

IN THE SUPREME COURT OF THE STATE OF NEVADA

SUSAN FALLINI,

Appellant,

Supreme Court No.: 56840

vs.

Estate of MICHAEL DAVID ADAMS,
By and through his mother JUDITH ADAMS,
Individually and on behalf of the Estate,

Respondent.

Appeal from the Fifth Judicial District Court of the State of Nevada in
and for the County of Nye
The Honorable Robert W. Lane, District Judge

**JOINT APPENDIX
VOLUME II**

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ALPHABETICAL INDEX

| | <u>Volume/Page</u> |
|--|--------------------|
| Acceptance of Service..... | I.8-9 |
| Application for Default Judgment Against Defendant Susan Fallini..... | II.89-129 |
| Case Appeal Statement..... | II.236-239 |
| Case Summary..... | II.240-244 |
| Certificate of Mailing..... | I.146-147 |
| Complaint..... | I.1-6 |
| Counterdefendant, Estate of Michael David Adams, by and Through His Mother, Judith Adams, Individually and on Behalf of the Estate, Joinder to Plaintiff's Motion For Partial Summary Judgment..... | I.52-54 |
| Counterdefendant, Estate of Michael David Adams, By and Through His Mother, Judith Adams, Individually and on Behalf the Estate, Notice of Non-Opposition to Plaintiff's Motion to Reopen Discovery..... | I.75-77 |
| Default..... | II.41-42 |
| Defendant Susan Fallini's Answer and Counterclaim..... | I.10-14 |
| Demand for Jury Trial..... | I.150-151 |
| Findings of Fact, Conclusions of Law and Order Holding Defendant's Counsel In Contempt of Court..... | II.68-75 |
| Findings of Fact, Conclusions of Law and Order Striking Answer and Counterclaim of Defendant Susan Fallini and Holding Defendant's Counsel in Contempt of Court...II. | 26-31 |
| Motion for Leave to File Motion For Reconsideration..... | II.133-159 |
| Motion for Partial Summary Judgment..... | I.29-39 |
| Motion for Partial Summary Judgment..... | I.40-51 |
| Motion to Reopen Discovery and for an Extension of Time To Complete Discovery (First Request)..... | I.63-70 |
| Notice of Appeal..... | II.233-235 |
| Notice of Entry of Default..... | II.43-47 |
| Notice of Entry of Order [Findings of Fact, Conclusions of Law and Order Holding Defendant's Counsel In Contempt of Court]..... | II.76-86 |
| Notice of Entry of Order [Findings of Fact, Conclusions of Law and Order Striking Answer and Counterclaim of Defendant Susan Fallini and Holding Defendant's Counsel in Contempt of Court | II.32-40 |
| Notice of Entry of Order [Motion for Partial Summary Judgment]..... | I.58-62 |
| Notice of Entry of Order [Order After Hearing] | II.226-232 |
| Notice of Entry of Order [Order Denying Plaintiff's Motion to Strike Defendant's Answer and Counterclaim]..... | I.234-238 |
| Notice of Entry of Order [Order Granting Motion for Summary Judgment in Favor of Counterdefendant, Estate of Michael David Adams]..... | I.78-84 |
| Notice of Entry of Order [Order Granting Plaintiff's Motion to Compel Defendant's Production of Documents]..... | I.152-156 |
| Notice of Entry of Order [Order Granting Plaintiff's Motion to Reopen Discovery and For an Extension of Time to Complete Discovery]..... | I.87-90 |

| | |
|---|------------|
| Notice of Entry of Order [Order Regarding Order to Show Cause why Defendant Susan Fallini and Her Counsel Should Not be Held in Contempt of Court]..... | II.22-25 |
| Notice of Entry of Order [Order to Show Cause Why Defendant Susan Fallini and her Counsel Should Not be Held in Contempt of Court and Possible Sanctions be Imposed] | II.62-67 |
| Opposition to Application for Default Judgment Against Defendant Susan Fallini..... | II.130-132 |
| Opposition to Fallini's Motion for Leave to File Motion for Reconsideration..... | II.169-207 |
| Opposition to Plaintiff's Motion to Strike Defendant's Answer and Counterclaim..... | I.224-231 |
| Order After Hearing..... | II.222-225 |
| Order Denying Defendant's Motion to have Matter Heard in Tonopah..... | I.18-20 |
| Order Denying Plaintiff's Motion to Strike Defendant's Answer and Counterclaim..... | I.232-233 |
| Order Granting Plaintiff's Motion for Partial Summary Judgment..... | I.55-57 |
| Order Granting Plaintiff's Motion to Compel Defendant's Production of Documents..... | I.148-149 |
| Order Granting Plaintiff's Motion to Reopen Discovery and For an Extension of Time to Complete Discovery..... | I.85-86 |
| Order Granting Motion for Summary Judgment in Favor of Counterdefendant, Estate of Michael David Adams..... | I.71-74 |
| Order Regarding Order to Show Cause why Defendant Susan Fallini and Her Counsel Should Not be Held in Contempt of Court..... | II.20-21 |
| Order Setting Jury Trial..... | I.220-223 |
| Order to Show Cause why Defendant Susan Fallini and Her Counsel Should Not be Held in Contempt of Court..... | II.17-19 |
| Order to Show Cause Why Defendant Susan Fallini and her Counsel Should Not be Held in Contempt of Court and Possible Sanctions be Imposed..... | II.59-61 |
| Order to Set Trial..... | I.157-159 |
| Plaintiff's and Counterdefendant's Case Conference Report..... | I.21-28 |
| Plaintiff's Ex Parte Motion for Order to Show Cause why Defendant Susan Fallini and Her Counsel Should Not be Held in Contempt of Court...II.1-12 | |
| Plaintiff's Ex Parte Motion for Order to Show Cause Why Defendant Susan Falini and her Counsel Should Not be Held in Contempt of Court and Possible Sanctions be Imposed..... | II.48-58 |
| Plaintiff's Motion to Compel Defendant's Production of Documents..... | I.91-143 |
| Plaintiff's Motion to Strike Defendant's Answer and Counterclaim..... | I.160-219 |
| Plaintiff's Notice of Motion to Compel Defendant's Production of Documents..... | I.144-145 |
| Receipt of Copy of Plaintiff's Ex Parte Motion for Order to Show Cause why Defendant Susan Fallini and Her Counsel Should not be Held in Contempt of Court..... | II.15-16 |
| Receipt of Copy of Order to Show Cause Why Defendant Susan Fallini and Her Counsel Should Not be Held in Contempt of Court..... | II.13-14 |
| Reply to Counterclaim..... | I.15-17 |
| Reply to Fallini's Opposition to Application for Default Judgment Against Defendant Susan Fallini..... | II.160-168 |
| Substitution of Attorneys..... | II.87-88 |
| Summons..... | I.7 |
| Supplement to Application for Default Judgment Against Defendant Susan Fallini..... | II.208-221 |

CHRONOLOGICAL INDEX

Volume I

| | <u>Page</u> |
|--|-------------|
| Complaint..... | 1-6 |
| Summons..... | 7 |
| Acceptance of Service..... | 8-9 |
| Defendant Susan Fallini's Answer and Counterclaim..... | 10-14 |
| Reply to Counterclaim..... | 15-17 |
| Order Denying Defendant's Motion to have Matter Heard in Tonopah..... | 18-20 |
| Plaintiff's and Counterdefendant's Case Conference Report..... | 21-28 |
| Motion for Partial Summary Judgment..... | 29-39 |
| Motion for Partial Summary Judgment..... | 40-51 |
| Counterdefendant, Estate of Michael David Adams, by and Through His Mother, Judith Adams, Individually and on Behalf of the Estate, Joinder to Plaintiff's Motion For Partial Summary Judgment..... | 52-54 |
| Order Granting Plaintiff's Motion for Partial Summary Judgment..... | 55-57 |
| Notice of Entry of Order [Motion for Partial Summary Judgment]..... | 58-62 |
| Motion to Reopen Discovery and for an Extension of Time To Complete Discovery (First Request)..... | 63-70 |
| Order Granting Motion for Summary Judgment in Favor of Counterdefendant, Estate of Michael David Adams..... | 71-74 |
| Counterdefendant, Estate of Michael David Adams, By and Through His Mother, Judith Adams, Individually and on Behalf the Estate, Notice of Non-Opposition to Plaintiff's Motion to Reopen Discovery..... | 75-77 |
| Notice of Entry of Order [Order Granting Motion for Summary Judgment in Favor of Counterdefendant, Estate of Michael David Adams]..... | 78-84 |
| Order Granting Plaintiff's Motion to Reopen Discovery and For an Extension of Time to Complete Discovery..... | 85-86 |
| Notice of Entry of Order [Order Granting Plaintiff's Motion to Reopen Discovery and For an Extension of Time to Complete Discovery]..... | 87-90 |
| Plaintiff's Motion to Compel Defendant's Production of Documents..... | 91-143 |
| Plaintiff's Notice of Motion to Compel Defendant's Production of Documents..... | 144-145 |
| Certificate of Mailing..... | 146-147 |
| Order Granting Plaintiff's Motion to Compel Defendant's Production of Documents..... | 148-149 |
| Demand for Jury Trial..... | 150-151 |
| Notice of Entry of Order [Order Granting Plaintiff's Motion to Compel Defendant's Production of Documents]..... | 152-156 |
| Order to Set Trial..... | 157-159 |
| Plaintiff's Motion to Strike Defendant's Answer and Counterclaim..... | 160-219 |
| Order Setting Jury Trial..... | 220-223 |
| Opposition to Plaintiff's Motion to Strike Defendant's Answer and Counterclaim..... | 224-231 |
| Order Denying Plaintiff's Motion to Strike Defendant's Answer and Counterclaim..... | 232-233 |

| | |
|--|---------|
| Notice of Entry of Order [Order Denying Plaintiff's Motion to Strike Defendant's Answer and Counterclaim]..... | 234-238 |
|--|---------|

Volume II

| | |
|--|-------------|
| | <u>Page</u> |
| Plaintiff's Ex Parte Motion for Order to Show Cause why Defendant Susan Fallini and Her Counsel Should Not be Held in Contempt of Court..... | 1-12 |
| Receipt of Copy of Order to Show Cause Why Defendant Susan Fallini and Her Counsel Should Not be Held in Contempt of Court..... | 13-14 |
| Receipt of Copy of Plaintiff's Ex Parte Motion for Order to Show Cause why Defendant Susan Fallini and Her Counsel Should not be Held in Contempt of Court..... | 15-16 |
| Order to Show Cause why Defendant Susan Fallini and Her Counsel Should Not be Held in Contempt of Court..... | 17-19 |
| Order Regarding Order to Show Cause why Defendant Susan Fallini and Her Counsel Should Not be Held in Contempt of Court..... | 20-21 |
| Notice of Entry of Order [Order Regarding Order to Show Cause why Defendant Susan Fallini and Her Counsel Should Not be Held in Contempt of Court]..... | 22-25 |
| Findings of Fact, Conclusions of Law and Order Striking Answer and Counterclaim of Defendant Susan Fallini and Holding Defendant's Counsel in Contempt of Court.... | 26-31 |
| Notice of Entry of Order[Findings of Fact, Conclusions of Law and Order Striking Answer and Counterclaim of Defendant Susan Fallini and Holding Defendant's Counsel in Contempt of Court | 32-40 |
| Default..... | 41-42 |
| Notice of Entry of Default | 43-47 |
| Plaintiff's Ex Parte Motion for Order to Show Cause Why Defendant Susan Falini and her Counsel Should Not be Held in Contempt of Court and Possible Sanctions be Imposed..... | 48-58 |
| Order to Show Cause Why Defendant Susan Fallini and her Counsel Should Not be Held in Contempt of Court and Possible Sanctions be Imposed..... | 59-61 |
| Notice of Entry of Order [Order to Show Cause Why Defendant Susan Fallini and her Counsel Should Not be Held in Contempt of Court and Possible Sanctions be Imposed | 62-67 |
| Findings of Fact, Conclusions of Law and Order Holding Defendant's Counsel In Contempt of Court..... | 68-75 |
| Notice of Entry of Order [Findings of Fact, Conclusions of Law and Order Holding Defendant's Counsel In Contempt of Court]..... | 76-86 |
| Substitution of Attorneys..... | 87-88 |
| Application for Default Judgment Against Defendant Susan Fallini..... | 89-129 |
| Opposition to Application for Default Judgment Against Defendant Susan Fallini..... | 130-132 |
| Motion for Leave to File Motion For Reconsideration..... | 133-159 |
| Reply to Fallini's Opposition to Application for Default Judgment Against Defendant Susan Fallini..... | 160-168 |
| Opposition to Fallini's Motion for Leave to File Motion for Reconsideration..... | 169-207 |

| | |
|---|---------|
| Supplement to Application for Default Judgment Against Defendant Susan Fallini..... | 208-221 |
| Order After Hearing..... | 222-225 |
| Notice of Entry of Order [Order After Hearing] | 226-232 |
| Notice of Appeal..... | 233-235 |
| Case Appeal Statement..... | 236-239 |
| Case Summary..... | 240-244 |

1 MOT
2 John P. Aldrich
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6 Las Vegas, Nevada 89146
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8 Attorney for Plaintiff

FILED

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NYE COUNTY CLERK
BY DEPUTY

Linda Uhl

THE FIFTH JUDICIAL DISTRICT COURT
THE STATE OF NEVADA
COUNTY OF NYE

Estate of MICHAEL DAVID ADAMS, by
and through his mother JUDITH ADAMS,
individually and on behalf of the Estate,

Case No.: CV24539
Dept. No.: 2P

Plaintiff,

v.

SUSAN FALLINI, ; DOES I-X, and ROE
CORPORATIONS I-X, inclusive,

Defendants.

SUSAN FALLINI,

Counterclaimant,

vs.

Estate of MICHAEL DAVID ADAMS, by
and through his mother JUDITH ADAMS,
individually and on behalf of the Estate

Counterdefendants.

**PLAINTIFF'S EX PARTE MOTION FOR ORDER TO SHOW CAUSE WHY
DEFENDANT SUSAN FALLINI AND HER COUNSEL SHOULD NOT BE HELD IN
CONTEMPT OF COURT**

COMES NOW Plaintiff JUDITH ADAMS, individually and for the ESTATE OF
MICHAEL DAVID ADAMS, by and through her counsel of record, John P. Aldrich, Esq., of the
Aldrich Law Firm, Ltd., and hereby moves this Court pursuant to NRS 22.010, 22.030 and 22.040

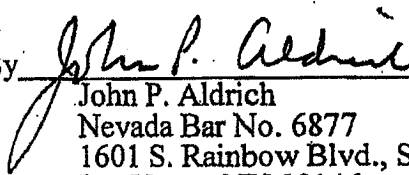
1 (and any other applicable provisions of Chapter 22) for an Order to Show Cause why Defendant
2 Susan Fallini and her counsel should not be held in contempt of court for her failure to comply with
3 the Court's Order dated July 17, 2009 that Susan Fallini must produce all documents responsive to
4 Plaintiffs discovery requests by August 12, 2009.

5 This Motion is made and based upon all papers, pleadings and records on file herein, the
6 points and authorities and any exhibits attached hereto, and such oral argument as the court may
7 entertain at the time of the hearing on this matter.

8 DATED this 28 day of August, 2009.

9 ALDRICH LAW FIRM, LTD.

10
11 By


John P. Aldrich
Nevada Bar No. 6877
1601 S. Rainbow Blvd., Suite 160
Las Vegas, NV 89146
(702) 853-5490
Attorneys for Plaintiff

12
13
14
15
16 **POINTS AND AUTHORITIES**

17 **I.**

18 **FACTS**

19 This lawsuit arises out of an incident that occurred on or about July 7, 2005.¹ At
20 approximately 9:00 p.m. on that day, MICHAEL DAVID ADAMS ("Adams") was driving his 1994
21 Jeep Wrangler on SR 375 highway in Nye County, when he collided with a Hereford cow ("cow")
22 owned by Defendant SUSAN FALLINI ("Fallini"). Adams died at the scene as a result of the
23

24
25 ¹ Previously, in Plaintiff's Motion to Compel and Motion to Strike, Plaintiff attached the
26 discovery documents, prior orders, etc., mentioned in the Statement of Facts. Those documents
27 number dozens of pages. Plaintiff's counsel does not attach those documents to this Motion as
28 well for three reasons: (1) because they have already been presented to the Court, (2) to avoid
unnecessary copy expense to Plaintiff, and (3) Defendant has never disputed the Statement of
Facts or the documents referenced therein.

1 impact.

2 The decedent's mother, JUDITH ADAMS ("Judith"), filed a complaint on behalf of Adams'
3 mother and his estate on November 29, 2006 and properly served Fallini with process. Fallini filed
4 her Answer and Counterclaim on March 14, 2007. On October 31, 2007, Plaintiff submitted
5 interrogatories to Fallini. Those interrogatories were never answered. Adams also submitted
6 requests for admissions and its first set of requests for production of documents on October 31, 2007.
7 A second set of requests for production of documents were submitted to Fallini on July 2, 2008,
8 requesting information as to Fallini's insurance policies and/or carriers that may provide coverage
9 for damages that occurred as a result of the incident. (Affidavit of John P. Aldrich, Esq., attached
10 hereto as Exhibit 1.)

11 Fallini never responded to any of these requests. To this date, Fallini has not produced any
12 responses of any kind to Plaintiff's written discovery requests. Despite an extension requested by
13 Plaintiff and granted by the Court, the discovery period has lapsed without any responses being
14 provided by Defendant. (Exhibit 1.)

15 On or about April 7, 2008 (and again on May 14, 2008 with a Certificate of Service), Plaintiff
16 filed a Motion for Partial Summary Judgment. Defendant did not oppose that motion and the Court
17 granted that Motion on July 30, 2008. Notice of entry of the Order Granting Plaintiff's Motion for
18 Summary Judgment was served on Defendant on August 15, 2008. (Exhibit 1.)

19 Plaintiff attempted to amicably resolve the discovery dispute and obtain a copy of
20 Defendant's applicable insurance policies, but to no avail. On February 24, 2009, Plaintiff sent
21 letters to Defendant's counsel seeking responses to the discovery. (Exhibit 1.)

22 Plaintiff's counsel, Mr. Aldrich, has attempted to discuss this discovery issue with
23 Defendant's counsel, Mr. Kuehn, as well. On or about March 6, 2009, Plaintiff's counsel contacted
24 the office of Defendant's counsel. Mr. Aldrich was informed that Mr. Kuehn was not available. Mr.
25 Aldrich left a message with Mr. Aldrich's phone number and asked that Mr. Kuehn return the call.
26 No return call ever came. (Exhibit 1.)

27 On March 18, 2009, Mr. Aldrich again contacted the office of Mr. Kuehn. Mr. Aldrich was
28 informed that Mr. Kuehn was not available. Mr. Aldrich left a message with Mr. Aldrich's phone

1 number and asked that Mr. Kuehn return the call. No return call ever came. (Exhibit 1.)

2 On March 23, 2009, Plaintiff filed a Motion to Compel Defendant's Production of
3 Documents, including information regarding any insurance policies that may provide coverage for
4 the incident as contemplated in the Plaintiff's second request for documents. This motion was heard
5 on April 27, 2009. The Defendant's attorney, Mr. Kuehn, attended the hearing. Mr. Kuehn did not
6 oppose the motion to compel and agreed at the hearing it was warranted. Mr. Kuehn provided no
7 explanation as to why Defendant failed to respond to all discovery requests. Mr. Kuehn agreed
8 sanctions were warranted, however, he disputed the amount of sanctions. This Honorable Court
9 granted the Motion to Compel and awarded John Aldrich, Esq., \$750.00 in sanctions for having to
10 bring the motion. A Notice of Entry of Order on the order granting the motion to compel was
11 entered on May 18, 2009. It was served by mail on Defendant on May 14, 2009. Defendant never
12 complied with the Order. (Exhibit 1.)

13 On June 16, 2009 Plaintiff filed a Motion to Strike Defendant's Answer and Counterclaim
14 due to Defendants complete failure to comply with discovery requests and this Court's Order. The
15 Defendant's counsel again attended the hearing and again provided no explanation as to why
16 Defendant failed to respond to all discovery requests, but stated Defendant would comply with
17 discovery requests. This Honorable Court denied Plaintiff's Motion to Strike based on Defendant's
18 counsel's promises to comply. This Honorable Court did, however, order Defendant to comply with
19 the Order granting Plaintiff's Motion to Compel and to respond to Plaintiff's discovery requests by
20 August 12, 2009 or Defendant's Answer and Counterclaim would be stricken. The Court also
21 ordered Defendant to pay a \$1,000 sanction. (Exhibit 1.)

22 To date, Defendant has failed to comply with the order of this Honorable Court and respond
23 to Plaintiff's discovery requests. Defendant's counsel has paid the \$1,750.00 in sanctions as ordered
24 by the Court. (Exhibit 1.)

25 Plaintiff is entitled to the discovery responses, and in fact, Defendant has admitted as much
26 on more than one occasion. Nevertheless, Defendant refuses and continues to refuse to respond. As
27 the Court is aware, it is preferable for Plaintiff to place Defendant's insurance carrier on notice of
28 the claim before obtaining a judgment in favor of Plaintiff; otherwise, Plaintiff fears Defendant's

1 insurance company will refuse to pay the claim.

2 II.

3 LEGAL ARGUMENT

4 **PLAINTIFF RESPECTFULLY REQUESTS THIS COURT ISSUE AN ORDER TO**
5 **SHOW CAUSE WHY DEFENDANT SUSAN FALLINI AND HER COUNSEL SHOULD**
6 **NOT BE HELD IN CONTEMPT OF COURT FOR FAILURE TO ABIDE BY THE**
7 **COURT'S ORDER**

8 This Court has authority, pursuant to NRS 22.030, to enter an order to show cause why Susan
9 Fallini and her counsel should not be held in contempt of court for failing to comply with this
10 Honorable Court's orders of July 17, 2009 and April 27, 2009, ordering Defendant to respond
11 Plaintiff's discovery requests.

12 NRS 22.040 provides:

13 When the contempt is not committed in the immediate view of and
14 presence of the court or judge, a warrant of attachment may be
15 issued to bring the person charged to answer, or, without previous
16 arrest, a warrant of commitment may, upon notice, or upon an order
17 to show cause, be granted; and no warrant of commitment shall be
18 issued without such previous attachment to answer, or such notice
19 or order to show cause

20 NRS 22.010 further provides in pertinent part:

21 The following acts or omissions shall be deemed contempts:

22 ...

23 3. Disobedience or resistance to any lawful writ, order, rule or
24 process issued by the court or judge at chambers.

25 In the present case Defendant has disobeyed this Court's Order. Susan Fallini and her
26 counsel are in contempt under NRS 22.010 because they disobeyed two of this Court's Orders
27 respond to Plaintiff's discovery requests.

28 Notwithstanding proper attempts and due diligence of service of a lawfully obtained Order,
Susan Fallini and her counsel have acted in bad faith and failed to provide insurance information as
required in her NRCP 16.1 disclosures and failed to respond to any written discovery propounded
by Plaintiff. Plaintiff submitted her initial interrogatories to Defendant on October 31, 2007, and
continued sending various discovery requests through July 2, 2008. Plaintiff submitted

1 interrogatories, requests for admission, and two sets of requests for production of documents,
2 including a request that Fallini produce all related insurance information regarding the incident.

3 Despite these discovery requests, Defendant has failed and refused to cooperate or respond.
4 Plaintiff's counsel has made phone calls and submitted letters to Fallini's counsel notifying them of
5 these discovery requests to no avail. Nevertheless, Fallini failed to provide any of the information
6 as requested despite the extension. Plaintiff was then forced to file a motion to compel. Defendant
7 did not oppose the motion, but agreed it was warranted. Yet, Defendant failed to comply with the
8 order.

9 Defendant has failed to produce any sort of discovery despite numerous formal requests,
10 followed by phone calls and letters for nearly a year and a half from the initial submission of
11 interrogatories on September 10, 2007. As shown above, Plaintiff has made several good faith
12 efforts to procure the discovery without court intervention, including re-opening discovery and
13 extending the deadline. Plaintiff finally sought court intervention and this Court issued an order
14 compelling Defendant to comply with discovery requests. Nevertheless, Defendant continues to
15 show no interest in cooperating with discovery guidelines or this Court's order. Defendant's failure
16 to comply with this Court's order and all discovery requests has completely halted the normal
17 adversary process.

18 This Court is authorized pursuant to NRS 22.040 to issue an appropriate order to show cause
19 why Susan Fallini and her counsel should not be held in contempt of court. This Court is further
20 authorized to order sanctions against Susan Fallini for Plaintiff having to bring this motion.

21 **III.**

22 **CONCLUSION**

23 The Court has authority pursuant to NRS 22.040 to issue and order to show cause why
24 Defendant and her counsel should not be held in contempt of court. Further, this Court has inherent
25 powers to sanction inequitable conduct. Under both authorities, Plaintiff respectfully requests that

26 ///

27 ///

28 ///

1
2 this Court order Susan Fallini and her counsel to show cause why sanctions, including civil contempt
3 sanctions, a bench warrant and monetary sanctions, should not be issued against her and her counsel.

4 DATED this 28 day of August, 2009.

5 ALDRICH LAW FIRM, LTD.

6
7 By

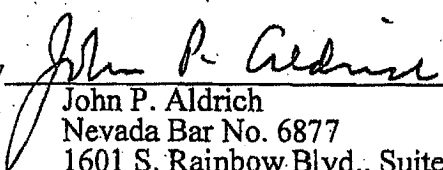

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Attorneys for Plaintiff

EXHIBIT 1

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6 Las Vegas, Nevada 89146
7 (702) 853-5490
8 *Attorney for Plaintiff*

9 **THE FIFTH JUDICIAL DISTRICT COURT**
10 **THE STATE OF NEVADA**
11 **COUNTY OF NYE**

12 Estate of MICHAEL DAVID ADAMS, by
13 and through his mother JUDITH ADAMS,
14 individually and on behalf of the Estate,

15 Plaintiff,

16 v.

17 SUSAN FALLINI, ; DOES I-X, and ROE
18 CORPORATIONS I-X, inclusive,

19 Defendants.

20

SUSAN FALLINI,

21 Counterclaimant,

22 vs.

23 Estate of MICHAEL DAVID ADAMS, by
24 and through his mother JUDITH ADAMS,
25 individually and on behalf of the Estate

26 Counterdefendants.

Case No.: CV24539
Dept. No.: 2P

27 **AFFIDAVIT OF JOHN P. ALDRICH IN SUPPORT OF MOTION TO COMPEL**

28 State of Nevada)
County of Clark) SS

Affiant, being first duly sworn, deposes and states the following:

1. I, John P. Aldrich, am an attorney licensed to practice in the State of Nevada and a

1 partner in the law firm of Aldrich Law Firm, Ltd.

2 2. My office address is 1601 S. Rainbow Blvd., Suite 160, Las Vegas, Nevada 89146.

3 3. The decedent's mother, JUDITH ADAMS ("Judith"), filed a complaint on behalf of
4 Adams' mother and his estate on November 29, 2006 and properly served Fallini with process.
5 Fallini filed her Answer and Counterclaim on March 14, 2007. On October 31, 2007, my office
6 submitted interrogatories to Fallini. Those interrogatories were never answered. My office also
7 submitted requests for admissions and Plaintiff's first set of requests for production of documents
8 on October 31, 2007. A second set of requests for production of documents were submitted to
9 Fallini on July 2, 2008, requesting information as to Fallini's insurance policies and/or carriers that
10 may provide coverage for damages that occurred as a result of the incident

11 4. Fallini never responded to any of these requests. To this date, Fallini has not
12 produced any responses of any kind to Plaintiff's written discovery requests. Despite an extension
13 requested by Plaintiff and granted by the Court, the discovery period has lapsed without any
14 responses being provided by Defendant.

15 5. On or about April 7, 2008 (and again on May 14, 2008 with a Certificate of Service),
16 I filed a Motion for Partial Summary Judgment. Defendant did not oppose that motion and the Court
17 granted that Motion on July 30, 2008. Notice of entry of the Order Granting Plaintiff's Motion for
18 Summary Judgment was served on Defendant on August 15, 2008.

19 6. I attempted to amicably resolve the discovery dispute and obtain a copy of
20 Defendant's applicable insurance policies, but to no avail. On February 24, 2009, I sent letters to
21 Defendant's counsel seeking responses to the discovery.

22 7. I have attempted to discuss this discovery issue with Defendant's counsel, Mr. Kuehn,
23 as well. On or about March 6, 2009, I contacted the office of Defendant's counsel. I was informed
24 that Mr. Kuehn was not available. I left a message with my phone number and asked that Mr. Kuehn
25 return the call. No return call ever came.

26 8. On March 18, 2009, I again contacted the office of Mr. Kuehn. I was informed that
27 Mr. Kuehn was not available. I left a message with my phone number and asked that Mr. Kuehn
28

1 return the call. No return call ever came.

2 9. On March 23, 2009, Plaintiff filed a Motion to Compel Defendant's Production of
3 Documents, including information regarding any insurance policies that may provide coverage for
4 the incident as contemplated in the Plaintiff's second request for documents. This motion was heard
5 on April 27, 2009. I was unable to attend, but my associate attended. I am informed that the
6 Defendant's attorney, Mr. Kuehn, attended the hearing. Mr. Kuehn did not oppose the motion to
7 compel and agreed at the hearing it was warranted. Mr. Kuehn provided no explanation as to why
8 Defendant failed to respond to all discovery requests. Mr. Kuehn agreed sanctions were warranted,
9 however, he disputed the amount of sanctions. This Honorable Court granted the Motion to Compel
10 and awarded John Aldrich, Esq., \$750.00 in sanctions for having to bring the motion. A Notice of
11 Entry of Order on the order granting the motion to compel was entered on May 18, 2009. It was
12 served by mail on Defendant on May 14, 2009. Defendant never complied with the Order.

13 10. On June 16, 2009 my office filed a Motion to Strike Defendant's Answer and
14 Counterclaim due to Defendants complete failure to comply with discovery requests and this Court's
15 Order. The Defendant's counsel again attended the hearing and again provided no explanation as
16 to why Defendant failed to respond to all discovery requests, but stated Defendant would comply
17 with discovery requests. This Honorable Court denied Plaintiff's Motion to Strike based on
18 Defendant's counsel's promises to comply. This Honorable Court did, however, order Defendant
19 to comply with the Order granting Plaintiff's Motion to Compel and to respond to Plaintiff's
20 discovery requests by August 12, 2009 or Defendant's Answer and Counterclaim would be stricken.
21 The Court also ordered Defendant to pay a \$1,000 sanction.

22 11. To date, Defendant has failed to comply with the order of this Honorable Court and
23 respond to Plaintiff's discovery requests. Defendant's counsel has paid the \$1,750.00 in sanctions
24 as ordered by the Court.

25 ///

26 ///

27 ///

28 ///

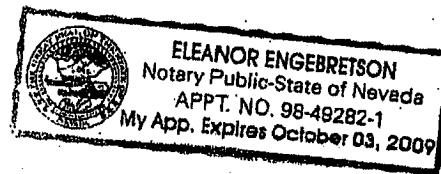
12. Plaintiff is entitled to the discovery responses, and in fact, Defendant has admitted as much on more than one occasion. Nevertheless, Defendant refuses and continues to refuse to respond. As the Court is aware, it is preferable for Plaintiff to place Defendant's insurance carrier on notice of the claim before obtaining a judgment in favor of Plaintiff; otherwise, Plaintiff fears Defendant's insurance company will refuse to pay the claim.

Dated this 28 day of August, 2009.

John P. Aldrich
JOHN P. ALDRICH, ESQ.

Subscribed & sworn to before me
this 28th day of August, 2009.

Eleanor Engbretson
NOTARY PUBLIC



1 **ROC**

John P. Aldrich, Esq.

Nevada Bar No. 6877

ALDRICH LAW FIRM, LTD.

1601 S. Rainbow Blvd., Suite 160

Las Vegas, Nevada 89146

(702) 853-5490

(702) 227-1975 fax

Attorneys for Plaintiff

THE FIFTH JUDICIAL DISTRICT COURT
THE STATE OF NEVADA
COUNTY OF NYE

Estate of MICHAEL DAVID ADAMS,
by and through his mother JUDITH
ADAMS, individually and on behalf of the
Estate,

Plaintiffs,

vs.

SUSAN FALLINI, DOES I-X and ROE
CORPORATIONS I-X, inclusive,

Defendants.

Case No.: CV24539
Dept.: 2P

SUSAN FALLINI,

Counterclaimant,

vs.

Estate of MICHAEL DAVID ADAMS,
by and through his mother JUDITH
ADAMS, individually and on behalf of the
Estate,

Counterdefendants.

**RECEIPT OF COPY OF PLAINTIFF'S EX PARTE MOTION FOR ORDER
TO SHOW CAUSE WHY DEFENDANT SUSAN FALLINI AND HER
COUNSEL SHOULD NOT BE HELD IN CONTEMPT OF COURT**

///

1 RECEIPT OF COPY of Plaintiff's *Ex Parte* Motion for Order to Show Cause Why
2 Defendant Susan Fallini and Her Counsel Should Not Be Held in Contempt of Court is hereby
3 acknowledged this _____ day of September, 2009.

4 

5 _____
6 Harold Kuehn, Esq.
7 Gibson, & Kuehn
8 1601 E. Basin Avenue, Suite 101
9 Pahrump, NV 89060
10 *Attorney for Defendant/Counterclaimant*

1 **ORDR**

2 John P. Aldrich, Esq.

3 Nevada Bar No. 6877

4 **ALDRICH LAW FIRM, LTD.**

5 1601 S. Rainbow Blvd., Suite 160

6 Las Vegas, Nevada 89146

7 (702) 853-5490

8 (702) 227-1975 fax

9 *Attorneys for Plaintiff*

FILED

2009 SEP -1 A 9:42

NYE COUNTY CLERK
BY DEPUTY

Michelle A. Thore

7 **THE FIFTH JUDICIAL DISTRICT COURT**
8 **THE STATE OF NEVADA**
9 **COUNTY OF NYE**

10 Estate of MICHAEL DAVID ADAMS,
11 by and through his mother JUDITH
12 ADAMS, individually and on behalf of the
13 Estate,

14 **Plaintiffs,**

15 **vs.**

16 SUSAN FALLINI, DOES I-X and ROE
17 CORPORATIONS I-X, inclusive,

18 **Defendants.**

19 **SUSAN FALLINI,**

20 **Counterclaimant,**

21 **vs.**

22 Estate of MICHAEL DAVID ADAMS,
23 by and through his mother JUDITH
24 ADAMS, individually and on behalf of the
25 Estate,

26 **Counterdefendants.**

Case No.: CV24539

Dept.: 2P

27 **ORDER TO SHOW CAUSE WHY DEFENDANT SUSAN FALLINI AND HER**
28 **COUNSEL SHOULD NOT BE HELD IN CONTEMPT OF COURT**

///

///

1 This Court, having reviewed the Ex Parte Motion For Order To Show Cause Why Defendant
2 Susan Fallini and her Counsel Should Not Be Held in Contempt of Court and other documentation
3 in support thereof, and finding that the Application meets the requirements of Chapter 22 of the
4 Nevada Revised Statutes and good cause appearing therefore:

5 IT IS HEREBY ORDERED that Defendant Susan Fallini and her Counsel, shall appear in
6 Department 2P of the above-entitled Court at the hour of 9:00 o'clock a.m./p.m. on the
7 28 day of September, 2009, and show cause why Susan Fallini and her
8 Counsel should not be held in contempt of court.

9 IT IS FURTHER ORDERED that the Plaintiff, Judith Adams shall personally serve the
10 Application and this Order on Susan Fallini and her Counsel through her counsel, no later than three
11 (3) days after the issuance of this Order.

12 IT IS FURTHER ORDERED that Susan Fallini and her Counsel shall file and personally
13 serve their written response to this Order no later than September 11, 2009, and
14 that the Plaintiff, Judith Adams shall file and personally serve her reply memorandum, if any, no
15 later than September 18, 2009.

16 ///

17 ///

18 ///

19 ///

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21 ///

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23 ///

24 ///

25 ///

26 ///

1 PLEASE BE ADVISED that if Susan Fallini and her Counsel fail to appear, they shall be
2 deemed to have waived their right to the hearing and that in such case the Court may impose
3 sanctions including granting Plaintiff Judith Adams her fees and costs, and grant any other relief
4 necessary and proper to effectuate the compliance with its Order compelling Susan Fallini and her
5 Counsel to respond to Plaintiff's discovery requests, including providing information regarding any
6 insurance policies that may apply.

7 DATED this 1 day of September, 2009.

8
9 **ROBERT W. LANE**
DISTRICT COURT JUDGE

10 Submitted by:

11 **ALDRICH LAW FIRM, LTD.**

12
13 John P. Aldrich
14 John P. Aldrich, Esq.
15 Nevada Bar No.: 6877
16 1601 S. Rainbow Blvd., Suite 160
Las Vegas, Nevada 89146
Attorneys for Plaintiff

ORIGINAL

9-09

1 **ROC**

John P. Aldrich, Esq.

2 Nevada Bar No. 6877

ALDRICH LAW FIRM, LTD.

3 1601 S. Rainbow Blvd., Suite 160

Las Vegas, Nevada 89146

4 (702) 853-5490

(702) 227-1975 fax

5 *Attorneys for Plaintiff*

6
7 THE FIFTH JUDICIAL DISTRICT COURT
THE STATE OF NEVADA
8 COUNTY OF NYE

9 Estate of MICHAEL DAVID ADAMS,)
by and through his mother JUDITH)
10 ADAMS, individually and on behalf of the)
Estate,)

11 Plaintiffs,

12 vs.

13 SUSAN FALLINI, DOES I-X and ROE)
14 CORPORATIONS I-X, inclusive,)

15 Defendants.

16 SUSAN FALLINI,

17 Counterclaimant,

18 vs.

19 Estate of MICHAEL DAVID ADAMS,)
by and through his mother JUDITH)
20 ADAMS, individually and on behalf of the)
Estate,)

21 Counterdefendants.

22
23 **RECEIPT OF COPY OF ORDER TO SHOW CAUSE WHY DEFENDANT**
24 **SUSAN FALLINI AND HER COUNSEL SHOULD NOT BE HELD**
IN CONTEMPT OF COURT

25 ///

1 RECEIPT OF COPY of Order to Show Cause Why Defendant Susan Fallini And Her
2 Counsel Should Not Be Held in Contempt of Court is hereby acknowledged this _____ day of
3 September, 2009.

4 

5 _____
6 Harold Kuehn, Esq.
7 Gibson, & Kuehn
8 1601 E. Basin Avenue, Suite 101
9 Pahrump, NV 89060
10 *Attorney for Defendant/Counterclaimant*

1 **ORDR**

John P. Aldrich, Esq.

2 Nevada Bar No. 6877

ALDRICH LAW FIRM, LTD.

3 1601 S. Rainbow Blvd., Suite 160

Las Vegas, Nevada 89146

4 (702) 853-5490

(702) 227-1975 fax

5 *Attorneys for Plaintiff*

FILED

2009 OCT -8 P 1:26

NYE COUNTY CLERK
BY DEPUTY

Linda Uhl

6 THE FIFTH JUDICIAL DISTRICT COURT
7 THE STATE OF NEVADA, COUNTY OF NYE

8 Estate of MICHAEL DAVID ADAMS,
9 by and through his mother JUDITH
ADAMS, individually and on behalf of the
Estate,

10 Plaintiffs,

11 vs.

12 SUSAN FALLINI, DOES I-X and ROE
13 CORPORATIONS I-X, inclusive,

14 Defendants.

15 SUSAN FALLINI,

16 Counterclaimant,

17 vs.

18 Estate of MICHAEL DAVID ADAMS,
19 by and through his mother JUDITH
ADAMS, individually and on behalf of the
Estate,

20 Counterdefendants.

21 **ORDER REGARDING ORDER TO SHOW CAUSE WHY DEFENDANT SUSAN**
22 **FALLINI AND HER COUNSEL SHOULD NOT BE HELD IN CONTEMPT OF COURT**

23 THIS MATTER having come on for hearing on Monday, September 28, 2009, a conference
24 having been held in Chambers before the Honorable Robert W. Lane, and John P. Aldrich, Esq., of
25 Aldrich Law Firm, Ltd., appearing on behalf of the Plaintiffs, with Harry Kuehn, Esq., appearing on
26 behalf of Defendant, the Court hereby orders as follows:

1 IT IS HEREBY ORDERED that Defendant's counsel shall have until close of business on
2 October 12, 2009, to comply with the Order Granting Plaintiff's Motion to Compel and provide
3 responses to Plaintiff's Request for Production of Documents, including the requested insurance
4 information.

5 IT IS FURTHER ORDERED that if Defendant does not provide the above-described
6 information by October 12, 2009, Defendant's counsel will be held in contempt of court and will be
7 fined \$150.00 per day, beginning October 13, 2009, until said information is provided. The days
8 shall be calculated on a seven-day week.

9 IT IS FURTHER ORDERED that if the above-described information is not provided by
10 October 12, 2009, the Court will strike defendant's pleadings in their entirety. Plaintiff will not need
11 to renew any motion regarding its request to strike defendant's pleadings; Plaintiff will be able to
12 simply submit an Order Striking the Pleadings for signature by the Court.

13 DATED this 8 day of October, 2009.

14
15 **ROBERT W LANE**
16 DISTRICT COURT JUDGE

17 Submitted by:

18 **ALDRICH LAW FIRM, LTD.**

19 John P. Aldrich
20 John P. Aldrich, Esq.
21 Nevada Bar No.: 6877
22 1601 S. Rainbow Blvd., Suite 160
Las Vegas, Nevada 89146
Attorneys for Plaintiff

1 NOE

John P. Aldrich, Esq.

2 Nevada Bar No. 6877

ALDRICH LAW FIRM, LTD.

3 1601 S. Rainbow Blvd., Suite 160

Las Vegas, Nevada 89146

4 (702) 853-5490

(702) 227-1975 fax

5 *Attorneys for Plaintiff*

FILED

FIFTH JUDICIAL DISTRICT

OCT 14 2009

Nye County Clerk

Michelle A. Thorn

Deputy

6
7 THE FIFTH JUDICIAL DISTRICT COURT
8 THE STATE OF NEVADA
9 COUNTY OF NYE

10 Estate of MICHAEL DAVID ADAMS,
by and through his mother JUDITH
11 ADAMS, individually and on behalf of the
Estate,

12 Plaintiffs,

13 vs.

14 SUSAN FALLINI, DOES I-X and ROE
CORPORATIONS I-X, inclusive,

15 Defendants.

16 SUSAN FALLINI,

17 Counterclaimant,

18 vs.

19 Estate of MICHAEL DAVID ADAMS,
20 by and through his mother JUDITH
ADAMS, individually and on behalf of the
21 Estate,

22 Counterdefendants.

Case No.: CV24539

Dept.: 2P

23 **NOTICE OF ENTRY OF ORDER**

24 ///

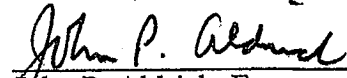
25 ///

26 ///

1 PLEASE TAKE NOTICE that an Order was entered in the above-entitled matter on October
2 8, 2009, a copy of which is attached hereto as Exhibit 1.

3 DATED this 13 day of October, 2009.

4 ALDRICH LAW FIRM, LTD.

5 
6 John P. Aldrich, Esq.
7 Nevada State Bar No. 6877
8 1601 S. Rainbow Blvd., Suite 160
9 Las Vegas, Nevada 89146
(702) 853-5490
(702) 227-1975
Attorneys for Plaintiff

10 **CERTIFICATE OF SERVICE**

11 I HEREBY CERTIFY that on the 13th day of October, 2009, I mailed a copy of the
12 NOTICE OF ENTRY OF ORDER, in a sealed envelope, to the following and that postage was fully
13 paid thereon:

14 Harold Kuehn, Esq.
15 Gibson, & Kuehn
16 1601 E. Basin Avenue, Suite 101
Pahrump, NV 89060
Attorney for Defendant/Counterclaimant

17
18 Katherine M. Barker, Esq.
19 Law Office of Katherine M. Barker
701 Bridger Ave, Ste. 500
20 Las Vegas, NV 89101
Attorney for Counterdefendant
21 Estate of Michael David Adams

22
23 
24 An employee of Aldrich Law Firm, Ltd.

1 **ORDR**

John P. Aldrich, Esq.

2 Nevada Bar No. 6877

ALDRICH LAW FIRM, LTD.

3 1601 S. Rainbow Blvd., Suite 160

Las Vegas, Nevada 89146

4 (702) 853-5490

(702) 227-1975 fax

5 *Attorneys for Plaintiff*

FILED

2009 OCT -8 P 1:26

NYE COUNTY CLERK
BY DEPUTY

Linda Uhl

THE FIFTH JUDICIAL DISTRICT COURT
THE STATE OF NEVADA, COUNTY OF NYE

6
7 Estate of MICHAEL DAVID ADAMS,
8 by and through his mother JUDITH
9 ADAMS, individually and on behalf of the
Estate,

10 Plaintiffs,

11 vs.

12 SUSAN FALLINI, DOES I-X and ROE
13 CORPORATIONS I-X, inclusive,

14 Defendants.

15 SUSAN FALLINI,

16 Counterclaimant,

17 vs.

18 Estate of MICHAEL DAVID ADAMS,
19 by and through his mother JUDITH
ADAMS, individually and on behalf of the
Estate,

20 Counterdefendants.

Case No.: CV24539
Dept.: 2P

21 **ORDER REGARDING ORDER TO SHOW CAUSE WHY DEFENDANT SUSAN**
22 **FALLINI AND HER COUNSEL SHOULD NOT BE HELD IN CONTEMPT OF COURT**

23 THIS MATTER having come on for hearing on Monday, September 28, 2009, a conference
24 having been held in Chambers before the Honorable Robert W. Lane, and John P. Aldrich, Esq., of
25 Aldrich Law Firm, Ltd., appearing on behalf of the Plaintiffs, with Harry Kuehn, Esq., appearing on
26 behalf of Defendant, the Court hereby orders as follows:
27
28

1 IT IS HEREBY ORDERED that Defendant's counsel shall have until close of business on
2 October 12, 2009, to comply with the Order Granting Plaintiff's Motion to Compel and provide
3 responses to Plaintiff's Request for Production of Documents, including the requested insurance
4 information.

5 IT IS FURTHER ORDERED that if Defendant does not provide the above-described
6 information by October 12, 2009, Defendant's counsel will be held in contempt of court and will be
7 fined \$150.00 per day, beginning October 13, 2009, until said information is provided. The days
8 shall be calculated on a seven-day week.

9 IT IS FURTHER ORDERED that if the above-described information is not provided by
10 October 12, 2009, the Court will strike defendant's pleadings in their entirety. Plaintiff will not need
11 to renew any motion regarding its request to strike defendant's pleadings; Plaintiff will be able to
12 simply submit an Order Striking the Pleadings for signature by the Court.

13 DATED this 8 day of October, 2009.

14
15 **ROBERT W. LANE**
16 DISTRICT COURT JUDGE

17 Submitted by:

18 **ALDRICH LAW FIRM, LTD.**

19 John P. Aldrich
20 John P. Aldrich, Esq.
21 Nevada Bar No.: 6877
22 1601 S. Rainbow Blvd., Suite 160
23 Las Vegas, Nevada 89146
24 Attorneys for Plaintiff
25
26
27
28

1 **ORDR**

John P. Aldrich, Esq.

2 Nevada Bar No. 6877

ALDRICH LAW FIRM, LTD.

3 1601 S. Rainbow Blvd., Suite 160

Las Vegas, Nevada 89146

4 (702) 853-5490

(702) 227-1975 fax

5 *Attorneys for Plaintiff*

FILED
FIFTH JUDICIAL DISTRICT

NOV 04 2009

Michelle A. Thorn *Nye County Clerk*

Deputy

6 **THE FIFTH JUDICIAL DISTRICT COURT**
7 **THE STATE OF NEVADA, COUNTY OF NYE**

8 Estate of MICHAEL DAVID ADAMS,
9 by and through his mother JUDITH
ADAMS, individually and on behalf of the
Estate,

10 **Plaintiffs,**

11 **vs.**

12 SUSAN FALLINI, DOES I-X and ROE
13 CORPORATIONS I-X, inclusive,

14 **Defendants.**

15 **SUSAN FALLINI,**

16 **Counterclaimant,**

17 **vs.**

18 Estate of MICHAEL DAVID ADAMS,
19 by and through his mother JUDITH
ADAMS, individually and on behalf of the
Estate,

20 **Counterdefendants.**

Case No.: CV24539
Dept.: 2P

21 **FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER STRIKING ANSWER**
22 **AND COUNTERCLAIM OF DEFENDANT SUSAN FALLINI AND HOLDING**
23 **DEFENDANT'S COUNSEL IN CONTEMPT OF COURT**

24 THIS MATTER having come on for hearing on Monday, September 28, 2009, a conference
25 having been held in Chambers before the Honorable Robert W. Lane, and John P. Aldrich, Esq., of
26 Aldrich Law Firm, Ltd., appearing on behalf of the Plaintiffs, with Harry Kuehn, Esq., appearing on
27 behalf of Defendant, the Court hereby orders as follows:

FINDINGS OF FACT

The Court, having been presented the following facts by Plaintiff's counsel and having received no opposition to the facts by Defendant, makes the following findings of fact:

1. This lawsuit arises out of an incident that occurred on or about July 7, 2005. At approximately 9:00 p.m. on that day, MICHAEL DAVID ADAMS ("Adams") was driving his 1994 Jeep Wrangler on SR 375 highway in Nye County, when he collided with a Hereford cow ("cow") owned by Defendant SUSAN FALLINI ("Fallini"). Adams died at the scene as a result of the impact.

2. The decedent's mother, JUDITH ADAMS ("Judith"), filed a complaint on behalf of Adams' mother and his estate on November 29, 2006 and properly served Fallini with process. Fallini filed her Answer and Counterclaim on March 14, 2007.

3. On October 31, 2007, Plaintiff submitted interrogatories to Fallini. Those interrogatories were never answered. Adams also submitted requests for admissions and its first set of requests for production of documents on October 31, 2007. A second set of requests for production of documents were submitted to Fallini on July 2, 2008, requesting information as to Fallini's insurance policies and/or carriers that may provide coverage for damages that occurred as a result of the incident.

4. Fallini never responded to any of these requests. To this date, Fallini has not produced any responses of any kind to Plaintiff's written discovery requests. Despite an extension requested by Plaintiff and granted by the Court, the discovery period has lapsed without any responses being provided by Defendant.

5. On or about April 7, 2008 (and again on May 14, 2008 with a Certificate of Service), Plaintiff filed a Motion for Partial Summary Judgment. Defendant did not oppose that motion and the Court granted that Motion on July 30, 2008. Notice of entry of the Order Granting Plaintiff's Motion for Summary Judgment was served on Defendant on August 15, 2008.

6. Plaintiff attempted to amicably resolve the discovery dispute and obtain a copy of

1 Defendant's applicable insurance policies, but to no avail. On February 24, 2009, Plaintiff sent
2 letters to Defendant's counsel seeking responses to the discovery.

3 7. Plaintiff's counsel, Mr. Aldrich, attempted to discuss this discovery issue with
4 Defendant's counsel, Mr. Kuehn, as well. On or about March 6, 2009, Plaintiff's counsel contacted
5 the office of Defendant's counsel. Mr. Aldrich was informed that Mr. Kuehn was not available. Mr.
6 Aldrich left a message with Mr. Aldrich's phone number and asked that Mr. Kuehn return the call.
7 No return call ever came.

8 8. On March 18, 2009, Mr. Aldrich again contacted the office of Mr. Kuehn. Mr.
9 Aldrich was informed that Mr. Kuehn was not available. Mr. Aldrich left a message with Mr.
10 Aldrich's phone number and asked that Mr. Kuehn return the call. No return call ever came.
11 (Exhibit 1.)

12 9. On March 23, 2009, Plaintiff filed a Motion to Compel Defendant's Production of
13 Documents, including information regarding any insurance policies that may provide coverage for
14 the incident as contemplated in the Plaintiff's second request for documents. This motion was heard
15 on April 27, 2009. The Defendant's attorney, Mr. Kuehn, attended the hearing. Mr. Kuehn did not
16 oppose the motion to compel and agreed at the hearing it was warranted. Mr. Kuehn provided no
17 explanation as to why Defendant failed to respond to all discovery requests. Mr. Kuehn agreed
18 sanctions were warranted, however, he disputed the amount of sanctions.

19 10. At the hearing on April 27, 2009, this Court granted the Motion to Compel and
20 awarded John Aldrich, Esq., \$750.00 in sanctions for having to bring the motion. A Notice of Entry
21 of Order on the order granting the motion to compel was entered on May 18, 2009. It was served
22 by mail on Defendant on May 14, 2009. Defendant never complied with the Order.

23 11. On June 16, 2009 Plaintiff filed a Motion to Strike Defendant's Answer and
24 Counterclaim due to Defendants complete failure to comply with discovery requests and this Court's
25 Order. The Defendant's counsel again attended the hearing and again provided no explanation as
26 to why Defendant failed to respond to all discovery requests, but stated Defendant would comply
27

1 with discovery requests.

2 12. The Court denied Plaintiff's Motion to Strike based on Defendant's counsel's
3 promises to comply. This Court did, however, order Defendant to comply with the Order granting
4 Plaintiff's Motion to Compel and to respond to Plaintiff's discovery requests by August 12, 2009
5 or Defendant's Answer and Counterclaim would be stricken. The Court also ordered Defendant to
6 pay a \$1,000 sanction.

7 13. To date, Defendant has failed to comply with the order of this Honorable Court and
8 respond to Plaintiff's discovery requests. Defendant's counsel has paid the \$1,750.00 in sanctions
9 as ordered by the Court.

10 14. Plaintiff is entitled to the discovery responses, and in fact, Defendant has admitted
11 as much on more than one occasion. Nevertheless, Defendant refused and continues to refuse to
12 respond.

13 15. Because Defendant failed and refused to follow this Court's order and provide the
14 requested information, Plaintiff brought an Ex Parte Motion for Order to Show Cause Why
15 Defendant and Her Counsel Should Not Be Held in Contempt. The Order to Show Cause was
16 granted, and a hearing was scheduled on September 28, 2009. A conference was held in chambers,
17 so as to avoid embarrassment to Defendant's counsel. Following the conference, the Court ordered:

18 (A) That Defendant's counsel shall have until close of business on October 12,
19 2009, to comply with the Order Granting Plaintiff's Motion to Compel and
20 provide responses to Plaintiff's Request for Production of Documents,
21 including the requested insurance information.

22 (B) That if Defendant does not provide the above-described information by
23 October 12, 2009, Defendant's counsel will be held in contempt of court and
24 will be fined \$150.00 per day, beginning October 13, 2009, until said
25 information is provided. The days shall be calculated on a seven-day week.

26 (C) That if the above-described information is not provided by October 12, 2009,
27
28

1 the Court will strike defendant's pleadings in their entirety. Plaintiff will not
2 need to renew any motion regarding its request to strike defendant's
3 pleadings; Plaintiff will be able to simply submit an Order Striking the
4 Pleadings for signature by the Court.

5 CONCLUSIONS OF LAW

6 Based on the Findings of Fact, as set forth above, the Court makes the following conclusions
7 of law:

8 1. Pursuant to NRCP 34, Plaintiff has the right to request documents which are
9 discoverable pursuant to NRCP 26. According to NRCP 34, Defendant has 30 days from receipt of
10 the requests for production of documents to provide appropriate responses.

11 2. NRCP 34(b) permits a party to seek relief under NRCP 37(a) if the party who receives
12 discovery requests fails to respond appropriately. NRCP 37(a) provides that the Court may enter an
13 order compelling a non-responsive party to disclose the requested information.

14 3. This Court has at least three times entered an order compelling Defendant to respond
15 to Discovery requests.

16 4. NRCP 37(b)(2)(c), permits "an order striking out pleadings or parts thereof," for
17 discovery abuses. "Selection of a particular sanction for discovery abuses under NRCP 37 is
18 generally a matter committed to the sound discretion of the district court." *Stubli v. Big Int'l Trucks,*
19 *Inc.*, 107 Nev. 309, 312-313, 810 P.2d 785 (1991) (citing *Fire Ins. Exchange v. Zenith Radio Corp.*,
20 103 Nev. 648, 649, 747 P.2d 911, 912 (1987) and *Kelly Broadcasting v. Sovereign Broadcast*, 96
21 Nev. 188, 192, 606 P.2d 1089, 1092 (1980.))

22 5. The Nevada Supreme Court held that default judgments will be upheld where "the
23 normal adversary process has been halted due to an unresponsive party, because diligent parties are
24 entitled to be protected against interminable delay and uncertainty as to their legal rights." *Hamlett*
25 *v. Reynolds*, 114 Nev. 863, 963 P.2d 457 (1998) (citing *Skeen v. Valley Bank of Nevada*, 89 Nev.
26 301, 303, 511 P.2d 1053, 1054 (1973).
27
28

6. Defendant has provided no responses whatsoever, nor has Defendant objected to any request. Defendant has failed on at least three occasions to comply with this Court's Order.

7. Defendant has been given ample opportunity to comply with the Court's Orders, and striking Defendant's Answer and Counterclaim is appropriate under the circumstances.

ORDER

Based on the Findings of Fact and Conclusions of Law, as set forth above:

IT IS HEREBY ORDERED that Defendant's Answer and Counterclaim shall be stricken, and the Court Clerk is directed to enter Default against Defendant Susan Fallini.

IT IS FURTHER ORDERED that Defendant's Counterclaim, having been stricken, shall be dismissed with prejudice.

IT IS FURTHER ORDERED that Defendant's counsel, Harold Kuehn, Esq., is in contempt of Court and must pay to Plaintiff's counsel, John P. Aldrich, Esq., \$150.00 per day, beginning October 13, 2009, and continuing to accrue until the information described above is provided. The days shall be calculated on a seven-day week, and this Order shall constitute a judgment upon which Mr. Aldrich can execute. Interest on unpaid balances shall accrue at the statutory rate.

IT IS SO ORDERED.


DATED this 4 day of November, 2009.

ROBERT W. LANE

DISTRICT COURT JUDGE

Submitted by:

ALDRICH LAW FIRM, LTD.


John P. Aldrich, Esq.
Nevada Bar No.: 6877
1601 S. Rainbow Blvd., Suite 160
Las Vegas, Nevada 89146
Attorneys for Plaintiff

1 NEO

John P. Aldrich, Esq.

2 Nevada Bar No. 6877

ALDRICH LAW FIRM, LTD.

3 1601 S. Rainbow Blvd., Suite 160

Las Vegas, Nevada 89146

4 (702) 853-5490

(702) 227-1975 fax

5 *Attorneys for Plaintiff*

FILED
FIFTH JUDICIAL DISTRICT

NOV 09 2009

DEBRA BENNETT Deputy Clerk

Deputy

THE FIFTH JUDICIAL DISTRICT COURT
THE STATE OF NEVADA
COUNTY OF NYE

9 Estate of MICHAEL DAVID ADAMS,
10 by and through his mother JUDITH
11 ADAMS, individually and on behalf of the
Estate,

12 Plaintiffs,

13 vs.

14 SUSAN FALLINI, DOES I-X and ROE
15 CORPORATIONS I-X, inclusive,

16 Defendants.

17 SUSAN FALLINI,

18 Counterclaimant,

19 vs.

20 Estate of MICHAEL DAVID ADAMS,
21 by and through his mother JUDITH
ADAMS, individually and on behalf of the
Estate,

22 Counterdefendants.

Case No.: CV24539
Dept.: 2P

23 NOTICE OF ENTRY OF ORDER

24 ///

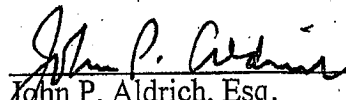
25 ///

26 ///

1 PLEASE TAKE NOTICE that an Order was entered in the above-entitled matter on
2 November 4, a copy of which is attached hereto as Exhibit 1.

3 DATED this 5 day of November, 2009.

4 ALDRICH LAW FIRM, LTD.

5 
6 John P. Aldrich, Esq.
7 Nevada State Bar No. 6877
8 1601 S. Rainbow Blvd., Suite 160
9 Las Vegas, Nevada 89146
10 (702) 853-5490
11 (702) 227-1975
12 *Attorneys for Plaintiff*

13 **CERTIFICATE OF SERVICE**

14 I HEREBY CERTIFY that on the 5th day of November, 2009, I mailed a copy of the
15 NOTICE OF ENTRY OF ORDER, in a sealed envelope, to the following and that postage was fully
16 paid thereon:

17 Harold Kuehn, Esq.
18 Gibson, & Kuehn
19 1601 E. Basin Avenue, Suite 101
20 Pahrump, NV 89060
21 *Attorney for Defendant/Counterclaimant*

22 Katherine M. Barker, Esq.
23 Law Office of Katherine M. Barker
24 701 Bridger Ave, Ste. 500
25 Las Vegas, NV 89101
26 *Attorney for Counterdefendant*
27 *Estate of Michael David Adams*

28 
An employee of Aldrich Law Firm, Ltd.

EXHIBIT 1

EXHIBIT 1

FILED
FIFTH JUDICIAL DISTRICT

NOV 04 2009

Nye County Clerk

Michelle A. Thorn Deputy

1 ORDR

2 John P. Aldrich, Esq.
3 Nevada Bar No. 6877

4 ALDRICH LAW FIRM, LTD.
5 1601 S. Rainbow Blvd., Suite 160
6 Las Vegas, Nevada 89146

7 (702) 853-5490
8 (702) 227-1975 fax

9 Attorneys for Plaintiff

10 THE FIFTH JUDICIAL DISTRICT COURT
11 THE STATE OF NEVADA, COUNTY OF NYE

12 Estate of MICHAEL DAVID ADAMS,
13 by and through his mother JUDITH
14 ADAMS, individually and on behalf of the
15 Estate,

16 Plaintiffs,

17 vs.

18 SUSAN FALLINI, DOES I-X and ROE
19 CORPORATIONS I-X, inclusive,

20 Defendants.

21 SUSAN FALLINI,

22 Counterclaimant,

23 vs.

24 Estate of MICHAEL DAVID ADAMS,
25 by and through his mother JUDITH
26 ADAMS, individually and on behalf of the
27 Estate,

28 Counterdefendants.

Case No.: CV24539
Dept.: 2P

29 **FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER STRIKING ANSWER**
30 **AND COUNTERCLAIM OF DEFENDANT SUSAN FALLINI AND HOLDING**
31 **DEFENDANT'S COUNSEL IN CONTEMPT OF COURT**

32 THIS MATTER having come on for hearing on Monday, September 28, 2009, a conference
33 having been held in Chambers before the Honorable Robert W. Lane, and John P. Aldrich, Esq., of
34 Aldrich Law Firm, Ltd., appearing on behalf of the Plaintiffs, with Harry Kuehn, Esq., appearing on
35 behalf of Defendant, the Court hereby orders as follows:

FINDINGS OF FACT

The Court, having been presented the following facts by Plaintiff's counsel and having received no opposition to the facts by Defendant, makes the following findings of fact:

1. This lawsuit arises out of an incident that occurred on or about July 7, 2005. At approximately 9:00 p.m. on that day, MICHAEL DAVID ADAMS ("Adams") was driving his 1994 Jeep Wrangler on SR 375 highway in Nye County, when he collided with a Hereford cow ("cow") owned by Defendant SUSAN FALLINI ("Fallini"). Adams died at the scene as a result of the impact.

2. The decedent's mother, JUDITH ADAMS ("Judith"), filed a complaint on behalf of Adams' mother and his estate on November 29, 2006 and properly served Fallini with process. Fallini filed her Answer and Counterclaim on March 14, 2007.

3. On October 31, 2007, Plaintiff submitted interrogatories to Fallini. Those interrogatories were never answered. Adams also submitted requests for admissions and its first set of requests for production of documents on October 31, 2007. A second set of requests for production of documents were submitted to Fallini on July 2, 2008, requesting information as to Fallini's insurance policies and/or carriers that may provide coverage for damages that occurred as a result of the incident.

4. Fallini never responded to any of these requests. To this date, Fallini has not produced any responses of any kind to Plaintiff's written discovery requests. Despite an extension requested by Plaintiff and granted by the Court, the discovery period has lapsed without any responses being provided by Defendant.

5. On or about April 7, 2008 (and again on May 14, 2008 with a Certificate of Service), Plaintiff filed a Motion for Partial Summary Judgment. Defendant did not oppose that motion and the Court granted that Motion on July 30, 2008. Notice of entry of the Order Granting Plaintiff's Motion for Summary Judgment was served on Defendant on August 15, 2008.

6. Plaintiff attempted to amicably resolve the discovery dispute and obtain a copy of

1 Defendant's applicable insurance policies, but to no avail. On February 24, 2009, Plaintiff sent
2 letters to Defendant's counsel seeking responses to the discovery.

3 7. Plaintiff's counsel, Mr. Aldrich, attempted to discuss this discovery issue with
4 Defendant's counsel, Mr. Kuehn, as well. On or about March 6, 2009, Plaintiff's counsel contacted
5 the office of Defendant's counsel. Mr. Aldrich was informed that Mr. Kuehn was not available. Mr.
6 Aldrich left a message with Mr. Aldrich's phone number and asked that Mr. Kuehn return the call.
7 No return call ever came.

8 8. On March 18, 2009, Mr. Aldrich again contacted the office of Mr. Kuehn. Mr.
9 Aldrich was informed that Mr. Kuehn was not available. Mr. Aldrich left a message with Mr.
10 Aldrich's phone number and asked that Mr. Kuehn return the call. No return call ever came.
11 (Exhibit 1.)

12 9. On March 23, 2009, Plaintiff filed a Motion to Compel Defendant's Production of
13 Documents, including information regarding any insurance policies that may provide coverage for
14 the incident as contemplated in the Plaintiff's second request for documents. This motion was heard
15 on April 27, 2009. The Defendant's attorney, Mr. Kuehn, attended the hearing. Mr. Kuehn did not
16 oppose the motion to compel and agreed at the hearing it was warranted. Mr. Kuehn provided no
17 explanation as to why Defendant failed to respond to all discovery requests. Mr. Kuehn agreed
18 sanctions were warranted, however, he disputed the amount of sanctions.

19 10. At the hearing on April 27, 2009, this Court granted the Motion to Compel and
20 awarded John Aldrich, Esq., \$750.00 in sanctions for having to bring the motion. A Notice of Entry
21 of Order on the order granting the motion to compel was entered on May 18, 2009. It was served
22 by mail on Defendant on May 14, 2009. Defendant never complied with the Order.

23 11. On June 16, 2009 Plaintiff filed a Motion to Strike Defendant's Answer and
24 Counterclaim due to Defendants complete failure to comply with discovery requests and this Court's
25 Order. The Defendant's counsel again attended the hearing and again provided no explanation as
26 to why Defendant failed to respond to all discovery requests, but stated Defendant would comply
27
28

1 with discovery requests.

2 12. The Court denied Plaintiff's Motion to Strike based on Defendant's counsel's
3 promises to comply. This Court did, however, order Defendant to comply with the Order granting
4 Plaintiff's Motion to Compel and to respond to Plaintiff's discovery requests by August 12, 2009
5 or Defendant's Answer and Counterclaim would be stricken. The Court also ordered Defendant to
6 pay a \$1,000 sanction.

7 13. To date, Defendant has failed to comply with the order of this Honorable Court and
8 respond to Plaintiff's discovery requests. Defendant's counsel has paid the \$1,750.00 in sanctions
9 as ordered by the Court.

10 14. Plaintiff is entitled to the discovery responses, and in fact, Defendant has admitted
11 as much on more than one occasion. Nevertheless, Defendant refused and continues to refuse to
12 respond.

13 15. Because Defendant failed and refused to follow this Court's order and provide the
14 requested information, Plaintiff brought an Ex Parte Motion for Order to Show Cause Why
15 Defendant and Her Counsel Should Not Be Held in Contempt. The Order to Show Cause was
16 granted, and a hearing was scheduled on September 28, 2009. A conference was held in chambers,
17 so as to avoid embarrassment to Defendant's counsel. Following the conference, the Court ordered:

18 (A) That Defendant's counsel shall have until close of business on October 12,
19 2009, to comply with the Order Granting Plaintiff's Motion to Compel and
20 provide responses to Plaintiff's Request for Production of Documents,
21 including the requested insurance information.

22 (B) That if Defendant does not provide the above-described information by
23 October 12, 2009, Defendant's counsel will be held in contempt of court and
24 will be fined \$150.00 per day, beginning October 13, 2009, until said
25 information is provided. The days shall be calculated on a seven-day week.

26 (C) That if the above-described information is not provided by October 12, 2009,
27
28

1 the Court will strike defendant's pleadings in their entirety. Plaintiff will not
2 need to renew any motion regarding its request to strike defendant's
3 pleadings; Plaintiff will be able to simply submit an Order Striking the
4 Pleadings for signature by the Court.

5 CONCLUSIONS OF LAW

6 Based on the Findings of Fact, as set forth above, the Court makes the following conclusions
7 of law:

8 1. Pursuant to NRCP 34, Plaintiff has the right to request documents which are
9 discoverable pursuant to NRCP 26. According to NRCP 34, Defendant has 30 days from receipt of
10 the requests for production of documents to provide appropriate responses.

11 2. NRCP 34(b) permits a party to seek relief under NRCP 37(a) if the party who receives
12 discovery requests fails to respond appropriately. NRCP 37(a) provides that the Court may enter an
13 order compelling a non-responsive party to disclose the requested information.

14 3. This Court has at least three times entered an order compelling Defendant to respond
15 to Discovery requests.

16 4. NRCP 37(b)(2)(c), permits "an order striking out pleadings or parts thereof," for
17 discovery abuses. "Selection of a particular sanction for discovery abuses under NRCP 37 is
18 generally a matter committed to the sound discretion of the district court." *Stubli v. Big Int'l Trucks,*
19 *Inc.*, 107 Nev. 309, 312-313, 810 P.2d 785 (1991) (citing *Fire Ins. Exchange v. Zenith Radio Corp.*,
20 103 Nev. 648, 649, 747 P.2d 911, 912 (1987) and *Kelly Broadcasting v. Sovereign Broadcast*, 96
21 Nev. 188, 192, 606 P.2d 1089, 1092 (1980.))

22 5. The Nevada Supreme Court held that default judgments will be upheld where "the
23 normal adversary process has been halted due to an unresponsive party, because diligent parties are
24 entitled to be protected against interminable delay and uncertainty as to their legal rights." *Hamlett*
25 *v. Reynolds*, 114 Nev. 863, 963 P.2d 457 (1998) (citing *Skeen v. Valley Bank of Nevada*, 89 Nev.
26 301, 303, 511 P.2d 1053, 1054 (1973).
27
28

6. Defendant has provided no responses whatsoever, nor has Defendant objected to any request. Defendant has failed on at least three occasions to comply with this Court's Order.

7. Defendant has been given ample opportunity to comply with the Court's Orders, and striking Defendant's Answer and Counterclaim is appropriate under the circumstances.

ORDER

Based on the Findings of Fact and Conclusions of Law, as set forth above:

IT IS HEREBY ORDERED that Defendant's Answer and Counterclaim shall be stricken, and the Court Clerk is directed to enter Default against Defendant Susan Fallini.

IT IS FURTHER ORDERED that Defendant's Counterclaim, having been stricken, shall be dismissed with prejudice.

IT IS FURTHER ORDERED that Defendant's counsel, Harold Kuehn, Esq., is in contempt of Court and must pay to Plaintiff's counsel, John P. Aldrich, Esq., \$150.00 per day, beginning October 13, 2009, and continuing to accrue until the information described above is provided. The days shall be calculated on a seven-day week, and this Order shall constitute a judgment upon which Mr. Aldrich can execute. Interest on unpaid balances shall accrue at the statutory rate.

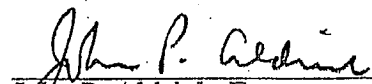
IT IS SO ORDERED.

DATED this 4 day of November, 2009.

ROBERT W. LANE
DISTRICT COURT JUDGE

Submitted by:

ALDRICH LAW FIRM, LTD.



John P. Aldrich, Esq.
Nevada Bar No.: 6877
1601 S. Rainbow Blvd., Suite 160
Las Vegas, Nevada 89146
Attorneys for Plaintiff

9

FILED

2010 FEB -11 P 2:27
RACHEL ALDANA
NYE COUNTY CLERK
BY DEPUTY

1 DFLT

John P. Aldrich, Esq.

2 Nevada Bar No. 6877

ALDRICH LAW FIRM, LTD.

3 1601 S. Rainbow Blvd., Suite 160

Las Vegas, Nevada 89146

4 (702) 853-5490

(702) 227-1975 fax

5 Attorneys for Plaintiff

6
7 THE FIFTH JUDICIAL DISTRICT COURT
8 THE STATE OF NEVADA
9 COUNTY OF NYE

10 Estate of MICHAEL DAVID ADAMS,
11 by and through his mother JUDITH
ADAMS, individually and on behalf of the
Estate,

12 Plaintiffs,

13 vs.

14 SUSAN FALLINI, DOES I-X and ROE
15 CORPORATIONS I-X, inclusive,

16 Defendants.

17 SUSAN FALLINI,

18 Counterclaimant,

19 vs.

20 Estate of MICHAEL DAVID ADAMS,
21 by and through his mother JUDITH
ADAMS, individually and on behalf of the
Estate,

22 Counterdefendants.

Case No.: CV24539
Dept.: 2P

23 DEFAULT

24 It appearing from the files and records in the above-entitled action that Defendant SUSAN
25 FALLINI, being duly served with a copy of the Summons and Complaint on the 1st day of March,
26 2007, and that an Answer and Counterclaim were filed on March 14, 2007. Defendant and her
27
28

1 counsel have not participated in this matter in good faith and both have been found in contempt of
2 Court. Based on the Findings of Fact and Conclusions of Law, on November 4, 2009, it was ordered
3 that Defendant's Answer and Counterclaim be stricken and the Court Clerk enter a Default against
4 Defendant Susan Fallini. Default is so entered.

5 DATED this 4th day of February, 2010.

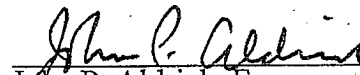
6 CLERK OF THE COURT

7 RACHEL ALDANA

8 By: _____
9 Deputy Clerk

10 The undersigned hereby requests
11 and directs the entry of default.

12 **ALDRICH LAW FIRM, LTD.**

13
14 
15 John P. Aldrich, Esq.
16 Nevada Bar No.: 6877
17 1601 S. Rainbow Blvd., Suite 160
18 Las Vegas, Nevada 89146
19 Attorney for Plaintiffs
20
21
22
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27
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FILED

2010 FEB 11 A 8:49

NYE COUNTY CLERK
BY DEPUTY
Sheila Winn

John P. Aldrich, Esq.
Nevada Bar No. 6877
ALDRICH LAW FIRM, LTD.
1601 S. Rainbow Blvd., Suite 160
Las Vegas, Nevada 89146
(702) 853-5490
(702) 227-1975 (fax)
Attorneys for Plaintiff

THE FIFTH JUDICIAL DISTRICT COURT
THE STATE OF NEVADA
COUNTY OF NYE

Estate of MICHAEL DAVID ADAMS,
by and through his mother JUDITH
ADAMS, individually and on behalf of the
Estate,

Plaintiffs,

vs.

SUSAN FALLINI, DOES I-X and ROE
CORPORATIONS I-X, inclusive,

Defendants.

SUSAN FALLINI,

Counterclaimant,

vs.

Estate of MICHAEL DAVID ADAMS,
by and through his mother JUDITH
ADAMS, individually and on behalf of the
Estate,

Counterdefendants.

Case No.: CV24539
Dept.: 2P

NOTICE OF ENTRY OF DEFAULT

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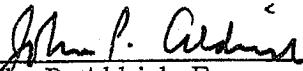
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///

1 PLEASE TAKE NOTICE that a DEFAULT was entered in the above-entitled matter on
2 February 4, 2010, a copy of which is attached hereto.

3 DATED this 8 day of February, 2010.

4 ALDRICH LAW FIRM, LTD.

5 
6 John P. Aldrich, Esq.
7 Nevada State Bar No. 6877
8 1601 S. Rainbow Blvd., Suite 160
9 Las Vegas, Nevada 89146
10 (702) 853-5490
11 (702) 227-1975 (fax)
12 Attorneys for Plaintiff

13 CERTIFICATE OF SERVICE

14 I HEREBY CERTIFY that on the 8th day of February, 2010, I mailed a copy of the
15 NOTICE OF ENTRY OF DEFAULT, in a sealed envelope, to the following and that postage was
16 fully paid thereon:

17 Harold Kuehn, Esq.
18 Gibson, & Kuehn
19 1601 E. Basin Avenue, Suite 101
20 Pahrump, NV 89060
21 Attorney for Defendant/Counterclaimant

22 Katherine M. Barker, Esq.
23 Law Office of Katherine M. Barker
24 701 Bridger Ave, Ste. 500
25 Las Vegas, NV 89101
26 Attorney for Counterdefendant
27 Estate of Michael David Adams

28 
An employee of Aldrich Law Firm, Ltd.

EXHIBIT 1

EXHIBIT 1

FILED

2010 FEB 14 P 2:27
RACHEL ALDANA
NYE COUNTY CLERK
BY DEPUTY

1 DFLT

2 John P. Aldrich, Esq.

3 Nevada Bar No. 6877

4 **ALDRICH LAW FIRM, LTD.**

5 1601 S. Rainbow Blvd., Suite 160

6 Las Vegas, Nevada 89146

7 (702) 853-5490

8 (702) 227-1975 fax

9 *Attorneys for Plaintiff*

10 THE FIFTH JUDICIAL DISTRICT COURT
11 THE STATE OF NEVADA
12 COUNTY OF NYE

13 Estate of MICHAEL DAVID ADAMS,
14 by and through his mother JUDITH
15 ADAMS, individually and on behalf of the
16 Estate,

17 Plaintiffs,

18 vs.

19 SUSAN FALLINI, DOES I-X and ROE
20 CORPORATIONS I-X, inclusive,

21 Defendants.

22 SUSAN FALLINI,

23 Counterclaimant,

24 vs.

25 Estate of MICHAEL DAVID ADAMS,
26 by and through his mother JUDITH
27 ADAMS, individually and on behalf of the
28 Estate,

Counterdefendants.

Case No.: CV24539

Dept.: 2P

DEFAULT

It appearing from the files and records in the above-entitled action that Defendant SUSAN FALLINI, being duly served with a copy of the Summons and Complaint on the 1st day of March, 2007, and that an Answer and Counterclaim were filed on March 14, 2007. Defendant and her

1 counsel have not participated in this matter in good faith and both have been found in contempt of
2 Court. Based on the Findings of Fact and Conclusions of Law, on November 4, 2009, it was ordered
3 that Defendant's Answer and Counterclaim be stricken and the Court Clerk enter a Default against
4 Defendant Susan Fallini. Default is so entered.

5 DATED this 4th day of February, 2010.

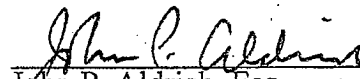
6 CLERK OF THE COURT

7 RACHEL ALDANA

8 By: _____
9 Deputy Clerk

10 The undersigned hereby requests
11 and directs the entry of default.

12 **ALDRICH LAW FIRM, LTD.**

13
14 
15 John P. Aldrich, Esq.
16 Nevada Bar No.: 6877
17 1601 S. Rainbow Blvd., Suite 160
18 Las Vegas, Nevada 89146
19 Attorney for Plaintiffs
20
21
22
23
24
25
26
27
28

1 MOT

John P. Aldrich

2 Nevada Bar No.: 6877

ALDRICH LAW FIRM, LTD.

3 1601 S. Rainbow Blvd., Suite 160

Las Vegas, Nevada 89146

4 (702) 853-5490

Attorney for Plaintiff

FILED

2010 APR -7 P 1:55

NYE COUNTY CLERK
BY DEPUTY

THE FIFTH JUDICIAL DISTRICT COURT
THE STATE OF NEVADA
COUNTY OF NYE

Michelle A. Thorne

9 Estate of MICHAEL DAVID ADAMS, by
and through his mother JUDITH ADAMS,
10 individually and on behalf of the Estate,

11 Plaintiff,

12 v.

13 SUSAN FALLINI, ; DOES I-X, and ROE
14 CORPORATIONS I-X, inclusive,

15 Defendants.

16
17 SUSAN FALLINI,

18 Counterclaimant,

19 vs.

20 Estate of MICHAEL DAVID ADAMS, by
and through his mother JUDITH ADAMS,
21 individually and on behalf of the Estate

22 Counterdefendants.

23
24 **PLAINTIFF'S EX PARTE MOTION FOR ORDER TO SHOW CAUSE WHY**
25 **DEFENDANT SUSAN FALLINI AND HER COUNSEL SHOULD NOT BE HELD IN**
26 **CONTEMPT OF COURT AND POSSIBLE SANCTIONS BE IMPOSED**

27 COMES NOW Plaintiff JUDITH ADAMS, individually and for the ESTATE OF
28 MICHAEL DAVID ADAMS, by and through her counsel of record, John P. Aldrich, Esq., of the
Aldrich Law Firm, Ltd., and hereby moves this Court pursuant to NRS 21.270 and 22.030 for an

1 Order to Show Cause why Defendant Susan Fallini and her counsel should not be held in contempt
2 of court for her failure to comply with the Court's Orders dated April 27, 2009, July 17, 2009, and
3 October 8, 2009 that Susan Fallini must produce all documents responsive to Plaintiff's discovery
4 requests. Further, Defendant requests that both Defendant Fallini and her counsel be required to
5 appear in Court, that Defendant and/or her counsel be sanctioned for Plaintiff having to bring this
6 motion, that the Court refer this matter to the State Bar of Nevada for consideration of disciplinary
7 action, and that the Court impose stiff sanctions – Plaintiff suggests \$5,000 immediately and \$500
8 per day until Defendant complies – for Defendant's repeated failure to comply with the Court's
9 Orders. If Defendant will not comply with the Court's Orders, or if **both Defendant and her**
10 **counsel are not present in Court**, Plaintiff will request that the Court issue a bench warrant until
11 Defendant complies.

12 This Motion is made and based upon all papers, pleadings and records on file herein, the
13 points and authorities and any exhibits attached hereto, and such oral argument as the court may
14 entertain at the time of the hearing on this matter.

15 DATED this 5 day of April, 2010.

16 ALDRICH LAW FIRM, LTD.

17
18 By John P. Aldrich
19 John P. Aldrich
20 Nevada Bar No. 6877
21 1601 S. Rainbow Blvd., Suite 160
22 Las Vegas, NV 89146
23 (702) 853-5490
24 *Attorneys for Plaintiff*

25 **AFFIDAVIT OF JOHN P. ALDRICH IN SUPPORT OF EX PARTE APPLICATION FOR**
26 **ORDER TO SHOW CAUSE**

27 State of Nevada)
28) SS
County of Clark)

Affiant, being first duly sworn, deposes and states the following:

1. I, John P. Aldrich, am an attorney licensed to practice in the State of Nevada and
a partner in the law firm of Aldrich Law Firm, Ltd.

1
2 2. My office address is 1601 S. Rainbow Blvd Suite 160, Las Vegas, Nevada 89146.

3 3. I have personal knowledge of the contents of this document, or where stated upon
4 information and belief, I believe them to be true and I am competent to testify to the facts set
5 forth herein.

6 4. On **March 23, 2009** – more than a year ago – Plaintiff filed a Motion to Compel
7 Defendant's Production of Documents, including information regarding any insurance policies that
8 may provide coverage for the incident as contemplated in the Plaintiff's second request for
9 documents. On **April 27, 2009**, this Honorable Court granted the Motion to Compel and awarded
10 John Aldrich, Esq., \$750.00 in sanctions for having to bring the motion. A Notice of Entry of Order
11 on the order granting the motion to compel was entered on May 18, 2009. It was served by mail on
12 Defendant on May 14, 2009. **Defendant never complied with the Order.**

13 5. On **June 16, 2009**, Plaintiff filed a Motion to Strike Defendant's Answer and
14 Counterclaim due to Defendants complete failure to comply with discovery requests and this Court's
15 Order. The Defendant's Counsel attended the hearing and again provided no explanation as to why
16 Defendant failed to respond to all discovery requests, **but stated Defendant would comply with**
17 **the Court's Order and respond to the discovery requests.** This Honorable Court denied
18 Plaintiff's Motion to Strike **based on Defendant's counsel's promises to comply.** This Honorable
19 Court did, however, **order Defendant to comply with its prior Order** and respond to Plaintiff's
20 discovery requests by **July 12, 2009** or Defendant's Answer and Counterclaim would be stricken.
21 Defendant's counsel paid a total of \$1,750 in sanctions, as ordered by the Court.

22 6. After Defendant again failed to comply with an Order of this Court, on **August 31,**
23 **2009**, Plaintiff brought an Ex Parte Motion for Order to Show Cause Why Defendant Susan Fallini
24 and Her Counsel Should Not be Held in Contempt. The Court issued an Order to Show Cause which
25 required the attendance of both Defendant Susan Fallini and her counsel, Harry Kuehn, Esq. After
26 a hearing in chambers on **September 28, 2009** – a hearing at which **Defendant Susan Fallini did**
27 **not appear** – the Court issued an Order on Plaintiff's Order to Show Cause, dated **October 8, 2009**,
28 that Susan Fallini must produce all documents responsive to Plaintiff's discovery requests by
October 12, 2009. The Court further ordered that if Defendant did not supply the requested

1 information by October 12, 2009, Defendant's counsel would be held in contempt of court and
2 would be fined \$150.00 a day, beginning October 13, 2009. Further this Court ordered that if the
3 requested information was not provided by October 12, 2009, the Court would strike Defendant's
4 pleadings in their entirety. To date, Defendant has failed to comply with the order of this
5 Honorable Court and respond to Plaintiff's discovery requests. On November 6, 2009 an order
6 was entered Striking Defendant's pleadings. As of the date of this Motion, Defendant's counsel
7 owes Plaintiff more than \$25,000 for not complying with this Court's Order.

8 7. Plaintiff has expended significant time and resources in attempting to get Defendant
9 to comply with discovery requests. Defendant and/or her counsel have never provided any reason
10 for her failure to respond to discovery or to comply with the Court's Order. Rather, Defendant's
11 counsel has on more than one occasion acknowledged to the Court that Defendant must provide the
12 required information, but continues to fail to do so.

13 8. Plaintiff first requested the information she is seeking more than a year ago. Plaintiff
14 has a right to know what insurance is available, or if there is any insurance at all. Plaintiff must learn
15 this before she can proceed with seeking a judgment; otherwise, Plaintiff runs the risk that the
16 judgment will not be enforceable as to any insurance that may apply to the case. Plaintiff is also
17 concerned that as more time passes (and the economy continues to struggle), Defendant could be
18 disposing of or wasting assets.

