



1 Mr. Aldrich knew or had reason to know this accident occurred on open range.  
2  
3 His client's webpage, the Nevada Highway Patrol Accident Report, and Defendant's  
4 answer all referred to the location of the accident as open range. At the bare minimum,  
5 counsel should have conducted a reasonable inquiry as to the open range status prior to  
6 sending a request for admissions, and perhaps as early as prior to filing his Complaint. If  
7 Mr. Aldrich indeed did not know this area was open range in 2007, he likely discovered it  
8 was open range afterwards. Instead of correcting this alleged known falsehood, Mr.  
9 Aldrich utilized Ms. Fallini's admission that this area was not open range as grounds to  
10 obtain a favorable award of summary judgment.

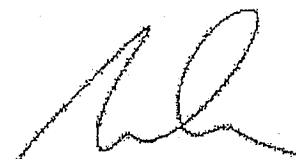
11  
12 Finality has a particular importance in our legal system. The Supreme Court of  
13 Nevada has described a final judgment as one "that disposes of the issues presented in the  
14 case, determines the costs, and leaves nothing for future consideration of the court."  
15 Alper v. Posin, 77 Nev. 328, 330, 363 P.2d 502, 503 (1961). In the matter before the bar  
16 however, the issues presented in this case were summarily disposed above due to the  
17 negligence of Defendant's counsel Mr. Kuehn. The merits of the case were never  
18 actually addressed. Had Mr. Kuehn properly denied Mr. Aldrich's request for  
19 admissions, the outcome may have been much different.

20  
21 Therefore, after consideration of the papers and pleadings on file, the evidence,  
22 and the testimony given throughout this proceeding, the court issues the following Order:

23  
24 IT IS HEREBY ORDERED that Defendant's Motion for Relief from Judgment  
25 Pursuant to NRCP 60(b) is GRANTED.  
26  
27  
28

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

DATED this 6<sup>th</sup> day of August, 2014.



District Court Judge

FIFTH JUDICIAL DISTRICT COURT  
ESMERALDA, MINERAL AND NYE COUNTIES





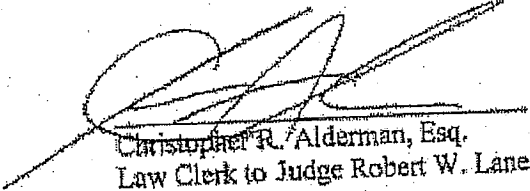
CERTIFICATION OF SERVICE

The undersigned hereby certifies that on the 6<sup>th</sup> 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

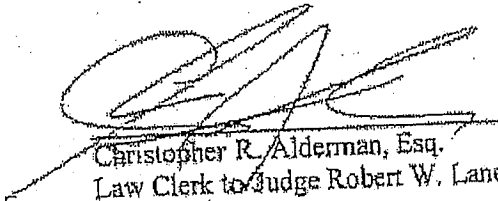
JOHN P. ALDRICH, ESQ.  
Aldrich Law Firm, Ltd.  
1601 S. Rainbow Blvd., Suite 160  
Las Vegas, NV 89146

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

# EXHIBIT 14

# EXHIBIT 14

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,  
Petitioner,

vs.

THE FIFTH JUDICIAL DISTRICT  
COURT OF THE STATE OF NEVADA,  
IN AND FOR THE COUNTY OF NYE;  
AND THE HONORABLE ROBERT W.  
LANE, DISTRICT JUDGE,

Respondents,

and

SUSAN FALLINI,

Real Party in Interest.

No. 66521

FILED

JAN 15 2015

TRACEE K. LINDEMAN  
CLERK OF THE SUPREME COURT  
BY *[Signature]*  
CHIEF DEPUTY CLERK

*ORDER DENYING PETITION FOR EXTRAORDINARY WRIT RELIEF*

This original petition for extraordinary writ relief challenges a district court order granting real party in interest's NRCP 60(b) motion for relief from the judgment on fraud grounds. After this court entered an order directing petitioner to show cause why this writ petition should not be summarily denied, given that it appears to challenge a substantively appealable order, petitioner responded by arguing that a writ petition is a proper method to challenge the district court's order because the district court lacked jurisdiction to grant real party in interest's NRCP 60(b) motion and the order also affects petitioner's attorney, who has no appeal rights. Real party in interest has replied, asserting that the petition merely attempts to extend the appeal deadline and that the district court's

order does not sanction petitioner's attorney, such that the attorney could challenge it personally through a writ petition.

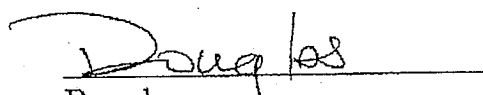
Having considered the parties' arguments, we summarily deny the writ petition, as it challenges a substantively appealable order. See NRAP 3A(b)(8) (permitting an appeal from a special order entered after final judgment, except for an order "granting a motion to set aside a default judgment under NRCP 60(b)(1) when the motion was filed and served within 60 days after entry of the default judgment"); *Lindblom v. Prime Hospitality Corp.*, 120 Nev. 372, 374 n.1, 90 P.3d 1283, 1284 n.1 (2004) (explaining that an order setting aside a default judgment is appealable as a special order after final judgment if the motion to set aside is made more than 60 days after entry of the judgment). In particular, real party in interest's motion for relief from the judgment was filed more than six months after entry of the judgment, and in granting the motion, the district court specifically rejected real party in interest's "excusable neglect" argument under NRCP 60(b)(1), noting that the motion was filed well beyond the six-month window for moving for such relief under NRCP 60(b)(1).

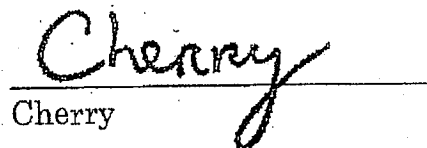
While the order granting relief from the judgment based on a finding of fraud was subject to challenge by appeal, notice of that order's entry was served by mail on August 13, 2014, and petitioner did not file a notice of appeal within the 33-day appeal period. See NRAP 4(a)(1); NRAP 26(c). Instead, petitioner filed this writ petition on September 17, 2014, 35 days after the order's notice of entry was served. See *Pan v. Eighth Judicial Dist. Court*, 120 Nev. 222, 224-25, 88 P.3d 840, 841 (2004) (noting that an appeal provides an adequate remedy that generally precludes writ relief, and regardless, "writ relief is not available to correct an untimely

notice of appeal"). Accordingly, we decline to consider the merits of this writ petition, NRAP 21(b), and instead

ORDER the petition DENIED.

 J.  
Parraguirre

 J.  
Douglas

 J.  
Cherry

cc: Hon. Robert W. Lane, District Judge  
Aldrich Law Firm, Ltd.  
Fabian & Clendenin, P.C. (Utah)  
John Ohlson  
Nye County Clerk

1 David R. Hague #12389  
2 Ashton J. Hyde #12407  
3 [dhague@fabianlaw.com](mailto:dhague@fabianlaw.com)  
4 [ahyde@fabianlaw.com](mailto:ahyde@fabianlaw.com)  
5 FABIAN & CLENDENIN, P.C.  
6 215 South State Street, Suite 1200  
7 Salt Lake City, UT 84111-2323  
8 Telephone: (801) 531-8900

601 South 10th Street, Suite 204  
Las Vegas, NV 89101  
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  
17 CORPORATIONS I-X, inclusive,

18 Defendants.

**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

22 ////

23 ////

24 ////

25 ////

26 ////

27

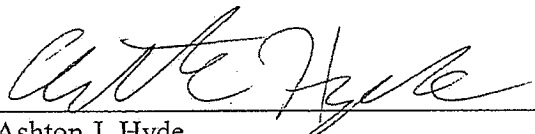
28



**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 21<sup>st</sup> day of April, 2015.



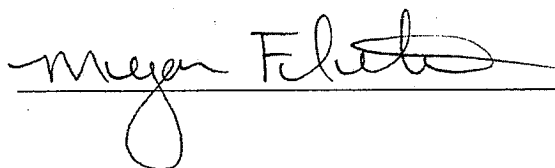
Ashton J. Hyde  
FABIAN & CLENDENIN,  
A Professional Corporation  
*Attorneys for Defendant*

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 21<sup>st</sup> day of April, 2015

  
\_\_\_\_\_

1 David R. Hague #12389  
2 Ashton J. Hyde #12407  
3 dhague@fabianlaw.com  
4 ahyde@fabianlaw.com  
5 FABIAN & CLENDENIN, P.C.  
6 215 South State Street, Suite 1200  
7 Salt Lake City, UT 84111-2323  
8 Telephone: (801) 531-8900

9 601 S Tenth Street  
10 Las Vegas, Nevada 89101  
11 Phone: 702-233-4444  
12 Fax: 702-998-1503.

FILED  
FIFTH JUDICIAL DISTRICT COURT  
APR 17 2015  
NYE COUNTY DEPUTY CLERK  
DEPUTY \_\_\_\_\_

Veronica Aguilar

THE FIFTH JUDICIAL DISTRICT COURT

THE STATE OF NEVADA, COUNTY OF NYE

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

Plaintiff,

vs.

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

Defendants.

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

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

On February 3, 2015, Defendant filed a Motion for Entry of Final Judgment (“**Defendant’s Motion**”). In response, Plaintiff filed Plaintiff’s Opposition to Defendant’s 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 (collectively, “**Plaintiff’s Motions**”). On February 20, 2015, Defendant filed a Reply to Plaintiff’s Motions.

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

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

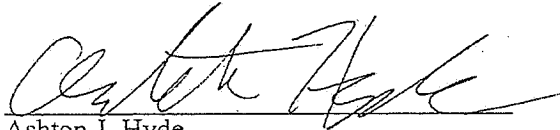
4 **FURTHER ORDERED** that Defendant's Motion is **GRANTED** and the above-captioned  
5 case is dismissed with prejudice.

6  
7 DATED this 17<sup>th</sup> day of April, 2015.

8  
9 **ROBERT W. LANE**

10 \_\_\_\_\_  
11 District Court Judge

12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
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*

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

FILED  
2015 MAY 15 A 10 31  
TANNER DAVIS  
NYE COUNTY CLERK

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

7  
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.

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

**NOTICE OF APPEAL**

13 Defendants.

14 TO: Defendant and her counsel of record, David R. Hague, Esq.

15 Notice is hereby given that Plaintiff Estate of Michael David Adams, by and through his mother  
16 Judith Adams, individually and on behalf of the Estate, appeals to the Supreme Court of Nevada from  
17 the following:

- 18 1. The April 17, 2015 Order Granting Motion for Entry of Final Judgment and Dismissing  
19 Case with Prejudice, which included a denial of Plaintiff's Countermotion to Reconsider  
20 and/or for Rehearing of Order Entered on August 6, 2014, of Alternatively,  
21 Countermotion to Set Aside Order Entered on August 6, 2014, or Alternatively, for Entry  
22 of Final Judgment (Notice of Entry of Order filed on or about April 21, 2015).

23 ///

24 ///

25 ///

26 ///

1 This appeal is from all issues of law and fact.

2 Dated this 15<sup>th</sup> day of May, 2015.

3 ALDRICH LAW FIRM, LTD.

4  
5 By John P. Aldrich  
6 John P. Aldrich  
7 Nevada Bar No. 6877  
8 1601 S. Rainbow Blvd., Suite 160  
9 Las Vegas, NV 89146  
10 (702) 853-5490  
11 *Attorneys for Plaintiff*

12 ///

13 ///

14 ///

15

16

17

18

19

20

21

22

23

24

25

26

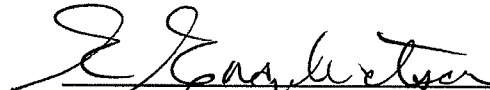
27

28

**CERTIFICATE OF SERVICE**

I hereby certify that on the 15<sup>th</sup> day of May, 2015, I mailed a copy of the Notice of Appeal in a sealed envelope, to the following and that postage was fully paid thereon:

David R. Hague, Esq.  
Fabian & Clendenin  
215 S. State Street, Suite 1200  
Salt Lake City, UT 84111-2323  
*Attorney for Defendant*

  
An employee of Aldrich Law Firm, Ltd.

1 IN THE  
2 SUPREME COURT OF THE STATE OF NEVADA

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

8 Appellant,

9 v.

10 SUSAN FALLINI,

11 Respondent.

Supreme Court No.: 68033  
District Court Case No.: CV24539  
Electronically Filed  
Feb 11, 2016 09:42 a.m.  
Tracie K. Lindeman  
Clerk of Supreme Court

12 APPELLANT'S APPENDIX, VOLUME VII  
13 (Bates Nos. 1234-1374)

14  
15 John P. Aldrich, Esq.  
16 Nevada Bar No. 6877  
17 **ALDRICH LAW FIRM, LTD.**  
18 1601 S. Rainbow Blvd. Suite 160  
19 Las Vegas, Nevada 89146  
20 Tel (702) 853-5490  
21 Fax (702) 227-1975  
22 *Attorneys for Appellant*  
23  
24  
25  
26  
27  
28



**APPELLANT’S APPENDIX**

**CHRONOLOGICAL INDEX**

**VOLUME I**

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

Findings of Fact, Conclusions of Law and Order Striking  
Answer and Counterclaim of Defendant Susan Fallini  
and Holding Defendant's Counsel in Contempt of  
Court (11/4/09) **0165-0170**

Notice of Entry of Default (2/11/10) **0171-0175**

Plaintiff's *Ex Parte* Motion for Order to Show Cause Why  
Defendant Susan Fallini and Her Counsel Should Not  
Be Held in Contempt of Court and Possible Sanctions  
Be Imposed (4/7/10) **0176-0187**

Order to Show Cause Why Defendant Susan Fallini and Her  
Counsel Should Not Be Held in Contempt of Court  
and Possible Sanctions Be Imposed (4/19/10) **0188-0190**

Notice of Entry of Order (6/4/10) [Findings of Fact,  
Conclusions of Law and Order Holding Defendant's  
Counsel in Contempt of Court (6/2/10)] **0191-0201**

Substitution of Attorneys (6/11/10) **0202-0203**

## **VOLUME II**

Application for Default Judgment Against Defendant Susan  
Fallini (6/21/10) **Pages  
0204-0265**

Opposition to Application for Default Judgment Against  
Defendant Susan Fallini (6/23/10) **0266-0268**

Motion for Leave to File Motion for Reconsideration (7/6/10) **0269-0295**

Transcript of Proceedings (Application for Default Judgment)  
(7/19/10) **0296-0334**

Notice of Entry of Order (8/18/10) [Order After Hearing  
(8/12/10)] **0335-0341**

Notice of Appeal (9/7/10)	<b>0342-0344</b>
Notice of Referral to Settlement Program and Suspension of Rules (9/20/10)	<b>0345</b>
Complaint for Declaratory Relief (1/31/11)	<b>0346-0355</b>
Settlement Program Status Report (2/15/11)	<b>0356</b>
Certificate (3/10/11)	<b>0357-0359</b>

### **VOLUME III**

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

### **VOLUME IV**

	<b><u>Pages</u></b>
Motion for Order Allowing Supplementation of Appendix and for Re-Opening of Briefs (10/5/11)	<b>0578-0626</b>

Respondent's Opposition to Appellant's Motion for Order Allowing Supplementation of Appendix and for Re-Opening of Briefs (10/17/11)	<b>0627-0651</b>
Order Granting Motion to Supplement Appendix and Reopen Briefing (10/24/11)	<b>0652-0653</b>
Appellants' Amended Opening Brief (11/17/11)	<b>0654-0676</b>
Respondent's Amended Answering Brief (12/27/11)	<b>0677-0713</b>
Appellants' Amended Reply Brief (1/10/12)	<b>0714-0730</b>
Order Submitting for Decision Without Oral Argument (2/15/13)	<b>0731</b>
Order Affirming In Part, Reversing In Part and Remanding (3/29/13)	<b>0732-0738</b>
Appellant's Petition for Rehearing (4/9/13)	<b>0739-0757</b>
Order Denying Rehearing (6/3/13)	<b>0758</b>
Appellant's Petition for En Banc Reconsideration (6/5/13)	<b>0759-0778</b>
Order Denying En Banc Reconsideration (7/18/13)	<b>0779-0780</b>
Remittitur (8/14/13)	<b>0781</b>
Motion to Disqualify Judge Robert W. Lane From Any Further Proceedings In This Case and to Transfer This Case For Further Consideration to Hon. Kimberly A. Wanker (8/15/13)	<b>0782-0787</b>

## **VOLUME V**

	<b><u>Pages</u></b>
Opposition to Motion to Disqualify Judge Robert W. Lane From Any Further Proceedings In This Case and to Transfer This Case For Further Consideration to Hon. Kimberly A. Wanker (9/4/13)	<b>0788-0834</b>
Court Order (9/5/13)	<b>0835-0845</b>
Reply in Support of Motion to Disqualify Judge Robert W. Lane From Any Further Proceedings In This Case and to Transfer This Case For Further Consideration to Hon. Kimberly A. Wanker (9/6/13)	<b>0846-0849</b>
Request for Submission (9/6/13)	<b>0850-0852</b>
Supplemental Court Order (9/23/13)	<b>0853-0854</b>
Motion to Enter Final Judgment Following Remittitur (9/25/13)	<b>0855-0882</b>
Opposition to Motion for Entry of Order (9/30/13)	<b>0883-0894</b>
Motion to Reverse or Withdraw Remittitur and Clarify Instructions For Allowance of Interest (10/7/13)	<b>0895-0900</b>
Reply to Opposition to Motion to Enter Final Judgment Following Remittitur (10/8/13)	<b>0901-0903</b>
Opposition to Motion to Withdraw Remittitur and Clarify Instructions For Allowance of Interest (10/14/13)	<b>0904-0907</b>
Order Granting Motion to Recall Remittitur and to Modify March 29, 2013, Order for Allowance of Interest (1/3/14)	<b>0908-0911</b>
Remittitur (2/12/14)	<b>0912</b>

Jury Demand (3/11/14)	<b>0913-0915</b>
Defendant's Objection to Proposed Judgment (3/27/14)	<b>0916-0924</b>
Reply to Defendant's Objection to Proposed Judgment (4/10/14)	<b>0925-0926</b>
Notice of Entry of Judgment (5/7/14)	<b>0927-0930</b>
Motion for Relief From Judgment Pursuant to NRCP 60(b) (5/20/14)	<b>0931-1008</b>

### **VOLUME VI**

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

## **VOLUME VII**

	<b><u>Pages</u></b>
Order Denying Petition for Extraordinary Writ Relief (1/15/15)	<b>1234-1236</b>
Motion for Entry of Final Judgment (1/28/15)	<b>1237-1240</b>
Plaintiff's Opposition to Defendant's 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 (2/9/15)	<b>1241-1366</b>
Notice of Entry of Order (4/21/15) [Order Granting Motion for Entry of Final Judgment and Dismissing Case with Prejudice (4/17/15)]	<b>1367-1371</b>
Notice of Appeal (5/15/15)	<b>1372-1374</b>

