# EXHIBIT “K”

BOBBY FRANKLIN
3520 Needles Hwy. Box 233
Needles, CA. 92363

Defendant – *pro se*

FILED ✓ ENTERED
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MAY 27 2015
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BY: DEPUTY

UNITED STATES DISTRICT COURT

DISTRICT OF NEVADA

| | |
|---|---|
| BWD PROPERTIES, et. al.,<br><br>Plaintiffs,<br><br>vs.<br><br>BOBBY LEN FRANKLIN, et. al.,<br><br>Defendants. | Case No.: 206-CV-01499-RCJ-(PAL)<br><br>**DEFENDANT'S RESPONSE TO UNITED STATES UNTIMELY OPPOSITION TO - DEFENDANTS' MOTION TO SET ASIDE ALL "VOID" JUDGEMENTS AND ORDERS IN THIS CASE THAT MISTAKENLY OVERLOOKED THE FRANKLIN TITLE AND DEEDED RIGHTS THAT WAS RE-RECORDED WITH THE CLARK COUNTY RECORDER ON 09/20/1993** |

Defendant Bobby Len Franklin ("Franklin") hereby responds to the UNITED STATES (Assistant Attorney Blaine "Welsh") untimely opposition to *Defendants' Motion to Set Aside All "Void" Judgments and Orders in this Case that Mistakenly Overlooked the Franklin Title and Deeded Rights that was Re-Recorded with the Clark County Recorder on 9/20/1993.*

A Memorandum of Points and Authorities and Proof of Service is attached herewith.

Sincerely submitted by,

Bobby L. Franklin
BOBBY L. FRANKLIN
Dba: DL&S Development Co.
Aka: Desert-Land Entryman N-49548
3520 Needles Hwy. Box 233
Needles, CA. 92363

dlepatent@hotmail.com
830-822-4791

5/20/2015
DATED

K

## MEMORANDUM OF POINTS AND AUTHORITIES

### I. RESPONSE TO MR. WELSH' INTRODUCTION

Mr. Welsh has been representing the United States interest against the Franklin claims, "for more than two decades", as he now states. Over these decades, he has twisted the official facts and law on Motion; he has misrepresented the United States interest; he has wasted $ millions of United States money, time and resources in litigating this matter; and during these two decades, he has fooled the federal courts to deny its ***subject-matter jurisdiction*** to ever examine or review the legal validity and legal effect of the Franklin *1993 Title/Deed* and its *confirmation rights* that were exhausted in the **final** IBLA decision on 12/19/1996.

### II. THE PLAINTIFFS' ADMITTED FACTS IN MOTION

Don Laughlin and his BWD corporations (and the others) rely and have always depended on Mr. Welsh to eliminate the Franklin title and confirmation rights, but they never conducted a Title Search to ever understand what such 1993 *Title/Deed* is, or what legal force & effect it has.

In 2006, the BLM ("USA") issued Don Laughlin three land patents ("80 acres"), for the land described in the 1993 Franklin Title/Deed. In such three land patents issued, it clearly states that the USA or its agencies have ***no further interest or liability*** in such 80 acres. Therefore, why is Mr. Welsh now filing another mass of his twisted jargon, all supported by his federal court orders that disregarded its ***subject matter jurisdiction***[1] and duty to examine or enforce the Franklin 1993 Title/Deed and its administratively exhausted confirmation rights? Who is Mr. Welsh representing now, and who is foolish enough to diagram his massive chaos? It appears that *only* the BWD corporations and the Franklins have any legal interest, title, rights or liability in such 80 acres, as of today.

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[1] Again, Fed. R. Civ. P. 60(b)(4) "Void Judgment(s)".



This federal court is void & has NO jurisdiction to expunge. -

## III. SUMMARY TO MR. WELSH

Mr. Welsh dances around all admitted facts and law in the Motion at hand. He appears to contend Franklin was legally obligated to again appeal the same BLM "Mineral in Character" decision that was *reversed* in 1990. However, on examination of the Franklin *1993 Title/Deed* and of its exhausted confirmation rights therein, it is clearly and officially documented that:

> **5. "Public lands -98- Limitation of two years after issuance of receipt forecloses inquiry into mineral character of land.** The expiration of the two-year period of limitations after the issuance of the receiver's receipt upon final entry which, under Act March 8, 1891, § 7 (Comp. St. § 5118) entitles the entryman to a patent if no contest or protest is then pending, precludes a subsequent inquiry as to whether the entryman knew or should have known that the land was chiefly valuable for its minerals at the time he maid his entry and final proof." *Stockley et al. v. U.S.*, 260 U.S. 532.
>
> See, the *Title/Deed* re-recorded on 9/20/1993

That is the legal reasons: 1) Why Franklin re-recorded his Title/Deed on 9/20/1993; 2) Why the Franklin Title/Deed confirmation rights were exhausted in the **final** IBLA decision on 12/19/1996; 3) Why Franklin did not continue to forever appeal more "Mineral in Character" decisions from BLM; and is, 4) Why Mr. Welsh' jargon is further fraud on this Court.

Mr. Welsh should educate himself and find the legal meaning of a real estate ***Title/Deed***, before *his* property is arbitrarily enjoined and expunged by a kangaroo court that has declared no *subject matter jurisdiction* to evaluate or enforce his Title or Deeded rights. Furthermore, Mr. Welsh has demonstrated who he has and who he is still representing, and it is not the United States interest or property.

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## IV. CONCLUSION

Because Mr. Welsh is not representing any United States interest or property here today, and his jargon does not directly oppose any admitted facts or law in the Motion at hand, the relief in the Motion at hand should be granted.

Sincerely submitted by,

Bobby Len Franklin

5/20/2015

BOBBY LEN FRANKLIN
Dba: DL&S Development Co.
Aka: Desert-Land Entryman N-49548
3520 Needles Hwy. Box 233
Needles, CA. 92363

dlepatent@hotmail.com
830-822-4791
(Defendant *pro se*)

DATED



This federal court is void & has NO jurisdiction to expunge. -

**PROOF OF SERVICE**

I certify that on the below date, I served the foregoing *Defendant's Response to United States* to this Court and a copy to the following Parties by prepaid 1st class USPS mail:

JOLLY URGA WOODBURY & LITTLE
3800 Howard Hughes Parkway
Wells Fargo Tower, 16th Floor
Las Vegas, NV. 89169

702-699-7500
FedCt@juww.com;
*Attorneys for Plaintiffs - BWD;*

U.S. Attorney's Office
333 Las Vegas Blvd. S. – Suite 5000
Las Vegas, NV. 89101

Blaine.Welsh@usdoj.gov
*Attorneys for Third Party Defendant - United States of America.*

Sincerely submitted by,

Bobby L. Franklin
BOBBY L. FRANKLIN
Dba: DL&S Development Co.
Aka: Desert-Land Entryman N-49548
3520 Needles Hwy. Box 233
Needles, CA. 92363

dlepatent@hotmail.com
830-822-4791
(Defendant *pro se*)

5/20/2015
DATED



This federal court is void & has NO jurisdiction to expunge. -

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Needles Hwy.
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les, CA. 92363

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U.S. District Court
District of Nevada - Las Vegas
333 Las Vegas Blvd. South
Las Vegas, NV. 89101

# EXHIBIT “L”

**UNITED STATES DISTRICT COURT**

**DISTRICT OF NEVADA**

BWD PROPERTIES et al.,

Plaintiff,

vs.

BOBBY LEN FRANKLIN et al.,

Defendants.

2:06-cv-01499-RCJ-PAL

**ORDER**

This case arises from a disagreement over the ownership of eighty acres of land located in Clark County, Nevada. The Court recently granted Plaintiffs' motion to extinguish documents recorded in Clark County by Defendant Franklin asserting ownership of the property in violation of a clear permanent injunction prohibiting such action. The Court also sanctioned Franklin for the violation in the amount of Plaintiffs' attorneys' fees. Now pending before the Court is Defendants' Motion to Set Aside Judgment. (ECF No. 166).

The Motion is denied. Defendants' challenges to the Court's finding in favor of Plaintiffs' ownership have been ruled upon multiple times in this District as well as in the Ninth Circuit. The outcome has not changed. Moreover, the Court does not find there to be any reason to reconsider its previous decision regarding sanctions, and it once more warns Defendants that if any recordings asserting ownership of the property are made in the future, they will be sanctioned further.

**CONCLUSION**

IT IS HEREBY ORDERED that Defendants' Motion to Set Aside All Void Judgments and Orders that Mistakenly Overlook the Franklin Title and Deeded Rights Re-Recorder with the Clark County Recorder (ECF No. 166) is DENIED with prejudice.

IT IS SO ORDERED.

Dated: June 1, 2015

ROBERT C. JONES
United States District Judge

# EXHIBIT "I"

BOBBY FRANKLIN
Daydream Land & Systems Development Co.
3520 Needles Hwy. Box 233
Needles, CA. 830-822-4791

Defendant – *pro se*

FILED ✓ RECEIVED
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MAY 11
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DISTRICT OF NEVADA
BY: DEPUTY

UNITED STATES DISTRICT COURT

DISTRICT OF NEVADA

| | |
|---|---|
| BWD PROPERTIES, et. al.,<br><br>Plaintiffs,<br><br>vs.<br><br>BOBBY LEN FRANKLIN, et. al.,<br><br>Defendants. | Case No.: 206-CV-01499-RCJ-(PAL)<br><br>**DEFENDANT'S REPLY TO PLAINTIFFS' OPPOSITION TO DEFENDANTS' MOTION TO SET ASIDE ALL "VOID" JUDGEMENTS AND ORDERS IN THIS CASE THAT MISTAKENLY OVERLOOKED THE THE FRANKLIN TITLE AND DEEDED RIGHTS THAT WAS RE-RECORDED WITH THE CLARK COUNTY RECORDER ON 09/20/1993** |

Defendant Bobby Len Franklin ("Franklin") hereby replies to the Plaintiffs' ("BWD") opposition to Franklin's Motion to Set Aside All "Void" Judgments and Orders.

A Memorandum of Points and Authorities and Proof of Service is attached herewith.

Sincerely submitted by,

Bobby L. Franklin

BOBBY L. FRANKLIN
Dba: DL&S Development Co.
Aka: Desert-Land Entryman N-49548
3520 Needles Hwy. Box 233
Needles, CA. 92363

dlepatent@hotmail.com
830-822-4791
(Defendant *pro se*)

DATED 5/8/2015

I

## MEMORANDUM OF POINTS AND AUTHORITIES

### I. ADMITTED FACTS

The BWD corporations have failed to directly respond to any of the dated chronological facts in the Motion, and therefore are undisputed facts admitted as the true facts.

The BWD corporations have failed to respond to any of the dated chronological facts in the attached Declaration of Facts, and therefore are undisputed facts admitted as the true facts.

The BWD corporations have failed to respond to the attached evidence in "Exhibit Z", and therefore is the admitted evidence that proves the entire 9/29/2008 injunction is entirely based on its mistaken ***false fact*** that "the Franklins failed to exhaust their administrative remedies … and therefore, have no rights, title or interest in the property."

Instead of directly responding or opposing anything in the Motion or its attachments, the BWD lawyers falsely state that "Franklin has no respect for this Court or the orders it enters." to patronize favor; then randomly quotes pieces of the April 13, 2015 Order, mixed with its own word bytes; and then, seeks the *prison* punishment against Franklin, to forever conceal his 1993 Title/Deed confirmation rights that were **never** examined or reviewed in any judicial court to ever be lawfully enjoined or expunged.

In short, the BWD lawyers want this Court to believe that this Court is too good and all mighty to set aside its mistaken injunction in "Exhibit Z", and to set aside all other "void judgments" that have never examined the legal validity and effect of Franklin's Title/Deed confirmation rights that was re-recorded with the Clark County Recorder on 9/20/1993, and that was administratively exhausted in the *final* IBLA decision on 12/19/1996.

Again, putting Franklin in prison to accomplish gagging Franklin's property *rights* would be extortion, but his Title/Deed would remain for enforcement when he gets out.



This federal court is void & has NO jurisdiction to expunge. -

## II. MATTER OF LAW

In its opposition, the BWD lawyers mistype the Federal and Nevada Court Rule *60(b)(4)*, and pretend that they do not know what a ***void judgment*** legally means:

> **"Void judgment.** One which has no legal force or effect, invalidity of which may be asserted by any person whose rights are affected at any time and at any place directly or collaterally. Reynolds v. Volunteer State Life Ins. Co., Tex.Civ.App., 80 S.W.2d 1087, 1092. One which, from its inception is and forever continues to be absolutely null, without legal efficacy, ineffectual to bind parties or support a right, of no legal force and effect whatever, and incapable of confirmation, ratification, or enforcement in any manner or to any degree. Judgment is a "void judgment" if court that rendered judgment lacked jurisdiction of the subject matter, or of the parties, or acted inconsistent with due process. Klugh v. U.S., D.C.S.C., 620 F.Supp. 892, 901."
>
> *Black's Law Dictionary, Sixth Edition*

That legally means that *all* of the past federal court orders or judgments (including the 9/29/2008 injunction) that ***lacked jurisdiction of the subject matter*** to ever examine or review the legal validity and effect of the Franklin Title/Deed confirmation rights that was re-recorded with the Clark County Recorder on 9/20/1993, and that was administratively exhausted in the final IBLA decision on 12/19/1996, were and still are *all* ***"void judgments"*** as a matter of law, inconsistent with due process, ... of no legal force and effect whatever, ... .

That also legally means that if the federal courts continue to mistakenly deny its *subject-matter jurisdiction* to ever examine the legal validity and effect of such Title/Deed instrument, *any person* whose rights are affected may be asserted at any time and at any place directly or collaterally. That legally means that Franklin and/or his heirs have a *right* to petition this Court or any other court to examine the legal validity and effect of such 1993 Title/Deed instrument.

That lastly legally means that Franklin is **not** in contempt to any nor to *all* of the ***"void judgments"*** or orders that the Federal Court(s) has issued over the years.

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## III. CONCLUSION

Based on the foregoing admitted facts and matter of law, the relief requested in the Motion at hand should be granted under the due process of law and justice.

Sincerely submitted by,

Bobby L. Franklin

5/8/2015

BOBBY L. FRANKLIN
Dba: DL&S Development Co.
Aka: Desert-Land Entryman N-49548
3520 Needles Hwy. Box 233
Needles, CA. 92363

dlepatent@hotmail.com
830-822-4791
(Defendant *pro se*)

DATED



This federal court is void & has NO jurisdiction to expunge. -

**PROOF OF SERVICE**

I certify that on the below date, I served the foregoing REPLY TO MOTION to this Court and a copy to the following Parties by prepaid 1st class USPS mail:

JOLLY URGA WOODBURY & LITTLE
3800 Howard Hughes Parkway
Wells Fargo Tower, 16th Floor
Las Vegas, NV. 89169

702-699-7500
FedCt@juww.com;
*Attorneys for Plaintiffs - BWD;*

U.S. Attorney's Office
333 Las Vegas Blvd. S. – Suite 5000
Las Vegas, NV. 89101

Blaine.Welsh@usdoj.gov
*Attorneys for Third Party Defendant - United States of America.*

Sincerely submitted by,

Bobby L. Franklin
BOBBY L. FRANKLIN
Dba: DL&S Development Co.
Aka: Desert-Land Entryman N-49548
3520 Needles Hwy. Box 233
Needles, CA. 92363

dlepatent@hotmail.com
830-822-4791
(Defendant *pro se*)

DATED 5/8/2015



This federal court is void & has NO jurisdiction to expunge. -

# EXHIBIT “J”

DANIEL G. BOGDEN
United States Attorney
District of Nevada

BLAINE T. WELSH
Assistant United States Attorney
Nevada Bar No. 4790
333 Las Vegas Boulevard South, Suite 5000
Las Vegas, Nevada 89101
Telephone: 702-388-6336
Facsimile: 702-388-6787
Email: *blaine.welsh@usdoj.gov*

Attorneys for the United States.

**UNITED STATES DISTRICT COURT**

**DISTRICT OF NEVADA**

| | | |
|---|---|---|
| BWD PROPERTIES 2, LLC, *et al.*, | ) | |
| Plaintiffs, | ) | Case No: 2:06-cv-01499-RCJ-PAL |
| v. | ) | |
| BOBBY LEN FRANKLIN, *et al.*, | ) | |
| Defendants. | ) | |

**THIRD PARTY DEFENDANT UNITED STATES' OPPOSITION TO DEFENDANTS' MOTION TO SET ASIDE, ETC.**

Third Party Defendant, the United States of America (United States), opposes Defendants' Motion to Set Aside All "Void" Judgements and Orders in this Case that Mistakenly Overlooked the the [sic] Franklin Title and Deeded Rights that was [sic] Re-Recorded with the Clark County Recorder on 09/20/2013 ("Motion to Set Aside"). ECF No. 166. The arguments raised in the Motion to Set Aside have already been rejected by this Court in earlier orders issued in the plethora of related litigation with which Defendants have plagued this Court and the parties. Once again, Defendants are entitled to no relief.

J

## MEMORANDUM OF POINTS AND AUTHORITIES

## I. INTRODUCTION

Despite more than two decades of judicial decisions to the contrary, Defendants continue to claim that they own certain real property located near Laughlin, Nevada. They do not. Their applications for the property were rejected. They failed to comply with administrative exhaustion requirements when those applications were rejected because they did not file a timely administrative appeal. Every court to address Defendants' ownership claims has concluded that Defendants' failure to exhaust administrative remedies deprived this Court of subject matter jurisdiction to hear their claims. Despite the unanimous adverse court orders, a permanent injunction and monetary sanctions, Defendants continue to pursue their universally rejected ownership claims.

Nothing in the current Motion to Set Aside will lead to a different result. The specific argument Defendants make about exhausting their administrative remedies in 1996 has been considered and rejected by the Court. Somewhat surprisingly, Defendants do not reference those earlier orders. Their failure to refer the Court to these orders, or provide a reason why this Court should ignore them, casts Defendants in a less than positive light, but then perhaps Defendants have simply forgotten the lawsuit they filed in this Court eleven years ago. Whatever the reason, the orders in that case address the very issue raised in the Motion to Set Aside, including the Fed R. Civ. P 60(b)(4) argument that the judgments and orders are all void.

## II. MOTION TO SET ASIDE

As the United States understands it, in the current Motion to Set Aside, Defendants argue that this Court has committed such error as to void all of the judgments and orders in this case because it improperly concluded that Defendants failed to exhaust their administrative remedies. Defendants contend that their "existing Title and Deed confirmation *rights* were re-recorded with the Clark County Recorder on 09/20/1993 and that were administratively exhausted in the final administrative ("IBLA") decision on 12/19/1996." *See* ECF No. 166 at 1.

Similarly, Defendants contend that "[o]n 12/19/1996, the Department of Interior Board of Land Appeals ("IBLA") dismissed such Title/Deed confirmation rights on appeal from BLM, in its ***final*** *administrative decision*." *Id.* at 2, lines 2-3. Defendants claim the Court acting through former United States District Court Judge Sandoval "mistakenly denied his *subject-matter jurisdiction* and his duty to evaluate the legal validity or effect of such 1993 Title/Deed; and, he issued a permanent injunction against the Franklins, **all** based on his mistaken **lie** that 'the Franklins failed to exhaust their administrative remedies.'" *Id.*, lines 9-12.

Defendants claim that the court failed to consider an exhibit, Document 34 "that proves without a doubt that the Franklins did exhaust all administrative remedies, in the final "IBLA" decision that was issued on 12/19/1996. *Id.,* lines 17-19. Defendants then contend that "[t]he Ninth Circuit Court affirmed Sandoval's (above) mistaken lie, based on its *1995* Franklin memos it issued before the Franklins had even exhausted their administrative remedies on *12/19/1996*." *Id.*, lines 20-22. Defendants then claim that they "did in fact and deed exhaust all administrative remedies on 12/19/1996." *Id.*, lines 22-23.

