

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.:

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16 **PETITIONER'S APPENDIX, VOLUME VI**

17 (Bates Nos. 1009-1233)

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FILED
FIFTH JUDICIAL DISTRICT COURT

JUN 09 2014

NYE COUNTY DEPUTY CLERK
DEPUTY VA

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

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

Case No.: CV24539
Dept.: 2P

10 Plaintiffs,

11 vs.

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

14 Defendants.

15
16 **COUNTERMOTION TO STRIKE DEFENDANT'S MOTION FOR RELIEF FROM**
17 **JUDGMENT PURSUANT TO NRCP 60(b) OR IN THE ALTERNATIVE,**
18 **OPPOSITION TO MOTION FOR RELIEF FROM**
19 **JUDGMENT UNDER NRCP 60(b)**

20 Plaintiff JUDITH ADAMS, INDIVIDUALLY AND ON BEHALF OF THE ESTATE OF
21 MICHAEL DAVID ADAMS, by and through her attorney of record, John P. Aldrich, of Aldrich
22 Law Firm Ltd., hereby moves to strike Defendant's Motion for Relief Under NRCP 60(b) on the
23 grounds that this Court does not have the jurisdiction to render a Decision on a Motion for Relief
24 Under NRCP 60(b) after the return on remittitur by the Nevada Supreme Court and after the six
25 month time period has elapsed. Further, this Motion was filed but was never set for hearing and as
26 such is a fugitive document.

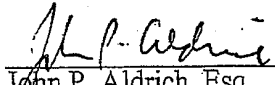
27 ///

28 ///

1 Should the Court determine that the motion is properly before the Court, the Plaintiff opposes
2 the Motion for Relief from Judgment under NRCP 60(b) as there was no fraud on the part of
3 Mr. Aldrich involved in obtaining the judgment, nor excusable neglect on the part of Defendant's
4 counsel.

5 DATED this 6th day of June, 2014.

6 ALDRICH LAW FIRM, LTD.

7 
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13 **POINTS AND AUTHORITIES**

14 **I.**

15 **STATEMENT OF FACTS**

16 **A. Procedural History**

17 The Court is well aware of the long, complicated, and well-documented procedural history
18 in this case. Indeed, the Court recently set forth much of that procedural history in an order that was
19 filed on September 5, 2013¹, in which it denied Defendant's Motion to Disqualify Judge Lane.
(Court Order, a true and correct copy of which is attached hereto as **Exhibit 1.**)

20 In the Court's September 5, 2013 Order, it addressed at least some of Defendant's purported
21 grounds for the Motion for Relief from Judgment Pursuant to NRCP 60(b) as follows:

22 ///

23 ///

24 _____

25 ¹ Although the Court records stands on its own, Plaintiff's counsel noted a factual mistake
26 in the September 5, 2013 Order. On page 3 at lines 16-17, the Order indicated that the sanction
27 against Defendant was \$5,000 and \$500 per month. It was actually \$500 per day.

HOLDING

The Court will address each of Defendant's arguments.

1. That the Court wrongly ruled against Fallini [because she had a viable affirmative defense].

In its Order of March 29, 2013, the Nevada Supreme Court affirmed the District Court's determination in this matter. A party is not allowed to re-litigate the issue in a post-Appeal motion. This argument is moot.

3. That despite knowledge that Kuehn was negligent, the Court wrongly entered judgment against Fallini.

In its Order of March 29, 2013, the Nevada Supreme Court affirmed the District Court's determination in this matter. A party is not allowed to re-litigate the issue in a post-Appeal motion. This argument is moot.

6. That the judgment by the Court reflects a failure to uphold and apply the law: to act in a manner that promotes public confidence in the integrity of the judiciary; and so the integrity and impartiality of the judiciary can be maintained through post-appeal proceedings.

This Court upheld and applied the law, as affirmed by the Supreme Court's Order of March 29, 2013. This Court promoted public confidence in the integrity of the judiciary, by ruling pursuant to the law, as affirmed by the Supreme Court's Order.

Number 6 in the Court's Order addresses essentially the same arguments Defendant is making against Plaintiff's counsel, only in the context of the Court. The Court is well aware of Plaintiff counsel's conduct throughout this entire proceeding.

The fact is that Defendant has already raised these same issues before this very Court in this case, before the District Court in another case when it sued Mr. Aldrich and Judge Lane, and before the Supreme Court on direct appeal in this case. That is demonstrated through the following documents, among others:

1. Defendant's Motion for Leave to File Motion for Reconsideration, filed around July 2, 2010. A true and correct copy of that Motion is attached hereto as **Exhibit 2**;
2. Complaint for Declaratory Relief, Case No. CV31449. This is an action filed by

1 Defendant in this case against Judge Lane and John Aldrich, among others. A true
2 and correct copy of the Complaint is attached hereto as **Exhibit 3**. A true and correct
3 copy of the Order dismissing Judge Lane is attached hereto as **Exhibit 4**. Mr.
4 Aldrich's office has made multiple attempts to obtain a signed order dismissing him
5 from the case from the Court in Tonopah, to no avail. Mr. Aldrich's office has
6 submitted multiple orders, the form and content of which was agreed to by Mr.
7 Ohlson, but has never received a signed order. Attempts again in recent days have
8 been unsuccessful as well, so the prior proposed orders have been attached as
9 **Exhibits 5 and 6**.

- 10 3. Appellant's (Defendant's) Opening Brief from the direct appeal in this matter, a true
11 and correct copy of which is attached hereto as **Exhibit 7**. Plaintiff refers the Court
12 to pages 12-16 in particular.

13 **B. Statement of Facts**

14 The Court is also well aware of the underlying facts of this litigation. Consequently, Plaintiff
15 will not restate them here.

16 Defendant's Motion for Relief from Judgment Pursuant to NRCP 60(b) is just another stall
17 tactic intended to cause delay, harass Plaintiff, cause Plaintiff additional fees and costs, and give
18 Defendant more time to dispose of assets (something that became clear in her recent judgment
19 debtor's exam). There is no basis in law or fact for the Motion for Relief from Judgment.

20 **II.**

21 **COUNTERMOTION TO STRIKE**

22 Under NRCP 12(f), the Court may:

23 Upon motion made by a party before responding to a pleading or, if no
24 responsive pleading is permitted by these rules, upon motion made by a party within
25 20 days after the service of the pleading upon the party or upon the court's own
26 initiative at any time, the court may order stricken from any pleading any
27 insufficient defense or any redundant, immaterial, impertinent, or scandalous
28 matter.

1 NRCP 12(f) (emphasis added).

2 It has been stated that the Nevada Supreme Court finds it to be "bad practice" to strike a
3 motion. *Lamb v. Lamb*, 55 Nev. 437, 38 P.2d 659 and *Lux v. Lux*, 66 Nev. 337, 338 (1949). The
4 reason that the Nevada Supreme Court has frowned on the practice is because the inefficiency that
5 it gives for the control of the courtroom. Both sides tend to want their matter heard first. We do
6 not foresee that as a problem in the current case.

7 This document was filed with no hearing notice and four years outside of the time period for
8 the filing of such motions. This 60(b) motion follows a jury demand that was filed for no reason a
9 couple of months ago.

10 As demonstrated above, this Motion for Relief from the Judgment is filled with redundant
11 arguments which have been made in the Nye County District Court in the current case, as well as in
12 the Nye County action where the Fallini's sued John Aldrich, Esq. and Judge Lane. The arguments
13 have also been made to the Nevada Supreme Court. The Nevada Supreme Court has affirmed the
14 Nye County District Court. The case against the Judge and Mr. Aldrich was dismissed with
15 prejudice.

16 The arguments are recycled, redundant and are no more noteworthy now than they were
17 numerous times before. The Motion to Strike filed by the Plaintiff is not about advocacy as much
18 as it is about procedure. More than thirty (30) days has passed since the decision from the Nevada
19 Supreme Court and the judgment amount has been reduced in compliance with the remand order.
20 The Plaintiff does not want a flurry of appeals about this Court's denial of a NRCP 60(b) motion
21 which should have never been filed.

22 III.

23 OPPOSITION TO MOTION

24 In the event the Court finds Defendant's Motion to be proper and will decide it on the merits,
25 Plaintiff opposes Defendant's Motion. The grounds for the Motion to Strike and the Opposition are
26 essentially the same, so the arguments are incorporated as to both the Motion to Strike and the
27

1 Opposition.

2 **A. TIMELINESS**

3 Defendant's Motion is clearly not timely. Rule 60(b)(1) strikes a balance between finality
4 of judgments and fairness in the proceedings. It implicates the Court's institutional integrity and
5 enables the court to manage its own affairs. NRCP 60(b) states, in pertinent part:

6 **Mistakes; Inadvertence; Excusable Neglect; Newly Discovered Evidence; Fraud, Etc.**
7 On motion and upon such terms as are just, the court may relieve a party or a party's legal
8 representative from a final judgment, order, or proceeding for the following reasons: (1)
9 mistake, inadvertence, surprise, or **excusable neglect**; (2) newly discovered evidence which
10 by due diligence could not have been discovered in time to move for a new trial under Rule
11 59(b); (3) **fraud** (whether heretofore denominated intrinsic or extrinsic), misrepresentation
12 or other misconduct of an adverse party; (4) the judgment is void; or, (5) the judgment has
13 been satisfied, released, or discharged, or a prior judgment upon which it is based has been
14 reversed or otherwise vacated, or it is no longer equitable that an injunction should have
15 prospective application. **The motion shall be made within a reasonable time, and for**
16 **reasons (1), (2), and (3) not more than 6 months after the proceeding was taken or the**
17 **date that written notice of entry of the judgment or order was served.**

18 NRCP 60(b) motions also have to be brought within a reasonable time, and not more than
19 six months after the proceeding was taken, or written notice of entry of the judgment was served.
20 NRCP 60(b). The clock does not magically start all over again if the judgment amount – not the
21 judgment itself – is modified through remittitur. To the contrary, Plaintiff could have executed on
22 the judgment throughout the pendency of the appeal. The merits of the judgment were upheld on
23 appeal. To allow the date of the corrected order to become the new starting date for a 60(b) motion
24 would completely negate the rule, defy jurisdictional laws, as well as the mandatory Supreme Court
25 appeal deadlines, and do substantial harm to the need for finality of a case. Since nothing new is
26 being offered in the motion, Fallini is barred from bringing this untimely motion.

27 This Rule 60(b) motion is, legally, a fugitive document. The Motion purports to set aside
28 the judgement under 60(b)(1) and 60(b)(3). The six-month time period to set judgments aside
under NRCP 60(b)(1) is not tolled by an appeal of the final appealable judgment which the Court
ordered in June 2010. Defendant would have this Court believe that the six-month period begins
after the Supreme Court does a remittitur and the amount of the judgment award is changed.
Defendant fails acknowledge the fact that in order to appeal to the Nevada Supreme Court, the

1 judgment had to be a "final appealable judgment." The actual content, law and decision of the
2 original judgment did not change. The Defendant does not get another bite at the apple.

3 Defendant attempts to state that the NRCP 60 motion is for (1) excusable neglect and (2)
4 "fraud upon the court." Defendant uses the grounds interchangeably through the motion. The
5 Court is already well aware of the circumstances herein and the Nevada Supreme Court was already
6 briefed and affirmed. Despite all of the forums reviewing this information over the past four years,
7 Defendant (with no legal basis) asks this Court to determine whether excusable neglect happened
8 in this case (again).

9 Regarding a 60(b) motion, the Nevada Supreme Court has made it extremely clear that the
10 six-month period is an outside, extreme time limit. In *Stoecklein v. Johnson Elec. Inc.*, 109 Nev.
11 268, 272, 849 P.2d 305 (1992). The Supreme Court stated that "the six-month period represents the
12 extreme limit of reasonableness." *Id.*

13 B. ISSUE PRECLUSION

14 Defendant's motion – and the issues raised therein – is barred by the doctrine of issue
15 preclusion. The four elements for issue preclusion are:

- 16 (1) the issue decided in the prior litigation must be identical to the issue presented in the
17 current action;
- 18 (2) the initial ruling must have been on the merits and have become final;
- 19 (3) the party against whom the judgment is asserted must have been a party or in privity
20 with a party to the prior litigation; and
- 21 (4) the issue was actually and necessarily litigated.

22 See Alcantara v. Wal-Mart Stores, Inc., 321 P.3d 912, 916 (Nev. 2014).

23 Issue preclusion applies here. Regarding the first element, the issues Defendant raises were
24 decided in this very case, the merits of which were then appealed to the Supreme Court and affirmed.

25 By the way, these issues were also litigated in the other action filed by Defendant (as a Plaintiff
26 against Aldrich and Judge Lane). This element supports the application of issue preclusion.

1 The second element also supports implementation of the doctrine of issue preclusion. The
2 initial ruling that is now being rehashed became final when this Court ruled in Plaintiff's favor, and
3 that ruling was affirmed by the Nevada Supreme Court.

4 The third element is met as well. Fallini was and is a party to the this lawsuit. As for her
5 attorney's failure to represent her, which led to the trial judge granting partial summary judgment,
6 it should be emphasized that Mr. Ohlson represented the Defendant on the Opposition to Default
7 Judgment, Motion for Reconsideration and in the appeal. He also represented her in the other state
8 court action (naming Aldrich and Judge Lane as defendants). As such, the argument that Defendant
9 was not adequately represented for the same issue is patently incorrect, as he was the one who did
10 everything from the prove-up of the Plaintiff's damages all the way to the Supreme Court's
11 affirmation of the judgment.

12 The fourth factor is present as well. These matters have been actually and necessarily
13 litigated in this case, before the Supreme Court, and in the separate lawsuit against Aldrich and
14 Judge Lane. When this case was given to the Supreme Court, the original suit had already been fully
15 and finally adjudicated. When the Nevada Supreme Court ruled against affirmed the merits of the
16 judgment (after considering the same arguments brought by Defendant in this Motion), every issue
17 that could have ever been brought was fully litigated and finally adjudicated.

18 To the extent Defendant's counsel is trying to ignore the Supreme Court's decision and
19 resurrect the merits of the underlying case, the issue being raised now is absolutely identical to the
20 one that was originally raised. The initial ruling was not only on the merits and became a final
21 judgment, but it was also affirmed by the Nevada Supreme Court. This case is squarely within the
22 Nevada case law regarding the cessation of cases that have claim or issue preclusion.

23 The superfluous motions and strange jury demand by the Defendant is nothing more than a
24 game of cat and mouse. At this point in the litigation, the Nevada Supreme Court affirmed the case
25 and corrected the amount. The case is done, other than collection.

1 C. FINALITY

2 Finality in litigation has particular importance in our system of justice. Finality secures the
3 peace and repose of society by finally resolving disputes between parties. Once a court renders a
4 judgment, it is final and binding on all parties. The Nevada Supreme Court has described a final
5 judgment as one "that disposes of the issues presented in the case, determines the costs, and leaves
6 nothing for the future consideration of the court." See, e.g., *Alper v. Posin*, 77 Nev. 328, 330, 363
7 P.2d 502, 503 (1961); *Magee et al. v. Whitacre et al.*, 60 Nev. 202, 96 P.2d 201 (1939); *Perkins v.*
8 *Sierra Nevada S.M. Co.*, 10 Nev. 405 (1876). In fact, the doctrine of preclusion prohibits the
9 parties and their privies from raising, in future suits, issues actually litigated as well as issues that
10 were not litigated but have a close relationship with the original claim. See *S. Pac. R.R. Co. v.*
11 *United States*, 168 U.S. 1, 48-49 (1897); *San Remo Hotel, L.P. v. City & County of San Francisco*,
12 125 S. Ct. 2491, 2500 n.16 (2005); *Lawlor v. Nat'l Screen Service Corp.*, 349 U.S. 322, 326 (1955).

13 In this case, the Defendant continues to disrupt the finality of the justice system. To remind
14 the Court of the tortured history of this case:

15 The Decedent passed away on July 7, 2005.

16 On March 1, 2007, the instant case was commenced.

17 On August 12, 2010, a final judgment was rendered by the Nye District Court.

18 On September 7, 2010 an appeal was filed by the Defendant to the Nevada Supreme Court.

19 On January 31, 2011, a separate action was filed by the Defendant against the Court, instant
20 counsel and others.

21 On July 11, 2011, the separate action was dismissed.

22 On January 31, 2014, the Supreme Court edited their original opinion to include the amount
23 of post-judgment interest.

24 On April 28, 2014, the Nye County District Court entered an amended judgment which was
25 amended only as to correct the amounts of interest but did not affect the merits of the final
26 judgment rendered by the Nye County District Court in 2010.

1 On May 20, 2014, the Defendant's filed a Motion for Relief from the Judgment Pursuant to
2 NRCP 60(b).

3 This case is finalized. This Motion is not appropriate.
4

5 IV.

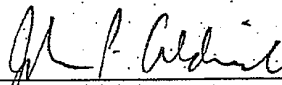
6 CONCLUSION

7 Defendant's Motion for Relief from Judgment Pursuant to NRCP 60(b) should be stricken.
8 It is a fugitive document, the matter has already been finally decided, it is grossly untimely, and the
9 Motion itself is barred by the doctrine of issue preclusion.

10 To the extent that the Court determines to consider the Motion, it should be denied for the
11 same reasons. This case has been decided at the district court level, appealed, and affirmed.
12 Defendant has tried to raise the same issues in a separate legal proceeding, but was unsuccessful
13 there as well. If the Court does not strike the Motion, it must at least deny the Motion.

14 DATED this 6th day of June, 2014.

15 ALDRICH LAW FIRM, LTD.

16
17 
18 John P. Aldrich
19 Nevada Bar No. 6877
20 Stephanie Cooper Herdman
21 Nevada Bar No. 5919
22 1601 S. Rainbow Blvd., Ste. 160
23 Las Vegas, NV 89146
24 (702) 853-5490
25 Attorneys for Plaintiff
26
27
28

CERTIFICATE OF SERVICE

I hereby certify that on the 6th day of June, 2014, I mailed a copy of the **Motion to Strike or in the Alternative, Opposition to Motion for Relief From Judgment Under NRCP 60(b)** in a sealed envelope, to the following and that postage was fully paid thereon:

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


An employee of Aldrich Law Firm, Ltd.

EXHIBIT 1

EXHIBIT 1

FILED

REBECCA BALLARD

Case No. CV 24539
Dept. 2P

2013 SEP -5 A 9:54

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

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

Plaintiff,

vs.

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

Defendants.

COURT ORDER

PROCEDURAL HISTORY

On or about November 29, 2006, Plaintiff filed a **Complaint** in Clark County. On January 31, 2007, the case was transferred to this Court. On March 14, 2007, Defendant filed an **Answer** and Counterclaim. On March 14, 2007, Defendant also filed a motion to change the forum to Tonopah. Plaintiff filed an opposition on March 26, 2007. A hearing was held on April 30, 2007 and an order denying motion to change forum was filed.

Fifth Judicial District Court
ESMERALDA, MINERAL AND NYE COUNTIES

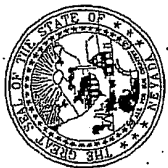




1
2 On March 30, 2007, Plaintiff filed a Reply to the counterclaim. On
3 October 23, 2007, Plaintiff filed a case conference report. On April 7, 2008,
4 Plaintiff filed a **Motion for Partial Summary Judgment**. On May 16,
5 2008, Plaintiff filed a Motion for Partial Summary Judgment. Joinders were
6 made on May 20, 2008. No opposition was filed. A hearing was held July
7 14, 2008. On July 30, 2008, an Order granting Partial Summary Judgment
8 was filed.
9

10
11 On September 22, 2008, Plaintiff filed Motions regarding discovery.
12 Various motions to compel, liens, notices etc. were filed through March
13 2009. A hearing was held November 10, 2008, and more time was given. A
14 hearing was held on April 27, 2009, and defendant's counsel was sanctioned
15 \$750 held in abeyance, and an Order granting Motion to Compel discovery
16 was granted.
17

18
19 On May 5, 2009, Plaintiff filed a demand for jury trial. An order
20 setting trial was filed on May 20, 2009 and June 24, 2009. On June 16, 2009,
21 Plaintiff filed a **Motion to Strike defendant's Answer and Counterclaim**.
22 Defendant filed an Opposition on July 13, 2009. A hearing was held on July
23 13, 2009. Defendant's counsel was sanctioned \$750 from the previous
24
25
26
27
28



1
2 hearing and \$1000. An Order denying plaintiff's motion to strike was filed
3 on July 17, 2009.

4
5 On August 31, 2009, Plaintiff filed a Motion for an Order to Show
6 Cause why Defendant should not be held in contempt. It was granted on
7 October 8, 2009. On November 4, 2009, an Order was filed striking
8 defendant's answer and counterclaim. On February 4, 2010, a Default was
9 filed.
10

11 On April 7, 2010, Plaintiff filed a Motion for an Order to Show Cause
12 why defendant should not be held in contempt. An order was granted on
13 April 26, 2010. A hearing was held on May 24, 2010. Tom Gibson appeared
14 for Harry Kuehn. Defendant's counsel was sanctioned \$5000 and \$500 per
15 month until he gave discovery. An Order was filed on June 2, 2010.
16

17 On June 17, 2010, John Ohlson substituted for Harry Kuehn. On June
18 24, 2010, an Application for Default was filed. An **Opposition** to default
19 was filed that same day. A Reply was filed on July 21, 2010. On July 6,
20 2010, a **Motion for Reconsideration** was filed.
21

22 A hearing was held on July 19, 2010, re: application for default,
23 opposition to application and defendant's motion for reconsideration.
24 Default was granted and reconsideration denied. On July 21, 2010, Plaintiff
25
26
27
28



1
2 filed a reply to defendant's opposition for default; and an Opposition to
3 plaintiff's motion for reconsideration.

4
5 On August 12, 2010, an Order granting default and denying reconsideration
6 was filed.

7 On September 10, 2010, Defendant filed a notice of Appeal. On
8 March 29, 2013, the Supreme Court issued an Order affirming the District
9 Court, but remanding for a new hearing regarding part of the damages
10 awarded. An order denying rehearing was filed on June 3, 2013. An order
11 denying en banc reconsideration was denied on July 18, 2013. An order
12 denying rehearing was filed on August 14, 2013.

13
14 On August 20, 2013, Defendant filed a Motion to Disqualify Judge
15 Lane.

16
17 This order follows.

18
19 **DEFENDANT'S ARGUMENT**

20
21 In her Motion to Disqualify, Fallini argues the following:

- 22 1. That the Court wrongly ruled against Fallini in this matter, because she had an
23 affirmative defense which sets forth that she is not liable for damages (Motion p.
24 2, lines 7, 20-24; p. 3, lines 21-24).
25 2. That the Court wrongly failed to notice Fallini that her attorney Kuehn was
26 being negligent (Motion p. 2, lines 18-19, 25-28).
27 3. That despite knowledge that Kuehn was negligent, the Court wrongly entered
28 judgment against Fallini (Motion p. 2, lines 12-17, 23-25; p. 3-4, lines 24- line 2).
4. That on appeal, the Supreme Court remanded this case on the issue of damages
(Motion p. 4, lines 3-4, 7).



5. That Fallini has sued Judge Lane (Motion p. 4, lines 4-6, 8).
6. That the judgment by the Court reflects a failure to uphold and apply the law and to act in a manner that promotes public confidence in the integrity of the judiciary where there is clear evidence of egregious misconduct by an officer of the Court, and so the integrity and impartiality of the judiciary can be maintained through post-appeal proceedings (Motion p.4, lines 9-11, 17-19).
7. That the Court is invested in the outcome of the case (Motion p. 4, line 15).

NEVADA RULES OF JUDICIAL CONDUCT

Defendant moves the Court to disqualify pursuant to the Nevada Rules of Judicial Conduct Rules 1.1, 1.2, 2.2, and 2.11, which state as follows:

A judge shall comply with the law, including the Code of Judicial Conduct. (1.1) A judge shall act at all times in a manner that promotes public confidence in the independence, integrity, and impartiality of the judiciary and shall avoid impropriety and the appearance of impropriety. (1.2) A judge shall uphold and apply the law, and shall perform all duties of judicial office fairly and impartially. (2.2)

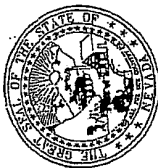
Disqualification.

(A) A judge shall disqualify himself or herself in any proceeding in which the judge's impartiality might reasonably be questioned, including but not limited to the following circumstances:

(1) The judge has a personal bias or prejudice concerning a party or a party's lawyer, or personal knowledge of facts that are in dispute in the proceeding.

(2) The judge knows that the judge, the judge's spouse or domestic partner, or a person within the third degree of relationship to either of them, or the spouse or domestic partner of such a person is:

- (a) a party to the proceeding or an officer, director, general partner, managing member, or trustee of a party;
- (b) acting as a lawyer in the proceeding;
- (c) a person who has more than a de minimis interest that could be substantially affected by the proceeding; or
- (d) likely to be a material witness in the proceeding.



(3) The judge knows that he or she, individually or as a fiduciary, or the judge's spouse, domestic partner, parent, or child, or any other member of the judge's family residing in the judge's household, has an economic interest in the subject matter in controversy or in a party to the proceeding.

(4) [Reserved.]

(5) The judge, while a judge or a judicial candidate, has made a public statement, other than in a court proceeding, judicial decision, or opinion, that commits or appears to commit the judge to reach a particular result or rule in a particular way in the proceeding or controversy.

(6) The judge:

(a) served as a lawyer in the matter in controversy or was associated with a lawyer who participated substantially as a lawyer in the matter during such association;

(b) served in governmental employment and in such capacity participated personally and substantially as a lawyer or public official concerning the proceeding, or has publicly expressed in such capacity an opinion concerning the merits of the particular matter in controversy;

(c) was a material witness concerning the matter; or

(d) previously presided as a judge over the matter in another court.

(B) A judge shall keep informed about the judge's personal and fiduciary economic interests and make a reasonable effort to keep informed about the personal economic interests of the judge's spouse or domestic partner and minor children residing in the judge's household. (2.11)

HOLDING

The Court will address each of Defendant's arguments.

1. That the Court wrongly ruled against Fallini.

In its Order of March 29, 2013, the Nevada Supreme Court affirmed the District Court's determination in this matter. A party is not allowed to re-litigate the issue in a post-Appeal motion. This argument is moot.

2. That the Court wrongly failed to notice Fallini that her attorney Kuehn was being negligent.



1
2 The Court had no duty to personally notify Fallini, and Fallini has
3 failed to cite to a statute or case law that sets forth such a legal requirement.
4
5 If such a duty exists, it would have been helpful to cite it to the District
6 Court during Fallini's Motion for Reconsideration, or to the Supreme Court
7 on Appeal. This is a matter that should have been argued on Appeal. Failure
8 to do so has waived the issue.
9

10
11 3. That despite knowledge that Kuehn was negligent, the Court wrongly
12 entered judgment against Fallini.

13 In its Order of March 29, 2013, the Nevada Supreme Court affirmed
14 the District Court's determination in this matter. A party is not allowed to
15 re-litigate the issue in a post-Appeal motion. This argument is moot.
16

17 4. That on appeal, the Supreme Court remanded this case on the issue of
18 damages.

19 In its Order of March 29, 2013, the Nevada Supreme Court affirmed
20 the District Court's in all legal issues. In determination of damages the
21 Court was upheld in part, and remanded in part to correct the award of
22 separate damages for loss of probable support and lost economic
23 opportunity. A remand to re-determine part of the damages is insufficient
24 grounds for disqualification.
25
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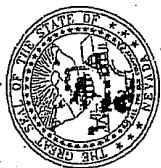
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2
3 5. That Fallini has sued Judge Lane.

4 On January 31, 2011, Fallini sued Judge Lane in case no. CV 31449.
5
6 On July 11, 2011, Judge Lane was summarily dismissed from that lawsuit on
7 the grounds that judges cannot be sued for their judicial acts and are entitled
8 to absolute immunity. A party is not allowed to forum shop for a different
9 judge by filing a frivolous law suit against the judge in order to force the
10 judge to recuse from their case. See U.S. v. Studley, 783 F.2d 934, 940 (9th
11 Cir. 1986), "a judge is not disqualified by a litigant's suit or threatened suit
12 against him." This argument lacks merit.
13
14

15 6. That the judgment by the Court reflects a failure to uphold and apply the
16 law; to act in a manner that promotes public confidence in the integrity of
17 the judiciary; and so the integrity and impartiality of the judiciary can be
18 maintained through post-appeal proceedings.

19 This Court upheld and applied the law, as affirmed by the Supreme
20 Court's Order of March 29, 2013. This Court promoted public confidence in
21 the integrity of the judiciary, by ruling pursuant to the law, as affirmed by
22 the Supreme Court's Order.
23

24 It should be noted that all the parties in this matter were strangers to
25 the Court, except attorney Harry Kuehn who has practiced in this
26
27
28



1
2 jurisdiction for over 20 years and with whom the court has had a friendly
3 and respectful relationship. In the course of the litigation, it became known
4 to the Court that the Fallini's owned a ranch in this jurisdiction. This Court
5 made multiple attempts in this matter to motivate Kuehn to act properly, in
6 part thanks to the courteous patience of the opposing side's counsel.
7

8 Accordingly, it could be argued that if the Court would have been biased in
9 any way, it would have been for Kuehn and the Fallini's, not the strangers
10 appearing from outside the jurisdiction. But the Court has no bias or
11 appearance of bias.
12

13 By following the law, the Court demonstrated its integrity and
14 impartiality. This Court will continue to uphold the integrity and impartiality
15 of the judiciary through post-appeal proceedings, by following the law. This
16 argument lacks merit.
17

18
19
20 7. That the Court is invested in the outcome of the case.