## **APPELLANT’S APPENDIX**

### **ALPHABETICAL INDEX**

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



Defendant Susan Fallini's Answer and Counterclaim (3/14/07)	<b>I</b>	<b>0007-0011</b>
Defendant's Objection to Proposed Judgment (3/27/14)	<b>V</b>	<b>0916-0924</b>
Findings of Fact, Conclusions of Law and Order Striking Answer and Counterclaim of Defendant Susan Fallini and Holding Defendant's Counsel in Contempt of Court (11/4/09)	<b>I</b>	<b>0165-0170</b>
Jury Demand (3/11/14)	<b>V</b>	<b>0913-0915</b>
Motion for Entry of Final Judgment (1/28/15)	<b>VII</b>	<b>1237-1240</b>
Motion for Leave to File Motion for Reconsideration (7/6/10)	<b>II</b>	<b>0269-0295</b>
Motion for Order Allowing Supplementation of Appendix and for Re-Opening of Briefs (10/5/11)	<b>IV</b>	<b>0578-0626</b>
Motion for Partial Summary Judgment (5/16/08)	<b>I</b>	<b>0012-0023</b>
Motion for Relief From Judgment Pursuant to NRCP 60(b) (5/20/14)	<b>V</b>	<b>0931-1008</b>
Motion to Dismiss (3/25/11)	<b>III</b>	<b>0360-0453</b>
Motion to Disqualify Judge Robert W. Lane From Any Further Proceedings In This Case and to Transfer This Case For Further Consideration to Hon. Kimberly A. Wanker (8/15/13)	<b>IV</b>	<b>0782-0787</b>
Motion to Enter Final Judgment Following Remittitur (9/25/13)	<b>V</b>	<b>0855-0882</b>
Motion to Reverse or Withdraw Remittitur and Clarify Instructions For Allowance of Interest (10/7/13)	<b>V</b>	<b>0895-0900</b>

Notice of Appeal (9/7/10)	<b>II</b>	<b>0342-0344</b>
Notice of Appeal (5/15/15)	<b>VII</b>	<b>1372-1374</b>
Notice of Entry of Default (2/11/10)	<b>I</b>	<b>0171-0175</b>
Notice of Entry of Judgment (5/7/14)	<b>V</b>	<b>0927-0930</b>
Notice of Entry of Order (8/15/08) [Order Granting Plaintiffs' Motion for Partial Summary Judgment (7/30/08)]	<b>I</b>	<b>0024-0028</b>
Notice of Entry of Order (5/18/09) [Order Granting Plaintiff's Motion to Compel Defendant's Production of Documents (4/27/09)]	<b>I</b>	<b>0082-0086</b>
Notice of Entry of Order (10/14/09) [Order Regarding Order to Show Cause Why Defendant Susan Fallini and Her Counsel Should Not Be Held in Contempt of Court (10/8/09)]	<b>I</b>	<b>0161-0164</b>
Notice of Entry of Order (6/4/10) [Findings of Fact, Conclusions of Law and Order Holding Defendant's Counsel in Contempt of Court (6/2/10)]	<b>I</b>	<b>0191-0201</b>
Notice of Entry of Order (8/18/10) [Order After Hearing (8/12/10)]	<b>II</b>	<b>0335-0341</b>
Notice of Entry of Order (6/26/14) [Order Granting Defendants Tony Adams, Judith Adams, and John P. Aldrich, Esq.'s Motion to Dismiss and Order Denying Defendants Tony Adams, Judith Adams, and John P. Aldrich, Esq.'s Motion for Sanctions Pursuant to NRCP 11 (6/23/14)]	<b>VI</b>	<b>1119-1122</b>
Notice of Entry of Order (8/13/14) [Court Order (8/6/14)]	<b>VI</b>	<b>1218-1233</b>

Notice of Entry of Order (4/21/15) [Order Granting Motion for Entry of Final Judgment and Dismissing Case with Prejudice (4/17/15)]	<b>VII</b>	<b>1367-1371</b>
Notice of Referral to Settlement Program and Suspension of Rules (9/20/10)	<b>II</b>	<b>0345</b>
Opposition to Application for Default Judgment Against Defendant Susan Fallini (6/23/10)	<b>II</b>	<b>0266-0268</b>
Opposition to Motion for Entry of Order (9/30/13)	<b>V</b>	<b>0883-0894</b>
Opposition to Motion to Disqualify Judge Robert W. Lane From Any Further Proceedings In This Case and to Transfer This Case For Further Consideration to Hon. Kimberly A. Wanker (9/4/13)	<b>V</b>	<b>0788-0834</b>
Opposition to Motion to Withdraw Remittitur and Clarify Instructions For Allowance of Interest (10/14/13)	<b>V</b>	<b>0904-0907</b>
Order (6/11/11)	<b>III</b>	<b>0522-0524</b>
Order Affirming In Part, Reversing In Part and Remanding (3/29/13)	<b>IV</b>	<b>0732-0738</b>
Order Denying En Banc Reconsideration (7/18/13)	<b>IV</b>	<b>0779-0780</b>
Order Denying Petition for Extraordinary Writ Relief (1/15/15)	<b>VII</b>	<b>1234-1236</b>
Order Denying Plaintiff's Motion to Strike Defendant's Answer and Counterclaim (7/17/09)	<b>I</b>	<b>0147-0148</b>
Order Denying Rehearing (6/3/13)	<b>IV</b>	<b>0758</b>

Order Granting Motion to Recall Remittitur and to Modify March 29, 2013, Order for Allowance of Interest (1/3/14)	<b>V</b>	<b>0908-0911</b>
Order Granting Motion to Supplement Appendix and Reopen Briefing (10/24/11)	<b>IV</b>	<b>0652-0653</b>
Order Submitting Appeal for Decision Without Oral Argument (8/19/11)	<b>III</b>	<b>0577</b>
Order Submitting for Decision Without Oral Argument (2/15/13)	<b>IV</b>	<b>0731</b>
Order to Show Cause Why Defendant Susan Fallini and Her Counsel Should Not Be Held in Contempt of Court and Possible Sanctions Be Imposed (4/19/10)	<b>I</b>	<b>0188-0190</b>
Plaintiff's <i>Ex Parte</i> Motion for Order to Show Cause Why Defendant Susan Fallini and Her Counsel Should Not Be Held in Contempt of Court (8/31/09)	<b>I</b>	<b>0149-0160</b>
Plaintiff's <i>Ex Parte</i> Motion for Order to Show Cause Why Defendant Susan Fallini and Her Counsel Should Not Be Held in Contempt of Court and Possible Sanctions Be Imposed (4/7/10)	<b>I</b>	<b>0176-0187</b>
Plaintiff's Motion to Compel Defendant's Production of Documents (3/23/09)	<b>I</b>	<b>0029-0081</b>
Plaintiff's Motion to Strike Defendant's Answer and Counterclaim (6/16/09)	<b>I</b>	<b>0087-0146</b>

Plaintiff's Opposition to Defendant's 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 (2/9/15)	<b>VII</b>	<b>1241-1366</b>
Remittitur (8/14/13)	<b>IV</b>	<b>0781</b>
Remittitur (2/12/14)	<b>V</b>	<b>0912</b>
Reply in Support of Motion to Disqualify Judge Robert W. Lane From Any Further Proceedings In This Case and to Transfer This Case For Further Consideration to Hon. Kimberly A. Wanker (9/6/13)	<b>V</b>	<b>0846-0849</b>
Reply to Defendant's Objection to Proposed Judgment (4/10/14)	<b>V</b>	<b>0925-0926</b>
Reply to Opposition to Motion to Enter Final Judgment Following Remittitur (10/8/13)	<b>V</b>	<b>0901-0903</b>
Request for Submission (9/6/13)	<b>V</b>	<b>0850-0852</b>
Respondent's Amended Answering Brief (12/27/11)	<b>IV</b>	<b>0677-0713</b>
Respondent's Answering Brief (7/8/11)	<b>III</b>	<b>0525-0556</b>
Respondent's Opposition to Appellant's Motion for Order Allowing Supplementation of Appendix and for Re-Opening of Briefs (10/17/11)	<b>IV</b>	<b>0627-0651</b>
Settlement Program Status Report (2/15/11)	<b>II</b>	<b>0356</b>
Substitution of Attorneys (6/11/10)	<b>I</b>	<b>0202-0203</b>
Supplemental Court Order (9/23/13)	<b>V</b>	<b>0853-0854</b>

Susan Fallini’s Reply Memorandum in Support of Her Rule 60(b) Motion to Set Aside Judgment and Opposition to Plaintiff’s Countermotion to Strike (6/16/14)	<b>VI</b>	<b>1110-1118</b>
Transcript of Proceedings (Application for Default Judgment) (7/19/10)	<b>II</b>	<b>0296-0334</b>
Transcript of Proceedings (Motion for Relief From Judgment Pursuant to NRCp 60(b)) (7/28/14)	<b>VI</b>	<b>1123-1217</b>

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,  
Petitioner,

vs.

THE FIFTH JUDICIAL DISTRICT  
COURT OF THE STATE OF NEVADA,  
IN AND FOR THE COUNTY OF NYE;  
AND THE HONORABLE ROBERT W.  
LANE, DISTRICT JUDGE,

Respondents,

and

SUSAN FALLINI,

Real Party in Interest.

No. 66521

FILED

JAN 15 2015

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

*ORDER DENYING PETITION FOR EXTRAORDINARY WRIT RELIEF*

This original petition for extraordinary writ relief challenges a district court order granting real party in interest's NRCP 60(b) motion for relief from the judgment on fraud grounds. After this court entered an order directing petitioner to show cause why this writ petition should not be summarily denied, given that it appears to challenge a substantively appealable order, petitioner responded by arguing that a writ petition is a proper method to challenge the district court's order because the district court lacked jurisdiction to grant real party in interest's NRCP 60(b) motion and the order also affects petitioner's attorney, who has no appeal rights. Real party in interest has replied, asserting that the petition merely attempts to extend the appeal deadline and that the district court's

order does not sanction petitioner's attorney, such that the attorney could challenge it personally through a writ petition.

Having considered the parties' arguments, we summarily deny the writ petition, as it challenges a substantively appealable order. See NRAP 3A(b)(8) (permitting an appeal from a special order entered after final judgment, except for an order "granting a motion to set aside a default judgment under NRCP 60(b)(1) when the motion was filed and served within 60 days after entry of the default judgment"); *Lindblom v. Prime Hospitality Corp.*, 120 Nev. 372, 374 n.1, 90 P.3d 1283, 1284 n.1 (2004) (explaining that an order setting aside a default judgment is appealable as a special order after final judgment if the motion to set aside is made more than 60 days after entry of the judgment). In particular, real party in interest's motion for relief from the judgment was filed more than six months after entry of the judgment, and in granting the motion, the district court specifically rejected real party in interest's "excusable neglect" argument under NRCP 60(b)(1), noting that the motion was filed well beyond the six-month window for moving for such relief under NRCP 60(b)(1).

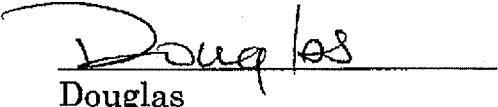
While the order granting relief from the judgment based on a finding of fraud was subject to challenge by appeal, notice of that order's entry was served by mail on August 13, 2014, and petitioner did not file a notice of appeal within the 33-day appeal period. See NRAP 4(a)(1); NRAP 26(c). Instead, petitioner filed this writ petition on September 17, 2014, 35 days after the order's notice of entry was served. See *Pan v. Eighth Judicial Dist. Court*, 120 Nev. 222, 224-25, 88 P.3d 840, 841 (2004) (noting that an appeal provides an adequate remedy that generally precludes writ relief, and regardless, "writ relief is not available to correct an untimely

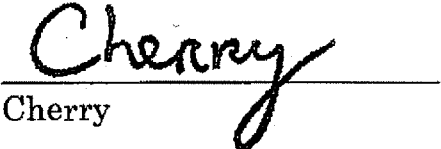


notice of appeal"). Accordingly, we decline to consider the merits of this writ petition, NRAP 21(b), and instead

ORDER the petition DENIED.

 J.  
Parraguirre

 J.  
Douglas

 J.  
Cherry

cc: Hon. Robert W. Lane, District Judge  
Aldrich Law Firm, Ltd.  
Fabian & Clendenin, P.C. (Utah)  
John Ohlson  
Nye County Clerk

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

10655 Park Run Drive, Suite 130  
Las Vegas, Nevada 89144  
Phone: 702-233-4444  
Fax: 702-998-1503.

**THE FIFTH JUDICIAL DISTRICT COURT**

**THE STATE OF NEVADA, COUNTY OF NYE**

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

Plaintiff,

vs.

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

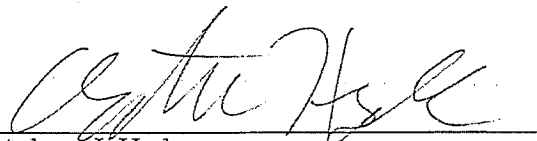
Defendants.

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

**MOTION FOR ENTRY OF FINAL  
JUDGMENT**

Defendant, Susan Fallini, by and through her counsel, moves the Court to enter final judgment in her favor pursuant to Nevada Rules of Civil Procedure 54. As set forth in the Memorandum of Points and Authorities below, this judgment should be entered in light of the finding of this Court, as set forth in its Order dated August 6, 2014, that the accident giving rise to Plaintiff's complaint occurred on open range.

DATED this 28<sup>th</sup> day of January, 2015.

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

- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 0
- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 0
- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 0

**STATEMENT OF MATERIAL FACTS**

1. Plaintiff Judith Adams brought suit against Defendant Susan Fallini for the death of her son Michael Adams after he struck one of Ms. Fallini's cattle that was on Highway SR 375. (Order at 2 Aug. 6, 2014).

1. Plaintiff Judith Adams brought suit against Defendant Susan Fallini for the death of her son Michael Adams after he struck one of Ms. Fallini's cattle that was on Highway SR 375. (Order at 2 Aug. 6, 2014).

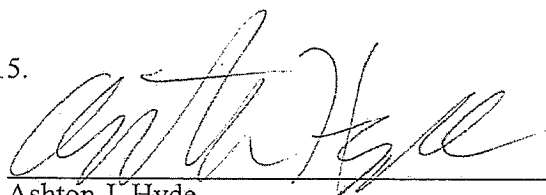
Section 1 of Nevada Revised Statute 568.360 entitled *Duties of owners of domestic animals with respect to domestic animals upon highway*, provides that owners of domestic animals will not be liable for damages or injuries caused by a vehicular accident between any driver and those animals when occurring on open range:

Section 1 of Nevada Revised Statute 568.360 entitled *Duties of owners of domestic animals with respect to domestic animals upon highway*, provides that owners of domestic animals will not be liable for damages or injuries caused by a vehicular accident between any driver and those animals when occurring on open range:

Accordingly, Ms. Fallini cannot be held liable for any injury or damage caused by the collision between Mr. Adam's vehicle and her cow, which occurred on open range. She had no duty to keep her cattle, domestic animals, off Highway SR 375 as a matter of law.

The accident in question occurred on open range. Therefore, Ms. Fallini cannot be held liable for any damages or injury caused by any collision between a motor vehicle and a domestic animal. As such, this Court should enter judgment in favor of Ms. Fallini.

1 DATED this 28<sup>th</sup> day of January, 2015.

2  
3 

4 Ashton J. Hyde  
5 FABIAN & CLENDENIN,  
6 A Professional Corporation  
7 *Attorneys for Defendant*  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 10
- 11
- 12
- 13
- 14
- 15
- 16
- 17
- 18
- 19
- 20
- 21
- 22
- 23
- 24
- 25
- 26
- 27
- 28

ved via U

7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

1 **OPP**

John P. Aldrich, Esq.

2 Nevada State Bar No. 6877

**ALDRICH LAW FIRM, LTD.**

3 1601 S. Rainbow Blvd., Suite 160

Las Vegas, Nevada 89146

4 (702) 853-5490

*Attorneys for Plaintiff*

FILED

2015 FEB -9 P 3:23

**TANNER DAVIS**  
NYE COUNTY CLERK  
BY DEPUTY

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

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

10 Plaintiff,

11 v.

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

14 Defendants.

15  
16 SUSAN FALLINI,

17 Counterclaimant,

18 vs.

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

21 Counterdefendants.

Case No.: CV24539

Dept. No.: 2P

22  
23 **PLAINTIFF'S OPPOSITION TO DEFENDANT'S MOTION FOR ENTRY OF FINAL**  
24 **JUDGMENT AND COUNTERMOTION TO RECONSIDER AND/OR FOR REHEARING OF**  
25 **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**

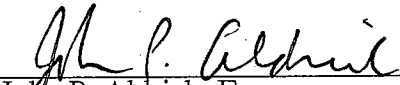
26 Plaintiff JUDITH ADAMS, INDIVIDUALLY AND ON BEHALF OF THE ESTATE OF  
27  
28

1 MICHAEL DAVID ADAMS, by and through her attorney of record, John P. Aldrich, of Aldrich Law  
2 Firm Ltd., hereby opposes Defendant's Motion for Entry of Final Judgment and countermoves this Court  
3 to reconsider its August 6, 2014 Order and/or for rehearing of the Order entered on August 6, 2014, or  
4 alternatively, to set aside the Order entered on August 6, 2014, which set aside the Default Judgment  
5 entered on August 12, 2010 and later appealed to the Nevada Supreme Court. The August 6, 2014 Order  
6 should be reconsidered, reheard, and/or set aside pursuant to NRCP 60(b), for numerous reasons,  
7 including mistake of fact, mistake of law, and fraud upon the Court by Defendant's counsel, as set forth  
8 more fully herein. Alternatively, Plaintiff moves for entry of final judgment because Defendant is still  
9 liable under the Order Granting Summary Judgment, and the damages amount has already been decided  
10 by the Nevada Supreme Court.

11 This Motion is based upon the attached memorandum of Points and Authorities, the attached  
12 exhibits, and any testimony or argument the Court will entertain at the hearing on this matter.

13 DATED this 9<sup>th</sup> day of February, 2015.

14 ALDRICH LAW FIRM, LTD.

15  
16   
17 John P. Aldrich, Esq.  
18 Nevada Bar No.: 6877  
19 1601 S. Rainbow Blvd., Suite 160  
20 Las Vegas, Nevada 89146  
21 (702) 853-5490  
22 Attorney for Plaintiff

23 **MEMORANDUM OF POINTS AND AUTHORITY**

24 **I.**

25 **CASE BACKGROUND**

26 **A. Factual Statement**

27 Michael David Adams was born on May 10, 1972. He was the only child of the marriage between  
28 Judith and Tony Adams. Michael was an extremely loving child, and grew into an extremely loving man.  
Michael worked as a staff geologist for Southern California Geotechnical Inc., making approximately

1 \$45,000.00 per year plus benefits.

2 On July 7, 2005 at around 9:00 p.m., Michael was driving his 1994 Jeep Wrangler on SR 375  
3 highway in Nye County, Nevada. As Michael drove, a Hereford cow suddenly appeared in Michael's  
4 travel lane, blocking his path. Although Michael was driving at a lawful rate of speed, it was not possible  
5 for him to avoid colliding with the cow and he hit it head-on. Michael's Jeep rolled over and left the  
6 paved highway. Sadly, Michael died at the scene.

