

IN THE SUPREME COURT OF NEVADA

Electronically Filed
Jan 05 2016 03:54 p.m.
Tracie K. Lindeman
Clerk of Supreme Court

PEGGY CAIN, an Individual; JEFFREY
CAIN, an Individual; and HELI OPS
INTERNATIONAL, LLC, an Oregon
limited liability company,

Appellants,

v.

RICHARD PRICE, an Individual; and
MICKEY SHACKELFORD, an
Individual,

Respondents.

Supreme Court Case No. 69333

District Court Case No.: 11-CV-0296

DOCKETING STATEMENT

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GENERAL INFORMATION

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

WARNING

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

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

This court has noted that when attorneys do not take seriously their obligations under NRAP 14 to complete the docketing statement properly and conscientiously, they waste the valuable judicial resources of this court, making the imposition of sanctions appropriate. See KDI Sylvan Pools v. Workman, 107 Nev. 340, 3.44, 810 P.2d. 1217, 1220 (1991). Please use tab dividers to separate any attached documents.

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1. **Judicial District:** Ninth **Department:** II
County: Douglas **Judge:** Thomas W. Gregory
District Court Case No. 11-CV-0296

2. **Attorneys filing this docketing statement:**

Attorney: Michael L. Matuska Telephone: (775) 350-7220
Firm: Matuska Law Offices, Ltd.
Address: 2310 South Carson Street, Suite 6, Carson City, NV 89701
Client(s): Peggy Cain; Jeffrey Cain; Heli Ops International, LLC

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

3. **Attorney(s) representing respondent(s):**

Attorney: Mark Forsberg, Esq. Telephone: (775) 301-4250
Firm: Oshinski & Forsberg, Ltd.
Address: 504 East Musser Street, Suite 302, Carson City NV 89701
Client(s): Richard Price and Mickey Shackelford

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

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

5. **Does this appeal raise issues concerning any of the following?** No

- ☐ Child custody
- ☐ Venue
- ☐ Termination of parental rights

6. Pending and prior proceedings in this court. List the name and docket number of all appeals or original proceedings presently or previously pending before this court which are related to this appeal: None

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

Ninth Judicial District Court Case No. 11-CV-0296
Peggy Cain, et al. v. D.R. Rawson, et al.

Order Granting Summary Judgment as to Richard Price and Mickey Shackelford entered on 11/05/15

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

This case involves various claims of Plaintiffs/Appellants Jeffrey Cain, Peggy Cain and HeliOps International, LLC (together, the "Cains") for fraud and diversion of funds in connection with a securities investment. The investment was memorialized in a joint venture agreement between HeliOps and C4 Worldwide, Inc. Respondents Richard Price and Mickey Shackelford were officers and directors of C4. On February 20, 2010, prior to filing the action, C4 agreed to pay \$20,000,000 and to surrender the securities if the Cains were not paid. C4 failed to pay the amount due or surrender the securities. The Cains filed their Complaint on September 14, 2011 against C4 and its officers and directors. The Cains have settled with or obtained judgments against all Defendants except Respondents Richard Price and Mickey Shackelford. On May 8, 2015, Hon. Thomas W. Gregory denied Plaintiffs' Third Motion to Compel which sought financial information as evidence of the misallocation and commingling of funds and upon which to base the claim for punitive damages. On July 28, 2015, Judge Gregory granted in part Defendant Joe Baker's Motion for Judgment on the Pleadings. Judge Gregory ruled that C4's officers and directors obtained the benefit of the release clause in the February 20, 2010 settlement agreement, even though they never paid the amounts due or surrendered the securities. On August 17, 2015, Judge Gregory ruled that he would try the continuing objections to personal jurisdiction, as well as the claim to pierce the corporate veil in a bifurcated proceeding prior to the jury trial. On November 5, 2015, Judge Gregory made his

prior ruling on the Motion for Judgment on the Pleadings a final summary judgment.

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

1. Whether the district court erred by denying the Cains' Third Motion to Compel tax returns and financial information relating to misallocation of the proceeds and the claim for punitive damages.

2. Whether the district court erred by ruling that it would try the issues of personal jurisdiction and alter ego prior to the jury trial, when the district court had already ruled that the Cains had made a prima facie for personal jurisdiction and the alter ego issue involves the same case for fraud that will need to be tried by the jury.

3. Whether the district court erred when it granted judgment on the pleadings and eventually summary judgment in favor of the defendants (and denied the Cains' cross-motion for judgment on the pleadings) based on a release clause in the settlement agreement, when the settlement agreement was breached and defendants never paid the amount due under the settlement agreement.

4. Whether the district court erred when it granted judgment on the pleadings and eventually summary judgment in favor of the defendants based on a release clause in the settlement agreement, when the defendants never had the ability to perform under the settlement agreement and the settlement agreement was part of the continuing fraud.

10. Pending proceedings in this court raising the same or similar issues. If you are aware of any proceedings presently pending before this court which raises the same or similar issues raised in this appeal, list the case name and docket number and identify the same or similar issues raised: None.

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

- ☒ N/A
- ☐ Yes

☐ No

If not, explain: _____

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

- ☐ Reversal of well-settled Nevada precedent (identify the case(s))
- ☐ An issue arising under the United States and/or Nevada Constitutions
- ☒ A substantial issue of first impression
- ☒ An issue of public policy
- ☐ An issue where en banc consideration is necessary to maintain uniformity of this court's decisions
- ☐ A ballot question

If so, explain:

1. Whether defendants should receive the benefit of a release clause in a settlement agreement when the payment due under the settlement agreement was never paid and the settlement agreement was part of the continuing fraud.

2. Whether the district court should try the issue of alter ego prior to the jury trial, when the alter ego issue involves the same case for fraud that is scheduled for a jury trial.

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

N/A

Was it a bench or jury trial? _____

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

TIMELINESS OF NOTICE OF APPEAL

15. Date of entry of written judgment or order appeal from:

1. *Order Denying Plaintiffs' Third Motion to Compel* entered on May 8, 2015;

2. *Order Granting In Part Defendant Joe Baker's Motion for Judgment on the Pleadings and Denying Plaintiff's Cross-Motion for Judgment on the Pleadings* entered on July 28, 2015;

3. *Order Granting, In Part, Joe Baker's Motion for (1) Hearing and/or to Bifurcate Trial and (2) to Stay a Portion of Trial Proceedings* entered on August 17, 2015.

4. *Order Granting Summary Judgment as to Richard Price and Mickey Shackelford* entered on November 5, 2015;

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

16. Date written notice of entry of judgment or order served:

11/05/2015

Was service by:

- ☐ Delivery
- ☒ Mail/electronic/fax

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

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

- ☐ NRCP 50(b) Date of filing: _____
- ☐ NRCP 52(b) Date of filing: _____
- ☐ NRCP 59 Date of filing: _____

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

(b) Date of entry of written order resolving tolling motion: N/A

- (c) Date written notice of entry of order resolving tolling motion served:
N/A

Was service by:

- ☐ Delivery
☐ Mail

18. Date notice of appeal filed: 12/01/2015

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

19. Specify statute or rule governing the time limit for filing the notice of appeal, *e.g.*, NRAP 4(a), NRS 155.190, or other: NRAP 4(a)

SUBSTANTIVE APPEALABILITY

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

- (a) ☒ NRAP 3A(b)(1) ☐ NRS 38.205
☐ NRAP 3A(b)(2) ☐ NRS 233B.150
☐ NRAP 3A(b)(3) ☐ NRS 703.376
☐ Other (specify): _____

- (b) Explain how each authority provides a basis for appeal from the judgment or order:

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

- (a) Parties:

Plaintiffs/Appellants Peggy Cain; Jeffrey Cain; and Heli Ops International, LLC

Defendants: DR Rawson; C4 Worldwide, Inc.; Margaret Rawson; Joe Baker, Michael K. Kavanagh; Jeffrey Edwards

Defendants/Respondents Richard Price; Mickey Shackelford

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

DR Rawson – Default Judgment entered on 05/17/2013

C4 Worldwide, Inc. – Default Judgment entered on 05/17/2013

Michael K. Kavanagh – Default Judgment entered on 05/17/2013

Margaret Rawson – Added to Default Judgment on 02/10/2014

Jeffrey Edwards – Default Judgment entered on 03/16/2015

Joe Baker – Settled and Dismissed per stipulation on 09/11/2015

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

Appellants claim that the Defendants used their company, C4 Worldwide, to commit fraud and divert their \$1,000,000 investment.

Respondents do not deny the diversion, but deny their involvement in the fraudulent scheme and claim the benefit of the release clause in the settlement agreement with C4, even though the settlement agreement was breached and the Appellants were never paid.

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

- ☒ Yes
☐ No

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

- (a) Specify the claims remaining pending below:

- (b) Specify the parties remaining below:
- (c) Did the district court certify the judgment or order appealed from as a final judgment pursuant to NRCP 54(b)?
- ☐ Yes
- ☐ No
- (d) Did the district court make an express determination, pursuant to NRCP 54(b), that there is no just reason for delay and an express direction for the entry of judgment?
- ☐ Yes
- ☐ No

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

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

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

VERIFICATION

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

Appellants:

Peggy Cain; Jeffrey Cain; and
Heli Ops International, LLC

12-26-2015
Date

Michael L. Matuska, Esq.

(Name of Counsel of Record)


(Signature of Counsel of Record)

Nevada, Carson City

(State and county where signed)

CERTIFICATE OF SERVICE

I certify that on the 4th day of January 2016, I served a copy of this

DOCKETING STATEMENT upon all counsel of record:

☐ By personally serving it upon him/her; or

☒ By mailing it by first class mail with sufficient postage prepaid to the following address(es): (NOTE: If all names and addresses cannot fit below, please list names below and attach a separate sheet with the addresses.)

Richard A. Oshinski, Esq.
Mark Forsberg, Esq.
Oshinski & Forsberg, Ltd.
504 East Musser Street, Suite 302
Carson City NV 89701

Attorneys for Respondents Richard Price and
Mickey Shackelford

Dated this 4th day of January 2016.


LIZ STERN, ALS

MATUSKA LAW OFFICES, LTD.
2310 S. Carson Street, Suite 6
Carson City, NV 89701
(775) 369-7120

RECEIVED

MAR 30 2015

FILED

CASE NO.: 11-CV-0296

DEPT. NO.: II

Douglas County
District Court Clerk 2015 MAR 30 PM 4:31

This document does not contain personal information of any person.

BOBBIE R. WILLIAMS
CLERK

D. HECHMOVICH
DEPUTY

THE NINTH JUDICIAL DISTRICT COURT OF NEVADA
IN AND FOR THE COUNTY OF DOUGLAS

PEGGY CAIN, an individual; JEFFREY CAIN,
an individual; and HELI OPS
INTERNATIONAL, LLC, an Oregon limited
liability company,

Plaintiffs,

v.

D.R. RAWSON, an individual;
C4 WORLDWIDE, INC., a Nevada corporation;
RICHARD PRICE, an individual; JOE BAKER,
an individual; MICKEY SHACKELFORD,
an individual; MICHAEL K. KAVANAGH,
an individual; JEFFREY EDWARDS,
an individual; and DOES 1 through 10, inclusive,

Defendants.