21 The Court has no invested interest in this matter, and Fallini fails to
22 cite what that interest would be. The Court has only followed the law. It has
23 no self-interest in who prevails.
24
25
26
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28




1
2 This is a limited remand by the Nevada Supreme Court, and the
3 remaining duty for the Court as set forth in the Supreme Court Order of
4 March 29, 2013, is to correct the award of separate damages for both loss of
5 probable support and lost economic opportunity. This is a simple issue, and
6 the Court will continue to ethically apply the law to the facts in this matter.
7
8 This argument lacks merit.
9

10 CONCLUSION

11
12 As shown above, having failed to set forth any sufficient grounds,
13 Defendant's Motion to Disqualify is HEREBY DENIED
14

15 DATED this 5th day of September, 2013.

16
17
18 
19 DISTRICT JUDGE
20
21
22
23
24
25
26
27
28



CERTIFICATION OF MAILING

The undersigned hereby certifies that on the 5th day of September, 2013, he mailed copies of the foregoing COURT ORDER to the following:

JOHN P. ALDRICH, ESQ.
ALDRICH LAW FIRM, LTD.
1601 S. RAINBOW BLVD., SUITE 160
LAS VEGAS, NV 89146

JOHN CHILSON, ESQ.
275 HILL ST., SUITE 230
RENO, NV 89501

Tanner L. Sharp, Esq.
Law Clerk to Judge Robert W. Lane

AFFIRMATION

The undersigned hereby affirms that this Court Order does not contain the social security number of any person.

Tanner L. Sharp, Esq.
Law Clerk to Judge Robert W. Lane

EXHIBIT 2

EXHIBIT 2

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

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

12 * * * * *

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

Case No.: CV24539

16 Plaintiff,

Dept. No.: 2P

17 vs.

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

20 Defendant.
21
22

23 AND ALL RELATED CLAIMS.
24
25

26 MOTION FOR LEAVE TO FILE MOTION FOR RECONSIDERATION

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

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

Points and Authorities

District Court Rule 13(7) provides as follows:

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

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

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

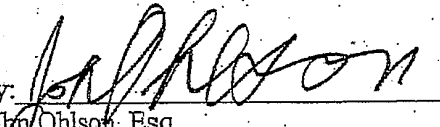
6 Accordingly, it is respectfully requested that the motion be granted, and that defendant be
7 allowed to file herein, the motion, Exhibit 1.

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

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

13 Dated this 2 day of July, 2010.

14 **BOWEN HALL OHLSON & OSBORNE**

15
16
17 By: 
18 John Ohlson, Esq.
19 Bar Number 1672
20 555 S. Center Street
21 Reno, Nevada 89501
22 Telephone: (775) 323-8678
23
24
25
26
27
28

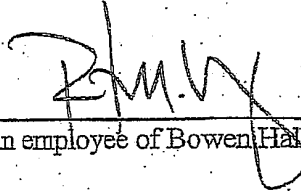
CERTIFICATE OF SERVICE

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

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

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

DATED this 2 day of July, 2010.


An employee of Bowen Hall

SCHEDULE OF EXHIBITS

EXHIBIT 1: Motion for Reconsideration

EXHIBIT 1

EXHIBIT 1

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

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

12 * * * * *

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

Case No.: CV24539

16 Plaintiff,

Dept. No.: 2P

17 vs.

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

20 Defendant.
21 _____/

22 AND ALL RELATED CLAIMS.
23 _____/

24 **MOTION TO RECONSIDER PRIOR ORDERS**

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

- 27 (1) Granting Plaintiff's Motion for Partial Summary Judgment signed on July 29, 2008;
28 (2) Granting Motion for Summary Judgment in Favor of Counter-defendant, October 16, 2008;
(3) Findings of Fact, Conclusions of Law and Order Striking Answer and Counterclaim, November 4, 2009.

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

1 hereon.

2 *Memorandum of Points and Authorities In Support of Motion for Reconsideration*

3 I.

4 **Facts and Procedural History**

5 The train wreck that is this case commenced with the filing of the complaint on January
6 31, 2007, over three years ago. The procedural history of this matter since that time is accurately
7 set forth in Plaintiff's "*Application for Default Judgment Against Defendant Susan Fallini*," filed
8 herein on June 24, 2010. Two Orders of this Court, however, have so far been proven to be case
9 determinative: First, the Order Granting Plaintiff's Motion for Partial Summary Judgment
10 (7/29/08); and the Order Striking Answer and Counterclaim (11/04/09).

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

- 17 1. Fallini's property is not located within an "open range" as it is defined in NRS 568.355.
- 18 2. Fallini is the owner of the cow that is mentioned in the Plaintiff's Complaint on file herein
- 19 ("subject cow").
- 20 3. It is the common practice of Nye County, Nevada ranchers to mark their cattle with
- 21 reflective or luminescent tags.
- 22 4. The subject cow was not marked with a reflective or luminescent tag.
- 23 5. The subject cow crossed a fence to arrive at the location of the subject accident described
- 24 in the Complaint of file herein.
- 25 6. Fallini's cattle had previously been involved in incidents with motor vehicles on the
- 26 roadway.
- 27
- 28

- 1 7. Fallini does not track the location of her cattle while they are grazing away from her
2 property.
3 8. Fallini does not remove her cattle from the roadway when notified that the cattle are in a
4 roadway.
5 9. The subject cow was not visible at night.
6 10. Fallini was aware that the subject cow was not visible at night prior to the incident that is
7 the subject of the Complaint on file herein.
8 11. The subject cow was in the roadway of SR 375 at the time of the incident that is the
9 subject matter of the Complaint on file herein.
10 12. The subject cow's presence in the roadway of SR 375 was the cause of the motor vehicle
11 accident that is the subject of the Complaint on file herein.
12 13. Fallini did not know the location of the subject cow at the time of the incident that is the
13 subject of the Complaint on file herein.
14 14. The presence of a reflective or luminescent tag on the subject cow would have made the
15 subject cow visible at the time of the incident that is the subject of the Complaint on file
16 herein.
17

18
19
20 The Order striking answer and counterclaim, of course, arose from Kuehn's repeated
21 failure, even in the face of contempt citations and sanctions to respond to discovery.

22 The order for partial summary judgment established defendant's liability in this matter,
23 and the order striking answer and counterclaim left the defendants in the position of default.
24

25 II. 26 Authorities

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

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

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

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

13 III. 14 Clearly Erroneous

15
16 Plaintiff achieved victory in this matter due to Kuehn's failure to deny requests for
17 admission. The essential subject matter of which established liability and provided that the area of
18 highway on which the accident occurred in this case was **not** open range. It was further
19 established, through failure to deny, that defendant failed in her responsibility to attached
20 reflective strips to her cows, as is the custom in that part of Nye County.

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

27 ¹ This 8th Circuit decision was cited by the Supreme Court in Masonry and Tile Contractors v. Jolley 113 Nev.
28 737, 941 P 2d 486, 489 (1997) ; in holding that the District Court properly granted reconsideration of a previously
decided issue that was clearly erroneous.

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

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

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

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

17 IV. 18 Manifest Injustice

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

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

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

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

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

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

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

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

26 V.
27 Conclusions

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

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

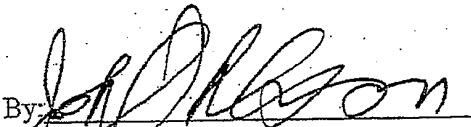
3 Because Susan Fallini's lawyer failed to communicate with her, she had no idea that the case
4 was proceeding down its disastrous path. Because she had been told by her lawyer that the case
5 had been taken care of, she reasonably believed that it was over with and did not concern herself
6 with it.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

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

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

14 Dated this 2 day of July, 2010.

16 **BOWEN HALL OHLSON & OSBORNE**

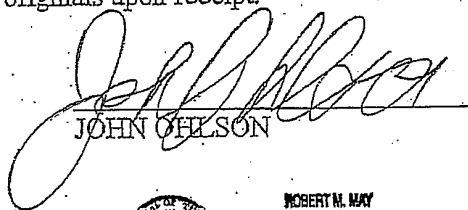
17
18 By: 
19 John Ohlson, Esq.
20 Bar Number 1672
21 555 S. Center Street
22 Reno, Nevada 89501
23 Telephone: (775) 323-8678
24
25
26
27
28

AFFIDAVIT OF JOHN OHLSON, ESO.

STATE OF NEVADA)
)ss.
COUNTY OF WASHOE)

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

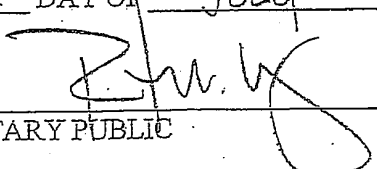
1. Affiant has been licensed to practice law in Nevada since September 1972, and is one of the lawyers representing defendant Susan Fallini;
2. Affiant personally interviewed Susan Fallini, Joe Fallini, Chris Call, and Tony Lesperance for the purposes of preparing their affidavits for this motion.
3.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


JOHN OHLSON



ROBERT N. MAY
NOTARY PUBLIC
STATE OF NEVADA
MY COMMISSION EXPIRES: 8-12-2012
COMMISSION NO: 04-81310-2

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


NOTARY PUBLIC

Initials _____

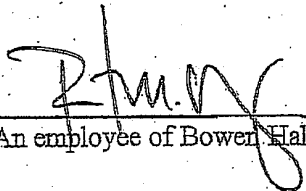
CERTIFICATE OF SERVICE

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

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

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

DATED this 2 day of July, 2010.


An employee of Bowen Hall

SCHEDULE OF EXHIBITS

EXHIBIT 1: Correspondence from Gilbert Garcia

EXHIBIT 2: Affidavit of Susan Fallini

EXHIBIT 3: Affidavit of Joe Fallini

EXHIBIT 4: Affidavit of Chris Call

EXHIBIT 5: Affidavit of Tony Lesperance

EXHIBIT 1

EXHIBIT 1



STATE OF NEVADA
OFFICE OF THE ATTORNEY GENERAL

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

CATHERINE CORTEZ MASTO
Attorney General

KEITH G. MUNRO
Assistant Attorney General

JIM SPENCER
Chief of Staff

June 21, 2010

VIA U.S. Mail

Joe Fallini
HC 76 Box 1100
Tonopah, NV 89049

Re: State Route 375, Open Range

Dear Mr. Fallini:

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

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

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

Sincere Regards,

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

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

cc: Steve Baer, Assistant District Engineer

EXHIBIT 2

EXHIBIT 2

AFFIDAVIT OF SUSAN FALLINI

STATE OF _____ }
COUNTY OF _____ } ss.

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

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

Initials _____

6. Had affiant known of the discovery requests made by plaintiff, affiant would have responded as required by law. Affiant would have denied the requests for admissions served herein.

7. The area of the accident is open range, and was at the time of the accident. The roadway is posted by the Nevada Department of Transportation as such. There is not, and never has been a custom or practice of cattle ranchers in Nye County to affix their cattle with luminescent or reflective devices of any kind. Affiant has ranched in Nye County for many years and has never even heard of such custom or practice.

8. There is no insurance coverage applicable to plaintiff's claim.

SUSAN FALLINI

SUBSCRIBED AND SWORN TO THIS
DAY OF _____, 2010.

NOTARY PUBLIC

EXHIBIT 3

EXHIBIT 3

AFFIDAVIT OF JOE FALLINI

STATE OF _____)
COUNTY OF _____) ss.

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

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

JOE FALLINI

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

NOTARY PUBLIC

Initials _____

EXHIBIT 4

EXHIBIT 4

AFFIDAVIT OF CHRIS CALL

STATE OF _____)
COUNTY OF _____) ss.

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

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

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Initials _____

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6. I called in this matter, I will testify consistently herewith.

CHRIS CALL

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

NOTARY PUBLIC

EXHIBIT 5

EXHIBIT 5

AFFIDAVIT OF TONY LESPERANCE

STATE OF _____ }
COUNTY OF _____ } ss.

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

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

TONY LESPERANCE

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

NOTARY PUBLIC

Initials _____

EXHIBIT 3

EXHIBIT 3

1 CASE NO. CV 31449

2 DEPT. NO. 1

FILED

2011 JAN 31 P 12:01
C. Uribe

NYE COUNTY CLERK
BY DEPUTY

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

9 **SUSAN FALLINI, and JOE FALLINI**

10 **Plaintiffs,**

11 **vs.**

COMPLAINT FOR DECLARATORY
RELIEF

12 **THE HONORABLE ROBERT W. LANE,**
13 **TONY ADAMS, JUDITH ADAMS,**
14 **JOHN P. ALDRICH, ESQ.,**
HAROLD KUEHN, ESQ., and Does I through V,
jointly and severally,

15 **Defendants.**
16

17 COMES NOW, Plaintiffs SUSAN FALLINI and JOE FALLINI, by and through their attorneys Jeff
18 Kump, Esq., of the law firm of Marvel & Kump, Ltd., of Elko, Nevada, and John Ohlson, Esq. of Reno,
19 Nevada, and complain for Declaratory Relief against the Defendants, THE HONORABLE ROBERT W.
20 LANE, TONY ADAMS, JUDITH ADAMS, JOHN P. ALDRICH, ESQ. and HAROLD KUEHN, ESQ.,
and allege as follows.

21 **Nature of the Action**

22 1. Plaintiffs, SUSAN FALLINI and JOE FALLINI, seek a declaration that a judgment entered
23 against them in the total sum of \$2,730,884.85, in the matter of Estate of MICHAEL DAVID ADAMS, By
24 and through his mother JUDITH ADAMS, Individually and on behalf of the Estate vs. SUSAN FALLINI,
25 case number CV24539, Department 2, in the Fifth Judicial District Court of Nevada, is null, void and of no
26 effect, and should be set aside and vacated. Said judgment was entered here on August 12, 2010, a copy of
27 which is attached hereto as Exhibit 1.
28

MARVEL & KUMP
Attorney at Law
217 Idaho Street
Elko, NV 89801

1 Parties

2 2. That at all times mentioned herein, Plaintiffs, Susan Fallini and Joe Fallini, husband and wife,
3 were residents of the State of Nevada.

4 3. That at all times mentioned herein, Defendants, Robert Lane, John Aldrich, and Harold
5 Kuehn, were officers of the court of the State of Nevada, and residents of said State.

6 4. On information and belief, that Defendants Judith Adams and Tony Adams, are residents of
7 the State of California.

8 General Allegations

9 5. That on or about January 31, 2007 a Complaint was filed, naming Susan Fallini as the
10 Defendant, that alleged negligence resulting in the death of Michael Adams. Fallini promptly
11 retained a local attorney, Defendant Harry Kuehn and an Answer and Counterclaim was filed on March 14,
12 2007 together with an Objection to Pahrump as Forum and Motion to have Matter Heard in Tonopah.
13 Defendant John Aldrich opposed Defendant's Motion to have the Matter Heard in Tonopah and the
14 information in the responsive pleading misinformed the Court that Defendant "lives equally distant between
15 Pahrump and Tonopah in the Armagosa Valley..." Counsel for Fallini, Harold Kuehn of Gibson & Kuehn,
16 failed to correct the false statement and the Court denied Fallini's motion regarding change of venue.

17 6. That on or about June 14, 2007 a Early Case Conference was scheduled and on June 15, 2007
18 all parties attended. On October 23, 2007 Plaintiff filed Plaintiff's and Counter-Defendant's Case
19 Conference Report that was not signed by Susan Fallini's Counsel.

20 7. That on or about October 31, 2007, Adams sent counsel for Fallini written discovery
21 requests, including Requests for Admission, Requests for Production of Documents, and Interrogatories.
22 Counsel for Fallini did not respond.

23 8. That on or about April 7, 2008 Adams filed a Motion for Partial Summary Judgment alleging
24 that on October 31, 2007 Fallini was served with written discovery requests, including Requests for
25 Admission, Requests for Production of Documents, and Interrogatories. Again counsel for Fallini did not
26 respond. On July 30, 2008, the Court issued an Order Granting Adam's Motion for Partial Summary
27 Judgment. Notice of Entry of Order was filed on August 15, 2008.

28 9. That on or about July 14, 2008 there was a hearing before the Honorable Robert W. Lane.

MARVEL & KUMP
Attorney at Law
217 Idaho Street
Elko, NV 89801

1 Adam's counsel, John P. Aldrich was present but Fallini's counsel was not present, the Court having entered
2 its Order Granting Plaintiff's Motion for Partial Summary Judgment on July 29, 2008 containing fourteen
3 separate findings of fact and the following Conclusions of Law:

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

14 10. On September 22, 2008, Adams filed a Motion to Reopen Discovery and for an Extension
15 of Time to Complete Discovery for the purpose of retaining an expert and establishing an opinion as to
16 decedent's lost earning capacity.

17 11. That on or about March 23, 2009 Adams filed a Motion to compel Fallini's Production of
18 Documents. Plaintiff alleged that "to this date, Fallini has not produced any responses of any kind to
19 Plaintiff's written discovery requests." Adams alleged that he had sent letters to Fallini's attorney that went
20 unanswered and made phone calls to Fallini's attorney that also went without return call.

21 12. That on or about April 27, 2009 the Court heard Adams' Motion to Compel Defendant's
22 Production of Documents. Fallini's attorney, Kuehn, attended the hearing and did not oppose Adams' motion
23 to compel and in fact agreed at the hearing it was warranted. Mr. Kuehn provided no explanation as to why
24 he had failed to respond to all discovery requests.

25 13. That on or about May 18, 2009 Adams filed a Request for Trial Setting and the Order to Set
26 Trial was filed May 20, 2009.

27 14. That on or about June 16, 2009 Adams filed a Motion to Strike Defendant's Answer and
28 Counterclaim.

MARVEL & KUMP
Attorney at Law
217 Idaho Street
Elko, NV 89801

1 15. That on or about July 13, 2009 Fallini's Counsel filed an Opposition to Adams' Motion to
2 Strike Defendant's Answer and Counterclaim in favor of a monetary sanction against Defendant's counsel.

3 Mr. Kuehn wrote: "The discovery non-compliance set out in plaintiff's motion is absolutely not the fault
4 of the party and the blame should be attributed to counsel in full."

5 16. The Court denied Plaintiff's Motion to Strike Defendant's Answer and Counterclaim by
6 Order dated July 17, 2009. The court sanctioned Mr. Kuehn \$1,000.00, ordered discovery completed by
7 August 12, 2009 or the Court would grant Plaintiff's Motion to Strike.

8 17. That on or about August 31, 2009 Adams filed an Ex Parte Motion for Order to Show Cause
9 Why Defendant Susan Fallini and Her Counsel Should Not Be Held In Contempt of Court. Plaintiff alleged
10 that "to date, Defendant has failed to comply with the order of this Honorable Court and respond to
11 Plaintiff's discovery requests. Defendant's counsel has paid the \$1,750 in sanctions as ordered by the
12 Court."

13 18. By Order dated September 1, 2009 the Court ordered Susan Fallini and her counsel to appear
14 September 28, 2009 at 9:00 a.m. Susan Fallini did not appear. John P. Aldrich, Counsel for Plaintiff, and
15 Mr. Kuehn for Defendant appeared in chambers. The Court ordered that Defense counsel had until October
16 12, 2009 to comply with the Court Order Granting Plaintiff's counsel John P. Aldrich's Motion to Compel
17 and if Defendant failed to do so the Court would strike defendant's pleadings in their entirety and Defense
18 counsel would be held in contempt and fined \$150 per day until the information was provided.

19 19. Defense counsel, Mr. Kuehn, did not comply as ordered. On November 4, 2009 the Court struck
20 the Defendant's answer and counterclaim and held defendant's counsel, Mr. Kuehn, in contempt. Notice
21 of Entry of Order was filed on November 9, 2009.

22 20. Default was filed on February 4, 2010; Notice of Entry of Default was filed February 11,
23 2010.

24 21. That on or about April 7, 2010 Plaintiff's counsel John P. Aldrich filed an Ex Parte Motion
25 for Order to Show Cause Why Defendant Susan Fallini and Her Counsel Should Not Be Held In Contempt
26 of Court and Possible Sanctions be Imposed. Plaintiff's counsel John P. Aldrich suggested that the Court
27 refer this matter to the State Bar and that the Court impose stiff sanctions: \$5,000 immediately and \$500 per
28 day until Defendant complies and "if both Defendant and her counsel are not present in Court, Plaintiff will

MARVEL & KUMP
Attorney at Law
217 Idaho Street
Elko, NV 89801

1 request that the Court issue a bench warrant until Defendant complies."

2 22. By Order dated April 19, 2010 the Court ordered Susan Fallini and her counsel to appear May
3 24, 2010 at 9:00 a.m.

4 23. That on May 24, 2010 Plaintiff's counsel John P. Aldrich and Thomas Gibson on behalf of
5 Fallini appeared for hearing. As with the prior Orders, neither Fallini nor her counsel responded. Mr.
6 Gibson indicated he had not seen the file and provided no valid excuse. Mr. Gibson made specific
7 representations to the Court that "the client, Defendant Susan Fallini, was unaware of the status of this case."

8 24. On June 24, 2010 Plaintiff filed an Application for Default Judgment against Fallini.
9 On July 6, 2010, Defendant Fallini, through new counsel, filed a Motion for Leave to file a Motion for
10 Reconsideration of prior orders. A Hearing was held on July 19, 2010, wherein Defendant's Motion for
11 Reconsideration was Denied. Further, Defendant Fallini was left in a position of default. The Court entered
12 its Order After Hearing on August 12, 2010 and awarded damages to Plaintiff and judgment was entered
13 therein.

14 **Defendant Kuehn**

15 25. Plaintiffs reallege and incorporate by reference all preceding paragraphs as though fully set
16 forth herein.

17 26. "The rule that attorney's negligence may be imputed to his client and prevent the latter from
18 relying on that ground for opening or vacating a judgment does not necessarily prevail in the event of the
19 attorney's abandonment or withdrawal from the case." (114 ALR 279 (1938); St. John Medical Center v.
20 Brown, 125 P.3d 700 (OKLA 2005); Yusem v. Butler, 683 So. 2d 1170 (FLA 1996); Myers v. All West
21 Transport, 766 P. 2d 864 (MT 1988); Boeckmann v. Smith, 189 S.W. 2d 449 (MO 1945); Stub v. Harrison,
22 96 P.2d 979 (CA. 1939).

23 27. The Defense counsel, Mr. Kuehn's action, providing no notice to his client was one of wilful
24 abandonment.

25 28. Defense counsel, Mr. Kuehn, secreted himself and his failure to act was a circumstance
26 beyond the control of his client, Mrs. Fallini.

27 29. Plaintiff's counsel John P. Aldrich took advantage of the defense attorney's failures.

28 30. The record also reflects that despite being ordered to produce his client, defense counsel, Mr.

MARVEL & KUMP
Attorney at Law
217 Idaho Street
Elko, NV 89801

1 Kuehn, refused, and neglected to do as a further act of abandonment.

2 31. Mrs. Fallini was not aware that a single hearing was held or that there was even a single
3 discovery request.

4 32. Under the rare circumstances of this case, Mrs. Fallini should not be charged with the conduct
5 of her counsel. This was a gross dereliction of duty and consequences should not have been directed to the
6 innocent client. Mrs. Fallini was, in effect, not represented by counsel in the underlying proceedings.

7 **Defendant Aldrich**

8 33. Plaintiffs reallege and incorporate by reference all preceding paragraphs as though fully set
9 forth herein.

10 34. Plaintiff's counsel John P. Aldrich misinformed the Court, of the specifics as set forth herein
11 in Paragraph 9 verbatim, in clear violation of SCR 172, and NRCp 11.

12 35. Plaintiff's counsel John P. Aldrich's pleadings and motions, as set forth herein
13 in Paragraph 9 verbatim, to which the Court relied, contained allegations that were false, misleading, and/or
14 have no evidentiary support, in violation of Nevada law.

15 36. NRCp 11 provides that by presenting pleadings and written motions and attorney is certifying
16 that to the best of the person's knowledge, information, and belief, formed after an inquiry reasonable under
17 the circumstances, the allegations and other factual contentions have evidentiary support.

18 37. On or about October 31, 2007, Plaintiff's counsel John P. Aldrich sent Defense counsel, Mr.
19 Kuehn written discovery requests, including Requests for Admission, Requests for Production of
20 Documents, and Interrogatories. As expected, Mr. Kuehn did not respond, and on April 7, 2008 Plaintiff's
21 counsel John P. Aldrich filed a Motion for Partial Summary Judgment alleging that Requests for Admissions
22 not being answered must be deemed admitted.

23 38. The following alleged material facts are false, misleading, and have no evidentiary support,
24 but were deemed admitted by the Court for defense counsel's failure to respond:

25 a. Fallini's property is not located within an "open range" as it is defined in NRS 568.355;
26
27
28

MARVEL & KUMP
Attorney at Law
217 Idaho Street
Elko, NV 89801

1 b. It is the common practice of Nye County, Nevada ranchers to mark their cattle with reflective or
2 luminescent tags;¹

3 39. There is no evidentiary support for the facts put forward by Plaintiff that Fallini's property
4 is not located within an "open range" as it is defined in NRS 568.355 and that it is the common practice of
5 Nye County, Nevada ranchers to mark their cattle with reflective or luminescent tags. At all times herein,
6 defendant Aldrich acted on behalf of his clients, defendants Tony and Judith Adams.

7 **Defendant Lane**

8 40. Plaintiffs reallege and incorporate by reference all preceding paragraphs as though fully set
9 forth herein.

10 41. Whenever any officer of the Court commits fraud during a proceeding in the court, he/she
11 is engaged in "fraud upon the court." In Bullock v. United States, 763 F.2d 1115, 1121 (10th Cir. 1985), the
12 Court stated "Fraud upon the court is fraud which is directed to the judicial machinery itself and is not fraud
13 between the parties or fraudulent documents, false statements or perjury. . . . It is where the court or a
14 member is corrupted or influenced or influence is attempted or where the judge has not performed his
15 judicial function - - - thus where the impartial function of the court have been directly corrupted."

16 42. The Supreme Court has ruled and has reaffirmed the principle that "justice must satisfy the
17 appearance of justice", Levine v. United States, 362 U.S. 610, 80 S.Ct. 1038 (1960), citing Offutt v. United
18 States, 348 U.S. 11, 14, 75 S.Ct. 11, 13 (1954).

19 43. The court failed to follow the law as to notice with respect to non-represented litigants.

20 44. The court accepted the statements made by plaintiff as true, knowing the statement to be false,
21 in granting the plaintiff's motion for summary judgment.

22 45. The Court relied on defendant's alleged facts, false facts, that were deemed admitted for
23 defense counsel's failure to respond in granting Plaintiff's Motion for Summary Judgment.

24 46. The judge failed to perform his judicial functions in the underlying matter herein, and in so
25 failing violated The Nevada Code of Judicial Conduct in the following particulars:
26
27

28 ¹ Also, When Defendant initially moved for the matter to be heard in Tonopah, Plaintiff misinformed the Court that Defendant lived in "Armagosa Valley."

- 1 a. Rule 2.5 Competence, Diligence, and Copperarion, in that Judge Lane failed to act
2 competently and diligently in the face of obvious dereliction of Attorney Kuehn;
- 3 b. Rule 2.6 Ensuring the Right to be Heard. When it became obvious that Attorney
4 Kuehn had abandoned his client, plaintiff Fallini, Judge Lane failed to employ the
5 resources available to him in suspending Kuehn from practice before him, and
6 notifying plaintiff;
- 7 c. Rule 2.16 Responding to Judicial and Lawyer Misconduct by failing to notify the
8 appropriate authority regarding Kuehn's misconduct, dereliction, and abandonment
9 of plaintiffs.

10 47. All of the foregoing resulted in a miscarriage of justice, and the resultant void judgment
11 against plaintiff.

12 Conclusions

13 48. Accordingly, a real, substantial, and justiciable controversy has arisen, and now exists
14 between plaintiffs and defendants, which controversy is subject to resolution by this Court.

15 49. Based on the foregoing, plaintiffs are entitled to a declaration that the judgment against them,
16 as described herein, is null, void, and of no effect.

17 WHEREFORE, Plaintiffs pray for a judgment as follows:

18 1. That the judgement against plaintiff in the total sum of \$2,730,884.85, in the matter of Estate
19 of MICHAEL DAVID ADAMS, By and through his mother JUDITH ADAMS, Individually
20 and on behalf of the Estate vs. SUSAN FALLINI, case number CV24539, Department 2, in
21 the Fifth Judicial District Court of Nevada, is null, void, and of no effect;

22 2. For attorneys' fees, costs, and disbursements incurred by Plaintiffs herein;

23 ///

24 ///

25 ///

26 ///

27

28

MARVEL & KUMP
Attorney at Law
217 Idaho Street
Elko, NV 89801

1 3. For such additional and further relief as this Court deems just and proper.

2 **AFFIRMATION**
3 **Pursuant to NRS 239B.030**

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

6
7 DATED this 27th day of January, 2011.

8
9
10 By 

11 John Ohlson, Esq.
12 Bar Number 1672
13 275 Hill Street, Suite 230
14 Reno, Nevada 89501
15 Telephone: (775) 323-2700

16 Jeff Kump, Esq.
17 Bar Number 5694
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22 *Attorneys for Plaintiffs*

23
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26
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MARVEL & KUMP
Attorney at Law
217 Idaho Street
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SCHEDULE OF EXHIBITS

EXHIBIT 1: August 12, 2010 Order

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Attorney at Law
217 Idaho Street
Elko, NV 89801

EXHIBIT 4

EXHIBIT 4

1 CASE NO. CV-31449

2 DEPT. I

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4
5
6 IN THE FIFTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

7 IN AND FOR THE COUNTY OF NYE

8
9 SUSAN FALLINI and JOE FALLINI,

10 Plaintiffs,

ORDER

11 vs.

12 THE HONORABLE ROBERT W. LANE,
13 TONY ADAMS, JUDITH ADAMS, JOHN P.
ALDRICH, ESQ., HAROLD KUEHN, ESQ.,
and Does I through V, jointly and severally,

14 Defendants.

15
16 The Motion to Dismiss made by the HON. ROBERT W. LANE, Defendant, having come
17 before the court for decision, the court having reviewed the presentments of the parties and
18 having heard argument in open court in Tonopah, Nevada, on June 6, 2011, and the Court
19 deeming itself fully advised in the premises and good cause appearing;

20 IT IS HEREBY ORDERED that the Motion to Dismiss should be, and hereby is,
21 GRANTED. Judges cannot be sued for their judicial acts and are entitled to absolute immunity.
22 *Mireles v. Waco*, 502 U.S. 9, 9 and 11(1991), *Stump v. Sparkman*, 435 U.S. 349, 355-56
23 (1978). Cf. *Marvin v. Fitch*, 126 Nev. ___, 232 P.3d 425, 429 (2010) ("[a]bsolute immunity
24 protects judicial officers from collateral attack and recognizes that appellate procedures are the
25 appropriate method of correcting judicial error").