7 Defendant was the owner of the cow which was in Michael's travel lane and caused his death.  
8 The cow was many miles away from the owner's ranch at the time of the incident. Further, the Defendant  
9 had taken no precautions to keep the cow from the highway where the collision occurred, including  
10 failing to put a fluorescent tag on the cow so it would be visible at night. As a direct and proximate result  
11 of Defendant's negligence, Michael was killed.

12 **B. Procedural History**

13 On or about **November 29, 2006**, Plaintiff/Respondent filed a lawsuit in Clark County, Nevada.  
14 Defendant SUSAN FALLINI was duly served with a copy of the Summons and Complaint on **March 1,**  
15 **2007**, and an Answer and Counterclaim (seeking to recover the value of the cow) were filed on **March**  
16 **14, 2007**. The case was later transferred to Pahrump, Nye County, Nevada. Plaintiff (as a plaintiff and  
17 counter-defendant) filed a Case Conference Report on **October 23, 2007**.

18 On **October 31, 2007**, Plaintiff submitted interrogatories to Fallini. Those interrogatories were  
19 never answered. Plaintiff also submitted requests for admissions and first set of requests for production  
20 of documents on October 31, 2007.

21 Defendant Fallini never responded to any of these requests. On or about **April 7, 2008** (and  
22 served on **May 14, 2008** with a Certificate of Service), Plaintiff filed a Motion for Partial Summary  
23 Judgment. A second set of requests for production of documents were submitted to Fallini on **July 2,**  
24 **2008**, requesting information as to Fallini's insurance policies and/or carriers that may provide coverage  
25 for damages that occurred as a result of the incident. Defendant never responded to those discovery  
26 requests either.

27 Defendant **did not oppose** that motion and the Court granted that Motion on **July 30, 2008**.



1 Notice of entry of the Order Granting Plaintiff's Motion for Summary Judgment was served on Defendant  
2 on **August 15, 2008**. (Order Granting Plaintiffs' Motion for Partial Summary Judgment, attached hereto  
3 as **Exhibit 1**.)

4 Plaintiff attempted to amicably resolve Defendant's refusal to respond to discovery and obtain a  
5 copy of Defendant's applicable insurance policies, but to no avail. On **February 24, 2009**, Plaintiff sent  
6 letters to Defendant's counsel seeking responses to the discovery.

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

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

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

23 The Court granted the Motion to Compel and awarded John Aldrich, Esq., \$750.00 in sanctions  
24 for having to bring the motion. A Notice of Entry of Order on the order granting the motion to compel  
25 was entered on **May 18, 2009** and was served by mail on Defendant. (Order Granting Plaintiff's Motion  
26 to Compel Defendant's Production of Documents, attached as **Exhibit 2**.) **Defendant never complied**  
27 **with the Order.**

1 On **June 16, 2009**, Plaintiff filed a Motion to Strike Defendant's Answer and Counterclaim due  
2 to Defendant's complete failure to comply with discovery requests and the Court's Order. Defendant's  
3 counsel again attended the hearing and again provided no explanation as to why Defendant failed to  
4 respond to all discovery requests, but stated Defendant would respond to the discovery requests. The  
5 Court denied Plaintiff's Motion to Strike based on Defendant's counsel's promises to comply. The Court  
6 did, however, order Defendant to comply with the Order granting Plaintiff's Motion to Compel and to  
7 respond to Plaintiff's discovery requests by **July 12, 2009** or Defendant's Answer and Counterclaim  
8 would be stricken. The Court also ordered Defendant to pay an additional \$1,000 sanction. (Order  
9 Denying Plaintiff's Motion to Strike Defendant's Answer and Counterclaim, attached as **Exhibit 3**.)

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

19 On **November 4, 2009**, an order was entered Striking Defendant's pleadings. (Findings of Fact,  
20 Conclusions of Law and Order Striking Answer and Counterclaim, attached hereto as **Exhibit 4**.)  
21 Because Defendant's Answer has been stricken, all the allegations of the Complaint are deemed to be true  
22 and Defendant's defenses are stricken. On **February 4, 2010**, the Clerk of the Court entered Default  
23 against Defendant. (Notice of Entry of Default and Default, attached hereto as **Exhibit 5**.)

24 Despite repeated requests, Defendant failed and refused to provide insurance information, or a  
25 response that Defendant had no insurance. Consequently, Plaintiff was again forced to bring yet another  
26 Ex Parte Motion for Order to Show Cause Why Defendant and Her Counsel Should Not Be Held in  
27 Contempt. The Order to Show Cause was granted, and another contempt hearing was held on **May 24**,

28

1 **2010.** (Order to Show Cause, attached hereto as **Exhibit 6.**) Neither Defendant nor her counsel, Harry  
2 Kuehn, appeared at the hearing. However, Thomas Gibson, Esq., the law partner to Mr. Kuehn, appeared  
3 at the hearing. Following argument by counsel, the Court made substantial findings of fact and  
4 conclusions of law. The Court also yet again held Defendant and her counsel in contempt of court and  
5 sanctioned them an additional **\$5,000.00**. Further, the Court again ordered Defendant to provide the  
6 information that had been ordered on several prior occasions, and imposed a **\$500.00 per day** sanction,  
7 beginning **June 1, 2010**, if Defendant did not respond as ordered. (Findings of Fact, Conclusions of Law  
8 and Order, attached as **Exhibit 7.**)

9 On **June 17, 2010**, Defendant Fallini filed a substitution of attorneys, substituting Marvel &  
10 Kump and John Olsen, Esq. for the firm of Gibson & Kuehn.

11 On **June 21, 2010**, Plaintiff filed an Application for Default Judgment. On **June 23, 2010**, Fallini  
12 filed an Opposition to the Application for Default Judgment, arguing Judgment should not be entered  
13 because Fallini had only recently been apprised on the status of the case and it would be injustice to her  
14 to allow Default Judgment.

15 On **July 2, 2010**, Fallini filed a Motion for Reconsideration, asking the Court to reconsider the  
16 Order granting partial summary judgment and the Order striking the Answer and Counterclaim.

17 On **July 19, 2010**, a hearing was held on Fallini's Motion for Reconsideration. Said motion was  
18 denied and the Court proceeded with a prove up hearing. On **August 18, 2010**, an Order was entered on  
19 this matter wherein the Court awarded Plaintiff \$1,000,000.00 in damages for grief, sorrow and loss of  
20 support, \$1,640,696 in damages for future lost earnings, \$50,000 in attorney's fees, \$35,000 in sanctions  
21 levied against Defendant, and \$5,188.85 in funeral and other related expenses. (Order After Hearing,  
22 attached hereto as **Exhibit 8.**)

23 On **September 7, 2010**, Fallini filed a Notice of Appeal. The parties briefed the matter not once,  
24 but twice, due to the fact that after the first round of briefing was completed, Defendant moved to re-open  
25 the briefing to submit the transcript of the prove-up hearing. The briefing was re-opened and the parties  
26 submitted a second round of briefing.

27 Following the second round of briefing, on **March 29, 2013**, the Nevada Supreme Court issued

1 its Order Affirming in Part, Denying in Part and Remanding this case. Although the Judgment was  
2 reduced by \$1,640,696.00, the remainder of the Judgment was upheld. (See **Exhibit 9**.)

3 Unwilling to accept the Nevada Supreme Court's decision, on **April 9, 2013**, Defendant filed a  
4 Petition for Rehearing. On **June 3, 2013**, the Nevada Supreme Court issued an Order Denying  
5 Rehearing. (See **Exhibit 10**.)

6 Still refusing to accept the Nevada Supreme Court's decision, on **June 5, 2013**, Defendant filed  
7 a Petition for *En Banc* Reconsideration. As it had done before, the Nevada Supreme Court issued an  
8 Order Denying *En Banc* Consideration on **July 18, 2013**. (See **Exhibit 11**.)

9 The Nevada Supreme Court affirmed this Court's decision to (1) deny Fallini's Motion for  
10 Reconsideration and (2) vacate the jury trial. The Nevada Supreme Court determined that Judge Lane's  
11 decision to deny Fallini's Motion for Reconsideration was proper. Fallini argued that the District Court  
12 erred in denying her motion for reconsideration because partial summary judgment was based on false  
13 factual premises regarding whether the accident occurred on open range. The Nevada Supreme Court  
14 **flatly rejected this argument** and affirmed Judge Lane's order in this regard. (See Nevada Supreme  
15 Court Order, attached hereto as **Exhibit 9**.)

16 Further, in an attempt to create a conflict with Judge Lane (and Mr. Aldrich), who had ruled  
17 against Defendant, Defendant brought a separate lawsuit against Judge Lane in Tonopah, Case No.  
18 CV31499, alleging Judge Lane's judgment was entered in spite of an absolute defense to this case – an  
19 issue that was already before the Nevada Supreme Court on appeal, and an argument which the Nevada  
20 Supreme Court flatly rejected. The Court in the frivolous case against Judge Lane (and Mr. Aldrich)  
21 granted Judge Lane's Motion to Dismiss and rightfully found no merit to the case. Those documents  
22 were previously provided to this Court as part of Plaintiff's Countermotion to Strike Defendant's Motion  
23 for Relief from Judgment, filed June 9, 2014.

24 Around **May 20, 2014**, Defendant filed a Motion for Relief from Judgment Pursuant to NRC  
25 60(b), alleging Plaintiff's counsel committed fraud on the Court. Plaintiff opposed, and a hearing was  
26 held on **July 28, 2014**. (Transcript of proceedings, attached hereto as **Exhibit 12**.) On or about **August**  
27 **6, 2014**, this Court granted Defendant's Motion. (Court Order, attached hereto as **Exhibit 13**.)

1 Plaintiff filed a Writ Petition with the Nevada Supreme Court, asking the Nevada Supreme Court  
2 to overturn the August 6, 2014 Order. The Nevada Supreme Court issued an Order to Show Cause why  
3 the writ petition should not be dismissed, Plaintiff responded and Defendant replied. The Nevada  
4 Supreme Court dismissed the Writ Petition. (Order Denying Extraordinary Writ Relief, attached hereto  
5 as **Exhibit 14.**)

## 6 **II.**

### 7 **OPPOSITION TO DEFENDANT'S MOTION FOR ENTRY OF FINAL JUDGMENT**

8 Plaintiff opposes Defendant's Motion for Entry of Final Judgment on several grounds. First, the  
9 August 6, 2014 Order set aside the Default Judgment, but it did not set aside the Order Granting Partial  
10 Summary Judgment entered on July 30, 2008. Defendant has not moved to set aside that order.  
11 Consequently, the summary judgment order still stands, and at best, Defendant still has a finding from  
12 this Court that she is liable in this action. Further, as will be explained more fully below, Plaintiff is  
13 entitled to entry of final judgment either because the matter has already been litigated and the August 6,  
14 2014 Order should be set aside and/or reconsidered, because Defendant is still liable and damages have  
15 already been decided by the Nevada Supreme Court, leaving no other issues to be litigated. Plaintiff's  
16 position is more fully set forth below, and Plaintiff incorporates those arguments as if set forth full here.

## 17 **III.**

### 18 **COUNTERMOTIONS TO RECONSIDER AND/OR REHEAR AND TO SET ASIDE** 19 **AUGUST 6, 2014 ORDER**

20 Plaintiff brings this Motion pursuant to Nevada law set forth below, District Court Rule 13, and  
21 NRCPP 60(b).

#### 22 **A. District Court Rule 13**

23 Plaintiff asks this court to reconsider the issues raised at the July 28, 2014 hearing and determined  
24 in the Court's August 6, 2014 Order. District Court Rule 13(7) provides:

#### 25 **Rule 13. Motions: Procedure for making motions; affidavits; renewal, rehearing of motions.**

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

1 D.C.R. 13(7). Unlike Eighth Judicial District Court Rule 2.24, which governs motions for rehearing in  
2 the Eighth Judicial District and requires that a motion to reconsider or for rehearing be brought within  
3 10 days of written notice of entry of order, D.C.R. 13 does not have a strict time limit. Consequently,  
4 Plaintiff's motion is timely under D.C.R. 13, and Plaintiff requests that the Court reconsider the August  
5 6, 2014 Order.

6 **B. NRCP 60(b)**

7 NRCP 60(b) provides, in pertinent part:

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

15 NRCP 60(b). In *Stoecklin v. Johnson Electric, Inc.*, 109 Nev. 268, 271, 849 P.2d 305, 307 (1993), the  
16 Nevada Supreme Court stated:

17 The district court has wide discretion in deciding whether to grant or deny a motion  
18 to set aside a judgment under NRCP 60(b). Its determination will not be disturbed on  
19 appeal absent an abuse of discretion. *Union Petrochemical Corp. v. Scott*, 96 Nev.  
20 337, 338, 609 P.2d 323 (1980). However, this discretion is a legal discretion and  
cannot be sustained where there is no competent evidence to justify the court's action.  
*Lukey v. Thomas*, 75 Nev. 20, 22, 333 P.2d 979 (1959).

21 *Id.* Plaintiff requests that this Court set aside the August 6, 2014 Order based on the grounds permitted  
22 under NRCP 60(b).

23 **C. Mistakes of Law and Fact**

24 With all due respect to the Court, the Court made substantial mistakes of fact and law, and  
25 Defendant's counsel made fraudulent misrepresentations at the hearing on July 28, 2014. As will be set  
26 forth more fully below, the Court should reconsider its August 6, 2014 Order and/or set aside its August  
27 6, 2014 Order and reinstate the Default Judgment that was already affirmed by the Nevada Supreme Court

1 on appeal.

- 2 1. *Defendant's Answer and Counterclaim were stricken as a discovery sanction, removing*  
3 *Defendant's ability to present defenses, because she had failed and refused to*  
4 *participate in the discovery process, and the entry of Default Judgment was based upon*  
5 *Defendant's inappropriate conduct (i.e., refusal to participate), not Defendant's*  
6 *admissions*

7 The extensive procedural history of this case is set forth above, including Plaintiff's repeated  
8 attempts to obtain discovery sanctions against Defendant, this Court's repeated granting of "second  
9 chances" and warnings of more harsh repercussions for Defendant's failure and refusal to participate in  
10 the discovery process. The Court granted a motion to compel production of documents, initially denied  
11 Plaintiff's Motion to Strike Defendant's Answer and Counterclaim, granted a motion for sanctions and  
12 held Defendant and her counsel in contempt. In that Order, the Court entered the following Findings of  
13 Fact and Conclusions of Law:

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

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

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

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

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

(B) **That if Defendant does not provide the above-described**  
**information by October 12, 2009,** Defendant's counsel will  
be held in contempt of court and will be fined \$150.00 per day,  
beginning October 13, 2009, until said information is

provided. The days shall be calculated on a seven-day week.

(C) That if the above-described information is not provided by October 12, 2009, the Court will strike defendant's pleadings in their entirety. Plaintiff will not need to renew any motion regarding its request to strike defendant's pleadings; Plaintiff will be able to simply submit an Order Striking the Pleadings for signature by the Court.

(Exhibit 4)(emphasis added). Further, the Order goes on to make it abundantly clear that the striking of Defendant's Answer and dismissal of her Counterclaim were based on her refusal to abide by orders of this Court and provide documents – not based on the granting of the Plaintiff's Motion for Partial Summary Judgment years earlier. The Court's Conclusions of Law and Order included the following:

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

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

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

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

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

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

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



1                    **ORDER**

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

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

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

8                    IT IS FURTHER ORDERED that Defendant's counsel, Harold Kuehn, Esq.,  
9                    is in contempt of Court and must pay to Plaintiff's counsel, John P. Aldrich, Esq.,  
10                   \$150.00 per day, beginning October 13, 2009, and continuing to accrue until the  
11                   information described above is provided. The days shall be calculated on a seven-day  
12                   week, and this Order shall constitute a judgment upon which Mr. Aldrich can execute.  
13                   Interest on unpaid balances shall accrue at the statutory rate.

14                   (Exhibit 4)(emphasis added).

15                   When Defendant failed and refused to abide by that Order, Plaintiff was forced to bring yet  
16                   another motion to hold Defendant in contempt for failure to provide validly sought information. On June  
17                   2, 2010 the court entered another Order holding Defendant and her counsel in contempt, and imposing  
18                   another \$5,000 sanction and a \$500.00 per day accruing sanction until Defendant provided responses to  
19                   the discovery. (Exhibit 7.)

20                   Thus, it is abundantly clear that the orders striking Defendant's Answer and Counterclaim and  
21                   imposing discovery sanctions did not involve in any fashion Defendant's own admissions in the case.  
22                   This is what led to the entry of Default Judgment. The granting of the Motion for Partial Summary  
23                   Judgment played no role whatsoever in the striking of Defendant's pleadings or the entry of Default  
24                   Judgment. Consequently, the Court's setting aside of the default judgment based on fraud upon the court  
25                   – which Plaintiff and her counsel continue to adamantly deny and disagree with – was improper, even if  
26                   it was somehow correct (which Plaintiff and her counsel deny).

27                   Indeed, this Court, in its August 6, 2014 Order, found that “The court granted Partial Summary  
28                   Judgment because there was no opposition or appearance by Fallini and/or Kuehn.” (Exhibit 13, p. 3,  
29                   Finding of Fact #6.) Similarly, the Court found that “On November 4, 2009, Plaintiff submitted an Order  
30                   striking Defendant's answer and counterclaim due to Kuehn's failure to provide discovery.” (Exhibit  
31                   13, p. 4, Finding of Fact #10.) That same finding mentions the entry of Default. The Court then notes

1 Plaintiff continued to seek sanctions “stemming from the failed requests for discovery.” (Exhibit 13, p.  
2 4, Finding of Fact #11.)

3 Due to Defendant’s rampant and repeated discovery abuses, this Court struck her pleadings. By  
4 having her answer stricken, Defendant’s alleged affirmative defenses were also stricken, and her right to  
5 present evidence to support those alleged defenses was extinguished. Nevertheless, despite the fact that  
6 Defendant’s answer had been stricken, the Court allowed Defendant Fallini to testify at the prove-up  
7 hearing. This Court considered Defendant’s Motion to Reconsider Prior Orders prior to the prove-up  
8 hearing, to which Defendant had attached alleged “evidence” supporting her position. Defendant’s  
9 counsel asked this Court to take judicial notice of the fact that the incident occurred in open range land,  
10 which the Court did. Even after this Court allowed that testimony and evidence, it upheld the entry of  
11 default and granted default judgment in Plaintiff’s favor, which was upheld on appeal (although the  
12 amount of the award was reduced). (Exhibit 9.)

13 Default Judgment was entered due to Defendant’s discovery abuses, not any alleged  
14 misrepresentations of Plaintiff’s counsel or Defendant’s admissions for failure to respond to discovery.  
15 Consequently, this Court erred in setting aside the Default Judgment and should reconsider and/or set  
16 aside its August 6, 2014 Order.

