

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

4 DATED this 28 day of August, 2009.

5 ALDRICH LAW FIRM, LTD.

6
7 By

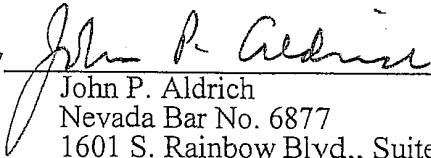

John P. Aldrich
Nevada Bar No. 6877
1601 S. Rainbow Blvd., Suite 160
Las Vegas, NV 89146
(702) 853-5490
Attorneys for Plaintiff

EXHIBIT 1

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

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

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

11 Plaintiff,

12 v.

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

15 Defendants.

16
17 SUSAN FALLINI,

18 Counterclaimant,

19 vs.

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

22 Counterdefendants.
23

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

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

25 State of Nevada)
26) SS
County of Clark)

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

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

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

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

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

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

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

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

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

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

1 return the call. No return call ever came.

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

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

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

25 ///

26 ///

27 ///

28 ///

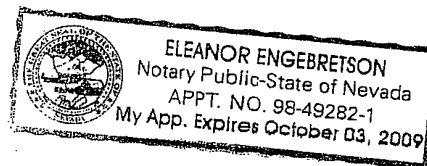
1 12. Plaintiff is entitled to the discovery responses, and in fact, Defendant has admitted
2 as much on more than one occasion. Nevertheless, Defendant refuses and continues to refuse to
3 respond. As the Court is aware, it is preferable for Plaintiff to place Defendant's insurance carrier
4 on notice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

6 Dated this 28 day of August, 2009.

7 *John P. Aldrich*
8 JOHN P. ALDRICH, ESQ.

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

11 *Eleanor Engbretson*
12 NOTARY PUBLIC



1 NOE

John P. Aldrich, Esq.

2 Nevada Bar No. 6877

ALDRICH LAW FIRM, LTD.

3 1601 S. Rainbow Blvd., Suite 160

Las Vegas, Nevada 89146

4 (702) 853-5490

(702) 227-1975 fax

5 *Attorneys for Plaintiff*

FILED
FIFTH JUDICIAL DISTRICT

OCT 14 2009

Michelle A. Thorne

Nye County Clerk

Deputy

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

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

12 Plaintiffs,

13 vs.

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

15 Defendants.

16 SUSAN FALLINI,

17 Counterclaimant,

18 vs.

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

22 Counterdefendants.

Case No.: CV24539
Dept.: 2P

23 NOTICE OF ENTRY OF ORDER

24 ///

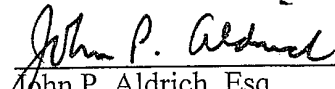
25 ///

26 ///

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

3 DATED this 13 day of October, 2009.

4 ALDRICH LAW FIRM, LTD.

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

13 **CERTIFICATE OF SERVICE**

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

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

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

28 
An employee of Aldrich Law Firm, Ltd.

1 **ORDR**

John P. Aldrich, Esq.

2 Nevada Bar No. 6877

ALDRICH LAW FIRM, LTD.

3 1601 S. Rainbow Blvd., Suite 160

Las Vegas, Nevada 89146

4 (702) 853-5490

(702) 227-1975 fax

5 *Attorneys for Plaintiff*

FILED

2009 OCT -8 P 1:26

NYE COUNTY CLERK
BY DEPUTY

Linda Uhl

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

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

10 Plaintiffs,

11 vs.

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

Defendants.

14 SUSAN FALLINI,

15 Counterclaimant,

16 vs.

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

20 Counterdefendants.

Case No.: CV24539

Dept.: 2P

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

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

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

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

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

13 DATED this 8 day of October, 2009.

14
15 ROBERT W. LANE
DISTRICT COURT JUDGE

16 Submitted by:

17 **ALDRICH LAW FIRM, LTD.**

18
19 John P. Aldrich
20 John P. Aldrich, Esq.
21 Nevada Bar No.: 6877
22 1601 S. Rainbow Blvd., Suite 160
Las Vegas, Nevada 89146
Attorneys for Plaintiff

1 **ORDR**

John P. Aldrich, Esq.

2 Nevada Bar No. 6877

ALDRICH LAW FIRM, LTD.

3 1601 S. Rainbow Blvd., Suite 160

Las Vegas, Nevada 89146

4 (702) 853-5490

(702) 227-1975 fax

5 *Attorneys for Plaintiff*

FILED
FIFTH JUDICIAL DISTRICT

NOV 04 2009

Michelle A. Thorn

Nye County Clerk

Deputy

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

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

10 Plaintiffs,)

11 vs.)

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

13 Defendants.)

14 SUSAN FALLINI,)

15 Counterclaimant,)

16 vs.)

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

20 Counterdefendants.)

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

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

1 FINDINGS OF FACT

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

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

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

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

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

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

26 6. Plaintiff attempted to amicably resolve the discovery dispute and obtain a copy of
27
28

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

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

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

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

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

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

1 with discovery requests.

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

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

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

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

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

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

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

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

5 CONCLUSIONS OF LAW

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

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

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

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

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

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

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

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

5 **ORDER**

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

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

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

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

16 IT IS SO ORDERED.

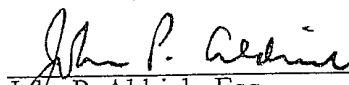
17 DATED this 4 day of November, 2009.

18 ROBERT W. LAINE

19 ~~ROBERT W. LAINE~~
20 DISTRICT COURT JUDGE

21 Submitted by:

22 ALDRICH LAW FIRM, LTD.

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

FILED

2010 FEB 11 A 8:49
Sheila Winn
NYE COUNTY CLERK
BY DEPUTY

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

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

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

Plaintiffs,

vs.

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

Defendants.

SUSAN FALLINI,

Counterclaimant,

vs.

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

Counterdefendants.

Case No.: CV24539
Dept.: 2P

NOTICE OF ENTRY OF DEFAULT

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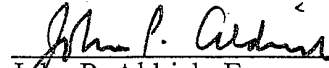
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1 PLEASE TAKE NOTICE that a DEFAULT was entered in the above-entitled matter on
2 February 4, 2010, a copy of which is attached hereto.

3 DATED this 8 day of February, 2010.

4 ALDRICH LAW FIRM, LTD.

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

13 **CERTIFICATE OF SERVICE**

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

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

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

28 
An employee of Aldrich Law Firm, Ltd.

EXHIBIT 1

EXHIBIT 1

FILED

2010 FEB 27 2:27 PM
RACHEL ALDANA

NYE COUNTY CLERK
BY DEPUTY

1 DFLT

John P. Aldrich, Esq.

2 Nevada Bar No. 6877

ALDRICH LAW FIRM, LTD.

3 1601 S. Rainbow Blvd., Suite 160

Las Vegas, Nevada 89146

4 (702) 853-5490

(702) 227-1975 fax

5 Attorneys for Plaintiff

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

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

12 Plaintiffs,)

13 vs.)

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

16 Defendants.)

17 SUSAN FALLINI,)

18 Counterclaimant,)

19 vs.)

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

22 Counterdefendants.)

23 DEFAULT

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

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

5 DATED this 4th day of February, 2010.

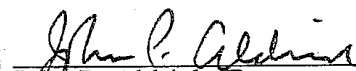
6 CLERK OF THE COURT

7 RACHEL ALDANA

8 By: _____
9 Deputy Clerk

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

12 **ALDRICH LAW FIRM, LTD.**

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

1 MOT

John P. Aldrich

2 Nevada Bar No.: 6877

ALDRICH LAW FIRM, LTD.

3 1601 S. Rainbow Blvd., Suite 160

Las Vegas, Nevada 89146

4 (702) 853-5490

Attorney for Plaintiff

FILED

2010 APR -7 P 1:55

NYE COUNTY CLERK
BY DEPUTY

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

Michelle A. Thorn

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

11 Plaintiff,

12 v.

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

15 Defendants.

16
17 SUSAN FALLINI,

18 Counterclaimant,

19 vs.

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

22 Counterdefendants.

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

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

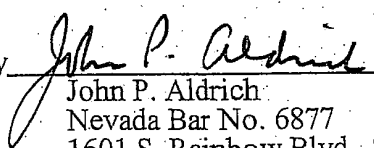
1 Order to Show Cause why Defendant Susan Fallini and her counsel should not be held in contempt
2 of court for her failure to comply with the Court's Orders dated April 27, 2009, July 17, 2009, and
3 October 8, 2009 that Susan Fallini must produce all documents responsive to Plaintiff's discovery
4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

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

15 DATED this 5 day of April, 2010.

16 ALDRICH LAW FIRM, LTD.

17
18 By


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

19
20
21
22 **AFFIDAVIT OF JOHN P. ALDRICH IN SUPPORT OF EX PARTE APPLICATION FOR**
ORDER TO SHOW CAUSE

23 State of Nevada)
24) SS
25 County of Clark)

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

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

1 2. My office address is 1601 S. Rainbow Blvd Suite 160, Las Vegas, Nevada 89146.
2
3 3. I have personal knowledge of the contents of this document, or where stated upon
4 information and belief, I believe them to be true and I am competent to testify to the facts set
5 forth herein.

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

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

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

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

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

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

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

28 ///

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

8 II.

9 LEGAL ARGUMENT

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

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

21 NRS 22.040 provides:

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

NRS 22.010 further provides in pertinent part:

The following acts or omissions shall be deemed contempts:

...

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

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

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

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

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

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

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

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

10 **III.**

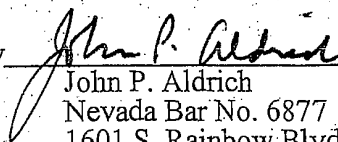
11 **CONCLUSION**

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

19 DATED this 5 day of April, 2010.

20 **ALDRICH LAW FIRM, LTD.**

21
22 By


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

For your next delivery call
Free Up Your Time
360-4555

Client: Aldrich Law
 Contact: _____
 Phone #: _____

Date: 4/21/10
 Driver 1: Anna P/A
 Driver 2: _____ D/C

P/U Location: Aldrich Law Firm
 P/U Address: _____

D/O Location: Libon + Kuehn
 D/O Address: 1401 E Bascom Ave #101
Pahrump NV 89060

Delivery Instructions: Hand deliver to Harold Kuehn

Standard <input type="checkbox"/>	Out of Area <input type="checkbox"/>
Rush <input type="checkbox"/>	Casino / House <input type="checkbox"/>
Wait Time <input type="checkbox"/>	Round Trip <input type="checkbox"/>
	Total <input type="checkbox"/>

Received by: Sandi Hill Pick Up Time: 2:00 PM 4/20/10
 Print: Mr. Kuehn not available Drop Off Time: 10:31 AM 4/21/10

4/21/10

To: Eleanor / Aldrich Law Firm
 From: Anna

We'll send you the carrier copy of the above run sheet with your invoice.

Thank you, again for considering Free Up Your Time.

Best regards,

Anna

1 **ORDR**

John P. Aldrich, Esq.

2 Nevada Bar No. 6877

ALDRICH LAW FIRM, LTD.

3 1601 S. Rainbow Blvd., Suite 160

Las Vegas, Nevada 89146

4 (702) 853-5490

(702) 227-1975 fax

5 *Attorneys for Plaintiff*

FILED

2010 APR 19 P 1:27

NYE COUNTY CLERK
BY DEPUTY

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

Michelle A. Thorn

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

11 Plaintiffs,

12 vs.

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

15 Defendants.

16 SUSAN FALLINI,

17 Counterclaimant,

18 vs.

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

21 Counterdefendants.

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

25 ///

26 ///

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

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

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

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

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28

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

7 DATED this 14 day of April, 2010.

8 **ROBERT W. LANE**

9
10 DISTRICT COURT JUDGE

11 Submitted by:

12 **ALDRICH LAW FIRM, LTD.**

13 *John P. Aldrich*

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

FILED

2010 JUN -4 P 2:16

REBECCA BALLARD
NYE COUNTY CLERK
BY DEPUTY

1 NEO

John P. Aldrich, Esq.

2 Nevada Bar No. 6877

ALDRICH LAW FIRM, LTD.

3 1601 S. Rainbow Blvd., Suite 160

Las Vegas, Nevada 89146

4 (702) 853-5490

(702) 227-1975 fax

5 *Attorneys for Plaintiff*

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

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

12 Plaintiffs,

13 vs.

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

15 Defendants.

16 SUSAN FALLINI,

17 Counterclaimant,

18 vs.

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

22 Counterdefendants.

Case No.: CV24539
Dept.: 2P

23 NOTICE OF ENTRY OF ORDER

24 ///

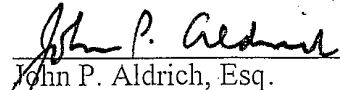
25 ///

26 ///

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

4 DATED this 3 day of June, 2010.

5 ALDRICH LAW FIRM, LTD.

6
7 
8 John P. Aldrich, Esq.
9 Nevada State Bar No. 6877
10 1601 S. Rainbow Blvd., Suite 160
11 Las Vegas, Nevada 89146
12 (702) 853-5490
13 (702) 227-1975
14 *Attorneys for Plaintiff*

15 CERTIFICATE OF SERVICE

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

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

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


29 
30 An employee of Aldrich Law Firm, Ltd.

EXHIBIT 1

EXHIBIT 1

1 **ORDR**

John P. Aldrich, Esq.

2 Nevada Bar No. 6877

ALDRICH LAW FIRM, LTD.

3 1601 S. Rainbow Blvd., Suite 160

Las Vegas, Nevada 89146

4 (702) 853-5490

(702) 227-1975 fax

5 *Attorneys for Plaintiff*

FILED

2010 JUN -2 A 8: 56

REBECCA BALLARD

CLERK
BY DEPUTY

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

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

10 Plaintiffs,

11 vs.

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

14 SUSAN FALLINI,)

15 Counterclaimant,)

16 vs.)

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

20 Counterdefendants.)

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

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

FINDINGS OF FACT

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

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

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

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

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

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

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

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

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

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

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

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

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

1 with discovery requests.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

CONCLUSIONS OF LAW

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

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

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

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

1 to Discovery requests.

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

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

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

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

21 **ORDER**

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

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

1 sought by Plaintiff.

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

10 IT IS SO ORDERED.

11 DATED this 2 day of June, 2010.

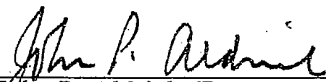
12 **ROBERT W. LANE**

13

DISTRICT COURT JUDGE

14 Submitted by:

15 **ALDRICH LAW FIRM, LTD.**

16
17 
18

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

7757880187

Marvel & Kump, Ltd.

03/09/21 p.m. 06-10-2010

1/2

1 CASE NO. CV-0024539

2 DEPT. 2P

REBECCA BALLAR

CLERK

3
4
5
6 **IN THE FIFTH JUDICIAL DISTRICT COURT OF THE**
7 **STATE OF NEVADA IN AND FOR THE COUNTY OF NYE**
8

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

SUBSTITUTION OF ATTORNEYS

Plaintiffs,

vs.

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

Defendants,

16 SUSAN FALLINI,

Counterclaimant,

vs.

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

Counterdefendants,

22 ///

23 ///

24 ///

25 ///

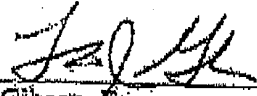
26 ///

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

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

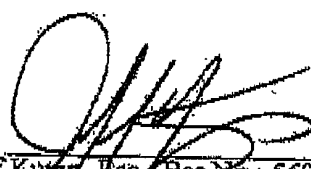
5
6 Dated this 17 of June, 2010.

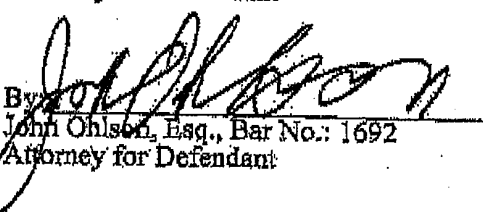
7 EARNEST, GIBSON & KUEHN

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

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

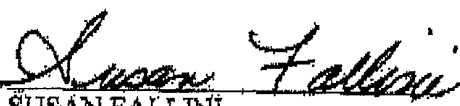
15 Dated this 17 of June, 2010.

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

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

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

26 Dated this 17 of June, 2010.

27 
28 SUSAN FALLINI

1 IN THE
2 SUPREME COURT OF THE STATE OF NEVADA

3 ESTATE OF MICHAEL DAVID
4 ADAMS, BY AND THROUGH HIS
5 MOTHER JUDITH ADAMS,
6 INDIVIDUALLY AND ON BEHALF
7 OF THE ESTATE,

8 Petitioner,

9 v.

10 FIFTH JUDICIAL DISTRICT
11 COURT, NYE COUNTY, NEVADA,

12 Respondent,

13 and

14 SUSAN FALLINI,

15 Real Party in Interest.

Supreme Court No.:

District Court Case No. CV2014-00239
Electronically Filed
Sep 17 2014 02:11 p.m.
Tracie K. Lindeman
Clerk of Supreme Court

16 PETITIONER'S APPENDIX, VOLUME I

17 (Bates Nos. 0001-0203)

18 John P. Aldrich, Esq.
19 Nevada Bar No. 6877
20 Stephanie Cooper Herdman, Esq.
21 Nevada Bar No. 5919
22 **ALDRICH LAW FIRM, LTD.**
23 1601 S. Rainbow Blvd. Suite 160
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25 Tel (702) 853-5490
26 Fax (702) 227-1975
27 *Attorneys for Petitioner*
28

PETITIONER'S APPENDIX

CHRONOLOGICAL INDEX

VOLUME I

	<u>Pages</u>
Complaint (1/31/07)	0001-0006
Defendant Susan Fallini's Answer and Counterclaim (3/14/07)	0007-0011
Motion for Partial Summary Judgment (5/16/08)	0012-0023
Notice of Entry of Order (8/15/08) [Order Granting Plaintiffs' Motion for Partial Summary Judgment (7/30/08)]	0024-0028
Plaintiff's Motion to Compel Defendant's Production of Documents (3/23/09)	0029-0081
Notice of Entry of Order (5/18/09) [Order Granting Plaintiff's Motion to Compel Defendant's Production of Documents (4/27/09)]	0082-0086
Plaintiff's Motion to Strike Defendant's Answer and Counterclaim (6/16/09)	0087-0146
Order Denying Plaintiff's Motion to Strike Defendant's Answer and Counterclaim (7/17/09)	0147-0148
Plaintiff's <i>Ex Parte</i> Motion for Order to Show Cause Why Defendant Susan Fallini and Her Counsel Should Not Be Held in Contempt of Court (8/31/09)	0149-0160
Notice of Entry of Order (10/14/09) [Order Regarding Order to Show Cause Why Defendant Susan Fallini and Her Counsel Should Not Be Held in Contempt of Court (10/8/09)]	0161-0164

Findings of Fact, Conclusions of Law and Order Striking Answer and Counterclaim of Defendant Susan Fallini and Holding Defendant's Counsel in Contempt of Court (11/04/09)	0165-0170
Notice of Entry of Default (2/11/10)	0171-0175
Plaintiff's <i>Ex Parte</i> Motion for Order to Show Cause Why Defendant Susan Fallini and Her Counsel Should Not Be Held in Contempt of Court and Possible Sanctions Be Imposed (4/7/10)	0176-0187
Order to Show Cause Why Defendant Susan Fallini and Her Counsel Should Not Be Held in Contempt of Court and Possible Sanctions Be Imposed (4/19/10)	0188-0190
Notice of Entry of Order (6/4/10) [Findings of Fact, Conclusions of Law and Order Holding Defendant's Counsel in Contempt of Court (6/2/10)]	0191-0201
Substitution of Attorneys (6/11/10)	0202-0203

VOLUME II

	<u>Pages</u>
Application for Default Judgment Against Defendant Susan Fallini (6/21/10)	0204-0265
Opposition to Application for Default Judgment Against Defendant Susan Fallini (6/23/10)	0266-0268
Motion for Leave to File Motion for Reconsideration (7/6/10)	0269-0295
Transcript of Proceedings (Application for Default Judgment) (7/19/10)	0296-0334
Notice of Entry of Order (8/18/10) [Order After Hearing (8/12/10)]	0335-0341
Notice of Appeal (9/7/10)	0342-0344

Notice of Referral to Settlement Program and Suspension of Rules (9/20/10)	0345
Complaint for Declaratory Relief (1/31/11)	0346-0355
Settlement Program Status Report (2/15/11)	0356
Certificate (3/10/11)	0357-0359

VOLUME III

	<u>Pages</u>
Motion to Dismiss (3/25/11)	0360-0453
Defendant Hon. Robert W. Lane's Motion to Dismiss Complaint for Declaratory Relief (4/5/11)	0454-0496
Appellants' Opening Brief (5/31/11)	0497-0518
Amended Certificate of Service (6/7/11)	0519-0521
Order (6/11/11)	0522-0524
Respondent's Answering Brief (7/8/11)	0525-0556
Appellants' Reply Brief (7/29/11)	0557-0576
Order Submitting Appeal for Decision Without Oral Argument (8/19/11)	0577

VOLUME IV

	<u>Pages</u>
Motion for Order Allowing Supplementation of Appendix and for Re-Opening of Briefs (10/5/11)	0578-0626
Respondent's Opposition to Appellant's Motion for Order Allowing Supplementation of Appendix and for Re-Opening of Briefs (10/17/11)	0627-0651

Order Granting Motion to Supplement Appendix and Reopen Briefing (10/24/11)	0652-0653
Appellants' Amended Opening Brief (11/17/11)	0654-0676
Respondent's Amended Answering Brief (12/27/11)	0677-0713
Appellants' Amended Reply Brief (1/10/12)	0714-0730
Order Submitting for Decision Without Oral Argument (2/15/13)	0731
Order Affirming In Part, Reversing In Part and Remanding (3/29/13)	0732-0738
Appellant's Petition for Rehearing (4/9/13)	0739-0757
Order Denying Rehearing (6/3/13)	0758
Appellant's Petition for En Banc Reconsideration (6/5/13)	0759-0778
Order Denying En Banc Reconsideration (7/18/13)	0779-0780
Remittitur (8/14/13)	0781
Motion to Disqualify Judge Robert W. Lane From Any Further Proceedings In This Case and to Transfer This Case For Further Consideration to Hon. Kimberly A. Wanker (8/15/13)	0782-0787

VOLUME V

Opposition to Motion to Disqualify Judge Robert W. Lane From Any Further Proceedings In This Case and to Transfer This Case For Further Consideration to Hon. Kimberly A. Wanker (9/4/13)	<u>Pages</u> 0788-0834
Court Order (9/5/13)	0835-0845

Reply in Support of Motion to Disqualify Judge Robert W. Lane From Any Further Proceedings In This Case and to Transfer This Case For Further Consideration to Hon. Kimberly A. Wanker (9/6/13)	0846-0849
Request for Submission (9/6/13)	0850-0852
Supplemental Court Order (9/23/13)	0853-0854
Motion to Enter Final Judgment Following Remittitur (9/25/13)	0855-0882
Opposition to Motion for Entry of Order (9/30/13)	0883-0894
Motion to Reverse or Withdraw Remittitur and Clarify Instructions For Allowance of Interest (10/7/13)	0895-0900
Reply to Opposition to Motion to Enter Final Judgment Following Remittitur (10/8/13)	0901-0903
Opposition to Motion to Withdraw Remittitur and Clarify Instructions For Allowance of Interest (10/14/13)	0904-0907
Order Granting Motion to Recall Remittitur and to Modify March 29, 2013, Order for Allowance of Interest (1/3/14)	0908-0911
Remittitur (2/12/14)	0912
Jury Demand (3/11/14)	0913-0915
Defendant's Objection to Proposed Judgment (3/27/14)	0916-0924
Reply to Defendant's Objection to Proposed Judgment (4/10/14)	0925-0926
Notice of Entry of Judgment (5/7/14)	0927-0930
Motion for Relief From Judgment Pursuant to NRCP 60(b) (5/20/14)	0931-1008

VOLUME VI

	<u>Pages</u>
Countermotion to Strike Defendant's Motion for Relief From Judgment Pursuant to NRCPP 60(b) or in the Alternative, Opposition to Motion for Relief From Judgment Under NRCPP 60(b) (6/9/14)	1009-1109
Susan Fallini's Reply Memorandum in Support of Her Rule 60(b) Motion to Set Aside Judgment and Opposition to Plaintiff's Countermotion to Strike (6/16/14)	1110-1118
Notice of Entry of Order (6/26/14) [Order Granting Defendants Tony Adams, Judith Adams, and John P. Aldrich, Esq.'s Motion to Dismiss and Order Denying Defendants Tony Adams, Judith Adams, and John P. Aldrich, Esq.'s Motion for Sanctions Pursuant to NRCPP 11 (6/23/14)]	1119-1122
Transcript of Proceedings (Motion for Relief From Judgment Pursuant to NRCPP 60(b)) (7/28/14)	1123-1217
Notice of Entry of Order (8/13/14) [Court Order (8/6/14)]	1218-1233

PETITIONER'S APPENDIX

ALPHABETICAL INDEX

	<u>Vol.</u>	<u>Pages</u>
Amended Certificate of Service (6/7/11)	III	0519-0521
Appellants' Amended Opening Brief (11/17/11)	IV	0654-0676
Appellants' Amended Reply Brief (1/10/12)	IV	0714-0730
Appellants' Opening Brief (5/31/11)	III	0497-0518
Appellant's Petition for En Banc Reconsideration (6/5/13)	IV	0759-0778
Appellant's Petition for Rehearing (4/9/13)	IV	0739-0757
Appellants' Reply Brief (7/29/11)	III	0557-0576
Application for Default Judgment Against Defendant Susan Fallini (6/21/10)	II	0204-0265
Certificate (3/10/11)	II	0357-0359
Complaint (1/31/07)	I	0001-0006
Complaint for Declaratory Relief (1/31/11)	II	0346-0355
Countermotion to Strike Defendant's Motion for Relief From Judgment Pursuant to NRCP 60(b) or in the Alternative, Opposition to Motion for Relief From Judgment Under NRCP 60(b) (6/9/14)	VI	1009-1109
Court Order (9/5/13)	V	0835-0845
Defendant Hon. Robert W. Lane's Motion to Dismiss Complaint for Declaratory Relief (4/5/11)	III	0454-0496