26 ///

27 ///

28 ///

1 Accordingly, dismissal is appropriate pursuant to NRCF 12(b)(1) and 12(b)(5).

2 DATED this 5th day of July, 2011.

3
4
5 
6 Justice Miriam Shearing

7
8 RESPECTFULLY SUBMITTED BY:
9 CATHERINE CORTEZ MASTO
10 Attorney General
11 C. WAYNE HOWLE
12 Solicitor General
13 WHowle@ag.nv.gov
14 Nevada State Bar #3443
15 100 North Carson Street
16 Carson City, Nevada 89701-4717
17 Telephone: (775) 684-1227
18 Facsimile: (775) 684-1108
19 Attorneys for Honorable Robert Lane
20
21
22
23
24
25
26
27
28

CERTIFICATE OF SERVICE

I hereby certify that I am an employee of the State of Nevada, Office of the Attorney General, and that on the 14th day of June 2011, I served a true and correct copy of the foregoing proposed Order by mailing said document via the United States Postal Service first class mail and, properly addressed with postage prepaid, to the following:

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

and via Reno/Carson Messenger Service to:

*John Ohlson, Esq.
275 Hill Street, Ste. 230
Reno, Nevada 89501*

and via email delivery to:

*Honorable Robert W. Lane
rlane@co.nye.nv.us*

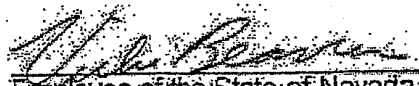

Employee of the State of Nevada
Office of the Attorney General

EXHIBIT 5

EXHIBIT 5



1601 S. Rainbow Blvd. Suite 160
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John P. Aldrich *

Catherine Hernandez
Matthew D. Spring

* Also admitted in Utah and Idaho

June 20, 2011

Nye County Court
County Clerk
PO Box 1031
Tonopah, Nevada 89049

Re: Fallini ve Adams
Case No.: CV31449
Dept. 1

Ladies/Gentlemen:

Enclosed please find the original and two copies of the 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 NRCF 11 for the above-listed case. The Order needs to be signed by the Judge and then filed. A self-addressed, stamped envelope is enclosed for the return of the filed copies.

If you have any questions, please contact our office.

Kindest regards,

ALDRICH LAW FIRM, LTD.

Eleanor Engebretson
Assistant to John P. Aldrich

1 ORDR

John P. Aldrich, Esq.

2 Nevada State Bar No. 6877

ALDRICH LAW FIRM, LTD.

3 1601 S. Rainbow Blvd., Suite 160

Las Vegas, Nevada 89146

4 (702) 853-5490

Attorneys for John P. Aldrich

5 and Tony and Judith Adams

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

9 SUSAN FALLINI, and JOE FALLINI,

10 Plaintiffs,

11 v.

12 THE HONORABLE ROBERT W.
13 LANE, TONY ADAMS, JUDITH ADAMS,
14 JOHN P. ALDRICH, ESQ., HAROLD
KUEHN, ESQ.; DOES I through V, jointly and
severally,

15 Defendants.
16

Case No.: CV31449

Dept. No.: 1

17 ORDER GRANTING DEFENDANTS TONY ADAMS, JUDITH ADAMS, AND JOHN P.
18 ALDRICH, ESQ.'S MOTION TO DISMISS AND ORDER DENYING DEFENDANTS TONY
19 ADAMS, JUDITH ADAMS, AND JOHN P. ALDRICH, ESQ.'S MOTION FOR SANCTIONS
20 PURSUANT TO NRCPII

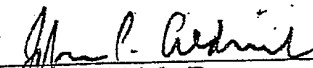
21 THESE MATTERS having come on for hearing on Monday, June 6, 2011, on Defendants Tony
22 Adams, Judith Adams, and John P. Aldrich, Esq.'s Motion to Dismiss and Motion for Sanctions before
23 the Honorable Miriam Shearing, and John P. Aldrich, Esq., of Aldrich Law Firm, Ltd., appearing on
24 behalf of himself and Defendants Tony Adams and Judith Adams, John Ohlson, Esq., and Jeffrey Kump,
25 Esq., appearing on behalf of Plaintiffs, Susan Fallini and Joe Fallini, the court having reviewed all
26 pleadings and papers on file herein, arguments heard from Plaintiffs' counsel, and good cause appearing
therefore:

1 IT IS HEREBY ORDERED that Defendants Tony Adams, Judith Adams, and John P. Aldrich,
2 Esq.'s Motion to Dismiss is GRANTED, and this case shall be dismissed as against all Defendants.


3 IT IS FURTHER ORDERED that Defendants Tony Adams, Judith Adams, and John P. Aldrich,
4 Esq.'s Motion for Sanctions is DENIED.

5
6 DISTRICT COURT JUDGE

7
8 Submitted by:

9 
10 John P. Aldrich, Esq.
ALDRICH LAW FIRM, LTD.
11 Nevada Bar No.: 6877
1601 S. Rainbow Blvd., Suite 160
12 Las Vegas, Nevada 89146
(702) 853-5490
13 Attorney for Defendants John P. Aldrich,
Tony Adams and Judith Adams

14
15 Approved as to form and content:

16 
17 John Giffon, Esq.
275 Hill Street, Suite 230
18 Reno, NV 89501
Attorneys for Plaintiffs
19 Susan Fallini and Joe Fallini

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 20th day of June, 2011, I mailed a copy of the 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 NRCP11 in a sealed envelope, to the following and that postage was fully paid thereon:

Jeffrey Kump, Esq.
Marvel & Kump
217 Idaho Street
Elko, Nevada 89801

John Ohlson, Esq.
275 Hill Street, Suite 230
Reno, NV 89501

State of Nevada Attorney General's Office
Solicitor General
Appellate Division
100 North Carson Street
Carson City, Nevada 89701


Employee of Aldrich Law Firm, Ltd.

EXHIBIT 6

EXHIBIT 6



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John P. Aldrich *

Catherine Hernandez
Christopher K. Lezak**

* Also admitted in Utah and Idaho
** Also admitted in California

September 24, 2013

Nye County Clerk
Nye County Court
1520 E. Basin Avenue
Pahrump, NV 89060

Re: Case No. CV31449
Dept. 1

Ladies/Gentlemen:

Enclosed please find the original and 2 copies of an 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 for Case No. CV31449. This was previously submitted on June 20, 2011 but for some reason the Judge did not sign it. Both counsel have resigned the document.

I am enclosing an envelope in which to return all copies.

If you have any questions, please contact our office.

Kindest regards,

ALDRICH LAW FIRM, LTD.

Eleanor Engebretson, Assistant to
John P. Aldrich

1 **ORDR**
2 John P. Aldrich, Esq.
3 Nevada State 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 *Attorneys for John P. Aldrich*
9 *and Tony and Judith Adams.*

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

SUSAN FALLINI, and JOE FALLINI,

Plaintiffs,

v.

THE HONORABLE ROBERT W.
LANE, TONY ADAMS, JUDITH ADAMS,
JOHN P. ALDRICH, ESQ., HAROLD
KUEHN, ESQ. ; DOES I through V, jointly and
severally,

Defendants.

Case No.: CV31449
Dept. No.: 1

**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 NRCPII**

THESE MATTERS having come on for hearing on Monday, June 6, 2011, on Defendants Tony Adams, Judith Adams, and John P. Aldrich, Esq.'s Motion to Dismiss and Motion for Sanctions before the Honorable Miriam Shearing, and John P. Aldrich, Esq., of Aldrich Law Firm, Ltd., appearing on behalf of himself and Defendants Tony Adams and Judith Adams, John Olson, Esq., and Jeffrey Kump, Esq., appearing on behalf of Plaintiffs, Susan Fallini and Joe Fallini, the court having reviewed all pleadings and papers on file herein, arguments heard from Plaintiffs' counsel, and good cause appearing therefore:

1 IT IS HEREBY ORDERED that Defendants Tony Adams, Judith Adams, and John P. Aldrich,
2 Esq.'s Motion to Dismiss is GRANTED, and this case shall be dismissed as against all Defendants.


3 IT IS FURTHER ORDERED that Defendants Tony Adams, Judith Adams, and John P. Aldrich,
4 Esq.'s Motion for Sanctions is DENIED.

DISTRICT COURT JUDGE

8 Submitted by:

9 John P. Aldrich
10 John P. Aldrich, Esq.
ALDRICH LAW FIRM, LTD.
11 Nevada Bar No.: 6877
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12 Las Vegas, Nevada 89146
(702) 853-5490
13 *Attorney for Defendants John P. Aldrich,
Tony Adams and Judith Adams*

15. Approved as to ~~form~~ and ~~content~~:

16 
17 John Olson, Esq.
18 275 Hill Street, Suite 230
19 Reno, NV 89501
Attorneys for Plaintiffs
Susan Fallini and Joe Fallini

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 24th day of September, 2013, I mailed a copy of the ORDER GRANTING DEFENDANTS TONY ADAMS, JUDITH ADAMS, AND JOHN P. ALDRICH, ESO.'S MOTION TO DISMISS AND ORDER DENYING DEFENDANTS TONY ADAMS, JUDITH ADAMS, AND JOHN P. ALDRICH, ESO.'S MOTION FOR SANCTIONS PURSUANT TO NRCP11 in a sealed envelope, to the following and that postage was fully paid thereon:

Jeffrey Kump, Esq.
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John Ohlson, Esq.
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State of Nevada Attorney General's Office
Solicitor General
Appellate Division
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Carson City, Nevada 89701

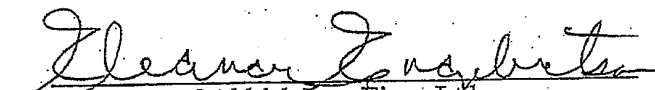

Employee of Aldrich Law Firm, Ltd.

EXHIBIT 7

EXHIBIT 7

1
2 IN THE SUPREME COURT OF THE STATE OF NEVADA
3

4 SUSAN FALLINI,

Supreme Court No.: 56840

5
6 Appellant,

7 vs.

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

11 Respondent.
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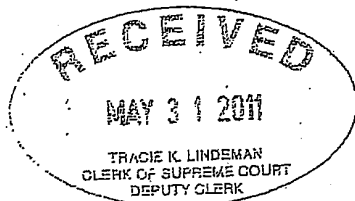
BY _____
DEPUTY CLERK

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

APPELLANTS' OPENING BRIEF

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Jeff Kump, Esq.
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Counsel for Appellants



1
2 IN THE SUPREME COURT OF THE STATE OF NEVADA
3

4 SUSAN FALLINI,

Supreme Court No.: 56840

5
6 Appellant,

7 vs.

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

11 Respondent.
12
13

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

17 APPELLANTS' OPENING BRIEF
18
19

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Counsel for Appellants

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4	<i>City of Los Angeles, Harbor Div. v. Santa Monica Baykeeper</i> , 254 F.3d 882, 885 (9th Cir.2001).....	12
5	<i>Cornea v. Wilcox</i> , 898 P.2d 1379, 1386 (Utah 1995).....	19
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13	<i>Rees v. Intermountain Health Care, Inc.</i> , 808 P.2d 1069, 1072 (Utah 1991).....	19
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IN THE SUPREME COURT OF THE STATE OF NEVADA

SUSAN FALLINI,

Supreme Court No.: 56840

Appellant,

vs.

APPELLANT'S
OPENING BRIEF

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

Respondent.

Pursuant to NRAP 28(a), Appellant, Susan Fallini, hereby submits Appellant's Opening Brief:

JURISDICTIONAL STATEMENT

An aggrieved party may take an appeal from a "final judgment entered in an action or proceeding . . ." NRAP 3A(b)(1). A final judgment in an action or proceeding is essentially one that disposes of the issues presented in the case, determines the costs, and leaves nothing for future consideration of the court. *Alper v. Posin*, 77 Nev. 328, 344 P.2d 676 (1959). When no further action of the court is required in order to determine the rights of the parties in the action the order or judgment is final; when the case is retained for further action, it is interlocutory. *Perkins v. Sierra Nevada Silver Mining Co.*, 10 Nev. 405 (1876).

On August 12, 2010, the Fifth Judicial District Court of the State of Nevada entered an Order After Hearing, denying Defendant's Motion for Reconsideration, granting the Plaintiff damages in the principal amount of \$1,000,000 for grief, sorrow and loss of support together with damages for future lost earnings in the amount of \$1,640,696, attorney's fees in the amount of \$50,000, sanctions in the amount of \$35,000 and funeral expenses in the amount for \$5,188.85, and cancelling the trial that had been scheduled (*See* Order After Hearing entered August 12, 2010, Jt. Appx. II, 222-225¹). All

¹ References to pages in Joint Appendix will be in the form "Jt. Appx. [volume].[page(s)]". Thus "Jt. Appx. II, 222-225", above, refers to volume II, pages 222-225, in Appellants' Appendix.

IN THE SUPREME COURT OF THE STATE OF NEVADA

SUSAN FALLINI,

Supreme Court No.: 56840

Appellant,

vs.

APPELLANT'S
OPENING BRIEF

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

Respondent.

Pursuant to NRAP 28(a), Appellant, Susan Fallini, hereby submits Appellant's Opening Brief:

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An aggrieved party may take an appeal from a "final judgment entered in an action or proceeding . . ." NRAP 3A(b)(1). A final Judgment in an action or proceeding is essentially one that disposes of the issues presented in the case, determines the costs, and leaves nothing for future consideration of the court. *Alper v. Posin*, 77 Nev. 328, 344 P.2d 676 (1959). When no further action of the court is required in order to determine the rights of the parties in the action the order or judgment is final; when the case is retained for further action, it is interlocutory. *Perkins v. Sierra Nevada Silver Mining Co.*, 10 Nev. 405 (1876).

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¹ References to pages in Joint Appendix will be in the form "Jt. Appx. [volume],[page(s)]". Thus "Jt. Appx. II, 222-225", above, refers to volume II, pages 222-225, in Appellants' Appendix.

1 other issues had been resolved previously in this case through the entry of partial
2 summary judgment, the striking of Susan Fallini's Answer and Counterclaim and entry of
3 a default. Jt. Appx. II, 55-57, 26-31, and 41-42.

4 NRAP 4 requires that "the notice of appeal required by Rule 3 shall be filed with
5 the district court clerk . . . after entry of a written judgment or order, and no later than 30
6 days after the date that written notice of entry of the judgment or order appealed from is
7 served." NRAP 4(a). On August 18, 2010, Plaintiff, Estate of Michael David Adams, by
8 and through his mother Judith Adams, Individually and on behalf of the Estate
9 (hereinafter Adams) filed a Notice of Entry of Order, which was mailed to Susan Fallini
10 (hereinafter Fallini) on August 17, 2010. Fallini filed her Notice of Appeal and Case
11 Appeal Statement on September 10, 2010.

12 This court may properly hear this matter as the District Court's August 12, 2010,
13 Order After Hearing was a final judgment as defined in NRAP 3A(b)(1) and *Alper v.*
14 *Posin, supra*, and a Notice of Appeal was properly filed September 10, 2010, along with a
15 Case Appeal Statement in conformance with NRAP 3, NRAP 3A(a) and NRAP 4.

16 ISSUES PRESENTED FOR REVIEW

- 17 (1) Whether the district court committed a reversible error in denying Defendant's
18 Motion for Reconsideration.
19 (2) Whether the district court erred in vacating the jury trial, and determining damages.
20 (3) Whether damages awarded by the district court were excessive, and without a legal
21 basis.

22 STATEMENT OF CASE

23 The action arose out of wrongful death claims asserted by Plaintiff, Adams against
24 Defendant, Fallini. Jt. Appx. I, 1-6. Michael David Adams (hereinafter Michael) was
25 driving his car on July 7, 2005, when he hit a cow owned by Fallini, and died. Jt. Appx. I,
26 3. The complaint was filed on January 31, 2007. Jt. Appx. I, 1. Fallini filed her Answer
27 and Counterclaim on March 14, 2007. Jt. Appx. I, 10. Soon after the Answer and
28 Counterclaim were filed, Fallini's attorney Harold Kuehn (hereinafter Kuehn) failed to

1 take further necessary action including the failure to respond to discovery requests such as
2 the request for admissions. Jt. Appx. II, 91-95.

3 As a result of Kuehn's failure to answer the requests for admissions, inaccurate
4 statements establishing Fallini's liability were deemed admitted. Jt. Appx. I, 55-57. On
5 July 30, 2008 the District Court entered an Order Granting Plaintiffs' Motion for Partial
6 Summary Judgment establishing Fallini's liability leaving only the issue of damages left
7 to be heard. Jt. Appx. I, 55-57. Notice of Entry of that Order was filed on August 15,
8 2008. Jt. Appx. I, 58-62. On June 16, 2009, Plaintiff moved to Strike Defendant's Answer
9 and Counterclaim, which Kuehn opposed requesting that the court "decline to strike the
10 answer and counterclaim in favor of imposing further monetary sanction against him." Jt.
11 Appx. I, 224-231. Kuehn declared to the Court that the discovery noncompliance was
12 "absolutely not the fault of the party and the blame should be attributed to counsel in full."
13 Jt. Appx. I, 226. On July 17, 2009, the Court denied Plaintiff's Motion to Strike
14 Defendant's Answer and Counterclaim. Jt. Appx. I, 232-233. However, on November 4,
15 2009, after repeatedly sanctioning Kuehn for his continued failure to respond to discovery
16 requests and orders, the Court entered a Findings of Fact, Conclusions of Law and Order
17 Striking Answer and Counterclaim of Defendant Fallini and Holding Defendant's
18 Counsel in Contempt of Court. Jt. Appx. II, 26-31. Notice of entry of that Order was filed
19 on November 9, 2009, and a Default was entered by the clerk of the court pursuant to that
20 Order on February 4, 2010. Jt. Appx. II, 32-33, 41.

21 On June 16, 2010, Fallini substituted counsel replacing Kuehn. Jt. Appx. II, 87-88.
22 On June 24, 2010, Adams filed an Application for Default Judgment Against Defendant
23 Susan Fallini. Jt. Appx. II, 89-129. This Motion was opposed that same day (See
24 Opposition, Jt. Appx. II, 130-132). Fallini then filed a Motion for Leave to File a Motion
25 for Reconsideration that Adams opposed. (See Motion for Reconsideration "MFR",
26 attached as Exhibit 1 thereto, Jt. Appx. II, 138-159) Adams' Application and Fallini's
27 Motion were heard on July 19, 2010, resulting in the final Order After Hearing entered
28 August 12, 2010, granting Adams' Application, denying Fallini's Motion, and granting

1 Adams a total of \$2,730,884.85 in damages and attorney's fees, which Fallini Appeals
2 from (See Order After Hearing entered August 12, 2010, Jt. Appx. II, 222-225).

3 RELEVANT FACTS

4 On July 7, 2005 around 9:00 p.m. Michael was driving on SR 375 highway in Nye
5 County, Nevada, when he hit a Herford cow, owned by Fallini, killing both Michael and
6 the cow. Jt. Appx. I, 2. On November 29, 2006 Adams filed his Complaint in Clark
7 County Nevada. Fallini retained Harry Kuehn, Esq. of the law firm Gibson & Kuehn, to
8 represent her as the Defendant in the wrongful death case; Adams, et al v. Fallini. Jt.
9 Appx. I, 14. The action in Clark County was dismissed and subsequently re-filed in Nye
10 County in the Fifth Judicial District Court of Nevada (Pahrump). Jt. Appx. I, 18-20.
11 Kuehn accepted service on behalf of Fallini on March 1, 2007. Jt. Appx. I, 8-9. Fallini
12 filed her Answer and Counterclaim on March 14, 2007. Fallini had a complete defense to
13 the lawsuit, as the cow was on the highway in an "open range" part of Nevada (See MFR
14 Jt. Appx. II, 138-159). The fact that the part of the highway where the accident occurred
15 was "open range" is commonly known in that area (See MFR Jt. Appx. II, 138-159 and
16 Opposition to Application for Default, Jt. Appx. II, 130-132).

17 Sometime in June, 2007, Fallini called Kuehn to inquire about the case, as she had
18 not heard from Kuehn. Kuehn informed Fallini that the case was "over," and that she had
19 prevailed. That was not true, Kuehn had filed an answer, and the case was just beginning
20 (See Opposition to Application for Default, Jt. Appx. II, 130-132).

21 On or about October 31, 2007, Kuehn was served with discovery requests
22 including Requests for Admission by Adams. Jt. Appx. I, 40-51. Kuehn failed to respond
23 to said Requests for Admission before the expiration of 30 days, and, in fact, never
24 responded to the requests. Jt. Appx. I, 40-51. As a direct result of Kuehn's failure to
25 respond to the Requests for Admission the requests were deemed admitted by default
26 pursuant to NRCP 36. Jt. Appx. I, 71-74. Thus, Fallini "admitted" that: the area of the
27 accident was not open range; that Fallini had failed to follow the custom and practice of
28 ranchers in the area of tagging cattle with luminous tags so that they could be seen at night

1 on the roadway (a practice that has never existed); and other statements that established
2 Fallini's liability in the matter and extinguished her defenses. Kuehn never informed
3 Fallini of the discovery requests. Jt. Appx. I, 71-74.

4 On July 2, 2008, Adams served a second set of request for production of
5 documents on Kuehn. Kuehn failed to responded to these discovery requests as well. Jt.
6 Appx. I, 41-46.

7 On April 7, 2008 (and again on May 14, 2008 with a certificate of service) Adams
8 filed their Motion for Partial Summary Judgment. Jt. Appx. I, 40. Kuehn failed to oppose
9 this motion. Jt. Appx. I, 71-74. The Motion was based primarily on the admissions
10 contained in the request for admissions. Jt. Appx. I, 41-49. A hearing on the Motion was
11 held on July 14, 2008, which Kuehn failed to appear at and the motion was granted (See
12 court minutes in Case Summary, Jt. Appx. II, 240-244). The Court entered its Order
13 Granting Plaintiff's Motion for Partial Summary Judgment on July 30, 2008. Jt. Appx. I,
14 55-57. Notice of entry of that Order was served on Kuehn on August 15, 2008. Jt. Appx.
15 I, 58-62.

16 On March 23, 2009, Adams filed a Motion to Compel Defendant's Production of
17 Documents. A hearing on that motion was held on April 27, 2009, wherein Kuehn
18 appeared and stated that his office dropped the ball and did not oppose the motion (See
19 See court minutes in Case Summary, Jt. Appx. II, 240-244). The Court issued an Order
20 Granting Plaintiff's Motion and ordering Fallini to pay \$750.00 in attorney's fees. Kuehn
21 continued to fail to produce the discovery requests, and on June 16, 2009, Adams filed a
22 Motion to Strike Defendant's Answer and Counterclaim. Jt. Appx. I, 160-170. Kuehn
23 opposed requesting that the court "decline to strike the answer and counterclaim in favor
24 of imposing further monetary sanction against him." Jt. Appx. I, 224-231. Kuehn
25 declared to the Court that the discovery noncompliance was "absolutely not the fault of
26 the party and the blame should be attributed to counsel in full." Jt. Appx. I, 226. On July
27 13, 2009, the Court heard and denied Plaintiff's Motion to Strike Defendant's Answer and
28 Counterclaim and imposed additional sanctions on Kuehn. Jt. Appx. I, 232-233.

1 Because of Kuehn's repeated failure to comply with discovery requests, Adams
2 filed numerous Motions for Order to Show Cause and Orders to Show Cause were issued.
3 Jt. Appx. I, 91-143, 148-149, 160-219, II, 1-12, 17-19, 20-21, 26-31, 48-58 and 68-75.
4 Kuehn was repeatedly sanctioned by the Court. Jt. Appx. I, 148-149, 220-223, 232-233;
5 II, 20-21, 26-31, 59-61, 68-75 and 222-225. In the face of these sanctions, Kuehn
6 promised to comply, but never did. Jt. Appx. II, 89-129. Despite the imposition of
7 sanctions, which accrued daily, Kuehn never responded.

8 On November 4, 2009, after repeatedly sanctioning Kuehn for his continued failure
9 to respond to discovery requests and orders the Court entered a Findings of Fact,
10 Conclusions of Law and Order Striking Answer and Counterclaim of Defendant Susan
11 Fallini and Holding Defendant's Counsel in Contempt of Court. Jt. Appx. II, 26-31.
12 Notice of entry of that Order was filed on November 9, 2009. Jt. Appx. II, 32-40. Default
13 was entered by the clerk of the court pursuant to that Order on February 4, 2010. Jt. Appx.
14 II, 41-42. On June 2, 2010, the Court entered another Findings of Fact, Conclusions of
15 Law and Order Holding Defendant's Counsel in Contempt of Court, this time fining
16 Kuehn \$5,000.00 plus an additional \$500.00 per day for every day after the 30th day
17 following the entry of that Order that Kuehn continued to fail to respond to Discovery
18 requests. Jt. Appx. II, 68-75. Kuehn, nonetheless maintained his inaction.

19 The Order for Partial Summary Judgment established Fallini's liability in this
20 matter, and the Order Striking Answer and Counterclaim left Fallini in the position of
21 default. The default stripped Fallini of all defenses (See MFR, Jt. Appx. II, 138-159). Still,
22 Kuehn did not notify Fallini of the status of the case. Kuehn failed to inform Fallini about
23 these circumstances, having previously told her that the case was "over" (See MFR, Jt.
24 Appx. II, 138-159). Kuehn never brought Fallini to any of the hearings and repeatedly
25 told the Court that the responsibility for the inaction was his alone (See court minutes in
26 Case Summary, Jt. Appx. II, 240-244). Finally, in June of 2010, Kuehn's partner, Tom
27 Gibson, Esq. discovered the status of the case and contacted Fallini, informing her of what
28 had transpired over the preceding three years (See MFR, Jt. Appx. II, 138-159). Gibson

1 informed Fallini that Kuehn has bi-polar disorder, and "went off his meds" (See MFR Jt.
2 Appx. II, 138-159). Fallini immediately hired new counsel filing a Substitution of
3 Counsel on June 16, 2010, replacing Kuehn with the undersigned counsel. Jt. Appx. II,
4 87-88. On June 24, 2010, Adams filed an Application for Default Judgment Against
5 Defendant Susan Fallini. Jt. Appx. II, 89-129. This Application was opposed that same
6 day (See Opposition, Jt. Appx. II, 130-132). Fallini's new counsel then filed a Motion for
7 Leave to File a Motion for Reconsideration that Adams opposed. (See MFR, Jt. Appx. II,
8 138-159). Adams' Application and Fallini's Motion were heard on July 19, 2010,
9 resulting in the final Order After Hearing entered August 12, 2010, granting Adams'
10 Application, denying Fallini's Motion, and proceeding with a prove up hearing granting
11 Adams a total of \$2,730,884.85 in damages and attorney's fees, from which Fallini
12 Appeals (See Order After Hearing, Jt. Appx. II, 222-225 and court minutes in Case
13 Summary, Jt. Appx. II, 240-244).

14 SUMMARY OF ARGUMENTS

15 I. Denying Fallini's Motion for Reconsideration was reversible error as the
16 Orders entered of which Fallini was requesting reconsideration were clearly erroneous,
17 based on "facts" known to be untrue but established by default, and manifested injustice,
18 holding Fallini liable for an accident that she was in no way responsible for to the tune of
19 2.7 million dollars.

20 II. Dismissing the jury trial was reversible error because it deprived Defendant
21 of her constitutional right and the determination of damages is an issue of fact that should
22 have been resolved by the jury.

23 III. The damages awarded to Adams by the District Court were excessive and
24 were not supported by any legal basis or calculations supported by evidence.

25 The District Court's Order After Hearing should be reversed and the case
26 remanded, with instructions to reconsider previous orders and have all issues of fact tried
27 by a jury.
28

ARGUMENTS

I. THE DISTRICT COURT ERRED IN DENYING FALLINI'S MOTION FOR RECONSIDERATION.

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

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

The Supreme Court has recognized the propriety of motions for reconsideration under DCR 13(7). See *Arnold v. Kip*, 123 Nev. 410, 168 P3d 1050 (2007). So long as it retains jurisdiction over a case, a trial court "possesses the inherent procedural power to reconsider, rescind, or modify an interlocutory order for cause seen by the court to be sufficient." *Mullally v. Jones*, 2010 WL 3359333 (D.Nev.), citing *City of Los Angeles, Harbor Div. v. Santa Monica Baykeeper*, 254 F.3d 882, 885 (9th Cir. 2001).

A trial court should reconsider, and reverse prior rulings made prior to final judgment when the prior decision is clearly erroneous and the order, if left in place, would cause manifest injustice. *Masonry and Tile Contractors v. Jolley*, 113 Nev. 737, 941 P 2d 486, 489 (1997) citing *Little Earth v. Department of Housing*, 807 Fed 2d 1433 (8th Cir. 1986); *United States v. Serpa*, 930 F.2d 639 (8th Cir., 1991). The Court's ability to reconsider is not hampered by the "law of the case doctrine" when the order reconsidered would work a manifest injustice. *U.S. v. Serpa*, at 640.

A. *The Order Granting Plaintiff's Motion for Partial Summary Judgment was Clearly Erroneous*

The Granting of Plaintiff's Motion for Partial Summary Judgment was brought about through a breach of the rules of professional conduct by both attorney's and breach of the code of judicial conduct by the District Court.

Attorney's have a duty not to present frivolous contentions to the tribunal and are required to be candid in their presentation of the facts.

1 Nevada Rule of Professional Conduct 3.1 provides in relevant part: "A lawyer shall
2 not ... assert or controvert an issue ... unless there is a basis in law *and fact* for doing so
3 that is not frivolous ..." (emphasis added).

4 Rule 3.3. provides in relevant part:

5 (a) A lawyer shall not knowingly:

6 (1) Make a false statement of fact or law to a tribunal or fail to
7 correct a false statement of material fact or law previously made to
8 the tribunal by the lawyer; ... or

9 (3) Offer evidence that the lawyer knows to be false. If a lawyer, the
10 lawyer's client, or a witness called by the lawyer, has offered
11 material evidence and the lawyer comes to know of its falsity, the
12 lawyer shall take reasonable remedial measures, including, if
13 necessary, disclosure to the tribunal...

