EXHIBIT "4"

REGISTER OF ACTIONS

CASE NO. P-12-074745-E

In the Matter of: Leroy Black, Deceased	Case Type:	**Probate - Special Administration**
	Date Filed:	**06/26/2012**
	Location:	
	Cross-Reference Case Number:	**P074745**
	Supreme Court No.:	**63960** **65983**

PARTY INFORMATION

		Lead Attorneys
Decedent	**Black, Leroy**	
Petitioner	**Markowitz, Phillip** 2201 Hercules DR Los Angeles, CA 90046	**Jonathan W. Barlow** *Retained* 702-476-5900(W)

EVENTS & ORDERS OF THE COURT

08/27/2014 **All Pending Motions** (9:00 AM) (Judicial Officer Sturman, Gloria)

Minutes

08/27/2014 9:00 AM

- MOTION FOR SANCTIONS AGAINST WILLIAM FINK AND TO DISQUALIFY ATTORNEYS' OF RECORD FOR WILLIAM FINK . . . . . OPPOSITION BY WILLIAM FINK AND COUNTERMOTION FOR CERTIFICATION TO SET ASIDE JUDGMENT PURSUANT TO NRCP 60(B) FOR FRAUD UPON THIS COURT BY MARKOWITZ Court asked Counsel if this matter was pre-mature considering the matter is pending appeal before the Nevada Supreme Court and Court and Counsel decided the only matter this Court retained jurisdiction over was the request to disqualify attorneys' of record for William Fink. The remainder of the Motion and Countermotion would be continued for 60 days. Mr. Barlow advised his client recently informed him he had a phone conversation with Goodsell Olsen about this case at the end of last year. Court advised that needs to moved separately. Counsel argued whether the letter in question and subsequent e-mails violated the Standard of Professional Conduct and if the letter itself constituted a specific act of impropriety. Following argument, COURT ORDERED the Law Firm of Callister & Frizell disqualified as attorneys of record for William Fink and further advised the Court will notify the Nevada State Bar of the violation of Rule 3.4(e) of the Rules of Professional Conduct as required. Mr. Barlow to prepare proposed Order. CONTINUED TO 10/22/2014 AT 10:00AM CLERK'S NOTE: Counsel to note the corrected hearing date as shown above. A copy of this minute order was placed in the attorney folders of Jonathan Barlow, Esq. (CLEAR COUNSEL LAW GROUP) and Michael Olsen, Esq. (GOODSELL & OLSEN)./ ld 8.27.14

Parties Present

Return to Register of Actions

upon reaching him or her, would be unduly taxed, seized, confiscated, appropriated, or in any way taken from him or her in such a manner as to prevent his or her use and enjoyment of the same.

(6) The judicially declared incompetency of the beneficiary.

(c) The Trustee shall not be responsible unless the Trustee has knowledge of the happening of any event set forth above.

(d) To safeguard the rights of the beneficiary, if any distribution from his or her Trust share has been delayed for more than one (1) year, he or she may apply to the District Court in Las Vegas, Nevada, for a judicial determination as to whether the Trustee has reasonably adhered to the standards set forth herein. The Trustee shall not have any liability in the event the Court determines the Trustee made a good faith attempt to reasonably follow the standards set forth above.

ARTICLE 7

PROVISIONS RELATING TO TRUSTEESHIP

7.1 **Successor Trustee**. In the event of the death or incapacity of the original Trustee, JEFFREY BURR, LTD., a Nevada corporation, shall serve as the Successor Trustee of all of the Trusts hereunder and shall have full power and authority to appointment an independent Trust Company in its stead. If JEFFREY BURR, LTD. is unable or unwilling to serve as Successor Trustee and has not named a successor independent Trust Company to serve in its stead, then KAUFMAN, KAUFMAN & ASSOCIATES, P.C., a Nevada professional corporation, shall serve as Successor Trustee of all of the Trusts hereunder. In determining the incapacity of any Trustee serving hereunder, the guidelines set forth in Section 3.1 may be followed.

If no Successor Trustee is designated to act in the event of the death, incapacity or resignation of the Trustee, then acting, or no Successor Trustee accepts the office, the Trustee then acting may appoint a Successor Trustee. If no such appointment is made, the majority of the adult beneficiaries entitled to distribution from this Trust may appoint a Successor Trustee.

JEFFREY BURR, LTD., a Nevada corporation, shall serve as the Successor Trustee hereunder and the Trustor directs that JEFFREY BURR, LTD. may also serve as legal counsel to this Trust. The Trustor waives any conflict of interest which may exist if JEFFREY BURR, LTD. serves as Trustee and as legal counsel to this Trust. The Trustor further directs that JEFFREY BURR, LTD. shall be entitled to reasonable compensation for all services provided to the Trust in whatever capacity it may serve.

7.2 **Liability of Successor Trustee**. No Successor Trustee shall be liable for the acts, omissions, or default of a prior Trustee. Unless requested in writing within sixty (60) days of appointment by an adult beneficiary of the Trust, no Successor Trustee shall have any duty to audit or investigate the accounts or administration of any such Trustee, and may accept the accounting records of the predecessor Trustee showing assets on hand without further investigation and without incurring any liability to any person claiming or having an interest in the Trust.

7.3 **Trustee's Actions**. If applicable, the Trustee of this Trust, as a licensed individual stockholder, director, member, manager, or otherwise, of a professional corporation or professional company owned by this Trust, who is legally qualified, may render the same specific professional services as those for which the professional corporation or company was incorporated; provided, however, under no circumstances shall a Trustee of this Trust enter into any type of agreement vesting another person, including a Trustee of this Trust, with the authority to exercise the voting power of any or all professional stock, unless the other person is licensed to render the same specific professional services as those for which the professional corporation was incorporated.

7.4 **Acceptance by Trustee**. A Trustee shall become Trustee or Co-Trustee jointly with any remaining or surviving Co-Trustees, and assume the duties thereof, immediately upon delivery or written acceptance to Trustor, during his lifetime and thereafter to any Trustee hereunder, or if for any reason there shall be no Trustee then serving, to any beneficiary hereunder, without the necessity of any other act, conveyance, or transfer.

7.5 **Delegation by Trustee**. Any individual Co-Trustee shall have the right at any time, by an instrument in writing delivered to the other Co-Trustee, to delegate to such other Co-Trustee any and all of the Trustee's powers and discretion.

7.6 **Resignation of Trustee**. Any Trustee at any time serving hereunder may resign as Trustee by delivering to Trustor, during his lifetime and thereafter to any Trustee hereunder, or to any beneficiary hereunder if for any reason there shall be no Trustee then serving hereunder, an instrument in writing signed by the Trustee.

7.7 **Corporate Trustee**. During the Trust periods, if any, that a corporate Trustee acts as Co-Trustee with an individual, the corporate Trustee shall have the unrestricted right to the custody of all securities, funds, and other property of the Trusts and it shall make all payments and distributions provided hereunder.

7.8 **Majority**. Subject to any limitations stated elsewhere in this Trust Indenture, all decisions affecting any of the Trust estate shall be made in the following manner: While three or more Trustees, whether corporate or individual, are in office, the determination of a majority shall be binding. If only two individual Trustees are in office, they must act unanimously.

7.9 **Bond**. No bond shall ever be required of any Trustee hereunder.

7.10 **Expenses and Fees**. The Successor Trustee shall be reimbursed for all actual expenses incurred in the administration of any Trust created herein. In addition, the Successor Trustee shall be entitled to reasonable compensation for service rendered to the Trust.

ARTICLE 8

PROVISIONS RELATING TO TRUSTOR'S POWERS

8.1 **Power to Amend**. During the lifetime of the Trustor, this Trust Indenture may be amended in whole or in part by an instrument in writing, signed by the Trustor, and delivered to the Trustee. Upon the death of the Trustor, this Trust Indenture shall not be amended.

8.2 **Power to Revoke**. During the lifetime of Trustor, the Trustor may revoke this Trust Indenture by an instrument in writing, signed by the Trustor. Upon revocation, the Trustee shall deliver the revoked portion of the Trust property to the Trustor. Upon the death of the Trustor, this Trust Indenture shall not be revoked.

8.3 **Power to Change Trustee**. During the lifetime of the Trustor, he may change the Trustee or Successor Trustee of this Trust by an instrument in writing.

8.4 **Additions to Trust**. Any additional property acceptable to the Trustee may be transferred to this Trust. The property shall be subject to the terms of this Trust.

8.5 **Special Gifts**. If the Trustor becomes legally incompetent, or if in the Trustee's judgment reasonable doubt exists regarding capacity, the Trustee is authorized in such Trustee's sole discretion to continue any gift program which the Trustor had previously commenced, to make use of the federal gift tax annual exclusion. Such gifts may be made outright or in trust.

ARTICLE 9

PROVISIONS RELATING TO TRUSTEE'S POWERS

9.1 **Management of Trust Property**. With respect to the Trust property, except as otherwise specifically provided in this Trust, the Trustee shall have all powers now or hereafter conferred upon trustees by applicable state law, and also those powers appropriate to the orderly and effective administration of the Trust. Any expenditure involved in the exercise of the Trustee's powers shall be borne by the Trust estate. Such powers shall include, but not be limited to, the following powers with respect to the assets in the Trust estate:

(a) With respect to real property: to sell and to buy real property; to mortgage and/or convey by deed of trust or otherwise encumber any real property now or hereafter owned by this Trust (including, but not limited to any real property, the Trustee may hereafter acquire or receive and the Trustor's personal residence) to lease, sublease, release; to eject, and remove tenants or other persons from, and recover possession of by all lawful means; to accept real property as a gift or as security for a loan; to collect, sue for,

receive and receipt for rents and profits; and to conserve, invest or utilize any and all of such rents, profits, and receipts for the purposes described in this paragraph; to do any act of management and conservation, to pay, compromise or to contest tax assessments and to apply for refunds in connection therewith; to employ laborers; to subdivide, develop, dedicate to public use without consideration, and/or dedicate easements over; to maintain, protect, repair, preserve, insure, build upon, demolish, alter or improve all of any part thereof; to obtain or vacate plats and adjust boundaries; to adjust differences in valuation on exchange or partition by giving or receiving consideration; to release or partially release real property from a lien.

(h) To register any securities or other property held hereunder in the names of Trustees or in the name of a nominee, with or without the addition of words indicating that such securities or other property are held in a fiduciary capacity, and to hold in bearer form any securities or other property held hereunder so that title thereto will pass by delivery, but the books and records of Trustees shall show that all such investments are part of their respective funds.

(c) To hold, manage, invest, and account for the separate trusts in one or more consolidated funds, in whole or in part, as they may determine. As to each consolidated fund, the division into the various shares comprising such fund need be made only upon Trustees' books of account.

(d) To lease Trust property for terms within or beyond the term of the Trust and for any purpose, including exploration for and removal of gas, oil, and other minerals; and to enter into community oil leases, pooling, and unitization agreements.

(e) To borrow money, mortgage, pledge, or lease Trust assets for whatever period of time Trustee shall determine, even beyond the expected term of the respective Trust.

(f) To hold and retain any property, real or personal, in the form in which the same may be at the time of the receipt thereof, as long as in the exercise of their discretion it may be advisable so to do, notwithstanding same may not be of a character authorized by law for investment of Trust funds.

(g) To invest and reinvest in their absolute discretion, and they shall not be restricted in their choice of investments to such investments as are permissible for fiduciaries under any present or future applicable law, notwithstanding that the same may constitute an interest in a partnership.

(h) To advance funds to any of the Trusts for any Trust purpose. The interest rate imposed for such advances shall not exceed the current rates.

(i) To institute, compromise, and defend any actions and proceedings.

(j) To vote, in person or by proxy, at corporate meetings any shares of stock in any Trust created herein, and to participate in or consent to any voting Trust, reorganization, dissolution, liquidation, merger, or other action affecting any such shares of stock or any corporation which has issued such shares or stock.

(k) To partition, allot, and distribute, in undivided interest or in kind, or partly in money and partly in kind, and to sell such property as the Trustees may deem necessary to make divisions or partial or final distribution of any of the Trusts.

(l) To determine what is principal or income of the Trusts and apportion and allocate receipts and expenses as between these accounts.

(m) To make payments hereunder directly to any Beneficiary under disability, to the guardian of his or her person or estate, to any other person deemed suitable by the Trustees, or by direct payment of such Beneficiary's expenses.

(n) To employ agents, attorneys, brokers, and other employees individual or corporate, and to pay them reasonable compensation, which shall be deemed part of the expenses of the Trusts and powers hereunder.

(o) To accept additions of property to the Trusts, whether made by the Trustor, a member of the Trustor's family, by any beneficiaries hereunder, or by anyone interested in such beneficiaries.

(p) To hold on deposit or to deposit any funds of any Trust created herein, whether part of the original Trust fund or received thereafter, in one or more savings and loan associations, bank or other financing institution and in such form of account, whether or not interest bearing, as Trustees may determine, without regard to the amount of any such deposit or to whether or not it would otherwise be a suitable investment for funds of a trust.

(q) To open and maintain safety deposit boxes in the name of this Trust.

(r) To make distributions to any Trust or Beneficiary hereunder in cash or in specific property, real or personal, or an undivided

interest therein, or partly in cash and partly in such property, and to do so without regard to the income tax basis of specific property so distributed. The Trustor requests but does not direct, that the Trustees make distributions in a manner which will result in maximizing the aggregate increase in income tax basis of assets of the estate on account of federal and state estate, inheritance and succession taxes attributable to appreciation of such assets.

(s) The powers enumerated in NRS 163.265 to NRS 163.410, inclusive, are hereby incorporated herein to the extent they do not conflict with any other provisions of this instrument.

(t) The enumeration of certain powers of the Trustees shall not limit their general powers, subject always to the discharge of their fiduciary obligations, and being vested with and having all the rights, powers, and privileges which an absolute owner of the same property would have.

(u) The Trustees shall have the power to invest Trust assets in securities of every kind, including debt and equity securities, to buy and sell securities, to write covered securities options on recognized options exchanges, to buy-back covered securities options listed on such exchanges, to buy and sell listed securities options, individually and in combination, employing recognized investment techniques such as, but not limited to, spreads, straddles, and other documents, including margin and option agreements which may be required by securities brokerage firms in connection with the opening of accounts in which such option transactions will be effected.

(v) The power to guarantee loans made for the benefit of, in whole or in part, any Trustor or Beneficiary or any entity in which any Trustor or Beneficiary has a direct or indirect interest.

(w) In regard to the operation of any closely held business of the Trust, the Trustees shall have the following powers:

(1) The power to retain and continue the business engaged in by the Trust or to recapitalize, liquidate or sell the same.

(2) The power to direct, control, supervise, manage, or participate in the operation of the business and to determine the manner and degree of the fiduciary's active participation in the management of the business and to that end to delegate all or any part of the power to supervise, manage, or operate the

business to such person or persons as the fiduciary may select, including any individual who may be a Beneficiary or Trustee hereunder.

(3) The power to engage, compensate and discharge, or as a stockholder owning the stock of the Corporation, to vote for the engagement, compensation and discharge of such managers, employees, agents, attorneys, accountants, consultants, or other representatives, including anyone who may be a Beneficiary or Trustee hereunder.

(4) The power to become or continue to be an officer, director, or employee of a Corporation and to be paid reasonable compensation from such Corporation as such officer, director, and employee, in addition to any compensation otherwise allowed by law.

(5) The power to invest or employ in such business such other assets of the Trust estate.

9.2 **Power to Appoint Agent**. The Trustee is authorized to employ attorneys, accountants, investment managers, specialists, and such other agents as the Trustee shall deem necessary or desirable. The Trustee shall have the authority to appoint an investment manager or managers to manage all or any part of the assets of the Trust, and to delegate to said investment manager the discretionary power to acquire and dispose of assets of the Trust. The Trustee may charge the compensation of such attorneys, accountants, investment managers, specialists, and other agents against the Trust, including any other related expenses.

9.3 **Broad Powers of Distribution**. After the death of the Trustor, upon any division or partial or final distribution of the Trust estate, the Successor Trustee shall have the power to partition, allot and distribute the Trust estate in undivided interest or in kind, or partly in money and partly in kind, at valuations determined by the Trustee, and to sell such property as the Trustee, in the Trustee's discretion, considers necessary to make such division or distribution. In making any division or partial or final distribution of the Trust estate, the Trustee shall be under no obligation to make a pro rata division or to distribute the same assets to beneficiaries similarly situated. Rather, the Trustee may,

in the Trustee's discretion, make non pro rata divisions between Trusts or shares and non pro rata distributions to beneficiaries as long as the respective assets allocated to separate trusts or shares or the distributions to beneficiaries have equivalent or proportionate fair market value. The income tax basis or assets allocated or distributed non pro rata need not be equivalent and may vary to a greater or lesser amount, as determined by the Trustee, in his or her discretion, and no adjustment need be made to compensate for any difference in basis.

9.4 **Apply for Government Assistance**. The Trustee shall have the power to deal with governmental agencies. To make applications for, receive and administer any of the following benefits, if applicable: Social Security, Medicare, Medicaid, Supplemental Security Income, In-Home Support Services, and any other government resources and community support services available to the elderly.

9.5 **Catastrophic Health Care Planning**. The Trustee shall have the power to explore and implement planning strategies and options and to plan and accomplish asset preservation in the event the Trustor needs long-term health and nursing care. Such planning shall include, but is not necessarily limited to, the power and authority to: (1) make home improvements and additions to the Trustor's family residence; (2) pay off, partly or in full, the encumbrance, if any, on the Trustor's family residence; (3) purchase a family residence, if the Trustor does not own one; (4) purchase a more expensive family residence; (5) make gifts of assets for estate planning purposes to the beneficiaries and in the proportions set forth in Article 5.

ARTICLE 10

ELECTING SMALL BUSINESS AND

QUALIFIED SUBCHAPTER S TRUSTS

10.1 **QSS Trust**. To the extent that any Trust created under this Instrument (for purposes of this Article an "Original Trust") owns or becomes the owner (or would but for this provision become the owner) of shares of stock of any then electing "S corporation" pursuant to Section 1361 et seq. of the Internal Revenue Code, or to the extent that any such Original Trust owns or becomes the owner of shares of stock of any

"small business corporation" as defined in Section 1361(b) of the Internal Revenue Code with respect to which the Trustee desires to continue, make, or allow to be made an "S corporation" election, the Trustees of such Trust shall have the power at any time, in such Trustees' sole and absolute discretion, the exercise of which shall not be subject to review by any person or court, to terminate said Original Trust as to such shares of stock and to allocate, pay, and distribute (or cause to be allocated, paid, and distributed directly from any transferor) some or all of such shares of stock to a separate and distinct Qualified Subchapter S Trust, which Trust and Trust fund shall be designated with the name of the same Beneficiary with whose name the Original Trust is designated (such Beneficiary with whose name the Original Trust is designated being for purposes of this Article the "Beneficiary" of such trust) followed by the phrase **"QSS TRUST"** and shall be held pursuant to the same terms and conditions as the Original Trust, except that, notwithstanding any other provision in this Trust Indenture applicable to the Original Trust:

(a) Until the death of the Beneficiary of the Qualified Subchapter S Trust, the Trustees of such Qualified Subchapter S Trust shall pay and distribute to such Beneficiary and to no other person all of the net income of the Qualified Subchapter S Trust annually or at more frequent intervals. Any and all income accrued, but not paid to the Beneficiary prior to the death of the Beneficiary, shall be paid to the estate of the Beneficiary. If more than one person had a present right to receive income distributions from the trust to which the "S Corporation" stock was originally allocated, then the Trustee shall have the authority to designate multiple current income beneficiaries and establish a separate Trust S for each such Beneficiary.

(b) Any distribution of principal from a Qualified Subchapter S Trust may be made only to the Beneficiary then entitled to receive income from such trust.

(c) Each Qualified Subchapter S Trust is intended to be a Qualified Subchapter S Trust, as defined in Section 1361 (d) of the Internal Revenue Code, as amended, or any successor provisions thereto. Accordingly, no Trustee of any Qualified Subchapter S Trust created pursuant to this Article shall have any power, the possession of which would cause any such Trust to fail to be a Qualified Subchapter S Trust; no power shall be exercisable in such a manner as to cause any such Trust to fail to be a Qualified

Subchapter S Trust; and any ambiguity in this Trust Indenture shall be resolved in such a manner that each such trust shall be a Qualified Subchapter S Trust.

(d) The provisions of Articles 5 and 6 shall have no application to the distribution of income from any Qualified Subchapter S Trust created or continued pursuant to the provisions of this Article.

(e) Any power provided in Articles 5 and 6 of this Trust Indenture may be exercised with respect to any Qualified Subchapter S Trust created pursuant to this Article, if and only if, or to the extent that, the exercise of any such power shall not violate the provisions of this Article and shall not impair or disqualify the Qualified Subchapter S Trust status of such trust.

(f) Any reference in this instrument to any person, acting in an individual or fiduciary capacity, making an election for himself or for or on behalf of any person shall include, but not be limited to, an election made in accordance with Section 1361(d)(2) of the Code.

(g) The Trustee hereunder shall characterize receipts and expenses of any QSS Trust in a manner consistent with qualifying that trust as a Qualified Subchapter S Trust.

(h) The Trustee may not consolidate any trust with another if to do so would jeopardize the qualification of one or both of the trusts as Qualified Subchapter S Trusts.

(i) If the continuation of any Qualified Subchapter S Trust created under this section would, in the opinion of the Trustee's legal counsel, result in the termination of the "S Corporation" status of any corporation whose stock is held as a part of the QSS Trust estate, the Trustee, in Trustee's sole discretion, shall have, in addition to the power to sell or otherwise dispose of such stock, the power to distribute the stock of such "S Corporation" to the person then entitled to receive the income therefrom. Distribution of such stock in the manner herein provided shall relieve the Trustee of any further responsibility with respect to such "S Corporation" stock. The Trustee shall have no liability for distributing or failing to distribute such stock as authorized by this section.

10.2 **ESB Trust**. To the extent that any Trust created under this Instrument (for purposes of this Article an "Original Trust") owns or becomes the owner (or would but for this provision become the owner) of shares of stock of any then electing "S corporation" pursuant to Section 1361 et seq. of the Internal Revenue Code, or to the

extent that any such Original Trust owns or becomes the owner of shares of stock of any "small business corporation" as defined in Section 1361(b) of the Internal Revenue Code with respect to which the Trustee desires to continue, make, or allow to be made an "S corporation" election, the Trustees of such Trust shall have the power at any time, in such Trustees' sole and absolute discretion, the exercise of which shall not be subject to review by any person or court, to terminate said Original Trust as to such shares of stock and to allocate, pay, and distribute (or cause to be allocated, paid, and distributed directly from any transferor) some or all of such shares of stock to a separate and distinct Electing Small Business ("ESB") Trust, which Trust and Trust fund shall be designated with the name of the same Beneficiary with whose name the Original Trust is designated (such Beneficiary with whose name the Original Trust is designated being for purposes of this Article the "Beneficiary" of such trust) followed by the phrase "**ESB TRUST**" and shall be held pursuant to the same terms and conditions as the Original Trust if the following conditions are met:

(a) If the Trustee determines it to be in the best interest of the Primary Beneficiary of any trust hereunder to elect status as an Electing Small Business Trust ("ESBT") pursuant to Code Section 1361 (c)(2)(A)(v);

(b) All beneficiaries of the trust for which the proposed ESBT election are qualified beneficiaries of an ESBT, as required pursuant to Code Section 1361(e)(1)(A)(i);

(c) There is no current election for the trust to be a Qualified Subchapter S Trust under 1361(d); and

(d) The Sub-Trust to be created by the ESBT election will otherwise qualify under all applicable Code provisions, regulations, and other applicable law, in which event the Trustee shall make all necessary elections to create a separate sub-trust, and following such election shall allocate any shares of stock of any then electing "S" Corporation to such ESB sub-trust.

10.3 **Trustee's Discretion**. The Trustee(s) of each trust shall have full discretion in making the QSST and/or ESBT elections as provided for in this Article, including the power to create both QSST and ESBT sub-trusts and allocate all or any portion of such stock in any manner between such sub-trusts; provided however, that

during any time in which a Beneficiary is serving as sole Trustee of a trust of which he/she is a permissible Beneficiary, such Trustee/Beneficiary shall make one allocation only of Subchapter S stock to either the QSST or the ESBT, and once such allocation is made, such Trustee/Beneficiary shall not be permitted, acting alone, to thereafter change the election, with respect to any Subchapter S stock, in any way which would affect the beneficial enjoyment of income from any Subchapter S stock in any manner which might cause inclusion of such stock in the Trustee/Beneficiary's estate pursuant to Code Section 2036 or 2038 or any other applicable law. If a Trustee/Beneficiary is serving as a Co-Trustee of his/her trust, nothing herein shall prevent the non-Beneficiary Co-Trustee from making and changing the applicable QSST and ESBT elections with respect to any shares of stock of an electing "S corporation."

10.4 **Effect on Beneficiaries**. In granting to the Trustee the discretion to create one or more Electing Small Business Trusts as herein provided, the Trustor recognizes that the interest of present or future beneficiaries may be increased or diminished upon the exercise of such discretion.

ARTICLE 11

PROTECTION OF AND ACCOUNTING BY TRUSTEE

11.1 **Protection**. The Trustee shall not be liable for any loss or injury to the property at any time held by him hereunder, except only such as may result from his fraud, willful misconduct, or gross negligence. Every election, determination, or other exercise by Trustee of any discretion vested, either expressly or by implication, in him, pursuant to this Trust Indenture, whether made upon a question actually raised or implied in his acts and proceedings, shall be conclusive and binding upon all parties in interest.

11.2 **Accounting**. Upon the written request delivered or mailed to the Trustee by an income beneficiary hereunder, the Trustee shall render a written statement of the financial status of the Trust. Such statement shall include the receipts and disbursements of the Trust for the period requested or for the period transpired since the last statement and the principal of the Trust at the end of such period. Statements need not be rendered more frequently than annually.

ARTICLE 12

EXONERATION OF PERSONS DEALING WITH THE TRUSTEE

No person dealing with the Trustee shall be obliged to see to the application of any property paid or delivered to him or to inquire into the expediency or propriety of any transaction or the authority of the Trustee to enter into and consummate the same upon such terms as he may deem advisable.

ARTICLE 13

HIPAA RELEASE

If any person's authority under the instrument is dependent upon any determination that the Trustor is unable to properly manage his affairs or a determination of his incapacity, then any physician, health-care professional, dentist, health plan, hospital, clinic, laboratory, pharmacy or other covered health-care provider, any insurance company, and any health-care clearinghouse that has provided treatment or services to the Trustor or is otherwise requested by the Trustor's nominated Successor Trustee to determine his incapacity, and any other person or entity in possession of any of the Trustor's "protected health information," as contemplated by the Health Insurance Portability and Accountability Act of 1996 ("HIPAA"), 42 USC 1320d and 45 CFR 160-164, is hereby authorized and directed to disclose the Trustor's protected health information to the nominated Successor Trustee to the extent necessary, and only to the extent necessary, in order for the nominated Successor Trustee to determine whether an event of incapacity has occurred pursuant to Article 3 hereinabove. This release of authority applies even if that person has not yet been appointed as Successor Trustee. Any limitation on protected health information to be disclosed hereunder shall have no effect upon any rights to such information any other party may have under any other instrument granting access to such information.

ARTICLE 14

GENERAL PROVISIONS

14.1 **Controlling Law**. This Trust Indenture is executed under the laws of the State of Nevada and shall in all respects be administered by the laws of the State of

Nevada; provided, however, the Trustee shall have the discretion, exercisable at any later time and from time to time, to administer any Trust created hereunder pursuant to the laws of any jurisdiction in which the Trustee, may be domiciled, by executing a written instrument acknowledged before a notary public to that effect, and delivered to the then income beneficiaries. If the Trustee exercises the discretion, as above provided, this Trust Indenture shall be administered from that time forth by the laws of the other state or jurisdiction.

14.2 **Spendthrift Provision**. No interest in the principal or income of any trust created under this Trust Instrument shall be anticipated, assigned, encumbered or subjected to creditors' claims or legal process before actual receipt by a beneficiary. This provision shall not apply to a Trustor's interest in the Trust estate. The income and principal of this Trust shall be paid over to the beneficiary at the time and in the manner provided by the terms of this Trust, and not upon any written or oral order, nor upon any assignment or transfer by the beneficiary, nor by operation of law.

14.3 **Perpetuities Savings Clause**. Notwithstanding anything to the contrary contained in this Trust agreement, the Trusts created herein, unless earlier terminated according to the terms of this Trust agreement, shall all terminate one (1) day less than three hundred and sixty-five (365) years after the execution date of this Trust. Upon such termination each Trust shall forthwith be distributed to the Beneficiaries of such Trust; provided however, that if no Beneficiary is then living, such property shall be distributed to those persons so designated in said Trust, as therein provided. Notwithstanding the foregoing, in the event any Trust created hereunder should be controlled and governed by the laws of any state which state has modified or repealed the common law Rule Against Perpetuities, then such modified Rule Against Perpetuities shall apply to such trust, and if the Rule Against Perpetuities shall have been repealed by the law of the governing state, then termination of any Trusts hereunder pursuant to the common law Rule Against Perpetuities shall not apply to any Trust which is, as a result, not subject to any such Rule Against Perpetuities, and all other references throughout this Trust Agreement to termination of any Trust hereunder pursuant to any applicable Rule Against Perpetuities shall not be applicable to such Trust or Trusts.

14.4 **No-Contest Provision**. The Trustor specifically desires that this Trust Indenture and these Trusts created herein be administered and distributed without litigation or dispute of any kind. If any beneficiary of these trusts or any other person, whether stranger, relative or heir, or any legatee or devisee under the Last Will and Testament of either the Trustor or the successors-in-interest of any such persons, including the Trustor's estate under the intestate laws of the State of Nevada or any other state lawfully or indirectly, singly or in conjunction with another person, seek or establish to assert any claim or claims to the assets of these Trusts established herein, or attack, oppose or seek to set aside the administration and distribution of the Trusts, or to invalidate, impair or set aside its provisions, or to have the same or any part thereof declared null and void or diminished, or to defeat or change any part of the provisions of the Trusts established herein, then in any and all of the above-mentioned cases and events, such person or persons shall receive One Dollar ($1.00), and no more, in lieu of any interest in the assets of the Trusts or interest in income or principal.

14.5 **Provision for Others**. The Trustor has, except as otherwise expressly provided in this Trust Indenture, intentionally and with full knowledge declined to provide for any and all of his heirs or other persons who may claim an interest in his respective estates or in these Trusts.

14.6 **Severability**. In the event any clause, provision or provisions of this Trust Indenture prove to be or be adjudged invalid or void for any reason, then such invalid or void clause, provision or provisions shall not affect the whole of this instrument, but the balance of the provisions hereof shall remain operative and shall be carried into effect insofar as legally possible.

14.7 **Distribution of Small Trust**. If the Trustee, in the Trustee's absolute discretion, determines that the amount held in Trust is not large enough to be administered in Trust on an economical basis, then the Trustee may distribute the Trust assets free of Trust to those persons then entitled to receive the same.

14.8 **Headings**. The various clause headings used herein are for convenience of reference only and constitute no part of this Trust Indenture.

14.9 **More Than One Original**. This Trust Indenture may be executed in any number of copies and each shall constitute an original of one and the same instrument.

14.10 **Interpretation**. Whenever it shall be necessary to interpret this Trust, the masculine, feminine and neuter personal pronouns shall be construed interchangeably, and the singular shall include the plural and the singular.

14.11 **Definitions**. The following words are defined as follows:

(a) **"Principal" and "Income"**. Except as otherwise specifically provided in this Trust Indenture, the determination of all matters with respect to what is principal and income of the Trust estate and the apportionment and allocation or receipts and expenses thereon shall be governed by the provisions of Nevada's Revised Uniform Principal and Income Act, as it may be amended from time to time and so long as such Act does not conflict with any provision of this instrument. Notwithstanding such Act, no allowance for depreciation shall be charged against income or net income payable to any beneficiary.

(b) **"Education"**. Whenever provision is made in this Trust Indenture for payment for the "education" of a beneficiary, the term "education" shall be construed to include technical or trade schooling, college or postgraduate study, so long as pursued to advantage by the beneficiary at an institution of the beneficiary's choice and in determining payments to be made for such college or postgraduate education, the Trustees shall take into consideration the beneficiary's related living and traveling expenses to the extent that they are reasonable.

(c) **"Child, Children, Descendants or Issue"**. As used in this instrument, the term "descendants" or "issue" of a person means all of that person's lineal descendants of all generations. The terms "child, children, descendants or issue" include adopted persons, but do not include a step-child or step-grandchild, unless that person is entitled to inherit as a legally adopted person.

(d) "Tangible Personal Property". As used in this instrument, the term "tangible personal property" shall not include money, evidences of indebtedness, documents of title, securities and property used in a trade or business.

EXECUTED in Clark County, Nevada, on October 27, 2009.

LEROY BLACK

ACCEPTANCE BY TRUSTEE

I certify that I have read the foregoing Declaration of Trust and understand the terms and conditions upon which the Trust estate is to be held, managed, and disposed of by me as Trustee. I accept the Declaration of Trust in all particulars and acknowledge receipt of the Trust property.

LEROY BLACK

STATE OF NEVADA)
)ss.
COUNTY OF CLARK)

On October 27, 2009, before me, the undersigned, a Notary Public in and for said County of Clark, State of Nevada, personally appeared LEROY BLACK, personally known to me (or proved to me on the basis of satisfactory evidence) to be the person whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his authorized capacity, and that by his signature on the instrument, the person, or the entity upon behalf of which the person acted, executed the instrument.

IN WITNESS WHEREOF, I have hereunto set my hand and seal the day and year in this certificate first above written.

NOTARY PUBLIC

Notary Public - State of Nevada
COUNTY OF CLARK
SANDRA L. SIMPSON
No. 96-2010-1 My Appointment Expires October 26, 2009

SANDRA L. SIMPSON
NOTARY PUBLIC
STATE OF NEVADA
APPT. No. 96-2010-1
MY APPT. EXPIRES OCT. 26, 2013

EXHIBIT "X"

Assessor

Michele W. Shafe, Assessor

PARCEL OWNERSHIP HISTORY

Comment Codes New Search

ASSESSOR DESCRIPTION
HAWKINS ADD PLAT BOOK 1 PAGE 40 LOT 25 BLOCK 4 & LOTS 26-28
SEC 34 TWP 20 RNG 61

CURRENT PARCEL NO.	CURRENT OWNER	RECORDED DOCUMENT NO.	RECORDED DATE	VESTING	TAX DISTRICT	ESTIMATED SIZE
139-34-611-043	SENIOR NEVADA BENEFIT GROUP L P	19941102:01553	11/02/1994	NO STATUS	203	.32 AC

PARCEL NO.	PRIOR OWNER(S)	RECORDED DOCUMENT NO.	RECORDED DATE	VESTING	TAX DISTRICT	ESTIMATED SIZE
139-34-611-043	I D A BLACKS 1986 TRUST	19920724:00609	07/24/1992	NO STATUS	203	SUBDIVIDED LOT

Note: Only documents from September 15, 1999 through present are available for viewing.

NOTE: THIS RECORD IS FOR ASSESSMENT USE ONLY. NO LIABILITY IS ASSUMED AS TO THE ACCURACY OF THE DATA DELINEATED HEREON.

  500 S. Grand Central Pkwy., Las Vegas, NV 89155 (702) 455-0000

EXHIBIT "Y"

Assessor

Michele W. Shafe, Assessor

PARCEL OWNERSHIP HISTORY

ASSESSOR DESCRIPTION

HAWKINS ADD PLAT BOOK 1 PAGE 40 LOT 17 BLOCK 4 & LOTS 18,19
SEC 34 TWP 20 RNG 61

CURRENT PARCEL NO.	CURRENT OWNER	RECORDED DOCUMENT NO.	RECORDED DATE	VESTING	TAX DISTRICT	ESTIMATED SIZE
139-34-611-046	SENIOR NEVADA BENEFIT GROUP L P	19941102:01553	11/02/1994	NO STATUS	203	.24 AC

PARCEL NO.	PRIOR OWNER(S)	RECORDED DOCUMENT NO.	RECORDED DATE	VESTING	TAX DISTRICT	ESTIMATED SIZE
139-34-611-046	I D A--BLACKS FAMILY TRUST	19930708:00764	07/08/1993	NO STATUS	203	SUBDIVIDED LOT
040-063-016	BLACK LEE & SANDY	19930602:00179	06/02/1993	JOINT TENANCY	203	SUBDIVIDED LOT

Note: Only documents from September 15, 1999 through present are available for viewing.

NOTE: THIS RECORD IS FOR ASSESSMENT USE ONLY. NO LIABILITY IS ASSUMED AS TO THE ACCURACY OF THE DATA DELINEATED HEREON.

EXHIBIT "Z"

Assessor

Michele W. Shafe, Assessor

PARCEL OWNERSHIP HISTORY

Comment Codes

ASSESSOR DESCRIPTION
PT GOV LOT 3
SEC 01 TWP 21 RNG 61

CURRENT PARCEL NO.	CURRENT OWNER	RECORDED DOCUMENT NO.	RECORDED DATE	VESTING	TAX DISTRICT	ESTIMATED SIZE
162-01-103-001	SENIOR NEVADA BENEFIT GROUP L P	20121214:00166	12/14/2012	NO STATUS	200	.42 AC

PARCEL NO.	PRIOR OWNER(S)	RECORDED DOCUMENT NO.	RECORDED DATE	VESTING	TAX DISTRICT	ESTIMATED SIZE
162-01-103-001	TRUSTEE CLARK COUNTY TREASURER	20120614:02246	06/14/2012	NO STATUS	200	.42 AC
162-01-103-001	SENIOR NEVADA BENEFIT GROUP L P	20090924:00788	09/24/2009	NO STATUS	200	.42 AC
162-01-103-001	SAMIR SOUDAH L L C	20070412:03600	04/12/2007	NO STATUS	200	.42 AC
162-01-103-001	SENIOR NEVADA BENEFIT GROUP L P	20021206:00406	12/06/2002	NO STATUS	200	.42 AC
162-01-103-001	UNION OIL COMPANY CALIFORNIA	0491:0450939	01/30/1975	NO STATUS	200	.42 AC
050-200-001	UNION OIL CO OF CA	0491:0450939	01/30/1975		200	.42 AC
050-200-001	LATIVAD INCORPORATED	0108:0086260	03/16/1971		200	.42 AC

Note: Only documents from September 15, 1999 through present are available for viewing.

NOTE: THIS RECORD IS FOR ASSESSMENT USE ONLY. NO LIABILITY IS ASSUMED AS TO THE ACCURACY OF THE DATA DELINEATED HEREON.

EXHIBIT

"AA"

AFFIDAVIT OF CRYSTAL MEYER

STATE OF NEVADA)
) ss:
COUNTY OF CLARK)

I, CRYSTAL MEYER being first duly sworn, on oath, deposed and say:

1. I am over 18 years of age and am competent to testify to the matters set forth herein. To the best of my knowledge and belief the information and statements contained herein are true and correct.

2. I am employed as a paralegal at Jeffrey Burr, Ltd. in Henderson, Nevada and have been working in the legal profession for over 12 years.

3. Leroy Black contacted our office on Friday, March 30, 2012, and spoke with me to request changes to his nominated Successor Trustee, changes to his financial power of attorney, and a change to the distribution language of his trust. I informed Leroy that I would consult with Jason Walker to determine the fees required to make the changes and that I would get back to him.

4. None of Leroy's requested changes discussed on March 30, 2012, to his estate planning documents involved adding Phil Markowitz as a Successor Trustee, agent under any power of attorney, nor as beneficiary of Leroy's Will or Trust.

5. On that date Leroy also asked me why two of his properties were not titled in the name of the trust but were in his name as an individual

6. On Friday, March 30, 2012, I e-mailed Jason Walker and summarized the changes that Leroy Black had requested and I asked Mr. Walker to provide an estimate on fees so that I could phone Leroy and let him know the cost and to set up an appointment.

7. On Wednesday, April 4, 2012, I reminded Jason Walker via e-mail that Leroy Black was requesting a quote of our legal fees to make requested changes to his estate plan.

8. Later that day (April 4) Jason Walker replied to my e-mail and provided a price for the changes that Leroy Black had requested. I then called Leroy Black's home number and left a message for him to call us back to confirm the fees and to set a signing appointment.

9. On April 11, 2012, I received a phone call from Monica Steinberg requesting a copy of Leroy's irrevocable life insurance trust. Monica Steinberg informed me that Leroy had passed away.

\\\

\\\

Affiant further sayeth naught.

Crystal Meyer
CRYSTAL MEYER

SUBSCRIBED and SWORN to before me
This 27 day of August, 2013.

NOTARY PUBLIC

KARI A. LOMPREY
NOTARY PUBLIC
STATE OF NEVADA
APPT. No. 11-5388-1
MY APPT. EXPIRES JULY 14, 2015

EXHIBIT "BB"

AFFIDAVIT OF
WILLIAM F. MARTIN

STATE OF NEVADA)
) ss.
COUNTY OF CLARK)

On this date, appeared before me WILLIAM F. MARTIN, who is known to me or provided appropriate identification, and who upon his oath deposed and said:

1. My name is WILLIAM F. MARTIN. I am over 18 years of age, am of sound mind, and am fully competent to make this Affidavit. I am currently a California State Licensed Private Investigator, and have been so licensed since 1983. I retired from the Los Angeles Police Department as a Sergeant, with extensive detective experience after 34 years of service, in 2007.

2. With the exception of any and all matters stated upon information and belief, all of the facts stated in this Affidavit are based upon my personal knowledge and are true and correct, to the best of my recollection. Regarding any and all matters stated upon information and belief, I believe such matters to be true.

3. I declare that I have reviewed the arrest records of Mr. David Harvey Everston (DOB 09/23/1965) and determined that he is a convicted felon in the State of California for violation of 664 187(a) of the penal code (Attempted Murder) and 246 of the penal code (Shooting into an inhabited dwelling or vehicle). He was convicted for said crimes in the Los Angeles Superior Court and sentenced to the state prison. Additionally, he has multiple arrests over several years for lesser crimes.

4. I make this affidavit under the penalty of perjury of the laws of the United States and of the States of California and Nevada.

FURTHER AFFIANT SAYETH NAUGHT.

_____ _____
WILLIAM MARTIN, Affiant DATE

SUBSCRIBED AND SWORN TO before me,
on August _____, 2014, to verify which, witness
my hand and seal.

_____
NOTARY PUBLIC, in and for
said State and County

EXHIBIT "CC"

235 P.3d 592 (2010)

Teresa BAHENA, Individually, and as Special Administrator for Evertina M. Trujillo Tapia, Deceased; Mariana Bahena, Individually; Mercedes Bahena, Individually; Maria Rocio Perreya, Individually; Maria Lourdes Bahena-Meza, Individually; Maricela Bahena, Individually; Ernesto Torres and Leonor Torres, Individually, and Leonor Torres, as Special Administrator for Andres Torres, Deceased; Leonor Torres for Armando Torres and Crystal Torres, Minors, Represented as their Guardian Ad Litem; Victoria Campe, as Special Administrator of Frank Enriquez, Deceased; Patricia Jayne Mendez, for Joseph Enriquez, Jeremy Enriquez, and Jamie Enriquez, Minors, Represented as their Guardian Ad Litem; and Maria Arriaga for Koji Arriaga, Represented as his Guardian Ad Litem, Appellants/Cross-Respondents,

v.

GOODYEAR TIRE & RUBBER COMPANY, Respondent/Cross-Appellant.

No. 49207.

Supreme Court of Nevada.

July 1, 2010.

594 *594 Albert D. Massi, Ltd., and Albert D. Massi, Las Vegas, for Appellants/Cross-Respondents Arriagas, Campe, Mendez, and Torres.

Callister & Reynolds and Matthew Q. Callister and R. Duane Frizell, Las Vegas, for Appellants/Cross-Respondents Bahena, Bahena-Meza, and Perreya.

Lewis & Roca, LLP, and Daniel F. Polsenberg and Joel D. Henriod, Las Vegas, for Respondent/Cross-Appellant Goodyear Tire & Rubber Company.

Before the Court En Banc.

OPINION

By the Court, GIBBONS, J.:

In this appeal we consider whether the district court abused its discretion when it struck a defendant's answer, as to liability only, as a discovery sanction pursuant to NRCP 37(b)(2)(C) and NRCP 37(d). We conclude that the district court did not abuse its discretion by imposing non-case concluding sanctions and by not holding a full evidentiary hearing. We further conclude that the district court exercised its inherent equitable power and properly applied the factors set forth in *Young v. Johnny*

Ribeiro Building, 106 Nev. 88, 92-93, 787 P.2d 777, 780 (1990). We therefore affirm the judgment of the district court.

FACTS AND PROCEDURAL HISTORY

This case arises out of a single-vehicle, multiple rollover accident sustained by the appellants/cross-respondents (collectively, Bahena) that occurred when the left rear Goodyear tire separated from the vehicle.

The appellants were family members and friends. Three people were killed in the accident. Seven other passengers suffered injuries. A teenage boy suffered a closed head injury that caused a persistent vegetative state. Bahena sued respondent/cross-appellant Goodyear Tire and Rubber Company for wrongful death and other tort claims arising from the accident. Although the district court precluded Goodyear from litigating the issue of liability, the district court permitted Goodyear to fully litigate, without any restrictions, all claims by Bahena for compensatory and punitive damages.

The district court set the trial date for January 29, 2007. The discovery cutoff was December 15, 2006.

On November 28, 2006, Bahena filed a second motion to compel for sanctions seeking better responses to interrogatories and to require an index matching the discovery documents. The motion to compel pertained to interrogatory answers and a mass production of documents Goodyear had previously produced. At the hearing before the discovery commissioner on December 5, 2006, the discovery commissioner made a written finding of fact that he did not believe that Goodyear was acting in good faith and that Goodyear must designate which Rule 34 request made by Bahena the specific documents produced were responding to; otherwise, Goodyear was being evasive and noncompliant with discovery. The discovery commissioner's findings and recommendations were not objected to and subsequently approved by the district court when it entered an order on January 5, 2007.

The next discovery dispute pertained to a deposition noticed by Bahena of a Goodyear representative for December 11, 2006. Goodyear moved for a protective order on December 8, 2006. The discovery commissioner held a hearing upon the motion for protective order on December 14, 2006. The commissioner ruled that the deposition should go forward and recommended in writing on December 20, 2006, as follows:

595 IT IS RECOMMENDED THAT prior to December 28, 2006, Goodyear will have *595 a representative appear at the office of Plaintiffs' counsel in Las Vegas, Nevada to render testimony in the presence of a court reporter regarding the authenticity of the approximately 74,000 documents bates stamped GY-Bahena produced by Goodyear in this matter. Any document Goodyear's representative does not either affirm or deny as authentic will be deemed authentic.

These recommendations were served on Goodyear on December 21, 2006. Goodyear did not request the discovery commissioner to stay the deposition prior to December 28, 2006. In addition,

Goodyear did not file its objections to the discovery commissioner's recommendations until January 3, 2007.[1] On January 5, 2007, the district court entered its order approving the discovery commissioner's recommendations retroactive to the December 14, 2006, hearing date. Goodyear had filed a timely objection to the discovery commissioner's recommendations on January 3, 2007. However, the district court did not receive the objections prior to entering its order on January 5, 2007.