Those contentions are all without merit. As discussed below, Defendants claimed that they had exhausted their administrative remedies based on the 12/19/1996 IBLA decision in a separate lawsuit they filed in 2004. This Court rejected that argument and the Ninth Circuit Court of Appeals affirmed. Thus, the contentions made in Defendants' arguments have already been examined and rejected by this Court and serve as no basis for any relief, let alone the extraordinary relief they request.

## III. *Franklin, et al. v. United States, et al.,* 2:04-cv-0128-RLH-PAL

In 2004, Defendants Bobby Len Franklin, Robert Lee Franklin and Donna Sue Owens sued the United States seeking review of the IBLA's 1996 dismissal of Defendants' appeal from a 1995 information letter from the BLM. *See* Exhibit 1 attached to this Opposition, June 7, 2004 Order at 1, line 23 through 2, line 12. After discussing the already lengthy history of this "perpetual" case, the Court ruled as follows:

> Plaintiffs seek this Court's review of the IBLA's 1996 dismissal of an appeal from a 1995 informational letter from BLM to Plaintiffs Franklin and R. Franklin. Plaintiffs contend that subject matter jurisdiction exists because Plaintiffs appealed the 1995 letter to the IBLA, and therefore the IBLA's decision is final and this Court may review the decision per 43 C.F.R. § 4.21. Because the letters in question, however, contained only information pertaining to the rejection of Franklin's DLE application, it is evident that the 1996 appeal to the IBLA was actually an appeal of the 1993 rejection of the DLE application.
>
> The Department of Interior requires a party to exhaust its administrative remedies before a District Court may properly assume jurisdiction. *Doria Mining and Eng'g Corp. v. Morton*, 608 F.2d 1255, 1257 (9th Cir. 1979) (citing 43 C.F.R. § 4.21(b)). Administrative remedies regarding Department of Interior decisions are exhausted only upon disposition of an appeal by the IBLA. *Id.*
>
> This Court lacks jurisdiction to hear this case for the same reason it lacked jurisdiction to hear Franklin's four previous claims arising from the rejection of his DLE application. Franklin failed to appeal the 1993 rejection of his application to the IBLA within 30 days of its issuance and therefore he has failed to exhaust his administrative remedies. As such, this Court lacks jurisdiction to hear this claim.

Exhibit 1, Order at 5, line 12 through 6, line 3.

After addressing other issues, the Court then granted the United States' Motion to Dismiss and entered judgment in favor of the United States. As Defendants have done throughout, and as they have now done in this case, they filed a Motion for Relief from Judgment or Order alleging they were entitled to relief from the Court's order dismissing the case pursuant to Rule 60(b)(3),(4),(5), and (6). *See* Exhibit 2, attached to this Opposition, July 30, 2004 Order.

Among other things, Defendants claimed that the United States' failure to exhaust arguments were fraudulent. The Court rejected that argument. It held that the failure to exhaust arguments were true and correct, not fraudulent. *See* Exhibit 2 at 5, lines 9-26. It also rejected Defendants' arguments that the Court committed prejudicial error by refusing to examine their asserted property rights. The Court reiterated that it could not do so because, among other things, the Court lacked subject matter jurisdiction. *Id.* at 6, lines 19-26. The orders in the *Franklin, et al. v. United States, et al.*, 2:04-cv-0128-RLH-PAL, were affirmed by the Ninth Circuit Court of Appeals in an unpublished memorandum decision. *See Bobby Len Franklin v.*

*United States BLM,* 125 Fed. Appx. 152 (9th Cir. 2005) (unpublished), *cert. denied*, 546 U.S. 1004 (2005)

**VI. ARGUMENT**

A final judgment is "void" for purposes of Rule 60(b)(4) only if the court that considered it lacked jurisdiction, either as to the subject matter of the dispute or over the parties to be bound, or acted in a manner inconsistent with due process of law. Fed. R. Civ. P. 60(b)(4); *see also U.S. v. Berke*, 170 F.3d 882, 883 (9th Cir. 1999).

The judicial decisions in the cases filed by Defendants about this subject have all concluded that Defendants did not exhaust their administrative remedies and their failure to do so deprives the Court of subject matter jurisdiction. The judicial decisions concerning the 1996 IBLA appeal reached a similar result. None of those orders involve a court acting without jurisdiction.

Nothing raised by Defendants amounts to a violation of due process. While Defendants appear to claim that the Court failed to consider their claims on the merits by refusing to review the 1993 BLM decision rejecting their applications, that circumstance is not a denial of due process. Rather, these decisions are consistent with a district court's duty to hear only those claims over which it has jurisdiction.

This Court's orders and judgments have not deprived Defendants of due process. Rather, it was Defendants' decision not to appeal the BLM's 1993 decision that created the problem about which Defendants complain. Had Defendants filed a timely notice of appeal to the BLM's 1993 decision, this Court and the Ninth Circuit Court of Appeals could have reviewed that decision on the merits. Defendants' failure to exhaust administrative remedies is a failure of their own making and is not attributable to the Court. Thus, there is no due process violation affecting this Court's orders and judgments.

Further, Defendants' failure to refer to the Court's orders concerning the 1996 IBLA appeal do not provide a basis for Rule 60(b)(4) relief. These orders remain in place and are

dispositive of the Motion to Set Aside.

In short, the Motion to Set Aside is without merit. The Court has considered the impact of the December 19, 1996 IBLA appeal and determined it was, at best, an untimely appeal from the 1993 BLM decision rejecting Defendants' applications and thus did not confer subject matter jurisdiction on the Court to consider the merits of Defendants' claims. Thus, rather than failing to consider the December 19, 1996 IBLA appeal, this Court has considered it and has determined it does not change the result or provide subject matter jurisdiction.

## V. CONCLUSION

The Motion to Set Aside should be summarily denied. Contrary to Defendants' assertions, this Court has considered the 1996 IBLA appeal and determined that the IBLA appeal does not confer subject matter jurisdiction on the Court to consider Defendants' "Title/Deed" claims. Rather, this is yet another attempt by Defendants to perpetuate litigation in a case that they lost more than twenty years ago.[1]

Respectfully submitted this 14th day of May 2015.

DANIEL G. BOGDEN
United States Attorney

*/s/ Blaine T. Welsh*
BLAINE T. WELSH
Assistant United States Attorney

[1] The United States takes no position on what sanctions, if any, should be imposed on Defendants for their conduct.

## CERTIFICATE OF SERVICE

I, Blaine T. Welsh, certify that the following individuals were served with a copy of the **THIRD PARTY DEFENDANT UNITED STATES' OPPOSITION TO DEFENDANTS' MOTION TO SET ASIDE. ETC.** on the following date and by the below identified method of service:

**Electronic Case Filing:**

Brian C Wedl
bcw@juww.com, dr@juww.com, em@juww.com

Charles T. Cook
CTC@juww.com, FedCt@juww.com, lg@juww.com

William R. Urga
FedCt@juww.com, ls@juww.com

**U.S. Mail:**

Bobby Len Franklin
Daydream Land & Systems Development Co.
3520 Needles Hwy, Box 233
Needles, California 92363

Robert Lee Franklin
526 Pecos Circle
New Braunfels, Texas 78130

Dated this 14th day of May 2015.

*/s/ Blaine T. Welsh*
BLAINE T. WELSH
Assistant United States Attorney

# EXHIBIT 1

FILED ✓ ENTERED
RECEIVED ✓ SERVED ON COUNSEL/PARTIES OF RECORD
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CLERK US DISTRICT COURT
DISTRICT OF NEVADA
BY: MS DEPUTY

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# UNITED STATES DISTRICT COURT

# DISTRICT OF NEVADA

* * *

| | |
|---|---|
| FRANKLIN, et al., Plaintiffs, vs. UNITED STATES, et al., Defendants. | Case No.: CV-S-04-0128-RLH (PAL) **ORDER** (Motion to Dismiss #10) |

Before the Court is Defendants' **Motion to Dismiss Pursuant to Fed. R. Civ. P. 12(b)(1) and (6)** (#10), filed April 29, 2004. The Court has also considered Plaintiffs' Opposition (#12), filed May 12, 2004, and Defendants' Reply (#13), filed May 25, 2004. Also before the Court is Plaintiffs' **Motion for Sanctions Pursuant to Fed. R. Civ. P. 11** (#14), filed June 2, 2004. The Court has also considered Defendant's Opposition (#15), filed May 26, 2004, and Plaintiff's Reply (#17), filed June 2, 2004.

## BACKGROUND

This is an action in which Plaintiffs seek judicial review of an order of the Interior Board of Land Appeals ("IBLA"), issued December 19, 1996. In 1995, Plaintiff Bobby Len Franklin ("Franklin"), and his father, Plaintiff Robert Lee Franklin ("R. Franklin"), sent letters to Defendant Bureau of Land Management ("BLM") questioning the BLM's 1988 and subsequent 1993 denials

of Franklin's request for Desert Land Entry ("DLE"). In response, the Las Vegas District Manager of the BLM sent identical letters, dated October 27, 1995, to both men, with information pertaining to the mens' questions, and stating that the BLM was closing the Plaintiffs' files concerning the DLE application as no available appeals procedures remained. Franklin and R. Franklin appealed those letters to the IBLA. The IBLA dismissed the Franklins' appeal on the grounds that the men were attempting to use the October 1995 informational letters to appeal the 1993 denial of Franklin's DLE application, a right Franklin had waived by neglecting to appeal the 1993 denial to the IBLA within 30 days of its issuance. Furthermore, the IBLA found that the letters themselves did not "adversely affect" the men within the meaning of 43 C.F.R. § 4.410(a), and therefore were not appealable. The two men, with Plaintiff Donna Sue Owens ("Owens"), now seek judicial review of the IBLA's 1996 dismissal of their appeal from the 1995 informational letters.

The history of this perpetual case is extensive. On August 8, 1988, Franklin filed a DLE application with the BLM in an attempt to acquire title to an 80-acre parcel of land near Laughlin, Nevada (the site) from the U.S. government. On October 13, 1988, the BLM denied Franklin's application on the grounds that the property was not subject to disposition under the Desert Land Act because the land was mineral in nature, and appropriated by mining claims. Franklin timely appealed to the IBLA, and in an order dated August 27, 1990, the IBLA reversed the decision and remanded the issue so that the BLM could survey the land to determine whether the site was in fact mineral in nature and therefore whether it was subject to disposition.

Instead of waiting for the BLM's decision on remand, Franklin filed an action in Federal Court on May 6, 1991. This Court dismissed the action on August 20, 1991 for improper service of process, failure to exhaust administrative remedies under the Administrative Procedures Act, failure to name the United States as a proper defendant under the Federal Torts Claims Act, 28 U.S.C. §§2671, *et seq.*, and failure to provide defendants adequate notice regarding the facts that Franklin believed supported his complaint. Franklin appealed the dismissal to the Ninth Circuit,

which affirmed on the service of process issue. *Franklin v. Clark County Manager's Office*, 967 F.2d 586 (9th Cir. 1992) (unpublished disposition). Subsequently, Franklin filed a Petition for Writ of Certiorari to the United States Supreme Court, which that Court denied. *Franklin v. Clark County Manager's Office*, 508 U.S. 916 (1993).

BLM issued its decision on remand November 12, 1993, once again rejecting Franklin's DLE application. After survey and investigation, the BLM decided the property was in fact mineral in nature, and therefore not subject to disposition under the Desert Land Act. The decision set out Franklin's appeal rights, which were the same he had followed years earlier when he appealed the BLM's first rejection of his DLE application. Franklin had 30 days to appeal the decision to the IBLA. He did not do so.

Instead of appealing to the IBLA, Franklin filed another suit in Federal Court November 22, 1993, this time seeking to quiet title to the site. On May 16, 1994, this Court granted the United States' motion to dismiss for lack of subject matter jurisdiction, on the grounds that Franklin had failed to exhaust his administrative remedies by neglecting to file an appeal of the BLM's final decision with the IBLA.

Franklin appealed the District Court's dismissal to the Ninth Circuit, which again affirmed the dismissal. *Franklin v. United States*, 46 F.3d 1140 (9th Cir. 1995) (unpublished disposition). Again, Franklin filed a Petition for Writ of Certiorari to the United States Supreme Court, which was again denied. *Franklin v. United States*, 516 U.S. 829 (1995).

In 1995, Franklin enclosed a portion of the site with a chain link fence and began occupying the site. The BLM advised Franklin that the use was unauthorized and requested that he leave. Franklin refused to do so. The United States instituted a trespass action against Franklin. Franklin counter-sued asserting that he owned the property. On October 14, 1997, this Court enjoined Franklin from any further trespass on the property. The District Court dismissed Franklin's counter-claim for lack of subject matter jurisdiction for the same reason it had done so in 1994.

Later in 1997, Franklin filed yet another suit in Federal Court, which was again dismissed for lack of subject matter jurisdiction. Again, Franklin appealed to the Ninth Circuit, which again affirmed the District Court's dismissal. *Franklin v. Bilbray*, 172 F.3d 56 (9th Cir. 1999) (unpublished disposition). Franklin again filed a Petition for Writ of Certiorari to the United States Supreme Court, which was again denied. *Franklin v. Bilbray*, 528 U.S. 863 (1999).

Franklin joins with new Plaintiffs, R. Franklin and Owens, seeking this Court's review of issues arising from the rejection of Franklin's DLE application for the fifth time, this time seeking review of the IBLA's 1996 dismissal for lack of jurisdiction of Franklin and R. Franklin's appeal from the informational letters from BLM.

**DISCUSSION**

The Court finds that, for a variety of reasons, Defendants' motion to dismiss should be granted. First, this Court lacks subject matter jurisdiction to hear this claim. Second, even if this Court's jurisdiction was proper, the applicable statute of limitations has run and this claim is effectively barred. Third, the doctrine of claim preclusion prevents plaintiffs from bringing this claim. Finally, there is an alleged lack of standing, but because the aforementioned reasons require this Court to dismiss the action, standing will not be addressed.

As a preliminary issue, because Plaintiffs appear *pro se*, this Court has liberally construed Plaintiffs' pleadings, in accordance with *Eldridge v. Block*, 832 F.2d 1132, 1137 (9th Cir. 1987) (citing *Boag v. MacDougall*, 454 U.S. 364 (1982)).

**A Motion to Dismiss**

**i. Legal Standard**

Rule 12(b)(1) of the Federal Rules of Civil Procedure provides that a court may dismiss a complaint for, "lack of jurisdiction over the subject matter." "Whenever it appears by suggestion of the parties or otherwise that the court lacks jurisdiction of the subject matter, the court shall dismiss the action." Fed. R. Civ. P. 12(h)(3).

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AO 72
(Rev. 8/82)

Rule 12(b)(6) of the Federal Rules of Civil Procedure provides that a court may dismiss a complaint for "failure to state a claim upon which relief can be granted." "[A] complaint should not be dismissed for failure to state a claim unless it appears beyond doubt that the plaintiff can prove no set of facts in support of his claim which would entitle him to relief." *Conley v. Gibson*, 355 U.S. 41, 45-46 (1957); *see also Yamaguchi v. U.S. Dept. of the Air Force*, 109 F.3d 1475, 1481 (9th Cir. 1997). All factual allegations set forth in the complaint "are taken as true and construed in the light most favorable to [p]laintiffs." *Epstein v. Washington Energy Co.*, 83 F.3d 1136, 1140 (9th Cir. 1999). Dismissal is appropriate "only if it is clear that no relief could be granted under any set of facts that could be proven consistent with the allegations." *Hishon v. King & Spalding*, 467 U.S. 69, 73 (1984); *see also McGlinchy v. Shell Chem. Co.*, 845 F.2d 802, 810 (9th Cir. 1988).

**ii. Subject Matter Jurisdiction**

Plaintiffs seek this Court's review of the IBLA's 1996 dismissal of an appeal from a 1995 informational letter from BLM to Plaintiffs Franklin and R. Franklin. Plaintiffs contend that subject matter jurisdiction exists because Plaintiffs appealed the 1995 letter to the IBLA, and therefore the IBLA's decision is final and this Court may review the decision per 43 C.F.R. § 4.21. Because the letters in question, however, contained only information pertaining to the rejection of Franklin's DLE application, it is evident that the 1996 appeal to the IBLA was actually an appeal of the 1993 rejection of the DLE application.

The Department of Interior requires a party to exhaust its administrative remedies before a District Court may properly assume jurisdiction. *Doria Mining and Eng'g Corp. v. Morton*, 608 F.2d 1255, 1257 (9th Cir. 1979) (citing 43 C.F.R. § 4.21(b)). Administrative remedies regarding Department of Interior decisions are exhausted only upon disposition of an appeal by the IBLA. *Id.*

This Court lacks jurisdiction to hear this case for the same reason it lacked jurisdiction to hear Franklin's four previous claims arising from the rejection of his DLE application. Franklin



AO 72
(Rev. 8/82)

failed to appeal the 1993 rejection of his application to the IBLA within thirty days of its issuance and therefore he has failed to exhaust his administrative remedies. As such, this Court lacks jurisdiction to hear this claim.

**iii. Statute of Limitations**

Even assuming, *arguendo*, that this Court has jurisdiction to hear the claim, the claim is barred by the six year statute of limitations. The Administrative Procedure Act, 5 U.S.C §§ 701-706 (APA), under which the current claim is brought, does not specify a particular statute of limitations. It is therefore fitting to apply 28 U.S.C. § 2401 to claims filed pursuant to the APA. *Sierra Club v. Penfold*, 857 F.2d 1307, 1315 (9th Cir. 1998). 28 U.S.C. § 2401 provides, "Every civil action commenced against the United States shall be barred unless the complaint is filed within six years after the cause of action first accrues." Under the APA, a cause of action accrues from the date final agency action is taken, or the date from which all administrative remedies are exhausted. *Spannus v. United States Dept. of Justice*, 824 F.2d 52, 56 (D.C. Cir. 1987).

To constitute a final agency action, the action "must mark the consummation of the agency's decision-making process - it must not be of a merely tentative or interlocutory nature." *Bennett v. Spear*, 520 U.S. 154, 177-8 (1997) (citing *Chicago and southern Airlines, Inc. v. Waterman S.S. Corp.*, 333 U.S. 103, 113 (1948)). Furthermore, "the action must be one by which rights or obligations have been determined, or from which legal consequences will flow." *Id.* (citing *Port of Boston Marine Terminal Assn. v. Rederiaktiebolaget, Transatlantic*, 400 U.S. 62 (1970)). Finally, an administrative decision is final if a party has failed to file a notice of appeal within the requisite time period. *Taylor v. Heckler*, 765 F.2d 872, 876-77 (9th Cir. 1985).

Accordingly, Franklin's cause of action accrued in 1993 when the BLM denied his DLE application on remand because the decision was the consummation of the agency's decision making process in that absent further appeal to the IBLA by Franklin, the BLM would take no further action, and the decision would stand as final. The decision also had legal consequences which included denying Franklin title to the land which later resulted in a trespass action against



AO 72
(Rev. 8/82)

Franklin. Finally, Franklin's failure to appeal the 1993 rejection to the IBLA within the 30 day window following the rejection also resulted in the rejection becoming final agency action. Given that the cause of action accrued in 1993, it is clear that the six year statute of limitations has run and therefore Plaintiffs are barred from bringing this claim.[1]

**Claim Preclusion**

Claim preclusion bars "any lawsuits on any claims that were or could have been raised in a prior action." *Stewart v. U.S. Bancorp*, 297 F.3d 953, 956 (9th Cir. 2002) (emphasis omitted). "Claim preclusion applies if there is (1) an identity of claims; (2) a final judgment on the merits; and (3) identity or privity between the parties." *Providence Health Plan v. McDowell*, 361 F.3d 1243, 1249 (9th Cir. 2004) (quoting *Owens v. Kaiser Found. Health Plan, Inc.*, 244 F.3d 708, 713 (9th Cir. 2001)).

