity Worldwide to Plaintiff. The facts demonstrated by clear and convincing evidence that the funds provided were for an investment in the company as a matter of law in light of the circumstances at the time they executed the Deal Agreement as supported by the Deal Agreement.

JOANNA S. KISHNER
DISTRICT JUDGE
DEPARTMENT XXXI
LAS VEGAS, NEVADA 89155

4. The Deal Agreement also states that "...Scott has reviewed the Executive Summary for Longevity Worldwide attached to [t]his Agreement[2]." *Id.* The Deal Agreement along with the Executive Summary forms the basis of the understanding among the parties as was conceded by all parties.

5. Mr. Song drafted the Deal Agreement and the Executive Summary. Mr. Song and Mrs. Song executed the Deal Agreement in their capacities as CEO and President of Longevity Worldwide, respectively, and not in their individual capacities as set forth on the face of the Agreement. The evidence demonstrates that the Song Defendants were not signing in their individual capacities; therefore, there could be no sale of personal property interests in the Deal Agreement. Instead, Mr. and Mrs. Song, as CEO and President of Longevity Worldwide, were authorizing the exchange of 5 percent (5%) of Longevity Worldwide in exchange for $100,000.00 in capital for the growth of the business.

6. Nowhere in the Deal Agreement or the Executive Summary (or any other writing in evidence) is there a reference to the sale of personal property, individual membership units or interests, equity, stock, or any other colloquial term for an individual's ownership interest in a company.

7. The evidence demonstrates that the Deal Agreement was intended to raise capital for, and start-up the growth of, Longevity Worldwide; therefore, even if the Song Defendants were asserting that they selling their personal ownership interests in Longevity Worldwide (which the evidence did not establish), Mr. Pensivy reasonably understood that the $100,000.00 cash contribution would be used for the clearly stated purpose in the Deal Agreement

[2] Agreement is defined as "This Deal Agreement" in the document itself, so there can be no question that the Executive Summary was attached, and reviewed by Scott Pensivy on or prior to February 13, 2015, as set forth in the preamble by the Song Defendants.

– "cash contribution to the capital and growth of Longevity Worldwide." **Exhibit 1**. There was no written evidence presented that the Song Defendants communicated a different understanding to Plaintiff, and the subsequent communications between the parties would be inconsistent with an interpretation that Plaintiff's funds were to purchase the Song's purported personal interests.

8. As was stated in the Executive Summary, Longevity Worldwide's business model was to manufacture, distribute and/or sell - *The Germ Terminator Travel Steam Toothbrush Sanitizer* ("GT2000"). **Exhibit 3**. The Executive Summary is a prospectus that was given to investors for purposes of soliciting investments into a start-up company. Nowhere in the Executive Summary does it say that the Song Defendants were selling their personal membership units in Longevity Worldwide.

9. The Executive Summary further states, "To assist in funding its manufacturing and distribution global launch, LONGEVITY WORLDWIDE LLC is raising a capital war chest of $600,000 for a 30% share interest in the company. Interest will be authorized in $20,000 interests slices.[3] A $20,000 investment equals a 1.0% share. Profits will be distributed after year two based on ownership percentage." *Id.*

10. The Executive Summary, beneath the words "FINANCIAL OPPORTUNITY", uses the words "investors", "investment", and "investment" (*Id.* at 03-004) and specifically states that "i.e. a 5% Members Ownership Interest would be a $100,000 investment", which is consistent with the amount that Mr. Pensivy invested. The language of the Executive Summary created and

[3] This sentence is consistent with the language in the Deal Agreement where "Jim & Adi" authorize the transfer of 5% ownership in Longevity Worldwide from the treasury to Mr. Pensivy.

prepared by Mr. Song was consistent with Plaintiff Pensivy's testimony and provided further evidence that the funds were an investment into capital.

11. Consistent with the Deal Agreement provided to Plaintiff, a similar Deal Agreement and Executive Summary was given to Sean and Heidi Freitas (the "Freitas"), who also provided a capital contribution, or investment to Longevity Worldwide, in the amount of $20,000.00 cash which was given to Mrs. Song on or about April 8, 2015, at her home in Henderson, Nevada.

12. As both Mr. and Mrs. Freitas testified, they relied on the Deal Agreement and Executive Summary and, similar to Mr. Pensivy, believed that their "investment" would be used to capitalize and grow Longevity Worldwide. The Freitas family did not believe that they were giving $20,000.00 in cash to the Song Defendants for their personal ownership interests in Longevity Worldwide. This is consistent with the testimony of Mr. Pensivy and the admissible evidence in this matter.

13. Based on the testimony of three of the witnesses, the Executive Summary was given to Mr. Pensivy and the Freitas as a prospectus, or pitch-piece, inducing them to invest in Longevity Worldwide.

14. According to Mr. Pensivy, he believed that his capital investment would be used for the purchase of products, the hiring of employees and distribution agents, and other start-up costs of Longevity Worldwide, so that it would succeed in manufacturing, distributing and selling the GT2000.

15. Mr. Pensivy and the Freitas family credibly testified that they were never told that they were giving the Song Defendants money in exchange for their membership units. Moreover, they were never told that the investment money would be used for the Song Defendants' own personal use such as flying their son to Europe for tennis or to purchase personal clothing. This is consistent with the concept of a start-up company, the Deal Agreement and the Executive

Summary, which all contemplate the start-up of a new company that will require capital to operate.

16. Indeed, the emails and text messages introduced and admitted to evidence support the testimony. Mr. Song's testimony wherein he asserted that the $100,000.00 he received from Plaintiff, who was his friend, was to be used for his family's own personal use rather than for the development of the very company whose name was on the deal agreement, was not consistent with the documentary evidence. It also was not credible as his responses were inconsistent. Further, there was no documentation to support his testimony. Nowhere did he memorialize that he was selling his own personal membership interests in Longevity Worldwide. In light of the totality of the Mr. Song's testimony, his actions and the documentary evidence before the Court, as set forth further herein, the Court as the trier of fact finds that Mr. Song's conduct toward Plaintiff constitutes fraudulent.

a. **First**, and as a matter of law, Mr. Song could not have been selling his personal membership interests in Longevity Worldwide because it was not organized under Nevada law as of February 13, 2015, when the Deal Agreement was fully executed. This is undisputed as Longevity Worldwide was not organized under Nevada law until March 11, 2015, nearly a month after the Deal Agreement was fully executed. **Exhibit 7.** Because membership units did not exist on February 13, 2015, the Song Defendants could not have been selling their personal property interests as a matter of law.

b. **Second**, the Song Defendants never produced any evidence that they owned the membership interests of Longevity Worldwide. The Song Defendants failed and refused to produce any documents evidencing the original membership roster or ledger of Longevity Worldwide. The Song Defendants produced no membership certificates, membership roster or ledger, let alone any

evidence of a purported transfer of the ownership interests to Mr. Pensivy. The Song Defendants failed to produce a bill of sale evidencing the purported sale of the membership interests, any transfer or assignment documentation, or any evidence that the Song Defendants paid income taxes on the alleged $100,000.00 transaction. Indeed, Mr. Song testified that he did not pay any income taxes on the $100,000.00 which clearly demonstrates that in 2015 he believed that this was a $100,000.00 investment to the start-up company – Longevity Worldwide - and not the sale of his personal membership units to Mr. Pensivy.

c. **Third**, there was both verbal and documentary evidence that despite the repeated demand for information by Mr. Pensivy, Mr. Song never corrected the alleged "misunderstanding" or "unilateral mistake" of Mr. Pensivy that he was investing in a start-up company. Mr. Song had the opportunity to tell his friend that he "misunderstood" or was "mistaken" about the nature of the transaction on September 7, 2015, (**Exhibit 9**); January 31, 2016, (**Exhibit 10**); February 9, 2016, (**Exhibit 11 and Exhibit 14-111**); and April 26, 2016, (**Exhibit 13**).

i. Specifically, Mr. Pensivy sent an email to Mr. Song on Monday, September 7, 2015, at 10:43 a.m., inquiring about the GT2000, asking for a business outline and expense report so he could see how the profits could be divided, among other requests made in that email. Mr. Song did not respond to this email. **Exhibit 9.**

ii. On January 31, 2016, at 4:00 p.m., Mr. Pensivy also sent emails to Mr. Song to inquire about the $100,000.00 investment, its status, and the GT2000. Mr. Pensivy sought information on how the product is selling and sought a business report. He also asked for a profit and loss statement or a balance sheet. Mr. Pensivy also asked for future sales data,

strategies, expectations, and the direction of the company. Finally, Mr. Pensivy sought information regarding the 2-year option period as evidenced by the fact that he asked for information that "would help me see how the investment I made is working in the last 12 months [meaning another 12 months is 2 years] and where you see the product heading in 3 months, 6 months and [again] a year with possible profits." **Exhibit 10.** There was no evidence presented that Mr. Song responded to the emails or that he provided the requested information.

iii. Mr. Pensivy sends further inquiries, via email, to Mr. Song on Tuesday February 9, 2016, at 5:34 p.m., stating, "I would like more information on the funds of $100,000 that I put into your company approximately last Feb. 2015. Can you please let me know how you are moving forward with the investment and what has been done so far with it. I sent you an email last week [Exhibit 10] regarding the same questions and I have not received anything." **Exhibit 11.** Mr. Song did not respond to this email either.

iv. On April 13, 2016, Mr. Pensivy also reached out to Sean Freitas to inquire as to whether they have heard anything from Mr. Song on the investments, to which Sean Freitas responds, "No we haven't scott…." **Exhibit 12**. The Freitas testimony is consistent with this email.

v. An additional email was sent on Tuesday, April 26, 2016, at 5:54 p.m., by Mr. Pensivy again to Mr. Song. Again, based on what was presented to the Court, there was no response by Mr. Song. **Exhibit 13.**

vi. Plaintiff also presented evidence in the form of text messages to support his position that he was seeking information from Mr. Song regarding the status of his $100,000.00 investment, but he did not receive any response from Mr. Song. **Exhibit 14.**

vii. Mr. Pensivy testified that he was inquiring about the investment so he could make an informed decision about the options in

the Deal Agreement. Based on totality of the evidence, Plaintiff's testimony was credible and reasonably supported by the documentary evidence. Defendants did not present any evidence to rebut the contention. As a result, the Court finds that Mr. Song cannot benefit from his failure to communicate with Mr. Pensivy, or his refusal to comply with Nevada law in disclosing financial information to a member of a limited liability company. Mr. Song is barred by the doctrine of unclean hands, waiver, estoppel and laches, from contending that Mr. Pensivy failed to meet his obligation of exercising options under the Deal Agreement as he has presented no evidence to support that contention.

viii. In addition to the foregoing, given Plaintiff's detailed analysis of how quickly Plaintiff's funds were spent to pay Defendants' outstanding debts and personal expenditures, combined with the admission by Defendants that they did not raise hardly any sums, if any, for Longevity Worldwide, there was no evidence presented that Longevity Worldwide had the money to repay Mr. Pensivy. Mr. Song had already spent the funds on personal items within a matter of two months. Neither Mr. Song, nor Longevity Worldwide, was shown to have the wherewithal to repay Plaintiff's investment, so any exercise of an option under the Deal Agreement would have been futile.

ix. Finally, Mr. Pensivy brought this lawsuit in January of 2017, within the 2-year option period, to force the disclosure of financial information and put the Song Defendants on notice that he was pursuing the return of his investment capital.

x. Despite receipt of each of the above communications, and despite a pattern of communicating in writing, Mr. Song failed to respond to any of the above communications in writing. Instead, Mr. Song testified that in each of the above instances, he communicated orally to Mr. Pensivy. As the trier of fact, the Court has to evaluate credibility. In the present

case, given the breadth of email communications during the relevant time period on so many related topics, it is unusual and inconsistent with how the other evidence was presented that the Court was not provided with emails or texts regarding this issue. See, e.g. series of texts admitted by the parties throughout 2015-2016. **Exhibit 14**.

d. **Fourth**, Mr. Pensivy drafted his investment check payable to "Longevity". **Exhibit 2.** Plaintiff's testimony explained that he put on the memo line, "Longevity Worldwide" as he believed that he was investing in Longevity Worldwide LLC. There was no evidence, written or oral, to rebut his testimony. Instead, the contemporaneous designation on the check was consistent with the Deal Agreement and the Executive Summary as well as Plaintiff's testimony that his understanding was that he was investing in the Company and not purchasing the Songs personal shares. Defendants did not provide any credible response as to why they had the check made out to Longevity if it was their intention that the funds were intended to purchase their personal membership units.

e. **Fifth**, there was no evidence presented that the membership units of Longevity Worldwide had any value on or about February 13, 2015, because the company was not yet organized, it had no assets, employees, sales, contracts, credit, inventory, intellectual property rights, or any other value. In order for the Court to adopt Defendants' position that the $100,000.00 was 5 percent (5%) of the value of Longevity Worldwide, then the company that had not yet even been created would have to have been valued at two-million dollars ($2,000,000.00) on February 13, 2015.[4] Indeed, the Song Defendants failed to produce any evidence to convince the Court that the membership units had that

[4] $20,000.00 per 1% multiplied x 100% as set forth in the Executive Summary is equal to two-million dollars ($2,000,000.00).

value or any other specific value. Further, the Song Defendants testified that they did not pay cash for their membership units and they did not establish that they provided any other value for their units, so there is a failure of consideration.

f. **Sixth**, Mr. Pensivy and the Freitas family testified that had they known that the money was going to be used personally by the Song Defendants, and not as stated in the Deal Agreement and Executive Summary, they would not have made their respective investments. From a practical standpoint, there was no explanation given as to what value the membership shares would have had if Longevity Worldwide, as a new company, had no money, assets etc. The Court also finds that there was no credible evidence presented to support Defendants' position that Plaintiff knowingly gave them one-hundred-thousand dollars for them to use for their own personal expenses, but then spent the next several months of his own time, money, and efforts trying to have others invest in Longevity Worldwide and promote the product. From a practical standpoint, if there was no funding going to the product or company, there would be no money to develop, distribute, or sell the product; and thus, Plaintiff's position that his money was for investing in the company so that it could meet the goals set forth in the Executive Summary is more credible.

17. In short, Mr. Song's testimony is inconsistent with the plain language of the Deal Agreement and Executive Summary, the evidence admitted at trial, and the conduct of the parties.

18. The Executive Summary also contains additional misrepresentations of fact, omissions, and other unsupportable statements that the Song Defendants made in an attempt to induce investors to give the Song Defendants money that they never intended to use to capitalize and grow Longevity Worldwide.

19. The Court finds that since Mr. Song created the Executive Summary with the help of family members, and Mrs. Song was an executive of Longevity Worldwide, both Song Defendants would be legally responsible for the misrepresentations and omissions. The Court further finds that *inter alia* the following are either misrepresentations and/or omissions, which they knew were untrue, by which they intended to fraudulently induce investors:

a. That "the new GT Travel 2000 is within 90 days of going into manufacturing";

b. That "[o]ver 3,000,000,000 toothbrushes are sold every year worldwide";

c. That "every single toothbrush is contaminated with hundreds of thousands of germs after each use";

d. That the GT2000 "kills all the germs on toothbrushes providing a 100% germ free toothbrush everytime you brush";

e. That Mr. Song "majored in biochemistry and microbiology at the University of Wisconsin," without stating the fact that Mr. Song never graduated with a degree;

f. That Longevity Worldwide would "market and distribute the new GT Travel 2000 to every major country in the world";

g. That the expected return on investment was "Very High."

20. Based upon the above intentional misrepresentations and omissions of fact, Mr. Pensivy (and others) reasonably relied upon and entered into the Deal Agreement thinking that their money would be used to manufacture, distribute, and sell the GT2000. Based on Mr. Song's misrepresentations, Mr. Pensivy (and others) reasonably believed that Mr. Song had specific knowledge and wherewithal to capitalize and grow Longevity Worldwide.

21. In addition to the above misrepresentations and omissions, the Executive Summary is misleading by the pictures represented on Page 3 of the Executive Summary. **Exhibit 3-003**. First, the Court addresses the "Mythbusters" picture. At trial, the Song Defendants introduced a video clip, initially represented to the Court as being an episode of Mythbusters featured on the Discovery Channel that supported the GT2000. **Exhibit 68**. During the trial, it was then demonstrated that in reality, the video clip was a short edited version of a Mythbusters episode that failed to mention the GT2000[5] or the GT100 at all. The only reference to the GT2000 was an alleged picture of the GT2000 cut and pasted next to the Mythbusters clip which allegedly appeared on YouTube. Given what was presented in Court was demonstrated to not be a part of Mythbusters, the Court finds that the provision of the Executive Summary relating thereto was a misrepresentation of fact that omitted key facts from the Executive Summary to clear up the obvious misunderstanding it created.

22. Indeed, there was no evidence admitted at trial that the GT100 or the GT2000 were "Featured On" any of the following shows: "The Doctors, Fox News, CNN Headline News, ABC News, ABC 7, or the View." Indeed, Exhibit 3, at 003, of the Executive Summary stated, "The Germ Terminator was featured on **Prime Time with Diane Sawyer** and the segment was one of the most popular stories of the year for **ABC News**" (emphasis in the original). It was also initially represented to the Court that the clip that was to be shown to the Court would feature the toothbrush sanitizer product. The Court finds that after reviewing the clip and hearing the evidence relating thereto, the "Prime Time with Diane Sawyer clip" was an episode that featured how different people try to get

[5] The Mythbusters episode could not have mentioned or had any relevance to the GT2000 because it aired January 25, 2004.

their products on the Home Shopping Network. An example of a person who was trying to get his product on the Home Shopping Network was Mr. Song with the prior version of the Germ Terminator. Hence the focus of the episode was what a person goes through to try and have his or her product be placed on the Home Shopping Network, not on any particular product that ended up on the Home Shopping Network. While it was accurate that a prior version of the Germ Terminator was mentioned as one of the products which was trying to be placed on the Home Shopping Network, it was a misrepresentation to state that the *Prime Time with Diane Sawyer* segment was about the Germ Terminator. There also was no evidence presented to support the contention that it was one of the most popular stories of the year. Moreover, there was no evidence presented at trial that "The Germ Terminator and its inventor, Jim Song, have been featured also on CNN News *and on hundreds of TV news stories in the USA*." In light of the clips presented, as well as the lack of evidence to support the assertions and pictures presented in Exhibit 3, the Executive Summary, the Court finds that the statements and pictures set forth herein, on the Executive Summary, were intentionally false statements.