19 9. Defendant's counsel has not been candid with the Court. On at least two occasions
20 Mr. Kuehn has made specific representations to the Court that he and/or his client would provide the
21 requested information. Mr. Kuehn's actions have served only to delay justice for Plaintiff.
22 Defendant's dilatory stall tactics are inappropriate, and Plaintiff asks the Court to grant Plaintiff's
23 Motion for Order Shortening Time. Further, at the hearing on September 28, 2009, Defendant's
24 counsel made specific representations that he had contacted his malpractice insurance carrier and that
25 they would be contacting him (and perhaps Plaintiff's counsel) immediately. However, no insurance
26 attorney has made any effort to intervene in this matter. I am concerned about that representation
27 made by Defendant's counsel as well.

28 ///

10. Defendant's inappropriate actions have resulted in substantial needless litigation and have precluded Plaintiff from obtaining judgment in this matter. It is not the undersigned's purpose or goal to cause difficulties with the State Bar of Nevada for Defendant's attorney, but Plaintiff believes it would be appropriate to refer Defendant's conduct to the State Bar of Nevada for consideration of possible discipline. Defendant's counsel clearly has no respect for this Court, its Orders or its authority.

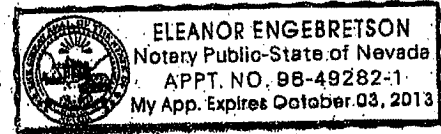
11. Because of Defendant's and/or her counsel's repeated failure to comply with this Court's Orders, and the substantial length of time that has passed, I respectfully request that this Court set the hearing on the Order to Show Cause as soon as practicable so as to avoid further delay in the proceedings.

Dated this 5 day of April, 2010.

John P. Aldrich
JOHN P. ALDRICH, ESQ.

Subscribed & sworn to before me
this 5th day of April, 2010.

Eleanor Engbretson
NOTARY PUBLIC



POINTS AND AUTHORITIES

I.

FACTS

Plaintiff is certain the Court is aware of the facts of both this case and the underlying discovery dispute, as the Court must now consider yet another motion related to Defendant's dilatory and bad faith conduct.

///

///

1 This lawsuit arises out of an incident that occurred on or about July 7, 2005.¹ At
2 approximately 9:00 p.m. on that day, MICHAEL DAVID ADAMS ("Adams") was driving his 1994
3 Jeep Wrangler on SR 375 highway in Nye County, when he collided with a Hereford cow ("cow")
4 owned by Defendant SUSAN FALLINI ("Fallini"). Adams died at the scene as a result of the
5 impact.

6 The decedent's mother, JUDITH ADAMS ("Judith"), filed a complaint on behalf of Adams'
7 mother and his estate on November 29, 2006 and properly served Fallini with process. Fallini filed
8 her Answer and Counterclaim on March 14, 2007. On October 31, 2007, Plaintiff submitted
9 interrogatories to Fallini. Those interrogatories were never answered. Adams also submitted
10 requests for admissions and its first set of requests for production of documents on October 31, 2007.
11 A second set of requests for production of documents were submitted to Fallini on July 2, 2008,
12 requesting information as to Fallini's insurance policies and/or carriers that may provide coverage
13 for damages that occurred as a result of the incident

14 Fallini never responded to any of these requests. To this date, Fallini has not produced any
15 responses of any kind to Plaintiff's written discovery requests. Despite an extension requested by
16 Plaintiff and granted by the Court, the discovery period has lapsed without any responses being
17 provided by Defendant.

18 On or about April 7, 2008 (and again on May 14, 2008 with a Certificate of Service), Plaintiff
19 filed a Motion for Partial Summary Judgment. Defendant did not oppose that motion and the Court
20 granted that Motion on July 30, 2008. Notice of entry of the Order Granting Plaintiff's Motion for
21 Summary Judgment was served on Defendant on August 15, 2008.

22 Plaintiff attempted to amicably resolve the discovery dispute and obtain a copy of
23 Defendant's applicable insurance policies, but to no avail. On February 24, 2009, Plaintiff sent
24

25 ¹ Previously, in Plaintiff's Motion to Compel and Motion to Strike, Plaintiff attached the
26 discovery documents, prior orders, etc., mentioned in the Statement of Facts. Those documents
27 number dozens of pages. Plaintiff's counsel does not attach those documents to this Motion as
28 well for three reasons: (1) because they have already been presented to the Court, (2) to avoid
unnecessary copy expense to Plaintiff, and (3) Defendant has never disputed the Statement of
Facts or the documents referenced therein.

1 letters to Defendant's counsel seeking responses to the discovery.

2 Plaintiff's counsel, Mr. Aldrich, has attempted to discuss this discovery issue with
3 Defendant's counsel, Mr. Kuehn, as well. On or about March 6, 2009, Plaintiff's counsel contacted
4 the office of Defendant's counsel. Mr. Aldrich was informed that Mr. Kuehn was not available. Mr.
5 Aldrich left a message with Mr. Aldrich's phone number and asked that Mr. Kuehn return the call.
6 No return call ever came.

7 On March 18, 2009, Mr. Aldrich again contacted the office of Mr. Kuehn. Mr. Aldrich was
8 informed that Mr. Kuehn was not available. Mr. Aldrich left a message with Mr. Aldrich's phone
9 number and asked that Mr. Kuehn return the call. No return call ever came.

10 On **March 23, 2009** – nearly nine months after propounding the discovery and more than a
11 year ago – Plaintiff filed a Motion to Compel Defendant's Production of Documents, including
12 information regarding any insurance policies that may provide coverage for the incident as
13 contemplated in the Plaintiff's second request for documents. This motion was heard on **April 27,**
14 **2009**. The Defendant's attorney, Mr. Kuehn, attended the hearing. Mr. Kuehn did not oppose the
15 motion to compel and agreed at the hearing it was warranted. Mr. Kuehn provided no explanation
16 as to why Defendant failed to respond to all discovery requests. Mr. Kuehn agreed sanctions were
17 warranted, however, he disputed the amount of sanctions. This Honorable Court granted the Motion
18 to Compel and awarded John Aldrich, Esq., \$750.00 in sanctions for having to bring the motion.
19 A Notice of Entry of Order on the order granting the motion to compel was entered on May 18, 2009.
20 It was served by mail on Defendant on May 14, 2009. Defendant never complied with the Order.

21 On **June 16, 2009**, Plaintiff filed a Motion to Strike Defendant's Answer and Counterclaim
22 due to Defendants complete failure to comply with discovery requests and this Court's Order. The
23 Defendant's counsel again attended the hearing and again provided no explanation as to why
24 Defendant failed to respond to all discovery requests, but stated Defendant would comply with
25 discovery requests. This Honorable Court denied Plaintiff's Motion to Strike based on Defendant's
26 counsel's promises to comply. This Honorable Court did, however, order Defendant to comply with
27 the Order granting Plaintiff's Motion to Compel and to respond to Plaintiff's discovery requests by
28 **July 12, 2009** or Defendant's Answer and Counterclaim would be stricken. The Court also ordered

1 Defendant to pay a \$1,000 sanction.

2 Defendant still did not comply with the Court's Order and failed to respond to Plaintiff's
3 discovery requests. On **August 31, 2009**, Plaintiff brought an Ex Parte Motion for Order to Show
4 Cause Why Defendant Susan Fallini and Her Counsel Should Not be Held in Contempt. The Court
5 issued an Order on Plaintiff's Order to Show Cause, dated **October 8, 2009**, that Susan Fallini must
6 produce all documents responsive to Plaintiffs discovery requests by **October 12, 2009**. The Court
7 further ordered that if Defendant did not supply the requested information by October 12, 2009,
8 Defendant's counsel would be held in contempt of court and would be fined \$150.00 a day,
9 beginning October 13, 2009. Further this Court ordered that if the requested information was not
10 provided by October 12, 2009, the Court would strike Defendant's pleadings in their entirety. To
11 date, Defendant has failed to comply with the order of this Honorable Court and respond to
12 Plaintiff's discovery requests.

13 On **November 6, 2009**, an order was entered Striking Defendant's pleadings. As of the date
14 of this Motion, Defendant and/or her counsel owes more than **\$25,000** for not complying with this
15 Court's Orders.

16 Plaintiff is entitled to the discovery responses, and in fact, Defendant has admitted as much
17 to this Court on more than one occasion. Plaintiff has a right to know what insurance is available,
18 or if there is any insurance at all. Plaintiff must learn this before she can proceed with seeking a
19 judgment; otherwise, Plaintiff runs the risk that the judgment will not be enforceable as to any
20 insurance that may apply to the case. Plaintiff is also concerned that as more time passes (and the
21 economy continues to struggle), Defendant could be disposing of or wasting assets.

22 Defendant's counsel has not been candid with the Court. On at least two occasions Mr.
23 Kuehn has made specific representations to the Court that he and/or his client would provide the
24 requested information. Mr. Kuehn's actions have served only to delay justice for Plaintiff.
25 Defendant's dilatory stall tactics are inappropriate, and Plaintiff asks the Court to grant Plaintiff's
26 Motion for Order Shortening Time.

27 Defendant's inappropriate actions have resulted in substantial needless litigation and have
28 precluded Plaintiff from obtaining judgment in this matter. It is not the undersigned's purpose or

1 goal to cause difficulties with the State Bar of Nevada for Defendant's attorney, but Plaintiff believes
2 it would be appropriate to refer Defendant's conduct to the State Bar of Nevada for consideration
3 of possible discipline.

4 Because of Defendant's and/or her counsel's repeated refusal and failure to comply
5 with this Court's Orders, and the substantial length of time that has passed, I respectfully request that
6 this Court set the hearing on the Order to Show Cause as soon as practicable so as to avoid further
7 delay in the proceedings.

8 **II.**

9 **LEGAL ARGUMENT**

10 **PLAINTIFF RESPECTFULLY REQUESTS THIS COURT ISSUE AN ORDER TO**
11 **SHOW CAUSE WHY DEFENDANT SUSAN FALLINI AND HER COUNSEL SHOULD**
12 **NOT BE HELD IN CONTEMPT OF COURT FOR FAILURE TO ABIDE BY THE**
13 **COURT'S ORDERS. PLAINTIFF FURTHER REQUESTS BOTH DEFENDANT**
14 **FALLINI AND HER COUNSEL TO BE ORDERED TO PERSONALLY APPEAR IN**
15 **COURT ON THE DAY OF THE HEARING, AND THAT THE COURT CONSIDER**
16 **FURTHER SANCTIONS AGAINST DEFENDANT**

17 This Court has authority, pursuant to NRS 22.030, to enter an order to show cause why
18 **Susan Fallini and her counsel** should not be held in contempt of court for failing to comply with
19 this Honorable Court's orders of October 8, 2009, July 17, 2009 and April 27, 2009, ordering
20 Defendant to respond to Plaintiff's discovery requests.

21 NRS 22.040 provides:

22 When the contempt is not committed in the immediate view of and
23 presence of the court or judge, a warrant of attachment may be
24 issued to bring the person charged to answer, or, without previous
25 arrest, a warrant of commitment may, upon notice, or upon an order
26 to show cause, be granted; and no warrant of commitment shall be
27 issued without such previous attachment to answer, or such notice
28 or order to show cause

23 NRS 22.010 further provides in pertinent part:

24 The following acts or omissions shall be deemed contempts:

25 ...

26 3. Disobedience or resistance to any lawful writ, order rule or
27 process issued by the court or judge at chambers.

1 In the present case, Defendant has repeatedly disregarded and disobeyed this Court's Orders.
2 Susan Fallini and her counsel are in contempt under NRS 22.010 because they disobeyed three of
3 this Court's Orders to respond to Plaintiff's discovery requests.

4 Notwithstanding proper attempts and due diligence of service of a lawfully obtained Order,
5 Susan Fallini and her counsel have acted in bad faith and failed to provide NRCp 16.1 disclosures
6 and has failed to respond to any written discovery propounded by Plaintiff. Plaintiff submitted her
7 initial interrogatories to Defendant on October 31, 2007, and continued sending various discovery
8 requests through July 2, 2008. Plaintiffs submitted interrogatories, requests for admission, and two
9 sets of requests for production of documents, including a request that Fallini produce all related
10 insurance information regarding the incident.

11 Despite these discovery requests, Defendant has failed and refused to cooperate or respond.
12 Plaintiff's counsel has made phone calls and submitted letters to Fallini's counsel notifying them of
13 these discovery requests to no avail. Nevertheless, Fallini failed to provide any of the information
14 as requested despite the extension. Plaintiff was then forced to file a motion to compel. Defendant
15 did not oppose the motion, but agreed it was warranted. Defendant still failed to comply with the
16 order.

17 Defendant has failed to produce any sort of discovery despite numerous formal requests,
18 followed by phone calls and letters for nearly a year and a half from the initial submission of
19 interrogatories on September 10, 2007. As shown above, Plaintiff has made several good faith
20 efforts to procure the discovery without court intervention, including re-opening discovery and
21 extending the deadline. Plaintiff finally sought court intervention and this Court issued an order
22 compelling Defendant to comply with discovery requests. Nevertheless, Defendant continues to
23 show no interest in cooperating with discovery guidelines or this Court's order. Defendant's failure
24 to comply with this Court's order and all discovery requests has completely halted the normal
25 adversary process.

26 Plaintiff requests that Defendant be required to produce all insurance information including
27 a declaration sheet. Defendant further requests that both Defendant Fallini and her Counsel be
28 required to appear in court to answer as to why they should not be held in contempt of Court, and

1 why the Court should not impose stiff sanctions – Plaintiff suggests suggests \$5,000 immediately
2 and \$500 per day until Defendant complies – for repeated failure and refusal to abide by this Court's
3 Orders. If Defendant will not comply with the Court's Orders, or if **both Defendant and her**
4 **counsel are not present in Court**, Plaintiff will request that the Court issue a bench warrant until
5 Defendant complies.

6 This Court is authorized pursuant to NRS 22.040 to issue an appropriate order to show cause
7 why Susan Fallini and her counsel should not be held in contempt of court. This Court is further
8 authorized to order sanctions against Susan Fallini for Plaintiff having to bring this motion and for
9 Defendant's counsel's utter lack of respect for the Court, its Orders and its authority.

10 III.

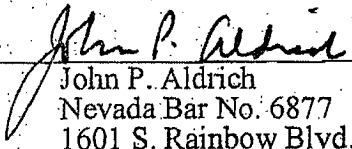
11 CONCLUSION

12 The Court has authority pursuant to NRS 22.040 to issue and order to show cause why
13 Defendant and her counsel should not be held in contempt of court. Further, this Court has inherent
14 powers to sanction inequitable conduct. Under both authorities, Plaintiff respectfully requests that
15 this Court order Susan Fallini and her counsel both appear in court to show cause why sanctions,
16 including civil contempt sanctions, a bench warrant and monetary sanctions, should not be issued
17 against her and her counsel. Plaintiff further requests that the hearing on the Order to Show Cause
18 be held as soon as practicable.

19 DATED this 5 day of April, 2010.

20 ALDRICH LAW FIRM, LTD.

21
22 By


John P. Aldrich
Nevada Bar No. 6877
1601 S. Rainbow Blvd., Suite 160
Las Vegas, NV 89146
(702) 853-5490
Attorneys for Plaintiff

1 **ORDR**

John P. Aldrich, Esq.

2 Nevada Bar No. 6877

ALDRICH LAW FIRM, LTD.

3 1601 S. Rainbow Blvd., Suite 160

Las Vegas, Nevada 89146

4 (702) 853-5490

(702) 227-1975 fax

5 *Attorneys for Plaintiff*

FILED

2010 APR 19 P 1:27

NYE COUNTY CLERK
BY DEPUTY

THE FIFTH JUDICIAL DISTRICT COURT
THE STATE OF NEVADA
COUNTY OF NYE

Michelle A. Tibone

9 Estate of MICHAEL DAVID ADAMS,
by and through his mother JUDITH
10 ADAMS, individually and on behalf of the
Estate,

11 Plaintiffs,

12 vs.

13 SUSAN FALLINI, DOES I-X and ROE
14 CORPORATIONS I-X, inclusive,

15 Defendants.

16 SUSAN FALLINI,

17 Counterclaimant,

18 vs.

19 Estate of MICHAEL DAVID ADAMS,
by and through his mother JUDITH
20 ADAMS, individually and on behalf of the
Estate,

21 Counterdefendants.

Case No.: CV24539
Dept.: 2P

23 **ORDER TO SHOW CAUSE WHY DEFENDANT SUSAN FALLINI AND HER**
24 **COUNSEL SHOULD NOT BE HELD IN CONTEMPT OF COURT AND POSSIBLE**
25 **SANCTIONS BE IMPOSED**

26 ///

27 ///

1 This Court, having reviewed the Ex Parte Motion For Order To Show Cause Why Defendant
2 Susan Fallini and her Counsel Should Not Be Held in Contempt of Court and Possible Sanctions Be
3 Imposed, and other documentation in support thereof, and finding that the Application meets the
4 requirements of Chapter 22 of the Nevada Revised Statutes and good cause appearing therefore:

5 IT IS HEREBY ORDERED that Defendant Susan Fallini and her Counsel, shall appear in
6 Department 2P of the above-entitled Court at the hour of 9.00 o'clock a.m./p.m. on the
7 24 day of May, 2010, 2009, and show cause why Susan Fallini and her
8 Counsel should not be held in contempt of court.

9 IT IS FURTHER ORDERED that the Plaintiff, Judith Adams shall personally serve the
10 Application and this Order on Susan Fallini and her Counsel through her counsel, no later than three
11 (3) days after the issuance of this Order.

12 IT IS FURTHER ORDERED that Susan Fallini and her Counsel shall file and personally
13 serve their written response to this Order no later than _____, and
14 that the Plaintiff, Judith Adams shall file and personally serve her reply memorandum, if any, no
15 later than _____.

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1 PLEASE BE ADVISED that if Susan Fallini and/or her Counsel fail to appear, they shall be
2 deemed to have waived their right to the hearing and that in such case the Court may impose
3 sanctions including granting Plaintiff Judith Adams her fees and costs, imposition of sanctions as
4 requested by Plaintiff, and grant any other relief necessary and proper to effectuate the compliance
5 with its Order compelling Susan Fallini and her Counsel to respond to Plaintiff's discovery requests,
6 including providing information regarding any insurance policies that may apply.


7 DATED this 14 day of April, 2010.

8 **ROBERT W. LANE**

9 **DISTRICT COURT JUDGE**

10 Submitted by:

11 **ALDRICH LAW FIRM, LTD.**

12
13 
14 John P. Aldrich, Esq.
15 Nevada Bar No.: 6877
16 1601 S. Rainbow Blvd., Suite 160
Las Vegas, Nevada 89146
Attorneys for Plaintiff

1 NEO
2 John P. Aldrich, Esq.
3 Nevada Bar No. 6877
4 **ALDRICH LAW FIRM, LTD.**
5 1601 S. Rainbow Blvd., Suite 160
6 Las Vegas, Nevada 89146
7 (702) 853-5490
8 (702) 227-1975 fax
9 *Attorneys for Plaintiff*

FILED
FIFTH JUDICIAL DISTRICT

APR 26 2010

Nye County Clerk

Michelle A. Thorne Deputy

7 THE FIFTH JUDICIAL DISTRICT COURT
8 THE STATE OF NEVADA
9 COUNTY OF NYE

10 Estate of MICHAEL DAVID ADAMS,
11 by and through his mother JUDITH
12 ADAMS, individually and on behalf of the
13 Estate,

14 Plaintiffs,

15 vs.

16 SUSAN FALLINI, DOES I-X and ROE
17 CORPORATIONS I-X, inclusive,

18 Defendants.

19 SUSAN FALLINI,

20 Counterclaimant,

21 vs.

22 Estate of MICHAEL DAVID ADAMS,
23 by and through his mother JUDITH
24 ADAMS, individually and on behalf of the
25 Estate,

26 Counterdefendants.

Case No.: CV24539
Dept.: 2P

27 NOTICE OF ENTRY OF ORDER

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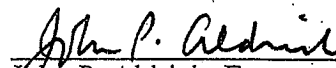
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1 PLEASE TAKE NOTICE that an Order was entered in the above-entitled matter on April
2 19, 2010, a copy of which is attached hereto as Exhibit 1.

3 DATED this 22nd day of April, 2010.

4 ALDRICH LAW FIRM, LTD.

5 
6 John P. Aldrich, Esq.
7 Nevada State Bar No. 6877
8 1601 S. Rainbow Blvd., Suite 160
9 Las Vegas, Nevada 89146
10 (702) 853-5490
11 (702) 227-1975
12 *Attorneys for Plaintiff*

13 **CERTIFICATE OF SERVICE**

14 I HEREBY CERTIFY that on the 23rd day of April, 2010, I mailed a copy of the
15 NOTICE OF ENTRY OF ORDER, in a sealed envelope, to the following and that postage was fully
16 paid thereon:

17 Harold Kuehn, Esq.
18 Gibson, & Kuehn
19 1601 E. Basin Avenue, Suite 101
20 Pahrump, NV 89060
21 *Attorney for Defendant/Counterclaimant*

22 Katherine M. Barker, Esq.
23 Law Office of Katherine M. Barker
24 701 Bridger Ave, Ste. 500
25 Las Vegas, NV 89101
26 *Attorney for Counterdefendant*
27 *Estate of Michael David Adams*

28 
An employee of Aldrich Law Firm, Ltd.

EXHIBIT 1

EXHIBIT 1

1 **ORDER**

2 John P. Aldrich, Esq.
3 Nevada Bar No. 6877
4 **ALDRICH LAW FIRM, LTD.**
5 1601 S. Rainbow Blvd., Suite 160
6 Las Vegas, Nevada 89146
7 (702) 853-5490
8 (702) 227-1975 fax
9 *Attorneys for Plaintiff*

FILED

2010 APR 19 P 1:27

NYE COUNTY CLERK
BY DEPUTY

THE FIFTH JUDICIAL DISTRICT COURT
THE STATE OF NEVADA
COUNTY OF NYE

Michelle A. Thore

9 Estate of MICHAEL DAVID ADAMS,
10 by and through his mother JUDITH
11 ADAMS, individually and on behalf of the
12 Estate,

Plaintiffs,

vs.

13 SUSAN FALLINI, DOES I-X and ROE
14 CORPORATIONS I-X, inclusive,

Defendants.

16 SUSAN FALLINI,

Counterclaimant,

vs.

19 Estate of MICHAEL DAVID ADAMS,
20 by and through his mother JUDITH
21 ADAMS, individually and on behalf of the
22 Estate,

Counterdefendants.

Case No.: CV24539
Dept.: 2P

**ORDER TO SHOW CAUSE WHY DEFENDANT SUSAN FALLINI AND HER
COUNSEL SHOULD NOT BE HELD IN CONTEMPT OF COURT AND POSSIBLE
SANCTIONS BE IMPOSED**

///

///

1 This Court, having reviewed the Ex Parte Motion For Order To Show Cause Why Defendant
2 Susan Fallini and her Counsel Should Not Be Held in Contempt of Court and Possible Sanctions Be
3 Imposed, and other documentation in support thereof, and finding that the Application meets the
4 requirements of Chapter 22 of the Nevada Revised Statutes and good cause appearing therefore:

5 IT IS HEREBY ORDERED that Defendant Susan Fallini and her Counsel, shall appear in
6 Department 2P of the above-entitled Court at the hour of 9:00 o'clock a.m./p.m. on the
7 24 day of May, 2010, 2009, and show cause why Susan Fallini and her
8 Counsel should not be held in contempt of court.

9 IT IS FURTHER ORDERED that the Plaintiff, Judith Adams shall personally serve the
10 Application and this Order on Susan Fallini and her Counsel through her counsel, no later than three
11 (3) days after the issuance of this Order.

12 IT IS FURTHER ORDERED that Susan Fallini and her Counsel shall file and personally
13 serve their written response to this Order no later than _____, and
14 that the Plaintiff, Judith Adams shall file and personally serve her reply memorandum, if any, no
15 later than _____.

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1 PLEASE BE ADVISED that if Susan Fallini and/or her Counsel fail to appear, they shall be
2 deemed to have waived their right to the hearing and that in such case the Court may impose
3 sanctions including granting Plaintiff Judith Adams her fees and costs, imposition of sanctions as
4 requested by Plaintiff, and grant any other relief necessary and proper to effectuate the compliance
5 with its Order compelling Susan Fallini and her Counsel to respond to Plaintiff's discovery requests,
6 including providing information regarding any insurance policies that may apply.

7 DATED this 14 day of April, 2010.

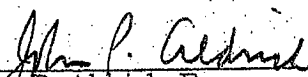
8 **ROBERT W. LANE**

9

DISTRICT COURT JUDGE

10 Submitted by:

11 **ALDRICH LAW FIRM, LTD.**

12
13 

14 John P. Aldrich, Esq.
15 Nevada Bar No.: 6877
16 1601 S. Rainbow Blvd., Suite 160
Las Vegas, Nevada 89146
Attorneys for Plaintiff

1 **ORDER**

2 John P. Aldrich, Esq.
3 Nevada Bar No. 6877
4 **ALDRICH LAW FIRM, LTD.**
5 1601 S. Rainbow Blvd., Suite 160
6 Las Vegas, Nevada 89146
7 (702) 853-5490
8 (702) 227-1975 fax
9 *Attorneys for Plaintiff*

FILED

2010 JUN -2 A 8:56

REBECCA BALLARD

CLERK
BY DEPUTY

6 **THE FIFTH JUDICIAL DISTRICT COURT**
7 **THE STATE OF NEVADA, COUNTY OF NYE**

8 Estate of MICHAEL DAVID ADAMS,
9 by and through his mother JUDITH
10 ADAMS, individually and on behalf of the
11 Estate,

12 **Plaintiffs,**

13 **vs.**

14 SUSAN FALLINI, DOES I-X and ROE
15 CORPORATIONS I-X, inclusive,

16 **Defendants.**

17 **SUSAN FALLINI,**

18 **Counterclaimant,**

19 **vs.**

20 Estate of MICHAEL DAVID ADAMS,
21 by and through his mother JUDITH
22 ADAMS, individually and on behalf of the
23 Estate,

24 **Counterdefendants.**

25 **FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER HOLDING**
26 **DEFENDANT'S COUNSEL IN CONTEMPT OF COURT**

27 THIS MATTER having come on for hearing on Monday, May 24, 2010, a hearing having
28 been held before the Honorable Robert W. Lane, and John P. Aldrich, Esq., of Aldrich Law Firm,
Ltd., appearing on behalf of the Plaintiffs, with Thomas Gbson, Esq., appearing on behalf of
Defendant, the Court hereby orders as follows:

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FINDINGS OF FACT

The Court, having been presented the following facts by Plaintiff's counsel and having received no opposition to the facts by Defendant, makes the following findings of fact:

1. This lawsuit arises out of an incident that occurred on or about July 7, 2005. At approximately 9:00 p.m. on that day, MICHAEL DAVID ADAMS ("Adams") was driving his 1994 Jeep Wrangler on SR 375 highway in Nye County, when he collided with a Hereford cow ("cow") owned by Defendant SUSAN FALLINI ("Fallini"). Adams died at the scene as a result of the impact.

2. The decedent's mother, JUDITH ADAMS ("Judith"), filed a complaint on behalf of Adams' mother and his estate on November 29, 2006 and properly served Fallini with process. Fallini filed her Answer and Counterclaim on March 14, 2007.

3. On October 31, 2007, Plaintiff submitted interrogatories to Fallini. Those interrogatories were never answered. Adams also submitted requests for admissions and its first set of requests for production of documents on October 31, 2007. A second set of requests for production of documents were submitted to Fallini on July 2, 2008, requesting information as to Fallini's insurance policies and/or carriers that may provide coverage for damages that occurred as a result of the incident.

4. Fallini never responded to any of these requests. To this date, Fallini has not produced any responses of any kind to Plaintiff's written discovery requests. Despite an extension requested by Plaintiff and granted by the Court, the discovery period has lapsed without any responses being provided by Defendant.

5. On or about April 7, 2008 (and again on May 14, 2008 with a Certificate of Service), Plaintiff filed a Motion for Partial Summary Judgment. Defendant did not oppose that motion and the Court granted that Motion on July 30, 2008. Notice of entry of the Order Granting Plaintiff's Motion for Summary Judgment was served on Defendant on August 15, 2008.

6. Plaintiff attempted to amicably resolve the discovery dispute and obtain a copy of

1 Defendant's applicable insurance policies, but to no avail. On February 24, 2009, Plaintiff sent
2 letters to Defendant's counsel seeking responses to the discovery.

3 7. Plaintiff's counsel, Mr. Aldrich, attempted to discuss this discovery issue with
4 Defendant's counsel, Mr. Harry Kuehn, as well. On or about March 6, 2009, Plaintiff's counsel
5 contacted the office of Defendant's counsel. Mr. Aldrich was informed that Mr. Kuehn was not
6 available. Mr. Aldrich left a message with Mr. Aldrich's phone number and asked that Mr. Kuehn
7 return the call. No return call ever came.

8 8. On March 18, 2009, Mr. Aldrich again contacted the office of Mr. Kuehn. Mr.
9 Aldrich was informed that Mr. Kuehn was not available. Mr. Aldrich left a message with Mr.
10 Aldrich's phone number and asked that Mr. Kuehn return the call. No return call ever came.
11 (Exhibit 1.)

12 9. On March 23, 2009, Plaintiff filed a Motion to Compel Defendant's Production of
13 Documents, including information regarding any insurance policies that may provide coverage for
14 the incident as contemplated in the Plaintiff's second request for documents. This motion was heard
15 on April 27, 2009. The Defendant's attorney, Mr. Kuehn, attended the hearing. Mr. Kuehn did not
16 oppose the motion to compel and agreed at the hearing it was warranted. Mr. Kuehn provided no
17 explanation as to why Defendant failed to respond to all discovery requests. Mr. Kuehn agreed
18 sanctions were warranted, however, he disputed the amount of sanctions.

19 10. At the hearing on April 27, 2009, this Court granted the Motion to Compel and
20 awarded John Aldrich, Esq., \$750.00 in sanctions for having to bring the motion. A Notice of Entry
21 of Order on the order granting the motion to compel was entered on May 18, 2009. It was served
22 by mail on Defendant on May 14, 2009. Defendant never complied with the Order.

23 11. On June 16, 2009 Plaintiff filed a Motion to Strike Defendant's Answer and
24 Counterclaim due to Defendants complete failure to comply with discovery requests and this Court's
25 Order. The Defendant's counsel again attended the hearing and again provided no explanation as
26 to why Defendant failed to respond to all discovery requests, but stated Defendant would comply
27

1 with discovery requests.

2 12. The Court denied Plaintiff's Motion to Strike based on Defendant's counsel's
3 promises to comply. This Court did, however, order Defendant to comply with the Order granting
4 Plaintiff's Motion to Compel and to respond to Plaintiff's discovery requests by August 12, 2009
5 or Defendant's Answer and Counterclaim would be stricken. The Court also ordered Defendant to
6 pay a \$1,000 sanction.

7 13. To date, Defendant has failed to comply with the order of this Honorable Court and
8 respond to Plaintiff's discovery requests. Defendant's counsel has paid the \$1,750.00 in sanctions
9 as ordered by the Court.

10 14. Plaintiff is entitled to the discovery responses, and in fact, Defendant has admitted
11 as much on more than one occasion. Nevertheless, Defendant refused and continues to refuse to
12 respond.

13 15. Because Defendant failed and refused to follow this Court's order and provide the
14 requested information, Plaintiff brought its first Ex Parte Motion for Order to Show Cause Why
15 Defendant and Her Counsel Should Not Be Held in Contempt. The Order to Show Cause was
16 granted, and a hearing was scheduled on September 28, 2009. A conference was held in chambers,
17 so as to avoid embarrassment to Defendant's counsel. Following the conference, the Court ordered:

18 (A) That Defendant's counsel shall have until close of business on October 12,
19 2009, to comply with the Order Granting Plaintiff's Motion to Compel and
20 provide responses to Plaintiff's Request for Production of Documents,
21 including the requested insurance information.

22 (B) That if Defendant does not provide the above-described information by
23 October 12, 2009, Defendant's counsel will be held in contempt of court and
24 will be fined \$150.00 per day, beginning October 13, 2009, until said
25 information is provided. The days shall be calculated on a seven-day week.

26 (C) That if the above-described information is not provided by October 12, 2009,
27

1 the Court will strike defendant's pleadings in their entirety. Plaintiff will not
2 need to renew any motion regarding its request to strike defendant's
3 pleadings; Plaintiff will be able to simply submit an Order Striking the
4 Pleadings for signature by the Court.

5 16. Defendant and her counsel failed to provide the information at issue by October 12,
6 2009. Consequently, on or about November 4, 2009, the Court entered its Findings of Fact,
7 Conclusions of Law and Order Striking Answer and Counterclaim of Defendant Susan Fallini and
8 Holding Defendant's Counsel in Contempt of Court. Pursuant to said Order, Defendant's counsel,
9 Harold Kuehn, Esq., was held in contempt of Court and was ordered to pay to Plaintiff's counsel,
10 John P. Aldrich, Esq., \$150.00 per day, beginning October 13, 2009, and continuing to accrue until
11 the information described above is provided. The Order provided that the days shall be calculated
12 on a seven-day week, and that the Order shall constitute a judgment upon which Mr. Aldrich can
13 execute. Interest on unpaid balances was ordered to accrue at the statutory rate.

14 17. Again in contravention of the Court's orders, Defendant and her counsel have failed
15 and refused to provide the information they have been ordered to provide. Defendant's counsel's
16 utter refusal to abide by the Court's orders has stalled and frustrated the litigation process.

17 18. On or about April 7, 2010, Plaintiff again brought an Ex Parte Motion for Order to
18 Show Cause Why Defendant Susan Fallini and Her Counsel Should Not Be Held in Contempt of
19 Court and Possible Sanctions Be Imposed. On or about April 19, 2010, the Court entered the Order
20 to Show Cause and set a hearing for Monday, May 24, 2010.

21 19. As with the prior Order to Show Cause (and several other motions), despite personal
22 service on Defendant's counsel, neither Defendant nor her counsel responded in writing to the Order
23 to Show Cause.

24 20. The Court held a hearing on Monday, May 24, 2010. Thomas Gibson, Esq., the law
25 partner to Harry Kuehn, Esq., appeared on behalf of Defendant. Defendant Susan Fallini did not
26 appear at the hearing.

1 21. During the hearing, Mr. Gibson indicated he had not seen the file and provided no
2 valid excuse for Defendant's or Defendant's counsel's failure and refusal to abide by the Court's
3 prior orders. Mr. Aldrich also advised the Court that over 220 days had passed since the Court-
4 imposed sanction began to accrue, and that over \$30,000.00 was now due pursuant to that sanction.

5 22. Mr. Gibson made specific representations to the Court that the client, Defendant
6 Susan Fallini, was unaware of the status of this case. Mr. Gibson also made specific representations
7 that he would obtain the information at issue immediately and provide it to Plaintiff. Mr. Aldrich
8 requested that the Court impose a \$5,000.00 sanction, as well as a \$500.00 per day sanction, starting
9 on May 25, 2010, until Defendant provides the information. The Court imposed the \$5,000.00
10 sanction upon Defendant's counsel. The Court advised both counsel that the Court would give
11 Defendant until June 1, 2010 to comply with the Court's prior orders before increasing the daily
12 sanction from \$150.00 per day to \$500.00 per day.

13 23. Plaintiff's counsel also requested that the Court issue a bench warrant for Defendant
14 Susan Fallini, given her failure to appear as ordered by the Court on two occasions. The Court
15 declined to do so at the hearing on May 24, 2010, but indicated it may be willing to do so if
16 Defendant does not comply this time.

17 CONCLUSIONS OF LAW

18 Based on the Findings of Fact, as set forth above, the Court makes the following conclusions
19 of law:

20 1. Pursuant to NRCP 34, Plaintiff has the right to request documents which are
21 discoverable pursuant to NRCP 26. According to NRCP 34, Defendant has 30 days from receipt of
22 the requests for production of documents to provide appropriate responses.

23 2. NRCP 34(b) permits a party to seek relief under NRCP 37(a) if the party who receives
24 discovery requests fails to respond appropriately. NRCP 37(a) provides that the Court may enter an
25 order compelling a non-responsive party to disclose the requested information.

26 3. This Court has at least four times entered an order compelling Defendant to respond
27
28

1 to Discovery requests.

2 4. NRCP 37(b)(2)(c), permits "an order striking out pleadings or parts thereof," for
3 discovery abuses. "Selection of a particular sanction for discovery abuses under NRCP 37 is
4 generally a matter committed to the sound discretion of the district court." *Stubli v. Big Int'l Trucks,*
5 *Inc.*, 107 Nev. 309, 312-313, 810 P.2d 785 (1991) (citing *Fire Ins. Exchange v. Zenith Radio Corp.*,
6 103 Nev. 648, 649, 747 P.2d 911, 912 (1987) and *Kelly Broadcasting v. Sovereign Broadcast*, 96
7 Nev. 188, 192, 606 P.2d 1089, 1092 (1980.))

8 5. The Nevada Supreme Court held that default judgments will be upheld where "the
9 normal adversary process has been halted due to an unresponsive party, because diligent parties are
10 entitled to be protected against interminable delay and uncertainty as to their legal rights." *Hamlett*
11 *v. Reynolds*, 114 Nev. 863, 963 P.2d 457 (1998) (citing *Skeen v. Valley Bank of Nevada*, 89 Nev.
12 301, 303, 511 P.2d 1053, 1054 (1973).

13 6. Defendant has provided no responses whatsoever, nor has Defendant objected to any
14 request. Defendant has failed on at least four occasions to comply with this Court's Order. At no
15 time has Defendant or her counsel given any excuse or justification for their failure and refusal to
16 abide by the Court's orders.

17 7. Defendant has been given ample opportunity to comply with the Court's Orders.
18 Defendant has halted the litigation process and the additional sanctions of \$5,000.00 immediately
19 and \$500.00 per day beginning June 1, 2010, if Defendant does not comply with the Court's prior
20 orders, are appropriate under the circumstances.

21 ORDER

22 Based on the Findings of Fact and Conclusions of Law, as set forth above:

23 IT IS HEREBY ORDERED that Defendant's counsel, Harold Kuehn, Esq., is in contempt
24 of Court and must pay to Plaintiff's counsel, John P. Aldrich, Esq., \$5,000.00, in addition to the
25 \$150.00 per day that began accruing on October 13, 2009, and which continues to accrue until the
26 Defendant and her counsel comply with the Court's prior orders, including providing the information
27

1 sought by Plaintiff.

2 IT IS FURTHER ORDERED that Defendant shall provide the information sought by
3 Plaintiff, and which Defendant and her counsel have been ordered to provide, by June 1, 2010. In
4 the event Defendant does not comply with the Court's prior orders by June 1, 2010, Mr. Kuehn will
5 be held in contempt of Court again and must pay to Plaintiff's counsel, John P. Aldrich, Esq.,
6 \$500.00 per day, beginning June 1, 2010, and continuing to accrue until the information described
7 above is provided. The days shall be calculated on a seven-day week, and this Order shall constitute
8 a judgment upon which Mr. Aldrich can execute. Interest on unpaid balances shall accrue at the
9 statutory rate.

10 IT IS SO ORDERED.

11 DATED this 2 day of June, 2010.

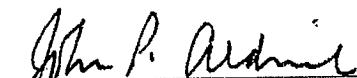
12 **ROBERT W. LANE**

13

DISTRICT COURT JUDGE

14 Submitted by:

15 **ALDRICH LAW FIRM, LTD.**

16 

17

John P. Aldrich, Esq.
18 Nevada Bar No.: 6877
19 1601 S. Rainbow Blvd., Suite 160
20 Las Vegas, Nevada 89146
Attorneys for Plaintiff

6-2-10

1 **NEO**
2 John P. Aldrich, Esq.
3 Nevada Bar No. 6877
4 **ALDRICH LAW FIRM, LTD.**
5 1601 S. Rainbow Blvd., Suite 160
6 Las Vegas, Nevada 89146
7 (702) 853-5490
8 (702) 227-1975 fax
9 *Attorneys for Plaintiff*

THE FIFTH JUDICIAL DISTRICT COURT
THE STATE OF NEVADA
COUNTY OF NYE

10 Estate of MICHAEL DAVID ADAMS,
11 by and through his mother JUDITH
12 ADAMS, individually and on behalf of the
13 Estate,

Plaintiffs,

vs.

14 SUSAN FALLINI, DOES I-X and ROE
15 CORPORATIONS I-X, inclusive,

Defendants.

16 SUSAN FALLINI,

Counterclaimant,

vs.

19 Estate of MICHAEL DAVID ADAMS,
20 by and through his mother JUDITH
21 ADAMS, individually and on behalf of the
22 Estate,

Counterdefendants.

Case No.: CV24539
Dept.: 2P

NOTICE OF ENTRY OF ORDER

24 ///

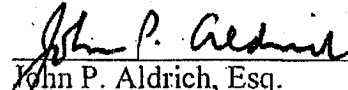
25 ///

26 ///

PLEASE TAKE NOTICE that an Order Holding Defendant's Counsel in Contempt of Court was entered in the above-entitled matter on June 2, 2010, a copy of which is attached hereto as Exhibit 1.

DATED this 3 day of June, 2010.

ALDRICH LAW FIRM, LTD.


John P. Aldrich, Esq.
Nevada State Bar No. 6877
1601 S. Rainbow Blvd., Suite 160
Las Vegas, Nevada 89146
(702) 853-5490
(702) 227-1975
Attorneys for Plaintiff

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 3rd day of June, 2010, I mailed a copy of the NOTICE OF ENTRY OF ORDER, in a sealed envelope, to the following and that postage was fully paid thereon:

Harold Kuehn, Esq.
Gibson, & Kuehn
1601 E. Basin Avenue, Suite 101
Pahrump, NV 89060
Attorney for Defendant/Counterclaimant

Katherine M. Barker, Esq.
Law Office of Katherine M. Barker
701 Bridger Ave, Ste. 500
Las Vegas, NV 89101
*Attorney for Counterdefendant
Estate of Michael David Adams*

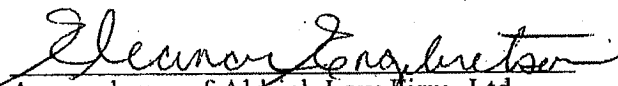

An employee of Aldrich Law Firm, Ltd.

EXHIBIT 1

EXHIBIT 1

1 **ORDR**

2 John P. Aldrich, Esq.,
3 Nevada Bar No. 6877
4 **ALDRICH LAW FIRM, LTD.**
5 1601 S. Rainbow Blvd., Suite 160
6 Las Vegas, Nevada 89146
7 (702) 853-5490
8 (702) 227-1975 fax
9 *Attorneys for Plaintiff*

FILED

2010 JUN -2 A 8:56

REBECCA BALLARD

CLERK
BY DEPUTY

10 THE FIFTH JUDICIAL DISTRICT COURT
11 THE STATE OF NEVADA, COUNTY OF NYE

12 Estate of MICHAEL DAVID ADAMS,
13 by and through his mother JUDITH
14 ADAMS, individually and on behalf of the
15 Estate,

Case No.: CV24539
Dept.: 2P

16 Plaintiffs,

17 vs.

18 SUSAN FALLINI, DOES I-X and ROE
19 CORPORATIONS I-X, inclusive,

20 Defendants.

21 SUSAN FALLINI,

22 Counterclaimant,

23 vs.

24 Estate of MICHAEL DAVID ADAMS,
25 by and through his mother JUDITH
26 ADAMS, individually and on behalf of the
27 Estate,

28 Counterdefendants.

FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER HOLDING
DEFENDANT'S COUNSEL IN CONTEMPT OF COURT

THIS MATTER having come on for hearing on Monday, May 24, 2010, a hearing having been held before the Honorable Robert W. Lane, and John P. Aldrich, Esq., of Aldrich Law Firm, Ltd., appearing on behalf of the Plaintiffs, with Thomas Gbson, Esq., appearing on behalf of Defendant, the Court hereby orders as follows:

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FINDINGS OF FACT

The Court, having been presented the following facts by Plaintiff's counsel and having received no opposition to the facts by Defendant, makes the following findings of fact:

1. This lawsuit arises out of an incident that occurred on or about July 7, 2005. At approximately 9:00 p.m. on that day, MICHAEL DAVID ADAMS ("Adams") was driving his 1994 Jeep Wrangler on SR 375 highway in Nye County, when he collided with a Hereford cow ("cow") owned by Defendant SUSAN FALLINI ("Fallini"). Adams died at the scene as a result of the impact.

2. The decedent's mother, JUDITH ADAMS ("Judith"), filed a complaint on behalf of Adams' mother and his estate on November 29, 2006 and properly served Fallini with process. Fallini filed her Answer and Counterclaim on March 14, 2007.

3. On October 31, 2007, Plaintiff submitted interrogatories to Fallini. Those interrogatories were never answered. Adams also submitted requests for admissions and its first set of requests for production of documents on October 31, 2007. A second set of requests for production of documents were submitted to Fallini on July 2, 2008, requesting information as to Fallini's insurance policies and/or carriers that may provide coverage for damages that occurred as a result of the incident.

4. Fallini never responded to any of these requests. To this date, Fallini has not produced any responses of any kind to Plaintiff's written discovery requests. Despite an extension requested by Plaintiff and granted by the Court, the discovery period has lapsed without any responses being provided by Defendant.

5. On or about April 7, 2008 (and again on May 14, 2008 with a Certificate of Service), Plaintiff filed a Motion for Partial Summary Judgment. Defendant did not oppose that motion and the Court granted that Motion on July 30, 2008. Notice of entry of the Order Granting Plaintiff's Motion for Summary Judgment was served on Defendant on August 15, 2008.

6. Plaintiff attempted to amicably resolve the discovery dispute and obtain a copy of

1 Defendant's applicable insurance policies, but to no avail. On February 24, 2009, Plaintiff sent
2 letters to Defendant's counsel seeking responses to the discovery.

3 7. Plaintiff's counsel, Mr. Aldrich, attempted to discuss this discovery issue with
4 Defendant's counsel, Mr. Harry Kuehn, as well. On or about March 6, 2009, Plaintiff's counsel
5 contacted the office of Defendant's counsel. Mr. Aldrich was informed that Mr. Kuehn was not
6 available. Mr. Aldrich left a message with Mr. Aldrich's phone number and asked that Mr. Kuehn
7 return the call. No return call ever came.

8 8. On March 18, 2009, Mr. Aldrich again contacted the office of Mr. Kuehn. Mr.
9 Aldrich was informed that Mr. Kuehn was not available. Mr. Aldrich left a message with Mr.
10 Aldrich's phone number and asked that Mr. Kuehn return the call. No return call ever came.
11 (Exhibit 1.)

12 9. On March 23, 2009, Plaintiff filed a Motion to Compel Defendant's Production of
13 Documents, including information regarding any insurance policies that may provide coverage for
14 the incident as contemplated in the Plaintiff's second request for documents. This motion was heard
15 on April 27, 2009. The Defendant's attorney, Mr. Kuehn, attended the hearing. Mr. Kuehn did not
16 oppose the motion to compel and agreed at the hearing it was warranted. Mr. Kuehn provided no
17 explanation as to why Defendant failed to respond to all discovery requests. Mr. Kuehn agreed
18 sanctions were warranted, however, he disputed the amount of sanctions.

19 10. At the hearing on April 27, 2009, this Court granted the Motion to Compel and
20 awarded John Aldrich, Esq., \$750.00 in sanctions for having to bring the motion. A Notice of Entry
21 of Order on the order granting the motion to compel was entered on May 18, 2009. It was served
22 by mail on Defendant on May 14, 2009. Defendant never complied with the Order.

23 11. On June 16, 2009 Plaintiff filed a Motion to Strike Defendant's Answer and
24 Counterclaim due to Defendants complete failure to comply with discovery requests and this Court's
25 Order. The Defendant's counsel again attended the hearing and again provided no explanation as
26 to why Defendant failed to respond to all discovery requests, but stated Defendant would comply
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28

1 with discovery requests.

2 12. The Court denied Plaintiff's Motion to Strike based on Defendant's counsel's
3 promises to comply. This Court did, however, order Defendant to comply with the Order granting
4 Plaintiff's Motion to Compel and to respond to Plaintiff's discovery requests by August 12, 2009
5 or Defendant's Answer and Counterclaim would be stricken. The Court also ordered Defendant to
6 pay a \$1,000 sanction.

7 13. To date, Defendant has failed to comply with the order of this Honorable Court and
8 respond to Plaintiff's discovery requests. Defendant's counsel has paid the \$1,750.00 in sanctions
9 as ordered by the Court.

10 14. Plaintiff is entitled to the discovery responses, and in fact, Defendant has admitted
11 as much on more than one occasion. Nevertheless, Defendant refused and continues to refuse to
12 respond.

13 15. Because Defendant failed and refused to follow this Court's order and provide the
14 requested information, Plaintiff brought its first Ex Parte Motion for Order to Show Cause Why
15 Defendant and Her Counsel Should Not Be Held in Contempt. The Order to Show Cause was
16 granted, and a hearing was scheduled on September 28, 2009. A conference was held in chambers,
17 so as to avoid embarrassment to Defendant's counsel. Following the conference, the Court ordered:

18 (A) That Defendant's counsel shall have until close of business on October 12,
19 2009, to comply with the Order Granting Plaintiff's Motion to Compel and
20 provide responses to Plaintiff's Request for Production of Documents,
21 including the requested insurance information.

22 (B) That if Defendant does not provide the above-described information by
23 October 12, 2009, Defendant's counsel will be held in contempt of court and
24 will be fined \$150.00 per day, beginning October 13, 2009, until said
25 information is provided. The days shall be calculated on a seven-day week.

26 (C) That if the above-described information is not provided by October 12, 2009,
27

1 the Court will strike defendant's pleadings in their entirety. Plaintiff will not
2 need to renew any motion regarding its request to strike defendant's
3 pleadings; Plaintiff will be able to simply submit an Order Striking the
4 Pleadings for signature by the Court.

5 16. Defendant and her counsel failed to provide the information at issue by October 12,
6 2009. Consequently, on or about November 4, 2009, the Court entered its Findings of Fact,
7 Conclusions of Law and Order Striking Answer and Counterclaim of Defendant Susan Fallini and
8 Holding Defendant's Counsel in Contempt of Court. Pursuant to said Order, Defendant's counsel,
9 Harold Kuehn, Esq., was held in contempt of Court and was ordered to pay to Plaintiff's counsel,
10 John P. Aldrich, Esq., \$150.00 per day, beginning October 13, 2009, and continuing to accrue until
11 the information described above is provided. The Order provided that the days shall be calculated
12 on a seven-day week, and that the Order shall constitute a judgment upon which Mr. Aldrich can
13 execute. Interest on unpaid balances was ordered to accrue at the statutory rate.

14 17. Again in contravention of the Court's orders, Defendant and her counsel have failed
15 and refused to provide the information they have been ordered to provide. Defendant's counsel's
16 utter refusal to abide by the Court's orders has stalled and frustrated the litigation process.

17 18. On or about April 7, 2010, Plaintiff again brought an Ex Parte Motion for Order to
18 Show Cause Why Defendant Susan Fallini and Her Counsel Should Not Be Held in Contempt of
19 Court and Possible Sanctions Be Imposed. On or about April 19, 2010, the Court entered the Order
20 to Show Cause and set a hearing for Monday, May 24, 2010.

21 19. As with the prior Order to Show Cause (and several other motions), despite personal
22 service on Defendant's counsel, neither Defendant nor her counsel responded in writing to the Order
23 to Show Cause.

24 20. The Court held a hearing on Monday, May 24, 2010. Thomas Gibson, Esq., the law
25 partner to Harry Kuehn, Esq., appeared on behalf of Defendant. Defendant Susan Fallini did not
26 appear at the hearing.

21. During the hearing, Mr. Gibson indicated he had not seen the file and provided no valid excuse for Defendant's or Defendant's counsel's failure and refusal to abide by the Court's prior orders. Mr. Aldrich also advised the Court that over 220 days had passed since the Court-imposed sanction began to accrue, and that over \$30,000.00 was now due pursuant to that sanction.

22. Mr. Gibson made specific representations to the Court that the client, Defendant Susan Fallini, was unaware of the status of this case. Mr. Gibson also made specific representations that he would obtain the information at issue immediately and provide it to Plaintiff. Mr. Aldrich requested that the Court impose a \$5,000.00 sanction, as well as a \$500.00 per day sanction, starting on May 25, 2010, until Defendant provides the information. The Court imposed the \$5,000.00 sanction upon Defendant's counsel. The Court advised both counsel that the Court would give Defendant until June 1, 2010 to comply with the Court's prior orders before increasing the daily sanction from \$150.00 per day to \$500.00 per day.

23. Plaintiff's counsel also requested that the Court issue a bench warrant for Defendant Susan Fallini, given her failure to appear as ordered by the Court on two occasions. The Court declined to do so at the hearing on May 24, 2010, but indicated it may be willing to do so if Defendant does not comply this time.

CONCLUSIONS OF LAW

Based on the Findings of Fact, as set forth above, the Court makes the following conclusions of law:

1. Pursuant to NRCP 34, Plaintiff has the right to request documents which are discoverable pursuant to NRCP 26. According to NRCP 34, Defendant has 30 days from receipt of the requests for production of documents to provide appropriate responses.

2. NRCP 34(b) permits a party to seek relief under NRCP 37(a) if the party who receives discovery requests fails to respond appropriately. NRCP 37(a) provides that the Court may enter an order compelling a non-responsive party to disclose the requested information.

3. This Court has at least four times entered an order compelling Defendant to respond

1 to Discovery requests.

2 4. NRCP 37(b)(2)(c), permits "an order striking out pleadings or parts thereof," for
3 discovery abuses. "Selection of a particular sanction for discovery abuses under NRCP 37 is
4 generally a matter committed to the sound discretion of the district court." *Stubli v. Big Int'l Trucks,*
5 *Inc.*, 107 Nev. 309, 312-313, 810 P.2d 785 (1991) (citing *Fire Ins. Exchange v. Zenith Radio Corp.*,
6 103 Nev. 648, 649, 747 P.2d 911, 912 (1987) and *Kelly Broadcasting v. Sovereign Broadcast*, 96
7 Nev. 188, 192, 606 P.2d 1089, 1092 (1980.))

8 5. The Nevada Supreme Court held that default judgments will be upheld where "the
9 normal adversary process has been halted due to an unresponsive party, because diligent parties are
10 entitled to be protected against interminable delay and uncertainty as to their legal rights." *Hamlett*
11 *v. Reynolds*, 114 Nev. 863, 963 P.2d 457 (1998) (citing *Skeen v. Valley Bank of Nevada*, 89 Nev.
12 301, 303, 511 P.2d 1053, 1054 (1973).

13 6. Defendant has provided no responses whatsoever, nor has Defendant objected to any
14 request. Defendant has failed on at least four occasions to comply with this Court's Order. At no
15 time has Defendant or her counsel given any excuse or justification for their failure and refusal to
16 abide by the Court's orders.

17 7. Defendant has been given ample opportunity to comply with the Court's Orders.
18 Defendant has halted the litigation process and the additional sanctions of \$5,000.00 immediately
19 and \$500.00 per day beginning June 1, 2010, if Defendant does not comply with the Court's prior
20 orders, are appropriate under the circumstances.

21 ORDER

22 Based on the Findings of Fact and Conclusions of Law, as set forth above:

23 IT IS HEREBY ORDERED that Defendant's counsel, Harold Kuehn, Esq., is in contempt
24 of Court and must pay to Plaintiff's counsel, John P. Aldrich, Esq., \$5,000.00, in addition to the
25 \$150.00 per day that began accruing on October 13, 2009, and which continues to accrue until the
26 Defendant and her counsel comply with the Court's prior orders, including providing the information.

1 sought by Plaintiff.

2 IT IS FURTHER ORDERED that Defendant shall provide the information sought by
3 Plaintiff, and which Defendant and her counsel have been ordered to provide, by June 1, 2010. In
4 the event Defendant does not comply with the Court's prior orders by June 1, 2010, Mr. Kuehn will
5 be held in contempt of Court again and must pay to Plaintiff's counsel, John P. Aldrich, Esq.,
6 \$500.00 per day, beginning June 1, 2010, and continuing to accrue until the information described
7 above is provided. The days shall be calculated on a seven-day week, and this Order shall constitute
8 a judgment upon which Mr. Aldrich can execute. Interest on unpaid balances shall accrue at the
9 statutory rate.

10 IT IS SO ORDERED.

11 DATED this 2 day of June, 2010.

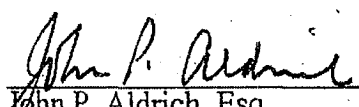
12 **ROBERT W. LANE**

13

DISTRICT COURT JUDGE

14 Submitted by:

15 **ALDRICH LAW FIRM, LTD.**

16
17 
18 John P. Aldrich, Esq.
19 Nevada Bar No.: 6877
1601 S. Rainbow Blvd., Suite 160
20 Las Vegas, Nevada 89146
Attorneys for Plaintiff

1 CASE NO. CV-0024539

2 DEPT. 2P

REBECCA BALLARI

CLERK

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5
6 **IN THE FIFTH JUDICIAL DISTRICT COURT OF THE**
7 **STATE OF NEVADA IN AND FOR THE COUNTY OF NYE**
8

9 Estate of MICHAEL DAVID ADAMS,
10 by and through his mother JUDITH
11 ADAMS, individually and on behalf of the
12 Estate,

SUBSTITUTION OF ATTORNEYS

12 Plaintiffs,

13 vs.

14 SUSAN FALLINI DOES I-X and ROE
15 CORPORATIONS I-X, inclusive

16 Defendants.

17 SUSAN FALLINI,

18 Counterclaimant,

19 vs.

20 Estate of MICHAEL DAVID ADAMS,
21 by the through his mother JUDITH
22 ADAMS, individually and on behalf of the
23 Estate,

24 Counterdefendants.

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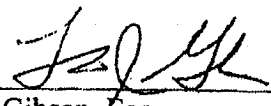
28 ///

MARVEL & KUMP, LTD.
Attorneys at Law
555 West Silver St., Suite 101
Elko, Nevada 89801
(775) 777-1204

1 EARNEST, GIBSON & KUEHN, attorneys of record for the above-named Defendant
2 Susan Fallini, do hereby consent to the substitution of Marvel & Kump, Ltd., and John Ohlson,
3 Esq. as attorneys, for the Defendant, Susan Fallini, in the above-entitled matter in their place and
4 stead.

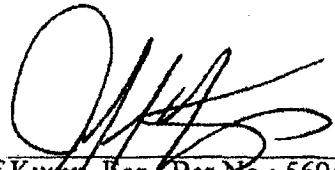
5 Dated this 17 of June, 2010.


6 EARNEST, GIBSON & KUEHN

7 By: 
8 Tom Gibson, Esq.
9 921 S. Hwy. 160, #203
10 Pahrump, NV 89048

11 Marvel & Kump, Ltd. and John Ohlson, Esq. do hereby agree to be substituted in the
12 place of EARNEST, GIBSON & KUEHN as attorneys for the Defendant, Susan Fallini, in the
13 above-entitled matter.
14

15 Dated this 17 of June, 2010.

16 By: 
17 Jeff Kump, Esq., Bar No.: 5694
18 Attorney for Defendant

19 By: 
20 John Ohlson, Esq., Bar No.: 1692
21 Attorney for Defendant

22 Susan Fallini, Defendant in the above-entitled matter consents to the substitution of
23 Marvel & Kump, Ltd and John Ohlson, Esq. in place of EARNEST, GIBSON & KUEHN, as her
24 attorneys of record.
25

26 Dated this 17 of June, 2010.

27 
28 SUSAN FALLINI

1 **APP**
John P. Aldrich, Esq.
2 Nevada State Bar No. 6877
ALDRICH LAW FIRM, LTD.
3 1601 S. Rainbow Blvd., Suite 160
Las Vegas, Nevada 89146
4 (702) 853-5490
Attorneys for Plaintiff

6 THE FIFTH JUDICIAL DISTRICT COURT
THE STATE OF NEVADA
7 COUNTY OF NYE

8 Estate of MICHAEL DAVID ADAMS, by and
9 through his mother JUDITH ADAMS,
individually and on behalf of the Estate,

Case No.: CV24539
Dept. No.: 2P

10 Plaintiff,

11 v.

12 SUSAN FALLINI, ; DOES I-X, and ROE
13 CORPORATIONS I-X, inclusive,

14 Defendants.
15

16 SUSAN FALLINI,

17 Counterclaimant,

18 vs.

19 Estate of MICHAEL DAVID ADAMS, by and
20 through his mother JUDITH ADAMS,
individually and on behalf of the Estate

21 Counterdefendants.
22

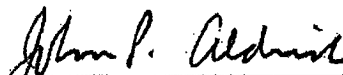
23 **APPLICATION FOR DEFAULT JUDGMENT AGAINST DEFENDANT SUSAN FALLINI**

24 Plaintiff JUDITH ADAMS, INDIVIDUALLY AND ON BEHALF OF THE ESTATE OF
25 MICHAEL DAVID ADAMS, by and through her attorney of record, John P. Aldrich, of Aldrich Law
26 Firm Ltd., hereby applies for an Order granting Default Judgment against the Defendant SUSAN
27

1 FALLINI. The Application is based upon the attached memorandum of Points and Authorities, the
2 attached exhibits, and any testimony the Court will accept at the hearing on this matter.

3 DATED this 21st day of June, 2010.

4 ALDRICH LAW FIRM, LTD.

5
6 
7 John P. Aldrich, Esq.
8 Nevada Bar No.: 6877
9 1601 S. Rainbow Blvd., Suite 160
10 Las Vegas, Nevada 89146
11 (702) 853-5490
12 Attorney for Plaintiff

13 NOTICE OF MOTION

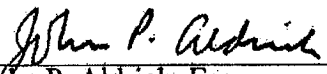
14 TO: Defendant Susan Fallini;

15 TO: Harold Kuehn, attorney for Defendant.

16 PLEASE TAKE NOTICE that the undersigned will bring an Application for Default Judgment
17 for hearing before the above entitled Court on the ____ day of _____, 2010, at the hour
18 of ____ m. or as soon thereafter as counsel may be heard.

19 DATED this 21st day of June, 2010.

20 ALDRICH LAW FIRM, LTD.

21 
22 John P. Aldrich, Esq.
23 Nevada Bar No.: 6877
24 1601 S. Rainbow Blvd., Suite 160
25 Las Vegas, Nevada 89146
26 (702) 853-5490
27 Attorney for Plaintiff
28

1 **MEMORANDUM OF POINTS AND AUTHORITY**

2 **I.**

3 **STATEMENT OF FACTS**

4 **The Subject Incident**

5 Michael David Adams was born on May 10, 1972. He was the only child of the marriage between
6 Judith and Tony Adams. Michael was an extremely loving child, and grew into an extremely loving man.
7 Michael worked as staff geologist for Southern California Geotechnical Inc., making approximately
8 \$45,000.00 per year plus benefits.

9 On July 7, 2005 around 9:00 p.m., Michael was lawfully driving his 1994 Jeep Wrangler on SR
10 375 highway in Nye County, Nevada. At that time and place, a Hereford cow suddenly appeared in
11 Michael's travel lane, blocking his path. Although Michael was driving at a lawful rate of speed, it was
12 not possible for him to avoid colliding with the cow and he hit it head-on. Michael's Jeep rolled over
13 and left the paved highway. Sadly, Michael died at the scene.

14 Defendant was the owner of the cow which was in Michael's travel lane and caused his death.
15 The cow was many miles away from the owner's ranch at the time of the incident. Further, the defendant
16 had taken no precautions to keep the cow from the highway where the collision occurred, including
17 failing to put a florescent tag on the cow so it would be visible at night. As a direct and proximate result
18 of Defendant's negligence, Michael was killed.

19 **Procedural History**

20 On or about November 29, 2006, Plaintiff filed a lawsuit in Clark County, Nevada. Defendant
21 SUSAN FALLINI was duly served with a copy of the Summons and Complaint on March 1, 2007, and
22 an Answer and Counterclaim (seeking to recover the value of the cow) were filed on March 14, 2007.
23 The case was later transferred to Pahrump, Nye County, Nevada.

24 On October 31, 2007, Plaintiff submitted interrogatories to Fallini. Those interrogatories were
25 never answered. Adams also submitted requests for admissions and its first set of requests for production
26 of documents on October 31, 2007. Pursuant to Requests for Admission that Defendant never answered,
27 Defendant admitted the following:

1. That Defendant's property is not located within "open range."
2. That Defendant is the owner of the cow that is mentioned in the Complaint on file herein.
3. That it is the common practice of Nye County ranchers to mark their cattle with reflective or luminescent tags.
4. That the subject cow was not marked with a reflective or luminescent tag.
5. That the subject cow crossed a fence to arrive at the location of the subject accident described in the Complaint on file herein.
6. That Defendant's cattle have previously been involved in incidents with motor vehicles on the roadway.
7. That Defendant does not track the location of her cattle while they are grazing away from Defendant's property.
8. That Defendant does not remove her cattle from the roadway when notified that the cattle are in a roadway.
9. That the subject cow was not visible at night.
10. That Defendant was aware that the subject cow was not visible at night prior to the incident that is the subject of the Complaint on file herein.
11. That the subject cow was in the roadway of SR 375 at the time of the incident that is the subject of the Complaint on file herein.
12. That the subject cow's presence in the roadway of SR 375 was the cause of the motor vehicle accident that is the subject of the Complaint on file herein.
13. That Defendant did not know the location of the subject cow at the time of the incident that is the subject of the Complaint on file herein.
14. That the presence of a reflective or luminescent tag on the subject cow would have made the subject cow visible at the time of the incident that is the subject of the Complaint on file herein.

A second set of requests for production of documents were submitted to Fallini on July 2, 2008, requesting information as to Fallini's insurance policies and/or carriers that may provide coverage for

1 damages that occurred as a result of the incident

2 Defendant Fallini never responded to any of these requests. To date, Defendant Fallini has not
3 produced any responses of any kind to Plaintiff's written discovery requests. Despite an extension
4 requested by Plaintiff and granted by the Court, the discovery period has lapsed without any responses
5 being provided by Defendant.

6 On or about **April 7, 2008** (and again on **May 14, 2008** with a Certificate of Service), Plaintiff
7 filed a Motion for Partial Summary Judgment. Defendant did not oppose that motion and the Court
8 granted that Motion on **July 30, 2008**. Notice of entry of the Order Granting Plaintiff's Motion for
9 Summary Judgment was served on Defendant on **August 15, 2008**.

10 Plaintiff attempted to amicably resolve the discovery dispute and obtain a copy of Defendant's
11 applicable insurance policies, but to no avail. On **February 24, 2009**, Plaintiff sent letters to Defendant's
12 counsel seeking responses to the discovery.

13 Plaintiff's counsel, Mr. Aldrich, has attempted to discuss this discovery issue with Defendant's
14 counsel, Mr. Kuehn, as well. On or about **March 6, 2009**, Plaintiff's counsel contacted the office of
15 Defendant's counsel. Mr. Aldrich was informed that Mr. Kuehn was not available. Mr. Aldrich left a
16 message with Mr. Aldrich's phone number and asked that Mr. Kuehn return the call. No return call ever
17 came.

18 On **March 18, 2009**, Mr. Aldrich again contacted the office of Mr. Kuehn. Mr. Aldrich was
19 informed that Mr. Kuehn was not available. Mr. Aldrich left a message with Mr. Aldrich's phone number
20 and asked that Mr. Kuehn return the call. No return call ever came.

21 On **March 23, 2009** – nearly nine months after propounding the discovery and more than a year
22 ago – Plaintiff filed a Motion to Compel Defendant's Production of Documents, including information
23 regarding any insurance policies that may provide coverage for the incident as contemplated in the
24 Plaintiff's second request for documents. This motion was heard on **April 27, 2009**. The Defendant's
25 attorney, Mr. Kuehn, attended the hearing. Mr. Kuehn did not oppose the motion to compel and agreed
26 at the hearing it was warranted. Mr. Kuehn provided no explanation as to why Defendant failed to
27 respond to all discovery requests. Mr. Kuehn agreed sanctions were warranted, however, he disputed the

1 amount of sanctions. This Honorable Court granted the Motion to Compel and awarded John Aldrich,
2 Esq., \$750.00 in sanctions for having to bring the motion. A Notice of Entry of Order on the order
3 granting the motion to compel was entered on May 18, 2009. It was served by mail on Defendant on May
4 14, 2009. Defendant never complied with the Order.

5 On June 16, 2009, Plaintiff filed a Motion to Strike Defendant's Answer and Counterclaim due
6 to Defendants complete failure to comply with discovery requests and this Court's Order. The
7 Defendant's counsel again attended the hearing and again provided no explanation as to why Defendant
8 failed to respond to all discovery requests, but stated Defendant would comply with discovery requests.
9 This Honorable Court denied Plaintiff's Motion to Strike based on Defendant's counsel's promises to
10 comply. This Honorable Court did, however, order Defendant to comply with the Order granting
11 Plaintiff's Motion to Compel and to respond to Plaintiff's discovery requests by July 12, 2009 or
12 Defendant's Answer and Counterclaim would be stricken. The Court also ordered Defendant to pay a
13 \$1,000 sanction.

14 Defendant still did not comply with the Court's Order and failed to respond to Plaintiff's
15 discovery requests. On August 31, 2009, Plaintiff brought an Ex Parte Motion for Order to Show Cause
16 Why Defendant Susan Fallini and Her Counsel Should Not be Held in Contempt. The Court issued an
17 Order on Plaintiff's Order to Show Cause, dated October 8, 2009, that Susan Fallini must produce all
18 documents responsive to Plaintiffs discovery requests by October 12, 2009. The Court further ordered
19 that if Defendant did not supply the requested information by October 12, 2009, Defendant's counsel
20 would be held in contempt of court and would be fined \$150.00 a day, beginning October 13, 2009.
21 Further this Court ordered that if the requested information was not provided by October 12, 2009, the
22 Court would strike Defendant's pleadings in their entirety.

23 On November 6, 2009, an order was entered Striking Defendant's pleadings. Because
24 Defendant's Answer has been stricken, all the allegations of the Complaint are deemed to be true.

25 To date, Defendant still has failed to comply with the orders of this Honorable Court and respond
26 to Plaintiff's discovery requests. However, Mr. Kuehn's partner, Thomas Gibson, Esq., has notified
27 Plaintiff's counsel by phone and by letter that there is no insurance available. Despite providing this

1 information, Defendant still has not technically complied with the Court's Order. As of the date of this
2 Application, Defendant and/or her counsel owes more than \$35,000 for not complying with this Court's
3 Orders.

4 On November 4, 2009, the Court entered its Findings of Fact, Conclusions of Law and Order
5 striking Defendant's Answer and Counterclaim and directing the Court Clerk to enter Default against
6 Defendant Susan Fallini. On February 4, 2010, the Clerk of the Court entered Default against
7 Defendant.

8 Despite repeated requests, Defendant continued to fail and refuse to provide insurance
9 information, or a response that Defendant had no insurance. Consequently, Plaintiff was again forced
10 to bring yet another Ex Parte Motion for Order to Show Cause Why Defendant and Her Counsel Should
11 Not Be Held in Contempt. The Order to Show Cause was granted, and another contempt hearing was
12 held on May 24, 2010. Neither Defendant nor her counsel, Harry Kuehn, appeared at the hearing.
13 However, Thomas Gibson, Esq., the law partner to Mr. Kuehn, appeared at the hearing. Following
14 argument by counsel, the Court made substantial findings of fact and conclusions of law. The Court also
15 held Mr. Kuehn in contempt yet again held Defendant and her counsel in contempt of court and
16 sanctioned them an additional \$5,000.00. Further, the Court again ordered Defendant to provide the
17 information that had been ordered on several prior occasions, and imposed a \$500.00 per day sanction,
18 beginning June 1, 2010, if Defendant did not respond as ordered.

19 Defendant has not responded to the discovery, but Mr. Gibson has advised Plaintiff's counsel that
20 Defendant has no insurance that is applicable to this case. Plaintiff's counsel has requested something
21 in writing, signed by the Defendant, to that effect, but has not received anything to date.

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II.

LEGAL ANALYSIS

Pursuant to NRCP 55, the Court should enter a default judgment against Defendant. Further, NRS 41.085 provides for the recovery of various types of damages by both the estate and heirs.

NRS 41.085 Heirs and personal representatives may maintain action.

1. As used in this section, "heir" means a person who, under the laws of this State, would be entitled to succeed to the separate property of the decedent if the decedent had died intestate. The term does not include a person who is deemed to be a killer of the decedent pursuant to chapter 41B of NRS, and such a person shall be deemed to have predeceased the decedent as set forth in NRS 41B.330.

2. When the death of any person, whether or not a minor, is caused by the wrongful act or neglect of another, the heirs of the decedent and the personal representatives of the decedent may each maintain an action for damages against the person who caused the death, or if the wrongdoer is dead, against the wrongdoer's personal representatives, whether the wrongdoer died before or after the death of the person injured by the wrongdoer. If any other person is responsible for the wrongful act or neglect, or if the wrongdoer is employed by another person who is responsible for the wrongdoer's conduct, the action may be maintained against that other person, or if the other person is dead, against the other person's personal representatives.

3. An action brought by the heirs of a decedent pursuant to subsection 2 and the cause of action of that decedent brought or maintained by the decedent's personal representatives which arose out of the same wrongful act or neglect may be joined.

4. The heirs may prove their respective damages in the action brought pursuant to subsection 2 and the court or jury may award each person pecuniary damages for the person's grief or sorrow, loss of probable support, companionship, society, comfort and consortium, and damages for pain, suffering or disfigurement of the decedent. The proceeds of any judgment for damages awarded under this subsection are not liable for any debt of the decedent.

5. The damages recoverable by the personal representatives of a decedent on behalf of the decedent's estate include:

(a) Any special damages, such as medical expenses, which the decedent incurred or sustained before the decedent's death, and funeral expenses; and

(b) Any penalties, including, but not limited to, exemplary or punitive damages, that the decedent would have recovered if the decedent had lived,

1 but do not include damages for pain, suffering or disfigurement of the
2 decedent. The proceeds of any judgment for damages awarded under
3 this subsection are liable for the debts of the decedent unless exempted
4 by law.

5 NRS 41.085.

6 Plaintiff seeks the following damages:

7 **Grief and Sorrow, Loss of Probable Support, Companionship, Society, Comfort and Consortium**

8 Michael's parents, Judith and Tony Adams, have written letters to try and give the Court an idea
9 of how Michael's loss has affected their lives. Michael was an exceptional son and person. Plaintiff
10 respectfully refers the Court to the statements of Judith and Tony Adams, attached hereto as **Exhibits 1**
11 **and 2**. Mr. and Mrs. Adams will also be present at the prove-up hearing, should the Court determine one
12 is needed. Needless to say, the loss of Ms. Adams' only son cannot be compensated by monetary
13 remuneration because he was priceless to her. Nevertheless, Judith Adams requests **\$2,500,000.00** for
14 grief and sorrow, and loss of probable support, companionship, society, comfort and consortium.

15 **Lost Earnings**

16 Michael was 33 years old when he died. He was making approximately \$45,000 per year, plus
17 benefits, at the time of his death. Plaintiff retained Dr. Terrence Clauretie to opine regarding Michael's
18 lost earnings. Dr. Clauretie opined that Michael would have earned at least **\$1,640,696.00** during his
19 lifetime if he had not been killed by Defendant's cow. (Plaintiff's Expert Witness Designation, attached
20 hereto as **Exhibit 3**.)

21 **Hedonic Damages**

22 In addition, because of Michael's death, there has been a substantial loss of support to which Ms.
23 Adams and/or Michael's estate is entitled, including hedonic damages. Hedonic damages have been
24 specifically recognized by the Nevada Supreme Court. In Banks v. Sunrise Hospital, 120 Nev.822, 102
25 P.3d 52 (2004), the Nevada Supreme Court noted that "monetary remedies awarded to compensate
26 injured persons for their noneconomic loss of life's pleasures or the loss of enjoyment of life." Id.
27 Quoting the Supreme Court of South Carolina, the Court explained how hedonic damages are different
28 from damages for pain and suffering:

1 An award for pain and suffering compensates the injured person for the
2 physical discomfort and the emotional response to the sensation of pain
3 caused by the injury itself. Separate damages are given for mental anguish
4 where the evidence shows, for example, that the injured person suffered
5 shock, fright, emotional upset, and/or humiliation as the result of the
6 defendant's negligence.

7 On the other hand, damages for "loss of enjoyment of life" compensate for
8 the limitations, resulting from the defendant's negligence, on the injured
9 person's ability to participate in and derive pleasure from the normal
10 activities of daily life, or for the individual's inability to pursue his talents,
11 recreational interests, hobbies, or avocations.

12 Id. (quoting Boan v. Blackwell, 541 S.E.2d 242, 244 (S.C. 2001)).

13 Michael has been deprived of so much life. As his parents have noted, he will not have the
14 opportunity to marry or experience the joys that come with that sacred institution. Michael will never
15 have the opportunity to father children—no witnessing his child's first words, no kindergarten graduation,
16 no coaching little league. Finally, while some might consider elderly parents a burden, it is clear that
17 Michael would have viewed his parents' aging as an opportunity to tenderly give back to his parents some
18 of the love they had shown him during his short life. Michael will not be able to participate in so many
19 of the things that really matter in life.

20 Hedonic damages are difficult to measure because so many of the things listed above are priceless;
21 i.e., they are nearly impossible to value in monetary terms. Although expert witness testimony regarding
22 hedonic damages is permitted, see Banks, expert testimony is not necessary. Despite the fact that expert
23 testimony is not necessary, the Banks court discussed the expert witness in that case, and those comments
24 are instructive here.

25 The expert in Banks examined the value of hedonic damages using two methods—the "survey
26 method" and the "wage-risk method." Id. Using these methods, the expert opined that the tangible value
27 of a person's life is somewhere between \$2.5 million on the low end, \$8.7 million on average, and
28 literally priceless (i.e., impossible to value) on the high end. Id. Noting that the defendant had appealed
the district court's decision to allow the expert to testify at trial, the Nevada Supreme Court held that the
expert testimony was proper. Id.

///

1 The expert in Banks was analyzing the life of a 52-year-old man who was left in a vegetative state
2 following surgery. In this case, Michael was 33 years old at the time of his death. Clearly, Michael was
3 a wonderful human being who would have enjoyed a fulfilling life with deep relationships.
4 Unfortunately, due to the Defendant's negligence, none of that can ever come to be. Consequently,
5 Plaintiff requests \$5,000,000.00 in hedonic damages.

6 **Funeral and Other Related Expenses**

7 Plaintiff incurred the following additional expenses following Michael's death:

8 Cremation expenses (Exhibit 4) \$2,153.14

9 Additional expenses (see Memo of Costs) \$3,035.71

10 **III.**

11 **CONCLUSION**

12 Based on the evidence set forth above, and to be presented at the prove-up hearing, the Plaintiff
13 is entitled to Default Judgment as follows:

14 On the Cause of Action alleged in the Complaint, for an award of damages against Defendant
15 Susan Fallini as follow:

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|---|--|--------------------------|
| 1 | Grief, sorrow, loss of support, etc. | \$2,500,000.00 |
| 2 | Lost earnings | \$1,640,696.00 |
| 3 | Hedonic damages | \$5,000,000.00 |
| 4 | Attorney fees reasonably incurred | \$50,000.00 |
| 5 | Sanctions already levied against Defendant | \$35,000.00 ¹ |
| 6 | Funeral and other related expenses | <u>\$5,188.85</u> |
| 7 | TOTAL JUDGMENT SOUGHT | <u>\$9,230,884.85</u> |

8 For such further relief as this Court deems appropriate.

9 Plaintiff so moves this Honorable Court.

10 Respectfully submitted this 21st day of June, 2010.

11 ALDRICH LAW FIRM, LTD.

12
13 
14 John P. Aldrich, Esq.
15 Nevada Bar No.: 6877
16 1601 S. Rainbow Blvd., Suite 160
17 Las Vegas, Nevada 89146
18 (702) 853-5490
19 Attorney for Plaintiff
20
21
22
23
24
25

26
27 ¹ Plaintiff will provide the exact amount at the time of the prove-up hearing. Plaintiff expects
28 the actual amount due will exceed \$35,000.00.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 21st day of June, 2010, I mailed a copy of the APPLICATION FOR DEFAULT JUDGMENT, in a sealed envelope, to the following and that postage was fully paid thereon:

Harold Kuehn, Esq.
Gibson, & Kuehn
1601 E. Basin Avenue, Suite 101
Pahrump, NV 89060
Attorney for Defendant/Counterclaimant

Katherine M. Barker, Esq.
Law Office of Katherine M. Barker
701 Bridger Ave, Ste. 500
Las Vegas, NV 89101
*Attorney for Counterdefendant
Estate of Michael David Adams*


An employee of Aldrich Law Firm, Ltd.

EXHIBIT 1

EXHIBIT 1

Judith H Adams
6162 Rosemary Dr
Cypress CA 90630
04/09/2010

It is hard to put into words the relationship that I had with Michael. He was my only child and we were very close. He was warm, funny, smart and loving. When he no longer lived at home he called almost every day and ended each call with "...love you..." He visited frequently and never left without a kiss goodbye. Not a day goes by that I don't think about him and even now, almost five years after his death it is hard to talk about him with crying. I don't think a mother could have asked for a more wonderful son.

No one can imagine what it is like to lose an only child. Never to see that child again, never to see him happily married, never to know the joy of grandchildren, for I know that Mike loved children and wanted to have them one day. He had even chosen some favorite names. No one can know how difficult it is to answer the question "...do you have any children?" Not only was Michael my only child he was my mother's only grandchild. Mike was very close to her and although she lived in Arizona Mike called her frequently, visited often and never forgot to send cards on her birthday and Mothers Day. At the time he died she was 87 years old and in frail health so I made the decision not to tell her. I was grateful that she had failing vision due to macular degeneration and could not see the pain on my face or the tears in my husband's eyes when she asked about Mike. Since we visited almost every two months I went through this agony for a long time. Each time I would have to invent some new reason for Mike's failure to call or write. This distress was only alleviated when her memory began to fade in 2008. Thankfully she went to her death last year without having to suffer the knowledge of our loss.

Beside the emotional strain I have suffered losing Mike there is a physical pain as well. It can be described as stress cardiomyopathy. It feels as though there is a hand clutching your heart and slowly squeezing it.

In thinking about my mother I know that having a child to help her as she grew older was a great comfort and I realize that I will not have this help and support in the future. This has necessitated making choices and decisions now knowing that I may be all alone at some time in the years ahead. All the friends in the world are not a substitute for family.

Mike provided emotional support when his Dad suffered a heart attack in 1992. He came home from San Diego and was at my side in the hospital. This allowed us to take turns sitting by my husband's bedside. During this time Mike patiently read the newspaper out loud whether Tony was conscious or not.

The number of ways that Mike helped us would be too many to count. If there were chores that were too physically difficult for my husband or I Mike was there. Since Mike had a cell phone long before I did he patiently showed me how to use all the features. If we went out of town Mike took care of the house made sure the plants were watered and that everything was safe.

It would be almost impossible to state how my life has changed since his death. I can say that my outlook is so different. In the past when I was shopping or traveling I might want to buy something with the thought that this could be something that I could pass along to Mike or grandchildren. Now I stop and think what possible use would I have for this item as it represents something someone will just toss out in the end. It is even difficult at times to be around friends and hear them talk about their children and grandchildren.

As difficult as Mike's death was for me the effect on my husband was even more profound. For many months after his death I tried to be exceptionally careful not to talk about Mike too much and be mindful not to cry in his presence. For a long time I grieved in solitude. It was so extremely hard to see the pain on my husband's face and I tried to alleviate this by telling him that Mike would be so upset to see us in such sorrow. My husband and I have the same doctor and each time I visit the doctor he would ask me how Tony is doing since he has seen the physical and emotional changes that have affected him. To give you just one example: about three years ago the doctor suggested that Tony have a defibrillator implant due to his heart condition. Tony vehemently refused each time the doctor talked to him. I know that the reason for his refusal is that his will and desire to live seriously diminished after Mike died. It was only after suffering a coronary arrest last November that he agreed to the implant. Even now when I know that he has been thinking about Mike he asks me "...why did I call the paramedics..."

I can say these things since I know that Mike and his Dad had a very close and loving relationship. When Mike went away to college in 1990 my husband was disconsolate. Fortunately Mike was only 100 miles from home and was home often. If they both had cell phones at that time they would have talked constantly. When Mike joined the Marine Reserves in 1991 the knowledge that we would not see or talk to Mike for the 12 weeks of basic training was almost too much for him to endure. Mike did write as frequently as he could and I wrote to him every day.

06/16/10 WED 21:07 FAX

To help you understand why we feel this way about Mike is not only because he was our child but it is but it about the person he was, I invite you to go to Mike's website www.michaeldavidadams.net and read the remarks from his friends. Mike was loved not only by his family but by all those whose lives he touched. When we held a celebration of Mike's life several weeks after his death the staff at Mike's favorite local restaurant one that he went to when ever he was home had a plaque made in honor of their favorite patron. To this day it hangs on the restaurant wall. Each year on his birthday a large crowd gathers to celebrate. On the website you see reference to the annual chili cook off. This was an event that he convinced his friends to enter and in his memory they still participate in each year. You will also see that two of his very best friends named their first child Michael. To this day there are still many stories that friends take to share with me.

I realize that if you check his website you will note that Mike had an older half brother. The love and bond the two shared was remarkable. Although there is a 15 year difference in their ages they always very close. Interestingly Mike's friends became his brother's friends and his brothers friends became Mike's. I could not even begin to describe how Tony Jr. has dealt with the loss. To this day it is impossible not to cry when we talk about Mike. I don't want to minimize the relationship that my stepson and I have nor the relationship that he has with his Dad. It is just that the relationship that we all had with Mike was on a whole different level. And although my stepson says that he will be there for me I know that he has his own life and family. And although I know that he also loves his Dad and me it still can not replace the loss of our Michael.

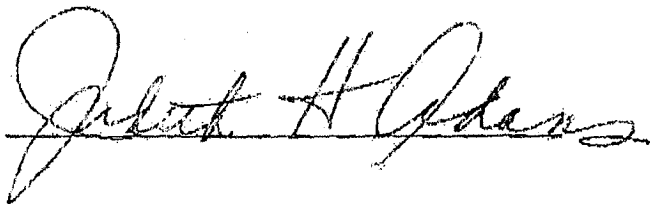


EXHIBIT 2

EXHIBIT 2

Anthony W Adams
6152 Rosemary Dr
Cypress CA 90630
04/09/2010

You would have to be a father and lose a son to know the grief and depression you feel. Mike was my son but he was also my best friend. He would call ten times during a Laker game to discuss what the team was doing wrong or call just to discuss an article he had read which he thought might be of interest to me. Our discussion would range on so many different subjects as Mike had a lot of different interests and I will miss our conversations and his discovery of new things that are happening every day. Mike liked gadgets as I do and any new invention was sure to be in his collection. I can not use my iPhone without thinking how much he would have loved it.

It's strange that everything I look at seems to remind me of Mike, whether it's the barbeque where he enjoyed cooking or the bird house that I caught him putting up for my birthday. Mike liked to surprise me with the simple things. On our last Fathers Day we had dinner together at a restaurant where Mike's friend was the manager and of course the service was excellent. Yes, Mike had many friends and not holiday goes by that one of them does not call.

