IN THE SUPREME COURT OF THE STATE OF NEVADA

INDICATE FULL CAPTION:

KERRY KIRSON and JAMES BOONE

v.

CHARLES ADAY and DAVID ARENEZ

No. 63446

Electronically Filed
Aug 22 2013 04:20 p.m.
Tracie K. Lindeman
Clerk of Supreme Court

DOCKETING STATEMENT
CIVIL APPEALS

GENERAL INFORMATION

All appellants not in proper person must complete this docketing statement. NRAP 14(a). The purpose of the docketing statement is to assist the Supreme Court in screening jurisdiction, classifying cases for en banc, panel, or expedited treatment, compiling statistical information and identifying parties and their counsel.

WARNING

This statement must be completed fully, accurately and on time. NRAP 14(c). The Supreme Court may impose sanctions on counsel or appellant if it appears that the information provided is incomplete or inaccurate. *Id.* Failure to fill out the statement completely or to file it in a timely manner constitutes grounds for the imposition of sanctions, including a fine and/or dismissal of the appeal.

A complete list of the documents that must be attached appears as Question 26 on this docketing statement. Failure to attach all required documents will result in the delay of your appeal and may result in the imposition of sanctions.

This court has noted that when attorneys do not take seriously their obligations under NRAP 14 to complete the docketing statement properly and conscientiously, they waste the valuable judicial resources of this court, making the imposition of sanctions appropriate. *See* KDI Sylvan Pools v. Workman, 107 Nev. 340, 344, 810 P.2d 1217, 1220 (1991). Please use tab dividers to separate any attached documents.

Docket 63446 Document 2013-24898

1. Judicial District Eighth Department X

County Clark Judge Jessie Walsh

District Ct. Case No. A-11-644767-C

2. Attorney filing this docketing statement:

Attorney James W. Kwon, Esq. Telephone 702-515-1200

Firm JAMES KWON, LLC

Address 8925 W. Post Rd., Ste. 110
Las Vegas, NV 89148

Client(s) Kerry Kirson and James Boone

If this is a joint statement by multiple appellants, add the names and addresses of other counsel and the names of their clients on an additional sheet accompanied by a certification that they concur in the filing of this statement.

3. Attorney(s) representing respondents(s):

Attorney Alexandra B. McLeod, Esq. Telephone 702-697-6500

Firm BRADY, VORWERCK, RYDER & CASPINO

Address 2795 E. Desert Inn Rd., Suite 200
Las Vegas, NV 89121

Client(s) Charles Aday and David Arenaz

Attorney Heather L. Trujillo, Esq. Telephone 702-697-6500

Firm BRADY, VORWERCK, RYDER & CASPINO

Address 2795 E. Desert Inn Rd., Suite 200
Las Vegas, NV 89121

Client(s) Charles Aday and David Arenaz

(List additional counsel on separate sheet if necessary)

4. Nature of disposition below (check all that apply):

- ☐ Judgment after bench trial
- ☐ Judgment after jury verdict
- ☐ Summary judgment
- ☐ Default judgment
- ☐ Grant/Denial of NRCP 60(b) relief
- ☐ Grant/Denial of injunction
- ☐ Grant/Denial of declaratory relief
- ☐ Review of agency determination
- ☒ Dismissal:
  - ☐ Lack of jurisdiction
  - ☐ Failure to state a claim
  - ☐ Failure to prosecute
  - ☒ Other (specify): time barred
- ☐ Divorce Decree:
  - ☐ Original ☐ Modification
- ☐ Other disposition (specify): _____

5. Does this appeal raise issues concerning any of the following?

- ☐ Child Custody
- ☐ Venue
- ☐ Termination of parental rights

6. Pending and prior proceedings in this court. List the case name and docket number of all appeals or original proceedings presently or previously pending before this court which are related to this appeal:

None.

7. Pending and prior proceedings in other courts. List the case name, number and court of all pending and prior proceedings in other courts which are related to this appeal (*e.g.*, bankruptcy, consolidated or bifurcated proceedings) and their dates of disposition:

None.

8. Nature of the action. Briefly describe the nature of the action and the result below:

Kirson, Boone and Aday formed a corporation to purchase a parcel of land in Arizona from Arenez. Unbeknownst to Kirson and Boone, Aday received a substantial kickback from Arenez as well as a promissory note for part of Aday's portion of the purchase price of the land. Kirson and Boone did not discover the kickback and promissory note, and, in turn, that Aday never really paid for his interest in the corporation until approximately five years after the purchase of the land. Kirson and Boone claimed they did not make this discovery because Aday refused to release paperwork evidencing the sale transaction and, when he did produce it, fraudulently altered it. Kirson and Boone claimed breach of contract, fraud and several other causes of action. Ultimately, the Court dismissed the case on the basis that Kirson and Boone lacked standing to sue Aday for any action he took as the manager of an LLC. Several causes of action were dismissed on the basis that the statute of limitations had run and that Kirson and Boone should have known of their claims prior to the expiration of the statute of limitations. Following dismissal an Order granting attorney's fees to Aday and Arenaz was issued.

9. Issues on appeal. State concisely the principal issue(s) in this appeal (attach separate sheets as necessary):

The only issue on appeal is the Court's award of attorney's fees. Appellant's argue that if several causes of actions were dismissed on a "should have known" basis for failing to timely file--but not on a finding that they had actual knowledge of these facts--their lawsuit should not have been deemed "frivolous" and attorney's fees should not have been awarded.

10. Pending proceedings in this court raising the same or similar issues. If you are aware of any proceedings presently pending before this court which raises the same or similar issues raised in this appeal, list the case name and docket numbers and identify the same or similar issue raised:

None.

11. Constitutional issues. If this appeal challenges the constitutionality of a statute, and the state, any state agency, or any officer or employee thereof is not a party to this appeal, have you notified the clerk of this court and the attorney general in accordance with NRAP 44 and NRS 30.130?

☒ N/A

☐ Yes

☐ No

If not, explain:

12. Other issues. Does this appeal involve any of the following issues?

☐ Reversal of well-settled Nevada precedent (identify the case(s))

☐ An issue arising under the United States and/or Nevada Constitutions

☐ A substantial issue of first impression

☐ An issue of public policy

☐ An issue where en banc consideration is necessary to maintain uniformity of this court's decisions

☐ A ballot question

If so, explain:

13. Trial. If this action proceeded to trial, how many days did the trial last? _____

Was it a bench or jury trial? _____

14. Judicial Disqualification. Do you intend to file a motion to disqualify or have a justice recuse him/herself from participation in this appeal? If so, which Justice?
No.

TIMELINESS OF NOTICE OF APPEAL

15. Date of entry of written judgment or order appealed from May 23, 2013

If no written judgment or order was filed in the district court, explain the basis for seeking appellate review:

16. Date written notice of entry of judgment or order was served May 29, 2013

Was service by:

☐ Delivery

☒ Mail/electronic/fax

17. If the time for filing the notice of appeal was tolled by a post-judgment motion (NRCP 50(b), 52(b), or 59)

(a) Specify the type of motion, the date and method of service of the motion, and the date of filing.