17 **2. *The Nevada Supreme Court’s Order Affirming in Part, Reversing in Part, and***  
18 ***Remanding, entered on March 20, 2013, constitutes issue preclusion and law of the***  
19 ***case for the issues raised in Defendant’s Motion to Set Aside Judgment Pursuant to***  
20 ***NRCP 60(b)***

21 In her Amended Opening Brief in her direct appeal before the Nevada Supreme Court, Defendant  
22 Fallini argued that counsel for Plaintiff had violated Nevada Rules of Professional Conduct 3.1, 3.3, and  
23 8.4, and that the Honorable Robert W. Lane had violated the Code of Judicial Conduct. Defendant further  
24 noted that the District Court *had taken judicial notice* – at Defendant’s request – of the location of the  
25 incident – and concluded that it had indeed occurred in open range. Despite the District Court’s taking  
26 judicial notice of the location of the incident, Defendant persisted in her position that Aldrich had  
27 somehow “allow[ed] misrepresentations to stand perpetrating misconduct of his own.” Defendant  
28 asserted that the District Court “failed to uphold the ‘integrity of the tribunal.’”

1 The Supreme Court specifically addressed the arguments raised by Defendant in her Motion for  
2 Relief from Judgment related to her own admissions – nearly identical assertions to those raised in  
3 Defendant’s appeal – and expressly found those arguments to be unpersuasive. More specifically, the  
4 Supreme Court stated:

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

9 . . . . .

10 In Nevada, a defendant has 30 days to respond to a plaintiff’s request for  
11 admission. NRCP 36(a). Failure to do so may result in the requests being  
12 deemed “conclusively established.” NRCP 36(b). It is well settled that  
13 unanswered requests for admission may be properly relied upon as a basis for  
14 granting summary judgment, and that the district court is allowed considerable  
15 discretion in determining whether to do so. Wagner v. Carex Investigations &  
16 Sec., 93 Nev. 627, 631, 572 P.2d 921, 923 (1977) (concluding that summary  
17 judgment was properly based on admissions stemming from a party’s  
18 unanswered request for admission under NRCP 36, even where such admissions  
19 were contradicted by previously filed answers to interrogatories); Smith v.  
20 Emery, 109 Nev. 737, 742, 856 P.2d 13865, 1390 (explaining that [] “failure to  
21 respond to a request for admissions will result in those matters being deemed  
22 conclusively established . . . even if the established matters are ultimately  
23 untrue”)(citation omitted).

24 Here, Fallini’s argument is unpersuasive because she has not raised a  
25 new issue of fact or law. The question of whether the accident occurred on open  
26 range was expressly disputed in Fallini’s answer, but she subsequently failed to  
27 challenge this issue through Adams’ requests for admissions. Fallini has  
28 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.

(Exhibit 9.) At the hearing on Defendant’s Motion to Set Aside Judgment Pursuant to NRCP 60(b) on  
July 28, 2014, and in the Court Order entered on August 6, 2014, the Court disregarded the Nevada  
Supreme Court’s prior decision on these issues.

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

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

2 The law-of-the-case doctrine “refers to a family of rules embodying the general  
3 concept that a court involved in later phases of a lawsuit should not re-open  
4 questions decided (i.e., established as law of the case) by that court or a higher  
5 one in earlier phases.” Crocker v. Piedmont Aviation, Inc., 49 F.3d 735, 739,  
6 311 U.S. App. D.C. 1 (D.C. Cir. 1995). Normally, “for the law-of-the-case  
7 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.”).

8 317 P.3d at 818. The crux of the issue alleged by Defendant in her Motion for Relief from Judgment  
9 Pursuant to NRCP 60(b) is the same as the issues raised on appeal: Plaintiff and her counsel allegedly  
10 perpetrated a fraud on the court by sending a request for admission that Defendant alleges Plaintiff or her  
11 counsel knew or should have known was a false fact. The Nevada Supreme Court has already ruled on  
12 those arguments, and the Court acted contrary to the law of the case when it granted Defendant’s Motion  
13 to Set Aside Judgment Pursuant to NRCP 60(b). Simply put, the Court did not have jurisdiction to  
14 overrule the Nevada Supreme Court.

15 Further, the doctrine of issue preclusion also precluded the Court from granting Defendant’s  
16 Motion to Set Aside. As explained to the Court in Plaintiff’s Opposition, the four elements for issue  
17 preclusion are:

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

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

25 Issue preclusion applied to Defendant’s Motion to Set Aside. Regarding the first element, the  
26 issues Defendant raised were argued on direct appeal before the Supreme Court and affirmed. These  
27 issues were also litigated in the other action filed by Defendant as a plaintiff against Aldrich and Judge  
28 Lane) in Tonopah, Nevada. Indeed Defendant Fallini (as a plaintiff in that matter) alleged that Aldrich

1 had misinformed the court using allegedly false requests for admission. That action was dismissed after  
2 both Aldrich and Judge Lane filed motions to dismiss. This element supports the application of issue  
3 preclusion.

4 The second element also supports implementation of the doctrine of issue preclusion. The court  
5 in Tonopah dismissed the case, which was fully litigated. The ruling in this case became final when the  
6 Nevada Supreme Court found in favor of Plaintiff's favor nearly two years ago. (**Exhibit 9.**)

7 The third element is met as well. Fallini was a party to the Tonopah lawsuit, which was  
8 dismissed. Further, Fallini was and is a party to this lawsuit. As for her attorney's failure to represent  
9 her in this case, which led to the trial judge granting partial summary judgment and striking Defendant's  
10 Answer and Counterclaim, it should be emphasized that Mr. Ohlson, not Fallini's prior counsel, Mr.  
11 Kuehn, represented the Defendant on the Opposition to Default Judgment, Motion for Reconsideration  
12 of Prior Orders, and in the appeal. Mr. Ohlson also represented Defendant Fallini in the Tonopah action  
13 (naming Aldrich and Judge Lane as defendants). This element supports the application of issue  
14 preclusion.

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

20 In short, Defendant's counsel ignored the Supreme Court's decision and resurrected the merits  
21 of the underlying case, despite the fact that the issues Defendant raised in the Motion to Set Aside were  
22 absolutely identical to those originally raised on appeal and in a separate court in Tonopah. The initial  
23 ruling was not only on the merits and became a final judgment, but it was also affirmed by the Nevada  
24 Supreme Court. This case is squarely within the Nevada case law regarding the cessation of cases that  
25 have claim or issue preclusion.

26 This District Court's Order granting Defendant's Motion to Set Aside, entered on August 6, 2014,  
27 was contrary to the law of the case, and contrary to Nevada law. The Court should reconsider it and/or

28

1 set it aside.

2       3.     *Even if the Doctrines of Issue Preclusion and Law of the Case Do Not Apply, the*  
3             *District Court acted contrary to law when it granted Defendant's Motion to Set Aside*  
4             *Judgment Pursuant to NRCP 60(b) and ignored admissions made by Defendant*  
              *pursuant to NRCP 36 nearly seven years before the hearing on Defendant's Motion to*  
              *Set Aside Judgment Pursuant to NRCP 60(b)*

5       The grounds set forth in the Defendant's Motion had already been litigated before the Court in  
6 this case, a separate District Court Judge in the Fifth Judicial District, and most importantly, the Nevada  
7 Supreme Court. Even so, there were several grounds – all of which have already been before the Nevada  
8 Supreme Court – upon which the Final Judgment was properly entered. In granting Defendant's Motion  
9 for Relief from Judgment Pursuant to NRCP 60(b), the Court erred in several respects.<sup>1</sup>

10           a.     **The Court made Findings that contradicted the record**

11       The Court makes several Findings of Fact in the Order. Findings 3 and 4 are particularly  
12 problematic. These are findings that are based on new evidence “presented” in the Motion to Set Aside,  
13 and are not based on any evidence properly before the Court. In addition, as Mr. Aldrich explained with  
14 respect to Finding number 3, he was not in possession of all the information in the purported report  
15 attached to the Motion to Set Aside by Defendant. This was a version he had never seen before, as  
16 explained at the hearing, had not been properly authenticated, and was blatant inadmissible hearsay. NRS  
17 51.035; NRS 51.065; NRS 51.067.

18       Similarly, in Finding number 4, the District Court referenced an alleged website that was allegedly  
19 constructed by Plaintiff. This “evidence” was not properly before the District Court because that  
20 “evidence” sought to contradict Defendant's own admissions pursuant to NRCP 36 and was also  
21 inadmissible hearsay. NRS 51.035; NRS 51.065; NRS 51.067. Additionally, Defendant was not entitled  
22 to present evidence because she lost her right to defend when her answer and counterclaim were stricken  
23 as a sanction for her refusal to participate in the discovery process.

24       Besides the fact that this was not an evidentiary hearing and the Default Judgment was a sanction,

25

---

26       <sup>1</sup>In Finding 9, there is a typo. At the line located between line numbers 5 and 6, it says “At the  
27 hearing, Kuehn requested additional sanctions....” It should say “At the hearing Aldrich requested  
additional sanctions....”

28

1 this new "evidence" was irrelevant. See Smith v. Emery, 109 Nev. 737, 856 P.2d 1386 (1993). As  
2 explained, the entry of Default Judgment was based on a discovery sanction, not Defendant's admission.  
3 Nonetheless, the law regarding admissions under Rule 36 supports Plaintiff's position.

4 NRCP 36 provides, in pertinent part:

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

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

14 "[E]ven if a request is objectionable, if a party fails to object and fails to respond  
15 to the request, that party should be held to have admitted the matter." Jenson v.  
16 Pioneer Dodge Center, Inc., 702 P.2d 98, 100-01 \*Utah 1985) (citing Rutherford  
17 v. Bass Air Conditioning Co., 38 N.C.App. 630, 248 S.E.2d 887 (1978)). It is  
18 well settled that failure to respond to a request for admissions will result in those  
19 matters **being deemed conclusively established**. Woods, 107 Nev. At 425, 812  
20 P.2d at 1297; Dzack, 80 Nev. At 347, 393 P.2d at 611. This is so **even if the**  
21 **established matters are ultimately untrue**. Lawrence v. Southwest Gas Corp.,  
22 89 Nev. 433, 514 P.2d 868 (1973); Graham v. Carson-Tahoe Hosp., 91 Nev. 609,  
23 540 P.2d 105 (1975). Emery's failure to respond or object to the Smith's request  
24 for admissions entitles the Smiths to have the assertions contained therein  
25 conclusively established.

26 Id. At 742-43 (emphasis added).

27 The evidence presented to the Court nearly six years ago in Plaintiff's Motion for Partial Summary  
28 Judgment included the conclusively proven facts that had been admitted by Defendant in the Requests  
for Admission. 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).

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

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

7 Even without the Requests for Admission, the district court properly granted the Motion for Partial  
8 Summary Judgment. This action by the Court was permitted by District Court Rule 13 and clearly was  
9 within the discretion of the Court several years ago.

10 b. **The District Court erred when it entered conclusions of law (a) that Mr.**  
11 **Aldrich violated his duty of candor under Nevada Rules of Professional**  
12 **Conduct 3.3 and (b) that Plaintiff somehow "violated Rule 60 (b)" and**  
13 **"perpetrat[ed] a fraud upon the court."**

13 The default judgment was based on a discovery sanction, not Defendant's admitted facts on the  
14 granting of Plaintiff's Motion for Partial Summary Judgment, as described more fully above.  
15 Consequently, there was no fraud upon the court. Nevertheless, Plaintiff will address these specific  
16 findings.

17 On page 7, ls. 3-5, the Court also concluded that at the time Plaintiff sent written discovery to  
18 Defendant's counsel, Mr. Kuehn, "Kuehn was failing to respond to various motions and requests to the  
19 extent that Aldrich knew or should have known that a response from Kuehn was unlikely." The record  
20 in this case is absolutely contrary to this conclusion. To begin with, this conclusion is inappropriate  
21 because there was no evidentiary hearing related to these facts and conclusions, nor were those facts even  
22 discussed at the July 28, 2014 hearing. In actuality, Defendant had moved the case to Nye County and  
23 subsequently filed an Answer and Counterclaim on March 14, 2007. Defendant's counsel missed the  
24 Early Case Conference, but there was no other indication that he might not respond. Again, the  
25 procedural history is set forth in detail above, and Defendant had multiple opportunities to resolve the  
26 discovery dispute but refused to do so.

27 Nevertheless, when Plaintiff's counsel sent the Requests for Admission on October 31, 2007, he



1 had no reason to believe that Mr. Kuehn would not participate in the discovery process. Mr. Kuehn  
2 appeared in court and requested extensions of time to respond on multiple occasions, which the Court  
3 granted over Plaintiff's objections. Moreover, even assuming this conclusion to be true, nowhere in  
4 NRCP 36 or any case analyzing NRCP 36 does the law state an attorney cannot send discovery to the  
5 opposing side unless he knows that opposing counsel will timely respond. Such a requirement would  
6 completely emasculate NRCP 36. Nor is there any case law whatsoever cited by the Court in its Order  
7 that indicates there is any duty on the part of Plaintiff's counsel to notify Defendant's counsel that  
8 Defendant's counsel has failed to do something in the case on behalf of the opposing party. Mr. Aldrich  
9 has a duty to represent his client diligently and zealously, as he did in this case. Even so, Defendant's  
10 counsel was well aware that discovery was long overdue. The entire procedure is set forth above. There  
11 was no fraud.

12 On page 7, ls. 9-12, the Court concluded that "Mr. Aldrich violated his duty of candor under  
13 Nevada Rules of Professional Conduct 3.3 by utilizing Defendant's denial that the accident occurred on  
14 open range to obtain a favorable ruling in the form of an unopposed award of summary judgment." The  
15 Motion for Partial Summary Judgment advised the Court, at page 4, lines 16-18, that Plaintiff had  
16 submitted Requests for Admission, and that Defendant had failed to respond to those requests. Further,  
17 it is undisputed that Defendant did not oppose the summary judgment motion, nor did Defendant or her  
18 counsel appear at the hearing. The Order Granting Plaintiff's Motion for Partial Summary Judgment  
19 makes it clear that the Court considered all the pleadings in the case before it decided the unopposed  
20 motion.

21 District Court Rule 13(3) provides:

22 **Rule 13. Motions: Procedure for making motions; affidavits; renewal, rehearing**  
23 **of motions.**

24 3. Within 10 days after the service of the motion, the opposing party shall serve  
25 and file his written opposition thereto, together with a memorandum of points and  
26 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.

27 D.C.R. 13(3)(emphasis added). Regardless of the admission of facts by Defendant, pursuant to NRPC

1 36, the Court properly granted the Motion for Partial Summary Judgment because Defendant failed to  
2 oppose it. Moreover, **Defendant has never moved to set aside that order, and it still stands**, even if  
3 the Court upheld its August 6, 2014 Order. There was no fraud on the court.

4 On page 9 of its Order, the Court makes the following contradictory conclusions: "This is not to  
5 suggest that Mr. Aldrich is an unethical attorney. For example, the record indicates that on numerous  
6 occasions, Mr. Aldrich granted Mr. Kuehn multiple extensions to provide discovery. The court believes  
7 that Mr. Aldrich was zealously representing his client." Then, however, contrary to those statements, the  
8 Court - again without any supporting case law - concludes that "As an officer of the court [,] however,  
9 Mr. Aldrich violated his duty of candor under Nevada Rules of Professional Conduct 3.3 by utilizing  
10 Defendant's denial that the accident occurred on open range to obtain a favorable ruling in the form of  
11 an unopposed award of summary judgment. Thus, the court finds Plaintiff violated Rule 60(b) as  
12 Plaintiff's request for admission of a known fact, a fact that was a central component of Defendant's case,  
13 was done when counsel knew or should have known that the accident did occur on open range, **thereby**  
14 **perpetrating a fraud upon the court."**

15 On page 10, ls. 4-11, the Court stated, "At the bare minimum, counsel should have conducted a  
16 reasonable inquiry as to the open range status prior to sending a request for admissions, and perhaps as  
17 early as prior to filing his Complaint. If Mr. Aldrich indeed did not know this area was open range in  
18 2007, he likely discovered it was open range afterwards. Instead of correcting this alleged known  
19 falsehood, Mr. Aldrich utilized Ms. Fallini's admission that this area was not open range as grounds to  
20 obtain a favorable award of summary judgment." This conclusion was error for several reasons. First  
21 as explained above, the Default Judgment was based on Defendant's repeated failure and refusal to  
22 participate in discovery and respond to discovery requests – it was not based on any admission or the  
23 Order Granting Partial Summary Judgment. Second, as also explained above, Aldrich attempted to  
24 conduct a "reasonable inquiry" after Defendant raised the "open range" affirmative defense in her answer  
25 by sending discovery requests. Defendant stifled the discovery process and refused to respond, despite  
26 repeated orders compelling responses, granting sanctions, and holding Defendant in contempt. Third, the  
27 conclusion that Aldrich should have conducted a "reasonable inquiry" into the open range status before  
28

1 filing the complaint is not supported by Nevada law, nor is any cited by the Court. To the contrary,  
2 Plaintiff is not required to conduct inquiry into any possible affirmative defense that might be raised by  
3 a defendant. Fourth, as has been explained above, at the prove up hearing in July 2010, Defendant was  
4 allowed to testify and she testified that the incident occurred in open range land. Then, at the request  
5 of Defendant's counsel, this Court took judicial notice that the incident occurred in open range  
6 land. This was done over the objection of Plaintiff's counsel. The Court was well aware of the status  
7 of the facts in this case at all times, and there was absolutely no fraud on the court.

8 The Court concluded that "In the matter before the bar however, the issues presented in this case  
9 were summarily disposed above due to the negligence of Defendant's counsel Mr. Kuehn. The merits  
10 of the case were never actually addressed. Had Mr. Kuehn properly denied Mr. Aldrich's request for  
11 admissions, the outcome may have been much different." (August 6, 2014 Order, p. 10, ls. 16-20.) This  
12 conclusion is inappropriate, as this precise issue was already litigated and affirmed by the Nevada  
13 Supreme Court. (**Exhibit 9.**) Nothing here even remotely resembles fraud on the court.

14 Significantly, the Court, in its conclusion, notes "This court followed the law and proper  
15 procedure throughout this case, as affirmed by the Supreme Court of Nevada." The Court, goes on to  
16 state "however, once cannot ignore the apparent injustice that Defendant has suffered throughout this  
17 matter. Ms. Fallini is responsible for a multi-million dollar judgment without the merits of the case even  
18 being addressed." Again concluding that Mr. Aldrich "should have conducted a reasonable inquiry into  
19 the open range status prior to sending a request for admissions, and perhaps as early as prior to filing his  
20 Complaint" the Court completed its conclusions stating: "Finality has a particular importance in our legal  
21 system. The Supreme Court of Nevada has described a final judgment as one "that disposes of the issues  
22 presented in the case, determines the costs, and leaves nothing for future consideration of the court."  
23 Alper v Posin, 77 Nev.328, 330, 363 P.2d 502, 503 (1961). In the matter before the bar however, the  
24 issues presented in this case were summarily disposed above due to the negligence of Defendant's counsel  
25 Mr. Kuehn. The merits of the case were never actually addressed. Had Mr. Kuehn properly denied Mr.  
26 Aldrich's request for admissions, the outcome may have been much different."

