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**DISTRICT COURT
CLARK COUNTY, NEVADA**

**CHEETAH WIRELESS
TECHNOLOGIES, INC.; and
MITCHELL GONZALEZ,**

Plaintiffs,

Vs.

**LASVEGAS.NET, LLC; LV.NET, LLC;
MARTY MIZRAHI; DOES I-X; and ROE
ENTITIES I-X, inclusive,**

Defendants.

LV.NET, LLC,

Counter-Claimant,

Vs.

**CHEETAH WIRELESS
TECHNOLOGIES, INC.; MITCHELL
GONZALEZ; MICHAEL DEAN;
MICHAEL MIMES; DOES XI-XX,
inclusive; and ROE ENTITIES XI-XX,**

¹

inclusive,

Counter-Defendants.

Case No. A-16-738043-B

Dept. No. XXII

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

...

...

¹As MICHAEL DEAN, MICHAEL MIMES, DOES XI-XX and ROE ENTITIES XI-XX are not listed as plaintiffs in the primary action, they are best classified as “third-party defendants.” However, notwithstanding this procedural point, the “counter-claims” lodged against MR. DEAN and MR. MIMES were dismissed via Stipulation on November 12, 2019. See pp. 4-5 *infra*.

SUSAN HONSON
DISTRICT JUDGE
DEPARTMENT XXII

FINDINGS OF FACT, CONCLUSIONS OF LAW AND JUDGMENT

1
2 This matter came on for a 21-day bench trial on the 18th, 19th, 20th, 25th, 26th, 27th and 28th
3 days of October 2021, the 2nd, 3rd, 6th, 8th, 10th, 20th and 21st days of December 2021, and the 10th,
4 11th, 12th, 24th, 25th, 26th and 27th days of January 2022 before Department XXII of the Eighth
5 Judicial District Court, in and for Clark County, Nevada, with JUDGE SUSAN JOHNSON
6 presiding; Plaintiffs/ Counter-Defendants CHEETAH WIRELESS TECHNOLOGIES, INC. and
7 MITCHELL GONZALEZ appeared by and through their attorney, MARTIN A. LITTLE, ESQ. of
8 the law firm, HOWARD & HOWARD; and Defendants LASVEGAS.NET, LLC and MARTY
9 MIZRAHI, and Defendant/Counter-Claimant LV.NET, LLC appeared by and through their attorney,
10 MARK A. KULLA, ESQ. Having reviewed the papers and pleadings on file, including but not
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13 limited to the exhibits admitted at trial, the recorder's transcripts of the 21-day trial filed August 9,
14 2022, March 14, 2023 and March 16, 2023, and the parties' pre- and post-trial briefs filed in May
15 2022, heard oral statements and argument of counsel as well as the testimonies of parties and/or
16 witnesses, to wit: MITCHELL GONZALEZ, ROBERT SCOTT LESLIE, DAVID WEEKLY,
17 MICHAEL DEAN, CHARLES SATTLER,³ RICHARD TYLER, RONALD COOK,
18 CHRISTOPHER FLANAGAN, JOHN WIGHTMAN and MARTIN MIZRAHI,⁴ and taken this
19 matter under advisement, this Court makes the following Findings of Fact, Conclusions of Law and
20 Judgment:
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24 ²The exhibits admitted at trial were Plaintiffs'/Counter-Defendants' Nos. 1 through 50, 53 through 57, 59
25 through 62, 78 through 93, 96, 97, 98, 100, 103, 104, 106, 118 and 128, and Defendants' and Defendant/Counter-
26 Claimant LV.NET, LLC'S Nos. 200, 201, 203, 209, 213, 214, 215, 227, 230 through 242, 249, 250, 256, 259, 260, 261,
27 271, 272, 273, 276, 278, 279, 280, 283 through 286, 288 through 296, 298, 303, 311, 313, 316.1, 316.2, 316.3, 318
through 334, 337, 339, 340, 341, 342, 344 through 348, 350 through 353, 355 through 372, 375, 380 through 383, 390,
392, 393, 396, 401 and 402, and Court's Exhibits Nos. 1, 2, 3, 4, and 5.

³Throughout the trial, MR. SATTLER was referred to by parties and witnesses as "CJ."

⁴In lieu of MI ANN BENNETT'S live testimony, the parties stipulated to the submission of her deposition
28 testimony taken June 22, 2017 as this witness' attestations at trial.

FINDINGS OF FACT AND PROCEDURAL HISTORY

- 1
- 2 **1.** On June 7, 2016, Plaintiffs CHEETAH WIRELESS TECHNOLOGIES, INC.
- 3 (referred to as “CWTI” herein) and MITCHELL GONZALEZ filed their Complaint against
- 4 Defendants LASVEGAS.NET,⁵ LLC; LV.NET, LLC⁶ and MARTY MIZRAHI, asserting claims of:
- 5 a. Breach of contract (CWTI against LV.NET, LLC only);
- 6
- 7 b. Breach of implied covenant of good faith and fair dealing (CWTI against
- 8 LV.NET, LLC only);
- 9 c. Tortious breach of implied covenant of good faith and fair dealing (CWTI
- 10 against LV.NET, LLC and MR. MIZRAHI);
- 11 d. Unjust enrichment (CWTI against LV.NET, LLC and MR. MIZRAHI);
- 12
- 13 e. Conversion (CWTI against LV.NET, LLC and MR. MIZRAHI);
- 14 f. Fraud (CWTI against LV.NET, LLC and MR. MIZRAHI);
- 15 g. Breach of fiduciary duty (CWTI against LV.NET, LLC and MR. MIZRAHI);
- 16 h. Specific Performance (CWTI against LV.NET, LLC and MR. MIZRAHI);
- 17 i. Declaratory relief (CWTI against LV.NET, LLC and MR. MIZRAHI); and
- 18 j. Breach of Employment Agreement (MR. GONZALEZ against LV.NET,
- 19 LLC).

20 By way of their Complaint and based upon the evidence presented at trial, CWTI and MR.

21 GONZALEZ claim they are entitled to judgment against LV.NET, LLC and MR. MIZRAHI in the

22 amounts of \$1,153,977.00 (CWTI) and \$91,898 (MR. GONZALEZ) for a total of \$1,245,875.⁷

23 ...

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25

26 ⁵This Court gleaned LASVEGAS.NET and LV.NET, LLC were one and the same. No causes of action are asserted directly against LASVEGAS.NET in the Complaint filed June 7, 2016. No evidence was presented with respect to LASVEGAS.NET’S conduct at the bench trial.

27 ⁶LV.NET, LLC is also referred to as “LVN” by the parties and within the paperwork.

28 ⁷See CWTI’S and MR. GONZALEZ’S Closing Argument Brief, p. 2, filed May 12, 2022. Also see Court’s Trial Exhibit No. 2, DAVID WEEKLY’S Powerpoint Presentation.

1 2. On October 31, 2016, LV.NET, LLC filed its Answer and Counter-Claim against
2 CWTI, MR. GONZALEZ, MICHAEL. DEAN and MICHAEL MIMES (both CWTI investors),
3 averring the following claims:

- 4 a. Breach of contract (against CWTI only);
5 b. Fraud in the inducement;
6 c. Quantum meruit/Contract abandonment;
7 d. Monies due and owing;
8 e. Declaratory relief;
9 f. Fraud;
10 g. Contractual breach of implied covenant of good faith and fair dealing (against
11 CWTI and MR. GONZALEZ only); and
12 h. Tortious breach of implied covenant of good faith and fair dealing (against
13 CWTI and MR. GONZALEZ only).

14 3. Thereafter, on November 28, 2016, MISTERS DEAN, MIMES and GONZALEZ
15 filed a Motion to Dismiss the Counter-Claim. On December 13, 2016, the Court granted the motion
16 in part, ordering Paragraphs 11-16, 42-43 and 67 be pled with more particularity. The Answer and
17 Counter-Claim was amended that same day.
18

19 4. Almost three years later, on November 12, 2019, the parties stipulated to dismissal of
20 some of the counter-claims. Notably,
21

- 22 a. Fraud in the inducement was dismissed *with prejudice*;
23 b. Quantum meruit/contract abandonment was dismissed against MR. MIMES
24 (*with prejudice*), and MR. DEAN and MR. GONZALEZ (*without prejudice*);
25 c. Monies due and owing was dismissed against MR. MIMES (*with prejudice*),
26 and MR. DEAN and MR. GONZALEZ (*without prejudice*);
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1 d. Declaratory relief was dismissed against MR. MIMES (*with prejudice*), and
2 MR. DEAN and MR. GONZALEZ (*without prejudice*);

3 e. Fraud was dismissed against MR. MIMES (*with prejudice*) and MR. DEAN
4 (*without prejudice*); and

5 f. Tortious breach of implied covenant of good faith and fair dealing was
6 dismissed against MR. GONZALEZ *without prejudice*.

7
8 LV.NET, LLC claims it is entitled to judgment against CWTI and MR. GONZALEZ for breach of
9 contract as of December 31, 2014 of \$125,092.00 with interest accruing thereon, as well as general
10 damages on the claims of fraud and tortious breach of covenant of good faith and fair dealing,
11 including that for the losses on the Primm, Oasis and LVM projects of \$278,344.00.⁸

12
13 The following facts were adduced at trial:

14 5. Before February 12, 2010, CWTI, founded by MR. GONZALEZ⁹ in approximately
15 2002, had been in the business of building wi-fi networks¹⁰ with municipalities, utilities and other
16 large landowners including, but not limited to Nevada Power, City of Las Vegas, Boulder City,
17 Primm,¹¹ Mesquite, Pomona, Del-Mar Fairgrounds and Turnberry Towers.¹² CWTI is or was
18 registered as a public utility with the Nevada Public Utilities Commission, and thus, an entity able to
19 access public right-of-way to deliver services to its customers and end-users.¹³ CWTI's business

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22 ⁸See Defendants'/Counter-Claimant's Post-Trial Brief, p. 49, filed May 14, 2022. Notably, Defendant's
23 accounting expert, JOHN WIGHTMAN testified he calculated LV.NET, LLC is owed \$1,800,030 or \$1,830,173 in
damages. See Trial Transcript, Day 15, January 10, 2022 pp. 28-29 and 79.

24 ⁹At all relevant times herein, MR. GONZALEZ served as CWTI's president.

25 ¹⁰This Court understands "wi-fi" generally is wireless technology used to connect computers, smart-phones,
26 tablets and other devices to the internet. According to MR. GONZALEZ, "wi-fi" is "wireless fidelity." See Trial
Transcript, Day 1, October 18, 2021, p. 34, filed December 21, 2021.

27 ¹¹Within Primm, CWTI also provided wi-fi networks for its businesses, such as International House of
28 Pancakes (IHOP) and McDonald's. See Trial Transcript, Day 2, October 19, 2021, p. 56, filed December 21, 2021.

¹²See Trial Transcript, Day 1, October 18, 2021, pp. 111-130; Plaintiffs'/Counter-Defendants' Trial Exhibits
Nos. 21, 23, 24 and 25; also see Trial Transcript, Day 7, October 28, 2021, pp. 157-162 and Trial Transcript, Day 8,
December 2, 2021, pp. 46-49.

¹³According to MR. MIZRAHI, "[y]ou do not need a PUC license or an FCC license to do any type of
municipality business...." See Trial Transcript, Day 17, January 12, 2022, pp. 210-211. MR. MIZRAHI also testified:

1 pedestrians and end-users patronizing the hotels and casinos.²⁰ Ultimately, a significant percentage
2 of its revenues were being generated from the internet service CWTI provided to the Strip's and
3 downtown's customers. However, correspondingly, CWTI incurred additional debt to purchase
4 circuits and other equipment essentially to feed the increased growth of revenue and its business.²¹

5 **8.** In approximately 2008, like most governmental entities and businesses in the United
6 States, Clark County experienced a downturn in its economy. In addition to the decrease in tourism,
7 it was around that time many of the casinos-hotels located on the Strip or within downtown
8 developed their own wi-fi systems, charging their guests and patrons a resort fee for the service
9 whether it was actually used. According to MR. GONZALEZ, both of those circumstances resulted
10 in CWTI sustaining a sixty percent (60%) decrease in revenue in 2008 and 2009²² but no reduction
11 in debt. As a consequence, CWTI re-focused its business upon its private/public partnership model
12 with municipalities and utilities which included, but were not limited to, Boulder City, Primm,
13 Mesquite, Del Mar Fairgrounds, Pomona, the Turnberry Towers and International Asset Managers.²³
14 Unfortunately, CWTI's returning to the private/partnership model did not result in its earning
15 revenue as extensive as what was generated from its internet services provided along the Strip and
16 downtown Las Vegas.²⁴ CWTI was operating at a loss, and MR. GONZALEZ and the CWTI
17 investors realized they needed to reduce monthly expenses by approximately \$85,000.²⁵

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22 ²⁰See Trial Transcript, Day 1, October 18, 2021, p. 37; *also see* Trial Transcript, Day 7, October 28, 2021, pp.
23 169-170. The revenue generated from this internet service was identified as "Travelers' WiFi" within the MOU
24 spreadsheets. *See* Trial Transcript, Day 2, October 19, 2021, p. 182.

25 ²¹See Trial Transcript, Day 1, October 18, 2021, p. 46.

26 ²²*Id.*, p. 47; *also see* Trial Transcript, Day 15, January 10, 2022, p. 60 ("[MR. WIGHTMAN] Unfortunately,
27 and I think this has nothing to do with parties. It has everything to do with the industry the Wi-Fi business got replaced.
28 It got replaced by cell phones. It got replaced by casinos offering W-Fi to their guests. As a result they don't need to
pay some third party as a result of it, and so we—we then began to see a dramatic decline in the Wi-Fi revenues that
CWTI's business model was toward today and through 2013 it's virtually zero.").

²³See Trial Transcript, Day 1, October 18, 2021, p. 64.

²⁴*Id.*, p. 65.

²⁵*Id.*, p. 66; *also see* Trial Transcript, Day 2, October 19, 2021, p. 148 (MR. GONZALEZ testified losses were
approximately \$85,000.00 per month).