It is hard to see a young family with children and know that you won't be seeing any grandchildren. All the items that I saved to pass on to Mike and all the toys that he held on to to pass on to his children have lost their value and have no meaning to me. Some day I hope to be able to walk into his room without tears in my eyes but I don't see that happening any time soon.

They say that time heals all wounds but whoever said that did not lose a son like Mike.

Anthony Adams

EXHIBIT 3

EXHIBIT 3

1 DOW
2 John P. Aldrich
3 Nevada Bar No. 6877
4 ALDRICH LAW FIRM, LTD
5 3654 N. Rancho Drive
6 Las Vegas, Nevada 89130
7 (702) 853-5490
8 Attorneys for Plaintiffs

9 THE FIFTH JUDICIAL DISTRICT COURT
10 THE STATE OF NEVADA
11 COUNTY OF NYE

12 Estate of MICHAEL DAVID ADAMS,
13 by and through his mother JUDITH
14 ADAMS, individually and on behalf of the
15 Estate,

16 Plaintiffs,

17 vs.
18 SUSAN FALLINI, DOES I-X and ROE
19 CORPORATIONS I-X, inclusive,

20 Defendants.

21 SUSAN FALLINI,

22 Counterclaimant,

23 vs.

24 Estate of MICHAEL DAVID ADAMS,
25 by and through his mother JUDITH
26 ADAMS, individually and on behalf of the
27 Estate,

28 Counterdefendants.

Case No.: CV24539
Dept.: 2P

29 PLAINTIFF'S DESIGNATION OF EXPERT WITNESSES

30 TO: SUSAN FALLINI, Defendant/Counterclaimant;

31 TO: HAROLD KUEHN, ESQ., attorney for Defendant/Counterclaimant;

32 TO: KATHERINE M. BARKER, ESQ., attorney for Counterdefendant, Estate of Michael David
33 Adams

34 COMES NOW Plaintiff Estate of Michael David Adams, by and through his mother, Judith
35 Adams, by and through her attorney, John P. Aldrich, Esq., of ALDRICH LAW FIRM, LTD., his
36 attorney of record, and hereby submits his initial Designation of Expert Witnesses pursuant to NRCF

26(b)(5) as follows:

Expert Witness:

1. Terrence M. Clauretie, Ph.D., C.P.A.
3741 Lyle Lane
Las Vegas, NV 89120

Dr. Clauretie is a professor of finance at the University of Nevada, Las Vegas. Using the Wage and employment data from his employer, Southern California Geotechnical; 2003 to 2005; Standard worklife tables for persons in the technical and related support occupations; 2008 Annual Report of the Trustees of OASDI (for future growth in earning capacity); Interest rates on United States Treasury securities (to discount future losses to present value); and fringe benefit rates published by the United States Department of Labor, Dr. Clauretie estimated the lifetime earnings of Mr. Michael Adams subsequent to his death in July, 2005. Dr. Clauretie's report of his findings is attached as Exhibit "1".

Dr. Clauretie's CV is attached as Exhibit "2". Exhibits "3" and "4" contain Dr. Clauretie's list of testimony and depositions and his fee schedule.

Documents

| Exhibit | Description |
|---------|--|
| 1 | Report prepared by Terrence M. Clauretie, Ph.D., CPA, dated December 22, 2008, regarding his findings after reviewing employment records. (16 pages) |
| 2 | Dr. Clauretie's CV (6 pages) |
| 3 | Dr. Clauretie's Trial & Deposition Testimony List (9 pages) |
| 4 | Dr. Clauretie's Fee Schedule (1 page) |
| | |

2. The following individuals are anticipated to testify as Plaintiff's experts at the trial of this matter, regarding their involvement in Plaintiff's accident. Said individuals are expected to testify as to the injuries Plaintiff Michael David Adams sustained in the subject incident; the diagnosis and prognosis; and as to the authenticity and genuineness of their medical records and billings, as well as to the reasonableness of the medical charges incurred herein:

- a. Nevada Highway Patrol
Trooper M. Scott Simon, #6399, Primary Investigator

1 Trooper Guy Davis, #6485, Assisting Officer
2 Trooper Bill West, #6648, Assisting Officer

3 b. Nye County Sheriff's Department
4 Deputy Duane Downing, Deputy Coroner

5 This witness is also expected to testify as to the cause of Mr. Adams' death, his
6 injuries, and the time of his death.

7 c. Gunters Funeral Home
8 Dean Glasford

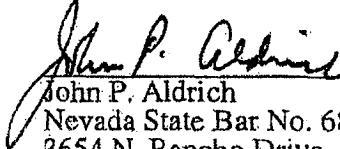
9 d. Pro Towing
10 Marshall Davis

11 Plaintiff expressly reserves the right to utilize any and all witnesses identified in Defendant's
12 Expert Witness Designation for proper purposes.

13 Plaintiff expressly reserves the right to supplement, augment, modify, reduce, or otherwise
14 alter these designations for purposes of identifying rebuttal and/or impeachment witnesses.

15 DATED this 22nd day of December, 2008.

16 ALDRICH LAW FIRM, LTD.

17 
18 John P. Aldrich
19 Nevada State Bar No. 6877
20 3654 N. Rancho Drive
21 Las Vegas, Nevada 89130
22 (702) 853-5490
23 (702) 853-5491 (fax)
24 Attorneys for Plaintiff Judith Adams

25 ///

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1
2 CERTIFICATE OF MAILING

3 I hereby certify that on this 22nd day of December, 2008, service of the foregoing
4 **PLAINTIFF'S DESIGNATION OF EXPERT WITNESS** was made this date by depositing a true
5 and correct copy of the same for mailing in Las Vegas, Nevada, addressed to:

6 Harold Kuehn, Esq.
7 Gibson, & Kuehn
8 1601 E. Basin Avenue, #101
9 Pahrump, NV 89060
10 *Attorney for Defendant/Counterclaimant*
11 *Susan Fallini*

12 Katherine M. Barker, Esq.
13 Barker Law Office
14 701 Bridger Ave, Ste. 500
15 Las Vegas, NV 89101
16 *Attorney for Counterdefendant*
17 *Estate of Michael David Adams*

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An employee of ALDRICH LAW FIRM, LTD.

EXHIBIT 1

**REPORT ON THE LIFETIME EARNINGS OF
MR. MICHAEL ADAMS
TERRENCE M. CLAURETIE
DECEMBER 22, 2008**

ASSIGNMENT

I have been asked by Mr. John Aldrich to estimate the lifetime earnings of Mr. Michael Adams subsequent to his death in July, 2005.

MATERIALS RELIED UPON

For this purpose I have relied upon the following.

1. Wage and employment data from his employer, Southern California Geotechnical: 2003 to 2005.
2. Standard worklife tables for persons in the technical and related support occupations
3. 2008 Annual Report of the Trustees of OASDI (for future growth in earning capacity)
4. Interest rates on United States Treasury securities (to discount future losses to present value,
5. Fringe benefit rates published by the United States Department of Labor.

CALCULATION OF LIFETIME EARNINGS

Table one shows the calculation in this case. At the time of his death Mr. Adams was earning \$45,000 annually and had the typical fringe benefits (23% by United States Department of Labor estimates). The lifetime earnings begin in the month of his death and continue for his worklife expectancy, age 60.62. The growth in earnings is assumed to be 3.7% annually based on information from item # 3 above. The discount rate is four per cent annually based on item number 4. The present value of the lifetime earnings is ***\$1,640,696.***

COMPENSATION

I charge \$350 per hour for non-testimony work and \$450 for all testimony. I have allocated two hours to this report and have attached an invoice.

ATTACHMENTS

In addition to materials relied upon I have attached:

1. Current CV
2. Testimony history

3. Invoice.

Am 4 *Blue* *7*

TABLE ONE

LIFETIME EARNING CAPACITY

NAME: ADAMS
 GENDER: MALE
 ATTORNEY: ALDRICH

DOB: 10-May-72
 DOD: 30-Jul-05
 DOR: 22-Dec-08
 Age DOR: 36.62 P. 198
 Work-Life: 24 or until
 Last Day of EC: 60.62

Fringe Benefit %
 Rate of Growth in Wages
 Subsequent to Lec
 Subsequent to Report
 Inflation
 Productivity
 Discount Rate
 Monthly Income on:
 Last Day of EC:
 Months Since LDEC
 Months Until Work-Life
 Mon. EC Date of Report

30-Jul-05
 23.00%
 3.50%
 3.70%
 3.00%
 0.70%
 4.00%
 annual
 \$4,612.50 \$55,350
 40.77
 288
 \$5,184.82 \$62,218

Past Earning Capacity
 Future Earning Capacity
 Total

\$199,973
 \$1,440,723
\$1,640,696

5/19/72

[illegible]**STATUS**[illegible]

Qualified Retirement Plan**APPLICATION FOR DISTRIBUTION From A Qualified Retirement Plan***Please read the important information and instructions on the following pages.***GENERAL INFORMATION**

Name of Plan Southern California Geotechnical, Inc. Retirement Plan
 Plan Number R 0003465
 Name of Employer Southern California Geotechnical
 Address 12100 N. Hancock Ste 101
 City Anaheim State CA Zip 92807
 Name of Participant Michael D. Adams Date of Birth 05/10/72
 SSN 545-53-7622
 Vested % _____ Hours Worked During Plan Year _____

Complete the following section for the individual requesting the payout.

Name Anthony W. Adams
 Home Address 16155 Rosemary DR.
 City Cypress State CA Zip 910630
 Social Security No. 552-15-4003 Telephone # _____

DISTRIBUTION REASON

☐ Normal Retirement Age ☐ Disability ☒ Death ☐ Termination of Employment ☐ Plan Termination
☐ Hardship ☐ Loan Disbursement (If permitted by plan) ☐ Other Date of Event _____

METHOD OF PAYMENT

☒ Single Sum Cash Payment - Amount _____ ☒ All Shares
☐ Installment Payments, in the following manner: ☐ Monthly ☐ Quarterly ☐ Semiannually ☐ Annually ☐ Other _____
 Commencement Date _____ Amount _____

☐ Required Minimum Distribution - Amount _____ For Tax Year _____

Is your spouse more than 10 years younger than you, and is he or she your sole beneficiary for the entire calendar year?

☐ Yes ☐ No

If yes, the joint life expectancy of you and your spouse, recalculated, will be used. If no, the Uniform Lifetime Table will be used to calculate the Required Minimum Distribution.

☐ Qualified Joint and Survivor Annuity (If permitted by Plan. Additional documentation required; contact your plan administrator)

☐ Direct Rollover of Eligible Rollover Distribution to: (Check one) ☐ IRA ☐ 403(a) Plan ☐ 457(b) Plan

(See the instructions on the following page.)

☐ Qualified Plan ☐ 403(b) Plan

Specify new plan or complete and attach the Direct Rollover Request form: _____

☐ Other: _____

Specify investment(s) to be liquidated (or other special instructions): _____

ACCOUNT DISTRIBUTED (For use with 401(k) plans only.)

| | | |
|--|--|-----------------------------------|
| <input type="checkbox"/> Employee 401(k) Contributions: | <input checked="" type="checkbox"/> Entire Account | <input type="checkbox"/> \$ _____ |
| <input type="checkbox"/> Matching Contribution: | <input checked="" type="checkbox"/> Entire Account | <input type="checkbox"/> \$ _____ |
| <input type="checkbox"/> Employer Profit Sharing Contribution: | <input checked="" type="checkbox"/> Entire Account | <input type="checkbox"/> \$ _____ |
| <input type="checkbox"/> Other _____: | <input checked="" type="checkbox"/> Entire Account | <input type="checkbox"/> \$ _____ |

Performance Review

Southern California Geotechnical
INC.

Employee Name Mike Adams Title STAFF GEOLOGIST

Reason for Review REQUEST BY EMPLOYEE Date 1-31-05

Reviewed by GARY JAS

Current Salary \$ 41k per YR New Salary \$ 45k per YR effective 2-6-05

The purpose of this evaluation is to achieve the following:

- Evaluate: Review the employee's recent performance relative to goals set during the previous review and relative to the employer's expectations.
- Communicate: The supervisor and employee communicate openly and honestly about the employee's performance.
- Set Goals: The employee and supervisor establish mutually agreed upon goals for the employee's future progress and development.

1. Position Objectives and Responsibilities: STAFF GEOLOGIST

2. Review of Goals and/or Objectives Established at Previous Review:

- A. Goal: IMPROVE FIELD LOGS, SOIL DESCRIPTIONS
Result: THEY HAVE IMPROVED. CONTINUE TO WORK ON THIS
- B. Goal: GET MORE ORGANIZED
Result: NEEDS WORK.
- C. Goal: MORE INDEPENDANT WORK & THOUGHT - CHECK YOUR OWN WORK
Result: STILL NEEDS IMPROVEMENT
- D. Goal: NO OFFICE FILES IN FIELD
Result: IMPROVING, DOES NOT SEEM TO BE A PROBLEM.
- E. Goal: _____
Result: _____
- F. Goal: _____
Result: _____



2-50 Small Group Employee Application

Blue Cross Dental Net and Blue Cross Dental SelectHMO, and all medical products except Blue Cross Basic PPO, Blue Cross Saver PPO and Advantage PPO offered by Blue Cross of California. Blue Cross PPO and FFS Dental, Blue Cross Basic PPO, Blue Cross Saver PPO, Advantage PPO, Life and AD&D products offered by BC Life & Health Insurance Company.

Small Group Services
Blue Cross of California
P.O. Box 9062
Oxnard, CA 93031-9062
www.bluecrossca.com



INSTRUCTIONS

1. You, the employee, must complete this application. You are solely responsible for its accuracy and completeness.
2. All questions must be answered in full or the application may be returned to you resulting in a delay in processing.
3. Type or print clearly using blue or black ink.

Group No.
230954

1 COVERAGE - Please verify with your employer which plans are available.

A. MEDICAL COVERAGE SELECTION - Check only one Medical Plan:

- | | | | |
|------------------------------------|--|---|--|
| <input type="checkbox"/> Basic PPO | <input type="checkbox"/> PPO \$40 Copay | <input type="checkbox"/> Premier PPO \$20 Copay | <input type="checkbox"/> High Deductible EPO |
| <input type="checkbox"/> Saver PPO | <input checked="" type="checkbox"/> PPO \$30 Copay | <input type="checkbox"/> Premier PPO \$10 Copay | <input type="checkbox"/> Saver HMO |
| | <input type="checkbox"/> Advantage PPO \$25 Copay | | <input type="checkbox"/> HMO 100% |

If selecting an HMO, you must select a Primary Medical Group (PMG) or an Independent Practice Association (IPA). If you are selecting an IPA, please select a Primary Care Physician for each enrolling family member and list them by number below in Section 3A.

HMO plan PMG or IPA Medical Office Number: Are you currently a patient of this facility? ☐ Yes ☐ No

B. DENTAL COVERAGE SELECTION - (If group has elected Dental Coverage) - Check only one Dental Plan:

- | | | |
|---|--|-------------------|
| <input type="checkbox"/> High Option PPO* | <input checked="" type="checkbox"/> Dental Net - You must select a Dental Office No. | 006469 |
| <input type="checkbox"/> Standard Option PPO* | <input type="checkbox"/> Blue Cross Dental SelectHMO - You must select a Dental Office No. | Dental Office No. |
| <input type="checkbox"/> Basic Option PPO* | | |

*Fee-for-service dental coverage is substituted if the member is outside of PPO dental service area.

C. OPTIONAL DEPENDENT LIFE INSURANCE (Available only if offered by employer.)

☐ Yes ☐ No

D. SUPPLEMENTAL LIFE INSURANCE (Available only if offered by employer.)

☐ Yes ☐ No Amount: ☐ \$15,000 ☐ \$25,000 ☐ \$50,000 ☐ \$100,000

2 EMPLOYEE INFORMATION - Must be completed by employee.

- | | | | |
|---|--|-------------------------------------|---------------------------------|
| <input type="checkbox"/> New group enrollment | <input checked="" type="checkbox"/> New hire | <input type="checkbox"/> COBRA | COBRA/Cal-COBRA Effective Date: |
| <input type="checkbox"/> Family addition | <input type="checkbox"/> Change of coverage | <input type="checkbox"/> Cal-COBRA* | <input type="text"/> |
| <input type="checkbox"/> Late enrollment | <input type="checkbox"/> Other | | |

*Cal-COBRA applicants must submit first month's premium.

| | | | | |
|---|--|--|---|----------------------------------|
| Last Name Adams | First Name Mike | M.I. D | Marital Status <input checked="" type="checkbox"/> Single <input type="checkbox"/> Married | Social Security No. 545537622 |
| Home Address (P.O. Box not acceptable unless rural P.O. Box) 350 Marina Dr. #52 | | Apt No. | # of Dependents including Spouse* 0 | Spouse's Social Security No. |
| City Seal Beach | | State CA | ZIP Code 90740 | Home Phone No. (562) 596-5244 |
| Hire Date (MM/DD/YY) | Employer Name Southern California Crystalline Staff Geologist | Occupation/Job Title | <input type="checkbox"/> Part time <input checked="" type="checkbox"/> Full time | # of Hours Worked per Week |
| Business Phone No. (714) 777-0333 | Salary (Required) \$3167 | <input type="checkbox"/> Hourly <input type="checkbox"/> Weekly <input checked="" type="checkbox"/> Monthly | Life Insurance Beneficiary - Last Name, First, M.I. Adams, Anthony W | |
| Language Choice (Optional) <input checked="" type="checkbox"/> English <input type="checkbox"/> Spanish <input type="checkbox"/> Chinese <input type="checkbox"/> Korean | | Ethnic Origin (Optional) <input checked="" type="checkbox"/> Caucasian <input type="checkbox"/> Black/African American <input type="checkbox"/> Hispanic <input type="checkbox"/> Chinese <input type="checkbox"/> Korean <input type="checkbox"/> Native American <input type="checkbox"/> Other | | |
| Relationship Brother | | | | |

*Spouse includes domestic partner ONLY if your employer has elected that coverage. If coverage is available, domestic partner enrollment requires submission of a signed and notarized Domestic Partner Affidavit or, if applicable, a copy of a valid Declaration of Domestic Partnership filed with and stamped by the Secretary of State of California.



Life and Worklife Expectancies

Hugh Richards, M.S.

Jon R. Abele, Esq.



**® Lawyers & Judges
Publishing Company, Inc.**

Table 11: Worklife expectancies by occupation and sex, all races, conventional model, 1990, continued

| Technicians and Related Support Occupations | | | | | | | | | | | | |
|---|-------|------|------|--------------|----------------|-------------|---------|------|------|--------------|----------------|-------------|
| Age | Males | | | | | | Females | | | | | |
| | All * | < HS | HS | Some College | College Degree | Grad Degree | All * | < HS | HS | Some College | College Degree | Grad Degree |
| 18 | 39.8 | 33.3 | 39.2 | 39.1 | 41.4 | 43.8 | 34.5 | 26.1 | 32.9 | 34.9 | 35.6 | 38.3 |
| 19 | 39.2 | 32.8 | 38.5 | 38.6 | 40.7 | 43.0 | 33.9 | 25.5 | 32.2 | 34.3 | 34.8 | 37.5 |
| 20 | 38.6 | 32.2 | 37.7 | 38.0 | 40.1 | 42.3 | 33.2 | 25.0 | 31.4 | 33.6 | 34.1 | 36.8 |
| 21 | 37.9 | 31.6 | 37.0 | 37.3 | 39.4 | 41.6 | 32.5 | 24.4 | 30.7 | 32.9 | 33.4 | 36.0 |
| 22 | 37.2 | 30.9 | 36.2 | 36.6 | 38.7 | 40.9 | 31.7 | 23.8 | 29.9 | 32.1 | 32.5 | 35.2 |
| 23 | 36.4 | 30.2 | 35.3 | 35.8 | 37.9 | 40.1 | 30.9 | 23.2 | 29.1 | 31.3 | 31.7 | 34.5 |
| 24 | 35.6 | 29.4 | 34.5 | 35.1 | 37.0 | 39.4 | 30.1 | 22.6 | 28.3 | 30.6 | 30.8 | 33.7 |
| 25 | 34.8 | 28.6 | 33.6 | 34.2 | 36.1 | 38.6 | 29.3 | 22.0 | 27.5 | 29.7 | 30.0 | 32.9 |
| 26 | 33.9 | 27.9 | 32.8 | 33.4 | 35.3 | 37.8 | 28.5 | 21.4 | 26.8 | 28.9 | 29.1 | 32.1 |
| 27 | 33.1 | 27.1 | 31.9 | 32.5 | 34.4 | 37.0 | 27.7 | 20.8 | 26.0 | 28.1 | 28.3 | 31.2 |
| 28 | 32.2 | 26.3 | 31.0 | 31.6 | 33.5 | 36.2 | 26.9 | 20.3 | 25.2 | 27.3 | 27.4 | 30.4 |
| 29 | 31.3 | 25.6 | 30.1 | 30.7 | 32.7 | 35.4 | 26.1 | 19.7 | 24.5 | 26.4 | 26.6 | 29.6 |
| 30 | 30.4 | 24.8 | 29.2 | 29.8 | 31.8 | 34.5 | 25.3 | 19.1 | 23.7 | 25.6 | 25.7 | 28.8 |
| 31 | 29.4 | 24.1 | 28.3 | 28.9 | 30.8 | 33.6 | 24.4 | 18.5 | 23.0 | 24.8 | 24.9 | 27.9 |
| 32 | 28.5 | 23.3 | 27.4 | 27.9 | 29.9 | 32.7 | 23.7 | 17.9 | 22.2 | 24.0 | 24.1 | 27.1 |
| 33 | 27.6 | 22.6 | 26.5 | 27.1 | 29.0 | 31.7 | 22.9 | 17.4 | 21.5 | 23.2 | 23.3 | 26.3 |
| 34 | 26.7 | 21.8 | 25.6 | 26.2 | 28.1 | 30.8 | 22.1 | 16.8 | 20.7 | 22.4 | 22.5 | 25.4 |
| 35 | 25.8 | 21.0 | 24.7 | 25.3 | 27.1 | 29.9 | 21.3 | 16.2 | 19.9 | 21.6 | 21.6 | 24.6 |
| 36 | 24.9 | 20.2 | 23.9 | 24.4 | 26.2 | 28.9 | 20.5 | 15.6 | 19.2 | 20.8 | 20.8 | 23.7 |
| 37 | 24.0 | 19.4 | 23.0 | 23.5 | 25.3 | 28.0 | 19.7 | 15.0 | 18.4 | 20.0 | 20.0 | 22.9 |
| 38 | 23.1 | 18.6 | 22.1 | 22.6 | 24.4 | 27.1 | 18.9 | 14.4 | 17.7 | 19.1 | 19.2 | 22.0 |
| 39 | 22.2 | 17.9 | 21.2 | 21.6 | 23.5 | 26.1 | 18.0 | 13.8 | 16.9 | 18.3 | 18.4 | 21.2 |
| 40 | 21.3 | 17.1 | 20.3 | 20.7 | 22.6 | 25.2 | 17.3 | 13.3 | 16.1 | 17.5 | 17.6 | 20.3 |
| 41 | 20.4 | 16.3 | 19.4 | 19.8 | 21.6 | 24.3 | 16.5 | 12.6 | 15.3 | 16.7 | 16.8 | 19.5 |
| 42 | 19.4 | 15.5 | 18.5 | 18.9 | 20.7 | 23.4 | 15.6 | 12.0 | 14.5 | 15.9 | 16.0 | 18.6 |
| 43 | 18.6 | 14.7 | 17.6 | 18.0 | 19.8 | 22.4 | 14.8 | 11.4 | 13.7 | 15.0 | 15.2 | 17.8 |
| 44 | 17.6 | 13.9 | 16.7 | 17.1 | 18.9 | 21.5 | 13.9 | 10.7 | 13.0 | 14.2 | 14.4 | 16.9 |
| 45 | 16.7 | 13.1 | 15.9 | 16.2 | 18.0 | 20.6 | 13.1 | 10.1 | 12.2 | 13.4 | 13.5 | 16.0 |
| 46 | 15.7 | 12.4 | 15.0 | 15.3 | 17.0 | 19.7 | 12.2 | 9.5 | 11.4 | 12.5 | 12.7 | 15.2 |
| 47 | 14.8 | 11.6 | 14.1 | 14.4 | 16.1 | 18.8 | 11.4 | 8.9 | 10.6 | 11.7 | 11.8 | 14.3 |
| 48 | 13.8 | 10.9 | 13.2 | 13.5 | 15.2 | 17.9 | 10.5 | 8.3 | 9.9 | 10.9 | 11.0 | 13.4 |
| 49 | 13.0 | 10.1 | 12.3 | 12.6 | 14.3 | 17.0 | 9.8 | 7.7 | 9.1 | 10.0 | 10.2 | 12.6 |
| 50 | 12.1 | 9.4 | 11.4 | 11.7 | 13.4 | 16.1 | 8.9 | 7.1 | 8.4 | 9.2 | 9.4 | 11.7 |
| 51 | 11.2 | 8.7 | 10.6 | 10.8 | 12.5 | 15.2 | 8.2 | 6.5 | 7.7 | 8.4 | 8.6 | 10.9 |
| 52 | 10.2 | 7.9 | 9.7 | 9.9 | 11.6 | 14.3 | 7.4 | 6.0 | 7.0 | 7.6 | 7.8 | 10.1 |
| 53 | 9.3 | 7.2 | 8.9 | 9.0 | 10.7 | 13.4 | 6.7 | 5.4 | 6.3 | 6.9 | 7.0 | 9.3 |
| 54 | 8.5 | 6.5 | 8.1 | 8.2 | 9.8 | 12.5 | 6.0 | 4.8 | 5.7 | 6.1 | 6.3 | 8.5 |
| 55 | 7.6 | 5.8 | 7.3 | 7.4 | 8.9 | 11.7 | 5.3 | 4.3 | 5.1 | 5.5 | 5.6 | 7.7 |
| 56 | 6.8 | 5.2 | 6.5 | 6.5 | 8.1 | 10.8 | 4.7 | 3.7 | 4.5 | 4.8 | 5.0 | 7.0 |
| 57 | 6.0 | 4.5 | 5.7 | 5.8 | 7.3 | 9.9 | 4.1 | 3.2 | 4.0 | 4.2 | 4.4 | 6.4 |
| 58 | 5.3 | 3.9 | 5.0 | 5.0 | 6.5 | 9.3 | 3.6 | 2.7 | 3.5 | 3.7 | 3.8 | 5.8 |
| 59 | 4.6 | 3.4 | 4.3 | 4.4 | 5.7 | 8.4 | 3.1 | 2.3 | 3.0 | 3.2 | 3.3 | 5.2 |
| 60 | 4.0 | 2.9 | 3.7 | 3.7 | 5.0 | 7.6 | 2.7 | 2.0 | 2.6 | 2.8 | 2.9 | 4.7 |
| 61 | 3.3 | 2.4 | 3.1 | 3.2 | 4.4 | 6.9 | 2.3 | 1.6 | 2.2 | 2.4 | 2.5 | 4.1 |
| 62 | 2.9 | 2.0 | 2.6 | 2.7 | 3.8 | 6.3 | 1.9 | 1.3 | 1.9 | 2.0 | 2.1 | 3.6 |
| 63 | 2.4 | 1.7 | 2.2 | 2.2 | 3.3 | 5.6 | 1.6 | 1.1 | 1.6 | 1.7 | 1.8 | 3.2 |
| 64 | 2.0 | 1.4 | 1.8 | 1.9 | 2.8 | 5.1 | 1.3 | 0.9 | 1.3 | 1.5 | 1.5 | 2.8 |
| 65 | 1.7 | 1.2 | 1.5 | 1.5 | 2.4 | 4.5 | 1.1 | 0.8 | 1.1 | 1.2 | 1.2 | 2.5 |
| 66 | 1.5 | 1.0 | 1.3 | 1.3 | 2.1 | 4.0 | 0.9 | 0.6 | 0.9 | 1.0 | 1.0 | 2.2 |
| 67 | 1.2 | 0.8 | 1.1 | 1.1 | 1.7 | 3.6 | 0.8 | 0.5 | 0.7 | 0.9 | 0.8 | 1.9 |
| 68 | 1.0 | 0.7 | 0.9 | 0.9 | 1.5 | 3.2 | 0.6 | 0.4 | 0.6 | 0.7 | 0.7 | 1.7 |
| 69 | 0.9 | 0.6 | 0.8 | 0.8 | 1.2 | 2.8 | 0.5 | 0.4 | 0.5 | 0.6 | 0.6 | 1.5 |
| 70 | 0.7 | 0.5 | 0.7 | 0.7 | 1.0 | 2.5 | 0.5 | 0.3 | 0.4 | 0.5 | 0.5 | 1.3 |

* Weighted averages by education. Sources: see Chapter 12



INTEREST RATE STATISTICS

Daily Treasury Yield Curve Rates

☒ Get e-mail updates when this information changes.

[Historical Data](#)

This data is also available in XML format by clicking on the XML icon

December 2008

| Date | 1 mo | 3 mo | 6 mo | 1 yr | 2 yr | 3 yr | 5 yr | 7 yr | 10 yr | 20 yr | 30 yr |
|----------|------|------|------|------|------|------|------|------|-------|-------|-------|
| 12/01/08 | 0.09 | 0.07 | 0.44 | 0.81 | 0.90 | 1.16 | 1.71 | 2.13 | 2.72 | 3.51 | 3.22 |
| 12/02/08 | 0.04 | 0.06 | 0.42 | 0.77 | 0.90 | 1.12 | 1.65 | 2.08 | 2.68 | 3.47 | 3.18 |
| 12/03/08 | 0.02 | 0.02 | 0.35 | 0.70 | 0.87 | 1.07 | 1.60 | 2.03 | 2.67 | 3.45 | 3.17 |
| 12/04/08 | 0.01 | 0.02 | 0.26 | 0.61 | 0.82 | 1.02 | 1.51 | 1.93 | 2.55 | 3.35 | 3.06 |
| 12/05/08 | 0.02 | 0.02 | 0.23 | 0.54 | 0.93 | 1.19 | 1.67 | 2.09 | 2.67 | 3.41 | 3.11 |
| 12/08/08 | 0.01 | 0.03 | 0.28 | 0.53 | 0.97 | 1.27 | 1.76 | 2.17 | 2.77 | 3.45 | 3.16 |
| 12/09/08 | 0.04 | 0.03 | 0.25 | 0.49 | 0.84 | 1.15 | 1.61 | 2.03 | 2.67 | 3.35 | 3.06 |
| 12/10/08 | 0.00 | 0.00 | 0.21 | 0.49 | 0.86 | 1.21 | 1.82 | 2.05 | 2.69 | 3.39 | 3.09 |
| 12/11/08 | 0.00 | 0.01 | 0.22 | 0.51 | 0.79 | 1.11 | 1.55 | 1.99 | 2.64 | 3.35 | 3.07 |
| 12/12/08 | 0.03 | 0.02 | 0.21 | 0.50 | 0.78 | 1.05 | 1.55 | 1.98 | 2.60 | 3.36 | 3.07 |
| 12/15/08 | 0.00 | 0.03 | 0.28 | 0.50 | 0.75 | 1.02 | 1.50 | 1.92 | 2.53 | 3.29 | 2.98 |
| 12/16/08 | 0.05 | 0.04 | 0.23 | 0.45 | 0.65 | 0.88 | 1.34 | 1.77 | 2.37 | 3.16 | 2.86 |
| 12/17/08 | 0.03 | 0.05 | 0.19 | 0.45 | 0.73 | 0.98 | 1.35 | 1.70 | 2.20 | 3.01 | 2.66 |
| 12/18/08 | 0.03 | 0.00 | 0.15 | 0.43 | 0.68 | 0.92 | 1.26 | 1.59 | 2.08 | 2.86 | 2.53 |
| 12/19/08 | 0.00 | 0.02 | 0.14 | 0.44 | 0.74 | 1.02 | 1.35 | 1.66 | 2.13 | 2.89 | 2.55 |

* 30-year Treasury constant maturity series was discontinued on February 18, 2002 and reintroduced on February 9, 2006. From February 18, 2002 to February 8, 2006, Treasury published alternatives to a 30-year rate. See Long-Term Average Rate for more information.

Treasury discontinued the 20-year constant maturity series at the end of calendar year 1986 and reinstated that series on October 1, 1993. As a result, there are no 20-year rates available for the time period January 1, 1987 through September 30, 1993.

Treasury Yield Curve Rates. These rates are commonly referred to as "Constant Maturity Treasury" rates, or CMTs. Yields are interpolated by the Treasury from the daily yield curve. This curve, which relates the yield on a security to its time to maturity is based on the closing market bid yields on actively traded Treasury securities in the over-the-counter market. These market yields are calculated from composites of quotations obtained by the Federal Reserve Bank of New York. The yield values are read from the yield curve at fixed maturities, currently 1, 3 and 6 months and 1, 2, 3, 5, 7, 10, 20, and 30 years. This method provides a yield for a 10 year maturity, for example, even if no outstanding security has exactly 10 years remaining to maturity.

Treasury Yield Curve Methodology. The Treasury yield curve is estimated daily using a cubic spline model. Inputs to the model are primarily bid-side yields for on-the-run Treasury securities. See our [Treasury Yield Curve Methodology](#) page for details.

[Daily Treasury Yield Curve Rates](#)

[Daily Treasury Bill Rates](#)

[Daily Treasury Long-Term Rates](#)


[Daily Treasury Real Yield Curve Rates](#)

[Daily Treasury Real Long-Term Rates](#)

Negative Yields and Nominal Constant Maturity Treasury Series Rates (CMTs). Current financial market conditions, in conjunction with extraordinary low levels of interest rates, have resulted in negative yields for some Treasury securities trading in the secondary market. Negative yields for Treasury securities most often reflect highly technical factors in Treasury markets related to the cash and repurchase agreement markets, and are at times unrelated to the time value of money.

For more information regarding these statistics contact the Office of Debt Management by email at debt.management@do.treas.gov.

For other Public Debt information contact (202) 504-3550.

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News

United States
Department
of Labor



Bureau of Labor Statistics

Washington, D.C. 20212

Technical Contact: (202) 691-6199 NCSinfo@bls.gov
Media Contact: (202) 691-5902
Internet Address: <http://www.bls.gov/ect>

USDL: 08-0788
For Release: 10:00 AM EDT
Wednesday, June 11, 2008

EMPLOYER COSTS FOR EMPLOYEE COMPENSATION—MARCH 2008

Employer costs for employee compensation averaged \$28.46 per hour worked in March 2008, the U.S. Department of Labor's Bureau of Labor Statistics reported today. Wages and salaries, which averaged \$19.83, accounted for 69.7 percent of these costs, while benefits, which averaged \$8.63, accounted for the remaining 30.3 percent. (See table 1.) Employer Costs for Employee Compensation, based on the National Compensation Survey, measures employer costs for wages, salaries, and employee benefits for nonfarm private and state and local government workers.

Costs for legally required benefits, including Social Security, Medicare, unemployment insurance, and workers' compensation, averaged \$2.24 per hour (7.9 percent of total compensation). Employer costs for life, health, and disability insurance benefits averaged \$2.40 (8.4 percent); paid leave benefits (vacations, holidays, sick leave, and other leave) averaged \$2.00 (7.0 percent); and retirement and savings benefits averaged \$1.26 (4.4 percent) per hour worked.

Health benefit costs in private industry

The average cost for health benefits was \$1.92 per hour worked in private industry (7.2 percent of total compensation) in March 2008. In March 2003, employer costs for health benefits averaged \$1.41, or 6.3 percent of total compensation.

Among occupational groups, employer costs for health benefits ranged from 90 cents per hour and 6.8 percent of total compensation for service workers to \$2.77 and 5.8 percent of total compensation for management, professional, and related occupations. Among other occupational categories, employer costs for health benefits averaged \$1.67 (7.9 percent) for sales and office occupations, lower than \$2.30 (7.6 percent) for natural resources, construction, and maintenance occupations, and \$2.21 (9.6 percent) for production, transportation, and material-moving occupations. (See table 5.)

Employer costs for health benefits were significantly higher for union workers, averaging \$3.95 per hour (10.9 percent), than for nonunion workers, averaging \$1.68 (6.5 percent). (See table 5.)

NOTE

Effective with the December 2008 release, series for metropolitan and nonmetropolitan areas in table 7 will be discontinued.

In goods-producing industries, health benefit costs were higher, \$2.68 per hour (8.5 percent of total compensation), than in service-providing industries, \$1.73 per hour (6.8 percent of total compensation). (See table 6.)

Within goods-producing industries, health insurance costs were \$2.91 per hour (9.3 percent of total compensation) for manufacturing workers, greater than the cost for construction workers (\$2.09 and 6.9 percent of compensation.) Service-providing industries varied greatly in costs, ranging from 61 cents in leisure and hospitality (5.2 percent), to \$2.60 in the financial activities industry (7.3 percent) and \$2.90 in the information industry (7.4 percent). (See table 6.)

Among the four regions, costs for health benefits ranged from \$1.65 per hour in the South to \$2.12 in the Northeast. Health care costs were \$2.06 in the Midwest and \$1.99 in the West. The proportion of total compensation represented by health benefits was 6.9 percent in the West, South and Northeast, and 7.9 percent in the Midwest. Within census divisions, hourly health benefit costs ranged from \$1.56 in the West South Central division, to \$2.17 in the Middle Atlantic and East North Central divisions. (See table 7.)

Health benefit costs increased, both in average hourly dollar amount and as a proportion of total compensation, with establishment size. Establishments with fewer than 50 workers averaged \$1.26 (5.8 percent), those with 50-99 workers averaged \$1.64 (7.0 percent), those with 100-499 employees averaged \$2.12 (7.9 percent), and those with 500 or more employees averaged \$3.01 (8.0 percent). (See table 8.)

Private industry

In March 2008, private industry employer compensation costs averaged \$26.76 per hour worked. Wages and salaries averaged \$18.91 per hour (70.6 percent), while benefits averaged \$7.86 (29.4 percent). Employer costs for paid leave averaged \$1.80 per hour worked (6.7 percent), supplemental pay averaged 80 cents (3.0 percent), insurance benefits averaged \$2.06 (7.7 percent), retirement and savings averaged 96 cents (3.6 percent), and legally required benefits \$2.24 (8.4 percent) per hour worked. (See table 5.)

Employer costs for health benefits varied by industry, occupation, bargaining status, region and establishment size. These differences reflect in part, varying incidence of benefit coverage among these groups. The National Compensation Survey also produces comprehensive data on the percentage of workers with access to and that participate in various employer provided benefit plans. For more information, see the BLS internet site <http://www.bls.gov/nes/ebs/home.htm>.

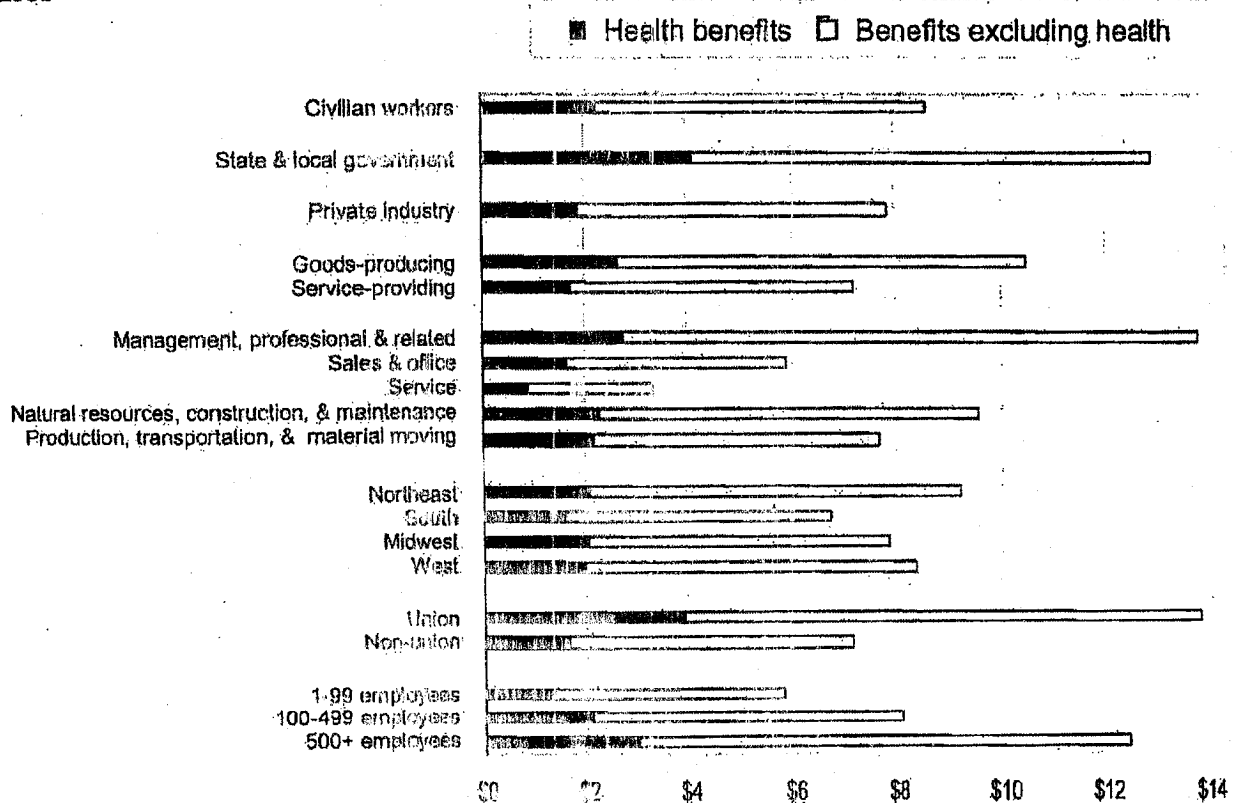
Note

The Employer Costs for Employee Compensation news release for June 2008 is scheduled for Wednesday, September 10, 2008, at 10:00 AM (EDT).

Relative importance of employer costs for employee compensation, March 2008

| Compensation component | Civilian workers | State and local government | Private industry |
|------------------------|------------------|----------------------------|------------------|
| Wages & salaries | 69.7% | 65.9% | 70.6% |
| Benefits | 30.3 | 34.1 | 29.4 |
| Paid leave | 7.0 | 8.2 | 6.7 |
| Supplemental pay | 2.6 | 0.9 | 3.0 |
| Insurance | 8.4 | 11.4 | 7.7 |
| Health benefits | 7.9 | 11.0 | 7.2 |
| Retirement & savings | 4.4 | 7.6 | 3.6 |
| Defined benefit | 2.7 | 6.7 | 1.6 |
| Defined contribution | 1.8 | 0.8 | 2.0 |
| Legally required | 7.9 | 6.0 | 8.4 |

Employer costs per hour worked for health benefits and total benefits, by various categories, March 2008



1 John Ohlson, Esq.
2 Bar Number 1672
3 BOWEN HALL OHLSON & OSBORNE
4 555 South Center Street
5 Reno, Nevada 89501
6 Telephone: (775) 323-8678
7 Attorneys for Susan Fallini

8
9 **FIFTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA**
10
11 **IN AND FOR THE COUNTY OF NYE**

12 * * * * *

13 Estate of MICHAEL DAVID ADAMS,
14 By and through his mother JUDITH ADAMS,
15 Individually and on behalf of the Estate,

16 Plaintiff,

Case No.: CV24539

Dept. No.: 2P

17 vs.

18 SUSAN FALLINI, DOES I-X, and
19 ROECORPORATIONS I-X, inclusive,

20 Defendant.

21
22 AND ALL RELATED CLAIMS.
23
24

25 **OPPOSITION TO APPLICATION FOR DEFAULT JUDGMENT**
26 **AGAINST DEFENDANT SUSAN FALLINI**

27 Comes Now, Defendant SUSAN FALLINI, by and through her counsel of record, John
28 Ohlson, Esq. and hereby submits the within opposition to application for default judgment as follows:

- 25 1. Undersigned Counsel was just retained to represent defendants herein, and just received
26 the Application for Default from former counsel on today's date.
- 27 2. On information and belief, the defendant Susan Fallini learned of the status of this case
28 last week. She promptly sought new counsel.

- 1 3. Plaintiff's Counsel has accurately described the procedural history of this case beginning
2 at page 3 of his motion, and continuing through page 7.
- 3 4. On information and belief, defendant's former counsel, Mr. Kuehn suffered some sort of
4 mental breakdown, and allowed this case, and others in his office to become the "train
5 wreck " that it is, without informing his client, Ms Fallini.
- 6 5. Undersigned counsel is working as quickly as possible to prepare and file a motion with
7 this Court seeking redress on behalf of the defendant who is blameless in this disaster.
- 8 6. It is the understanding that a status conference is set before this Court on July 19, 2010. It
9 is planned that Defendant's motions will be filed in sufficient time for opposition thereto
10 to be made before that status conference and the Court's hearing of this application and
11 other matters at the Status conference.
- 12 7. It would aggravate the injustice that has been visited on all parties and the Court by Mr.
13 Kuehn to continue to proceed in the default of the defendant, without giving the defendant
14 an opportunity to be heard.

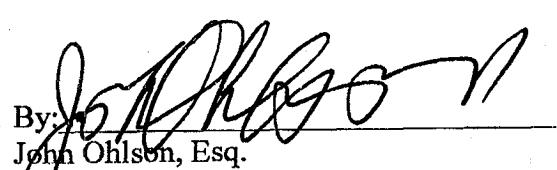
15 Based on the foregoing, it is respectfully requested that the Court defer ruling on the
16 plaintiff's Application For Default until the matter comes before the Court on July 19, 2010 or
17 until such other time as the Court fixes for a hearing to be had hereon.

18 **AFFIRMATION**
19 Pursuant to NRS 239B.030

20 The undersigned does hereby affirm that the preceding document does not contain the
21 social security number of any person.


22 Dated this 23 day of June, 2010.

23 **BOWEN HALL OHLSON & OSBORNE**

24
25 By: 
26 John Ohlson, Esq.
27 Bar Number 1672
28 555 S. Center Street
Reno, Nevada 89501
Telephone: (775) 323-8678

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John P. Aldrich, Esq.
Aldrich Law Firm, Ltd.
1601 S. Rainbow Blvd., Ste. 160
Las Vegas, NV 89146


An employee of Bower Hall

- 3 -

1 John Ohlson, Esq.
2 Bar Number 1672
3 BOWEN HALL OHLSON & OSBORNE
4 555 South Center Street
5 Reno, Nevada 89501
6 Telephone: (775) 323-8678
7 Attorneys for Susan Fallini

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RACHEL ALDANA CLERK
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FIFTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

IN AND FOR THE COUNTY OF NYE

Estate of MICHAEL DAVID ADAMS,
By and through his mother JUDITH ADAMS,
Individually and on behalf of the Estate,

Plaintiff,

Case No.: CV24539

Dept. No.: 2P

vs.

SUSAN FALLINI, DOES I-X, and
ROE CORPORATIONS I-X, inclusive,

Defendant.

AND ALL RELATED CLAIMS.

MOTION FOR LEAVE TO FILE MOTION FOR RECONSIDERATION

Comes Now, Defendant SUSAN FALLINI, by and through her counsel of record, John Ohlson, Esq. and moves this Court for leave to file herein a Motion for Reconsideration, in the form and substance of Exhibit 1 to the memorandum of points and authorities submitted herewith.

This motion is made and based on the memorandum of points and authorities submitted herewith, and all the records, files, and pleadings on file herein.

Points and Authorities

District Court Rule 13(7) provides as follows:

No motion once heard and disposed of shall be renewed in the same cause, nor shall

1 the same matters therein embraced be reheard, unless by leave of the court granted
2 upon motion therefor, after notice of such motion to the adverse parties.

3 Defendant seeks leave, as required by the Rule, to file herein the Motion For Reconsideration
4 attached hereto as Exhibit 1, and incorporated herein by reference. As set forth in the proposed
5 motion, the motion is meritorious, and not interposed for delay.


6 Accordingly, it is respectfully requested that the motion be granted, and that defendant be
7 allowed to file herein, the motion, Exhibit 1.

8
9 **AFFIRMATION**
10 **Pursuant to NRS 239B.030**

11 The undersigned does hereby affirm that the preceding document does not contain the
12 social security number of any person.

13 Dated this 2 day of July, 2010.

14 **BOWEN HALL OHLSON & OSBORNE**

15
16
17 By: 
18 John Ohlson, Esq.
19 Bar Number 1672
20 555 S. Center Street
21 Reno, Nevada 89501
22 Telephone: (775) 323-8678
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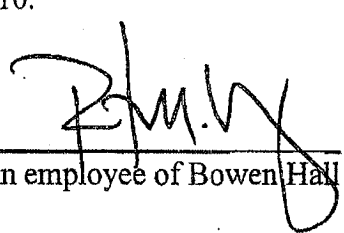
CERTIFICATE OF SERVICE

Pursuant to NRCP 5(b), I hereby certify that I am an employee of BOWEN, HALL,
OHLSON, & OSBORNE, and that on this date I personally served a true copy of the foregoing
MOTION FOR LEAVE TO FILE MOTION FOR RECONSIDERATION, by the method
indicated and addressed to the following:

John P. Aldrich, Esq.
Aldrich Law Firm, Ltd.
1601 S. Rainbow Blvd., Ste. 160
Las Vegas, NV 89146

☒ Via U.S. Mail
☐ Via Overnight Mail
☐ Via Hand Delivery
☒ Via Facsimile
☐ Via ECF

DATED this 2 day of July, 2010.



An employee of Bowen Hall

SCHEDULE OF EXHIBITS

EXHIBIT 1: Motion for Reconsideration

EXHIBIT 1

EXHIBIT 1

1 John Ohlson, Esq.
2 Bar Number 1672
3 BOWEN HALL OHLSON & OSBORNE
4 555 South Center Street
5 Reno, Nevada 89501
6 Telephone: (775) 323-8678
7 *Attorneys for Susan Fallini*

8
9 **FIFTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA**
10
11 **IN AND FOR THE COUNTY OF NYE**

12 * * * * *

13 Estate of MICHAEL DAVID ADAMS,
14 By and through his mother JUDITH ADAMS,
15 Individually and on behalf of the Estate,

16 Plaintiff,

Case No.: CV24539

Dept. No.: 2P

17 vs.

18 SUSAN FALLINI, DOES I-X, and
19 ROE CORPORATIONS I-X, inclusive,

20 Defendant.
21 _____/

22 AND ALL RELATED CLAIMS.
23 _____/

24 **MOTION TO RECONSIDER PRIOR ORDERS**

25 Comes Now, Defendant SUSAN FALLINI, by and through her counsel of record, John
26 Ohlson, Esq. and hereby moves the court for its orders reconsidering prior orders:

27 (1) Granting Plaintiff's Motion for Partial Summary Judgment signed on July 29, 2008;

28 (2) Granting Motion for Summary Judgment in Favor of Counter-defendant, October 16, 2008;

(3) Findings of Fact, Conclusions of Law and Order Striking Answer and Counterclaim, November 4, 2009.

This motion is made and based on the points and authorities and affidavits submitted herewith, and all the records, files and proceedings on file herein, and the testimony to be had

hereon.

Memorandum of Points and Authorities In Support of Motion for Reconsideration

I.

Facts and Procedural History

The train wreck that is this case commenced with the filing of the complaint on January 31, 2007, over three years ago. The procedural history of this matter since that time is accurately set forth in Plaintiff's "*Application for Default Judgment Against Defendant Susan Fallini*," filed herein on June 24, 2010. Two Orders of this Court, however, have so far been proven to be case determinative: First, the Order Granting Plaintiff's Motion for Partial Summary Judgment (7/29/08); and the Order Striking Answer and Counterclaim (11/04/09).

The foundation for the Courts Order for Partial Summary Judgment lies in the failure of former Counsel Harry Kuehn (hereinafter Kuehn) to respond to Requests for Admission served by Plaintiff on October 31, 2007. Since the requests for admission were not denied earlier than December 31, 2007, they were deemed admitted by default. Those admissions established the following "facts" for the purpose of this case:

1. Fallini's property is not located within an "open range" as it is defined in NRS 568.355.
2. Fallini is the owner of the cow that is mentioned in the Plaintiff's Complaint on file herein ("subject cow").
3. It is the common practice of Nye County, Nevada ranchers to mark their cattle with reflective or luminescent tags.
4. The subject cow was not marked with a reflective or luminescent tag.
5. The subject cow crossed a fence to arrive at the location of the subject accident described in the Complaint of file herein.
6. Fallini's cattle had previously been involved in incidents with motor vehicles on the roadway.

- 1 7. Fallini does not track the location of her cattle while they are grazing away from her
2 property.
- 3 8. Fallini does not remove her cattle from the roadway when notified that the cattle are in a
4 roadway.
- 5 9. The subject cow was not visible at night.
- 6 10. Fallini was aware that the subject cow was not visible at night prior to the incident that is
7 the subject of the Complaint on file herein.
- 8 11. The subject cow was in the roadway of SR 375 at the time of the incident that is the
9 subject matter of the Complaint on file herein.
- 10 12. The subject cow's presence in the roadway of SR 375 was the cause of the motor vehicle
11 accident that is the subject of the Complaint on file herein.
- 12 13. Fallini did not know the location of the subject cow at the time of the incident that is the
13 subject of the Complaint on file herein.
- 14 14. The presence of a reflective or luminescent tag on the subject cow would have made the
15 subject cow visible at the time of the incident that is the subject of the Complaint on file
16 herein.

17 The Order striking answer and counterclaim, of course, arose from Kuehn's repeated
18 failure, even in the face of contempt citations and sanctions to respond to discovery.

19 The order for partial summary judgment established defendant's liability in this matter,
20 and the order striking answer and counterclaim left the defendants in the position of default.

21 II.

22 Authorities

23 Since the 5th Judicial District has not enacted local rules of practice, the first inquiry on
24 the subject of motions to reconsider rulings should be to the District Court Rules, and particularly
25 Rule 13(7), which provides as follows:
26
27
28

1 No motion once heard and disposed of shall be renewed in the same cause, nor shall
2 the same matters therein embraced be reheard, unless by leave of the court granted
upon motion therefor, after notice of such motion to the adverse parties.

3 The Supreme Court has recognized the propriety of motions for reconsideration under DCR
4 13(7). See Arnold v. Kip 123 Nev. 410, 168 P3d 1050 (2007).

5 But, when is it appropriate for the Court to reconsider, and reverse prior rulings (having been
6 made in the case prior to final judgment)? The authorities seem to indicate that the standard is
7 two-pronged. First, the prior decision must be *clearly erroneous*; second, the order must work a
8 *manifest injustice*. Little Earth v. Department of Housing 807 Fed 2d 1433 (8th Cir. 1986).¹ The
9 Court's ability to reconsider is not even hampered by the "law of the case doctrine" when the
10 order reconsidered would work a manifest injustice. United States v. Serpa 930 Fed 2d 639 (8th
11 Cir., 1991).
12

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III. Clearly Erroneous

16 Plaintiff achieved victory in this matter due to Kuehn's failure to deny requests for
17 admission. The essential subject matter of which established liability and provided that the area of
18 highway on which the accident occurred in this case was **not** open range. It was further
19 established, through failure to deny, that defendant failed in her responsibility to attached
20 reflective strips to her cows, as is the custom in that part of Nye County.

21 Both propositions of fact are clearly erroneous. Attached hereto as Exhibit 1, is the letter
22 of Gilbert Garcia, Esq. Deputy Attorney General for NDOT. Mr. Garcia states what everybody in
23 Nye County seems to know, that the area in which the accident occurred was, in fact, open range.
24 Further the affidavits of Susan Fallini (Exhibit 2) and Joe Fallini (Exhibit 3) support Mr. Garcia's
25 statement. If the Court allows testimony at the hearing on this motion, defendant will call several
26

27
28

¹ This 8th Circuit decision was cited by the Supreme Court in Masonry and Tile Contractors v. Jolley 113 Nev.
737, 941 P 2d 486, 489 (1997), in holding that the District Court properly granted reconsideration of a previously
decided issue that was clearly erroneous.

1 witnesses to testify as to the open range character to the area in question.

2 Because Mr. Keuhn failed to deny the plaintiff's request for admission, the questions were
3 deemed admitted. To compound matters, Kuehn failed to oppose plaintiff's motion for summary
4 judgment. The Court had no choice but to grant the motion for summary judgment, **even though**
5 **the factual premise therefore is patently untrue.** Had defendants been properly represented, the
6 Court may well have taken judicial notice that the area in question in this case was open range.
7 Instead, the Court was forced to accept a false factual premise due to Keuhn's failures.

8
9 On the subject of reflective strips, Susan and Joe Fallini (Exhibits 2 and 3) and long time
10 brand inspector Chris Call (Exhibit 4) do, and can present evidence that no such custom and
11 practice exists among ranchers in Nye County. Once again, the Court was forced down Alice's
12 rabbit hole by Kuehn, who allowed this preposterous premise to be established by virtue of
13 unanswered discovery.
14

15 Because the Partial Summary Judgment rests on factual falsehoods, it is **clearly**
16 **erroneous.** The first prong has been met.

17 **IV.**
18 **Manifest Injustice**

19 Promptly after this case was initiated, defendant Susan Fallini retained Mr. Kuehn to
20 represent her in the defense of this action. Kuehn accepted service for the defendants on February
21 22, 2007. Until approximately June 2, 2010 Kuehn failed to communicate the status of the case,
22 **except to tell defendant that the case was "over and had been taken care of."** Finally, Mr.
23 Tom Gibson (apparently having been apprised of Kuehn's many derelictions in this case)
24 contacted defendants and gave them the bad news.
25

26 Defendants had no idea that they had been served with discovery requests. Defendants had
27 no idea that, among those requests were Requests for Admissions, the failure to deny would
28 become case determinative. They had no idea they had been served with interrogatories (which

1 they would have promptly and easily answered). They had no idea they had been asked for
2 documents which they would have promptly produced if they had existed. The defendants were
3 completely unaware that the lawyer they had hired and paid had failed so miserably to protect
4 their interests that every motion made by plaintiff had gone unopposed. They were ignorant of the
5 fact that their lawyer had repeatedly exposed them to contempt citations (which were never
6 served on them personally).

8 The defendants would have been better off if they had proceeded in pro per. As soon as
9 they discovered that their lawyer had failed in his ethical obligations (competence) and had been
10 the engine of this disaster, they consulted long time counsel who referred them to new counsel
11 without delay.

12 Rule 1.1 of the Nevada Rules of Professional Conduct provides as follows:

13 A lawyer shall provide competent representation to a client. Competent
14 representation requires the legal knowledge, skill, thoroughness and preparation
15 reasonably necessary for the representation.

16 Kuehn's breach of this requirement of professional responsibility not only brought this
17 unjust result upon his client, but it forced the Court to enter decisions based entirely on his
18 failures, and not on sound factual and legal premises. He has subverted the administration of
19 justice. He has further complicated and frustrated the efforts of plaintiff's counsel who has
20 suffered along with the Court in his attempt to prosecute his client's claim fairly and ethically. If
21 this case does not represent the "manifest injustice" of which the Supreme Court speaks, then
22 manifest injustice does not exist.

24 It is expected that Kuehn and partner Gibson will be subpoenaed to testify at the hearing
25 hereon, and possibly explain the unexplainable by shedding light on Kuehn's mental condition.

26 V.
27 **Conclusions**

28 The Court's Orders granting partial summary judgment and striking answer and

1 counterclaim merit reconsideration and withdrawal. Those orders are clearly erroneous because
2 they are based on false factual premises.

3 Because Susan Fallini's lawyer failed to communicate with her, she had no idea that the case
4 was proceeding down its disastrous path. Because she had been told by her lawyer that the case
5 had been taken care of, she reasonably believed that it was over with and did not concern herself
6 with it. Susan Fallini is blameless in this matter. The fault lies entirely with Kuehn. To visit Ms.
7 Fallini with the consequences of Kuehn's derelictions and incompetence would truly bring about
8 a "manifest injustice."
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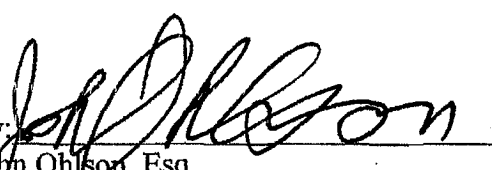
10 **AFFIRMATION**

11 **Pursuant to NRS 239B.030**

12 The undersigned does hereby affirm that the preceding document does not contain the
13 social security number of any person.

14 Dated this 2 day of July, 2010.
15

16 **BOWEN HALL OHLSON & OSBORNE**

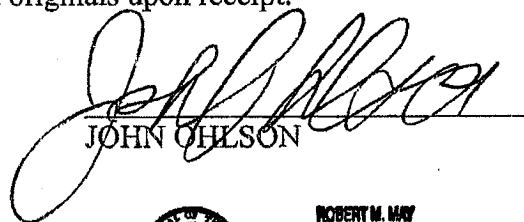
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18 By: 
19 John Ohlson, Esq.
20 Bar Number 1672
21 555 S. Center Street
22 Reno, Nevada 89501
23 Telephone: (775) 323-8678
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AFFIDAVIT OF JOHN OHLSON, ESQ.

STATE OF NEVADA)
)ss.
COUNTY OF WASHOE)

I, John Ohlson, being first duly sworn, do hereby affirm under penalty of perjury that the assertions of this affidavit are true, that I have personal knowledge of the matters stated in this affidavit, except as to those matters stated on information and belief, and as to those matters, I believe them to be true, and that if called as a witness, I could competently testify to the matters contained herein.

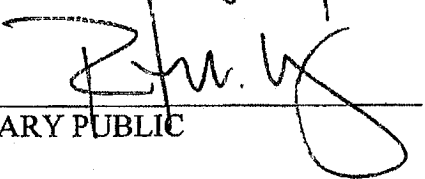
1. Affiant has been licensed to practice law in Nevada since September 1972, and is one of the lawyers representing defendant Susan Fallini;
2. Affiant personally interviewed Susan Fallini, Joe Fallini, Chris Call, and Tony Lesperance for the purposes of preparing their affidavits for this motion.
3. Each of the above described persons gave affiant information as set forth in their respective affidavits. Each acknowledged that their affidavits would be prepared for signature to support this motion. Each agreed to sign said affidavits upon receipt, and to testify in court as necessary.
4. Because of the shortness of time and distances involved, affiant was unable to obtain their signatures as of this filing, but will file signed originals upon receipt.


JOHN OHLSON



ROBERT M. MAY
NOTARY PUBLIC
STATE OF NEVADA
MY COMMISSION EXPIRES: 8-12-2012
COMMISSION NO: 04-91310-2

SUBSCRIBED AND SWORN TO THIS
2 DAY OF July, 2010.


NOTARY PUBLIC

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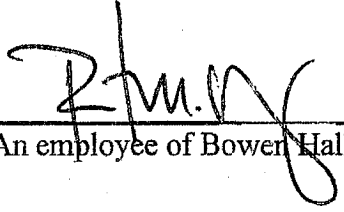
CERTIFICATE OF SERVICE

Pursuant to NRCP 5(b), I hereby certify that I am an employee of BOWEN, HALL,
OHLSON, & OSBORNE, and that on this date I personally served a true copy of the foregoing
MOTION TO RECONSIDER PRIOR ORDERS, by the method indicated and addressed to
the following:

John P. Aldrich, Esq.
Aldrich Law Firm, Ltd.
1601 S. Rainbow Blvd., Ste. 160
Las Vegas, NV 89146

☒ Via U.S. Mail
☐ Via Overnight Mail
☐ Via Hand Delivery
☒ Via Facsimile
☐ Via ECF

DATED this 2 day of July, 2010.


An employee of Bower Hall

SCHEDULE OF EXHIBITS

EXHIBIT 1: Correspondence from Gilbert Garcia

EXHIBIT 2: Affidavit of Susan Fallini

EXHIBIT 3: Affidavit of Joe Fallini

EXHIBIT 4: Affidavit of Chris Call

EXHIBIT 5: Affidavit of Tony Lesperance

EXHIBIT 1

EXHIBIT 1



STATE OF NEVADA
OFFICE OF THE ATTORNEY GENERAL

555 East Washington Ave., Suite 3900
Las Vegas, Nevada 89101

CATHERINE CORTEZ MASTO
Attorney General

KEITH G. MUNRO
Assistant Attorney General

JIM SPENCER
Chief of Staff

June 21, 2010

VIA U.S. Mail

Joe Fallini
HC 76 Box 1100
Tonopah, NV 89049

Re: State Route 375, Open Range

Dear Mr. Fallini:

Please be advised that I am writing this letter on behalf of the Nevada Department of Transportation ("NDOT") at your request regarding the open range status and signage of State Route 375.

NDOT's Tonopah sub-district has jurisdiction and maintenance responsibilities of SR 375 from milepost 0 to 49.36, which ends at the Nye-Lincoln county line. Within the limits of the above mentioned mileposts, there are no fences on the state right-of-way, and this section of highway is posted and signed as open range. If requested, we will provide our sign inventory list, which lists the milepost locations where these open range signs are located.

If you have any questions or concerns regarding the above, please contact me at (702) 486-3428. Thank you for your cooperation.

Sincere Regards,

A handwritten signature in black ink, appearing to read "Gilbert R. Garcia", written over a horizontal line.

Gilbert R. Garcia
Deputy Attorney General
Bureau of Government Affairs
Transportation Division

cc: Steve Baer, Assistant District Engineer

EXHIBIT 2

EXHIBIT 2

AFFIDAVIT OF SUSAN FALLINI

STATE OF _____)
COUNTY OF _____) ss.

I, Susan Fallini first duly sworn, do hereby affirm under penalty of perjury that the assertions of this affidavit are true, that I have personal knowledge of the matters stated in this affidavit, except as to those matters stated on information and belief, and as to those matters, I believe them to be true, and that if called as a witness, I could competently testify to the matters contained herein.

1. Affiant makes this affidavit in support of her motion to reconsider on file herein;
2. Affiant has read the memorandum of points and authorities in support of her motion and swears that the factual allegations therein are true and correct;
3. That in February 2007, Harry Kuehn, having been hired by affiant to represent her interests herein, accepted service of summons and complaint on her behalf;
4. Shortly thereafter, Mr. Kuehn, upon her inquiry, told affiant that this matter was "over" and that it had been "taken care of." Because of Kuehn's reassurances, affiant believed the case was no longer active, and Affiant did not worry about the case until June, 2010. Affiant did not pursue her counterclaim after being told the case was "over" out of sympathy for the plaintiff, the mother of the deceased. Affiant did not question Mr. Kuehn's reassurance because she knew that that area of the accident was open range, and believed she would be vindicated in this matter eventually.
5. On approximately June 2, 2010, affiant was contacted by Kuehn's partner, Tom Gibson, and informed of the true status of the case. Affiant was shocked. Affiant then attempted to obtain Court records to verify what had happened. After obtaining these records, affiant immediately obtained referrals to, and obtained new counsel to represent her.

- 1 6. Had affiant known of the discovery requests made by plaintiff, affiant would have
2 responded as required by law. Affiant would have denied the requests for admissions
3 served herein.
4
5 7. The area of the accident is open range, and was at the time of the accident. The roadway is
6 posted by the Nevada Department of Transportation as such. There is not, and never has
7 been a custom or practice of cattle ranchers in Nye County to affix their cattle with
8 luminescent or reflective devices of any kind. Affiant has ranched in Nye County for
9 many years and has never even heard of such custom or practice.
10
11 8. There is no insurance coverage applicable to plaintiff's claim.
12
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16

14 SUSAN FALLINI

16
17 SUBSCRIBED AND SWORN TO THIS
18 _____ DAY OF _____, 2010.

19 _____
20 NOTARY PUBLIC
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EXHIBIT 3

EXHIBIT 3

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STATE OF _____ }
COUNTY OF _____ } ss.

I, Joe Fallini first duly sworn, do hereby affirm under penalty of perjury that the assertions of this affidavit are true, that I have personal knowledge of the matters stated in this affidavit, except as to those matters stated on information and belief, and as to those matters, I believe them to be true, and that if called as a witness, I could competently testify to the matters contained herein.

1. Affiant is the husband of defendant Susan Fallini, and makes this affidavit in support of the Motion to Reconsider submitted herewith.
2. Affiant has read the Points and Authorities supporting said motion and swears that the factual allegations therein are true and correct;
3. Affiant has ranched in Nye County with Defendant for many years and is aware of the customs and practices of cattle ranchers in Nye County, as well as open range laws and their applicability to the area of the accident in this case;
4. Affiant has read the statements of Susan Fallini in her affidavit, and swears the same are true and correct, all from personal knowledge

JOE FALLINI

SUBSCRIBED AND SWORN TO THIS
 _____ DAY OF _____, 2010.

NOTARY PUBLIC

EXHIBIT 4

EXHIBIT 4

AFFIDAVIT OF CHRIS CALL

STATE OF _____ }
COUNTY OF _____ } ss.

I, Chris Call first duly sworn, do hereby affirm under penalty of perjury that the assertions of this affidavit are true, that I have personal knowledge of the matters stated in this affidavit, except as to those matters stated on information and belief, and as to those matters, I believe them to be true, and that if called as a witness, I could competently testify to the matters contained herein.

1. Affiant has been involved, in one way or another, with ranching in Nevada for most of my life.
2. I worked for the Nevada Department of Agriculture as a brand inspector, district supervisor of brand inspections, and administrator. I retired chief administrator of the State Brand Inspection Division in 2010.
3. Most of my experience has been in with Nye County, Nevada ranching. I have a B.S. Degree from UNR, and have taken post graduate courses. I am familiar with all aspects of cattle ranching in Nye County, including customs and practices, and with open range laws.
4. The area of highway on State Route 375 from milepost 0 to 49.36 is, and has been for many years open range. That area of highway is posted as such to warn motorists.
5. There is not now, nor has there ever been a common practice among ranchers in Nye county to affix luminescent or reflective markers to cattle. In fact, I have never even heard of such a practice being common in Nevada.

////

////

1 6. I called in this matter, I will testify consistently herewith.
2
3
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5 _____
CHRIS CALL
6

7 SUBSCRIBED AND SWORN TO THIS
8 _____ DAY OF _____, 2010.
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NOTARY PUBLIC
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EXHIBIT 5

EXHIBIT 5

AFFIDAVIT OF TONY LESPERANCE

STATE OF _____ }
COUNTY OF _____ } ss.

I, Tony Lesperance first duly sworn, do hereby affirm under penalty of perjury that the assertions of this affidavit are true, that I have personal knowledge of the matters stated in this affidavit, except as to those matters stated on information and belief, and as to those matters, I believe them to be true, and that if called as a witness, I could competently testify to the matters contained herein.

1. Affiant is currently appointed and serving director of the Nevada Department of Agriculture. Affiant formerly taught at UNR's school of agriculture, and has been involved in agriculture in Nevada for more than 60 years;
2. Affiant is familiar with Nevada's open range laws and knows that SR 375, as pertinent to this case is open range;
3. Affiant further is well acquainted with the customs and practices of cattle ranchers in Nye County, Nevada. The idea that a Nevada cattle rancher would tag his/her cattle with luminescent or reflective tags to aid in the cow being seen at night on a roadway, is simply unheard of.

TONY LESPERANCE

SUBSCRIBED AND SWORN TO THIS
____ DAY OF _____, 2010.

NOTARY PUBLIC

1 **RPLY**

John P. Aldrich, Esq.

2 Nevada State Bar No. 6877

ALDRICH LAW FIRM, LTD.

3 1601 S. Rainbow Blvd., Suite 160

Las Vegas, Nevada 89146

4 (702) 853-5490

Attorneys for Plaintiff

5
6 THE FIFTH JUDICIAL DISTRICT COURT
7 THE STATE OF NEVADA
COUNTY OF NYE

8 Estate of MICHAEL DAVID ADAMS, by and
9 through his mother JUDITH ADAMS,
individually and on behalf of the Estate,

10 Plaintiff,

11 v.

12
13 SUSAN FALLINI, ; DOES I-X, and ROE
14 CORPORATIONS I-X, inclusive,

15 Defendants.

16
17 SUSAN FALLINI,

Counterclaimant,

18 vs.

19 Estate of MICHAEL DAVID ADAMS, by and
20 through his mother JUDITH ADAMS,
individually and on behalf of the Estate

21 Counterdefendants.

Case No.: CV24539

Dept. No.: 2P

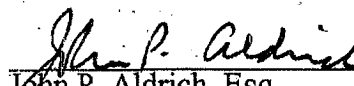
22
23 **REPLY TO FALLINI'S OPPOSITION TO APPLICATION FOR DEFAULT JUDGMENT**
24 **AGAINST DEFENDANT SUSAN FALLINI**

25 Plaintiff JUDITH ADAMS, INDIVIDUALLY AND ON BEHALF OF THE ESTATE OF
26 MICHAEL DAVID ADAMS, by and through her attorney of record, John P. Aldrich, of Aldrich Law
27 Firm Ltd., hereby submits this reply to Defendant's Opposition to Application for Default Judgment

1 against the Defendant SUSAN FALLINI. The Reply is based upon the attached memorandum of Points
2 and Authorities, the attached exhibits, and any testimony or argument the Court will entertain at the
3 hearing on this matter.

4 DATED this 13 day of July, 2010.

5 ALDRICH LAW FIRM, LTD.

6
7 
8 John P. Aldrich, Esq.
9 Nevada Bar No.: 6877
10 1601 S. Rainbow Blvd., Suite 160
11 Las Vegas, Nevada 89146
12 (702) 853-5490
13 Attorney for Plaintiff

11 **MEMORANDUM OF POINTS AND AUTHORITY**

12 **I.**

13 **INTRODUCTION**

14 Defendant, now years after her first discovery abuse, now attempts to come before this Court and
15 set aside this Court's prior orders. Defendant attempts to portray herself to this Court as an innocent
16 victim of an attorney having some sort of breakdown. In reality, Defendant is a woman who has been
17 involved in numerous federal lawsuits and is clearly litigation-savvy, and despite this fact, she apparently
18 ignored this case entirely. She had three years to figure out what was happening in her case. However,
19 because she apparently stuck her head in the sand and failed to follow up for status updates or
20 confirmation of alleged status updates, she now wants to blame her attorney.

21 While trying to paint Defendant as the victim, Defendants's Opposition fails to mention the
22 substantial prejudice that has been meted out on Plaintiff as a result of Defendant's dilatory conduct.
23 Plaintiff spent three years attempting to gain basic discoverable information, including insurance
24 information. Plaintiff was forced to file numerous motions that would not have been necessary had
25 Defendant and/or her counsel complied with Nevada rules and law. Plaintiff is the blameless party in this
26 matter.
27

1 It is unthinkable that Defendant would now, years later, attempt to move this Court to "start the
2 case over" after Plaintiff had to expend extensive resources to establish facts, obtain simple insurance
3 information, and ultimately seek judgment. Plaintiff lost her only son as a result of this accident – what
4 Ms. Adams has been through is indescribable. For Defendant to now ask this Court to require Plaintiff
5 to go through the pain of re-litigating this case in which all key facts have been established, summary
6 judgment has been granted, and Defendant's Answer and Counterclaim have been stricken, is
7 unwarranted. This is especially so in light of the fact Defendant has cited no Nevada law to support her
8 request, as required by the District Rules of the State of Nevada Rule 13.

9 **II.**

10 **DEFENDANT HAS NO STANDING TO OPPOSE PLAINTIFF'S APPLICATION FOR**
11 **DEFAULT JUDGMENT**

12 **A. Defendant Has Set Forth No Facts to Support Her Request**

13 Defendant cites no case law or statute in support of her Opposition to Plaintiff's Application for
14 Default Judgment. Pursuant to District Court Rule 13(3), Defendant must serve an opposition that
15 includes a memorandum of points and authorities and/or supporting affidavits. DCR 13(3). The Rule
16 further provides that failure to include these items can be construed as a concession by the opposing party
17 that the motion (in this instance the Application for Default Judgment) is meritorious and a consent by
18 the opposing party to the granting of the motion. Defendant's failure to comply with this rule (largely
19 because there is no law or fact that supports Defendant's position) should be deemed a concession by
20 Defendant that the relief sought by Ms. Adams should be granted.

21 Defendant's "facts" do not help either. Apparently in support of her Opposition to Plaintiff's
22 Application for Default Judgment, Defendant sets forth seven "facts" – none of which are verified or
23 given under oath – in support of her request. Further, Defendant cites no case law whatsoever to support
24 her Opposition. Nevertheless, Ms. Adams makes the following comments regarding Defendant's seven
25 "facts":

- 26 1. The Opposition was signed on June 23, 2010. Although the undersigned does not dispute
27 that new counsel may have just received the Application for Default Judgment, this "fact"

1 does not have any relevance to Defendant's request, nor does it provide a basis for this
2 Court to grant the relief requested by Defendant (i.e., that the prove-up hearing be
3 postponed).

4 2. The Opposition claims that Defendant just learned of the status of this case the week prior
5 to June 23, 2010, which would be the week of Monday, June 14, 2010. However, in a
6 subsequently filed Motion for Leave to File Motion for Reconsideration, Defendant Susan
7 Fallini's unsigned affidavit indicates she was aware of the status of the case by at least
8 June 2, 2010. Despite this fact, she still waited approximately three weeks to obtain new
9 counsel. Again, this "fact" does not provide a basis for this Court to grant the relief
10 requested by Defendant (i.e., that the prove-up hearing be postponed).

11 3. Defendant concedes in "fact" number 3 that the factual history set forth in the Application
12 for Default Judgment is true and accurate. Indeed, the Court has adopted that recitation
13 of facts (and ones similar to it) on several occasions throughout this litigation. Certainly,
14 the facts and procedural history set forth in the Application for Default Judgment do not
15 provide any basis for this Court to grant the relief requested by Defendant (i.e., that the
16 prove-up hearing be postponed).

17 4. Defendant concedes the case is a "train wreck," but tries to claim (without any apparent
18 basis) that Mr. Kuehn had some sort of breakdown. This "fact" is simply incorrect. The
19 Court has seen Mr. Kuehn countless times over the past three years while this case has
20 been pending. Moreover, Mr. Kuehn (or Mr. Gibson at the last hearing) appeared at each
21 hearing, took responsibility for his inaction, and promised to remedy the problem. There
22 was and is no indication of some sort of breakdown. This alleged "fact" does not provide
23 a basis for this Court to grant the relief requested by Defendant (i.e., that the prove-up
24 hearing be postponed).

25 5. Defendant's new counsel indicated he was working to file a motion, and he has since done
26 so on or about July 2, 2010. However, this "fact" has no relevance to the issues at hand
27 and provides no basis for this Court to grant the relief requested by Defendant (i.e., that
28

the prove-up hearing be postponed).

6. Defendant's new counsel appears to be asking for a hearing on the motion he was preparing to file at the time of Defendant's Opposition. As with the other "facts," this "fact" has no relevance to the issues at hand and provides no basis for this Court to grant the relief requested by Defendant (i.e., that the prove-up hearing be postponed).

7. Defendant's new counsel claims that allowing the prove-up to proceed as scheduled "would aggravate the injustice that has been visited on all parties and the Court by Mr. Kuehn to continue to proceed in the default of the Defendant, without giving the Defendant an opportunity to be heard." (Opposition, p. 2.) First and foremost, **Defendant has had ample opportunity to be heard.** The procedural history – which Defendant concedes is accurate – is replete with opportunities for Defendant to be heard. Moreover, not only was Defendant (through counsel) heard at each hearing, Mr. Kuehn and Defendant were given many additional days to provide requested information. Defendant has received second, third, even fourth chances. Defendant herself was at least twice ordered to be present in Court and failed to appear. Instead, Defendant and her counsel have been held in contempt and owe tens of thousands of dollars in contempt sanctions.¹ Further, the true injustice in this matter would be for this Court to undo all that has been done over the past three years and require Ms. Adams to re-litigate a case that has already been conclusively proven, summary judgment already granted (more than two years ago), and Defendant's Answer and Counterclaim stricken.

It is also worth noting that Defendant's Opposition does not take issue with the amount of damages sought by Ms. Adams. Consequently, there being no opposition, the Court should award damages in the amount requested in Plaintiff's Application for Default Judgment.

///

¹ Incidentally, although Mr. Gibson advised by letter that Defendant apparently has no insurance to provide coverage for this case, Plaintiff notes that Defendant still has not complied with this Court's orders by providing a written response to the discovery requests Defendant was ordered to answer. Consequently, it is Plaintiff's position that the sanction continues to accrue.

1 **B. Defendant's Request Is Contrary to Nevada Law**

2 Inherent in Defendant's motion is the assumption that she even has standing to contest the
3 evidence to be presented at the prove up hearing. However, there is no fact or law that indicates
4 Defendant has standing to object to the Application for Default Judgment, or that she should be allowed
5 to present or contest the evidence at the time of the prove up hearing. In actuality, the Nevada Supreme
6 Court has found that where default was entered due to the defaulting party's abusive litigation practices,
7 **the defaulting party gives up the right to object to all but the most patent and fundamental defects**
8 **in the accounting.** *Young v. Johnny Ribeiro Building*, 106 Nev. 88, 95, 787 P.2d 777, 781
9 (1990)(emphasis added). The district court has broad discretion to determine how the prove up hearing
10 is conducted and to what extent the offending party is allowed to participate, if at all. *Hamlett v.*
11 *Reynolds*, 114 Nev. 863, 866, 963 P.2d 457, 459 (1999). In *Hamlett*, the parties stipulated that the
12 offending party would be limited to cross-examination of witnesses and the court held the parties to said
13 stipulation.

14 In the present case, the parties have no such stipulation, and under the circumstances of this case,
15 Defendant should not be allowed to participate at all – Defendant's Answer and Counterclaim have been
16 stricken due to Defendant's (and her counsel's) dilatory and contemptuous conduct. Consequently,
17 Defendant should not be permitted to participate in any fashion in the prove-up hearing.

18 Even if this Court were inclined to allow Defendant to participate, her role should be limited to
19 objecting to only the most fundamental defects in the accounting of damages. However, the Defendant's
20 Opposition does not even argue that Plaintiff's requested damages are inaccurate, nor does it include one
21 piece of admissible evidence that shows any defect in the Plaintiff's calculated damages. As such,
22 Defendant's Opposition is not meritorious and should not be considered.

23 Plaintiff attempted for almost three years to obtain basic discoverable information, including
24 insurance information. Plaintiff submitted interrogatories to Fallini. Those interrogatories were never
25 answered. Adams also submitted requests for admission and requests for production of documents to
26 Fallini requesting information as to Fallini's insurance policies and/or carriers that may provide coverage
27 for damages that occurred as a result of the incident. Defendant Fallini never responded to any of those

1 requests.

2 Defendant had ample opportunity during the three years of litigation on this case to comply with
3 Court Orders prior to her Answer and Counterclaim being stricken and Default being entered. The
4 Answer and Counterclaim are stricken and Default has been entered, and Defendant has no legal right
5 to oppose Plaintiff's Application for Default Judgment.

6 Defendant blames her attorney Harry Keuhn for the status of the case. However, Defendant
7 provides no admissible evidence to support a mental breakdown of Harry Kuehn. Moreover, Defendant
8 is litigation-savvy, having litigated *pro se* in federal court. She should have checked with her attorney
9 and asked for documentation of the status of the case. Certainly, Defendant has a legal malpractice claim
10 against her attorneys, but she has no basis for the relief requested in her Opposition to Plaintiff's
11 Application for Default Judgment. To the contrary, Plaintiff's Application should be granted and
12 judgment entered against Defendant as set forth below.

13 III.

14 CONCLUSION

15 Defendant has set no basis in law or fact to oppose Plaintiff's Application for Default Judgment.
16 Based on the evidence set forth above, and to be presented at the prove-up hearing, the Plaintiff is entitled
17 to Default Judgment as follows:

18 On the Cause of Action alleged in the Complaint, for an award of damages against Defendant
19 Susan Fallini as follow:

| | | |
|----|--|---------------------------------|
| 20 | Grief, sorrow, loss of support, etc. | \$2,500,000.00 |
| 21 | Lost earnings | \$1,640,696.00 |
| 22 | Hedonic damages | \$5,000,000.00 |
| 23 | Attorney fees reasonably incurred | \$50,000.00 |
| 24 | Sanctions already levied against Defendant | <u>\$35,000.00</u> ² |
| 25 | TOTAL JUDGMENT SOUGHT | <u>\$9,225,696.00</u> |

26
27 ² Plaintiff will provide the exact amount at the time of the prove-up hearing. Plaintiff expects
the actual amount due will exceed \$35,000.00.

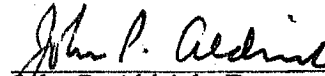
1 For such further relief as this Court deems appropriate.

2 Plaintiff so moves this Honorable Court.

3 DATED this 13 day of July, 2010.

4 Respectfully Submitted,

5 **ALDRICH LAW FIRM, LTD.**

6
7 

8 John P. Aldrich, Esq.

9 Nevada Bar No.: 6877

10 1601 S. Rainbow Blvd., Suite 160

11 Las Vegas, Nevada 89146

12 (702) 853-5490


13 Attorney for Plaintiff

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 13th day of July, 2010, I mailed a copy of the
REPLY TO OPPOSITION TO APPLICATION FOR DEFAULT JUDGMENT, in a sealed envelope,
to the following and that postage was fully paid thereon:

John Ohlson, Esq.
Bowen, Hall, Ohlson & Osborne
555 South Center Street
Reno, NV 89501
Attorney for Defendant/Counterclaimant

Katherine M. Barker, Esq.
Law Office of Katherine M. Barker
823 S. Las Vegas Blvd., Ste. 300
Las Vegas, NV 89101
Attorney for Counterdefendant
Estate of Michael David Adams


An employee of Aldrich Law Firm, Ltd.

1 **OPP**

John P. Aldrich, Esq.

2 Nevada Bar No. 6877

ALDRICH LAW FIRM, LTD.

3 1601 S. Rainbow Blvd., Suite 160

Las Vegas, Nevada 89146

4 (702) 853-5490

Attorneys for Plaintiff

5
6 THE FIFTH JUDICIAL DISTRICT COURT
7 THE STATE OF NEVADA
COUNTY OF NYE

8 Estate of MICHAEL DAVID ADAMS, by and
9 through his mother JUDITH ADAMS,
individually and on behalf of the Estate,

10 Plaintiff,

11 v.

12
13 SUSAN FALLINI, ; DOES I-X, and ROE
CORPORATIONS I-X, inclusive,

14
15 Defendants.

16
17 SUSAN FALLINI,

Counterclaimant,

18 vs.

19 Estate of MICHAEL DAVID ADAMS, by and
20 through his mother JUDITH ADAMS,
individually and on behalf of the Estate

21 Counterdefendants.

Case No.: CV24539
Dept. No.: 2P


22
23 **OPPOSITION TO FALLINI'S MOTION FOR LEAVE TO FILE MOTION FOR**
24 **RECONSIDERATION**

25 Plaintiff JUDITH ADAMS, INDIVIDUALLY AND ON BEHALF OF THE ESTATE OF
26 MICHAEL DAVID ADAMS, by and through her attorney of record, John P. Aldrich, of Aldrich Law
27 Firm Ltd., hereby submits this Opposition to Defendant's Motion for Leave to File Motion for

1 Reconsideration. The Opposition is based upon the attached memorandum of Points and Authorities, the
2 attached exhibits, and any testimony the Court will accept at the hearing on this matter.

