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KAREN ELLISON, RECORDER

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Findings of fact  
Title of Document (required)

----- (Only use if applicable) -----

The undersigned hereby affirms that the document submitted for recording contains personal information as required by law: (check applicable)

- Affidavit of Death – NRS 440.380(1)(A) & NRS 40.525(5)
- Judgment – NRS 17.150(4)
- Military Discharge – NRS 419.020(2)

Alexandra Snipes  
Signature

Alexandra Snipes  
Printed Name

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\_\_\_\_\_  
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CLERK OF THE COURT

1 **FFCL**  
2 **VERNON A. NELSON, JR., ESQ.**  
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7 DISTRICT COURT  
8 CLARK COUNTY, NEVADA

10 NEVA ONE, LLC, a Nevada limited liability  
11 company; WG-STAE LINE, LLC, a Nevada  
12 limited liability company,

Case No.: A-15-712337-C  
Dept No.: I

12 Plaintiffs,

13 v.

14 FIRST SELECT, INC., a Nevada corporation,  
15 dba LV LIQUIDATORS; DOES I through  
16 XX; and ROE CORPORATIONS I through X,  
17 inclusive,

16 Defendants.

17 FIRST SELET, INC., a Nevada corporation,  
18 dba LV LIQUIDATORS,

19 Third-Party Plaintiff,

20 v.

21 WARNER HOSPITALITY, LLC, a Nevada  
22 limited liability company; MARK LAVOIE,  
23 an individual; DANIEL A. ROONEY, an  
24 individual; HOTEL LIQUIDATION  
25 LOGISTICS, INC., a Nevada cororation, dba  
26 THE LIQUIDATORS; DOES I through X;  
27 and ROE CORPORATIONS I through X,  
28 inclusive,

Third-Party Defendants.

27 **FINDINGS OF FACT AS TO WHICH THERE IS NO GENUINE DISPUTE,**

28 **CONCLUSIONS OF LAW, AND ORDER OF SUMMARY JUDGMENT**

<input type="checkbox"/> Voluntary Dismissal	<input checked="" type="checkbox"/> Summary Judgment
<input type="checkbox"/> Involuntary Dismissal	<input type="checkbox"/> Stipulated Judgment
<input type="checkbox"/> Stipulated Dismissal	<input type="checkbox"/> Default Judgment
<input type="checkbox"/> Motion to Dismiss by Deft(s)	<input type="checkbox"/> Judgment of Arbitration

THE LAW OFFICE OF VERNON NELSON  
ATTORNEY AT LAW

1 Plaintiff, Neva One, LLC ("Neva One" or "Plaintiff") filed and served its Plaintiff's Motion to  
2 Extend the Deadline to File a Motion for Summary Judgment and Motion for Summary Judgment  
3 against First Select Inc. on November 28, 2016. The Court conducted a Pretrial Conference on  
4 December 8, 2016. Vernon Nelson appeared on behalf of the Plaintiff. Spencer Judd appeared on  
5 behalf of the Defendant First Select Inc. doing business as Las Vegas Liquidators ("First Select" or  
6 "Defendant"). Mr. Judd informed the Court that the principal of First Select passed away last  
7 December and that he was aware of Neva One's Motion for Summary Judgment. Mr. Judd stated that  
8 First Select would not be able oppose Neva One's Motion. Mr. Nelson then made an oral motion that  
9 Neva One's Motion for Summary Judgment be heard on shortened time; which Mr. Judd did not  
10 oppose. The Court granted the motion to shorten time. The Court then granted Plaintiff's Motion for  
11 Summary Judgment.

12 Accordingly, based on the pleadings and papers on file with the Court, and the representations  
13 and arguments of counsel for Neva One and First Select during the hearing,

14 **THE COURT FINDS** that under NRCP 56 and pursuant to the standards set forth by the  
15 Supreme Court of Nevada, in e. g., *Wood v. Safeway, Inc.*, 121 Nev. 724, 731 (2005): that no  
16 "genuine" issue of material facts exists regarding each of Neva One's claims against First Select, these  
17 being: (1) breach of contract; (2) account stated; (3) open book account; (4) fraud (in the inducement);  
18 (5) conversion; and (6) breach of good faith and fair dealing.