1 9. In late 2009, MR. GONZALEZ determined a venture with LV.NET, LLC would
2 benefit CWTI as LV.NET, LLC could provide infrastructure by way of bandwidth, “co-los,”
3 customer support center, as well as a building to house its business in exchange for a share of
4 CWTI’S profits. According to MR. MIZRAHI, LV.NET, LLC was profitable prior to February 12,
5 2010, earning gross revenues of approximately \$4,579,000 during the previous three years.²⁶
6 CWTI’S infrastructure within the municipalities and its public partnership model offered an
7 attractive revenue building opportunity to LV.NET, LLC.²⁷

8 10. On February 12, 2010, after months of negotiation,²⁸ CWTI and LV.NET, LLC
9 entered into a Confidential Memorandum of Understanding (also referred to as the “MOU”
10 herein).²⁹ The MOU, signed and initialed by both MR. GONZALEZ and MR. MIZRAHI, provided
11 in pertinent part:
12

13 The purpose of this Memorandum of Understanding (“MOU”) is to set forth, in general
14 terms, the rights and obligations of Cheetah Wireless Technologies, Inc. (“CWTI”) a
15 Wireless Internet Service Provider and LasVegas.Net LLC (“LVN”), a web site operator and
16 provider of co-location, Wi-Fi, internet marketing and other services, with respect to entering
17 into a strategic business relationship. The parties hereto intend to work closely together to
18 share services and profits derived from the operation of Wi-Fi networks. The parties hereto
19 agree to work in good faith and use their best efforts to negotiate and execute any necessary
20 agreements in pursuit of the business relationship and goals described in this MOU.³⁰ Due to

21 ²⁶See Trial Transcript, Day 20, January 26, 2022, p. 60. The federal income tax returns for approximately five
22 (5) years before February 12, 2010 showed LV.NET, LLC suffered losses, as opposed to it generating income. MR.
23 MIZRAHI explained his company wrote off or expensed its equipment every year as opposed to depreciating it over a
24 seven-year period as most companies did. *Id.*, p. 58. *Also see* Trial Exhibit 1 (QuickBook record showing LV.NET,
25 LLC sustaining losses from 2002 to 2010 and further, the gross income was \$4,200,000 for combined years 2007-2009,
26 not \$4,579,000). *Also see* Trial Transcript, Day 8, December 2, 2021, pp. 93-94, and Trial Transcript, Day 12,
27 December 10, 2021, p. 13 (“Q. And LVN also, in 2009, reported nearly a \$200,000 loss; (sic) right? A. [MR. COOK] In
28 what year? Q. 2009. A. 194,000, this says. Q. And then 352,000 in 2010? A. Yes.”).

29 ²⁷*Also see* Trial Transcript, Day 7, October 28, 2021, p. 66 (“[MR. SATTTLER] ...Cheetah was making a
sizable income on the WiFi assets and we [LV.NET, LLC] thought we could expand them and double and get a lot more
revenue from what they current—what their assets were and reduce their costs by providing our services that they were
outsourcing.”).

30 ²⁸Although there were months of negotiation, the extent of MR. MIZRAHI’S due diligence was reviewing
CWTI’S Quickbooks with MR. GONZALEZ for approximately 20 minutes to an hour. *See* Trial Transcript, Day 11,
December 8, 2021, pp. 130-133. MR. COOK never conducted any due diligence on the company prior to the MOU
being signed. *Id.*, p. 133.

²⁹See Trial Exhibit No. 6.

³⁰Although the MOU signed by MR. GONZALEZ (on behalf of CWTI) and MR. MIZRAHI (on behalf of
LV.NET, LLC) outlines the parties’ intent “to negotiate and execute any necessary agreements in pursuant of the

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the complexities involved in achieving full integration of the services offered by each company, the parties anticipate successful integration may require more than 30 days (further described in Attachment “A” hereto). A list of the transition costs will be listed in exhibit A and those costs will be taken out of the gross revenues. Any additional equipment needed for future growth will be deducted from gross revenues before profit is calculated. Accounting will be maintained on a cash basis and as such profits will be calculated as gross cash receipts less expenses and investment. The remaining profit will be split as further described below.

LVN will pay, through a sliding rate of profit share (further described in Attachment “A” hereto) a total of \$1.5 million in exchange for fifty percent (50%) of all CWTI’s Wi-Fi Network related profits, except revenues derived from CLEAR vending, event rentals and DISH Network’s (sic). Any CLEAR or Dish Network’s items ordered and paid for through the Wi-Fi network would be specifically included in profits subject to the profit sharing arrangement. For the first 18 months or until the end of the \$1.5M earn in period, LVN will also provide the following services at no cost to CWTI entitling it to its share of CWTI’s revenues:

- ** Co-location space to house all the CWTI Network Colo-Assets
- ** “Back-haul,” i.e. Internet signals from the co-location space to CWTI’s radios, to include currently leased rooftops and backhaul equipment with Bandwidth capabilities over 10 Mbps per link
- ** Office space to support (5) employees and additional space should growth dictate; warehouse space; access to network asset management software and call center support from 7 AM through 1 AM; (sic)
- ** All “bandwidth,” i.e. all Internet signals from the Internet to the co-location space, with a minimum of 20Mbps with bursts to 50Mbps and additional growth as needed
- ** Outdoor storage space for (2-3) POD trailers
- ** Outdoor parking for company vehicles
- ** Agreement to leverage LVN existing vendor relationships to assist CWTI restructure existing vendor agreements
- ** Use of LVN personnel to assist with installation, maintenance and support of Network and customer location equipment throughout the coverage areas

CWTI will pay for the remaining loan balance on all company vehicles as well as their registration and LVN will have no claim to them as assets. Regular scheduled maintenance, insurance and gasoline expenses for the vehicles will be paid out of the gross revenues generated by the Wi-Fi network prior to profit calculations.

...

At the end of 18 months if a total of \$1.5M has not yet been paid to CWTI, LVN will be compensated \$7,000 per month³¹ off of the gross revenue prior to calculating profit splits to

business relationship and goals described in this MOU,” the evidence showed none was ever written or executed. *Also see* Trial Exhibit No. 53, SCOTT LESLIE’S Report, pp. 4 and 6.

³¹Throughout the trial, the \$7,000 was described by witnesses as “rent” or “rent utilities.” *See, for example,*

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reduce LVN's monthly investment into the business. After a total of \$1.5M has been paid to CWTI, LVN's contribution of expenses paid and services listed above will be subtracted from revenues before profits are calculated.

...

Should LVN choose to terminate the agreement, CWTI can choose to become a regular LVN customer and pay market rate for ongoing services or choose to terminate all services. In either event, LVN will not be entitled to charge CWTI for services prior to notice of terminating the agreement.

All personnel and operating decisions regarding each company's assets shall remain with the company for whom such personnel and assets are employed.

LVN will be allowed to use backhaul infrastructure to provide its current product offerings to new markets such as Boulder City, Primm, Mesquite, etc. LVN will pay CWTI 12.5% of gross monthly receipts for sales made by an agent of CWTI. Companies shall write down exact service which each company is responsible for so there is no conflict of interests in attachment B.³²

CWTI shall receive all funds generated from its Wi-Fi Networks as it normally does during the course of operations and will deposit to its bank account with Bank of Las Vegas, its operating account. All payments to vendors, loan payments, payroll to its employees will be made from this bank account. Payments up to the dollar amount listed in Attachment A may be made by CWTI without consulting LVN. Any payment greater than the amounts listed in Attachment or any vendor, employee, or other person/entity requesting payment will not be made by CWTI without first getting written approval from LVN. In the event that the income from the Wi-Fi network is less than the amounts expected and shown in Attachment A, CWTI will first consult LVN prior to making all payments. All income and expenses will be tracked in a QuickBooks file separate from its operating file and made available to LVN for audit at any time. CWTI will reconcile all income and expenses after the end of each month and will pay shareholder distributions within 30 days of the close of each month. CWTI will be responsible for the maintenance, operation and decisions related to: Hotel/Resort Hotspot Access Equipment; Municipal Wi-Fi Access Equipment; Video Surveillance Equipment; Best-Effort Internet access connections, all last-mile Wi-Fi hardware and software; software for billing; splash page advertising; and gateway hardware and software.

LVN will be responsible for the maintenance, operation, billing and decisions related to: Backhaul; Point-to-Point wireless; Co-Location; any SLA-Level Point-to-Multipoint WiMax

Trial Transcript, Day 9, December 3, 2021, p. 160; *also see* Trial Transcript, Day 17, pp. 25-26 (\$7,000 was calculated by the parties as encompassing overhead or indirect expenses, i.e. rent, utilities, phone, administrative salaries, co-locations).

³²MR. GONZALEZ testified there never was an Attachment B to the MOU. *See* Trial Transcript, Day 1, October 18, 2021, p. 110.

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connections; Website Programming; Co-Location; Dial-Up; Web/Email Hosting; Virtual Servers; and Offsite backup.³³

Neither party will incur an expense in relation to this agreement without prior written authorization from the other party.

Nothing contained in this MOU is intended to, or shall be deemed to create any joint venture, partnership, joint enterprise, association, agency, employer-employee relationship, or other relationship or affiliation between CWTI and LVN. Each Party shall be deemed to be an independent contractor of the other for all purposes related to its activities on behalf of the other pursuant to this Agreement and the relationship between the Parties is and shall remain that of independent parties to a contractual relationship as set forth in this MOU. Neither party shall be liable for the debts or obligations of the other. Neither Party shall be an agent of the other, nor shall they have any right, power or authority to act for or on behalf of the other, to enter into any agreement, contract, or other obligation on behalf of the other. Neither Party shall execute any document or instrument on behalf of the other, or at any time hold himself out to any third party as an agent of the other or imply to any third party that he has any authority to so act on behalf of the other. Neither Party shall have the right to control any act of the other Party, except as expressly provided in this Agreement. Neither Party, in its dealings with third parties, shall do anything to disparage or injure the reputation, good will, or standing in the business community of the other Party. Each Party shall be responsible for any acts or omissions of its employees or agents in violation of this provision (sic)

If either Party fails to perform its obligations described herein and such failure is not cured within thirty (30) days of written notice from the other Party (or, if a cure is not possible within thirty (30) days, if such Party does not commence to cure such failure within said thirty (30) days and diligently thereafter prosecute the same to completion), such Party shall be in default. In any such case, the non-defaulting Party may terminate this MOU by written notice to the defaulting Party. Such termination shall not waive any rights or remedies of the non-defaulting Party in connection with such default by the other Party.

This MOU shall be governed by the laws of the State of Nevada (regardless of the laws that might otherwise govern under applicable principles of conflicts of law) as to all matters, including, but not limited to, matters of validity, construction, effect, performance and remedies. CWTI and LVN acknowledge that this MOU is not the final agreement to be made between the two parties but is an outline of the future agreement to be made between the parties.

...
...

³³See Trial Transcript, Day 7, October 28, 2021, pp. 9-11 (MR. SATTLER wanted a definition for what CWTI would be responsible and for what LV.NET, LLC would be obligated within the MOU) and 15 (“A. They [CWTI] were doing very similar stuff to us [LV.NET, LLC]. And I wanted to make clear which customers were ours and which was theirs and which ones I would personally be—deal with and make work.”).

1 GONZALEZ and CWTI investors of CWTI'S accounting update.⁴⁰ During the course of the parties'
2 relationship, MR. MIZRAHI compiled, maintained and revised what was identified as the "MOU
3 spreadsheets." There were several and different iterations of the Excel spreadsheets compiled after
4 the MOU was signed⁴¹ with the last or "Current MOU" spreadsheet (also referred to as the "January
5 2019 MOU spreadsheet) being amended through December 2018. These spreadsheets were changed
6 or amended by MR. MIZRAHI, *inter alia*, to reflect CWTI'S monthly profits and losses, the
7 incurrence and reimbursement of debt owed to LV.NET, LLC for benefits or monies lent by
8 LV.NET, LLC that, in MR. MIZRAHI'S and MR. COOK'S view, were not contemplated by the
9 terms of the MOU. Such debts included, but were not limited to the costs of replacing CWTI'S five
10 computer servers,⁴² paying unpaid salaries,⁴³ providing equipment⁴⁴ and set-up fees.⁴⁵ Within the
11 spreadsheets, MR. MIZRAHI also accrued interest on the outstanding debt owed by CWTI at credit
12 card rates up to 30 percent.⁴⁶

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15 **13.** In early May 2010, a few months after the MOU was signed, MR. GONZALEZ was
16 contacted by Christopher J. Kindell, Senior Project Manager for BrightSource Energy, who was
17 constructing a large scale solar power plant southwest of Primm Valley Golf Club and referred to
18 CWTI by Jeff Tibbets, the Internet Technology ("IT") Manager for Primm, Nevada. BrightSource
19 Energy was interested in receiving internet service via millimeter wave transmission and contacted
20 CWTI to provide additional bandwidth from Whiskey Pete's located in Primm, Nevada.⁴⁷ Within
21 two months of initial contact, July 2010, CWTI contracted to provide a network infrastructure to
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24 ⁴⁰See Trial Transcript, Day 1, October 18, 2021, p. 121; Trial Transcript, Day 3, October 20, 2021, p. 19 and
Trial Exhibit No. 53, Bates Nos. CW07442-CW07443; *also see* Deposition of MS, BENNETT, p. 22.

25 ⁴¹See Trial Transcript, Day 3, October 20, 2021, p. 19.

26 ⁴²See Trial Transcript, Day 9, December 3, 2021, p. 44.

27 ⁴³*Id.*, pp. 45-46.

28 ⁴⁴*Id.*, p. 47.

⁴⁵*Id.*, pp. 54-55.

⁴⁶*Id.*, pp. 63-66.

⁴⁷See Trial Transcript, Day 1, October 18, 2021, pp. 131-132; *also see* Trial Exhibit No. 24 (e-mail to MR.
GONZALEZ from Mr. Kindell of BrightSource Energy dated May 3, 2010).

1 BrightSource Energy.⁴⁸ The income generated as a result of the BrightSource Energy contract was
2 recorded in the spreadsheets as a profit split between CWTI and LV.NET, LLC pursuant to the
3 MOU.⁴⁹

4 14. The services provided by CWTI to BrightSource Energy resulted in referrals to new
5 clients, i.e. Sun Edison, First Solar, NRG Energy, Net Vision, MCI and Verizon,⁵⁰ who were
6 developing their plants in Ivanpah. CWTI entered into contracts with Sun Edison, First Solar, NRG
7 Energy, Net Vision, MCI and Verizon, and income derived from these sources was recorded in the
8 MOU spreadsheets as profit-split between CWTI and LV.NET, LLC.⁵¹

10 15. According to MR. GONZALEZ, after he and CWTI consummated the deal with
11 BrightSource Energy, MR. MIZRAHI pushed harder for CWTI and LV.NET, LLC to merge.⁵² MR.
12 GONZALEZ told MR. MIZRAHI “the only way we could do that is if we maintain a spreadsheet
13 and the revenue show will not change. That—that’s a contract. We can’t change that. If you want
14 to brand LV Net because it saves us when you go negotiate the debt down, then that’s okay. That
15 makes sense. But otherwise, it doesn’t make sense.”⁵³ After discussing the matter with MR. DEAN
16 and MR. MIME, MR. GONZALEZ agreed to transfer CWTI’S bank account to LV.NET, LLC and
17 the two companies’ financial books were merged into one.⁵⁴ Once the bank accounts were
18

20 _____
21 ⁴⁸See Trial Exhibits Nos. 25 and 26; *also see* Trial Transcript, Day 1, October 18, 2021, p. 142 and Trial
Transcript, Day 2, October 19, 2021, p. 5.