Defendant Susan Fallini's Answer and Counterclaim (3/14/07)	I	0007-0011
Defendant's Objection to Proposed Judgment (3/27/14)	III	0916-0924
Findings of Fact, Conclusions of Law and Order Striking Answer and Counterclaim of Defendant Susan Fallini and Holding Defendant's Counsel in Contempt of Court (11/4/09)	I	0165-0170
Jury Demand (3/11/14)	III	0913-0915
Motion for Leave to File Motion for Reconsideration (7/6/10)	II	0269-0295
Motion for Order Allowing Supplementation of Appendix and for Re-Opening of Briefs (10/5/11)	IV	0578-0626
Motion for Partial Summary Judgment (5/16/08)	I	0012-0023
Motion for Relief From Judgment Pursuant to NRCP 60(b) (5/20/14)	V	0931-1008
Motion to Dismiss (3/25/11)	III	0360-0453
Motion to Disqualify Judge Robert W. Lane From Any Further Proceedings In This Case and to Transfer This Case For Further Consideration to Hon. Kimberly A. Wanker (8/15/13)	IV	0782-0787
Motion to Enter Final Judgment Following Remittitur (9/25/13)	V	0855-0882
Motion to Reverse or Withdraw Remittitur and Clarify Instructions For Allowance of Interest (10/7/13)	V	0895-0900
Notice of Appeal (9/7/10)	II	0342-0344

Notice of Entry of Default (2/11/10)	I	0171-0175
Notice of Entry of Judgment (5/7/14)	V	0927-0930
Notice of Entry of Order (8/15/08) [Order Granting Plaintiffs' Motion for Partial Summary Judgment (7/30/08)]	I	0024-0028
Notice of Entry of Order (5/18/09) [Order Granting Plaintiff's Motion to Compel Defendant's Production of Documents (4/27/09)]	I	0082-0086
Notice of Entry of Order (10/14/09) [Order Regarding Order to Show Cause Why Defendant Susan Fallini and Her Counsel Should Not Be Held in Contempt of Court (10/8/09)]	I	0161-0164
Notice of Entry of Order (6/4/10) [Findings of Fact, Conclusions of Law and Order Holding Defendant's Counsel in Contempt of Court (6/2/10)]	I	0191-0201
Notice of Entry of Order (8/18/10) [Order After Hearing (8/12/10)]	II	0335-0341
Notice of Entry of Order (6/26/14) [Order Granting Defendants Tony Adams, Judith Adams, and John P. Aldrich, Esq.'s Motion to Dismiss and Order Denying Defendants Tony Adams, Judith Adams, and John P. Aldrich, Esq.'s Motion for Sanctions Pursuant to NRCP 11 (6/23/14)]	VI	1119-1122
Notice of Entry of Order (8/13/14) [Court Order (8/6/14)]	VI	1218-1233
Notice of Referral to Settlement Program and Suspension of Rules (9/20/10)	II	0345
Opposition to Application for Default Judgment Against Defendant Susan Fallini (6/23/10)	II	0266-0268

Opposition to Motion for Entry of Order (9/30/13)	III	0883-0894
Opposition to Motion to Disqualify Judge Robert W. Lane From Any Further Proceedings In This Case and to Transfer This Case For Further Consideration to Hon. Kimberly A. Wanker (9/4/13)	V	0788-0834
Opposition to Motion to Withdraw Remittitur and Clarify Instructions For Allowance of Interest (10/14/13)	III	0904-0907
Order (6/11/11)	III	0522-0524
Order Affirming In Part, Reversing In Part and Remanding (3/29/13)	IV	0732-0738
Order Denying En Banc Reconsideration (7/18/13)	IV	0779-0780
Order Denying Plaintiff's Motion to Strike Defendant's Answer and Counterclaim (7/17/09)	I	0147-0148
Order Denying Rehearing (6/3/13)	IV	0758
Order Granting Motion to Recall Remittitur and to Modify March 29, 2013, Order for Allowance of Interest (1/3/14)	V	0908-0911
Order Granting Motion to Supplement Appendix and Reopen Briefing (10/24/11)	IV	0652-0653
Order Submitting Appeal for Decision Without Oral Argument (8/19/11)	III	0577
Order Submitting for Decision Without Oral Argument (2/15/13)	IV	0731

Order to Show Cause Why Defendant Susan Fallini and Her Counsel Should Not Be Held in Contempt of Court and Possible Sanctions Be Imposed (4/19/10)	I	0188-0190
Plaintiff's <i>Ex Parte</i> Motion for Order to Show Cause Why Defendant Susan Fallini and Her Counsel Should Not Be Held in Contempt of Court (8/31/09)	I	0149-0160
Plaintiff's <i>Ex Parte</i> Motion for Order to Show Cause Why Defendant Susan Fallini and Her Counsel Should Not Be Held in Contempt of Court and Possible Sanctions Be Imposed (4/7/10)	I	0176-0187
Plaintiff's Motion to Compel Defendant's Production of Documents (3/23/09)	I	0029-0081
Plaintiff's Motion to Strike Defendant's Answer and Counterclaim (6/16/09)	I	0087-0146
Remittitur (8/14/13)	IV	0781
Remittitur (2/12/14)	III	0912
Reply in Support of Motion to Disqualify Judge Robert W. Lane From Any Further Proceedings In This Case and to Transfer This Case For Further Consideration to Hon. Kimberly A. Wanker (9/6/13)	V	0846-0849
Reply to Defendant's Objection to Proposed Judgment (4/10/14)	V	0925-0926
Reply to Opposition to Motion to Enter Final Judgment Following Remittitur (10/8/13)	III	0901-0903
Request for Submission (9/6/13)	V	0850-0852
Respondent's Amended Answering Brief (12/27/11)	IV	0677-0713

Respondent's Answering Brief (7/8/11)	III	0525-0556
Respondent's Opposition to Appellant's Motion for Order Allowing Supplementation of Appendix and for Re-Opening of Briefs (10/17/11)	IV	0627-0651
Settlement Program Status Report (2/15/11)	II	0356
Substitution of Attorneys (6/11/10)	I	0202-0203
Supplemental Court Order (9/23/13)	V	0853-0854
Susan Fallini's Reply Memorandum in Support of Her Rule 60(b) Motion to Set Aside Judgment and Opposition to Plaintiff's Countermotion to Strike (6/16/14)	VI	1110-1118
Transcript of Proceedings (Application for Default Judgment) (7/19/10)	II	0296-0334
Transcript of Proceedings (Motion for Relief From Judgment Pursuant to NRCP 60(b)) (7/28/14)	VI	1123-1217

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COMP
EDWARD J. ACHREM & ASSOCIATES
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Nevada Bar No. 2281
James E. Smith, Esq.
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512 South Tonopah Dr., Ste. 100
Las Vegas, Nevada 89106
Phone: (702) 734-3936

Attorneys for Plaintiffs

DISTRICT COURT

NYE COUNTY, NEVADA

ESTATE OF MICHAEL DAVID ADAMS,)
by and through his mother)
JUDITH ADAMS, individually)
and on behalf of the ESTATE,)
Plaintiffs,)
vs)
SUSAN FALLINI, DOES I-X and)
ROE CORPORATIONS I-X,)
inclusive,)
Defendants.)

CASE NO. : CV24539
DEPT. NO. : 2

COMPLAINT

Plaintiffs, the Estate of MICHAEL DAVID ADAMS ("Michael"),
by and through his mother, JUDITH ADAMS ("Judith"), individually
and as Executrix for her son's Estate (hereinafter collectively
referred to as "Plaintiffs"), by and through the law firm of
EDWARD J. ACHREM & ASSOCIATES, LTD., for their claims and causes
of action against the Defendants, and each of them, hereby
allege as follows:

...
...
...

FILED
FIFTH JUDICIAL DISTRICT

JAN 31 2001

Nye County Clerk
ROBERT CARSON
Deputy

GENERAL ALLEGATIONS

1. At the time of his death, Michael was 33 years old and was a resident of Orange County, California. He was unmarried and had no natural or adopted children. His mother, Judith, is the administrator of her son's estate and also a resident of Orange County, California. Because the incident set forth below occurred in Nevada, Plaintiffs voluntarily subject themselves to, and will be bound by the jurisdiction of this Court.

2. Upon information and belief, Defendant SUSAN FALLINI ("Fallini") is the owner of a Hereford red cow. As more fully set forth below, this cow was wandering freely on SR 375 highway, at Nye mile marker 33, in Nye County, Nevada on or about July 7, 2005.

3. Plaintiffs are ignorant of the true names and capacities of Defendants sued herein as DOES I through X, and ROE CORPORATIONS I through X, inclusive, and therefore sue these Defendants by such fictitious names. Plaintiffs are further informed and believe that one or more of the parties which may be responsible for some portion of the damages being sought by the Plaintiffs as a result of Michael's death on July 7, 2005 may include persons, partnerships, corporations, other owners, governmental subdivisions and/or other persons and entities, the identities of which have not yet been determined. Because such names are currently unknown, Plaintiffs have listed them collectively as DOE Defendants and ROE CORPORATION Defendants and will seek leave of Court to amend this Complaint to allege their true names and capacities when they have been ascertained.

1 4. Plaintiffs are informed and believe, and thereon allege,
2 that each of the fictitiously named Defendants is responsible in
3 some manner for the occurrence described herein and that
4 Plaintiffs' damages, including Michael's death, were proximately
5 caused by such conduct.

6 5. Plaintiffs are informed and believe, and thereon allege,
7 that at all times herein mentioned, each of the Defendants was
8 the agent and/or employee of each of the remaining Defendants,
9 and in doing the things hereinafter alleged, were acting within
10 the course and scope of such agency, employment or contract.

11 6. On July 7, 2005, around 9:00 p.m., Michael was lawfully
12 driving his 1994 Jeep Wrangler on SR 375 highway in Nye County,
13 Nevada. At that time and place, a Hereford cow suddenly
14 appeared in the travel portion of the roadway, blocking
15 Michael's path. Although Michael was traveling at a lawful rate
16 of speed, it was not possible for him to avoid a head-on
17 collision with the cow. As a direct and proximate result of the
18 collision, Michael's Jeep rolled over and left the paved
19 highway. Michael died at the scene.

20 7. Plaintiffs contend that at all times herein mentioned,
21 Michael acted reasonably, had a right to use the highway, and
22 did nothing to cause or contribute to his death. Plaintiffs
23 further contend that Defendants, and each of them, owed a
24 continuing duty of care, which included without limitation, (a)
25 the duty to control the Hereford cow by providing boundary
26 fencing that would keep it away from passing motorists; (b) the
27 duty to monitor all of Defendants' cows, including the one that
28 caused Michael's death, and to take reasonable precautions to

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1 prevent them from wandering many miles away; and (c) the duty to
2 warn drivers traveling along the highway that cattle would, or
3 could be present in the area in which they were driving.

4 In addition to the duties set forth above, Defendants and
5 each of them also had a separate and independent obligation to
6 illuminate the Hereford cow by marking it with an inexpensive
7 florescent tag, or similar device, so that the cow could be seen
8 more easily by persons who were driving on the highway at night,
9 such as Michael.

10 8. Plaintiffs contend that, despite constructive and/or actual
11 notice by the Defendants of the extreme hazard that was posed by
12 a wandering Hereford cow at night, the Defendants and each of
13 them, (a) failed to control the Hereford cow by providing
14 boundary fencing that would keep it away from passing motorists;
15 (b) failed to monitor all of Defendants' cows, including the one
16 that caused Michael's death, and to take reasonable precautions
17 to prevent them from wandering many miles away; and (c) failed
18 to warn drivers traveling along the highway that cattle would,
19 or could be present in the area in which they were driving.

20 In addition to the above, Defendants and each of them also
21 failed to illuminate the Hereford cow by marking it with an
22 inexpensive florescent tag, or similar device, so that the cow
23 could be seen more easily by persons who were driving on the
24 highway at night, such as Michael.

25 9. As a direct and proximate result of the Defendants'
26 negligent acts and omissions, in the manner described above,
27 Michael was killed. As a result, his Estate and heir(s) have
28 been generally and specially damaged in a sum well in excess of

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ten thousand dollars (\$10,000.00). These damages include, without limitation, pain and suffering, as well as severe emotional distress, from the time of the accident until the moment of Michael's death, the loss of the quality and enjoyment of Michael's life, and the loss of Michael's company, companionship, society, comfort, attention, services and support.

10. As a further direct and proximate result of the Defendants' negligent acts and omissions, in the manner described above, Michael's Estate has incurred incidental, funeral and burial expenses in an amount not yet fully ascertained, but which will be set forth in full at the time of trial.

WHEREFORE, Plaintiffs, expressly reserving their right to amend this Complaint at the time of the trial of the actions herein to include all items of damages not yet ascertained, hereby pray for damages against Defendants, and each of them, as follows:

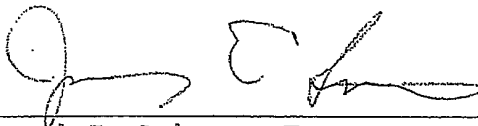
- 1. For general damages in excess of \$10,000.00;
- 2. For special damages in excess of \$10,000.00;

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3. For prejudgment interests, costs of suit herein incurred
and reasonable attorney's fees; and
4. For such further relief as may appear just to the Court.
- DATED this 29 day of January, 2007.

EDWARD J. ACHREM & ASSOCIATES



Edward J. Achrem, Esq.
Nevada Bar No. 2281
James E. Smith, Esq.
Nevada Bar No. 0052
512 South Tonopah Dr., Ste. 100
Las Vegas, NV 89106
Attorneys for Plaintiffs

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MAR 19 2007

Case No. CV24539
Dept. 2P

FILED

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Danae A. Bright

NYE COUNTY CLERK
BY DEPUTY

IN THE FIFTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
IN AND FOR THE COUNTY OF NYE

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

Plaintiffs,

vs.

**DEFENDANT SUSAN FALLINI's
ANSWER AND COUNTERCLAIM**

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

Defendants,

COMES NOW Defendant SUSAN FALLINI above named, by and through
her attorney HAROLD KUEHN, Esq. of the law firm of EARNEST, GIBSON
& KUEHN, and for her answer to Plaintiffs' Complaint on file
herein, admits, denies and alleges as follows:

1. Answering Paragraphs 1 and 6, Defendant SUSAN FALLINI is
without sufficient information to form a belief as to the truth or
falsity of these allegations, and accordingly, Defendant SUSAN
FALLINI denies each and every allegation contained therein.

2. Answering Paragraphs 2, 3, 4, 5, 7, 8, 9 and 10,
Defendant SUSAN FALLINI denies each and every allegation contained
therein.

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1 2. That on or about July 7, 2005, Defendant was the owner of
2 the "cow" referenced in Plaintiffs' complaint on file herein. A

3 3. That on or about July 7, 2005, MICHAEL DAVID ADAMS was
4 operating a motor vehicle at or near State Route 375 near mile
5 marker Nye 33, which then collided with the "cow" mentioned in A
6 Paragraph 2. above, killing said MICHAEL DAVID ADAMS and said
7 "cow."

8 4. That Plaintiff ESTATE OF MICHAEL DAVID ADAMS is the
9 lawful successor in interest to MICHAEL DAVID ADAMS. A

10 5. That at all times relevant, the area at or near State
11 Route 375 near mile marker Nye 33 was "open range" as defined in
12 NRS 568.355. O

13 5. That as a direct and proximate result of MICHAEL DAVID
14 ADAMS' actions and/or omissions, the ESTATE OF MICHAEL DAVID ADAMS
15 is liable to Defendant SUSAN FALLINI for the replacement value of
16 said "cow" and other incidental and general damages relating to O
17 the disposal and replacement of said "cow," according to the proof
18 presented at time of trial.

19 6. That Defendant SUSAN FALLINI has been required to retain
20 the services of EARNEST, GIBSON & KUEHN to prosecute this action, O
21 and accordingly, Defendant SUSAN FALLINI is entitled to her costs
22 and attorney fees incurred.

23 WHEREFORE, Defendant SUSAN FALLINI prays for judgment as
24 follows:
25

26 1. For a sum reflecting the replacement value of said "cow,"
27 and other incidental and general damages.

28 2. For an award of attorney fees and costs.

1 3. For such other and further relief as the Court may deem
2 just and proper in the premises.

3 DATED this 13th day of March, 2007.



HAROLD KUEHN, Esq.
Nevada Bar #284
EARNEST, GIBSON & KUEHN
921 So. Hwy. 160, Suite 203
Pahrump, NV 89048
775/751-9000
Attorney for Defendant
SUSAN FALLINI

CERTIFICATE OF SERVICE

I certify that I am an employee of EARNEST, GIBSON & KUEHN,
Attorneys at Law, and that on the 13th day of
March, 2007, I served the foregoing DEFENDANT SUSAN
FALLINI's ANSWER AND COUNTERCLAIM by depositing a copy in the U.S.
mail, first class postage prepaid, addressed to the following
person(s) at the following address(es):

James E. Smith, Esq.
EDWARD J. ACHREM & ASSOCIATES
512 So. Tonopah Drive, Suite 100
Las Vegas, NV 89106



an employee of EARNEST, GIBSON & KUEHN

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

MOT

John P. Aldrich, Esq.
Nevada State Bar No. 6877
Adrianne C. Duncan, Esq.
Nevada State Bar No. 9797

BLACK & LOBELLO

10777 West Twain Avenue, Suite 300
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(702) 869-8801
Attorneys for Plaintiffs

Michelle A. Thorn

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

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

Plaintiffs,

v.

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

Defendants

SUSAN FALLINI,

Counter-claimant,

v.

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

Counter-defendants

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

**MOTION FOR PARTIAL SUMMARY
JUDGMENT**

Date of Hearing:
Time of Hearing:

Plaintiffs, Estate of MICHAEL DAVID ADAMS, by and through his mother JUDITH
ADAMS, individually and on behalf of the Estate, by and through their attorneys of record JOHN

CALENDARED

on:

FILED

MAY 20 2008

2008 MAY 16 P 2:17

NYE COUNTY CLERK
BY DEPUTY

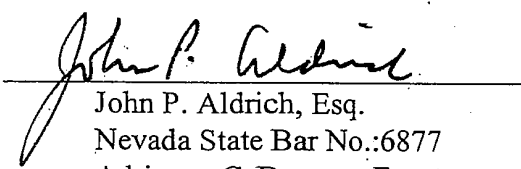
1 P. ALDRICH, ESQ., and ADRIANNE C. DUNCAN, ESQ. and the law firm of BLACK &
2 LoBELLO, hereby present their *MOTION FOR PARTIAL SUMMARY JUDGMENT*.

3 This Motion is made and based upon the papers and pleadings on file herein, the attached
4 affidavit of John P. Aldrich, Esq., and exhibits and any and all oral argument or testimony that the
5 Court may entertain at the hearing of this Motion.
6

7 DATED this 14th day of May, 2008.

8 **BLACK & LOBELLO**

9
10 By


John P. Aldrich, Esq.
Nevada State Bar No.: 6877
Adrianne C. Duncan, Esq.
Nevada State Bar No.: 9797
10777 West Twain Avenue, Suite 300
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Attorneys for Plaintiffs

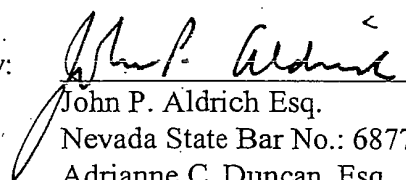
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15 **NOTICE OF MOTION**

16 PLEASE TAKE NOTICE that on the 14 day of July 2008, at the hour of
17 9am, or as soon thereafter as counsel may be heard, in Department 2 Plaintiffs, by and
18 through their attorneys, John P. Aldrich, Esq. and Adrianne C. Duncan, Esq. and the law firm of
19 Black & LoBello will bring the foregoing MOTION on for hearing.
20

21 DATED this 14th day of May, 2008.

22 **BLACK & LOBELLO**

23
24 By:


John P. Aldrich Esq.
Nevada State Bar No.: 6877
Adrianne C. Duncan, Esq.
Nevada State Bar No.: 9797
10777 West Twain Avenue, Suite 300
Las Vegas, NV 89135
Attorneys for Plaintiffs

1
2 **POINTS AND AUTHORITIES**

3 **I.**

4 **PROCEDURAL HISTORY**

5 On November 29, 2006, Plaintiffs Estate of MICHAEL DAVID ADAMS, by and through
6 his mother JUDITH ADAMS ("Judith"), individually and on behalf of the Estate, filed a complaint
7 in the Eighth Judicial District Court, Clark County, Nevada, alleging, among other things, the
8 wrongful death of Michael David Adams ("Michael").
9

10 On December 29, 2006, Defendant Susan Fallini ("Fallini"), filed a Demand and Motion for
11 Mandatory Change of Venue. Subsequently, the parties, by and through their counsel, stipulated and
12 agreed to dismiss the pending action in Clark County, Nevada, without prejudice, so that the matter
13 could be heard in Nye County, Nevada.
14

15 On March 14, 2007, Defendant Fallini, filed an Answer to Plaintiffs' Complaint and a
16 Counterclaim in Nye County, Nevada. On March 30, 2007, Plaintiffs filed a Reply to Defendant's
17 Counterclaim. Subsequently, Fallini filed an objection to Pahrump as the forum for the litigation
18 and a Motion to have the matter heard in Tonopah. However, that Motion was denied and the case
19 proceeded in Pahrump.
20

21 The Early Case Conference in this matter was held on June 15, 2007. The parties, by and
22 through their respective counsel, filed a Joint Case Conference Report on October 23, 2007.
23 Thereafter, on October 31, 2007, Plaintiffs served the Defendant with written discovery requests,
24 including Requests for Admission, Requests for Production of Documents, and Interrogatories. (See
25 **Exhibit 1**). To date, Defendant has not responded to the written discovery requests, nor has
26 Defendant requested an extension in which to respond.
27

28 ///

II.

STATEMENT OF FACTS

At the time of his death, Michael was 33 years old and a resident of Orange County, California. He was unmarried and had no natural or adopted children. His mother, Judith, is the administrator of her son's estate and also a resident of Orange County, California. The incident that caused Michael's death occurred in Nevada.

Defendant Fallini, is the owner of a Hereford red cow that was wandering freely on SR 375 highway, at Nye mile marker 33, in Nye County, Nevada on or about July 7, 2005. On said date at approximately 9:00 p.m., Michael was lawfully driving his 1994 Jeep Wrangler on SR 375. The Hereford cow suddenly appeared in the travel portion of the roadway, blocking Michael's path. Although Michael was traveling at a lawful rate of speed, it was not possible for him to avoid the head-on collision with the cow. As a direct and proximate result of the collision, Michael's Jeep rolled over and left the paved highway. Michael died at the scene.

On October 31, 2007, Plaintiffs served Fallini with Requests for Admission. To date, the Requests for Admission have not been answered, and therefore are deemed admitted. Therefore, the following are additional facts that must be taken into consideration by the court:

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

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

III.

LEGAL ARGUMENT

A. STANDARD OF REVIEW.

Pursuant to NRCP 56(c), a Motion for Summary Judgment "shall be rendered forthwith if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law." NRCP 56(c). A genuine issue of material fact is one where the evidence is such that a reasonable jury could return a verdict for the non-moving party. *Posadis v. City of Reno*, 109 Nev. 448, 851 P. 2d 438 (1983). In the present matter, there are no genuine issues as to any material fact, and therefore, Plaintiffs are entitled to summary judgment.

1 Although the non-moving party is entitled to have the evidence and all reasonable inferences
2 accepted as true, See City of Boulder City v. State of Nevada, 106 Nev. 390, 793 P. 2d 845 (1990),
3 citing, Wiltsie v. Baby Grand Corp., 105 Nev. 291, 774 P. 2d 432 (1989), if the moving party is able
4 to “show that one of the elements is clearly lacking as a matter of law,” then summary judgment is
5 appropriate. Joynt v. California Hotel & Casino, 108 Nev. 539, 542, 835 P. 2d 799, 801 (1992).
6 (internal quotations and citations omitted).

8 When a motion for summary judgment is made and supported as provided in Rule 56, the
9 adverse party may not rest upon mere allegations of his pleading, but must, by affidavit or otherwise,
10 set forth specific facts demonstrating the existence of a genuine issue for trial. See NGA #2, LLC,
11 v. Rains, 113 Nev. 1151, 1157, 946 P. 2d 163, 167 (1997); Boland v. Nevada Rock & Sand, Co.,
12 Nev. 108, 894 P. 2d 988, 990 (1995). The non-moving party “is not entitled to build a case on the
13 gossamer threads of whimsey, speculation, and conjecture.” Collins v. Union Fed Savings & Loan,
14 99 Nev. 284, 302, 662 P. 2d 610, 621 (1983), quoting, Hahn v. Sargent 523 F. 2d 461, 469 (1st Cir.
15 1975), cert. denied, 425 U.S. 904, 95 S. Ct. 1495, 47 L. Ed. 2d 754 (1976). A party opposing
16 summary judgment may not rely on the allegations of his pleadings to raise a material issue of fact
17 where the moving party supports his motion with competent evidence. Garvey v. Clark County, 91
18 Nev. 127, 130, 523 P. 2d 269, 271 (1975).

21 Here, the Plaintiffs support their motion with competent evidence, and the Defendant may
22 not simply rely on the allegations set forth in her pleadings to raise material issues of fact. Therefore,
23 based upon the facts and argument set forth below, Plaintiffs are entitled to summary judgment.

