IN THE SUPREME COURT OF THE STATE OF NEVADA

ESTATE OF MICHAEL DAVID ADAMS, BY AND THROUGH HIS MOTHER JUDITH ADAMS, INDIVIDUALLY AND ON BEHALF OF THE ESTATE, Appellant, v. SUSAN FALLINI, Respondent.	Supreme Court No.: 68033 District Court Case No.: CV24539

Appeal from the Fifth Judicial District Court of the State of Nevada in and for the County of Nye

The Honorable Robert W. Lane, District Judge

APPELLANT'S OPENING BRIEF

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

NRAP 26.1 DISCLOSURE STATEMENT

The undersigned counsel of record certifies that the following are persons and entities as described in NRAP 26.1(a), and must be disclosed.

Appellant:	ESTATE OF MICHAEL DAVID ADAMS, BY AND THROUGH HIS MOTHER JUDITH ADAMS, INDIVIDUALLY AND ON BEHALF OF THE ESTATE
Represented by:	JOHN P. ALDRICH Nevada Bar No. 6877 ALDRICH LAW FIRM, LTD. 1601 S. Rainbow Blvd. Suite 160 Las Vegas, Nevada 89146 (702) 853-5490
Respondent:	SUSAN FALLINI
Represented by: Current counsel	DAVID R. HAGUE FABIAN VAN COTT formerly FABIAN & CLENDENIN 215 S. State Street, Suite 1200 Salt Lake City, UT 84111 (801) 531-8900
Former counsel	JOHN OHLSON 275Hill Street, Suite 230 Reno, NV 89501 (775) 323-2700
	JEFF KUMP MARVEL & KUMP Elko, NV 89801 (775) 777-1204
	HAROLD KUEHN GIBSON & KUEHN 1601 E. Basin Avenue, Suite 101 Pahrump, NV 89060 (775) 751-9000

///

///

///

These representations are made in order that the judges of this court may evaluate possible disqualification or recusal.

DATED this 10th day of February, 2016.

ALDRICH LAW FIRM, LTD.

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

TABLE OF CONTENTS

TABLE OF AUTHORITIES

I.

JURISDICTIONAL STATEMENT

The Nevada Supreme Court has jurisdiction pursuant to NRAP 3A(b)(1).

This district court entered final judgment dismissing Plaintiff's case on April 17, 2015. Notice of entry was provided on April 21, 2015. Notice of appeal was filed on May 15, 2015. As such, Plaintiff's appeal was timely pursuant to NRAP 4(a).

II.

STATEMENT OF THE ISSUES

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. See Order Affirming in Part, Reversing in Part and Remanding (AA, IV,732-0738.) However, the district court exceeded its jurisdiction, ignored this Court's prior decision, and set aside this original judgment that had already been affirmed by this Court. The district court then entered subsequent unlawful orders, ultimately dismissing Plaintiff's case. Consequently, the issues are as follows:

A. Were the August 6, 2014 Order and all subsequent orders void pursuant to the doctrine of rule of mandate because this Honorable Court had already entered the Order Affirming in Part, Reversing in Part and Remanding (AA, IV,732-0738) in this case, in which this Honorable Court had already addressed the issues raised by Defendant in her Motion for Relief from Judgment Pursuant to NRCP 60(b)?

B. Did the law of the case doctrine preclude the district court from granting Defendant's Motion for Relief from Judgment Pursuant to NRCP 60(b) and entering all subsequent orders?

C. Did the doctrine of issue preclusion prohibit the district court from granting Defendant's Motion for Relief from Judgment Pursuant to NRCP 60(b) and entering all subsequent orders?

D. Even if the doctrines of rule of mandate, law of the case, and issue preclusion did not preclude the district court from granting Defendant's Motion for Relief from Judgment Pursuant to NRCP 60(b) and entering all subsequent orders, did the district court abuse its discretion when it entered the August 6, 2014 Order and all subsequent orders?

E. Did the district court err when it denied Plaintiff's Countermotion for Entry of Final Judgment?

III.

STATEMENT OF THE CASE

This case has been ongoing for nine years. During that time, Defendant repeatedly failed and refused to participate in the discovery process. Plaintiff was forced to bring a series of motions to compel, all of which were granted. Nevertheless, Defendant continued to fail and refuse to participate in discovery or obey the district court's orders. Consequently, the district court struck Defendant's answer and counterclaim as a sanction and entered default judgment against Defendant. Again, default judgment was entered as a *sanction*; the default judgment was not related to Defendant's admissions. Defendant appealed the entry of judgment against her.

The Nevada Supreme Court's Order Affirming in Part, Reversing in Part, and Remanding, entered on March 29, 2013 (AA, IV, 0732-0738), fully adjudicated all of the issues that were raised in Defendant's Motion for Relief from Judgment Pursuant to NRCP 60(b). The doctrines of rule of mandate, law of the case, and issue preclusion prohibit the district court from taking any further action on those issues. Defendant did not raise any new issues in her Motion for Relief from Judgment Pursuant to NRCP 60(b) to support the district court's orders now on appeal. Rather, Defendant regurgitated her arguments, sought to admit inadmissable hearsay evidence through unauthenticated documents, and filled the courtroom with 60 or so fellow

ranchers in what appeared to be an effort to intimidate the district court.

The district court then acted without jurisdiction and contrary to law when it later granted Defendant's Motion for Relief from Judgment Pursuant to NRCP 60(b). The grounds set forth in the Defendant's Motion had already been litigated before the district court in this case, a separate district court Judge in the Fifth Judicial District, and most importantly, the Nevada Supreme Court on Defendant's direct appeal. In granting Defendant's Motion for Relief from Judgment Pursuant to NRCP 60(b), the district court ignored the Supreme Court's prior Order in this case, the well-established law regarding admissions pursuant to NRCP 36, and well established law.

Further, the district court erred when it entered conclusions of law (a) that Mr. Aldrich violated his duty of candor under Nevada Rules of Professional Conduct 3.3 and (b) that Plaintiff somehow "violated Rule 60(b)" and "perpetrat[ed] a fraud upon the court" by sending a request for admission as part of the discovery process. Plaintiff and her counsel did not violate any ethics rule, nor did they perpetrate fraud on the court. To the contrary, the requests for admission, which Defendant never responded to, addressed specific affirmative defenses and Defendant's counterclaim. In addition, during the prove-up hearing on **July 19, 2010**, the district court admitted it **knew** where the incident occurred, and ***at the request of Defendant***, the Court ***took judicial notice*** that the incident occurred on open range. (AA II, 0322.) Consequently, there could be no fraud on the court.

Moreover, the district court erred when it made findings and conclusions that were directly contrary to the admissions that had previously been made by Defendant pursuant to NRCP 36 nearly seven years before the hearing on Defendant's Motion for Relief from Judgment Pursuant to NRCP 60(b). Those admissions were made in 2007 and remain as admissions in this case, as affirmed by the Nevada Supreme Court.

Finally, following the entry of the August 6, 2014 Order, the district court once again ignored the Supreme Court's previous rulings by unilaterally entering final judgment in Defendant's favor and dismissing the case, despite this Court's prior decision, based on the district court's erroneous finding of fraud on the court. Plaintiff respectfully requests that this Court overturn the district court's dismissal of the case in the Order entered on April 17, 2015. Plaintiff further respectfully requests that this Court overturn the findings of the district court's August 6, 2014 Order, and make specific findings: (1) that the Nevada Supreme Court has already decided the issues raised by Defendant in her Motion for Relief from Judgment Pursuant to NRCP 60(b), (2) that Plaintiff and her counsel did not perpetrate a fraud on the Court, and (3) that the judgment that was entered in Plaintiff's favor on April 28, 2014 be reinstated, as if the August 6, 2014 Order and those following it had never been entered.

IV.

STATEMENT OF FACTS

A. Factual History

Michael David Adams ("Michael") was born on May 10, 1972. He was the only child of the marriage between Judith and Tony Adams. Michael was an extremely loving child, and grew into an extremely loving man. (AA II, 0206.) Michael worked as a staff geologist for Southern California Geotechnical Inc., making approximately $45,000.00 per year plus benefits. (AA II, 0230.)

On July 7, 2005 at around 9:00 p.m., Michael was driving his 1994 Jeep Wrangler on SR 375 highway in Nye County, Nevada. (AA Vol. I, 0003.) As Michael drove, a Hereford cow suddenly appeared in Michael's travel lane, blocking his path. (AA I, 0003.) Michael was unable to avoid colliding with the cow and he hit the animal head-on. As a result of the impact, Michael's Jeep rolled over and left the paved highway. Sadly, Michael died at the scene. (AA I, 0003.)

Defendant Fallini was the owner of the cow which was in Michael's travel lane and caused his death. (AA I, 0002.) The cow was many miles away from the owner's ranch at the time of the incident. (AA I, 0004.) Further, Defendant Fallini had taken no precautions to keep the cow from the highway where the collision occurred. (AA I, 0003.) As a direct and proximate result of Defendant Fallini's negligence, Michael was killed. (AA I, 0003.)