Bahena filed a motion for sanctions on December 29, 2006. This motion was based upon Goodyear's unverified interrogatory responses and boilerplate or proprietary and trade-secret objections.[2] In this motion, Bahena sought additional relief, including the striking of Goodyear's answer and the entry of judgment as to both liability and damages. At a hearing upon this motion held January 9, 2007, the district court also considered and overruled Goodyear's objections to the recommendations and sustained its January 5, 2007, order regarding producing a witness for deposition to authenticate the documents as verbally ruled by the discovery commissioner on December 14, 2006. The district court struck Goodyear's answer as to liability and damages for sanctions based upon discovery abuses.

After the January 9, 2007, hearing, Bahena filed a motion to establish all its damages by way of a prove-up hearing. Goodyear filed an opposition to this motion and a countermotion for reconsideration of all the discovery sanctions approved by the district court, pursuant to its January 5, 2007, approval of the discovery commissioner's recommendations for the December 14, 2006, hearing, and its January 9, 2007, order granting the motion to strike Goodyear's answer as to liability and damages. The district court set a hearing for these motions, pursuant to an order shortening time, for January 18, 2007. During the hearing, the district court granted Goodyear's request for reconsideration of its January 9, 2007, ruling to strike Goodyear's answer as to both liability and damages and entertained further argument on these issues. The district court further proceeded to accept factual representations made by all of the parties' attorneys present in court on behalf of Bahena and Goodyear, as officers of the court. At this hearing, which consisted of 64 pages of transcript, the district court questioned the attorneys regarding the nature of the discovery disputes and the various responses. The district court further considered the voluminous exhibits and affidavits of counsel for the parties that were attached to the various motions and countermotions filed by Bahena and Goodyear. The district court imposed reduced sanctions of striking Goodyear's answer as to liability only, and denied Bahena's request to establish its damages by way of a prove-up hearing.

In analyzing its decision for imposing these non-case concluding sanctions, the district court reasoned that Goodyear's conduct throughout the discovery process caused stalling and unnecessary delays. The district court stated that the repeated discovery delays attributed to
596 Goodyear were such that continuing the trial date to allow discovery to *596 be completed was not the appropriate remedy for Bahena since the prejudice was extreme and inappropriate. The district court noted that the Bahena plaintiffs included a 14-year-old who had been in a persistent vegetative state for the past two years together with the estates of three dead plaintiffs. The district court further held that since the trial was scheduled to commence January 29, 2007, Goodyear knew full well that not responding to discovery in good faith would require the trial date to be vacated. If the trial had proceeded, there could have been an open question as to the authenticity of approximately 74,000

documents that were the subject of the December 14, 2006, hearing before the discovery commissioner. The district court then analyzed and applied the factors to be considered in the imposition of discovery sanctions set forth in *Young v. Johnny Ribeiro Building*, and codified findings of fact and conclusions of law in a written order filed January 29, 2007.[3] The case then proceeded to jury trial on the issue of damages only and Bahena obtained a judgment in excess of $30 million in compensatory damages. However, Goodyear received a defense verdict upon Bahena's claim for punitive damages.

DISCUSSION

In reviewing sanctions, we do not consider whether we, as an original matter, would have imposed the sanctions. Our standard of review is whether the district court abused its discretion in doing so. *Foster v. Dingwall*, 126 Nev. ___, 227 **P.3d** 1042 (2010). However, we do not impose a somewhat heightened standard of review because the sanctions in this case did not result in the case concluding sanctions of striking Goodyear's answer both as to liability and damages. In *Clark County School District v. Richardson Construction*, we concluded that:

> Under NRCP 37(b)(2), a district court has discretion to sanction a party for its failure to comply with a discovery order, which includes document production under NRCP 16.1. We will set aside a sanction order only upon an abuse of that discretion.

123 Nev. 382, 391, 168 **P.3d** 87, 93 (2007). We further concluded that there was substantial evidence to support the district court's decision to sanction the Clark County School District by striking all of its affirmative defenses. *Id.* In its analysis, the district court weighed the factors to impose the appropriate sanctions against the Clark County School District. *Id.* at 391-92, 168 **P.3d** at 93. Non-case concluding sanctions could have included striking the school district's answer as to liability only, as well as striking all of its affirmative defenses. The district court chose the latter. *Id.* For these reasons, we conclude that the same standard of review for striking all of the defendant's affirmative defenses applies when the district court strikes a defendant's answer as to liability only, but does not conclude the case as to damages.[4]

NRCP 37(b)(2) sanctions

Bahena contends that Goodyear violated the discovery order to produce a witness for deposition prior to December 28, 2006. We agree.

NRCP 37(b)(2) provides, in part, that if a person designated by a party to testify "fails to obey an order to provide or permit discovery..., the court in which the action is pending may make such orders in regard to the failure as are just," and, among other things, enter the following sanctions:

> An order striking out pleadings or parts thereof, or staying further proceedings until the order is obeyed, or dismissing the *597 action or proceeding or any part thereof, or rendering a judgment by default against the disobedient party.

597

NRCP 37(b)(2)(C). In this case, the discovery commissioner made a ruling at a hearing on December 14, 2006, that Goodyear must produce a witness for deposition to testify as to the authenticity of voluminous documents prior to December 28, 2006. Goodyear did not request the discovery commissioner stay this ruling pursuant to EDCR 2.34(e), the local district court rule that would allow such a stay. Thereafter, the time to produce the witness for deposition passed. On January 3, 2007, Goodyear filed objections to the discovery commissioner's written report and recommendations dated December 20, 2006, requiring the deposition. The district court initially approved the discovery commissioner's recommendations by an order dated January 5, 2007. Since the district court did not receive a copy of the objections filed by Goodyear on January 3, 2007, the district court allowed Goodyear to argue its objections at a hearing held January 9, 2007. The district court again overruled Goodyear's objections at the conclusion of this hearing.[5]

Goodyear was required to comply with the discovery commissioner's ruling announced at the December 14 hearing, unless the ruling was overruled by the district court. *See* NRCP 16.3(b) (stating that the discovery commissioner has the authority "to do all acts and take all measures necessary or proper for the efficient performance of his duties"). A ruling by the discovery commissioner is effective and must be complied with for discovery purposes once it is made, orally or written, unless the party seeks a stay of the ruling pending review by the district court. *Id.*; EDCR 2.34(e). Goodyear failed to seek a stay of the ruling or an expedited review by the district court prior to the time to comply with the ruling, and was therefore required to comply with the discovery commissioner's directive. The failure to do so was tantamount to a violation of a discovery order as it relates to NRCP 37(b)(2). Young, 106 Nev. at 92, 787 P.2d at 779 (holding that a court's oral ruling was sufficient to "constitute an order to provide or permit discovery under NRCP 37(b)(2)").

In *Young*, "[t]he court sanctioned Young by ordering him to pay [the nonoffending party's] costs and fees on the motion to dismiss, *by dismissing Young's entire complaint with prejudice, and by adopting the final accounting proposed by [the nonoffending party] as a form of default judgment against Young*" even though Young argued "that [the nonoffending party's] accounting was factually insufficient to constitute a default judgment." 106 Nev. at 91, 787 P.2d at 778 (emphasis added). We disagreed with Young and affirmed the judgment of the district court in all respects since Young "forfeited his right to object to all but the most patent and fundamental defects in the accounting."[6] *Id.* at 95, 787 P.2d at 781.

After the hearing on January 9, 2007, Bahena filed a motion to allow damages to be established by way of a prove-up hearing. Goodyear filed an opposition to this motion and a countermotion for reconsideration regarding the discovery sanction issues as to the interrogatory answers, the discovery commissioner's report and recommendations regarding the deposition and self-executing authentication sanctions, and the order striking Goodyear's answer. The district court granted
598 Goodyear's request for reconsideration *598 and reopened argument upon the issue of appropriate sanctions for these discovery abuses. At the hearing on January 18, 2007, the district court discussed the discovery commissioner's recommendations regarding producing a witness for deposition and observed as follows:

> I would have overruled your objections because the recommendation is very clear on its

> face. There is no confusion. It says what it says. And all you have to do is read it and comply with it.

The district court then proceeded to review the history of discovery abuses in this case involving Goodyear not only as to Bahena, but as to the codefendant Garm Investments, Inc. We conclude the district court did not abuse its discretion by imposing non-case concluding sanctions upon Goodyear pursuant to NRCP 37(b)(2).

Inherent equitable power of the district court

In *Young,* we held that courts have "inherent equitable powers to dismiss actions or enter default judgments for . . . abusive litigation practices. Litigants and attorneys alike should be aware that these powers may permit sanctions for discovery and other litigation abuses not specifically proscribed by statute." 106 Nev. at 92, 787 P.2d at 779 (alteration in original) (internal quotation and citation omitted). We further concluded that "while dismissal need not be preceded by other less severe sanctions, it should be imposed only after thoughtful consideration of all the factors involved in a particular case." *Id.* at 92, 787 P.2d at 780. In discussing the legal basis for dismissal, we held:

> that every order of dismissal with prejudice as a discovery sanction be supported by an express, careful and preferably written explanation of the court's analysis of the pertinent factors. The factors a court may properly consider include, but are not limited to, the degree of willfulness of the offending party, the extent to which the non-offending party would be prejudiced by a lesser sanction, the severity of the sanction of dismissal relative to the severity of the discovery abuse, whether any evidence has been irreparably lost, the feasibility and fairness of alternative, less severe sanctions, such as an order deeming facts relating to improperly withheld or destroyed evidence to be admitted by the offending party, the policy favoring the adjudication on the merits, whether sanctions unfairly operate to penalize a party for the misconduct of his or her attorney, and the need to deter both the parties and future litigants from similar abuses.

Id. at 93, 787 P.2d at 780.

After analyzing all of these factors, we held "that the district court did not abuse its discretion in imposing the more severe sanctions *of dismissal and entry of default judgment*" and that the sanctions were not "manifestly unjust." *Id.* (emphasis added). We stated that "the district court gave appropriately careful, correct and express consideration to most of the factors discussed above" and that we have "affirmed sanctions of dismissal and entry of default judgment based on discovery abuses even less serious than Young's." *Id.* at 93-94, 787 P.2d at 780.

As the district court did in *Young,* the district court here prepared nine pages of carefully written findings of fact and conclusions of law analyzing the *Young* factors. These findings of fact detail Goodyear's discovery abuses not only as to the violation of the court order to produce a witness for deposition, but as to improper responses and verifications to answers to interrogatories. For example, the district court found that "Goodyear failed to produce any representative in Nevada by December

28, 2006 pursuant to this [c]ourt's order from the December 14, 2006 hearing." Another finding of fact provided, in part, that if "the [c]ourt had been made aware of Goodyear's objection to the [d]iscovery [c]ommissioner's recommendations from the December 14, 2006 hearing, the [c]ourt would have overruled Goodyear's objections because the signed recommendation is very clear on its face." The conclusions of law set forth that the degree of willfulness by Goodyear was extreme and itemize nine separate reasons. These conclusions also state that:

> it is clear that Goodyear has taken the approach of stalling, obstructing and objecting.
> 599 Therefore, the court considers Goodyear's posture in this case to be totally *599
> untenable and unjustified. Goodyear's responses to [p]laintiffs' interrogatories are
> nothing short of appalling.

The conclusions of law further balance various lesser and more severe sanctions and conclude that striking Goodyear's answer as to liability only was the appropriate sanction. The district court additionally awarded monetary sanctions against Goodyear in favor of Bahena and codefendant Garm Investments, Inc., for failure to provide proper answers to interrogatories and verifications.

We would further note that the discovery violations of Goodyear are strikingly similar to those in *Foster v. Dingwall*, 126 Nev. ___, 227 **P.3d** 1042 (2010). In *Foster*, the district court struck all the pleadings of the appellants and allowed judgment to be entered by default. *Id.* at ___, 227 **P.3d** at 1047. We concluded that the district court orders sufficiently demonstrated that the conduct of the appellants was "repetitive, abusive, and recalcitrant." *Id.* We further concluded that the district court "did not err by striking their pleadings and entering a default judgment against them." *Id.* The discovery abuses in *Foster* include the initial failure of a party to appear after depositions were noticed. *Id.* at ___, 227 **P.3d** at 1046. There were also discovery abuses by the failure of the appellants to supplement their responses to their answers to interrogatories and responses to requests for production of documents. *Id.* We concluded that NRCP 37(b)(2)(C) and NRCP 37(d) provide that a court may strike a party's pleadings if that party fails to attend his own deposition or fails to obey a discovery order. *Id.* at ___, 227 **P.3d** at 1048. We further concluded that entries of complete default are proper where "litigants are unresponsive and engaged in abusive litigation practices that cause interminable delays." *Id.* We held that such sanctions "were necessary to demonstrate to future litigants that they are not free to act with wayward disregard of a court's orders," and that the conduct of the appellants evidenced "their willful and recalcitrant disregard of the judicial process." *Id.* at ___, 227 **P.3d** at 1049. As to the issue of attorney fees, we concluded that the award of attorney fees, in addition to default sanctions, was proper and the award of attorney fees shall be reviewed under the abuse of discretion standard. *Id.* at ___, 227 **P.3d** at 1052 (citing *Albios v. Horizon Communities, Inc.*, 122 Nev. 409, 417, 132 **P.3d** 1022, 1027-28 (2006)).

Based upon the holdings of *Young*, *Foster*, and *Clark County School District v. Richardson Construction*, and for all of the reasons set forth above, we conclude that substantial evidence supports the non-case concluding sanctions of striking Goodyear's answer as to liability only pursuant to the district court's inherent equitable power. Further, findings of fact shall not be set aside unless they are clearly erroneous and not supported by substantial evidence. *See* NRCP 52(a); *Beverly Enterprises v. Globe Land Corp.*, 90 Nev. 363, 365, 526 P.2d 1179, 1180 (1974). The discovery

commissioner's recommendations, from the December 5, 2006, and December 14, 2006, hearings, which the district court affirmed and adopted on January 5, 2007, are the findings of a master. Since the district court adopted them, they shall be considered the findings of the court. NRCP 52(a).

We further conclude that by Goodyear requesting reconsideration of the discovery sanctions due to the failure of Goodyear's representative to appear for a deposition prior to December 28, 2006, and the order of the district court from the January 9, 2007, hearing, the district court had the inherent equitable power to revise the appropriate sanctions in conjunction with the violation of this order and
600 the failure of Goodyear to properly answer and verify the interrogatories.[7] These non-case *600 concluding sanctions do not have to be preceded by other less severe sanctions. Young, 106 Nev. at 92, 787 P.2d at 780. The district court did not abuse its discretion by doing so since substantial evidence supports the district court's findings, and the findings are not clearly erroneous.

NRCP 37(d) sanctions

In addition to awarding sanctions pursuant to NRCP 37(b)(2)(C), and based upon its inherent equitable power, the district court may order sanctions under NRCP 37(d). NRCP 37(d) allows for the award of sanctions if a party fails to attend their own deposition or fails to serve answers to interrogatories or fails to respond to requests for production of documents. Among the sanctions that are authorized by this rule are for the court to enter an order striking a pleading or parts thereof. *See* Foster, 126 Nev. , 227 **P.3d** 1042; Skeen v. Valley Bank of Nevada, 89 Nev. 301, 303, 511 P.2d 1053, 1054 (1973).

The district court found that Goodyear answered numerous sets of interrogatories propounded by Bahena and Garm Investments, Inc., that did not have proper verifications. In addition, the district court found that the Goodyear witness did not attend a deposition prior to December 28, 2006, which was recommended by the discovery commissioner and subsequently ordered by the district court. Therefore, we conclude there is substantial evidence to support the findings of the district court and the district court did not abuse its discretion under NRCP 37(d) and its inherent equitable power by structuring non-case concluding sanctions to strike the answer of Goodyear as to liability only.

The district court has the discretion to conduct such hearings as are necessary to impose non-case concluding sanctions

Goodyear argues that it was entitled to a full evidentiary hearing regarding the issue of striking Goodyear's answer as to liability only. We disagree.

Goodyear relies upon the case of Nevada Power v. Fluor Illinois, 108 Nev. 638, 837 P.2d 1354 (1992). In that case, the district court dismissed the complaint of the Nevada Power Company and the California Department of Water Resources for alleged discovery abuses. *Id.* at 642-43, 837 P.2d at 1358. The case was concluded by dismissing the complaint with prejudice. *Id.* We reversed and said that because of the case ending dismissal of the Nevada Power complaint, it was entitled to an evidentiary hearing upon the issue of sanctions. In Foster, 126 Nev. , 227 **P.3d** 1042, the district

court struck the defendants' answer as to both liability and damages and allowed the plaintiffs to establish their damages by way of a prove-up hearing. 126 Nev. at ___, 227 P.3d at 1047. The district court held the required evidentiary hearing since the sanctions were case concluding.

In this case, the district court denied Bahena's motion to strike Goodyear's answer as to damages and Bahena's motion to be allowed to establish damages through a prove-up hearing. The district court permitted Goodyear to fully argue and contest the amount of damages, if any, that Bahena could prove to a jury. In fact, Goodyear prevailed and received a defense jury verdict upon Bahena's cause of action for punitive damages.

Since the district court limited its sanctions to striking Goodyear's answer as to liability only, the sanctions were not case concluding ultimate sanctions. The sanctions were of the lesser nature similar to those imposed in *Clark County School District v. Richardson Construction*, 123 Nev. 382, 168 P.3d 87 (2007).[8] We conclude that when the court does not impose ultimate discovery sanctions
601 of dismissal of a complaint with prejudice or striking an answer as to liability *601 *and* damages, the court should, at its discretion, hold such hearing as it reasonably deems necessary to consider matters that are pertinent to the imposition of appropriate sanctions. The length and nature of the hearing for non-case concluding sanctions shall be left to the sound discretion of the district court. In determining the nature of this hearing, the district court should exercise its discretion to ensure that there is sufficient information presented to support the sanctions ordered. Further, the district court should make such findings as necessary to support its conclusions of the factors set forth in *Young*, 106 Nev. 88, 787 P.2d 777.

Sufficiency of the January 18, 2007, hearing

The district court set a hearing on January 18, 2007, to consider Bahena's motion to establish damages by way of a prove-up hearing and Goodyear's countermotion to reconsider sanctions. At the hearing, the district court allowed the attorneys for Bahena and Goodyear to make factual representations regarding the various discovery issues in dispute. The court also considered the record, which included exhibits and affidavits from other attorneys for Goodyear regarding the discovery disputes in question. The questions of the district court at the hearing to counsel pertained to various discovery requests that were propounded, and the failure of Goodyear to comply with the discovery commissioner's recommendations and subsequent court order to produce a witness for deposition prior to December 28, 2006. The district court further considered the objections that had been previously filed by Goodyear to the recommendations of the discovery commissioner regarding the deposition witness.

Since the district court considered all affidavits and exhibits, and permitted the attorneys for Bahena and Goodyear to make factual representations to the court, we conclude that the district court conducted a sufficient hearing. Based upon the factual representations made by the attorneys, as officers of the court, and the balance of the record, the district court crafted its own findings of fact and conclusions of law emanating from this hearing.[9] The nature of the hearing complied with the requirements of *Young*, 106 Nev. 88, 787 P.2d 777. Therefore, the district court did not abuse its

discretion by the way it structured the hearing since the record was sufficient for the court to make its findings of willfulness.[10]

Compensatory damages

Goodyear contends that the compensatory damages awarded by the jury are excessive. We disagree.

In *Guaranty National Insurance Company v. Potter,* we concluded that "this court will affirm an award of compensatory damages unless the award is so excessive that it appears to have been given under the influence of passion or prejudice" and "an appellate court will disallow or reduce the award if its judicial conscience is shocked." 112 Nev. 199, 206-07, 912 P.2d 267, 272 (1996) (quotations and citations omitted). We subsequently held that "[s]ince special damages are a species of compensatory damages, a jury has wide latitude in awarding them. So long as there is an evidentiary basis for determining an amount that is reasonably accurate, the amount of special damages need not be mathematically exact." *Countrywide Home* *602 *Loans v. Thitchener,* 124 Nev. 725, 737, 192 **P.3d** 243, 251 (2008) (footnote omitted).

602

The compensatory damages are supported by substantial evidence. We must "`assume that the jury believed all [of] the evidence favorable to the prevailing party and drew all *reasonable* inferences in [that party's] favor.'" *Id.* at 739, 192 **P.3d** at 252 (alteration in original) (quoting *Bongiovi v. Sullivan,* 122 Nev. 556, 581, 138 **P.3d** 433, 451 (2006)). Because of the loss of life and the serious injuries suffered by the appellants, we conclude there was a sufficient evidentiary basis for the award of all the compensatory damages. We further conclude that the amount of compensatory damages are not excessive and do not shock our judicial conscience.

Punitive damages

Bahena contends that the district court improperly required the appellants to establish liability for punitive damages. We disagree.

The district court has the discretion to determine what degree Goodyear was entitled to participate in the trial when it struck Goodyear's answer as to liability. *See Hamlett v. Reynolds,* 114 Nev. 863, 866-67, 963 P.2d 457, 458 (1998). Therefore, we conclude that the district court did not abuse its discretion regarding the punitive damage liability issue by refusing to impose case concluding sanctions.

CONCLUSION

For all the reasons set forth above, the judgement of the district court is affirmed.[11]

We concur: PARRAGUIRRE, C.J., HARDESTY, DOUGLAS, CHERRY, and SAITTA, JJ.

PICKERING, J., dissenting:

The majority's decision to uphold the $30,000,000 default judgment in this case relies heavily on our deferential standard of review, and, in doing so, ignores the unanswered, material questions of whether Goodyear's alleged discovery abuse was willful and whether it prejudiced Bahena. Without an evidentiary hearing to resolve those questions, striking Goodyear's answer was an abuse of discretion and a violation of Goodyear's due process rights.

I.

Although our review of discovery abuse sanctions is deferential, contrary to the majority's view, that deference "does not automatically mandate adherence to [the district court's] decision." *McDonald v. Western-Southern Life Ins. Co.*, 347 F.3d 161, 172 (6th Cir.2003). "`"Deferential review is not no review," and "deference need not be abject."'" *Id.* (quoting *Hess v. Hartford Life & Acc. Ins. Co.*, 274 F.3d 456, 461 (7th Cir.2001) (quoting *Gallo v. Amoco Corp.*, 102 F.3d 918, 922 (7th Cir.1996))).

Our policy favoring disposition on the merits requires us to apply a heightened standard of review where the sanction imposed, as in this case, is liability-determining. *Havas v. Bank of Nevada*, 96 Nev. 567, 570, 613 P.2d 706, 707-08 (1980); *Young v. Johnny Ribeiro Building*, 106 Nev. 88, 92, 787 P.2d 777, 779-80 (1990). In *Nevada Power Co. v. Fluor Illinois*, we held that the district court abused its discretion when it dismissed a complaint and imposed other sanctions without first holding an evidentiary hearing on factual issues related to the meaning of discovery orders and whether those orders had been violated. 108 Nev. 638, 646, 837 P.2d 1354, 1360 (1992). In reversing the district court, we held that "[i]f the party against whom dismissal may be imposed raises a question of fact as to any of these factors, the court *must* allow the parties to address the relevant factors in an evidentiary hearing." *Id.* at 645, 837 P.2d at 1359 (emphasis added).

While the majority distinguishes this case from *Nevada Power* by characterizing the sanctions as "non-case concluding," the reality is that striking Goodyear's answer did effectively conclude this case. The sanction resulted in a default liability judgment against Goodyear and left Goodyear with
603 the *603 ability to defend on the amount of damages only. Liability was seriously in dispute in this case,[1] but damages, once liability was established, were not, given the catastrophic injuries involved. Thus, striking Goodyear's answer was akin to a case concluding sanction, placing this case on the same footing as *Nevada Power.*

Surprisingly, the majority relies on *Young v. Johnny Ribeiro Building*. What it misses in *Young* is that we affirmed the claim-concluding sanctions there only because the district "court treated Young fairly, *giving him a full evidentiary hearing.*" 106 Nev. at 93, 787 P.2d at 780 (emphasis added). This case thus is not like *Young* but rather like *Nevada Power,* in that the district court erred as a matter of law in not holding an evidentiary hearing.

II.

When the district court struck Goodyear's answer, Goodyear's counsel had raised several factual questions about Goodyear's willfulness and the extent of any prejudice to Bahena. However, the district court did not hold or conduct the evidentiary hearing required by *Nevada Power* and *Young* to resolve the questions of fact before striking Goodyear's answer and all defenses to liability. This is, I submit, an example of "Sentence first—verdict afterwards," that does not deserve deferential review. Lewis Carroll, *Alice's Adventures in Wonderland,* Chapter XII "Alice's Evidence" (MacMillan and Co. 1865).

The district court entered three discovery orders based on the Discovery Commissioner's recommendations. Because the first order merely set the language for Goodyear's protective order, it is not a discovery order that Goodyear could have violated. The remaining two orders were both entered by the district court on January 5, 2007, just four days prior to the district court's decision to strike Goodyear's answer.

The second order adopted the Discovery Commissioner's December 5, 2006, recommendation that all counsel meet and review written discovery to reach an agreement as to what discovery obligations remained unfulfilled. Goodyear's attorneys submitted affidavits averring that they met and conferred telephonically with Bahena on December 15, 2006. According to Goodyear, it requested that Bahena present it with a list of documents Bahena wanted authenticated and a list of any other discovery issues. Goodyear claims that Bahena failed to produce these lists. Nonetheless, even if Bahena had provided Goodyear with the lists, the terms of the recommendation gave Goodyear 30 days, or until January 15, 2007, to "conclusively respond to what was requested." This order cannot justify the district court's sanction order since the time for complying with its obligations (January 15, 2007) came six days *after* the district court ordered Goodyear's answer stricken (January 9, 2007).

The third order similarly adopted a recommendation by the Discovery Commissioner, this one dated December 14, 2006, and recommending that by December 28, 2006, Goodyear produce a representative to authenticate the 74,000 adjustment and claims documents that Goodyear had produced months earlier under NRCP 34, as they were kept in the ordinary course of its business.[2] Goodyear made a timely objection to this recommendation on January 3, 2007. This recommendation also is problematic as the predicate for the severe sanctions imposed. Significantly, in his December 14 recommendation, the Discovery Commissioner *rejected* Bahena's request to strike Goodyear's answer as sanctions and instead provided a self-executing "deemed authentic" noncompliance
604 penalty.[3] Also important, the parties *604 disputed the meaning of—and consequence of violating—this recommendation. Bahena offered to seek clarification from the court—and did so on December 29, 2006, a day after Goodyear was supposed to comply with this third recommendation. The fact that Bahena, not Goodyear, sought clarification supports Goodyear's position that an unresolved dispute existed among the lawyers as to what, precisely, the Discovery Commissioner had directed them to do. Further confusing things, the parties were not able to get back before the Discovery Commissioner over the holiday or thereafter because of his impending retirement, effective December 31.

The majority's reasoning does not acknowledge the confusion surrounding these issues but instead defers to the district court's finding that Goodyear failed to comply with the discovery

recommendations. Based on Goodyear's assertions, however, which it supported by affidavit, there are genuine, material questions of whether Goodyear willfully abused the discovery process. Without resolution of these questions through an evidentiary hearing, an ultimate sanction was premature.

III.

Goodyear additionally raised questions of whether the alleged discovery abuse prejudiced Bahena. Goodyear maintains that Bahena was prepared for trial and therefore did not need the additional discovery sought to be compelled. Bahena admitted to being ready for trial on January 4, 2007, before the district court struck Goodyear's answer.

Goodyear further contends that Bahena's trial experts did not need Goodyear to provide more specificity with respect to the disputed documents, which comprised adjustment and claims data relating to various tires. Rather, Goodyear asserts that Bahena's experts had already formed their opinions prior to Bahena's request and were amply familiar with the documents as produced by Goodyear from other Goodyear products liability litigation in which the same set of documents had been produced. In a September 29, 2006, deposition, Bahena's expert, Dennis Carlson, stated that all of his opinions were contained in his report and that he was prepared to give his expert testimony. Carlson further revealed that his opinions were not based on adjustment or claims data. Additionally, the July 5, 2006, report of another Bahena expert, Allan Kam, states that Kam supported his conclusions with claims data he already had for a nearly identical tire. Moreover, Bahena did not refute Goodyear's assertion that its expert Kam, through prior litigation involving Goodyear and its adjustment and claims documents, already reviewed and produced reports on the same documents Goodyear produced elsewhere in other lawsuits without the index that became the source of the core discovery dispute in this case.

Goodyear also asserts that Bahena contributed to any prejudice it may have suffered by making delayed discovery requests and contributing to discovery and case management problems. Bahena served its third set of written discovery on November 10, 2006, less than 30 days before the December 7, 2006, discovery cutoff date.[4] Goodyear responded to the discovery request on December 13, 2006, which was within 30 days, after allowing 3 days for mailing, missing the
605 verification required by NRCP 33 but promising to supply it. Bahena filed its motion to compel *605 answers to this third set of discovery on December 29, 2006. Goodyear opposed the motion on the grounds that Bahena filed it after the discovery cutoff date and that Bahena's third discovery request came too close to trial.

The majority's decision defers to the district court's recitation that Bahena suffered prejudice. Without an evidentiary hearing to resolve the existence and extent of the prejudice—including whether imposing liability-terminating sanctions was required to stanch that prejudice—we have no findings to which deference is due.

IV.

This court would not affirm summary judgment where a party had raised factual disputes like those asserted here concerning willfulness and prejudice. However, the majority's decision is analogous to affirming summary judgment despite the record presenting numerous unresolved factual issues.

While the majority relies on the district court's inherent power to impose sanctions, due process requirements limit that power. *See* Wyle v. R.J. Reynolds Industries, Inc., 709 F.2d 585, 589 (9th Cir.1983) (citing Hammond Packing Co. v. Arkansas, 212 U.S. 322, 349-54, 29 S.Ct. 370, 53 L.Ed. 530 (1909)). "Sanctions interfering with a litigant's claim or defenses violate due process when imposed merely for punishment of an infraction that did not threaten to interfere with the rightful decision of the case." *Id.* at 591 (citing G-K Properties v. Redevelopment Agency, Etc., 577 F.2d 645, 648 (9th Cir. 1978)). Put another way, the district court's sanction must relate to the prejudice caused by the matter at issue in the discovery order. *Id.* With no evidentiary hearing to decide the disputed issues of fact, the benefit of the doubt on them should go to the party who lost, not the party who won. Applying this familiar summary judgment standard, striking Goodyear's answer appears to have been an excessive penalty and was not proportional to Bahena's discovery dispute claims. To uphold this ultimate sanction in the face of these factual questions and without the benefit of an evidentiary hearing violates the most fundamental of due process rights and for that reason, I respectfully dissent.

[1] Goodyear's objections filed January 3, 2007, to the December 20, 2006, recommendations included an objection to the self-executing sanctions of deeming the documents authentic. This same objection continued in pleadings filed by Goodyear January 8, 2007, January 17, 2007, and through a hearing held on January 18, 2007, discussed below.

[2] On December 13, 2006, Goodyear answered all 34 interrogatories propounded by Bahena with objections. Further, Goodyear did not verify these answers. As previously noted, the discovery cutoff date was December 15, 2006.

[3] The district court invited both Bahena and Goodyear to submit proposed findings of fact and conclusions of law to the district court. However, the district court rejected the proposed findings and conclusions submitted by Bahena and Goodyear, and crafted its own findings of fact and conclusions of law.

[4] Our dissenting colleague suggests we adopt a standard of review for discovery sanctions based upon a parallel line of federal authority. We disagree because there is ample Nevada case authority regarding discovery sanctions. Also, we have expressly rejected the adoption of federal authority that employs mechanical application of factors regarding qualifications of expert witnesses and that conflicts with our state law. Higgs v. State, 126 Nev. ___, ___, 222 **P.3d** 648, 657-58 (2010).

[5] After the discovery commissioner's report and recommendations are signed and objected to, the district court has the option of affirming and adopting the recommendations without a hearing, modifying or overruling the recommendations without a hearing, or setting a date and time for a hearing upon the objections filed. NRCP 16.1(d)(3). If the recommendations are affirmed and adopted, the order of the district court is effective retroactive to the date of the hearing before the discovery commissioner when the ruling is verbally made. EDCR 2.34(e) permits the discovery commissioner to stay the ruling pending review by the district court.

[6] We further noted that damages in a prove-up must normally be established by substantial evidence. Young, 106 Nev. at 94, 787 P.2d at 781. However, in cases involving a default judgment as a discovery sanction, the nonoffending party has a somewhat lesser standard of proof and only needs to establish a prima facie case by substantial evidence. *Id.*; Foster v. Dingwall, 126 Nev. ___, ___, 227 **P.3d** 1042, 1049 (2010). Therefore, Ribeiro only had to establish a prima facie accounting.

[7] Goodyear did not argue to the district court in its objections to the discovery commissioner's recommendations or in its opposition filed January 8, 2007, in its countermotion for reconsideration filed January 17, 2007, nor in its objections filed January 26, 2007, that the sanctions for violating the order to produce the witness for deposition must be limited to deeming the documents in question to be authentic. To the contrary, Goodyear argued that all sanctions including these self-executing authentication sanctions were improper and should be vacated. Goodyear further argued that if sanctions were to be imposed, they should be limited to an order to provide supplemental discovery responses or monetary sanctions.

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Bankruptcy

These are likely the person that you were searching for. These are matched based on name, age, and other criteria to ensure accuracy.

Name	Filing Date	Location	Chapter

Judgements and Liens

These are likely the person that you were searching for. These are matched based on name, age, and other criteria to ensure accuracy.

Name	Filing Date	Amount	Type
David Everston	Unavailable	$9,465	FEDERAL TAX LIEN

Record

Name:	David Everston
Type:	FEDERAL TAX LIEN
Amount:	$9,465
Court:	LA COUNTY / RECORDER OF DEEDS
Case Number:	
TMS ID:	HG0531082439465CALOSC1
Jurisdiction:	California
Chapter:	
Debtor Address:	11684 Ventura Blvd # 509, STUDIO CITY, CA 91604
Creditor:	IRS

David Everston	Unavailable	$9,465	FEDERAL TAX LIEN RELEASE

Record

Name:	David Everston
Type:	FEDERAL TAX LIEN RELEASE
Amount:	$9,465
Court:	LA COUNTY / RECORDER OF DEEDS
Case Number:	
TMS ID:	HG200531082439465CALOSC1
Jurisdiction:	California
Chapter:	
Debtor Address:	11684 Ventura Blvd # 509, STUDIO CITY, CA 91604
Creditor:	IRS

David Everston	Unavailable	$1,555	SMALL CLAIMS JUDGMENT

Record

Name:	David Everston
Type:	SMALL CLAIMS JUDGMENT
Amount:	$1,555
Court:	VAN NUYS MUNICIPAL - LA COUNTY
Case Number:	
TMS ID:	HG02V136461555CALOSMQ
Jurisdiction:	California
Chapter:	
Debtor Address:	11684 Ventura Blvd # 509, STUDIO CITY, CA 91604
Creditor:	RAUL MALDONA BARAJAS

David Everston	Unavailable	Unavailable	FORCIBLE ENTRY/DETAINER

Record

Name:	David Everston
Type:	FORCIBLE ENTRY/DETAINER
Court:	BROWARD COUNTY CIRCUIT COURT
Case Number:	
TMS ID:	HGB31417P0718FLBROC1
Jurisdiction:	Florida
Chapter:	
Debtor Address:	2881 NE 32nd St Apt 312, FT LAUDERDALE, FL 33306
Creditor:	INTRACOASTAL ISLES APTS ASSOCIAT

David Everston	Unavailable	Unavailable	FORCIBLE ENTRY/DETAINER

Record

Name:	David Everston
Type:	FORCIBLE ENTRY/DETAINER
Court:	BROWARD COUNTY CIRCUIT COURT
Case Number:	
TMS ID:	HG01005972FLBROC1
Jurisdiction:	Florida
Chapter:	
Debtor Address:	2881 NE 32nd St Apt 312, FT LAUDERDALE, FL 33306
Creditor:	INTRACOASTAL ISLES APTS ASSOC

David Everston	Unavailable	Unavailable	FORCIBLE ENTRY/DETAINER

Record

Name:	David Everston
Type:	FORCIBLE ENTRY/DETAINER
Court:	LOS ANGELES MUNICIPAL - LA COUNTY
Case Number:	
TMS ID:	HG95U19423CALOSM1
Jurisdiction:	California
Chapter:	
Debtor Address:	6051 Shadyglade Ave, N HOLLYWOOD, CA 91606
Creditor:	FEDERAL HOME LOAN MORTGAGE

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EXHIBIT "P"

Yolanda Yolanda Onofre

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Table of Contents

Yolanda Yolanda Onofre

Location: Valley Village, CA

Personal Information

Aliases:	Yolanda Yolanda Onofre Yolanda Onofre Maria Y Onofre Maria Yolanda Onofre Yolanda Pino Maria Onofre Maria Onofre
Age:	45
Phone:	833-2195 559-562-9344 559-562-0117 559-562-1958 559-562-4168 818-701-0046 818705

Address History

9 | Addresses Found

#	Address	Last Seen Date
1	5541 Laurel Canyon Blvd, Apt 45, Valley Village, CA 91607	
2	7429 Tampa Ave, Reseda, CA 91335	
3	7835 Fallbrook Ave, Canoga Park, CA 91304	
4	Laurel Canyon Blvd, Valley Vlg, CA 91607	
5	531 N Gale Hill Ave, Lindsay, CA 93247	
6	Zelzah Ave, Encino, CA 91335	
7	690 W Hermosa St, Spc 18, Lindsay, CA 93247	
8	Lindley Ave, Encino, CA 91335	
9	7550 Jordan Ave, Apt 202, Canoga Park, CA 91303	

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Likely Matches:

These records have the same name and date of birth as the person you selected. In most cases, this is a strong indicator that the person you selected is also the person in the result below.

No results.

Possible Matches:

These records have the same name or the same date of birth as the person you selected. Sometimes court records are incomplete as a result of being filtered through different court systems or because of typographic errors when moving the records from paper to computerized format.

No results.

Possible Relatives

#	Name	Age	Address
1	Orley O Onofre	52	400 S Berendo St Apt 119, Los Angeles, CA 90020 (10/1988 - 10/1988) 19255 Saticoy St, Reseda, CA 91335 No Occupancy Dates Specified
2	Marjorie E Quintana	NA	7429 Tampa Ave, Reseda, CA 91335 (12/2005 - 12/2005) 7745 Reseda Blvd Apt 60, Reseda, CA 91335 No Occupancy Dates Specified
3	Ricardo E Onofre	50	5535 S Tripp Ave, Chicago, IL 60629 (11/2003 - 04/2011) Po Box 370244, Reseda, CA 91337 No Occupancy Dates Specified
4	Guido B Pino	NA	971 Menlo Ave Apt 202, Los Angeles, CA 90006 (08/1993 - 08/1993) 444 S Ardmore Ave Apt 159, Los Angeles, CA 90020 No Occupancy Dates Specified
5	Fabian P Beltran	49	2701 N 34th Ave Apt C, Hollywood, FL 33021 No Occupancy Dates Specified 167 S Arden Blvd Apt 310, Los Angeles, CA 90004 (03/1989 - 03/1989)
6	Ana Maria Onofre	53	423 S Hoover St Apt 105, Los Angeles, CA 90020 (01/2003 - 01/2006) 423 S Hoover St Apt 108S, Los Angeles, CA 90020 (07/2001 - 09/2005)
7	Lila Rosibel Diaz	53	423 S Hoover St Apt 108, Los Angeles, CA 90020 No Occupancy Dates Specified 14528 Gault St, Van Nuys, CA 91405 No Occupancy Dates Specified
8	Galo G Plaza	46	11025 Lillian Ln, South Gate, CA 90280 No Occupancy Dates Specified 21040 Parthenia St Apt 26, Canoga Park, CA 91304 No Occupancy Dates Specified
9	Luis O Plaza	49	245 N Alvarado St Apt 209, Los Angeles, CA 90026 (11/1992 - 06/1995) 7429 Tampa Ave Apt 1, Reseda, CA 91335 No Occupancy Dates Specified
10	Maribel Plaza	45	444 S Berendo St Apt 237, Los Angeles, CA 90020 (03/1988 - 08/1993) 424 S Ardmore Ave Apt 221, Los Angeles, CA 90020 No Occupancy Dates Specified

11	Ivan P Plaza	50	107 N Arboles Ct, San Pedro, CA 90731 No Occupancy Dates Specified 245 N Alvarado St Apt 312, Los Angeles, CA 90026 (04/1995 - 04/1995)
12	Wilson O Plaza	51	444 S Berendo St Apt 237, Los Angeles, CA 90020 (03/1988 - 12/1994) 424 S Ardmore Ave Apt 221, Los Angeles, CA 90020 (03/1988 - 03/1988)
13	Wilson Plaza	NA	
14	Valerie Plaza	21	
15	Ana M Plaza	NA	
16	Ligia A Onofre	52	5535 S Tripp Ave, Chicago, IL 60629 (11/2003 - 12/2010) 6412 S Lamon Ave, Chicago, IL 60638 No Occupancy Dates Specified
17	Nancy E Maldonado	54	1628 W Touhy Ave Apt 301, Chicago, IL 60626 (06/2004 - 08/2007) 1431 W Chicago Ave, Chicago, IL 60642 (06/1995 - 01/1997)
18	Maria P Maldonado	53	4329 Sterling Rd, Downers Grove, IL 60515 (09/1993 - 04/2000) 226 11th St Apt S, Rochelle, IL 61068 No Occupancy Dates Specified
19	Oscar A Maldonado	80	3515 Onyx Pkwy, Rockford, IL 61102 No Occupancy Dates Specified 2043 W Moffat St, Chicago, IL 60647 (09/1974 - 09/1974)
20	Oscar P Maldonado	57	237 Crescent Ln, Cliffside Park, NJ 07010 No Occupancy Dates Specified 406 S Main St Apt 3, Rochelle, IL 61068 No Occupancy Dates Specified
21	Fernando L Maldonado	50	237 Crescent Ln, Cliffside Park, NJ 07010 (2003 - 07/2003) 357 Palisade Ave, Cliffside Park, NJ 07010 (10/2002 - 10/2002)
22	Ruth Maldonado	NA	
23	Carlos Onofre	NA	
24	Maria Yolanda Onofre	NA	

Possible Associates

#	Name	Age	Address
1	Esther Gonzalez	45	682 N Gale Hill Ave, Lindsay, CA 93247 (04/2006 - 04/2008) 335 N Gale Hill Ave Apt 4, Lindsay, CA 93247 (11/2004 - 04/2006)
2	Angelina R Rodriguez	NA	531 N Gale Hill Ave, Lindsay, CA 93247 (07/2005 - 07/2005) 682 N Gale Hill Ave, Lindsay, CA 93247 (2005 - 2005)
3	Jesus S Gonzalez	NA	7429 Tampa Ave, Reseda, CA 91335 (05/1997 - 07/1997) 2843 N Terry St, Portland, OR 97217 No Occupancy Dates Specified
4	Elena L Jimenez	35	7514 Woodman Ave, Van Nuys, CA 91405 (01/2013 - 01/2013) 13641 Runnymede St Apt 4, Van Nuys, CA 91405 (09/2007 - 09/2007)
5	Monica Leticia Millan	44	19150 Schoenborn St, Northridge, CA 91324 (10/2000 - 05/2007) 18521 Prairie St, Northridge, CA 91324 No Occupancy Dates Specified
6	Alejandro A Mejia	47	2843 N Terry St, Portland, OR 97217 (02/1996 - 06/2008) 7660 E McKellips Rd Lot 52, Scottsdale, AZ 85257 (1996 - 1996)
7	Dora D Mejia	46	4063 NE 10th Ave, Portland, OR 97212 (08/1995 - 08/1995) 7835 Fallbrook Ave, Canoga Park, CA 91304 (02/1995 - 02/1995)
8	Ageda Perez	36	531 N Gale Hill Ave, Lindsay, CA 93247 (10/1999 - 10/1999) 7247 Tampa Ave, Reseda, CA 91335 No Occupancy Dates Specified
9	Luis O Plaza	49	245 N Alvarado St Apt 209, Los Angeles, CA 90026 (11/1992 - 06/1995) 7429 Tampa Ave Apt 1, Reseda, CA 91335 No Occupancy Dates Specified
10	Ivan P Plaza	50	107 N Arboles Ct, San Pedro, CA 90731 No Occupancy Dates Specified 245 N Alvarado St Apt 312, Los Angeles, CA 90026 (04/1995 - 04/1995)

11	Mauricio A Plaza	NA	7429 Tampa Ave, Reseda, CA 91335 (05/1994 - 05/1994)
12	Maria L Vasquez	55	7731 Pioneer Blvd, Whittier, CA 90606 (07/1994 - 11/2002) 15547 Saranac Dr, Whittier, CA 90604 (02/1995 - 02/1995)
13	Robert F Wasvary	69	18771 Strathern St, Reseda, CA 91335 (12/1993 - 12/1993) Tampa Ave, Tarzana, CA 91335 No Occupancy Dates Specified
14	Marjorie E Quintana	NA	7429 Tampa Ave, Reseda, CA 91335 (12/2005 - 12/2005) 7745 Reseda Blvd Apt 60, Reseda, CA 91335 No Occupancy Dates Specified
15	A E Perez	NA	
16	Erica E Perez	NA	

Bankrupticies, Judgements, and Liens

This will provide details on bankruptcy records associated with an individual. Bankruptcy is a civil record for someone that cannot, has chosen not to, or disputes a debt owed to creditors. A creditor can be anyone from a business, landlord, government entity, or just a regular person.

Bankruptcy

These are likely the person that you were searching for. These are matched based on name, age, and other criteria to ensure accuracy.

Name	Filing Date	Location	Chapter

Judgements and Liens

These are likely the person that you were searching for. These are matched based on name, age, and other criteria to ensure accuracy.