THIRD AMENDED COMPLAINT
(BREACH OF CONTRACT, FRAUD,
NEGLIGENCE, CIVIL CONSPIRACY,
CONVERSION, CONSTRUCTIVE TRUST,
INTENTIONAL INTERFERENCE WITH
CONTRACTUAL ADVANTAGE)

COME NOW Plaintiffs, PEGGY CAIN, JEFFREY CAIN, and HELI OPS
INTERNATIONAL, LLC, ("Plaintiffs"), by and through their counsel of record,
Michael L. Matuska, Matuska Law Offices, Ltd., and hereby allege, aver, and complain as
follows:

I.
PARTIES

1. Plaintiffs Peggy Cain and Jeffrey Cain (collectively the "Cains") are now and at all
times mentioned herein were residents of Douglas County, Nevada.

///

1 2. Plaintiff Heli Ops International, LLC ("Heli Ops") is now and at all times
2 mentioned herein was an Oregon limited liability company, duly organized and existing under the
3 laws of the state of Oregon.

4 3. Defendant C4 Worldwide, Inc. ("C4") is now and at all times mentioned herein was
5 a Nevada corporation, duly organized and existing under the laws of the state of Nevada, which
6 has contractually consented to jurisdiction and venue in Douglas County, Nevada.

7 4. D.R. Rawson ("Rawson") is now and at all times mentioned herein was a resident
8 of Orange County, California, who has contractually consented to jurisdiction and venue in
9 Douglas County, Nevada.

10 5. Defendant Richard Price ("Price") is now and at all times mentioned herein was a
11 resident of Travis County, Texas.

12 6. Defendant Joe Baker ("Baker") is now and at all times mentioned herein was a
13 resident of Williamson County, Texas.

14 7. Defendant Mickey Shackelford ("Shackelford") is now and at all times mentioned
15 herein was a resident of Tulsa County, Oklahoma.

16 8. Defendant Michael K. Kavanagh ("Kavanagh") is now and at all times mentioned
17 herein was a resident of Riverside County, California.

18 9. Defendant Jeffrey Edwards ("Edwards") is now and at all times mentioned herein
19 was a resident of Clay County, Florida.

20 10. The aforementioned individuals are now and at all times referenced herein were
21 officers and/or directors of C4.

22 11. The true names or capacities, whether individual, corporate, associate or otherwise,
23 of the defendants sued herein as Does 1 through 10, inclusive, are unknown to Plaintiffs, who are
24 informed and believe, and thereon allege, that each of these fictitiously named defendants is in
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1 some way liable to Plaintiffs on the causes of action below, and therefore sues these Defendants
2 by such fictitious names. Plaintiffs will move to amend this Complaint and insert the true names
3 and capacities of said fictitiously named defendants when the same have been ascertained.

4 12. Plaintiffs are informed and believe, and thereon allege, that at all times herein
5 mentioned, each actually and fictitiously named defendant was the principal, agent, co-venturer,
6 partner, surety, guarantor, officer, director, and/or employee of each co-defendant and in doing the
7 things herein alleged was acting within the scope of authority and with the permission of each co-
8 defendant or took some part in the acts and omissions hereinafter set forth, and by reason thereof
9 each said defendant is liable to Plaintiffs for the relief prayed herein.
10

11 **II.**
12 **BACKGROUND TO CLAIMS**

13 13. In approximately November 2009, Defendants induced the Cains, through their
14 business Heli Ops, to loan One Million Dollars (\$1,000,000) to C4 for the purpose of enabling C4
15 to acquire Collateralized Mortgage Obligations ("CMOs") with the loan proceeds.

16 14. Based on the inducement, Heli Ops loaned C4 One Million Dollars (\$1,000,000)
17 pursuant to the terms of a Joint Venture Agreement and Promissory Note that obligated C4 to
18 repay Heli Ops Twenty Million Dollars (\$20,000,000) no later than sixty (60) days from the date
19 of the loan. The payment was sent from the Heli Ops principal office in Nevada.
20

21 15. C4 defaulted in its obligations under the loan and has failed to repay any part of it.

22 16. All of the individually named Defendants participated in communications with the
23 Plaintiffs regarding the investments that are the subject of this Complaint, and participated in the
24 inducement for Plaintiffs to make the loan.
25

26 17. By agreement dated February 28, 2010 (the "Settlement Agreement"), Rawson and
27 C4 acknowledged their liability for the amounts due to Plaintiffs in the amount of Twenty Million
28 Dollars (\$20,000,000), together with interest thereon at the rate of nine percent (9%) per annum

1 from December 31, 2009 until paid in full. A copy of the Settlement Agreement setting forth
2 Rawson's and C4's acknowledgement of liability is attached hereto as *Exhibit 1*.

3 18. Under the Settlement Agreement, Rawson and C4 promised to pay Plaintiffs the
4 total sum of Twenty Million Dollars (\$20,000,000), plus all accumulated interest, no later than
5 ninety (90) days from February 25, 2010.
6

7 19. Under that same Settlement Agreement, Rawson and C4 agreed that any legal
8 action would be filed in Douglas County, Nevada.

9 20. Rawson and C4 have failed and refused to pay Plaintiffs the Twenty Million Dollar
10 (\$20,000,000) obligation or any part thereof.

11 III.
12 FIRST CLAIM FOR RELIEF
13 (Breach of Contract)

14 21. Plaintiffs incorporate by reference herein the allegations set forth in the preceding
15 paragraphs as if those allegations were repeated in their entirety herein.

16 22. *Plaintiffs have satisfied all conditions precedent on their part, or such conditions*
17 *have been waived or excused, under the February 28, 2010 Settlement Agreement.*

18 23. *Rawson and C4 have breached the Settlement Agreement by failing to pay the*
19 *Twenty Millions Dollar (\$20,000,000) obligation owed to Plaintiffs, or any part thereof.*

20 24. *Pursuant to Section 4 of the Settlement Agreement, Plaintiffs are entitled to recover*
21 *all attorney's fees, costs, and expenses incurred in pursuing this action.*

22 25. *Plaintiffs are entitled to judgment against Rawson and C4 in the amount of Twenty*
23 *Million Dollars (\$20,000,000), plus interest at the rate of nine percent (9%) per annum from*
24 *December 31, 2009 until paid.*

25 26. At the time C4 and Rawson executed the Settlement Agreement, each of the
26 individual Defendants knew or should have known that the Settlement Agreement was illusory in
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1 that C4 was a mere shell corporation with no ability to repay the amounts owed, and Rawson had
2 no intention of repaying the loan.

3 27. Plaintiffs are informed and believe, and thereon allege, that at all times relevant
4 herein C4 was a mere sham and was organized and operated as the alter ego of the individual
5 Defendants named herein for their personal benefit and advantage, in that the individual
6 Defendants have at all times herein mentioned exercised total dominion and control over C4. The
7 individual Defendants and C4 have so intermingled their personal and financial affairs that C4
8 was, and is, the alter ego of the individual Defendants, and should be disregarded. By reason of
9 the failure of C4, each individual Defendant should be and is liable to Plaintiff for the relief prayed
10 for herein.

11 28. Plaintiffs are further informed and believe and on that basis allege that C4 was
12 created for the sole purpose of transacting business with the Plaintiffs and does not conduct any
13 other business; that C4 owns no assets other than assets described in this Complaint; that C4 was
14 never funded or capitalized; and that the individually named defendants have comingled their
15 personal finances with that of C4 and disregarded the corporate entity by taking loans from C4 to
16 pay personal expenses.

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IV.
SECOND CLAIM FOR RELIEF
(Fraud)

29. Plaintiffs incorporate by reference herein the allegations set forth in the preceding
paragraphs as if those allegations were repeated in their entirety herein.

30. All of the individually named Defendants created a false perception regarding C4
and Rawson, including their experience, professionalism, and expertise in financial matters.

31. Defendants, and each of them created this false perception in order obtain funds
from Plaintiffs.

1 32. The inducement included in large part promotional materials and resumes of all of
2 the individually named Defendants, including Rawson, Price, Baker, Shackelford, Kavanagh and
3 Edwards.

4 33. The Defendants knowingly allowed Rawson to misrepresent to Plaintiffs the
5 intended use of the loaned funds, the likelihood of obtaining the dramatic returns necessary to
6 satisfy the obligation to Plaintiffs, and his experience and capabilities in order to induce Plaintiffs
7 to advance the loaned funds in the first place and to subsequently induce Plaintiffs to continue to
8 defer taking legal action against Rawson and C4 thereafter.

9 34. The Defendants knowingly allowed Rawson to further facilitate or allow the waste
10 and improper disposition of the collateral acquired with the loaned funds, the CMOs.

11 35. Plaintiffs reasonably relied on Defendants' representations and were unaware of
12 their true intentions.

13 36. Plaintiffs are entitled to a judgment against the Defendants, and each of them,
14 jointly and severally, in the amount of Twenty Millions Dollars (\$20,000,000), plus interest at the
15 rate of nine percent (9%) per annum from December 31, 2009 until paid in full.

16 37. Plaintiffs are further entitled to an award of punitive and exemplary damages as a
17 result of the Defendants' fraudulent conduct.

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21 V.
22 THIRD CLAIM FOR RELIEF
23 (Civil Conspiracy)

24 38. Plaintiffs incorporate by reference herein the allegations set forth in the preceding
25 paragraphs as if those allegations were repeated in their entirety herein.

26 39. Defendants Rawson, Baker, Price, Shackelford, Edwards, and Kavanagh conspired
27 and knowingly participated in and/or lent their names to a fraudulent scheme to induce Plaintiffs
28 to loan funds in the first instance, and then to defer from taking legal action thereafter.

40. Defendants Rawson, Baker, Price, Shackelford, Edwards, and Kavanagh are fully liable to Plaintiffs in the amount of Twenty Millions Dollars (\$20,000,000), plus interest at the rate of nine percent (9%) per annum from December 31, 2009 until paid in full.

VI.
FOURTH CLAIM FOR RELIEF
(Negligence)

41. Plaintiffs incorporate by reference herein the allegations set forth in the preceding paragraphs as if those allegations were repeated in their entirety herein.

42. C4 and each of the individually named defendants, as officers and directors of C4, owed a duty of care to creditors and co-venturers of C4, including Plaintiffs.

43. If and to the extent any of the named Defendants did not participate in the transactions alleged herein, then they breached their legal duty as officers and directors of C4 to monitor the business activities of C4 and the other individuals involved to prevent C4 from being used for improper purposes and to prevent damage to Plaintiffs.

44. As a result of the foregoing wrongful conduct of the Defendants, and each of them, Plaintiffs have been damaged in an amount to be proved at trial in excess of \$10,000.

VII.
FIFTH CLAIM FOR RELIEF
(Conversion)

45. Plaintiffs incorporate by reference herein the allegations set forth in the preceding paragraphs as if those allegations were repeated in their entirety herein.

