

MARQUIS AURBACH COFFING

10001 Park Run Drive
Las Vegas, Nevada 89145
(702) 382-0711 FAX: (702) 382-5816

**DECLARATION OF TYE S. HANSEEN, ESQ. IN SUPPORT OF REPLY IN SUPPORT
OF MOTION FOR ATTORNEY FEES AND COSTS**

Tye S. Hanseen, Esq. declares as follows:

1. I am over the age of 18 years and have personal knowledge of the facts stated herein, except for those stated upon information and belief, and as to those, I believe them to be true. I am an attorney with the law firm of Marquis Aurbach Coffing, counsel for the Defendant in this matter.

2. The hourly rate for the attorneys handling this matter on behalf of Gang was \$210 per hour for associates and \$425 for Mr. Marquis. These rates were lower than or equal to the usual and customary rates which Marquis Aurbach Coffing and the attorneys working on this case charged to other clients from 2009-2012. Further, these rates are very reasonable in light of the community.

3. Based on my review of the attorney fees, community standards, the work involved in prosecuting this lawsuit through January 4, 2012, and the factors listed in Brunzell v. Golden Gate Nat'l Bank, 85 Nev. 345, 349, 455 P.2d 31 (1960), the total amount of fees and costs Gang actually, reasonably, and necessarily incurred through January 4, 2012, was \$19,833.50 in attorney fees and \$408.49 in costs.¹ The redacted invoices and time entries through November 7, 2011, are attached hereto for the Court's review at Tab 1 and the redacted invoices and time entries from November 7, 2011, through January 4, 2012, are attached hereto at Tab 2.² The factors enumerated in Brunzell are as follows:

a. Qualities of the Advocate: The qualities of Marquis Aurbach Coffing as an advocate are well known in this community. The firm is AV rated by Martindale Hubbell, the highest rating a law firm can receive. Moreover, Marquis Aurbach Coffing is listed in Martindale-Hubbell's registry of Pre Eminent Lawyers. Lead counsel on this case and the supervising attorney was Albert G. Marquis, Esq. Mr. Marquis is a director at Marquis Aurbach

¹ See redacted billing entries attached hereto at **Tabs 1 and 2**.

² Id.

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1 Coffing and has been practicing law in Nevada for more than thirty-five years. In addition, Mr.
2 Marquis has enjoyed success as a trial attorney and maintains a solid reputation among his peers.
3 The lead associate on the case was Tye S. Hanseen, Esq. Mr. Hanseen has been practicing law in
4 Nevada for approximately five years; and, based on his years of practice, also maintains a solid
5 reputation among his peers.

6 b. The Character of the Work Done—Its Difficulty, Its Intricacy, Its
7 Importance, Time and Skill Required, the Responsibility Imposed and the Prominence and
8 Character of the Parties Where They Affect The Importance of the Litigation: The character of
9 the case is likely most prevalent in the settlement negotiations, relationships between the parties,
10 the litigation, and the appeal. Over what has amounted to more than a two year period, the
11 parties negotiated, exchanged, and discussed multiple settlement alternatives, participated in
12 briefings and a hearing, and are now engaged in an appeal. Legitimate and productive settlement
13 discussions indeed require skill and time, both of which Gang's attorneys devoted to the case.
14 The character was further magnified because of the nature of the claims as Gang maintains
15 Hunter filed the Complaint without a valid basis or reasonable ground. Moreover, the parties are
16 now engaged in an appeal.

17 c. The Work Actually Performed: As of January 4, 2012, Marquis
18 Aurbach Coffing had spent over 89 hours litigating this matter over the last two+ years. Each of
19 the tasks were given careful attention and executed to Gang's benefit.

20 d. The Result: Whether the Attorneys Were Successful and What
21 Benefits Were Derived: The end result of the work performed by Marquis Aurbach Coffing on
22 behalf of Gang is readily apparent. Gang was successful in defeating Hunter's claims and
23 getting them dismissed with prejudice.

24 4. I am also able to verify that the costs of \$408.49 that Gang incurred in this matter
25 were necessary and reasonable.

26 5. On behalf of William Gang, I sent settlement inquiries/correspondences to
27 counsel for Richard Hunter on or about September 22, 2010, September 29, 2010, October 28,
28 2010, and November 12, 2010. On November 23, 2010, Mr. Hunter's counsel responded to my

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1 four inquiries indicating "the Hunters have been traveling. i [sic] will reach out and hopefully
2 get you an answer of some sort." I was traveling during the Thanksgiving Holiday in 2010 and
3 did not substantively review the November 23 response until December 3.

4 6. On December 3, 2010, March 23, 2011, April 25, 2011, July 24, 2011, July 27,
5 2011, and August 1, 2011, I sent further follow up settlement inquiries/correspondences to
6 counsel for Mr. Hunter. On August 2, 2011, Mr. Hunter's counsel responded to my additional
7 six inquiries indicating: "i [sic] am on vacation this week and will get with dick [sic] and maggie
8 [sic] next week." On August 11, 2011, still without any further contact from Hunter's counsel, I
9 informed Hunter's counsel that Gang would be moving to dismiss the case.

10 7. On January 27, 2010, I received correspondence from Mr. Hunter's counsel
11 indicating that Mr. Hunter wanted a response to the Complaint filed because Mr. Gang objected
12 to Mr. Hunter's request to Clark County for a variance. To comply with the request, I began
13 preparing the Answer and Counterclaim. Settlement discussions ensued. I did not anticipate that
14 subsequent settlement discussions would make the preparation of the Answer and Counterclaim
15 not immediately necessary. Rather, I was responding to Hunter's counsel's request for a
16 response to the Complaint, which request Hunter's counsel indicated was the result of Gang's
17 objection at a Clark County hearing to Hunter's variance request.

18 8. I declare under penalty of perjury under the laws of the State of Nevada (NRS
19 53.045), that the foregoing is true and correct.

20 Dated this 5 day of January, 2012.

21 
22 TYE S. HANSEEN, ESQ.
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25
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27
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Exhibit 1

**MARQUIS AURBACH
COFFING**

ATTORNEYS AT LAW

10001 PARK RUN DRIVE
LAS VEGAS, NEVADA 89145
Telephone 702-382-0711
Fax 702-382-5816

Bill Gang

Invoice 209718 - 242687

ID: 11526-001 - AGM

Re: Hunter, Richard A. adv.

For Services Rendered Through November 7, 2011

Current Fees	13,652.00
Current Disbursements	157.09
Current Interest	20.02
Total Current Charges	13,829.11

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Bill Gang
 Re: Hunter, Richard A. adv.
 I.D. 11526-001 - AGM

November 7, 2011
 Invoice 209718 -
 Page 2

Fees				
Date	Atty	Description	Hours	Amount
12/09/09	AGM	Telephone conference with Bill regarding [REDACTED]	0.50	212.50
12/17/09	TSH	Telephone conference with Bill regarding [REDACTED].	0.40	84.00
12/17/09	TSH	Prepare correspondence to opposing counsel regarding representation of Mr. Gang, service of complaint, no entry of default, and status.	0.20	42.00
12/22/09	TSH	Prepare correspondence to Bill discussing [REDACTED].	0.40	84.00
12/23/09	TSH	Telephone call and leave telephone message for Bill Gang regarding matter. Telephone conference with Bill Gang regarding [REDACTED].	0.40	84.00
01/06/10	TSH	Prepare correspondence to opposing counsel regarding status in order to arrange telephone conference. Prepare correspondence to client regarding matter.	0.10	21.00
01/06/10	TSH	Telephone conference with opposing counsel regarding matter, regarding resolution, and status.	0.20	42.00
01/06/10	TSH	Telephone call and leave voice message for client. Review and analyze correspondence from Bill and prepare correspondence to Bill responding to same and providing update. Telephone conference with Bill regarding status of matter.	0.40	84.00
01/07/10	TSH	Prepare correspondence to opposing counsel confirming meeting to potentially resolve matter, discussing available dates, and discussing and confirming open extension on responsive pleading, including follow up regarding same.	0.30	63.00
01/07/10	TSH	Prepare correspondence to Bill regarding [REDACTED]. Review and analyze correspondence from Bill [REDACTED]. Prepare correspondence to Bill [REDACTED]. Prepare correspondence to opposing counsel providing available dates and discussing same.	0.60	126.00
01/08/10	TSH	Review and analyze correspondence from Ferrario regarding potential conference to discuss settlement and follow up regarding same.	0.10	21.00
01/11/10	TSH	Telephone conferences with Bill regarding [REDACTED]. Strategize regarding conference and arguments. Review and analyze correspondence from Ferrario regarding conference to discuss settlement and prepare correspondence to Ferrario regarding same.	1.00	210.00
01/12/10	TSH	Telephone conference with Bill Gang regarding [REDACTED]. Telephone conference with planning commission regarding continuation of hearing, including review of notice regarding same received from Bill. Telephone conference with Bill Gang regarding matter. Telephone call and conference with opposing counsel regarding status of matter and potential time to meet. Further telephone conferences with opposing counsel and client regarding	0.80	168.00

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Bill Gang			November 7, 2011 Invoice 209718 Page 3	
Date	Atty	Description	Hours	Amount
		matter. Prepare correspondence to opposing counsel following up regarding conference. Review and analyze correspondence from opposing counsel confirming conference and prepare correspondence to client confirming same. Telephone call to Bill confirming conference.		
01/12/10	TSH	Attend conference with opposing counsel, plaintiff, and client to discuss settlement of matter, including pre and post conference discussions regarding [REDACTED]	1.20	252.00
01/12/10	AGM	Attend meeting with Hunters.	0.50	212.50
01/13/10	TSH	Prepare correspondence to Ferrario regarding intentions surrounding meeting at Mt. Springs and planning commission and potential purchase of 5 acre parcel.	0.20	42.00
01/13/10	TSH	Review and analyze correspondence from Bill regarding [REDACTED]	0.20	42.00
01/14/10	TSH	Review and analyze voice message from Bill regarding [REDACTED] [REDACTED] Telephone call and leave voice message with Bill. Telephone conference with Bill regarding [REDACTED]	0.30	63.00
01/15/10	TSH	Review and analyze voice message from client regarding matter. Prepare correspondence to opposing counsel regarding conference with plaintiff and results of same. Review and analyze correspondence from opposing counsel regarding measurements and anticipated meeting with client. Telephone conference with client regarding matter.	0.30	63.00
01/15/10	TSII	Telephone conference with opposing counsel regarding potential resolution, status, and offer. Telephone conference with Bill regarding [REDACTED] [REDACTED]	0.40	84.00
01/18/10	TSH	Review and analyze correspondence from Bill [REDACTED] [REDACTED]	0.10	21.00
01/20/10	TSH	Review and analyze telephone message from Bill regarding [REDACTED] [REDACTED] Telephone call and conference with Bill regarding [REDACTED]	0.30	63.00
01/27/10	TSH	Review and analyze correspondence from opposing counsel regarding demand for responsive pleading, potential resolution, and discussions to resolve matter. Prepare correspondence to opposing counsel regarding status, resolution, responsive pleading, and current options to which Bill is willing to agree.	0.30	63.00
02/04/10	TSH	Prepare correspondence to opposing counsel regarding response to complaint.	0.10	21.00
02/05/10	TSH	Review and analyze correspondence from opposing counsel regarding diagram and photos and prepare correspondence to opposing counsel regarding same.	0.10	21.00
02/09/10	TSH	Begin to prepare answer to complaint. Telephone call and leave telephone message with Bill. Telephone conference with Bill regarding [REDACTED]	0.60	126.00

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Bill Gang			November 7, 2011 Invoice 209718 Page 4	
Date	Atty	Description	Hours	Amount
02/09/10	TSH	matter. Prepare correspondence to opposing counsel regarding matter. Conduct legal research regarding [REDACTED] [REDACTED] Preparation of affirmative defenses in support of answer to complaint.	1.10	231.00
02/09/10	TSH	Begin preparation of counterclaim [REDACTED] [REDACTED]	0.70	147.00
02/09/10	TSII	Telephone call from Bill and conference with Bill regarding [REDACTED] [REDACTED]	0.40	84.00
02/10/10	TSH	Telephone calls from and conferences with opposing counsel regarding matter, status, and facts. Review and analyze correspondence from opposing counsel and forward correspondence to opposing counsel regarding matter.	0.40	84.00
02/16/10	TSH	Telephone call from and conference with Bill Gang regarding [REDACTED] [REDACTED]	0.30	63.00
02/22/10	TSH	Telephone call from Ferrario regarding matter. Telephone call and leave telephone message with Ferrario. Telephone conference with Ferrario regarding matter.	0.10	21.00
02/22/10	TSH	Telephone call and conference with Bill regarding [REDACTED] [REDACTED]	0.40	84.00
02/23/10	TSH	Review and analyze photographs received from client as to encroachment and drainage pipe. Prepare correspondence to opposing counsel regarding drainage pipe, survey, and survey expense. Prepare correspondence to Bill [REDACTED] [REDACTED] Strategize regarding [REDACTED]	0.70	147.00
02/23/10	TSH	Review and analyze correspondence from opposing counsel regarding pipes and drainage and forward same to Bill for review.	0.10	21.00
02/24/10	TSH	Review and analyze correspondence from Bill regarding matter. Prepare correspondence to Bill regarding [REDACTED] [REDACTED] [REDACTED]	0.40	84.00
02/24/10	TSII	Telephone conference with Bill regarding [REDACTED] [REDACTED] Prepare correspondence to opposing counsel regarding history, drainage issue, injunction, survey, litigation, settlement offers, and status conference.	1.10	231.00
02/25/10	TSH	Prepare correspondence to opposing counsel regarding status of response and resolution of current issues. Prepare correspondence to Bill regarding matter.	0.10	21.00
02/26/10	TSH	Review and analyze correspondence from Ferrario regarding matter and also from Bill.	0.10	21.00
02/26/10	TSH	Make additions to complaint to incorporate additional causes of action and affirmative defenses. Prepare correspondence to Bill forwarding draft of complaint and [REDACTED]	1.00	210.00
03/02/10	TSH	Review and analyze correspondence from Mark and Bill and prepare	0.10	21.00

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Bill Gang			November 7, 2011 Invoice 209718 Page 5	
Date	Atty	Description	Hours	Amount
		correspondence to Bill regarding matter.		
03/02/10	TSH	Exchange correspondences with Bill regarding matter. Telephone conference with Bill. Telephone call and leave telephone message with opposing counsel regarding matter.	0.50	105.00
03/11/10	TSH	Telephone conference with opposing counsel regarding matter, including discussions regarding alternatives to resolution, settlement offer, counteroffer, drainage pipe, claims, and status. Prepare correspondence to Bill providing update.	0.30	63.00
03/11/10	TSII	Review and analyze correspondence from Bill regarding [REDACTED]	0.00	
03/15/10	TSII	Review and analyze correspondence from Bill regarding [REDACTED] [REDACTED] Prepare correspondence to Bill advising [REDACTED]	0.10	21.00
03/25/10	TSH	Review and analyze correspondence from Bill regarding [REDACTED] [REDACTED] Prepare correspondence to Bill regarding matter and discussing [REDACTED]	0.10	21.00
03/26/10	TSH	Review and analyze correspondence from Bill regarding status and outlook. Prepare correspondence to Bill regarding [REDACTED] [REDACTED]	0.60	126.00
04/02/10	TSH	Telephone conference with Bill regarding [REDACTED] [REDACTED] Telephone call and leave telephone message with opposing counsel regarding matter. Prepare correspondence to opposing counsel regarding status of response. Prepare correspondence to Bill regarding [REDACTED]	1.00	210.00
04/13/10	TSH	Telephone call with opposing counsel regarding matter.	0.10	21.00
04/15/10	TSH	Prepare correspondence to opposing counsel regarding status. Review and analyze correspondence and voice mail from opposing counsel regarding status.	0.10	21.00
04/16/10	TSH	Review and analyze correspondence from opposing counsel. Telephone conference with opposing counsel.	0.10	21.00
04/19/10	TSH	Telephone call and leave voice message for opposing counsel regarding matter and prepare correspondence to client advising [REDACTED] [REDACTED]	0.10	21.00
04/20/10	TSH	Review and analyze voice message from opposing counsel. Telephone call and leave voice message for opposing counsel. Prepare correspondence to opposing counsel regarding voice message.	0.10	21.00
04/29/10	TSH	Telephone call and leave voice message with opposing counsel regarding status. Prepare correspondence to client providing update.	0.10	21.00
05/04/10	TSH	Review and analyze voice message from opposing counsel. Telephone call and leave voice message for opposing counsel. Prepare correspondence to Bill providing update.	0.10	21.00
05/10/10	TSH	Review and analyze voice message from opposing counsel. Telephone call and leave voice message with opposing counsel regarding status of matter. Telephone conference with opposing counsel regarding status, outlook, developments, and potential avenues of resolution moving	0.30	63.00

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Bill Gang			November 7, 2011 Invoice 209718 Page 6	
Date	Atty	Description	Hours	Amount
		forward.		
05/12/10	TSH	Office conference regarding [REDACTED] [REDACTED] Prepare correspondence to client regarding [REDACTED] [REDACTED] Telephone call and message to opposing counsel regarding matter. Prepare correspondence to opposing counsel regarding matter.	0.40	84.00
05/13/10	TSH	Review and analyze correspondence from opposing counsel regarding changes in property and circumstances since prior deal failed to close and prepare correspondence responding to same.	0.10	21.00
05/17/10	TSH	Review and analyze voice message from Bill regarding [REDACTED] [REDACTED] Telephone conference with Bill regarding [REDACTED] [REDACTED]	0.50	105.00
05/21/10	TSH	Telephone conference with opposing counsel regarding matter, settlement, and status.	0.20	42.00
05/21/10	TSH	Review and analyze voice message from Bill regarding matter. Telephone call and conference with Bill regarding [REDACTED] [REDACTED]	0.30	63.00
06/21/10	AGM	Draft email to client.	0.30	127.50
06/21/10	TSH	Telephone conference with opposing counsel regarding matter and outlook. Prepare correspondence to client providing [REDACTED] [REDACTED]. Review and analyze correspondence from Bill regarding [REDACTED]	0.30	63.00
07/20/10	TSH	Telephone conference with client regarding [REDACTED] [REDACTED] Strategize regarding [REDACTED]	0.40	84.00
08/05/10	TSII	Review and analyze voice message from opposing attorney regarding matter. Telephone call and leave voice message with opposing attorney returning call. Telephone conference with opposing attorney regarding status, settlement, and further legal action. Strategize regarding [REDACTED] [REDACTED]	0.40	84.00
08/09/10	TSH	Telephone conference with client discussing [REDACTED] [REDACTED] [REDACTED]	1.10	231.00
08/10/10	TSH	Review and analyze [REDACTED] from client regarding [REDACTED] [REDACTED]. Prepare correspondence to opposing attorney regarding encroaching argument, regarding settlement offer, and regarding interference with contractual relations argument.	0.60	126.00
08/11/10	TSH	Review and revise correspondence to opposing attorney regarding settlement, encroaching reference, and status. Prepare correspondence to client regarding matter. Telephone conference with client regarding [REDACTED]	0.50	105.00
08/11/10	TSH	Review and analyze correspondence from client regarding [REDACTED]	0.10	21.00

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Bill Gang			November 7, 2011 Invoice 209718 Page 7	
Date	Atty	Description	Hours	Amount
		██████████ Prepare correspondence to client responding to ██████████		
08/12/10	AGM	Review and revise correspondence to opposing attorney; office conference.	0.30	127.50
08/13/10	TSII	Review and analyze voice message from client regarding ██████████	0.30	63.00
		██████████ Review and revise correspondence to opposing attorney regarding settlement, encroaching analysis, intentional interference allegations, and status. Finalize correspondence to opposing attorney.		
08/17/10	TSH	Finalize correspondence to opposing attorney regarding status and settlement. Review and analyze correspondence to opposing attorney regarding letter. Prepare correspondence to opposing attorney regarding letter and discussions to resolve matter.	0.10	21.00
08/24/10	TSH	Review and analyze correspondence from client regarding ██████████	0.20	42.00
		██████████ Prepare correspondence to client regarding ██████████		
08/25/10	AGM	Office conference; review email to Ferrario.	0.40	170.00
08/25/10	TSH	Telephone conference with Bill regarding ██████████	1.40	294.00
		██████████ Prepare correspondence to opposing attorney regarding Bill's position, status, and settlement. Strategize regarding ██████████		
08/25/10	TSII	Review and analyze correspondence from client regarding ██████████	0.50	105.00
		██████████ Make revisions and forward correspondence to opposing attorney. Prepare correspondence to client regarding ██████████		
09/01/10	TSH	Prepare correspondence to client providing update regarding ██████████	0.20	42.00
09/21/10	TSH	Review and analyze correspondence from opposing attorney regarding settlement status. Review prior settlement correspondence for potential settlement alternatives. Prepare correspondence to client regarding ██████████	0.50	105.00
09/22/10	TSH	Review and analyze voice message from client. Telephone calls and leave voice messages for client. Telephone conference with client. Additional telephone conference with client regarding ██████████	1.00	210.00
		██████████ Prepare correspondence to opposing attorney regarding telephone conference with discussion of counteroffer and status of matter prior to response to complaint.		
09/29/10	TSH	Review and analyze correspondence from client regarding ██████████	0.40	84.00
		██████████ Prepare correspondence to opposing attorney regarding further developments and discussing same in relation to matter, further litigation, and settlement.		
10/29/10	TSH	Prepare correspondence to opposing attorney regarding status, settlement, and failure to respond and receipt of previous correspondence. Prepare correspondence to client providing update	0.20	42.00

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Bill Gang			November 7, 2011 Invoice 209718 Page 8	
Date	Atty	Description	Hours	Amount
		regarding status of matter.		
11/12/10	TSH	Prepare correspondence to opposing attorney regarding status of review of settlement offers. Prepare correspondence to client providing update.	0.10	21.00
12/03/10	TSH	Review and analyze correspondence from opposing attorney regarding status of plaintiff and settlement. Prepare correspondence to client providing update. Prepare correspondence to opposing attorney inquiring regarding further update.	0.10	21.00
01/12/11	TSH	Research court docket to follow up regarding any filings not served, potential case reassignment, and orders from court or discovery. Confirm status of response and correspondence from opposing attorney.	0.10	21.00
02/01/11	TSH	Prepare correspondence to client providing update regarding [REDACTED]	0.20	42.00
02/17/11	TSH	Review and analyze voice message from client. Telephone call and leave voice message for client. Telephone call and conference with client regarding [REDACTED]	0.50	105.00
03/23/11	TSH	Prepare further correspondence to opposing attorney regarding status of matter, outlook, prior negotiations, and resolution.	0.10	21.00
04/25/11	TSH	Review and analyze correspondence from client regarding status of matter. Research court docket to determine whether any further filings have taken place. Prepare correspondence to client regarding status. Prepare correspondence to opposing attorney regarding status, options, and moving forward.	0.50	105.00
06/16/11	TSH	Review and analyze voice message from client. Call to client. Review and analyze docket to determine whether judge assignment remains the same and whether any filings have taken place.	0.10	21.00
07/26/11	TSH	Review and analyze correspondence from client regarding status. Prepare correspondence to client regarding [REDACTED].	0.30	63.00
07/27/11	TSH	Prepare correspondence to opposing attorney in follow up to conference at court, contact with Hunter, and action in case.	0.10	21.00
08/01/11	TSH	Prepare correspondence to opposing attorney following up regarding status of matter and outlook. Prepare correspondence to client regarding [REDACTED]	0.30	63.00
08/02/11	TSH	Review and analyze correspondence from opposing attorney regarding discussions with client. Prepare correspondence to client regarding [REDACTED] Further preparation of motion to dismiss.	0.30	63.00
08/03/11	TSH	Review and analyze correspondence from client regarding motion to dismiss. Prepare correspondence to client regarding motion to dismiss, [REDACTED]	0.20	42.00
08/04/11	AGM	Exchange emails with client.	0.30	127.50
08/04/11	TSH	Review and analyze exchanges of correspondence and continue to prepare motion to dismiss. Strategize regarding [REDACTED]	0.30	63.00
08/11/11	TSH	Further preparation of motion to dismiss. Legal research regarding [REDACTED] Review	1.10	231.00

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Bill Gang			November 7, 2011 Invoice 209718 Page 9	
Date	Atty	Description	Hours	Amount
		and revise motion to dismiss. Finalize motion to dismiss.		
08/15/11	TSH	Review and analyze correspondence from court confirming filing of motion to dismiss and review same to ensure conformance. Review and analyze correspondence from opposing attorney regarding discussions on resolution.	0.10	21.00
08/16/11	TSH	Review and analyze correspondence from opposing attorney regarding motion to dismiss. Prepare correspondence to opposing attorney regarding motion to dismiss, status, and plaintiff's request. Prepare correspondence to client regarding [REDACTED]	1.00	210.00
08/17/11	TSH	Review and analyze correspondence from opposing attorney regarding status and alternatives in light of motion to dismiss.	0.10	21.00
08/17/11	TSH	Review and analyze voice message from client and telephone call to and conference with client regarding matter.	0.40	84.00
08/23/11	TSH	Prepare correspondence to opposing attorney reaffirming position that client will not withdraw motion to dismiss, that client remains open to discussing settlement, and to present any proposed resolution.	0.10	21.00
08/25/11	TSH	Review and analyze voice message from client. Telephone call and leave message for client. Telephone conference with client regarding [REDACTED]	0.30	63.00
09/01/11	TSH	Review and analyze opposition to motion to dismiss. Review and analyze plaintiff's spouse's affidavit in support of opposition. Prepare correspondence to client providing [REDACTED]	0.40	84.00
09/09/11	TSH	Telephone conference with client regarding [REDACTED]	0.40	84.00
09/12/11	TSH	Review and analyze correspondence regarding opposing attorney's request to extend hearing and prepare correspondence to client regarding matter.	0.10	21.00
09/12/11	TSH	Telephone conferences with opposing attorney's office regarding hearing. Preparation of outline for hearing and arguments related to same.	1.20	252.00
09/13/11	TSII	Attend hearing regarding motion to dismiss and argue same. Post-hearing conference with opposing attorney. Post-hearing conference with client. Telephone conference with client regarding [REDACTED] Strategize regarding [REDACTED]	2.20	462.00
09/22/11	TSH	Review and analyze voice message from client. Prepare correspondence to client regarding [REDACTED] Prepare further correspondence to opposing attorney regarding resolution and outlook. Review and analyze correspondence from client.	0.50	105.00
09/23/11	TSH	Telephone conference with client regarding [REDACTED]	0.60	126.00
09/26/11	TSH	Prepare correspondence to client requesting [REDACTED] Telephone call from and conference with client regarding [REDACTED] Prepare correspondence to opposing	0.40	84.00

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Bill Gang		November 7, 2011 Invoice 209718 Page 10		
Date	Atty	Description	Hours	Amount
		attorney regarding status, future action, and strategy.		
09/27/11	TSH	Review and analyze correspondence from opposing attorney regarding ideas for solution, status, outlook, and status of plaintiff. Begin preparation of order regarding motion to dismiss.	0.10	21.00
09/30/11	TSH	Prepare correspondence to client regarding [REDACTED] Continue briefly preparing order [REDACTED]	0.20	42.00
10/04/11	TSH	Continue preparation of findings of fact, conclusions of law, and order. Research [REDACTED] Review and analyze [REDACTED] [REDACTED] Research court docket to incorporate court's minutes into order. Strategize regarding [REDACTED] [REDACTED]. Prepare correspondence to client regarding [REDACTED] [REDACTED] Review and analyze [REDACTED] [REDACTED]	2.00	420.00
10/04/11	AGM	Review and revision of order dismissing case.	0.40	170.00
10/06/11	TSH	Make additions and revisions to findings of fact, conclusions of law and order. Prepare correspondence to client following up regarding [REDACTED] [REDACTED]	0.20	42.00
10/10/11	TSH	Exchange correspondences with client regarding [REDACTED] [REDACTED] Review, analyze and revise [REDACTED] [REDACTED] Prepare correspondence to client regarding [REDACTED] Prepare memorandum regarding versions of order and finalization of same. Review court minutes to ensure judge requested findings of fact.	1.20	252.00
10/11/11	AGM	review order dismissing case; office conference.	0.50	212.50
10/11/11	TSH	Conference with opposing attorney regarding order, status, potential resolution, alternatives for resolution and appeal. Strategize regarding order and further action.	0.10	21.00
10/11/11	TSH	Review and analyze correspondence from opposing attorney regarding license offer and resolution. Telephone conference with client regarding [REDACTED] [REDACTED].	0.70	147.00
10/12/11	TSH	Review and analyze correspondence from client regarding [REDACTED] [REDACTED] Review correspondence to client regarding [REDACTED] Prepare correspondence to client regarding [REDACTED] [REDACTED]	0.20	42.00
10/12/11	AGM	Assess, analyze and review Ferraro settlement proposal; draft email to Bill.	0.50	212.50
10/12/11	TSH	Prepare correspondence to opposing attorney regarding proposed order. Strategize regarding [REDACTED] Review and revise correspondence to opposing attorney regarding further action.	1.30	273.00

MARQUIS AURBACH COFFING P.C.

Bill Gang			November 7, 2011 Invoice 209718 Page 11	
Date	Atty	Description	Hours	Amount
10/13/11	AGM	Office conference re strategy.	0.50	212.50
10/17/11	TSH	Review and analyze correspondence from opposing attorney regarding proposed findings of fact and conclusions of law. Prepare correspondence to opposing attorney regarding requested revisions. Review and analyze correspondence from opposing attorney regarding matter and prepare correspondence to opposing attorney regarding resolution, parties and order.	0.30	63.00
10/18/11	TSH	Prepare correspondence to client regarding [REDACTED]	0.20	42.00
10/20/11	TSH	Prepare correspondence to opposing attorney regarding status of order and submission of competing orders. Review correspondence from client regarding [REDACTED] Prepare correspondence to client regarding [REDACTED] Review correspondence from opposing attorney regarding proposed order. Review order and prepare correspondence to client [REDACTED] Review correspondence from client regarding [REDACTED] Review correspondence from opposing attorney regarding settlement. Prepare correspondence to client regarding [REDACTED]	0.70	147.00
10/21/11	TSH	Review voice message from client. Review correspondence from client. Telephone conference with client regarding [REDACTED] Prepare correspondence to opposing attorney regarding settlement, alternatives and outlook.	1.10	231.00
10/24/11	TSH	Review correspondence from opposing attorney regarding settlement. Prepare correspondence to opposing attorney regarding resolution.	0.10	21.00
10/28/11	TSH	Prepare correspondence to opposing attorneys regarding status of settlement offer and counteroffer, if applicable, proposal to same. Prepare correspondence to client providing [REDACTED] Telephone conference with client providing [REDACTED]	0.90	189.00
10/28/11	TSH	Review correspondence from opposing counsel regarding status of counter offer and discussions related to same. Prepare correspondence to client providing [REDACTED]	0.10	21.00
11/01/11	TSH	Follow up regarding status of response from opposing attorney as to settlement and prepare correspondence to opposing attorney regarding status of response, competing orders, intentions, third party mediator and outlook. Prepare correspondence to client providing update.	0.40	84.00
11/01/11	TSH	Review correspondence from opposing attorney regarding resolution and settlement. Review correspondence from client regarding [REDACTED]	0.10	21.00
11/02/11	TSH	Prepare correspondence to client providing update regarding [REDACTED] Prepare correspondence to court regarding competing orders.	1.30	273.00

MARQUIS AURBACH COFFING P.C.

Bill Gang			November 7, 2011 Invoice 209718 Page 12	
Date	Atty	Description	Hours	Amount
		Review correspondence from client regarding [REDACTED] [REDACTED] Prepare correspondence to opposing attorney regarding orders and resolution. Review correspondence from opposing attorney regarding discussions with plaintiff. Prepare correspondence to client regarding [REDACTED] [REDACTED] Review correspondence from client regarding contact with plaintiff.		
11/02/11	MSE	Office conference with TSH on [REDACTED] [REDACTED]	0.20	65.00
11/03/11	TSH	Review and revise correspondence to judge regarding competing orders and transcript. Review transcript for [REDACTED] [REDACTED]. Begin process of preparation of memorandum of costs and compilation of cost back up in support of memorandum. REview correspondence from opposing attorney regarding orders submitted to court and report on discussions with plaintiff regarding developments or options on resolution.	0.50	105.00
11/03/11	TSH	Prepare correspondence to opposing attorney regarding orders submitted, transcript submitted and correspondence to court. Telephone call and conference with client regarding [REDACTED] [REDACTED]	0.40	84.00
11/07/11	TSH	Begin preparation of memorandum of costs and motion for attorney fees.	2.70	567.00
Total Fees			60.60	13,652.00
Disbursements				
Date	Description			Amount
	Telex			7.00
	Copies			21.00
	Scanning Charges			9.45
	Westlaw Research			101.82
	Postage			1.32
08/31/11	Messenger Service			6.00
	Wiznet; Online Filing Fees			10.50
Total Disbursements				157.09

Exhibit 2

**MARQUIS AURBACH
COFFING**

ATTORNEYS AT LAW

10001 PARK RUN DRIVE
LAS VEGAS NEVADA 89145
Telephone 702-382-0711
Fax 702-382-5816

Bill Gang

Invoice 243943 - 245467
January 5, 2012

ID: 11526-001 - AGM

Re: Hunter, Richard A. adv.

For Services Rendered Through January 5, 2012

Current Fees	6,181.50
Current Disbursements	251.40
Total Current Charges	6,432.90

MARQUIS AURBACH COFFING P.C.

Bill Gang
 Re: Hunter, Richard A. adv.
 I.D. 11526-001 - AGM

January 5, 2012
 Invoice 243943 -
 Page 2

Fees				
Date	Atty	Description	Hours	Amount
11/07/11	TSH	Review and analyze correspondence from court regarding order dismissing case and review file stamped copy of same for conformance in preparation for preparing and filing notice.	0.10	21.00
11/08/11	TSH	Strategize regarding [REDACTED] Prepare and finalize notice of entry of order. Prepare correspondence to client regarding [REDACTED] Review correspondence from court regarding file stamped copy of notice and review same to ensure conformance.	0.30	63.00
11/11/11	TSH	Follow up regarding memo of costs and prepare correspondence to client [REDACTED] Strategize regarding [REDACTED] and preparation of correspondence for [REDACTED] regarding same.	0.20	42.00
11/14/11	TSH	Review and analyze cost detail to incorporate same into memorandum of costs and review and revise memorandum. Prepare correspondence to client regarding [REDACTED] Review and analyze correspondence from client regarding [REDACTED]	0.70	147.00
11/15/11	TSH	Finalize memorandum of costs in preparation to file same. Review correspondence from court regarding memorandum of costs and review same to ensure conformance.	0.10	21.00
11/18/11	TSH	Review and analyze notice of appeal. Review and analyze case appeal statement. Review and analyze notice of posting costs. Prepare correspondence to client [REDACTED] Review correspondence from client regarding [REDACTED] Prepare correspondence to client discussing [REDACTED] Review correspondence from Supreme Court regarding notice of appeal. Review telephone message from client and call to and leave telephone message with client. Research supreme court site for confirmation of status and referral to settlement program. Review notice of referral to settlement program and suspension of rules. Telephone conference with client regarding [REDACTED] Strategize regarding [REDACTED] exchange correspondences regarding same.	1.40	294.00
11/21/11	TSH	Telephone call with client regarding [REDACTED]	0.20	42.00
11/22/11	TSH	Review correspondence from supreme court regarding settlement judge assignment and follow up regarding settlement judge and background related to same. Prepare correspondence to client regarding [REDACTED]	0.20	42.00
11/22/11	MSE	Office conference with TSH regarding [REDACTED]	0.20	65.00

MARQUIS AURBACH COFFING P.C.

Bill Gang

January 5, 2012

Invoice 243943

Page 3

Date	Atty	Description	Hours	Amount
11/28/11	TSH	Continue preparation of motion for fees, including further preparation of statement of facts, introduction to legal arguments, argument that fees are appropriate under NRS 18.010, argument that costs are mandatory, argument that fees are reasonable, and conclusion. Prepare attorney declaration in support of motion.	2.30	483.00
11/28/11	TSH	Review and revise motion for fees and costs and correspond regarding updated fees and costs to incorporate same. Review and revise attorney declaration in support of motion. Finalize motion for fees and costs. Finalize attorney declaration in support of fees and costs. Research court docket regarding status of filing. Prepare correspondence to client regarding [REDACTED] [REDACTED] Prepare correspondence to opposing attorney regarding motion for fees and settlement conference.	1.50	315.00
11/28/11	MSE	Office conference with TSH regarding [REDACTED] [REDACTED]	0.20	65.00
11/29/11	TSH	Review correspondence from client regarding [REDACTED] [REDACTED] Telephone conference with client regarding [REDACTED] [REDACTED]	0.50	105.00
11/30/11	TSH	Review correspondence from court regarding file stamped motion for fees and costs. Follow up regarding notice of hearing. Review and revise notice of hearing in preparation to file same. Finalize notice of hearing. Review correspondence from court regarding notice of hearing and review notice to ensure conformance. Review and analyze docketing statement. Prepare correspondence to client regarding [REDACTED] [REDACTED]	0.30	63.00
12/05/11	TSH	Formulate arguments in support of confidential settlement brief. Begin preparation of confidential settlement statement, including sections related to [REDACTED] [REDACTED] [REDACTED]	2.40	504.00
12/05/11	TSH	Conduct legal research to [REDACTED] [REDACTED] Conduct legal research to [REDACTED] [REDACTED] Begin to review and analyze legal research to incorporate same into arguments. Research [REDACTED] [REDACTED]	2.20	462.00
12/06/11	TSH	Continue preparation of confidential settlement statement. Continue to review and analyze legal research to incorporate same into arguments. Preparation of legal argument related to [REDACTED] [REDACTED] legal argument regarding [REDACTED] [REDACTED] legal argument regarding [REDACTED] and legal argument regarding [REDACTED] [REDACTED] Review and revise settlement statement. Prepare correspondence to client regarding [REDACTED]	3.60	756.00
12/06/11	AGM	Review and revision of Confidential Settlement Statement.	0.70	297.50
12/06/11	TSH	Preparation of errata to certificate of service to motion for attorney fees and costs.	0.20	42.00

MARQUIS AURBACH COFFING P.C.