22 ⁴⁹See Trial Transcript, Day 1, October 18, 2021, p. 150; *also see* Trial Exhibit No. 9; *but see* Trial Transcript,
Day 10, December 6, 2021, pp. 191-192 (MR. COOK testified the sale to BrightSource Energy was joint between CWTI
23 and LV.NET, LLC. CWTI provided Wi-fi and LV.NET, LLC was the internet service provider (ISP).

24 ⁵⁰*Id.*, p. 147.

⁵¹See Trial Transcript, Day 2, October 19, 2021, pp. 47-49 and 51.

25 ⁵²See Trial Transcript, Day 1, October 18, 2021, p. 158; *also see* Trial Exhibit No. 10 (E-mail from MR.
MIZRAHI to MR. GONZALEZ dated November 22, 2010. “Within 17 months [CWTI’S investors] should be able to
26 collect over 700k if we do a full merger. Possibly more.”); *but see* Trial Transcript, Day 9, December 3, 2021, p. 134
(MR. COOK testified the decision for LV.NET, LLC to take control of the cash resulted from CWTI’S irresponsible use
of funds).

27 ⁵³See Trial Transcript, Day 1, October 18, 2021, p. 160.

28 ⁵⁴Although the parties used the term “merger” throughout the trial, they all agreed there was never a formal
“merger” of the companies, and MR. DEAN, MR. MIMES and any other CTWI investors never lost their interest in
CWTI. The MOU between the CWTI investors and LV.NET, LLC discussed *supra* remained in effect.

1 consolidated and fell into MR. MIZRAHI'S control,⁵⁵ the CWTI investors lost the ability to review
2 a full set of books and records.⁵⁶ In or about December 2010, MR. GONZALEZ "quit Cheetah and
3 I became an LV Net employee and renegotiated my employment with him because I had to get my
4 stock back from Cheetah."⁵⁷ CWTI ceased formal business operations as of December 31, 2010
5 using its own name;⁵⁸ thereafter, CWTI and MR. GONZALEZ performed under the LV.NET, LLC
6 brand, although CWTI remained a separate entity. MS. BENNETT continued her bookkeeping
7 duties, inputting the accounting information within the CWTI/LV.NET, LLC QuickBooks and
8 keeping the CWTI investors abreast of the companies' happenings.
9

10 **16.** On January 1, 2011, LV.NET and MR. GONZALEZ entered into an employment
11 contract.⁵⁹ This contract provided, *inter alia*:

12
13 This Executive Employment Agreement ("Agreement") is made and effective this 1st day of
14 January 2011, by and between EV.Net, LLC, located at 2595 Fremont St., Las Vegas NV
15 89104 ("Company") and Mitchell Gonzalez located at 10019 Amber Field St., Las Vegas,
16 NV 89178 ("Executive").

17 NOW, THEREFORE, *the parties hereto agree as follows*:

18 **1. Employment.**

19 Company hereby agrees to employ Executive as its Sr. Vice President of Sales and General
20 Manager of Wi-Fi Operations; and Executive hereby accepts such employment in accordance
21 with the terms of this Agreement and the terms of employment applicable to regular
22 employees of Company. In the event of any conflict or ambiguity between the terms of this

23 ⁵⁵Also see Trial Transcript, Day 17, p. 61 ("A. [MR. WIGHTMAN] To be very clear, yes. The revenues were
24 under the control of LVN. Q. And—and isn't it true that as of 2011, MOU revenues were deposited into LVN's bank
25 accounts? A. From 2011 forward, that's correct. Q. And it's also true that LVN controlled MOU-related cash
26 beginning in 2011? A. That's correct.").

27 ⁵⁶See Trial Transcript, Day 3, October 20, 2021, p. 25. Also see Trial Transcript, Day 21, January 26, 2022, p.
28 37 (MR. WEEKLY testified he never received access to LV.NET'S QuickBooks); but see Trial Transcript, Day 10,
December 6, 2021, p. 118 (MR. COOK testified both MS. BENNETT and MR. GONZALEZ had access to the LV.NET,
LLC QuickBooks once CWTI'S bank account was merged into LV.NET, LLC'S.).

⁵⁷See Trial Transcript, Day 1, October 18, 2021, pp. 120-121 and 164 ("A. Mr. [Mizrahi] had suggested that I
become an employee to prevent action from these collectors on me personally and incurring potential lawsuits, et cetera.
So I resigned from LV Net—or Cheetah as their president and I gave back my shares of stock to Chris Flanagan to no
longer have any connection to Cheetah."); also see Trial Exhibit Nos. 13, Employment Contract, and 328, Resignation
Letter to CWTI Investors dated December 31, 2010.

⁵⁸See Trial Exhibit No. 12.

⁵⁹See Trial Exhibit No. 13.

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Agreement and terms of employment applicable to regular employees, the terms of this Agreement shall control.

2. Duties of Executive.

The Executive as former CEO and President of Cheetah Wireless prior to it merging with LV.Net, will continue his responsibilities for overseeing all Wi-Fi operations and the organization, management and marketing of service performed by the Network and the clients which were transferred from Cheetah Wireless Technologies, Inc. to LV.Net and will be known as "Cheetah Accounts". (sic) These clients will include, but not be limited to the following:

- City of Boulder City, NV
- City of Mesquite, LV
- City of Primm, LV
- City of Pomona, CA
- DelMar FairGrounds, CA
- Strip and Downtown LV Wi-Fi operations.

3. Compensation.

Executive will be paid the same compensation as afforded by Cheetah Wireless Technologies, Inc. prior to the merger with LV.Net compensation during this Agreement as follows: A base salary of \$165,000 (one hundred and sixty-five thousand dollars) per year, payable in installments according to the Company's regular payroll schedule. Any and all adjustments will be calculated on the anniversary of the merger date, the first of January, the Executive and LV.Net Partners will meet to review the performance of the Wi-Fi operations, Client operations and any additional revenues produced by the Executive and his Sales team for LV.Net. Should the revenues be less than the operational expenses; (sic) the LV.Net Partners and the Executive will re-negotiate cost reductions which may require an adjustment to the salary of the Executive.

The Executive will also be entitled to commissions' payable quarterly. They will be calculated at 5.5% of the profits of sales sold by the Executive directly and 2.75% of the sales sold by the indirect sales team. Commissions will accrue throughout the employment of the Executive; however they will only be paid once all loans and interest from LV.Net have been paid back in full.

4. Benefits.

A. Executive will be entitled to the same benefits as LV.net (sic) has for all their employees. It's in the employee handbook.

...

...

1 sold his CWTI stock back to CWTI,⁶⁵ MR. GONZALEZ was no longer entitled to any remuneration
2 from CWTI's share of profits after December 31, 2010.⁶⁶

3 **18.** Over the next few years, CWTI and its investors received no return on their
4 investments and notably, none of their profit share.⁶⁷ The 12.5 percent commissions on the gross
5 monthly receipt for sales also had not been paid to CWTI.⁶⁸ Further, the evidence showed LV.NET,
6 LLC never directly paid the CWTI shareholders the \$1,500,000 for an interest in CWTI as outlined
7 in the MOU.⁶⁹ In September 2014, MR. GONZALEZ and the CWTI investors learned from MS.

10 ⁶⁵See Trial Transcript, Day 13, December 20, 2021, p. 82. The stock was returned to CWTI in exchange for the
11 forgiveness of MR. GONZALEZ'S draws or debts owing to the company.

12 ⁶⁶See Trial Transcript, Day 2, October 19, 2021, pp. 59-60.

13 ⁶⁷Also see Trial Transcript, Day 5, October 26, 2021, p. 72

14 ⁶⁸See Trial Transcript, Day 1, October 18, 2021, p. 166 (MR. GONZALEZ testified he never was paid any of
15 the 5.5 percent commission on gross receipts on sales); also see Trial Transcript, Day 2, October 19, 2021, p. 80, Trial
16 Transcript, Day 4, October 25, 2021, pp. 263-264, and Trial Transcript, Day 12, December 10, 2021, pp. 9-10 (“Q. We
17 left off, looking at my notes, talking about how, in your current MOU spreadsheet, you’re charging Cheetah with
18 Mitch’s entire salary, yet you want to take credit for every major account that he signed up, all of these solar customer,
19 the MDU customers and say that those are commission only. The truth is, you, LVN, hasn’t issued a single check to
20 Mitch Gonzalez or Cheetah Wireless for any commissions; (sic) correct? A. [MR. COOK] I—I really don’t recall when
21 I did that. Q. Well, I’ll represent to you—and you heard Mitch testify and Mr. Dean testify, no commission checks had
22 been issued to either Mitch or—or Cheetah Wireless. I mean, you spent, you said, hundreds and hundreds of hours
23 going through the accounting. You don’t dispute that, do you? A. No, I don’t dispute that.”).

24 ⁶⁹See Trial Exhibit No. 53, p. 8; also see Trial Transcript, Day 12, December 10, 2021, p. 57. However, there
25 was evidence, by his actions in charging CWTI with certain costs in QuickBooks, MR. MIZRAHI deemed LV.NET,
26 LLC could “earn in” or perform tasks, such as his negotiating the satisfaction of CWTI debt, in lieu it paying \$1,500,000
27 via the “sliding rate of profit share, which is contrary to the MOU’s terms such service would be provided “at no cost to
28 CWTI.” The TelePacific Communications debt of “close[] to \$500,000” “was just negotiated away.” See Trial
29 Transcript, Day 2, October 19, 2021, pp. 72-73. The IRS debt of \$36,758.70 was negotiated downward to \$13,000.00
30 which ultimately was paid by CWTI. *Id.* at p. 73; also see Trial Transcript, Day 4, October 25, 2021, pp. 146-147, and
31 Trial Exhibit No. 321 (showing tax lien of \$36,758.70). And we had some rents that were negotiated away. And very
32 small accounts that we owed some guys that did some work that we were able to negotiate.” *Id.* There were some
33 anticipated expenses set forth in the MOU spreadsheets such as CWTI’s leasing poles from Clark County, i.e.
34 \$71,000.00, but such was never billed to CWTI, and thus, never paid or negotiated downward. See Trial Transcript, Day
35 2, October 19, 2021, pp. 174-175. Also see Trial Transcript, Day 3, October 20, 2021, pp. 62-63 and 140 (MR. LESLIE
36 was informed MR. MIZRAHI negotiated all debts between CWTI and other companies to zero except for a small
37 amount of back taxes owing to IRS. Also see Trial Transcript, Day 8, December 2, 2021, p. 130 (“LVN negotiated and
38 got debt eliminated so that [CWTI] didn’t have to file bankruptcy and individuals didn’t have to pay personal
39 liabilities.”). According to MR. LESLIE, the debts that were negotiated downward totaled \$445,000. *But see* Trial
40 Transcript, Day 15, January 10, 2022, pp. 152-153 (MR. WIGHTMAN testified: “I believe the—the agreement actually
41 anticipated that Mr. Mizrahi was going to attempt to assist them in negotiating, leveraging his relationships, et cetera,
42 their debts, and these were the debts that—that he did. These are not included. None of that 1,191,000 is included in
43 [MR. WEEKLY’S] damage calculation. It’s just these amounts, and you can see some of them are round estimated
44 amounts, but these were debts that existed that were negotiated and—and basically wiped away.”). MR. GONZALEZ
45 testified \$1,500,000 was not wholly “earned in.” In December 2010, LV.NET, LLC charged CWTI \$97,623.89 which
46 included interest as a cost of equipment for the backhaul on the Las Vegas Strip. See Trial Transcript, Day 4, October
47 25, 2021, p. 9; also see Trial Exhibit No. 329. In MR. GONZALEZ’S view, the equipment should have been provided

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BENNETT she had been instructed by MR. MIZRAHI to reclassify much of the CWTI revenues from profit-share to commission-based sales within the businesses' QuickBooks which resulted in the investors sustaining a loss of their investment. Of significance, MR. MIZRAHI deleted profit splits of income derived from CWTI'S contracts with BrightSource Energy, NRG Energy, Net Vision and MCI from the profits-split category and re-categorized them as commission sales.⁷⁰ In addition, the profit-loss calculations were changed to reflect all losses were borne by CWTI.⁷¹ MR. MIZRAHI also revised the MOU spreadsheets, moving the \$7,000 monthly payment to LV.NET, LLC from the gross revenue above the line into regular expenses prior to calculating profit splits.⁷² He reduced commissions payable to CWTI from 2010 through August 2014 to reflect a correction of a "sizeable error" on the MOU spreadsheets. Given the aforementioned changes reported to them by MS. BENNETT, MR. GONZALEZ and the CWTI investors met with MR. MIZRAHI in or about September 2014 and demanded the revisions be retracted. When MR. MIZRAHI refused, MR. GONZALEZ resigned his employment position on or about February 2, 2015.⁷³ As set forth *supra*, both parties claim, by way of the primary action and counter-claim, their adversaries owe them monetary damages.

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to CWTI at no cost.
⁷⁰Also see Trial Exhibit No. 45 (MS. BENNETT'S September 14, 2014 e-mail; see Trial Transcript, Day 4, October 25, 2021, p. 275 (BrightSource Energy revenues were historically treated as profit split revenues by MR. MIZRAHI from the time he created the original MOU spreadsheet through September 9, 2014 when he instructed MS. BENNETT to remove them).
⁷¹See Trial Transcript, Day 16, January 11, 2022, p. 82. "Q. And that—that one issue has a significant impact on the overall numbers in this case, does it not? A. [MR. WIGHTMAN] Certainly." *Id.*, pp. 82-83.
⁷²The monthly \$7,000 was never paid to LV.NET, LLC after the first 18 months, although by that time, MR. MIZRAHI had control of the parties' financials and bank accounts. See Trial Transcript, Day 17, January 12, 2022, pp. 29-31.
⁷³See Trial Exhibit No. 49 (MR. GONZALEZ'S resignation letter).

1 19. In the spirit of mediation and settlement negotiations in 2015, R. SCOTT LESLIE,
2 CPA, was jointly retained by the parties to conduct a forensic audit⁷⁴ and he subsequently compiled
3 a 27-page report⁷⁵ based upon the available information. Ultimately, MR. LESLIE concluded:

4 The tasks we were charged with were to determine if the accounting done in the venture
5 between CWTI and LVN followed the MOU, and if the revenues, expenses and investment
6 charged to DWTI are documented, logical and fair.