24
25 **B. PLAINTIFFS’ REQUESTS FOR ADMISSION TO DEFENDANT, SUSAN FALLINI,
26 MUST BE DEEMED ADMITTED.**

27 NRCP 36 provides in relevant part:

28 (a) ... The matter is admitted unless, within 30 days after service of the request, or

1 within such shorter or longer time as the court may allow, or the parties may agree
2 to in writing, subject to Rule 29, the party to whom the request is directed serves
3 upon the party requesting the admission a written answer or objection addressed to
the matter, signed by the party or by the party's attorney. ...

4 (b) Effect of Admission. Any matter admitted under this rule is conclusively
5 established unless the court on motion permits withdrawal or amendment of the
6 admission. ... Any admission made by a party under this rule is for the purpose of the
7 pending action only and is not an admission for any other purpose nor may it be used
against the party in any other proceeding.

8 Written discovery requests were served upon the Defendant on October 31, 2007. (See
9 **Exhibit 1**). Pursuant to NRCP 36(a), Defendant had 30 days to respond to Plaintiffs' Requests for
10 Admission, or the Requests for Admission are deemed admitted. Allowing three days for mailing,
11 the discovery responses were due no later than December 3, 2007, four months ago. To date,
12 Defendant has neither responded to the Requests for Admission, nor has she requested an extension
13 to respond to the same. As such, the Requests for Admission are deemed admitted pursuant to
14 NRCP 36. Pursuant to NRCP 36(b), the admissions made by the Defendant are conclusively
15 established.
16

17 Therefore, the following statements are conclusively established as undisputed facts in this
18 case:

- 19 1. Fallini's property is not located within an "open range" as it is defined in
20 NRS 568.355.
- 21 2. Fallini is the owner of the cow that is mentioned in the Plaintiff's Complaint on file
22 herein ("subject cow").
- 23 3. It is the common practice of Nye County, Nevada ranchers to mark their cattle with
24 reflective or luminescent tags.
- 25 4. The subject cow was not marked with a reflective or luminescent tag.
26
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5. The subject cow crossed a fence to arrive at the location of the subject accident described in the Complaint on file herein.
6. Fallini's cattle had previously been involved in incidents with motor vehicles on the roadway.
7. Fallini does not track the location of her cattle while they are grazing away from her property.
8. Fallini does not remove her cattle from the roadway when notified that the cattle are in a roadway.
9. The subject cow was not visible at night.
10. Fallini was aware that the subject cow was not visible at night prior to the incident that is the subject of the Complaint on file herein.
11. The subject cow was in the roadway of SR 375 at the time of the incident that is the subject matter of the Complaint on file herein.
12. The subject cow's presence in the roadway of SR 375 was the cause of the motor vehicle accident that is the subject of the Complaint on file herein.
13. Fallini did not know the location of the subject cow at the time of the incident that is the subject of the Complaint on file herein.
14. The presence of a reflective or luminescent tag on the subject cow would have made the subject cow visible at the time of the incident that is the subject of the Complaint on file herein.

C. NEGLIGENCE.

A claim for negligence must be based on (1) an existing duty of care, (2) breach, (3) legal causation, and (4) damages. *Jordan v. State ex rel. Dept. of Motor Vehicles and Public Safety*, 121

1 Nev. 44, 51 (2005). In the instant matter, the Defendant owed Michael a duty of care to control her
2 cattle and to prevent the cattle from endangering the lives of others. Defendant owed Michael a duty
3 to mark her cattle with reflective or luminescent tags.
4

5 Defendant breached the duty of care that she owed to Michael because the subject cow was
6 not marked with a reflective or luminescent tag. Fallini was put on notice that her cattle were
7 endangering people's lives because the cattle had previously been involved in incidents with motor
8 vehicles on the roadway. However, Fallini continued not to track the location of her cattle while they
9 are grazing away from her property. Defendant further breached the duty of care that she owed to
10 Michael because the subject cow was not visible at night, and Fallini was aware that the subject cow
11 was not visible at night prior to the incident that is the subject of the Complaint on file herein.
12

13 Fallini's negligence was the direct and proximate cause of Michael's death. The subject cow
14 was in the roadway of SR 375 when Michael was traveling on SR 375. The subject cow's presence
15 on SR 375 was the cause of the motor vehicle accident that killed Michael. Defendant admits that
16 the presence of a reflective or luminescent tag on the subject cow would have made the subject cow
17 visible at night and the accident that caused Michael's death could have been avoided. Thus,
18 Fallini's negligence was the cause of Michael's untimely death. As such, summary judgment is
19 proper with regard to all elements except damages. Damages need to be proven up at a hearing on
20 the matter. Fallini's negligence caused Michael's death, but that is not the full extent of the damages
21 caused by Fallini's negligence.
22

23 **D. WRONGFUL DEATH/ LOSS OF CONSORTIUM.**
24

25 **NRS 41.085 provides in relevant part:**

26 2. When the death of any person, whether or not a minor, is caused by the wrongful
27 act or neglect of another, the heirs of the decedent and the personal representatives
28 of the decedent may each maintain an action for damages against the person who

1 caused the death, or if the wrongdoer is dead, against his personal representatives,
2 whether the wrongdoer died before or after the death of the person he injured. If any
3 other person is responsible for the wrongful act or neglect, or if the wrongdoer is
4 employed by another person who is responsible for his conduct, the action may be
maintained against that other person, or if he is dead against his personal
representatives.

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

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

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

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

14 (b) Any penalties, including, but not limited to, exemplary or punitive
15 damages, that the decedent would have recovered if he had lived, but do not
16 include damages for pain, suffering or disfigurement of the decedent. The
proceeds of any judgment for damages awarded under this subsection are
liable for the debts of the decedent unless exempted by law.

17 As set forth above, the Defendant's negligence is the cause of Michael's death. Michael's
18 death caused his mother, Judith, to suffer immense sorrow and grief. Michael's mother has forever
19 lost the companionship, society, and comfort of her son's presence. As a result, Judith requests that
20 the Defendant be held accountable for Michael's wrongful and untimely death, and that her Motion
21 for Partial Summary Judgment be granted. However, the extent of the damages caused by Fallini's
22 negligence is an issue for the trier of fact, because Michael's untimely death is but one of the
23 consequences of Fallini's negligence.
24

25 ///

26 ///

27 ///

IV.

CONCLUSION

Accordingly, based upon the foregoing, Plaintiffs hereby respectfully request that the Court enter partial summary judgment against Defendant, finding Defendant liable for Michael's death. Damages will be shown at a prove-up hearing to be set at a later date..

DATED this 14th day of May, 2008.

BLACK & LOBELLO

By: John P. Aldrich
John P. Aldrich, Esq.
Nevada State Bar No.: 6877
Adrianne C. Duncan, Esq.
Nevada State Bar No.: 9797
10777 West Twain Avenue, Suite 300
Las Vegas, NV 89135
Attorneys for Plaintiff

CERTIFICATE OF SERVICE

I hereby certify that on the 15th day of May, 2008, I served a true and correct copy of the foregoing MOTION FOR PARTIAL SUMMARY JUDGMENT, by first class mail, postage prepaid, addressed as follows:

Harold Kuehn, Esq.
EARNEST, GIBSON & KUEHN
921 S. Hwy 160, #203
Pahrump, NV 89048
Attorney for Defendant/Counterclaimant
Susan Fallini

Katherine M. Barker, Esq.
701 Bridger Avenue, Suite 500
Las Vegas, NV 89101
Attorneys for Counter-Defendant
Estate of Michael David Adams


An Employee of BLACK & LOBELLO

1 **NEO**

2 John P. Aldrich, Esq.
3 Nevada State Bar No. 6877
4 Adrianne C. Duncan, Esq.
5 Nevada State Bar No. 9797

BLACK & LOBELLO

6 10777 West Twain Avenue, Suite 300
7 Las Vegas, Nevada 89135
8 (702) 869-8801
9 Attorneys for Plaintiffs

FILED

2008 AUG 15 P 2:44

NYE COUNTY CLERK
BY DEPUTY

Linda W.

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

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

Plaintiffs,

vs.

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

Defendants.

17 SUSAN FALLINI,

Counterclaimant,

19 vs.

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

Counterdefendants.

Case No.: CV24539
Dept.: 2P

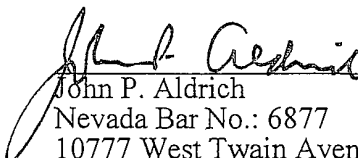
24 **NOTICE OF ENTRY OF ORDER**

25 PLEASE TAKE NOTICE that on the 30th day of July, 2008 an Order Granting Plaintiffs'
26 Motion for Partial Summary Judgement was entered in the above-captioned matter,

1 a copy of which is attached hereto.

2 DATED this 13th day of August, 2008.

3 **BLACK & LOBELLO**

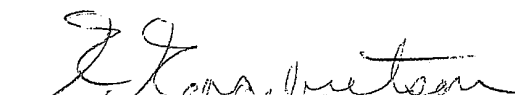
4
5 
6 John P. Aldrich
7 Nevada Bar No.: 6877
8 10777 West Twain Avenue, Suite 300
9 Las Vegas, Nevada 89135
10 (702) 869-8801
11 (702) 869-2669 (Fax)

12 **CERTIFICATE OF SERVICE**

13 I hereby certify that on the 13th day of August, 2008 a true and correct copy of the foregoing
14 **NOTICE OF ENTRY OF ORDER** was deposited into the U.S. mail at Las Vegas, Nevada, first-
15 class postage fully prepaid, addressed to the following person(s):

16 Harold Kuehn, Esq.
17 Gibson & Kuehn, LLP
18 1601 E. Basin Avenue, Ste. 101
19 Pahrump, NV 89060

20 Katherine M. Barker, Esq.
21 Law Office of Katherine M. Barker
22 701 Bridger Avenue, Suite 500
23 Las Vegas, NV 89101

24 
25 An Employee of Black & LoBello
26
27
28

FILED
DEBRA BENNETT
2008 JUL 30 P 3:30
NYE COUNTY CLERK
BY DEPUTY

1 **ORDER**

John P. Aldrich, Esq.
Nevada State Bar No. 6877
Adrianne C. Duncan, Esq.
Nevada State Bar No. 9797

3 **BLACK & LOBELLO**

10777 West Twain Avenue, Suite 300
Las Vegas, Nevada 89135
(702) 869-8801
Attorneys for Plaintiffs

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

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

12 Plaintiffs,)

13 vs.)

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

16 Defendants.)

17 SUSAN FALLINI,)

18 Counterclaimant,)

19 vs.)

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

22 Counterdefendants.)
23

24 **ORDER GRANTING PLAINTIFFS' MOTION FOR PARTIAL SUMMARY JUDGMENT**

25 THIS MATTER having come on for hearing on Monday, July 14, 2008, on Plaintiff's Motion
26 for Partial Summary Judgment before the Honorable Robert W. Lane, and John P. Aldrich, Esq.
27 appearing on behalf of the Plaintiffs, no other counsel present, the court having reviewed the Motion
28

1 for Partial Summary Judgment and the Joinder to the Motion for Partial Summary Judgment, having
2 reviewed all pleadings and papers on file herein, and having heard the arguments of present counsel;
3 and good cause appearing therefore,

4 **THE COURT HEREBY ENTERS THE FOLLOWING FINDINGS OF FACT:**

- 5 1. Fallini's property is not located within an "open range" as it is defined in
6 NRS 568.355.
- 7 2. Fallini is the owner of the cow that is mentioned in the Plaintiff's Complaint on file
8 herein ("subject cow").
- 9 3. It is the common practice of Nye County, Nevada ranchers to mark their cattle with
10 reflective or luminescent tags.
- 11 4. The subject cow was not marked with a reflective or luminescent tag.
- 12 5. The subject cow crossed a fence to arrive at the location of the subject accident
13 described in the Complaint on file herein.
- 14 6. Fallini's cattle had previously been involved in incidents with motor vehicles on the
15 roadway.
- 16 7. Fallini does not track the location of her cattle while they are grazing away from her
17 property.
- 18 8. Fallini does not remove her cattle from the roadway when notified that the cattle are
19 in a roadway.
- 20 9. The subject cow was not visible at night.
- 21 10. Fallini was aware that the subject cow was not visible at night prior to the incident
22 that is the subject of the Complaint on file herein.
- 23 11. The subject cow was in the roadway of SR 375 at the time of the incident that is the
24 subject matter of the Complaint on file herein.
- 25 12. The subject cow's presence in the roadway of SR 375 was the cause of the motor
26 vehicle accident that is the subject of the Complaint on file herein.
- 27 13. Fallini did not know the location of the subject cow at the time of the incident that
28 is the subject of the Complaint on file herein.

14. The presence of a reflective or luminescent tag on the subject cow would have made the subject cow visible at the time of the incident that is the subject of the Complaint on file herein.

THE COURT HEREBY ENTERS THE FOLLOWING CONCLUSIONS OF LAW:

1. Defendant Fallini had and duty to ensure that the subject cow was not in the roadway at the time of the incident described in the Complaint.
2. Defendant Fallini had a duty to follow the common practice of Nye County, Nevada ranchers and to mark her cow with reflecting or lumination tags.
3. Defendant Fallini breached the duty of care to the decedent, as set forth in the Findings of Fact and Conclusions of Law.
4. As a result of Defendant Fallini's breach, the decedent, Michael David Adams, was killed.
5. Defendant Fallini is liable for the damages to which Plaintiff is entitled, in an amount to be determined at a later time.

IT IS HEREBY ORDERED that Plaintiffs' Motion for Partial Summary Judgment as to the issue of Defendant's duty and breach of duty is hereby GRANTED.

DATED this 29th day of July, 2008.

ROBERT W. LANE

DISTRICT COURT JUDGE

Submitted By:

BLACK & LOBELLO

John P. Aldrich
John P. Aldrich

Nevada Bar No.: 6877
10777 West Twain Avenue, Suite 300
Las Vegas, Nevada 89135
(702) 869-8801
(702) 869-2669 (Fax)

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

FILED

2009 MAR 23 P 1:52

NYE COUNTY CLERK
BY DEPUTY

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

Linda Uhl

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

11 Plaintiff,

12 v.

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

15 Defendants.

16
17 SUSAN FALLINI,

18 Counterclaimant,

19 vs.

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

22 Counterdefendants.

23
24 **PLAINTIFF'S MOTION TO COMPEL DEFENDANT'S PRODUCTION OF**
25 **DOCUMENTS**

26 COMES NOW Plaintiff, JUDITH ADAMS for the ESTATE OF MICHAEL DAVID
27 ADAMS and individually, by and through her counsel of record, John P. Aldrich, Esq., of the
28 Aldrich Law Firm, Ltd., and hereby moves this Court for an order compelling Defendant SUSAN
FALLINI to comply with discovery pursuant to NRCP 16.1 and NRCP 37 and for related attorney's

1 fees and costs in the amount of \$1,650.00 as a result of Defendant SUSAN FALLINI'S failure to
2 comply with discovery rules.

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

6 DATED this 20 day of March, 2009.

7 **ALDRICH LAW FIRM, LTD.**

8
9 By John P. Aldrich

10 John P. Aldrich
11 Nevada Bar No. 6877
12 **ALDRICH LAW FIRM, LTD.**
13 1601 S. Rainbow Blvd., Suite 160
14 Las Vegas, NV 89146
15 (702) 853-5490
16 *Attorneys for Plaintiff*

17 **POINTS AND AUTHORITIES**

18 **I.**

19 **FACTS**

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

25 The decedent's mother, JUDITH ADAMS ("Judith") filed a complaint on behalf of Adam's
26 estate on November 29, 2006 and properly served Fallini with process. Fallini filed her Answer and
27 Counterclaim on March 14, 2007. On October 31, 2007, Plaintiff submitted interrogatories to
28 Fallini. (Exhibit 1.) Those interrogatories were never answered. Adams also submitted requests
for admissions and its first set of requests for production of documents on October 31, 2007.
(Exhibits 2 and 3, respectively.) A second set of requests for production of documents were
submitted to Fallini on July 2, 2008, requesting information as to Fallini's insurance policies and/or

1 carriers that may provide coverage for damages that occurred as a result of the incident . (Exhibit
2 4.)

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

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

11 Plaintiff has attempted to amicably resolve this discovery issue and obtain a copy of
12 Defendant's applicable insurance policies, but to no avail. On February 24, 2009, Plaintiff sent
13 letters to Defendant's counsel seeking responses to the discovery. (Exhibit 6.)

14 Plaintiff's counsel, Mr. Aldrich, has attempted to discuss this discovery issue with
15 Defendant's counsel, Mr. Kuehn, as well. On or about March 6, 2009, Plaintiff's counsel contacted
16 the office of Defendant's counsel. Mr. Aldrich was informed that Mr. Kuehn was not available. Mr.
17 Aldrich left a message with Mr. Aldrich's phone number and asked that Mr. Kuehn return the call.
18 No return call ever came. (Exhibit 7.)

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

22 As of the date of the signing of this motion, Plaintiff still has received no discovery from the
23 Defendant. Due to the egregious nature of Defendant's failure to comply with discovery rules by
24 providing responses to routine requests, Plaintiff respectfully requests that this Court enter an order
25 compelling Defendant to comply with discovery rules and provide appropriate responses, including
26 information regarding any insurance policies that may provide coverage for the incident as
27 contemplated in the Plaintiff's second request for documents.

28

II.

LEGAL ARGUMENT

A. DEFENDANT FALLINI SHOULD BE COMPELLED TO PRODUCE DISCOVERY PURSUANT TO NRCP 34 and 37(a) FOR FAILING TO PROVIDE ANY DISCOVERY RESPONSES

Pursuant to NRCP 34, Plaintiff has the right to request documents which are discoverable pursuant to NRCP 26. According to NRCP 34, Defendant has 30 days from receipt of the requests for production of documents to provide appropriate responses. Defendant has provided no responses whatsoever, nor has Defendant objected to any request.

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

Pursuant to NRCP 34(b) and 37(a), Plaintiff respectfully requests that Defendant be compelled to respond to the requests for production of documents propounded upon Defendant by Plaintiff, including a specific order that Defendant provide any and all information related to insurance policies of Defendant that do or may provide coverage for the subject matter. The Court has already found that Defendant is liable for the death of Mr. Adams, and Plaintiff is entitled to the information sought before trial.

B. DEFENDANT FALLINI SHOULD BE COMPELLED TO PRODUCE DISCOVERY PURSUANT TO NRCP 16.1 AND NRCP 37 FOR FAILING TO PROVIDE ANY DISCOVERY RESPONSES

NRCP 16.1 states in pertinent part:

RULE 16.1. MANDATORY PRE-TRIAL DISCOVERY REQUIREMENTS

(a) Attendance at Early Case Conference. Within thirty (30) days after service of the answer by the first answering defendant, and thereafter as each defendant answers the original complaint or an amended complaint, the attorneys for the parties, who must possess authority to act and knowledge of the case obtained after reasonable inquiry under the circumstances, shall meet in person for the purpose of complying with subdivision (b) of this rule. The attorney for the plaintiff shall designate the time and place of each meeting which must be held in the county where the action was filed, unless the parties agree upon a different location. The attorneys may agree to continue the time for the case conference for an additional period of not more than ninety (90) days. The court, in its discretion and for good cause shown, may also continue the time for the conference. Absent compelling and extraordinary circumstances, neither the court nor the parties may extend the time to a day more than one hundred and eighty (180) days after service of the summons and complaint

1 upon the defendant in question. The time for holding a case conference with respect
2 to a defendant who has filed a motion pursuant to Rule 12(b)(2)-(4) is tolled until
entry of an order denying the motion.

3 (b) Meet and Confer Requirements; Mandatory Discovery Exchanges. At each
4 case conference, the attorneys must:

5 (1) Exchange all documents then reasonably available to a party which are
6 then contemplated to be used in support of the allegations or denials of the pleading
filed by that party, including rebuttal and impeachment documents;

7 **(2) Request with reasonable specificity from the opposing party all other**
8 **documents, discoverable within the scope of Rule 26(b), that may support the**
9 **allegations of the pleading filed by the requesting party, including rebuttal and**
10 **impeachment documents. The opponent must (A) provide the additional**
11 **documents, or (B) agree to provide the additional documents as soon as they are**
12 **reasonably available, or (C) explain why the documents will not be provided;**

13 ...

14 (Emphasis Added). If a party fails to comply with NRCP 16.1, the adverse party may compel
15 discovery pursuant to NRCP 37(a), as set forth in Section A above.

16 Defendant has failed to provide NRCP 16.1 disclosures and has failed to respond to written
17 discovery propounded by Plaintiff. Plaintiff submitted her initial interrogatories to Defendant on
18 October 31, 2007, and continued sending various discovery requests through July 2, 2008. Plaintiffs
19 submitted interrogatories, requests for admission, and two sets of requests for production of
20 documents, including a request that Fallini produce all related insurance information regarding the
21 incident.

22 Despite these discovery requests, Defendant has failed and refused to cooperate or respond.
23 Plaintiff's counsel has made phone calls and submitted letters to Fallini's counsel notifying them of
24 these discovery requests to no avail. (Exhibits 6 and 7.) Nevertheless, Fallini failed to provide any
25 of the information as requested despite the extension.

26 Plaintiff respectfully requests that this Court grant this motion to compel and order Defendant
27 to provide appropriate responses to the Plaintiff's requests for production of documents, with a
28 specific order to produce a copy of any and all documentation relating to any insurance policy that
does or may provide coverage to Defendant for the instant case.

1 C. **DEFENDANT FALLINI SHOULD BE HELD SUBJECT TO SANCTIONS UNDER**
2 **NRPC 37 FOR FAILURE TO FOLLOW DISCOVERY RULES**

3 Rule 37(a)(4) states in pertinent part:

4 NRPC 37(a)(4) Expenses and Sanctions

5 (A) If the motion is granted or if the disclosure or requested
6 discovery is provided after the motion was filed, the court shall, after affording
7 an opportunity to be heard, require the party or deponent whose conduct
8 necessitated the motion or the party or attorney advising such conduct or both
9 of them to pay to the moving party the reasonable expenses incurred in making
the motion, including attorney's fees, unless the court finds that the motion was
filed without the movant's first making a good faith effort to obtain the
disclosure or discovery without court action, or that the opposing party's
nondisclosure, response or objection was substantially justified, or that other
circumstances make an award of expenses unjust.

10 (B) If the motion is denied, the court may enter any protective order
11 authorized under Rule 26(c) and shall, after affording an opportunity to be heard,
12 require the moving party or the attorney filing the motion or both of them to pay to
13 the party or deponent who opposed the motion the reasonable expenses incurred in
opposing the motion, including attorney's fees, unless the court finds that the making
of the motion was substantially justified or that other circumstances make an award
of expenses unjust.

14 (C) If the motion is granted in part and denied in part, the court may enter
15 any protective order authorized under Rule 26(c) and may, after affording an
16 opportunity to be heard, apportion the reasonable expenses incurred in relation to the
motion among the parties and persons in a just manner.

17 (Emphasis Added).

18 Similarly, NRCP 37(d) provides:

19 **(d) Failure of Party to Attend at Own Deposition or Serve Answers to**
20 **Interrogatories or Respond to Request for Inspection.** If a party or an officer,
21 director, or managing agent of a party or a person designated under Rule 30(b)(6) or
22 31(a) to testify on behalf of a party fails (1) to appear before the officer who is to take
the deposition, after being served with a proper notice, or (2) to serve answers or
objections to interrogatories submitted under Rule 33, after proper service of the
interrogatories, or (3) to serve a written response to a request for inspection submitted
23 under Rule 34, after proper service of the request, the court in which the action is
pending on motion may make such orders in regard to the failure as are just, and
among others it may take any action authorized under subparagraphs (A), (B), and
24 (C) of subdivision (b)(2) of this rule. Any motion specifying a failure under clause
(2) or (3) of this subdivision shall include a certification that the movant has in good
25 faith conferred or attempted to confer with the party failing to answer or respond in
an effort to obtain such answer or response without court action. In lieu of any order
26 or in addition thereto, the court shall require the party failing to act or the attorney
advising that party or both to pay the reasonable expenses, including attorney's fees,
27 caused by the failure, unless the court finds that the failure was substantially justified
or that other circumstances make an award of expenses unjust.

1 In the instant case, Plaintiff's filing of this motion is necessitated by the fact that Defendant
2 has failed to produce any sort of discovery despite numerous formal requests, followed by phone
3 calls and letters for nearly a year and a half from the initial submission of interrogatories on
4 September 10, 2007. As shown above, Plaintiff has made several good faith efforts to procure the
5 discovery without court intervention, including re-opening discovery and extending the deadline.
6 Nevertheless, Defendant has shown no interest in cooperating with discovery guidelines, resulting
7 in the filing of this motion. Plaintiff therefore respectfully requests that sanctions be levied against
8 Defendant in the form of an award of attorneys' fees in the amount of \$1,600 and costs in the amount
9 of \$50.00, for a total of \$1,650.00, as set forth in Mr. Aldrich's affidavit.

10 **III.**

11 **CONCLUSION**

12 Based upon the above, Plaintiff's request an Order compelling Plaintiffs to provide discovery
13 as requested, particularly responses to Plaintiff's requests for production of documents. Plaintiff
14 further requests that the order specifically mention that Defendant must provide any and all
15 documents relating in any way to any insurance policy which does or may apply to the instant case.
16 Finally, Plaintiff requests an Order granting attorney's fees and costs for having to prepare the
17 current Motion and travel to Pahrump, Nevada for the hearing.