Bill Gang

January 5, 2012

Invoice 243943

Page 4

Date	Atty	Description	Hours	Amount
12/07/11	TSH	Finalize confidential settlement statement and arrange for submission of same. Review correspondence regarding submission of settlement statement.	0.10	21.00
12/15/11	TSH	Begin to review opposition to motion for fees and prepare correspondence to client [REDACTED].	0.10	21.00
12/20/11	TSH	Review and analyze opp to atty fees and formulate arguments in opposition to same. Telephone conference with client regarding [REDACTED].	0.50	105.00
01/02/12	TSH	Continue to prepare reply in support of motion for attorney fees and costs, including introduction, introduction to legal arguments, and legal argument that adverse possession claim was without reasonable ground. Conduct legal research [REDACTED]. Conduct legal research regarding [REDACTED]. Begin preparation of legal argument regarding quit title claim and groundless basis of same.	2.90	609.00
01/03/12	TSH	Review and revise legal argument in support of reply in support of motion for attorney fees that adverse possession claim was without reasonable ground. Review and revise legal argument that quiet title action was without reasonable ground, including argument related to remedies. Prepare legal argument regarding estoppel argument and alleged two inconsistent positions.	2.30	483.00
01/03/12	TSII	Prepare legal argument regarding settlement discussions, unresponsiveness, and break down of discussions in support of reply in support of motion for attorney fees and costs. Prepare legal argument regarding consideration of merits. Prepare legal argument regarding fees for pleadings not filed. Prepare conclusion. Prepare attorney declaration in support of reply. Conduct further legal research related to reply and opposing arguments. Review and revise reply in support of motion for attorney fees and costs.	3.90	819.00
01/04/12	TSH	Telephone conference with client regarding [REDACTED]. Review and redact additional billings to incorporate into motion for attorney fees. Make revisions to reply in support of motion for attorney fees. Finalize reply in support of motion for attorney fees.	1.40	294.00
Total Fees			28.50	6,181.50

Disbursements

Date	Description	Amount
	Scanning Charges	13.65
	Copies	48.00
	Postage	3.40
	Wiznet; Online Filing Fees	17.50
11/30/11	Messenger Service	6.00

MARQUIS AURBACH COFFING P.C.

Bill Gang		January 5, 2012 Invoice 243943 Page 5
Date	Description	Amount
11/30/11	Parking Fee; 09/13/2011 hearing	5.00
12/31/11	Telex	1.00
12/31/11	Westlaw Research	156.85
Total Disbursements		251.40

A-09-604877-C

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Title to Property		COURT MINUTES	January 09, 2012
A-09-604877-C		Richard Hunter, Plaintiff(s) vs. William Gang, Defendant(s)	
January 09, 2012	3:00 AM	Motion for Attorney Fees and Costs	Defendant's Motion for Attorney Fees and Costs

HEARD BY: Smith, Douglas E.

COURTROOM: RJC Courtroom 16D

COURT CLERK: Katherine Streuber

RECORDER:

REPORTER:

PARTIES
PRESENT:

JOURNAL ENTRIES

- Having considered the moving papers, COURT ORDERED, motion GRANTED. Mr. Hanseen to prepare the order and provide to opposing counsel for review prior to submitting to the Court for signature.

CLERK'S NOTE: The above minute order has been distributed to: Tye S. Hanseen Esq. of Marquis Aurbach Coffing. 01/10/12 kls

PRINT DATE: 01/10/2012

Page 1 of 1

Minutes Date: January 09, 2012

APP0176

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08/13/2013 10:55:20 AM


CLERK OF THE COURT

1 **NEO**
2 **MARK E. FERRARIO, ESQ.**
3 **Nevada Bar No. 1625**
4 **TAMI D. COWDEN, ESQ.**
5 **Nevada Bar No. 8994**
6 **GREENBERG TRAURIG, LLP**
7 **3773 Howard Hughes Parkway, Suite 400 North**
8 **Las Vegas, Nevada 89169**
9 **Telephone: (702) 792-3773**
10 **Facsimile: (702) 792-9002**
11 **Email: ferrariom@gtlaw.com**
12 **godfrey@gtlaw.com**
13 **Attorneys for Plaintiff Richard A. Hunter**

9 **DISTRICT COURT**
10 **CLARK COUNTY, NEVADA**

11 **RICHARD A. HUNTER, an individual,**
12 **Plaintiff,**

Case No. A-09-604877-C

Dept No. VIII

13 **v.**

NOTICE OF ENTRY OF ORDER

14 **WILLIAM GANG, an individual, and DOE**
15 **DEFENDANTS 1 through 10, and ROE**
16 **CORPORATIONS 1 through 10, inclusive,**

17 **Defendants.**

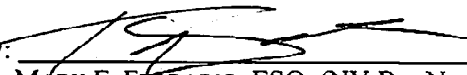
18 **TO: ALL INTERESTED PARTIES**

19 **PLEASE TAKE NOTICE** that on January 25, 2012, this Court entered an Order
20 **Granting William Gang Motion for Attorneys Fees and Costs and Judgment, a copy of which is**
21 **attached hereto.**

22 **DATED this 13th day of August, 2013.**

23 **GREENBERG TRAURIG, LLP**

24 **By:**

25 
26 **MARK E. FERRARIO, ESQ. (NV Bar No. 1625)**
27 **TAMI D. COWDEN, ESQ. (NV Bar No. 8994)**
28 **3773 Howard Hughes Parkway, Suite 400 North**
Las Vegas, Nevada 89169
Attorneys for Plaintiff Richard A. Hunter

CERTIFICATE OF SERVICE

I hereby certify pursuant to N.R.C.P 5 that I served the foregoing NOTICE OF ENTRY
OF ORDER on:

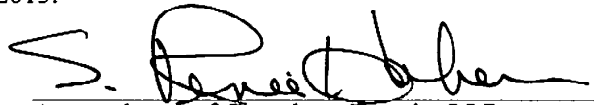
Albert G. Marquis
Tye Hanseen
Marquis Aurbach Coffing
10001 Park Run Drive
Las Vegas, NV 89145

by causing a full, true, and correct copy thereof to be sent by the following indicated
method

or methods, on the date set forth below:

- ☒ by mailing in a sealed, first class postage-prepaid envelop, addressed to the last-known office address of the attorney, and deposited with the United States Postal Service in Las Vegas, Nevada.
- ☐ by hand delivery.
- ☐ by sending via overnight courier in a sealed envelope.
- ☐ by electronic mail to the last known e-mail address.

DATED this 13th day of August, 2013.

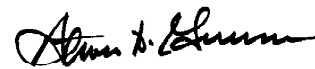

An employee of Greenberg Traurig, LLP

Greenberg Traurig LLP
3773 Howard Hughes Parkway, Suite 400 North
Las Vegas, Nevada 89169
(702) 792-3773
(702) 792-9002 (fax)

MARQUIS AURBACH COFFING

10001 Park Run Drive
Las Vegas, Nevada 89145
(702) 382-0711 FAX: (702) 382-5816

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01/26/2012 01:55:39 PM



CLERK OF THE COURT

1 **Marquis Aurbach Coffing**
2 **ALBERT G. MARQUIS, ESQ.**
3 Nevada Bar No. 1919
4 **TYE S. HANSEEN, ESQ.**
5 Nevada Bar No. 10365
6 10001 Park Run Drive
7 Las Vegas, Nevada 89145
8 Telephone: (702) 382-0711
9 Facsimile: (702) 382-5816
10 amarquis@maclaw.com
11 thanseen@maclaw.com
12 Attorneys for William Gang

13 **DISTRICT COURT**

14 **CLARK COUNTY, NEVADA**

15 **RICHARD A. HUNTER, an individual,**

16 **Plaintiff,**

17 **vs.**

18 **WILLIAM GANG, an individual, and DOE**
19 **DEFENDANTS 1 through 10, and ROE**
20 **CORPORATIONS 1 through 10, inclusive,**

21 **Defendants.**

Case No.: A-09-604877-C

Dept. No.: VIII

Hearing Date: January 9, 2012

Hearing Time: Chambers

22 **ORDER GRANTING WILLIAM GANG'S MOTION FOR ATTORNEY FEES AND**
23 **COSTS AND JUDGMENT**

24 The Court, having considered Defendant William Gang's ("Gang") Motion for Attorney
25 Fees and Costs, the Opposition filed by Plaintiff Richard Hunter ("Hunter"), and the Reply Gang
26 filed, hereby GRANTS Gang's Motion for Attorney Fees and Costs.

27 In granting Gang's Motion for Attorney Fees and Costs, the Court has considered the
28 related briefings, the factors set forth in Beattie v. Thomas, 99 Nev. 268, 668 P.2d 268 (1993)
and Brunzell v Golden Gate National Bank, 85 Nev. 345, 455 P.2d 31 (1969), and NRS
18.010(2)(b), which authorizes the award of attorney fees and costs when the court finds that
claims were brought or maintained without reasonable ground or to harass the prevailing party.
Gang is also awarded his costs pursuant to NRS Chapter 18 as the prevailing party.

In light of the legal basis for an award of attorney fees to Gang, as well as the Court's
review of all the stated information, the Court hereby awards Defendant William Gang the sum

MARQUIS AURBACH COFFING

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Las Vegas, Nevada 89145
(702) 382-0711 FAX: (702) 382-5816

1 of \$19,833.50 in attorney fees and \$408.49 in costs, for a total award of \$20,241.99, against
2 Plaintiff Richard Hunter.

3 **JUDGMENT**

4 Judgment is hereby entered in favor of Defendant William Gang and against Plaintiff
5 Richard Hunter in the amount of \$20,241.99 with legal interest to run on this amount from the
6 date of entry of Judgment until this amount has been fully satisfied.

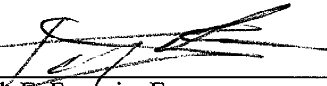
7 IT IS SO ORDERED.

8 Dated this ²⁵~~26~~ day of January, 2012.

9
10 
DISTRICT COURT JUDGE 

11 Approved by 
12 GREENBERG TRAURIG, LLP

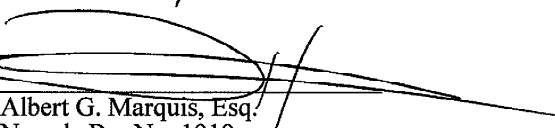
13 Dated this ¹⁸~~19~~ day of January, 2012.

14 By 
15 Mark E. Ferrario, Esq.
16 Nevada Bar No. 1625
17 Leslie Godfrey, Esq.
18 Nevada Bar No. 10229
19 3773 Howard Hughes Parkway, Suite 400 North
20 Las Vegas, Nevada 89169
21 Attorneys for Richard A. Hunter

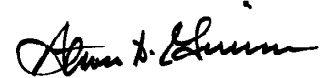
22 Respectfully Submitted by:

23 MARQUIS AURBACH COFFING

24 Dated this ¹⁹~~18~~ day of January, 2012.

25 By 
26 Albert G. Marquis, Esq.
27 Nevada Bar No. 1919
28 Tye S. Hanseen, Esq.
Nevada Bar No. 10365
10001 Park Run Drive
Las Vegas, Nevada 89145
Attorneys for William Gang

Electronically Filed
08/13/2013 10:58:20 AM


CLERK OF THE COURT

1 **ANOA**
2 MARK E. FERRARIO, ESQ.
3 Nevada Bar No. 1625
4 TAMI D. COWDEN, ESQ.
5 Nevada Bar No. 8994
6 GREENBERG TRAURIG, LLP
7 3773 Howard Hughes Parkway, Suite 400 North
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9 Telephone: (702) 792-3773
10 Facsimile: (702) 792-9002
11 Email: ferrariom@gtlaw.com
12 godfrey1@gtlaw.com
13 *Attorneys for Plaintiff Richard A. Hunter*

14 **DISTRICT COURT**

15 **CLARK COUNTY, NEVADA**

16 RICHARD A. HUNTER, an individual,

17 Plaintiff,

18 v.

19 WILLIAM GANG, an individual, and DOE
20 DEFENDANTS 1 through 10, and ROE
21 CORPORATIONS 1 through 10, inclusive,

22 Defendants.

Case No. A-09-604877-C

Dept No. VIII

AMENDED NOTICE OF APPEAL

23 Amended Notice is hereby given that Plaintiff Richard A. Hunter, by and through counsel
24 of record, Mark E. Ferrario, Esq. and Tami D. Cowden, Esq., of Greenberg Traurig, LLP, hereby
25 appeals to the Supreme Court of the State of Nevada from the Findings of Fact, Conclusions of
26 Law and Order Granting William Gang's Motion to Dismiss, dated November 7, 2011, and for
27 which notice of the entry of the order was dated November 8, 2011, and also appeals from the

28 //

//

//

//

1 Order Granting Fees, entered January 25, 2012, for which Notice of Entry was filed August 13,
2 2013 .

3 DATED this 13th day of August, 2013.

4 **GREENBERG TRAURIG, LLP**

6 By: 

7 MARK E. FERRARIO, ESQ.

8 Nevada Bar No. 1625

9 TAMI D. COWDEN, ESQ.

10 Nevada Bar No. 8994

11 3773 Howard Hughes Parkway

12 Suite 400 North

13 Las Vegas, Nevada 89169

14 Telephone: (702) 792-3773

15 *Attorneys for Plaintiff Richard A. Hunter*

16
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28
Greenberg Traurig LLP
3773 Howard Hughes Parkway, Suite 400 North
Las Vegas, Nevada 89169
(702) 792-3773
(702) 792-9002 (fax)

CERTIFICATE OF SERVICE

I hereby certify pursuant to N.R.C.P 5 that I served the foregoing **AMENDED NOTICE OF APPEAL** on:

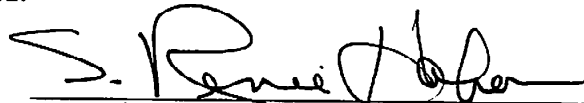
Albert G. Marquis
Tye Hanseen
Marquis Aurbach Coffing
10001 Park Run Drive
Las Vegas, NV 89145

by causing a full, true, and correct copy thereof to be sent by the following indicated method

or methods, on the date set forth below:

- ☒ by mailing in a sealed, first class postage-prepaid envelop, addressed to the last-known office address of the attorney, and deposited with the United States Postal Service in Las Vegas, Nevada.
- ☐ by hand delivery.
- ☐ by sending via overnight courier in a sealed envelope.
- ☐ by electronic mail to the last known e-mail address.

DATED this 13th day of May, 2012.


An employee of Greenberg Traurig, LLP

Greenberg Traurig LLP
3773 Howard Hughes Parkway, Suite 400 North
Las Vegas, Nevada 89169
(702) 792-3773
(702) 792-9002 (fax)

MARQUIS AURBACH COFFING

10001 Park Run Drive
Las Vegas, Nevada 89145
(702) 382-0711 FAX: (702) 382-5816

1 Clearly, this case is the type of case the Legislature envisioned when it declared that a
2 “court [should] award attorney’s fees . . . *to punish for and deter frivolous and vexatious claims*
3 and defenses *because such claims* and defenses overburden limited judicial resources, hinder the
4 timely resolution of meritorious claims and *increase the costs of engaging in business and*
5 *providing professional services to the public.*” NRS 18.010(2)(b) (emphasis added). Thus,
6 Gang, as the prevailing party, should be awarded his attorneys fees and costs in the amount of
7 \$14,809.09.³

8 **B. GANG IS ENTITLED TO RECOVER HIS COSTS AS THE PREVAILING**
9 **PARTY.**

10 Nevada law awards costs to the prevailing party. NRS 18.020 states in relevant part:

11 Costs must be allowed of course to the prevailing party against any adverse party
12 against whom judgment is rendered, in the following cases:

- 13 1. In an action for the recovery of real property or a possessory right thereto.
- 14 3. In an action for the recovery of money or damages, where the plaintiff
15 seeks to recover more than \$2,500.
- 16 5. In an action which involves the title . . . of real estate . . .⁴

17 In the instant case, Hunter claimed the case was worth more than \$10,000.⁵ Further, the
18 claims dealt specifically with the title to the Gang Property and the possessory rights of the Gang
19 Property.⁶ Also, Gang was the prevailing party against Hunter.⁷ In addition, the Nevada
20 Supreme Court has determined an award of costs under NRS 18.020(3) is mandatory and not
21 subject to the court’s discretion.⁸ Furthermore, the costs that are allowed are set forth in NRS
22 18.005 and NRS 17.115 and all of Gang’s costs fall within the allowed costs. Moreover, Gang

23 ³ See Declaration included below on pages 11 and 12 of this Motion and Verified Memorandum of Costs,
24 on file herein.

25 ⁴ See NRS 18.020.

26 ⁵ See Hunter’s Complaint, generally.

27 ⁶ Id.

28 ⁷ See November 7, 2011, Order on file herein.

⁸ Day v. West Coast Holdings, Inc., 101 Nev. 260, 699 P.2d 1067 (1985).

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1 filed a Verified Memorandum of Costs and Fees to which Hunter did not object.⁹ Thus, Gang is
2 entitled to his costs.

3 The law firm of Marquis Aurbach Coffing incurred reasonable costs in the defense of
4 Gang throughout this litigation, the settlement discussions, and the motion to dismiss hearing.
5 Marquis Aurbach Coffing incurred the costs for copies, scanning, faxing, messenger service,
6 filing fees, postage, legal research, and other miscellaneous expenses. The costs Gang incurred
7 during this lawsuit totaled \$157.09.¹⁰ The supporting documentation for Gang's costs is attached
8 to the Verified Memorandum of Costs and Fees that Gang filed on November 15, 2011.¹¹

9 **C. GANG'S ATTORNEY FEES ARE REASONABLE AND JUSTIFIED IN**
10 **AMOUNT.**

11 In calculating the amount of attorney fees to award, a District Court may begin with any
12 method rationally designed to calculate a reasonable amount; however, the District Court must
13 continue its analysis by considering the requested amount in light of the factors enumerated in
14 Brunzell v. Golden Gate National Bank,¹² which are (1) the advocate's professional qualities;
15 (2) the nature of the litigation; (3) the work performed; and (4) the result.¹³ Based upon work
16 performed since December 2009, for the litigation, the settlement discussions, and the Motion to
17 Dismiss hearing and briefing, Gang's attorney fees of \$14,652.00 are reasonable and justified.¹⁴
18 Also, the redacted invoices and time entries through November 7, 2011, are attached for the
19 Court's review.¹⁵

20 _____
21 ⁹ See Verified Memorandum of Costs, on file herein.

22 ¹⁰ Id.

23 ¹¹ Id.

24 ¹² 85 Nev. 345, 349, 455 P.2d 31, 33 (1969).

25 ¹³ Shuette v. Beazer Homes Holdings Corp., 124 P.3d 530, 549 (Nev. Dec. 15, 2005).

26 ¹⁴ See Declaration of Tye S. Hansen, Esq. included as pages 11 and 12 of this Motion. The Declaration
27 addresses the Brunzell factors and affirms the reasonableness of the attorney fees and costs Gang
28 incurred.

¹⁵ See Exhibit A.

MARQUIS AURBACH COFFING

10001 Park Run Drive
Las Vegas, Nevada 89145
(702) 382-0711 FAX: (702) 382-5816

1 **1. The Professional Qualities of Gang's Advocates.**¹⁶

2 The qualities of Marquis Aurbach Coffing as an advocate are well known in this
3 community. The firm is AV rated by Martindale Hubbell, the highest rating a law firm can
4 receive. Moreover, Marquis Aurbach Coffing is listed in Martindale-Hubbell's registry of Pre
5 Eminent Lawyers.

6 Lead counsel on this case and the supervising attorney was Albert G. Marquis, Esq. Mr.
7 Marquis is a director at Marquis Aurbach Coffing and has been practicing law in Nevada for
8 more than thirty-five years. In addition, Mr. Marquis has enjoyed success as a trial attorney and
9 maintains a solid reputation among his peers.

10 **2. The Character of the Work Done: Its Difficulty, Its Intricacy, Its**
11 **Importance, Time and Skill Required, the Responsibility Imposed and**
12 **the Prominence and Character of the Parties Where They Affect The**
Importance of the Litigation.¹⁷

13 The nature of the claims in this case was not per se difficult or intricate. The character of
14 the case is likely most prevalent in the settlement negotiations and relationships between the
15 parties. Over what amounted to almost a two year period, the parties negotiated, exchanged, and
16 discussed multiple settlement alternatives on multiple occasions. Legitimate and productive
17 settlement discussions indeed require skill and time, both of which Gang's attorneys devoted to
18 the case. The character was further magnified because of the nature of the claims as Gang
19 believed Hunter filed them without a valid basis and Hunter persisted that they were legitimate to
20 obtain a favorable resolution.

21 **3. The Work Actually Performed by the Lawyer: The Skill, Time, and**
22 **Attention Given to the Work.**¹⁸

23 As of November 7, 2011, Marquis Aurbach Coffing had spent over 60 hours litigating
24 this matter over the last two years. Each of the tasks were given careful attention and executed
25 to Gang's benefit.

26 ¹⁶ See Declaration of Tye S. Hansen, Esq. included as pages 11 and 12 of this Motion at 11 ¶ 3(a).

27 ¹⁷ Id. at 11 ¶ 3(b).

28 ¹⁸ Id. at 11 ¶ 3(c).

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4. **The Result: Whether the Attorneys Were Successful and What Benefits Were Derived.**¹⁹

The end result of the work performed by Marquis Aurbach Coffing on behalf of Gang is readily apparent. Gang was successful in defeating Hunter's claims and getting them dismissed with prejudice.

Therefore, after applying the Beattie and Brunzell factors to the facts of this case, the fees Gang incurred in this matter were reasonable and justified. Thus, the Court should award Gang attorney fees in the sum of \$14,652 and costs in the sum of \$157.09 against Hunter.

IV. CONCLUSION.

This case is the type of case the Legislature envisioned when it enacted NRS 18.010(2)(b) "to punish for and deter frivolous and vexatious claims and defenses because such claims and defenses . . . increase the costs of engaging in business and providing professional services to the public." Gang, as the prevailing party in this frivolous lawsuit, should be awarded his attorney fees and costs. Accordingly, Gang respectfully requests that this Honorable Court enter an order granting Defendant William Gang attorney fees and costs in the amount of \$14,809.09.

Dated this 28th day of November, 2011.

MARQUIS & AURBACH

By /s/ Tye S. Hanseen
Albert G. Marquis, Esq.
Nevada Bar No. 1919
Tye S. Hanseen, Esq.
Nevada Bar No. 10365
10001 Park Run Drive
Las Vegas, Nevada 89145
amarquis@maclaw.com
thanseen@maclaw.com
Attorneys for William Gang

¹⁹ Id. at 11 ¶ 3(d).

MARQUIS AURBACH COFFING

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**DECLARATION OF TYE S. HANSEEN, ESQ. IN SUPPORT OF MOTION FOR
ATTORNEY FEES AND COSTS**

Tye S. Hanseen, Esq. declares as follows:

1. I am over the age of 18 years and have personal knowledge of the facts stated herein, except for those stated upon information and belief, and as to those, I believe them to be true. I am an attorney with the law firm of Marquis Aurbach Coffing, counsel for the Defendant in this matter.

2. The hourly rate for the attorneys handling this matter on behalf of Gang was \$210 per hour for associates and \$425 for Mr. Marquis. These rates were lower than or equal to the usual and customary rates which Marquis Aurbach Coffing and the attorneys working on this case charged to other clients from 2009-2011. Further, these rates are reasonable in light of the community.

3. Based on my review of the attorney fees, community standards, the work involved in prosecuting this lawsuit, and the factors listed in Brunzell v. Golden Gate Nat'l Bank, 85 Nev. 345, 349, 455 P.2d 31 (1960), the total amount of fees and costs Gang actually, reasonably, and necessarily incurred was \$13,652 in attorney fees and \$157.09 in costs. The redacted invoices and time entries through November 7, 2011, are attached for the Court's review.²⁰ Gang has incurred additional fees since November 7, 2011, through present for the preparation of this Motion and other work on this matter; and, anticipates incurring further expense for the hearing of this matter. For the purposes of this Motion, \$1,000 has been added to the \$13,652 total to compensate for this additional work. The factors enumerated in Brunzell are as follows:

a. Qualities of the Advocate: The qualities of Marquis Aurbach Coffing as an advocate are well known in this community. The firm is AV rated by Martindale Hubbell, the highest rating a law firm can receive. Moreover, Marquis Aurbach Coffing is listed in Martindale-Hubbell's registry of Pre Eminent Lawyers. Lead counsel on this case and the supervising attorney was Albert G. Marquis, Esq. Mr. Marquis is a director at Marquis Aurbach

²⁰ See Exhibit A.

MARQUIS AURBACH COFFING

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1 Coffing and has been practicing law in Nevada for more than thirty-five years. In addition, Mr.
2 Marquis has enjoyed success as a trial attorney and maintains a solid reputation among his peers.

3 b. The Character of the Work Done—Its Difficulty, Its Intricacy, Its
4 Importance, Time and Skill Required, the Responsibility Imposed and the Prominence and
5 Character of the Parties Where They Affect The Importance of the Litigation: The nature of the
6 claims in this case was not per se difficult or intricate. The character of the case is likely most
7 prevalent in the settlement negotiations and relationships between the parties. Over what
8 amounted to almost a two year period, the parties negotiated, exchanged, and discussed multiple
9 settlement alternatives on multiple occasions. Legitimate and productive settlement discussions
10 indeed require skill and time, both of which Gang's attorneys devoted to the case. The character
11 was further magnified because of the nature of the claims as Gang believed Hunter filed them
12 without a valid basis.

13 c. The Work Actually Performed: As of November 7, 2011, Marquis
14 Aurbach Coffing had spent over 60 hours litigating this matter over the last two years. Each of
15 the tasks were given careful attention and executed to Gang's benefit.

16 d. The Result: Whether the Attorneys Were Successful and What
17 Benefits Were Derived: The end result of the work performed by Marquis Aurbach Coffing on
18 behalf of Gang is readily apparent. Gang was successful in defeating Hunter's claims and
19 getting them dismissed with prejudice.

20 4. I am also able to verify that the costs of \$157.09 that Gang incurred in this matter
21 were necessary and reasonable.

22 5. I declare under penalty of perjury under the laws of the State of Nevada (NRS
23 53.045), that the foregoing is true and correct.

24 Dated this 28th day of November, 2011.

25 /s/ Tye S. Hanseen
26 TYE S. HANSEEN, ESQ.
27
28

MARQUIS AURBACH COFFING

10001 Park Run Drive
Las Vegas, Nevada 89145
(702) 382-0711 FAX: (702) 382-5816

CERTIFICATE OF SERVICE

I hereby certify that the foregoing MOTION FOR ATTORNEY FEES AND COSTS was submitted electronically for filing and/or service with the Eighth Judicial District Court on the ____ day of November, 2011. Electronic service of the foregoing document shall be made in accordance with the E-Service List as follows:²¹

N/A

I further certify that I served a copy of this document by mailing a true and correct copy thereof, postage prepaid, addressed to:

Mark E. Ferrario, Esq.
Greenberg Traurig, LLP
3773 Howard Hughes Parkway, Suite 400 North
Las Vegas, Nevada 89169
Attorneys for Richard A. Hunter

/s/ Gaby Chavez
An employee of Marquis Aurbach Coffing

²¹ Pursuant to EDCR 8.05(a), each party who submits an E-Filed document through the E-Filing System consents to electronic service pursuant to NRCP 5(b)(2)(D).

Exhibit A

**MARQUIS AURBACH
COFFING**

ATTORNEYS AT LAW

10001 PARK RUN DRIVE
LAS VEGAS, NEVADA 89145
Telephone 702-382-0711
Fax 702-382-5816

Bill Gang

Invoice 209718 - 242687

ID: 11526-001 - AGM

Re: Hunter, Richard A. adv.

For Services Rendered Through November 7, 2011

Current Fees	13,652.00
Current Disbursements	157.09
Current Interest	20.02
Total Current Charges	13,829.11

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MARQUIS AURBACH COFFING P.C.

Bill Gang
 Re: Hunter, Richard A. adv.
 I.D. 11526-001 - AGM

November 7, 2011
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Fees				
Date	Atty	Description	Hours	Amount
12/09/09	AGM	Telephone conference with Bill regarding [REDACTED].	0.50	212.50
12/17/09	TSH	Telephone conference with Bill regarding [REDACTED].	0.40	84.00
12/17/09	TSH	Prepare correspondence to opposing counsel regarding representation of Mr. Gang, service of complaint, no entry of default, and status.	0.20	42.00
12/22/09	TSH	Prepare correspondence to Bill discussing [REDACTED].	0.40	84.00
12/23/09	TSH	Telephone call and leave telephone message for Bill Gang regarding matter. Telephone conference with Bill Gang regarding [REDACTED].	0.40	84.00
01/06/10	TSH	Prepare correspondence to opposing counsel regarding status in order to arrange telephone conference. Prepare correspondence to client regarding matter.	0.10	21.00
01/06/10	TSH	Telephone conference with opposing counsel regarding matter, regarding resolution, and status.	0.20	42.00
01/06/10	TSH	Telephone call and leave voice message for client. Review and analyze correspondence from Bill and prepare correspondence to Bill responding to same and providing update. Telephone conference with Bill regarding status of matter.	0.40	84.00
01/07/10	TSH	Prepare correspondence to opposing counsel confirming meeting to potentially resolve matter, discussing available dates, and discussing and confirming open extension on responsive pleading, including follow up regarding same.	0.30	63.00
01/07/10	TSH	Prepare correspondence to Bill regarding [REDACTED]. Review and analyze correspondence from Bill [REDACTED]. Prepare correspondence to Bill [REDACTED]. Prepare correspondence to opposing counsel providing available dates and discussing same.	0.60	126.00
01/08/10	TSH	Review and analyze correspondence from Ferrario regarding potential conference to discuss settlement and follow up regarding same.	0.10	21.00
01/11/10	TSH	Telephone conferences with Bill regarding [REDACTED]. Strategize regarding conference and arguments. Review and analyze correspondence from Ferrario regarding conference to discuss settlement and prepare correspondence to Ferrario regarding same.	1.00	210.00
01/12/10	TSH	Telephone conference with Bill Gang regarding [REDACTED]. Telephone conference with planning commission regarding continuation of hearing, including review of notice regarding same received from Bill. Telephone conference with Bill Gang regarding matter. Telephone call and conference with opposing counsel regarding status of matter and potential time to meet. Further telephone conferences with opposing counsel and client regarding	0.80	168.00

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MARQUIS AURBACH COFFING P.C.

Bill Gang

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Date	Atty	Description	Hours	Amount
		matter. Prepare correspondence to opposing counsel following up regarding conference. Review and analyze correspondence from opposing counsel confirming conference and prepare correspondence to client confirming same. Telephone call to Bill confirming conference.		
01/12/10	TSH	Attend conference with opposing counsel, plaintiff, and client to discuss settlement of matter, including pre and post conference discussions regarding [REDACTED]	1.20	252.00
01/12/10	AGM	Attend meeting with Hunters.	0.50	212.50
01/13/10	TSH	Prepare correspondence to Ferrario regarding intentions surrounding meeting at Mt. Springs and planning commission and potential purchase of 5 acre parcel.	0.20	42.00
01/13/10	TSH	Review and analyze correspondence from Bill regarding [REDACTED]	0.20	42.00
01/14/10	TSH	Review and analyze voice message from Bill regarding [REDACTED] [REDACTED] Telephone call and leave voice message with Bill. Telephone conference with Bill regarding [REDACTED]	0.30	63.00
01/15/10	TSH	Review and analyze voice message from client regarding matter. Prepare correspondence to opposing counsel regarding conference with plaintiff and results of same. Review and analyze correspondence from opposing counsel regarding measurements and anticipated meeting with client. Telephone conference with client regarding matter.	0.30	63.00
01/15/10	TSH	Telephone conference with opposing counsel regarding potential resolution, status, and offer. Telephone conference with Bill regarding [REDACTED]	0.40	84.00
01/18/10	TSH	Review and analyze correspondence from Bill [REDACTED]	0.10	21.00
01/20/10	TSH	Review and analyze telephone message from Bill regarding [REDACTED] [REDACTED] Telephone call and conference with Bill regarding [REDACTED]	0.30	63.00
01/27/10	TSH	Review and analyze correspondence from opposing counsel regarding demand for responsive pleading, potential resolution, and discussions to resolve matter. Prepare correspondence to opposing counsel regarding status, resolution, responsive pleading, and current options to which Bill is willing to agree.	0.30	63.00
02/04/10	TSH	Prepare correspondence to opposing counsel regarding response to complaint.	0.10	21.00
02/05/10	TSH	Review and analyze correspondence from opposing counsel regarding diagram and photos and prepare correspondence to opposing counsel regarding same.	0.10	21.00
02/09/10	TSH	Begin to prepare answer to complaint. Telephone call and leave telephone message with Bill. Telephone conference with Bill regarding	0.60	126.00

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MARQUIS AURBACH COFFING P.C.

Bill Gang

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Date	Atty	Description	Hours	Amount
02/09/10	TSH	matter. Prepare correspondence to opposing counsel regarding matter. Conduct legal research regarding [REDACTED] [REDACTED] Preparation of affirmative defenses in support of answer to complaint.	1.10	231.00
02/09/10	TSH	Begin preparation of counterclaim [REDACTED] [REDACTED]	0.70	147.00
02/09/10	TSH	Telephone call from Bill and conference with Bill regarding [REDACTED] [REDACTED]	0.40	84.00
02/10/10	TSH	Telephone calls from and conferences with opposing counsel regarding matter, status, and facts. Review and analyze correspondence from opposing counsel and forward correspondence to opposing counsel regarding matter.	0.40	84.00
02/16/10	TSH	Telephone call from and conference with Bill Gang regarding [REDACTED] [REDACTED]	0.30	63.00
02/22/10	TSH	Telephone call from Ferrario regarding matter. Telephone call and leave telephone message with Ferrario. Telephone conference with Ferrario regarding matter.	0.10	21.00
02/22/10	TSH	Telephone call and conference with Bill regarding [REDACTED] [REDACTED]	0.40	84.00
02/23/10	TSH	Review and analyze photographs received from client as to encroachment and drainage pipe. Prepare correspondence to opposing counsel regarding drainage pipe, survey, and survey expense. Prepare correspondence to Bill [REDACTED] [REDACTED] Strategize regarding [REDACTED]	0.70	147.00
02/23/10	TSH	Review and analyze correspondence from opposing counsel regarding pipes and drainage and forward same to Bill for review.	0.10	21.00
02/24/10	TSH	Review and analyze correspondence from Bill regarding matter. Prepare correspondence to Bill regarding [REDACTED] [REDACTED]	0.40	84.00
02/24/10	TSH	Telephone conference with Bill regarding [REDACTED] [REDACTED] Prepare correspondence to opposing counsel regarding history, drainage issue, injunction, survey, litigation, settlement offers, and status conference.	1.10	231.00
02/25/10	TSH	Prepare correspondence to opposing counsel regarding status of response and resolution of current issues. Prepare correspondence to Bill regarding matter.	0.10	21.00
02/26/10	TSH	Review and analyze correspondence from Ferrario regarding matter and also from Bill.	0.10	21.00
02/26/10	TSH	Make additions to complaint to incorporate additional causes of action and affirmative defenses. Prepare correspondence to Bill forwarding draft of complaint and [REDACTED]	1.00	210.00
03/02/10	TSH	Review and analyze correspondence from Mark and Bill and prepare	0.10	21.00

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MARQUIS AURBACH COFFING P.C.

