

IN THE SUPREME COURT OF THE STATE OF NEVADA

INDICATE FULL CAPTION:

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

Appellant,

vs.

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

No. 68033

Electronically Filed
Jun 10 2015 08:37 a.m.
DOCKETING STATEMENT
CIVIL APPEALS
Tracie K. Lindeman
Clerk of Supreme Court

GENERAL INFORMATION

All appellants not in proper person must complete this docketing statement. NRAP 14(a). The purpose of the docketing statement is to assist the Supreme Court in screening jurisdiction, classifying cases for en banc, panel, or expedited treatment, compiling statistical information and identifying parties and their counsel.

WARNING

This statement must be completed fully, accurately and on time. NRAP 14(c). The Supreme Court may impose sanctions on counsel or appellant if it appears that the information provided is incomplete or inaccurate. *Id.* Failure to fill out the statement completely or to file it in a timely manner constitutes grounds for the imposition of sanctions, including a fine and/or dismissal of the appeal.

A complete list of the documents that must be attached appears as Question 26 on this docketing statement. Failure to attach all required documents will result in the delay of your appeal and may result in the imposition of sanctions.

This court has noted that when attorneys do not take seriously their obligations under NRAP 14 to complete the docketing statement properly and conscientiously, they waste the valuable judicial resources of this court, making the imposition of sanctions appropriate. See KDI Sylvan Pools v. Workman, 107 Nev. 340, 344, 810 P.2d 1217, 1220 (1991). Please use tab dividers to separate any attached documents.

1. Judicial District FIFTH Department 2
County NYE Judge ROBERT W. LANE
District Ct. Case No. CV0024539

2. Attorney filing this docketing statement:

Attorney John P. Aldrich, Esq. Telephone 702-853-5490

Firm Aldrich Law Firm, Ltd.

Address 1601 S. Rainbow Blvd. Suite 160
Las Vegas, NV 89146

Client(s) Estate of Michael David Adams, by and through his mother, Judith Adams

If this is a joint statement by multiple appellants, add the names and addresses of other counsel and the names of their clients on an additional sheet accompanied by a certification that they concur in the filing of this statement.

3. Attorney(s) representing respondents(s):

Attorney David R. Hague, Esq. Telephone 801-531-8900

Firm Fabian & Clendenin, P. C.

Address 215 South State Street, Suite 1200
Salt Lake City, UT 84111-2323

Client(s) Susan Fallini

Attorney _____ Telephone _____

Firm _____

Address _____

Client(s) _____

(List additional counsel on separate sheet if necessary)

4. Nature of disposition below (check all that apply):

- | | |
|---|--|
| <input type="checkbox"/> Judgment after bench trial | <input checked="" type="checkbox"/> Dismissal: |
| <input type="checkbox"/> Judgment after jury verdict | <input type="checkbox"/> Lack of jurisdiction |
| <input type="checkbox"/> Summary judgment | <input type="checkbox"/> Failure to state a claim |
| <input type="checkbox"/> Default judgment | <input type="checkbox"/> Failure to prosecute |
| <input checked="" type="checkbox"/> Grant/Denial of NRCP 60(b) relief | <input type="checkbox"/> Other (specify): _____ |
| <input type="checkbox"/> Grant/Denial of injunction | <input type="checkbox"/> Divorce Decree: |
| <input type="checkbox"/> Grant/Denial of declaratory relief | <input type="checkbox"/> Original <input type="checkbox"/> Modification |
| <input type="checkbox"/> Review of agency determination | <input checked="" type="checkbox"/> Other disposition (specify): <u>See attached supp.</u> |

5. Does this appeal raise issues concerning any of the following?

N/A

- Child Custody
- Venue
- Termination of parental rights

6. Pending and prior proceedings in this court. List the case name and docket number of all appeals or original proceedings presently or previously pending before this court which are related to this appeal:

Supreme Court No. 56840

Susan Fallini, Appellant vs. Estate of Michael David Adams, by and through his mother Judith Adams, Individually and on behalf of the Estate, Respondent.

Supreme Court No. 66521 - Petition for Extraordinary Writ

Estate of Michael David Adams, by and through his mother Judith Adams, Individually and on behalf of the Estate, Petitioner, vs. Fifth Judicial District Court, Nye County, Nevada, Respondent, and Susan Fallini, Real Party in Interest.

7. Pending and prior proceedings in other courts. List the case name, number and court of all pending and prior proceedings in other courts which are related to this appeal (e.g., bankruptcy, consolidated or bifurcated proceedings) and their dates of disposition:

None.

8. Nature of the action. Briefly describe the nature of the action and the result below:

This action is a wrongful death case brought by Plaintiff Estate of Michael David Adams, by and through his mother Judith Adams, individually and on behalf of the Estate against Defendant Susan Fallini, as a result of a July 7, 2005 automobile incident wherein Michael Adams hit a cow owned by Defendant, killing Mr. Adams. The action proceeded, and Defendant's Answer and Counterclaim were stricken as a result of Defendant's refusal to respond to discovery or abide by the district court's orders. The district court entered default judgment in favor of Plaintiff and against Defendant in the amount of \$1,000,000.00 for grief and sorrow and loss of support, \$1,640,696.00 for future lost earnings, \$50,000.00 in attorney's fees, sanctions in the amount of \$35,000.00, and funeral expenses of \$5,188.85. Defendant appealed the default judgment.

See attached supplement for continued text.

9. Issues on appeal. State specifically all issues in this appeal (attach separate sheets as necessary):

a. Because the original default judgment and all related issues in this case had already been considered and decided by the Nevada Supreme Court in the original appeal, did the district court err when it denied Plaintiff's Countermotion to Reconsider and/or for Rehearing of Order Entered on August 6, 2014?

b. Because the original default judgment and all related issues in this case had already been considered and decided by the Nevada Supreme Court in the original appeal, and because Defendant's counsel made misrepresentations to the district court at the hearing on July 28, 2014, did the district court err when it denied Plaintiff's Countermotion to Set Aside Order Entered on August 6, 2014?

See attached supplement for continued text.

10. Pending proceedings in this court raising the same or similar issues. If you are aware of any proceedings presently pending before this court which raises the same or similar issues raised in this appeal, list the case name and docket numbers and identify the same or similar issue raised:

The undersigned is not aware of any proceeding presently before this Court which raises the same or similar issues to those raised in the present appeal.

11. Constitutional issues. If this appeal challenges the constitutionality of a statute, and the state, any state agency, or any officer or employee thereof is not a party to this appeal, have you notified the clerk of this court and the attorney general in accordance with NRAP 44 and NRS 30.130?

N/A

Yes

No

If not, explain:

12. Other issues. Does this appeal involve any of the following issues?

Reversal of well-settled Nevada precedent (identify the case(s))

An issue arising under the United States and/or Nevada Constitutions

A substantial issue of first impression

An issue of public policy

An issue where en banc consideration is necessary to maintain uniformity of this court's decisions

A ballot question

If so, explain: None of the above.

13. Trial. If this action proceeded to trial, how many days did the trial last? _____

Was it a bench or jury trial? Did not proceed to trial.

14. Judicial Disqualification. Do you intend to file a motion to disqualify or have a justice recuse him/herself from participation in this appeal? If so, which Justice?
No.

TIMELINESS OF NOTICE OF APPEAL

15. Date of entry of written judgment or order appealed from April 17, 2015

If no written judgment or order was filed in the district court, explain the basis for seeking appellate review:

16. Date written notice of entry of judgment or order was served April 21, 2015

Was service by:

Delivery

Mail/electronic/fax

17. If the time for filing the notice of appeal was tolled by a post-judgment motion (NRCP 50(b), 52(b), or 59)

(a) Specify the type of motion, the date and method of service of the motion, and the date of filing.

NRCP 50(b) Date of filing N/A

NRCP 52(b) Date of filing N/A

NRCP 59 Date of filing N/A

NOTE: Motions made pursuant to NRCP 60 or motions for rehearing or reconsideration may toll the time for filing a notice of appeal. See AA Primo Builders v. Washington, 126 Nev. ____, 245 P.3d 1190 (2010).