As set forth below in the procedural history of this case, Defendant Fallini was sent discovery requests, including Requests for Admission. Defendant Fallini never responded to any of these requests. Due to the fact Defendant Fallini failed to respond to the Request for Admissions within 30 days of service (or ever), the following facts were conclusively established, as a matter of law:

1. That Defendant Fallini's property is not located within "open range."
2. That Defendant Fallini is the owner of the cow that is mentioned in the Complaint.
3. That it is the common practice of Nye County ranchers to mark their cattle with reflective or luminescent tags.
4. That the subject cow was not marked with a reflective or luminescent tag.
5. That the subject cow crossed a fence to arrive at the location of the subject accident described in the Complaint.
6. That Defendant Fallini's cattle have previously been involved in incidents with motor vehicles on the roadway.
7. That Defendant Fallini does not track the location of her cattle while they are grazing away from her property.
8. That Defendant Fallini does not remove her cattle from the roadway when notified that the cattle are in a roadway.
9. That the subject cow was not visible at night.

10. That Defendant Fallini was aware that the subject cow was not visible at night prior to the incident that is the subject of the Complaint.

11. That the subject cow was in the roadway of SR 375 at the time of the incident that is the subject of the Complaint.

12. That the subject cow's presence in the roadway of SR 375 was the cause of the motor vehicle accident that is the subject of the Complaint.

13. That Defendant Fallini did not know the location of the subject cow at the time of the incident that is the subject of the Complaint.

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

(AA I, 0024-0028.)

B. Procedural History Before the First Appeal

Plaintiff filed a lawsuit in Clark County, Nevada. The case was later transferred to Pahrump, Nye County, upon Defendant's request and thereafter re-filed on **January 31, 2007** in Pahrump, Nye County, Nevada. (AA I, 0001-0006.) Defendant filed her Answer and Counterclaim on **March 14, 2007**. (AA I, 0007-0011.) In her Answer, Defendant asserted three different affirmative defenses related to Chapter 568 of the Nevada Revised Statutes. (PA I, 0008.) Defendant's Counterclaim also sought to recover the monetary value of the cow pursuant to Chapter 568. (AA I, 0008-0010.)

On **October 31, 2007**, Plaintiff submitted interrogatories to Defendant. Although they were timely and properly served, the interrogatories were never answered. (AA I, 0053-0062.) Plaintiff also submitted Rule 36 requests for admission and her first set of requests for production of documents on **October 31, 2007**. (AA I, 0038-0041; AA I, 0043-0051.) A second set of requests for production of documents were also submitted to Defendant on **July 2, 2008**, requesting information

related to Defendant's insurance policies and/or insurance carriers that may provide coverage for the damages that occurred as a result of the incident. (AA I, 0064-0069.)

Defendant **never** responded to **any** of these requests, completely stifling the discovery process. On or about **May 16, 2008**, Plaintiff filed a Motion for Partial Summary Judgment. (AA I, 0012-0023.) Defendant did not oppose that motion and the Court granted the Motion for Partial Summary Judgment on the issue of liability on **July 30, 2008**. (AA I, 0026-0028.) Notice of Entry of the Order Granting Plaintiff's Motion for Summary Judgment was served on Defendant on **August 15, 2008**. (AA I, 0024-0025.)

In the meantime, Plaintiff had attempted to amicably resolve the discovery dispute and obtain a copy of Defendant's applicable insurance policies, but to no avail. On **February 24, 2009**, Plaintiff sent a letter to Defendant's counsel seeking responses to the discovery. (AA I, 0077.)

Plaintiff's counsel, Mr. Aldrich, also attempted to discuss this discovery issue with Defendant's counsel, Mr. Kuehn, as well. On or about **March 6, 2009**, Plaintiff's counsel contacted the office of Defendant's counsel, but was informed that Mr. Kuehn was not available. Mr. Aldrich left a message that included Mr. Aldrich's phone number and asked that Mr. Kuehn return the call. No return call ever came. (AA I, 0079-0081.)

On **March 18, 2009**, Mr. Aldrich again contacted the office of Mr. Kuehn. Once again, he was informed that Mr. Kuehn was not available. As before, Mr. Aldrich left a message that included his phone number and asked that Mr. Kuehn return the call. No return call ever came. (AA I, 0079-0081.)

On **March 23, 2009** – nearly nine months after propounding the discovery – Plaintiff filed a Motion to Compel Defendant's Production of Documents, including information regarding any and all insurance policies that may provide coverage for the incident as had been previously sought in the Plaintiff's second set of requests for

production of documents. (AA I, 0029-0081.) Defendant did not oppose the Motion to Compel in writing. This motion was heard on **April 27, 2009**. Defendant's attorney, Mr. Kuehn, attended the hearing. The Court granted Plaintiff's Motion to Compel and awarded Mr. Aldrich $750.00 in sanctions for having to bring the motion. (AA I, 0085-0086.) A Notice of Entry of Order on the Order Granting Plaintiffs Motion to Compel Defendant's Production of Documents was entered on **May 18, 2009** and was served by mail on Defendant's counsel. Defendant never complied with the Order. (AA I, 0082-0083.)

On **June 16, 2009**, Plaintiff filed a Motion to Strike Defendant's Answer and Counterclaim due to Defendant's complete and continued failure to respond to discovery requests or to comply with the Court's Order. (AA I, 0087-0093.) Defendant's counsel again failed to oppose the motion in writing but did attend the hearing, during which he provided no explanation as to why Defendant had failed to respond to all discovery requests. He did, however, advise the court that Defendant would respond to the discovery requests. Based on counsel's representation, the court denied Plaintiff's Motion to Strike. However the district court ordered Defendant to comply with the Order granting Plaintiff's Motion to Compel and to respond to Plaintiff's discovery requests by **August 12, 2009**; otherwise Defendant's Answer and Counterclaim would be stricken. The court further ordered Defendant to pay an additional $1,000.00 sanction. (AA I, 0147-0148.) Following the hearing, Defendant still did not comply with the district court's Order and failed to respond to Plaintiff's discovery requests.

On **August 31, 2009**, Plaintiff brought an Ex Parte Motion for Order to Show Cause Why Defendant Susan Fallini and Her Counsel Should Not Be Held in Contempt. (AA I, 0149-0155.) It its Order Regarding Order to Show Cause Why Defendant Susan Fallini and Her Counsel Should Not Be Held In Contempt of Court, dated **October 8, 2009**, Defendant was judicially instructed to produce all documents

responsive to Plaintiff's discovery requests by **October 12, 2009**. The court further ordered that if Defendant did not supply the requested information by the October 12, 2009 deadline, Defendant's counsel would be held in contempt of court and would be fined $150.00 a day, beginning **October 13, 2009**. Further, the Court ordered that if the requested information was not provided by October 12, 2009, the Court would strike Defendant's pleadings in their entirety. (AA I, 0163-0164.) Defendant ignored the district court's order and the deadline came and went with no response from Defendant.

On **November 4, 2009**, the district court entered its order striking Defendant's pleadings. Because Defendant's answer and counterclaim had been stricken in its entirety, all the allegations of the Complaint were deemed to be true. (AA I, 0165-0170.) On February 4, 2010, the Clerk of the Court entered Default against Defendant. (AA I, 0171-0175.)

Despite repeated requests, Defendant failed and refused to provide any insurance information, or a response that Defendant had no insurance. Consequently, Plaintiff was again forced to bring yet another Ex Parte Motion for Order to Show Cause Why Defendant Fallini and Her Counsel Should Not Be Held in Contempt and Possible Sanctions Be Imposed. (AA I, 0176-0187.) The Order to Show Cause was granted, and another contempt hearing was held on **May 24, 2010**. Although Defendant and her counsel, Harry Kuehn, were not in attendance at the hearing, Thomas Gibson, Esq., Mr. Kuehn's law partner, appeared at the hearing. (AA I, 0194.) Following argument by counsel, the Court made substantial findings of fact and conclusions of law. Additionally, the Court once again held Defendant and her counsel in contempt of court and sanctioned them an additional $5,000.00. (AA I, 0191-0201.) Further, the Court again ordered Defendant to provide the information that had been ordered on several prior occasions, and imposed a $500.00 per day sanction, beginning **June 1, 2010**, if Defendant did not respond as ordered. (AA I,

0191-0201.)

On **June 17, 2010**, Defendant filed a substitution of attorneys, substituting Marvel & Kump and John Ohlson, Esq. for the firm of Gibson & Kuehn. (AA I, 0202-0203.)

On **June 21, 2010**, Plaintiff filed an Application for Default Judgment. (AA II, 0204-0265.) On **June 23, 2010**, Defendant filed an Opposition to the Application for Default Judgment, arguing that the Judgment should not be entered because it was an injustice to her to allow Default Judgment to be entered against Defendant. (AA II, 0266-0268.)

On **July 2, 2010**, Defendant filed a Motion to Reconsider Prior Orders, asking the court to reconsider the Order granting summary judgment and the Order striking the Answer and Counterclaim. (AA II, 0269-0295.) In that Motion, Defendant, through her counsel, argued that "the Court was forced to accept the false factual premise **due to Kuehn's failures**." (AA II, 0278 (emphasis added).) Defendant went on to explain how Mr. Kuehn had breached his duty of professional responsibility to his client. (AA II, 0279.) There was no mention of any alleged "fraud on the Court" by Plaintiffs counsel, Mr. Aldrich.

On **July 19, 2010**, a hearing was held on Defendant's Motion for Reconsideration of Prior Orders. That motion was denied and the district court proceeded with a prove up hearing. During the hearing, the district court allowed Defendant's counsel to cross-examine witnesses and to call his own witness – Defendant Fallini – despite the fact that Defendant's Answer had been stricken and default had been entered against her. Defendant testified that the incident occurred in open range land. (AA II, 0322.) When Plaintiff's counsel objected to the question by *Defendant's* attorney as to whether the incident had occurred in open range land, the following critical exchange occurred:

THE COURT: **It doesn't matter. I'm aware that it is.**

Go ahead.