Bill Gang

November 7, 2011

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Date	Atty	Description	Hours	Amount
		correspondence to Bill regarding matter.		
03/02/10	TSH	Exchange correspondences with Bill regarding matter. Telephone conference with Bill. Telephone call and leave telephone message with opposing counsel regarding matter.	0.50	105.00
03/11/10	TSH	Telephone conference with opposing counsel regarding matter, including discussions regarding alternatives to resolution, settlement offer, counteroffer, drainage pipe, claims, and status. Prepare correspondence to Bill providing update.	0.30	63.00
03/11/10	TSH	Review and analyze correspondence from Bill regarding [REDACTED]	0.00	
03/15/10	TSH	Review and analyze correspondence from Bill regarding [REDACTED] [REDACTED] Prepare correspondence to Bill advising [REDACTED]	0.10	21.00
03/25/10	TSH	Review and analyze correspondence from Bill regarding [REDACTED] [REDACTED] Prepare correspondence to Bill regarding matter and discussing [REDACTED]	0.10	21.00
03/26/10	TSH	Review and analyze correspondence from Bill regarding status and outlook. Prepare correspondence to Bill regarding [REDACTED] [REDACTED]	0.60	126.00
04/02/10	TSH	Telephone conference with Bill regarding [REDACTED] [REDACTED] Telephone call and leave telephone message with opposing counsel regarding matter. Prepare correspondence to opposing counsel regarding status of response. Prepare correspondence to Bill regarding [REDACTED]	1.00	210.00
04/13/10	TSH	Telephone call with opposing counsel regarding matter.	0.10	21.00
04/15/10	TSH	Prepare correspondence to opposing counsel regarding status. Review and analyze correspondence and voice mail from opposing counsel regarding status.	0.10	21.00
04/16/10	TSH	Review and analyze correspondence from opposing counsel. Telephone conference with opposing counsel.	0.10	21.00
04/19/10	TSH	Telephone call and leave voice message for opposing counsel regarding matter and prepare correspondence to client advising [REDACTED] [REDACTED]	0.10	21.00
04/20/10	TSH	Review and analyze voice message from opposing counsel. Telephone call and leave voice message for opposing counsel. Prepare correspondence to opposing counsel regarding voice message.	0.10	21.00
04/29/10	TSH	Telephone call and leave voice message with opposing counsel regarding status. Prepare correspondence to client providing update.	0.10	21.00
05/04/10	TSH	Review and analyze voice message from opposing counsel. Telephone call and leave voice message for opposing counsel. Prepare correspondence to Bill providing update.	0.10	21.00
05/10/10	TSH	Review and analyze voice message from opposing counsel. Telephone call and leave voice message with opposing counsel regarding status of matter. Telephone conference with opposing counsel regarding status, outlook, developments, and potential avenues of resolution moving	0.30	63.00

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MARQUIS AURBACH COFFING P.C.

Bill Gang

November 7, 2011

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Date	Atty	Description	Hours	Amount
		forward.		
05/12/10	TSH	Office conference regarding [REDACTED] [REDACTED] Prepare correspondence to client regarding [REDACTED] [REDACTED] Telephone call and message to opposing counsel regarding matter. Prepare correspondence to opposing counsel regarding matter.	0.40	84.00
05/13/10	TSH	Review and analyze correspondence from opposing counsel regarding changes in property and circumstances since prior deal failed to close and prepare correspondence responding to same.	0.10	21.00
05/17/10	TSH	Review and analyze voice message from Bill regarding [REDACTED] [REDACTED] Telephone conference with Bill regarding [REDACTED] [REDACTED]	0.50	105.00
05/21/10	TSH	Telephone conference with opposing counsel regarding matter, settlement, and status.	0.20	42.00
05/21/10	TSH	Review and analyze voice message from Bill regarding matter. Telephone call and conference with Bill regarding [REDACTED] [REDACTED]	0.30	63.00
06/21/10	AGM	Draft email to client.	0.30	127.50
06/21/10	TSH	Telephone conference with opposing counsel regarding matter and outlook. Prepare correspondence to client providing [REDACTED] [REDACTED]. Review and analyze correspondence from Bill regarding [REDACTED]	0.30	63.00
07/20/10	TSH	Telephone conference with client regarding [REDACTED] [REDACTED] Strategize regarding [REDACTED]	0.40	84.00
08/05/10	TSH	Review and analyze voice message from opposing attorney regarding matter. Telephone call and leave voice message with opposing attorney returning call. Telephone conference with opposing attorney regarding status, settlement, and further legal action. Strategize regarding [REDACTED] [REDACTED]	0.40	84.00
08/09/10	TSH	Telephone conference with client discussing [REDACTED] [REDACTED] [REDACTED] [REDACTED]	1.10	231.00
08/10/10	TSH	Review and analyze [REDACTED] from client regarding [REDACTED] [REDACTED]. Prepare correspondence to opposing attorney regarding encroaching argument, regarding settlement offer, and regarding interference with contractual relations argument.	0.60	126.00
08/11/10	TSH	Review and revise correspondence to opposing attorney regarding settlement, encroaching reference, and status. Prepare correspondence to client regarding matter. Telephone conference with client regarding [REDACTED] [REDACTED]	0.50	105.00
08/11/10	TSH	Review and analyze correspondence from client regarding [REDACTED]	0.10	21.00

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Bill Gang

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Date	Atty	Description	Hours	Amount
		██████████ Prepare correspondence to client responding to ██████████		
08/12/10	AGM	Review and revise correspondence to opposing attorney; office conference.	0.30	127.50
08/13/10	TSH	Review and analyze voice message from client regarding ██████████	0.30	63.00
		██████████ Review and revise correspondence to opposing attorney regarding settlement, encroaching analysis, intentional interference allegations, and status. Finalize correspondence to opposing attorney.		
08/17/10	TSH	Finalize correspondence to opposing attorney regarding status and settlement. Review and analyze correspondence to opposing attorney regarding letter. Prepare correspondence to opposing attorney regarding letter and discussions to resolve matter.	0.10	21.00
08/24/10	TSH	Review and analyze correspondence from client regarding ██████████	0.20	42.00
		██████████ Prepare correspondence to client regarding ██████████		
08/25/10	AGM	Office conference; review email to Ferrario.	0.40	170.00
08/25/10	TSH	Telephone conference with Bill regarding ██████████	1.40	294.00
		██████████ Prepare correspondence to opposing attorney regarding Bill's position, status, and settlement. Strategize regarding ██████████		
08/25/10	TSH	Review and analyze correspondence from client regarding ██████████	0.50	105.00
		██████████ Make revisions and forward correspondence to opposing attorney. Prepare correspondence to client regarding ██████████		
09/01/10	TSH	Prepare correspondence to client providing update regarding ██████████	0.20	42.00
09/21/10	TSH	Review and analyze correspondence from opposing attorney regarding settlement status. Review prior settlement correspondence for potential settlement alternatives. Prepare correspondence to client regarding ██████████	0.50	105.00
09/22/10	TSH	Review and analyze voice message from client. Telephone calls and leave voice messages for client. Telephone conference with client. Additional telephone conference with client regarding ██████████	1.00	210.00
		██████████ Prepare correspondence to opposing attorney regarding telephone conference with discussion of counteroffer and status of matter prior to response to complaint.		
09/29/10	TSH	Review and analyze correspondence from client regarding ██████████	0.40	84.00
		██████████ Prepare correspondence to opposing attorney regarding further developments and discussing same in relation to matter, further litigation, and settlement.		
10/29/10	TSH	Prepare correspondence to opposing attorney regarding status, settlement, and failure to respond and receipt of previous correspondence. Prepare correspondence to client providing update	0.20	42.00

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MARQUIS AURBACH COFFING P.C.

Bill Gang

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Date	Atty	Description	Hours	Amount
		regarding status of matter.		
11/12/10	TSH	Prepare correspondence to opposing attorney regarding status of review of settlement offers. Prepare correspondence to client providing update.	0.10	21.00
12/03/10	TSH	Review and analyze correspondence from opposing attorney regarding status of plaintiff and settlement. Prepare correspondence to client providing update. Prepare correspondence to opposing attorney inquiring regarding further update.	0.10	21.00
01/12/11	TSH	Research court docket to follow up regarding any filings not served, potential case reassignment, and orders from court or discovery. Confirm status of response and correspondence from opposing attorney.	0.10	21.00
02/01/11	TSH	Prepare correspondence to client providing update regarding [REDACTED]	0.20	42.00
02/17/11	TSH	Review and analyze voice message from client. Telephone call and leave voice message for client. Telephone call and conference with client regarding [REDACTED]	0.50	105.00
03/23/11	TSH	Prepare further correspondence to opposing attorney regarding status of matter, outlook, prior negotiations, and resolution.	0.10	21.00
04/25/11	TSH	Review and analyze correspondence from client regarding status of matter. Research court docket to determine whether any further filings have taken place. Prepare correspondence to client regarding status. Prepare correspondence to opposing attorney regarding status, options, and moving forward.	0.50	105.00
06/16/11	TSH	Review and analyze voice message from client. Call to client. Review and analyze docket to determine whether judge assignment remains the same and whether any filings have taken place.	0.10	21.00
07/26/11	TSH	Review and analyze correspondence from client regarding status. Prepare correspondence to client regarding [REDACTED]	0.30	63.00
07/27/11	TSH	Prepare correspondence to opposing attorney in follow up to conference at court, contact with Hunter, and action in case.	0.10	21.00
08/01/11	TSH	Prepare correspondence to opposing attorney following up regarding status of matter and outlook. Prepare correspondence to client regarding [REDACTED]	0.30	63.00
08/02/11	TSH	Review and analyze correspondence from opposing attorney regarding discussions with client. Prepare correspondence to client regarding [REDACTED] Further preparation of motion to dismiss.	0.30	63.00
08/03/11	TSH	Review and analyze correspondence from client regarding motion to dismiss. Prepare correspondence to client regarding motion to dismiss, [REDACTED]	0.20	42.00
08/04/11	AGM	Exchange emails with client.	0.30	127.50
08/04/11	TSH	Review and analyze exchanges of correspondence and continue to prepare motion to dismiss. Strategize regarding [REDACTED]	0.30	63.00
08/11/11	TSH	Further preparation of motion to dismiss. Legal research regarding [REDACTED] Review	1.10	231.00

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MARQUIS AURBACH COFFING P.C.

Bill Gang

November 7, 2011

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Date	Atty	Description	Hours	Amount
		and revise motion to dismiss. Finalize motion to dismiss.		
08/15/11	TSH	Review and analyze correspondence from court confirming filing of motion to dismiss and review same to ensure conformance. Review and analyze correspondence from opposing attorney regarding discussions on resolution.	0.10	21.00
08/16/11	TSH	Review and analyze correspondence from opposing attorney regarding motion to dismiss. Prepare correspondence to opposing attorney regarding motion to dismiss, status, and plaintiff's request. Prepare correspondence to client regarding [REDACTED]	1.00	210.00
08/17/11	TSH	Review and analyze correspondence from opposing attorney regarding status and alternatives in light of motion to dismiss.	0.10	21.00
08/17/11	TSH	Review and analyze voice message from client and telephone call to and conference with client regarding matter.	0.40	84.00
08/23/11	TSH	Prepare correspondence to opposing attorney reaffirming position that client will not withdraw motion to dismiss, that client remains open to discussing settlement, and to present any proposed resolution.	0.10	21.00
08/25/11	TSH	Review and analyze voice message from client. Telephone call and leave message for client. Telephone conference with client regarding [REDACTED]	0.30	63.00
09/01/11	TSH	Review and analyze opposition to motion to dismiss. Review and analyze plaintiff's spouse's affidavit in support of opposition. Prepare correspondence to client providing [REDACTED]	0.40	84.00
09/09/11	TSH	Telephone conference with client regarding [REDACTED]	0.40	84.00
09/12/11	TSH	Review and analyze correspondence regarding opposing attorney's request to extend hearing and prepare correspondence to client regarding matter.	0.10	21.00
09/12/11	TSH	Telephone conferences with opposing attorney's office regarding hearing. Preparation of outline for hearing and arguments related to same.	1.20	252.00
09/13/11	TSH	Attend hearing regarding motion to dismiss and argue same. Post-hearing conference with opposing attorney. Post-hearing conference with client. Telephone conference with client regarding [REDACTED] Strategize regarding [REDACTED]	2.20	462.00
09/22/11	TSH	Review and analyze voice message from client. Prepare correspondence to client regarding [REDACTED] Prepare further correspondence to opposing attorney regarding resolution and outlook. Review and analyze correspondence from client.	0.50	105.00
09/23/11	TSH	Telephone conference with client regarding [REDACTED]	0.60	126.00
09/26/11	TSH	Prepare correspondence to client requesting [REDACTED] Telephone call from and conference with client regarding [REDACTED] Prepare correspondence to opposing	0.40	84.00

APP0081

MARQUIS AURBACH COFFING P.C.

Bill Gang

November 7, 2011

Invoice 209718

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Date	Atty	Description	Hours	Amount
		attorney regarding status, future action, and strategy.		
09/27/11	TSH	Review and analyze correspondence from opposing attorney regarding ideas for solution, status, outlook, and status of plaintiff. Begin preparation of order regarding motion to dismiss.	0.10	21.00
09/30/11	TSH	Prepare correspondence to client regarding [REDACTED] Continue briefly preparing order [REDACTED]	0.20	42.00
10/04/11	TSH	Continue preparation of findings of fact, conclusions of law, and order. Research [REDACTED] Review and analyze [REDACTED] [REDACTED] Research court docket to incorporate court's minutes into order. Strategize regarding [REDACTED] [REDACTED]. Prepare correspondence to client regarding [REDACTED] [REDACTED] Review and analyze [REDACTED] [REDACTED]	2.00	420.00
10/04/11	AGM	Review and revision of order dismissing case.	0.40	170.00
10/06/11	TSH	Make additions and revisions to findings of fact, conclusions of law and order. Prepare correspondence to client following up regarding [REDACTED] [REDACTED]	0.20	42.00
10/10/11	TSH	Exchange correspondences with client regarding [REDACTED] [REDACTED] Review, analyze and revise [REDACTED] [REDACTED] Prepare correspondence to client regarding [REDACTED] Prepare memorandum regarding versions of order and finalization of same. Review court minutes to ensure judge requested findings of fact.	1.20	252.00
10/11/11	AGM	review order dismissing case; office conference.	0.50	212.50
10/11/11	TSH	Conference with opposing attorney regarding order, status, potential resolution, alternatives for resolution and appeal. Strategize regarding order and further action.	0.10	21.00
10/11/11	TSH	Review and analyze correspondence from opposing attorney regarding license offer and resolution. Telephone conference with client regarding [REDACTED] [REDACTED].	0.70	147.00
10/12/11	TSH	Review and analyze correspondence from client regarding [REDACTED] [REDACTED] Review correspondence to client regarding [REDACTED] Prepare correspondence to client regarding [REDACTED] [REDACTED]	0.20	42.00
10/12/11	AGM	Assess, analyze and review Ferraro settlement proposal; draft email to Bill.	0.50	212.50
10/12/11	TSH	Prepare correspondence to opposing attorney regarding proposed order. Strategize regarding [REDACTED] Review and revise correspondence to opposing attorney regarding further action.	1.30	273.00

APP0082

MARQUIS AURBACH COFFING P.C.

Bill Gang

November 7, 2011

Invoice 209718

Page 11

Date	Atty	Description	Hours	Amount
10/13/11	AGM	Office conference re strategy.	0.50	212.50
10/17/11	TSH	Review and analyze correspondence from opposing attorney regarding proposed findings of fact and conclusions of law. Prepare correspondence to opposing attorney regarding requested revisions. Review and analyze correspondence from opposing attorney regarding matter and prepare correspondence to opposing attorney regarding resolution, parties and order.	0.30	63.00
10/18/11	TSH	Prepare correspondence to client regarding [REDACTED]	0.20	42.00
10/20/11	TSH	Prepare correspondence to opposing attorney regarding status of order and submission of competing orders. Review correspondence from client regarding [REDACTED] Prepare correspondence to client regarding [REDACTED] Review correspondence from opposing attorney regarding proposed order. Review order and prepare correspondence to client [REDACTED] Review correspondence from client regarding [REDACTED] Review correspondence from opposing attorney regarding settlement. Prepare correspondence to client regarding [REDACTED]	0.70	147.00
10/21/11	TSH	Review voice message from client. Review correspondence from client. Telephone conference with client regarding [REDACTED] Prepare correspondence to opposing attorney regarding settlement, alternatives and outlook.	1.10	231.00
10/24/11	TSH	Review correspondence from opposing attorney regarding settlement. Prepare correspondence to opposing attorney regarding resolution.	0.10	21.00
10/28/11	TSH	Prepare correspondence to opposing attorneys regarding status of settlement offer and counteroffer, if applicable, proposal to same. Prepare correspondence to client providing [REDACTED] Telephone conference with client providing [REDACTED]	0.90	189.00
10/28/11	TSH	Review correspondence from opposing counsel regarding status of counter offer and discussions related to same. Prepare correspondence to client providing [REDACTED]	0.10	21.00
11/01/11	TSH	Follow up regarding status of response from opposing attorney as to settlement and prepare correspondence to opposing attorney regarding status of response, competing orders, intentions, third party mediator and outlook. Prepare correspondence to client providing update.	0.40	84.00
11/01/11	TSH	Review correspondence from opposing attorney regarding resolution and settlement. Review correspondence from client regarding [REDACTED]	0.10	21.00
11/02/11	TSH	Prepare correspondence to client providing update regarding [REDACTED] Prepare correspondence to court regarding competing orders.	1.30	273.00

APP0083

MARQUIS AURBACH COFFING P.C.

Bill Gang

November 7, 2011

Invoice 209718

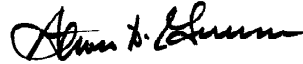
Page 12

Date	Atty	Description	Hours	Amount
		Review correspondence from client regarding [REDACTED] [REDACTED] Prepare correspondence to opposing attorney regarding orders and resolution. Review correspondence from opposing attorney regarding discussions with plaintiff. Prepare correspondence to client regarding [REDACTED] [REDACTED] Review correspondence from client regarding contact with plaintiff.		
11/02/11	MSE	Office conference with TSH on [REDACTED] [REDACTED]	0.20	65.00
11/03/11	TSH	Review and revise correspondence to judge regarding competing orders and transcript. Review transcript for [REDACTED] [REDACTED] Begin process of preparation of memorandum of costs and compilation of cost back up in support of memorandum. REview correspondence from opposing attorney regarding orders submitted to court and report on discussions with plaintiff regarding developments or options on resolution.	0.50	105.00
11/03/11	TSH	Prepare correspondence to opposing attorney regarding orders submitted, transcript submitted and correspondence to court. Telephone call and conference with client regarding [REDACTED] [REDACTED]	0.40	84.00
11/07/11	TSH	Begin preparation of memorandum of costs and motion for attorney fees.	2.70	567.00
Total Fees			60.60	13,652.00

Disbursements		
Date	Description	Amount
	Telex	7.00
	Copies	21.00
	Scanning Charges	9.45
	Westlaw Research	101.82
	Postage	1.32
08/31/11	Messenger Service	6.00
	Wiznet; Online Filing Fees	10.50
Total Disbursements		157.09

APP0084

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CLERK OF THE COURT

Marquis Aurbach Coffing
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DISTRICT COURT

CLARK COUNTY, NEVADA

RICHARD A. HUNTER, an individual,

Plaintiff,

vs.

WILLIAM GANG, an individual, and DOE
DEFENDANTS 1 through 10, and ROE
CORPORATIONS 1 through 10, inclusive,

Defendants.

Case No.: A-09-604877-C
Dept. No.: VIII

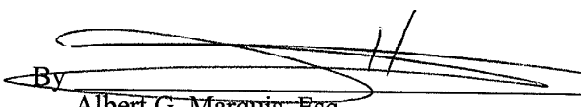
NOTICE OF HEARING

Notice is hereby given that Defendant, William Gang filed and served his Motion for Attorneys Fees and Costs on the 28th day of November, 2011, and that the hearing on said Motion has been set for January 9, 2012 in Chambers in Department VIII of the above-referenced court.

Dated this 30 day of November, 2011.

MARQUIS AURBACH COFFING

By



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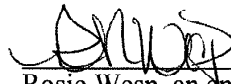
CERTIFICATE OF SERVICE

I hereby certify that the foregoing **NOTICE OF HEARING** was submitted electronically for filing and/or service with the Eighth Judicial District Court on the 30th day of November, 2011. Electronic service of the foregoing document shall be made in accordance with the E-Service List as follows:¹

N/A

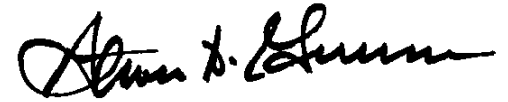
I further certify that I served a copy of this document by mailing a true and correct copy thereof, postage prepaid, addressed to:

Mark E. Ferrario, Esq.
Greenberg Traurig, LLP
3773 Howard Hughes Parkway, Suite 400 North
Las Vegas, Nevada 89169
Attorneys for Richard A. Hunter



Rosie Wesp, an employee of
Marquis Aurbach Coffing

¹ Pursuant to EDCR 8.05(a), each party who submits an E-Filed document through the E-Filing System consents to electronic service pursuant to NRCP 5(b)(2)(D).



CLERK OF THE COURT

OPP

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DISTRICT COURT

CLARK COUNTY, NEVADA

RICHARD A. HUNTER, an individual,

Plaintiff,

v.

WILLIAM GANG, an individual, and DOE
DEFENDANTS 1 through 10, and ROE
CORPORATIONS 1 through 10, inclusive,

Defendants.

Case No. A-09-604877-C

Dept No. VIII

**OPPOSITION TO MOTION FOR
ATTORNEYS FEES**

Date of Hearing: January 12, 2012

Time of Hearing: Chambers.

Plaintiff, Richard A. Hunter ("Plaintiff"), by and through his counsel, the law firm of Greenberg Traurig, LLP, hereby submits this "Opposition" to the Motion For Attorneys Fees ("Motion ") filed by Defendant William Gang ("Defendant").

This Opposition is supported by the following memorandum of points and authorities, the pleadings and papers on file herein and any oral argument the Court may entertain at the hearing on the motion.

MEMORANDUM OF POINTS AND AUTHORITIES

Ruling on a motion based solely on a purported lack of prosecution, which motion was filed less than two years after the Complaint had been filed, this Court dismissed the Complaint with prejudice, even though the movant had never filed an Answer or other responsive pleading. Moreover, even though Defendant Gang never filed any pleading or other document making any allegations regarding the merits or any conduct by Plaintiff Hunter, and even though there was no admissible evidence of *any* kind *ever* presented in this case, this Court signed an Order containing factual findings submitted by Defendant Gang. The “factual” findings made in that Order went far beyond any oral ruling made by this Court; incorporated allegations never presented in any form in this case and to which Hunter was given no opportunity to respond; and purported to resolve the case on the merits of the underlying claims rather than on the purported failure to prosecute.

Now, based on the same factual allegations previously presented *only* in that draft order, and once again, without any evidentiary support, Gang moves for attorneys fees, claiming that the Complaint was frivolous when filed. Remarkably, not only is the Motion, like the Order, wholly lacking in evidentiary support of its allegations, but it includes billing entries from Gang’s counsel that *disprove* the scant allegations made in the Motion to Dismiss. Accordingly, the Motion for Attorneys Fees must be denied.

STATEMENT OF RELEVANT FACTS

Less than two years ago, Plaintiff Richard Hunter filed a *verified* complaint, asserting claims to quiet title and for adverse possession, and seeking injunctive and declaratory relief regarding an easement or an action to quiet title to a slim *portion* of a parcel of real property (“Property”) recently acquired by Defendant William Gang, an employee of the Nevada Department of the Judiciary.¹ **See Ex. 1, Verified Complaint.** Hunter sought to quiet title as to the portion of the Property on which a berm is located. *Id.*, at ¶ 4-12. With the knowledge of Gang’s predecessor in interest, Hunter constructed the berm in 1983, in order to protect Hunter’s

¹ The Verified Complaint is the only *evidence* regarding the facts of this matter contained in the entire record. Accordingly, there is no evidence to refute any of the allegations contained therein.

1 own parcel from flooding by run off from the Property. *Id.* Since 1983, Hunter has continuously
2 maintained the berm, without objection from Gang's predecessor in interest. Gang was aware of
3 the berm prior to obtaining ownership of the Property. *Id.* at ¶ 12.

4 As Gang himself has acknowledged, following the filing of the quiet title action, he
5 delayed filing an answer by engaging in settlement negotiations. *See Ex. 2, Motion to Dismiss,*
6 *3:9.* However, even after such negotiations tapered off, Gang filed no answer, even though his
7 counsel apparently prepared such a document. *See Ex. 3, Gang's Counsel's Billing Entries, for*
8 *Feb. 9, 2010; Feb. 26, 2010; September 22, 2010.* Instead of filing a responsive pleading, in
9 August of 2011, Gang filed a Motion to Dismiss for want of prosecution. *Ex. 2.* Gang claimed
10 therein that settlement discussion "broke down over a year ago and Hunter became unresponsive
11 for extended periods of time." *Id.* at 3:11-12.² The few allegations made in the Motion were
12 directed at the purported lack of progress in the case, and even those were unsupported by any
13 affidavit or other evidence. *Id.* Beyond the claim of a lack of responsiveness, and Gang's
14 acknowledgement of his understanding that Hunter was suffering from illness, there were no
15 allegations regarding any conduct by Hunter. *Id.*

16 Hunter opposed the Motion, noting that dismissal of a Complaint less than two years old
17 was not authorized by NRCP 41(e). *Ex. 4, Opposition.* Additionally, Hunter submitted an
18 affidavit from his wife, who testified that Hunter had suffered severe health problems during the
19 pendency of the case, including heart problems, pneumonia, dangerously high blood pressure, and
20 mini-strokes that caused temporary blindness. *See Ex. 4, Opposition; Affidavit of Marguerite*
21 *Hunter.*

22 A hearing was held on September 13, 2011. During the hearing, which lasted nine
23 minutes, Gang's counsel acknowledge awareness of Hunter's health issues. *Ex. 5, Transcript,*
24 *2:7-9.* Counsel also made statements, unsupported by any evidence, regarding purported
25 conduct by Hunter. *Id.* at Finally, Gang's counsel acknowledged that no answer or counterclaim
26

27 ² That statement, made in August 2011, is belied by the billing entries submitted by Gang's counsel in support of his
28 Motion for Attorneys fees, which detail communication between the parties' counsel regarding settlement or
extensions for responsive pleading in August, September, October, November and December 2010, and in January,
March, April, July, and the first weeks of August 2011.

1 had been filed. Indeed, he even stated that “Mr. Gang needs a shot to file his counterclaim and we
2 need to move forward.” This Court made comments suggesting a disagreement with the well-
3 established legal doctrine of adverse possession. *Id.* at 4:23-6:3.

4 Even though 1) the Motion was brought only a year and one half after the complaint had
5 been filed; 2) Gang acknowledged that he himself was responsible for the initial delay in
6 responding and that he had never filed an answer and or any counterclaims; and 3) Gang
7 acknowledged Hunter’s health problems, the Court granted the motion. The Court made no oral
8 findings in granting the Motion. However, this Court subsequently executed an order containing
9 factual findings wholly unsupported by any evidence in the record. **Ex. 6, Order.** Gang’s counsel
10 submitted the order to the Court despite the fact that Hunter’s counsel had pointed out the lack of
11 evidentiary support for those factual findings. **See Ex. 7, Email Exchange, Cowden to Hanseen.**

12 The Court’s ruling essentially purports to have grant summary judgment, even though no
13 motion for summary judgment was filed or briefed by the parties, no evidence in support of Mr.
14 Gang’s new raised contentions was presented, and Mr. Hunter was given no opportunity to
15 present evidence in support of his claims or to refute the contentions made by Gang.

16 A Notice of Appeal was filed on November 17, 2011. On November 28, 2011, Gang filed
17 his Motion for Attorneys Fees.

18 LEGAL ARGUMENT

19 20 **I. THERE IS NO EVIDENCE TO SUPPORT A FINDING THAT THIS MATTER IS FRIVOLOUS.**

21 The sole basis upon which Gang seeks attorneys fees is his claim that this action was
22 frivolous when filed. The record herein does not support such a conclusion.

23 In order to award attorneys fees pursuant to NRS 18.010(2)(a), the Court must find that
24 “the claim ... was brought without reasonable ground or to harass the prevailing party.” “To
25 support such an award, however, there must be evidence in the record supporting the proposition
26 that the complaint was brought without reasonable grounds or to harass the other party.” *Kahn v.*
27 *Morse & Mowbray*, 121 Nev. 464, 479, 117 P.3d 227, 238 (2005) (reversing award of fees where
28

1 no evidence supported finding that claim was frivolous). The District Court abuses its discretion
2 if it makes such a finding in the absence of evidence to support that finding. *Miller v. Jones*, 114
3 Nev. 1291, 1300, 970 P.2d 571, 577 (1998). In *Miller*, the Court awarded fees on the basis of a
4 frivolous claim, even though the complaint had stated a prima facie cause of action, and key
5 factual allegations are supported by the record. The Supreme Court held the District Court had
6 abused its discretion in finding the claim frivolous, since evidence in the record supported the
7 claim.

8 Here, Hunter's Verified Complaint stated prima facie causes of action for adverse
9 possession of and/or to quiet title to an easement or irrevocable license over the Property. The
10 key allegations therein—that Hunter constructed a berm on the Property in 1983, which berm has
11 existed continuously since then, have not been refuted by any evidence. Since Hunter's
12 complaint was verified, the allegations therein constitute evidence in this matter. *See Vaile v.*
13 *Eighth Judicial Dist. Ct.*, 118 Nev. 262, 272, 44 P.3d 506, 513 (2002) (acknowledging that
14 verified complaint can serve as evidence). Furthermore, the "factual" findings made by this
15 Court in the absence of any supporting evidence do *not* contradict Hunter's key allegations.
16 Thus, *nothing* in the record even refute the evidence of Hunter's key allegations. Accordingly, no
17 finding that the claim is frivolous can be supported by this record.

18
19 **II. GANG IS JUDICIALLY ESTOPPED FROM SEEKING FEES FOR A TIME**
20 **PERIOD DURING WHICH HE CLAIMS THERE WAS NO ACTIVITY IN THE**
21 **CASE.**

22 Even if Gang could be entitled to fees in this matter, he is judicially estopped from seeking
23 certain of the fees claim. The doctrine of judicial estoppel prevents a party from benefitting from
24 taking contradictory positions. Judicial estoppel applies when a "(1) the same party has taken
25 two positions; (2) the positions were taken in judicial or quasi-judicial administrative
26 proceedings; (3) the party was successful in asserting the first position (i.e., the tribunal adopted
27 the position or accepted it as true); (4) the two positions are totally inconsistent; and (5) the first
28 position was not taken as a result of ignorance, fraud, or mistake." *NOLM, LLC v. County of*
Clark, 120 Nev. 736, 743, 100 P.3d 658, 663 (2004).

1 Here, Gang has taken two inconsistent positions within this judicial proceeding. In his
2 Motion to Dismiss filed August 11, 2011, Gang asserted the following:

3 On December 4, 2009, Hunter filed his Complaint alleging claims for quiet title,
4 adverse possession, and declaratory relief. Hunter gave Gang an extension to
5 respond to the Complaint while the parties discussed a potential resolution. The
6 discussion, however, broke down over a year ago and Hunter became unresponsive
for extended periods of time. As a result, the matter is now going on two years
without any occurrences.

7 Ex. 2, p. 3:8-13. Thus, Gang asserted that no settlement discussions had occurred during the
8 period of at least August 2010 - August 2011. This Court granted the Motion; indeed, this Court
9 executed Gang's proffered order expressly "finding" that "settlement negotiations broke down
10 over a year ago." Ex. 7, Order, ¶ 10. Thus, Gang was apparently successful in convincing the
11 Court that this was true.

12 However, the Motion for Attorneys fees seeks recovery of fees based on the following
13 time entries:

14 08/05/10 TSH

15 **Review and analyze voice message from opposing attorney regarding matter.**
16 **Telephone call and leave voice message with opposing attorney returning call.**
17 **Telephone conference with opposing attorney regarding status, settlement,**
and further legal action. Strategize regarding [redaction]

18 08/10/10 TSH

19 **Review and analyze [redaction] from client regarding [redaction]**
20 **Prepare correspondence to opposing attorney regarding encroaching**
argument, regarding settlement offer, and regarding interference with
contractual relations argument.

21 08/12/10 AGM

22 **Review and revise correspondence to opposing attorney; office**
conference.

23 08/13/10 TSH

24 **Review and analyze voice message from client regarding [redaction]**
Review and revise correspondence to opposing attorney regarding settlement,
25 **encroaching analysis, intentional interference allegations, and status. Finalize**
correspondence to opposing attorney.

26 08/25/10 AGM

27 **Office conference; review email to Ferrario.**

28 08/25/10 TSH

Review and analyze correspondence from client regarding [redacted]

1 **Make revisions and forward correspondence to opposing attorney. Prepare**
2 **correspondence to client regarding [redaction]**

3 09/21/10 TSH

4 **Review and analyze correspondence from opposing attorney regarding**
5 **settlement status. Review prior settlement correspondence for potential**
6 **settlement alternatives.** Prepare correspondence to client regarding [redaction]

7 09/22/10 TSH

8 Review and analyze voice message from client. Telephone calls and
9 leave voice messages for client. Telephone conference with client.
10 Additional telephone conference with client regarding
11 **Prepare correspondence to opposing attorney regarding telephone conference**
12 **with discussion of counteroffer and status of matter prior to response to**
13 **complaint.**

14 09/29/10 TSH

15 Review and analyze correspondence from client regarding [redaction]
16 **Prepare correspondence to opposing attorney regarding further developments**
17 **and discussing same in relation to matter, further litigation, and settlement.**

18 10/29/10 TSH

19 **Prepare correspondence to opposing attorney regarding status,**
20 **settlement, and failure to respond and receipt of previous**
21 **correspondence.** Prepare correspondence to client providing update regarding status
22 of matter.

23 11/12/10 TSH

24 **Prepare correspondence to opposing attorney regarding status of review**
25 **of settlement offers.** Prepare correspondence to client providing update.

26 12/03/10 TSH

27 **Review and analyze correspondence from opposing attorney regarding**
28 **status of plaintiff and settlement.** Prepare correspondence to client
providing update. **Prepare correspondence to opposing attorney**
inquiring regarding further update.

01/12/11 TSH

Research court docket to follow up regarding any filings not served,
potential case reassignment, and orders from court or discovery.
Confirm status of response and correspondence from opposing attorney.

03/23/11 TSH

Prepare further correspondence to opposing attorney regarding status matter, outlook,
prior negotiations, and resolution.

04/25/11 TSH

Review and analyze correspondence from client regarding status of
matter. Research court docket to determine whether any further filings
have taken place. Prepare correspondence to client regarding status.
Prepare correspondence to opposing attorney regarding status, options,
and moving forward.

07/27/11 TSH

Prepare correspondence to opposing attorney in follow up to conference

1 at court, contact with Hunter, and action in case.

2 08/01/11 TSH

3 **Prepare correspondence to opposing attorney following up regarding**
4 **status of matter and outlook.** Prepare correspondence to client
5 regarding [redaction]

6 08/02/11 TSH

7 **Review and analyze correspondence from opposing attorney regarding**
8 **discussions with client.** Prepare correspondence to client regarding [redaction]
9 Further preparation of motion to dismiss.

10 *Motion*, Ex. A, pp. 6-8 (emphasis added). As can be seen, these time entries include time spent
11 by Gang's attorneys for engaging in settlement negotiations with Hunter's counsel.

12 In seeking such recovery, Gang takes a position that is "totally inconsistent" with that
13 taken in his *Motion to Dismiss*, as he now seeks recovery of fees expended for settlement
14 negotiations he had previously claimed *had not occurred*. There is no reasonable basis to assume
15 that the inconsistent positions were taken by mistake.

16 Gang has taken inconsistent positions, and has already benefitted from his prior version of
17 the purported facts in this proceeding. Accordingly, he must be judicially estopped from
18 recovering fees incurred for participation in settlement negotiations during a period of time he
19 claimed such negotiations had ceased.

20 **III. GANG SHOULD NOT BE REIMBURSED FOR FEES FOR PREPARATION OF**
21 **COURT DOCUMENTS NEVER FILED.**

22 Gang is not entitled to attorneys fees incurred for the preparation of court pleadings never
23 filed. Gang never filed an answer or counterclaim in this action; indeed, such a filing was the
24 next step required in the litigation - the only option available to Hunter would have been to seek a
25 default judgment against Gang. Yet, in what can only be considered the height of chutzpa,³ Gang
26 actually seeks recovery of fees for the preparation of a answer and counterclaim. The billing
27 entries for which Gang seeks reimbursement include the following entries:

28 ³ "The classic definition of *chutzpa* is, of course, this: *Chutzpa* is that quality enshrined in a man who, having killed
his mother and father, throws himself on the mercy of the court because he is an orphan." *Embury v. King*, 361 F.3d
562, 566 (9th Cir. 2004), quoting Leo Rosten, *The Joys of Yiddish* 94 (1971).

1 02/09/10 TSH

2 Begin to prepare answer to complaint. Telephone call and leave
telephone message with Bill. Telephone conference with Bill regarding

3 02/09/10 TSH

4 Conduct legal research regarding [redaction] Preparation of affirmative defenses in
support of
5 answer to complaint.

6 02/09/10 TSH

Begin preparation of counterclaim

7 02/26/10 TSH

8 Make additions to complaint to incorporate additional causes of action
and affirmative defenses. Prepare correspondence to Bill forwarding
9 draft of complaint and [redaction]

10 Motion, Ex. A, pp. 3-4. Despite the fact that an answer and counterclaim were apparently
11 prepared in February, 2010, these documents were never filed.

12 An award of attorneys fees must include a finding that such fees are reasonable and
13 justified. *Beattie v. Thomas*, 99 Nev. 579, 589, 668 P.2d 268, 274 (1983) (noting that it is an
14 abuse of discretion to award the full amount of requested attorney fees without making “findings
15 based on evidence that the attorney's fees sought are reasonable and justified”). Fees for
16 preparation of documents never used in the litigation cannot be considered reasonable or justified.
17 A claim for recovery of such fees is particularly offensive, given that had the answer and
18 counterclaim actually been filed, this litigation could have proceeded. Instead, Gang continued to
19 delay the filing of an answer, stemming off a default with inquiries regarding settlement.