18 DATED this 20 day of March, 2009.

19 **ALDRICH LAW FIRM, LTD.**

20
21 By John P. Aldrich
22 John P. Aldrich
23 Nevada Bar No. 6877
24 **ALDRICH LAW FIRM, LTD.**
25 1601 S. Rainbow Blvd., Suite 160
26 Las Vegas, NV 89146
27 (702) 853-5490
28 *Attorneys for Plaintiff*

///

///

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 20th day of March, 2009, I mailed a copy of
PLAINTIFF'S MOTION TO COMPEL DEFENDANT'S PRODUCTION OF DOCUMENTS in a
sealed envelope, to the following and that postage was fully paid thereon:

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

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

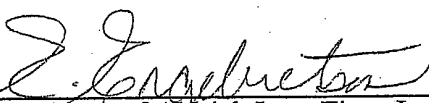

An employee of Aldrich Law Firm, Ltd.

EXHIBIT 1

1 **REQT**

John P. Aldrich

2 Nevada Bar No. 6877

Stacy D. Harrop

3 Nevada Bar No. 9826

ALDRICH & BRYSON LLP

4 1601 S. Rainbow Blvd., Suite 160

Las Vegas, Nevada 89146

5 (702) 853-5490

(702) 853-5491 (fax)

6 *Attorneys for Plaintiffs*

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

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

12 Plaintiffs,

13 vs.

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

15 Defendants.

Case No.: CV24539

Dept.: 2P

16 SUSAN FALLINI,

17 Counterclaimant,

18 vs.

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

22 Counterdefendants.

23 **PLAINTIFFS' FIRST SET OF REQUESTS FOR ADMISSION TO DEFENDANT**
24 **FALLINI**

25 **TO: SUSAN FALLINI, Defendant/Counterclaimant**

26 **TO: HAROLD KUEHN, ESQ., attorney for Defendant/Counterclaimant**

27 Plaintiffs, Estate of MICHAEL DAVID ADAMS, by and through his mother JUDITH
28 ADAMS, by and through their attorneys, Aldrich & Bryson, LLP, hereby request that Defendant,
pursuant to Nev. R. Civ. P. 36 respond to the following Requests for Admission within thirty (30)
days of service hereof:

1 **REQUEST FOR ADMISSION NO. 1:**

2 Admit that your property is not located within "open range."

3 NOTE: As used throughout these requests "open range" is to be defined as set forth in NRS
4 568.355.

5 **REQUEST FOR ADMISSION NO. 2:**

6 Admit that you are the owner of the cow that is mentioned in of the Complaint on file herein
7 (hereafter "subject cow").

8 **REQUEST FOR ADMISSION NO. 3:**

9 Admit that it is the common practice of Nye County ranchers to mark their cattle with
10 reflective or luminescent tags.

11 **REQUEST FOR ADMISSION NO. 4:**

12 Admit that the subject cow was not marked with a reflective or luminescent tag.

13 **REQUEST FOR ADMISSION NO. 5:**

14 Admit that the subject cow crossed a fence to arrive at the location of the subject accident
15 described in the Complaint on file herein.

16 **REQUEST FOR ADMISSION NO. 6:**

17 Admit that your cattle have previously been involved in incidents with motor vehicles on the
18 roadway.

19 **REQUEST FOR ADMISSION NO. 7:**

20 Admit that you do not track the location of your cattle while they are grazing away from your
21 property.

22 **REQUEST FOR ADMISSION NO. 8:**

23 Admit that you do not remove your cattle from the roadway when notified that the cattle are
24 in a roadway.

25 **REQUEST FOR ADMISSION NO. 9:**

26 Admit that the subject cow was not visible at night.

27 **REQUEST FOR ADMISSION NO. 10:**

28 Admit that you were aware that the subject cow was not visible at night prior to the incident

1 that is the subject of the Complaint on file herein.

2 **REQUEST FOR ADMISSION NO. 11:**

3 Admit that the subject cow was in the roadway of SR 375 at the time of the incident that is
4 the subject of the Complaint on file herein.

5 **REQUEST FOR ADMISSION NO. 12:**

6 Admit that the subject cow's presence in the roadway of SR 375 was the cause of the motor
7 vehicle accident that is the subject of the Complaint on file herein.

8 **REQUEST FOR ADMISSION NO. 13:**

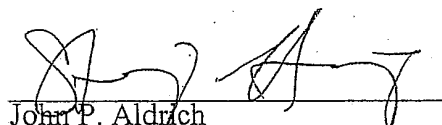
9 Admit that you did not know the location of the subject cow at the time of the incident that
10 is the subject of the Complaint on file herein.

11 **REQUEST FOR ADMISSION NO. 14:**

12 Admit that the presence of a reflective or luminescent tag on the subject cow would have
13 made the subject cow visible at the time of the incident that is the subject of the Complaint on file
14 herein.

15 DATED this 31st day of October, 2007.

16 **ALDRICH & BRYSON, LLP**

17 
18 John P. Aldrich
19 Nevada Bar No. 6877
20 Stacy D. Harrop
21 Nevada Bar No. 9826
22 1601 S. Rainbow Blvd., Suite 160
23 Las Vegas, Nevada 89146
24 (702) 853-5490
25 (702) 853-5491 (fax)
26 Attorneys for Plaintiffs
27
28

CERTIFICATE OF MAILING

I hereby certify that on this 31st day of October, 2007, service of the foregoing
PLAINTIFFS' FIRST SET OF REQUESTS FOR ADMISSION TO DEFENDANT FALLINI
was made this date by depositing a true and correct copy of the same for mailing in Las Vegas,
Nevada, addressed to:

Harold Kuehn, Esq.
Gibson, & Kuehn
921 S. Highway 160, #203
Pahrump, NV 89048

P.O. Box 1411
Tonopah, NV 89049
Attorney for Defendant/Counterclaimant

Katherine M. Peck, Esq.
Peck Law Offices
701 Bridger Ave, Ste. 500
Las Vegas, NV 89106
*Attorney for Counterdefendant
Estate of Michael David Adams*


An employee of ALDRICH & BRYSON, LLP

EXHIBIT 2

1 **REQT**

2 John P. Aldrich
3 Nevada Bar No. 6877
4 Stacy D. Harrop
5 Nevada Bar No. 9826

6 **ALDRICH & BRYSON LLP**

7 1601 S. Rainbow Blvd., Suite 160
8 Las Vegas, Nevada 89146
9 (702) 853-5490
10 (702) 853-5491 (fax)
11 *Attorneys for Plaintiffs*

12
13 **THE FIFTH JUDICIAL DISTRICT COURT**
14 **THE STATE OF NEVADA**
15 **COUNTY OF NYE**

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

20 Plaintiffs,

21 vs.

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

24 Defendants.

25 SUSAN FALLINI,

26 Counterclaimant,

27 vs.

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

Counterdefendants.

Case No.: CV24539
Dept.: 2P

29 **PLAINTIFFS' FIRST SET OF REQUESTS FOR PRODUCTION OF DOCUMENTS TO**
30 **DEFENDANT FALLINI**

31 **TO: SUSAN FALLINI, Defendant/Counterclaimant**

32 **TO: HAROLD KUEHN, ESQ., attorney for Defendant/Counterclaimant**

33 Plaintiffs, Estate of MICHAEL DAVID ADAMS, by and through his mother JUDITH
34 ADAMS, by and through their attorneys, Aldrich & Bryson, LLP, hereby requests that Defendant,
35 pursuant to Nev. R. Civ. P. 34, respond to the following Requests for Production of Documents
36 within thirty (30) days of service hereof:

DEFINITIONS AND INSTRUCTIONS

The following preliminary definitions and instructions apply to each of the Requests set forth hereafter and are deemed to be incorporated therein.

A. When used in these Requests, the term "Defendant" or "Defendants," its plural or any synonym thereof, is intended to and shall embrace and include, in addition to the named party or parties, counsel for said party and all agents, servants, employees, representatives, investigators and others who are in possession of, or may have obtained, information for or on behalf of the named Defendant. As to each person, please state his or her full name, last known residence address and telephone number, and his or her job title, capacity or position at such last known employment.

B. As used in these Requests, the terms "document" and "writing" and the plural forms thereof shall mean all written, recorded or graphic matters, however produced or reproduced, of every kind and description, pertaining in any way to the subject matter of this action. The terms "document" and "writing" shall include, but are not limited to, any books, pamphlets, periodicals, memoranda (including those of telephone and oral conversations), e-mails, contracts, correspondence, agreements, application, financial records, security instruments, disbursements, checks, bank statements, time records, accounting or financial records, notes, diaries, logs, telegrams, or cables prepared, drafted, received or sent, tapes, transcripts, recordings, minutes of meetings, directives, work papers, charts, drawings, prints, flow sheets, photographs, film, computer printouts, medical and hospital records and reports, x-ray photographs, advertisements, catalogs, or any hand-written, recorded, transcribed, punched, tapes, filmed or graphic matters, however, produced or reproduced in Defendant's possession, custody or control or to which defendant has or has had access.

C. As used throughout these Requests, the term "you," its plural or any synonyms thereof, is intended to and shall embrace and include in addition to the named party or parties, counsel for such party or parties, and all agents, servants, employees, representatives, investigators and others who are in the possession of or who may have obtained information for or on behalf of the named party or parties.

D. As used throughout these Requests, the term "person," or its plural or any synonyms

1 thereof, is intended to and shall embrace and include any individual, partnership, corporation,
2 company, association, government agency (whether federal, state, local or any agency of the
3 government of a foreign country) or any other entity.

4 E. As used throughout these Requests, the term "communication," its plural or any
5 synonyms thereof, is intended to and shall embrace and include all written communications, and with
6 respect to all communications, shall include but is not limited to every discussion,
7 conversation, conference, meeting, interview, telephone call or doctor or other professional service
8 visit.

9 F. (a) As used throughout these Requests, the terms "identify," "identity," or
10 "identification," their plural or any synonyms thereof, when used with reference to a person, shall
11 mean to state the full name and address, and where applicable, the present position and business, if
12 known, and each prior position and business.

13 (b) As used throughout these Requests, the terms "identify," "identity," or
14 "identification," their plural or synonyms thereof, when used with reference to a document mean to
15 state:

16 (1) The general nature of the document or object, i.e., whether it is a letter,
17 a memorandum, a report, a drawing, a chart or tracing, a pamphlet, etc.;

18 (2) The general subject matter of the document or object;

19 (3) The name, current or last known business address and home address
20 of the original author or draftsman (and, if different, the signor or signors), and of any person who
21 has edited, corrected, revised or amended, or who has entered any initials or comment or notation
22 thereon;

23 (4) The date thereof, including any date of any such editing, correcting,
24 amending or revision;

25 (5) Any numerical designation appearing thereon, such as a file reference;

26 (6) The name of each recipient of a copy of the document or object; and

27 (7) The place where and the person now having custody or control of each
28 such document or object, or if such document or object has been destroyed, the place of and reasons

1 for such destruction.

2 (c) As used throughout these Requests, the terms "identify," "identity," and
3 "identification," when used in reference to a communication, mean to state with respect to each
4 communication, the nature of the communication (telephone call, letter, etc.), the date of the
5 communication, the persons who were present at or participated in the communication or with whom
6 or from whom the communication was made, and the substance of the statement made by each
7 person involved in such communication.

8 G. All information is to be divulged which is in Defendant's possession or control, or can
9 be ascertained upon reasonable investigation of areas within your control. The knowledge of
10 Defendant's attorney is deemed to be Defendant's knowledge, so that, apart from privileged matters,
11 if Defendant's attorney has knowledge of the information sought to be elicited herein, said
12 knowledge must be incorporated into these answers, even if such information is unknown to
13 Defendant individually.

14 H. Whenever you are unable to state an answer to these Requests based upon your own
15 personal knowledge, please so state, and identify the person or persons you believe to have such
16 knowledge, what you believe the correct answer to be, and the facts upon which you base your
17 answer.

18 I. When a Request calls for an answer in more than one part, each part should be
19 separated so that the answer is clearly understandable.

20 J. Each Request should be construed independently. No Request should be construed
21 by reference to any other Request if the result is a limitation of the scope of the answer to such
22 Request.

23 K. "And" and "or" shall be construed disjunctively or conjunctively as necessary, in
24 order to bring within the scope of the Request all responses which might otherwise be construed to
25 be outside of its scope.

26 L. If a Request is objected to, in whole or in part, or if information responsive to a
27 Request is withheld, on the ground of privilege or otherwise, please set forth fully each objection,
28 describe generally the information which is withheld, and set forth the facts upon which Defendants

1 rely as the basis for each such objection.

2 M. These Requests are addressed to all Defendants. If, for a Request, the answers for all
3 Defendants would be the same, only one answer is necessary. If the Defendants' answers to a
4 Request would vary among them, state and identify answers for each Defendant separately.

5 N. Pursuant to Nev. R. Civ. P. 26, you shall supplement your responses according to the
6 following:

7 (a) A party is under a duty reasonably to supplement his response with respect
8 to any question directly addressed to (A) the identity and location of persons having knowledge of
9 discoverable matters and, (B), the identity of each person expected to be called as an expert witness
10 at trial, the subject matter on which he is expected to testify, and the substance of his testimony.

11 (b) A party is under a duty reasonably to amend a prior response if he obtains
12 information upon the basis of which (A) he knows that the response was incorrect when made, and
13 (B) he knows that the response though correct when made is no longer true and the circumstances
14 are such that a failure to amend the response is in substance a knowing concealment.

15 **REQUESTS FOR PRODUCTION**

16 **REQUEST FOR PRODUCTION NO. 1:**

17 Produce any and all documents identified, consulted or referred to in your answers to
18 Plaintiff's First Set of Interrogatories to Defendant Fallini, served concurrently herewith.

19 **REQUEST FOR PRODUCTION NO. 2:**

20 Produce any and all documents which support, refute, or in any way relate to the allegations
21 in the Complaint on file herein and/or your defenses thereto.

22 **REQUEST FOR PRODUCTION NO. 3:**

23 Produce copies of any and all written or recorded statements allegedly made by Plaintiff or
24 his representative, Defendant or any representative or agent of Defendant or any witness regarding
25 the allegations which form the basis of this litigation.

26 **REQUEST FOR PRODUCTION NO. 4:**

27 Produce copies of any and all non-transcribed witness statements allegedly made by Plaintiff,
28 Defendant or representative or agent of Defendant, or any witness regarding the allegations which

1 form the basis of this litigation.

2 **REQUEST FOR PRODUCTION NO. 5:**

3 Produce copies of any and all videotapes, photographs, charts, or diagrams which depict the
4 scene of the incident which forms the basis of this litigation.

5 **REQUEST FOR PRODUCTION NO. 6:**

6 Produce copies of any and all investigative reports and the underlying notes giving rise
7 thereto regarding the incident which forms the basis of this litigation

8 **REQUEST FOR PRODUCTION NO. 7:**

9 Produce any and all documents contemplated to be used in defense of the allegations in the
10 Complaint on file herein, including all rebuttal and impeachment documents.

11 **REQUEST FOR PRODUCTION NO. 8:**

12 Produce copies of any journals, diaries or other contemporary documentation regarding the
13 allegations which form the basis of this litigation.

14 **REQUEST FOR PRODUCTION NO. 9:**

15 Produce copies of any and all documents that relate to any contact or communications
16 between Defendant, or any agent or representative of Defendant, and the police with regard to the
17 incident described in the Complaint on file herein.

18 **REQUEST FOR PRODUCTION NO. 10:**

19 Produce copies of any photographs or depictions of the marks or brands used by you on your
20 cattle, including any ear tags.

21 **REQUEST FOR PRODUCTION NO. 11:**

22 Produce copies of any photographs or depictions of the marks or brands, including ear tags,
23 commonly used by cattle owners in Nye County, as provided in your answers to Plaintiff's
24 Interrogatories to Defendant Fallini served concurrently herewith.

25 **REQUEST FOR PRODUCTION NO. 12:**

26 Produce any and all documents that describe or depict the location of your property, the last
27 confirmed location of the subject cow prior to the incident, as provided in your answers to Plaintiff's
28 Interrogatories to Defendant Fallini served concurrently herewith, and the location of the incident

described in the Complaint on file herein.

REQUEST FOR PRODUCTION NO. 13:

Produce any and all documents that describe or depict the any fences or fenced property that the subject cow would have had to cross in order to arrive at the location of the subject incident from its last confirmed location, as provided in your answers to Plaintiff's Interrogatories to Defendant Fallini served concurrently herewith.

REQUEST FOR PRODUCTION NO. 14:

Produce any and all documents that describe or define whether the following locations are located in "open range" or in a "herd district": your property, the last confirmed location of the subject cow prior to the incident, or the location of the incident described in the Complaint on file herein.

REQUEST FOR PRODUCTION NO. 15:

Produce any and all documents that describe or depict the typical grazing area of your cattle as provided in your answers to Plaintiff's Interrogatories to Defendant Fallini served concurrently herewith.

REQUEST FOR PRODUCTION NO. 16:

Produce any and all documents that describe or relate to any and all policies, standards, procedures, or practices that you follow with regard to tracking the location of your cattle.

REQUEST FOR PRODUCTION NO. 17:

Produce any and all documents that describe or relate to any and all policies, standards, procedures, or practices that you typically follow when you discover or are notified that any of your cattle are located on a highway

REQUEST FOR PRODUCTION NO. 18:

Produce any and all documents that describe or relate to any incidents in the ten (10) years prior to the subject incident where your cattle were involved in an incident with any man-made or man-operated object on a roadway.

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1 **REQUEST FOR PRODUCTION NO. 19:**

2 Produce a list of all experts with whom you have communicated in connection with this
3 matter, and a copy of any reports received from those experts, along with a copy of all documents
4 which were provided to the expert and were utilized by said expert in forming an opinion, as well
5 as any notes of communication with said experts.

6 **REQUEST FOR PRODUCTION NO. 20:**

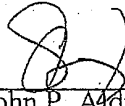
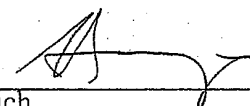
7 Produce any and all documents that support any and all of your denials to the Requests for
8 Admissions served concurrently herewith.

9 **REQUEST FOR PRODUCTION NO. 21:**

10 Produce any and all documents consulted, referenced, or utilized in responding to these
11 requests for production of documents.

12 DATED this 3rd day of October, 2007.

13 **ALDRICH & BRYSON, LLP**

14 
15 
16 John P. Aldrich
17 Nevada Bar No. 6877
18 Stacy D. Harrop
19 Nevada Bar No. 9826
20 1601 S. Rainbow Blvd., Suite 160
21 Las Vegas, Nevada 89146
22 (702) 853-5490
23 (702) 853-5491 (fax)
24 *Attorneys for Plaintiffs*
25
26
27
28

CERTIFICATE OF MAILING

I hereby certify that on this 31st day of October, 2007, service of the foregoing
PLAINTIFFS' FIRST SET OF REQUESTS FOR PRODUCTION OF DOCUMENTS TO
DEFENDANT FALLINI was made this date by depositing a true and correct copy of the same for
mailing in Las Vegas, Nevada, addressed to:

Harold Kuehn, Esq.
Gibson, & Kuehn
921 S. Highway 160, #203
Pahrump, NV 89048

P.O. Box 1411
Tonopah, NV 89049
Attorney for Defendant/Counterclaimant

Katherine M. Peck, Esq.
Peck Law Offices
701 Bridger Ave, Ste. 500
Las Vegas, NV 89106
Attorney for Counterdefendant
Estate of Michael David Adams


An employee of ALDRICH & BRYSON, LLP

EXHIBIT 3

1 **INTG**

John P. Aldrich

2 Nevada Bar No. 6877

Stacy D. Harrop

3 Nevada Bar No. 9826

ALDRICH & BRYSON LLP

4 1601 S. Rainbow Blvd., Suite 160

Las Vegas, Nevada 89146

5 (702) 853-5490

(702) 853-5491 (fax)

6 *Attorneys for Plaintiffs*

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

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

12 Plaintiffs,

13 vs.

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

15 Defendants.

16 SUSAN FALLINI,

17 Counterclaimant,

18 vs.

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

20 Counterdefendants.

Case No.: CV24539
Dept.: 2P

21
22
23 **PLAINTIFF'S FIRST SET OF INTERROGATORIES TO DEFENDANT FALLINI**

24 **TO: SUSAN FALLINI, Defendant/Counterclaimant**

25 **TO: HAROLD KUEHN, ESQ., attorney for Defendant/Counterclaimant**

26 Plaintiffs, Estate of MICHAEL DAVID ADAMS, by and through his mother JUDITH
27 ADAMS, by and through their attorneys, Aldrich & Bryson, LLP, hereby requests that Defendant,
28 pursuant to Nev. R. Civ. P. 33, answer the following Interrogatories, in writing, under oath, within
thirty (30) days of service hereof:

DEFINITIONS AND INSTRUCTIONS

The following preliminary definitions and instructions apply to each of the Interrogatories set forth hereafter and are deemed to be incorporated therein.

A. When used in these Interrogatories, the term "Defendant," its plural or any synonym thereof, is intended to and shall embrace and include, in addition to the named party or parties, counsel for said party and all agents, servants, employees, representatives, investigators and others who are in possession of, or may have obtained, information for or on behalf of the named Defendant. As to each person, please state his or her full name, last known residence address and telephone number, and his or her job title, capacity or position at such last known employment.

B. As used in these Interrogatories, the terms "document" and "writing" and the plural forms thereof shall mean all written, recorded or graphic matters, however produced or reproduced, of every kind and description, pertaining in any way to the subject matter of this action. The terms "document" and "writing" shall include, but are not limited to, any books, pamphlets, periodicals, memoranda (including those of telephone and oral conversations), e-mails, contracts, correspondence, agreements, application, financial records, security instruments, disbursements, checks, bank statements, time records, accounting or financial records, notes, diaries, logs, telegrams, or cables prepared, drafted, received or sent, tapes, transcripts, recordings, minutes of meetings, directives, work papers, charts, drawings, prints, flow sheets, photographs, film, computer printouts, medical and hospital records and reports, x-ray photographs, advertisements, catalogs, or any hand-written, recorded, transcribed, punched, tapes, filmed or graphic matters, however produced or reproduced in Defendant's possession, custody or control or to which defendant has or has had access.

C. As used throughout these Interrogatories, the term "you," its plural or any synonyms thereof, is intended to and shall embrace and include in addition to the named party or parties, counsel for such party or parties, and all agents, servants, employees, representatives, investigators and others who are in the possession of or who may have obtained information for or on behalf of the named party or parties.

D. As used throughout these Interrogatories, the term "person," or its plural or any

1 synonyms thereof, is intended to and shall embrace and include any individual, partnership,
2 corporation, company, association, government agency (whether federal, state, local or any agency
3 of the government of a foreign country) or any other entity.

4 E. As used throughout these Interrogatories, the term "communication," its plural or any
5 synonyms thereof, is intended to and shall embrace and include all written communications, and with
6 respect to all communications, shall include but is not limited to every discussion,
7 conversation, conference, meeting, interview, telephone call or doctor or other professional service
8 visit.

9 F. (a) As used throughout these Interrogatories, the terms "identify," "identity," or
10 "identification," their plural or any synonyms thereof, when used with reference to a person, shall
11 mean to state the full name and address, and where applicable, the present position and business, if
12 known, and each prior position and business.

13 (b) As used throughout these Interrogatories, the terms "identify," "identity," or
14 "identification," their plural or synonyms thereof, when used with reference to a document mean to
15 state:

16 (1) The general nature of the document or object, i.e., whether it is a letter,
17 a memorandum, a report, a drawing, a chart or tracing, a pamphlet, etc.;

18 (2) The general subject matter of the document or object;

19 (3) The name, current or last known business address and home address
20 of the original author or draftsman (and, if different, the signor or signors), and of any person who
21 has edited, corrected, revised or amended, or who has entered any initials or comment or notation
22 thereon;

23 (4) The date thereof, including any date of any such editing, correcting,
24 amending or revision;

25 (5) Any numerical designation appearing thereon, such as a file reference;

26 (6) The name of each recipient of a copy of the document or object; and

27 (7) The place where and the person now having custody or control of each
28 such document or object, or if such document or object has been destroyed, the place of and reasons

1 for such destruction.

2 (c) As used throughout these Interrogatories, the terms "identify," "identity," and
3 "identification," when used in reference to a communication, mean to state with respect to each
4 communication, the nature of the communication (telephone call, letter, etc.), the date of the
5 communication, the persons who were present at or participated in the communication or with whom
6 or from whom the communication was made, and the substance of the statement made by each
7 person involved in such communication.

8 G. All information is to be divulged which is in Defendant's possession or control, or can
9 be ascertained upon reasonable investigation of areas within your control. The knowledge of
10 Defendant's attorney is deemed to be Defendant's knowledge, so that, apart from privileged matters,
11 if Defendant's attorney has knowledge of the information sought to be elicited herein, said
12 knowledge must be incorporated into these answers, even if such information is unknown to
13 Defendant individually.

14 H. Whenever you are unable to state an answer to these Interrogatories based upon your
15 own personal knowledge, please so state, and identify the person or persons you believe to have such
16 knowledge, what you believe the correct answer to be, and the facts upon which you base your
17 answer.

18 I. When an Interrogatory calls for an answer in more than one part, each part should be
19 separated so that the answer is clearly understandable.

20 J. Each Interrogatory should be construed independently. No Interrogatory should be
21 construed by reference to any other Interrogatory if the result is a limitation of the scope of the
22 answer to such Interrogatory.

23 K. "And" and "or" shall be construed disjunctively or conjunctively as necessary, in order
24 to bring within the scope of the Interrogatory all responses which might otherwise be construed to
25 be outside of its scope.

26 L. If an Interrogatory is objected to, in whole or in part, or if information responsive to
27 an Interrogatory is withheld, on the ground of privilege or otherwise, please set forth fully each
28 objection, describe generally the information which is withheld, and set forth the facts upon which

1 Defendants rely as the basis for each such objection.

2 M. These Interrogatories are addressed to all Defendants. If, for an Interrogatory, the
3 answers for all Defendants would be the same, only one answer is necessary. If the Defendants'
4 answers to an Interrogatory would vary among them, state and identify answers for each Defendant
5 separately.