Name	Filing Date	Amount	Type
Yolanda Onofre	Unavailable	Unavailable	FORCIBLE ENTRY/DETAINER

Record

Name:	Yolanda Onofre
Type:	FORCIBLE ENTRY/DETAINER
Court:	LOS ANGELES MUNICIPAL - LA COUNTY
Case Number:	
TMS ID:	HG95U11781CALOSM1
Jurisdiction:	California
Chapter:	
Debtor Address:	7550 Jordan Ave Apt 202, CANOGA PARK, CA 91303
Creditor:	KENLOR MGMT CO

EXHIBIT "Q"

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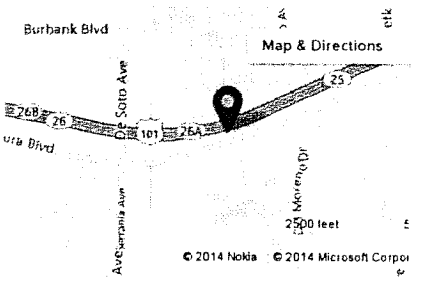

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AKA:	Business Discovery Solutions Inc
Category:	Business Management

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EXHIBIT "R"

Jonathan C Callister

From: david kennet <davidkennet@hotmail.com>
Sent: Friday, February 28, 2014 12:34 PM
To: Jonathan C Callister
Subject: Re: Ongoing Expenses

Thank you and i will submit those receipts and or debit statements to you this afternoon -- I just wanted reimbursement and so thank you

Sent from my iPhone

On Feb 28, 2014, at 1:40 PM, "Jonathan C Callister" <jcallister@callisterfrizell.com> wrote:

> David,
>
> As I have stated on a number of occasions previously, please submit your receipts for reimbursement. I am not reneging on anything. I am waiting for you to give me receipts. Please either email them to this email or fax them to the number below. You can even mail them if you want. After receipt, you will be reimbursed for your legitimate travel expenses.
>
> In the alternative, you can fail to provide them and make threats about suing me or going to the State bar. In which case, I will prepare to defend myself and to counter-sue. I prefer to reimburse, but I leave that choice to you. If you do not have a receipt, since you appeared to use your debit card, I am sure you can provide some evidence of payment for a particular expense which will suffice.
>
> Sincerely,
>
> Jonathan C. Callister, Esq.
> Licensed Attorney in Idaho and Nevada
> **<image001.png>**
>
> 8275 South Eastern Ave., Suite 200
> Las Vegas, Nevada 89123
> Phone: (702) 657-6000
> Fax: (702) 657-0065
> jcallister@callisterfrizell.com

Jonathan C Callister

From: david kennet <davidkennet@hotmail.com>
Sent: Wednesday, April 09, 2014 1:34 PM
To: Jonathan C Callister
Subject: Re: Friday April 4

I never threatened you

Sent from my iPhone

On Apr 9, 2014, at 2:29 PM, "Jonathan C Callister" <jcallister@callisterfrizell.com> wrote:

> David,
>
> I hope this can end amicably, but if not, so be it. My calculations are based on the receipt you gave me the day you left (which totaled $676.00 and I paid you $767.00). You were paid $422.00 for air travel under the assumption you were purchasing a ticket back to LA. You did not. The cost of the one ticket to Las Vegas was $211.00 (I am not contesting your Delta change fee even though a receipt was not provided). You were paid another $70.00 for a ride to the airport and another $70 for the assumption you would need a ride back. You did not since you flew out of LAX. You were paid $25.00 for a taxi to your hotel. $30.00 here and $20.00 back. These are your numbers and not mine – see attached. The money back on our card was the money we spent and not yours, so it's not like you paid it to us. In addition, I gave you $30.00 for a tax ride to pick up your rental car from our office. You are now requesting an additional 3 taxi rides when you would have only needed the one to get here from your hotel.
>
> In addition, you requested money for food for the 2 days you were here of $150. You are now requesting $275.00 for food while here. I paid you an extra $100.00 in the check I gave to you for food, so despite that you already requested $150 and $275 for the same days, I am fine paying you an extra $175.00.($275 minus the extra $100 you were paid in the check) I am not even raising the issue of the fact that you had a car for 6 days for a 2 day trip here. In the end you can accept the reimbursement amount requested less the $211.00 for a plane ticket not purchased, $100.00 extra paid for food, $70.00 for a sedan that was never needed, and $45.00 for the cheapest 2 taxi rides, and $29.00 for equipment purchased at the airport for a total reduction of $455.00. If you want to dispute that, then that is fine. I will withhold any future travel expenses until the matter is decided by a court. You can threaten to go to the bar and anything else you want because I am being more than reasonable, am sick of your threats and am more than happy to defend the letter I wrote to you and these travel expense reimbursements in any forum you care to bring it up in.
>
> The decision is up to you.
>
> Sincerely,
>
> Jonathan C. Callister, Esq.
> Licensed Attorney in Idaho and Nevada
> **<image001.png>**
>
> 8275 South Eastern Ave., Suite 200
> Las Vegas, Nevada 89123
> Phone: (702) 657-6000
> Fax: (702) 657-0065
> jcallister@callisterfrizell.com
>
> CONFIDENTIALITY CLAUSE:

From: david kennet [mailto:davidkennet@hotmail.com]
Sent: Wednesday, April 09, 2014 12:55 PM
To: Jonathan C Callister
Subject: Re: Friday April 4

Travel expenses are exactly that and I'm not trying to get any more - i spent more than that on this trip to provide you and your client with the most accurate info I could and has obviously put your client in a better position and also provided you with my knowledge of what could have been very bad for you and your firm . - those funds were never requested from me only reimbursement of travel expenses so please stop the nonsense and lets move on

Sent from my iPhone

On Apr 9, 2014, at 12:50 PM, "Jonathan C Callister" <jcallister@callisterfrizell.com> wrote:

> David,
>
> I reimbursed you for a number of these expenses already when I issued you a check for $767.00 dollars. Including $150 for food and $250.00 for Taxi's and Sedans (which includes $30.00 I gave you for one). In addition, you were paid $211.00 for a plane ticket you never purchased. I will be deducting those expenses which were already reimbursed to you from your request. In addition, there appear to be iphone and lock purchases which have nothing to do with typical travel expenses. The remainder balance I will deposit in your account.
>
> Sincerely,
>
> Jonathan C. Callister, Esq.
> Licensed Attorney in Idaho and Nevada
> **<image001.png>**
>
> 8275 South Eastern Ave., Suite 200
> Las Vegas, Nevada 89123
> Phone: (702) 657-6000
> Fax: (702) 657-0065
> jcallister@callisterfrizell.com

From: david kennet [mailto:davidkennet@hotmail.com]
Sent: Wednesday, April 09, 2014 7:56 AM
To: Jonathan C Callister
Subject: Re: Friday April 4

Good morning Jonathan -- can you please finalize our business today thank you

Sent from my iPhone

On Apr 8, 2014, at 2:24 PM, "Jonathan C Callister" <jcallister@callisterfrizell.com> wrote:

> David,
>
> I probably will not be able to today, but will try to get it done by tomorrow.
>
> Sincerely,
>
> Jonathan C. Callister, Esq.
> Licensed Attorney in Idaho and Nevada
> **<image001.png>**
>
> 8275 South Eastern Ave., Suite 200
> Las Vegas, Nevada 89123
> Phone: (702) 657-6000
> Fax: (702) 657-0065
> jcallister@callisterfrizell.com
>
>

EXHIBIT "S"

AFFIDAVIT OF THOMAS R. GROVER, ESQ.

State of Nevada)
) ss:
County of Clark)

THOMAS R. GROVER, ESQ, being first duly sworn, deposes and says that I have personal knowledge of and am competent to testify to the following facts:

1. I am an attorney and member of the State Bar of Nevada in good standing.
2. I am an associate at the law firm of Goodsell & Olsen, LLP.
3. My firm, Goodsell & Olsen represents William Fink in the matter of the Estate of Leroy G. Black, P-12-074745-E, and was retained in this matter for the purpose of defending Leroy Black's Trust and to handle the issue of whether the March 2012 Will revoked the Black Trust.
4. Neither myself, or the partner I work for, Michael A. Olsen, Esq., were aware of the January 10 Letter until long after it had been sent. Neither Olsen or myself had any involvement, in any way, in locating the witnesses to the March 2012 Will or obtaining the affidavits of those witnesses. Goodsell & Olsen certainly played no role in conceiving or drafting the January 10 Letter.

FURTHER YOUR AFFIANT SAYETH NAUGHT.

DATED this 21 day of AUGUST 2014.

THOMAS R. GROVER, ESQ.

SIGNED AND SWORN to before me
this 21 day of AUGUST 2014.

NOTARY PUBLIC in and for said
County and State.

EMILY C. KARDT
Notary Public State of Nevada
No. 06-107050-1
My appt. exp. Aug. 25, 2017

GOODSELL & OLSEN
ATTORNEYS AT LAW
10155 W. TWAIN AVENUE, SUITE 100, LAS VEGAS, NV 89147
(702) 869-6261 TEL - (702) 869-8243 FAX

EXHIBIT "T"

GOODSELL & OLSEN
ATTORNEYS AT LAW
10155 W. TWAIN AVENUE, SUITE 100, LAS VEGAS, NV 89147
(702) 869-6261 TEL - (702) 869-8243 FAX

AFFIDAVIT OF MICHAEL A. OLSEN, ESQ.

State of Nevada)
) ss:
County of Clark)

MICHAEL A. OLSEN, ESQ, being first duly sworn, deposes and says that I have personal knowledge of and am competent to testify to the following facts:

1. I am an attorney and member of the State Bar of Nevada in good standing.
2. I am a partner at the law firm of Goodsell & Olsen, LLP.
3. My firm, Goodsell & Olsen represents William Fink in the matter of the Estate of Leroy G. Black, P-12-074745-E, and was retained in this matter for the purpose of defending Leroy Black's Trust and to handle the issue of whether the March 2012 Will revoked the Black Trust.
4. Neither myself, or my associate Thomas R. Grover, Esq. were aware of the January 10 Letter until long after it had been sent. Neither Grover or myself had any involvement, in any way, in locating the witnesses to the March 2012 Will or obtaining the affidavits of those witnesses. Goodsell & Olsen certainly played no role in conceiving or drafting the January 10 Letter.

FURTHER YOUR AFFIANT SAYETH NAUGHT.

DATED this 21st day of AUGUST 2014.

MICHAEL A. OLSEN, ESQ.

SIGNED AND SWORN to before me
this 21 day of AUGUST 2014.

NOTARY PUBLIC in and for said
County and State.

EXHIBIT "U"

Electronically Filed
08/02/2013 11:06:25 AM

CLERK OF THE COURT

NEO
JORDAN M. FLAKE
Nevada Bar No. 9964
JONATHAN W. BARLOW
Nevada Bar No. 9964
BARLOW FLAKE LLP
50 S. Stephanie St., Ste. 101
Henderson, Nevada 89012
(702) 476-5900
(702) 924-0709 (Fax)
jonathan@barlowflakelaw.com
Attorneys for the Estate

DISTRICT COURT
CLARK COUNTY, NEVADA

In the Matter of the Estate of LEROY G. BLACK, Deceased.	Case No. P-12-074745-E Dept. No. 26

NOTICE OF ENTRY OF ORDER GRANTING OBJECTION TO REPORT AND RECOMMENDATION

YOU AND EACH OF YOU WILL PLEASE TAKE NOTICE that the ***Order Granting Objection to Report and Recommendation*** was entered in the above entitled matter on August 1, 2013, a copy of which is attached hereto.

DATED this 2nd day of August, 2013.

BARLOW FLAKE LLP

JONATHAN W. BARLOW
Nevada Bar No. 9964
Attorneys for the Estate

BARLOW FLAKE LLP
50 S. Stephanie St., Ste. 101
Henderson, NV 89012
(702) 476-5900

CERTIFICATE OF MAILING

I hereby certify that on August 7, 2013, a true and correct copy of the original ***Notice of Entry of Order Granting Objection to Report and Recommendation*** was sent via U.S. Mail, first class postage prepaid, to the following at their last known address:

Rose E. Markowitz
318 North California St.
Burbank CA 91505

Phillip Markowitz
2201 Hercules Drive
Los Angeles CA 90046

Jonathan C. Callister
Callister & Frizell
8275 S. Eastern Ave., Ste. 200
Las Vegas NV 89123

An employee of Barlow Flake LLP

BARLOW FLAKE LLP
50 S. Stephanie St., Ste. 101
Henderson, NV 89012
(702) 476-6900

Electronically Filed
08/01/2013 09:42:49 AM

CLERK OF THE COURT

ORDR
JONATHAN W. BARLOW
Nevada Bar No. 9964
JORDAN M. FLAKE
Nevada Bar No. 10583
BARLOW FLAKE LLP
50 S. Stephanie St., Ste. 101
Henderson, Nevada 89012
(702) 476-5900
(702) 924-0709 (Fax)
jonathan@barlowflakelaw.com
Attorneys for the Estate

DISTRICT COURT
CLARK COUNTY, NEVADA

In the Matter of the Estate of LEROY G. BLACK, Deceased.	Case No. P-12-074745-E Dept. No. 26

ORDER GRANTING OBJECTION TO REPORT AND RECOMMENDATION

Date of Hearing: July 9, 2013
Time of Hearing: 9:00 a.m.

The *Objection to Report and Recommendation* filed by Phillip Markowitz as Executor of the Estate of Leroy G. Black came on for hearing on July 9, 2013. Jonathan W. Barlow, of Barlow Flake LLP, appeared for Phillip Markowitz as Executor of the Estate of Leroy G. Black, and Jonathan C. Callister, of Callister & Frizell, appeared for William Fink. The Court having reviewed all pleadings and papers on file, having considered the arguments of counsel, and other good cause showing, enters the following findings and order granting the Objection:

FINDINGS OF FACT:

1. Leroy G. Black ("Decedent") died on April 4, 2012.

2. On July 18, 2012, Phillip Markowitz ("Markowitz") filed a Petition for Probate of Will, Petition for Appointment of Personal Representative and for Issuance of Letters

Testamentary (the "Petition to Probate Will"). In the Petition to Probate Will, Markowitz petitioned the Court to enter a will dated March 7, 2012, to probate as Decedent's last will and testament.

3. On July 27, 2012, Markowitz provided Notice of Hearing on the Petition to Probate Will to William Fink ("Fink").

4. This Court held its hearing on the Petition to Probate Will on August 31, 2012. Fink neither filed a written objection to the Petition to Probate Will, nor did Fink appear at the hearing to object to the Petition to Probate Will.

5. This Court entered its Order admitting the March 7, 2012, will to probate on August 31, 2012. Notice of Entry of the Order was served on Fink on August 31, 2012.

6. On November 27, 2012, Fink filed an Objection to the Admission of the Last Will and Testament of Leroy G. Black, for the Revocation of Letters Testamentary and for Appointment of Special Administrator Pending the Conclusion of Will Contest (the "Objection to Admission of Will").

7. On January 3, 2013, Fink caused a Citation to Plea to Contest to be issued by the Clerk of Court.

8. On January 23, 2013, Fink filed a Petition to Enlarge Time Pursuant to NRCP 6(b).

CONCLUSIONS OF LAW:

1. An interested person who wishes to revoke an order admitting a will to probate must file a petition "containing the allegations of the contestant against the validity of the will or against the sufficiency of the proof, and requesting that the probate be revoked." NRS

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50 S. Stephanie St., Ste. 101
Henderson, NV 89012
(702) 476-5900

137.080. The petition to revoke the probate must be filed "at any time within 3 months after the order is entered admitting the will to probate." NRS 137.080.

2. In addition to the requirements of NRS 137.080, an interested person who wishes to revoke an order admitting a will to probate must comply with the requirements of NRS 137.090, which states, "Upon filing the petition, and within the time allowed for filing the petition, a citation must be issued, directed to the personal representative and to all the devisees mentioned in the will, and the heirs, so far as known to the petitioner, including minors and incapacitated persons, or the personal representative of any such person who is dead, directing them to plead to the contest within 30 days after service of the citation."

3. The plain language rule of statutory interpretation requires that NRS 137.080-.090 must be given their plain and unambiguous meaning. The phrase, "a citation must be issued," in NRS 137.090 is given its plain meaning as a mandatory, not permissive, requirement that must be performed within three months after entry of the order admitting a will to probate.

4. Because Fink failed to cause a citation to be issued within three months of August 31, 2012, Fink is time-barred by the statute of limitations to pursue a will contest of the March 7, 2012, will. Pursuant to NRS 137.120, the probate of Decedent's March 7, 2012, will is conclusive.

5. The statute of limitations in this case is not tolled based on extrinsic fraud. Fink did not provide any evidence of extrinsic fraud or any proof of any action by Markowitz that would have prevented Fink from knowing his rights in this matter or acting to protect his rights.

6. Rule 6 of the Nevada Rules of Civil Procedure is not applicable to enlarge the time to issue the citation required by NRS 137.090.

BARLOW FLAKE LLP
50 S. Stephanie St., Ste. 101
Henderson, NV 89012
(702) 476-5900

IT IS THEREFORE ORDERED that the *Objection to Report and Recommendation* filed by Phillip Markowitz as Executor of the Estate of Leroy G. Black is granted. The Court does not adopt or approve of the Report and Recommendation entered by Probate Commissioner Wesley Yamashita on April 11, 2013.

IT IS FURTHER ORDERED that William Fink's Objection to Admission of Will is denied. Fink's purported will contest of the admission of Decedent's March 7, 2012, will to probate is time-barred by his failure to comply with the requirements of NRS 137.090 and is, therefore, dismissed. The probate of Decedent's March 7, 2012, will is conclusive.

DATED this 31st day of July, 2013.

DISTRICT COURT JUDGE

Prepared and submitted by:
BARLOW FLAKE LLP

JONATHAN W. BARLOW
Nevada Bar No. 9964
Attorneys for the Estate

Reviewed as to form and content:
CALLISTER & FRIZELL

JONATHAN C. CALLISTER
Nevada Bar No. 8011
Attorney for William Fink

BARLOW FLAKE LLP
50 S. Stephanie St., Ste. 101
Henderson, NV 89012
(702) 476-5900

EXHIBIT "V"

AFFIDAVIT OF JASON C. WALKER, ESQ.

STATE OF NEVADA)
) ss:
COUNTY OF CLARK)

I, Jason C. Walker, Esq., being first duly sworn, on oath, deposed and say:

1. I am over 18 years of age and am competent to testify to the matters set forth herein. To the best of my knowledge and belief the information and statements contained herein are true and correct.

2. I am an attorney in Las Vegas, Nevada and have been practicing law for over six (6) years and licensed to practice for seven (7) years. I am also a Notary Public in Nevada.

3. I had worked with Leroy Black and his mother, Ida Black, for many years, starting in 2008, to update their respective estate planning. They were also both long-time clients of the Jeffrey Burr law firm dating back to 1994 when attorney John Dawson helped them for Senior Nevada Benefit Group.

4. In 2008 and 2009 I worked extensively with Leroy to get properties properly owned by his trust and LP, and to correctly change ownership of the limited partnership to his trust. I provided a diagram of his trust and the limited partnership and we worked together to try to accomplish the proper ownership of the properties and limited partnership as we were making preparations to make sure that there would be no probate required when his mother, Ida, passed away.

5. Leroy would consistently contact our office for advice regarding his revocable trust, his mother's revocable trust, and the limited partnership known as Senior Nevada Benefit Group, LP. Leroy would call me about many other things as well, and I was generally his sounding board for financial decisions. Leroy would also talk to me and "vent" about his thoughts on the economy, politics, and other topics. Due to the length of some of our conversations I began to have office staff members talk to Leroy initially and they would try and get to the real purpose of his call before I would call him back personally.

6. Leroy contacted our office on Friday, March 30, 2012, and spoke with my legal assistant Crystal Meyer to request changes to his nominated Successor Trustee, changes to his financial power of attorney, and a change to the distribution language of his trust. Leroy also asked Crystal about two of the properties and why they were not titled in the name of the trust. None of the requested changes involved naming Phil Markowitz as a Trustee, Executor, or agent under power of attorney; nor was it requested to name him as a new beneficiary to Leroy's revocable trust..

7. On Wednesday, April 4, 2012, I replied to an e-mail from Crystal Meyer providing a price quote for our legal fees to make the changes that Leroy had requested. In my e-mail

response to Crystal Meyer I provided a price quote for the estate planning changes and for the preparation of two deeds to transfer two properties that were titled in his individual name.

8. I was notified about a week later, on April 11, 2012, that Leroy Black was deceased and our office was contacted by Monica Steinberg requesting a copy of Leroy's irrevocable life insurance trust.

9. Between the years 2008 and 2011 I notarized a number of legal documents for Leroy Black including his life insurance trust established in 2010, powers of attorney in 2009 and 2011, and a number of real property deeds and miscellaneous assignments. I was the notary for his documents because every one of my appointments with Leroy Black was at his house since he was always caring for his mother, Ida. Although I notice some evolution in his signature from the documents our firm has on file from 1994 through 2011, the signature on the Will executed on March 7, 2012, seems very suspect and different enough from Leroy's signature on the other documents that I questioned the validity of that Will.

10. In all the years that I worked with Leroy and with the numerous phone conversations with Leroy about his estate (and other topics) I cannot recall Leroy ever mentioning that he had an estranged sister. I also cannot recall Leroy ever mentioning a cousin other than William Fink. Leroy never requested any mention or specific bequest or disinheritance in his trust or Will for Zelda Kameyer, Rose Markowitz, or Phillip Markowitz.

Affiant further sayeth naught.

JASON C. WALKER, ESQ.

SUBSCRIBED and SWORN to before me
This 26th day of August, 2013.

NOTARY PUBLIC

TRACY TORRES
NOTARY PUBLIC
STATE OF NEVADA
My Commission Expires: 03-31-16
Certificate No: 08-6205-1

EXHIBIT "W"

THE TOTAL AMENDMENT AND RESTATEMENT OF THE THE LEROY G. BLACK 1992 LIVING TRUST

Originally Dated August 21, 1992

Prepared by
JEFFREY BURR, LTD.
2600 Paseo Verde Parkway
Henderson, NV 89074

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Trust Agreement

OF THE

TOTAL AMENDMENT AND RESTATEMENT OF THE

LEROY G. BLACK 1992 LIVING TRUST

THIS DECLARATION OF TRUST AGREEMENT is a Total Amendment and Restatement of the LEROY G. BLACK 1992 LIVING TRUST which was originally established on August 21, 1992. This Total Amendmnet and Restatement, as follows, is made on October 27, 2009, by LEROY BLACK (hereinafter referred to as the "Trustor" or "Grantor" when reference is made to him in his capacity as creator of this Trust and the transferor of the principal properties thereof) and LEROY BLACK, of Clark County, Nevada (hereinafter referred to as the "Trustee," when reference is made to him in his capacity as Trustee or fiduciary hereunder);

Witnesseth:

WHEREAS, the Trustor desires by this Trust Agreement to establish the "LEROY G. BLACK 1992 LIVING TRUST" for the use and purposes hereinafter set forth, to make provisions for the care and management of certain of his present properties and for the ultimate distribution of the Trust properties;

NOW, THEREFORE, all property subject to this Trust Indenture shall constitute the Trust estate and shall be held for the purpose of protecting and preserving it, collecting the income therefrom, and making distributions of the principal and income thereof as hereinafter provided.

Additional property may be added to the Trust estate, at any time and from time to time, by the Trustor or any person or persons, by inter vivos act or testamentary transfer, or by insurance contract or Trust designation.

The property comprising the original Trust estate, during the life of the Trustor, shall retain its character as his separate property. Property subsequently received by the

Trustee during the life of the Trustor shall also be the sole and separate property of the Trustor.

ARTICLE 1

NAME AND BENEFICIARIES OF THE TRUST

1.1 **Name**. The Trust created in this instrument may be referred to as the "LEROY G. BLACK 1992 LIVING TRUST", and any separate Trust may be referred to by adding the name of the beneficiary.

1.2 **Beneficiaries**. The Trust estate created hereby shall be for the use and benefit of LEROY BLACK, and for the other beneficiaries name herein.

ARTICLE 2

DISTRIBUTION OF INCOME AND PRINCIPAL WHILE THE TRUSTOR SHALL LIVE

2.1 **Distributions While the Trustor Lives**. During the lifetime of LEROY BLACK, he shall be entitled to all income and principal of the Trust property without limitation.

2.2 **Use of Residence**. While the Trustor shall live, he may possess and use, without rental or accounting to Trustee, any residence owned by this Trust.

ARTICLE 3

INCAPACITY

3.1 **Incapacity of Trustor**. If at any time the Trustor has become physically or mentally incapacitated, as certified in writing by a licensed physician, psychologist, or psychiatrist, and whether or not a court of competent jurisdiction has declared him incompetent, mentally ill or in need of a guardian or conservator, the Successor Trustee shall pay to the Trustor or apply for his benefit or for the benefit of those who are dependent upon him, the amounts of net income and principal necessary, in the Successor Trustee's discretion, for the proper health, support and maintenance of the Trustor and his family members who are dependent upon him, in accordance with their accustomed

manner of living at the date of this instrument, until the incapacitated Trustor, either in the Successor Trustee's discretion or as certified by a licensed physician, psychologist, or psychiatrist, is again able to manage his own affairs or until his death. This shall include, but not be limited to, distribution of income and principal to retain personal aides, homemakers, bill payers, or other persons who may assist the Trustor in activities of daily living and otherwise enable the Trustor to continue to reside in his home for as long as it is feasible to do so, taking into account safety and financial considerations. In exercising such discretion, the Successor Trustee shall consider the duty and ability of anyone else to support the Trustor and his family and shall also consider all other funds known to the Successor Trustee to be available from other sources for such purposes. The Trustor directs that the Successor Trustee maintain the Trustor in the same custom and style to which the Trustor has been accustomed during his lifetime. It is the Trustor's express desire to remain in his home for the remainder of his lifetime and not be placed in a nursing home or retirement care facility. The Trustor directs that the Trustee shall utilize income and principal from this Trust as may be necessary, including amounts necessary for required nursing and other care, so as to maintain the Trustor in his home, unless in the opinion of the Trustor's attending physician, together with the opinion of a second independent or consulting physician, residence in a nursing home would be required for the Trustor's physical well being. All undistributed income shall be accumulated and added to the Trust principal annually. In addition, it is Trustor's desire that, in the event of his incapacity or in the event he is unable to remain in his primary residence, the Trustee hereunder shall continue to maintain the Trustor's residence and shall continue to pay for all taxes, insurance, fees, and encumbrances on such residence for as long as it is owned by this Trust.

3.2 **Reliance on Writing**. Anyone dealing with this Trust may rely on the physicians' or the psychologists' written statements regarding the Trustor's incapacity, or a photocopy of the statements, presented to them by the Successor Trustee. A third party relying on such written statements shall not incur any liability to any beneficiary for any dealings with the Successor Trustee in reliance upon such written statements. This provision is inserted in this Trust indenture to encourage third parties to deal with the Co-Trustee or Successor Trustee without the need for court proceedings.

ARTICLE 4

DISTRIBUTION OF HOUSEHOLD AND PERSONAL EFFECTS AFTER DEATH OF TRUSTOR

4.1 **Distribution of Personal Property**. After the death of the Trustor, the Trustee shall distribute all tangible personal property of the deceased Trustor, including but not limited to, furniture, furnishings, rugs, pictures, books, silver, linen, china, glassware, objects of art, wearing apparel, jewelry, and ornaments, in accordance with any written statement or list that the Trustor leaves disposing of this property. Any such statement or list then in existence shall be determinative with respect to all bequests made therein. Any property not included on said list shall be added to the Trust created in Article 5 below.

ARTICLE 5

DISTRIBUTION OF INCOME AND PRINCIPAL AFTER DEATH OF THE TRUSTOR

5.1 **Payment of Debts and Expenses**. Upon the death of the Trustor, the Trustee may, in the Trustee's sole discretion, pay from the income and/or principal of the Trust estate, the administrative expenses, the expenses of the last illness and funeral of the Trustor and any debt owed by the Trustor.

5.2 **Distribution of the Remaining Trust Estate**. Any remaining property, both income and principal of this Trust estate shall be distributed outright and free of Trust to the Trustor's mother IDA B. BLACK, if she is then living and survives the Trustor by a period of Ninety (90) days. In the event that IDA B. BLACK is not living at the time of the Trustor's death or does not survive the Trustor by a period of Ninety (90) days, the remaining Trust estate shall be distributed to the Trustor's cousin, WILLIAM FINK, also known as BILL FINK, if he is then living, outright and free of Trust.

5.3 **Last Resort Clause**. In the event that the principal of the Trust administered under this Article 5 is not disposed of under the foregoing provisions, the remainder, if any, shall be distributed, outright and free of Trust, to the local Chapter of the ALZHEIMER'S ASSOCIATION, to be used for its general charitable purposes.

ARTICLE 6

TRUSTEE'S DISCRETION ON DISTRIBUTION TO PRIMARY BENEFICIARIES

6.1 **Delay of Distribution**. Notwithstanding the distribution provisions of Article 5, the following powers and directions are given to the Trustee:

(a) If, upon any of the dates described in Article 5, the Trustee for any reason described below determines, in the Trustee's sole discretion, that it would not be in the best interest of the beneficiary that a distribution take place, then in that event the said distribution shall be totally or partially postponed until the reason for the postponement has been eliminated. During the period of postponement, the Trustee shall have the absolute discretion to distribute income or principal to the beneficiary as the Trustee deems advisable for the beneficiary's welfare.

(b) If said causes for delayed distribution are never removed, then the Trust share of that beneficiary shall continue until the death of the beneficiary and then be distributed as provided in this Trust Instrument. The causes of such delay in the distribution shall be limited to any of the following:

(1) The current involvement of the beneficiary in a divorce proceeding or a bankruptcy or other insolvency proceedings.

(2) The existence of a large judgment against the beneficiary.

(3) Chemical abuse or dependency.

(4) The existence of any event that would deprive the beneficiary of complete freedom to expend the distribution from the Trust estate according to his or her own desires.

(5) In the event that a beneficiary is not residing in the United States of America at any given time, then the Trustee may decline to transmit to him or her any part or all of the income and shall not be required to transmit to him or her any of the principal if, in the Trustee's sole and uncontrolled judgment, the political and/or economic conditions or such place of residence of the beneficiary are such that it is likely the money would not reach him or her, or

EXHIBIT "J"

Jonathan C Callister

From: Jonathan C Callister
Sent: Wednesday, February 19, 2014 11:13 AM
To: davidkennet@hotmail.com
Subject: Revocation of Previous Letter/Communication

David,

In light of our recent meeting, and upon review of the letter mailed/emailed to you, it became clear that my letter, although not intended, could be read to imply that we would pay money in exchange for false testimony or that we were seeking to influence testimony. This was not the intent of the letter. The intent was to motivate you to meet with us and if any testimony were untrue to have the truth come out.

That being said, it was perhaps poorly worded and could have been interpreted that we would seek to punish someone for telling the truth or pay them for changing the truth. That is not what was intended. We would not seek to punish anyone for telling the truth nor pay someone to lie. To the extent any communication implied that this was the case, it is hereby revoked, and I express my deepest apologies for any confusion. Our sole desire is that the actual truth be told and would only want you to tell the truth.

If you have any questions or concerns, please do not hesitate to contact me.

Sincerely,

Jonathan C. Callister, Esq.
Licensed Attorney in Idaho and Nevada

CALLISTER & FRIZELL
ATTORNEYS AT LAW

8275 South Eastern Ave., Suite 200
Las Vegas, Nevada 89123
Phone: (702) 657-6000
Fax: (702) 657-0065
jcallister@callisterfrizell.com

under federal tax law, and (2) may not be used in connection with the promotion, marketing or recommendation of any transaction, investment or other arrangement or matter, except as expressly stated otherwise.

EXHIBIT "K"

AFFIDAVIT OF

WILLIAM F. MARTIN

STATE OF NEVADA)
) ss.
COUNTY OF CLARK)

On this date, appeared before me WILLIAM F. MARTIN, who is known to me or provided appropriate identification, and who upon his oath deposed and said:

1. My name is WILLIAM F. MARTIN. I am over 18 years of age, am of sound mind, and am fully competent to make this Affidavit. I am currently a California State Licensed Private Investigator, and have been so licensed since 1983.

2. With the exception of any and all matters stated upon information and belief, all of the facts stated in this Affidavit are based upon my personal knowledge and are true and correct, to the best of my recollection. Regarding any and all matters stated upon information and belief, I believe such matters to be true.

3. I declare that on August 2, 2014, I witnessed Ms. Maria Yolanda Onofre sign an Affidavit (the "Affidavit") regarding the will purported to be the Last Will and Testament of Leroy G. Black (the "Will"), wherein she denied that she had witnessed the signing of the Will by Leroy G. Black.

4. I declare that I had an in person conversation with Ms. Onofre during the signing of the Affidavit at which time she stated to me the following: a) She did not travel to Nevada for any purpose relative to the signing of the Will or any other witness documents; b) That said documents, including the Will and Statement of Witness (Attachments A and B in Ms. Onofre's Affidavit) were both signed by her on the same occasion at her office located at 19255 Saticoy Street, Reseda, CA. 91335 and Leroy G. Black was not present; c) She signed the Will and Statement of Witness on the insistence of her then boy-friend, who she identified as David Everston; d) She was busy working as an accountant at the time and did not review the aforementioned documents prior to her signature; e) She believes that David Everston may have mentioned a Mr. Phil Markowitz during her conversations with him; and f) at no time did she meet or speak with Leroy G. Black regarding the Will or any other matter.

5. I declare that no compensation or consideration of any kind or manner was offered, paid or conveyed to Maria Onofre in exchange for her affidavit and the same was freely given by her.

6. That Maria Onofre was represented by her attorney Mr. Lindberg during the discussions surrounding the signing of her Affidavit.

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7. I make this affidavit under the penalty of perjury of the laws of the United States and of the States of California and Nevada.

FURTHER AFFIANT SAYETH NAUGHT.

WILLIAM MARTIN, Affiant

AUGUST 4, 2014
DATE

SUBSCRIBED AND SWORN TO before me, on August _____, 2014, to verify which, witness my hand and seal.

NOTARY PUBLIC, in and for said State and County

State of California, County of KERN
Subscribed and sworn to (or affirmed) before me on this 4th day of August, 20 14,
by William Martin,
proved to me on the basis of satisfactory evidence to be the person(s) who appeared before me.
Signature: K.L. Shulman Notary

K.L. SHULMAN
COMM. #2009355
NOTARY PUBLIC • CALIFORNIA
KERN COUNTY
My Comm. Exp. Mar. 2, 2017

EXHIBIT "L"

227 P.3d 1042 (2010)

Ronald FOSTER; Patrick Cochrane; and Frederick Dornan, Appellants,

v.

Terry DINGWALL, an Individual, and Derivatively on behalf of Innovative Energy Solutions, Inc.; Michael Harman, Special Master, Hyun Ik Yang; and Hyunsuk Chai, Respondents.

No. 50166.

Supreme Court of Nevada.

February 25, 2010.

1045 *1045 Bailus Cook & Kelesis, Ltd., and Marc P. Cook, Las Vegas, for Appellants Ronald Foster and Patrick Cochrane.

Holland & Hart LLP and J. Stephen Peek, Matthew J. Kreutzer, and Janet L. Rosales, Las Vegas, for Appellant Frederick Dornan.

Buchalter Nemer and Michael L. Wachtell, Los Angeles, CA, for Respondent Michael Harman.

Howard & Howard, PC, and James A. Kohl, Las Vegas, for Respondents Hyun Ik Yang and Hyunsuk Chai.

Lewis & Roca LLP and Daniel F. Polsenberg and Dan R. Waite, Las Vegas, for Respondent Terry Dingwall.

BEFORE THE COURT EN BANC.

OPINION

By the Court, HARDESTY, J.:

In this opinion, we address two main issues. First, we consider whether an order to strike appellants' pleadings was a proper discovery sanction in this case. Second, we address the burden of proof that a party must satisfy at an NRCP 55(b) prove-up hearing to establish damages, following the entry of default.

Because we conclude that appellants' conduct during discovery was repetitive, abusive, and recalcitrant, we uphold the district court's decision to strike the pleadings and enter default. We clarify that after an entry of default, at an NRCP 55(b)(2) prove-up hearing, the nonoffending party retains the burden of presenting sufficient evidence to establish a prima facie case for each cause of action as well as demonstrating by substantial evidence that damages are attributable to each claim. Accordingly, we uphold the award of compensatory damages to respondent Terry Dingwall because

Dingwall presented a prima facie case for damages on each cause of action, which included substantially demonstrating that he was entitled to the relief sought. However, we reverse the compensatory damage award to respondents Hyun Ik Yang and Hyunsuk Chai because it was duplicative and because no evidence was presented to show the relationship between the tortious conduct and the requested award.

FACTS AND PROCEDURAL HISTORY

The underlying suit arose in August 2005 when Innovative Energy Solutions, Inc. (IESI), a full-service energy corporation, filed a suit against, among others, Dingwall, a director of IESI. In its complaint, IESI alleged that Dingwall breached his corporate fiduciary duties, usurped corporate opportunities, and engaged in civil conspiracy and conversion. On behalf of IESI, Dingwall filed an amended answer and third-party complaint, where he asserted claims[1] against appellants Frederick Dornan, Ronald Foster, and Patrick Cochrane, other directors of IESI, in their individual capacities. After Dingwall filed his third-party complaint, IESI shareholders Yang and Chai moved to intervene in the action. The district court granted the motion to intervene, and Yang and Chai asserted derivative claims on behalf of IESI and individual claims against Dornan, Foster, and Cochrane. Subsequently, Yang and Chai moved the district court for an appointment of a receiver alleging that IESI was mismanaging the corporate assets; however, the parties later agreed that a special master should be appointed to examine the records of IESI.

During discovery in November 2006, the parties agreed that depositions of Dornan, Foster, and Cochrane would occur on specified dates in January 2007. Dingwall's counsel agreed to fly to
1046 Canada to depose Dornan *1046 and Cochrane in their hometown and to depose Foster in Las Vegas, Nevada.

In December 2006, counsel for Dornan, Foster, and Cochrane moved the court to withdraw due to unpaid legal fees. While awaiting the court's decision on the motion, counsel for Dornan, Foster, and Cochrane notified Dingwall that the depositions could not proceed as scheduled because IESI's counsel was also withdrawing and IESI needed to retain new corporate counsel. In response, Dingwall expressed his intent to proceed with the depositions, maintaining that withdrawal of IESI's counsel had no affect on the depositions, and travel had already been arranged and expenses incurred.

After counsel for Dornan and Cochrane again informed Dingwall that neither Dornan nor Cochrane would be available for their depositions in Canada, Dingwall stated that he would proceed with the depositions unless the court issued a protective order. Dingwall also warned Dornan's and Cochrane's counsel that if they failed to attend without obtaining a protective order, he would seek severe sanctions, including striking all pleadings and an entry of default. A protective order was not obtained, and neither Dornan nor Cochrane appeared for his deposition.

Similarly, Foster also stated that he would not attend his deposition, citing his inability to afford legal counsel to represent him. Additionally, Foster notified Dingwall that IESI had filed for bankruptcy. In response, Dingwall maintained that Foster's inability to afford legal representation did not excuse him

from attending his scheduled deposition, and absent a protective order, the deposition would continue as scheduled. Dingwall further informed Foster that if Foster failed to attend, he would seek sanctions, including a request to strike all pleadings. Foster replied, stating that he would nevertheless not attend his deposition because of health concerns. Foster did not appear for his deposition and no protective order was entered. During this time, Dornan, Foster, and Cochrane had also failed to provide complete responses to Dingwall's interrogatories and failed to produce requested documents.

The court ultimately granted Dornan, Foster, and Cochrane's counsel's motion to withdraw. Dornan, Foster, and Cochrane's counsel drafted the formal order granting the withdrawal motion, which the court signed on January 12, 2007. In the order, counsel listed a Henderson, Nevada, address where Dornan, Foster, and Cochrane could receive further notice. Also included in the withdrawal order was the following statement: "IT IS FURTHER ORDERED ADJUDGED AND DECREED, that the deposition of Counterdefendant/Third Party defendant, Ronald Foster is currently scheduled for January 18, 2007. (*Stay pursuant to Bankruptcy filing*)."[2] (Emphasis added.)

Thereafter, due to Dornan's, Foster's, and Cochrane's failures to appear for their noticed depositions and other alleged discovery violations, Dingwall filed his first motion seeking to strike the pleadings and enter default. Shareholders Yang and Chai joined. Neither Dornan, Foster, nor Cochrane opposed Dingwall's motion for sanctions. Thus, pursuant to Eighth Judicial District Court Rule (EDCR) 2.20(b), as it existed in 2007,[3] the court deemed all allegations in Dingwall's motion admitted.

On March 1, 2007, the court entered an order issuing lesser sanctions against Dornan, Foster, and Cochrane and did not strike the pleadings at that time. The court clarified any confusion as to the January 12, 2007, withdrawal order, by deleting the "Stay pursuant to Bankruptcy filing" language because the stay did not apply to Dornan, Foster, and Cochrane. The court also compelled Dornan, Foster, and Cochrane to supplement their previously deficient responses to interrogatories and requests for production of documents within 10 days. In addition, the court ordered Dornan, Foster, and Cochrane to attend depositions within 30 days. The court expressly warned Dornan, Foster, and
1047 Cochrane *1047 about their discovery tactics, finding, in part, that they had been acting in bad faith. The court warned that Dornan's, Foster's, and Cochrane's failures to comply with the court's order would result in further sanctions, including an order to strike their pleadings and entry of judgment against them, including an award of fees and costs. Dingwall faxed and mailed multiple copies of the order to Dornan, Foster, and Cochrane at both the designated Henderson address and at IESI's address in Canada.

Dornan, Foster, and Cochrane failed to comply with the court's order. Doman and Cochrane failed to attend their court-mandated depositions, despite the court's clarification that IESI's bankruptcy stay did not affect Dornan's, Foster's, and Cochrane's discovery obligations. And although Foster attended his deposition, the court determined that Foster refused to answer many relevant questions. In addition, Dornan, Foster, and Cochrane did not supplement their responses to interrogatories or requests for production of documents.

As a result, Dingwall filed a second motion seeking sanctions, again requesting that the court strike

the pleadings against Dingwall and enter default against Dornan, Foster, and Cochrane. Neither Dornan, Foster, nor Cochrane opposed Dingwall's motion. Consequently, the court held an evidentiary hearing on the factors set forth in *Young v. Johnny Ribeiro Building*, 106 Nev. 88, 93, 787 P.2d 777, 780 (1990), to determine whether the sanction was proper. Following the evidentiary hearing, the court granted Dingwall's second sanction motion and struck Dornan's, Foster's, and Cochrane's pleadings and entered default against them. The court also announced that it would hold an NRCP 55(b)(2) prove-up hearing to determine the amount of damages.

At the subsequent prove-up hearing, the court first heard from Dingwall, who testified that he had worked with a certified public accountant to calculate an estimate of damages. He also presented demonstrative evidence to show how his asserted causes of action related to the damages sought. Second, the court heard from Yang, who testified that his derivative claims were based on the testimony and evidence presented by Dingwall.

Thereafter, the court entered a judgment detailing its findings of fact, conclusions of law, and award of damages. The court ultimately awarded Dingwall, derivatively on behalf of IESI, compensatory damages totaling approximately $2,890,000, and punitive damages for approximately $8,673,000. In response to Yang and Chai's request to reinstate their IESI stock, the district court declared that Yang and Chai were entitled to their vested shares. The court also awarded Yang and Chai compensatory damages totaling $15,000,000, and punitive damages totaling $45,000,000. The court further awarded Dingwall, Yang, and Chai attorney fees and compelled Dornan, Foster, and Cochrane to pay all special-master fees. Doman, Foster, and Cochrane appeal.[4]

DISCUSSION

First, we consider whether the district court erred by striking Dornan's, Foster's, and Cochrane's pleadings and entering default against them. Because the district court's detailed strike order sufficiently demonstrated that Dornan's, Foster's, and Cochrane's conduct was repetitive, abusive, and recalcitrant, we conclude that the district court did not err by striking their pleadings and entering default judgment against them.

Second, we consider whether the district court erred by awarding damages against Dornan, Foster, and Cochrane. We take this opportunity to clarify that even where there is an entry of default, the presentation of a prima facie case requires the nonoffending party to present sufficient evidence to show that the amount of damages sought is attributable to the tortious conduct and designed to either compensate the nonoffending party or punish the offending party. Because Dingwall presented
1048 evidence to show that the damages sought were related to each cause *1048 of action, and that the compensatory damages award was based on reasonably calculated estimates, we uphold the damages awarded to Dingwall. However, we reverse the compensatory damages awarded to Yang and Chai because the award was duplicative and not based on any credible evidence or calculated estimate.

Third, we consider whether the district court abused its discretion by awarding attorney fees to Dingwall, Yang, and Chai. Because the district court found the claims and defenses of Dornan,

Foster, and Cochrane were frivolous and asserted in bad faith, we conclude that the district court did not abuse its discretion by awarding attorney fees.

Lastly, we consider whether the district court abused its discretion by ordering Dornan, Foster, and Cochrane jointly and severally liable for the special-master fees. Because the parties failed to object to the district court's clear communication that the special-master fees would be recoverable by the prevailing party, we conclude that the district court did not abuse its discretion by ordering Dornan, Foster, and Cochrane to pay the fees.

The strike order and entry of default

Dornan, Foster, and Cochrane challenge the district court's order striking their pleadings. They primarily claim that the court erred by failing to make the findings required in *Young v. Johnny Ribeiro Building*, 106 Nev. 88, 787 P.2d 777 (1990), before imposing the strike sanction.[5]

NRCP 37(b)(2)(C) grants the district court authority to strike the pleadings in the event that a party fails to obey a discovery order. This court generally reviews a district court's imposition of a discovery sanction for abuse of discretion. *Young*, 106 Nev. at 92, 787 P.2d at 779. However, a somewhat heightened standard of review applies where the sanction strikes the pleadings, resulting in dismissal with prejudice. *Id.* Under this somewhat heightened standard, the district court abuses its discretion if the sanctions are not just and do not relate to the claims at issue in the discovery order that was violated. *Id.* at 92, 787 P.2d at 779-80.

NRCP 37(d) specifically provides that the court may strike a party's pleadings if that party fails to attend his own deposition.[6] In addition, this court has upheld entries of default where litigants are unresponsive and engage in abusive litigation practices that cause interminable delays. *Young*, 106 Nev. at 94, 787 P.2d at 780; *Temora Trading Co. v. Perry*, 98 Nev. 229, 230-31, 645 P.2d 436, 437 (1982) (upholding default judgment where corporate officers failed to show up for court-ordered depositions).

In *Young*, we emphasized that "every order of dismissal with prejudice as a discovery sanction [must] be supported by an express, careful and preferably written explanation of the court's analysis of the pertinent factors." 106 Nev. at 93, 787 P.2d at 780. In doing so, this court provided a nonexhaustive
1049 list of factors that a district court should *1049 consider when imposing this discovery sanction. *Id.* In this case, the district court drafted a lengthy strike order, which set forth detailed findings of fact, conclusions of law, and its consideration of each of the *Young* factors. After reviewing the record and the court's order, we conclude that the court's decision to strike defendants' pleadings and enter default was just, related to the claims at issue in the violated discovery order, and supported by a careful written analysis of the pertinent factors.

Additionally, we conclude that appellants' continued discovery abuses and failure to comply with the district court's first sanction order evidences their willful and recalcitrant disregard of the judicial process, which presumably prejudiced Dingwall, Yang, and Chai. *See Hamlett v. Reynolds*, 114 Nev. 863, 865, 963 P.2d 457, 458 (1998) (upholding the district court's strike order where the defaulting

party's "constant failure to follow [the court's] orders was unexplained and unwarranted"); *In re Phenylpropanolamine (PPA) Products*, 460 F.3d 1217, 1236 (9th Cir.2006) (holding that, with respect to discovery abuses, "[p]rejudice from unreasonable delay is presumed" and failure to comply with court orders mandating discovery "is sufficient prejudice"). In light of appellants' repeated and continued abuses, the policy of adjudicating cases on the merits would not have been furthered in this case, and the ultimate sanctions were necessary to demonstrate to future litigants that they are not free to act with wayward disregard of a court's orders. Moreover, we conclude that Dornan's, Foster's, and Cochrane's failure to oppose Dingwall's second motion to strike constitutes an admission that the motion was meritorious. *Cf. King v. Cartlidge*, 121 Nev. 926, 927, 124 P.3d 1161, 1162 (2005) (stating that an unopposed motion may be considered as an admission of merit and consent to grant the motion) (citing DCR 13(3)).

Accordingly, we affirm the district court's decision to strike Dornan's, Foster's, and Cochrane's pleadings and enter default against them.

Damages award

Dornan, Foster, and Cochrane next argue that the district court erred by awarding compensatory damages to Dingwall, Yang, and Chai, because Dingwall, Yang, and Chai did not provide competent evidence to support the award of damages. In addition, Dornan, Foster, and Cochrane argue that Yang and Chai did not establish a prima facie case for each cause of action because they failed to show that they could prevail at a trial on the merits.

