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9 *Attorney for Plaintiff/Counterdefendant,*
 10 *Thomas K. Kurian*

11 **UNITED STATES DISTRICT COURT**
 12 **DISTRICT OF NEVADA**

13 THOMAS K. KURIAN, individually,
 14 Plaintiff/Counterdefendant,
 15 vs.
 16 SNAPS HOLDING COMPANY, a North
 17 Dakota Domestic Corporation,
 18 Defendants/Counterclaimant.

Case No.: 2:19-cv-01757-GMN-EJY

19 **AMENDED JOINT PRETRIAL**
 20 **ORDER**

21 COMES NOW Plaintiff/Counterdefendant, THOMAS K. KURIAN (hereinafter
 22 “KURIAN”), by and through his counsel, E. Brent Bryson, Esq. of the law offices of E. Brent
 23 Bryson, Ltd., and Defendant/Counterclaimant SNAPS HOLDING COMPANY (hereinafter
 24 “SNAPS”), by and through its counsel, Richard G. Campbell, Jr., Esq., of the law offices of
 25 Kaemper Crowell, and John R. Neve, Esq. of the law offices of Quantum Lex, PA, Minnesota
 26 Bar No. 278300 (Motion *Pro Hac Vice* to be filed), and pursuant to Local Rule 16-4 and this
 27 Court’s Order (ECF No. 127), and submits their revised Joint Pretrial Order as follows:

28 After pretrial proceedings in this case,

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1 IT IS SO ORDERED:

2 **I. THIS IS AN ACTION FOR:**

3 A. PLAINTIFF'S ALLEGATIONS:

4 On May 19, 2014, Plaintiff/Counterdefendant KURIAN ("Kurian") and
5 Defendant/Counterclaimant SNAPS HOLDING COMPANY ("SNAPS") executed a Spectrum
6 Manager Lease Agreement wherein SNAPS leased from KURIAN the right to use certain
7 frequencies contained within call sign WQCP809 (809) issued to Kurian from the FCC. As part
8 of the duties of the lessee, SNAPS was to build out the portion of the frequencies leased to
9 SNAPS and use only equipment approved by the FCC but SNAPS failed to do so. SNAPS
10 additionally failed to pay KURIAN as agreed pursuant to the parties' lease.
11

12 Plaintiff ("Kurian") filed his complaint in the Eighth Judicial District Court advancing
13 causes of action sounding in contract law. Defendant (SNAPS) removed the matter pursuant to
14 Diversity Jurisdiction to Federal Court. All of Kurian's causes of action are based on Nevada
15 State law. After removing the matter to Federal Court, SNAPS filed its answer and counterclaim.
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17 Plaintiff, therefore, alleged Breach of Contract, Fraud/Misrepresentation, Interference
18 with Prospective Economic Gain, Breach of the Covenant of Good Faith and Fair Dealing –
19 Contractual, Declaratory Relief, and Injunctive Relief.

20 This Court granted summary judgment on Plaintiff's causes of action for breach of
21 contract and breach of the implied covenant of good faith and fair dealing. Additionally, the
22 Court granted partial summary judgment on Plaintiff's first cause of action for declaratory relief
23 finding that there is a valid contract between the parties. See ECF No. 55.
24

25 The Court in its Order (ECF No. 59) left counterclaims for Unjust Enrichment,
26 Fraudulent Misrepresentation, Negligent Misrepresentation, Fraudulent Inducement, Breach of
27 the Covenant of Good Faith and Fair Dealing and Tortious Interference with Prospective
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1 Economic Advantage unresolved.

2 B. DEFENDANT’S CONTENTIONS:

3 Objection: Plaintiff Kurian objects to Defendant’s contentions to the extent Defendants
4 are attempting to relitigate this Court’s prior ruling in favor of Plaintiff on summary judgment.

5 Defendant’s Response to Plaintiff’s Objection: It is well-settled that district courts have
6 the authority to reconsider and revise interlocutory orders, such as orders granting motions for
7 partial summary judgment. *Amarel v. Connell*, 102 F.3d 1494, 1515 (9th Cir.1996) (“[T]he
8 interlocutory orders and rulings made pre-trial by a district judge are subject to modification by
9 the district judge at any time prior to final judgment.”); *Balla v. Idaho State Bd. of*
10 *Corrections*, 869 F.2d 461, 465 (9th Cir.1989); Fed. R. Civ. P. 54(b).

11
12 In May 2014, SNAPS leased the “wireless radio frequency license, WQCP809,” which
13 consists of the 217.5-218 MHz and 219.5-220 MHz frequencies, from Kurian “in exchange for a
14 monthly payment of \$20,390.00.” *See* ECF 55, Order on Summary Judgment Motions at 2. In
15 March 2019, Kurian terminated SNAPS’ lease and, in June 2019, he sued SNAPS for the
16 amounts remaining due under the Lease.

17
18 In May 2019, just two months after he terminated SNAPS’ lease, Kurian sold the 219.5-
19 220 MHz frequencies to PTC-220, LLC, a conglomeration of the seven largest railroads in the
20 United States. Kurian sold the frequencies for an amount that entirely mitigates his damages.
21 Further, despite informing PTC-220, LLC in October 2018 that he would terminate SNAPS’
22 lease to facilitate the sale, Kurian continued to collect rent from SNAPS until March 2019.
23 Kurian breached the clause of “exclusive” rights of SNAPS in the Lease Agreement signed with
24 SNAPS. In addition, Kurian breached the clause of offering “cure period” for the delay in
25 payment from SNAPS and disregarded the clause in the Lease Agreement to offer SNAPS an
26 opportunity to buy the spectrum before he terminated the agreement. Kurian’s actions breached
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1 the covenant of good faith and fair dealing.

2 Since SNAPS discovered that Kurian mitigated his damages by selling the 219.5-220
3 MHz frequencies to PTC-220, LLC, Kurian has offered testimony that conflicts with his prior
4 positions in this matter, and with the Court's summary judgment order. For example, at Kurian's
5 November 10, 2023 deposition, he testified that SNAPS leased no frequencies and no channels:
6

7 Q. · And that lease agreement says -- it's your understanding that
8 that lease agreement SNAPS cannot use any frequencies or any
9 channels?

10 A. · Exhibit A neither have 217 or 219. · If Exhibit A have the 217
11 or 219, they can use.

12 Q. · So if Exhibit A had 219.5 to 220, SNAPS could use those
13 frequencies?

14 A. · Yes.

15 Q. · And if Exhibit A had 217.5 to 218, SNAPS could use those
16 frequencies?

17 A. · That's correct.

18 Q. · But because Exhibit A contains no frequencies, SNAPS
19 cannot use any frequencies or channels?

20 A. · That's correct. · That's what exactly the party -- this is the
21 parties' agreement. · I've read this. · It's limited in all respect --
22 limited in all respect by the parties' agreement.

23 This directly contradicts Kurian's position at summary judgment:

24 First, Snaps received two things as consideration under the
25 Agreement: (1) the *exclusive right to operate in the geographic
26 locations and on the channels identified in Exhibit A to the contract,*
27 and (2) the *option to purchase the frequencies.* Specifically, the
28 Agreement provided Snaps, "the right to use certain frequencies of
the Licenses in certain areas, as defined in Exhibit A." These leased
frequencies are referred to in the Agreement as "Channels." Exhibit 1,
p.1. *This lease provided Snaps "the right to use on an exclusive basis
the Channels" specified on Exhibit "A." Id.* The Agreement also
included an option contract, pursuant to which Snaps received the
right to purchase Kurian's "right, title and interest to the Channels."
Exhibit 1, paragraph 3."