6 N. Pursuant to Nev. R. Civ. P. 26, you shall supplement your responses according to the
7 following:

8 (a) A party is under a duty reasonably to supplement his response with respect
9 to any question directly addressed to (A) the identity and location of persons having knowledge of
10 discoverable matters and, (B), the identity of each person expected to be called as an expert witness
11 at trial, the subject matter on which he is expected to testify, and the substance of his testimony.

12 (b) A party is under a duty reasonably to amend a prior response if he obtains
13 information upon the basis of which (A) he knows that the response was incorrect when made, and
14 (B) he knows that the response though correct when made is no longer true and the circumstances
15 are such that a failure to amend the response is in substance a knowing concealment.

16 **INTERROGATORIES**

17 **INTERROGATORY NO. 1:**

18 State your name, address, telephone number, Social Security number, date of birth and
19 birthplace.

20 **INTERROGATORY NO. 2:**

21 If you have ever been convicted of a felony or a misdemeanor having to do with truth or
22 veracity, set forth all relevant facts relating to such conviction including, but not limited to, the
23 nature of the crime and the date and place of each conviction, and any fine or sentence imposed.

24 **INTERROGATORY NO. 3:**

25 State the location of your property and whether it is located within "open range." If it is not
26 located within "open range," state any grazing restrictions that apply to your land, including any
27 requirements regarding the fencing in of your animals or keeping your animals off the roadways.

28 NOTE: As used throughout these interrogatories "open range" is to be defined as set forth in NRS

1 568.355.

2 **INTERROGATORY NO. 4:**

3 State the number of cattle that you own, how long you have owned the cattle, the purpose for
4 which you raise the cattle, and the number of employees or independent contractors you hire to keep
5 track of the cattle.

6 **INTERROGATORY NO. 5:**

7 Provide a description of the typical grazing area of your cattle, including the distance from
8 your ranch that your cattle typically graze and whether those areas of typical grazing are in "open
9 range." If those areas are not located within "open range," state any grazing restrictions that apply
10 to those areas, including any requirements regarding the fencing in of your animals or keeping your
11 animals off the roadways.

12 **INTERROGATORY NO. 6:**

13 State any and all policies, standards, procedures, or practices that you follow with regard to
14 tracking the location of your cattle. Include in your answer how often you confirm the location of
15 your cattle and how often that you confirm that all cattle are accounted for.

16 **INTERROGATORY NO. 7:**

17 State any and all policies, standards, procedures, or practices that you typically follow when
18 you discover or are notified that any of your cattle are located on a highway. Include in your answer
19 whether you follow different policies, standards, procedures, or practices depending on whether the
20 cattle is located in "open range" or not, and whether you proceed to remove your cattle from the
21 roadway and, if so, the time lapse that typically occurs between notification and your removal of the
22 cattle.

23 **INTERROGATORY NO. 8:**

24 State the last time you had confirmed the location of the cow that is the subject of this lawsuit
25 prior to the subject accident. Include in your answer a description of the confirmed location of that
26 cow, including whether that location was in "open range," the date on which that location was
27 confirmed and who confirmed the subject cow's location.

28 ///

1 **INTERROGATORY NO. 9:**

2 Based on the location as provided by you in the preceding interrogatory as the starting point,
3 provide whether the subject cow would have had to cross a fence or fenced property in order to arrive
4 at the location of the subject accident with Plaintiff. Include in your answer a description of the
5 location of any fences or fenced property that the cow would have had to cross.

6 **INTERROGATORY NO. 10:**

7 State all time within the five (5) years prior to the subject incident when you lost track of any
8 of your cattle or were notified that one or more of your cattle were on or near any roadway.

9 **INTERROGATORY NO. 11:**

10 State whether any of your other cattle, other than the cow that is a subject of this lawsuit,
11 were at or near the location of the subject accident with Plaintiff at the time of that accident or
12 shortly thereafter.

13 **INTERROGATORY NO. 12:**

14 Describe with particularity how your cattle are marked and/or branded, including the subject
15 cow. Include in you answer whether your cattle have ear tags and, if so, whether those ear tags are
16 florescent, reflect light or otherwise luminesce at night or when illuminated.

17 **INTERROGATORY NO. 13:**

18 Describe with particularity, based on your observations and personal knowledge of the
19 industry, the common practice among cattle owners in Nye County regarding how their cattle are
20 marked and/or branded. Include in you answer whether it is common practice in Nye County for
21 cattle to have ear tags and, if so, whether those ear tags are florescent, reflect light or otherwise
22 luminesce at night or when illuminated.

23 **INTERROGATORY NO. 14:**

24 Identify sufficiently to permit service of a subpoena any expert or consultant with whom you
25 have communicated or intend to utilize at trial or arbitration in connection with the occurrence which
26 is the subject matter of this action, and state the specific area of knowledge of each such person, their
27 expected testimony, and the date when each such person was first contacted.

28 ///

1 **INTERROGATORY NO. 15:**

2 Identify sufficiently to permit service of a subpoena, duces tecum or Rule 34 Request for
3 Production, each document, writing, or physical object provided to each person identified in your
4 answer to the preceding interrogatory and each document, writing or communication you have
5 received from each such person.

6 **INTERROGATORY NO. 16:**

7 Identify sufficiently to permit service of a subpoena, duces tecum or Rule 34 Request for
8 Production, each document, writing or communication of which you or your attorney have
9 possession or control from or by any Plaintiff, Defendant, witness, or any agent or representative of
10 any Defendant, Plaintiff or any witness, which pertains in any manner to this accident or to the issues
11 arising therefrom.

12 **INTERROGATORY NO. 17:**

13 Identify sufficiently to permit service of a subpoena, duces tecum or Rule 34 Request for
14 Production, each document, writing or physical object known to you pertaining to this accident or
15 to the issues arising therefrom not previously identified in your answers to the preceding
16 interrogatories.

17 **INTERROGATORY NO. 18:**

18 Describe with particularity any and all incidents in the ten (10) years prior to the subject
19 incident where your cattle were involved in an incident with any man-made or man-operated object
20 on a roadway. Include in your answer a description of the incident, the date of the incident, the name
21 of the party in the motor vehicle, whether any injuries or fatalities resulted, and whether litigation
22 was instituted.

23 **INTERROGATORY NO. 19:**

24 Set forth each and every fact which you contend supports your defense of the allegations
25 contained in the Complaint on file herein.

26 **INTERROGATORY NO. 20:**

27 If your answer to any of the Requests for Admissions served herewith is anything other than
28 an unqualified admission, please set forth all facts upon which you base your response for each

1 Request.

2 **INTERROGATORY NO. 21:**

3 State the name, title, and position of the person(s), other than your attorney, who helped
4 prepare or supplied information for the answers to Plaintiff's Interrogatories

5 DATED this 21st day of October, 2007.

6 **ALDRICH & BRYSON, LLP**

7 
8 _____

9 John P. Aldrich

10 Nevada Bar No. 6877

11 Stacy D. Harrop

12 Nevada Bar No. 9826

13 1601 S. Rainbow Blvd., Suite 160

14 Las Vegas, Nevada 89146

15 (702) 853-5490

16 (702) 853-5491 (fax)

17 *Attorneys for Plaintiffs*

CERTIFICATE OF MAILING

I hereby certify that on this 31st day of October, 2007, service of the foregoing **PLAINTIFFS' FIRST SET OF INTERROGATORIES TO DEFENDANT FALLINI** was made this date by depositing a true and correct copy of the same for mailing in Las Vegas, Nevada, addressed to:

Harold Kuehn, Esq.
Gibson, & Kuehn
921 S. Highway 160, #203
Pahrump, NV 89048

P.O. Box 1411
Tonopah, NV 89049
*Attorney for Defendant/Counterclaimant
Susan Fallini*

Katherine M. Peck, Esq.
Peck Law Offices
701 Bridger Ave, Ste. 500
Las Vegas, NV 89106
*Attorney for Counterdefendant
Estate of Michael David Adams*


An employee of ALDRICH & BRYSON, LLP

EXHIBIT 4

1 REQT
2 **BLACK & LOBELLO**
3 John P. Aldrich
4 Nevada Bar No.: 6877
5 10777 West Twain Avenue, Suite 300
6 Las Vegas, Nevada 89135
7 (702) 869-8801
8 (702) 869-2669 (Fax)
9 *Attorneys for Plaintiffs*

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

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

Plaintiffs,

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

Defendants.

Case No.: CV24539
Dept.: 2P

SUSAN FALLINI,

Counterclaimant,

vs.

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

Counterdefendants.

**PLAINTIFFS' SECOND SET OF REQUESTS FOR PRODUCTION OF DOCUMENTS
TO DEFENDANT FALLINI**

TO: SUSAN FALLINI, Defendant/Counterclaimant

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

Plaintiffs, Estate of MICHAEL DAVID ADAMS, by and through his mother JUDITH
ADAMS, by and through their attorneys, Aldrich & Bryson, LLP, hereby requests that Defendant,
pursuant to Nev. R. Civ. P. 34, respond to the following Requests for Production of Documents
within thirty (30) days of service hereof:

DEFINITIONS AND INSTRUCTIONS

The following preliminary definitions and instructions apply to each of the Requests set forth hereafter and are deemed to be incorporated therein.

A. When used in these Requests, the term "Defendant" or "Defendants," its plural or any synonym thereof, is intended to and shall embrace and include, in addition to the named party or parties, counsel for said party and all agents, servants, employees, representatives, investigators and others who are in possession of, or may have obtained, information for or on behalf of the named Defendant. As to each person, please state his or her full name, last known residence address and telephone number, and his or her job title, capacity or position at such last known employment.

B. As used in these Requests, the terms "document" and "writing" and the plural forms thereof shall mean all written, recorded or graphic matters, however produced or reproduced, of every kind and description, pertaining in any way to the subject matter of this action. The terms "document" and "writing" shall include, but are not limited to, any books, pamphlets, periodicals, memoranda (including those of telephone and oral conversations), e-mails, contracts, correspondence, agreements, application, financial records, security instruments, disbursements, checks, bank statements, time records, accounting or financial records, notes, diaries, logs, telegrams, or cables prepared, drafted, received or sent, tapes, transcripts, recordings, minutes of meetings, directives, work papers, charts, drawings, prints, flow sheets, photographs, film, computer printouts, medical and hospital records and reports, x-ray photographs, advertisements, catalogs, or any hand-written, recorded, transcribed, punched, tapes, filmed or graphic matters, however, produced or reproduced in Defendant's possession, custody or control or to which defendant has or has had access.

C. As used throughout these Requests, the term "you," its plural or any synonyms thereof, is intended to and shall embrace and include in addition to the named party or parties, counsel for such party or parties, and all agents, servants, employees, representatives, investigators and others who are in the possession of or who may have obtained information for or on behalf of the named party or parties.

D. As used throughout these Requests, the term "person," or its plural or any synonyms

1 thereof, is intended to and shall embrace and include any individual, partnership, corporation,
2 company, association, government agency (whether federal, state, local or any agency of the
3 government of a foreign country) or any other entity.

4 E. As used throughout these Requests, the term "communication," its plural or any
5 synonyms thereof, is intended to and shall embrace and include all written communications, and with
6 respect to all communications, shall include but is not limited to every discussion,
7 conversation, conference, meeting, interview, telephone call or doctor or other professional service
8 visit.

9 F. (a) As used throughout these Requests, the terms "identify," "identity," or
10 "identification," their plural or any synonyms thereof, when used with reference to a person, shall
11 mean to state the full name and address, and where applicable, the present position and business, if
12 known, and each prior position and business.

13 (b) As used throughout these Requests, the terms "identify," "identity," or
14 "identification," their plural or synonyms thereof, when used with reference to a document mean to
15 state:

16 (1) The general nature of the document or object, i.e., whether it is a letter,
17 a memorandum, a report, a drawing, a chart or tracing, a pamphlet, etc.;

18 (2) The general subject matter of the document or object;

19 (3) The name, current or last known business address and home address
20 of the original author or draftsman (and, if different, the signor or signors), and of any person who
21 has edited, corrected, revised or amended, or who has entered any initials or comment or notation
22 thereon;

23 (4) The date thereof, including any date of any such editing, correcting,
24 amending or revision;

25 (5) Any numerical designation appearing thereon, such as a file reference;

26 (6) The name of each recipient of a copy of the document or object; and

27 (7) The place where and the person now having custody or control of each
28 such document or object, or if such document or object has been destroyed, the place of and reasons

1 for such destruction.

2 (c) As used throughout these Requests, the terms "identify," "identity," and
3 "identification," when used in reference to a communication, mean to state with respect to each
4 communication, the nature of the communication (telephone call, letter, etc.), the date of the
5 communication, the persons who were present at or participated in the communication or with whom
6 or from whom the communication was made, and the substance of the statement made by each
7 person involved in such communication.

8 G. All information is to be divulged which is in Defendant's possession or control, or can
9 be ascertained upon reasonable investigation of areas within your control. The knowledge of
10 Defendant's attorney is deemed to be Defendant's knowledge, so that, apart from privileged matters,
11 if Defendant's attorney has knowledge of the information sought to be elicited herein, said
12 knowledge must be incorporated into these answers, even if such information is unknown to
13 Defendant individually.

14 H. Whenever you are unable to state an answer to these Requests based upon your own
15 personal knowledge, please so state, and identify the person or persons you believe to have such
16 knowledge, what you believe the correct answer to be, and the facts upon which you base your
17 answer.

18 I. When a Request calls for an answer in more than one part, each part should be
19 separated so that the answer is clearly understandable.

20 J. Each Request should be construed independently. No Request should be construed
21 by reference to any other Request if the result is a limitation of the scope of the answer to such
22 Request.

23 K. "And" and "or" shall be construed disjunctively or conjunctively as necessary, in
24 order to bring within the scope of the Request all responses which might otherwise be construed to
25 be outside of its scope.

26 L. If a Request is objected to, in whole or in part, or if information responsive to a
27 Request is withheld, on the ground of privilege or otherwise, please set forth fully each objection,
28 describe generally the information which is withheld, and set forth the facts upon which Defendants

1 rely as the basis for each such objection.

2 M. These Requests are addressed to all Defendants. If, for a Request, the answers for all
3 Defendants would be the same, only one answer is necessary. If the Defendants' answers to a
4 Request would vary among them, state and identify answers for each Defendant separately.

5 N. Pursuant to Nev. R. Civ. P. 26, you shall supplement your responses according to the
6 following:

7 (a) A party is under a duty reasonably to supplement his response with respect
8 to any question directly addressed to (A) the identity and location of persons having knowledge of
9 discoverable matters and, (B), the identity of each person expected to be called as an expert witness
10 at trial, the subject matter on which he is expected to testify, and the substance of his testimony.

11 (b) A party is under a duty reasonably to amend a prior response if he obtains
12 information upon the basis of which (A) he knows that the response was incorrect when made, and
13 (B) he knows that the response though correct when made is no longer true and the circumstances
14 are such that a failure to amend the response is in substance a knowing concealment.

15 **REQUESTS FOR PRODUCTION**

16 **REQUEST FOR PRODUCTION NO. 22:**

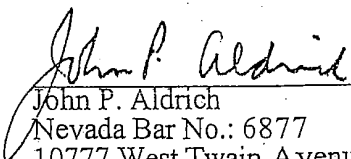
17 Produce any insurance policies or carriers which may provide coverage for the incident
18 described in the complaint.

19 **REQUEST FOR PRODUCTION NO. 23:**

20 Produce all notices to any potential insurance carriers regarding the incident described in the
21 complaint, including any responses received by any potential insurance carriers.

22 DATED this 1st day of July, 2008.

23 **BLACK & LOBELLO**

24 
25 John P. Aldrich
26 Nevada Bar No.: 6877
27 10777 West Twain Avenue, Suite 300
28 Las Vegas, Nevada 89135
(702) 869-8801
(702) 869-2669 (Fax)

Attorneys for Plaintiffs

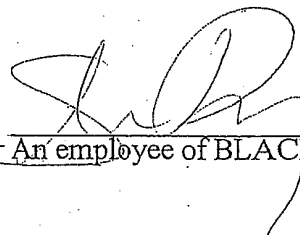
CERTIFICATE OF MAILING

I hereby certify that on this 2nd day of July, 2008, service of the foregoing **PLAINTIFFS'**
SECOND SET OF REQUESTS FOR PRODUCTION OF DOCUMENTS TO DEFENDANT
FALLINI was made this date by depositing a true and correct copy of the same for mailing in Las
Vegas, Nevada, addressed to:

Harold Kuehn, Esq.
Gibson, & Kuehn
921 S. Highway 160, #203
Pahrump, NV 89048

P.O. Box 1411
Tonopah, NV 89049
Attorney for Defendant/Counterclaimant

Katherine M. Peck, Esq.
Peck Law Offices
701 Bridger Ave, Ste. 500
Las Vegas, NV 89106
Attorney for Counterdefendant
Estate of Michael David Adams



An employee of BLACK & LOBELLO

EXHIBIT 5

1 **NEO**

John P. Aldrich, Esq.

2 Nevada State Bar No. 6877

Adrianne C. Duncan, Esq.

3 Nevada State Bar No. 9797

BLACK & LOBELLO

4 10777 West Twain Avenue, Suite 300

Las Vegas, Nevada 89135

5 (702) 869-8801

Attorneys for Plaintiffs

FILED

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NYE COUNTY CLERK
BY DEPUTY

Linda Uhl

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

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

12 Plaintiffs,

13 vs.

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

16 Defendants.

Case No.: CV24539
Dept.: 2P

17 SUSAN FALLINI,

18 Counterclaimant,

19 vs.

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

22 Counterdefendants.
23

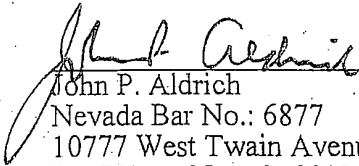
24 **NOTICE OF ENTRY OF ORDER**

25 PLEASE TAKE NOTICE that on the 30th day of July, 2008 an Order Granting Plaintiffs'
26 Motion for Partial Summary Judgement was entered in the above-captioned matter,

1 a copy of which is attached hereto.

2 DATED this 13th day of August, 2008.

3 **BLACK & LOBELLO**

4
5 
6 John P. Aldrich
7 Nevada Bar No.: 6877
8 10777 West Twain Avenue, Suite 300
9 Las Vegas, Nevada 89135
10 (702) 869-8801
11 (702) 869-2669 (Fax)

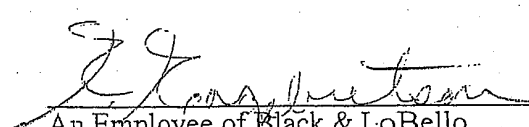
12 **CERTIFICATE OF SERVICE**

13 I hereby certify that on the 13th day of August, 2008 a true and correct copy of the foregoing

14 **NOTICE OF ENTRY OF ORDER** was deposited into the U.S. mail at Las Vegas, Nevada, first-
15 class postage fully prepaid, addressed to the following person(s):

16 Harold Kuehn, Esq.
17 Gibson & Kuehn, LLP
18 1601 E. Basin Avenue, Ste. 101
19 Pahrump, NV 89060

20 Katherine M. Barker, Esq.
21 Law Office of Katherine M. Barker
22 701 Bridger Avenue, Suite 500
23 Las Vegas, NV 89101

24 
25 An Employee of Black & LoBello
26
27
28

FILED
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2008 JUL 30 P 3:30
NYE COUNTY CLERK
BY DEPUTY

1 **ORDER**

2 John P. Aldrich, Esq.
3 Nevada State Bar No. 6877
4 Adrienne C. Duncan, Esq.
5 Nevada State Bar No. 9797
6 **BLACK & LOBELLO**
7 10777 West Twain Avenue, Suite 300
8 Las Vegas, Nevada 89135
9 (702) 869-8801
10 *Attorneys for Plaintiffs*

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

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

14 Plaintiffs,

15 vs.

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

18 Defendants.

19 SUSAN FALLINI,

20 Counterclaimant,

21 vs.

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

26 Counterdefendants.

Case No.: CV24539
Dept.: 2P

27 **ORDER GRANTING PLAINTIFFS' MOTION FOR PARTIAL SUMMARY JUDGMENT**

28 THIS MATTER having come on for hearing on Monday, July 14, 2008, on Plaintiff's Motion
for Partial Summary Judgment before the Honorable Robert W. Lane, and John P. Aldrich, Esq.
appearing on behalf of the Plaintiffs, no other counsel present, the court having reviewed the Motion

1 for Partial Summary Judgment and the Joinder to the Motion for Partial Summary Judgment, having
2 reviewed all pleadings and papers on file herein, and having heard the arguments of present counsel;
3 and good cause appearing therefore,

4 **THE COURT HEREBY ENTERS THE FOLLOWING FINDINGS OF FACT:**

- 5 1. Fallini's property is not located within an "open range" as it is defined in
6 NRS 568.355.
- 7 2. Fallini is the owner of the cow that is mentioned in the Plaintiff's Complaint on file
8 herein ("subject cow").
- 9 3. It is the common practice of Nye County, Nevada ranchers to mark their cattle with
10 reflective or luminescent tags.
- 11 4. The subject cow was not marked with a reflective or luminescent tag.
- 12 5. The subject cow crossed a fence to arrive at the location of the subject accident
13 described in the Complaint on file herein.
- 14 6. Fallini's cattle had previously been involved in incidents with motor vehicles on the
15 roadway.
- 16 7. Fallini does not track the location of her cattle while they are grazing away from her
17 property.
- 18 8. Fallini does not remove her cattle from the roadway when notified that the cattle are
19 in a roadway.
- 20 9. The subject cow was not visible at night.
- 21 10. Fallini was aware that the subject cow was not visible at night prior to the incident
22 that is the subject of the Complaint on file herein.
- 23 11. The subject cow was in the roadway of SR 375 at the time of the incident that is the
24 subject matter of the Complaint on file herein.
- 25 12. The subject cow's presence in the roadway of SR 375 was the cause of the motor
26 vehicle accident that is the subject of the Complaint on file herein.
- 27 13. Fallini did not know the location of the subject cow at the time of the incident that
28 is the subject of the Complaint on file herein.

1 14. The presence of a reflective or luminescent tag on the subject cow would have made
2 the subject cow visible at the time of the incident that is the subject of the Complaint
3 on file herein.

4 **THE COURT HEREBY ENTERS THE FOLLOWING CONCLUSIONS OF LAW:**

- 5 1. Defendant Fallini had and duty to ensure that the subject cow was not in the roadway
6 at the time of the incident described in the Complaint.
- 7 2. Defendant Fallini had a duty to follow the common practice of Nye County, Nevada
8 ranchers and to mark her cow with reflecting or lumination tags.
- 9 3. Defendant Fallini breached the duty of care to the decedent, as set forth in the
10 Findings of Fact and Conclusions of Law.
- 11 4. As a result of Defendant Fallini's breach, the decedent, Michael David Adams, was
12 killed.
- 13 5. Defendant Fallini is liable for the damages to which Plaintiff is entitled, in an amount
14 to be determined at a later time.

15 **IT IS HEREBY ORDERED** that Plaintiffs' Motion for Partial Summary Judgment as to
16 the issue of Defendant's duty and breach of duty is hereby GRANTED.

17 DATED this 27 day of July, 2008.

18 **ROBERT W. LANE**

19 _____
20 DISTRICT COURT JUDGE

21 Submitted By:

22 **BLACK & LOBELLO**

23 John P. Aldrich

24 John P. Aldrich

25 Nevada Bar No.: 6877

26 10777 West Twain Avenue, Suite 300

27 Las Vegas, Nevada 89135

(702) 869-8801

28 (702) 869-2669 (Fax)

EXHIBIT 6

ALDRICH LAW FIRM, LTD.

1601 S. Rainbow Blvd., Suite 160

Las Vegas, NV 89146

(702) 853-5490

(702) 227-1975 fax

February 24, 2009

Harold Kuehn, Esq.
Gibson, & Kuehn
1601 E. Basin Avenue, #101
Pahrump, NV 89060

Re: *Adams v Fallini*

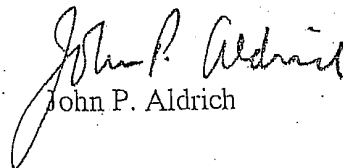
Dear Mr. Kuehn:

Discovery requests were sent to your client, Susan Fallini, quite some time ago. I have never received any responses. One of the requests was for your client to produce the insurance policy information she carried on her ranch and cattle. At this time I respectfully request that you produce this information within ten (10) days of receipt of this letter. Failure to do so will result in me filing a motion to compel.

I look forward to hearing from you soon.

Kindest Regards,

ALDRICH LAW FIRM, LTD.


John P. Aldrich

cc: Katherine M. Barker, Esq.

EXHIBIT 7

1 **AFF**
2 John P. Aldrich
3 Nevada Bar No.: 6877
4 **ALDRICH LAW FIRM, LTD.**
5 1601 S. Rainbow Blvd., Suite 160
6 Las Vegas, Nevada 89146
7 (702) 853-5490
8 *Attorney for Plaintiff*

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

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

15 Plaintiff,

16 v.

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

19 Defendants.

20 _____
21 SUSAN FALLINI,

22 Counterclaimant,

23 vs.

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

27 Counterdefendants.
28 _____

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

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

30 State of Nevada)
31) SS
32 County of Clark)

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

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

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

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

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

6 4. The documents attached hereto as Exhibits 1 through 6 are true and correct copies of
7 documents prepared by my office and sent to counsel for Defendant in this matter. These documents
8 were kept in the ordinary course of business.

9 5. I have attempted to amicably resolve this discovery issue and obtain a copy of
10 Defendant's applicable insurance policies, but to no avail. On February 28, 2009, I sent a letter to
11 Defendant's counsel seeking responses to the discovery. (Exhibit 6.)