46. The Joint Venture Agreement provided in pertinent part:

4.04 JVP Compensation. The first twenty million USD (\$20,000,000) received from the proceeds and profits leveraging the CMOs in international trade will go to the JVP on a priority basis prior to any disbursements to C4WW.

III

1 10.01 Books and Records. The Joint Venture shall keep adequate
2 books and records at its place of business, setting forth a true and correct
3 account of all business transactions arising out of and in connection with
4 the conduct of the joint venture.

5 10.02 Joint bank account. The funds loaned to C4WW will be
6 held in a separate checking account from all other C4WW funds. The JVP
7 and C4WW will jointly own a bank account where the proceeds of the
8 loan will be held, used and administered as determined by this Agreement.
9 Pursuant to 5.01 above, C4WW will administer and control the joint
10 checking account.

11 10.03 Proof of Funds. All monies received from the JVP as a
12 loan to C4WW shall be kept in a separate checking account from all other
13 C4WW funds, see 10.02 above. The JVP will be able to view the account
14 balance online via the internet at any time from any internet and computer
15 enabled location.

16 47. In addition to the foregoing, Defendants promised and agreed on multiple
17 occasions to surrender C4's interest in the CMOs to the Plaintiffs.

18 48. In contravention of the foregoing, the funds loaned to C4 were not placed in a
19 checking account separate from all other C4 funds, but rather, were placed in C4's Wells Fargo
20 checking account no. xxxxxx177 from where over \$400,000 of the funds were diverted as
21 payments or loans to the individual defendants.

22 49. The CMOs earned dividends (interest payments) of approximately \$17,000 per
23 month.

24 50. Also in contravention of the foregoing, the dividends were not paid to the Plaintiffs,
25 but rather were diverted for the benefit of the Defendants.

26 51. Also in contravention of the foregoing, Defendants entered into various agreements
27 to pool, transfer and sell the CMOs without approval or consent of the Plaintiffs.

28 52. The foregoing acts constitute a distinct exercise of dominion and control by the
Defendants, and each of them, over Plaintiffs' CMOs and other funds and money belonging to the
Plaintiffs.

1 paragraphs as if those allegations were repeated in their entirety herein.

2 62. The Joint Venture Agreement is a valid contract.

3 63. Defendants, and each of them, knew of the Joint Venture Agreement.

4 64. Defendants committed intentional acts, as described above, intended to or designed
5 to disrupt the Joint Venture Agreement.

6 65. There was an actual disruption of the Joint Venture Agreement.

7 66. Plaintiffs sustained damages as a result of the disruption of the Joint Venture
8 Agreement in an amount in excess of \$10,000.

9 WHEREFORE, Plaintiffs Peggy Cain, Jeffrey Cain, and Heli Ops pray for judgment
10 against Defendants as follows:

11 1. For compensatory damages against all Defendants, jointly and severally, in the
12 amount of \$20,000,000, together with interest at the rate of nine percent (9%) per annum from
13 December 31, 2009 until paid in full.

14 3. For punitive damages against all Defendants in an amount to be determined at trial
15 due to the fraudulent conduct described elsewhere in the Complaint.

16 4. For the imposition of an actual and/or constructive trust.

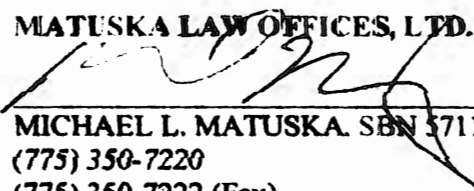
17 5. For the cost of suit and attorney's fees.

18 6. For such other and further relief as the Court deems just in the premises.

19 Respectfully submitted.

20 Dated this 30 day of March 2015.

21 MATUSKA LAW OFFICES, LTD.

22 
23 MICHAEL L. MATUSKA, SBN 5711
24 (775) 350-7220
25 (775) 350-7222 (Fax)
26 Attorneys for Plaintiffs
27
28

CERTIFICATE OF SERVICE

Pursuant to NRC P 5(b), I certify that I am an employee of Matuska Law Offices, Ltd., and that on the 30th day of March 2015, I served a true and correct copy of the preceding document entitled **THIRD AMENDED COMPLAINT** as follows:

Michael K. Johnson, Esq.
Rollston, Henderson, Crabb & Johnson, Ltd.
P.O. Box 4848
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Attorney for Defendants Richard Price and Mickey Shackelford

Jeffrey Edwards
595 Chivas Court
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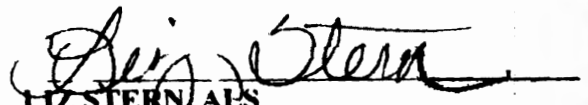
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1 Case No. 11-CV-0296

2 Dept. No. II

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6 IN THE NINTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

7 IN AND FOR THE COUNTY OF DOUGLAS

8
9 PEGGY CAIN, an individual;
10 JEFFREY CAIN, an individual;
11 and HELI OPS INTERNATIONAL,
LLC, an Oregon limited
liability company,

12 Plaintiffs,

13 vs.

14 DR RAWSON, an individual; C4
15 WORLDWIDE, INC., a Nevada
16 corporation; RICHARD PRICE,
an individual; JOE BAKER, an
17 individual; MICKEY
SHACKELFORD, an individual;
18 MICHAEL K. KAVANAGH, an
individual; JEFFREY EDWARDS,
19 an individual; and DOES 1-10,
inclusive,
20 Defendants.

**ORDER GRANTING SUMMARY
JUDGMENT AS TO RICHARD PRICE
AND MICKEY SHACKELFORD**

21 THIS MATTER comes before the Court on Defendant Joe
22 Baker's Motion for Order Confirming Election of Remedy and for
23 Summary Judgment Thereon filed on August 17, 2015. The motion
24 was joined by Defendants Richard Price ("Price") and Mickey
25 Shackelford ("Shackelford") on August 28, 2015 and opposed by
26 Plaintiffs on September 2, 2015. Baker was dismissed from the
27 case on September 11, 2015. The motion is ripe for
28

1 consideration as to Price and Shackelford.

2 This litigation regards a joint venture agreement between
3 Heli Ops International and C4 Worldwide and a subsequently
4 entered into settlement agreement. Plaintiffs have been at
5 liberty over the course of the past four years to direct their
6 lawsuit. Plaintiffs have secured \$20,000,000 default judgments
7 against C4 Worldwide, Inc., and individual defendants DR
8 Rawson, Michael Kavanagh and Jeffrey Edwards premised upon the
9 settlement agreement. Price and Shackelford,
10 directors/officers of C4, are the only remaining Defendants.
11

12 Plaintiffs summarize what remains of the case as follows:
13 "They [Plaintiffs] sued for money damages under the Settlement
14 Agreement and obtained a judgment against C4. They
15 [Plaintiffs] are now seeking to pierce the corporate veil and
16 hold Joe Baker and the other Defendants liable for the debts of
17 C4. They [Plaintiffs] are also suing Joe Baker and the other
18 Defendants directly for fraud and other tortious activity
19 related to the Joint Venture Agreement." Plaintiffs'
20 Opposition, page 2, lines 2-8.
21

22 The question squarely before the Court is whether the
23 sweeping release provision of the settlement agreement
24 unambiguously preempts Plaintiffs' claims against Price and
25 Shackelford, directors/officers of C4. The Court answers that
26 question in the affirmative and grants summary judgment.

27 ///

28 ///

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1 Heli Ops to C4 with a loan period of two months. The
2 Promissory Note calls for C4 to pay Heli Ops \$20,000,000 "as
3 per the terms of the Joint Venture Agreement between the
4 parties executed on November 29, 2009." Further, "the full
5 repayment per the above schedule will end on the 30th of
6 December, 2009." The CMO's were designated as collateral for
7 the Promissory Note consistent with the ownership interests
8 designated in the JVA.
9

10 Heli Ops transferred \$1,000,000 to C4. C4 purchased
11 CMO's. C4 did not repay the \$1,000,000 loan nor did Heli Ops
12 receive from C4 any profits from the CMO's.

13 On March 1, 2010, a document entitled *Settlement Agreement*
14 *and Release of All Claims* ("SA") was executed by Heli Ops and
15 C4 with Jeffrey Cain, Peggy Cain and DR Rawson joining in their
16 individual capacities.

17 The SA begins with the following statement of intent:

18 WHEREAS the Parties are each desiring to resolve
19 issues having to do with C4 WorldWide's unpaid
20 financial obligations arising out of the Promissory
21 Note and Security Interest in the CMO Securities
22 dated November 29, 2009 and upon signing this
23 Agreement intend to cease further collection efforts
24 including but not limited to the filing of any
25 litigation and the Cains further stipulate and agree
26 that they will file no complaint(s) or the like with
27 either the Securities and Exchange Commission and/or
28 the Department of Justice of any state.

To the extent not modified herein, the Promissory
Note and Security Interest in the CMO securities
remains in full force and effect.

WHEREAS, each party desires to settle all the claims
fully and finally without admission of liability;...

1 Section 1 of the SA, entitled "CONSIDERATION" states in
2 relevant part:

3 1.1 In consideration of the Releases set forth below
4 in Section 2 and the other terms set for herein, C4
5 WorldWide stipulates that it owes the Cains Twenty
6 Million USD (\$20,000,000) and that said amount was
7 due on December 29, 2009 and remains unpaid. C4
8 WorldWide acknowledges its obligation to pay and
9 agrees to pay the sum of \$20,000,000, plus all
10 accumulated interest, to Cains no later than 90 days
11 from February 25, 2010...

12 Consistent with the JVA, section 1.2 requires that C4
13 assign a 49% interest in the CMO's to the Cains. Upon payment
14 of the \$20,000,000 plus interest, the SA and JVA require the
15 Cains to transfer their 49% ownership interest in the CMO's
16 back to C4.

17 Section 2 of the SA, entitled "RELEASE" states in relevant
18 part:

19 2.1 The Cains...and all other affiliated persons,
20 firms or corporations, hereby fully and forever
21 releases and discharges C4 WorldWide, from any and
22 all claims that exist arising out of C4 WorldWide's
23 financial misfortunes and resultant inability to
24 timely pay the Promissory Note and Security Interest
25 in CMO Securities dated November 29, 2009 (a true and
26 correct copy of which is attached hereto as Exhibit A
27 and is incorporated herein by reference). Such
28 release covers the Cains...hereby fully and forever
release and discharge C4 WorldWide, it successors,
predecessors, parents, assigns, agents, employees,
officers, directors, insurers, and all other
affiliated persons, firms or corporations, of and
from any and all past, present and future claims,
demands, obligations, causes of action for damages of
any kind, known and unknown, the basis of which now
exist or hereafter may become manifest that are
directly or indirectly related to the facts in any of
the claims of any kind asserted against or which
could have been asserted in any of the claims.

1 Section 3 of the SA, entitled "EXPRESS ACKNOWLEDGMENTS,
2 REPRESENTATIONS, AND WARRANTIES" states in relevant part:

3 3.1 The parties expressly acknowledge and agree that
4 the Release set forth in Section 2 is a general
5 release of the matters described above.