7 ...

8 Before we conclude, it must be noted that although LVN gave us full cooperation on CWTI
9 accounts and accounting we were not allowed to view all of LVN's accounting. Since the
10 accounts of CWTI are merged into LVN this limited our ability to view, probe or ask
11 questions on anything that was deemed by LVN to not be part of the CWTI venture.

12 ...

13 Our procedures have led us to be able to conclude that the accounting called for in the MOU
14 is not being followed. The reasons for this are in part that the document is so poorly written
15 that following it may not be possible, and in part there has been little effort to put into place
16 systems and controls to follow the portions of it that could be followed.

17 To carry out the second task we tested one complete year, 2013, and the revenue portion of
18 the 2014 of the Excel spreadsheet that is used to track revenues, expenses and investment.

19 There is no agreement on what is a CWTI customer as opposed to a LVN customer; therefore
20 we cannot test if revenues are being properly accounted for. We could only look at what
21 CWTI claimed were their customers, and compare that to what LVN said were CWTI's
22 customers. After consultation with the CWTI original partners we conclude that moving
23 forward to other years was not a productive use of time without agreement on this critical
24 issue.

25 The results of the testing for expenses and investment showed that the documentation to
26 prove expenses are fairly charged to the CWTI accounts is just not there for a significant
27 amount of the expenses. Further, there are no internal controls or guidelines (such as from
28 the MOU) in place to expect that the expenses could be documented or reconstructed with
any accuracy.⁷⁶ Again after consultation with the CWTI original partners we concluded that
moving forward to other years or working to develop other tests on 2013 to try to determine
if expenses were accurately charged was not a productive use of time.

⁷⁴See Trial Transcript, Day 2, October 19, 2021, p. 68. Although he was jointly retained by CWTI and LV.NET, LLC, CWTI paid all of MR. LESLIE'S bill. See Trial Transcript, Day 3, October 20, 2021, p. 156.

⁷⁵See Trial Exhibit No. 53 (MR. LESLIE'S March 18, 2016 report).

⁷⁶Also see Trial Transcript, Day 10, December 6, 2021, p. 178-179 (MR. COOK testified the parties never tracked costs attributable to jobs performed for clients) and Trial Transcript, Day 12, December 10, 2021, p. 28 ("Q. But you have—you have a list of many jobs here: Las Vegas Motor Coach, Oasis, Primm, Boulder City, Turnberry, Rebel Oil. You have this list of projects. But the point is, you didn't contemporaneously track costs or expenses by those projects; (sic) correct? A. [MR. COOK] No, we did not.")

1 Finally, the last section of the Excel spreadsheet allocates profit and determines if there is an
2 amount owing between partners. We determined first that there is no guidance provided by
3 the MOU on how to account for partner shortfalls. We also determined that is (sic) appears
4 the allocation calculation has at least partial double-counting in it. Finally, we were unable
5 to verify claims that the CWTI original partners owe LVN over \$4 million.⁷⁷

6 **20.** During the course of this litigation that commenced June 7, 2016, the parties retained
7 their own accounting experts. DAVID WEEKLY, a Certified Public Accountant (CPA) who also
8 holds certifications in fraud examination, financial forensics and internal controls audits, was hired
9 by the CWTI investors in December 2018 and JOHN WIGHTMAN, a CPA, was retained by
10 LV.NET, LLC and MR. MIZRAHI. This Court also gleaned insight into the parties' financials from
11 RONALD COOK, the former Chief Financial Officer (CFO) and shareholder of LV.NET, LLC.⁷⁸

12 **21.** The work performed by CWTI'S expert, MR. WEEKLY, transpired over
13 approximately three years of the litigation and he compiled two expert reports. He testified he
14 initially experienced the same difficulty as MR. LESLIE had in acquiring documentation and
15 information from LV.NET, LLC and MR. MIZRAHI. Both MR. LESLIE and MR. WEEKLY
16 requested to view all LV.NET, LLC'S accounting and QuickBooks spreadsheets in native format as
17 the CWTI accounts had been merged into LV.NET, LLC'S financials which were refused.
18 According to MR. WEEKLY, both MR. LESLIE and he were denied the ability to ask, probe or
19 review LV.NET, LLC financials MR. MIZRAHI claimed were unrelated to CWTI'S.⁷⁹ MR.
20 WEEKLY testified he was fed information in pieces such as extracted reports from native files over
21 a long period of time.⁸⁰ Further, there were no records available from LV.NET, LLC'S billing
22
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24 ⁷⁷See Trial Exhibit No. 53, Bates No. CW011102; *also see* Trial Transcript, Day 3, October 20, 2021, pp 52-
25 53. MR. LESLIE testified he did a test of MR. MIZRAHI'S MOU spreadsheet, and recalculated the amount MR.
26 MIZRAHI claimed CWTI owed LV.NET, LLC, i.e. over \$4,000,000.00. Using LV.NET, LLC'S numbers with no
adjustments, the number was actually \$1,152,351, not including the \$376,015 of interest.

27 ⁷⁸MR. COOK testified at trial he was a shareholder of LV.NET "until two years ago." *See* Trial Transcript,
Day 11, December 8, 2021, pp. 112-113. His role was that of Chief Financial Officer (CFO) for LV.NET. *Id.*, pp. 124-
125.

28 ⁷⁹*Also see* Trial Transcript, Day 5, October 26, 2021, p. 8.

⁸⁰*See* Trial Exhibit No. 53 (MR. LESLIE'S March 18, 2016 report); *also see* Trial Transcript, Day 3, October

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systems prior to April 2012.⁸¹ MR. WEEKLY'S first—and what he later referred to as the preliminary report dated June 21, 2019—set CWTI'S initial claim for damages at \$2,458,353.

22. MR. WEEKLY'S findings expressed within his preliminary report were:

a. MR. MIZRAHI did not prepare the MOU spreadsheets accurately, reliably or consistently.⁸²

b. MR. LESLIE'S report confirms the MOU spreadsheet was not reliable as there were:

- 1) An absence of internal controls and unreliable accounting policies;
- 2) Expenses based upon estimates and accruals (although the MOU stated they should be based upon "cash");⁸³ and
- 3) Errors, inconsistencies and lack of documentation.

c. MR. MIZRAHI made substantial changes after the LESLIE report that directly benefitted LV.NET, LLC. For example, after MR. GONZALEZ left his employ at LV.NET, LLC in 2015, MR. MIZRAHI retroactively changed the profit split calculation

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20, 2021, p. 170.

⁸¹See Court's Trial Exhibit No. 2.

⁸²Also see Trial Transcript, Day 5, October 26, 2021, p. 6. (MR. WEEKLY testified "there were a number of instances where they were double counting, there were errors, there was (sic) changes that were made over time. I didn't find them to be reliable because they didn't have sufficient evidence to support the amounts.").

⁸³See Trial Transcript, Day 10, December 6, 2021, pp. 174-176 (MR. COOK testified MR. MIZRAHI and MR. MITCHELL used estimates as opposed to inputting actual expenses to save money "trying to keep all the gas receipts," calculating the specific insurance for each vehicle or counting equipment and inventory. For example, \$5,000 was estimated to be the monthly equipment expense.). *Id.*, pp. 175-176.

1 reflecting 100 percent of the losses each month were allocated only to CWTI⁸⁴ as opposed to
2 *pro rata* treatment as was the profits during the previous five (5) years.⁸⁵

3 d. The current MOU spreadsheet is not fair or reliable and must be adjusted.

4 MR. WEEKLY'S opinions based upon his findings set forth within his June 21, 2019 report
5 were:

6 1) The current MOU spreadsheet is not reliable to fairly calculate
7 amounts due to or from LV.NET, LLC and/or CWTI without significant adjustments.

8 In particular,

9 A) The revenues subject to the profit split are significantly
10 understated;

11 B) Expenses must be adjusted to correct for errors, estimates,
12 allocations and other unsupported amounts;

13 C) Certain adjustment and reimbursements are misclassified or
14 erroneous; and

15 D) The MOU net income (loss) amounts each month are not
16 shared *pro rata*.

17 ...

18 ...

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20 ⁸⁴See Court's Trial Exhibit No. 2; *also see* Trial Transcript, Day 11, December 8, 2021, p. 140 ("Q. And isn't it
21 true, sir, that after you wrote this document [entitled "Questions for Mark"], you or Mr. Mizrahi or perhaps both of you
22 decided to change how losses had been treated over the past many years and prepared your current MOU spreadsheet,
23 your claim, or your counterclaim and alleged all monthly losses to Cheetah. That's a fact, is it not? A. [MR. COOK]
24 Yes.") and p. 219 ("Q. But even though you pulled out all those BrightSource, NRG, Net Vision, First Solar revenues
25 that you just acknowledged, you ended up adding several hundred thousand dollars in costs to your spreadsheet; (sic)
26 correct? So even though you pulled out revenues, your costs went up over what was in the Leslie spreadsheet. A. [MR.
27 COOK] You're gonna have to give me the spreadsheets and show me. I—I'm confused now as to which spreadsheet on
28 what date. Q. Well, let me ask you this-- A. Well-- Q. --you—you changed the profit loss calculation so that all losses,
now, were attributed to Cheetah; (sic) right? A. That was done, yes."). *Also see* Trial Transcript, Day 17, January 12,
2022, pp. 61-62.

⁸⁵See Trial Transcript, Day 11, December 8, 2021, p. 141.

1 2) LV.NET, LLC'S calculation of interest owed by CWTI was not agreed
2 to by the parties or authorized by the MOU, and that amount is greater than LV.NET,
3 LLC's actual costs.

4 3) As adjusted, LV.NET, LLC owed CWTI at least \$1,656,288,⁸⁶ not
5 including the loss of CWTI assets held by LV.NET, LLC with book value of
6 \$802,065 as of December 31, 2010 and other CWTI claims not yet quantified.

7
8 **23.** At trial, MR. WEEKLY emphasized his preliminary report stated there was "a lot of
9 information that we would like to have to make further adjustments to come of the numbers that
10 were included in the initial claim."⁸⁷ Later, in lieu of providing MR. WEEKLY his requested
11 information, MR. MIZRAHI and MR. COOK proposed a site visit where they could meet him and

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14 ⁸⁶See Court Trial Exhibit No. 2. A summary of MR. WEEKLY'S calculations of the amounts due LV.NET,
15 LLC and CWTI under the MOU is as follows:

2010 - 2018			
Description	Current MOU Spreadsheet	MR. WEEKLY'S Adjustments	MR. WEEKLY'S Adjusted MOU Amounts
Total Profit Split Revenues	\$ 5,259,224	\$ 4,476,819	\$ 9,737,043
Less: Total MOU Expenses	\$ (6,483,123)	\$ (355,183)	\$ (6,838,307)
MOU Net Income/(Loss)	\$ (1,223,899)	\$ 4,121,635	\$ 2,897,736
CWTI Profit/(Loss) Split	\$ (1,454,920)	\$ 3,267,440	\$ 1,813,112
LV.NET, LLC Profit/(Loss) Split	\$ 230,430	\$ 854,194	\$ 1,804,624

Calculations of Amounts Due	Due to LV.NET, LLC	Due to CWTI
Profit/(Loss) Split [a]	\$ 230,430	\$ 1,813,112
Adjustments/Reimbursements	\$ 2,363,204	\$ (365,683)
Total Amount Due Not Including Interest	\$ 2,598,634	\$ 1,447,429
12.5% Commission [b]	\$ (768,462)	\$ 208,859
Cumulative Amount Due Not Including Interest	\$ 1,830,173	\$ 1,656,288

24 [a] "Earlier versions of the MOU Spreadsheet prepared by LVN, including the Leslie MOU Spreadsheet, split net
25 income or loss between CWTI and LVN. In the Current MOU Spreadsheet, Mizrahi allocates 100% of all monthly
26 losses to CWTI and none to LVN. In this table, F3 made adjustments to split profits and losses in the same manner as
the Leslie MOU Spread Sheet."

27 [b] "Commissions reduce amounts owed to LVN in Current MOU Spreadsheet but increase amounts owed to CWTI as
adjusted by F3."

28 Of the \$208,859 in 12.5% commissions, MR. WEEKLY testified MR. GONZALEZ was entitled to \$91,898
(5.5%) and the CTWI investors should receive \$116,961 (7%).

⁸⁷See Trial Transcript, Day 3, October 20, 2021, p. 172.

1 his staff face-to-face.⁸⁸ “[T]heir preferred method of providing input was to provide screenshots
2 or—of copies of spreadsheets or documents, as opposed to allowing us to have access to the full
3 database.”⁸⁹ MR. WEEKLY accepted their invitation and met with MR. MIZRAHI, MR. COOK
4 and MR. WIGHTMAN on January 20, 2020, however, he never received access to LV.NET, LLC’S
5 QuickBooks files.⁹⁰

6
7 **24.** As a result of his January 2020 visit, MR. WEEKLY acquired additional information
8 he and his staff requested which included the set-up and incremental costs⁹¹ and extent of the CWTI
9 assets. In revising his report, MR. WEEKLY considered the information provided to him as well as
10 other material such as deposition testimony and exhibits as addressed in the supplement issued

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20 ⁸⁸*Id.*; *but see* Trial Transcript, Day 11, December 8, 2021, p. 36 (MR. COOK testified “[w]hatever [MR.
21 WEEKLY] requested, he was given. Everything he was requested he was provided with.”).

22 ⁹⁰*See* Trial Transcript, Day 21, January 27, 2022, p. 37.

23 ⁹¹MR. WEEKLY testified he applied an incremental cost ratio of 33.46% of MOU-related revenue in his
24 calculations based upon the work MS. BENNETT did at MR. MIZRAHI’S request when the BrightSource Energy and
25 other customers were pulled out of the MOU spreadsheet. Absent having other information, he would use that figure
26 until he received additional information. MR. WEEKLY testified he would not have had to come up with an
27 incremental cost if LV.NET, LLC kept proper accounting records. *See* Trial Transcript, Day 5, October 26, 2021, p. 13.
28 LV.NET, LLC initially applied an incremental cost ratio of 20% on November 13, 2019. That cost ratio increased to
28 28% or by 40% as of the January 20, 2020 visit. After the January 2020 site visit, LV.NET, LLC claimed incremental
direct costs of 42% of MOU-related revenue. There was no contemporaneous supporting documentation for the majority
of the set-up costs or budgets. There was no tracking of actual set-up costs when incurred; cost estimates were prepared
up to five (5) years later. *See* Court Trial Exhibit No. 2. *Also see* Trial Transcript, Day 10, December 6, 2021, pp. 242-
244 (MR. COOK testified costs were not recorded in the MOU Spreadsheets; in preparation of MR. WEEKLY’S
January 2020 visit, he and MR. MIZRAHI reconstructed the costs for the previous several years). Ultimately, MR.
COOK testified LV.NET, LLC’S reconstruction revealed it advanced \$2,128,789 in set-up costs from 2010 to 2019. *Id.*,
p. 245. He testified indirect expenses were 42% of the MOU-related revenue, and overhead costs were 46%. *Id.*, p. 251.