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

16 7. On March 18, 2009, I again contacted the office of Mr. Kuehn. I was again informed
17 that Mr. Kuehn was not available. I left a message with my phone number and asked that Mr.
18 Kuehn return the call. No return call ever came.

19 8. I have expended approximately 3 hours preparing the Motion to Compel and this
20 Affidavit. I anticipate that I will have to travel to Pahrump, Nevada for the hearing on this matter.
21 Generally, the round trip from Las Vegas to Pahrump, including the hearing, takes about four hours
22 (a full half-day). Although my normal hourly rate is \$300.00 per hour, I am only requesting
23 attorney's fees in the amount of \$1,600.00 for having to bring this motion, as well as \$50.00 in costs
24 for having to travel to Pahrump.

25 ///

26 ///

27 ///

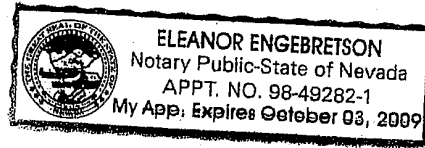
9. The information sought is standard discovery, and there is no rationale basis for Defendant's refusal to provide the requested discovery.

Dated this 20 day of March, 2009.

John P. Aldrich
JOHN P. ALDRICH, ESQ.

Subscribed & sworn to before me
this 20th day of March, 2009.

Heavenly Engstrom
NOTARY PUBLIC



1 NEO

John P. Aldrich, Esq.

2 Nevada Bar No. 6877

ALDRICH LAW FIRM, LTD.

3 1601 S. Rainbow Blvd., Suite 160

Las Vegas, Nevada 89146

4 (702) 853-5490

(702) 227-1975 fax

5 *Attorneys for Plaintiff*

FILED

2009 MAY 18 ~~Shelia Winn~~ ^{Reli v2}

**NYE COUNTY CLERK
BY DEPUTY**

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

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

Case No.: CV24539
Dept.: 2P

12 Plaintiffs,)

13 vs.)

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

15 Defendants.)

16 SUSAN FALLINI,)

17 Counterclaimant,)

18 vs.)

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

22 Counterdefendants.)

23 NOTICE OF ENTRY OF ORDER

24 ///

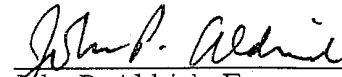
25 ///

26 ///

PLEASE TAKE NOTICE that an Order was entered in the above-entitled matter on April 27, 2009, a copy of which is attached hereto as Exhibit 1.

DATED this 14th day of May, 2009.

ALDRICH LAW FIRM, LTD.


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

CERTIFICATE OF SERVICE

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

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

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


An employee of Aldrich Law Firm, Ltd.

EXHIBIT 1

ORIGINAL**ORDER**

John P. Aldrich
 Nevada Bar No.: 6877
 Catherine Hernandez
 Nevada Bar No. 8410
ALDRICH LAW FIRM, LTD.
 1601 S. Rainbow Blvd., Suite 160
 Las Vegas, Nevada 89146
 (702) 853-5490
Attorneys for Plaintiff

FILED
 FIFTH JUDICIAL DISTRICT

APR 27 2009

Nye County Clerk

Deputy

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

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

Plaintiff,

v.

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

Defendants.

SUSAN FALLINI,

Counterclaimant,

vs.

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

Counterdefendants.

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

**ORDER GRANTING PLAINTIFF'S MOTION TO COMPEL DEFENDANT'S
 PRODUCTION OF DOCUMENTS**

THIS MATTER having come on for hearing on Monday, April 27, 2009, on Plaintiff's
 Motion to Compel Defendant's Production of Documents before the Honorable Robert W. Lane, and

1 Catherine Hernandez, Esq., of Aldrich Law Firm, Ltd., appearing on behalf of the Plaintiffs, no other
2 counsel present, the court having reviewed all pleadings and papers on file herein, no opposition
3 having been presented, and good cause appearing therefore:

4 **IT IS HEREBY ORDERED** that Plaintiff's Motion to Compel Defendant's Production of
5 Documents is GRANTED. Defendant SUSAN FALLINI shall produce all documents responsive
6 to Plaintiff's discovery requests pursuant to NRCP 16.1, 26,33,34 and NRCP 37 within ten (10)
7 days of Notice of Entry of this Order.

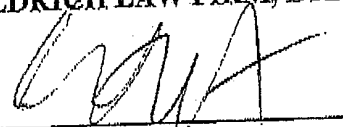
8 **IT IS FURTHER ORDERED** that Defendant shall pay \$1,650.00 for related attorney's fees
9 and costs for failing to comply with discovery rules and for Plaintiff having to bring this motion, also
10 within ten (10) days of Notice of Entry of this Order.

11 DATED this 27 day of April, 2009.

12 
13 DISTRICT COURT JUDGE

14
15 Respectfully submitted by:

16 **ALDRICH LAW FIRM, LTD.**

17 
18 John P. Aldrich, Esq.
19 Nevada Bar No. 6877
20 Catherine Hernandez, Esq.
21 Nevada Bar No. 8410
22 1601 S. Rainbow Blvd., Suite 160
23 Las Vegas, NV 89146
24 (702) 853-5491
25 Attorneys for Plaintiff
26
27
28

1 **MOT**
2 John P. Aldrich
3 Nevada Bar No.: 6877
4 **ALDRICH LAW FIRM, LTD.**
5 1601 S. Rainbow Blvd., Suite 160
6 Las Vegas, Nevada 89146
7 (702) 853-5490
8 *Attorney for Plaintiff*

FILED

2009 JUN 16 P 1:56

Shelia Winn
NYE COUNTY CLERK
BY DEPUTY

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

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

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

15 Plaintiff,

16 v.

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

19 Defendants.

20

SUSAN FALLINI,

21 Counterclaimant,

22 vs.

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

26 Counterdefendants.
27

28 **PLAINTIFF'S MOTION TO STRIKE DEFENDANT'S ANSWER AND**
COUNTERCLAIM

COMES NOW Plaintiff JUDITH ADAMS, individually and for the ESTATE OF
MICHAEL DAVID ADAMS, by and through her counsel of record, John P. Aldrich, Esq., of the
Aldrich Law Firm, Ltd., and hereby moves this Court for an order striking Defendant SUSAN
FALLINI's answer for failure to comply with a court order. Plaintiff further requests that this Court

1 issue another Order to Defendant Fallini to provide information regarding any applicable insurance
2 policies so that Plaintiff can collect against such insurance policies.

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

6 DATED this 11 day of June, 2009.

7 **ALDRICH LAW FIRM, LTD.**

8
9 By John P. Aldrich
10 John P. Aldrich
11 Nevada Bar No. 6877
12 **ALDRICH LAW FIRM, LTD.**
13 1601 S. Rainbow Blvd., Suite 160
14 Las Vegas, NV 89146
15 (702) 853-5490
16 Attorneys for Plaintiff

17 **PLAINTIFF'S NOTICE OF MOTION TO STRIKE DEFENDANT'S**
18 **ANSWER AND COUNTERCLAIM**

19 PLEASE TAKE NOTICE that the undersigned will bring a Motion to Strike Defendant's
20 Answer and Counterclaim for hearing before the above entitled Court on the 13 day of _____

21 July, 2009, at the hour of 1:15 P.m. or as soon thereafter as counsel may be heard.

22 DATED this 11 day of June, 2009.

23 **ALDRICH LAW FIRM, LTD.**

24 By John P. Aldrich
25 John P. Aldrich
26 Nevada Bar No. 6877
27 **ALDRICH LAW FIRM, LTD.**
28 1601 S. Rainbow Blvd., Suite 160
Las Vegas, NV 89146
(702) 853-5490
Attorneys for Plaintiff

1 POINTS AND AUTHORITIES

2 I.

3 FACTS

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

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

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

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

25 Plaintiff attempted to amicably resolve the discovery dispute and obtain a copy of
26 Defendant's applicable insurance policies, but to no avail. On February 24, 2009, Plaintiff sent
27 letters to Defendant's counsel seeking responses to the discovery. (Exhibit 6.)

28 Plaintiff's counsel, Mr. Aldrich, has attempted to discuss this discovery issue with

1 Defendant's counsel, Mr. Kuehn, as well. On or about March 6, 2009, Plaintiff's counsel contacted
2 the office of Defendant's counsel. Mr. Aldrich was informed that Mr. Kuehn was not available. Mr.
3 Aldrich left a message with Mr. Aldrich's phone number and asked that Mr. Kuehn return the call.
4 No return call ever came. (Exhibit 7.)

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

8 On March 23, 2009, Plaintiff filed a Motion to Compel Defendant's Production of
9 Documents, including information regarding any insurance policies that may provide coverage for
10 the incident as contemplated in the Plaintiff's second request for documents. This motion was heard
11 on April 27, 2009. The Defendant's attorney, Mr. Kuehn, attended the hearing. Mr. Kuehn did not
12 oppose the motion to compel and agreed at the hearing it was warranted. Mr. Kuehn provided no
13 explanation as to why Defendant failed to respond to all discovery requests. Mr. Kuehn agreed
14 sanctions were warranted, however he disputed the amount of sanctions. (See Affidavit of Catherine
15 Hernandez, Esq., attached hereto as Exhibit 8.) This Honorable Court granted the Motion to Compel
16 and awarded John Aldrich, Esq., \$750.00 in sanctions for having to bring the motion. A Notice of
17 Entry of Order on the order granting the motion to compel was entered on May 18, 2009. It was
18 served by mail on Defendant on May 14, 2009. (Exhibit 9.) To date, Defendant has failed to
19 comply with the order of this Honorable Court and respond to all Plaintiff's discovery requests.
20 Further, Defendant has failed to pay the sanctions ordered by this Honorable Court.

21 II.

22 LEGAL ARGUMENT

23 **PLAINTIFF'S MOTION TO STRIKE DEFENDANT FALLINI'S ANSWER SHOULD BE** 24 **GRANTED**

25 Pursuant to NRCP 34, Plaintiff has the right to request documents which are discoverable
26 pursuant to NRCP 26. According to NRCP 34, Defendant has 30 days from receipt of the requests
27 for production of documents to provide appropriate responses. Defendant has provided no responses
28 whatsoever, nor has Defendant objected to any request. NRCP 34(b) permits a party to seek relief

1 under NRCP 37(a) if the party who receives discovery requests fails to respond appropriately. NRCP
2 37(a) provides that the Court may enter an order compelling a non-responsive party to disclose the
3 requested information. This Court has entered an order compelling Defendant to respond to
4 Discovery requests. Defendant has failed to comply with this order.

5 NRCP 37(b)(2)(c), permits "an order striking out pleadings or parts thereof," for discovery
6 abuses. "Selection of a particular sanction for discovery abuses under NRCP 37 is generally a
7 matter committed to the sound discretion of the district court." *Stubli v. Big Int'l Trucks, Inc.*, 107
8 Nev. 309, 312-313, 810 P.2d 785 (1991) (citing *Fire Ins. Exchange v. Zenith Radio Corp.*, 103 Nev.
9 648, 649, 747 P.2d 911, 912 (1987) and *Kelly Broadcasting v. Sovereign Broadcast*, 96 Nev. 188,
10 192, 606 P.2d 1089, 1092 (1980.)) In *Hamlett v. Reynolds*, despite orders from the discovery
11 commissioner and the district court, as well as having monetary sanctions imposed, Hamlett refused
12 to comply with Reynold's discovery requests. Finally, after a year of attempts to force Hamlett to
13 comply, the district court struck Hamlett's answer and entered default against him as a failure to
14 comply with discovery orders. Hamlett appealed. The Nevada Supreme Court held that default
15 judgments will be upheld where "the normal adversary process has been halted due to an
16 unresponsive party, because diligent parties are entitled to be protected against interminable delay
17 and uncertainty as to their legal rights." *Hamlett v. Reynolds*, 114 Nev. 863, 963 P.2d 457 (1998)
18 (citing *Skeen v. Valley Bank of Nevada*, 89 Nev. 301, 303, 511 P.2d 1053, 1054 (1973).

19 In the present case Defendant has failed to provide NRCP 16.1 disclosures and has failed to
20 respond to any written discovery propounded by Plaintiff. Plaintiff submitted her initial
21 interrogatories to Defendant on October 31, 2007, and continued sending various discovery requests
22 through July 2, 2008. Plaintiffs submitted interrogatories, requests for admission, and two sets of
23 requests for production of documents, including a request that Fallini produce all related insurance
24 information regarding the incident.

25 Despite these discovery requests, Defendant has failed and refused to cooperate or respond.
26 Plaintiff's counsel has made phone calls and submitted letters to Fallini's counsel notifying them of
27 these discovery requests to no avail. (Exhibits 6 and 7.) Nevertheless, Fallini failed to provide any
28 of the information as requested despite the extension. Plaintiff was then forced to file a motion to

1 compel. Defendant did not oppose the motion, but agreed it was warranted. Yet, Defendant failed
2 to comply with the order.

3 Defendant has failed to produce any sort of discovery despite numerous formal requests,
4 followed by phone calls and letters for nearly a year and a half from the initial submission of
5 interrogatories on September 10, 2007. As shown above, Plaintiff has made several good faith
6 efforts to procure the discovery without court intervention, including re-opening discovery and
7 extending the deadline. Plaintiff finally sought court intervention and this Court issued an order
8 compelling Defendant to comply with discovery requests. Nevertheless, Defendant continues to
9 show no interest in cooperating with discovery guidelines or this Court's order. Defendant's failure
10 to comply with this Court's order and all discovery requests has completely halted the normal
11 adversary process. Plaintiff therefore respectfully requests that NRCP 37 sanctions be levied against
12 Defendant and her answer be stricken for her blatant failure to comply with this Court's order and
13 the discovery rules.

14 Plaintiff further requests that this Court issue another Order to Defendant Fallini to provide
15 information regarding any applicable insurance policies Plaintiff must notify Defendant's insurance
16 prior to Plaintiff obtaining a default judgment and collect against such insurance policies. *Estate*
17 *of Lomastro v. American Family Insurance*, 195 P.3d 399 (2008).

18 ///

19 ///

20 ///

III.

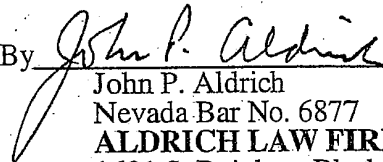
CONCLUSION

Based upon the above, Plaintiff's request an Order Striking Defendant's Answer as Defendant has failed to respond to any discovery requests and failed to comply with Court's Order Compelling Responses to Plaintiff's Discovery Requests. Plaintiff further requests this Honorable Court issue another order compelling Defendant to produce applicable insurance policies.

DATED this 11 day of June, 2009.

ALDRICH LAW FIRM, LTD.

By



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

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 15th day of June, 2009, I mailed a copy of PLAINTIFF'S MOTION TO STRIKE DEFENDANT'S ANSWER in a sealed envelope, to the following and that postage was fully paid thereon:

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

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


An employee of Aldrich Law Firm, Ltd.

EXHIBIT 1

1 **INTG**

John P. Aldrich

2 Nevada Bar No. 6877

Stacy D. Harrop

3 Nevada Bar No. 9826

ALDRICH & BRYSON LLP

4 1601 S. Rainbow Blvd., Suite 160

Las Vegas, Nevada 89146

5 (702) 853-5490

(702) 853-5491 (fax)

6 *Attorneys for Plaintiffs*

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

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

15 Plaintiffs,

16 vs.

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

19 Defendants.

Case No.: CV24539
Dept.: 2P

20 SUSAN FALLINI,

21 Counterclaimant,

22 vs.

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

27 Counterdefendants.

28 **PLAINTIFF'S FIRST SET OF INTERROGATORIES TO DEFENDANT FALLINI**

TO: SUSAN FALLINI, Defendant/Counterclaimant

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

Plaintiffs, Estate of MICHAEL DAVID ADAMS, by and through his mother JUDITH
ADAMS, by and through their attorneys, Aldrich & Bryson, LLP, hereby requests that Defendant,
pursuant to Nev. R. Civ. P. 33, answer the following Interrogatories, in writing, under oath, within
thirty (30) days of service hereof:

DEFINITIONS AND INSTRUCTIONS

The following preliminary definitions and instructions apply to each of the Interrogatories set forth hereafter and are deemed to be incorporated therein.

A. When used in these Interrogatories, the term "Defendant," its plural or any synonym thereof, is intended to and shall embrace and include, in addition to the named party or parties, counsel for said party and all agents, servants, employees, representatives, investigators and others who are in possession of, or may have obtained, information for or on behalf of the named Defendant. As to each person, please state his or her full name, last known residence address and telephone number, and his or her job title, capacity or position at such last known employment.

B. As used in these Interrogatories, the terms "document" and "writing" and the plural forms thereof shall mean all written, recorded or graphic matters, however produced or reproduced, of every kind and description, pertaining in any way to the subject matter of this action. The terms "document" and "writing" shall include, but are not limited to, any books, pamphlets, periodicals, memoranda (including those of telephone and oral conversations), e-mails, contracts, correspondence, agreements, application, financial records, security instruments, disbursements, checks, bank statements, time records, accounting or financial records, notes, diaries, logs, telegrams, or cables prepared, drafted, received or sent, tapes, transcripts, recordings, minutes of meetings, directives, work papers, charts, drawings, prints, flow sheets, photographs, film, computer printouts, medical and hospital records and reports, x-ray photographs, advertisements, catalogs, or any handwritten, recorded, transcribed, punched, tapes, filmed or graphic matters, however produced or reproduced in Defendant's possession, custody or control or to which defendant has or has had access.

C. As used throughout these Interrogatories, the term "you," its plural or any synonyms thereof, is intended to and shall embrace and include in addition to the named party or parties, counsel for such party or parties, and all agents, servants, employees, representatives, investigators and others who are in the possession of or who may have obtained information for or on behalf of the named party or parties.

D. As used throughout these Interrogatories, the term "person," or its plural or any

1 synonyms thereof, is intended to and shall embrace and include any individual, partnership,
2 corporation, company, association, government agency (whether federal, state, local or any agency
3 of the government of a foreign country) or any other entity.

4 E. As used throughout these Interrogatories, the term "communication," its plural or any
5 synonyms thereof, is intended to and shall embrace and include all written communications, and with
6 respect to all communications, shall include but is not limited to every discussion,
7 conversation, conference, meeting, interview, telephone call or doctor or other professional service
8 visit.

9 F. (a) As used throughout these Interrogatories, the terms "identify," "identity," or
10 "identification," their plural or any synonyms thereof, when used with reference to a person, shall
11 mean to state the full name and address, and where applicable, the present position and business, if
12 known, and each prior position and business.

13 (b) As used throughout these Interrogatories, the terms "identify," "identity," or
14 "identification," their plural or synonyms thereof, when used with reference to a document mean to
15 state:

16 (1) The general nature of the document or object, i.e., whether it is a letter,
17 a memorandum, a report, a drawing, a chart or tracing, a pamphlet, etc.;

18 (2) The general subject matter of the document or object;

19 (3) The name, current or last known business address and home address
20 of the original author or draftsman (and, if different, the signor or signors), and of any person who
21 has edited, corrected, revised or amended, or who has entered any initials or comment or notation
22 thereon;

23 (4) The date thereof, including any date of any such editing, correcting,
24 amending or revision;

25 (5) Any numerical designation appearing thereon, such as a file reference;

26 (6) The name of each recipient of a copy of the document or object; and

27 (7) The place where and the person now having custody or control of each
28 such document or object, or if such document or object has been destroyed, the place of and reasons

1 for such destruction.

2 (c) As used throughout these Interrogatories, the terms "identify," "identity," and
3 "identification," when used in reference to a communication, mean to state with respect to each
4 communication, the nature of the communication (telephone call, letter, etc.), the date of the
5 communication, the persons who were present at or participated in the communication or with whom
6 or from whom the communication was made, and the substance of the statement made by each
7 person involved in such communication.

8 G. All information is to be divulged which is in Defendant's possession or control, or can
9 be ascertained upon reasonable investigation of areas within your control. The knowledge of
10 Defendant's attorney is deemed to be Defendant's knowledge, so that, apart from privileged matters,
11 if Defendant's attorney has knowledge of the information sought to be elicited herein, said
12 knowledge must be incorporated into these answers, even if such information is unknown to
13 Defendant individually.

14 H. Whenever you are unable to state an answer to these Interrogatories based upon your
15 own personal knowledge, please so state, and identify the person or persons you believe to have such
16 knowledge, what you believe the correct answer to be, and the facts upon which you base your
17 answer.

18 I. When an Interrogatory calls for an answer in more than one part, each part should be
19 separated so that the answer is clearly understandable.

20 J. Each Interrogatory should be construed independently. No Interrogatory should be
21 construed by reference to any other Interrogatory if the result is a limitation of the scope of the
22 answer to such Interrogatory.

23 K. "And" and "or" shall be construed disjunctively or conjunctively as necessary, in order
24 to bring within the scope of the Interrogatory all responses which might otherwise be construed to
25 be outside of its scope.

26 L. If an Interrogatory is objected to, in whole or in part, or if information responsive to
27 an Interrogatory is withheld, on the ground of privilege or otherwise, please set forth fully each
28 objection, describe generally the information which is withheld, and set forth the facts upon which

1 Defendants rely as the basis for each such objection.

2 M. These Interrogatories are addressed to all Defendants. If, for an Interrogatory, the
3 answers for all Defendants would be the same, only one answer is necessary. If the Defendants'
4 answers to an Interrogatory would vary among them, state and identify answers for each Defendant
5 separately.

6 N. Pursuant to Nev. R. Civ. P. 26, you shall supplement your responses according to the
7 following:

8 (a) A party is under a duty reasonably to supplement his response with respect
9 to any question directly addressed to (A) the identity and location of persons having knowledge of
10 discoverable matters and, (B), the identity of each person expected to be called as an expert witness
11 at trial, the subject matter on which he is expected to testify, and the substance of his testimony.

12 (b) A party is under a duty reasonably to amend a prior response if he obtains
13 information upon the basis of which (A) he knows that the response was incorrect when made, and
14 (B) he knows that the response though correct when made is no longer true and the circumstances
15 are such that a failure to amend the response is in substance a knowing concealment.

16 INTERROGATORIES

17 INTERROGATORY NO. 1:

18 State your name, address, telephone number, Social Security number, date of birth and
19 birthplace.

20 INTERROGATORY NO. 2:

21 If you have ever been convicted of a felony or a misdemeanor having to do with truth or
22 veracity, set forth all relevant facts relating to such conviction including, but not limited to, the
23 nature of the crime and the date and place of each conviction, and any fine or sentence imposed.

24 INTERROGATORY NO. 3:

25 State the location of your property and whether it is located within "open range." If it is not
26 located within "open range," state any grazing restrictions that apply to your land, including any
27 requirements regarding the fencing in of your animals or keeping your animals off the roadways.

28 NOTE: As used throughout these interrogatories "open range" is to be defined as set forth in NRS

568.355.

INTERROGATORY NO. 4:

State the number of cattle that you own, how long you have owned the cattle, the purpose for which you raise the cattle, and the number of employees or independent contractors you hire to keep track of the cattle.

INTERROGATORY NO. 5:

Provide a description of the typical grazing area of your cattle, including the distance from your ranch that your cattle typically graze and whether those areas of typical grazing are in "open range." If those areas are not located within "open range," state any grazing restrictions that apply to those areas, including any requirements regarding the fencing in of your animals or keeping your animals off the roadways.

INTERROGATORY NO. 6:

State any and all policies, standards, procedures, or practices that you follow with regard to tracking the location of your cattle. Include in your answer how often you confirm the location of your cattle and how often that you confirm that all cattle are accounted for.

INTERROGATORY NO. 7:

State any and all policies, standards, procedures, or practices that you typically follow when you discover or are notified that any of your cattle are located on a highway. Include in your answer whether you follow different policies, standards, procedures, or practices depending on whether the cattle is located in "open range" or not, and whether you proceed to remove your cattle from the roadway and, if so, the time lapse that typically occurs between notification and your removal of the cattle.

INTERROGATORY NO. 8:

State the last time you had confirmed the location of the cow that is the subject of this lawsuit prior to the subject accident. Include in your answer a description of the confirmed location of that cow, including whether that location was in "open range," the date on which that location was confirmed and who confirmed the subject cow's location.

///

1 **INTERROGATORY NO. 9:**

2 Based on the location as provided by you in the preceding interrogatory as the starting point,
3 provide whether the subject cow would have had to cross a fence or fenced property in order to arrive
4 at the location of the subject accident with Plaintiff. Include in your answer a description of the
5 location of any fences or fenced property that the cow would have had to cross.

6 **INTERROGATORY NO. 10:**

7 State all time within the five (5) years prior to the subject incident when you lost track of any
8 of your cattle or were notified that one or more of your cattle were on or near any roadway.

9 **INTERROGATORY NO. 11:**

10 State whether any of your other cattle, other than the cow that is a subject of this lawsuit,
11 were at or near the location of the subject accident with Plaintiff at the time of that accident or
12 shortly thereafter.

13 **INTERROGATORY NO. 12:**

14 Describe with particularity how your cattle are marked and/or branded, including the subject
15 cow. Include in you answer whether your cattle have ear tags and, if so, whether those ear tags are
16 florescent, reflect light or otherwise luminesce at night or when illuminated.

17 **INTERROGATORY NO. 13:**

18 Describe with particularity, based on your observations and personal knowledge of the
19 industry, the common practice among cattle owners in Nye County regarding how their cattle are
20 marked and/or branded. Include in you answer whether it is common practice in Nye County for
21 cattle to have ear tags and, if so, whether those ear tags are florescent, reflect light or otherwise
22 luminesce at night or when illuminated.

23 **INTERROGATORY NO. 14:**

24 Identify sufficiently to permit service of a subpoena any expert or consultant with whom you
25 have communicated or intend to utilize at trial or arbitration in connection with the occurrence which
26 is the subject matter of this action, and state the specific area of knowledge of each such person, their
27 expected testimony, and the date when each such person was first contacted.