MR. OHLSON: **If you are, Your Honor, you'll take judicial notice of that?**

THE COURT: **That'll be fine.**

(AA II, 0322 (emphasis added).) It is therefore indisputable that the district court confirmed it knew where the incident occurred and that the court was taking judicial notice that the incident occurred in open range land.

On **August 18, 2010**, an Order was entered in this matter wherein the district court awarded Plaintiff $1,000,000.00 in damages for grief, sorrow and loss of support, $1,640,696.00 in damages for future lost earnings, $50,000.00 in attorney's fees, $35,000.00 in sanctions levied against Defendant, and $5,188.85 in funeral and other related expenses. (AA II, 0335-0341.) On **September 7, 2010**, Defendant filed a Notice of Appeal. (AA II, 0342-0344.)

C. Procedural History While First Appeal Pending

On **January 31, 2011**, Susan and Joe Fallini filed a Complaint for Declaratory Relief in Tonopah, Nevada. (AA II, 0346-0355.) The defendants who had been named in that action included Plaintiff's counsel, John P. Aldrich, Esq., and The Hon. Robert W. Lane. Included in those claims was an accusation that Mr. Aldrich's pleadings in this case "contained allegations that were false, misleading, and/or have no evidentiary support, in violation of Nevada law." (AA II, 0351.) Mr. Aldrich filed a Motion to Dismiss on **March 25, 2011**. (AA III, 0360-0453.) A hearing was held on **June 6, 2011** in Tonopah, Nevada. At the conclusion of this hearing, the case was dismissed with prejudice. The Order granting Aldrich's Motion to Dismiss was entered on **June 26, 2014**. (AA VI, 1119-1122.)

On **March 2, 2011**, the Nevada Supreme Court entered an Order Reinstating Briefing, giving Defendant Fallini 15 days to file a transcript request form and 90 days to file an opening brief and appendix. On **March 10, 2011**, Defendant Fallini

filed a Certificate of No Transcript Available. (AA II, 0357-0359.)

On or about **May 31, 2011**, Defendant filed her first Opening Brief. (AA III, 0497-0518.) Defendant filed an Amended Certificate of Service of Appellant's Opening Brief on or about **June 7, 2011**. (AA II, 0519-0521.) In her Opening Brief, Defendant Fallini argued that counsel for Plaintiff, John P. Aldrich, had violated Nevada Rules of Professional Conduct 3.1, 3.3, and 8.4. Despite the fact that Defendant had admitted the subject facts by failing to respond to discovery over a period of years, Defendant asserted that Mr. Aldrich had asserted facts that he knew or should have known were false. (AA III, 0510-0511.) Defendant even asserted that the Honorable Robert W. Lane had violated the Code of Judicial Conduct. (AA III, 0511.)

On **July 8, 2011**, Plaintiff filed her Respondent's Answering Brief. (AA III, 0525-0556.) In her pleading, Plaintiff clearly and methodically responded to each unfounded assertion of Mr. Aldrich's alleged misconduct and provided the Supreme Court with extensive Nevada case authority setting forth the law regarding NRCP 36 admissions – including the fact that once matters are admitted, they are conclusively established in the case. (AA III, 0545-0546.)

On **July 29, 2011**, Defendant filed Appellant's Reply Brief. (AA III, 0557-0576.) Once again Defendant addressed the alleged misconduct by Mr. Aldrich. (AA III, 0568-0569.) On **August 19, 2011**, the Supreme Court filed an Order Submitting Appeal for Decision Without Oral Argument. (AA III, 0577.)

On or about **October 5, 2011**, Defendant/Respondent filed a Motion for Order Allowing Supplementation of Appendix and Re-Opening of Briefs. (AA IV, 0578-0586.) Attached to said motion was a transcript of the prove-up hearing. (AA IV, 0588-0626.) On or about **October 17, 2011**, Plaintiff filed Respondents' Opposition to Motion for Order Allowing Supplementation of Appendix and Re-Opening of Briefs. (AA IV, 0627-0651.) Ultimately, Defendant's Motion was

granted on **October 24, 2011**. (AA IV, 0652-0653.) The parties were given additional time to file their respective briefs. (AA IV, 0652-0653.)

On or about **November 17, 2011**, Defendant filed her Amended Opening Brief. Defendant Fallini repeated her arguments that counsel for Plaintiff had violated Nevada Rules of Professional Conduct 3.1, 3.3, and 8.4, and that the Honorable Robert W. Lane had violated the Code of Judicial Conduct. (AA IV, 0654-0676.) Defendant further noted that the district court had taken judicial notice of the location of the incident – and concluded that it had indeed occurred in open range. (AA IV, 0661-0662.) Despite the district court's taking judicial notice of the location of the incident, Defendant persisted in her argument that Mr. Aldrich had somehow "allow[ed] misrepresentations to stand perpetrating misconduct of his own." (AA IV, 0667.) Defendant also asserted that the district court had "failed to uphold the 'integrity of the tribunal.'" (AA IV, 0668.)

On or about **December 27, 2011**, Plaintiff filed her Amended Answering Brief. (AA IV, 0677-0713.) Yet again, Plaintiff addressed each unfounded assertion regarding Mr. Aldrich's alleged misconduct. (AA IV, 0698.) On or about **January 10, 2012**, Defendant filed her Appellants' [sic] Amended Reply Brief. (AA IV, 0714-0730.)

On **February 15, 2013**, the Supreme Court entered an Order Submitting Appeal for Decision Without Oral Argument. (AA IV, 0731.) On **March 29, 2013**, the Nevada Supreme Court entered an Order Affirming in Part, Reversing in Part, and Remanding. (AA IV, 0732-0738.) In its ruling this Honorable Court specifically addressed the arguments of Defendant related to her own admissions, and expressly found such arguments to be unpersuasive. (AA IV, 0733.) More specifically, the Supreme Court stated:

> 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.

. . .

> 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 (explaining 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.

(AA IV, 0733-0735.)

Significantly, the Supreme Court also addressed, in a footnote, the argument that Defendant should be relieved from the judgment due to her prior counsel's inaction, stating:

> We also reject Fallini' s attempt to distinguish herself from her prior counsel's ineptitude. "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." [Citations omitted.]

(AA IV, 0735, footnote 2.)

In reducing the award, this Honorable Court concluded that the district court

"abused its discretion by awarding separate damages for both loss of probable support and lost economic opportunity," and remanded the matter to the district court "for proceedings consistent with this order." (AA IV, 0737-0738.) That is, this Honorable Court remanded the matter to the district court only for purposes of reducing the award in accordance with this Court's decision and nothing else.

D. Procedure After Order Affirming in Part, Reversing in Part, and Remanding But Before Entry of Final Judgment Following First Appeal

On **April 9, 2013**, Defendant filed Appellant's Petition for Rehearing. (AA IV, 0739-0757.) That Petition raised the identical issues that had already been considered – and expressly ruled upon – by the Supreme Court in Defendant's appeal, including the issue of alleged fraud against Mr. Aldrich. (AA IV, 0753-0754.) An Order Denying Rehearing was thereafter entered on **June 3, 2013**. (AA IV, 0758.)

On **June 5, 2013**, Defendant filed Appellant's Petition for En Banc Reconsideration. (AA IV, 0759-0778.) Once again, the Petition was nearly identical to the Petition for Rehearing, and specifically included the allegations of fraud against Mr. Aldrich. (AA IV 0773-0775.) On **July 18, 2013**, the Supreme Court entered an Order Denying En Banc Consideration. (AA IV, 0779-0780.)

On **August 14, 2013**, the Supreme Court entered Remittitur. (AA IV, 0781.)

On or about **August 15, 2013**, Defendant filed a Motion to Disqualify Judge Robert W. Lane from Any Further Proceedings in This Case and to Transfer This Case to the Hon. Kimberly A. Wanker. (AA IV, 0782-0787.) In that Motion, Defendant took a position that is entirely the opposite of Defendant's position in her later-filed Motion for Relief from Judgment Pursuant to NRCP 60(b). Defendant asserted that Judge Lane should be disqualified because he violated his duty of impartiality, noting that he "acknowledged that the portion of the highway on which the accident in which the Adams' son was killed occurred was open range – *a fact that is a substantive and complete defense to Adams' claims of liability against Fallini.*" (AA IV, 0784 (emphasis in original).) Defendant then argued that Judge

Lane should recuse himself because Defendant had sued him (and presumably could no longer be impartial) and because "the judgment reflects a failure by Judge Lane to uphold and apply the law and to act in a manner that promotes public confidence in the integrity of the judiciary where there is clear evidence of *egregious* misconduct by an officer of the Court...." (AA IV, 0785 (emphasis in original).)

On or about **September 4, 2013**, Plaintiff filed her Opposition to Motion to Disqualify Judge Robert W. Lane from Any Further Proceedings in This Case and to Transfer This Case to the Hon. Kimberly A. Wanker. (AA V, 0788-0834.) On **September 5, 2013**, the district court entered an order denying Defendant's motion. (AA V, 0835-0845.) On or about **September 6, 2013**, Defendant filed her Reply to that motion. (AA V, 0846-0849.) Defendant apparently simultaneously filed a Request for Submission of the motion. (AA V, 0850-0852.)

On **September 23, 2013**, the Court entered a Supplemental Order, noting that after reviewing Defendant's Reply, it was once again denying the Motion to Disqualify. (AA V, 0853-0854.)