1 July 17, 2020.⁹² MR. WEEKLY revised and decreased CWTI'S claim for damages to \$1,245,875⁹³
2 which included the reduced value of CWTI'S inventory and fixed assets held by LV.NET, LLC.⁹⁴

3 25. MR. WIGHTMAN'S accounting services were engaged by MR. MIZRAHI in 2016
4 around the time the parties were mediating or attempting to resolve their differences.⁹⁵ He later
5 generated his initial report on June 21, 2019 which outlined his tasks, findings and opinions.⁹⁶ He
6 reviewed the MOU the parties signed in 2010 and its spreadsheet dated January 2019 which
7 contained multiple tabs and hundreds of columns.⁹⁷ He interviewed MR. and MRS. MIZRAHI,
8 requested documents, made numerous site visits, tested the figures contained within the spreadsheet
9 to ascertain the veracity and reliability of the January 2019 MOU spreadsheet's accounting and its
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13 ⁹²See Trial Transcript, Day 3, October 20, 2021, p. 173. Costs not evidenced by invoices or receipts, such as
14 the alleged cash payments to Top Notch, were not allowed. Of the \$403,000 paid to Top Notch, MR. WEEKLY allowed
15 LV.NET, LLC \$286,995 as there were credit card statements to support it. See Trial Transcript, Day 21, January 27,
16 2022, p. 60.

⁹³A summary of MR. WEEKLY'S calculations of what is owed to CWTI as outlined in his supplemental report
dated July 17, 2020 is as follows:

	Amount Due Under MOU	Cash, Fixed Assets & Inventory	Total
MR. WEEKLY'S Preliminary Report	\$ 1,656,288	\$ 802,065	\$ 2,458,353
MR. WEEKLY'S Adjustments 07/17/2020			
1. Add Setup Construction Costs	\$ (149,344)		\$ (149,344)
2. Add Incremental Costs	\$ (502,090)		\$ (502,090)
3a. Reduce NBV of Fixed Assets		\$ (189,531)	\$ (189,531)
3b. Obsolete Inventory Reduction		\$ (391,536)	\$ (391,536)
3c. Cash Transferred to LV.NET, LLC		\$ 20,024	\$ 20,024
Revised CWTI Claim	\$ 1,004,854	\$ 241,022	\$ 1,245,875

25 ⁹⁴MR. WEEKLY noted, of the \$802,065 book value of CTWI inventory and equipment transferred to LV.NET,
26 LLC as of December 31, 2010, only \$40,000 in equipment was credited to CWTI by MR. MIZRAHI in his current MOU
spreadsheet. MR. WEEKLY testified LV.NET, LLC was unable to explain what happened to the remaining assets.

⁹⁵See Trial Transcript, Day 15, January 10, 2022, p. 29.

27 ⁹⁶*Id.*, p. 30. At the time he prepared his initial report, MR. WIGHTMAN had not received or reviewed MR.
28 WEEKLY'S preliminary report which was coincidentally dated the same day as MR. WIGHTMAN'S first report.

⁹⁷*Id.*, pp. 31-32; also see Trial Exhibit 55 admitted into evidence.

1 supporting documentation.⁹⁸ The scope of his work was to review the current MOU (January 2019)
2 accountings to see if they were reliable.⁹⁹ He disagreed with MR. WEEKLY'S opinion contained in
3 his preliminary report the LV.NET, LLC'S accounting was unreliable and lacked internal
4 controls.¹⁰⁰ Notably, MR. WIGHTMAN initially did not know the parties agreed to divide the gross
5 revenues by either "full revenue share" or 12.5 percent commissionable sales being paid to CWTI
6 and MR. GONZALEZ, and he did not understand there was a difference.¹⁰¹ However, whether the
7 proceeds were "full revenue share" or deemed commissionable sales, he attested such information
8 was contained in the accounting records.¹⁰² MR. WIGHTMAN testified he relied exclusively upon
9 the current or January 2019 MOU spreadsheet for his work which identified the revenues subject to
10 a profit split and those upon which commissionable sales were to be paid to CWTI;¹⁰³ he did not
11 use, consider or rely upon the 2015 LESLIE report or the prior contemporaneously drafted MOU
12 spreadsheets as a basis for his opinions.¹⁰⁴

15 **26.** MR. WIGHTMAN was critical of MR. WEEKLY'S forensic accounting set forth in
16 his preliminary report for various reasons. *First*, MR. WEEKLY reclassified \$4,400,000 revenue
17 listed in the current MOU from commissionable sales to full-revenue share.¹⁰⁵ *Second*, MR.

21 ⁹⁸*Id.*, pp. 33-34 and 36. MR. WIGHTMAN testified he discovered some error calculations but he deemed
22 them immaterial, and thus, did not discuss them in his report. *See* Trial Transcript, Day 16, January 11, 2022, pp. 162
23 and 190-191. These immaterial error calculations include fuel costs being double-counted. *Id.*, pp. 193-194. *Also see*
24 Trial Transcript, Day 21, January 27, 2022, p. 45 ("[MR. WEEKLY] And yet [MR. WIGHTMAN] also had to agree that
25 there were some errors that he didn't catch. The [INAUDIBLE] old deck that we said you should have reserved. Only
26 12,000, that's a lot of money. Your Honor, you picked up on the \$7,000 and the one extra month. That's an error.
27 That's only two smaller errors, but--...").

25 ⁹⁹*See* Trial Transcript, Day 15, January 10, 2022, p. 39. MR. WIGHTMAN did not review the prior MOU
26 accountings to see what changes had been made to the iterations prior to the January 2019 MOU spreadsheets. *See* Trial
27 Transcript, Day 16, January 11, 2022, p. 72.

26 ¹⁰⁰*Id.*, pp. 36 and 40.

27 ¹⁰¹*Id.*, p. 39.

28 ¹⁰²*Id.*

¹⁰³*See* Trial Transcript, Day 16, January 11, 2022, p. 25.

¹⁰⁴*Id.*, p. 26 and 87-92.

¹⁰⁵*See* Trial Transcript, Day 15, January 10, 2022, p. 133.

1 WEEKLY substantially under-reported costs that were CWTI'S responsibility.¹⁰⁶ Of note, MR.
2 WEEKLY reduced the construction and set-up costs of \$1,213,704¹⁰⁷ by 50 percent, and in essence,
3 only attributed 15 percent of costs to \$4,400,000 in revenue.¹⁰⁸ *Third*, MR. WIGHTMAN disagreed
4 with MR. WEEKLY'S opinion the accounting was made on an accrual as opposed to cash basis.¹⁰⁹
5 *Fourth*, MR. WEEKLY'S analysis is based upon bookkeeping treatment of the transaction or "a
6 representation of whose customer it was" rather than scope of services.¹¹⁰ *Fifth*, MR. WEEKLY'S
7 forensic accounting provides a sharing of the losses as well as the profits which, in MR.
8 WIGHTMAN'S view, is contrary to the terms of the MOU.¹¹¹ *Sixth*, MR. WEEKLY included a
9 claim for both unused inventory and fixed assets totaling \$802,065, much, if not all, were obsolete
10 and thus, worthless.¹¹²

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13 27. MR. WIGHTMAN also attested CWTI is not owed money from LV.NET, LLC; in
14 his view, it is CWTI who is indebted to LV.NET, LLC in the amount of \$1,830,173.¹¹³ Such
15 includes \$475,000 in actual disbursements or payments for MR. GONZALEZ'S credit card debt,
16 CWTI'S obligation to the Internal Revenue Service, some of which was negotiated downward by
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¹⁰⁶*Id.*, p. 36.

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¹⁰⁸*See* Trial Transcript, Day 16, January 11, 2022, p. 16.
¹⁰⁸*Id.*, p. 43; *but see* Trial Transcript, Day 17, January 12, 2022, p. 17 (MR. WIGHTMAN acknowledged, prior to the January 20, 2019 site visit, both MR. MIZRAHI and MR. COOK came up with lower incremental cost figures than MR. WEEKLY had.).

¹⁰⁹*See* Trial Transcript, Day 15, January 10, 2022, pp. 36-37.

¹¹⁰*Id.*, p. 142.

¹¹¹*Id.*, p. 144; *also see* Trial Transcript, Day 16, January 11, 2022, p. 94. After the MOU was signed, the parties shared in the losses as well as the profits until approximately 2015. *See* Trial Transcript, Day 17, January 12, 2022, p. 60. MR. LESLIE acknowledged the parties shared both profits and losses in his 2015 report. *Id.*

¹¹²*See* Trial Transcript, Day 16, January 11, 2022, pp. 52-55. *Also see* Trial Transcript, Day 17, January 12, 2022, p. 161 ("[MR. WIGHTMAN] I don't know what [LV.NET] ultimately did with the equipment. My understanding is, is it was unusable equipment at that time, other than the small amount that was sold. Q. Well. A. And they were credited with.").

¹¹³*Id.*, pp. 75-76. MR. WIGHTMAN also testified LV.NET provided him the damages' amount presented for litigation purposes and he agreed with it. *Id.*, pp. 76-78. *Also see* Trial Transcript, Day 21, January 27, 2022, p. 45 ("[MR. WEEKLY] Well, Mr. Wightman their expert opined in his report and again on the stand that his damages were his calculation. He insisted that and they were \$1,830,000 exactly the same amount as the current MOU spreadsheet that Mr. Mizrahi prepared. They were perfect. Not a single adjustment.").

1 MR. MIZRAHI, MS. BENNETT'S \$57,000¹¹⁴ and MR. GONZALEZ'S \$303,598 salaries or
2 compensation, CWTI'S monthly charges for virtual servers, programming and equipment purchases
3 and \$1,191,000 representing forgiveness of CWTI'S other debts.¹¹⁵ He also noted any
4 commissionable sales earned by MR. GONZALEZ and CWTI were used to offset the debt owed
5 LV.NET, LLC and they are not payable to Plaintiffs until the obligations are paid in full.¹¹⁶
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7 **28.** As set forth *supra*, the parties have asserted various competing claims against each
8 other, including one for judicial declaration or determination of their rights and obligations under the
9 MOU.

10 CONCLUSIONS OF LAW

11 Parties' Competing Claims for Declaratory Relief

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13 **1.** Here, both parties seek a declaration and determination from this Court regarding
14 their rights and obligations to each other under NRS Chapter 30, the "Uniform Declaratory
15 Judgments Act." NRS 30.030 specifically provides the courts shall have the power to declare rights,
16 status and other legal relations whether or not further relief is or could be claimed. The court's
17 declaration may be either affirmative or negative in form and effect; such declaration shall have the
18 force and effect of a final judgment or decree. NRS 30.040(1) also states:

19 Any person interested under a deed, written contract or other writings constituting a
20 contract, or whose rights, status or other legal relations are affected by statute, municipal
21 ordinance, contract or franchise, may have determined any question of construction or
22 validity arising under the instrument, statute, ordinance, contract or franchise and obtain a
23 declaration of rights, status or other legal relations thereunder.

24 Actions for declaratory relief are governed by the same liberal pleading standards applied in other
25 civil actions but they must raise a present justiciable issue. Cox v. Glenbrook Co., 78 Nev. 254,

26 ¹¹⁴There was evidence presented at trial showing MS. BENNETT'S compensation was paid by CWTI investors.

27 ¹¹⁵See Trial Transcript, Day 17, January 12, 2022, p. 158. MR. WIGHTMAN testified he did adjust LV.NET'S
28 damage calculation by removing the accrued interest. See Trial Transcript, Day 16, January 11, 2022, p. 96. However,
his "number agreed to their number." *Id.*, pp. 97 and 107; also see Trial Transcript, Day 17, January 12, 2022, pp. 23-
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¹¹⁶*Id.*, pp. 134-135 and 164.

1 267-268, 371 P.2d 647, 766 (1962). Here, present justiciable issues exist as the parties disagree as to
2 their rights and obligations under the MOU they signed and entered in 2010. CWTI seeks a court
3 declaration (1) it is entitled to revenues derived from those customers it brought to parties' venture
4 as well as monies earned from those clients developed post-MOU that were within its business
5 model and base, including all the municipality, solar projects and multiple dwelling unit projects, (2)
6 it is responsible only for costs allocable to its revenues, (3) it be compensated for its contribution of
7 assets, customers and services to its relationship with LV.NET, LLC and (4) it be compensated by
8 LV.NET, LLC for all commissionable sales.¹¹⁷ LV.NET, LLC seeks a declaration regarding (1) the
9 reasonable value of services rendered by it to CWTI as being far in excess of what was contemplated
10 by the MOU, (2) the appropriate calculation of revenues on the limited accounts involved, (3) the
11 reasonable value for monthly expenses attributable to the network operation, maintenance and
12 improvements paid for and serviced by LV.NET, LLC and (4) CTWI being responsible for all costs
13 properly allocable to the revenue it claims and all those in excess of CWTI's revenue associated with
14 networks and advanced by LV.NET, LLC. By virtue of NRS 30.030, this Court has the power to
15 determine what the parties are entitled under the 2010 MOU which is presented *infra*.

18 **The Parties' Competing Breach of Contract and Unjust Enrichment/Quantum Meruit Claims**

19 2. "Basic contract principals require, for an enforceable contract, an offer and
20 acceptance, meeting of the minds, and consideration." May v. Anderson, 121 Nev. 668, 676, 119
21 P.3d 1254, 1257 (2005). A meeting of the minds exists when the parties have agreed upon the
22 contract's essential terms. Roth v. Scott, 112 Nev. 1078, 1083, 921 P.2d 1262, 1265 (1996). Which
23 terms are essential "depends on the agreement and its context and also on the subsequent conduct of
24 the parties, including the dispute which arises and the remedy sought." Restatement (Second) of
25 Contracts, §131, comment g (1981). "[W]hether a contract exists is [a question] of fact, requiring
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28 ¹¹⁷See Complaint, pp. 13-14, paragraph 80, filed June 7, 2016

1 this court to defer to the district court’s findings unless they are clearly erroneous or not based on
2 substantial evidence.” May, 121 Nev. at 672-673, 119 P.3d at 1257.