20 No fees may be awarded where the actions taken were clearly not necessary to the
21 litigation. Accordingly, any fees for preparation of an answer and a complaint must be denied.

22 CONCLUSION

23 Gang has failed to present sufficient evidence upon which a finding that this cause of
24 action was frivolous may be based. Indeed, the *only* evidence that exists in this record is the
25 Verified Complaint, the allegations of which have never been denied by Gang. Additionally, the
26 Motion seeks recovery of fees that Gang is judicially estopped from seeking, as well as for fees
27

28

1 that were not reasonably incurred. Accordingly, the Motion for Fees must be denied.

2 DATED this 8th day of December, 2011.

3 GREENBERG TRAURIG, LLP

4
5 By: 

MARK E. FERRARIO, ESQ.

Nevada Bar No. 1625

LESLIE S. GODFREY, ESQ.

Nevada Bar No. 10229

3773 Howard Hughes Parkway

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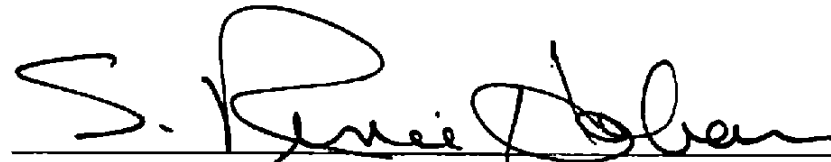
Attorneys for Plaintiff Richard A. Hunter

Greenberg Traurig LLP
3773 Howard Hughes Parkway, Suite 400 North
Las Vegas, Nevada 89169
(702) 792-3773
(702) 792-9002 (fax)

CERTIFICATE OF MAIL

I hereby certify that I am employed in the law office of GREENBERG TRAURIG, and that on the 8th day of December, 2011, I served a copy of the foregoing **OPPOSITION TO MOTION FOR ATTORNEYS FEES**, in accordance with Rule 5, by depositing the same in the U.S. Mails, postage prepaid, in Las Vegas, Nevada, addressed to the following:

Albert G. Marquis, Esq.
Tye S. Hanseen, Esq.
10001 Park Run Drive
Las Vegas, Nevada 89145
Attorneys for William Gang


An employee of GREENBERG TRAURIG

Greenberg Traurig LLP
3773 Howard Hughes Parkway, Suite 400 North
Las Vegas, Nevada 89169
(702) 792-3773
(702) 792-9002 (fax)

EXHIBIT 1

1 **COMP**

2 MARK E. FERRARIO, ESQ.

3 NEVADA BAR NO. 1625

4 LUIS A. AYON, ESQ.

5 NEVADA BAR NO. 9752

6 GREENBERG TRAURIG, LLP

7 3773 Howard Hughes Parkway, Suite 400 North

8 Las Vegas, Nevada 89169

9 Telephone: (702) 792-3773

10 Facsimile: (702) 792-9002

11 Email: ferrariom@gtlaw.com

12 ayonl@gtlaw.com

13 Attorneys for Plaintiff Richard A. Hunter

14 **DISTRICT COURT**

15 **CLARK COUNTY, NEVADA**

16 RICHARD A. HUNTER, an individual,

17 Plaintiff,

18 v.

19 WILLIAM GANG, an individual, and DOE
20 DEFENDANTS 1 through 10, and ROE
21 CORPORATIONS 1 through 10, inclusive,

22 Defendants.

Case No. 09-A-

Dept No.

VERIFIED COMPLAINT

Arbitration Exemption

Matter Concerns Real Property

Injunctive Relief Requested

23 Plaintiff, Richard A. Hunter ("Plaintiff"), by and through his counsel, the law firm of
24 Greenberg Traurig, LLP, hereby complains against Defendant William Gang (hereinafter "Gang"
25 or "Defendant"), and alleges the following:

26 **PARTIES**

27 1. Plaintiff Richard A. Hunter is, and was at all times relevant hereto, a resident of
28 Clark County, Nevada, and the owner of a certain parcel of real estate, commonly known as 9500
Pinion Dr., Clark County, Nevada, with an APN# of 174-20-402-004, which was recorded with

1 the Clark County Recorder's office on or around September of 1980 as instrument number
2 19910910/00588 (the "Property").¹

3 2. Defendant William Gang, upon information and belief, is a resident of Clark
4 County, Nevada, and the owner of a certain parcel of real estate with an APN# of 174-20-303-
5 002, which was recorded with the Clark County Recorder's office on or about March 6, 2002 as
6 instrument number 20020306/00520 (the "Defendant's Property"). Defendant's Property is a
7 vacant lot that shares a common boundary with the Property.

8 3. The true names and capacities, whether individual, corporate, associate, or
9 otherwise of Defendants DOE INDIVIDUALS 1 through 10 and ROE CORPORATIONS 1
10 through 10, including, but not limited to, employers, franchisors, agents, employees, or related to
11 persons or entities are not currently known to Plaintiff and therefore cannot yet be named herein,
12 and therefore Plaintiff sues said Defendants by such fictitious names. Plaintiff is informed and
13 believes, and on such basis alleges, that each of the Defendants designated as DOE
14 INDIVIDUALS 1 through 10 and ROE CORPORATIONS 1 through 10 is responsible in some
15 manner for the events and occurrences referred to in this Complaint, and/or owes money to
16 Plaintiff and/or may be affiliated with one of the other Defendants, and/or is the alter-ego of
17 Defendants. Plaintiff will seek leave of this Court to amend this Complaint and insert the true
18 names and capacities of DOE INDIVIDUALS 1 through 10 and ROE CORPORATIONS 1
19 through 10, when the same have been ascertained and to join said Defendants in this action.

20 COMMON ALLEGATIONS

21 4. On or around 1980, Plaintiff acquired and became owner of the Property.

22 5. On or around 1983, Plaintiff discussed with Defendant's predecessor in interest
23 that the flow of water was running onto Plaintiff's property such that it was causing flooding on
24 certain parts of the Property.

25 6. Due to the water flow Plaintiff on or around 1983, Plaintiff built a berm on Gang's
26 property.

27
28 ¹ The Clark County Recorder's office lists that the instrument was recorded in 1991, but recorder's website only lists documents that were recorded after 1991.

7. Until 2009, no one, including Gang or his predecessor-in-interest, objected to building or existence of the berm.

8. The portion of Defendant's Property on which the berm is located (the "Disputed Property") is on or near the boundaries of the parties' property.

9. The berm was essential to Plaintiff in order to prevent the natural flow of water from flooding portions of Plaintiff's property and for continued use and enjoyment of the Property.

10. The berm has existed on the Disputed Property for approximately 25 years.

11. In the 25 years in which the berm existed, Plaintiff never received any complaints concerning the existence of the berm.

12. Prior to obtaining ownership to the Defendant's Property, upon information and belief, Defendant was aware of the term on the Disputed Property.

FIRST CLAIM FOR RELIEF

(Quiet Title)

13. Plaintiff restates and incorporates herein by reference the allegations contained in the above and foregoing paragraphs.

14. In Nevada, actions in which parties with a competing interest in the same property is governed by NRS §40.010.

15. The parties, each of them, by their claims and actions, have asserted an ownership interest in the Disputed Property.

16. The Plaintiff is seeking a judicial determination that: Plaintiff is the rightful owner of the Disputed Property, and that the Court quiet title to Disputed Property and extinguish any ownership interest the Defendant may have in the Disputed Property in favor of the Plaintiff.

17. Plaintiff has been required to obtain legal counsel to prosecute this action, and is entitled to an award of its attorneys' fees and costs incurred herein, both as special damages, and pursuant to statutory and contractual provisions allowing for the recovery of such fees and costs.

111

///

SECOND CLAIM FOR RELIEF

(Injunctive Relief)

18. Plaintiff restates and incorporates herein by reference the allegations contained in the above and foregoing paragraphs.

19. Plaintiff and Defendant's predecessor in interest had an understanding that Plaintiff was permitted to build a berm on the Disputed Property.

20. Based on this understanding, Plaintiff built a berm and relied on the same in developing his property.

21. The understanding between Plaintiff and Defendant's predecessor in interest created an irrevocable license in favor of Plaintiff such that Plaintiff was permitted to use the Disputed Property.

22. Such irrevocable license was relied upon by Plaintiff and Plaintiff has incurred substantial expense in relying on Defendant's predecessor in interest.

23. Moreover, the continued use of the Disputed Property has created an easement on the Disputed Property either implied or by prescription.

24. As such, Plaintiff is entitled to rely on, and has relied on, the conduct of Defendant's predecessor in interest.

25. Defendant is bound and obligated to honor the irrevocable license and/or easement Plaintiff has obtained on the Disputed Property.

26. Defendant's attempt(s) to eject Plaintiff from the Disputed Property, and/or to revoke Plaintiff's irrevocable license or easement is improper and without justification.

27. Plaintiff requests that the Court enjoin Defendant from any and all attempts to prevent Plaintiff from use and enjoyment of the Disputed Property.

28. Plaintiff does not have an adequate remedy at law if Defendant is permitted to eject Plaintiff from the Disputed Property, and/or revoke the irrevocable license or easement Plaintiff possesses for his use and enjoyment of the Disputed Property.

29. Plaintiff requests that the Court enjoin Defendant from any and all attempts to prevent Plaintiff from use and enjoyment of the Disputed Property.

1 30. Plaintiff has been required to obtain legal counsel to prosecute this action, and is
2 entitled to an award of its attorneys' fees and costs incurred herein, both as special damages, and
3 pursuant to statutory and contractual provisions allowing for the recovery of such fees and costs.

4 **THIRD CLAIM FOR RELIEF**

5 **(Adverse Possession)**

6 31. Plaintiff restates and incorporates herein by reference the allegations contained in
7 the above and foregoing paragraphs.

8 32. Plaintiff has a hostile claim for title to the Disputed Property which is adverse to
9 Defendant's claim to the same property.

10 33. This is evidence by: (i) Plaintiff's continued use of the Disputed Property for over
11 15 years; (ii) such use of the Disputed Property was open and obvious for anyone to witness; and
12 (iii) such continued use of the Disputed Property was without Defendant's express permission..

13 34. Plaintiff has been required to obtain legal counsel to prosecute this action, and is
14 entitled to an award of its attorneys' fees and costs incurred herein, both as special damages, and
15 pursuant to statutory and contractual provisions allowing for the recovery of such fees and costs.

16 **FOURTH CLAIM FOR RELIEF**

17 **(Declaratory Relief)**

18 35. Plaintiff restates and incorporates herein by reference the allegations contained in
19 the above and foregoing paragraphs.

20 36. A dispute and actual controversy exists between the parties relative to the
21 ownership of the Disputed Property.

22 37. Plaintiff are entitled to declaration that either: (i) Plaintiff has adversely possessed
23 the Disputed Property, and therefore, is the owner of the Disputed Property; (ii) Defendant's
24 predecessor in interest granted an irrevocable license to enjoy use of the Disputed Property and
25 Defendant, through the actions of his predecessor in interest, is enjoined from interfering with that
26 irrevocable license; (iii) an easement has been created, through Defendant's predecessor in
27 interest, such that, Plaintiff is entitled to possession and use of the Disputed Property, and
28 Defendant is estopped from revoking the easement; or (iv) that a boundary disputed existed

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1 between Plaintiff and Defendant's predecessor in interest, and that, Defendant's predecessor in
2 interest acquiesced to the boundary of the parties' respective properties, such that Plaintiff
3 took possession of the Disputed Property.

4 38. Plaintiff has been required to obtain legal counsel to prosecute this action, and is
5 entitled to an award of its attorneys' fees and costs incurred herein, both as special damages, and
6 pursuant to statutory and contractual provisions allowing for the recovery of such fees and costs.

7 WHEREFORE, Plaintiff prays for relief in favor of Plaintiff and against Defendants, as
8 follows.

- 9 1. That the Court quiet title to the Disputed Property;
10 2. For declaratory relief;
11 3. For injunctive relief;
12 4. For attorneys' fees and costs incurred herein, both pursuant to any contract, statute
13 or rule allowing for the same, and also as special damages incurred herein; and
14 5. For such other and further relief as this Court may deem just and proper.

15 DATED this 11th day of December, 2009.

16 GREENBERG TRAURIG, LLP

17 By: 
18

19 MARK E. FERRARIO, ESQ.
20 NEVADA BAR NO. 1625
21 LUIS A. AYON, ESQ.
22 NEVADA BAR NO. 9752
23 3773 Howard Hughes Parkway
24 Suite 400 North
25 Las Vegas, Nevada 89169
26 Telephone: (702) 792-3773
27 Attorneys for Plaintiff Richard A. Hunter
28

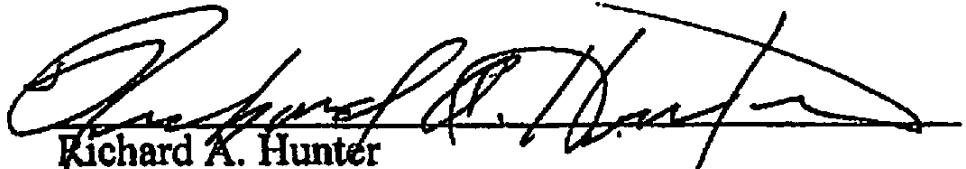
Greenburg Ireland LLP
3773 Howard Hughes Parkway, Suite 400 North
Las Vegas, Nevada 89169
(702) 782-3773
(702) 782-8002 (fax)

VERIFICATION

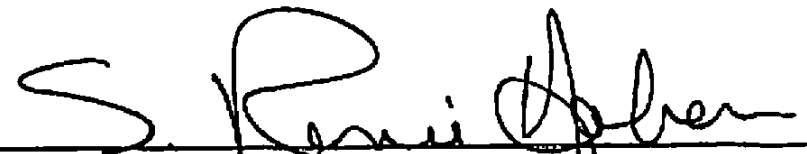
STATE OF NEVADA)
)ss
COUNTY OF CLARK)

I, Richard A. Hunter, declare, under penalty of perjury, that the following statement is true.

I am the named Plaintiff in the above-entitled action. I have read the COMPLAINT and know of the contents therein. The same is true of my knowledge, except as to those matters therein stated on information and belief, and as to those matters, I believe them to be true.


Richard A. Hunter

SUBSCRIBED and SWORN to before me
this 4th day of December, 2009.


Notary Public in and for said County and State

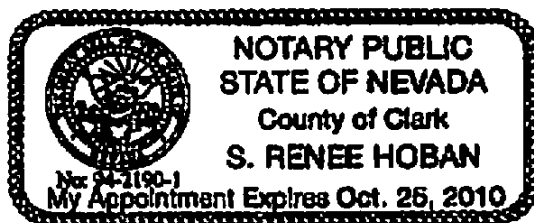


EXHIBIT 2

1 **Marquis Aurbach Coffing**
2 **ALBERT G. MARQUIS, ESQ.**
3 Nevada Bar No. 1919
4 **TYE S. HANSEEN, ESQ.**
5 Nevada Bar No. 10365
6 10001 Park Run Drive
7 Las Vegas, Nevada 89145
8 Telephone: (702) 382-0711
9 Facsimile: (702) 382-5816
10 amarquis@maclaw.com
11 thanseen@maclaw.com
12 Attorneys for William Gang

13 **DISTRICT COURT**
14 **CLARK COUNTY, NEVADA**

15 **RICHARD A. HUNTER, an individual,**
16 **Plaintiff,**

Case No.: A-09-604877-C
Dept. No.: VIII

17 **vs.**

18 **WILLIAM GANG, an individual, and DOE**
19 **DEFENDANTS 1 through 10, and ROE**
20 **CORPORATIONS 1 through 10, inclusive,**
21 **Defendants.**

22 **WILLIAM GANG'S MOTION TO DISMISS**

23 Defendant William Gang ("Gang"), by and through his attorneys of record, Marquis
24 Aurbach Coffing, hereby files his Motion to Dismiss. This Motion is based on the following

25 ///

26 ///

27 ///

28 ///

1 Memorandum of Points and Authorities, the pleadings and papers on file herein, and any oral
2 argument by counsel permitted at the hearing on this matter.

3 Dated this 11 day of August, 2011.

4 MARQUIS AURBACH COFFING

5
6 By 

7 Albert G. Marquis, Esq.
8 Nevada Bar No. 1919
9 Tye S. Hanseen, Esq.
10 Nevada Bar No. 10365
11 10001 Park Run Drive
12 Las Vegas, Nevada 89145
13 Attorneys for William Gang

14 **NOTICE OF MOTION**

15 You and each of you, will please take notice that the foregoing MOTION TO DISMISS
16 will come on regularly for hearing on the _____ day of _____, 2011, at the hour of _
17 _____,m., or as soon thereafter as counsel may be heard, in Department VIII in the above-
18 referenced court.

19 Dated this 11 day of August, 2011.

20 MARQUIS AURBACH COFFING

21 By 

22 Albert G. Marquis, Esq.
23 Nevada Bar No. 1919
24 Tye S. Hanseen, Esq.
25 Nevada Bar No. 10365
26 10001 Park Run Drive
27 Las Vegas, Nevada 89145
28 Attorneys for William Gang

MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

Defendant Gang respectfully requests that this Court dismiss Richard Hunter's ("Hunter") Complaint as a result of his failure to prosecute this action. Hunter has failed to diligently pursue his claims, or request the matter be brought to trial. Hunter's lack of action and effort justifies dismissal with prejudice.

II. STATEMENT OF FACTS

On December 4, 2009, Hunter filed his Complaint alleging claims for quiet title, injunctive relief, adverse possession, and declaratory relief.¹ Hunter gave Gang an extension to respond to the Complaint while the parties discussed a potential resolution. The discussions, however, broke down over a year ago and Hunter became unresponsive for extended periods of time. As a result, the matter is now going on two years without any occurrences.

III. LEGAL ARGUMENT

Gang respectfully requests the dismissal of Hunter's Complaint for his failure to prosecute. "When a case has long been neglected and no adequate excuse is offered for the neglect, an inference arises that the case lacks merit . . ." Hassett v. St. Mary's Hospital Ass'n, 86 Nev. 900, 906, 478 P.2d 154, 158 (1970). The element necessary to justify dismissal for failure to prosecute is lack of diligence on the part of the plaintiff. Moore v. Cherry, 90 Nev. 390, 395, 528 P.2d 1018, 1022 (1974). The duty rests upon the plaintiff to use diligence at every stage of the proceeding to expedite the case to final determination. Thran v. First Judicial District Court, 79 Nev. 176, 181, 380 P.2d 297, 300 (1963). The Defendant on the other hand, is required only to meet the Plaintiff step by step as the latter proceeds. Id.

Here, given Hunter's lack of activity, dismissal is proper. This matter is now going on two years. Gang has attempted frequent contact with Hunter throughout the pendency of the Complaint. Specifically, Gang has made multiple attempts to get Hunter to resolve the matter or

¹ See Complaint on file herein.

1 move forward with litigation. Hunter, however, has done neither.² Hunter has failed to
2 diligently pursue the claims as well as request the matter be brought to trial. Hunter's lack of
3 action and effort justifies dismissal with prejudice. Moreover, based on the lack of prosecution,
4 the Court is well within the use of its sound discretion to dismiss Hunter's claims for failure to
5 take any reasonable steps to prosecute this action.

6 **IV. CONCLUSION**

7 Gang respectfully requests the Court take action against Hunter's failure to make strides
8 toward pursuing his claims. Hunter filed his claims over a year and a half ago and nothing has
9 happened. As a result, Hunter's lack of action warrants dismissal.

10 Dated this 11 day of August, 2011.

11 MARQUIS AURBACH COFFING

12
13 By 

14 Albert G. Marquis, Esq.
15 Nevada Bar No. 1919
16 Tye S. Hanseen, Esq.
17 Nevada Bar No. 10365
18 10001 Park Run Drive
19 Las Vegas, Nevada 89145
20 Attorneys for William Gang

21
22
23
24
25
26
27 ² Gang understands that Hunter may be experiencing some health concerns, but Gang has no independent
28 knowledge of any health concerns. If Hunter is experiencing health concerns, Gang empathizes with him.

CERTIFICATE OF SERVICE

I hereby certify that the foregoing **WILLIAM GANG'S MOTION TO DISMISS** was submitted electronically for filing and/or service with the Eighth Judicial District Court on the 14th day of August, 2011. Electronic service of the foregoing document shall be made in accordance with the E-Service List as follows:³

N/A

I further certify that I served a copy of this document by mailing a true and correct copy thereof, postage prepaid, addressed to:

Mark E. Ferrario, Esq.
Luis A. Lyon, Esq.
Greenberg Traurig, LLP
3773 Howard Hughes Parkway, Suite 400 North
Las Vegas, Nevada 89169
Attorneys for Richard A. Hunter



Rosie Wesp, an employee of
Marquis Aurbach Coffing

³ Pursuant to EDCR 8.05(a), each party who submits an E-Filed document through the E-Filing System consents to electronic service pursuant to NRCP 5(b)(2)(D).

EXHIBIT 3

MARQUIS AURBACH COFFING P.C.

Bill Gang

November 7, 2011

Invoice 209718

Page 3

Date	Atty	Description	Hours	Amount
		matter. Prepare correspondence to opposing counsel following up regarding conference. Review and analyze correspondence from opposing counsel confirming conference and prepare correspondence to client confirming same. Telephone call to Bill confirming conference.		
01/12/10	TSH	Attend conference with opposing counsel, plaintiff, and client to discuss settlement of matter, including pre and post conference discussions regarding [REDACTED]	1.20	252.00
01/12/10	AGM	Attend meeting with Hunters.	0.50	212.50
01/13/10	TSH	Prepare correspondence to Ferrario regarding intentions surrounding meeting at Mt. Springs and planning commission and potential purchase of 5 acre parcel.	0.20	42.00
01/13/10	TSH	Review and analyze correspondence from Bill regarding [REDACTED]	0.20	42.00
01/14/10	TSH	Review and analyze voice message from Bill regarding [REDACTED] [REDACTED] Telephone call and leave voice message with Bill. Telephone conference with Bill regarding [REDACTED]	0.30	63.00
01/15/10	TSH	Review and analyze voice message from client regarding matter. Prepare correspondence to opposing counsel regarding conference with plaintiff and results of same. Review and analyze correspondence from opposing counsel regarding measurements and anticipated meeting with client. Telephone conference with client regarding matter.	0.30	63.00
01/15/10	TSH	Telephone conference with opposing counsel regarding potential resolution, status, and offer. Telephone conference with Bill regarding [REDACTED]	0.40	84.00
01/18/10	TSH	Review and analyze correspondence from Bill [REDACTED]	0.10	21.00
01/20/10	TSH	Review and analyze telephone message from Bill regarding [REDACTED] [REDACTED] Telephone call and conference with Bill regarding [REDACTED]	0.30	63.00
01/27/10	TSH	Review and analyze correspondence from opposing counsel regarding demand for responsive pleading, potential resolution, and discussions to resolve matter. Prepare correspondence to opposing counsel regarding status, resolution, responsive pleading, and current options to which Bill is willing to agree.	0.30	63.00
02/04/10	TSH	Prepare correspondence to opposing counsel regarding response to complaint.	0.10	21.00
02/05/10	TSH	Review and analyze correspondence from opposing counsel regarding diagram and photos and prepare correspondence to opposing counsel regarding same.	0.10	21.00
02/09/10	TSH	Begin to prepare answer to complaint. Telephone call and leave telephone message with Bill. Telephone conference with Bill regarding	0.60	126.00

MARQUIS AURBACH COFFING P.C.

Bill Gang			November 7, 2011 Invoice 209718 Page 4	
Date	Atty	Description	Hours	Amount
02/09/10	TSH	matter. Prepare correspondence to opposing counsel regarding matter. Conduct legal research regarding [REDACTED] [REDACTED] Preparation of affirmative defenses in support of answer to complaint.	1.10	231.00
02/09/10	TSH	Begin preparation of counterclaim [REDACTED] [REDACTED]	0.70	147.00
02/09/10	TSH	Telephone call from Bill and conference with Bill regarding [REDACTED] [REDACTED]	0.40	84.00
02/10/10	TSH	Telephone calls from and conferences with opposing counsel regarding matter, status, and facts. Review and analyze correspondence from opposing counsel and forward correspondence to opposing counsel regarding matter.	0.40	84.00
02/16/10	TSH	Telephone call from and conference with Bill Gang regarding [REDACTED] [REDACTED]	0.30	63.00
02/22/10	TSH	Telephone call from Ferrario regarding matter. Telephone call and leave telephone message with Ferrario. Telephone conference with Ferrario regarding matter.	0.10	21.00
02/22/10	TSH	Telephone call and conference with Bill regarding [REDACTED] [REDACTED]	0.40	84.00
02/23/10	TSH	Review and analyze photographs received from client as to encroachment and drainage pipe. Prepare correspondence to opposing counsel regarding drainage pipe, survey, and survey expense. Prepare correspondence to Bill [REDACTED] [REDACTED] Strategize regarding [REDACTED]	0.70	147.00
02/23/10	TSH	Review and analyze correspondence from opposing counsel regarding pipes and drainage and forward same to Bill for review.	0.10	21.00
02/24/10	TSH	Review and analyze correspondence from Bill regarding matter. Prepare correspondence to Bill regarding [REDACTED] [REDACTED]	0.40	84.00
02/24/10	TSH	Telephone conference with Bill regarding [REDACTED] [REDACTED] Prepare correspondence to opposing counsel regarding history, drainage issue, injunction, survey, litigation, settlement offers, and status conference.	1.10	231.00
02/25/10	TSH	Prepare correspondence to opposing counsel regarding status of response and resolution of current issues. Prepare correspondence to Bill regarding matter.	0.10	21.00
02/26/10	TSH	Review and analyze correspondence from Ferrario regarding matter and also from Bill.	0.10	21.00
02/26/10	TSH	Make additions to complaint to incorporate additional causes of action and affirmative defenses. Prepare correspondence to Bill forwarding draft of complaint and [REDACTED]	1.00	210.00
03/02/10	TSH	Review and analyze correspondence from Mark and Bill and prepare	0.10	21.00

MARQUIS AURBACH COFFING P.C.

Bill Gang

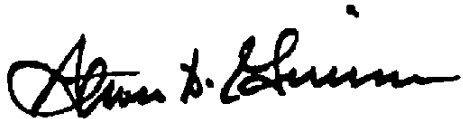
November 7, 2011

Invoice 209718

Page 7

Date	Atty	Description	Hours	Amount
		██████████ Prepare correspondence to client responding to ██████████		
08/12/10	AGM	Review and revise correspondence to opposing attorney; office conference.	0.30	127.50
08/13/10	TSH	Review and analyze voice message from client regarding ██████████	0.30	63.00
		██████████ Review and revise correspondence to opposing attorney regarding settlement, encroaching analysis, intentional interference allegations, and status. Finalize correspondence to opposing attorney.		
08/17/10	TSH	Finalize correspondence to opposing attorney regarding status and settlement. Review and analyze correspondence to opposing attorney regarding letter. Prepare correspondence to opposing attorney regarding letter and discussions to resolve matter.	0.10	21.00
08/24/10	TSH	Review and analyze correspondence from client regarding ██████████	0.20	42.00
		██████████ Prepare correspondence to client regarding ██████████		
08/25/10	AGM	Office conference; review email to Ferrario.	0.40	170.00
08/25/10	TSH	Telephone conference with Bill regarding ██████████	1.40	294.00
		██████████ Prepare correspondence to opposing attorney regarding Bill's position, status, and settlement. Strategize regarding ██████████		
08/25/10	TSH	Review and analyze correspondence from client regarding ██████████	0.50	105.00
		██████████ Make revisions and forward correspondence to opposing attorney. Prepare correspondence to client regarding ██████████		
09/01/10	TSH	Prepare correspondence to client providing update regarding ██████████	0.20	42.00
09/21/10	TSH	Review and analyze correspondence from opposing attorney regarding settlement status. Review prior settlement correspondence for potential settlement alternatives. Prepare correspondence to client regarding ██████████	0.50	105.00
09/22/10	TSH	Review and analyze voice message from client. Telephone calls and leave voice messages for client. Telephone conference with client. Additional telephone conference with client regarding ██████████	1.00	210.00
		██████████ Prepare correspondence to opposing attorney regarding telephone conference with discussion of counteroffer and status of matter prior to response to complaint.		
09/29/10	TSH	Review and analyze correspondence from client regarding ██████████	0.40	84.00
		██████████ Prepare correspondence to opposing attorney regarding further developments and discussing same in relation to matter, further litigation, and settlement.		
10/29/10	TSH	Prepare correspondence to opposing attorney regarding status, settlement, and failure to respond and receipt of previous correspondence. Prepare correspondence to client providing update	0.20	42.00

EXHIBIT 4



CLERK OF THE COURT

OPP

MARK E. FERRARIO, ESQ.
Nevada Bar No. 1625
LESLIE S. GODFREY, ESQ.
Nevada Bar No. 10229
GREENBERG TRAURIG, LLP
3773 Howard Hughes Parkway, Suite 400 North
Las Vegas, Nevada 89169
Telephone: (702) 792-3773
Facsimile: (702) 792-9002
Email: ferrariom@gtlaw.com
godfrey1@gtlaw.com
Attorneys for Plaintiff Richard A. Hunter

DISTRICT COURT

CLARK COUNTY, NEVADA

RICHARD A. HUNTER, an individual,

Plaintiff,

v.

WILLIAM GANG, an individual, and DOE
DEFENDANTS 1 through 10, and ROE
CORPORATIONS 1 through 10, inclusive,

Defendants.

Case No. A-09-604877-C

Dept No. VIII

**OPPOSITION TO MOTION TO
DISMISS**

**Date of Hearing: Sept. 13, 2011
Time of Hearing: 8:00 a.m.**

Plaintiff, Richard A. Hunter ("Plaintiff"), by and through his counsel, the law firm of
Greenberg Traurig, LLP, hereby submits this Opposition to the Motion to Dismiss ("Opposition")
filed by Defendant William Gang ("Defendant").

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Greenberg Traurig LLP
3773 Howard Hughes Parkway, Suite 400 North
Las Vegas, Nevada 89169
(702) 792-3773
(702) 792-8002 (fax)

1 This Opposition is supported by the following memorandum of points and authorities, the
2 pleadings and papers on file herein and any oral argument the Court may entertain at the hearing
3 on the motion.

4 DATED this 29th day of August, 2011.

5 GREENBERG TRAURIG, LLP

6 By: 
7

8 MARK E. FERRARIO, ESQ.

9 Nevada Bar No. 1625

10 LESLIE S. GODFREY, ESQ.

11 Nevada Bar No. 10229

12 3773 Howard Hughes Parkway

13 Suite 400 North

14 Las Vegas, Nevada 89169

15 Telephone: (702) 792-3773

16 Attorneys for Plaintiff Richard A. Hunter

17 **MEMORANDUM OF POINTS AND AUTHORITIES**

18 **I. INTRODUCTION AND SUMMARY OF FACTS.**

19 This case involves a dispute over a portion of land upon which Plaintiff built a berm to
20 prevent the natural flow of water onto his property more than twenty-five years ago. On or about
21 December 9, 2009, Plaintiff filed his complaint against Defendant for quiet title, injunctive relief,
22 declaratory relief, and adverse possession regarding this disputed portion of property. See
23 Complaint on file herein. Since Plaintiff filed his complaint, he has been suffering from serious
24 medical conditions that interfere with his ability to focus on this litigation, including heart
25 problems, a series of mini strokes that temporarily left Plaintiff without eye sight, pneumonia, and
26 most recently he has had difficulty controlling dangerously high blood pressure. See the Affidavit
27 of Margueritte Hunter filed herewith.

28 Despite knowing of these hardships, Defendant now requests that this Court dismiss
Plaintiff's Complaint. In his Motion to Dismiss for Failure to Prosecute, Defendant cites to
various authorities indicating that the Court has discretion to dismiss a matter if a Plaintiff does
not diligently pursue the matter. Defendant fails to cite language within these authorities which
clearly indicate that such a motion is only proper after the passing of two years. Two years has

1 not yet passed in this case, and as a result, Defendant's motion is premature. Nonetheless, even if
2 the Court considers Defendants' premature motion, any delay that has occurred as a result of
3 Plaintiff's health condition should be excused by this Court. Based on these two issues, Plaintiff
4 requests that this Court deny Defendant's Motion to Dismiss.

5 II. LEGAL ARGUMENT

6 As a general policy, Courts prefer that a matter be tried on its merits. *See Hassett v. St.*
7 *Mary's Hospital Ass'n*, 86 Nev. 900 (1970). Plaintiff acknowledges that when a matter is not
8 pursued diligently, the Court has discretion to dismiss it. *Id.* The Court should not dismiss this
9 matter for two reasons: first, Defendant is not entitled to request that the matter be dismissed, as
10 two years have not passed since the matter was filed, and second, Plaintiff's delay is a result of
11 excusable neglect resulting from serious ongoing health problems.

12 Nevada Rule of Civil Procedure 41(e) provides in pertinent part, "[t]he Court may in its
13 discretion dismiss any action for want of prosecution on motion of any party or on the court's
14 own motion and after due notice to the parties, whenever plaintiff has failed for 2 years after
15 action is filed to bring such action to trial." (emphasis added). Curiously, Defendant cites several
16 Nevada cases without any mention of the two-year threshold under the rule. *See Motion*. Further,
17 the cases cited by Defendant are distinguishable from the instant case in that they involve
18 situations where the complaint was filed more than two years prior to the filing of the motion to
19 dismiss. *See Hassett v. St. Mary's Hospital Ass'n*, 86 Nev. 900 (1970) (affirming district court's
20 dismissal where defendant was not served with process for more than two years after filing of
21 complaint); *see also Thran v. First Judicial District Court In and For Ormsby County*, 79 Nev.
22 176 (1963) (affirming dismissal of complaint where motion to dismiss filed nearly four years after
23 the filing of the complaint). Finally, *Moore v. Cherry*, 90 Nev. 390 (1974) is distinguishable in
24 that *Moore* involved a case that had actually been set for trial almost two years after the complaint
25 was filed. However, in *Moore*, neither the plaintiffs nor their attorney appeared on the date of
26 trial. As a result, the district court entered a judgment dismissing the case with prejudice under
27 NRCP 41(b) and the Nevada Supreme Court affirmed. In this case, Plaintiff has not let this case
28 languish as many as four full years, nor has Plaintiff engaged in a conscious disregard of

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1 scheduling orders issued by this Court. The Complaint was filed on December 9, 2009, two years
2 full years have not passed. Accordingly, this motion is not ripe, and the Court should deny
3 Defendant's request on that basis alone.

4 Nonetheless, even if two years had passed, the Court should deny Defendant's request.
5 The Court has the discretion to allow a Plaintiff time beyond the two year limitation, if the
6 Plaintiff can demonstrate excusable neglect. *Monroe Ltd. v. Central Tel. Co.*, 91 Nev. 450, 538
7 P.2d 152 (1975). Unfortunately, Plaintiff has been suffering from serious medical conditions that
8 have interfered with his ability to focus on this litigation, including heart problems, a series of
9 mini strokes that temporarily left Plaintiff without eye sight, pneumonia, and most recently he has
10 had difficulty controlling dangerously high blood pressure. See the Affidavit of Margueritte
11 Hunter filed herewith. These ailments have made it impossible for Plaintiff pursue this matter
12 until his health improves. Plaintiff has not intentionally neglected this case, but rather, has been
13 trying to focus on regaining his health. As such, Plaintiff respectfully requests that the Court
14 exercise its discretion to excuse Plaintiff's failure to set the case for trial to date and allow
15 Plaintiff to take the necessary steps to either recover or appoint an appropriate representative to
16 pursue this matter on his behalf.

17 **III. CONCLUSION**

18 Based on the foregoing, Plaintiff respectfully requests that this Court deny Defendant's
19 motion to dismiss.

20 DATED this 29th day of August, 2011.

21 **GREENBERG TRAURIG, LLP**

22 By: Leslie S. Godfrey
23 MARK E. FERRARIO, ESQ.
24 Nevada Bar No. 1625
25 LESLIE S. GODFREY, ESQ.
26 Nevada Bar No. 10229
27 3773 Howard Hughes Parkway
28 Suite 400 North
Las Vegas, Nevada 89169
Telephone: (702) 792-3773
Attorneys for Plaintiff Richard A. Hunter

CERTIFICATE OF SERVICE

I hereby certify pursuant to N.R.C.P 5 that I served the forgoing **Opposition to Motion to Dismiss** on:

Albert G. Marquis
Tye Hanseen
Marquis Aurbach Coffing
10001 Park Run Drive
Las Vegas, NV 89145

by causing a full, true, and correct copy thereof to be sent by the following indicated method

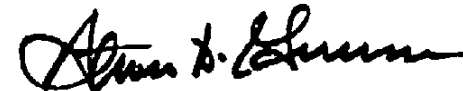
or methods, on the date set forth below:

- ☒ by mailing in a sealed, first class postage-prepaid envelop, addressed to the last-known office address of the attorney, and deposited with the United States Postal Service in Las Vegas, Nevada.
- ☐ by hand delivery.
- ☐ by sending via overnight courier in a sealed envelope.
- ☐ by faxing to the attorney at the fax number that is the last-known fax number.
- ☐ by electronic mail to the last known e-mail address.

DATED this 29th day of August, 2011.