6 ...

7 3.3 The parties expressly acknowledge and agree that
8 the purpose and effect of this Agreement is to fully
9 and forever resolve all issues relating to claims
10 arising out of and which could be asserted in this
11 case and that no party will pursue the other for
12 anything relating in any way to the claims being
13 released.

14 3.4 The parties expressly acknowledge and agree that
15 the terms of this Agreement are contractual in nature
16 and not merely a recital.

17 C4 did not pay Heli Ops or the Cains \$20,000,000, nor did
18 they transfer a 49% interest in the CMO's to Heli Ops/Cains.
19 Heli Ops/Cains ("Plaintiffs") filed this lawsuit on September
20 14, 2011. The case started out with seven named defendants:
21 C4; DR Rawson ("Rawson"); Michael Kavanagh ("Kavanagh");
22 Jeffrey Edwards ("Edwards"); Joe Baker ("Baker"); Mickey
23 Shackelford ("Shackelford"); and Richard Price ("Price").

24 Over the next four years the landscape of the case shifted
25 through four different complaints and many motions. The
26 Plaintiffs obtained default judgments against C4, Rawson,
27 Kavanagh and Edwards for \$20,000,000 under the SA. Baker was
28 recently dismissed out of the case at the joint request of
Plaintiffs and Baker. Price and Shackelford are the only
remaining defendants.

1 In the Third Amended Complaint ("TAC"), Plaintiffs allege
2 seven claims for relief. The first claim is against C4 and
3 Rawson for breach of contract, i.e., the SA. The claim also
4 seeks to hold Price and Shackelford individually liable for
5 C4's breach of the SA under a theory of alter ego but, as
6 explained further below, that claim was previously dismissed on
7 the pleadings.

8
9 The TAC's second claim for relief alleges fraud on the
10 part of Price and Shackelford as it relates to their role in
11 inducing Plaintiffs to enter into the JVA and later the SA.

12 The TAC's third claim for relief alleges civil conspiracy
13 amongst the individually named defendants, including Price and
14 Shackelford, as it relates to their role in inducing Plaintiffs
15 to enter into the JVA and later the SA.

16 The TAC's fourth claim for relief alleges negligence on
17 the part of the individually named defendants, including Price
18 and Shackelford, in monitoring the business activities of C4.

19 The TAC's fifth claim for relief alleges that all
20 Defendants converted or diverted funds, profits from and/or
21 ownership in the CMO's. (There is no sixth or seventh claim
22 listed in the TAC.)

23
24 The TAC's eighth claim for relief requests that Plaintiffs
25 be granted constructive trust over the CMO's and/or any profits
26 generated therefrom.

27 The TAC's ninth claim for relief alleges intentional
28 interference with contractual relations in that all Defendants

1 interfered with or disrupted the performance of the JVA.

2 On July 28, 2015, the Court granted partial judgment on
3 the pleadings in favor of Baker, Price and Shackelford and
4 certified the judgment as final. The Court held that given the
5 release provision of the SA, Plaintiffs cannot, as a matter of
6 law, enforce the SA against Price and Shackelford, non-party
7 beneficiaries to the SA, under a theory of alter ego. However,
8 based upon limited language in the TAC wherein Plaintiffs
9 seemingly contest the validity of the SA, the Court stated:
10

11 As already indicated, the allegation in the TAC that the
12 Settlement Agreement was illusory could form the basis to
13 set aside the Settlement Agreement in its entirety,
14 including the Release. In which case, Plaintiffs could
15 pursue personal liability under the Joint Venture
16 Agreement on the theory of alter ego. Material issues of
17 fact thus exists that prevent a determination with respect
18 to the enforceability of the Release on those portions of
19 the remaining claims for Relief relating to the Joint
20 Venture Agreement.

21 *Order Granting in Part Defendant Joe Baker's Motion for*
22 *Judgment on the Pleadings and Denying Plaintiff's Cross-Motion*
23 *for Judgment on the Pleadings, p. 12, lines 5-14, filed July*
24 *28, 2015. Plaintiffs did not request reconsideration of that*
25 *order and the Court does not now reconsider that order.*

26 Price and Shackelford now argue through their motion for
27 summary judgment that Plaintiffs have not specifically claimed,
28 nor sought, the remedy of rescission of the SA and that it would
be too late for Plaintiffs to now do so. Further, by obtaining
default judgements against C4 and Rawson on the SA and making
efforts to enforce those judgements, Plaintiffs have elected

1 their remedy, i.e., enforcement of the SA, and cannot now
2 pursue the inconsistent remedy of rescision. Lastly, if the SA
3 is not subject to being rescinded, then the release provision
4 of the SA prohibits Plaintiffs from suing Price and
5 Shackelford.

6 In their opposition, Plaintiffs clarify what they are
7 attempting to accomplish through the lawsuit. Specifically,
8 "They [Plaintiffs] sued for money damages under the Settlement
9 Agreement and obtained a judgment against C4. They
10 [Plaintiffs] are now seeking to pierce the corporate veil and
11 hold Joe Baker and the other Defendants liable for the debts of
12 C4." Plaintiffs' Opposition, p.2, lines 2-6. The Court has
13 already held that Plaintiffs cannot, as a matter of law, pursue
14 that course. July 28, 2015 *Order Granting in Part Defendant*
15 *Joe Baker's Motion for Judgment on the Pleadings and Denying*
16 *Plaintiffs' Cross Motion for Judgment on the Pleadings.*

17 Plaintiffs further indicate, "They [Plaintiffs] are also
18 suing Joe Baker and the other Defendants directly for fraud and
19 other tortious activity related to the Joint Venture
20 Agreement." Plaintiffs' Opposition, page 2, lines 6-8.
21 Regarding the SA and the impact of its release provision,
22 Plaintiffs state, "Rescision does not apply to this case, as
23 Baker has never offered to restore the Cain's to their former
24 position. Hence, the Settlement Agreement cannot be rescinded
25 and the correct course of action was for the Cains to sue for
26 money damages, which they have done." Plaintiffs' Opposition,
27
28

1 page 6, lines 17-21.

2 This clarification by Plaintiffs removes the material
3 issue that previously deterred the Court from granting complete
4 judgment on the pleadings in favor of Price, Shackelford and
5 Baker, i.e., whether Plaintiffs seek to rescind the SA and
6 whether there exists grounds to do so. Plaintiffs have now
7 made it patently clear that they do not seek to rescind or
8 otherwise void the SA or even argue the existence of grounds to
9 do so. Accordingly, all remaining parties acknowledge the
10 validity of the SA and its release provision.
11

12 Since Plaintiffs have removed from consideration arguments
13 regarding rescission or validity of the SA, the Court agrees with
14 Plaintiffs that the doctrine of election of remedies is not
15 applicable. The case has matriculated to a point where the
16 Court must determine whether the release provision
17 unambiguously preempts the Plaintiffs' remaining claims for
18 relief against Price and Shackelford.
19

20 **Standard of Review and Applicable Law**

21 Summary judgment is appropriate when, after viewing the
22 evidence in a light most favorable to the non-moving party,
23 there remain no genuine issues of material fact and the moving
24 party is entitled to judgment as a matter of law. NRCP 56;
25 *Butler v. Bogdanovich*, 101 Nev. 449, 451, 705 P.2d 662, 663
26 (1985).

27 A genuine factual dispute occurs when the evidence is such
28 that a rational trier of fact could return a verdict for the

1 non-moving party. *Wood v. Safeway, Inc.*, 121 Nev. 724, 731,
2 121 P.3d 1026, 1031 (2005). See also *Cuzze v. University and*
3 *Community College System of Nevada*, 123 Nev. 598, 602-03, 172
4 P.3d 131, 134 (2007) (party moving for summary judgment bears
5 the initial burden of production to show the absence of a
6 genuine issue of material fact).

7
8 The Court must give the party opposing summary judgment
9 the benefit of all favorable inferences. *O'Dell v. Martin*, 101
10 Nev. 142, 144, 696 P.2d 996, 997 (1985); *Berge v. Fredericks*,
11 95 Nev. 183 (1979). While the court must construe the
12 pleadings and evidence in a light most favorable to the non-
13 moving party, that party must show more than some metaphysical
14 doubt as to the operative, material facts. *Wood*, 121 Nev. at
15 732.

16 The parties have failed to cite any one of a fair number
17 of cases regarding release provisions that have been decided by
18 the Nevada Supreme Court. Many of the decision have upheld or
19 mandated summary judgment or dismissal on the pleadings based
20 upon unambiguous release terms. See, e.g., *Chwialkowski v.*
21 *Sachs*, 108 Nev. 404, 834 P.2d 405 (1992); *Sibson v. Farmers*
22 *Insurance Group*, 88 Nev. 417, 498 P.2d 1331 (1972); *Allstate*
23 *Insurance Co. v. Fackett*, 125 Nev. 132, 206 P.3d 572 (2009);
24 *University of Nevada v. Jones and Taylor*, 116 Nev. 428, 997
25 P.2d 812 (2000). The Nevada Supreme Court has reversed summary
26 judgment and/or dismissals where release provisions were
27 ambiguous and/or where there remained genuine issues of
28

1 material fact. See, e.g., *In Re: Amerco Derivative Litigation*,
2 127 Nev.Ad.Op 17, 252 P.3d 681, (2001); *Shapro v. Forsythe*, 103
3 Nev. 666, 747 P.2d 241 (1987); *Oh v. Wilson*, 112 Nev. 38, 910
4 P.2d 276 (1996); *Russ v. General Motors Corp.*, 111 Nev. 1431,
5 906 P.2d 718 (1995).

6 It is clear from the case law that settlement agreements
7 are contracts and as such are governed by contract law. *Mack*
8 *v. Mack Estate*, 125 Nev. 80, 95, 206 P.3d 98, 108 (2009). An
9 unambiguous release within a settlement agreement is construed
10 from the language of the document. *In Re: Amerco Derivative*
11 *Litigation*, 127 Nev.Ad.Op 17, 252 P.3d 681, 693 (2001), citing
12 *Chwialkowski v. Sachs*, 108 Nev. 404, 406, 834 P.2d 405, 406
13 (1992).

14
15 "When a contract is unambiguous and neither party is
16 entitled to relief from the contract, summary judgment based on
17 the contractual language is proper." *Allstate Insurance Co. v.*
18 *Fackett*, 125 Nev. 132, 137, 206 P.3d 572, 575 (2009), citing
19 *Chwialkowski v. Sachs*, 108 Nev. 404, 406, 834 P.2d 405, 406
20 (1992) (holding that summary judgment was proper because an
21 unambiguous contract can be construed as a matter of law from
22 the language of the document); See also, *University of Nevada*
23 *v. Jones and Taylor*, 116 Nev. 428, 431, 997 P.2d 812, 814
24 (2000) (holding that summary judgment is appropriate when a
25 contract is clear and unambiguous, meaning the contract is not
26 reasonably susceptible to more than one interpretation).
27

1 A court's "ultimate goal is to effectuate the contracting
2 parties' intent, however, when that intent is not clearly
3 expressed in the contractual language, we may also consider the
4 circumstances surrounding the agreement." *Id.*, citing *Sheehan*
5 & *Sheehan v. Nelson Malley & Co.*, 121 Nev. 481, 487-91, 117
6 P.3d 219, 223-24 (2005).