27 The Court's findings that Aldrich violated the Rules of Professional Conduct and "perpetrated a  
28

1 fraud upon the court” were gross error. The Nevada Supreme Court has held that “fraud upon the court”  
2 as used in NRCP 60(b) cannot be defined to mean “any conduct of a party or lawyer of which the court  
3 disapproves,” because, among other things, such a definition would render the time limitation for motions  
4 under NRCP 60(b)(3) meaningless. NC-DSH, Inc. V. Garner, 125 Nev. 647, 654, 218 P.3d 853, 858  
5 (2009). This Court has adopted a standard for “fraud on the court” that  
6 “embrace[s] only that species of fraud which does, or attempts to,  
7 subvert the integrity of the court itself, or is a fraud perpetrated by  
8 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.”

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

19 In this case, Plaintiff’s counsel did nothing wrong, and it is abundantly clear that none of the final  
20 three elements are met. Mr. Aldrich did not conceal any facts, nor did he present intentionally false facts.  
21 To the contrary, Mr. Aldrich zealously advocated for his client, seeking to identify what facts and law  
22 would be at issue in the case by sending requests for admission to Defendant. Defendant did not respond,  
23 and those facts were deemed admitted by Defendant.

24 Plaintiff then moved for partial summary judgment, advising the Court that there were facts that  
25 had been admitted by Defendant by not responding to the requests for admission in a timely fashion.  
26 Plaintiff again notified the District Court that “[t]o date, the Request for Admission have not been  
27 answered, and therefore are deemed admitted.” Plaintiff then listed the items admitted by Defendant’s  
28

1 non-response. Plaintiff cited NRCP 36 and again notified the Court that Defendant had not responded  
2 to requests for admission, and again set forth the facts that had been conclusively proven.

3 Defendant did not oppose the motion for partial summary judgment. Pursuant to DCR 13, the  
4 Court properly granted partial summary judgment. Plaintiff continued to attempt to gather more  
5 information through discovery, but Defendant failed and refused to participate, resulting in Defendant's  
6 Answer being stricken. All of those events occurred properly under Nevada law. There was simply no  
7 fraud, no attempt to deceive the Court, on the part of Plaintiff's counsel.

8 Regarding the fifth element of fraud on the court, the court *must actually be deceived*. That  
9 unequivocally and undeniable *did not happen* in this case. Quite to the contrary, the Court had an  
10 abundance of information - despite the fact that Defendant's Answer had been stricken. In her Motion  
11 to Reconsider Prior Orders, Defendant's counsel attached a letter and four unsigned affidavits claiming  
12 that the location where the incident occurred was open range land - contrary to Defendant's admissions.  
13 On **July 19, 2010**, a hearing was held on Defendant's Motion for Reconsideration of Prior Orders. That  
14 motion was denied and the Court proceeded with a prove up hearing. At the hearing, the Court allowed  
15 Defendant's counsel to cross-examine witnesses and call his own witness - Defendant Fallini - despite  
16 the fact that Defendant's Answer had been stricken and default had been entered against her. Defendant  
17 testified that the incident occurred in open range land. Further, after Plaintiff's counsel objected to the  
18 question whether the incident occurred in open range land, the following exchange occurred:

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

20 Go ahead.

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

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

24 Thus, the Court confirmed it knew where the incident occurred and took judicial notice - at the request  
25 of Defendant's counsel - that the incident occurred in open range land. Thus, the Court was not deceived  
26 in any fashion. Of course, as set forth above and in the direct appeal, it really did not matter whether the  
27 Court took judicial notice of that fact, because Defendant had already admitted the fact that the incident

28

1 did not occur on open range, making the judicial notice irrelevant.

2 It is important to Plaintiff's counsel that this Court specifically find that he absolutely *did not*  
3 perpetrate a fraud on the court. His reputation is at stake, and the District Court's "finding" that he  
4 attempted to perpetrate a fraud on the court is just plain wrong and could be damaging to the reputation  
5 he has spent years building. Mr. Aldrich is a member of the bars in Nevada, Utah, and Idaho, and is  
6 concerned about the potential side effects of the District Court's "finding," such as insurance, pro hac vice  
7 applications, and the like. It is imperative that the Supreme Court make clear that Mr. Aldrich did not  
8 perpetrate a fraud on the court.

9 **D. Misrepresentations by Defendant's Counsel**

10 At the hearing on July 28, 2014, Defendant's counsel made a series of misrepresentations and/or  
11 unsupported statements to the Court:

- 12 1. He claimed that the fact that the collision may have occurred in open range was  
13 "undisputed and...has never been disputed by Plaintiff's counsel" (**Exhibit 12**, p. 9, ls. 21-  
14 22). This fact initially was not undisputed, as Defendant asserted an "open range"  
15 affirmative defense. To test the validity of Defendant's assertion of that affirmative  
16 defense, Plaintiff sent discovery on this issue and Defendant refused to answer it (as set  
17 forth above). Ultimately, it was Defendant's failure to respond that led to this fact being  
18 deemed conclusively proven pursuant to NRCP 36. This fact no longer had to be  
19 contested because it was admitted by Defendant. Even Defendant did not dispute that fact  
20 thereafter for many years.
- 21 2. That there were "14 signs between where Mr. Adams drove his car to where he hit the  
22 cow" (**Exhibit 12**, p. 11, ls. 11-12). No admissible evidence had been presented to the  
23 Court to sustain this assertion, and it was improper to use the July 28, 2014 hearing for  
24 Defendant's counsel to attempt to testify in the case.
- 25 3. That the Requests for Admission were sent "after Ms. Fallini's counsel repeatedly  
26 neglected to attend hearings and respond to pleadings" (**Exhibit 12**, p. 12, l. 24 through  
27 p. 13, l. 2). This is addressed more fully above, but is a statement that is clearly not

1 supported by the record in the case.

- 2 4. That "Plaintiff sought default judgment based upon the order granting summary judgment  
3 which the court granted" (**Exhibit 12**, p. 13 ls. 6-8). This is also addressed more fully  
4 above, and it is absolutely a false statement intended to divert the Court's attention away  
5 from the real basis for the entry of Default Judgment. Briefly, the Default Judgment was  
6 entered after the Defendant's Answer and Counterclaim were stricken due to her repeated  
7 failure to abide by Court Orders. It was not based on the granting of summary judgment.
- 8 5. That he "found no cases where a court took judicial notice of an essential fact in direct  
9 contradiction of a deemed admitted fact that then formed the basis for prevailing on  
10 summary judgment." (**Exhibit 12**, p. 22 ls. 15-19). This is a misrepresentation because  
11 the Court took judicial notice of the essential fact at the prove-up hearing, which occurred  
12 two (2) years after partial summary judgment was granted, and at the request of  
13 Defendant's counsel.
- 14 6. "Opposing counsel forced the Court to pronounce a clear lie that the accident was not in  
15 open range when it entered the motion for summary judgment and the order that he  
16 prepared." (**Exhibit 12**, p. 23 ls. 10-13). Again, the default judgment was entered due to  
17 Defendant's repeated violation of court orders, not her admissions of fact.
- 18 7. That "fraud upon the Court has never been litigated...but the allegations that opposing  
19 counsel committed fraud upon the Court have not been claimed, litigated or reviewed at  
20 any point in any prior proceeding." (**Exhibit 12**, p. 56 l. 22 though 57, l. 3.). This issue  
21 absolutely had been litigated, as explained above, in Defendant's appeal (which she lost  
22 three (3) times) and separately in the Tonopah action.
- 23 8. That Mr. Aldrich "did it again [committed fraud upon the Court] when the Court said I  
24 take judicial notice that this occurred on open range." (**Exhibit 12**, p. 60, l. 24 through  
25 61, l. 1). Again, Defendant's counsel, Mr. Ohlson, asked the Court to take judicial notice  
26 over the objection of Plaintiff's counsel.

27 ///

1 These representations also present a sufficient basis to grant Plaintiff's requested relief under  
2 NRCP 60(b) – that the Court set aside its August 6, 2014 Order and reinstate the Default Judgment, along  
3 with a finding that Aldrich did not commit fraud upon the Court.

#### 4 IV.

#### 5 COUNTERMOTION FOR ENTRY OF FINAL JUDGMENT

6 The August 6, 2014 Order set aside the Default Judgment, but it did not set aside the Order  
7 Granting Partial Summary Judgment entered on July 30, 2008. Defendant has not moved to set aside that  
8 order. Consequently, the summary judgment order still stands, and at best, Defendant still has a finding  
9 from this Court that she is liable in this action. Further, as has been explained above, Plaintiff is entitled  
10 to entry of final judgment either because the matter has already been litigated or because the August 6,  
11 2014 Order should be set aside.

12 Plaintiff incorporates the arguments set forth above. Defendant is still liable for the incident  
13 because partial summary judgment still stands. The Nevada Supreme Court reduced the judgment  
14 amount, so there are no issues regarding damages to be litigated. Consequently, Plaintiff is still entitled  
15 to judgment as reduced by the Nevada Supreme Court, and Plaintiff requests that the Court enter  
16 judgment in that amount. This should occur regardless of whether the Court grants Plaintiff's  
17 counter motions for reconsideration or to set aside the August 6, 2014 Order.

#### 18 V.

#### 19 CONCLUSION

20 Based on the above, Defendant's Motion for Entry of Final Judgment should be denied. Further,  
21 Plaintiff's counter motion to reconsider the August 6, 2014 Order and/or for rehearing of the Order entered  
22 on August 6, 2014, or alternatively, to set aside the Order entered on August 6, 2014, which set aside the  
23 Default Judgment entered on August 12, 2010 and later appealed to the Nevada Supreme Court should  
24 be granted. The August 6, 2014 Order should be reconsidered, reheard, and/or set aside pursuant to  
25 NRCP 60(b), for numerous reasons, including mistake of fact, mistake of law, and fraud upon the Court  
26 by Defendant's counsel, as set forth more fully herein.

27 Alternatively, Plaintiff moves for entry of final judgment because Defendant is still liable under

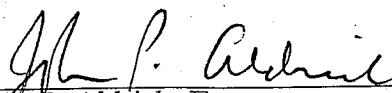


1 the Order Granting Summary Judgment, and the damages amount has already been decided by the Nevada  
2 Supreme Court, so there are no other issues to litigate in that regard.

3 DATED this 9<sup>th</sup> day of February, 2015.

4 Respectfully Submitted,

5 **ALDRICH LAW FIRM, LTD.**

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

CERTIFICATE OF SERVICE

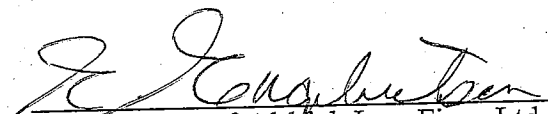
I HEREBY CERTIFY that on the 9<sup>th</sup> day of February, 2015, I mailed a copy of the

PLAINTIFF'S OPPOSITION TO DEFENDANT'S 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

in a sealed envelope, to the following and that postage was fully paid thereon:

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

David R. Hague  
Fabian & Clendenin  
215 S. State Street, Suite 1200  
Salt Lake City, UT 84111-2323  
*Attorney for Defendant*

  
An employee of Aldrich Law Firm, Ltd.

# EXHIBIT 1

# EXHIBIT 1

1 **ORDR**

John P. Aldrich, Esq.

2 Nevada State Bar No. 6877

Adrianne C. Duncan, Esq.

3 Nevada State Bar No. 9797

**BLACK & LOBELLO**

4 10777 West Twain Avenue, Suite 300

Las Vegas, Nevada 89135

5 (702) 869-8801

*Attorneys for Plaintiffs*

**FILED**

**DEBRA BENNETT**

2008 JUL 30 P 3:30

**NYE COUNTY CLERK  
BY DEPUTY**

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

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

12 **Plaintiffs,**

13 vs.

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

16 **Defendants.**

17 SUSAN FALLINI,

18 **Counterclaimant,**

19 vs.

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

22 **Counterdefendants.**

Case No.: CV24539  
Dept.: 2P

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

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

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

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

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

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

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

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

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

17 DATED this 29 day of July, 2008.

18 **ROBERT W. LANE**  
19 **DISTRICT COURT JUDGE**

20  
21 Submitted By:

22 **BLACK & LOBELLO**

23  
24 John P. Aldrich

25 John P. Aldrich

26 Nevada Bar No.: 6877

10777 West Twain Avenue, Suite 300

27 Las Vegas, Nevada 89135

(702) 869-8801

(702) 869-2669 (Fax)

# EXHIBIT 2

# EXHIBIT 2

ORIGINAL

1 ORDER

John P. Aldrich

2 Nevada Bar No.: 6877

Catherine Hernandez

3 Nevada Bar No. 8410

**ALDRICH LAW FIRM, LTD.**

4 1601 S. Rainbow Blvd., Suite 160

Las Vegas, Nevada 89146

5 (702) 853-5490

*Attorneys for Plaintiff*

FILED

FIFTH JUDICIAL DISTRICT

APR 27 2009

Nye County Clerk

Deputy

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

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

Plaintiff,

13 v.

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

16 Defendants.

17  
18 SUSAN FALLINI,

Counterclaimant,

19 vs.

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

23 Counterdefendants.

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

24  
25 ORDER GRANTING PLAINTIFF'S MOTION TO COMPEL DEFENDANT'S  
26 PRODUCTION OF DOCUMENTS

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



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

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

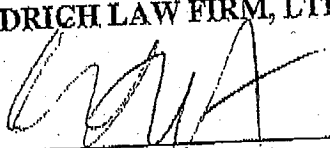
9 **IT IS FURTHER ORDERED** that Defendant shall pay <sup>750.00</sup> \$1,650.00 for related attorney's fees  
10 and costs for failing to comply with discovery rules and for Plaintiff having to bring this motion, also  
11 within ten (10) days of Notice of Entry of this Order.

12 DATED this 27 day of April, 2009.

  
DISTRICT COURT JUDGE

13  
14  
15 Respectfully submitted by:

16 **ALDRICH LAW FIRM, LTD.**

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

# EXHIBIT 3

# EXHIBIT 3

1 **ORDR**

2 John P. Aldrich

3 Nevada Bar No.: 6877

4 **ALDRICH LAW FIRM, LTD.**

5 1601 S. Rainbow Blvd., Suite 160

6 Las Vegas, Nevada 89146

7 (702) 853-5490

8 *Attorneys for Plaintiff*

**FILED**

2009 JUL 17 A 9:42

**Shella Winn**  
NYE COUNTY CLERK  
BY DEPUTY

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

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

15 Plaintiff,

16 v.

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

19 Defendants.

20 

---

SUSAN FALLINI,

21 Counterclaimant,

22 vs.

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

26 Counterdefendants.

Case No.: CV24539

Dept. No.: 2P

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

THIS MATTER having come on for hearing on Monday, July 13, 2009, on Plaintiff's Motion to Strike Defendant's Answer and Counterclaim, before the Honorable Robert W. Lane, and John P. Aldrich, Esq., of Aldrich Law Firm, Ltd., appearing on behalf of the Plaintiffs, with Harry

1 Kuehn, Esq., appearing on behalf of Defendant, the Court having reviewed all pleadings and papers  
2 on file herein, and good cause appearing therefore:

3 **IT IS HEREBY ORDERED** that Plaintiff's Motion to Strike Defendant's Answer and  
4 Counterclaim is DENIED at this time.

5 **IT IS FURTHER ORDERED** that Defendant SUSAN FALLINI shall produce all  
6 documents responsive to Plaintiff's discovery requests pursuant to NRCP 16.1, 26,33,34 and NRCP  
7 37 within thirty (30) days of the hearing of Plaintiff's Motion to Strike Defendant's Answer and  
8 Counterclaim. Thus, the date by which Defendant must provide said documents is August 12, 2009.

9 **IT IS FURTHER ORDERED** that in the event Defendant SUSAN FALLINI does not  
10 produce all documents responsive to Plaintiff's discovery requests pursuant to NRCP 16.1, 26,33,34  
11 and NRCP 37 within thirty (30) days of the hearing of Plaintiff's Motion to Strike Defendant's  
12 Answer and Counterclaim, the Court will grant the relief sought by Plaintiff and strike Defendant's  
13 Answer and Counterclaim.

14 **IT IS FURTHER ORDERED** that Defendant shall pay a monetary sanction of \$1,000.00  
15 for related attorney's fees and costs for failing to comply with discovery rules and the Court's prior  
16 Order granting Plaintiff's Motion to Compel, and for Plaintiff having to bring this motion.

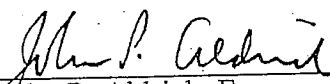
17 DATED this 17 day of July, 2009.

18 **ROBERT W. LANE**

19 DISTRICT COURT JUDGE

20  
21 Respectfully submitted by:

22 **ALDRICH LAW FIRM, LTD.**

23   
24 John P. Aldrich, Esq.  
25 Nevada Bar No. 6877  
26 1601 S. Rainbow Blvd., Suite 160  
27 Las Vegas, NV 89146  
28 (702) 853-5491  
*Attorneys for Plaintiff*

# EXHIBIT 4

# EXHIBIT 4

NOV 04 2009

Michelle A. Thorn

**ORDR**John P. Aldrich, Esq.  
Nevada Bar No. 6877**ALDRICH LAW FIRM, LTD.**  
1601 S. Rainbow Blvd., Suite 160  
Las Vegas, Nevada 89146(702) 853-5490  
(702) 227-1975 fax  
*Attorneys for Plaintiff*THE FIFTH JUDICIAL DISTRICT COURT  
THE STATE OF NEVADA, COUNTY OF NYEEstate of MICHAEL DAVID ADAMS,  
by and through his mother JUDITH  
ADAMS, individually and on behalf of the  
Estate,

Plaintiffs,

vs.

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

Defendants.

SUSAN FALLINI,

Counterclaimant,

vs.

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

Counterdefendants.

Case No.: CV24539  
Dept.: 2P**FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER STRIKING ANSWER  
AND COUNTERCLAIM OF DEFENDANT SUSAN FALLINI AND HOLDING  
DEFENDANT'S COUNSEL IN CONTEMPT OF COURT**

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

## FINDINGS OF FACT

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

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

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

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

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

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

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

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

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

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

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

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

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



1 with discovery requests.

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

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

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

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

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

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

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

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

### 5 CONCLUSIONS OF LAW

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

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

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

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

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

22 5. The Nevada Supreme Court held that default judgments will be upheld where "the  
23 normal adversary process has been halted due to an unresponsive party, because diligent parties are  
24 entitled to be protected against interminable delay and uncertainty as to their legal rights." *Hamlett*  
25 *v. Reynolds*, 114 Nev. 863, 963 P.2d 457 (1998) (citing *Skeen v. Valley Bank of Nevada*, 89 Nev.  
26 301, 303, 511 P.2d 1053, 1054 (1973).  
27  
28

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

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

5 **ORDER**

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

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

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

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

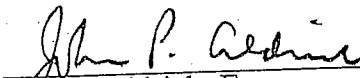
16 IT IS SO ORDERED.