3 3. Absent some countervailing reason, contracts in Nevada will be construed from the
4 penned language and enforced as written. Kaldi v. Farmers Insurance Exchange, 117 Nev. 273, 278,
5 21 P.3d 16, 20 (2001), *citing* Ellison v. CSAA, 106 Nev. 601, 603, 797 P.2d 975, 977 (1990). When
6 the facts are not in dispute, the interpretation of a contract is a question of law. Shelton v. Shelton,
7 119 Nev. 492, 497, 78 P.3d 507, 510 (2003).

9 4. “A contract is ambiguous if it is reasonably susceptible to more than one
10 interpretation.” *Id.*, *quoting* Margrave v. Dermody Properties, 110 Nev. 824, 827, 878 P.2d 291, 293
11 (1994). However, ambiguity does not arise simply when the parties disagree on how to interpret
12 their contract. North Las Vegas Infrastructure Investment and Construction, LLC v. City of North
13 Las Vegas, 139 Nev.Adv.Op. 5, 525 P.3d 836, 840 (2023). “Contracts must be read as a whole
14 without negating any term.” *Id.*, *quoting* Federal National Mortgage Association v. Westland
15 Liberty Village, LLC, 138 Nev.Adv.Op. 57, 515 P.3d 329, 334 (2022). Thus, even if a contract
16 contains an ambiguous term, extrinsic evidence is not considered if the meaning of the ambiguous
17 term or portion of the contract can be ascertained by reviewing the contract in its entirety. *Id.*, *citing*
18 Halling v. Hovanovich, 391 P.3d 611, 818 (Wyo. 2017).

20 5. When the contract is determined ambiguous, the best approach for interpreting it is to
21 delve beyond its express terms and “examine the circumstances surrounding the parties’ agreement
22 in order to determination the true mutual intentions of the parties.” *Id.*, *quoting* Hilton Hotels v.
23 Butch Lewis Productions, 107 Nev. 226, 231, 808 P.2d 919, 921 (1991). This examination includes
24 not only the circumstances surround the contract’s execution, but also subsequent acts and
25 declarations of the parties. *Id.*, *citing* Trans Western Leasing v. Corrao Construction Company, 98
26 Nev. 445, 447, 652 P.2d 1181, 1183 (1982). Also, a specific provision will quality the meaning of a
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1 general one. *Id.*, citing Mayer v. Pierce County Medical Bureau, 80 Wash.App. 416, 909 P.2d 1323,
2 1327 (1995). Finally, “[a]n interpretation which results in a fair and reasonable contract is
3 preferable to one that result in a harsh and unreasonable contract.” *Id.*, quoting Dickenson v. State,
4 Department of Wildlife, 110 Nev. 934, 937, 877 P.2d 1059, 1061 (1994).

5 6. As set forth *infra*, the parties have made alternative claims for unjust enrichment and
6 *quantum meruit*. In the absence of an express contract, one may be able to recover under a theory of
7 *quantum meruit*. “‘*Quantum meruit*’ is a cause of action in two fields: restitution and contract.”
8 Certified Fire Protection, Inc. v. Precision Construction, Inc., 128 Nev. 371, 379, 283 P.3d 250
9 (2012), quoting Candace Saari Kovacic-Fleischer, Quantum Meruit and the Restatement (Third) of
10 Restitution and Unjust Enrichment, 27 Rev. Litig. 127, 129 (2007); Restatement (Third) of
11 Restitution and Unjust Enrichment §31 cmt. E (2011) (A pleading in *quantum meruit*, “[f]rom its
12 17th-century origins to the present day,... has been used to state two quite different claims.”); Martin
13 v. Companaro, 156 F.2d, 127, 130 n.5 (2nd Cir. 1946) (addressing the ambiguity of a pleading in
14 *quantum meruit*).

15 7. “*Quantum meruit* historically was one of the common counts—a subspecies of the
16 writ of indebitatus or general assumpsit—available as a remedy at law to enforce implied promises
17 or contracts.” Certified Fire Protection, Inc., 128 Nev. at 379, 283 P.3d 250, citing 1 Joseph M.
18 Perillo, Corbin on Contracts §1.18(b) at 53 (rev. ed. 1993); 7 C.J.S. Action of Assumpsit §2 (2004).
19 A party who pleaded *quantum meruit* sought recovery of the reasonable value or “as much as he has
20 deserved”¹¹⁸ for services rendered.
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22 8. *Quantum meruit*’s first application is in actions based upon contracts implied-in-fact.
23 A contract implied-in-fact must be “manifested by conduct;”¹¹⁹ it “is a true contract that arises from
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28 ¹¹⁸Black’s Law Dictionary, p. 1361 (9th ed. 2009) (defining *quantum meruit*).

¹¹⁹See Certified Fire Protection, Inc., 128 Nev. at 379, 283 P.3d 250, citing Smith v. Recrion Corp., 91 Nev.

1 the tacit agreement of the parties.” *Id.*, quoting Perillo, *supra*, §1.20, at 64. To find a contract
2 implied-in-fact, the fact-finder must conclude the parties intended to contract and promises were
3 exchanged, the general obligations for which must be sufficiently clear. It is at that point a party
4 may invoke *quantum meruit* as a gap-filler to supply the absent term. *Id.*, 128 Nev. at 380, 283 P.3d
5 250; see Quantum Meruit and the Restatement (Third) of Restitution and Unjust Enrichment, 27
6 Rev. Litig., at 129-130; 1 Dan B. Dobbs, Dobbs Law of Remedies §4.2(3) (2nd ed. 1993) (*quantum*
7 *meruit* fills price term when it is appropriate to imply the parties agreed to a reasonable price).
8 Where such a contract exists, *quantum meruit* ensures the laborer receives the reasonable value,
9 usually market price, for his services. Certified Fire Protection, Inc., 128 Nev. at 380, 283 P.3d 250,
10 *citing* Restatement (Third) of Restitution and Unjust Enrichment §31 cmt. e (2011).

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13 9. *Quantum meruit's* other role is in providing restitution for unjust enrichment.
14 “Liability in restitution for the market value of goods or services is the remedy traditionally known
15 as quantum meruit.” Restatement (Third) of Restitution and Unjust Enrichment §31 cmt. f (2011);
16 *id.*, §31 cmt. e (2011) (*quantum meruit's* secondary use is as a pleading in the common law in cases
17 “regarded in modern law as instances of unjust enrichment rather than contract”); Ewing v. Sargeant,
18 87 Nev. 74, 79-80, 482 P.2d 819-822-823 (1971). “Where unjust enrichment is found, the law
19 implies a quasi-contract which requires the defendant to pay to plaintiff the value of the benefit
20 conferred. In other words, the defendant makes restitution to the plaintiff in *quantum meruit.*”
21 Certified Fire Protection, Inc., 128 Nev. 380-381, 283 P.3d 250, *quoting* Lackner v. Glosser, 892
22 A.2d 21, 34 (Pa.Super.Ct. 2006), *in turn*, *quoting* AmeriPro Search, Inc. v. Fleming Steel Co., 787
23 A.2d 988, 991 (Pa.Super.Ct. 2001).

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25 10. When a plaintiff seeks “as much as he... deserve[s]” based on a theory of restitution,
26 as opposed to implied-in-fact contract, he must establish each element of unjust enrichment. Black's
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28 666, 668, 541 P.2d 663, 664 (1975); Hay v. Hay, 100 Nev. 196, 198, 678 P.2d 672, 674 (1984).

1 Law Dictionary, p. 1361 (9th ed. 2009); *see* Restatement (Third) of Restitution and Unjust
2 Enrichment §49(3)(c) *and* cmt. f (2011) (“[T]he market value of...services is the *remedy*
3 traditionally known as quantum meruit.”) (Emphasis added); Doug Rendleman, Quantum Meruit for
4 the Subcontractor: Has Restitution Jumped off Dawson’s Dock?, 79 Tex.L.Rev. 2055, 2073 (2001)
5 (“A defendant’s unjust enrichment is a major prerequisite for a plaintiff’s quantum meruit.”).
6 *Quantum meruit*, then, is “the usual measurement of enrichment in cases where non-returnable
7 benefits have been furnished at the defendant’s request, but where the parties made no enforceable
8 agreement as to price.” Certified Fire Protection, Inc., 128 Nev. at 381, 283 P.3d 250, *citing*
9 Restatement (Third) of Restitution and Unjust Enrichment, §49 cmt. f (2011).

11 **11.** Unjust enrichment exists when the plaintiff confers a benefit on the defendant, the
12 defendant appreciates such a benefit and there is “acceptance and retention by the defendant of such
13 benefit under circumstances such that it would be inequitable for him to retain the benefit without
14 payment of the value thereof.” *Id.*, *quoting* Unionamerica Mtg. v. McDonald, 97 Nev. 210, 212,
15 626 P.2d 1272, 1273 (1981), *in turn, quoting* Dass v. Epplen, 424 P.2d 779, 780 (Colo. 1967); *also*
16 *see* 26 Richard A. Lord, Williston on Contracts §68:1, at 24 (4th ed. 2003) (*quantum meruit* to avoid
17 unjust enrichment applies “when a party confers a benefit with a reasonable expectation of
18 payment”).

19
20 **A. Confidential Memorandum of Understanding (MOU)**

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22 **12.** In this case, there is no dispute the parties had entered a Confidential Memorandum
23 of Understanding (“MOU”) which was written in letter form signed by MR. GONZALEZ and MR.
24 MIZRAHI on behalf of CWTI and LV.NET, LLC, respectively, on February 12, 2010.¹²⁰ The initial
25 composition of the MOU was written by MR. GONZALEZ and then submitted to and edited by MR.
26 MIZRAHI and MR. SATTLER, whereby both parties were involved in the MOU’s draft. As both

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28 ¹²⁰*See* Trial Exhibit No. 6.

1 parties participated in drafting the contract, this Court does not construe the terms of the MOU
2 against either party. The parties intended their connection to be a “strategic business relationship”
3 where each were independent contractors of each other. Nothing contained in the MOU was
4 intended to, or deemed to create “any joint venture, partnership, joint enterprise, association, agency,
5 employer-employee relationship, or other relationship or affiliation between CWTI and LVN.”¹²¹ In
6 exchange for 50 percent of CWTI’S profits,¹²² LV.NET, LLC would pay CWTI \$1,500,000
7 “through a sliding rate of profit share” described in the MOU’s Attachment A. This “sliding rate of
8 profit share” provided CWTI initially would receive 95 percent of the revenue share which dropped
9 incrementally to 60 percent by the eighteenth (18th) month. “For the first 18 months or until the end
10 of the \$1.5M earn in period,” LV.NET, LLC would also provide various services “at no cost to
11 CWTI,” which included co-location space, back-haul, office and warehouse space, band-width,
12 outdoor storage and parking, leverage services to restructure CWTI’S existing vendor agreements
13 and use of LV.NET, LLC’S personnel to assist with installation, maintenance and support of
14 network and customer location equipment throughout the coverage areas. The MOU also provided,
15 at the end of the 18-month period which would have been September 2011, if the \$1,500,000 had not
16 been paid to CWTI, LV.NET, LLC would be compensated \$7,000 monthly “off the gross revenue
17 prior to calculating profit splits to reduce” LV.NET, LLC’S monthly investment into CWTI’S
18 business. After the \$1,500,000 was paid to CWTI “through the sliding rate of profit share,”
19 LV.NET, LLC’S contribution of paid expenses and services would be subtracted from revenues
20 before profits were calculated.¹²³

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24 **13.** Within Attachment A, the parties anticipated CWTI’S monthly expenses would be
25 \$69,438.44 which included salaries of three (3) employees, one-half of MR. GONZALEZ’S
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28 ¹²² *Id.* Such did not include “revenues derived from CLEAR vending, event rentals and DISH Network’s.” *Id.*

¹²³ *Id.*

1 \$120,000 annual income or \$60,000,¹²⁴ payroll taxes, equipment leases, loans, bank fees, pole
2 rentals and motor vehicle maintenance expenses.¹²⁵ The parties anticipated and agreed CWTI’S
3 expenses would be paid from the CWTI bank account. “Payments up to the dollar amount listed in
4 Attachment A [\$69,438.44] may be made by CWTI without consulting LVN.”¹²⁶ However, “[a]ny
5 payment greater than the amounts listed in Attachment or any vendor, employee, or other
6 person/entity requesting payment will not be made by CWTI without first getting written approval
7 from LVN.”¹²⁷ Further, “[i]n the event...the income from the Wi-Fi network is less than the
8 amounts expected and shown in Attachment A, CWTI will first consult LVN prior to making all
9 payments.” “Neither party will incur an expense in relation to this agreement without a prior written
10 authorization from the other party.”¹²⁸

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13 **14.** In this Court’s view, the MOU is unartfully written but its terms are not ambiguous.
14 The parties agreed LV.NET, LLC would receive fifty percent (50%) of CWTI’S profits once the
15 \$1,500,000 was paid by LV.NET, LLC to CWTI “through a sliding rate of profit share” described in
16 Attachment A which was expected to occur within eighteen (18) months. The “sliding rate of profit
17 share” divided the profit-share between the parties incrementally over six three-month periods
18 during the first eighteen (18) months of the parties’ relationship:

<u>CWTI</u>	<u>LV.NET, LLC</u>	<u>Difference in Profits to Be Credited Toward Earn In</u> ¹²⁹
95%	5%	45%
90%	10%	40%
80%	20%	30%
70%	30%	20%
65%	35%	15%
60%	40%	10%

¹²⁴The other half was contemplated to be paid from CWTI’S revenue share or profits.

¹²⁵CWTI, however, was responsible for the debt associated with the motor vehicles.

¹²⁶See Trial Exhibit No. 6, p. 2.

¹²⁷Id.

¹²⁸

¹²⁹Id. p. 3
As the parties agreed the resulting profit share would be fifty percent (50%), the difference or sliding rate of profit share” would be the percentage actually conferred by LV.NET, LLC to CWTI.