☐ NRCP 50(b) Date of filing _____

☐ NRCP 52(b) Date of filing _____

☐ NRCP 59 Date of filing _____

NOTE: Motions made pursuant to NRCP 60 or motions for rehearing or reconsideration may toll the time for filing a notice of appeal. ***See*** **AA Primo Builders v. Washington, 126 Nev. ____, 245 P.3d 1190 (2010).**

(b) Date of entry of written order resolving tolling motion _____

(c) Date written notice of entry of order resolving tolling motion was served _____

Was service by:

☐ Delivery

☐ Mail

18. Date notice of appeal filed June 19, 2013

If more than one party has appealed from the judgment or order, list the date each notice of appeal was filed and identify by name the party filing the notice of appeal:

19. Specify statute or rule governing the time limit for filing the notice of appeal, *e.g.*, NRAP 4(a) or other

NRAP 4(a)(1)

SUBSTANTIVE APPEALABILITY

20. Specify the statute or other authority granting this court jurisdiction to review the judgment or order appealed from:

(a)

☒ NRAP 3A(b)(1)	☐ NRS 38.205
☐ NRAP 3A(b)(2)	☐ NRS 233B.150
☐ NRAP 3A(b)(3)	☐ NRS 703.376
☐ Other (specify)	

(b) Explain how each authority provides a basis for appeal from the judgment or order:
The Order appealed from is a final judgment entered in an action or proceeding commenced in the court in which the judgment was rendered.

21. List all parties involved in the action or consolidated actions in the district court:

(a) Parties:

Plaintiffs: Kerry Kirson, James Boone

Defendants: Mohave Valley Partners IV, LLC, a Nevada Limited Liability Company, Charles Aday, David Arenaz, Lana Arenaz (now deceased).

(b) If all parties in the district court are not parties to this appeal, explain in detail why those parties are not involved in this appeal, *e.g.*, formally dismissed, not served, or other:

The Order granting attorney's fees was entered in favor of Charles Aday and David Arenaz only. As noted above, Lana Arenaz is deceased.

22. Give a brief description (3 to 5 words) of each party's separate claims, counterclaims, cross-claims, or third-party claims and the date of formal disposition of each claim.

Kirson and Boone: 1. Breach of Contract ; 2. Breach of Implied Covenant of Good Faith and Fair Dealing; 3. Unjust Enrichment; 4. Securities Fraud; 5. Violation of State Rico; 6. Fraud.

All claims were dismissed at hearing of December 4, 2012 and pursuant to Order entered February 21, 2013.

23. Did the judgment or order appealed from adjudicate ALL the claims alleged below and the rights and liabilities of ALL the parties to the action or consolidated actions below?

☒ Yes

☐ No

24. If you answered "No" to question 23, complete the following:

(a) Specify the claims remaining pending below:
Note, however, that Appellant's are appealing the Order awarding attorney's fees and not the order dismissing their claims.

(b) Specify the parties remaining below:

(c) Did the district court certify the judgment or order appealed from as a final judgment pursuant to NRCP 54(b)?

☐ Yes

☐ No

(d) Did the district court make an express determination, pursuant to NRCP 54(b), that there is no just reason for delay and an express direction for the entry of judgment?

☐ Yes

☐ No

25. If you answered "No" to any part of question 24, explain the basis for seeking appellate review (*e.g.*, order is independently appealable under NRAP 3A(b)):
N/A.

26. Attach file-stamped copies of the following documents:

- The latest-filed complaint, counterclaims, cross-claims, and third-party claims
- Any tolling motion(s) and order(s) resolving tolling motion(s)
- Orders of NRCP 41(a) dismissals formally resolving each claim, counterclaims, cross-claims and/or third-party claims asserted in the action or consolidated action below, even if not at issue on appeal
- Any other order challenged on appeal
- Notices of entry for each attached order

VERIFICATION

I declare under penalty of perjury that I have read this docketing statement, that the information provided in this docketing statement is true and complete to the best of my knowledge, information and belief, and that I have attached all required documents to this docketing statement.

Kerry Kirson and James Boone
Name of appellant

August 14, 2013
Date

Clark County, Nevada
State and county where signed

James W. Kwon, Esq.
Name of counsel of record

Signature of counsel of record

CERTIFICATE OF SERVICE

I certify that on the 22 day of August, 2013, I served a copy of this completed docketing statement upon all counsel of record:

☐ By personally serving it upon him/her; or

☒ By mailing it by first class mail with sufficient postage prepaid to the following address(es): (NOTE: If all names and addresses cannot fit below, please list names below and attach a separate sheet with the addresses.)

Alexandra B. McLeod, Esq.
Heather L. Trujillo, Esq.
BRADY, VORWERCK, RYDER & CASPINO
2795 E. Desert Inn Rd., Suite 200
Las Vegas, NV 89121

Dated this 22 day of August, 2013

Signature

CIVIL COVER SHEET A-11-644767-C

County, Nevada X

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

I. Party Information

Plaintiff(s) (name/address/phone):	Defendant(s) (name/address/phone):
Kerry Kirson 41 Daisy Meadow Terrace Henderson, NV 89074 James Boone 10524 Torre De Nolte St. Las Vegas, NV 89141 Attorney (name/address/phone): James W. Kwon, Esq. 8925 W. Post Road, Suite #120 Las Vegas, NV 89148	Mohave Valley Partners IV, LLC 8337 W. Sunset Rd., Ste. #200 Las Vegas, NV 89113 Charles Aday 7024 Blue Bird Wing St. Las Vegas, NV 89084 David Arenez 840 S. Rancho Blvd. Las Vegas, NV 89106 Lana Arenez 900 Las Vegas Blvd. S, Unit 1401 Las Vegas, NV 89101 Attorney (name/address/phone): Peter M. Rinato, Esq. 9029 S. Pecos Rd., Ste. 2800 Las Vegas, NV 89074 For Charles Aday

II. Nature of Controversy (Please check applicable bold category and applicable subcategory, if appropriate)

☐ **Arbitration Requested**

Civil Cases

Real Property	Torts	
☐ **Landlord/Tenant** ☐ Unlawful Detainer ☐ **Title to Property** ☐ Foreclosure ☐ Liens ☐ Quiet Title ☐ Specific Performance ☐ **Condemnation/Eminent Domain** ☐ **Other Real Property** ☐ Partition ☐ Planning/Zoning	Negligence ☐ **Negligence – Auto** ☐ **Negligence – Medical/Dental** ☐ **Negligence – Premises Liability** (Slip/Fall) ☐ **Negligence – Other**	☐ **Product Liability** ☐ Product Liability/Motor Vehicle ☐ Other Torts/Product Liability ☐ **Intentional Misconduct** ☐ Torts/Defamation (Libel/Slander) ☐ Interfere with Contract Rights ☐ **Employment Torts** (Wrongful termination) ☐ **Other Torts** ☐ Anti-trust ☐ Fraud/Misrepresentation ☐ Insurance ☐ Legal Tort ☐ Unfair Competition

Probate	Other Civil Filing Types
Estimated Estate Value: _____ ☐ **Summary Administration** ☐ **General Administration** ☐ **Special Administration** ☐ **Set Aside Estates** ☐ **Trust/Conservatorships** ☐ Individual Trustee ☐ Corporate Trustee ☐ **Other Probate**	☐ **Construction Defect** ☐ Chapter 40 ☐ General ☒ **Breach of Contract** ☐ Building & Construction ☐ Insurance Carrier ☐ Commercial Instrument ☒ Other Contracts/Acct/Judgment ☐ Collection of Actions ☐ Employment Contract ☐ Guarantee ☐ Sale Contract ☐ Uniform Commercial Code ☐ **Civil Petition for Judicial Review** ☐ Foreclosure Mediation ☐ Other Administrative Law ☐ Department of Motor Vehicles ☐ Worker's Compensation Appeal ☐ **Appeal from Lower Court** *(also check applicable civil case box)* ☐ Transfer from Justice Court ☐ Justice Court Civil Appeal ☐ **Civil Writ** ☐ Other Special Proceeding ☐ **Other Civil Filing** ☐ Compromise of Minor's Claim ☐ Conversion of Property ☐ Damage to Property ☐ Employment Security ☐ Enforcement of Judgment ☐ Foreign Judgment – Civil ☐ Other Personal Property ☐ Recovery of Property ☐ Stockholder Suit ☐ Other Civil Matters