28 ///

1 **INTERROGATORY NO. 15:**

2 Identify sufficiently to permit service of a subpoena, duces tecum or Rule 34 Request for
3 Production, each document, writing, or physical object provided to each person identified in your
4 answer to the preceding interrogatory and each document, writing or communication you have
5 received from each such person.

6 **INTERROGATORY NO. 16:**

7 Identify sufficiently to permit service of a subpoena, duces tecum or Rule 34 Request for
8 Production, each document, writing or communication of which you or your attorney have
9 possession or control from or by any Plaintiff, Defendant, witness, or any agent or representative of
10 any Defendant, Plaintiff or any witness, which pertains in any manner to this accident or to the issues
11 arising therefrom.

12 **INTERROGATORY NO. 17:**

13 Identify sufficiently to permit service of a subpoena, duces tecum or Rule 34 Request for
14 Production, each document, writing or physical object known to you pertaining to this accident or
15 to the issues arising therefrom not previously identified in your answers to the preceding
16 interrogatories.

17 **INTERROGATORY NO. 18:**

18 Describe with particularity any and all incidents in the ten (10) years prior to the subject
19 incident where your cattle were involved in an incident with any man-made or man-operated object
20 on a roadway. Include in your answer a description of the incident, the date of the incident, the name
21 of the party in the motor vehicle, whether any injuries or fatalities resulted, and whether litigation
22 was instituted.

23 **INTERROGATORY NO. 19:**

24 Set forth each and every fact which you contend supports your defense of the allegations
25 contained in the Complaint on file herein.

26 **INTERROGATORY NO. 20:**

27 If your answer to any of the Requests for Admissions served herewith is anything other than
28 an unqualified admission, please set forth all facts upon which you base your response for each

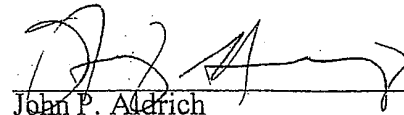
1 Request.

2 **INTERROGATORY NO. 21:**

3 State the name, title, and position of the person(s), other than your attorney, who helped
4 prepare or supplied information for the answers to Plaintiff's Interrogatories

5 DATED this 31st day of October, 2007.

6 **ALDRICH & BRYSON, LLP**

7 
8 _____

9 John P. Aldrich

10 Nevada Bar No. 6877

11 Stacy D. Harrop

12 Nevada Bar No. 9826

13 1601 S. Rainbow Blvd., Suite 160

14 Las Vegas, Nevada 89146

15 (702) 853-5490

16 (702) 853-5491 (fax)

17 *Attorneys for Plaintiffs*

CERTIFICATE OF MAILING

I hereby certify that on this 31st day of October, 2007, service of the foregoing **PLAINTIFFS' FIRST SET OF INTERROGATORIES TO DEFENDANT FALLINI** was made this date by depositing a true and correct copy of the same for mailing in Las Vegas, Nevada, addressed to:

Harold Kuehn, Esq.
Gibson, & Kuehn
921 S. Highway 160, #203
Pahrump, NV 89048

P.O. Box 1411
Tonopah, NV 89049
*Attorney for Defendant/Counterclaimant
Susan Fallini*

Katherine M. Peck, Esq.
Peck Law Offices
701 Bridger Ave, Ste. 500
Las Vegas, NV 89106
*Attorney for Counterdefendant
Estate of Michael David Adams*


An employee of ALDRICH & BRYSON, LLP

EXHIBIT 2

1 **REQT**

2 John P. Aldrich
3 Nevada Bar No. 6877
4 Stacy D. Harrop
5 Nevada Bar No. 9826
6 **ALDRICH & BRYSON LLP**
7 1601 S. Rainbow Blvd., Suite 160
8 Las Vegas, Nevada 89146
9 (702) 853-5490
10 (702) 853-5491 (fax)
11 *Attorneys for Plaintiffs*

12
13 **THE FIFTH JUDICIAL DISTRICT COURT**
14 **THE STATE OF NEVADA**
15 **COUNTY OF NYE**

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

20 Plaintiffs,

21 vs.
22 SUSAN FALLINI, DOES I-X and ROE
23 CORPORATIONS I-X, inclusive,

24 Defendants.

25 SUSAN FALLINI,

26 Counterclaimant,

27 vs.

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

Counterdefendants.

Case No.: CV24539
Dept.: 2P

29 **PLAINTIFFS' FIRST SET OF REQUESTS FOR ADMISSION TO DEFENDANT**
30 **FALLINI**

31 **TO: SUSAN FALLINI, Defendant/Counterclaimant**

32 **TO: HAROLD KUEHN, ESQ., attorney for Defendant/Counterclaimant**

33 Plaintiffs, Estate of MICHAEL DAVID ADAMS, by and through his mother JUDITH
34 ADAMS, by and through their attorneys, Aldrich & Bryson, LLP, hereby request that Defendant,
35 pursuant to Nev. R. Civ. P. 36 respond to the following Requests for Admission within thirty (30)
36 days of service hereof:

1 **REQUEST FOR ADMISSION NO. 1:**

2 Admit that your property is not located within "open range."

3 NOTE: As used throughout these requests "open range" is to be defined as set forth in NRS
4 568.355.

5 **REQUEST FOR ADMISSION NO. 2:**

6 Admit that you are the owner of the cow that is mentioned in of the Complaint on file herein
7 (hereafter "subject cow").

8 **REQUEST FOR ADMISSION NO. 3:**

9 Admit that it is the common practice of Nye County ranchers to mark their cattle with
10 reflective or luminescent tags.

11 **REQUEST FOR ADMISSION NO. 4:**

12 Admit that the subject cow was not marked with a reflective or luminescent tag.

13 **REQUEST FOR ADMISSION NO. 5:**

14 Admit that the subject cow crossed a fence to arrive at the location of the subject accident
15 described in the Complaint on file herein.

16 **REQUEST FOR ADMISSION NO. 6:**

17 Admit that your cattle have previously been involved in incidents with motor vehicles on the
18 roadway.

19 **REQUEST FOR ADMISSION NO. 7:**

20 Admit that you do not track the location of your cattle while they are grazing away from your
21 property.

22 **REQUEST FOR ADMISSION NO. 8:**

23 Admit that you do not remove your cattle from the roadway when notified that the cattle are
24 in a roadway.

25 **REQUEST FOR ADMISSION NO. 9:**

26 Admit that the subject cow was not visible at night.

27 **REQUEST FOR ADMISSION NO. 10:**

28 Admit that you were aware that the subject cow was not visible at night prior to the incident

1 that is the subject of the Complaint on file herein.

2 **REQUEST FOR ADMISSION NO. 11:**

3 Admit that the subject cow was in the roadway of SR 375 at the time of the incident that is
4 the subject of the Complaint on file herein.

5 **REQUEST FOR ADMISSION NO. 12:**

6 Admit that the subject cow's presence in the roadway of SR 375 was the cause of the motor
7 vehicle accident that is the subject of the Complaint on file herein.

8 **REQUEST FOR ADMISSION NO. 13:**

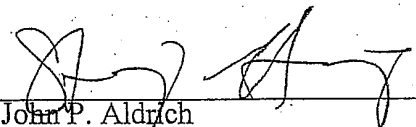
9 Admit that you did not know the location of the subject cow at the time of the incident that
10 is the subject of the Complaint on file herein.

11 **REQUEST FOR ADMISSION NO. 14:**

12 Admit that the presence of a reflective or luminescent tag on the subject cow would have
13 made the subject cow visible at the time of the incident that is the subject of the Complaint on file
14 herein.

15 DATED this 31st day of October, 2007.

16 **ALDRICH & BRYSON, LLP**

17 
18 John P. Aldrich
19 Nevada Bar No. 6877
20 Stacy D. Harrop
21 Nevada Bar No. 9826
22 1601 S. Rainbow Blvd., Suite 160
23 Las Vegas, Nevada 89146
24 (702) 853-5490
25 (702) 853-5491 (fax)
26 Attorneys for Plaintiffs
27
28

CERTIFICATE OF MAILING

I hereby certify that on this 31st day of October, 2007, service of the foregoing
PLAINTIFFS' FIRST SET OF REQUESTS FOR ADMISSION TO DEFENDANT FALLINI
was made this date by depositing a true and correct copy of the same for mailing in Las Vegas,
Nevada, addressed to:

Harold Kuehn, Esq.
Gibson, & Kuehn
921 S. Highway 160, #203
Pahrump, NV 89048

P.O. Box 1411
Tonopah, NV 89049
Attorney for Defendant/Counterclaimant

Katherine M. Peck, Esq.
Peck Law Offices
701 Bridger Ave, Ste. 500
Las Vegas, NV 89106
*Attorney for Counterdefendant
Estate of Michael David Adams*


An employee of ALDRICH & BRYSON, LLP

EXHIBIT 3

1 **REQT**

John P. Aldrich

2 Nevada Bar No. 6877

Stacy D. Harrop

3 Nevada Bar No. 9826

ALDRICH & BRYSON LLP

4 1601 S. Rainbow Blvd., Suite 160

Las Vegas, Nevada 89146

5 (702) 853-5490

(702) 853-5491 (fax)

6 *Attorneys for Plaintiffs*

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

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

12 Plaintiffs,

13 vs.

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

15 Defendants.

16 SUSAN FALLINI,

17 Counterclaimant,

18 vs.

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

20 Counterdefendants.

Case No.: CV24539
Dept.: 2P

21
22 **PLAINTIFFS' FIRST SET OF REQUESTS FOR PRODUCTION OF DOCUMENTS TO**
23 **DEFENDANT FALLINI**

24 **TO: SUSAN FALLINI, Defendant/Counterclaimant**

25 **TO: HAROLD KUEHN, ESQ., attorney for Defendant/Counterclaimant**

26 Plaintiffs, Estate of MICHAEL DAVID ADAMS, by and through his mother JUDITH
27 ADAMS, by and through their attorneys, Aldrich & Bryson, LLP, hereby requests that Defendant,
28 pursuant to Nev. R. Civ. P. 34, respond to the following Requests for Production of Documents
within thirty (30) days of service hereof:

DEFINITIONS AND INSTRUCTIONS

The following preliminary definitions and instructions apply to each of the Requests set forth hereafter and are deemed to be incorporated therein.

A. When used in these Requests, the term "Defendant" or "Defendants," its plural or any synonym thereof, is intended to and shall embrace and include, in addition to the named party or parties, counsel for said party and all agents, servants, employees, representatives, investigators and others who are in possession of, or may have obtained, information for or on behalf of the named Defendant. As to each person, please state his or her full name, last known residence address and telephone number, and his or her job title, capacity or position at such last known employment.

B. As used in these Requests, the terms "document" and "writing" and the plural forms thereof shall mean all written, recorded or graphic matters, however produced or reproduced, of every kind and description, pertaining in any way to the subject matter of this action. The terms "document" and "writing" shall include, but are not limited to, any books, pamphlets, periodicals, memoranda (including those of telephone and oral conversations), e-mails, contracts, correspondence, agreements, application, financial records, security instruments, disbursements, checks, bank statements, time records, accounting or financial records, notes, diaries, logs, telegrams, or cables prepared, drafted, received or sent, tapes, transcripts, recordings, minutes of meetings, directives, work papers, charts, drawings, prints, flow sheets, photographs, film, computer printouts, medical and hospital records and reports, x-ray photographs, advertisements, catalogs, or any handwritten, recorded, transcribed, punched, tapes, filmed or graphic matters, however, produced or reproduced in Defendant's possession, custody or control or to which defendant has or has had access.

C. As used throughout these Requests, the term "you," its plural or any synonyms thereof, is intended to and shall embrace and include in addition to the named party or parties, counsel for such party or parties, and all agents, servants, employees, representatives, investigators and others who are in the possession of or who may have obtained information for or on behalf of the named party or parties.

D. As used throughout these Requests, the term "person," or its plural or any synonyms

1 thereof, is intended to and shall embrace and include any individual, partnership, corporation,
2 company, association, government agency (whether federal, state, local or any agency of the
3 government of a foreign country) or any other entity.

4 E. As used throughout these Requests, the term "communication," its plural or any
5 synonyms thereof, is intended to and shall embrace and include all written communications, and with
6 respect to all communications, shall include but is not limited to every discussion,
7 conversation, conference, meeting, interview, telephone call or doctor or other professional service
8 visit.

9 F. (a) As used throughout these Requests, the terms "identify," "identity," or
10 "identification," their plural or any synonyms thereof, when used with reference to a person, shall
11 mean to state the full name and address, and where applicable, the present position and business, if
12 known, and each prior position and business.

13 (b) As used throughout these Requests, the terms "identify," "identity," or
14 "identification," their plural or synonyms thereof, when used with reference to a document mean to
15 state:

16 (1) The general nature of the document or object, i.e., whether it is a letter,
17 a memorandum, a report, a drawing, a chart or tracing, a pamphlet, etc.;

18 (2) The general subject matter of the document or object;

19 (3) The name, current or last known business address and home address
20 of the original author or draftsman (and, if different, the signor or signors), and of any person who
21 has edited, corrected, revised or amended, or who has entered any initials or comment or notation
22 thereon;

23 (4) The date thereof, including any date of any such editing, correcting,
24 amending or revision;

25 (5) Any numerical designation appearing thereon, such as a file reference;

26 (6) The name of each recipient of a copy of the document or object; and

27 (7) The place where and the person now having custody or control of each
28 such document or object, or if such document or object has been destroyed, the place of and reasons

1 for such destruction.

2 (c) As used throughout these Requests, the terms "identify," "identity," and
3 "identification," when used in reference to a communication, mean to state with respect to each
4 communication, the nature of the communication (telephone call, letter, etc.), the date of the
5 communication, the persons who were present at or participated in the communication or with whom
6 or from whom the communication was made, and the substance of the statement made by each
7 person involved in such communication.

8 G. All information is to be divulged which is in Defendant's possession or control, or can
9 be ascertained upon reasonable investigation of areas within your control. The knowledge of
10 Defendant's attorney is deemed to be Defendant's knowledge, so that, apart from privileged matters,
11 if Defendant's attorney has knowledge of the information sought to be elicited herein, said
12 knowledge must be incorporated into these answers, even if such information is unknown to
13 Defendant individually.

14 H. Whenever you are unable to state an answer to these Requests based upon your own
15 personal knowledge, please so state, and identify the person or persons you believe to have such
16 knowledge, what you believe the correct answer to be, and the facts upon which you base your
17 answer.

18 I. When a Request calls for an answer in more than one part, each part should be
19 separated so that the answer is clearly understandable.

20 J. Each Request should be construed independently. No Request should be construed
21 by reference to any other Request if the result is a limitation of the scope of the answer to such
22 Request.

23 K. "And" and "or" shall be construed disjunctively or conjunctively as necessary, in
24 order to bring within the scope of the Request all responses which might otherwise be construed to
25 be outside of its scope.

26 L. If a Request is objected to, in whole or in part, or if information responsive to a
27 Request is withheld, on the ground of privilege or otherwise, please set forth fully each objection,
28 describe generally the information which is withheld, and set forth the facts upon which Defendants

1 rely as the basis for each such objection.

2 M. These Requests are addressed to all Defendants. If, for a Request, the answers for all
3 Defendants would be the same, only one answer is necessary. If the Defendants' answers to a
4 Request would vary among them, state and identify answers for each Defendant separately.

5 N. Pursuant to Nev. R. Civ. P. 26, you shall supplement your responses according to the
6 following:

7 (a) A party is under a duty reasonably to supplement his response with respect
8 to any question directly addressed to (A) the identity and location of persons having knowledge of
9 discoverable matters and, (B), the identity of each person expected to be called as an expert witness
10 at trial, the subject matter on which he is expected to testify, and the substance of his testimony.

11 (b) A party is under a duty reasonably to amend a prior response if he obtains
12 information upon the basis of which (A) he knows that the response was incorrect when made, and
13 (B) he knows that the response though correct when made is no longer true and the circumstances
14 are such that a failure to amend the response is in substance a knowing concealment.

15 **REQUESTS FOR PRODUCTION**

16 **REQUEST FOR PRODUCTION NO. 1:**

17 Produce any and all documents identified, consulted or referred to in your answers to
18 Plaintiff's First Set of Interrogatories to Defendant Fallini, served concurrently herewith.

19 **REQUEST FOR PRODUCTION NO. 2:**

20 Produce any and all documents which support, refute, or in any way relate to the allegations
21 in the Complaint on file herein and/or your defenses thereto.

22 **REQUEST FOR PRODUCTION NO. 3:**

23 Produce copies of any and all written or recorded statements allegedly made by Plaintiff or
24 his representative, Defendant or any representative or agent of Defendant or any witness regarding
25 the allegations which form the basis of this litigation.

26 **REQUEST FOR PRODUCTION NO. 4:**

27 Produce copies of any and all non-transcribed witness statements allegedly made by Plaintiff,
28 Defendant or representative or agent of Defendant, or any witness regarding the allegations which

1 form the basis of this litigation.

2 **REQUEST FOR PRODUCTION NO. 5:**

3 Produce copies of any and all videotapes, photographs, charts, or diagrams which depict the
4 scene of the incident which forms the basis of this litigation.

5 **REQUEST FOR PRODUCTION NO. 6:**

6 Produce copies of any and all investigative reports and the underlying notes giving rise
7 thereto regarding the incident which forms the basis of this litigation

8 **REQUEST FOR PRODUCTION NO. 7:**

9 Produce any and all documents contemplated to be used in defense of the allegations in the
10 Complaint on file herein, including all rebuttal and impeachment documents.

11 **REQUEST FOR PRODUCTION NO. 8:**

12 Produce copies of any journals, diaries or other contemporary documentation regarding the
13 allegations which form the basis of this litigation.

14 **REQUEST FOR PRODUCTION NO. 9:**

15 Produce copies of any and all documents that relate to any contact or communications
16 between Defendant, or any agent or representative of Defendant, and the police with regard to the
17 incident described in the Complaint on file herein.

18 **REQUEST FOR PRODUCTION NO. 10:**

19 Produce copies of any photographs or depictions of the marks or brands used by you on your
20 cattle, including any ear tags.

21 **REQUEST FOR PRODUCTION NO. 11:**

22 Produce copies of any photographs or depictions of the marks or brands, including ear tags,
23 commonly used by cattle owners in Nye County, as provided in your answers to Plaintiff's
24 Interrogatories to Defendant Fallini served concurrently herewith.

25 **REQUEST FOR PRODUCTION NO. 12:**

26 Produce any and all documents that describe or depict the location of your property, the last
27 confirmed location of the subject cow prior to the incident, as provided in your answers to Plaintiff's
28 Interrogatories to Defendant Fallini served concurrently herewith, and the location of the incident

described in the Complaint on file herein.

REQUEST FOR PRODUCTION NO. 13:

Produce any and all documents that describe or depict the any fences or fenced property that the subject cow would have had to cross in order to arrive at the location of the subject incident from its last confirmed location, as provided in your answers to Plaintiff's Interrogatories to Defendant Fallini served concurrently herewith.

REQUEST FOR PRODUCTION NO. 14:

Produce any and all documents that describe or define whether the following locations are located in "open range" or in a "herd district": your property, the last confirmed location of the subject cow prior to the incident, or the location of the incident described in the Complaint on file herein.

REQUEST FOR PRODUCTION NO. 15:

Produce any and all documents that describe or depict the typical grazing area of your cattle as provided in your answers to Plaintiff's Interrogatories to Defendant Fallini served concurrently herewith.

REQUEST FOR PRODUCTION NO. 16:

Produce any and all documents that describe or relate to any and all policies, standards, procedures, or practices that you follow with regard to tracking the location of your cattle.

REQUEST FOR PRODUCTION NO. 17:

Produce any and all documents that describe or relate to any and all policies, standards, procedures, or practices that you typically follow when you discover or are notified that any of your cattle are located on a highway

REQUEST FOR PRODUCTION NO. 18:

Produce any and all documents that describe or relate to any incidents in the ten (10) years prior to the subject incident where your cattle were involved in an incident with any man-made or man-operated object on a roadway.

///

///

1 **REQUEST FOR PRODUCTION NO. 19:**

2 Produce a list of all experts with whom you have communicated in connection with this
3 matter, and a copy of any reports received from those experts, along with a copy of all documents
4 which were provided to the expert and were utilized by said expert in forming an opinion, as well
5 as any notes of communication with said experts.

6 **REQUEST FOR PRODUCTION NO. 20:**

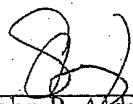
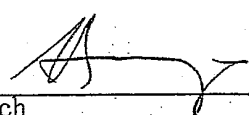
7 Produce any and all documents that support any and all of your denials to the Requests for
8 Admissions served concurrently herewith.

9 **REQUEST FOR PRODUCTION NO. 21:**

10 Produce any and all documents consulted, referenced, or utilized in responding to these
11 requests for production of documents.

12 DATED this 3rd day of October, 2007.

13 **ALDRICH & BRYSON, LLP**

14 
15 
16 John P. Aldrich
17 Nevada Bar No. 6877
18 Stacy D. Harrop
19 Nevada Bar No. 9826
20 1601 S. Rainbow Blvd., Suite 160
21 Las Vegas, Nevada 89146
22 (702) 853-5490
23 (702) 853-5491 (fax)
24 *Attorneys for Plaintiffs*
25
26
27
28

CERTIFICATE OF MAILING

I hereby certify that on this 31st day of October, 2007, service of the foregoing
PLAINTIFFS' FIRST SET OF REQUESTS FOR PRODUCTION OF DOCUMENTS TO
DEFENDANT FALLINI was made this date by depositing a true and correct copy of the same for
mailing in Las Vegas, Nevada, addressed to:

Harold Kuehn, Esq.
Gibson, & Kuehn
921 S. Highway 160, #203
Pahrump, NV 89048

P.O. Box 1411
Tonopah, NV 89049
Attorney for Defendant/Counterclaimant

Katherine M. Peck, Esq.
Peck Law Offices
701 Bridger Ave, Ste. 500
Las Vegas, NV 89106
Attorney for Counterdefendant
Estate of Michael David Adams


An employee of ALDRICH & BRYSON, LLP

EXHIBIT 4

1 **REQT**
2 **BLACK & LOBELLO**
3 John P. Aldrich
4 Nevada Bar No.: 6877
5 10777 West Twain Avenue, Suite 300
6 Las Vegas, Nevada 89135
7 (702) 869-8801
8 (702) 869-2669 (Fax)
9 *Attorneys for Plaintiffs*

CALENDARED
01:
JUL 02 2008

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

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

14 **Plaintiffs,**

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

18 **Defendants.**

19 SUSAN FALLINI,

20 **Counterclaimant,**

21 vs.

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

26 **Counterdefendants.**

Case No.: CV24539
Dept.: 2P

27 **PLAINTIFFS' SECOND SET OF REQUESTS FOR PRODUCTION OF DOCUMENTS**
28 **TO DEFENDANT FALLINI**

TO: SUSAN FALLINI, Defendant/Counterclaimant

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

Plaintiffs, Estate of MICHAEL DAVID ADAMS, by and through his mother JUDITH
ADAMS, by and through their attorneys, Aldrich & Bryson, LLP, hereby requests that Defendant,
pursuant to Nev. R. Civ. P. 34, respond to the following Requests for Production of Documents
within thirty (30) days of service hereof:

DEFINITIONS AND INSTRUCTIONS

The following preliminary definitions and instructions apply to each of the Requests set forth hereafter and are deemed to be incorporated therein.

A. When used in these Requests, the term "Defendant" or "Defendants," its plural or any synonym thereof, is intended to and shall embrace and include, in addition to the named party or parties, counsel for said party and all agents, servants, employees, representatives, investigators and others who are in possession of, or may have obtained, information for or on behalf of the named Defendant. As to each person, please state his or her full name, last known residence address and telephone number, and his or her job title, capacity or position at such last known employment.

B. As used in these Requests, the terms "document" and "writing" and the plural forms thereof shall mean all written, recorded or graphic matters, however produced or reproduced, of every kind and description, pertaining in any way to the subject matter of this action. The terms "document" and "writing" shall include, but are not limited to, any books, pamphlets, periodicals, memoranda (including those of telephone and oral conversations), e-mails, contracts, correspondence, agreements, application, financial records, security instruments, disbursements, checks, bank statements, time records, accounting or financial records, notes, diaries, logs, telegrams, or cables prepared, drafted, received or sent, tapes, transcripts, recordings, minutes of meetings, directives, work papers, charts, drawings, prints, flow sheets, photographs, film, computer printouts, medical and hospital records and reports, x-ray photographs, advertisements, catalogs, or any hand-written, recorded, transcribed, punched, tapes, filmed or graphic matters, however, produced or reproduced in Defendant's possession, custody or control or to which defendant has or has had access.

C. As used throughout these Requests, the term "you," its plural or any synonyms thereof, is intended to and shall embrace and include in addition to the named party or parties, counsel for such party or parties, and all agents, servants, employees, representatives, investigators and others who are in the possession of or who may have obtained information for or on behalf of the named party or parties.

D. As used throughout these Requests, the term "person," or its plural or any synonyms

1 thereof, is intended to and shall embrace and include any individual, partnership, corporation,
2 company, association, government agency (whether federal, state, local or any agency of the
3 government of a foreign country) or any other entity.

4 E. As used throughout these Requests, the term "communication," its plural or any
5 synonyms thereof, is intended to and shall embrace and include all written communications, and with
6 respect to all communications, shall include but is not limited to every discussion,
7 conversation, conference, meeting, interview, telephone call or doctor or other professional service
8 visit.

9 F. (a) As used throughout these Requests, the terms "identify," "identity," or
10 "identification," their plural or any synonyms thereof, when used with reference to a person, shall
11 mean to state the full name and address, and where applicable, the present position and business, if
12 known, and each prior position and business.