(b) Date of entry of written order resolving tolling motion _____

(c) Date written notice of entry of order resolving tolling motion was served _____

Was service by:

Delivery

Mail

18. Date notice of appeal filed May 15, 2015

If more than one party has appealed from the judgment or order, list the date each notice of appeal was filed and identify by name the party filing the notice of appeal:

19. Specify statute or rule governing the time limit for filing the notice of appeal, e.g., NRAP 4(a) or other

NRAP 4(a)

SUBSTANTIVE APPEALABILITY

20. Specify the statute or other authority granting this court jurisdiction to review the judgment or order appealed from:

(a)

- | | |
|---|---------------------------------------|
| <input checked="" type="checkbox"/> NRAP 3A(b)(1) | <input type="checkbox"/> NRS 38.205 |
| <input type="checkbox"/> NRAP 3A(b)(2) | <input type="checkbox"/> NRS 233B.150 |
| <input type="checkbox"/> NRAP 3A(b)(3) | <input type="checkbox"/> NRS 703.376 |
| <input type="checkbox"/> Other (specify) _____ | |
-

(b) Explain how each authority provides a basis for appeal from the judgment or order:
The district court entered final judgment in favor of Defendant and against Plaintiff, dismissing Plaintiff's case.

21. List all parties involved in the action or consolidated actions in the district court:

(a) Parties:

Plaintiff: Estate of Michael David Adams, by and through his mother Judith Adams, individually and on behalf of the Estate

Defendant: Susan Fallini

(b) If all parties in the district court are not parties to this appeal, explain in detail why those parties are not involved in this appeal, *e.g.*, formally dismissed, not served, or other:

N/A

22. Give a brief description (3 to 5 words) of each party's separate claims, counterclaims, cross-claims, or third-party claims and the date of formal disposition of each claim.

Plaintiff's claims: wrongful death; Defendant's Cross Claims: destruction of property.

As for disposition, see attached supplement.

23. Did the judgment or order appealed from adjudicate ALL the claims alleged below and the rights and liabilities of ALL the parties to the action or consolidated actions below?

Yes

No

24. If you answered "No" to question 23, complete the following:

(a) Specify the claims remaining pending below:

N/A

(b) Specify the parties remaining below:

(c) Did the district court certify the judgment or order appealed from as a final judgment pursuant to NRCP 54(b)?

Yes

No

(d) Did the district court make an express determination, pursuant to NRCP 54(b), that there is no just reason for delay and an express direction for the entry of judgment?

Yes

No

25. If you answered "No" to any part of question 24, explain the basis for seeking appellate review (e.g., order is independently appealable under NRAP 3A(b)):

N/A

26. Attach file-stamped copies of the following documents:

- The latest-filed complaint, counterclaims, cross-claims, and third-party claims
- Any tolling motion(s) and order(s) resolving tolling motion(s)
- Orders of NRCP 41(a) dismissals formally resolving each claim, counterclaims, cross-claims and/or third-party claims asserted in the action or consolidated action below, even if not at issue on appeal
- Any other order challenged on appeal
- Notices of entry for each attached order

VERIFICATION

I declare under penalty of perjury that I have read this docketing statement, that the information provided in this docketing statement is true and complete to the best of my knowledge, information and belief, and that I have attached all required documents to this docketing statement.

Judith Adams
Name of appellant

John P. Aldrich
Name of counsel of record

June 9, 2015
Date

John P. Aldrich
Signature of counsel of record

Nevada, County of Clark
State and county where signed

CERTIFICATE OF SERVICE

I certify that on the 9th day of June, 2015, I served a copy of this completed docketing statement upon all counsel of record:

- By personally serving it upon him/her; or
- By mailing it by first class mail with sufficient postage prepaid to the following address(es): (NOTE: If all names and addresses cannot fit below, please list names below and attach a separate sheet with the addresses.)

David R. Hague, Esq.
Fabian and Clendenin, P.C.
215 South State Street, Suite 1200
Salt Lake City, UT 84111-2323

Dated this 9th day of June, 2015

Doreen Ingelbretson
Signature

SCHEDULE OF EXHIBITS

Supplemental responses

- Exhibit 1 Notice of Entry of Order and Court Order After Hearing
- Exhibit 2 Order Affirming in Part, Reversing in Part and Remanding
- Exhibit 3 Order Granting Motion to Recall Remittitur and to Modify March 29, 2013, Order for Allowance of Interest
- Exhibit 4 Notice of Entry of Final Judgment
- Exhibit 5 Notice of Entry of Order and Court Order
- Exhibit 6 Notice of Entry of Order Granting Motion for Entry of Final Judgment and Dismissing Case With Prejudice
- Exhibit 7 Complaint
- Exhibit 8 Defendant Susan Fallini's Answer and Counterclaim

SUPPLEMENTAL ANSWERS TO DOCKETING
STATEMENT CIVIL APPEALS

Estate of Michael David Adams, by
and through his mother Judith Adams,
individually and on behalf of the Estate,

No. 68033

Appellant,

vs.

Susan Fallini; DOES I-X and ROE
CORPORATIONS I-X, inclusive,

Respondent.

No. 4. Nature of disposition:

Other disposition: Granting of Defendant's Motion for Entry of Judgment after default judgment set aside.

No. 8. Nature of the action:

Continuation of text:

On March 29, 2013, the Nevada Supreme Court entered an Order Affirming in Part, Reversing in Part, and Remanding, in which the Supreme Court upheld the award of damages but reduced the amount. On April 9, 2013, Defendant Fallini petitioned for rehearing. That petition was denied on June 3, 2013. Thereafter, on June 5, 2013, Defendant Fallini filed a Petition for En Banc Reconsideration. That petition was also denied on July 18, 2013. The Supreme Court issued Remittitur on August 14, 2013. After recognizing that the Supreme Court did not give direction regarding calculation of interest, Plaintiff moved the Supreme Court for direction. On January 3, 2014, the Supreme Court issued an Order Granting Motion to Recall Remittitur and to Modify March 29, 2013 Order for Allowance of Interest.

After additional wrangling over the final form of the judgment, Final Judgment was entered on or about May 7, 2014. On May 20, 2014, Defendant filed a Motion for Relief from Judgment Pursuant to NRCPP 60(b). Plaintiff opposed the motion, but in an Order dated August 6, 2014, the district court granted Defendant's Motion for Relief from Judgment Pursuant to NRCPP 60(b). Thereafter, Plaintiff filed a Petition for Extraordinary Writ Relief. The Supreme Court issued an Order to Show Cause why the petition should not be summarily denied. Plaintiff provided a response, but the Supreme Court denied the writ petition on January 15, 2015. On or about January 28, 2015, Defendant Fallini filed a Motion for Entry of Final Judgment. Plaintiff opposed and filed a Countermotion to Reconsider and/or for Rehearing of Order Entered on August 6, 2014, or Alternatively, Countermotion to Set Aside Order Entered on August 6, 2014, or Alternatively, for Entry of Final Judgment. On April 17, 2015, the district court entered an Order Granting Motion for Entry of Final Judgment and Dismissing Case with Prejudice. This appeal is from the April 17, 2015 Order Granting Motion for Entry of Final Judgment and Dismissing Case with Prejudice.

No. 9c. Issues on Appeal

Continuation of text:

- c. Because the original default judgment and all related issues in this case had already been considered and decided by the Nevada Supreme Court in the original appeal, and because the default judgment was based on a sanction against Defendant for repeated refusal to follow court orders, did the district court err when it granted Defendant's Motion for Entry of Final Judgment?

No. 22. Disposition of each claim.

- a. As for disposition, please see the following:
 - i. Notice of Entry and Order After Hearing dated August 12, 2010 (Exhibit 1)
 - ii. Order Affirming in Part, Reversing in Part, and Remanding dated March 29, 2013 (Exhibit 2)

- iii. Order Granting Motion to Recall Remittitur and to Modify March 29, 2013 Order for Allowance of Interest dated January 3, 2014 (Exhibit 3)
- iv. Notice of Entry and Final Judgment entered on May 7, 2014 (Exhibit 4)
- v. Notice of Entry and Court Order dated August 6, 2014 (Exhibit 5)
- vi. Notice of Entry of Order Granting Motion for Entry of Final Judgment and Dismissing Case with Prejudice, dated April 21, 2015 (Exhibit 6)

EXHIBIT 1

EXHIBIT 1

1 **NEO**
John P. Aldrich, Esq.
2 Nevada Bar No. 6877
ALDRICH LAW FIRM, LTD.
3 1601 S. Rainbow Blvd., Suite 160
Las Vegas, Nevada 89146
4 (702) 853-5490
(702) 227-1975 fax
5 *Attorneys for Plaintiff*

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

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

12 **Plaintiffs,**

13 vs.

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

15 **Defendants.**

16 **SUSAN FALLINI,**

17 **Counterclaimant,**

18 vs.

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

22 **Counterdefendants.**

Case No.: CV24539
Dept.: 2P

23 **NOTICE OF ENTRY OF ORDER**

24 ///


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26 ///

1 PLEASE TAKE NOTICE that an Order After Hearing was entered in the above-entitled
2 matter on August 12, 2010, a copy of which is attached hereto as Exhibit 1.