An employee of Greenberg Traurig, LLP

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3773 Howard Hughes Parkway, Suite 400 North
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CLERK OF THE COURT

1 **AFFD**

2 MARK E. FERRARIO, ESQ.
Nevada Bar No. 1625

3 LESLIE S. GODFREY, ESQ.
Nevada Bar No. 10229

4 GREENBERG TRAURIG, LLP
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8 Email: ferrariom@gtlaw.com

godfrey1@gtlaw.com

Attorneys for Plaintiff Richard A. Hunter

9 **DISTRICT COURT**

10 **CLARK COUNTY, NEVADA**

11 RICHARD A. HUNTER, an individual,

12 Plaintiff,

13 v.

14 WILLIAM GANG, an individual, and DOE
15 DEFENDANTS 1 through 10, and ROE
16 CORPORATIONS 1 through 10, inclusive,

17 Defendants.

Case No. A-09-604877-C

Dept No. VIII

**AFFIDAVIT OF MARGUERITTE
HUNTER IN SUPPORT OF
PLAINTIFF'S OPPOSITION TO
MOTION TO DISMISS**

Date of Hearing: Sept. 13, 2011

Time of Hearing: 8:00 a.m.

18 STATE OF NEVADA)

19) ss.

20 COUNTY OF CLARK)

21 I, MARGUERITTE HUNTER, being first duly sworn, under penalty of perjury, deposes
22 and states:

23 1. I am over 21 years of age and I am competent to testify to the matters stated herein
24 based upon personal knowledge, except for those matters stated upon information and belief, and
25 to those matters, I believe them to be true.

26 2. This Affidavit is made in support of Plaintiff's Opposition to Defendant's Motion
27 to Dismiss for Failure to Prosecute.
28

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(702) 762-4002 (fax)

1 3. I have been informed and believe thereon that the Complaint in this matter was
2 filed on December 4, 2009.

3 4. I am the spouse of Plaintiff, Richard Hunter.

4 5. Since early 2009, Mr. Hunter has been suffering from a series of health related
5 problems, including heart problems, a series of mini strokes that resulted in the temporary loss of
6 eyesight, pneumonia, and most recently, Mr. Hunter and his physicians are struggling to control
7 dangerously high blood pressure.

8 6. Mr. Hunter has been attending to his health, and is currently unable to focus his
9 efforts on litigating this case.

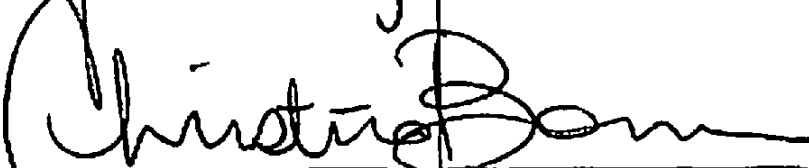
10 7. Plaintiff does not intend to inappropriately delay or hinder the case at bar.

11 FURTHER YOUR AFFLIANT SAYETH NAUGHT.

12 
13 MARGUERITE HUNTER

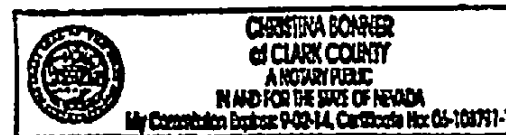
14
15 SUBSCRIBED AND SWORN BEFORE ME this

16 29th day of August, 2011.

17 

18
19 NOTARY PUBLIC in and for said County and State

20 My Commission Expires: 7/2/2014



CERTIFICATE OF SERVICE

I hereby certify pursuant to N.R.C.P 5 that I served the forgoing **AFFIDAVIT OF MARGUERITTE HUNTER IN SUPPORT OF PLAINTIFF'S OPPOSITION TO MOTION TO DISMISS** on:

Albert G. Marquis
Tye Hanseen
Marquis Aurbach Coffing
10001 Park Run Drive
Las Vegas, NV 89145

by causing a full, true, and correct copy thereof to be sent by the following indicated method

or methods, on the date set forth below:

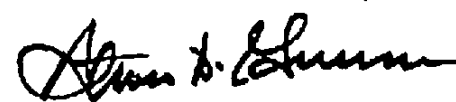
- ☒ by mailing in a sealed, first class postage-prepaid envelop, addressed to the last-known office address of the attorney, and deposited with the United States Postal Service in Las Vegas, Nevada.
- ☐ by hand delivery.
- ☐ by sending via overnight courier in a sealed envelope.
- ☐ by faxing to the attorney at the fax number that is the last-known fax number.
- ☐ by electronic mail to the last known e-mail address.

DATED this 30th day of August, 2011.

Valerie Larsen
An employee of Greenberg Traurig, LLP

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EXHIBIT 5



CLERK OF THE COURT

1 TRAN

2 **ORIGINAL**

3
4
5 DISTRICT COURT
6 CLARK COUNTY, NEVADA

7
8 RICHARD HUNTER,
9 Plaintiff,

CASE NO. A604877
DEPT. VIII

10 vs.

11
12 WILLIAM GANG,
13 Defendant.

14 BEFORE THE HONORABLE DOUGLAS E. SMITH, DISTRICT COURT JUDGE
15 TUESDAY, SEPTEMBER 13, 2011

16 **TRANSCRIPT OF PROCEEDINGS**
17 **WILLIAM GANG'S MOTION TO DISMISS**

18 APPEARANCES:


19 For the Plaintiff:

MARK E. FERRARIO, ESQ.

20 For the Defendant:

TYE S. HANSEEN, ESQ.

21
22
23 RECORDED BY: JILL JACOBY, COURT RECORDER

CLERK OF THE COURT
OCT 12 2011
RECEIVED


1 TUESDAY, SEPTEMBER 13, 2011 AT 8:15 A.M.

2
3 MR. HANSEEN: Good morning, Your Honor, Tye Hanseen of Marquis
4 Aurbach Coffing on behalf of Defendant William Gang. This is page 5.

5 THE COURT: Okay.

6 MR. FERRARIO: Mark Ferrario on behalf of the plaintiff, Your Honor.

7 MR. HANSEEN: Your Honor, first of all, we are very sympathetic to
8 Mr. Hunter's medical conditions, we are aware of those, and we wish him nothing
9 but well.

10 As to the motion pending before the Court, this has to do with some
11 property that is up in Mountain Springs which is located off of Highway 160 about
12 halfway in between Las Vegas and Pahrump.

13 It all arose, Mr. Hunter has about 2.5 acres up there, Mr. Gang has
14 about 20 acres. Mr. Hunter built within about six inches of his property line, literally
15 six inches. Two years ago, he tried to sell the property and the potential buyer
16 realized that hey, there might be an issue here, you built within six inches of the
17 property line and you've landscaped your backyard on Mr. Gang's property. So the
18 deal fell through with Mr. Hunter. So what Mr. Hunter did, of course, was then turn
19 around and sue Mr. Gang to try to secure what was literally Mr. Gang's property for
20 his backyard. They tried to make a deal, it didn't work out. We're now going on two
21 years since the case started and here we sit, still nothing has happened.

22 This is not Mr. Hunter's first time around doing something like this. He
23 landscaped on Forest Service property in the same place, the Forest Service made
24 him take it out. He built a building on Forest Service property, Forest Service made
25 him take it out. He had an illegal easement up there which has now been

1 eliminated. So this is a continuing pattern where he goes up there and tries to
2 amass property that is beyond his own boundaries.

3 Now, the current situation --

4 THE COURT: Are you saying Mr. Gang doesn't have the power of the Forest
5 Service?

6 MR. HANSEEN: No.

7 THE COURT: Okay.

8 MR. HANSEEN: No, I did not say -- well --

9 THE COURT: He doesn't, trust me.

10 MR. HANSEEN: Well, I wish that Mr. Gang could go up there and walk up
11 there with the authority and say: Hey, wipe this stuff out. But it hasn't happened.

12 So we've been up here two years. Even during this lawsuit, about
13 halfway in between, you know, six or eight months after it was filed, Mr. Hunter even
14 went up and staged a construction project for Mr. Gang's property. He dug up
15 Mr. Gang's land, installed this massive 18-inch, 24-inch drainage pipe which
16 currently sits underneath Mr. Gang's property.

17 And, you know, like we said, we're sympathetic to the health conditions,
18 we're aware of those, but we've been going on now for two years. And it's not a
19 berm. It's not a berm. They reference it as a berm, it's a backyard. It's literally, it's
20 a backyard that they have essentially commandeered that they are literally trying to
21 steal from Mr. Gang.

22 Now, again, we get the medical conditions, you know, we're not here to
23 cause Mr. Hunter harm, but it's time that the case gets going. We're going on two
24 years. You know, we either need to get this thing moving, Mr. Gang needs a shot to
25 file his counterclaim and we need to move forward or the case needs to be

1 dismissed, at a minimum, without prejudice. And if Mr. Hunter decides in two
2 months, six months, or whatever that he wants to proceed with the suit, so be it. But
3 it's been almost two years.

4 MR. FERRARIO: Do you want to -- do you want me to argue beyond
5 what's in the motion like -- like Mr. Hanseen did?

6 THE COURT: Well, I just think there's more to it than he's sitting on his rights
7 right now. I don't think he has a position and he's just filed a suit in hopes that
8 something sticks if he throws it against the wall.

9 MR. FERRARIO: Well, I beg to differ with you, Your Honor, I don't file suits
10 for that --

11 THE COURT: I know. That's why that's --

12 MR. FERRARIO: -- for that reason. Mr. Hanseen's brought a motion to
13 dismiss, the case hasn't even been on the books for two years. We filed an affidavit
14 from Mrs. Hunter. Unfortunately, Mr. Hunter has suffered serious health issues.
15 He -- in addition to the heart issues, he fell and hit his head a few years ago and it's
16 caused recurring neurological issues.

17 So I have no problem moving the case along. And the thing that I find
18 interesting -- and Your Honor points at us saying that we're engaging in some
19 inappropriate conduct, that's not the case at all. Mr. Hanseen and I have -- and it's
20 been a pleasure working with him -- have tried on numerous occasions to resolve
21 this. The last thing you want to have is neighboring property owners fight over
22 things like this.

23 THE COURT: Do you --

24 MR. FERRARIO: I have a spin on why it hasn't settled.

25 THE COURT: -- argue that he did not landscape on Mr. Gang's property, is

1 that your argument?

2 MR. FERRARIO: There is no question there is a -- a landscaping on
3 Mr. Gang's property. Here's the beauty of this. It's Mr. Gang's property. If they
4 wanted to file a counterclaim, let them file a counterclaim, why hasn't he done that?

5 If we are out there digging on his property putting up a major
6 construction project, why wasn't he parading in here getting an injunction to stop it?
7 He doesn't represent the Forest Service, I don't see them in here. The reality is the
8 sale fell through because Mr. Gang interfered with the sale and we believe gave
9 inaccurate information to the buyers about encroachment of a tennis court and what
10 have you.

11 The only issue -- this thing's been there for 25 years. If this -- if this
12 was such an offending structure to Mr. Gang on about 20 -- I don't know how many
13 feet of his property -- 20 or 40 feet of his property in the middle of nowhere, why
14 wasn't he in court getting us to remove it? Those are the questions the Court needs
15 to ask. This was open and obvious, it was done 25 years ago.

16 You have to picture this, it's out in the middle of nowhere. Mr. Hunter's
17 been there longer than Mr. Gang. Mr. Gang inherited this property from his mother.
18 My client went up and built the house up there. There was drainage issues, it's
19 flowing everywhere. At some point in time, some 20 some-odd years ago, and I
20 don't have the precise facts here, he moved dirt around so that water would come
21 down and go in a different direction. Some of that dirt, no question, is on Mr. Gang's
22 property. I think Mr. Hunter put up trees and what have you on Mr. Gang's property
23 which is now Mr. Gang's property but at the time, it was Mrs. Gang's property. So
24 that's what's going on if you want to hear the whole story.

25 THE COURT: So if -- so it's -- you think that's reasonable?

1 MR. FERRARIO: I'm not --

2 THE COURT: And you think that, well, I get the property if Gang doesn't do
3 anything about it.

4 MR. FERRARIO: Well, there are adverse possession laws, there's all sorts of
5 issues that may come into play here. I'm not saying that I would tell a client just go
6 out and willy-nilly 25 years ago in the middle of nowhere and put prop -- you know,
7 build a berm. That's not what I'm telling Your Honor. I'm just saying the reality is
8 this is a long time ago and the only people that are involved are -- were Mr. Hunter
9 and Mr. Gang's mother at the time. So we filed the Complaint and we'll probably be
10 amending because of Mr. Gang's interference with the sale and providing what we
11 believe to be inaccurate information to the buyers.

12 THE COURT: All right.

13 MR. FERRARIO: So, I -- and, Your Honor, one final thing. In terms of the
14 health issues and -- it's somewhat difficult when you're handling a case like this and
15 you're talking to your client and you hear that he had a mini stroke or that he's going
16 on another medication and you have to make a decision, do you go in and do you
17 try to push this matter down his throat in the middle of these types of issues? Those
18 are tough judgment calls to make as an attorney. This case hasn't been on the
19 books for two years. They don't cite you one case that would support dismissal.
20 We would respectfully request that we allow -- you allow the case to proceed.

21 The other alternative that I think might not be a bad idea because the
22 parties have talked and things have broken down a number of times, we believe that
23 Mr. -- we talked about buying property and all sorts of stuff. Perhaps ordering a
24 settlement conference with another judge might help the process. It might help me,
25 quite frankly, in dealing with my client and in the midst of these health issues maybe

1 to come into the courthouse and have a settlement conference with another judge, I
2 think might help the situation. And I would request that.

3 THE COURT: All right. I was inclined to give the continuance, I'm not now
4 after hearing arguments of counsel. The motion to dismiss is granted.

5 Defense will prepare findings of facts, conclusions of law.

6 MR. HANSEEN: Thank you, Your Honor.

7 [Proceeding concluded at 8:24 a.m.]
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21 ATTEST: I hereby certify that I have truly and correctly transcribed the audio/visual
22 recording in the above-entitled case.

23 
24 Jill Jacoby
25 Court Recorder

EXHIBIT 6


CLERK OF THE COURT

1 **Marquis Aurbach Coffing**
2 **ALBERT G. MARQUIS, ESQ.**
3 Nevada Bar No. 1919
4 **TYE S. HANSEEN, ESQ.**
5 Nevada Bar No. 10365
6 10001 Park Run Drive
7 Las Vegas, Nevada 89145
8 Telephone: (702) 382-0711
9 Facsimile: (702) 382-5816
10 amarquis@maclaw.com
11 thanseen@maclaw.com
12 Attorneys for William Gang

13 **DISTRICT COURT**
14 **CLARK COUNTY, NEVADA**

15 **RICHARD A. HUNTER, an individual,**
16
17 **Plaintiff,**

18 **vs.**

19 **WILLIAM GANG, an individual, and DOE**
20 **DEFENDANTS 1 through 10, and ROE**
21 **CORPORATIONS 1 through 10, inclusive,**
22 **Defendants.**

Case No.: A-09-604877-C
Dept. No.: VIII

23 **FINDINGS OF FACT, CONCLUSIONS OF**
24 **LAW AND ORDER GRANTING**
25 **WILLIAM GANG'S MOTION TO**
26 **DISMISS**

27 This matter having come for hearing before the Honorable Douglas Smith on September
28 13, 2011, the Plaintiff Richard A. Hunter ("Hunter") represented by his counsel of record Mark
Ferrario, Esq. of the law firm of Greenberg Traurig, LLP, and Defendant William Gang
("Gang") represented by his counsel of record Tye Hanseen, Esq. of the law firm of Marquis
Aurbach Coffing. The Court having read the pleadings filed by the parties, and considered the
oral arguments of counsel, hereby makes the following findings of facts, conclusions of law, and
orders as follows:

29 **FINDINGS OF FACT**

30 1. Gang is the owner of 20.47 acres of real property described in the office of the
31 Clark County Assessor as: Land Division 93-92, Lot 2, 920819:570—APN 174-20-303-002
32 ("Gang Property").

<input type="checkbox"/> Voluntary Dis	<input type="checkbox"/> Stip Dis	<input type="checkbox"/> Sum Jdgmt	FINAL DISPOSITIONS <input type="checkbox"/> Time Limit Expired <input type="checkbox"/> Dismissed (with or without prejudice) <input type="checkbox"/> Judgment Satisfied/Paid in full
<input type="checkbox"/> Involuntary (stat) Dis	<input type="checkbox"/> Stip Jdgmt	<input type="checkbox"/> Non Jury Trial	
<input type="checkbox"/> Jdgmt on Arb Award	<input type="checkbox"/> Default Jdgmt	<input type="checkbox"/> Jury Trial	
<input checked="" type="checkbox"/> Mtn to Dis (by deft)	<input type="checkbox"/> Transferred		

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MARQUIS AURBACH COFFING
10001 Park Run Drive
Las Vegas, Nevada 89145
(702) 382-0711 FAX: (702) 382-5816

1 2. The Hunter Family Trust is the owner of 2.65 acres of real property described in
2 the office of the Clark County Assessor as: 9500 Pinion Dr., Unincorporated County, Lot 1 &
3 Vac. Rd., Sec 20 Twp 22 Rng 58—APN 174-20-402-004 ("Hunter Property").

4 3. The subject properties are located in the community of Mountain Springs, which
5 is located off of Highway 160 in the Spring Mountains between Las Vegas and Pahrump.

6 4. The north side of the Hunter Property borders the south side of the Gang Property.

7 5. Hunter built his home on the Hunter Property within eight inches of the property
8 line between the Hunter Property and Gang Property.

9 6. Hunter landscaped on the Gang Property, which landscape includes trees, shrubs,
10 ~~and a watering system complete with sprinklers for the landscape (hereinafter referred to as the~~

11 "Encroachment"). In essence, Hunter created a back yard for himself on property he did not
12 own.

13 7. The Encroachment encompasses an area on the Gang Property of approximately
14 200' by 40'.

15 8. On December 4, 2009, Hunter filed this suit against Gang alleging claims for
16 quiet title, injunctive relief, adverse possession, and declaratory relief to attempt to obtain title to
17 the Encroachment.

18 9. Other than filing the Complaint, Hunter has not taken any action.

19 10. Hunter gave Gang an extension to respond to the suit while the parties discussed
20 a potential resolution. The discussions, however, broke down over a year ago. After that point,
21 Hunter became, for the most part, unresponsive for extended periods of time while the Gang
22 Property remained encumbered by this legal action which was filed for no apparent reason other
23 than to force a settlement favorable to Hunter.

24 11. Due to the suit, the Gang Property has now been encumbered for almost two
25 years—while property values in Clark County have continued to decrease.

26 12. The Encroachment on the Gang Property was part of a pattern of encroachment
27 by Hunter, who also constructed a building and other improvements on Forest Service land that
28

1 borders the Hunter Property to the west. The Forest Service required Hunter to remove the
2 structure and improvements.

3 13. Hunter also landscaped on the Forest Service land, as he did on the Gang
4 Property, and with the same disregard for ownership and property rights.

5 14. Even as this lawsuit was pending, Hunter continued to disregard Gang's property
6 rights, staging a construction project for the Hunter Property on Gang's property.

7 15. During the project, Hunter dug a trench utilizing the Gang Property and installed
8 a 24" diameter drainage pipe, a portion of which appears to be on the Gang Property.

9 16. Hunter's landscape, watering system, and drainage pipe all sit on the Gang
10 Property.

11 17. Gang never authorized Hunter to landscape, install a watering system, or install a
12 drainage pipe on the Gang Property.

13 **CONCLUSIONS OF LAW**

14 1. The duty was on Hunter to use diligence at every stage of the proceeding to
15 expedite the case to final determination.

16 2. Gang was required to meet Hunter step by step as Hunter proceeded.

17 3. Hunter neglected and failed to reasonably prosecute the case.

18 4. There was no adequate excuse for Hunter's neglect and failure to reasonably
19 prosecute the case.

20 5. Hunter's neglect and failure adversely impacted Gang's ability to market the
21 Gang Property.

22 6. Hunter failed to diligently pursue the claims as well as request the matter be
23 brought to trial.

24 7. Hunter's claims for quiet title, injunctive relief, adverse possession, and
25 declaratory relief to attempt to obtain title to the Encroachment lack merit.

26 ///

27 ///

28

MARQUIS AURBACH COFFING

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Las Vegas, Nevada 89145
(702) 382-0711 FAX: (702) 382-5816


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NOW, THEREFORE, IT IS HEREBY ORDERED, that the Motion to Dismiss is hereby
GRANTED and the Complaint is dismissed with prejudice.

Dated this ^{November} 3 day of October, 2011.


DISTRICT COURT JUDGE *Red*

Respectfully submitted by
MARQUIS AURBACH COFFING

By 
Albert G. Marquis, Esq.
Nevada Bar No. 1919
Tye S. Hanseen, Esq.
Nevada Bar No. 10365
10001 Park Run Drive
Las Vegas, Nevada 89145
Attorneys for William Gang

Approved as to form and content:
GREENBERG TRAURIG, LLP

By _____
Mark E. Ferrario, Esq.
Nevada Bar No. 1625
Leslie Godfrey, Esq.
Nevada Bar No. 10229
3773 Howard Hughes Parkway, Suite 400 North
Las Vegas, Nevada 89169
Attorneys for Richard A. Hunter

EXHIBIT 7

Cowden, Tami D. (OfCnsl-LV-LT)

To: Cowden, Tami D. (OfCnsl-LV-LT); Tye S. Hanseen; Ferrario, Mark E. (Shld-LV-LT)
Subject: RE: 11526-001 Gang adv. Hunter--CONFIDENTIAL SETTLEMENT COMMUNICATIONS [IWOV-
IMANAGE.FID739929]

From: cowdent@gtlaw.com [mailto:cowdent@gtlaw.com]
Sent: Monday, October 17, 2011 10:09 AM
To: Tye S. Hanseen
Subject: 11526-001 Gang adv. Hunter

Dear Mr. Hanseen,

Mark Ferrario asked me to reply to you regarding the proposed order. He will discuss the remaining issues raised in your email with the client.

Regarding the order, I am frankly quite puzzled at its contents. I have reviewed your motion, which contained a single paragraph of facts, directed solely at procedure in this case. As a result, I am at a loss as to the basis of most of the proposed "factual findings"—specifically, Paragraphs 3-7; 9, the final paragraph of 10, 11-17. There is simply no evidentiary basis on which the court might make these "factual" findings. Indeed, these proposed findings go even beyond your own unsupported statements at the hearing, so that even if your statements could be considered "evidence"—which they could not, particularly in light of Mark's objection to your raising issues outside the briefings—there is simply nothing upon which the Court could have relied to make such findings.

I do think it would be an appropriate fact to include the failure of Mr. Gang to file any answer in this case. As you might expect, that failure will certainly be highlighted in any appeal of this case.

I am also struck by the conclusions of law. I have no issue with Paragraphs 1 and 2 - although given that Gang failed to present an answer in this case, I am surprised that you would wish to include Paragraph 2. Paragraphs 3 and 5 are unsupported by the facts, but are consistent with the Court's ruling. The remaining conclusions, however, are unsupported by any evidence or by any ruling by the judge. Indeed, the only "failure" of action taken by Mr. Hunter was in refraining from seeking a default judgment against Mr. Gang. Paragraph 7, moreover, goes far beyond the only issue presented by the motion.

In essence, the proposed order seeks to rule on the merits of the litigation, as though a summary judgment motion had been filed, briefed, and granted. As such, we cannot even approve the form.

I look forward to seeing an order that addresses the motion filed. Please feel free to call me if you have any questions.

Yours,

Tami D. Cowden
Of Counsel
Greenberg Traurig, LLP | Suite 400 North
3773 Howard Hughes Parkway | Las Vegas, Nevada 89169
Tel 702.938.6874
cowdent@gtlaw.com | www.gtlaw.com

 **GreenbergTraurig**

12/7/2011

42

APP0139

From: Tye S. Hanseen [mailto:thanseen@maclaw.com]
Sent: Thursday, October 13, 2011 1:22 PM
To: Ferrario, Mark E. (Shld-LV-LT); Godfrey, Leslie S. (Assoc-LV-LT)
Cc: Albert Marquis
Subject: RE: 11526-001 Gang adv. Hunter [IWOV-IMANAGE.FID739929]

Mark:

Attached is the proposed order. Unless we reach a final resolution or hear back from you with comments, we plan on submitting the order next Tuesday.

Also, Bill is now engaged with the Forest Service to sell the property. Within the last 10 days or so he walked the property with a Forest Service representative. The representative indicated to Bill that if the Forest Service does purchase the property, there would be no issue with the existing trees on the encroachment. That having been said, the Forest Service wants the property with the straight-line boundaries that currently exist. An irregular boundary (carving out even a small piece) may adversely impact the willingness of the Forest Service to purchase the property. Although the process may take several months to complete, Bill has submitted the paperwork to the Forest Service and it is pending. If the deal with the Forest Service goes through, it seems like a win win for everyone. Bill sells the land to the Forest Service and Dick gets to market his property as potentially having Forest Service land outside his back door.

Unfortunately, at this time, the proposed revocable license is not an option. Bill and Dick both likely feel like they've had enough of each other. The revocable license would only put a band aid on the situation that would have to be dealt with down the road when Bill sells the property, when Dick sells his property, or when Dick develops further on Bill's property. It's a great idea, but it won't work with these parties under these circumstances.

If you have any other proposals or ideas, we are more than willing to listen and work with you and Dick to reach a resolution, but it needs to be final. We're not interested in putting you in a difficult situation with your client, but, for the sake of both parties, need a final resolution.

From: ferrariom@gtlaw.com [mailto:ferrariom@gtlaw.com]
Sent: Tuesday, October 11, 2011 4:24 PM
To: Tye S. Hanseen
Subject:

Tye,

I look forward to receiving the draft order for review and comment. However, I would hope we could get our clients to a point of resolution and obviate the need to finalize this matter and the proceedings that may follow. It seems your client may not have understood what I was proposing in terms of a revocable easement/license. While my clients feel their position is correct, they have stressed they are not interested in impeding Bill's ability to sell or develop his property. What I envisioned was an agreement that could be revoked if it impacted his ability to develop or sell his property. Obviously, we would not expect him to simply revoke it the day after it was signed. But if the land in question legitimately thwarted development or sale then the agreement could be revoked by Bill. As I stated, if Bill is interested in pursuing this I will again approach my clients and if they agree then I think between our two firms we should be able to fashion appropriate language. Let me know your thoughts.

Thanks. Mark.

Tax Advice Disclosure: To ensure compliance with requirements imposed by the IRS under Circular 230, we inform you that any U.S. federal tax advice contained in this communication (including any attachments), unless otherwise specifically stated, was not intended or written to be used, and cannot be used, for the purpose of (1) avoiding penalties under the Internal Revenue Code or (2) promoting, marketing or recommending to another party any matters addressed herein.

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A-09-604877-C

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Title to Property		COURT MINUTES	January 09, 2012
A-09-604877-C		Richard Hunter, Plaintiff(s) vs. William Gang, Defendant(s)	
January 09, 2012	3:00 AM	Motion for Attorney Fees and Costs	Defendant's Motion for Attorney Fees and Costs

HEARD BY: Smith, Douglas E.

COURTROOM: RJC Courtroom 16D

COURT CLERK: Katherine Streuber

RECORDER:

REPORTER:

PARTIES
PRESENT:

JOURNAL ENTRIES

- Having considered the moving papers, COURT ORDERED, motion GRANTED. Mr. Hanseen to prepare the order and provide to opposing counsel for review prior to submitting to the Court for signature.

CLERK'S NOTE: The above minute order has been distributed to: Tye S. Hanseen Esq. of Marquis Aurbach Coffing. 01/10/12 kls

PRINT DATE: 01/10/2012

Page 1 of 1

Minutes Date: January 09, 2012

APP0142

MARQUIS AURBACH COFFING
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Electronically Filed
01/05/2012 11:14:36 AM


CLERK OF THE COURT

1 **Marquis Aurbach Coffing**
2 ALBERT G. MARQUIS, ESQ.
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4 TYE S. HANSEEN, ESQ.
5 Nevada Bar No. 10365
6 10001 Park Run Drive
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11 thanseen@maclaw.com
12 Attorneys for William Gang

DISTRICT COURT
CLARK COUNTY, NEVADA

13 RICHARD A. HUNTER, an individual,
14
15 Plaintiff,

16 vs.

17 WILLIAM GANG, an individual, and DOE
18 DEFENDANTS 1 through 10, and ROE
19 CORPORATIONS 1 through 10, inclusive,
20 Defendants.

Case No.: A-09-604877-C
Dept. No.: VIII

Date: January 9, 2012
Time: In Chambers

REPLY IN SUPPORT OF MOTION FOR ATTORNEY FEES AND COSTS

21 William Gang ("Gang"), through the law firm of Marquis Aurbach Coffing, hereby files
22 his Reply in Support of Motion for Attorney Fees and Costs. This Reply is made and based upon
23 the papers and pleadings on file herein, the attached exhibits, the Memorandum of Points and
24

25 ///

26 ///

27 ///

28 ///

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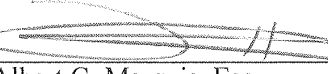
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1 Authorities, the Verified Memorandum of Costs and Attorney Fees, and the Declaration of Tye
2 S. Hanseen, Esq.

3 Dated this 5 day of January, 2012.

4
5 MARQUIS AURBACH COFFING

6
7 By 
8 Albert G. Marquis, Esq.
9 Nevada Bar No. 1919
10 Tye S. Hanseen, Esq.
11 Nevada Bar No. 10365
12 10001 Park Run Drive
13 Las Vegas, Nevada 89145
14 amarquis@maclaw.com
15 thanseen@maclaw.com
16 Attorneys for William Gang

17
18 **MEMORANDUM OF POINTS AND AUTHORITIES**

19 **I. INTRODUCTION.**

20 The focal point of this Motion is whether Hunter's Complaint "was brought without
21 reasonable ground or to harass", which lack of reasonable ground authorizes the Court to award
22 Gang the attorney fees he incurred in defending this matter. NRS 18.010.2(b). More specifically
23 is whether Hunter had reasonable ground to bring an adverse possession claim when Nevada law
24 requires payment of related property taxes to succeed on an adverse possession claim, and
25 Hunter made no such payment. Also, although Hunter raises two more defenses to the Court's
26 award of attorney fees, the defenses are without merit. Gang did not take two inconsistent
27 positions and is not estopped from obtaining an award of attorney fees. Further, all of Gang's
28 attorney fees and costs were reasonable and justified. Moreover, if the Court considered the
merits of the matter when granting the Motion to Dismiss, it was well within its discretion to do
so. How quickly Hunter forgets that he was the one who started this dispute when he attempted
to bully Gang with a frivolous lawsuit to obtain approximately 8,000 square feet of the Gang
Property for no cost. Hunter brought the frivolous Complaint without reasonable ground and
Gang is now entitled to an award of the attorney fees and costs he incurred in defending and
defeating the frivolous Complaint. Thus, the Court should award Gang \$19,833.50 in attorney

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1 fees and \$408.49 in costs.¹

2 **II. LEGAL ARGUMENT.**

3 The Court should award Gang the attorney fees and costs he expended in the defense of
4 this case because Hunter brought his claims without reasonable ground and Hunter's arguments
5 in opposition to an award of attorney fees are not persuasive. First, Hunter brought the
6 Complaint without reasonable ground, in part, because he didn't pay any property taxes on the
7 Gang Property, which is summarily dispositive of Hunter's claims. Second, Hunter's estoppel
8 argument is without merit because Gang did not take two inconsistent positions, and the
9 evidence Hunter offers actually supports Gang's arguments. Third, Gang's attorney fees and
10 costs were justified and reasonable, including those attorney fees expended in preparing the
11 Answer and Counterclaim to the Complaint. Fourth, if the Court indeed considered the merits of
12 the case when it granted the Motion to Dismiss, it was absolutely within its discretion to do so;
13 and, it's unfortunate that Hunter is forcing the parties to incur more expense and time rehashing a
14 Motion the Court already decided. Thus, Gang is entitled to an award of his attorney fees and
15 costs, and the Court should grant this Motion and award Gang \$19,833.50 in attorney fees and
16 \$408.49 in costs.²

17 **A. HUNTER BROUGHT HIS CLAIMS WITHOUT REASONABLE GROUND**
18 **AND GANG IS ENTITLED TO HIS ATTORNEY FEES UNDER NRS**
19 **18.010.2(B).**

20 Hunter argues there is no evidence to support a finding that this matter was frivolous.
21 See Hunter's Opp'n at 4:19-5:17. In support of this proposition, Hunter asserts that his
22 Complaint "stated prima facie causes of action for adverse possession of and/or to quiet title. . ."
23 Id. at 5:8-9. Review of these claims and the other causes of action in the Complaint, however,
24 confirm Hunter brought the Complaint and claims therein without reasonable ground; and, as a

25 ¹ Gang originally requested \$14,652 in attorney fees, which were calculated through November 7, 2011,
26 and included an additional \$1,000 in attorney fees Gang anticipated incurring for the preparation of the
27 Motion for Attorney Fees. See Motion for Attorney Fees and Costs at 3:12-13. The \$19,833.50 in fees
28 and \$408.49 in costs is updated through January 4, 2012, and the reasonableness of the total updated fees
and costs is addressed in the Declaration of Tye Hanseen, Esq. attached as **Exhibit A**.

² See **Exhibit A** identifying the Brunzell factors and confirming the reasonableness of the fees and costs.

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1 result, Gang is entitled to his attorney fees and costs.

2 In Nevada, failure to pay taxes on alleged adversely possessed real property is dispositive
3 of the related claim. See NRS 11.150 and NRS 40.090; see also Potts v. Vokits, 101 Nev. 90,
4 93, 692 P.2d 1304, 1306 (1985). "In order to claim adverse possession . . . **the claimant must**
5 **pay all taxes** assessed against the property for that same time period." Id. (emphasis added).
6 Under Nevada law, the payment of taxes on the property at issue is an "**absolute requirement**"
7 for establishing title through adverse possession. Potts, at 93, 692 P.2d at 1306 (1985) (emphasis
8 added) citing Crumbaker v. Kelly, 95 Nev. 743, 601 P.2d 1199 (1979); Reno Brewing Co. v.
9 Packard, 31 Nev. 433, 103 P. 415 (1909).

10 Here, Hunter paid no taxes whatsoever on the Gang Property. Further, Hunter does not
11 even allege he paid any taxes on the Gang Property. See Hunter's Complaint, *generally*. As a
12 result, Hunter cannot show a right to the property through an adverse possession claim and there
13 is no reasonable basis for the adverse possession claim. Further, Hunter was certainly aware of
14 this payment of taxes requirement prior to filing the frivolous Complaint; and, if he was not, less
15 than five minutes of legal research regarding adverse possession claims in Nevada would have
16 revealed that both statutory law and case law set forth the payment of taxes requirement.
17 Without payment of taxes, the case law is clear there is no reasonable ground for an adverse
18 possession claim. Thus, because Hunter did not pay any taxes or even allege he paid any taxes
19 on the Gang Property, as well as other reasons, Hunter brought the claim without reasonable
20 round.³ Thus, Gang is entitled to attorney fees of \$19,833.50 and costs of \$408.49 for defending
21

22
23 ³ In addition to the Adverse Possession claim, Hunter brought Quiet Title and Declaratory and Injunctive
24 Relief claims. The Quiet Title claim for ownership of the Gang Property is without reasonable ground
25 because its legal theory is based on Hunter's fatally flawed adverse possession claim. Further, the
26 Declaratory and Injunctive Relief claims are not separate causes of action or independent grounds for
27 relief, but are remedies. Moreover, quiet title actions are merely a species of declaratory judgment
28 actions and are therefore inherently redundant of declaratory relief claims. See Kress v. Corey, 65 Nev. 1,
189 P.2d 352, 364 (1948) ("For many years prior to the adoption of [declaratory judgment] statutes courts
have nonetheless been rendering declaratory judgments, that is, the declaration of the pre-existing rights
of the litigants without any coercive decree, in such cases as quiet title suits...."). Thus, Hunter brought
the Complaint without reasonable ground.

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1 against the frivolous Complaint.⁴

2 B. HUNTER'S JUDICIAL ESTOPPEL ARGUMENT EQUATES TO LITTLE
3 MORE THAN ANOTHER EXAMPLE OF HUNTER'S MISPLACED
4 LEGAL THEORIES.

5 Hunter asserts that Gang is estopped from receiving an award of attorney fees based on
6 Hunter's frivolous claims because Gang allegedly took two inconsistent positions. See Hunter's
7 Opp'n at 5:19-8:17. Notably, Hunter provides no authority even beginning to imply that a party
8 can bring claims without reasonable ground and avoid paying attorney fees based on an estoppel
9 defense. Id. Nevertheless, the estoppel defense to paying Gang's attorney fees and costs is just
10 as frivolous as Hunter's Complaint, and requires Hunter to substantially skew the facts to try and
11 convince the Court of the validity of the argument.

12 1. Gang Indicated Settlement Discussions Broke Down and Hunter Was
13 Unresponsive For Extended Periods of Time—Gang Did Not Indicate
14 No Settlement Discussions Occurred.