14 Rule 8.4. provides in relevant part that it is professional misconduct for a lawyer to:

15 (a) Violate or attempt to violate the Rules of Professional Conduct,
16 knowingly assist or induce another to do so, or do so through the acts
17 of another; ...

18 (c) Engage in conduct involving dishonesty, fraud, deceit or
19 misrepresentation;

20 (d) Engage in conduct that is prejudicial to the administration of
21 justice.

22 Plaintiff achieved victory in this matter due to Kuehn's failure to deny requests for
23 admission. Jt. Appx. I, 55-57. The essential subject matter of which established liability
24 and provided that the area of highway on which the accident occurred in this case was *not*
25 open range. Jt. Appx. II, 89-129. It was further established, through failure to deny, that
26 Defendant failed in her responsibility to attached reflective tags to her cows, as is the
27 custom in that part of Nye County. Jt. Appx. I, 55-57.

28 Both propositions of fact are false and therefore clearly erroneous. The area in
which the accident occurred in Nye County, Nevada was, in fact, open range, a fact
commonly known in Nye County, in which the District Court sat (*See MFR, Jt. Appx. II,*
138-159 and/or Opposition to Application for Default, Jt. Appx. II, 130-132). On the
subject of reflective strips, no such custom and practice exists among ranchers in Nye
County (*See MFR, Jt. Appx. II, 138-159 and/or Opposition to Application for Default, Jt.*
Appx. II, 130-132). Plaintiff's counsel knew or should have known that these contentions

1 were false, as it was common knowledge in Nye County, yet he still presented these
2 statement as "facts" to the Court, allowing misrepresentations to stand perpetrating
3 misconduct of his own.

4 Because Kuehn failed to deny the Plaintiff's request for admission, the questions
5 were deemed admitted (*See* Jt. Appx. I, 55-57). To compound matters, Kuehn failed to
6 oppose Plaintiff's motion for summary judgment, violating Rule 1.1 of the Code of
7 Professional Conduct requiring that counsel provide competent representation (*See* Jt.
8 Appx. I, 55-57). The Court then granted the unopposed motion for summary judgment,
9 even though the factual premise therefore was and is patently untrue (*See* MFR, Jt. Appx.
10 II, 138-159).

11 The first Canon of the Code of Judicial Conduct provides:

12 A judge shall uphold and promote the independence, integrity, and
13 impartiality of the judiciary and shall avoid impropriety and the appearance
14 of impropriety.

15 Although there is no transcript of the final hearing in front of the District Court,
16 Fallini recalls the Honorable Robert Lane stating that he knew the area where the accident
17 occurred to be "open range." Yet the Court accepted as fact that it was not open range
18 and made rulings consistent therewith, detracting from the integrity of the tribunal. By
19 accepting facts as true, which were known or should have been known to be false the trial
20 court failed to uphold the "integrity of the tribunal."

21 Had Fallini been properly represented, the District Court may well have taken
22 judicial notice that the area in question in this case was open range. The Court began the
23 final Hearing inclined to grant Fallini's Motion for Reconsideration (*See* court minutes in
24 Case Summary, Jt. Appx. II, 240-244). Instead, the Court accepted a false factual premise
25 due to Kuehn's failures, ultimately ratifying that acceptance in its final order despite
26 knowing the facts supporting the order were false (*See* Order after Hearing, Jt. Appx. II,
27 222-225).

28 Because the Partial Summary Judgment rested on factual falsehoods, it was clearly

1 erroneous. The first prong for the Court to have reconsidered and rescinded previous
2 orders was met.

3 *B. Allowing the Order Granting Motion for Partial Summary Judgment to stand*
4 *worked a Manifest Injustice*

5 Promptly after this case was initiated, Fallini retained Kuehn to represent her in the
6 defense of this action (See Jt. Appx. I, 8-9). Kuehn accepted service for Fallini on
7 February 22, 2007 (See Proof of Service, Jt. Appx. I, 8-9). Until approximately June 2,
8 2010 Kuehn failed to communicate the status of the case, ~~except to tell Defendant that~~
9 ~~the case was "over and had been taken care of"~~ (See MFR Jt. Appx. II, 138-159).
10 Finally, Mr. Tom Gibson (apparently having been apprised of Kuehn's many derelictions
11 in this case) contacted Fallini and apprised her of the true status of her case (See MFR Jt.
12 Appx. II, 138-159).

13 Fallini had no idea that she had been served with discovery requests, that among
14 those requests were Requests for Admissions, or that the failure to deny those had become
15 case determinative (See Opposition to Application for Default Jt. Appx. II, 130-132).
16 Fallini had been completely unaware that the lawyer she had hired and paid had failed so
17 miserably to protect her interests or that every motion made by Adams had gone
18 unopposed (See court minutes in Case Summary, Jt. Appx. II, 240-244). Further, Fallini
19 was ignorant of the fact that her lawyer had repeatedly exposed them to contempt citations
20 (which were never served on her personally) (See MFR Jt. Appx. II, 138-159, Opposition
21 to Application for Default, Jt. Appx. II, 130-132 and Certificate of Service attached to
22 Orders or Notice's of Entry, Jt. Appx. II, 23, 33, 63, and 77).

23 As soon as Fallini discovered her lawyer had failed to competently represent her
24 and had been the engine of this disaster, she consulted long time counsel who referred her
25 to new counsel without delay (See Jt. Appx. II, 87-88, and Opposition to Application for
26 Default, Jt. Appx. II, 130-132). If Kuehn was the engine for this disaster then the District
27 Court was the conductor, and this disaster could have been and should have been stopped
28 from barreling down this track at a much earlier time.

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

2 A lawyer shall provide competent representation to a client. Competent
3 representation requires the legal knowledge, skill, thoroughness and
4 preparation reasonably necessary for the representation.

5 Rule 2.15 of the Nevada Code of Judicial Conduct provides in relevant part as
6 follows:

7 (B) A judge having knowledge that a lawyer has committed a
8 violation of the Nevada Rules of Professional Conduct that raises a
9 substantial question regarding the lawyer's honesty, trustworthiness,
10 or fitness as a lawyer in other respects shall inform the appropriate
11 authority. . . . (D) A judge who receives information indicating a
12 substantial likelihood that a lawyer has committed a violation of the
13 Nevada Rules of Professional Conduct shall take appropriate action.

14 Kuehn's utter failure to provide competent representation and be honest with
15 Fallini not only brought this unjust result upon Fallini, but the District Court, despite its
16 obvious knowledge of Kuehn's misconduct (shown by the numerous and hefty fines
17 imposed on Kuehn) failed to notify the appropriate authority or Fallini, and instead enter
18 decisions based entirely on his failures, and not on sound factual premises. The District
19 Court had a duty to report Kuehn to the State Bar for his gross and obvious dereliction of
20 duty, and should have required Kuehn to at least bring his client to one or more of the
21 hearings where her rights were being foreclosed upon (See court minutes in Case
22 Summary, Jt. Appx. II, 240-244). Kuehn subverted the administration of justice and the
23 court allowed this subversion to continue in violation of numerous rules of professional
24 conduct and the code of judicial conduct.² If this case does not represent the "manifest
25 injustice" of which the Supreme Court speaks, then manifest injustice does not exist.

26 Because the Orders that Fallini moved the court to reconsider were clearly
27 erroneous and leaving them in place perpetuated a manifest injustice, the District Court
28 erred in denying Fallini's Motion for Reconsideration.

² Code of Judicial Conduct Canon 1: A judge shall uphold and promote the independence, integrity, and impartiality
of the judiciary and shall avoid impropriety and the appearance of impropriety.

1 II. THE DISTRICT COURT ERRED WHEN IT DISMISSED THE JURY
2 TRIAL AND DETERMINED DAMAGES

3 This matter was set for a jury trial when the District Court vacated that jury trial
4 setting and determining damages from the bench (See Jt. Appx. I, 221-224, and Order
5 After Hearing, Jt. Appx. II, 222-225) Article 1, Section 3 of the Nevada Constitution
6 provides:

7 Trial by jury; waiver in civil cases. The right of trial by Jury shall be
8 secured to all and remain inviolate forever; but a Jury trial may be waived
9 by the parties in all civil cases in the manner to be prescribed by law; and in
10 civil cases, if three fourths of the Jurors agree upon a verdict it shall stand
11 and have the same force and effect as a verdict by the whole Jury, Provided,
12 the Legislature by a law passed by a two thirds vote of all the members
13 elected to each branch thereof may require a unanimous verdict
14 notwithstanding this Provision.

15 The unconstitutional denial of a jury trial must be reversed unless the error was
16 harmless. *United States v. California Mobile Home Management Park Co.*, 107 F.3d
17 1374, 1377 (9th Cir. 1997). The right to jury trial includes having a jury determine all
18 issues of fact. *Molodyk v. Truck Insurance Exchange*, 744 P.2d 992, 304 Or. 290, 297-298
19 (1987). "The amount of damages *** from the beginning of trial by jury, was a 'fact' to
20 be found by the jurors." *Lakin v. Senco Products, Inc.*, 987 P.2d 463, 470, 329 Or. 62,
21 Quoting Charles T. McCormick, *Handbook on the Law of Damages* 24. (1935).

22 This matter was set to be tried by a jury. Jt. Appx. I, 220-223. Factual
23 determinations remained as to damages, even though the Court struck the Defendant's
24 answer and entered default (See Opposition to Application for Default Jt. Appx. II, 130-
25 132). The Court's determination of damages from the bench, after striking the jury trial,
26 violated Defendant's right to a jury trial secured by the above cited section of the Nevada
27 Constitution. The Damages awarded by the District Court in total exceeded 2.7 million
28 dollars, making the error very harmful to Fallini (See Order After Hearing, Jt. Appx. II,
222-225). Thus, this Court must reverse the District Court's decision.

///

////

1 III. THE DISTRICT COURT ERRED WHEN IT AWARDED
2 EXCESSIVE DAMAGES WITHOUT LEGAL BASIS

3 Damages were awarded in this case without a legal basis, and were excessive. The
4 Due Process Clause of the Fourteenth Amendment prohibits a State from imposing a
5 “grossly excessive” punishment on a tortfeasor. *TXO Production Corp. v. Alliance*
6 *Resources Corp.*, 509 U. S. 443, 454 (1993). Nevada Pattern Civil Jury Instruction No.:
7 Nev. J.I 10.13 explains that damages are determined to make a Plaintiff whole, and
8 compensate for loss, and provides as follows:

9 The heir's loss of probable support, companionship, society, comfort and
10 consortium. In determining that loss, you may consider the financial support, if
11 any, which the heir would have received from the deceased except for his death,
12 and the right to receive support, if any, which the heir has lost by reason of his
13 death.

14 [The right of one person to receive support from another is not destroyed by
15 the fact that the former does not need the support, nor by the fact that the latter has
16 not provided it.]

17 You may also consider:

- 18 1. The age of the deceased and of the heir;
19 2. The health of the deceased and of the heir;
20 3. The respective life expectancies of the deceased and of the heir;
21 4. Whether the deceased was kindly, affectionate or otherwise;
22 5. The disposition of the deceased to contribute financially to support the
23 heir;
24 6. The earning capacity of the deceased;
25 7. His habits of industry and thrift; and
26 8. Any other facts shown by the evidence indicating what benefits the heir
27 might reasonably have been expected to receive from the deceased had
28 he lived.

 With respect to life expectancies, you will only be concerned with the
 shorter of the two, that of the heir whose damages you are evaluating or that
 of the decedent, as one can derive a benefit from the life of another only so
 long as both are alive.

 A calculation of damages should only be upheld if there is competent evidence to

1 sustain it. *Corned v. Wilcox*, 898 P.2d 1379, 1386 (Utah 1995) citing *Rees v.*
2 *Intermountain Health Care, Inc.*, 808 P.2d 1069, 1072 (Utah 1991); *Penrod v. Carter*, 737
3 P.2d 199, 200 (Utah 1987). In this matter, there was no showing that Plaintiffs suffered
4 any economic loss from the death of their son. Only the estate damages related to funeral
5 expenses were shown constituting compensable damage (See Order After Hearing, It.
6 Appx. II, 222-225).

7 CONCLUSION

8 This cataclysmic, train wreck of a case was occasioned by the blatant malpractice
9 of Appellant Fallini's first lawyer, compounded by Adam's attorney's misconduct, which
10 caused the entry of partial summary judgment, the striking of Appellant's answer, and the
11 entry of default. But for the attorney misconduct and allowance by the District Court,
12 Appellant should have prevailed. The District Court committed reversible error when it
13 denied Fallini's Motion for Reconsideration, vacated the jury trial and awarded excessive
14 damages to Adams.

15 Now Appellant faces a huge (\$2.7 million) damages award. This court should
16 reverse the District Court's decision and remand the case directing the lower Court to
17 reconsider its earlier orders and allow Appellant her defense.

18 CERTIFICATE OF COMPLIANCE

19 I hereby certify that I have read this appellate brief, and to the best of my
20 knowledge, information, and belief it is not frivolous or interposed for any improper
21 purpose. I further certify that this brief complies with all applicable Nevada Rules of
22 Appellate Procedure, including the requirement of N.R.A.P. 28(e), which requires that
23 every assertion in the briefs regarding matters in the record be supported by a reference to
24 the page of the transcript or appendix where the matter relied on is to be found. I
25 understand that I may be subject to sanctions in the event that the accompanying brief is

26 ////

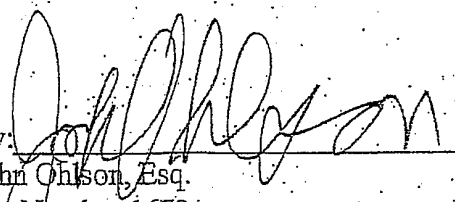
27 ////

1 not in conformity with the requirements of the Nevada Rules of Appellate Procedure.

2
3 **AFFIRMATION**
4 Pursuant to NRS 239B.030

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

7 Dated this 27 day of May, 2011.

8
9 By: 
10 John Olson, Esq.
11 Bar Number 1672
12 275 Hill Street, Suite 230
13 Reno, Nevada 89501
14 (775) 323-2700

15 Jeff Kump, Esq.
16 Bar Number 5694
17 MARVEL & KUMP, LTD.
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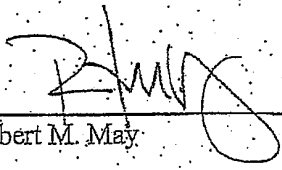
CERTIFICATE OF SERVICE

I hereby certify that I am an employee of JOHN OHLSON, and that on this date I personally served a true copy of the foregoing APPELLANT'S OPENING BRIEF, by the method indicated and addressed to the following:

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

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

DATED this 27 day of May, 2011.


Robert M. May

1. Case No.: CV 24539

2. Dept. No.: 2P

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

8. * * * * *

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

12. Plaintiff,

13. vs.

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

16. Defendants.

17. **SUSAN FALLINI'S REPLY MEMORANDUM IN SUPPORT OF HER RULE 60(b)**
18. **MOTION TO SET ASIDE JUDGMENT AND OPPOSITION TO PLAINTIFF'S**
19. **COUNTERMOTION TO STRIKE**

20. Defendant Susan Fallini respectfully submits this memorandum in reply to Plaintiff's
21. opposition and in further support of her Rule 60(b) Motion to Set Aside Judgment (the "Rule
22. 60(b) Motion").

23. **INTRODUCTION**

24. Rather than respond to the nearly thirty factual allegations set forth by Ms. Fallini in her
25. motion for relief, Plaintiff simply regurgitates the procedural history of the case and cites a few
26. cases that lend no support to Plaintiff's opposition or motion to strike. Indeed, beyond conclusory
27. huffs of redundancy, claims of stalling, and allegations of improper conduct, Plaintiff's counsel
28.

1 fails to respond in any substantive manner. This failure equates to an admission and, at the very
2 least, strongly indicates that the factual allegations are meritorious and should not be ignored by
3 this Court. True to form, Plaintiff relies on procedural gamesmanship. What is more, Plaintiff has
4 no leg to stand on. As set forth below, Plaintiff's procedural arguments utterly fail. Plaintiff's
5 countermotion to strike must be discarded instantly. Further, Plaintiff's finality and issue
6 preclusion arguments, which are two sides of the same coin, both fold upon the barest scrutiny.
7

8 ARGUMENT

9 **I. THE COUNTERMOTION TO STRIKE MUST FAIL BECAUSE IT IS SIMPLY** 10 **"BAD PRACTICE" TO FILE SUCH A MOTION.**

11 Courts promptly discard any countermotion to strike that argues the merits of the original
12 motion, finding it both improper and confusing. *Buehler v. Buehler*, 151 P. 44, 45 (Nev. 1915).
13 The *filing* of such a motion to strike is bad practice. *Lamb v. Lamb*, 38 P.2d 659, 659 (Nev. 1934).
14 The Nevada Supreme Court said as much: "Let us first say that the filing of the counter motion,
15 going as it does to the merits of appellant's motion, is bad practice." *Orleans Hornsilver Mining*
16 *Co. v. Le Champ D'Or French Gold Mining Co.*, 208 P. 887, 888 (Nev. 1929). Accordingly, no
17 court has entertained this perplexing motion practice. Opposing counsel clearly should not have
18 filed a countermotion to strike, especially because "[t]he grounds for the Motion to Strike and the
19 Opposition are essentially the same. . . ." (Pl.'s Opp'n to Def.'s Mot. Relief from J. 5). In addition
20

21 to being a bad practice consistently rejected by courts in this jurisdiction, the fact that Plaintiff has
22 failed, and refused, to respond to any of Ms. Fallini's factual allegations—allegations which
23 clearly call into question the ruling in this case and Plaintiff's conduct—makes Plaintiff's motion
24 to strike even more suspect and frivolous. As such, this Court should promptly dismiss the
25 countermotion. Simply, the motion to strike must be stricken. *Lamb*, 38 P.2d at 659.
26

27 ////
28

1 **II. FRAUD ON THE COURT'S GRIEVOUS NATURE MANDATES THAT "THERE**
2 **IS NO TIME LIMITATION" TO SET ASIDE SUCH A JUDGMENT.**

3 Contrary to Plaintiff's blanket statements and conclusions, Ms. Fallini's motion to set
4 aside for fraud on the court has no time limitation. This rule of law is old, established centuries
5 ago: "Fraud upon the court has been recognized for centuries as a basis for setting aside a *final*
6 *judgment*, sometimes *even years after it was entered.*" *NC-DSH, Inc. v. Garner*, 218 P.3d 853,
7 858 (Nev. 2009) (emphasis added). Simply put, "there is no time limitation." *Id.* at 862 *quoting*
8 *Price v. Dunn*, 787 P.2d 785, 787 (Nev. 1990).

9 Plaintiff's obfuscating attempt to re-cast Ms. Fallini's motion as 60(b)(3) must be ignored.
10 Ms. Fallini cites to NRCP 60(b)(3) precisely one time in her supporting memo. (Def.'s Mem.
11 Supp. Mot. Relief from J. 7). This citation, unambiguously marked *cf.*, highlights that fraud on
12 the court *differs* from NRCP 60(b)(3). Plaintiff's misunderstanding on this point and failure to
13 state the full NRCP 60(b) rule is perplexing and misleading. The omitted portion of NRCP 60(b)
14 (cited improperly by opposing counsel by omitting ellipsis) reads:

15 A motion under this subdivision (b) does not affect the finality of a judgment
16 or suspend its operation. ***This rule does not limit the power of a court*** to entertain
17 an independent action to relieve a party from a judgment, order, or proceeding, or
18 ***to set aside a judgment for fraud upon the court.*** Writs of coram nobis, coram
19 vobis, audita querela, and bills of review and bills in the nature of a bill of review,
20 are abolished, and the procedure for obtaining any relief from a judgment shall be
21 by motion as prescribed in these rules or by an independent action.

22 ~~60(b)(3) has a 6-month time limitation. On the other hand, to set aside a judgment for~~
23 fraud upon the court, "there is no time limitation." *NC-DSH, Inc.*, 218 P.3d at 862.

24 The clock does not need to magically reset: Plaintiff, hoping to find procedural protection,
25 misstates the law. Again, the clock may run *for years* without foreclosing the ability of Ms.
26 Fallini to file or this court to hear her motion and grant relief if it sees fit.

27 Conversely, to successfully argue excusable neglect, Ms. Fallini needs a reset. But, as
28 Plaintiff recently argued *ex parte* after remand that a new debtor's exam was warranted following

1 a new entry of judgment, Ms. Fallini simply follows suit. The Court did enter a new judgment.
2 Further, Plaintiff points to absolutely no authority to foreclose this argument, and counsel for Ms.
3 Fallini has uncovered no case law indicating that this argument is incorrect or not allowed.
4 Furthermore, the entry of judgment on remand does reset the 60(b) clock. 60(b) expressly states
5 that the movant has 6 months to file following service of "written notice of entry of judgment or
6 order. . ." This reasonable interpretation of the statute withstands Plaintiff's weak attack that fails
7 to cite any legal authority directly or indirectly refuting it.
8

9 Finally, Plaintiff's silence and failure to substantively engage speaks volumes. Ms. Fallini
10 alleged sufficient material facts to show both fraud upon the court *and* excusable neglect.
11 Plaintiff's counsel fails to deny the timing of his knowledge and his calculated scheme to mislead
12 this tribunal. Among other things, Plaintiff does not challenge the fact that Plaintiff's counsel (a)
13 failed to disclose or produce discovery materials relating to the accident, (b) fabricated an
14 industry practice in his request for admissions, and (c) purposely mislead the Court by knowingly
15 making false statements of fact and law to the Court. Plaintiff's failure to respond or deny these
16 material facts is tantamount to an admission. Plaintiff attempts to overcome a meritorious
17 argument solely with procedural jabs that fall short. Because these procedural punches find
18 nothing but empty air, and facing no substantive counter-argument or even straightforward factual
19 denial, Ms. Fallini's motion requesting relief must be granted.
20

21
22 **III. ISSUE PRECLUSION, A PRINCIPAL TO PROTECT FINALITY, CANNOT**
23 **APPLY BECAUSE PRIOR PROCEEDINGS REGARDING OPPOSING**
24 **COUNSEL'S FRAUD UPON THE COURT ARE NONEXISTENT.**

25 Plaintiff's finality argument crumbles by simply reading NRCP 60(b), which
26 unequivocally states that finality does not hinder relief: "On motion and upon such terms as are
27 just, the court may relieve a party or a party's legal representative *from a final judgment...*"
28

1 NRCP 60(b) (emphasis added).¹ Obviously, finality *always* precedes a motion for relief. It
2 therefore cannot bar application of NRCP 60(b). Such an argument eviscerates any application of
3 the rule. Finally, Plaintiff's policy arguments have already been considered and found wanting by
4 the legislature that enacted NRCP 60(b). Simply, finality is a condition necessarily preceding
5 every motion or independent action for relief from judgment; it cannot be a bar.

7 Likewise, Plaintiff's issue preclusion argument quickly implodes. The identical
8 requirement of issue preclusion mandates a *prior* proceeding. *Alcantara v Wal-Mart Stores, Inc.*,
9 321 P.3d 912, 916 (Nev. 2014). Plaintiff irreparably stumbles on this commonsense and simplest
10 requisite. This current proceeding is the *only* possible proceeding, having privity of parties, with
11 any issues *at all* necessarily and actually litigated. Given that Plaintiff's finality argument *must*
12 fail and a *prior* proceeding wholly absent, Plaintiff's entire section III.B. and III.C. disintegrate.
13 This barest of scrutiny overwhelms pages of argument. Plaintiff's counsel advances absolutely no
14 meritorious procedural argument and simply no substantive retort of any kind.

16 What is more, Plaintiff's conclusory and unsupported analysis is swept away by Plaintiff's
17 own (and only) cited authority. Nevada courts require that the exact issue at hand be decided
18 previously in a prior proceeding: "For issue preclusion to attach, the issue decided in the prior
19 proceeding must be identical to the issue presented in the current proceeding." *Alcantara*, 321
20 P.3d at 916. Plaintiff, without explanation or example, states that the issue of fraud upon the court
21 has been decided. This baffling assertion flops. True, the procedural path of this case has been
22 upheld by the Supreme Court *in this case* (not prior). The allegations of opposing counsel's fraud
23 on the court, however, have not been claimed, litigated, or reviewed at any point in a prior
24 proceeding, this case, or any related proceeding. This simple fact alone puts an end to Plaintiff's
25 issue preclusion argument.

27 ¹ Additionally, "[a] motion under this subdivision (b) does not affect the finality of a judgment or
28 suspend its operation." Nev. R. Civ. P. 60(b). The rule therefore contemplates finality twice,
indicating both times that it is not a bar to the filing of a motion.

1 And although marginally related, the procedural path of this case *is not at issue*. The
2 undenied material facts that opposing counsel (1) knew the accident was on open range, (2)
3 advanced a fake industry standard to show negligence, (3) purposefully and calculatingly mislead
4 this tribunal (4) failed to correct or unwind his scheme at multiple necessary and opportune
5 instances, and (5) manipulated and withheld evidence to further this scheme *are at issue*. Clearly,
6 this issue—that Plaintiff's counsel utterly ignored and violated his duty of candor and committed
7 fraud upon the court such that the very temple of justice has been defiled—has not been decided
8 in prior litigation.

10 Although Ms. Fallini asserted fraud on the court against Judge Lane, that issue (1) was
11 never actually litigated as it was rightfully dismissed on judicial immunity grounds and (2) is
12 completely distinct from opposing counsel committing fraud upon the court. As a hypothetical
13 example, if Tommy brings a negligence action against Sam and that action is dismissed and then
14 Tommy brings a negligence action for the same injury against Bill, the two claims are distinct.
15 Likewise, Ms. Fallini's argument that opposing counsel committed fraud upon the court is distinct
16 and novel compared to any other claim or argument filed in this or any other related proceeding.

18 The actions of opposing counsel, which were “calculated to mislead the tribunal,” *Sierra*
19 *Glass & Mirror v. Viking Indus., Inc.*, 808 P.2d 512, 516 (Nev. 1991), used a proper procedural
20 path in a despicable and improper way. The abuse of the discovery process and procedural rules
21 to force a known false fact onto the tribunal subverts the legitimacy of the judgment and the very
22 court system itself. Not surprisingly, opposing counsel trumpets this procedural path and its
23 unassailability to mask his dereliction of duty. This ploy, however, must fail as it is unsupported
24 by reason and law. Simply, the issue of opposing counsel's fraud upon the court has neither been
25 claimed, argued, litigated, nor reviewed.

27 Again, the first element of issue preclusion fails, which makes discussion of the remaining
28

1 elements contrived. The second element requires that the initial ruling be “on the merits and have
2 become final.” *Id.* Issue preclusion cannot apply if there “was no [prior] litigation of the actual
3 merits.” *Five Star Capital Corp. v. Ruby*, 194 P.3d 709 (Nev. 2008). The actual merits at issue
4 center on the impropriety of counsel’s behavior and newly discovered information of a scheme to
5 mislead and abuse the machinery of justice. Concerning that matter, no merits have been litigated,
6 a prior ruling is nonexistent. Thus, the second element sinks.
7

8 Finally, to be actually and necessarily litigated, the matter must be properly raised and
9 submitted for determination. *Alcantara*, 321 P.3d at 918. In *Alcantara*, Wal-Mart successfully
10 litigated a wrongful death claim in which a jury found Wal-Mart not liable. *Id.* at 914. Necessary
11 to that judgment, the jury determined Wal-Mart not negligent. *Id.* Therefore, the court reasoned
12 that because Wal-Mart’s negligence was necessary to determine liability in the *prior* case, issue
13 preclusion denied re-litigating Wal-Mart’s negligence in a *subsequent* proceeding. *Id.* at 918.
14 Here, contrary to Wal-Mart, opposing counsel has neither a previously litigated case nor the
15 specific and necessary finding regarding opposing counsel’s calculated misleading of or scheme
16 to force fraudulent facts on the Court. “Whether the issue was necessarily litigated turns on
17 whether the common issue was *necessary to the judgment in the earlier suit.*” *Id.* (quotations
18 omitted) (emphasis in original). Now, rings the death knell again. In what earlier suit has
19 opposing counsel’s alleged fraud upon the court been necessarily litigated? No earlier suit exists
20 that has actual and necessary litigation related to opposing counsel’s fraud on the court.
21
22

23 CONCLUSION

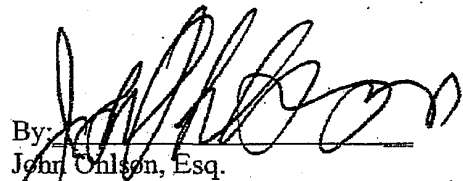
24 The law in Nevada is clear: relief from judgment for fraud upon the court has no filing
25 time limitation. Further, Plaintiff’s finality and issue preclusion arguments fail entirely. Given
26 that these procedural arguments wilt under minimal analysis *and Plaintiff’s counsel failed to deny*
27 *or combat the motion substantively*, this Court would be within its discretion to grant Ms.
28

1 Fallini's motion without a hearing. In any event, however, Ms. Fallini's motion must at least
2 obtain a hearing. And given that Ms. Fallini has requested and properly noticed a hearing, this
3 document is not fugitive. As Plaintiff's arguments utterly fail, to deny a hearing would be an
4 abuse of discretion and would result in a manifest injustice.
5

6
7 **AFFIRMATION**
8 **Pursuant to NRS 239B.030**

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

11 Dated this 13th day of June, 2013..

12
13
14 By: 
15 John Olson, Esq.
16 Bar Number 1672
17 275 Hill Street, Suite 230
18 Reno, Nevada 89501
19 Telephone: (775) 323-2700
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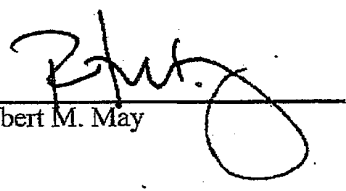
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2
3 **CERTIFICATE OF SERVICE**

4 Pursuant to NRCP 5(b), I hereby certify that I am an employee of JOHN OHLSON, and
5 that on this date, I served a true and correct copy of the foregoing **SUSAN FALLINI'S REPLY**
6 **MEMORANDUM IN SUPPORT OF HER RULE 60(b) MOTION TO SET ASIDE**
7 **JUDGMENT AND OPPOSITION TO PLAINTIFF'S COUNTERMOTION TO STRIKE**
8 by the method indicated and addressed to the following:

9
10 John P. Aldrich, Esq.
11 Aldrich Law Firm, Ltd.
12 1601 S. Rainbow Blvd., Suite 160
13 Las Vegas, NV 89146

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

14 Dated this 16th day of June, 2014.

15
16
17
18 
19 Robert M. May
20
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27
28

1 NEO
2 John P. Aldrich, Esq.
3 Nevada State 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 Attorneys for Plaintiff

FILED

2014 JUN 26 A 11:52

AMY DOWERS

NYE COUNTY CLERK

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

8 SUSAN FALLINI, and JOE FALLINI,
9 Plaintiffs,

Case No.: CV31449
Dept. No.: 1

10 vs.