17 DATED this 4 day of November, 2009.

18 **ROBERT W. LANE**  
19 **DISTRICT COURT JUDGE**

20 Submitted by:

21 **ALDRICH LAW FIRM, LTD.**

22 

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

# EXHIBIT 5

# EXHIBIT 5

FILED

2010 FEB 11 A 8:49

Shella Winn  
NIE COUNTY CLERK  
BY DEPUTY

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

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

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

Plaintiffs,

vs.

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

Defendants.

SUSAN FALLINI,

Counterclaimant,

vs.

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

Counterdefendants.

Case No.:  
Dept.:

CV24539  
2P

NOTICE OF ENTRY OF DEFAULT

///

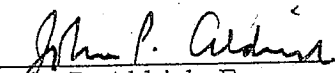
///

///

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

3 DATED this 8 day of February, 2010.

4 ALDRICH LAW FIRM, LTD.

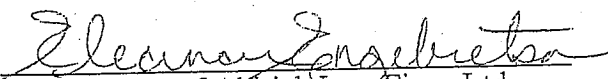
5   
6 John P. Aldrich, Esq.  
7 Nevada State Bar No. 6877  
8 1601 S. Rainbow Blvd., Suite 160  
9 Las Vegas, Nevada 89146  
10 (702) 853-5490  
11 (702) 227-1975 (fax)  
12 *Attorneys for Plaintiff*

13 **CERTIFICATE OF SERVICE**

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

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

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

28   
An employee of Aldrich Law Firm, Ltd.

# EXHIBIT 1

# EXHIBIT 1

FILED

2010 FEB 27 2:27  
RACHEL ALDANA  
NYE COUNTY CLERK  
BY DEPUTY

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

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

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

12 Plaintiffs,

13 vs.

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

16 Defendants.

17 SUSAN FALLINI,

18 Counterclaimant,

19 vs.

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

22 Counterdefendants.

Case No.: CV24539  
Dept.: 2P

23 DEFAULT

24 It appearing from the files and records in the above-entitled action that Defendant SUSAN  
25 FALLINI, being duly served with a copy of the Summons and Complaint on the 1<sup>st</sup> day of March,  
26 2007, and that an Answer and Counterclaim were filed on March 14, 2007. Defendant and her  
27  
28



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

5 DATED this 4th day of February, 2010.

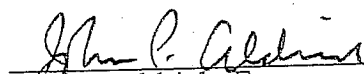
6 CLERK OF THE COURT

7 RACHEL ALDANA

8 By: \_\_\_\_\_  
9 Deputy Clerk

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

12 ALDRICH LAW FIRM, LTD.

13  
14 

15 John P. Aldrich, Esq.

16 Nevada Bar No.: 6877

17 1601 S. Rainbow Blvd., Suite 160

18 Las Vegas, Nevada 89146

19 Attorney for Plaintiffs

# EXHIBIT 6

# EXHIBIT 6

FILED

2010 APR 19 P 1:27

NYE COUNTY CLERK  
BY DEPUTY

1 ORDER

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

Michelle A. Thorne

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

11 Plaintiffs,

12 vs.

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

15 Defendants.

16 SUSAN FALLINI,

17 Counterclaimant,

18 vs.

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

21 Counterdefendants.

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

26 ///

27 ///

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

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

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

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

16 ///

17 ///

18 ///

19 ///

20 ///

21 ///

22 ///

23 ///

24 ///

25 ///

26 ///

27

28

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

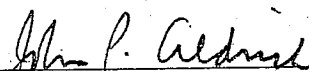
7 DATED this 14 day of April, 2010.

8 **ROBERT W. LANE**

9  
10 \_\_\_\_\_  
DISTRICT COURT JUDGE

11 Submitted by:

12 **ALDRICH LAW FIRM, LTD.**

13 

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

# EXHIBIT 7

# EXHIBIT 7

FILED

2010 JUN -2 A 8:57

REBECCA BALLARD  
NYE COUNTY CLERK  
BY DEPUTY

1 **ORDER**

2 John P. Aldrich, Esq.  
3 Nevada Bar No. 6877  
4 **ALDRICH LAW FIRM, LTD.**  
5 1601 S. Rainbow Blvd., Suite 160  
6 Las Vegas, Nevada 89146  
7 (702) 853-5490  
8 (702) 227-1975 fax  
9 *Attorneys for Plaintiff*

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

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

16 Plaintiffs,

17 vs.

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

20 Defendants.

21 SUSAN FALLINI,

22 Counterclaimant,

23 vs.

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

28 Counterdefendants.

Case No.: CV24539  
Dept.: 2P

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

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

## FINDINGS OF FACT

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

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

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

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

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

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

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



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

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

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

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

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

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

1 with discovery requests.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

## CONCLUSIONS OF LAW

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

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

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

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

1 to Discovery requests.

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

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

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

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

### 21 ORDER

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

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

1 sought by Plaintiff.

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

10 IT IS SO ORDERED.

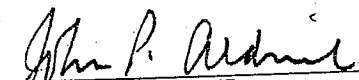
11 DATED this 2 day of June, 2010.

12 **ROBERT W. LANE**

13 **DISTRICT COURT JUDGE**

14 Submitted by:

15 **ALDRICH LAW FIRM, LTD.**

16 

17 John P. Aldrich, Esq.

18 Nevada Bar No.: 6877

19 1601 S. Rainbow Blvd., Suite 160

20 Las Vegas, Nevada 89146

21 Attorneys for Plaintiff

# EXHIBIT 8

# EXHIBIT 8



Case No. CV 24539  
Dept. 2P

FILED

*Heaven Ballard*  
2010 AUG 12 A 9:00

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

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

Plaintiff,

vs.

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

Defendants.

ORDER AFTER HEARING

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



1  
2 Motion for Reconsideration and proceeded with the Prove Up Hearing and Canceled the  
3 Trial scheduled for August 2010. Judith Adams, Anthony Adams, and Susan Fallini were  
4 sworn in and testified. The parties' counsel gave their closing statements. The Court  
5 heard testimony, counsels' statements and arguments, and reviewed the pleadings on file  
6 herein. This Order follows.

7  
8 ORDER

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

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

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

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

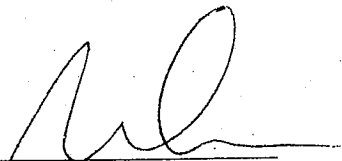
17 IT IS FURTHER ORDERED that the Court grants the Plaintiff \$35,000 in  
18 sanctions levied against the Defendant.

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

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

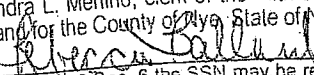
1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

DATED this 12<sup>th</sup> day of August 2010.

  
DISTRICT JUDGE

CERTIFIED COPY

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.

Date: 8-18-10  
Sandra L. Mertino, clerk of the Fifth Judicial District Court, in and for the County of Nye, State of Nevada.  
By: , Deputy  
Per NRS 239 Sec. 6 the SSN may be redacted, but in no way affects the legality of the document.

FIFTH JUDICIAL DISTRICT COURT  
ESMERELDA, MINERAL AND NYE COUNTIES



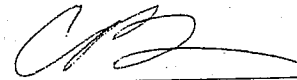
CERTIFICATION OF MAILING

The undersigned hereby certifies that on the 12<sup>th</sup> 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 9

# EXHIBIT 9

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 *H. Anderson*  
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.<sup>1</sup> 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.

---

<sup>1</sup>As 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.<sup>2</sup>

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

---

<sup>2</sup>We 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.<sup>3</sup> 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

---

<sup>3</sup>The 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.<sup>4</sup> Alsens, 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.

[Signature] J.  
Hardesty

[Signature] J.  
Parraguirre

[Signature] 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

<sup>4</sup>Adams 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 10

# EXHIBIT 10

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

JUN 03 2013

TRACIE K. LINDEMAN  
CLERK OF SUPREME COURT  
BY R. Malone  
DEPUTY CLERK

**ORDER DENYING REHEARING**

Rehearing denied. NRAP 40(c).

It is so ORDERED.

Hardesty J.  
Hardesty

Parraguirre J.  
Parraguirre

Cherry J.  
Cherry

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

# EXHIBIT 11

# EXHIBIT 11

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**

JUL 18 2013

TRACIE K. LINDEMAN  
CLERK OF SUPREME COURT  
BY: *R. Malone*  
DEPUTY CLERK

**ORDER DENYING EN BANC RECONSIDERATION**

Having considered the petition on file herein, we have concluded that en banc reconsideration is not warranted. NRAP 40A. Accordingly, we

ORDER the petition DENIED.

*Pickering*  
\_\_\_\_\_, C.J.  
Pickering

*Gibbons*  
\_\_\_\_\_, J.  
Gibbons

*Parraguirre*  
\_\_\_\_\_, J.  
Parraguirre

*Cherry*  
\_\_\_\_\_, J.  
Cherry

*Hardesty*  
\_\_\_\_\_, J.  
Hardesty

*Douglas*  
\_\_\_\_\_, J.  
Douglas

*Saitta*  
\_\_\_\_\_, J.  
Saitta

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



# EXHIBIT 12

# EXHIBIT 12

**In Re:**

*Estate of Michael David Adams, et al. vs.  
Susan Fallini, et al.*

---

*Transcription  
August 13, 2014*

---

*www.depointernational.com*



Min-U-Script® with Word Index

**depo international**  
worldwide deposition services

1 THE FIFTH JUDICIAL DISTRICT COURT  
2 STATE OF NEVADA, COUNTY OF NYE  
3  
4 Estate of MICHAEL DAVID ADAMS,  
5 by and through his mother JUDITH  
6 ADAMS, individually and on  
7 behalf of the estate,  
8 Plaintiff,  
9 vs.  
10 SUSAN FALLINI, DOES I-X and ROE  
11 CORPORATIONS I-X, inclusive,  
12 Defendants.  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25 Reported by: Teri R. Ward, CCR NO. 839

Case No.  
CV24539  
Dept. No. 2P

1 THE COURT: Adams versus Fallini, 24539.  
2 MR. OHLSON: Good morning, Your Honor.  
3 THE COURT: Good morning. Let's give  
4 people a little bit of time to shuffle in and out  
5 and then we'll make a record. What page is Fallini  
6 on? Page 7.  
7 Okay, counsel. Everybody's came on in  
8 and sat down now, and you were about to state for  
9 the record your name, and we were going to get  
10 started. So go ahead, please.  
11 MR. OHLSON: Yes, Your Honor. If I may,  
12 John Ohlson and David Hague for Mrs. Fallini, who's  
13 present. We're ready to proceed. Mr. Hague is a  
14 partner in the law firm of Fabian & Clendenin, also,  
15 adjunct -- or I don't know if he's adjunct, but he's  
16 a --  
17 MR. HAGUE: That's right.  
18 MR. OHLSON: -- law professor and --  
19 THE COURT: Good. And Mr. Aldrich.  
20 Very good.  
21 MR. ALDRICH: John Aldrich, yes, for the  
22 Plaintiff.  
23 THE COURT: All right. Case No. 24539,  
24 Adams versus Fallini. It's the time and place set  
25 for a motion for relief from judgment and also any

1 APPEARANCES:  
2 For the Plaintiff:  
3 JOHN P. ALDRICH, ESQ.  
4 Aldrich Law Firm, Ltd.  
5 1601 South Rainbow Boulevard  
6 Suite 160  
7 Las Vegas, Nevada 89146  
8 For the Defendants:  
9 DAVID R. HAGUE, ESQ.  
10 Fabian & Clendenin, P.C.  
11 215 South State Street  
12 Suite 1200  
13 Salt Lake City, UT 84111  
14 For the Defendants:  
15 JOHN OHLSON, ESQ.  
16 275 Hill Street  
17 Reno, Nevada 89501  
18  
19  
20  
21  
22  
23  
24  
25

1 other information that we're going to get out on the  
2 motion to quash the subpoena duces tecum for the  
3 business records. I --  
4 MR. OHLSON: Mr. Hague is going to argue  
5 the motion, Your Honor.  
6 THE COURT: Very good. Counsel, I've  
7 read the briefs, but this is your chance to make a  
8 record, so go ahead.  
9 MR. HAGUE: Thank you, Your Honor.  
10 Thanks for letting us come here today, and we have  
11 quite a few supporters for Ms. Fallini. They've  
12 traveled all over the place.  
13 This is an important hearing. It's an  
14 important hearing for my client. I've traveled from  
15 Texas. My other partner's traveled from Salt Lake.  
16 We view this as a very important motion, and we're  
17 grateful the Court has allowed us to present it  
18 today.  
19 THE COURT: Okay.  
20 MR. HAGUE: Your Honor, as you can see,  
21 there are several supporters here because they also  
22 have a stake in the outcome of this case. It's not  
23 just Ms. Fallini, who's here.  
24 You know, I've thought about this case  
25 for the past couple of years over and over again,

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

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

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

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

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

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

13 THE COURT: Thank you, sir.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

25 Since early 2007, Your Honor,

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

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

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

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

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

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

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

25 Opposing counsel never produced this web

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1 to the fraud.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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



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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

25 THE COURT: She relied on Mr. Kuehn.

1 MR. HAGUE: She relied on Mr. Kuehn.  
2 That's right. She did. And fortunately, the  
3 Supreme Court has said that we're not going to  
4 impute that type of shoddy lawyer (indiscernible).  
5 THE COURT: I didn't mean to get you off  
6 your thing.

7 MR. HAGUE: No.

8 THE COURT: It just stood out at me.

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

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

24 Do you have any questions for me?

25 THE COURT: I might have after

1 exert a little pressure.

2 But I will say I'm glad that

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

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

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

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

1 Mr. Aldrich speaks.

2 MR. HAGUE: Okay. Thank you.

3 THE COURT: Thank you.

4 MR. ALDRICH: Good morning, Your Honor.

5 THE COURT: Good morning.

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

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

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

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

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

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

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

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

3 Now, Counsel comes in today and tries to  
4 make Mrs. Fallini seem like the victim, non-savvy,  
5 doesn't know what's going on, no idea what was going  
6 on. If you're in 31 cases, you're smart enough to  
7 ask that question, when you're lawyer says this case  
8 is over, great, send me the pleading that says it's  
9 over. So there's another mistake right there.  
10 Okay? And, by the way, if he sent her a pleading  
11 that said it was over, that's not my doing, but I've  
12 never seen that.

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

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

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

19 THE COURT: All right.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1 THE COURT: Short recess.  
2 THE MARSHAL: All rise.  
3 (Court recessed at 11:06 a.m. until  
4 11:22 a.m.)

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

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

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

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

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

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

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

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

14 THE COURT: You know what?

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

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

20 MR. ALDRICH: Fair enough.

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

25 MR. ALDRICH: Great. Thank you.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1 duty to correct Kuehn's error?

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

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

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

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

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

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

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

15 THE COURT: I know it has.

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

23 THE COURT: So you're --

24 MR. ALDRICH: -- sent them out.

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

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

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

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

18 MR. ALDRICH: No. I don't think --  
19 THE COURT: -- them?

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



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

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

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

17 THE COURT: Counsel.

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

25 I think I said that we owe a duty of

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

8 THE COURT: I haven't.

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

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

19 MR. HAGUE: Thank you.

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

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

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

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

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

4 THE COURT: Sure. That's fine.

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

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

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

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

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

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

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



<p style="text-align: right;">Page 57</p> <p>1 counsel committed fraud upon the Court have not been 2 claimed, litigated or reviewed at any point in any 3 prior proceeding. 4 Now, the Court has asked today to 5 Counsel, does that matter? Can you send someone a 6 request for admission, Doesn't matter what it says? 7 Doesn't matter if it's a complete lie. I'll send 8 some stranger request for admission. Hey, admit you 9 said that Dave Hague has herpes. Okay? Person 10 laughs at it. Right? Thinks that's silly. They 11 don't respond. Request for admission, deemed 12 admitted, defamation, I win, case over. That's what 13 the Court's opening up the door for. 14 That's why there are people here today, 15 because they all own cows on open range, which now 16 means there's going to be a precedence that any time 17 you drive through and hit a cow, as long as you can 18 catch somebody off guard, even if you're 19 misrepresenting, even if you're lying, you catch 20 them off guard, they're going to deem admitted as 21 something that is false. That is the problem with 22 this case. The Supreme Court did not decide that. 23 Your Honor has never decided that. We've never 24 brought a Rule 60 motion, and we've never talked 25 about fraud upon the Court.</p>	<p style="text-align: right;">Page 59</p> <p>1 MR. HAGUE: The fraud occurred at 2 several different points. 3 THE COURT: But let's make it clear for 4 the record. If it's -- 5 MR. HAGUE: Yes. 6 THE COURT: -- appealed up to the 7 Supreme Court, we want them to look at the 8 particular -- 9 MR. HAGUE: Yes. 10 THE COURT: -- moment he's committed 11 fraud on the Court. 12 MR. HAGUE: I believe he committed fraud 13 when the complaint was filed because there was no 14 basis to support it because the open range law. 15 That was the first fraud. 16 The second fraud was the request for 17 admissions when he knew that it was on open range 18 and he asked my client to admit a fact that was 19 false -- 20 THE COURT: Okay. 21 MR. HAGUE: -- that had no evidentiary 22 support. 23 THE COURT: And you're purported to 24 point at evidence to the Supremes saying here's how 25 I know that he knew it was open range?</p>
<p style="text-align: right;">Page 58</p> <p>1 The accident report, Your Honor, was 2 discovered this year in 2014. The accident report 3 says -- and it's in our motion and it's attached -- 4 that the accident was on open range. Mr. Aldrich 5 has that report. It was in his production of 6 documents that he was going to submit at trial. It 7 was never submitted to us. 8 Your Honor, Mr. Aldrich wants to have 9 the Court claim that actual innocence is not 10 relevant. How can innocence not be relevant in this 11 case? Isn't there a way -- isn't there a way that 12 we can relieve Ms. Fallini this judgment, an over 13 \$1,000,000 judgment that will crush her family, that 14 will crush her livelihood, that will crush her 15 profession, when there was a law designed to protect 16 her? 17 THE COURT: How would it crush her 18 profession? No. Let me withdraw that question. 19 Let me ask you a more pertinent one. If you're 20 submitting -- and I'm sure you went into great 21 detail in your brief. I apologize for making you 22 elucidate it again verbally. But if you're 23 submitting that Counsel committed fraud, let's be 24 specific where the fraud occurred. Was it in the 25 request for admissions?</p>	<p style="text-align: right;">Page 60</p> <p>1 MR. HAGUE: Absolutely. 2 THE COURT: All right. 3 MR. HAGUE: Absolutely. 4 THE COURT: And that would be -- 5 MR. HAGUE: That would be through the 6 accident report, that would be through her complaint 7 where she set forth the affirmative defense -- or 8 her answer. That would be in the complaint. That 9 would be in his document that he submitted to this 10 Court and signed where he actually lists all the 11 documents, the accident report, and where her 12 affirmative defenses are stated again. 13 THE COURT: Because in the accident 14 report it affirmatively stated this is -- 15 MR. HAGUE: Affirmatively stated. 16 THE COURT: -- open range, and he knew 17 that? 18 MR. HAGUE: And he knew that. 19 THE COURT: All right. 20 MR. HAGUE: The other part is when he 21 filed his motion for summary judgment. He had this 22 Court enter judgment on a deemed admitted fact that, 23 again, he knew was fraudulent. That was the other 24 fraud he committed upon the Court. He did it again 25 when the Court said I take judicial notice that this</p>

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

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

5 MR. HAGUE: Correct.

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

9 MR. HAGUE: Absolutely has.

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

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

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

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

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

7 There is no fraud on the Court here.

8 The Court knew exactly what was going on, exactly  
9 that, yes, I sent requests for admissions and they  
10 were not responded to for months and months and  
11 months. Okay? Then I brought a motion for summary  
12 judgment.