1 It also directly contradicts this Court’s holding on summary judgment that (1) “Plaintiff
2 leased its wireless radio frequency license, WQCP809 to Defendant,” (2) the parties’ lease is
3 supported by consideration because “Plaintiff agreed to lease its License to Defendant in
4 exchange for a monthly payment of \$20,390.00,” and (3) mutual assent exists because “[u]nder
5 the express terms of the Agreement, the parties agreed to Defendant providing substantial
6 services to the leased geographical area, in addition to Defendant leasing Plaintiff’s license.” *See*
7 ECF 55, Order on Summary Judgment Motions at 2, 7-8. Kurian cannot escape his mitigation of
8 damages by changing his testimony when confronted with evidence of the sale to PTC-220,
9 LLC. SNAPS leased the 219.5-220 MHz frequencies, and Kurian mitigated his damages by
10 selling those frequencies to PTC-220, LLC shortly after he terminated SNAPS’ lease.

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12 C. PROCEDURAL HISTORY:

13 1. On June 27, 2019, the Plaintiff and Counterdefendant THOMAS K. KURIAN
14 (hereinafter “Plaintiff”) filed his State Court Claim.

15 2. On September 19, 2019, Defendant and Counterclaimant SNAPS HOLDING
16 COMPANY (hereinafter “Defendant”) was served a Summons and Complaint on September 19,
17 2019.

18 3. On October 9, 2019, Defendant filed its Notice of Removal to United States
19 District Court [ECF No. 1] and its Certificate of Interested Parties [ECF No. 2],
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21 4. On October 9, 2019, the Court issued its Minute Order in Chambers for case
22 removal [ECF No. 3] and the Court’s Standing Order [ECF No. 4] that the case was assigned to
23 the Honorable Judge Gloria M. Navarro.

24 5. On October 15, 2019, Defendant answered Plaintiff’s Complaint [ECF No. 5].

25 6. On October 23, 2019, Plaintiff filed a limited response in Opposition [ECF No. 6]
26 to Defendant’s Petition for Removal [ECF No. 1].
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1 7. On October 24, 2019, Defendant filed a Certificate of Service [ECF No. 7] of the
2 Court's Minute Order in Chambers [ECF No. 3] to Plaintiff's counsel, E. Brent Bryson, Esq.

3 8. On October 24, 2019, Defendant filed its Removal Statement [ECF No. 8].

4 9. On October 30, 2019, Defendant filed its Response [ECF No. 9] to Plaintiff's
5 limited opposition [ECF No. 6] to Defendant's Petition for Removal [ECF No 1].
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7 10. On November 8, 2019, the parties filed their Joint Status Report [ECF No. 10].

8 11. On November 8, 2019, Rory C. Mattson, Esq., of the law firm of Messerli
9 Kramer, filed his Motion for Permission to Practice Pro Hac Vice - Verified Petition [ECF No.
10 11].

11 12. On November 13, 2019, the Court filed its Minute Order in Chambers [ECF No.
12 12] and Notice of Corrected Image [ECF No. 13] regarding Defendant's counsel's Motion for
13 Permission to Practice Pro Hac Vice - Verified Petition [ECF No. 11].
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15 13. On November 25, 2019, the parties filed a proposed discovery plan and
16 scheduling order [ECF No. 14].

17 14. On November 26, 2019, the Court filed its Scheduling Order [ECF No. 15] that
18 granted the parties proposed plan [ECF No 14].

19 15. On November 26, 2019, the Court filed its Order [ECF No. 16] granting
20 Defendant's counsel's Verified Petition to practice pro hac vice [ECF No. 11].
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22 16. On January 7, 2020, Plaintiff filed a Motion for Leave to Amend Complaint to
23 Add Parties [ECF No. 17].

24 17. On January 13, 2020, Defendant filed a Motion for Leave to Amend Answer to
25 Complaint and Add Counterclaims [ECF No. 18].

26 18. On January 21, 2020, Defendant filed a Response [ECF No. 19] to Plaintiff's
27 Motion to Amend Complaint and Add Parties [ECF No. 18].
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1 19. On January 27, 2020, Plaintiff filed an Opposition [ECF No. 20] to Defendant's
2 Motion for Leave to Amend Answer to Add Counterclaims [ECF No. 18].

3 20. On January 28, 2020, Plaintiff filed a Reply [ECF No. 21] to Defendant's
4 Response [ECF No. 19] to Plaintiff's Motion to Amend Complaint [ECF No. 17].

5 21. On February 3, 2020, Defendant filed a Reply [ECF No 22] in Support of
6 Defendant's Motion to Amend Answer and Add Counterclaims [ECF No 18].

7 22. On February 12, 2020, the parties filed a Joint Interim Status Report [ECF No.
8 23].

9 23. On February 12, 2020, the parties filed a Stipulation for Confidentiality
10 Agreement and for Protective Order [ECF No. 24].

11 24. On February 13, 2020, the Court filed an Order [ECF No. 25] granting the parties'
12 Stipulation for Confidentiality Agreement / Protective Order [ECF No. 24].

13 25. On March 20, 2020, the parties filed a stipulation [ECF No. 26] to amend the
14 scheduling order to extend the discovery cut-off date which the Court DENIED as presented on
15 March 23, 2020 [ECF No. 27].

16 26. On April 21, 2020, the Court entered its Order [ECF No. 28] denying without
17 prejudice Plaintiff's motion for leave to amend Complaint to add parties [ECF No. 17].

18 27. On April 27, 2020, the Court entered its Order [ECF No. 29] granting Plaintiff's
19 motion for leave to amend Answer and add counterclaims [ECF No. 18].

20 28. On April 27, 2020, Defendant filed its Amended Answer and Counterclaim [ECF
21 No. 30] regarding Petition for Removal [ECF No. 1].

22 29. On May 1, 2020, Plaintiff filed his renewed Motion for Leave to Amend
23 Complaint to add parties [ECF No. 31].

24 30. On May 6, 2020, Plaintiff filed his Answer [ECF No. 32] to
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1 Defendant/Counterclaimant's Answer with counterclaims [ECF No. 30].

2 31. On May 15, 2020, Defendant filed its Response [ECF No.33] to Plaintiff's
3 renewed Motion to Amend Complaint to add parties [ECF No. 31].

4 32. On May 22, 2020, Plaintiff filed his Reply [ECF No. 35] to Defendant's Response
5 [ECF No. 33] in support of Plaintiff's motion for to amend complaint to add parties [ECF No.
6 31].

7 33. On August 20, 2020, the Court filed its Report and Recommendation [ECF No.
8 36] denying without prejudice Plaintiff's renewed motion to amend complaint to add parties
9 [ECF No. 31].

10 34. On September 24, 2020, the Court filed its Order [ECF No. 37] adopting in full
11 the Report and Recommendation [ECF No. 36] and denied without prejudice Plaintiff's
12 Renewed Motion for leave to amend complaint to add parties [ECF No. 31].

13 35. On October 27, 2020, Plaintiff filed his Motion for Summary Judgment [ECF No.
14 38].

15 36. On November 17, 2020, Defendant filed its Response [ECF No. 40] to
16 Plaintiff/Counterdefendant's motion for summary judgment [ECF No. 38].

17 37. On December 14, 2020, Defendant filed its Motion for Partial Summary
18 Judgment [ECF No. 43].

19 38. On December 23, 2020, Plaintiff filed his Response [ECF No. 45] opposing
20 Defendant/Counterclaimant's motion for partial summary judgment [ECF No. 43].

21 39. On January 6, 2021, Defendant filed its Reply [ECF No. 46] in support of its
22 motion for partial summary judgment [ECF No. 43].

23 40. On April 5, 2021, the Court filed its Minute Order [ECF No. 48] that, pursuant to
24 LR 16-5, this case was referred to Magistrate Judge Elayna J. Youchah for a settlement
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1 conference.

2 41. On April 6, 2021, the Court filed its Order [ECF No. 49] setting a settlement
3 conference for June 15, 2021.

4 42. On June 15, 2021 the Court filed its Minutes of Settlement Conference
5 Proceedings [ECF No. 50] continuing settlement discussions for approximately 60 days and set a
6 telephonic status conference for Monday, August 16, 2021 at 11:00 AM.
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8 43. On August 4, 2021, the parties filed their Stipulation and proposed order [ECF
9 No. 51] requesting the settlement conference set for June 15, 2021 be vacated and reset.