3 DATED this 17th day of August, 2010.

4 ALDRICH LAW FIRM, LTD.

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

14 **CERTIFICATE OF SERVICE**

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

18 John Ohlson, Esq.
19 275 Hill Street, Suite 230
20 Reno, Nevada 89501
21 *Attorney for Defendant/Counterclaimant*

22 Katherine M. Barker, Esq.
23 Law Office of Katherine M. Barker
24 823 S. Las Vegas Blvd., Ste. 300
25 Las Vegas, NV 89101
26 *Attorney for Counterdefendant*
27 *Estate of Michael David Adams*

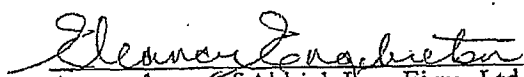
28 
An employee of Aldrich Law Firm, Ltd.

EXHIBIT 1

EXHIBIT 1

FILED

Case No. CV 24539
Dept. 2P

2010 AUG 12 A 9:00

REBECCA BALLARD

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

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

Plaintiff,

vs.

ORDER AFTER HEARING

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

Defendants.

This matter is regarding a motor vehicle accident involving Michael Adams and a Hereford Cow owned by the Defendant. On June 24, 2010, Plaintiff filed an Application for Default Judgment against Defendant Susan Fallini. Plaintiff requested \$2,500,000 for grief, sorrow, loss of support; \$1,640,696 for lost career earnings; \$5,000,000 for hedonic damages loss of life's pleasure and enjoyment; \$35,000 for Sanctions already levied against Defendants; \$50,000 for attorney's fees; and \$5,188.85 for funeral and other related expenses for a total of \$9,230,884.85. Defendants filed an Opposition on June 24, 2010. A hearing was held on this matter on July 19, 2010, in which Plaintiff and Defendants appeared with their counsels. After hearing arguments from both sides regarding the Defendant's violation of procedural rules, the Court denied Defendant's

FIFTH JUDICIAL DISTRICT COURT
ESMERALDA, MINERAL AND NYE COUNTIES



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Motion for Reconsideration and proceeded with the Prove Up Hearing and Canceled the Trial scheduled for August 2010. Judith Adams, Anthony Adams, and Susan Fallini were sworn in and testified. The parties' counsel gave their closing statements. The Court heard testimony, counsels' statements and arguments, and reviewed the pleadings on file herein. This Order follows.

ORDER

IT IS HEREBY ORDERED that the Defendant's Motion for Reconsideration is DENIED.

IT IS FURTHER ORDERED that the Court grants the Plaintiff \$1,000,000 in Damages for Grief, Sorrow, and loss of support.

IT IS FURTHER ORDERED that the Court grants the Plaintiff \$1,640,696 in Damages for future lost earnings.

IT IS FURTHER ORDERED that the Court grants the Plaintiff \$50,000 in Attorney's Fees.

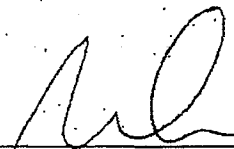
IT IS FURTHER ORDERED that the Court grants the Plaintiff \$35,000 in sanctions levied against the Defendant.

IT IS FURTHER ORDERED that the Court grants the Plaintiff \$5,188.85 in funeral and other related expenses.

IT IS FURTHER ORDERED that Plaintiff's request for Hedonic damages is DENIED.

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DATED this 12th day of August 2010.



DISTRICT JUDGE

FIFTH JUDICIAL DISTRICT COURT
ESMERALDA, MINERAL AND NYE COUNTIES





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CERTIFICATION OF MAILING

The undersigned hereby certifies that on the 12th day of August 2010, he mailed
copies of the foregoing ORDER AFTER HEARING to the following:

John P. Aldrich, Esq.
ALDRICH LAW FIRM, LTD.
1601 S. Rainbow Blvd., Suite 160
Las Vegas, NV 89146

John Ohlson, Esq.
BOWEN, HALL, OHLSON & OSBORNE
555 South Center Street
Reno, NV 89501

Katherine M. Barker, Esq.
LAW OFFICE OF KATHERINE M. BARKER
823 S. Las Vegas Blvd., Ste. 300
Las Vegas, NV 89101

C. PAUL TECHO
Law Clerk to
DISTRICT JUDGE

EXHIBIT 2

EXHIBIT 2

IN THE SUPREME COURT OF THE STATE OF NEVADA

SUSAN FALLINI,
Appellant,
vs.
ESTATE OF MICHAEL DAVID ADAMS,
BY AND THROUGH HIS MOTHER
JUDITH ADAMS, INDIVIDUALLY AND
ON BEHALF OF THE ESTATE,
Respondent.

No. 56840

FILED

MAR 29 2013

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY *Angela*
DEPUTY CLERK

ORDER AFFIRMING IN PART, REVERSING IN PART AND
REMANDING

This is an appeal from a final judgment in a wrongful death action. Fifth Judicial District Court, Nye County; Robert W. Lane, Judge.

Respondent Judith Adams brought suit against appellant Susan Fallini for the death of her son after he struck one of Fallini's cattle that was in the roadway.¹ Fallini, through her previous counsel, repeatedly failed to answer various requests for admission, resulting in a conclusive admission of negligence pursuant to NRCP 36. Namely, Fallini was deemed to have admitted that the accident did not occur on open range, which rendered her affirmative defense under NRS 568.360(1) inapplicable. These admissions lead to a partial summary judgment in Adams' favor on the issue of liability.

¹As the parties are familiar with the facts, we do not recount them further except as necessary to our disposition.

Approximately three years after Adams filed her complaint, Fallini retained new counsel and immediately filed a motion for reconsideration of prior orders, arguing that the accident had in fact occurred on open range. The district court denied Fallini's motion for reconsideration, vacated the jury trial, and proceeded to a prove-up hearing where it awarded damages to Adams in excess of \$2.5 million.

Fallini appealed, challenging the district court's decision to (1) deny her motion for reconsideration; (2) vacate the jury trial; and (3) award over \$2.5 million in damages. We conclude that Fallini's first two arguments are unpersuasive and affirm in part the district court's order. However, we reverse and remand in part the district court's award of damages.

The district court properly denied Fallini's motion for reconsideration

Fallini argues that the district court erred in denying her motion for reconsideration because the partial summary judgment was based on false factual premises regarding whether the accident occurred on open range. We disagree.

"A district court may reconsider a previously decided issue if substantially different evidence is subsequently introduced or the decision is clearly erroneous." Masonry and Tile v. Jolley, Urga & Wirth, 113 Nev. 737, 741, 941 P.2d 486, 489 (1997); see also Moore v. City of Las Vegas, 92 Nev. 402, 405, 551 P.2d 244, 246 (1976) ("Only in very rare instances in which new issues of fact or law are raised supporting a ruling contrary to the ruling already reached should a motion for rehearing be granted.")

In Nevada, a defendant has 30 days to respond to a plaintiff's request for admission. NRCP 36(a). Failure to do so may result in the requests being deemed "conclusively established." NRCP 36(b). It is well

settled that unanswered requests for admission may be properly relied upon as a basis for granting summary judgment, and that the district court is allowed considerable discretion in determining whether to do so. Wagner v. Carex Investigations & Sec., 93 Nev. 627, 631, 572 P.2d 921, 923 (1977) (concluding that summary judgment was properly based on admissions stemming from a party's unanswered request for admission under NRCP 36, even where such admissions were contradicted by previously filed answers to interrogatories); Smith v. Emery, 109 Nev. 737, 742, 856 P.2d 1386, 1390 (1993) (explaining that that "failure to respond to a request for admissions will result in those matters being deemed conclusively established . . . even if the established matters are ultimately untrue") (citation omitted).

Here, Fallini's argument is unpersuasive because she has not raised a new issue of fact or law. The question of whether the accident occurred on open range was expressly disputed in Fallini's answer, but she subsequently failed to challenge this issue through Adams' requests for admissions. Fallini has presented no evidence on appeal to alter the conclusive impact of admissions under NRCP 36 as a basis for partial summary judgment. Wagner, 93 Nev. at 631, 572 P.2d at 923. Moreover, the fact that these admissions may ultimately be untrue is irrelevant. Smith, 109 Nev. at 742, 856 P.2d at 1390. Finally, the district court had discretion to treat Fallini's failure to file an opposition to partial summary judgment as "an admission that the motion [was] meritorious and a consent to granting the motion." King v. Cartlidge, 121 Nev. 926, 927, 124 P.3d 1161, 1162 (2005) (citing D.C.R. 13(3)).