23. Mr. Song's testimony on cross-examination also demonstrates that there were financial assertions in the Executive Summary that were also false. Initially, Mr. Song testified that his new business model – the GT2000 travel version of the toothbrush sanitizer at $19.95 – would be better than the previous business model – the GT100 home version at $49.95-$149.95. This turned out to be untrue after listening to entirety of his trial testimony. First, based on the most optimistic projection in the Executive Summary, "3,000,000 units"[6], the

[6] A "Conservative Projection" of 250,000 units makes a gross profit of $875,000-$1,125,000 (before taking out selling expenses and taxes), which is not a better sales model as Mr. Song testified.

gross profit at "$3.5-$4.5 per unit" is a mere $10,500,000-$13,500,000 in gross profits (as compared with the figures set forth in Footnote 4 below of between $34,965,000 and $104,965,000). Moreover, "gross profit"[7] fails to take into account the selling expenses and taxes on the units. Mr. Song had previously testified that it would cost in excess of $3.5-$4.5 to sell the units, meaning that the net profit of these units was actually a negative integer.[8]

24. The Executive Summary is further misleading because it states that Mr. Song is going to sell into "every major country in the world" and then attaches a page that lists all countries in the world – presumably as of February 13, 2015. **Exhibit 03-006**. The name of the company adds to the misleading nature of the representation ("Longevity Worldwide, LLC") and when probed on this topic Mr. Song admitted that he had no contacts in any countries other than the United States and South Korea.[9] Again, there are no sales records to support that the Song Defendants sold any of these products in any country.

25. The Executive Summary makes further intentional misrepresentations of fact stating that the GT Travel 2000 "kills all the germs on toothbrushes providing a 100% germ-free toothbrush everytime you brush." **Exhibit 03-002.** This assertion, the Court finds, is untrue since Defendants conceded that the GT2000, itself, was never tested. The Executive Summary continues this misrepresentation on Page 7. There was no evidence admitted, that either the GT2000 or the GT100 "killed 100% of representative groups of bacteria, viruses, molds, and yeasts, with no germs detected after any test."

---

[7] Mr. Song's understanding of gross profit is clearly in question as he had insufficient support for making those statements and his statements were at times contradictory.

[8] This does not even take into account the taxes on the product, which make it even less profitable to make and sell at $19.95.

[9] Mr. Song failed to produce any written evidence that he has business contacts in South Korea.

**Exhibit 03-007 (emphasis in original).** Furthermore, there was no evidence admitted that any of the "GERMS TESTED": were actually tested, including but not limited to: E. Coli, Herpes Simplex Virus – Type 1, HIV, Hepatitis C Virus, or SARS.

26. In addition to the above misrepresentations and omissions, the Executive Summary also makes additional misrepresentations about the sale of the original GT100 ("the original Germ Terminator GT100 consumer home unit was launched in 2003 and has sold over 700,000 units in the United States and South Korea."). **Exhibit 03-003**. This is inconsistent with Mr. Song's statement in a September 7, 2015, text message to Mr. Pensivy that he had sold "over 500,000 units". **Exhibit 14 at 096.** Moreover, Mr. Song states that he had "cycled 18 million into the infomercial campaign" regarding the GT100. *Id.* There was no evidence produced in discovery by the Song Defendants in this case to support any of the above.[10] While the prior model was not directly at issue in the trial, Plaintiff contended that Mr. Song's representations as to the sales success of the prior product is what induced him in part to invest in Longevity Worldwide which was the company purportedly set up to make, sell, and market the portable new version.

27. Plaintiff presented Defendant Song with the investment check on February 13, 2015, at a Steiner's pub in Summerlin, Nevada. The check was written through Plaintiff's wholly-owned corporation - Scott Pensivy Physical Therapy, Inc., for $100,000.00. The check was made payable to Longevity, and the memo states, "Longevity Worldwide." **Exhibit 2**.

[10] 700,000 units at the low end "consumer price point" of $49.95 equals $34,965,000; 700,000 units at the high end consumer price point of $149.95 equals 104,965,000. If true, certainly evidence to support these outrageous sales numbers would have been produced in this litigation.

28. It was uncontested that Mr. Song did not deposit Mr. Pensivy's $100,000.00 capital contribution to an account belonging to Longevity Worldwide LLC. Indeed, there was no evidence presented that Mr. Song ever opened a bank account in the name of Longevity Worldwide, LLC.

29. Instead, Mr. Song deposited the $100,000.00 into his other company's account – Longevity Network Ltd ("Longevity Network"), a company that Mr. Pensivy was not told about, nor had any ownership interest in. Mr. Song never told Mr. Pensivy that the $100,000.00 was being deposited in an account that did not belong to Longevity Worldwide, LLC.

30. After receiving Mr. Pensivy's $100,000.00 on February 13, 2015, at lunch; that same day, Mr. Song deposited the money into an account at Wells Fargo Bank belonging to Longevity Network, LLC (yet another Longevity entity that was not disclosed to Mr. Pensivy). February 13, 2015, was a Friday before a holiday weekend)[11] and on February 17, 2015, the first day the $100,000.00 was available to the Song Defendants, Mr. Song transferred $99,830.00 from the Longevity Network, LLC account at Wells Fargo Bank. $92,000.00 of that money was transferred into a joint account belonging to the Song Defendants. Then that money was systematically transferred into other personal accounts, specifically an account held by Mrs. Song, and then the money was used to repay creditors, maintain a 6,000 square-foot vacation home in Utah, and live extravagantly. *See e.g.* **Exhibit 15**.

31. From their personal accounts, the Songs spent almost the entirety of Mr. Pensivy's $100,000.00 within less than three months. The Songs paid personal mortgages, personal credit card debt, department store credit cards, lawn-care maintenance, pest control, and other household expenses. The

[11] The following Monday, February 16, 2015, was Presidents' Day, a bank holiday.

Songs purchased airline tickets, made large unsubstantiated cash withdrawals, and went shopping with Mr. Pensivy's $100,000.00. **Exhibit 15.**

32. By April 30, 2015, less than three months after receiving Mr. Pensivy's $100,000.00 investment into Longevity Worldwide, Mr. Song and Mrs. Song had spent all but $3,986.00 of the $100,000.00. **Exhibit 15**.

33. Mr. Song and Mrs. Song did the same thing with the Freitas' family $20,000.00 investment. Shortly after delivery of the $20,000.00 in cash to Mrs. Song, a large cash deposit of $14,020.00 was made into a personal account belonging to the Songs. Although it is unclear where the additional $5,980.00 in cash went, another deposit of $6,020.00 was made shortly thereafter into a related account. Because the Songs were not earning any other income during this time, the Court can only conclude that this was the cash delivered to Mrs. Song on or about April 8, 2015. **Exhibit 15**.

34. Mr. Song misrepresented that he was raising "a capital war chest of $600,000 for a 30% share interest in the company" when, in fact, he only raised $140,000.00 through Pensivy, the Freitas family, and Darren Cahill,[12] who were also defrauded into believing they were investing into the startup and growth of Longevity Worldwide. The Song Defendants never told the investors that they were using the investment money on paying down their personal lines of credit, traveling, a Utah vacation home, or shopping. The Songs had an obligation to correct any misunderstandings, but failed to do so on numerous occasions; leading the Court to conclude that they were concealing their fraudulent financial activities from their investors.

[12] Darin Cahill was stated to be a friend of Mr. Song's and the other $20,000.00 1% owner of Longevity Worldwide (**Exhibit 05-021**); however, he was not called as a witness.

35. Mr. Song did not use any of Mr. Pensivy's $100,000.00 to capitalize Longevity Worldwide. Mr. Song distinguished Mr. Pensivy from the other investors because "he had options in his Deal Agreement" was not supported, especially with a lack of evidence that any other investor received a different deal.

36. Mr. and Mrs. Song testified that Mr. Pensivy's capital contribution was not an investment, but rather the purchase of 5 percent (5%) of the membership units in Longevity Worldwide from the Song Defendants. Based on all of the evidence presented and admitted at trial, after considering the live testimony of the witnesses and evaluating their credibility in open court, and after careful consideration of the argument made by the Song Defendants, the Court finds against the Song Defendants and finds in favor of Mr. Pensivy by clear and convincing evidence as set forth herein.

37. Based on the series of misrepresentations and omissions, the Court finds that Mr. Song committed fraud and conversion by taking Plaintiff's funds and spending it on personal items as described by the bank records and via testimony. Mr. Pensivy has proven by clear and convincing evidence that the Song Defendants are liable for intentional misrepresentation, fraud, and conversion of the $100,000.00.

38. As to the affirmative defenses presented by the Song Defendants, each of them fails[13], specifically as follows:

39. First, the Song Defendants that this action belonged derivatively to Longevity Worldwide and therefore standing is an issue. This argument fails for several reasons. Again, at the time in which the fraudulent conduct took place,

[13] The Song Defendants set forth 28 affirmative defenses in their Answer to Pensivy's Second Amended Complaint, most of which fail as irrelevant or inapplicable (*see e.g.* to this case, and others that are duplicative. *See e.g.* 19-20 (duplicate); 5/6/8 as being duplicative of 27 (waiver, estoppel and laches); 12/13/14 (all relate to declaratory relief).

Longevity Worldwide was not organized so it had no derivative claim. Second, Longevity Worldwide never had possession or control of the $100,000.00 as it never had a bank account and all of the money was stolen by the Song Defendants, and converted around Longevity Worldwide, prior to March 11, 2015, when it was organized. Third, it would be inequitable to allow the Song Defendants hide behind this specious argument considering their intentional misconduct outlined above. Fourth, and finally, although Mr. Pensivy was apparently given a five percent (5%) interest in Longevity Worldwide, it was not clear until Longevity Worldwide filed its Chapter 7 bankruptcy petition on August 24, 2017. **Exhibit 5**. This is the first time that a list of equity security holders is presented on behalf of Longevity Worldwide. The voluntary petition, schedules, and statement of financial affairs indicate that Longevity Worldwide had no creditors, no bank accounts, (whether closed or opened), no assets, no contracts,[14] and no activities leading up to the filing. Longevity Worldwide is a limited liability company and the case has been closed as of March 1, 2018, with a finding of no assets by the Chapter 7 Trustee, Lenard Schwartzer. *See In re Longevity Worldwide,* (U.S. Nev. BK Case No. 17-14617-abl); ECF No's. 10-11.

40. The Song Defendants are judicially estopped from claiming that this action belonged to Longevity Worldwide, as the Song Defendants did not list it as an asset under penalty of perjury. Even if it was an asset of the debtor, and this

[14] Although Mr. Song signed Exhibit 5 under penalties of perjury **and** 18 U.S.C. §§ 152, 1341, 1519, and 3571, Mr. Song testified for the first time at trial inconsistently with that document. At trial Mr. Song stated that Longevity Worldwide was a party to an "exclusive distribution agreement" that was between Longevity Worldwide and Mr. Song. He further testified that he alone "terminated" the "exclusive distribution agreement" – a fact also disclosed for the first time at trial, which facts are inconsistent with the schedules of assets and liabilities set forth in the Chapter 7 bankruptcy case of Longevity Worldwide, and further damage any credibility that Mr. Song had left. Mr. Song also testified that there was another bank account opened through "Kickstarter" at Chase, but he also failed to disclose this citing to the convenient and unsupportable fact that it was closed "more than 1 year before filing this case." *See* **Exhibit 05-019** at Part 10, question 18.

action should have been brought as a derivative claim this Court rejects the affirmative defense as leading to an absurd result. If this were a derivative claim, the Song Defendants' would end up with 93% of the $100,000.00 recovery as the majority owners of the limited liability company. For reasons previously articulated, all of the damages in this case belong to Mr. Pensivy. It would be inequitable to distribute the $100,000 through a sham LLC, owned 93% by owners and individuals who committed fraud and converted the money in the first place. This Court rejects this affirmative defense as producing an absurd result.

41. The other affirmative defense related to standing and/or privity is the Song Defendants claim that the action requires Scott Pensivy Physical Therapy, Inc. to be added as a party because that is the entity that suffered damages. First, that is not true because Scott Pensivy is ultimately the party that lost $100,000.00. Second, Scott Pensivy is the real party in interest and is the only party with privity pursuant to the Deal Agreement where his company is not a party. Finally, where Mr. Pensivy got his investment money is irrelevant and an issue between Mr. Pensivy and his 100 percent (100%) wholly owned corporation that has issued him a constructive distribution of that $100,000.00 by his testimony.[15] The Song Defendants apparently issued the membership interest to Scott Pensivy in his individual capacity so they cannot now claim that the real party in interest is his corporate entity.

42. A 'real party in interest' under NRCP 17(a) is one who possesses the right to enforce the claim and has a significant interest in the litigation." *Szilagyi v. Testa,* 99 Nev. 834, 838, 673 P.2d 495, 498 (1983) (finding individual

[15] Whether this was a loan, equity distribution, or some other form of investment is irrelevant. In any event, the Song Defendants refused to stipulate to adding Scott Pensivy Physical Therapy Inc. to the caption, or as an intervenor, and there is no prejudice. The Song Defendants are again making specious arguments in a desperate attempt to get away with their heist.

partner was real party in interest rather than partnership when note and escrow signed by individual even though escrow instruction were in partnership's name).[16]

43. Although moot, the Court also rejects the Song Defendants affirmative defense that Mr. Pensivy first breached the Deal Agreement and that he failed to exercise his options under the Deal Agreement.

44. The Deal provided that two (2) years after Mr. Pensivy's $100,000.00 cash contribution, Mr. Pensivy is entitled to exercise one of the following options:

a. Option 1: Maintain the five (5) percent ownership interest in Longevity Worldwide and all associated profits related to that ownership interest;

b. Option 2: Transfer the five (5) percent ownership interest in Longevity Worldwide to Mr. and Mrs. Song and Longevity Worldwide in exchange for $100,000.00 plus seven (7) percent simple interest calculated from the date of the Deal Agreement; or

c. Option 3: Transfer the five (5) percent ownership interest in Longevity Worldwide to Mr. and Mrs. Song and Longevity Worldwide in exchange for $100,000.00 plus seven (7) percent interest (calculated from the date of the Deal Agreement) in Mr. and Mrs. Song's ownership interest in the Longevity Sports Center based on an appraisal of the

[16] In any event, Mr. Pensivy and his counsel offered to add Scott Pensivy Physical Therapy, Inc. in this action and the Song Defendants refused, yet cited to no prejudice. Plaintiff, during trial, again agreed to amend the pleadings if the Defendants wished, but as Defendants would not agree and the Court denied their Rule 52 Motion, the Court does not find that Defendants have met their burden to show that Plaintiff was not the proper party. Instead, the Court finds that Plaintiff is the proper party and is the party who signed the Deal Agreement.

building and land at the two-year anniversary mark from the Deal Agreement.

45. As to the breach of contract defenses, the Song Defendants cannot now somehow shield themselves from liability by refusing to communicate the financial status of Longevity Worldwide, nor can they somehow blame Mr. Pensivy as he clearly sought the information he was entitled to under Nevada law, and to make a common-sense business decision, but was continually stalled, blocked, and denied this information during the option periods set forth above.

46. However, this is a moot point as the Song Defendants had already converted the money, committed fraud and intentional misrepresentations in order to induce the investment. Longevity Worldwide was, at all times, relevant unable to repay the money had Mr. Pensivy exercised his options in a fashion acceptable to the Song Defendants. In short, the Song Defendants used the Deal Agreement to carry out their intentional misrepresentations, fraud and conversion. The Song Defendants had spent almost all of the $100,000.00 on personal expenditures, debt repayment, mortgage delinquencies, travel, and shopping by the end of April 2015. The Song Defendants then concealed that the $100,000.00 was never used to capitalize Longevity Worldwide, and refused to respond to Mr. Pensivy's constant written inquiries regarding how the $100,000.00 investment was being used, and how Longevity Worldwide was performing. The Song Defendants had a duty to respond to the many inquiries by Mr. Pensivy, but failed and refused to do so because their only response was an obvious one – they had spent all of the money on uses unrelated to the capitalization of Longevity Worldwide. For these reasons, the Court rejects any affirmative defenses relating to the failed exercise of the sham options set forth in the Deal Agreement.

47. The Song Defendants also violated Chapter 86 of the Nevada Revised Statutes for failing to produce books and records to Mr. Pensivy as a member of the company. *See* NRS 86.241. There was no evidence of an accounting at the bankruptcy court, so this argument fails.

## III. CONCLUSIONS OF LAW

The above findings of fact are incorporated herein by this reference. To the extent that a finding of fact is a conclusion of law, or vice versa, each will be treated according to its true nature.

**Breach of Contract**

1. To prevail on a breach of contract claim, a plaintiff must establish that (1) the plaintiff and defendant entered into a valid and existing contract; (2) the plaintiff performed or was excused from performing under the contract; (3) the plaintiff breached his obligations under the contract; and (4) the plaintiff sustained damages as a result of the defendant's breach. *Calloway v. City of Reno*, 116 Nev. 250, 993 P.2d 1259 (2000), *overruled on other grounds by Olson v. Richard*, 120 Nev. 240, 89 P.3d 31 (2004); *see also Saini v. Int'l Game Tech.*, 434 F. Supp. 2d 913, 919-20 (D. Nev. 2006) (To maintain a breach of contract claim, the plaintiff must sufficiently "show (1) the existence of a valid contract, (2) a breach by the defendant, and (3) damage as a result of the breach.") (citing *Richardson v. Jones*, 1 Nev. 405, 405 (1865)).

2. Mr. Pensivy has established that: (1) Mr. Pensivy and Mr. Song entered into the Deal Agreement, a valid and existing contract; (2) Mr. Pensivy performed under the Deal Agreement by tendering a valid check for $100,000.00 to be used as a capital contribution and for the growth of Longevity Worldwide; (3) The Song Defendants breached the Deal Agreement by (a) failing to use Mr. Pensivy's capital contribution to fund and grow Longevity Worldwide and instead putting the capital contribution to the Song Defendants' own personal use; (b)

depriving Mr. Pensivy of his right to his $100,000.00 back, with interest; and (c) failing to provide Mr. Pensivy with an accounting; and (4) Mr. Pensivy has been damaged by the Song Defendants' breach because they took and spent his capital contribution on personal uses instead of the stated purpose of capitalizing and growing Longevity Worldwide.

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

3. Every contract in Nevada, including the Deal Agreement, contains an implied covenant of good faith and fair dealing. *See Consol. Generator-Nevada, Inc. v. Cummins Engine Co., Inc.*, 114 Nev. 1304, 1311, 971 P.2d 1251, 1256 (1998).

4. A claim for breach of implied covenant will arise when a plaintiff adequately alleges that the defendant "deliberately countervenes the intention and spirit of the contract..." *Morris v. Bank of Am. Nevada*, 110 Nev. 1274, 1278, 886 P.2d 454, 457 (1994); *Hilton Hotels Corp. v. Butch Lewis Productions*, 107 Nev. 226, 232, 808 P.2d 919, 922-23 (1991).

5. In order to properly assert a breach of the implied covenant of good faith and fair dealing, a plaintiff must allege that: (1) plaintiff and defendant were parties to the contract; (2) the defendant owed a duty of good faith to the plaintiff; (3) the defendant breached that duty by performing in a manner that was unfaithful to the purpose of the contract; and (4) the plaintiff's justified expectations were thus denied. *See Perry v. Jordan*, 111 Nev. 943, 947, 900 P.2d 335, 338 (1995); *Hilton Hotels Corp.*, 107 Nev. at 232, 808 P.2d at 922-23.