10 44. On August 5, 2021, the Court filed its Order [ECF No 52] granting the parties'
11 stipulation to vacate the August 16, 2021 telephonic status conference and reset it to September
12 27, 2021.

13 45. On August 26, 2021, the Court filed its Minute Order [ECF No. 53] that vacated
14 the Telephonic Status Conference set for September 29, 2021 at 4:00 PM and reset it for October
15 1, 2021 at 9:30 AM.
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17 46. On September 10, 2021, the Court filed its Minute Order [ECF No. 54] that
18 vacated the Telephonic Status Conference set for September 29, 2021 at 4:00 PM and reset it for
19 October 1, 2021 at 9:30 AM.
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21 47. On September 27, 2021, the Court filed its Order [ECF No. 55] that
22 granted/denied in part Plaintiff's motion for summary judgment [ECF No. 38] and that
23 granted/denied in part Defendant's motion for summary judgment [ECF No. 43].

24 48. On October 1, 2021, the Court filed its Minutes of Proceedings [ECF No. 56]
25 regarding the Telephonic Status Conference held on 10/1/2021 and ordered that on or
26 before October 22, 2021, the parties are to submit either a discovery plan/scheduling order on
27 agreed upon discovery going forward, or a notice to the Court that no agreement can be reached
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1 as discussed in open court and the transcript of these proceedings will serve as the Court's Order.

2 49. On October 14, 2021 the parties filed their Joint Notice of Compliance [ECF No.
3 57] stating that counsel for the parties met and conferred and determined that a motion for
4 clarification of the Court's Order [ECF No. 55] regarding summary judgment.

5 50. On October 28, 2021, the parties filed their Joint Motion for Clarification [ECF
6 No. 58] regarding the Court's Order [ECF No. 55] on the parties' motions for summary
7 judgment [ECF Nos. 38 and 43].

8 51. On August 23, 2021, the Court filed its Order [ECF No. 59] Granting the parties'
9 joint motion for clarification [ECF No. 58].

10 52. On September 9, 2021, the parties filed their first Stipulation/Proposed Order
11 [ECF No. 60] to extend the deadline to file the proposed joint pretrial order.

12 53. On September 9, 2021, the Court filed its Order [ECF No. 61] granting the
13 parties' stipulation [ECF No. 60].

14 54. On October 13, 2021, Defendant's counsel, Brendan R. Tupa of Messerli &
15 Kramer, P.A., Minneapolis, MN, filed a Verified Petition for Permission to Practice Pro Hac
16 Vice in this case only [ECF No.62].

17 55. On October 13, 2022, Defendant filed its Notice of Withdrawal and Substitution
18 of Counsel [ECF No. 63].

19 56. On October 13, 2022, the Court filed its Order [ECF No. 64] Granting [ECF No.
20 62] Verified Petition for Permission to Practice Pro Hac Vice.

21 57. On October 14, 2022, the Court filed its Minute Order [ECF No. 65] Granting
22 [ECF No. 63] Notice of Withdrawal and Substitution of Counsel.

23 58. On November 9, 2022, the Court filed its Order [ECF No. 67] Granting [ECF No.
24 66] Stipulation for Extension of Time.

1 59. On November 10, 2022, the Court filed its Minute Order [ECF No. 68] requiring
2 the parties to file a Status Report confirming whether any discovery remains at issue and if a
3 settlement conference before joint pretrial order is due would be futile.

4 60. On November 23, 2022, the parties files their joint Status Report [ECF No. 69].

5 61. On November 28, 2022, the Court filed its Minute Order [ECF No. 70] regarding
6 Status Report [ECF No. 69] setting a Zoom Discovery hearing for December 13, 2022.
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8 62. On December 13, 2022, the Court filed Minutes [ECF No. 71] of the December
9 13, 2022 Proceedings and set an in-person Settlement Conference for April 25, 2023 with
10 confidential settlement briefs due by April 18, 2023.

11 63. On January 4, 2023, the Court filed the Transcript [ECF No. 73] of redacted
12 proceedings on December 13, 2022.
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14 64. On February 22, 2023, Defendant filed its Motion for Order to Show Cause [ECF
15 No. 74], Declaration in support of Motion for Order to Show Cause [ECF No. 75], and an
16 Affidavit of Service of Exhibits [ECF No. 77] to Motion for Order to Show Cause [ECF No. 74].

17 65. On March 8, 2023, Defendant filed a Motion to Extend Time to file the Joint
18 Pretrial Order [ECF No. 78].

19 66. On March 8, 2023, Plaintiff filed his Response in Opposition [ECF No. 79] to
20 Defendant's Motion for Order to Show Cause [ECF No. 74].
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22 67. On March 8, 2023, the Court filed its Minute Order in Chambers [ECF No. 83]
23 striking ECF Nos. 80 and 81, as Plaintiff must file a single Response to Defendant's Motion for
24 Order to Show Cause [ECF No. 74].

25 68. On March 9, 2023, the Court filed its Minute Order in Chambers [ECF No. 85]
26 vacating its previous Minute Order in Chambers [ECF No. 83], as Plaintiff's Response in
27 Opposition to Defendant's Motion for Order to Show Cause is found at ECF No. 79.
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1 69. On March 9, 2023, Plaintiff filed his Response in Opposition [ECF No. 86] to
2 Defendant's Motion to Order to Show Cause [ECF No. 74], the Declaration of Plaintiff [ECF
3 No. 86-1] and the Declaration of Plaintiff's Counsel [ECF No 86-2].

4 70. On March 9, 2023, the Court filed its Minute Order in Chambers [ECF No. 87]
5 striking ECF No 82, Plaintiff's Proposed Pretrial Order, and Granting ECF No. 78, Defendant's
6 Motion to Extend Time to file the Joint Pretrial Order to May 25, 2023.

7 71. On March 16, 2023, Defendant filed its Reply [ECF No. 88] in Support of its
8 Motion for Order to Show Cause [ECF No. 74].

9 72. On March 16, 2023, Defendant filed its Supplemental Declaration [ECF No. 89]
10 and Exhibit [ECF No 89-1] in Support of its Reply [ECF No. 88] supporting its Motion for Order
11 to Show Cause [ECF No 74].

12 73. On April 18, 2023, the parties filed a Stipulation and Order [ECF No. 90] to
13 vacate the in-person Settlement Conference set for April 25, 2023 [ECF No. 71].

14 74. On April 18, 2023, the Court filed its Order [ECF No. 91] vacating the April 25,
15 2023 Settlement Conference and Continuing the Joint Pretrial due date.

16 75. On April 21, 2023, Defendant filed its Motion for Leave [ECF No. 92] to
17 Supplement its Reply Brief [ECF No. 88] in Support of Defendant's Motion for Order to Show
18 Cause [ECF No. 74].

19 76. On May 5, 2023, Plaintiff filed his Response [ECF Nos. 93 and 94] in Opposition
20 to Defendant's Motion for Leave to Supplement Reply Brief [ECF No. 92] in Support of
21 Defendant's Motion for Order to Show Cause [ECF No. 74].

22 77. On May 10, 2023, Defendant filed its Reply [ECF No. 95] in Support of its
23 Motion for Leave to Supplement Reply Brief [ECF No. 92] in Support of Defendant's Motion
24 for Order to Show Cause [ECF No. 74].

1 78. On May 10, 2023, Plaintiff filed his Motion to Strike [ECF No. 96] Plaintiff's
2 Response in Opposition [ECF No. 93] to Defendant's Motion for Leave to Supplement Reply
3 [ECF No. 92] in Support of Defendant's Motion for Order to Show Cause [ECF No. 74].