11 THE HONORABLE ROBERT W. LANE,
12 TONY ADAMS, JUDITH ADAMS, JOHN P.
13 ALDRICH, ESQ., HAROLD KUEHN, ESQ.;
14 DOES I through V, jointly and severally,


Defendants.

15 NOTICE OF ENTRY OF ORDER

16 PLEASE TAKE NOTICE that an Order was entered regarding the Order Granting Defendants
17 Tony Adams, Judith Adams, and John P. Aldrich, Esq.'s Motion to Dismiss and Order Denying
18 Defendants Tony Adams, Judith Adams, and John P. Aldrich, Esq.'s Motion for Sanctions Pursuant to
19 NRCP 11 on June 23, 2014, a copy of which is attached hereto.

20 DATED this 25th day of June, 2014.

21 ALDRICH LAW FIRM, LTD.

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

ORIGINAL

FILED

1 **ORDR**

John P. Aldrich, Esq.

2 Nevada State Bar No. 6877

ALDRICH LAW FIRM, LTD.

3 1601 S. Rainbow Blvd., Suite 160

Las Vegas, Nevada 89146

4 (702) 853-5490

Attorneys for John P. Aldrich

5 *and Tony and Judith Adams*

2014 JUN 23 P 3:28

KELLY SIDMAN

NYE COUNTY CLERK
BY DEPUTY

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

9 SUSAN FALLINI, and JOE FALLINI,

10 Plaintiffs,

11 v.

12 THE HONORABLE ROBERT W.
13 LANE, TONY ADAMS, JUDITH ADAMS,
14 JOHN P. ALDRICH, ESQ., HAROLD
KUEHN, ESQ. ; DOES I through V, jointly and
severally,

15 Defendants.
16

Case No.: CV31449
Dept. No.: 1

17 **ORDER GRANTING DEFENDANTS TONY ADAMS, JUDITH ADAMS, AND JOHN P.**
18 **ALDRICH, ESQ.'S MOTION TO DISMISS AND ORDER DENYING DEFENDANTS TONY**
19 **ADAMS, JUDITH ADAMS, AND JOHN P. ALDRICH, ESQ.'S MOTION FOR SANCTIONS**
PURSUANT TO NRCPI1

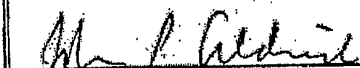
20 THESE MATTERS having come on for hearing on Monday, June 6, 2011, on Defendants Tony
21 Adams, Judith Adams, and John P. Aldrich, Esq.'s Motion to Dismiss and Motion for Sanctions before
22 the Honorable Miriam Shearing, and John P. Aldrich, Esq., of Aldrich Law Firm, Ltd., appearing on
23 behalf of himself and Defendants Tony Adams and Judith Adams, John Ohlson, Esq., and Jeffrey Kump,
24 Esq., appearing on behalf of Plaintiffs, Susan Fallini and Joe Fallini, the court having reviewed all
25 pleadings and papers on file herein, arguments heard from Plaintiffs' counsel, and good cause appearing
26 therefore:

1 IT IS HEREBY ORDERED that Defendants Tony Adams, Judith Adams, and John P. Aldrich,
2 Esq.'s Motion to Dismiss is GRANTED, and this case shall be dismissed as against all Defendants.

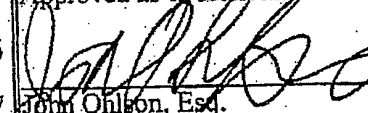
3 IT IS FURTHER ORDERED that Defendants Tony Adams, Judith Adams, and John P. Aldrich,
4 Esq.'s Motion for Sanctions is DENIED.

5
6 
DISTRICT COURT JUDGE

7
8 Submitted by:

9 
10 John P. Aldrich, Esq.
11 ALDRICH LAW FIRM, LTD.
12 Nevada Bar No.: 6877
13 1601 S. Rainbow Blvd., Suite 160
14 Las Vegas, Nevada 89146
(702) 853-5490
Attorney for Defendants John P. Aldrich,
Tony Adams and Judith Adams

15 Approved as to form and content:

16 
17 John Ohlson, Esq.
18 275 Hill Street, Suite 230
19 Reno, NV 89501
Attorneys for Plaintiffs
Susan Fallini and Joe Fallini

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 24th day of September, 2013, I mailed a copy of the **ORDER GRANTING DEFENDANTS TONY ADAMS, JUDITH ADAMS, AND JOHN P. ALDRICH, ESO.'S MOTION TO DISMISS AND ORDER DENYING DEFENDANTS TONY ADAMS, JUDITH ADAMS, AND JOHN P. ALDRICH, ESO.'S MOTION FOR SANCTIONS PURSUANT TO NRCPI1** in a sealed envelope, to the following and that postage was fully paid thereon:

Jeffrey Kump, Esq.
Marvel & Kump
217 Idaho Street
Elko, Nevada 89801

John Ohlson, Esq.
275 Hill Street, Suite 230
Reno, NV 89501

State of Nevada Attorney General's Office
Solicitor General
Appellate Division
100 North Carson Street
Carson City, Nevada 89701


Employee of Aldrich Law Firm, Ltd.

1 THE FIFTH JUDICIAL DISTRICT COURT

2 STATE OF NEVADA, COUNTY OF NYE

3

4 Estate of MICHAEL DAVID ADAMS,)
by and through his mother JUDITH)
ADAMS, individually and on)
5 behalf of the estate,)
) Case No.
6 Plaintiff,) CV24539
)
7 vs.) Dept. No. 2P
)
8 SUSAN FALLINI, DOES I-X and ROE)
CORPORATIONS I-X, inclusive,)
9)
Defendants.)
10)

11

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13

14

15 HEARING

16 JULY 28 2014

17

18

19

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21

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24

25 Reported by: Teri R. Ward, CCR NO. 839

1 APPEARANCES:

2 For the Plaintiff:

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10 For the Defendants:

11 JOHN OHLSON, ESQ.
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13

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15

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1 THE COURT: Adams versus Fallini, 24539.

2 MR. OHLSON: Good morning, Your Honor.

3 THE COURT: Good morning. Let's give
4 people a little bit of time to shuffle in and out
5 and then we'll make a record. What page is Fallini
6 on? Page 7.

7 Okay, counsel. Everybody's came on in
8 and sat down now, and you were about to state for
9 the record your name, and we were going to get
10 started. So go ahead, please.

11 MR. OHLSON: Yes, Your Honor. If I may,
12 John Ohlson and David Hague for Mrs. Fallini, who's
13 present. We're ready to proceed. Mr. Hague is a
14 partner in the law firm of Fabian & Clendenin, also,
15 adjunct -- or I don't know if he's adjunct, but he's
16 a --

17 MR. HAGUE: That's right.

18 MR. OHLSON: -- law professor and --

19 THE COURT: Good. And Mr. Aldrich.
20 Very good.

21 MR. ALDRICH: John Aldrich, yes, for the
22 Plaintiff.

23 THE COURT: All right. Case No. 24539,
24 Adams versus Fallini. It's the time and place set
25 for a motion for relief from judgment and also any

1 other information that we're going to get out on the
2 motion to quash the subpoena duces tecum for the
3 business records. I --

4 MR. OHLSON: Mr. Hague is going to argue
5 the motion, Your Honor.

6 THE COURT: Very good. Counsel, I've
7 read the briefs, but this is your chance to make a
8 record, so go ahead.

9 MR. HAGUE: Thank you, Your Honor.
10 Thanks for letting us come here today, and we have
11 quite a few supporters for Ms. Fallini. They've
12 traveled all over the place.

13 This is an important hearing. It's an
14 important hearing for my client. I've traveled from
15 Texas. My other partner's traveled from Salt Lake.
16 We view this as a very important motion, and we're
17 grateful the Court has allowed us to present it
18 today.

19 THE COURT: Okay.

20 MR. HAGUE: Your Honor, as you can see,
21 there are several supporters here because they also
22 have a stake in the outcome of this case. It's not
23 just Ms. Fallini, who's here.

24 You know, I've thought about this case
25 for the past couple of years over and over again,

1 and I've never had a case where I've stayed up at
2 night scratching my head and feeling so perplexed
3 and frustrated about what's happened here. I never
4 had a case where the Defendant was 100 percent
5 innocent as a matter of law and then somehow loses
6 over a \$1,000,000. I've never had that.

7 Your Honor's practiced law, and you've
8 probably dealt with similar situations where you
9 represent a plaintiff or you represent a defendant.
10 You've got some gray areas and your case looks
11 really good at first, but then it just starts to get
12 uglier and uglier. That's the one thing that's
13 never happened here because I've looked at this and
14 I've said Ms. Fallini is truly a victim.

15 And I've discussed this case with
16 colleagues. I've discussed it with some of the
17 professors where I teach law. I've discussed it
18 with my colleagues, other attorneys, and we keep
19 scratching our head as to how this could have
20 happened. And I think the answer, Your Honor, that
21 I truly believe 100 percent is that this Court was
22 deceived by Plaintiff's attorney who is also an
23 officer of the court.

24 He blatantly ignored and violated his
25 duty of candor and committed fraud upon the Court in

1 obtaining an over \$1,000,000 judgment against
2 Ms. Fallini.

3 Your Honor, for the judicial process to
4 function, especially at the state level, the Court
5 has to rely on Counsel's honesty and integrity.
6 I've watched Your Honor conduct several hearings
7 here today, lots of people presenting very silly
8 things, the hearing we just heard. But your job,
9 when you sit up there as a lawyer, is to trust me
10 that what I tell you, that what I present before you
11 is truthful, that it's honest, and that I have a
12 basis under the law for doing so. I owe you a duty
13 of loyalty as a lawyer.

14 And as lawyers, we have these rules that
15 tell us when we file documents with the court that
16 we must certify that what we are putting on paper is
17 warranted by existing law and that the allegations
18 have evidentiary support. We have other rules that
19 tell us we can assert only an issue when there is a
20 clear basis in law and that doing so is not
21 frivolous.

22 Your Honor, these rules were not
23 followed in the case. And it's not the Court's
24 fault because the Court relied on fraudulent
25 representations. The Court did its job. It trusted

1 the lawyers in this case. And as a result, my
2 client's life has been ruined by an over \$1,000,000
3 judgment when she did absolutely nothing wrong and
4 there's absolutely no law to support the judgment.

5 Fortunately, the Court is in a position
6 today to rectify that, to hear something that it
7 hasn't heard, to hear something under Rule 60 that
8 it hasn't heard in neither this case nor in any
9 prior proceeding. I know the Court's aware of the
10 facts, and I appreciate the Court reading the brief,
11 but I would like to put some into the record, if I
12 may.

13 THE COURT: Thank you, sir.

14 MR. HAGUE: Your Honor, you know that
15 this case began on March 1st, 2007, when Plaintiff
16 served a complaint on Ms. Fallini suing her for the
17 death of her son after he got behind the wheel drunk
18 and struck one of her cows on Highway SR-375. I
19 know this Court is also aware that Ms. Fallini is
20 not an attorney. She's over 60 years of age. She's
21 a rancher who has devoted her life to her family and
22 her family's ranch. She does things the good old
23 fashion way, the way we wish everyone conducted
24 themselves.

25 She's trustworthy, she's dependent, and

1 her integrity means everything to her. But again,
2 she's not an expert on the law. So what does she
3 do? What anyone else here would have done here
4 today. They would have hired a lawyer to represent
5 them and to represent their interests.

6 So she retained Harold Kuehn and
7 essentially put her livelihood in his hands. He did
8 one thing right in this entire case. He filed an
9 answer on Ms. Fallini's behalf, and he asserted an
10 affirmative defense under the Open Range Law that
11 was contained directly in the brief.

12 It listed the open range defense under
13 Nevada Revised Statute 568.360, which expressly
14 provides that those who own domestic animals do not
15 have a duty to keep those animals off highways
16 located on open range and are not liable for any
17 damage or injury resulting from a collision between
18 a motor vehicle and an animal on open range; in
19 other words, a complete defense for Ms. Fallini as a
20 matter of law.

21 The answer was filed, but after that,
22 Ms. Fallini's attorney jumped ship. He completely
23 abandoned her in her weakest moment. But before he
24 did that, he lied to her. He said Ms. Fallini, the
25 case is over, we've got this open range defense,

1 there's no law to support it, you're done. But that
2 didn't happen, Your Honor.

3 Unbeknownst to Ms. Fallini, the case was
4 not over. Instead, what followed was a pattern of
5 overzealousness and deceit on the part of opposing
6 counsel.

7 While Ms. Fallini's attorney was lost in
8 space, litigation continued by way of fraudulent
9 discovery requests and motion practiced by opposing
10 counsel. All of this was done without Ms. Fallini's
11 knowledge.

12 Your Honor, we have attached to our
13 motion an accident report as Exhibit A that I don't
14 know if the Court has seen up until now. There are
15 some relevant facts in there. That the vehicle was
16 speeding at almost 80 miles per hour, that the
17 deceased was at fault, and that the deceased was
18 driving under the influence of alcohol. These are
19 somewhat relevant, Your Honor. But the most
20 critical fact that's contained in that accident
21 report and that is undisputed and which has never
22 been disputed by Plaintiff's counsel is that the
23 collision occurred on open range approximately seven
24 miles past an open range warning sign.

25 Since early 2007, Your Honor,

1 Plaintiff's counsel has had possession of this
2 report and of this open range knowledge. It is
3 listed in Plaintiff's list of documents to be
4 produced at trial. We never saw it. We obtained it
5 this year on our own accord.

6 This open range defense was also, of
7 course, listed in Ms. Fallini's answer as an
8 affirmative defense, which opposing counsel saw and
9 signed off on the case conference report filed on
10 October 23rd, 2007. Now, Ms. Fallini's answer, I
11 understand, Your Honor, is not necessarily
12 conclusive, but Plaintiff's admissions are
13 conclusive.

14 Perhaps, another thing that this Court
15 hasn't reviewed, and we didn't get until recently,
16 was a memorial web page created by Plaintiff, which
17 expressly provided that the accident occurred on
18 open range. I quote, "Mike died on the famous ET
19 highway. This is open range county and the cows
20 have the right of way." It goes so far as to cite
21 articles and other statutes trying to fight against
22 the open range so that when this may happen again,
23 someone else might have a prayer out there in
24 bringing a lawsuit.

25 Opposing counsel never produced this web

1 page either as part of the mandatory initial
2 disclosure process or throughout any discovery.
3 This website contains several determinative
4 admissions.

5 Furthermore, Your Honor, according to
6 three affidavits filed in support of this motion,
7 the area of Highway State 375 is and has been for
8 many years open range, and anyone making a
9 responsible and reasonable inquiry as to whether or
10 not that stretch of highway is open range would find
11 that it is. There are 14 signs between where
12 Mr. Adams drove his car to where he hit the cow that
13 state it is open range.

14 So despite all this, Your Honor, despite
15 the unequivocal statements in the accident report,
16 which again to date have never been challenged, as
17 well as his client's own admissions to the contrary
18 and without any evidentiary support or existing law
19 on his side, opposing counsel sent a request to
20 Ms. Fallini's attorney that included a request for
21 Ms. Fallini to actually admit or perhaps lie that
22 the accident did not occur on open range as set
23 forth in the Open Range statute.

24 Even more problematic is that this
25 request came after Ms. Fallini's counsel repeatedly

1 neglected to attend hearings and respond to
2 pleadings. No one ever informed Ms. Fallini of this
3 request. In conflict with ethical rules, procedural
4 rules, and equitable principles, opposing counsel
5 absolutely sought admissions of known false facts;
6 facts which have been false from day one, facts
7 which have zero evidentiary support, facts which
8 this Court has knowledge are simply untrue.

9 And as the Court knows, Ms. Fallini, she
10 didn't answer the request for admission. She
11 thought she was being represented by a competent
12 lawyer who had her best interest in mind, but he
13 didn't, and opposing counsel knew this. No one ever
14 informed Ms. Fallini that her counsel was not
15 responding to any of the motions and other papers.

16 And despite all of this, and despite
17 Ms. Fallini's 100 percent statutory defense as a
18 matter of law, Plaintiff's counsel then had the
19 court enter partial summary judgment upon false
20 facts, which it imposed liability on Ms. Fallini for
21 the accident, the accident that everyone knew
22 occurred on open range.

23 Ms. Fallini was deemed to have admitted
24 that it did not occur on open range under the
25 statute. It was not until three years after

1 Mr. Kuehn told Ms. Fallini the case was over and
2 that she had prevailed that she learned the true
3 status of her case, that she had been had. That she
4 had been worked over by the system that was designed
5 to protect her constitutional rights. In the
6 meantime, Plaintiff sought default judgment based
7 upon the order granting summary judgment which the
8 Court granted.

9 I don't know if the Court's aware of
10 this or not, but Mr. Kuehn has since been suspended
11 from practicing law. But the tragedy here, Your
12 Honor, is that he also lied to his malpractice
13 insurance carrier. So when Ms. Fallini had a 100
14 percent cause of action against him for malpractice
15 went to sue him, we found out that he had lied on
16 all of his coverage, and so coverage was denied.
17 This is Ms. Fallini's only remedy. This is
18 Ms. Fallini's last prayer to fight an over
19 \$1,000,000 judgment when she did nothing wrong.

20 Your Honor, in addition to the
21 fraudulent request for admission regarding the open
22 range, Plaintiff's counsel fabricated in industry's
23 practice in the request for admission that cattle in
24 the area where the accident occurred are marked with
25 reflective and luminescent tags. Again, Ms. Fallini

1 didn't answer, and these absurd false requests were
2 deemed admitted and used to support the motion for
3 summary judgment.

4 We filed three affidavits that are also
5 attached to the motion of three experienced cattle
6 ranchers who have been around this area for several
7 years. All of them have stated that this practice
8 of attaching reflectors to cows is unheard of and a
9 reasonable inquiry would indicate that marking cows
10 with luminescent tags is absolutely not common
11 practice.

12 Your Honor, before I go into my argument
13 stating the rules, it's important to note that in
14 response to the motion filed, opposing counsel does
15 absolutely nothing to rebut any of these factual
16 allegations. In fact, he doesn't even respond; he
17 simply ignores them. I suppose we should just deem
18 these facts admitted.

19 Your Honor, Rule 60(b) of the Nevada
20 Rules of Civil Procedure expressly provides that the
21 court may set aside a judgment for fraud upon the
22 court. Your Honor, the Supreme Court has made it
23 very clear that there are no time limits on bringing
24 this type of motion, and that makes perfect sense.
25 No worthwhile interest is served in protecting such

1 a judgment. A case of fraud upon the court calls
2 into question the very legitimacy of the judgment
3 that was obtained.

4 Your Honor, courts have held that simple
5 dishonesty of an attorney who is an officer of the
6 court is so damaging on courts and litigants that it
7 is considered fraud upon the court. And courts have
8 consistently held that an officer of the court
9 perpetrates the fraud on the court, one, through an
10 act that is calculated to mislead the court or, two,
11 by failing to correct a misrepresentation or retract
12 false evidence submitted to the court. Opposing
13 counsel is guilty of both.

14 We have cited several cases from the
15 Nevada Supreme Court in support of our argument. In
16 NC-DSH versus Garner, which is at 218 P.3d 853, a
17 Nevada Supreme Court 2009 case, the Nevada Supreme
18 Court found fraud upon the court when an attorney
19 acted dishonestly. The attorney made a fraudulent
20 misrepresentation to the court by passing off a
21 forged settlement agreement as genuine. This was
22 sufficient to find fraud.

23 The court said that fraud can occur when
24 a party is kept away from the court by such conduct
25 as prevents a real trial upon the issues involved.

1 In another similar case, the Nevada
2 Supreme Court found fraud upon the court when an
3 attorney misknowingly represented testimony. That's
4 the Sierra Glass versus Viking case, 808 P.2d F12.
5 That's a 1991 Nevada Supreme Court case.

6 In Sierra, the attorney simply read a
7 deposition into the record and omitted a portion to
8 further his client's position. The court reasoned
9 that this behavior was nothing other than fraud upon
10 the court, despite counsel's framing the behavior as
11 clever lawyering and proficient advocacy. The court
12 held that any act which is calculated to mislead the
13 tribunal in violation of Nevada Rule of Professional
14 Conduct 3.3 is fraud on the court.

15 Now, Rule 3.3, Your Honor, is quite
16 simple. It states, quote, "A lawyer shall not
17 knowingly make a false statement of fact or law to a
18 tribunal or fail to correct a false statement of
19 material fact of law previously made to the tribunal
20 by the lawyer, knowingly advancing false facts to
21 the tribunal even if doing so through the guise of
22 the discovery process is clearly fraud on the court
23 and violates Rule 3.3." But using the court
24 processes to accomplish this is even more deplorable
25 because it attempts to force the court to be a party

1 to the fraud.

2 Plaintiff's counsel advanced falsehoods
3 that, one, the use of luminescent tags on cattle is
4 common practice to falsely prove negligence, and,
5 two, that the accident did not occur in open range
6 to avoid Ms. Fallini's absolute defense. He
7 confused the concepts of effective advocacy and
8 fraud.

9 More to the point, Your Honor, seeking
10 admission of known false facts and then using those
11 false facts to support a motion filed with the court
12 is absolutely fraud upon the court.

13 The Ninth Circuit has held that Rule
14 36(a) serves two important goals, true seeking in
15 litigation and efficiency in dispensing justice.
16 But they also have said that it should not be used
17 to harass the other side or in the hope that a
18 party's adversary will simply concede essential
19 elements.

20 Recently, the Ninth Circuit faced an
21 issue with admissions. This is in McCollough v.
22 Johnson, 637 F.3d 939. This is a 2011 Ninth Circuit
23 case. It held that a plaintiff service of false
24 request for admissions violated the Fair Debt
25 Collection Practices Act as a matter of law.

1 I quote from their opinion. "JRL's
2 request for admission asked McCollough to admit
3 facts that were not true." That he had no defense,
4 that every statement in the complaint was true, and
5 that he had actually made a payment. JRL had
6 information in its possession that demonstrated the
7 untruthfulness of the request of admissions.

8 Accordingly, the court held that the
9 service of these requests for admission containing
10 false information constituted unfair,
11 unconscionable, or false deceptive or misleading
12 means to collect a debt.

13 Now, Your Honor, the 11th Circuit has
14 decided a case involving similar issues, and the
15 11th Circuit case is Perez versus Miami-Dade. It's
16 297 F.3d 1255. It's a 2002 case, but it's also been
17 cited with approval by the Ninth Circuit in Conlon
18 VUS, 474 F.3d 616.

19 This case is interesting. Mr. Perez was
20 a police officer, and he got out of his car to chase
21 some other suspects. Another police car came around
22 the corner and thought he was one of the bad guys
23 and allegedly ran him over and crippled him. So
24 Mr. Perez sued the county. He also sued the police
25 officer.

1 His request for admissions had no
2 evidentiary support and were simple regurgitations
3 of what was set forth in the initial complaint. One
4 of the things he asked, Your Honor, in that case was
5 for the county to admit that it had a practice of
6 using unnecessary deadly force, but there was no
7 factual proof at any time in the case that that was
8 even a legitimate request.

9 Furthermore, the county had already
10 denied this exact request for admission in the
11 complaint. The county failed to respond to the
12 requests. They were deemed admitted. Perez asked
13 the court to strike the answers which contained all
14 of the affirmative defenses able to withstand
15 summary judgment. The court did.

16 Perez then filed for summary judgment
17 and prevailed because of the deemed admissions. So
18 the county filed a motion to withdraw the request
19 for admissions and filed a motion for
20 reconsideration. Both were denied by the district
21 court. It was overturned by the 11th court where it
22 analyzed it under an abusive discretion standard.

23 I quote, "We conclude with the comment
24 on Rule 36 and Perez's use of requests for
25 admissions in this case. Essentially, Rule 36 is a

1 timesaver designed to expedite the trial and to
2 relieve the parties of the cost-approving facts that
3 will not be disputed at trial. That is, when a
4 party uses the rule to establish uncontested facts
5 and to narrow the issues for trial, then the rule
6 functions properly. When a party like Perez,
7 however, uses the rule to harass the other side or,
8 as in this case, with the wild-eyed hope that the
9 other side will fail to answer and therefore admit
10 essential elements that the party has already denied
11 in its answer, the rule's timesaving function
12 creases. The rule instead becomes a weapon,
13 dragging out litigation and wasting valuable
14 resources. This is especially true here where the
15 defendants had denied Perez's core allegations in
16 the answers and again at a scheduling conference.
17 Perez's continued service of the same request for
18 admissions in the face of these denials was an abuse
19 of Rule 36."

20 Your Honor, our case is no different.
21 It is more egregious. Opposing counsel, despite his
22 knowledge, the Court's knowledge, and his client's
23 knowledge to the contrary, advanced false facts
24 using the discovery process in a calculated attempt
25 to mislead the Court and with the wild-eyed hope

1 that Ms. Fallini, particularly her non-responsive
2 attorney, would fail to answer and therefore admit
3 the inapplicability of an essential defense that
4 Ms. Fallini had already set forth in her answer and
5 at the scheduling conference. Opposing counsel used
6 the rule as a weapon, not a timesaving function. He
7 abused the Rules of Civil Procedure.

8 He was in possession of the accident
9 report as early as 2007. It unequivocally provided
10 that the accident occurred on open range. He was in
11 possession of Ms. Fallini's answer which contained
12 the affirmative defense. He had knowledge of his
13 client's website which contained the admission. In
14 fact, he didn't even object, Your Honor, when this
15 Court took judicial notice of the fact that the
16 whole accident occurred on open range. And despite
17 all of this, Ms. Fallini was deemed to have admitted
18 that the accident did not occur on open range.

19 Again, this request for her to admit
20 this came after Ms. Fallini's counsel had jumped
21 ship. When no one responded, opposing counsel used
22 these false admitted facts in a pleading filed with
23 the court. Opposing counsel abused discovery
24 process in a calculated maneuver to force fraudulent
25 facts on this Court. He has subverted the integrity

1 of the Court calling into question the very
2 legitimacy of the judgment.

3 Your Honor, this is not clever lawyering
4 or proficient advocacy. It is nothing other than
5 fraud on the Court. That is not the purpose of the
6 Rules of Civil Procedure. The rules were designed
7 to -- the rules were not designed to manufacture
8 claims and facts and then use those artificial
9 claims to blindside opposing parties and deceive the
10 Court.

11 The Sierra Glass court put it plainly.
12 "An act which is calculated to mislead the tribunal
13 is not clever lawyering and proficient advocacy. It
14 is nothing other than fraud on the court."

15 Your Honor, I have found no cases where
16 a court took judicial notice of an essential fact in
17 direct contradiction of a deemed admitted fact that
18 then formed the basis for prevailing on summary
19 judgment. I find this troubling because this
20 clearly highlights the inability of the court to
21 perform in the usual manner its impartial task. As
22 Your Honor knows, to obtain summary judgment, one
23 must show that no material facts are in dispute and
24 that they're entitled to judgment as a matter of
25 law.

1 The Court essentially took notice that
2 two plus two equals four, but then agreed with
3 Plaintiff that two plus two equals five as a matter
4 of law. That is not how the system should work.
5 Just like the open range issue, the Court knows,
6 Plaintiff knows, opposing counsel knows and we know
7 that two plus two is four. Nothing should be able
8 to change this. Requests for admissions are not
9 weapons designed to strip away the truth. Opposing
10 counsel forced the Court to pronounce a clear lie
11 that the accident was not in open range when it
12 entered the motion for summary judgment and the
13 order that he prepared.

14 In further support of opposing counsel's
15 fraud upon the Court, Plaintiff's counsel willfully
16 ignored his obligations under Rule 11. By signing
17 the complaint that he filed on behalf of Plaintiff
18 as well as the motion for summary judgment that was
19 filed, opposing counsel certified that to the best
20 of his knowledge, information and belief formed
21 after reasonable inquiry the allegations and other
22 factual contentions had evidentiary support or were
23 likely to have evidentiary support after a
24 reasonable opportunity for further investigation or
25 discovery.

1 Your Honor, where is the evidentiary
2 support? There is none. In fact, the only evidence
3 is evidence that goes directly against Plaintiff's
4 false contentions. He was in possession of the
5 accident report which stated it had occurred on open
6 range. That was a complete defense to Ms. -- to
7 Plaintiff's complaint. The Plaintiff's website
8 admitted it was on open range, again providing her
9 with a complete defense.

10 Finally, as indicated in the attached
11 affidavits to our motion, a simple call to the
12 applicable regulatory agency or just a drive through
13 the area where the accident occurred would have
14 provided Counsel with the simple truth that the
15 accident was on open range and that there was a 100
16 percent statutory defense.

17 He not only failed to perform a
18 reasonable inquiry before filing the complaint and
19 the motion for summary judgment, he ignored his
20 client's own admissions and other evidence that made
21 the suit and the motion for summary judgment 100
22 percent frivolous.

23 This is also a violation of Rule 3.1 of
24 the Rules of Professional Conduct, which provides
25 that a lawyer shall not assert an issue unless there

1 is a basis in law and fact for doing so that is not
2 frivolous. Again, Your Honor, the accident report,
3 the website, the famousness of the ET Highway where
4 the accident occurred, and a simple inquiry to the
5 applicable agency all clearly indicate that the
6 accident happened on open range.

7 Further, Plaintiff's counsel advanced
8 luminescent tagging as common practice, which is
9 another falsehood relied upon by the Court to find
10 Ms. Fallini liable. There can be no doubt that
11 Plaintiff's counsel knew that these assertions were
12 false.