6. "A determination by the jury that the implied covenant was breached will give rise to an award of contract damages." *Hilton Hotels Corp. v. Butch Lewis Prods., Inc.*, 109 Nev. 1043, 1047, 862 P.2d 1207, 1209 (1993).

7. Mr. Pensivy has established that (1) Mr. Pensivy and Song Defendants entered into the Deal Agreement, which is a valid and existing

contract; (2) the Song Defendants owed Mr. Pensivy a duty of good faith in the performance of the Deal Agreement; (3) the Song Defendants breached the duty of good faith and fair dealing by using Mr. Pensivy's capital contribution for personal use rather than to capitalize and grow Longevity Worldwide, which was the intention of the Deal Agreement; and (4) Mr. Pensivy's justified expectation that his capital contribution would be used to capitalize and grow Longevity Worldwide was thus denied.

**Conversion**

8. In Nevada, conversion is "a distinct act of dominion wrongfully exerted over another's personal property in denial of, or inconsistent with his title or rights therein or in derogation, exclusion, or defiance of such title or rights." *Evans v. Dean Witter Reynolds, Inc.*, 116 Nev. 598, 606, 5 P.3d 1043, 1048 (2000) (quoting *Wantz v. Redfield*, 74 Nev. 196, 198, 326 P.2d 413, 414 (1958)).

9. An act of conversion only applies to personal property, which may include intangible assets. *M.C. Multi-Family Dev., L.L.C. v. Crestdale Associates, Ltd.*, 124 Nev. 901, 904, 193 P.3d 536, 538-39 (2008).

10. When the Song Defendants accepted Mr. Pensivy's capital contribution for Longevity Worldwide and deposited it first in an account belonging to Longevity Network, and then in personal accounts belonging to the Song Defendants, the Song Defendants committed a distinct act of dominion wrongfully exerted over Mr. Pensivy's capital contribution in denial of, or inconsistent with his title or rights therein or in derogation, exclusion, or defiance of such title or rights.

11. The $100,000.00 was to be used for capital and growth of Longevity but, instead, it was diverted to personal accounts belonging to the Song Defendants. In less than two months, the Song Defendants then depleted

nearly all of the $100,000.00 by paying off personal debts, curing delinquent mortgages, shopping, traveling and making large cash withdrawals.

12. The Court finds that the Song Defendants had the requisite intent to commit conversion of the $100,000.00 considering the timing of how the funds were spent and lack of disclosure by Mr. Song to Mr. Pensivy, and then the use of the funds by both Defendants.

13. The Song Defendants are thus liable to Mr. Pensivy in the amount of the $100,000.00 capital contribution to Longevity Worldwide plus interest at the statutory judgment rate of interest.

**Intentional Misrepresentation and Fraud**

14. Pursuant to Nev. R. Civ. P. 15(a), Mrs. Song was added to the cause of action for Intentional Misrepresentation and/or Fraud because she signed the Deal Agreement, incorporating the Executive Summary, thereby adopting the misrepresentations and omissions set forth therein. Both parties waived a written opinion or order on this subject; and, therefore, the action applies to both Song Defendants. Nevertheless, based on the evidence presented in Court, the Court only finds that Plaintiff has met his burden of proof as to Mr. Song by clear and convincing evidence as set forth below.

15. Under Nevada law, the essential elements of intentional misrepresentation and fraud are: (1) a false representation made by the defendant; (2) defendant's knowledge or belief that the representation is false (or insufficient basis for making the representation); (3) defendant's intention to induce the plaintiff to act or to refrain from acting in reliance upon the misrepresentation;(4) plaintiff's justifiable reliance upon the misrepresentation; and (5) damage to the plaintiff resulting from such reliance. *Bulbman, Inc. v. Nevada Bell*, 108 Nev. 105, 825 P.2d 588, 592 (1992) (citing *Lubbe v. Barba*, 91 Nev. 596, 540 P.2d 115, 117 (1975)).

JOANNA S. KISHNER
DISTRICT JUDGE
DEPARTMENT XXXI
LAS VEGAS, NEVADA 89155

16. A Plaintiff must prove each element of the fraud claim by clear and convincing evidence. *Bulbman*, 825 P.2d at 592.

17. If a Plaintiff proves fraud in an action for the breach of any obligation not arising from contract, the Court may award punitive damages. NRS 42.005.

18. Mr. Pensivy has proven all elements for a fraud claim by clear and convincing evidence.

19. Mr. Pensivy has established by clear and convincing evidence that Mr. Song falsely represented that: (1) Longevity Worldwide was duly organized on February 13, 2015; (2) that this was a Deal Agreement for capitalizing and growing Longevity Worldwide; (3) that the money would be used to fund the manufacturing and distribution of a traveling toothbrush sanitizer named GT2000 along with the many other misrepresentations and omissions listed above.

20. Mr. Song failed and refused to communicate with Mr. Pensivy, and did so to conceal his fraudulent misconduct. In so doing, Mr. Song omitted material facts that should have been conveyed to Mr. Pensivy, such as the status of his $100,000.00 investment. The reason Mr. Song did not respond to Mr. Pensivy's inquiries is obvious – he had no good response – the Song Defendants had already taken and spent the $100,000.00 on themselves personally.

21. Mr. Song deposited the $100,000.00 in Longevity Network's account, instead of an account belonging to Longevity Worldwide as represented, and he continually lied to Mr. Pensivy, or failed to respond, so that Mr. Pensivy would hopefully go away.

22. Mr. Pensivy has established by clear and convincing evidence that the Song Defendants knew that the representation in the Deal Agreement – that Mr. Pensivy's $100,000.00 was to be used for capital and growth for Longevity Worldwide – was false. The Song Defendants made this knowingly false

misrepresentation to Mr. Pensivy to induce him to invest $100,000.00 into the stated purpose of Longevity Worldwide - to manufacture, distribute, and sell the GT2000. Mr. Pensivy reasonably relied on these intentional misrepresentations and acted by delivering a check to his friend Mr. Song. Mr. Song then played out the intentionally fraudulent scheme by spending the money directly and indirectly by providing part of the funds to his wife so that all funds were spent within two months. Indeed, the Song Defendants failed and refused to produce a single piece of evidence that *any* of the $100,000.00 was used for Longevity Worldwide.

23. Mr. Pensivy has also proven by clear and convincing evidence that Mr. Song knew that: (1) Longevity Worldwide had not yet been organized under Nevada law, such that it had no valid membership units available for purchase; (2) Mr. Song did not intend to deposit Mr. Pensivy's capital contribution into an account belonging to Longevity Worldwide; and that (3) the multiple intentional misrepresentations in the Executive Summary were made in a global attempt to induce Mr. Pensivy to act by drafting a check to Longevity Worldwide.

24. Mr. Pensivy has proven by clear and convincing evidence that Mr. Song made each such representation in order to induce Mr. Pensivy to provide the capital contribution to Longevity Worldwide.

25. Mr. Pensivy has proven by clear and convincing evidence that in making the capital contribution to Longevity Worldwide, Mr. Pensivy justifiably relied upon Mr. Song's intentional representations that (1) Longevity Worldwide was organized such that it had valid membership units available for purchase by Mr. Pensivy; (2) Mr. Song intended to deposit Mr. Pensivy's capital contribution into an account belonging to Longevity Worldwide; and (3) once deposited in Longevity Worldwide's account, the capital contribution would be used to fund and grow Longevity Worldwide.

26. The Court finds that Mr. Pensivy has proven each of the elements of intentional misrepresentation/fraud by clear and convincing evidence and that Mr. Pensivy has suffered $100,000.00 in damages as a direct and proximate cause of the Song Defendants' fraud.

27. Mr. Song is thus liable to Mr. Pensivy in the amount of the $100,000.00 plus interest at the statutory judgment rate of interest.

**Accounting/Violation of NRS Chapter 86**

28. The Song Defendants also violated Chapter 86 of the Nevada Revised Statutes for failing to produce books and records to Mr. Pensivy as a member of the company. *See* NRS 86.241. There was no evidence of an accounting at the bankruptcy court, so this argument fails.

## ORDER AND JUDGMENT

Based upon the foregoing and other good cause appearing,

IT IS HEREBY ORDERED, ADJUDGED, and DECREED that Judgment shall enter in Mr. Pensivy's favor in the amount of $100,000.00 (one-hundred thousand dollars) and against Mr. Song and Mrs. Song on Plaintiff's First Cause of Action for Breach of Contract.

IT IS HEREBY FURTHER ORDERED, ADJUDGED, and DECREED that Judgment shall enter in Mr. Pensivy's favor in the amount of $100,000.00 (one-hundred thousand dollars) and against Mr. Song and Mrs. Song on Plaintiff's Second Cause of Action for Breach of the Implied Covenant of Good Faith and Fair Dealing.

IT IS HEREBY FURTHER ORDERED, ADJUDGED, and DECREED that Judgment shall enter in Mr. Pensivy's favor in the amount of $100,000.00 (one-

hundred thousand dollars) and against Mr. Song and Mrs. Song on Plaintiff's Fourth Cause of Action for Conversion.

IT IS HEREBY FURTHER ORDERED, ADJUDGED, and DECREED that Judgment shall enter in Mr. Pensivy's favor in the amount of $100,000.00 (one-hundred thousand dollars) and against Mr. Song and Mrs. Song on Plaintiff's Fifth Cause of Action for Negligent Misrepresentation

IT IS HEREBY FURTHER ORDERED, ADJUDGED, and DECREED that Judgment shall enter in Mr. Pensivy's favor in the amount of $100,000.00 (one-hundred thousand dollars) and against Mr. Song on Plaintiff's Tenth Cause of Action for Intentional Misrepresentation/Fraud.

IT IS HEREBY FURTHER ORDERED, ADJUDGED, and DECREED that Mr. Pensivy's claim for punitive damages is DENIED as he did not meet the evidentiary standard.

IT IS FURTHER ORDERED that Plaintiff is awarded interest pursuant to the statutory rate under Nevada law;[17]

IT IS FURTHER ORDERED THAT PLAINTIFF IS DIERECTED TO PROVIDE PROMPT NOTICE OF ENTRY OF JUDGMENT memorializing the above award.

DATED this March 29, 2019.

Joanna S Kishner

JOANNA S. KISHNER
DISTRICT COURT JUDGE

[17] As the Court has found that Plaintiff has met his burden of recovery of the entirety of his $100,000.00 investment under different theories of recovery, the Court's Order is not intended to have him obtain multiple recoveries as he did not establish that he incurred damages in excess of the $100,000.00 he provided to Defendants.

## CERTIFICATE OF SERVICE

I hereby certify that on or about the date filed, a copy of this Order was served via Electronic Service to all counsel/registered parties, pursuant to the Nevada Electronic Filing Rules, and/or served via in one or more of the following manners: fax, U.S. mail, or a copy of this Order was placed in the attorney's file located at the Regional Justice Center:

**ALL COUNSEL SERVED VIA E-SERVICE**



TRACY L. CORDOBA-WHEELER
Judicial Executive Assistant

JOANNA S. KISHNER
DISTRICT JUDGE
DEPARTMENT XXXI
LAS VEGAS, NEVADA 89155

Electronically Filed
4/1/2019 3:35 PM
Steven D. Grierson
CLERK OF THE COURT

**NJUD**
Ryan J. Works, Esq. (NSBN 9224)
Jason B. Sifers, Esq. (NSBN 14273)
McDONALD CARANO LLP
2300 West Sahara Avenue, Suite 1200
Las Vegas, Nevada 89102
Telephone: (702) 873-4100
rworks@mcdonaldcarano.com
jsifers@mcdonaldcarano.com

*Attorneys for Plaintiff*

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

| | |
|---|---|
| SCOTT PENSIVY, Individually,<br><br>Plaintiff,<br><br>v.<br><br>LONGEVITY WORLDWIDE, LLC, a Nevada Limited Liability Company; JAMES SONG, Individually; ADRIENNE SONG, Individually; LONGEVITY NETWORK, LTD, a Nevada Limited Liability Company; INTERNATIONAL SPORTS CENTER, LLC, a Nevada Limited Liability Company, d/b/a LONGEVITY SPORTS CENTER; DOE PERONS, I through X, inclusive; and ROE CORPORATIONS, XI through XX, inclusive,<br><br>Defendants. | CASE NO.: A-17-749167-C<br>DEPT. NO.: XXXI<br><br>**NOTICE OF ENTRY OF FINDINGS OF FACT AND CONCLUSIONS OF LAW AND JUDGMENT** |

NOTICE IS HEREBY GIVEN to all parties that the Findings of Fact and Conclusions of Law and Judgment was entered in the above-captioned case on the 29th day of March, 2019, a copy of which is attached hereto.

DATED this 1st day of April, 2019.

McDONALD CARANO LLP

By: */s/ Ryan J. Works*
Ryan J. Works, Esq. (NSBN 9224)
Jason B. Sifers, Esq. (NSBN 14273)
2300 West Sahara Avenue, Suite 1200
Las Vegas, Nevada 89102
rworks@mcdonaldcarano.com
jsifers@mcdonaldcarano.com
*Attorneys for Plaintiff*

McDONALD CARANO
2300 WEST SAHARA AVENUE, SUITE 1200 • LAS VEGAS, NEVADA 89102
PHONE 702.873.4100 • FAX 702.873.9966

**CERTIFICATE OF SERVICE**

In accordance with NRCP 5(b), I certify that I am an employee of the law firm of McDonald Carano LLP and on this 1st day of April, 2019, I caused a copy of the foregoing **NOTICE OF ENTRY OF FINDINGS OF FACT AND CONCLUSIONS OF LAW AND JUDGMENT** to be served upon those persons listed in the E-Service Master List of the above-referenced matter in the Eighth Judicial District Court eFiling System in accordance with the mandatory electronic service requirements of Administrative Order 14-2 and the Nevada Electronic Filing and Conversion Rules.

*/s/ Kimberly Kirn*
An Employee of McDonald Carano LLP

4810-8978-5489, v. 1

McDONALD CARANO
2300 WEST SAHARA AVENUE, SUITE 1200 • LAS VEGAS, NEVADA 89102
PHONE 702.873.4100 • FAX 702.873.9966

Electronically Filed
3/29/2019 6:09 PM
Steven D. Grierson
CLERK OF THE COURT

FFCL

**DISTRICT COURT**

**CLARK COUNTY, NEVADA**

SCOTT PENSIVY, Individually,

Plaintiff,

v.

LONGEVITY WORLDWIDE, LLC, a Nevada Limited Liability Company; JAMES SONG, Individually; ADRIENNE SONG, Individually; LONGEVITY NETWORK, LTD, a Nevada Limited Liability Company; INTERNATIONAL SPORTS CENTER, LLC, a Nevada Limited Liability Company, d/b/a LONGEVITY SPORTS CENTER; DOE PERONS, I through X, inclusive; and ROE CORPORATIONS, XI through XX, inclusive,

Defendants.

CASE NO.: A-17-749167-C
DEPT. NO.: XXXI

**FINDINGS OF FACT AND CONCLUSIONS OF LAW AND JUDGMENT**

The above-referenced matter came on for a Bench Trial before the Honorable Judge Joanna S. Kishner, in Department XXXI, on February 13, 19, 20, and 21, 2019. Having reviewed the record, the witnesses' testimony, the documentary evidence, stipulations of counsel, the papers submitted by the parties and considered counsels' argument at trial in this matter, the Court now renders the following Findings of Fact and Conclusions of Law and Judgment[1]:

[1] The parties also requested and filed supplemental proposed findings.

JOANNA S. KISHNER
DISTRICT JUDGE
DEPARTMENT XXXI
LAS VEGAS, NEVADA 89155

## I. PROCEDURAL HISTORY

1. On January 6, 2017, the Plaintiff, Scott Pensivy (" Plaintiff" or " Mr. Pensivy"), filed a Complaint against several defendants including Defendants Longevity Worldwide LLC, ("Longevity Worldwide"), James Song ("Mr. Song") and Adrienne Song ("Ms. Song" collectively "Song Defendants").

2. Plaintiff amended his Complaint on August 29, 2018, and added a claim for intentional misrepresentation and/or fraud against Mr. Song. The *Second Amended Complaint* alleges counts of: (1) breach of contract against Defendants Mr. Song, Mrs. Song, and Longevity Worldwide; (2) breach of the implied covenant of good faith and fair dealing against Defendants Mr. Song, Mrs. Song, and Longevity Worldwide; (3) alter-ego against Defendants Mr. Song, Mrs. Song, Longevity Network, International Sports Center, and LV Sports & Land Development; (4) conversion against Defendants Mr. Song, Mrs. Song, and Longevity Worldwide; (5) negligent misrepresentation and/or concealment against Defendants Mr. Song, Mrs. Song, and Longevity Worldwide; (6) unjust enrichment (plead in the alternative) against Defendants Mr. Song, Mrs. Song, and Longevity Worldwide; (7) declaratory relief against all Defendants; (8) accounting against all Defendants; (9) constructive trust against all Defendants; and (10) intentional misrepresentation and/or fraud against Defendant Mr. Song.

3. The Second Amended Complaint included allegations against, International Sports Center, LLC, DBA Longevity Sports Center which were later voluntarily dismissed with prejudice prior to trial, including the entirety of the

JOANNA S. KISHNER
DISTRICT JUDGE
DEPARTMENT XXXI
LAS VEGAS, NEVADA 89155

constructive trust claim. On February 21, 2019, Plaintiff waived the Declaratory Relief cause of action.

4. On February 21, 2019, the Court denied Defendants' oral Rule 52 Motion without prejudice setting forth its oral detailed analysis on the Record.

## II. FINDINGS OF FACT

1. This case arises out of the "Deal Agreement" fully executed on February 13, 2015, and entered into by and between Mr. Pensivy in his individual capacity, and by Mr. and Mrs. Song as CEO and President respectively of Longevity Worldwide. **Exhibit 1**. The evidence presented demonstrated that the intention of the Deal Agreement was for the Plaintiff, Mr. Pensivy's, $100,000.00 investment to be in exchange for a 5 percent (5%) ownership interest in Longevity Worldwide. The $100,000.00 was to be used as start-up capital and for the growth of Longevity Worldwide to manufacture, distribute, and sell a portable toothbrush sanitizer. Longevity Worldwide was exchanging 1 percent (1%) membership units for $20,000.00 each as part of its initial capital fundraiser as set forth in the exhibits and supported by testimony. **Exhibit 1**.

2. The Deal Agreement states, "In exchange for a cash contribution to the capital and growth of Longevity Worldwide of $100,000 (One-hundred thousand dollars), Jim & Adi do transfer a 5% ownership interest to Scott." **Exhibit 1**.