4 79. On June 12, 2023, the Court filed its Minute Order in Chambers [ECF No. 97]
5 setting a June 21, 2023, 10:00 a.m. Hearing on Defendant's Motion for an Order to Show Cause
6 [ECF No. 74], Defendant's Motion for Leave to Supplement Reply Brief in Support of Motion
7 for an Order to Show Cause [ECF No. 92], and Plaintiff's Notice of Withdrawal and Request to
8 Strike ECF No. 93, Plaintiff's Response in Opposition to SNAPS' Motion for Leave to
9 Supplement Reply [ECF No. 96].

10 80. On June 20, 2023, the Court filed its Minute Order in Chambers [ECF No. 98]
11 requiring Defendant file by June 20, 2023 documentary evidence of Plaintiff's Failure to Comply
12 with the Court's Order [ECF No 73] and in support of Defendant's Motion for Leave to
13 Supplement Reply Brief [ECF No. 92] in Support of Defendant's Motion for an Order to Show
14 Cause [ECF No. 74].

15 81. On June 20, 2023, Defendant filed Exhibits [ECF Nos. 99 and 100].

16 82. On June 20, 2023, the Court filed its Minute Order in Chambers [ECF No. 101]
17 Striking Defendant's ECF Nos. 99 and 100.

18 83. On June 21, 2023, the Court filed its Order [ECF No. 102] Granting in part and
19 Denying in part Defendant's Motion for Order to Show Cause [ECF No. 74].

20 84. On June 26, 2023, Transcript of June 21, 2023 Hearing [ECF No. 104].

21 85. On June 26, 2023, the Court filed its Order [ECF No. 105] temporarily releasing
22 Transcript [ECF No 104].

23 86. On July 5, 2023, Defendant filed its Memorandum [ECF No. 106] in Support of
24 Attorneys' Fees pursuant to the Court's Order of June 21, 2023 [ECF No. 102] awarding
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1 attorneys' fees to Defendant, and Defendant's Counsel's Declaration and Exhibit [ECF Nos. 107
2 and 108] in Support of Defendant's Memorandum [ECF No. 106].

3 87. On July 12, 2023, Plaintiff filed his Response in Opposition [ECF No. 109] to
4 Defendant's Memorandum in Support of Attorney's Fees [ECF 102].

5 88. On August 14, 2023, Defendant filed an Unopposed Motion/Stipulation [ECF No.
6 110] to Extend Discovery Deadline and Deadline to File Joint Pretrial Order [First Request].

7 89. On August 14, 2023, the Court filed its Order [ECF No. 111] Granting ECF No.
8 110, Unopposed Motion/Stipulation to Extend Discovery Deadline and Deadline to File Joint
9 Pretrial Order [First Request].

10 90. On October 19, 2023, Defendant filed an Unopposed Motion/Stipulation [ECF
11 No. 112] to Extend Discovery Deadline and Deadline to File Joint Pretrial Order [Second
12 Request to Extend Discovery Deadline; Fifth Request to Extend Deadline to File Joint Pretrial
13 Order].

14 91. On October 19, 2023, The Court filed its Order [ECF No. 113] Granting the
15 Unopposed Motion/Stipulation [ECF No. 112] to Extend Discovery Deadline and Deadline to
16 File Joint Pretrial Order.

17 92. On October 24, 2023, the Court filed its Order [ECF No. 114] Granting
18 Defendant's Attorney Fees related to its Subpoena to PTC-220.

19 93. On November 8, 2023, Counsel for Defendant filed Motions for Permission to
20 Practice Pro Hac Vice via Verified Petition [ECF Nos. 115 and 116].

21 94. On November 8, 2023, the Court filed its Minute Order in Chambers [ECF No.
22 117] that deferred its ruling on Counsel for Defendant's Pro Hac Vice Motions [ECF No. 115
23 and 116], and Ordered that Petitioners shall have until November 29, 2023, to file corrected
24 Verified Petitions using the "Notice of Corrected Image/Document" event.
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1 95. On November 8, 2023, Counsel for Defendant filed Notices of Corrected
2 Image/Document [ECF Nos. 118 and 119] related to their Motions for Permission to Practice Pro
3 Hac Vice via Verified Petition [ECF Nos. 115 and 116].

4 96. On November 8, 2023, the Court filed its Orders [ECF Nos. 120 and 121]
5 Granting Defendant's Counsels' verified Petitions to Practice Pro Hac Vice [ECF Nos. 115 and
6 116].

7 97. On December 20, 2023, the parties filed their proposed Joint Pretrial Order [ECF
8 No. 122].

9 98. On January 4, 2024, the Court filed its Minute Order [ECF No. 123] setting a
10 Status Conference to explain the deficiencies in the Proposed Joint Pretrial Order January 17,
11 2024, at 10:00 a.m.

12 99. On January 9, 2024, Counsel for Defendant SNAPS, Messerli & Kramer and
13 Kaemper Crowell, pursuant to LR 7-2 and LR IA 11-6(b), filed their motion to withdraw as
14 attorneys of record [ECF No. 124] and Declaration in support thereof [ECF No. 125].

15 100. On January 9, 2024, the Court filed its Minute Order [ECF No. 126] requiring
16 Defendant's Counsels' Motion to Withdraw as Attorney [ECF No. 124] be heard at the Hearing
17 currently set for January 17, 2024, at 10:00 a.m. [ECF No. 123], in addition to addressing the
18 deficiencies in the Proposed Joint Pretrial Order.

19 101. On January 17, 2024, the Court filed its Minute Order [ECF No. 127] rejecting
20 the parties' proposed joint pretrial order [ECF No. 122] to be revised and refiled by February 16,
21 2024, and Granting ECF No. 124, Defendant's Counsels' motion to withdraw as attorneys of
22 record.

23 102. On January 22, 2024, Defendant's Counsel filed its Supplement [ECF No. 128] in
24 support of their motion to withdraw [ECF No. 124].
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1 103. On February 6, 2024, the Court filed a copy of the Transcript [ECF No. 129] of
2 the January 17, 2024 Proceedings regarding the Court's Order [ECF No. 127] rejecting the
3 parties' proposed Joint Pretrial Order [ECF No. 122], Order on Motion to Withdraw as Attorney
4 [ECF No. 124], and Status Conference held on 1/17/2024 [ECF No. 123].

5 104. On February 7, 2024, Defendant's new counsel, John R. Neve, Esq. of the law
6 offices of Quantum Lex, PA, Minnesota Bar No. 278300 (Motion *Pro Hac Vice* to be filed),
7 filed a Notice of Appearance [ECF No. 130] on behalf of the Defendant.
8

9 **II. STATEMENT OF JURISDICTION**

10 Jurisdiction and Venue are proper in this court because the acts and omissions
11 complained of herein occurred and caused harm to Plaintiff in the City of Las Vegas, Nevada,
12 County of Clark.

13 **III. THE FOLLOWING FACTS ARE ADMITTED BY THE PARTIES AND REQUIRE NO PROOF:**

14 A. The parties signed an agreement entitled Spectrum Manager Lease Agreement
15 dated May 19, 2014.
16

17 **IV. THE FOLLOWING FACTS, THOUGH NOT ADMITTED, WILL NOT BE CONTESTED AT TRIAL BY EVIDENCE TO THE CONTRARY:**

- 18 A. That there was a valid contract between the parties;
19
20 B. That the Defendants (Snaps) breached the valid contract;
21
22 C. That the Defendants (Snaps) breached the implied covenant of good faith and fair
23 dealing;
24
25 D. That Kurian sold the 219.5-220 MHz frequencies to PTC-220, LLC;
26

27 **V. THE FOLLOWING ARE THE ISSUES OF FACT TO BE TRIED AND DETERMINED AT TRIAL**
28

1 A. PLAINTIFF'S ISSUES OF FACT

2 1. What are Plaintiff's damages when the court has determined there to be
3 the existence of a valid, enforceable contract between the above-captioned parties, when
4 Plaintiff performed his duties and obligations that arose under or were imposed upon
5 Plaintiff by the terms of the contract, but when Defendant did not perform its duties and
6 obligations that arose under or were imposed upon Defendant by the terms of the contract
7 by repeatedly failing to timely pay, or not pay at all, its monthly payment to Plaintiff, a
8 material failure of performance and breach of the terms of the contract resulting in
9 damages to Plaintiff.
10