3 DATED this 13 day of July, 2010.

4 ALDRICH LAW FIRM, LTD.

5
6 
7 John P. Aldrich, Esq.
8 Nevada Bar No.: 6877
9 1601 S. Rainbow Blvd., Suite 160
10 Las Vegas, Nevada 89146
11 (702) 853-5490
12 Attorney for Plaintiff

13 **MEMORANDUM OF POINTS AND AUTHORITY**

14 **I.**

15 **STATEMENT OF FACTS**

16 Defendant, years after her first discovery abuses and Orders have been long entered, now attempts
17 to come before this Court and set aside this Court's prior orders. Defendant attempts to portray herself
18 to this Court as an innocent victim of an attorney having some sort of breakdown.¹ In reality, Defendant
19 is a woman who has been involved in federal lawsuits and is clearly litigation-savvy, and despite this fact,
20 she apparently ignored this case entirely. She had three years to figure out what was happening in her
21 case. However, because she apparently stuck her head in the sand and failed to follow up for status
22 updates or confirmation of alleged status updates, she now wants to blame her attorney – and disclaim
23 any responsibility for herself.

24 While trying to paint Defendant as the victim, Defendants's Opposition fails to mention the
25 substantial prejudice to Ms. Adams as a result of Defendant's and her counsel's dilatory conduct. Ms.
26 Adams spent three years attempting to gain basic discoverable information, including insurance

27 ¹ Besides the fact that Defendant has provided no actual evidence Mr. Kuehn had a breakdown,
28 Mr. Kuehn is a member of a firm, and Plaintiff's counsel has had dealings with at least three attorneys
from that firm – Harry Kuehn, Jason Earnest, and Tom Gibson.

1 information. Ms. Adams was forced to file numerous motions that would not have been necessary had
2 Defendant and/or her counsel complied with Nevada rules and law. After achieving success on each of
3 her motions, Ms. Adams proceeded in accordance with the rules and law, and she is entitled to a default
4 judgment – not to start over again. Ms. Adams is the blameless party in this matter.

5 It is unthinkable that Defendant would now, years later, attempt to move this Court to “start the
6 case over” after Ms. Adams had to expend extensive resources to establish facts, obtain simple insurance
7 information, and ultimately seek judgment. Ms. Adams lost her only son as a result of this accident –
8 what Ms. Adams has been through is indescribable. For Defendant to now ask this Court to require Ms.
9 Adams to go through the pain of re-litigating this case in which all key facts have been established,
10 summary judgment has been granted, and Defendant’s Answer and Counterclaim have been stricken, is
11 unwarranted.

12 I.

13 STATEMENT OF FACTS

14 The Court is well aware of the facts of this case, having entertained numerous motions which have
15 resulted in the granting of summary judgment as to liability in July 2008 and the striking of Defendant’s
16 Answer and Counterclaim in November 2009. Defendant has conceded that the recitation of facts and
17 procedural history submitted by Ms. Adams is correct. For the Court’s convenience, Ms. Adams has
18 attached the latest Findings of Fact, Conclusions of Law and Order to this Opposition as Exhibit 1.

19 II.

20 LEGAL ANALYSIS

21 Defendant argues that she is entitled to Reconsideration of two of prior rulings in this case: the
22 July 29, 2008, Order Granting Plaintiff’s Motion for Partial Summary Judgment; and the November 4,
23 2009 Order Striking Answer and Counterclaim. Defendant argues that she is entitled to reconsideration
24 of these Orders because these Orders are as a result of her attorney Harry Kuehn failing to respond to
25 Request for Admissions, failing to Oppose the Motion for Summary Judgment, and his failure in general,
26 to respond to discovery. Defendant fully blames her former attorney for these discovery abuses and
27 argues the prior decisions were “clearly erroneous” and would serve a manifest injustice. The reality is

1 that Defendant's counsel's negligence is imputed to her and Defendant herself took a "head in the sand"
2 approach. The Orders are not clearly erroneous, but based on clear Nevada law and the established facts
3 in this case, and there is no manifest injustice to Defendant. Further, Defendant is a litigation-savvy
4 woman who had years to become apprised of the happenings in her case.

5 **A. Defendant's Motion for Reconsideration Should be Heard As She Has Presented**
6 **No New Law or Fact Justifying Rehearing**

7 Defendant seeks a "second bite at the apple" – an apple that has long since rotted. Unfortunately
8 for Defendant, the law does not support her attempt. Rehearings are not granted as a matter of right and
9 are not allowed for the purpose of reargument unless substantially different evidence is subsequently
10 introduced or the original decision of the Court was clearly erroneous. Masonry and Tile Contractors
11 Ass'n v. Jolley, Urga & Wirth, Ltd., 113 Nev. 737, 941 P.2d 486, at 489 (1997) [citing with approval,
12 Little Earth of United Tribes v. Department of Housing, 807 F.2d 1433, 1441 (8th Cir. 1986)]. See also,
13 Geller v. McCowan, 64 Nev. 106, 178 P.2d 380 (1947); State ex rel. Copeland v. Woodbury, 17 Nev.
14 337, 30 P. 1006 (1883). Only in very rare instances, in which new issues of law or fact are raised
15 supporting a ruling contrary to the ruling already reached, should a motion for rehearing be granted.
16 Moore v. City of Las Vegas, 92 Nev. 402, 551 P.2d 244 (1976). Moreover, a party may not raise a new
17 point for the first time on rehearing. In re Ross, 99 Nev. 657, 668 P.2d 1089 (1983).

18 Defendant is now attempting to completely circumvent the finality of the summary judgment
19 rulings that have already - and repeatedly - been made by Court in this case. Defendant is trying to revisit
20 factual and legal matters that were long ago *conclusively* established.

21 **1. Defendant's Motion for Reconsideration Should be Denied as Her**
22 **Attorney's Negligence is Imputed to Her**

23 The crux of Defendant's argument is that this Court's prior rulings should be reconsidered because
24 they are based on failures and discovery abuses of her prior counsel. However, "[i]t is a general rule that
25 the negligence of an attorney is imputable to his client, and that the latter cannot be relieved from a
26 judgment taken against him, in consequence of the neglect, carelessness, forgetfulness, or inattention of
27 the former." Tahoe Village Realty v. DeSmet, 95 Nev. 131, 590 P.2d 1158, 1161. In Moore v. Cherry,
28 90 Nev. 390, 528 P.2d 1018 (1974), the Nevada Supreme Court stated as follows:

1
2 There is certainly no merit to the contention that dismissal of petitioner's claim because
3 of his counsel's unexcused conduct imposes an unjust penalty on the client. Petitioner
4 voluntarily chose this attorney as his representative in the action, and he cannot now avoid
5 the consequences of the acts or omissions of this freely selected agent. Any other notion
6 would be wholly inconsistent with our system of representative litigation, in which each
7 party is deemed bound by the acts of his lawyer-agent, and is considered to have notice
8 of all facts, notice of which can be charged upon the attorney.

9 Id., 90 Nev. at 395 (quoting Link v. Wabash Railroad Company, 370 U.S. 626, 82 S.Ct 1386
10 (1962)(emphasis added)).

11 Therefore, Defendant's attorney's inattention and carelessness in responding to discovery is
12 imputed to her. She cannot now move to reconsider valid Orders based on her attorney's negligence and
13 her purported blamelessness.

14 Defendant was personally served with the lawsuit and voluntarily selected the attorney she wanted
15 to represent her interests and to defend her in the action that had been filed. Mrs. Fallini was not only
16 personally aware of the lawsuit that had been filed against her, but she also knew that her attorney was
17 counter-suing to recover the value of the beef she lost when Mr. Adams' Jeep struck the cow.

18 At an absolute minimum, Defendant was obligated to ask about the status of her case, the defenses
19 that were being raised, the actions that were being taken by her counsel, and the rulings the Court was
20 making. Most importantly, Defendant could have—and should have—requested written confirmation that
21 both suits were really over, as she now claims her attorney had previously represented to her.

22 Further, Defendant is litigation-savvy, having been a party to litigation and hired attorneys in the
23 past. Even the most cursory internet search revealed that Defendant has been involved in other lawsuits,
24 as evidenced by the opinion attached hereto as Exhibit 2. Defendant is well aware of how this process
25 works, and she cannot take a “head in the sand” approach and the come to this Court just before judgment
26 is to be entered and ask for a “do over.”

27 2. *Notice to the Attorney Constitutes Notice to the Client.*

28 Notice to the attorney of any matter relating to the business of the client in which the attorney is
engaged constitutes notice to the client. Milner v. Dudrey, 77 Nev. 256, 362 P.2d 439 (1961); Aldabe
v. Adams, 81 Nev. 280, 402 P.2d 34 (1965); Noah v. Metzker, 85 Nev 57, 450 P.2d 141 (1969); Lange

1 v. Hickman, 92 Nev. 41, 544 P.2d 1208 (1976). Every pleading and every document that was filed in this
2 case, including the written discovery, summary judgment motion, discovery motions, and subsequent
3 orders of the Court, once served on the Defendant's counsel, constituted legal service on the Defendant.
4 The Defendant cannot now come before the Court and claim she had no idea what was going on, and then
5 make a request for what amounts to a new trial on issues that have already been conclusively resolved
6 and established as a matter of law.

7 **B. The Prior Orders Are Not Clearly Erroneous**

8 Defendant argues that the facts deemed to be admitted in Plaintiff's Requests for Admission,
9 namely that the area where the accident occurred was not open range, and that the fact that Defendant
10 failed to attach reflective strips to her cows, are clearly erroneous. Defendant claims, therefore, that the
11 Orders should be reconsidered. However it is clear and well-established law in Nevada that the failure
12 to timely respond to requests for admission deems the facts admitted, and this is true even if the facts are
13 untrue.

14 **1. The Facts Submitted in the Requests for Admission Are Conclusively Proven**

15 NRCF 36 provides, in pertinent part:

16that the matter is admitted unless, within 30 days after service
17 of the request, or within such shorter or longer time as the court may
18 allow, or the parties may agree in writing,... the party to whom the
19 request is directed serves upon the party requesting the admission a
written answer or objection addressed to the matter, signed by the
party or by the party's attorney.

20 In Smith v. Emery, 109 Nev. 737, 856 P.3d 1386 (1993), the Court found that failure to timely
21 respond to requests for admission will result in those matters being **conclusively established**, and this
22 is the case **even if the established matters are ultimately untrue**. Id. The Court explained:

23 "[E]ven if a request is objectionable, if a party fails to object and fails
24 to respond to the request, that party should be held to have admitted
the matter." Jensen v. Pioneer Dodge Center, Inc., 702 P.2d 98,
25 100-01 (Utah 1985) (citing Rutherford v. Bass Air Conditioning Co.,
38 N.C.App. 630, 248 S.E.2d 887 (1978)). It is well settled that failure
26 to respond to a request for admissions will result in those matters
being **deemed conclusively established**. Woods, 107 Nev. at 425,
27 812 P.2d at 1297; Dzack, 80 Nev. at 347, 393 P.2d at 611. This is so
even if the established matters are ultimately untrue. Lawrence v.

1 Southwest Gas Corp., 89 Nev. 433, 514 P.2d 868 (1973); Graham v.
2 Carson-Tahoe Hosp., 91 Nev. 609, 540 P.2d 105 (1975). Emery's
3 failure to respond or object to the Smiths' request for admissions
entitles the Smiths to have the assertions contained therein
conclusively established.

4 Id. at 742-43 (emphasis added).

5 2. *The Court's Prior Rulings Are Not Clearly Erroneous*

6 Even if the facts that have been deemed admitted are not true, the Order Granting Partial Summary
7 Judgment was not clearly erroneous. The facts were deemed established due to Defendant's failure to
8 respond. It is well settled law in Nevada that such admissions may properly serve as the basis for
9 summary judgment against the party who failed to serve a timely response. *Wagner v. Carex*
10 *Investigations & Sec., Inc.*, 93 Nev. 627, 572 P.2d 921 (1977). The evidence presented to the Court
11 nearly two years ago in Plaintiff's Motion for Partial Summary Judgment included the following
12 conclusively established facts:

- 13 1. That Defendant's property is not located within "open range."
- 14 2. That Defendant is the owner of the cow that is mentioned in of the Complaint on file
15 herein.
- 16 3. That it is the common practice of Nye County ranchers to mark their cattle with
17 reflective or luminescent tags.
- 18 4. That the subject cow was not marked with a reflective or luminescent tag.
- 19 5. That the subject cow crossed a fence to arrive at the location of the subject accident
20 described in the Complaint on file herein.
- 21 6. That Defendant's cattle have previously been involved in incidents with motor
22 vehicles on the roadway.
- 23 7. That Defendant does not track the location of her cattle while they are grazing away
24 from her property.
- 25 8. That Defendant does not remove her cattle from the roadway when notified that the
26 cattle are in a roadway.
- 27 9. That the subject cow was not visible at night.

10. That Defendant was aware that the subject cow was not visible at night prior to the incident that is the subject of the Complaint on file herein.

11. That the subject cow was in the roadway of SR 375 at the time of the incident that is the subject of the Complaint on file herein.

12. That the subject cow's presence in the roadway of SR 375 was the cause of the motor vehicle accident that is the subject of the Complaint on file herein.

13. That Defendant did not know the location of the subject cow at the time of the incident that is the subject of the Complaint on file herein.

14. That the presence of a reflective or luminescent tag on the subject cow would have made the subject cow visible at the time of the incident that is the subject of the Complaint on file herein.

For the convenience of the Court, Plaintiff has attached the Requests for Admission as Exhibit 3. Based on the evidence before the Court, this Court properly granted summary judgment favor of Ms. Adams.

The Order Striking Defendant's Answer and Counterclaim was also properly entered. The lengthy procedural history is set forth in numerous court orders and motions filed by Ms. Adams. Defendant has conceded that the history set forth in those documents is accurate. The striking of Defendant's Answer and counterclaim, and the holding of Defendant and her counsel in contempt, is entirely proper. This Court imposed appropriately progressive sanctions before striking the Answer and Counterclaim. In order to avoid reciting all the arguments and law in this Opposition, Plaintiff refers the Court to Plaintiff's prior motions to compel and to hold Defendant in contempt – all of which were granted. Ms. Adams further notes that Mr. Kuehn (or Mr. Gibson at the last hearing) appeared at each and every hearing.

3. ***Defendant Is Estopped from Raising These Issues Due to the Actions (and/or Inactions) of Her Counsel***

Ratification of an attorney's conduct can occur through negligence, inattention, or the failure to express disapproval by his client, as it's the client's duty, having knowledge of the case, to express her disapproval within a reasonable time, under the equitable doctrine of laches. Comb's Admr. v. Virginia

1 Iron, Coal & Coke Co., 33 SW 2d 649 (Ky. 1930); Baumgartner v. Whinney, 39 A.2d 738 (Pa. 1944);
2 Kreis v. Kreis, 57 SW2d 1107 (1933 Tex Civ App), *error dismissed*, former app 36 SW2d 821.

3 Defendant was personally served with the lawsuit and voluntarily selected the attorney she wanted
4 to represent her interests and to defend her in the action that had been filed. Defendant was not only
5 personally aware of the lawsuit that had been filed against her, but she also knew that her attorney was
6 counter-suing to recover the value of the beef she lost when Mr. Adams' Jeep struck the cow. As noted
7 above, Defendant is a litigation-savvy client who should have wondered why she had not heard anything
8 regarding the case in several years, or if her attorney really did tell her the case was "over," she should
9 have requested documentation to substantiate that claim.

10 At an absolute minimum, Defendant was obligated to ask about the status of her case, the defenses
11 that were being raised, the actions that were being taken by her counsel, and the rulings the Court was
12 making. Most importantly, Defendant could have – and should have – requested written confirmation
13 that both suits (the claim and counterclaim) were really concluded, as she now claims her attorney had
14 previously represented to her.

15 4. ***The "Evidence" Proposed by Defendant Is Improper and Extremely Late***

16 All of the evidence Defendant presents in her Motion to support the contention that the prior
17 rulings are clearly erroneous is inadmissible. Before an affidavit can be considered by the Court for any
18 purpose, there must first be a showing that the affiant is competent to testify to the matters stated in the
19 affidavit. Lockart v. MacLean, 77 Nev. 210, 361 P.2d 670 (1961); Daugherty v. Wabash Life Insurance
20 Co., 87 Nev. 32, 482 P.2d 814 (1971). The affidavit must also set forth such facts as would be admissible
21 in evidence at trial, under the ordinary rules of trial evidence. Caltrone v. 105 Casino Corp., 82 Nev. 166,
22 414 P.2d 106 (1966); Collins v. Union Federal Savings & Loan Association, 99 Nev. 284, 662 P.2d 610
23 (1983). The affidavit must also be made on personal knowledge. The court has the authority to strike
24 affidavits which do not comply with the requirements. EDCR 2.21(c); State v. Fourth Judicial District
25 Court, 68 Nev. 527, 238 P.2d 1125 (1951). The Affidavits of Susan Fallini, Joe Fallini, Chris Call and
26 Tony Lesperance are unsigned, and therefore, inadmissible. However, even if signed, the affidavits are
27 inadmissible because they do not establish a sufficient foundation for the testimony they purport to

1 provide. Additionally, the expert deadline in this case has passed, and Defendant cannot now come into
2 Court – just before default judgment is entered – and bring new expert testimony. Defendant also
3 attached a letter from Gilbert Garcia to her Motion; however, the letter is also inadmissible hearsay and
4 arguably expert testimony. Finally, none of these witnesses have been identified by Defendant in any pre-
5 trial disclosure. As such, Defendant has provided no admissible evidence to support her contentions.

6 **C. The Only Manifest Injustice That Would Occur in this Case Is if the Ms. Adams Had to
7 Re-litigate This Case**

8 Defendant argues a manifest injustice would occur if the Orders were to stand in this case.
9 However, the reality is that Defendant chose her former counsel and knew she was being sued. In fact,
10 she even counter-sued for the value of the cow that was killed. “Where a party has been accurately
11 notified of the time and place of a hearing, his failure to appear amounts to failure to prosecute, and is
12 a proper ground for dismissal.” Link v. Wabash Railroad Company, 370 U.S. 626 (1962). Further,
13 “[i]nherent in courts is the power to dismiss a case for failure to prosecute or to comply with its orders.
14 To prevent undue delays and to control their calendars, courts may exercise this power within the bounds
15 of sound judicial discretion, independent of any authority granted under statutes or court rules.” Sloup
16 v. Hershey, 457 F.2d 148 (9th Cir. 1971), *rehearing denied* April 17, 1972; Harris v. Harris, 65 Nev. 342,
17 196 P.2d 402 (1948); Dubin v. Harrell, 79 Nev. 467, 386 P.2d 729 (1963); Volpert v. Papagna, 85 Nev.
18 437, 456 P.2d 848 (1989).

19 Defendant knew of the seriousness of the lawsuit and the large amount of damages that would be
20 sought. Defendant had been involved in numerous prior lawsuits and was well apprised of the normal
21 course of suit. It was incumbent upon Defendant to remain aware of what was going on with the suit and
22 request dismissal paperwork from her prior attorney.

23 The only way a manifest injustice would result is if this Motion were granted. Ms. Adams should
24 not be penalized for a situation that Defendant and her former counsel created.

25 Further, if this Motion is not granted Defendant would not be left without a remedy. The
26 Defendant would still have legal recourse against her former attorney. In fact, she would be entitled to
27 summary judgment against Kuehn as a matter of law, which would then open a verified and substantial
28

1 legal malpractice policy.

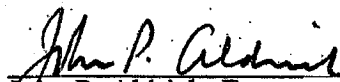
2 III.

3 CONCLUSION

4 Defendant has set forth no basis in law or fact to request rehearing on Orders that have been in
5 place for two years. The Defendant chose her former counsel and had an obligation to remain apprised
6 of the progress of the suit. As set forth clearly above, any negligence by Defendant's former counsel is
7 imputed to her. Further, Defendant has not shown the prior rulings were clearly erroneous or that a
8 manifest injustice would occur. As, such Defendant's Motion should be denied.

9 DATED this 13 day of July, 2010.

10 ALDRICH LAW FIRM, LTD.

11
12 

13 John P. Aldrich, Esq.
14 Nevada Bar No.: 6877
15 1601 S. Rainbow Blvd., Suite 160
16 Las Vegas, Nevada 89146
17 (702) 853-5490
18 Attorney for Plaintiff
19
20
21
22
23
24
25
26
27
28

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 13th day of July, 2010, I mailed a copy of the
OPPOSITION TO MOTION FOR LEAVE TO FILE MOTION FOR RECONSIDERATION, in a sealed
envelope, to the following and that postage was fully paid thereon:

John Ohlson, Esq.
Bowen, Hall, Ohlson & Osborne
555 South Center Street
Reno, NV 89501
Attorney for Defendant/Counterclaimant

Katherine M. Barker, Esq.
Law Office of Katherine M. Barker
823 S. Las Vegas Blvd., Ste. 300
Las Vegas, NV 89101
Attorney for Counterdefendant
Estate of Michael David Adams

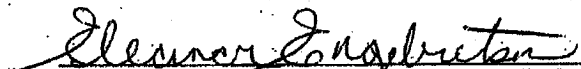

An employee of Aldrich Law Firm, Ltd.

EXHIBIT 1

EXHIBIT 1

1 NEO

John P. Aldrich, Esq.

2 Nevada Bar No. 6877

ALDRICH LAW FIRM, LTD.

3 1601 S. Rainbow Blvd., Suite 160

Las Vegas, Nevada 89146

4 (702) 853-5490

(702) 227-1975 fax

5 *Attorneys for Plaintiff*

FILED

2000 JUN -4 P 2:16

REBECCA BALLARD

NYE COUNTY CLERK

BY DEPUTY

7 THE FIFTH JUDICIAL DISTRICT COURT
8 THE STATE OF NEVADA
9 COUNTY OF NYE

10 Estate of MICHAEL DAVID ADAMS,
11 by and through his mother JUDITH
ADAMS, individually and on behalf of the
Estate,

12 Plaintiffs,

13 vs.

14 SUSAN FALLINI, DOES I-X and ROE
15 CORPORATIONS I-X, inclusive,

16 Defendants.

17 SUSAN FALLINI,

18 Counterclaimant,

19 vs.

20 Estate of MICHAEL DAVID ADAMS,
21 by and through his mother JUDITH
ADAMS, individually and on behalf of the
Estate,

22 Counterdefendants.

Case No.: CV24539

Dept.: 2P

23 NOTICE OF ENTRY OF ORDER

24 ///

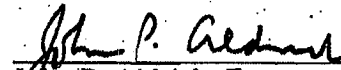
25 ///

26 ///

PLEASE TAKE NOTICE that an Order Holding Defendant's Counsel in Contempt of Court was entered in the above-entitled matter on June 2, 2010, a copy of which is attached hereto as Exhibit 1.

DATED this 3 day of June, 2010.

ALDRICH LAW FIRM, LTD.


John P. Aldrich, Esq.
Nevada State Bar No. 6877
1601 S. Rainbow Blvd., Suite 160
Las Vegas, Nevada 89146
(702) 853-5490
(702) 227-1975
Attorneys for Plaintiff

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 3rd day of June, 2010, I mailed a copy of the NOTICE OF ENTRY OF ORDER, in a sealed envelope, to the following and that postage was fully paid thereon:

Harold Kuehn, Esq.
Gibson, & Kuehn
1601 E. Basin Avenue, Suite 101
Pahrump, NV 89060
Attorney for Defendant/Counterclaimant

Katherine M. Barker, Esq.
Law Office of Katherine M. Barker
701 Bridger Ave, Ste. 500
Las Vegas, NV 89101
*Attorney for Counterdefendant
Estate of Michael David Adams*


An employee of Aldrich Law Firm, Ltd.

EXHIBIT 1

EXHIBIT 1

1 **ORDR**

2 John P. Aldrich, Esq.
3 Nevada Bar No. 6877
4 **ALDRICH LAW FIRM, LTD.**
5 1601 S. Rainbow Blvd., Suite 160
6 Las Vegas, Nevada 89146
7 (702) 853-5490
8 (702) 227-1975 fax
9 *Attorneys for Plaintiff*

FILED

2010 JUN -2 A 8:56

REBECCA BALLARD

CLERK
BY DEPUTY

6 **THE FIFTH JUDICIAL DISTRICT COURT**
7 **THE STATE OF NEVADA, COUNTY OF NYE**

8 Estate of MICHAEL DAVID ADAMS,
9 by and through his mother JUDITH
10 ADAMS, individually and on behalf of the
11 Estate,

12 Plaintiffs,

13 vs.

14 SUSAN FALLINI, DOES I-X and ROE
15 CORPORATIONS I-X, inclusive,

16 Defendants.

17 SUSAN FALLINI,

18 Counterclaimant,

19 vs.

20 Estate of MICHAEL DAVID ADAMS,
21 by and through his mother JUDITH
22 ADAMS, individually and on behalf of the
23 Estate,

24 Counterdefendants.

Case No.: CV24539
Dept.: 2P

25 **FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER HOLDING**
26 **DEFENDANT'S COUNSEL IN CONTEMPT OF COURT**

27 THIS MATTER having come on for hearing on Monday, May 24, 2010, a hearing having
28 been held before the Honorable Robert W. Lane, and John P. Aldrich, Esq., of Aldrich Law Firm,
Ltd., appearing on behalf of the Plaintiffs, with Thomas Gbson, Esq., appearing on behalf of
Defendant, the Court hereby orders as follows:

FINDINGS OF FACT

The Court, having been presented the following facts by Plaintiff's counsel and having received no opposition to the facts by Defendant, makes the following findings of fact:

1. This lawsuit arises out of an incident that occurred on or about July 7, 2005. At approximately 9:00 p.m. on that day, MICHAEL DAVID ADAMS ("Adams") was driving his 1994 Jeep Wrangler on SR 375 highway in Nye County, when he collided with a Hereford cow ("cow") owned by Defendant SUSAN FALLINI ("Fallini"). Adams died at the scene as a result of the impact.

2. The decedent's mother, JUDITH ADAMS ("Judith"), filed a complaint on behalf of Adams' mother and his estate on November 29, 2006 and properly served Fallini with process. Fallini filed her Answer and Counterclaim on March 14, 2007.

3. On October 31, 2007, Plaintiff submitted interrogatories to Fallini. Those interrogatories were never answered. Adams also submitted requests for admissions and its first set of requests for production of documents on October 31, 2007. A second set of requests for production of documents were submitted to Fallini on July 2, 2008, requesting information as to Fallini's insurance policies and/or carriers that may provide coverage for damages that occurred as a result of the incident.

4. Fallini never responded to any of these requests. To this date, Fallini has not produced any responses of any kind to Plaintiff's written discovery requests. Despite an extension requested by Plaintiff and granted by the Court, the discovery period has lapsed without any responses being provided by Defendant.

5. On or about April 7, 2008 (and again on May 14, 2008 with a Certificate of Service), Plaintiff filed a Motion for Partial Summary Judgment. Defendant did not oppose that motion and the Court granted that Motion on July 30, 2008. Notice of entry of the Order Granting Plaintiff's Motion for Summary Judgment was served on Defendant on August 15, 2008.

6. Plaintiff attempted to amicably resolve the discovery dispute and obtain a copy of

1 Defendant's applicable insurance policies, but to no avail. On February 24, 2009, Plaintiff sent
2 letters to Defendant's counsel seeking responses to the discovery.

3 7. Plaintiff's counsel, Mr. Aldrich, attempted to discuss this discovery issue with
4 Defendant's counsel, Mr. Harry Kuehn, as well. On or about March 6, 2009, Plaintiff's counsel
5 contacted the office of Defendant's counsel. Mr. Aldrich was informed that Mr. Kuehn was not
6 available. Mr. Aldrich left a message with Mr. Aldrich's phone number and asked that Mr. Kuehn
7 return the call. No return call ever came.

8 8. On March 18, 2009, Mr. Aldrich again contacted the office of Mr. Kuehn. Mr.
9 Aldrich was informed that Mr. Kuehn was not available. Mr. Aldrich left a message with Mr.
10 Aldrich's phone number and asked that Mr. Kuehn return the call. No return call ever came.
11 (Exhibit 1.)

12 9. On March 23, 2009, Plaintiff filed a Motion to Compel Defendant's Production of
13 Documents, including information regarding any insurance policies that may provide coverage for
14 the incident as contemplated in the Plaintiff's second request for documents. This motion was heard
15 on April 27, 2009. The Defendant's attorney, Mr. Kuehn, attended the hearing. Mr. Kuehn did not
16 oppose the motion to compel and agreed at the hearing it was warranted. Mr. Kuehn provided no
17 explanation as to why Defendant failed to respond to all discovery requests. Mr. Kuehn agreed
18 sanctions were warranted, however, he disputed the amount of sanctions.

19 10. At the hearing on April 27, 2009, this Court granted the Motion to Compel and
20 awarded John Aldrich, Esq., \$750.00 in sanctions for having to bring the motion. A Notice of Entry
21 of Order on the order granting the motion to compel was entered on May 18, 2009. It was served
22 by mail on Defendant on May 14, 2009. Defendant never complied with the Order.

23 11. On June 16, 2009 Plaintiff filed a Motion to Strike Defendant's Answer and
24 Counterclaim due to Defendants complete failure to comply with discovery requests and this Court's
25 Order. The Defendant's counsel again attended the hearing and again provided no explanation as
26 to why Defendant failed to respond to all discovery requests, but stated Defendant would comply
27

1 with discovery requests.

2 12. The Court denied Plaintiff's Motion to Strike based on Defendant's counsel's
3 promises to comply. This Court did, however, order Defendant to comply with the Order granting
4 Plaintiff's Motion to Compel and to respond to Plaintiff's discovery requests by August 12, 2009
5 or Defendant's Answer and Counterclaim would be stricken. The Court also ordered Defendant to
6 pay a \$1,000 sanction.

7 13. To date, Defendant has failed to comply with the order of this Honorable Court and
8 respond to Plaintiff's discovery requests. Defendant's counsel has paid the \$1,750.00 in sanctions
9 as ordered by the Court.

10 14. Plaintiff is entitled to the discovery responses, and in fact, Defendant has admitted
11 as much on more than one occasion. Nevertheless, Defendant refused and continues to refuse to
12 respond.

13 15. Because Defendant failed and refused to follow this Court's order and provide the
14 requested information, Plaintiff brought its first Ex Parte Motion for Order to Show Cause Why
15 Defendant and Her Counsel Should Not Be Held in Contempt. The Order to Show Cause was
16 granted, and a hearing was scheduled on September 28, 2009. A conference was held in chambers,
17 so as to avoid embarrassment to Defendant's counsel. Following the conference, the Court ordered:

18 (A) That Defendant's counsel shall have until close of business on October 12,
19 2009, to comply with the Order Granting Plaintiff's Motion to Compel and
20 provide responses to Plaintiff's Request for Production of Documents,
21 including the requested insurance information.

22 (B) That if Defendant does not provide the above-described information by
23 October 12, 2009, Defendant's counsel will be held in contempt of court and
24 will be fined \$150.00 per day, beginning October 13, 2009, until said
25 information is provided. The days shall be calculated on a seven-day week.

26 (C) That if the above-described information is not provided by October 12, 2009,
27
28

the Court will strike defendant's pleadings in their entirety. Plaintiff will not need to renew any motion regarding its request to strike defendant's pleadings; Plaintiff will be able to simply submit an Order Striking the Pleadings for signature by the Court.

16. Defendant and her counsel failed to provide the information at issue by October 12, 2009. Consequently, on or about November 4, 2009, the Court entered its Findings of Fact, Conclusions of Law and Order Striking Answer and Counterclaim of Defendant Susan Fallini and Holding Defendant's Counsel in Contempt of Court. Pursuant to said Order, Defendant's counsel, Harold Kuehn, Esq., was held in contempt of Court and was ordered to pay to Plaintiff's counsel, John P. Aldrich, Esq., \$150.00 per day, beginning October 13, 2009, and continuing to accrue until the information described above is provided. The Order provided that the days shall be calculated on a seven-day week, and that the Order shall constitute a judgment upon which Mr. Aldrich can execute. Interest on unpaid balances was ordered to accrue at the statutory rate.

17. Again in contravention of the Court's orders, Defendant and her counsel have failed and refused to provide the information they have been ordered to provide. Defendant's counsel's utter refusal to abide by the Court's orders has stalled and frustrated the litigation process.

18. On or about April 7, 2010, Plaintiff again brought an Ex Parte Motion for Order to Show Cause Why Defendant Susan Fallini and Her Counsel Should Not Be Held in Contempt of Court and Possible Sanctions Be Imposed. On or about April 19, 2010, the Court entered the Order to Show Cause and set a hearing for Monday, May 24, 2010.

19. As with the prior Order to Show Cause (and several other motions), despite personal service on Defendant's counsel, neither Defendant nor her counsel responded in writing to the Order to Show Cause.

20. The Court held a hearing on Monday, May 24, 2010. Thomas Gibson, Esq., the law partner to Harry Kuehn, Esq., appeared on behalf of Defendant. Defendant Susan Fallini did not appear at the hearing.

21. During the hearing, Mr. Gibson indicated he had not seen the file and provided no valid excuse for Defendant's or Defendant's counsel's failure and refusal to abide by the Court's prior orders. Mr. Aldrich also advised the Court that over 220 days had passed since the Court-imposed sanction began to accrue, and that over \$30,000.00 was now due pursuant to that sanction.

22. Mr. Gibson made specific representations to the Court that the client, Defendant Susan Fallini, was unaware of the status of this case. Mr. Gibson also made specific representations that he would obtain the information at issue immediately and provide it to Plaintiff. Mr. Aldrich requested that the Court impose a \$5,000.00 sanction, as well as a \$500.00 per day sanction, starting on May 25, 2010, until Defendant provides the information. The Court imposed the \$5,000.00 sanction upon Defendant's counsel. The Court advised both counsel that the Court would give Defendant until June 1, 2010 to comply with the Court's prior orders before increasing the daily sanction from \$150.00 per day to \$500.00 per day.

23. Plaintiff's counsel also requested that the Court issue a bench warrant for Defendant Susan Fallini, given her failure to appear as ordered by the Court on two occasions. The Court declined to do so at the hearing on May 24, 2010, but indicated it may be willing to do so if Defendant does not comply this time.

CONCLUSIONS OF LAW

Based on the Findings of Fact, as set forth above, the Court makes the following conclusions of law:

1. Pursuant to NRCP 34, Plaintiff has the right to request documents which are discoverable pursuant to NRCP 26. According to NRCP 34, Defendant has 30 days from receipt of the requests for production of documents to provide appropriate responses.

2. NRCP 34(b) permits a party to seek relief under NRCP 37(a) if the party who receives discovery requests fails to respond appropriately. NRCP 37(a) provides that the Court may enter an order compelling a non-responsive party to disclose the requested information.

3. This Court has at least four times entered an order compelling Defendant to respond

1 to Discovery requests.

2 4. NRCP 37(b)(2)(c), permits "an order striking out pleadings or parts thereof," for
3 discovery abuses. "Selection of a particular sanction for discovery abuses under NRCP 37 is
4 generally a matter committed to the sound discretion of the district court." *Stubli v. Big Int'l Trucks,*
5 *Inc.*, 107 Nev. 309, 312-313, 810 P.2d 785 (1991) (citing *Fire Ins. Exchange v. Zenith Radio Corp.*,
6 103 Nev. 648, 649, 747 P.2d 911, 912 (1987) and *Kelly Broadcasting v. Sovereign Broadcast*, 96
7 Nev. 188, 192, 606 P.2d 1089, 1092 (1980.))

8 5. The Nevada Supreme Court held that default judgments will be upheld where "the
9 normal adversary process has been halted due to an unresponsive party, because diligent parties are
10 entitled to be protected against interminable delay and uncertainty as to their legal rights." *Hamlett*
11 *v. Reynolds*, 114 Nev. 863, 963 P.2d 457 (1998) (citing *Skeen v. Valley Bank of Nevada*, 89 Nev.
12 301, 303, 511 P.2d 1053, 1054 (1973).

13 6. Defendant has provided no responses whatsoever, nor has Defendant objected to any
14 request. Defendant has failed on at least four occasions to comply with this Court's Order. At no
15 time has Defendant or her counsel given any excuse or justification for their failure and refusal to
16 abide by the Court's orders.

17 7. Defendant has been given ample opportunity to comply with the Court's Orders.
18 Defendant has halted the litigation process and the additional sanctions of \$5,000.00 immediately
19 and \$500.00 per day beginning June 1, 2010, if Defendant does not comply with the Court's prior
20 orders, are appropriate under the circumstances.

21 ORDER

22 Based on the Findings of Fact and Conclusions of Law, as set forth above:

23 IT IS HEREBY ORDERED that Defendant's counsel, Harold Kuehn, Esq., is in contempt
24 of Court and must pay to Plaintiff's counsel, John P. Aldrich, Esq., \$5,000.00, in addition to the
25 \$150.00 per day that began accruing on October 13, 2009, and which continues to accrue until the
26 Defendant and her counsel comply with the Court's prior orders, including providing the information
27

1 sought by Plaintiff.

2 IT IS FURTHER ORDERED that Defendant shall provide the information sought by
3 Plaintiff, and which Defendant and her counsel have been ordered to provide, by June 1, 2010. In
4 the event Defendant does not comply with the Court's prior orders by June 1, 2010, Mr. Kuehn will
5 be held in contempt of Court again and must pay to Plaintiff's counsel, John P. Aldrich, Esq.,
6 \$500.00 per day, beginning June 1, 2010, and continuing to accrue until the information described
7 above is provided. The days shall be calculated on a seven-day week, and this Order shall constitute
8 a judgment upon which Mr. Aldrich can execute. Interest on unpaid balances shall accrue at the
9 statutory rate.

10 IT IS SO ORDERED.

11 DATED this 2 day of June, 2010.

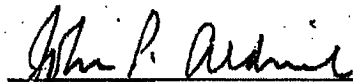
12 **ROBERT W. LANE**

13

DISTRICT COURT JUDGE

14 Submitted by:

15 **ALDRICH LAW FIRM, LTD.**

16 

17

John P. Aldrich, Esq.
18 Nevada Bar No.: 6877
19 1601 S. Rainbow Blvd., Suite 160
20 Las Vegas, Nevada 89146
Attorneys for Plaintiff

EXHIBIT 2

EXHIBIT 2

The following search terms have been highlighted for you: **susan fallini**

Susan L. Fallini, and Joseph B. Fallini, Jr., in Each of Thefollowing Capacities: As an Individual Person and Successorto the Interest of Helen Fallini As Sole Heir of Helenefallini, Deceased, Executor of the Last Will of Helenefallini, and Trustee of the Helene Fallini Living Trust Andthe Helene Fallini Living Trust As the Sole Distributee Ofthe Last Will of Helene Fallini, Plaintiffs-appellants, v. the United States, Defendant-appellee

United States Court of Appeals, Federal Circuit. - 56 F.3d 1378

June 8, 1995.Rehearing Denied; Suggestion for Rehearing In Banc DeclinedNov. 8, 1995

William F. Schroeder, Vale, OR, argued for plaintiffs-appellants. With him on the brief was William A. Schroeder, of Boise, ID.

Peter A. Appel, Attorney, Environment and Natural Resources Div., Dept. of Justice, Washington, DC, argued for defendant-appellee. With him on the brief were Lois J. Schiffer, Asst. Atty. Gen., John A. Bryson and Dorothy R. Burakreis, Attorneys. Of counsel was Laura B. Brown, Office of the Sol., Dept. of the Interior, Washington, DC.

James L. Huffman, Dean and Professor of Law Director, Natural Resources Law Institute, Northwestern School of Law, Lewis and Clark College, of Portland, OR, was on the brief for amicus curiae, Water for Life, Inc.

Before MICHEL, LOURIE and BRYSON, Circuit Judges.

BRYSON, Circuit Judge.

- 1 In this Fifth Amendment "takings" case, the Fallinis, who are engaged in cattle ranching in Nevada, argue that the federal government has taken personal property

from them without compensation. The Fallinis contend that the government effected a "taking" by requiring them to provide water to wild horses living in the area in which the Fallinis conducted their ranching activities. The Court of Federal Claims ruled against the Fallinis, concluding on motion for summary judgment that they had no property right that was taken by governmental action. *Fallini v. United States*, 31 Fed.Cl. 53 (1994). We conclude that their complaint was not filed within the applicable statute of limitations period and that the complaint should be dismissed on that ground.

- 2 * The appellants, Susan and Joseph Fallini, own a 2700-acre ranch in south-central Nevada. The Fallinis' ranch property is located within a region known as the Reveille Allotment, which consists of 657,520 acres of federally owned land. Pursuant to federal permits, the Fallinis graze cattle on the public land surrounding their ranch property.
- 3 The Fallini family has engaged in ranching in the area since the 19th century. Over time, they have developed a number of water sources on the public land to water the cattle that are permitted to graze there. Although the Fallinis do not own the land where the water sources are located, they contend that under federal and state law they enjoy proprietary rights in all the water they produce from the waterworks that they and their predecessors have constructed.
- 4 In 1971, Congress enacted the Wild Free-Roaming Horses and Burros Act, 16 U.S.C. Secs. 1331-1340, which provided for the management and protection of wild horses and burros on public lands. The Act prohibited the removal, destruction, or harassment of wild horses and burros found on public lands, and it authorized the Secretary of the Interior to issue regulations providing for the management of the wild horses and burros.
- 5 In November 1992, the Fallinis filed a complaint in the Court of Federal Claims, contending that the government had taken their property by requiring them "to provide water to wild horses whenever plaintiffs provided water to their domestic livestock after December 17, 1971 [the effective date of the Wild Free-Roaming Horses and Burros Act], on penalty of loss of their grazing preference." The Fallinis' complaint does not describe exactly what the government required them to do in order to "provide water to the wild horses," but they elsewhere assert that they have been prohibited from fencing their water sources in ways that would permit cattle access to the water but prevent wild horses from having access. In their complaint, the Fallinis alleged that between 1971 and 1991 the cost of providing water to wild horses that took water from the Fallinis' developed water sources totaled approximately \$1 million.
- 6 The Court of Federal Claims granted summary judgment to the government. The court first held that the Fallinis do not own the water they produce in excess of the amounts

necessary to satisfy the cattle authorized under their federal grazing permits. The court further concluded that, because the government may regulate the use of the public lands on which the Fallinis' cattle are allowed to graze, the Fallinis "did not have a compensable expectancy in exclusion of wild horses and other wild animals from the allotment or exclusive use of the forage and water." *Fallini v. United States*, 31 Fed.Cl. at 58.

7 On appeal, the Fallinis contend that the court erred in characterizing their interest in the water that they brought to the surface at the developed water sources on the Reville Allotment. Based on their claim that they enjoy ownership rights in that water under federal and state law, the Fallinis argue that the government took their property without compensation when it prohibited them from barring the wild horses from drinking water at those sites.

8 The government responds, first, that the Fallinis failed to file their complaint within the applicable statute of limitations period and that the complaint therefore should be dismissed. On the merits, the government argues that the Court of Federal Claims was correct in ruling that the government had the right to condition the Fallinis' use of the public lands on their not barring the wild horses from having access to the developed water sources.

9 II

10 We do not reach the merits of the Fallinis' claim, but instead vacate the judgment of the Court of Federal Claims and direct that court to dismiss the complaint as untimely filed.

11 The Fallinis brought their claim against the United States under the Tucker Act, 28 U.S.C. Sec. 1491. Actions brought under the Tucker Act are time-barred unless they are filed within six years of the date that the cause of action accrued. 28 U.S.C. Sec. 2501. As a general matter, a cause of action accrues when all the events have occurred that fix the defendant's alleged liability and entitle the plaintiff to institute an action. *Alliance of Descendants of Texas Land Grants v. United States*, 37 F.3d 1478, 1481 (Fed.Cir.1994). The question whether the pertinent events have occurred is determined under an objective standard; a plaintiff does not have to possess actual knowledge of all the relevant facts in order for the cause of action to accrue. *Menominee Tribe v. United States*, 726 F.2d 718, 721 (Fed.Cir.), cert. denied, 469 U.S. 826, 105 S.Ct. 106, 83 L.Ed.2d 50 (1984).

12 In the present case, the objective standard is clearly met, because the appellants have been cognizant of the facts underlying the alleged taking since long before they filed their complaint in the Court of Federal Claims. The complaint alleges that the

uncompensated taking began in 1971, when Congress enacted the Wild Free-Roaming Horses and Burros Act, and has continued since that time.

- 13 On October 3, 1983, the Fallinis sent a bill to the Bureau of Land Management seeking compensation for the water drunk by the wild horses. At least by that date, then, the Fallinis were aware of all the facts necessary to establish the liability of the United States for the alleged taking. Unless the Fallinis were justified in delaying the filing of their complaint following that event, their claim is barred because it was not filed in the Court of Federal Claims until 1992, more than six years after the 1983 bill that the Fallinis submitted to the Bureau of Land Management.
- 14 The Fallinis advance two theories that, they claim, enable them to avoid dismissal under the time bar. First, they argue that their complaint was filed within the limitations period because they have experienced a continuous taking over many years and the taking did not stabilize until November 28, 1986, a date slightly less than six years before the filing of their suit. Second, they allege that every drink taken by every wild horse from 1971 through the date of the filing of their complaint constituted a separate taking. Under that theory, the Fallinis would not be able to recover for any water taken more than six years before they filed suit, but they would be entitled to claim compensation for the water taken within the six-year period before their complaint was filed. As we analyze the case, neither of the Fallinis' theories suffices to overcome the limitations bar.
- 15 In support of their first theory, the Fallinis claim that they have been subject to a continuous taking under *United States v. Dickinson*, 331 U.S. 745, 67 S.Ct. 1382, 91 L.Ed. 1789 (1947), and its progeny. See generally *Applegate v. United States*, 25 F.3d 1579, 1581-84 (Fed.Cir.1994). Under that theory, they contend, their cause of action for the continuous taking that began in 1971 did not accrue until 1986.
- 16 In *Dickinson*, the Supreme Court announced the principle that, when the government allows a taking of land to occur by a continuing process of physical events, plaintiffs may postpone filing suit until the nature and extent of the taking is clear. 331 U.S. at 749, 67 S.Ct. at 1385. The taking in *Dickinson* resulted from the government's construction of a dam that intermittently inundated the property of nearby landowners. Noting that the landowners were uncertain at first how frequently the dam would result in flooding (and thus whether an actual permanent taking had occurred), the Court in *Dickinson* held that the plaintiffs' cause of action in such a case does not accrue until "the situation becomes stabilized." *Id.*
- 17 *Dickinson* contains language that can be read to suggest that a cause of action for a taking does not accrue until all the damages resulting from the taking can be finally calculated. See, e.g., *Dickinson*, 331 U.S. at 749, 67 S.Ct. at 1385 (landowner may

postpone suit until "the consequences [of the governmental act in question] have so manifested themselves that a final account may be struck"). That interpretation of the Dickinson rule, however, would be broader than even the appellants contend for, as it would mean that in a case such as this one, where the damages continue to increase over time, the plaintiffs' cause of action would never accrue and the statute of limitations would never run. See *Gustine Land & Cattle Co. v. United States*, 174 Ct.Cl. 556, 656, 1966 WL 8856 (Ct.Cl.1966) (broad interpretation "would put the Dickinson doctrine in unending conflict with the statute of limitations").

- 18 The Supreme Court has not read Dickinson so expansively. In *United States v. Dow*, 357 U.S. 17, 27, 78 S.Ct. 1039, 1047, 2 L.Ed.2d 1109 (1958), the Court characterized Dickinson as holding only that the statute of limitations does not bar an action for a taking by flooding "when it was uncertain at what stage in the flooding operation the land had become appropriated to public use."
- 19 Following *Dow*, the Court of Claims adopted a similarly narrow interpretation of Dickinson and the meaning of "stabilization" in the takings context. In *Kabua v. United States*, 546 F.2d 381, 384, 212 Ct.Cl. 160 (1976), the court noted that in *Dow*, the Supreme Court "more or less limited [Dickinson] to the class of flooding cases to which it belonged, when the landowner must wait in asserting his claim, until he knows whether the subjection to flooding is so substantial and frequent as to constitute a taking." Accord *Hilkovsky v. United States*, 504 F.2d 1112, 1114, 205 Ct.Cl. 460 (1974) (*Dow* "distinguished the flooding situation in Dickinson from other types of Government taking because, in the slow flooding situation in Dickinson, the full extent of the Government taking could not be known until the high water mark of the flooding had been reached"). And in *Barnes v. United States*, 538 F.2d 865, 210 Ct.Cl. 467 (1976), on facts very similar to those in Dickinson, the court held that a taking by flood accrued in 1973 rather than in 1969, the date of the first flood. The court explained that the taking must be dated from the time that "it first became clearly apparent ... that the intermittent flooding was of a permanent nature." *Id.* at 873. In other post-Dickinson cases, the Court of Claims has made clear that it is not necessary that the damages from the alleged taking be complete and fully calculable before the cause of action accrues. *Columbia Basin Orchard v. United States*, 88 F.Supp. 738, 739, 116 Ct.Cl. 348 (1950) ("we do not think the Supreme Court, in the Dickinson case, meant to hold that plaintiff was entitled to wait until any possibility of further damage had been removed"); *Nadler Foundry & Mach. Co. v. United States*, 164 F.Supp. 249, 251, 143 Ct.Cl. 92 (1958) (same); see also *Wilcox v. Executors of Plummer*, 29 U.S. (4 Pet.) 172, 177, 7 L.Ed. 821 (1830) (statute of limitations begins to run when breach of duty occurs; "right to sue is not suspended, until subsequent events shall show the amount of damage or loss").

- 20 In the case at bar, the "permanent nature" of the taking was evident to the Fallinis at least by 1983, when they sent their water bill to the Bureau of Land Management. The Fallinis maintain that the taking was continuous from 1971 on, but that it did not "stabilize" until November 28, 1986. The only event to occur on or about that date, however, was the formation of the Herd Management Area (HMA) in settlement of one of the Fallinis' prior suits against the government.
- 21 The HMA established the historical location and herd population of wild horses in the Reveille Allotment. As part of the settlement, the Bureau of Land Management undertook to conduct an annual census of wild horses in the HMA and to remove any excess horses. Thus, the formation of the HMA served only to reduce the damages the Fallinis were suffering because of the alleged taking; it did nothing to establish that the horses' drinking constituted a taking for which the United States was liable.
- 22 Three years before the HMA was established, the Fallinis billed the federal government for the water allegedly taken by the wild horses up to that point. At least by that time, the situation had become clearly apparent, and therefore had "stabilized" within the meaning of Dickinson, because the bill that the Fallinis sent to the Bureau of Land Management indicated that they were fully aware of all the facts that, on their view of the case, led to the conclusion that the government's actions amounted to a taking. The only changes in the ensuing years were changes in the number of protected horses in the Reveille Allotment, and thus the amount of water taken. Nothing that happened in those later years had the legal effect of triggering, for the first time, the Fallinis' obligation to sue for the alleged takings that had occurred since the enactment of the Wild Free-Roaming Horses and Burros Act in 1971. Thus, the Fallinis' first theory does not allow them to avoid the statute of limitations bar.
- 23 Under their second theory, the Fallinis concede application of the time-bar as to pre-1986 events, but seek compensation for injury they suffered after 1986, i.e., within the six years prior to the filing of their suit. That claim, however, depends upon characterizing every drink by every wild horse as a new and independent federal taking compensable under the Fifth Amendment.
- 24 In analyzing this theory of recovery, it is useful to analogize the conduct at issue in this case to a taking of real property. If a landowner owns a parcel of beachfront property and the government enacts legislation demanding that the landowner allow others to walk along the shore, the government has effected a taking of an easement on the landowner's property. See *Nollan v. California Coastal Comm'n*, 483 U.S. 825, 831, 107 S.Ct. 3141, 3145, 97 L.Ed.2d 677 (1987). For purposes of claim accrual, such a taking occurs on the date of enactment of the legislation. *Alliance of Descendants of Texas Land Grants v. United States*, 37 F.3d at 1482; *De Anza Properties X, Ltd. v. Santa Cruz*, 936 F.2d 1084 (9th Cir.1991). Every instance of a beachcomber using the

public easement does not constitute a separate taking, even though each use may inflict psychic or economic injury on the landowner.

- 25 The analysis of the present facts is similar. In their complaint, the Fallinis allege that the Wild Free-Roaming Horses and Burros Act deprived the Fallinis of their right to exclude wild horses from the developed water sources on the Reveille Allotment. In light of those allegations, it is the enactment of the statute, not the individual intrusions by the horses, to which a court must look to determine if there has been a taking.
- 26 The fact that the water at issue in this case is personalty and the land at issue in the easement case was realty does not alter the nature of the analysis. For purposes of determining when the Fallinis' claim accrued, it is necessary in either case to look to the nature and timing of the governmental action that constituted the alleged taking. *Alliance of Descendants of Texas Land Grants v. United States*, 37 F.3d at 1481.
- 27 If the horses were agents or instrumentalities of the United States government, the analysis of what governmental action constituted the alleged taking might well be different. See *Mountain States Legal Found. v. Hodel*, 799 F.2d 1423, 1428 (10th Cir.1986) (en banc), cert. denied, 480 U.S. 951, 107 S.Ct. 1616, 94 L.Ed.2d 800 (1987). But the horses are not agents of the Department of the Interior any more than beachcombers wandering across a property owner's land are agents of the legislature that mandated the creation of an easement along the shore.
- 28 What the Fallinis may challenge under the Fifth Amendment is what the government has done, not what the horses have done. The only governmental action that could constitute a compensable taking in this case is the government's directive forbidding the Fallinis from shoing the horses away from the water that the Fallinis have produced at their developed water sources. That governmental action cannot be regarded as recurring with every new drink taken by every wild horse, even though the consumption of water by the wild horses imposes a continuing economic burden on the Fallinis. See *Delaware State College v. Ricks*, 449 U.S. 250, 258, 101 S.Ct. 498, 504, 66 L.Ed.2d 431 (1980) (proper focus, for statute of limitations purposes, "is upon the time of the [defendant's] acts, not upon the time at which the consequences of the acts became most painful"). Because the Fallinis identify the enactment of the Wild Free-Roaming Horses and Burros Act as the governmental action that prevented them from fencing the horses away from their water sources, and because they admit that they suffered injury from the date of enactment, their claim must be regarded as accruing long before they filed their present suit.

29 III

30

Based on our analysis of the Fallinis' takings claim, we conclude that their claim was time-barred. We therefore vacate the judgment and remand this case to the Court of Federal Claims with instructions to dismiss the complaint as untimely.

31 Each party shall bear its own costs.

32 VACATED AND REMANDED WITH INSTRUCTIONS

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Justia > Cases > US Court of Appeals > F.3d > 56 > 1378 - Susan L. Fallini, and Joseph B. Fallini, Jr., in Each of Thefollowing Capacities: As an Individual Person and Successorto the Interest of Helen Fallini As Sole Heir of Helenefallini, Deceased, Executor of the Last Will of Helenefallini, and Trustee of the Helene Fallini Living Trust Andthe Helene Fallini Living Trust As the Sole Distributee Ofthe Last Will of Helene Fallini, Plaintiffs-appellants, v. the United States, Defendant-appellee

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EXHIBIT 3

EXHIBIT 3

1 **REQT**

John P. Aldrich

2 Nevada Bar No. 6877

Stacy D. Harrop

3 Nevada Bar No. 9826

ALDRICH & BRYSON LLP

4 1601 S. Rainbow Blvd., Suite 160

Las Vegas, Nevada 89146

5 (702) 853-5490

(702) 853-5491 (fax)

6 *Attorneys for Plaintiffs*

7
8 **THE FIFTH JUDICIAL DISTRICT COURT**
9 **THE STATE OF NEVADA**
10 **COUNTY OF NYE**

11 Estate of MICHAEL DAVID ADAMS,
by and through his mother JUDITH
ADAMS, individually and on behalf of the
Estate,

12 Plaintiffs,

13 vs.

14 SUSAN FALLINI, DOES I-X and ROE
CORPORATIONS I-X, inclusive,

15 Defendants.

Case No.: CV24539

Dept.: 2P

16 SUSAN FALLINI,

17 Counterclaimant,

18 vs.

19 Estate of MICHAEL DAVID ADAMS,
by and through his mother JUDITH
ADAMS, individually and on behalf of the
Estate,

20 Counterdefendants.

21
22
23 **PLAINTIFFS' FIRST SET OF REQUESTS FOR ADMISSION TO DEFENDANT**
FALLINI

24 **TO: SUSAN FALLINI, Defendant/Counterclaimant**

25 **TO: HAROLD KUEHN, ESQ., attorney for Defendant/Counterclaimant**

26 Plaintiffs, Estate of MICHAEL DAVID ADAMS, by and through his mother JUDITH
27 ADAMS, by and through their attorneys, Aldrich & Bryson, LLP, hereby request that Defendant,
28 pursuant to Nev. R. Civ. P. 36 respond to the following Requests for Admission within thirty (30)
days of service hereof:

1 **REQUEST FOR ADMISSION NO. 1:**

2 Admit that your property is not located within "open range."

3 NOTE: As used throughout these requests "open range" is to be defined as set forth in NRS
4 568.355.

5 **REQUEST FOR ADMISSION NO. 2:**

6 Admit that you are the owner of the cow that is mentioned in of the Complaint on file herein
7 (hereafter "subject cow").

8 **REQUEST FOR ADMISSION NO. 3:**

9 Admit that it is the common practice of Nye County ranchers to mark their cattle with
10 reflective or luminescent tags.

11 **REQUEST FOR ADMISSION NO. 4:**

12 Admit that the subject cow was not marked with a reflective or luminescent tag.

13 **REQUEST FOR ADMISSION NO. 5:**

14 Admit that the subject cow crossed a fence to arrive at the location of the subject accident
15 described in the Complaint on file herein.

16 **REQUEST FOR ADMISSION NO. 6:**

17 Admit that your cattle have previously been involved in incidents with motor vehicles on the
18 roadway.

19 **REQUEST FOR ADMISSION NO. 7:**

20 Admit that you do not track the location of your cattle while they are grazing away from your
21 property.

22 **REQUEST FOR ADMISSION NO. 8:**

23 Admit that you do not remove your cattle from the roadway when notified that the cattle are
24 in a roadway.

25 **REQUEST FOR ADMISSION NO. 9:**

26 Admit that the subject cow was not visible at night.

27 **REQUEST FOR ADMISSION NO. 10:**

28 Admit that you were aware that the subject cow was not visible at night prior to the incident

1 that is the subject of the Complaint on file herein.

2 **REQUEST FOR ADMISSION NO. 11:**

3 Admit that the subject cow was in the roadway of SR 375 at the time of the incident that is
4 the subject of the Complaint on file herein.

5 **REQUEST FOR ADMISSION NO. 12:**

6 Admit that the subject cow's presence in the roadway of SR 375 was the cause of the motor
7 vehicle accident that is the subject of the Complaint on file herein.

8 **REQUEST FOR ADMISSION NO. 13:**

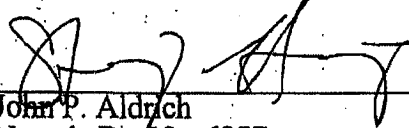
9 Admit that you did not know the location of the subject cow at the time of the incident that
10 is the subject of the Complaint on file herein.

11 **REQUEST FOR ADMISSION NO. 14:**

12 Admit that the presence of a reflective or luminescent tag on the subject cow would have
13 made the subject cow visible at the time of the incident that is the subject of the Complaint on file
14 herein.

15 DATED this 31st day of October, 2007.

16 **ALDRICH & BRYSON, LLP**

17
18 
19 John P. Aldrich
20 Nevada Bar No. 6877
21 Stacy D. Harrop
22 Nevada Bar No. 9826
23 1601 S. Rainbow Blvd., Suite 160
24 Las Vegas, Nevada 89146
25 (702) 853-5490
26 (702) 853-5491 (fax)
27 Attorneys for Plaintiffs
28

CERTIFICATE OF MAILING

I hereby certify that on this 31st day of October, 2007, service of the foregoing
PLAINTIFFS' FIRST SET OF REQUESTS FOR ADMISSION TO DEFENDANT FALLINI
was made this date by depositing a true and correct copy of the same for mailing in Las Vegas,
Nevada, addressed to:

Harold Kuehn, Esq.
Gibson, & Kuehn
921 S. Highway 160, #203
Pahrump, NV 89048

P.O. Box 1411
Tonopah, NV 89049
Attorney for Defendant/Counterclaimant

Katherine M. Peck, Esq.
Peck Law Offices
701 Bridger Ave, Ste. 500
Las Vegas, NV 89106
*Attorney for Counterdefendant
Estate of Michael David Adams*


An employee of ALDRICH & BRYSON, LLP

1 **SUPP**

John P. Aldrich, Esq.

2 Nevada State Bar No. 6877

ALDRICH LAW FIRM, LTD.

3 1601 S. Rainbow Blvd., Suite 160

Las Vegas, Nevada 89146

4 (702) 853-5490

Attorneys for Plaintiff

6 THE FIFTH JUDICIAL DISTRICT COURT
7 THE STATE OF NEVADA
COUNTY OF NYE

8 Estate of MICHAEL DAVID ADAMS, by and
9 through his mother JUDITH ADAMS,
individually and on behalf of the Estate,

10 Plaintiff,

11 v.

12 SUSAN FALLINI, ; DOES I-X, and ROE
13 CORPORATIONS I-X, inclusive,

14 Defendants.

15
16 SUSAN FALLINI,

17 Counterclaimant,

18 vs.

19 Estate of MICHAEL DAVID ADAMS, by and
20 through his mother JUDITH ADAMS,
individually and on behalf of the Estate

21 Counterdefendants.

Case No.: CV24539

Dept. No.: 2P

22
23 **SUPPLEMENT TO APPLICATION FOR DEFAULT JUDGMENT**
24 **AGAINST DEFENDANT SUSAN FALLINI**

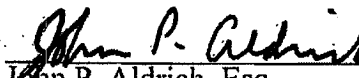
25 COMES NOW, JUDITH ADAMS, INDIVIDUALLY AND ON BEHALF OF THE ESTATE OF
26 MICHAEL DAVID ADAMS, by and through her attorney, John P. Aldrich, Esq., of Aldrich Law Firm,
27 Ltd., and hereby provides the following supplement to her Application for Default Judgment Against

1 Defendant Susan Fallini with respect to the above-captioned matter.

- 2 1. Email from Michael to his parents, dated July 3, 2005
- 3 2. Email from Michael to his parents, dated July 7, 2005
- 4 3. Email from dad to Michael, dated July 7, 2005
- 5 4. Memorial letter written by Michael's half brother, Tony, dated July 14, 2005
- 6 5. Condolence note from Judith's second cousin, not dated
- 7 6. Condolence note from friends, dated July 12, 2005
- 8 7. Condolence note from Michael's co-worker, not dated
- 9 8. Note from Michael's co-worker, dated July 15, 2005
- 10 9. Letter from one of Michael's closest friends who was stationed in Iraq and could not
- 11 attend Michael's memorial, which was held in August, dated August 15, 2005
- 12 10. Letter from another very close friend who was not able to attend the memorial, dated
- 13 August 14, 2005
- 14 11. Email from another friend of Michael's, dated November 30, 2005

15 Respectfully submitted this 12th day of July, 2010.

16 ALDRICH LAW FIRM, LTD.

17
18 
19 John P. Aldrich, Esq.
20 Nevada Bar No.: 6877
21 1601 S. Rainbow Blvd., Suite 160
22 Las Vegas, Nevada 89146
23 (702) 853-5490
24 Attorney for Plaintiff
25
26
27
28

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 12th day of July, 2010, I mailed a copy of the PLAINTIFFS' SUPPLEMENT TO APPLICATION FOR DEFAULT JUDGMENT, in a sealed envelope, to the following and that postage was fully paid thereon:

John Ohlson, Esq.
Bowen-Hall
555 South Center Street
Reno, Nevada 89501
Attorney for Defendant/Counterclaimant

Katherine M. Barker, Esq.
Law Office of Katherine M. Barker
701 Bridger Ave, Ste. 500
Las Vegas, NV 89101
*Attorney for Counterdefendant
Estate of Michael David Adams*


An employee of Aldrich Law Firm, Ltd.

YAHOO! MAIL
Classic

hello

Sunday, July 3, 2005 1:49 PM

From: "mike adams" <mdadams7@yahoo.com>

To: "Judl Adams" <judith2a@yahoo.com>, "Anthony W Adams" <awadams@yahoo.com>

Well,

Lets see whats new, besides one whole crew being abducted then just to be brought back by some aliens, nothing. What can really be new, I have not left the job site in a week. I have just completed one book I brought and am just starting on the other one, "The Chronicles of Namia". It is very long so it should get me through the well. I am not sure what my next destination is yet. I am going to call Doug here in a moment. He is back from Belleze, the first well went well, no pun intended. Not sure when the next one is getting under way. I see the Lakers think they have the next Shaq, I doubt it but one can never tell. I do have HBO out here now so at least I get to look forward to Enourage tonight. Talk to you later. By the way Dad Willie has a new album out.

Mike

Yahoo! Sports

Rekindle the Rivalries. Sign up for Fantasy Football

<http://football.fantasysports.yahoo.com>

YAHOO! MAIL

Classic

Hello

Thursday, July 7, 2005 2:09 PM

From: "mike adams" <mdadams7@yahoo.com>

To: "Judith Adams" <judith2a@yahoo.com>, "Anthony W Adams" <awadams@yahoo.com>

Well no alien abductions yet on the site, however some of these roughnecks(oil field workers) I start to question there real origins. By the way Dad Five easy peices was on last night a fitting movie for out here. I am going to Rachel Nevada today for dinner as my shift is going to end rather early. It is the first time I will be off location since last Saturday(June 25th). I am eagerly awaiting my next 5 days because I get to come home finally. I am not sure how long I will be home for. At least through Sunday, I am trying to get the following week off as well. but we'll see. Nothing is really new as there is nothing that happens out in the middle of nowhere.

Mike

Discover Yahoo!

Have fun online with music videos, cool games, IM and more. Check it out!

<http://discover.yahoo.com/online.html>

2

212

**MIKE AT THE WORLD FAMOUS CITY OF RACHEL**

Thursday, July 7, 2005 4:14 PM

From: "DeMars" <awadams@earthlink.net>

To: mdadams7@yahoo.com

Well I'm glad to see you have not been taken prisoner by some aliens to some out of the way planet in another galaxy.

You don't know what a party you missed at Tony's house. Every one asked about you and I told them if it were anyway possible

for you to be there you would. I let everyone know that you were probably in tears about not being able to attend. Well you can't have everything at least you get to go to that BEAUTIFUL city of RACHEL. How lucky can you get. A trip to Rachel and your Angel team up 8 1/2 games. You must be dreaming.

Be very careful in Rachel and be on the lookout for strange people. I hear many people have disappeared in this location never to be heard from again.

Dad

YAHOO! MAIL
Classic**Letter for Memorial**

Thursday, July 14, 2005 5:46 PM

From: "ANTHONY ADAMS" <sofftshoe@msn.com>

To: judith2a@yahoo.com

Well it took a while for my thoughts to come together. Here is the letter that I am putting into the cache.

Love,

Tony

Michael David Adams
Memorial Cache
May 10th 1972 - July 8th 2005

Brother and best friend.

Mike was more than just a brother, he was my best friend. Always having so much fun with him! Taking him on his first back packing trip, skiing, mountain climbing, and off road adventures. We were always very close to each other, always telling each other their problems or accomplishments. Never was there a week that went by were we would not call and talk to each other. When he called the first words were "hey brother". It seemed like life would always be there for each of us.

Mike had that special aura about him. He would always have that grin and smile, and if you were upset he would seem to be able to wash your troubles away with his witty sense of humor. Always having fun and such a great outlook and zeal about life. Whenever you were around him you felt that something special was going to happen. He liked so many friends, regardless of who or what you were. Friends were his happiness and life had a special meaning for him. He had so much excitement and could not wait for the next day to arrive. They say that the good die young.....that they are special spirits....angels that are here on earth for a short time and that they are very special people that we learn the most from and have touched us the most.....

Mike died along this ET Highway. A cow crossed his path and his jeep was not a match for a 1,000 pound animal. It's a pity that open-range laws still exists allowing the right of way to animals. But how fitting to have his birth sign (Taurus the Bull) facing where the accident took place. I guess you can say that he had the last laugh.

Love you Bro!

Tony

4

214

Dear Judi + Tony -

I know there are no words that can make this time any easier for you. The support of your family + friends is the only comfort, and your memories of the happy, devoted son whom you gave life to. I did not know Michael well but the times I came

Thinking of you.

to your house and saw him it was abundantly clear to me how close you were as a family.

A grown child who still spends a lot of time with his parents is a testament to what wonderful parents you must have been to him. Hopefully he had as much love and joy in his short life as most people have in an entire lifetime.

be there on behalf of our family.

With my heartfelt condolences,

Carrie Nachmanoff

My heart goes out to you in this difficult time. Please let me know when you have a service for Michael as I would like to

57

Dear Judi & Tony, 7-12-2005

Michael was a truly unique and interesting person such from the first time I met him at age 19. I also know he felt very close to both of you it was something I could tell by the wonderful way he spoke about you both. Michael will never be forgotten he had that kind of impact on people and he will always be missed.

Our deepest sorrow,
Debbie & Don

To Mike's Mom + Dad -

Tony and Judy -

All of us who knew Mike in the 'patch are shocked and saddened by his death. I rode the Ghost Train of Ely with him on Saturday - 25 June - to Roth where a large mineral deposit exists. We had fun riding the train, looking through the train 'boon', looking around. He always had a lot of dreams - concrete plans for the future.

Mike woke me on the 29 June - Wednesday - and said take off - had cover until his relief - Peter French - arrived the next day at 2 PM. I went home for some time off, talked to Mike the next night and he was OK. I've reconstructed his work hours and sent them to Doug.

Mike downloaded his camera photos of Germany plus some on his recent trip. If his camera is damaged or you want these files for any reason please let me know.

If there's anything I can do...

Respectfully,

Louis A. Saffari

15 July 2005

Dear Mr. And Mrs. Adams:

I was working with Mike when this tragic event occurred. It was, and still is painful. I had a very hard time continuing on at work. Mike liked working there and he was a pleasure to work with. I will miss him. This event has profoundly affected me and I have more gray hairs and lines on my face because of it. It is going to stick with me. I am going to Maine tomorrow to spend 3 weeks with my 2 kids. Because of divorce this is the only time that I spend with them during the year. I know Mike would approve.

Regards,
Peter French

420 Finley #32

Taft, CA 93268

YAHOO! MAIL
Classic**RE: Gabe's Message**

Monday, August 15, 2005 7:27 PM

From: "ANTHONY ADAMS" <sofftshoe@msn.com>

To: judith2a@yahoo.com

It was great time...I am glad that we waited....everyone said that this was the best service that they ever attended. It seemed more like a gathering of friends to enjoy the fun times. You did such a fantastic job!!! Here is Gabe's Speech.

Love,

Tony

There are many words that come to mind when I think of Mike. He was a classic comedian who always had a joke of some kind coming out of his mouth, and a few more in his pocket ready to dish out. To know Mike is to love him, and for those people who don't know him, missed out on knowing a great person. He was always upbeat, and had a positive outlook on life. He loved life more than anybody I know, and his determination drove him to accomplishing everything he wanted. If he wanted it, he got it, and there wasn't anything that would stop him. One day he came over to move a table of my mothers which my father had built. The top of the table was an old door and attached to it were 2x4's as legs. It took us 2 hours to move the table through to the spare bedroom. It never dawned on us that you can't fit a door through a door. He suggested that we saw off the legs and throw it through the window to the room. It seemed like an impossible task, but we got it done. His determination amongst many things is something I would never forget. I remember when we went to an Angels game during a horrible losing streak. We both had our jerseys on, and were discussing the problems the team was having. We came to the conclusion it was the jerseys we were wearing that was causing them to lose. He had a Tim Salmon Jersey, and I had a Mo Vaughn Jersey. So as we were stopped at a light on Katella just past the 5 fwy bridge, he said "If we change jerseys before the light turns green then the angels are going to win." So, there we were, in his jeep with no top....two guys changing shirts in the middle of the street, and people in cars looking at us trying to figure out what the hell was going on. I don't even want to know what they were thinking. Needless to say, just as the light turned green, we were finishing the changeover. The angels won, and we kept the switch of jerseys for years. When the Angels won the World Series, I was in South America. He used to tell me since then that I was bad luck, and just before he past away, he told me I couldn't come back from Iraq until the baseball season was over. There was never a dull moment with Mike, he always kept you on your toes, and you never knew what to expect, but I can assure you whatever it was, it was going to be funny.

He loved his family and friends were the two most important things in his life. He set up the best going away present for me when the families and friends went to dinner before I left. I can honestly say that was one of the nicest things anybody has ever done for me. I can tell stories about Mike that would last forever. I am going to miss his humor, his laugh, his wide knowledge of sports, and yes....his 3-4 phone calls a day talking about whatever was on his mind at that time. I have so many. I will cherish all the great times we shared together, and I love and thank him for being the super glue to a group of great friends.

> From: Judi Adams <judith2a@yahoo.com>
> To: sofftshoe@msn.com
> Subject: Gabe's Message
> Date: Mon, 15 Aug 2005 18:23:18 -0700 (PDT)

219

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Dear Mike,

I say Dear Mike, like I'm talking to him because I believe he can still hear us. I am so sorry and I am deeply shocked about your accident that ended your life at such a young age. Maaan.

The biggest memory I have of you Mike, is the summertime. Like it is now, when we took a trip together back east, to see Ryan Smith in Virginia and Washington D.C. It was just a great trip and during the summertime I always think about it and you. And especially now, I'll always think of you Mike, forever, during the summertime, when we made that special trip. We really got to bond. More so, than on the soccer field, where we first met. I found out you could talk a lot on the airplane. (Just a little joke)

And even though our paths went a separate way after highschool and we hadn't seen each other in awhile, you'll always remain a great friend. Everyone is coming together to help your family remain strong because you touched so many lives in the past and the present. Regardless if we hadn't talked in awhile or seen each other, I'm just sure we would pick up right where we left off. I just have to say your untimely death really saddens me.

Lastly, I'll just say Michael that you are etched in our heart and our memories, for life.

I'll see you on the other side.....Your friend....Earl Norman

YAHOO! MAIL

Classic

Re: Hello

Wednesday, November 30, 2005 11:20 PM

From: "kerrybe@earthlink.net" <kerrybe@earthlink.net>

To: "Judi Adams" <judith2a@yahoo.com>, "Julie Kelly" <julie.kelly@stjoe.org>

Hi Judi

How are you and Tony doing? Well I hope. We had a pretty quiet Thanksgiving, but it was nice. When I first recieved your email earlier this week regarding Shannon Dawson, I thought to myself, I knew her years ago and did know her pretty well. We went to elementary school together and at times were pretty good friends. I haven't heard from her probably since high school. In fact I didn't even know Mike knew her. Well this morning I got up to check my email and she had contacted me through classmates. She is the only person to ever contact me through there. She didn't know that I was friends with Mike, but I did respond to her message and let her know. I left my contact info with her and after reading my reply she called me tonight. She was shocked and sad to hear about Mike. The last time Shannon remembers seeing Mike was when he worked at Pollys, so it had been along time for her. I think we may get together this weekend, so I will be able to share some stories and pictures with her.

As Julie told you, this will be a tough weekend for all of us with our Turkey fry. This is yet another one of our traditons that Mike was such a part of. We all miss him dearly. For me Mike was that person that when something happend to me during my day, I would pick up the phone and call him, and often times he was the first person through the doors at Starbucks in the morning. It was always nice to start my day with the face of a friend. In fact, I had many customers and coworkers at Starbucks that knew Mike. I miss him dearly and think of him often through out every single day.

I hope this email finds you all well. I just wanted to share some of my thoughts with you, and let you know how special Mike was to all of us.

Love
Kerry

—Original Message—

From: Judi Adams

Sent: Nov 27, 2005 6:09 PM

To: Julie Kelly , Kerry Burns

Subject: Hello

I hope everyone had a great thanksgiving. We saw Gabriel, Scott and Mike Garcia a few weeks ago and they seemed to be doing OK.

Someone from Cypress Hi named Shannon Dawson sent Mike the following email message through his Classmates account message board.

"Hey Mike just dropping a message to say I'll hope all is good with you...didn't really know you all that well but had some fun with our mutual friends in Huntington Beach...now I live over there so it is fun...write me if you want...Shannon"

Do either of you know her? If you do can you let her know about Mike.

Thanks,

Judi

//

221

FILED

Case No. CV 24539
Dept. 2P

2010 AUG 12 A 9:00

REBECCA BALLARD

IN THE FIFTH JUDICIAL DISTRICT COURT OF THE
STATE OF NEVADA, IN AND FOR THE COUNTY OF NYE

ESTATE OF MICHAEL DAVID ADAMS,
by and through his mother JUDITH
ADAMS, individually and on behalf of the
Estate

Plaintiff,

vs.

SUSAN FALLINI; DOES I-X, and ROE
CORPORATIONS I-X, inclusive

Defendants.

ORDER AFTER HEARING

This matter is regarding a motor vehicle accident involving Michael Adams and a Hereford Cow owned by the Defendant. On June 24, 2010, Plaintiff filed an Application for Default Judgment against Defendant Susan Fallini. Plaintiff requested \$2,500,000 for grief, sorrow, loss of support; \$1,640,696 for lost career earnings; \$5,000,000 for hedonic damages loss of life's pleasure and enjoyment; \$35,000 for Sanctions already levied against Defendants; \$50,000 for attorney's fees; and \$5,188.85 for funeral and other related expenses for a total of \$9,230,884.85. Defendants filed an Opposition on June 24, 2010. A hearing was held on this matter on July 19, 2010, in which Plaintiff and Defendants appeared with their counsels. After hearing arguments from both sides regarding the Defendant's violation of procedural rules, the Court denied Defendant's





1
2 Motion for Reconsideration and proceeded with the Prove Up Hearing and Canceled the
3 Trial scheduled for August 2010. Judith Adams, Anthony Adams, and Susan Fallini were
4 sworn in and testified. The parties' counsel gave their closing statements. The Court
5 heard testimony, counsels' statements and arguments, and reviewed the pleadings on file
6 herein. This Order follows.

7
8 **ORDER**

9 IT IS HEREBY ORDERED that the Defendant's Motion for Reconsideration is
10 DENIED.

11 IT IS FURTHER ORDERED that the Court grants the Plaintiff \$1,000,000 in
12 Damages for Grief, Sorrow, and loss of support.

13 IT IS FURTHER ORDERED that the Court grants the Plaintiff \$1,640,696 in
14 Damages for future lost earnings.

15 IT IS FURTHER ORDERED that the Court grants the Plaintiff \$50,000 in
16 Attorney's Fees.

17 IT IS FURTHER ORDERED that the Court grants the Plaintiff \$35,000 in
18 sanctions levied against the Defendant.

19 IT IS FURTHER ORDERED that the Court grants the Plaintiff \$5,188.85 in
20 funeral and other related expenses.

21 IT IS FURTHER ORDERED that Plaintiff's request for Hedonic damages is
22 DENIED.
23
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DATED this 12th day of August 2010.


DISTRICT JUDGE



CERTIFICATION OF MAILING

The undersigned hereby certifies that on the 12th day of August 2010, he mailed
copies of the foregoing ORDER AFTER HEARING to the following:

John P. Aldrich, Esq.
ALDRICH LAW FIRM, LTD.
1601 S. Rainbow Blvd., Suite 160
Las Vegas, NV 89146

John Ohlson, Esq.
BOWEN, HALL, OHLSON & OSBORNE
555 South Center Street
Reno, NV 89501

Katherine M. Barker, Esq.
LAW OFFICE OF KATHERINE M. BARKER
823 S. Las Vegas Blvd., Ste. 300
Las Vegas, NV 89101

C. PAUL TECHO
Law Clerk to
DISTRICT JUDGE

1 **NEO**

John P. Aldrich, Esq.

2 Nevada Bar No. 6877

ALDRICH LAW FIRM, LTD.

3 1601 S. Rainbow Blvd., Suite 160

Las Vegas, Nevada 89146

4 (702) 853-5490

(702) 227-1975 fax

5 *Attorneys for Plaintiff*

6
7 **THE FIFTH JUDICIAL DISTRICT COURT**
8 **THE STATE OF NEVADA**
9 **COUNTY OF NYE**

10 Estate of MICHAEL-DAVID ADAMS,
11 by and through his mother JUDITH
ADAMS, individually and on behalf of the
Estate,

12 Plaintiffs,

13 vs.

14 SUSAN FALLINI, DOES I-X and ROE
CORPORATIONS I-X, inclusive,

15 Defendants.

16 SUSAN FALLINI,

17 Counterclaimant,

18 vs.

19 Estate of MICHAEL DAVID ADAMS,
20 by and through his mother JUDITH
ADAMS, individually and on behalf of the
21 Estate,

22 Counterdefendants.

Case No.: CV24539
Dept.: 2P

23 **NOTICE OF ENTRY OF ORDER**

24 ///

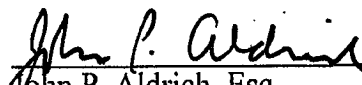
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1 PLEASE TAKE NOTICE that an Order After Hearing was entered in the above-entitled
2 matter on August 12, 2010, a copy of which is attached hereto as Exhibit 1.

3 DATED this 17th day of August, 2010.

4 ALDRICH LAW FIRM, LTD.

5
6 
7 John P. Aldrich, Esq.
8 Nevada State Bar No. 6877
9 1601 S. Rainbow Blvd., Suite 160
10 Las Vegas, Nevada 89146
11 (702) 853-5490
12 (702) 227-1975
13 *Attorneys for Plaintiff*

14 **CERTIFICATE OF SERVICE**

15 I HEREBY CERTIFY that on the 17th day of August, 2010, I mailed a copy of the
16 NOTICE OF ENTRY OF ORDER, in a sealed envelope, to the following and that postage was fully
17 paid thereon:

18 John Ohlson, Esq.
19 275 Hill Street, Suite 230
20 Reno, Nevada 89501
21 *Attorney for Defendant/Counterclaimant*

22 Katherine M. Barker, Esq.
23 Law Office of Katherine M. Barker
24 823 S. Las Vegas Blvd., Ste. 300
25 Las Vegas, NV 89101
26 *Attorney for Counterdefendant*
27 *Estate of Michael David Adams*


28 
An employee of Aldrich Law Firm, Ltd.

EXHIBIT 1

EXHIBIT 1

FILED

Case No. CV 24539
Dept. 2P

2010 AUG 12 A 9:00

REBECCA BALLARD

IN THE FIFTH JUDICIAL DISTRICT COURT OF THE
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ADAMS, individually and on behalf of the
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Plaintiff,

vs.

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CORPORATIONS I-X, inclusive

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FIFTH JUDICIAL DISTRICT COURT
ESMERALDA, MINERAL AND NYE COUNTIES





1
2 Motion for Reconsideration and proceeded with the Prove Up Hearing and Canceled the
3 Trial scheduled for August 2010. Judith Adams, Anthony Adams, and Susan Fallini were
4 sworn in and testified. The parties' counsel gave their closing statements. The Court
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DATED this 12th day of August 2010.


DISTRICT JUDGE

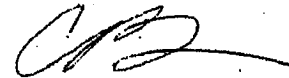
1
2 **CERTIFICATION OF MAILING**

3 The undersigned hereby certifies that on the 12th day of August 2010, he mailed
4 copies of the foregoing ORDER AFTER HEARING to the following:

5 John P. Aldrich, Esq.
6 ALDRICH LAW FIRM, LTD.
7 1601 S. Rainbow Blvd., Suite 160
8 Las Vegas, NV 89146

9 John Ohlson, Esq.
10 BOWEN, HALL, OHLSON & OSBORNE
11 555 South Center Street
12 Reno, NV 89501

13 Katherine M. Barker, Esq.
14 LAW OFFICE OF KATHERINE M. BARKER
15 823 S. Las Vegas Blvd., Ste. 300
16 Las Vegas, NV 89101

17
18 

19 C. PAUL TECHO
20 Law Clerk to
21 DISTRICT JUDGE
22
23
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25
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1 John Ohlson, Esq.
2 Bar Number 1672
3 275 Hill Street, Suite 230
4 Reno, Nevada 89501
5 Telephone: (775) 323-2700

6 Jeff Kump, Esq.
7 Bar Number 5694
8 Marvel & Kump, Ltd.
9 Elko, Nevada 89801
10 Telephone: (775) 777-1204
11 *Attorneys for Susan Fallini*

FILED

2010 SEP 10 A 9:47

NYE COUNTY CLERK
BY DEPUTY

P. ABERNATHY

FIFTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

IN AND FOR THE COUNTY OF NYE

12 Estate of MICHAEL DAVID ADAMS,
13 By and through his mother JUDITH ADAMS,
14 Individually and on behalf of the Estate,

Plaintiff,

Case No.: CV24539

Dept. No.: 2P

vs.

16 SUSAN FALLINI, DOES I-X, and
17 ROE CORPORATIONS I-X, inclusive,

Defendant.

19 _____/
20 AND ALL RELATED CLAIMS.
21 _____/

NOTICE OF APPEAL

23 TO: Plaintiff, and her counsel of record, John Aldrich, Esq.

24 Notice is given that Defendant SUSAN FALLINI, appeals to the Supreme Court of

25 ////

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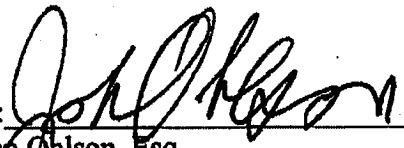
1 Nevada from: (1) the August 12, 2010 Order After Hearing.

2 DATED this 7 day of September, 2010.

3
4 **AFFIRMATION**
5 **Pursuant to NRS 239B.030**

6 The undersigned does hereby affirm that the preceding document does not contain the
7 social security number of any person.

8 Dated this 7 day of September, 2010.

9
10
11 By: 
12 John Ohlson, Esq.
13 Bar Number 1672
14 275 Hill Street, Suite 230
15 Reno, Nevada 89501
16 Telephone: (775) 323-2700

17 Jeff Kump, Esq.
18 Bar Number 5694
19 Marvel & Kump, Ltd.
20 Elko, Nevada 89801
21 Telephone: (775) 777-1204
22 *Attorneys for Susan Fallini*
23
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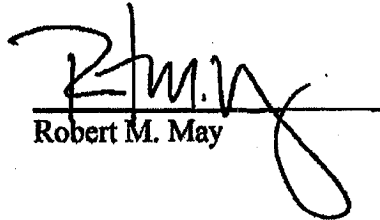
1
2
3 **CERTIFICATE OF SERVICE**

4 Pursuant to NRCP 5(b), I hereby certify that I am an employee of JOHN OHLSON, and
5 that on this date I personally served a true copy of the foregoing **NOTICE OF APPEAL**, by the
6 method indicated and addressed to the following:

7 John P. Aldrich, Esq.
8 Aldrich Law Firm, Ltd.
1601 S. Rainbow Blvd., Ste. 160
Las Vegas, NV 89146

☒ Via U.S. Mail
☐ Via Overnight Mail
☐ Via Hand Delivery
☒ Via Facsimile
☐ Via ECF

9
10
11 DATED this 7 day of September, 2010.