3. Plaintiff met his burden of establishing that neither of the Song Defendants told Mr. Pensivy that they were transferring their own personal ownership interests in Longevity Worldwide to Plaintiff. The facts demonstrated by clear and convincing evidence that the funds provided were for an investment in the company as a matter of law in light of the circumstances at the time they executed the Deal Agreement as supported by the Deal Agreement.

JOANNA S. KISHNER
DISTRICT JUDGE
DEPARTMENT XXXI
LAS VEGAS, NEVADA 89155

4. The Deal Agreement also states that "...Scott has reviewed the Executive Summary for Longevity Worldwide attached to [t]his Agreement[2]." *Id.* The Deal Agreement along with the Executive Summary forms the basis of the understanding among the parties as was conceded by all parties.

5. Mr. Song drafted the Deal Agreement and the Executive Summary. Mr. Song and Mrs. Song executed the Deal Agreement in their capacities as CEO and President of Longevity Worldwide, respectively, and not in their individual capacities as set forth on the face of the Agreement. The evidence demonstrates that the Song Defendants were not signing in their individual capacities; therefore, there could be no sale of personal property interests in the Deal Agreement. Instead, Mr. and Mrs. Song, as CEO and President of Longevity Worldwide, were authorizing the exchange of 5 percent (5%) of Longevity Worldwide in exchange for $100,000.00 in capital for the growth of the business.

6. Nowhere in the Deal Agreement or the Executive Summary (or any other writing in evidence) is there a reference to the sale of personal property, individual membership units or interests, equity, stock, or any other colloquial term for an individual's ownership interest in a company.

7. The evidence demonstrates that the Deal Agreement was intended to raise capital for, and start-up the growth of, Longevity Worldwide; therefore, even if the Song Defendants were asserting that they selling their personal ownership interests in Longevity Worldwide (which the evidence did not establish), Mr. Pensivy reasonably understood that the $100,000.00 cash contribution would be used for the clearly stated purpose in the Deal Agreement

[2] Agreement is defined as "This Deal Agreement" in the document itself, so there can be no question that the Executive Summary was attached, and reviewed by Scott Pensivy on or prior to February 13, 2015, as set forth in the preamble by the Song Defendants.

– "cash contribution to the capital and growth of Longevity Worldwide." **Exhibit 1**. There was no written evidence presented that the Song Defendants communicated a different understanding to Plaintiff, and the subsequent communications between the parties would be inconsistent with an interpretation that Plaintiff's funds were to purchase the Song's purported personal interests.

8. As was stated in the Executive Summary, Longevity Worldwide's business model was to manufacture, distribute and/or sell - *The Germ Terminator Travel Steam Toothbrush Sanitizer* ("GT2000"). **Exhibit 3**. The Executive Summary is a prospectus that was given to investors for purposes of soliciting investments into a start-up company. Nowhere in the Executive Summary does it say that the Song Defendants were selling their personal membership units in Longevity Worldwide.

9. The Executive Summary further states, "To assist in funding its manufacturing and distribution global launch, LONGEVITY WORLDWIDE LLC is raising a capital war chest of $600,000 for a 30% share interest in the company. Interest will be authorized in $20,000 interests slices.[3] A $20,000 investment equals a 1.0% share. Profits will be distributed after year two based on ownership percentage." *Id.*

10. The Executive Summary, beneath the words "FINANCIAL OPPORTUNITY", uses the words "investors", "investment", and "investment" (*Id.* at 03-004) and specifically states that "i.e. a 5% Members Ownership Interest would be a $100,000 investment", which is consistent with the amount that Mr. Pensivy invested. The language of the Executive Summary created and

[3] This sentence is consistent with the language in the Deal Agreement where "Jim & Adi" authorize the transfer of 5% ownership in Longevity Worldwide from the treasury to Mr. Pensivy.

prepared by Mr. Song was consistent with Plaintiff Pensivy's testimony and provided further evidence that the funds were an investment into capital.

11. Consistent with the Deal Agreement provided to Plaintiff, a similar Deal Agreement and Executive Summary was given to Sean and Heidi Freitas (the "Freitas"), who also provided a capital contribution, or investment to Longevity Worldwide, in the amount of $20,000.00 cash which was given to Mrs. Song on or about April 8, 2015, at her home in Henderson, Nevada.

12. As both Mr. and Mrs. Freitas testified, they relied on the Deal Agreement and Executive Summary and, similar to Mr. Pensivy, believed that their "investment" would be used to capitalize and grow Longevity Worldwide. The Freitas family did not believe that they were giving $20,000.00 in cash to the Song Defendants for their personal ownership interests in Longevity Worldwide. This is consistent with the testimony of Mr. Pensivy and the admissible evidence in this matter.

13. Based on the testimony of three of the witnesses, the Executive Summary was given to Mr. Pensivy and the Freitas as a prospectus, or pitch-piece, inducing them to invest in Longevity Worldwide.

14. According to Mr. Pensivy, he believed that his capital investment would be used for the purchase of products, the hiring of employees and distribution agents, and other start-up costs of Longevity Worldwide, so that it would succeed in manufacturing, distributing and selling the GT2000.

15. Mr. Pensivy and the Freitas family credibly testified that they were never told that they were giving the Song Defendants money in exchange for their membership units. Moreover, they were never told that the investment money would be used for the Song Defendants' own personal use such as flying their son to Europe for tennis or to purchase personal clothing. This is consistent with the concept of a start-up company, the Deal Agreement and the Executive

Summary, which all contemplate the start-up of a new company that will require capital to operate.

16. Indeed, the emails and text messages introduced and admitted to evidence support the testimony. Mr. Song's testimony wherein he asserted that the $100,000.00 he received from Plaintiff, who was his friend, was to be used for his family's own personal use rather than for the development of the very company whose name was on the deal agreement, was not consistent with the documentary evidence. It also was not credible as his responses were inconsistent. Further, there was no documentation to support his testimony. Nowhere did he memorialize that he was selling his own personal membership interests in Longevity Worldwide. In light of the totality of the Mr. Song's testimony, his actions and the documentary evidence before the Court, as set forth further herein, the Court as the trier of fact finds that Mr. Song's conduct toward Plaintiff constitutes fraudulent.

a. **First**, and as a matter of law, Mr. Song could not have been selling his personal membership interests in Longevity Worldwide because it was not organized under Nevada law as of February 13, 2015, when the Deal Agreement was fully executed. This is undisputed as Longevity Worldwide was not organized under Nevada law until March 11, 2015, nearly a month after the Deal Agreement was fully executed. **Exhibit 7.** Because membership units did not exist on February 13, 2015, the Song Defendants could not have been selling their personal property interests as a matter of law.

b. **Second**, the Song Defendants never produced any evidence that they owned the membership interests of Longevity Worldwide. The Song Defendants failed and refused to produce any documents evidencing the original membership roster or ledger of Longevity Worldwide. The Song Defendants produced no membership certificates, membership roster or ledger, let alone any

evidence of a purported transfer of the ownership interests to Mr. Pensivy. The Song Defendants failed to produce a bill of sale evidencing the purported sale of the membership interests, any transfer or assignment documentation, or any evidence that the Song Defendants paid income taxes on the alleged $100,000.00 transaction. Indeed, Mr. Song testified that he did not pay any income taxes on the $100,000.00 which clearly demonstrates that in 2015 he believed that this was a $100,000.00 investment to the start-up company – Longevity Worldwide - and not the sale of his personal membership units to Mr. Pensivy.

c. **Third**, there was both verbal and documentary evidence that despite the repeated demand for information by Mr. Pensivy, Mr. Song never corrected the alleged "misunderstanding" or "unilateral mistake" of Mr. Pensivy that he was investing in a start-up company. Mr. Song had the opportunity to tell his friend that he "misunderstood" or was "mistaken" about the nature of the transaction on September 7, 2015, (**Exhibit 9**); January 31, 2016, (**Exhibit 10**); February 9, 2016, (**Exhibit 11 and Exhibit 14-111**); and April 26, 2016, (**Exhibit 13**).

i. Specifically, Mr. Pensivy sent an email to Mr. Song on Monday, September 7, 2015, at 10:43 a.m., inquiring about the GT2000, asking for a business outline and expense report so he could see how the profits could be divided, among other requests made in that email. Mr. Song did not respond to this email. **Exhibit 9.**

ii. On January 31, 2016, at 4:00 p.m., Mr. Pensivy also sent emails to Mr. Song to inquire about the $100,000.00 investment, its status, and the GT2000. Mr. Pensivy sought information on how the product is selling and sought a business report. He also asked for a profit and loss statement or a balance sheet. Mr. Pensivy also asked for future sales data,

strategies, expectations, and the direction of the company. Finally, Mr. Pensivy sought information regarding the 2-year option period as evidenced by the fact that he asked for information that "would help me see how the investment I made is working in the last 12 months [meaning another 12 months is 2 years] and where you see the product heading in 3 months, 6 months and [again] a year with possible profits." **Exhibit 10.** There was no evidence presented that Mr. Song responded to the emails or that he provided the requested information.

iii. Mr. Pensivy sends further inquiries, via email, to Mr. Song on Tuesday February 9, 2016, at 5:34 p.m., stating, "I would like more information on the funds of $100,000 that I put into your company approximately last Feb. 2015. Can you please let me know how you are moving forward with the investment and what has been done so far with it. I sent you an email last week [Exhibit 10] regarding the same questions and I have not received anything." **Exhibit 11.** Mr. Song did not respond to this email either.

iv. On April 13, 2016, Mr. Pensivy also reached out to Sean Freitas to inquire as to whether they have heard anything from Mr. Song on the investments, to which Sean Freitas responds, "No we haven't scott…." **Exhibit 12**. The Freitas testimony is consistent with this email.

v. An additional email was sent on Tuesday, April 26, 2016, at 5:54 p.m., by Mr. Pensivy again to Mr. Song. Again, based on what was presented to the Court, there was no response by Mr. Song. **Exhibit 13.**

vi. Plaintiff also presented evidence in the form of text messages to support his position that he was seeking information from Mr. Song regarding the status of his $100,000.00 investment, but he did not receive any response from Mr. Song. **Exhibit 14.**

vii. Mr. Pensivy testified that he was inquiring about the investment so he could make an informed decision about the options in

the Deal Agreement. Based on totality of the evidence, Plaintiff's testimony was credible and reasonably supported by the documentary evidence. Defendants did not present any evidence to rebut the contention. As a result, the Court finds that Mr. Song cannot benefit from his failure to communicate with Mr. Pensivy, or his refusal to comply with Nevada law in disclosing financial information to a member of a limited liability company. Mr. Song is barred by the doctrine of unclean hands, waiver, estoppel and laches, from contending that Mr. Pensivy failed to meet his obligation of exercising options under the Deal Agreement as he has presented no evidence to support that contention.

viii. In addition to the foregoing, given Plaintiff's detailed analysis of how quickly Plaintiff's funds were spent to pay Defendants' outstanding debts and personal expenditures, combined with the admission by Defendants that they did not raise hardly any sums, if any, for Longevity Worldwide, there was no evidence presented that Longevity Worldwide had the money to repay Mr. Pensivy. Mr. Song had already spent the funds on personal items within a matter of two months. Neither Mr. Song, nor Longevity Worldwide, was shown to have the wherewithal to repay Plaintiff's investment, so any exercise of an option under the Deal Agreement would have been futile.

ix. Finally, Mr. Pensivy brought this lawsuit in January of 2017, within the 2-year option period, to force the disclosure of financial information and put the Song Defendants on notice that he was pursuing the return of his investment capital.

x. Despite receipt of each of the above communications, and despite a pattern of communicating in writing, Mr. Song failed to respond to any of the above communications in writing. Instead, Mr. Song testified that in each of the above instances, he communicated orally to Mr. Pensivy. As the trier of fact, the Court has to evaluate credibility. In the present

case, given the breadth of email communications during the relevant time period on so many related topics, it is unusual and inconsistent with how the other evidence was presented that the Court was not provided with emails or texts regarding this issue. See, e.g. series of texts admitted by the parties throughout 2015-2016. **Exhibit 14**.

d. **Fourth**, Mr. Pensivy drafted his investment check payable to "Longevity". **Exhibit 2.** Plaintiff's testimony explained that he put on the memo line, "Longevity Worldwide" as he believed that he was investing in Longevity Worldwide LLC. There was no evidence, written or oral, to rebut his testimony. Instead, the contemporaneous designation on the check was consistent with the Deal Agreement and the Executive Summary as well as Plaintiff's testimony that his understanding was that he was investing in the Company and not purchasing the Songs personal shares. Defendants did not provide any credible response as to why they had the check made out to Longevity if it was their intention that the funds were intended to purchase their personal membership units.

e. **Fifth**, there was no evidence presented that the membership units of Longevity Worldwide had any value on or about February 13, 2015, because the company was not yet organized, it had no assets, employees, sales, contracts, credit, inventory, intellectual property rights, or any other value. In order for the Court to adopt Defendants' position that the $100,000.00 was 5 percent (5%) of the value of Longevity Worldwide, then the company that had not yet even been created would have to have been valued at two-million dollars ($2,000,000.00) on February 13, 2015.[4] Indeed, the Song Defendants failed to produce any evidence to convince the Court that the membership units had that

[4] $20,000.00 per 1% multiplied x 100% as set forth in the Executive Summary is equal to two-million dollars ($2,000,000.00).

value or any other specific value. Further, the Song Defendants testified that they did not pay cash for their membership units and they did not establish that they provided any other value for their units, so there is a failure of consideration.

f. **Sixth**, Mr. Pensivy and the Freitas family testified that had they known that the money was going to be used personally by the Song Defendants, and not as stated in the Deal Agreement and Executive Summary, they would not have made their respective investments. From a practical standpoint, there was no explanation given as to what value the membership shares would have had if Longevity Worldwide, as a new company, had no money, assets etc. The Court also finds that there was no credible evidence presented to support Defendants' position that Plaintiff knowingly gave them one-hundred-thousand dollars for them to use for their own personal expenses, but then spent the next several months of his own time, money, and efforts trying to have others invest in Longevity Worldwide and promote the product. From a practical standpoint, if there was no funding going to the product or company, there would be no money to develop, distribute, or sell the product; and thus, Plaintiff's position that his money was for investing in the company so that it could meet the goals set forth in the Executive Summary is more credible.

17. In short, Mr. Song's testimony is inconsistent with the plain language of the Deal Agreement and Executive Summary, the evidence admitted at trial, and the conduct of the parties.

18. The Executive Summary also contains additional misrepresentations of fact, omissions, and other unsupportable statements that the Song Defendants made in an attempt to induce investors to give the Song Defendants money that they never intended to use to capitalize and grow Longevity Worldwide.

19. The Court finds that since Mr. Song created the Executive Summary with the help of family members, and Mrs. Song was an executive of Longevity Worldwide, both Song Defendants would be legally responsible for the misrepresentations and omissions. The Court further finds that *inter alia* the following are either misrepresentations and/or omissions, which they knew were untrue, by which they intended to fraudulently induce investors:

a. That "the new GT Travel 2000 is within 90 days of going into manufacturing";

b. That "[o]ver 3,000,000,000 toothbrushes are sold every year worldwide";

c. That "every single toothbrush is contaminated with hundreds of thousands of germs after each use";

d. That the GT2000 "kills all the germs on toothbrushes providing a 100% germ free toothbrush everytime you brush";

e. That Mr. Song "majored in biochemistry and microbiology at the University of Wisconsin," without stating the fact that Mr. Song never graduated with a degree;

f. That Longevity Worldwide would "market and distribute the new GT Travel 2000 to every major country in the world";

g. That the expected return on investment was "Very High."

20. Based upon the above intentional misrepresentations and omissions of fact, Mr. Pensivy (and others) reasonably relied upon and entered into the Deal Agreement thinking that their money would be used to manufacture, distribute, and sell the GT2000. Based on Mr. Song's misrepresentations, Mr. Pensivy (and others) reasonably believed that Mr. Song had specific knowledge and wherewithal to capitalize and grow Longevity Worldwide.

21. In addition to the above misrepresentations and omissions, the Executive Summary is misleading by the pictures represented on Page 3 of the Executive Summary. **Exhibit 3-003**. First, the Court addresses the "Mythbusters" picture. At trial, the Song Defendants introduced a video clip, initially represented to the Court as being an episode of Mythbusters featured on the Discovery Channel that supported the GT2000. **Exhibit 68**. During the trial, it was then demonstrated that in reality, the video clip was a short edited version of a Mythbusters episode that failed to mention the GT2000[5] or the GT100 at all. The only reference to the GT2000 was an alleged picture of the GT2000 cut and pasted next to the Mythbusters clip which allegedly appeared on YouTube. Given what was presented in Court was demonstrated to not be a part of Mythbusters, the Court finds that the provision of the Executive Summary relating thereto was a misrepresentation of fact that omitted key facts from the Executive Summary to clear up the obvious misunderstanding it created.

22. Indeed, there was no evidence admitted at trial that the GT100 or the GT2000 were "Featured On" any of the following shows: "The Doctors, Fox News, CNN Headline News, ABC News, ABC 7, or the View." Indeed, Exhibit 3, at 003, of the Executive Summary stated, "The Germ Terminator was featured on **Prime Time with Diane Sawyer** and the segment was one of the most popular stories of the year for **ABC News**" (emphasis in the original). It was also initially represented to the Court that the clip that was to be shown to the Court would feature the toothbrush sanitizer product. The Court finds that after reviewing the clip and hearing the evidence relating thereto, the "Prime Time with Diane Sawyer clip" was an episode that featured how different people try to get

[5] The Mythbusters episode could not have mentioned or had any relevance to the GT2000 because it aired January 25, 2004.

their products on the Home Shopping Network. An example of a person who was trying to get his product on the Home Shopping Network was Mr. Song with the prior version of the Germ Terminator. Hence the focus of the episode was what a person goes through to try and have his or her product be placed on the Home Shopping Network, not on any particular product that ended up on the Home Shopping Network. While it was accurate that a prior version of the Germ Terminator was mentioned as one of the products which was trying to be placed on the Home Shopping Network, it was a misrepresentation to state that the *Prime Time with Diane Sawyer* segment was about the Germ Terminator. There also was no evidence presented to support the contention that it was one of the most popular stories of the year. Moreover, there was no evidence presented at trial that "The Germ Terminator and its inventor, Jim Song, have been featured also on CNN News *and on hundreds of TV news stories in the USA*." In light of the clips presented, as well as the lack of evidence to support the assertions and pictures presented in Exhibit 3, the Executive Summary, the Court finds that the statements and pictures set forth herein, on the Executive Summary, were intentionally false statements.