On or about **September 25, 2013**, Plaintiff filed a Motion to Enter Final Judgment Following Remittitur. (AA V, 0855-0882.) On or about **September 30, 2013**, Defendant opposed the Motion, noting that there were no instructions regarding interest. (AA V, 0883-0894.) Plaintiff filed a Reply on or about **October 7, 2013**, advising the district court that Plaintiff had sought clarification from the Supreme Court. (AA V, 0901-0903.) The hearing on that motion was postponed pending further motion practice before the Supreme Court.

After receiving Defendant's objection and noticing the need for correcting the Remittitur, on or about **October 7, 2013**, Plaintiff filed a Motion to Reverse or Withdraw Remittitur and Clarify Instructions for Allowance of Interest. (AA V, 0895-0900.) On or about **October 14, 2013**, Defendant filed her Opposition to Motion to Withdraw Remittitur and Clarify Instructions for Allowance of Interest.

(AA V, 0904-0907.) On or about **January 3, 2014**, the Supreme Court entered an Order Granting Motion to Recall Remittitur and to Modify March 29, 2013, Order for Allowance of Interest. (AA V, 0908-0911.) On **February 12, 2014**, the Court re-issued Remittitur on the original judgment that had previously been entered. (AA V, 0912.) Following re-issuance of Remittitur, the district court asked the parties to attempt to resolve the amount of interest to be applied. The parties could not agree.

On or about **March 11, 2014**, nearly four years after default judgment was entered against Defendant, Defendant filed a Jury Demand. (AA V, 0913-0915.)

On **March 25, 2014**, Defendant filed her Objection to Proposed Judgment. (AA V, 0916-0924.) One of the exhibits to Defendant's Motion was a proposed judgment that had been signed by Defendant's counsel. Plaintiff ultimately stipulated to Defendant's proposed judgment. Plaintiff thereafter notified the district court of this decision in her Reply filed April 10, 2014. (AA V, 0925-0926.)

Final Judgment was entered on **April 28, 2014**; Notice of Entry was provided on **May 6, 2014**. (AA V, 0927-0930.)

E. Procedure After Entry of Final Judgment in Plaintiff's Favor Following the First Appeal

On or about **May 20, 2014**, Defendant filed a Motion for Relief from Judgment Pursuant to NRCP 60(b). (AA V, 0931-1008.) Defendant's Motion was based on the following alleged grounds:

1. "Opposing counsel [Aldrich], an officer of the court, knowingly forced fraudulent facts on the court and failed to correct misrepresentations thereby committing fraud upon the court;"
2. "Ms. Fallini's previous counsel's incompetence, neglect, and misconduct, denied Ms. Fallini an opportunity to advance her meritorious defenses;"
3. "[P]ublic policy strongly supports deciding cases on the merits;" and
4. "[T]he merits of this case, as known by all the parties *prior to filing suit*

in 2007, provide Defendant with an absolute defense to liability." (AA V, 0932 (emphasis in original).)

In the Motion for Relief from Judgment Pursuant to NRCP 60(b), Defendant sought to introduce evidence of a police report and a website, in an attempt to overcome the legally-established admissions that are now over eight years old.

In reality, each of these allegations had already been addressed by the Nevada Supreme Court on appeal (**three times** if the Court counts its denial of Defendant's Petition for Rehearing and Petition for En Banc Reconsideration). Defendant was now seeking to assert "fraud" as her grounds to set aside the judgment that had already been affirmed by the Nevada Supreme Court – in hopes that she could overcome the fact that the Motion had been brought four years after the original judgment was entered.

The first alleged grounds for setting aside the judgment (i.e., Mr. Aldrich's alleged fraud) was already litigated before and decided by the district court in this case (through the Motion to Reconsider Prior Orders). Additionally, the Nevada Supreme Court considered the assertions that had been made by Defendant (asserted in both Opening Briefs and Replies on the direct appeal and in the Petition for Rehearing and Petition for En Banc Reconsideration), and found they had no merit. And another district court judge in the Fifth Judicial District Court (through the separate lawsuit Fallini filed against Mr. Aldrich and Judge Lane in Tonopah, Nevada while the first appeal was pending) found the allegations had no merit.

The second and third grounds alleged in Defendant's Motion for Relief from Judgment have already been exhaustively addressed during the lengthy history of this case and do not constitute fraud, nor were they the reason the Motion was granted. As for the fourth alleged ground, it is essentially the same as the fraud allegation.

On or about **June 9, 2014**, Plaintiff filed a Countermotion to Strike Defendant's Motion for Relief from Judgment Pursuant to NRCP 60(b), or in the

Alternative, Opposition to Motion for Relief from Judgment Under NRCP 60(b). (AA VI, 1009-1109.) In her pleading, Plaintiff argued that the Motion for Relief from Judgment Pursuant to NRCP 60(b) was a fugitive document and should never have been filed. (AA VI, 1009.) Plaintiff reminded the district court that the fraud argument was legally untenable because the Nevada Supreme Court had already ruled on this issue. Plaintiff also attached, as exhibits to the Countermotion and Opposition, Defendant's Motion to Reconsider Prior Orders, the separate Complaint filed by Defendant in Tonopah, and Defendant's appellate brief, setting forth exactly where Defendant had already unsuccessfully raised the allegation of fraud on the court on multiple occasions. (AA VI, 1020-1109.)

On or about **June 16, 2014**, Defendant filed her Reply Memorandum in Support of Her Rule 60(b) Motion for Relief from Judgment and Opposition to Plaintiff's Countermotion to Strike. (AA VI, 1110-1118.) In her Reply, Defendant completely ignored the prior procedural history of this case before both the district court and Supreme Court, as well as the separate action she had filed in Tonopah, Nevada, no doubt because all of them had specifically addressed the factual allegations of the alleged fraud on the court by Mr. Aldrich. The entire brief ignored the actual facts and procedure of the case, and pushed ahead to claim that this issue was just now being brought before the district court.

On **July 28, 2014** the hearing took place regarding Defendant's Motion for Relief from Judgment Pursuant to NRCP 60(b) and Opposition to Plaintiff's Countermotion to Strike. What should have been a short and routine motion hearing quickly turned into a circus. Defendant Fallini, who a rancher, brought 60 or so "supporters" with her. Defendant's counsel then addressed the issue of Defendant's "supporters" with the district court as follows:

> "Your Honor, as you can see, there are several supporters here because they also have a stake in the outcome of this case. It's not just Ms. Fallini, who's here." (AA VI, 1126, ls. 20-23.)

These "supporters" continued to be a topic of conversation at various times throughout the hearing. (AA VI, 1126, ls. 20-23; 1156, l. 19 through 1157, 1. 1; 1176, 1. 9 through 1177, 1. 3; 1189, 1. 2 through 1191, 1. 2.) The Judge then entered into a lengthy discussion, during which he addressed the large crowd in many respects. (AA VI, 1191 through 1202, 1. 24.)

During the hearing, Defendant's attorney argued that Mr. Aldrich "blatantly ignored and violated his duty of candor and committed fraud upon the Court..." (AA VI, 1127, ls. 24-25) and asserted – contrary to the position Defendant had previously taken in her Motion to Disqualify the district court judge – that "it's not the Court's fault because the Court relied on fraudulent representations. The Court did its job. It trusted the lawyers in this case." (AA VI, 1128, 1. 23 through 1129, 1. 1.) Defendant's attorney went on to assert that "what followed was a pattern of overzealousness and deceit on the part of opposing counsel..." (AA VI, 1131, ls. 4-6) due to "fraudulent discovery requests and motion practiced[sic] by opposing counsel." (AA VI, 1131, ls. 8-10.)

Defendant's counsel then continued to repeat and rehash these same arguments over and over again throughout the lengthy motion hearing. He also tried to admit hearsay evidence through authenticated documents. The district court acknowledged that "at some point in the litigation I learned this was open range...." (AA VI, 1194, ls. 6-7.)

As he was commenting on the prior appeal, the district court stated "and this case was appealed up to the Supreme Court by good attorneys who made full arguments to the Supreme Court about why Judge Lane should be reversed, he was wrong. And I wasn't wrong." (AA VI, 1196, ls. 19-23.) The district court further commented "I think the main attacks were that we should have known it was open range, and I'm embarrassed to admit I didn't. I didn't know it was open range at the beginning..." (AA VI, 1197, ls. 11-14) "and I was like oh, sure. That's open range.

What's that mean? And I'm learning, oh, crud, she shouldn't have lost this case..." (AA VI, 1197, ls. 17-20) and "even if I had known it was open range, I can't kick it out." (AA VI, 1197, ls. 24-25.)

The district court, seemingly acknowledging that there was no fraud on the court, continued:

> "if you take this up to the Supremes – if I rule in your favor and I say fraud on the Court and excusable neglect, and we'll send it up to the Supremes where they've got seven judges who can take a year with 14 law clerks and a staff of attorneys to decide if it's the right call or not, we'll let the Supreme Court decide, and they'll make the right decision, even though I don't think you're going to prevail, and I think the Supreme Court will agree with my gut feeling right now, which is it's not there.
>
> ...
>
> So let's give them a shot. Let's let the Supreme Court decide if this was fraud on the Court based on your definitions. **I don't think it was**."

(AA VI, 1203, ls. 3-13, 16-19 (emphasis added).) The district court later commented that it could "go back and do some more research on it, rather than to just turning it over to the Supremes and letting them decide." (AA VI, 1204, 1. 24 through 1205, 1. 2.) After some discussion with Defendant's attorney about whether Defendant could appeal, the Court took the matter under advisement. (AA VI, 1205-1206.)