7 **Applicability of Release Provision to Price and Shackelford**

8 Plaintiffs make multiple arguments as to why the release
9 provision of the SA should not be employed so as to release
10 Price and Shackelford. Price and Shackelford disagree. Each
11 of Plaintiffs' claims are addressed below.
12

13 Importantly, Plaintiffs do not contend that Price and
14 Shackelford were not intended to be protected by the release.
15 Rather, Plaintiffs contend the release provision of the SA has
16 not been triggered given C4's non-performance. The Court
17 already rejected this argument in the July 28, 2015 Order
18 *Granting in Part Defendant Joe Bakers Motion for Judgment on*
19 *the Pleadings and Denying Plaintiffs' Cross-Motion for Judgment*
20 *on the Pleadings*, finding that the plain and unambiguous terms
21 of the SA made the release provision effective upon execution
22 of the SA. Payment of the \$20,000,000 by C4 and Rawson was not
23 a condition precedent to the release. Plaintiffs did not
24 request reconsideration of the Court's ruling and the Court
25 does not herein reconsider that ruling. Plaintiffs acknowledge
26 that, "By signing the Settlement Agreement (with the release
27 clause), the Cains gave up a valuable legal right."
28

1 Plaintiffs' Opposition, page 14, lines 20-21. The Court
2 agrees.

3 Plaintiffs also contend the release provision should be
4 read narrowly. Specifically, Plaintiffs focus upon Section 2.1
5 of the SA which states, in part, that C4 is discharged from
6 "...all claims arising out of C4 worldwide's financial
7 misfortunes and resultant inability to timely pay..." SA,
8 Section 2.1. Plaintiffs argue that since the claims in the TAG
9 did not arise out of C4's financial misfortune, the release
10 does not apply. The Court already rejected this argument in
11 the July 28, 2015 *Order Granting in Part Defendant Joe Bakers*
12 *Motion for Judgment on the Pleadings and Denying Plaintiffs'*
13 *Cross-Motion for Judgment on the Pleadings*, finding that
14 Plaintiffs ignore the broad, sweeping and unambiguous release
15 language found in the release provision and throughout the SA.
16 Examples of such include:

17
18 The Title of the SA:

19 Settlement Agreement and Release of All Claims.

20 SA, Section 3.1:

21 "The parties expressly acknowledge and agree that the
22 Release set for in Section 2 is a general release..."

23 SA, page 1:

24 "WHEREAS the Parties are each desiring to resolve
25 issues having to do with C4 WorldWide's unpaid
26 financial obligations arising out of the Promissory
27 Note and Security Interest in the CMO Securities
28 dated November 29, 2009 and upon signing this
Agreement intend to cease further collection efforts,
including but not limited to the filing of any
litigation..."

1 SA, page 1:

2 "WHEREAS each party desires to settle all the claims,
3 fully and finally..."

4 SA, Section 2.1:

5 And, Plaintiffs "hereby fully and forever release C4
6 WorldWide, its...officers, directors...from any and
7 all past, present, and future claims, demands,
8 obligations, causes of action for damages of any
9 kind, known and unknown, the basis for which now
exists or may hereafter become manifest that are
directly or indirectly related to the facts in any of
the claims of any kind asserted against or which
could have been asserted in any of the claims."

10 Again, Plaintiffs did not request reconsideration of the
11 Court's ruling and the Court does not herein reconsider that
12 ruling.

13 Plaintiffs also argue that the SA was a mere recital of an
14 already existing obligation of C4 to pay them \$20,000,000 under
15 the JVA. Plaintiffs inexplicably disregard clear and
16 unambiguous language in the SA to the contrary. Specifically,
17 section 3.4 of the SA provides: "The parties expressly
18 acknowledge and agree that the terms of this Agreement are
19 contractual in nature and not merely a recital." SA, section
20 3.4. This provision renders Plaintiffs' contention untenable.

21 Plaintiffs further argue that C4 and Rawson did not give
22 Plaintiffs any new or separate consideration for the release.
23 The plain and unambiguous terms of the JVA and SA suggest
24 otherwise. The JVA did not obligate C4 to pay Heli Ops
25 \$20,000,000.00 plus interest. Rather, the JVA required C4 to
26 purchase CMO's with the \$1,000,000 loan proceeds. Assuming the
27

1 CMO's to be profitable, Heli Ops was to get the first
2 \$20,000,000 in profits and C4 would get all profits thereafter.
3 Further, the JVA makes no mention of C4 having to pay interest.
4 Under the SA, C4 and Rawson became obligated to pay Heli Ops
5 \$20,000,000 regardless of the profitability of the CMO's.
6 Additionally, C4 and Rawson agreed to pay interest on the
7 \$20,000,000, something they were not obligated to do under the
8 JVA. These obligations went beyond the obligations created by
9 the JVA and constituted consideration for the release provision
10 of the SA.
11

12 Additionally, Rawson was not a party to the JVA and did
13 not have any personal, financial obligation to Heli Ops under
14 the JVA. By signing the SA in his individual capacity, Rawson
15 made himself personally liable to Plaintiffs. This is now
16 undisputed given Plaintiffs' success in obtaining a default
17 judgement against Rawson on the settlement agreement.

18 A final point regarding consideration for the release
19 concerns the Cains. The Cains were not a party to the JVA and
20 C4 did not have any financial obligation to the Cains under the
21 JVA. The Cains were, however, a party to the SA. Through the
22 SA, C4 and Rawson agreed to be liable not only to Heli Ops but
23 to the Cains. This too acted as consideration for the release
24 provision of the SA. The Court finds from the plain and
25 unambiguous language of the JVA and SA that there was ample
26 consideration for the release and it is a gross understatement
27 for Plaintiffs to claim otherwise.
28

1 As a subset of their argument regarding consideration,
2 Plaintiffs claim that all Defendants, including Price and
3 Shackelford, fraudulently induced Plaintiffs to enter the SA,
4 thereby getting something for nothing as in *Bernard v. Rockhill*
5 *Development Co.*, 103 Nev. 132, 743 P.2d 1238.¹ The Court's
6 findings regarding consideration for the release, gleaned from
7 the plain and unambiguous language of the SA, debunk this claim
8 and distinguish this case from *Bernard*.

9
10 Further, the Restatement (Second) of Contracts provides:

11 Ordinarily, therefore, courts do not inquire into the
12 adequacy of consideration...Gross inadequacy of
13 consideration may be relevant to issues of...fraud and the
14 like, but the requirement of consideration is not a
safeguard against imprudent and improvident contracts
except in cases where it appears that there is no bargain
in fact.

15 ...

16 Although the requirement of consideration may be met
17 despite great difference in the values exchanged, gross
18 inadequacy of consideration may be relevant in the
19 application of other rules. Inadequacy "such as shocks
the conscience" is often said to be a "badge of fraud,"
justifying a denial of specific performance. Inadequacy
20 may also help to justify rescission or cancellation on the
ground of lack of capacity, mistake, misrepresentation,
duress or undue influence.

21 *Oh v. Wilson*, 112 Nev. 38, 41, 910 P.2d 276, 278-79 (1996),
22 quoting Restatement (Second) of Contracts, Sec. 79 cmt. c and
23 cmt. e (1979).

24
25 The consideration evident from the face of the SA does

26 1 Plaintiffs do not seek rescission of the SA yet they claim
27 damages for fraud in its inducement. This is yet another
28 example of how Plaintiffs desire to keep the SA in tact so as
to reap its benefits, i.e., \$20,000,000 plus interest, while
attempting to circumvent the general release.

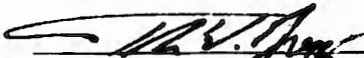
1 not, as a matter of law, shock the conscience or reflect a
2 badge of fraud even when viewed in a light most favorable to
3 Plaintiffs. Further, the plain and unambiguous terms of the SA
4 reflect that each party acknowledged having obtained
5 independent legal advice regarding the SA and "That the parties
6 further warrant that no promise or inducement has been offered,
7 except as set forth in this Agreement, and that this Agreement
8 is executed without reliance on any statement or representation
9 by any other party concerning the nature and extent of damages
10 or legal liability." SA, Section 3.2. Lastly, Plaintiffs have
11 not alleged any facts indicating that Price and Shackelford,
12 non-parties to the SA, personally and fraudulently induced
13 Plaintiffs into executing the SA.
14

15 The Court finds, as a matter of law, from the clear and
16 unambiguous terms of the Settlement Agreement and Release of
17 All Claims, that Plaintiffs bargained for the liability of C4
18 and Rawson to the tune of \$20,000,000 plus interest in return
19 for the general and sweeping release of the likes of Price and
20 Shackelford, non-parties to the JVA. The release preempts all
21 of the claims in Plaintiffs' TAC against Price and Shackelford.
22 Construing the SA in such a manner is consistent with the clear
23 and unambiguous terms of the SA, and requires no inferences or
24 reading into of terms. It likewise does not create an absurd
25 result, especially when considering that Plaintiffs
26 successfully obtained judgments against C4 and others under the
27 SA. This is exactly what the parties to the SA bargained for.
28

1 Further, because Plaintiffs have not alleged or provided
2 any evidence that Price and Shackelford possess, control or
3 otherwise own any of the CMO's in question, there is also no
4 basis for Plaintiffs' request for constructive trust of the
5 CMO's. Good cause appearing,

6 IT IS HEREBY ORDERED that summary judgement is GRANTED as
7 to Price and Shackelford as to all claims in the TAC. This
8 judgment is certified as final pursuant to NRCP 54(b).
9

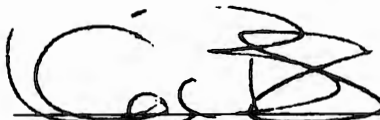
10 Dated this 5th day of November, 2015.

11 
12 THOMAS W. GREGORY
13 DISTRICT COURT JUDGE

14 Copies served by mail this 5th day of November 2015, to:

15 Michael Matuska, Esq.
16 2310 South Carson Street, #6
17 Carson City, Nevada 89701

18 Richard A. Oshinski, Esq.
19 Oshinski & Forsberg, Ltd.
20 504 E. Musser Street, Suite 302
21 Carson City, Nevada 89701

22 
23 Vicki Barrett

1 Mark Forsberg, Esq., NSB 4265
2 Rick Oshinski, Esq., NSB 4127
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7 Mark@OshinskiForsberg.com
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9 Attorney for Defendants
10 MICKEY SHACKELFORD and
11 RICHARD PRICE
12

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IN THE NINTH JUDICIAL DISTRICT COURT OF NEVADA

IN AND FOR THE COUNTY OF DOUGLAS

PEGGY CAIN, an individual; JEFFREY CAIN,
an individual; and HELI OPS
INTERNATIONAL, LLC, an Oregon limited
liability company,

Case No. 11 CV 0296

Dept. No. II

Plaintiffs,

NOTICE OF ENTRY OF ORDER

vs.

