



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

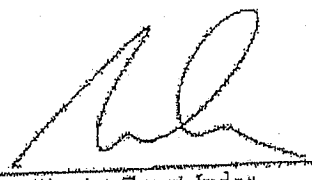
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12 Finality has a particular importance in our legal system. The Supreme Court of
13 Nevada has described a final judgment as one "that disposes of the issues presented in the
14 case, determines the costs, and leaves nothing for future consideration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

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

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25 **IT IS HEREBY ORDERED** that Defendant's Motion for Relief from Judgment
26 Pursuant to NRCP 60(b) is GRANTED.
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DATED this 6th day of August, 2014.



District Court Judge

FIFTH JUDICIAL DISTRICT COURT
ESMERALDA, MINERAL AND NYE COUNTIES



FIFTH JUDICIAL DISTRICT COURT
ESMERALDA, MINERAL AND FIVE COUNTRIES



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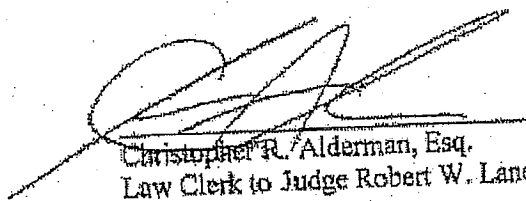
CERTIFICATION OF SERVICE

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

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

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

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


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

AFFIRMATION

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

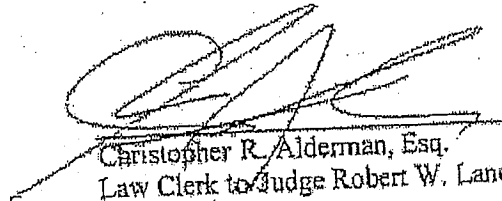

Christopher R. Alderman, Esq.
Law Clerk to Judge Robert W. Lane

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

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

15-01698

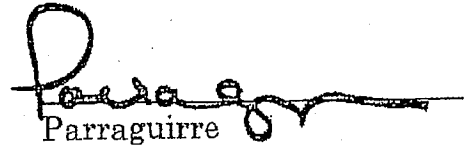
order does not sanction petitioner's attorney, such that the attorney could challenge it personally through a writ petition.

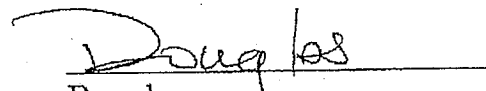
Having considered the parties' arguments, we summarily deny the writ petition, as it challenges a substantively appealable order. See NRAP 3A(b)(8) (permitting an appeal from a special order entered after final judgment, except for an order "granting a motion to set aside a default judgment under NRCP 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).

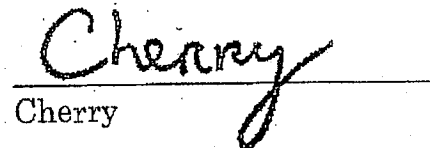
While the order granting relief from the judgment based on a finding of fraud was subject to challenge by appeal, notice of that order's entry was served by mail on August 13, 2014, and petitioner did not file a notice of appeal within the 33-day appeal period. See NRAP 4(a)(1); NRAP 26(c). Instead, 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
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

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

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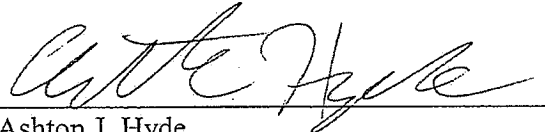
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AFFIRMATION
Pursuant to NRS 239B.030

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

DATED this 21st day of April, 2015.



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

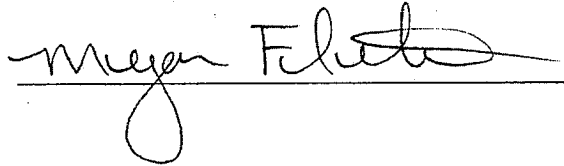
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CERTIFICATE OF SERVICE

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

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

Dated this 21st day of April, 2015



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1 David R. Hague #12389
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

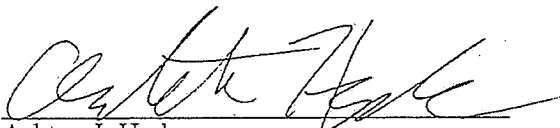
1 argument thereon, and having made findings and conclusions on the record, hereby issues the
2 following Order:

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 17th day of April, 2015.

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

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

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

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
CLERK

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

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

Case No.: CV24539
Dept. No.: 2

10 Plaintiff,
vs.

NOTICE OF APPEAL

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

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).

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This appeal is from all issues of law and fact.

Dated this 15th day of May, 2015.

ALDRICH LAW FIRM, LTD.