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

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

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

4 THE COURT: All right.

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

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

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

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

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

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

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

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

22 MR. ALDRICH: (Indiscernible).

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

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

1 or wasn't open range, to my recollection. I'm not  
2 -- I mean, I've never been there. Okay? But --  
3 THE COURT: If you had known it was open  
4 range, did you have an ethical duty to say, even  
5 though she admitted this, Judge, I want you to know  
6 that I know it's open range?

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

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

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

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

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

22 THE COURT: All right.

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

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

1 way.

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

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

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

11 THE COURT: Is there any precedence --

12 MR. ALDRICH: When --

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

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

23 THE COURT: You think it has precedence?

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

1 beat this too much into the ground. We've all made  
2 the arguments, and I'm not a fan of redundancy. Is  
3 there anything else new that you guys want to add?  
4 MR. HAGUE: No, Your Honor. I would  
5 just ask that the Court follow the law and think  
6 about what's transpired in this case and think about  
7 the admissions that opposing counsel has made today.  
8 They're astonishing.

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

20 THE COURT: Counsel.

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

1 THE COURT: All right.

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

9 THE COURT: Sure.

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

16 THE COURT: Well --

17 MR. HAGUE: That scares them.

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

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

25 THE COURT: All they have to do is make

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

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

4 THE COURT: I'd hope that.

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

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

8 (Pause in the proceedings)

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1 to make these decisions and follow the law. I wish  
2 I could just decide it in equity. You know what? I  
3 just feel sorry for you, and I'm just going to set  
4 the law aside and rule in Ms. Fallini's favor  
5 because this shouldn't have happened.

6 I'm actually a little bit embarrassed.  
7 On one of these sheets I wrote it down that it's  
8 always hard for a human being to have their  
9 weaknesses pointed out to them, and I've had my  
10 weaknesses pointed out to me in this case.

11 I think the main attacks were that we  
12 should have known it was open range, and I'm  
13 embarrassed to admit I didn't. I didn't know it was  
14 open range at the beginning. It wasn't until a year  
15 or two into the litigation that somebody -- might  
16 have been your motion for reconsideration where you  
17 said take judicial notice it's open range. And I  
18 was like oh, sure. That's open range. What's that  
19 mean? And I'm learning, oh, crud, she shouldn't  
20 have lost this case.

21 And I know it's a shame because if you  
22 had had a rancher as a judge, that rancher would  
23 have said what in the heck is this? This is -- I'm  
24 kicking it out. But I can't do that. Even if I had  
25 known it was open range, I can't kick it out. I

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

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

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

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

25 I feel kind of trapped, too, in having

1 have to be neutral.

2 It's not my job to go up and investigate  
3 and find out if it's open range or not for  
4 Ms. Fallini and help her out because Kuehn's not  
5 doing anything. That's not my job. I'd be  
6 improperly, unethical acting if I did that. I have  
7 to go on what the attorneys show me. Here's my  
8 motions, here is our admissions. What do you do,  
9 Judge? Follow the law. And that's what I did.

10 If you ever have a case about  
11 submarines, I know the law on that. And I have to  
12 tell you, I'm totally ignorant on the politics of  
13 the open range. You stated earlier in your argument  
14 that the ranchers are upset because there's, I  
15 guess, a movement to say it shouldn't be open range  
16 and people should be allowed to sue if they hit a  
17 cow and so forth. And I have to be honest, that's  
18 news to me. I don't follow rancher laws of open  
19 range and so forth. I guess I will from now on, on  
20 the Internet, and what's going on. And I take it  
21 that's an ongoing movement that's going on right now  
22 to --

23 MR. HAGUE: Well, it's -- well, I wasn't  
24 necessarily, Your Honor, speaking to the movement.  
25 I was, of course, speaking to the fact that there's

1 a huge concern that there is a set open range law by  
2 Congress and that it isn't protecting Ms. Fallini  
3 anymore because a request for admission was  
4 submitted that was false.

5 THE COURT: Okay. So there isn't some  
6 movement to overturn that law and make open range go  
7 away?

8 MR. HAGUE: I'm not aware of a  
9 movement --

10 THE COURT: Okay.

11 MR. HAGUE: -- but I -- like you, I  
12 don't practice in -- you know, full-time in cattle  
13 and open range law, and so I'm also learning about  
14 it. But the thing that I know is that there is a  
15 law that's out there that hasn't been repealed and  
16 it hasn't been changed, and it's a 100 percent  
17 defense, always.

18 THE COURT: Yeah, I know. I agree with  
19 you. That's the problem in this case, searching for  
20 a remedy.

21 MR. HAGUE: And I think the remedy's  
22 Rule 60, as clear as day.

23 THE COURT: Are you taking another shot  
24 at it? Just kidding you.

25 MR. HAGUE: Probably.

1 when we went into chambers to do jury instructions,  
2 the defense was celebrating because they knew there  
3 was no touching, and they were going to get an  
4 acquittal.

5 I knew what was going on. I used to be  
6 a prosecutor, but it's not my job. I have to be  
7 neutral. I can't tell the State here's what you're  
8 doing wrong. So we went into chambers, and the  
9 defense made a motion. They wanted to get the case  
10 dismissed. There was no touching involved for gross  
11 lewdness, he should be acquitted. Summarily,  
12 acquitted.

13 And the State argued in chambers that  
14 they should be allowed to amend it to indecent  
15 exposure, and I said no, following the law. It's  
16 too late now, you've rested your case. And they  
17 said, well, Judge, let us have a lesser included  
18 crime of annoying a minor and argue that to the  
19 jury. And I said, well, no, I can't do that because  
20 the Supreme Court had a case about a year ago that  
21 where they went into the definition of annoying a  
22 minor and you don't meet that definition, so --

23 And he said, Judge, let me try. Let me  
24 argue it. Let me appeal it. Let me take it to the  
25 Supremes and argue it to them that they can adjust

1 MR. OHLSON: Your Honor, would you allow  
2 me a couple of words?

3 THE COURT: Who are you again? No, I'm  
4 just kidding. I don't think so, Mr. Ohlson. If I  
5 open that door again, then Aldrich has to speak  
6 again. I'm pretty familiar with everything that's  
7 going on.

8 MR. OHLSON: All right.

9 THE COURT: I thought I saw Mr. Gibson  
10 in the audience. He isn't here. A few years ago,  
11 12, 13 years ago, I had a case here in town where a  
12 man went to the park and pulled his pants down and  
13 flashed some kids, which under the law is a crime  
14 called indecent exposure, and the State charged him  
15 with the wrong crime. And the law says that the  
16 State is allowed to amend the crime up until the  
17 point where they close their case. And the State  
18 had a brain eruption and didn't realize they had  
19 charged him with the wrong crime.

20 They charged him with gross lewdness,  
21 which involves a touching, and there was no touching  
22 in this case. So the State prosecuted the case,  
23 called their witnesses, did everything, presented it  
24 to the jury, closed their case for an illegal  
25 touching of a child when there was no touching. So

1 their definition of annoying a minor so I can get a  
2 conviction on this guy for pulling his pants down to  
3 the kids. And I said, well, you know, once a guy's  
4 acquitted, the State can't take things up. So if I  
5 don't submit it to the jury and he's acquitted, it's  
6 over. There's no double jeopardy. So I guess I'll  
7 give you the chance to argue it to the Supremes,  
8 even though I think it's going to be reversed; and  
9 you can argue it up to the Supremes.

10 So they submitted annoying a minor, and  
11 the man was convicted of it by the jury because the  
12 jury wanted to get him for something for what he did  
13 wrong. And it was appealed to the Supreme Court and  
14 the Supreme Court reversed it, just like I knew they  
15 would.

16 And because of that case, whenever I  
17 campaign, instead of being able to say I've never  
18 been reversed by the Supreme Court, I have to say,  
19 well, I've only been reversed once, and I -- you  
20 know, I should have followed my gut and just had the  
21 strength and the fortitude to say no, you're not  
22 appealing this to the Supreme Court, we're going to  
23 follow the law, and I'm never going to make that  
24 mistake again. And here I am it again.

25 MR. OHLSON: Your Honor, please --

1 THE COURT: Because I think --  
2 MR. OHLSON: -- a couple sentences.  
3 THE COURT: -- if you take this up to  
4 the Supremes -- if I rule in your favor and I say  
5 fraud on the Court and excusable neglect, and we'll  
6 send it up to the Supremes where they've got seven  
7 judges who can take a year with 14 law clerks and a  
8 staff of attorneys to decide if it's the right call  
9 or not, we'll let the Supreme Court decide, and  
10 they'll make the right decision, even though I don't  
11 think you're going to prevail, and I think the  
12 Supreme Court will agree with my gut feeling right  
13 now, which is it's not there.

14 On the other hand, I knew the guy  
15 flashed the kids and was guilty, and I know that  
16 Ms. Fallini was on open range. So let's give them a  
17 shot. Let's let the Supreme Court decide if this  
18 was fraud on the Court based on your definitions. I  
19 don't think it was. And I should note for the  
20 record that Mr. Aldrich is right when he says I have  
21 not only done everything right in this case, but I  
22 went the extra mile.

23 I remember my shock in chambers when  
24 Kuehn and Aldrich would come into chambers, and we  
25 were in there for the fourth or fifth time trying to

1 just turning it over to the Supremes and letting  
2 them decide.

3 If I make a decision that Mr. Aldrich is  
4 in the right and rule in his favor and deny your  
5 motion for reconsideration, can you appeal that up  
6 to the Supreme Court and let them decide?

7 MR. HAGUE: Well, Your Honor, I can try  
8 to appeal, but it's all going to be moot. It's  
9 going to be a year-long process where he has  
10 aggressively gone after assets. We have writs of  
11 execution. We have writs of garnishment. We have a  
12 judgment debtor's exam scheduled for today for the  
13 third one. It's not right. It will be moot.

14 THE COURT: Well, we talked about the  
15 injustice to Ms. Fallini, that her cow was on open  
16 range and she's getting hit for over a million. On  
17 the other side of the coin is a family with a dead  
18 son who won a lawsuit, and now here it is four years  
19 later, five later, six years later. That's kind of  
20 an injustice, too, to that family. There has to be  
21 finality to things.

22 MR. HAGUE: I agree, Your Honor. There  
23 does have to be finality, but these things have been  
24 uncovered over time. And I think your instinct to  
25 grant our motion and let the Supreme Court decide if

1 get Mr. Kuehn to respond. And I had already  
2 sanctioned him three times; 250, 500, \$1,000. And  
3 we brought him into chambers again, and Mr. Aldrich  
4 said, Judge, this has been going on for a year and  
5 we can't get Kuehn to respond to this. And I'd  
6 known Kuehn for 21 years and I didn't really want to  
7 hammer him, but I didn't know what else to do. The  
8 law said I had to.

9 And I said, Harry, I'm going to have to  
10 grant summary judgment on this. I can't get you to  
11 respond. And then for the fifth or sixth time  
12 Mr. Aldrich said, it's okay, Judge. We'll give him  
13 another couple of months. We'll give him another  
14 month, another couple of weeks. Let's give him a  
15 chance to get these in because it was perfunctory.  
16 All he had to do was file denials. I deny this  
17 admission. I deny this.

18 And Mr. Aldrich was cool about it for a  
19 year or two. And I think he went the extra mile as  
20 far as trying to help Mr. Kuehn do the right thing.  
21 But my dilemma is your argument that Mr. Aldrich  
22 knew that this was open range, and you're saying he  
23 was wrong for submitting that, anyway. Ethically,  
24 you may be right. I don't know. I guess I could go  
25 back and do some more research on it, rather than

1 that's wrong is the right thing to do not only  
2 morally, but I think that you have an absolute basis  
3 under Rule 60 because I don't know what fraud is  
4 upon the Court if this isn't fraud upon the Court.

5 THE COURT: Well, that's the dilemma.  
6 Give me one more second. When I have questions in  
7 my mind, I turn around and ask my law clerk, and he  
8 says to me privately, Judge, you're (indiscernible)  
9 it. Whatever you decide is the right thing. And  
10 then I feel a lot better about my decisions. Hang  
11 on one second.

12 (Pause in the proceedings)  
13 THE COURT: Let me say it out loud to  
14 him and get his opinion. I wonder if we should take  
15 this back into chambers one more time, take one  
16 final look at whether or not an attorney makes a  
17 representation in his request for admissions, and  
18 then after the admission is made, whether or not  
19 that's committing fraud, ethically and legally.  
20 Give one more look at it. Counsel cited cases, he  
21 cited cases. And I wonder if we should do that.  
22 And I'm brilliant, right? Of course.

23 Let me take one more look at it, take a  
24 look at your arguments, because it's all boiling  
25 down to that simple issue, which is why I had you



1 address it. And if I agree with you that it's fraud  
2 or if I'm not sure if it's fraud or not, we'll let  
3 the Supremes decide.  
4 If I'm confident that based on the laws  
5 that you've cited and the things you've cited in  
6 your brief that there was no fraud committed by you  
7 by asking for an admission that it was open range  
8 when you knew it wasn't, then I'll deny your motion.  
9 And I'll have that decision in the next two or three  
10 days.

11 MR. HAGUE: So Your Honor, can I ask you  
12 a quick question, then?

13 THE COURT: Yes.

14 MR. HAGUE: If you're going to have that  
15 decision in the next two or three days and take it  
16 under advisement, there are a few housekeeping  
17 matters that I think are really important. One of  
18 them is that emotions are really high today, and  
19 Mr. Aldrich is scheduled a debtor's exam of  
20 Ms. Fallini. He's also scheduled one of  
21 Mr. Fallini, even though he's not a debtor, so  
22 that's not a proper exam. But I'd like to stay the  
23 debtor exam, and I'd also like to stay, just while  
24 you're making your decision --

25 THE COURT: What's the prejudice?

1 MR. HAGUE: They could turn them over at  
2 any moment, right?

3 THE COURT: Yeah.

4 MR. HAGUE: If a bank is served with a  
5 writ of garnishment, they have a certain amount of  
6 time to respond.

7 THE COURT: Right.

8 MR. HAGUE: If they want to respond,  
9 they could provide those assets to Mr. Aldrich right  
10 now. Is that not prejudicial?

11 MR. ALDRICH: If I may?

12 THE COURT: Yes.

13 MR. ALDRICH: I'll go backwards. On the  
14 writs of garnishment --

15 THE COURT: Okay. We're all over the  
16 place here.

17 MR. ALDRICH: Right.

18 THE COURT: Sorry about that.

19 MR. ALDRICH: On the writs of  
20 garnishment, I mean, the judgment was entered in  
21 2010. I didn't execute while it was on appeal. I  
22 could have because there was no stay. So there's no  
23 basis to do that.

24 With regard to the judgment debtor's  
25 exam today, I agree emotions are high, and I will

1 MR. HAGUE: The prejudice is that if we  
2 prevail, then he's finding out information about  
3 assets, about financial whereabouts of things when  
4 this case could go the other way.

5 THE COURT: What's the prejudice to him  
6 finding out that information? I could understand  
7 you making -- coming into court for an evidentiary  
8 hearing to argue to me that he shouldn't be allowed  
9 to collect that information, but I've had a hard  
10 time putting my finger on why there's prejudice.

11 There's an argument that it's not community  
12 property, and I have to tell you, I disagree.

13 I think if he has a separate trust and  
14 Ms. Fallini marries him and lives on the ranch for  
15 40 years and increases the value of it, she has a  
16 definite community-property interest in that  
17 increase, in that value.

18 MR. HAGUE: Well, I think that's not the  
19 hearing. I disagree, but we can argue that at a  
20 different time. So if there's not a prejudice,  
21 there is a prejudice for the fact that there are  
22 writs of garnishment and executions out there right  
23 now asking banks to turn over assets. I think that  
24 should be stayed.

25 THE COURT: He's not collecting on them.

1 candidly admit I'm nervous about being here today.  
2 I do have a court reporter sitting over there who's  
3 been sitting there since 10:00 o'clock. I would not  
4 want to be responsible for that court reporter's  
5 appearance fee. Other than that, if they want to  
6 move it to a different day, I am willing to do that.

7 MR. HAGUE: We'd like to move it to a  
8 different day, Your Honor, if we could.

9 THE COURT: You'd be responsible for the  
10 fee?

11 MR. OHLSON: The appearance fee, yes.

12 MR. ALDRICH: Whatever the fee was to  
13 have the court reporter here today. I don't know if  
14 she's local or -- I don't know what the deal is  
15 there, and I couldn't even make a representation as  
16 to what that amount is.

17 THE COURT: I was actually addressing  
18 not the garnishment but the motion for the subpoena  
19 duces tecum for the business records. I'm inclined  
20 to grant your request to allow him to get the  
21 information that he needs in his investigation and  
22 research, but without granting his request to  
23 collect it, which is a different issue. But I can't  
24 see how him gathering the knowledge of the trust and  
25 so forth is prejudicial. You following me?



1 MR. HAGUE: No, I disagree. I'm not  
2 following you on -- we filed an objection -- we  
3 filed a motion to quash the subpoenas because they  
4 were asking for financial documents and records of  
5 non-defendant and third parties.

6 THE COURT: Right.

7 MR. HAGUE: And I don't see how that's  
8 proper. I don't see how you can do that. I don't  
9 see --

10 THE COURT: Yeah, we had that hearing a  
11 week or two ago.

12 MR. HAGUE: We did, and --

13 THE COURT: And I heard all your  
14 argument.

15 MR. HAGUE: I know, and you had said  
16 that you might have had some other questions for us  
17 today.

18 THE COURT: Yeah.

19 MR. HAGUE: That's the only reason I  
20 bring --

21 THE COURT: And the question I had was  
22 how is it -- I believe one of the arguments you made  
23 of -- besides the fact that it was a non-defendant,  
24 I believe one of the arguments you made was that it  
25 was prejudicial.

1 that several fraudulent transfers has occurred with  
2 respect to these entities. But I've practiced a lot  
3 of fraudulent transfer law in bankruptcy and  
4 receivership. You've got to bring a complaint for  
5 fraudulent transfer, and then you go after the  
6 entity, and that's when you get to do your  
7 discovery.