12
13 
14 Robert M. May
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1 John Ohlson, Esq.
2 Bar Number 1672
3 275 Hill Street, Suite 230
4 Reno, Nevada 89501
5 Telephone: (775) 323-2700

6 Jeff Kump, Esq.
7 Bar Number 5694
8 Marvel & Kump, Ltd.
9 Elko, Nevada 89801
10 Telephone: (775) 777-1204
11 Attorneys for Susan Fallini

FILED

2010 SEP 10 A 9:47

NYE COUNTY CLERK
BY DEPUTY

R. ABERNATHY

12 FIFTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

13 IN AND FOR THE COUNTY OF NYE

14 * * * * *

15 Estate of MICHAEL DAVID ADAMS,
16 By and through his mother JUDITH ADAMS,
17 Individually and on behalf of the Estate,

18 Plaintiff,

Case No.: CV24539

19 vs.

Dept. No.: 2P

20 SUSAN FALLINI, DOES I-X, and
21 ROE CORPORATIONS I-X, inclusive,

22 Defendant.

23 AND ALL RELATED CLAIMS.

24 CASE APPEAL STATEMENT

25 1. Appellant: Defendant SUSAN FALLINI.

26 2. Judge Issuing Order: The Honorable Robert Lane, District Judge, Fifth Judicial
27 District Court, Department 2.
28

////

////

1 3. Appellant: Defendant SUSAN FALLINI, represented by:

2 John Ohlson, Esq.
3 275 Hill Street, Suite 230
4 Reno, Nevada 89501
5 Telephone: (775) 323-2700

6 Jeff Kump, Esq.
7 Marvel & Kump, Ltd.
8 Elko, Nevada 89801
9 Telephone: (775) 777-1204

10 4. Respondent: Plaintiff Estate of MICHAEL DAVID ADAMS, by and through his
11 mother JUDITH ADAMS, Individually and on behalf of the Estate represented by:

12 John P. Aldrich, Esq.
13 Aldrich Law Firm, Ltd.
14 1601 S. Rainbow Blvd., Ste. 160
15 Las Vegas, NV 89146
16 Telephone: (702) 853-5490

17 5. The attorneys identified in section 3 and section 4 above are licensed to practice
18 law in Nevada.

19 6. Appellant was represented by retained counsel in the District Court.

20 7. Appellant is represented by retained counsel on appeal.

21 8. Appellant was not granted leave to proceed *in forma pauperis*.

22 9. Plaintiff's Complaint was filed on January 31, 2007.

23 10 This action arises out of damage claims asserted by Plaintiff Estate of MICHAEL
24 DAVID ADAMS, by and through his mother JUDITH ADAMS, Individually and on behalf of
25 the Estate against Defendant Susan Fallini, as a result of a July 7, 2005 automobile versus cow
26 accident, wherein Michael Adams died. The action proceeded to default, including the granting of
27 a partial summary judgment and the striking of Defendant Susan Fallini's Answer and
28 Counterclaim. Further, the District Judge vacated the trial and returned an award in favor of

1 Plaintiff and against Defendant Susan Fallini. An Order was entered on August 12, 2010 in the
2 principal amount of \$1,000,000 for damages for grief, sorrow and loss of support together with
3 damages for future lost earnings in the amount of \$1,640,696, attorney's fees in the amount of
4 \$50,000, sanctions in the amount of \$35,000 and funeral expenses in the amount of \$5,188.85.
5 This appeal is from the August 12, 2010 Order After Hearing.
6

7 11. This case has not previously been the subject of an appeal to or original writ
8 proceeding in the Nevada Supreme Court.

9 12. This appeal does not involve child custody or visitation.

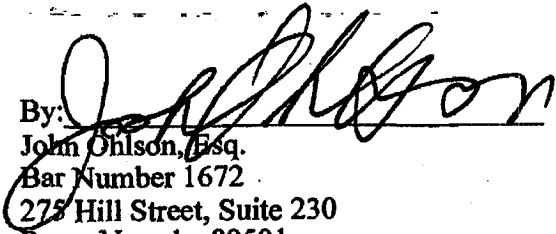
10 13. This appeal involves the possibility of settlement, and Defendant SUSAN
11 FALLINI, requests assignment to the Settlement Conference Program provided for under NRAP
12 16.
13

14 DATED this 7 day of September, 2010.
15

16 **AFFIRMATION**
17 **Pursuant to NRS 239B.030**

18 The undersigned does hereby affirm that the preceding document does not contain the
19 social security number of any person.

20 Dated this 7 day of September, 2010.
21

22 By: 
23 John Ohlson, Esq.
24 Bar Number 1672
25 275 Hill Street, Suite 230
26 Reno, Nevada 89501
27 Telephone: (775) 323-2700

28 Jeff Kump, Esq.
Bar Number 5694
Marvel & Kump, Ltd.
Elko, Nevada 89801
Telephone: (775) 777-1204
Attorneys for Susan Fallini

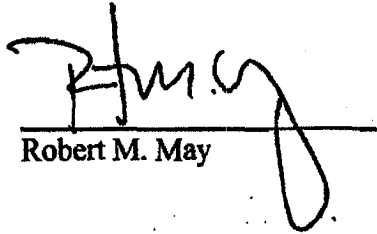
1
2
3 **CERTIFICATE OF SERVICE**

4 Pursuant to NRCP 5(b), I hereby certify that I am an employee of JOHN OHLSON, and
5 that on this date I personally served a true copy of the foregoing **CASE APPEAL**
6 **STATEMENT**, by the method indicated and addressed to the following:

7 John P. Aldrich, Esq.
8 Aldrich Law Firm, Ltd.
9 1601 S. Rainbow Blvd., Ste. 160
10 Las Vegas, NV 89146

11 ☒ Via U.S. Mail
12 ☐ Via Overnight Mail
13 ☒ Via Hand Delivery
14 ☐ Via Facsimile
15 ☐ Via ECF

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DATED this 7 day of September, 2010.


Robert M. May

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Fifth Judicial District Court, Nye County
Case Summary

NYE COUNTY CLERK

PAGE 01/05

Page 1
DC2100

Case #: CV-0024539

Judge: ROBERT W. LANE

Date Filed: 01/31/07 Department: 02

Case Type: NEGOTH TORT/OTHER NEGLIGENCE

Title/Caption: ESTATE OF MICHAEL DAVID ADAMS, by and
through his mother JUDITH ADAMS,
individually and on behalf of the ESTATE
VS.
SUSAN FALLINI, DOES I-X and
ROE CORPORATIONS I-X, inclusive

Comments: FILE IN PAHRUMP

Defendant(s)
FALLINI, SUSAN

Attorney(s)
KUMP, JEFF

Plaintiff(s)
ESTATE OF MICHAEL DAVID ADAMS

Attorney(s)
JOHN P. ALDRICH

Plaintiff(s)
ADAMS, JUDITH

Attorney(s)
JOHN P. ALDRICH

Disp/Judgment: SMJD Date: 08/12/10

Hearings:

| Date | Time | Hearing |
|---------|------|---|
| 4/30/07 | 9:00 | OBJECTION TO PAHRUMP AS FORUM AND MOTION... JUDGE: ROBERT W. LANE CLERK: SHEILA WINN CLERK: RACHEL ALDANA BAILIFF: GERALD (BEAR) SMITH APP: HARRY KUEHN ON BEHALF OF THE DEFENDANTS KUEHN STATES THAT THIS MATTER WAS INITIALLY F IN CLARK COUNTY AND THEN WAS MOVED HERE. MR. ARGUES THAT THE DEFENSE HAS THE RIGHT TO LITI IN THE COUNTY SEAT. THE COURT CLARIFIES MR. KU ARGUMENT. JOHN ALDRICH IS PRESENT FOR JUDITH AND HE STATES THAT PAHRUMP IS A NICE MIDDLE G FOR EVERYBODY. THE RELEVANT PARTIES LIVE IN T SEPARATE AREAS, ONE IN SOUTHERN CALIFORNIA AN IN TONOPAH. IT SEEMS TO HIM THAT AS LONG AS I THE CORRECT FORUM, IT SHOULD BE ALLOWED TO PR HERE IN PAHRUMP. THE COURT NEEDS CLARIFICATIO THE RULE THAT THE DEFENDANT HAS A RIGHT TO CH VENUE AND WILL REVIEW THAT RULE FURTHER. MR. OFFERS FURTHER ARGUMENT. THE COURT WILL ISSUE RULING WITHIN A FEW DAYS. |
| 7/14/08 | 9:00 | MOTION FOR PARTIAL SUMMARY JUDGMENT JUDGE: ROBERT W. LANE CLERK: RACHEL ALDANA BAILIFF: GERALD (BEAR) SMITH APP: JOHN ALDRICH IS PRESENT FOR THE PLAINTIF MR. ALDRICH BRIEFS THE COURT THAT THERE HAS B |

Reference

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Run: 05/12/11
14:58:13

Fifth Judicial District Court, Nye County
Case Summary

Page 2
DC2100

NO RESPONSE FROM THE DEFENDANT, AND CLARIFIES THAT THE DEFENDANT RECEIVED NOTICE. COURT GRANTS THE MOTION AND NOTES THAT THERE IS NO ORDER AND WILL SIGN ORDER UPON SUBMITTING.

11/10/08 1:15 MOTION TO REOPEN DISCOVERY & FOR AN EXTENSION
JUDGE: ROBERT W. LANE
CLERK: RACHEL ALDANA
BAILIFF: GERALD (BEAR) SMITH
APP: JOHN ALDRICH IS PRESENT FOR THE PLAINTIFF F.
MR. ALDRICH OUTLINES THAT SINCE HE CHANGED FIRMS
HE WAS UNCLEAR OF THE DISCOVERY DATE AND OFFERS
EXPLANATION IN REGARDS TO EXTENSION. MR. ALDRICH
NOTES NO OPPOSITION AND REVIEWS CASE HISTORY.
COURT GRANTS WITH NO OPPOSITION AND WILL SIGN
THE ORDER WHEN SUBMITTED.

4/27/09 9:00 MOTION TO COMPEL DEFENDANT'S PRODUCTION OF DOCUMENTS...
JUDGE: ROBERT W. LANE
CLERK: RACHEL ALDANA
BAILIFF: STEPHEN (JAMIE) DAVIS
APP: CATHERINE HERNANDEZ IS PRESENT FOR THE PLAINTIFF;
HARRY KUEHN IS PRESENT FOR THE DEFENDANTS. MS.
HERNANDEZ BRIEFS HER MOTION AND REVIEWS THAT THEY
REQUESTED THIS INFORMATION A YEAR AGO. MR. KUEHN
STATES NO OPPOSITION AND OUTLINES THAT HIS OFFICE
DROPPED THE BALL AND NOTES THAT OPPOSING PARTY IS
REQUESTING ATTORNEY FEES. COURT GRANTS THE MOTION
AND \$750 IN ATTORNEY FEES. MS. HERNANDEZ SUBMITS
ORDER TO THE COURT. COURT SIGNS THE ORDER.

6/22/09 4:30 CALENDAR CALL
7/13/09 1:15 PLAINTIFF'S MOTION TO STRIKE DEFENDANT'S ANSWER..
JUDGE: ROBERT LANE
CLERK: MICHELLE THORN
BAILIFF: JAMIE DAVIS
APP: JOHN ALDRICH PRESENT FOR THE PLAINTIFF. HARRY KUEHN PRESENT FOR THE
DEFENDANT. MR. ALDRICH ARGUES HIS MOTION TO STRIKE, ADDING AT THE PREVIOUS
HEARING THE DEFENSE WAS NEGLIGENT IN PROVIDING THE DISCOVERY FROM THE
INSURANCE COMPANY & IMPOSING SANCTIONS DID NOT WORK. MR. ALDRICH ARGUES THE
COURT IMPOSED SANCTIONS OF \$750 PREVIOUSLY & THEY STILL HAVE NOT BEEN PAID &
HE HAS STILL NOT RECEIVED THE INSURANCE DISCOVERY. MR. KUEHN PLEADS WITH THE
COURT REQUESTING ADDITIONAL SANCTIONS BE IMPOSED, NOTING HE HAS A CHECK IN
HAND TO PRESENT TO OPPOSING COUNSEL TODAY. COURT REVIEWS ARGUMENT & IMPOSES
A \$1000 SANCTION THIS TIME AROUND & DEFENSE HAS 30 DAYS TO PROVIDE THE
PREVIOUSLY ORDER INFORMATION/DISCOVERY REGARDING INSURANCE TO MR. FITTS. MR.
KUEHN ACKNOWLEDGES.

5/24/10 9:00 ORDER TO SHOW CAUSE
JUDGE: ROBERT LANE
CLERK: RACHEL ALDANA
BAILIFF: DEPUTY J. MURPHY
APP: JOHN ALDRICH PRESENT FOR THE PLAINTIFF; THOMAS GIBSON IN FOR HARRY KUEHN,
PRESENT FOR THE DEFENDANTS. MR. ALDRICH BRIEFS THE ORDER TO SHOW CAUSE AND
OUTLINES CASE HISTORY. MR. ALDRICH CONTINUES TO PROVIDE ARGUMENT IN REGARDS
TO OPPOSING COUNSEL FAILING TO COMPLY WITH THE SANCTIONS THAT WERE ISSUED
BY THE COURT AND STATES THAT THERE IS STILL NO DISCOVERY PRODUCED. MR.
ALDRICH REQUESTS A \$5,000 SANCTION AND \$500 A DAY UNTIL THE DISCOVERY IS
BROUGHT FORWARD AND REQUESTS THE COURT ISSUE A BENCH WARRANT FOR THE
DEFENDANT. MR. GIBSON PROVIDES REBUTTAL ARGUMENT AND REQUESTS A CLOSED

Run: 05/12/11
14:58:13

Fifth Judicial District Court, Nye County
Case Summary

NYE COUNTY CLERK

PAGE 03/05
Page 3
DC2100

COURTROOM TO DISCLOSE THE ISSUES REGARDING ATTORNEY HARRY KUEHN. MR. GIBSON INFORMS THE COURT OF HARRY KUEHN'S ISSUES WITH DEPRESSION. COURT ISSUES THE \$5,000 SANCTIONS AND ORDERS THAT HARRY KUEHN PAY THE \$500 A MONTH STARTING JUNE 1, 2010 AND HOLDS HARRY KUEHN IN CONTEMPT OF COURT AND STATES THAT THE \$5,000 WILL GO TOWARD THE FEES AND COSTS OF OPPOSING COUNSEL. PARTIES CONTINUE TO PROVIDE ARGUMENT.

7/19/10 9:00 APPLICATION FOR DEFAULT JUDGMENT

JUDGE: ROBERT W. LANE

CLERK: PATTI ABERNATHY

BAILIFF: STEPHEN (JAMIE) DAVIS

APPEARANCES: JOHN ALDRICH PRESENT WITH JUDITH AND ANTHONY ADAMS. JOHN OHLSON AND JEFF KUMP PRESENT WITH SUSAN FALLINI.

ATTORNEY ALDRICH TOLD THE COURT THE MATTERS ON TODAY ARE HIS APPLICATION FOR DEFAULT JUDGMENT AND ATTORNEY OHLSON'S OPPOSITION TO THE APPLICATION FOR DEFAULT JUDGMENT AND MOTION FOR RECONSIDERATION. THE COURT TOLD THE PARTIES HE WAS INCLINED TO GRANT THE MOTION FOR RECONSIDERATION BUT WOULD LIKE TO HEAR ARGUMENTS FROM BOTH SIDES BEFORE DECIDING. ATTORNEY ALDRICH ARGUES THERE IS NO LEGAL BASIS TO SET ASIDE WHAT HAS ALREADY BEEN DONE IN THIS CASE AND OUTLINES THE HISTORY OF THIS CASE. ATTORNEY ALDRICH TOLD THE COURT IT SHOULD GO FORWARD WITH APPLICATION FOR DEFAULT JUDGMENT TODAY AND HAVE JUDGMENT ENTERED TODAY. THE COURT ASKED WHO WAS GOING TO DETERMINE DAMAGES AND AMOUNTS. ATTORNEY ALDRICH TOLD THE COURT IT SHOULD GO FORWARD WITH THE HEARING TODAY AND THE COURT SHOULD DETERMINE THE AMOUNT OF DAMAGES. ATTORNEY OHLSON OUTLINES THE HISTORY OF DEFENDANT'S REPRESENTATION BY ATTORNEY KUEHN AND BEING TOLD IN THE PAST THAT THE CASE WAS OVER AND DID NOT KNOW UNTIL JUNE OF THIS YEAR THAT THE CASE WAS STILL PENDING. ATTORNEY OHLSON PROVIDES REBUTTAL TO ATTORNEY ALDRICH'S ARGUMENTS. AFTER HEARING ARGUMENTS FROM BOTH SIDES, THE COURT DENIED THE MOTION FOR RECONSIDERATION AND PROCEEDED WITH THE PROVE UP HEARING TODAY AND SCRATCHED THE TRIAL SCHEDULED FOR AUGUST. MR. OLSON TOLD THE COURT HE WILL HOLD HIS MOTIONS TO THE END OF THE TESTIMONY AND ARGUED COMPARATIVE FAULT. ATTORNEY ALDRICH OFFERED REBUTTAL. JUDITH ADAMS WAS SWORN AND TESTIFIED. ANTHONY ADAMS WAS SWORN AND TESTIFIED. SUSAN FALLINI WAS SWORN AND TESTIFIED. MR. OLSON ASKED THE COURT TO TAKE JUDICIAL NOTICE THE ACCIDENT OCCURRED IN OPEN RANGE. AFTER HEARING CLOSING ARGUMENTS FROM BOTH SIDES, THE COURT TOLD THE PARTIES A DECISION WOULD BE MADE IN A COUPLE DAYS.

7/19/10 9:00 CALENDAR CALL - 8/25-28/2010

JURY DRAW - 120 JURORS - FILE TO CINDY

JURY TRIAL - D2P - 3 DAYS

7/19/10

8/25/10 CRT

9/28/09 9:00 ORDER TO SHOW CAUSE (SUSAN FALLINI & COUNSEL)

12/23/09 9:00 SETTLEMENT CONFERENCE

Filings:

| Date | Pty | Filing | Fees |
|---------|-----|---|--------|
| 1/31/07 | P | COMPLAINT | 156.00 |
| 1/31/07 | P | INITIAL APPEARANCE FEE DISCLOSURE STATEMENT | |
| 1/31/07 | C | SUMMONS (ISSUED) | |
| 3/14/07 | D | DEFENDANT SUSAN FALLINI'S OBJECTION TO PAHRUMP AS FORUM AND | 79.00 |
| 3/14/07 | D | MOTION TO HAVE MATTER HEARD IN TONOPAH | 79.00 |
| 3/14/07 | D | SUSAN FALLINI'S ANSWER AND COUNTERCLAIM | |
| 3/26/07 | P | PLAINTIFFS' OPPOSITION TO DEFENDANT SUSAN FALLINI'S | |
| 3/26/07 | P | OBJECTION TO PAHRUMP AS FORUM AND MOTION TO HAVE MATTER | |
| 3/26/07 | P | HEARD IN TONOPAH | |
| 3/30/07 | P | REPLY TO COUNTERCLAIM | |
| 4/30/07 | C | ORDER DENYING DEFENDANT'S MOTION TO HAVE MATTER HEARD IN | |
| 4/30/07 | C | TONOPAH | |

Run: 05/12/11
14:58:13

Fifth Judicial District Court, Nye County
Case Summary

NYE COUNTY CLERK

PAGE 04/05
Page 4
DC2100

5/02/07 P NOTICE OF REPRESENTATION BY ATTORNEY (COUNTERDEFENDANTS)
6/14/07 P NOTICE OF EARLY CASE CONFERENCE
10/23/07 P PLAINTIFF'S & COUNTERDEFENDANT'S CASE CONFERENCE REPORT
3/26/08 P NOTICE OF CHANGE OF FIRM NAME
4/07/08 P MOTION FOR PARTIAL SUMMARY JUDGMENT
5/16/08 P MOTION FOR PARTIAL SUMMARY JUDGMENT
5/30/08 D COUNTERDEFENDANT, ESTATE OF MICHAEL DAVID ADAMA, BY AND
D THROUGH HIS MOTHER, JUDITH ADAMS, INDIVIDUALLY AND ON
D BEHALF OF THE ESTATE, JOINDER TO PLAINTIFF'S MOTION FOR
D PARTIAL SUMMARY JUDGMENT
7/30/08 C ORDER GRANTING PLAINTIFFS' MOTION FOR PARTIAL SUMMARY
C JUDGMENT
8/15/08 P NOTICE OF ENTRY OF ORDER
9/22/08 P MOTION TO REOPEN DISCOVERY & FOR EXTENSION OF TIME TO
P COMPLETE DISCOVERY (FIRST REQUEST)
10/23/08 C ORDER GRANTING MOTION FOR SUMMARY JUDGMENT IN FAVOR OF
C COUNTERDEFENDANT, ESTATE OF MICHAEL DAVID ADAMS
10/27/08 P COUNTERDEFENDANT, ESTATE OF MICHAEL DAVID ADAMS, BY AND
P THROUGH HIS MOTHER, JUDITH ADAMS, INDIVIDUALLY & ON
P BEHALF OF THE ESTATE, NOTICE OF NON-OPPOSITION TO
P PLAINTIFF'S MOTION TO REOPEN DISCOVERY
11/13/08 P NOTICE OF ENTRY OF ORDER
12/10/08 P SUBSTITUTION OF ATTORNEYS
2/17/09 C ORDER GRANTING PLAINTIFFS' MOTION TO REOPEN DISCOVERY & FOR
C AN EXTENSION OF TIME TO COMPLETE DISCOVERY
2/20/09 P NOTICE OF ENTRY OF ORDER
3/03/09 P LIEN FOR ATTORNEY'S FEES
3/09/09 P NOTICE OF CHANGE OF ADDRESS
3/23/09 P PLAINTIFF'S MOTION TO COMPEL DEFENDANT'S PRODUCTION OF
P DOCUMENTS
3/25/09 P NOTICE OF MOTION TO COMPEL DEFENDANT'S PRODUCTION OF
P DOCUMENTS
4/06/09 P CERTIFICATE OF MAILING
4/27/09 C ORDER GRANTING PLAINTIFF'S MOTION TO COMPEL DEFENDANT'S
C PRODUCTION OF DOCUMENTS
5/05/09 P DEMAND FOR JURY TRIAL
5/18/09 P NOTICE OF ENTRY OF ORDER
5/18/09 P REQUEST FOR TRIAL SETTING
5/20/09 C ORDER TO SET TRIAL
6/16/09 P INFORMATION QUESTIONNAIRE
6/16/09 D INFORMATION QUESTIONNAIRE
6/16/09 P PLAINTIFF'S MOTION TO STRIKE DEFENDANT'S ANSWER AND
P COUNTERCLAIM
6/22/09 D INFORMATION QUESTIONNAIRE
6/24/09 C ORDER SETTING JURY TRIAL
7/13/09 D OPPOSITION TO PLAINTIFF'S MOTION TO STRIKE DEFENDANT'S
D ANSWER AND COUNTERCLAIM
7/17/09 C ORDER DENYING PLAINTIFF'S MOTION TO STRIKE DEFENDANT'S
ANSWER AND COUNTERCLAIM
8/26/09 P NOTICE OF ENTRY OF ORDER
8/31/09 P PLAINTIFF'S EX PARTE MOTION FOR ORDER TO SHOW CAUSE WHY
DEFENDANT SUSAN FALLINI AND HER COUNSEL SHOULD NOT BE HELD
IN CONTEMPT OF COURT
9/10/09 P RECEIPT OF COPY OF ORDER TO SHOW CAUSE WHY DEFENDANT SUSAN
FALLINI & HER COUNSEL SHOULD NOT BE HELD IN CONTEMPT OF
COURT
9/10/09 P RECEIPT OF COPY OF PLAINTIFF'S EX PARTE MOTION FOR ORDER

360.00

Run: 05/12/11
14:58:13Fifth Judicial District Court, Nye County
Case SummaryPage 5
DC2100

TO SHOW CAUSE WHY DEFENDANT SUSAN FALLINI & HER COUNSEL
SHOULD NOT BE HELD IN CONTEMPT OF COURT

10/08/09 C ORDER REGARDING ORDER TO SHOW CAUSE WHY DEFENDANT SUSAN
FALLINI AND HER COUNSEL SHOULD NOT BE HELD IN CONTEMPT OF
COURT

10/14/09 P NOTICE OF ENTRY OF ORDER

11/04/09 C FINDINGS OF FACT, CONCLUSIONS OF LAW & ORDER STRIKING ANSWER
& COUNTERCLAIM OF DEFENDANT SUSAN FALLINI & HOLDING
DEFENDANT'S COUNSEL IN CONTEMPT OF COURT

11/09/09 P NOTICE OF ENTRY OF ORDER

2/04/10 C DEFAULT (PER ORDER FILED 11/4/09)

2/11/10 P NOTICE OF ENTRY OF DEFAULT

4/07/10 P PLAINTIFF'S EX PARTE MOTION FOR ORDER TO SHOW CAUSE WHY
DEFENDANT SUSAN FALLINI AND HER COUNSEL SHOULD NOT BE HELD
IN CONTEMPT OF COURT AND POSSIBLE SANCTIONS BE IMPOSED

4/19/10 C ORDER TO SHOW CAUSE WHY DEFENDANT SUSAN FALLINI AND HER
COUNSEL SHOULD NOT BE HELD IN CONTEMPT OF COURT AND
POSSIBLE SANCTIONS BE IMPOSED

4/26/10 P NOTICE OF ENTRY OF ORDER

6/02/10 P FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER HOLDING
DEFENDANT'S COUNSEL IN CONTEMPT OF COURT

6/04/10 P NOTICE OF ENTRY OF ORDER

6/17/10 D SUBSTITUTION OF ATTORNEYS

6/24/10 P OPPOSITION TO APPLICATION FOR DEFAULT JUDGEMENT AGAINST
DEFENDANT SUSAN FALLINI

6/24/10 P APPLICATION FOR DEFAULT JUDGMENT AGAINST DEFENDANT SUSAN
FALLINI

6/24/10 P MEMORANDUM OF COSTS AND DISBURSEMENTS

6/30/10 P AMENDED CERTIFICATE OF SERVICE

7/06/10 D MOTION FOR LEAVE TO FILE MOTION FOR RECONSIDERATION

7/21/10 P REPLY TO FALLINI'S OPPOSITION TO APPLICATION FOR DEFAULT
JUDGMENT AGAINST DEFENDANT SUSAN FALLINI

7/21/10 P OPPOSITION TO FALLINI'S MOTION FOR LEAVE TO FILE MOTION FOR
RECONSIDERATION

7/21/10 P SUPPLEMENT TO APPLICATION FOR DEFAULT JUDGMENT AGAINST
DEFENDANT SUSAN FALLINI

8/12/10 C ORDER AFTER HEARING

8/16/10 D NOTICE OF CHANGE OF FIRM AND CONTACT INFORMATION

8/18/10 P NOTICE OF ENTRY OF ORDER

9/08/10 P DECLARATION OF JOHN P. ALDRICH IN SUPPORT OF EX PARTE MOTION
ORDER ALLOWING EXAMINATION OF JUDGMENT DEBTOR

9/09/10 P PLAINTIFFS' EX PARTE MOTION FOR ORDER ALLOWING EXAMINATION
OF JUDGMENT DEBTOR

9/10/10 D NOTICE OF APPEAL

9/10/10 D CASE APPEAL STATEMENT

9/14/10 P CERTIFICATE OF SERVICE

9/22/10 R RECEIPT FOR DOCUMENTS

Events:

| Date | Time | Code | Event |
|---------|------|------|---|
| 8/23/10 | | | CHNG DISP CODE WAS CHANGED FROM 'SMJD' TO 'SMJD'. |

IN THE SUPREME COURT OF THE STATE OF NEVADA

SUSAN FALLINI,

Supreme Court No.: 56840

Appellant,

vs.

Estate of MICHAEL DAVID ADAMS,
By and through his mother JUDITH ADAMS,
Individually and on behalf of the Estate,

Respondent.

Appeal from the Fifth Judicial District Court of the State of Nevada in
and for the County of Nye
The Honorable Robert W. Lane, District Judge

**JOINT APPENDIX
VOLUME I**

JOHN OHLSON, ESQ.
Nev. Bar No. 1672
275 Hill Street, Suite 230
Reno, Nevada 89501
(775) 323-2700
Counsel for Appellant

IN THE SUPREME COURT OF THE STATE OF NEVADA

SUSAN FALLINI,

Supreme Court No.: 56840

Appellant,

vs.

Estate of MICHAEL DAVID ADAMS,
By and through his mother JUDITH ADAMS,
Individually and on behalf of the Estate,

Respondent.

Appeal from the Fifth Judicial District Court of the State of Nevada in
and for the County of Nye
The Honorable Robert W. Lane, District Judge

**JOINT APPENDIX
VOLUME I**

JOHN OHLSON, ESQ.
Nev. Bar No. 1672
275 Hill Street, Suite 230
Reno, Nevada 89501
(775) 323-2700
Counsel for Appellant

ALPHABETICAL INDEX

| | <u>Volume/Page</u> |
|--|--------------------|
| Acceptance of Service..... | I.8-9 |
| Application for Default Judgment Against Defendant Susan Fallini..... | II.89-129 |
| Case Appeal Statement..... | II.236-239 |
| Case Summary..... | II.240-244 |
| Certificate of Mailing..... | I.146-147 |
| Complaint..... | I.1-6 |
| Counterdefendant, Estate of Michael David Adams, by and Through His Mother, Judith Adams, Individually and on Behalf of the Estate, Joinder to Plaintiff's Motion For Partial Summary Judgment..... | I.52-54 |
| Counterdefendant, Estate of Michael David Adams, By and Through His Mother, Judith Adams, Individually and on Behalf the Estate, Notice of Non-Opposition to Plaintiff's Motion to Reopen Discovery..... | I.75-77 |
| Default..... | II.41-42 |
| Defendant Susan Fallini's Answer and Counterclaim..... | I.10-14 |
| Demand for Jury Trial..... | I.150-151 |
| Findings of Fact, Conclusions of Law and Order Holding Defendant's Counsel In Contempt of Court..... | II.68-75 |
| Findings of Fact, Conclusions of Law and Order Striking Answer and Counterclaim of Defendant Susan Fallini and Holding Defendant's Counsel in Contempt of Court.. | II.26-31 |
| Motion for Leave to File Motion For Reconsideration..... | II.133-159 |
| Motion for Partial Summary Judgment..... | I.29-39 |
| Motion for Partial Summary Judgment..... | I.40-51 |
| Motion to Reopen Discovery and for an Extension of Time To Complete Discovery (First Request)..... | I.63-70 |
| Notice of Appeal..... | II.233-235 |
| Notice of Entry of Default..... | II.43-47 |
| Notice of Entry of Order [Findings of Fact, Conclusions of Law and Order Holding Defendant's Counsel In Contempt of Court]..... | II.76-86 |
| Notice of Entry of Order [Findings of Fact, Conclusions of Law and Order Striking Answer and Counterclaim of Defendant Susan Fallini and Holding Defendant's Counsel in Contempt of Court | II.32-40 |
| Notice of Entry of Order [Motion for Partial Summary Judgment]..... | I.58-62 |
| Notice of Entry of Order [Order After Hearing] | II.226-232 |
| Notice of Entry of Order [Order Denying Plaintiff's Motion to Strike Defendant's Answer and Counterclaim]..... | I.234-238 |
| Notice of Entry of Order [Order Granting Motion for Summary Judgment in Favor of Counterdefendant, Estate of Michael David Adams]..... | I.78-84 |
| Notice of Entry of Order [Order Granting Plaintiff's Motion to Compel Defendant's Production of Documents]..... | I.152-156 |
| Notice of Entry of Order [Order Granting Plaintiff's Motion to Reopen Discovery and For an Extension of Time to Complete Discovery]..... | I.87-90 |

| | |
|---|------------|
| Notice of Entry of Order [Order Regarding Order to Show Cause why Defendant Susan Fallini and Her Counsel Should Not be Held in Contempt of Court]..... | II.22-25 |
| Notice of Entry of Order [Order to Show Cause Why Defendant Susan Fallini and her Counsel Should Not be Held in Contempt of Court and Possible Sanctions be Imposed] | II.62-67 |
| Opposition to Application for Default Judgment Against Defendant Susan Fallini..... | II.130-132 |
| Opposition to Fallini's Motion for Leave to File Motion for Reconsideration..... | II.169-207 |
| Opposition to Plaintiff's Motion to Strike Defendant's Answer and Counterclaim..... | I.224-231 |
| Order After Hearing..... | II.222-225 |
| Order Denying Defendant's Motion to have Matter Heard in Tonopah..... | I.18-20 |
| Order Denying Plaintiff's Motion to Strike Defendant's Answer and Counterclaim..... | I.232-233 |
| Order Granting Plaintiff's Motion for Partial Summary Judgment..... | I.55-57 |
| Order Granting Plaintiff's Motion to Compel Defendant's Production of Documents..... | I.148-149 |
| Order Granting Plaintiff's Motion to Reopen Discovery and For an Extension of Time to Complete Discovery..... | I.85-86 |
| Order Granting Motion for Summary Judgment in Favor of Counterdefendant, Estate of Michael David Adams..... | I.71-74 |
| Order Regarding Order to Show Cause why Defendant Susan Fallini and Her Counsel Should Not be Held in Contempt of Court..... | II.20-21 |
| Order Setting Jury Trial..... | I.220-223 |
| Order to Show Cause why Defendant Susan Fallini and Her Counsel Should Not be Held in Contempt of Court..... | II.17-19 |
| Order to Show Cause Why Defendant Susan Fallini and her Counsel Should Not be Held in Contempt of Court and Possible Sanctions be Imposed..... | II.59-61 |
| Order to Set Trial..... | I.157-159 |
| Plaintiff's and Counterdefendant's Case Conference Report..... | I.21-28 |
| Plaintiff's Ex Parte Motion for Order to Show Cause why Defendant Susan Fallini and Her Counsel Should Not be Held in Contempt of Court.... | II.1-12 |
| Plaintiff's Ex Parte Motion for Order to Show Cause Why Defendant Susan Falini and her Counsel Should Not be Held in Contempt of Court and Possible Sanctions be Imposed..... | II.48-58 |
| Plaintiff's Motion to Compel Defendant's Production of Documents..... | I.91-143 |
| Plaintiff's Motion to Strike Defendant's Answer and Counterclaim..... | I.160-219 |
| Plaintiff's Notice of Motion to Compel Defendant's Production of Documents..... | I.144-145 |
| Receipt of Copy of Plaintiff's Ex Parte Motion for Order to Show Cause why Defendant Susan Fallini and Her Counsel Should not be Held in Contempt of Court..... | II.15-16 |
| Receipt of Copy of Order to Show Cause Why Defendant Susan Fallini and Her Counsel Should Not be Held in Contempt of Court..... | II.13-14 |
| Reply to Counterclaim..... | I.15-17 |
| Reply to Fallini's Opposition to Application for Default Judgment Against Defendant Susan Fallini..... | II.160-168 |
| Substitution of Attorneys..... | II.87-88 |
| Summons..... | I.7 |
| Supplement to Application for Default Judgment Against Defendant Susan Fallini..... | II.208-221 |

CHRONOLOGICAL INDEX

Volume I

| | <u>Page</u> |
|--|-------------|
| Complaint..... | 1-6 |
| Summons..... | 7 |
| Acceptance of Service..... | 8-9 |
| Defendant Susan Fallini's Answer and Counterclaim..... | 10-14 |
| Reply to Counterclaim..... | 15-17 |
| Order Denying Defendant's Motion to have Matter Heard in Tonopah..... | 18-20 |
| Plaintiff's and Counterdefendant's Case Conference Report..... | 21-28 |
| Motion for Partial Summary Judgment..... | 29-39 |
| Motion for Partial Summary Judgment..... | 40-51 |
| Counterdefendant, Estate of Michael David Adams, by and Through His Mother, Judith Adams, Individually and on Behalf of the Estate, Joinder to Plaintiff's Motion For Partial Summary Judgment..... | 52-54 |
| Order Granting Plaintiff's Motion for Partial Summary Judgment..... | 55-57 |
| Notice of Entry of Order [Motion for Partial Summary Judgment]..... | 58-62 |
| Motion to Reopen Discovery and for an Extension of Time To Complete Discovery (First Request)..... | 63-70 |
| Order Granting Motion for Summary Judgment in Favor of Counterdefendant, Estate of Michael David Adams..... | 71-74 |
| Counterdefendant, Estate of Michael David Adams, By and Through His Mother, Judith Adams, Individually and on Behalf the Estate, Notice of Non-Opposition to Plaintiff's Motion to Reopen Discovery..... | 75-77 |
| Notice of Entry of Order [Order Granting Motion for Summary Judgment in Favor of Counterdefendant, Estate of Michael David Adams]..... | 78-84 |
| Order Granting Plaintiff's Motion to Reopen Discovery and For an Extension of Time to Complete Discovery..... | 85-86 |
| Notice of Entry of Order [Order Granting Plaintiff's Motion to Reopen Discovery and For an Extension of Time to Complete Discovery]..... | 87-90 |
| Plaintiff's Motion to Compel Defendant's Production of Documents..... | 91-143 |
| Plaintiff's Notice of Motion to Compel Defendant's Production of Documents..... | 144-145 |
| Certificate of Mailing..... | 146-147 |
| Order Granting Plaintiff's Motion to Compel Defendant's Production of Documents..... | 148-149 |
| Demand for Jury Trial..... | 150-151 |
| Notice of Entry of Order [Order Granting Plaintiff's Motion to Compel Defendant's Production of Documents]..... | 152-156 |
| Order to Set Trial..... | 157-159 |
| Plaintiff's Motion to Strike Defendant's Answer and Counterclaim..... | 160-219 |
| Order Setting Jury Trial..... | 220-223 |
| Opposition to Plaintiff's Motion to Strike Defendant's Answer and Counterclaim..... | 224-231 |
| Order Denying Plaintiff's Motion to Strike Defendant's Answer and Counterclaim..... | 232-233 |

| | |
|--|---------|
| Notice of Entry of Order [Order Denying Plaintiff's Motion to Strike Defendant's Answer and Counterclaim]..... | 234-238 |
|--|---------|

Volume II

| | |
|--|-------------|
| | <u>Page</u> |
| Plaintiff's Ex Parte Motion for Order to Show Cause why Defendant Susan Fallini and Her Counsel Should Not be Held in Contempt of Court..... | 1-12 |
| Receipt of Copy of Order to Show Cause Why Defendant Susan Fallini and Her Counsel Should Not be Held in Contempt of Court..... | 13-14 |
| Receipt of Copy of Plaintiff's Ex Parte Motion for Order to Show Cause why Defendant Susan Fallini and Her Counsel Should not be Held in Contempt of Court..... | 15-16 |
| Order to Show Cause why Defendant Susan Fallini and Her Counsel Should Not be Held in Contempt of Court..... | 17-19 |
| Order Regarding Order to Show Cause why Defendant Susan Fallini and Her Counsel Should Not be Held in Contempt of Court..... | 20-21 |
| Notice of Entry of Order [Order Regarding Order to Show Cause why Defendant Susan Fallini and Her Counsel Should Not be Held in Contempt of Court]..... | 22-25 |
| Findings of Fact, Conclusions of Law and Order Striking Answer and Counterclaim of Defendant Susan Fallini and Holding Defendant's Counsel in Contempt of Court.... | 26-31 |
| Notice of Entry of Order[Findings of Fact, Conclusions of Law and Order Striking Answer and Counterclaim of Defendant Susan Fallini and Holding Defendant's Counsel in Contempt of Court | 32-40 |
| Default..... | 41-42 |
| Notice of Entry of Default | 43-47 |
| Plaintiff's Ex Parte Motion for Order to Show Cause Why Defendant Susan Falini and her Counsel Should Not be Held in Contempt of Court and Possible Sanctions be Imposed..... | 48-58 |
| Order to Show Cause Why Defendant Susan Fallini and her Counsel Should Not be Held in Contempt of Court and Possible Sanctions be Imposed..... | 59-61 |
| Notice of Entry of Order [Order to Show Cause Why Defendant Susan Fallini and her Counsel Should Not be Held in Contempt of Court and Possible Sanctions be Imposed | 62-67 |
| Findings of Fact, Conclusions of Law and Order Holding Defendant's Counsel In Contempt of Court..... | 68-75 |
| Notice of Entry of Order [Findings of Fact, Conclusions of Law and Order Holding Defendant's Counsel In Contempt of Court]..... | 76-86 |
| Substitution of Attorneys..... | 87-88 |
| Application for Default Judgment Against Defendant Susan Fallini..... | 89-129 |
| Opposition to Application for Default Judgment Against Defendant Susan Fallini..... | 130-132 |
| Motion for Leave to File Motion For Reconsideration..... | 133-159 |
| Reply to Fallini's Opposition to Application for Default Judgment Against Defendant Susan Fallini..... | 160-168 |
| Opposition to Fallini's Motion for Leave to File Motion for Reconsideration..... | 169-207 |

| | |
|---|---------|
| Supplement to Application for Default Judgment Against Defendant Susan Fallini..... | 208-221 |
| Order After Hearing..... | 222-225 |
| Notice of Entry of Order [Order After Hearing] | 226-232 |
| Notice of Appeal..... | 233-235 |
| Case Appeal Statement..... | 236-239 |
| Case Summary..... | 240-244 |

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512 South Tonopah Dr., Suite 100 • Las Vegas, Nevada 89106
(702) 734-3936

1 COMP

2 EDWARD J. ACHREM & ASSOCIATES
3 Edward J. Achrem, Esq.
4 Nevada Bar No. 2281
5 James E. Smith, Esq.
6 Nevada Bar No. 0052
7 512 South Tonopah Dr., Ste. 100
8 Las Vegas, Nevada 89106
9 Phone: (702) 734-3936

10 Attorneys for Plaintiffs

11 DISTRICT COURT

12 NYE COUNTY, NEVADA

13 ESTATE OF MICHAEL DAVID ADAMS,)
14 by and through his mother)
15 JUDITH ADAMS, individually)
16 and on behalf of the ESTATE,)

17 Plaintiffs,)

18 vs)

19 SUSAN FALLINI, DOES I-X and)
20 ROE CORPORATIONS I-X,)
21 inclusive,)

22 Defendants.)

CASE NO. :
DEPT. NO. :

23 COMPLAINT

24 Plaintiffs, the Estate of MICHAEL DAVID ADAMS ("Michael"),
25 by and through his mother, JUDITH ADAMS ("Judith"), individually
26 and as Executrix for her son's Estate (hereinafter collectively
27 referred to as "Plaintiffs"), by and through the law firm of
28 EDWARD J. ACHREM & ASSOCIATES, LTD., for their claims and causes
of action against the Defendants, and each of them, hereby
allege as follows:

...

...

...

FILED
FIFTH JUDICIAL DISTRICT

JAN 31 2007

Nye County Clerk

Deputy

GENERAL ALLEGATIONS

1. At the time of his death, Michael was 33 years old and was a resident of Orange County, California. He was unmarried and had no natural or adopted children. His mother, Judith, is the administrator of her son's estate and also a resident of Orange County, California. Because the incident set forth below occurred in Nevada, Plaintiffs voluntarily subject themselves to, and will be bound by the jurisdiction of this Court.

2. Upon information and belief, Defendant SUSAN FALLINI ("Fallini") is the owner of a Hereford red cow. As more fully set forth below, this cow was wandering freely on SR 375 highway, at Nye mile marker 33, in Nye County, Nevada on or about July 7, 2005.

3. Plaintiffs are ignorant of the true names and capacities of Defendants sued herein as DOES I through X, and ROE CORPORATIONS I through X, inclusive, and therefore sue these Defendants by such fictitious names. Plaintiffs are further informed and believe that one or more of the parties which may be responsible for some portion of the damages being sought by the Plaintiffs as a result of Michael's death on July 7, 2005 may include persons, partnerships, corporations, other owners, governmental subdivisions and/or other persons and entities, the identities of which have not yet been determined. Because such names are currently unknown, Plaintiffs have listed them collectively as DOE Defendants and ROE CORPORATION Defendants and will seek leave of Court to amend this Complaint to allege their true names and capacities when they have been ascertained.

...

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1 4. Plaintiffs are informed and believe, and thereon allege,
2 that each of the fictitiously named Defendants is responsible in
3 some manner for the occurrence described herein and that
4 Plaintiffs' damages, including Michael's death, were proximately
5 caused by such conduct.

6 5. Plaintiffs are informed and believe, and thereon allege,
7 that at all times herein mentioned, each of the Defendants was
8 the agent and/or employee of each of the remaining Defendants,
9 and in doing the things hereinafter alleged, were acting within
10 the course and scope of such agency, employment or contract.

11 6. On July 7, 2005, around 9:00 p.m., Michael was lawfully
12 driving his 1994 Jeep Wrangler on SR 375 highway in Nye County,
13 Nevada. At that time and place, a Hereford cow suddenly
14 appeared in the travel portion of the roadway, blocking
15 Michael's path. Although Michael was traveling at a lawful rate
16 of speed, it was not possible for him to avoid a head-on
17 collision with the cow. As a direct and proximate result of the
18 collision, Michael's Jeep rolled over and left the paved
19 highway. Michael died at the scene.

20 7. Plaintiffs contend that at all times herein mentioned,
21 Michael acted reasonably, had a right to use the highway, and
22 did nothing to cause or contribute to his death. Plaintiffs
23 further contend that Defendants, and each of them, owed a
24 continuing duty of care, which included without limitation, (a)
25 the duty to control the Hereford cow by providing boundary
26 fencing that would keep it away from passing motorists; (b) the
27 duty to monitor all of Defendants' cows, including the one that
28 caused Michael's death, and to take reasonable precautions to

1 prevent them from wandering many miles away; and (c) the duty to
2 warn drivers traveling along the highway that cattle would, or
3 could be present in the area in which they were driving.

4 In addition to the duties set forth above, Defendants and
5 each of them also had a separate and independent obligation to
6 illuminate the Hereford cow by marking it with an inexpensive
7 florescent tag, or similar device, so that the cow could be seen
8 more easily by persons who were driving on the highway at night,
9 such as Michael.

10 8. Plaintiffs contend that, despite constructive and/or actual
11 notice by the Defendants of the extreme hazard that was posed by
12 a wandering Hereford cow at night, the Defendants and each of
13 them, (a) failed to control the Hereford cow by providing
14 boundary fencing that would keep it away from passing motorists;
15 (b) failed to monitor all of Defendants' cows, including the one
16 that caused Michael's death, and to take reasonable precautions
17 to prevent them from wandering many miles away; and (c) failed
18 to warn drivers traveling along the highway that cattle would,
19 or could be present in the area in which they were driving.

20 In addition to the above, Defendants and each of them also
21 failed to illuminate the Hereford cow by marking it with an
22 inexpensive florescent tag, or similar device, so that the cow
23 could be seen more easily by persons who were driving on the
24 highway at night, such as Michael.

25 9. As a direct and proximate result of the Defendants'
26 negligent acts and omissions, in the manner described above,
27 Michael was killed. As a result, his Estate and heir(s) have
28 been generally and specially damaged in a sum well in excess of

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1 ten thousand dollars (\$10,000.00). These damages include,
2 without limitation, pain and suffering, as well as severe
3 emotional distress, from the time of the accident until the
4 moment of Michael's death, the loss of the quality and enjoyment
5 of Michael's life, and the loss of Michael's company,
6 companionship, society, comfort, attention, services and
7 support.

8 10. As a further direct and proximate result of the Defendants'
9 negligent acts and omissions, in the manner described above,
10 Michael's Estate has incurred incidental, funeral and burial
11 expenses in an amount not yet fully ascertained, but which will
12 be set forth in full at the time of trial.

13 WHEREFORE, Plaintiffs, expressly reserving their right to
14 amend this Complaint at the time of the trial of the actions
15 herein to include all items of damages not yet ascertained,
16 hereby pray for damages against Defendants, and each of them, as
17 follows:

- 18 1. For general damages in excess of \$10,000.00;
19 2. For special damages in excess of \$10,000.00;

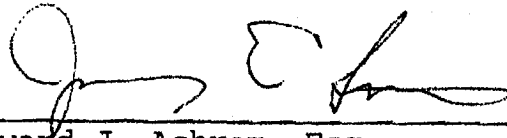
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3. For prejudgment interests, costs of suit herein incurred
and reasonable attorney's fees; and

4. For such further relief as may appear just to the Court.

DATED this 29 day of January, 2007.

EDWARD J. ACHREM & ASSOCIATES



Edward J. Achrem, Esq.
Nevada Bar No. 2281
James E. Smith, Esq.
Nevada Bar No. 0052
512 South Tonopah Dr., Ste. 100
Las Vegas, NV 89106
Attorneys for Plaintiffs

docs\lg1\complaint.ma

Edward J. Achrem & Associates
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DISTRICT COURT

NYE COUNTY, NEVADA

ESTATE OF MICHAEL DAVID ADAMS, by
and through his mother JUDITH ADAMS,
individually and on behalf of the ESTATE,

CASE NO: CV 24539
DEPT. NO: 2

Plaintiffs,

SUMMONS

vs.

Hearing Date: n/a
Hearing Time: n/a

SUSAN FALLINI, DOES I-X and ROE
CORPORATIONS I-X, inclusive,

Defendants.

NOTICE! YOU HAVE BEEN SUED. THE COURT MAY DECIDE AGAINST YOU WITHOUT YOUR
BEING HEARD UNLESS YOU RESPOND WITHIN 20 DAYS. READ THE INFORMATION BELOW.

TO THE DEFENDANT: SUSAN FALLINI, Twin Springs Ranch Rd., Tonopah, NV

A civil Complaint has been filed by the plaintiff against you for the relief set forth in the
Complaint.

1. If you intend to defend this lawsuit, within 20 days after this Summons is served on
you exclusive of the day of service, you must do the following:

a. File with the Clerk of this Court, whose address is shown below, a formal
written response to the Complaint in accordance with the rules of the Court.

b. Serve a copy of your response upon the attorney whose name and address is
shown below.

2. Unless you respond, your default will be entered upon application of the plaintiff
and this Court may enter a judgment against you for the relief demanded in the Complaint, which
could result in the taking of money or property or other relief requested in the Complaint.

3. If you intend to seek the advice of an attorney in this matter, you should do so
promptly so that your response may be filed on time.

Issued at direction of:

EDWARD J. ACHREM & ASSOCIATES

SAM MERLINO, CLERK

By

By

EDWARD J. ACHREM, ESQ. #2281
JAMES E. SMITH, ESQ. #0052
512 South Tonopah Drive
Las Vegas, Nevada 89106
Attorneys for Plaintiff

Deputy Clerk Date
1520 E. Basin Ave.
Pahrump, NV 89060
(775) 751-7040

NOTE: When service is by publication, add a brief statement of the object of the action. See Rules of Civil
Procedure, Rule 4(b).

ACSR

EDWARD J. ACHREM & ASSOCIATES

Edward J. Achrem, Esq.

Nevada Bar No. 2281

James E. Smith, Esq.

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512 South Tonopah Dr., Ste. 100

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Phone: (702) 734-3936

Attorneys for Plaintiffs

DISTRICT COURT

NYE COUNTY, NEVADA

ESTATE OF MICHAEL DAVID ADAMS,)
by and through his mother)
JUDITH ADAMS, individually)
and on behalf of the ESTATE,)

Plaintiffs,)

vs)

SUSAN FALLINI, DOES I-X and)
ROE CORPORATIONS I-X,)
inclusive,)

Defendants.)

CASE NO. : CV24539

DEPT NO. : 2

ACCEPTANCE OF SERVICE

I, Harold Kuehn, Esq., of the law firm of EARNEST, GIBSON &
KUEHN, in the capacity as attorney of record for Defendant,
SUSAN FALLINI hereby accept service of process of Plaintiffs'
Complaint on behalf of Defendant SUSAN FALLINI.

DATED this 22nd day of February, 2007.

EARNEST, GIBSON & KUEHN

HAROLD "HARRY" KUEHN, ESQ.

Nevada Bar #0284

921 S. Highway 160, #203

Pahrump, NV 89048

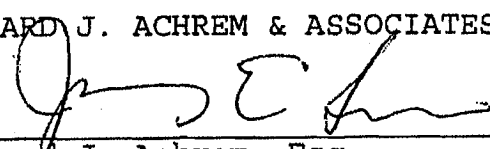
(775) 751-9000

Attorneys for Defendant

AFFIRMATION
PURSUANT TO NRS 239B.030

The undersigned does hereby affirm that the preceding
Acceptance of Service filed in District Court Case No. CV24539/2
DOES NOT contain the social security number of any person.

EDWARD J. ACHREM & ASSOCIATES, LTD.



Edward J. Achrem, Esq.
Nevada Bar No. 2281
James E. Smith, Esq.
Nevada Bar No. 0052
512 S. Tonopah Drive
Las Vegas, Nevada 89106
(702) 734-3936
Attorneys for Plaintiffs

2/27/07
DATE

Edward J. Achrem & Associates, Ltd.
512 South Tonopah Dr., Suite 100 • Las Vegas, Nevada 89106
(702) 734-3936

Case No. CV24539
Dept. 2P

2007 MAR 14 AM 10:23

NYE COUNTY CLERK
BY DEPUTY

IN THE FIFTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
IN AND FOR THE COUNTY OF NYE

Estate of MICHAEL DAVID
ADAMS, by and through his
mother JUDITH ADAMS,
individually and on behalf
of the Estate,

Plaintiffs,

vs.

**DEFENDANT SUSAN FALLINI's
ANSWER AND COUNTERCLAIM**

SUSAN FALLINI, DOES I-X
and ROE CORPORATIONS
I-X, inclusive,

Defendants,

COMES NOW Defendant SUSAN FALLINI above named, by and through
her attorney HAROLD KUEHN, Esq. of the law firm of EARNEST, GIBSON
& KUEHN, and for her answer to Plaintiffs' Complaint on file
herein, admits, denies and alleges as follows:

1. Answering Paragraphs 1 and 6, Defendant SUSAN FALLINI is
without sufficient information to form a belief as to the truth or
falsity of these allegations, and accordingly, Defendant SUSAN
FALLINI denies each and every allegation contained therein.

2. Answering Paragraphs 2, 3, 4, 5, 7, 8, 9 and 10,
Defendant SUSAN FALLINI denies each and every allegation contained
therein.

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1 2. That on or about July 7, 2005, Defendant was the owner of
2 the "cow" referenced in Plaintiffs' complaint on file herein.

3 3. That on or about July 7, 2005, MICHAEL DAVID ADAMS was
4 operating a motor vehicle at or near State Route 375 near mile
5 marker Nye 33, which then collided with the "cow" mentioned in
6 Paragraph 2 above, killing said MICHAEL DAVID ADAMS and said
7 "cow."

8 4. That Plaintiff ESTATE OF MICHAEL DAVID ADAMS is the
9 lawful successor in interest to MICHAEL DAVID ADAMS.

10 5. That at all times relevant, the area at or near State
11 Route 375 near mile marker Nye 33 was "open range" as defined in
12 NRS 568.355.

13 5. That as a direct and proximate result of MICHAEL DAVID
14 ADAMS' actions and/or omissions, the ESTATE OF MICHAEL DAVID ADAMS
15 is liable to Defendant SUSAN FALLINI for the replacement value of
16 said "cow" and other incidental and general damages relating to
17 the disposal and replacement of said "cow," according to the proof
18 presented at time of trial.

19 6. That Defendant SUSAN FALLINI has been required to retain
20 the services of EARNEST, GIBSON & KUEHN to prosecute this action,
21 and accordingly, Defendant SUSAN FALLINI is entitled to her costs
22 and attorney fees incurred.

23 WHEREFORE, Defendant SUSAN FALLINI prays for judgment as
24 follows:
25

26 1. For a sum reflecting the replacement value of said "cow,"
27 and other incidental and general damages.

28 2. For an award of attorney fees and costs.

1 3. For such other and further relief as the Court may deem
2 just and proper in the premises.

3 DATED this 13th day of March, 2007.



4
5 HAROLD KUEHN, Esq.
6 Nevada Bar #284
7 EARNEST, GIBSON & KUEHN
8 921 So. Hwy. 160, Suite 203
9 Pahrump, NV 89048
10 775/751-9000
11 Attorney for Defendant
12 SUSAN FALLINI
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CERTIFICATE OF SERVICE

I certify that I am an employee of EARNEST, GIBSON & KUEHN,
Attorneys at Law, and that on the 13th day of
March, 2007, I served the foregoing DEFENDANT SUSAN
FALLINI's ANSWER AND COUNTERCLAIM by depositing a copy in the U.S.
mail, first class postage prepaid, addressed to the following
person(s) at the following address(es):

James E. Smith, Esq.
EDWARD J. ACHREM & ASSOCIATES
512 So. Tonopah Drive, Suite 100
Las Vegas, NV 89106



an employee of EARNEST, GIBSON & KUEHN

ORIGINAL

CASE NO: CV24539
DEPT NO: 2P

IN THE FIFTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA IN
AND FOR THE COUNTY OF NYE

ESTATE OF MICHAEL DAVID ADAMS,)
by and through his mother)
JUDITH ADAMS, individually)
and on behalf of the ESTATE,)

Plaintiffs/Counterdefendants,)

REPLY TO COUNTERCLAIM

vs

SUSAN FALLINI, DOES I-X and)
ROE CORPORATIONS I-X,)
inclusive,)

Defendants/Counterclaimants.)

Counterdefendants, the Estate of Michael David Adams and
Judith Adams, on behalf of the Estate, by and through the law
firm of Edward J. Achrem & Associates, hereby reply to
Counterclaimant Susan Fallini as follows:

1. Answering paragraphs 1-4 of Counterclaimant Susan Fallini's
Counterclaim, Counterdefendants, the Estate of Michael David
Adams and Judith Adams admit these allegations.

2. Answering paragraphs 5-6 of Counterclaimant Susan Fallini's
Counterclaim, Counterdefendants, the Estate of Michael David
Adams and Judith Adams deny these allegations.

Affirmative Defenses

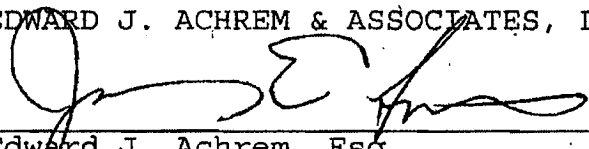
1. Failure to state a claim upon which relief can be based.
2. Comparative negligence on Counterdefendant's part.
3. Damages, if any, caused by third parties over which the
replying parties had no control.
4. Attorney's fees only recoverable by statute or contract.

5. Reservation of other affirmative defenses under NRCP 11.
6. Supervening intervening acts over which the replying parties had no control.

WHEREFORE, Counterdefendants, the Estate of Michael David Adams and Judith Adams pray Counterplaintiff Susan Fallini take nothing by reason of her Counterclaim.

DATED this 26 day of March, 2007.

EDWARD J. ACHREM & ASSOCIATES, LTD.


Edward J. Achrem, Esq.
Nevada Bar No. 2281
James E. Smith, Esq.
Nevada Bar No. 0052
512 S. Tonopah Drive, #100
Las Vegas, Nevada 89106
(702) 734-3936
Attorneys for Plaintiffs

CERTIFICATE OF SERVICE

I certify that I am an employee of EDWARD J. ACHREM & ASSOCIATES, LTD., and that on this 28th day of March, 2007, I caused a true and correct copy of the foregoing document entitled: REPLY TO COUNTERCLAIM to be served on all parties as follows:

- ☒ **VIA U.S. MAIL** by placing a true copy thereof enclosed in a sealed envelope with the postage thereon fully prepaid, addressed as indicated on the attached service list in the United States mail.
- ☒ **VIA FACSIMILE**: by causing a true copy thereof to be telecopied to the number indicated on the attached service list.
- ☐ **VIA PERSONAL DELIVERY**: by causing a true copy hereof to be hand delivered on this date to the addressee(s) at the address(es) set forth on the attached service list.

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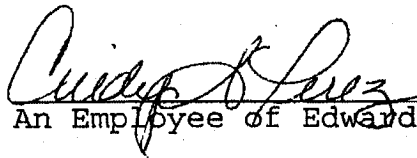
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SERVICE LIST

| Attorney | Party |
|--|-------------------------|
| Harold Kuehn, Esq. EARNEST GIBSON & KUEHN 921 S. Hwy. 160, #203 Pahrump, NV 89048 Fax: #775-751-1910 | Attorneys for Defendant |



An Employee of Edward J. Achrem & Assoc

512 South Tonopah Dr., Suite 100 • Las Vegas, Nevada 89106
 (702) 734-3936
 "dwc" J.C. "ke" A's ates

1
2 Case No. CV 24539

3 Dept. 2
4
5

6 IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF
7 THE STATE OF NEVADA, IN AND FOR THE COUNTY OF NYE
8

9
10 ESTATE OF MICHAEL DAVID ADAMS,
11 by and through his mother JUDITH
12 ADAMS, individually and on behalf of
13 the Estate,

14 Plaintiffs/Counterdefendants,

15 -v-

ORDER DENYING DEFENDANT'S
MOTION TO HAVE MATTER
HEARD IN TONOPAH


16 SUSAN FALLINI, DOES I - X and ROE
17 CORPORATIONS I - X, inclusive,

18 Defendants/Counterclaimants.
19

20 This matter came before the Court on April 30, 2007 on Defendant's Objection to
21 Pahrump as Forum and Motion to Have Matter Heard in Tonopah. The Court, having heard oral
22 argument on the Motion and having read all papers and pleadings in regard to the Motion,
23 hereby DENIES the Motion to have the matter transferred to Tonopah.

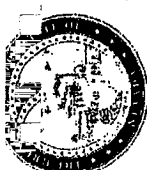
24 The Court finds that venue is proper within Nye County, regardless of the location of the
25 courthouse, and that the convenience of a majority of the parties and counsel involved is best
26 served by retaining the matter in Pahrump.

27 DATED this 30th day of April, 2007.
28


DISTRICT JUDGE



FIFTH JUDICIAL DISTRICT COURT
XL DISTRICT COURT
ESMERALDA, MINERAL AND NYE COUNTIES



CERTIFICATION OF SERVICE

The undersigned hereby certifies that on the 30th day of April, 2007, he mailed copies of the foregoing ORDER to the following:

HAROLD KUEHN, ESQ.
EARNEST, GIBSON & KUEHN
921 S. HWY 160, SUITE 203
PAHRUMP, NV 89048

EDWARD J. ACHREM, ESQ.
JAMES E. SMITH, ESQ.
512 S. TONOPAH DRIVE, #100
LAS VEGAS, NV 89106

JEFF URIEN, Law Clerk to
DISTRICT JUDGE

FIFTH JUDICIAL DISTRICT COURT
COUNTY OF NYE, STATE OF NEVADA

AFFIRMATION

Pursuant to NRS 239B.030

The undersigned does hereby affirm that the preceding document, _____
Order Denying Defendant's Motion to Have Matter Heard in
Tonopah

(Title of Document)

filed in case number: CV24539

☒ Document does not contain the social security number of any person.

OR

☐ Document contains the social security number of a person as required by:

☐ A specific state or federal law, to wit:

(State specific state or federal law)

or

☐ For the administration of a public program

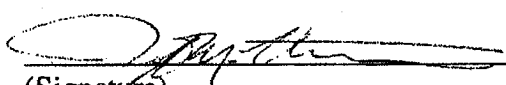
or

☐ For an application for a federal or state grant

or

☐ Confidential Family Court Information Sheet
(NRS 125.130, NRS 125.230 and NRS 125B.055)

Date: April 30, 2007


(Signature)

Jeff Urie
(Print Name)

ORIGINAL

ICCR

John P. Aldrich

ALDRICH & BRYSON, LLP

Nevada Bar No. 6877

1601 S. Rainbow Blvd., Suite 160

Las Vegas, Nevada 89146

Telephone: (702) 853-5490

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Attorneys for Plaintiffs

THE FIFTH JUDICIAL DISTRICT COURT
THE STATE OF NEVADA
COUNTY OF NYE

Estate of MICHAEL DAVID ADAMS,
by and through his mother JUDITH
ADAMS, individually and on behalf of the
Estate,

Plaintiffs,

vs.

SUSAN FALLINI, DOES I-X and ROE
CORPORATIONS I-X, inclusive,

Defendants.

SUSAN FALLINI,

Counterclaimant,

vs.

Estate of MICHAEL DAVID ADAMS,
by and through his mother JUDITH
ADAMS, individually and on behalf of the
Estate,

Counterdefendants.

Case No.: CV24539
Dept.: 2P

PLAINTIFF'S and COUNTERDEFENDANT'S CASE CONFERENCE REPORT

DISCOVERY PLANNING/DISPUTE
CONFERENCE REQUESTED:

YES _____ NO X

I.

PROCEEDINGS PRIOR TO CASE CONFERENCE REPORT

A. **DATE OF FILING OF COMPLAINT:** January 31, 2007.

B. **DATE OF FILING OF ANSWER BY EACH DEFENDANT:** Defendant Fallini filed its Answer and Counterclaim on March 14, 2007; the Counterdefendant Adams filed its Reply to Counterclaim on March 30, 2007.

C. **DATE THAT EARLY CASE CONFERENCE WAS HELD AND WHO ATTENDED:** The Early Case Conference was conducted on June 15, 2007. John P. Aldrich of Aldrich & Bryson, LLP participated on behalf of Plaintiff Judith Adams; Harold Kuehn, Esq of Earnest, Gibson & Kuehn participated on behalf of Defendant Susan Fallini; and Katharine Peck, Esq., participated on behalf Judith Adams and GEICO.

II.

A BRIEF DESCRIPTION OF THE NATURE OF THE ACTION AND EACH CLAIM FOR RELIEF OR DEFENSE: [16.1(c)(1)]

A. **DESCRIPTION OF THE ACTION:** This is an action arising out of an incident where Michael Adams, deceased, collided with Defendant's cow while driving on or near State Route 375, killing both Plaintiff and Defendant's cow.

B. **CLAIMS FOR RELIEF:**

(i) **Claims for Relief Set Forth in Plaintiff's Complaint:**

1. General damages in an amount excess of \$10,000.00 each;
2. Special damages in an amount excess of \$10,000.00;
3. Prejudgment interests, costs of suit herein incurred and reasonable attorney's fees;
4. For such other and further relief that the court may deem just and proper.

(ii) **Claims for Relief Set Forth in Defendant/Counterclaimant's Counterclaim:**

1. A sum reflecting the replacement value of said "cow," and other incidental and general damages;

1 2. An award of attorneys fees and costs;

2 3. For such other and further relief as the Court may deem just and proper in the
3 premises.

4 **C. DEFENSES:**

5 **(i) Affirmative Defenses Set Forth in Defendant's Answer:**

6 1. The Complaint on file herein fails to state a claim against this Defendant
7 upon which relief can be granted.

8 2. The location referenced in the complaint on file herein as "SR 375 highway,
9 at Nye mile marker 33, in Nye County, Nevada," or thereabouts, was "open
10 range" as defined in NRS 568.355.

11 3. The "cow" referenced in the complaint on file herein was a "domestic
12 animal" as contemplated by NRS Chapter 568 of the Nevada Revised
13 Statutes.

14 4. NRS 568.360 (1) directs that "[n]o person, firm or corporation owning,
15 controlling or in possession of any domestic animal running on open range
16 has the duty to keep the animal off any highway traversing or located on the
17 open range, and no such person, firm or corporation is liable for damages to
18 any property or for injury to any person caused by any collision between a
19 motor vehicle and the animal occurring on such a highway."

20 **(ii) Affirmative Defenses Set Forth in Plaintiff/Counterdefendant's Reply to**
21 **Counterclaim:**

22 1. Failure to state a claim upon which relief can be based.

23 2. Comparative negligence on Counterdefendant's part.

24 3. Damages, if any, caused by third parties over which the replying parties had
25 no control.

26 4. Attorney's fees only recoverable by statute or contract.

III.

**LIST OF ALL DOCUMENTS, DATA COMPILATIONS AND TANGIBLE THINGS IN
THE POSSESSION, CUSTODY OR CONTROL OF EACH PARTY WHICH WERE
IDENTIFIED OR PROVIDED AT THE EARLY CASE CONFERENCE
OR AS A RESULT THEREOF: [16.1(a)(1)(B) and 16.1(c)(4)]**

A. **DOCUMENTS PROVIDED BY PLAINTIFF:** See Plaintiff's disclosure pursuant to NRCP 16.1, attached hereto without exhibits as Exhibit 1.

Plaintiff reserves the right to supplement the foregoing list as additional information and/or documentation becomes known, is obtained, or otherwise becomes available to her or as she is able to organize and obtain and make available or produce additional documents. Plaintiff further reserves the right to use any documents identified by Defendant or by CounterDefendant herein.

B. **DOCUMENTS IDENTIFIED BY DEFENDANT** Defendant has not provided any disclosures.

C. **DOCUMENTS PROVIDED BY COUNTERDEFENDANT:** See Counterdefendant's disclosure pursuant to NRCP 16.1, attached hereto without exhibits as Exhibit 2.

Counterdefendant reserves the right to supplement the foregoing list as additional information and/or documentation becomes known, is obtained, or otherwise becomes available to him or as he is able to organize and obtain and make available or produce additional documents. Counterdefendant further reserves the right to use any documents identified by Plaintiff herein.

D. **OBJECTIONS AS TO AUTHENTICITY** Plaintiff and Counterdefendant reserve the right to object to the authenticity of any document produced by any other party herein, based on further investigation hereafter, although such objections were not specifically raised in this report.

IV.

**LIST OF PERSONS IDENTIFIED BY EACH PARTY AS LIKELY TO HAVE
INFORMATION DISCOVERABLE UNDER RULE 26(b), INCLUDING
IMPEACHMENT OR REBUTTAL WITNESSES: [16.1(a)(1)(A) and 16.1(c)(3)]**

A. **WITNESSES IDENTIFIED BY PLAINTIFF:** See Plaintiff's disclosure pursuant to NRCP 16.1, attached hereto without exhibits as Exhibit 1.

1 Plaintiff reserves the right to supplement the foregoing list as additional information
2 and/or documentation becomes known, is obtained, or otherwise becomes available to her or as
3 she is able to organize and obtain and make available or produce additional documents. Plaintiff
4 further reserves the right to use any documents identified by Defendant herein.

5 **B. WITNESSES IDENTIFIED BY DEFENDANT:** Defendant has not provided
6 any disclosures.

7 **C. WITNESSES IDENTIFIED BY COUNTERDEFENDANT:** See
8 Counterdefendant's disclosure pursuant to NRCP 16.1, attached hereto without exhibits as
9 Exhibit 2.

10 Counterdefendant reserves the right to supplement the foregoing list as additional information
11 and/or documentation becomes known, is obtained, or otherwise becomes available to him or as he
12 is able to organize and obtain and make available or produce additional documents.

13 Counterdefendant further reserves the right to use any documents identified by Plaintiff herein.

14 **V.**

15 **DISCOVERY PLAN NRCP 16.1(b)(2) and 16.1(c)(2)**

16 **A. WHAT CHANGE, IF ANY, SHOULD BE MADE IN THE TIMING, FORM**
17 **OR REQUIREMENTS FOR DISCLOSURES UNDER NRCP 16.1(a):**

- 18 1. **Plaintiff's view:** None at this time.
19 2. **Defendant's view:** Unknown.
20 3. **Counterdefendant:** None at this time.

21 **WHEN DISCLOSURES UNDER NRCP 16.1(a)(1) WERE MADE OR WILL BE**
22 **MADE:**

- 23 1. **Plaintiff's disclosures:** July 2, 2007
24 2. **Defendant's disclosures:** Has not provided them.
25 3. **Counterdefendant's disclosures:** June 15, 2007.

26 **B. SUBJECTS ON WHICH DISCOVERY MAY BE NEEDED :**
27
28

1. **Plaintiff's view:** Discovery is necessary on the following issues, including but not limited to:

(A) Facts surrounding the incident at issue;

(B) Plaintiff's damages;

(C) Liability of Defendant.

Plaintiff reserves the right to modify, add to, or otherwise change this list of items upon which to conduct discovery based upon new information.

2. Defendant's view:

(A) Unknown.

3. Counterdefendant's view:

(A) Facts surrounding the incident at issue;

(B) Plaintiff's damages;

(C) Liability of Defendant.

C. SHOULD DISCOVERY BE CONDUCTED IN PHASE OR LIMITED TO OR FOCUSED UPON PARTICULAR ISSUES?

1. Plaintiff's view: No.

2. Defendant's view: Unknown.

3. Counterdefendant's view: No.

D. WHAT CHANGES, IF, ANY SHOULD BE MADE IN LIMITATIONS ON DISCOVERY IMPOSED UNDER THESE RULES AND WHAT, IF ANY, OTHER LIMITATIONS SHOULD BE IMPOSED?

1. Plaintiff's view: None.

2. Defendant's view: Unknown.

3. Counterdefendant's view: None.

E. WHAT, IF ANY, OTHER ORDERS SHOULD BE ENTERED BY THE COURT UNDER RULE 26(c) OR RULE 16(b) AND (c):

1. Plaintiff's view: Each party agrees to maintain the confidentiality of any personal information, such as Social Security numbers or account numbers, contained in documents exchanged between the parties herein, and to redact any such information from any exhibits to any court filings, except where necessary to establish a fact at issue in the filing.

2. Defendant's view: Unknown.

3. Counterdefendant's view: Each party agrees to maintain the confidentiality of any personal information, such as Social Security numbers or account numbers, contained in documents exchanged between the parties herein, and to redact any such information from any exhibits to any court filings, except where necessary to establish a fact at issue in the filing

F. ESTIMATED TIME FOR TRIAL:

1. Plaintiff's view: 2 - 3 days.

2. Defendant's view: Unknown.

3. Counterdefendant's view: 2-3 days.

VI.

DISCOVERY AND MOTION DATES [16.1(c)(5)-(8)]

A. DATES AGREED BY THE PARTIES:

1. **Close of discovery:** September 15, 2008.

**2. Final date to file motions to amend pleadings
or add parties (without a further court order): June 15, 2008.**

3. Final dates for expert disclosures:

i. Initial disclosure: June 15, 2008.

ii. Rebuttal disclosures: July 15, 2008.

4. Final date to file dispositive motions: October 15, 2008

B. IN THE EVENT THE PARTIES DO NOT AGREE ON DATES, THE FOLLOWING SECTION MUST BE COMPLETED: N/A

VII.

JURY DEMAND [16.1(c)(10)]

A jury demand has been filed: ☐ Yes ☒ No

VIII.

INITIAL DISCLOSURES/OBJECTIONS [16.1(a)(1)]

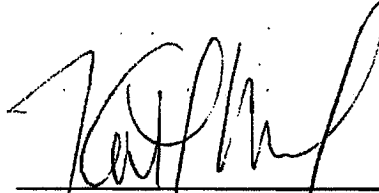
If a party objects during the Early Case Conference that initial disclosures are not appropriate in the circumstances of this case, those objections must be stated herein. The Court shall determine what disclosures, if any, are to be made and shall set the time for such disclosure.

This report is signed in accordance with rule 26(g)(1) of the Nevada Rules of Civil Procedure. Each signature constitutes a certification that to the best of the signer's knowledge, information and belief, formed after a reasonable inquiry, the disclosures made by the signer are complete and correct as of this time.

DATED this 22 day of October, 2007.



John P. Aldrich, Esq. #6877
1601 S. Rainbow Blvd., Suite 160
Las Vegas, Nevada 89104
Attorneys for Plaintiffs



Katherine M. Peck, Esq. Bar #6084
701 Bridger Avenue, Suite 500
Las Vegas, Nevada 89101
Attorney for Counterdefendants

BLACK & LOBELLO
10777 West Twain Avenue, Suite 300
Las Vegas, Nevada 89135
(702) 869-8801

MOT

John P. Aldrich, Esq.
Nevada State Bar No. 6877
Adrianne C. Duncan, Esq.
Nevada State Bar No. 9797

BLACK & LOBELLO

10777 West Twain Avenue, Suite 300
Las Vegas, Nevada 89135
(702) 869-8801
Attorneys for Plaintiffs

CALENDARED
on;

APR 03 2008

FILED

2008 APR -7 P 1:17
Linda Uhl
NYE COUNTY CLERK
BY DEPUTY

**THE FIFTH JUDICIAL DISTRICT COURT
THE STATE OF NEVADA
COUNTY OF NYE**

Estate of MICHAEL DAVID ADAMS,
by and through his mother JUDITH ADAMS,
individually and on behalf of the Estate,

Plaintiffs,

v.

SUSAN FALLINI, DOES I-X and ROE
CORPORATIONS I-X, inclusive

Defendants

SUSAN FALLINI,

Counter-claimant,

v.

Estate of MICHAEL DAVID ADAMS,
by and through his mother JUDITH ADAMS,
individually and on behalf of the Estate,

Counter-defendants

Case No.: CV24539
Dept. No.: 2P

**MOTION FOR PARTIAL SUMMARY
JUDGMENT**

Date of Hearing:
Time of Hearing:

29

Plaintiffs, Estate of MICHAEL DAVID ADAMS, by and through his mother JUDITH
ADAMS, individually and on behalf of the Estate, by and through their attorneys of record JOHN

1 P. ALDRICH, ESQ., and ADRIANNE C. DUNCAN, ESQ. and the law firm of BLACK &
2 LoBELLO, hereby present their *MOTION FOR PARTIAL SUMMARY JUDGMENT*.

3 This Motion is made and based upon the papers and pleadings on file herein, the attached
4 affidavit of John P. Aldrich, Esq., and exhibits and any and all oral argument or testimony that the
5 Court may entertain at the hearing of this Motion.
6

7 DATED this 1st day of April 2008.

8 **BLACK & LOBELLO**

9
10 By

John P. Aldrich
John P. Aldrich, Esq.
Nevada State Bar No.: 6877
Adrianne C. Duncan, Esq.
Nevada State Bar No.: 9797
10777 West Twain Avenue, Suite 300
Las Vegas, NV 89135
Attorneys for Plaintiffs

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12
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14
15 **NOTICE OF MOTION**

16 PLEASE TAKE NOTICE that on the 19 day of May 2008, at the hour of
17 1:15, or as soon thereafter as counsel may be heard, in Department , Plaintiffs, by and
18 through their attorneys, John P. Aldrich, Esq, and Adrianne C. Duncan, Esq. and the law firm of
19 Black & LoBello will bring the foregoing MOTION on for hearing.
20

21 DATED this 1st day of April 2008.

22 **BLACK & LOBELLO**

23
24 By

John P. Aldrich
John P. Aldrich Esq.
Nevada State Bar No.: 6877
Adrianne C. Duncan, Esq.
Nevada State Bar No.: 9797
10777 West Twain Avenue, Suite 300
Las Vegas, NV 89135
Attorneys for Plaintiffs

1
2 **POINTS AND AUTHORITIES**

3 **I.**

4 **PROCEDURAL HISTORY**

5 On November 29, 2006, Plaintiffs Estate of MICHAEL DAVID ADAMS, by and through
6 his mother JUDITH ADAMS ("Judith"), individually and on behalf of the Estate, filed a complaint
7 in the Eighth Judicial District Court, Clark County, Nevada, alleging, among other things, the
8 wrongful death of Michael David Adams ("Michael").
9

10 On December 29, 2006, Defendant Susan Fallini ("Fallini"), filed a Demand and Motion for
11 Mandatory Change of Venue. Subsequently, the parties, by and through their counsel, stipulated and
12 agreed to dismiss the pending action in Clark County, Nevada, without prejudice, so that the matter
13 could be heard in Nye County, Nevada.
14

15 On March 14, 2007, Defendant Fallini, filed an Answer to Plaintiffs' Complaint and a
16 Counterclaim in Nye County, Nevada. On March 30, 2007, Plaintiffs filed a Reply to Defendant's
17 Counterclaim. Subsequently, Fallini filed an objection to Pahrump as the forum for the litigation
18 and a Motion to have the matter heard in Tonopah. However, that Motion was denied and the case
19 proceeded in Pahrump.
20

21 The Early Case Conference in this matter was held on June 15, 2007. The parties, by and
22 through their respective counsel, filed a Joint Case Conference Report on October 23, 2007.
23 Thereafter, on October 31, 2007, Plaintiffs served the Defendant with written discovery requests,
24 including Requests for Admission, Requests for Production of Documents, and Interrogatories. (See
25 **Exhibit 1**). To date, Defendant has not responded to the written discovery requests, nor has
26 Defendant requested an extension in which to respond.
27
28

///

II.

STATEMENT OF FACTS

At the time of his death, Michael was 33 years old and a resident of Orange County, California. He was unmarried and had no natural or adopted children. His mother, Judith, is the administrator of her son's estate and also a resident of Orange County, California. The incident that caused Michael's death occurred in Nevada.

Defendant Fallini, is the owner of a Hereford red cow that was wandering freely on SR 375 highway, at Nye mile marker 33, in Nye County, Nevada on or about July 7, 2005. On said date at approximately 9:00 p.m., Michael was lawfully driving his 1994 Jeep Wrangler on SR 375. The Hereford cow suddenly appeared in the travel portion of the roadway, blocking Michael's path. Although Michael was traveling at a lawful rate of speed, it was not possible for him to avoid the head-on collision with the cow. As a direct and proximate result of the collision, Michael's Jeep rolled over and left the paved highway. Michael died at the scene.

On October 31, 2007, Plaintiffs served Fallini with Requests for Admission. To date, the Requests for Admission have not been answered, and therefore are deemed admitted. Therefore, the following are additional facts that must be taken into consideration by the court:

1. Fallini's property is not located within an "open range" as it is defined in NRS 568.355.
2. Fallini is the owner of the cow that is mentioned in the Plaintiff's Complaint on file herein ("subject cow").
3. It is the common practice of Nye County, Nevada ranchers to mark their cattle with reflective or luminescent tags.
4. The subject cow was not marked with a reflective or luminescent tag.
5. The subject cow crossed a fence to arrive at the location of the subject accident described in the Complaint on file herein.

6. Fallini's cattle had previously been involved in incidents with motor vehicles on the roadway.
7. Fallini does not track the location of her cattle while they are grazing away from her property.
8. Fallini does not remove her cattle from the roadway when notified that the cattle are in a roadway.
9. The subject cow was not visible at night.
10. Fallini was aware that the subject cow was not visible at night prior to the incident that is the subject of the Complaint on file herein.
11. The subject cow was in the roadway of SR 375 at the time of the incident that is the subject matter of the Complaint on file herein.
12. The subject cow's presence in the roadway of SR 375 was the cause of the motor vehicle accident that is the subject of the Complaint on file herein.
13. Fallini did not know the location of the subject cow at the time of the incident that is the subject of the Complaint on file herein.
14. The presence of a reflective or luminescent tag on the subject cow would have made the subject cow visible at the time of the incident that is the subject of the Complaint on file herein.

III.

LEGAL ARGUMENT

A. STANDARD OF REVIEW.

Pursuant to NRCP 56(c), a Motion for Summary Judgment "shall be rendered forthwith if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law." NRCP 56(c). A genuine issue of material fact is one where the evidence is such that a reasonable jury could return a verdict for the non-moving party. Posadis v. City of Reno, 109 Nev. 448, 851 P. 2d 438 (1983). In the present matter, there are no genuine issues as to any material fact, and therefore, Plaintiffs are entitled to summary judgment.

1 Although the non-moving party is entitled to have the evidence and all reasonable inferences
2 accepted as true, See City of Boulder City v. State of Nevada, 106 Nev. 390, 793, P. 2d 845 (1990),
3 citing, Wiltsie v. Baby Grand Corp., 105 Nev. 291, 774 P. 2d 432 (1989), if the moving party is able
4 to "show that one of the elements is clearly lacking as a matter of law," then summary judgment is
5 appropriate. Joynt v. California Hotel & Casino, 108 Nev. 539, 542, 835 P. 2d 799, 801 (1992).
6 (internal quotations and citations omitted).
7

8 When a motion for summary judgment is made and supported as provided in Rule 56, the
9 adverse party may not rest upon mere allegations of his pleading, but must, by affidavit or otherwise,
10 set forth specific facts demonstrating the existence of a genuine issue for trial. See NGA #2, LLC,
11 v. Rains, 113 Nev. 1151, 1157, 946 P. 2d 163, 167 (1997); Boland v. Nevada Rock & Sand, Co.,
12 Nev. 108, 894 P. 2d 988, 990 (1995). The non-moving party "is not entitled to build a case on the
13 gossamer threads of whimsey, speculation, and conjecture." Collins v. Union Fed Savings & Loan,
14 99 Nev. 284, 302, 662 P. 2d 610, 621 (1983), quoting, Hahn v. Sargent 523 F. 2d 461, 469 (1st Cir.
15 1975), cert. denied, 425 U.S. 904, 95 S. Ct. 1495, 47 L. Ed. 2d 754 (1976). A party opposing
16 summary judgment may not rely on the allegations of his pleadings to raise a material issue of fact
17 where the moving party supports his motion with competent evidence. Garvey v. Clark County, 91
18 Nev. 127, 130, 523 P. 2d 269, 271 (1975).
19

20 Here, the Plaintiffs support their motion with competent evidence, and the Defendant may
21 not simply rely on the allegations set forth in her pleadings to raise material issues of fact. Therefore,
22 based upon the facts and argument set forth below, Plaintiffs are entitled to summary judgment.
23

24 **B. PLAINTIFFS' REQUESTS FOR ADMISSION TO DEFENDANT, SUSAN FALLINI,**
25 **MUST BE DEEMED ADMITTED.**

26 NRCP 36 provides in relevant part:
27

28 (a) ... The matter is admitted unless, within 30 days after service of the request, or

1 within such shorter or longer time as the court may allow, or the parties may agree
2 to in writing, subject to Rule 29, the party to whom the request is directed serves
3 upon the party requesting the admission a written answer or objection addressed to
the matter, signed by the party or by the party's attorney. ...

4 (b) Effect of Admission. Any matter admitted under this rule is conclusively
5 established unless the court on motion permits withdrawal or amendment of the
6 admission. ... Any admission made by a party under this rule is for the purpose of the
7 pending action only and is not an admission for any other purpose nor may it be used
against the party in any other proceeding.

8 Written discovery requests were served upon the Defendant on October 31, 2007. (See
9 **Exhibit 1**). Pursuant to NRCP 36(a), Defendant had 30 days to respond to Plaintiffs' Requests for
10 Admission, or the Requests for Admission are deemed admitted. Allowing three days for mailing,
11 the discovery responses were due no later than December 3, 2007, four months ago. To date,
12 Defendant has neither responded to the Requests for Admission, nor has she requested an extension
13 to respond to the same. As such, the Requests for Admission are deemed admitted pursuant to
14 NRCP 36. Pursuant to NRCP 36(b), the admissions made by the Defendant are conclusively
15 established.
16

17 Therefore, the following statements are conclusively established as undisputed facts in this
18 case:

- 19 1. Fallini's property is not located within an "open range" as it is defined in.
20 NRS 568.355.
21
- 22 2. Fallini is the owner of the cow that is mentioned in the Plaintiff's Complaint on file
23 herein ("subject cow").
24
- 25 3. It is the common practice of Nye County, Nevada ranchers to mark their cattle with
26 reflective or luminescent tags.
27
- 28 4. The subject cow was not marked with a reflective or luminescent tag.