III. Business Court Requested (Please check applicable category; *for Clark or Washoe Counties only.*)

☐ NRS Chapters 78-88	☐ Investments (NRS 104 Art. 8)	☐ Enhanced Case Mgmt/Business
☐ Commodities (NRS 90)	☐ Deceptive Trade Practices (NRS 598)	☐ Other Business Court Matters
☐ Securities (NRS 90)	☐ Trademarks (NRS 600A)	

7/8/11
Date

Signature of initiating party or representative

See other side for family-related case filings.

ORIGINAL

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CLERK OF THE COURT

COMP
JAMES W. KWON, ESQ.
Nevada Bar No. 8146
JAMES KWON, LLC
8925 West Post Road, Suite #120
Las Vegas, Nevada 89148
(702) 515-1200
Attorneys for Plaintiffs

DISTRICT COURT
CLARK COUNTY, NEVADA

KERRY KIRSON, an individual; and JAMES BOONE, an individual;

Plaintiffs,

v.

MOHAVE VALLEY PARTNERS IV, LLC, a Nevada limited liability; CHARLES ADAY, an individual; DAVID ARENEZ, an individual; LANA ARENEZ, an individual; DOES I-X; and/or ROE CORPORATIONS I-X, inclusive,

Defendants.

Case No.: A-11-644767-C
Dept. No. X

COMPLAINT

EXEMPT FROM ARBITRATION
(Damages in excess of $50,000 per Plaintiff, matters contains significant public policy issues and presents unusual circumstances that constitute good cause for removal from the mandatory arbitration program)

COMPLAINT

COMES NOW, Plaintiffs, KERRY KIRSON and JAMES BOONE, by and through their attorney, James W. Kwon, Esq. of JAMES KWON, LLC and for their causes of action, allege as follows:

PARTIES

1. The Plaintiff, KERRY KIRSON (hereinafter referred to as "Kirson"), is now, and was at all times relevant hereto, a resident of Clark County, Nevada.

2. The Plaintiff, JAMES BOONE (hereinafter referred to as "Boone"), is now, and was at all times relevant hereto, a resident of Clark County, Nevada.

3. The Defendant, MOHAVE VALLEY PARTNERS IV, LLC (hereinafter referred to as "Mohave"), is now, and was at all times relevant hereto a Nevada limited liability company doing business in the State of Nevada.

4. The Defendant, CHARLES ADAY (hereinafter referred to as "Aday"), is now, and was at all times relevant hereto, a resident of Clark County, Nevada.

5. The Defendant, DAVID ARENEZ (hereinafter referred to as "David"), is now, and was at all times relevant hereto, a resident of Clark County, Nevada.

6. The Defendant, LANA ARENEZ (hereinafter referred to as "Lana"), is now, and was at all times relevant hereto, a resident of Clark County, Nevada.

7. The true names and capacities of the Defendants named herein as DOES I-X, inclusive, whether individual, corporate, associate or otherwise, are presently unknown to Plaintiff who therefore sues the said Defendants by such fictitious names; and when the true names and capacities of DOES I-X inclusive are discovered, the Plaintiff will ask leave to amend this Complaint to substitute the true names of the said Defendants. The Plaintiff is informed, believes and therefore alleges that the Defendants so designated herein are responsible in some manner for the events and occurrences contained in this action.

JURISDICTION

8. Plaintiffs repeat and reallege each and every allegation contained in the foregoing paragraphs as though fully set forth herein.

9. That the foregoing causes of action are related to individuals, corporations, companies whose residence business operations is or was located in this jurisdiction at all relevant times hereto, or conducted business with parties within this jurisdiction.

10. This Court has subject matter jurisdiction over this matter and venue of this action is proper in this Court on the basis that Plaintiffs' causes of action arose in this District.

GENERAL ALLEGATIONS

11. Plaintiffs repeat and reallege each and every allegation contained in the foregoing paragraphs as though fully set forth herein.

12. On or about May, 2005, Aday approached Kirson and Boone (collectively referred to herein as the "Investors") regarding the opportunity to purchase forty acres of real property located in Arizona, APN: 333-43-040 (the "property").

13. Investors were advised that the fair market price for such property was four hundred and fifty thousand dollars ($450,000.00.)

14. Unbeknownst to the Investors the property was owned by David and Lana.

15. Aday presented the Investors with informational materials which discussed the planned development of the area which included golf courses, residential development and commercial retail areas; and indicated that the purchase of the property would be a great investment and he did not want to lose the opportunity.

16. Aday proposed forming a Nevada limited liability company be formed to hold the property.

17. On May 31, 2005 Mohave was formed under the agreement that the Investors would each own 40% of Mohave and Aday would hold the remaining 20% interest. Pursuant to the agreement between the parties the Investors would each contribute one hundred and eighty one thousand and two hundred and sixteen dollars ($181,216.00) and Aday would contribute the remaining balance of ninety thousand dollars ($90,000.00.)

17. Subsequently the closing of the property occurred in July, 2005 and the Investors were presented with certificates stating that they each held a 40% interest in Mohave.

18. Following the purchase of the property, Aday managed the affairs of Mohave and maintained all the books and records.

18. Since the closing in 2005, Investors repeatedly asked Aday for the documentation related to the investment and closing document, however Aday came up with excuses and did not produce the requested information. Being that no activity was being made to develop the property; on or about July, 2007 the Investors became concerned and began to aggressively ask for documentation substantiating their investment and specifically asked for the escrow closing documents.

19. When Aday was asked for this information he frequently conjured excuses why the information could not be provided such as: He was moving and he was unable to locate the documents, he was going through a divorce and his wife had the documentation, he needed to obtain a copy from the title company, etc.

20. On or about July, 2007 the Investors were informed that Aday had decided to place the property for sale. After discussing the matter with Aday, Kirson was able to obtain the realtor's name who was listing the property for sale.

21. The realtor informed Kirson that the property taxes were delinquent and that a line had been placed on the property. However, during the years in which the property was owned by Mohave, Aday had requested annually that the Investors remit monies to pay for the property taxes.

22. After confronting Aday in regards to the unpaid property taxes and the lien on the property, Aday stated that he would remedy the matter immediately. This was also contrary to Aday's statements in July, 2005 in which he claimed that the property was owned free and clear of any encumbrances, yet a lien was on the property from the outset of the purchase.

23. In July, 2010 Kirson contacted the realtor who was listing the property for sale, and was told the lien was never removed and that the taxes were again delinquent. Kirson immediately contacted Aday and asked him to resolve the lien and the taxes due; furthermore

Kirson asked to see the escrow closing documents.

24. Later in July, 2010 Aday faxed to Boone the first page of the closing statement for the property, which appeared to be redacted. The closing statement stated that there was a promissory note in favor of David in the amount of $22,500 which had not been paid. Aday explained that he could pay the full balance for his 20% ownership and had been loaned the monies from David.