23. Mr. Song's testimony on cross-examination also demonstrates that there were financial assertions in the Executive Summary that were also false. Initially, Mr. Song testified that his new business model – the GT2000 travel version of the toothbrush sanitizer at $19.95 – would be better than the previous business model – the GT100 home version at $49.95-$149.95. This turned out to be untrue after listening to entirety of his trial testimony. First, based on the most optimistic projection in the Executive Summary, "3,000,000 units"[6], the

[6] A "Conservative Projection" of 250,000 units makes a gross profit of $875,000-$1,125,000 (before taking out selling expenses and taxes), which is not a better sales model as Mr. Song testified.

gross profit at "$3.5-$4.5 per unit" is a mere $10,500,000-$13,500,000 in gross profits (as compared with the figures set forth in Footnote 4 below of between $34,965,000 and $104,965,000). Moreover, "gross profit"[7] fails to take into account the selling expenses and taxes on the units. Mr. Song had previously testified that it would cost in excess of $3.5-$4.5 to sell the units, meaning that the net profit of these units was actually a negative integer.[8]

24. The Executive Summary is further misleading because it states that Mr. Song is going to sell into "every major country in the world" and then attaches a page that lists all countries in the world – presumably as of February 13, 2015. **Exhibit 03-006**. The name of the company adds to the misleading nature of the representation ("Longevity Worldwide, LLC") and when probed on this topic Mr. Song admitted that he had no contacts in any countries other than the United States and South Korea.[9] Again, there are no sales records to support that the Song Defendants sold any of these products in any country.

25. The Executive Summary makes further intentional misrepresentations of fact stating that the GT Travel 2000 "kills all the germs on toothbrushes providing a 100% germ-free toothbrush everytime you brush." **Exhibit 03-002.** This assertion, the Court finds, is untrue since Defendants conceded that the GT2000, itself, was never tested. The Executive Summary continues this misrepresentation on Page 7. There was no evidence admitted, that either the GT2000 or the GT100 "killed 100% of representative groups of bacteria, viruses, molds, and yeasts, with no germs detected after any test."

---

[7] Mr. Song's understanding of gross profit is clearly in question as he had insufficient support for making those statements and his statements were at times contradictory.

[8] This does not even take into account the taxes on the product, which make it even less profitable to make and sell at $19.95.

[9] Mr. Song failed to produce any written evidence that he has business contacts in South Korea.

**Exhibit 03-007 (emphasis in original).** Furthermore, there was no evidence admitted that any of the "GERMS TESTED": were actually tested, including but not limited to: E. Coli, Herpes Simplex Virus – Type 1, HIV, Hepatitis C Virus, or SARS.

26. In addition to the above misrepresentations and omissions, the Executive Summary also makes additional misrepresentations about the sale of the original GT100 ("the original Germ Terminator GT100 consumer home unit was launched in 2003 and has sold over 700,000 units in the United States and South Korea."). **Exhibit 03-003**. This is inconsistent with Mr. Song's statement in a September 7, 2015, text message to Mr. Pensivy that he had sold "over 500,000 units". **Exhibit 14 at 096.** Moreover, Mr. Song states that he had "cycled 18 million into the infomercial campaign" regarding the GT100. *Id.* There was no evidence produced in discovery by the Song Defendants in this case to support any of the above.[10] While the prior model was not directly at issue in the trial, Plaintiff contended that Mr. Song's representations as to the sales success of the prior product is what induced him in part to invest in Longevity Worldwide which was the company purportedly set up to make, sell, and market the portable new version.

27. Plaintiff presented Defendant Song with the investment check on February 13, 2015, at a Steiner's pub in Summerlin, Nevada. The check was written through Plaintiff's wholly-owned corporation - Scott Pensivy Physical Therapy, Inc., for $100,000.00. The check was made payable to Longevity, and the memo states, "Longevity Worldwide." **Exhibit 2**.

[10] 700,000 units at the low end "consumer price point" of $49.95 equals $34,965,000; 700,000 units at the high end consumer price point of $149.95 equals 104,965,000. If true, certainly evidence to support these outrageous sales numbers would have been produced in this litigation.

28. It was uncontested that Mr. Song did not deposit Mr. Pensivy's $100,000.00 capital contribution to an account belonging to Longevity Worldwide LLC. Indeed, there was no evidence presented that Mr. Song ever opened a bank account in the name of Longevity Worldwide, LLC.

29. Instead, Mr. Song deposited the $100,000.00 into his other company's account – Longevity Network Ltd ("Longevity Network"), a company that Mr. Pensivy was not told about, nor had any ownership interest in. Mr. Song never told Mr. Pensivy that the $100,000.00 was being deposited in an account that did not belong to Longevity Worldwide, LLC.

30. After receiving Mr. Pensivy's $100,000.00 on February 13, 2015, at lunch; that same day, Mr. Song deposited the money into an account at Wells Fargo Bank belonging to Longevity Network, LLC (yet another Longevity entity that was not disclosed to Mr. Pensivy). February 13, 2015, was a Friday before a holiday weekend)[11] and on February 17, 2015, the first day the $100,000.00 was available to the Song Defendants, Mr. Song transferred $99,830.00 from the Longevity Network, LLC account at Wells Fargo Bank. $92,000.00 of that money was transferred into a joint account belonging to the Song Defendants. Then that money was systematically transferred into other personal accounts, specifically an account held by Mrs. Song, and then the money was used to repay creditors, maintain a 6,000 square-foot vacation home in Utah, and live extravagantly. *See e.g.* **Exhibit 15**.

31. From their personal accounts, the Songs spent almost the entirety of Mr. Pensivy's $100,000.00 within less than three months. The Songs paid personal mortgages, personal credit card debt, department store credit cards, lawn-care maintenance, pest control, and other household expenses. The

[11] The following Monday, February 16, 2015, was Presidents' Day, a bank holiday.

Songs purchased airline tickets, made large unsubstantiated cash withdrawals, and went shopping with Mr. Pensivy's $100,000.00. **Exhibit 15.**

32. By April 30, 2015, less than three months after receiving Mr. Pensivy's $100,000.00 investment into Longevity Worldwide, Mr. Song and Mrs. Song had spent all but $3,986.00 of the $100,000.00. **Exhibit 15**.

33. Mr. Song and Mrs. Song did the same thing with the Freitas' family $20,000.00 investment. Shortly after delivery of the $20,000.00 in cash to Mrs. Song, a large cash deposit of $14,020.00 was made into a personal account belonging to the Songs. Although it is unclear where the additional $5,980.00 in cash went, another deposit of $6,020.00 was made shortly thereafter into a related account. Because the Songs were not earning any other income during this time, the Court can only conclude that this was the cash delivered to Mrs. Song on or about April 8, 2015. **Exhibit 15**.

34. Mr. Song misrepresented that he was raising "a capital war chest of $600,000 for a 30% share interest in the company" when, in fact, he only raised $140,000.00 through Pensivy, the Freitas family, and Darren Cahill,[12] who were also defrauded into believing they were investing into the startup and growth of Longevity Worldwide. The Song Defendants never told the investors that they were using the investment money on paying down their personal lines of credit, traveling, a Utah vacation home, or shopping. The Songs had an obligation to correct any misunderstandings, but failed to do so on numerous occasions; leading the Court to conclude that they were concealing their fraudulent financial activities from their investors.

[12] Darin Cahill was stated to be a friend of Mr. Song's and the other $20,000.00 1% owner of Longevity Worldwide (**Exhibit 05-021**); however, he was not called as a witness.

35. Mr. Song did not use any of Mr. Pensivy's $100,000.00 to capitalize Longevity Worldwide. Mr. Song distinguished Mr. Pensivy from the other investors because "he had options in his Deal Agreement" was not supported, especially with a lack of evidence that any other investor received a different deal.

36. Mr. and Mrs. Song testified that Mr. Pensivy's capital contribution was not an investment, but rather the purchase of 5 percent (5%) of the membership units in Longevity Worldwide from the Song Defendants. Based on all of the evidence presented and admitted at trial, after considering the live testimony of the witnesses and evaluating their credibility in open court, and after careful consideration of the argument made by the Song Defendants, the Court finds against the Song Defendants and finds in favor of Mr. Pensivy by clear and convincing evidence as set forth herein.

37. Based on the series of misrepresentations and omissions, the Court finds that Mr. Song committed fraud and conversion by taking Plaintiff's funds and spending it on personal items as described by the bank records and via testimony. Mr. Pensivy has proven by clear and convincing evidence that the Song Defendants are liable for intentional misrepresentation, fraud, and conversion of the $100,000.00.

38. As to the affirmative defenses presented by the Song Defendants, each of them fails[13], specifically as follows:

39. First, the Song Defendants that this action belonged derivatively to Longevity Worldwide and therefore standing is an issue. This argument fails for several reasons. Again, at the time in which the fraudulent conduct took place,

[13] The Song Defendants set forth 28 affirmative defenses in their Answer to Pensivy's Second Amended Complaint, most of which fail as irrelevant or inapplicable (*see e.g.* to this case, and others that are duplicative. *See e.g.* 19-20 (duplicate); 5/6/8 as being duplicative of 27 (waiver, estoppel and laches); 12/13/14 (all relate to declaratory relief).

Longevity Worldwide was not organized so it had no derivative claim. Second, Longevity Worldwide never had possession or control of the $100,000.00 as it never had a bank account and all of the money was stolen by the Song Defendants, and converted around Longevity Worldwide, prior to March 11, 2015, when it was organized. Third, it would be inequitable to allow the Song Defendants hide behind this specious argument considering their intentional misconduct outlined above. Fourth, and finally, although Mr. Pensivy was apparently given a five percent (5%) interest in Longevity Worldwide, it was not clear until Longevity Worldwide filed its Chapter 7 bankruptcy petition on August 24, 2017. **Exhibit 5**. This is the first time that a list of equity security holders is presented on behalf of Longevity Worldwide. The voluntary petition, schedules, and statement of financial affairs indicate that Longevity Worldwide had no creditors, no bank accounts, (whether closed or opened), no assets, no contracts,[14] and no activities leading up to the filing. Longevity Worldwide is a limited liability company and the case has been closed as of March 1, 2018, with a finding of no assets by the Chapter 7 Trustee, Lenard Schwartzer. *See In re Longevity Worldwide,* (U.S. Nev. BK Case No. 17-14617-abl); ECF No's. 10-11.

40. The Song Defendants are judicially estopped from claiming that this action belonged to Longevity Worldwide, as the Song Defendants did not list it as an asset under penalty of perjury. Even if it was an asset of the debtor, and this

[14] Although Mr. Song signed Exhibit 5 under penalties of perjury **and** 18 U.S.C. §§ 152, 1341, 1519, and 3571, Mr. Song testified for the first time at trial inconsistently with that document. At trial Mr. Song stated that Longevity Worldwide was a party to an "exclusive distribution agreement" that was between Longevity Worldwide and Mr. Song. He further testified that he alone "terminated" the "exclusive distribution agreement" – a fact also disclosed for the first time at trial, which facts are inconsistent with the schedules of assets and liabilities set forth in the Chapter 7 bankruptcy case of Longevity Worldwide, and further damage any credibility that Mr. Song had left. Mr. Song also testified that there was another bank account opened through "Kickstarter" at Chase, but he also failed to disclose this citing to the convenient and unsupportable fact that it was closed "more than 1 year before filing this case." *See* **Exhibit 05-019** at Part 10, question 18.

action should have been brought as a derivative claim this Court rejects the affirmative defense as leading to an absurd result. If this were a derivative claim, the Song Defendants' would end up with 93% of the $100,000.00 recovery as the majority owners of the limited liability company. For reasons previously articulated, all of the damages in this case belong to Mr. Pensivy. It would be inequitable to distribute the $100,000 through a sham LLC, owned 93% by owners and individuals who committed fraud and converted the money in the first place. This Court rejects this affirmative defense as producing an absurd result.

41. The other affirmative defense related to standing and/or privity is the Song Defendants claim that the action requires Scott Pensivy Physical Therapy, Inc. to be added as a party because that is the entity that suffered damages. First, that is not true because Scott Pensivy is ultimately the party that lost $100,000.00. Second, Scott Pensivy is the real party in interest and is the only party with privity pursuant to the Deal Agreement where his company is not a party. Finally, where Mr. Pensivy got his investment money is irrelevant and an issue between Mr. Pensivy and his 100 percent (100%) wholly owned corporation that has issued him a constructive distribution of that $100,000.00 by his testimony.[15] The Song Defendants apparently issued the membership interest to Scott Pensivy in his individual capacity so they cannot now claim that the real party in interest is his corporate entity.

42. A 'real party in interest' under NRCP 17(a) is one who possesses the right to enforce the claim and has a significant interest in the litigation." *Szilagyi v. Testa,* 99 Nev. 834, 838, 673 P.2d 495, 498 (1983) (finding individual

[15] Whether this was a loan, equity distribution, or some other form of investment is irrelevant. In any event, the Song Defendants refused to stipulate to adding Scott Pensivy Physical Therapy Inc. to the caption, or as an intervenor, and there is no prejudice. The Song Defendants are again making specious arguments in a desperate attempt to get away with their heist.

partner was real party in interest rather than partnership when note and escrow signed by individual even though escrow instruction were in partnership's name).[16]

43. Although moot, the Court also rejects the Song Defendants affirmative defense that Mr. Pensivy first breached the Deal Agreement and that he failed to exercise his options under the Deal Agreement.

44. The Deal provided that two (2) years after Mr. Pensivy's $100,000.00 cash contribution, Mr. Pensivy is entitled to exercise one of the following options:

a. Option 1: Maintain the five (5) percent ownership interest in Longevity Worldwide and all associated profits related to that ownership interest;

b. Option 2: Transfer the five (5) percent ownership interest in Longevity Worldwide to Mr. and Mrs. Song and Longevity Worldwide in exchange for $100,000.00 plus seven (7) percent simple interest calculated from the date of the Deal Agreement; or

c. Option 3: Transfer the five (5) percent ownership interest in Longevity Worldwide to Mr. and Mrs. Song and Longevity Worldwide in exchange for $100,000.00 plus seven (7) percent interest (calculated from the date of the Deal Agreement) in Mr. and Mrs. Song's ownership interest in the Longevity Sports Center based on an appraisal of the

[16] In any event, Mr. Pensivy and his counsel offered to add Scott Pensivy Physical Therapy, Inc. in this action and the Song Defendants refused, yet cited to no prejudice. Plaintiff, during trial, again agreed to amend the pleadings if the Defendants wished, but as Defendants would not agree and the Court denied their Rule 52 Motion, the Court does not find that Defendants have met their burden to show that Plaintiff was not the proper party. Instead, the Court finds that Plaintiff is the proper party and is the party who signed the Deal Agreement.

building and land at the two-year anniversary mark from the Deal Agreement.

45. As to the breach of contract defenses, the Song Defendants cannot now somehow shield themselves from liability by refusing to communicate the financial status of Longevity Worldwide, nor can they somehow blame Mr. Pensivy as he clearly sought the information he was entitled to under Nevada law, and to make a common-sense business decision, but was continually stalled, blocked, and denied this information during the option periods set forth above.

46. However, this is a moot point as the Song Defendants had already converted the money, committed fraud and intentional misrepresentations in order to induce the investment. Longevity Worldwide was, at all times, relevant unable to repay the money had Mr. Pensivy exercised his options in a fashion acceptable to the Song Defendants. In short, the Song Defendants used the Deal Agreement to carry out their intentional misrepresentations, fraud and conversion. The Song Defendants had spent almost all of the $100,000.00 on personal expenditures, debt repayment, mortgage delinquencies, travel, and shopping by the end of April 2015. The Song Defendants then concealed that the $100,000.00 was never used to capitalize Longevity Worldwide, and refused to respond to Mr. Pensivy's constant written inquiries regarding how the $100,000.00 investment was being used, and how Longevity Worldwide was performing. The Song Defendants had a duty to respond to the many inquiries by Mr. Pensivy, but failed and refused to do so because their only response was an obvious one – they had spent all of the money on uses unrelated to the capitalization of Longevity Worldwide. For these reasons, the Court rejects any affirmative defenses relating to the failed exercise of the sham options set forth in the Deal Agreement.

47. The Song Defendants also violated Chapter 86 of the Nevada Revised Statutes for failing to produce books and records to Mr. Pensivy as a member of the company. *See* NRS 86.241. There was no evidence of an accounting at the bankruptcy court, so this argument fails.

## III. CONCLUSIONS OF LAW

The above findings of fact are incorporated herein by this reference. To the extent that a finding of fact is a conclusion of law, or vice versa, each will be treated according to its true nature.

**Breach of Contract**

1. To prevail on a breach of contract claim, a plaintiff must establish that (1) the plaintiff and defendant entered into a valid and existing contract; (2) the plaintiff performed or was excused from performing under the contract; (3) the plaintiff breached his obligations under the contract; and (4) the plaintiff sustained damages as a result of the defendant's breach. *Calloway v. City of Reno*, 116 Nev. 250, 993 P.2d 1259 (2000), *overruled on other grounds by Olson v. Richard*, 120 Nev. 240, 89 P.3d 31 (2004); *see also Saini v. Int'l Game Tech.*, 434 F. Supp. 2d 913, 919-20 (D. Nev. 2006) (To maintain a breach of contract claim, the plaintiff must sufficiently "show (1) the existence of a valid contract, (2) a breach by the defendant, and (3) damage as a result of the breach.") (citing *Richardson v. Jones*, 1 Nev. 405, 405 (1865)).

2. Mr. Pensivy has established that: (1) Mr. Pensivy and Mr. Song entered into the Deal Agreement, a valid and existing contract; (2) Mr. Pensivy performed under the Deal Agreement by tendering a valid check for $100,000.00 to be used as a capital contribution and for the growth of Longevity Worldwide; (3) The Song Defendants breached the Deal Agreement by (a) failing to use Mr. Pensivy's capital contribution to fund and grow Longevity Worldwide and instead putting the capital contribution to the Song Defendants' own personal use; (b)

depriving Mr. Pensivy of his right to his $100,000.00 back, with interest; and (c) failing to provide Mr. Pensivy with an accounting; and (4) Mr. Pensivy has been damaged by the Song Defendants' breach because they took and spent his capital contribution on personal uses instead of the stated purpose of capitalizing and growing Longevity Worldwide.

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

3. Every contract in Nevada, including the Deal Agreement, contains an implied covenant of good faith and fair dealing. *See Consol. Generator-Nevada, Inc. v. Cummins Engine Co., Inc.*, 114 Nev. 1304, 1311, 971 P.2d 1251, 1256 (1998).

4. A claim for breach of implied covenant will arise when a plaintiff adequately alleges that the defendant "deliberately countervenes the intention and spirit of the contract..." *Morris v. Bank of Am. Nevada*, 110 Nev. 1274, 1278, 886 P.2d 454, 457 (1994); *Hilton Hotels Corp. v. Butch Lewis Productions*, 107 Nev. 226, 232, 808 P.2d 919, 922-23 (1991).

5. In order to properly assert a breach of the implied covenant of good faith and fair dealing, a plaintiff must allege that: (1) plaintiff and defendant were parties to the contract; (2) the defendant owed a duty of good faith to the plaintiff; (3) the defendant breached that duty by performing in a manner that was unfaithful to the purpose of the contract; and (4) the plaintiff's justified expectations were thus denied. *See Perry v. Jordan*, 111 Nev. 943, 947, 900 P.2d 335, 338 (1995); *Hilton Hotels Corp.*, 107 Nev. at 232, 808 P.2d at 922-23.