> In determining whether the prior litigation involved the same claim, we consider four questions: (1) whether rights or interests established in the prior judgment would be destroyed or impaired by prosecution of the second action; (2) whether substantially the same evidence is presented in the two actions; (3) whether the two suits involve infringement on the same right; and (4) whether the two suits arise out of the same transactional nucleus of facts. The fourth question is the most important.

*Gospel Missions of America v. City of Los Angeles*, 328 F.3d 548, 555 (9th Cir. 2003). Claim preclusion also applies to final administrative decisions and the same general rules apply to administrative decisions as apply to judicial decisions. *Taylor*, 765 F.2d 876-77.

Claim preclusion bars Plaintiffs from bringing this action because all three requirements for claim preclusion are met.

Identity of Claims: The transactional nucleus of facts out of which this claim arises is the same as that which gave rise to Franklin's previous proceedings. The transactional nucleus of facts giving rise to these actions has consistently been the BLM's rejection of Franklin's DLE application.

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[1] Even if the cause of action accrued upon the IBLA's dismissal of Franklin's appeal in 1996, the statute of limitations has nevertheless run.



AO 72
(Rev. 8/82)

Final Judgment on the Merits: When Franklin failed to appeal the BLM's 1993 decision rejecting his application, the decision on the merits became final. Furthermore, the Court's decision in the United States' trespass action against Franklin is also a final decision on the merits because it necessarily found that Franklin did not own the property. Franklin appealed this decision and the Ninth Circuit affirmed, meaning that decision is also final.

Privity Among Parties: "Privity may exist if there is substantial identity between parties, that is, there is sufficient commonality of interest." *Gospel Missions*, 328 F.3d at 556. Plaintiffs R. Franklin and Owens now assert an interest in the site because Plaintiff Franklin entered into a contract for sale with R. Franklin and Owens for portions of the site. R. Franklin and Owen's interests in the site are derivative of Franklin's interest, and all parties share the same interest in establishing validity of title. Furthermore, had Franklin been successful in establishing title in any of his previous claims, R. Franklin and Owen's claims would be moot because the contracts for sale were executed in 2002, many years after Franklin's failed attempts to establish ownership of the site.

Accordingly, all the elements of claim preclusion have been met, and Plaintiffs are barred from re-litigating this action.

**iii. Standing**

Because the Court finds it necessary to grant Defendants' motion to dismiss for the reasons discussed *supra*, the Court finds it unnecessary to address the issue of standing.

**B. Motion for Sanctions**

Plaintiffs' motion for sanctions is predicated on the notion that Defendants' motion to dismiss was made fraudulently. As this Court has seen fit to grant Defendants' motion to dismiss, the Court obviously does not agree that the motion was fraudulent. Accordingly, the plaintiff's motion for sanctions is denied.

## CONCLUSION

Accordingly, and for good cause appearing,

IT IS HEREBY ORDERED that Defendants' Motion to Dismiss Pursuant to Fed. R. Civ. P. 12(b)(1) and (6) (#10) is GRANTED. Plaintiff's Motion for Sanctions Pursuant to Fed. R. Civ. P. 11 (#14) is DENIED.

Dated: June 7, 2004.

**ROGER L. HUNT**
**United States District Judge**

# EXHIBIT 2

FILED
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COUNSEL/PARTIES OF RECORD
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DISTRICT OF NEVADA
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# UNITED STATES DISTRICT COURT

# DISTRICT OF NEVADA

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| FRANKLIN, et al., Plaintiffs, vs. UNITED STATES, et al., Defendants. | Case No.: CV-S-04-0128-RLH (PAL) **ORDER** (Motion for Relief from Judgment or Order #21; Plaintiff's Motion and Demand for Trial by Jury #20) |

Before the Court is Plaintiffs' **Motion for Relief from Judgment or Order** (#21), filed June 22, 2004. The Court has also considered Defendants' Opposition (#22), filed July 9, 2004, and Defendants' Reply (#23), filed July 21, 2004. Also before the Court is Plaintiffs' **Motion and Demand for Trial by Jury** (#20), filed June 22, 2004.

## BACKGROUND

As stated in the Court's order of June 9, 2004, the facts in this case are as follows. This is an action in which Plaintiffs seek judicial review of an order of the Interior Board of Land Appeals ("IBLA"), issued December 19, 1996. In 1995, Plaintiff Bobby Len Franklin ("Franklin"), and his father, Plaintiff Robert Lee Franklin ("R. Franklin"), sent letters to Defendant Bureau of Land Management ("BLM") questioning the BLM's 1988 and subsequent 1993 denials of Franklin's request for Desert Land Entry ("DLE"). In response, the Las Vegas District Manager



AO 72
(Rev. 8/82)

24

of the BLM sent identical letters, dated October 27, 1995, to both men, with information pertaining to the mens' questions, and stating that the BLM was closing the Plaintiffs' files concerning the DLE application as no available appeals procedures remained. Franklin and R. Franklin appealed those letters to the IBLA. The IBLA dismissed the Franklins' appeal on the grounds that the men were attempting to use the October 1995 informational letters to appeal the 1993 denial of Franklin's DLE application, a right Franklin had waived by neglecting to appeal the 1993 denial to the IBLA within 30 days of its issuance. Furthermore, the IBLA found that the letters themselves did not "adversely affect" the men within the meaning of 43 C.F.R. § 4.410(a), and therefore were not appealable. The two men, with Plaintiff Donna Sue Owens ("Owens"), now seek judicial review of the IBLA's 1996 dismissal of their appeal from the 1995 informational letters.

The history of this perpetual case is extensive. On August 8, 1988, Franklin filed a DLE application with the BLM in an attempt to acquire title to an 80-acre parcel of land near Laughlin, Nevada (the site) from the U.S. government. On October 13, 1988, the BLM denied Franklin's application on the grounds that the property was not subject to disposition under the Desert Land Act because the land was mineral in nature, and appropriated by mining claims. Franklin timely appealed to the IBLA, and in an order dated August 27, 1990, the IBLA reversed the decision and remanded the issue so that the BLM could survey the land to determine whether the site was in fact mineral in nature and therefore whether it was subject to disposition.

Instead of waiting for the BLM's decision on remand, Franklin filed an action in Federal Court on May 6, 1991. This Court dismissed the action on August 20, 1991 for improper service of process, failure to exhaust administrative remedies under the Administrative Procedures Act, failure to name the United States as a proper defendant under the Federal Torts Claims Act, 28 U.S.C. §§2671, *et seq.*, and failure to provide defendants adequate notice regarding the facts that Franklin believed supported his complaint. Franklin appealed the dismissal to the Ninth Circuit, which affirmed on the service of process issue. *Franklin v. Clark County Manager's*



AO 72
(Rev. 8/82)

*Office*, 967 F.2d 586 (9th Cir. 1992) (unpublished disposition). Subsequently, Franklin filed a Petition for Writ of Certiorari to the United States Supreme Court, which that Court denied. *Franklin v. Clark County Manager's Office*, 508 U.S. 916 (1993).

BLM issued its decision on remand November 12, 1993, once again rejecting Franklin's DLE application. After survey and investigation, the BLM decided the property was in fact mineral in nature, and therefore not subject to disposition under the Desert Land Act. The decision set out Franklin's appeal rights, which were the same he had followed years earlier when he appealed the BLM's first rejection of his DLE application. Franklin had 30 days to appeal the decision to the IBLA. He did not do so.

Instead of appealing to the IBLA, Franklin filed another suit in Federal Court November 22, 1993, this time seeking to quiet title to the site. On May 16, 1994, this Court granted the United States' motion to dismiss for lack of subject matter jurisdiction, on the grounds that Franklin had failed to exhaust his administrative remedies by neglecting to file an appeal of the BLM's final decision with the IBLA.

Franklin appealed the District Court's dismissal to the Ninth Circuit, which again affirmed the dismissal. *Franklin v. United States*, 46 F.3d 1140 (9th Cir. 1995) (unpublished disposition). Again, Franklin filed a Petition for Writ of Certiorari to the United States Supreme Court, which was again denied. *Franklin v. United States*, 516 U.S. 829 (1995).

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AO 72
(Rev. 8/82)

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In the instant action, Franklin joined with new Plaintiffs, R. Franklin and Owens, seeking this Court's review of issues arising from the rejection of Franklin's DLE application for the fifth time, this time seeking review of the IBLA's 1996 dismissal for lack of jurisdiction of Franklin and R. Franklin's appeal from the informational letters from BLM. On June 9, 2004, this Court dismissed the action on several grounds. Specifically, this Court lacks jurisdiction over the subject matter of these claims as Plaintiffs failed to exhaust their administrative remedies, the claims are time-barred by the applicable statute of limitations, and the claims are precluded under the doctrine of *res judicata*. Plaintiffs have now moved this Court for relief from the order dismissing Plaintiffs' claim. Plaintiffs have also moved for trial by jury. For the reasons established herein, Plaintiffs' motions are denied.

**DISCUSSION**

Plaintiffs have moved this Court for relief from its order of June 8, 2004, pursuant to Fed. R. Civ. P. 60(b). As a preliminary matter, because Plaintiffs appear *pro se*, the Court has construed their pleadings liberally. *See Resnick v. Hayes*, 213 F.3d 443, 447 (9th Cir. 2000).

Under Rule 60(b), a court may relieve a party from a final judgment, order or proceeding only for the following reasons: (1) mistake, inadvertence, surprise, or excusable neglect; (2) newly discovered evidence; (3) fraud, misrepresentation, or other misconduct of an adverse party; (4) the judgment is void; (5) the judgment is satisfied, released, or discharged, or a prior judgment on which it is based has been reversed; or (6) any other reason justifying relief from the judgment. A motion for reconsideration is properly denied when it presents no



AO 72
(Rev. 8/82)

arguments that were not already raised in its original motion. *See Backlund v. Barnhart*, 778 F.2d 1386, 1388 (9th Cir. 1985).

Motions for reconsideration are not "the proper vehicles for rehashing old arguments," *Resolution Trust Corp. v. Holmes*, 846 F.Supp. 1310, 1316 (S.D.Tex. 1994)(footnotes omitted), and are not "intended to give an unhappy litigant one additional chance to sway the judge." *Durkin v. Taylor*, 444 F.Supp. 879, 889 (E.D.Va. 1977).

Here, Plaintiffs assert that they are entitled to relief from the Court's order pursuant to Rule 60(b)(3), (4), (5), and (6).

**I. Fed. R. Civ. P. 60(b)(3)**

Plaintiffs argue that they are entitled to relief from the Court's order, pursuant to Rule 60(b)(3), on the grounds that the Court's dismissal of Plaintiffs' claims was predicated upon a fraud perpetrated by Defendants. Plaintiffs argue that Defendants fraudulently represented to this Court that Plaintiff Franklin did not successfully appeal the BLM's determination that the land in question was, in fact, mineral in character. Defendants' representation was not fraudulent; it was true. Plaintiffs timely appealed to the IBLA the BLM's *first* determination that the land was mineral in character. The IBLA reversed the decision because the appropriate factual findings had not been made. The IBLA remanded the matter to the BLM to conduct the necessary investigation to determine whether the land was, in fact, mineral in character. The BLM issued its ruling on remand that the land was mineral in character. Plaintiffs never appealed the BLM's determination on remand to the IBLA. Plaintiffs' failure to do so necessarily means that this Court lacks jurisdiction over the subject matter of Plaintiffs' claims.

In their instant motion, Plaintiffs rehash the fraud argument they have presented throughout this action. The Court addressed, in its prior order, that Defendants' arguments, with respect to Plaintiffs' failure to exhaust their administrative remedies, are true and correct. The Court will not continue trying to explain to Plaintiffs why Defendants' representation is not fraudulent.



AO 72
(Rev. 8/82)

Accordingly, Plaintiffs have not met the standard for relief from the Court's order pursuant to Rule 60(b)(3).

**II. Fed. R. Civ. P. 60(b)(4)**

Plaintiffs also contend that the Court's order of June 8, 2004, is void, and that Plaintiffs are therefore entitled to relief from the order, pursuant to Rule 60(b)(4). In support of this contention, Plaintiffs rehash the fraud argument discussed above, and argue that the six year statute of limitations applied by the Court is not valid in this case. The parties fully briefed these issues when the motion to dismiss was before the Court, and the Court fully addressed them in its previous order. The Court will not repeat itself here.

**III. Fed. R. Civ. P. 60(b)(5)**

Plaintiffs also contend that they are entitled to relief from the Court's order, pursuant to Rule 60(b)(5). Specifically, Plaintiffs argue that the Court's previous order was based upon a prior judgment that has been reversed. In support of this contention, Plaintiffs rely on their old standby argument, that the BLM's original denial of Plaintiff Franklin's application was reversed by the IBLA. For the reasons discussed *ad nauseum* throughout Plaintiffs' perpetual litigation concerning this matter, the Court's ruling was not based on a judgment that has been reversed. Accordingly, Plaintiffs have not met the standard for relief from the Court's order, pursuant to Rule 60(b)(5).

**IV. Fed. R. Civ. P. 60(b)(6)**

Finally, Plaintiffs contend that they are entitled to relief from the Court's order, pursuant to Rule 60(b)(6). In support of this contention, Plaintiffs appear to argue that the Court committed prejudicial error by refusing to examine Plaintiffs' asserted property rights. As the Court has previously established, it cannot do so because it lacks jurisdiction over the subject matter of Plaintiffs' claims, the applicable statute of limitations has run, and the claims are precluded under the doctrine of *res judicata*. Plaintiffs have failed to establish a valid reason justifying relief from this Court's order of June 8, 2004, pursuant to Rule 60(b)(6).



AO 72
(Rev. 8/82)

**V. Motion for Trial by Jury**

As Plaintiffs' claims have been dismissed, there will not be a trial. Accordingly, Plaintiffs' motion is denied as moot.

**VI. Sanctions**

To the extent that Plaintiffs have requested sanctions in their motion for relief from judgment, the frivolous request is denied.

**CONCLUSION**

Accordingly, and for good cause appearing,

IT IS HEREBY ORDERED that Plaintiffs' Motion for Relief from Judgment or Order (#21) is DENIED.

IT IS FURTHER ORDERED that Plaintiffs' Motion and Demand for Trial by Jury (#20) is DENIED.

IT IS FURTHER ORDERED that to the extent Plaintiffs have requested sanctions, the request is DENIED.

Dated: July 30, 2004.

**ROGER L. HUNT**
**United States District Judge**



AO 72
(Rev. 8/82)

# EXHIBIT “H”

WILLIAM R. URGA, ESQ.
Nevada Bar No. 1195
CHARLES T. COOK, ESQ.
Nevada Bar No. 1516
BRIAN C. WEDL, ESQ.
Nevada Bar No. 8717
JOLLEY URGA WOODBURY & LITTLE
3800 Howard Hughes Parkway
Wells Fargo Tower, Sixteenth Floor
Las Vegas, Nevada 89169
Telephone: 702.699.7500
Facsimile: 702.699.7555
E-mail: FedCt@juww.com
E-mail: ctc@juww.com

*Attorneys for Plaintiffs* BWD PROPERTIES 2, LLC, BWD PROPERTIES 3, LLC and BWD PROPERTIES 4, LLC

Jolley Urga Woodbury & Little
3800 HOWARD HUGHES PARKWAY, SUITE 1600, LAS VEGAS, NV 89169
TELEPHONE: (702) 699-7500 FAX: (702) 699-7555

**UNITED STATES DISTRICT COURT**

**DISTRICT OF NEVADA**

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|---|---|
| BWD PROPERTIES 2, LLC, a Nevada Limited Liability Company, BWD PROPERTIES 3, LLC, a Nevada Limited Liability Company, and BWD PROPERTIES 4, LLC, a Nevada Limited Liability Company,<br><br>Plaintiffs,<br><br>vs.<br><br>BOBBY LEN FRANKLIN, an individual and dba DAYDREAM LAND & SYSTEMS DEVELOPMENT COMPANY, ROBERT LEE FRANKLIN, an individual, BOBBY DEAN FRANKLIN, an individual, and DONNA SUE OWENS, an individual,<br><br>Defendants.<br><br>AND ALL RELATED CLAIMS. | Case No.: 2:06-CV-01499-RCJ-(PAL)<br><br>**PLAINTIFFS' OPPOSITION TO DEFENDANTS' MOTION TO SET ASIDE ALL "VOID" JUDGMENTS AND ORDERS IN THIS CASE THAT MISTAKENLY OVERLOOKED THE FRANKLIN TITLE AND DEEDED RIGHTS THAT WAS RE-RECORDED WITH THE CLARK COUNTY RECORDER ON 09/20/1993** |

Plaintiffs BWD Properties 2, LLC, BWD Properties 3, LLC, and BWD Properties 4, LLC (collectively "BWD"), by and through their attorneys, Jolley Urga Woodbury & Little,





H

hereby opposes Bobby Len Franklin's Motion to Set Aside All "Void" Judgments.

## I. INTRODUCTION

BWD is at a loss for words, yet it is forced once again to respond to a frivolous, unfounded and improper motion filed by Franklin. It is evident that Franklin has no respect for this Court or the orders it enters. Indeed, just nine (9) days after this Court entered an order stating it was "very troubled by Franklin's wanton disregard for the Court's authority and the injunction that has been issued in this case," Franklin filed a motion to set aside more than a decade's worth of legal rulings. It was done without any basis in law (other than the obligatory reference to Rule 60); it was done without any basis in fact (other than Franklin's self-serving recitations which have been routinely rejected); and it was done with blatant contempt for the authority of the Court. As such, BWD requests that the Court deny Franklin's Motion, and BWD requests that the Court sanction Franklin sufficiently to impose upon him the significance of this Court's rulings.

## II. THE COURT SHOULD SEVERELY SANCTION FRANKLIN

In its April 13, 2015 Order, this Court stated it was troubled by Franklin's wanton disregard for the Court's authority. *See* April 13, 2015 Order (Document 165), 6:4-5. The Court found that Franklin had "acted in bad faith by willfully ignoring this Court's prior order and permanent injunction." *Id.* at 6:5-6. The Court then fined Franklin $5,262.50. *Id.*

Quite prophetically, the Court stated it was "concerned whether this sanction will be enough to deter any future violations by Franklin." *Id.* at 6:9-10. The Court quite graciously gave Franklin "one last chance to respect the authority of the courts of the United States and comply with the permanent injunction." *Id.* at 6:17-18. The Court then reiterated the prohibitions on claiming title to the subject land and filing documents that would slander BWD's title to the property.

Despite all of the warnings and the fine already imposed, Franklin served the current Motion a mere nine (9) days after the April 13 Order. In doing so, Franklin once again flouted the Court's previous rulings going so far as to say the September 29, 2008 Judge Sandoval Order

Jolley Urga Woodbury & Little
3800 HOWARD HUGHES PARKWAY, SUITE 1600, LAS VEGAS, NV 89169
TELEPHONE: (702) 699-7500 FAX: (702) 699-7555

is a "mistaken *lie*" and a "fraud on [the] court." *See* Motion, 2:11 and 3:21. Franklin also alleged that this Court was practicing "extortion" by exercising its lawful authority to sanction those who are in contempt of this Court.

It is obvious that Franklin does not respect this Court's orders nor does he fear minimal fines that result when he intentionally and willfully disobeys those orders. It is well established that a federal court has the "power to punish by fine or imprisonment, or both, at its discretion, such contempt of its authority, and none other, as . . . [d]isobedience or resistance to its lawful writ, process, order, rule, decree, or command." 18 U.S.C. § 401. BWD requests that the Court impose a more substantial sanction – one that would convey the seriousness of Franklin's repeated unlawful actions.

## III. CONCLUSION

BWD requests that the Court deny the Motion to Set Aside All "Void" Judgments. Further, BWD requests that the Court sanction Bobby Len Franklin pursuant to 18 U.S.C. § 401 to the extent necessary to ensure Franklin's future compliance with the orders of this Court.