Following the hearing on **July 28, 2014**, the Court entered an Order on **August 6, 2014**. Notice of Entry of Order was provided on or about **August 13, 2014**. (AA VI, 1218-1233.) The Court granted Defendant's Motion for Relief from Judgment Pursuant to NRCP 60(b) and set aside the four-year-old judgment. (AA VI, 1231, ls. 25-26.)

F. Procedure Following Entry of the August 6, 2014 Order

Plaintiff filed a Writ Petition with the Nevada Supreme Court, asking the Nevada Supreme Court to overturn the August 6, 2014 Order.[1] The Nevada Supreme

---

[1] Plaintiff refers the Court to Case No. 66521 for the record of the writ petition. Because the writ petition was extremely lengthy, and to avoid unnecessary duplication, the large majority of the documents related to the writ

Court issued an Order to Show Cause why the writ petition should not be dismissed, Plaintiff responded and Defendant replied. The Nevada Supreme Court dismissed the Writ Petition. (Order Denying Extraordinary Writ Relief, (AA VII, 1234-1236.)

Defendant filed a Motion for Entry of Final Judgment. (AA VII. 1237-1240.) Plaintiff filed an Opposition to Motion for Entry of Final Judgment and 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. (AA VII, 1241-1366.) The district court later denied all of Plaintiff's countermotions and entered final Judgment in favor of Defendant on April 17, 2015. Notice of Entry of the April 17, 2015 Order was provided on April 21, 2015. (AA VII, 1367-1371.) Plaintiff filed a Notice of Appeal on May 15, 2015. (AA VII, 1372-1374.)

Following the entry of final Judgment in Defendant's favor, Defendant has moved for attorney's fees and costs, seeking an award of hundreds of thousands of dollars in attorney's fees against Plaintiff and Mr. Aldrich personally based on the district court's finding of fraud in its August 6, 2014 Order. Because the issue of attorney's fees and costs is still pending before the district court, the documents related to those issues will not be included in the appendix or addressed in this brief, other than to point out that if this Honorable Court overturns the August 6, 2014 Order and those following it, and confirms the judgment it already affirmed in this case, the attorney fee issue will become entirely moot.

V.

STANDARD OF REVIEW

All decisions of the district court following this Court's Order Affirming in Part, Reversing in Part, and Remanding are subject to de novo review. The district

---

petition are not included separately here; many of the documents in the appendix to the writ are included in this appendix.

court lacked subject matter jurisdiction to enter the orders it did following this Court's entry of the Order Affirming in Part, Reversing in Part, and Remanding. This Court reviews de novo issues of subject matter jurisdiction. Ogawa v. Ogawa, 125 Nev. 660, 667, 221 P.3d 699, 704 (2009). "[W]hether a court lacks subject matter jurisdiction 'can be raised by the parties at any time, or sua sponte by a court of review, and cannot be conferred by the parties.'" Landreth v. Malik, 127 Nev. 175, 179, 251 P.3d 163, 166 (2011) (quoting Swan v. Swan, 106 Nev. 464, 469, 796 P.2d 221, 224 (1990)).

Moreover, this Court's review of the questions of law considered by the district court, including its decision to grant Defendant's Motion for Relief from Judgment, as well as the Motion for Entry of Final Judgment, are also reviewed de novo. Sanchez v. Wal-Mart Stores, 125 Nev. 818, 823, 221 P.3d 1276, 1280 (2009).

Should this Court find that the district court had jurisdiction to consider Defendant's Motion for Relief from Judgment Pursuant to NRCP 60(b) and that it will now review the propriety of the Order entered on August 6, 2014 (and all subsequent orders), this Court's review of the district court's decision will be based on the abuse of discretion standard. Bianchi v. Bank of America, 124 Nev. 472, 474, 186 P.3d 890, 892 (2008).

VI.

LEGAL ARGUMENT

A. The District Court's August 6, 2014 Order Is Void, as Are All Subsequent Orders

The district court had no subject matter jurisdiction to grant Defendant's Motion for Relief from Judgment Pursuant to NRCP 60(b). The Nevada Supreme Court has already decided the same issues Defendant raised in that Motion. Consequently, all of the district court's orders from the August 6, 2014 Order forward are null and void and of no legal effect. See Cox v. Eighth Jud. Dist. Ct., 124 Nev. 925, 193 P.3d 530, 534 (2008) ("Nevertheless, we conclude that once an NRCP 41(e)

motion has been brought, but improperly denied, district courts lack further jurisdiction to take an action to judgment on its merits. Any subsequent orders entered by district courts going to the merits of an action are in ex-cess of their jurisdiction and, therefore, void."); D.R. Horton, Inc. v. Eighth Jud. Dist. Ct., 358 P.3d 925 (Nev. 2015) (in an NRCP 41(e) context, noting that once the district court has no jurisdiction, "its subsequent orders going to the merits of the action are void." (citing Cox, supra)); Holdaway-Foster v. Brunell, 330 P.3d 471 (Nev. 2014) (citing Swan v. Swan, 106 Nev. 464, 469, 796 P.2d 221, 224 (1990) (holding that a district court's custody ruling was void because the court lacked subject matter jurisdiction)).

"The rule of mandate requires a lower court to act on the mandate of an appellate court, without variance or examination, only execution." United States v. Garcia-Beltran, 443 F.3d 1126, 1130 (9th Cir. 2006), *cert. denied*, 549 U.S. 935, 127 S. Ct. 319, 166 L. Ed. 2d 239 (2006). The Ninth Circuit Court of Appeals described the rule of mandate doctrine as follows:

> When a case has been once decided by this court on appeal, and remanded to the [district court], whatever was before this court, and disposed of by its decree, is considered as finally settled. The [district court] is bound by the decree as the law of the case, and must carry it into execution according to the mandate. That court cannot vary it, or examine it for any other purpose than execution; or give any other or further relief; or review it, even for apparent error, upon any matter decided on appeal; or intermeddle with it, further than to settle so much as has been remanded. . . . But the [district court] may consider and decide any matters left open by the mandate of this court . . . .

United States v. Thrasher, 483 F.3d 977, 981-982 (9th Cir. 2007) (citing In re Sanford Fork & Tool Co., 160 U.S. 247, 255-56, 16 S. Ct. 291, 40 L. Ed. 414 (1895)). In United States v. Houser, 804 F.2d 565 (9th Cir. 1986), the Ninth Circuit Court of Appeals held:

> A trial court may not, however, reconsider a question decided by an appellate court. When matters are decided by an appellate court, its rulings, unless reversed by it or a superior court, bind the lower court. Upon remand, an issue decided by an appellate court may not be reconsidered.

Id. at 567 (internal citations omitted). The rule of mandate doctrine serves "an

interest in consistency, finality and efficiency" and "preserv[es] the hierarchical structure of the court system." Thrasher, 483 F.3d at 982. "[I]f a district court errs by violating the rule of mandate, the error is a jurisdictional one." Id.

In the Amended Opening Brief of her direct appeal before the Nevada Supreme Court, Defendant Fallini argued that counsel for Plaintiff had violated Nevada Rules of Professional Conduct 3.1, 3.3, and 8.4, and that the Honorable Robert W. Lane had violated the Code of Judicial Conduct. (AA IV, 0654-0676.) Defendant further noted that the district court *had taken judicial notice* – at Defendant's request – of the location of the incident – and concluded that it had indeed occurred in open range. (AA IV, 0661-0662.) Despite this, Defendant persisted in her position that Mr. Aldrich had somehow "allow[ed] misrepresentations to stand perpetrating misconduct of his own." (AA IV, 0667.) Defendant also asserted that the district court "failed to uphold the 'integrity of the tribunal.'" (AA IV, 0668.)

In its Order Affirming in Part, Reversing in Part, and Remanding, entered on March 29, 2013, the Supreme Court specifically addressed the same arguments that were subsequently raised by Defendant in her Motion for Relief from Judgment related to her own admissions. This Court expressly found those arguments to be unpersuasive. (AA IV, 0732-0738.) More specifically, this Court stated:

> 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.
>
> . . .
>
> 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 (explaining 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.

(AA IV, 0733-0735.) The Nevada Supreme Court then remanded the case for further proceedings "consistent with this order," the scope of which was very narrow:

> 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 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.

(AA IV, 0737-0738 (citation omitted)).

Despite the Nevada Supreme Court's clear and unambiguous order on all of the issues raised by Defendant's Motion for Relief from Judgment, the district court chose to ignore this Court's Order in its entirety, reversed the High Court's ruling, made unlawful and improper findings in its August 6, 2014 Order, and later entered judgment in Defendant's favor, grossly exceeding its jurisdictional authority in the process. The district court had no authority or jurisdiction to do so.

B. Likewise, the Law of the Case Doctrine Precluded the District Court from Granting Defendant's Motion for Relief from Judgment and All Subsequent Orders

In Recontrust Company, N.A., et al v. Zhang, 317 P.3d 814, 818 (Nev. 2014),

the Nevada Supreme Court discussed the law-of-the-case doctrine:

> The law-of-the-case doctrine "refers to a family of rules embodying the general concept that a court involved in later phases of a lawsuit should not re-open questions decided (i.e., established as law of the case) by that court or a higher one in earlier phases." Crocker v. Piedmont Aviation, Inc., 49 F.3d 735, 739, 311 U.S. App. D.C. 1 (D.C. Cir. 1995). Normally, "for the law-of-the-case doctrine to apply, the appellate court must actually address and decide the issue explicitly or by necessary implication. Dictor v. Creative Mgmt. Servs. L.L.C., 126 Nev. ___, ___, 223 P.3d 332, 334 (2010); see Wheeler Springs Plaza, L.L.C. v. Beemon, 119 Nev. 260, 266, 71 P.3d 1258, 1262 (2003) ("The doctrine only applies to issues previously determined, not to matters left open by the appellate court.").