19 **THE COURT SPECIFICALLY FINDS** under NRCP 56(c) that:

20 The Judgment sought should be rendered forthwith if the pleadings, depositions,  
21 answers to interrogatories, and admissions on file, together with the affidavits, if any  
22 show that there is no genuine issue as to any material fact and that the moving party is  
23 entitled to judgment as a matter of law.

24 **THE COURT FURTHER SPECIFICALLY FINDS** under an NRCP 56 (e) that:

25 When a motion for summary judgment is made and supported as provided in this rule,  
26 an adverse party may not rest upon the mere allegations or denials of the adverse  
27 parties pleadings, but the adverse parties response, by affidavit or otherwise provided  
28 in this rule, must set forth specific facts showing that there is a general issue for trial.

26 **THE COURT SPECIFICALLY FINDS** that Neva One supported its motion for summary  
27 judgment by demonstrating in its briefing that there is no genuine issue of material fact and that it is  
28 entitled to judgment as a matter of law. The Court specifically finds that First Select has informed the

1 Court that it cannot file an opposition to Neva One's motion and that it cannot raise a genuine issue of  
2 material fact to avoid entry of summary judgment on Neva One's claims.

3 **NEVA ONE'S CLAIM FOR BREACH OF CONTRACT**

4 **A. Breach of Contract**

5 To prevail on its claim for Breach of Contract First Select must demonstrate: (1) that First  
6 Select offered to sell specific furniture and mattresses to Neva One and made multiple warranties to  
7 Neva One; (2) Neva One accepted the offer and paid First Select \$129,300; (3) First Select breached  
8 the contract by failing to deliver the furniture and mattresses its specifically warranted that it would  
9 provide; and by failing to return Neva One's payment; and (4) Neva One suffered damages because of  
10 such breach.

11 The contract between Neva One and First Select was for the purchase of furniture and  
12 mattresses. *See Abbott Declaration.* Furniture and mattresses meet the definition of goods provided for  
13 in NRS 104.2105. NRS 104.2106 defines a contract and agreement *as those relating to the present*  
14 *or future sale of goods. Contract for sale includes both a present sale of goods and a contract to sell*  
15 *goods at a future time a sale consist in the passing of title from the seller to the buyer for a price NRS*  
16 *104.2401. NRS 104.2106 further provides that [g]oods or conduct including any part of the*  
17 *performance are conforming or conform to the contract when they are in accordance with the*  
18 *obligations under the contract.*

19 NRS 104.2201 provides that *a contract for the sale of goods of \$500 or more is not*  
20 *enforceable by way of action or defense unless there's some writing sufficient to indicate that a*  
21 *contract for sale has been made between the parties and signed by the parties against whom*  
22 *enforcement is sought or by his or her authorized agent or broker. A writing is not insufficient*  
23 *because it omits or incorrectly states a term agreed upon but the contract is not enforceable under this*  
24 *subsection beyond the quantity of good shown in such writing.*

25 NRS 104.2204 provides that *a contract for the sale of goods may be made in any manner*  
26 *sufficient to show agreement including conduct by both parties which recognizes the existence of such*  
27 *contract. This section further provides that [a]n agreement sufficient to constitute a contract for sale*  
28 *may be found even though the moment of its making is undetermined. This section further provides*

1 that [e]ven though one or more terms are left open a contract for sale does not fail for indefiniteness if  
2 the parties intended to make a contract and there is a reasonably certain basis for giving an  
3 appropriate remedy.

4 NRS 104.2206 provides that [a]n offer to make a contract shall be construed as inviting  
5 acceptance in any manner and by any medium reasonable in the circumstances. NRS 104.2207  
6 provides that [a] definite and seasonable expression of except in or a written confirmation which is  
7 sent within a reasonable time operates as an acceptance even though it states additional to or  
8 different terms from those offered or agreed-upon unless acceptance is expressly made conditional on  
9 assent to the additional or different terms.