By John P. Aldrich
John P. Aldrich
Nevada Bar No. 6877
1601 S. Rainbow Blvd., Suite 160
Las Vegas, NV 89146
(702) 853-5490
Attorneys for Plaintiff

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CERTIFICATE OF SERVICE

I hereby certify that on the 15th 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
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APPELLANT’S APPENDIX

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APPELLANT'S APPENDIX

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Motion for Entry of Final Judgment (1/28/15)	VII	1237-1240
Motion for Leave to File Motion for Reconsideration (7/6/10)	II	0269-0295
Motion for Order Allowing Supplementation of Appendix and for Re-Opening of Briefs (10/5/11)	IV	0578-0626
Motion for Partial Summary Judgment (5/16/08)	I	0012-0023
Motion for Relief From Judgment Pursuant to NRCP 60(b) (5/20/14)	V	0931-1008
Motion to Dismiss (3/25/11)	III	0360-0453
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)	IV	0782-0787
Motion to Enter Final Judgment Following Remittitur (9/25/13)	V	0855-0882
Motion to Reverse or Withdraw Remittitur and Clarify Instructions For Allowance of Interest (10/7/13)	V	0895-0900

Notice of Appeal (9/7/10)	II	0342-0344
Notice of Appeal (5/15/15)	VII	1372-1374
Notice of Entry of Default (2/11/10)	I	0171-0175
Notice of Entry of Judgment (5/7/14)	V	0927-0930
Notice of Entry of Order (8/15/08) [Order Granting Plaintiffs' Motion for Partial Summary Judgment (7/30/08)]	I	0024-0028
Notice of Entry of Order (5/18/09) [Order Granting Plaintiff's Motion to Compel Defendant's Production of Documents (4/27/09)]	I	0082-0086
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)]	I	0161-0164
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)]	I	0191-0201
Notice of Entry of Order (8/18/10) [Order After Hearing (8/12/10)]	II	0335-0341
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)]	VI	1119-1122
Notice of Entry of Order (8/13/14) [Court Order (8/6/14)]	VI	1218-1233

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

Order Granting Motion to Recall Remittitur and to Modify March 29, 2013, Order for Allowance of Interest (1/3/14)	V	0908-0911
Order Granting Motion to Supplement Appendix and Reopen Briefing (10/24/11)	IV	0652-0653
Order Submitting Appeal for Decision Without Oral Argument (8/19/11)	III	0577
Order Submitting for Decision Without Oral Argument (2/15/13)	IV	0731
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)	I	0188-0190
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)	I	0149-0160
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)	I	0176-0187
Plaintiff's Motion to Compel Defendant's Production of Documents (3/23/09)	I	0029-0081
Plaintiff's Motion to Strike Defendant's Answer and Counterclaim (6/16/09)	I	0087-0146

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)	VII	1241-1366
Remittitur (8/14/13)	IV	0781
Remittitur (2/12/14)	V	0912
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)	V	0846-0849
Reply to Defendant's Objection to Proposed Judgment (4/10/14)	V	0925-0926
Reply to Opposition to Motion to Enter Final Judgment Following Remittitur (10/8/13)	V	0901-0903
Request for Submission (9/6/13)	V	0850-0852
Respondent's Amended Answering Brief (12/27/11)	IV	0677-0713
Respondent's Answering Brief (7/8/11)	III	0525-0556
Respondent's Opposition to Appellant's Motion for Order Allowing Supplementation of Appendix and for Re-Opening of Briefs (10/17/11)	IV	0627-0651
Settlement Program Status Report (2/15/11)	II	0356
Substitution of Attorneys (6/11/10)	I	0202-0203
Supplemental Court Order (9/23/13)	V	0853-0854

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)	VI	1110-1118
Transcript of Proceedings (Application for Default Judgment) (7/19/10)	II	0296-0334
Transcript of Proceedings (Motion for Relief From Judgment Pursuant to NRCPP 60(b)) (7/28/14)	VI	1123-1217

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

TRACE 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.

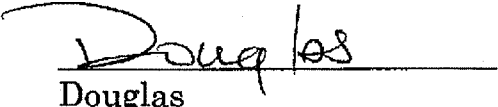
Having considered the parties' arguments, we summarily deny the writ petition, as it challenges a substantively appealable order. See NRAP 3A(b)(8) (permitting an appeal from a special order entered after final judgment, except for an order "granting a motion to set aside a default judgment under NRCP 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).

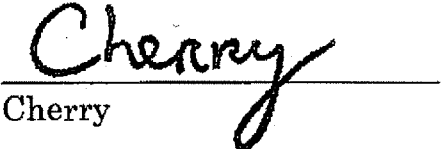
While the order granting relief from the judgment based on a finding of fraud was subject to challenge by appeal, notice of that order's entry was served by mail on August 13, 2014, and petitioner did not file a notice of appeal within the 33-day appeal period. See NRAP 4(a)(1); NRAP 26(c). Instead, 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

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

13 **THE FIFTH JUDICIAL DISTRICT COURT**

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

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

18 Plaintiff,

19 vs.

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

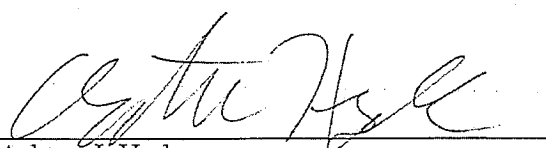
22 Defendants.