11 2. What are Plaintiff's damages when the court has determined there to be
12 the existence of a valid, enforceable contract between the above-captioned parties that
13 imposes upon each party a duty of good faith and fair dealing in its performance and
14 execution of the terms of contract, and when Defendant breached its duty of performance
15 and execution of the terms of the contract by (1) failing to build out the leased channels;
16 (2) failing to make timely payments to Plaintiff pursuant to the terms of the agreement;
17 (3) failing to provide Plaintiff with oversights; (4) failing to allow Plaintiff to inspect
18 Defendant's operations; (5) failing to construct and operate to provide coverage to two-
19 thirds of the population; (6) failing to operate equipment pursuant to FCC authorization
20 and approval; and by (7) failing to provide engineering studies as per FCC regulation;
21 and thus acted in a manner unfaithful to the purpose, intent and spirit of the parties' valid
22 and enforceable contract that resulted in Plaintiff's justified expectations under the
23 contract being denied and required Plaintiff to rebuild the infrastructure himself to save
24 his license from being revoked by the FCC but, moreover, resulted in damages to
25 Plaintiff in the amount of \$10,194,996.00.
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1 B. DEFENDANT’S ISSUES OF FACT

2 Objection: Plaintiff Kurian objects to Defendant’s issues of fact to the extent
3 Defendants are attempting to relitigate this Court’s prior ruling in favor of Plaintiff on
4 summary judgment.

5 Defendant’s Response to Plaintiff’s Objection: It is well-settled that district courts
6 have the authority to reconsider and revise interlocutory orders, such as orders granting
7 motions for partial summary judgment. *Amarel v. Connell*, 102 F.3d 1494, 1515 (9th
8 Cir.1996) (“[T]he interlocutory orders and rulings made pre-trial by a district judge are
9 subject to modification by the district judge at any time prior to final judgment.”); *Balla*
10 *v. Idaho State Bd. of Corrections*, 869 F.2d 461, 465 (9th Cir.1989); Fed. R. Civ. P.
11 54(b).

12
13
14 1. Can Kurian change the Court’s holding on summary judgment that
15 SNAPS leased the “wireless radio frequency license, WQCP809” from Kurian “in
16 exchange for a monthly payment of \$20,390.00” by later creating contradictory
17 testimony? *See* ECF 55, Order on Summary Judgment Motions at 2.

18 2. Did Kurian entirely mitigate his damages by selling the 219.5-220MHz
19 frequencies to PTC-220, LLC after terminating SNAPS’ lease?

20 3. What are Defendant’s damages for the Plaintiff’s breach of the implied
21 covenant of good faith and fair dealing?
22

23 **VI. THE FOLLOWING ARE THE ISSUES OF LAW TO BE TRIED AND**
24 **DETERMINED AT TRIAL**

25 A. PLAINTIFF’S ISSUES OF LAW:

26 1. Is Defendant entitled to relief upon its counterclaims contained in
27 Defendant’s Amended Answer Adding Counterclaims, ECF No. 30?
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2. As the Court has determined there to be the existence of a valid and enforceable contract between the above-captioned parties, can Defendant maintain its second cause of action for unjust enrichment in Defendant’s Amended Answer Adding Counterclaims, ECF No. 30.

B. DEFENDANTS’ ISSUES OF LAW:

1. If the Court considers the evidence offered by Kurian after the Court’s summary judgment order, what are the terms of the parties’ contract?

VII. EXHIBITS

A. The following exhibits are stipulated into evidence in this case and may be so marked by the clerk:

1. The parties’ executed Spectrum Manager Lease Agreement dated May 19, 2014, Bates range KURIAN10387-KURIAN10408 [ECF No. 45-2].

B. As to the following exhibits, the party against whom the same will be offered objects to their admission on the grounds stated:

1. Objection: Plaintiff objects to any documents proffered by Defendants not previously provided prior to the discovery cutoff date.

2. Objection: Defendant objects to any documents proffered by Plaintiff not previously provided prior to the discovery cutoff date.

1. PLAINTIFF’S EXHIBITS:

	<u>Bates Range:</u>
1. MAP - Automated Maritime Telecommunications System Areas (AMTSA)	1
2. Geographically Licensed Frequency for Purchase or Lease	2
3. NorthWestern Energy – Full Spectrum	3-4
4. April 23, 2014 Email Chain Subject: 7:30 PM on Tuesday 3/25/14 --- RE: Regarding Frequency Spectrum in ND region	5-97

1	5. 2000 CENSUS	98-106
2		
3	6. Map	107
4	7. Unexecuted Spectrum Manager Lease Agreement and Exhibit A 2000 Census	108-127
5	8. May 14, 2014 Email Chain Subject: Revised Agreement as per our discussions	128-286
6	9. May 19, 2014 Email Chain Subject: Background	287-298
7	10. May 19, 2014 Email Chain Subject: Frequency Lease	299-303
8	11. Map – Yampa Valley	304
9		
10	12. May 22, 2014 Email Chain Subject: June Payment	305-310
11	13. May 30, 2014 Email Chain Subject: State of Montana cancels licenses to 700 MHz public-safety narrowband spectrum	311-325
12		
13	14. June 2, 2014 Email Chain Subject: ACLARA --- RE: State of Montana cancels licenses to 700 MHz public-safety narrowband spectrum	326-328
14		
15	15. FCC Form 602 – Federal Communications Commission – Information and Instructions	329-336
16	16. July 14, 2014 Keller and Heckman LLP July 18, 2014 Correspondence re: Application Requesting Modification of Lease ID L000010890 under station WQCP809	337-340
17		
18	17. FCC Form 608 Main Form - FCC Application or Notification for Spectrum Leasing Arrangement and Attachments	341-403
19		
20	18. FCC Form 602 Main Form and Schedule A – Federal Communications Commission Information and Instructions	404-411
21		
22	19. July 25, 2014 Email Chain Subject: Public Interest Statement	412-545
23	20. August 8, 2014 Email Chain Subject: Payment	546-561
24	21. August 17,2014 Email Subject: Amit Paterl	562
25	22. Join Alcael-Lucent and Extenet Systems Conference on September 8, 2014	563-628
26	23. August 21, 2014 Email Chain Subject: Meeting at CCA	629
27	24. August 22, 2014 Email Chain Subject: Business Plan for North Dakota	630
28		

1	25. August 22, 2014 Email Chain Subject: Sample Bugatry Pricing for 12 Band 12 eNode B's Hosted off of WCW Core	631-634
2		
3	26. Business Plan (short form)	635
4	27. Acatel-Lucent Spectrum Holdings (FCC ULS 8/19/2014) ND & MN	636
5	28. August 22, 2014 Proposal #TBD; Tom Navone	637
6	29. August 25, 2014 Email Chain Subject: My meeting with Thomas Kurian	638-809
7	30. August 25, 2014 Email Chain Subject: Review Sprint Partnership Potential PDF	810-843
8		
9	31. September 24, 2014 Email Chain Subject: Lease Deposit	844-855
10	32. September 24, 2014 Email Chain Subject: Need your advise	856-857
11	33. Executed Signature Pages to License Purchase Agreement between Thomas K. Kurian and T-Mobile License	858-859
12		
13	34. September 29, 2014 Email Subject: Albert Kangas, General Manger and COO of NewCore Wireless	860
14	35. September 29, 2014 Email Subject: Dicky Rural and Seth Arndorfer, CEO of Dakota Carrier Network.	861
15		
16	36. September 29, 2014 Email Chain Subject: Fwd: 700 Mhz LTE system	862-872
17	37. September 29, 2014 Email Chain Subject: Re: SRT Communications	873-876
18	38. September 30, 2014 Email Subject: fyi	877-879
19	39. September 30, 2014 Email Chain Subject: RE: Meeting in NJ??	880-866
20		
21	40. October 1, 2014 Email Subject: Ihave been talking to you for sometime about the Bakken you are not doing anything	887
22	41. October 1, 2014 Email Chain Subject: RE: FYI	888-906
23		
24	42. October 1, 2014 Email Subject: You may want to read the below FCC related proceedings	907
25	43. October 2, 2014 Email Subject: AMTS Radio	908
26	44. October 2, 2014 Email Subject: Lease Payment	909
27	45. October 3, 2014 Email Subject: San Jose Visit	910
28		