13 (b) As used throughout these Requests, the terms "identify," "identity," or
14 "identification," their plural or synonyms thereof, when used with reference to a document mean to
15 state:

16 (1) The general nature of the document or object, i.e., whether it is a letter,
17 a memorandum, a report, a drawing, a chart or tracing, a pamphlet, etc.;

18 (2) The general subject matter of the document or object;

19 (3) The name, current or last known business address and home address
20 of the original author or draftsman (and, if different, the signor or signors), and of any person who
21 has edited, corrected, revised or amended, or who has entered any initials or comment or notation
22 thereon;

23 (4) The date thereof, including any date of any such editing, correcting,
24 amending or revision;

25 (5) Any numerical designation appearing thereon, such as a file reference;

26 (6) The name of each recipient of a copy of the document or object; and

27 (7) The place where and the person now having custody or control of each
28 such document or object, or if such document or object has been destroyed, the place of and reasons

1 for such destruction.

2 (c) As used throughout these Requests, the terms "identify," "identity," and
3 "identification," when used in reference to a communication, mean to state with respect to each
4 communication, the nature of the communication (telephone call, letter, etc.), the date of the
5 communication, the persons who were present at or participated in the communication or with whom
6 or from whom the communication was made, and the substance of the statement made by each
7 person involved in such communication.

8 G. All information is to be divulged which is in Defendant's possession or control, or can
9 be ascertained upon reasonable investigation of areas within your control. The knowledge of
10 Defendant's attorney is deemed to be Defendant's knowledge, so that, apart from privileged matters,
11 if Defendant's attorney has knowledge of the information sought to be elicited herein, said
12 knowledge must be incorporated into these answers, even if such information is unknown to
13 Defendant individually.

14 H. Whenever you are unable to state an answer to these Requests based upon your own
15 personal knowledge, please so state, and identify the person or persons you believe to have such
16 knowledge, what you believe the correct answer to be, and the facts upon which you base your
17 answer.

18 I. When a Request calls for an answer in more than one part, each part should be
19 separated so that the answer is clearly understandable.

20 J. Each Request should be construed independently. No Request should be construed
21 by reference to any other Request if the result is a limitation of the scope of the answer to such
22 Request.

23 K. "And" and "or" shall be construed disjunctively or conjunctively as necessary, in
24 order to bring within the scope of the Request all responses which might otherwise be construed to
25 be outside of its scope.

26 L. If a Request is objected to, in whole or in part, or if information responsive to a
27 Request is withheld, on the ground of privilege or otherwise, please set forth fully each objection,
28 describe generally the information which is withheld, and set forth the facts upon which Defendants

1 rely as the basis for each such objection.

2 M. These Requests are addressed to all Defendants. If, for a Request, the answers for all
3 Defendants would be the same, only one answer is necessary. If the Defendants' answers to a
4 Request would vary among them, state and identify answers for each Defendant separately.

5 N. Pursuant to Nev. R. Civ. P. 26, you shall supplement your responses according to the
6 following:

7 (a) A party is under a duty reasonably to supplement his response with respect
8 to any question directly addressed to (A) the identity and location of persons having knowledge of
9 discoverable matters and, (B), the identity of each person expected to be called as an expert witness
10 at trial, the subject matter on which he is expected to testify, and the substance of his testimony.

11 (b) A party is under a duty reasonably to amend a prior response if he obtains
12 information upon the basis of which (A) he knows that the response was incorrect when made, and
13 (B) he knows that the response though correct when made is no longer true and the circumstances
14 are such that a failure to amend the response is in substance a knowing concealment.

15 **REQUESTS FOR PRODUCTION**

16 **REQUEST FOR PRODUCTION NO. 22:**

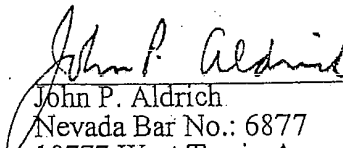
17 Produce any insurance policies or carriers which may provide coverage for the incident
18 described in the complaint.

19 **REQUEST FOR PRODUCTION NO. 23:**

20 Produce all notices to any potential insurance carriers regarding the incident described in the
21 complaint, including any responses received by any potential insurance carriers.

22 DATED this 1st day of July, 2008.

23 **BLACK & LOBELLO**

24
25 
26 John P. Aldrich
27 Nevada Bar No.: 6877
28 10777 West Twain Avenue, Suite 300
Las Vegas, Nevada 89135
(702) 869-8801
(702) 869-2669 (Fax)

Attorneys for Plaintiffs

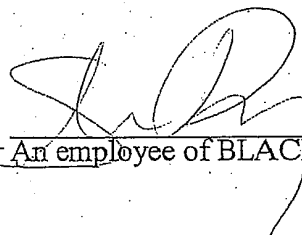
CERTIFICATE OF MAILING

I hereby certify that on this 2nd day of July, 2008, service of the foregoing **PLAINTIFFS'**
SECOND SET OF REQUESTS FOR PRODUCTION OF DOCUMENTS TO DEFENDANT
FALLINI was made this date by depositing a true and correct copy of the same for mailing in Las
Vegas, Nevada, addressed to:

Harold Kuehn, Esq.
Gibson, & Kuehn
921 S. Highway 160, #203
Pahrump, NV 89048

P.O. Box 1411
Tonopah, NV 89049
Attorney for Defendant/Counterclaimant

Katherine M. Peck, Esq.
Peck Law Offices
701 Bridger Ave, Ste. 500
Las Vegas, NV 89106
Attorney for Counterdefendant
Estate of Michael David Adams



— An employee of BLACK & LOBELLO

EXHIBIT 5

1 **NEO**

John P. Aldrich, Esq.

2 Nevada State Bar No. 6877

Adrianne C. Duncan, Esq.

3 Nevada State Bar No. 9797

BLACK & LOBELLO

4 10777 West Twain Avenue, Suite 300

Las Vegas, Nevada 89135

5 (702) 869-8801

Attorneys for Plaintiffs

FILED

2008 AUG 15 P 2:44

NYE COUNTY CLERK
BY DEPUTY

Linda O'Neil

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

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

12 Plaintiffs,

13 vs.

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

16 Defendants.

Case No.: CV24539

Dept.: 2P

17 SUSAN FALLINI,

18 Counterclaimant,

19 vs.

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

22 Counterdefendants.
23

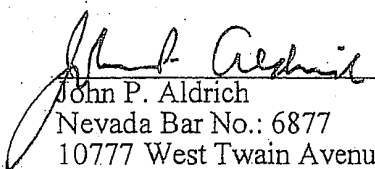
24 **NOTICE OF ENTRY OF ORDER**

25 PLEASE TAKE NOTICE that on the 30th day of July, 2008 an Order Granting Plaintiffs'
26 Motion for Partial Summary Judgement was entered in the above-captioned matter,
27

1 a copy of which is attached hereto.

2 DATED this 13th day of August, 2008.

3 **BLACK & LOBELLO**

4
5 
6 John P. Aldrich
7 Nevada Bar No.: 6877
8 10777 West Twain Avenue, Suite 300
9 Las Vegas, Nevada 89135
10 (702) 869-8801
11 (702) 869-2669 (Fax)

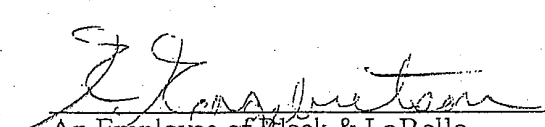
12 **CERTIFICATE OF SERVICE**

13 I hereby certify that on the 13th day of August, 2008 a true and correct copy of the foregoing

14 **NOTICE OF ENTRY OF ORDER** was deposited into the U.S. mail at Las Vegas, Nevada, first-
15 class postage fully prepaid, addressed to the following person(s):

16 Harold Kuehn, Esq.
17 Gibson & Kuehn, LLP
18 1601 E. Basin Avenue, Ste. 101
19 Pahrump, NV 89060

20 Katherine M. Barker, Esq.
21 Law Office of Katherine M. Barker
22 701 Bridger Avenue, Suite 500
23 Las Vegas, NV 89101

24 
25 An Employee of Black & LoBello

FILED
DEBRA BENNET
2008 JUL 30 P. 3:30
NYE COUNTY CLERK
BY DEPUTY

1 **ORDER**

John P. Aldrich, Esq.
Nevada State Bar No. 6877
Adrianne C. Duncan, Esq.
Nevada State Bar No. 9797
BLACK & LOBELLO
10777 West Twain Avenue, Suite 300
Las Vegas, Nevada 89135
(702) 869-8801
Attorneys for Plaintiffs

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

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

12 Plaintiffs,

13 vs.

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

16 Defendants.

17 SUSAN FALLINI,

18 Counterclaimant,

19 vs.

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

22 Counterdefendants.
23

Case No.: CV24539
Dept.: 2P

24 **ORDER GRANTING PLAINTIFFS' MOTION FOR PARTIAL SUMMARY JUDGMENT**

25 THIS MATTER having come on for hearing on Monday, July 14, 2008, on Plaintiff's Motion
26 for Partial Summary Judgment before the Honorable Robert W. Lane, and John P. Aldrich, Esq.
27 appearing on behalf of the Plaintiffs, no other counsel present, the court having reviewed the Motion
28

1 for Partial Summary Judgment and the Joinder to the Motion for Partial Summary Judgment, having
2 reviewed all pleadings and papers on file herein, and having heard the arguments of present counsel;
3 and good cause appearing therefore,

4 **THE COURT HEREBY ENTERS THE FOLLOWING FINDINGS OF FACT:**

- 5 1. Fallini's property is not located within an "open range" as it is defined in
6 NRS 568.355.
- 7 2. Fallini is the owner of the cow that is mentioned in the Plaintiff's Complaint on file
8 herein ("subject cow").
- 9 3. It is the common practice of Nye County, Nevada ranchers to mark their cattle with
10 reflective or luminescent tags.
- 11 4. The subject cow was not marked with a reflective or luminescent tag.
- 12 5. The subject cow crossed a fence to arrive at the location of the subject accident
13 described in the Complaint on file herein.
- 14 6. Fallini's cattle had previously been involved in incidents with motor vehicles on the
15 roadway.
- 16 7. Fallini does not track the location of her cattle while they are grazing away from her
17 property.
- 18 8. Fallini does not remove her cattle from the roadway when notified that the cattle are
19 in a roadway.
- 20 9. The subject cow was not visible at night.
- 21 10. Fallini was aware that the subject cow was not visible at night prior to the incident
22 that is the subject of the Complaint on file herein.
- 23 11. The subject cow was in the roadway of SR 375 at the time of the incident that is the
24 subject matter of the Complaint on file herein.
- 25 12. The subject cow's presence in the roadway of SR 375 was the cause of the motor
26 vehicle accident that is the subject of the Complaint on file herein.
- 27 13. Fallini did not know the location of the subject cow at the time of the incident that
28 is the subject of the Complaint on file herein.

1 14. The presence of a reflective or luminescent tag on the subject cow would have made
2 the subject cow visible at the time of the incident that is the subject of the Complaint
3 on file herein.

4 **THE COURT HEREBY ENTERS THE FOLLOWING CONCLUSIONS OF LAW:**

- 5 1. Defendant Fallini had and duty to ensure that the subject cow was not in the roadway
6 at the time of the incident described in the Complaint.
7 2. Defendant Fallini had a duty to follow the common practice of Nye County, Nevada
8 ranchers and to mark her cow with reflecting or lumination tags.
9 3. Defendant Fallini breached the duty of care to the decedent, as set forth in the
10 Findings of Fact and Conclusions of Law.
11 4. As a result of Defendant Fallini's breach, the decedent, Michael David Adams, was
12 killed.
13 5. Defendant Fallini is liable for the damages to which Plaintiff is entitled, in an amount
14 to be determined at a later time.

15 **IT IS HEREBY ORDERED** that Plaintiffs' Motion for Partial Summary Judgment as to
16 the issue of Defendant's duty and breach of duty is hereby GRANTED.

17 DATED this 27 day of July, 2008.

18 **ROBERT W. LANE**

19 _____
20 DISTRICT COURT JUDGE

21 Submitted By:

22 **BLACK & LOBELLO**

23 John P. Aldrich

24 John P. Aldrich

25 Nevada Bar No.: 6877

26 10777 West Twain Avenue, Suite 300

27 Las Vegas, Nevada 89135

(702) 869-8801

(702) 869-2669 (Fax)

EXHIBIT 6

ALDRICH LAW FIRM, LTD.

1601 S. Rainbow Blvd., Suite 160
Las Vegas, NV 89146
(702) 853-5490
(702) 227-1975 fax

February 24, 2009

Harold Kuehn, Esq.
Gibson, & Kuehn
1601 E. Basin Avenue, #101
Pahrump, NV 89060

Re: *Adams v Fallini*

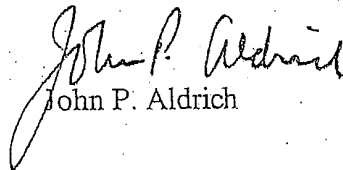
Dear Mr. Kuehn:

Discovery requests were sent to your client, Susan Fallini, quite some time ago. I have never received any responses. One of the requests was for your client to produce the insurance policy information she carried on her ranch and cattle. At this time I respectfully request that you produce this information within ten (10) days of receipt of this letter. Failure to do so will result in me filing a motion to compel.

I look forward to hearing from you soon.

Kindest Regards,

ALDRICH LAW FIRM, LTD.


John P. Aldrich

cc: Katherine M. Barker, Esq.

EXHIBIT 7

1. **AFF**
John P. Aldrich
2 Nevada Bar No.: 6877
ALDRICH LAW FIRM, LTD.
3 1601 S. Rainbow Blvd., Suite 160
Las Vegas, Nevada 89146
4 (702) 853-5490
Attorney for Plaintiff
5

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

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

11 Plaintiff,

12 v.

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

15 Defendants.
16

17 SUSAN FALLINI,

18 Counterclaimant,

19 vs.

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

22 Counterdefendants.
23

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

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

25 State of Nevada)
26) SS
County of Clark)

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

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

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

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

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

6 4. The documents attached hereto as Exhibits 1 through 6 are true and correct copies of
7 documents prepared by my office and sent to counsel for Defendant in this matter. These documents
8 were kept in the ordinary course of business.

9 5. I have attempted to amicably resolve this discovery issue and obtain a copy of
10 Defendant's applicable insurance policies, but to no avail. On February 28, 2009, I sent a letter to
11 Defendant's counsel seeking responses to the discovery. (Exhibit 6.)

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

16 7. On March 18, 2009, I again contacted the office of Mr. Kuehn. I was again informed
17 that Mr. Kuehn was not available. I left a message with my phone number and asked that Mr.
18 Kuehn return the call. No return call ever came.

19 8. I have expended approximately 3 hours preparing the Motion to Compel and this
20 Affidavit. I anticipate that I will have to travel to Pahrump, Nevada for the hearing on this matter.
21 Generally, the round trip from Las Vegas to Pahrump, including the hearing, takes about four hours
22 (a full half-day). Although my normal hourly rate is \$300.00 per hour, I am only requesting
23 attorney's fees in the amount of \$1,600.00 for having to bring this motion, as well as \$50.00 in costs
24 for having to travel to Pahrump.

25 ///

26 ///

27 ///

28

Dated this 20 day of March, 2009.

John P. Aldrich
JOHN P. ALDRICH, ESQ.

Subscribed & sworn to before me
this 20th day of March, 2009.

Theresa E. Ingbert
NOTARY PUBLIC

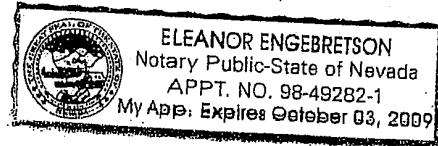


EXHIBIT 8

1 AFFIDAVIT OF CATHERINE HERNANDEZ IN SUPPORT OF MOTION TO STRIKE
2 DEFENDANT'S ANSWER

3 State of Nevada)
4 County of Clark) SS

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

6 1. I, Catherine Hernandez, am an attorney licensed to practice in the State of Nevada and
7 aa attorney with the law firm of Aldrich Law Firm, Ltd.

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

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

12 4. I appeared at the hearing on Plaintiff's Motion to Compel Defendant to Compel
13 Defendant's Production of Documents on April 27, 2009. Harold Kuehn, Esq. appeared for
14 Defendant.

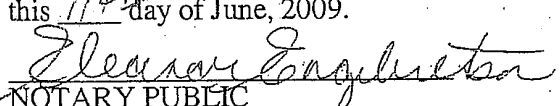
15 5. At said hearing Mr. Kuehn did not orally oppose the Motion to Compel, but agreed
16 the motion should be granted. At the hearing Mr. Kuehn provided no reason as to why Defendant
17 had not complied with any previous requests for discovery.

18 6. Further, at said hearing, Mr. Kuehn did not object to sanctions being awarded for
19 Defendant's failure to comply with discovery requests, he only objected to the amount of sanctions
20 requested.

21 Dated this 11 day of June, 2009

22 
23 CATHERINE HERNANDEZ, ESQ.

24 Subscribed & sworn to before me
25 this 11th day of June, 2009.

26 
27 NOTARY PUBLIC
28

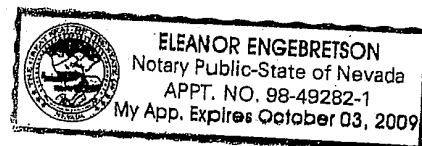


EXHIBIT 9

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

FILED

2009 MAY 18 2:02 PM
Shirley W. Wynn

NYE COUNTY CLERK
BY DEPUTY

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

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

Case No.: CV24539
Dept.: 2P

12 Plaintiffs,)

13 vs.)

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

15 Defendants.)

16 SUSAN FALLINI,)

17 Counterclaimant,)

18 vs.)

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

22 Counterdefendants.)

23 NOTICE OF ENTRY OF ORDER

24 ///

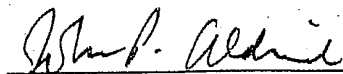
25 ///

26 ///

PLEASE TAKE NOTICE that an Order was entered in the above-entitled matter on April 27, 2009, a copy of which is attached hereto as Exhibit 1.

DATED this 14th day of May, 2009.

ALDRICH LAW FIRM, LTD.



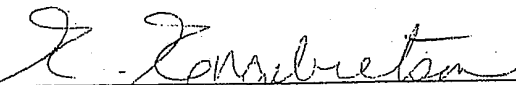
John P. Aldrich, Esq.
Nevada State Bar No. 6877
1601 S. Rainbow Blvd., Suite 160
Las Vegas, Nevada 89146
(702) 853-5490
(702) 227-1975
Attorneys for Plaintiff

CERTIFICATE OF SERVICE

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

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

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



An employee of Aldrich Law Firm, Ltd.

EXHIBIT 1

ORIGINAL**ORDER**

John P. Aldrich
 Nevada Bar No.: 6877
 Catherine Hernandez
 Nevada Bar No. 8410
ALDRICH LAW FIRM, LTD.
 1601 S. Rainbow Blvd., Suite 160
 Las Vegas, Nevada 89146
 (702) 853-5490
Attorneys for Plaintiff

FILED

FIFTH JUDICIAL DISTRICT

APR 27 2009

Nye County Clerk

Deputy

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

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

Plaintiff,

v.

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

Defendants.

SUSAN FALLINI,

Counterclaimant,

vs.

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

Counterdefendants.

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

**ORDER GRANTING PLAINTIFF'S MOTION TO COMPEL DEFENDANT'S
 PRODUCTION OF DOCUMENTS**

THIS MATTER having come on for hearing on Monday, April 27, 2009, on Plaintiff's
 Motion to Compel Defendant's Production of Documents before the Honorable Robert W. Lane, and

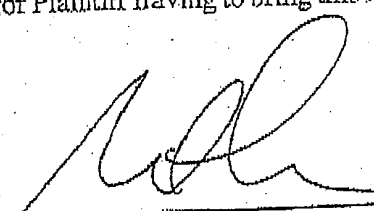
1 Catherine Hernandez, Esq., of Aldrich Law Firm, Ltd., appearing on behalf of the Plaintiffs, no other
2 counsel present, the court having reviewed all pleadings and papers on file herein, no opposition
3 having been presented, and good cause appearing therefore:

4 **IT IS HEREBY ORDERED** that Plaintiff's Motion to Compel Defendant's Production of
5 Documents is GRANTED. Defendant SUSAN FALLINI shall produce all documents responsive
6 to Plaintiff's discovery requests pursuant to NRCP 16.1, 26,33,34 and NRCP 37 within ten (10)
7 days of Notice of Entry of this Order.

8 **IT IS FURTHER ORDERED** that Defendant shall pay ^{750.00} \$1,650.00 for related attorney's fees
9 and costs for failing to comply with discovery rules and for Plaintiff having to bring this motion, also
10 within ten (10) days of Notice of Entry of this Order.

11 DATED this 22 day of April, 2009.

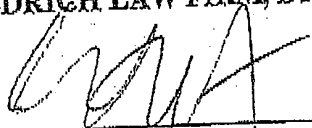
12
13
14


DISTRICT COURT JUDGE

15 Respectfully submitted by:

16 **ALDRICH LAW FIRM, LTD.**

17
18


19 John P. Aldrich, Esq.
Nevada Bar No. 6877
Catherine Hernandez, Esq.
20 Nevada Bar No. 8410
1601 S. Rainbow Blvd., Suite 160
21 Las Vegas, NV 89146
(702) 853-5491
22 Attorneys for Plaintiff

23
24
25
26
27
28

1 **ORDR**

John P. Aldrich

2 Nevada Bar No.: 6877

ALDRICH LAW FIRM, LTD.

3 1601 S. Rainbow Blvd., Suite 160

Las Vegas, Nevada 89146

4 (702) 853-5490

Attorneys for Plaintiff

FILED

2009 JUL 17 10:42 AM
Sheila Winn

NYE COUNTY CLERK
BY DEPUTY

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

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

11 Plaintiff,

12 v.

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

15 Defendants.

16
17 SUSAN FALLINI,

18 Counterclaimant,

19 vs.

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

22 Counterdefendants.

Case No.: CV24539

Dept. No.: 2P

23
24 **ORDER DENYING PLAINTIFF'S MOTION TO STRIKE DEFENDANT'S ANSWER**
25 **AND COUNTERCLAIM**

26
27 THIS MATTER having come on for hearing on Monday, July 13, 2009, on Plaintiff's
28 Motion to Strike Defendant's Answer and Counterclaim, before the Honorable Robert W. Lane, and
John P. Aldrich, Esq., of Aldrich Law Firm, Ltd., appearing on behalf of the Plaintiffs, with Harry

1 Kuehn, Esq., appearing on behalf of Defendant, the Court having reviewed all pleadings and papers
2 on file herein, and good cause appearing therefore:

3 **IT IS HEREBY ORDERED** that Plaintiff's Motion to Strike Defendant's Answer and
4 Counterclaim is DENIED at this time.

5 **IT IS FURTHER ORDERED** that Defendant SUSAN FALLINI shall produce all
6 documents responsive to Plaintiff's discovery requests pursuant to NRCP 16.1, 26,33,34 and NRCP
7 37 within thirty (30) days of the hearing of Plaintiff's Motion to Strike Defendant's Answer and
8 Counterclaim. Thus, the date by which Defendant must provide said documents is August 12, 2009.

9 **IT IS FURTHER ORDERED** that in the event Defendant SUSAN FALLINI does not
10 produce all documents responsive to Plaintiff's discovery requests pursuant to NRCP 16.1, 26,33,34
11 and NRCP 37 within thirty (30) days of the hearing of Plaintiff's Motion to Strike Defendant's
12 Answer and Counterclaim, the Court will grant the relief sought by Plaintiff and strike Defendant's
13 Answer and Counterclaim.

14 **IT IS FURTHER ORDERED** that Defendant shall pay a monetary sanction of \$1,000.00
15 for related attorney's fees and costs for failing to comply with discovery rules and the Court's prior
16 Order granting Plaintiff's Motion to Compel, and for Plaintiff having to bring this motion.

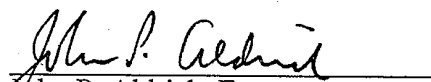
17 DATED this 17 day of July, 2009.

ROBERT W. LANE

18
19 DISTRICT COURT JUDGE

20
21 Respectfully submitted by:

22 **ALDRICH LAW FIRM, LTD.**

23 
24 John P. Aldrich, Esq.
25 Nevada Bar No. 6877
26 1601 S. Rainbow Blvd., Suite 160
27 Las Vegas, NV 89146
28 (702) 853-5491
Attorneys for Plaintiff

1 MOT

John P. Aldrich

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Attorney for Plaintiff

FILED

2009 AUG 31 P 2:31

NYE COUNTY CLERK
BY L. J. J. J.

Linda Unl

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

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

11 Plaintiff,

12 v.

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

15 Defendants.

16
17 SUSAN FALLINI,

18 Counterclaimant,

19 vs.

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

22 Counterdefendants.
23

Case No.: CV24539

Dept. No.: 2P

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

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

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

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

8 DATED this 28 day of August, 2009.

9 ALDRICH LAW FIRM, LTD.

10
11 By John P. Aldrich
12 John P. Aldrich
13 Nevada Bar No. 6877
14 1601 S. Rainbow Blvd., Suite 160
Las Vegas, NV 89146
(702) 853-5490
Attorneys for Plaintiff

15
16 POINTS AND AUTHORITIES

17 I.

18 FACTS

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

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

1 impact.

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

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

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

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

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

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

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

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

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

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

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

1 insurance company will refuse to pay the claim.

2 II.

3 LEGAL ARGUMENT

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

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

12 NRS 22.040 provides:

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

20 NRS 22.010 further provides in pertinent part:

21 The following acts or omissions shall be deemed contempts:

22 ...

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

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

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

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

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

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

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

21 III.

22 CONCLUSION

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

26 ///

27 ///

28 ///