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

25 **MOTION FOR ENTRY OF FINAL
26 JUDGMENT**

27 Defendant, Susan Fallini, by and through her counsel, moves the Court to enter final
28 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 28th day of January, 2015.


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

1 MEMORANDUM OF POINTS AND AUTHORITIES

2 Ms. Fallini has a statutory and absolute defense to any damages or injuries arising from
3 the unfortunate incident in which Mr. Adams' vehicle struck one of Ms. Fallini's cattle on open
4 range.

5 **STATEMENT OF MATERIAL FACTS**

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

9 2. The collision between Mr. Adams and Ms. Fallini's cow on Highway SR 375 happened
10 on "open range" approximately 7 miles past an open range warning sign. (Hr'g July 19, 2010;
11 See Order at 5, 7 Aug. 6, 2014).

12 **ARGUMENT**

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

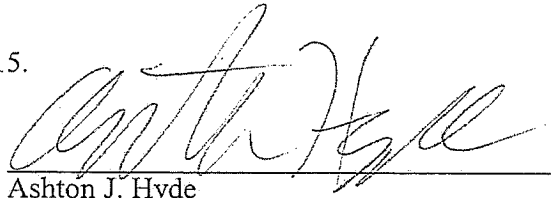
17 (1) No person, firm or corporation owning, controlling or in possession of any
18 domestic animal running on open range has the duty to keep the animal off any
19 highway traversing or located on the open range, and no such person, firm or
20 corporation is liable for damages to any property or for injury to any person
caused by any collision between a motor vehicle and the animal occurring on such
a highway.

21 Accordingly, Ms. Fallini cannot be held liable for any injury or damage caused by the collision
22 between Mr. Adam's vehicle and her cow, which occurred on open range. She had no duty to
23 keep her cattle, domestic animals, off Highway SR 375 as a matter of law.
24

25 **CONCLUSION**

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

DATED this 28th day of January, 2015.



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

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1 CERTIFICATE OF SERVICE

2 I hereby certify that on the 28th day of January, 2015, I caused a true and correct copy of
3 the foregoing **MOTION FOR ENTRY OF FINAL JUDGMENT** to be served via U.S. mail,
4 postage prepaid, with an electronic copy emailed, as follows:
5

6
7 John P. Aldrich, Esq.
8 Aldrich Law Firm, Ltd.
9 1601 S. Rainbow Blvd., Ste. 160
10 Las Vegas, NV 89146
11 jaldrich@johnaldrichlawfirm.com

12 
13 An employee of Fabian & Clendenin

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
THE STATE OF NEVADA
7 COUNTY OF NYE

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

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

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.

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

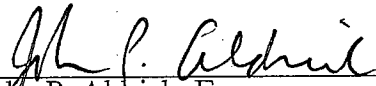
26 Plaintiff JUDITH ADAMS, INDIVIDUALLY AND ON BEHALF OF THE ESTATE OF
27

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 9th 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**.

28

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.**

28

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

28

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**.)

28

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 NRCPC 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
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
Fallini.

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

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

10 (Exhibit 4)(emphasis added).

11 When Defendant failed and refused to abide by that Order, Plaintiff was forced to bring yet
12 another motion to hold Defendant in contempt for failure to provide validly sought information. On June
13 2, 2010 the court entered another Order holding Defendant and her counsel in contempt, and imposing
14 another \$5,000 sanction and a \$500.00 per day accruing sanction until Defendant provided responses to
15 the discovery. (Exhibit 7.)

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

23 Indeed, this Court, in its August 6, 2014 Order, found that "The court granted Partial Summary
24 Judgment because there was no opposition or appearance by Fallini and/or Kuehn." (Exhibit 13, p. 3,
25 Finding of Fact #6.) Similarly, the Court found that "On November 4, 2009, Plaintiff submitted an Order
26 striking Defendant's answer and counterclaim due to Kuehn's failure to provide discovery." (Exhibit
27 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 In Nevada, a defendant has 30 days to respond to a plaintiff’s request for
10 admission. NRCP 36(a). Failure to do so may result in the requests being
11 deemed “conclusively established.” NRCP 36(b). It is well settled that
12 unanswered requests for admission may be properly relied upon as a basis for
13 granting summary judgment, and that the district court is allowed considerable
14 discretion in determining whether to do so. Wagner v. Carex Investigations &
15 Sec., 93 Nev. 627, 631, 572 P.2d 921, 923 (1977) (concluding that summary
16 judgment was properly based on admissions stemming from a party’s
17 unanswered request for admission under NRCP 36, even where such admissions
18 were contradicted by previously filed answers to interrogatories); Smith v.
19 Emery, 109 Nev. 737, 742, 856 P.2d 13865, 1390 (explaining that [] “failure to
20 respond to a request for admissions will result in those matters being deemed
21 conclusively established . . . even if the established matters are ultimately
22 untrue”)(citation omitted).