10 NRS 104.2301 provides [t]he obligation of the seller is to transfer and deliver and that of the  
11 buyer is to accept and pay in accordance with contract. NRS 104.2304 provides that the price can be  
12 made payable and money or otherwise.

13 NRS 104.2313 provides that [e]xpress warranties by the seller are created by any affirmation  
14 of fact or promise made by the seller to the buyer which relates to the goods and becomes part of the  
15 basis of the bargain create an express warranty that the goods shall conform to the affirmation or  
16 promise. This section further provides that [a]ny description of the goods which is made part of the  
17 basis of the bargain creates an express warranty that the goods shall conform to the description any  
18 sample or model which is made part of the basis of the bargain create an express warranty that the  
19 whole of the good shall conform to the sample or model.

20 Part 6 of Article 2 of the Uniform Commercial Code as adopted by Chapter 104 of the Nevada  
21 Revised Statutes describes various methods by which a seller can breach a contract. For example,  
22 NRS 104.2601 provides that if the goods or the tender of delivery fail in any respect to conform to the  
23 contract the buyer may reject the whole; or accept the whole; or except any commercial unit or units  
24 and reject the rest. Similarly, NRS 104.2711 provides that where the seller fails to make delivery...  
25 The buyer may cancel, and whether or not the buyers done so may in addition to recovering so much  
26 of the prices been paid recover damages for nondelivery as provided for in NRS 104.2713.

27 NRS 104.2713 provides that the measure of damages for nondelivery by the seller is a  
28 difference between the market price at the time when the buyer learned of the breach and the contract

1 *price together with any incidental and consequential damages provided for in article NRS 104.2715,*  
2 *but less expenses saved in consequence of seller's breach market price is determined as of the place*  
3 *for tender or, in cases of rejection.*

4       The Abbott Declaration clearly demonstrates: (1) that First Select offered to sell specific  
5 furniture and mattresses to Neva One and made multiple warranties to Neva; (2) Neva One accepted  
6 the offer and paid First Select \$129,300; (3) First Select breach the contract by failing to deliver the  
7 furniture and mattresses its specifically warranted that it would provide; and by failing to return Neva  
8 One's payment; and (4) Neva One suffered damages because of such breach. For example, Abbott's  
9 Declaration evidences that the Defendants sent a revised proposal that included proposals to supply:  
10 (1) certain mattresses and box springs; and (2) to provide specific furniture from "The Hotel" (the  
11 "Offer") *See Abbott Declaration at PLTFS000002.* Abbott's Declaration also demonstrates that the  
12 Defendant sent an invoice for \$129,300 to Neva One via email. \$100,000 of the invoice was intended  
13 to secure specific furniture from "The Hotel," with the remainder to secure specific mattresses and box  
14 springs. *Id.* Abbott's Declaration also evidences that Neva One wired \$129,300 to the Defendants to  
15 pay for the invoice (the "Acceptance") *Id.*

16       Abbott's Declaration evidences that a consultant contacted WG Stateline on May 2, 2014 and  
17 reported that he had learned that a different liquidation company had the contract to liquidate the  
18 furniture at "The Hotel." Mr. Abbott subsequently met with Dan Rooney of The Liquidators (a  
19 competitor of the Defendants) and determined that The Liquidators had the furniture from The Hotel  
20 and that the Defendants misrepresented that they could sell The Hotel furniture. *Id.*

21       Abbott's Declaration evidences that the principals of the Defendant met with WG Stateline at  
22 its offices on Howard Hughes Drive. The principals admitted that the Defendant could not provide: (1)  
23 the mattresses and box springs provided for in the invoice; or (2) the furniture from "The Hotel." The  
24 Principals of the Defendant also advised that Neva One's deposit had been deposited into the  
25 Defendant's general accounts; and that the Defendants did not have funds available to return Neva  
26 One's deposit (collectively "the First Breach"). The principals apologized and offered a full refund by  
27 June 4, 2014. *Id.* at PLTFS000003.