D.R. RAWSON, an individual; C4
WORLDWIDE, INC., a Nevada corporation;
RICHARD PRICE, an individual; JOE BAKER,
an individual; MICKEY SHACKELFORD, an
individual; MICHAEL K. KAVANAGH, an
individual; JEFFREY EDWARDS, an
individual; and DOES 1-10, inclusive,


Defendants.

PLEASE TAKE NOTICE that this Court entered its Order Granting Summary Judgment as to
Richard Price and Mickey Shackelford on the 5th day of November, 2015, a true and correct copy of
which is attached hereto as Exhibit 1.

The undersigned does hereby affirm that this document does not contain the Social Security Number of any person.

Dated this 9th day of November, 2015.

OSHINSKI & FORSBERG, LTD.

By 
Mark Forsberg, Esq., NSB 4265
Rick Oshinski, Esq., NSB 4127
*Attorneys for Defendants Richard Price
and Mickey Shackelford*

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CERTIFICATE OF SERVICE

I hereby certify that I am an employee of Oshinski & Forsberg, Ltd., and that on this date, I served the within Notice of Entry of Order Granting Summary Judgment as to Richard Price and Mickey Shackelford on the following individuals or entities by serving a true copy thereof by the following method(s):

☒ enclosed in a sealed envelope with postage fully prepaid thereon, in the United States Post Office mail, pursuant to NRCP 5(b)(2)(B);

☐ via electronic filing pursuant to Nevada Electronic Filing and Conversion Rules ("NEFCR") 9(b);

☐ hand delivery via Reno/Carson Messenger Service pursuant to NRCP 5(b)(2)(A);

☐ electronic transmission (e-mail) to the address(es) listed below, pursuant to NRCP 5(b)(2)(D); and/or

☐ Federal Express, UPS, or other overnight delivery

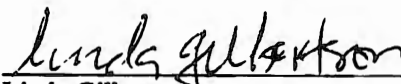
fully addressed as follows:

Michael L. Matuska, Esq.
Matuska Law Offices, Ltd.
2310 S. Carson Street, Suite 6
Carson City, NV 89701
F 775-350-7222
Attorneys for Plaintiffs

Michael J. McLaughlin, Esq.
Feldman, McLaughlin Thiel, LLP
178 U.S. Highway 50, Ste. B
P.O. Box 1309
Zephyr Cove, NV 89448
Attorney for Jeffrey Edwards

I declare under penalty of perjury that the foregoing is true and correct.

Executed on this 9th day of November, 2015, in Carson City, Nevada.


Linda Gilbertson

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FILED

Case No. 11-CV-0296

MAY 08 2015

Dept. No. II

Douglas County
District Court Clerk

2015 MAY -8 PM 2:39

CLERK
D. HECIMOVICH
DEPUTY

IN THE NINTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
IN AND FOR THE COUNTY OF DOUGLAS

PEGGY CAIN, an individual;
JEFFREY CAIN, an individual;
and HELI OPS INTERNATIONAL,
LLC, an Oregon limited
liability company,

Plaintiffs,

vs.

DR RAWSON, an individual; C4
WORLDWIDE, INC., a Nevada
corporation; RICHARD PRICE,
an individual; JOE BAKER, an
individual; MICKEY
SHACKELFORD, an individual;
MICHAEL K. KAVANAGH, an
individual; JEFFREY EDWARDS,
an individual; and DOES 1-10,
inclusive,

Defendants.

ORDER DENYING PLAINTIFF'S
THIRD MOTION TO COMPEL

THIS MATTER comes before the court at the request of
Plaintiffs, Peggy Cain and Jeffrey Cain and Heli Ops
International, LLC (the "Cains") on their Third Motion to
Compel, filed on March 9, 2015. On March 19, 2015, defendants
Richard Price ("Price") and Mickey Shackelford ("Shackelford")
filed their opposition. On March 26, 2015, defendant, Joe
Baker ("Baker") filed his opposition. On March 30, 2015, the

1 Cains filed their reply.

2 The court has considered all the pleadings and evidence
3 submitted by the parties, the record, and applicable court
4 rules. The court finds and orders as follows:

5 The Cains seek an order compelling defendants Baker, Price
6 and Shackelford to produce additional documents pursuant to
7 discovery requests propounded on December 26, 2014, including
8 Form W2s, Form 1099s and personal tax returns for tax years
9 2009 and 2010. The specific discovery requests are Requests
10 for Production of Documents Nos. 18, 19 and 20, which provide
11 as follows:
12

13 REQUEST FOR PRODUCTION NO. 18: Provide any and all
14 documents showing expenses incurred on behalf of C4
Worldwide, Inc.

15 REQUEST FOR PRODUCTION NO. 19: Provide any and all
16 documents showing payments received from C4 Worldwide,
17 Inc., including cancelled checks, bank statements and
promissory notes.

18 REQUEST FOR PRODUCTION NO. 20: Provide any and all Form
19 W2s, Form 1099s and any and all personal tax returns for
tax years 2009 and 2010.

20 1. Requests for Production Nos. 18 and 19

21 With respect to Requests for Production Nos. 18 and 19,
22 the Defendants have each either responded by asserting that
23 they have no responsive documents in their possession, custody
24 or control, or that they have produced any responsive documents
25 in their possession, custody or control. The Cains' motion
26 fails to explain why these responses are deficient. The Cains'
27

28 /////

1 motion with respect to Requests for Productions Nos. 18 and 19
2 are DENIED.

3 2. Requests for Production No. 20

4 Defendants have asserted that their tax forms and returns
5 are protected from discovery pursuant to the Nevada Supreme
6 Court's decision in *Hetter v. District Court*, 110 Nev. 513
7 (1994). The Cains dispute this, seeking discovery of the
8 Defendants' W2s, Form 1099s and personal income tax returns for
9 two reasons: (1) to discover how payments to the Defendants
10 from C4 were characterized as either "income, repayment of
11 expenses, loans, etc." Motion, page 6, line 13. (2) to
12 discover Defendants' personal financial information for their
13 punitive damages claims.
14

15 A. Characterization of Payments from C4. The Cains
16 do not need and are not entitled to complete copies of the
17 Defendants' personal income tax returns or W2s and Form 1099s
18 from entities or employers other than C4 to ascertain how any
19 payments from C4 to the Defendants were characterized.
20

21 All three of the Defendants have affirmed in their written
22 responses to Request for Production No. 20 that they did not
23 receive W2s or Form 1099s from C4 for the tax years 2009 and
24 2010. Shackelford and Price each state: "Answering Defendant
25 has no form W2s or Form 1099s that are responsive to Request
26 for Production No. 20. Answering Defendant was never issued
27 Form W2s or Form 1099s by or on behalf of C4 Worldwide, Inc."
28 Motion, Exhibit 7 and 8, p.2.

1 The Cains presented a copy of a February 17, 2015 letter
2 prepared by Baker's counsel in response to the Cains' meet and
3 confer efforts (and pre-dating the Cains' March 9, 2015
4 Motion), in which Baker's counsel confirms that Baker's "2009
5 and 2010 tax returns do not evidence any transaction involving
6 funds to or from C4." See Motion, Exhibit 12. At the Cains'
7 request Baker followed up that correspondence with a March 11,
8 2015 Supplemental Response to Request for Production in which
9 he confirms, "Responding party received no Form W-2s and/or
10 Form 1099s for the tax years 2009 and/or 2010 relating to C4
11 Worldwide. Supplement: Responding party is not in possession of
12 such requested documents involving transactions involving C4."
13 See Baker Opposition, Exhibit 9.¹

15 The court cannot compel the production of something that
16 does not exist. The Cains' motion with respect to the
17 production of W2s and 1099s from C4 is DENIED.

18 B. Punitive Damage Claim. Nevada law is clear that
19 discovery of tax returns may not be had "for the mere asking."
20 Hetter, supra, 109 Nev. at 520. Before tax returns or
21 financial records are discoverable on the issue of punitive
22 damages, "the plaintiff must demonstrate some factual basis for
23

24 1 The February 17, 2015 letter was drafted in response to the
25 Cains' meet and confer efforts. On February 24, 2015, the
26 Cains' counsel requested that Baker set forth his
27 "representations concerning the tax returns" in a supplemental
28 response. The Cains filed their motion on March 9, 2015.
Baker served his supplemental response on March 11, 2015. The
court does not find that the supplemental response was prompted
by the Motion to Compel. The Cains are not entitled to recover
their attorney's fees pursuant to NRCP 37(a)(4)(A) under these
circumstances.

1 its punitive damage claim."

2 The Cains claim to have met their burden on the basis of
3 the following six factual allegations:

4 1. The Cains wire transferred \$1,000,000 on November 30,
5 2009.

6 2. Pursuant to the Joint Venture Agreement, the loan
7 proceeds were to be deposited into a separate account and were
8 to be used to purchase CMOs.

9 3. The loan proceeds were deposited into C4's general
10 Wells Fargo account xxxx 2177.

11 4. In December 2009, the Defendants diverted \$804,327.20
12 from account xxxx 2177.

13 5. Richard Price was a signatory on account xxx 2177 and
14 spoke with Jeff Cain about the wire transfer before it was
15 made.

16 6. Richard Price and Joe Baker were signatories on the
17 Bank of America Account Nos. xxxx 3175 and xxxx 9695.

18 Punitive damages are only available based upon one of the
19 Cains' non-contract claims for fraud, civil conspiracy and
20 conversion, and if Plaintiffs establish by clear and convincing
21 evidence that the Defendants have been guilty of "oppression,
22 fraud or malice." NRS 42.005(1). None of the allegations
23 asserted above demonstrate a basis for finding "oppression,
24 fraud or malice" on the part of Price, Baker or Shackelford.
25 The Cains fail to meet their burden under the Hetter decision.
26 Their Motion to Compel the production of the Defendants'

1 personal income tax returns is therefore also DENIED but
2 without prejudice. The Cains may renew their motion under the
3 Hetter decision, if as discovery continues they discover new
4 information demonstrating the existence of "oppression, fraud
5 or malice" on the part of Price, Baker or Shackelford.

6 C. Continuing Duties.


7 The parties are subject to a continuing duty to supplement
8 all disclosure and discovery responses. NRCP 26(e). If
9 information that should be produced is not, and such refusal is
10 properly evidenced through a motion to compel, then sanctions
11 generally will be imposed pursuant to NRCP 37(a)(4).