23 Here, Fallini’s argument is unpersuasive because she has not raised a
24 new issue of fact or law. The question of whether the accident occurred on open
25 range was expressly disputed in Fallini’s answer, but she subsequently failed to
26 challenge this issue through Adams’ requests for admissions. Fallini has
27 presented no evidence on appeal to alter the conclusive impact of admissions
28 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. Carlidge, 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
8 explicitly or by necessary implication.” Dictor v. Creative Mgmt. Servs., L.L.C.,
9 126 Nev. ___, ___, 223 P.3d 332, 334 (2010); see Wheeler Springs Plaza, L.L.C.
10 v. Beemon, 119 Nev. 260, 266, 71 P.3d 1258, 1262 (2003) (“The doctrine only
11 applies to issues previously determined, not to matters left open by the appellate
12 court.”).

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

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

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

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

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

34

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*
5 *pursuant to NRCP 36 nearly seven years before the hearing on Defendant's Motion to*
6 *Set Aside Judgment Pursuant to NRCP 60(b)*

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

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

13 The Court makes several Findings of Fact in the Order. Findings 3 and 4 are particularly
14 problematic. These are findings that are based on new evidence “presented” in the Motion to Set Aside,
15 and are not based on any evidence properly before the Court. In addition, as Mr. Aldrich explained with
16 respect to Finding number 3, he was not in possession of all the information in the purported report
17 attached to the Motion to Set Aside by Defendant. This was a version he had never seen before, as
18 explained at the hearing, had not been properly authenticated, and was blatant inadmissible hearsay. NRS
19 51.035; NRS 51.065; NRS 51.067.

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

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

27

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

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:

5that 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
27 should be denied. **Failure of the opposing party to serve and file his written**
28 **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 NRCP

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 NRCPC 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 NRCPC 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 (6th 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 (6th Cir. 2010); quoting Carter v. Anderson, 585
15 F.3d 1007, 1011-12 (6th 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

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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

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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

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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 NRCPP 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 NRCPP 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.

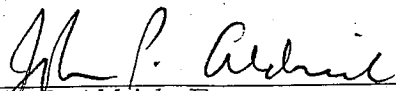
27 Alternatively, Plaintiff moves for entry of final judgment because Defendant is still liable under

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 9th 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 9th 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

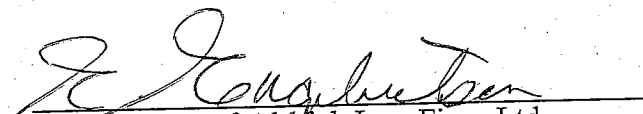

An employee of Aldrich Law Firm, Ltd.

EXHIBIT 1

EXHIBIT 1

1 **ORDR**

John P. Aldrich, Esq.
2 Nevada State Bar No. 6877
Adrienne 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
THE STATE OF NEVADA
9 COUNTY OF NYE

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

Case No.: CV24539
Dept.: 2P

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.

23
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
19 **ROBERT W. LANE**
20 DISTRICT COURT JUDGE

21 Submitted By:

22 **BLACK & LOBELLO**

23
24 John P. Aldrich
25 John P. Aldrich
26 Nevada Bar No.: 6877
27 10777 West Twain Avenue, Suite 300
28 Las Vegas, Nevada 89135
(702) 869-8801
(702) 869-2669 (Fax)

EXHIBIT 2

EXHIBIT 2

ORIGINAL

1 **ORDER**
2 John P. Aldrich
3 Nevada Bar No.: 6877
4 Catherine Hernandez
5 Nevada Bar No. 8410
6 **ALDRICH LAW FIRM, LTD.**
7 1601 S. Rainbow Blvd., Suite 160
8 Las Vegas, Nevada 89146
9 (702) 853-5490
10 *Attorneys for Plaintiff*

FILED
FIFTH JUDICIAL DISTRICT

APR 27 2009

Nye County Clerk

Deputy

**THE FIFTH JUDICIAL DISTRICT COURT
THE STATE OF NEVADA
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,

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

Counterdefendants.

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

**ORDER GRANTING PLAINTIFF'S MOTION TO COMPEL DEFENDANT'S
PRODUCTION OF DOCUMENTS**

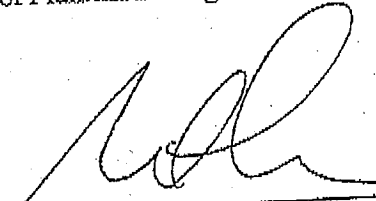
25
26
27 THIS MATTER having come on for hearing on Monday, April 27, 2009, on Plaintiff's
28 Motion to Compel Defendant's Production of Documents before the Honorable Robert W. Lane, and

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 Kelly present* having been presented, and good cause appearing therefore:

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

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

11 DATED this 27 day of April, 2009.


DISTRICT COURT JUDGE

12
13
14
15 Respectfully submitted by:

16 **ALDRICH LAW FIRM, LTD.**


17 
18 _____
19 John P. Aldrich, Esq.
20 Nevada Bar No. 6877
21 Catherine Hernandez, Esq.
22 Nevada Bar No. 8410
23 1601 S. Rainbow Blvd., Suite 160
24 Las Vegas, NV 89146
25 (702) 853-5491
26 *Attorneys for Plaintiff*
27
28

EXHIBIT 3

EXHIBIT 3

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

FILED

2009 JUL 17 A 9:42

Shella Winn
NYE COUNTY CLERK
BY DEPUTY

**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,

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

Plaintiff,

v.