Where default is entered by a district court, the court, if necessary, may conduct a prove-up hearing under NRCP 55(b)(2) to determine the amount of damages. *See Hamlett*, 114 Nev. at 866-67, 963 P.2d at 459. Generally, when an entry of default judgment under NRCP 55(b)(2) is for an uncertain or incalculable sum, the plaintiff must prove up damages, supported by substantial evidence. *Kelly Broadcasting v. Sovereign Broadcast*, 96 Nev. 188, 193-94, 606 P.2d 1089, 1092 (1980), *superseded by statute on other grounds as stated in Countrywide Home Loans v. Thitchener*, 124 Nev. ___, ___, 192 P.3d 243, 254 (2008); *see also Young v. Johnny Ribeiro Building*, 106 Nev. 88, 94, 787 P.2d 777, 781 (1990). However, where default is entered as a result of a discovery sanction, the nonoffending party "need only establish a *prima facie* case in order to obtain the default judgment." *Young*, 106 Nev. at 94, 787 P.2d at 781.

In our discussion in *Young*, however, we did not clearly outline what evidence is required to prove a prima facie case, particularly, the extent to which a nonoffending party must prove damages. In addition, we have not explicitly reconciled the defaulting party's right to challenge fundamental defects of the nonoffending party's prima facie case for damages with the district court's discretion to conduct the NRCP 55(b)(2) prove-up hearing in a manner it deems appropriate. We therefore take this opportunity to clarify these issues.

Generally, where a district court enters default, the facts alleged in the pleadings will be deemed admitted. *Estate of LoMastro v. American Family Ins.*, 124 Nev. ___, ___ n. 14, 195 P.3d 339, 345 n. 14 (2008). Thus, during an NRCP 55(b)(2) *1050 prove-up hearing, the district court shall consider the

allegations deemed admitted to determine whether the nonoffending party has established a prima facie case for liability. *Id.* This court has defined a "prima facie case" as "sufficiency of evidence in order to send the question to the jury." *Vancheri v. GNLV Corp.*, 105 Nev. 417, 420, 777 P.2d 366, 368 (1989). A prima facie case is supported by sufficient evidence when enough evidence is produced to permit a trier of fact to infer the fact at issue and rule in the party's favor. *Black's Law Dictionary* 1310 (9th ed.2009).

In *Young*, we affirmed the district court's entry of default and concluded that at the NRCP 55(b)(2) prove-up hearing, the nonoffending party's prima facie accounting was supported by substantial evidence, which included a "15-page authenticated accounting [summarizing] partnership disbursements, receipts, liabilities and assets." 106 Nev. at 94-95, 787 P.2d at 781. And by reviewing the evidence presented and concluding that a prima facie case was established, we impliedly determined that a nonoffending party must sufficiently demonstrate, by substantial evidence, that it is entitled to the damages or relief sought. *Id.*

We also concluded in *Young* that because default was entered as a result of the defaulting party's abusive litigation practices, the defaulting party "forfeited his right to object to all but the most patent and fundamental defects in the accounting." *Id.* at 95, 787 P.2d at 781. Indeed, where a district court determines that an NRCP 55(b)(2) prove-up hearing is necessary to determine the amount of damages, the district court has broad discretion to determine how the prove-up hearing should be conducted and the extent to which the offending party may participate. *Hamlett*, 114 Nev. at 866-67, 963 P.2d at 459. The district court, for example, has the discretion to limit the defaulting party's presentation of evidence where the court has determined that the nonoffending party has presented sufficient evidence to establish the essential elements of the prima facie case for which it seeks relief. *Id.* Where, on the other hand, the defaulting party identifies a "fundamental defect[]" in the nonoffending party's case, it would be an abuse of discretion for the district court to preclude the defaulting party from presenting evidence to challenge the claim. *See Young*, 106 Nev. at 95, 787 P.2d at 781; *Hamlett*, 114 Nev. at 867, 963 P.2d at 459. We note that this is especially true when the nonoffending party seeks monetary damages without demonstrating entitlement to the relief sought or that the damage award is reasonable and accords with the principles of due process.

Following the principles set forth in both *Young* and *Hamlett*, we hold that although allegations in the pleadings are deemed admitted as a result of the entry of default, the admission does not relieve the nonoffending party's obligation to present sufficient evidence to establish a prima facie case, which includes substantial evidence that the damages sought are consistent with the claims for which the nonoffending party seeks compensation. In other words, where the nonoffending party seeks monetary relief, a prima facie case requires the nonoffending party to establish that the offending party's conduct resulted in damages, the amount of which is proven by substantial evidence. *See Vancheri*, 105 Nev. at 420, 777 P.2d at 368. We therefore stress that we do not read *Young* and *Hamlett* as entitling a nonoffending party to unlimited or unjustifiable damages simply because default was entered against the offending party.

Damages awarded to Dingwall

In this case, after holding an NRCP 55(b)(2) prove-up hearing, the district court awarded Dingwall, derivatively on behalf of IESI, compensatory damages totaling approximately $2,890,000. After careful review of the record, we are satisfied that at the NRCP 55(b)(2) prove-up hearing, Dingwall presented sufficient evidence to support a prima facie case for each derivative cause of action.[7]
1051 Accordingly, we conclude that the *1051 district court did not err for three reasons. First, we conclude that the factual allegations contained in Dingwall's third amended complaint sufficiently established the elements necessarily required to prove each claim. Importantly, Dingwall's allegations demonstrated that he was entitled to the relief sought as it related to each cause of action.

Second, Dingwall presented substantial evidence at the prove-up hearing to support his claim for damages. Dingwall testified that he arrived at his estimate of damages by working with a certified public accountant to review roughly 50,000 pages of documents gathered over at least two years. For each cause of action, Dingwall presented charts and other demonstrative evidence to the court to prove how he arrived at the amount of damages for that particular cause of action. For example, for his breach of fiduciary duty claim, Dingwall presented evidence to show that as directors of IESI, Foster used corporate funds to advance a competing entity (IESI Canada); that Dornan, Foster, and Cochrane used IESI corporate funds for their personal benefits; and that advances were made toward a company that had no business relationship with IESI. *See* Stalk v. Mushkin, 125 Nev. ___, ___, 199 P.3d 838, 843 (2009) (providing that a breach of fiduciary duty claim requires an injury resulting from the tortious conduct of the defendant who owes a fiduciary duty to the plaintiff). Dingwall then demonstrated how he estimated and calculated the damages as a result of these indiscretions.

Third, the district court did not unnecessarily prevent Dornan, Foster, and Cochrane from participating in the prove-up hearing. Dornan, Foster, and Cochrane cross-examined Dingwall, and although the court allowed them the opportunity, they declined to cross-examine Dingwall's certified public accountant. Thus, there is no indication that the court abused its discretion when conducting the prove-up hearing.

Accordingly, we conclude that the district court did not err by awarding compensatory damages to Dingwall because he presented a prima facie case for each cause of action, including substantial evidence that the damages sought were related to the asserted causes of action, and the damages were calculated to compensate for the harm.

Damages awarded to Yang and Chai

At the NRCP 55(b)(2) prove-up hearing, the district court awarded compensatory damages of $15,000,000 to Yang and Chai, individually. However, we conclude that the district court committed error when it awarded compensatory damages to Yang and Chai because the award was duplicative, and even if it was not duplicative, Yang and Chai did not present substantial evidence to support the amount of damages sought.[8]

At the outset, we reject Foster's and Cochrane's argument that damages awarded to Yang and Chai were improper because Yang and Chai did not demonstrate that they could prevail on the merits at trial. Where default is entered as a discovery sanction, the nonoffending party is not required to prove

likelihood of success on the merits; rather, it is only required to prove a prima facie case to support its claims. *See* Young v. Johnny Ribeiro Building, 106 Nev. 88, 94, 787 P.2d 777, 781 (1990).

The claims under which Yang and Chai sought individual recovery were not clearly set forth in either their second amended complaint or at the prove-up hearing, at which only Yang testified; however, it appears that Yang and Chai sought to recover individually for either intentional or negligent misrepresentation, alleging that they were wrongfully induced by Dornan, Foster, and Cochrane into selling or transferring their stock. At the prove-up hearing, Yang was asked what relief he and Chai sought for their misrepresentation claim. Yang and Chai principally sought declaratory judgment—the
1052 reinstatement of their *1052 stock ownership and the cancellation of Dornan's, Foster's, and Cochrane's stock—which the district court granted. Yang and Chai did not plainly seek monetary damages under that cause of action. Therefore, by awarding both declaratory relief—the reinstatement of Yang and Chai's stock—and monetary relief—$15,000,000—we conclude that the award resulted in duplicative recovery for a single cause of action.

Even if the award was not duplicative, Yang and Chai did not present sufficient evidence to establish a prima facie case for intentional or negligent misrepresentation. *See* Nelson v. Heer, 123 Nev. 217, 225, 163 P.3d 420, 426 (2007) (providing the elements of intentional misrepresentation: "(1) a false representation that is made with either knowledge or belief that it is false ..., (2) an intent to induce another's reliance, and (3) damages that result from this reliance"); Barmettler v. Reno Air, Inc., 114 Nev. 441, 449, 956 P.2d 1382, 1387 (1998) (providing that one who, without exercising reasonable care or competence, "supplies false information for the guidance of others in their business transactions" is liable for "pecuniary loss caused to them by their justifiable reliance upon the information"). Both causes of action require a showing that damages resulted from the tortious misrepresentations. Nelson, 123 Nev. at 225, 163 P.3d at 426; Barmettler, 114 Nev. at 449, 956 P.2d at 1387. And although default was entered in this case and the pleadings were deemed admitted, *see Estate of LoMastro v. American Family Ins.*, 124 Nev. ___, ___ n. 14, 195 P.3d 339, 345 n. 14 (2008), the admission of the pleadings did not relieve Yang and Chai of their responsibility to show that they were entitled to relief and that the amount of damages sought corresponded with the asserted causes of action. In other words, because both intentional and negligent misrepresentation require a showing that the claimed damages were caused by the alleged misrepresentations, Nelson, 123 Nev. at 225, 163 P.3d at 426; Barmettler, 114 Nev. at 449, 956 P.2d at 1387, it was not sufficient for Yang and Chai to merely assert the fact that they were damaged without showing substantial evidence that the amount of damages sought were both attributed to the tortious misrepresentation and intended to compensate Yang and Chai for the harm caused by the misrepresentation. *See* Miller v. Schnitzer, 78 Nev. 301, 309, 371 P.2d 824, 828 (1962), *abrogated on other grounds by* Ace Truck v. Kahn, 103 Nev. 503, 508, 746 P.2d 132, 135-36 (1987), *abrogated on other grounds by* Bongiovi v. Sullivan, 122 Nev. 556, 582-83, 138 P.3d 433, 451-52 (2006).

Therefore, because the award was duplicative, and because Yang did not present substantial evidence to show that $15,000,000— the amount of damages awarded—was related to the harm caused, we reverse the award of compensatory damages to Yang and Chai.

Attorney fees

The district court awarded Dingwall, Yang, and Chai attorney fees after it entered default judgment against Doman, Foster, and Cochrane for their wrongful conduct, particularly their failure to comply with the court's March 1, 2007, discovery order and the fact that their claims and defenses were frivolous, asserted in bad faith, and not based in law or fact.

Foster and Cochrane argue that the district court erred by awarding attorney fees to Dingwall, Yang, and Chai because they each recovered more than $20,000, and thus were not entitled to attorney fees under NRS 18.010(2)(a). Dornan did not challenge the award of attorney fees. This court will review a district court's grant of attorney fees for abuse of discretion. *Albios v. Horizon Communities, Inc.*, 122 Nev. 409, 417, 132 P.3d 1022, 1027-28 (2006).

We conclude that the award of attorney fees was proper. In a lengthy and exhaustive judgment, the district court expressly recited the repetitive, abusive, and recalcitrant actions of Dornan, Foster, and Cochrane and found that their claims and defenses were not based in law or fact and as such were frivolous and asserted in bad faith. First, appellants failed to cooperate and comply with the district court's discovery order. NRCP 37(b)(2) permits the district court to require the offending party to pay
1053 reasonable attorney fees as sanctions for discovery *1053 abuses. Second, appellants' claims and defenses were frivolous and not based in law or fact. NRS 18.010(2)(b) permits a district court to award attorney fees when a party's claims or defenses are brought without a reasonable ground or to harass the prevailing party. After reviewing the judgment and record, we conclude that the district court did not abuse its discretion in awarding attorney fees. Because the district court did not abuse its discretion, we affirm the district court's award of attorney fees.

Special-master fees

Foster and Cochrane also argue that, because the parties had reached a cost-sharing agreement as to how the special-master fees would be split, the district court abused its discretion by ordering the defendants jointly and severally liable for special-master fees.

Because the appointment of a special master is within the district court's discretion, and because a special master is entitled to a reasonable remuneration for his or her services, this court will review the district court's award of special-master fees for abuse of discretion. *See State v. District Court*, 143 Idaho 695, 152 P.3d 566, 570 (2007); 9C Charles Alan Wright & Arthur R. Miller, *Federal Practice and Procedure* § 2608 (3d ed.2008).

In this case, the district court held a hearing concerning the appointment of a special master. During the hearing, the parties and the court discussed how the special-master fees would be allocated. Foster and Cochrane argue that the parties agreed to split the fees 50/50. However, after the parties agreed to split the fees 50/50, the district court clearly communicated that the special-master fees would be recoverable at the end of the case by the prevailing party. Neither party objected to the court's conclusion that special-master fees were recoverable by the prevailing party.

Thus, we conclude that when the district court entered default against Dornan, Foster, and Cochrane, it essentially determined that Dingwall, Yang, and Chai were the prevailing parties. Therefore, it was

within the court's discretion to order Dornan, Foster, and Cochrane to pay the special-master fees.

CONCLUSION

We conclude that the court's decision to strike Dornan's, Foster's, and Cochrane's pleadings was supported by sufficient evidence under the factors set forth in *Young v. Johnny Ribeiro Building*, 106 Nev. 88, 93, 787 P.2d 777, 780 (1990). Because we conclude that at the NRCP 55(b)(2) prove-up hearing Dingwall presented sufficient evidence to support a prima facie case for each cause of action, including substantial evidence that demonstrated that the amount of damages was related to each claim, we affirm the district court's award of compensatory damages to Dingwall. However, we reverse the award of damages to Yang and Chai because it was duplicative and not supported by evidence showing that it was related to the claims or calculated to compensate for the harm caused. Additionally, because we conclude that Dingwall, Yang, and Chai were properly entitled to attorney fees, we affirm the district court's award. Finally, we affirm the district court's order compelling Dornan, Foster, and Cochrane to pay the special-master fees.

Accordingly, we affirm in part and reverse in part the district court's judgment.

We concur: PARRAGUIRRE, C.J., DOUGLAS, and GIBBONS, JJ.

CHERRY, J., with whom PICKERING and SAITTA, JJ., agree, concurring in part and dissenting in part:

I concur with my colleagues in the majority in reversing the award of damages to Yang and Chai because it was duplicative and not supported by evidence showing that it was related to the claim or calculated to compensate for harm caused. However, I respectfully dissent from my colleagues as to the striking of the pleadings filed by Dornan, Foster, and Cochran. The majority concludes that the court's decision to strike the above-mentioned pleadings was supported by sufficient evidence under
1054 the factors set forth in *Young v. Johnny Ribeiro Building*, 106 *1054 Nev. 88, 787 P.2d 777 (1990). I respectfully disagree.

As to Dornan, Foster, and Cochran, I would hold the following: (1) these parties did not display the requisite degree of willfulness necessary to support the striking of pleadings and ordering of sanctions under *Young;* (2) Doman suffered from health problems; (3) Dornan did not act willfully because he reasonably believed that the IESI bankruptcy stayed discovery; (4) Dornan was unable to comply with Dingwall's discovery requests; (5) the district court failed to properly consider Dornan's justification for noncompliance; (6) the sanction was too severe in light of the totality of the circumstances, and lesser sanctions would have been adequate to remedy the situation; (7) the district court erred when it assumed prejudice to Dingwall; (8) the district court did not consider the feasibility and faimess of alternative, less severe sanctions; and (9) Dornan, Foster, and Cochran were denied a trial on the merits concerning liability and also were denied a trial on the merits concerning damages. I also question how the sanctioning of these parties is just, fair, and has a deterrent purpose as to other cases in our state.

For these reasons, I must dissent as to the striking of pleadings filed on behalf of Dornan, Foster, and

Cochran.

We concur: SAITTA, and PICKERING, JJ.

[1] Specifically, Dingwall alleged claims for breach of contract, breach of the covenant of good faith and fair dealing, breach of fiduciary duties, conspiracy, intentional and negligent misrepresentation, abuse of process, intentional interference with contractual relations and prospective economic advantage, unjust enrichment, receivership, indemnity, contribution, accounting, and conversion.

[2] IESI had filed for Chapter 7 bankruptcy on January 9, 2007. However, neither Dornan, Foster, nor Cochrane had personally filed for bankruptcy at any time during pendency of the underlying suit.

[3] EDCR 2.20 was amended, effective April 23, 2008, and the language of former EDCR 2.20(b) is now found in EDCR 2.20(c).

[4] Although the district court awarded punitive damages to Dingwall, Yang, and Chai, all three parties withdrew their claims for punitive damages during oral argument. Therefore, we do not address the propriety of the punitive damages award.

[5] Separately, Dornan asserts that the district court erred by grouping him with Foster and Cochrane for sanction purposes, arguing that the district court failed to consider the distinctions between Dornan and his colleagues. We conclude that Dornan's claims and explanations lack merit and that the district court did not err by grouping Dornan with Foster and Cochrane.

[6] NRCP 37(d) states, in pertinent part:

If a party or an officer, director, or managing agent of a party or a person designated... to testify on behalf of a party fails (1) to appear before the officer who is to take the deposition, after being served with a proper notice ... the court in which the action is pending on motion may make such orders in regard to the failure as are just, and among others it may take any action authorized under subparagraphs (A), (B), and (C) of subdivision (b)(2) of this rule.

NRCP 37(b)(2) states, in pertinent part:

If a party or an officer, director, or managing agent of a party or a person designated... to testify on behalf of a party fails to obey an order to provide or permit discovery, ... the court in which the action is pending may make such orders in regard to the failure as are just, and among others the following:

. . .

(C) An order striking out pleadings or parts thereof, or staying further proceedings until the order is obeyed, or dismissing the action or proceeding or any part thereof, or rendering a judgment by default against the disobedient party.

[7] Dingwall asserted causes of action for: breach of contract, breach of the implied covenant of good faith and fair dealing, breach of fiduciary duties, constructive fraud, intentional misrepresentation, conversion, and indemnity. We note that certain causes of action listed in footnote 1 had been subsequently abandoned by Dingwall throughout the litigation.

[8] Yang and Chai also sought monetary damages derivatively, on behalf of IESI, for various causes of action. Because the court did not award Yang and Chai derivative relief, we do not discuss whether substantial evidence supported those claims.

EXHIBIT "M"

AFFIDAVIT OF WILLIAM FINK

State of ~~Nevada~~ CALIFORNIA)
AT LOS ANGELES
County of ~~Clark~~) ss:

WILLIAM FINK, being first duly sworn, deposes and says that I have personal knowledge of and am competent to testify to the following facts:

1. I did not pay for the testimony of any witness, including, but not limited to David Everston and/or Maria Onofre, in the matter of the Estate of Leroy G. Black, P-12-074745-E.

FURTHER YOUR AFFIANT SAYETH NAUGHT.

DATED this 21 day of AUGUST 2014.

WILLIAM FINK

SIGNED AND SWORN to before me
this 21 day of AUGUST 2014.

NOTARY PUBLIC in and for said
County and State.

ALBERT TRINIDAD
Commission # 1941575
Notary Public - California
Los Angeles County
My Comm. Expires Jun 19, 2015

10155 W. Twain Avenue, Suite 100, Las Vegas, NV 89147
(702) 869-6261 Tel - (702) 869-8243 Fax

CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT
CIVIL CODE § 1189

State of California

County of Los Angeles

On 8-21-2014 before me, Albert Trinidad, Notary Public.
Date *Here Insert Name and Title of the Officer*

personally appeared WILLIAM FINK
Name(s) of Signer(s)

who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature: _____
Signature of Notary Public

ALBERT TRINIDAD
Commission # 1941575
Notary Public - California
Los Angeles County
My Comm. Expires Jun 19, 2015

Place Notary Seal Above

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☐ Trustee ☐ Guardian or Conservator
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Signer's Name: _____
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☐ Partner — ☐ Limited ☐ General
☐ Individual ☐ Attorney in Fact
☐ Trustee ☐ Guardian or Conservator
☐ Other: _____

Signer Is Representing: _____

EXHIBIT "N"

787 P.2d 777 (1990)

Bill YOUNG, Appellant,

v.

JOHNNY RIBEIRO BUILDING, INC.; John J. D'Atri; Livia J. D'Atri, Respondents.

No. 19672.

Supreme Court of Nevada.

February 22, 1990.

778 *778 Patrick James Martin, Reno, for appellant.

Lionel Sawyer & Collins, and M. Kristina Pickering, Reno, for respondent Ribeiro.

Hill, Cassas, deLipkau & Erwin, and Pierre A. Hascheff, Reno, for respondents D'Atri.

OPINION

PER CURIAM:

This is a discovery sanctions case. The district court found that appellant Bill Young (Young) willfully fabricated evidence during discovery. Based on this finding, the court sanctioned Young by dismissing his entire complaint, ordering Young to pay certain of the fees and costs of respondent Johnny Ribeiro Building, Inc. (JRBI), and adopting the accounting proposed by JRBI as the final accounting of Young's and JRBI's interests in the parties' partnership. We affirm the judgment of the district court.

FACTS

Young, JRBI and respondent John J. D'Atri (D'Atri) were partners in a partnership to develop and sell real estate in Reno. Young filed this suit against JRBI, stating causes of action for an accounting and dissolution of the partnership, for breach of JRBI's fiduciary duty as managing partner to keep adequate records, and for breach of contract based on JRBI's failure to build the last 10 out of a promised 35 condominiums. Having no material disputes with Young and having settled his disagreements with JRBI, D'Atri is merely a nominal party to this appeal.

During discovery, Young gave JRBI two of his personal business diaries as supplemental discovery responses. The diaries contained dated handwritten notations by Young. The two most important sets of notations indicated that JRBI had orally guaranteed a profit to the partners of $45,000 per condominium, and that certain advances made by the partners to JRBI were understood to be interest-bearing loans rather than capital contributions, which do not carry interest. Young testified in deposition that he generally made the entries in these diaries nearly contemporaneously with the

conversations recorded. Confronted with the suspicious looking nature of some of the notations, Young dissembled, saying he may have added some of the notations up to a year after the alleged conversations. Young denied ever having added any notations during discovery, but JRBI was not convinced.

Informed in chambers of JRBI's suspicion of fabrication, the court offered Young the opportunity to clarify when he made the notations after consulting with counsel. Young never recanted or clarified his original deposition testimony. JRBI brought a motion to dismiss based on the fabrications. After a full evidentiary hearing, the court found that Young had added the two sets of notations to his diaries just before turning the diaries over to JRBI during discovery and that Young had given conflicting accounts in his deposition regarding when he made, or may have made, the entries. Based on these and other facts, the court found that Young had willfully fabricated evidence.

The court sanctioned Young by ordering him to pay JRBI's costs and fees on the motion to dismiss, by dismissing Young's entire complaint with prejudice, and by adopting the final accounting proposed by JRBI as a form of default judgment against Young. Young appeals the final judgment of sanctions, arguing that the severe sanctions were an abuse of discretion and that JRBI's accounting was
779 factually insufficient to constitute a default judgment. JRBI requests sanctions pursuant *779 to NRAP 38 on the grounds that this appeal is frivolous.

LEGAL DISCUSSION

Young's appeal raises five main issues: whether the court's finding of willful fabrication was supported by substantial evidence; whether the court had authority to impose the sanctions; whether the court abused its discretion in imposing these sanctions, especially the harsh sanction of dismissal with prejudice; whether the accounting adopted by the court was factually sufficient as a default judgment; and whether this court should grant JRBI's request for NRAP 38 sanctions against Young for bringing this appeal.

I. *The court's finding of willful fabrication of evidence.*

The court's finding of willful fabrication is supported by substantial evidence. Based on chemical and microscopic examination of the two sets of diary notations, JRBI's forensic expert Albert Lyter testified that it was his opinion, to a reasonable scientific probability, that Young had written the entries in question with a different pen than the one used to make the original entries. Lyter further concluded that Young had added the entries during discovery soon before turning over the diaries to JRBI. Additionally the highlighter which Young had used to call JRBI's attention to the entries smeared only the words which Lyter found to have been added during discovery. The words which were part of the original entries were not smeared. Young testified in deposition that he generally made the entries in the diaries nearly contemporaneously with the reported events and he denied having added any entries during discovery. If true, this testimony would greatly increase the probative value of the diaries. Coupled with Young's deposition testimony, the late-added diary entries constitute fabrication of evidence. The court further had substantial evidence on which to conclude that the fabrication was

willful. Given the rather strong evidence that the entries were belatedly added, Young's failures to recant his denials and to clarify his other patently misleading testimony regarding the timing of the entries in the face of the court's admonition to do so are strong indications of willfulness.

II. *The sources of authority for the discovery sanctions.*

Two sources of authority support the district court's judgment of sanctions. First, NRCP 37(b)(2) authorizes as discovery sanctions dismissal of a complaint, entry of default judgment, and awards of fees and costs. Generally, NRCP 37 authorizes discovery sanctions only if there has been willful noncompliance with a discovery order of the court. Fire Insurance Exchange v. Zenith Radio Corp., 103 Nev. 648, 651, 747 P.2d 911, 913 (1987). The court's express oral admonition to Young to rectify any inaccuracies in his deposition testimony suffices to constitute an order to provide or permit discovery under NRCP 37(b)(2). Second, courts have "inherent equitable powers to dismiss actions or enter default judgments for ... abusive litigation practices." TeleVideo Systems, Inc. v. Heidenthal, 826 F.2d 915, 916 (9th Cir.1987) (citations omitted). Litigants and attorneys alike should be aware that these powers may permit sanctions for discovery and other litigation abuses not specifically proscribed by statute.

III. *Statement and application of the standards governing imposition of the discovery sanctions of dismissal and entry of default judgment.*

Where the discovery sanctions are within the power of the district court, this court will not reverse the particular sanctions imposed absent a showing of abuse of discretion. Kelly Broadcasting v. Sovereign Broadcast, 96 Nev. 188, 192, 606 P.2d 1089, 1092 (1980). Even if we would not have imposed such sanctions in the first instance, we will not substitute our judgment for that of the district court. *Id.* Where the sanction is one of dismissal with prejudice, however, we believe that a somewhat
780 heightened standard of review should apply. First, fundamental notions of due *780 process require that the discovery sanctions for discovery abuses be just and that the sanctions relate to the claims which were at issue in the discovery order which is violated. Wyle v. R.J. Reynolds Industries, Inc., 709 F.2d 585, 591 (9th Cir.1983). Second, while dismissal need not be preceded by other less severe sanctions, it should be imposed only after thoughtful consideration of all the factors involved in a particular case. Aoude v. Mobile Oil Corporation, 892 F.2d 1115 (1st Cir.1989). We will further require that every order of dismissal with prejudice as a discovery sanction be supported by an express, careful and preferably written explanation of the court's analysis of the pertinent factors. The factors a court may properly consider include, but are not limited to, the degree of willfulness of the offending party, the extent to which the non-offending party would be prejudiced by a lesser sanction, the severity of the sanction of dismissal relative to the severity of the discovery abuse, whether any evidence has been irreparably lost, the feasibility and fairness of alternative, less severe sanctions, such as an order deeming facts relating to improperly withheld or destroyed evidence to be admitted by the offending party, the policy favoring adjudication on the merits, whether sanctions unfairly

operate to penalize a party for the misconduct of his or her attorney, and the need to deter both the parties and future litigants from similar abuses. *See generally* Wyle, supra; Aoude, supra; Kelly, supra; Silas v. Sears Roebuck & Co., 586 F.2d 382 (5th Cir.1978).

Having stated the pertinent abuse of discretion standard of review, we must now apply it. The court's money sanction was patently proper. Based on the rules just stated, we further hold that the district court did not abuse its discretion in imposing the more severe sanctions of dismissal and entry of default judgment. First, all of the claims dismissed related to the fabricated evidence. All these claims were designed to establish Young's interest in the partnership. The fabricated diary entries were highly relevant to the determination both of Young's profit share and any contract damages based on JRBI's failure to build the last 10 condominiums. Contrary to Young's contentions, the entries were also relevant to Young's cause of action for an accounting. Second, we cannot conclude that the sanctions were manifestly unjust. The court treated Young fairly, giving him a full evidentiary hearing and offering him the opportunity to clarify his testimony, which Young failed to do. Additionally, the order of dismissal did not operate to forfeit all of Young's return on his partnership investment. At oral argument, counsel for Young and JRBI stipulated that Young had made capital contributions to the partnership in the amount of about $12,500. Young has since received a return on his investment amounting to at least $240,000. Moreover, the district court's order permits Young to share equally with the other parties in any partnership assets remaining after JRBI satisfies its judgment for fees and costs from Young's share.

Third, the district court gave appropriately careful, correct and express consideration to most of the factors discussed above. For example, the court believed there was a need to deter other litigants from similar practices and the court noted that JRBI would be prejudiced if required to respond with expensive forensic expert testimony to other portions of the diaries Young might seek to adduce as evidence. Fourth, we stress the importance of an express and careful discussion of the relevant factors supportive of dismissal. The better practice is to put this discussion in writing. Judge Whitehead's 18-page recitation of findings of fact and conclusions of law exemplifies the careful approach warranted before imposition of these severe sanctions. Finally, we note that this court has affirmed sanctions of dismissal and entry of default judgment based on discovery abuses even less serious than Young's.[1]

781 *781 ## IV. *The factual sufficiency of the default judgment entered as a discovery sanction.*

We reject Young's contention that JRBI's accounting entered as a default judgment against him was factually insufficient to constitute a default judgment of accounting.

In most cases involving entry of default judgments pursuant to NRCP 55(b) in favor of plaintiffs on unliquidated sums, the plaintiff must prove up both the fact and amount of damages by substantial evidence. Kelly, 96 Nev. at 193-94, 606 P.2d at 1092. In cases involving entry of default judgment as a discovery sanction, the non-offending party need only establish a *prima facie* case in order to obtain the default judgment. TeleVideo, 826 F.2d at 917. The offending party has forfeited the right to litigate

this *prima facie* case. Thus, we will not reverse a default judgment entered as a sanction where the non-offending party has established a *prima facie* case by substantial evidence. JRBI's 15-page authenticated accounting summarized partnership disbursements, receipts, liabilities and assets. The accounting is further supported by several indexed files containing the primary source documents of partnership transactions. For these reasons, JRBI's documents suffice to state a *prima facie* accounting according to the elements of an accounting as stated in Polikoff v. Levy, 132 Ill. App.2d 492, 270 N.E.2d 540 (1971). We hold that the accounting adopted by the district court constitutes substantial evidence of a *prima facie* accounting. Even if correct, Young's sundry and specific criticisms of the accounting do not render the *prima facie* case insubstantial. By fabricating evidence Young has forfeited his right to object to all but the most patent and fundamental defects in the accounting.

V. *JRBI's request for sanctions pursuant to NRAP 38.*

We decline to grant JRBI's request for sanctions pursuant to NRAP 38. We recognize that Young's briefs were voluminous and that some of the issues he raised went to the merits of the lawsuit, rather than to the somewhat narrower issue of sanctions. Nevertheless, the issues raised by this appeal were quite broad and several of Young's arguments, not discussed in this opinion, had arguable relevance to these issues. Additionally, Young's belief that the court went too far in dismissing the entire complaint was understandable, especially given the lack of clear authority in this state governing the proper scope of discovery sanctions. Finally, due to the severity of the sanctions already imposed, additional appellate sanctions are not necessary to deter Young from future misconduct. We wish, however, to put litigants and attorneys on notice that willful abuse of court process in the trial court may well give rise to an inference of abuse of appellate process on appeal, rendering the possibility of sanctions under NRAP 38 more likely than in other cases.

CONCLUSION

Substantial evidence supports the district court's conclusion that Young willfully fabricated evidence. The district court's sanctions were authorized both by NRCP 37(b)(2) and by courts' inherent powers to sanction abusive litigation practices. The district court's careful consideration of the several pertinent factors stated in this opinion amply satisfies the somewhat heightened standard of review which applies to this court's review of severe discovery sanctions. The default accounting ordered by the court satisfies the factual prerequisites to default judgments entered pursuant to NRCP 55(b).
782 Young's appeal was *782 not frivolously brought and thus does not warrant sanctions pursuant to NRAP 38. We deny Young's request for this court to take judicial notice of subsequent events in the D'Atris' separate suit against JRBI.

Because all of Young's remaining contentions are without merit, we affirm the judgment of the district court in all respects.

[1] *See, e.g.*, Temora Trading Co. v. Perry, 98 Nev. 229, 645 P.2d 436 (1982), *cert. denied*, 459 U.S. 1070, 103 S.Ct. 489, 74 L.Ed.2d 632 (1982) (affirming default judgment entered against a defendant corporation where corporate officers failed to show

up for depositions and corporation did not adequately respond to interrogatories); *Havas v. Bank of Nevada*, 96 Nev. 567, 613 P.2d 706 (1980) (affirming sanctions of dismissal of plaintiff's complaint and granting of default judgment in favor of defendant on defendant's counterclaim, on the ground that plaintiff failed to supplement interrogatory answers as ordered by the court); *Kelly, supra* (affirming sanctions of striking defendant's answer and entering default judgment against defendant based on defendant's incomplete and evasive answers to interrogatories in violation of court order).

EXHIBIT "O"

David H Everston

Generated on: 08/20/2014

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Table of Contents

David H Everston

Location: Studio City, CA

Personal Information

Aliases:	David H Everston David H Everston David Everston David H Everston David Everston
Age:	48
Phone:	818-802-2222 954-564-4156 818-763-5368 878-0985 661-944-1001

Address History

11 Addresses Found

#	Address	Last Seen Date
1	11684 Ventura Blvd, Unit 509, Studio City, CA 91604	
2	5847 Dawson St, Hollywood, FL 33023	
3	5737 Denny Ave, North Hollywood, CA 91601	
4	11694 Ventura Blvd, Apt 509, Studio City, CA 91604	
5	6051 Shadyglade Ave, North Hollywood, CA 91606	
6	8235 Sepulveda Pl, Panorama City, CA 91402	
7	632 Winthrop St, Taunton, MA 02780	
8	2881 Ne 32nd St, Apt 312, Fort Lauderdale, FL 33306	
9	11541 Dona Pepita Pl, Studio City, CA 91604	
10	7201 Pearblossom Hwy, Littlerock, CA 93543	
11	2805 E Oakland Park Blvd, Apt, Fort Lauderdale, FL 33306	

Criminal Records

Likely Matches:

These records have the same name and date of birth as the person you selected. In most cases, this is a strong indicator that the person you selected is also the person in the result below.

#	Name	Age	Address	DOB
1	David Harvey Everston	48	CA	09/23/1965

Result Details

Name:	David Harvey Everston	**Race:**	WHITE
Age:	48	**Eye Color:**	GREEN
Date of Birth:	09/23/1965	**Hair Color:**	
Height:	070	**Scars/Marks:**	
Weight:	245	**Source State:**	CA
Sex:	Male		

Offense Details

Court Record ID:

Case Number:

Source Name: Los Angeles County

Disposition:

Court Name:		**Arrest Agency:**	SUPR CRT-VAN NUYS COURTHOUSE
Conviction Date:		**Source State:**	CA
Charge Category:		**Offense Code:**	
Plea:		**Source:**	Arrest Log
NCIC Code:		**Offense:**	NOT SPECIFIED MISDEMEANOR
Offense Code:			
Case Type:			

2	David Harvey Everston	48	CA	09/23/1965

Result Details

Name:	David Harvey Everston	**Race:**	WHITE
Age:	48	**Eye Color:**	GREEN
Date of Birth:	09/23/1965	**Hair Color:**	
Height:	070	**Scars/Marks:**	
Weight:	245	**Source State:**	CA
Sex:	Male		

Offense Details

Court Record ID:

Case Number:

Source Name: Los Angeles County

Disposition:

Court Name:		**Arrest Agency:**	0957
Conviction Date:		**Source State:**	CA
Charge Category:		**Offense Code:**	
Plea:		**Source:**	Arrest Log
NCIC Code:		**Offense:**	NOT SPECIFIED MISDEMEANOR
Offense Code:			
Case Type:			

3	David H Everston	48	CA	09/23/1965

Result Details

Name:	David H Everston	**Race:**	WHITE
Age:	48	**Eye Color:**	GREEN
Date of Birth:	09/23/1965	**Hair Color:**	
Height:	070	**Scars/Marks:**	
Weight:	220	**Source State:**	CA
Sex:	Male		

Offense Details

Court Record ID:			
Case Number:			
Source Name:	Los Angeles County		
Disposition:			
Court Name:		**Arrest Agency:**	SUPR CRT-VAN NUYS COURTHOUSE
Conviction Date:			
Charge Category:		**Source State:**	CA
Plea:		**Offense Code:**	
NCIC Code:			
Offense Code:		**Source:**	Arrest Log
Case Type:		**Offense:**	NOT SPECIFIED MISDEMEANOR

4	David H Everston	48	CA	09/23/1965

Result Details

Name:	David H Everston	**Race:**	WHITE
Age:	48	**Eye Color:**	GREEN
Date of Birth:	09/23/1965	**Hair Color:**	
Height:	070	**Scars/Marks:**	
Weight:	220	**Source State:**	CA
Sex:	Male		

Offense Details

Court Record ID:	
Case Number:	
Source Name:	Los Angeles County
Disposition:	

Court Name:		**Arrest Agency:**	0931
Conviction Date:		**Source State:**	CA
Charge Category:		**Offense Code:**	
Plea:		**Source:**	Arrest Log
NCIC Code:		**Offense:**	NOT SPECIFIED MISDEMEANOR
Offense Code:			
Case Type:			

5	David Harvey Everston	48	CA	09/23/1965

Result Details

Name:	David Harvey Everston	**Race:**	
Age:	48	**Eye Color:**	
Date of Birth:	09/23/1965	**Hair Color:**	
Height:		**Scars/Marks:**	
Weight:		**Source State:**	CA
Sex:	Unknown		

Offense Details

Court Record ID:	61920BC
Case Number:	61920BC
Source Name:	Orange County
Disposition:	

Court Name:		**Arrest Agency:**	
Conviction Date:		**Disposition Date:**	07/07/2006
Charge Category:		**Source State:**	CA
Plea:		**Offense Date:**	02/06/2006
NCIC Code:		**Offense Code:**	
Offense Code:		**Source:**	Criminal Court
Case Type:		**Offense:**	NOT SPECIFIED

Possible Matches:

These records have the same name or the same date of birth as the person you selected. Sometimes court records are incomplete as a result of being filtered through different court systems or because of typographic errors when moving the records from paper to computerized format.

#	Name	Age	Address	DOB
1	David H Everston	48	NV	09/23/1965

Result Details

Name:	David H Everston	**Race:**	
Age:	48	**Eye Color:**	
Date of Birth:	09/23/1965	**Hair Color:**	
Height:		**Scars/Marks:**	
Weight:		**Source State:**	NV
Sex:	Unknown		

Offense Details

Court Record ID:	07CRG000160-0000
Case Number:	07CRG000160-0000
Source Name:	Clark County
Disposition:	FNL CRIMINAL CONVERSION ONLY Status:CLOSED 20071029

Court Name:		**Arrest Agency:**	
Conviction Date:		**Disposition Date:**	12/05/2007
Charge Category:		**Source State:**	NV
Plea:		**Offense Code:**	
NCIC Code:		**Source:**	Criminal Court
Offense Code:		**Offense:**	FAIL TO DISPLAY LICENSE PLATES
Case Type:			

Possible Relatives

#	Name	Age	Address
1	Bruce N Everston	80	4432 Coldwater Canyon Ave Apt 107, Studio City, CA 91604 (05/2005 - 05/2005)
2	Edna M Everston	80	11844 Otsego St, Valley Village, CA 91607 (11/2004 - 11/2004) 11541 Dona Pepita Pl, Studio City, CA 91604 (02/1992 - 04/2003)
3	Natalie M Everston	25	4735 Sepulveda Blvd Apt 258, Sherman Oaks, CA 91403 No Occupancy Dates Specified
4	Joel D Everston	77	1710 N Occidental Blvd, Los Angeles, CA 90026 (03/1993 - 03/1993)

Possible Associates

No results.

5.3. **Simultaneous Death**. If any beneficiary under this will and I die simultaneously, or if it cannot be established by clear and convincing evidence whether that beneficiary or I died first, I shall be deemed to have survived that beneficiary, and this will shall be construed accordingly.

5.4. **Period of Survivorship**. For the purposes of this will, a beneficiary shall not be deemed to have survived me if that beneficiary dies within two months after my death.

5.5. **No-Contest Clause**. If any person, directly or indirectly, contests the validity of this will in whole or in part, or opposes, objects to, or seeks to invalidate any of its provisions, or seeks to succeed to any part of my estate otherwise than in the manner specified in this will, any gift or other interest given to that person under this will shall be revoked and shall be disposed of as if he or she had predeceased me without issue.

5.6. **Definition of Incapacity**. As used in this will, "incapacity" or "incapacitated" means a person operating under a legal disability such as a duly established conservatorship, or a person who is unable to do either of the following:

(a) Provide properly for that person's own needs for physical health, food, clothing, or shelter; or

(b) Manage substantially that person's own financial resources, or resist fraud or undue influence.

5.7. **Captions**. The captions appearing in this will are for convenience of reference only, and shall be disregarded in determining the meaning and effect of the provisions of this will.

5.8. **Severability Clause**. If any provision of this will is invalid, that provision shall be disregarded, and the remainder of this will shall be construed as if the invalid provision had not been included.

5.9. **Nevada Law to Apply**. All questions concerning the validity and interpretation of this will, including any trusts created by this will, shall be governed by the laws of the State of Nevada in effect at the time this will is executed.

Executed on March 7, 2012, at Las Vegas, Nevada.

LEROY G. BLACK

KNOWN SIGNATURES

III.

THIS FIRST AMENDMENT is accepted, made, and executed by the General Partners and Limited Partners in the State of Nevada on the day and year first above written.

GENERAL PARTNER:

I.D.A. HOLDINGS, LLC

By: LEROY G. BLACK, Manager

K-1

LIMITED PARTNERS:

LEROY G. BLACK 1992 TRUST, August 21, 1992

By: _____

LEROY G. BLACK, Trustee

the business and to that end to delegate all or any part of the power to supervise, manage or operate the business to such person or persons as the fiduciary may select, including any individual who may be a Beneficiary or Trustee hereunder.

(3) The power to engage, compensate and discharge, or as stockholder owning the stock of the Corporation, to vote for the engagement, compensation and discharge of such manager, employees, agents, attorneys, accountants, consultants or other representatives, including anyone who may be a Beneficiary or Trustee hereunder.

(4) The power to become or continue to be an officer, director or employee of a Corporation and to be paid reasonable compensation from such Corporation as such officer, director and employee, in addition to any compensation otherwise allowed by law.

(5) The power to invest or employ in such business such other assets of the Trust estate.

IN WITNESS WHEREOF, the Grantor and Trustee has hereunto set his hand October 27, 2009.

LEROY BLACK, Grantor and Trustee

K-2

STATE OF NEVADA)
)ss.
COUNTY OF CLARK)

Notary Public - State of Nevada
COUNTY OF CLARK
SANDRA L. SIMPSON
No. 96-2010-1 My Appointment Expires October 26, 2009

On October 27, 2009, before me, the undersigned, a Notary Public in and for said County of Clark, State of Nevada, personally appeared LEROY BLACK, personally known to me (or proved to me on the basis of satisfactory evidence) to be the person whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his authorized capacity, and that by his signature on the instrument, the person, or the entity upon behalf of which the person acted, executed the instrument.

SANDRA L. SIMPSON
NOTARY PUBLIC
STATE OF NEVADA
APPT. No. 96-2010-1
MY APPT. EXPIRES OCT. 26, 2013

WITNESS my hand and official seal.

NOTARY PUBLIC

APPROVED AS TO FORM:

Jason C. Walker, Esq.
ATTORNEY FOR GRANTOR

IN WITNESS WHEREOF the Parties have executed this Agreement as of the Effective Date.

SENIOR NEVADA BENEFIT GROUP, LIMITED PARTNERSHIP, a Nevada Limited Partnership

K-3

Leroy George Black, General Manager

STATE OF Nevada
COUNTY OF Clark

This instrument was acknowledged before me on 25th day of June, 2010, by Leroy George Black as General Manager of SENIOR NEVADA BENEFIT GROUP, LIMITED PARTNERSHIP, a Nevada Limited Partnership

Signature of Notary

ASHLEE GUZMAN
NOTARY PUBLIC
STATE OF NEVADA
Date Appointment Exp: 10/25/2011
Certificate No: 08-5404-1

NOTARY SEAL

Print, Type or Stamp Name of Notary

Personally Known _____ OR Produced Identification X
Type of Identification Produced NJDL 2101581761 X 01-25-2014

(b) **"Independent Trustee".** As used in this instrument, the term "Independent Trustee" shall only be a qualified corporation or those persons who would be an Independent Trustee as defined in Internal Revenue Code Section 672(c) of a trust for which the beneficiary of the trust share for the appointment of the Independent Trustee were the grantor of such trust.

(c) **"Trust Consultant".** As used in this instrument, the term "Trust Consultant" shall be the appointed individual or institution who has the right and power by giving Ten (10) days written notice to the Trustee or Successor Trustee, as the case may be, to remove any Trustee or Successor Trustee and to appoint an individual, qualified bank or trust company to serve as Successor Trustee or as Successor Co-Trustees of the Trusts created hereunder.

EXECUTED in Clark County, Nevada, on July 9, 2010.

TRUSTOR:

LEROY G. BLACK

K-4

TRUSTEE:

GLENN ROBERTSON

Senior Nevada Benefit Group. L.P.

FACSIMILE COVER SHEET

OUR FAX NUMBER IS: (702) 366-9200

PLEASE DELIVER THE FOLLOWING PAGES TO:

NAME:	JEFF BECK	1-866-879-0331
	MARK GATSCH	1-866-745-7107
	GIB BARBERIS	1-866-422-3992
COMPANY:		
FAX NUMBER:		
FROM:	LEROY BLACK	

MESSAGE:

HELLO JEFF, GIB & MARK:

PLEASE CORRECT THE DOLLAR-AMOUNT IN RECITAL #1 AND FILL-IN THE BLANKS ON THIS UNDATED AGREEMENT DRAFTED BY ATTORNEY HARDY. I WAS TOLD THAT I WOULD HAVE TO SIGN THIS FIRST (ON JUNE 22ND) IN ORDER TO BE GIVEN THE PLANTARA AGREEMENT THAT I THEN SIGNED (ON JUNE 23RD).

THIS DEMAND IS WHAT CAUSED THE "UNDISCLOSED" DOUBLE-ENGAGEMENT MISUNDERSTANDING (14% THRU HARDY VS. 6%-8% THRU PLANTARA). IN PARAGRAPH 2.3, THE LATTER "ARRANGEMENT" FEES ARE REPRESENTED AS CUSTOMARY AND SHOULD PREVAIL. THANK YOU FOR CORRECTING THINGS PROMPTLY IN A FIDUCIARY MANNER.