DATED this 6th day of May, 2015.

JOLLEY URGA WOODBURY & LITTLE

By: _____

William R. Urga, Esq. #1195
Charles T. Cook Esq. #1516
Brian C. Wedl, Esq. #8717
3800 Howard Hughes Pkwy., #1600
Las Vegas, Nevada 89169
Telephone: 702.699.7500
Facsimile: 702.699.7555
E-mail: FedCt@juww.com
E-mail: ctc@juww.com
Attorneys for Plaintiffs BWD PROPERTIES 2, LLC, BWD PROPERTIES 3, LLC, and BWD PROPERTIES 4, LLC

Jolley Urga Woodbury & Little
3800 HOWARD HUGHES PARKWAY, SUITE 1600, LAS VEGAS, NV 89169
TELEPHONE: (702) 699-7500 FAX: (702) 699-7555

Jolley Urga Woodbury & Little
3800 HOWARD HUGHES PARKWAY, SUITE 1600, LAS VEGAS, NV 89169
TELEPHONE: (702) 699-7500 FAX: (702) 699-7555

**CERTIFICATE OF SERVICE (ELECTRONIC)**

This will hereby certify that I am employed in the County of Clark, State of Nevada, am over the age of 18 years, and not a party to this action. My business address is that of Jolley Urga Wirth Woodbury & Standish, 3800 Howard Hughes Parkway, Suite 1600, Las Vegas, Nevada 89169.

This is to certify that on this day I electronically filed the **PLAINTIFFS' OPPOSITION TO DEFENDANTS' MOTION TO SET ASIDE ALL "VOID" JUDGMENTS AND ORDERS IN THIS CASE THAT MISTAKENLY OVERLOOKED THE FRANKLIN TITLE AND DEEDED RIGHTS THAT WAS RE-RECORDED WITH THE CLARK COUNTY RECORDER ON 09/20/1993** with the Clerk of Court using the CM/ECF system, which will cause the document to be served upon the following counsel of record:

Blaine T. Welsh, Esq.
Robert R. Edelman, Esq.
U.S. Attorney's Office
333 Las Vegas Blvd. S. – Suite 5000
Las Vegas, NV 89101
E-mail: Blaine.Welsh@usdoj.gov
E-mail: Robert.Edelman@usdoj.gov
*Attorneys for United States of America*

I hereby further certify that on this date I served the above-named document by placing a true copy thereof enclosed in a sealed envelope, addressed as follows:

Bobby Len Franklin
3520 Needles Hwy. Box 233
Needles, CA 92363

and placing the envelope in the mail bin at the firm's office.

I am readily familiar with the firm's practice of collection and processing correspondence for mailing. Under that practice it is deposited with the U. S. Postal Service on the same day it is placed in the mail bin, with postage thereon fully prepaid at Las Vegas, Nevada, in the ordinary course of business.

I certify under penalty of perjury that the foregoing is true and correct, and that this Certificate of Service by Mail was executed by me on May 6, 2015 at Las Vegas, Nevada.

Agnes R. Wong
An Employee of JOLLEY URGA WOODBURY & LITTLE

# EXHIBIT “F”

**UNITED STATES DISTRICT COURT**

**DISTRICT OF NEVADA**

BWD PROPERTIES 2, LLC, *et al.*,

Plaintiffs,

vs.

BOBBY LEN FRANKLIN, *et al.*,

Defendants.

2:06-cv-01499-RCJ-PAL

**ORDER**

This case arises from a dispute regarding the ownership of eighty acres of land located in Clark County, Nevada. Pending before the Court is Plaintiffs' Motion to Expunge (ECF No. 160) recordings made by Defendants in the Clark County Recorder's Office that cloud title to the land at issue. Plaintiffs also request that the Court sanction Defendant Bobby Len Franklin ("Franklin") for his failure to comply with an Order previously entered by the Court.

## I. FACTS AND PROCEDURAL HISTORY

The facts of this case have been presented in multiple Orders, (*see* ECF Nos. 111, 144, 148), and the Court will only summarize them here. On August 18, 1988, Franklin filed application N-49548 under the Desert Land Entry Act ("DLE") concerning eighty acres of land located near Laughlin, Nevada. In October 1988, the Bureau of Land Management ("BLM") denied Franklin's application because the property was appropriated by mining claims and thus

unsuitable for disposition under the DLE. Franklin appealed the decision to the Interior Board of Land Appeals ("IBLA"), which reversed and remanded to the BLM for further factual findings.

On remand, the BLM again denied the application and informed Franklin of his right to appeal the denial to the IBLA within thirty days of his receipt of the decision. Franklin did not appeal the decision and instead filed an action against the United States in federal court. The action was dismissed for Franklin's failure to exhaust administrative remedies. Franklin appealed that decision to the Ninth Circuit. The Court of Appeals affirmed the ruling. *See Franklin v. United States*, 46 F.3d 1140 (9th Cir. 1995) (unpublished).

On November 21, 1989, Defendant Bobby Dean Franklin filed application N-52292 under the DLE concerning land located in the same general area. In 1993, the BLM denied this application as well because the lands for which the application was filed were mineral in character. Bobby Dean Franklin was advised of his right to file an appeal of the BLM's decision, but he did not do so. Instead, he filed an action against the United States in federal court and the action was dismissed for failure to exhaust administrative remedies. This decision was also affirmed by the Ninth Circuit. *See Franklin v. United States*, 46 F.3d 1141 (9th Cir. 1995).

In 2006, the United States granted to D.J. Laughlin ("Laughlin") the title to three parcels of land located in Clark County, Nevada ("the Property"). The Property included the acreage upon which the Franklins had submitted their DLE applications. Laughlin then transferred his interest in all three parcels to the BWD Plaintiffs. Between 1999 and 2006, Defendants had recorded multiple documents against the Property in the Clark County Recorder's Office. Plaintiffs brought this lawsuit against Defendants seeking to quiet title to the Property.

In 2008, Judge Brian E. Sandoval granted BWD's motion for summary judgment and declared the following: (1) Defendants, and anyone claiming under or through them, had no right, title, or interest in or to the Property on the basis of DLE applications N-49548 and N-52292; (2) Plaintiffs were the 100% fee simple owners of the Property; and (3) all instruments, documents, and claims recorded by or on behalf of Defendants against the Property in the office of the Clark County Recorder were null and void. (Sept. 29, 2008 Order 8, ECF No. 111).

Judge Sandoval further entered a permanent injunction as follows:

> Defendants, and anyone claiming title under or through them, are permanently enjoined from asserting, claiming, or setting up any right, title, or interest in or to the property described in patent 27-2006-0071, patent 27-2006-0070, and patent 27-2006-0069 under the DLE, applications N-49548 and N-52292, or on any other ground or basis.
>
> . . .
>
> Defendants, and anyone claiming under or through them, are enjoined from filing any instruments, documents, and claims in the office of the Clark County Recorder that would slander, interfere with, compromise, or cloud Plaintiffs' title to the property.

(*Id.* at 8–9).

In December 2009, the Ninth Circuit affirmed this decision. (Ninth Cir. Op. 1–2, ECF No. 127). The Ninth Circuit stated that "the district court properly granted summary judgment on the claims made by BWD because BWD offered undisputed evidence that they owned the properties over which they sought to quiet title, and the Franklins failed to raise a triable issue of their own cognizable interest in these properties." (*Id.* at 3). The Ninth Circuit further held that the "district court correctly determined that the various documents recorded by the Franklins were a cloud on the title of BWD's property and ordered the documents expunged, and did not abuse its discretion when it granted a permanent injunction against the Franklins." (*Id.* at 4).

In April 2012, Franklin through Daydream Land & Systems Development Company ("Daydream Land & Systems") filed a "Notice of Action to Quiet Title" with the Clark County Recorder's Office in violation of the Court's September 2008 Order. (Mar. 7, 2013 Order 4, 6, ECF No. 144). Plaintiffs filed a motion to expunge the recording along with a request that Defendants be sanctioned for ignoring the Court's Order. The Court granted the motion to expunge the recording, but it found that sanctions were not warranted. Although the Court declined to impose sanctions at the time, it explicitly warned Defendants "that if there [were] any future violations of the permanent injunction, this Court [would] sanction them appropriately through this Court's inherent powers." (*Id.* at 6). The Court further directed Plaintiffs that if any future violations occurred, they were to move for sanctions and submit attorneys' fees and costs associated with defending against the violation. (*Id.*).

On July 29, 2014, Franklin through Daydream Land & Systems recorded a "Conditional Will to Title Deed" against the Property in Clark County. (Cond. Will to Title Deed, ECF No. 160, Ex. 12). The recording purports to show that Franklin is the proper owner of the Property based on arguments previously ruled upon by Judge Sandoval and the Ninth Circuit, as well as this Court. Additionally, Franklin filed a cause of action in the Eighth Judicial District Court in Clark County, Nevada seeking to quiet title to the Property. In conjunction therewith, Franklin also recorded a "Notice of Pendency of Quiet Title Action" ("the Lis Pendens") with the Clark County Recorder's Office on September 17, 2014. (Lis Pendens, ECF No. 163, Ex. 16).

Plaintiffs filed the instant Motion to Expunge these recordings as well as a request for sanctions pursuant to the Court's March 7, 2013 Order. Franklin opposes the Motion and argues that he holds proper title to the Property notwithstanding the multiple orders of this Court as well as the holdings of the Ninth Circuit.

## II. DISCUSSION

Pursuant to the permanent injunction, the Motion to Expunge is granted and the recordings made by Franklin regarding any claim to ownership of the Property are null and void. The Conditional Will recorded on July 29, 2014 and the Lis Pendens recorded on September 17, 2014 are expunged.

The Court also finds that Franklin has left the Court no choice but to impose sanctions on him for his blatant disregard of an express order from this Court. Franklin was on notice and fully aware that if he made any additional recordings in an attempt to claim ownership to any portion of the Property, the Court would sanction him. (*See* Mar. 7, 2013 Order 6). Plaintiffs request that, at a minimum, they be awarded their attorneys' fees, in support of which they have submitted the appropriate documentation, (*see* ECF No. 160, Ex. 13; ECF No. 162, Ex. 14). Plaintiffs also urge the Court to consider finding or imprisoning Franklin for his contempt based upon 18 U.S.C. § 401.

"A district court has the power to adjudge in civil contempt any person who willfully disobeys a specific and definite order of the court." *Gifford v. Heckler*, 741 F.2d 263, 266 (9th Cir. 1984). Under its inherent powers, "a district court may also award sanctions in the form of attorneys' fees against a party who acts 'in bad faith, vexatiously, wantonly, or for oppressive reasons.'" *Leon v. IDX Sys. Corp.*, 464 F.3d 951, 961 (9th Cir. 2006) (citation omitted). Bad faith arises where a party hampers the enforcement of a court order. *Id.*

Furthermore, a federal court has the "power to punish by fine or imprisonment, or both, at its discretion, such contempt of its authority, and none other, as . . . [d]isobedience or resistance to its lawful writ, process, order, rule, decree, or command." 18 U.S.C. § 401. And when a court issues a permanent injunction enjoining a specific set of acts, the enjoined party, knowing of the

injunction, is "bound to obey it." *Union Tool Co. v. Wilson*, 259 U.S. 107, 113 (1922). Violating an injunction, therefore, is a contempt of court which may be punished pursuant to § 401. *See F.J. Hanshaw Enters., Inc. v. Emerald River Dev., Inc.*, 244 F.3d 1128, 1136–37 (9th Cir. 2001).

The Court is very troubled by Franklin's wanton disregard for the Court's authority and the injunction that has been issued in this case. Franklin acted in bad faith by willfully ignoring this Court's prior Order and the permanent injunction. Accordingly, the Court finds that he should be monetarily sanctioned in the amount of $5,262.50 for Plaintiffs' attorneys' fees and costs. (*See* Fees Report, ECF No. 162, Ex. 14).

The Court is concerned whether this sanction will be enough to deter any future violations by Franklin or any of the other Defendants. To date, Franklin has violated the injunction no less than five times: (1) by filing an action in the U.S. District Court for the Western District of Texas on January 18, 2011, (2) by recording the "Notice of Action to Quiet Title" on April 10, 2012, (3) by recording the Conditional Will to Title Deed on July 29, 2014, (4) by filing another quiet title action in Clark County on September 22, 2014, and (5) by recording the "Notice of Pendency of Quiet Title Action" on September 17, 2014.

Before imposing a more severe sanction, however, the Court will give Franklin and the other Defendants one last chance to respect the authority of the courts of the United States and comply with the permanent injunction. For emphasis, the Court reiterates that:

> Defendants, and anyone claiming title under or through them, are permanently enjoined from asserting, claiming, or setting up any right, title, or interest in or to the property described in patent 27-2006-0071, patent 27-2006-0070, and patent 27-2006-0069 under the DLE, applications N-49548 and N-52292, or on any other ground or basis.
>
> Defendants, and anyone claiming under or through them, are enjoined from filing any instruments, documents, and claims in the office of the Clark County Recorder that would slander, interfere with, compromise, or cloud Plaintiffs' title to the property.

Should Defendants continue to ignore the injunction and the previous Orders in this case, a harsher sanction will be forthcoming. It would be well within the Court's discretion to issue a fine or even order imprisonment for any future disobedience. The Court hopes that Franklin will take this advisement to heart. For now, the Court finds that bearing the burden of Plaintiffs' attorneys' fees suffices as an appropriate sanction for Franklin's conduct.

**CONCLUSION**

IT IS HEREBY ORDERED that Plaintiffs' Motion to Expunge (ECF No. 160) is GRANTED.

Defendant Bobby Len Franklin is hereby sanctioned in the amount of $5,260.50 for his bad faith and willful violation of the permanent injunction issued in this case.

IT IS SO ORDERED.

Dated this 13th day of April, 2015.

ROBERT C. JONES
United States District Judge

# EXHIBIT “G”

✓ FILED ____ RECEIVED
____ ENTERED ____ SERVED ON
COUNSEL/PARTIES OF RECORD
APR 27 2015
CLERK US DISTRICT COURT
DISTRICT OF NEVADA
BY: _____ DEPUTY

BOBBY FRANKLIN
Daydream Land & Systems Development Co.
3520 Needles Hwy. Box 233
Needles, CA. 830-822-4791

Defendant – *pro se*

UNITED STATES DISTRICT COURT

DISTRICT OF NEVADA

| | |
|---|---|
| BWD PROPERTIES, et. al.,<br><br>Plaintiffs,<br><br>vs.<br><br>BOBBY LEN FRANKLIN, et. al.,<br><br>Defendants. | Case No.: 206-CV-01499-RCJ-(PAL)<br><br>**DEFENDANTS' MOTION TO SET ASIDE ALL "VOID" JUDGEMENTS AND ORDERS IN THIS CASE THAT MISTAKENLY OVERLOOKED THE THE FRANKLIN TITLE AND DEEDED RIGHTS THAT WAS RE-RECORDED WITH THE CLARK COUNTY RECORDER ON 09/20/1993** |

Defendant FRANKLIN moves this court to set aside *all* its "void" judgments and orders that have mistakenly denied its *subject-matter jurisdiction* and duty to evaluate or review the legal validity and effect of the Franklins existing Title and Deed confirmation *rights* that were re-recorded with the Clark County Recorder on **09/20/1993**, and that were administratively exhausted in the final administrative ("IBLA") decision on **12/19/1996**.

A Memorandum of Points and Authorities, followed by an affidavit of relevant facts ("Declaration") and Proof of Service is attached herewith.

Sincerely submitted by,

Bobby L. Franklin
BOBBY L. FRANKLIN

DATED 4/22/2015

dlepatent@hotmail.com
830-822-4791
(Defendant *pro se*)

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**MEMORANDUM OF POINTS AND AUTHORITIES**

On **9/20/1993**, Franklin re-recorded his *Title/Deed* with the Clark County Recorder.

On **12/19/1996**, the Department of Interior Board of Land Appeals ("IBLA") dismissed such Title/Deed confirmation rights on appeal from BLM, in its ***final** administrative decision*.

In **2006**, the Plaintiffs allegedly bought the land (described in Franklin's Title/Deed) from BLM, without conducting a Title Search, and later filed this suit to quiet title and obtain Title Insurance on the described real estate property.

On **9/29/2008**, Judge Sandoval mistakenly denied his *subject-matter jurisdiction* and his duty to evaluate the legal validity or effect of such 1993 Title/Deed; and, he issued a permanent injunction against the Franklins, **all** based on his mistaken *lie* that "the Franklins failed to exhaust their administrative remedies." See, His lie, in *Document 111, page 7, lines 1 to 3*. In fact, he never examined or mentioned the Franklin 1993 Title/Deed to ever legally expunge it or enjoin it. His judgment and injunction order is completely ***"void"*** of such 1993 Title/Deed.

## I. ARGUMENT

Prior to Sandoval's (above) mistaken lie, the Franklins had undisputed evidence on exhibit in *Document 34*, that was filed in Sandoval's federal court on *12/15/2007*, that proves without a doubt that the Franklins did exhaust all administrative remedies, in the final "IBLA" decision that was issued on 12/19/1996. The entire IBLA proceedings were on exhibit in Document 34, but Sandoval disregarded such evidence, and entered his (above) lie. The Ninth Circuit Court affirmed Sandoval's (above) mistaken lie, based on its *1995* Franklin memos it issued before the Franklins had even exhausted their administrative remedies on *12/19/1996*. The Franklins did in fact and deed exhaust all administrative remedies on 12/19/1996, to enforce their Title/Deed confirmation rights that were re-recorded with the Clark County Recorder on 9/20/1993, but the

federal courts have denied its ***subject-matter jurisdiction*** and its duty to ever evaluate the legal validity or effect of Franklins 1993 Title/Deed *confirmation rights*, that were administratively exhausted on 12/19/96. In fact, no federal court to this date has ever taken its precious time to ever read, consider or examine the legal validity or effect of the Franklin 1993 Title/Deed *instrument*, and that is why such *instrument* is now on exhibit in the Nevada State Courts. Perhaps a local court judge might have an education to read and evaluate the legal effect of a Title/Deed ***instrument***?

Recently, the Plaintiffs' lawyers have been requesting this federal court to fine and ***imprison*** Franklin for asking this federal court to examine his 1993 Title/Deed *rights*, which was administratively exhausted on 12/19/1996. That is *extortion* (See, Black's Law Dictionary), and that is the reason why Franklin is asking the Clark County District Court to examine the legal validity and effect of Franklin's 1993 Title/Deed *rights*. The federal courts denied its *subject-matter jurisdiction* and duty to do so, and is based on the (above) lie that Sandoval mistakenly concocted in his permanent injunction issued 9/29/2008, which supposedly *closed* this Case

On **4/13/2015**, this federal court *fined* Franklin for $5,260.50, because Franklin again asked the court to examine the legal validity and effect of Franklin's 1993 Title/Deed, and such fine is entirely based on the (above) lie in Sandoval's permanent injunction. In short, this federal court is mistakenly entertaining the *extortion* requested by the Plaintiffs' lawyers, and is entirely based on the fraud on court that Sandoval mistakenly entered into on 9/29/2008. This federal court still has opportunity to set aside such fraud on the court that has escalated.

## II. SUMMARY

Once again, pursuant to Federal and Nevada Court **Rule 60(b)(4)**, all judgments and orders entered on record here are entirely "***void***" of the Franklin 1993 Title/Deed confirmation *rights*,



This federal court is void & has NO jurisdiction to expunge

which were exhausted in the ***final*** administrative (IBLA) decision on 12/19/1996. A "void judgment" is clearly defined in Black's Law Dictionary. This federal court must admit it has mistakenly denied its *subject-matter jurisdiction* and its duty to ever examine or review Franklin's 1993 Title/Deed confirmation *rights*, and thereby has been inconsistent with Due Process of Law and Justice.[1]

Threatening Franklin to fines and imprisonment to conceal his confirmation rights in his Title and Deed for the described property is *extortion*, and should not be done or perpetuated by this federal court. Franklin still demands his 1993 Title/Deed be examined in a judicial court of law, for Quiet Title relief. The federal courts have refused to consider such 1993 Title/Deed for many years, and that is why Franklin has petitioned the Clark County District Court for Title relief.