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.

**ORDER DENYING PLAINTIFF'S MOTION TO STRIKE DEFENDANT'S ANSWER
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 _____
20 DISTRICT COURT JUDGE

21 Respectfully submitted by:
22 **ALDRICH LAW FIRM, LTD.**

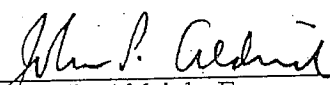
23 
24 _____
25 John P. Aldrich, Esq.
26 Nevada Bar No. 6877
27 1601 S. Rainbow Blvd., Suite 160
28 Las Vegas, NV 89146
(702) 853-5491
Attorneys for Plaintiff

EXHIBIT 4

EXHIBIT 4

NOV 04 2009

Michelle A. Thorne

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

Case No.: CV24539
Dept.: 2P

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

10 Plaintiffs,

11 vs.

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

Defendants.

14 SUSAN FALLINI,

Counterclaimant,

16 vs.

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

20 Counterdefendants.

21 **FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER STRIKING ANSWER**
22 **AND COUNTERCLAIM OF DEFENDANT SUSAN FALLINI AND HOLDING**
23 **DEFENDANT'S COUNSEL IN CONTEMPT OF COURT**

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

1 FINDINGS OF FACT

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

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

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

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

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

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

26 6. Plaintiff attempted to amicably resolve the discovery dispute and obtain a copy of
27

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 _____
20 DISTRICT COURT JUDGE

21 Submitted by:

22 **ALDRICH LAW FIRM, LTD.**

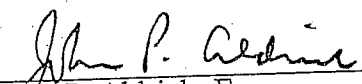
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24 _____
25 John P. Aldrich, Esq.
26 Nevada Bar No.: 6877
1601 S. Rainbow Blvd., Suite 160
Las Vegas, Nevada 89146
Attorneys for Plaintiff

EXHIBIT 5

EXHIBIT 5

FILED

2010 FEB 11 A 8:49

Shella Winn COUNTY CLERK
BY DEPUTY

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

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

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

Plaintiffs,

13 vs.

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

Defendants.

16 SUSAN FALLINI,

Counterclaimant,

18 vs.

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

Counterdefendants.

NOTICE OF ENTRY OF DEFAULT

24 ///

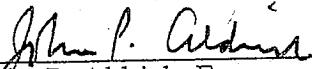
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1 PLEASE TAKE NOTICE that a DEFAULT was entered in the above-entitled matter on
2 February 4, 2010, a copy of which is attached hereto.

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 8th 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
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
ADAMS, individually and on behalf of the
11 Estate,

Case No.: CV24539
Dept.: 2P

12 Plaintiffs,

13 vs.

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

15 Defendants.

16 SUSAN FALLINI,

17 Counterclaimant,

18 vs.

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

22 Counterdefendants.

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 1st day of March,
26 2007, and that an Answer and Counterclaim were filed on March 14, 2007. Defendant and her
27

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.

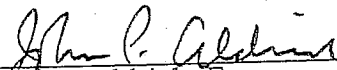
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14 
15 John P. Aldrich, Esq.
16 Nevada Bar No.: 6877
17 1601 S. Rainbow Blvd., Suite 160
18 Las Vegas, Nevada 89146
19 Attorney for Plaintiffs
20
21
22
23
24
25
26
27
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EXHIBIT 6

EXHIBIT 6

FILED

2010 APR 19 P 1:27

NYE COUNTY CLERK
BY DEPUTY

Michelle A. Thom

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

1 **ORDR**
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*

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

Plaintiffs,

vs.

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

Defendants.

16 SUSAN FALLINI,

Counterclaimant,

vs.

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

Counterdefendants.

Case No.: CV24539
Dept.: 2P

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

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27

28

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./p.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 _____.

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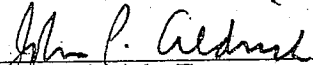
1 PLEASE BE ADVISED that if Susan Fallini and/or her Counsel fail to appear, they shall be
2 deemed to have waived their right to the hearing and that in such case the Court may impose
3 sanctions including granting Plaintiff Judith Adams her fees and costs, imposition of sanctions as
4 requested by 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 _____
15 John P. Aldrich, Esq.
16 Nevada Bar No.: 6877
1601 S. Rainbow Blvd., Suite 160
Las Vegas, Nevada 89146
Attorneys for Plaintiff

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

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*

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

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

Case No.: CV24539
Dept.: 2P

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

24 Counterdefendants.

25 FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER HOLDING
26 DEFENDANT'S COUNSEL IN CONTEMPT OF COURT

27 THIS MATTER having come on for hearing on Monday, May 24, 2010, a hearing having
28 been held before the Honorable Robert W. Lane, and John P. Aldrich, Esq., of Aldrich Law Firm,
Ltd., appearing on behalf of the Plaintiffs, with Thomas Gbson, 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. 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.