25. Subsequently in July, 2010 the Investors for the first time found out who the title company was and obtained the title company closing documents directly from the title company.

26. The Investors discovered that Aday took an undisclosed finder's fee of one hundred thirty one thousand and five hundred dollars ($131,500.00) and that instead of the ninety thousand dollars ($90,000.00) contribution Aday contributed only sixty-eight thousand seven hundred and sixteen dollars ($68,716.00). Also unknown to the Investors, there was a promissory note against the property for the remaining twenty-two thousand five hundred dollars ($22,500.00).

27. Aday failed to disclose on or about July, 2005 that he was remitting to himself a finder's fee of one hundred thirty one thousand and five hundred dollars ($131,500.00), which upon information and belief, David either wrote or approved a check or payment to Aday; that he had only contributed sixty-eight thousand seven hundred and sixteen dollars ($68,716.00) toward his interest in the property, and; that there was a promissory note against the property for the remaining twenty-two thousand five hundred dollars ($22,500.00) in favor of David.

28. The Investors were further informed by their review of the title company documents, that David and Lana were the former owners of the property. David is also a close associate of Aday as they are both firemen in Clark County. Upon information and belief, Aday arranged for the sale of the property owned by his friends, David and Lana, and fraudulently

elicited funds from the Investors under the guise that the property was a incredible investment opportunity; while Aday completed the sale of a property for David and Lana which would not have been sold otherwise, providing himself an interest in the same property without full consideration and providing himself an undisclosed finder's fee of ($131,500.00).

29. Aday further attempted to conceal his wrongful actions by willfully failing to produce documents to the Investors, from July, 2005 to July, 2010.

FIRST CLAIM FOR RELIEF
(Breach of Contract - As to Defendants, Mohave and Aday)

30. Plaintiffs repeat and reallege each and every allegation contained in the foregoing paragraphs as though fully set forth herein.

31. Plaintiffs, Mohave and Aday agreed that Investors would each own 40% of Mohave and Aday would hold the remaining 20% interest. Pursuant to the agreement between the parties the Investors would each contribute one hundred and eighty one thousand and two hundred and sixteen dollars ($181,216.00) and Aday would contribute the remaining balance of ninety thousand dollars ($90,000.00.)

32. Plaintiffs reasonably relied on the representations of the Defendants and that they would honor the terms of the agreement, all to their detriment.

33. Plaintiffs performed all conditions precedent and subsequent in regards to their duties owed with respect to the agreement.

34. That the Defendants have breached the terms of the agreement, by specifically among other material breaches; Aday failed to remit full consideration for his ownership in Mohave, paid to himself an undisclosed finder's fee of $131,500 from David and/or Lana, allowed the property to be subject to a lien in the form of a promissory note, and failing to disclose pertinent documents after the request of Plaintiff in contradiction to the Operating Agreement.

35. That if the Plaintiffs were aware that Aday and Mohave would undertake such unilateral and damaging actions, Plaintiffs would not have agreed to the purchase of ownership interest in Mohave.

36. As a result of the Defendants failure to perform and honor the agreement as set forth, Plaintiffs have been damaged in an amount in excess of $50,000.00.

37. It has become necessary for Plaintiffs to engage the services of an attorney to commence this action and Plaintiffs are, therefore, entitled to reasonable attorney's fees and costs as damages.

SECOND CLAIM FOR RELIEF
(Breach of Implied Covenant of Good Faith and Fair Dealing –
As to Defendants, Mohave and Aday)

38. Plaintiffs repeat and reallege each and every allegation contained in the foregoing paragraphs as though fully set forth herein.

39. That the parties herein agreed to uphold certain obligations contained as agreed upon and memorialized herein; specifically, and among other terms; that Aday would contribute the amount which he had agreed upon to purchase his ownership interest, paid to himself an undisclosed finder's fee of $131,500 from David and/or Lana, allowed the property to be subject to a lien in the form of a promissory note, and withholding pertinent documents from the Plaintiffs which they are entitled to review pursuant to the Operating Agreement of Mohave.

40. That in every agreement there exist a covenant of good faith and fair dealing.

41. That parties agreed to uphold the terms of the agreement and Operating Agreement (the "agreements") upon execution of the respective documents and as a result agreed to perform certain duties.

42. That Defendants have failed to maintain the obligations which they agreed to in regards to Subscription Agreements or the securities.

43. That the Defendants have failed to act in good faith and have also failed to deal fairly in regards to upholding their defined duties under agreements.

44. As a result of the actions of the Defendants in failing to act in good faith and deal fairly with Plaintiffs, Plaintiffs have been damaged in a sum in excess of $50,000.00.

45. It has become necessary for Plaintiffs to engage the services of an attorney to commence this action and Plaintiffs are, therefore, entitled to reasonable attorney's fees and costs as damages.

THIRD CLAIM FOR RELIEF

(Unjust Enrichment – As to Defendants, Aday, David and Lana)

46. Plaintiffs repeat and reallege each and every allegation contained in the foregoing paragraphs as though fully set forth herein.

47. Through the actions of Defendants, Defendants enjoyed the benefit of funds which were in fact intended toward the purchase of the property.

48. That Aday was not entitled to an ownership interest in Mohave of 20% since he failed to provide the requisite consideration, nor was Aday entitled to a finder's fee of $131,500, paid by David and/or Lana, which was paid from the monies remitted by the Plaintiffs.

49. That through the fraudulent efforts of Aday, David and Lana; a scheme was concocted to elicit funds from the Plaintiffs wherein they would all benefit from monies remitted by them for the purchase of real property from Aday's close associates, which property was proclaimed as an incredible investment opportunity and that Aday could readily develop.

50. That David and Lana were grossly benefitted by this scheme by receiving funds for the property which they would not otherwise be able to sell, but through the scheme perpetuated upon the Plaintiffs.

51. That such actions have resulted in the unjust enrichment of Defendants.

52. That Plaintiffs have been damaged and the Defendants have been unjustly enriched in a sum in excess of $50,000.00.

53. It has become necessary for Plaintiffs to engage the services of an attorney to

commence this action and Plaintiffs are, therefore, entitled to reasonable attorney's fees and costs as damages.

FOURTH CLAIM FOR RELIEF

(Securities Fraud Pursuant to NRS 90 – As to Aday, David and Lana)

54. Plaintiffs repeat and reallege each and every allegation contained in the foregoing paragraphs as though fully set forth herein.

55. NRS 90.220 states:

> **"Broker-dealer" defined.** "Broker-dealer" means any person engaged in the business of effecting transactions in securities for the account of others or for the person's own account. "Broker-dealer" does not include:
>
> 1. A sales representative;
> 2. An issuer, except when effecting transactions other than with respect to its own securities;
> 3. A depository institution; or
> 4. Any other person the Administrator by regulation or order designates.

56. NRS 90.295 states:

> **"Security" defined.** "Security" means a note, stock, bond, debenture, evidence of indebtedness, certificate of interest or participation in a profit-sharing agreement, a limited partnership interest, an interest in a limited-liability company, collateral-trust certificate, preorganization certificate or subscription, transferable share, investment contract, viatical settlement investment, voting-trust certificate, certificate of deposit for a security, fractional undivided interest in an oil, gas or other mineral lease or in payments out of production of such a lease, right or royalty, a put, call, straddle or option on a security, certificate of deposit or group or index of securities including any interest therein or based on the value of any of the foregoing, or, in general, any interest or instrument commonly known as a security or any certificate of interest or participation in, temporary or interim certificate for, receipt for, whole or partial guarantee of or warrant or right to subscribe to or purchase any of the foregoing. ...