1 During the first eighteen (18) months, LV.NET, LLC was to provide certain amenities “at no cost to
2 CWTI,” which included co-location space, backhaul, office and warehouse space, band-width,
3 outdoor storage and parking, leverage services to restructure CWTI’S existing vendor agreements
4 and use of LV.NET, LLC’S personnel to assist with installation, maintenance and support of
5 network and customer location equipment throughout the coverage areas. After the payment of the
6 \$1,500,000 through the “sliding rate of profit share,” LV.NET, LLC’S contribution of the
7
8 aforementioned services “at no cost to CWTI” would cease, and then LV.NET, LLC’S expenses
9 attributable to future amenities would be subtracted from revenues before profits were calculated.
10 Further, if the \$1,500,000 was not paid within the 18-month period, LV.NET, LLC then would be
11 compensated \$7,000 monthly “off the gross revenue prior to calculating profit splits to reduce”
12
13 LV.NET, LLC’S monthly investment into CWTI’S business.¹³⁰

14 **15.** In light of the MOU’s terms set forth above, this Court finds LV.NET, LLC breached
15 its contractual obligations to CWTI in many ways. *First*, either LV.NET, LLC did not supply the
16 MOU’s listed services it agreed to provide “at no cost to CWTI” during the \$1,500,000 earn-in
17 period or it retroactively levied such expenses upon CWTI during MR. MIZRAHI’S various
18 revisions to the MOU spreadsheet. Notwithstanding that point, the imposing of such costs was
19 unfairly inflated in that MR. MIZRAHI included the full extent of outstanding vendor debts as
20 opposed to the amounts leveraged or negotiated downward and/or actually satisfied by LV.NET,
21 LLC for CWTI’S benefit.¹³¹ LV.NET, LLC also charged for the other MOU-listed services which
22 were to be provided “at no cost to CWTI.” Not only were the costs of these amenities levied upon
23
24

25 ¹³⁰Notably, the MOU did not address what percentage of profits would be relinquished if the \$1,500,000 had
26 not been wholly paid through the “sliding rate of profit share” by the end of the eighteen (18) months. Such a gap would
27 either require the parties to amend the MOU with a new or same “sliding rate of profit share or continue it at the last and
28 most minimal division, i.e. 60%-40%.

¹³¹As stated *supra*, CWTI actually paid the IRS debt negotiated from over \$36,000 to \$13,000. The obligations
owing to CWTI’S vendors were “basically wiped away” by MR. MIZRAHI. See Trial Transcript, Day 15, January 10,
2022, pp. 152-153.

1 CWTI, but also they were included within the \$1,500,000 earn-in amount.¹³² Such a tactic not only
2 resulted in duplicative charges for costs, but it also reduced the time it would take LV.NET, LLC to
3 earn in the \$1,500,000 and be eligible to receive the fifty percent (50%) of CWTI'S profits which
4 would be increased from the "sliding rate of profit share." MR. GONZALEZ'S personal credit card
5 debt was also included as an obligation owed by CWTI even though MR. GONZALEZ testified he
6 satisfied it through a reduction of his LV.NET, LLC salary as insisted upon by MR. MIZRAHI.¹³³
7
8 *Second*, LV.NET, LLC retroactively saddled CWTI with full losses as opposed to the sharing both
9 profits and losses as contemplated by both the parties and the MOU's terms.¹³⁴ "The true mutual
10 intentions of the parties"¹³⁵ in entering a "strategic business relationship"¹³⁶ was shown by their
11 sharing of *both* profits and losses within the fifty-one (51) months that followed the signing of the
12 2010 MOU. *Third*, LV.NET, LLC charged CWTI for the full extent of "additional equipment
13 needed for future growth," such as replacement of computers, when the MOU specifically indicated
14 the costs "will be deducted from gross revenues before profit is calculated."¹³⁷
15

16 16. Although the MOU does not specifically identify the parties' clients or customers, the
17 agreement contemplated the two entities would be separate from one another when entering their
18 "strategic business relationship." They would share profits derived from CWTI'S "operation of the
19 Wi-Fi network," in accordance with Attachment A. LV.NET, LLC would be permitted to use its
20 backhaul structure to provide its current product offerings to new markets, including to CWTI'S
21

23 ¹³²As set forth *supra*, MR. WIGHTMAN was critical of MR. WEEKLY'S forensic accounting for removing
\$1,191,000 in costs from the \$1,500,000 earn-in amount. See Trial Transcript, Day 15, January 10, 2022, pp. 152-153.

24 ¹³³See Trial Transcript, Day 1, October 18, 2021, pp. 168-170

25 ¹³⁴The parties structured the MOU's provisions to control costs, and thus, losses. The MOU specifically
provided CWTI could make payments up to an aggregate \$69,438.44 monthly without consulting LV.NET, LLC, but if
it needed to pay additional sums, it needed to receive LV.NET, LLC'S approval in writing. Further, if the income from
26 the Wi-Fi network was less than expected, CWTI was required to consult with LV.NET, LLC prior to making all
payments. CWTI could not incur a loss unless it had LV.NET, LLC'S approval. In other words, LV.NET, LLC was
27 accorded control over CWTI'S spending, and thus, any losses it would incur.

28 ¹³⁵

¹³⁶*Hilton Hotels*, 107 Nev. at 231, 808 P.2d at 921.
See Trial Exhibit No. 6.

¹³⁷See Trial Exhibit No. 6, p. 1.

1 customers, and it agreed to pay CWTI 12.5% of the gross monthly receipts for sales made by
2 CWTI'S agents. There was no provision within the MOU to suggest the parties agreed CWTI'S
3 12.5% commissions would not be paid until all its expenses and MR. GONZALEZ'S personal debts
4 owing to LV.NET, LLC were satisfied. Although, for fifty-one (51) months after the MOU was
5 signed, the parties' financial records showed a sharing of profits from CWTI'S revenues derived
6 from its clients or customers acquired both before and after the MOU was signed, LV.NET, LLC
7 refused to tender CWTI its share of profits and commissions earned after MR. MIZRAHI acquired
8 control of the QuickBooks in December 2010. MR. MIZRAHI also reclassified most of the
9 revenues earned by CWTI from profit-share to commission sales. For the aforementioned reasons,
10 this Court concludes CWTI demonstrated by a preponderance of the evidence LV.NET, LLC
11 breached the parties' Confidential Memorandum of Understanding and is liable to CWTI for
12 damages.
13

14
15 17. Of the two expert opinions, this Court concludes MR. WEEKLY'S was the most
16 credible. MR. WIGHTMAN'S opinion as to damages was not in keeping with the terms of the
17 MOU or the historical treatment of the parties' financials and client/customer bases—perhaps
18 because of his exclusive reliance upon the January 2019 MOU spreadsheet.¹³⁸ That is, MR.
19 WIGHTMAN ignored the parties' treatment of certain client accounts and profits/losses from
20 February 2010 to September 2014. His reading and interpretation of the MOU was selective and
21 limited when he testified the parties' contract was to share only profits and not losses.¹³⁹ This Court
22
23
24

25 ¹³⁸MR. WIGHTMAN'S calculations are also far different than those set forth on page 49 of LV.NET, LLC'S
26 and MR. MIZRAHI'S Post Trial Brief filed May 14, 2022.

27 ¹³⁹As stated *supra*, the parties had a mechanism in place to control the losses. CWTI could not spend more than
28 the \$69,438.44, the anticipated monthly expenses without receiving LV.NET, LLC'S approval in writing. If the income
derived from the Wi-Fi network was less than anticipated, CWTI was required to consult with LV.NET, LLC before it
made all payments. Furthermore, it should be noted MR. MIZRAHI had total control of the QuickBooks and checkbook
after January 1, 2011, and thus, the ability to curb all losses.

1 therefore awards CWTI \$208,859 for loss in commissions¹⁴⁰ and \$795,995 in profit-split or revenue
2 share as against LV.NET, LLC as damages under CWTI'S Breach of Contract claim. It dismisses
3 the Breach of Contract claim brought by LV.NET, LLC against CWTI.

4 **18.** There was no provision within the parties' MOU that addressed inventory and/or
5 equipment, except the paragraph stating: "All personnel and operating decisions regarding each
6 company's assets shall remain with the company for whom such personnel and assets are
7 employed."¹⁴¹ By virtue of this contractual condition, this Court concludes CWTI was entitled to its
8 assets which include its cash, inventory and equipment. However, even if CWTI'S post-MOU
9 actions could be interpreted as allowing LV.NET, LLC to acquire and hold such assets as of January
10 1, 2011, CWTI still would be entitled to return of the assets or payment of their value. As set forth
11 *supra*, unjust enrichment exists when the plaintiff confers a benefit on the defendant, the defendant
12 appreciates such a benefit and there is "acceptance and retention by the defendant of such benefit
13 under circumstances such that it would be inequitable for him to retain the benefit without payment
14 of the value thereof." Certified Fire Protection, Inc., 128 Nev. at 381, 283 P.3d 250. MR.
15 WEEKLY testified LV.NET, LLC credited CWTI \$40,000 for some of the unused equipment and
16 inventory that was sold through E-Bay.¹⁴² However, LV.NET, LLC was unable to explain to him
17 what happened to the remaining assets. LV.NET, LLC also proffered no evidence it ever returned
18 the \$20,024 in cash that was transferred to it from CWTI. It would be inequitable for LV.NET, LLC
19 to retain the benefit without payment of the cash or the value of the unused equipment and
20 inventory. MR. WEEKLY opined the remaining value of the cash, inventory and equipment was
21 \$241,022 in July 2020; MR. WIGHTMAN attested such inventory and equipment is worthless as
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26 ¹⁴⁰Of this amount, CWTI investors and MR. GONZALEZ agree \$91,898 is to be accorded to MR.
GONZALEZ. The remaining \$116,961 is to be allotted to CWTI.

27 ¹⁴¹See Trial Exhibit No. 6, p. 3.

28 ¹⁴²There was no evidence presented to suggest the \$40,000 was returned to CWTI. As LV.NET, LLC claimed
CWTI was indebted to it in the amount of \$1,830,475, this Court presumes the 440,000 was "credited" to the debt
allegedly owed.

1 they are obsolete. He did not include the \$20,024 cash in his assessment. This Court finds the cash,
2 inventory and equipment had some value prior to 2020 as LV.NET, LLC took possession of them,
3 sold some of the inventory and even listed CWTI'S equipment as collateral when seeking a bank
4 loan.¹⁴³ This Court concludes LV.NET, LLC was unjustly enrichment in the amount of \$241,022,
5 and therefore, awards CWTI such amount as against LV.NET, LLC. The total compensatory
6 damages awarded in favor of CWTI as against LV.NET, LLC is \$1,245,875.
7

8 **B. Employment Agreement Between MR. GONZALEZ and LV.NET, LLC**

9 **19.** As discussed *supra*, MR. GONZALEZ and LV.NET, LLC entered into an
10 Employment Contract effective January 1, 2011.¹⁴⁴ The contract specifically provided MR.
11 GONZALEZ'S new employment position with LV.NET, LLC was Senior Vice President of Sales
12 and General Manager of Wi-Fi Operations whose duties included "continu[ing] his responsibilities
13 for overseeing all Wi-Fi operations and the organization, management and marketing of services
14 performed by the Network and the clients which were transferred from Cheetah Wireless
15 Technologies, Inc. to LV.Net and will be known as the 'Cheetah Accounts.'"¹⁴⁵ In consideration,
16 MR. GONZALEZ was to receive compensation from LV.NET, LLC in the form of an annual base
17 salary of \$165,000, plus 5.5 percent of the profits of sales sold by him directly and 2.75 percent of
18 those profits sold by the indirect sales team. According to MR. GONZALEZ, the CTWI investors
19 maintained their right under the MOU to receive 7 percent commissions.
20
21

22 **20.** Reading the MOU and Employment Contract together, it is evident certain aspects of
23 the parties' relationship, as well as their rights and obligations, changed as of January 1, 2011. The
24 first change is MR. GONZALEZ no longer was affiliated as either shareholder or employee of
25

26 ¹⁴³See Trial Transcript, Day 1, October 18, 2021, p. 85.

27 ¹⁴⁴See Exhibit 13.

28 ¹⁴⁵*Id.* Also see Trial Transcript, Day 1, October 18, 2021, pp. 167-168. As set forth *supra*, CWTI never lost its
individuality and no evidence was presented to suggest its investors sold the business to LV.NET, LLC. CWTI simply
performing under the LV.NET, LLC brand, and MR. GONZALEZ, as a new employee of LV.NET, LLC, continued
working the same position he had with CWTI.

1 CWTI. He became an employee of LV.NET, LLC and, according to the Employment Contract, he
2 was to be compensated by his employer with an annual base salary of \$165,000 plus 5 percent “of
3 the profits of sales sold by him directly” and 2.75 percent “of those profits sold by the indirect sales
4 team.” CWTI was no longer responsible to compensate MR. GONZALEZ as of January 1, 2011
5 although it retained some responsibility for his salary as outlined in the MOU entered into by CWTI
6 and LV.NET, LLC. According to the MOU, \$60,000 toward MR. GONZALEZ’S salary was to be
7 shared by CWTI and LV.NET, LLC as an expense before any profits were paid to these entities. In
8 this Court’s view, LV.NET, LLC was responsible to pay the entirety of MR. GONZALEZ’S annual
9 base pay of \$165,000, but it was entitled to reimbursement of \$60,000 from the MOU expenses
10 shared by CWTI and LV.NET, LLC. The second change was MR. GONZALEZ was not entitled to
11 share any of the 12.5 percent “of the gross monthly receipts for sales made by an agent of CWTI”
12 which LV.NET, LLC was obligated to pay CWTI under the MOU. MR. GONZALEZ’S
13 entitlement to commissions became governed by his Employment Contract entered into January 1,
14 2011. CTWI was and is not bound by the terms of the GONZALEZ-LV.NET, LLC Employment
15 Contract, and thus, its entitlement to 12.5 percent commissions under the MOU remained, but it was
16 limited to the “gross monthly receipts for sales made by an agent of CWTI” which no longer
17 included those earned by MR. GONZALEZ.