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

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

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

17 CONCLUSIONS OF LAW

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

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

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

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

1 to Discovery requests.

2 4. NRCPP 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 NRCPP 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 _____
14 DISTRICT COURT JUDGE

15 Submitted by:

16 **ALDRICH LAW FIRM, LTD.**

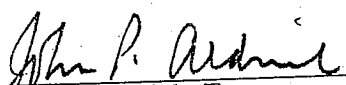
17 
18 _____
19 John P. Aldrich, Esq.
20 Nevada Bar No.: 6877
21 1601 S. Rainbow Blvd., Suite 160
22 Las Vegas, Nevada 89146
23 *Attorneys for Plaintiff*

EXHIBIT 8

EXHIBIT 8



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Case No. CV 24539
Dept. 2P

FILED
Heaven Baller
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

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

ORDER

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

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

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

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

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

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

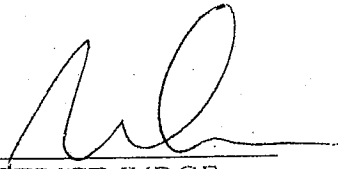
IT IS FURTHER ORDERED that Plaintiff's request for Hedonic damages is DENIED.

FIFTH JUDICIAL DISTRICT COURT
ESMERELDA, MINERAL AND NYE COUNTIES



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DATED this 12th 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. Merlino, clerk of the Fifth Judicial District Court, in and for the County of Nye, State of Nevada.

By: [Signature], 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
ESMERALDA, MINERAL AND NYE COUNTIES



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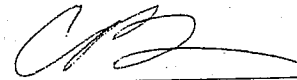
CERTIFICATION OF MAILING

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

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

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

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



C. PAUL TECHO
Law Clerk to
DISTRICT JUDGE

FIFTH JUDICIAL DISTRICT COURT
ESMERELDA, MINERAL AND NYE COUNTIES



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 *Handwritten Signature*
DEPUTY CLERK

ORDER AFFIRMING IN PART, REVERSING IN PART AND
REMANDING

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

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

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

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

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

The district court properly denied Fallini's motion for reconsideration

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

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

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

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

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

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

The district court did not err in vacating the jury trial

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

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

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

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

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

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

The district court erred in its award of damages

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

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

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

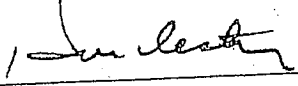
"[T]he district court is given wide discretion in calculating an award of damages, and this award will not be disturbed on appeal absent an abuse of discretion." Diamond Enters., Inc. v. Lau, 118 Nev. 1376, 1379, 951 P.2d 73, 74 (1997). An heir in a wrongful death action may broadly recover "pecuniary damages for the person's grief or sorrow, loss of probable support, companionship, society, comfort and consortium, and damages for pain, suffering or disfigurement of the decedent." NRS 41.085(4); see also Moyer v. United States, 593 F. Supp. 145, 146-47 (D. Nev. 1984) (recognizing that regardless of whether a parent was dependent on the decedent child for support, the parent is entitled to recovery for the loss of probable support based on contributions (such as time and services) that "would naturally have flowed from . . . feelings of affection, gratitude and loyalty"). However, while "heirs have a right to recover for 'loss of probable support[,] [t]his element of damages translates into, and is often measured by, the decedent's lost economic opportunity." Alsenz v. Clark Co. School Dist., 109 Nev. 1062, 1064-65, 864 P.2d 285, 286-87 (1993) (indicating that a duplicative award of damages already available under NRS 41.085(4) would be absurd).

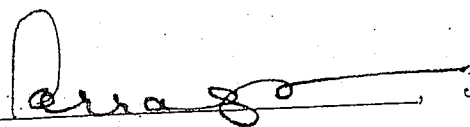
We conclude that the district court acted within its discretion to award damages to Adams based on loss of probable support despite evidence that Adams was not financially dependent on her son. NRS 41.085(4). However, we conclude that the district court abused its

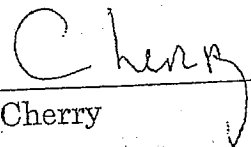
³The district court also awarded Adams \$5,188.85 for funeral expenses and \$85,000 in sanctions and attorney fees. This award is not challenged on appeal.

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

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


_____, J.
Hardesty


_____, J.
Parraguirre


_____, J.
Cherry

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

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

EXHIBIT 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.

J. Hardesty

Hardesty J.

Parraguirre

Parraguirre J.

Cherry

Cherry J.

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

Hardesty
_____, J.
Hardesty

Parraguirre
_____, J.
Parraguirre

Douglas
_____, J.
Douglas

Cherry
_____, J.
Cherry

Saitta
_____, J.
Saitta

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

EXHIBIT 12

EXHIBIT 12

In Re:

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

*Transcription
August 13, 2014*

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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.

Case No.
 CV24539
 Dept. No. 2P

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

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

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

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

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

1 to the fraud.