Leroy Black K-S

THIS TELECOPY CONSISTS OF "24" PAGE(S)INCLUDING COVER SHEET. IF YOU DO NOT RECEIVE ALL PAGES OR EXPERIENCE ANY PROBLEMS IN THIS TRANSMITTAL, PLEASE CALL OUR VOICE PHONE: (702) 366-1600.

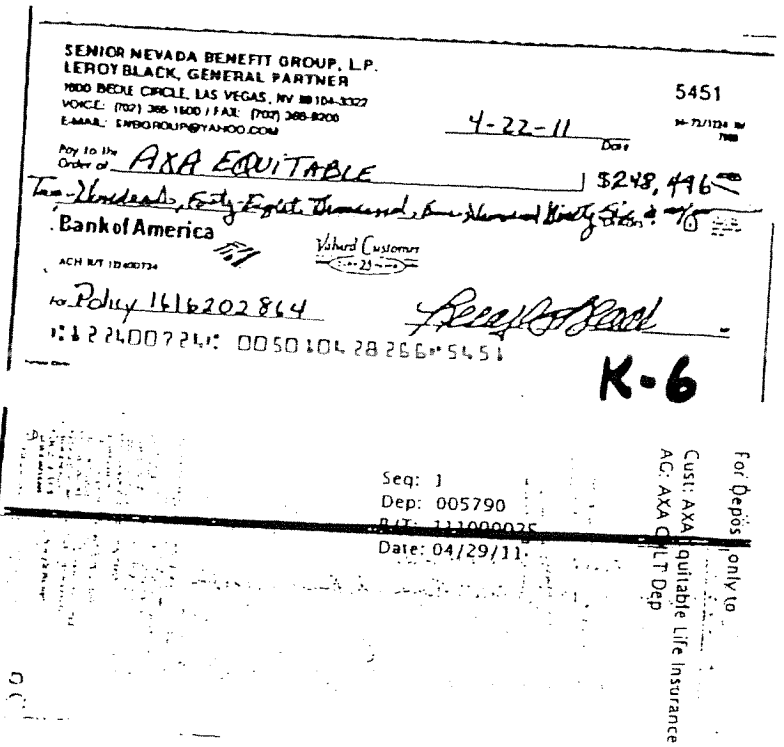
DATE AND TIME OF TRANSMISSION: THURSDAY, JULY 29, 2010

1600 Becke Circle • Las Vegas, NV 89104-3322 • Home Office: (702) 366-1600 • Facsimile: (702) 366-9200

Bank of America

Business Economy Chk - 8266 : Check Image

Check Image:



SENIOR NEVADA BENEFIT GROUP, L.P.
LEROY BLACK, GENERAL PARTNER
1800 BECLE CIRCLE, LAS VEGAS, NV 89104-3322
VOICE: (702) 366-1600 / FAX: (702) 366-8200
E-MAIL: ENERGROUP@YAHOO.COM

5451

4-22-11
Date

Pay to the Order of AXA EQUITABLE $248,496

Two Hundred, Forty-Eight Thousand, Four Hundred Ninety-Six & 00/100

Bank of America

Valued Customer

ACH R/T 121000724

for Policy 16162028 64

⑈122400724⑆ 005010428266⑈5451

K-6

Seq: 1
Dep: 005790
R/T: 111000025
Date: 04/29/11

For Deposit only to
Cust: AXA Equitable Life Insurance C
AC: AXA C LT Dep

4. Law does not fix the amount or rates of real estate commissions. It is set by each BROKER individually and may be negotiable between the OWNER and BROKER.

5. The parties understand and agree that BROKER'S undertaking pursuant to this contract is limited to the procurement of a BUYER, ready, willing and able to PURCHASE the property on the terms and conditions specified, and that the commission established herein shall be due and payable according to the terms described above.

6. In the event suit is brought by either party to enforce this contract, the prevailing party is entitled to court costs and reasonable attorney's fees.

In consideration of the above contract and authorization, BROKER and/or his representatives agree to use diligence in their efforts to bring about the SALE of subject property.

McMenemy Investment Services
900 Karen Suite C-219
Las Vegas, NV 89109
(702) 307.4925
Fax:(702) 920.8811

BROKER- Ron McMenemy

THE UNDERSIGNED ACKNOWLEDGE THAT THEY HAVE READ THIS ENTIRE CONTRACT AND AGREE TO THE TERMS AND CONDITIONS HEREIN. THE UNDERSIGNED WARRANT THAT HAVE FULL LEGAL AUTHORIZATION TO EXECUTE THIS CONTRACT.
Receipt of a copy of this contract is hereby acknowledged.

GENERAL PARTNER K-7

06-14-11 DATE

3:30 PM TIME

1600 Becker Cir LV NV 89104
ADDRESS 366-1600

* FAXED & MAILED TO EQUIFAX ON 10-23-2011
(1-888-826-0573) (6-PAGES)

(P.O. Box 105069
Atlanta, GA 30348)

October 20, 2011

EQUIFAX

To Start An Investigation, Please Visit Us At:
www.investigate.equifax.com

001056250-6433
Leroy George Black
1600 Becke Cir Apt 54
Las Vegas NV 89104-3322

Dear Leroy George Black

Enclosed is a copy of your Equifax credit file. Please review it for any unauthorized accounts or inquiries. If unauthorized information is reporting on your Equifax credit file, you may start an investigation immediately on-line at www.investigate.equifax.com. Using the Internet to initiate an on-line investigation request will expedite the resolution of your concerns. You may also start an investigation by completing and returning the enclosed Research Request Form or by calling the toll free telephone number on the credit file. Please advise us of any documents that may help us in the reinvestigation, such as an identity theft report or letters from credit grantors.

You should contact the credit grantors that are reporting information you believe is fraudulent. Ask them to explain their fraud investigation process, what steps should be taken and how long the process normally takes. Additionally request that they send you a letter or documentation stating the results of the investigation. Upon receipt, forward a copy of that letter to us.

If your ID information, such as driver's license or social security card, was lost or stolen, contact the appropriate issuing agency.

Results Of Your Investigation *(For your security, the last 4 digits of your credit account number(s) have been replaced by *)*

>>> ***We have researched the credit account. Account # - 515788479* The results are:*** This creditor has verified to Equifax that the balance is being reported correctly. Additional information has been provided from the original source regarding this item. If you have additional questions about this item please contact: ***US Bank Home MTG, PO Box 20005, Owensboro, KY 42304-0005 Phone: (800) 365-7772***

The FBI Has Named Identity Theft As The Fastest Growing Crime In America.

Protect yourself with Equifax Credit Watch™, a service that monitors your credit file every business day and notifies you within 24 hours of any activity. To order, go to: ***www.creditwatch.equifax.com***

INVESTIGATION REMAINS INACCURATE!

Leroy George Black K-8

10-23-2011

PROPOSED TREATMENT PLAN

Feb 14, 2012

MOORE FAMILY DENTISTRY

2560 S. MARYLAND PKWY. SUITE #5
LAS VEGAS, NV 89109-1672
(702)791-1010 ( )-

LEROY BLACK
160 BECKE CIRCLE
LAS VEGAS , NV 89104

ID: 9415

hase	Date Plan	Appt	Provider	Service		Tth	Surf	Fee	Ins.	Pat.
	02/14/12		222	D7210	SURGICAL REMOVAL OF ERU	8		$70.00	$0.00	$70.00
	02/14/12		222	D7210	SURGICAL REMOVAL OF ERU	9		$70.00	$0.00	$70.00
					Subtotal For This Phase:			$140.00	$0.00	$140.00
	02/14/12		222	D5820	INTERIM PARTIAL DENTURE (	UA		$150.00	$0.00	$150.00
					Subtotal For This Phase:			$150.00	$0.00	$150.00
					Subtotal:			$290.00	$0.00	$290.00

claimer: THIS IS AN ESTIMATE OF WHAT YOU CAN EXPECT YOUR DENTAL INSURANCE TO
VER. THE PATIENT IS RESPONSIBLE FOR ANY DIFFERENCE BETWEEN ACTUAL CHARGES
D WHAT THE CARRIER PAYS.

Total Proposed:	$290.00
Total Completed:	$0.00
Total Accepted:	$0.00
Proposed Insurance:	$0.00

above treatment recommendations have been explained to me. I have been informed of my dental condition

All my questions have been answered and I have been informed of my dental condition, treatment options, benefits, rates and possible consequences of treatment or no treatment

Patient or Guarantor's Signature: Leroy Black Date 2/14/12

PER MARY

K-9

Your returns may be selected for review by the taxing authorities. Any proposed adjustments by the examining agent are subject to certain rights of appeal. In the event of such governmental tax examination, we will be available, upon request, to represent you under a separate engagement letter for that representation.

You understand that your income tax returns will be electronically filed through a secured third party filing service. (The state returns will be filed electronically if applicable.) You may opt out of electronic filing if you so choose.

Our fee for preparation of your tax returns will be based on the time required at our standard billing rates plus out-of-pocket expense. All invoices are due and payable upon presentation.

If the foregoing fairly sets forth your understanding, please sign the enclosed copy of this letter in the space indicated and return it to our office. However, if there are other tax returns you expect us to prepare, such as gift and/or property, please inform us by noting so just below your signature at the end of the returned copy of this letter.

We want to express our appreciation for this opportunity to work with you.

Very truly yours,

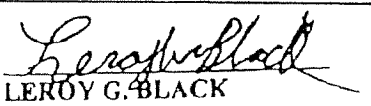
Conway, Stuart & Woodbury

Accepted By: [signature] K-10

Date: 03-25-2012

Comments or additional requests:

QUESTIONED SIGNATURE



LEROY G. BLACK

Q-1

March 7, 2012

KNOWN SIGNATURES

By: LEROY G. BLACK, Manager

K-1

LEROY G. BLACK, Trustee

August 21, 1992

LEROY BLACK, Grantor and Trustee

K-2

October 27, 2009

Leroy George Black, General Manager

K-3

June 22, 2010

LEROY G. BLACK

K-4

July 9, 2010

K-5

July 29, 2010

K-6

April 22, 2011

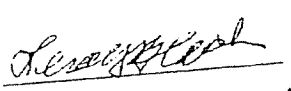
GENERAL PARTNER

K-7

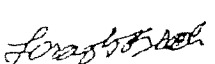
June 1, 2011

K-8

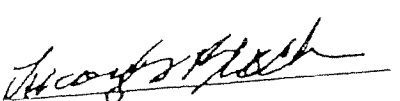
October 23, 2011



K-9



February 14, 2012



K-10

March 25, 2012

TRANSPARENCIES

CURRICULUM VITAE

FOR

ANTONIA M. KLEKODA-BAKER – CERTIFIED DOCUMENT EXAMINER

ANTONIA'S CERTIFIED HANDWRITING ANALYSIS SERVICE
LAS VEGAS, NV 89117-2313
Phone (702) 256-4479 Fax (702) 256-4489
Email: Antoniakb@aol.com

Antonia M. Klekoda-Baker has been a Forensic Document Examiner since June of 1971. She has qualified as an Expert Witness and Questioned Document Examiner in Municipal, Probate, Circuit, and Federal Courts in Michigan and Nevada.

Antonia's opinions have been presented to courts in West Germany, Hawaii, Canada, Ethiopia, and Trinidad. Antonia has professional contacts in England and Oslo, Norway. US Customs Department Officials in Miami, Florida regularly seek her conclusions. Antonia has been a Confidential Specialist Consultant to Wisconsin Public Officials in matters of Poison Pen Letters. Her opinions have been sought by authorities in California, Utah, New Jersey, Washington, and the Dakotas.

Antonia has testified in Murder trials in Michigan as well as providing expert testimony against culpable members of the State Police department. Antonia has testified in Teamsters and UAW-CIO Contract Disputes and Work Infractions. In 1988, Antonia provided valuable Expert Forensic Handwriting Analysis Evidence and Court Testimony to protect Federal Land from being seized by fraudulent conspirators in the famous Joseph Cizaukas case in Michigan.

While a member of the Certified Fraud Examiners of Las Vegas her informative article on Handwriting Identification was published in their official edition.

Las Vegas Judges periodically appoint Antonia to be the Handwriting Expert in Cases of Questioned Documents. Antonia repeatedly is called to perform Handwriting Investigations for the Federal Public Defender.

EDUCATION, TRAINING AND EXPERIENCE:

Colleges:

Aquinas College, Grand Rapids, Michigan; Grand Rapids Junior College; Davenport Business College of Michigan.

OTHER:

Antonia began her work in Document Examination under the tutoring of skilled

Document Examination Authority in Washington DC. She studied Secret Service methods in Forensic Training Courses taught by Police Personnel in Colorado. She has Certificates in Forensic Document Examination and Investigative Procedures. Her studies included attending Classes, Workshops, Seminars, and Testing in:

1.) Washington DC under the direction of FBI Teachers;
2.) Denver, CO which hosted Law Enforcement Educators;
3.) Santa Monica, CA where Forensic Specialists provided Instruction;
4.) Atlanta, GA where Established Noted Attorneys presided over Training in Tnal Disciplines.

Her studies included the following:

- *Disguise In Handwriting
- *Effects of Medication/Drugs/Disease On Writing
- *Expert Witness Programs
- *Medical Authorizations
- *Paper, Age, Contents, Watermarks
- *Ink, Separation and Dating
- *Scientific Examination of Documents
- *Identification of Handlettering, Printscript/Numerals
- *Desktop forgery
- *Child custody Disputes
- *Typewriter Comparisons
- *Anonymous Hate Notes
- *Real Estate Documents
- *Graffiti
- *Bank Signature Cards
- *Internal Sabotage/Theft
- *Forensic Photography
- *Death Threats

PROGRAMS, AFFILIATIONS, PUBLISHED WORKS:

- 1985 International Handwriting Analysts Recognition
- 1985 American Society of Safety Engineers Award for Forensic Handwriting Analysis Testimony
- 1986 Data Processing Management Award for Handwriting Expertise in Company Investigations
- 1987 American Legion Award for Outstanding Professional Services
- 1987 Keynote Speaker in Washington DC on Document Examination
- **1987 Membership/Certification in National Document Examiners Associations**
- 1988 Conducted Seminars in San Jose CA on Document Examination
- 1988 Technical Writings on Document Examination presented to Library of Congress
- 1990 Listed in Who's Who Of American Women
- 1990 Educational Chairman National Assoc. Document Examiners
- 1990 Board of Directors – National Assoc. of Document Examiners
- 1990 Board of Examiners – National Assoc. of Document Examiners
- 1991 Authored "RESEARCH COMPENDIUM FOR DOCUMENT EXAMINERS"
- 1991 Authored "A GUIDE FOR DOCUMENT EXAMINERS"
- 1991 Re-Wrote By-laws for National Assoc of Document Examiners
- 1991 Educational Speaker at National Document Examiners Conference in

Santa Monica, CA
- 1991 Presidential Nominee – National Assoc. Document Examiners
- 1991 Articles and books accepted in National Handwriting Analysis Research Library
- UPI Liaison – Over 4000 Published Works, National and International
- 1996-1998 – Member Certified Fraud Examiners – Las Vegas, NV

SERVICES:

Antonia was the President of ANTONIA'S CERTIFIED HANDWRITING ANALYSIS SERVICE, incorporated in Michigan for 26 years before moving to Las Vegas in 1996 to be a permanent resident. She provides professional validation in Forgery Identification, Court Testimony, Historical Writing Verification, Study of Antique Markings, and Anonymous Mail – along with maintaining a Resource Library – formerly, Michigan Graphological Resources.

Microscopes, Infra-Red Photography, Magnifiers, Ultra-Violet lights, Forensic Measuring Plates, a Stereo-Microscope, and special Photo accouterments comprise some of her equipment for technical investigations.

Antonia has worked with and is endorsed by:
- US Postmaster
- State of Michigan Corrections System
- State of Michigan Board of Education
- State of Michigan Social Services
- Wisconsin City Council Members
- Michigan Police Department Personnel
- Miami, Florida Customs Agents
- National And International Detective Firms

Antonia M. Klekoda-Baker, C.D.E. is recommended by EXPERT RESOURCES, an International Experts Endorsement Firm in Peoria, Illinois, as a credible, capable Professional in the Field of Forensic Document Examination. Antonia is listed in the Michigan Library Services as the Resource Professional in all matters of Handwriting Identification.

President Gerald R. Ford publicly recognized and encouraged Antonia's work in Handwriting Analysis.

ANTONIA'S CERTIFIED HANDWRITING ANALYSIS SERVICE
ANTONIA M. KLEKODA-BAKKER C.D.E.
LAS VEGAS, NV 89117-2313
Phone: (702) 256-4479 Fax: (702) 256-4489

Limited List Of Testimony References (Michigan)

Date	Case	Court/Attorney/Judge
6/24/71	GRABAU	HASTINGS PROBATE COURT Attorney Albert R. Dilley
9/25/73	COURTNEY	KALAMAZOO CIRCUIT COURT Attorneys Sauer & Tucker
2/19/75	WILLIAMS/COOK	HARRISON CIRCUIT COURT Attorney Richard S. Allen Honorable Paul O'Connell
4/29/76	COURTNEY	KENT COUNTY CIRCUIT COURT Attorney Scott Pierce
12/12/78	IRWIN	KENT COUNTY CIRCUIT COURT Attorney Victor Smedsted Honorable Judge Boucher
3/30/79	WILMA BANKS	KENT COUNTY CIRCUIT COURT Attorney Donald Pebley Honorable Judge Boucher
10/4/79	JACKSON	KENT COUNTY PROBATE COURT Attorney Neal Weathers Honorable Judge Stoppels
11/22/84	MARY PALMET	BENTON HARBOR CIRCUIT COURT Attorney Donald Dettman
1/2/86	BAILEY	HASTINGS PROBATE COURT Attorney Susan Mallory

Date	Case	Court/Attorney/Judge
9/12/88	JOE CIZAUKAS	KENT COUNTY CIRCUIT COURT Attorney William Azkoul Honorable Donald DeYoung
2/1/89	BRENT COBB	COOK COUNTY CIRCUIT COURT Attorney Carol Mackenzie Honorable James C. Kingsley
2/12/91	ISAAC DAVIS	KALAMAZOO CIRCUIT COURT Attorney Thomas Harmon Honorable Phillip Schaefer
3/1/93	RITA JORDAN	MONTCALM CIRCUIT COURT Attorney Charles Simon Honorable James K. Nichols
3/8/93	MILLS/TRIGGS	KENT COUNTY CIRCUIT COURT Attorney Judy Ostrander Honorable Robert Benson
4/27/93	BEMENT/HEUSS	OTTAWA COUNTY CIRCUIT COURT Attorney Daniel Zemaitis Honorable Wesley J. Nykamp
5/26/93	SUMMERS/HOLLAND	KENT COUNTY PROBATE COURT Self Attorney Honorable Janet Jaynes
12/8/93	BLACK/HERBACH	HASTINGS CIRCUIT COURT Attorney Bruce Lincoln Honorable Schuster
9/8/94	RANKIN/ABEX/NWL AEROSPACE MILITARY	PRIVATE CHAMBERS Attorney Doug Callander
5/2/95	BRADLEY/WITHEY	US FEDERAL COURT Attorney James Rinck Honorable Lawrence Howard

Limited List Of Past Testimony References

(Nevada)

Date	Case	Court/Attorney/Judge
3/3/2000	*ARMAND MASSA*	CLARK COUNTY DISTRICT COURT Attorney David Amesbury Honorable Lee A. Gates Heard by: Commissioner Don Ashworth
8/4/00	*FERTEL/FERTEL*	CLARK COUNTY DISTRICT COURT Attorney Patrick Nohrden Honorable Mark Denton
9/8/00	*CACTUS SAND/GRAVEL v. C & P ENTERPRISES*	CLARK COUNTY DISTRICT COURT Attorney Susan Frankewich Honorable Mark Denton
9/11/00	*LAWRENCE M. KRANSKY*	CLARK COUNTY DISTRICT COURT Attorney John Gorman Honorable Lee A. Gates
1/5/01	*LA VAUGHN MOORE*	HUTCHINSON & STEFFEN LAW *Mediation* ATTORNEY JOHN PETER LEE
3/29/01	*JUDITH STRASSNER*	CLARK COUNTY DISTRICT COURT Attorney Robt. M. Draskovich Court Appointed by: Honorable Sally Loehrer *Case Dismissed*
9/1/01	*DORI VS FARRIS*	DEPOSITION Attorney Robert M. Apple
10/2/01	*JAMES FARRIS*	CLARK COUNTY DISTRICT COURT Attorney John Peter Lee Honorable Mark Denton
11/13/01	*LINDA MEAD*	LAS VEGAS JUSTICE COURT Attorney Josie Tessie Bayudan Honorable Tony Abbotangelo
4/24/03	*TOXIE HALL SMITH*	CLARK COUNTY DISTRICT COURT Attorney Susan Frankewich Honorable Valorie J. Vega Commissioner Don Ashworth

Date	Case	Court/Attorney/Judge
7/23/2003	BEVERLY AN HENRICKS	CLARK COUNTY DISTRICT COURT Attorney Robert Caldwell Honorable Sally Loehrer
8/8/2003	HERMAN CORREA	ARBITRATION Attorney Michael Harker Christopher McCullough (Arbitrator)
6/28/2004	DANIEL DIANTONIO	CLARK COUNTY DISTRICT COURT #9 Honorable Stewart Bell
7/20/2004	CHRISOPHER HEWITT	CLARK COUNTY DISTRICT COURT #15 Attorney David H. Putney, Esq. Honorable Sally Loehrer
9/2/04 (Appointed by Judge Kathy Hardcastle for both Plaintiff & Defendant.)	MARY F. LARVO	CLARK COUNTY DISTRICT COURT #15 Attorney Paul Ray Attorney Victor Miller Honorable Sally Loehrer
3/24/05	DAVID SKROCK	CLARK COUNTY DISTRICT J COURT Attorney Jack Barfield Judge Lisa M. Brown
4/20/05	LEONA LAFEMINA	CLARK COUNTY DISTRICT COURT Attorney Richard A. Avila Presiding In Judgment Honoroble Don Ashworth
5/12/05	HASSAM BASHIR	UNITED STATES DISTRICT COURT FOR THE DISTRICT OF NEVADA DEPOSITION E.E.O.C. Vs Nellis Cab Attorney Patrick Hicks (Nellis) Attorney Peter Laura (E.E.O.C.)

Date	Case	Court/Attorney/Judge
7/1/05	EVELYN M. GARITI	FAMILY COURT & SERVICES CTR GUARDIANSHIP HEARING Attorney Kim Boyer Presiding: Commissioner Jon Norheim
7/19/05	ROBERT FORD	CLARK COUNTY DISTRICT COURT Attorney Michael Bohn Honorable Stewart Bell
8/25/05	SPRING STONE	FAMILY COURT & SERVICES Attorney Gary Huntsman Honorable Sandra Pomrenze
9/1/05	DALE GLEN HOLLADAY	FAMILY COURT & SERVICES Attorney George Carter Hon. N. Anthony Del Vecchio
12/10/05	DWAYNE JECHART	CLARK COUNTY CIRCUIT COURT Attorney Gerry Zobrist Honorable Sally Loehrer
7/17/06	ROBERT HARRIS	CLARK COUNTY DISTRICT COURT Attorney Richard Young Honorable Sally Loehrer
7/13/07	KEVIN KEY	CLARK COUNTY DISTRICT COURT Attorney Emily McFarling Honorable Elizabeth Halverson
1/22/08	ROBERT GOMEZ	U.S. BANKRUPTCY COURT Attorney David Krieger Honorable Michael Nakagawa
6/2/08	Rick & Melissa White	KINGMAN, ARIZONA ROC Attorney Mark Sipple Honorable M. Douglas (Tucson, AZ)

Date	*Case*	*Court/Attorney/Judge*
7/9/08	Tungalog Haschyr	CLARK COUNTY JUSTICE COURT Attorney Susan Frankewich Honorable Melissa Saragosa
1/6/09	Tania Main	CLARK COUNTY FAMILY COURT Attorney Fred Page Honorable Brice Duckworth
10/6/09	Goldberg vs. Goodman	U.S. BANKRUPTCY COURT Attorney Christopher Burke Honorable Mike Nakagawa
12/15/09	Goldberg vs Goodman	U.S. BANKRUPTCY COURT Attorney Christopher Burke Honorable Mike Nakagawa
12/21/09	George Harris	Clark County District Court Attorney Frank Cremen Honorable Jessie Walsh
12/23/09	Bhadra vs Bhadra	Clark County Family Court Attorney Natricia Tricano Honorable Kenneth Pollock
7/07/10	Aymann/Sellers	Arbitration Attorney Paul Ray Elizabeth Foley, Arbitrator
11/05/10	Racinowski vs Racinowski	Family Court Attorney Blake Fields Honorable Sandra Pomrenze
11/18/10	Wasef Qaraman/OM Construction	Clark County District Court Attorney AJ Kung Honorable Michelle Leavitt
6/2/11	Alex Popovic v Kopper King	Las Vegas Justice Court Attorney Chris Burk Hon. Karen Bennett-Haron

Date	Case	Court/Attorney/Judge
10/24/11	Richard Boorman	Stephanie A. Barker, Chief Deputy District Attorney Office of the District Attorney Civil Division Las Vegas, NV 89155-2215
5/19/12	Bianchi v Bianchi	8th Judicial District Court Family Division Attorney Patricia Vaccarino Hon. Sandra Pomrenze
5/25/12	Haddock	Deposition SYLVESTER & POLEDNAK
6/4/12	STAMPCO	Deposition Mary Chapman Office

ANTONIA'S CERTIFIED HANDWRITING ANALYSIS SERVICE

Antonia M. Klekoda-Baker C.D.E.

LAS VEGAS, NV 89117-2313

PHONE: (702) 256-4479 **FAX: (702) 256-4489**

FEE SCHEDULE

A $495.00 retainer is required for involvement in any case. This will accommodate:

1.) **Comparison of a Limited Amount of Questioned Signatures or Documents to Unlimited Amount of Known Exemplars;**
2.) **Consultation/Discussion, telephone or otherwise, of client's wishes regarding oral or written results in case;**
3.) **Preparation of a Written Opinion –Complete Confidentiality**

Should you not wish a written opinion, the retainer fee is the same. Additional Questioned Documents increase the fee per additional item, providing it pertains to the same case.

OTHER FEES:

1.) **Testimony Fee is $1200.00 minimum to accomodate one day or any part of one day with Signed Contract prior to rendering of Testimony. (This Fee is for Las Vegas, NV only. Out of State Cases subject to negotiation.) (Stand-by Fee of $150 perhour if no testimony rendered)**
2.) **Deposition Fee is $600.00 Minimum to accommodate up to Four Hours . Thereafter, the fee is $150.00 per additional hour.**
3.) **Office calls to your place of business are $150.00 per hour . (One Hour Min.)**
4.) **Affidavit Verification or Notarizing are $150.00 per report.**

* *

All of the above information is subject to consideration on a "case by case" basis and based upon National Forensic Guidelines.

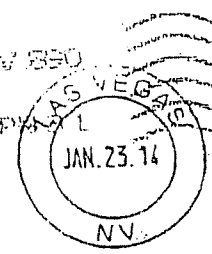
EXHIBIT "G"

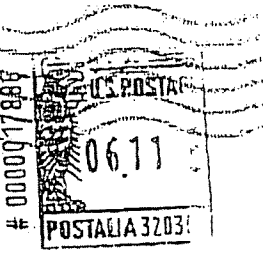
McALISTER OLIVERI
8275 South Eastern Avenue, Suite 200
Las Vegas, Nevada 89123

CERTIFIED MAIL

7013 1090 0002 1552 0358

LAS VEGAS NV 890
23 JAN 2014 PM 1 L

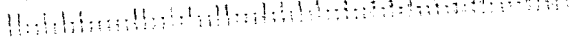




Maria Onofre
5536 Lindley Ave, Apt #111
Encino, CA

RETURN TO SENDER
ATTEMPTED - NOT KNOWN
UNABLE TO FORWARD

BC: 89123254530 *0679-07720-25-42



89123@2545
9131619503

CERTIFIED MAIL

7012 2210 0001 2333 8106

Callister & Frizell, PLLC
8275 South Eastern Ave., Suite 20
Las Vegas, NV 89123

LAS VEGAS NV 890
11 JAN 2014 PM 5 L
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NV
U.S.POSTAGE
06.11
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Maria Onofre
5541 Laurel Canyon Blvd., Apt #51
Valley Villa

NIXIE 917 5C 1 0001/23/14

RETURN TO SENDER
NOT DELIVERABLE AS ADDRESSED
UNABLE TO FORWARD

BC: 89123259199 *0879-02259-11-43

EXHIBIT "H"

GOODSELL & OLSEN
ATTORNEYS AT LAW
10155 W. TWAIN AVENUE, SUITE 100, LAS VEGAS, NV 89147
(702) 869-6261 TEL - (702) 869-8243 FAX

AFFIDAVIT OF JONATHAN CALLISTER, ESQ.

State of Nevada)
) ss:
County of Clark)

JONATHAN CALLISTER, ESQ, being first duly sworn, deposes and says that I have personal knowledge of and am competent to testify to the following facts:

1. I am an attorney and member of the State Bar of Nevada in good standing.
2. I am a partner at the law firm of Callister & Frizell, LLP.
3. My firm, Callister & Frizell represents William Fink in the matter of the Estate of Leroy G. Black, P-12-074745-E.
4. Mr. Fink and I experienced extraordinary difficulty locating the individuals who purported to witness the March 2012 Will, David Everston and Maria Onofre. On January 10, 2014, I sent a letter to Everston and Onofre to seek their testimony as to the validity of the March 2102 Will. The letter addressed to Onofre was returned, undeliverable.
5. The intent of the January 10 Letter was to motivate them to call me since we could not locate what appeared to be valid addresses (and David was in Costa Rica). The intent was never to have them change testimony or influence them to do so.
6. Everston came to Las Vegas on or about February 19, 2014 and executed an affidavit wherein he testified that he did not witness Leroy Black execute the March 2012 Will.
7. In February 2012, Everston told me that he had given a copy of the January 10, 2014 letter I had sent him to Jonathan Barlow, counsel for Phil Markowitz.
8. I repeatedly made it clear to Everston that I only sought truthful testimony.

9. Everston was not paid for his testimony, though he was reimbursed for his travel expenses.

10. Onofre was not paid for her testimony.

FURTHER YOUR AFFIANT SAYETH NAUGHT.

DATED this 21 day of AUGUST 2014.

JONATHAN CALLISTER, ESQ.

SIGNED AND SWORN to before me
this 21st day of AUGUST 2014.

NOTARY PUBLIC in and for said
County and State.

HSUAN LING GRACE SIMPSON
Notary Public State of Nevada
No. 12-9113-1
My Appt. Exp. Oct. 11, 2016

GOODSELL & OLSEN
ATTORNEYS AT LAW
10155 W. TWAIN AVENUE, SUITE 100, LAS VEGAS, NV 89147
(702) 869-6261 TEL – (702) 869-8243 FAX

EXHIBIT "I"

JONATHAN C. CALLISTER*
* LLM IN TAX LAW
jcallister@callisterfrizell.com

CALLISTER & FRIZELL
ATTORNEYS AT LAW

R. DUANE FRIZELL**
** LICENSED IN NV, NM & TX
dfrizell@callisterfrizell.com

8275 S. EASTERN AVE. SUITE 200
LAS VEGAS, NEVADA 89123
TELEPHONE (702) 657-8090
FACSIMILE (702) 657-0065
www.callisterfrizell.com

January 10, 2014

Via Certified and US Mail

David H. Everston
2722 Tennyson St.
Thousand Oaks, CA 91360

Maria Onofre
5541 Laurel Canyon Blvd., Apt #51
Valley Village, CA 91607

Re: Estate of Leroy Black

Dear Mr. Everston and/or Ms. Onofre,

Our firm currently represents William Fink, the current Trustee and beneficiary of the Leroy Black 1992 Trust (the "Trust") which was, until the recent Will change, the beneficiary of the Leroy Black Estate (the "Estate").

The vast majority of Leroy Black's assets are held in the Trust, however there are a couple of pieces of property, not worth much in monetary value, which are held in the Estate. While the Estate is not worth much by way of actual value, it does hold personal and sentimental value to my client. My client made certain assurances to the decedent, Leroy Black (the "Decedent"), that he would develop the property in a way that benefitted the public good and left a legacy of which the Decedent could be proud.

Unfortunately, you each allege that you witnessed the Decedent executing a new Will shortly before his death in which he made Philip Markowitz the beneficiary of his Estate. Fortunately, whoever created that Will was not familiar with the Decedent's actual estate planning, and therefore they failed to also amend and change the beneficiary of the Trust which holds the majority of the assets of the Decedent and therefore failed to completely accomplish their plan of "hijacking" the assets of the Estate after the Decedent's death.

There are numerous reasons that we believe that the Decedent never executed a new Will and that you were not present to witness the Decedent signing such Will. These range from our having a handwriting expert attest that the signature is a forgery to the Decedent, Leroy Black, calling his long-time estate and trust attorney to discuss making changes to his actual Will and Trust only four (4) days prior to his death and made no mention at that time of any new Will which left assets to Philip or Rose Markowitz nor did he state that he had any desire to leave anything to them. Additionally, we have witnesses that were allegedly approached by Philip Markowitz after the Decedent's death to "witness" the execution of a fake Will in exchange for payment. We believe that because they declined that he may have approached you.

Because the Estate and the promises made by my client are of personal importance to him, he wants to give you a single opportunity to meet with myself and discuss the specifics surrounding your witnessing of the Will and any promises made to you by Mr. Markowitz in exchange for your signature. **In exchange for your honest testimony regarding the circumstances of your witnessing, or should I say "non-witnessing", of the Will, including the a full and honest disclosure of who approached you with the proposal and a statement indicating that you never witnessed the Decedent signing a Will, my client will pay for all of your travel expenses to and from Las Vegas, Nevada, including air-fare and hotel accommodations. In addition, he will make a one-time payment to each of you of Five Thousand Dollars ($5,000.00). Finally, he will agree to waive and release all claims he, the Trust or the Estate may have against each of you for your erroneously stated affidavit and non-witnessing of the Will. Finally, because time is of the essence in this matter, as a further incentive my client will pay an additional Two Thousand Dollars ($2,000.00) to the first of you to call, accept his offer and provide the required testimony.**

While in Las Vegas each of you will be required to meet briefly with myself or my associate in order for your testimony to be taken. At that meeting you will be provided with a check for the $5,000.00 (or $7,000.00 if you are the first to accept the offer and provide testimony) and a waiver and release of any claims against you (travel expenses will be paid by my client, however, your meals will be reimbursed). If you cannot travel to Las Vegas, Nevada, we can arrange to meet with either or both of you in Southern California where you will be provided a $5,000.00 check (or $7,000.00 if the first to accept the offer and provide the testimony) and the same release in exchange for your testimony.

This is a one-time offer. My client has no interest in pursuing any claims against you. His interests lie entirely with the Estate and Philip Markowitz. That being said, if you refuse to come forward and meet, we will be compelled to force your appearance via subpoena. We will also spend extensive time subpoenaing your bank records, credit cards and looking into your back-ground in order to show that you never travelled to Las Vegas in March of 2012 and witnessed the signing of the Will by the Decedent. We will also take every step possible in order to show that there are serious questions regarding your past back-grounds, honesty and character. For example, we already know each of you listed false addresses at which you never resided in the Will and in light of certain judgments that may exist against each of you, past legal issues, and the possible use of a social security number of another individual, it is certainly in your best interests to willingly come forward and take advantage of my client's generosity. I assure you that if you do not, he will spare no expense in pursuing any and all legal claims he may have against each of you and in bringing your false testimony to light.

I am not sure what exactly was promised to you in exchange for your witness signature or what story may have been given to you so as to justify you in providing your signature, however I urge you to take this opportunity to "clear the air" regarding your witnessing of the Will. I believe that each of you are most likely good people that were misinformed regarding the facts of this case or promised something which will never come to fruition. Meeting with me will provide you the opportunity of doing the right thing and correcting a problem which should have never been. Please help us carry out the real desires of an honest and good man's true wishes regarding his Estate- instead of undermining those wishes via false testimony. I reiterate that my client holds no ill will towards you or anything you may have done previously nor does he have any desire to see you be held accountable for any prior actions in this matter if you will take this single opportunity to accept his offer and clear up the real circumstances of what occurred.

You may be tempted to show this letter and offer to Mr. Markowitz in an effort to see if he will match such an offer. I cannot stop you from doing so, however keep in mind that ultimately, and regardless of what you decide, my client will successfully show that the Will was fraudulent and should you fail to accept his more than generous offer, he will take every step available to prove that you did not witness the signing of the Will and to see that you are held accountable in law and in equity for falsely testifying in this matter. In such a scenario, the true party at fault gets to walk away and it will be you that will have to face the legal implications of perjury and a false affidavit. This will be an uncomfortable and expensive situation for each of you. My client would much more prefer to pay you handsomely for your time and honest testimony than see you held liable for another's allegedly dishonest plan. You will not only benefit financially but can rest knowing that you have done the right thing in this matter and that there will be no on-going legal situation in which you will be personally involved or liable.

As I said this is a one-time offer. You have seven (7) days from the receipt of this letter to contact myself and accept his offer. At that time, we can discuss and make arrangements for our meeting and your travel, as well as address any matters necessary to assure you that we are serious and that this is not some "scheme" to try and deceive you in any manner. Please contact me at the above number, email and/or address to discuss this letter, accept the offer or address any concerns you may have.

Sincerely,

CALLISTER&FRIZELL

Jonathan C. Callister, Esq.
For the Firm

W-12-003875

LAST WILL OF LEROY G. BLACK

I, LEROY G. BLACK, a resident of Clark County, Nevada, declare that this is my will. I hereby revoke any and all of my previous wills and codicils.

ARTICLE ONE
INTRODUCTOY PROVISIONS

1.1. Marital Status. I am not currently married.

1.2. Identification of Living Children. I have no living children.

1.3. Deceased Children. I have no deceased children.

ARTICLE TWO
GIFT OF ENTIRE ESTATE

2.1. Gift of Entire Estate. I give all of my property, both real and personal, as follows: Twenty-five percent (25%) of the total value of my estate at the time of my death to my aunt, ROSE E. MARKOWITZ. The remainder of my estate, Seventy-five percent (75%), shall be given to my cousin, PHILLIP I. MARKOWITZ.

2.2. Beneficiaries Excluded. I, LEROY G. BLACK, specifically direct that no portion of the trust estate ever be used for the benefit of or pass to ZELDA KAMEYER, and/or any of her children, possible heirs or beneficiaries. Other possible heirs or beneficiaries not specifically provided for in this document shall be considered as excluded beneficiaries from my estate and shall not receive any benefit from my estate. The provisions contained in this agreement contain my final decisions in this regard.

ARTICLE THREE
RESIDUARY PROVISIONS

3.1. Disposition of Residue. I give the residue of my estate to the executor of this will, PHILLIP I. MARKOWITZ, as trustee, who shall hold, administer, and distribute the property

under a testamentary trust, the terms of which shall be identical to the terms of this will that are in effect on the date of execution of this will.

ARTICLE FOUR

EXECUTOR

4.1. Nomination of Executor. I nominate PHILLIP I. MARKOWITZ as executor of this will.

4.2. Successor Executor. If PHILLIP I. MARKOWITZ is unable (by reason of death, incapacity, or any other reason) or unwilling to serve as executor, or if at any time the office of executor becomes vacant, by reason of death, incapacity, or any other reason, and no successor executor or co-executors have been designated under any other provision of this will, I nominate the following, as executor:

FIRST: ROSE E. MARKOWITZ

If all those named above are unwilling or unable to serve as successor executor, a new executor or co-executors shall be appointed by the court.

4.3. Waiver of Bond. No bond or undertaking shall be required of any executor nominated in this will.

4.4. General Powers of Executor. The executor shall have full authority to administer my estate under the Nevada Revised Statute Section 164. The executor shall have all powers now or hereafter conferred on executors by law, except as otherwise specifically provided in this will, including any powers enumerated in this will.

4.5. Power to Invest. The executor shall have the power to invest estate funds in any kind of real or personal property, as the executor deems advisable.

4.6. Division or Distribution in Cash or in Kind. In order to satisfy a pecuniary gift or to distribute or divide estate assets into shares or partial shares, the executor may distribute or divide those assets in kind, or divide undivided interests in those assets, or sell all or any part of those assets and distribute or divide the property in cash, in kind, or partly in cash and partly in kind. Property distributed to satisfy a pecuniary gift under this will shall be valued at its fair market value at the time of distribution.

4.7. Power to Sell, Lease, and Grant Options to Purchase Property. The executor shall have the power to sell, at either public or private sale and with or without notice, lease, and grant options to purchase any real or personal property belonging to my estate, on such terms and conditions as the executor determines to be in the best interest of my estate.

4.8. Payments to Legally Incapacitated Persons. If at any time any beneficiary under this will is a minor or it appears to the executor that any beneficiary is incapacitated, incompetent, or for any other reason not able to receive payments or make intelligent or responsible use of the payments, then the executor, in lieu of making direct payments to the beneficiary, may make payments to the beneficiary's conservator or guardian; to the beneficiary's custodian under the Uniform Gifts to Minors Act or Uniform Transfers to Minors Act of any state; to one or more suitable persons, as the executor deems proper, such as a relative or a person residing with the beneficiary, to be used for the benefit of the beneficiary; to any other person, firm, or agency for services rendered or to be rendered for the beneficiary's assistance or benefit; or to accounts in the beneficiary's name with financial institutions. The receipt of payments by any of the foregoing shall constitute a sufficient acquittance of the executor for all purposes.

ARTICLE FIVE
CONCLUDING PROVISIONS

5.1. Definition of Death Taxes. The term "death taxes," as used in this will, shall mean all inheritance, estate, succession, and other similar taxes that are payable by any person on account of that person's interest in my estate or by reason of my death, including penalties and interest, but excluding the following:

(a) Any additional tax that may be assessed under Internal Revenue Code Section 2032A.

(b) Any federal or state tax imposed on a "generation-skipping transfer," as that term is defined in the federal tax laws, unless the applicable tax statutes provide that the generation-skipping transfer tax on that transfer is payable directly out of the assets of my gross estate.

5.2. Payment of Death Taxes. The executor shall pay death taxes, whether or not attributable to property inventoried in my probate estate, by prorating and apportioning them among the persons interested in my estate as provided in the Nevada Revised Statutes.

5.3. Simultaneous Death. If any beneficiary under this will and I die simultaneously, or if it cannot be established by clear and convincing evidence whether that beneficiary or I died first, I shall be deemed to have survived that beneficiary, and this will shall be construed accordingly.

5.4. Period of Survivorship. For the purposes of this will, a beneficiary shall not be deemed to have survived me if that beneficiary dies within two months after my death.

5.5. No-Contest Clause. If any person, directly or indirectly, contests the validity of this will in whole or in part, or opposes, objects to, or seeks to invalidate any of its provisions, or seeks to succeed to any part of my estate otherwise than in the manner specified in this will, any gift or other interest given to that person under this will shall be revoked and shall be disposed of as if he or she had predeceased me without issue.

5.6. Definition of Incapacity. As used in this will, "incapacity" or "incapacitated" means a person operating under a legal disability such as a duly established conservatorship, or a person who is unable to do either of the following:

(a) Provide properly for that person's own needs for physical health, food, clothing, or shelter; or

(b) Manage substantially that person's own financial resources, or resist fraud or undue influence.

5.7. Captions. The captions appearing in this will are for convenience of reference only, and shall be disregarded in determining the meaning and effect of the provisions of this will.

5.8. Severability Clause. If any provision of this will is invalid, that provision shall be disregarded, and the remainder of this will shall be construed as if the invalid provision had not been included.

5.9. Nevada Law to Apply. All questions concerning the validity and interpretation of this will, including any trusts created by this will, shall be governed by the laws of the State of Nevada in effect at the time this will is executed.

Executed on March 7, 2012, at Las Vegas, Nevada.

LEROY G. BLACK

On the date written above, we, the undersigned, each being present at the same time, witnessed the signing of this instrument by LEROY G. BLACK. At that time, LEROY G. BLACK appeared to us to be of sound mind and memory and, to the best of our knowledge, was not acting under fraud, duress, menace, or undue influence. Understanding this instrument, which consists of five (5) pages, including the pages on which the signature of LEROY G. BLACK and our signatures appear, to be the will of LEROY G. BLACK, we subscribe our names as witnesses thereto.

We declare under penalty of perjury under the laws of the State of Nevada that the foregoing is true and correct.

Executed on March 7, 2012, at Las Vegas, Nevada.

Signature: _____

Printed Name: DAVID Everston

Address: 11684 Ventura bl Suite 507

Studio, CA 91604.

City State

Signature: _____

Printed Name: MARIA Y. ONOFEE

Address: 20360 Ventura Blvd

Woodland Hills, CA

City State

EXHIBIT B

EXHIBIT B

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08/14/2012 04:14:36 PM

CLERK OF THE COURT

AFFT
CHRISTOPHER J. PHILLIPS, ESQ.
Nevada Bar No: 8224
BLACK & LOBELLO
10777 West Twain Avenue, Suite 300
Las Vegas, Nevada 89135
(702) 869-8801
Attorney for the Petitioner,
PHILLIP MARKOWITZ

DISTRICT COURT

CLARK COUNTY, NEVADA

In the Matter of the Estate of
LEROY G. BLACK, Deceased.

CASE NO. P-12-074745-E
DEPT. NO. 26 (Probate)

AFFIDAVIT OF ATTESTING WITNESS

STATE OF CALIFORNIA)
: ss:
COUNTY OF LOS ANGELES)

MARIA ONOFRE, being first duly sworn according to law, deposes and says:

1. Affiant witnessed the execution of the Last Will of Leroy G. Black on March 7, 2012.

2. Affiant witnessed said Last Will and Testament in the presence of the Testator, in the presence of one other witness, and at the request of the Testator.

3. At the time of the execution of said will, the said Testator appeared to your Affiant to be of full age and of sound and disposing mind, memory and understanding.

MARIA ONOFRE

SUBSCRIBED and SWORN to before me
this 26TH day of JULY, 2012.

NOTARY PUBLIC in and for said
County and State

MONICA LETICIA ARLLAH
Commission # 1902011
Notary Public - California
Los Angeles County
My Comm. Expires Aug 28, 2014

BLACK & LOBELLO
10777 West Twain Avenue, Suite 300
Las Vegas, Nevada 89135
(702) 869-8801 FAX: (702) 869-2669

State of California
County of Los Angeles

Subscribed and sworn to (or affirmed) before me on this 26th day of July, 2012, by MARIA ONOFRE

proved to me on the basis of satisfactory evidence to be the person(s) who appeared before me.

MONICA LETICIA MILLAN
Commission # 1902011
Notary Public - California
Los Angeles County
My Comm. Expires Aug 28, 2014

(Seal)

Signature

EXHIBIT "D"

CLEARCOUNSEL LAW GROUP

JONATHAN W. BARLOW*
JORDAN M. FLAKE
JARED R. RICHARDS
MATTHEW M. McARTHUR
ETHAN M. FEATHERSTONE
AMY K. CRIGHTON
CHRISTOPHER M. WOOD
*Also licensed in Utah

June 11, 2014

VIA EMAIL

Jonathan C. Callister
Callister & Frizell
8275 S. Eastern Ave., Ste. 200
Las Vegas, NV 89123

Re: Estate of Leroy G. Black

Dear Jonathan:

Phil Markowitz formally offers to settle all pending issues in both the trust and estate matters on the following terms: your client would receive 60% of all assets of the trust and estate, Phil Markowitz would receive 20% of all such assets, and Rose Markowitz would receive 20% of all such assets. Of course, in order to reach such a settlement, we would need to receive full disclosure from your client regarding all assets that belong to the trust or that have been gathered by the trust, including all income received since the time of Leroy's death and all assets owned by Senior Nevada Benefit Group. There are other issues, such as the insurance claims and potential creditor issues, that would need to be resolved, but if your client is amenable to the structure of this settlement we can work out the finer details.