## III. RELIEF REQUESTED

Based on the foregoing, this federal court must admit to Sandoval's (above) mistaken lie on 9/29/2008, and *set aside* all orders and judgments that have overlooked the Franklin 1993 Title/Deed confirmation *rights* that were administratively exhausted on 12/19/1996. Franklin also request this federal court to not interfere with his Quiet Title Action rights petitioned in the State of Nevada Courts, and stop threatening Franklin with fines and imprisonment to conceal his existing 1993 Title instrument and his probate court rights.

Sincerely submitted by,

Bobby L Franklin

BOBBY L. FRANKLIN
Dba: DL&S Development Co.
Aka: Desert-Land Entryman N-49548
3520 Needles Hwy. Box 233
Needles, CA. 92363

DATED 4/22/2015

[1] The Franklin 1993 Title/Deed *instrument* clearly shows that any BLM decision to re-classify the described land as "Mineral Lands" after 8/27/1990, was illegal & outlawed by the Congressional Act of March 8,1891.



This federal court is void & has NO jurisdiction to expunge

**DECLARATION OF FACTS**

Pursuant to 28 U.S.C. 1746, I, BOBBY L. FRANKLIN do declare under penalty of perjury that the following relevant facts are true and are officially documented:

1. On **8/27/1990**, the Department of the Interior Board of Land Appeals ("IBLA") *reversed* the Bureau of Land Management ("BLM") *mineral* contest on the described land. *Bobby L. Franklin*, 116 IBLA 29 (published).

2. On **9/20/1993**, I re-recorded my Deed of land purchase "receipt" from BLM, and my Title "rights" with the Clark County Recorder, because Harry Reid was brokering a "BLM land swap" deal with local land developers Robert Bilbray, Don Laughlin, and their private corporations, to take and transfer my real estate property. (Newspaper Articles; Audio Tape recordings with BLM officials).

3. In **1995**, my father and I continued to have meetings with BLM officials, where we demanded BLM to abide by our Title rights and issue us the Land Patents, because BLM refused to issue us the final DLE certificates ("permits"). Subsequently, the BLM District Manager denied our re-recorded Title rights, by concluding that BLM had re-classified our asserted real estate as "Mineral in Character". So, my father and I timely appealed (again) to IBLA from BLM, to enforce our re-recorded Title instrument, which clearly documented it was illegal for BLM to re-classify the land as "Mineral in Character" after 8/27/1990, under the Congressional Act of March 8, 1891 ("The Confirmation Law").

4. On **12/19/1996**, the IBLA officially "consolidated" my father's and my appeal from BLM together, and "dismissed" our re-recorded Title rights in its ***final*** administrative decision.

5. In **February, 1997** (after years of un-warranted harassment on the property), Lt. Commander *Tom Smitley* ordered his LVMPD officers in Laughlin, to confiscate all movable property on Franklins' asserted 160 acre estate, and to destroy all structures, which was all done without any directed warrant to do so. Subsequently, federal judge Rose dismissed all accounts as *frivolous*. (Somewhat similar to what has happened to the Bundy Ranch over the years)

6. In **2006,** D.J. Laughlin allegedly bought 80 acres of land described in Franklin's Title, from a "BLM Land Auction" that Mr. Laughlin; Commissioner Bruce Woodbury; Tom Smitley; and, their appointed Laughlin Town government created to occur, under their "Envision Laughlin" program that was financed by the Clark County taxpayers. But they all forgot to conduct a Title Search. So, Mr. Laughlin transferred such 80 acres into his "BWD corporations", who sued the Franklin family in federal court, to quiet the Title into the BWD corporations, without stating any federal statute to do so. The adverse lawyers were *falsely* claiming the Franklins had *no Title* on the described property, because the Franklins did not exhaust their administrative remedies.

7. On **2/15/2007, in Document 34,** filed in Sandoval's federal court, Franklin filed the entire IBLA proceedings on exhibit as evidence, including the ***final*** IBLA administrative decision that was certified on **12/19/1996,** that unequivocally proves beyond any doubt that the Franklins **did** exhaust all their land Title confirmation rights, in the ***final*** administrative decision that was issued from IBLA on 12/19/1996.

8. On **9/29/2008, in Document 111**, federal judge Sandoval granted BWD ownership to the disputed property, and he laid down his long winded "permanent injunction" against the Franklin Title and all rights to the described property, all done by his bold face lie: "the Franklins failed to exhaust their administrative remedies … and therefore, have no rights, title or interest in the property." A copy of Sandoval's bold face lie is attached herewith, as **"Exhibit Z"** for consideration to set it aside.

9. Shortly thereafter, federal judge Sandoval resigned as judge, and became the Governor of the State of Nevada, allegedly to further the BLM's mismanagement of 85% of the Land and Resources located in Nevada.

10. Shortly thereafter, federal judge Jones replaced the Sandoval court, where the BWD lawyers in the Bruce Woodbury law firm were requesting Jones to fine and imprison Franklin, for asking the Court to set aside Sandoval's documented lie, and enforce the Franklin 1993 Title/Deed *rights* that were administratively exhausted on 12//19/1996. That is *attempted* extortion of my property Title rights, done by such lawyers.

11. On **4/13/2015**, federal judge Jones re-opened the Case, and directly quoted all the ways that Sandoval enjoined and expunged the Franklin Title *rights*. But he forgot to quote that Sandoval's entire injunction is entirely based on his bold face lie, here in Exhibit Z. He ends it by threatening Franklin to *prison*, and concludes Franklin pay his federal court $5,260.50 for challenging Sandoval's fraud on the court, attached herewith. That is *extortion* of my existing 1993 property *Title rights*, committed by these federal judges, done under color of their federal court badge.

12. I truly believe that this federal court should *set aside* all its mistakenly foolish "void" judgments and orders entered in this Case, and discover that **none** of its "void" orders or extortion threats has ever expunged my Title/Deed rights that were re-recorded with the Clark County Recorder on 9/20/1993. Such Title is still there to stay, and it is still subject to an examination of its legal force and effect in a competent judicial court of law that has subject-matter jurisdiction to examine it.

Sincerely submitted by,

Bobby L. Franklin

4/22/2015

BOBBY L. FRANKLIN
Dba: DL&S Development Co.
Aka: Desert-Land Entryman N-49548
3520 Needles Hwy. Box 233
Needles, CA. 92363

dlepatent@hotmail.com
830-822-4791
(Defendant *pro se*)

DATED

# EXHIBIT Z



This federal court is void & has NO jurisdiction to expunge

suit in federal court. Id. at Exs. 4, 8. As a result, the Franklins failed to exhaust their administrative remedies. Because the Franklins failed to exhaust their administrative remedies as to their original DLE applications, any claim to an interest in the property asserted on the basis of the Franklins' alleged ownership of parcels described in those applications must fail. Therefore, the defendants have no right, title or interest in the property.

Because the defendants have no right, title or interest in the property, the documents recorded with the Clark County Recorder's office constitute a cloud on title. The Court, therefore, declares those documents to be null and void and hereby orders them expunged from the record. Furthermore, the Court finds that BWD is entitled to a permanent injunction preventing the defendants from further clouding title. "To obtain permanent injunctive relief, a plaintiff must show '(1) that it has suffered an irreparable injury; (2) that remedies available at law, such as monetary damages, are inadequate to compensate for the injury; (3) that, considering the balance of hardships between the plaintiff and defendant, a remedy in equity is warranted; and (4) that the public interest would not be disserved by a permanent injunction.'" Geertson Seed Farms v. Johanns, No. 07-16458, Slip Op. 12009, 12023 (9th Cir. Sept. 2, 2008) (citations omitted).

Here, BWD has suffered irreparable injury insofar as the defendants have continually clouded the title of the property with unfounded recordings. Moreover, the possibility of future unfounded recordings could make it difficult for BWD to obtain title insurance or convey clean title. The remedies available at law are not sufficient because they will not compensate BWD for the ramifications of improper recordings–e.g., the difficulties associated with potentially conveying such property to a third party. The balance of hardships favors BWD because an injunction prohibiting future recordings will work no harm on the defendants, who have no rights in the property. The public will not be disserved. Rather, preserving the integrity of the title of the property is in the benefit of the public. Therefore, the defendants are enjoined from further clouding BWD's title by filing recordings related to their purported interest in the property. BWD's request for attorney's fees is denied.

**PROOF OF SERVICE**

I certify that on the below date, I served the foregoing MOTION and all its attachments to this Court and a copy to the following Parties by prepaid 1st class USPS mail:

JOLLY URGA WOODBURY & LITTLE
3800 Howard Hughes Parkway
Wells Fargo Tower, 16th Floor
Las Vegas, NV. 89169

702-699-7500
FedCt@juww.com;
*Attorneys for Plaintiffs - BWD;*

U.S. Attorney's Office
333 Las Vegas Blvd. S. – Suite 5000
Las Vegas, NV. 89101

Blaine.Welsh@usdoj.gov
*Attorneys for Third Party Defendant - United States of America.*

Sincerely submitted by,

Bobby L. Franklin

BOBBY L. FRANKLIN
Dba: DL&S Development Co.
Aka: Desert-Land Entryman N-49548
3520 Needles Hwy. Box 233
Needles, CA. 92363

dlepatent@hotmail.com
830-822-4791
(Defendant *pro se*)

4/22/2015
DATED



This federal court is void & has NO jurisdiction to expunge

# EXHIBIT “D”

**UNITED STATES DISTRICT COURT**

**DISTRICT OF NEVADA**

* * *

| | |
|---|---|
| BOBBY L. FRANKLIN,<br><br>Plaintiff,<br><br>vs.<br><br>MARK CHATTERTON; DON LAUGHLIN; THOMAS SMITLEY; UNITED STATES OF AMERICA; and BRUCE WOODBURY,<br><br>Defendants. | Case No.: 2:07-cv-1400-RLH-RJJ<br><br>**ORDER AND INJUNCTION**<br><br>(Motion to Consolidate, or alternatively, for Recusal–#21; Motion to Enjoin Further Lawsuits–#47) |

Before the Court is Plaintiff Bobby L. Franklin's **Motion to Consolidate into Related Case pursuant to FRCP 42(a), or alternatively, Motion for Recusal** (#21), filed January 16, 2008. The Court has also considered Defendant Bruce Woodbury's Opposition (#29), filed January 28, 2008, Defendants Mark Chatterton and the United States of America's Opposition (#34), filed February 1, 2008, Defendant Don Laughlin's Opposition (#35), filed February 1, 2008, and Plaintiff's Reply (#42), filed February 11, 2008.

Also before the Court is Defendants Mark Chatterton and the United States of America's **Motion to Enjoin Further Lawsuits** (#47), filed March 12, 2008. The Court has also considered Defendant Bruce Woodbury's Joinder (#48), filed March 14, 2008, Defendant Thomas



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Smitley's Joinder (#49), filed March 25, 2008, Defendant Don Laughlin's Joinder (#51), filed March 31, 2008, Plaintiff's Opposition (#50), and Defendants Mark Chatterton and the United States of America's Reply (#53), filed April 3, 2008.

**BACKGROUND**

This case arises out of the denial of Plaintiff's 1988 Desert Land Entry ("DLE") application to acquire property under the Desert Land Act, 43 U.S.C. §§ 321 *et seq*. The act allows individuals to claim up to 320 acres of unappropriated public desert lands by asserting that they intend to reclaim the lands for irrigated agriculture. "Desert lands" are defined as "[a]ll lands exclusive of timber lands and mineral lands which will not, without irrigation, produce some agricultural crop." § 322.

In 1988, Plaintiff filed a DLE application for a plot of desert land near Laughlin, Nevada. The Bureau of Land Management ("BLM") denied the application because the property was the subject of prior mining claims. Plaintiff properly appealed the denial to the Interior Board of Land Appeals ("IBLA"), which reversed and remanded the BLM's initial decision for further review. In so doing, the IBLA required the BLM to make a determination of whether the land should be classified as open to the DLE. *Bobby L. Franklin*, 116 IBLA 29, 31, 1990 WL 308036 (1990).

In compliance with the instructions in the 1990 IBLA decision, the BLM conducted a mineral report on the property. The BLM found that the property was mineral in character and thus it properly denied Plaintiff's DLE application. The BLM's decision notified Plaintiff of his appeal rights. Rather than file an appeal with the IBLA, however, Plaintiff filed an action in federal court to quiet title to the property. *Franklin v. United States*, No. cv-s-93-01140-PMP-LRL (D. Nev. 1993). After finding that Plaintiff had failed to exhaust his administrative remedies, the Court dismissed the case for lack of subject matter jurisdiction. Plaintiff appealed to the Ninth Circuit, which affirmed the dismissal. *Franklin v. United States*, 46 F.3d 1140 (9th Cir. 1995) (unpublished), *cert. denied*, 516 U.S. 829 (1995).



AO 72
(Rev. 8/82)

In 1995, Plaintiff enclosed approximately one acre of the property and began to occupy it. The BLM notified Plaintiff that his enclosure and use of the property was unauthorized and asked that he remove the fence and stop using the property. When Plaintiff failed to do so, the United States filed a trespass action. *United States v. Franklin*, No. cv-s-96-1089-LDG-LRL (D. Nev. 1996). In response, Plaintiff filed a counterclaim asserting ownership to the property and seeking to quiet title. On October 14, 1997, the Court permanently enjoined Plaintiff from further using or occupying the property or from further trespass on any other land owned by the United States and dismissed Plaintiff's counterclaim for lack of subject matter jurisdiction.

In 1997, Plaintiff filed his third suit regarding the property. *Franklin v. Bilbray*, No. cv-s-97-037-PMP (D. Nev. 1997). In that action, Plaintiff filed a 42-count complaint against more than twenty defendants. The United States moved to dismiss for a variety of reasons, including lack of subject matter jurisdiction. The Court again granted the United States' motion to dismiss, which was affirmed on appeal by the Ninth Circuit. *Franklin v. Bilbray*, 172 F.3d 56 (9th Cir. 1999) (unpublished), *cert. denied*, 528 U.S. 863 (1999).

In 2004, Plaintiff made another attempt to litigate the BLM's decision that the property was mineral in character. *Franklin v. United States Dep't of the Interior*, 2:04-cv-0128-RLH-PAL (D. Nev. 2004). In granting the United States' motion to dismiss, the Court held that it "lack[ed] jurisdiction to hear this case for the same reason it lacked jurisdiction to hear [Plaintiff]'s four previous claims arising from the rejection of his DLE claim. [Plaintiff] failed to appeal the 1993 rejection of his claim to the IBLA within 30 days of its issuance and therefore he has failed to exhaust his administrative remedies." *Id.* at Dkt. #18. The Court further held that even if it had jurisdiction, Plaintiff's claims were barred by the applicable statute of limitations and claim preclusion. *Id.* The Ninth Circuit affirmed. *Franklin v. United States BLM*, 125 F. App'x 152 (9th Cir. 2005) (unpublished), *cert. denied*, 546 U.S. 1004 (2005).

In November 2005, Plaintiff filed suit in the United States District Court for the District of Arizona against the United States, Assistant United States Attorney Blaine Welsh, and



AO 72
(Rev. 8/82)

United States District Court Judge Roger L. Hunt, requesting relief from this Court's June 7, 2004, Order under 28 U.S.C. § 1361 and Fed. R. Civ. P. 60(b). *Franklin v. United States*, No. cv'05 3719 PHX NVW (D. Ariz. 2005). The Arizona court dismissed the complaint with prejudice because it failed to state a claim upon which relief could be granted and ordered that no amended complaint be filed because it would have been futile to do so. The Ninth Circuit affirmed. *Franklin v. Welsh*, 189 F. App'x 675 (9th Cir. 2006) (unpublished), *cert. denied*, 127 S. Ct. 1277 (2007).

In 2006, Plaintiff filed a third-party complaint against the United States seeking yet again to quiet title to the property. *BWD Props. 2, LLC v. Franklin*, No. 2:06-cv-01499-BES-PAL (D. Nev. Nov. 21, 2006). The Court dismissed Plaintiff's third-party complaint for a variety of reasons, including lack of subject matter jurisdiction for failing to exhaust his administrative remedies, res judicata, and the running of the statute of limitations. *Id.* at Dkt. #62. Plaintiff filed a motion for reconsideration, which was denied. *Id.* at Dkt. #83.

On October 28, 2007, Plaintiff filed the instant action. Although disguised as a civil rights and *Bivens* action, the Complaint again attempted to quiet title to the same property at issue in all of Plaintiff's prior lawsuits. Consequently, the Court dismissed Plaintiff's Complaint for lack of subject matter jurisdiction, res judicata, and the running of the statute of limitations, but directed the Clerk of the Court not to close the case. (Dkt. #43.) Defendants Mark Chatterton and the United States of America subsequently filed their Motion to Enjoin Further Lawsuits, asking the Court to enter a pre-filing order enjoining him from filing further suits against the United States, its agencies, and its agencies' past or present employees arising out the denial of his DLE application to acquire property under the Desert Land Act. Defendants Don Laughlin, Thomas Smitley, and Bruce Woodbury filed separate joinders asking the Court to also enjoin further suits against Clark County, its past and present employees and commissioners, Thomas Smitley, Don Laughlin and his successors in title, BWD Properties 2, LLC, BWD Properties 3, LLC, and BWD Properties 4, LLC.



AO 72
(Rev. 8/82)

Based on Plaintiff's history of repeatedly filing frivolous and harassing claims arising from his 1988 DLE application, the Court enjoins Plaintiff from filing further lawsuits as detailed below. Consequently, the Court grants Defendants Mark Chatterton and the United States of America's Motion to Enjoin Further Lawsuits and denies Plaintiff's Motion to Consolidate, or alternatively, for Recusal as frivolous.

**INJUNCTION**

IT IS HEREBY ORDERED that Bobby L. Franklin may not file any civil action based on his 1988 Desert Land Entry application or the property at issue in that application without first obtaining leave of the Court. In seeking leave of the Court, Bobby L. Franklin must submit a copy of this Order with his proposed complaint, and certify and demonstrate that the claims he wishes to present are new claims never before raised and disposed of by any federal court. Upon failure to certify or upon a false certification, Bobby L. Franklin may be found in contempt of court and punished accordingly.[1]

**DISCUSSION**

The All Writs Act, 28 U.S.C. § 1651(a), authorizes district courts to enter pre-filing injunctions against vexatious litigants. *Moy v. U.S.*, 906 F.2d 467, 469 (9th Cir. 1990). Pre-filing orders, however, are an extreme remedy and courts should not issue them "with undue haste because such sanctions can tread on a litigant's due process right of access to the courts." *Molski v. Evergreen Dynasty Corp.*, 500 F.3d 1047, 1057 (9th Cir. 2007). "Nevertheless, flagrant abuse of the judicial process cannot be tolerated because it enables one person to preempt the use of judicial time that properly could be used to consider the meritorious claims of other litigants." *Id.* (internal quotations omitted).

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[1] The wording of the Court's Injunction is based in part on the Ninth Circuit's opinion in *Franklin v. Murphy*, 745 F.2d 1221, 1232 (9th Cir. 1984) (quoting *In re Green*, 669 F.2d 779, 787 (D.C. Cir. 1981)).