28       Abbott's Declaration further evidences that the Defendant breached its promise to provide the



1 cash refund, even though the Defendant acknowledged it was not able to deliver "The Hotel"  
2 furniture. *Id.* Abbott's Declaration further evidences that the principals of the Defendant stated that  
3 they would not comply with the mattresses and box spring requirements that they had warranted they  
4 could provide. *Id.* at PLT FS000004 (the "Second Breach")

5 Abbott's Declaration further evidences that representatives of WG Stateline went to the  
6 Defendants main office and requested a refund of \$129,300 from the Defendants. The Defendants  
7 agreed to meet with the representatives and they stated that they would meet with the WG Stateline  
8 representatives on November 21, 2014. However, they failed to meet with WG Stateline  
9 representatives. As of the date of this motion, the defendants have not returned Neva One's deposit of  
10 \$129,300 (the "Damages").

11 Neva One has demonstrated that it entered an agreement with the Defendant, the Defendant  
12 breached the agreement, Neva One has suffered damages of at least \$129,300 because of the  
13 Defendant's breach. Accordingly, Neva One's Motion for Summary Judgment as to its Breach of  
14 Contract claim is granted.

15 **B. Account Stated**

16 To prevail on its claim for Account Stated, Neva One must demonstrate: (1) that it established  
17 an account with First Select to purchase specific furniture and mattresses from First Select; (2) that  
18 First Select opened an account for Neva One and sent it an Invoice for \$129,300 that was due on the  
19 account; and (3) First Select never delivered the specific furniture mattresses that Neva One agreed to  
20 purchase pursuant to the account stated.

21 An account stated is in agreement based on prior transactions between the parties with respect  
22 to the items composing the account and the balance due. *Coker Equip. v. Great Western Capital*  
23 *Corp.*, 110 Nev. 266 (1994). Abbott's Declaration evidences that Neva One and First Select had  
24 entered an agreement for an account stated. On the one hand Neva One established an account with  
25 First Select for the purchase agreed to purchase specific furniture and mattresses from First Select. *See*  
26 *Abbott Declaration at PLTFS000002.* First Select opened an account for Neva One and sent it an  
27 Invoice for \$129,300 that was due on the account. *Id.* Neva One paid the amount due under the  
28 account. *Id.* However, First Select never delivered the specific furniture mattresses that Neva One

1 agreed to purchase pursuant to the account stated. *Id.* When First Select failed to deliver the specific  
2 furniture and mattresses that were the subject of the account stated, Neva One demanded return of its  
3 payment for \$129,003. *Id.* First Select's actions clearly amount to a breach of the account stated  
4 agreed to between Neva One and First Select.

5 Neva One has demonstrated that it was a party to an account stated with the Defendant, that  
6 the Defendant breached the account stated agreement, and Neva One has suffered damages of at least  
7 \$129,300 because of the breach of the account stated. Accordingly, Neva One's motion for summary  
8 judgment as to its account stated claim must be granted.

9 **C. Open Book Account**

10 To prevail on its Open Book Account claim, Neva One must demonstrate that: (1) First Select  
11 maintained a record of the transactions between First Select and Neva One that arose out of the  
12 contract between First Select and Neva One; and (2) and that the Defendant failed to refund monies  
13 due to Neva One under the contract.