6. "A determination by the jury that the implied covenant was breached will give rise to an award of contract damages." *Hilton Hotels Corp. v. Butch Lewis Prods., Inc.*, 109 Nev. 1043, 1047, 862 P.2d 1207, 1209 (1993).

7. Mr. Pensivy has established that (1) Mr. Pensivy and Song Defendants entered into the Deal Agreement, which is a valid and existing

contract; (2) the Song Defendants owed Mr. Pensivy a duty of good faith in the performance of the Deal Agreement; (3) the Song Defendants breached the duty of good faith and fair dealing by using Mr. Pensivy's capital contribution for personal use rather than to capitalize and grow Longevity Worldwide, which was the intention of the Deal Agreement; and (4) Mr. Pensivy's justified expectation that his capital contribution would be used to capitalize and grow Longevity Worldwide was thus denied.

**Conversion**

8. In Nevada, conversion is "a distinct act of dominion wrongfully exerted over another's personal property in denial of, or inconsistent with his title or rights therein or in derogation, exclusion, or defiance of such title or rights." *Evans v. Dean Witter Reynolds, Inc.*, 116 Nev. 598, 606, 5 P.3d 1043, 1048 (2000) (quoting *Wantz v. Redfield*, 74 Nev. 196, 198, 326 P.2d 413, 414 (1958)).

9. An act of conversion only applies to personal property, which may include intangible assets. *M.C. Multi-Family Dev., L.L.C. v. Crestdale Associates, Ltd.*, 124 Nev. 901, 904, 193 P.3d 536, 538-39 (2008).

10. When the Song Defendants accepted Mr. Pensivy's capital contribution for Longevity Worldwide and deposited it first in an account belonging to Longevity Network, and then in personal accounts belonging to the Song Defendants, the Song Defendants committed a distinct act of dominion wrongfully exerted over Mr. Pensivy's capital contribution in denial of, or inconsistent with his title or rights therein or in derogation, exclusion, or defiance of such title or rights.

11. The $100,000.00 was to be used for capital and growth of Longevity but, instead, it was diverted to personal accounts belonging to the Song Defendants. In less than two months, the Song Defendants then depleted

nearly all of the $100,000.00 by paying off personal debts, curing delinquent mortgages, shopping, traveling and making large cash withdrawals.

12. The Court finds that the Song Defendants had the requisite intent to commit conversion of the $100,000.00 considering the timing of how the funds were spent and lack of disclosure by Mr. Song to Mr. Pensivy, and then the use of the funds by both Defendants.

13. The Song Defendants are thus liable to Mr. Pensivy in the amount of the $100,000.00 capital contribution to Longevity Worldwide plus interest at the statutory judgment rate of interest.

**Intentional Misrepresentation and Fraud**

14. Pursuant to Nev. R. Civ. P. 15(a), Mrs. Song was added to the cause of action for Intentional Misrepresentation and/or Fraud because she signed the Deal Agreement, incorporating the Executive Summary, thereby adopting the misrepresentations and omissions set forth therein. Both parties waived a written opinion or order on this subject; and, therefore, the action applies to both Song Defendants. Nevertheless, based on the evidence presented in Court, the Court only finds that Plaintiff has met his burden of proof as to Mr. Song by clear and convincing evidence as set forth below.

15. Under Nevada law, the essential elements of intentional misrepresentation and fraud are: (1) a false representation made by the defendant; (2) defendant's knowledge or belief that the representation is false (or insufficient basis for making the representation); (3) defendant's intention to induce the plaintiff to act or to refrain from acting in reliance upon the misrepresentation;(4) plaintiff's justifiable reliance upon the misrepresentation; and (5) damage to the plaintiff resulting from such reliance. *Bulbman, Inc. v. Nevada Bell*, 108 Nev. 105, 825 P.2d 588, 592 (1992) (citing *Lubbe v. Barba*, 91 Nev. 596, 540 P.2d 115, 117 (1975)).

JOANNA S. KISHNER
DISTRICT JUDGE
DEPARTMENT XXXI
LAS VEGAS, NEVADA 89155

16. A Plaintiff must prove each element of the fraud claim by clear and convincing evidence. *Bulbman*, 825 P.2d at 592.

17. If a Plaintiff proves fraud in an action for the breach of any obligation not arising from contract, the Court may award punitive damages. NRS 42.005.

18. Mr. Pensivy has proven all elements for a fraud claim by clear and convincing evidence.

19. Mr. Pensivy has established by clear and convincing evidence that Mr. Song falsely represented that: (1) Longevity Worldwide was duly organized on February 13, 2015; (2) that this was a Deal Agreement for capitalizing and growing Longevity Worldwide; (3) that the money would be used to fund the manufacturing and distribution of a traveling toothbrush sanitizer named GT2000 along with the many other misrepresentations and omissions listed above.

20. Mr. Song failed and refused to communicate with Mr. Pensivy, and did so to conceal his fraudulent misconduct. In so doing, Mr. Song omitted material facts that should have been conveyed to Mr. Pensivy, such as the status of his $100,000.00 investment. The reason Mr. Song did not respond to Mr. Pensivy's inquiries is obvious – he had no good response – the Song Defendants had already taken and spent the $100,000.00 on themselves personally.

21. Mr. Song deposited the $100,000.00 in Longevity Network's account, instead of an account belonging to Longevity Worldwide as represented, and he continually lied to Mr. Pensivy, or failed to respond, so that Mr. Pensivy would hopefully go away.

22. Mr. Pensivy has established by clear and convincing evidence that the Song Defendants knew that the representation in the Deal Agreement – that Mr. Pensivy's $100,000.00 was to be used for capital and growth for Longevity Worldwide – was false. The Song Defendants made this knowingly false

misrepresentation to Mr. Pensivy to induce him to invest $100,000.00 into the stated purpose of Longevity Worldwide - to manufacture, distribute, and sell the GT2000. Mr. Pensivy reasonably relied on these intentional misrepresentations and acted by delivering a check to his friend Mr. Song. Mr. Song then played out the intentionally fraudulent scheme by spending the money directly and indirectly by providing part of the funds to his wife so that all funds were spent within two months. Indeed, the Song Defendants failed and refused to produce a single piece of evidence that *any* of the $100,000.00 was used for Longevity Worldwide.

23. Mr. Pensivy has also proven by clear and convincing evidence that Mr. Song knew that: (1) Longevity Worldwide had not yet been organized under Nevada law, such that it had no valid membership units available for purchase; (2) Mr. Song did not intend to deposit Mr. Pensivy's capital contribution into an account belonging to Longevity Worldwide; and that (3) the multiple intentional misrepresentations in the Executive Summary were made in a global attempt to induce Mr. Pensivy to act by drafting a check to Longevity Worldwide.

24. Mr. Pensivy has proven by clear and convincing evidence that Mr. Song made each such representation in order to induce Mr. Pensivy to provide the capital contribution to Longevity Worldwide.

25. Mr. Pensivy has proven by clear and convincing evidence that in making the capital contribution to Longevity Worldwide, Mr. Pensivy justifiably relied upon Mr. Song's intentional representations that (1) Longevity Worldwide was organized such that it had valid membership units available for purchase by Mr. Pensivy; (2) Mr. Song intended to deposit Mr. Pensivy's capital contribution into an account belonging to Longevity Worldwide; and (3) once deposited in Longevity Worldwide's account, the capital contribution would be used to fund and grow Longevity Worldwide.

26. The Court finds that Mr. Pensivy has proven each of the elements of intentional misrepresentation/fraud by clear and convincing evidence and that Mr. Pensivy has suffered $100,000.00 in damages as a direct and proximate cause of the Song Defendants' fraud.

27. Mr. Song is thus liable to Mr. Pensivy in the amount of the $100,000.00 plus interest at the statutory judgment rate of interest.

**Accounting/Violation of NRS Chapter 86**

28. The Song Defendants also violated Chapter 86 of the Nevada Revised Statutes for failing to produce books and records to Mr. Pensivy as a member of the company. *See* NRS 86.241. There was no evidence of an accounting at the bankruptcy court, so this argument fails.

## ORDER AND JUDGMENT

Based upon the foregoing and other good cause appearing,

IT IS HEREBY ORDERED, ADJUDGED, and DECREED that Judgment shall enter in Mr. Pensivy's favor in the amount of $100,000.00 (one-hundred thousand dollars) and against Mr. Song and Mrs. Song on Plaintiff's First Cause of Action for Breach of Contract.

IT IS HEREBY FURTHER ORDERED, ADJUDGED, and DECREED that Judgment shall enter in Mr. Pensivy's favor in the amount of $100,000.00 (one-hundred thousand dollars) and against Mr. Song and Mrs. Song on Plaintiff's Second Cause of Action for Breach of the Implied Covenant of Good Faith and Fair Dealing.

IT IS HEREBY FURTHER ORDERED, ADJUDGED, and DECREED that Judgment shall enter in Mr. Pensivy's favor in the amount of $100,000.00 (one-

hundred thousand dollars) and against Mr. Song and Mrs. Song on Plaintiff's Fourth Cause of Action for Conversion.

IT IS HEREBY FURTHER ORDERED, ADJUDGED, and DECREED that Judgment shall enter in Mr. Pensivy's favor in the amount of $100,000.00 (one-hundred thousand dollars) and against Mr. Song and Mrs. Song on Plaintiff's Fifth Cause of Action for Negligent Misrepresentation

IT IS HEREBY FURTHER ORDERED, ADJUDGED, and DECREED that Judgment shall enter in Mr. Pensivy's favor in the amount of $100,000.00 (one-hundred thousand dollars) and against Mr. Song on Plaintiff's Tenth Cause of Action for Intentional Misrepresentation/Fraud.

IT IS HEREBY FURTHER ORDERED, ADJUDGED, and DECREED that Mr. Pensivy's claim for punitive damages is DENIED as he did not meet the evidentiary standard.

IT IS FURTHER ORDERED that Plaintiff is awarded interest pursuant to the statutory rate under Nevada law;[17]

IT IS FURTHER ORDERED THAT PLAINTIFF IS DIERECTED TO PROVIDE PROMPT NOTICE OF ENTRY OF JUDGMENT memorializing the above award.

DATED this March 29, 2019.

Joanna S Kishner

JOANNA S. KISHNER
DISTRICT COURT JUDGE

[17] As the Court has found that Plaintiff has met his burden of recovery of the entirety of his $100,000.00 investment under different theories of recovery, the Court's Order is not intended to have him obtain multiple recoveries as he did not establish that he incurred damages in excess of the $100,000.00 he provided to Defendants.

## CERTIFICATE OF SERVICE

I hereby certify that on or about the date filed, a copy of this Order was served via Electronic Service to all counsel/registered parties, pursuant to the Nevada Electronic Filing Rules, and/or served via in one or more of the following manners: fax, U.S. mail, or a copy of this Order was placed in the attorney's file located at the Regional Justice Center:

**ALL COUNSEL SERVED VIA E-SERVICE**



TRACY L. CORDOBA-WHEELER
Judicial Executive Assistant

JOANNA S. KISHNER
DISTRICT JUDGE
DEPARTMENT XXXI
LAS VEGAS, NEVADA 89155

# DISTRICT COURT
# CLARK COUNTY, NEVADA

**Collection of Accounts** **COURT MINUTES** **August 03, 2017**

A-17-749167-C Scott Pensivy, Plaintiff(s)
vs.
Longevity Worldwide, LLC, Defendant(s)

**August 03, 2017** **9:30 AM** **All Pending Motions**

**HEARD BY:** Kishner, Joanna S. **COURTROOM:** RJC Courtroom 12B

**COURT CLERK:** Tena Jolley

**RECORDER:** Sandra Harrell

**REPORTER:**

**PARTIES PRESENT:**

| | |
|---|---|
| Hyson, Kimberley A. | Attorney |
| Perdue, Keely A. | Attorney |
| Schnitzer, Jordan | Attorney |
| Works, Kendelee Leascher | Attorney |

## JOURNAL ENTRIES

- DEFENDANT JAMES SONG AND ADRIENNE SONG'S MOTION TO DISMISS...DEFENDANT INTERNATIONAL SPORTS CENTER, LLC D/B/A LOGEVITY SPORTS CENTER'S MOTION TO DISMISS

Court noted that Defendant James Song and Adrienne Song's Motion to Dismiss was not set for hearing as there was no Notice of Hearing filed and counsel stipulated to allow the matter to be heard today. After the Court's consideration of the papers submitted by counsel in connection with this matter, and, having heard the oral arguments presented by Mr. Schnitzer, Ms. Works, and Ms. Hyson, COURT FINDS it appropriate to rule on the motions on a Motion to Dismiss standards because that is the way the parties filed these motions and because it is so early in the litigation that it would not be appropriate to treat the motions and Motions for Summary Judgments. COURT FURTHER FINDS an ambiguity exists as to who were the parties to the agreement and ORDERED, Defendant James Song and Adrienne Song's Motion to Dismiss is DENIED WITHOUT PREJUDICE. The COURT ADDITIONALLY FINDS an ambiguity as to who are the parties to the agreement and ORDERED, Defendant International Sports Center, LLC d/b/a Longevity Sports Center's Motion to Dismiss is similarly DENIED WITHOUT PREJUDICE. Ms. Works is to prepare the order and

circulate it to counsel within ten (10) days pursuant to EDCR 7.21.

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

| **Collection of Accounts** | **COURT MINUTES** | **May 01, 2018** |
|---|---|---|

A-17-749167-C Scott Pensivy, Plaintiff(s)
vs.
Longevity Worldwide, LLC, Defendant(s)

**May 01, 2018** **9:30 AM** **All Pending Motions**

**HEARD BY:** Kishner, Joanna S. **COURTROOM:** RJC Courtroom 12B

**COURT CLERK:** Tena Jolley

**RECORDER:** Sandra Harrell

**REPORTER:**

**PARTIES PRESENT:**

| | |
|---|---|
| Hyson, Kimberley A. | Attorney |
| Schnitzer, Jordan | Attorney |
| Works, Ryan J. | Attorney |

**JOURNAL ENTRIES**

- DEFENDANT JAMES SONG AND ADRIENNE SONG'S MOTION TO DISMISS...DEFENDANT INTERNATIONAL SPORTS CENTER, DBA LONGEVITY SPORTS CENTER'S SUBSTANTIVE JOINDER TO DEFENDANTS JAMES SONG AND ADRIENNE SONG'S MOTION TO DISMISS

After the Court's consideration of the papers submitted by counsel in connection with this matter, and, having heard the oral arguments presented by Mr. Schnitzer, Ms. Hyson and Mr. Works, COURT ORDERED, Defendant James Song and Adrienne Song's Motion to Dismiss and Joinder thereto DENIED WITHOUT PREJUDICE. Mr. Works to prepare the Order pursuant to EDCR 7.21. Colloquy regarding possible voluntary dismissal. COURT FURTHER ORDERED, matter SET for Status Check regarding possible dismissal.

6/26/18 9:00 AM STATUS CHECK RE: POSSIBLE VOLUNTARY DISMISSAL

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

| **Collection of Accounts** | **COURT MINUTES** | **June 26, 2018** |
|---|---|---|

A-17-749167-C Scott Pensivy, Plaintiff(s)
vs.
Longevity Worldwide, LLC, Defendant(s)

| **June 26, 2018** | **9:00 AM** | **Status Check** | **Status Check: Possible Voluntary Dismissal** |
|---|---|---|---|

**HEARD BY:** Kishner, Joanna S. **COURTROOM:** RJC Courtroom 12B

**COURT CLERK:** Tena Jolley

**RECORDER:** Sandra Harrell

**REPORTER:**

**PARTIES PRESENT:**

| | |
|---|---|
| Hyson, Kimberley A. | Attorney |
| Schnitzer, Jordan | Attorney |
| Works, Ryan J. | Attorney |

**JOURNAL ENTRIES**

- Mr. Works indicated that after conducting discovery, counsel intends on filing a motion for leave to amend the complaint. The Court advised counsel regarding the docket changes taking place on July 2, 2018, and indicated this case may be reassigned. Upon the Court's inquiry if counsel thought a Settlement Conference would be helpful, all counsel agreed and Mr. Schnitzer indicated he would have to contact his client first. The Court DIRECTED counsel to notify Chambers if they wanted a settlement conference.

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

| **Collection of Accounts** | **COURT MINUTES** | **August 07, 2018** |
|---|---|---|

A-17-749167-C Scott Pensivy, Plaintiff(s)
vs.
Longevity Worldwide, LLC, Defendant(s)

**August 07, 2018** **9:00 AM** **Motion for Leave**

**HEARD BY:** Kishner, Joanna S. **COURTROOM:** RJC Courtroom 12B

**COURT CLERK:** Tena Jolley

**RECORDER:** Sandra Harrell

**REPORTER:**

**PARTIES PRESENT:**

| | |
|---|---|
| Hyson, Kimberley A. | Attorney |
| Schnitzer, Gary | Attorney |
| Sifers, Jason B | Attorney |

**JOURNAL ENTRIES**

- The being no written opposition and counsel present having confirmed the matter was unopposed, COURT ORDERED, Plaintiff's Motion for Leave to File Amended Complaint GRANTED; Plaintiff will have ten (10) days from Notice of Entry of Order to file its Amended Complaint. Mr. Sifers to prepare the Order pursuant to EDCR 7.21.

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

| **Collection of Accounts** | **COURT MINUTES** | **October 16, 2018** |
|---|---|---|

A-17-749167-C Scott Pensivy, Plaintiff(s)
vs.
Longevity Worldwide, LLC, Defendant(s)

**October 16, 2018** **9:00 AM** **Status Check**

**HEARD BY:** Kishner, Joanna S. **COURTROOM:** RJC Courtroom 12B

**COURT CLERK:** Tena Jolley

**RECORDER:** Sandra Harrell

**REPORTER:**

**PARTIES PRESENT:**

| | |
|---|---|
| Hyson, Kimberley A. | Attorney |
| Schnitzer, Jordan | Attorney |
| Works, Ryan J. | Attorney |

**JOURNAL ENTRIES**

- Mr. Works indicated their is a pending motion to compel documents and perhaps an additional deposition scheduled for mid-November and announced ready and anticipated 2-3 days for Trial. Mr. Schnitzer concurred with Mr. Works' representations and anticipates summary judgment motion practice in early November from each defendant. Mr. Works indicated he was unsure what the dispositive motion from the other defendant would be as they have agreed to dismiss them. The Court stated it would wait to receive the parties' briefing.