If settlement is not reached, we will proceed immediately with the following work:

1) Notice of Appeal of Order approving the Report and Recommendation on the trust revocation issue. This will coincide with the continued appellate work related to the will contest issue. Even if your client prevails on the will contest appeal, the result would be to remand the case to probate court to conduct an evidentiary hearing on the will contest. I would anticipate that the Supreme Court will be very interested in the legal issues presented in both appeals and that, therefore, we would be about two years away from any decision on the appeals. An evidentiary hearing would not occur any sooner than 9-12 months after that decision. In short, it would likely be 3-5 years before we had any verdict on the actual will contest issue itself.

2) The Estate will be filing a lawsuit against AXA Equitable, Senior Nevada Benefit Group, and William Fink for a refund of the life insurance premium that was wrongfully paid to SNBG. Upon review of the documents related to the AXA policy, particularly the life insurance

policy itself (the "Policy"), it is apparent that AXA wrongfully paid the refund of premium of the Policy to SNBG, rather than to the Estate.

Page 5 of the Policy states that AXA will pay the "Insurance Benefit" to the beneficiary upon the death of the insured person. This provision then defines "Insurance Benefit" as "the death benefit described in the 'Base Policy Death Benefit' provision; plus any other benefits then due from riders to this policy ...." The "Base Policy Death Benefit" provision (set forth on Page 6 of the Policy) states that the death benefit is "the greater of (a) the base policy face amount; or (b) a percentage of the amount in your Policy Account on the date of death of the insured person." As such, pursuant to the plain terms of the Policy, the "Insurance Benefit" includes only the base policy face amount, any benefits due from riders, or a percentage of the amount in the Policy Account, and nothing more.

On the other hand, page 18 of the Policy describes AXA's policy for the refund of premiums paid upon the suicide of the insured person. This provision states that the sum paid in the event of suicide is equal to the premiums paid, minus any loans or partial withdrawals of the cash value of the policy. This provision clearly does not define the refund of premiums paid as a death benefit, nor does it define the refund of premiums paid as an "Insurance Benefit". Furthermore, the definition of "Insurance Benefit," as noted above, clearly does not include the refund of premiums paid.

Because the refund of premiums paid is not an "Insurance Benefit" as defined under the Policy, and because the Policy provides that the beneficiary of the Policy is entitled to *only* the "Insurance Benefit," the Estate is entitled to payment of the refund of the premium. The Estate will bring a claim against SNBG and Mr. Fink individually for unjust enrichment, and I assume that AXA would also bring a third party claim against SNBG for indemnity against the Estate's claim of breach of contract against AXA.

3) We anticipate that Steinberg Equity Partners will likely file suit to prove its Creditor Claim, which the Estate has rejected. If so, the Estate will bring a third party claim against SNBG and Mr. Fink for indemnity against such a claim.

4) Motion for Sanctions against Mr. Fink for his instruction to you to prepare the terms and conditions of your January 10, 2014, letter to the witnesses to the will. This Motion will also include a motion to disqualify your firm from further representation of Mr. Fink, the trust, and SNBG as a result of the letter.

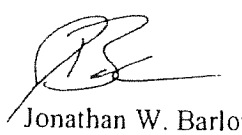
5) We anticipate litigation related to the lis pendens issue that you raised by way of your May 27, 2014, letter. We disagree with the contention that the lis pendens are inappropriate.

6) The Estate intends to pursue its claim for losses incurred due to the loss of personal property at the Rancho Circle property and the Becke property. If it is determined that Mr. Fink, the trust, or SNBG wrongfully obtained any insurance proceeds from any claims on the homeowners insurance policies, the Estate will pursue recovery of those amounts from whomever received the proceeds.

We both know that the expense to continue all of these litigation matters will be enormous, easily exceeding (and likely far exceeding) $100,000 for both of our clients. I understand your client's feelings toward my client. However, there has to come a point at which the practical aspects of avoiding this level of litigation bring a desire to settle and resolve all issues once and for all. In addition, we have talked conceptually about the possibility of jointly pursuing a reclassification of Leroy's death from a suicide to any other cause of death, which would allow a valid claim to the entire $4,000,000 death benefit. Based on the limited information available, I believe that we could have some success if we were able to work jointly on that issue.

Please respond by no later than June 20, 2014, regarding this offer of settlement. My client has made multiple offers of settlement in the past and has received little if any response from your client. Mr. Fink certainly does not need to settle if he chooses not to do so. However, I would ask the courtesy of a prompt response to this offer so that we do not delay any longer on the list of work described here that I have put off in the hope that we can reach a settlement.

Sincerely,
CLEAR COUNSEL LAW GROUP



Jonathan W. Barlow

EXHIBIT "E"

Last Will and Testament

OF

LEROY BLACK

I, LEROY BLACK, domiciled in and a resident of Clark County, Nevada, declare this to be my Will, and I revoke all other Wills made by me.

I.

DEBTS, FUNERAL EXPENSES AND BURIAL INSTRUCTIONS. I direct that all debts, which may be legally due and owing at the time of my death, excepting those properly secured and those under installment contracts not yet due and payable, and all expenses of my last illness and burial, and all costs and expenses in connection with the administration and distribution of my Estate, be paid before any distribution after my death. I do hereby designate my Executor to order the burial of my human remains upon my death. I instruct my Executor to utilize arrangements I have made with Palm Mortuary for burial in the King David section of their facility.

II.

MY HEIRS. I am not married and I have no children.

III.

DISTRIBUTION OF ESTATE. All of the rest of my Estate wheresoever located, I give, devise and bequeath to the Trustee of the "LEROY G. BLACK 1992 LIVING TRUST" which was originally established on August 21, 1992, and thereafter totally amended and restated on October 27, 2009, to be held in Trust on the terms and conditions set forth therein.

If the above disposition is inoperative in whole or in part, whether because the trust has been revoked, or for any other reason, I leave my probate estate to the persons named, and in the manner provided, in the "LEROY G. BLACK 1992 LIVING TRUST" as it existed immediately prior to its revocation, or if it has not been revoked, as it existed immediately prior to my death.

IV.

PROVISIONS FOR OTHERS. Except as otherwise provided herein, I have intentionally and with full knowledge omitted to provide for my heirs, including any person or persons who may hereafter become my heir or heirs.

V.

NO CONTEST CLAUSE. If any beneficiary under this Will, in any manner, directly or indirectly, contests or attacks this Will or any of its provisions, any share or interest in my Estate given to that contesting beneficiary under this Will is revoked and shall be disposed of in the same manner provided herein as if that contesting beneficiary had predeceased me.

VI.

APPOINTMENT OF EXECUTOR. I name JEFFREY BURR, LTD., a Nevada corporation to serve as Executor of my Will, to serve without bond or other security being required of it. If JEFFREY BURR, LTD. is unable or unwilling to serve as Executor of my Will, KAUFMAN, KAUFMAN & ASSOCIATES, P.C., a Nevada professional corporation, shall serve as Successor Executor of my Will. I wish all Executors hereunder to serve without bond or other security being required of them.

JEFFREY BURR, LTD., a Nevada corporation, shall serve as Executor hereunder and I direct that JEFFREY BURR, LTD. may also serve as legal counsel to my Estate. I waive any conflict of interest which may exist if JEFFREY BURR, LTD. serves as Executor and as legal counsel to my Estate. I further directs that JEFFREY BURR, LTD. shall be entitled to reasonable compensation for all services provided to my Estate in whatever capacity it may serve.

VII.

SPECIAL INSTRUCTIONS AND POWERS OF MY EXECUTOR. Except as otherwise specifically provided, my Executor shall have all powers now or hereafter conferred by applicable State law, and also all powers appropriate to the orderly and effective administration of the Estate. In addition, the Executor shall have the following powers and discretion, in each case to be exercisable without Court order:

A. To sell (for cash or on credit), exchange, purchase and retain assets, to improve, alter, lease (even extending beyond the period of administration), partition and otherwise deal with and manage property, and to invest and reinvest in preferred or common stock, bonds, mortgages, investment company shares, money market and mutual (including index) funds, common trust funds maintained by the fiduciary, and any other property, real or personal, foreign or domestic.

B. To receive additional property from any source, and to acquire or hold properties jointly or in undivided interests with other persons or entities, including beneficiaries of this Will and the Estates of and Trusts established by any of these beneficiaries; and properties may be purchased from, sold to or exchanged with, and funds may be borrowed from or loaned to, any such beneficiaries, Trusts and Estates on fair and equitable terms appropriate to the Executor's fiduciary responsibilities.

C. To enter, continue or participate in the operation of any business or other enterprise, including as a sole proprietor, as a general or limited partner or as a shareholder, and to incorporate, liquidate, reorganize or otherwise change the form or terminate the operation of the business or enterprise, and to contribute capital or loan money to the business or enterprise.

D. To acquire, exercise, grant or dispose of options, puts, calls, privileges or rights with respect to securities and other property including but not limited to rights to vote, grant proxies, subscribe, convert or assent to or participate in compromises, releases, renewals or extensions, modifications, reorganizations, recapitalization, consolidations, liquidations and the like, and to abandon or otherwise deal with any property or interests in any manner deemed to be in the best interests of the Estate.

E. To borrow funds, guarantee or indemnify in the name of the Estate and to secure any such obligation by mortgage pledge or other encumbrance or security interest, including for a term extending beyond the period of administration, and to renew, extend or modify any such obligation; such obligations may be entered into without personal liability of the Executor and lenders shall have no duty to see to the application of the proceeds.

F. To enter into a lease, pooling or other arrangement for exploration, conservation, development, and removal of minerals and other natural resources.

G. To prosecute, defend, contest, or otherwise litigate legal actions or other proceedings for the protection or benefit of the Estate; to pay, compromise, release, adjust or submit to arbitration any debt, claim or controversy; and to insure the Estate against any risk, and the Executor against liability with respect to third persons.

H. To employ and compensate (from the Estate) accountants, lawyers, investment and tax advisors, agents and others to aid or assist in the management, administration and protection of the Estate.

I. To hold property in the name of a nominee, or unregistered or without disclosure of fiduciary capacity, or in a manner that will allow title to pass by delivery or will otherwise facilitate proper administration.

J. To account for and allocate receipts or expenditures to income or principal and to establish reserves out of income, all as provided by law or in the fiduciary's reasonable discretion to the extent the law is unclear.

K. To make divisions, allocations or distributions in cash or in kind, including in undivided interests, by prorate and nonprorate division, or in any combination of these ways (with no obligation to take account of the tax basis of the assets) in the discretion of the Executor.

VIII.

NOMINATION OF GUARDIAN. If at any time it becomes necessary to appoint a guardian of my person, I hereby nominate GLENN F. ROBERTSON as such guardian. If for any reason it becomes necessary to appoint a substitute guardian, then I nominate WILLIAM FINK as substitute guardian. My guardian shall serve in such capacity without bond or, if a bond be required, I request that such bond be set as low as possible. I hereby revoke all prior guardianship nominations that I have made.

IN WITNESS WHEREOF, I have hereunto set my hand October 27, 2009.

LEROY BLACK

Under penalty of perjury pursuant to the law of the State of Nevada, the undersigned JASON WALKER and Sandra A. Simpson declare that the following is true of their own knowledge: That they witnessed the execution of the foregoing Last Will and Testament of the Testator; that the Testator subscribed the Will and declared it to be his Last Will and Testament in their presence; that they thereafter subscribed the Will as witnesses in the presence of the Testator and in the presence of each other and at the request of the Testator; and that the Testator at the time

of the execution of his Will appeared to them to be of full age and of sound mind and memory.

Dated this October 27 2009.

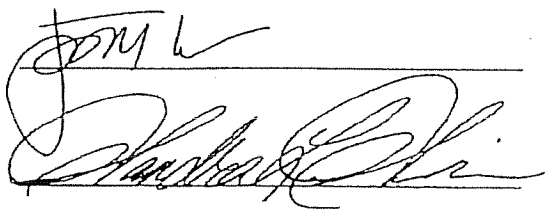


EXHIBIT "F"

ANTONIA'S CERTIFIED HANDWRITING ANALYSIS SERVICE

Antonia Klekoda-Baker C.F.D.E.
LAS VEGAS, NV 89117-23
Phone (702) 256-4479 **Fax(702) 256-4489**
www.experthandwritingnow.com

To: William Fink
1835 East Michelle Street
West Covina, CA 91791

Date: January 22, 2013
Re: HANDWRITING ANALYSIS INVESTIGATION
Subject: Questioned Signature on Will

EXPLICATION:

On January 21, 2013 William Fink hand-delivered to this Examiner a Document bearing the Questioned Signature of Leroy G. Black -- along with assorted documents bearing the Purportedly-Known Signature of Leroy G. Black for the purpose of determining authenticity of the Questioned Signature.

****

The items discussed in this report are described as follows:

QUESTIONED WRITING/DOCUMENTS:

Q-1 -- Copy of Page 4 of the *Last Will of Leroy G. Black* dated March 7, 2012 bearing the Questioned Signature of Leroy G. Black.

KNOWN WRITING/DOCUMENTS:

K-1 -- Partnership page dated August 21, 1992 bearing two Purportedly-Known signatures of Leroy G. Black.

K-2 -- Notarized page from Grantor/Trustee matter dated October 27, 2009 bearing the Purportedly-Known Signature of Leroy G. Black.

K-3 – Actual Notarized Senior Nevada Benefit Group form dated June 22, 2010 bearing the Purportedly-Known Signature of Leroy G. Black.

K-4 – Trustor form dated July 9, 2010 bearing the Purportedly-Known Signature of Leroy G. Black.

K-5 –Facsimile Cover sheet dated July 29, 2010 bearing the Purportedly-Known Signature of Leroy G. Black.

K-6 – Copy of Bank of America check #5451 dated April 22, 2011 bearing the Purportedly-Known Signature of Leroy G. Black.

K-7 – Page 2 from Real Estate Contract Agreement dated June 14, 2011 bearing the Purportedly-Known Signature of Leroy G. Black.

K-8 -- Actual letter from EQUIFAX dated October 28, 2011 bearing the Purportedly-Known Signature of Leroy G. Black.

K-9 – Copy of Dental Invoice dated February 14, 2012 bearing two Purportedly-Known Signatures of Leroy G. Black.

K-10 – Letter regarding tax forms from Conway, Stuart & Woodbury dated March 25, 2012 bearing the Purportedly-Known Signature of Leroy G. Black.

COMMENTS:

In order to establish that a signature, or any writing whatsoever, was written by a particular person, an examination with known genuine signatures and/or writing must show agreement in *all* handwriting characteristics *without unexplainable differences.*

This investigation covers the obvious characteristics such as *letter formations, spacing, slant, and line quality* as well as the less conspicuous characteristics – including, *pressure pattern, proportions, connections, and initial and terminal stroke formations.*

OPINION:

In my opinion, Leroy G. Black did not perform his own Signature on the document identified as the Last Will of Leroy G. Black.

The Questioned and Purportedly-Known Signatures were isolated from the documents on which they appeared and placed on a composite sheet for visual comparison.

It can be noted that the regular penmanship habits of Leroy G. Black which repeatedly appear in his Purportedly-Known Signatures – namely, Specimens K-1 through K-10, inclusively, are absent in the Questioned Signature. There are unexplainable differences in the Questioned Signature on Specimen Q-1 which cannot be found in any of his Purportedly-Known Signatures.

There is illegibility, restricted letter formations, a closed letter and a non-matching "r" and "B" form in the Questioned Signature.

What with so many diversified penmanship presentations, there is no reason to believe that the Questioned Signature on Specimen Q-1 is authentic.

CONCLUSION:

This opinion is qualified by the use of copies wherein described and limited to the items described at the beginning of this report. This opinion is the result of a professional service for which an agreed-upon fee has been rendered. Any further involvement in this matter, with or without subpoena from either side, subjects said officer of the court, and/or client, to additional professional charges according to National Forensic Guidelines .

The person requesting this report carries all responsibilities for any expenses this Handwriting Expert may incur in servicing this case -- for the present, and future, should such become a reality.

Respectfully submitted,
Antonia M. Klekoda-Baker C.F.D.E.
Antonia M. Klekoda-Baker
Certified Forensic Document Examiner
Licensed

EXHIBIT "3"

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CLERK OF THE COURT

OPPO
MICHAEL A. OLSEN, ESQ.
Nevada Bar No. 6076
THOMAS R. GROVER, ESQ.
Nevada Bar No. 12387
GOODSELL & OLSEN, LLP
10155 W. Twain Ave., Suite 100
Las Vegas, NV 89147
Office: (702) 869-6261
Fax: (702) 869-8243
mike@goodsellolsen.com
tom@goodsellolsen.com
JONATHAN C. CALLISTER, ESQ.
Nevada Bar No. 8011
CALLISTER & FRIZELL
8275 S. Eastern Ave., Suite 200
Las Vegas, Nevada 89123
Telephone: (702) 657-6000
Facsimile: (702) 657-0065
jcallister@callisterfrizell.com
Attorneys for William Fink

DISTRICT COURT
CLARK COUNTY, NEVADA

In the Matter of the Estate of:	)	Case No. P-12-074745-E
	)	Dept. No. 26/PC-1
LEROY G. BLACK	)	
	)	
	)	
	)	
Deceased.	)	

WILLIAM FINK'S OPPOSITION TO PHIL MARKOWITZ'S MOTION FOR SANCTIONS AGAINST WILLIAM FINK AND TO DISQUALIFY ATTORNEYS' OF RECORD FOR WILLIAM FINK AND COUNTER MOTION FOR CERTIFICATION TO SET ASIDE JUDGMENT PURSUANT TO NRCP 60(B) FOR FRAUD UPON THIS COURT BY MARKOWITZ

COMES NOW, William Fink (hereafter "Fink") by and through his attorney of record, MICHAEL A. OLSEN, ESQ., of the law firm of GOODSELL & OLSEN, LLP, and hereby files his " Opposition to Phil Markowitz's Motion For Sanctions Against William Fink and to Disqualify Attorneys' of Record for William Fink and Counter Motion for Certification to Set

Aside Judgment Pursuant to NRCP 60(b) for Fraud Upon This Court by Markowitz" (hereafter "Opposition" or "Counter Motion") on the grounds set forth in the Points and Authorities herein, Exhibits attached hereto and any papers or pleadings on file with this Court.

DATED this 21 day of AUGUST, 2014.

MICHAEL A. OLSEN, ESQ.
Nevada Bar No. 6076
THOMAS R. GROVER, ESQ.
Nevada Bar No. 12387
GOODSELL & OLSEN, LLP
10155 W. Twain Ave., Ste. 100
Las Vegas, NV 89147
TEL: (702) 869-6261
Attorneys for Petitioner Emily C. Kardt

GOODSELL & OLSEN
ATTORNEYS AT LAW
10155 W. TWAIN AVE., SUITE 100, LAS VEGAS, NV 89147
(702) 869-6261 TEL - (702) 869-8243 FAX

FACTUAL BACKGROUND

Phil Markowitz' Motion has been brought for two reasons.

First, after a diligent search by Fink, both of the witnesses to the purported March 7, 2012 Will (hereafter "March 2012 Will")[1] were located and stepped forward to provide testimony[2] that they did not actually witness Leroy Black (hereafter "Black" or "Decedent") execute the Will Markowitz lodged and petitioned to probate in this Court. This testimony now confirms what was obvious on the surface all along - the March 2012 Will is a forgery concocted by Markowitz in an attempt to set aside the trust and illegally seize the assets of the Decedent's Estate and

[1] **Exhibit "A".**

[2] Affidavit of David Everston, **Exhibit "B"**; Affidavit of Maria Onofre, **Exhibit "C"**.

Trust. Markowitz' Motion is a feeble attempt to deflect this Court's attention from his fraud which has now been exposed and laid bare.

Second, Markowitz' Motion is brought in retaliation for Fink's refusal to accept a June 11, 2014 settlement offer. Markowitz threatened, through counsel, on June 11, 2014 to bring his motion now before this Court seeking sanctions and disqualification of counsel if Fink did not accept Markowitz' demand for 40% of the Estate and Trust assets for Markowitz and his mother, Rose Markowitz.[3]

Fink has been the sole beneficiary of the Black Trust, of which Leroy G. Black (hereafter "Decedent"), was the trustor, since August 1992, over twenty years. A pour-over will, gifting remaining assets of the estate to the trust, was executed by Black at the time of the execution of the Amendment to his trust.[4] Fink was also the beneficiary of Black's prior wills. All of Black's prior estate planning was performed under the careful guidance of estate planning attorneys', more specifically Jeffrey Burr & Associates. The forged March 2012 Will[5] Markowitz has presented to this Court was not drafted by Jeffrey Burr LTD nor was anyone at that firm informed of its existence. In fact, to date, Markowitz has refused to reveal the identity of the drafter of the March 2012 Will.

The March 2012 Will suspiciously appeared **after** Black's death, gifting Black's **entire probate** Estate to Rose and Phillip Markowitz, individuals with whom Black had no long-term relationship, and with whom Black only had limited interaction immediately prior to his death. **The new will was clearly prepared by the Executor,** Phil Markowitz, or at a minimum at his

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[3] Letter from Jonathan Barlow, Esq. to Jonathan Callister, June 11, 2014, **Exhibit "D".**

[4] **Exhibit "E"**.

[5] **Exhibit "A"**.

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direction. The March 2012 Will was purportedly witnessed by two individuals, David Everston (hereafter "Everston") and Maria Onofre (hereafter "Onofre"), who were complete strangers to Black and Fink. According to the signatures on the document, these two perfect strangers residing in California were allegedly summoned by Leroy Black to Las Vegas to witness the execution of the March 2012 Will. Anticipating a will contest, Fink retained an expert to evaluate Black's alleged signature on the March 2012 Will. The expert has concluded that the signature on the March 2012 Will is a forgery.[6] **To this date, the purported signature of Leroy Black on the March 2012 Will has never been authenticated.**

On August 31, 2012, the March 2012 Will was submitted to probate by Markowitz. On November 27, 2012, Fink, through Douglas Gardner, his attorney at that time, filed an objection to the admission of the March 2012 Will, thereby initiating a will contest. However, Fink's attorney was mistaken in his reading of the after-probate will contest statute causing him to miss the statutory time period to issue citations. Upon discovery of the mistake, citations were issued immediately and Fink sought new counsel.

Initially, the Probate Commissioner found excusable neglect in the timing of the issuance of citations. However, Markowitz appealed the Commissioner's Report and Recommendation. This Court ruled that the timing of the citations barred Fink's ability to object to the probate of the March 2012 Will. **Importantly, the March 2012 Will has proceeded in probate not because the Court made a finding that the signature or the document was authentic, but on a procedural technicality. That procedural technicality has given Markowitz unintended cover for his fraud upon this Court, now exposed by the testimony of Onofre and Everston.**

[6] "Handwriting Analysis Investigation" **Exhibit "F"**.

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Fink and his counsel experienced extraordinary difficulty locating the individuals who purported to witness the March 2012 Will. On January 10, 2014 counsel for Fink, Jonathan Callister, sent a letter to Everston and Onofre to seek their testimony as to the validity of the March 2102 Will. The letter addressed to Onofre was returned, undeliverable.[7] The January 10 Letter notes that there is substantial evidence that the March 2012 Will is a forgery orchestrated by Markowitz, including, "a handwriting expert [who will] attest that the signature is a forgery," as well as discussion of Black's call to his estate planning attorney at Jeffrey Burr LTD, just four days prior to his death, wherein he discussed changes to his will and estate planning.[8] This of course begs the question why Black would call his estate planning counsel for help if he recently decided to take his estate planning into his own hands by drafting the March 2012 Will.

I. AFFIDAVIT OF WITNESS OF MARCH 2012 WILL: DAVID EVERSTON

Importantly, the January 10 Letter repeatedly emphasizes that the purpose for which Everston was sought was to provide "honest testimony." At no point does the January 10 Letter instruct any witness what to say. The clear intent of the January 10 Letter, while not artfully drafted, was to obtain truthful testimony about the fraudulent circumstances surrounding the witnessing of the March 2012 Will.

David Everston, who was living in Costa Rica at the time, received the January 10 Letter in the first week of February.[9] He was initially concerned that the January 10 Letter may be a bribe, so he called Fink's counsel because Everston, "wanted [Callister] to explain to [Everston]

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[7] Returned letters addressed to Maria Onofre, **Exhibit "G"**; Affidavit of Jonathan Callister, Esq., **Exhibit "H"**.

[8] Letter from Jonathan Callister, Esq. to David Everston, January 10, 2014, **Exhibit "I"**.

[9] Affidavit of David Everston, February 19, 2014, **Exhibit "B"**.

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what exactly the letter was regarding."[10] Callister responded that he and Fink "were looking for the truth and not looking to compensate anyone to be untruthful or to feel like they needed to be untruthful."[11] "Upon a subsequent phone call, Jonathan Callister explained that the letter was sent in an effort to find the truth about a Will of Leroy Black that was currently in dispute."[12] Even more, Everston testified that he, "asked about the money referenced in [Callister's] letter to [Everston]. [Callister] made it clear that he would not pay me for my testimony and that the only money that could be paid would be for traveling expenses."[13]

Subsequently, Callister made it absolutely clear to Everston that no money would be exchanged in favor of testimony. On February 19, 2014 Callister told Everston that the objective of the January 10, 2014 letter was not to influence testimony, but to simply obtain Everston's cooperation. "The intent was to motivate you to meet with us and if any testimony were untrue to have the truth come out." Callister conceded that the January 10 letter

> was perhaps poorly worded and could have been interpreted that we would seek to punish someone for telling the truth or pay them for changing the truth. That is not what was intended. We would not seek to punish anyone for telling the truth nor pay someone to lie. To the extent any communication implied that this was the case, it is hereby revoked, and I express my deepest apologies for any confusion. Our sole desire is that the actual truth be told and would only want you to tell the truth.[14]

Everston came to Las Vegas on or about February 19, 2014 and executed an affidavit wherein he testified that on or about March 7, 2012,

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[10] Id.

[11] Id.

[12] Id.

[13] Id.

[14] Email from Jonathan Callister, Esq. to David Everston, February 19, 2014, **Exhibit "J"**.

> there was a table that had various documents set about on it which I assumed were in relation to money being lent to Leroy. I was asked to sign only a single document. It was the [March 2012 Will] which states that I was 'witnessing the signing of this instrument of Leroy Black.' Nowhere did the document reference that it had anything to do with being a Will. It was never stated that the document was the Last Will and Testament of Leroy Black and I never witnessed Leroy actually signing that document.[15]

Everston further testified that he was not threatened in any way by Callister & Frizell and that, "the only thing which Callister & Frizell has paid on my behalf have been airline tickets to and from Los Angeles from Costa Rica, hotel accomodations, and related travel and food expenses."[16] While in Las Vegas, Everston indicated to Fink's counsel that he had given a copy of the January 10 letter to counsel for Markowitz, Jonathan Barlow.[17]

II. AFFIDAVIT OF WITNESS OF MARCH 2012 WILL: MARIA ONOFRE

William F. Martin (hereafter "Martin"), private investigator and retired Los Angeles Police Department officer, met with Maria Onofre on or about August 2, 2014.[18] At that meeting, Onofre was represented by her own counsel. Martin witnessed[19] Onofre sign an affidavit wherein she testified under oath as follows:

> I declare that I did not witness the execution of the Last Will and Testament (the "Will") of Leroy G. Black dated on March 7, 2012 and which is attached hereto as Exhibit A.
>
> I declare that I have never met, spoken with nor had any dealings with Leroy G. Black.
>
> I declare that I was not present during the signing of the Will by Leroy G. Black.[20]

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[15] Affidavit of David Everston, February 19, 2014, **Exhibit "B"**.

[16] Affidavit of David Everston, February 19, 2014, **Exhibit "B"**.

[17] Affidavit of Jonathan Callister, Esq., **Exhibit "H"**.

[18] Affidavit of William F. Martin, August 4, 2014, **Exhibit "K"**.

[19] Affidavit of William F. Martin, August 4, 2014, **Exhibit "K"**.

[20] Affidavit of Maria Onofre, August 2, 2014, **Exhibit "C"**.

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Martin testified under oath that Onofre was not compensated in any way for her testimony.[21] Onofre further testified that when she signed as a witness to the March 2012 Will, she did so without understanding what she was signing.[22] Martin testified that Onofre said that, "she signed the Will and Statement of Witness on the insistence of her then boy-friend, who was identified as David Everston," and that Onofre, "was busy working as an accountant at the time and did not review the aforementioned documents prior to her signature."[23]

On June 11, 2014, approximately four months after becoming aware of the January 10 Letter to Everston, counsel for Markowitz sent Fink's counsel a letter offering to settle the dispute over the Estate and Trust, "on the following terms: [William Fink] would receive 60% of all assets of the trust and estate, Phil Markowitz would receive 20% of all such assets, and Rose Markowitz would receive 20% of all such assets."[24] This offer came after this Court had quite properly ruled that the March 2012 Will did not revoke the Trust thereby eliminating any potential claim to Trust assets by Markowitz. Markowitz' counsel threatened that if Fink rejected the offer, Markowitz would retaliate by bringing the Motion now before this Court. "If settlement is not reached, we will proceed immediately... [with a] Motion for Sanctions against Mr. Fink for his instruction to you to prepare the terms and conditions of the January 10, 2014, letter to the witnesses of the will. This Motion will also include a motion to disqualify your firm

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[21] Affidavit of William F. Martin, August 4, 2014, **Exhibit "K"**.

[22] Affidavit of Maria Onofre, August 2, 2014, **Exhibit "C"**.

[23] Affidavit of William F. Martin, August 4, 2014, **Exhibit "K"**.

[24] Letter from Jonathan W. Barlow, Esq. to Jonathan Callister, Esq., June 11, 2014, **Exhibit "D"**.

from further representation of Mr. Fink, the trust, and SNBG as a result of the letter."[25] Markowitz' counsel, in the same letter, threatened to escalate the attorneys' fees in this matter to "easily [exceed] (and likely far exceeding) $100,000 for both clients," and to drag the litigation on for another "3-5 years" if the offer to settle was not accepted.

William Fink rejected the offer because, as shown below, there is overwhelming, conclusive, corroborating evidence that Phil Markowitz engaged in fraud upon this Court when he petitioned this Court to probate a will he fraudulently forged, which he knew Leroy Black had not signed, and David Everston and Maria Onofre had not witnessed. Markowitz knows that the "witnesses" to the March 2012 Will have been found. Markowitz knows what this Court now knows - that the witnesses testimony is damning to Markowitz not only in this matter, but also in potential criminal proceedings. Markowitz' brings his Motion before this Court as a desperate act of retaliation against Fink for rejecting his last ditch effort to extract at least something from the Estate before Markowitz' fraud was laid bare before this Court.

LEGAL ARGUMENT

I. MARKOWITZ' MOTION WAS NOT BROUGHT WITHIN A "REASONABLE TIME" AND IS THEREFORE TIME-BARRED BY NRCP 60(B)

Markowitz seeks to set aside the May 29, 2014 Order which denied Markowitz attempt to use the March 2012 Will to revoke the Trust, even though the May 29, 2014 Order is on appeal. Markowitz seeks the following relief: "...the Court should enter terminating sanctions against Fink by striking all of Fink's pleadings, motions, and papers filed in this matter and entering

[25] Id.

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summary judgment in favor of Markowitz regarding the trust revocation Petition."[26] Put in simple terms, Markowitz seeks to set aside the May 29, 2014 Order.

Though Markowitz' Motion never cites to the appropriate rule, petitions/motions to set aside an order or judgment are governed by NRCP 60(b). Under NRCP 60(b), a motion to modify or seek relief of an Order of the District Court, "shall be made **within a reasonable time**, and for reasons (1), (2), and (3) [**misconduct of an adverse party**] not more than 6 months after the proceeding was taken or the date that written notice of entry of the judgment or order was served." (Emphasis added).

In Union Petrochemical Corp. v. Scott, 96 Nev. 337, 339 (Nev. 1980), the Appellant/Defendant, Union, sought to set aside a default judgment within the six month window proscribed by Rule 60(b). The District Court denied Union's motion to set aside default judgment, finding that Union's motion was not brought within a "reasonable time." Union appealed, arguing that it's motion to set aside was timely because it was made within six months, a fact not in dispute on appeal. The Nevada Supreme Court affirmed the District Court, ruling against Union, finding that the six-month time bar in Rule 60(b) "represents the extreme limit of reasonableness."[27] Further, "... **want of diligence in seeking to set aside a judgment is ground enough for denial of such a motion**."[28] The Union court explained that

> [t]o condone the actions of a party who has sat on its rights only to make a last-minute rush to set aside judgment would be to turn NRCP 60(b) into a device for delay rather than the means for relief from an oppressive judgment that it was intended to be.[29]

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[26] Markowitz' Motion, at pg. 15:14-16.

[27] Union Petrochemical Corp. v. Scott, 96 Nev. 337, 339 (Nev. 1980) adopting Murphy v. Bocchio, 338 A.2d 519, 523 (R.I. 1975).

[28] Union Petrochemical Corp. v. Scott, 96 Nev. 337, 339 (Nev. 1980) (Emphasis added).

[29] Union Petrochemical Corp. v. Scott, 96 Nev. 337, 339 (Nev. 1980).

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(702) 869-6261 TEL - (702) 869-8243 FAX

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Similarly, Markowitz' Motion has been brought some **eight full months** after the January 10, 2014 letter. By early February, at the latest, counsel for Markowitz was aware of the January 10 Letter because Everston had provided him a copy.[30] The Report and Recommendation upon which the May 29, 2014 Order is based was filed with the District Court on **November 14, 2013**. Why has Markowitz waited until **August 4, 2014** to raise issues surrounding the **January 10, 2014** letter? Markowitz could have immediately sought reconsideration with the District Court, prior to filing appeal, but he did not. Markowitz could also have brought a separate motion to set aside under Rule 60(b) prior to filing his appeal, but he did not. Instead, he sat on his hands, doing nothing. Markowitz was only motivated to file his motion once Everston and Onofre were located and provided damning testimony, after Markowitz had already filed an appeal to the Nevada Supreme Court. Knowing that his house of cards was about to collapse, Markowitz filed the instant motion (1) as a pre-emptive red-herring, hoping to distract this Court from his fraud; and (2) in retaliation for not accepting his demand for settlement, described in detail above.

If Markowitz, who has perpetuated a fraud upon this Court and a forgery in this matter, is so concerned about the effect of the January 10 Letter on "the fair administration of justice"[31] and "abusive litigation tactics that cause derision and obloquy on the judicial system"[32] then why did he wait **eight months** to seek redress from this Court?

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[30] Affidavit of Jonathan Callister, Esq., **Exhibit "H"**.

[31] Markowitz' Motion, at pg. 2:17.

[32] Markowitz' Motion, at pg. 2:21.

Given the unflinching fraud perpetrated by Markowitz upon this Court, Black and Fink, now exposed by the testimony of Everston and Onofre), Markowitz' attempts to cloak himself in the integrity of the judiciary ring hollow. Markowitz' Motion cries crocodile tears of justice, belatedly.

Markowitz **eight month delay** is not "reasonable" within the meaning of Rule 60(b) and epitomizes the "last-minute rush to set aside judgment" denounced and rejected by the Nevada Supreme Court in Union. Accordingly, this Court must deny Markowitz' Motion.

II. THIS COURT LACKS JURISDICTION TO GRANT MARKOWITZ' MOTION AS JURSIDICTION CURRENTLY LIES WITH THE NEVADA SUPREME COURT

Markowitz Motion must be denied because he has not followed the proper procedure to set aside an Order/Judgment which is pending on appeal.

The Nevada Supreme Court has held that "...a properly filed notice of appeal vests jurisdiction in this court, the district court is divested of jurisdiction to consider any issues that are pending before this court on appeal."[33] However, the Supreme Court of Nevada has

> ...adopted a procedure whereby, if a party to an appeal believes a basis exists to alter, vacate, or otherwise modify or change an order or judgment challenged on appeal after an appeal from that order or judgment has been perfected in this court, the party can seek to have the district court certify its intent to grant the requested relief, and thereafter the party may move this court to remand the matter to the district court for the entry of an order granting the requested relief.[34]

Further,

> In considering such motions, the district court has jurisdiction to direct briefing on the motion, hold a hearing regarding the motion, and enter an order denying the motion, but lacks jurisdiction to enter an order granting such a motion.[35]

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[33] Mack-Manley v. Manley, 122 Nev. 849, 852 (Nev. 2006).

[34] Foster v. Dingwall, 228 P.3d 453, 455 (Nev. 2010) (Foster I).

[35] Foster v. Dingwall, 228 P.3d 453, 455 (Nev. 2010) (Foster I).

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ATTORNEYS AT LAW
10155 W. TWAIN AVE., SUITE 100, LAS VEGAS, NV 89147
(702) 869-6261 TEL - (702) 869-8243 FAX

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10155 W. TWAIN AVE., SUITE 100, LAS VEGAS, NV 89147
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The Nevada Supreme Court went on to explain the procedure in great detail in Foster v. Dingwall, 228 P.3d 453, 455 (Nev. 2010) (Foster I). According to Foster I,

> As for the remand procedure, if the district court is inclined to grant the relief requested, then it may certify its intent to do so. At that point, it would be appropriate for the moving party to file a motion (to which the district court's certification of its intent to grant relief is attached) with this court seeking a remand to the district court for entry of an order granting the requested relief. This court will then consider the request for a remand and determine whether it should be granted or denied. If the district court is not inclined to grant the requested relief, however, then as stated above, the district court may enter an order denying the motion.[36]

Not only does Markowitz' Motion fail to even acknowledge Rule 60(b), the rule which governs the relief Markowitz seeks, but Markowitz has not moved this Court for certification, the process by which a motion is filed to set aside an order/judgment pending appeal. Under Foster I, this Court has no jurisdiction to grant Markowitz' Motion, as jurisdiction lies with the Supreme Court, though this Court has authority to deny Markowitz' Motion outright. If Markowitz wishes to set aside a judgment pending appeal, he must follow the procedure outlined in Foster I while seeking relief under NRCP 60(b). He has not, nor has he even asked for such relief. As such, his Motion **must** be summarily denied.

III. THE RELIEF MARKOWITZ SEEKS IN HIS MOTION IS NOT SUPPORTED BYTHE AUTHORITY HE RELIES UPON

Markowitz cites to three Nevada Supreme Court cases and two criminal statutes in support of his contention that, "The Nevada Supreme Court previously upheld terminating sanctions, which strike pleadings leading to entry of default and default judgment, in response to

[36] Foster v. Dingwall, 228 P.3d 453, 455-456 (Nev. 2010) (Foster I) (internal citations omitted).

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severe abuse litigation practices."[37] The authority cited by Markowitz in no way supports this proposition, as discussed below.

a. Markowitz inappropriately relies upon inapt discovery rules regarding discovery abuses as support for his Motion.

Specifically, the three cases Markowitz cites interpret and apply NRCP 37, which governs sanctions in **discovery**. Markowitz does not even allege **discovery** abuse, thus the cases he cites are inapt. Each of the cases Markowitz cites are discussed below.

i. Foster v. Dingwall, 227 P.3d 1042 (Nev. 2010)(Foster II)[38]

Foster II provides absolutely no authority or guidance as to whether an order or other pleadings or filings should be stricken as a penalty for allegedly bribing a witness (though no bribe even occurred in this matter[39]).

The actual issue in Foster II was whether the District Court erred in striking the pleadings of the Appellant, pursuant to NRCP 37(b)(2)(C), for **abusive discovery practices**, including not showing up to depositions and flagrant disobedience of court orders as to discovery. The Foster II court concluded that striking the pleadings was an appropriate sanction under NRCP 37 because, "appellants' conduct during discovery was repetitive, abusive, and recalcitrant..."[40] Even if Rule 37 were governed the issue now before this Court, which it does not, not even Markowitz argues that the January 10 Letter was **repetitive** or **recalcitrant**. Rather, as discussed above, Callister repeatedly stated he only sought truthful testimony, and later clarified that he

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[37] Markowitz' Motion, at pg. 11:13-14.

[38] Attached as **Exhibit "L"**.

[39] Affidavit of David Everston, **Exhibit "B"**; Affidavit of William Fink, **Exhibit "M"**; Affidavit of Jonathan Callister, Esq., **Exhibit "H"**; Affidavit of Maria Onofre, **Exhibit "C"**; Affidavit of William F. Martin, **Exhibit "K"**.

[40] Foster v. Dingwall, 227 P.3d 1042, 1045 (Nev. 2010)(Foster II).

could not and would not pay for testimony, other than reimbursing travel expenses. Ultimately, no witness was paid for their testimony.[41]

ii. Young v. Johnny Ribeiro Bldg., 106 Nev. 88 (Nev. 1990)[42]

While the sanctioning authority in Young is admittedly more broad than Foster II, Young provides a criteria to assess whether sanctions ought to be issued for alleged abusive litigation practices:

> The factors a court may properly consider include, but are not limited to, the degree of willfulness of the offending party, the extent to which the non-offending party would be prejudiced by a lesser sanction, the severity of the sanction of dismissal relative to the severity of the discovery abuse, whether any evidence has been irreparably lost, the feasibility and fairness of alternative, less severe sanctions, such as an order deeming facts relating to improperly withheld or destroyed evidence to be admitted by the offending party, the policy favoring adjudication on the merits, whether sanctions unfairly operate to penalize a party for the misconduct of his or her attorney, and the need to deter both the parties and future litigants from similar abuses.[43]

Consideration of these factors (hereafter "Young Factors") weigh conclusively in favor of outright denial of Markowitz' Motion. First, there has been no willful act of bribery in this matter, in fact there has been no bribery at all, as established by overwhelming evidence.[44] Callister has been consistent that he only sought truthful testimony and made it clear to Everston, once contacted by him, that he would not be paid for his testimony, except to reimburse him for his travel expenses. Second, Markowitz will not be prejudiced if this Court refuses to issue

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[41] Affidavit of David Everston, **Exhibit "B"**; Affidavit of William Fink, **Exhibit "M"**; Affidavit of Jonathan Callister, Esq., **Exhibit "H"**; Affidavit of Maria Onofre, **Exhibit "C"**; Affidavit of William F. Martin, **Exhibit "K"**.

[42] Attached as **Exhibit "N"**.

[43] Young v. Johnny Ribeiro Bldg., 106 Nev. 88, 93 (Nev. 1990).

[44] Affidavit of David Everston, **Exhibit "B"**; Affidavit of William Fink, **Exhibit "M"**; Affidavit of Jonathan Callister, Esq., **Exhibit "H"**; Affidavit of Maria Onofre, **Exhibit "G"**; Affidavit of William F. Martin, **Exhibit "K"**.

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10155 W. TWAIN AVE., SUITE 100, LAS VEGAS, NV 89147
(702) 869-6261 TEL - (702) 869-8243 FAX

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10155 W. TWAIN AVE., SUITE 100, LAS VEGAS, NV 89147
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sanctions. This is not only because there was no bribe, but more importantly, it's impossible for Markowitz to be prejudiced as he has committed an unflinching fraud upon this Court by submitting a fraudulent and forged will to probate. Third, there was no bribe here, and in fact, a substantial effort to clarify that there would be no bribe. Therefore "terminating sanctions" are disproportionate. Fourth, no evidence has been lost, nor does Markowitz allege as much. Fifth, to the extent that the January 10 Letter was poorly worded, Fink and Callister recognize as much and therefore "terminating sanctions" or lesser sanctions serve no purpose. Sixth, this matter ought to be adjudicated on its merits, especially now that Markowitz' fraud upon the Court has come to light. Seventh, it would be unfair to Fink to terminate his rights as a sanction for a letter that his attorney penned. Eighth, there is no reason to believe that Callister or Fink have or ever will bribe a witness in this matter. Each and every one of the Young Factors weigh in against any kind of sanction, much less "terminating sanctions" against Fink. Accordingly, this Court should deny Markowitz' Motion.

iii. Bahena v. Goodyear Tire & Rubber Co., 235 P.3d 592 (Nev. 2010)[45]

In Bahena, Goodyear was sanctioned pursuant to NRCP 37 for completely disregarding a Discovery Commissioner order to produce a person most knowledgeable for deposition by a certain date. Additionally, the Discovery Commissioner ordered Goodyear to cure insufficient responses to written discovery. The deadline given by the Discovery Commissioner passed without compliance by Goodyear. Bahena moved to strike Goodyear's pleadings pursuant to NRCP 37. The District Court applied the Young Factors, noted above, striking Goodyear's Answer as to liability, but not damages. On appeal, the Supreme Court affirmed the District Court.

[45] **Exhibit "CC"**.

Like Foster II, the authority upon which sanctions were issued in Bahena was NRCP 37, which is absolutely not applicable to any issue or question raised in Markowitz' Motion. Even if NRCP 37 were applicable, which it is not, in Bahena, Goodyear flagrantly ignored an order from the Court (Discovery Commissioner), whereas in this matter no Court orders have been disregarded. Even more, the delays caused by Goodyear's noncompliance were especially egregious given that Goodyear's noncompliance essentially made it impossible to proceed with the scheduled trial date:

> The district court stated that the repeated discovery delays attributed to Goodyear were such that continuing the trial date to allow discovery to be completed was not the appropriate remedy for Bahena since the prejudice was extreme and inappropriate. The district court noted that the Bahena plaintiffs included a 14-year-old who had been in a persistent vegetative state for the past two years together with the estates of three dead plaintiffs.[46]

Even if Markowitz' allegations of bribery were true, which they are not, and even if NRCP 37 were applicable, which it is not, Markowitz cannot point to prejudice in this matter that is equivalent or proportional to the misconduct in Bahena. Even in Bahena, the Court didn't strike Goodyear's Answer in its entirety, but only as to liability itself, not damages. In short, there is absolutely no authority in Bahena which supports the relief that Markowitz seeks from this Court.

b. Markowitz inappropriately relies upon inapt criminal statutes which have absolutely nothing to do with striking pleadings in a civil matter.

Similar to his attempt to inaptly invoke NRCP 37, Markowitz invokes criminal statutes which in no way address civil sanctions. Even more important, the criminal statutes cited by Markowitz were not violated in this matter.

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[46] Bahena v. Goodyear Tire & Rubber Co., 235 P.3d 592, 595-596 (Nev. 2010).

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Markowitz alleges that Fink and Callister have violated NRS 199.240, which prohibits bribing a witness. However, in this matter, Callister made it clear to Everston, when he initially made contact, that he would not be compensated for his testimony, and, more importantly, that Callister only sought the truth. Further, the Nevada Supreme Court has held that

> NRS 199.240 requires an agreement or understanding between the giver of the bribe and the receiver. If the giver makes an offer and he reasonably believes that the receiver has accepted, then there is an "understanding" between the parties.[47]

Markowitz provides no evidence that (1) Callister sought to "influence" Markowitz' testimony; and, most importantly (2) that Everston ever accepted a bribe. In fact, the evidence is conclusive that Everston was confused by the January 10 letter, and upon inquiry was told explicitly by Callister that Everston could not be compensated for his testimony. Thus, Markowitz' claims of criminal liability fail on two counts. First, there was no attempt to influence. Second, even if there had been an attempt to influence, which there was not, there was no acceptance of a bribe by Everston. This is another example of Markowitz desperately attempting to distract this Court now that his fraud has been laid bare by the two individuals he used as phony witnesses to his forged will.