57. NRS 90.280 partially states:

> **"Sale" and "sell" defined.** "Sale" includes every contract of sale, contract to sell, or other disposition, of a security or interest in a security for value. "Sell" has a corresponding meaning. In this context:
>
> 1. "Offer to sell" includes every attempt or offer to dispose of, or solicitation of an offer to purchase, a security or interest in a security for value.

2. "Offer to purchase" includes every attempt or offer to obtain, or solicitation of an offer to sell, a security or interest in a security for value, but the term does not include a transaction that is subject to section 14(d) of the Securities Exchange Act of 1934.

58. NRS 90.460 states:

Registration requirement. It is unlawful for a person to offer to sell or sell any security in this State unless the security is registered or the security or transaction is exempt under this chapter.

59. NRS 90.285 states:

"Sales representative" defined. "Sales representative" means a natural person other than a broker-dealer, authorized to act and acting for a broker-dealer or issuer effecting or attempting to effect purchases or sales of securities. A partner, officer or director of a broker-dealer or issuer, or a person occupying a similar status or performing similar functions, is a sales representative only if he or she otherwise comes within the definition.

60. NRS 90.310 partially states:

Licensing of broker-dealers, sales representatives and transfer agents.
1. It is unlawful for any person to transact business in this State as a broker-dealer or sales representative unless licensed or exempt from licensing under this chapter.
2. It is unlawful for any issuer or any broker-dealer licensed under this chapter to employ or contract with a person as a sales representative within this State unless the sales representative is licensed or exempt from licensing under this chapter.

61. NRS 90.570 states:

Offer, sale and purchase. In connection with the offer to sell, sale, offer to purchase or purchase of a security, a person shall not, directly or indirectly:
1. Employ any device, scheme or artifice to defraud;
2. Make an untrue statement of a material fact or omit to state a material fact necessary in order to make the statements made not misleading in the light of the circumstances under which they are made; or
3. Engage in an act, practice or course of business which operates or would operate as a fraud or deceit upon a person.

62. NRS 90.660 states:

1. A person who offers or sells a security in violation of any of the following provisions:
   (a) Subsection 1 of NRS 90.310;
   (b) NRS 90.460;
   (c) Subsection 10 of NRS 90.500;
   (d) Subsection 2 of NRS 90.570;
   (e) Subsection 2 of NRS 90.610; or
   (f) A condition imposed in subsection 8 or 9 of NRS 90.500,

~is liable to the person purchasing the security. Upon tender of the security, the purchaser may recover the consideration paid for the security and interest at the legal rate of this State from the date of payment, costs and reasonable attorney's fees, less the amount of income received on the security. A purchaser who no longer owns the security may recover damages. Damages are the amount that would be recoverable upon a tender less the value of the security when the purchaser disposed of it, plus interest at the legal rate of this State from the date of disposition of the security, costs and reasonable attorney's fees determined by the court. Tender requires only notice of willingness to exchange the security for the amount specified.

2. A person who offers or sells a security in violation of subsection 2 of NRS 90.570 is not liable under subsection 1 of this section if:

(a) The purchaser knew that a statement of a material fact was untrue or that there was an omission of a statement of a material fact; or

(b) The seller did not know and in the exercise of reasonable care could not have known of the untrue statement or misleading omission.

3. A person who willfully participates in any act or transaction in violation of NRS 90.580 is liable to a person who purchases or sells a security, other than a security traded on a national securities exchange or quoted on a national automated quotation system administered by a self-regulatory organization, at a price that was affected by the act or transaction for the damages sustained as a result of the act or transaction. Damages are the difference between the price at which the securities were purchased or sold and the market value the securities would have had at the time of the person's purchases or sale in the absence of the act or transaction, plus interest at the legal rate of this State from the date of the act or transaction and reasonable attorney's fees.

4. A person who directly or indirectly controls another person who is liable under subsection 1 or 3, a partner, officer or director of the person liable, a person occupying a similar status or performing similar functions, any agent of the person liable, an employee of the person liable if the employee materially aids in the act, omission or transaction constituting the violation, and a broker-dealer or sales representative who materially aids in the act, omission or transaction constituting the violation, are also liable jointly and severally with and to the same extent as the other person, but it is a defense that the person did not know, and in the exercise of reasonable care could not have known, of the existence of the facts by which the liability is alleged to exist. With respect to a person who directly or indirectly, controls another person who is liable under subsection 3, it is also a defense that the controlling person acted in good faith and did not, directly or indirectly, induce the act, omission or transaction constituting the violation. Contribution among the several persons liable is the same as in cases arising out of breach of contract.

63. That Plaintiffs initial investment offering as evidenced by the Operating Agreement and related agreement defined herein and incorporated herein, are a security as defined by NRS 90.295. That Plaintiffs were collectively offered an 80% ownership interest in Mohave for funds totaling $362,432. (Hereafter collectively referred to as the "securities")

64. That Defendant, Aday acted in the capacity as a sales representative as defined by

NRS 90.285.

65. That the securities were not registered in violation of NRS 90.460.

66. That Defendant, Aday who acted in the capacity as a sales representative as defined by NRS 90.285, during the course and scope of his representations to Plaintiffs on or about July, 2005, violated said statute as he was not licensed pursuant to NRS 90.310. Furthermore, Aday was not permitted to receive a commission, or finder's fee, as he was not registered as a sale representative pursuant to NRS 90.285. That, upon information and belief, Defendants, David and Lana likewise violated said statutes for their involvement in orchestrating this scheme during the course of her involvement in the sale of the securities, as they was likewise not licensed pursuant to NRS 90.310.

67. That Defendant, Aday also acted in the capacity of a broker-dealer as defined by NRS 90.220 or sales representative as defined by NRS 90.285, during the course and scope of his representations to Plaintiffs.

68. That Defendants, Aday acts of soliciting Plaintiffs to purchase the securities are in accordance with the definition of a "Sale" or to "Sell" a security contained in NRS 90.280.

69. That Defendants, Aday, David and Lana knew or reasonably should have known that the securities were in violation of NRS 90.460. Furthermore, Aday, David and Lana, upon information and belief, perpetuated a fraud upon Plaintiffs as they knew that the securities purchased by Plaintiffs would be worthless and that they continued to illicit funds from Plaintiffs for their own benefit and/or to benefit others they associated with.

70. That Defendants, Aday, David and Lana, upon information and belief, employed a scheme to illicit funds from Plaintiffs by way of offering or knowingly assisting in procuring funds for the investment in Mohave, and made, or assisted in the making of material representations which were in fact misleading.

71. That Defendants actions violate provisions related to NRS 90 with respect to registering the securities, illegal sale of the securities, lack of proper licensure, misuse of funds received under the guise of being a security, fraudulent and willful misrepresentations or assisting in the act of the same, and generally perpetuating a fraud upon Plaintiffs by such ill acts, etc.; and that such acts are in violation of NRS 90.570.

72. That NRS 90.660 states that any person who violates NRS 90.310, 90.460, 90.570 or 90.500 is liable to the person purchasing the security in the amount provided, interest, and reasonable attorney's fees and costs.

73. As a result of Defendants actions, Plaintiffs have been damaged in an amount in excess of $50,000.

74. It has become necessary for Plaintiffs to engage the services of an attorney to commence this action and Plaintiffs are, therefore, entitled to reasonable attorney's fees and costs as damages.