14 Abbott's Declaration evidences that First Select maintained records that show debits and  
15 credits related to the contract as they were able to tell Neva One that they did not have the funds to  
16 refund Neva One's deposit. *Id.* at PLTFS000002-004. Abbott's Declaration also evidences that these  
17 records were maintained in the regular course of business as First Select admitted that it kept Neva  
18 One's funds in its primary bank account. *Id.* Further, First Select admission that it was able to track  
19 Neva One's deposit to its primary bank account demonstrates that First Select kept records of the  
20 "book account" in a reasonably permanent form and manner. *Id.*

21 NRS 99.040 defines a "book account" as a detailed statement which:

- 22 (a) constitutes the principal record of one or more transactions between a debtor  
23 and a creditor arising out of a contract....;
- 24 (b) shows debits and credits in connection with the contract and shows against  
25 whom and in favor of whom entries are made;
- 26 (c) is entered in the regular course of business as conducted by such creditor....;
- 27 and
- 28 (d) and is kept in a reasonably permanent form and manner.... See also *Met v. Zeman*, 87 Nev. 294 (1971).

27 Abbott's Declaration evidences that Neva One and First Select were parties to an open book account.  
28 See Abbott Declaration at PLTFS000002. Abbott's Declaration demonstrates that First Select



1 maintained a record of the transactions between First Select and Neva One that arose out of the  
2 contract between First Select and Neva One. Abbott's Declaration evidences that First Select  
3 maintained records that show debits and credits in connection with the contract as they were able to  
4 tell Neva One that they did not have the funds to refund Neva One's deposit. *Id.* at PLTFS000002-  
5 004. Abbott's Declaration also evidences that these records were maintained in the regular course of  
6 business as First Select admitted that it kept Neva One's funds in its primary bank account. *Id.*  
7 Further, First Select admission that it was able to track Neva One's deposit to its primary bank  
8 account demonstrates that First Select kept records of the "book account" in a reasonably permanent  
9 form and manner. *Id.*

10 Neva One has demonstrated that: (1) it was a party to a book account as defined in NRS  
11 99.040 with the Defendant; (2) the Defendant failed to refund monies due to Neva One under the  
12 contract; (3) Neva One suffered damages of at least \$129,300 due to Defendant's actions. Thus, Neva  
13 One's motion for summary judgment as to its open book account claim must be granted.

14 **D. Fraud (*In the Inducement*).**

15 To prevail on its claim for summary of judgment for fraud in the inducement, Neva One must  
16 demonstrate, by clear and convincing evidence, each of the following elements: (1) a false  
17 representation made by [DEFENDANT], (2) [DEFENDANT]'s knowledge or belief that the  
18 representation was false, (3) [DEFENDANT]'s intention to therewith induce [PLAINTIFF] to consent  
19 to the contract's formation, (4) [Plaintiff]'s justifiable reliance upon the misrepresentation, and (5)  
20 damage to [Plaintiff] resulting from such reliance .

21 In *J.A. Jones Constr. Co. v. Lehrer McGovern Bovis, Inc.*, 120 Nev. 277, 290-291 (2004), the  
22 Nevada Supreme Court held:

23 To establish fraud in the inducement, [PLAINTIFF] must prove by clear and  
24 convincing evidence each of the following elements: (1) a false representation made  
25 by [DEFENDANT], (2) [DEFENDANT]'s knowledge or belief that the representation  
26 was false (or knowledge that it had an insufficient basis for making the representation),  
27 (3) [DEFENDANT]'s intention to therewith induce [PLAINTIFF] to consent to the  
28 contract's formation, (4) [Plaintiff]'s justifiable reliance upon the misrepresentation,  
and (5) damage to [Plaintiff] resulting from such reliance. We have recognized that  
"fraud is never presumed; it must be clearly and satisfactorily proved."

Abbott's Declaration evidences that Neva One is entitled to summary judgment on its cause of