5. The subject cow crossed a fence to arrive at the location of the subject accident described in the Complaint on file herein.
6. Fallini's cattle had previously been involved in incidents with motor vehicles on the roadway.
7. Fallini does not track the location of her cattle while they are grazing away from her property.
8. Fallini does not remove her cattle from the roadway when notified that the cattle are in a roadway.
9. The subject cow was not visible at night.
10. Fallini was aware that the subject cow was not visible at night prior to the incident that is the subject of the Complaint on file herein.
11. The subject cow was in the roadway of SR 375 at the time of the incident that is the subject matter of the Complaint on file herein.
12. The subject cow's presence in the roadway of SR 375 was the cause of the motor vehicle accident that is the subject of the Complaint on file herein.
13. Fallini did not know the location of the subject cow at the time of the incident that is the subject of the Complaint on file herein.
14. The presence of a reflective or luminescent tag on the subject cow would have made the subject cow visible at the time of the incident that is the subject of the Complaint on file herein.

C. NEGLIGENCE.

A claim for negligence must be based on (1) an existing duty of care, (2) breach, (3) legal causation, and (4) damages. *Jordan v. State ex rel. Dept. of Motor Vehicles and Public Safety*, 121

1 Nev. 44, 51 (2005). In the instant matter, the Defendant owed Michael a duty of care to control her
2 cattle and to prevent the cattle from endangering the lives of others. Defendant owed Michael a duty
3 to mark her cattle with reflective or luminescent tags.
4

5 Defendant breached the duty of care that she owed to Michael because the subject cow was
6 not marked with a reflective or luminescent tag. Fallini was put on notice that her cattle were
7 endangering people's lives because the cattle had previously been involved in incidents with motor
8 vehicles on the roadway. However, Fallini continued not to track the location of her cattle while they
9 are grazing away from her property. Defendant further breached the duty of care that she owed to
10 Michael because the subject cow was not visible at night, and Fallini was aware that the subject cow
11 was not visible at night prior to the incident that is the subject of the Complaint on file herein.
12

13 Fallini's negligence was the direct and proximate cause of Michael's death. The subject cow
14 was in the roadway of SR 375 when Michael was traveling on SR 375. The subject cow's presence
15 on SR 375 was the cause of the motor vehicle accident that killed Michael. Defendant admits that
16 the presence of a reflective or luminescent tag on the subject cow would have made the subject cow
17 visible at night and the accident that caused Michael's death could have been avoided. Thus,
18 Fallini's negligence was the cause of Michael's untimely death. As such, summary judgment is
19 proper with regard to all elements except damages. Damages need to be proven up at a hearing on
20 the matter. Fallini's negligence caused Michael's death, but that is not the full extent of the damages
21 caused by Fallini's negligence.
22

23 **D. WRONGFUL DEATH/ LOSS OF CONSORTIUM.**
24

25 **NRS 41.085 provides in relevant part:**
26

27 2. When the death of any person, whether or not a minor, is caused by the wrongful
28 act or neglect of another, the heirs of the decedent and the personal representatives
of the decedent may each maintain an action for damages against the person who

1 caused the death, or if the wrongdoer is dead, against his personal representatives,
2 whether the wrongdoer died before or after the death of the person he injured. If any
3 other person is responsible for the wrongful act or neglect, or if the wrongdoer is
4 employed by another person who is responsible for his conduct, the action may be
maintained against that other person, or if he is dead against his personal
representatives.

5 3. An action brought by the heirs of a decedent pursuant to subsection 2 and the cause
6 of action of that decedent brought or maintained by his personal representatives
which arose out of the same wrongful act or neglect may be joined.

7 4. The heirs may prove their respective damages in the action brought pursuant to
8 subsection 2 and the court or jury may award each person pecuniary damages for his
9 grief or sorrow, loss of probable support, companionship, society, comfort and
10 consortium, and damages for pain, suffering or disfigurement of the decedent. The
proceeds of any judgment for damages awarded under this subsection are not liable
for any debt of the decedent.

11 5. The damages recoverable by the personal representatives of a decedent on behalf
of his estate include:

12 (a) Any special damages, such as medical expenses, which the decedent
13 incurred or sustained before his death, and funeral expenses; and

14 (b) Any penalties, including, but not limited to, exemplary or punitive
15 damages, that the decedent would have recovered if he had lived, but do not
16 include damages for pain, suffering or disfigurement of the decedent. The
proceeds of any judgment for damages awarded under this subsection are
liable for the debts of the decedent unless exempted by law.

17 As set forth above, the Defendant's negligence is the cause of Michael's death. Michael's
18 death caused his mother, Judith, to suffer immense sorrow and grief. Michael's mother has forever
19 lost the companionship, society, and comfort of her son's presence. As a result, Judith requests that
20 the Defendant be held accountable for Michael's wrongful and untimely death, and that her Motion
21 for Partial Summary Judgment be granted. However, the extent of the damages caused by Fallini's
22 negligence is an issue for the trier of fact, because Michael's untimely death is but one of the
23 consequences of Fallini's negligence.
24

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IV.

CONCLUSION

Accordingly, based upon the foregoing, Plaintiffs hereby respectfully request that the Court enter partial summary judgment against Defendant, finding Defendant liable for Michael's death. Damages will be shown at a prove-up hearing to be set at a later date..

DATED this 2nd day of April 2008.

BLACK & LOBELLO

By: John P. Aldrich
John P. Aldrich, Esq.
Nevada State Bar No.: 6877
Adrianne C. Duncan, Esq.
Nevada State Bar No.: 9797
10777 West Twain Avenue, Suite 300
Las Vegas, NV 89135
Attorneys for Plaintiffs

BLACK & LOBELLO
10777 West Twain Avenue, Suite 300
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(702) 869-8801

1 MOT

2 John P. Aldrich, Esq.
3 Nevada State Bar No. 6877

4 Adrienne C. Duncan, Esq.
5 Nevada State Bar No. 9797

6 **BLACK & LOBELLO**
7 10777 West Twain Avenue, Suite 300
8 Las Vegas, Nevada 89135
9 (702) 869-8801

10 *Attorneys for Plaintiffs*

CALEDARED

on:

FILED

MAY 20 2008

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NYE COUNTY CLERK
BY DEPUTY

Michelle A. Thorn

THE FIFTH JUDICIAL DISTRICT COURT
THE STATE OF NEVADA
COUNTY OF NYE

Estate of MICHAEL DAVID ADAMS,
by and through his mother JUDITH ADAMS,
individually and on behalf of the Estate,

Plaintiffs,

v.

SUSAN FALLINI, DOES I-X and ROE
CORPORATIONS I-X, inclusive

Defendants

Case No.: CV24539
Dept. No.:2P

MOTION FOR PARTIAL SUMMARY
JUDGMENT

Date of Hearing:
Time of Hearing:

SUSAN FALLINI,

Counter-claimant,

v.

Estate of MICHAEL DAVID ADAMS,
by and through his mother JUDITH ADAMS,
individually and on behalf of the Estate,

Counter-defendants

Plaintiffs, Estate of MICHAEL DAVID ADAMS, by and through his mother JUDITH
ADAMS, individually and on behalf of the Estate, by and through their attorneys of record JOHN

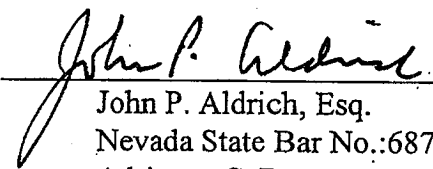
1 P. ALDRICH, ESQ., and ADRIANNE C. DUNCAN, ESQ. and the law firm of BLACK &
2 LoBELLO, hereby present their *MOTION FOR PARTIAL SUMMARY JUDGMENT*.

3 This Motion is made and based upon the papers and pleadings on file herein, the attached
4 affidavit of John P. Aldrich, Esq., and exhibits and any and all oral argument or testimony that the
5 Court may entertain at the hearing of this Motion.
6

7 DATED this 14th day of May, 2008.

8 **BLACK & LOBELLO**

9
10 By


John P. Aldrich, Esq.
Nevada State Bar No.: 6877
Adrianne C. Duncan, Esq.
Nevada State Bar No.: 9797
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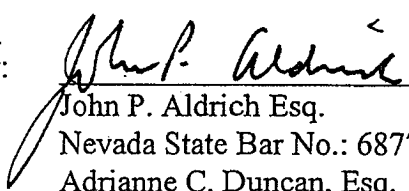
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14
15 **NOTICE OF MOTION**

16 PLEASE TAKE NOTICE that on the 14 day of July 2008, at the hour of
17 9am, or as soon thereafter as counsel may be heard, in Department 2 Plaintiffs, by and
18 through their attorneys, John P. Aldrich, Esq. and Adrianne C. Duncan, Esq. and the law firm of
19 Black & LoBello will bring the foregoing MOTION on for hearing.
20

21 DATED this 14th day of May, 2008.

22 **BLACK & LOBELLO**

23
24 By:


John P. Aldrich Esq.
Nevada State Bar No.: 6877
Adrianne C. Duncan, Esq.
Nevada State Bar No.: 9797
10777 West Twain Avenue, Suite 300
Las Vegas, NV 89135
Attorneys for Plaintiffs

1
2 **POINTS AND AUTHORITIES**

3 **I.**

4 **PROCEDURAL HISTORY**

5 On November 29, 2006, Plaintiffs Estate of MICHAEL DAVID ADAMS, by and through
6 his mother JUDITH ADAMS ("Judith"), individually and on behalf of the Estate, filed a complaint
7 in the Eighth Judicial District Court, Clark County, Nevada, alleging, among other things, the
8 wrongful death of Michael David Adams ("Michael").
9

10 On December 29, 2006, Defendant Susan Fallini ("Fallini"), filed a Demand and Motion for
11 Mandatory Change of Venue. Subsequently, the parties, by and through their counsel, stipulated and
12 agreed to dismiss the pending action in Clark County, Nevada, without prejudice, so that the matter
13 could be heard in Nye County, Nevada.
14

15 On March 14, 2007, Defendant Fallini, filed an Answer to Plaintiffs' Complaint and a
16 Counterclaim in Nye County, Nevada. On March 30, 2007, Plaintiffs filed a Reply to Defendant's
17 Counterclaim. Subsequently, Fallini filed an objection to Pahrump as the forum for the litigation
18 and a Motion to have the matter heard in Tonopah. However, that Motion was denied and the case
19 proceeded in Pahrump.
20

21 The Early Case Conference in this matter was held on June 15, 2007. The parties, by and
22 through their respective counsel, filed a Joint Case Conference Report on October 23, 2007.
23 Thereafter, on October 31, 2007, Plaintiffs served the Defendant with written discovery requests,
24 including Requests for Admission, Requests for Production of Documents, and Interrogatories. (See
25 **Exhibit 1**). To date, Defendant has not responded to the written discovery requests, nor has
26 Defendant requested an extension in which to respond.
27

28 ///

II.

STATEMENT OF FACTS

At the time of his death, Michael was 33 years old and a resident of Orange County, California. He was unmarried and had no natural or adopted children. His mother, Judith, is the administrator of her son's estate and also a resident of Orange County, California. The incident that caused Michael's death occurred in Nevada.

Defendant Fallini, is the owner of a Hereford red cow that was wandering freely on SR 375 highway, at Nye mile marker 33, in Nye County, Nevada on or about July 7, 2005. On said date at approximately 9:00 p.m., Michael was lawfully driving his 1994 Jeep Wrangler on SR 375. The Hereford cow suddenly appeared in the travel portion of the roadway, blocking Michael's path. Although Michael was traveling at a lawful rate of speed, it was not possible for him to avoid the head-on collision with the cow. As a direct and proximate result of the collision, Michael's Jeep rolled over and left the paved highway. Michael died at the scene.

On October 31, 2007, Plaintiffs served Fallini with Requests for Admission. To date, the Requests for Admission have not been answered, and therefore are deemed admitted. Therefore, the following are additional facts that must be taken into consideration by the court:

1. Fallini's property is not located within an "open range" as it is defined in NRS 568.355.
2. Fallini is the owner of the cow that is mentioned in the Plaintiff's Complaint on file herein ("subject cow").
3. It is the common practice of Nye County, Nevada ranchers to mark their cattle with reflective or luminescent tags.
4. The subject cow was not marked with a reflective or luminescent tag.
5. The subject cow crossed a fence to arrive at the location of the subject accident described in the Complaint on file herein.

6. Fallini's cattle had previously been involved in incidents with motor vehicles on the roadway.
7. Fallini does not track the location of her cattle while they are grazing away from her property.
8. Fallini does not remove her cattle from the roadway when notified that the cattle are in a roadway.
9. The subject cow was not visible at night.
10. Fallini was aware that the subject cow was not visible at night prior to the incident that is the subject of the Complaint on file herein.
11. The subject cow was in the roadway of SR 375 at the time of the incident that is the subject matter of the Complaint on file herein.
12. The subject cow's presence in the roadway of SR 375 was the cause of the motor vehicle accident that is the subject of the Complaint on file herein.
13. Fallini did not know the location of the subject cow at the time of the incident that is the subject of the Complaint on file herein.
14. The presence of a reflective or luminescent tag on the subject cow would have made the subject cow visible at the time of the incident that is the subject of the Complaint on file herein.

III.

LEGAL ARGUMENT

A. STANDARD OF REVIEW.

Pursuant to NRCP 56(c), a Motion for Summary Judgment "shall be rendered forthwith if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law." NRCP 56(c). A genuine issue of material fact is one where the evidence is such that a reasonable jury could return a verdict for the non-moving party. Posadis v. City of Reno, 109 Nev. 448, 851 P. 2d 438 (1983). In the present matter, there are no genuine issues as to any material fact, and therefore, Plaintiffs are entitled to summary judgment.

1 Although the non-moving party is entitled to have the evidence and all reasonable inferences
2 accepted as true, See City of Boulder City v. State of Nevada, 106 Nev. 390, 793, P. 2d 845 (1990),
3 citing, Wiltsie v. Baby Grand Corp., 105 Nev. 291, 774 P. 2d 432 (1989), if the moving party is able
4 to "show that one of the elements is clearly lacking as a matter of law," then summary judgment is
5 appropriate. Joynt v. California Hotel & Casino, 108 Nev. 539, 542, 835 P. 2d 799, 801 (1992).
6 (internal quotations and citations omitted).
7

8 When a motion for summary judgment is made and supported as provided in Rule 56, the
9 adverse party may not rest upon mere allegations of his pleading, but must, by affidavit or otherwise,
10 set forth specific facts demonstrating the existence of a genuine issue for trial. See NGA #2, LLC,
11 v. Rains, 113 Nev. 1151, 1157, 946 P. 2d 163, 167 (1997); Boland v. Nevada Rock & Sand, Co.,
12 Nev. 108, 894 P. 2d 988, 990 (1995). The non-moving party "is not entitled to build a case on the
13 gossamer threads of whimsey, speculation, and conjecture." Collins v. Union Fed Savings & Loan,
14 99 Nev. 284, 302, 662 P. 2d 610, 621 (1983), quoting, Hahn v. Sargent 523 F. 2d 461, 469 (1st Cir.
15 1975), cert. denied, 425 U.S. 904, 95 S. Ct. 1495, 47 L. Ed. 2d 754 (1976). A party opposing
16 summary judgment may not rely on the allegations of his pleadings to raise a material issue of fact
17 where the moving party supports his motion with competent evidence. Garvey v. Clark County, 91
18 Nev. 127, 130, 523 P. 2d 269, 271 (1975).
19

20 Here, the Plaintiffs support their motion with competent evidence, and the Defendant may
21 not simply rely on the allegations set forth in her pleadings to raise material issues of fact. Therefore,
22 based upon the facts and argument set forth below, Plaintiffs are entitled to summary judgment.
23

24 **B. PLAINTIFFS' REQUESTS FOR ADMISSION TO DEFENDANT, SUSAN FALLINI,**
25 **MUST BE DEEMED ADMITTED.**
26

27 NRCP 36 provides in relevant part:

28 (a) ... The matter is admitted unless, within 30 days after service of the request, or

1 within such shorter or longer time as the court may allow, or the parties may agree
2 to in writing, subject to Rule 29, the party to whom the request is directed serves
3 upon the party requesting the admission a written answer or objection addressed to
4 the matter, signed by the party or by the party's attorney. ...

5 (b) Effect of Admission. Any matter admitted under this rule is conclusively
6 established unless the court on motion permits withdrawal or amendment of the
7 admission. ... Any admission made by a party under this rule is for the purpose of the
8 pending action only and is not an admission for any other purpose nor may it be used
9 against the party in any other proceeding.

10 Written discovery requests were served upon the Defendant on October 31, 2007. (See
11 **Exhibit 1**). Pursuant to NRCP 36(a), Defendant had 30 days to respond to Plaintiffs' Requests for
12 Admission, or the Requests for Admission are deemed admitted. Allowing three days for mailing,
13 the discovery responses were due no later than December 3, 2007, four months ago. To date,
14 Defendant has neither responded to the Requests for Admission, nor has she requested an extension
15 to respond to the same. As such, the Requests for Admission are deemed admitted pursuant to
16 NRCP 36. Pursuant to NRCP 36(b), the admissions made by the Defendant are conclusively
17 established.

18 Therefore, the following statements are conclusively established as undisputed facts in this
19 case:

- 20 1. Fallini's property is not located within an "open range" as it is defined in
21 NRS 568.355.
- 22 2. Fallini is the owner of the cow that is mentioned in the Plaintiff's Complaint on file
23 herein ("subject cow").
- 24 3. It is the common practice of Nye County, Nevada ranchers to mark their cattle with
25 reflective or luminescent tags.
- 26 4. The subject cow was not marked with a reflective or luminescent tag.
27
28

- 1 5. The subject cow crossed a fence to arrive at the location of the subject accident
- 2 described in the Complaint on file herein.
- 3
- 4 6. Fallini's cattle had previously been involved in incidents with motor vehicles on the
- 5 roadway.
- 6 7. Fallini does not track the location of her cattle while they are grazing away from her
- 7 property.
- 8 8. Fallini does not remove her cattle from the roadway when notified that the cattle are
- 9 in a roadway.
- 10 9. The subject cow was not visible at night.
- 11 10. Fallini was aware that the subject cow was not visible at night prior to the incident
- 12 that is the subject of the Complaint on file herein.
- 13
- 14 11. The subject cow was in the roadway of SR 375 at the time of the incident that is the
- 15 subject matter of the Complaint on file herein.
- 16 12. The subject cow's presence in the roadway of SR 375 was the cause of the motor
- 17 vehicle accident that is the subject of the Complaint on file herein.
- 18
- 19 13. Fallini did not know the location of the subject cow at the time of the incident that
- 20 is the subject of the Complaint on file herein.
- 21 14. The presence of a reflective or luminescent tag on the subject cow would have made
- 22 the subject cow visible at the time of the incident that is the subject of the Complaint
- 23 on file herein.
- 24

25 **C. NEGLIGENCE.**

26 A claim for negligence must be based on (1) an existing duty of care, (2) breach, (3) legal

27 causation, and (4) damages. *Jordan v. State ex rel. Dept. of Motor Vehicles and Public Safety*, 121

28

1 Nev. 44, 51 (2005). In the instant matter, the Defendant owed Michael a duty of care to control her
2 cattle and to prevent the cattle from endangering the lives of others. Defendant owed Michael a duty
3 to mark her cattle with reflective or luminescent tags.
4

5 Defendant breached the duty of care that she owed to Michael because the subject cow was
6 not marked with a reflective or luminescent tag. Fallini was put on notice that her cattle were
7 endangering people's lives because the cattle had previously been involved in incidents with motor
8 vehicles on the roadway. However, Fallini continued not to track the location of her cattle while they
9 are grazing away from her property. Defendant further breached the duty of care that she owed to
10 Michael because the subject cow was not visible at night, and Fallini was aware that the subject cow
11 was not visible at night prior to the incident that is the subject of the Complaint on file herein.
12

13 Fallini's negligence was the direct and proximate cause of Michael's death. The subject cow
14 was in the roadway of SR 375 when Michael was traveling on SR 375. The subject cow's presence
15 on SR 375 was the cause of the motor vehicle accident that killed Michael. Defendant admits that
16 the presence of a reflective or luminescent tag on the subject cow would have made the subject cow
17 visible at night and the accident that caused Michael's death could have been avoided. Thus,
18 Fallini's negligence was the cause of Michael's untimely death. As such, summary judgment is
19 proper with regard to all elements except damages. Damages need to be proven up at a hearing on
20 the matter. Fallini's negligence caused Michael's death, but that is not the full extent of the damages
21 caused by Fallini's negligence.
22

23 **D. WRONGFUL DEATH/ LOSS OF CONSORTIUM.**
24

25 **NRS 41.085 provides in relevant part:**
26

27 2. When the death of any person, whether or not a minor, is caused by the wrongful
28 act or neglect of another, the heirs of the decedent and the personal representatives
of the decedent may each maintain an action for damages against the person who

1 caused the death, or if the wrongdoer is dead, against his personal representatives,
2 whether the wrongdoer died before or after the death of the person he injured. If any
3 other person is responsible for the wrongful act or neglect, or if the wrongdoer is
4 employed by another person who is responsible for his conduct, the action may be
maintained against that other person, or if he is dead against his personal
representatives.

5 3. An action brought by the heirs of a decedent pursuant to subsection 2 and the cause
6 of action of that decedent brought or maintained by his personal representatives
which arose out of the same wrongful act or neglect may be joined.

7 4. The heirs may prove their respective damages in the action brought pursuant to
8 subsection 2 and the court or jury may award each person pecuniary damages for his
9 grief or sorrow, loss of probable support, companionship, society, comfort and
10 consortium, and damages for pain, suffering or disfigurement of the decedent. The
proceeds of any judgment for damages awarded under this subsection are not liable
for any debt of the decedent.

11 5. The damages recoverable by the personal representatives of a decedent on behalf
of his estate include:

12 (a) Any special damages, such as medical expenses, which the decedent
13 incurred or sustained before his death, and funeral expenses; and

14 (b) Any penalties, including, but not limited to, exemplary or punitive
15 damages, that the decedent would have recovered if he had lived, but do not
16 include damages for pain, suffering or disfigurement of the decedent. The
proceeds of any judgment for damages awarded under this subsection are
liable for the debts of the decedent unless exempted by law.

17 As set forth above, the Defendant's negligence is the cause of Michael's death. Michael's
18 death caused his mother, Judith, to suffer immense sorrow and grief. Michael's mother has forever
19 lost the companionship, society, and comfort of her son's presence. As a result, Judith requests that
20 the Defendant be held accountable for Michael's wrongful and untimely death, and that her Motion
21 for Partial Summary Judgment be granted. However, the extent of the damages caused by Fallini's
22 negligence is an issue for the trier of fact, because Michael's untimely death is but one of the
23 consequences of Fallini's negligence.
24

25 ///

26 ///

27 ///

IV.

CONCLUSION

Accordingly, based upon the foregoing, Plaintiffs hereby respectfully request that the Court enter partial summary judgment against Defendant, finding Defendant liable for Michael's death. Damages will be shown at a prove-up hearing to be set at a later date..

DATED this 14th day of May, 2008.

BLACK & LOBELLO

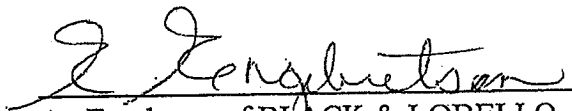
By: John P. Aldrich
John P. Aldrich, Esq.
Nevada State Bar No.: 6877
Adrianne C. Duncan, Esq.
Nevada State Bar No.: 9797
10777 West Twain Avenue, Suite 300
Las Vegas, NV 89135
Attorneys for Plaintiff

CERTIFICATE OF SERVICE

I hereby certify that on the 15th day of May, 2008, I served a true and correct copy of the foregoing MOTION FOR PARTIAL SUMMARY JUDGMENT, by first class mail, postage prepaid, addressed as follows:

Harold Kuehn, Esq.
EARNEST, GIBSON & KUEHN
921 S. Hwy 160, #203
Pahrump, NV 89048
Attorney for Defendant/Counterclaimant
Susan Fallini

Katherine M. Barker, Esq.
701 Bridger Avenue, Suite 500
Las Vegas, NV 89101
Attorneys for Counter-Defendant
Estate of Michael David Adams


An Employee of BLACK & LOBELLO

ORIGINAL

1 JOIN
2 KATHERINE M. BARKER, ESQ.
3 Nevada Bar No.: 006084
4 LAW OFFICE OF KATHERINE M. BARKER
5 701 Bridger Avenue, Suite 500
6 Las Vegas, Nevada 89101
7 (702) 233-9303
8 Attorney for Counter-Defendant
9 ESTATE OF MICHAEL DAVID ADAMS

Katherine Barker

5-28-08

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FIFTH JUDICIAL DISTRICT COURT
NYE COUNTY, NEVADA

ESTATE OF MICHAEL DAVID ADAMS, by
and through his mother JUDITH ADAMS,
individually and on behalf of the ESTATE,

Plaintiffs,

vs.

SUSAN FALLINI, DOES I-X and ROE
CORPORATIONS I-X, inclusive,

Defendants.

Case No.: CV24539

Dept. No.: 2P

SUSAN FALLINI,

Counterclaimant,

vs.

ESTATE OF MICHAEL DAVID ADAMS, by
and through his mother JUDITH ADAMS,
individually and on behalf of the ESTATE,

Counterdefendants.

COUNTERDEFENDANT, ESTATE OF MICHAEL DAVID ADAMS, BY AND
THROUGH HIS MOTHER, JUDITH ADAMS, INDIVIDUALLY AND ON BEHALF OF
THE ESTATE, JOINDER TO PLAINTIFF'S MOTION FOR

1 **PARTIAL SUMMARY JUDGMENT**

2 Counter-Defendant Estate of Michael David Adams, by and through his mother,
3 Judith Adams, individually and on behalf of the Estate, by and through their attorney,
4 Katherine M. Barker, Esq. hereby joins Plaintiffs, Estate of Michael David Adams, by
5 and through his mother, Judith Adams, individually and on behalf of the Estate, Motion
6 for Partial Summary Judgment as to Defendant, Susan Fallini.
7

8 This Motion is made and based upon the pleadings and papers on file herein,
9 together with the Points and Authorities and any oral argument which the Court may
10 entertain at the time of hearing.

11
12 DATED this 28th day of May, 2008

13
14 **LAW OFFICE OF KATHERINE M. BARKER**

15
16 Katherine M. Barker, Esq.
17 Nevada Bar No. 6084
18 701 Bridger Avenue, Suite 500
19 Las Vegas, Nevada 89101
20 (702) 233-9303
21 Attorneys for Counter-Defendant
22 Estate of Michael David Adams
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CERTIFICATE OF MAILING

Pursuant to Nevada Rules of Civil Procedure 5(b), I hereby certify that service of the foregoing **COUNTERDEFENDANT, ESTATE OF MICHAEL DAVID ADAMS, BY AND THROUGH HIS MOTHER, JUDITH ADAMS, INDIVIDUALLY AND ON BEHALF OF THE ESTATE, JOINDER TO PLAINTIFF'S MOTION FOR PARTIAL SUMMARY JUDGMENT** was made this date by depositing a true copy of the same for mailing, first class mail, at Las Vegas, Nevada, addressed as follows:

Harold Kuehn, Esq.
EARNEST, GIBSON & KUEHN
921 S. Hwy 160, #203
Pahrump, NV 89048

John P. Aldrich, Esq.
BLACK & LOBELLO
10777 W. Twain Avenue, #300
Las Vegas, NV 89135


EMPLOYEE OF LAW OFFICE OF
KATHERINE M. BARKER

DATED: 5-28-08

FILED
DEBRA BENNET
2008 JUL 30 P 3:30
NYE COUNTY CLERK
BY DEPUTY

1 **ORDR**

John P. Aldrich, Esq.

2 Nevada State Bar No. 6877

Adrianne C. Duncan, Esq.

3 Nevada State Bar No. 9797

BLACK & LOBELLO

4 10777 West Twain Avenue, Suite 300

Las Vegas, Nevada 89135

5 (702) 869-8801

Attorneys for Plaintiffs

7
8 **THE FIFTH JUDICIAL DISTRICT COURT**
9 **THE STATE OF NEVADA**
COUNTY OF NYE

10 Estate of MICHAEL DAVID ADAMS,)
by and through his mother JUDITH)
11 ADAMS, individually and on behalf of the)
Estate,)

12 Plaintiffs,

13 vs.

14 SUSAN FALLINI, DOES I-X and ROE)
15 CORPORATIONS I-X, inclusive,)

16 Defendants.)

17 SUSAN FALLINI,)

18 Counterclaimant,)

19 vs.)

20 Estate of MICHAEL DAVID ADAMS,)
by and through his mother JUDITH)
21 ADAMS, individually and on behalf of the)
Estate,)

22 Counterdefendants.)
23

Case No.: CV24539
Dept.: 2P

24 **ORDER GRANTING PLAINTIFFS' MOTION FOR PARTIAL SUMMARY JUDGMENT**

25 THIS MATTER having come on for hearing on Monday, July 14, 2008, on Plaintiff's Motion
26 for Partial Summary Judgment before the Honorable Robert W. Lane, and John P. Aldrich, Esq.
27 appearing on behalf of the Plaintiffs, no other counsel present, the court having reviewed the Motion
28

1 for Partial Summary Judgment and the Joinder to the Motion for Partial Summary Judgment, having
2 reviewed all pleadings and papers on file herein, and having heard the arguments of present counsel;
3 and good cause appearing therefore,

4 **THE COURT HEREBY ENTERS THE FOLLOWING FINDINGS OF FACT:**

- 5 1. Fallini's property is not located within an "open range" as it is defined in
6 NRS 568.355.
- 7 2. Fallini is the owner of the cow that is mentioned in the Plaintiff's Complaint on file
8 herein ("subject cow").
- 9 3. It is the common practice of Nye County, Nevada ranchers to mark their cattle with
10 reflective or luminescent tags.
- 11 4. The subject cow was not marked with a reflective or luminescent tag.
- 12 5. The subject cow crossed a fence to arrive at the location of the subject accident
13 described in the Complaint on file herein.
- 14 6. Fallini's cattle had previously been involved in incidents with motor vehicles on the
15 roadway.
- 16 7. Fallini does not track the location of her cattle while they are grazing away from her
17 property.
- 18 8. Fallini does not remove her cattle from the roadway when notified that the cattle are
19 in a roadway.
- 20 9. The subject cow was not visible at night.
- 21 10. Fallini was aware that the subject cow was not visible at night prior to the incident
22 that is the subject of the Complaint on file herein.
- 23 11. The subject cow was in the roadway of SR 375 at the time of the incident that is the
24 subject matter of the Complaint on file herein.
- 25 12. The subject cow's presence in the roadway of SR 375 was the cause of the motor
26 vehicle accident that is the subject of the Complaint on file herein.
- 27 13. Fallini did not know the location of the subject cow at the time of the incident that
28 is the subject of the Complaint on file herein.

1 14. The presence of a reflective or luminescent tag on the subject cow would have made
2 the subject cow visible at the time of the incident that is the subject of the Complaint
3 on file herein.

4 **THE COURT HEREBY ENTERS THE FOLLOWING CONCLUSIONS OF LAW:**

- 5 1. Defendant Fallini had and duty to ensure that the subject cow was not in the roadway
6 at the time of the incident described in the Complaint.
- 7 2. Defendant Fallini had a duty to follow the common practice of Nye County, Nevada
8 ranchers and to mark her cow with reflecting or lumination tags.
- 9 3. Defendant Fallini breached the duty of care to the decedent, as set forth in the
10 Findings of Fact and Conclusions of Law.
- 11 4. As a result of Defendant Fallini's breach, the decedent, Michael David Adams, was
12 killed.
- 13 5. Defendant Fallini is liable for the damages to which Plaintiff is entitled, in an amount
14 to be determined at a later time.

15 **IT IS HEREBY ORDERED** that Plaintiffs' Motion for Partial Summary Judgment as to
16 the issue of Defendant's duty and breach of duty is hereby GRANTED.

17 DATED this 27 day of July, 2008.

18 **ROBERT W. LANE**

19
20 DISTRICT COURT JUDGE

21 Submitted By:

22 **BLACK & LOBELLO**

23
24 John P. Aldrich

25 John P. Aldrich

26 Nevada Bar No.: 6877

10777 West Twain Avenue, Suite 300

27 Las Vegas, Nevada 89135

(702) 869-8801

(702) 869-2669 (Fax)

1 **NEO**

John P. Aldrich, Esq.

2 Nevada State Bar No. 6877

Adrianne C. Duncan, Esq.

3 Nevada State Bar No. 9797

BLACK & LOBELLO

4 10777 West Twain Avenue, Suite 300

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5 (702) 869-8801

Attorneys for Plaintiffs

FILED

2008 AUG 15 P 2:44

NYE COUNTY CLERK
BY DEPUTY

Linda W.

7
8 THE FIFTH JUDICIAL DISTRICT COURT
THE STATE OF NEVADA
9 COUNTY OF NYE

10 Estate of MICHAEL DAVID ADAMS,
by and through his mother JUDITH
11 ADAMS, individually and on behalf of the
Estate,

12 Plaintiffs,

13 vs.

14 SUSAN FALLINI, DOES I-X and ROE
15 CORPORATIONS I-X, inclusive,

16 Defendants.

17 SUSAN FALLINI,

18 Counterclaimant,

19 vs.

20 Estate of MICHAEL DAVID ADAMS,
by and through his mother JUDITH
21 ADAMS, individually and on behalf of the
Estate,

22 Counterdefendants.
23

Case No.: CV24539
Dept.: 2P

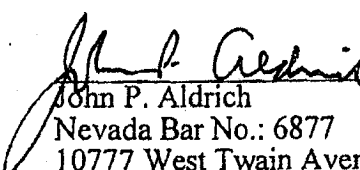
24 **NOTICE OF ENTRY OF ORDER**

25 PLEASE TAKE NOTICE that on the 30th day of July, 2008 an Order Granting Plaintiffs'
26 Motion for Partial Summary Judgement was entered in the above-captioned matter,
27
28

1 a copy of which is attached hereto.

2 DATED this 13th day of August, 2008.

3 **BLACK & LOBELLO**

4
5 
6 John P. Aldrich
7 Nevada Bar No.: 6877
8 10777 West Twain Avenue, Suite 300
9 Las Vegas, Nevada 89135
10 (702) 869-8801
11 (702) 869-2669 (Fax)

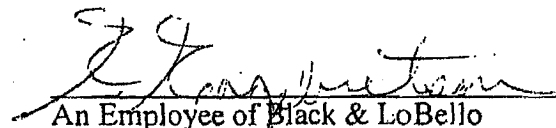
12 **CERTIFICATE OF SERVICE**

13 I hereby certify that on the 13th day of August, 2008 a true and correct copy of the foregoing

14 **NOTICE OF ENTRY OF ORDER** was deposited into the U.S. mail at Las Vegas, Nevada, first-
15 class postage fully prepaid, addressed to the following person(s):

16 Harold Kuehn, Esq.
17 Gibson & Kuehn, LLP
18 1601 E. Basin Avenue, Ste. 101
19 Pahrump, NV 89060

20 Katherine M. Barker, Esq.
21 Law Office of Katherine M. Barker
22 701 Bridger Avenue, Suite 500
23 Las Vegas, NV 89101

24 
25 An Employee of Black & LoBello
26
27
28

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NYE COUNTY CLERK
BY DEPUTY

1 **ORDR**

John P. Aldrich, Esq.

2 Nevada State Bar No. 6877

Adrianne C. Duncan, Esq.

3 Nevada State Bar No. 9797

BLACK & LOBELLO

4 10777 West Twain Avenue, Suite 300

Las Vegas, Nevada 89135

5 (702) 869-8801

Attorneys for Plaintiffs

7
8 THE FIFTH JUDICIAL DISTRICT COURT
THE STATE OF NEVADA
9 COUNTY OF NYE

10 Estate of MICHAEL DAVID ADAMS,
by and through his mother JUDITH
11 ADAMS, individually and on behalf of the
Estate,

12 Plaintiffs,

13 vs.

14 SUSAN FALLINI, DOES I-X and ROE
15 CORPORATIONS I-X, inclusive,

16 Defendants.

17 SUSAN FALLINI,

18 Counterclaimant,

19 vs.

20 Estate of MICHAEL DAVID ADAMS,
by and through his mother JUDITH
21 ADAMS, individually and on behalf of the
Estate,

22 Counterdefendants.
23

Case No.: CV24539
Dept.: 2P

24 **ORDER GRANTING PLAINTIFFS' MOTION FOR PARTIAL SUMMARY JUDGMENT**

25 THIS MATTER having come on for hearing on Monday, July 14, 2008, on Plaintiff's Motion
26 for Partial Summary Judgment before the Honorable Robert W. Lane, and John P. Aldrich, Esq.
27 appearing on behalf of the Plaintiffs, no other counsel present, the court having reviewed the Motion
28

1 for Partial Summary Judgment and the Joinder to the Motion for Partial Summary Judgment, having
2 reviewed all pleadings and papers on file herein, and having heard the arguments of present counsel;
3 and good cause appearing therefore,

4 **THE COURT HEREBY ENTERS THE FOLLOWING FINDINGS OF FACT:**

- 5 1. Fallini's property is not located within an "open range" as it is defined in
6 NRS 568.355.
- 7 2. Fallini is the owner of the cow that is mentioned in the Plaintiff's Complaint on file
8 herein ("subject cow").
- 9 3. It is the common practice of Nye County, Nevada ranchers to mark their cattle with
10 reflective or luminescent tags.
- 11 4. The subject cow was not marked with a reflective or luminescent tag.
- 12 5. The subject cow crossed a fence to arrive at the location of the subject accident
13 described in the Complaint on file herein.
- 14 6. Fallini's cattle had previously been involved in incidents with motor vehicles on the
15 roadway.
- 16 7. Fallini does not track the location of her cattle while they are grazing away from her
17 property.
- 18 8. Fallini does not remove her cattle from the roadway when notified that the cattle are
19 in a roadway.
- 20 9. The subject cow was not visible at night.
- 21 10. Fallini was aware that the subject cow was not visible at night prior to the incident
22 that is the subject of the Complaint on file herein.
- 23 11. The subject cow was in the roadway of SR 375 at the time of the incident that is the
24 subject matter of the Complaint on file herein.
- 25 12. The subject cow's presence in the roadway of SR 375 was the cause of the motor
26 vehicle accident that is the subject of the Complaint on file herein.
- 27 13. Fallini did not know the location of the subject cow at the time of the incident that
28 is the subject of the Complaint on file herein.

14. The presence of a reflective or luminescent tag on the subject cow would have made the subject cow visible at the time of the incident that is the subject of the Complaint on file herein.

THE COURT HEREBY ENTERS THE FOLLOWING CONCLUSIONS OF LAW:

1. Defendant Fallini had and duty to ensure that the subject cow was not in the roadway at the time of the incident described in the Complaint.
2. Defendant Fallini had a duty to follow the common practice of Nye County, Nevada ranchers and to mark her cow with reflecting or lumination tags.
3. Defendant Fallini breached the duty of care to the decedent, as set forth in the Findings of Fact and Conclusions of Law.
4. As a result of Defendant Fallini's breach, the decedent, Michael David Adams, was killed.
5. Defendant Fallini is liable for the damages to which Plaintiff is entitled, in an amount to be determined at a later time.

IT IS HEREBY ORDERED that Plaintiffs' Motion for Partial Summary Judgment as to the issue of Defendant's duty and breach of duty is hereby GRANTED.

DATED this 27 day of July, 2008.

ROBERT W. LANE

DISTRICT COURT JUDGE

Submitted By:

BLACK & LOBELLO

John P. Aldrich

John P. Aldrich

Nevada Bar No.: 6877

10777 West Twain Avenue, Suite 300

Las Vegas, Nevada 89135

(702) 869-8801

(702) 869-2669 (Fax)

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FILED
FIFTH JUDICIAL DISTRICT

SEP 22 2008

Wyo County Clerk

Deputy

1 MOT

2 John P. Aldrich, Esq.
3 Nevada State Bar No. 6877

4 **BLACK & LOBELLO**

5 10777 West Twain Avenue, Suite 300
6 Las Vegas, Nevada 89135

7 (702) 869-8801

8 Attorneys for Plaintiffs

9
10 **THE FIFTH JUDICIAL DISTRICT COURT**
11 **THE STATE OF NEVADA**
12 **COUNTY OF NYE**

13 Estate of MICHAEL DAVID ADAMS,
14 by and through his mother JUDITH ADAMS,
15 individually and on behalf of the Estate,

16 Plaintiffs,

17 v.

18 SUSAN FALLINI, DOES I-X and ROE
19 CORPORATIONS I-X, inclusive

20 Defendants

21
22 SUSAN FALLINI,

23 Counter-claimant,

24 v.

25 Estate of MICHAEL DAVID ADAMS,
26 by and through his mother JUDITH ADAMS,
27 individually and on behalf of the Estate,

28 Counter-defendants

Case No.: CV24539
Dept. No.: 2P

**MOTION TO REOPEN DISCOVERY
AND FOR AN EXTENSION OF TIME
TO COMPLETE DISCOVERY**

(FIRST REQUEST)

Date of Hearing:
Time of Hearing:

Plaintiffs, Estate of MICHAEL DAVID ADAMS, by and through his mother JUDITH ADAMS, individually and on behalf of the Estate, by and through their attorneys of record JOHN P. ALDRICH, ESQ., and ADRIANNE C. DUNCAN, ESQ. and the law firm of BLACK & LoBELLO, hereby present their *MOTION TO REOPEN DISCOVERY AND FOR AN EXTENSION OF TIME TO COMPLETE DISCOVERY.*

///

///

1 This Motion is made and based upon the papers and pleadings on file herein, the attached
2 affidavit of John P. Aldrich, Esq., and exhibits and any and all oral argument or testimony that the
3 Court may entertain at the hearing of this Motion.

4 DATED this 16th day of September, 2008.

5 **BLACK & LOBELLO**

6 By

7 John P. Aldrich
8 John P. Aldrich, Esq.
9 Nevada State Bar No.: 6877
10 10777 West Twain Avenue, Suite 300
11 Las Vegas, Nevada 89135
12 (702) 869-8801
13 *Attorneys for Plaintiff*

14 **NOTICE OF MOTION**

15 TO ALL INTERESTED PARTIES AND THEIR COUNSEL, please take notice that the
16 undersigned will bring the foregoing **MOTION TO REOPEN DISCOVERY AND FOR AN**
17 **EXTENSION OF TIME TO COMPLETE DISCOVERY** on for hearing before the Discovery
18 Commissioner, at 1:15 o'clock pm. on the 10 day of NOV, 2008.

19 DATED this 16th day of September, 2008.

20 **BLACK & LOBELLO**

21 By

22 John P. Aldrich
23 John P. Aldrich, Esq.
24 Nevada State Bar No.: 6877
25 10777 West Twain Avenue, Suite 300
26 Las Vegas, Nevada 89135
27 (702) 869-8801
28 *Attorneys for Plaintiff*

///

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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I.**

3 **PROCEDURAL HISTORY AND STATEMENT OF RELEVANT FACTS**

4 This case arises out of a wrongful death claim. The decedent, Michael David Adams was
5 traveling on a road in Nye County when he struck a cow that was owned by Defendant and was
6 standing in the middle of the highway. The force of the collision caused Michael Adams' vehicle
7 to veer off the road and roll killing Michael Adams.

8 On November 29, 2006, Plaintiffs filed their Complaint against Defendant in the Eighth
9 Judicial District Court, Clark County, Nevada. On December 29, 2006, Defendant filed a Demand
10 and Motion for Change of Venue. Subsequently, on March 2, 2007, the parties stipulated to move
11 the case from Clark County to Nye County. On March 14, 2007, Defendant filed an Answer and
12 Counter-claim. On May 16, 2008, Plaintiff filed a Motion for Partial Summary Judgment, which
13 was granted on July 14, 2008. The only issues remaining relate to the damages sustained by
14 Plaintiff.

15 **II.**

16 **LEGAL ARGUMENT**

17 **A. Discovery completed.**

18 Plaintiff has propounded Requests for Admission, two sets of Requests for Production of
19 Documents, and Interrogatories to Defendant. Defendant has failed to respond to any of these
20 discovery requests.

21 **B. Discovery that remains to be completed.**

22 As the only issue remaining is the damages sustained by Plaintiff, Plaintiff needs to retain
23 expert witnesses, including an expert to provide his or her expert opinion with regard to the
24 decedent's lost earning capacity as a result of his untimely death.

25 **C. Reasons why the discovery remaining was not completed within the time limits set by**
26 **the discovery order.**

27 In approximately November 2007, Plaintiff's counsel's firm split and the undersigned
28 counsel had to take on additional cases when his partner left the firm. Subsequently, Plaintiff's

1 counsel's firm merged with Black & LoBello in approximately March 2008. The break up of
2 Aldrich & Bryson and the subsequent merge of the undersigned counsel's practice with Black &
3 LoBello caused a delay in the completion of discovery. The parties executed a Joint Case
4 Conference Report (JCCR), but a discovery scheduling order was not issued (as is custom in Clark
5 County), and the dates indicated in the JCCR were not recorded onto the undersigned counsel's
6 calendar at the new firm. Furthermore, Defendant's non-responsiveness and failure to answer
7 discovery requests has caused discovery to remain outstanding. In an attempt to continue to move
8 the case along, Plaintiff obtained partial summary judgment in July 2008. (See Affidavit of John P.
9 Aldrich, Esq., attached hereto as Exhibit 1.)

10 **D. A proposed schedule for completing all remaining discovery.**

11 In order to retain an appropriately qualified expert to conduct an investigation and provide
12 an opinion regarding Plaintiff's damages, Plaintiff requires approximately sixty (60) days from the
13 date of the hearing on this matter.

14 **E. Current trial date.**

15 To the best of the knowledge of the undersigned, this case has not yet been set for trial.
16 Plaintiff also requests that the Court set the discovery cut-off date seventy-five (75) days after the
17 initial expert deadline, and that the Court set a trial date in early 2009.

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III.

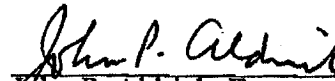
CONCLUSION

Based upon the above arguments, Plaintiff respectfully requests that the Court reopen discovery so that Plaintiff may retain qualified expert, and that the Court set a trial date in early 2009.

Dated this 16th day of September, 2008.

BLACK & LOBELLO

By


John P. Aldrich, Esq.
Nevada State Bar No.: 6877
10777 West Twain Avenue, Suite 300
Las Vegas, Nevada 89135
(702) 869-8801
Attorneys for Plaintiff

CERTIFICATE OF SERVICE

I hereby certify that on the 17th day of September, 2008 a true and correct copy of the foregoing **MOTION TO REOPEN DISCOVERY** was deposited into the U.S. mail at Las Vegas, Nevada, first-class postage fully prepaid, addressed to the following person(s):

Harold Kuehn, Esq.
Gibson & Kuehn, LLP
1601 E. Basin Avenue, Ste. 101
Pahrump, NV 89060

Katherine M. Barker, Esq.
Law Office of Katherine M. Barker
701 Bridger Avenue, Suite 500
Las Vegas, NV 89101

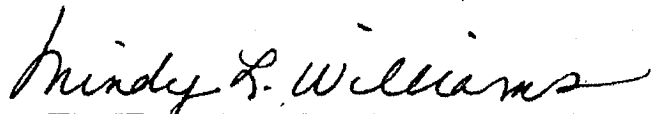

An Employee of Black & LoBello

Exhibit 1

**AFFIDAVIT OF JOHN P. ALDRICH IN SUPPORT OF MOTION TO REOPEN
DISCOVERY**

State of Nevada)
County of Clark) ss:

Affiant, being first duly sworn, deposes and states the following:

1. I, John P. Aldrich, am an attorney licensed to practice in the State of Nevada and a partner in the law firm of Black & LoBello.

2. My office address is 10777 West Twain Avenue, Third Floor, Las Vegas, Nevada 89135.

3. I have personal knowledge of the contents of this document, or where stated upon information and belief, I believe them to be true, and I am competent to testify to the facts set forth herein.

4. In approximately November 2007, my prior firm split and I had to take on additional cases when my partner left the firm. Subsequently, I merged my firm with Black & LoBello, in approximately March 2008. The break up of Aldrich & Bryson (my former firm) and the subsequent merger with Black & LoBello caused a brief delay in the completion of discovery, as did Defendant's failure to cooperate or respond to discovery.

5. The parties executed a Joint Case Conference Report (JCCR), but a discovery scheduling order was not issued (as is custom in Clark County), and the dates indicated in the JCCR were not recorded onto my calendar at the new firm. Furthermore, Defendant's non-responsiveness and failure to answer discovery requests has caused discovery to remain outstanding and has slowed the process of this litigation. In an attempt to continue to move the case along, I obtained partial summary judgment in July 2008.

6. I am requesting additional time to retain an appropriately qualified expert to conduct an investigation and provide an opinion regarding Plaintiff's damages, and I am requesting approximately sixty (60) days from the date of the hearing on this matter to do so.

///

///

ORIGINAL

ORD
KATHERINE M. BARKER, ESQ.
Nevada Bar No.: 006084
LAW OFFICE OF KATHERINE M. BARKER
701 Bridger Avenue, Suite 500
Las Vegas, Nevada 89101
(702) 233-9303
Attorney for Counter-Defendant
ESTATE OF MICHAEL DAVID ADAMS

FIFTH JUDICIAL DISTRICT COURT
NYE COUNTY, NEVADA

ESTATE OF MICHAEL DAVID ADAMS, by
and through his mother JUDITH ADAMS,
individually and on behalf of the ESTATE,

Plaintiffs,

vs.

SUSAN FALLINI, DOES I-X and ROE
CORPORATIONS I-X, inclusive,

Defendants.

Case No.: CV24539

Dept. No.: 2P

SUSAN FALLINI,

Counterclaimant,

vs.

ESTATE OF MICHAEL DAVID ADAMS, by
and through his mother JUDITH ADAMS,
individually and on behalf of the ESTATE,

Counterdefendants.

ORDER GRANTING MOTION FOR SUMMARY JUDGMENT IN FAVOR OF
COUNTERDEFENDANT, ESTATE OF MICHAEL DAVID ADAMS

1 Plaintiffs' Motion For Partial Summary Judgment joined by Counter-Defendant
2 Estate of Michael David Adams, by and through his mother, Judith Adams, individually
3 and on behalf of the Estate, by and through their attorney, Katherine M. Barker, Esq.,
4 the matter having come on regularly for hearing before the Honorable Robert W. Lane
5 on Monday, July 14, 2008, Plaintiffs appearing by and through counsel, John P.
6 Aldrich, Esq. and no other counsel present, this matter having been fully briefed, and
7 oral argument having been presented by the parties, and the Court having been fully
8 apprised in the premises, and the Court having entered its Order Granting Plaintiffs'
9 Motion for Partial Summary Judgment on July 29, 2008 containing fourteen separate
10 findings of fact and the following Conclusions of Law:
11

- 12 1. Defendant Fallini had and duty to ensure that the subject cow was
13 not in the roadway at the time of the incident described in the
14 Complaint.
15
- 16 2. Defendant Fallini had a duty to follow the common practice of Nye
17 County, Nevada ranchers and to mark her cow with reflecting or
18 lamination tags.
19
- 20 3. Defendant Fallini breached the duty of care to the decedent, as
21 set forth in the Findings of Fact and Conclusions of Law.
22
- 23 4. As a result of Defendant Fallini's breach, the decedent, Michael
24 David Adams, was killed.
25
- 26 5. Defendant Fallini is liable for the damages to which Plaintiff is
27 entitled, in an amount to be determined at a later time.
28

1 The Court's findings have now fully disposed of Defendant Fallini's
2 Counterclaims filed against Counter-Defendant:

3
4 IT IS HEREBY ORDERED, ADJUDGED AND DECREED that
5 Summary Judgment in favor of Counter-Defendant is hereby GRANTED.

6
7 DATED this 23rd day of October, 2008

8
9 
DISTRICT JUDGE

10 Submitted by:

11 
12 LAW OFFICE OF KATHERINE M. BARKER

13
14 Katherine M. Barker, Esq.
15 Nevada Bar No. 006084
16 701 Bridger Avenue, Suite 500
17 Las Vegas, Nevada 89101
18 Attorney for Counter-Defendant
19 Estate of Michael David Adams
20
21
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1
2 **CERTIFICATE OF MAILING**

3 Pursuant to Nevada Rules of Civil Procedure 5(b), and the Court's Minute
4 Order, I hereby certify that service of the foregoing **ORDER GRANTING MOTION**
5 **FOR SUMMARY JUDGMENT IN FAVOR OF COUNTERDEFENDANT, ESTATE OF**
6 **MICHAEL DAVID ADAMS** was made this date by depositing a true copy of the same
7 for mailing, first class mail, at Las Vegas, Nevada, addressed as follows:

8 Harold Kuehn, Esq.
9 EARNEST, GIBSON & KUEHN
10 921 S. Hwy 160, #203
Pahrump, NV 89048

John P. Aldrich, Esq.
BLACK & LOBELLO
10777 W. Twain Avenue, #300
Las Vegas, NV 89135

11
12
13 *Elaine Messing*
14 EMPLOYEE OF LAW OFFICE OF
15 KATHERINE M. BARKER

16 DATED: 10-16-08
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NYE COUNTY CLERK
BY DEPUTY



KATHERINE M. BARKER, ESQ.
Nevada Bar No.: 006084
LAW OFFICE OF KATHERINE M. BARKER
701 Bridger Avenue, Suite 500
Las Vegas, Nevada 89101
(702) 233-9303
Attorney for Counter-Defendant
ESTATE OF MICHAEL DAVID ADAMS

FIFTH JUDICIAL DISTRICT COURT
NYE COUNTY, NEVADA

ESTATE OF MICHAEL DAVID ADAMS, by
and through his mother JUDITH ADAMS,
individually and on behalf of the ESTATE,

Plaintiffs,

vs.

SUSAN FALLINI, DOES I-X and ROE
CORPORATIONS I-X, inclusive,

Defendants.

Case No.: CV24539

Dept. No.: 2P

SUSAN FALLINI,

Counterclaimant,

vs.

ESTATE OF MICHAEL DAVID ADAMS, by
and through his mother JUDITH ADAMS,
individually and on behalf of the ESTATE,

Counterdefendants.

COUNTERDEFENDANT, ESTATE OF MICHAEL DAVID ADAMS, BY AND
THROUGH HIS MOTHER, JUDITH ADAMS, INDIVIDUALLY AND ON BEHALF OF

1 THE ESTATE, NOTICE OF NON-OPPOSITION TO PLAINTIFF'S MOTION TO RE-
2 OPEN DISCOVERY

3
4 Date of Hearing: November 10, 2008

5 Time of Hearing: 1:15 p.m.
6

7
8 Counter-Defendant Estate of Michael David Adams, by and through his mother,
9 Judith Adams, individually and on behalf of the Estate, by and through their attorney,
10 Katherine M. Barker, Esq. hereby notifies the Court and parties that Counter-
11 Defendant has no opposition to Plaintiff's request to re-open discovery.

12 Additionally, counsel for Counter-Defendant will not be appearing in Court on
13 the scheduled hearing date.
14

15 DATED this 23rd day of October, 2008

16
17 **LAW OFFICE OF KATHERINE M. BARKER**

18
19 Katherine M. Barker, Esq.
20 Nevada Bar No. 006084
21 701 Bridger Avenue, Suite 500
22 Las Vegas, Nevada 89101
23 (702) 233-9303
24 Attorneys for Counter-Defendant
25 Estate of Michael David Adams

26
27 CERTIFICATE OF MAILING
28

Pursuant to Nevada Rules of Civil Procedure 5(b), I hereby certify that service of the foregoing COUNTERDEFENDANT, ESTATE OF MICHAEL DAVID ADAMS, by and through his mother, JUDITH ADAMS, individually and on behalf of the Estate,

1 NOTICE OF NON-OPPOSITION TO PLAINTIFF'S MOTION TO RE-OPEN

2 DISCOVERY was made this date by depositing a true copy of the same for mailing,
3 first class mail, at Las Vegas, Nevada, addressed as follows:

4 Harold Kuehn, Esq.
5 EARNEST, GIBSON & KUEHN
6 921 S. Hwy 160, #203
Pahrump, NV 89048

John P. Aldrich, Esq.
BLACK & LOBELLO
10777 W. Twain Avenue, #300
Las Vegas, NV 89135

7
8
9 *Katherine Messing*
10 EMPLOYEE OF LAW OFFICE OF
11 KATHERINE M. BARKER

12 DATED: 10/23/08
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NYE COUNTY CLERK
BY DEPUTY



1 NOTC
2 KATHERINE M. BARKER, ESQ.
3 Nevada Bar No.: 6084
4 LAW OFFICE OF KATHERINE M. BARKER
5 701 Bridger Avenue, Suite 500
6 Las Vegas, Nevada 89101
7 (702) 233-9303
8 Attorney for Counter-Defendant
9 ESTATE OF MICHAEL DAVID ADAMS

10 FIFTH JUDICIAL DISTRICT COURT
11 COUNTY OF NYE, STATE OF NEVADA

12 ESTATE OF MICHAEL DAVID ADAMS, by
13 and through his mother JUDITH ADAMS,
14 individually and on behalf of the ESTATE,

15 Plaintiffs,

16 vs.

17 SUSAN FALLINI, DOES I-X and ROE
18 CORPORATIONS I-X, inclusive,

19 Defendants.

Case No.: CV24539

Dept. No.: 2P

20 SUSAN FALLINI,

21 Counterclaimant,

22 vs.

23 ESTATE OF MICHAEL DAVID ADAMS, by
24 and through his mother JUDITH ADAMS,
25 individually and on behalf of the ESTATE,

26 Counterdefendants.

27 NOTICE OF ENTRY OF ORDER

28 TO: ALL PARTIES AND THEIR RESPECTIVE COUNSEL OF RECORD.

1 PLEASE TAKE NOTICE that an ORDER GRANTING MOTION FOR
2 SUMMARY JUDGMENT IN FAVOR OF COUNTERDEFENDANT, ESTATE OF
3 MICHAEL DAVID ADAMS was entered in the above-entitled matter on the 23RD day of
4 October, 2008, a copy of which is attached hereto.

5 DATED this 6th day of November, 2008

6
7 **LAW OFFICE OF KATHERINE M. BARKER**

8
9 Katherine M. Barker, Esq.
10 Nevada Bar No. 6084
11 701 Bridger Avenue, Suite 500
12 Las Vegas, Nevada 89101
13 (702) 233-9303
14 Attorneys for Counter-Defendant
15 Estate of Michael David Adams
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CERTIFICATE OF MAILING

Pursuant to Nevada Rules of Civil Procedure 5(b), I hereby certify that service of the foregoing **NOTICE OF ENTRY OF ORDER** was made this date by depositing a true copy of the same for mailing, first class mail, at Las Vegas, Nevada, addressed as follows:

Harold Kuehn, Esq.
GIBSON & KUEHN, LLP
1601 E. Basin Avenue, Suite 101
Pahrump, NV 89060
Attorney for Defendant/Counterclaimant
Susan Fallini

John P. Aldrich, Esq.
ALDRICH & BRYSON, LLP
1601 S. Rainbow Blvd. #160
Las Vegas, NV 89146
Attorney for Plaintiff
Estate of Michael David Adams, by and
through his mother Judith Adams

Edward J. Achrem, Esq.
EDWARD J. ACHREM & ASSOC.
512 South Tonopah Dr., Ste. 100
Las Vegas, NV 89106
Attorney for Plaintiff
Estate of Michael David Adams, by and
through his mother Judith Adams

Katherine Messing

EMPLOYEE OF LAW OFFICE OF
KATHERINE M. BARKER

DATED: 11-6-08

ORIGINAL

ORD
KATHERINE M. BARKER, ESQ.
Nevada Bar No.: 006084
LAW OFFICE OF KATHERINE M. BARKER
701 Bridger Avenue, Suite 500
Las Vegas, Nevada 89101
(702) 233-9303
Attorney for Counter-Defendant
ESTATE OF MICHAEL DAVID ADAMS

FIFTH JUDICIAL DISTRICT COURT
NYE COUNTY, NEVADA

ESTATE OF MICHAEL DAVID ADAMS, by
and through his mother JUDITH ADAMS,
individually and on behalf of the ESTATE,

Plaintiffs,

vs.

SUSAN FALLINI, DOES I-X and ROE
CORPORATIONS I-X, inclusive,

Defendants.

Case No.: CV24539

Dept. No.: 2P

SUSAN FALLINI,

Counterclaimant,

vs.

ESTATE OF MICHAEL DAVID ADAMS, by
and through his mother JUDITH ADAMS,
individually and on behalf of the ESTATE,

Counterdefendants.

**ORDER GRANTING MOTION FOR SUMMARY JUDGMENT IN FAVOR OF
COUNTERDEFENDANT, ESTATE OF MICHAEL DAVID ADAMS**

1 Plaintiffs' Motion For Partial Summary Judgment joined by Counter-Defendant
2 Estate of Michael David Adams, by and through his mother, Judith Adams, individually
3 and on behalf of the Estate, by and through their attorney, Katherine M. Barker, Esq.,
4 the matter having come on regularly for hearing before the Honorable Robert W. Lane
5 on Monday, July 14, 2008, Plaintiffs appearing by and through counsel, John P.
6 Aldrich, Esq. and no other counsel present, this matter having been fully briefed, and
7 oral argument having been presented by the parties, and the Court having been fully
8 apprised in the premises, and the Court having entered its Order Granting Plaintiffs'
9 Motion for Partial Summary Judgment on July 29, 2008 containing fourteen separate
10 findings of fact and the following Conclusions of Law:
11

- 12 1. Defendant Fallini had and duty to ensure that the subject cow was
13 not in the roadway at the time of the incident described in the
14 Complaint.
15
- 16 2. Defendant Fallini had a duty to follow the common practice of Nye
17 County, Nevada ranchers and to mark her cow with reflecting or
18 lamination tags.
19
- 20 3. Defendant Fallini breached the duty of care to the decedent, as
21 set forth in the Findings of Fact and Conclusions of Law.
22
- 23 4. As a result of Defendant Fallini's breach, the decedent, Michael
24 David Adams, was killed.
25
- 26 5. Defendant Fallini is liable for the damages to which Plaintiff is
27 entitled, in an amount to be determined at a later time.
28

1 The Court's findings have now fully disposed of Defendant Fallini's
2 Counterclaims filed against Counter-Defendant:

3
4 IT IS HEREBY ORDERED, ADJUDGED AND DECREED that
5 Summary Judgment in favor of Counter-Defendant is hereby GRANTED.

6
7 DATED this 23rd day of October, 2008

8
9 
DISTRICT JUDGE

10 Submitted by:

11 
12 LAW OFFICE OF KATHERINE M. BARKER

13
14 Katherine M. Barker, Esq.
15 Nevada Bar No. 006084
16 701 Bridger Avenue, Suite 500
17 Las Vegas, Nevada 89101
18 Attorney for Counter-Defendant
19 Estate of Michael David Adams
20
21
22
23
24
25
26
27
28

1
2 **CERTIFICATE OF MAILING**

3 Pursuant to Nevada Rules of Civil Procedure 5(b), and the Court's Minute
4 Order, I hereby certify that service of the foregoing **ORDER GRANTING MOTION**
5 **FOR SUMMARY JUDGMENT IN FAVOR OF COUNTERDEFENDANT, ESTATE OF**
6 **MICHAEL DAVID ADAMS** was made this date by depositing a true copy of the same
7 for mailing, first class mail, at Las Vegas, Nevada, addressed as follows:

8 Harold Kuehn, Esq.
9 EARNEST, GIBSON & KUEHN
10 921 S. Hwy 160, #203
11 Pahrump, NV 89048

John P. Aldrich, Esq.
BLACK & LOBELLO
10777 W. Twain Avenue, #300
Las Vegas, NV 89135

12
13 *Elaine Messing*
14 EMPLOYEE OF LAW OFFICE OF
15 KATHERINE M. BARKER

16 DATED: 10-16-08
17
18
19
20
21
22
23
24
25
26
27
28

1 **ORDR**

John P. Aldrich, Esq.

2 Nevada Bar No. 6877

ALDRICH LAW FIRM, LTD.

3 3654 N. Rancho Drive

Las Vegas, Nevada 89130

4 (702) 853-5490

Attorneys for Plaintiff

FILED
FIFTH JUDICIAL DISTRICT

FEB 17 2009

DEBRA BENNETT Nye County Clerk

Deputy

6
7 **THE FIFTH JUDICIAL DISTRICT COURT**
8 **THE STATE OF NEVADA**
9 **COUNTY OF NYE**

9 Estate of MICHAEL DAVID ADAMS,)
10 by and through his mother JUDITH)
11 ADAMS, individually and on behalf of the)
12 Estate,)

11 Plaintiffs,

12 vs.

13 SUSAN FALLINI, DOES I-X and ROE)
14 CORPORATIONS I-X, inclusive,)

15 Defendants.

16 SUSAN FALLINI,

17 Counterclaimant,

18 vs.

19 Estate of MICHAEL DAVID ADAMS,)
20 by and through his mother JUDITH)
21 ADAMS, individually and on behalf of the)
22 Estate,)

21 Counterdefendants.

23 **ORDER GRANTING PLAINTIFFS' MOTION TO REOPEN**
24 **DISCOVERY AND FOR AN EXTENSION OF TIME TO COMPLETE DISCOVERY**

25 THIS MATTER having come on for hearing on Monday, November 10, 2008, on Plaintiff's
26 Motion to Reopen Discovery and for an Extension of Time to Complete Discovery before the
27 Honorable Robert W. Lane, and John P. Aldrich, Esq. appearing on behalf of the Plaintiffs, no other

counsel present, the court having reviewed having reviewed all pleadings and papers on file herein,
no opposition having been presented, and good cause appearing therefore,

IT IS HEREBY ORDERED that Plaintiffs' Motion to Reopen Discovery and for an
Extension of Time to Complete Discovery is **GRANTED**. The Court imposes the following
deadlines:

Last day to provide expert testimony: December 22, 2008

Last day for rebuttal experts: January 15, 2009

Discovery cutoff: February 10, 2009

Last day to file dispositive motions: February 28, 2009.

IT IS SO ORDERED.

DATED this 16th day of Feb, 2009.

ROBERT W. LANE

DISTRICT COURT JUDGE

Respectfully submitted by:

ALDRICH LAW FIRM, LTD.

John P. Aldrich
John P. Aldrich
Nevada Bar No.: 6877
3654 N. Rancho Drive
Las Vegas, Nevada 89130
(702) 853-5490
Attorneys for Plaintiff

2-19-09

1 **NEO**
John P. Aldrich, Esq.
2 Nevada Bar No. 6877
ALDRICH LAW FIRM, LTD.
3 3654 N. Rancho Drive
Las Vegas, Nevada 89130
4 (702) 853-5490
Attorneys for Plaintiff
5

6
7 **THE FIFTH JUDICIAL DISTRICT COURT**
THE STATE OF NEVADA
8 **COUNTY OF NYE**

9 Estate of MICHAEL DAVID ADAMS,)
by and through his mother JUDITH)
10 ADAMS, individually and on behalf of the)
Estate,)

Case No.: CV24539
Dept.: 2P

11)
12 Plaintiffs,)
13)

14 vs.)

15 SUSAN FALLINI, DOES I-X and ROE)
16 CORPORATIONS I-X, inclusive,)

17 Defendants.)
18)

19 SUSAN FALLINI,)

20 Counterclaimant,)
21)

22 vs.)

23 Estate of MICHAEL DAVID ADAMS,)
by and through his mother JUDITH)
24 ADAMS, individually and on behalf of the)
Estate,)

25 Counterdefendants.)
26)

27 **NOTICE OF ENTRY OF ORDER**

28 ///

///

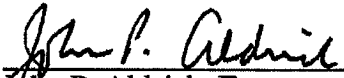
///



1 PLEASE TAKE NOTICE that an Order was entered in the above-entitled matter on February
2 17, 2009, a copy of which is attached hereto.

3 DATED this 19 day of February, 2009.

4 ALDRICH LAW FIRM, LTD.

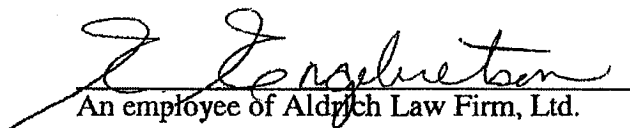
5 
6 John P. Aldrich, Esq.
7 Nevada State Bar No. 6877
8 3654 N. Rancho Drive
9 Las Vegas, Nevada 89130
(702) 853-5490
Attorneys for Plaintiff

10 **CERTIFICATE OF SERVICE**

11 I HEREBY CERTIFY that on the 19th day of February, 2009, I mailed a copy of the
12 NOTICE OF ENTRY OF ORDER, in a sealed envelope, to the following and that postage was fully
13 paid thereon:

14 Harold Kuehn, Esq.
15 Gibson, & Kuehn
16 1601 E. Basin Avenue, Suite 101
Pahrump, NV 89060
Attorney for Defendant/Counterclaimant

17
18 Katherine M. Barker, Esq.
19 Law Office of Katherine M. Barker
701 Bridger Ave, Ste. 500
20 Las Vegas, NV 89101
Attorney for Counterdefendant
Estate of Michael David Adams

21
22 
23 An employee of Aldrich Law Firm, Ltd.
24
25
26
27
28

1 **ORDER**

John P. Aldrich, Esq.

2 Nevada Bar No. 6877

ALDRICH LAW FIRM, LTD.

3 3654 N. Rancho Drive

Las Vegas, Nevada 89130

4 (702) 853-5490

Attorneys for Plaintiff

FILED
FIFTH JUDICIAL DISTRICT

FEB 17 2009

DEBRA BENNETT Nye County Clerk

Deputy

6
7 **THE FIFTH JUDICIAL DISTRICT COURT**
8 **THE STATE OF NEVADA**
COUNTY OF NYE

9 Estate of MICHAEL DAVID ADAMS,
10 by and through his mother JUDITH
ADAMS, individually and on behalf of the
Estate,

11
12 **Plaintiffs,**

13 vs.

14 **SUSAN FALLINI, DOES I-X and ROE**
CORPORATIONS I-X, inclusive,

15 **Defendants.**

16 **SUSAN FALLINI,**

17 **Counterclaimant,**

18 vs.

19 Estate of MICHAEL DAVID ADAMS,
20 by and through his mother JUDITH
ADAMS, individually and on behalf of the
Estate,

21 **Counterdefendants.**

Case No.: CV24539
Dept.: 2P

23 **ORDER GRANTING PLAINTIFFS' MOTION TO REOPEN**
24 **DISCOVERY AND FOR AN EXTENSION OF TIME TO COMPLETE DISCOVERY**

25 THIS MATTER having come on for hearing on Monday, November 10, 2008, on Plaintiff's
26 Motion to Reopen Discovery and for an Extension of Time to Complete Discovery before the
27 Honorable Robert W. Lane, and John P. Aldrich, Esq. appearing on behalf of the Plaintiffs, no other

counsel present, the court having reviewed having reviewed all pleadings and papers on file herein,
no opposition having been presented, and good cause appearing therefore,

IT IS HEREBY ORDERED that Plaintiffs' Motion to Reopen Discovery and for an
Extension of Time to Complete Discovery is **GRANTED**. The Court imposes the following
deadlines:

Last day to provide expert testimony: December 22, 2008

Last day for rebuttal experts: January 15, 2009

Discovery cutoff: February 10, 2009

Last day to file dispositive motions: February 28, 2009.

IT IS SO ORDERED.

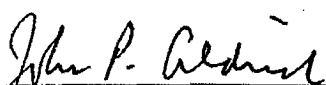
DATED this 16th day of Feb, 2009.

ROBERT W. LANE

DISTRICT COURT JUDGE

Respectfully submitted by:

ALDRICH LAW FIRM, LTD.


John P. Aldrich
Nevada Bar No.: 6877
3654 N. Rancho Drive
Las Vegas, Nevada 89130
(702) 853-5490
Attorneys for Plaintiff

1 MOT
John P. Aldrich
2 Nevada Bar No.: 6877
ALDRICH LAW FIRM, LTD.
3 1601 S. Rainbow Blvd., Suite 160
Las Vegas, Nevada 89146
4 (702) 853-5490
Attorney for Plaintiff
5

6 THE FIFTH JUDICIAL DISTRICT COURT
7 THE STATE OF NEVADA
8 COUNTY OF NYE

9 Estate of MICHAEL DAVID ADAMS, by
and through his mother JUDITH ADAMS,
10 individually and on behalf of the Estate,

11 Plaintiff,

12 v.

13 SUSAN FALLINI, ; DOES I-X, and ROE
14 CORPORATIONS I-X, inclusive,

15 Defendants.
16

17 SUSAN FALLINI,

18 Counterclaimant,

19 vs.

20 Estate of MICHAEL DAVID ADAMS, by
and through his mother JUDITH ADAMS,
21 individually and on behalf of the Estate

22 Counterdefendants.
23

Case No.: CV24539
Dept. No.: 2P

24 PLAINTIFF'S MOTION TO COMPEL DEFENDANT'S PRODUCTION OF
25 DOCUMENTS

26 COMES NOW Plaintiff, JUDITH ADAMS for the ESTATE OF MICHAEL DAVID
27 ADAMS and individually, by and through her counsel of record, John P. Aldrich, Esq., of the
28 Aldrich Law Firm, Ltd., and hereby moves this Court for an order compelling Defendant SUSAN
FALLINI to comply with discovery pursuant to NRCP 16.1 and NRCP 37 and for related attorney's



1 fees and costs in the amount of \$1,650.00 as a result of Defendant SUSAN FALLINI'S failure to
2 comply with discovery rules.

3 This Motion is made and based upon all papers, pleadings and records on file herein, the
4 points and authorities and any exhibits attached hereto, and such oral argument as the court may
5 entertain at the time of the hearing on this matter.

6 DATED this 20 day of March, 2009.

7 **ALDRICH LAW FIRM, LTD.**

8
9 By John P. Aldrich
10 John P. Aldrich
11 Nevada Bar No. 6877
12 **ALDRICH LAW FIRM, LTD.**

13 1601 S. Rainbow Blvd., Suite 160
14 Las Vegas, NV 89146
15 (702) 853-5490
16 *Attorneys for Plaintiff*

17 **POINTS AND AUTHORITIES**

18 **I.**

19 **FACTS**

20 This lawsuit arises out of an incident that occurred on or about July 7, 2005. At
21 approximately 9:00 p.m. on that day, MICHAEL DAVID ADAMS ("Adams") was driving his 1994
22 Jeep Wrangler on SR 375 highway in Nye County, when he collided with a Hereford cow ("cow")
23 owned by Defendant SUSAN FALLINI ("Fallini"). Adams died at the scene as a result of the
24 impact.

25 The decedent's mother, JUDITH ADAMS ("Judith") filed a complaint on behalf of Adam's
26 estate on November 29, 2006 and properly served Fallini with process. Fallini filed her Answer and
27 Counterclaim on March 14, 2007. On October 31, 2007, Plaintiff submitted interrogatories to
28 Fallini. (Exhibit 1.) Those interrogatories were never answered. Adams also submitted requests
for admissions and its first set of requests for production of documents on October 31, 2007.
(Exhibits 2 and 3, respectively.) A second set of requests for production of documents were
submitted to Fallini on July 2, 2008, requesting information as to Fallini's insurance policies and/or

1 carriers that may provide coverage for damages that occurred as a result of the incident . (Exhibit
2 4.)

3 Fallini never responded to any of these requests To this date, Fallini has not produced any
4 responses of any kind to Plaintiff's written discovery requests. Despite an extension requested by
5 Plaintiff and granted by the Court, the discovery period has lapsed without any responses being
6 provided by Defendant.

7 On or about April 7, 2008 (and again on May 14, 2008 with a Certificate of Service), Plaintiff
8 filed a Motion for Partial Summary Judgment. Defendant did not oppose that motion and the Court
9 granted that Motion on July 30, 2008. Notice of entry of the Order Granting Plaintiff's Motion for
10 Summary Judgment was served on Defendant on August 15, 2008. (Exhibit 5.)

11 Plaintiff has attempted to amicably resolve this discovery issue and obtain a copy of
12 Defendant's applicable insurance policies, but to no avail. On February 24, 2009, Plaintiff sent
13 letters to Defendant's counsel seeking responses to the discovery. (Exhibit 6.)

14 Plaintiff's counsel, Mr. Aldrich, has attempted to discuss this discovery issue with
15 Defendant's counsel, Mr. Kuehn, as well. On or about March 6, 2009, Plaintiff's counsel contacted
16 the office of Defendant's counsel. Mr. Aldrich was informed that Mr. Kuehn was not available. Mr.
17 Aldrich left a message with Mr. Aldrich's phone number and asked that Mr. Kuehn return the call.
18 No return call ever came. (Exhibit 7.)

19 On March 18, 2009, Mr. Aldrich again contacted the office of Mr. Kuehn. Mr. Aldrich was
20 informed that Mr. Kuehn was not available. Mr. Aldrich left a message with Mr. Aldrich's phone
21 number and asked that Mr. Kuehn return the call. No return call ever came. (Exhibit 7.)

22 As of the date of the signing of this motion, Plaintiff still has received no discovery from the
23 Defendant. Due to the egregious nature of Defendant's failure to comply with discovery rules by
24 providing responses to routine requests, Plaintiff respectfully requests that this Court enter an order
25 compelling Defendant to comply with discovery rules and provide appropriate responses, including
26 information regarding any insurance policies that may provide coverage for the incident as
27 contemplated in the Plaintiff's second request for documents.

II.

LEGAL ARGUMENT

**A. DEFENDANT FALLINI SHOULD BE COMPELLED TO PRODUCE
DISCOVERY PURSUANT TO NRCP 34 and 37(a) FOR FAILING TO PROVIDE
ANY DISCOVERY RESPONSES**

Pursuant to NRCP 34, Plaintiff has the right to request documents which are discoverable pursuant to NRCP 26. According to NRCP 34, Defendant has 30 days from receipt of the requests for production of documents to provide appropriate responses. Defendant has provided no responses whatsoever, nor has Defendant objected to any request.

NRCP 34(b) permits a party to seek relief under NRCP 37(a) if the party who receives discovery requests fails to respond appropriately. NRCP 37(a) provides that the Court may enter an order compelling a non-responsive party to disclose the requested information.

Pursuant to NRCP 34(b) and 37(a), Plaintiff respectfully requests that Defendant be compelled to respond to the requests for production of documents propounded upon Defendant by Plaintiff, including a specific order that Defendant provide any and all information related to insurance policies of Defendant that do or may provide coverage for the subject matter. The Court has already found that Defendant is liable for the death of Mr. Adams, and Plaintiff is entitled to the information sought before trial.

**B. DEFENDANT FALLINI SHOULD BE COMPELLED TO PRODUCE DISCOVERY
PURSUANT TO NRCP 16.1 AND NRCP 37 FOR FAILING TO PROVIDE ANY
DISCOVERY RESPONSES**

NRCP 16.1 states in pertinent part:

RULE 16.1. MANDATORY PRE-TRIAL DISCOVERY REQUIREMENTS

(a) Attendance at Early Case Conference. Within thirty (30) days after service of the answer by the first answering defendant, and thereafter as each defendant answers the original complaint or an amended complaint, the attorneys for the parties, who must possess authority to act and knowledge of the case obtained after reasonable inquiry under the circumstances, shall meet in person for the purpose of complying with subdivision (b) of this rule. The attorney for the plaintiff shall designate the time and place of each meeting which must be held in the county where the action was filed, unless the parties agree upon a different location. The attorneys may agree to continue the time for the case conference for an additional period of not more than ninety (90) days. The court, in its discretion and for good cause shown, may also continue the time for the conference. Absent compelling and extraordinary circumstances, neither the court nor the parties may extend the time to a day more than one hundred and eighty (180) days after service of the summons and complaint.

1 upon the defendant in question. The time for holding a case conference with respect
2 to a defendant who has filed a motion pursuant to Rule 12(b)(2)-(4) is tolled until
entry of an order denying the motion.

3 (b) Meet and Confer Requirements; Mandatory Discovery Exchanges. At each
4 case conference, the attorneys must:

5 (1) Exchange all documents then reasonably available to a party which are
6 then contemplated to be used in support of the allegations or denials of the pleading
filed by that party, including rebuttal and impeachment documents;

7 (2) Request with reasonable specificity from the opposing party all other
8 documents, discoverable within the scope of Rule 26(b), that may support the
9 allegations of the pleading filed by the requesting party, including rebuttal and
impeachment documents. The opponent must (A) provide the additional
documents, or (B) agree to provide the additional documents as soon as they are
reasonably available, or (C) explain why the documents will not be provided;

10 ...

11 (Emphasis Added). If a party fails to comply with NRCP 16.1, the adverse party may compel
12 discovery pursuant to NRCP 37(a), as set forth in Section A above.

13 Defendant has failed to provide NRCP 16.1 disclosures and has failed to respond to written
14 discovery propounded by Plaintiff. Plaintiff submitted her initial interrogatories to Defendant on
15 October 31, 2007, and continued sending various discovery requests through July 2, 2008. Plaintiffs
16 submitted interrogatories, requests for admission, and two sets of requests for production of
17 documents, including a request that Fallini produce all related insurance information regarding the
18 incident.

19 Despite these discovery requests, Defendant has failed and refused to cooperate or respond.
20 Plaintiff's counsel has made phone calls and submitted letters to Fallini's counsel notifying them of
21 these discovery requests to no avail. (Exhibits 6 and 7.) Nevertheless, Fallini failed to provide any
22 of the information as requested despite the extension.

23 Plaintiff respectfully requests that this Court grant this motion to compel and order Defendant
24 to provide appropriate responses to the Plaintiff's requests for production of documents, with a
25 specific order to produce a copy of any and all documentation relating to any insurance policy that
26 does or may provide coverage to Defendant for the instant case.

1 **C. DEFENDANT FALLINI SHOULD BE HELD SUBJECT TO SANCTIONS UNDER**
2 **NRPC 37 FOR FAILURE TO FOLLOW DISCOVERY RULES**

3 Rule 37(a)(4) states in pertinent part:

4 NRPC 37(a)(4) Expenses and Sanctions

5 (A) If the motion is granted or if the disclosure or requested
6 discovery is provided after the motion was filed, the court shall, after affording
7 an opportunity to be heard, require the party or deponent whose conduct
8 necessitated the motion or the party or attorney advising such conduct or both
9 of them to pay to the moving party the reasonable expenses incurred in making
the motion, including attorney's fees, unless the court finds that the motion was
filed without the movant's first making a good faith effort to obtain the
disclosure or discovery without court action, or that the opposing party's
nondisclosure, response or objection was substantially justified, or that other
circumstances make an award of expenses unjust.

10 (B) If the motion is denied, the court may enter any protective order
11 authorized under Rule 26(c) and shall, after affording an opportunity to be heard,
12 require the moving party or the attorney filing the motion or both of them to pay to
13 the party or deponent who opposed the motion the reasonable expenses incurred in
opposing the motion, including attorney's fees, unless the court finds that the making
of the motion was substantially justified or that other circumstances make an award
of expenses unjust.

14 (C) If the motion is granted in part and denied in part, the court may enter
15 any protective order authorized under Rule 26(c) and may, after affording an
16 opportunity to be heard, apportion the reasonable expenses incurred in relation to the
motion among the parties and persons in a just manner.

17 (Emphasis Added).

18 Similarly, NRCP 37(d) provides:

19 **(d) Failure of Party to Attend at Own Deposition or Serve Answers to**
20 **Interrogatories or Respond to Request for Inspection.** If a party or an officer,
21 director, or managing agent of a party or a person designated under Rule 30(b)(6) or
22 31(a) to testify on behalf of a party fails (1) to appear before the officer who is to take
the deposition, after being served with a proper notice, or (2) to serve answers or
objections to interrogatories submitted under Rule 33, after proper service of the
interrogatories, or (3) to serve a written response to a request for inspection submitted
23 under Rule 34, after proper service of the request, the court in which the action is
pending on motion may make such orders in regard to the failure as are just, and
among others it may take any action authorized under subparagraphs (A), (B), and
24 (C) of subdivision (b)(2) of this rule. Any motion specifying a failure under clause
(2) or (3) of this subdivision shall include a certification that the movant has in good
25 faith conferred or attempted to confer with the party failing to answer or respond in
an effort to obtain such answer or response without court action. In lieu of any order
26 or in addition thereto, the court shall require the party failing to act or the attorney
advising that party or both to pay the reasonable expenses, including attorney's fees,
27 caused by the failure, unless the court finds that the failure was substantially justified
or that other circumstances make an award of expenses unjust.

1 In the instant case, Plaintiff's filing of this motion is necessitated by the fact that Defendant
2 has failed to produce any sort of discovery despite numerous formal requests, followed by phone
3 calls and letters for nearly a year and a half from the initial submission of interrogatories on
4 September 10, 2007. As shown above, Plaintiff has made several good faith efforts to procure the
5 discovery without court intervention, including re-opening discovery and extending the deadline.
6 Nevertheless, Defendant has shown no interest in cooperating with discovery guidelines, resulting
7 in the filing of this motion. Plaintiff therefore respectfully requests that sanctions be levied against
8 Defendant in the form of an award of attorneys' fees in the amount of \$1,600 and costs in the amount
9 of \$50.00, for a total of \$1,650.00, as set forth in Mr. Aldrich's affidavit.

10 **III.**

11 **CONCLUSION**

12 Based upon the above, Plaintiff's request an Order compelling Plaintiffs to provide discovery
13 as requested, particularly responses to Plaintiff's requests for production of documents. Plaintiff
14 further requests that the order specifically mention that Defendant must provide any and all
15 documents relating in any way to any insurance policy which does or may apply to the instant case.
16 Finally, Plaintiff requests an Order granting attorney's fees and costs for having to prepare the
17 current Motion and travel to Pahrump, Nevada for the hearing.

18 DATED this 22 day of March, 2009.

19 **ALDRICH LAW FIRM, LTD.**

20
21 By John P. Aldrich
22 John P. Aldrich
23 Nevada Bar No. 6877
24 **ALDRICH LAW FIRM, LTD.**
25 1601 S. Rainbow Blvd., Suite 160
26 Las Vegas, NV 89146
27 (702) 853-5490
28 *Attorneys for Plaintiff*

1 CERTIFICATE OF SERVICE

2 I HEREBY CERTIFY that on the 20th day of March, 2009, I mailed a copy of
3 PLAINTIFF'S MOTION TO COMPEL DEFENDANT'S PRODUCTION OF DOCUMENTS in a
4 sealed envelope, to the following and that postage was fully paid thereon:

5 Harold Kuehn, Esq.
6 Gibson, & Kuehn
7 1601 E. Basin Avenue, Suite 101
8 Pahrump, NV 89060
Attorney for Defendant/Counterclaimant

9 Katherine M. Barker, Esq.
10 Law Office of Katherine M. Barker
11 701 Bridger Ave, Ste. 500
12 Las Vegas, NV 89101
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Estate of Michael David Adams

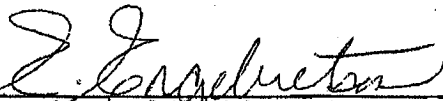
13 
14 An employee of Aldrich Law Firm, Ltd.