FIFTH CLAIM FOR RELIEF

(Violation of State RICO NRS 207.350 - .520 – As to All Defendants)

75. Plaintiffs repeat and reallege each and every allegation contained in the foregoing paragraphs as though fully set forth herein.

76. Sections 207.350 through 207.520 of the NRS contain the state's anti-racketeering or "baby RICO" law. NRS 207.390 defines "racketeering activity" as "engaging in at least two crimes related to racketeering that have the same or similar pattern, intents, results, accomplices, victims or methods of commission, or are otherwise interrelated by distinguishing characteristics and are not isolated incidents... ."

77. NRS 207.370 defines a "criminal syndicate" as "any combination of persons, so structured that the organization will continue its operation even if individual members enter or leave the organization, which engages in or has the purpose of engaging in racketeering activity."

78. Under NRS 207.360, a "crime related to racketeering" or predicate act includes, *inter alia*, "[a]ny violation of NRS 90.570" as well as "taking property from another under circumstances not amounting to robbery; grand larceny; embezzlement of money or property valued at $250 or more; and obtaining possession of money or property valued at $250 or more ... by means of false pretenses." NRS 90.570, prohibits fraud, deceit, and materially false or misleading statements or omissions "in connection with the offer to sell, sale, offer to purchase or purchase of a security... ."

79. NRS 90.660 provides a private right of action only to defrauded purchasers of securities, and then only for violations of NRS 90.570(2) relating to material misstatements or omissions. However, whether directed at purchasers or sellers, multiple violations of NRS 90.570, including subparagraphs (1) ("any device, scheme or artifice to defraud") and (3) ("an act, practice or course of business which operates or would operate as a fraud or deceit"), give rise to a private right of action under NRS 207.470 by "[a]ny person who is injured in his business or property by reason of any violation NRS 207.400," which provides in relevant part:

> 1. It is unlawful for a person:
>
> (a) Who has with criminal intent received any proceeds derived, directly or indirectly, from racketeering activity to use or invest, whether directly or indirectly, any part of the proceeds, or the proceeds derived from the investment or use thereof, in the acquisition of: ...
>
> (2) Any interest in or the establishment or operation of any enterprise.
>
> (b) Through racketeering activity to acquire or maintain, directly or indirectly, any interest in or control of any enterprise.
>
> (c) Who is employed by or associated with any enterprise to conduct or participate, directly or indirectly, in:
>
> (1) The affairs of the enterprise through racketeering activity; or
>
> (2) Racketeering activity through the affairs of the enterprise.

(d) Intentionally to organize, manage, direct, supervise or finance a criminal syndicate.

(f) To furnish advice, assistance or direction in the conduct, financing or management of the affairs of the criminal syndicate with the intent to promote or further the criminal objectives of the syndicate.

(h) To conspire to violate any of the provisions of this section.
(i) Who knows that property represents proceeds of, or is directly or indirectly derived from, any unlawful activity to conduct or attempt to conduct any transaction involving the property:
(1) With the intent to further racketeering activity; or
(2) With the knowledge that the transaction conceals the location, source, ownership or control of the property.
(j) To conspire to violate any of the provisions of this section.

80. NRS 207.520 provides that a civil action for violation of NRS 207.470 "may be commenced at any time within 5 years after the violation occurs or after the injured person sustains the injury, whichever is later."

81. The multiple violations of the antifraud provisions of the federal securities laws alleged in the Fourth Claim of Relief above also constitute violations of NRS 90.570 and predicate acts under NRS 207.360.

81. That Defendants continued violations of NRS 90 and assistance in violations of said Chapter, and specifically NRS 90.570 constitute a further predicate act under NRS 207.360.

82. That all relevant Defendants mentioned herein actively participated in the theft of securities investment funds, conspired or assisted in the scheme to defraud and to steal monies from Plaintiffs or received monies through their assistance and negligence.

83. All the predicate acts alleged above constitute racketeering activity under NRS 207.390 because they were related to each other as part of a coordinated scheme, starting in May, 2005 and continuing to the July, 2010 when Plaintiffs became cognizant of the criminal activities of the Defendants, directed at Plaintiffs, and designed to compel them ultimately to surrender a vast sum of money.

84. That specifically, Defendants, actively engaged in material misrepresentations which assisted in the concealment or concealing, of the use of monies used to purchase the securities. Furthermore, said Defendants actively engaged and colluded to steal monies from Plaintiffs through misrepresentation amounting to theft, embezzlement, civil conspiracy and in general violated the sections of NRS 207.360 and 207.400 as mentioned in this claim for relief.

85. That pursuant to NRS 207.470 Plaintiffs are entitled to recover from Defendants three times the actual damages sustained, plus reasonable attorney's fees and costs.

86. It has become necessary for Plaintiffs to engage the services of an attorney to commence this action and Plaintiffs are, therefore, entitled to reasonable attorney's fees and costs as damages.

SIXTH CLAIM FOR RELIEF

(Fraud - As to Defendants, Aday)

87. Plaintiffs repeat and reallege each and every allegation contained in the foregoing paragraphs as though fully set forth herein.

88. That Defendant on or about July, 2005 and thereafter represented that Investors would each own 40% of Mohave and Aday would hold the remaining 20% interest. Further, pursuant to the agreement between the parties the Investors would each contribute one hundred and eighty one thousand and two hundred and sixteen dollars ($181,216.00) and Aday would contribute the remaining balance of ninety thousand dollars ($90,000.00.)

89. Plaintiffs reasonably relied on the representations of the Defendants and that they would honor the terms of the agreement, all to their detriment.

90. That the Defendant fraudulently and maliciously materially misrepresented to the Plaintiffs that he would abide by the agreement and specifically; Aday failed to remit full consideration for his ownership in Mohave, paid to himself an undisclosed finder's fee of

$131,500 on or about July, 2005, allowed the property to be subject to a lien in the form of a promissory note, and failing to disclose pertinent documents after the request of Plaintiff in contradiction to the Operating Agreement from on or about July, 2005 and thereafter.

91. Aday further intentionally and fraudulently misrepresented the closing of the property by providing a redacted copy of the first page of the closing statement for the purchase of the property on or about July, 2010; and that the document intentionally and fraudulently failed to disclose the finder's fee which Aday had remitted to himself.

92. That if the Plaintiffs were aware that Aday and Mohave would undertake such unilateral and damaging actions, Plaintiffs would not have agreed to the purchase of ownership interest in Mohave.

93. That the numerous representations made by the Defendant, were knowingly and willfully false and made with malicious intent.

94. That Defendants made such representations to induce Plaintiffs to act accordingly with his request, and Plaintiffs detrimentally relied on the representations.

95. That based on the representations of Defendants, Plaintiffs were damaged; and that Defendants were the proximate cause of Plaintiff's damages.

96. As a result of the Defendants actions, Plaintiffs have been damaged in an amount in excess of $50,000.00.

97. It has become necessary for Plaintiffs to engage the services of an attorney to commence this action and Plaintiffs are, therefore, entitled to reasonable attorney's fees and costs as damages.