15 The basis of Hunter's estoppel defense is Gang indicated that settlement discussions
16 "broke down" and Hunter became unresponsive for extended periods of time. Id. at 6:3-6. In
17 fact, Hunter quotes directly from Gang's Motion to Dismiss indicating: "The discussion
18 [resolution discussions] broke down over a year ago and Hunter became unresponsive for
19 extended periods of time." Id. Hunter then distorts the quoted language from the Motion to
20 Dismiss and insults the Court and Gang by indicating: "Thus, Gang asserted that no settlement
21 discussions had occurred during the period of at least August 2010-August 2011." Id. at 6:7-8.
22 It is obvious Gang never indicated "no settlement discussions had occurred". Id. at 6:3-6.
23 Rather, Gang indicated that the discussions "broke down" and Hunter "became unresponsive for
24 extended periods of time." Id. and Motion to Dismiss at 3:8-13. Thus, Hunter's argument of
25 two inconsistent positions is distorted. There is an obvious difference between what Gang
26 actually indicated in his Motion to Dismiss and the picture Hunter is attempting to paint. Thus,
27 the Court should disregard Hunter's estoppel argument and grant the Motion.

28 ⁴ See Exhibit A identifying the Brunzell factors and confirming the reasonableness of the attorney fees
and costs. Also, NRS 18.010.2(b) requires that the "court shall liberally construe the provisions of this
paragraph in favor of awarding attorney's fees in all appropriate situations." NRS 18.010.2(b) (emphasis
added).

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2. **Hunter's Own Opposition Demonstrates the Settlement Discussions Broke Down and that Hunter Was Unresponsive.**

Hunter's own Opposition supports the conclusion that settlement discussions broke down and Hunter became unresponsive for extended periods of time. Id. at 6:15-8:6. In support of the estoppel argument, Hunter sets forth 18 billing entries from Gang's counsel that span the time period August 2010 to August 2011. Id. Hunter believes these time entries show that settlement discussions were actually ongoing during the same time period Gang indicated they had broken down and Hunter was unresponsive for extended periods of time. Id. These handpicked billing entries are the best Hunter could compile and even they refute Hunter's estoppel claim, and support Gang's argument that the settlement discussions "broke down" and that Hunter became unresponsive for extended periods of time. Id.

The one year of handpicked time entries show three responses from Hunter to Gang's settlement inquiries. Id. Based on the time entries, Gang's counsel reviewed the three responses from Hunter on September 21, 2010, December 3, 2010, and August 1, 2011. Id. What Hunter fails to acknowledge is what the responses from Hunter actually indicated and what it took for Gang to obtain the responses. For example, Gang sent to Hunter settlement inquiries on September 22, 2010, September 29, 2010, October 28, 2010, and November 12, 2010, before Hunter's counsel responded on November 23, 2010,⁵ that "the Hunters have been traveling. i [sic] will reach out and hopefully get you an answer of some sort." See Hanseen Declaration at ¶ 5 attached as **Exhibit A**. Gang then sent further settlement inquiries on December 3, 2010, March 23, 2011, April 25, 2011, July 24, 2011, July 27, 2011, and August 1, 2011, before Hunter's counsel responded on August 2, 2011, "i [sic] am on vacation this week and will get with dick [sic] and maggie [sic] next week." Id. at ¶ 6.

It is obvious Hunter's handpicked billing entries are consistent with Gang's indication that the settlement discussions broke down and Hunter became unresponsive for extended periods of time. From September 2010 to August 2011 it took **10** settlement correspondences

⁵ Due to the Thanksgiving Holiday and a vacation, Gang's counsel did not substantively review the November 23 response until December 3.

1 from Gang to Hunter to get Hunter to respond twice—once indicating that the Hunters were
 2 traveling and the other indicating that Hunter’s counsel was on vacation. *Id.* at ¶¶ 5-6. Thus, if
 3 anything, the billing entries support Gang’s indication that the settlement discussions truly broke
 4 down and Hunter truly became unresponsive for extended periods of time. This, taken together
 5 with the fact that Gang never indicated “no settlement discussions occurred”, demonstrates the
 6 estoppel argument, based on the assertion that Gang took two inconsistent positions, is without
 7 merit. Thus, the Court should grant the Motion for Attorney Fees and Costs and award Gang
 8 \$19,833.50 in attorney fees and \$408.49 in costs.⁶

9
 10 **C. GANG IS ENTITLED TO ALL OF HIS ATTORNEY FEES, INCLUDING
 THE ATTORNEY FEES FOR DOCUMENTS THAT WERE NOT FILED.**

11 In a last ditch attempt to avoid an award of all of Gang’s attorney fees, Hunter asserts
 12 without any authority whatsoever that Gang is not entitled to attorney fees for the preparation of
 13 pleadings that Gang did not end up filing. *See* Hunter’s Opp’n at 8:17-9:22. Hunter takes issue
 14 with \$714 in attorney fees dedicated to preparing an Answer and Counterclaim. *Id.* at 9:1-9.
 15 What Hunter does not tell the Court is the entries contain work not related to the Answer and
 16 Counterclaim and that in late January 2010 Hunter demanded a response to the Complaint
 17 because Gang opposed Hunter’s request to Clark County for a variance to legalize the structure
 18 Hunter built within eight inches of Gang’s property line. **Exhibit A** at ¶ 7. After and in the
 19 midst of Gang’s counsel’s preparation of the Answer and Counterclaim, the parties began to
 20 discuss settlement, which obviated the immediate need to file the Answer and Counterclaim. *Id.*
 21 Nevertheless, the preparation of the Answer and Counterclaim was necessary and justified.

22 Gang’s counsel did not anticipate that settlement discussions would occur and make the
 23 preparation and subsequent filing of the Answer and Counterclaim not immediately necessary.
 24 *Id.* Rather, Gang’s counsel was responding to Hunter’s request for a response to the Complaint,
 25 which demand was the result of Gang’s objection to Hunter’s variance request. *Id.* Further, the
 26 test is not whether Gang filed the Answer and Complaint, but whether the \$714 for the

27
 28 ⁶ *See Exhibit A* identifying the *Brunzell* factors and confirming the reasonableness of the fees and costs.

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1 preparation of the Answer and Counterclaim and other work were reasonable and justified. See
2 Gang's Motion for Attorney Fees at 8:9-10:8. Certainly Gang's counsel was justified in
3 responding to a demand to respond to the Complaint by preparing an Answer and Counterclaim;
4 and, certainly \$714 to prepare an Answer and Counterclaim, as well as other work, is reasonable.
5 Id. Thus, Hunter's arguments are without merit and the Court should grant the Motion for
6 Attorney Fees and Costs awarding Gang \$19,833.50 in attorney fees and \$408.49 in costs.⁷

7 **D. HUNTER'S ATTEMPT TO REARGUE THE MOTION TO DISMISS IN**
8 **OPPOSITION TO THE MOTION FOR ATTORNEY FEES AND COSTS**
9 **IS NOT PERSUASIVE.**

10 In his Opposition, Hunter appears to take issue with the Court's granting of the Motion to
11 Dismiss and the related Order, and the possibility that the Court considered the merits of the
12 case. See Hunter's Opp'n at 2:11-12. In the event the Court considered the merits of the case, it
13 was completely within its discretion and did not err. There is no case law in Nevada precluding
14 district courts from considering the merits of cases when motions to dismiss for want of
15 prosecution are brought. Rather, just the opposite is true. The Nevada Supreme Court has held
16 repeatedly that district courts are completely justified in considering the merits of cases when
17 motions to dismiss for want of prosecution are brought. Volpert v. Popagna, 85 Nev. at 441, 456
18 P.2d at 850 (stating "If in fact the trial court did consider the merits of the action in exercising its
19 discretion this was not error."). Further, when a case has long been neglected, "an inference
20 arises that the case lacks merit . . ." Id.; see also Northern Illinois Corporation v. Miller, 78 Nev.
21 213, 217, 370 P.2d 955, 956 (1962) (stating it was not in error for the trial court to consider the
22 merits of the action in exercising its discretion and an inference arises that a case lacks merit
23 when it has long been neglected) (citations omitted). As a result, the Court was completely
24 within its scope of discretion to consider the merits, if it indeed did so, of the action in
25 conjunction with the Motion to Dismiss. Thus, Hunter's opposing arguments are not persuasive
26 and the Court should grant the Motion for Attorney Fees and Costs.

27 ⁷ See Exhibit A identifying the Brunzell factors and confirming the reasonableness of the fees and costs.
28

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1 **III. CONCLUSION.**

2 This case is the type of case the Legislature envisioned when it enacted NRS 18.010.2(b)
3 “to punish for and deter frivolous and vexatious claims and defenses because such claims and
4 defenses . . . increase the costs of engaging in business and providing professional services to the
5 public.” Hunter brought his Complaint without reasonable ground. Hunter never paid any
6 property taxes on the Gang Property, which is dispositive of his claims. Nevertheless, Hunter
7 attempted through his fatally flawed adverse possession claim to obtain approximately 8,000
8 square feet of the Gang Property for no cost. In other words, Hunter thought he would bully
9 Gang through this lawsuit into giving up the 8,000 square feet of land for free. Gang, however,
10 resisted and was successful in dismissing Hunter’s frivolous Complaint. Because Hunter
11 brought the Complaint without reasonable ground, Gang is entitled to an award of attorney fees.
12 Per statute, Gang is also entitled to costs. Thus, the Court should grant the Motion and award
13 Gang \$19,833.50 in attorney fees and \$408.49 in costs.

14 Dated this 5 day of January, 2012.

MARQUIS AURBACH COFFING

17 By 

18 Albert G. Marquis, Esq.
19 Nevada Bar No. 1919
20 Tye S. Hanseen, Esq.
21 Nevada Bar No. 10365
22 10001 Park Run Drive
23 Las Vegas, Nevada 89145
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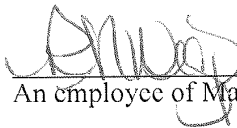
CERTIFICATE OF SERVICE

I hereby certify that the foregoing REPLY IN SUPPORT OF MOTION FOR ATTORNEY FEES AND COSTS was submitted electronically for filing and/or service with the Eighth Judicial District Court on the 5th day of January, 2012. Electronic service of the foregoing document shall be made in accordance with the E-Service List as follows:⁸

Mark E. Ferrario, Esq.
Greenberg Traurig, LLP
3773 Howard Hughes Parkway, Suite 400 North
Las Vegas, Nevada 89169
Email: ferrario@gtlaw.com
Attorneys for Richard A. Hunter

I further certify that I served a copy of this document by mailing a true and correct copy thereof, postage prepaid, addressed to:

N/A



An employee of Marquis Aurbach Coffing

⁸ Pursuant to EDCR 8.05(a), each party who submits an E-Filed document through the E-Filing System consents to electronic service pursuant to NRCP 5(b)(2)(D).

Exhibit A

IN THE SUPREME COURT OF THE STATE OF NEVADA

RICHARD A. HUNTER
APPELLANT,
vs.
WILLIAM GANG, ,
Respondent.

Supreme Court Case No. 59691
Dist. Court Case No. 2013-0348
Electronically Filed
Aug 14 2013 3:48 p.m.
Tracie K. Lindeman
Clerk of Supreme Court

APPELLANT'S APPENDIX – VOLUME I

Tami D. Cowden, Esq.
Nevada Bar No. 8994
Mark E. Ferrario, Esq.
Nevada Bar No. 1625
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ferrariom@gtlaw.com

Attorneys for Appellant Richard A. Hunter

APPENDIX TABLE OF CONTENTS
[Alphabetical Order]

VOL.	PAGES	DATE	DOCUMENT
I	APP0026-0028	August 30, 2011	Affidavit of Margueritte Hunter in Support of Plaintiff's Opposition to Motion to Dismiss
I	APP0181-0183	August 13, 2013	Amended Notice of Appeal
I	APP0054-0056	November 16, 2011	Case Appeal Statement
I	APP0142	January 9, 2012	Court minutes re: Order on Motion for Attorney's Fees
I	APP0036-0039	November 7, 2011	Findings of Fact, Conclusions of Law and Order Granting William Gang's Motion to Dismiss
I	APP0008-00009	December 4, 2009	Initial Appearance Fee Disclosure
I	APP0013	August 11, 2011	Initial Appearance Fee Disclosure
I	APP0059-0084	November 28, 2011	Motion for Attorney's Fees
I	APP0051-0053	November 16, 2011	Notice of Appeal
I	APP0040-0045	November 8, 2011	Notice of Entry of Findings of Fact, Conclusions of Law and Order Granting William Gang's Motion to Dismiss
I	APP0177-0180	August 13, 2013	Notice of Entry of Order Granting Motion for Attorney's Fees
I	APP0085-0086	November 30, 2011	Notice of Hearing
I	APP0019-0020	August 22, 2011	Notice of Hearing on William Gang's Motion to Dismiss
I	APP0057-0058	November 16, 2011	Notice of Posting Cost Bond
I	APP0087-0141	December 8, 2011	Opposition to Motion for Attorney's Fees
I	APP0021-0025	August 29, 2011	Opposition to William Gang's Motion to Dismiss
I	APP0176	January 26, 2012	Order Granting Motion for Attorney's Fees
I	APP0143-0175	January 5, 2012	Reply in Support of Motion for Attorney's Fees
I	APP0010-00012	December 14, 2009	Summons
I	APP0029-0035	September 13, 2011	Transcript of Proceedings on William Gang's Motion to Dismiss
I	APP0001-00007	December 4, 2009	Verified Complaint
I	APP0046-0050	November 15, 2011	Verified Memorandum of Costs and Fees
I	APP0014-0018	August 11, 2011	William Gang's Motion to Dismiss

APPENDIX TABLE OF CONTENTS
[Chronological Order]

VOL.	PAGES	DATE	DOCUMENT
I	APP0001-00007	December 4, 2009	Verified Complaint
I	APP0008-00009	December 4, 2009	Initial Appearance Fee Disclosure
I	APP0010-00012	December 14, 2009	Summons
I	APP0013	August 11, 2011	Initial Appearance Fee Disclosure
I	APP0014-0018	August 11, 2011	William Gang's Motion to Dismiss
I	APP0019-0020	August 22, 2011	Notice of Hearing on William Gang's Motion to Dismiss
I	APP0021-0025	August 29, 2011	Opposition to William Gang's Motion to Dismiss
I	APP0026-0028	August 30, 2011	Affidavit of Margueritte Hunter in Support of Plaintiff's Opposition to Motion to Dismiss
I	APP0029-0035	September 13, 2011	Transcript of Proceedings on William Gang's Motion to Dismiss
I	APP0036-0039	November 7, 2011	Findings of Fact, Conclusions of Law and Order Granting William Gang's Motion to Dismiss
I	APP0040-0045	November 8, 2011	Notice of Entry of Findings of Fact, Conclusions of Law and Order Granting William Gang's Motion to Dismiss
I	APP0046-0050	November 15, 2011	Verified Memorandum of Costs and Fees
I	APP0051-0053	November 16, 2011	Notice of Appeal
I	APP0054-0056	November 16, 2011	Case Appeal Statement
I	APP0057-0058	November 16, 2011	Notice of Posting Cost Bond
I	APP0059-0084	November 28, 2011	Motion for Attorney's Fees
I	APP0085-0086	November 30, 2011	Notice of Hearing
I	APP0087-0141	December 8, 2011	Opposition to Motion for Attorney's Fees
I	APP0142	January 9, 2012	Court minutes re: Order on Motion for Attorney's Fees
I	APP0143-0175	January 5, 2012	Reply in Support of Motion for Attorney's Fees
I	APP0176	January 26, 2012	Order Granting Motion for Attorney's Fees
I	APP0177-0180	August 13, 2013	Notice of Entry of Order Granting Motion for Attorney's Fees
I	APP0181-0183	August 13, 2013	Amended Notice of Appeal

COMP

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Attorneys for Plaintiff Richard A. Hunter

FILED
DEC 04 2009
Alvin D. Lavin
CLERK OF COURT

DISTRICT COURT

CLARK COUNTY, NEVADA

RICHARD A. HUNTER, an individual,
Plaintiff,

Case No. 09-A-

Dept No.

604877-C
VIII

v.

WILLIAM GANG, an individual, and DOE
DEFENDANTS 1 through 10, and ROE
CORPORATIONS 1 through 10, inclusive,

VERIFIED COMPLAINT

Arbitration Exemption
Matter Concerns Real Property
Injunctive Relief Requested

Defendants.

Plaintiff, Richard A. Hunter ("Plaintiff"), by and through his counsel, the law firm of Greenberg Traurig, LLP, hereby complains against Defendant William Gang (hereinafter "Gang" or "Defendant"), and alleges the following:

PARTIES

1. Plaintiff Richard A. Hunter is, and was at all times relevant hereto, a resident of Clark County, Nevada, and the owner of a certain parcel of real estate, commonly known as 9500 Pinion Dr., Clark County, Nevada, with an APN# of 174-20-402-004, which was recorded with

1 the Clark County Recorder's office on or around September of 1980 as instrument number
2 19910910/00588 (the "Property").¹

3 2. Defendant William Gang, upon information and belief, is a resident of Clark
4 County, Nevada, and the owner of a certain parcel of real estate with an APN# of 174-20-303-
5 002, which was recorded with the Clark County Recorder's office on or about March 6, 2002 as
6 instrument number 20020306/00520 (the "Defendant's Property"). Defendant's Property is a
7 vacant lot that shares a common boundary with the Property.

8 3. The true names and capacities, whether individual, corporate, associate, or
9 otherwise of Defendants DOE INDIVIDUALS 1 through 10 and ROE CORPORATIONS 1
10 through 10, including, but not limited to, employers, franchisors, agents, employees, or related to
11 persons or entities are not currently known to Plaintiff and therefore cannot yet be named herein,
12 and therefore Plaintiff sues said Defendants by such fictitious names. Plaintiff is informed and
13 believes, and on such basis alleges, that each of the Defendants designated as DOE
14 INDIVIDUALS 1 through 10 and ROE CORPORATIONS 1 through 10 is responsible in some
15 manner for the events and occurrences referred to in this Complaint, and/or owes money to
16 Plaintiff and/or may be affiliated with one of the other Defendants, and/or is the alter-ego of
17 Defendants. Plaintiff will seek leave of this Court to amend this Complaint and insert the true
18 names and capacities of DOE INDIVIDUALS 1 through 10 and ROE CORPORATIONS 1
19 through 10, when the same have been ascertained and to join said Defendants in this action.

20 COMMON ALLEGATIONS

21 4. On or around 1980, Plaintiff acquired and became owner of the Property.

22 5. On or around 1983, Plaintiff discussed with Defendant's predecessor in interest
23 that the flow of water was running onto Plaintiff's property such that it was causing flooding on
24 certain parts of the Property.

25 6. Due to the water flow Plaintiff on or around 1983, Plaintiff built a berm on Gang's
26 property.

27
28 ¹ The Clark County Recorder's office lists that the instrument was recorded in 1991, but recorder's website only lists documents that were recorded after 1991.

1 7. Until 2009, no one, including Gang or his predecessor-in-interest, objected to
2 building or existence of the berm.

3 8. The portion of Defendant's Property on which the berm is located (the "Disputed
4 Property") is on or near the boundaries of the parties' property.

5 9. The berm was essential to Plaintiff in order to prevent the natural flow of water
6 from flooding portions of Plaintiff's property and for continued use and enjoyment of the
7 Property.

8 10. The berm has existed on the Disputed Property for approximately 25 years.

9 11. In the 25 years in which the berm existed, Plaintiff never received any complaints
10 concerning the existence of the berm.

11 12. Prior to obtaining ownership to the Defendant's Property, upon information and
12 belief, Defendant was aware of the berm on the Disputed Property.

13 **FIRST CLAIM FOR RELIEF**

14 **(Quiet Title)**

15 13. Plaintiff restates and incorporates herein by reference the allegations contained in
16 the above and foregoing paragraphs.

17 14. In Nevada, actions in which parties with a competing interest in the same property
18 is governed by NRS §40.010.

19 15. The parties, each of them, by their claims and actions, have asserted an ownership
20 interest in the Disputed Property.

21 16. The Plaintiff is seeking a judicial determination that: Plaintiff is the rightful owner
22 of the Disputed Property, and that the Court quiet title to Disputed Property and extinguish any
23 ownership interest the Defendant may have in the Disputed Property in favor of the Plaintiff.

24 17. Plaintiff has been required to obtain legal counsel to prosecute this action, and is
25 entitled to an award of its attorneys' fees and costs incurred herein, both as special damages, and
26 pursuant to statutory and contractual provisions allowing for the recovery of such fees and costs.

27 ///

28 ///

SECOND CLAIM FOR RELIEF

(Injunctive Relief)

18. Plaintiff restates and incorporates herein by reference the allegations contained in the above and foregoing paragraphs.

19. Plaintiff and Defendant's predecessor in interest had an understanding that Plaintiff was permitted to build a berm on the Disputed Property.

20. Based on this understanding, Plaintiff built a berm and relied on the same in developing his property.

21. The understanding between Plaintiff and Defendant's predecessor in interest created an irrevocable license in favor of Plaintiff such that Plaintiff was permitted to use the Disputed Property.

22. Such irrevocable license was relied upon by Plaintiff and Plaintiff has incurred substantial expense in relying on Defendant's predecessor in interest.

23. Moreover, the continued use of the Disputed Property has created an easement on the Disputed Property either implied or by prescription.

24. As such, Plaintiff is entitled to rely on, and has relied on, the conduct of Defendant's predecessor in interest.

25. Defendant is bound and obligated to honor the irrevocable license and/or easement Plaintiff has obtained on the Disputed Property.

26. Defendant's attempt(s) to eject Plaintiff from the Disputed Property, and/or to revoke Plaintiff's irrevocable license or easement is improper and without justification.

27. Plaintiff requests that the Court enjoin Defendant from any and all attempts to prevent Plaintiff from use and enjoyment of the Disputed Property.

28. Plaintiff does not have an adequate remedy at law if Defendant is permitted to eject Plaintiff from the Disputed Property, and/or revoke the irrevocable license or easement Plaintiff possesses for his use and enjoyment of the Disputed Property.

29. Plaintiff requests that the Court enjoin Defendant from any and all attempts to prevent Plaintiff from use and enjoyment of the Disputed Property.

1 30. Plaintiff has been required to obtain legal counsel to prosecute this action, and is
2 entitled to an award of its attorneys' fees and costs incurred herein, both as special damages, and
3 pursuant to statutory and contractual provisions allowing for the recovery of such fees and costs.

4 **THIRD CLAIM FOR RELIEF**

5 **(Adverse Possession)**

6 31. Plaintiff restates and incorporates herein by reference the allegations contained in
7 the above and foregoing paragraphs.

8 32. Plaintiff has a hostile claim for title to the Disputed Property which is adverse to
9 Defendant's claim to the same property.

10 33. This is evidence by: (i) Plaintiff's continued use of the Disputed Property for over
11 15 years; (ii) such use of the Disputed Property was open and obvious for anyone to witness; and
12 (iii) such continued use of the Disputed Property was without Defendant's express permission..

13 34. Plaintiff has been required to obtain legal counsel to prosecute this action, and is
14 entitled to an award of its attorneys' fees and costs incurred herein, both as special damages, and
15 pursuant to statutory and contractual provisions allowing for the recovery of such fees and costs.

16 **FOURTH CLAIM FOR RELIEF**

17 **(Declaratory Relief)**

18 35. Plaintiff restates and incorporates herein by reference the allegations contained in
19 the above and foregoing paragraphs.

20 36. A dispute and actual controversy exists between the parties relative to the
21 ownership of the Disputed Property.

22 37. Plaintiff are entitled to declaration that either: (i) Plaintiff has adversely possessed
23 the Disputed Property, and therefore, is the owner of the Disputed Property; (ii) Defendant's
24 predecessor in interest granted an irrevocable license to enjoy use of the Disputed Property and
25 Defendant, through the actions of his predecessor in interest, is enjoined from interfering with that
26 irrevocable license; (iii) an easement has been created, through Defendant's predecessor in
27 interest, such that, Plaintiff is entitled to possession and use of the Disputed Property, and
28 Defendant is estopped from revoking the easement; or (iv) that a boundary disputed existed

1 between Plaintiff and Defendant's predecessor in interest, and that, Defendant's predecessor in
2 interest acquiesced to the boundary of the parties' respective properties, such that Plaintiff
3 took possession of the Disputed Property.

4 38. Plaintiff has been required to obtain legal counsel to prosecute this action, and is
5 entitled to an award of its attorneys' fees and costs incurred herein, both as special damages, and
6 pursuant to statutory and contractual provisions allowing for the recovery of such fees and costs.

7 WHEREFORE, Plaintiff prays for relief in favor of Plaintiff and against Defendants, as
8 follows.

- 9 1. That the Court quiet title to the Disputed Property;
10 2. For declaratory relief;
11 3. For injunctive relief;
12 4. For attorneys' fees and costs incurred herein, both pursuant to any contract, statute
13 or rule allowing for the same, and also as special damages incurred herein; and
14 5. For such other and further relief as this Court may deem just and proper.

15 DATED this 11th day of December, 2009.

16 GREENBERG TRAURIG, LLP

17
18 By: 

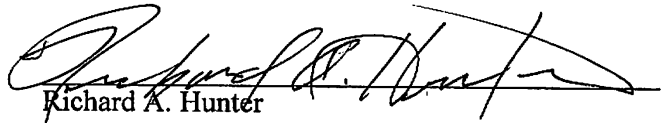
19 MARK E. FERRARIO, ESQ.
20 NEVADA BAR NO. 1625
21 LUIS A. AYON, ESQ.
22 NEVADA BAR NO. 9752
23 3773 Howard Hughes Parkway
24 Suite 400 North
25 Las Vegas, Nevada 89169
26 Telephone: (702) 792-3773
27 *Attorneys for Plaintiff Richard A. Hunter*
28

VERIFICATION

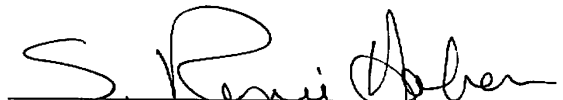
STATE OF NEVADA)
)ss
COUNTY OF CLARK)

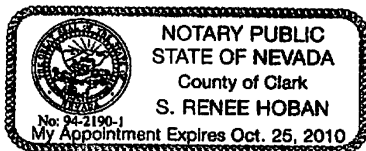
I, Richard A. Hunter, declare, under penalty of perjury, that the following statement is true.

I am the named Plaintiff in the above-entitled action. I have read the COMPLAINT and know of the contents therein. The same is true of my knowledge, except as to those matters therein stated on information and belief, and as to those matters, I believe them to be true.


Richard A. Hunter

SUBSCRIBED and SWORN to before me
this 4th day of December, 2009.


Notary Public in and for said County and State



1 **IAFD**

2 MARK E. FERRARIO, ESQ.

3 NEVADA BAR NO. 1625

4 LUIS A. AYON, ESQ.

5 NEVADA BAR NO. 9752

6 GREENBERG TRAURIG, LLP

7 3773 Howard Hughes Parkway, Suite 400 North

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9 Telephone: (702) 792-3773

10 Facsimile: (702) 792-9002

11 Email: ferrariom@gtlaw.com

12 ayonl@gtlaw.com

13 Attorneys for Plaintiff Richard A. Hunter

14 **DISTRICT COURT**

15 **CLARK COUNTY, NEVADA**

16 RICHARD A. HUNTER, an individual,

17 Plaintiff,

18 v.

19 WILLIAM GANG, an individual, and DOE
20 DEFENDANTS 1 through 10, and ROE
21 CORPORATIONS 1 through 10, inclusive,

22 Defendants.

Case No. 09-A-

Dept No.

**INITIAL APPEARANCE FEE
DISCLOSURE PURSUANT TO NRS
CHAPTER 19**

23 Pursuant to NRS Chapter 19, as amended by Assembly Bill 65, filing fees are submitted
24 for parties appearing in the above-entitled action as indicated below:

25 ///

26 ///

27 ///

28 ///

///

///

///

FILED
DEC 04 2009
Clerk of Court

604877-C
VIII

Greenberg Traurig LLP
3773 Howard Hughes Parkway, Suite 400 North
Las Vegas, Nevada 89169
(702) 792-3773
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RICHARD A. HUNTER

☒ \$270.00

TOTAL:

\$270.00

DATED this 7th day of December, 2009.

GREENBERG TRAURIG, LLP

By: 

MARK E. FERRARIO, ESQ.

NEVADA BAR NO. 1625

LUIS A. AYON, ESQ.

NEVADA BAR NO. 9752

3773 Howard Hughes Parkway

Suite 400 North

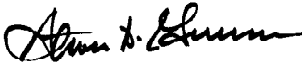
Las Vegas, Nevada 89169

Telephone: (702) 792-3773

Attorneys for Plaintiff Richard A. Hunter

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CLERK OF THE COURT

SUMM

MARK E. FERRARIO, ESQ.

NEVADA BAR NO. 1625

LUIS A. AYON, ESQ.

NEVADA BAR NO. 9752

GREENBERG TRAURIG, LLP

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Attorneys for Plaintiff Richard A. Hunter

DISTRICT COURT

CLARK COUNTY, NEVADA

RICHARD A. HUNTER, an individual,

Plaintiff,

v.

WILLIAM GANG, an individual, and DOE
DEFENDANTS 1 through 10, and ROE
CORPORATIONS 1 through 10, inclusive,

Defendants.

Case No. 09-A-

Dept No.

SUMMONS- CIVIL

SUMMONS

**NOTICE! YOU HAVE BEEN SUED, THE COURT MAY DECIDE AGAINST YOU
WITHOUT YOUR BEING HEARD UNLESS YOU RESPOND WITHIN 20 DAYS,
READY THE INFORMATION BELOW.**

TO THE DEFENDANT(S): WILLIAM GANG, a civil complaint has been filed by the
Plaintiff against you for relief set forth in the complaint requesting a Judgment against you.

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:

Greenberg Traurig LLP
3773 Howard Hughes Parkway, Suite 400 North
Las Vegas, Nevada 89169
(702) 792-3773
(702) 792-8202 (fax)

1 a. File with the Clerk of this Court, whose address is shown below, a formal
2 written response to the Complaint in accordance with the rules of the Court, with the
3 appropriate filing fee.

4 b. Serve a copy of your response upon the attorney whose name and address is
5 listed below.

6 2. Unless you respond, your default will be entered upon application of Plaintiff(s)
7 and this Court may enter a judgment against you for the relief demanded in the Complaint, which
8 could result in the taking of money or property or other relief requested in the Complaint.

9 3. If you intend to seek the advice of an attorney in this matter, you should do so
10 promptly so that your response may be filed on time.

11 4. The State of Nevada, its political subdivisions, agencies, officers, employees,
12 board members, commission members and legislators, each have 45 days after service of this
13 summons within which to file an answer or other responsive pleading to the complaint.

14 CLERK OF THE COURT
15 By: Alvame Demery Date: 11/27/09
16 Deputy Clerk
17 Regional Justice Center
18 200 Lewis Avenue
19 Las Vegas, NV 89155

20 Submitted by:

21 **GREENBERG TRAURIG, LLP**

22 By: [Signature]
23 MARK E. FERRARIO, ESQ.
24 NEVADA BAR NO. 1625
25 LUIS A. AYON, ESQ.
26 NEVADA BAR NO. 9752
27 3773 Howard Hughes Parkway
28 Suite 400 North
Las Vegas, Nevada 89169
Telephone: (702) 792-3773
Attorneys for Plaintiff Richard A. Hunter

AFFIDAVIT OF SERVICE

State of Nevada

County of Clark

District Court

Case Number: A-09-604877-C DEPT. VIII Court Date: 4/3/2010

Plaintiff:
Richard A. Hunter

vs.

Defendant:
William Gang

Received by AM:PM Legal Solutions on the 7th day of December, 2009 at 2:50 pm to be served on William Gang, 9216 Forest Manor Ct., Las Vegas, NV 89134.

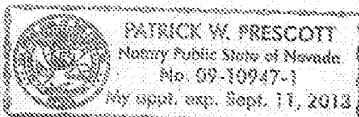
I, Stan McGrue, being duly sworn, depose and say that on the 8th day of December, 2009 at 7:24 pm, I:

at all times herein was and is a citizen of the United States, over 18 years of age, not a party to or interested in the proceeding in which this affidavit is made and personally served the within named person with a true and correct copy of the **Summons and Verified Complaint** on the date and hour endorsed thereon by me, at the aforementioned address, pursuant to Nevada Statutes.

Description of Person Served: Age: 50+, Sex: M, Race/Skin Color: Caucasian, Height: 5'7", Weight: 145, Hair: Black/Gray, Glasses: N

Subscribed and Sworn to me on the 9th day of
December, 2009.


NOTARY PUBLIC




Stan McGrue
NV License 1790

AM:PM Legal Solutions
520 S. 7th St., Ste. B
Las Vegas, NV 89101
(702) 385-2676

Our Job Serial Number: 2009004687
Ref: 120812.010100

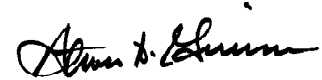
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APP0012

MARQUIS AURBACH COFFING

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Las Vegas, Nevada 89145
(702) 382-0711 FAX: (702) 382-5816

Electronically Filed
08/11/2011 10:30:54 AM



CLERK OF THE COURT

1 **Marquis Aurbach Coffing**
2 ALBERT G. MARQUIS, ESQ.
3 Nevada Bar No. 1919
4 TYE S. HANSEEN, ESQ.
5 Nevada Bar No. 10365
6 10001 Park Run Drive
7 Las Vegas, Nevada 89145
8 Telephone: (702) 382-0711
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10 amarquis@maclaw.com
11 thanseen@maclaw.com
12 Attorneys for William Gang

13 **DISTRICT COURT**
14 **CLARK COUNTY, NEVADA**

15 RICHARD A. HUNTER, an individual,

16 Plaintiff,

17 vs.

18 WILLIAM GANG, an individual, and DOE
19 DEFENDANTS 1 through 10, and ROE
20 CORPORATIONS 1 through 10, inclusive,

21 Defendants.

Case No.: A-09-604877-C
Dept. No.: VIII

22 **INITIAL APPEARANCE FEE DISCLOSURE**

23 Pursuant to NRS Chapter 19, as amended by Senate Bill 106, filing fees are submitted for
24 parties appearing in the above-entitled action as indicated below:

25 WILLIAM GANG, \$223.00

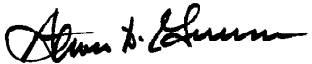
26 **TOTAL REMITTED \$223.00**

27 Dated this 11th day of August, 2011.

28 MARQUIS AURBACH COFFING

By /s/ Tye S. Hanseen
Albert G. Marquis, Esq.
Nevada Bar No. 1919
Tye S. Hanseen, Esq.
Nevada Bar No. 10365
10001 Park Run Drive
Las Vegas, Nevada 89145
Attorneys for William Gang

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CLERK OF THE COURT

Marquis Aurbach Coffing
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thanseen@maclaw.com
Attorneys for William Gang

DISTRICT COURT

CLARK COUNTY, NEVADA

RICHARD A. HUNTER, an individual,

Plaintiff,

Case No.: A-09-604877-C
Dept. No.: VIII

vs.

WILLIAM GANG, an individual, and DOE
DEFENDANTS 1 through 10, and ROE
CORPORATIONS 1 through 10, inclusive,

Defendants.

WILLIAM GANG'S MOTION TO DISMISS

Defendant William Gang ("Gang"), by and through his attorneys of record, Marquis Aurbach Coffing, hereby files his Motion to Dismiss. This Motion is based on the following

///

///

///

///

MARQUIS AURBACH COFFING

10001 Park Run Drive
Las Vegas, Nevada 89145
(702) 382-0711 FAX: (702) 382-5816

1 Memorandum of Points and Authorities, the pleadings and papers on file herein, and any oral
2 argument by counsel permitted at the hearing on this matter.

3 Dated this 11 day of August, 2011.

MARQUIS AURBACH COFFING

6 By 

7 Albert G. Marquis, Esq.
8 Nevada Bar No. 1919
9 Tye S. Hanseen, Esq.
10 Nevada Bar No. 10365
11 10001 Park Run Drive
12 Las Vegas, Nevada 89145
13 Attorneys for William Gang

14 **NOTICE OF MOTION**

15 You and each of you, will please take notice that the foregoing MOTION TO DISMISS
16 will come on regularly for hearing on the 13 day of Sept, 2011, at the hour of 8:00 AM
17 8:00 AM, or as soon thereafter as counsel may be heard, in Department VIII in the above-
18 referenced court.

19 Dated this 11 day of August, 2011.

MARQUIS AURBACH COFFING

20 By 

21 Albert G. Marquis, Esq.
22 Nevada Bar No. 1919
23 Tye S. Hanseen, Esq.
24 Nevada Bar No. 10365
25 10001 Park Run Drive
26 Las Vegas, Nevada 89145
27 Attorneys for William Gang
28

MARQUIS AURBACH COFFING

10001 Park Run Drive
Las Vegas, Nevada 89145
(702) 382-0711 FAX: (702) 382-5816

MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

Defendant Gang respectfully requests that this Court dismiss Richard Hunter's ("Hunter") Complaint as a result of his failure to prosecute this action. Hunter has failed to diligently pursue his claims, or request the matter be brought to trial. Hunter's lack of action and effort justifies dismissal with prejudice.

II. STATEMENT OF FACTS

On December 4, 2009, Hunter filed his Complaint alleging claims for quiet title, injunctive relief, adverse possession, and declaratory relief.¹ Hunter gave Gang an extension to respond to the Complaint while the parties discussed a potential resolution. The discussions, however, broke down over a year ago and Hunter became unresponsive for extended periods of time. As a result, the matter is now going on two years without any occurrences.