Thus, the district court did not err in refusing to reconsider its prior orders.²

The district court did not err in vacating the jury trial

Fallini argues that the district court's decision to vacate the jury trial violated her rights under Article 1, Section 3 of the Nevada Constitution. We disagree.

Following entry of a default judgment, the district court may conduct hearings to determine the amount of damages "as it deems necessary and proper and shall accord a right of trial by jury to the parties when and as required by any statute of the State." NRCp 55(b)(2). "The failure of a party to serve a demand [for a jury trial] . . . constitutes a waiver by the party of trial by jury." NRCp 38(d). Generally, "[w]hen the right to a jury trial is waived in the original case by failure to timely make the demand, . . . the right is not revived by the ordering of a new trial." Executive Mgmt. v. Tigor Title Ins. Co., 118 Nev. 46, 53, 38 P.3d 872, 876 (2002) (quoting 8 James Wm. Moore et al., Moore's Federal Practice § 38.52[7][c] (3d ed. 2001)).

Here, the parties initially determined in 2007 that a jury trial was not required for resolution of this case. Upon Fallini's default on the

²We also reject Fallini's attempt to distinguish herself from her prior counsel's inaptitude. "It is a general rule that the negligence of an attorney is imputable to his client, and that the latter cannot be relieved from a judgment taken against [her], in consequence of the neglect, carelessness, forgetfulness, or inattention of the former." Tahoe Village Realty v. DeSmet, 95 Nev. 131, 134, 590 P.2d 1158, 1161 (1979) (quoting Guardia v. Guardia, 48 Nev. 230, 233-34, 229 P. 386, 387 (1924)), abrogated on other grounds by Ace Truck v. Kahn, 103 Nev. 503, 507, 746 P.2d 132, 135 (1987), abrogated on other grounds by Bongiovi v. Sullivan, 122 Nev. 556, 583, 138 P.3d 433, 452 (2006).

partial summary judgment motion, Adams demanded a jury trial on the issue of damages. Following the district court's order to strike Fallini's pleadings, the district court vacated the jury trial and proceeded to determine damages by way of a prove-up hearing. Although both parties were present at the hearing, neither party objected to these proceedings. The record shows that Fallini did not object when the district court vacated the jury trial and proceeded with a prove-up hearing. She did not argue her right to a jury trial in her motion for reconsideration. Nor did she demand a jury trial prior to her argument on appeal.

Thus, we conclude that Fallini waived her right to a jury trial by failing to make a timely demand. The district court was within its authority to proceed with the prove-up hearing for a determination of damages. NRCP 55(b).

The district court erred in its award of damages

Fallini argues that the district court's damages award was excessive because there is no evidence that Adams suffered any economic loss from the death of her son.

The record indicates that Adams originally sought over \$9 million in damages, including \$2.5 million for grief, sorrow, and loss of support; \$1,640,696 for lost career earnings; and \$5 million for hedonic damages. Adams and her husband both testified that while they were not financially dependent on the decedent, they remained extremely close until the time of his death. Adams testified that her son often helped with physical tasks around the house and provided support while the couple coped with health problems. The record on appeal does not include any evidence regarding the decedent's salary, earning history, or future earning potential. Ultimately, the district court granted Adams damages in the reduced amount of \$1 million for grief, sorrow, and loss of support

as well as \$1,640,696 for lost career earnings.³ The district court denied Adams' request for hedonic damages.

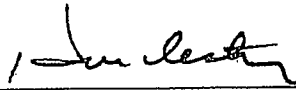
"[T]he district court is given wide discretion in calculating an award of damages, and this award will not be disturbed on appeal absent an abuse of discretion." Diamond Enters., Inc. v. Lau, 113 Nev. 1376, 1379, 951 P.2d 73, 74 (1997). An heir in a wrongful death action may broadly recover "pecuniary damages for the person's grief or sorrow, loss of probable support, companionship, society, comfort and consortium, and damages for pain, suffering or disfigurement of the decedent." NRS 41.085(4); see also Moyer v. United States, 593 F. Supp. 145, 146-47 (D. Nev. 1984) (recognizing that regardless of whether a parent was dependent on the decedent child for support, the parent is entitled to recovery for the loss of probable support based on contributions (such as time and services) that "would naturally have flowed from . . . feelings of affection, gratitude and loyalty"). However, while "heirs have a right to recover for 'loss of probable support[,] [t]his element of damages translates into, and is often measured by, the decedent's lost economic opportunity." Alsenz v. Clark Co. School Dist., 109 Nev. 1062, 1064-65, 864 P.2d 285, 286-87 (1993) (indicating that a duplicative award of damages already available under NRS 41.085(4) would be absurd).


We conclude that the district court acted within its discretion to award damages to Adams based on loss of probable support despite evidence that Adams was not financially dependent on her son. NRS 41.085(4). However, we conclude that the district court abused its

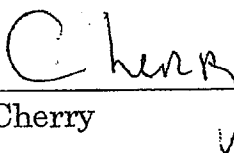
³The district court also awarded Adams \$5,188.85 for funeral expenses and \$85,000 in sanctions and attorney fees. This award is not challenged on appeal.

discretion by awarding separate damages for both loss of probable support and lost economic opportunity, as there is neither a legal basis nor evidentiary support for the award of \$1,640,696 in lost career earnings.⁴ Alsenz, 109 Nev. at 1065, 864 P.2d at 287. Accordingly we,

ORDER the judgment of the district court AFFIRMED IN PART AND REVERSED IN PART AND REMAND this matter to the district court for proceedings consistent with this order.


_____, J.
Hardesty


_____, J.
Parraguirre


_____, J.
Cherry

cc: Hon. Robert W. Lane, District Judge
Carolyn Worrell, Settlement Judge
Marvel & Kump, Ltd.
John Ohlson
Aldrich Law Firm, Ltd.
Nye County Clerk

⁴Adams argues that even if the district court erred in attributing her award to a particular category of damages, the total award should be upheld because she is entitled to hedonic damages. Because hedonic damages are often available in wrongful death cases only as an element of pain and suffering (which is included in the award under NRS 41.085(4)), we conclude this argument similarly fails. Banks v. Sunrise Hospital, 120 Nev. 822, 839, 102 P.3d 52, 63-64 (2004); Pitman v. Thorndike, 762 F. Supp. 870, 872 (D. Nev. 1991) (indicating that hedonic damages in Nevada are an element of the pain and suffering award).

EXHIBIT 3

EXHIBIT 3

IN THE SUPREME COURT OF THE STATE OF NEVADA

SUSAN FALLINI,

Appellant,

vs.

ESTATE OF MICHAEL DAVID ADAMS,

BY AND THROUGH HIS MOTHER

JUDITH ADAMS, INDIVIDUALLY AND

ON BEHALF OF THE ESTATE,

Respondent.

No. 56840

FILED

JAN 03 2014

TRADIE K. LINDEMAN
CLERK OF SUPREME COURT
BY *[Signature]*
DEPUTY CLERK

*ORDER GRANTING MOTION TO RECALL REMITTITUR AND TO
MODIFY MARCH 29, 2013, ORDER FOR ALLOWANCE OF INTEREST*

Respondent has filed a motion to recall the remittitur and clarify instructions for the allowance of interest, arguing that when this court entered a dispositive order resolving this appeal on March 29, 2013, reducing respondent's judgment, the order neglected to instruct the district court about the allowance of interest on the modified judgment. See NRAP 37(b) (providing that if this court "modifies or reverses a judgment with a direction that a money judgment be entered in the district court, the mandate must contain instructions about the allowance of interest"). Appellant opposes the motion, arguing that it should be treated as a petition for rehearing under NRAP 40, and denied as untimely.

Having considered the parties' arguments, we grant respondent's motion. See *Bancamerica Commercial Corp. v. Mosher Steel of Kan., Inc.*, 103 F.3d 80, 81 n.1 (10th Cir. 1996) (applying FRAP 37, which is identical to NRAP 37, in explaining that when an appellate court's mandate overlooks interest, recall and reformation of the mandate is appropriate to answer the question of how interest should be applied).