13 Plaintiff's counsel was obligated to
14 accept known facts pursuant to Professional Conduct
15 and Civil Procedure Rules while advocating
16 zealously, but he, instead, sidestepped those
17 obligations as an officer of the court and forced
18 fraudulent facts on the Court by seeking an
19 admission that the allegations were true even though
20 they were absolutely false.

21 Now, even assuming, Your Honor, for the
22 sake of argument, that these facts were not known
23 from the outset, which is simply not true, an
24 attorney who fails to correct a misrepresentation or
25 retract false evidence at any time during the case

1 commits fraud upon the court. In Sierra Glass, the
2 court reasoned that perhaps the most egregious
3 action that opposing counsel took was their failure
4 to correct the misstatement once it was brought to
5 their attention.

6 In our case, Your Honor, opposing
7 counsel failed on multiple occasions to correct the
8 misrepresentations of material fact. He asserted
9 that Michael was legally driving, despite holding
10 evidence to the contrary, that the deceased was at
11 fault, that he was speeding, and that he was drunk.
12 All of this was in the undisputed accident report
13 and death report, but it was never brought to the
14 Court's attention. No corrections were made.
15 Holding the contradicting accident report and having
16 no evidence to support his assertions, opposing
17 counsel thought it clever lawyering and proficient
18 advocacy to mislead this tribunal concerning
19 material facts that would otherwise, provide
20 Ms. Fallini a perfect defense. He manufactured
21 false evidence using the discovery process, and he
22 took affirmative steps to forward this fraud by
23 counseling his clients to deactivate the memorial
24 website for her son and then produce requests for
25 admissions for my client to admit that it never

1 happened on open range. He even failed to retract
2 his statements after the Court took judicial notice
3 that this occurred on open range.

4 Your Honor, my client, who is now in her
5 60s, and who has labored her entire life to support
6 her family and provide them with security should not
7 be punished because of opposing counsel's lies and
8 her attorney's ineptness. She did nothing wrong.
9 It's not fair, it's not what the judicial system is
10 about, and it is simply not right to deprive
11 Ms. Fallini of due process. It needs to be
12 corrected. There is no doubt that fraud was
13 committed upon the Court, and Rule 60 allows the
14 Court to remediate this fraud by setting aside the
15 judgment and it should.

16 Your Honor, the second part of the
17 argument that I've set forth in the brief deals with
18 Rule 60(b)(1), which this Court is very familiar
19 with, likely. It's where there's mistake,
20 inadvertent surprise or excusable neglect. That one
21 has a six-month time period.

22 Fraud upon the Court can be looked at
23 three, four, five years after it occurred because as
24 the Supreme Court has held, we do not like to ever
25 entertain the idea that fraud has been committed

1 upon the court and so we allow judges to revisit
2 that at any time.

3 The 60(b)(1) argument, Your Honor, is
4 separate from fraud upon the court. That one has a
5 six-month time period. We believe we're also within
6 our right to bring that motion under 60(b)(1) as
7 well for inadvertent surprise and excusable neglect.
8 The reason is, is because there's a new judgment.
9 The old judgment is void. The Supreme Court
10 remanded, you entered a new order still making
11 Ms. Fallini liable for over a \$1,000,000, but it's a
12 new order. We have filed a motion within our
13 six-month time frame.

14 The Supreme Court of Nevada has
15 established guidelines where the courts can analyze
16 a claim under 60(b)(1). It simply needs to analyze
17 whether the movement promptly applied to remove the
18 judgment, lack the intent to delay the proceedings,
19 demonstrate a good faith, and lack knowledge of
20 procedural requirements. Ms. Fallini meets these
21 elements.

22 Your Honor, if there was ever a case
23 where excusable neglect was present it is this one.
24 All Ms. Fallini is asking for is to have her day in
25 court. She objected promptly. There's no evidence

1 to suggest that Ms. Fallini filed any motions to
2 unnecessarily delay or prolong the matter. The
3 record contains no indicia of bad faith on
4 Ms. Fallini's part. And, as the Court knows and as
5 I've exhausted, she has several meritorious
6 defenses, in fact, complete 100 percent defenses as
7 a matter of law.

8 So the only remaining issue is was there
9 excusable neglect, inadvertence, or surprise?
10 Clearly, there was. We cited a couple cases in our
11 brief, Your Honor, and it's astounding how many
12 cases are less severe than Ms. Fallini's, yet the
13 defaults have been set aside without any question by
14 the court.

15 We cited Stachel v. Weaver, 655 P.2d
16 518. In that case, the attorney failed to respond
17 to interrogatories and other discovery requests. He
18 left his client high and dry. Plaintiff got a
19 default judgment. The Supreme Court set it aside
20 and said, "Where a client is unknowingly deprived of
21 effective representation by counsel's failure to
22 serve process to appear at the pretrial conference,
23 to communicate with the court, client and other
24 counsel and the action is dismissed by reason of the
25 attorney's misrepresentation, the client will not be

1 charged with responsibility for the misconduct of
2 nominal counsel of record."

3 So what makes this case any different?
4 Why are we going to charge Ms. Fallini with the
5 responsibility of the misconduct of her inept
6 counsel who is suspended from practicing law and who
7 has no malpractice insurance?

8 We also cited a case called Passarelli,
9 which is instructive. In that case, the attorney
10 was the victim of substance abuse and allowed his
11 practice to disintegrate. The court had to decide
12 whether the conduct of defendant's counsel should be
13 imputed to defendant. The court said no, it would
14 be improper.

15 I quote from the Supreme Court of
16 Nevada, "Counsel's failure to meet his professional
17 obligations constitutes excusable neglect.
18 Defendant was effectually and unknowingly deprived
19 of legal representation." So the court determined
20 it would be unfair to impute such conduct to
21 defendant and thereby deprive him of a full trial on
22 the merits.

23 So I ask again, how is Ms. Fallini's
24 case any different? Why would the court in
25 Passarelli say that it would be unfair to impute the

1 attorney's conduct to defendant, but it would be
2 fair to do so to Ms. Fallini in this case,
3 especially when a trial on the merits would
4 absolutely change the outcome of the case?

5 Mr. Kuehn's conduct was outrageous. He
6 was a liar, he abandoned his client completely, and
7 he has no malpractice insurance. Why are we going
8 to punish Ms. Fallini? She didn't know he was
9 incompetent and shirking his duties as a lawyer.
10 She didn't know he would leave her high and dry.
11 She trusted him. She trusted the system.

12 If he simply answered the request for
13 admission with a deny, we wouldn't even be here
14 today. The case would have been over, ruled in
15 favor of Ms. Fallini. That's why we have Rule 60.

16 In short, Your Honor, the undenied,
17 undisputed material facts clearly show that opposing
18 counsel knew the accident was on open range,
19 advanced the fake industry standard to show
20 negligence, purposefully and calculatingly misled
21 this tribunal, failed to correct or unwind his
22 scheme at multiple and necessary and opportune
23 instances, manipulated and withheld evidence to
24 further his scheme, and did all this when
25 Ms. Fallini had zero representation and no knowledge

1 whatsoever of the status of her case and opposing
2 counsel's deceptive strategy to obtain Plaintiff's
3 judgment.

4 The Court must set aside the judgment,
5 and it has clear grounds to do so under Rule 60(b)
6 because opposing counsel committed fraud upon the
7 Court. And it has clear grounds to do so for the
8 excusable neglect provision of Rule 60.

9 Your Honor, let's not punish a
10 67-year-old woman for the mistake of her attorney or
11 for the fraud committed on the Court by opposing
12 counsel. If this Court can tell me one thing that
13 Ms. Fallini did wrong in this case, I would love to
14 hear it. If anyone can tell me one thing that
15 Ms. Fallini has done wrong in this case, I'd love to
16 hear it. What law did she break? What did she do
17 wrong?

18 I could testify under oath, Your Honor,
19 that I have spoken with over 50 lawyers, judges and
20 practitioners about this case.

21 THE COURT: You can't think of one thing
22 she did wrong?

23 MR. HAGUE: There's not one thing she
24 did wrong.

25 THE COURT: She relied on Mr. Kuehn.

1 MR. HAGUE: She relied on Mr. Kuehn.

2 That's right. She did. And fortunately, the
3 Supreme Court has said that we're not going to
4 impute that type of shoddy lawyer (indiscernible).

5 THE COURT: I didn't mean to get you off
6 your thing.

7 MR. HAGUE: No.

8 THE COURT: It just stood out at me.

9 MR. HAGUE: The case, Your Honor, is
10 shocking. And I'm not saying it's the Court's fault
11 at all. I think what's happened in this case is
12 what I've seen happen all over jurisdictions in
13 state courts where you rely on what goes before you
14 and you stamp things. And I understand you read
15 them, but this was a complex case, attorneys were
16 not showing up for court, and you relied on opposing
17 counsel's representations, but they were false.

18 Ms. Fallini had a 100 percent defense.
19 I couldn't sue the court, I couldn't sue the judge
20 and then say, admit that you don't have judicial
21 immunity. You always have judicial immunity. She
22 always had that defense. It needs to be rectified
23 today, Your Honor.

24 Do you have any questions for me?

25 THE COURT: I might have after

1 Mr. Aldrich speaks.

2 MR. HAGUE: Okay. Thank you.

3 THE COURT: Thank you.

4 MR. ALDRICH: Good morning, Your Honor.

5 THE COURT: Good morning.

6 MR. ALDRICH: That is difficult to
7 listen to. To stand there and listen to my
8 integrity be questioned like that over and over
9 again by someone who does not know me is very
10 difficult. I will say that I do appreciate the fact
11 that Mr. Ohlson didn't come in here and say all that
12 garbage about me.

13 I don't even know where to start, but
14 you know, I think that it's interesting to me, you
15 go to court and you have these sayings that come up.
16 And one of the sayings is when the facts are on your
17 side, argue the facts. When the law's on your side,
18 argue the law.

19 Well, apparently, when the facts and the
20 law aren't on your side, what you do is you attack
21 opposing counsel, and, oh, by the way, let's attack
22 the judge, too, and say he doesn't know what he's
23 doing or he's biased or whatever else we can do.
24 And then let's see if maybe it's an election year,
25 we can bring in a whole bunch of friends to try and

1 exert a little pressure.

2 But I will say I'm glad that
3 Mrs. Fallini's decided to appear now and contest
4 something so maybe we can get this thing going
5 forward. But I want to touch on a few things here
6 and clarify the record a little bit. I know
7 Mr. Hague is new to the case or somewhat new to the
8 case.

9 Now, the police report that they
10 attached, I don't know for sure where that came
11 from. It's different than the one I had, my
12 recollection. Not sure it matters. Actually, I
13 know it doesn't matter because the evidentiary part
14 of this case happened four years ago, and the Court
15 remembers that. You were here, I was here,
16 Mr. Ohlson was here.

17 We had a default judgment hearing. My
18 clients came and testified. And the Court, even
19 though default judgment had been entered but the
20 amount hadn't yet, the Court let Mr. Ohlson
21 cross-examine my clients. I recall that very
22 clearly as well.

23 But let's back up for a second because
24 what's happened in this case is that we handled it
25 exactly how we were supposed to handle it from the

1 very start. I did not push this case through really
2 fast, like you might try. Sometimes I have clients
3 come in and go, oh, maybe they won't answer, we'll
4 hurry and push through a default judgment.

5 Unfortunately, I didn't anticipate quite
6 so much that was not in the pleading and I didn't
7 bring the entire record, but the Court is well
8 aware. I sent requests for admission like you're
9 supposed to do, by the way, for efficiency and to
10 clarify what the issues were going to be. Months
11 and months later -- I apologize, I don't know
12 exactly, but my recollection is nine months later I
13 brought a motion for partial summary judgment.

14 At that time, that motion for partial
15 judgment was based on those requests for admission
16 because it took care of the liability issues in the
17 case. That was not opposed by Mr. Kuehn. And by
18 the way, you're right. That is mistake number one
19 that Mrs. Fallini made. That's the first one.

20 The second one, interestingly enough,
21 one of the Fallinis has gotten the press interested
22 in this, and there was an article that contained
23 some portion related to this case in the Las Vegas
24 Review Journal recently. In that article, my
25 recollection is it said that the Fallinis have been

1 involved in 31 cases, and that they've won 30 of
2 those cases except this one here.

3 Now, Counsel comes in today and tries to
4 make Mrs. Fallini seem like the victim, non-savvy,
5 doesn't know what's going on, no idea what was going
6 on. If you're in 31 cases, you're smart enough to
7 ask that question, when you're lawyer says this case
8 is over, great, send me the pleading that says it's
9 over. So there's another mistake right there.

10 Okay? And, by the way, if he sent her a pleading
11 that said it was over, that's not my doing, but I've
12 never seen that.

13 Now, I guess I got off into the facts
14 because there was so much here, and I got a little
15 irritated what was being said about me.

16 THE COURT: Do you need a recess to
17 gather your thoughts today?

18 MR. ALDRICH: Oh, no. I'm good.

19 THE COURT: All right.

20 MR. ALDRICH: I'm on a roll now. This
21 really should be stricken. That's where we should
22 start. This should be stricken, and they should not
23 be able to just continue to bring motions in with
24 all this stuff. But let's just take a second.
25 I attached it to my pleading, but, you know, this

1 issue was raised in the motion for reconsideration
2 on the default judgment four years ago that I was
3 committing fraud on the Court and made
4 misrepresentations to the Court. That was denied.

5 Then it went up on appeal. That was
6 addressed in the appellate brief, which I also
7 attached. It starts on page 12 about how I made all
8 these alleged misrepresentations to the Court.
9 That's addressed.

10 The Supreme Court has looked at this
11 issue and said, sorry, you lose. I did not make
12 misrepresentations to the Court. The Court was well
13 aware of everything that happened in this case.
14 And the Court will recall, after summary judgment
15 was granted, just the partial summary judgment, I
16 was trying to get more information through
17 discovery. I brought motions to compel after
18 motions to compel. Mr. Kuehn came to some of those
19 hearings, the Court will recall.

20 In fact, lest anyone think that Your
21 Honor was not giving proper -- what's the right
22 term? Well, wasn't being fair, I drove back out
23 here several times because the Court gave Mr. Kuehn
24 additional time to provide the documents he was
25 supposed to provide.

1 I moved for sanctions. I drove back out
2 here. Mr. Kuehn showed up in some, sorry, I'll get
3 you the information. Your Honor, gave him 30 more
4 days but did impose a sanction if he didn't do it in
5 30 days. Wasn't done in 30 days.

6 I brought another motion for sanctions.
7 I got that granted because it either wasn't opposed
8 or the information wasn't provided. This went on
9 and on and on.

10 I did not push this through in a hurry
11 trying to pull the wool over anybody's eyes. That
12 isn't what happened. Motion for summary judgment
13 was granted. It was not opposed.

14 So we get the admissions, those count,
15 and those facts are admitted. By the way, we went
16 through that. Supreme Court brief, we won. They
17 said, you've deemed those admitted, those are your
18 facts, which brings me back to in the motion for
19 partial summary judgment, I didn't make any
20 representations to the Court about those facts.
21 Those are the Defendant's facts. Okay? I didn't
22 come in here and say, Your Honor, this is where it
23 happened. It was or wasn't open range.

24 I presented to Your Honor requests for admission
25 that were deemed admitted by Plaintiff. Those

1 aren't my facts. And Your Honor was well aware of
2 that, and I was completely aboveboard the entire
3 time on that.

4 So anyway, so this has already been in
5 front of the Supreme Court. This really should be
6 stricken, and the Court really shouldn't even
7 consider it. But if the Court wants to consider it,
8 we'll just keep going.

9 Now, interesting that, you know, the
10 conversation is oh, Mr. -- sorry -- Hague, is
11 perplexed and confused about this case somehow.
12 Well, I'm perplexed and confused, too, and we just
13 keep coming back on the same stuff, and I'm patient,
14 I've handled it here, and I've handled it there.

15 And, you know, yes, we have tried to
16 execute, and we're trying to chase that money down,
17 and we're finding out all kinds of fun stuff about
18 where the money's going. And that's just going to
19 lead to more litigation. That's not really for here
20 today. But again, we're back to saying, oh, she's a
21 victim, not savvy. She's absolutely savvy. She's
22 dumping cash left and right, but that's for another
23 day.

24 Let's see. Some comments here about he
25 said he was scratching his head. I can provide

1 whatever part of the record Mr. Hague needs to not
2 have to scratch his head anymore on this case
3 because it's all very clear. I was very careful
4 about how I approached it. Your Honor was very
5 careful about how you approached it.

6 And by the way, here we go again,
7 Supreme Court already said, yep, what you did was
8 right. Yes. They reduced the amount on the
9 judgment. Okay. Whatever. I lived with that.
10 Okay?

11 In fact, Mr. Ohlson and I had some
12 dispute, the Court may recall, about the amount of
13 that judgment, the modified judgment, amended
14 judgment, whatever we want to call it. And
15 ultimately, we just said whatever, we'll quit
16 fighting about it, and we accepted the amount that
17 they put in that judgment.

18 Let's see. I will say this. Listening
19 to how deceitful I was and all those allegations, I
20 would invite anybody to contact any opposing counsel
21 on any case I've ever been involved in and ask if I
22 have ever been deceitful in any way in any case.

23 All right. A couple other things. I'm
24 not sure. There was an assertion about this
25 memorial web page and how I advised my client to

1 take it down or something. I actually know nothing
2 about the web page. I may have seen it before.
3 I've not told my client to do anything with the web
4 page. It all is what it is. This is all red
5 herring.

6 You can't come in after judgment's been
7 entered, after an appeal has already been done and
8 affirmed and come in and present new evidence. You
9 just can't do it. Where's the finality, which is
10 back to why really it should just be stricken in the
11 first place.

12 I'm sorry. Let me just check my notes.
13 I want to try and cover --

14 THE COURT: You know what?

15 MR. ALDRICH: -- what needs to be
16 covered.

17 THE COURT: You don't want me to, but
18 I'm going to let you get your thoughts in order
19 because I have to go to the bathroom.

20 MR. ALDRICH: Fair enough.

21 THE COURT: So we're going to take a
22 short recess, let you get your thoughts in order,
23 come back, you can finish up. We'll hear from you
24 again, and then I'll let you know.

25 MR. ALDRICH: Great. Thank you.

1 THE COURT: Short recess.

2 THE MARSHAL: All rise.

3 (Court recessed at 11:06 a.m. until
4 11:22 a.m.)

5 THE COURT: All right, Counsel. Let's
6 go ahead. And, Mr. Aldrich, we'll ask you to
7 continue your argument.

8 MR. ALDRICH: I thank you, Your Honor.
9 I will try to be brief, as I know the Court's
10 already heard quite a bit from me. So let me just
11 go back.

12 So this has already been decided by the
13 Supreme Court. That's the most important part. It
14 went up on appeal and went back.

15 Now, interestingly enough, while that
16 was -- appeal was pending, Mrs. Fallini sued me
17 personally and Your Honor in Tonopah, and made
18 similar allegations. The ones against me were that
19 I made allegations that were false, misleading, have
20 no evidentiary support in violation of Nevada law,
21 and on and on and on, and that Your Honor accepted
22 those knowing they were false, and on and on and on.

23 And so I sat at my desk for a while, did
24 a motion to dismiss, drove on up to Tonopah one day
25 and got that thing dismissed. It was dismissed

1 against Your Honor as well. And so now it's been
2 litigated in front of the Supreme Court. It's been
3 litigated in front of a separate court, albeit in
4 this judicial district, I believe. So it's been
5 handled twice.

6 Now we're back here talking about the
7 same stuff again, and it's already been decided,
8 pick one, whether it's the Supreme Court or the
9 other district court. I'm good either way because
10 it's already been decided.

11 Now back to -- well, then -- okay. So
12 then we got the series of rulings that Mrs. Fallini
13 doesn't like. So then they came back and moved to
14 disqualify Your Honor, raising essentially the same
15 issues that we already litigated up in Tonopah. And
16 so that was denied, and now we're here.

17 With regard to the motion for summary
18 judgment, I just want to touch on it way back when.
19 No facts were in dispute. And when you're entitled
20 to judgment as a matter of law, you're supposed to
21 get summary judgment. And on the facts that we had
22 in the case at the time, and the fact, by the way,
23 there was no opposition, the law says we win summary
24 judgment, which is what Your Honor granted and what
25 we -- the relief we obtained, all aboveboard.

1 Now, we look at Rule 60(b) which is,
2 when it comes down to it, ultimately what we're here
3 to talk about today, and the wording of 60(b) --
4 sorry. My iPad is not cooperating. But Rule 60(b)
5 allows to set aside for mistake, inadvertence,
6 surprise or excusable neglect. We've already
7 litigated, actually, the excusable neglect part of
8 it.

9 The Court is well aware that there's no
10 mistake here. There's no surprise here. Okay?
11 There's no inadvertence going on here.

12 The second problem there is newly
13 discovered evidence which by due diligence could not
14 have been discovered in time to move for a new trial
15 under Rule 59(b). What we got today attached to the
16 pleading that we're here to talk about today is a
17 police report which, again, it's got more
18 information on it than I've ever seen before. Not
19 authenticated, by the way, but nonetheless, I don't
20 have a reason to dispute it or not. I don't need to
21 for today's purposes, but to argue that that could
22 not have been discovered at some point in the past
23 is ridiculous.

24 And by the way, remember, the Court
25 addressed all these issues four years ago. Okay.

1 That's what the default judgment was entered.
2 That's when the evidence should have been presented.
3 Well, long before that, but nonetheless. So that
4 one doesn't apply. Then, fraud. I've already had
5 my say on the fraud issue, so there's no reason to
6 set it aside.

7 Again, there's no -- you can't come in
8 after it's been up on appeal and been upheld and
9 say, okay, now I have some evidence I want to
10 present. You just can't do it. And I'm not
11 required to come in here and conduct discovery or
12 prove or disprove or anything else because I've
13 already won, and I won on appeal.

14 So my last comment here is imagine a
15 system where when we get a judgment, whether it's a
16 default judgment after a prove-up hearing like we
17 had here or, heaven forbid, one of those eight or
18 nine-month trials. All right. And then we go
19 fishing through the record and say, oh, I didn't
20 like this and I didn't like that.

21 And after it's up on appeal and comes
22 back we start going -- and going, oh, but the
23 lawyer, he said something I didn't like. He
24 shouldn't have said that. It's his fault. And we
25 come back to it and say, you know what, yeah; that

1 guy's a bad guy, go try that case again. I know you
2 already won on appeal. I know it was five years
3 ago, but do it again. That's absurd. There has to
4 be finality. And there has to be finality here in
5 this instance.

6 So my request to the Court is that -- my
7 real request is that the motion be stricken, to
8 begin with. But I understand there's been a lot
9 raised. And if the Court wants to consider it,
10 that's fine. Consider it. But you still have to
11 deny it because there's no basis to set this
12 judgment aside.

13 Oh, and the last thing I forgot to
14 mention. This little six-month thing, the judgment
15 was entered four years ago. The Supreme Court
16 modified that the amount is now less than it was.
17 That is true. But these bases for trying to set it
18 aside should have been asserted sometime within the
19 six months after it was done four years ago, not
20 after the Supreme Court had sent it back, upheld it,
21 and then it was entered from there.

22 THE COURT: Let me have you address one
23 -- the main point he made. The main point he made
24 was that you submitted a request for admissions that
25 this is open range -- that this is not open range

1 knowing that it's open range. And that was the main
2 argument he made for a while. How do you address
3 that?

4 MR. ALDRICH: Well, interestingly
5 enough, I've never been out there, and I don't know
6 that it's open range, me personally. I did not go
7 investigate whether it was open range. I didn't
8 file the complaint. Mr. Ackerman filed the
9 complaint. I took over the case after that. I have
10 not been out there. I will candidly tell the Court
11 that. Requests for admission are there to, as he
12 said, clarify and help have efficiency. That is why
13 I sent it out.

14 Now, interestingly enough, I've only
15 been practicing here 15 years. I do personal injury
16 litigation, I do a lot of commercial litigation, and
17 I do labor -- a lot of labor litigation. Okay? I
18 get request for admissions in many, many cases that
19 have requests for, you know, admit this fact -- that
20 is it a fact in dispute? And it happens all the
21 time. Okay?

22 But the Court will recall -- and I
23 didn't bring this briefing because we've already
24 briefed it. But I've presented to this Court and up
25 on appeal the law on Rule 36 and the law that says

1 -- the rule says if you don't answer in 30 days,
2 it's deemed admitted.

3 And the case law that I cited to this
4 Court and to the Nevada Supreme Court on that issue
5 actually says something to the effect of they are
6 deemed admitted even if they are ultimately proven
7 to be false, okay, or it turns out that those facts
8 are false. That's what they're there for.

9 THE COURT: Let's take it to the next
10 step, then. I understand that what you're saying is
11 it's quite common out in the legal community when
12 you submit your request for admissions to submit
13 things that everybody may know that that's not true
14 or that the guy's going to respond and say -- so,
15 for example, there's an accident, and you say to the
16 other guy admit that you weren't drunk and so forth.
17 And you know he wasn't, but you're just asking
18 because it's normal to ask for the admissions of the
19 obvious things. This case would be one where you're
20 saying, well, just admit that it was an open range,
21 and Kuehn doesn't respond.

22 Now, I'm not saying you committed fraud
23 on the Court when you submitted your standard
24 admissions. Fine. Okay. You submitted it. Just
25 admit that it was all your fault and Kuehn doesn't

1 respond. You know, oh, I -- he's saying, okay,
2 well, maybe the next step was fraud, which is you
3 coming into court and saying give me my motion for
4 summary judgment because it's deemed admitted, Kuehn
5 didn't respond, Kuehn admitted that it's not open
6 range. And he's saying but at that point you should
7 have said, well, Judge, he admitted this, but it
8 really isn't open -- it is open range.

9 And so what's your response to that?
10 He's putting the duty on you to admit something that
11 Kuehn didn't admit.

12 MR. ALDRICH: I have two responses. One
13 is this issue's already been up to the Supreme Court
14 and come back.

15 THE COURT: I know it has.

16 MR. ALDRICH: Okay? My second response
17 is that is not my representation to the Court. Your
18 Honor was well aware what the basis for my motion
19 for summary judgment was. It was requests for
20 admission that were admitted by the Defendant. They
21 were not my representations. I represented to the
22 Court that I --

23 THE COURT: So you're --

24 MR. ALDRICH: -- sent them out.

25 THE COURT: -- saying you didn't have a

1 duty to correct Kuehn's error?

2 MR. ALDRICH: No. I don't have a duty
3 to correct his error and it's -- the admission is
4 deemed admitted. That's what the law says. It is a
5 fact that is admitted. It's not my fact. It's the
6 Defendant's fact. Okay? I ask it because I want to
7 know -- it's like any discovery. I want to know
8 what the Defendant is going to say about X, Y and Z.
9 That's why I ask.

10 And then what happens is they either
11 admit it or deny it. And on the stuff they deny, I
12 go do more work. Right? On the stuff they admit,
13 because it's there for efficiency, I don't have to
14 do any more work.

15 But how in the world is it my duty to
16 come in and say, well, her lawyer screwed up? What
17 about my duty to my client who has asked me to
18 prosecute her case on her behalf? Right? I have a
19 duty to zealously represent her, which I did, and
20 I've done it exactly how you're supposed to do it.
21 And the Supreme Court has agreed that I did it
22 exactly how you're supposed to do it.

23 THE COURT: You talked about the fact
24 that it's outside the six-month mark regarding the
25 excusable neglect argument. Is there any estoppel

1 for this argument to be raised and for me to rule in
2 their favor and send it up to the Supremes because
3 this argument should have been raised or was raised
4 four years ago, three years ago, two years ago --
5 could have raised it to the Supremes, should have
6 raised it, should have argued it? Maybe they did.
7 It's all been done. Does that stop this argument in
8 any way that they could have argued this fraud a
9 year ago and didn't?

10 MR. ALDRICH: Well, I mean, I think they
11 should be estopped from arguing it because they've
12 already argued it. They've argued it here in front
13 of Your Honor. They've argued it in front of the
14 Supreme Court, and they've argued it in Tonopah in
15 front of somebody else.

16 THE COURT: Are they allowed to keep
17 arguing it in front of --

18 MR. ALDRICH: No. I don't think --

19 THE COURT: -- them?

20 MR. ALDRICH: -- that they are. I think
21 they should be estopped. I mean, there's not a
22 waiver argument there because they've already made
23 the argument. Estoppel, I mean, yeah, I think at
24 some point they have to stop. And ultimately, down
25 the road, I will bring a motion to address that

1 issue, that they keep bringing the same motion
2 again, if I have to.

3 But sure, I think that there's an
4 estoppel argument there, too. But I will be candid,
5 I do not want to go up to another appeal. There's
6 not a reason to go to another appeal. It's done.
7 That's what they're trying to do, I understand.
8 But this is clear. This motion -- I -- again, it
9 should really just be stricken but easily just
10 denied because it's been considered by this Court,
11 by the Nevada Supreme Court, by another court up in
12 Tonopah.

13 THE COURT: Thank you, sir. Anything
14 else you want to add?

15 MR. ALDRICH: Not right now. Thank you
16 for your time.

17 THE COURT: Counsel.

18 MR. HAGUE: Thank you, Your Honor. I'll
19 address some of Mr. Aldrich's points. The first one
20 he said, which is that I'm getting up here today and
21 making attacks on you. I don't think I've done
22 that. If I have, I apologize. But I don't think
23 that I have done anything to attack your judgment or
24 anything you do.

25 I think I said that we owe a duty of

1 loyalty to you, and that facts were presented in
2 front of you that were fraudulent. I never said
3 that this Court did anything wrong, and I've made no
4 such attack on the Court. And if I have, I
5 apologize for that, and I hope the Court hasn't
6 interpreted my argument today on behalf of my client
7 as an attack on you.

8 THE COURT: I haven't.

9 MR. HAGUE: Thank you. The second one
10 is that Mr. Aldrich referring to all of these people
11 here today and then somehow wants to use that to say
12 you're up for election is so irrelevant to this
13 case. Most of these people here are not in this
14 district. They're here because they love
15 Ms. Fallini, and they're here because their
16 livelihood is affected by this decision.