20 **21.** The only evidence presented to suggest MR. GONZALEZ was not paid the full
21 extent of his base salary was his testimony that, when his credit card debt was satisfied through
22 reductions of his paycheck, LV.NET, LLC refused to increase the amount listed on his check to the
23 contracted wages. He resigned his position shortly thereafter which suggests MR. GONZALEZ
24 sustained little or no loss of salary. There was no evidence presented of any loss of commissions
25 while MR. GONZALEZ was employed by LV.NET, LLC. MR. GONZALEZ’S claim is for
26 \$91,898 commissions he earned while a shareholder and officer of CWTI; the MOU provides
27
28

1 LV.NET, LLC will pay 12.5 percent of the gross monthly receipts for sales to CWTI and not to MR.
2 GONZALEZ directly. In other words, any division of the commissions awarded CTWI under the
3 MOU is between MR. GONZALEZ and the CWTI investors. MR. GONZALEZ does not have a
4 direct claim for commissions against LV.NET, LLC. This Court, therefore, finds in favor of
5 LV.NET, LLC as against MR. GONZALEZ with respect to his Breach of Employment Contract
6 claim, which includes the damages for loss of commissions.
7

8 **The Parties' Claims for Breach of Implied Covenant of Good Faith and Fair Dealing**

9 22. There is no question “[t]he covenant of good faith and fair dealing is implied into
10 every commercial contract....” Ainsworth v. Combined Insurance Co. of America, 104 Nev. 587,
11 592 n1, 763 P.2d 673, 676 n.1 (1988). Under the implied covenant of good faith and fair dealing,
12 each party must act in a manner that is faithful “to the purpose of the contract and the justified
13 expectations of the other party.” Morris v. Bank of America, 110 Nev. 1274, 1278, 866 P.2d 454,
14 457 (1994), *quoting* Hilton Hotels, 107 Nev. at 234, 808 P.2 at 923. Such position is true even
15 where, ultimately, there is no breach of contract; a plaintiff “may still be able to recover damages for
16 breach of the implied covenant of good faith and fair dealing.” Hilton Hotels, 107 Nev. at 232, 808
17 P.2d at 922. To wit, whether a breach of the *letter* of the contract exists, the implied covenant of
18 good faith is an obligation independent of the consensual contractual covenants. Morris, 110 Nev. at
19 1278, 886 P.2d at 457. Here, both parties have asserted contractual and tortious breach of the
20 covenant of good faith and fair dealing.
21
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23 23. The tort action for breach of the implied covenant of good faith and fair dealing
24 requires a special element of reliance or fiduciary duty and is limited to “rare and exceptional cases.”
25 Great American Insurance Company v. General Builders, Inc., 113 Nev. 346, 354, 934 P.2d 257,
26 263 (1997). The Nevada Supreme Court has recognized this type of reliance in various
27 relationships, including those formed by employment, bailment, insurance, partnership and franchise
28

1 agreements,¹⁴⁶ and a plaintiff can assert a contractual claim and also one for fraud based upon the
2 facts surrounding the contract's execution and performance. *Id.*, citing Amoroso Construction v.
3 Lazovich and Lazovich, 107 Nev. 294, 810 P.2d 775 (1991).

4 **24.** Tort liability for breach of the good faith covenant is appropriate where “the party in
5 the superior or entrusted position” has engaged in “grievous and perfidious misconduct.” *Id.*, citing
6 K Mart Corporation, 103 Nev. at 49, 732 P.2d at 1371. Awards beyond ordinary contract damages
7 are sanctioned where necessary to “make the aggrieved, weaker, ‘trusting’ party ‘whole,’” and to
8 fully punish the tortfeasor for his misdeeds. *Id.*, citing K Mart Corporation, 103 Nev. at 49, 732
9 P.2d at 1371.

10
11 **25.** In light of the evidence presented at trial and summarized *supra*, this Court concludes
12 MR. MIZRAHI and LV.NET, LLC did not act in a manner that was faithful “to the purpose of the
13 contract and the justified expectation of” CWTI. It therefore finds in favor of CWTI as against MR.
14 MIZRAHI and LV.NET, LLC with respect to their competing contractual Breach of the Implied
15 Covenant of Good Faith and Fair Dealing claims. The awardable compensatory damages arising
16 from such claim are those granted CWTI for Breach of Contract/*Quantum Meruit*/Unjust
17 Enrichment discussed *supra*.

18
19 **26.** In analyzing the parties' tortious Breach of the Covenant of Good Faith and Fair
20 Dealing given the evidence presented in this case, this Court is mindful the Nevada Supreme Court
21 has denied tort liability in certain relationships where agreements have been heavily negotiated and
22 the aggrieved party was a sophisticated businessman. Great American Insurance Company, 113
23 Nev. at 355, 934 P.2d at 263, citing Aluevich v. Harrah's, 99 Nev. 215, 660 P.2d 986 (1983). Here,
24 there is no question the individuals on both sides of the “V” are smart and very sophisticated.
25
26

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¹⁴⁶*Id.*, 113 Nev. at 355, 934 P.2d at 263, citing K Mart Corporation v. Ponsock, 103 Nev. 39, 49, 732 P.2d 1364,
1370-1372 (1987).

1 However, as CWTI investors, MR. DEAN and MR. MIME were entitled to rely upon the business
2 judgments and management of CWTI'S president, MR. GONZALEZ. Of the individuals involved
3 in this action, this Court found MR. GONZALEZ'S demeanor was such he clearly was the "weakest
4 link" and succumbed to MR. MIZRAHI'S pressures to merge the companies' finances under veiled
5 threats he and his company could be sued and their bank accounts levied if CWTI did not perform
6 under the LV.NET, LLC brand. Once he obtained control of CWTI'S bank account and finances in
7 January 2011, MR. MIZRAHI had and exercised such control the CWTI investors lost the ability to
8 review a full set of books and records.¹⁴⁷ They were denied payment of revenues given the
9 numerous revisions of the MOU spreadsheets which reflected increasing losses over revenue.
10 CWTI'S accounting expert, MR. WEEKLY, and MR. LESLIE were denied access to LV.NET,
11 LLC'S financial records, causing difficulty in their forensic accounting duties. MR. MIZRAHI did
12 not follow the terms of the MOU and, suffice it to say, his creative revisions to the spreadsheets
13 resulted in a conquest of the company and attempted extortion from CWTI'S investors. This Court
14 concludes LV.NET, LLC'S and MR. MIZRAHI'S conduct was oppressive, malicious and
15 fraudulent. For these reasons, this Court finds in favor of CWTI and against LV.NET, LLC and
16 MR. MIZRAHI with respect to the tortious Breach of the Covenant of Good Faith and Fair Dealing
17 and awards \$250,000 in punitive damages. *See* NRS 42.005. This Court dismisses the tortious
18 Breach of the Covenant of Good Faith and Fair Dealing filed by LV.NET, LLC against CWTI.
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22 **Plaintiffs' Claim for Conversion**

23 27. Generally speaking, conversion is the "intentional exercise of dominion or control
24 over a chattel which so seriously interferes with the right of another to control it that the actor may
25

26
27 ¹⁴⁷*See* Trial Transcript, Day 3, October 20, 2021, p. 25. *But see* Trial Transcript, Day 10, December 6, 2021, p.
28 118 (MR. COOK testified both MS. BENNETT and MR. GONZALEZ had access to the LV.NET, LLC QuickBooks
once CWTI'S bank account was merged into LV.NET, LLC S.). *But see* Trial Transcript, Day 21, January 26, 2022, p.
37 (MR. WEEKLY testified he never received access to LV.NET'S QuickBooks).

1 See Bulbman, Inc. v. Nevada Bell, 108 Nev. 105, 110, 825 P.2d 588, 592 (1992); also see Barnettler
2 v. Reno Air, Inc., 114 Nev. 441, 446-447, 956 P.2d 1382, 1386 (1998).

3 **30.** In this Court’s view, the case presented by CWTI showed, by clear and convincing
4 evidence, LV.NET, LLC and MR. MIZRAHI made numerous misrepresentations, intending to
5 induce CWTI to enter the MOU. Indeed, as set forth in the MOU, LV.NET, LLC and MR.
6 MIZRAHI promised CWTI would receive \$1,500,000 by way of a sliding rate of profit share over
7 the course of eighteen (18) in exchange for it receiving fifty percent (50%) of CWTI’S Wi-Fi
8 network profits. LV.NET, LLC and MR. MIZRAHI represented during the anticipated eighteen
9 (18) earn-in period LV.NET, LLC would provide certain services “at no cost to CWTI,” but, instead,
10 it charged for such amenities. LV.NET, LLC and MR. MIZRAHI represented, during the
11 anticipated eighteen (18) months after the signing of the MOU, CWTI and LV.NET, LLC would
12 share the Wi-Fi network profits based upon the percentage share outlined in the MOU’s Attachment
13 A, when, ultimately, MR. MIZRAHI retroactively changed the revenue stream from profit-share to
14 commissions. LV.NET, LLC and MR. MIZRAHI also represented CWTI would receive 12.5
15 percent of “gross monthly receipts for sales made by an agent of CWTI,” but none were ever paid.
16 LV.NET, LLC and MR. MIZRAHI represented certain expenses allocated to CWTI were its valid
17 obligations when they were not. Further, MR. MIZRAHI retroactively revised the MOU
18 spreadsheets to reflect CWTI bore all losses and costs. MR. MIZRAHI also accrued interest—up to
19 thirty percent (30%) annually—when he knew there was no provision in the MOU allowing
20 LV.NET, LLC to profit by receiving interest. CWTI sustained damage as a result of such
21 misrepresentations and misconduct. This Court finds in favor of CWTI as against LV.NET, LLC
22 and MR. MIZRAHI with regard to the Fraud cause of action and awards \$250,000 in punitive
23 damages. Such an award, however, is not duplicative of those already awarded for CWTI’S claim
24 for tortious Breach of the Covenant of Good Faith and Fair Dealing.
25
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28

1 **Plaintiffs' Claim for Breach of Fiduciary Duty**

2 31. A claim for breach of fiduciary duty customarily has three elements: (1) existence of
3 a fiduciary duty, (2) breach of that duty and (3) damages as a result of the breach. *See* Guzman v.
4 Johnson, 137 Nev. 126, 132, 483 P.3d 531, 537-538 (2021), *citing* Guilfoyle v. Olde Monmouth
5 Stock Transfer Co., 130 Nev. 801, 812-813, 335 P.3d 190, 198 (2014) (providing elements of aiding
6 and abetting a breach of fiduciary duty).

7
8 32. This Court finds from the evidence a fiduciary relationship and duty did exist
9 between the parties when LV.NET, LLC and MR. MIZRAHI acquired full control of CWTI'S cash,
10 bank accounts and financial records. That duty was breached when LV.NET, LLC and MR.
11 MIZRAHI did not abide by the terms of the MOU, failed to provide CWTI with the benefit of the
12 bargain, retroactively changed the revenue stream from profit-share to commissions, attempted to
13 charge CWTI and its investors extraordinary interest upon the alleged incurred costs and refused full
14 access to MR. GONZALEZ, the CWTI investors of the financial records. CWTI sustained damages
15 as a result of the breach of fiduciary duty, however, again, those damages are subsumed within those
16 previously awarded. This Court finds in favor of CWTI with respect to the breach of fiduciary duty
17 claim.
18

19 **Plaintiff's Claim for Specific Performance**

20 33. While CWTI has couched "specific performance" as a claim for relief, it is, in
21 actuality, a remedy and an extraordinary one at that. *See* Calamari & Perillo, Contracts, p. 581 (2nd
22 ed. 1981). Specific performance was developed in the Courts of Equity to provide relief when legal
23 remedies of damages and restitution were inadequate.¹⁴⁸ *Id.* In this case, this Court concludes
24
25 ...
26

27 ¹⁴⁸

28 However, some states, by statute, have broadened the test of equity jurisdiction, permitting specific performance in some cases where, under traditional tests, the legal remedy is adequate. *Id.*, *citing* Van Hecke, "Changing Emphases in Specific Performance," 40 N.C.L.Rev. 1, 9-11 (1961).

1 CWTI'S remedy for monetary damages is adequate, and thus, does not provide relief by way of
2 specific performance.

3 Accordingly, based upon the foregoing Findings of Fact and Conclusions of Law,

4 **IT IS HEREBY ORDERED, ADJUDGED AND DECREED** judgment is awarded in
5 favor of CHEETAH WIRELESS TECHNOLOGIES, INC. as against LV.NET, LLC and MARTY
6 MIZRAHI with respect to its causes of action set forth within the Complaint as follows:
7

8 1. ONE MILLION TWO HUNDRED FORTY-FIVE THOUSAND EIGHT HUNDRED
9 SEVENTY-FIVE AND NO/100 DOLLARS (\$1,245,875.00) in compensatory damages as against
10 LV.NET, LLC only under the First, Second, Fourth, Fifth and Seventh Claims for Relief;

11 2. TWO HUNDRED FIFTY THOUSAND AND NO/100 DOLLARS (\$250,000) in
12 punitive damages as against both LV.NET, LLC and MARTY MIZRAHI, jointly and severally,
13 under the Third and Sixth Claims for Relief.
14

15 **IT IS FURTHER ORDERED, ADJUDGED AND DECREED** judgment is awarded in
16 favor of CHEETAH WIRELESS TECHNOLOGIES, INC. as against LV.NET, LLC with respect to
17 the claims set forth in its Counter-Claim.

18 **IT IS FURTHER ORDERED, ADJUDGED AND DECREED** judgment is awarded in
19 favor of LV.NET, LLC as against MITCHELL GONZALEZ concerning MR. GONZALEZ'S
20 Breach of Employment Contract set forth within the Complaint's Tenth Claim for Relief.
21

22 **IT IS FURTHER ORDERED, ADJUDGED AND DECREED** this Court awards
23 CHEETAH WIRELESS TECHNOLOGIES, INC. pre-judgment interest accruing at the current legal
24 rate,¹⁴⁹ 10.25 percent, upon \$1,245,875.00 compensatory damages¹⁵⁰ since date of service of
25

26 _____
27 ¹⁴⁹See Lee v. Ball, 121 Nev. 391, 395-396, 116 P.3d 64 (2005) ("...NRS 17.130(2) instructs courts to use the
28 base prime rate percentage 'as ascertained by the Commissioner of Financial Institutions on January 1 or July 1, as the
case may be, immediately preceding the date of judgment, plus 2 percent.'). Under NRS 17.130(2), a judgment accrues
interest from the date of the service of the summons and complaint.

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process, August 2, 2016, to date of judgment as against LV.NET, LLC in the amount of EIGHT HUNDRED NINETY-EIGHT THOUSAND FOUR HUNDRED SIXTY-THREE DOLLARS AND 61/100 DOLLARS (\$898,463.61). Post-judgment interest shall accrue upon \$1,245,875.00 compensatory damages at the then prevailing rate set forth by NRS 17.130 and NRS 99.040 until the judgment is paid or otherwise satisfied.

Dated this 14th day of August, 2023



SUSAN JOHNSON, DISTRICT COURT JUDGE

**876 D89 2C6B 4748
Susan Johnson
District Court Judge**

¹⁵⁰Pre-judgment interest does not accrue upon an award of punitive damages. “Prejudgment interest is viewed as compensation for use by defendant of money to which plaintiff is entitled from the time the cause of action accrues until time of judgment; it is not designed as a penalty.” See Ramada Inns, Inc. v. Sharp, 101 Nev. 824, 826, 711 P.2d 1, 2 (1985).

1 **CSERV**

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3 DISTRICT COURT
CLARK COUNTY, NEVADA

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6 Cheetah Wireless Technologies
Inc, Plaintiff(s)

CASE NO: A-16-738043-B

7 vs.

DEPT. NO. Department 22

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9 Las Vegas.Net LLC,
Defendant(s)

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11 **AUTOMATED CERTIFICATE OF SERVICE**

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13 This automated certificate of service was generated by the Eighth Judicial District
14 Court. The foregoing Findings of Fact, Conclusions of Law and Judgment was served via the
15 court's electronic eFile system to all recipients registered for e-Service on the above entitled
16 case as listed below:

17 Service Date: 8/14/2023

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