1	46. FCC - ETSI Specifications Data Sheet	911
2	47. October 8, 2014 Email Chain Subject: RE: BEC Technologies	912-913
3	48. October 8, 2014 Email Chain Subject: RE: FW: The World of	
4	Connectivity and Control Hits Las Vegas	914-969
5	49. October 28, 2014 Email Chain Subject: Fwd: FW: 4 Country Inn & Suites	
6	Stafford Virtual Deal Room Real Capital Markets	970-990
7	50. November 5, 2014 Email Chain Subject: Re: 1031 Exchange	991-1184
8	51. November 10, 2014 Email Chain Subject: RE: Hotel Investments	1185-1188
9	52. November 16, 2014 Email Subject: Dakota Venture LLC	1189
10	53. November 17, 2014 Email Chain Subject: RE: Promissory note	1190-1191
11	54. Operating Agreement of Dakota Ventures, LLC	1192-1249
12	55. Dakota Ventures LLC - Minutes of Organizational Meeting	1250-1251
13	56. Minnesota Hospitality, Inc. - Promissory Note	1252-1253
14	57. November 18, 2014 Email Chain Subject RE: Promissory Note	1254-1267
15	58. Promissory Note and Security Agreement	1268-1269
16	59. November 22, 2014 Email Chain Subject: RE: Dakota Ventures LLC	1270-1419
17	60. December 4, 2014 Email Chain Subject: RE: Monthly lease payment	1420-1421
18	61. December 27, 2014 Email Chain Subject: RE: Real Estate Investments	1422-1424
19	62. Investment Summary	1425-1432
20	63. January 7, 2015 Email Chain Subject: RE: Willinston Property	1433-1459
21	64. January 23, 2015 Email Chain Subject: RE: Tom Kurian	1460-1464
22	65. March 6, 2015 Email Chain Subject: RE: Yampa Valley	1465-1510
23	66. Transaction Activity 04/07/2015	1511
24	67. April 8, 2015 Email Chain Subject: RE: ACH	1512-1524
25	68. Confirmation - Transaction Date 5/13/2015	1525-1527
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1	69. May 14, 2015 Email Chain Subject: RE: FW: Payment	1528-1571
2	70. June 8, 2015 Email Chain Subject: Re: Another empty promise	1572-1576
3	71. July 7, 2015 Email Chain Subject: Payment for Lease	1577-1578
4	72. August 7, 2015 Email Subject: Wire	1579
5	73. August 20, 2015 Email Chain Subject: Re: FCC Form 602	1580-1606
6	74. By The Numbers - Basin Electric Power Cooperative	1607
7	75. October 12, 2015 Email Chain Subject: RE: Wire for Oct Pmt	1608-1621
8	76. October 26, 2015 Email Chain Subject: RE: Xetawave radio	1622-1623
9	77. December 22, 2015 Email Chain Subject: RE: Construction of systems	1624-1629
10	78. Public Interest Statement FCC Form 608	1630
11	79. Section 20.9(b) Certification	1631
12	80. February 3, 2016 Email Chain Subject: Re: W9	1632-1891
13	81. February 3, 2016 Email Chain Subject: Re: Lease Payment	1892-1902
14	82. FCC Universal Licensing System	1903-1906
15	83. February 9, 2016 Email Chain Subject: RE: Fwd: Fwd: SNAPS FCC Forms	1907-2412
16	84. FCC Application or Notification for Spectrum Leasing Arrangement	2413-2882
17	85. March 4, 2016 Email Chain Subject: RE: Lease Payment	2883-2884
18	86. March 28, 2016 Email Chain Subject: [Blank]	2885
19	87. May 11, 2016 Email Chain Subject: RE: KTS Agility Radio — RE:	2886-2888
20	88. June 6, 2016 Email Chain Subject: Re: Fwd: Understanding FCC rules regarding the Lease...	2889-3010
21	89. FCC DA 16-1167 ORDER and Attachment	3011-3087
22	90. Confirmation Transaction Date 8/11/2016	3088
23	91. June 29, 2016 Email Chain Subject: RE: Great River Project	3089-3090
24	92. Tait Communications Quote	3091

1	93. July 20, 2016 Email Chain Subject: RE: FW: Tait MPT1327 & Mobile Radio	3092-3101
2		
3	94. November 7, 2016 Email Chain Subject: RE: Action Plan to deploy a network to meet...	3102-3437
4		
5	95. November 11, 2016 Email Chain Subject: RE: Phone call	3438-3445
6		
7	96. FCC DA 10-664 Order on Reconsideration	3446-3449
8		
9	97. January 1, 2017 Email Chain Subject: Re: FCC Construction Requirement	3450-3459
10		
11	98. January 12, 2017 Email Chain Subject: RE: Payment	3460-3469
12		
13	99. January 18, 2017 Email Chain Subject: RE: Sites — RE: Payment	3470-3482
14		
15	100. 2016 IRS FORM 1099-MISC Thomas K. Kurian	3483-3484
16		
17	101. 2017 IRS FORM W-9 Thomas K. Kurian	3485
18		
19	102. February 1, 2017 Email Chain Subject: Re: W-9	3486-3518
20		
21	103. March 6, 2017 Email Chain Subject: RE: lease	3519-3522
22		
23	104. March 13, 2017 Email Chain Subject: RE: Payment	3523-3524
24		
25	105. April 21, 2017 Email Chain Subject: Re: Warren Havens vs. Kurian	3525-3526
26		
27	106. May 4, 2017 Email Chain Subject: RE: An interesting reading	3527-3528
28		
	107. May 12, 2017 Email Subject: MCLM/Choctaw Holding got extension...	3529-3539
	108. May 12, 2017 Email Chain Subject: RE: check	3540-3541
	109. FCC DA 17-450 ORDER	3542-3551
	110. June 7, 2017 Email Chain Subject: RE: Part 80 or 90?	3552-3569
	111. June 26, 2017 Email Chain Subject: RE: Reminder — RE: Part 80 or 90?	3570-3591
	112. July 12, 2017 Email Chain Subject: RE: Payment	3592-3593
	113. September 14, 2017 Email Chain Subject: RE: Payment	3594-3595
	114. September 26, 2017 Email Chain Subject: RE: Returned check	3596-3624
	115. October 17, 2017 Email Chain Subject: Re: Payment	3625-3637

1	116. November 11, 2017 Email Chain Subject: RE: Checking on the status of the check	3638-3639
2		
3	117. October 12, 2017 FILED Notice of Entry of Judgment Upon Jury Verdict	3640-3643
4	118. January 25, 2018 Email Chain Subject: Re: Lease payment	3644-3652
5	119. February 16, 2018 Email Chain Subject: Re: Monthly Lease payment	3653-3658
6	120. March 12, 2018 Email Chain Subject: RE: NB-IoT	3659-2660
7	121. March 13, 2018 Email Subject: Did you send the payment?	3661
8	122. March 16, 2018 Email Chain Subject: RE: Payment not received still	3662-3674
9		
10	123. April 18, 2018 Email Chain Subject: RE: status of check	3675-3681
11	124. FCC 601 Main Form – FCC Application for Radio Service Authorization	3682-3712
12	125. May 10, 2018 Email Chain Subject: Fwd: FN 0008200765 §90.259 App. Re WQCP816, WQJW656, WQNZ336, WQOC595	3713-3740
13		
14	126. FCC 601 Main Form – FCC Application for Radio Service Authorization	3741-3762
15	127. May 11, 2018 Email Chain Subject: RE: Havens	3763-3772
16	128. May 14, 2018 Email Chain Subject: RE: FCC filing and check	3773-3783
17	129. ComStudy Mammoth Mtn.rs2 Monday, May 14, 2018	3784-3786
18	130. FCC Petition to Deny in the Matter of Polaris PNT PBC	3787-3791
19	131. May 18, 2018 Email Chain Subject: Re: Fwd: FN 0008200765 §90.259 App. Re WQCP809	3792-4051
20		
21	132. May 22, 2018 Email Chain Subject: RE: \$250 Million for PTC Projects	4052-4053
22	133. May 31, 2018 Email Subject: Re: Just checking into see if guys planning to make a timely payment this month.	4054
23		
24	134. July 17, 2018 Email Chain Subject: Re: Fwd: Payment	4055-4098
25	135. May 31, 2018 Email Chain Subject: RE: PTC220	4099-4113
26	136. September 28, 2018 Email Subject: MiMax	4114
27	137. May 31, 2018 Email Chain Subject: RE: Payment	4115-4118
28		