III. LEGAL ARGUMENT

Gang respectfully requests the dismissal of Hunter's Complaint for his failure to prosecute. "When a case has long been neglected and no adequate excuse is offered for the neglect, an inference arises that the case lacks merit . . ." Hassett v. St. Mary's Hospital Ass'n, 86 Nev. 900, 906, 478 P.2d 154, 158 (1970). The element necessary to justify dismissal for failure to prosecute is lack of diligence on the part of the plaintiff. Moore v. Cherry, 90 Nev. 390, 395, 528 P.2d 1018, 1022 (1974). The duty rests upon the plaintiff to use diligence at every stage of the proceeding to expedite the case to final determination. Thran v. First Judicial District Court, 79 Nev. 176, 181, 380 P.2d 297, 300 (1963). The Defendant on the other hand, is required only to meet the Plaintiff step by step as the latter proceeds. Id.

Here, given Hunter's lack of activity, dismissal is proper. This matter is now going on two years. Gang has attempted frequent contact with Hunter throughout the pendency of the Complaint. Specifically, Gang has made multiple attempts to get Hunter to resolve the matter or

¹ See Complaint on file herein.

MARQUIS AURBACH COFFING

10001 Park Run Drive
Las Vegas, Nevada 89145
(702) 382-0711 FAX: (702) 382-5316

1 move forward with litigation. Hunter, however, has done neither.² Hunter has failed to
2 diligently pursue the claims as well as request the matter be brought to trial. Hunter's lack of
3 action and effort justifies dismissal with prejudice. Moreover, based on the lack of prosecution,
4 the Court is well within the use of its sound discretion to dismiss Hunter's claims for failure to
5 take any reasonable steps to prosecute this action.

6 **IV. CONCLUSION**

7 Gang respectfully requests the Court take action against Hunter's failure to make strides
8 toward pursuing his claims. Hunter filed his claims over a year and a half ago and nothing has
9 happened. As a result, Hunter's lack of action warrants dismissal.

10 Dated this 11 day of August, 2011.

11 MARQUIS AURBACH COFFING

12
13 
14 By Albert G. Marquis, Esq.

15 Nevada Bar No. 1919
16 Tye S. Hanseen, Esq.
17 Nevada Bar No. 10365
18 10001 Park Run Drive
19 Las Vegas, Nevada 89145
20 Attorneys for William Gang
21
22
23
24
25
26

27 ² Gang understands that Hunter may be experiencing some health concerns, but Gang has no independent
28 knowledge of any health concerns. If Hunter is experiencing health concerns, Gang empathizes with him.

MARQUIS AURBACH COFFING

10001 Park Run Drive
Las Vegas, Nevada 89145
(702) 382-0711 FAX: (702) 382-5816

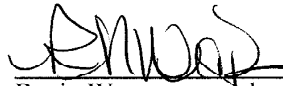
CERTIFICATE OF SERVICE

I hereby certify that the foregoing **WILLIAM GANG'S MOTION TO DISMISS** was submitted electronically for filing and/or service with the Eighth Judicial District Court on the 14th day of August, 2011. Electronic service of the foregoing document shall be made in accordance with the E-Service List as follows:³

N/A

I further certify that I served a copy of this document by mailing a true and correct copy thereof, postage prepaid, addressed to:

Mark E. Ferrario, Esq.
Luis A. Lyon, Esq.
Greenberg Traurig, LLP
3773 Howard Hughes Parkway, Suite 400 North
Las Vegas, Nevada 89169
Attorneys for Richard A. Hunter



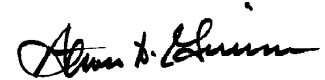
Rosie Wesp, an employee of
Marquis Aurbach Coffing

³ Pursuant to EDCR 8.05(a), each party who submits an E-Filed document through the E-Filing System consents to electronic service pursuant to NRCP 5(b)(2)(D).

MARQUIS AURBACH COFFING

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CLERK OF THE COURT

1 **Marquis Aurbach Coffing**
2 ALBERT G. MARQUIS, ESQ.
3 Nevada Bar No. 1919
4 TYE S. HANSEEN, ESQ.
5 Nevada Bar No. 10365
6 10001 Park Run Drive
7 Las Vegas, Nevada 89145
8 Telephone: (702) 382-0711
9 Facsimile: (702) 382-5816
10 amarquis@maclaw.com
11 thanseen@maclaw.com
12 Attorneys for William Gang

13 **DISTRICT COURT**
14 **CLARK COUNTY, NEVADA**

15 RICHARD A. HUNTER, an individual,
16
17 Plaintiff,

Case No.: A-09-604877-C
Dept. No.: VIII

18 vs.

19 WILLIAM GANG, an individual, and DOE
20 DEFENDANTS 1 through 10, and ROE
21 CORPORATIONS 1 through 10, inclusive,
22 Defendants.

23 **NOTICE OF HEARING ON WILLIAM**
24 **GANG'S MOTION TO DISMISS**

25 Notice is hereby given that Defendant, William Gang filed his Motion to Dismiss on the
26 11th day of August, 2011, and that the hearing on said Motion has been set for September 13,
27 2011 at 8:00 a.m., or as soon thereafter as counsel may be heard, in Department 8 of the above-
28 referenced court.

Dated this 16 day of August, 2011.

MARQUIS AURBACH COFFING

By 

Albert G. Marquis, Esq.
Nevada Bar No. 1919
Tye S. Hanseen, Esq.
Nevada Bar No. 10365
10001 Park Run Drive
Las Vegas, Nevada 89145
Attorneys for William Gang

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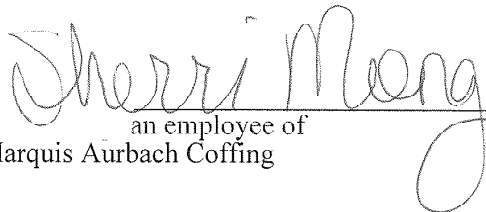
CERTIFICATE OF SERVICE

I hereby certify that the foregoing **NOTICE OF HEARING ON WILLIAM GANG'S MOTION TO DISMISS** was submitted electronically for filing and/or service with the Eighth Judicial District Court on the 22nd day of August, 2011. Electronic service of the foregoing document shall be made in accordance with the E-Service List as follows:¹

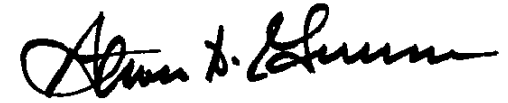
N/A

I further certify that I served a copy of this document by mailing a true and correct copy thereof, postage prepaid, addressed to:

Mark E. Ferrario, Esq.
Luis A. Lyon, Esq.
Greenberg Traurig, LLP
3773 Howard Hughes Parkway, Suite 400 North
Las Vegas, Nevada 89169
Attorneys for Richard A. Hunter


an employee of
Marquis Aurbach Coffing

¹ Pursuant to EDCR 8.05(a), each party who submits an E-Filed document through the E-Filing System consents to electronic service pursuant to NRCP 5(b)(2)(D).



CLERK OF THE COURT

OPP

MARK E. FERRARIO, ESQ.
Nevada Bar No. 1625
LESLIE S. GODFREY, ESQ.
Nevada Bar No. 10229
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3773 Howard Hughes Parkway, Suite 400 North
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Telephone: (702) 792-3773
Facsimile: (702) 792-9002
Email: ferrariom@gtlaw.com
godfrey@gtlaw.com
Attorneys for Plaintiff Richard A. Hunter

DISTRICT COURT

CLARK COUNTY, NEVADA

RICHARD A. HUNTER, an individual,

Plaintiff,

v.

WILLIAM GANG, an individual, and DOE
DEFENDANTS 1 through 10, and ROE
CORPORATIONS 1 through 10, inclusive,

Defendants.

Case No. A-09-604877-C

Dept No. VIII

**OPPOSITION TO MOTION TO
DISMISS**

Date of Hearing: Sept. 13, 2011

Time of Hearing: 8:00 a.m.

Plaintiff, Richard A. Hunter ("Plaintiff"), by and through his counsel, the law firm of
Greenberg Traurig, LLP, hereby submits this Opposition to the Motion to Dismiss ("Opposition")
filed by Defendant William Gang ("Defendant").

///

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1 This Opposition is supported by the following memorandum of points and authorities, the
2 pleadings and papers on file herein and any oral argument the Court may entertain at the hearing
3 on the motion.

4 DATED this 29th day of August, 2011.

5 **GREENBERG TRAURIG, LLP**

6 By: 
7

8 MARK E. FERRARIO, ESQ.

9 Nevada Bar No. 1625

10 LESLIE S. GODFREY, ESQ.

11 Nevada Bar No. 10229

12 3773 Howard Hughes Parkway

13 Suite 400 North

14 Las Vegas, Nevada 89169

15 Telephone: (702) 792-3773

16 *Attorneys for Plaintiff Richard A. Hunter*

17 **MEMORANDUM OF POINTS AND AUTHORITIES**

18 **I. INTRODUCTION AND SUMMARY OF FACTS.**

19 This case involves a dispute over a portion of land upon which Plaintiff built a berm to
20 prevent the natural flow of water onto his property more than twenty-five years ago. On or about
21 December 9, 2009, Plaintiff filed his complaint against Defendant for quiet title, injunctive relief,
22 declaratory relief, and adverse possession regarding this disputed portion of property. *See*
23 *Complaint* on file herein. Since Plaintiff filed his complaint, he has been suffering from serious
24 medical conditions that interfere with his ability to focus on this litigation, including heart
25 problems, a series of mini strokes that temporarily left Plaintiff without eye sight, pneumonia, and
26 most recently he has had difficulty controlling dangerously high blood pressure. *See the Affidavit*
27 *of Margueritte Hunter* filed herewith.

28 Despite knowing of these hardships, Defendant now requests that this Court dismiss
Plaintiff's Complaint. In his Motion to Dismiss for Failure to Prosecute, Defendant cites to
various authorities indicating that the Court has discretion to dismiss a matter if a Plaintiff does
not diligently pursue the matter. Defendant fails to cite language within these authorities which
clearly indicate that such a motion is only proper after the passing of two years. Two years has

1 not yet passed in this case, and as a result, Defendant's motion is premature. Nonetheless, even if
2 the Court considers Defendants' premature motion, any delay that has occurred as a result of
3 Plaintiff's health condition should be excused by this Court. Based on these two issues, Plaintiff
4 requests that this Court deny Defendant's Motion to Dismiss.

5 II. LEGAL ARGUMENT

6 As a general policy, Courts prefer that a matter be tried on its merits. *See Hassett v. St.*
7 *Mary's Hospital Ass'n*, 86 Nev. 900 (1970). Plaintiff acknowledges that when a matter is not
8 pursued diligently, the Court has discretion to dismiss it. *Id.* The Court should not dismiss this
9 matter for two reasons: first, Defendant is not entitled to request that the matter be dismissed, as
10 two years have not passed since the matter was filed, and second, Plaintiff's delay is a result of
11 excusable neglect resulting from serious ongoing health problems.

12 Nevada Rule of Civil Procedure 41(e) provides in pertinent part, "[t]he Court may in its
13 discretion dismiss any action for want of prosecution on motion of any party or on the court's
14 own motion and after due notice to the parties, whenever plaintiff has failed for 2 years after
15 action is filed to bring such action to trial." (emphasis added). Curiously, Defendant cites several
16 Nevada cases without any mention of the two-year threshold under the rule. *See Motion*. Further,
17 the cases cited by Defendant are distinguishable from the instant case in that they involve
18 situations where the complaint was filed more than two years prior to the filing of the motion to
19 dismiss. *See Hassett v. St. Mary's Hospital Ass'n*, 86 Nev. 900 (1970) (affirming district court's
20 dismissal where defendant was not served with process for more than two years after filing of
21 complaint); *see also Thran v. First Judicial District Court In and For Ormsby County*, 79 Nev.
22 176 (1963) (affirming dismissal of complaint where motion to dismiss filed nearly four years after
23 the filing of the complaint). Finally, *Moore v. Cherry*, 90 Nev. 390 (1974) is distinguishable in
24 that *Moore* involved a case that had actually been set for trial almost two years after the complaint
25 was filed. However, in *Moore*, neither the plaintiffs nor their attorney appeared on the date of
26 trial. As a result, the district court entered a judgment dismissing the case with prejudice under
27 NRCP 41(b) and the Nevada Supreme Court affirmed. In this case, Plaintiff has not let this case
28 languish as many as four full years, nor has Plaintiff engaged in a conscious disregard of

1 scheduling orders issued by this Court. The Complaint was filed on December 9, 2009, two years
2 full years have not passed. Accordingly, this motion is not ripe, and the Court should deny
3 Defendant's request on that basis alone.

4 Nonetheless, even if two years had passed, the Court should deny Defendant's request.
5 The Court has the discretion to allow a Plaintiff time beyond the two year limitation, if the
6 Plaintiff can demonstrate excusable neglect. *Monroe Ltd. v. Central Tel. Co.*, 91 Nev. 450, 538
7 P.2d 152 (1975). Unfortunately, Plaintiff has been suffering from serious medical conditions that
8 have interfered with his ability to focus on this litigation, including heart problems, a series of
9 mini strokes that temporarily left Plaintiff without eye sight, pneumonia, and most recently he has
10 had difficulty controlling dangerously high blood pressure. See the Affidavit of Margueritte
11 Hunter filed herewith. These ailments have made it impossible for Plaintiff pursue this matter
12 until his health improves. Plaintiff has not intentionally neglected this case, but rather, has been
13 trying to focus on regaining his health. As such, Plaintiff respectfully requests that the Court
14 exercise its discretion to excuse Plaintiff's failure to set the case for trial to date and allow
15 Plaintiff to take the necessary steps to either recover or appoint an appropriate representative to
16 pursue this matter on his behalf.

17 **III. CONCLUSION**

18 Based on the foregoing, Plaintiff respectfully requests that this Court deny Defendant's
19 motion to dismiss.

20 DATED this 29th day of August, 2011.

21 **GREENBERG TRAURIG, LLP**

22 By: Leslie S. Godfrey
23 MARK E. FERRARIO, ESQ.
24 Nevada Bar No. 1625
25 LESLIE S. GODFREY, ESQ.
26 Nevada Bar No. 10229
27 3773 Howard Hughes Parkway
28 Suite 400 North
Las Vegas, Nevada 89169
Telephone: (702) 792-3773
Attorneys for Plaintiff Richard A. Hunter

CERTIFICATE OF SERVICE

I hereby certify pursuant to N.R.C.P 5 that I served the forgoing **Opposition to Motion to**

Dismiss on:

Albert G. Marquis
Tye Hanseen
Marquis Aurbach Coffing
10001 Park Run Drive
Las Vegas, NV 89145

by causing a full, true, and correct copy thereof to be sent by the following indicated method

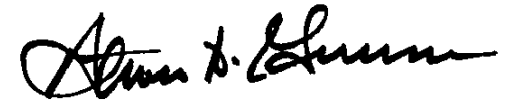
or methods, on the date set forth below:

- ☒ by mailing in a sealed, first class postage-prepaid envelop, addressed to the last-known office address of the attorney, and deposited with the United States Postal Service in Las Vegas, Nevada.
- ☐ by hand delivery.
- ☐ by sending via overnight courier in a sealed envelope.
- ☐ by faxing to the attorney at the fax number that is the last-known fax number.
- ☐ by electronic mail to the last known e-mail address.

DATED this 29th day of August, 2011.


An employee of Greenberg Traurig, LLP

Greenberg Traurig LLP
3773 Howard Hughes Parkway, Suite 400 North
Las Vegas, Nevada 89169
(702) 792-3773
(702) 792-9602 (fax)



CLERK OF THE COURT

AFFD

MARK E. FERRARIO, ESQ.
Nevada Bar No. 1625
LESLIE S. GODFREY, ESQ.
Nevada Bar No. 10229
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godfrey1@gtlaw.com
Attorneys for Plaintiff Richard A. Hunter

DISTRICT COURT

CLARK COUNTY, NEVADA

RICHARD A. HUNTER, an individual,

Plaintiff,

v.

WILLIAM GANG, an individual, and DOE
DEFENDANTS 1 through 10, and ROE
CORPORATIONS 1 through 10, inclusive,

Defendants.

Case No. A-09-604877-C

Dept No. VIII

**AFFIDAVIT OF MARGUERITTE
HUNTER IN SUPPORT OF
PLAINTIFF'S OPPOSITION TO
MOTION TO DISMISS**

Date of Hearing: Sept. 13, 2011

Time of Hearing: 8:00 a.m.

STATE OF NEVADA)
) ss.
COUNTY OF CLARK)

I, MARGUERITTE HUNTER, being first duly sworn, under penalty of perjury, deposes
and states:

1. I am over 21 years of age and I am competent to testify to the matters stated herein
based upon personal knowledge, except for those matters stated upon information and belief, and
to those matters, I believe them to be true.

2. This Affidavit is made in support of Plaintiff's Opposition to Defendant's Motion
to Dismiss for Failure to Prosecute.

Greenberg Traurig LLP
3773 Howard Hughes Parkway, Suite 400 North
Las Vegas, Nevada 89169
(702) 792-3773
(702) 792-9002 (fax)

1 3. I have been informed and believe thereon that the Complaint in this matter was
2 filed on December 4, 2009.

3 4. I am the spouse of Plaintiff, Richard Hunter.

4 5. Since early 2009, Mr. Hunter has been suffering from a series of health related
5 problems, including heart problems, a series of mini strokes that resulted in the temporary loss of
6 eyesight, pneumonia, and most recently, Mr. Hunter and his physicians are struggling to control
7 dangerously high blood pressure.

8 6. Mr. Hunter has been attending to his health, and is currently unable to focus his
9 efforts on litigating this case.

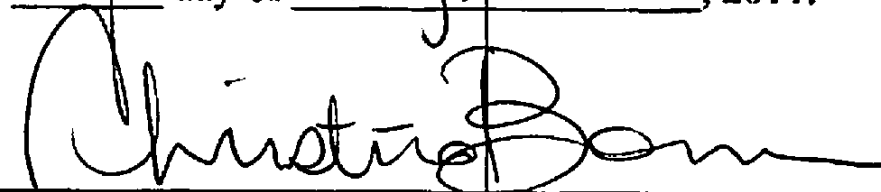
10 7. Plaintiff does not intend to inappropriately delay or hinder the case at bar.

11 FURTHER YOUR AFFIANT SAYETH NAUGHT.

12 
13 MARGUERITE HUNTER

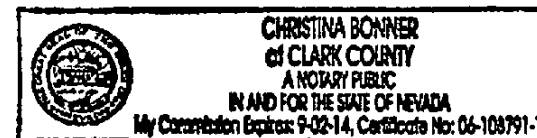
14
15 SUBSCRIBED AND SWORN BEFORE ME this

16 29th day of August, 2011.

17 

18
19 NOTARY PUBLIC in and for said County and State

20 My Commission Expires: 9/2/2014



CERTIFICATE OF SERVICE

I hereby certify pursuant to N.R.C.P 5 that I served the forgoing **AFFIDAVIT OF MARGUERITTE HUNTER IN SUPPORT OF PLAINTIFF'S OPPOSITION TO MOTION TO DISMISS** on:

Albert G. Marquis
Tye Hanseen
Marquis Aurbach Coffing
10001 Park Run Drive
Las Vegas, NV 89145

by causing a full, true, and correct copy thereof to be sent by the following indicated method

or methods, on the date set forth below:

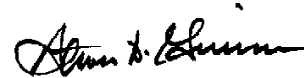
- ☒ by mailing in a sealed, first class postage-prepaid envelop, addressed to the last-known office address of the attorney, and deposited with the United States Postal Service in Las Vegas, Nevada.
- ☐ by hand delivery.
- ☐ by sending via overnight courier in a sealed envelope.
- ☐ by faxing to the attorney at the fax number that is the last-known fax number.
- ☐ by electronic mail to the last known e-mail address.

DATED this 20th day of August, 2011.

Valerie Larsen
An employee of Greenberg Traurig, LLP

Greenberg Traurig LLP
3773 Howard Hughes Parkway, Suite 400 North
Las Vegas, Nevada 89169
(702) 792-3773
(702) 792-9332 (fax)

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CLERK OF THE COURT

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DISTRICT COURT
CLARK COUNTY, NEVADA

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8

RICHARD HUNTER,

9

Plaintiff,

CASE NO. A604877

10

vs.

DEPT. VIII

11

12

WILLIAM GANG,

13

Defendant.

14

BEFORE THE HONORABLE DOUGLAS E. SMITH, DISTRICT COURT JUDGE
TUESDAY, SEPTEMBER 13, 2011

15

16

**TRANSCRIPT OF PROCEEDINGS
WILLIAM GANG'S MOTION TO DISMISS**

17

18

APPEARANCES:

19

For the Plaintiff:

MARK E. FERRARIO, ESQ.

20

For the Defendant:

TYE S. HANSEEN, ESQ.

21

22

23

RECORDED BY: JILL JACOBY, COURT RECORDER

RECEIVED
OCT 12 2011

CLERK OF THE COURT

1 TUESDAY, SEPTEMBER 13, 2011 AT 8:15 A.M.

2
3 MR. HANSEEN: Good morning, Your Honor, Tye Hanseen of Marquis
4 Aurbach Coffing on behalf of Defendant William Gang. This is page 5.

5 THE COURT: Okay.

6 MR. FERRARIO: Mark Ferrario on behalf of the plaintiff, Your Honor.

7 MR. HANSEEN: Your Honor, first of all, we are very sympathetic to
8 Mr. Hunter's medical conditions, we are aware of those, and we wish him nothing
9 but well.

10 As to the motion pending before the Court, this has to do with some
11 property that is up in Mountain Springs which is located off of Highway 160 about
12 halfway in between Las Vegas and Pahrump.

13 It all arose, Mr. Hunter has about 2.5 acres up there, Mr. Gang has
14 about 20 acres. Mr. Hunter built within about six inches of his property line, literally
15 six inches. Two years ago, he tried to sell the property and the potential buyer
16 realized that hey, there might be an issue here, you built within six inches of the
17 property line and you've landscaped your backyard on Mr. Gang's property. So the
18 deal fell through with Mr. Hunter. So what Mr. Hunter did, of course, was then turn
19 around and sue Mr. Gang to try to secure what was literally Mr. Gang's property for
20 his backyard. They tried to make a deal, it didn't work out. We're now going on two
21 years since the case started and here we sit, still nothing has happened.

22 This is not Mr. Hunter's first time around doing something like this. He
23 landscaped on Forest Service property in the same place, the Forest Service made
24 him take it out. He built a building on Forest Service property, Forest Service made
25 him take it out. He had an illegal easement up there which has now been

1 eliminated. So this is a continuing pattern where he goes up there and tries to
2 amass property that is beyond his own boundaries.

3 Now, the current situation --

4 THE COURT: Are you saying Mr. Gang doesn't have the power of the Forest
5 Service?

6 MR. HANSEEN: No.

7 THE COURT: Okay.

8 MR. HANSEEN: No, I did not say -- well --

9 THE COURT: He doesn't, trust me.

10 MR. HANSEEN: Well, I wish that Mr. Gang could go up there and walk up
11 there with the authority and say: Hey, wipe this stuff out. But it hasn't happened.

12 So we've been up here two years. Even during this lawsuit, about
13 halfway in between, you know, six or eight months after it was filed, Mr. Hunter even
14 went up and staged a construction project for Mr. Gang's property. He dug up
15 Mr. Gang's land, installed this massive 18-inch, 24-inch drainage pipe which
16 currently sits underneath Mr. Gang's property.

17 And, you know, like we said, we're sympathetic to the health conditions,
18 we're aware of those, but we've been going on now for two years. And it's not a
19 berm. It's not a berm. They reference it as a berm, it's a backyard. It's literally, it's
20 a backyard that they have essentially commandeered that they are literally trying to
21 steal from Mr. Gang.

22 Now, again, we get the medical conditions, you know, we're not here to
23 cause Mr. Hunter harm, but it's time that the case gets going. We're going on two
24 years. You know, we either need to get this thing moving, Mr. Gang needs a shot to
25 file his counterclaim and we need to move forward or the case needs to be

1 dismissed, at a minimum, without prejudice. And if Mr. Hunter decides in two
2 months, six months, or whatever that he wants to proceed with the suit, so be it. But
3 it's been almost two years.

4 MR. FERRARIO: Do you want to -- do you want me to argue beyond
5 what's in the motion like -- like Mr. Hanseen did?

6 THE COURT: Well, I just think there's more to it than he's sitting on his rights
7 right now. I don't think he has a position and he's just filed a suit in hopes that
8 something sticks if he throws it against the wall.

9 MR. FERRARIO: Well, I beg to differ with you, Your Honor, I don't file suits
10 for that --

11 THE COURT: I know. That's why that's --

12 MR. FERRARIO: -- for that reason. Mr. Hanseen's brought a motion to
13 dismiss, the case hasn't even been on the books for two years. We filed an affidavit
14 from Mrs. Hunter. Unfortunately, Mr. Hunter has suffered serious health issues.
15 He -- in addition to the heart issues, he fell and hit his head a few years ago and it's
16 caused recurring neurological issues.

17 So I have no problem moving the case along. And the thing that I find
18 interesting -- and Your Honor points at us saying that we're engaging in some
19 inappropriate conduct, that's not the case at all. Mr. Hanseen and I have -- and it's
20 been a pleasure working with him -- have tried on numerous occasions to resolve
21 this. The last thing you want to have is neighboring property owners fight over
22 things like this.

23 THE COURT: Do you --

24 MR. FERRARIO: I have a spin on why it hasn't settled.

25 THE COURT: -- argue that he did not landscape on Mr. Gang's property, is

1 that your argument?

2 MR. FERRARIO: There is no question there is a -- a landscaping on
3 Mr. Gang's property. Here's the beauty of this. It's Mr. Gang's property. If they
4 wanted to file a counterclaim, let them file a counterclaim, why hasn't he done that?

5 If we are out there digging on his property putting up a major
6 construction project, why wasn't he parading in here getting an injunction to stop it?
7 He doesn't represent the Forest Service, I don't see them in here. The reality is the
8 sale fell through because Mr. Gang interfered with the sale and we believe gave
9 inaccurate information to the buyers about encroachment of a tennis court and what
10 have you.

11 The only issue -- this thing's been there for 25 years. If this -- if this
12 was such an offending structure to Mr. Gang on about 20 -- I don't know how many
13 feet of his property -- 20 or 40 feet of his property in the middle of nowhere, why
14 wasn't he in court getting us to remove it? Those are the questions the Court needs
15 to ask. This was open and obvious, it was done 25 years ago.

16 You have to picture this, it's out in the middle of nowhere. Mr. Hunter's
17 been there longer than Mr. Gang. Mr. Gang inherited this property from his mother.
18 My client went up and built the house up there. There was drainage issues, it's
19 flowing everywhere. At some point in time, some 20 some-odd years ago, and I
20 don't have the precise facts here, he moved dirt around so that water would come
21 down and go in a different direction. Some of that dirt, no question, is on Mr. Gang's
22 property. I think Mr. Hunter put up trees and what have you on Mr. Gang's property
23 which is now Mr. Gang's property but at the time, it was Mrs. Gang's property. So
24 that's what's going on if you want to hear the whole story.

25 THE COURT: So if -- so it's -- you think that's reasonable?

1 MR. FERRARIO: I'm not --

2 THE COURT: And you think that, well, I get the property if Gang doesn't do
3 anything about it.

4 MR. FERRARIO: Well, there are adverse possession laws, there's all sorts of
5 issues that may come into play here. I'm not saying that I would tell a client just go
6 out and willy-nilly 25 years ago in the middle of nowhere and put prop -- you know,
7 build a berm. That's not what I'm telling Your Honor. I'm just saying the reality is
8 this is a long time ago and the only people that are involved are -- were Mr. Hunter
9 and Mr. Gang's mother at the time. So we filed the Complaint and we'll probably be
10 amending because of Mr. Gang's interference with the sale and providing what we
11 believe to be inaccurate information to the buyers.

12 THE COURT: All right.

13 MR. FERRARIO: So, I -- and, Your Honor, one final thing. In terms of the
14 health issues and -- it's somewhat difficult when you're handling a case like this and
15 you're talking to your client and you hear that he had a mini stroke or that he's going
16 on another medication and you have to make a decision, do you go in and do you
17 try to push this matter down his throat in the middle of these types of issues? Those
18 are tough judgment calls to make as an attorney. This case hasn't been on the
19 books for two years. They don't cite you one case that would support dismissal.
20 We would respectfully request that we allow -- you allow the case to proceed.

21 The other alternative that I think might not be a bad idea because the
22 parties have talked and things have broken down a number of times, we believe that
23 Mr. -- we talked about buying property and all sorts of stuff. Perhaps ordering a
24 settlement conference with another judge might help the process. It might help me,
25 quite frankly, in dealing with my client and in the midst of these health issues maybe

1 to come into the courthouse and have a settlement conference with another judge, I
2 think might help the situation. And I would request that.

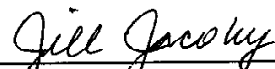
3 THE COURT: All right. I was inclined to give the continuance, I'm not now
4 after hearing arguments of counsel. The motion to dismiss is granted.

5 Defense will prepare findings of facts, conclusions of law.

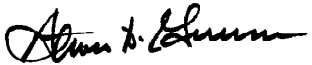
6 MR. HANSEEN: Thank you, Your Honor.

7 [Proceeding concluded at 8:24 a.m.]
8
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21 ATTEST: I hereby certify that I have truly and correctly transcribed the audio/visual
22 recording in the above-entitled case.

23 
24 Jill Jacoby
25 Court Recorder

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CLERK OF THE COURT

Marquis Aurbach Coffing
ALBERT G. MARQUIS, ESQ.
Nevada Bar No. 1919
TYE S. HANSEEN, ESQ.
Nevada Bar No. 10365
10001 Park Run Drive
Las Vegas, Nevada 89145
Telephone: (702) 382-0711
Facsimile: (702) 382-5816
amarquis@maclaw.com
thanseen@maclaw.com
Attorneys for William Gang

DISTRICT COURT
CLARK COUNTY, NEVADA

RICHARD A. HUNTER, an individual,

Plaintiff,

Case No.: A-09-604877-C
Dept. No.: VIII

vs.

WILLIAM GANG, an individual, and DOE
DEFENDANTS 1 through 10, and ROE
CORPORATIONS 1 through 10, inclusive,

Defendants.

FINDINGS OF FACT, CONCLUSIONS OF
LAW AND ORDER GRANTING
WILLIAM GANG'S MOTION TO
DISMISS

This matter having come for hearing before the Honorable Douglas Smith on September 13, 2011, the Plaintiff Richard A. Hunter ("Hunter") represented by his counsel of record Mark Ferrario, Esq. of the law firm of Greenberg Traurig, LLP, and Defendant William Gang ("Gang") represented by his counsel of record Tye Hanseen, Esq. of the law firm of Marquis Aurbach Coffing. The Court having read the pleadings filed by the parties, and considered the oral arguments of counsel, hereby makes the following findings of facts, conclusions of law, and orders as follows:

FINDINGS OF FACT

1. Gang is the owner of 20.47 acres of real property described in the office of the Clark County Assessor as: Land Division 93-92, Lot 2, 920819:570—APN 174-20-303-002 ("Gang Property").

<input type="checkbox"/> Voluntary Dis	<input type="checkbox"/> Stip Dis	<input type="checkbox"/> Sum Jdgmt	FINAL DISPOSITIONS <input type="checkbox"/> Time Limit Expired <input type="checkbox"/> Dismissed (with or without prejudice) <input type="checkbox"/> Judgment Satisfied/Paid in full
<input type="checkbox"/> Involuntary (stat) Dis	<input type="checkbox"/> Stip Jdgmt	<input type="checkbox"/> Non Jury Trial	
<input type="checkbox"/> Jdgmt on Arb Award	<input type="checkbox"/> Default Jdgmt	<input type="checkbox"/> Jury Trial	
<input checked="" type="checkbox"/> Mtn to Dis (by deft)	<input type="checkbox"/> Transferred		

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APP0036

MARQUIS AURBACH COFFING

10001 Park Run Drive
Las Vegas, Nevada 89145
(702) 382-0711 FAX: (702) 382-5816

MARQUIS AURBACH COFFING

10001 Park Run Drive
Las Vegas, Nevada 89145
(702) 382-0711 FAX: (702) 382-5816

1 2. The Hunter Family Trust is the owner of 2.65 acres of real property described in
2 the office of the Clark County Assessor as: 9500 Pinion Dr., Unincorporated County, Lot 1 &
3 Vac. Rd., Sec 20 Twp 22 Rng 58—APN 174-20-402-004 (“Hunter Property”).

4 3. The subject properties are located in the community of Mountain Springs, which
5 is located off of Highway 160 in the Spring Mountains between Las Vegas and Pahrump.

6 4. The north side of the Hunter Property borders the south side of the Gang Property.

7 5. Hunter built his home on the Hunter Property within eight inches of the property
8 line between the Hunter Property and Gang Property.

9 6. Hunter landscaped on the Gang Property, which landscape includes trees, shrubs,
10 and a watering system complete with sprinklers for the landscape (hereinafter referred to as the
11 “Encroachment”). In essence, Hunter created a back yard for himself on property he did not
12 own.

13 7. The Encroachment encompasses an area on the Gang Property of approximately
14 200’ by 40’.

15 8. On December 4, 2009, Hunter filed this suit against Gang alleging claims for
16 quiet title, injunctive relief, adverse possession, and declaratory relief to attempt to obtain title to
17 the Encroachment.

18 9. Other than filing the Complaint, Hunter has not taken any action.

19 10. Hunter gave Gang an extension to respond to the suit while the parties discussed
20 a potential resolution. The discussions, however, broke down over a year ago. After that point,
21 Hunter became, for the most part, unresponsive for extended periods of time while the Gang
22 Property remained encumbered by this legal action which was filed for no apparent reason other
23 than to force a settlement favorable to Hunter.

24 11. Due to the suit, the Gang Property has now been encumbered for almost two
25 years—while property values in Clark County have continued to decrease.

26 12. The Encroachment on the Gang Property was part of a pattern of encroachment
27 by Hunter, who also constructed a building and other improvements on Forest Service land that
28

MARQUIS AURBACH COFFING

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1 borders the Hunter Property to the west. The Forest Service required Hunter to remove the
2 structure and improvements.

3 13. Hunter also landscaped on the Forest Service land, as he did on the Gang
4 Property, and with the same disregard for ownership and property rights.

5 14. Even as this lawsuit was pending, Hunter continued to disregard Gang's property
6 rights, staging a construction project for the Hunter Property on Gang's property.

7 15. During the project, Hunter dug a trench utilizing the Gang Property and installed
8 a 24" diameter drainage pipe, a portion of which appears to be on the Gang Property.

9 16. Hunter's landscape, watering system, and drainage pipe all sit on the Gang
10 Property.

11 17. Gang never authorized Hunter to landscape, install a watering system, or install a
12 drainage pipe on the Gang Property.

13 **CONCLUSIONS OF LAW**

14 1. The duty was on Hunter to use diligence at every stage of the proceeding to
15 expedite the case to final determination.

16 2. Gang was required to meet Hunter step by step as Hunter proceeded.

17 3. Hunter neglected and failed to reasonably prosecute the case.

18 4. There was no adequate excuse for Hunter's neglect and failure to reasonably
19 prosecute the case.

20 5. Hunter's neglect and failure adversely impacted Gang's ability to market the
21 Gang Property.

22 6. Hunter failed to diligently pursue the claims as well as request the matter be
23 brought to trial.

24 7. Hunter's claims for quiet title, injunctive relief, adverse possession, and
25 declaratory relief to attempt to obtain title to the Encroachment lack merit.

26 ///

27 ///

1 NOW, THEREFORE, IT IS HEREBY ORDERED, that the Motion to Dismiss is hereby
2 GRANTED and the Complaint is dismissed with prejudice.

3 Dated this 7 day of ^{November} ~~October~~, 2011.

4
5 
6 DISTRICT COURT JUDGE 

7 Respectfully submitted by
8 MARQUIS AURBACH COFFING

9 By 

10 Albert G. Marquis, Esq.
11 Nevada Bar No. 1919
12 Tye S. Hanseen, Esq.
13 Nevada Bar No. 10365
14 10001 Park Run Drive
15 Las Vegas, Nevada 89145
16 Attorneys for William Gang

17 Approved as to form and content:

18 GREENBERG TRAURIG, LLP

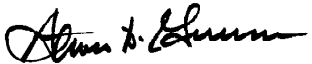
19 By _____

20 Mark E. Ferrario, Esq.
21 Nevada Bar No. 1625
22 Leslie Godfrey, Esq.
23 Nevada Bar No. 10229
24 3773 Howard Hughes Parkway, Suite 400 North
25 Las Vegas, Nevada 89169
26 Attorneys for Richard A. Hunter
27
28

MARQUIS AURBACH COFFING

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Las Vegas, Nevada 89145
(702) 382-0711 FAX: (702) 382-5816

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CLERK OF THE COURT

Marquis Aurbach Coffing
ALBERT G. MARQUIS, ESQ.
Nevada Bar No. 1919
TYE S. HANSEEN, ESQ.
Nevada Bar No. 10365
10001 Park Run Drive
Las Vegas, Nevada 89145
Telephone: (702) 382-0711
Facsimile: (702) 382-5816
amarquis@maclaw.com
thanseen@maclaw.com
Attorneys for William Gang

**DISTRICT COURT
CLARK COUNTY, NEVADA**

RICHARD A. HUNTER, an individual,
Plaintiff,

Case No.: A-09-604877-C
Dept. No.: VIII

vs.