EXHIBIT 1

1 **REQT**

John P. Aldrich

2 Nevada Bar No. 6877

Stacy D. Harrop

3 Nevada Bar No. 9826

ALDRICH & BRYSON LLP

4 1601 S. Rainbow Blvd., Suite 160

Las Vegas, Nevada 89146

5 (702) 853-5490

(702) 853-5491 (fax)

6 *Attorneys for Plaintiffs*

7
8 **THE FIFTH JUDICIAL DISTRICT COURT**
9 **THE STATE OF NEVADA**
10 **COUNTY OF NYE**

11 Estate of MICHAEL DAVID ADAMS,
12 by and through his mother JUDITH
13 ADAMS, individually and on behalf of the
14 Estate,

15 Plaintiffs,

16 vs.
17 SUSAN FALLINI, DOES I-X and ROE
18 CORPORATIONS I-X, inclusive,

19 Defendants.

20 SUSAN FALLINI,

21 Counterclaimant,

22 vs.

23 Estate of MICHAEL DAVID ADAMS,
24 by and through his mother JUDITH
25 ADAMS, individually and on behalf of the
26 Estate,

27 Counterdefendants.

Case No.: CV24539
Dept.: 2P

28 **PLAINTIFFS' FIRST SET OF REQUESTS FOR ADMISSION TO DEFENDANT**
FALLINI

TO: SUSAN FALLINI, Defendant/Counterclaimant

TO: HAROLD KUEHN, ESQ., attorney for Defendant/Counterclaimant

Plaintiffs, Estate of MICHAEL DAVID ADAMS, by and through his mother JUDITH
ADAMS, by and through their attorneys, Aldrich & Bryson, LLP, hereby request that Defendant,
pursuant to Nev. R. Civ. P. 36 respond to the following Requests for Admission within thirty (30)
days of service hereof:

1 **REQUEST FOR ADMISSION NO. 1:**

2 Admit that your property is not located within "open range."

3 NOTE: As used throughout these requests "open range" is to be defined as set forth in NRS
4 568.355.

5 **REQUEST FOR ADMISSION NO. 2:**

6 Admit that you are the owner of the cow that is mentioned in of the Complaint on file herein
7 (hereafter "subject cow").

8 **REQUEST FOR ADMISSION NO. 3:**

9 Admit that it is the common practice of Nye County ranchers to mark their cattle with
10 reflective or luminescent tags.

11 **REQUEST FOR ADMISSION NO. 4:**

12 Admit that the subject cow was not marked with a reflective or luminescent tag.

13 **REQUEST FOR ADMISSION NO. 5:**

14 Admit that the subject cow crossed a fence to arrive at the location of the subject accident
15 described in the Complaint on file herein.

16 **REQUEST FOR ADMISSION NO. 6:**

17 Admit that your cattle have previously been involved in incidents with motor vehicles on the
18 roadway.

19 **REQUEST FOR ADMISSION NO. 7:**

20 Admit that you do not track the location of your cattle while they are grazing away from your
21 property.

22 **REQUEST FOR ADMISSION NO. 8:**

23 Admit that you do not remove your cattle from the roadway when notified that the cattle are
24 in a roadway.

25 **REQUEST FOR ADMISSION NO. 9:**

26 Admit that the subject cow was not visible at night.

27 **REQUEST FOR ADMISSION NO. 10:**

28 Admit that you were aware that the subject cow was not visible at night prior to the incident

1 that is the subject of the Complaint on file herein.

2 **REQUEST FOR ADMISSION NO. 11:**

3 Admit that the subject cow was in the roadway of SR 375 at the time of the incident that is
4 the subject of the Complaint on file herein.

5 **REQUEST FOR ADMISSION NO. 12:**

6 Admit that the subject cow's presence in the roadway of SR 375 was the cause of the motor
7 vehicle accident that is the subject of the Complaint on file herein.

8 **REQUEST FOR ADMISSION NO. 13:**

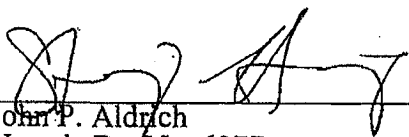
9 Admit that you did not know the location of the subject cow at the time of the incident that
10 is the subject of the Complaint on file herein.

11 **REQUEST FOR ADMISSION NO. 14:**

12 Admit that the presence of a reflective or luminescent tag on the subject cow would have
13 made the subject cow visible at the time of the incident that is the subject of the Complaint on file
14 herein.

15 DATED this 31st day of October, 2007.

16 **ALDRICH & BRYSON, LLP**

17
18 
19 John P. Aldrich
Nevada Bar No. 6877
20 Stacy D. Harrop
Nevada Bar No. 9826
21 1601 S. Rainbow Blvd., Suite 160
Las Vegas, Nevada 89146
22 (702) 853-5490
(702) 853-5491 (fax)
23 Attorneys for Plaintiffs
24
25
26
27
28

CERTIFICATE OF MAILING

I hereby certify that on this 31st day of October, 2007, service of the foregoing
PLAINTIFFS' FIRST SET OF REQUESTS FOR ADMISSION TO DEFENDANT FALLINI
was made this date by depositing a true and correct copy of the same for mailing in Las Vegas,
Nevada, addressed to:

Harold Kuehn, Esq.
Gibson, & Kuehn
921 S. Highway 160, #203
Pahrump, NV 89048

P.O. Box 1411
Tonopah, NV 89049
Attorney for Defendant/Counterclaimant

Katherine M. Peck, Esq.
Peck Law Offices
701 Bridger Ave, Ste. 500
Las Vegas, NV 89106
*Attorney for Counterdefendant
Estate of Michael David Adams*


An employee of ALDRICH & BRYSON, LLP

EXHIBIT 2

1 **REQT**

John P. Aldrich

2 Nevada Bar No. 6877

Stacy D. Harrop

3 Nevada Bar No. 9826

ALDRICH & BRYSON LLP

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Las Vegas, Nevada 89146

5 (702) 853-5490

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6 *Attorneys for Plaintiffs*

7
8 **THE FIFTH JUDICIAL DISTRICT COURT**
9 **THE STATE OF NEVADA**
COUNTY OF NYE

10 Estate of MICHAEL DAVID ADAMS,
11 by and through his mother JUDITH
ADAMS, individually and on behalf of the
Estate,

12 Plaintiffs,

13 vs.
14 SUSAN FALLINI, DOES I-X and ROE
CORPORATIONS I-X, inclusive,

15 Defendants.

Case No.: CV24539
Dept.: 2P

16 SUSAN FALLINI,

17 Counterclaimant,

18 vs.

19 Estate of MICHAEL DAVID ADAMS,
20 by and through his mother JUDITH
ADAMS, individually and on behalf of the
Estate,

21 Counterdefendants.
22

23 **PLAINTIFFS' FIRST SET OF REQUESTS FOR PRODUCTION OF DOCUMENTS TO**
DEFENDANT FALLINI

24 **TO: SUSAN FALLINI, Defendant/Counterclaimant**

25 **TO: HAROLD KUEHN, ESQ., attorney for Defendant/Counterclaimant**

26 Plaintiffs, Estate of MICHAEL DAVID ADAMS, by and through his mother JUDITH
27 ADAMS, by and through their attorneys, Aldrich & Bryson, LLP, hereby requests that Defendant,
28 pursuant to Nev. R. Civ. P. 34, respond to the following Requests for Production of Documents
within thirty (30) days of service hereof:

DEFINITIONS AND INSTRUCTIONS

The following preliminary definitions and instructions apply to each of the Requests set forth hereafter and are deemed to be incorporated therein.

A. When used in these Requests, the term "Defendant" or "Defendants," its plural or any synonym thereof, is intended to and shall embrace and include, in addition to the named party or parties, counsel for said party and all agents, servants, employees, representatives, investigators and others who are in possession of, or may have obtained, information for or on behalf of the named Defendant. As to each person, please state his or her full name, last known residence address and telephone number, and his or her job title, capacity or position at such last known employment.

B. As used in these Requests, the terms "document" and "writing" and the plural forms thereof shall mean all written, recorded or graphic matters, however produced or reproduced, of every kind and description, pertaining in any way to the subject matter of this action. The terms "document" and "writing" shall include, but are not limited to, any books, pamphlets, periodicals, memoranda (including those of telephone and oral conversations), e-mails, contracts, correspondence, agreements, application, financial records, security instruments, disbursements, checks, bank statements, time records, accounting or financial records, notes, diaries, logs, telegrams, or cables prepared, drafted, received or sent, tapes, transcripts, recordings, minutes of meetings, directives, work papers, charts, drawings, prints, flow sheets, photographs, film, computer printouts, medical and hospital records and reports, x-ray photographs, advertisements, catalogs, or any handwritten, recorded, transcribed, punched, tapes, filmed or graphic matters, however, produced or reproduced in Defendant's possession, custody or control or to which defendant has or has had access.

C. As used throughout these Requests, the term "you," its plural or any synonyms thereof, is intended to and shall embrace and include in addition to the named party or parties, counsel for such party or parties, and all agents, servants, employees, representatives, investigators and others who are in the possession of or who may have obtained information for or on behalf of the named party or parties.

D. As used throughout these Requests, the term "person," or its plural or any synonyms

thereof, is intended to and shall embrace and include any individual, partnership, corporation, company, association, government agency (whether federal, state, local or any agency of the government of a foreign country) or any other entity.

E. As used throughout these Requests, the term "communication," its plural or any synonyms thereof, is intended to and shall embrace and include all written communications, and with respect to all communications, shall include but is not limited to every discussion, conversation, conference, meeting, interview, telephone call or doctor or other professional service visit.

F. (a) As used throughout these Requests, the terms "identify," "identity," or "identification," their plural or any synonyms thereof, when used with reference to a person, shall mean to state the full name and address, and where applicable, the present position and business, if known, and each prior position and business.

(b) As used throughout these Requests, the terms "identify," "identity," or "identification," their plural or synonyms thereof, when used with reference to a document mean to state:

(1) The general nature of the document or object, i.e., whether it is a letter, a memorandum, a report, a drawing, a chart or tracing, a pamphlet, etc.;

(2) The general subject matter of the document or object;

(3) The name, current or last known business address and home address of the original author or draftsman (and, if different, the signor or signors), and of any person who has edited, corrected, revised or amended, or who has entered any initials or comment or notation thereon;

(4) The date thereof, including any date of any such editing, correcting, amending or revision;

(5) Any numerical designation appearing thereon, such as a file reference;

(6) The name of each recipient of a copy of the document or object; and

(7) The place where and the person now having custody or control of each such document or object, or if such document or object has been destroyed, the place of and reasons

1 for such destruction.

2 (c) As used throughout these Requests, the terms "identify," "identity," and
3 "identification," when used in reference to a communication, mean to state with respect to each
4 communication, the nature of the communication (telephone call, letter, etc.), the date of the
5 communication, the persons who were present at or participated in the communication or with whom
6 or from whom the communication was made, and the substance of the statement made by each
7 person involved in such communication.

8 G. All information is to be divulged which is in Defendant's possession or control, or can
9 be ascertained upon reasonable investigation of areas within your control. The knowledge of
10 Defendant's attorney is deemed to be Defendant's knowledge, so that, apart from privileged matters,
11 if Defendant's attorney has knowledge of the information sought to be elicited herein, said
12 knowledge must be incorporated into these answers, even if such information is unknown to
13 Defendant individually.

14 H. Whenever you are unable to state an answer to these Requests based upon your own
15 personal knowledge, please so state, and identify the person or persons you believe to have such
16 knowledge, what you believe the correct answer to be, and the facts upon which you base your
17 answer.

18 I. When a Request calls for an answer in more than one part, each part should be
19 separated so that the answer is clearly understandable.

20 J. Each Request should be construed independently. No Request should be construed
21 by reference to any other Request if the result is a limitation of the scope of the answer to such
22 Request.

23 K. "And" and "or" shall be construed disjunctively or conjunctively as necessary, in
24 order to bring within the scope of the Request all responses which might otherwise be construed to
25 be outside of its scope.

26 L. If a Request is objected to, in whole or in part, or if information responsive to a
27 Request is withheld, on the ground of privilege or otherwise, please set forth fully each objection,
28 describe generally the information which is withheld, and set forth the facts upon which Defendants

1 rely as the basis for each such objection.

2 M. These Requests are addressed to all Defendants. If, for a Request, the answers for all
3 Defendants would be the same, only one answer is necessary. If the Defendants' answers to a
4 Request would vary among them, state and identify answers for each Defendant separately.

5 N. Pursuant to Nev. R. Civ. P. 26, you shall supplement your responses according to the
6 following:

7 (a) A party is under a duty reasonably to supplement his response with respect
8 to any question directly addressed to (A) the identity and location of persons having knowledge of
9 discoverable matters and, (B), the identity of each person expected to be called as an expert witness
10 at trial, the subject matter on which he is expected to testify, and the substance of his testimony.

11 (b) A party is under a duty reasonably to amend a prior response if he obtains
12 information upon the basis of which (A) he knows that the response was incorrect when made, and
13 (B) he knows that the response though correct when made is no longer true and the circumstances
14 are such that a failure to amend the response is in substance a knowing concealment.

15 **REQUESTS FOR PRODUCTION**

16 **REQUEST FOR PRODUCTION NO. 1:**

17 Produce any and all documents identified, consulted or referred to in your answers to
18 Plaintiff's First Set of Interrogatories to Defendant Fallini, served concurrently herewith.

19 **REQUEST FOR PRODUCTION NO. 2:**

20 Produce any and all documents which support, refute, or in any way relate to the allegations
21 in the Complaint on file herein and/or your defenses thereto.

22 **REQUEST FOR PRODUCTION NO. 3:**

23 Produce copies of any and all written or recorded statements allegedly made by Plaintiff or
24 his representative, Defendant or any representative or agent of Defendant or any witness regarding
25 the allegations which form the basis of this litigation.

26 **REQUEST FOR PRODUCTION NO. 4:**

27 Produce copies of any and all non-transcribed witness statements allegedly made by Plaintiff,
28 Defendant or representative or agent of Defendant, or any witness regarding the allegations which

1 form the basis of this litigation.

2 **REQUEST FOR PRODUCTION NO. 5:**

3 Produce copies of any and all videotapes, photographs, charts, or diagrams which depict the
4 scene of the incident which forms the basis of this litigation.

5 **REQUEST FOR PRODUCTION NO. 6:**

6 Produce copies of any and all investigative reports and the underlying notes giving rise
7 thereto regarding the incident which forms the basis of this litigation

8 **REQUEST FOR PRODUCTION NO. 7:**

9 Produce any and all documents contemplated to be used in defense of the allegations in the
10 Complaint on file herein, including all rebuttal and impeachment documents.

11 **REQUEST FOR PRODUCTION NO. 8:**

12 Produce copies of any journals, diaries or other contemporary documentation regarding the
13 allegations which form the basis of this litigation.

14 **REQUEST FOR PRODUCTION NO. 9:**

15 Produce copies of any and all documents that relate to any contact or communications
16 between Defendant, or any agent or representative of Defendant, and the police with regard to the
17 incident described in the Complaint on file herein.

18 **REQUEST FOR PRODUCTION NO. 10:**

19 Produce copies of any photographs or depictions of the marks or brands used by you on your
20 cattle, including any ear tags.

21 **REQUEST FOR PRODUCTION NO. 11:**

22 Produce copies of any photographs or depictions of the marks or brands, including ear tags,
23 commonly used by cattle owners in Nye County, as provided in your answers to Plaintiff's
24 Interrogatories to Defendant Fallini served concurrently herewith.

25 **REQUEST FOR PRODUCTION NO. 12:**

26 Produce any and all documents that describe or depict the location of your property, the last
27 confirmed location of the subject cow prior to the incident, as provided in your answers to Plaintiff's
28 Interrogatories to Defendant Fallini served concurrently herewith, and the location of the incident

described in the Complaint on file herein.

REQUEST FOR PRODUCTION NO. 13:

Produce any and all documents that describe or depict the any fences or fenced property that the subject cow would have had to cross in order to arrive at the location of the subject incident from its last confirmed location, as provided in your answers to Plaintiff's Interrogatories to Defendant Fallini served concurrently herewith.

REQUEST FOR PRODUCTION NO. 14:

Produce any and all documents that describe or define whether the following locations are located in "open range" or in a "herd district": your property, the last confirmed location of the subject cow prior to the incident, or the location of the incident described in the Complaint on file herein.

REQUEST FOR PRODUCTION NO. 15:

Produce any and all documents that describe or depict the typical grazing area of your cattle as provided in your answers to Plaintiff's Interrogatories to Defendant Fallini served concurrently herewith.

REQUEST FOR PRODUCTION NO. 16:

Produce any and all documents that describe or relate to any and all policies, standards, procedures, or practices that you follow with regard to tracking the location of your cattle.

REQUEST FOR PRODUCTION NO. 17:

Produce any and all documents that describe or relate to any and all policies, standards, procedures, or practices that you typically follow when you discover or are notified that any of your cattle are located on a highway

REQUEST FOR PRODUCTION NO. 18:

Produce any and all documents that describe or relate to any incidents in the ten (10) years prior to the subject incident where your cattle were involved in an incident with any man-made or man-operated object on a roadway.

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1 **REQUEST FOR PRODUCTION NO. 19:**

2 Produce a list of all experts with whom you have communicated in connection with this
3 matter, and a copy of any reports received from those experts, along with a copy of all documents
4 which were provided to the expert and were utilized by said expert in forming an opinion, as well
5 as any notes of communication with said experts.

6 **REQUEST FOR PRODUCTION NO. 20:**

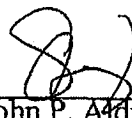
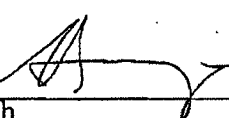
7 Produce any and all documents that support any and all of your denials to the Requests for
8 Admissions served concurrently herewith.

9 **REQUEST FOR PRODUCTION NO. 21:**

10 Produce any and all documents consulted, referenced, or utilized in responding to these
11 requests for production of documents.

12 DATED this 3rd day of October, 2007.

13 **ALDRICH & BRYSON, LLP**

14 
15 
16 John P. Aldrich
17 Nevada Bar No. 6877
18 Stacy D. Harrop
19 Nevada Bar No. 9826
20 1601 S. Rainbow Blvd., Suite 160
21 Las Vegas, Nevada 89146
22 (702) 853-5490
23 (702) 853-5491 (fax)
24 Attorneys for Plaintiffs
25
26
27
28

CERTIFICATE OF MAILING

I hereby certify that on this 21st day of October, 2007, service of the foregoing
PLAINTIFFS' FIRST SET OF REQUESTS FOR PRODUCTION OF DOCUMENTS TO
DEFENDANT FALLINI was made this date by depositing a true and correct copy of the same for
mailing in Las Vegas, Nevada, addressed to:

Harold Kuehn, Esq.
Gibson, & Kuehn
921 S. Highway 160, #203
Pahrump, NV 89048

P.O. Box 1411
Tonopah, NV 89049
Attorney for Defendant/Counterclaimant

Katherine M. Peck, Esq.
Peck Law Offices
701 Bridger Ave, Ste. 500
Las Vegas, NV 89106
Attorney for Counterdefendant
Estate of Michael David Adams


An employee of ALDRICH & BRYSON, LLP

EXHIBIT 3

1 **INTG**

John P. Aldrich

2 Nevada Bar No. 6877

Stacy D. Harrop

3 Nevada Bar No. 9826

ALDRICH & BRYSON LLP

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Las Vegas, Nevada 89146

5 (702) 853-5490

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6 *Attorneys for Plaintiffs*

7
8 **THE FIFTH JUDICIAL DISTRICT COURT**
9 **THE STATE OF NEVADA**
COUNTY OF NYE

10 Estate of MICHAEL DAVID ADAMS,
11 by and through his mother JUDITH
ADAMS, individually and on behalf of the
Estate,

12 Plaintiffs,

13 vs.
14 SUSAN FALLINI, DOES I-X and ROE
CORPORATIONS I-X, inclusive,

15 Defendants.

16 SUSAN FALLINI,

17 Counterclaimant,

18 vs.

19 Estate of MICHAEL DAVID ADAMS,
20 by and through his mother JUDITH
ADAMS, individually and on behalf of the
Estate,

21 Counterdefendants.
22

Case No.: CV24539
Dept.: 2P

23 **PLAINTIFF'S FIRST SET OF INTERROGATORIES TO DEFENDANT FALLINI**

24 **TO: SUSAN FALLINI, Defendant/Counterclaimant**

25 **TO: HAROLD KUEHN, ESQ., attorney for Defendant/Counterclaimant**

26 Plaintiffs, Estate of MICHAEL DAVID ADAMS, by and through his mother JUDITH
27 ADAMS, by and through their attorneys, Aldrich & Bryson, LLP, hereby requests that Defendant,
28 pursuant to Nev. R. Civ. P. 33, answer the following Interrogatories, in writing, under oath, within
thirty (30) days of service hereof:

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1 synonyms thereof, is intended to and shall embrace and include any individual, partnership,
2 corporation, company, association, government agency (whether federal, state, local or any agency
3 of the government of a foreign country) or any other entity.

4 E. As used throughout these Interrogatories, the term "communication," its plural or any
5 synonyms thereof, is intended to and shall embrace and include all written communications, and with
6 respect to all communications, shall include but is not limited to every discussion,
7 conversation, conference, meeting, interview, telephone call or doctor or other professional service
8 visit.

9 F. (a) As used throughout these Interrogatories, the terms "identify," "identity," or
10 "identification," their plural or any synonyms thereof, when used with reference to a person, shall
11 mean to state the full name and address, and where applicable, the present position and business, if
12 known, and each prior position and business.

13 (b) As used throughout these Interrogatories, the terms "identify," "identity," or
14 "identification," their plural or synonyms thereof, when used with reference to a document mean to
15 state:

16 (1) The general nature of the document or object, i.e., whether it is a letter,
17 a memorandum, a report, a drawing, a chart or tracing, a pamphlet, etc.;

18 (2) The general subject matter of the document or object;

19 (3) The name, current or last known business address and home address
20 of the original author or draftsman (and, if different, the signor or signors), and of any person who
21 has edited, corrected, revised or amended, or who has entered any initials or comment or notation
22 thereon;

23 (4) The date thereof, including any date of any such editing, correcting,
24 amending or revision;

25 (5) Any numerical designation appearing thereon, such as a file reference;

26 (6) The name of each recipient of a copy of the document or object; and

27 (7) The place where and the person now having custody or control of each
28 such document or object, or if such document or object has been destroyed, the place of and reasons

1 for such destruction.

2 (c) As used throughout these Interrogatories, the terms "identify," "identity," and
3 "identification," when used in reference to a communication, mean to state with respect to each
4 communication, the nature of the communication (telephone call, letter, etc.), the date of the
5 communication, the persons who were present at or participated in the communication or with whom
6 or from whom the communication was made, and the substance of the statement made by each
7 person involved in such communication.

8 G. All information is to be divulged which is in Defendant's possession or control, or can
9 be ascertained upon reasonable investigation of areas within your control. The knowledge of
10 Defendant's attorney is deemed to be Defendant's knowledge, so that, apart from privileged matters,
11 if Defendant's attorney has knowledge of the information sought to be elicited herein, said
12 knowledge must be incorporated into these answers, even if such information is unknown to
13 Defendant individually.

14 H. Whenever you are unable to state an answer to these Interrogatories based upon your
15 own personal knowledge, please so state, and identify the person or persons you believe to have such
16 knowledge, what you believe the correct answer to be, and the facts upon which you base your
17 answer.

18 I. When an Interrogatory calls for an answer in more than one part, each part should be
19 separated so that the answer is clearly understandable.

20 J. Each Interrogatory should be construed independently. No Interrogatory should be
21 construed by reference to any other Interrogatory if the result is a limitation of the scope of the
22 answer to such Interrogatory.

23 K. "And" and "or" shall be construed disjunctively or conjunctively as necessary, in order
24 to bring within the scope of the Interrogatory all responses which might otherwise be construed to
25 be outside of its scope.

26 L. If an Interrogatory is objected to, in whole or in part, or if information responsive to
27 an Interrogatory is withheld, on the ground of privilege or otherwise, please set forth fully each
28 objection, describe generally the information which is withheld, and set forth the facts upon which

1 Defendants rely as the basis for each such objection.

2 M. These Interrogatories are addressed to all Defendants. If, for an Interrogatory, the
3 answers for all Defendants would be the same, only one answer is necessary. If the Defendants'
4 answers to an Interrogatory would vary among them, state and identify answers for each Defendant
5 separately.

6 N. Pursuant to Nev. R. Civ. P. 26, you shall supplement your responses according to the
7 following:

8 (a) A party is under a duty reasonably to supplement his response with respect
9 to any question directly addressed to (A) the identity and location of persons having knowledge of
10 discoverable matters and, (B), the identity of each person expected to be called as an expert witness
11 at trial, the subject matter on which he is expected to testify, and the substance of his testimony.

12 (b) A party is under a duty reasonably to amend a prior response if he obtains
13 information upon the basis of which (A) he knows that the response was incorrect when made, and
14 (B) he knows that the response though correct when made is no longer true and the circumstances
15 are such that a failure to amend the response is in substance a knowing concealment.

16 INTERROGATORIES

17 INTERROGATORY NO. 1:

18 State your name, address, telephone number, Social Security number, date of birth and
19 birthplace.

20 INTERROGATORY NO. 2:

21 If you have ever been convicted of a felony or a misdemeanor having to do with truth or
22 veracity, set forth all relevant facts relating to such conviction including, but not limited to, the
23 nature of the crime and the date and place of each conviction, and any fine or sentence imposed.

24 INTERROGATORY NO. 3:

25 State the location of your property and whether it is located within "open range." If it is not
26 located within "open range," state any grazing restrictions that apply to your land, including any
27 requirements regarding the fencing in of your animals or keeping your animals off the roadways.

28 NOTE: As used throughout these interrogatories "open range" is to be defined as set forth in NRS

1 568.355.

2 **INTERROGATORY NO. 4:**

3 State the number of cattle that you own, how long you have owned the cattle, the purpose for
4 which you raise the cattle, and the number of employees or independent contractors you hire to keep
5 track of the cattle.

6 **INTERROGATORY NO. 5:**

7 Provide a description of the typical grazing area of your cattle, including the distance from
8 your ranch that your cattle typically graze and whether those areas of typical grazing are in "open
9 range." If those areas are not located within "open range," state any grazing restrictions that apply
10 to those areas, including any requirements regarding the fencing in of your animals or keeping your
11 animals off the roadways.

12 **INTERROGATORY NO. 6:**

13 State any and all policies, standards, procedures, or practices that you follow with regard to
14 tracking the location of your cattle. Include in your answer how often you confirm the location of
15 your cattle and how often that you confirm that all cattle are accounted for.

16 **INTERROGATORY NO. 7:**

17 State any and all policies, standards, procedures, or practices that you typically follow when
18 you discover or are notified that any of your cattle are located on a highway. Include in your answer
19 whether you follow different policies, standards, procedures, or practices depending on whether the
20 cattle is located in "open range" or not, and whether you proceed to remove your cattle from the
21 roadway and, if so, the time lapse that typically occurs between notification and your removal of the
22 cattle.

23 **INTERROGATORY NO. 8:**

24 State the last time you had confirmed the location of the cow that is the subject of this lawsuit
25 prior to the subject accident. Include in your answer a description of the confirmed location of that
26 cow, including whether that location was in "open range," the date on which that location was
27 confirmed and who confirmed the subject cow's location.

28 ///

1 **INTERROGATORY NO. 9:**

2 Based on the location as provided by you in the preceding interrogatory as the starting point,
3 provide whether the subject cow would have had to cross a fence or fenced property in order to arrive
4 at the location of the subject accident with Plaintiff. Include in your answer a description of the
5 location of any fences or fenced property that the cow would have had to cross.

6 **INTERROGATORY NO. 10:**

7 State all time within the five (5) years prior to the subject incident when you lost track of any
8 of your cattle or were notified that one or more of your cattle were on or near any roadway.

9 **INTERROGATORY NO. 11:**

10 State whether any of your other cattle, other than the cow that is a subject of this lawsuit,
11 were at or near the location of the subject accident with Plaintiff at the time of that accident or
12 shortly thereafter.

13 **INTERROGATORY NO. 12:**

14 Describe with particularity how your cattle are marked and/or branded, including the subject
15 cow. Include in you answer whether your cattle have ear tags and, if so, whether those ear tags are
16 florescent, reflect light or otherwise luminesce at night or when illuminated.

17 **INTERROGATORY NO. 13:**

18 Describe with particularity, based on your observations and personal knowledge of the
19 industry, the common practice among cattle owners in Nye County regarding how their cattle are
20 marked and/or branded. Include in you answer whether it is common practice in Nye County for
21 cattle to have ear tags and, if so, whether those ear tags are florescent, reflect light or otherwise
22 luminesce at night or when illuminated.

23 **INTERROGATORY NO. 14:**

24 Identify sufficiently to permit service of a subpoena any expert or consultant with whom you
25 have communicated or intend to utilize at trial or arbitration in connection with the occurrence which
26 is the subject matter of this action, and state the specific area of knowledge of each such person, their
27 expected testimony, and the date when each such person was first contacted.

28 ///

1 **INTERROGATORY NO. 15:**

2 Identify sufficiently to permit service of a subpoena, duces tecum or Rule 34 Request for
3 Production, each document, writing, or physical object provided to each person identified in your
4 answer to the preceding interrogatory and each document, writing or communication you have
5 received from each such person.

6 **INTERROGATORY NO. 16:**

7 Identify sufficiently to permit service of a subpoena, duces tecum or Rule 34 Request for
8 Production, each document, writing or communication of which you or your attorney have
9 possession or control from or by any Plaintiff, Defendant, witness, or any agent or representative of
10 any Defendant, Plaintiff or any witness, which pertains in any manner to this accident or to the issues
11 arising therefrom.

12 **INTERROGATORY NO. 17:**

13 Identify sufficiently to permit service of a subpoena, duces tecum or Rule 34 Request for
14 Production, each document, writing or physical object known to you pertaining to this accident or
15 to the issues arising therefrom not previously identified in your answers to the preceding
16 interrogatories.

17 **INTERROGATORY NO. 18:**

18 Describe with particularity any and all incidents in the ten (10) years prior to the subject
19 incident where your cattle were involved in an incident with any man-made or man-operated object
20 on a roadway. Include in your answer a description of the incident, the date of the incident, the name
21 of the party in the motor vehicle, whether any injuries or fatalities resulted, and whether litigation
22 was instituted.

23 **INTERROGATORY NO. 19:**

24 Set forth each and every fact which you contend supports your defense of the allegations
25 contained in the Complaint on file herein.

26 **INTERROGATORY NO. 20:**

27 If your answer to any of the Requests for Admissions served herewith is anything other than
28 an unqualified admission, please set forth all facts upon which you base your response for each

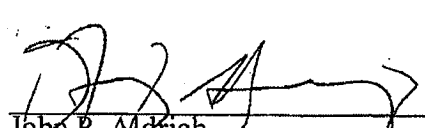
1 Request.

2 **INTERROGATORY NO. 21:**

3 State the name, title, and position of the person(s), other than your attorney, who helped
4 prepare or supplied information for the answers to Plaintiff's Interrogatories

5 DATED this 3rd day of October, 2007.

6 **ALDRICH & BRYSON, LLP**

7 
8 _____
9 John P. Aldrich
10 Nevada Bar No. 6877
11 Stacy D. Harrop
12 Nevada Bar No. 9826
13 1601 S. Rainbow Blvd., Suite 160
14 Las Vegas, Nevada 89146
15 (702) 853-5490
16 (702) 853-5491 (fax)
17 *Attorneys for Plaintiffs*

CERTIFICATE OF MAILING

I hereby certify that on this 31st day of October, 2007, service of the foregoing **PLAINTIFFS' FIRST SET OF INTERROGATORIES TO DEFENDANT FALLINI** was made this date by depositing a true and correct copy of the same for mailing in Las Vegas, Nevada, addressed to:

Harold Kuehn, Esq.
Gibson, & Kuehn
921 S. Highway 160, #203
Pahrump, NV 89048

P.O. Box 1411
Tonopah, NV 89049
*Attorney for Defendant/Counterclaimant
Susan Fallini*

Katherine M. Peck, Esq.
Peck Law Offices
701 Bridger Ave, Ste. 500
Las Vegas, NV 89106
*Attorney for Counterdefendant
Estate of Michael David Adams*


An employee of ALDRICH & BRYSON, LLP

EXHIBIT 4

1 **REQT**
2 **BLACK & LOBELLO**
3 John P. Aldrich
4 Nevada Bar No.: 6877
5 10777 West Twain Avenue, Suite 300
6 Las Vegas, Nevada 89135
7 (702) 869-8801
8 (702) 869-2669 (Fax)
9 *Attorneys for Plaintiffs*

CALENDARED

OR:

JUL 02 2008

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THE FIFTH JUDICIAL DISTRICT COURT
THE STATE OF NEVADA
COUNTY OF NYE

Estate of MICHAEL DAVID ADAMS,
by and through his mother JUDITH
ADAMS, individually and on behalf of the
Estate,

Case No.: CV24539
Dept.: 2P

Plaintiffs,

vs.
SUSAN FALLINI, DOES I-X and ROE
CORPORATIONS I-X, inclusive,

Defendants.

SUSAN FALLINI,

Counterclaimant,

vs.

Estate of MICHAEL DAVID ADAMS,
by and through his mother JUDITH
ADAMS, individually and on behalf of the
Estate,

Counterdefendants.

**PLAINTIFFS' SECOND SET OF REQUESTS FOR PRODUCTION OF DOCUMENTS
TO DEFENDANT FALLINI**

TO: SUSAN FALLINI, Defendant/Counterclaimant

TO: HAROLD KUEHN, ESQ., attorney for Defendant/Counterclaimant

Plaintiffs, Estate of MICHAEL DAVID ADAMS, by and through his mother JUDITH
ADAMS, by and through their attorneys, Aldrich & Bryson, LLP, hereby requests that Defendant,
pursuant to Nev. R. Civ. P. 34, respond to the following Requests for Production of Documents
within thirty (30) days of service hereof:

DEFINITIONS AND INSTRUCTIONS

The following preliminary definitions and instructions apply to each of the Requests set forth hereafter and are deemed to be incorporated therein.

A. When used in these Requests, the term "Defendant" or "Defendants," its plural or any synonym thereof, is intended to and shall embrace and include, in addition to the named party or parties, counsel for said party and all agents, servants, employees, representatives, investigators and others who are in possession of, or may have obtained, information for or on behalf of the named Defendant. As to each person, please state his or her full name, last known residence address and telephone number, and his or her job title, capacity or position at such last known employment.

B. As used in these Requests, the terms "document" and "writing" and the plural forms thereof shall mean all written, recorded or graphic matters, however produced or reproduced, of every kind and description, pertaining in any way to the subject matter of this action. The terms "document" and "writing" shall include, but are not limited to, any books, pamphlets, periodicals, memoranda (including those of telephone and oral conversations), e-mails, contracts, correspondence, agreements, application, financial records, security instruments, disbursements, checks, bank statements, time records, accounting or financial records, notes, diaries, logs, telegrams, or cables prepared, drafted, received or sent, tapes, transcripts, recordings, minutes of meetings, directives, work papers, charts, drawings, prints, flow sheets, photographs, film, computer printouts, medical and hospital records and reports, x-ray photographs, advertisements, catalogs, or any hand-written, recorded, transcribed, punched, tapes, filmed or graphic matters, however, produced or reproduced in Defendant's possession, custody or control or to which defendant has or has had access.

C. As used throughout these Requests, the term "you," its plural or any synonyms thereof, is intended to and shall embrace and include in addition to the named party or parties, counsel for such party or parties, and all agents, servants, employees, representatives, investigators and others who are in the possession of or who may have obtained information for or on behalf of the named party or parties.

D. As used throughout these Requests, the term "person," or its plural or any synonyms

1 thereof, is intended to and shall embrace and include any individual, partnership, corporation,
2 company, association, government agency (whether federal, state, local or any agency of the
3 government of a foreign country) or any other entity.

4 E. As used throughout these Requests, the term "communication," its plural or any
5 synonyms thereof, is intended to and shall embrace and include all written communications, and with
6 respect to all communications, shall include but is not limited to every discussion,
7 conversation, conference, meeting, interview, telephone call or doctor or other professional service
8 visit.

9 F. (a) As used throughout these Requests, the terms "identify," "identity," or
10 "identification," their plural or any synonyms thereof, when used with reference to a person, shall
11 mean to state the full name and address, and where applicable, the present position and business, if
12 known, and each prior position and business.

13 (b) As used throughout these Requests, the terms "identify," "identity," or
14 "identification," their plural or synonyms thereof, when used with reference to a document mean to
15 state:

16 (1) The general nature of the document or object, i.e., whether it is a letter,
17 a memorandum, a report, a drawing, a chart or tracing, a pamphlet, etc.;

18 (2) The general subject matter of the document or object;

19 (3) The name, current or last known business address and home address
20 of the original author or draftsman (and, if different, the signor or signors), and of any person who
21 has edited, corrected, revised or amended, or who has entered any initials or comment or notation
22 thereon;

23 (4) The date thereof, including any date of any such editing, correcting,
24 amending or revision;

25 (5) Any numerical designation appearing thereon, such as a file reference;

26 (6) The name of each recipient of a copy of the document or object; and

27 (7) The place where and the person now having custody or control of each
28 such document or object, or if such document or object has been destroyed, the place of and reasons

1 for such destruction.

2 (c) As used throughout these Requests, the terms "identify," "identity," and
3 "identification," when used in reference to a communication, mean to state with respect to each
4 communication, the nature of the communication (telephone call, letter, etc.), the date of the
5 communication, the persons who were present at or participated in the communication or with whom
6 or from whom the communication was made, and the substance of the statement made by each
7 person involved in such communication.

8 G. All information is to be divulged which is in Defendant's possession or control, or can
9 be ascertained upon reasonable investigation of areas within your control. The knowledge of
10 Defendant's attorney is deemed to be Defendant's knowledge, so that, apart from privileged matters,
11 if Defendant's attorney has knowledge of the information sought to be elicited herein, said
12 knowledge must be incorporated into these answers, even if such information is unknown to
13 Defendant individually.

14 H. Whenever you are unable to state an answer to these Requests based upon your own
15 personal knowledge, please so state, and identify the person or persons you believe to have such
16 knowledge, what you believe the correct answer to be, and the facts upon which you base your
17 answer.

18 I. When a Request calls for an answer in more than one part, each part should be
19 separated so that the answer is clearly understandable.

20 J. Each Request should be construed independently. No Request should be construed
21 by reference to any other Request if the result is a limitation of the scope of the answer to such
22 Request.

23 K. "And" and "or" shall be construed disjunctively or conjunctively as necessary, in
24 order to bring within the scope of the Request all responses which might otherwise be construed to
25 be outside of its scope.

26 L. If a Request is objected to, in whole or in part, or if information responsive to a
27 Request is withheld, on the ground of privilege or otherwise, please set forth fully each objection,
28 describe generally the information which is withheld, and set forth the facts upon which Defendants

1 rely as the basis for each such objection.

2 M. These Requests are addressed to all Defendants. If, for a Request, the answers for all
3 Defendants would be the same, only one answer is necessary. If the Defendants' answers to a
4 Request would vary among them, state and identify answers for each Defendant separately.

5 N. Pursuant to Nev. R. Civ. P. 26, you shall supplement your responses according to the
6 following:

7 (a) A party is under a duty reasonably to supplement his response with respect
8 to any question directly addressed to (A) the identity and location of persons having knowledge of
9 discoverable matters and, (B), the identity of each person expected to be called as an expert witness
10 at trial, the subject matter on which he is expected to testify, and the substance of his testimony.

11 (b) A party is under a duty reasonably to amend a prior response if he obtains
12 information upon the basis of which (A) he knows that the response was incorrect when made, and
13 (B) he knows that the response though correct when made is no longer true and the circumstances
14 are such that a failure to amend the response is in substance a knowing concealment.

15 **REQUESTS FOR PRODUCTION**

16 **REQUEST FOR PRODUCTION NO. 22:**

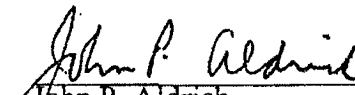
17 Produce any insurance policies or carriers which may provide coverage for the incident
18 described in the complaint.

19 **REQUEST FOR PRODUCTION NO. 23:**

20 Produce all notices to any potential insurance carriers regarding the incident described in the
21 complaint, including any responses received by any potential insurance carriers.

22 DATED this 1st day of July, 2008.

23 **BLACK & LOBELLO**

24 
25 John P. Aldrich
26 Nevada Bar No.: 6877
27 10777 West Twain Avenue, Suite 300
28 Las Vegas, Nevada 89135
(702) 869-8801
(702) 869-2669 (Fax)

Attorneys for Plaintiffs

CERTIFICATE OF MAILING

I hereby certify that on this 2nd day of July, 2008, service of the foregoing **PLAINTIFFS'**
SECOND SET OF REQUESTS FOR PRODUCTION OF DOCUMENTS TO DEFENDANT
FALLINI was made this date by depositing a true and correct copy of the same for mailing in Las
Vegas, Nevada, addressed to:

Harold Kuehn, Esq.
Gibson, & Kuehn
921 S. Highway 160, #203
Pahrump, NV 89048

P.O. Box 1411
Tonopah, NV 89049
Attorney for Defendant/Counterclaimant

Katherine M. Peck, Esq.
Peck Law Offices
701 Bridger Ave, Ste. 500
Las Vegas, NV 89106
Attorney for Counterdefendant
Estate of Michael David Adams


An employee of BLACK & LOBELLO

EXHIBIT 5

1 **NEO**

John P. Aldrich, Esq.

2 Nevada State Bar No. 6877

Adrianne C. Duncan, Esq.

3 Nevada State Bar No. 9797

BLACK & LOBELLO

4 10777 West Twain Avenue, Suite 300

Las Vegas, Nevada 89135

5 (702) 869-8801

Attorneys for Plaintiffs

FILED

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NYE COUNTY CLERK
BY DEPUTY

Linda Uno

7
8 THE FIFTH JUDICIAL DISTRICT COURT
THE STATE OF NEVADA
9 COUNTY OF NYE

10 Estate of MICHAEL DAVID ADAMS,
by and through his mother JUDITH
11 ADAMS, individually and on behalf of the
Estate,

12 Plaintiffs,

13 vs.

14 SUSAN FALLINI, DOES I-X and ROE
15 CORPORATIONS I-X, inclusive,

16 Defendants.

17 SUSAN FALLINI,

18 Counterclaimant,

19 vs.

20 Estate of MICHAEL DAVID ADAMS,
by and through his mother JUDITH
21 ADAMS, individually and on behalf of the
Estate,

22 Counterdefendants.
23

Case No.: CV24539
Dept.: 2P

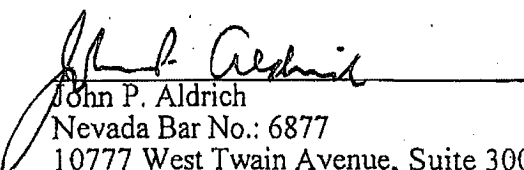
24 **NOTICE OF ENTRY OF ORDER**

25 PLEASE TAKE NOTICE that on the 30th day of July, 2008 an Order Granting Plaintiffs'
26 Motion for Partial Summary Judgement was entered in the above-captioned matter,
27
28

1 a copy of which is attached hereto.

2 DATED this 13th day of August, 2008.

3 **BLACK & LOBELLO**

4
5 
6 John P. Aldrich
7 Nevada Bar No.: 6877
8 10777 West Twain Avenue, Suite 300
9 Las Vegas, Nevada 89135
10 (702) 869-8801
11 (702) 869-2669 (Fax)

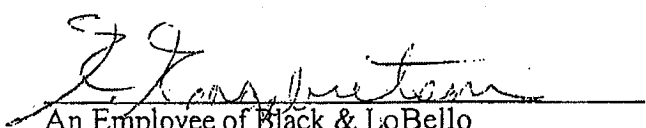
12 **CERTIFICATE OF SERVICE**

13 I hereby certify that on the 13th day of August, 2008 a true and correct copy of the foregoing

14 **NOTICE OF ENTRY OF ORDER** was deposited into the U.S. mail at Las Vegas, Nevada, first-
15 class postage fully prepaid, addressed to the following person(s):

16 Harold Kuehn, Esq.
17 Gibson & Kuehn, LLP
18 1601 E. Basin Avenue, Ste. 101
19 Pahrump, NV 89060

20 Katherine M. Barker, Esq.
21 Law Office of Katherine M. Barker
22 701 Bridger Avenue, Suite 500
23 Las Vegas, NV 89101

24 
25 An Employee of Black & LoBello

FILED
DEBRA BENNET
2008 JUL 30 P 3:30
NYE COUNTY CLERK
BY DEPUTY

ORDER

John P. Aldrich, Esq.
Nevada State Bar No. 6877
Adrianne C. Duncan, Esq.
Nevada State Bar No. 9797
BLACK & LOBELLO
10777 West Twain Avenue, Suite 300
Las Vegas, Nevada 89135
(702) 869-8801
Attorneys for Plaintiffs

THE FIFTH JUDICIAL DISTRICT COURT
THE STATE OF NEVADA
COUNTY OF NYE

Estate of MICHAEL DAVID ADAMS,
by and through his mother JUDITH
ADAMS, individually and on behalf of the
Estate,

Plaintiffs,

vs.

SUSAN FALLINI, DOES I-X and ROE
CORPORATIONS I-X, inclusive,

Defendants.

SUSAN FALLINI,

Counterclaimant,

vs.

Estate of MICHAEL DAVID ADAMS,
by and through his mother JUDITH
ADAMS, individually and on behalf of the
Estate,

Counterdefendants.

Case No.: CV24539
Dept.: 2P

ORDER GRANTING PLAINTIFFS' MOTION FOR PARTIAL SUMMARY JUDGMENT

THIS MATTER having come on for hearing on Monday, July 14, 2008, on Plaintiff's Motion
for Partial Summary Judgment before the Honorable Robert W. Lane, and John P. Aldrich, Esq.
appearing on behalf of the Plaintiffs, no other counsel present, the court having reviewed the Motion

1 for Partial Summary Judgment and the Joinder to the Motion for Partial Summary Judgment, having
2 reviewed all pleadings and papers on file herein, and having heard the arguments of present counsel;
3 and good cause appearing therefore,

4 **THE COURT HEREBY ENTERS THE FOLLOWING FINDINGS OF FACT:**

- 5 1. Fallini's property is not located within an "open range" as it is defined in
6 NRS 568.355.
- 7 2. Fallini is the owner of the cow that is mentioned in the Plaintiff's Complaint on file
8 herein ("subject cow").
- 9 3. It is the common practice of Nye County, Nevada ranchers to mark their cattle with
10 reflective or luminescent tags.
- 11 4. The subject cow was not marked with a reflective or luminescent tag.
- 12 5. The subject cow crossed a fence to arrive at the location of the subject accident
13 described in the Complaint on file herein.
- 14 6. Fallini's cattle had previously been involved in incidents with motor vehicles on the
15 roadway.
- 16 7. Fallini does not track the location of her cattle while they are grazing away from her
17 property.
- 18 8. Fallini does not remove her cattle from the roadway when notified that the cattle are
19 in a roadway.
- 20 9. The subject cow was not visible at night.
- 21 10. Fallini was aware that the subject cow was not visible at night prior to the incident
22 that is the subject of the Complaint on file herein.
- 23 11. The subject cow was in the roadway of SR 375 at the time of the incident that is the
24 subject matter of the Complaint on file herein.
- 25 12. The subject cow's presence in the roadway of SR 375 was the cause of the motor
26 vehicle accident that is the subject of the Complaint on file herein.
- 27 13. Fallini did not know the location of the subject cow at the time of the incident that
28 is the subject of the Complaint on file herein.

1 14. The presence of a reflective or luminescent tag on the subject cow would have made
2 the subject cow visible at the time of the incident that is the subject of the Complaint
3 on file herein.

4 **THE COURT HEREBY ENTERS THE FOLLOWING CONCLUSIONS OF LAW:**

- 5 1. Defendant Fallini had and duty to ensure that the subject cow was not in the roadway
6 at the time of the incident described in the Complaint.
- 7 2. Defendant Fallini had a duty to follow the common practice of Nye County, Nevada
8 ranchers and to mark her cow with reflecting or lumination tags.
- 9 3. Defendant Fallini breached the duty of care to the decedent, as set forth in the
10 Findings of Fact and Conclusions of Law.
- 11 4. As a result of Defendant Fallini's breach, the decedent, Michael David Adams, was
12 killed.
- 13 5. Defendant Fallini is liable for the damages to which Plaintiff is entitled, in an amount
14 to be determined at a later time.

15 **IT IS HEREBY ORDERED** that Plaintiffs' Motion for Partial Summary Judgment as to
16 the issue of Defendant's duty and breach of duty is hereby GRANTED.

17 DATED this 27th day of July, 2008.

18 **ROBERT W. LANE**

19 _____
20 DISTRICT COURT JUDGE

21 Submitted By:

22 **BLACK & LOBELLO**

23 John P. Aldrich

24 John P. Aldrich
25 Nevada Bar No.: 6877
26 10777 West Twain Avenue, Suite 300
27 Las Vegas, Nevada 89135
(702) 869-8801
(702) 869-2669 (Fax)

EXHIBIT 6

ALDRICH LAW FIRM, LTD.

1601 S. Rainbow Blvd., Suite 160

Las Vegas, NV 89146

(702) 853-5490

(702) 227-1975 fax

February 24, 2009

Harold Kuehn, Esq.
Gibson, & Kuehn
1601 E. Basin Avenue, #101
Pahrump, NV 89060

Re: *Adams v Fallini*

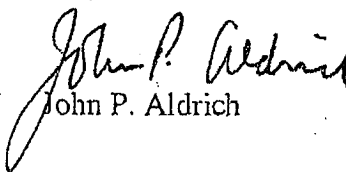
Dear Mr. Kuehn:

Discovery requests were sent to your client, Susan Fallini, quite some time ago. I have never received any responses. One of the requests was for your client to produce the insurance policy information she carried on her ranch and cattle. At this time I respectfully request that you produce this information within ten (10) days of receipt of this letter. Failure to do so will result in me filing a motion to compel.

I look forward to hearing from you soon.

Kindest Regards,

ALDRICH LAW FIRM, LTD.


John P. Aldrich

cc: Katherine M. Barker, Esq.

EXHIBIT 7

1 **AFF**
2 John P. Aldrich
3 Nevada Bar No.: 6877
4 **ALDRICH LAW FIRM, LTD.**
5 1601 S. Rainbow Blvd., Suite 160
6 Las Vegas, Nevada 89146
7 (702) 853-5490
8 *Attorney for Plaintiff*

6 **THE FIFTH JUDICIAL DISTRICT COURT**
7 **THE STATE OF NEVADA**
8 **COUNTY OF NYE**

9 Estate of MICHAEL DAVID ADAMS, by
10 and through his mother JUDITH ADAMS,
11 individually and on behalf of the Estate,

11 Plaintiff,

12 v.

13 SUSAN FALLINI, ; DOES I-X, and ROE
14 CORPORATIONS I-X, inclusive,

15 Defendants.

16
17 SUSAN FALLINI,

18 Counterclaimant,

19 vs.

20 Estate of MICHAEL DAVID ADAMS, by
21 and through his mother JUDITH ADAMS,
22 individually and on behalf of the Estate

23 Counterdefendants.

Case No.: CV24539
Dept. No.: 2P

24 **AFFIDAVIT OF JOHN P. ALDRICH IN SUPPORT OF MOTION TO COMPEL**

25 State of Nevada)
26) SS
27 County of Clark)

28 Affiant, being first duly sworn, deposes and states the following:

1. I, John P. Aldrich, am an attorney licensed to practice in the State of Nevada and a

1 partner in the law firm of Aldrich Law Firm, Ltd.

2 2. My office address is 1601 S. Rainbow Blvd., Suite 160, Las Vegas, Nevada 89146.

3 3. I have personal knowledge of the contents of this document, or where stated upon
4 information and belief, I believe them to be true and I am competent to testify to the facts set forth
5 herein.

6 4. The documents attached hereto as Exhibits 1 through 6 are true and correct copies of
7 documents prepared by my office and sent to counsel for Defendant in this matter. These documents
8 were kept in the ordinary course of business.

9 5. I have attempted to amicably resolve this discovery issue and obtain a copy of
10 Defendant's applicable insurance policies, but to no avail. On February 28, 2009, I sent a letter to
11 Defendant's counsel seeking responses to the discovery. (Exhibit 6.)

12 6. I have attempted to discuss this discovery issue with Defendant's counsel, Mr.
13 Kuehn, as well. On or about March 6, 2009, I contacted the office of Mr. Kuehn. I was informed
14 that Mr. Kuehn was not available. I left a message with my phone number and asked that Mr. Kuehn
15 return the call. No return call ever came.

16 7. On March 18, 2009, I again contacted the office of Mr. Kuehn. I was again informed
17 that Mr. Kuehn was not available. I left a message with my phone number and asked that Mr.
18 Kuehn return the call. No return call ever came.

19 8. I have expended approximately 3 hours preparing the Motion to Compel and this
20 Affidavit. I anticipate that I will have to travel to Pahrump, Nevada for the hearing on this matter.
21 Generally, the round trip from Las Vegas to Pahrump, including the hearing, takes about four hours
22 (a full half-day). Although my normal hourly rate is \$300.00 per hour, I am only requesting
23 attorney's fees in the amount of \$1,600.00 for having to bring this motion, as well as \$50.00 in costs
24 for having to travel to Pahrump.

25 ///

26 ///

27 ///

28

1 NOTC

John P. Aldrich

2 Nevada Bar No.: 6877

ALDRICH LAW FIRM, LTD.

3 1601 S. Rainbow Blvd., Suite 160

Las Vegas, Nevada 89146

4 (702) 853-5490

(702) 227-1975

5 Attorney for Plaintiff

FILED

FIFTH JUDICIAL DISTRICT

Nye County Clerk

MT

Deputy

6 THE FIFTH JUDICIAL DISTRICT COURT
7 THE STATE OF NEVADA
8 COUNTY OF NYE

9 Estate of MICHAEL DAVID ADAMS, by
10 and through his mother JUDITH ADAMS,
11 individually and on behalf of the Estate,

12 Plaintiff,

13 v.

14 SUSAN FALLINI, ; DOES I-X, and ROE
15 CORPORATIONS I-X, inclusive,

16 Defendants.

17 SUSAN FALLINI,

18 Counterclaimant,

19 vs.

20 Estate of MICHAEL DAVID ADAMS, by
21 and through his mother JUDITH ADAMS,
22 individually and on behalf of the Estate

23 Counterdefendants.

24 ///

25 ///

26 ///

27

28

Case No.: CV24539
Dept. No.: 2P

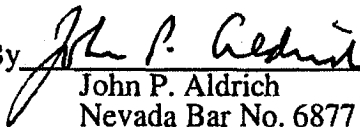
3-24-09

1 **PLAINTIFF'S NOTICE OF MOTION TO COMPEL DEFENDANT'S**
2 **PRODUCTION OF DOCUMENTS**

3 PLEASE TAKE NOTICE that the undersigned will bring a Motion to Compel Defendant's
4 Production of Documents for hearing before the above entitled Court on the 27 day of
5 April, 2009, at the hour of 9:00 A m. or as soon thereafter as counsel may be heard.

6 DATED this 24 day of March, 2009.

7 **ALDRICH LAW FIRM, LTD.**

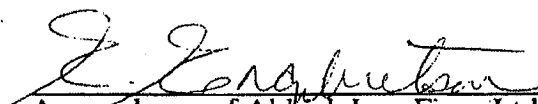
8 By 
9 John P. Aldrich
10 Nevada Bar No. 6877
11 **ALDRICH LAW FIRM, LTD.**
12 1601 S. Rainbow Blvd., Suite 160
13 Las Vegas, NV 89146
14 (702) 853-5490
15 *Attorneys for Plaintiff*

16 **CERTIFICATE OF SERVICE**

17 I HEREBY CERTIFY that on the 24th day of March, 2009, I mailed a copy of
18 PLAINTIFF'S NOTICE OF MOTION TO COMPEL DEFENDANT'S PRODUCTION OF
19 DOCUMENTS in a sealed envelope, to the following and that postage was fully paid thereon:

20 Harold Kuehn, Esq.
21 Gibson, & Kuehn
22 1601 E. Basin Avenue, Suite 101
23 Pahrump, NV 89060
24 *Attorney for Defendant/Counterclaimant*

25 Katherine M. Barker, Esq.
26 Law Office of Katherine M. Barker
27 701 Bridger Ave, Ste. 500
28 Las Vegas, NV 89101
 Attorney for Counterdefendant
 Estate of Michael David Adams


 An employee of Aldrich Law Firm, Ltd.

1 **CERT**

John P. Aldrich

2 Nevada Bar No. 6877

3 **ALDRICH LAW FIRM, LTD.**

3654 N. Rancho Drive

Las Vegas, Nevada 89130

4 (702) 853-5490

5 *Attorneys for Plaintiffs*

6 **THE FIFTH JUDICIAL DISTRICT COURT**
 7 **THE STATE OF NEVADA**
 8 **COUNTY OF NYE**

9 Estate of MICHAEL DAVID ADAMS,
 10 by and through his mother JUDITH
 11 ADAMS, individually and on behalf of the
 12 Estate,

11 Plaintiffs,

12 vs.
 13 SUSAN FALLINI, DOES I-X and ROE
 14 CORPORATIONS I-X, inclusive,

14 Defendants.

15 SUSAN FALLINI,

16 Counterclaimant,

17 vs.

18 Estate of MICHAEL DAVID ADAMS,
 19 by and through his mother JUDITH
 20 ADAMS, individually and on behalf of the
 21 Estate,

20 Counterdefendants.

Case No.: CV24539
 Dept.: 2P

21 **CERTIFICATE OF MAILING**

22 I HEREBY CERTIFY that on the 27th day of March, 2009, I mailed a copy of the file-
 23 stamped PLAINTIFF'S NOTICE OF MOTION TO COMPEL DEFENDANT'S PRODUCTION OF
 24 DOCUMENTS in a sealed envelope, to the following and that postage was fully paid thereon:

25 ///

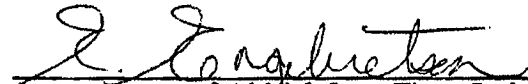
26 ///

27 ///

28

1 Harold Kuehn, Esq.
2 Gibson, & Kuehn
3 1601 E. Basin Avenue, Suite 101
4 Pahrump, NV 89060
5 *Attorney for Defendant/Counterclaimant*

6 Katherine M. Barker, Esq.
7 Law Office of Katherine M. Barker
8 701 Bridger Ave, Ste. 500
9 Las Vegas, NV 89101
10 *Attorney for Counterdefendant*
11 *Estate of Michael David Adams*


An employee of Aldrich Law Firm, Ltd.

ORIGINAL**ORDR**

John P. Aldrich
Nevada Bar No.: 6877
Catherine Hernandez
Nevada Bar No. 8410
ALDRICH LAW FIRM, LTD.
1601 S. Rainbow Blvd., Suite 160
Las Vegas, Nevada 89146
(702) 853-5490
Attorneys for Plaintiff

FILED
FIFTH JUDICIAL DISTRICT

APR 27 2009

Nye County Clerk

Deputy

**THE FIFTH JUDICIAL DISTRICT COURT
THE STATE OF NEVADA
COUNTY OF NYE**

Estate of MICHAEL DAVID ADAMS, by
and through his mother JUDITH ADAMS,
individually and on behalf of the Estate,

Plaintiff,

v.

SUSAN FALLINI, ; DOES I-X, and ROE
CORPORATIONS I-X, inclusive,

Defendants.

SUSAN FALLINI,

Counterclaimant,

vs.

Estate of MICHAEL DAVID ADAMS, by
and through his mother JUDITH ADAMS,
individually and on behalf of the Estate

Counterdefendants.

Case No.: CV24539
Dept. No.: 2P

**ORDER GRANTING PLAINTIFF'S MOTION TO COMPEL DEFENDANT'S
PRODUCTION OF DOCUMENTS**

THIS MATTER having come on for hearing on Monday, April 27, 2009, on Plaintiff's
Motion to Compel Defendant's Production of Documents before the Honorable Robert W. Lane, and

1 Catherine Hernandez, Esq., of Aldrich Law Firm, Ltd., appearing on behalf of the Plaintiffs, no other
2 counsel present, the court having reviewed all pleadings and papers on file herein, no opposition
3 having been presented, and good cause appearing therefore:

4 **IT IS HEREBY ORDERED** that Plaintiff's Motion to Compel Defendant's Production of
5 Documents is GRANTED. Defendant SUSAN FALLINI shall produce all documents responsive
6 to Plaintiff's discovery requests pursuant to NRCP 16.1, 26,33,34 and NRCP 37 within ten (10)
7 days of Notice of Entry of this Order.

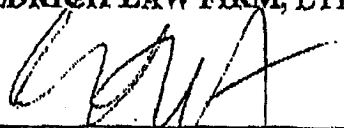
8 **IT IS FURTHER ORDERED** that Defendant shall pay \$1,650.00^{750.00} for related attorney's fees
9 and costs for failing to comply with discovery rules and for Plaintiff having to bring this motion, also
10 within ten (10) days of Notice of Entry of this Order.

11 DATED this 22 day of April, 2009.

12
13 
14 DISTRICT COURT JUDGE

15 Respectfully submitted by:

16 ALDRICH LAW FIRM, LTD.

17 
18 John P. Aldrich, Esq.
19 Nevada Bar No. 6877
20 Catherine Hernandez, Esq.
21 Nevada Bar No. 8410
22 1601 S. Rainbow Blvd., Suite 160
23 Las Vegas, NV 89146
24 (702) 853-5491
25 Attorneys for Plaintiff
26
27
28

ORIGINAL

FILED

FIFTH JUDICIAL DISTRICT

MAY 11 5 2008

mt

DMJT
John P. Aldrich
Nevada Bar No. 6877
ALDRICH LAW FIRM, LTD.
3654 N. Rancho Drive
Las Vegas, Nevada 89130
(702) 853-5490
Attorneys for Plaintiffs

THE FIFTH JUDICIAL DISTRICT COURT
THE STATE OF NEVADA
COUNTY OF NYE

Estate of MICHAEL DAVID ADAMS,
by and through his mother JUDITH
ADAMS, individually and on behalf of the
Estate,

Plaintiffs,

vs.
SUSAN FALLINI, DOES I-X and ROE
CORPORATIONS I-X, inclusive,

Defendants.

Case No.: CV24539
Dept.: 2P

SUSAN FALLINI,

Counterclaimant,

vs.

Estate of MICHAEL DAVID ADAMS,
by and through his mother JUDITH
ADAMS, individually and on behalf of the
Estate,

Counterdefendants.

DEMAND FOR JURY TRIAL

COMES NOW, Plaintiffs, Estate of MICHAEL DAVID ADAMS, by and through his mother
JUDITH ADAMS, individually and on behalf of the Estate, by and through his attorney of record,

///

///

///

1 John P. Aldrich, Esq., of ALDRICH LAW FIRM, LTD., and hereby demands a trial by jury, as
2 provided in N.R.C.P. 38 and 39, in the above-titled case.

3 DATED this 28 day of April, 2009.

4 ALDRICH LAW FIRM, LTD.

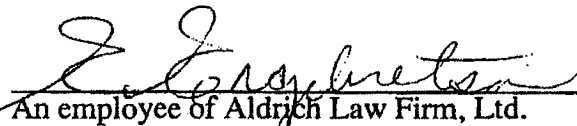
5
6 BY: John P. Aldrich
7 John P. Aldrich, Esq.
8 Nevada Bar No. 6877
1601 S. Rainbow Boulevard, Suite 160
Las Vegas, Nevada 89146

9
10 **CERTIFICATE OF MAILING**

11 I HEREBY CERTIFY that on the 28th day of April, 2009, I mailed a copy of the file-
12 stamped **DEMAND FOR JURY TRIAL** in a sealed envelope, to the following and that postage was
13 fully paid thereon:

14 Harold Kuehn, Esq.
15 Gibson, & Kuehn
1601 E. Basin Avenue, Suite 101
16 Pahrump, NV 89060
17 *Attorney for Defendant/Counterclaimant*

18 Katherine M. Barker, Esq.
19 Law Office of Katherine M. Barker
701 Bridger Ave, Ste. 500
Las Vegas, NV 89101
20 *Attorney for Counterdefendant*
21 *Estate of Michael David Adams*

22
23 
An employee of Aldrich Law Firm, Ltd.

1 NEO

John P. Aldrich, Esq.

2 Nevada Bar No. 6877

ALDRICH LAW FIRM, LTD.

3 1601 S. Rainbow Blvd., Suite 160

Las Vegas, Nevada 89146

4 (702) 853-5490

(702) 227-1975 fax

5 *Attorneys for Plaintiff*

FILED

2009 MAY 18 ~~Shella W. W.~~

NYE COUNTY CLERK
BY DEPUTY

7 THE FIFTH JUDICIAL DISTRICT COURT
8 THE STATE OF NEVADA
9 COUNTY OF NYE

10 Estate of MICHAEL DAVID ADAMS,
11 by and through his mother JUDITH
12 ADAMS, individually and on behalf of the
13 Estate,

14 Plaintiffs,

15 vs.

16 SUSAN FALLINI, DOES I-X and ROE
17 CORPORATIONS I-X, inclusive,

18 Defendants.

19 SUSAN FALLINI,

20 Counterclaimant,

21 vs.

22 Estate of MICHAEL DAVID ADAMS,
23 by and through his mother JUDITH
24 ADAMS, individually and on behalf of the
25 Estate,

26 Counterdefendants.

Case No.: CV24539
Dept.: 2P

27 NOTICE OF ENTRY OF ORDER

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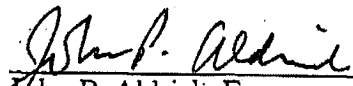
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///

1 PLEASE TAKE NOTICE that an Order was entered in the above-entitled matter on April
2 27, 2009, a copy of which is attached hereto as Exhibit 1.

3 DATED this 14th day of May, 2009.

4 ALDRICH LAW FIRM, LTD.

5 
6 John P. Aldrich, Esq.
7 Nevada State Bar No. 6877
8 1601 S. Rainbow Blvd., Suite 160
9 Las Vegas, Nevada 89146
10 (702) 853-5490
11 (702) 227-1975
12 Attorneys for Plaintiff

13 CERTIFICATE OF SERVICE

14 I HEREBY CERTIFY that on the 14th day of May, 2009, I mailed a copy of the
15 NOTICE OF ENTRY OF ORDER, in a sealed envelope, to the following and that postage was fully
16 paid thereon:

17 Harold Kuehn, Esq.
18 Gibson, & Kuehn
19 1601 E. Basin Avenue, Suite 101
20 Pahrump, NV 89060
21 Attorney for Defendant/Counterclaimant

22 Katherine M. Barker, Esq.
23 Law Office of Katherine M. Barker
24 701 Bridger Ave, Ste. 500
25 Las Vegas, NV 89101
26 Attorney for Counterdefendant
27 Estate of Michael David Adams

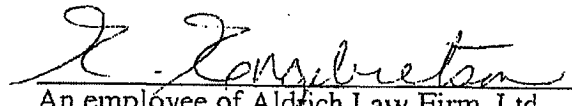
28 
An employee of Aldrich Law Firm, Ltd.

EXHIBIT 1

ORIGINAL**ORDR**John P. Aldrich
Nevada Bar No.: 6877Catherine Hernandez
Nevada Bar No. 8410**ALDRICH LAW FIRM, LTD.**

1601 S. Rainbow Blvd., Suite 160

Las Vegas, Nevada 89146

(702) 853-5490

*Attorneys for Plaintiff***FILED**

FIFTH JUDICIAL DISTRICT

APR 27 2009

Nye County Clerk

Deputy

**THE FIFTH JUDICIAL DISTRICT COURT
THE STATE OF NEVADA
COUNTY OF NYE**Estate of MICHAEL DAVID ADAMS, by
and through his mother JUDITH ADAMS,
individually and on behalf of the Estate,

Plaintiff,

v.

SUSAN FALLINI, ; DOES I-X, and ROE
CORPORATIONS I-X, inclusive,

Defendants.

SUSAN FALLINI,

Counterclaimant,

vs.

Estate of MICHAEL DAVID ADAMS, by
and through his mother JUDITH ADAMS,
individually and on behalf of the Estate

Counterdefendants.

Case No.: CV24539
Dept. No.: 2P**ORDER GRANTING PLAINTIFF'S MOTION TO COMPEL DEFENDANT'S
PRODUCTION OF DOCUMENTS**

THIS MATTER having come on for hearing on Monday, April 27, 2009, on Plaintiff's
Motion to Compel Defendant's Production of Documents before the Honorable Robert W. Lane, and

1 Catherine Hernandez, Esq., of Aldrich Law Firm, Ltd., appearing on behalf of the Plaintiffs, no other
2 counsel present, the court having reviewed all pleadings and papers on file herein, no opposition
3 having been presented, and good cause appearing therefore:

4 **IT IS HEREBY ORDERED** that Plaintiff's Motion to Compel Defendant's Production of
5 Documents is GRANTED. Defendant SUSAN FALLINI shall produce all documents responsive
6 to Plaintiff's discovery requests pursuant to NRCP 16.1, 26,33,34 and NRCP 37 within ten (10)
7 days of Notice of Entry of this Order.

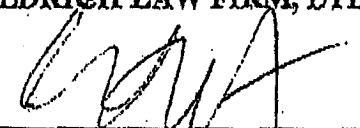
8 **IT IS FURTHER ORDERED** that Defendant shall pay ^{750.00} \$1,650.00 for related attorney's fees
9 and costs for failing to comply with discovery rules and for Plaintiff having to bring this motion, also
10 within ten (10) days of Notice of Entry of this Order.

11 DATED this 27 day of April, 2009.

12
13 
14 DISTRICT COURT JUDGE

15 Respectfully submitted by:

16 **ALDRICH LAW FIRM, LTD.**

17 
18 John P. Aldrich, Esq.
19 Nevada Bar No. 6877
20 Catherine Hernandez, Esq.
21 Nevada Bar No. 8410
22 1601 S. Rainbow Blvd., Suite 160
23 Las Vegas, NV 89146
24 (702) 853-5491
25 Attorneys for Plaintiff
26
27
28

1 Case No. CV 24539

2 Dept. No. 2P

FILED

2009 MAY 20 A 11:50

3
4 **IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT**
5 **OF THE STATE OF NEVADA, IN AND FOR THE COUNTY OF NYE**
6

7 ESTATE OF MICHAEL DAVID ADAMS,
8 by and through his mother JUDITH ADAMS,
9 individually and on behalf of the ESTATE,

10 Plaintiffs,

-v-

ORDER TO SET TRIAL

11 SUSAN FALLINI, DOES I-X
12 and, ROE CORPORATIONS I-X,
13 inclusive,

14 Defendants
15

16 TO: JOHN P. ALDRICH, ESQ.
17 TO: KATHERINE M. BARKER, ESQ.

TO: HAROLD KUEHN, ESQ.

18 It appears that the above matter is at issue and ready for trial. A trial date will be set at the
19 calendar call on the next Law and Motion day for Nye County, which will be on Monday, the 22nd
20 day of June, 2009, at the Nye County Courthouse, Pahrump, Nevada. Counsel shall complete and
21 return the Information Questionnaire attached to this Order before the calendar call. It is not
22 necessary for counsel to appear at the calendar call on June 22, 2009. Failure to respond will result
23 in the case being set for trial at the convenience of the Court.
24

25 DATED this 20th day of May 2009.

26
27 
28 DISTRICT JUDGE

FIFTH JUDICIAL DISTRICT COURT
ESMERELDA, MINERAL AND NYE COUNTIES



CERTIFICATION OF SERVICE

The undersigned hereby certifies that on the 20th day of May 2009, she mailed copies of the foregoing ORDER TO SET TRIAL to the following:

John P. Aldrich, Esq.
Catherine Hernandez, Esq.
ALDRICH LAW FIRM, LTD.
1601 S. Rainbow Blvd, Suite 160
Las Vegas, NV 89146

Harold Kuehn, Esq.
GIBSON & KUEHN
1601 E. Basin Ave, Suite 101
Pahrump, NV 89060

Katherine M. Barker, Esq.
LAW OFFICE OF KATHERINE M. BARKER
701 Bridger Ave, Suite 500
Las Vegas, Nevada 89101

C Ward

CINDY WARD, Secretary to
DISTRICT JUDGE



1
2 **5TH JUDICIAL DISTRICT COURT**
3 **COUNTY OF NYE, STATE OF NEVADA**

4 **Affirmation Pursuant to 239B.030**

5 The undersigned does hereby affirm that the preceding document:

6 **Order to Set Trial**

7 (Title of Document)

8 Filed in case number: CV24539

9
10 ☒ Does not contain the social security number of any person.

11 ☐ Contains the social security number of a person as required by:

12 ☐ A specific state or federal law, to wit:

13
14 _____
(name the specific state or federal law)

15 -or-

16 ☐ For the administration of a public program

17 -or-

18 ☐ For an application for a federal or state grant

19 -or-

20 ☐ Confidential Family Court Information Sheet
(NRS 125.130; 125.230; or 125B.055)

21 Date: 5/20/09

22 C. Ward
(Signature)

23 Cindy Ward
24 (Print name)

25 Supervising Legal Secretary
26 (Title)



1 **MOT**
John P. Aldrich
2 Nevada Bar No.: 6877
ALDRICH LAW FIRM, LTD.
3 1601 S. Rainbow Blvd., Suite 160
Las Vegas, Nevada 89146
4 (702) 853-5490
Attorney for Plaintiff

FILED

2009 JUN 16 P 1:56
Shella Winn
NYE COUNTY CLERK
BY DEPUTY

6 **THE FIFTH JUDICIAL DISTRICT COURT**
7 **THE STATE OF NEVADA**
8 **COUNTY OF NYE**

9 Estate of MICHAEL DAVID ADAMS, by
and through his mother JUDITH ADAMS,
10 individually and on behalf of the Estate,

Case No.: CV24539
Dept. No.: 2P

11 Plaintiff,

12 v.

13 SUSAN FALLINI, ; DOES I-X, and ROE
14 CORPORATIONS I-X, inclusive,

15 Defendants.

16
17 SUSAN FALLINI,

18 Counterclaimant,

19 vs.

20 Estate of MICHAEL DAVID ADAMS, by
and through his mother JUDITH ADAMS,
21 individually and on behalf of the Estate

22 Counterdefendants.

23
24 **PLAINTIFF'S MOTION TO STRIKE DEFENDANT'S ANSWER AND**
25 **COUNTERCLAIM**

26 COMES NOW Plaintiff JUDITH ADAMS, individually and for the ESTATE OF
27 MICHAEL DAVID ADAMS, by and through her counsel of record, John P. Aldrich, Esq., of the
28 Aldrich Law Firm, Ltd., and hereby moves this Court for an order striking Defendant SUSAN
FALLINI's answer for failure to comply with a court order. Plaintiff further requests that this Court

1 issue another Order to Defendant Fallini to provide information regarding any applicable insurance
2 policies so that Plaintiff can collect against such insurance policies.

3 This Motion is made and based upon all papers, pleadings and records on file herein, the
4 points and authorities and any exhibits attached hereto, and such oral argument as the court may
5 entertain at the time of the hearing on this matter.

6 DATED this 11 day of June, 2009.

7 **ALDRICH LAW FIRM, LTD.**

8
9 By John P. Aldrich

10 John P. Aldrich
11 Nevada Bar No. 6877
12 **ALDRICH LAW FIRM, LTD.**
13 1601 S. Rainbow Blvd., Suite 160
14 Las Vegas, NV 89146
15 (702) 853-5490
16 Attorneys for Plaintiff

17 **PLAINTIFF'S NOTICE OF MOTION TO STRIKE DEFENDANT'S**
18 **ANSWER AND COUNTERCLAIM**

19 PLEASE TAKE NOTICE that the undersigned will bring a Motion to Strike Defendant's
20 Answer and Counterclaim for hearing before the above entitled Court on the 13 day of _____

21 July, 2009, at the hour of 1:15 p.m. or as soon thereafter as counsel may be heard.

22 DATED this 11 day of June, 2009.

23 **ALDRICH LAW FIRM, LTD.**

24 By John P. Aldrich

25 John P. Aldrich
26 Nevada Bar No. 6877
27 **ALDRICH LAW FIRM, LTD.**
28 1601 S. Rainbow Blvd., Suite 160
Las Vegas, NV 89146
(702) 853-5490
Attorneys for Plaintiff

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1 Defendant's counsel, Mr. Kuehn, as well. On or about March 6, 2009, Plaintiff's counsel contacted
2 the office of Defendant's counsel. Mr. Aldrich was informed that Mr. Kuehn was not available. Mr.
3 Aldrich left a message with Mr. Aldrich's phone number and asked that Mr. Kuehn return the call.
4 No return call ever came. (Exhibit 7.)

5 On March 18, 2009, Mr. Aldrich again contacted the office of Mr. Kuehn. Mr. Aldrich was
6 informed that Mr. Kuehn was not available. Mr. Aldrich left a message with Mr. Aldrich's phone
7 number and asked that Mr. Kuehn return the call. No return call ever came. (Exhibit 7.)

8 On March 23, 2009, Plaintiff filed a Motion to Compel Defendant's Production of
9 Documents, including information regarding any insurance policies that may provide coverage for
10 the incident as contemplated in the Plaintiff's second request for documents. This motion was heard
11 on April 27, 2009. The Defendant's attorney, Mr. Kuehn, attended the hearing. Mr. Kuehn did not
12 oppose the motion to compel and agreed at the hearing it was warranted. Mr. Kuehn provided no
13 explanation as to why Defendant failed to respond to all discovery requests. Mr. Kuehn agreed
14 sanctions were warranted, however he disputed the amount of sanctions. (See Affidavit of Catherine
15 Hernandez, Esq., attached hereto as Exhibit 8.) This Honorable Court granted the Motion to Compel
16 and awarded John Aldrich, Esq., \$750.00 in sanctions for having to bring the motion. A Notice of
17 Entry of Order on the order granting the motion to compel was entered on May 18, 2009. It was
18 served by mail on Defendant on May 14, 2009. (Exhibit 9.) To date, Defendant has failed to
19 comply with the order of this Honorable Court and respond to all Plaintiff's discovery requests.
20 Further, Defendant has failed to pay the sanctions ordered by this Honorable Court.

21 II.

22 LEGAL ARGUMENT

23 **PLAINTIFF'S MOTION TO STRIKE DEFENDANT FALLINI'S ANSWER SHOULD BE** 24 **GRANTED**

25 Pursuant to NRCP 34, Plaintiff has the right to request documents which are discoverable
26 pursuant to NRCP 26. According to NRCP 34, Defendant has 30 days from receipt of the requests
27 for production of documents to provide appropriate responses. Defendant has provided no responses
28 whatsoever, nor has Defendant objected to any request. NRCP 34(b) permits a party to seek relief

1 under NRCP 37(a) if the party who receives discovery requests fails to respond appropriately. NRCP
2 37(a) provides that the Court may enter an order compelling a non-responsive party to disclose the
3 requested information. This Court has entered an order compelling Defendant to respond to
4 Discovery requests. Defendant has failed to comply with this order.

5 NRCP 37(b)(2)(c), permits "an order striking out pleadings or parts thereof," for discovery
6 abuses. "Selection of a particular sanction for discovery abuses under NRCP 37 is generally a
7 matter committed to the sound discretion of the district court." *Stubli v. Big Int'l Trucks, Inc.*, 107
8 Nev. 309, 312-313, 810 P.2d 785 (1991) (citing *Fire Ins. Exchange v. Zenith Radio Corp.*, 103 Nev.
9 648, 649, 747 P.2d 911, 912 (1987) and *Kelly Broadcasting v. Sovereign Broadcast*, 96 Nev. 188,
10 192, 606 P.2d 1089, 1092 (1980.)) In *Hamlett v. Reynolds*, despite orders from the discovery
11 commissioner and the district court, as well as having monetary sanctions imposed, Hamlett refused
12 to comply with Reynold's discovery requests. Finally, after a year of attempts to force Hamlett to
13 comply, the district court struck Hamlett's answer and entered default against him as a failure to
14 comply with discovery orders. Hamlett appealed. The Nevada Supreme Court held that default
15 judgments will be upheld where "the normal adversary process has been halted due to an
16 unresponsive party, because diligent parties are entitled to be protected against interminable delay
17 and uncertainty as to their legal rights." *Hamlett v. Reynolds*, 114 Nev. 863, 963 P.2d 457 (1998)
18 (citing *Skeen v. Valley Bank of Nevada*, 89 Nev. 301, 303, 511 P.2d 1053, 1054 (1973).

19 In the present case Defendant has failed to provide NRCP 16.1 disclosures and has failed to
20 respond to any written discovery propounded by Plaintiff. Plaintiff submitted her initial
21 interrogatories to Defendant on October 31, 2007, and continued sending various discovery requests
22 through July 2, 2008. Plaintiffs submitted interrogatories, requests for admission, and two sets of
23 requests for production of documents, including a request that Fallini produce all related insurance
24 information regarding the incident.

25 Despite these discovery requests, Defendant has failed and refused to cooperate or respond.
26 Plaintiff's counsel has made phone calls and submitted letters to Fallini's counsel notifying them of
27 these discovery requests to no avail. (Exhibits 6 and 7.) Nevertheless, Fallini failed to provide any
28 of the information as requested despite the extension. Plaintiff was then forced to file a motion to

1 compel. Defendant did not oppose the motion, but agreed it was warranted. Yet, Defendant failed
2 to comply with the order.

3 Defendant has failed to produce any sort of discovery despite numerous formal requests,
4 followed by phone calls and letters for nearly a year and a half from the initial submission of
5 interrogatories on September 10, 2007. As shown above, Plaintiff has made several good faith
6 efforts to procure the discovery without court intervention, including re-opening discovery and
7 extending the deadline. Plaintiff finally sought court intervention and this Court issued an order
8 compelling Defendant to comply with discovery requests. Nevertheless, Defendant continues to
9 show no interest in cooperating with discovery guidelines or this Court's order. Defendant's failure
10 to comply with this Court's order and all discovery requests has completely halted the normal
11 adversary process. Plaintiff therefore respectfully requests that NRCP 37 sanctions be levied against
12 Defendant and her answer be stricken for her blatant failure to comply with this Court's order and
13 the discovery rules.

14 Plaintiff further requests that this Court issue another Order to Defendant Fallini to provide
15 information regarding any applicable insurance policies Plaintiff must notify Defendant's insurance
16 prior to Plaintiff obtaining a default judgment and collect against such insurance policies. *Estate*
17 *of Lomastro v. American Family Insurance*, 195 P.3d 399 (2008).

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III.

CONCLUSION

Based upon the above, Plaintiff's request an Order Striking Defendant's Answer as Defendant has failed to respond to any discovery requests and failed to comply with Court's Order Compelling Responses to Plaintiff's Discovery Requests. Plaintiff further requests this Honorable Court issue another order compelling Defendant to produce applicable insurance policies.

DATED this 11 day of June, 2009.

ALDRICH LAW FIRM, LTD.

By John P. Aldrich
John P. Aldrich
Nevada Bar No. 6877
ALDRICH LAW FIRM, LTD.
1601 S. Rainbow Blvd., Suite 160
Las Vegas, NV 89146
(702) 853-5490
Attorneys for Plaintiff

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 15th day of June, 2009, I mailed a copy of PLAINTIFF'S MOTION TO STRIKE DEFENDANT'S ANSWER in a sealed envelope, to the following and that postage was fully paid thereon:

Harold Kuehn, Esq.
Gibson, & Kuehn
1601 E. Basin Avenue, Suite 101
Pahrump, NV 89060
Attorney for Defendant/Counterclaimant

Katherine M. Barker, Esq.
Law Office of Katherine M. Barker
701 Bridger Ave, Ste. 500
Las Vegas, NV 89101
*Attorney for Counterdefendant
Estate of Michael David Adams*

Eleanor Englebertson
An employee of Aldrich Law Firm, Ltd.

EXHIBIT 1

1 **INTG**

John P. Aldrich

2 Nevada Bar No. 6877

Stacy D. Harrop

3 Nevada Bar No. 9826

ALDRICH & BRYSON LLP

4 1601 S. Rainbow Blvd., Suite 160

Las Vegas, Nevada 89146

5 (702) 853-5490

(702) 853-5491 (fax)

6 *Attorneys for Plaintiffs*

7
8 **THE FIFTH JUDICIAL DISTRICT COURT**
9 **THE STATE OF NEVADA**
10 **COUNTY OF NYE**

11 Estate of MICHAEL DAVID ADAMS,
12 by and through his mother JUDITH
13 ADAMS, individually and on behalf of the
14 Estate,

15 Plaintiffs,

16 vs.
17 SUSAN FALLINI, DOES I-X and ROE
18 CORPORATIONS I-X, inclusive,

19 Defendants.

20 SUSAN FALLINI,

21 Counterclaimant,

22 vs.

23 Estate of MICHAEL DAVID ADAMS,
24 by and through his mother JUDITH
25 ADAMS, individually and on behalf of the
26 Estate,

27 Counterdefendants.

Case No.: CV24539
Dept.: 2P

28 **PLAINTIFF'S FIRST SET OF INTERROGATORIES TO DEFENDANT FALLINI**

TO: SUSAN FALLINI, Defendant/Counterclaimant

TO: HAROLD KUEHN, ESQ., attorney for Defendant/Counterclaimant

Plaintiffs, Estate of MICHAEL DAVID ADAMS, by and through his mother JUDITH ADAMS, by and through their attorneys, Aldrich & Bryson, LLP, hereby requests that Defendant, pursuant to Nev. R. Civ. P. 33, answer the following Interrogatories, in writing, under oath, within thirty (30) days of service hereof:

DEFINITIONS AND INSTRUCTIONS

The following preliminary definitions and instructions apply to each of the Interrogatories set forth hereafter and are deemed to be incorporated therein.

A. When used in these Interrogatories, the term "Defendant," its plural or any synonym thereof, is intended to and shall embrace and include, in addition to the named party or parties, counsel for said party and all agents, servants, employees, representatives, investigators and others who are in possession of, or may have obtained, information for or on behalf of the named Defendant. As to each person, please state his or her full name, last known residence address and telephone number, and his or her job title, capacity or position at such last known employment.