12 D. Attorney's Fees.

13 The court finds the Defendants have incurred attorney's
14 fees and costs in filing their oppositions herein and are
15 entitled to an award of attorney's fees and costs under NRCP
16 37(a)(4)(A). The court finds reasonable attorney's fees to be
17 \$500 for Price and Shakelford's counsel and \$500 for Baker's
18 counsel, payable within thirty days. The Cains' motions for an
19 award of attorney's fees is DENIED.
20

21 IT IS SO ORDERED.

22 Dated this 8 day of May, 2015.

23
24
25
26
27
28

THOMAS W. GREGORY
DISTRICT JUDGE

1 Copies served by mail this 8 day of May, 2015, to:

2 Michael Matuska, Esq.
3 937 Mica Drive
4 Carson City, Nevada 89705

5 Rick Oshinski, Esq.
6 Mark Forsberg
7 504 E. Musser Street, Suite 302
8 Carson City, NV 89701

9 Michael Johnson, Esq.
10 P.O. Box 4848
11 Stateline, NV 89449

12 Jeffrey Edwards
13 595 Chivas Court
14 Orange Park, Florida 33073


Vicki Barrett

1 Case No. 11-CV-0296

2 Dept. No. II

RECEIVED

JUL 28 2015

Douglas County
District Court Clerk

FILED

2015 JUL 28 AM 10:05

BOBBY R. WILLIAMS

CLERK

K. WILFERT

BY _____ DEPUTY

6 IN THE NINTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

7 IN AND FOR THE COUNTY OF DOUGLAS

9 PEGGY CAIN, an individual;
10 JEFFREY CAIN, an individual;
and HELI OPS INTERNATIONAL,
11 LLC, an Oregon limited
liability company,

12 Plaintiffs,

13 vs.

14 DR RAWSON, an individual; C4
15 WORLDWIDE, INC., a Nevada
corporation; RICHARD PRICE,
16 an individual; JOE BAKER, an
individual; MICKEY
17 SHACKELFORD, an individual;
18 MICHAEL K. KAVANAGH, an
individual; JEFFREY EDWARDS,
an individual; and DOES 1-10,
19 inclusive,

20 Defendants.

**ORDER GRANTING IN PART
DEFENDANT JOE BAKER'S MOTION
FOR JUDGMENT ON THE PLEADINGS
AND DENYING PLAINTIFF'S
CROSS-MOTION FOR JUDGMENT ON
THE PLEADINGS**

21 This matter is before the Court on Defendant Joe Baker's
22 (Baker) Motion for Judgment on the Pleadings filed April 21,
23 2015. Plaintiffs Peggy Cain, Jeffrey Cain and Heli Ops
24 International, LLC (Plaintiffs) filed an opposition and Baker
25 filed a reply. Defendants Richard Price (Price) and Mickey
26 Shackelford (Shackelford) joined in Baker's motion. Plaintiffs'
27 opposition filed May 8, 2015, contained a Cross-Motion for

1 Judgment on the Pleadings which is also ripe for decision.

2 Based upon the papers and pleadings on file herein and
3 good cause appearing, Baker's Motion for Judgment on the
4 Pleadings is GRANTED in part and DENIED in part. Plaintiffs'
5 Cross-Motion for Judgment on the Pleadings is DENIED.
6

7 Parties and Procedural Posture

8 This case is set for jury trial in September 2015.
9 Plaintiffs filed their initial Complaint on August 14, 2011.
10 The Court has previously ruled on two Motions to Dismiss as
11 well as Motions for Summary Judgment. Plaintiffs filed their
12 Third Amended Complaint (the TAC) on March 30, 2015.

13 This case started out with seven named defendants: DR
14 Rawson(Rawson); C4 Worldwide Inc., a now defunct Nevada
15 corporation (C4); Richard Price (Price); Joe Baker (Baker);
16 Mickey Shackelford (Shackelford); Michael Kavanagh (Kavanagh);
17 and Jeffrey Edwards (Edwards).

18 Plaintiffs have obtained Default Judgments against Rawson,
19 C4, Kavanagh and Edwards. The Default Judgments against
20 Rawson, C4 and Kavanagh were entered based upon the failure of
21 those defendants to file an Answer. Edwards' default was
22 imposed by the Honorable Michael P. Gibbons as a sanction for
23 his failure to participate in discovery. The Honorable David
24 R. Gamble entered a Default Judgment against Edwards on March
25 16, 2015.
26

27 The remaining defendants are Price, Baker, and
28 Shackelford. Price, Baker and Shackelford have all filed

1 Answers to the TAC.

2 Factual Background

3 Plaintiffs claimed to have loaned C4 \$1,000,000 pursuant
4 to a Joint Venture Agreement and Promissory Note executed
5 November 29, 2009. (TAC ¶¶ 14, 15).

6 Plaintiffs allege they funded the \$1,000,000 loan to C4
7 and that C4 defaulted in its obligations under the loan,
8 failing to re-pay any part of it. (TAC ¶¶14, 15).

9 Plaintiffs allege that on February 28, 2010, Plaintiffs,
10 C4, and Rawson entered into a Settlement Agreement and Release
11 of All Claims (the Settlement Agreement). (TAC ¶17).

12 The Settlement Agreement, which is attached to the TAC,
13 recites as its purpose that the parties to that agreement
14 desired to:

15 resolve issues having to do with C4 Worldwide's unpaid
16 financial obligations arising out of the Promissory Note
17 and Security Interest in the CMO Securities dated November
18 29, 2009 and upon signing this Agreement intend to cease
19 further collection efforts, including but not limited to
20 the filing of any litigation and the Cains further
21 stipulate and agree that they will file no complaint(s) or
22 the like with either the Securities and Exchange
23 Commission and/or the Department of Justice of any state.

24 The Settlement Agreement goes on to provide:

25 **1.1. In consideration of the Releases set forth below in**
26 **Section 2 and the other terms set forth herein, C4**
27 **WorldWide stipulates that it owes the Cains Twenty Million**
28 **USD (\$20,000,000) and that said amount was due on December**
 30, 2009 and remains unpaid. C4 WorldWide acknowledges
 its obligation to pay and agrees to pay the sum of
 \$20,000,000, plus all accumulated interest, to Cains no
 later than 90 days from February 25, 2010, less any
 advance payments made, and C4 Worldwide shall use all
 reasonable efforts to pay this obligation off in full as
 quickly as possible.... (Emphasis added).

1 The RELEASE portion of the Settlement Agreement, the
2 "consideration," provides as follows:

3 2.1 The Cains, their successors, predecessors, parents,
4 assigns, agents, employees, officers, directors, insurers,
5 and all other affiliated persons, firms, or corporations,
6 hereby fully and forever releases and discharges C4
7 WorldWide from any and all claims that exist arising out
8 of C4 worldwide's [sic] financial misfortunes and
9 resultant inability to timely pay the Promissory Note and
10 Security Interest in the CMO Securities dated November 29,
11 2009 Such release covers the Cains their successors,
12 predecessors, parents, assigns, agents employees,
13 officers, directors, insurers, and all other affiliated
14 persons, firms, or corporations, [sic] **hereby fully and**
15 **forever release and discharge C4 WorldWide, its**
16 **successors, predecessors, parents, assigns, agents,**
17 **employees, officers, directors, insurers, and all other**
18 **affiliated persons, firms, or corporations, of and from**
19 **any and all past, present, and future claims, demands,**
20 **obligations, causes of action for damages of any kind,**
21 **known and unknown, the basis of which now exists or may**
22 **hereafter become manifest that are directly or indirectly**
23 **related to the facts in any of the claims of any kind**
24 **asserted against or which could have been asserted against**
25 **in any of the claims. (Emphasis added).**

26 The Settlement Agreement also includes the language:

27 3.1 The parties expressly acknowledge and agree that the
28 Release set forth in Section 2 is a **general release** of the
matters described above.... (Emphasis added).

3.3 **The parties expressly acknowledge and agree that the**
purpose and effect of this Agreement is to fully and
forever resolve all issues relating to claims arising out
of and which could be asserted in this case and that no
party will pursue the other for anything related in any
way to the claims being released. (Emphasis added).

The Settlement Agreement states that California law
applies.

Plaintiffs allege that C4 and Rawson breached the
Settlement Agreement by failing to pay them \$20,000,000, or any
part thereof. (TAC ¶23). Plaintiffs seek to hold Baker, Price

1 and Shackelford personally liable for \$20,000,000 under the
2 Settlement Agreement based upon the alter ego doctrine. (TAC
3 ¶27).

4 The TAC alleges the following causes of action:

5 First Claim for Relief: Breach of Contract (the Settlement
6 Agreement)

7 Second Claim for Relief: Fraud

8 Third Claim for Relief: Civil Conspiracy

9 Fourth Claim for Relief: Negligence

10 Fifth Claim for Relief: Conversion

11 [There is no Sixth or Seventh Claim for Relief]

12 Eighth Claim for Relief: Constructive Trust

13 Ninth Claim for Relief: Intentional Interference with
14 Contractual Relations.
15

16 Analysis

17 1. The Pending Motions.

18 Baker moves for judgment on the pleadings claiming that
19 Baker is a third-party beneficiary of the Settlement Agreement.
20 As such, he claims pursuant to the terms of that agreement, he
21 has been expressly released from liability for all of the
22 claims for relief set forth in the TAC.
23

24 Plaintiffs oppose Baker's motion claiming that because C4
25 and Rawson did not perform under the Settlement Agreement,
26 Baker was not released. Plaintiffs further argue that the
27 release language of the Settlement Agreement (hereinafter
28 collectively referred to as "the Release") only applies to

1 claims "arising out of C4's financial misfortunes and resultant
2 inability to pay," and therefore cannot be construed to release
3 the remaining defendants from liability for Plaintiff's tort
4 claims.

5 In Plaintiffs' opposition to Baker's Motion for Judgment
6 on the Pleadings, Plaintiffs assert a Cross-Motion for Judgment
7 on the Pleadings seeking the dismissal of Baker's thirty-third
8 affirmative defense of "release."

9
10 2. Standard of Review.

11 NRCP 12(c) provides as follows:

12 Motion for Judgment on the Pleadings. After the pleadings
13 are closed but within such time as not to delay the trial,
14 any party may move for judgment on the pleadings. If, on a
15 motion for judgment on the pleadings, matters outside the
16 pleadings are presented to and not excluded by the court,
the motion shall be treated as one for summary judgment
and disposed of as provided in Rule 56, and all parties
shall be given reasonable opportunity to present all
material made pertinent to such a motion by Rule 56.

17 *Bernard v. Rockhill Dev. Co.*, 103 Nev. 132, 135-136 (1987)
18 provides:

19 A Rule 12(c) motion is designed to provide a means of
20 disposing of cases when material facts are not in dispute
21 and a judgment on the merits can be achieved by focusing
22 on the content of the pleadings. 35 C. Wright & A.
23 Miller, Federal Practice and Procedure § 1367 (1969). The
24 motion for a judgment on the pleadings has utility only
25 when all material allegations of fact are admitted in the
26 pleadings and only questions of law remain. Id. See also
Duhamel v. United States, 119 F.Supp. 192 (Ct.Cl.1954).
Moreover, a defendant will not succeed on a motion under
Rule 12(c) if there are allegations in the plaintiff's
pleadings that, if proved, would permit recovery. 5 C.
Wright & A. Miller, Federal Practice and Procedure § 1368
(1969).

27 /////
28

1 3. Procedural Propriety.