In resolving this appeal, this court concluded that the district court acted within its discretion in awarding damages to respondent based

on loss of probable support, but that it abused its discretion by awarding separate damages for both loss of probable support and lost economic opportunity because the loss of probable support element of damages “translates into, and is often measured by, the decedent’s lost economic opportunity.” See *Fallini v. Adams*, Docket No. 56840 (Order Affirming in Part, Reversing in Part, and Remanding, March 29, 2013) (quoting *Alsenz v. Clark Co. School Dist.*, 109 Nev. 1062, 1064-65; 864 P.2d 285, 286-87 (1993) (explaining that in a wrongful death action, the estate could not recover for both lost economic opportunities of the decedent and loss of probable support, as this would amount to a double recovery)). This court therefore affirmed the wrongful death judgment to the extent that it awarded damages for grief, sorrow, and loss of support, but reversed the portion of the judgment that awarded additional damages for lost career earnings. *Id.*

Since the district court’s judgment was partially reversed only to the extent that it awarded duplicative damages for lost career earnings and thus the partial reversal was grounded on the judgment’s dollar value and reduced accordingly, interest on the modified judgment shall accrue from the date of the district court’s original judgment. See *Bancamerica Commercial Corp.*, 103 F.3d at 81 (noting that “[i]n determining whether postjudgment interest should accrue from the date of the district court’s original judgment or the date of a later judgment,” an appellate court examines “the extent to which the case was reversed” (quoting *N. Natural Gas Co. v. Hegler*, 818 F.2d 730, 737 (10th Cir. 1987))). In analyzing the extent to which a case was reversed, the Third Circuit Court of Appeals in *Dunn v. HOVIC*, concluded that the post-judgment interest calculation should begin on the date when the jury verdict was originally entered, since the “jury’s decision was never overturned and the matter was never

retried," noting that on appeal, "the entire award was not vacated, but was merely reduced." 13 F.3d 58, 61-62 (3d Cir. 1993) (awarding a plaintiff post-judgment interest from the original judgment's date, even though the original judgment was \$26.3 million and the ultimate judgment after appeal and remittitur was \$1.5 million); *see also Cordero v. De Jesus-Mendez*, 922 F.2d 11, 16 (1st Cir. 1990) (explaining that "where the original judgment is basically sound but is modified on remand, post-judgment interest accrues from the date of the first judgment"); *N. Natural Gas Co.*, 818 F.2d at 737 (mandating interest to accrue from the date when the first judgment was awarded because the reversal of the first judgment "was not on any basic liability errors or errors in procedure which affected the basic issues but on a dollar value, a matter of degree"). Accordingly, we recall the remittitur and amend the mandate in the March 29, 2013, order to include instructions for the allowance of post-judgment interest on the modified judgment to accrue from the date of the original judgment. *Dunn*, 13 F.3d at 61-62; *N. Natural Gas Co.*, 818 F.2d at 737.

It is so ORDERED.

Pickering, C.J.
Pickering

Gibbons, J.
Gibbons

Hardesty, J.
Hardesty

Parraguirre, J.
Parraguirre

Douglas, J.
Douglas

Cherry, J.
Cherry

Saitta, J.
Saitta

cc: Hon. Robert W. Lane, District Judge
Marvel & Kump, Ltd.
John Ohlson
Aldrich Law Firm, Ltd.
Nye County Clerk

EXHIBIT 4

EXHIBIT 4

MAY 07 2014

NYE COUNTY DEPUTY CLERK
DEPUTY Sarah Westfall

1 NEO
John P. Aldrich, Esq.
2 Nevada Bar No. 6877
ALDRICH LAW FIRM, LTD.
3 1601 S. Rainbow Blvd., Suite 160
Las Vegas, Nevada 89146
4 (702) 853-5490
Attorneys for Judith Adams

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

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

Case No.: CV24539

Dept. No.: 2

10 Plaintiff,

11 vs.

NOTICE OF ENTRY OF JUDGMENT


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

13 Defendants.

14
15 PLEASE TAKE NOTICE that an Order granting Plaintiff final judgment against Defendant was
16 entered on April 28, 2014, a copy of which is attached hereto.

17 DATED this 6th day of May, 2014.

18 ALDRICH LAW FIRM, LTD.

19
20  #5919
21 John P. Aldrich, Esq.
Nevada Bar No.: 6877
1601 S. Rainbow Blvd., Suite 160
Las Vegas, Nevada 89146
22 (702) 853-5490
Attorney for Plaintiff

23 The document to which this certificate is attached
is a full, true and correct copy of the original
on file and of record in my office.

24 Date 5-7-14
Sandra L. Merlino, clerk of the Fifth Judicial
District Court, in and for the
County of Nye, State of Nevada

25 By Sarah Westfall Deputy
26 Per NRS 239 Sec. 6 the SSN may be redacted,
but in no way affects the legality of the document

1 Case No.: CV 24539

2 Dept. No.: 2P

FILED
Patricia A. ...
2010 APR 28 A 8 42

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

9 *****

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

13 Plaintiff,

14 vs.

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

17 Defendants.

18 Plaintiff having applied for a default judgment against Defendant, the Court having
19 entered an Order After Hearing on August 12, 2010, awarding Plaintiff damages in the total sum
20 of \$2,730,884.85, including \$1,640,696.00 in damages for lost future earnings, the Nevada
21 Supreme Court having reversed award for lost future earnings and affirmed the judgment in the
22 sum of \$1,090,188.85, and the Nevada Supreme Court having directed the Court to enter a
23 judgment in the amount of \$1,090,188.85, plus post-judgment interest on the sum of
24 \$1,090,188.85,

25 Final Judgment is hereby entered in favor of Plaintiff and against Defendant Susan Fallini,
26 and the Court ORDERS as follows:

27 1. IT IS ORDERED THAT Plaintiff is granted a judgment and shall recover from
28

1 Susan Fallini the sum of \$1,090,188.85.

2 2. IT IS ORDERED THAT Plaintiff is granted a judgment and shall recover from
3 Susan Fallini post-judgment interest in the sum of \$203,853.00, calculated as follows:

4 Original Judgment entered on August 12, 2010

5 8/12/10 to 12/31/10 = 142 days
6 Judgment Amount = \$1,090,188.80
7 Interest rate = 3.25 + 2 = 5.25
8 1,090,188.8 X .0525 = 57,234.91
9 57,234.91/365 = 156.81 a day x 142 days = \$22,267.02

10 1/1/11 to 6/30/11 = 181 days
11 Judgment Amount = \$1,090,188.80
12 Interest rate = 3.25 + 2 = 5.25
13 1,090,188.8 X .0525 = 57,234.91
14 57,234.91/365 = 156.81 a day x 181 days = \$28,382.61

15 7/1/11 to 12/31/11 = 184 days
16 Judgment Amount = \$1,090,188.80
17 Interest rate = 3.25 + 2 = 5.25
18 1,090,188.8 X .0525 = 57,234.91
19 57,234.91/365 = 156.81 a day x 184 days = \$28,853.04

20 1/1/12 to 6/30/12 = 182 days
21 Judgment Amount = \$1,090,188.80
22 Interest rate = 3.25 + 2 = 5.25
23 1,090,188.8 X .0525 = 57,234.91
24 57,234.91/365 = 156.81 a day x 182 days = \$28,539.42

25 7/1/12 to 12/31/12 = 184 days
26 Judgment Amount = \$1,090,188.80
27 Interest rate = 3.25 + 2 = 5.25
28 1,090,188.8 X .0525 = 57,234.91
57,234.91/365 = 156.81 a day x 184 days = \$28,853.04

1/1/14 to 6/30/13 = 181 days
Judgment Amount = \$1,090,188.80
Interest rate = 3.25 + 2 = 5.25
1,090,188.8 X .0525 = 57,234.91
57,234.91/365 = 156.81 a day x 181 days = \$28,382.61

7/1/13 to 12/31/13 = 184 days
Judgment Amount = \$1,090,188.85
Interest Rate = 3.25 + 2 = 5.25
1,090,188.85 X .0525 = 57,234.91
57,234.91/365 = 156.81 per day x 184 days = \$28,853.04

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1 1/1/14 to 2/3/14 = 62 days
2 Judgment Amount = \$1,090,188.85
3 Interest Rate = 3.25 + 2 = 5.25
4 1,090,188.85 X .525 = 57,234.91
5 57,234.91/365 = 156.81 per day x 15 days = \$9,722.22
6
7 **TOTAL = \$203,853.00**

8 3. IT IS ORDERED THAT Plaintiff is granted a judgment and shall recover against
9 Defendant in the amount of \$1,090,188.80, plus interest in the amount of \$203,853.00 (through
10 March 3, 2014), for a total of \$1,294,041.85, and post-judgment interesting continuing to accrue
11 at the statutory rate until satisfied.

12 DATED this 25th day of April, 2014.

13
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15
16 
17 DISTRICT COURT JUDGE


18 Submitted by:
19 
20
21 John Olson, Esq.
22 Bar Number 1672
23 275 Hill Street, Suite 230
24 Reno, NV 89501
25 Telephone: (775) 323-2700
26 Attorney for Defendant
27
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EXHIBIT 5

EXHIBIT 5

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Case No.: CV 24539

Dept. No.: 2P

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

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

Plaintiff,

vs.

