

1 **MOT**

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Tracie K. Lindeman  
Clerk of Supreme Court

2 **IN THE SUPREME COURT OF THE STATE OF NEVADA**  
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7 **OFFICE OF THE CLERK**

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9 SUSAN FALLINI

10 Appellant,

Supreme Court No.: 56840

District Court Case No.: CV00224539

11 v.

12 ESTATE OF MICHAEL DAVID ADAMS, BY  
13 AND THROUGH HIS MOTHER JUDITH  
14 ADAMS, INDIVIDUALLY AND ON  
BEHALF OF THE ESTATE,

15 Respondent.

16 **MOTION TO REVERSE OR WITHDRAW REMITTITUR AND CLARIFY INSTRUCTIONS**  
17 **FOR ALLOWANCE OF INTEREST**

18 Respondent JUDITH ADAMS, INDIVIDUALLY AND ON BEHALF OF THE ESTATE OF  
19 MICHAEL DAVID ADAMS, by and through her attorney of record, John P. Aldrich, of Aldrich Law  
20 Firm Ltd., hereby submits this Motion to Reverse or Withdraw Remittitur and Clarify Instructions for  
21 Allowance of Interest. The Motion is based upon the attached memorandum of Points and Authorities,  
22 the attached exhibits, and testimony or argument the Court will entertain at the hearing on

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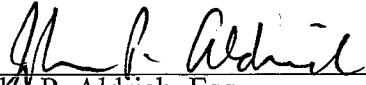
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1 this matter.

2 DATED this 7<sup>th</sup> day of October, 2013.

3 ALDRICH LAW FIRM, LTD.

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6 J. P. Aldrich, Esq.  
7 Nevada Bar No.: 6877  
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9 Las Vegas, Nevada 89146  
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11 *Attorney for Respondent*

12 **MEMORANDUM OF POINTS AND AUTHORITY**

13 **I.**

14 **CASE BACKGROUND**

15 **A. Procedural History in District Court**

16 On or about **November 29, 2006**, Plaintiff/Respondent filed a lawsuit in Clark County, Nevada.  
17 Defendant SUSAN FALLINI was duly served with a copy of the Summons and Complaint on **March 1,**  
18 **2007**, and an Answer and Counterclaim (seeking to recover the value of the cow) were filed on **March**  
19 **14, 2007**. The case was later transferred to Pahrump, Nye County, Nevada.

20 On **October 31, 2007**, Plaintiff /Respondent submitted interrogatories to Fallini. Those  
21 interrogatories were never answered. Plaintiff/Respondent also submitted requests for admissions and  
22 its first set of requests for production of documents on October 31, 2007 Defendant Fallini never  
23 responded to any of these requests. On or about **April 7, 2008** (and served on **May 14, 2008** with a  
24 Certificate of Service), Plaintiff /Respondent filed a Motion for Partial Summary Judgment.  
25 Defendant/Appellant did not oppose that motion and the Court granted that Motion on **July 30, 2008**.  
26 On **March 23, 2009** Plaintiff/Respondent filed a Motion to Compel Defendant's Production of  
27 Documents, including information regarding any insurance policies that may provide coverage for the  
28 incident as contemplated in the Plaintiff's second request for documents. This motion was heard on **April**

1 **27, 2009.** The Court granted the Motion to Compel and awarded John Aldrich, Esq., \$750.00 in  
2 sanctions for having to bring the motion. A Notice of Entry of Order on the order granting the motion  
3 to compel was entered on May 18, 2009 and was served by mail on Defendant/Appellant.  
4 Defendant/Appellant never complied with the Order.

5 On **June 16, 2009**, Plaintiff /Respondent filed a Motion to Strike Defendant's Answer and  
6 Counterclaim due to Defendant's complete failure to comply with discovery requests and the Court's  
7 Order. The Defendant/Appellant's counsel again attended the hearing and again provided no explanation  
8 as to why Defendant /Appellant failed to respond to all discovery requests, but stated Defendant would  
9 comply with discovery requests. The Court denied Plaintiff's Motion to Strike based on Defendant's  
10 counsel's promises to comply. The Court did, however, order Defendant/Appellant to comply with the  
11 Order granting Plaintiff's Motion to Compel and to respond to Plaintiff's discovery requests by **July 12,**  
12 **2009** or Defendant's Answer and Counterclaim would be stricken. The Court also ordered Defendant to  
13 pay an additional \$1,000 sanction. Defendant/Appellant still did not comply with the Court's Order and  
14 failed to respond to Plaintiff/Respondent's discovery requests. On **August 31, 2009**, Plaintiff brought  
15 an Ex Parte Motion for Order to Show Cause Why Defendant Susan Fallini and Her Counsel Should Not  
16 be Held in Contempt. The Court issued an Order on Plaintiff's Order to Show Cause, dated **October**  
17 **8, 2009**, that Susan Fallini must produce all documents responsive to Plaintiffs discovery requests by  
18 **October 12, 2009.** The Court further ordered that if Defendant did not supply the requested information  
19 by October 12, 2009, Defendant's counsel would be held in contempt of court and would be fined  
20 \$150.00 a day, beginning October 13, 2009. Further, the Court ordered that if the requested information  
21 was not provided by October 12, 2009, the Court would strike Defendant's pleadings in their entirety.