Markowitz also makes a misplaced attempt to apply NRS 205.320 to the January 10 Letter. According to Markowitz, "Fink threatened the witnesses in order to gain money or property or to compel them to make a writing affecting a pending legal matter."[48]

Aside from the fact that nowhere in NRS 205.320 is there authority for sanctions in a civil matter, this is a nonsensical argument in direct conflict with Nevada Supreme Court case

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[47] Fox v. Sheriff, Clark County, 86 Nev. 21, 22 (Nev. 1970).

[48] Markowitz Motion, at pg. 9:8-9.

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law. The cases interpreting NRS 205.320 overwhelmingly contemplate extortion where one party, through a threat, extracts money from the threatened party.

Under NRS 205.320, a person is only guilty of extortion if he engages in one of the following four acts: (1) To accuse any person of a crime; (2) To injure a person or property; (3) To publish or connive at publishing any libel; (4) To expose or impute to any person any deformity or disgrace; or (5) [t]o expose any secret. Recall that under NRS 205.320, there must not only be a threat, but the threat must be made to extort something of value from the victim, or target of the alleged threat, in this case Everston and Onofre.

First, nowhere does the January 10 Letter threaten to accuse Everston or Onofre of a crime if they did not provide money, property or other assets to Fink. In fact, the January 10 Letter doesn't even accuse Markowitz or Onofre of a crime.[49]

Second, at no point in the January 10 Letter are Onofre and Everston threatened with injury, nor does Markowitz allege as much.

Third, at no point does the January 10 Letter threaten libel in an attempt to extort money, property or assets from Everston or Onofre. In fact, the January 10 Letter doesn't threaten libel at all. The Nevada Supreme Court has held that, "a statement must be false to constitute libel under the extortion statute."[50] Markowitz' Motion doesn't allege that any of the statements made about Everston or Onofre in the January 10 Letter are false, thus NRS 205.320(3) is inapplicable to the January 10 Letter.

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[49] The January 10 Letter actually states: "I assure you that if you do not [come forward and provide truthful testimony], [Fink] will spare no expense in pursuing any and all legal claims he may have against each of you in bringing your false testimony to light." There is no crime in threatening to exercise the legal rights one **may** have against another.

[50] Phillips v. State, 121 Nev. 591, 599 (Nev. 2005) (overturned on other grounds).

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Fourth, the January 10 Letter does not threaten to "expose or impute to [Onofre and Everston] any deformity or disgrace" as a means to extract money, property or assets from Onofre or Everston. The Nevada Supreme Court has adopted the following definition of "disgrace" for purposes of NRS 205.320(4):

> The thing held secret must be unknown to the general public, or to some particular part thereof which might be interested in obtaining knowledge of the secret; the secret must concern some matter of fact, relating to things past, present, or future; the secret must affect the threatened person in some way so far unfavorable to the reputation, or to some other interest of the threatened person, **that threatened exposure thereof would be likely to induce him through fear to pay out money or property for the purpose of avoiding the exposure**.[51]

As it turns out, David Everston **does have a history of dishonesty**. A background check on Everston reveals that in addition to a series of unspecified misdemeanors, Everston has several federal tax liens and civil judgments against him.[52] A separate investigation by private investigator William Martin revealed that Everston,

> is a convicted felon in the State of California for violation of 664 187(a) of the penal code (Attempted Murder) and 246 of the penal code (Shooting into an inhabited dwelling or vehicle). He was convicted for said crimes in the Los Angeles Superior Court and sentenced to the state prison. Additionally, he has multiple arrests over several years for lesser crimes.[53]

To the extent that either Everston or Onofre have or have had legal troubles, those are a matter of public record, thus there can be no "disgrace" as to extortion. The January 10 Letter alleges that false addresses were used by the witnesses to the March 2012 Will. As to Onofre, this is also true. A background check, which includes an address history, on Onofre reveals that she has never lived at "20560 Ventura Blvd, Woodland Hills, CA," as the March 2012 Will

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[51] Phillips v. State, 121 Nev. 591, 599 (Nev. 2005) (overturned on other grounds).

[52] BeenVerified.com Report on David Everston, August 20, 2014, **Exhibit "O"**.

[53] Affidavit of William F. Martin, August 21, 2014, Exhibit "BB".

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claims.[54] In reality, that address, 20560 Ventura Blvd, is home to a business, not a residence, called Business Discovery Solutions.[55]

Further, and perhaps most importantly, there was no threat of exposure "likely to induce [Everston or Onofre] through fear to pay out money or property for the purpose of avoiding the exposure."

Fifth, there has been no threat to reveal a secret made to induce payment of money or property. The Nevada Supreme Court has adopted the following definition of "secret":

> The thing held secret must be unknown to the general public, or to some particular part thereof which might be interested in obtaining knowledge of the secret; the secret must concern some matter of fact, relating to things past, present, or future; the secret must affect the threatened person in some way so far unfavorable to the reputation, or to some other interest of the threatened person, that threatened exposure thereof would be likely to induce him through fear to pay out money or property for the purpose of avoiding the exposure.[56]

Again, no threat was made by Fink, or his counsel, to expose a secret held by Onofre or Everston to "induce [them] through fear to pay out money or property for the purpose of avoiding the exposure.

In addition to all of the foregoing analysis, Everston himself testifies that he was not threatened or paid for his testimony: "

There is no question that the January 10 Letter does not constitute extortion within the meaning of NRS 205.320. However, Markowitz June 11, 2014 letter to Fink's counsel most

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[54] BeenVerified.com, Report on Maria Yolanda Onofre, August 20, 2014, **Exhibit "P"**.

[55] Business Discovery Solutions, YellowPages.com, Retrieved August 20, 2014 from http://www.yellowpages.com/woodland-hills-ca/mip/business-discovery-solutions-470835486, **Exhibit "Q"**.

[56] Phillips v. State, 121 Nev. 591, 599 (Nev. 2005) (overturned on other grounds).

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certainly does constitute extortion. In that letter, Markowitz threatened Fink that if Fink did not concede 40% of the assets of the Trust and Estate to Markowitz and his mother, he would bring the instant motion, drag out the litigation for 3-5 years, run litigation costs in excess of $100,000.00, to initiate litigation against Fink personally. Markowitz is the party who has violated NRS 205.320 with his correspondence, not Fink.

Of course, on top of all of that, NRS 205.320 does not provide any kind of a civil remedy. NRS 205.320 provides literally zero legal authority for any of the relief Markowitz seeks, and therefore, as to Markowitz' Motion, it should be entirely disregarded by this Court.

IV. THE ONLY FUNDS PAID TO EVERSTON WERE FUNDS FOR TRAVEL REIMBURSEMENT

Without any evidentiary support whatsoever, Markowitz claims that, "Everston did eventually provide a statement to Fink and did receive compensation, gratuity or a reward for doing so."[57]

In reality, the evidence shows that no money, other than a travel reimbursement, was paid to Everston for his testimony. Callister, Everston and Fink have all testified to as much under oath.[58] Callister made it clear back in February 2014 that, "[w]e would not seek to punish anyone for telling the truth nor pay someone to lie. To the extent any communication implied that this was the case, it is hereby revoked, and I express my deepest apologies for any confusion. Our sole desire is that the actual truth be told and would only want you to tell the

[57] Markowitz Motion, at pg. 9:1-2.

[58] Affidavit of David Everston, **Exhibit "B"**; Affidavit of William Fink, **Exhibit "M"**; Affidavit of Jonathan Callister, Esq., **Exhibit "H".**

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truth."[59] Further, Callister and Everston would later squabble over the meager travel reimbursement.[60]

There is no dispute that Onofre was not paid a penny for her testimony. The only evidence in this matter is conclusive that she was not.[61] Onofre's testimony corroborates the testimony of Callister, Everston, Martin and Fink- that no money was exchanged in this matter for testimony.

V. FINK'S COUNSEL SHOULD NOT BE DISQUALIFIED

a. Callister & Frizell should not be disqualified

Markowitz' request to have Callister & Frizell disqualified has no basis in fact or law and is made purely for tactical advantage.

> The district court must balance the prejudices that will inure to the parties as a result of its decision. Therefore, to prevail on a motion to disqualify opposing counsel for an alleged ethical violation, the moving party must first establish "at least a reasonable possibility that some specifically identifiable impropriety did in fact occur." Id. at 909. Moving counsel must also establish that the likelihood of public suspicion or obloquy outweighs the social interests which will be served by a lawyer's continued participation in a particular case.[62]

First, Markowitz presents literally **zero evidence** that an "impropriety," in this case a bribe, occurred. In fact, the best that Markowitz can do is muster an "upon information and belief" statement without any evidentiary support. "**Upon information and belief**, Everston did

[59] Email from Jonathan Callister, Esq. to David Everston, February 19, 2014, **Exhibit "H"**.

[60] Emails between Jonathan Callister, Esq. and David Everston, **Exhibit "R"**.

[61] Affidavit of Jonathan Callister, Esq, **Exhibit "H"**; Affidavit of Maria Onofre, **Exhibit "C"**.

[62] Cronin v. Eighth Judicial Dist. Court, 105 Nev. 635, 640-641 (Nev. 1989) (internal quotations omitted, overruled on other grounds).

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eventually provide a statement to Fink and did receive compensation, gratuity, or a reward for doing so."[63] In other words, Markowitz' core allegation is **pure speculation**.

Worse, Markowitz pure speculation contradicts the overwhelming evidence that Everston was not paid. First, on February 19, 2014 Callister made it clear to Everston that he would not be paid for his testimony.[64] Second, multiple witnesses testify that neither Everston and/or Onofre were paid for their testimony, including: Jonathan Callister, Esq., William Fink, Maria Onofre, David Everston and retired LAPD Officer William F. Martin.[65]

The relief Markowitz seeks would cause extreme prejudice to Fink. Fink's counsel had intimate knowledge of the complex history, law and facts in this matter. There are two appeals pending before the Supreme Court in this matter. Forcing Fink to find and retain new counsel at this juncture would cause him unnecessary expense and would leave him vulnerable in the period in which new counsel brought themselves up to speed in this matter. No doubt, Markowitz' Motion is brought for tactical advantage, and is another maneuver to avoid having this matter heard and decided on the merits.

Finally, because no bribe was offered, and because no bribe occurred, there is no "obloquy" at issue.

b. There is no legal basis to disqualify Goodsell & Olsen

[63] Markowitz Motion, at pg. 8:23-9:2.

[64] "We would not seek to punish anyone for telling the truth nor pay someone to lie. To the extent any communication implied that this was the case, it is hereby revoked, and I express my deepest apologies for any confusion. Our sole desire is that the actual truth be told and would only want you to tell the truth" Email from Jonathan Callister, Esq. to David Everston, February 19, 2014, **Exhibit "J"**.

[65] Affidavit of Jonathan Callister, **Exhibit "H"**; Affidavit of William Fink, Exhibit **"M"**; Affidavit of Maria Onofre, Exhibit **"C"**; Affidavit of William F. Martin, Exhibit **"K"**.

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ATTORNEYS AT LAW
10155 W. TWAIN AVE., SUITE 100, LAS VEGAS, NV 89147
(702) 869-6261 TEL – (702) 869-8243 FAX

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As to disqualifying Goodsell & Olsen, Markowitz' offers nothing more than **pure speculation** that the firm had any knowledge or involvement in the January 10 Letter, when, in fact, the firm did **not**! Goodsell & Olsen was retained in this matter for the purpose of defending Leroy Black's Trust and to handle the issue of whether the March 2012 Will revoked the Black Trust. Neither attorney from Goodsell & Olsen, Michael A. Olsen, Esq. or Thomas R. Grover, Esq. were aware of the January 10 Letter until long after it had been sent. Neither Olsen nor Grover had any involvement, in any way, in locating the witnesses to the March 2012 Will or obtaining the affidavits of those witnesses. Goodsell & Olsen certainly played no role in conceiving or drafting the January 10 Letter. Therefore, in addition to the reasons stated above, there is absolutely zero basis upon which Goodsell & Olsen should be disqualified from representing William Fink in this matter.[66]

COUNTER MOTION FOR CERTIFICATION TO SET ASIDE JUDGMENT PURSUANT TO NRCP 60(B) FOR FRAUD UPON THIS COURT BY MARKOWITZ

Fink now counter motions this Court for certification to set aside the Order Granting Objection to Report and Recommendation (filed August 1, 2013, notice of entry filed August 2, 2013)[67] and all previous orders, rulings and decisions which have already been entered in this matter.

As noted above, when an order or judgment is challenged while on appeal, the moving party must seek certification from the District Court to bring the motion in front of the Supreme Court where jurisdiction resides.[68]

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[66] Affidavit of Thomas R. Grover, Esq., Exhibit **"S"**; Affidavit of Michael A. Olsen, Esq., Exhibit **"T"**.

[67] **Exhibit "U"**.

[68] Foster v. Dingwall, 228 P.3d 453, 455 (Nev. 2010) (Foster I).

NRCP 60(b) allows this Court to set aside an order or judgment for fraud or misconduct of a party, among other reasons. While normally such motions must be brought within a "reasonable time" no later than six months, described above, Rule 60(b), "does not limit the power of a court to entertain an independent action to relieve a party from a judgment, order, or proceeding, or to set aside a judgment for fraud upon the court." "The purpose of this part of the rule is to afford relief upon proof of extrinsic fraud, and the normal six month limitation of Rule 60(b) has no application."[69] Extrinsic fraud includes, "fraud by the other party to the suit which prevents the losing party either from knowing about his rights or defenses, or from having a fair opportunity of presenting them upon the trial."[70] Under federal case law, a party moving to set aside an order or judgment under Rule 60 for fraud upon the court must, "show an unconscionable plan or scheme which is designed to improperly influence the court in its decision."[71]

Here, the evidence is overwhelming that Markowitz created a forged will had it fraudulently witnessed and lodged it with the clerk of this Court, and then, with the assistance of counsel, petitioned this Court to probate the fraudulent document. This was part of Markowitz' scheme to hijack Black's estate by deceiving the Court with a fraudulent will.

First, both purported witnesses to the March 2012 Will have now come forward to provide sworn testimony that they did not, in fact, witness Leroy Black sign a will. Onofre, acting with assistance of counsel, testifies that she, "did not witness the execution of the Last

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[69] Savage v. Salzmann, 88 Nev. 193, 195 (Nev. 1972).

[70] Murphy v. Murphy, 65 Nev. 264, 271 (Nev. 1948).

[71] England v. Doyle, 281 F.2d 304, 309 (9th Cir. Cal. 1960).

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Will and Testament of Leroy G. Black dated on March 7, 2012."[72] Similarly, Everston testifies that he did "not specifically recall ever signing" the March 2012 Will.[73] Further, Onofre testifies that she had, "never met, spoken with nor had any dealings with Leroy G. Black."[74]

Second, consistent with the testimony of Everston and Onofre, in January 2013 a handwriting expert, Antonia Klekoda-Baker, upon examining the March 2012 Will and other known signatures of Leroy Black, noted that, "the regular penmanship habits of Leroy G. Black which repeatedly appear in his Purportedly-Known signatures...are absent in the [signature on the March 2012 Will]. The handwriting expert concluded that, "there is no reason to believe that [the signature on the March 2012 Will] is authentic." "In my opinion, Leroy G. Black did not perform his own Signature on the document identified as the Last Will of Leroy G. Black." [75]

Third, Black's estate planning attorney, Jason Walker, Esq., "worked with Leroy Black and his mother, Ida Black, for many years, starting in 2008, to update their respective estate planning."[76] Leroy Black had had his estate planning performed and managed by Jeffrey Burr, LTD dating back to 1994. Walker "worked extensively with Leroy to get properties owned by his trust and LP, and to correctly change ownership of the limited partnership to his trust." Throughout their professional relationship, Walker, also a notary public, notarized many documents for Black, and thus was familiar with Black's signature. Having reviewed the

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[72] Affidavit of Maria Onofre, **Exhibit "C"**.

[73] Affidavit of David Everston, **Exhibit "B"**.

[74] Affidavit of Maria Onofre, **Exhibit "C"**.

[75] "Handwriting Analysis Investigation," Antonia Klekoda-Baker, January 22, 2013, **Exhibit "F"**.

[76] Affidavit of Jason C. Walker, Esq., **Exhibit "V"**.

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purported signature of Black on the March 2012 Will, Walker concluded, "the signature on the Will executed on March 7, 2012, seems very suspect and different enough from Leroy's signature on the other documents that I questioned the validity of that Will."[77]

Fourth, The dubious nature of the purported signature on the March 2012 Will is further amplified by the disharmony between the circumstances the March 2012 Will supposedly came into existence and the years of meticulous estate planning performed by the law firm of Jeffrey Burr, LTD, a firm specializing in estate planning. From 1994 through his death, Black utilized the law firm of Jeffrey Burr for careful, thoughtful and comprehensive estate planning.

For example, though Black already had extensive and nuanced estate planning in place in March 2012, strangely, the March 2012 Will makes no specific reference to existing or prior estate planning documents or assets, because the March 2012 Will is a forgery crafted by Markowitz who had no knowledge of Black's existing, extensive estate planning.

The terms of the Black Trust require that, "[u]pon revocation, the Trustee shall deliver the revoked portion of the Trust property to the Trustor."[78] Upon the supposed execution of the March 2012 Will, none of the Black Trust property was retitled into the name of the Trustor, Black.[79] This inaction strongly reinforces what is now obvious- Markowitz forged the March 2012 Will in order to commandeer Black's assets and property.

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[77] Id.

[78] Section 8.2 "Power to Revoke," "The Total Amendment and Restatement of the Leroy G. Black 1992 Living Trust," **Exhibit "W"**.

[79] Parcel Ownership History, APN 139-34-611-043, Clark County Assessor, **Exhibit "X"**; Parcel Ownership History, APN 139-34-611-046, Clark County Assessor, **Exhibit "Y"**; Parcel Ownership History, APN 162-01-103-001, Clark County Assessor, **Exhibit "Z".**

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Black's own conduct during the last days of his life indicates he was completely unaware of the March 2012 Will. "[O]n March 30, 2012, [Black called the law firm of Jeffrey Burr, LTD] and spoke with [Walker's] legal assistant Crystal Meyer to request changes to his nominated Successor Trustee, changes to his financial power of attorney, and a change to the distribution language of his trust," again never mentioning Markowitz.[80] According to Meyer, "[n]one of Leroy's requested changes discussed on March 30, 2012, to his estate planning documents involved adding Phil Markowitz as a Successor Trustee, agent under any power of attorney, nor as beneficiary of Leroy's Will or Trust."[81] Note here, the crucial differences between the dates. The March 2012 Will was purportedly executed on **March 7, 2013**. Some **23 days later**, Black called the law offices of Jeffrey Burr, making requests to his estate planning that **clearly indicate he assumed, believed and intended for the Black Trust to still be valid**. Moreover, on March 30 – 23 days after the March 2012 Will was purportedly executed – **Black was totally silent as to even the existence of Markowitz**, let alone his status as a beneficiary of Black's estate planning. Once again, Black's conduct just prior to his death indicate that he was completely unaware of the March 2012 Will because the March 2012 Will is a forgery.

The newly acquired testimony from Everston and Onofre, harmonized with the existing evidence, creates an avalanche that Markowitz' fraud can no longer withstand. The evidence is clear and convincing - the March 2012 Will is a forgery inartfully concocted by Phil Markotwitz to steal and hijack the assets of the Estate of Leroy Black. Importantly, for the purposes of this Countermotion, the newly acquired testimony of Everston and Onofre now conclusively show that when Markowitz petitioned this Court to probate the will he forged, he committed fraud

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[80] Affidavit of Jason C. Walker, Esq. **Exhibit "V"**; Affidavit of Crystal Meyer, **Exhibit "AA"**.

[81] Affidavit of Crystal Meyer, **Exhibit "AA".**

upon this Court. As such, pursuant to Foster II and Rule 60(b), Fink now moves this Court for certification to petition the Supreme Court to:

1) Set aside the Order Granting Objection to Report and Recommendation (filed August 1, 2013, notice of entry filed August 2, 2013);
2) Set aside and strike the March 2012 Will lodged with the Court on or about June 5, 2012 (W003875); and,
3) Set aside and strike Phil Markowitz' "Petition for Special Letters of Special Administration" filed on or about June 26, 2012.

CONCLUSION

Phil Markowitz has worked diligently to avoid having this matter heard on its merits because he has perpetrated a fraud upon this Court by petitioning this Court to probate a forgery that he created. Markowitz brought his motion as retribution for Fink not accepting Markowitz last, desperate attempt to extract money from Fink and/or the Estate and Trust. Markowitz also hopes that his motion distracts this Court from the devastating testimony of Everston and Onofre, the supposed witnesses of the March 2012 Will, both of whom now admit they never saw Leroy Black sign the March 2012 Will.

That same testimony, from Onofre & Everston, reveals and confirms that Markowitz has, in fact, perpetrated a fraud upon this Court. Accordingly, this Court should certify the Order filed on August 1, 2013; the March 2012 Will lodged on or about June 5, 2012; and Petition for Letters of Special Administration filed on or about June 26, 2012, for the purposes of taking Fink's instant countermotion before the Supreme Court to set aside the aforementioned orders and filings pursuant to NRCP 60(b).

GOODSELL & OLSEN
ATTORNEYS AT LAW
10155 W. TWAIN AVE., SUITE 100, LAS VEGAS, NV 89147
(702) 869-6261 TEL - (702) 869-8243 FAX

BASED UPON THE FOREGOING, William Fink respectfully prays an Order from this Court as to the following relief:

A. Denial of Phil Markowitz' " Motion For Sanctions Against William Fink and to Disqualify Attorneys' of Record for William Fink" in its entirety; and,

B. Certification of this motion to be taken in front of the Nevada Supreme Court for the purposes of setting aside and striking:

   a. The Order Granting Objection to Report and Recommendation (filed August 1, 2013, notice of entry filed August 2, 2013); and,

   b. The March 2012 Will lodged with the Court on or about June 5, 2012 (W003875); and,

   c. Phil Markowitz' "Petition for Special Letters of Special Administration" filed on or about June 26, 2012.

C. For attorneys' fees and costs; and,

D. That such other and further orders be issued by the Court as the Court deems proper.

DATED this 21 day of AUGUST, 2014.

MICHAEL A. OLSEN, ESQ.
Nevada Bar No. 6076
THOMAS R. GROVER, ESQ.
Nevada Bar No. 12387
GOODSELL & OLSEN, LLP
10155 W. Twain Ave., Ste. 100
Las Vegas, NV 89147
TEL: (702) 869-6261
Attorneys for William Fink

GOODSELL & OLSEN
ATTORNEYS AT LAW
10155 W. TWAIN AVE., SUITE 100, LAS VEGAS, NV 89147
(702) 869-6261 TEL - (702) 869-8243 FAX

EXHIBIT "A"

W-12-003875

LAST WILL OF LEROY G. BLACK

I, LEROY G. BLACK, a resident of Clark County, Nevada, declare that this is my will. I hereby revoke any and all of my previous wills and codicils.

ARTICLE ONE
INTRODUCTOY PROVISIONS

1.1. Marital Status. I am not currently married.

1.2. Identification of Living Children. I have no living children.

1.3. Deceased Children. I have no deceased children.

ARTICLE TWO
GIFT OF ENTIRE ESTATE

2.1. Gift of Entire Estate. I give all of my property, both real and personal, as follows: Twenty-five percent (25%) of the total value of my estate at the time of my death to my aunt, ROSE E. MARKOWITZ. The remainder of my estate, Seventy-five percent (75%), shall be given to my cousin, PHILLIP I. MARKOWITZ.

2.2. Beneficiaries Excluded. I, LEROY G. BLACK, specifically direct that no portion of the trust estate ever be used for the benefit of or pass to ZELDA KAMEYER, and/or any of her children, possible heirs or beneficiaries. Other possible heirs or beneficiaries not specifically provided for in this document shall be considered as excluded beneficiaries from my estate and shall not receive any benefit from my estate. The provisions contained in this agreement contain my final decisions in this regard.

ARTICLE THREE
RESIDUARY PROVISIONS

3.1. Disposition of Residue. I give the residue of my estate to the executor of this will, PHILLIP I. MARKOWITZ, as trustee, who shall hold, administer, and distribute the property

under a testamentary trust, the terms of which shall be identical to the terms of this will that are in effect on the date of execution of this will.

ARTICLE FOUR
EXECUTOR

4.1. Nomination of Executor. I nominate PHILLIP I. MARKOWITZ as executor of this will.

4.2. Successor Executor. If PHILLIP I. MARKOWITZ is unable (by reason of death, incapacity, or any other reason) or unwilling to serve as executor, or if at any time the office of executor becomes vacant, by reason of death, incapacity, or any other reason, and no successor executor or co-executors have been designated under any other provision of this will, I nominate the following, as executor:

FIRST: ROSE E. MARKOWITZ

If all those named above are unwilling or unable to serve as successor executor, a new executor or co-executors shall be appointed by the court.

4.3. Waiver of Bond. No bond or undertaking shall be required of any executor nominated in this will.

4.4. General Powers of Executor. The executor shall have full authority to administer my estate under the Nevada Revised Statute Section 164. The executor shall have all powers now or hereafter conferred on executors by law, except as otherwise specifically provided in this will, including any powers enumerated in this will.

4.5. Power to Invest. The executor shall have the power to invest estate funds in any kind of real or personal property, as the executor deems advisable.

4.6. Division or Distribution in Cash or in Kind. In order to satisfy a pecuniary gift or to distribute or divide estate assets into shares or partial shares, the executor may distribute or divide those assets in kind, or divide undivided interests in those assets, or sell all or any part of those assets and distribute or divide the property in cash, in kind, or partly in cash and partly in kind. Property distributed to satisfy a pecuniary gift under this will shall be valued at its fair market value at the time of distribution.

4.7. **Power to Sell, Lease, and Grant Options to Purchase Property.** The executor shall have the power to sell, at either public or private sale and with or without notice, lease, and grant options to purchase any real or personal property belonging to my estate, on such terms and conditions as the executor determines to be in the best interest of my estate.

4.8. **Payments to Legally Incapacitated Persons.** If at any time any beneficiary under this will is a minor or it appears to the executor that any beneficiary is incapacitated, incompetent, or for any other reason not able to receive payments or make intelligent or responsible use of the payments, then the executor, in lieu of making direct payments to the beneficiary, may make payments to the beneficiary's conservator or guardian; to the beneficiary's custodian under the Uniform Gifts to Minors Act or Uniform Transfers to Minors Act of any state; to one or more suitable persons, as the executor deems proper, such as a relative or a person residing with the beneficiary, to be used for the benefit of the beneficiary; to any other person, firm, or agency for services rendered or to be rendered for the beneficiary's assistance or benefit; or to accounts in the beneficiary's name with financial institutions. The receipt of payments by any of the foregoing shall constitute a sufficient acquittance of the executor for all purposes.

ARTICLE FIVE
CONCLUDING PROVISIONS

5.1. **Definition of Death Taxes.** The term "death taxes," as used in this will, shall mean all inheritance, estate, succession, and other similar taxes that are payable by any person on account of that person's interest in my estate or by reason of my death, including penalties and interest, but excluding the following:

(a) Any additional tax that may be assessed under Internal Revenue Code Section 2032A.

(b) Any federal or state tax imposed on a "generation-skipping transfer," as that term is defined in the federal tax laws, unless the applicable tax statutes provide that the generation-skipping transfer tax on that transfer is payable directly out of the assets of my gross estate.

5.2. **Payment of Death Taxes.** The executor shall pay death taxes, whether or not attributable to property inventoried in my probate estate, by prorating and apportioning them among the persons interested in my estate as provided in the Nevada Revised Statutes.

5.3. **Simultaneous Death.** If any beneficiary under this will and I die simultaneously, or if it cannot be established by clear and convincing evidence whether that beneficiary or I died first, I shall be deemed to have survived that beneficiary, and this will shall be construed accordingly.

5.4. **Period of Survivorship.** For the purposes of this will, a beneficiary shall not be deemed to have survived me if that beneficiary dies within two months after my death.

5.5. **No-Contest Clause.** If any person, directly or indirectly, contests the validity of this will in whole or in part, or opposes, objects to, or seeks to invalidate any of its provisions, or seeks to succeed to any part of my estate otherwise than in the manner specified in this will, any gift or other interest given to that person under this will shall be revoked and shall be disposed of as if he or she had predeceased me without issue.

5.6. **Definition of Incapacity.** As used in this will, "incapacity" or "incapacitated" means a person operating under a legal disability such as a duly established conservatorship, or a person who is unable to do either of the following:

(a) Provide properly for that person's own needs for physical health, food, clothing, or shelter; or

(b) Manage substantially that person's own financial resources, or resist fraud or undue influence.

5.7. **Captions.** The captions appearing in this will are for convenience of reference only, and shall be disregarded in determining the meaning and effect of the provisions of this will.

5.8. **Severability Clause.** If any provision of this will is invalid, that provision shall be disregarded, and the remainder of this will shall be construed as if the invalid provision had not been included.

5.9. **Nevada Law to Apply.** All questions concerning the validity and interpretation of this will, including any trusts created by this will, shall be governed by the laws of the State of Nevada in effect at the time this will is executed.

Executed on March 7, 2012, at Las Vegas, Nevada.

LEROY G. BLACK

On the date written above, we, the undersigned, each being present at the same time, witnessed the signing of this instrument by LEROY G. BLACK. At that time, LEROY G. BLACK appeared to us to be of sound mind and memory and, to the best of our knowledge, was not acting under fraud, duress, menace, or undue influence. Understanding this instrument, which consists of **five (5)** pages, including the pages on which the signature of LEROY G. BLACK and our signatures appear, to be the will of LEROY G. BLACK, we subscribe our names as witnesses thereto.

We declare under penalty of perjury under the laws of the State of Nevada that the foregoing is true and correct.

Executed on March 7, 2012, at Las Vegas, Nevada.

Signature: _____

Printed Name: DAVID Everston

Address: 11684 Ventura Bl Suite 507

Studio, CA 91604

City State

Signature: _____

Printed Name: MARIA Y. ONOFRE

Address: 20360 Ventura Blvd

Woodland Hills, CA

City State

EXHIBIT "B"

AFFIDAVIT OF DAVID EVERSTON

STATE OF NEVADA)
) ss:
COUNTY OF CLARK)

I, David Everston, being first duly sworn, on oath, deposed and say:

1. I am over 18 years of age and am competent to testify to the matters set forth herein. To the best of my knowledge and belief the information and statements contained herein are true and correct.

2. I am an individual currently residing in Costa Rica.

3. On or about the first week of February 2014, I received a call from an old acquaintance who stated that there was a registered letter that came to his house and addressed for my attention. I asked him to send me the letter, which he did, but he only sent the first page. Upon initial review of the letter it appeared to me to bribe, so I called the attorney that wrote the letter and wanted him to explain to me what exactly the letter was regarding.

4. The attorney I spoke with was Jonathan Callister and he asked if he could send the entire letter which he did with an email explaining that they were looking for the truth and not looking to compensate anyone to be untruthful or to feel like they needed to be untruthful. After I reviewed the letter, I was still a little unclear on what exactly he wanted. Upon a subsequent phone call, Jonathan Callister explained that the letter was sent on an effort to find the truth about a Will of Leroy Black that was currently in dispute.

5. During the subsequent phone call with Jonathan Callister, I asked about the money referenced in his letter to me. He made it very clear that he could not pay me for my testimony and that the only money that could be paid would be for traveling expenses. I further inquired as to what was happening and what exactly what his firm and client were looking for and his response was that they just wanted the truth. I was still unsure if there was anything that I could or should say, however after speaking for a while with Jonathan and being given information I was unaware of, I decided to accept the offer to be deposed and to have all the facts and truth be known.

6. When I arrived at Callister & Frizell, Jonathan Callister and Duane Frizell explained again that they could not compensate me for my testimony beyond the payment of travel expenses and I agreed.

7. On or about early March of 2012, I was approached by Phillip Markowitz to loan money in the amount of $45,000.00 to him and/or another individual who was presented to me as Leroy Black.

8. On or about March 7, 2012, I travelled to Las Vegas, with my then girlfriend Maria Onofre ("Maria") in order to meet with Phillip Markowitz ("Phil"), Leroy Black ("Leroy") and a

third party claiming to be an attorney. We initially met with Leroy and Phil at a coffee shop and thereafter travelled to Leroy's home on Becke Circle to sign certain documents related to the money being lent by me to Leroy.

9. On or about March 7, 2012, at the meeting with the above named individuals in Las Vegas, there was a table that had various documents set about on it which I assumed were in relation to the money being lent to Leroy. I was asked to sign only a single document. It was the document attached hereto as Exhibit "1" and which states that I was "witnessing the signing of this instrument by Leroy Black." Nowhere did the document reference that it had anything to do with being a Will. It was never stated that the document was the Last Will and Testament of Leroy Black and I never witnessed Leroy actually signing that document. Phil and I had a close, trusting relationship, and I understood at the time when the attorney handed the document to me, that it had to do with the loan transaction. It was not until the Will was filed that I even understood that the paper was a Will.

10. When I originally called Jonathan Callister in response to a letter that had been sent to me, he explained that they wanted to meet with me so I could explain what occurred at the time I signed the document which I later discovered to be a Will. In that conversation, he explained that they wanted to hear from me regarding exactly what occurred and that they, and their client, would not pay me any compensation or benefit, other than travel expenses, for providing that information to them. Additionally, they have not sought to influence my testimony nor have they induced me to provide false testimony in any way.

11. That I do not specifically recall ever signing the Affidavit of Attesting Witness attached hereto as Exhibit "2" and to the extent it was ever provided to me, I assumed that it had something to do with loan transaction with Leroy Black.

12. That Callister & Frizell, nor their attorney's or client have pressured or threatened me in any manner in providing this affidavit and I provided this affidavit out of pure concern that the truth in this matter is conveyed and clearly explained.

13. That the only thing which Callister & Frizell has paid on my behalf have been airline tickets to and from Los Angeles from Costa Rica, hotel accommodations, and related travel and food expenses, including travel expenses to Las Vegas from Los Angeles in the total amount of $767.00 in order for me to meet with them and be interviewed.

Affiant further sayeth naught.

DAVID EVERSTON

SUBSCRIBED and SWORN to before me
This 19th day of Feb, 2014.

NOTARY PUBLIC

HSUAN LING GRACE SIMPSON
Notary Public State of Nevada
No. 12-9113-1
My Appt. Exp. Oct. 11, 2016

EXHIBIT "1"

LAST WILL OF LEROY G. BLACK

I, LEROY G. BLACK, a resident of Clark County, Nevada, declare that this is my will. I hereby revoke any and all of my previous wills and codicils.

ARTICLE ONE
INTRODUCTOY PROVISIONS

1.1. **Marital Status.** I am not currently married.

1.2. **Identification of Living Children.** I have no living children.

1.3. **Deceased Children.** I have no deceased children.

ARTICLE TWO
GIFT OF ENTIRE ESTATE

2.1. **Gift of Entire Estate.** I give all of my property, both real and personal, as follows: Twenty-five percent (25%) of the total value of my estate at the time of my death to my aunt, ROSE E. MARKOWITZ. The remainder of my estate, Seventy-five percent (75%), shall be given to my cousin, PHILLIP I. MARKOWITZ.

2.2. **Beneficiaries Excluded.** I, LEROY G. BLACK, specifically direct that no portion of the trust estate ever be used for the benefit of or pass to ZELDA KAMEYER, and/or any of her children, possible heirs or beneficiaries. Other possible heirs or beneficiaries not specifically provided for in this document shall be considered as excluded beneficiaries from my estate and shall not receive any benefit from my estate. The provisions contained in this agreement contain my final decisions in this regard.

ARTICLE THREE
RESIDUARY PROVISIONS

3.1. **Disposition of Residue.** I give the residue of my estate to the executor of this will, PHILLIP I. MARKOWITZ, as trustee, who shall hold, administer, and distribute the property

under a testamentary trust, the terms of which shall be identical to the terms of this will that are in effect on the date of execution of this will.

ARTICLE FOUR
EXECUTOR

4.1. **Nomination of Executor.** I nominate PHILLIP I. MARKOWITZ as executor of this will.

4.2. **Successor Executor.** If PHILLIP I. MARKOWITZ is unable (by reason of death, incapacity, or any other reason) or unwilling to serve as executor, or if at any time the office of executor becomes vacant, by reason of death, incapacity, or any other reason, and no successor executor or co-executors have been designated under any other provision of this will, I nominate the following, as executor:

FIRST: ROSE E. MARKOWITZ

If all those named above are unwilling or unable to serve as successor executor, a new executor or co-executors shall be appointed by the court.

4.3. **Waiver of Bond.** No bond or undertaking shall be required of any executor nominated in this will.

4.4. **General Powers of Executor.** The executor shall have full authority to administer my estate under the Nevada Revised Statute Section 164. The executor shall have all powers now or hereafter conferred on executors by law, except as otherwise specifically provided in this will, including any powers enumerated in this will.

4.5. **Power to Invest.** The executor shall have the power to invest estate funds in any kind of real or personal property, as the executor deems advisable.

4.6. **Division or Distribution in Cash or in Kind.** In order to satisfy a pecuniary gift or to distribute or divide estate assets into shares or partial shares, the executor may distribute or divide those assets in kind, or divide undivided interests in those assets, or sell all or any part of those assets and distribute or divide the property in cash, in kind, or partly in cash and partly in kind. Property distributed to satisfy a pecuniary gift under this will shall be valued at its fair market value at the time of distribution.

4.7. **Power to Sell, Lease, and Grant Options to Purchase Property.** The executor shall have the power to sell, at either public or private sale and with or without notice, lease, and grant options to purchase any real or personal property belonging to my estate, on such terms and conditions as the executor determines to be in the best interest of my estate.

4.8. **Payments to Legally Incapacitated Persons.** If at any time any beneficiary under this will is a minor or it appears to the executor that any beneficiary is incapacitated, incompetent, or for any other reason not able to receive payments or make intelligent or responsible use of the payments, then the executor, in lieu of making direct payments to the beneficiary, may make payments to the beneficiary's conservator or guardian; to the beneficiary's custodian under the Uniform Gifts to Minors Act or Uniform Transfers to Minors Act of any state; to one or more suitable persons, as the executor deems proper, such as a relative or a person residing with the beneficiary, to be used for the benefit of the beneficiary; to any other person, firm, or agency for services rendered or to be rendered for the beneficiary's assistance or benefit; or to accounts in the beneficiary's name with financial institutions. The receipt of payments by any of the foregoing shall constitute a sufficient acquittance of the executor for all purposes.

ARTICLE FIVE
CONCLUDING PROVISIONS

5.1. **Definition of Death Taxes.** The term "death taxes," as used in this will, shall mean all inheritance, estate, succession, and other similar taxes that are payable by any person on account of that person's interest in my estate or by reason of my death, including penalties and interest, but excluding the following:

(a) Any additional tax that may be assessed under Internal Revenue Code Section 2032A.

(b) Any federal or state tax imposed on a "generation-skipping transfer," as that term is defined in the federal tax laws, unless the applicable tax statutes provide that the generation-skipping transfer tax on that transfer is payable directly out of the assets of my gross estate.

5.2. **Payment of Death Taxes.** The executor shall pay death taxes, whether or not attributable to property inventoried in my probate estate, by prorating and apportioning them among the persons interested in my estate as provided in the Nevada Revised Statutes.

5.3. **Simultaneous Death.** If any beneficiary under this will and I die simultaneously, or if it cannot be established by clear and convincing evidence whether that beneficiary or I died first, I shall be deemed to have survived that beneficiary, and this will shall be construed accordingly.

5.4. **Period of Survivorship.** For the purposes of this will, a beneficiary shall not be deemed to have survived me if that beneficiary dies within two months after my death.

5.5. **No-Contest Clause.** If any person, directly or indirectly, contests the validity of this will in whole or in part, or opposes, objects to, or seeks to invalidate any of its provisions, or seeks to succeed to any part of my estate otherwise than in the manner specified in this will, any gift or other interest given to that person under this will shall be revoked and shall be disposed of as if he or she had predeceased me without issue.

5.6. **Definition of Incapacity.** As used in this will, "incapacity" or "incapacitated" means a person operating under a legal disability such as a duly established conservatorship, or a person who is unable to do either of the following:

(a) Provide properly for that person's own needs for physical health, food, clothing, or shelter; or

(b) Manage substantially that person's own financial resources, or resist fraud or undue influence.

5.7. **Captions.** The captions appearing in this will are for convenience of reference only, and shall be disregarded in determining the meaning and effect of the provisions of this will.

5.8. **Severability Clause.** If any provision of this will is invalid, that provision shall be disregarded, and the remainder of this will shall be construed as if the invalid provision had not been included.

5.9. **Nevada Law to Apply.** All questions concerning the validity and interpretation of this will, including any trusts created by this will, shall be governed by the laws of the State of Nevada in effect at the time this will is executed.

Executed on March 7, 2012, at Las Vegas, Nevada.

LEROY G. BLACK

On the date written above, we, the undersigned, each being present at the same time, witnessed the signing of this instrument by LEROY G. BLACK. At that time, LEROY G. BLACK appeared to us to be of sound mind and memory and, to the best of our knowledge, was not acting under fraud, duress, menace, or undue influence. Understanding this instrument, which consists of five (5) pages, including the pages on which the signature of LEROY G. BLACK and our signatures appear, to be the will of LEROY G. BLACK, we subscribe our names as witnesses thereto.

We declare under penalty of perjury under the laws of the State of Nevada that the foregoing is true and correct.

Executed on March 7, 2012, at Las Vegas, Nevada.

Signature: _____

Printed Name: DAVID Everston

Address: 11684 Ventura Bl Suite 507

Studio, CA 91604

City State

Signature: _____

Printed Name: MARIA G. ONOFRE

Address: 20360 Ventura Blvd

Woodland Hills, CA

City State

EXHIBIT "2"

Electronically Filed
08/14/2012 04:09:29 PM

CLERK OF THE COURT

AFFT
CHRISTOPHER J. PHILLIPS, ESQ.
Nevada Bar No: 8224
BLACK & LOBELLO
10777 West Twain Avenue, Suite 300
Las Vegas, Nevada 89135
(702) 869-8801
Attorney for the Petitioner,
PHILLIP MARKOWITZ

DISTRICT COURT

CLARK COUNTY, NEVADA

In the Matter of the Estate of LEROY G. BLACK, Deceased.	CASE NO. P-12-074745-E DEPT. NO. 26 (Probate)

AFFIDAVIT OF ATTESTING WITNESS

STATE OF CALIFORNIA)
: ss:
COUNTY OF Los Angeles)

DAVID EVERSTON, being first duly sworn according to law, deposes and says:

1. Affiant witnessed the execution of the Last Will of Leroy G. Black on March 7, 2012.

2. Affiant witnessed said Last Will and Testament in the presence of the Testator, in the presence of one other witness, and at the request of the Testator.

3. At the time of the execution of said will, the said Testator appeared to your Affiant to be of full age and of sound and disposing mind, memory and understanding.

DAVID EVERSTON

SUBSCRIBED and SWORN to before me
this 9th day of August, 2012.

NOTARY PUBLIC in and for said
County and State

VISHAL ROY
Commission # 1869187
Notary Public - California
Los Angeles County
My Comm. Expires Feb 10, 2015

BLACK & LOBELLO
10777 West Twain Avenue, Suite 300
Las Vegas, Nevada 89135
(702) 869-8801 FAX: (702) 869-2669

EXHIBIT "C"

AFFIDAVIT OF
MARIA ONOFRE

STATE OF CALIFORNIA)
) ss.
COUNTY OF LOS ANGELES)

On this date, appeared before me MARIA ONOFRE, who is known to me or provided appropriate identification, and who upon her oath deposed and said:

1. My name is MARIA ONOFRE. I am over 18 years of age, am of sound mind, and am fully competent to make this Affidavit.

2. With the exception of any and all matters stated upon information and belief, all of the facts stated in this Affidavit are based upon my personal knowledge and are true and correct, to the best of my recollection. Regarding any and all matters stated upon information and belief, I believe such matters to be true.

3. I declare that I did not witness the execution of the Last Will and Testament (the "Will") of Leroy G. Black dated on March 7, 2012 and which is attached hereto as **Exhibit A.**

4. I declare that I have never met, spoken with nor had any dealings with Leroy G. Black.

5. I declare that I was not present during the signing of the Will by Leroy G. Black.

6. I further declare that the Affidavit of Attesting Witness, attached hereto as **Exhibit B,** is an incorrect statement as I did not fully understand what I was signing.

7. I make this affidavit under the penalty of perjury of the laws of the United States and of the State of Nevada.

FURTHER AFFIANT SAYETH NAUGHT.

MARIA ONOFRE, Affiant

08/2/2014
DATE

Subscribed and sworn to (or affirmed) before me,
On this 2nd day of August 2014, by
MARIA ONOFRE as proved to me on the basis of satisfactory evidence to be the person who appeared before me.

NOTARY PUBLIC, in and for
said State and County

ALIREZA MAZAHRI
Commission # 2053526
Notary Public - California
Los Angeles County
My Comm. Expires Jan 21, 2018

EXHIBIT A

EXHIBIT A

EXHIBIT "2"

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CLERK OF THE COURT

ORDR
JONATHAN W. BARLOW
Nevada Bar No. 9964
JORDAN M. FLAKE
Nevada Bar No. 10583
BARLOW FLAKE LLP
50 S. Stephanie St., Ste. 101
Henderson, Nevada 89012
(702) 476-5900
(702) 924-0709 (Fax)
jonathan@barlowflakelaw.com
Attorneys for the Estate

DISTRICT COURT
CLARK COUNTY, NEVADA

In the Matter of the Estate of LEROY G. BLACK, Deceased.	Case No. P-12-074745-E Dept. No. 26

ORDER GRANTING OBJECTION TO REPORT AND RECOMMENDATION

Date of Hearing: July 9, 2013
Time of Hearing: 9:00 a.m.

The *Objection to Report and Recommendation* filed by Phillip Markowitz as Executor of the Estate of Leroy G. Black came on for hearing on July 9, 2013. Jonathan W. Barlow, of Barlow Flake LLP, appeared for Phillip Markowitz as Executor of the Estate of Leroy G. Black, and Jonathan C. Callister, of Callister & Frizell, appeared for William Fink. The Court having reviewed all pleadings and papers on file, having considered the arguments of counsel, and other good cause showing, enters the following findings and order granting the Objection:

FINDINGS OF FACT:

1. Leroy G. Black ("Decedent") died on April 4, 2012.

2. On July 18, 2012, Phillip Markowitz ("Markowitz") filed a Petition for Probate of Will, Petition for Appointment of Personal Representative and for Issuance of Letters

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Henderson, NV 89012
(702) 476-5900

Testamentary (the "Petition to Probate Will"). In the Petition to Probate Will, Markowitz petitioned the Court to enter a will dated March 7, 2012, to probate as Decedent's last will and testament.

3. On July 27, 2012, Markowitz provided Notice of Hearing on the Petition to Probate Will to William Fink ("Fink").

4. This Court held its hearing on the Petition to Probate Will on August 31, 2012. Fink neither filed a written objection to the Petition to Probate Will, nor did Fink appear at the hearing to object to the Petition to Probate Will.

5. This Court entered its Order admitting the March 7, 2012, will to probate on August 31, 2012. Notice of Entry of the Order was served on Fink on August 31, 2012.