Id.,317 P.3d at 818. The issues that were raised in Defendant's Motion for Relief from Judgment Pursuant to NRCP 60(b) are the same ones raised in her prior appeal (i.e., the absurd and unsupported allegation that Plaintiff and her counsel somehow perpetrated a fraud on the court by sending a request for admission that Defendant alleges Plaintiff or her counsel knew contained a false fact). (AA V, 0931-0954.) Since the Nevada Supreme Court has already ruled on those arguments, as explained above, the district court exceeded its jurisdiction and acted contrary to the law of the case when it granted Defendant's Motion for Relief from Judgment Pursuant to NRCP 60(b).

C. The Doctrine of Issue Preclusion Barred the District Court from Granting Defendant's Motion for Relief from Judgment and All Subsequent Orders

In similar fashion, the doctrine of issue preclusion barred the district court from granting Defendant's Motion for Relief from Judgment. The four elements for issue preclusion are:

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

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

Based on this Court's Order and the case authority, the doctrine of issue

preclusion applied to Defendant's Motion for Relief from Judgment, and it never should have been granted.

1. **The Issues Decided by the Nevada Supreme Court on Defendant's Direct Appeal Are Identical to Those Presented by Defendant to the District Court in Her Motion for Relief from Judgment**

Regarding the first element discussed in Alcantara, the issues Defendant raised had already been argued, and rejected, by the Nevada Supreme Court when it affirmed Plaintiff's judgment. Additionally, this Court declined to reconsider its previous rulings on two occasions when it denied Defendant's request for rehearing and Defendant's separate request for *en banc* reconsideration. (AA IV, 0779-0780.) These issues were also litigated in the separate action filed by Defendant (as a plaintiff against Mr. Aldrich and Judge Lane) in Tonopah, Nevada. Indeed Defendant Fallini (as a plaintiff in that matter) alleged that Mr. Aldrich had misinformed the court using allegedly false requests for admission. (AA II, 0348, 0351.) That action was ultimately dismissed after both Mr. Aldrich and Judge Lane filed separate motions to dismiss. (AA III, 0360-0453, 0454-0496, 0522-0524; AA VI, 1119-1122.) This element weighs heavily in favor of the application of issue preclusion.

2. **The Initial Ruling Was on the Merits and Final**

The second element discussed in Alcantara also supports implementation of the doctrine of issue preclusion because this issue had already been litigated in two separate forums – at the district court level in Tonopah, Nevada and more importantly, before this Court. This Court's prior ruling in the first appeal in this case was on the merits and final, and the matter was fully litigated. (AA IV, 0733-0735.) The ruling in this case became final when this Honorable Court found in Plaintiff's favor nearly three years ago. (AA IV, 0732-0738.)

Likewise, by dismissing the case outright, with prejudice, the court in Tonopah necessarily decided the issue on the merits, which means the matter was fully litigated in two forums. (AA III, 0522-0524; AA VI 1119-1122.) This factor weighs heavily

in favor of the application of issue preclusion.

3. **Defendant Fallini Is a Party in All Relevant Matters**

The third element from Alcantara is met as well. Not only was Fallini a party to the Tonopah lawsuit, which was dismissed, she was and is a party to this lawsuit. This element strongly supports the application of issue preclusion.

4. **The Issues Were Actually and Necessarily Litigated**

The fourth Alcantara factor is present as well. These matters have been actually and necessarily litigated in this case, both before the Supreme Court and in the separate lawsuit against Mr. Aldrich and Judge Lane in Tonopah. The moment the Nevada Supreme Court affirmed the merits of the Plaintiff's judgment (after thoroughly considering the same arguments that were brought by Defendant in her Motion for Relief from Judgment), the issues were fully litigated and finally adjudicated. The same holds true for the dismissal of the Tonopah action.

In short, Defendant and the district court have intentionally and inexplicably ignored the Nevada Supreme Court's decision by attempting to resurrect the merits of the underlying case through re-hashing spurious allegations on which Defendant lost, both on appeal to this Court and in a separate action Defendant filed in Tonopah. The initial ruling was not only on the merits and became a final judgment, but it was also affirmed by the Nevada Supreme Court. This case is squarely within the Nevada case authority regarding the cessation of lawsuits involving claim or issue preclusion.

D. Even If the Doctrines of Rule of Mandate, Law of the Case, and Issue Preclusion Do Not Apply, the District Court Acted Contrary to Law and Abused Its Discretion When It Granted Defendant's Motion for Relief from Judgment Pursuant to NRCP 60(b)

The grounds set forth in Defendant's Motion had already been litigated before the district court in this case, a separate district court Judge in the Fifth Judicial District, and most importantly, the Nevada Supreme Court. Even so, there were several grounds – all of which have already been before the Nevada Supreme Court – upon which the final judgment in Plaintiff's favor after the first appeal was properly

entered. Nevertheless, the district court abused its discretion in several respects when it granted Defendant's Motion for Relief from Judgment, as will be demonstrated below.

1. There Was No Fraud on the Court

The Nevada Supreme Court has held that "fraud upon the court" as used in NRCP 60(b) cannot be defined to mean "any conduct of a party or lawyer of which the court disapproves," because, among other things, such a definition would render the time limitation for motions under NRCP 60(b)(3) meaningless. NC-DSH, Inc. v. Gamer, 125 Nev. 647, 654, 218 P.3d 853, 858 (2009). The Nevada Supreme Court has adopted a standard for "fraud on the court" that

> "embrace[s] only that species of fraud which does, or attempts to, subvert the integrity of the court itself, or is a fraud perpetrated by officers of the court so that the judicial machinery cannot perform in the usual manner its impartial task of adjudging cases...and relief should be denied in the absence of such conduct."

Id. (quoting Demjanjuk v. Petrovsky, 10 F.3d 338, 352 (6th Cir. 1993)). Accordingly, cases require a party seeking to show fraud on the court to present *clear and convincing evidence* of the following elements: "(1) [conduct] on the part of an officer of the court; that (2) is directed to the judicial machinery itself; (3) is intentionally false, willfully blind to the truth, or is in reckless disregard of the truth; (4) is a positive averment or a concealment when one is under a duty to disclose; and (5) deceives the court." Johnson v. Bell, 605 F.3d 333, 339 (6th Cir. 2010); (quoting Carter v. Anderson, 585 F.3d 1007, 1011-12 (6th Cir. 2009)). "In practice, this means that even fairly despicable conduct will not qualify as fraud on the court." Moore's Federal Practice § 60.21[4][c] (citing cases for the proposition that perjury and non-disclosure by a single litigant did not rise to the level of fraud on the court).

In the present case, Plaintiff's counsel did nothing wrong, and it is abundantly clear that none of the final three required elements can be met. Mr. Aldrich did not conceal any facts, nor did he present intentionally false facts. To the contrary, Mr.

Aldrich zealously advocated for his client, seeking to identify what facts and law would be at issue in the case by following the rules of disocvery and sending requests for admission, and other discovery requests, to Defendant. Those requests were specifically tailored to address the issues raised by Defendant in her answer and counterclaim. When Defendant never responded to any of the discovery requests, and the facts in the requests for admission were unconditionally deemed admitted by Defendant, pursuant to NRCP 36.

Plaintiff then moved for partial summary judgment, advising the district court that there were facts that had been admitted by Defendant by not responding to the requests for admission in a timely fashion. (AA I, 0014, ls. 25-26.) Once again, Plaintiff notified the district court that "[t]o date, the Requests for Admission have not been answered, and therefore are deemed admitted." (AA I, 0015, ls. 17-18.) Plaintiff then listed the items admitted by Defendant's non-response. Plaintiff cited NRCP 36 and again notified the district court that Defendant had not responded to requests for admission, and again set forth the facts that had been conclusively proven. (AA I, 0018-0019.)

Defendant did not oppose the motion for partial summary judgment. Pursuant to DCR 13, Defendant's failure to serve and file a written opposition "may be construed as an admission that the motion is meritorious and a consent to granting the same," and the district court properly granted partial summary judgment on the issue of liability in Plaintiff's favor. In the meantime, Plaintiff continued to attempt to gather more information through discovery, but Defendant failed and refused to participate. This resulted in multiple sanctions being issued against Defendant, until her answer and counterclaim ultimately were stricken. (AA I, 0165-0170, 0171-0175.) All of those events occurred properly and in accordance with Nevada law. There was simply no fraud, and no attempt to deceive the district court on the part of Plaintiff or her counsel.

Additionally, the court ***must actually be deceived***. As shown above, that unequivocally and undeniably did not happen in this case. Quite to the contrary, the district court had an abundance of information – despite the fact that Defendant's pleadings had been stricken. In her Motion to Reconsider Prior Orders, Defendant's counsel had even attached a legally inadmissible letter and four unsigned affidavits claiming that the location where the incident occurred was open range land – contrary to Defendant's uncontested admissions.