WHEREFORE, Plaintiff prays for judgment against the Defendants, jointly and severally, as follows:

1. For compensatory damages in a sum according to proof at trial;

ERR
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Attorney for Plaintiffs

DISTRICT COURT
CLARK COUNTY, NEVADA

KERRY KIRSON, an individual; and JAMES BOONE, an individual; Plaintiffs, v. MOHAVE VALLEY PARTNERS IV, LLC, a Nevada limited liability; CHARLES ADAY, an individual; DAVID ARENEZ, an individual; LANA ARENEZ, an individual; DOES I-X; and/or ROE CORPORATIONS I-X, inclusive, Defendants.	Case No.: A-11-644767-C Dept. No. X

ERRATA TO COMPLAINT

COMES NOW, Plaintiffs, KERRY KIRSON and JAMES BOONE, by and through their attorney, JAMES W. KWON, ESQ. of JAMES KWON, LLC and hereby submits this Errata to the Plaintiff's Complaint.

The Complaint contains a spelling error with regard to two of the Defendants last names. Specifically, the Complaint identifies "DAVID ARENEZ" and "LANA ARENEZ" as Defendants. Further research reveals that the true and correct names of these two Defendants are: "DAVID ARENAZ" and "LANA ARENAZ."

DATED this 18 day of July, 2011.

JAMES KWON, LLC

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DISTRICT COURT

CLARK COUNTY, NEVADA

KERRY KIRSON, an individual; and JAMES BOONE, an individual; Plaintiffs, v. MOHAVE VALLEY PARTNERS IV, LLC, a Nevada limited liability; CHARLES ADAY, an individual; DAVID ARENEZ, an individual; LANA ARENEZ, an individual; DOES I-X; and/or ROE CORPORATIONS I-X, inclusive, Defendants.	Case No.: A-11-644767-C Dept. No. X

NOTICE OF ENTRY OF ORDER GRANTING DEFENDANTS CHARLES ADAY AND DAVID ARENAZ' MOTION TO DISMISS

TO: KERRY KIRSON, Plaintiff,
TO: JAMES BOONE, Plaintiff,
TO: CHARLES ADAY, Defendant, through his attorneys of record, Heather L. Trujillo, Esq. and Alexandra B. McLeod, Esq.
TO: DAVID ARENAZ, Defendant, through his attorneys of record, Heather L. Trujillo, Esq. and Alexandra B. McLeod, Esq.

YOU AND EACH OF YOU, WILL PLEASE TAKE NOTICE that an *Order Granting Defendants Charles Aday and David Arenaz' Motion to Dismiss* was entered in the above entitled

matter on the 12th day of February, 2013. A copy of said *Order* is attached hereto.

DATED this 25 day of February, 2013.

JAMES KWON, LLC

JAMES W. KWON, ESQ.
Nevada State Bar No. 8146
8925 West Post Road, Suite 120
Las Vegas, Nevada 89148

CERTIFICATE OF MAILING

Pursuant to NRCP 5(b), I hereby certify that service of the foregoing *Notice of Entry of Order Granting Defendants Charles Aday and David Arenaz' Motion to Dismiss* was made this 26 day of February, 2013, by depositing a true and correct copy of the same in the United States mail at Las Vegas, Nevada, first class postage fully prepaid, and addressed to the following:

Alexandra B. McLeod, Esq.
Heather L. Trujillo, Esq.
BRADY, VORWERCK, RYDER & CASPINO
2795 E. Desert Inn Road, Suite 200
Las Vegas, NV 89121

Kerry Kirson
41 Daisy Meadow Terrace
Henderson, NV 89074

James Boone
10524 Torre De Nolte Street
Las Vegas, NV 89141

An employee of JAMES W. KWON, LLC

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CLERK OF THE COURT

ORDR
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Las Vegas, Nevada 89148
(702) 515-1200
Attorneys for Plaintiffs

DISTRICT COURT

CLARK COUNTY, NEVADA

KERRY KIRSON, an individual; and JAMES BOONE, an individual;

Plaintiffs,

v.

MOHAVE VALLEY PARTNERS IV, LLC, a Nevada limited liability; CHARLES ADAY, an individual; DAVID ARENEZ, an individual; LANA ARENEZ, an individual; DOES I-X; and/or ROE CORPORATIONS I-X, inclusive,

Defendants.

Case No.: A-11-644767-C
Dept. No. X

ORDER GRANTING DEFENDANTS CHARLES ADAY AND DAVID ARENAZ' MOTION TO DISMISS

THIS MATTER having come before the Court on Defendants CHARLES ADAY (hereinafter "ADAY") and DAVID ARENAZ' (hereinafter "ARENAZ" and collectively "DEFENDANTS") Motion to Dismiss on the 4th day of December, 2012 at the hour of 9:30 a.m., Defendants ADAY and ARENAZ appearing through their counsel of record, Heather Trujillo, Esq. and Alexandra B. McLeod, Esq. of BRADY, VORWERCK, RYDER & CASPINO, and Plaintiffs KERRY KIRSON (hereinafter "KIRSON") and JAMES BOONE (hereinafter "BOONE" and collectively as "PLAINTIFFS"), this Honorable Court having considered all of the papers and pleadings on file herein, as well as the arguments of counsel for the parties hereto; and

good cause appearing therefor:

FINDINGS OF FACT

1. Plaintiffs claim breach of contract, breach of implied covenant of good faith and fair dealing and fraud as to ADAY and unjust enrichment, securities fraud and RICO violations as to both ADAY and ARENAZ arising out of a land sale deal between Mohave Valley Partners IV, LLC (hereinafter "MVP") and ARENAZ and his now-deceased wife Lana Arenaz occurring on July 21, 2005 in Mohave Valley, Arizona.
2. Defendants argue that, under corporate law, Plaintiffs do not have standing to sue ADAY for actions taken in the course and scope of his role as manager of MVP, as MVP is a separate legal entity from ADAY, and the corporate veil must be pierced for the manager of a corporation to be sued for actions taken while acting as manager of the corporation.
3. Defendants also argue that Plaintiffs do not have standing to sue ARENAZ, as any wrongdoings by ARENAZ would have been against MVP and not Plaintiffs, making Plaintiffs improper parties.
4. Defendants further argue that the securities fraud, RICO and fraud claims are barred by the statute of limitations.
5. Lastly, Defendants argue that the RICO cause of action was not pled with sufficient specificity to withstand dismissal and that Plaintiffs failed to allege a pattern of criminal activity.
6. On May 31, 2005, prior to purchasing the land, KIRSON and BOONE entered into an operating agreement with ADAY, in which the three men formed MVP, a Nevada limited liability company with the intent of using the company for the land sale purchase.
7. ADAY was the manager of MVP.
8. Plaintiffs did not attempt to pierce the corporate veil before bringing suit against ADAY.

9. ARENAZ was not a member of MVP.

10. ARENAZ sold the parcel of land to MVP.

11. All of the allegations in the Complaint against ARENAZ deal with the land sale deal between MVP and ARENAZ.

12. In July 2007, Plaintiffs became concerned about the actions ADAY had taken as manager of MVP.

13. Having been made aware of cause for concern in July 2007, Plaintiffs did not take any action to find information about their concerns until July 2010.

BASED UPON THE FOREGOING FINDINGS OF FACT, THE COURT MAKES THE FOLLOWING CONCLUSIONS OF LAW:

1. Plaintiffs lack standing for a suit against ADAY because ADAY signed the purchase agreement in his capacity as Manager of MVP.

2. Plaintiffs lack standing for suit against ARENAZ because he was not a member of MVP and any suit filed against him should have been filed against him by MVP as a derivative suit, not KIRSON and BOONE as individuals.