AO 72
(Rev. 8/82)

In *De Long v. Hennessey*, the Ninth Circuit set forth four guidelines for district courts to follow before entering pre-filing injunctions. 912 F.2d 1144, 1147–48 (9th Cir. 1990). First, the litigant must be afforded notice and an opportunity to oppose the pre-filing order before it is entered. *Id.* at 1147. Second, the court must create an adequate record for appellate review. *Id.* Third, the court must make substantive findings as to the frivolous or harassing nature of the litigant's actions. *Id.* at 1148. Fourth, the court must narrowly tailor the pre-filing order to the litigant's specific vice. *Id.*

**I. Notice and the Opportunity to Oppose**

"Due process requires notice and an opportunity to be heard." *De Long*, 912 F.2d at 1147 (quoting *In re Powell*, 851 F.2d 427, 431 (D.C. Cir. 1988)). But "an opportunity to be heard does not require an oral or evidentiary hearing on the issue . . . [because] the opportunity to brief the issue fully satisfies due process requirements." *Molski*, 500 F.3d at 1059 (quoting *Pac. Harbor Capital, Inc. v. Carnival Air Lines, Inc.*, 210 F.3d 1112, 1120 (9th Cir. 2000)). Here, Plaintiff has availed himself of the opportunity to oppose Defendants' Motion to Enjoin Further Lawsuits by filing his Opposition (#50). Moreover, the Court finds that Franklin was given adequate notice of Defendants' Motion and thus had sufficient time to prepare his Opposition. It also finds that oral argument is unnecessary because the Parties have adequately briefed the issue of whether the Court should enter a pre-filing order.

**II. Adequate Record for Review**

"An adequate record for review should include a listing of all the cases and motions that led the district court to conclude that a vexatious litigant order was needed." *De Long*, 912 F.2d at 1147. "At the least, the record needs to show, in some manner, that the litigant's activities were numerous or abusive." *Id.* Here, the record before the Court is detailed in the Background section of this Order. Further, the Court hereby incorporates as part of its record Exhibits 1–17 (Plaintiff's prior complaints and orders dismissing those complaints) submitted to the Court as part of Defendants Mark Chatterton and the United States of America's Motion to Enjoin Further



AO 72
(Rev. 8/82)

Lawsuits. (Dkt. #49, Attachments #1–18.) The Court also incorporates Plaintiff's Opposition in which he continues to assert the same failed arguments that have been dismissed time and time again, including in this case.

**III. Frivolous or Harassing Nature of the Litigation**

Before a district court issues a pre-filing injunction against a pro se litigant, it must make substantive findings concerning the frivolous or harassing nature of the litigant's actions based on the number and the content of the litigant's filings. *De Long*, 912 F.2d at 1148. Here, the Court finds that Plaintiff's claims in *United States v. Franklin*, No. cv-s-96-1089-LDG-LRL (D. Nev. 1996), *Franklin v. Bilbray*, No. cv-s-97-037-PMP (D. Nev. 1997), *Franklin v. United States Dep't of the Interior*, 2:04-cv-0128-RLH-PAL (D. Nev. Feb. 2, 2004), *Franklin v. United States*, No. cv'05 3719 PHX NVW (D. Ariz. 2005), *BWD Props. 2, LLC v. Franklin*, No. 2:06-cv-01499-BES-PAL (D. Nev. Nov. 21, 2006), and *Franklin v. Chatterton*, No. 2:07-cv-1400-RLH-RJJ are "patently without merit," *Moy*, 906 F.2d at 470, because they seek to relitigate the same issues that this Court dismissed in *Franklin v. United States*, No. cv-s-93-01140-PMP-LRL (D. Nev. 1993), which the Ninth Circuit affirmed, 46 F.3d 1140 (9th Cir. 1995), and in which the Supreme Court denied Plaintiff's petition for writ of certiorari, 516 U.S. 829 (1995). Moreover, the Court finds that Plaintiff has also used his filings as a means of harassment. While his initial filing in *Franklin v. United States*, No. cv-s-93-01140-PMP-LRL (D. Nev. 1993), involved only the United States as a defendant, his quixotic crusade has grown to include the BLM, current and former employees of the BLM, a federal judge,[2] state officials, county officials, a justice of the peace, an assistant United States Attorney, police, and a news publisher. The Court, therefore, finds that Plaintiff's filings have become increasingly frivolous and harassing.

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[2] Chief Judge Hunt was a defendant in *Franklin v. United States*, No. cv'05 3719 PHX NVW (D. Ariz. 2005). He is also a target of Plaintiff's current Motion for Consolidation, or alternatively, for Recusal, which the Court finds is both harassing and frivolous.



AO 72
(Rev. 8/82)

**IV. Narrowly Tailored to Specific Vice**

"The fourth and final factor in the *De Long* standard is that the pre-filing order must be narrowly tailored to the vexatious litigant's wrongful behavior." *Molski*, 500 F.3d at 1061. Here, the Court's pre-filing injunction is narrowly tailored to the Plaintiff's wrongful conduct. The Injunction only requires Plaintiff to submit a copy of his complaint and this Order to the Court for screening before he may file another lawsuit arising out of the facts and circumstances of this case. The Court believes that its Order appropriately prevents Plaintiff from harassing Defendants because he will not be permitted to serve them with another frivolous lawsuit, while also preserving Plaintiff's right of access to the courts for any potentially meritorious claim. Moreover, the requirement that he certify that his proposed complaint does not contain claims previously adjudicated prevents further abuse of the Court's limited time and resources.

**CONCLUSION**

Accordingly, and for good cause appearing,

IT IS HEREBY ORDERED that Plaintiff Bobby L. Franklin's Motion to Consolidate, or alternatively, for Recusal (#21) is DENIED.

IT IS FURTHER ORDERED that Defendants Mark Chatterton and the United States of America's Motion to Enjoin Further Lawsuits (#47) is GRANTED.

The Clerk of the Court is directed to close the case.

Dated: April 21, 2008.

Roger L. Hunt

**ROGER L. HUNT**
**Chief United States District Judge**



AO 72
(Rev. 8/82)

# EXHIBIT “E”

**UNITED STATES DISTRICT COURT**

**DISTRICT OF NEVADA**

BWD PROPERTIES 2, LLC, a Nevada Limited Liability Company; BWD PROPERTIES 3, LLC, a Nevada Limited Liability Company; and BWD PROPERTIES 4, LLC, a Nevada Limited Liability Company,

Plaintiffs,

v.

BOBBY LEN FRANKLIN, an individual and d.b.a. DAYDREAM LAND & SYSTEMS DEVELOPMENT COMPANY; ROBERT LEE FRANKLIN, an individual; BOBBY DEAN FRANKLIN, an individual,

Defendants.

BOBBY LEN FRANKLIN; BOBBY DEAN FRANKLIN,

Third-Party Plaintiffs,

v.

UNITED STATES,

Third-Party Defendant.

2:06-CV-01499-BES-PAL

**ORDER**

Presently before the Court is Plaintiff BWD Properties 2, LLC, BWD Properties 3, LLC, and BWD Properties 4, LCC's (collectively "BWD") Renewed Motion for Summary Judgment (#93) filed on March 14, 2008. Defendant Bobby Len Franklin filed his Opposition to Plaintiffs' Renewed Motion for Summary Judgment (#100) on March 27, 2008. BWD filed its Reply in



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Support of Plaintiffs' Renewed Motion for Summary Judgment (#102) on April 10, 2008. Franklin filed his Opposition to Plaintiffs' Supplement Reply to its Renewed Motion for Summary Judgment (#104) on May 5, 2008. Also before the Court is Plaintiff Bobby Len Franklin's Motion to Consolidate Cases (#66), filed on October 29, 2007.

**I. Background**

On August 18, 1988, Bobby Len Franklin filed application N-49548 under the Desert Land Entry Act ("DLE") concerning eighty acres of land located in the Southern one-half of the Southeast quarter of Section 16, Township 32 South, Range 66 East, Mount Diablo Meridian, Clark County, Nevada (the "N-49548 Property"). (Mot. Summ. J. (#93) Ex. 1.) In October 1988, the Bureau of Land Management ("BLM") denied Bobby Len Franklin's application because the property was appropriated by mining claims and thus unsuitable for disposition under the DLE. Id. Bobby Len Franklin appealed the decision to the Interior Board of Land Appeals ("IBLA"), which reversed and remanded to BLM for further findings because the record did not contain evidence to support the conclusion that the land was mineral in character. Id. On remand, BLM denied the application. Id. at Ex. 2. BLM advised Bobby Len Franklin of his right to appeal the decision to the IBLA, and of the requirement that the appeal be filed within thirty days of receipt of the decision. Id. Bobby Len Franklin did not appeal the decision, however. Instead, he filed an action against the United States in federal court. Id. at Ex. 4. The action was dismissed for failure to exhaust administrative remedies. Id. at Ex. 5. The district court's decision was affirmed by the Ninth Circuit Court of Appeals ("Ninth Circuit"). See Franklin v. United States, 46 F.3d 1140 (9th Cir. 1995) (unpublished).

On November 21, 1989, Bobby Dean Franklin filed application N-52292 under the DLE concerning eighty acres of land located in the Northern one-half of the Southeast quarter of Section 16, Township 32 South, Range 66 East, Mount Diablo Meridian, Clark County, Nevada (the "N-52292 Property"). Id. Ex. 6. BLM denied the application in 1993 because the lands for which the application was filed were mineral in character. Id. at Ex. 7. Bobby Dean Franklin was advised of his right to appeal the decision and that his notice of appeal must be filed within thirty days of receipt of the decision. Id. Bobby Dean Franklin did not appeal.

Instead, he filed an action against the United States in federal court. Id. at Ex. 8. The action was dismissed by the court for failure to exhaust administrative remedies. Id. at Ex. 6. The court's order was affirmed by the Ninth Circuit. See Franklin v. United States, 46 F.3d 1141 (1995).

In 2006, the United States granted to D.J. Laughlin title to three parcels located in Clark County, Nevada ("the property"). The property included the acreage upon which the Franklins had submitted their DLE applications. The three parcels were granted by way land patents, including patent 27-2006-0071, patent 27-2006-0070, and patent 27-2006-0069. Id. at Ex. 9; (Laughlin Aff. (#94) ¶ 4.) Patent 27-2006-0071 relates to real property described as the East one-half of the Southeast quarter of the Southeast quarter of Section 16, township 32 South, Range 66 East, Mount Diablo Meridian, Nevada ("parcel two"). (Mot. Summ. J. Ex. 9). Patent 27-2006-0070 relates to land described as the West one-half of the Southeast quarter of the Southeast quarter of Section 16, Township 32 South, Range 66 East, Mount Diablo Meridian, Nevada ("parcel three"). Id. Ex. 11. Patent 27-2006-0069 relates to property described as the Southwest quarter of the Southeast quarter of Section 16, Township 32 South, Range 66 East, Mount Diablo, Meridian, Nevada ("parcel four"). Id. Ex. 13. Laughlin then transferred his interest in all three parcels to BWD. Id. at Exs. 10, 12, 14. Since 1999, the defendants have recorded the following documents against the property with the office of the Clark County Recorder:

1. Notice of Lis Pendens, recorded October 6, 1999. Id. at Ex. 15.
2. Notice of Statutory Lien, recorded October 12, 1999. Id. at Ex. 16.
3. Notice of Lien, recorded October 12, 1999. Id. at Ex. 17.
4. Joint Notice of Artisans Lien, recorded October 18, 1999. Id. at Ex. 18.
5. Agreement to Sell Real Estate, recorded September 23, 2002. Id. at Ex. 19.
6. Agreement to Sell Real Estate, recorded October 11, 2002. Id. at Ex. 20.
7. Notice of Abeyance, recorded May 4, 2005. Id. at Ex. 21.
8. Notice of Joint Trespass, recorded April 13, 2006. Id. at Ex. 22.

In 1996, the United States filed a complaint against Bobby Len Franklin asserting a

trespass claim. Id. at Ex. 23. Bobby Len Franklin counterclaimed, arguing that he was in lawful possession of the property pursuant to his DLE application. Id. Bobby Len Franklin's counterclaim was dismissed for failure to exhaust administrative remedies. Id. The court also granted the United States's motion for summary judgment, and permanently enjoined Bobby Len Franklin from occupying the site or further trespassing any other land owned by the United States. Id.

BWD initiated the instant action on November 21, 2006, seeking an order quieting title in its favor. (Compl. (#1) ¶¶ 31-37.) BWD also seeks an permanent injunction enjoining the defendants from asserting, claiming, or setting up any right, title or interest in the property, attorney's fees and costs, and declaratory relief. Id. ¶¶ 38-58. On December 14, 2006, Bobby Len Franklin and Bobby Dean Franklin filed their answer and counterclaim, requesting the Court quiet title in their favor. (Bobby Len Franklin and Bobby Dean Franklin Ans. (#11).) The same day, Bobby Len Franklin and Bobby Dean Franklin filed third-party complaint against the United States. (Third-Party Compl. (#14).) On December 26, 2006, Robert Lee Franklin filed his answer and counterclaim asserting ownership in a portion of the property. (Robert Lee Franklin Ans. (#16).) On February 2, 2007, Donna Sue Owens filed her answer and counterclaim also asserting ownership in a portion of the property. (Donna Sue Owens Ans. (#26).) On September 28, 2007, the Court dismissed Bobby Len Franklin and Bobby Dean Franklin's third-party complaint for lack of subject matter jurisdiction. (Order (#62).) The Court based its decision on Bobby Len Franklin and Bobby Dean Franklin's failure to appeal the denials of their DLE applications. Id. at 4. On February 8, 2008, the Court denied Bobby Len Franklin's motion for reconsideration. (Order (#83).) BWD now seeks an order granting summary judgment in its favor, as well as a declaratory judgment and permanent injunction. (Mot. Summ. J. (#93) 10-11.) The only party to oppose the motion is Bobby Len Franklin.[1]

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[1]On March 9, 2007, the United States filed a suggestion of death in which it states that Bobby Dean Franklin died during the course of the instant litigation. (Suggestion of Death (#43) 1-2.) On November 5, 2007, the Court entered an order allowing the substitute of Shirley Eckles as Special Administratrix for purposes of this suit. (Order (#69) 5.) On March 26, 2008, the Court granted Donna Sue Owens's motion to substitute Bobby Len Franklin in her place because she quitclaimed her interest in a portion of the property at issue to Bobby Len Franklin. (Order) (#97) 1-2.) Thus, Bobby Len

## II. Legal Standard

Summary judgment "shall be rendered forthwith if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law." Fed. R. Civ. P. 56(c). The burden of demonstrating the absence of a genuine issue of material fact lies with the moving party, and for this purpose, the material lodged by the moving party must be viewed in the light most favorable to the nonmoving party. Adickes v. S.H. Kress & Co., 398 U.S. 144, 157 (1970); Martinez v. City of Los Angeles, 141 F.3d 1373, 1378 (9th Cir. 1998). A material issue of fact is one that affects the outcome of the litigation and requires a trial to resolve the differing versions of the truth. Lynn v. Sheet Metal Workers Int'l Ass'n, 804 F.2d 1472, 1483 (9th Cir. 1986); S.E.C. v. Seaboard Corp., 677 F.2d 1301, 1306 (9th Cir. 1982).

If the moving party presents evidence that would call for judgment as a matter of law at trial if left uncontroverted, then the respondent must show by specific facts the existence of a genuine issue for trial. Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 250 (1986). "[T]here is no issue for trial unless there is sufficient evidence favoring the nonmoving party for a jury to return a verdict for that party. If the evidence is merely colorable, or is not significantly probative, summary judgment may be granted." Id. at 243-50 (citations omitted). "A mere scintilla of evidence will not do, for a jury is permitted to draw only those inferences of which the evidence is reasonably susceptible; it may not resort to speculation." British Airways Board v. Boeing Co., 585 F.2d 946, 952 (9th Cir. 1978); see also Daubert v. Merrell Dow Pharmaceuticals, Inc., 509 U.S. 579, 596 (1993) ("[I]n the event the trial court concludes that the scintilla of evidence presented supporting a position is insufficient to allow a reasonable juror to conclude that the position more likely than not is true, the court remains free . . . to grant summary judgment."). Moreover, "[i]f the factual context makes the non-

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Franklin's opposition can be construed as opposing the motion on behalf of himself, as well as the interests originally asserted by Donna Sue Owens. Because the issues presented in the opposition are common to the claims of Bobby Dean Franklin's estate and Robert L. Franklin, however, the Court will consider the opposition as filed on their behalf as well.

moving party's claim of a disputed fact implausible, then that party must come forward with more persuasive evidence than otherwise would be necessary to show there is a genuine issue for trial." Blue Ridge Ins. Co. v. Stanewich, 142 F.3d 1145, 1143 (9th Cir. 1998) (citing Cal. Architectural Bldg. Products, Inc. v. Franciscan Ceramics, Inc., 818 F.2d 1466, 1468 (9th Cir. 1987)). Conclusory allegations that are unsupported by factual data cannot defeat a motion for summary judgment. Taylor v. List, 880 F.2d 1040, 1045 (9th Cir. 1989).

**III. Discussion**

In this action, BWD seeks to quiet title to the property identified in the patents issued to it by the United States. In a quiet title action under Nevada law, "the burden of proof rests with the plaintiff to prove good title in himself." Breliant v. Preferred Equities Corp., 112 Nev. 663, 669, 918 P.2d 314, 318 (1996) (citations omitted). It is undisputed that BWD received patent 27-2006-0071, patent 27-2006-0070, and patent 27-2006-0069 from Laughlin, who received them from the United States at auction. (Opp'n (#100) 2-3.) That notwithstanding, the defendants contend that both Bobby Len Franklin and Bobby Dean Franklin properly obtained an interest in the land upon which they originally filed their DLE applications, and therefore to the extent that land falls within the boundaries of what the United States patented to Laughlin, the Court should quiet title in their favor. (Opp'n (#100) 2.)

"When the regulations governing an administrative decision-making body require that a party exhaust its administrative remedies prior to seeking judicial review, the party must do so before the administrative decision may be considered final and the district court may properly assume jurisdiction." Doria Mining and Eng'g Corp. v. Morton, 608 F.2d 1255, 1257 (9th Cir. 1979), cert. Denied, 455 U.S. 962 (1980). Under Department of Interior regulations, a potential plaintiff must exhaust administrative remedies before any administrative decision is subject to judicial review. 43 C.F.R. § 4.21(c). The disposition of public lands is subject to review by the IBLA. 43 C.F.R. § 4.1(b)(3)(i). Therefore, exhaustion of administrative remedies only occurs upon disposition of such an appeal by the IBLA. Id. § 4.21(c). The Franklins' DLE applications of 1988 and 1989 were denied by BLM. (Mot. Summ. J. Exs. 2, 7.) The Franklins, though, did not appeal the decisions to the IBLA. Instead, they immediately filed

suit in federal court. Id. at Exs. 4, 8. As a result, the Franklins failed to exhaust their administrative remedies. Because the Franklins failed to exhaust their administrative remedies as to their original DLE applications, any claim to an interest in the property asserted on the basis of the Franklins' alleged ownership of parcels described in those applications must fail. Therefore, the defendants have no right, title or interest in the property.

Because the defendants have no right, title or interest in the property, the documents recorded with the Clark County Recorder's office constitute a cloud on title. The Court, therefore, declares those documents to be null and void and hereby orders them expunged from the record. Furthermore, the Court finds that BWD is entitled to a permanent injunction preventing the defendants from further clouding title. "To obtain permanent injunctive relief, a plaintiff must show '(1) that it has suffered an irreparable injury; (2) that remedies available at law, such as monetary damages, are inadequate to compensate for the injury; (3) that, considering the balance of hardships between the plaintiff and defendant, a remedy in equity is warranted; and (4) that the public interest would not be disserved by a permanent injunction.'" Geertson Seed Farms v. Johanns, No. 07-16458, Slip Op. 12009, 12023 (9th Cir. Sept. 2, 2008) (citations omitted).