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

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

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

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

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

1 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

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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.

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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?

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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?

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1 MR. HAGUE: Absolutely.
2 THE COURT: All right.
3 MR. HAGUE: Absolutely.
4 THE COURT: And that would be --
5 MR. HAGUE: That would be through the
6 accident report, that would be through her complaint
7 where she set forth the affirmative defense -- or
8 her answer. That would be in the complaint. That
9 would be in his document that he submitted to this
10 Court and signed where he actually lists all the
11 documents, the accident report, and where her
12 affirmative defenses are stated again.
13 THE COURT: Because in the accident
14 report it affirmatively stated this is --
15 MR. HAGUE: Affirmatively stated.
16 THE COURT: -- open range, and he knew
17 that?
18 MR. HAGUE: And he knew that.
19 THE COURT: All right.
20 MR. HAGUE: The other part is when he
21 filed his motion for summary judgment. He had this
22 Court enter judgment on a deemed admitted fact that,
23 again, he knew was fraudulent. That was the other
24 fraud he committed upon the Court. He did it again
25 when the Court said I take judicial notice that this

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

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

5 MR. HAGUE: Correct.

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

9 MR. HAGUE: Absolutely has.

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

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

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

1 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

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CERTIFICATE OF REPORTER

STATE OF NEVADA)
) SS:
COUNTY OF CLARK)

I, Teri R. Ward, a duly commissioned Notary Public, Clark County, State of Nevada, do hereby certify:

That the typewritten transcript of said recording is a complete, true and accurate transcription.

I further certify that I am not a relative, employee, or independent contractor of counsel of any of the parties; nor a relative, employee, or independent contractor of the parties involved in said action; nor do I have any other relationship with any of the parties or with counsel of any of the parties involved in the action that may reasonably cause my impartiality to be questioned.

IN WITNESS WHEREOF, I have hereunto set my hand in my office in the County of Clark, State of Nevada, this ____ day of _____, 2014.

Teri R. Ward, CCR NO. 839

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.)

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EXHIBIT 13

EXHIBIT 13

AUG 06 2014

NYE COUNTY DEPUTY CLERK
DEPUTY 

1
2 CV 24539
3 Dept. No. 2

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

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

10 Plaintiff,

11 v.

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

14 Defendant.

COURT ORDER

15 On May 21, 2014, Defendant filed a Motion for Relief from Judgment Pursuant to
16 NRCF 60(b), on the grounds of fraud upon the court and "excusable neglect." Defendant
17 alleged that Plaintiff's counsel "knowingly forced fraudulent facts on the court and failed
18 to correct misrepresentations thereby committing fraud upon the court." Plaintiff filed a
19 Countermotion to Strike/Opposition to Defendant's Motion for Relief from Judgment
20 Pursuant to NRCF 60(b) on June 9, 2014. Plaintiff submits there was no fraud upon the
21 court on the part of Plaintiff's counsel in obtaining the judgment. Defendant filed a
22 Reply on June 17, 2014. A hearing was held on Defendant's Motion on July 28, 2014.
23 At the conclusion of arguments from both parties, the court took the matter into
24 consideration and informed the parties a decision would be rendered shortly thereafter.
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FIFTH JUDICIAL DISTRICT COURT
ESMERALDA, MINERAL AND NYE COUNTIES





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After review of the papers and pleadings on file, and in consideration of counsels' statements and arguments at the July 28, 2014 hearing, this court finds, concludes and orders as follows:

FINDINGS OF FACT

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



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county and the cows have the right of way." The website also contained links and information advocating against open range laws.

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



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



1
2 Motion for Reconsideration on July 19, 2010. The Default was granted, and the
3 Reconsideration was denied.

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

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

10 16. On May 21, 2014, Defendant filed a Motion for Relief from Judgment Pursuant to
11 NRCF 60(b). Defendant alleged Aldrich, as an officer of the court, knowingly
12 forced fraudulent facts on the court and failed to correct misrepresentations,
13 thereby committing fraud upon the court in violation of NRCF 60(b). Defendant
14 based this allegation upon belief that Aldrich knew the accident occurred on open
15 range based on the following evidence: Defendant's answer asserted open range
16 as an affirmative defense, Adams website should have put Aldrich on notice that
17 this accident occurred on open range, and a Nevada Highway Patrol Traffic
18 Report (NHP-E2005-00779) on which Page 4 says the collision occurred on open
19 range. Despite this, Defendant alleges Aldrich sent a request for admissions that
20 requested Defendant to admit that the property is not located within an "open
21 range" as it is defined in NRS 568.355. Defendant argues, according to case law
22 and the Nevada Rules of Professional Conduct, Aldrich advanced false facts using
23 the discovery process in a calculated attempt to mislead the court.
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17. On June 9, 2014, Plaintiff filed her Countermotion to Strike Defendant's Motion for Relief from Judgment Pursuant to NRCP 60(b) or in the alternative, Opposition to Motion for Relief from Judgment. In the Opposition, Plaintiff argues that this matter was previously litigated and decided in her favor, therefore issue preclusion should apply and Defendant's Motion should be barred.