3. Causes of Action 4, 5 and 6 are all barred by the applicable statutes of limitation because Plaintiffs were able to contact the real estate agent who conducted the sale prior to or during 2007 and it is logical to assume that they could have found out the identity of the title company that conducted the sale of the property to MVP at that time.

4. There is no explanation for Plaintiffs having waited from 2007 to 2010 to obtain documents that they had reason to believe could indicate or confirm that fraudulent actions took place.

5. Plaintiffs should have made written request to ADAY for documents in 2007.

6. Defendants show that Plaintiffs had some notice of the potential method of sale and kickback which would at least give Plaintiffs reason to investigate further as early as 2005 so it is the

Court's view that Plaintiffs' claims are time-barred by the statute of limitations under the knew or should have known test which applies to these causes of action.

7. With regard to the RICO claims, Plaintiffs have not demonstrated two crimes related to racketeering that have the same or similar pattern. The pleadings do not meet the *Cummings v. Charter Hospital* standard because it is extremely difficult to understand which sections of RICO Plaintiffs are alleging in their Complaint.

8. Plaintiffs do not allege underlying criminal activity with specificity required from the pleadings or make it clear which specific crimes are alleged and, furthermore, it appears that the RICO claims should have been brought by MVP in a derivative action as well.

IT IS HEREBY ORDERED, ADJUDGED AND DECREED that for the foregoing reasons and those articulated in the written pleadings and oral argument today, Defendants' Motion to Dismiss is granted and Plaintiff's Complaint against ADAY and ARENAZ is dismissed with prejudice.

DATED this 12th day of February, 2013.

Jessie Walsh

Hon. JESSIE WALSH
DISTRICT COURT JUDGE

Submitted by:

JAMES KWON, LLC

JAMES W. KWON, ESQ.
Nevada Bar No. 8146
8925 West Post Road, Suite 120
Las Vegas, Nevada 89148
Attorney for Plaintiffs KERRY KIRSON and JAMES BOONE

Reviewed as to form and content by:

BRADY, VORWERCK, RYDER & CASPINO

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HEATHER L. TRUJILLO
Nevada Bar No. 12651
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Attorney for Defendants CHARLES ADAY and DAVID ARENAZ

CERTIFICATE OF SERVICE

I hereby certify that on this 29th day of May, 2013, a true and correct copy of NOTICE OF ENTRY OF JUDGMENT was placed in an envelope, postage prepaid, addressed as stated below, in the basket for outgoing mail before 4:00 p.m. at BRADY, VORWERCK, RYDER & CASPINO, . The firm has established procedures so that all mail placed in the basket before 4:00 p.m. is taken that same day by an employee and deposited in a U.S. Mail box.

Kirson v Mohave Valley Partners
Case No. A-11-644767-C
BVRC File No. 15867

Party	Phone/Fax/E-Mail	Description
James W. Kwon, Esq. Kwon Law Firm 8925 W. Post Road, #120 Las Vegas, NV 89148	T (702) 515-1200 F (702) 515-1201	Attorneys for Plaintiffs

By Terry Kelly-Lamb
Terry Kelly-Lamb, an Employee of
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CLERK OF THE COURT

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Attorneys for Defendants, CHARLES ADAY and DAVID ARENAZ

DISTRICT COURT

CLARK COUNTY, NEVADA

KERRY KIRSON, an individual; and JAMES BOONE, an individual,

Plaintiffs,

v.

MOHAVE VALLEY PARTNERS IV, LLC, a Nevada limited liability; CHARLES ADAY, an individual; DAVID ARENAZ, an individual; LANA ARENAZ, an individual; DOES I-X; and/or ROE CORPORATIONS 1-X, inclusive,

Defendants.

Case No. A-11-644767
Dept. No.: X

JUDGMENT AND ORDER GRANTING ATTORNEYS' FEES AND COSTS TO DEFENDANTS CHARLES ADAY AND DAVID ARENAZ

Defendants CHARLES ADAY and DAVID ARENAZ (hereinafter "Defendants") filed a Motion to Dismiss this action in its entirety. On December 4, 2012, this Court granted that motion. Defendants' for Attorneys' Fees and Costs came before this Court on April 25, 2012, Chambers Calendar and this Honorable Court having considered all of the papers and pleadings on file herein, and good cause appearing therefore;

FINDINGS OF FACT

1. A Notice of Entry of Order Granting Defendants' Motion to Dismiss was filed on February 27, 2013.

. . .

2. Defendants filed their Memorandum of Costs and Disbursements on March 3, 2013; thereafter, Defendants filed their Application for Attorney's Fees and Costs on March 20, 2013.

3. Plaintiffs filed their Opposition to Defendants' Application for Attorneys' Fees, Costs and Interest on April 12, 2013.

4. The case was dismissed through no ordinary motion to dismiss, because the Court found no legal basis for any of Plaintiffs' claims;

5. Plaintiffs' lawsuit was frivolous and vexatious;

6. Based on the above facts, the Court considered the costs reasonable under NRS Chapter 18 and *Berosini*, *see Bobby Berosini, Ltd. v. People for the Ethical Treatment of Animals*, 114 Nev. 1348, 971 P.2d 383 (1998), and found as follows:

   a. Plaintiffs did not address their failure to file a motion to re-tax costs, and pursuant to EDCR 2.20(2) this failure is construed as an admission that Defendants' Motion is meritorious; and

   b. The costs sought are reasonable and justified in amount.

7. The Court then found that the fees were reasonable and necessary according to the *Brunzell* factors, *see Brunzell v. Golden Gate*, 85 Nev. 345, 455 P.2d 31 (1969), because:

   a. Defense counsel possessed sufficient qualities to support the rate billed as multiple attorneys worked on this case, from associates to partners, in an effort to address the complex issues, yet keep the costs down;

   b. Defense counsels' work completed was sufficient to support the time, effort, and energy expended, as this was a complex case, requiring many hours of legal research, records research, contract review, and discovery;

c. Defense counsel performed significant work on the defense, as over 85 hours was spent to protect defendants from a frivolous lawsuit;

d. The time spent was deemed reasonable to the court;

e. After litigating the case for a year and a half, the defense succeeded in having the case dismissed;

f. Plaintiffs' only argument against fees is that the lawsuit was filed in good faith; and

g. The fees sought are reasonable and justified in amount.

CONCLUSIONS OF LAW

This Court hereby awards attorney fees and costs pursuant to NRS Chapter 18, NRS 18.0.01(2)(b) and EDCR 2.20(e) and pursuant to the foregoing precedent. Therefore,

The COURT HEREBY ORDERS, that the Defendants' Application for Attorneys' Fees and Costs is GRANTED and, upon review of the billing statements submitted by counsel for fees incurred defending this action, the Court hereby awards attorney fees in the amount of $16,234.50 and costs in the amount of $545.70.

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BRADY, VORWERCK, RYDER & CASPINO
2795 East Desert Inn Road
Suite 200

IT IS ORDERED AND ADJUDGED that the Plaintiffs, KERRY KIRSON and JAMES BOONE take nothing, as the action was dismissed on the merits, and the Defendants CHARLES ADAY and DAVID ARENAZ recover from the Plaintiffs their costs of action and fees in the total amount of $16,780.20, with post-judgment interest to accrue at the statutory rate.

DATED: May 17, 2013.

DISTRICT COURT JUDGE
JESSIE WALSH

Respectfully submitted by:

BRADY, VORWERCK, RYDER & CASPINO

ALEXANDRA B. McLEOD
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