B. As used in these Interrogatories, the terms "document" and "writing" and the plural forms thereof shall mean all written, recorded or graphic matters, however produced or reproduced, of every kind and description, pertaining in any way to the subject matter of this action. The terms "document" and "writing" shall include, but are not limited to, any books, pamphlets, periodicals, memoranda (including those of telephone and oral conversations), e-mails, contracts, correspondence, agreements, application, financial records, security instruments, disbursements, checks, bank statements, time records, accounting or financial records, notes, diaries, logs, telegrams, or cables prepared, drafted, received or sent, tapes, transcripts, recordings, minutes of meetings, directives, work papers, charts, drawings, prints, flow sheets, photographs, film, computer printouts, medical and hospital records and reports, x-ray photographs, advertisements, catalogs, or any hand-written, recorded, transcribed, punched, tapes, filmed or graphic matters, however produced or reproduced in Defendant's possession, custody or control or to which defendant has or has had access.

C. As used throughout these Interrogatories, the term "you," its plural or any synonyms thereof, is intended to and shall embrace and include in addition to the named party or parties, counsel for such party or parties, and all agents, servants, employees, representatives, investigators and others who are in the possession of or who may have obtained information for or on behalf of the named party or parties.

D. As used throughout these Interrogatories, the term "person," or its plural or any

1 synonyms thereof, is intended to and shall embrace and include any individual, partnership,
2 corporation, company, association, government agency (whether federal, state, local or any agency
3 of the government of a foreign country) or any other entity.

4 E. As used throughout these Interrogatories, the term "communication," its plural or any
5 synonyms thereof, is intended to and shall embrace and include all written communications, and with
6 respect to all communications, shall include but is not limited to every discussion,
7 conversation, conference, meeting, interview, telephone call or doctor or other professional service
8 visit.

9 F. (a) As used throughout these Interrogatories, the terms "identify," "identity," or
10 "identification," their plural or any synonyms thereof, when used with reference to a person, shall
11 mean to state the full name and address, and where applicable, the present position and business, if
12 known, and each prior position and business.

13 (b) As used throughout these Interrogatories, the terms "identify," "identity," or
14 "identification," their plural or synonyms thereof, when used with reference to a document mean to
15 state:

16 (1) The general nature of the document or object, i.e., whether it is a letter,
17 a memorandum, a report, a drawing, a chart or tracing, a pamphlet, etc.;

18 (2) The general subject matter of the document or object;

19 (3) The name, current or last known business address and home address
20 of the original author or draftsman (and, if different, the signor or signors), and of any person who
21 has edited, corrected, revised or amended, or who has entered any initials or comment or notation
22 thereon;

23 (4) The date thereof, including any date of any such editing, correcting,
24 amending or revision;

25 (5) Any numerical designation appearing thereon, such as a file reference;

26 (6) The name of each recipient of a copy of the document or object; and

27 (7) The place where and the person now having custody or control of each
28 such document or object, or if such document or object has been destroyed, the place of and reasons

1 for such destruction.

2 (c) As used throughout these Interrogatories, the terms "identify," "identity," and
3 "identification," when used in reference to a communication, mean to state with respect to each
4 communication, the nature of the communication (telephone call, letter, etc.), the date of the
5 communication, the persons who were present at or participated in the communication or with whom
6 or from whom the communication was made, and the substance of the statement made by each
7 person involved in such communication.

8 G. All information is to be divulged which is in Defendant's possession or control, or can
9 be ascertained upon reasonable investigation of areas within your control. The knowledge of
10 Defendant's attorney is deemed to be Defendant's knowledge, so that, apart from privileged matters,
11 if Defendant's attorney has knowledge of the information sought to be elicited herein, said
12 knowledge must be incorporated into these answers, even if such information is unknown to
13 Defendant individually.

14 H. Whenever you are unable to state an answer to these Interrogatories based upon your
15 own personal knowledge, please so state, and identify the person or persons you believe to have such
16 knowledge, what you believe the correct answer to be, and the facts upon which you base your
17 answer.

18 I. When an Interrogatory calls for an answer in more than one part, each part should be
19 separated so that the answer is clearly understandable.

20 J. Each Interrogatory should be construed independently. No Interrogatory should be
21 construed by reference to any other Interrogatory if the result is a limitation of the scope of the
22 answer to such Interrogatory.

23 K. "And" and "or" shall be construed disjunctively or conjunctively as necessary, in order
24 to bring within the scope of the Interrogatory all responses which might otherwise be construed to
25 be outside of its scope.

26 L. If an Interrogatory is objected to, in whole or in part, or if information responsive to
27 an Interrogatory is withheld, on the ground of privilege or otherwise, please set forth fully each
28 objection, describe generally the information which is withheld, and set forth the facts upon which

1 Defendants rely as the basis for each such objection.

2 M. These Interrogatories are addressed to all Defendants. If, for an Interrogatory, the
3 answers for all Defendants would be the same, only one answer is necessary. If the Defendants'
4 answers to an Interrogatory would vary among them, state and identify answers for each Defendant
5 separately.

6 N. Pursuant to Nev. R. Civ. P. 26, you shall supplement your responses according to the
7 following:

8 (a) A party is under a duty reasonably to supplement his response with respect
9 to any question directly addressed to (A) the identity and location of persons having knowledge of
10 discoverable matters and, (B), the identity of each person expected to be called as an expert witness
11 at trial, the subject matter on which he is expected to testify, and the substance of his testimony.

12 (b) A party is under a duty reasonably to amend a prior response if he obtains
13 information upon the basis of which (A) he knows that the response was incorrect when made, and
14 (B) he knows that the response though correct when made is no longer true and the circumstances
15 are such that a failure to amend the response is in substance a knowing concealment.

16 INTERROGATORIES

17 INTERROGATORY NO. 1:

18 State your name, address, telephone number, Social Security number, date of birth and
19 birthplace.

20 INTERROGATORY NO. 2:

21 If you have ever been convicted of a felony or a misdemeanor having to do with truth or
22 veracity, set forth all relevant facts relating to such conviction including, but not limited to, the
23 nature of the crime and the date and place of each conviction, and any fine or sentence imposed.

24 INTERROGATORY NO. 3:

25 State the location of your property and whether it is located within "open range." If it is not
26 located within "open range," state any grazing restrictions that apply to your land, including any
27 requirements regarding the fencing in of your animals or keeping your animals off the roadways.

28 NOTE: As used throughout these interrogatories "open range" is to be defined as set forth in NRS

1 568.355.

2 **INTERROGATORY NO. 4:**

3 State the number of cattle that you own, how long you have owned the cattle, the purpose for
4 which you raise the cattle, and the number of employees or independent contractors you hire to keep
5 track of the cattle.

6 **INTERROGATORY NO. 5:**

7 Provide a description of the typical grazing area of your cattle, including the distance from
8 your ranch that your cattle typically graze and whether those areas of typical grazing are in "open
9 range." If those areas are not located within "open range," state any grazing restrictions that apply
10 to those areas, including any requirements regarding the fencing in of your animals or keeping your
11 animals off the roadways.

12 **INTERROGATORY NO. 6:**

13 State any and all policies, standards, procedures, or practices that you follow with regard to
14 tracking the location of your cattle. Include in your answer how often you confirm the location of
15 your cattle and how often that you confirm that all cattle are accounted for.

16 **INTERROGATORY NO. 7:**

17 State any and all policies, standards, procedures, or practices that you typically follow when
18 you discover or are notified that any of your cattle are located on a highway. Include in your answer
19 whether you follow different policies, standards, procedures, or practices depending on whether the
20 cattle is located in "open range" or not, and whether you proceed to remove your cattle from the
21 roadway and, if so, the time lapse that typically occurs between notification and your removal of the
22 cattle.

23 **INTERROGATORY NO. 8:**

24 State the last time you had confirmed the location of the cow that is the subject of this lawsuit
25 prior to the subject accident. Include in your answer a description of the confirmed location of that
26 cow, including whether that location was in "open range," the date on which that location was
27 confirmed and who confirmed the subject cow's location.

28 ///

1 **INTERROGATORY NO. 9:**

2 Based on the location as provided by you in the preceding interrogatory as the starting point,
3 provide whether the subject cow would have had to cross a fence or fenced property in order to arrive
4 at the location of the subject accident with Plaintiff. Include in your answer a description of the
5 location of any fences or fenced property that the cow would have had to cross.

6 **INTERROGATORY NO. 10:**

7 State all time within the five (5) years prior to the subject incident when you lost track of any
8 of your cattle or were notified that one or more of your cattle were on or near any roadway.

9 **INTERROGATORY NO. 11:**

10 State whether any of your other cattle, other than the cow that is a subject of this lawsuit,
11 were at or near the location of the subject accident with Plaintiff at the time of that accident or
12 shortly thereafter.

13 **INTERROGATORY NO. 12:**

14 Describe with particularity how your cattle are marked and/or branded, including the subject
15 cow. Include in you answer whether your cattle have ear tags and, if so, whether those ear tags are
16 florescent, reflect light or otherwise luminesce at night or when illuminated.

17 **INTERROGATORY NO. 13:**

18 Describe with particularity, based on your observations and personal knowledge of the
19 industry, the common practice among cattle owners in Nye County regarding how their cattle are
20 marked and/or branded. Include in you answer whether it is common practice in Nye County for
21 cattle to have ear tags and, if so, whether those ear tags are florescent, reflect light or otherwise
22 luminesce at night or when illuminated.

23 **INTERROGATORY NO. 14:**

24 Identify sufficiently to permit service of a subpoena any expert or consultant with whom you
25 have communicated or intend to utilize at trial or arbitration in connection with the occurrence which
26 is the subject matter of this action, and state the specific area of knowledge of each such person, their
27 expected testimony, and the date when each such person was first contacted.

28 ///

1 **INTERROGATORY NO. 15:**

2 Identify sufficiently to permit service of a subpoena, duces tecum or Rule 34 Request for
3 Production, each document, writing, or physical object provided to each person identified in your
4 answer to the preceding interrogatory and each document, writing or communication you have
5 received from each such person.

6 **INTERROGATORY NO. 16:**

7 Identify sufficiently to permit service of a subpoena, duces tecum or Rule 34 Request for
8 Production, each document, writing or communication of which you or your attorney have
9 possession or control from or by any Plaintiff, Defendant, witness, or any agent or representative of
10 any Defendant, Plaintiff or any witness, which pertains in any manner to this accident or to the issues
11 arising therefrom.

12 **INTERROGATORY NO. 17:**

13 Identify sufficiently to permit service of a subpoena, duces tecum or Rule 34 Request for
14 Production, each document, writing or physical object known to you pertaining to this accident or
15 to the issues arising therefrom not previously identified in your answers to the preceding
16 interrogatories.

17 **INTERROGATORY NO. 18:**

18 Describe with particularity any and all incidents in the ten (10) years prior to the subject
19 incident where your cattle were involved in an incident with any man-made or man-operated object
20 on a roadway. Include in your answer a description of the incident, the date of the incident, the name
21 of the party in the motor vehicle, whether any injuries or fatalities resulted, and whether litigation
22 was instituted.

23 **INTERROGATORY NO. 19:**

24 Set forth each and every fact which you contend supports your defense of the allegations
25 contained in the Complaint on file herein.

26 **INTERROGATORY NO. 20:**

27 If your answer to any of the Requests for Admissions served herewith is anything other than
28 an unqualified admission, please set forth all facts upon which you base your response for each


1 Request.

2 **INTERROGATORY NO. 21:**

3 State the name, title, and position of the person(s), other than your attorney, who helped
4 prepare or supplied information for the answers to Plaintiff's Interrogatories

5 DATED this 21st day of October, 2007.

6 **ALDRICH & BRYSON, LLP**

7 
8 _____
9 John P. Aldrich
10 Nevada Bar No. 6877
11 Stacy D. Harrop
12 Nevada Bar No. 9826
13 1601 S. Rainbow Blvd., Suite 160
14 Las Vegas, Nevada 89146
15 (702) 853-5490
16 (702) 853-5491 (fax)
17 Attorneys for Plaintiffs
18
19
20
21
22
23
24
25
26
27
28

CERTIFICATE OF MAILING

I hereby certify that on this 31st day of October, 2007, service of the foregoing **PLAINTIFFS' FIRST SET OF INTERROGATORIES TO DEFENDANT FALLINI** was made this date by depositing a true and correct copy of the same for mailing in Las Vegas, Nevada, addressed to:

Harold Kuehn, Esq.
Gibson, & Kuehn
921 S. Highway 160, #203
Pahrump, NV 89048

P.O. Box 1411
Tonopah, NV 89049
*Attorney for Defendant/Counterclaimant
Susan Fallini*

Katherine M. Peck, Esq.
Peck Law Offices
701 Bridger Ave, Ste. 500
Las Vegas, NV 89106
*Attorney for Counterdefendant
Estate of Michael David Adams*


An employee of ALDRICH & BRYSON, LLP

EXHIBIT 2

1 **REQT**

2 John P. Aldrich
3 Nevada Bar No. 6877
4 Stacy D. Harrop
5 Nevada Bar No. 9826
6 **ALDRICH & BRYSON LLP**
7 1601 S. Rainbow Blvd., Suite 160
8 Las Vegas, Nevada 89146
9 (702) 853-5490
10 (702) 853-5491 (fax)
11 *Attorneys for Plaintiffs*

12
13 **THE FIFTH JUDICIAL DISTRICT COURT**
14 **THE STATE OF NEVADA**
15 **COUNTY OF NYE**

16 Estate of MICHAEL DAVID ADAMS,
17 by and through his mother JUDITH
18 ADAMS, individually and on behalf of the
19 Estate,

20 Plaintiffs,

21 vs.
22 SUSAN FALLINI, DOES I-X and ROE
23 CORPORATIONS I-X, inclusive,

24 Defendants.

25 SUSAN FALLINI,

26 Counterclaimant,

27 vs.

28 Estate of MICHAEL DAVID ADAMS,
by and through his mother JUDITH
ADAMS, individually and on behalf of the
Estate,

Counterdefendants.

Case No.: CV24539
Dept.: 2P

PLAINTIFFS' FIRST SET OF REQUESTS FOR ADMISSION TO DEFENDANT
FALLINI

TO: SUSAN FALLINI, Defendant/Counterclaimant

TO: HAROLD KUEHN, ESQ., attorney for Defendant/Counterclaimant

Plaintiffs, Estate of MICHAEL DAVID ADAMS, by and through his mother JUDITH
ADAMS, by and through their attorneys, Aldrich & Bryson, LLP, hereby request that Defendant,
pursuant to Nev. R. Civ. P. 36 respond to the following Requests for Admission within thirty (30)
days of service hereof:

1 **REQUEST FOR ADMISSION NO. 1:**

2 Admit that your property is not located within "open range."

3 NOTE: As used throughout these requests "open range" is to be defined as set forth in NRS
4 568.355.

5 **REQUEST FOR ADMISSION NO. 2:**

6 Admit that you are the owner of the cow that is mentioned in of the Complaint on file herein
7 (hereafter "subject cow").

8 **REQUEST FOR ADMISSION NO. 3:**

9 Admit that it is the common practice of Nye County ranchers to mark their cattle with
10 reflective or luminescent tags.

11 **REQUEST FOR ADMISSION NO. 4:**

12 Admit that the subject cow was not marked with a reflective or luminescent tag.

13 **REQUEST FOR ADMISSION NO. 5:**

14 Admit that the subject cow crossed a fence to arrive at the location of the subject accident
15 described in the Complaint on file herein.

16 **REQUEST FOR ADMISSION NO. 6:**

17 Admit that your cattle have previously been involved in incidents with motor vehicles on the
18 roadway.

19 **REQUEST FOR ADMISSION NO.7:**

20 Admit that you do not track the location of your cattle while they are grazing away from your
21 property.

22 **REQUEST FOR ADMISSION NO. 8:**

23 Admit that you do not remove your cattle from the roadway when notified that the cattle are
24 in a roadway.

25 **REQUEST FOR ADMISSION NO. 9:**

26 Admit that the subject cow was not visible at night.

27 **REQUEST FOR ADMISSION NO. 10:**

28 Admit that you were aware that the subject cow was not visible at night prior to the incident

1 that is the subject of the Complaint on file herein.

2 **REQUEST FOR ADMISSION NO. 11:**

3 Admit that the subject cow was in the roadway of SR 375 at the time of the incident that is
4 the subject of the Complaint on file herein.

5 **REQUEST FOR ADMISSION NO. 12:**

6 Admit that the subject cow's presence in the roadway of SR 375 was the cause of the motor
7 vehicle accident that is the subject of the Complaint on file herein.

8 **REQUEST FOR ADMISSION NO. 13:**

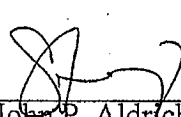
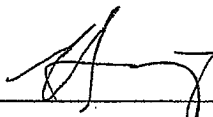
9 Admit that you did not know the location of the subject cow at the time of the incident that
10 is the subject of the Complaint on file herein.

11 **REQUEST FOR ADMISSION NO. 14:**

12 Admit that the presence of a reflective or luminescent tag on the subject cow would have
13 made the subject cow visible at the time of the incident that is the subject of the Complaint on file
14 herein.

15 DATED this 31st day of October, 2007.

16 **ALDRICH & BRYSON, LLP**

17 
18 
19 John P. Aldrich
20 Nevada Bar No. 6877
21 Stacy D. Harrop
22 Nevada Bar No. 9826
23 1601 S. Rainbow Blvd., Suite 160
24 Las Vegas, Nevada 89146
25 (702) 853-5490
26 (702) 853-5491 (fax)
27 *Attorneys for Plaintiffs*
28

CERTIFICATE OF MAILING

I hereby certify that on this 31ST day of October, 2007, service of the foregoing
PLAINTIFFS' FIRST SET OF REQUESTS FOR ADMISSION TO DEFENDANT FALLINI
was made this date by depositing a true and correct copy of the same for mailing in Las Vegas,
Nevada, addressed to:

Harold Kuehn, Esq.
Gibson, & Kuehn
921 S. Highway 160, #203
Pahrump, NV 89048

P.O. Box 1411
Tonopah, NV 89049
Attorney for Defendant/Counterclaimant

Katherine M. Peck, Esq.
Peck Law Offices
701 Bridger Ave, Ste. 500
Las Vegas, NV 89106
*Attorney for Counterdefendant
Estate of Michael David Adams*


An employee of ALDRICH & BRYSON, LLP

EXHIBIT 3

1 **REQT**

John P. Aldrich

2 Nevada Bar No. 6877

Stacy D. Harrop

3 Nevada Bar No. 9826

ALDRICH & BRYSON LLP

4 1601 S. Rainbow Blvd., Suite 160

Las Vegas, Nevada 89146

5 (702) 853-5490

(702) 853-5491 (fax)

6 *Attorneys for Plaintiffs*

7
8 **THE FIFTH JUDICIAL DISTRICT COURT**
9 **THE STATE OF NEVADA**
COUNTY OF NYE

10 Estate of MICHAEL DAVID ADAMS,
11 by and through his mother JUDITH
ADAMS, individually and on behalf of the
Estate,

12 Plaintiffs,

13 vs.
14 SUSAN FALLINI, DOES I-X and ROE
CORPORATIONS I-X, inclusive,

15 Defendants.

16 SUSAN FALLINI,

17 Counterclaimant,

18 vs.

19 Estate of MICHAEL DAVID ADAMS,
20 by and through his mother JUDITH
ADAMS, individually and on behalf of the
Estate,

21 Counterdefendants.

Case No.: CV24539
Dept.: 2P

22
23 **PLAINTIFFS' FIRST SET OF REQUESTS FOR PRODUCTION OF DOCUMENTS TO**
24 **DEFENDANT FALLINI**

25 **TO: SUSAN FALLINI, Defendant/Counterclaimant**

26 **TO: HAROLD KUEHN, ESQ., attorney for Defendant/Counterclaimant**

27 Plaintiffs, Estate of MICHAEL DAVID ADAMS, by and through his mother JUDITH
28 ADAMS, by and through their attorneys, Aldrich & Bryson, LLP, hereby requests that Defendant,
pursuant to Nev. R. Civ. P. 34, respond to the following Requests for Production of Documents
within thirty (30) days of service hereof:

DEFINITIONS AND INSTRUCTIONS

The following preliminary definitions and instructions apply to each of the Requests set forth hereafter and are deemed to be incorporated therein.

A. When used in these Requests, the term "Defendant" or "Defendants," its plural or any synonym thereof, is intended to and shall embrace and include, in addition to the named party or parties, counsel for said party and all agents, servants, employees, representatives, investigators and others who are in possession of, or may have obtained, information for or on behalf of the named Defendant. As to each person, please state his or her full name, last known residence address and telephone number, and his or her job title, capacity or position at such last known employment.

B. As used in these Requests, the terms "document" and "writing" and the plural forms thereof shall mean all written, recorded or graphic matters, however produced or reproduced, of every kind and description, pertaining in any way to the subject matter of this action. The terms "document" and "writing" shall include, but are not limited to, any books, pamphlets, periodicals, memoranda (including those of telephone and oral conversations), e-mails, contracts, correspondence, agreements, application, financial records, security instruments, disbursements, checks, bank statements, time records, accounting or financial records, notes, diaries, logs, telegrams, or cables prepared, drafted, received or sent, tapes, transcripts, recordings, minutes of meetings, directives, work papers, charts, drawings, prints, flow sheets, photographs, film, computer printouts, medical and hospital records and reports, x-ray photographs, advertisements, catalogs, or any hand-written, recorded, transcribed, punched, tapes, filmed or graphic matters, however, produced or reproduced in Defendant's possession, custody or control or to which defendant has or has had access.

C. As used throughout these Requests, the term "you," its plural or any synonyms thereof, is intended to and shall embrace and include in addition to the named party or parties, counsel for such party or parties, and all agents, servants, employees, representatives, investigators and others who are in the possession of or who may have obtained information for or on behalf of the named party or parties.

D. As used throughout these Requests, the term "person," or its plural or any synonyms

1 thereof, is intended to and shall embrace and include any individual, partnership, corporation,
2 company, association, government agency (whether federal, state, local or any agency of the
3 government of a foreign country) or any other entity.

4 E. As used throughout these Requests, the term "communication," its plural or any
5 synonyms thereof, is intended to and shall embrace and include all written communications, and with
6 respect to all communications, shall include but is not limited to every discussion,
7 conversation, conference, meeting, interview, telephone call or doctor or other professional service
8 visit.

9 F. (a) As used throughout these Requests, the terms "identify," "identity," or
10 "identification," their plural or any synonyms thereof, when used with reference to a person, shall
11 mean to state the full name and address, and where applicable, the present position and business, if
12 known, and each prior position and business.

13 (b) As used throughout these Requests, the terms "identify," "identity," or
14 "identification," their plural or synonyms thereof, when used with reference to a document mean to
15 state:

16 (1) The general nature of the document or object, i.e., whether it is a letter,
17 a memorandum, a report, a drawing, a chart or tracing, a pamphlet, etc.;

18 (2) The general subject matter of the document or object;

19 (3) The name, current or last known business address and home address
20 of the original author or draftsman (and, if different, the signor or signors), and of any person who
21 has edited, corrected, revised or amended, or who has entered any initials or comment or notation
22 thereon;

23 (4) The date thereof, including any date of any such editing, correcting,
24 amending or revision;

25 (5) Any numerical designation appearing thereon, such as a file reference;

26 (6) The name of each recipient of a copy of the document or object; and

27 (7) The place where and the person now having custody or control of each
28 such document or object, or if such document or object has been destroyed, the place of and reasons

1 for such destruction.

2 (c) As used throughout these Requests, the terms "identify," "identity," and
3 "identification," when used in reference to a communication, mean to state with respect to each
4 communication, the nature of the communication (telephone call, letter, etc.), the date of the
5 communication, the persons who were present at or participated in the communication or with whom
6 or from whom the communication was made, and the substance of the statement made by each
7 person involved in such communication.

8 G. All information is to be divulged which is in Defendant's possession or control, or can
9 be ascertained upon reasonable investigation of areas within your control. The knowledge of
10 Defendant's attorney is deemed to be Defendant's knowledge, so that, apart from privileged matters,
11 if Defendant's attorney has knowledge of the information sought to be elicited herein, said
12 knowledge must be incorporated into these answers, even if such information is unknown to
13 Defendant individually.

14 H. Whenever you are unable to state an answer to these Requests based upon your own
15 personal knowledge, please so state, and identify the person or persons you believe to have such
16 knowledge, what you believe the correct answer to be, and the facts upon which you base your
17 answer.

18 I. When a Request calls for an answer in more than one part, each part should be
19 separated so that the answer is clearly understandable.

20 J. Each Request should be construed independently. No Request should be construed
21 by reference to any other Request if the result is a limitation of the scope of the answer to such
22 Request.

23 K. "And" and "or" shall be construed disjunctively or conjunctively as necessary, in
24 order to bring within the scope of the Request all responses which might otherwise be construed to
25 be outside of its scope.

26 L. If a Request is objected to, in whole or in part, or if information responsive to a
27 Request is withheld, on the ground of privilege or otherwise, please set forth fully each objection,
28 describe generally the information which is withheld, and set forth the facts upon which Defendants

1 rely as the basis for each such objection.

2 M. These Requests are addressed to all Defendants. If, for a Request, the answers for all
3 Defendants would be the same, only one answer is necessary. If the Defendants' answers to a
4 Request would vary among them, state and identify answers for each Defendant separately.

5 N. Pursuant to Nev. R. Civ. P. 26, you shall supplement your responses according to the
6 following:

7 (a) A party is under a duty reasonably to supplement his response with respect
8 to any question directly addressed to (A) the identity and location of persons having knowledge of
9 discoverable matters and, (B), the identity of each person expected to be called as an expert witness
10 at trial, the subject matter on which he is expected to testify, and the substance of his testimony.

11 (b) A party is under a duty reasonably to amend a prior response if he obtains
12 information upon the basis of which (A) he knows that the response was incorrect when made, and
13 (B) he knows that the response though correct when made is no longer true and the circumstances
14 are such that a failure to amend the response is in substance a knowing concealment.

15 **REQUESTS FOR PRODUCTION**

16 **REQUEST FOR PRODUCTION NO. 1:**

17 Produce any and all documents identified, consulted or referred to in your answers to
18 Plaintiff's First Set of Interrogatories to Defendant Fallini, served concurrently herewith.

19 **REQUEST FOR PRODUCTION NO. 2:**

20 Produce any and all documents which support, refute, or in any way relate to the allegations
21 in the Complaint on file herein and/or your defenses thereto.

22 **REQUEST FOR PRODUCTION NO. 3:**

23 Produce copies of any and all written or recorded statements allegedly made by Plaintiff or
24 his representative, Defendant or any representative or agent of Defendant or any witness regarding
25 the allegations which form the basis of this litigation.

26 **REQUEST FOR PRODUCTION NO. 4:**

27 Produce copies of any and all non-transcribed witness statements allegedly made by Plaintiff,
28 Defendant or representative or agent of Defendant, or any witness regarding the allegations which

1 form the basis of this litigation.

2 **REQUEST FOR PRODUCTION NO. 5:**

3 Produce copies of any and all videotapes, photographs, charts, or diagrams which depict the
4 scene of the incident which forms the basis of this litigation.

5 **REQUEST FOR PRODUCTION NO. 6:**

6 Produce copies of any and all investigative reports and the underlying notes giving rise
7 thereto regarding the incident which forms the basis of this litigation

8 **REQUEST FOR PRODUCTION NO. 7:**

9 Produce any and all documents contemplated to be used in defense of the allegations in the
10 Complaint on file herein, including all rebuttal and impeachment documents.

11 **REQUEST FOR PRODUCTION NO. 8:**

12 Produce copies of any journals, diaries or other contemporary documentation regarding the
13 allegations which form the basis of this litigation.

14 **REQUEST FOR PRODUCTION NO. 9:**

15 Produce copies of any and all documents that relate to any contact or communications
16 between Defendant, or any agent or representative of Defendant, and the police with regard to the
17 incident described in the Complaint on file herein.

18 **REQUEST FOR PRODUCTION NO. 10:**

19 Produce copies of any photographs or depictions of the marks or brands used by you on your
20 cattle, including any ear tags.

21 **REQUEST FOR PRODUCTION NO. 11:**

22 Produce copies of any photographs or depictions of the marks or brands, including ear tags,
23 commonly used by cattle owners in Nye County, as provided in your answers to Plaintiff's
24 Interrogatories to Defendant Fallini served concurrently herewith.

25 **REQUEST FOR PRODUCTION NO. 12:**

26 Produce any and all documents that describe or depict the location of your property, the last
27 confirmed location of the subject cow prior to the incident, as provided in your answers to Plaintiff's
28 Interrogatories to Defendant Fallini served concurrently herewith, and the location of the incident

described in the Complaint on file herein.

REQUEST FOR PRODUCTION NO. 13:

Produce any and all documents that describe or depict the any fences or fenced property that the subject cow would have had to cross in order to arrive at the location of the subject incident from its last confirmed location, as provided in your answers to Plaintiff's Interrogatories to Defendant Fallini served concurrently herewith.

REQUEST FOR PRODUCTION NO. 14:

Produce any and all documents that describe or define whether the following locations are located in "open range" or in a "herd district": your property, the last confirmed location of the subject cow prior to the incident, or the location of the incident described in the Complaint on file herein.

REQUEST FOR PRODUCTION NO. 15:

Produce any and all documents that describe or depict the typical grazing area of your cattle as provided in your answers to Plaintiff's Interrogatories to Defendant Fallini served concurrently herewith.

REQUEST FOR PRODUCTION NO. 16:

Produce any and all documents that describe or relate to any and all policies, standards, procedures, or practices that you follow with regard to tracking the location of your cattle.

REQUEST FOR PRODUCTION NO. 17:

Produce any and all documents that describe or relate to any and all policies, standards, procedures, or practices that you typically follow when you discover or are notified that any of your cattle are located on a highway

REQUEST FOR PRODUCTION NO. 18:

Produce any and all documents that describe or relate to any incidents in the ten (10) years prior to the subject incident where your cattle were involved in an incident with any man-made or man-operated object on a roadway.

///

///

1 **REQUEST FOR PRODUCTION NO. 19:**

2 Produce a list of all experts with whom you have communicated in connection with this
3 matter, and a copy of any reports received from those experts, along with a copy of all documents
4 which were provided to the expert and were utilized by said expert in forming an opinion, as well
5 as any notes of communication with said experts.

6 **REQUEST FOR PRODUCTION NO. 20:**

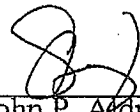
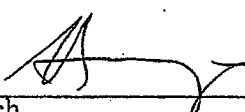
7 Produce any and all documents that support any and all of your denials to the Requests for
8 Admissions served concurrently herewith.

9 **REQUEST FOR PRODUCTION NO. 21:**

10 Produce any and all documents consulted, referenced, or utilized in responding to these
11 requests for production of documents.

12 DATED this 31st day of October, 2007.

13 **ALDRICH & BRYSON, LLP**

14 
15 
16 John P. Aldrich
17 Nevada Bar No. 6877
18 Stacy D. Harrop
19 Nevada Bar No. 9826
20 1601 S. Rainbow Blvd., Suite 160
21 Las Vegas, Nevada 89146
22 (702) 853-5490
23 (702) 853-5491 (fax)
24 Attorneys for Plaintiffs
25
26
27
28

CERTIFICATE OF MAILING

I hereby certify that on this 31st day of October, 2007, service of the foregoing
PLAINTIFFS' FIRST SET OF REQUESTS FOR PRODUCTION OF DOCUMENTS TO
DEFENDANT FALLINI was made this date by depositing a true and correct copy of the same for
mailing in Las Vegas, Nevada, addressed to:

Harold Kuehn, Esq.
Gibson, & Kuehn
921 S. Highway 160, #203
Pahrump, NV 89048

P.O. Box 1411
Tonopah, NV 89049
Attorney for Defendant/Counterclaimant

Katherine M. Peck, Esq.
Peck Law Offices
701 Bridger Ave, Ste. 500
Las Vegas, NV 89106
Attorney for Counterdefendant
Estate of Michael David Adams


An employee of ALDRICH & BRYSON, LLP

EXHIBIT 4

1 **REQT**
2 **BLACK & LOBELLO**
3 John P. Aldrich
4 Nevada Bar No.: 6877
5 10777 West Twain Avenue, Suite 300
6 Las Vegas, Nevada 89135
7 (702) 869-8801
8 (702) 869-2669 (Fax)
9 *Attorneys for Plaintiffs*

CALENDARED

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**THE FIFTH JUDICIAL DISTRICT COURT
THE STATE OF NEVADA
COUNTY OF NYE**

Estate of MICHAEL DAVID ADAMS,
by and through his mother JUDITH
ADAMS, individually and on behalf of the
Estate,

Case No.: CV24539
Dept.: 2P

Plaintiffs,

vs.
SUSAN FALLINI, DOES I-X and ROE
CORPORATIONS I-X, inclusive,

Defendants.

SUSAN FALLINI,

Counterclaimant,

vs.

Estate of MICHAEL DAVID ADAMS,
by and through his mother JUDITH
ADAMS, individually and on behalf of the
Estate,

Counterdefendants.

**PLAINTIFFS' SECOND SET OF REQUESTS FOR PRODUCTION OF DOCUMENTS
TO DEFENDANT FALLINI**

TO: SUSAN FALLINI, Defendant/Counterclaimant

TO: HAROLD KUEHN, ESQ., attorney for Defendant/Counterclaimant

Plaintiffs, Estate of MICHAEL DAVID ADAMS, by and through his mother JUDITH
ADAMS, by and through their attorneys, Aldrich & Bryson, LLP, hereby requests that Defendant,
pursuant to Nev. R. Civ. P. 34, respond to the following Requests for Production of Documents
within thirty (30) days of service hereof:

DEFINITIONS AND INSTRUCTIONS

The following preliminary definitions and instructions apply to each of the Requests set forth hereafter and are deemed to be incorporated therein.

A. When used in these Requests, the term "Defendant" or "Defendants," its plural or any synonym thereof, is intended to and shall embrace and include, in addition to the named party or parties, counsel for said party and all agents, servants, employees, representatives, investigators and others who are in possession of, or may have obtained, information for or on behalf of the named Defendant. As to each person, please state his or her full name, last known residence address and telephone number, and his or her job title, capacity or position at such last known employment.

B. As used in these Requests, the terms "document" and "writing" and the plural forms thereof shall mean all written, recorded or graphic matters, however produced or reproduced, of every kind and description, pertaining in any way to the subject matter of this action. The terms "document" and "writing" shall include, but are not limited to, any books, pamphlets, periodicals, memoranda (including those of telephone and oral conversations), e-mails, contracts, correspondence, agreements, application, financial records, security instruments, disbursements, checks, bank statements, time records, accounting or financial records, notes, diaries, logs, telegrams, or cables prepared, drafted, received or sent, tapes, transcripts, recordings, minutes of meetings, directives, work papers, charts, drawings, prints, flow sheets, photographs, film, computer printouts, medical and hospital records and reports, x-ray photographs, advertisements, catalogs, or any hand-written, recorded, transcribed, punched, tapes, filmed or graphic matters, however, produced or reproduced in Defendant's possession, custody or control or to which defendant has or has had access.

C. As used throughout these Requests, the term "you," its plural or any synonyms thereof, is intended to and shall embrace and include in addition to the named party or parties, counsel for such party or parties, and all agents, servants, employees, representatives, investigators and others who are in the possession of or who may have obtained information for or on behalf of the named party or parties.

D. As used throughout these Requests, the term "person," or its plural or any synonyms

1 thereof, is intended to and shall embrace and include any individual, partnership, corporation,
2 company, association, government agency (whether federal, state, local or any agency of the
3 government of a foreign country) or any other entity.

4 E. As used throughout these Requests, the term "communication," its plural or any
5 synonyms thereof, is intended to and shall embrace and include all written communications, and with
6 respect to all communications, shall include but is not limited to every discussion,
7 conversation, conference, meeting, interview, telephone call or doctor or other professional service
8 visit.

9 F. (a) As used throughout these Requests, the terms "identify," "identity," or
10 "identification," their plural or any synonyms thereof, when used with reference to a person, shall
11 mean to state the full name and address, and where applicable, the present position and business, if
12 known, and each prior position and business.

13 (b) As used throughout these Requests, the terms "identify," "identity," or
14 "identification," their plural or synonyms thereof, when used with reference to a document mean to
15 state:

16 (1) The general nature of the document or object, i.e., whether it is a letter,
17 a memorandum, a report, a drawing, a chart or tracing, a pamphlet, etc.;

18 (2) The general subject matter of the document or object;

19 (3) The name, current or last known business address and home address
20 of the original author or draftsman (and, if different, the signor or signors), and of any person who
21 has edited, corrected, revised or amended, or who has entered any initials or comment or notation
22 thereon;

23 (4) The date thereof, including any date of any such editing, correcting,
24 amending or revision;

25 (5) Any numerical designation appearing thereon, such as a file reference;

26 (6) The name of each recipient of a copy of the document or object; and

27 (7) The place where and the person now having custody or control of each
28 such document or object, or if such document or object has been destroyed, the place of and reasons

1 for such destruction.

2 (c) As used throughout these Requests, the terms "identify," "identity," and
3 "identification," when used in reference to a communication, mean to state with respect to each
4 communication, the nature of the communication (telephone call, letter, etc.), the date of the
5 communication, the persons who were present at or participated in the communication or with whom
6 or from whom the communication was made, and the substance of the statement made by each
7 person involved in such communication.

8 G. All information is to be divulged which is in Defendant's possession or control, or can
9 be ascertained upon reasonable investigation of areas within your control. The knowledge of
10 Defendant's attorney is deemed to be Defendant's knowledge, so that, apart from privileged matters,
11 if Defendant's attorney has knowledge of the information sought to be elicited herein, said
12 knowledge must be incorporated into these answers, even if such information is unknown to
13 Defendant individually.

14 H. Whenever you are unable to state an answer to these Requests based upon your own
15 personal knowledge, please so state, and identify the person or persons you believe to have such
16 knowledge, what you believe the correct answer to be, and the facts upon which you base your
17 answer.

18 I. When a Request calls for an answer in more than one part, each part should be
19 separated so that the answer is clearly understandable.

20 J. Each Request should be construed independently. No Request should be construed
21 by reference to any other Request if the result is a limitation of the scope of the answer to such
22 Request.

23 K. "And" and "or" shall be construed disjunctively or conjunctively as necessary, in
24 order to bring within the scope of the Request all responses which might otherwise be construed to
25 be outside of its scope.

26 L. If a Request is objected to, in whole or in part, or if information responsive to a
27 Request is withheld, on the ground of privilege or otherwise, please set forth fully each objection,
28 describe generally the information which is withheld, and set forth the facts upon which Defendants

1 rely as the basis for each such objection.

2 M. These Requests are addressed to all Defendants. If, for a Request, the answers for all
3 Defendants would be the same, only one answer is necessary. If the Defendants' answers to a
4 Request would vary among them, state and identify answers for each Defendant separately.

5 N. Pursuant to Nev. R. Civ. P. 26, you shall supplement your responses according to the
6 following:

7 (a) A party is under a duty reasonably to supplement his response with respect
8 to any question directly addressed to (A) the identity and location of persons having knowledge of
9 discoverable matters and, (B), the identity of each person expected to be called as an expert witness
10 at trial, the subject matter on which he is expected to testify, and the substance of his testimony.

11 (b) A party is under a duty reasonably to amend a prior response if he obtains
12 information upon the basis of which (A) he knows that the response was incorrect when made, and
13 (B) he knows that the response though correct when made is no longer true and the circumstances
14 are such that a failure to amend the response is in substance a knowing concealment.

15 **REQUESTS FOR PRODUCTION**

16 **REQUEST FOR PRODUCTION NO. 22:**

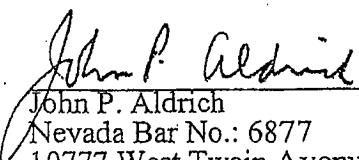
17 Produce any insurance policies or carriers which may provide coverage for the incident
18 described in the complaint.

19 **REQUEST FOR PRODUCTION NO. 23:**

20 Produce all notices to any potential insurance carriers regarding the incident described in the
21 complaint, including any responses received by any potential insurance carriers.

22 DATED this 1st day of July, 2008.

23 **BLACK & LOBELLO**

24
25 
26 John P. Aldrich
27 Nevada Bar No.: 6877
28 10777 West Twain Avenue, Suite 300
Las Vegas, Nevada 89135
(702) 869-8801
(702) 869-2669 (Fax)

Attorneys for Plaintiffs

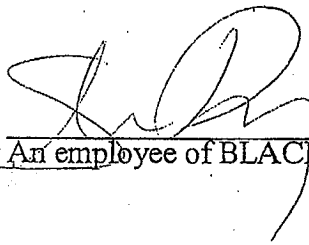
CERTIFICATE OF MAILING

I hereby certify that on this 2nd day of July, 2008, service of the foregoing PLAINTIFFS' SECOND SET OF REQUESTS FOR PRODUCTION OF DOCUMENTS TO DEFENDANT FALLINI was made this date by depositing a true and correct copy of the same for mailing in Las Vegas, Nevada, addressed to:

Harold Kuehn, Esq.
Gibson, & Kuehn
921 S. Highway 160, #203
Pahrump, NV 89048

P.O. Box 1411
Tonopah, NV 89049
Attorney for Defendant/Counterclaimant

Katherine M. Peck, Esq.
Peck Law Offices
701 Bridger Ave, Ste. 500
Las Vegas, NV 89106
*Attorney for Counterdefendant
Estate of Michael David Adams*



An employee of BLACK & LOBELLO

EXHIBIT 5

1 **NEO**

John P. Aldrich, Esq.

2 Nevada State Bar No. 6877

Adrianne C. Duncan, Esq.

3 Nevada State Bar No. 9797

BLACK & LOBELLO

4 10777 West Twain Avenue, Suite 300

Las Vegas, Nevada 89135

5 (702) 869-8801

Attorneys for Plaintiffs

FILED

2008 AUG 15 P 2:44

NYE COUNTY CLERK
BY DEPUTY

Linda Oke

7
8 THE FIFTH JUDICIAL DISTRICT COURT
THE STATE OF NEVADA
9 COUNTY OF NYE

10 Estate of MICHAEL DAVID ADAMS,
11 by and through his mother JUDITH
ADAMS, individually and on behalf of the
Estate,

12 Plaintiffs,

13 vs.

14 SUSAN FALLINI, DOES I-X and ROE
15 CORPORATIONS I-X, inclusive,

16 Defendants.

17 SUSAN FALLINI,

18 Counterclaimant,

19 vs.

20 Estate of MICHAEL DAVID ADAMS,
21 by and through his mother JUDITH
ADAMS, individually and on behalf of the
Estate,

22 Counterdefendants.
23

Case No.: CV24539
Dept.: 2P

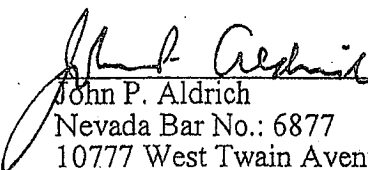
24 **NOTICE OF ENTRY OF ORDER**

25 PLEASE TAKE NOTICE that on the 30th day of July, 2008 an Order Granting Plaintiffs'
26 Motion for Partial Summary Judgement was entered in the above-captioned matter,
27
28

1 a copy of which is attached hereto.

2 DATED this 13th day of August, 2008.

3 **BLACK & LOBELLO**

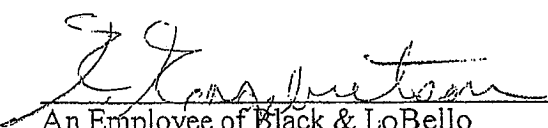
4
5 
6 John P. Aldrich
7 Nevada Bar No.: 6877
8 10777 West Twain Avenue, Suite 300
9 Las Vegas, Nevada 89135
10 (702) 869-8801
11 (702) 869-2669 (Fax)

12 **CERTIFICATE OF SERVICE**

13 I hereby certify that on the 13th day of August, 2008 a true and correct copy of the foregoing
14 **NOTICE OF ENTRY OF ORDER** was deposited into the U.S. mail at Las Vegas, Nevada, first-
15 class postage fully prepaid, addressed to the following person(s):

16 Harold Kuehn, Esq.
17 Gibson & Kuehn, LLP
18 1601 E. Basin Avenue, Ste. 101
19 Pahrump, NV 89060

20 Katherine M. Barker, Esq.
21 Law Office of Katherine M. Barker
22 701 Bridger Avenue, Suite 500
23 Las Vegas, NV 89101

24 
25 An Employee of Black & LoBello
26
27
28

FILED
DEBRA BENNETT
2008 JUL 30 P. 3: 30
NYE COUNTY CLERK
BY DEPUTY

1 **ORDR**

John P. Aldrich, Esq.

2 Nevada State Bar No. 6877

Adrianne C. Duncan, Esq.

3 Nevada State Bar No. 9797

BLACK & LOBELLO

4 10777 West Twain Avenue, Suite 300

Las Vegas, Nevada 89135

5 (702) 869-8801

Attorneys for Plaintiffs

7
8 THE FIFTH JUDICIAL DISTRICT COURT
THE STATE OF NEVADA
9 COUNTY OF NYE

10 Estate of MICHAEL DAVID ADAMS,
by and through his mother JUDITH
11 ADAMS, individually and on behalf of the
Estate,

12 Plaintiffs,

13 vs.

14 SUSAN FALLINI, DOES I-X and ROE
15 CORPORATIONS I-X, inclusive,

16 Defendants.

17 SUSAN FALLINI,

18 Counterclaimant,

19 vs.

20 Estate of MICHAEL DAVID ADAMS,
by and through his mother JUDITH
21 ADAMS, individually and on behalf of the
Estate,

22 Counterdefendants.
23

Case No.: CV24539
Dept.: 2P

24 **ORDER GRANTING PLAINTIFFS' MOTION FOR PARTIAL SUMMARY JUDGMENT**

25 THIS MATTER having come on for hearing on Monday, July 14, 2008, on Plaintiff's Motion
26 for Partial Summary Judgment before the Honorable Robert W. Lane, and John P. Aldrich, Esq.
27 appearing on behalf of the Plaintiffs, no other counsel present, the court having reviewed the Motion
28

1 for Partial Summary Judgment and the Joinder to the Motion for Partial Summary Judgment, having
2 reviewed all pleadings and papers on file herein, and having heard the arguments of present counsel;
3 and good cause appearing therefore,

4 **THE COURT HEREBY ENTERS THE FOLLOWING FINDINGS OF FACT:**

- 5 1. Fallini's property is not located within an "open range" as it is defined in
6 NRS 568.355.
- 7 2. Fallini is the owner of the cow that is mentioned in the Plaintiff's Complaint on file
8 herein ("subject cow").
- 9 3. It is the common practice of Nye County, Nevada ranchers to mark their cattle with
10 reflective or luminescent tags.
- 11 4. The subject cow was not marked with a reflective or luminescent tag.
- 12 5. The subject cow crossed a fence to arrive at the location of the subject accident
13 described in the Complaint on file herein.
- 14 6. Fallini's cattle had previously been involved in incidents with motor vehicles on the
15 roadway.
- 16 7. Fallini does not track the location of her cattle while they are grazing away from her
17 property.
- 18 8. Fallini does not remove her cattle from the roadway when notified that the cattle are
19 in a roadway.
- 20 9. The subject cow was not visible at night.
- 21 10. Fallini was aware that the subject cow was not visible at night prior to the incident
22 that is the subject of the Complaint on file herein.
- 23 11. The subject cow was in the roadway of SR 375 at the time of the incident that is the
24 subject matter of the Complaint on file herein.
- 25 12. The subject cow's presence in the roadway of SR 375 was the cause of the motor
26 vehicle accident that is the subject of the Complaint on file herein.
- 27 13. Fallini did not know the location of the subject cow at the time of the incident that
28 is the subject of the Complaint on file herein.

14. The presence of a reflective or luminescent tag on the subject cow would have made the subject cow visible at the time of the incident that is the subject of the Complaint on file herein.

THE COURT HEREBY ENTERS THE FOLLOWING CONCLUSIONS OF LAW:

1. Defendant Fallini had and duty to ensure that the subject cow was not in the roadway at the time of the incident described in the Complaint.
2. Defendant Fallini had a duty to follow the common practice of Nye County, Nevada ranchers and to mark her cow with reflecting or lumination tags.
3. Defendant Fallini breached the duty of care to the decedent, as set forth in the Findings of Fact and Conclusions of Law.
4. As a result of Defendant Fallini's breach, the decedent, Michael David Adams, was killed.
5. Defendant Fallini is liable for the damages to which Plaintiff is entitled, in an amount to be determined at a later time.

IT IS HEREBY ORDERED that Plaintiffs' Motion for Partial Summary Judgment as to the issue of Defendant's duty and breach of duty is hereby GRANTED.

DATED this 29th day of July, 2008.

ROBERT W. LANE

DISTRICT COURT JUDGE

Submitted By:

BLACK & LOBELLO

John P. Aldrich

John P. Aldrich

Nevada Bar No.: 6877

10777 West Twain Avenue, Suite 300

Las Vegas, Nevada 89135

(702) 869-8801

(702) 869-2669 (Fax)

EXHIBIT 6

ALDRICH LAW FIRM, LTD.

1601 S. Rainbow Blvd., Suite 160
Las Vegas, NV 89146
(702) 853-5490
(702) 227-1975 fax

February 24, 2009

Harold Kuehn, Esq.
Gibson, & Kuehn
1601 E. Basin Avenue, #101
Pahrump, NV 89060

Re: *Adams v Fallini*

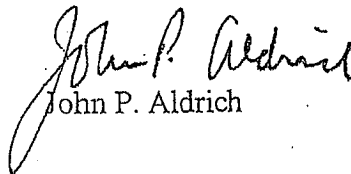
Dear Mr. Kuehn:

Discovery requests were sent to your client, Susan Fallini, quite some time ago. I have never received any responses. One of the requests was for your client to produce the insurance policy information she carried on her ranch and cattle. At this time I respectfully request that you produce this information within ten (10) days of receipt of this letter. Failure to do so will result in me filing a motion to compel.

I look forward to hearing from you soon.

Kindest Regards,

ALDRICH LAW FIRM, LTD.


John P. Aldrich

cc: Katherine M. Barker, Esq.

EXHIBIT 7

1 **AFF**
2 John P. Aldrich
3 Nevada Bar No.: 6877
4 **ALDRICH LAW FIRM, LTD.**
5 1601 S. Rainbow Blvd., Suite 160
6 Las Vegas, Nevada 89146
7 (702) 853-5490
8 *Attorney for Plaintiff*

9 **THE FIFTH JUDICIAL DISTRICT COURT**
10 **THE STATE OF NEVADA**
11 **COUNTY OF NYE**

12 Estate of MICHAEL DAVID ADAMS, by
13 and through his mother JUDITH ADAMS,
14 individually and on behalf of the Estate,

15 Plaintiff,

16 v.

17 SUSAN FALLINI, ; DOES I-X, and ROE
18 CORPORATIONS I-X, inclusive,

19 Defendants.

20 _____
21 SUSAN FALLINI,

22 Counterclaimant,

23 vs.

24 Estate of MICHAEL DAVID ADAMS, by
25 and through his mother JUDITH ADAMS,
26 individually and on behalf of the Estate

27 Counterdefendants.
28 _____

Case No.: CV24539
Dept. No.: 2P

29 **AFFIDAVIT OF JOHN P. ALDRICH IN SUPPORT OF MOTION TO COMPEL**

30 State of Nevada)
31) SS
32 County of Clark)

33 Affiant, being first duly sworn, deposes and states the following:

34 1. I, John P. Aldrich, am an attorney licensed to practice in the State of Nevada and a

1 partner in the law firm of Aldrich Law Firm, Ltd.

2 2. My office address is 1601 S. Rainbow Blvd., Suite 160, Las Vegas, Nevada 89146.

3 3. I have personal knowledge of the contents of this document, or where stated upon
4 information and belief, I believe them to be true and I am competent to testify to the facts set forth
5 herein.

6 4. The documents attached hereto as Exhibits 1 through 6 are true and correct copies of
7 documents prepared by my office and sent to counsel for Defendant in this matter. These documents
8 were kept in the ordinary course of business.

9 5. I have attempted to amicably resolve this discovery issue and obtain a copy of
10 Defendant's applicable insurance policies, but to no avail. On February 28, 2009, I sent a letter to
11 Defendant's counsel seeking responses to the discovery. (Exhibit 6.)

12 6. I have attempted to discuss this discovery issue with Defendant's counsel, Mr.
13 Kuehn, as well. On or about March 6, 2009, I contacted the office of Mr. Kuehn. I was informed
14 that Mr. Kuehn was not available. I left a message with my phone number and asked that Mr. Kuehn
15 return the call. No return call ever came.

16 7. On March 18, 2009, I again contacted the office of Mr. Kuehn. I was again informed
17 that Mr. Kuehn was not available. I left a message with my phone number and asked that Mr.
18 Kuehn return the call. No return call ever came.

19 8. I have expended approximately 3 hours preparing the Motion to Compel and this
20 Affidavit. I anticipate that I will have to travel to Pahrump, Nevada for the hearing on this matter.
21 Generally, the round trip from Las Vegas to Pahrump, including the hearing, takes about four hours
22 (a full half-day). Although my normal hourly rate is \$300.00 per hour, I am only requesting
23 attorney's fees in the amount of \$1,600.00 for having to bring this motion, as well as \$50.00 in costs
24 for having to travel to Pahrump.

25 ///

26 ///

27 ///

9. The information sought is standard discovery, and there is no rationale basis for Defendant's refusal to provide the requested discovery.

Dated this 20 day of March, 2009.

JOHN P. ALDRICH, ESQ.

Subscribed & sworn to before me
this 20th day of March, 2009.

Theresa Engstrom
NOTARY PUBLIC

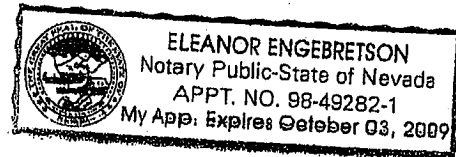


EXHIBIT 8

1 AFFIDAVIT OF CATHERINE HERNANDEZ IN SUPPORT OF MOTION TO STRIKE
2 DEFENDANT'S ANSWER

3 State of Nevada)
4 County of Clark) SS

5 Affiant, being first duly sworn, deposes and states the following:

6 1. I, Catherine Hernandez, am an attorney licensed to practice in the State of Nevada and
7 aa attorney with the law firm of Aldrich Law Firm, Ltd.

8 2. My office address is 1601 S. Rainbow Blvd., Suite 160, Las Vegas, Nevada 89146.

9 3. I have personal knowledge of the contents of this document, or where stated upon
10 information and belief, I believe them to be true and I am competent to testify to the facts set forth
11 herein.

12 4. I appeared at the hearing on Plaintiff's Motion to Compel Defendant to Compel
13 Defendant's Production of Documents on April 27, 2009. Harold Kuehn, Esq. appeared for
14 Defendant.

15 5. At said hearing Mr. Kuehn did not orally oppose the Motion to Compel, but agreed
16 the motion should be granted. At the hearing Mr. Kuehn provided no reason as to why Defendant
17 had not complied with any previous requests for discovery.

18 6. Further, at said hearing, Mr. Kuehn did not object to sanctions being awarded for
19 Defendant's failure to comply with discovery requests, he only objected to the amount of sanctions
20 requested.

21 Dated this 11 day of June, 2009

22 
23 CATHERINE HERNANDEZ, ESQ.

24 Subscribed & sworn to before me
25 this 11 day of June, 2009.

26 
27 NOTARY PUBLIC

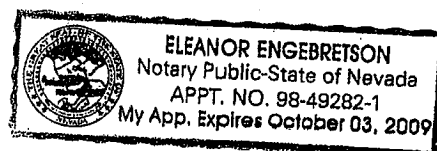


EXHIBIT 9

1 NEO

John P. Aldrich, Esq.

2 Nevada Bar No. 6877

ALDRICH LAW FIRM, LTD.

3 1601 S. Rainbow Blvd., Suite 160

Las Vegas, Nevada 89146

4 (702) 853-5490

(702) 227-1975 fax

5 *Attorneys for Plaintiff*

FILED

2009 MAY 18 ~~Shelli Winn~~ ²

NYE COUNTY CLERK
BY DEPUTY

6
7 THE FIFTH JUDICIAL DISTRICT COURT
8 THE STATE OF NEVADA
9 COUNTY OF NYE

10 Estate of MICHAEL DAVID ADAMS,)
11 by and through his mother JUDITH)
ADAMS, individually and on behalf of the)
Estate,)

12 Plaintiffs,

13 vs.

14 SUSAN FALLINI, DOES I-X and ROE)
15 CORPORATIONS I-X, inclusive,)
Defendants.)

16 SUSAN FALLINI,

17 Counterclaimant,

18 vs.

19 Estate of MICHAEL DAVID ADAMS,)
20 by and through his mother JUDITH)
21 ADAMS, individually and on behalf of the)
Estate,)

22 Counterdefendants.)

Case No.: CV24539
Dept.: 2P

23 NOTICE OF ENTRY OF ORDER

24 ///

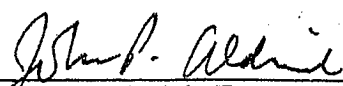
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26 ///

1 PLEASE TAKE NOTICE that an Order was entered in the above-entitled matter on April
2 27, 2009, a copy of which is attached hereto as Exhibit 1.

3 DATED this 14th day of May, 2009.

4 ALDRICH LAW FIRM, LTD.

5 
6 John P. Aldrich, Esq.
7 Nevada State Bar No. 6877
8 1601 S. Rainbow Blvd., Suite 160
9 Las Vegas, Nevada 89146
10 (702) 853-5490
11 (702) 227-1975
12 *Attorneys for Plaintiff*

13 **CERTIFICATE OF SERVICE**

14 I HEREBY CERTIFY that on the 14th day of May, 2009, I mailed a copy of the
15 NOTICE OF ENTRY OF ORDER, in a sealed envelope, to the following and that postage was fully
16 paid thereon:

17 Harold Kuehn, Esq.
18 Gibson, & Kuehn
19 1601 E. Basin Avenue, Suite 101
20 Pahrump, NV 89060
21 *Attorney for Defendant/Counterclaimant*

22 Katherine M. Barker, Esq.
23 Law Office of Katherine M. Barker
24 701 Bridger Ave, Ste. 500
25 Las Vegas, NV 89101
26 *Attorney for Counterdefendant*
27 *Estate of Michael David Adams*

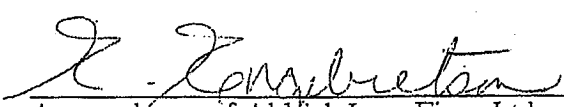
28 
An employee of Aldrich Law Firm, Ltd.

EXHIBIT 1

ORIGINAL**ORDER**

John P. Aldrich
 Nevada Bar No.: 6877
 Catherine Hernandez
 Nevada Bar No. 8410
ALDRICH LAW FIRM, LTD.
 1601 S. Rainbow Blvd., Suite 160
 Las Vegas, Nevada 89146
 (702) 853-5490
Attorneys for Plaintiff

FILED
 FIFTH JUDICIAL DISTRICT

APR 27 2009

Nye County Clerk

Deputy

THE FIFTH JUDICIAL DISTRICT COURT
THE STATE OF NEVADA
COUNTY OF NYE

Estate of MICHAEL DAVID ADAMS, by
 and through his mother JUDITH ADAMS,
 individually and on behalf of the Estate,

Plaintiff,

v.

SUSAN FALLINI, ; DOES I-X, and ROE
 CORPORATIONS I-X, inclusive,

Defendants.

SUSAN FALLINI,

Counterclaimant,

vs.

Estate of MICHAEL DAVID ADAMS, by
 and through his mother JUDITH ADAMS,
 individually and on behalf of the Estate

Counterdefendants.

Case No.: CV24539
 Dept. No.: 2P

ORDER GRANTING PLAINTIFF'S MOTION TO COMPEL DEFENDANT'S
PRODUCTION OF DOCUMENTS

THIS MATTER having come on for hearing on Monday, April 27, 2009, on Plaintiff's
 Motion to Compel Defendant's Production of Documents before the Honorable Robert W. Lane, and

1 Catherine Hernandez, Esq., of Aldrich Law Firm, Ltd., appearing on behalf of the Plaintiffs, no other
2 counsel present, the court having reviewed all pleadings and papers on file herein, no opposition
3 having been presented, and good cause appearing therefore:

4 **IT IS HEREBY ORDERED** that Plaintiff's Motion to Compel Defendant's Production of
5 Documents is GRANTED. Defendant SUSAN FALLINI shall produce all documents responsive
6 to Plaintiff's discovery requests pursuant to NRCP 16.1, 26,33,34 and NRCP 37 within ten (10)
7 days of Notice of Entry of this Order.

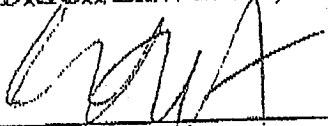
8 **IT IS FURTHER ORDERED** that Defendant shall pay \$1,650.00 for related attorney's fees
9 and costs for failing to comply with discovery rules and for Plaintiff having to bring this motion, also
10 within ten (10) days of Notice of Entry of this Order.

11 DATED this 22 day of April, 2009.

12 
13 DISTRICT COURT JUDGE

14
15 Respectfully submitted by:

16 **ALDRICH LAW FIRM, LTD.**

17 
18 _____
19 John P. Aldrich, Esq.
20 Nevada Bar No. 6877
21 Catherine Hernandez, Esq.
22 Nevada Bar No. 8410
1601 S. Rainbow Blvd., Suite 160
Las Vegas, NV 89146
(702) 853-5491
Attorneys for Plaintiff



1
2 Case No. CV 24539

3 Dept. No. 2P

FILED

2009 JUN 23 P 4: 15

RACHEL ALDANA
NYE COUNTY CLERK
BY DEPUTY

4
5 IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT
6 OF THE STATE OF NEVADA, IN AND FOR THE COUNTY OF NYE
7

8 ESTATE OF MICHAEL DAVID ADAMS,
9 by and through his mother JUDITH ADAMS,
10 individually and on behalf of the ESTATE,

11 Plaintiffs,

-v-

ORDER SETTING JURY TRIAL

12 SUSAN FALLINI, DOES I-X
13 and, ROE CORPORATIONS I-X,
14 inclusive,

15 Defendants.
16

17 Good cause appearing therefore,

18 IT IS ORDERED that the above-captioned matter be and the same hereby is set for trial,
19 before a jury, commencing at 9:00 o'clock a.m. on Tuesday, the 25th day of August 2010 in the
20 District Courtroom in Pahrump, Nevada. Three (3) days have been set aside for this trial. If the
21 services of a court reporter are desired it shall be the responsibility of the parties to schedule one.

22 IT IS FURTHER ORDERED that a calendar call is set for the 19th day of July, 2010, at the
23 hour of 9:00 a.m. Counsel must appear for the calendar call.

24 IT IS FURTHER ORDERED that the Nye County Jury Commissioner will draw a regular
25 panel of 120 jurors on Monday, the 19th day of July, 2010, at 4:30 p.m., in the presence of all
26 those who wish to attend.

27 IT IS FURTHER ORDERED that all discovery be completed no later than ten (10) days
28 before trial.



1
2 IT IS FURTHER ORDERED that no later than ten (10) days before trial, the parties shall
3 file with the clerk of this court, and exchange between themselves, a pre-trial statement
4 containing the following:

- 5 (1) A concise statement of the claimed facts supporting the party's claim or defenses.
6 (2) A statement of admitted or undisputed facts.
7 (3) A statement of the remaining issues of fact to be tried.
8 (4) A statement of issues of law supported by a memorandum of authorities.
9 (5) A list, sufficient for identification, of all documents or other exhibits intended to
10 be offered at the trial. In this regard, plaintiff's proposed exhibits shall be
11 designated numerically and defendant's proposed exhibits shall be designated
12 alphabetically.
13 (6) The names and addresses of all witnesses, except impeaching witnesses.
14 (7) A summary of any requested amendments to pleadings.
15 (8) A statement of any stipulations of fact or law requested from the other party.
16 (9) Any anticipated unusual problems concerning trial attendance of parties or
17 essential witnesses or other practical problems, which the court should consider
18 when setting the case for trial.

19 Case conference reports filed pursuant to NRCP 16.1(1)(c) may be incorporated by reference or
20 copies thereof attached to the pre-trial statement to avoid repetition.

21 DATED this 23rd day of June, 2009.


22
23 
24 _____
25 DISTRICT JUDGE
26
27
28

CERTIFICATION OF SERVICE

The undersigned hereby certifies that on the 23 day of June, 2009, she mailed copies of the foregoing ORDER SETTING TRIAL to the following:

John P. Aldrich, Esq.
Catherine Hernandez, Esq.
ALDRICH LAW FIRM, LTD.
1601 S. Rainbow Blvd, Suite 160
Las Vegas, NV 89146

Harold Kuehn, Esq.
GIBSON & KUEHN
1601 E. Basin Ave, Suite 101
Pahrump, NV 89060


CINDY WARD, Secretary to
DISTRICT JUDGE



1
2 **5TH JUDICIAL DISTRICT COURT**
3 **COUNTY OF NYE, STATE OF NEVADA**

4 **Affirmation Pursuant to 239B.030**

5 The undersigned does hereby affirm that the preceding document:

6 **Order Setting Jury Trial**

7 (Title of Document)

8 Filed in case number: CV24539

9
10 ☒ Does not contain the social security number of any person.

11 ☐ Contains the social security number of a person as required by:

12 ☐ A specific state or federal law, to wit:

13
14 (name the specific state or federal law)

15 -or-

16 ☐ For the administration of a public program

17 -or-

18 ☐ For an application for a federal or state grant

19 -or-

20 ☐ Confidential Family Court Information Sheet
(NRS 125.130; 125.230; or 125B.055)

21 Date: 6/23/09

22 *C. Ward*
(Signature)

23 Cindy Ward
24 (Print name)

25 Supervising Legal Secretary
26 (Title)

FIFTH JUDICIAL DISTRICT COURT
ESMERALDA, MINERAL AND NYE COUNTIES



DEBRA BENNETT

FILED

2009 JUL 13 A 8:35

NYE COUNTY CLERK
BY DEPUTY

1 Case No. CV24539
2 Dept. 2P

3 The undersigned hereby affirms this document
4 does not contain a social security number.
5

6 IN THE FIFTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
7
8 IN AND FOR THE COUNTY OF NYE

9 Estate of MICHAEL DAVID)
10 ADAMS, by and through his)
11 mother JUDITH ADAMS,)
12 individually and on behalf)
13 of the Estate,)

14 Plaintiffs,)

15 vs.)

16 SUSAN FALLINI, DOES I-X)
17 and ROE CORPORATIONS)
18 I-X, inclusive,)

19 Defendants,)

20 and other related claims)

21 OPPOSITION TO PLAINTIFF'S MOTION TO STRIKE DEFENDANT'S ANSWER
22 AND COUNTERCLAIM


23 COMES NOW Defendant SUSAN FALLINI, by and through HAROLD
24 KUEHN, Esq. of the law firm of GIBSON & KUEHN, LLP who hereby
25 submits this opposition to plaintiff's motion to strike
26 defendant's answer and counterclaim in favor of a monetary
27 sanction against Defendant's counsel.

28 ///

///

1 This Opposition is based upon NRCP 37 and the declaration of
2 counsel.

3 DATED this 13th day of July, 2009.

4
5 
6 HAROLD KUEHN, Esq.
7 Nevada Bar #284
8 GIBSON & KUEHN, LLP
9 Attorneys at Law
10 1601 E. Basin Ave., Suite 101
11 Pahrump, NV 89060
12 775/751-9000
13 Attorney for Defendant
14 SUSAN FALLINI

15 POINTS AND AUTHORITIES

16 A copy of NRCP 37 is attached hereto and incorporated in full
17 herein by reference.

18 UNSWORN DECLARATION OF HAROLD KUEHN, Esq. IN LIEU OF AFFIDAVIT

19 I, HAROLD KUEHN, declare under penalty of perjury and
20 pursuant to NRS 53.045 that the foregoing is true and correct.


21 Declarant is the attorney for Defendant SUSAN FALLINI. The
22 discovery non-compliance set out in plaintiff's motion is
23 absolutely not the fault of the party and the blame should be
24 attributed to counsel in full.

25 NRCP 37 gives the district court wide sanctioning latitude.
26 Declarant proposes that this Court decline to strike the answer
27 and counterclaim in favor of a monetary sanction against counsel
28 in an amount to be determined by the court. This matter should be

///
///
///

1 heard on the merits to the extent possible to allow for a fair
2 trial and a just result.

3 EXECUTED on this 13th day of July, 2009.

4 
5 _____
6 HAROLD KUEHN, Esq.
7 Nevada Bar #284.
8 GIBSON & KUEHN, LLP
9 Attorneys at Law
10 1601 E. Basin Ave., Suite 101
11 Pahrump, NV 89060
12 775/751-9000
13 Attorney for Defendant
14 SUSAN FALLINI
15
16
17
18
19
20
21
22
23
24
25
26
27
28

**RULE 37. FAILURE TO MAKE DISCLOSURE OR COOPERATE IN DISCOVERY;
SANCTIONS**

1. (a) Motion for Order Compelling Disclosure or Discovery. A party, upon reasonable notice to other parties and all persons affected thereby, may apply for an order compelling disclosure or discovery as follows:

(1) Appropriate Court. An application for an order to a party may be made to the court in which the action is pending, or, on matters relating to a deposition, to the court in the district where the deposition is being taken. An application for an order to a deponent who is not a party shall be made to the court in the district where the deposition is being, or is to be, taken.

[As amended; effective January 1, 2005.]

(2) Motion.

(A) If a party fails to make a disclosure required by Rule 16.1(a) or 16.2(a), any other party may move to compel disclosure and for appropriate sanctions. The motion must include a certification that the movant has in good faith conferred or attempted to confer with the party not making the disclosure in an effort to secure the disclosure without court action.

[As amended; effective July 1, 2008.]

(B) If a deponent fails to answer a question propounded or submitted under Rules 30 or 31, or a corporation or other entity fails to make a designation under Rule 30(b)(6) or 31(a), or a party fails to answer an interrogatory submitted under Rule 33, or if a party, in response to a request for inspection submitted under Rule 34, fails to respond that inspection will be permitted as requested or fails to permit inspection as requested, the discovering party may move for an order compelling an answer, or a designation, or an order compelling inspection in accordance with the request. The motion must include a certification that the movant has in good faith conferred or attempted to confer with the person or party failing to make the discovery in an effort to secure the information or material without court action. When taking a deposition on oral examination, the proponent of the question may complete or adjourn the examination before applying for an order.

[As amended; effective January 1, 2005.]

(3) Evasive or Incomplete Disclosure, Answer or Response. For purposes of this subdivision an evasive or incomplete disclosure, answer or response is to be treated as a failure to disclose, answer or respond.

[As amended; effective January 1, 2005.]

(4) Expenses and Sanctions.

(A) If the motion is granted or if the disclosure or requested discovery is provided after the motion was filed, the court shall, after affording an opportunity to be heard, require the party or deponent whose conduct necessitated the motion or the party or attorney advising such conduct or both of them to pay to the moving party the reasonable expenses incurred in making the motion, including

attorney's fees, unless the court finds that the motion was filed without the movant's first making a good faith effort to obtain the disclosure or discovery without court action, or that the opposing party's nondisclosure, response or objection was substantially justified, or that other circumstances make an award of expenses unjust.

(B) If the motion is denied, the court may enter any protective order authorized under Rule 26(c) and shall, after affording an opportunity to be heard, require the moving party or the attorney filing the motion or both of them to pay to the party or deponent who opposed the motion the reasonable expenses incurred in opposing the motion, including attorney's fees, unless the court finds that the making of the motion was substantially justified or that other circumstances make an award of expenses unjust.

(C) If the motion is granted in part and denied in part, the court may enter any protective order authorized under Rule 26(c) and may, after affording an opportunity to be heard, apportion the reasonable expenses incurred in relation to the motion among the parties and persons in a just manner.

[As amended; effective January 1, 2005.]

(b) Failure to Comply With Order.

(1) **Sanctions—Deponent.** If a deponent fails to be sworn or to answer a question after being directed to do so by the court the failure may be considered a contempt of court.

(2) **Sanctions—Party.** If a party or an officer, director, or managing agent of a party or a person designated under Rule 30(b)(6) or 31(a) to testify on behalf of a party fails to obey an order to provide or permit discovery, including an order made under subdivision (a) of this rule or Rule 35, or if a party fails to obey an order entered under Rules 16, 16.1, and 16.2, the court in which the action is pending may make such orders in regard to the failure as are just, and among others the following:

[As amended; effective July 1, 2008.]

(A) An order that the matters regarding which the order was made or any other designated facts shall be taken to be established for the purposes of the action in accordance with the claim of the party obtaining the order;

(B) An order refusing to allow the disobedient party to support or oppose designated claims or defenses, or prohibiting that party from introducing designated matters in evidence;

(C) An order striking out pleadings or parts thereof, or staying further proceedings until the order is obeyed, or dismissing the action or proceeding or any part thereof, or rendering a judgment by default against the disobedient party;

(D) In lieu of any of the foregoing orders or in addition thereto, an order treating as a contempt of court the failure to obey any orders except an order to submit to a physical or mental examination;

(E) Where a party has failed to comply with an order under Rule 35(a) requiring that party to produce another for examination, such orders as are listed in subparagraphs (A), (B), and (C) of this

subdivision, unless the party failing to comply shows that that party is unable to produce such person for examination.

In lieu of any of the foregoing orders or in addition thereto, the court shall require the party failing to obey the order or the attorney advising that party or both to pay the reasonable expenses, including attorney's fees, caused by the failure, unless the court finds that the failure was substantially justified or that other circumstances make an award of expenses unjust.

[As amended; effective January 1, 2005.]

(c) Failure to Disclose; False or Misleading Disclosure; Refusal to Admit.

(1) A party that without substantial justification fails to disclose information required by Rule 16.1, 16.2, or 26(e)(1), or to amend a prior response to discovery as required by Rule 26(e)(2), is not, unless such failure is harmless, permitted to use as evidence at a trial, at a hearing, or on a motion any witness or information not so disclosed. In addition to or in lieu of this sanction, the court, on motion and after affording an opportunity to be heard, may impose other appropriate sanctions. In addition to requiring payment of reasonable expenses, including attorney's fees, caused by the failure, these sanctions may include any of the actions authorized under Rule 37(b)(2)(A), (B), and (C) and may include informing the jury of the failure to make the disclosure.

[As amended; effective July 1, 2008.]

(2) If a party fails to admit the genuineness of any document or the truth of any matter as requested under Rule 36, and if the party requesting the admissions thereafter proves the genuineness of the document or the truth of the matter, the requesting party may apply to the court for an order requiring the other party to pay the reasonable expenses incurred in making that proof, including reasonable attorney's fees. The court shall make the order unless it finds that (A) the request was held objectionable pursuant to Rule 36(a), or (B) the admission sought was of no substantial importance, or (C) the party failing to admit had reasonable ground to believe that the party might prevail on the matter, or (D) there was other good reason for the failure to admit.

[As amended; effective January 1, 2005.]

(d) Failure of Party to Attend at Own Deposition or Serve Answers to Interrogatories or Respond to Request for Inspection. If a party or an officer, director, or managing agent of a party or a person designated under Rule 30(b)(6) or 31(a) to testify on behalf of a party fails (1) to appear before the officer who is to take the deposition, after being served with a proper notice, or (2) to serve answers or objections to interrogatories submitted under Rule 33, after proper service of the interrogatories, or (3) to serve a written response to a request for inspection submitted under Rule 34, after proper service of the request, the court in which the action is pending on motion may make such orders in regard to the failure as are just, and among others it may take any action authorized under subparagraphs (A), (B), and (C) of subdivision (b)(2) of this rule. Any motion specifying a failure under clause (2) or (3) of this subdivision shall include a certification that the movant has in good faith conferred or attempted to confer with the party failing to answer or respond in an effort to obtain such answer or response without court action. In lieu of any order or in addition thereto, the court shall require the party failing to act or the attorney advising that party or both to pay the reasonable expenses, including attorney's fees, caused by the failure, unless the court finds that the

failure was substantially justified or that other circumstances make an award of expenses unjust.

The failure to act described in this subdivision may not be excused on the ground that the discovery sought is objectionable unless the party failing to act has applied for a protective order as provided by Rule 26(c).

[As amended; effective January 1, 2005.]

(e) Reserved.

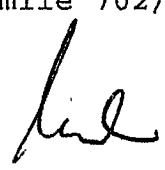
(f) Failure to Participate in the Framing of a Discovery Plan. If a party or a party's attorney fails to participate in good faith in the development and submission of a proposed discovery plan as required by Rule 16.1(b)(2) or 16.2, the court may, after opportunity for hearing, require such party or party's attorney to pay to any other party the reasonable expenses, including attorney's fees, caused by the failure.

[As amended; effective July 1, 2008.]

CERTIFICATE OF SERVICE

I certify that I am an employee of GIBSON & KUEHN, LLP,
Attorneys at Law, and that on the 13th day of July, 2009, I
served the foregoing OPPOSITION ... by delivering a copy to the
following person at the following address and via facsimile:

John P. Aldrich, Esq. [via facsimile 702/227-1975]
@ Nye County Courthouse
Pahrump, Nevada



an employee of GIBSON & KUEHN, LLP

1 **ORDR**

John P. Aldrich

2 Nevada Bar No.: 6877

ALDRICH LAW FIRM, LTD.

3 1601 S. Rainbow Blvd., Suite 160

Las Vegas, Nevada 89146

4 (702) 853-5490

Attorneys for Plaintiff

FILED

2009 JUL 17 A 9:41

Shelia Winn
NYE COUNTY CLERK
BY DEPUTY

6 **THE FIFTH JUDICIAL DISTRICT COURT**
7 **THE STATE OF NEVADA**
8 **COUNTY OF NYE**

9 Estate of MICHAEL DAVID ADAMS, by
and through his mother JUDITH ADAMS,
10 individually and on behalf of the Estate,

11 Plaintiff,

12 v.

13 SUSAN FALLINI, ; DOES I-X, and ROE
14 CORPORATIONS I-X, inclusive,

15 Defendants.

16
17 SUSAN FALLINI,

18 Counterclaimant,

19 vs.

20 Estate of MICHAEL DAVID ADAMS, by
and through his mother JUDITH ADAMS,
21 individually and on behalf of the Estate

22 Counterdefendants.

Case No.: CV24539
Dept. No.: 2P

23
24 **ORDER DENYING PLAINTIFF'S MOTION TO STRIKE DEFENDANT'S ANSWER**
25 **AND COUNTERCLAIM**

26 THIS MATTER having come on for hearing on Monday, July 13, 2009, on Plaintiff's
27 Motion to Strike Defendant's Answer and Counterclaim, before the Honorable Robert W. Lane, and
28 John P. Aldrich, Esq., of Aldrich Law Firm, Ltd., appearing on behalf of the Plaintiffs, with Harry

1 Kuehn, Esq., appearing on behalf of Defendant, the Court having reviewed all pleadings and papers
2 on file herein, and good cause appearing therefore:

3 **IT IS HEREBY ORDERED** that Plaintiff's Motion to Strike Defendant's Answer and
4 Counterclaim is DENIED at this time.

5 **IT IS FURTHER ORDERED** that Defendant SUSAN FALLINI shall produce all
6 documents responsive to Plaintiff's discovery requests pursuant to NRCP 16.1, 26, 33, 34 and NRCP
7 37 within thirty (30) days of the hearing of Plaintiff's Motion to Strike Defendant's Answer and
8 Counterclaim. Thus, the date by which Defendant must provide said documents is August 12, 2009.

9 **IT IS FURTHER ORDERED** that in the event Defendant SUSAN FALLINI does not
10 produce all documents responsive to Plaintiff's discovery requests pursuant to NRCP 16.1, 26, 33, 34
11 and NRCP 37 within thirty (30) days of the hearing of Plaintiff's Motion to Strike Defendant's
12 Answer and Counterclaim, the Court will grant the relief sought by Plaintiff and strike Defendant's
13 Answer and Counterclaim.

14 **IT IS FURTHER ORDERED** that Defendant shall pay a monetary sanction of \$1,000.00
15 for related attorney's fees and costs for failing to comply with discovery rules and the Court's prior
16 Order granting Plaintiff's Motion to Compel, and for Plaintiff having to bring this motion.

17 DATED this 17 day of July, 2009.

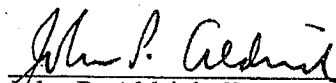
18 **ROBERT W. LANE**

19

DISTRICT COURT JUDGE

20
21 Respectfully submitted by:

22 **ALDRICH LAW FIRM, LTD.**

23
24 
25 John P. Aldrich, Esq.
26 Nevada Bar No. 6877
27 1601 S. Rainbow Blvd., Suite 160
28 Las Vegas, NV 89146
(702) 853-5491
Attorneys for Plaintiff

1 **NEO**

John P. Aldrich, Esq.

2 Nevada Bar No. 6877

ALDRICH LAW FIRM, LTD.

3 1601 S. Rainbow Blvd., Suite 160

Las Vegas, Nevada 89146

4 (702) 853-5490

(702) 227-1975 fax

5 *Attorneys for Plaintiff*

FILED
FIFTH JUDICIAL DISTRICT

AUG 27 2009

Nye County Clerk

Deputy

Michelle A. Thorne

7 **THE FIFTH JUDICIAL DISTRICT COURT**
8 **THE STATE OF NEVADA**
9 **COUNTY OF NYE**

10 Estate of MICHAEL DAVID ADAMS,
by and through his mother JUDITH
11 ADAMS, individually and on behalf of the
Estate,

12 **Plaintiffs,**

13 **vs.**

14 SUSAN FALLINI, DOES I-X and ROE
CORPORATIONS I-X, inclusive,

15 **Defendants.**

16 SUSAN FALLINI,

17 **Counterclaimant,**

18 **vs.**

19 Estate of MICHAEL DAVID ADAMS,
20 by and through his mother JUDITH
ADAMS, individually and on behalf of the
21 Estate,

22 **Counterdefendants.**

Case No.: CV24539
Dept.: 2P

23 **NOTICE OF ENTRY OF ORDER**

24 ///

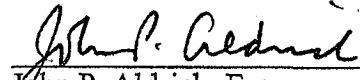
25 ///

26 ///

1 PLEASE TAKE NOTICE that an Order was entered in the above-entitled matter on July 17,
2 2009, a copy of which is attached hereto as Exhibit 1.

3 DATED this 26 day of August, 2009.

4 ALDRICH LAW FIRM, LTD.

5 
6 John P. Aldrich, Esq.
7 Nevada State Bar No. 6877
8 1601 S. Rainbow Blvd., Suite 160
9 Las Vegas, Nevada 89146
10 (702) 853-5490
11 (702) 227-1975
12 Attorneys for Plaintiff

13 **CERTIFICATE OF SERVICE**

14 I HEREBY CERTIFY that on the 26th day of August, 2009, I mailed a copy of the
15 NOTICE OF ENTRY OF ORDER, in a sealed envelope, to the following and that postage was fully
16 paid thereon:

17 Harold Kuehn, Esq.
18 Gibson, & Kuehn
19 1601 E. Basin Avenue, Suite 101
20 Pahrump, NV 89060
21 Attorney for Defendant/Counterclaimant

22 Katherine M. Barker, Esq.
23 Law Office of Katherine M. Barker
24 701 Bridger Ave, Ste. 500
25 Las Vegas, NV 89101
26 Attorney for Counterdefendant
27 Estate of Michael David Adams

28 
An employee of Aldrich Law Firm, Ltd.

EXHIBIT 1

1 **ORDR**

John P. Aldrich

2 Nevada Bar No.: 6877

ALDRICH LAW FIRM, LTD.

3 1601 S. Rainbow Blvd., Suite 160

Las Vegas, Nevada 89146

4 (702) 853-5490

Attorneys for Plaintiff

FILED

2009 JUL 17 A 9:41

Shelia Winn
NYE COUNTY CLERK
BY DEPUTY

6 **THE FIFTH JUDICIAL DISTRICT COURT**
7 **THE STATE OF NEVADA**
8 **COUNTY OF NYE**

9 Estate of MICHAEL DAVID ADAMS, by
and through his mother JUDITH ADAMS,
10 individually and on behalf of the Estate,

11 Plaintiff,

12 v.

13 SUSAN FALLINI, ; DOES I-X, and ROE
14 CORPORATIONS I-X, inclusive,

15 Defendants.

16
17 SUSAN FALLINI,

18 Counterclaimant,

19 vs.

20 Estate of MICHAEL DAVID ADAMS, by
and through his mother JUDITH ADAMS,
21 individually and on behalf of the Estate

22 Counterdefendants.

Case No.: CV24539
Dept. No.: 2P

23
24 **ORDER DENYING PLAINTIFF'S MOTION TO STRIKE DEFENDANT'S ANSWER**
25 **AND COUNTERCLAIM**

26 THIS MATTER having come on for hearing on Monday, July 13, 2009, on Plaintiff's
27 Motion to Strike Defendant's Answer and Counterclaim, before the Honorable Robert W. Lane, and
28 John P. Aldrich, Esq., of Aldrich Law Firm, Ltd., appearing on behalf of the Plaintiffs, with Harry

1 Kuehn, Esq., appearing on behalf of Defendant, the Court having reviewed all pleadings and papers
2 on file herein, and good cause appearing therefore:

3 **IT IS HEREBY ORDERED** that Plaintiff's Motion to Strike Defendant's Answer and
4 Counterclaim is DENIED at this time.

5 **IT IS FURTHER ORDERED** that Defendant SUSAN FALLINI shall produce all
6 documents responsive to Plaintiff's discovery requests pursuant to NRCP 16.1, 26, 33, 34 and NRCP
7 37 within thirty (30) days of the hearing of Plaintiff's Motion to Strike Defendant's Answer and
8 Counterclaim. Thus, the date by which Defendant must provide said documents is August 12, 2009.

9 **IT IS FURTHER ORDERED** that in the event Defendant SUSAN FALLINI does not
10 produce all documents responsive to Plaintiff's discovery requests pursuant to NRCP 16.1, 26, 33, 34
11 and NRCP 37 within thirty (30) days of the hearing of Plaintiff's Motion to Strike Defendant's
12 Answer and Counterclaim, the Court will grant the relief sought by Plaintiff and strike Defendant's
13 Answer and Counterclaim.

14 **IT IS FURTHER ORDERED** that Defendant shall pay a monetary sanction of \$1,000.00
15 for related attorney's fees and costs for failing to comply with discovery rules and the Court's prior
16 Order granting Plaintiff's Motion to Compel, and for Plaintiff having to bring this motion.

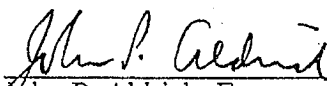
17 DATED this 17 day of July, 2009.

18 **ROBERT W. LANE**

19 DISTRICT COURT JUDGE

20
21 Respectfully submitted by:

22 **ALDRICH LAW FIRM, LTD.**

23
24 
25 John P. Aldrich, Esq.
26 Nevada Bar No. 6877
27 1601 S. Rainbow Blvd., Suite 160
28 Las Vegas, NV 89146
(702) 853-5491
Attorneys for Plaintiff