1	138. March 27, 2019 Thomas K. Kurian Letter to Sanjay Patel	4119-4120
2	139. January 8, 2019 Thomas K. Kurian Communication to Sanjay, NetHertz	4121
3	140. December 8, 2010 Letter to FCC	4122-4137
4	141. January 8, 2019 Email Chain Subject: Re: Termination of certain	
5	AMTS license for the failure to provide substantial service	4138-4183
6	142. January 8, 2019 Email Chain Subject: Fwd: Thomas K Kurian's	
7	03/26 Salt Lake City trip (VR2J7K): Your reservation is confirmed.	4184-4189
8	143. March 23, 2019 Email Chain Subject: Fwd: Thomas K Kurian's	
9	03/30 Phoenix trip (VRPBWK): Your reservation is confirmed.	4190-4195
10	144. March 23, 2019 Email Chain Subject: Fwd: Thomas K Kurian's	
11	04/03 El Paso trip (VSF2BU): Your reservation is confirmed.	4196-4202
12	145. March 25, 2019 Email Chain Subject: Re: Please call me on phone ASAP	4203-4207
13	146. March 27, 2019 Email Chain Subject: Re: Next Payment	4208-4873
14	147. FCC DA 18-322 – Notice of Apparent Liability for Forfeiture	4874-4882
15	148. April 3, 2019 Email Chain Subject: Re: Asset Purchase of AMTS Spectrum	
16	in the 217.5-218 MHz band	4883-4896
17	149. FCC Spectrum Leasing	4897-4898
18	150. Substantial Service	4899
19	151. Electronic Code of Federal Regulations	4900-4924
20	152. FCC Order	4925-4942
21	153. October 22, 2020 Republic Services Las Vegas Payment History	4944-4953
22	154. April 25, 2016 Crown Castle Letter to Vegas Wireless LLC	4954
23	155. First Amendment to Short Form Tower License Agreement	4955-4962
24	156. Mutual Nondisclosure Agreement	4971-4973
25	157. June 21, 2018 Gmail Chain Subject: Idaho Power Spectrum Purchase	4974-4982
26	158. Confidentiality Agreement	4983-4986
27	159. WQCP 809 Allocation Chart	4987

- 1 160. ECF NO. 45-2: EXHIBIT 1: Executed Spectrum Manager Lease Agreement
- 2 161. ECF NO. 45-3: EXHIBIT 2: February 3, 2016 Email Chain Regarding: W9
- 3 163. ECF NO. 45-4: EXHIBIT 3: December 22, 2015 Email Chain Regarding: Construction of
- 4 Systems
- 5 164. ECF NO. 45-5: EXHIBIT 4: November 7, 2016 Email Chain Regarding: Action Plan to
- 6 Deploy a Network to Meet the FCC's Coverage Requirement
- 7 165. ECF NO. 45-6: EXHIBIT 5: January 1, 2017 Email Chain Regarding: FCC Construction
- 8 Requirement
- 9 166. ECF NO. 45-7: EXHIBIT 6: June 6, 2016 Email Chain Subject: Understanding FCC Rules
- 10 167. ECF NO. 45-8: EXHIBIT 7: March 27, 2019 Email Chain Subject: Next Payment
- 11 168. ECF NO. 45-9: EXHIBIT 8: Register of Actions dated December 22, 2020 for Case No.:
12 A-19-797577-C, Thomas K. Kurian vs. Snaps Holding Company
- 13 169. ECF NO. 45-10: EXHIBIT 9: Deposition Excerpts of August 5, 2022 Deposition of
- 14 Plaintiff Thomas Kurian - Pages 1, 138, 139, and 217.
- 15 170. Deposition Transcript from the November 10, 2023 deposition of Plaintiff Thomas Kurian.
- 16 171. Parties' executed Spectrum Manager Lease Agreement dated May 19, 2014,
17 Bates range KURIAN10387-KURIAN10408 [ECF No. 45-2].
- 18 172. Parties' executed Asset Purchase Agreement dated October 21, 2013,
19 Bates range KURIAN10445-KURIAN10461.
- 20 173. Plaintiff's Supplemental Interrogatory and Document Responses to SNAPS' Requests and
21 Pursuant to ECF 102; including Bates range: KURIAN05040-KURIAN05043;
22 KURIAN10443-KURIAN10461.

23 Plaintiff reserves the right to use any and all exhibits disclosed and/or admitted by
24 Defendant in this matter.

25 Plaintiff reserves the right to use impeachment exhibits as permitted by applicable court
26 law.

27 a. Defendant's objections to Plaintiff's Exhibits:

- 28 1. Defendant objects to any documents proffered by Plaintiff
not previously provided prior to the discovery cutoff date.

1 **2. DEFENDANTS' EXHIBITS:**

- 2 1. All exhibits identified by Plaintiff.
- 3 2. April 23, 2014 Email Chain Subject: 7:30 PM on Tuesday 3/25/14 --- RE: Regarding
- 4 Frequency Spectrum in ND region, Bates KURIAN 05-97.
- 5 3. May 14, 2014 Email Chain Subject: Revised Agreement as per our discussions, Bates
- 6 KURIAN 128-286.
- 7
- 8 5. March 6, 2015 Email Chain Subject: RE: Yampa Valley, Bates KURIAN 1465-1510.
- 9
- 10 5. February 3, 2016 Email Chain Subject: Re: W9, Bates KURIAN 1632-1891.
- 11 6. February 9, 2016 Email Chain Subject: RE: Fwd: Fwd: SNAPS FCC Forms Bates
- 12 KURIAN 1907-2412.
- 13 7. Lease Spectrum Range Map, Bates KURIAN10464
- 14 8. Asset Purchase Agreement between Plaintiff and PTC-220, LLC for 219.5-220MHz
- 15 frequencies in call sign WQCP809, dated, May 31, 2019, and related closing documents,
- 16 Bates PTC-220_SNAPS_Subpoena_000001-036.
- 17
- 18 9. Email communications between Plaintiff and PTC-220, LLC, Bates PTC-
- 19 220_SNAPS_Subpoena_003097-3102.
- 20 10. Email communications between Plaintiff and PTC-220, LLC, Bates PTC-
- 21 220_SNAPS_Subpoena_003113-3115.
- 22 11. Email communications between Plaintiff and PTC-220, LLC, Bates PTC-
- 23 220_SNAPS_Subpoena_003690-91.
- 24 12. Email communications between Plaintiff and PTC-220, LLC, Bates PTC-
- 25 220_SNAPS_Subpoena_000173-178
- 26
- 27 13. Transcript from August 5, 2020 deposition of Plaintiff Thomas Kurian.
- 28 14. Transcript from November 10, 2023 deposition of Plaintiff Thomas Kurian.

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15. Transcript from July 19, 2023 deposition of Kevin Stokes, representative for PTC-220, LLC.

Defendant reserves the right to use all exhibits disclosed and/or admitted by Plaintiff in this matter.