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

| **Collection of Accounts** | **COURT MINUTES** | **November 14, 2018** |
|---|---|---|

A-17-749167-C Scott Pensivy, Plaintiff(s)
vs.
Longevity Worldwide, LLC, Defendant(s)

| | | | |
|---|---|---|---|
| **November 14, 2018** | **10:00 AM** | **Motion to Compel** | **Plaintiff's Motion (1) Compelling The Song Defendants Responses to Written Discovery Requests, (2) Overruling Defendants Objection to Subpoena; and (3) Requesting Additional Time for The Deposition of James Song** |

**HEARD BY:** Bulla, Bonnie **COURTROOM:** RJC Level 5 Hearing Room

**COURT CLERK:** Jennifer Lott

**RECORDER:** Francesca Haak

**REPORTER:**

**PARTIES PRESENT:**

| | |
|---|---|
| Schnitzer, Jordan | Attorney |
| Works, Ryan J. | Attorney |

**JOURNAL ENTRIES**

- Commissioner is concerned about the Bankruptcy issue. Mr. Works is only involved in this case because he is Bankruptcy counsel, and that case was closed. Entities cannot be Discharged under Chapter 7. This Motion relates to Mr. and Mrs. Song, and they are not protected in any way by an automatic stay or Discharge. Colloquy re: discovery. Colloquy re: RTP 1 to 6 is somewhat overly broad; RTP 7 to 9 is MOOT; for RTP 10 to 11, Commissioner requested a basis for why information is relevant. Argument by Mr. Works; counsel Subpoenaed Wells Fargo. Mr. Schnitzer doesn't know

the bank accounts, but he believed individual bank accounts are with Wells Fargo. Colloquy re: timeline of records from Wells Fargo. The Subpoena will go forward and see what you get before pursuing written requests. Mr. Works preferred a COR Affidavit; based on communication with Wells Fargo, they may be ready to produce the records with a Court Order. Mr. Schnitzer stated the financial documents are not relevant; argument by counsel.

Tracing of funds to the extent it is relevant to any claims, COMMISSIONER RECOMMENDED, motion is GRANTED IN PART and DENIED IN PART WITHOUT PREJUDICE; produce documents from January 1, 2015 to the present for Mr. Song, Mrs. Song, and Longevity Network LLC; Wells Fargo is REQUIRED to comply with the Subpoena; information placed under a Protective Order pursuant to Rule 26(c) within the confines of litigation until otherwise ordered by the District Court Judge; maintain documents as ATTORNEYS EYES ONLY until it is determined that information Is Not Relevant, then destroy documents or return them to Defense counsel. Prepare a separate Protective Order to be signed by the District Court Judge (in advance of the Subpoena).

Upon Mr. Schnitzer's request, COMMISSIONER RECOMMENDED, 2.34(e) relief provided, and there is no compliance with the Subpoena until three business days after Report and Recommendation is signed by the Judge; Request for Production 1 to 11 are DENIED WITHOUT PREJUDICE; Motion is GRANTED to re-depose Mr. Song limited to 2 1/2 hours (112 pages of texts recently produced by Deft); discovery cutoff EXTENDED to 12-14-18 to re-depose Mr. Song; discovery extended for Wells Fargo to comply with the Subpoena once the District Court Judge deems it appropriate. However, there is no end date on compliance with the Subpoena. Contact Commissioner by conference call if necessary. Trial date is 1-7-19. Mr. Works requested fees and costs. COMMISSIONER RECOMMENDED, Request is DENIED WITHOUT PREJUDICE. Mr. Works to prepare the Report and Recommendations, and Mr. Schnitzer to approve as to form and content. A proper report must be timely submitted within 10 days of the hearing. Otherwise, counsel will pay a contribution.

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

| **Collection of Accounts** | **COURT MINUTES** | **December 04, 2018** |
|---|---|---|

A-17-749167-C Scott Pensivy, Plaintiff(s)
vs.
Longevity Worldwide, LLC, Defendant(s)

**December 04, 2018 9:30 AM All Pending Motions**

**HEARD BY:** Kishner, Joanna S. **COURTROOM:** RJC Courtroom 12B

**COURT CLERK:** Tena Jolley

**RECORDER:** Sandra Harrell

**REPORTER:**

**PARTIES PRESENT:**

| | |
|---|---|
| Pensivy, Scott | Plaintiff |
| Schnitzer, Jordan | Attorney |
| Works, Ryan J. | Attorney |

**JOURNAL ENTRIES**

- DEFENDANT JAMES AND ADRIENNE SONG'S MOTION FOR SUMMARY JUDGMENT...OPPOSITION TO DEFENDANT JAMES SONG AND ADRIENNE SONG'S MOTION FOR SUMMARY JUDGMENT AND COUNTERMOTION FOR PARTIAL SUMMARY JUDGMENT

Following arguments by both Mr. Schnitzer and Mr. Works, COURT FINDS material issues of fact remain and ORDERED Defendant James and Adrienne Song's Motion for Summary Judgment DENIED. COURT FURTHER ORDERED, Plaintiff's Countermotion for Partial Summary Judgment DENIED both procedurally as there were no supporting Memorandum of Points and Authorities and substantially due to the lack of clarity in the deal agreement.

PRE TRIAL CONFERENCE

At the request of counsel COURT ORDERED, matter ADVANCED from December 6, 2018. Counsel anticipate 2 days for trial. Colloquy regarding trial setting. COURT ORDERED Trial Dates SET.

1/29/19 9:00 AM CALENDAR CALL

2/6/19 10:00 AM BENCH TRIAL

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

| **Collection of Accounts** | **COURT MINUTES** | **January 10, 2019** |
|---|---|---|

A-17-749167-C Scott Pensivy, Plaintiff(s)
vs.
Longevity Worldwide, LLC, Defendant(s)

**January 10, 2019** **9:30 AM** **Objection to Discovery Commissioner's Report**

**HEARD BY:** Kishner, Joanna S. **COURTROOM:** RJC Courtroom 12B

**COURT CLERK:** Tena Jolley

**RECORDER:** Sandra Harrell

**REPORTER:**

**PARTIES PRESENT:**

| | |
|---|---|
| Schnitzer, Jordan | Attorney |
| Works, Ryan J. | Attorney |

**JOURNAL ENTRIES**

- Following arguments by Mr. Schnitzer and Mr. Works, COURT ORDERED, Discovery Commissioner's Report and Recommendations AFFIRMED on the underlying merits and on substance. Mr. Works to prepare the Order, circulating to opposing counsel and provide it back to the Court in accordance with EDCR 7.21. Mr. Works indicated his concern that any delay in obtaining the third party records may affect the current trial date. The Court DIRECTED counsel to contact the Court to set up a telephone conference with all counsel, if necessary.

# DISTRICT COURT
# CLARK COUNTY, NEVADA

| Collection of Accounts | COURT MINUTES | January 24, 2019 |
|---|---|---|

A-17-749167-C Scott Pensivy, Plaintiff(s)
vs.
Longevity Worldwide, LLC, Defendant(s)

**January 24, 2019** **1:30 PM** **Telephonic Conference**

**HEARD BY:** Kishner, Joanna S. **COURTROOM:** RJC Courtroom 12B

**COURT CLERK:** Tena Jolley

**RECORDER:** Sandra Harrell

**REPORTER:**

**PARTIES PRESENT:**

| | |
|---|---|
| Schnitzer, Jordan | Attorney |
| Works, Ryan J. | Attorney |

## JOURNAL ENTRIES

- The Court stated there were issues regarding the Confidentiality and Attorneys Eyes Only Stipulation and Order submitted and inquired whether the current trial setting was going to meet the parties needs in light of the issues of obtaining the third party documents and a possible subsequent deposition. Mr. Works indicated he did not think there would be a need for a subsequent deposition, that the only thing outstanding was obtaining the subpoenaed records once the Confidentiality Stipulation and Order was entered on the docket; that depending on when he received the documents, he would not like to see the trial continued too far out. Mr. Schnitzer concurred and announced ready for trial.

Addressing the proposed Confidentiality Stipulation, the Court stated it was unable to sign the Confidentiality Order as presented. The Court stated the challenges with the Confidentiality Order was it was not on pleading paper, did not cite the Supreme Court Part 7, Rule 3, and the linguistics as to the storage provision that the Discovery Commissioner or District Court could rule, but did not include any applicable appellate authority. Colloquy regarding the changes to be made and the parties agreed that Mr. Works would submit a revised Stipulation and Order; that pursuant to EDCR 7.50, Mr. Schnitzer agreed that his original signature on page 4 will be incorporated with the resubmitted revised Confidentiality Stipulation containing Mr. Schnitzer's electronic signature to be

compliant regarding original signatures.

The Court then addressed the Court's availability to confirm the dates set for the trial. Counsel would prefer to retain the current trial date and requested the Calendar Call be continued from January 29 to January 31, 2019 and hold a status check on January 29, 2019. At the request of counsel, COURT ORDERED Calendar Call RESET and matter SET for a further Status Check regarding Third Party Document Production. The parties' Joint Pretrial Memorandum is DUE by 4:00 p.m. January 30, 2019.

1/29/19 9:00 AM STATUS CHECK: THIRD PARTY RECORDS PRODUCTION

1/31/19 9:00 AM CALENDAR CALL

# DISTRICT COURT
# CLARK COUNTY, NEVADA

**Collection of Accounts** **COURT MINUTES** **January 29, 2019**

A-17-749167-C Scott Pensivy, Plaintiff(s)
vs.
Longevity Worldwide, LLC, Defendant(s)

**January 29, 2019** **9:00 AM** **Status Check**

**HEARD BY:** Kishner, Joanna S. **COURTROOM:** RJC Courtroom 12B

**COURT CLERK:** Tena Jolley

**RECORDER:** Sandra Harrell

**REPORTER:**

**PARTIES PRESENT:**

| | |
|---|---|
| Schnitzer, Jordan | Attorney |
| Works, Ryan J. | Attorney |

## JOURNAL ENTRIES

- Upon the Court's inquiry if the third party records had been produced and if the Trial scheduled for February 6, 2019 would proceed, Mr. Works indicated he did not expect the documents would be produced prior to next Thursday or Friday, February 7th or 8th. Colloquy regarding trial setting. At the parties request and the Court finding good cause existed, COURT ORDERED, Trial Dates VACATED and RESET as #2 Trial Setting to February 13 and 15, 2019; Calendar Call RESET to February 11, 2019; and Telephonic Conference SET for February 7, 2019. The Court stated it would issue a Memorandum from Chambers on February 5, 2019 following the Calendar Calls to advise the parties if their case can proceed on February 13, 2019.

2/7/19 4:00 PM TELEPHONIC STATUS CHECK: THIRD PARTY RECORDS PRODUCTION/POSSIBLE TRIAL RESETTING

2/11/19 9:00 AM CALENDAR CALL

2/13/19 9:00 AM BENCH TRIAL

# DISTRICT COURT
# CLARK COUNTY, NEVADA

**Collection of Accounts** **COURT MINUTES** **February 07, 2019**

A-17-749167-C Scott Pensivy, Plaintiff(s)
vs.
Longevity Worldwide, LLC, Defendant(s)

**February 07, 2019** **4:00 PM** **Telephonic Conference**

**HEARD BY:** Kishner, Joanna S. **COURTROOM:** RJC Courtroom 12B

**COURT CLERK:** Tena Jolley

**RECORDER:** Sandra Harrell

**REPORTER:**

**PARTIES PRESENT:**

| | |
|---|---|
| Schnitzer, Jordan | Attorney |
| Works, Ryan J. | Attorney |

## JOURNAL ENTRIES

- Mr. Works advised that he should have the Wells Fargo Bank records no later than 5:00 p.m. tonight pursuant to an email confirmation from Wells Fargo that he would receive them February 7, 2019. Mr. Works indicated he will be following up first thing in the morning if he does not receive them today. Colloquy regarding trial schedule. Pursuant to the agreement of the parties, COURT ORDERED Trial Dates RESET. Colloquy regarding possibly resolving proposed exhibits and counsel's objections prior to the commencement of trial. Court determined it would need to hear testimony from Mr. Song in order to rule and the exhibits will be addressed in the ordinary course of the trial.

2/13/19 8:15 AM BENCH TRIAL
2/19/19 10:15 AM BENCH TRIAL

# DISTRICT COURT
# CLARK COUNTY, NEVADA

**Collection of Accounts** **COURT MINUTES** **February 11, 2019**

A-17-749167-C Scott Pensivy, Plaintiff(s)
vs.
Longevity Worldwide, LLC, Defendant(s)

**February 11, 2019** **9:00 AM** **Calendar Call**

**HEARD BY:** Kishner, Joanna S. **COURTROOM:** RJC Courtroom 12B

**COURT CLERK:** Tena Jolley

**RECORDER:** Sandra Harrell

**REPORTER:**

**PARTIES PRESENT:**

| | |
|---|---|
| Schnitzer, Jordan | Attorney |
| Works, Ryan J. | Attorney |

## JOURNAL ENTRIES

- The Court confirmed receipt of the parties' Joint Pretrial Memorandum. Counsel announced ready for trial. Two sets of proposed joint exhibits and original deposition transcripts were provided to the Clerk. Counsel agree that those identified as Stipulated are stipulated admitted for all purposes. Mr. Works confirmed he received the Wells Fargo records late Friday night consisting of approximately 1,295 pages (proposed Exhibit 15); that he would be providing defense with an electronic copy of the records and will be delivering to the Court later today hard copies. Colloquy regarding the parties' Stipulation regarding confidentiality agreement (for attorneys' eyes only) as to the Wells Fargo bank records. Mr. Works indicated he would need to review the bank records with his client in preparation for trial. By stipulation of the parties, Mr. Works will submit a new order to include that Mr. Pensivy agrees to be bound by the parties' confidentiality agreement.

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

| **Collection of Accounts** | **COURT MINUTES** | **February 13, 2019** |
|---|---|---|

A-17-749167-C Scott Pensivy, Plaintiff(s)
vs.
Longevity Worldwide, LLC, Defendant(s)

**February 13, 2019** **8:15 AM** **Bench Trial - FIRM**

**HEARD BY:** Kishner, Joanna S. **COURTROOM:** RJC Courtroom 12B

**COURT CLERK:** Alan Castle

**RECORDER:** Sandra Harrell

**REPORTER:**

**PARTIES PRESENT:**

| | |
|---|---|
| Pensivy, Scott | Plaintiff |
| Schnitzer, Jordan | Attorney |
| Song, Adrienne | Defendant |
| Song, James | Defendant |
| Works, Ryan J. | Attorney |

**JOURNAL ENTRIES**

- EXCLUSIONARY RULE INVOKED. Colloquy regarding Rule 7.27 briefs. Upon Court's inquiry, traditional trial order; parties do not wish to take their adverse witnesses on direct until their respective case-in-chief. Court notes evidentiary objection on the videos is deferred until Defense's case-in-chief. Excerpts of exhibit 15 have been pulled by Plaintiff on what portions Plaintiff is seeking to admit. Court finds WF000001 - WF 002067 has been redacted to relevant portions. Colloquy regarding Supreme Court Rule 3 motion.

First Amended Stipulated Confidentiality Agreement and Protective Order SIGNED & FILED IN OPEN COURT and is effective Nunc Pro Tunc to February 11, 2019.

Argument by counsel on exhibit 15 regarding production of documents not within the scope of the subpoena. Offer of proof by Mr. Works. Further argument. Court Finds credit card information not an issue at this time. Further, Court is going to Reserve Ruling until proper foundation has been laid as to its admission. Court provided original subpoenas to review. Court Finds ruling on request to

have exhibit 15 sealed in its entirety is DEFERRED.

Plaintiff Waived opening statement. Opening Statement by Defense. Testimony and exhibits presented. (See worksheets) Depositions PUBLISHED & FILED IN OPEN COURT. Further testimony and exhibits presented. (See worksheets)

Pending Matters submitted. COURT FINDS Defendants' Motion to Strike Complaint is DENIED. FURTHER FINDS in the Alternative Defendants' Motion for Mistrial to Allow Counsel to Brief the Matter and for Evidentiary Hearing is DENIED. Court Finds it is not necessary to do an evidentiary hearing seeing that Court's exhibit 1, the October, 26, 2016 letter was not produced, however there is a certified receipt of mailing signed by the UPS Store that received it; there was testimony on the stand that Defense maintained a mailbox at that UPS Store. This Court can take Judicial Notice that it was mailed with certified return receipt requested signifying it would have been delivered to the UPS Store at that location. Further, whether or not the letter was placed in the box or picked up by Defense is unknown, yet the letter arrived at that location. Court Finds the letter is specifically referenced in Plaintiff's operative complaint to put opposing party on notice of the claim; and, there could have been some discovery requests related to that issue had Defense chosen to do so. Court notes the operative complaint is not specifically seeking a remedy as for that $100,000.00. Court Finds no prejudice and ORDERS, Motion and Alternative Motion DENIED.

Colloquy regarding scheduling. TRIAL CONTINUED. Evening recess taken.

CONTINUED TO:
02/19/19 10:30 A.M.

# EXHIBIT LIST

Case No.: **A749167**

Dept. No.: **XXXI**

Trial Date: **FEBRUARY 13, 2019**

Judge: **JOANNA S. KISHNER**

Court Clerk: **TENA M JOLLEY** ALAN PAUL CASTLE, SR.

Recorder: **SANDRA HARRELL**

Counsel for Plaintiff: **RYAN J. WORKS, ESQ.**

**SCOTT PENSIVY,**

PLAINTIFF,

vs.

**LONGEVITY WORLDWIDE, LLC,**

DEFENDANTS.