Here, BWD has suffered irreparable injury insofar as the defendants have continually clouded the title of the property with unfounded recordings. Moreover, the possibility of future unfounded recordings could make it difficult for BWD to obtain title insurance or convey clean title. The remedies available at law are not sufficient because they will not compensate BWD for the ramifications of improper recordings–e.g., the difficulties associated with potentially conveying such property to a third party. The balance of hardships favors BWD because an injunction prohibiting future recordings will work no harm on the defendants, who have no rights in the property. The public will not be disserved. Rather, preserving the integrity of the title of the property is in the benefit of the public. Therefore, the defendants are enjoined from further clouding BWD's title by filing recordings related to their purported interest in the property. BWD's request for attorney's fees is denied.

## IV. Conclusion

In accordance with the foregoing, the Court orders as follows:

IT IS ORDERED that BWD's Motion for Summary Judgment (#93) is GRANTED.

IT IS DECLARED that Defendants, and anyone claiming under or through them, have no right, title or interest in or to the property described in patent 27-2006-0071, patent 27-2006-0070, and patent 27-2006-0069 on the basis of DLE applications N-49548 and N-52292.

IT IS FURTHER DECLARED that Plaintiffs are the 100% fee simple owners of the property described in patent 27-2006-0071, patent 27-2006-0070, and patent 27-2006-0069.

IT IS FURTHER DECLARED that all instruments, documents, and claims recorded by or on behalf of Defendants against the property in the office of the Clark County Recorder are null and void.

IT IS FURTHER ORDERED that the documents recorded in the Clark County Recorder's Office against the property, described here as Notice of Lis Pendens (recorded October 6, 1999), Notice of Statutory Lien (recorded October 12, 1999), Notice of Lien (recorded October 12, 1999), Joint Notice of Artisans Lien (recorded October 18, 1999), Agreement to Sell Real Estate (recorded September 23, 2002), Agreement to Sell Real Estate (recorded October 11, 2002), Notice of Abeyance (recorded May 4, 2005), and Notice of Joint Trespass (recorded April 13, 2006) are ordered expunged from the record of all such instruments or documents filed in the office of the Clark County Recorder.

IT IS FURTHER ORDERED that Defendants, and anyone claiming under or through them, are permanently enjoined from asserting, claiming, or setting up any right, title, or interest in or to the property described in patent 27-2006-0071, patent 27-2006-0070, and patent 27-2006-0069 under the DLE, applications N-49548 and N-52292, or on any other ground or basis.

IT IS FURTHER ORDERED that Defendants, and anyone claiming under or through them, are enjoined from filing any instruments, documents, and claims in the office of the Clark

County Recorder that would slander, interfere with, compromise, or cloud Plaintiffs' title to the property.

THE CLERK is ORDERED to enter judgment in favor of Plaintiffs and against Defendants on Plaintiffs' claims.

THE CLERK is further ORDERED to enter judgment in favor of Plaintiffs and against Defendants on Defendants' counterclaims.

IT IS FURTHER ORDERED that Plaintiff Bobby Len Franklin's Motion to Consolidate Cases (#66) is DENIED as moot.

THE CLERK is ORDERED to CLOSE THE CASE.

DATED: This 29th day of September, 2008.

UNITED STATES DISTRICT JUDGE

# EXHIBIT “A”

United States Department of the Interior

OFFICE OF HEARINGS AND APPEALS
INTERIOR BOARD OF LAND APPEALS
4015 WILSON BOULEVARD
ARLINGTON, VIRGINIA 22203

IN REPLY REFER TO:

OCT 09 1990

BOBBY L. FRANKLIN

IBLA 89-35 Decided August 27, 1990

Appeal from a decision of the District Manager, Las Vegas District, Nevada, Bureau of Land Management, rejecting desert land entry application N-49548.

Reversed and remanded.

1. Desert Land Entry: Applications—Desert Land Entry: Lands Subject To—Mining Claims: Location—Segregation

A decision rejecting a desert land entry application on the ground that the land is appropriated by unpatented mining claims will be reversed where a final certificate of mineral entry has not been issued for the land at the time the desert land entry application was filed.

APPEARANCES: Bobby L. Franklin, pro se.

OPINION BY ADMINISTRATIVE JUDGE KELLY

Bobby L. Franklin has appealed from a decision of the District Manager, Las Vegas District, Nevada, Bureau of Land Management (BLM), dated October 13, 1988, rejecting his desert land entry (DLE) application, N-49548, stating "the public lands affected by your DLE filing N-49548, are appropriated (by mining claims) and thereby rendered unsuitable under the Desert Land Act and not subject to disposition."

In his statement of reasons for appeal, appellant challenges the propriety of the decision on the basis that there has been no physical labor or mining production on the land in question over the past 5 years. Although there were multiple filings of mining claims and a mineral patent application (N-46678) filed involving 1,280 acres of valuable land in Laughlin, Nevada, he asserts nothing has been done to work these claims and the development of his DLE should not be held up indefinitely.

The record shows that appellant filed DLE application N-49548 with BLM on August 18, 1988, pursuant to 43 U.S.C. § 321 (1982). The application described 80 acres of land located in the SE¼ and the SW¼ of sec. 16, T. 32 S., R. 66 E., Mount Diablo Meridian, Clark County, Nevada. On the same date appellant filed a protest of mineral patent application N-46678 which had been previously filed with BLM May 27, 1987, by J. H. Edgar et al., for the Rojas Nos. 1-8 placer mining claims covering approximately 1,231.52 acres of public land in the same area in T. 32 S., R. 66 E.

BLM records confirm that the patent applicants submitted the required proofs, paid the filing fees, and deposited the required purchase money for the mineral entry final certificate for these Rojas Nos. 1-8 claims October 3, 1988. On November 28, 1988, BLM issued a decision noting that the mineral entry was allowed and the final certificate was issued effective that date. By letter of April 17, 1989, the applicants requested that mineral patent application N-46678 be withdrawn in its entirety because the company that was going to purchase black sands from the claims had gone out of business. BLM accepted the withdrawal request and the mineral entry involving the Rojas claims was cancelled as of April 17, 1989. 1/

The Board has noted that classification of the land as suitable for entry pursuant to section 7 of the Taylor Grazing Act "is a prerequisite to the approval of all entries" made under the desert land laws. 43 CFR 2400.0-3. 2/ James A. Maleski, 102 IBLA 175, 180 (1989). Because no DLE applications may be allowed until the land has been classified as suitable for such entry, BLM must first look to see whether or not the land is classified or should be classified as open to DLE. In this instance the lands have not been previously opened to entry under the desert land laws. Although appellant's application also serves as a petition for classification where the land has not been classified, that classification determination has yet to be made by BLM this case. 3/

However, irrespective of the lack of classification, BLM attempted to dispose of the application on the lack of availability of the land due to the conflicting mining claims of record. BLM rejected appellant's application, stating: "Regulations contained under 43 CFR 2520.0-8(a)(1) state in part: [I]n order for public lands to be subject to entry under the

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1/ By a decision, dated May 2, 1989, BLM accepted the applicants withdrawal of the mineral patent application and cancelled the mineral entry which included the Rojas Nos. 1-8 placer claims.

2/ Characteristics of land subject to disposition under the Desert Land Act are set forth in 43 CFR 2520.0-8. In Departmental regulation 43 CFR 2400.0-3(a), BLM notes that classification pursuant to 43 U.S.C § 315(f) (1982), is a prerequisite to approval of a DLE under 43 CFR Part 2520. Under 43 CFR 2521.2, an application must include a petition for classification unless the lands described in the application have been opened for disposition under the desert land laws. See generally 43 CFR Part 2450. This Board has affirmed the rejection of DLE applications on the ground that the land had not been classified as suitable for entry. See Duella M. Adams, 70 IBLA 63 (1983).

3/ Section 16 of the DLE application specifically provides an alternate petition for classification stating: "If the lands described in this application have not been classified as suitable for desert entry pursuant to the provisions of Section 7, of the Taylor Grazing Act of June 28, 1934, as amended, (43 CFR 315F), and the requirements of the regulations in 43 CFR Part 2400, please consider the application as a petition for such classification."

desert land law, such public lands must not only be irrigable but also surveyed, unreserved, unappropriated, nonmineral in character * * *."

[1] Although BLM has not made an official determination based on a mineral report that the lands are, in fact, "mineral in character," BLM may have based its rejection of appellant's DLE in part on a presumption to that effect because of placer mining claim filings and a mineral patent application on record in the same area. However, this Board has recently noted that the mere fact of location of a mining claim does not establish the mineral character of the land. Nancy M. Swallow, 112 IBLA 321, 323 (1990), and cases cited therein. In Swallow we held that where BLM itself does not recognize the land described by DLE applications to be mineral in character, applicants are not precluded from entering this land under the desert land law for this reason. See California v. Rodeffer, 75 I.D. 176, 179 (1968). We find no clear evidence in the record to support the conclusion that the land in question is mineral in character.

As to BLM's conclusion that the lands are appropriated by mining claims, we have repeatedly recognized that longstanding Departmental precedent makes it clear that a mining claim segregates land from entry by others when a final certificate of mineral entry has been issued. Nancy M. Swallow, supra; See also Melvin Helit, 110 IBLA 144, 149-50 (1989); Scott Burnham, 100 IBLA 94, 110, 94 I.D. 429, 437 (1987). In the case at hand, the record is clear that, as of August 18, 1988, the date the DLE application was filed, no final certificate of mineral entry had issued. Accordingly, we find the lands in question were not appropriated at the time the DLE application was filed.

For the above reasons, we conclude that BLM's decision of October 13, 1988, should be reversed. Since the mineral patent application has since been withdrawn and the mineral entry cancelled, BLM should reconsider appellant's application and determine whether the land should be classified as open to DLE.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is reversed and the case is remanded to BLM for action consistent with this opinion.

John H. Kelly
Administrative Judge

I concur:

Franklin D. Arness
Administrative Judge

# EXHIBIT “B”

N-49548
2520
(NV-054)

CERTIFIED MAIL NO. 13963
RETURN RECEIPT REQUESTED

OCT 25 1993

D E C I S I O N

Mr. Bobby L. Franklin :
5036 Royal Avenue : Desert Land Entry
Las Vegas, NV 89103 :

APPLICATION REJECTED

Your appeal of a Bureau of Land Management (BLM) decision dated October 13, 1988, rejecting your Desert Land Entry (DLE) application was decided upon by the Interior Board of Land Appeals (IBLA) on August 27, 1990. The IBLA reversed and remanded the BLM decision, instructing the BLM to "reconsider appellant's application and determine whether the land should be classified as open to DLE."

In accordance with the IBLA instructions a mineral report was completed concerning the SE¼ of section 16, T. 32 S., R. 66 E., MDM. The findings, as stated in the mineral report, are that the land is "considered mineral in character because of the presence of mineral materials namely sand and gravel."

Inasmuch as the lands for which you applied have been determined to be mineral in character, in accordance with 43 CFR § 2520.0-8(a), the lands are not subject to entry as desert land. Therefore, your Desert Land Entry application is hereby rejected in full.

This decision may be appealed to the Interior Board of Land Appeals, Office of the Secretary, in accordance with the regulations contained in 43 CFR, Part 4 and the enclosed Form 1842-1. If an appeal is taken, your notice of appeal must be filed in this office (at the above address) within 30 days from receipt of this decision. The appellant has the burden of showing that the decision appealed from is in error.

If you wish to file a petition (pursuant to regulation 43 CFR 4.21 (58 FR 4939, January 19, 1993)) (request) for a stay (suspension) of the effectiveness of this decision during the time that your appeal is being reviewed by the Board, the petition for a stay must accompany your notice of appeal. A petition for a stay is required to show sufficient justification

B

based on the standards listed below. Copies of the notice of appeal and petition for a stay must also be submitted to each party named in this decision and to the Interior Board of Land Appeals and to the appropriate Office of the Solicitor (see 43 CFR 4.413) at the same time the original documents are filed with this office. If you request a stay, you have the burden of proof to demonstrate that a stay should be granted.

Standards for Obtaining a Stay

Except as otherwise provided by law or other pertinent regulation, a petition for a stay of a decision pending appeal shall show sufficient justification based on the following standards:

(1) The relative harm to the parties if the stay is granted or denied,

(2) The likelihood of the appellant's success on the merits,

(3) The likelihood of immediate and irreparable harm if the stay is not granted, and

(4) Whether the public interest favors granting the stay.

Please contact Larry Sip of this office at (702) 647-5000 if you have any questions concerning this decision.

GARY RYAN

Gary Ryan
Acting District Manager

1 Enclosure
1. Form 1842-1

LS 10/22/93
N-49548D.CSN

# EXHIBIT “C”

# United States Department of the Interior

OFFICE OF HEARINGS AND APPEALS
Interior Board of Land Appeals
4015 Wilson Boulevard
Arlington, Virginia 22203

IN REPLY REFER TO:


DEC 19 1996

CERTIFIED

| | | |
|---|---|---|
| IBLA 96-111 | : | N-52292 |
| 96-163 | : | N-49548 |
| | : | |
| BOBBY D. FRANKLIN | : | Desert Land Entries |
| BOBBY L. FRANKLIN | : | |
| | : | Motion to Consolidate Granted; |
| | : | Appeals Dismissed |

ORDER

Bobby D. Franklin and his son Bobby L. Franklin appeal from identical letters dated October 27, 1995, issued by the Las Vegas District Manager, Bureau of Land Management (BLM), responding to questions regarding their desert land entry applications N-52292 and N-49548, filed pursuant to the Desert Land Act, as amended, 43 U.S.C. §§ 321-339 (1994). BLM noted that inasmuch as appellants had exhausted their appeals procedures, which were unsuccessful, it was closing their application files.

On August 8, 1988, Bobby L. Franklin filed his desert land entry application for lands located in the S½ of the SE¼, sec. 16, T. 32 S., R. 66 E., Mount Diablo Meridian. On November 21, 1989, Bobby D. Franklin filed his desert land entry application for adjacent lands in the N½ of the same SE¼.

Bobby L. Franklin appealed BLM's October 13, 1988, decision rejecting his claim on the basis that "the public lands affected by your DLE [desert land entry] filing N-49548, are appropriated (by mining claims) and thereby rendered unsuitable under the Desert Land Act and not subject to disposition." Under 43 CFR 2520.0-8(a)(1), in order for lands to be subject to entry under the desert land law, they must be nonmineral in character. In Bobby L. Franklin, 116 IBLA 29 (1990), the Board reversed BLM's decision noting that the mere fact of location of a mining claim does not establish the mineral character of the land. The Board stated that it found no clear evidence in the record to support the conclusion that the land in question was mineral in character. Consequently, the Board remanded the case to BLM for reconsideration of Bobby L. Franklin's application and determination of whether the land should be classified as open to desert land entry.

Pursuant to the Board's decision, BLM produced a mineral report dated July 16, 1992, for the SW¼ of sec. 16 which found the land embraced by the Franklins' applications to be mineral in character and therefore not available for appropriation under the Desert Land Act. BLM issued two decisions on November 12, 1993, denying the Franklins' applications based on the findings of the mineral report.

Case

C

Neither Bobby D. Franklin nor Bobby L. Franklin appealed BLM's decision to this Board. Instead, they instituted action in Federal district court. Bobby Dean Franklin v. United States, CV-S-93-1203-PMP (LRL)(D. Nev. May 16, 1994); Bobby Len Franklin v. United States, CV-93-01140-PMP. The Government moved to dismiss on the grounds that the Franklins had failed to exhaust their administrative remedies. The court granted the motion stating that when the Franklins received the adverse decisions from BLM, they were required to appeal to the Board. The court found that the Franklins' failure to do so constituted a failure to exhaust their administrative remedies. Therefore, the court concluded that it lacked jurisdiction to hear their appeals.

On appeal to the Ninth Circuit Court of Appeals, the court reviewed the district court de novo and affirmed the dismissal for lack of jurisdiction in two memorandum decisions dated January 10, 1995. Bobby L. Franklin v. United States, 46 F.3d 1140 (9th Cir.), cert. denied, 116 S.Ct. 100 (1995); Bobby D. Franklin v. United States, 46 F.3d 1141 (9th Cir.), cert. denied, 116 S.Ct. 123 (1995).

By letters dated October 27, 1995, BLM informed the Franklins that it was closing the files in their desert land entry application cases. The Franklins now appeal these letters. In their statement of reasons, the Franklins assert that the District Manager erred in refusing to issue patents as required by the Confirmation Statute, 43 U.S.C. § 1165 (1994) and 43 CFR 1862.6, the corresponding regulation.

In response, BLM contends that the appeals must be dismissed for lack of jurisdiction. BLM asserts that the Franklins are not "adversely affected" by the letters closing the files within the meaning of 43 CFR 4.410(a), and therefore those letters are not reviewable by the Board. BLM also points out that, to the extent that the appeals include reference to BLM's 1993 decisions denying their desert land entry claims, the appeals must fail because they were not timely filed. BLM asserts that absent a timely appeal, the Board must dismiss for lack of jurisdiction.

In a reply to BLM's response, Bobby L. Franklin essentially reiterates the arguments presented in his statement of reasons for appeal.

On November 4, 1996, the Franklins filed a motion to consolidate their appeals. In light of the fact that the BLM letters dated October 27, 1995, from which these appeals are taken are identical, and the arguments presented on appeal are the same, the motion for consolidation is granted.

The doctrine of administrative finality, like its judicial counterpart res judicata, bars reconsideration of prior actions which were or could have been subject to direct review, in subsequent or collateral proceedings, except upon a showing of compelling legal or equitable reasons. Keith Rush d/b/a Rush's Lakeview Ranch, 125 IBLA 346, 351 (1993) and cases cited. Where an appellant attempts to raise issues that were

finally decided in an earlier decision which was not appealed, the appeal is not timely as to those matters which could have been previously decided. The Wilderness Society, 106 IBLA 46, 53 (1988).

In its decisions dated November 12, 1993, BLM rejected the Franklins' desert land entry applications because the lands embraced by the applications were determined to be mineral in character and therefore not subject to entry as desert land. If the Franklins wanted to dispute the rejection of their applications, they were required to do so within 30 days of receipt of BLM's decisions. See 43 CFR 4.411(a). They did not do so. The timely filing of an appeal is jurisdictional and the failure to file timely mandates dismissal of the appeal. 43 CFR 4.411(c); D. R. Johnson Lumber Co., 106 IBLA 379, 382-83 (1989). The Franklins cannot use BLM's response to its questions concerning desert land entry to overcome their failure to appeal the November 12, 1993, decisions.

We note that the Franklins argued before the Ninth Circuit that the district court should have asserted its jurisdiction under the Confirmation Statute, 43 U.S.C. § 1165 (1994), regardless of their failure to exhaust administrative remedies. This statute places a restriction on the power of the Secretary of the Interior to contest an entryman's right to a patent on desert land and assures the entryman of rights to a patent if the Secretary fails to contest the entry within two years. The Ninth Circuit disposed of this argument by stating that the statute does not provide an independent basis for the district court's jurisdiction or excuse a party's failure to exhaust administrative remedies.

To the extent appellants have raised arguments which we have not specifically addressed herein, they have been considered and rejected.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the motion to consolidate is granted and the appeals are dismissed.

John H. Kelly
Administrative Judge

I concur:

Franklin D. Arness
Administrative Judge

APPEARANCES:

Bobby D. Franklin
5036 Royal Avenue
Las Vegas, NV 89103

Bobby L. Franklin
HC 770, Box 41531
Pahrump, NV 89041

Frank S. Wilson, Esq.
Assistant Regional Solicitor
U.S. Department of the Interior
2800 Cottage Way, Room E-2753
Sacramento, CA 95825-1980

BOBBY DEAN FRANKLIN
DESERT LAND ENTRY APPLICATION
N-52292
Chronology as of 9/7/95

05/11/88 Letter to Bobby D. and Bobby L. Franklin from Clark Co. Sanitation District stating that effluent may be available.

07/14/88 Letter to Bobby D. and Bobby L. Franklin from Clark Co. Sanitation District stating that effluent was available, that an agreement was needed and that the County could terminate the contract with an 18 month notification.

04/17/89 Letter from mining claimants requesting that mineral patent application be withdrawn.