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

CONCLUSIONS OF LAW

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

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

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



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2 Mr. Aldrich, as an officer of the court, had a duty to not mislead the court or fail
3 to correct a misrepresentation. In the case at bar, Mr. Aldrich has denied he knew the
4 accident occurred on open range. However, after consideration of the evidence and
5 arguments, the court finds Mr. Aldrich knew or should have known that the accident
6 occurred on open range. First, Mr. Aldrich was in possession of the Nevada Highway
7 Patrol Accident Report prior to his request for admissions. Page 4 of the Accident Report
8 clearly states that the "collision occurred on open range." (NHP Accident Report NHP-
9 E2005-00779 at Page 4). Second, Plaintiff Adams created a memorial website
10 advocating against open range laws shortly after the accident in 2005. See
11 <http://www.michaeldavidadams.net> (last visited 8/1/14). The website states, "He
12 encountered a cow crossing the road between mile marker 34-33 East side of the road.
13 This is open range country and the cows have the right of way." *Id.* Finally, Mr. Aldrich
14 received Defendant's answer that contained an open range affirmative defense. Based on
15 the totality of the circumstances, Mr. Aldrich knew or should have known the accident
16 occurred on open range prior to filing his request for admissions. At the bare minimum,
17 Mr. Aldrich possessed enough information to conduct a reasonable inquiry into the open
18 range status of the location where the accident occurred. At the July 28, 2014 hearing on
19 Defendant's Motion for Relief from Judgment, Mr. Aldrich stated he hasn't been to the
20 location to verify it was open range. (Hr'g 7/28/2014).

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23 Despite this, Mr. Aldrich sought an admission from Defendant stating that the
24 area where the accident occurred was not open range. Defendant's attorney Mr. Kuehn
25 failed to respond to this request, and it was subsequently deemed an admitted fact.
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2 Aldrich may argue that all Kuehn had to do was simply "deny" the request for
3 admissions. However, at this point in the case, Kuehn was failing to respond to various
4 motions and requests to the extent that Aldrich knew or should have known that a
5 response from Kuehn was unlikely. This is not to suggest that Mr. Aldrich is an unethical
6 attorney. For example, the record indicates that on numerous occasions, Mr. Aldrich
7 granted Mr. Kuehn multiple extensions to provide discovery. The court believes that Mr.
8 Aldrich was zealously representing his client. As an officer of the court however, Mr.
9 Aldrich violated his duty of candor under Nevada Rules of Professional Conduct 3.3 by
10 utilizing Defendant's denial that the accident occurred on open range to obtain a
11 favorable ruling in the form of an unopposed award of summary judgment. Thus, the
12 court finds Plaintiff violated Rule 60(b) as Plaintiff's request for admission of a known
13 fact, a fact that was a central component of Defendant's case, was done when counsel
14 knew or should have known that the accident did occur on open range, thereby
15 perpetrating a fraud upon the court.
16

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

19 Unlike NRCP 60(b) fraud claims, claims under NRCP 60(b)(1) must be filed
20 within six months of entry of judgment. NRCP 60(b). The Supreme Court of Nevada
21 has established guidelines for lower courts to examine a NRCP 60(b)(1) claim. The
22 district court must analyze whether the movant: "(1) promptly applied to remove the
23 judgment; (2) lacked intent to delay the proceedings; (3) demonstrated good faith; [and]
24 (4) lacked knowledge of procedural requirements." Bauwens v. Evans, 853 P.2d 121
25 (Nev. 1993).
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Under the facts of the present case, the court finds Defendant's "Excusable Neglect" claim under NRCP 60(b)(1) fails the first prong of Bauwens. The court entered a default judgment in June 2010. Under NRCP 60(b)(1), Defendant had six months after entry of judgment to file her Motion. NRCP 60(b)(1). The six-month window is not tolled by an appeal of the final appealable judgment. Foster v. Dingwall, 228 P.3d 453 (Nev. 1990). Defendant argues her Motion is timely because her Rule 60(b) Motion was filed on May 20, 2014; approximately one month after this court entered an amended judgment on April 28, 2014. The court does not find Defendant's argument persuasive. The April 28, 2014 amended judgment from this court was based on a recalculation of the interest owed to Plaintiff. The actual content, law, and decision of the original judgment did not change. Defendant's Motion would have been timely if it was filed within six months from the July 19, 2010 Default Judgment.

CONCLUSION

As a result of Mr. Kuehn's failure to oppose or respond to Plaintiff's Motions, Plaintiff obtained a Default Judgment for over a million dollars against Ms. Fallini. This court followed the law and proper procedure throughout this case, as affirmed by the Supreme Court of Nevada. However, one cannot ignore the apparent injustice that Defendant has suffered throughout this matter. Ms. Fallini is responsible for a multi-million dollar judgment without the merits of the case even being addressed. As stated by the Supreme Court of Nevada, "cases are to be heard on the merits if possible." Passarelli v. J-Mar Dev., Inc., 720 P.2d 1221, 1223 (Nev. 1986).