22 On **November 4, 2009**, an order was entered Striking Defendant's/Appellant's pleadings.  
23 Because Defendant's Answer has been stricken, all the allegations of the Complaint were deemed to be  
24 true. On **February 4, 2010**, the Clerk of the Court entered Default against Defendant/Appellant.

25 On **June 21, 2010**, Plaintiff/Respondent filed an Application for Default Judgment. On **June 23,**  
26 **2010**, Fallini filed an Opposition to the Application for Default Judgment, arguing Judgment should not  
27 be entered because Fallini had only recently been apprised on the status of the case and it would be

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1 injustice to her to allow Default Judgment.

2 On **July 2, 2010**, Fallini filed a Motion for Reconsideration, asking the Court to reconsider the  
3 Order granting summary judgment and the Order striking the Answer and Counterclaim.

4 On **July 19, 2010**, a hearing was held on Fallini's Motion for Reconsideration. Said motion was  
5 denied and the Court proceeded with a prove up hearing. On **August 18, 2010**, an Order was entered on  
6 this matter wherein the Court awarded Plaintiff \$1,000,000.00 in damages for grief, sorrow and loss of  
7 support, \$1,640,696 in damages for future lost earnings, \$50,000 in attorney's fees, \$35,000 in sanctions  
8 levied against Defendant, and \$5,188.85 in funeral and other related expenses.

9 **B. Proceedings Before Supreme Court**

10 On **September 7, 2010**, Fallini filed a Notice of Appeal. The parties briefed the matter not once,  
11 but twice, due to the fact that after the first round of briefing was completed, Defendant moved to re-open  
12 the briefing to submit the transcript of the prove-up hearing. The briefing was re-opened and the parties  
13 submitted a second round of briefing.

14 Following the second round of briefing, on **March 29, 2013**, the Nevada Supreme Court issued  
15 its Order Affirming in Part, Denying in Part and Remanding this case. Although the Judgment was  
16 reduced by \$1,640,696.00, the remainder of the Judgment was upheld. However, the Order does not  
17 contain instructions about the allowance of interest (See Exhibit 1.)

18 A Remittitur was issued in the above entitled case on August 14, 2013. (See Exhibit 2).

19 **II.**

20 **LEGAL ARGUMENT**

21 **A. This Court Issued an Order For Judgment in the Amount of \$1,090,188.80 Against**  
22 **Defendant, As Such This Court Must Issue an Order Containing Instructions for the**  
23 **Allowance of Interest**

24 On **March 29, 2013**, the Nevada Supreme Court issued its Order Affirming in Part, Denying in  
25 Part and Remanding this case. Although the Judgment was reduced by \$1,640,696.00, the remainder of  
26 the Judgment was upheld. Remittitur was issued by this Court on August 14, 2013. However, the Order  
27 does not contain instructions about the allowance of interest (See Exhibit 1). NRAP-37(b) provides

1 If the court modifies or reverses a judgment with a direction that a money judgment be  
2 entered in the district court, the mandate must contain instructions about the allowance  
3 interest.

4 Plaintiff requests this Court, pursuant to NRAP 37(b) issue an order containing instruction  
5 regarding the allowance of interest in the March 29, 2013 Order.

6 **III.**

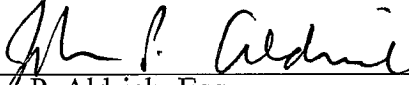
7 **CONCLUSION**

8 This Court's March 29, 2013 Order did not contain instructions for the allowance of interest. As  
9 such, Plaintiff now moves this Court to reverse or withdraw remittitur and for an Order containing  
10 instructions for the allowance of interest.

11 DATED this 7<sup>th</sup> day of October, 2013.

12 Respectfully Submitted,

13 **ALDRICH LAW FIRM, LTD.**

14   
15 John P. Aldrich, Esq.  
16 Nevada Bar No.: 6877  
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20 *Attorney for Respondent*

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**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on the 7<sup>th</sup> day of October, 2013, I mailed a copy of the Motion to Reverse or Withdraw Remittitur and Clarify Instructions for Allowance of Interest, in a sealed envelope, to the following and that postage was fully paid thereon:

John Ohlson, Esq.  
275 Hill Street, Suite 230  
Reno, NV 89501  
*Attorney for Appellant*

Jeff Kump, Esq.  
Marvel & Kump, Ltd.  
217 Idaho Street  
Elko, NV 89801  
*Attorney for Appellant*

  
An employee of Aldrich Law Firm, Ltd.