Defendant reserves the right to use impeachment and rebuttal exhibits as permitted by applicable court rules.

a. Plaintiff's objections to Defendant's Exhibits:

1. Plaintiff objects to the use of depositions by Defendant where the Defendant failed to provide the pages of any depositions Defendant plans to use. *See* ECF 15, Discovery Plan and Scheduling Order.

2. Plaintiff objects to any of Defendant's exhibits if the documents were not provided previously before the discovery cutoff date.

C. Electronic Evidence:

The parties are likely to present electronic evidence for out of state witnesses who are now parties.

D. Depositions:

1. Plaintiff will offer the following depositions:

a. Deposition excerpts of the August 5, 2022 deposition of Plaintiff Thomas Kurian, Pages 1, 81, 84, 85, 86, 101, 102, 103, 104, 138, 139; 192, and 217.

b. Deposition excerpts of the July 29, 2020 deposition of Sanjay Patel, Pages 1, 37, 39, 58, 59, 66, 70, 71, 72, 73, 74, 75, 79, 80, 81,

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82, 92, 93, 104, 116, 117, 118.

c. Deposition excerpts of the July 19, 2023 deposition of PTC-220, LLC's 30(b)(6) witness Kevin Stokes, Pages 1, 11, 18, 21, 22, 23, 24, 25, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 45, 46, 48, 49, 50, 51, 52, 55, 56, 57, 58, 59, 60, 61, 63, 67, 68, 71, 72, 73, 74, 75, 82, 83, 84, 85, 87, 87, 89, 148, 150, 151, 156, 157, 158, 159, 161.

d. Deposition excerpts of the July 30, 2020 deposition of Daivesh Sanghvi, Pages 1, 5, 15, 18, 19, 20, 21, 22, 23, 24, 25, 26, 28, 31, 32, 33, 34, 42, 43, 46, 47, 48, 49, 50, 51, 53, 56, 57, 58, 60, 61, 63, 64, 66, 67, 68, 69, 70, 73, 75, 76, 77, 78, 80, 81, 83, 85, 87.

e. Plaintiff reserves the right to use any and all deposition testimony for any lawful purpose.

2. Defendant will offer the following depositions:

a. July 19, 2023 deposition of Kevin Stokes, representative for PTC-220, LLC. Based upon new counsel's recent retention, Defendant is unable to identify exact page numbers at this time. Defendant states that Kevin Stokes is a key witness and believes the majority of his deposition testimony will be relevant.

b. Defendant reserves the right to use all deposition testimony for any lawful purpose.

E. Objections to depositions:

1. Defendant objects to Plaintiff's depositions as follows: None.

2. Plaintiff objects to Defendant's depositions as follows:

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a. Plaintiff objects to the use of depositions by Defendant where Defendant has not identified page numbers of the depositions sought to be used. *See* ECF 15, except for purposes of impeachment.

VIII. THE FOLLOWING WITNESSES MAY BE CALLED BY THE PARTIES AT TRIAL:

A. PLAINTIFF'S WITNESSES:

1. Thomas K. Kurian
C/o E. Brent Bryson, Esq.
375 E. Warm Springs Road, Ste. 104
Las Vegas, Nevada 89119
(702) 364-1234 Telephone
(702) 364- 1442 Facsimile
Ebbesqltd@yahoo.com

Plaintiff is expected to testify regarding the terms and provisions of the parties' contract, and how the contract came about, Defendants' breach of the contract, Plaintiff's efforts to mitigate his damages, Plaintiff's attempts to mitigate damages, and Plaintiff's attempts to informally resolve the dispute and Plaintiff's damages.

2. John C. Gazzo
12950 Quebec Street
Brighton, CO 80602
(303) 949-1266 Telephone

Mr. Gazzo is expected to testify regarding the use of his transmitting site by SNAPS using unauthorized equipment which is not certified by the FCC as well as his conduct in violation of the parties' agreement.

3. Sanjay Patel
President and CEO of SNAPS Holding Company

Mr. Patel is expected to testify regarding the parties' contract and SNAPS conduct in breaching the parties' agreement.

4. Daivesh Sanghvi
Vice President of SNAPS Holding Company

1 Mr. Sanghvi is expected to testify regarding the construction and substantial coverage of
2 the FCC Stations as well as his knowledge regarding the parties' contract.

3 5. Thomas Klyve
4 Controller for SNAPS Holding Company

5 Mr. Klyve is expected to testify regarding his knowledge about payments to Plaintiff
6 pursuant to the parties' contract.

7 6. Steve Lee
8 Direct of IDA

9 Mr. Lee is expected to testify regarding the installation and operation of the licenses.

10 7. PTC-220, LLC's 30(b)(6) witness regarding the contract between Thomas K. Kurian and
11 PTC-220, LLC, as well as his knowledge regarding the instant action.

12 1. Defendant's Objections to Plaintiff's Witnesses:

13 Defendant objects to Plaintiff's witnesses to the extent those witnesses
14 will testify to matters decided in the Court's summary judgment order, and to the
15 parties' settlement discussions.
16

17 B. DEFENDANT'S WITNESSES

18 1. Sanjay Patel
19 President and CEO of SNAPS Holding Company

20 Mr. Patel is expected to testify regarding the parties' lease, SNAPS' payments under the
21 lease, and the parties' communications.

22 2. Daivesh Sanghvi
23 Vice President of SNAPS Holding Company

24 Mr. Sanghvi is expected to testify regarding the parties' lease, SNAPS' payments under
25 the lease, and the parties' communications.

26 3. Thomas K. Kurian
27
28

1 Mr. Kurian is expected to testify regarding the parties' lease, the parties'
2 communications, and his contract with PTC-220, LLC for the 219.5-220MHz frequencies, and
3 the money he received for the frequencies.

4 4. Kevin Stokes, representative for PTC-220, LLC, by deposition.

5 Mr. Stokes is expected to testify regarding the Asset Purchase Agreement between PTC-
6 220, LLC and Kurian for the 219.5-220 MHz frequencies and the compensation Kurian
7 received for the frequencies.
8

9 1. Plaintiff's Objections to Defendants' Witnesses: None.

10 **IX. THE ATTORNEYS OR PARTIES HAVE MET AND JOINTLY OFFER THESE**
11 **THREE TRIAL DATES**

- 12 1. September 3-6, 2024;
13 2. September 16-20, 2024;
14 3. September 23-27, 2024.

15 **X. TRIAL**

16 It is estimated that trial will take a total of 3-5 days.

17 APPROVED AS TO FORM AND CONTENT:

18 DATED this 16th day of February, 2024.

19 **E. BRENT BRYSON, LTD.**

20 By: /s/ E. Brent Bryson, Esq.
21 E. BRENT BRYSON, ESQ.
22 Nevada Bar No. 004933
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Attorneys for Plaintiff/Counterdefendant,
Thomas K. Kurian

DATED this 16th day of February, 2024.

QUANTUM LEX, P.A.

By: /s/: John R. Neve, Esq.
JOHN R. NEVE, ESQ.
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	DATED this ____ day of December, 2023. KAEMPFER CROWELL By: <u>/s/:</u> RICHARD G. CAMPBELL, JR. Nevada Bar No. 001832 50 W. Liberty Street, Suite 700 Reno, NV 89501 (775) 852-3900 Telephone (775) 327-2011 Facsimile Rcampbell@kcnvlaw.com <i>Attorneys for Defendant/Counterclaimant,</i> <i>SNAPS</i>
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XI. ACTION BY COURT

bench

This case is set for a ~~jury~~ trial on the ~~fixed~~ stacked calendar on 9/23/2024 at 8:30 a.m.

Calendar call will be held on 9/17/2024 at 9:00 a.m.

This pretrial order has been approved by the parties to this action as evidenced by their signatures or the signatures of their attorneys hereon, and the order is hereby entered and will govern the trial of this case. This order may not be amended except by court order and based upon the parties' agreement or to prevent manifest injustice.



UNITED STATES DISTRICT COURT JUDGE