On **July 19, 2010**, a hearing was held on Defendant's Motion for Reconsideration of Prior Orders. That motion was denied and the Court proceeded with a prove up hearing. At the hearing, the district court allowed Defendant's counsel to cross-examine witnesses and to call his own witnesses. Even though her answer had been stricken and default had been entered against her, the district court allowed Defendant to testify that the incident occurred in open range land. (AA II, 0322.) Further, after Plaintiff's counsel objected to the question whether the incident occurred in open range land, the following exchange occurred:

> THE COURT: **It doesn't matter. I'm aware that it is.**
>
> Go ahead.
>
> MR. OHLSON: **If you are, Your Honor, you'll take judicial notice of that?**
>
> THE COURT: **That'll be fine.**

(AA II, 0322 (emphasis added).) Thus, the district court confirmed it knew where the incident occurred and took judicial notice – at the request of *Defendant's counsel* – that the incident occurred in open range land. Thus, the district court was not deceived in any fashion. In short, there is no evidence whatsoever of fraud, and certainly no clear and convincing evidence of fraud.

It is important to Plaintiff's counsel that this Court specifically find that he absolutely ***did not*** perpetrate a fraud on the court. His personal and professional

reputation are at stake, and the district court's "finding" that he attempted to perpetrate a fraud on the court is just plain wrong and could be damaging to the reputation he has spent years building. Mr. Aldrich is an active member of the bars in Nevada, Utah, and Idaho, and is understandably concerned about the potential side effects of the district court's "finding," such as insurance, pro hac vice applications, being held responsible for Defendant's attorney's fees if the district court grants her latest request, and the like. It is therefore imperative that the Supreme Court make clear that Mr. Aldrich ***did not*** perpetrate a fraud on the court.

2. The District Court Erred by Considering Hearsay and Unauthenticated Documents at the July 28, 2014 Hearing

The district court issued several Findings of Fact and Conclusions of Law in its August 6, 2014 Order. These are findings that are based on untimely hearsay and unauthenticated documents presented in the Motion for Relief from Judgment, and are not based on any evidence properly before the district court. The district court's reliance on the untimely inadmissible hearsay and unauthenticated documents – through which Defendant sought to contradict her own admissions under NRCP 36 – was an abuse of discretion.

Putting aside the fact that the July 28, 2014 hearing was not an evidentiary hearing, this new so-called "evidence" was legally irrelevant. *See* Smith v. Emery, 109 Nev. 737, 856 P.2d 1386 (1993).

NRCP 36 provides, in pertinent part:

> ....that the matter is admitted unless, within 30 days after service of the request, or within such shorter or longer time as the court may allow, or the parties may agree in writing,... the party to whom the request is directed serves upon the party requesting the admission a written answer or objection addressed to the matter, signed by the party or by the party's attorney.

In Smith v. Emery, 109 Nev. 737, 856 P.3d 1386 (1993), the Nevada Supreme Court found that failure to timely respond to requests for admission will result in those matters being **conclusively established**, and this is the case **even if the**

established matters are ultimately untrue. Id. The Court explained:

> "**[E]ven if a request is objectionable**, if a party fails to object and fails to respond to the request, that party should be held to have admitted the matter." Jensen v. Pioneer Dodge Center, Inc., 702 P.2d 98, 100-01 (Utah 1985) (citing Rutherford v. Bass Air Conditioning Co., 38 N.C.App. 630, 248 S.E.2d 887 (1978)). It is well settled that failure to respond to a request for admissions will result in those matters **being deemed conclusively established**. Woods, 107 Nev. at 425, 812 P.2d at 1297; Dzack, 80 Nev. at 347, 292 P.2d at 611. This is so **even if the established matters are ultimately untrue**. Lawrence v. Southwest Gas Corp., 89 Nev. 433, 514 P.2d 868 (1973); Graham v. Carson-Tahoe Hosp., 91 Nev. 609, 540 P.2d 105 (1975). Emery's failure to respond or object to the Smiths' request for admissions entitles the Smiths to have the assertions contained therein conclusively established.

Id. at 742-43 (emphasis added).

The evidence Plaintiff presented to the Court nearly six years ago in her unopposed Motion for Partial Summary Judgment included the uncontroverted legal admission by Defendant pursuant to NRCP 36. It is well settled law in Nevada that such admissions may properly serve as the basis for summary judgment against the party who failed to serve a timely response. *See* Wagner v. Carex Investigations & Sec., 93 Nev 627, 572 P.2d 921 (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***) (emphasis added).

Moreover, when Defendant Fallini did not oppose Plaintiff's Motion for Partial Summary Judgment, the Motion was properly granted. Nevada District Court Rule 13 addresses this exact situation. Nevada District Court Rule 13(3) provides, in pertinent part:

> Within 10 days after the service of a motion, the opposing party shall serve and file his written opposition thereto, together with a memorandum of point and authorities and supporting affidavits, if any, stating facts showing why the motion should be denied. Failure of the opposing party to serve and file his written opposition may be construed as an admission that the motion is meritorious and a consent to granting the same.

Even without the Rule 36 admissions by Defendant, the district court properly

granted Plaintiff's Motion for Partial Summary Judgment. This action by the district court was clearly permitted by District Court Rule 13 and was well within the discretion of the district court several years ago – as confirmed by this Honorable Court previously. (AA IV, 0732-0738.)

The district court also ignored the fact that it had properly ***stricken*** Defendant's pleadings, awarded sanctions, and granted default judgment against Defendant due to Defendant's repeated and rampant discovery abuses.

The district court's decision to ignore the prior history of the case and do a 180-degree reversal after 60 or so "supporters" of Defendant flooded the courtroom that day, and after Defendant sought to admit inadmissible, unauthenticated, and legally irrelevant hearsay evidence was an abuse of discretion, was contrary to law, and must be overturned.

3. Several of the District Court's Conclusions Were Improper and Based on Hearsay and Unauthenticated Documents That Are Not Relevant to the Admitted Facts of the Case

In granting Defendant's Motion for Relief from Judgment Pursuant to NRCP 60(b), the district court abused its discretion in several respects. Plaintiff asserts the Order as a whole is improper; due to space limitations, Plaintiff will highlight the most glaring errors.[2] Those include the items addressed below.

a. Finding of Fact #3

Finding of Fact #3 was improperly based on hearsay and unauthenticated documents. The district court found that Mr. Aldrich obtained the NHP Report. However, as Mr. Aldrich explained to the court, he was not in possession of the entirety of the purported report attached to the Motion for Relief from Judgment by

---

[2] In Finding 9, there is a typo. At the line located between line numbers 5 and 6, it says "At the hearing, Kuehn requested additional sanctions...." (AA VI, 1225.) It should say "At the hearing, **Aldrich** requested additional sanctions...."

Defendant. (AA VI, 1167.) This was a version he had never seen before, as explained at the hearing, and had not been properly authenticated. Further, it is well settled law that a police report is inadmissible hearsay. See NRS 51.035; NRS 51.065. The district court's consideration of inadmissible hearsay documents was an abuse of discretion.

b. Finding of Fact #4

Similarly, in Finding number 4, the district court referenced an alleged website that was allegedly constructed by Plaintiff. This "evidence" was not properly before the district court because the July 28, 2014 hearing was not an evidentiary hearing. Further, that unauthenticated hearsay document sought to contradict Defendant's own admissions pursuant to NRCP 36. The website information is also blatant inadmissible hearsay. See NRS 51.035; NRS 51.065. The district court's consideration if this inadmissible hearsay documentation was an abuse of discretion.

c. Conclusion that Mr. Aldrich knew or should have known that the accident occurred on open range

The district court concluded that "Mr. Aldrich knew or should have known that the accident occurred on open range," based on the following:

a. the Nevada Highway Patrol Accident Report,

b. a memorial website allegedly created by Plaintiff, and

c. the assertion of the open range affirmative defense in Defendant's Answer.

(AA VI, 1228, ls. 5-15.) According to the district court, this conclusion was reached "based on the totality of the circumstances." (AA VI, 1228, ls. 16-17.)

The above finding is improper for several compelling reasons. First, Mr. Aldrich's knowledge, or lack thereof, of where the incident occurred is of no relevance because the facts had already been conclusively established through discovery. Second, Defendant's pleadings had been stricken years ago in this matter as a discovery sanction. Third, Defendant had no right to submit new evidence to the

district court. Fourth, the prove-up hearing occurred back in 2010. Fifth, a prior appeal has already been considered and ruled upon by the Nevada Supreme Court in its Order Affirming in Part, Reversing in Part, and Remanding, entered on March 29, 2013. (AA IV, 0732-0738.) This conclusion was an abuse of discretion and contrary to this Honorable Court's prior ruling in the case.

d. Implication of wrongdoing for alleged failure to conduct a "reasonable inquiry"

Despite this Court's prior ruling, the district court erroneously concluded "At the bare minimum, Mr. Aldrich possessed enough information to conduct a reasonable inquiry into the open range status of the location where the accident occurred." (AA VI, 1228, ls. 18-20.) Not only did the district court fail to cite any law supporting this statement or any duty the district court seems to be implying, but the district court failed to recognize that propounding requests for admission is exactly the type of "reasonable inquiry" that the district court claimed Mr. Aldrich failed to conduct in this case. Again, as set forth above, those facts were conclusively proven, having been admitted by Defendant.

e. Conclusion that Aldrich allegedly "knew or should have known that a response from Kuehn was unlikely"

With regard to the timing of the sending of the requests for admission, the district court further concluded that "at this point in the case, Kuehn was failing to respond to various motions and requests to the extent the Aldrich knew or should have known that a response from Kuehn was unlikely." (AA VI, 1229, ls. 3-5.)