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

Defendants.

NOTICE OF ENTRY OF ORDER

PLEASE TAKE NOTICE that the above-entitled Court entered a Court Order in this
matter on

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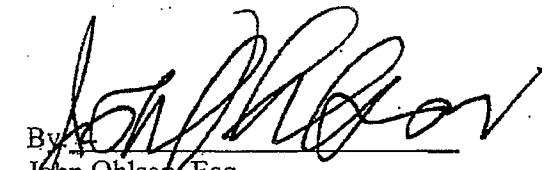
1 August 6, 2014. A true and correct copy of the Order is attached hereto as Exhibit 1.

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AFFIRMATION
Pursuant to NRS 239B.030

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

Dated this 13th day of August, 2014.


By: _____
John Ohlson, Esq.
Bar Number 1672
275 Hill Street, Suite 230
Reno, Nevada 89501
Telephone: (775) 323-2700
Attorneys for Defendant

1
2
3 **CERTIFICATE OF SERVICE**

4 Pursuant to NRCP 5(b), I hereby certify that I am an employee of JOHN OHLSON, and
5 that on this date, I served a true and correct copy of the foregoing **NOTICE OF ENTRY OF**
6 **ORDER** by the method indicated and addressed to the following:

7
8 John P. Aldrich, Esq.
9 Aldrich Law Firm, Ltd.
10 1601 S. Rainbow Blvd., Suite 160
11 Las Vegas, NV 89146

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

12 Dated this 13th day of August, 2014.

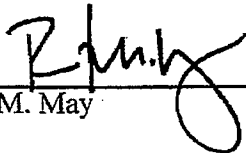
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17 Robert M. May

EXHIBIT 1

EXHIBIT 1

AUG 06 2014

NYE COUNTY DEPUTY CLERK
DEPUTY 

1
2 CV 24539
3 Dept. No. 2

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

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

10 Plaintiff,

11 v.

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

14 Defendant.

COURT ORDER

15
16 On May 21, 2014, Defendant filed a Motion for Relief from Judgment Pursuant to
17 NRCP 60(b), on the grounds of fraud upon the court and "excusable neglect." Defendant
18 alleged that Plaintiff's counsel "knowingly forced fraudulent facts on the court and failed
19 to correct misrepresentations thereby committing fraud upon the court." Plaintiff filed a
20 Countermotion to Strike/Opposition to Defendant's Motion for Relief from Judgment
21 Pursuant to NRCP 60(b) on June 9, 2014. Plaintiff submits there was no fraud upon the
22 court on the part of Plaintiff's counsel in obtaining the judgment. Defendant filed a
23 Reply on June 17, 2014. A hearing was held on Defendant's Motion on July 28, 2014.
24 At the conclusion of arguments from both parties, the court took the matter into
25 consideration and informed the parties a decision would be rendered shortly thereafter.
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After review of the papers and pleadings on file, and in consideration of counsels' statements and arguments at the July 28, 2014 hearing, this court finds, concludes and orders as follows:

FINDINGS OF FACT

1. Plaintiff Judith Adams brought suit against Defendant Susan Fallini for the death of her son Michael Adams after Michael struck one of Fallini's cattle that were on Highway SR 375.
2. Adams filed a complaint on January 31, 2007. She was and continues to be represented by Mr. John P. Aldrich, Esq. Fallini filed an answer and counterclaim on March 14, 2007. In her answer, Fallini listed as an affirmative defense NRS 568.360(1), which provides that those who own domestic animals do not have a duty to keep those animals off highways located on open range. At this time, Fallini was represented by Mr. Harold Kuehn, Esq.
3. A Notice of Early Case Conference was filed on June 14, 2007. On October 23, 2007, Adams filed a Case Conference Report. Prior to this Early Case Conference Plaintiff counsel Aldrich obtained the Nevada Highway Patrol Traffic Report number NHP-E2005000779. The investigating officer reports on Page 4 that the collision occurred on open range approximately 7 miles past an open range warning sign.
4. Prior to serving the Complaint, Adams created a website (www.michaeldavidadams.net) stating the accident occurred in "open range



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- county and the cows have the right of way." The website also contained links and information advocating against open range laws.
5. Plaintiff counsel Aldrich sent a request for admissions that included a request that "Fallini's property is not located within an "open range" as it is defined in NRS 568.355." Defense counsel Kuehn failed to respond. As a result, Fallini was deemed to have admitted that the accident did not occur on open range, despite already asserting an open range affirmative defense in her March 17, 2007 answer.
 6. On April 7, 2008, Adams filed a Motion for Partial Summary Judgment as a result of Fallini's admissions that the accident did not occur on open range. Adams filed another Motion for Partial Summary Judgment on May 16, 2008. Kuehn filed no oppositions to the Motions. A hearing was held on July 14, 2008, and the minutes reflect that only Aldrich appeared. The court granted Partial Summary Judgment because there was no opposition or appearance by Fallini and/or Kuehn.
 7. Beginning in September 2008, Plaintiff filed various Motions regarding discovery. A hearing was held on November 10, 2008 where Kuehn was given more time to produce. Another hearing was held on April 27, 2009. Kuehn was sanctioned \$750 held in abeyance, and an Order granting Motion to Compel Discovery was granted.
 8. On May 5, 2009, Plaintiff filed a demand for a jury trial. On June 30, 2009 the court ordered a trial would be held on August 25, 2010, with a calendar call set for July 19, 2010.



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9. On June 16, 2009, Plaintiff filed a Motion to Strike Fallini's answer and counterclaim, based on Fallini's failure to provide discovery. A hearing on this Motion was scheduled for July 13, 2009 at 1:15 PM. Kuehn submitted an opposition to this motion at 8:35 AM on July 13th. At the hearing, Kuehn requested additional sanctions be imposed for the failure to provide discovery. The Court issued a \$1000 sanction and gave Kuehn 30 days to provide the previously ordered information/discovery regarding insurance to Plaintiff.
10. On November 4, 2009, Plaintiff submitted an Order striking Defendant's answer and counterclaim due to Kuehn's repeated failures to provide discovery. The Court signed the Order. On February 4, 2010, Plaintiff filed for and obtained a Default.
11. On April 7, 2010, Adams filed another Motion for an Order to Show Cause stemming from the failed requests for discovery. An Order was granted on April 26, 2010. A hearing was held on May 24, 2010. Mr. Tom Gibson, Esq. appeared on behalf of Kuehn. Kuehn was sanctioned \$5,000 and \$500 per day until discovery was provided.
12. On or about June 17, 2010, Mr. John Ohlson, Esq. was substituted as counsel of record for Fallini in place of Kuehn.
13. On June 24, 2010 Plaintiff applied for Default Judgment. Defendant filed an Opposition the same day. On July 6, 2010 Defendant filed a Motion for Reconsideration. A hearing was held on both the Default Judgment and the



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Motion for Reconsideration on July 19, 2010. The Default was granted, and the Reconsideration was denied.

14. Defendant filed an appeal on September 10, 2010. The Nevada Supreme Court issued an Order affirming the District Court, but remanding for a new hearing regarding the calculation of the damages awarded.

15. After the parties re-calculated and stipulated to the amount of proper damages, the court entered its judgment against Defendant on April 28, 2014 consistent with the ruling from the Supreme Court of Nevada.

16. On May 21, 2014, Defendant filed a Motion for Relief from Judgment Pursuant to NRCPC 60(b). Defendant alleged Aldrich, as an officer of the court, knowingly forced fraudulent facts on the court and failed to correct misrepresentations, thereby committing fraud upon the court in violation of NRCPC 60(b). Defendant based this allegation upon belief that Aldrich knew the accident occurred on open range based on the following evidence: Defendant's answer asserted open range as an affirmative defense, Adams website should have put Aldrich on notice that this accident occurred on open range, and a Nevada Highway Patrol Traffic Report (NHP-E2005-00779) on which Page 4 says the collision occurred on open range. Despite this, Defendant alleges Aldrich sent a request for admissions that requested Defendant to admit that the property is not located within an "open range" as it is defined in NRS 568.355. Defendant argues, according to case law and the Nevada Rules of Professional Conduct; Aldrich advanced false facts using the discovery process in a calculated attempt to mislead the court.