05/02/89 Decision that Mineral Entry had been cancelled. J H Edgar, et al, placer mining claims Rojas #1 through #8.

11/21/89 Desert Land Entry application submitted to BLM.

07/28/89 through 5/1/90. Newspaper articles concerning wastewater discharge.

06/14/90 Letter from Bobby D. requesting that validity examinations be conducted by BLM.

10/09/90 Decision from IBLA: (1) classification determination needs to be made and (2) discusses mineral report.

09/13/93 Memo stating that mineral report not found, requesting a copy.

09/14/93 Mineral report concluding (p 20) that subject lands are mineral in character for mineral materials.

10/25/93 Decision to Bobby D. rejecting DLE application based on fact that land is mineral in character.

10/26/93 Unclaimed, unopened decision, address change.

11/12/93 Another decision sent to Bobby D. at new address.

12/27/93 Memo from NSO to Regional Solicitor. Applicant did not file appeal but filed complaint in Federal District Court.

08/24/94 Notice of appeal from Bobby D. to US Court of Appeals.

08/24/94 Appellant's or Petitioner's Informal Brief from Bobby D. to US Court of Appeals for the Ninth Circuit.

02/15/95 Petition for Rehearing from Bobby D. in US Court of Appeals.

05/15/95 Notice that a petition for a writ of certiorari had been filed in the Supreme Court.

05/29/95 Petition to US Supreme Court.

08/28/95 "Request Again And Application For You To Perform Your Plain Ministerial Duty Clearly Required Under Your Regulation 43 CFR 1862.6 And Under Our U.S. Law 43 USC 321; 43 USC 1165, For Issuance of Land Patent For My DLE N-52292" to Mike Dwyer by Bobby D. Franklin.

**IN THE SUPREME COURT OF THE STATE OF NEVADA**

Electronically Filed
Aug 12 2015 03:05 p.m.
Tracie K. Lindeman
Clerk of Supreme Court

BOBBY L. FRANKLIN

Appellant,

v.

D.J. LAUGHLIN, D/B/A/ BWD PROPERTIES 2, LLC; BWD PROPERTIES 3, LLC; AND BWD PROPERTIES 4, LLC,

Respondents.

Supreme Court Case No.: 67364

District Court No.: A-14-707291-C

# OPPOSITION TO RULE 60(b)(4) POST MOTION FOR ORDER TO SET ASIDE ALL FEDERAL COURT VOID JUDGMENTS AND COUNTER-MOTION FOR SANCTIONS

JOLLEY URGA WOODBURY & LITTLE
William R. Urga, Esq., Nevada Bar No. 1195
Charles T. Cook, Esq., Nevada Bar No. 1516
3800 Howard Hughes Parkway, 16th Floor
Las Vegas, Nevada 89169
Telephone: (702) 699-7500
Facsimile: (702) 699-7555
*Attorneys for Respondents*

Respondents, D.J. Laughlin, BWD Properties 2, LLC, BWD Properties 3, LLC, and BWD Properties 4, LLC, by and through their attorneys, Jolley Urga Woodbury & Little, hereby respond to Appellant's "Rule 60(b)(4) Post Motion for Order to Set Aside All Federal Court Void Judgments".

On July 23, 2015, this Court issued its Order of Affirmance, affirming a district court order dismissing the complaint and expunging the Lis Pendens.

On August 3, 2015, Appellant filed what was called a "Rule 60(b)(4) Post Motion for Order to Set Aside All Federal Court Void Judgments".

Also on August 3, 2015, Appellant filed what was called a "Motion for Reconsideration of the Record Overlooked". It appears as if the Court has treated this second motion as a Petition for Reconsideration, to which, according to NRAP 40(d), no answer or reply shall be filed unless requested by the Court. However, because Appellant states in his first motion that his first motion is based on "the accompanied Motion for Reconsideration", Respondents will briefly address both of Appellant's "motions" in this Opposition.

## INTRODUCTION

Appellant provides no new facts, law or evidence for the Court to consider. Appellant simply restates the same conclusory information as has been stated in his many previous court filings. The one thing that is apparent is that Appellant disagrees with, and refuses to accept, the prior decisions of both the state and federal courts. The Nevada courts, the federal district courts in Nevada and Texas, and the Fifth and Ninth Circuit Courts of Appeals, have all rejected Appellant's efforts to claim title to the subject property. Appellant has been adjudged to have no right, title, claim or interest in Respondents' property. Appellant has also been adjudged to be a vexatious litigant, has been enjoined from further filings and has

been sanctioned; yet he has defiantly proclaimed that he will never abandon his claim against Respondents' property.

The short story is that the government of the United States of America ("USA"), acting through its Bureau of Land Management ("BLM"), rejected Appellant's efforts to obtain title to land through the Desert Land Entry Act 42 USC 321 (the "DLE"). The title to the land remained in the USA until the BLM sold the property at auction in 2006. Respondents hold the title conveyed by the BLM.

## APPELLANT'S UNSUCCESSFUL ATTEMPTS TO GAIN TITLE TO LAND THROUGH DESERT LAND ENTRY APPLICATIONS

In 1988, the BLM denied Appellant's DLE application because the land was appropriated by mining claims. Appellant was advised that he had thirty (30) days to appeal the decision to the Interior Board of Land Appeals ("IBLA") and he timely appealed. In August 1990, the IBLA reversed and remanded the matter to the BLM for further findings. See Opinion in IBLA 89-35, decided August 27, 1990, a copy of which is attached hereto as **Exhibit "A."** The IBLA held, "we conclude that BLM's decision...should be reversed....BLM should reconsider appellant's application and determine whether the land should be classified as open to [Desert Land Entry]." Id., p. 3, ¶ 3.

In October 1993, on remand, the BLM again denied Appellant's DLE application. See BLM Decision (the "1993 BLM Decision"), a copy of which is attached hereto as **Exhibit "B".** In the 1993 BLM Decision, Appellant was advised:

> In accordance with the IBLA instructions a mineral report was completed....The findings, as stated in the mineral report, are that the

> land is considered mineral in character.... Inasmuch as the lands for which you applied have been determined to be mineral in character,...the lands are not subject to entry as desert land. Therefore, your Desert Land Entry application is hereby rejected in full.

The BLM then advised Appellant of his right to appeal the decision to the IBLA as well as the requirement that the appeal must be filed within 30 days of receipt of the Decision. Id., p. 1, ¶ 4. However, Appellant did not appeal the 1993 BLM decision to the IBLA. Instead, Appellant filed an action against the United States (Case No. CV-S-93-01140-PMP-LRL), alleging that he was the "owner in fee simple" of the land and the BLM's 1993 rejection of his DLE application was "wrong". By Order entered May 16, 1994, the action was dismissed by the court. In dismissing the complaint, the court noted that, in the Ninth Circuit, "administrative remedies [must] be exhausted before any administrative decision from the Department of Interior is subject to judicial review." The court then held that because Appellant failed to appeal the 1993 BLM Decision and thereby failed to exhaust his administrative remedies, the court lacked subject matter jurisdiction over his claim to the land. The district court's dismissal of the 1993 lawsuit was subsequently affirmed by the Ninth Circuit. See Franklin v. United States, 46 F.3d 1140 (9th Cir. 1995) (unpublished decision).

Appellant's further efforts to obtain a different result through the BLM also failed. *See* Opinion in IBLA 96-163, decided December 19, 1996, a copy of which is attached hereto as **Exhibit "C".** As stated above, the title to the land remained in the USA until the BLM sold the property at auction in 2006. Respondents hold the title conveyed by the BLM.

## APPELLANT'S CLAIM FOR QUIET TITLE IS FRIVOLOUS

The sole basis of Appellant's claim to title is the failure of the BLM to approve his DLE application. Appellant's claim lacks the basis typically found in quiet title actions. NRS 40.010 governs Nevada quiet title actions and provides: "An action may be brought by any person against another who claims an estate or interest in real property, adverse to the person bringing the action, for the purpose of determining such adverse claim." A plea to quiet title does not require any particular elements, but "each party must plead and prove his or her own claim to the property in question" and a "plaintiff's right to relief therefore depends on **superiority of title**." Yokeno v. Mafnas, 973 F.2d 803, 808 (9th Cir. 1992); see also Hodges Transp., Inc. v. Nevada, 562 F. Supp. 521, 522 (D. Nev. 1983).

Appellant has made repeated references in his pleadings to his "re-recorded title and deed", which Appellant says are attached to his complaint as Exhibits 1 and 2. A review of Exhibits 1 and 2 to the complaint reveals that there was never a conveyance to Appellant. Nevada's Statute of Frauds, NRS 111.205(1), provides that:

> No estate or interest in lands, other than for leases for a term not exceeding 1 year, nor any trust or power over or concerning lands, or in any manner relating thereto, shall be created, granted, assigned, surrendered or declared after December 2, 1861, unless by act or operation of law, or **by deed or conveyance, in writing, subscribed by the party** creating, granting, assigning, surrendering or declaring the same, or by the party's lawful agent thereunto authorized in writing. (emphasis supplied).

Appellant never received a "title", a "deed", or any form of "conveyance, in writing, subscribed by" any officer or agent of the USA.

Nevada's Recording Act, NRS 111.325, is a race-notice statute and because the land patents from the USA to Respondents' predecessors were recorded in the office of the Clark County Recorder (See Sandoval Order at 3:5-17, which is

discussed below and attached hereto as **Exhibit "D"**), Respondents' rights to the property would be **superior** to any rights that Appellant might now get from the USA. This is so because Respondents' title became firmly fixed when the land patents from the USA to Respondents' predecessors were recorded. At best, Appellant would simply have a damage claim against the USA.

## THE U.S. DISTRICT COURTS' ORDERS

While Appellant would have the Court "set aside" all of the federal court orders, a brief look at a few of the U.S. District Courts' Orders and proceedings should help illuminate the issues.

United States District Judge Roger L. Hunt issued a vexatious litigant order on April 21, 2008, enjoining Appellant, Bobby L. Franklin, from filing "any civil action based on his 1988 Desert Land Entry application or the property at issue in that application without first obtaining leave of the Court." See Order and Injunction filed April 21, 2008, in Case No. 2:07-cv-01400-RLH-RJJ, attached hereto as **Exhibit "D"**, 5:7-9 (hereinafter the "Hunt Order"). The Hunt Order made the necessary findings to establish Appellant as a vexatious litigant and this was affirmed by the Ninth Circuit Court of Appeals.

United States District Judge Brian E. Sandoval issued an order on September 29, 2008, enjoining Appellant "and anyone claiming under or through them, . . . from asserting, claiming, or setting up any right, title, or interest in or to the property" in question and "from filing any instruments, documents, and claims in the office of the Clark County Recorder that would slander, interfere with, compromise, or cloud [Respondents'] title to the property." See Order filed

September 29, 2008, in Case No. 2:06-cv-01499-BES-PAL, attached hereto as **Exhibit "E"**, 8:27-9:2 (hereinafter the "Sandoval Order").

Fast forward about six years (and omitting, for the sake of brevity, the intervening appeals, litigation and violations of court orders by Appellant), United States District Judge Robert C. Jones issued an order on April 15, 2015, expunging recordings made by Appellant as null and void, sanctioning Appellant for his "wanton disregard for the Court's authority" and finding that Appellant had "acted in bad faith by willfully ignoring this Court's prior Order and the permanent injunction." See Order filed April 15, 2015, in Case No. 2:06-cv-01499-RCJ-PAL, attached hereto as **Exhibit "F"**, 5:1–7:11.

Undeterred, Appellant then filed his "MOTION TO SET ASIDE ALL 'VOID' JUDGMENTS AND ORDERS IN THIS CASE THAT MISTAKENLY OVERLOOKED THE FRANKLIN TITLE AND DEEDED RIGHTS THAT WAS RE-RECORDED WITH THE CLARK COUNTY RECORDER ON 09/20/1993". See Motion filed April 27, 2015, in Case No. 2:06-cv-01499-RCJ-PAL, attached hereto as **Exhibit "G"**.

Respondents filed their Opposition requesting sanctions, pursuant to 18 U.S.C. 401, to the extent necessary to ensure Appellant's future compliance with the orders of the court. See Opposition filed May 6, 2015, in Case No. 2:06-cv-01499-RCJ-PAL, attached hereto as **Exhibit "H"**.

Appellant filed his Reply. See Reply filed May 11, 2015, in Case No. 2:06-cv-01499-RCJ-PAL, attached hereto as **Exhibit "I"**.

The United States Attorney for the District of Nevada filed "Third-Party Defendant United States' Opposition to Defendants' Motion to Set Aside Etc." See Third Party Opposition filed May 14, 2015, in Case No. 2:06-cv-01499-RCJ-

PAL, attached hereto as **Exhibit "J"**. Because of the long history of litigation between the USA and Appellant described in the U.S. Attorney's Opposition, it is respectfully suggested that this Court will find informative, the points and authorities by the United States Attorney's office and the exhibits thereto consisting of two 2004 Orders from United States District Judge Roger L. Hunt issued in Case No. CV-S-04-0128-RLH-PAL. The U.S. Attorney's Opposition concludes with the observation that the Appellant's motion "is yet another attempt by [Appellant] to perpetuate litigation in a case that they lost more than twenty years ago."

Appellant filed his Response to the United States' Opposition. See Response filed May 27, 2015, in Case No. 2:06-cv-01499-RCJ-PAL, attached hereto as **Exhibit "K"**.

United States District Judge Robert C. Jones issued an order on June 1, 2015, denying Appellant's Motion and stating in part:

> [Appellant's challenge] to the Court's finding in favor of [Respondents'] ownership have been ruled upon multiple times in this District as well as in the Ninth Circuit. The outcome has not changed. Moreover, the Court does not find there to be any reason to reconsider its previous decision regarding sanctions, and it once more warns [Appellant] that if any recordings asserting ownership of the property are made in the future, [he] will be sanctioned further.
>
> CONCLUSION
>
> IT IS HEREBY ORDERED that [Appellant's] Motion to Set Aside All Void Judgments and Orders that Mistakenly Overlook the Franklin Title and Deeded Rights Re-Recorder with the Clark County Recorder (ECF No. 166) is DENIED with prejudice.

See Order filed June 1, 2015, in Case No. 2:06-cv-01499-RCJ-PAL, attached hereto as **Exhibit "L"**.

## COUNTER-MOTION FOR SANCTIONS
## FOR VIOLATIONS OF COURT RULES AND ORDERS BY APPELLANT

NRCP Rule 11 applies to attorneys as well as unrepresented parties. The Pro Per Appellant has now moved from filing in federal court to filing in Nevada state court. To avoid the burden on the Nevada courts that will come from further undeterred, frivolous court filings by the Appellant, this Court must apply the safeguards afforded by NRCP 11. The Court should sanction Appellant for his prior misconduct in violation of the federal court orders. The Court should also inform the Appellant that if he conducts himself in the Nevada courts the same way as he has conducted himself in the federal courts, he will be sanctioned further.

As this court has stated when discussing attorney fee awards pursuant to NRS 18.010 and sanctions pursuant to NRCP 11, the Nevada Legislature has expressed a policy of discouraging frivolous litigation. In Trustees v. Developers Surety, 120 Nev. 56, 63, 84 P.3d 59, 63 (2004) the court quoted legislative history:

> It is the intent of the Legislature that the court award attorney's fees pursuant to this paragraph [NRS 18.010] and impose sanctions pursuant to Rule 11 of the Nevada Rules of Civil Procedure in all appropriate situations to punish for and deter frivolous or vexatious claims and defenses because such claims and defenses overburden limited judicial resources, hinder the timely resolution of meritorious claims and increase the costs of engaging in business and providing professional services to the public. (quoting from S.B. 250, 72d Leg. (Nev. 2003); 2003 Nev. Stat., ch. 508, § 153, at 3478)

## APPELLANT HAS BEEN ADJUDGED TO BE A VEXATIOUS LITIGANT AND SHOULD BE SANCTIONED FOR HARASSMENT AND FOR REPEATEDLY FILING FRIVOLOUS PLEADINGS.

The Court may impose sanctions on the Appellant pursuant to NRAP 38, which provides for damages and costs when civil appeals are frivolous. The rule provides as follows:

> RULE 38. FRIVOLOUS CIVIL APPEALS—DAMAGES AND COSTS
>
> (a) Frivolous Appeals; Costs. If the Supreme Court determines that an appeal is frivolous, it may impose monetary sanctions.
>
> (b) Frivolous Appeals; Attorney Fees as Costs. When an appeal has frivolously been taken or been processed in a frivolous manner; when circumstances indicate that an appeal has been taken or processed solely for purposes of delay, when an appeal has been occasioned through respondent's imposition on the court below; or whenever the appellate processes of the court have otherwise been misused, the court may, on its own motion, require the offending party to pay, as costs on appeal, such attorney fees as it deems appropriate to discourage like conduct in the future.

Appellants conduct herein is frivolous, vexatious and harassing and the Court is urged to address this offensive conduct before the proceedings in state court mirror the proceedings that have transpired in federal court.

Pursuant to NRAP 38, the Court may require a party to pay costs and attorney's fees for filing or processing a frivolous appeal. See NRAP 38; see also Works v. Kuhn, 103 Nev. 65, 732 P.2d 1373 (1987) (sanctioning appellant when the contentions on appeal are so lacking in merit as to constitute a frivolous appeal and misuse of the appellate process). Here, the underlying Complaint was filed in violation of the Hunt Order, and the lis pendens was recorded in violation of the Sandoval Order. Appellant's claims have been adjudicated on numerous occasions -- always in favor of Respondents. Appellant's continued litigious behavior is

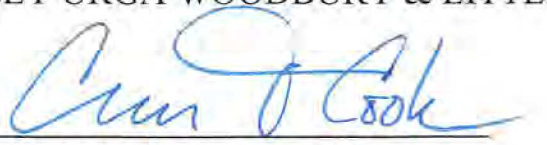
simply harassment. Therefore, Respondents request that the Court sanction Appellant in an amount sufficient to discourage like conduct in the future.

## CONCLUSION

For the reasons set forth herein, Appellant's Motions should be denied. Respondents further move for this Court to sanction Appellant, pursuant to NRAP 38 and NRCP 11, as a vexatious litigant and for filing frivolous, harassing pleadings with the Nevada Courts all in violation of valid court orders.

DATED this 12 day of August, 2015.

JOLLEY URGA WOODBURY & LITTLE

By: 

WILLIAM R. URGA, ESQ.
Nevada Bar No. 1195
CHARLES T. COOK, ESQ.
Nevada Bar No. 1516
3800 Howard Hughes Parkway
Wells Fargo Tower, Sixteenth Floor
Las Vegas, Nevada 89169
*Attorneys for Respondents*

## CERTIFICATE OF SERVICE BY MAIL

I, the undersigned, hereby certify that I am employed in the County of Clark, State of Nevada, am over the age of 18 years and not a party to this action. My business address is that of Jolley Urga Woodbury & Little, 3800 Howard Hughes Parkway, Suite 1600, Las Vegas, Nevada 89169.

On this day I served the **OPPOSITION TO RULE 60(b)(4) POST MOTION FOR ORDER TO SET ASIDE ALL FEDERAL COURT VOID JUDGMENTS AND COUNTER-MOTION FOR SANCTIONS** by placing a true copy thereof enclosed in a sealed envelope, addressed as follows:

Bobby L. Franklin
3520 Needles Hwy.
Box 233
Needles, CA 92363

and placed the envelope in the mail bin at the firm's office.

I am readily familiar with the firm's practice of collection and processing correspondence for mailing. Under that practice it is deposited with the U.S. Postal Service on the same day it is placed in the mail bin, with postage thereon fully prepaid at Las Vegas, Nevada, in the ordinary course of business. I certify under penalty of perjury that the foregoing is true and correct, and that this Certificate of Service by Mail was executed by me on August 12, 2015 at Las Vegas, Nevada.

An employee of JOLLEY URGA
WOODBURY & LITTLE