This conclusion is patently incorrect and contrary to the record. Additionally, this conclusion is both factually unsupported and legally inappropriate because there was no evidentiary hearing related to these facts and conclusions, nor were those facts even discussed during the July 28, 2014 hearing. Nevertheless, when Plaintiff's counsel sent the requests for admission on October 31, 2007, he had no reason to believe that Mr. Kuehn would not be participating in the discovery process. To the

contrary, Mr. Kuehn appeared in court and requested extensions of time to respond on multiple occasions, which the district court repeatedly granted. As the record makes abundantly clear, the district court was well aware of the status of discovery – and Defendant's failure to participate in that process – long before the default judgment was entered.

Moreover, even assuming this conclusion to be true, nowhere in NRCP 36 or any case analyzing NRCP 36 does the law state an attorney cannot send discovery to the opposing side unless he knows that opposing counsel will timely respond. Such a requirement would completely emasculate NRCP 36 and the rules of discovery by which all parties are governed. There was also no case authority whatsoever cited by the district court in its Order to support its misguided belief that there is an affirmative duty on the part of Plaintiff's counsel to notify Defendant's counsel that he has failed to do something in the case on behalf of the opposing party. Even so, as outlined above, Mr. Aldrich reached out repeatedly to Mr. Kuehn and received no response. Mr. Aldrich has a duty to represent his client diligently and zealously, which is exactly what he did and continues to do. This conclusion is an abuse of discretion.

f. Conclusion that Mr. Aldrich violated ethics rules and perpetrated a fraud upon the court

The district court made the following contradictory conclusions: "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." (AA VI, 1229, ls. 3-5.) Then, however, contrary to those statements, the district court – again without any supporting case law – concluded that "As an officer of the court [,] however, Mr. Aldrich violated his duty of candor under Nevada Rules of Professional Conduct 3.3 [the very rule cited by Defendant in her prior appeal] 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**." (AA VI, 1229, ls. 9-17 (emphasis added).) This finding is in direct contradiction to this Honorable Court's prior decision and the decision of the other district judge in Tonopah. It is also contrary to the law on fraud on the court, as there was no fraud and the court was never deceived. This conclusion also disregards the fact that at the prove up hearing on July 19, 2010, the district court was informed by Defendant herself through testimony – and later took judicial notice – that the incident occurred in open range. Of course, this was contrary to Defendant's NRCP 36 admissions. This conclusion that Mr. Aldrich violated ethics rules and perpetrated a fraud on the court was clearly an abuse of discretion.

g. The Court Was Influenced by the Presence of 60 or so "Supporters" of Defendant

Interestingly, the district court, in its conclusion, notes "This court followed the law and proper procedure throughout this case, as affirmed by the Supreme Court of Nevada." (AA VI, 1230, ls. 18-20 (emphasis added).) The district court, presumably swayed by the presence of the 60 or so "supporters" who were present at the hearing, went on to state "however, one cannot ignore the apparent injustice that Defendant has suffered throughout this matter. Ms. Fallini is responsible for a multi-million dollar judgment without the merits of the case even being addressed." (AA VI, 1230, ls. 18-20.) Again concluding that Mr. Aldrich "should have conducted a reasonable inquiry into the open range status prior to sending a request for admissions, and perhaps as early as prior to filing his Complaint" the district court concluded: "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." (AA VI, 1231, ls. 12-20.)

The merits of the case were finally adjudicated by this Honorable Court in its Order Affirming in Part, Reversing in Part, and Remanding. The district court had no authority to overrule this High Court. The district court's findings that Mr. Aldrich violated the Rules of Professional Conduct and "perpetrated a fraud upon the court" constitute gross error and an extreme abuse of discretion.

The district court abused its discretion and the Order entered on August 6, 2014, and all subsequent orders, should be overturned because all the subsequent orders stem directly from the district court's August 6, 2014 Order. Consequently, Plaintiff respectfully requests that this Court overturn the district court's dismissal of the case in the Order entered on April 17, 2015. Plaintiff further respectfully requests that this Court overturn the findings of the district court's August 6, 2014 Order, and make specific findings that: (1) the Nevada Supreme Court had already decided the issues raised by Defendant in her Motion for Relief from Judgment Pursuant to Rule 60(b), and (2) Plaintiff and her counsel absolutely did not perpetrate a fraud on the Court. In so doing, Plaintiff requests that this Court reinstate the judgment entered in Plaintiff's favor on April 28, 2014.

E. Even if the Court Finds the District Court Was Permitted to Set Aside the Judgment Entered on April 28, 2014, the District Court Committed Reversible Error When It Denied Plaintiff's Countermotion for Entry of Final Judgment

Following entry of the August 6, 2014 Order, Defendant moved for entry of final judgment. (AA VII, 1237-1240.) As part of Plaintiff's opposition to

Defendant's Motion for Entry of Final Judgment, Plaintiff countermoved for entry of final judgment in her favor. Plaintiff explained to the district court that Defendant had never challenged the Order granting summary judgment on appeal, nor had Defendant ever asked the district court to strike or overturn its Order granting partial summary judgment on the issue of liability. (AA VII, 1241-1366.)

When the district court set aside the Judgment that had been entered on April 28, 2014, it did not set aside the Order granting partial summary judgment, nor did Defendant ever ask the district court to strike or overturn that order, nor has Defendant ever asked this Court or the district court for permission to withdraw Defendant's Rule 36 admissions. Consequently, even after the district court somehow set aside the Judgment entered on April 28, 2014, Defendant's Rule 36 admissions continue to remain in place, the Order granting Plaintiff's Motion for Partial Summary Judgment remains in place, and there is still a finding of liability against Defendant.

Moreover, there are no remaining issues on damages in this case. Once the Nevada Supreme Court reduced the judgment amount during the first appeal, there were no longer any issues regarding damages left to be litigated, as a matter of law. Consequently, Plaintiff is entitled to the modified judgment amount, and the district court erred when it failed to enter such judgment.

VII.

CONCLUSION

The district court's Order granting Defendant's Motion for Relief from Judgment, entered on August 6, 2014, is void, was contrary to the law of the case, and is contrary to Nevada law. The district court exceeded its authority when it entered the August 6, 2014 Order. As a result, all subsequent orders are also void because all the remaining orders stem directly from the district court's August 6, 2014 Order.

Consequently, Plaintiff respectfully requests that this Court overturn and/or

vacate the findings of the district court's August 6, 2014 Order, and issue specific findings: (1) that the Nevada Supreme Court had already decided the issues raised by Defendant in her Motion for Relief from Judgment Pursuant to Rule 60(b), (2) that Plaintiff and her counsel absolutely did not perpetrate a fraud on the Court, and (3) that the judgment entered in Plaintiff's favor on April 28, 2014 be reinstated in its entirety as if the district court had not acted inappropriately. Further, Plaintiff respectfully requests that this Honorable Court overturn and/or vacate all orders subsequent to the August 6, 2014 Order, including the district court's improper and unlawful dismissal of the case in the Order entered on April 17, 2015.

DATED this 10th day of February, 2016.

ALDRICH LAW FIRM, LTD.

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

VERIFICATION

STATE OF NEVADA)
)
COUNTY OF CLARK)

I, John P. Aldrich, Esq., hereby declare under penalty of perjury of the laws of Nevada, that I am counsel for Appellant named in the foregoing Appellant's Opening Brief and know that contents thereof, the pleading is true of my own knowledge, except as to those matters stated on information and belief, and that as to such matters, I believe them to be true.

DATED this 10th day of February, 2016.

ALDRICH LAW FIRM, LTD.

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

CERTIFICATE OF COMPLIANCE

1. I hereby certify that this brief complies with the formatting requirements of NRAP 32(a)(4), the typeface requirements of NRAP 32(a)(5) and the type style requirements of NRAP 32(a)(6) because:

[X] This brief has been prepared in a proportionally spaced typeface using WordPerfect 12 in Times New Roman 14 pt. font; or

[ ] This brief has been prepared in a monospaced typeface using [state name and version of word-processing program] with [state number of characters per inch and name of type style].

2. I further certify that this brief complies with the page- or type-volume limitations of NRAP 32(a)(7) because, excluding the parts of the brief exempted by NRAP 32(a)(7)(C), it is either:

[X] Proportionately spaced, has a typeface of 14 points or more, and contains 13,828 words (1,283 lines of text); or

[ ] Monospaced, has 10.5 or fewer characters per inch, and contains __ words or __ lines of text; or

[ ] Does not exceed 30 pages.

3. Finally, I hereby certify that I have read this appellate brief, and to the best of my knowledge, information, and belief, it is not frivolous or interposed for any improper purpose. I further certify that this brief complies with all applicable Nevada Rules of Appellate Procedure, in particular NRAP 28(e)(1), which requires every assertion in the brief regarding matters in the record to be supported by a reference to the page and volume number, if any, of the transcript or appendix where the matter relied on is to be found. I understand that I may be subject to sanctions in the event that the accompanying brief is not in conformity with the requirements of the Nevada Rules of Appellate Procedure.

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.

ALDRICH LAW FIRM, LTD.

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

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 11th day of February, 2016, I mailed a copy of the foregoing APPELLANT'S BRIEF, in a sealed envelope, to the following address and that postage was fully paid thereon:

David R. Hague, Esq.
FABIAN VAN COTT
215 S. State Street, Suite 1200
Salt Lake City, UT 84111
Attorney for Respondent

An employee of ALDRICH LAW FIRM, LTD.