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17. On June 9, 2014, Plaintiff filed her Countermotion to Strike Defendant's Motion for Relief from Judgment Pursuant to NRCP 60(b) or in the alternative, Opposition to Motion for Relief from Judgment. In the Opposition, Plaintiff argues that this matter was previously litigated and decided in her favor, therefore issue preclusion should apply and Defendant's Motion should be barred.

18. On June 17, 2014, Defendant filed a Reply stating issue preclusion does not apply because the allegations of Aldrich's fraud upon the court have not been claimed, litigated, or reviewed at any point in a prior proceeding.

CONCLUSIONS OF LAW

Defendant bases her Motion for Relief from Judgment on two separate sections of NRCP 60: fraud upon the court (NRCP 60(b)) and "excusable neglect" (NRCP 60(b)(1)). The court will analyze each separately.

I. Fraud Upon The Court under NRCP 60(b)

Under NRCP 60(b), a district court may "set aside a judgment for fraud upon the court." NRCP 60(b). There is no 6-month time limit on bringing a motion for fraud upon the court. NC-DSH, Inc. v. Garner, 218 P.3d 853, 856 (Nev. 2009). Simple dishonesty of any attorney is so damaging on courts and litigants that it is considered fraud upon the court. Id. at 859 citing United States v. Throckmorton, 98 U.S. 61, 66 (1878); Damnajuk v. Petrovsky, 10 F.3d 338, 352 (6th Cir. 1993). An officer of the court perpetrates fraud on the court a) through an act that is calculated to mislead the court or b) by failing to correct a misrepresentation or retract false evidence submitted to the court. See Nevada Rules of Professional Conduct ("NRCP") Rule 3.3.



1
2 Mr. Aldrich, as an officer of the court, had a duty to not mislead the court or fail
3 to correct a misrepresentation. In the case at bar, Mr. Aldrich has denied he knew the
4 accident occurred on open range. However, after consideration of the evidence and
5 arguments, the court finds Mr. Aldrich knew or should have known that the accident
6 occurred on open range. First, Mr. Aldrich was in possession of the Nevada Highway
7 Patrol Accident Report prior to his request for admissions. Page 4 of the Accident Report
8 clearly states that the "collision occurred on open range." (NHP Accident Report NHP-
9 E2005-00779 at Page 4). Second, Plaintiff Adams created a memorial website
10 advocating against open range laws shortly after the accident in 2005. See
11 <http://www.michaeldavidadams.net> (last visited 8/1/14). The website states, "He
12 encountered a cow crossing the road between mile marker 34-33 East side of the road.
13 This is open range country and the cows have the right of way." *Id.* Finally, Mr. Aldrich
14 received Defendant's answer that contained an open range affirmative defense. Based on
15 the totality of the circumstances, Mr. Aldrich knew or should have known the accident
16 occurred on open range prior to filing his request for admissions. At the bare minimum,
17 Mr. Aldrich possessed enough information to conduct a reasonable inquiry into the open
18 range status of the location where the accident occurred. At the July 28, 2014 hearing on
19 Defendant's Motion for Relief from Judgment, Mr. Aldrich stated he hasn't been to the
20 location to verify it was open range. (Hr'g 7/28/2014).
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24 Despite this, Mr. Aldrich sought an admission from Defendant stating that the
25 area where the accident occurred was not open range. Defendant's attorney Mr. Kuehn
26 failed to respond to this request; and it was subsequently deemed an admitted fact.
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Aldrich may argue that all Kuehn had to do was simply "deny" the request for admissions. However, at this point in the case, Kuehn was failing to respond to various motions and requests to the extent that Aldrich knew or should have known that a response from Kuehn was unlikely. This is not to suggest that Mr. Aldrich is an unethical attorney. For example, the record indicates that on numerous occasions, Mr. Aldrich granted Mr. Kuehn multiple extensions to provide discovery. The court believes that Mr. Aldrich was zealously representing his client. As an officer of the court however, Mr. Aldrich violated his duty of candor under Nevada Rules of Professional Conduct 3.3 by utilizing Defendant's denial that the accident occurred on open range to obtain a favorable ruling in the form of an unopposed award of summary judgment. Thus, the court finds Plaintiff violated Rule 60(b) as Plaintiff's request for admission of a known fact, a fact that was a central component of Defendant's case, was done when counsel knew or should have known that the accident did occur on open range, thereby perpetrating a fraud upon the court.

II. "Excusable Neglect" under NRCP 60(b)(1)

Unlike NRCP 60(b) fraud claims, claims under NRCP 60(b)(1) must be filed within six months of entry of judgment. NRCP 60(b). The Supreme Court of Nevada has established guidelines for lower courts to examine a NRCP 60(b)(1) claim. The district court must analyze whether the movant: "(1) promptly applied to remove the judgment; (2) lacked intent to delay the proceedings; (3) demonstrated good faith; [and] (4) lacked knowledge of procedural requirements." Bauwens v. Evans, 853 P.2d 121 (Nev. 1993).



1
2 Under the facts of the present case, the court finds Defendant's "Excusable
3 Neglect" claim under NRCP 60(b)(1) fails the first prong of Bauwens. The court entered
4 a default judgment in June 2010. Under NRCP 60(b)(1), Defendant had six months after
5 entry of judgment to file her Motion. NRCP 60(b)(1). The six-month window is not
6 tolled by an appeal of the final appealable judgment. Foster v. Dingwall, 228 P.3d 453
7 (Nev. 1990). Defendant argues her Motion is timely because her Rule 60(b) Motion was
8 filed on May 20, 2014; approximately one month after this court entered an amended
9 judgment on April 28, 2014. The court does not find Defendant's argument persuasive.
10 The April 28, 2014 amended judgment from this court was based on a recalculation of the
11 interest owed to Plaintiff. The actual content, law, and decision of the original judgment
12 did not change. Defendant's Motion would have been timely if it was filed within six
13 months from the July 19, 2010 Default Judgment.
14

15
16 CONCLUSION

17 As a result of Mr. Kuehn's failure to oppose or respond to Plaintiff's Motions,
18 Plaintiff obtained a Default Judgment for over a million dollars against Ms. Fallini. This
19 court followed the law and proper procedure throughout this case, as affirmed by the
20 Supreme Court of Nevada. However, one cannot ignore the apparent injustice that
21 Defendant has suffered throughout this matter. Ms. Fallini is responsible for a multi-
22 million dollar judgment without the merits of the case even being addressed. As stated
23 by the Supreme Court of Nevada, "cases are to be heard on the merits if possible."
24 Passarelli v. J-Mar Dev., Inc., 720 P.2d 1221, 1223 (Nev. 1986).
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Mr. Aldrich knew or had reason to know this accident occurred on open range. His client's webpage, the Nevada Highway Patrol Accident Report, and Defendant's answer all referred to the location of the accident as open range. At the bare minimum, counsel should have conducted a reasonable inquiry as to the open range status prior to sending a request for admissions, and perhaps as early as prior to filing his Complaint. If Mr. Aldrich indeed did not know this area was open range in 2007, he likely discovered it was open range afterwards. Instead of correcting this alleged known falsehood, Mr. Aldrich utilized Ms. Fallini's admission that this area was not open range as grounds to obtain a favorable award of summary judgment.

Finality has a particular importance in our legal system. The Supreme Court of Nevada has described a final judgment as one "that disposes of the issues presented in the case, determines the costs, and leaves nothing for future consideration of the court." Alper v. Posin, 77 Nev. 328, 330, 363 P.2d 502, 503 (1961). In the matter before the bar however, the issues presented in this case were summarily disposed above due to the negligence of Defendant's counsel Mr. Kuehn. The merits of the case were never actually addressed. Had Mr. Kuehn properly denied Mr. Aldrich's request for admissions, the outcome may have been much different.

Therefore, after consideration of the papers and pleadings on file, the evidence, and the testimony given throughout this proceeding, the court issues the following Order:

IT IS HEREBY ORDERED that Defendant's Motion for Relief from Judgment Pursuant to NRCP 60(b) is GRANTED.

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DATED this 6th day of August, 2014.