1 action for fraud in the inducement. Abbott's Declaration clearly evidences that First Select falsely  
2 represented that it had the right to sell the furniture from the hotel. *See Abbott Declaration at*  
3 *PLTFS000001-003*. Abbott's Declaration further evidences that First Select falsely represented that it  
4 could provide particular mattresses required by Neva One as First Select knew that the contract to  
5 liquidate furniture from "The Hotel" had been granted to LV Liquidator's; First Select's competitor.  
6 *See Abbott Declaration at PLTFS000001-03*. Abbott's Declaration evidences that First Select knew  
7 it's misrepresentations regarding the furniture and mattresses were false and that it admitted this Neva  
8 One. *See Abbott Declaration at PLTFS000001-03*. Abbott's Declaration evidences that First Select  
9 made these misrepresentations with the intention of inducing Neva One to consent to the contract's  
10 formation and to pay First Select \$129,300. For example, First Select constantly contacted Neva One  
11 and falsely warned that Neva One had to move quickly to secure furniture from "The Hotel. *See*  
12 *Abbott Declaration at PLTFS000001-03*. Abbott's Declaration further evidences that Neva One's  
13 claim for fraudulent inducement because his declaration demonstrates that Neva One justifiably relied  
14 on the misrepresentations of First Select. For example, First Select sent pictures of furniture from The  
15 Hotel to Neva One. *See Abbott Declaration at PLTFS000001-03*. It also showed Neva One samples of  
16 the mattresses that it would sell to Neva One. *See Abbott Declaration at PLTFS000001-03*. Further,  
17 First Select repeatedly falsely warned Neva One the furniture from the hotel was rapidly being sold  
18 and that Neva One needed to move quickly to ensure that it could purchase the furniture. *See Abbott*  
19 *Declaration at PLTFS000001-03*. Further, Neva One justifiably relied on First Select  
20 misrepresentation that it was providing samples of the mattresses that would be provided by First  
21 Select. *Id*. Finally, Abbot's Declaration evidences that Neva One suffered damages of at least  
22 \$129,300 from its reliance on First Select's misrepresentations. *Id*.

23 Neva One has demonstrated, by clear and convincing evidence, that First Select fraudulently  
24 induced Neva One to enter the contract for the sale of furniture from The Hotel and certain specific  
25 mattresses. Accordingly, Neva One's motion for summary judgment as to fraud in the inducement  
26 must be granted.

27

28 ///

1           **E. Conversion**

2           To prevail on its claim for conversion, Neva One must demonstrate that First Select exerted  
3 wrongful dominion over Neva One's personal property. In *Larson V. B.R. Enterprises*, 104 Nev. 252,  
4 254 (1988) the Nevada Supreme Court held that *[c]onversion exists where one exerts wrongful*  
5 *dominion over another's personal property or wrongful interference with the owner's dominion.* In  
6 *Larson*, the Plaintiff alleged that the Defendant had converted money that the Plaintiff had given him  
7 to invest. *Id.* The Plaintiff alleged that the Defendant used Plaintiff's money to pay an alleged debt to  
8 the Four Queens. *Id.* The Nevada Supreme Court held that Plaintiff's actions amounted to a wrongful  
9 conversion. *Id.* In this regard, the Court stated:

10           *The record contains little or no evidence that Larson authorized Ross to use his money*  
11 *to pay an alleged debt to the Four Queens. At the time Ross collected Larson's*  
12 *commission, the venture between the two men [\*255] had ended. Ross admitted, at*  
13 *trial, that the money was Larson's, and that he did not obtain or care about Larson's*  
14 *approval before paying Larson's purported debt, and that he paid the \$ 6,000 debt to*  
15 *protect his own reputation. As a result, we conclude that the record clearly shows that*  
16 *Ross exercised wrongful dominion over the entire \$ 15,375, and not merely \$ 9,375 of*  
17 *Larson's commission. Because the district court's finding on this issue is unsupported*  
18 *by substantial evidence, it must be reversed. Id.*

19           Abbott's Declaration clearly evidences that the facts of this case substantially mirror the facts  
20 in *Larson*. Abbott's Declaration clearly evidences that Neva One paid First Select \$129,300 to buy  
21 furniture and mattresses that they could not provide. *See Abbott Declaration at PLTFS000001-03.*  
22 First Select admitted that it deposited Neva Ones money into First Select's general account and had  
23 spent it on other matters. *Id.* As a result, it was unable to refund the money paid by Neva One. *Id.* First  
24 Select's actions clearly demonstrate that it exercised wrongful dominion over the entire \$129,300 paid  
25 by Neva One. Therefore, Neva One is entitled to summary judgment on its claim for conversion.