Counsel for Defendant: **JORDAN SCHNITZER, ESQ.**

## TRIAL BEFORE THE COURT

### JOINT EXHIBITS

| Exhibit Number | Exhibit Description | Date Offered | Objection | Date Admitted |
|---|---|---|---|---|
| 1. | Deal Agreement, EX01-001 | 2-13-19 | STIP | 2-13-19 |
| 2. | Check from Scott Pensivy Physical Therapy Inc., dated February 13, 2015, EX02-001 | 2-13-19 | STIP | 2-13-19 |
| 3. | Executive Summary Longevity Worldwide LLC, EX03-001 – EX03-009 | 2-13-19 | STIP | 2-13-19 |
| 4. | Exclusive International Licensing Longevity Worldwide LLC, EX04-001 – EX04-009 | 2-13-19 | STIP | 2-13-19 |
| 5. | Voluntary Petition for Non-Individuals Filing for Bankruptcy re Longevity Worldwide LLC, EX05-001 – EX05-026 | 2-13-19 | STIP | 2-13-19 |
| 6. | Entity Details - Secretary of State, Nevada re Longevity Network, Ltd., EX06-001 – EX06-005 | 2-13-19 | STIP | 2-13-19 |
| 7. | Entity Details - Secretary of State, Nevada re Longevity Worldwide LLC, EX07-001 – EX07-002 | 2-13-19 | STIP | 2-13-19 |
| 8. | Email from Scott Pensivy re GT2K Toothbrush, dated February 16, 2015, EX08-001 – EX08-005 | 2-13-19 | STIP | 2-13-19 |
| 9. | Email from Scott Pensivy to James Song re GTK2 Update, dated September 7, 2015, EX09-001 – EX09-002 | 2-13-19 | STIP | 2-13-19 |
| 10. | Email chain ending in email from Scott Pensivy to James Song re investment update, dated January 31, 2016, EX10-001 - EX10-002 | 2-13-19 | STIP | 2-13-19 |
| 11. | Email from Scott Pensivy to James Song re investment update, dated February 9, 2016, EX11-001 | 2-13-19 | STIP | 2-13-19 |
| 12. | Email chain ending in email from Sean Freitas to Scott Pensivy re James Song, dated April 13, 2016, EX12-001 | 2-13-19 | NO OBJ | 2-13-19 |
| 13. | Email from Scott Pensivy to James Song re investment update, dated April 26, 2016, EX13-001 | 2-13-19 | STIP | 2-13-19 |
| 14. | Text Messages between James Song and Scott Pensivy, EX14-001 – EX14-112 | 2-13-19 | STIP | 2-13-19 |
| 15. | Bank Records/Statements received pursuant to the December 21, 2018 Discovery commissioner's Report and Recommendations, WF00001 ~~WF02007~~ – WF0003, AS REDACTED WF000180, WF000190, WF000325 – WF000328, WF000757 – WF000792, WF001150 – WF001151, WF001154, WF001459 | 2-13-19 | OBJ STIP | 2-13-19 |

# EXHIBIT LIST

**A749167**

**SCOTT PENSIVY** **VS.** **LONGEVITY WORLDWIDE, LLC**

**JOINT EXHIBITS**

| Exhibit Number | Exhibit Description | Date Offered | Objection | Date Admitted |
|---|---|---|---|---|
| 16. | Plaintiff's First Set of Interrogatories to James Song and Adrienne Song, dated August 30, 2018, EX16-001 – EX16-009 | RETURNED TO COUNSEL | | |
| 17. | Plaintiff's First Set of Requests for Production of Documents to James Song and Adrienne Song, dated August 30, 2018, EX17-001 – EX17-010 | 2-13-19 | OBJ | O/R 2-13-19 |
| 18. | Plaintiff's First Set of Requests for Admissions to James Song and Adrienne Song, dated August 30, 2018, EX18-001 – EX18-005 | RETURNED TO COUNSEL | | |
| 19. | Defendants' James and Adrienne Song's Responses to Plaintiff's First Set of Interrogatories to James and Adrienne Song, dated October 2, 2018, EX19-001 – EX19-004 | RETURNED TO COUNSEL | | |
| 20. | Defendants' James and Adrienne Song's Responses to Plaintiff's First Set of Requests for Production to James and Adrienne Song, dated October 2, 2018, EX20-001 – EX20-007 | 2-13-19 | OBJ | O/R 2-13-19 |
| 21. | Defendants' James and Adrienne Song's Responses to Plaintiff's First Set of Requests for Admission to James and Adrienne Song, dated October 2, 2018, EX21-001 – EX21-004 | RETURNED TO COUNSEL | | |
| 22. | Defendants' James and Adrienne Song's Amended Responses to Plaintiff's First Set of Requests for Admission to James and Adrienne Song, dated October 4, 2018, EX22-001 – EX22-004 | RETURNED TO COUNSEL | | |
| 23. | Entity Details - Secretary of State, Scott Pensivy Physical Therapy, Ltd., EX23-001 – EX23-004 | RETURNED TO COUNSEL | | |
| 24. | Longevity Worldwide LLC Voluntary Petition for Filing Bankruptcy, EX24-001 – EX24-023 | 2-13-19 | STIP | 2-13-19 |
| 25. | Emails relating to the draft agreement, dated September 10, 2015, EX25-001 – EX25-002 | RETURNED TO COUNSEL | | |
| 26. | Emails relating to the draft agreement, dated September 14, 2015, EX26-001 – EX26-002 | | | |
| 27. | Email relating to the draft agreement, dated September 16, 2015, EX27-001 – EX27-003 | | | |
| 28. | Emails relating to the draft agreement, dated September 17, 2015, EX28-001 – EX28-004 | | | |
| 29. | Email from James Song to Charles Kelly re Rehab1000, dated September 22, 2015, EX29-001 | | | |
| 30. | Email from Charles Kelly to James Song re Rehab1000, dated September 22, 2015, EX30-001 | | | |
| 31. | Email from Charles Kelly to James Song re Rehab1000, dated October 5, 2015, EX31-001 – EX31-002 | | | |
| 32. | Email from Charles Kelly to James Song re Rehab 1000, dated October 9, 2015, EX32-001 | | | |
| 33. | Email from James Song to Charles Kelly responding to Kelly email, dated October 14, 2015, EX33-001 – EX33-005 | | | |
| 34. | Email from James Song to Charles Kelly responding to Kelly email, dated October 15, 2015, EX34-001 – EX34-007 | RETURNED TO COUNSEL | | |

# EXHIBIT LIST

**A749167**

**SCOTT PENSIVY** **VS.** **LONGEVITY WORLDWIDE, LLC**

**JOINT EXHIBITS**

| Exhibit Number | Exhibit Description | Date Offered | Objection | Date Admitted |
|---|---|---|---|---|
| 35. | Email from Charles Kelly to James Song, dated October 15, 2015, EX35-001 – EX35-005 | RETURNED TO COUNSEL | | |
| 36. | Email from Charles Kelly to James Song re responding to a text message, dated November 11, 2015, EX36-001 | ↓ | ↓ | ↓ |
| 37 | Email from James Song to Charles Kelly re response to text message, dated November 11, 2015, EX37-001 – EX37-002 | ↓ | ↓ | ↓ |
| 38. | Email from James Song to Charles Kelly re response to text message, dated November 11, 2015, EX38-001 – EX38-002 | RETURNED TO COUNSEL | | |
| 39. | Email from Scott Pensivy to James Song re Rehab 1000, dated February 14, 2015, EX39-001 | 2-13-19 | STIP | 2-13-19 |
| 40. | Email from Scott Pensivy to James Song re Rehab 1000, dated February 12, 2015, EX40-001 | RETURNED TO COUNSEL | | |
| 41. | Email from Scott Pensivy to James Abrams re Rahab 1000 Course, dated March 20, 2015, EX41-001 | ↓ | ↓ | ↓ |
| 42. | Email from James Song to Scott Pensivy re Rahab 1000 Course, dated March 21, 2015, EX42-001 | ↓ | ↓ | ↓ |
| 43. | Email from James Song to Scott Pensivy re Rahab 1000 Course, dated March 21, 2015, EX43-001 | ↓ | ↓ | ↓ |
| 44. | Email from Scott Pensivy to Andy re Rehab 1000 and list of users, dated May 18, 2015, dated May 18, 2015, EX44-001 – EX44-005 | ↓ | ↓ | ↓ |
| 45. | Email from Scott Pensivy to Jim Song re Troy Toothbrush, dated June 2, 2015, EX45-001 | ↓ | ↓ | ↓ |
| 46. | Email from James Song to Scott Pensivy re Troy Toothbrush, dated June 2, 2015, EX46-001 | ↓ | ↓ | ↓ |
| 47. | Emails from Longevity re Rehab 1000 customer question, dated June 2, 2015, EX47-001 | ↓ | ↓ | ↓ |
| 48. | Email from Scott Pensivy to James Song re Rehab 1000 Kit Future, dated July 14, 2015, EX48-001 | RETURNED TO COUNSEL | | |
| 49. | Email from Scott Pensivy to James Song re GTK2, dated July 14, 2015, EX49-001 | 2-13-19 | STIP | 2-13-19 |
| 50. | Email from Scott Pensivy to James Song re Meeting with Jim Abrams, dated September 3, 2015, EX50-001 | RETURNED TO COUNSEL | | |
| 51. | Email from Scott Pensivy to James Song re Rehab 1000 Moving Forward, dated September 23, 2015, EX51-001 | ↓ | ↓ | ↓ |
| 52. | Email from Scotty Pensivy to James Song re Rehab 1000 Agreement, dated September 26, 2015, EX52-001- EX52-002 | ↓ | ↓ | ↓ |
| 53. | Email from Scott Pensivy to James Song re Rehab 1000 Agreements from Scott 9-28-2015, dated September 28, 2015, EX53-001 | ↓ | ↓ | ↓ |
| 54. | Email James Song to Scott Pensivy re Rehab 1000 Agreements from Scott 9/28/2015, dated September 28, 2015, EX54-001- EX54-004 | ↓ | ↓ | ↓ |
| 55. | Letter from James Song to Scott Pensivy, dated July 30, 2014, EX55-001 – EX55-005 | ↓ | ↓ | ↓ |
| 56. | Facsimile from Scott Pensivy Orthopedic Rehabilitation Therapy Services to James song, dated July 30, 2014, EX56-001 – EX56-003 | RETURNED TO COUNSEL | | |

# EXHIBIT LIST

**A749167**

**SCOTT PENSIVY** **VS.** **LONGEVITY WORLDWIDE, LLC**

**JOINT EXHIBITS**

| Exhibit Number | Exhibit Description | Date Offered | Objection | Date Admitted |
|---|---|---|---|---|
| 57. | Letter from Scott Pensivy to James Song, dated August 6, 2014, EX57-001 – EX57-007 | 2-19-19 2-21-19 | yes STIP | obj sus. 2-21-19 |
| 58. | Book Titled: Why Your Toothbrush May Be Killing You by James Song, published 2004 | 2-20-19 | yes | 2-20-19 |
| 59. | Intentionally Omitted | RETURNED TO COUNSEL | | |
| 60. | Intentionally Omitted | RETURNED TO COUNSEL | | |
| 61. | DVD of James Song/Germ Terminator on Prime Time with Diane Sawyer | 2-20-19 | yes | 2-20-19 |
| 62. | Article – You're probably brushing your teeth with fecal matter, April 6, 2017, EX62-001 | RETURNED TO COUNSEL | | |
| 63. | Article – 3.5 billion reasons why sustainable toothbrushes could be big business, November 14, 2016, EX63-001 – EX63-004 | | | |
| 64. | Article – The Disgusting Truth About Your Toothbrush, April 21, 2014, EX64-001 – EX64-003 | | | |
| 65. | Video - Germ Terminator- The View Feature, Posted on August 18, 2018 via Youtube.com: https://www.youtube.com/watch?v=gw9cGXJ0cTk , Video000001 | | | |
| 66. | Video – Germ Terminator – In Business Las Vegas News Feature, Posted on August 13, 2009 via Youtube.com: https://www.youtube.com/watch?v=yo9jGSc4-oM&t=98s , Video000002 | | | |
| 67. | Video – Germ Terminator – Fox News, Posted on August 27, 2008 via Youtube.com: https://www.youtube.com/watch?v=Aon2prLcKdo , Video000003 | RETURNED TO COUNSEL | | |
| 68. | Video – Germ Terminator – MythBusters, Posted on August 18, 2008 via Youtube.com: https://www.youtube.com/watch?v=AkSahFTaJ6A , Video000004 | 2-19-19 | yes | obj. sus. |
| 69a. | Kickstarter Germ Terminator - https://www.kickstarter.com/projects/poopgerms/poop-germs-on-my-toothbrush-seriously/description , EX69a-001 – EX69a-013 | 2-20-19 | yes | 2-20-19 |
| 69b. | Kickstarter Video | RETURNED TO COUNSEL | | |
| 70. | AppTec, Final Study Report, October 7, 2002, EX70-001 – EX70-011 | 2-20-19 | yes | obj. sus. |
| 71. | AppTec, Final Study Report, January 21, 2003, EX71-001 – EX71-011 | | | |
| 72. | Eleven Sterilization, EX72-001 – EX72-014 | | | |
| 73. | Nelson Laboratories, Inc. Preliminary Results Letter, April 4, 2002, EX73-001 – EX73-002 | | | |

# EXHIBIT LIST

**A749167**

**SCOTT PENSIVY** **VS.** **LONGEVITY WORLDWIDE, LLC**

**JOINT EXHIBITS**

| Exhibit Number | Exhibit Description | Date Offered | Objection | Date Admitted |
|---|---|---|---|---|
| 74. | ISSI Laboratories, Inc., Toothbrush Tests – 2, January 31, 2002, EX74-001 – EX74-002 | | | |
| 75. | ISSI Laboratories, Inc., Toothbrush Tests – 1, January 31, 2002, EX75-001 – EX75-002 | | | |
| 76. | ISSI Laboratories, Inc., Germ Terminator GT 100 – 1, April 19, 2002, EX76-001 – EX76-002 | | | |
| 77. | ISSI Laboratories, Inc., Germ Terminator GT 100 as Toothbrush Sanitizer, March 18, 2003, EX77-001 | | | |
| 78. | Carl W. Bruch, PhD, Summary Review of the Microbicidal Effectiveness of the GT 100 Toothbrush Sanitizer, EX78-001 – EX78-005 | | | |
| 79. | Nelson Laboratories Final Report, June 21, 2004, EX79-001 – EX79-011 | | | |
| 80. | Nelson Laboratories Final Report, April 12, 2002, EX80-001 – EX80-011 | | | |
| 81. | Nelson Laboratories Final Report, April 12, 2002, EX81-001 – EX81-011 | 2-20-19 | yes | obj sus. |
| 82. | Longevity Rehab 1000 Brochure, EX82-001 – EX82-002 | RETURNED TO COUNSEL | | |
| 83. | Email from Scott Pensivy to Andy re Rehab 1000, April 13, 2015, EX83-001 | | | |
| 84. | Email from Scott Pensivy to Andy re Rehab 1000 Status, April 27, 2015 EX84-001 – EX84-002 | | | |
| 85. | Email from Scott Pensivy to Andy re Rehab 1000 Marketing, May 18, 2015, EX85-001 – EX85-003 | | | |
| 86. | Fyzical 123 Brochure, EX86-001 – EX86-009 | RETURNED TO COUNSEL | | |
| | | | | |
| | | | | |
| | | | | |
| | | | | |
| | | | | |
| | | | | |
| | | | | |
| | | | | |

# EXHIBIT(S) LIST

Case No.: A-17-749167-C

Dept. No.: XXXI

Trial Date: FEB 13 2019

Judge: JOANNA S. KISHNER

Court Clerk: ALAN PAUL CASTLE, SR. / TENA JOLLEY

Recorder: SANDRA HARRELL

Counsel for Plaintiff: RYAN WORKS

SCOTT PENSIVY
PLAINTIFF,

vs.

LONGEVITY WORLDWIDE, LLC
DEFENDANTS.

Counsel for Defendant: JORDAN SCHNITZER

## TRIAL BEFORE THE COURT

COURT 'S EXHIBITS

| Exhibit Number | Exhibit Description | Date Offered | Objection | Date Admitted | |
|---|---|---|---|---|---|
| 1 | 10-24-16 FILE SUIT AND CERTIFIED MAILING CORRESPONDENCE TO DEFENSE INTENT TO | 2-13-19 | — | 2-13-19 | WA |
| 2 | 11-21-17 RE INTENT TO EXERCISE OPTION Correspondence To Defense | 2-13-19 | — | 2-13-19 | WA |
| | | | | | |
| | | | | | |
| | | | | | |
| | | | | | |
| | | | | | |
| | | | | | |
| | | | | | |
| | | | | | |
| | | | | | |
| | | | | | |
| | | | | | |
| | | | | | |
| | | | | | |
| | | | | | |

# Certification of Copy

**State of Nevada**
**County of Clark** } **SS:**

I, Steven D. Grierson, the Clerk of the Court of the Eighth Judicial District Court, Clark County, State of Nevada, does hereby certify that the foregoing is a true, full and correct copy of the hereinafter stated original document(s):

NOTICE OF APPEAL; CASE APPEAL STATEMENT; NOTICE OF POSTING APPEAL BOND FOR JAMES SONG AND ADRIENNE SONG; DISTRICT COURT DOCKET ENTRIES; CIVIL COVER SHEET; FINDINGS OF FACT AND CONCLUSIONS OF LAW AND JUDGMENT; NOTICE OF ENTRY OF FINDINGS OF FACT AND CONCLUSIONS OF LAW AND JUDGMENT; DISTRICT COURT MINUTES; EXHIBITS LIST

SCOTT PENSIVY,

Plaintiff(s),

vs.

LONGEVITY WORLDWIDE, LLC; JAMES SONG; ADRIENNE SONG; LONGEVITY NETWORK, LTD; INTERNATIONAL SPORTS CENTER, LLC DBA LONGEVITY SPORTS CENTER; LV SPORTS & LAND DEVELOPMENT,

Defendant(s),

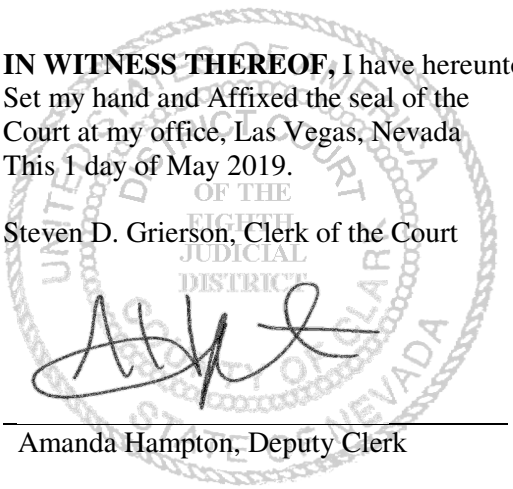
Case No: A-17-749167-C

Dept No: XXXI

now on file and of record in this office.

**IN WITNESS THEREOF,** I have hereunto Set my hand and Affixed the seal of the Court at my office, Las Vegas, Nevada This 1 day of May 2019.

Steven D. Grierson, Clerk of the Court




Amanda Hampton, Deputy Clerk

**EIGHTH JUDICIAL DISTRICT COURT**
**CLERK OF THE COURT**

REGIONAL JUSTICE CENTER
200 LEWIS AVENUE, 3rd Fl.
LAS VEGAS, NEVADA 89155-1160
(702) 671-4554

Steven D. Grierson
Clerk of the Court

Anntoinette Naumec-Miller
Court Division Administrator

May 1, 2019

Elizabeth A. Brown
Clerk of the Court
201 South Carson Street, Suite 201
Carson City, Nevada 89701-4702

RE: SCOTT PENSIVY vs. LONGEVITY WORLDWIDE, LLC; JAMES SONG; ADRIENNE SONG; LONGEVITY NETWORK, LTD; INTERNATIONAL SPORTS CENTER, LLC DBA LONGEVITY SPORTS CENTER; LV SPORTS & LAND DEVELOPMENT
D.C. CASE: A-17-749167-C

Dear Ms. Brown:

Please find enclosed a Notice of Appeal packet, filed April 29, 2019. Due to extenuating circumstances minutes from the date(s) listed below have not been included:

February 19, 2019 February 20, 2019 February 21, 2019

We do not currently have a time frame for when these minutes will be available.

If you have any questions regarding this matter, please contact me at (702) 671-0512.

Sincerely,
STEVEN D. GRIERSON, CLERK OF THE COURT

Amanda Hampton, Deputy Clerk