17 THE COURT: I'm not letting emotion
18 interfere with the decision.

19 MR. HAGUE: Thank you.

20 THE COURT: I don't care about these
21 people. I'm just kidding. But I'm not --

22 MR. HAGUE: No. I just want --

23 THE COURT: -- going to let emotion in.

24 MR. HAGUE: I just want the Court to
25 know this wasn't some propaganda that we started six

1 months ago to make the Court feel pressure or
2 anything. They're here because they have
3 supporters. That happens in every case.

4 THE COURT: Sure. That's fine.

5 MR. HAGUE: Your Honor, I am still
6 shocked, and I am still scratching my head over this
7 case because Counsel again has stood up here and has
8 done nothing to rebut the fact that he sent requests
9 for admissions to my client that were lies and then
10 he used those to support a motion for summary
11 judgment.

12 You even asked him have you been to the
13 accident site and he said no. Rule 11, Rule 3.1 of
14 Nevada Rules of Professional Conduct, and Rule 3.3,
15 says that you have to do some reasonable duty to
16 have some evidentiary support and law before you
17 assert anything or file anything. It is astounding
18 that this case has been filed and that he never went
19 to the accident site.

20 Even that, his client admitted it. Even
21 that, it's in the accident report, and this Court
22 took judicial notice of the fact. And so the fact
23 that he says that he didn't even bring this
24 complaint, whatever. He brought the requests for
25 admission that were fraudulent. He should have

1 corrected his misstatement when he knew and he knows
2 now, that the Court, and the Court knows, that this
3 occurred on open range, and that is a 100 percent
4 affirmative defense. All you have to do is say it's
5 on open range. Done. There's no prove-up, there's
6 no evidentiary hearing on that, nothing. And the
7 Court took judicial notice of that.

8 With respect to finality, Your Honor,
9 that argument is frivolous at best. Rule 60 says
10 after a final judgment the court may set aside a
11 final judgment. Rule 60 presupposes finality. So,
12 of course, there is a final judgment, and that's why
13 we brought this motion.

14 Your Honor, you've talked a little bit
15 about estoppel. You've talked a little bit about
16 res judicata. Estoppel, res judicata, claim
17 preclusion, issue preclusion, they all mandate a
18 prior proceeding with identical parties and
19 identical issues that are actually litigated.

20 Your Honor, Counsel's fraud on the Court
21 by the use of request for admissions and a Rule
22 60(b) motion to set aside that judgment for fraud
23 upon the Court has never been litigated. Perhaps
24 the procedural path of this case has been upheld by
25 the Supreme Court, but the allegations that opposing

1 counsel committed fraud upon the Court have not been
2 claimed, litigated or reviewed at any point in any
3 prior proceeding.

4 Now, the Court has asked today to
5 Counsel, does that matter? Can you send someone a
6 request for admission, Doesn't matter what it says?
7 Doesn't matter if it's a complete lie. I'll send
8 some stranger request for admission. Hey, admit you
9 said that Dave Hague has herpes. Okay? Person
10 laughs at it. Right? Thinks that's silly. They
11 don't respond. Request for admission, deemed
12 admitted, defamation, I win, case over. That's what
13 the Court's opening up the door for.

14 That's why there are people here today,
15 because they all own cows on open range, which now
16 means there's going to be a precedence that any time
17 you drive through and hit a cow, as long as you can
18 catch somebody off guard, even if you're
19 misrepresenting, even if you're lying, you catch
20 them off guard, they're going to deem admitted as
21 something that is false. That is the problem with
22 this case. The Supreme Court did not decide that.
23 Your Honor has never decided that. We've never
24 brought a Rule 60 motion, and we've never talked
25 about fraud upon the Court.

1 The accident report, Your Honor, was
2 discovered this year in 2014. The accident report
3 says -- and it's in our motion and it's attached --
4 that the accident was on open range. Mr. Aldrich
5 has that report. It was in his production of
6 documents that he was going to submit at trial. It
7 was never submitted to us.

8 Your Honor, Mr. Aldrich wants to have
9 the Court claim that actual innocence is not
10 relevant. How can innocence not be relevant in this
11 case? Isn't there a way -- isn't there a way that
12 we can relieve Ms. Fallini this judgment, an over
13 \$1,000,000 judgment that will crush her family, that
14 will crush her livelihood, that will crush her
15 profession, when there was a law designed to protect
16 her?

17 THE COURT: How would it crush her
18 profession? No. Let me withdraw that question.
19 Let me ask you a more pertinent one. If you're
20 submitting -- and I'm sure you went into great
21 detail in your brief. I apologize for making you
22 elucidate it again verbally. But if you're
23 submitting that Counsel committed fraud, let's be
24 specific where the fraud occurred. Was it in the
25 request for admissions?

1 MR. HAGUE: The fraud occurred at
2 several different points.

3 THE COURT: But let's make it clear for
4 the record. If it's --

5 MR. HAGUE: Yes.

6 THE COURT: -- appealed up to the
7 Supreme Court, we want them to look at the
8 particular --

9 MR. HAGUE: Yes.

10 THE COURT: -- moment he's committed
11 fraud on the Court.

12 MR. HAGUE: I believe he committed fraud
13 when the complaint was filed because there was no
14 basis to support it because the open range law.
15 That was the first fraud.

16 The second fraud was the request for
17 admissions when he knew that it was on open range
18 and he asked my client to admit a fact that was
19 false --

20 THE COURT: Okay.

21 MR. HAGUE: -- that had no evidentiary
22 support.

23 THE COURT: And you're purported to
24 point at evidence to the Supremes saying here's how
25 I know that he knew it was open range?

1 MR. HAGUE: Absolutely.

2 THE COURT: All right.

3 MR. HAGUE: Absolutely.

4 THE COURT: And that would be --

5 MR. HAGUE: That would be through the
6 accident report, that would be through her complaint
7 where she set forth the affirmative defense -- or
8 her answer. That would be in the complaint. That
9 would be in his document that he submitted to this
10 Court and signed where he actually lists all the
11 documents, the accident report, and where her
12 affirmative defenses are stated again.

13 THE COURT: Because in the accident
14 report it affirmatively stated this is --

15 MR. HAGUE: Affirmatively stated.

16 THE COURT: -- open range, and he knew
17 that?

18 MR. HAGUE: And he knew that.

19 THE COURT: All right.

20 MR. HAGUE: The other part is when he
21 filed his motion for summary judgment. He had this
22 Court enter judgment on a deemed admitted fact that,
23 again, he knew was fraudulent. That was the other
24 fraud he committed upon the Court. He did it again
25 when the Court said I take judicial notice that this

1 occurred on open range. That was the fifth time he
2 had to say --

3 THE COURT: That was at the motion for
4 reconsideration.

5 MR. HAGUE: Correct.

6 THE COURT: He is saying I have never
7 committed fraud because I have never said this was
8 an open range, never did.

9 MR. HAGUE: Absolutely has.

10 THE COURT: Fallini did. Fallini and
11 Kuehn said it's not open range, not me. It's their
12 fact, not mine. That was his defense a moment ago.

13 MR. HAGUE: That's absurd. That is
14 absurd for me to be able to place a lie on a piece
15 of paper. He wrote down admit that this accident
16 did not occur on open range. He wrote that. He put
17 that in a discovery request, a request that's
18 governed by Rule 11, a request that's governed by
19 Nevada Rules of Professional Conduct 3.1 and 3.3.
20 He wrote that down. He sat at his computer and put
21 that down when he knew that it was false. She was
22 silent about it, so it was deemed admitted. That is
23 fraud upon the Court.

24 The cases we've cited are not as
25 egregious as this. The cases we have cited, the

1 defendant still has some problems. The defendant
2 still has to establish some defenses. Ms. Fallini
3 doesn't have to.

4 THE COURT: All right.

5 MR. HAGUE: Congress already gave that
6 defense.

7 THE COURT: It's in my brain as I go
8 through all this stuff. And, yes, I have one. It's
9 boiling down to that issue. Let me see how he
10 responds to that issue. Counsel.

11 MR. ALDRICH: Again, I guess I should have
12 brought more transcripts than what I brought with
13 me. I will tell Your Honor that my recollection of
14 what Your Honor said -- so let me back up for a
15 second.

16 We had a hearing on a motion for
17 reconsideration of prior orders. That motion was
18 filed somewhere around July 2nd of 2010. Okay? And
19 we came here and we -- Your Honor heard that. And
20 then I forget if it was the same day or a week later
21 or something we did the prove-up.

22 Somewhere in that hearing or in the
23 prove-up hearing Your Honor said you were aware
24 where the incident occurred. I don't believe Your
25 Honor said you were taking judicial notice of my

1 statement as to where it was and whether it was open
2 range or not. Okay?

3 But again, we go back to -- I mean, I
4 can see the Court's concerned about it. This is
5 just absolutely absurd to me that this is even an
6 issue.

7 There is no fraud on the Court here.
8 The Court knew exactly what was going on, exactly
9 that, yes, I sent requests for admissions and they
10 were not responded to for months and months and
11 months. Okay? Then I brought a motion for summary
12 judgment.

13 Here's the other thing the Court's got
14 to understand. If I had brought a motion for
15 summary judgment with no affidavits attached to it,
16 no evidence at all attached to it, explained what
17 happened and said motion for summary judgment, Your
18 Honor, grant it, and Mrs. Fallini had not responded,
19 by rule I'm entitled to summary judgment because she
20 didn't oppose it. Okay? That's an important thing
21 here because, okay, we're trying to make an issue
22 about this underlying stuff, but she didn't oppose
23 the summary judgment either.

24 Also, with regard to the report, I did
25 not bring that with me today either. I will tell

1 Your Honor it is my recollection that when I read
2 the report they attached, especially about whether
3 my client had been drinking, some of that stuff,
4 that's more information than I had in the report
5 that I produced, and it is also my recollection that
6 I did, indeed, produce a report. I don't remember
7 much else beyond that because I haven't looked at
8 it. It hasn't been relevant to anything.

9 But again, it's not -- this is not fraud
10 on the Court. Fraud is a representation made to the
11 Court that someone knows is false with the intent
12 that that party will rely on it so as to reach some
13 result. And I did not make any misrepresentation to
14 the Court at all. The Defendant made
15 representations. Yes, it's through not responding.

16 THE COURT: Did you have an ethical duty
17 when she admitted -- and legally that's what she
18 did -- when she admitted that it was an open range,
19 did you have any kind of an ethical duty to say,
20 well, I know it is, I know it's open range and I've
21 seen the reports or whatever? Did you?

22 MR. ALDRICH: (Indiscernible).

23 THE COURT: Did you know it was open
24 range?

25 MR. ALDRICH: No. I did not know it was

1 or wasn't open range, to my recollection. I'm not
2 -- I mean, I've never been there. Okay? But --

3 THE COURT: If you had known it was open
4 range, did you have an ethical duty to say, even
5 though she admitted this, Judge, I want you to know
6 that I know it's open range?

7 MR. ALDRICH: I don't believe I did. I
8 don't believe I did.

9 THE COURT: You don't believe you had
10 that ethical duty. Okay.

11 MR. ALDRICH: Let's look at it in little
12 bit different context. Let's say that I've -- I
13 mean, did I have a duty to call and say, hey, you
14 didn't file an opposition to the motion for summary
15 judgment? I would say the answer to that is no.

16 THE COURT: He said a simple phone call
17 could have -- you could have discovered it was open
18 range. Did you have a duty to make that simple
19 phone call?

20 MR. ALDRICH: I sent out a discovery to
21 find out.

22 THE COURT: All right.

23 MR. ALDRICH: And I'm entitled to do
24 that.

25 THE COURT: All right. We don't want to

1 beat this too much into the ground. We've all made
2 the arguments, and I'm not a fan of redundancy. Is
3 there anything else new that you guys want to add?

4 MR. HAGUE: No, Your Honor. I would
5 just ask that the Court follow the law and think
6 about what's transpired in this case and think about
7 the admissions that opposing counsel has made today.
8 They're astonishing.

9 I'm absolutely -- it blows my mind that
10 he can stand up here today with a clear conscience
11 and say he had no duty to investigate whether this
12 was on open range when it was in our answer, and
13 that he still has not gone out there, and that the
14 accident report is irrelevant to the accident.
15 That's absurd. It's a violation of Rule 11, it's a
16 violation of Rules of Professional Conduct, and a
17 judgment should be set aside because it's the most
18 egregious case of fraud upon the Court I have ever
19 seen.

20 THE COURT: Counsel.

21 MR. ALDRICH: And I'll just be very
22 clear that I stand here in clear conscience, Your
23 Honor. I have been completely honest with Your
24 Honor and with everybody involved in this case from
25 the very beginning, and I will continue to be that

1 way.

2 And just a couple of comments that
3 Mr. Hague made that I wanted to address. He stated
4 that all these people are here today because they
5 will all be subject to what happens in this case,
6 and I respectfully disagree.

7 THE COURT: I was going to tell him
8 that, too.

9 MR. ALDRICH: It's very, very simple.
10 That is absolutely not the case.

11 THE COURT: Is there any precedence --

12 MR. ALDRICH: When --

13 THE COURT: -- to this decision that
14 will affect the other ranchers in any way?

15 MR. ALDRICH: Not even a little bit
16 because here's -- think about it. Accident happens
17 in open range, and some horribly unethical lawyer
18 like me comes in and sends out a request for
19 admission that says admit this was not in open
20 range. All they got to do is write back and say
21 deny. Has no effect at all on any of these people
22 and so it --

23 THE COURT: You think it has precedence?

24 MR. HAGUE: Your Honor, maybe the Court
25 misunderstood what I was saying.

1 THE COURT: All right.

2 MR. HAGUE: It affects them for two
3 reasons: One, because they are a tight-knit
4 community and they want to see Ms. Fallini and her
5 business succeed; two, it scares them. They're not
6 lawyers. They don't understand the law. It scares
7 them that this happened to Ms. Fallini and they hope
8 that it would not happen to them.

9 THE COURT: Sure.

10 MR. HAGUE: That's all I meant. They're
11 scared by the fact that someone could hit their cow
12 and then one day they could wake up and someone's
13 trying to take all their assets saying, sorry, you
14 got a \$2.5 million judgment against you even though
15 you did nothing wrong.

16 THE COURT: Well --

17 MR. HAGUE: That scares them.

18 THE COURT: -- this is a very sad case
19 for Ms. Fallini but a very good one for them because
20 now they're all educated to know that all they have
21 to do is say, hey, this is open range.

22 MR. HAGUE: Yeah, assuming they don't
23 put their hands -- well, you know what? She did do
24 that. They filed an answer in affirmative defense.

25 THE COURT: All they have to do is make

1 sure their lawyer's doing what they're paying their
2 lawyer to do.

3 MR. HAGUE: You would hope that, right?

4 THE COURT: I'd hope that.

5 MR. HAGUE: Yeah. I would, too.

6 THE COURT: All right. Give me one
7 minute, and I'll issue my decision.

8 (Pause in the proceedings)

9 THE COURT: I don't know what I'm going
10 to do. I haven't flipped a coin yet. No, I'm just
11 joking. All right.

12 Let's walk through it. You ready? I
13 got about ten pages of various notes up here, and
14 we're going to address them all because it's
15 important to Ms. Fallini, and it's important to all
16 the people in the audience so that they know what my
17 thought process is and why I'm doing the things I'm
18 doing. And I'm not even sure of my thought process,
19 yet, either.

20 It's the same way in criminal court.
21 Whenever I'm thinking through all the facts and the
22 arguments, I just kind of stall a little bit by
23 walking through it with everybody to give me some
24 time to think it.

25 So what I'm actually doing is I'm

1 thinking to myself what should I do here, and I'm
2 doing it out loud so you guys can actually follow my
3 thought process. I'm going to have to do it out of
4 order. It's going to be a little discombobulated
5 for all of you because the notes are out of order,
6 but let's walk through it all.

7 One of the first things Counsel said was
8 that all of you are here today because you have a
9 stake -- I wrote it down. That you have a stake in
10 the outcome of this case. And I wrote down the note
11 to reassure you, again, that there's no precedent to
12 this case. This case means absolutely zero to you
13 guys and to other judges in the case, except for, as
14 the attorneys said up at the end and said
15 emotionally you're attached to it. You care about
16 Ms. Fallini and you care about how this looks for
17 the ranching industry or whatever, that emotionally
18 you're attached. But as far as legally goes and
19 precedent and so forth, there's no precedent to this
20 case at all.

21 As a matter of fact, back when we were
22 doing this case four years ago and so forth, if I
23 remember correctly, we never even got into the facts
24 of the case. I know I didn't. I never saw any
25 driving report, I never heard anybody was drunk. I

1 don't think I was even sure about where the accident
2 occurred at. All I saw in the complaint was at some
3 highway out in rural Nevada, and we never got into
4 the facts of this case. Never during the four years
5 it's been litigated have we gotten into the facts of
6 this case. It's a blank slate to me.

7 Everything that's occurred in this case
8 has occurred procedurally. I filed this document,
9 he didn't file his document in time, we didn't have
10 discovery. It's all procedure. And so the reason
11 I'm stressing all that to you is it has no
12 precedence. No other court in Nevada will look at
13 this case to decide some kind of legal issue. We
14 never reached that point.

15 Counsel said that there's been a lot of
16 sleep lost in this case and that this young lady is
17 100 percent innocent by law, and, yet, she's the
18 victim of this case. And I've lost a lot of sleep
19 on it also over the years. It's been frustrating
20 for me. At some point in the litigation, somebody
21 -- one of the attorneys or a law clerk or somebody
22 -- said to me -- you have to remember this is after
23 years of dealing with Kuehn.

24 Counsel was attacked personally, that he
25 committed fraud on the Court. I've had that happen

1 to me before, too. And what it happens, when
2 somebody attacks you, your brain falls apart, you're
3 just flabbergasted, and you don't know how to
4 respond, and that's what he just went through. And
5 it's frustrating for him. It's frustrating for me.

6 At some point in the litigation I
7 learned this was open range, and open range is a
8 complete defense to this case. And so now I'm
9 presiding over what you called an injustice, and it
10 is an injustice. There's got to be a way to remedy
11 this. I've lost sleep over it also. But you also
12 have to remember I don't think about this case all
13 the time like you have for four years, and I don't
14 think about it a lot like you folks have.

15 We have the second busiest jurisdiction
16 in Nevada with cases per judge. And I've been the
17 judge for 14 years, and about 10 years -- Judge
18 Davis, when I became judge, was constantly nagging
19 me. Sorry, Judge Davis. He was constantly nagging
20 me that he be allowed to do the north and I do the
21 south, I do Pahrump and so forth. And I kept
22 resisting it. I didn't want to.

23 But finally, after about two or three
24 years, I gave in and said, okay, fine, I'll do
25 Pahrump, you do the north, which means I ended up

1 doing about 60 percent of the caseload. And the
2 reason I'm telling you that is we have the second
3 busiest jurisdiction in the state with about 2,700
4 cases per year, and I was doing 60 percent. So I
5 was actually doing over 3,000 cases a year.

6 So in the last 14 years I've done about
7 40,000 cases, and that includes murders and child
8 sexual assaults and all kinds of cases. And so my
9 mind's not on this case all the time like it is for
10 you folks. When I'm thinking about the case --
11 because one of these attorneys bother me with
12 appeals and motions and so forth -- then I lose
13 sleep over it, and I wish there was a way to have a
14 remedy also.

15 One of the things Counsel said at the
16 end was, Judge, follow the law. Well, that's the
17 problem all this time. I've been following the law.
18 When you guys elected me at different candidates
19 nights, the people said to me are you going to
20 follow the law or are you going to be like those
21 activist judges that just do whatever they want to
22 do and say it's equity and so forth? And I always
23 said, no, I'm just going to follow the law like
24 Scalia, and I'm just going to -- and Thomas. I'm
25 just going to follow the law, and that's what I've

1 been doing in this case for four years. And
2 unfortunately, going down that path of following the
3 law has led us to the point that we're at right now
4 where Mrs. Fallini loses.

5 And, you know, then people say to me in
6 court, well, I'm going to appeal this up. I'm like
7 please do. Please appeal this. If I'm wrong, I
8 want to know it. District court judges have to make
9 decisions right on the spot like I'm doing today.
10 You guys have made the argument. I have to make the
11 decision.

12 When you appeal it up to the Supreme
13 Court, seven great, smart judges then have a year to
14 look over it with their 14 law clerks and their
15 staff of attorneys and decide if it's the right
16 decision or not. And if I'm making the wrong
17 decision, I want to know about it. Appeal it up to
18 the Supremes so they can correct me.

19 And this case was appealed up to the
20 Supreme Court by good attorneys who made full
21 arguments to the Supreme Court about why Judge Lane
22 should be reversed, he was wrong. And I wasn't
23 wrong. The Supreme Court didn't reverse me. They
24 upheld me on all the legal issues.

25 I feel kind of trapped, too, in having

1 to make these decisions and follow the law. I wish
2 I could just decide it in equity. You know what? I
3 just feel sorry for you, and I'm just going to set
4 the law aside and rule in Ms. Fallini's favor
5 because this shouldn't have happened.

6 I'm actually a little bit embarrassed.
7 On one of these sheets I wrote it down that it's
8 always hard for a human being to have their
9 weaknesses pointed out to them, and I've had my
10 weaknesses pointed out to me in this case.

11 I think the main attacks were that we
12 should have known it was open range, and I'm
13 embarrassed to admit I didn't. I didn't know it was
14 open range at the beginning. It wasn't until a year
15 or two into the litigation that somebody -- might
16 have been your motion for reconsideration where you
17 said take judicial notice it's open range. And I
18 was like oh, sure. That's open range. What's that
19 mean? And I'm learning, oh, crud, she shouldn't
20 have lost this case.

21 And I know it's a shame because if you
22 had had a rancher as a judge, that rancher would
23 have said what in the heck is this? This is -- I'm
24 kicking it out. But I can't do that. Even if I had
25 known it was open range, I can't kick it out. I

1 have to be neutral.

2 It's not my job to go up and investigate
3 and find out if it's open range or not for
4 Ms. Fallini and help her out because Kuehn's not
5 doing anything. That's not my job. I'd be
6 improperly, unethical acting if I did that. I have
7 to go on what the attorneys show me. Here's my
8 motions, here is our admissions. What do you do,
9 Judge? Follow the law. And that's what I did.

10 If you ever have a case about
11 submarines, I know the law on that. And I have to
12 tell you, I'm totally ignorant on the politics of
13 the open range. You stated earlier in your argument
14 that the ranchers are upset because there's, I
15 guess, a movement to say it shouldn't be open range
16 and people should be allowed to sue if they hit a
17 cow and so forth. And I have to be honest, that's
18 news to me. I don't follow rancher laws of open
19 range and so forth. I guess I will from now on, on
20 the Internet, and what's going on. And I take it
21 that's an ongoing movement that's going on right now
22 to --

23 MR. HAGUE: Well, it's -- well, I wasn't
24 necessarily, Your Honor, speaking to the movement.
25 I was, of course, speaking to the fact that there's

1 a huge concern that there is a set open range law by
2 Congress and that it isn't protecting Ms. Fallini
3 anymore because a request for admission was
4 submitted that was false.

5 THE COURT: Okay. So there isn't some
6 movement to overturn that law and make open range go
7 away?

8 MR. HAGUE: I'm not aware of a
9 movement --

10 THE COURT: Okay.

11 MR. HAGUE: -- but I -- like you, I
12 don't practice in -- you know, full-time in cattle
13 and open range law, and so I'm also learning about
14 it. But the thing that I know is that there is a
15 law that's out there that hasn't been repealed and
16 it hasn't been changed, and it's a 100 percent
17 defense, always.

18 THE COURT: Yeah, I know. I agree with
19 you. That's the problem in this case, searching for
20 a remedy.

21 MR. HAGUE: And I think the remedy's
22 Rule 60, as clear as day.

23 THE COURT: Are you taking another shot
24 at it? Just kidding you.

25 MR. HAGUE: Probably.

1 MR. OHLSON: Your Honor, would you allow
2 me a couple of words?

3 THE COURT: Who are you again? No, I'm
4 just kidding. I don't think so, Mr. Ohlson. If I
5 open that door again, then Aldrich has to speak
6 again. I'm pretty familiar with everything that's
7 going on.

8 MR. OHLSON: All right.

9 THE COURT: I thought I saw Mr. Gibson
10 in the audience. He isn't here. A few years ago,
11 12, 13 years ago, I had a case here in town where a
12 man went to the park and pulled his pants down and
13 flashed some kids, which under the law is a crime
14 called indecent exposure, and the State charged him
15 with the wrong crime. And the law says that the
16 State is allowed to amend the crime up until the
17 point where they close their case. And the State
18 had a brain eruption and didn't realize they had
19 charged him with the wrong crime.

20 They charged him with gross lewdness,
21 which involves a touching, and there was no touching
22 in this case. So the State prosecuted the case,
23 called their witnesses, did everything, presented it
24 to the jury, closed their case for an illegal
25 touching of a child when there was no touching. So

1 when we went into chambers to do jury instructions,
2 the defense was celebrating because they knew there
3 was no touching, and they were going to get an
4 acquittal.

5 I knew what was going on. I used to be
6 a prosecutor, but it's not my job. I have to be
7 neutral. I can't tell the State here's what you're
8 doing wrong. So we went into chambers, and the
9 defense made a motion. They wanted to get the case
10 dismissed. There was no touching involved for gross
11 lewdness, he should be acquitted. Summarily,
12 acquitted.

13 And the State argued in chambers that
14 they should be allowed to amend it to indecent
15 exposure, and I said no, following the law. It's
16 too late now, you've rested your case. And they
17 said, well, Judge, let us have a lesser included
18 crime of annoying a minor and argue that to the
19 jury. And I said, well, no, I can't do that because
20 the Supreme Court had a case about a year ago that
21 where they went into the definition of annoying a
22 minor and you don't meet that definition, so --

23 And he said, Judge, let me try. Let me
24 argue it. Let me appeal it. Let me take it to the
25 Supremes and argue it to them that they can adjust

1 their definition of annoying a minor so I can get a
2 conviction on this guy for pulling his pants down to
3 the kids. And I said, well, you know, once a guy's
4 acquitted, the State can't take things up. So if I
5 don't submit it to the jury and he's acquitted, it's
6 over. There's no double jeopardy. So I guess I'll
7 give you the chance to argue it to the Supremes,
8 even though I think it's going to be reversed, and
9 you can argue it up to the Supremes.

10 So they submitted annoying a minor, and
11 the man was convicted of it by the jury because the
12 jury wanted to get him for something for what he did
13 wrong. And it was appealed to the Supreme Court and
14 the Supreme Court reversed it, just like I knew they
15 would.

16 And because of that case, whenever I
17 campaign, instead of being able to say I've never
18 been reversed by the Supreme Court, I have to say,
19 well, I've only been reversed once, and I -- you
20 know, I should have followed my gut and just had the
21 strength and the fortitude to say no, you're not
22 appealing this to the Supreme Court, we're going to
23 follow the law, and I'm never going to make that
24 mistake again. And here I am it again.

25 MR. OHLSON: Your Honor, please --

1 THE COURT: Because I think --

2 MR. OHLSON: -- a couple sentences.

3 THE COURT: -- if you take this up to
4 the Supremes -- if I rule in your favor and I say
5 fraud on the Court and excusable neglect, and we'll
6 send it up to the Supremes where they've got seven
7 judges who can take a year with 14 law clerks and a
8 staff of attorneys to decide if it's the right call
9 or not, we'll let the Supreme Court decide, and
10 they'll make the right decision, even though I don't
11 think you're going to prevail, and I think the
12 Supreme Court will agree with my gut feeling right
13 now, which is it's not there.

14 On the other hand, I knew the guy
15 flashed the kids and was guilty, and I know that
16 Ms. Fallini was on open range. So let's give them a
17 shot. Let's let the Supreme Court decide if this
18 was fraud on the Court based on your definitions. I
19 don't think it was. And I should note for the
20 record that Mr. Aldrich is right when he says I have
21 not only done everything right in this case, but I
22 went the extra mile.

23 I remember my shock in chambers when
24 Kuehn and Aldrich would come into chambers, and we
25 were in there for the fourth or fifth time trying to

1 get Mr. Kuehn to respond. And I had already
2 sanctioned him three times; 250, 500, \$1,000. And
3 we brought him into chambers again, and Mr. Aldrich
4 said, Judge, this has been going on for a year and
5 we can't get Kuehn to respond to this. And I'd
6 known Kuehn for 21 years and I didn't really want to
7 hammer him, but I didn't know what else to do. The
8 law said I had to.

9 And I said, Harry, I'm going to have to
10 grant summary judgment on this. I can't get you to
11 respond. And then for the fifth or sixth time
12 Mr. Aldrich said, it's okay, Judge. We'll give him
13 another couple of months. We'll give him another
14 month, another couple of weeks. Let's give him a
15 chance to get these in because it was perfunctory.
16 All he had to do was file denials. I deny this
17 admission. I deny this.

18 And Mr. Aldrich was cool about it for a
19 year or two. And I think he went the extra mile as
20 far as trying to help Mr. Kuehn do the right thing.
21 But my dilemma is your argument that Mr. Aldrich
22 knew that this was open range, and you're saying he
23 was wrong for submitting that, anyway. Ethically,
24 you may be right. I don't know. I guess I could go
25 back and do some more research on it, rather than

1 just turning it over to the Supremes and letting
2 them decide.

3 If I make a decision that Mr. Aldrich is
4 in the right and rule in his favor and deny your
5 motion for reconsideration, can you appeal that up
6 to the Supreme Court and let them decide?

7 MR. HAGUE: Well, Your Honor, I can try
8 to appeal, but it's all going to be moot. It's
9 going to be a year-long process where he has
10 aggressively gone after assets. We have writs of
11 execution. We have writs of garnishment. We have a
12 judgment debtor's exam scheduled for today for the
13 third one. It's not right. It will be moot.

14 THE COURT: Well, we talked about the
15 injustice to Ms. Fallini, that her cow was on open
16 range and she's getting hit for over a million. On
17 the other side of the coin is a family with a dead
18 son who won a lawsuit, and now here it is four years
19 later, five later, six years later. That's kind of
20 an injustice, too, to that family. There has to be
21 finality to things.

22 MR. HAGUE: I agree, Your Honor. There
23 does have to be finality, but these things have been
24 uncovered over time. And I think your instinct to
25 grant our motion and let the Supreme Court decide if

1 that's wrong is the right thing to do not only
2 morally, but I think that you have an absolute basis
3 under Rule 60 because I don't know what fraud is
4 upon the Court if this isn't fraud upon the Court.