District Court Judge

FIFTH JUDICIAL DISTRICT COURT
ESMERALDA, MINERAL AND NYE COUNTIES



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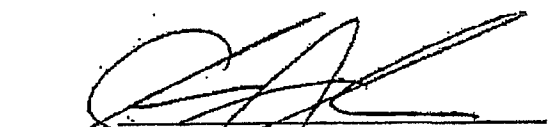
CERTIFICATION OF SERVICE

The undersigned hereby certifies that on the 6th day of August 2014; he mailed copies of the foregoing Court Order to the following:

JOHN OHLSON, ESQ.
275 Hill Street, Suite 230
Reno, NV 89501

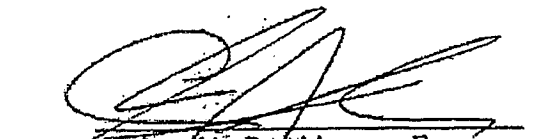
JOHN P. ALDRICH, ESQ.
Aldrich Law Firm, Ltd.
1601 S. Rainbow Blvd., Suite 160
Las Vegas, NV 89146

DAVID R. HAGUE
Fabian & Clendenin, P.C.
215 South State Street Suite 1200
Salt Lake City, Utah 84111


Christopher R. Alderman, Esq.
Law Clerk to Judge Robert W. Lane

AFFIRMATION

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


Christopher R. Alderman, Esq.
Law Clerk to Judge Robert W. Lane

FIFTI^H JUDICIAL DISTRICT COURT
ESMERALDA, MINERAL AND NYE COUNTIES



EXHIBIT 6

EXHIBIT 6

1 David R. Hague #12389
Ashton J. Hyde #12407
2 dhague@fabianlaw.com
3 ahyde@fabianlaw.com
4 FABIAN & CLENDENIN, P.C.
215 South State Street, Suite 1200
Salt Lake City, UT 84111-2323
5 Telephone: (801) 531-8900

6 601 South 10th Street, Suite 204
7 Las Vegas, NV 89101
8 Telephone: (702) 930-5806

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

11 Estate of MICHAEL DAVID ADAMS, By
12 and through his mother JUDITH ADAMS,
13 Individually and on behalf of the Estate,
14 Plaintiff,
15 vs.
16 SUSAN FALLINI, DOES I-X and ROE
CORPORATIONS I-X, inclusive,
17 Defendants.
18

NOTICE OF ENTRY OF ORDER

Case No.: CV 24539
Dept. No.: 2P

19 PLEASE TAKE NOTICE that the above-entitled Court entered a Court order in this
20 matter on April 17, 2015. A true and correct copy of the Order is attached hereto as Exhibit 1.
21

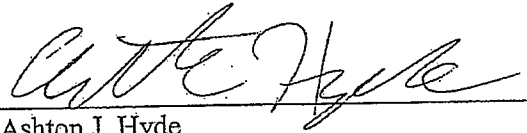
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AFFIRMATION
Pursuant to NRS 239B.030

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

DATED this 21st day of April, 2015.



Ashton J. Hyde
FABIAN & CLENDENIN,
A Professional Corporation
Attorneys for Defendant

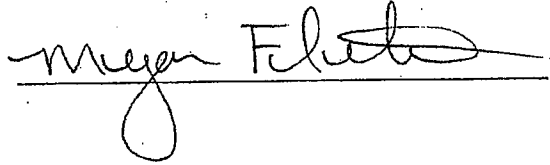
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CERTIFICATE OF SERVICE

Pursuant to NRCP 5(b), I hereby certify that I am an employee of FABIAN & CLENDENIN, and that on this date, I served a true and correct copy of the foregoing **NOTICE OF ENTRY OF ORDER** via U.S. Mail, postage prepaid, and addressed to the following:

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

Dated this 21st day of April, 2015



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1 David R. Hague #12389
Ashton J. Hyde #12407
2 dhague@fabianlaw.com
ahyde@fabianlaw.com
3 FABIAN & CLENDENIN, P.C.
215 South State Street, Suite 1200
4 Salt Lake City, UT 84111-2323
Telephone: (801) 531-8900

5 601 S Tenth Street
6 Las Vegas, Nevada 89101
Phone: 702-233-4444
7 Fax: 702-998-1503.

FILED
FIFTH JUDICIAL DISTRICT COURT

APR 17 2015

NYE COUNTY DEPUTY CLERK
DEPUTY _____

Veronica Aguilar

8 THE FIFTH JUDICIAL DISTRICT COURT

9 THE STATE OF NEVADA, COUNTY OF NYE

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

12 Plaintiff,

13 vs.

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

16 Defendants.

CASE NO.: CV24539
Dept. No.: 2P

**ORDER GRANTING MOTION FOR
ENTRY OF FINAL JUDGMENT AND
DISMISSING CASE WITH PREJUDICE**

17
18 On February 3, 2015, Defendant filed a Motion for Entry of Final Judgment ("**Defendant's**
19 **Motion**"). In response, Plaintiff filed Plaintiff's Opposition to Defendant's Motion for Entry of
20 Final Judgment and Countermotion to Reconsider and/or For Rehearing of Order Entered On
21 August 6, 2014, or Alternatively, Countermotion to Set Aside Order Entered on August 6, 2014,
22 or Alternatively, for Entry of Final Judgment (collectively, "**Plaintiff's Motions**"). On February
23 20, 2015, Defendant filed a Reply to Plaintiff's Motions.
24

25 On April 13, 2015, this matter came before the Court. David Hague, of the law firm Fabian
26 Clendenin, appeared on behalf of Defendant, and John Aldrich, of Aldrich Law Firm, appeared on
27 behalf of Plaintiff. The Court having considered the motions and the record, having heard oral
28

1 argument thereon, and having made findings and conclusions on the record, hereby issues the
2 following Order:

3 **IT IS HEREBY ORDERED** that Plaintiff's Motions are **DENIED**, it is
4 **FURTHER ORDERED** that Defendant's Motion is **GRANTED** and the above-captioned
5 case is dismissed with prejudice.

6
7 DATED this 17th day of April, 2015.

8
9 **ROBERT W. LANE**
10 _____
11 District Court Judge

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22 Respectfully submitted April 15, 2015 upon the request of the Court by:


23 
24 _____
25 Ashton J. Hyde
26 FABIAN CLENDENIN,
27 A Professional Corporation
28 215 South State Street, Suite 1200
Salt Lake City, UT 84111-2323
Attorneys for Defendant

EXHIBIT 7

EXHIBIT 7

Edward J. Achrem & Associates
512 South Tonopah Dr., Suite 100 • Las Vegas, Nevada 89106
(702) 734-3936

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EDWARD J. ACHREM & ASSOCIATES
Edward J. Achrem, Esq.
Nevada Bar No. 2281
James E. Smith, Esq.
Nevada Bar No. 0052
512 South Tonopah Dr., Ste. 100
Las Vegas, Nevada 89106
Phone: (702) 734-3936

Attorneys for Plaintiffs

DISTRICT COURT

NYE COUNTY, NEVADA

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

Plaintiffs,)

vs)

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

Defendants.)

CASE NO. :
DEPT. NO. :

COMPLAINT

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


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FILED
FIFTH JUDICIAL DISTRICT

JAN 31 2007

Nye County Clerk

Deputy



GENERAL ALLEGATIONS

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

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

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

*Edward J. Achre, 7 Associates
512 South Tonopah Dr., Suite 100 • Las Vegas, Nevada 89106
(702) 734-3936*

Edward J. Achre, 7 Associates
512 South Tonopah Dr., Suite 100 • Las Vegas, Nevada 89106
(702) 734-3936

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

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

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

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

Edward J. Achire & Associates
512 South Tonopah Dr., Suite 100 • Las Vegas, Nevada 89106
(702) 734-3936

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

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

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

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

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

Edward J. Achre & Associates
512 South Donohue Dr., Suite 100 • Las Vegas, Nevada 89106
(702) 734-3936

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

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

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

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

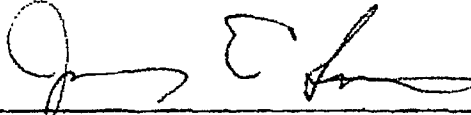
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512 South Tonopah Dr., Suite 100 • Las Vegas, Nevada 89106
(702) 734-3936

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

EDWARD J. ACHREM & ASSOCIATES



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

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EXHIBIT 8

EXHIBIT 8

1 Case No. CV24539
2 Dept. 2P

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BY DEPUTY

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

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

Plaintiffs,

vs.

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

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

Defendants,

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

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

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

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

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

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

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

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

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

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

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

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

CERTIFICATE OF SERVICE

1
2 I certify that I am an employee of EARNEST, GIBSON & KUEHN,
3 Attorneys at Law, and that on the 13th day of
4 March, 2007, I served the foregoing DEFENDANT SUSAN
5 FALLINI's ANSWER AND COUNTERCLAIM by depositing a copy in the U.S.
6 mail, first class postage prepaid, addressed to the following
7 person(s) at the following address(es):

8 James E. Smith, Esq.
9 EDWARD J. ACHREM & ASSOCIATES
10 512 So. Tonopah Drive, Suite 100
11 Las Vegas, NV 89106



12 an employee of EARNEST, GIBSON & KUEHN
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