WILLIAM GANG, an individual, and DOE
DEFENDANTS 1 through 10, and ROE
CORPORATIONS 1 through 10, inclusive,
Defendants.

**NOTICE OF ENTRY OF FINDINGS OF FACT, CONCLUSIONS OF LAW AND
ORDER GRANTING WILLIAM GANG'S MOTION TO DISMISS**

Please take notice that a Findings of Fact, Conclusions of Law and Order Granting William Gang's Motion to Dismiss was entered in the above-captioned matter on the 7th day of November, 2011, a copy of which is attached hereto.

Dated this 8 day of November, 2011.

MARQUIS AURBACH COFFING

By 

Albert G. Marquis, Esq.
Nevada Bar No. 1919
Tye S. Hanseen, Esq.
Nevada Bar No. 10365
10001 Park Run Drive
Las Vegas, Nevada 89145
Attorneys for William Gang

MARQUIS AURBACH COFFING

10001 Park Run Drive
Las Vegas, Nevada 89145
(702) 382-0711 FAX: (702) 382-5816

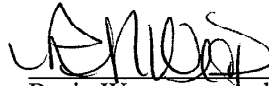
CERTIFICATE OF SERVICE

I hereby certify that the foregoing **NOTICE OF ENTRY OF FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER GRANTING WILLIAM GANG'S MOTION TO DISMISS** was submitted electronically for filing and/or service with the Eighth Judicial District Court on the 8th day of November, 2011. Electronic service of the foregoing document shall be made in accordance with the E-Service List as follows:¹

N/A

I further certify that I served a copy of this document by mailing a true and correct copy thereof, postage prepaid, addressed to:

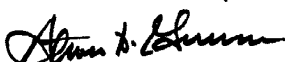
Mark E. Ferrario, Esq.
Leslie Godfrey, Esq.
Greenberg Traurig, LLP
3773 Howard Hughes Parkway, Suite 400 North
Las Vegas, Nevada 89169
Attorneys for Richard A. Hunter



Rosie Wesp, an employee of
Marquis Aurbach Coffing

¹ Pursuant to EDCR 8.05(a), each party who submits an E-Filed document through the E-Filing System consents to electronic service pursuant to NRCP 5(b)(2)(D).

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CLERK OF THE COURT

Marquis Aurbach Coffing
ALBERT G. MARQUIS, ESQ.
Nevada Bar No. 1919
TYE S. HANSEEN, ESQ.
Nevada Bar No. 10365
10001 Park Run Drive
Las Vegas, Nevada 89145
Telephone: (702) 382-0711
Facsimile: (702) 382-5816
amarquis@maclaw.com
thanseen@maclaw.com
Attorneys for William Gang

DISTRICT COURT
CLARK COUNTY, NEVADA

RICHARD A. HUNTER, an individual,

Plaintiff,

vs.

WILLIAM GANG, an individual, and DOE
DEFENDANTS 1 through 10, and ROE
CORPORATIONS 1 through 10, inclusive,

Defendants.

Case No.: A-09-604877-C
Dept. No.: VIII

**FINDINGS OF FACT, CONCLUSIONS OF
LAW AND ORDER GRANTING
WILLIAM GANG'S MOTION TO
DISMISS**

This matter having come for hearing before the Honorable Douglas Smith on September 13, 2011, the Plaintiff Richard A. Hunter ("Hunter") represented by his counsel of record Mark Ferrario, Esq. of the law firm of Greenberg Traurig, LLP, and Defendant William Gang ("Gang") represented by his counsel of record Tye Hanseen, Esq. of the law firm of Marquis Aurbach Coffing. The Court having read the pleadings filed by the parties, and considered the oral arguments of counsel, hereby makes the following findings of facts, conclusions of law, and orders as follows:

FINDINGS OF FACT

1. Gang is the owner of 20.47 acres of real property described in the office of the Clark County Assessor as: Land Division 93-92, Lot 2, 920819:570—APN 174-20-303-002 ("Gang Property").

<input type="checkbox"/> Voluntary Dis	<input type="checkbox"/> Stip Dis	<input type="checkbox"/> Sum Jdgmt	FINAL DISPOSITIONS <input type="checkbox"/> Time Limit Expired <input type="checkbox"/> Dismissed (with or without prejudice) <input type="checkbox"/> Judgment Satisfied/Paid in full
<input type="checkbox"/> Involuntary (stat) Dis	<input type="checkbox"/> Stip Jdgmt	<input type="checkbox"/> Non Jury Trial	
<input type="checkbox"/> Jdgmt on Arb Award	<input type="checkbox"/> Default Jdgmt	<input type="checkbox"/> Jury Trial	
<input type="checkbox"/> Min to Dis (by def)	<input type="checkbox"/> Transferred		

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MARQUIS AURBACH COFFING

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APP0042

MARQUIS AURBACH COFFING

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Las Vegas, Nevada 89145
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1 2. The Hunter Family Trust is the owner of 2.65 acres of real property described in
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11 “Encroachment”). In essence, Hunter created a back yard for himself on property he did not
12 own.

13 7. The Encroachment encompasses an area on the Gang Property of approximately
14 200’ by 40’.

15 8. On December 4, 2009, Hunter filed this suit against Gang alleging claims for
16 quiet title, injunctive relief, adverse possession, and declaratory relief to attempt to obtain title to
17 the Encroachment.

18 9. Other than filing the Complaint, Hunter has not taken any action.

19 10. Hunter gave Gang an extension to respond to the suit while the parties discussed
20 a potential resolution. The discussions, however, broke down over a year ago. After that point,
21 Hunter became, for the most part, unresponsive for extended periods of time while the Gang
22 Property remained encumbered by this legal action which was filed for no apparent reason other
23 than to force a settlement favorable to Hunter.

24 11. Due to the suit, the Gang Property has now been encumbered for almost two
25 years—while property values in Clark County have continued to decrease.

26 12. The Encroachment on the Gang Property was part of a pattern of encroachment
27 by Hunter, who also constructed a building and other improvements on Forest Service land that
28

APP0043

MARQUIS AURBACH COFFING

10001 Park Run Drive
Las Vegas, Nevada 89145
(702) 382-0711 FAX: (702) 382-5816

1 borders the Hunter Property to the west. The Forest Service required Hunter to remove the
2 structure and improvements.

3 13. Hunter also landscaped on the Forest Service land, as he did on the Gang
4 Property, and with the same disregard for ownership and property rights.

5 14. Even as this lawsuit was pending, Hunter continued to disregard Gang's property
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12 drainage pipe on the Gang Property.

13 **CONCLUSIONS OF LAW**

14 1. The duty was on Hunter to use diligence at every stage of the proceeding to
15 expedite the case to final determination.

16 2. Gang was required to meet Hunter step by step as Hunter proceeded.

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21 Gang Property.

22 6. Hunter failed to diligently pursue the claims as well as request the matter be
23 brought to trial.

24 7. Hunter's claims for quiet title, injunctive relief, adverse possession, and
25 declaratory relief to attempt to obtain title to the Encroachment lack merit.

26 ///

27 ///

MARQUIS AURBACH COFFING


10001 Park Run Drive
Las Vegas, Nevada 89145
(702) 382-0711 FAX: (702) 382-5816

1 NOW, THEREFORE, IT IS HEREBY ORDERED, that the Motion to Dismiss is hereby
2 GRANTED and the Complaint is dismissed with prejudice.


3 Dated this 7 day of October, 2011.

4
5 
6 DISTRICT COURT JUDGE 

7 Respectfully submitted by
8 MARQUIS AURBACH COFFING

9 
10 By Albert G. Marquis, Esq.
11 Nevada Bar No. 1919
12 Tye S. Hanseen, Esq.
13 Nevada Bar No. 10365
14 10001 Park Run Drive
15 Las Vegas, Nevada 89145
16 Attorneys for William Gang

17 Approved as to form and content:
18 GREENBERG TRAURIG, LLP

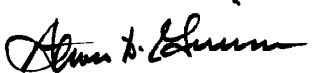
19 By 
20 Mark E. Ferrario, Esq.
21 Nevada Bar No. 1625
22 Leslie Godfrey, Esq.
23 Nevada Bar No. 10229
24 3773 Howard Hughes Parkway, Suite 400 North
25 Las Vegas, Nevada 89169
26 Attorneys for Richard A. Hunter
27
28

APP0045

MARQUIS AURBACH COFFING

10001 Park Run Drive
Las Vegas, Nevada 89145
(702) 382-0711 FAX: (702) 382-5816

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CLERK OF THE COURT

Marquis Aurbach Coffing
ALBERT G. MARQUIS, ESQ.
Nevada Bar No. 1919
TYE S. HANSEEN, ESQ.
Nevada Bar No. 10365
10001 Park Run Drive
Las Vegas, Nevada 89145
Telephone: (702) 382-0711
Facsimile: (702) 382-5816
amarquis@maclaw.com
thanseen@maclaw.com
Attorneys for William Gang

DISTRICT COURT
CLARK COUNTY, NEVADA

RICHARD A. HUNTER, an individual,

Plaintiff,

vs.

WILLIAM GANG, an individual, and DOE
DEFENDANTS 1 through 10, and ROE
CORPORATIONS 1 through 10, inclusive,

Defendants.

Case No.: A-09-604877-C
Dept. No.: VIII

VERIFIED MEMORANDUM OF COSTS AND FEES

Defendant William Gang ("Gang"), through the law firm of Marquis Aurbach Coffing,
hereby submits the following Verified Memorandum of Costs.

COSTS

Internal Copies ¹	\$21.00
Internal Scanning ²	\$9.45
Faxing ³	\$7.00
Messenger Service ⁴	\$6.00
Postage ⁵	\$1.32
Westlaw ⁶	\$101.82

¹ NRS 18.005(12); see Exhibit A.

² NRS 18.005(12) & (17); see Exhibit A.

³ NRS 18.005(11); see Exhibit A.

⁴ NRS 18.005(17); see Exhibit A.

⁵ NRS 18.005(14); see Exhibit A.

MARQUIS AURBACH COFFING

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1 Wiznet Online Filing Fees⁷ \$10.50
2 **Total Costs⁸** **\$157.09**

3 TYE S. HANSEEN, ESQ., hereby declares:

4 I am one of the attorneys in this case for Gang and have personal knowledge of the above
5 costs; that the items contained in the above memorandum are true and correct to the best of my
6 knowledge and belief; and that the said disbursements have been necessarily incurred and paid in
7 this action. Through November 7, 2011, Gang also incurred \$13,652 in attorney fees in this
8 case.

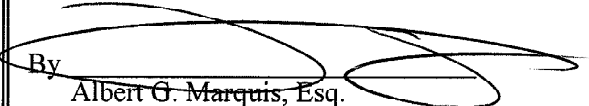
9 I declare under penalty of perjury under the laws of the state of Nevada (NRS 53.045),
10 that the foregoing is true and correct.

11 Dated this 15 day of November, 2011.

12 
13 TYE S. HANSEEN, ESQ.

14 Submitted by:

15 MARQUIS AURBACH COFFING

16 
17 By Albert G. Marquis, Esq.
18 Nevada Bar No. 1919
19 Tye S. Hanseen, Esq.
20 Nevada Bar No. 10365
21 10001 Park Run Drive
22 Las Vegas, Nevada 89145
23 amarquis@maclaw.com
24 thanseen@maclaw.com
25 Attorneys for William Gang

26 ⁶ NRS 18.005(17); see Exhibit A.

27 ⁷ NRS 18.005(1) and (17); see Exhibit A.

28 ⁸ See Exhibit A.

MARQUIS AURBACH COFFING
10001 Park Run Drive
Las Vegas, Nevada 89145
(702) 382-0711 FAX: (702) 382-5816

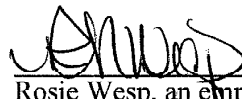
CERTIFICATE OF SERVICE

I hereby certify that the foregoing VERIFIED MEMORANDUM OF COSTS AND FEES was submitted electronically for filing and/or service with the Eighth Judicial District Court on the 15th day of November, 2011. Electronic service of the foregoing document shall be made in accordance with the E-Service List as follows:⁹

N/A

I further certify that I served a copy of this document by mailing a true and correct copy thereof, postage prepaid, addressed to:

Mark E. Ferrario, Esq.
Leslie Godfrey, Esq.
Greenberg Traurig, LLP
3773 Howard Hughes Parkway, Suite 400 North
Las Vegas, Nevada 89169
Attorneys for Richard A. Hunter

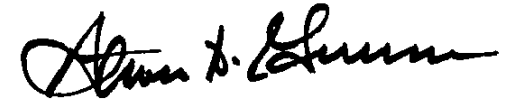


Rosie Wesp, an employee of
Marquis Aurbach Coffing

⁹ Pursuant to EDCR 8.05(a), each party who submits an E-Filed document through the E-Filing System consents to electronic service pursuant to NRCP 5(b)(2)(D).

Exhibit A

Accounting Date	Matter ID	Cost Code	Client Name	Caption	Units	Amount
12/29/2009	11526-001	Copies	Bill Gang	Hunter, Richard A. adv.	13	\$ 3.25
12/29/2009	11526-001	Copies	Bill Gang	Hunter, Richard A. adv.	1	\$ 0.25
1/13/2010	11526-001	Copies	Bill Gang	Hunter, Richard A. adv.	1	\$ 0.25
1/13/2010	11526-001	Copies	Bill Gang	Hunter, Richard A. adv.	1	\$ 0.25
2/4/2010	11526-001	Copies	Bill Gang	Hunter, Richard A. adv.	7	\$ 1.75
2/4/2010	11526-001	Copies	Bill Gang	Hunter, Richard A. adv.	7	\$ 1.75
2/9/2010	11526-001	Copies	Bill Gang	Hunter, Richard A. adv.	21	\$ 5.25
8/17/2010	11526-001	Copies	Bill Gang	Hunter, Richard A. adv.	2	\$ 0.50
8/11/2011	11526-001	Copies	Bill Gang	Hunter, Richard A. adv.	5	\$ 1.25
8/22/2011	11526-001	Copies	Bill Gang	Hunter, Richard A. adv.	2	\$ 0.50
8/22/2011	11526-001	Copies	Bill Gang	Hunter, Richard A. adv.	2	\$ 0.50
8/30/2011	11526-001	Copies	Bill Gang	Hunter, Richard A. adv.	5	\$ 1.25
11/3/2011	11526-001	Copies	Bill Gang	Hunter, Richard A. adv.	1	\$ 0.25
11/3/2011	11526-001	Copies	Bill Gang	Hunter, Richard A. adv.	1	\$ 0.25
11/3/2011	11526-001	Copies	Bill Gang	Hunter, Richard A. adv.	4	\$ 1.00
11/3/2011	11526-001	Copies	Bill Gang	Hunter, Richard A. adv.	2	\$ 0.50
11/3/2011	11526-001	Copies	Bill Gang	Hunter, Richard A. adv.	7	\$ 1.75
11/3/2011	11526-001	Copies	Bill Gang	Hunter, Richard A. adv.	1	\$ 0.25
11/3/2011	11526-001	Copies	Bill Gang	Hunter, Richard A. adv.	1	\$ 0.25
		Copies Total			84	\$ 21.00
8/31/2011	11526-001	Messenger Service	Bill Gang	Hunter, Richard A. adv.	0	\$ 6.00
		Messenger Service Total			0	\$ 6.00
8/11/2011	11526-001	Postage	Bill Gang	Hunter, Richard A. adv.	0	\$ 0.44
8/22/2011	11526-001	Postage	Bill Gang	Hunter, Richard A. adv.	0	\$ 0.44
11/3/2011	11526-001	Postage	Bill Gang	Hunter, Richard A. adv.	0	\$ 0.44
		Postage Total			0	\$ 1.32
2/9/2010	11526-001	Scanning Charges	Bill Gang	Hunter, Richard A. adv.	7	\$ 2.45
8/11/2011	11526-001	Scanning Charges	Bill Gang	Hunter, Richard A. adv.	5	\$ 1.75
8/22/2011	11526-001	Scanning Charges	Bill Gang	Hunter, Richard A. adv.	2	\$ 0.70
8/30/2011	11526-001	Scanning Charges	Bill Gang	Hunter, Richard A. adv.	5	\$ 1.75
9/1/2011	11526-001	Scanning Charges	Bill Gang	Hunter, Richard A. adv.	3	\$ 1.05
11/3/2011	11526-001	Scanning Charges	Bill Gang	Hunter, Richard A. adv.	1	\$ 0.35
11/3/2011	11526-001	Scanning Charges	Bill Gang	Hunter, Richard A. adv.	4	\$ 1.40
		Scanning Charges Total			27	\$ 9.45
12/31/2009	11526-001	Telex	Bill Gang	Hunter, Richard A. adv.	13	\$ 6.50
1/31/2010	11526-001	Telex	Bill Gang	Hunter, Richard A. adv.	1	\$ 0.50
		Telex Total			14	\$ 7.00
8/15/2011	11526-001	Wiznet	Bill Gang	Hunter, Richard A. adv.	0	\$ 7.00
8/31/2011	11526-001	Wiznet	Bill Gang	Hunter, Richard A. adv.	0	\$ 3.50
		Wiznet Total			0	\$ 10.50
2/28/2010	11526-001	Westlaw Research	Bill Gang	Hunter, Richard A. adv.	0	\$ 65.16
8/31/2011	11526-001	Westlaw Research	Bill Gang	Hunter, Richard A. adv.	0	\$ 36.66
		Westlaw Research Total			0	\$ 101.82
		Grand Total			125	\$ 157.09



CLERK OF THE COURT

1 **NOA**
2 MARK E. FERRARIO, ESQ.
3 Nevada Bar No. 1625
4 TAMI D. COWDEN, ESQ.
5 Nevada Bar No. 8994
6 GREENBERG TRAURIG, LLP
7 3773 Howard Hughes Parkway, Suite 400 North
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10 Facsimile: (702) 792-9002
11 Email: ferrariom@gtlaw.com
12 godfrey1@gtlaw.com
13 *Attorneys for Plaintiff Richard A. Hunter*

9 **DISTRICT COURT**

10 **CLARK COUNTY, NEVADA**

11 RICHARD A. HUNTER, an individual,
12
13 Plaintiff,

Case No. A-09-604877-C

Dept No. VIII

13 v.

NOTICE OF APPEAL

14 WILLIAM GANG, an individual, and DOE
15 DEFENDANTS 1 through 10, and ROE
16 CORPORATIONS 1 through 10, inclusive,

17 Defendants.

18
19
20 Notice is hereby given that Plaintiff Richard A. Hunter, by and through counsel of record,
21 Mark E. Ferrario, Esq. and Tami D. Cowden, Esq., of Greenberg Traurig, LLP, hereby appeals to
22 the Supreme Court of the State of Nevada from the Findings of Fact, Conclusions of Law and
23 Order Granting William Gang's Motion to Dismiss, dated November 7, 2011, and for which

24 //

25 //

26 //


27 //

28 //

1 notice of the entry of the order was dated November 8, 2011.

2 DATED this 16th day of November, 2011.

3 GREENBERG TRAURIG, LLP

4
5 By: 
6 MARK E. FERRARIO, ESQ.
7 Nevada Bar No. 1625
8 LESLIE S. GODFREY, ESQ.
9 Nevada Bar No. 10229
10 3773 Howard Hughes Parkway
11 Suite 400 North
12 Las Vegas, Nevada 89169
13 Telephone: (702) 792-3773
14 *Attorneys for Plaintiff Richard A. Hunter*

Greenberg Traurig LLP
3773 Howard Hughes Parkway, Suite 400 North
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(702) 792-3773
(702) 792-9002 (fax)

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28

CERTIFICATE OF SERVICE

I hereby certify pursuant to N.R.C.P 5 that I served the forgoing Notice of Appeal on:


Albert G. Marquis
Tye Hanseen
Marquis Aurbach Coffing
10001 Park Run Drive
Las Vegas, NV 89145

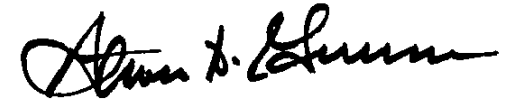
by causing a full, true, and correct copy thereof to be sent by the following indicated method

or methods, on the date set forth below:

- ☒ by mailing in a sealed, first class postage-prepaid envelop, addressed to the last-known office address of the attorney, and deposited with the United States Postal Service in Las Vegas, Nevada.
- ☐ by hand delivery.
- ☐ by sending via overnight courier in a sealed envelope.
- ☐ by electronic mail to the last known e-mail address.

DATED this 16th day of November, 2011.


An employee of Greenberg Traurig, LLP



CLERK OF THE COURT

NOA

MARK E. FERRARIO, ESQ.
Nevada Bar No. 1625
TAMI D. COWDEN, ESQ.
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Email: ferrariom@gtlaw.com
godfrey@gtlaw.com
Attorneys for Plaintiff Richard A. Hunter

DISTRICT COURT

CLARK COUNTY, NEVADA

RICHARD A. HUNTER, an individual,

Plaintiff,

Case No. A-09-604877-C

Dept No. VIII

v.

CASE APPEAL STATEMENT

WILLIAM GANG, an individual, and DOE
DEFENDANTS 1 through 10, and ROE
CORPORATIONS 1 through 10, inclusive,

Defendants.

1. Name of appellant filing this case appeal statement:

Richard A. Hunter

2. Identify the judge issuing the decision, judgment, or order appealed from:

The Honorable Judge Douglas E. Smith

3. Identify all parties to the proceedings in the district court:

Plaintiff: Richard A. Hunter

Defendant: William Gang

\\

Greenberg Traurig LLP
3773 Howard Hughes Parkway, Suite 400 North
Las Vegas, Nevada 89169
(702) 792-3773
(702) 792-9002 (fax)

4. Identify all parties involved in this appeal:

Appellant: Richard A. Hunter

Respondent: William Gang

5. Set forth the name, law firm, address, and telephone number of all counsel on appeal and identify the party or parties whom they represent:

a. Tami D. Cowden and Mark E. Ferrario, Esq. of Greenberg Traurig, LLP, 3773 Howard Hughes Parkway, Suite 400 North, Las Vegas, Nevada 89169, telephone: (702) 792-3773, attorney for Appellant.

b. Albert G. Marquis, Esq. and Tye Hanseen, Esq. of Marquis Aurbach Coffing, 10001 Park Run Drive, Las Vegas, NV 89145, telephone: (702) 382-0711, attorney for Plaintiff.

6. Indicate whether appellant was represented by appointed or retained counsel in the district court.

Appellant was represented by retained counsel in the district court.

7. Indicate whether appellant is represented by appointed or retained counsel on appeal.

Appellant is represented by retained counsel on this appeal.

8. Indicate whether appellant was granted leave to proceed in forma pauperis, and the date of entry of the district court order granting such leave:

None.


9. Indicate the date the proceedings commenced in the district court.

Complaint filed December 4, 2009.

DATED this 16th day of November, 2011.

GREENBERG TRAURIG, LLP

By:


MARK E. FERRARIO, ESQ. (NBN 1625)

TAMI D. COWDEN, ESQ. (NBN 8994)

3773 Howard Hughes Parkway, Suite 400 North
Las Vegas, Nevada 89169

Telephone: (702) 792-3773

Attorneys for Plaintiff Richard A. Hunter

CERTIFICATE OF SERVICE

I hereby certify pursuant to N.R.C.P 5 that I served the forgoing Case Appeal Statement
on:

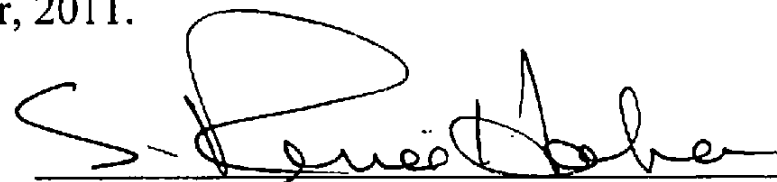
Albert G. Marquis
Tye Hanseen
Marquis Aurbach Coffing
10001 Park Run Drive
Las Vegas, NV 89145

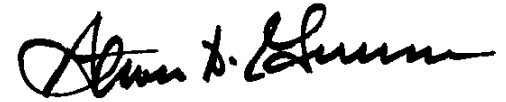
by causing a full, true, and correct copy thereof to be sent by the following indicated
method

or methods, on the date set forth below:

- ☒ by mailing in a sealed, first class postage-prepaid envelop, addressed to the last-known office address of the attorney, and deposited with the United States Postal Service in Las Vegas, Nevada.
- ☐ by hand delivery.
- ☐ by sending via overnight courier in a sealed envelope.
- ☐ by electronic mail to the last known e-mail address.

DATED this 16th day of November, 2011.


An employee of Greenberg Traurig, LLP



CLERK OF THE COURT

1 **NOA**
2 MARK E. FERRARIO, ESQ.
3 Nevada Bar No. 1625
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11 Email: ferrariom@gtlaw.com
12 godfrey1@gtlaw.com
13 *Attorneys for Plaintiff Richard A. Hunter*

9 **DISTRICT COURT**

10 **CLARK COUNTY, NEVADA**

11 RICHARD A. HUNTER, an individual,
12
13 Plaintiff,

Case No. A-09-604877-C

Dept No. VIII

13 v.

14 WILLIAM GANG, an individual, and DOE
15 DEFENDANTS 1 through 10, and ROE
16 CORPORATIONS 1 through 10, inclusive,
17 Defendants.

**NOTICE OF POSTING OF
COST BOND**

18 To: ALL PARTIES AND THEIR COUNSEL:

19 Please take notice that concurrently with the filing of the Notice of Appeal herein, Plaintiff
20 is posting Five Hundred Dollars (\$500.00) pursuant to NRCP 7.

21 DATED this 16th day of November, 2011.

22 **GREENBERG TRAUIG, LLP**

23
24 By: 

25 MARK E. FERRARIO, ESQ. (NBN 1625)
26 TAMI D. COWDEN, ESQ. (NBN 8994)
27 3773 Howard Hughes Parkway, Suite 400 North
28 Las Vegas, Nevada 89169
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CERTIFICATE OF SERVICE

I hereby certify pursuant to N.R.C.P 5 that I served the forgoing Notice of Posting Cost

Bond on:

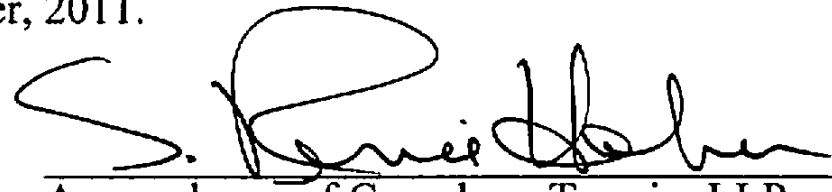
Albert G. Marquis
Tye Hanseen
Marquis Aurbach Coffing
10001 Park Run Drive
Las Vegas, NV 89145

by causing a full, true, and correct copy thereof to be sent by the following indicated method

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- ☒ by mailing in a sealed, first class postage-prepaid envelop, addressed to the last-known office address of the attorney, and deposited with the United States Postal Service in Las Vegas, Nevada.
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- ☐ by electronic mail to the last known e-mail address.

DATED this 16th day of November, 2011.



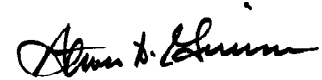
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MARQUIS AURBACH COFFING

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CLERK OF THE COURT

Marquis Aurbach Coffing
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amarquis@maclaw.com
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Attorneys for William Gang

DISTRICT COURT
CLARK COUNTY, NEVADA

RICHARD A. HUNTER, an individual,

Plaintiff,

vs.

WILLIAM GANG, an individual, and DOE
DEFENDANTS 1 through 10, and ROE
CORPORATIONS 1 through 10, inclusive,

Defendants.

Case No.: A-09-604877-C
Dept. No.: VIII

MOTION FOR ATTORNEY FEES AND COSTS

William Gang ("Gang"), through the law firm of Marquis Aurbach Coffing, hereby files his Motion for Attorney Fees and Costs. This Motion is made and based upon the papers and pleadings on file herein, the attached exhibits, the Memorandum of Points and Authorities, the

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MARQUIS AURBACH COFFING

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1 Verified Memorandum of Costs and Attorney Fees, the Declaration of Tye S. Hanseen, Esq., and
2 any oral argument allowed by the Court at the time of the hearing.

3 Dated this 28th day of November, 2011.

4
5 MARQUIS AURBACH COFFING

6
7 By /s/ Tye S. Hanseen
8 Albert G. Marquis, Esq.
9 Nevada Bar No. 1919
10 Tye S. Hanseen, Esq.
11 Nevada Bar No. 10365
12 10001 Park Run Drive
13 Las Vegas, Nevada 89145
14 amarquis@maclaw.com
15 thanseen@maclaw.com
16 Attorneys for William Gang

12 **NOTICE OF MOTION**

13 TO: ALL INTERESTED PARTIES,

14 You and each of you, will please take notice that William Gang's MOTION FOR
15 ATTORNEY FEES AND COSTS will come on regularly for hearing before the above-entitled
16 Court in Dept. VIII on the 9 day of January, 2011/2012, ^{In Chambers} ~~at the hour of~~
17 ~~a.m.~~ or as soon thereafter as counsel may be heard.

18 Dated this 28th day of November, 2011.

19
20 MARQUIS AURBACH COFFING

21
22 By /s/ Tye S. Hanseen
23 Albert G. Marquis, Esq.
24 Nevada Bar No. 1919
25 Tye S. Hanseen, Esq.
26 Nevada Bar No. 10365
27 10001 Park Run Drive
28 Las Vegas, Nevada 89145
amarquis@maclaw.com
thanseen@maclaw.com
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MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

Defendant Gang respectfully requests that this Court award him the attorney fees and costs he has incurred in the defense of this matter. NRS 18.010 authorizes this Court to enter an award for attorney fees in favor of Gang without regard to the recovery sought because Hunter brought his claims without reasonable ground and/or to harass Gang. Hunter built his house within eight inches of Gang's property, landscaped on 8,000 square feet of Gang's property, installed an irrigation system on Gang's property, and installed a 24" drainage pipe on Gang's property. Then, when a potential buyer backed out of a deal with Hunter to purchase Hunter's property because of Hunter's encroachment on Gang's property, Hunter sued Gang asserting that Gang's property should really be Hunter's property. On November 7, 2011, this Court entered an Order dismissing Hunter's Complaint against Gang with prejudice. The Court should now award Gang the \$14,652.00¹ in attorney fees and \$157.09 in costs he incurred for defending against Hunter's frivolous claims.

II. STATEMENT OF FACTS

1. Gang is the owner of 20.47 acres of real property described in the office of the Clark County Assessor as: Land Division 93-92, Lot 2, 920819:570—APN 174-20-303-002 ("Gang Property").

2. The Hunter Family Trust is the owner of 2.65 acres of real property described in the office of the Clark County Assessor as: 9500 Pinion Dr., Unincorporated County, Lot 1 & Vac. Rd., Sec 20 Twp 22 Rng 58—APN 174-20-402-004 ("Hunter Property").

3. The subject properties are located in the community of Mountain Springs, which is located off of Highway 160 in the Spring Mountains between Las Vegas and Pahrump.

4. The north side of the Hunter Property borders the south side of the Gang Property.

¹ This total of \$14,652 includes an additional amount of \$1,000 incurred since November 7, 2011, and anticipated fees for the preparation of this Motion and the related hearing, which fees are not updated as of November 28, 2011.

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1 5. Hunter built his home on the Hunter Property within eight inches of the property
2 line between the Hunter Property and Gang Property.

3 6. Hunter landscaped on the Gang Property, which landscape includes trees, shrubs,
4 and a watering system complete with sprinklers for the landscape (hereinafter referred to as the
5 “Encroachment”). In essence, Hunter created a back yard for himself on property he did not
6 own.

7 7. Hunter also installed a 24” drainage pipe on the Gang Property.

8 8. The Encroachment encompasses an area on the Gang Property of approximately
9 200’ by 40’.

10 9. The Encroachment on the Gang Property was part of a pattern of encroachment
11 by Hunter, who also constructed a building and other improvements on Forest Service land that
12 borders the Hunter Property to the west. The Forest Service required Hunter to remove the
13 structure and improvements.

14 10. Hunter also landscaped on the Forest Service land, as he did on the Gang
15 Property, and with the same disregard for ownership and property rights.

16 11. Even as this lawsuit was pending, Hunter continued to disregard Gang’s property
17 rights, staging a construction project for the Hunter Property on Gang’s property.

18 12. During the project, Hunter dug a trench utilizing the Gang Property and installed
19 the 24” drainage pipe, a portion of which appears to be on the Gang Property.

20 13. Hunter’s landscape, watering system, and drainage pipe all sit on the Gang
21 Property.

22 14. Gang never authorized Hunter to landscape, install a watering system, or install a
23 drainage pipe on the Gang Property.

24 15. When a potential buyer backed out of a deal with Hunter to purchase the Hunter
25 Property because of Hunter’s encroachment on the Gang Property, Hunter sued Gang asserting
26 that the 8,000 square feet of the Gang Property should really be part of the Hunter Property.

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1 16. Hunter filed the suit on December 4, 2009, against Gang alleging claims for quiet
2 title, injunctive relief, adverse possession, and declaratory relief to attempt to obtain title to the
3 Encroachment.

4 17. On November 7, 2011, this Court entered an Order dismissing Hunter's
5 Complaint against Gang.

6 **III. LEGAL ARGUMENT**

7 Gang is entitled to an award of his attorney fees and costs against Hunter. Pursuant to
8 NRS 18.010.2(b), Gang is entitled to an award of fees because Hunter brought his claims without
9 reasonable ground and to harass Gang.² Also, pursuant to NRS 18.020, Gang is entitled to his
10 costs because he is the prevailing party, he timely moved for his costs, and Hunter failed to
11 object to Gang's request for costs. Moreover, Gang's attorney fees and costs are reasonable.
12 Therefore, the Court should grant this Motion and award Gang \$14,652 in attorney fees and
13 \$157.09 in costs.

14 **A. GANG IS ENTITLED TO HIS ATTORNEY FEES UNDER NRS**
15 **18.010.2(B).**

16 The generally accepted "American Rule" is that parties to a lawsuit pay their own
17 attorneys fees. That rule may, however, be abrogated by contract, rule or statute. Barrett v.
18 Baird, 111 Nev. 1496, 908 P.2d 689 (1995). As to statute, NRS 18.010(2)(b) states in pertinent
19 part:

20 (2) In addition to the cases where an allowance is authorized by specific statute,
the court may make an allowance of attorneys fees to a prevailing party:

21 (b) without regard to the recovery sought, when the court finds that the
22 claim . . . of the opposing party was brought without reasonable ground or to
harass the prevailing party. . .

23 When discussing claims for relief that are brought without reasonable grounds, the
24 Nevada Supreme Court has determined that a claim is groundless if, "the allegations in the
25 complaint . . . are not supported by any credible evidence at trial." Allianz Insur. Co. v. Gagnon,
26 109 Nev. 990, 996, 860 P.2d 720 (1993) (*quoting* Western United Realty, Inc. v. Isaacs, 769

27
28 ² See NRS 18.010(2)(b).

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1 P.2d 1063, 1069 (Colo. 1984)). Although frivolity is determined at the time the claim is
2 instituted, a claim is groundless or frivolous if it cannot be supported by any credible evidence at
3 trial. Barozzi v. Benna, 112 Nev. 635, 639, 918 P.2d 301 (1996). While the claim is not
4 groundless at the time it was made, if evidence has become stale, the claim is groundless if
5 credible evidence never existed. Allianz Insur. Co., 109 Nev. at 996, 860 P.2d at 720. NRS
6 18.010(2)(b) requires that the “*court shall liberally construe the provisions of this paragraph in*
7 *favor of awarding attorney’s fees in all appropriate situations.*” NRS 18.010(2)(b) (emphasis
8 added). The language of the statute reinforces the intent of the Legislature by declaring that:

9 The court [should] award attorney’s fees . . . in all appropriate situations *to*
10 *punish for and deter frivolous and vexatious claims* and defenses because such
11 claims and defenses overburden limited judicial resources, hinder the timely
12 resolution of meritorious claims and *increase the costs of engaging in business*
13 *and providing professional services to the public.*

12 NRS 18.010(2)(b) (emphasis added).

13 In the instant matter, it was clear from the initiation of this suit that Hunter’s claims were
14 brought without reasonable ground and were brought only to harass and force Gang into a
15 settlement for land Hunter had no business in acquiring. Hunter’s claims were groundless
16 because he was trying to obtain approximately 8,000 square feet of the Gang Property for no
17 cost. Hunter utilized 8,000 square feet of the Gang Property for his own backyard. Even while
18 this suit was pending, Hunter used the Gang Property as a construction site while installing
19 without Gang’s permission a 24” drainage pipe on the Gang Property.

20 When a third party purchaser of the Hunter Property discovered the 8,000 square foot
21 Encroachment and backed out of a purchase for the Hunter Property, Hunter thought he would
22 bully Gang into giving up the 8,000 square feet of land for free so Hunter could sell the Hunter
23 Property with a backyard and without the Encroachment on the Gang Property. Gang was wise
24 to Hunter’s practice of encroaching on property he did not own. Hunter also constructed a
25 building and other improvements on Forest Service land that borders the Hunter Property to the
26 west. Further, Hunter landscaped on the Forest Service land, as he did on the Gang Property,
27 with the same disregard for ownership and property rights. As a result, on November 7, 2011,
28 the Court dismissed Hunter’s Complaint with prejudice.