5 THE COURT: Well, that's the dilemma.
6 Give me one more second. When I have questions in
7 my mind, I turn around and ask my law clerk, and he
8 says to me privately, Judge, you're (indiscernible)
9 it. Whatever you decide is the right thing. And
10 then I feel a lot better about my decisions. Hang
11 on one second.

12 (Pause in the proceedings)

13 THE COURT: Let me say it out loud to
14 him and get his opinion. I wonder if we should take
15 this back into chambers one more time, take one
16 final look at whether or not an attorney makes a
17 representation in his request for admissions, and
18 then after the admission is made, whether or not
19 that's committing fraud, ethically and legally.
20 Give one more look at it. Counsel cited cases, he
21 cited cases. And I wonder if we should do that.
22 And I'm brilliant, right? Of course.

23 Let me take one more look at it, take a
24 look at your arguments, because it's all boiling
25 down to that simple issue, which is why I had you

1 address it. And if I agree with you that it's fraud
2 or if I'm not sure if it's fraud or not, we'll let
3 the Supremes decide.

4 If I'm confident that based on the laws
5 that you've cited and the things you've cited in
6 your brief that there was no fraud committed by you
7 by asking for an admission that it was open range
8 when you knew it wasn't, then I'll deny your motion.
9 And I'll have that decision in the next two or three
10 days.

11 MR. HAGUE: So Your Honor, can I ask you
12 a quick question, then?

13 THE COURT: Yes.

14 MR. HAGUE: If you're going to have that
15 decision in the next two or three days and take it
16 under advisement, there are a few housekeeping
17 matters that I think are really important. One of
18 them is that emotions are really high today, and
19 Mr. Aldrich is scheduled a debtor's exam of
20 Ms. Fallini. He's also scheduled one of
21 Mr. Fallini, even though he's not a debtor, so
22 that's not a proper exam. But I'd like to stay the
23 debtor exam, and I'd also like to stay, just while
24 you're making your decision --

25 THE COURT: What's the prejudice?

1 MR. HAGUE: The prejudice is that if we
2 prevail, then he's finding out information about
3 assets, about financial whereabouts of things when
4 this case could go the other way.

5 THE COURT: What's the prejudice to him
6 finding out that information? I could understand
7 you making -- coming into court for an evidentiary
8 hearing to argue to me that he shouldn't be allowed
9 to collect that information, but I've had a hard
10 time putting my finger on why there's prejudice.
11 There's an argument that it's not community
12 property, and I have to tell you, I disagree.

13 I think if he has a separate trust and
14 Ms. Fallini marries him and lives on the ranch for
15 40 years and increases the value of it, she has a
16 definite community-property interest in that
17 increase, in that value.

18 MR. HAGUE: Well, I think that's not the
19 hearing. I disagree, but we can argue that at a
20 different time. So if there's not a prejudice,
21 there is a prejudice for the fact that there are
22 writs of garnishment and executions out there right
23 now asking banks to turn over assets. I think that
24 should be stayed.

25 THE COURT: He's not collecting on them.

1 MR. HAGUE: They could turn them over at
2 any moment, right?

3 THE COURT: Yeah.

4 MR. HAGUE: If a bank is served with a
5 writ of garnishment, they have a certain amount of
6 time to respond.

7 THE COURT: Right.

8 MR. HAGUE: If they want to respond,
9 they could provide those assets to Mr. Aldrich right
10 now. Is that not prejudicial?

11 MR. ALDRICH: If I may?

12 THE COURT: Yes.

13 MR. ALDRICH: I'll go backwards. On the
14 writs of garnishment --

15 THE COURT: Okay. We're all over the
16 place here.

17 MR. ALDRICH: Right.

18 THE COURT: Sorry about that.

19 MR. ALDRICH: On the writs of
20 garnishment, I mean, the judgment was entered in
21 2010. I didn't execute while it was on appeal. I
22 could have because there was no stay. So there's no
23 basis to do that.

24 With regard to the judgment debtor's
25 exam today, I agree emotions are high, and I will

1 candidly admit I'm nervous about being here today.
2 I do have a court reporter sitting over there who's
3 been sitting there since 10:00 o'clock. I would not
4 want to be responsible for that court reporter's
5 appearance fee. Other than that, if they want to
6 move it to a different day, I am willing to do that.

7 MR. HAGUE: We'd like to move it to a
8 different day, Your Honor, if we could.

9 THE COURT: You'd be responsible for the
10 fee?

11 MR. OHLSON: The appearance fee, yes.

12 MR. ALDRICH: Whatever the fee was to
13 have the court reporter here today. I don't know if
14 she's local or -- I don't know what the deal is
15 there, and I couldn't even make a representation as
16 to what that amount is.

17 THE COURT: I was actually addressing
18 not the garnishment but the motion for the subpoena
19 duces tecum for the business records. I'm inclined
20 to grant your request to allow him to get the
21 information that he needs in his investigation and
22 research, but without granting his request to
23 collect it, which is a different issue. But I can't
24 see how him gathering the knowledge of the trust and
25 so forth is prejudicial. You following me?

1 MR. HAGUE: No, I disagree. I'm not
2 following you on -- we filed an objection -- we
3 filed a motion to quash the subpoenas because they
4 were asking for financial documents and records of
5 non-defendant and third parties.

6 THE COURT: Right.

7 MR. HAGUE: And I don't see how that's
8 proper. I don't see how you can do that. I don't
9 see --

10 THE COURT: Yeah, we had that hearing a
11 week or two ago.

12 MR. HAGUE: We did, and --

13 THE COURT: And I heard all your
14 argument.

15 MR. HAGUE: I know, and you had said
16 that you might have had some other questions for us
17 today.

18 THE COURT: Yeah.

19 MR. HAGUE: That's the only reason I
20 bring --

21 THE COURT: And the question I had was
22 how is it -- I believe one of the arguments you made
23 of -- besides the fact that it was a non-defendant,
24 I believe one of the arguments you made was that it
25 was prejudicial.

1 MR. HAGUE: Yes.

2 THE COURT: And I had a hard time -- I
3 believe the prejudice you alluded to was that it --
4 what was the prejudice?

5 MR. HAGUE: The constitutional right to
6 privacy.

7 THE COURT: Yeah. Privacy.

8 MR. HAGUE: That's -- yeah, absolutely.

9 THE COURT: And I thought that penumbra
10 was not quite there. I didn't quite put my finger
11 on that penumbra. I don't see the prejudice of him
12 gathering information if he can't collect from it.
13 I mean, if he tries to collect, you could still come
14 in and say, hey, that's private, it shouldn't be
15 there. But he should have the right to look and see
16 if that trust was -- is now community property and
17 has it been breached and so forth, unless there's
18 some other --

19 MR. HAGUE: I guess I --

20 THE COURT: -- kind of prejudice I'm not
21 aware of --

22 MR. HAGUE: No, Your Honor. I just --

23 THE COURT: -- on such privacy.

24 MR. HAGUE: I struggle with it because
25 the allegations that he has made or that there's --

1 that several fraudulent transfers has occurred with
2 respect to these entities. But I've practiced a lot
3 of fraudulent transfer law in bankruptcy and
4 receivership. You've got to bring a complaint for
5 fraudulent transfer, and then you go after the
6 entity, and that's when you get to do your
7 discovery.

8 But if I get a lawsuit against you, I
9 can't now go subpoena records of a bank where your
10 dad or your mom or your wife or your sister and ask
11 for their financially-protected records just because
12 I have a judgment against you. His judgment's only
13 against Ms. Fallini, none of the other parties. I
14 think that's huge.

15 I'd be very upset if somebody was
16 getting my records without me ever even being sued
17 or no allegations or no complaint for a fraudulent
18 transfer under the Uniform Fraudulent Transfer Act.

19 THE COURT: Counsel.

20 MR. ALDRICH: Well, part of what he said
21 I agree with. I didn't ask for her parent's or her
22 sister or -- I asked for her husband's records.
23 It's community property. So, I mean, we're sort
24 of --

25 THE COURT: Anything else?

1 MR. ALDRICH: We've been doing this --
2 again, if they want to move the judgment debtor's
3 exam today, I --

4 THE COURT: That's fine.

5 MR. ALDRICH: I don't want to have pay
6 the court reporter fee, but I'm willing to move it
7 until after the Court has issued a decision on this.

8 If I may, just one last comment. I just
9 want to make sure I understand what the Court just
10 said. Is that you're going to make a decision as to
11 whether I committed fraud on the Court or not?

12 THE COURT: That's his motion. He wants
13 us to reverse our prior decision and take this to
14 trial --

15 MR. HAGUE: Absolutely.

16 THE COURT: -- because he committed
17 fraud on the Court.

18 MR. HAGUE: Absolutely.

19 THE COURT: So I'm either going to have
20 to say, yes, I find that you did commit fraud on the
21 Court and therefore we're reversing everything from
22 the last four years and we're going to start back at
23 the beginning, or I'm going to have to deny your
24 motion.

25 MR. HAGUE: Yeah. And I guess while

1 you're doing that, I mean, unless you've already
2 discounted my Rule 60(b)(1) motion for surprise and
3 excusable neglect, which I also think is within our
4 right because there's a new judgment, and that one's
5 an easy call, I think, because I believe there truly
6 was excusable neglect on the part of Ms. Fallini and
7 her attorney.

8 So I still think those are two issues,
9 and they were certainly set forth in our motion.
10 Roman numeral I is fraud upon the Court. Roman
11 numeral II is excusable neglect under 60(b)(1),
12 which is a six-month time period. Fraud upon the
13 Court, Your Honor, has no limitations, and that's
14 Supreme Court law.

15 THE COURT: Mr. Aldrich, I proceeded
16 today upon the evidentiary standard of them
17 presenting evidence that you committed fraud upon
18 the Court based on their representations as officers
19 of the court, and therefore, we didn't have an
20 evidentiary hearing with people under oath and so
21 forth.

22 We just made arguments that as officers
23 of the court, if you misrepresent something, you
24 make fraud upon the court. And that's how I
25 proceeded today. You don't have any kick against

1 that, do you?

2 MR. ALDRICH: No.

3 THE COURT: All right. Anything else?

4 MR. ALDRICH: No, Your Honor.

5 MR. HAGUE: No.

6 THE COURT: I'll have the decision on
7 the subpoena -- on the business records today. I'll
8 have the decision on your motion to set aside the
9 previous trial and previous -- I'll have that within
10 the next couple days while I do some research.

11 MR. HAGUE: Okay.

12 THE COURT: Okay. Good to go?

13 MR. HAGUE: Thank you.

14 THE COURT: Court's adjourned.

15 THE MARSHAL: All rise.

16 MR. ALDRICH: Appreciate your time.

17 (The proceedings concluded at 12:16
18 p.m.)

19 * * * * *

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1 CERTIFICATE OF REPORTER

2

3 STATE OF NEVADA)
SS:
4 COUNTY OF CLARK)

5

6 I, Teri R. Ward, a duly commissioned Notary
Public, Clark County, State of Nevada, do hereby
7 certify:

8 That the typewritten transcript of said
recording is a complete, true and accurate
9 transcription.

10 I further certify that I am not a relative,
employee, or independent contractor of counsel of
11 any of the parties; nor a relative, employee, or
independent contractor of the parties involved in
12 said action; nor do I have any other relationship
with any of the parties or with counsel of any of
13 the parties involved in the action that may
reasonably cause my impartiality to be questioned.

IN WITNESS WHEREOF, I have hereunto set my hand
15 in my office in the County of Clark, State of
Nevada, this _____ day of _____, 2014.

16

17

18

19

Teri R. Ward, CCR NO. 839

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25

1 Case No.: CV 24539

2 Dept. No.: 2P

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

8 * * * * *

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

12 Plaintiff,

13 vs.

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

16 Defendants.

17 **NOTICE OF ENTRY OF ORDER**

18 PLEASE TAKE NOTICE that the above-entitled Court entered a Court Order in this

19 matter on

20 ////

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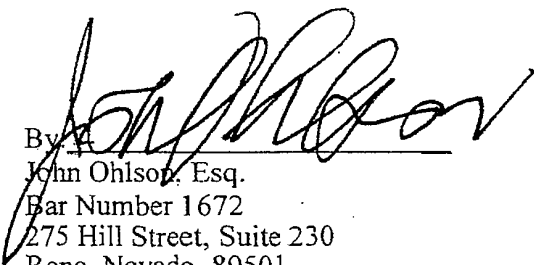
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1 August 6, 2014. A true and correct copy of the Order is attached hereto as Exhibit 1.

2
3 **AFFIRMATION**
4 **Pursuant to NRS 239B.030**

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

7
8 Dated this 13th day of August, 2014.

9
10 
11 By John Ohlson, Esq.
12 Bar Number 1672
13 275 Hill Street, Suite 230
14 Reno, Nevada 89501
15 Telephone: (775) 323-2700
16 *Attorneys for Defendant*
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3 **CERTIFICATE OF SERVICE**

4 Pursuant to NRCP 5(b), I hereby certify that I am an employee of JOHN OHLSON, and
5 that on this date, I served a true and correct copy of the foregoing **NOTICE OF ENTRY OF**
6 **ORDER** by the method indicated and addressed to the following:

7
8 John P. Aldrich, Esq.
9 Aldrich Law Firm, Ltd.
10 1601 S. Rainbow Blvd., Suite 160
11 Las Vegas, NV 89146

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

12 Dated this 13th day of August, 2014.

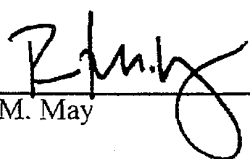
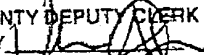
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17 Robert M. May
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EXHIBIT 1

EXHIBIT 1

AUG 06 2014

NYE COUNTY DEPUTY CLERK
DEPUTY 

CV 24539
Dept. No. 2

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

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,

Defendant.

COURT ORDER

On May 21, 2014, Defendant filed a Motion for Relief from Judgment Pursuant to NRCP 60(b), on the grounds of fraud upon the court and "excusable neglect." Defendant alleged that Plaintiff's counsel "knowingly forced fraudulent facts on the court and failed to correct misrepresentations thereby committing fraud upon the court." Plaintiff filed a Countermotion to Strike/Opposition to Defendant's Motion for Relief from Judgment Pursuant to NRCP 60(b) on June 9, 2014. Plaintiff submits there was no fraud upon the court on the part of Plaintiff's counsel in obtaining the judgment. Defendant filed a Reply on June 17, 2014. A hearing was held on Defendant's Motion on July 28, 2014. At the conclusion of arguments from both parties, the court took the matter into consideration and informed the parties a decision would be rendered shortly thereafter.

FIFTH JUDICIAL DISTRICT COURT
ESMERALDA, MINERAL AND NYE COUNTIES





1
2 After review of the papers and pleadings on file, and in consideration of counsels'
3 statements and arguments at the July 28, 2014 hearing, this court finds, concludes and
4 orders as follows:

5
6 **FINDINGS OF FACT**

- 7 1. Plaintiff Judith Adams brought suit against Defendant Susan Fallini for the death
8 of her son Michael Adams after Michael struck one of Fallini's cattle that were on
9 Highway SR 375.
- 10 2. Adams filed a complaint on January 31, 2007. She was and continues to be
11 represented by Mr. John P. Aldrich, Esq. Fallini filed an answer and counterclaim
12 on March 14, 2007. In her answer, Fallini listed as an affirmative defense NRS
13 568.360(1), which provides that those who own domestic animals do not have a
14 duty to keep those animals off highways located on open range. At this time,
15 Fallini was represented by Mr. Harold Kuehn, Esq.
- 16 3. A Notice of Early Case Conference was filed on June 14, 2007. On October 23,
17 2007, Adams filed a Case Conference Report. Prior to this Early Case
18 Conference Plaintiff counsel Aldrich obtained the Nevada Highway Patrol Traffic
19 Report number NHP-E2005000779. The investigating officer reports on Page 4
20 that the collision occurred on open range approximately 7 miles past an open
21 range warning sign.
- 22 4. Prior to serving the Complaint, Adams created a website
23 (www.michaeldavidadams.net) stating the accident occurred in "open range
24
25
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1
2 county and the cows have the right of way." The website also contained links and
3 information advocating against open range laws.

4 5. Plaintiff counsel Aldrich sent a request for admissions that included a request that
5 "Fallini's property is not located within an "open range" as it is defined in NRS
6 568.355." Defense counsel Kuehn failed to respond. As a result, Fallini was
7 deemed to have admitted that the accident did not occur on open range, despite
8 already asserting an open range affirmative defense in her March 17, 2007
9 answer.
10

11 6. On April 7, 2008, Adams filed a Motion for Partial Summary Judgment as a result
12 of Fallini's admissions that the accident did not occur on open range. Adams
13 filed another Motion for Partial Summary Judgment on May 16, 2008. Kuehn
14 filed no oppositions to the Motions. A hearing was held on July 14, 2008, and the
15 minutes reflect that only Aldrich appeared. The court granted Partial Summary
16 Judgment because there was no opposition or appearance by Fallini and/or Kuehn.
17

18 7. Beginning in September 2008, Plaintiff filed various Motions regarding
19 discovery. A hearing was held on November 10, 2008 where Kuehn was given
20 more time to produce. Another hearing was held on April 27, 2009. Kuehn was
21 sanctioned \$750 held in abeyance, and an Order granting Motion to Compel
22 Discovery was granted.
23

24 8. On May 5, 2009, Plaintiff filed a demand for a jury trial. On June 30, 2009 the
25 court ordered a trial would be held on August 25, 2010, with a calendar call set
26 for July 19, 2010.
27
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9. On June 16, 2009, Plaintiff filed a Motion to Strike Fallini's answer and counterclaim, based on Fallini's failure to provide discovery. A hearing on this Motion was scheduled for July 13, 2009 at 1:15 PM. Kuehn submitted an opposition to this motion at 8:35 AM on July 13th. At the hearing, Kuehn requested additional sanctions be imposed for the failure to provide discovery. The Court issued a \$1000 sanction and gave Kuehn 30 days to provide the previously ordered information/discovery regarding insurance to Plaintiff.
10. On November 4, 2009, Plaintiff submitted an Order striking Defendant's answer and counterclaim due to Kuehn's repeated failures to provide discovery. The Court signed the Order. On February 4, 2010, Plaintiff filed for and obtained a Default.
11. On April 7, 2010, Adams filed another Motion for an Order to Show Cause stemming from the failed requests for discovery. An Order was granted on April 26, 2010. A hearing was held on May 24, 2010. Mr. Tom Gibson, Esq. appeared on behalf of Kuehn. Kuehn was sanctioned \$5,000 and \$500 per day until discovery was provided.
12. On or about June 17, 2010, Mr. John Ohlson, Esq. was substituted as counsel of record for Fallini in place of Kuehn.
13. On June 24, 2010 Plaintiff applied for Default Judgment. Defendant filed an Opposition the same day. On July 6, 2010 Defendant filed a Motion for Reconsideration. A hearing was held on both the Default Judgment and the



1
2 Motion for Reconsideration on July 19, 2010. The Default was granted, and the
3 Reconsideration was denied.

4 14. Defendant filed an appeal on September 10, 2010. The Nevada Supreme Court
5 issued an Order affirming the District Court, but remanding for a new hearing
6 regarding the calculation of the damages awarded.

7
8 15. After the parties re-calculated and stipulated to the amount of proper damages, the
9 court entered its judgment against Defendant on April 28, 2014 consistent with
10 the ruling from the Supreme Court of Nevada.

11 16. On May 21, 2014, Defendant filed a Motion for Relief from Judgment Pursuant to
12 NRCP 60(b). Defendant alleged Aldrich, as an officer of the court, knowingly
13 forced fraudulent facts on the court and failed to correct misrepresentations,
14 thereby committing fraud upon the court in violation of NRCP 60(b). Defendant
15 based this allegation upon belief that Aldrich knew the accident occurred on open
16 range based on the following evidence: Defendant's answer asserted open range
17 as an affirmative defense, Adams website should have put Aldrich on notice that
18 this accident occurred on open range, and a Nevada Highway Patrol Traffic
19 Report (NHP-E2005-00779) on which Page 4 says the collision occurred on open
20 range. Despite this, Defendant alleges Aldrich sent a request for admissions that
21 requested Defendant to admit that the property is not located within an "open
22 range" as it is defined in NRS 568.355. Defendant argues, according to case law
23 and the Nevada Rules of Professional Conduct, Aldrich advanced false facts using
24 the discovery process in a calculated attempt to mislead the court.
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2 17. On June 9, 2014, Plaintiff filed her Countermotion to Strike Defendant's Motion
3 for Relief from Judgment Pursuant to NRCP 60(b) or in the alternative,
4 Opposition to Motion for Relief from Judgment. In the Opposition, Plaintiff
5 argues that this matter was previously litigated and decided in her favor, therefore
6 issue preclusion should apply and Defendant's Motion should be barred.
7

8 18. On June 17, 2014, Defendant filed a Reply stating issue preclusion does not apply
9 because the allegations of Aldrich's fraud upon the court have not been claimed,
10 litigated, or reviewed at any point in a prior proceeding.
11

12 CONCLUSIONS OF LAW

13 Defendant bases her Motion for Relief from Judgment on two separate sections of
14 NRCP 60: fraud upon the court (NRCP 60(b)) and "excusable neglect" (NRCP 60(b)(1)).
15 The court will analyze each separately.

16 I. Fraud Upon The Court under NRCP 60(b)

17 Under NRCP 60(b), a district court may "set aside a judgment for fraud upon the
18 court." NRCP 60(b). There is no 6-month time limit on bringing a motion for fraud
19 upon the court. NC-DSH, Inc. v. Garner, 218 P.3d 853, 856 (Nev. 2009). Simple
20 dishonesty of any attorney is so damaging on courts and litigants that it is considered
21 fraud upon the court. Id. at 859 citing *United States v. Throckmorton*, 98 U.S. 61, 66
22 (1878); *Damnajuk v. Petrovsky*, 10 F.3d 338, 352 (6th Cir. 1993). An officer of the court
23 perpetrates fraud on the court a) through an act that is calculated to mislead the court or
24 b) by failing to correct a misrepresentation or retract false evidence submitted to the
25 court. See Nevada Rules of Professional Conduct ("NRCP") Rule 3.3.
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2 Mr. Aldrich, as an officer of the court, had a duty to not mislead the court or fail
3 to correct a misrepresentation. In the case at bar, Mr. Aldrich has denied he knew the
4 accident occurred on open range. However, after consideration of the evidence and
5 arguments, the court finds Mr. Aldrich knew or should have known that the accident
6 occurred on open range. First, Mr. Aldrich was in possession of the Nevada Highway
7 Patrol Accident Report prior to his request for admissions. Page 4 of the Accident Report
8 clearly states that the "collision occurred on open range." (NHP Accident Report NHP-
9 E2005-00779 at Page 4). Second, Plaintiff Adams created a memorial website
10 advocating against open range laws shortly after the accident in 2005. See
11 <http://www.michaeldavidadams.net> (last visited 8/1/14). The website states, "He
12 encountered a cow crossing the road between mile marker 34-33 East side of the road.
13 This is open range country and the cows have the right of way." Id. Finally, Mr. Aldrich
14 received Defendant's answer that contained an open range affirmative defense. Based on
15 the totality of the circumstances, Mr. Aldrich knew or should have known the accident
16 occurred on open range prior to filing his request for admissions. At the bare minimum,
17 Mr. Aldrich possessed enough information to conduct a reasonable inquiry into the open
18 range status of the location where the accident occurred. At the July 28, 2014 hearing on
19 Defendant's Motion for Relief from Judgment, Mr. Aldrich stated he hasn't been to the
20 location to verify it was open range. (Hr'g 7/28/2014).

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24 Despite this, Mr. Aldrich sought an admission from Defendant stating that the
25 area where the accident occurred was not open range. Defendant's attorney Mr. Kuehn
26 failed to respond to this request, and it was subsequently deemed an admitted fact.
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2 Aldrich may argue that all Kuehn had to do was simply "deny" the request for
3 admissions. However, at this point in the case, Kuehn was failing to respond to various
4 motions and requests to the extent that Aldrich knew or should have known that a
5 response from Kuehn was unlikely. This is not to suggest that Mr. Aldrich is an unethical
6 attorney. For example, the record indicates that on numerous occasions, Mr. Aldrich
7 granted Mr. Kuehn multiple extensions to provide discovery. The court believes that Mr.
8 Aldrich was zealously representing his client. As an officer of the court however, Mr.
9 Aldrich violated his duty of candor under Nevada Rules of Professional Conduct 3.3 by
10 utilizing Defendant's denial that the accident occurred on open range to obtain a
11 favorable ruling in the form of an unopposed award of summary judgment. Thus, the
12 court finds Plaintiff violated Rule 60(b) as Plaintiff's request for admission of a known
13 fact, a fact that was a central component of Defendant's case, was done when counsel
14 knew or should have known that the accident did occur on open range, thereby
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17 perpetrating a fraud upon the court.

18 **II. "Excusable Neglect" under NRCP 60(b)(1)**

19 Unlike NRCP 60(b) fraud claims, claims under NRCP 60(b)(1) must be filed
20 within six months of entry of judgment. NRCP 60(b). The Supreme Court of Nevada
21 has established guidelines for lower courts to examine a NRCP 60(b)(1) claim. The
22 district court must analyze whether the movant: "(1) promptly applied to remove the
23 judgment; (2) lacked intent to delay the proceedings; (3) demonstrated good faith; [and]
24 (4) lacked knowledge of procedural requirements." Bauwens v. Evans, 853 P.2d 121
25 (Nev. 1993).
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2 Under the facts of the present case, the court finds Defendant's "Excusable
3 Neglect" claim under NRCP 60(b)(1) fails the first prong of Bauwens. The court entered
4 a default judgment in June 2010. Under NRCP 60(b)(1), Defendant had six months after
5 entry of judgment to file her Motion. NRCP 60(b)(1). The six-month window is not
6 tolled by an appeal of the final appealable judgment. Foster v. Dingwall, 228 P.3d 453
7 (Nev. 1990). Defendant argues her Motion is timely because her Rule 60(b) Motion was
8 filed on May 20, 2014; approximately one month after this court entered an amended
9 judgment on April 28, 2014. The court does not find Defendant's argument persuasive.
10 The April 28, 2014 amended judgment from this court was based on a recalculation of the
11 interest owed to Plaintiff. The actual content, law, and decision of the original judgment
12 did not change. Defendant's Motion would have been timely if it was filed within six
13 months from the July 19, 2010 Default Judgment.
14

15 CONCLUSION

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17 As a result of Mr. Kuehn's failure to oppose or respond to Plaintiff's Motions,
18 Plaintiff obtained a Default Judgment for over a million dollars against Ms. Fallini. This
19 court followed the law and proper procedure throughout this case, as affirmed by the
20 Supreme Court of Nevada. However, one cannot ignore the apparent injustice that
21 Defendant has suffered throughout this matter. Ms. Fallini is responsible for a multi-
22 million dollar judgment without the merits of the case even being addressed. As stated
23 by the Supreme Court of Nevada, "cases are to be heard on the merits if possible."
24 Passarelli v. J-Mar Dev., Inc., 720 P.2d 1221, 1223 (Nev. 1986).
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2 Mr. Aldrich knew or had reason to know this accident occurred on open range.
3 His client's webpage, the Nevada Highway Patrol Accident Report, and Defendant's
4 answer all referred to the location of the accident as open range. At the bare minimum,
5 counsel should have conducted a reasonable inquiry as to the open range status prior to
6 sending a request for admissions, and perhaps as early as prior to filing his Complaint. If
7 Mr. Aldrich indeed did not know this area was open range in 2007, he likely discovered it
8 was open range afterwards. Instead of correcting this alleged known falsehood, Mr.
9 Aldrich utilized Ms. Fallini's admission that this area was not open range as grounds to
10 obtain a favorable award of summary judgment.
11

12 Finality has a particular importance in our legal system. The Supreme Court of
13 Nevada has described a final judgment as one "that disposes of the issues presented in the
14 case, determines the costs, and leaves nothing for future consideration of the court."
15 Alper v. Posin, 77 Nev. 328, 330, 363 P.2d 502, 503 (1961). In the matter before the bar
16 however, the issues presented in this case were summarily disposed above due to the
17 negligence of Defendant's counsel Mr. Kuehn. The merits of the case were never
18 actually addressed. Had Mr. Kuehn properly denied Mr. Aldrich's request for
19 admissions, the outcome may have been much different.
20

21 Therefore, after consideration of the papers and pleadings on file, the evidence,
22 and the testimony given throughout this proceeding, the court issues the following Order:
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25 **IT IS HEREBY ORDERED** that Defendant's Motion for Relief from Judgment
26 Pursuant to NRCP 60(b) is GRANTED.
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FIFTH JUDICIAL DISTRICT COURT
ESMERALDA, MINERAL AND NYE COUNTIES



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DATED this 6th day of August, 2014.

District Court Judge



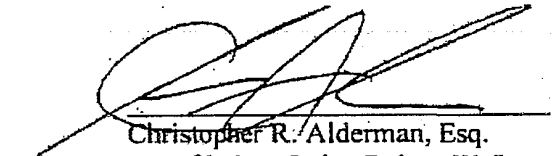
CERTIFICATION OF SERVICE

The undersigned hereby certifies that on the 6th day of August 2014, he mailed
copies of the foregoing Court Order to the following:

JOHN OHLSON, ESQ.
275 Hill Street, Suite 230
Reno, NV 89501

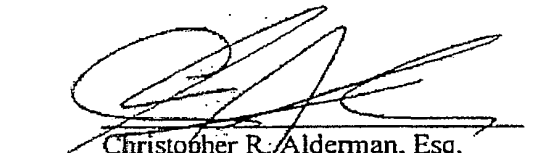
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DAVID R. HAGUE
Fabian & Clendenin, P.C.
215 South State Street Suite 1200
Salt Lake City, Utah 84111


Christopher R. Alderman, Esq.
Law Clerk to Judge Robert W. Lane

AFFIRMATION

The undersigned hereby affirms that this Court Order does not contain the social
security number of any person.


Christopher R. Alderman, Esq.
Law Clerk to Judge Robert W. Lane