6. On November 27, 2012, Fink filed an Objection to the Admission of the Last Will and Testament of Leroy G. Black, for the Revocation of Letters Testamentary and for Appointment of Special Administrator Pending the Conclusion of Will Contest (the "Objection to Admission of Will").

7. On January 3, 2013, Fink caused a Citation to Plea to Contest to be issued by the Clerk of Court.

8. On January 23, 2013, Fink filed a Petition to Enlarge Time Pursuant to NRCP 6(b).

CONCLUSIONS OF LAW:

1. An interested person who wishes to revoke an order admitting a will to probate must file a petition "containing the allegations of the contestant against the validity of the will or against the sufficiency of the proof, and requesting that the probate be revoked." NRS

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(702) 476-5900

137.080. The petition to revoke the probate must be filed "at any time within 3 months after the order is entered admitting the will to probate." NRS 137.080.

2. In addition to the requirements of NRS 137.080, an interested person who wishes to revoke an order admitting a will to probate must comply with the requirements of NRS 137.090, which states, "Upon filing the petition, and within the time allowed for filing the petition, a citation must be issued, directed to the personal representative and to all the devisees mentioned in the will, and the heirs, so far as known to the petitioner, including minors and incapacitated persons, or the personal representative of any such person who is dead, directing them to plead to the contest within 30 days after service of the citation."

3. The plain language rule of statutory interpretation requires that NRS 137.080-.090 must be given their plain and unambiguous meaning. The phrase, "a citation must be issued," in NRS 137.090 is given its plain meaning as a mandatory, not permissive, requirement that must be performed within three months after entry of the order admitting a will to probate.

4. Because Fink failed to cause a citation to be issued within three months of August 31, 2012, Fink is time-barred by the statute of limitations to pursue a will contest of the March 7, 2012, will. Pursuant to NRS 137.120, the probate of Decedent's March 7, 2012, will is conclusive.

5. The statute of limitations in this case is not tolled based on extrinsic fraud. Fink did not provide any evidence of extrinsic fraud or any proof of any action by Markowitz that would have prevented Fink from knowing his rights in this matter or acting to protect his rights.

6. Rule 6 of the Nevada Rules of Civil Procedure is not applicable to enlarge the time to issue the citation required by NRS 137.090.

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50 S. Stephanie St., Ste. 101
Henderson, NV 89012
(702) 476-5900

IT IS THEREFORE ORDERED that the *Objection to Report and Recommendation* filed by Phillip Markowitz as Executor of the Estate of Leroy G. Black is granted. The Court does not adopt or approve of the Report and Recommendation entered by Probate Commissioner Wesley Yamashita on April 11, 2013.

IT IS FURTHER ORDERED that William Fink's Objection to Admission of Will is denied. Fink's purported will contest of the admission of Decedent's March 7, 2012, will to probate is time-barred by his failure to comply with the requirements of NRS 137.090 and is, therefore, dismissed. The probate of Decedent's March 7, 2012, will is conclusive.

DATED this 31st day of July, 2013.

DISTRICT COURT JUDGE

Prepared and submitted by:
BARLOW FLAKE LLP

JONATHAN W. BARLOW
Nevada Bar No. 9964
Attorneys for the Estate

Reviewed as to form and content:
CALLISTER & FRIZELL

JONATHAN C. CALLISTER
Nevada Bar No. 8011
Attorney for William Fink

BARLOW FLAKE LLP
50 S. Stephanie St., Ste. 101
Henderson, NV 89012
(702) 476-5900

EXHIBIT "1"

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CLERK OF THE COURT

PETN
CHRISTOPHER J. PHILLIPS, ESQ.
Nevada Bar No: 8224
BLACK & LOBELLO
10777 West Twain Avenue, Suite 300
Las Vegas, Nevada 89135
(702) 869-8801
Attorney for the Petitioner,
PHILLIP MARKOWITZ

DISTRICT COURT
CLARK COUNTY, NEVADA

In the Matter of the Estate of LEROY G. BLACK, Deceased.	CASE NO. P-12-074745-E DEPT. NO. 26 (Probate)

PETITION FOR SPECIAL LETTERS OF ADMINISTRATION

Date of Hearing: n/a
Time of Hearing: n/a

COMES NOW, the Petitioner, PHILLIP MARKOWITZ, ("Phil") whose Petition respectfully represents the following to this Honorable Court:

1. Petitioner is the named Executor of the decedent's Last Will of Leroy G. Black, dated March 7, 2012 and cousin of the above-named decedent and is a resident of the State of California, his mailing address being 2201 Hercules Drive, Los Angeles, California 90046.

2. LEROY G. BLACK died on or about the 4th day of April, 2012, in the State of Nevada. The decedent was, at the time of his death, a resident of the State of Nevada. A copy of the decedent's Death Certificate will be submitted as Exhibit "1" when received.

3. The decedent left a document which your Petitioner alleges to be the Last Will and Testament of said decedent, a copy of which is attached hereto as Exhibit "2", and the original of which was lodged with this Court on June 5, 2012. The Petitioner will petition this Court to admit the will to probate as soon as possible, but there are pressing matters that necessitate this petition to appoint the Petitioner (and 75% beneficiary) as Special Administrator.

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Las Vegas, Nevada 89135
(702) 869-8801 FAX: (702) 869-2669

4. The decedent is survived by the following heirs/beneficiaries:

Name and Address	**Relationship to Deceased**
Rose E. Markowitz 318 North California St Burbank, Ca 91505	Aunt
Phillip Markowitz 2201 Hercules Drive Los Angeles, Ca 90046	Petitioner/Executor/Cousin

5. Petitioner reports to the Court that his appointment as Special Administrator of the decedent's estate is necessary due to the fact that the decedent owned several parcels of real property including a parking lot which generates revenue and a large and unique parcel of residential real property at 500 Rancho Circle which has sophisticated maintenance needs. The decedent recently spent a large amount of money refacing and preparing the property for sale. The property is currently listed for sale for $2,990,000. A copy of the listing is attached hereto as Exhibit "3".

6. Petitioner requests that the Court grant him all powers and authorities conferred upon special administrators including, but not limited to, the authority to:

a. To take possession and control of any and all assets of the decedent.

b. To take possession of and manage and maintain the decedent's real property.

7. Petitioner requests that all liquid assets belonging to the estate which come to his knowledge or possession be deposited into the trust account of BLACK & LOBELLO where said funds shall remain until further order of this Court.

8. Petitioner confirms that he has never been convicted of a felony.

9. Petitioner is competent and capable of acting as Special Administrator of the decedent's estate and hereby consents to serve in that capacity. The name of the person for whom Special Letters of Administration in this matter are requested is PHILLIP MARKOWITZ.

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your Petitioner herein.

WHEREFORE, Petitioner prays as follows:

1. That Petitioner be appointed to act as Special Administrator of the estate of LEROY G. BLACK, and that Special Letters of Administration issue to Petitioner upon him taking the oath of office as required by law, without bond. That all liquid assets belonging to the estate be deposited into the trust account of Black & LoBello.

2. That all of the powers, authorities and duties of special administrators be conferred upon Petitioner including, but not limited to, the authority to:

a. Take possession of, manage and control all funds on deposit in any and all banking, brokerage or other institutions located within this Court's jurisdiction.

b. Take possession of and manage and maintain the decedent's real property.

c. To open, inventory and take possession of the contents of any and all safe deposit boxes in the decedent's name, whether titled solely in the name of the decedent or jointly with others.

d. To take possession of and manage all of the remaining assets belonging to the decedent.

3. For such other and further relief as to the court may deem just and proper in the premises.

PHILLIP MARKOWITZ

VERIFICATION

PHILLIP MARKOWITZ, under penalty of perjury, deposes and says: That he is the

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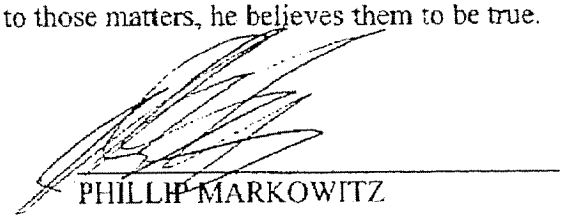
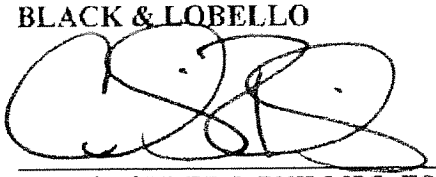
Las Vegas, Nevada 89135
(702) 869-8801 FAX: (702) 869-2669

Petitioner in the above entitled matter; that he has read the foregoing petition and knows the contents thereof; that the same is true of his own knowledge except as to those matters therein contained upon information and belief, and as to those matters, he believes them to be true.



PHILLIP MARKOWITZ

BLACK & LOBELLO



CHRISTOPHER J. PHILLIPS, ESQ.
10777 West Twain Avenue, Suite 300
Las Vegas, Nevada 89135
Attorney for the Petitioner
PHILLIP MARKOWITZ

BLACK & LOBELLO
10777 West Twain Avenue, Suite 300
Las Vegas, Nevada 89135
(702) 869-8801 FAX: (702) 869-2669

EXHIBIT 1

EXHIBIT 1

EXHIBIT 2

EXHIBIT 2

LAST WILL OF LEROY G. BLACK

I, LEROY G. BLACK, a resident of Clark County, Nevada, declare that this is my will. I hereby revoke any and all of my previous wills and codicils.

ARTICLE ONE
INTRODUCTOY PROVISIONS

1.1. Marital Status. I am not currently married.

1.2. Identification of Living Children. I have no living children.

1.3. Deceased Children. I have no deceased children.

ARTICLE TWO
GIFT OF ENTIRE ESTATE

2.1. Gift of Entire Estate. I give all of my property, both real and personal, as follows: Twenty-five percent (25%) of the total value of my estate at the time of my death to my aunt, ROSE E. MARKOWITZ. The remainder of my estate, Seventy-five percent (75%), shall be given to my cousin, PHILLIP I. MARKOWITZ.

2.2. Beneficiaries Excluded. I, LEROY G. BLACK, specifically direct that no portion of the trust estate ever be used for the benefit of or pass to ZELDA KAMEYER, and/or any of her children, possible heirs or beneficiaries. Other possible heirs or beneficiaries not specifically provided for in this document shall be considered as excluded beneficiaries from my estate and shall not receive any benefit from my estate. The provisions contained in this agreement contain my final decisions in this regard.

ARTICLE THREE
RESIDUARY PROVISIONS

3.1. Disposition of Residue. I give the residue of my estate to the executor of this will, PHILLIP I. MARKOWITZ, as trustee, who shall hold, administer, and distribute the property

under a testamentary trust, the terms of which shall be identical to the terms of this will that are in effect on the date of execution of this will.

ARTICLE FOUR
EXECUTOR

4.1. **Nomination of Executor.** I nominate PHILLIP I. MARKOWITZ as executor of this will.

4.2. **Successor Executor.** If PHILLIP I. MARKOWITZ is unable (by reason of death, incapacity, or any other reason) or unwilling to serve as executor, or if at any time the office of executor becomes vacant, by reason of death, incapacity, or any other reason, and no successor executor or co-executors have been designated under any other provision of this will, I nominate the following, as executor:

FIRST: ROSE E. MARKOWITZ

If all those named above are unwilling or unable to serve as successor executor, a new executor or co-executors shall be appointed by the court.

4.3. **Waiver of Bond.** No bond or undertaking shall be required of any executor nominated in this will.

4.4. **General Powers of Executor.** The executor shall have full authority to administer my estate under the Nevada Revised Statute Section 164. The executor shall have all powers now or hereafter conferred on executors by law, except as otherwise specifically provided in this will, including any powers enumerated in this will.

4.5. **Power to Invest.** The executor shall have the power to invest estate funds in any kind of real or personal property, as the executor deems advisable.

4.6. **Division or Distribution in Cash or in Kind.** In order to satisfy a pecuniary gift or to distribute or divide estate assets into shares or partial shares, the executor may distribute or divide those assets in kind, or divide undivided interests in those assets, or sell all or any part of those assets and distribute or divide the property in cash, in kind, or partly in cash and partly in kind. Property distributed to satisfy a pecuniary gift under this will shall be valued at its fair market value at the time of distribution.

4.7. **Power to Sell, Lease, and Grant Options to Purchase Property.** The executor shall have the power to sell, at either public or private sale and with or without notice, lease, and grant options to purchase any real or personal property belonging to my estate, on such terms and conditions as the executor determines to be in the best interest of my estate.

4.8. **Payments to Legally Incapacitated Persons.** If at any time any beneficiary under this will is a minor or it appears to the executor that any beneficiary is incapacitated, incompetent, or for any other reason not able to receive payments or make intelligent or responsible use of the payments, then the executor, in lieu of making direct payments to the beneficiary, may make payments to the beneficiary's conservator or guardian; to the beneficiary's custodian under the Uniform Gifts to Minors Act or Uniform Transfers to Minors Act of any state; to one or more suitable persons, as the executor deems proper, such as a relative or a person residing with the beneficiary, to be used for the benefit of the beneficiary; to any other person, firm, or agency for services rendered or to be rendered for the beneficiary's assistance or benefit; or to accounts in the beneficiary's name with financial institutions. The receipt of payments by any of the foregoing shall constitute a sufficient acquittance of the executor for all purposes.

ARTICLE FIVE
CONCLUDING PROVISIONS

5.1. **Definition of Death Taxes.** The term "death taxes," as used in this will, shall mean all inheritance, estate, succession, and other similar taxes that are payable by any person on account of that person's interest in my estate or by reason of my death, including penalties and interest, but excluding the following:

(a) Any additional tax that may be assessed under Internal Revenue Code Section 2032A.

(b) Any federal or state tax imposed on a "generation-skipping transfer," as that term is defined in the federal tax laws, unless the applicable tax statutes provide that the generation-skipping transfer tax on that transfer is payable directly out of the assets of my gross estate.

5.2. **Payment of Death Taxes.** The executor shall pay death taxes, whether or not attributable to property inventoried in my probate estate, by prorating and apportioning them among the persons interested in my estate as provided in the Nevada Revised Statutes.

5.3. **Simultaneous Death.** If any beneficiary under this will and I die simultaneously, or if it cannot be established by clear and convincing evidence whether that beneficiary or I died first, I shall be deemed to have survived that beneficiary, and this will shall be construed accordingly.

5.4. **Period of Survivorship.** For the purposes of this will, a beneficiary shall not be deemed to have survived me if that beneficiary dies within two months after my death.

5.5. **No-Contest Clause.** If any person, directly or indirectly, contests the validity of this will in whole or in part, or opposes, objects to, or seeks to invalidate any of its provisions, or seeks to succeed to any part of my estate otherwise than in the manner specified in this will, any gift or other interest given to that person under this will shall be revoked and shall be disposed of as if he or she had predeceased me without issue.

5.6. **Definition of Incapacity.** As used in this will, "incapacity" or "incapacitated" means a person operating under a legal disability such as a duly established conservatorship, or a person who is unable to do either of the following:

(a) Provide properly for that person's own needs for physical health, food, clothing, or shelter; or

(b) Manage substantially that person's own financial resources, or resist fraud or undue influence.

5.7. **Captions.** The captions appearing in this will are for convenience of reference only, and shall be disregarded in determining the meaning and effect of the provisions of this will.

5.8. **Severability Clause.** If any provision of this will is invalid, that provision shall be disregarded, and the remainder of this will shall be construed as if the invalid provision had not been included.

5.9. **Nevada Law to Apply.** All questions concerning the validity and interpretation of this will, including any trusts created by this will, shall be governed by the laws of the State of Nevada in effect at the time this will is executed.

Executed on March 7, 2012, at Las Vegas, Nevada.

LEROY G. BLACK

On the date written above, we, the undersigned, each being present at the same time, witnessed the signing of this instrument by LEROY G. BLACK. At that time, LEROY G. BLACK appeared to us to be of sound mind and memory and, to the best of our knowledge, was not acting under fraud, duress, menace, or undue influence. Understanding this instrument, which consists of **five (5)** pages, including the pages on which the signature of LEROY G. BLACK and our signatures appear, to be the will of LEROY G. BLACK, we subscribe our names as witnesses thereto.

We declare under penalty of perjury under the laws of the State of Nevada that the foregoing is true and correct.

Executed on March 7, 2012, at Las Vegas, Nevada.

Signature: _____

Printed Name: DAVID Everston

Address: 11684 Ventura bl Suite 507

Studio, CA 91604

City State

Signature: _____

Printed Name: MARIA Y. ONOFRE

Address: 20360 Ventura Blvd

Woodland Hills, CA

City State

GOODSELL & OLSEN
ATTORNEYS AT LAW
851 S. RAMPART BLVD., SUITE 200, LAS VEGAS, NV 89145
(702) 869-6261 TEL - (702) 869-8243 FAX

IN THE SUPREME COURT OF THE STATE OF NEVADA

IN THE MATTER OF: ESTATE OF LEROY G. BLACK, DECEASED,

WILLIAM FINK A/K/A BILL FINK,
Appellant,
vs.
PHILLIP MARKOWITZ AS EXECUTOR OF THE ESTATE OF LEROY G. BLACK,
Respondent.

No. 63960

PHILLIP MARKOWITZ AS EXECUTOR OF THE ESTATE OF LEROY G. BLACK,
Appellant,
vs.
WILLIAM FINK,
Respondent

No. 65983

REPLY TO RESPONSE TO ORDER TO SHOW CAUSE

COMES NOW, William Fink (hereafter "Fink") by and through his attorney of record, MICHAEL A. OLSEN, ESQ., of the law firm of GOODSELL & OLSEN, LLP, and hereby files his "Reply to Response to Order to Show Cause" (hereafter "Reply") on the grounds set forth in the Points and Authorities herein, Exhibits attached hereto and any papers or pleadings on file with this Court.

DATED this 15th day of SEPTEMBER, 2014.

MICHAEL A. OLSEN, ESQ.
Nevada Bar No. 6076
THOMAS R. GROVER, ESQ.
Nevada Bar No. 12387
GOODSELL & OLSEN, LLP
10155 W. Twain Ave., Ste. 100
Las Vegas, NV 89147
TEL: (702) 869-6261
Attorneys for William Fink

GOODSELL & OLSEN
ATTORNEYS AT LAW
851 S. RAMPART BLVD., SUITE 200, LAS VEGAS, NV 89145
(702) 869-6261 TEL - (702) 869-8243 FAX

POINTS AND AUTHORITIES

This matter involves an attempt by Phil Markowitz (hereafter "Markowitz") to use an unauthenticated, forged Will to revoke a Trust. The Probate Commissioner and the District Court have now both ruled against Markowitz. This Court has ordered briefing on whether this Court has jurisdiction to even hear Markowitz' appeal. For the reasons stated below, this Court does not have jurisdiction. Therefore, this Court should immediately dismiss Markowitz' appeal.

I. PROCEDURAL HISTORY

Leroy Black (hereafter "Black" or "Decedent") passed away on or about April 4, 2012 in Clark County, Nevada. Phil Markowitz (hereafter "Markowitz") petitioned the District Court on June 26, 2012 to probate a purported will dated March 7, 2012 ("March 2012 Will").[1]

At the time, substantial evidence indicated that the March 2012 Will was a forgery.

Unfortunately, prior counsel for William Fink (hereafter "Fink") did not issue Citation to Plea Will Contest within three months, as required by NRS 137.090. Fink, through prior counsel, filed a motion to enlarge time to issue the Citation. Initially, Probate Commissioner Wesley Yamashita issued a Report and Recommendation that time should be enlarged to issue the Citation. However, Markowitz objected, arguing that the three month time limit in NRS 137.090 was an absolute time bar that could not be enlarged. The District Court agreed[2], finding that

[1] Petition for Special Letters of Administration, June 26, 2012, **Exhibit "1"**. All exhibits attached hereto are incorporated herein by reference.

[2] This Order is now on appeal before this Court.

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(702) 869-6261 TEL - (702) 869-8243 FAX

Because Fink failed to cause a citation to be issued within three months of August 31, 2012, Fink is time-barred by the statute of limitations to pursue a will contest of the March 7, 2012, will.[3]

Thus, the March 2012 Will has proceeded in administration not because it has been found to be an authentic document, but rather because of a procedural ruling by the District Court (now on appeal before this Court).

Even though the March 2012 Will has never been authenticated and does not even reference, let alone specifically revoke the Leroy G, Black 1992 Living Trust (hereinafter the "Trust"), Markowitz attempted to use the document not only as a will, but also as Trust Revocation, by filing a "Petition to Declare Revocation of Trust Agreement" (hereafter "Markowitz Petition") on August 5, 2013. Notwithstanding the murky history behind the origins of the unauthenticated March 2012 Will, discussed below, the Markowitz Petition sought to use the March 2012 will as a Trust Revocation because, according to Markowitz, "[the terms of the March 2012 Will] represent Decedent's final wishes for the distribution of all property that he owned at the time of his death and provide clear indication of Decedent's intent for the distribution of all of his assets."[4]

Fink filed an Objection to the Markowitz petition, arguing that (1) the March 2012 Will is a forgery, (2) the March 2012 Will does not reach property owned by the Trust nor did it even reference the Trust and (3) authority indicates that because a will does not become effect until death, it cannot revoke a Trust.

The matter was heard before the Honorable Commissioner Wesley Yamashita on August 30, 2013. Commissioner Yamashita denied the Markowitz Petition, finding that the March 2012

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[3] Order Granting Objection to Report and Recommendation, August 1, 2013, **Exhibit "2"**.

[4] Markowitz Petition, at pg. 2:5-7, emphasis original.

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Will does not revoke the Trust because (1) "the March 2012 Will does not contain any express language expressly revoking, or even referencing, the Trust,"; (2) "the Trust had been funded by the Decedent there is a clear legal distinction between the assets of the Trust and the assets of the estate subject to probate,"; (3) Section 2.1 of the March 2012 Will references the property of the Decedent subject to probate and not property owned by the Trust; (4) lack of delivery of Trust property to the Trustor is indicative that the Decedent did not revoke the Trust with the March 2012 Will, nor did he intend to; (5) that the March 2012 Will cannot revoke the Trust because the March 2012 Will does not become operative until death.

Undeterred, Markowitz objected to Commissioner Yamashita's Report and Recommendation. The District Court concurred with Commissioner Yamashita and denied Markowitz' Objection. Markowitz now appeals that decision even though this Court does not have jurisdiction under NRAP 3(A) or NRS 155.190(1).

On August 6, 2014 this Court issued an Order concluding that the May 29 Order was not a final judgment and further ordered Markowitz to explain why jurisdiction lies within NRS 155.190(1), which lists appealable orders:

> Because the May 29, 2014, order only denies appellant's request to declare the trust revoked, it is not a final judgment resolving all pending issues in the probate action, *see* NRAP 3A(b)(1); *Lee v. GNLV Corp.*, 116 Nev. 424, 426-27, 996 P.2d 416, 417 (2000), and it does not appear to fall under 1 of the 16 probate orders from which an appeal may be taken pursuant to NRS 155.190(1) or any of the other statutes concerning wills, estates, and trusts.[5]

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[5] Order to Show Cause, Deferring Ruling on Motion to Consolidate, and Suspending Briefing, August 6, 2014, pg. 2.

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II. THE MARCH 2012 WILL IS A FORGERY, HAS NEVER BEEN AUTHENTICATED OR PROPERLY WITNESSED AND HAS ONLY PROCEEDED IN PROBATE BECAUSE OF THE DISTRICT COURT'S RULING AS TO THE CITATION

At the time Fink attempted to initiate a will contest, overwhelming evidence had been gathered that the March 2012 Will is a forgery. More recently, the witnesses to the March 2012 Will were found and have now sworn under oath that they did not, in fact, witness LeRoy Black sign the March 2012 Will. A Rule 60(b) motion for fraud upon the District Court filed by Fink is now pending before Judge Sturman based upon the recently acquired testimony of the purported witnesses of the March 2012 Will. As discussed in detail below, because Fink's pending Rule 60(b) Motion, if granted, will alter the disposition of assets within the Estate. The fact that such a motion may have implications for how Estate assets are distributed demonstrates that the May 2014 Order is not in any way final, and that while it may have indirect impact on the distribution of property, it does not direct the distribution of property or assets or determine heirship as asserted by Markowitz.

a. Evidence that March 2012 Will is a forgery was available at the time of the attempted will contest

Fink has been the sole beneficiary of the Trust, of which Black was the trustor, since August 1992, over twenty years. A pour-over will, gifting remaining assets of the estate to the trust, was executed by Black at the time of the execution of the trust.[6] Fink was also the beneficiary of Black's prior wills. All of Black's prior estate planning was performed under the careful guidance of estate planning attorneys', more specifically Jeffrey Burr & Associates. The

[6] Pour Over Will, attached as **Exhibit "E" to "Exhibit "1"** "William Fink's Opposition To Phil Markowitz's Motion For Sanctions Against William Fink And To Disqualify Attorney's Of Record For William Fink And Countermotion For Certification To Set Aside Judgment Pursuant To NRCP 60(B) For Fraud Upon This Court By Markowitz."

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purported March 2012 Will[7], which Markowitz incorrectly asserts unwinds 20 years of careful estate planning without referencing that estate planning, was not drafted by Jeffrey Burr nor was anyone at that firm informed of its existence, and, in fact to date the drafter is yet to be made known by Markowitz.

The March 2012 Will suspiciously first appeared **after** Black's death, gifting Black's **entire probate** Estate to Rose and Phillip Markowitz, individuals with whom Black had no long-term relationship, and with whom Black only had limited interaction immediately prior to his death. **The new will was concocted by the Executor,** Phil Markowitz, and was witnessed by two individuals, David Everston and Maria Onofre, who allegedly traveled from California to witness the execution of the March 2012 Will, and are complete strangers to Black and Fink. Everston is a friend and associate of Markowitz and Onofre was Everston's ex-girlfriend. At the time of the attempted will contest, unsuccessful attempts had been made to contact Everston and Onofre.

Anticipating a will contest, Fink retained an expert to evaluate Black's alleged signature on the March 2012 Will. The expert has concluded that the signature on the March 2012 Will is a forgery.[8] **To this date, the purported signature of Leroy Black on the March 2012 Will has never been authenticated by any court.**

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[7] March 2012 Will, attached as **Exhibit "A"** to **"Exhibit "1"**,"William Fink's Opposition To Phil Markowitz's Motion For Sanctions Against William Fink And To Disqualify Attorney's Of Record For William Fink And Countermotion For Certification To Set Aside Judgment Pursuant To NRCP 60(B) For Fraud Upon This Court By Markowitz."

[8] "Handwriting Analysis Investigation," attached as **Exhibit "F"** to **"Exhibit "1"**,"William Fink's Opposition To Phil Markowitz's Motion For Sanctions Against William Fink And To Disqualify Attorney's Of Record For William Fink And Countermotion For Certification To Set Aside Judgment Pursuant To NRCP 60(B) For Fraud Upon This Court By Markowitz."

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Importantly, the March 2012 Will has proceeded in probate not because the Court made a finding that the document was authentic, but on a procedural technicality as described above. In other words, Markowitz attempted to revoke the Trust based upon the his assertion that Black prepared and signed the purported March 2012 Will, **a fact that is strongly disputed based upon the expert report of Ms. Klekoda-Baker. The expert's opinion is further supported by the affidavits of Jason C. Walker and Crystal Meyer (attached).**

Ms. Klekoda-Baker, a Certified Forensic Document Examiner, has reviewed the March 2012 Will and concluded that it was not signed by Black. "In my opinion, Leroy G. Black did not perform his own Signature on the document identified as the Last Will of Leroy G. Black."[9] Ms. Klekoda-Baker came to this conclusion after examining the March 2012 Will and comparing the signature on it with known signatures from Black.

Ms. Klekoda-Baker's opinion is consistent with the observations of Jason C. Walker, Esq (hereafter "Walker"). Walker, an experienced estate planning attorney with the law firm of Jeffrey Burr, LTD., "worked with Leroy Black and his mother, Ida Black, for many years, starting in 2008, to update their respective estate planning."[10] Leroy Black had had his estate planning performed and managed by Jeffrey Burr, LTD dating back to 1994. Walker "worked extensively with Leroy to get properties owned by his trust and LP, and to correctly change ownership of the limited partnership to his trust." Throughout their professional relationship, Walker, also a notary public, notarized many documents for Black, and thus was familiar with

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[9] Id.

[10] Affidavit of Jason C. Walker, Esq. attached as **Exhibit "V"** to **"Exhibit "1"**,"William Fink's Opposition To Phil Markowitz's Motion For Sanctions Against William Fink And To Disqualify Attorney's Of Record For William Fink And Countermotion For Certification To Set Aside Judgment Pursuant To NRCP 60(B) For Fraud Upon This Court By Markowitz."

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Black's signature. Having reviewed the purported signature of Black on the March 2012 Will, Walker concluded, "the signature on the Will executed on March 7, 2012, seems very suspect and different enough from Leroy's signature on the other documents that I questioned the validity of that Will."[11]

The dubious nature of the purported signature on the March 2012 Will is further amplified by the disharmony between the circumstances the March 2012 Will supposedly came into existence in comparison to the years of meticulous estate planning performed by the law firm of Jeffrey Burr, LTD, a firm specializing in estate planning. For example, though Black already had extensive and nuanced estate planning in place in March 2012, strangely, the March 2012 Will makes no specific reference to existing or prior estate planning documents or assets, suggesting that the March 2012 Will was created, drafted and executed without knowledge of any of the assets or estate planning of Black, and thus without the knowledge, consent or signature of Black.

Perhaps even more telling, the terms of the Trust require that, "[u]pon revocation, the Trustee shall deliver the revoked portion of the Trust property to the Trustor."[12] Upon execution of the March 2012 Will, none of the Trust property was retitled into the name of the Trustor, Black.[13] This inaction strongly suggests that either Black did not, in fact, sign his name to the

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[11] Id.

[12] Section 8.2 "Power to Revoke," "The Total Amendment and Restatement of the Leroy G. Black 1992 Living Trust," attached as **Exhibit "W"** to **"Exhibit "1"**,"William Fink's Opposition To Phil Markowitz's Motion For Sanctions Against William Fink And To Disqualify Attorney's Of Record For William Fink And Countermotion For Certification To Set Aside Judgment Pursuant To NRCP 60(B) For Fraud Upon This Court By Markowitz."

[13] Parcel Ownership History, APN 139-34-611-043, Clark County Assessor, **Exhibit "X"**; Parcel Ownership History, APN 139-34-611-046, Clark County Assessor, attached hereto as **Exhibit "Y"**; Parcel Ownership History, APN 162-01-103-001, Clark County Assessor, **Exhibit "Z"** all attached to **"Exhibit "1"**,"William Fink's Opposition To Phil Markowitz's Motion For Sanctions

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851 S. RAMPART BLVD., SUITE 200, LAS VEGAS, NV 89145
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March 2012 Will or, if he did, he was not competent enough to comprehend it's contents. In either event, he certainly did not intend to revoke the Trust.

In fact, "on March 30, 2012, [Black called the law firm of Jeffrey Burr, LTD] and spoke with [Walker's] legal assistant Crystal Meyer to request changes to his nominated Successor Trustee, changes to his financial power of attorney, and a change to the distribution language of his trust," again never mentioning Markowitz.[14] According to Meyer, "None of Leroy's requested changes discussed on March 30, 2012, to his estate planning documents involved adding Phil Markowitz as a Successor Trustee, agent under any power of attorney, nor as beneficiary of Leroy's Will or Trust."[15] Note here, the crucial differences between the dates. The March 2012 Will was purportedly executed on **March 7, 2013**. Some **23 days later**, Black called the law offices of Jeffrey Burr, making requests to change his estate planning that **clearly indicate he believed and intended for his Trust to remain in full force and effect**. Moreover, on March 30 – 23 days after the March 2012 Will was purportedly executed – **Black was totally silent as to even the existence of Markowitz**, let alone his status as a beneficiary of Black's estate planning. The conversation as recounted by Jeffrey Burr LTD, above, is a clear indication that Black intended his Trust to be in effect as of **March 30, 2012**.

Against William Fink And To Disqualify Attorney's Of Record For William Fink And Countermotion For Certification To Set Aside Judgment Pursuant To NRCP 60(B) For Fraud Upon This Court By Markowitz."

[14] Affidavit of Jason C. Walker, Esq. **Exhibit "V"**; Affidavit of Crystal Meyer, **Exhibit "A"**, both attached to **"Exhibit "1"**,"William Fink's Opposition To Phil Markowitz's Motion For Sanctions Against William Fink And To Disqualify Attorney's Of Record For William Fink And Countermotion For Certification To Set Aside Judgment Pursuant To NRCP 60(B) For Fraud Upon This Court By Markowitz."

[15] Affidavit of Crystal Meyer, attached as **Exhibit "AA"** to **"Exhibit "1"**,"William Fink's Opposition To Phil Markowitz's Motion For Sanctions Against William Fink And To Disqualify Attorney's Of Record For William Fink And Countermotion For Certification To Set Aside Judgment Pursuant To NRCP 60(B) For Fraud Upon This Court By Markowitz."

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(702) 869-6261 TEL – (702) 869-8243 FAX

Additionally, Black indicated he wanted properties currently titled in his name to be titled in the Trust. This behavior is not consistent with disposing of property through probate and a Will, a process that Black carefully sought to avoid through nearly 20 years of estate planning by the law firm of Jeffrey Burr, LTD. Clearly, in the time leading up to his death, Black contemplated and intended to dispose of his property through the Trust, not probate.

Additionally, at no point during the years that Black worked with Walker, does Walker ever remember Black even mentioning the existence of the individuals named in the March 2012 Will. Further, Walker does not remember Black having ever "requested any specific bequest or disinheritance in his trust or any prior Will for Zelda Kameyer, Rose Markowitz, or Philip Markowitz."[16]

b. Subsequent evidence that March 2012 Will is a forgery: the purported witnesses to the March 2012 Will have now come forward and testified under oath that they did not witness the execution of that document

The purported witnesses to the March 2012 Will, David Everston and Maria Onofre, have recently been located and both have now come clean, admitting that they never witnessed Leroy Black sign the March 2012 Will.

Everston testified as follows:

> On or about March 7, 2012, at the meeting with the above named individuals in Las Vegas, there was a table that had various documents set about on it which I assumed were in relation to the money being lent to Leroy. I was asked to sign only a single document. It was the document attached hereto as Exhibit "1" and which states that I was "witnessing the signing of this instrument by Leroy Black." Nowhere did the document reference that it had anything to do with being a Will. It was never stated that the document was the Last Will and Testament of Leroy Black **and I never witnessed Leroy actually signing that document**. Phil and I had a close, trusting relationship, and I

[16] Affidavit of Jason C. Walker, Esq. attached as **Exhibit "V"** to **"Exhibit "1"**,"William Fink's Opposition To Phil Markowitz's Motion For Sanctions Against William Fink And To Disqualify Attorney's Of Record For William Fink And Countermotion For Certification To Set Aside Judgment Pursuant To NRCP 60(B) For Fraud Upon This Court By Markowitz."

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understood at the time when the attorney handed the document to me, that it had to do with the loan transaction. It was not until the Will was filed that I even understood the paper was a Will..[17] [Emphasis Added].

Onofre also signed an affidavit testifying that she did not witness the March 2012 Will. When she signed her affidavit, quoted below, she was represented by counsel.

From Onofre's affidavit:

I declare that I did not witness the execution of the Last Will and Testament (the "Will") of Leroy G. Black dated March 7, 2012 and which is attached hereto as Exhibit "A".[18]

It should be noted that Onofre was represented by counsel at the time this affidavit was executed.

William F. Martin, a retired Los Angeles Police Department Detective and private investigator who located Onofre testified that he witnessed Onofre sign the above referenced affidavit.[19]

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[17] Affidavit of David Everston, February 19, 2014, attached as **Exhibit "B"** to **"Exhibit "1"**,"William Fink's Opposition To Phil Markowitz's Motion For Sanctions Against William Fink And To Disqualify Attorney's Of Record For William Fink And Countermotion For Certification To Set Aside Judgment Pursuant To NRCP 60(B) For Fraud Upon This Court By Markowitz."The original letter sent to Everston by Jonathan Callister included language that the District Court interpreted as an offer to pay Everston for his testimony. However, when Everston inquired as to whether he was being bribed, Callister made it clear that he only wanted truthful testimony and that no compensation, other than travel expenses (Everston is an expatriate in Costa Rice), would be paid. Subsequently, Callister was disqualified from representing Fink based upon that letter.

[18] Affidavit of Maria Onofre, August 2, 2014, attached as **Exhibit "C"** to **"Exhibit "1"**,"William Fink's Opposition To Phil Markowitz's Motion For Sanctions Against William Fink And To Disqualify Attorney's Of Record For William Fink And Countermotion For Certification To Set Aside Judgment Pursuant To NRCP 60(B) For Fraud Upon This Court By Markowitz."

[19] Affidavit of William F. Martin, August 4, 2014, attached as **Exhibit "K"** to **"Exhibit "1"**,"William Fink's Opposition To Phil Markowitz's Motion For Sanctions Against William Fink And To Disqualify Attorney's Of Record For William Fink And Countermotion For Certification To Set Aside Judgment Pursuant To NRCP 60(B) For Fraud Upon This Court By Markowitz."

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Based upon the testimony of the recently located "witnesses" to the March 2012 Will, Fink filed a Rule 60(b) motion to set aside the order admitting the will to probate, for fraud upon the District Court by Markowitz. That motion is now pending before the District Court. As explained below, if the order is ultimately set aside, Markowitz' appeal will become null as there will be no basis upon which to argue that the fraudulent March 2012 Will revokes the Trust.

III. LEGAL ARGUMENT

As an overarching matter, Markowitz attempts to construe NRS 155.190(1) so broadly that such an interpretation would result in nearly all probate orders becoming appealable. A result clearly not intended by the legislature when it limited the types of Orders that were to be considered final for appeal. This interpretation would flood this Court with appeals from the state's probate Courts and would substantially prevent the efficient and timely administration of estates in Nevada. Additionally, the May 29 Order is clearly not a final order.

a. Jurisdiction does not lie based upon any of the provisions of NRS 155.190 cited by Markowitz

i. The May 29, 2014 Order Does Not Determine To Whom Distribution of Assets Should Be Made

The May 29 Order is not appealable under NRS 155.190(1)(k) because it does not "[determine] heirship or the persons to whom distribution must be made or pass."[20]

Provision cited by Markowitz' Reply Brief:

> 1. Except as otherwise provided in subsection 2, in addition to any order from which an appeal is expressly permitted by this title, an appeal may be taken to the Supreme Court within 30 days after the notice of entry of an order:
>
> (k) Determining heirship or the persons to whom distribution must be made or trust property must pass.[21]

[20] NRS 155.190(1)(k).

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ATTORNEYS AT LAW
851 S. RAMPART BLVD., SUITE 200, LAS VEGAS, NV 89145
(702) 869-6261 TEL - (702) 869-8243 FAX

Markowitz argues this, "Court has jurisdiction to hear the appeal of the May 29, 2014, Order because the Order determines to whom distribution of assets should be made."[22]

Markowitz' claim simply isn't true. The May 2014 Order does not determine to whom distribution of assets should be made. In fact, May 2014 Order does not in any way reference how property is to be distributed. Essentially, Markowitz argues that because the May 29 Order **may have implications** in how property is distributed in other, future Orders, or in other estate planning documents, that the May 29 Order is appealable.

Of course, the problem with this broad, distribution-by-implication interpretation of NRS 155.190 is that it would render **almost any** probate Order that had any indirect affect upon distribution of property as appealable. Markowitz' interpretation is so broad that it would swallow NRS 155.190 entirely, deluging this Court with appeals from a wide swath of probate orders which, like the May 29 Order, indirectly implicate distribution in some other future order or in some other estate planning document, such as the Trust Agreement.

Additionally, the canon of statutory construction, the Rule Against Surplusage, precludes the May 2014 Order from falling within the scope of NRS 155.190(1)(k).

This Court has repeatedly held that, "no part of a statute should be rendered nugatory, nor any language be turned to mere surplusage, if such consequences can properly be avoided."[23]

The scope of NRS 155.190(1)(k) is explicitly limited to orders which "determine" how "trust property **must** pass." The words "determine" and "must" connotate a decisive finality and

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[21] NRS 155.190(1)(k).

[22] Markowitz' Response Brief, at pg. 4:5-6.

[23] Ex parte Smith, 33 Nev. 466, 480 (Nev. 1910) quoting Torreyson v. Board of Examiners, 7 Nev. 19 (Nev. 1871).

must be given meaning when determining whether jurisdiction lies within NRS 155.190(1)(k). In addition to an absence of explicit language "determining" how "trust property must **pass**," the May 2014 Order does not "determine" how "property **must** pass" because it is possible that Orders subsequent to the May 2014 Order may, by implication, alter how certain property is ultimately distributed. Put in simpler terms, for jurisdiction to lie within NRS 155.190(1)(k), the order cannot simply have implications for how property is distributed, the order itself "must" "determine" how property passes.

Significantly, upon locating both David Everston and Maria Onofre, and obtaining sworn affidavits from each that they did not, in fact, witness the execution of the March 2012 Will, Fink filed with the District Court a petition to set aside judgment pursuant to NRCP 60(b) for fraud upon the Court.[24]

Fink's Rule 60(b) motion is currently pending before the Honorable Judge Gloria Sturman in District Court, set to be heard on October 22, 2014.[25] Given the massive fraud perpetrated by Markowitz through forging the March 2012 Will and obtaining false witnesses, it is probable that the May 2014 Order will be set aside, changing the implications of how Estate property is distributed, and rendering both appeals before this Court moot.

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[24] William Fink's Opposition to Phil Markowitz' Motion for Sanctions Against William Fink and to Disqualify Attorneys' of Record for William Fink and Counter Motion for Certification to Set Aside Judgment Pursuant to NRCP 60(b) for Fraud Upon this Court by Markowitz, August 21, 2014, **Exhibit "1"**.

[25] Register of Actions, Case No. P-12-074745-E, August 27, 2014 hearing, **Exhibit "4"**.

GOODSELL & OLSEN
ATTORNEYS AT LAW
851 S. RAMPART BLVD., SUITE 200, LAS VEGAS, NV 89145
(702) 869-6261 TEL - (702) 869-8243 FAX

GOODSELL & OLSEN
ATTORNEYS AT LAW
851 S. RAMPART BLVD., SUITE 200, LAS VEGAS, NV 89145
(702) 869-6261 TEL - (702) 869-8243 FAX

ii. Jurisdiction is <u>not</u> Proper because the May 29, 2014, Order Makes a Decision where the Amount in Controversy Exceeds $10,000.

Again, Markowitz' argument as to NRS 155.190(1)(h) relies entirely on **<u>implication</u>**.

> 1. Except as otherwise provided in subsection 2, in addition to any order from which an appeal is expressly permitted by this title, an appeal may be taken to the Supreme Court within 30 days after the notice of entry of an order:
>
> (n) Making any decision wherein the amount in controversy equals or exceeds, exclusive of costs, $10,000.

In Nevada, any estate worth less than $20,000.00 may be administered by affidavit, and no formal administration or even filing with the District Court is necessary.[26]

Thus, in any Estate that is administered the amount of property to be probated will exceed not only $10,000.00 - but will be greater than $20,000.00. If Markowitz' proposed interpretation of NRS 155.190(1)(n) were accepted, then literally every probate order would be appealable because virtually every probate order in some way, directly or indirectly, implicates more than $10,000.00 in property. Such an application or interpretation would render NRS 155.190(1)(n) completely null and useless as all probate orders would become appealable. "There is a presumption against a construction which would render a statute ineffective or inefficient or which would cause grave public injury or even inconvenience."[27]

Further, the U.S. Supreme Court has held as follows:

> We have refused to nullify statutes, however hard or unexpected the particular effect, where unambiguous language called for a logical and sensible result. n17 Any other course would be properly condemned as judicial legislation. However, to construe statutes so as to avoid results glaringly absurd, has long been a judicial function. n18 Where, as here, the language is susceptible of a construction which preserves the usefulness of the section, the judicial duty rests upon this Court to give expression to the intendment of the law.[28]

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[26] NRS 146.080.

[27] <u>Bird v. United States</u>, 187 U.S. 118, 124 (U.S. 1902).

[28] <u>Armstrong Paint & Varnish Works v. Nu-Enamel Corp.</u>, 305 U.S. 315, 333 (U.S. 1938).

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ATTORNEYS AT LAW
851 S. RAMPART BLVD., SUITE 200, LAS VEGAS, NV 89145
(702) 869-6261 TEL - (702) 869-8243 FAX

It would be truly absurd to interpret NRS 155.190(1)(n) to mean that any order which implicates, directly or indirectly, $10,000.00 or more in property is appealable. Such an interpretation would render NRS 155.190 null and constitute improper judicial legislation.

iii. Jurisdiction does not lie within NRS 155.190(1)(m) because the May 2014 Order does not refuse to make an order mentioned in NRS 155.190(1)

For the same reasons explained above, jurisdiction does not lie within NRS 155.190(1)(m) ("Refusing to make any order mentioned in this section") because the May 2014 Order does not deny an order enumerated in NRS 155.190(1).

b. Jurisdiction is not proper because NRS 155.190 does not explicitly authorize appeals for Order which address whether a will revokes a trust.

This Court should dismiss Markowitz' appeal because when the Legislature enacted NRS 155.190, it did not explicitly list as appealable orders as to whether a will revokes a trust. "The maxim 'EXPRESSIO UNIUS EST EXCLUSIO ALTERIUS', the expression of one thing is the exclusion of another, has been repeatedly confirmed in this State."[29]

Obviously, the Nevada legislature carefully considered which types of probate orders may be appealed. That thoughtful deliberation is evidenced by the sixteen specific types of orders that may be appealed. Orders as to whether a will revokes a trust, such as the May 2014 Order, are not explicitly enumerated. If the Legislature had intended for such orders to be appealable, such orders would have been enumerated among the sixteen other types of appealable orders in NRS 155.190. The Legislature did not include such orders in NRS 155.190 and such an exclusion must be assumed by this Court to be deliberate under expressio unius est exclusio alterius.

Therefore, this Court should dismiss Markowitz' appeal, as this Court lacks jurisdiction.

[29] Galloway v. Truesdell, 83 Nev. 13, 26 (Nev. 1967).

IV. CONCLUSION

Markowitz' has unsuccessfully attempted to shoe-horn the May 29 Order into one of the 16 types of appealable orders listed in NRS 155.190(1). However, Markowitz' interpretation of each of NRS 155.190(1) is so broad that it would swallow the specificity intended by the Legislature, rendering nearly all probate orders appealable. Additionally, the Nevada Legislature chose not to include orders as to whether a will revokes a trust as an appealable order. Finally, recent evidence has emerged revealing that the March 2012 Will to be a forgery. As a result, a motion is now pending before the District Court that would alter whatever implications the May 29 Order may have as to distribution of both trust and estate property. For these reasons, Markowitz' appeal must be dismissed for lack of jurisdiction.

DATED this 15 day of **SEPTEMBER**, 2014.

MICHAEL A. OLSEN, ESQ.
Nevada Bar No: 6076
THOMAS R. GROVER, ESQ.
Nevada Bar No: 12387
10155 W. Twain Ave., Suite 100
Las Vegas, Nevada 89147
Telephone (702) 869-6261
Facsimile (702) 869-8243
Attorneys for William Fink

GOODSELL & OLSEN
ATTORNEYS AT LAW
851 S. RAMPART BLVD., SUITE 200, LAS VEGAS, NV 89145
(702) 869-6261 TEL - (702) 869-8243 FAX