8 But if I get a lawsuit against you, I  
9 can't now go subpoena records of a bank where your  
10 dad or your mom or your wife or your sister and ask  
11 for their financially-protected records just because  
12 I have a judgment against you. His judgment's only  
13 against Ms. Fallini, none of the other parties. I  
14 think that's huge.

15 I'd be very upset if somebody was  
16 getting my records without me ever even being sued  
17 or no allegations or no complaint for a fraudulent  
18 transfer under the Uniform Fraudulent Transfer Act.

19 THE COURT: Counsel.

20 MR. ALDRICH: Well, part of what he said  
21 I agree with. I didn't ask for her parent's or her  
22 sister or -- I asked for her husband's records.  
23 It's community property. So, I mean, we're sort  
24 of --

25 THE COURT: Anything else?

1 MR. HAGUE: Yes.

2 THE COURT: And I had a hard time -- I  
3 believe the prejudice you alluded to was that it --  
4 what was the prejudice?

5 MR. HAGUE: The constitutional right to  
6 privacy.

7 THE COURT: Yeah. Privacy.

8 MR. HAGUE: That's -- yeah, absolutely.

9 THE COURT: And I thought that penumbra  
10 was not quite there. I didn't quite put my finger  
11 on that penumbra. I don't see the prejudice of him  
12 gathering information if he can't collect from it.  
13 I mean, if he tries to collect, you could still come  
14 in and say, hey, that's private, it shouldn't be  
15 there. But he should have the right to look and see  
16 if that trust was -- is now community property and  
17 has it been breached and so forth, unless there's  
18 some other --

19 MR. HAGUE: I guess I --

20 THE COURT: -- kind of prejudice I'm not  
21 aware of --

22 MR. HAGUE: No, Your Honor. I just --

23 THE COURT: -- on such privacy.

24 MR. HAGUE: I struggle with it because  
25 the allegations that he has made or that there's --

1 MR. ALDRICH: We've been doing this --  
2 again, if they want to move the judgment debtor's  
3 exam today, I --

4 THE COURT: That's fine.

5 MR. ALDRICH: I don't want to have pay  
6 the court reporter fee, but I'm willing to move it  
7 until after the Court has issued a decision on this.

8 If I may, just one last comment. I just  
9 want to make sure I understand what the Court just  
10 said. Is that you're going to make a decision as to  
11 whether I committed fraud on the Court or not?

12 THE COURT: That's his motion. He wants  
13 us to reverse our prior decision and take this to  
14 trial --

15 MR. HAGUE: Absolutely.

16 THE COURT: -- because he committed  
17 fraud on the Court.

18 MR. HAGUE: Absolutely.

19 THE COURT: So I'm either going to have  
20 to say, yes, I find that you did commit fraud on the  
21 Court and therefore we're reversing everything from  
22 the last four years and we're going to start back at  
23 the beginning, or I'm going to have to deny your  
24 motion.

25 MR. HAGUE: Yeah. And I guess while

1 you're doing that, I mean, unless you've already  
2 discounted my Rule 60(b)(1) motion for surprise and  
3 excusable neglect, which I also think is within our  
4 right because there's a new judgment, and that one's  
5 an easy call, I think, because I believe there truly  
6 was excusable neglect on the part of Ms. Fallini and  
7 her attorney.

8 So I still think those are two issues,  
9 and they were certainly set forth in our motion.  
10 Roman numeral I is fraud upon the Court. Roman  
11 numeral II is excusable neglect under 60(b)(1),  
12 which is a six-month time period. Fraud upon the  
13 Court, Your Honor, has no limitations, and that's  
14 Supreme Court law.

15 THE COURT: Mr. Aldrich, I proceeded  
16 today upon the evidentiary standard of them  
17 presenting evidence that you committed fraud upon  
18 the Court based on their representations as officers  
19 of the court, and therefore, we didn't have an  
20 evidentiary hearing with people under oath and so  
21 forth.

22 We just made arguments that as officers  
23 of the court, if you misrepresent something, you  
24 make fraud upon the court. And that's how I  
25 proceeded today. You don't have any kick against

1 that, do you?

2 MR. ALDRICH: No.

3 THE COURT: All right. Anything else?

4 MR. ALDRICH: No, Your Honor.

5 MR. HAGUE: No.

6 THE COURT: I'll have the decision on  
7 the subpoena -- on the business records today. I'll  
8 have the decision on your motion to set aside the  
9 previous trial and previous -- I'll have that within  
10 the next couple days while I do some research.

11 MR. HAGUE: Okay.

12 THE COURT: Okay. Good to go?

13 MR. HAGUE: Thank you.

14 THE COURT: Court's adjourned.

15 THE MARSHAL: All rise.

16 MR. ALDRICH: Appreciate your time.

17 (The proceedings concluded at 12:16  
18 p.m.)

19 \* \* \* \* \*

CERTIFICATE OF REPORTER

3 STATE OF NEVADA )  
4 COUNTY OF CLARK ) SS:

6 I, Teri R. Ward, a duly commissioned Notary  
7 Public, Clark County, State of Nevada, do hereby  
8 certify:

9 That the typewritten transcript of said  
10 recording is a complete, true and accurate  
11 transcription.

12 I further certify that I am not a relative,  
13 employee, or independent contractor of counsel of  
14 any of the parties; nor a relative, employee, or  
15 independent contractor of the parties involved in  
16 said action; nor do I have any other relationship  
17 with any of the parties or with counsel of any of  
18 the parties involved in the action that may  
19 reasonably cause my impartiality to be questioned.

20 IN WITNESS WHEREOF, I have hereunto set my hand  
21 in my office in the County of Clark, State of  
22 Nevada, this \_\_\_\_ day of \_\_\_\_\_, 2014.

Teri R. Ward, CCR NO. 839

EXHIBIT 13

EXHIBIT 13

AUG 06 2014

NYE COUNTY DEPUTY CLERK  
DEPUTY 

CV 24539  
Dept. No. 2

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

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

Plaintiff,

v.

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

Defendant.

COURT ORDER

On May 21, 2014, Defendant filed a Motion for Relief from Judgment Pursuant to NRCF 60(b), on the grounds of fraud upon the court and "excusable neglect." Defendant alleged that Plaintiff's counsel "knowingly forced fraudulent facts on the court and failed to correct misrepresentations thereby committing fraud upon the court." Plaintiff filed a Countermotion to Strike/Opposition to Defendant's Motion for Relief from Judgment Pursuant to NRCF 60(b) on June 9, 2014. Plaintiff submits there was no fraud upon the court on the part of Plaintiff's counsel in obtaining the judgment. Defendant filed a Reply on June 17, 2014. A hearing was held on Defendant's Motion on July 28, 2014. At the conclusion of arguments from both parties, the court took the matter into consideration and informed the parties a decision would be rendered shortly thereafter.

FIFTH JUDICIAL DISTRICT COURT  
EMERALDA, MINERAL AND NYE COUNTIES





1  
2 After review of the papers and pleadings on file, and in consideration of counsels'  
3 statements and arguments at the July 28, 2014 hearing, this court finds, concludes and  
4 orders as follows:

5  
6 **FINDINGS OF FACT**

- 7 1. Plaintiff Judith Adams brought suit against Defendant Susan Fallini for the death  
8 of her son Michael Adams after Michael struck one of Fallini's cattle that were on  
9 Highway SR 375.
- 10 2. Adams filed a complaint on January 31, 2007. She was and continues to be  
11 represented by Mr. John P. Aldrich, Esq. Fallini filed an answer and counterclaim  
12 on March 14, 2007. In her answer, Fallini listed as an affirmative defense NRS  
13 568.360(1), which provides that those who own domestic animals do not have a  
14 duty to keep those animals off highways located on open range. At this time,  
15 Fallini was represented by Mr. Harold Kuehn, Esq.
- 16 3. A Notice of Early Case Conference was filed on June 14, 2007. On October 23,  
17 2007, Adams filed a Case Conference Report. Prior to this Early Case  
18 Conference Plaintiff counsel Aldrich obtained the Nevada Highway Patrol Traffic  
19 Report number NHP-E2005000779. The investigating officer reports on Page 4  
20 that the collision occurred on open range approximately 7 miles past an open  
21 range warning sign.
- 22 4. Prior to serving the Complaint, Adams created a website  
23 (www.michaeldavidadams.net) stating the accident occurred in "open range  
24  
25  
26  
27  
28



1 county and the cows have the right of way." The website also contained links and  
2 information advocating against open range laws.

3  
4 5. Plaintiff counsel Aldrich sent a request for admissions that included a request that  
5 "Fallini's property is not located within an "open range" as it is defined in NRS  
6 568.355." Defense counsel Kuehn failed to respond. As a result, Fallini was  
7 deemed to have admitted that the accident did not occur on open range, despite  
8 already asserting an open range affirmative defense in her March 17, 2007  
9 answer.

10  
11 6. On April 7, 2008, Adams filed a Motion for Partial Summary Judgment as a result  
12 of Fallini's admissions that the accident did not occur on open range. Adams  
13 filed another Motion for Partial Summary Judgment on May 16, 2008. Kuehn  
14 filed no oppositions to the Motions. A hearing was held on July 14, 2008, and the  
15 minutes reflect that only Aldrich appeared. The court granted Partial Summary  
16 Judgment because there was no opposition or appearance by Fallini and/or Kuehn.

17  
18 7. Beginning in September 2008, Plaintiff filed various Motions regarding  
19 discovery. A hearing was held on November 10, 2008 where Kuehn was given  
20 more time to produce. Another hearing was held on April 27, 2009. Kuehn was  
21 sanctioned \$750 held in abeyance, and an Order granting Motion to Compel  
22 Discovery was granted.

23  
24 8. On May 5, 2009, Plaintiff filed a demand for a jury trial. On June 30, 2009 the  
25 court ordered a trial would be held on August 25, 2010, with a calendar call set  
26 for July 19, 2010.



- 1
  - 2
  - 3
  - 4
  - 5
  - 6
  - 7
  - 8
  - 9
  - 10
  - 11
  - 12
  - 13
  - 14
  - 15
  - 16
  - 17
  - 18
  - 19
  - 20
  - 21
  - 22
  - 23
  - 24
  - 25
  - 26
  - 27
  - 28
9. On June 16, 2009, Plaintiff filed a Motion to Strike Fallini's answer and counterclaim, based on Fallini's failure to provide discovery. A hearing on this Motion was scheduled for July 13, 2009 at 1:15 PM. Kuehn submitted an opposition to this motion at 8:35 AM on July 13th. At the hearing, Kuehn requested additional sanctions be imposed for the failure to provide discovery. The Court issued a \$1000 sanction and gave Kuehn 30 days to provide the previously ordered information/discovery regarding insurance to Plaintiff.
10. On November 4, 2009, Plaintiff submitted an Order striking Defendant's answer and counterclaim due to Kuehn's repeated failures to provide discovery. The Court signed the Order. On February 4, 2010, Plaintiff filed for and obtained a Default.
11. On April 7, 2010, Adams filed another Motion for an Order to Show Cause stemming from the failed requests for discovery. An Order was granted on April 26, 2010. A hearing was held on May 24, 2010. Mr. Tom Gibson, Esq. appeared on behalf of Kuehn. Kuehn was sanctioned \$5,000 and \$500 per day until discovery was provided.
12. On or about June 17, 2010, Mr. John Ohlson, Esq. was substituted as counsel of record for Fallini in place of Kuehn.
13. On June 24, 2010 Plaintiff applied for Default Judgment. Defendant filed an Opposition the same day. On July 6, 2010 Defendant filed a Motion for Reconsideration. A hearing was held on both the Default Judgment and the



1 Motion for Reconsideration on July 19, 2010. The Default was granted, and the  
2 Reconsideration was denied.  
3

4 14. Defendant filed an appeal on September 10, 2010. The Nevada Supreme Court  
5 issued an Order affirming the District Court, but remanding for a new hearing  
6 regarding the calculation of the damages awarded.  
7

8 15. After the parties re-calculated and stipulated to the amount of proper damages, the  
9 court entered its judgment against Defendant on April 28, 2014 consistent with  
10 the ruling from the Supreme Court of Nevada.  
11

12 16. On May 21, 2014, Defendant filed a Motion for Relief from Judgment Pursuant to  
13 NRCPP 60(b). Defendant alleged Aldrich, as an officer of the court, knowingly  
14 forced fraudulent facts on the court and failed to correct misrepresentations,  
15 thereby committing fraud upon the court in violation of NRCPP 60(b). Defendant  
16 based this allegation upon belief that Aldrich knew the accident occurred on open  
17 range based on the following evidence: Defendant's answer asserted open range  
18 as an affirmative defense, Adams website should have put Aldrich on notice that  
19 this accident occurred on open range, and a Nevada Highway Patrol Traffic  
20 Report (NHP-E2005-00779) on which Page 4 says the collision occurred on open  
21 range. Despite this, Defendant alleges Aldrich sent a request for admissions that  
22 requested Defendant to admit that the property is not located within an "open  
23 range" as it is defined in NRS 568.355. Defendant argues, according to case law  
24 and the Nevada Rules of Professional Conduct, Aldrich advanced false facts using  
25 the discovery process in a calculated attempt to mislead the court.  
26  
27  
28





1  
2 17. On June 9, 2014, Plaintiff filed her Countermotion to Strike Defendant's Motion  
3 for Relief from Judgment Pursuant to NRCP 60(b) or in the alternative,  
4 Opposition to Motion for Relief from Judgment. In the Opposition, Plaintiff  
5 argues that this matter was previously litigated and decided in her favor, therefore  
6 issue preclusion should apply and Defendant's Motion should be barred.

7  
8 18. On June 17, 2014, Defendant filed a Reply stating issue preclusion does not apply  
9 because the allegations of Aldrich's fraud upon the court have not been claimed,  
10 litigated, or reviewed at any point in a prior proceeding.

11 CONCLUSIONS OF LAW

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

15 L. **Fraud Upon The Court under NRCP 60(b)**

16 Under NRCP 60(b), a district court may "set aside a judgment for fraud upon the  
17 court." NRCP 60(b). There is no 6-month time limit on bringing a motion for fraud  
18 upon the court. NC-DSH, Inc. v. Garner, 218 P.3d 853, 856 (Nev. 2009). Simple  
19 dishonesty of any attorney is so damaging on courts and litigants that it is considered  
20 fraud upon the court. Id. at 859 citing United States v. Throckmorton, 98 U.S. 61, 66  
21 (1878); Dannajuk v. Petrovsky, 10 F.3d 338, 352 (6th Cir. 1993). An officer of the court  
22 perpetrates fraud on the court a) through an act that is calculated to mislead the court or  
23 b) by failing to correct a misrepresentation or retract false evidence submitted to the  
24 court. See Nevada Rules of Professional Conduct ("NRCP") Rule 3.3.  
25  
26  
27  
28



1 Mr. Aldrich, as an officer of the court, had a duty to not mislead the court or fail  
2 to correct a misrepresentation. In the case at bar, Mr. Aldrich has denied he knew the  
3 accident occurred on open range. However, after consideration of the evidence and  
4 arguments, the court finds Mr. Aldrich knew or should have known that the accident  
5 occurred on open range. First, Mr. Aldrich was in possession of the Nevada Highway  
6 Patrol Accident Report prior to his request for admissions. Page 4 of the Accident Report  
7 clearly states that the "collision occurred on open range." (NHP Accident Report NHP-  
8 E2005-00779 at Page 4). Second, Plaintiff Adams created a memorial website  
9 advocating against open range laws shortly after the accident in 2005. See  
10 <http://www.michaeldavidadams.net> (last visited 8/1/14). The website states, "He  
11 encountered a cow crossing the road between mile marker 34-33 East side of the road.  
12 This is open range country and the cows have the right of way." *Id.* Finally, Mr. Aldrich  
13 received Defendant's answer that contained an open range affirmative defense. Based on  
14 the totality of the circumstances, Mr. Aldrich knew or should have known the accident  
15 occurred on open range prior to filing his request for admissions. At the bare minimum,  
16 Mr. Aldrich possessed enough information to conduct a reasonable inquiry into the open  
17 range status of the location where the accident occurred. At the July 28, 2014 hearing on  
18 Defendant's Motion for Relief from Judgment, Mr. Aldrich stated he hasn't been to the  
19 location to verify it was open range. (Hr'g 7/28/2014).

20 Despite this, Mr. Aldrich sought an admission from Defendant stating that the  
21 area where the accident occurred was not open range. Defendant's attorney Mr. Kuehn  
22 failed to respond to this request, and it was subsequently deemed an admitted fact.  
23  
24  
25  
26  
27  
28



1 Aldrich may argue that all Kuehn had to do was simply "deny" the request for  
2 admissions. However, at this point in the case, Kuehn was failing to respond to various  
3 motions and requests to the extent that Aldrich knew or should have known that a  
4 response from Kuehn was unlikely. This is not to suggest that Mr. Aldrich is an unethical  
5 attorney. For example, the record indicates that on numerous occasions, Mr. Aldrich  
6 granted Mr. Kuehn multiple extensions to provide discovery. The court believes that Mr.  
7 Aldrich was zealously representing his client. As an officer of the court however, Mr.  
8 Aldrich violated his duty of candor under Nevada Rules of Professional Conduct 3.3 by  
9 utilizing Defendant's denial that the accident occurred on open range to obtain a  
10 favorable ruling in the form of an unopposed award of summary judgment. Thus, the  
11 court finds Plaintiff violated Rule 60(b) as Plaintiff's request for admission of a known  
12 fact, a fact that was a central component of Defendant's case, was done when counsel  
13 knew or should have known that the accident did occur on open range, thereby  
14 perpetrating a fraud upon the court.  
15

16  
17  
18 **II. "Excusable Neglect" under NRCP 60(b)(1)**

19 Unlike NRCP 60(b) fraud claims, claims under NRCP 60(b)(1) must be filed  
20 within six months of entry of judgment. NRCP 60(b). The Supreme Court of Nevada  
21 has established guidelines for lower courts to examine a NRCP 60(b)(1) claim. The  
22 district court must analyze whether the movant: "(1) promptly applied to remove the  
23 judgment; (2) lacked intent to delay the proceedings; (3) demonstrated good faith; [and]  
24 (4) lacked knowledge of procedural requirements." Bauwens v. Evans, 853 P.2d 121  
25 (Nev. 1993).  
26  
27  
28



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

#### 14 CONCLUSION

15 As a result of Mr. Kuehn's failure to oppose or respond to Plaintiff's Motions,  
16 Plaintiff obtained a Default judgment for over a million dollars against Ms. Fallini. This  
17 court followed the law and proper procedure throughout this case, as affirmed by the  
18 Supreme Court of Nevada. However, one cannot ignore the apparent injustice that  
19 Defendant has suffered throughout this matter. Ms. Fallini is responsible for a multi-  
20 million dollar judgment without the merits of the case even being addressed. As stated  
21 by the Supreme Court of Nevada, "cases are to be heard on the merits if possible."  
22 Passarelli v. J-Mar Dev., Inc., 720 P.2d 1221, 1223 (Nev. 1986).  
23  
24  
25  
26  
27  
28