26           **F. Breach of Good Faith and Fair Dealing**

27           To prevail on its claim for Breach of Good Faith and Fair Dealing, Neva One must  
28 demonstrate that First Select deliberately countervened the intention and spirit of the contract.  
NRS 104.1304 provides that every contract or duty within the Uniform Commercial Code imposes  
an obligation of good faith in its performance and enforcement. In *Hilton Hotels Corp. v. Butch*  
*Lewis Prods.*, 107 Nev. 226 (1991), the Nevada Supreme Court held that the implied covenant of  
good faith and fair dealing is part of every contract. *Id.* In describing the implied covenant, the

1 stated where the terms of a contract are literally complied with but one party to the contract  
2 deliberately countervenes the intention and spirit of the contract, that party can incur liability for  
3 breach of the implied covenant of good faith and fair dealing. *Id.*

4 Abbott's Declaration evidences that Neva One is entitled to summary judgment on its cause of  
5 action for the breach of good faith and fair dealing. Abbott's Declaration clearly evidences that First  
6 Select falsely represented that it had the right to sell the furniture from the hotel. *See Abbott*  
7 *Declaration at PLTFS000001-003.* This misrepresentation is certainly evidence of First Select's lack  
8 of good faith and fair dealing.

9 Abbott's Declaration further evidences that First Select falsely represented that it could  
10 provide particular mattresses required by Neva One as First Select knew that the contract to liquidate  
11 furniture from "The Hotel" had been granted to LV Liquidator's, First Select's competitor. *See Abbott*  
12 *Declaration at PLTFS000001-03.* Again, this misrepresentation is certainly evidence of First Select's  
13 lack of good faith and fair dealing.

14 Abbott's Declaration evidences that First Select knew its misrepresentations regarding the  
15 furniture and mattresses were false and that it admitted this Neva One. *See Abbott Declaration at*  
16 *PLTFS000001-03.* Again, this misrepresentation is certainly evidence of First Select's lack of good  
17 faith and fair dealing.

18 Abbott's Declaration evidences that First Select made these misrepresentations with the  
19 intention of inducing Neva One to consent to the contract's formation and to pay First Select  
20 \$129,300. For example, First Select constantly contacted Neva One and falsely warned that Neva One  
21 had to move quickly to secure furniture from "The Hotel. *See Abbott Declaration at PLTFS000001-*  
22 *03.* Again, this misrepresentation is certainly evidence of First Select's lack of good faith and fair  
23 dealing.

24 Abbott's Declaration further demonstrates that First Select sent pictures of furniture from The  
25 Hotel to Neva One in an effort to deceive Neva One that First Select had the right to sell the furniture.  
26 *See Abbott Declaration at PLTFS000001-03.* First Select showed Neva One samples of the mattresses  
27 that it would sell to Neva One. *See Abbott Declaration at PLTFS000001-03.* Further, First Select  
28 repeatedly falsely warned Neva One the furniture from the hotel was rapidly being sold and that Neva

1 One needed to move quickly to ensure that it could purchase the furniture. *See Abbott Declaration at*  
2 *PLTFS000001-03. Id.* Finally, Abbot's Declaration evidences that Neva One suffered damages of at  
3 least \$129,300 from its reliance on First Select's misrepresentations. *Id.* Again, these  
4 misrepresentations are certainly evidence of First Select's lack of good faith and fair dealing.

5 Neva One has demonstrated that First Select breached the implied duty of good faith and fair  
6 dealing. Accordingly, Neva One's motion for summary judgment must be granted.

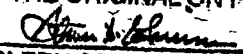
7 IT THEREFORE IS ORDERED that Neva One's Motion for Summary Judgment shall be and  
8 hereby is GRANTED.

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DATED Jan 12, 2017

  
DISTRICT COURT JUDGE

Respectfully submitted,  
THE LAW OFFICE OF VERNON NELSON  
\_\_\_\_\_  
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