2 Preliminarily, Plaintiffs challenge the Motion for
3 Judgment on the Pleadings claiming it is essentially a motion
4 for reconsideration of the earlier motions to dismiss and for
5 summary judgment. The Court rejects this argument. This is
6 Baker's first Motion for Judgment on the Pleadings, and his
7 first attempt to seek adjudication on the TAC. See Hoffman v.
8 Tonnemacher, 593 F.3d 908, 909 (2010). NRCP 12(c) allows for
9 the filing of a motion on the pleadings "After the pleadings
10 are closed but within such time as not to delay the trial, any
11 party may move for judgment on the pleadings."
12

13 Plaintiffs also oppose Price and Shackelford's request to
14 join in Baker's Motion. Since the facts, issues and analysis
15 are exactly the same for all three Defendants, Price and
16 Shackelford are allowed to join in Baker's Motion.

17 4. The Settlement Agreement and the Release.

18 The Court rejects Plaintiffs' argument that the Release of
19 Baker, Price and Shackelford is not effective because C4 failed
20 to perform. Pursuant to the terms of the Settlement Agreement,
21 C4 agreed to be financially obligated to Plaintiffs "in
22 consideration of the Releases." Settlement Agreement, 1.1.
23 The Release is not conditioned upon payment of the \$20,000,000
24 but rather the Settlement Agreement reflects an unconditional
25 general release given in exchange for a promise to pay
26 \$20,000,000 at a later date. The language of the Settlement
27 Agreement includes: "The Cains, their successors, predecessors,
28

1 parents, assigns, agents, employees, officers, directors,
2 insurers, and all other affiliated persons, firms, or
3 corporations, **heraby fully and forever releases and**
4 **discharges....**"(Emphasis added).

5
6 Importantly, Plaintiffs seek to enforce the Settlement
7 Agreement and have already obtained judgments against four
8 defendants based upon the Settlement Agreement. The fact that
9 C4 did not pay \$20,000,000 might give Plaintiffs grounds to
10 rescind the Settlement Agreement altogether, but Plaintiffs
11 cannot both seek to enforce the Settlement Agreement while at
12 the same time repudiating the Release - the express
13 consideration for the Settlement Agreement.

14 Plaintiffs' argument that the Release is narrowly drawn
15 and does not preclude their recovery on the tort claims in this
16 action is also not well founded. The Release is very broad and
17 if enforceable would encompass Plaintiffs' tort claims.

18 5. The First Claim for Relief is Dismissed.

19 In relevant part the First Claim for Relief alleges as
20 follows:

21 22. Plaintiffs have satisfied all conditions
22 precedent on their part, or such conditions have been
23 waived or excused, under the February 28, 2010, Settlement
24 Agreement.

25 23. Rawson and C4 have breached the Settlement
26 Agreement by failing to pay the Twenty Million Dollars
27 (\$20,000,000) obligation owed to Plaintiffs, or any part
28 thereof....

29 25. Plaintiffs are entitled to judgment against
30 Rawson and C4 in the amount of Twenty Million Dollars
31 (\$20,000,000), plus interest at the rate of nine percent

1 (9%) per annum from December 31, 2009 until paid.

2 Based on these allegations, Plaintiffs sought to enforce
3 the Settlement Agreement against Rawson and C4 and have in fact
4 obtained judgments against Rawson and C4 for \$20,000,000 plus
5 interest based on the Settlement Agreement.¹

6 The TAC goes on to allege:

7
8 26. At the time C4 and Rawson executed the
9 Settlement Agreement, each of the individual Defendants
10 knew or should have known that **the Settlement Agreement**
11 **was illusory** in that C4 was a mere shell corporation with
12 no ability to repay the amounts owed, and Rawson had no
13 intention of repaying the loan.

14 27. Plaintiffs are informed and believe, and thereon
15 allege, that at all times relevant herein C4 was a mere
16 sham and was organized and operated as the alter ego of
17 the individual Defendants named herein for their personal
18 benefit and advantage, in that the individual Defendants
19 have at all times herein mentioned exercised total
20 dominion and control over C4. The individual Defendants
21 and C4 have so intermingled their personal and financial
22 affairs that C4 was, and is, the alter ego of the
23 individual Defendants, and should be disregarded. By
24 reason of the failure of C4, each individual Defendant
25 should be and is liable to Plaintiff for the relief pray
26 for herein. (Emphasis added).

27 Based on these allegations, Plaintiffs are seeking to impose
28 liability upon the remaining Defendants for the \$20,000,000 C4
29 promised to pay under the terms of the Settlement Agreement
30 pursuant to the alter ego doctrine.

31 Under California law, which applies pursuant to the terms

32
33 1 The Court does not in this Order address whether
34 Plaintiffs' success in enforcing the Settlement
35 Agreement against C4 and Rawson through default
36 judgments has any legal impact on Plaintiffs'
37 obligation under the Settlement Agreement to Release
38 Baker, Price and Shackelford.

1 of the Settlement Agreement, the alter ego doctrine is
2 described as follows:

3 "The essence of the alter ego doctrine is that justice be
4 done." *Mesler v. Bragg Management Co.*, 39 Cal. 3d 290,
5 301 (1985).

6 The alter ego doctrine is strictly limited by the demands
7 of equity; it applies "only in narrowly defined
8 circumstances and only when the ends of justice so
9 require." [Citation omitted]. The alter ego doctrine will
10 only be applied to avoid an inequitable result. Alter ego
11 is essentially a theory of vicarious liability under which
12 the owners of a corporation may be held liable for harm
13 for which the corporation is responsible where, because of
14 the corporation's utilization of the corporate form, the
15 party harmed will not be adequately compensated for its
16 damages. *Doney v. TRW, Inc.*, 33 Cal.App.4th 245, 249
17 (1995).

18 The theory is used only "when a corporation" is used by an
19 individual or individuals, or by another corporation, to
20 perpetrate a fraud, circumvent a statute, or accomplish
21 some other wrongful or inequitable purpose." *McClellan v.*
22 *Northridge Park Townhome Owners Assn.*, 89 Cal.App.4th at
23 pp. 752-753. Under those circumstances, a court may
24 disregard the corporate entity and treat the acts as if
25 they were done by the individuals themselves or by the
26 controlling corporation. *Id.*

27 The Nevada case of *Trident Constr. Corp. v. W. Elec., Inc.*,
28 105 Nev. 423, 427, is instructive as well. In that case, the
Nevada Supreme Court addressed the extension of personal
liability under a settlement agreement to a corporate officer
based upon his signature on the settlement agreement without
reference to corporate capacity. The court ruled as follows:

29 In *Rowland v. Lepire*, 99 Nev. 308, 662 P.2d 1332 (1983),
30 this court enunciated the standard of proof for showing
31 alter ego based on an allegation of undercapitalization.
32 "[I]t is incumbent upon the one seeking to pierce the
33 corporate veil, to show by a preponderance of the
34 evidence, that the financial setup of the corporation is
35 only a sham and caused an injustice." *Id.* at 317, 662 P.2d
36 at 1337. By analogous reasoning, we believe it is

1 incumbent upon the one seeking to extend personal
2 liability to an officer of a corporation for a corporate
3 debt, to show by a preponderance of the evidence, that the
4 officer intended to be personally bound, and that the
5 creditor was looking to the officer as the guarantor of
6 the debt.

7 Accepting as true all facts asserted in the TAC, the Court
8 concludes as a matter of law that liability under the
9 Settlement Agreement cannot be imposed upon Baker, Price and
10 Shackelford through application of the equitable alter ego
11 doctrine. Plaintiffs cannot enforce the Settlement Agreement
12 by piercing the corporate veil to get to Baker, Price and
13 Shackelford when the Settlement Agreement includes specific
14 language releasing them from liability.

15 Similarly, the Plaintiffs seek to enforce the Settlement
16 Agreement to obtain a \$20,000,000 judgment while at the same
17 time claiming the Settlement Agreement to be illusory. While
18 Plaintiffs could perhaps seek to rescind the Settlement
19 Agreement as being illusory or due to C4's nonperformance, the
20 TAC's First Claim for Relief does not make that request.
21 Instead, Plaintiffs desire the benefit of the Settlement
22 Agreement to the exclusion of its Release terms while doubly
23 claiming the contract was illusory.

24 Plaintiffs cannot reap the benefit of the Settlement
25 Agreement while ignoring its release terms. Equity does not
26 "demand" in this case that the individual Defendants pay
27 Plaintiffs \$20,000,000 pursuant to a Settlement Agreement to
28 which they were not a party and which expressly releases them

1 from liability. Accordingly, the Court concludes as a matter
2 of law that the First Claim for Relief fails to state a claim
3 upon which relief can be granted against Baker, Price and
4 Shackelford.

5 As already indicated, the allegation in the TAC that the
6 Settlement Agreement was illusory could form the basis to set
7 aside the Settlement Agreement in its entirety, including the
8 Release. In which case, Plaintiffs could pursue personal
9 liability under the Joint Venture Agreement on the theory of
10 alter ego. Material issues of fact thus exists that prevent a
11 determination with respect to the enforceability of the Release
12 or the impact of the Release on those portions of the remaining
13 claims for Relief relating to the Joint Venture Agreement.

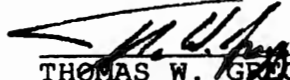
14 6. Plaintiff's Cross-Motion for Judgment on the
15 Pleadings is Denied.

16 Plaintiffs' Cross-motion is filed in contravention of
17 NJDCR 6(I) which requires that cross-motions be filed as a
18 separate document unless plead in the alternative. Beyond this
19 deficiency, affirmative defense 33 says: "Plaintiffs executed a
20 written release that expressly released Answering Defendant as
21 an intended third party beneficiary from all liability
22 concerning the incident giving rise to this action and released
23 and discharged any and all claims now being asserted against
24 Answering Defendant." Accepting as true the allegations of the
25 pleadings, the Court finds Baker has stated a claim upon which
26 relief can be granted.
27
28

1 IT IS HEREBY ORDERED that Baker's Motion for Judgment on
2 the Pleadings, joined by Price and Shackelford, is **GRANTED** with
3 respect to the TAC's First Claim for Relief and all other
4 claims to the extent they seek to hold Baker, Price and
5 Shackelford liable under the Settlement Agreement. NRCP 12(c).
6 The TAC's First Claim for Relief is dismissed with prejudice.
7 The Court certifies its judgment as final pursuant to NRCP
8 54(b). The motion is **DENIED** as to the remaining Claims for
9 Relief.
10

11 IT IS FURTHER ORDERED that Plaintiffs' Cross-Motion for
12 Judgment on the Pleadings is **DENIED**.

13 Dated this 28 day of July, 2015.

14
15 
16 THOMAS W. GREGORY
DISTRICT COURT JUDGE

17
18 Copies served by mail this 28 day of July 2015, to:

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CASE NO.: 11-CV-0296

JUL 29 2015

FILED

DEPT. NO.: II

Douglas County
District Court Clerk

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BOBBIE R. WILLIAMS
CLERK

This document does not contain personal information of any person.

K. WILFERT DEPUTY

THE NINTH JUDICIAL DISTRICT COURT OF NEVADA
IN AND FOR THE COUNTY OF DOUGLAS

PEGGY CAIN, an individual; JEFFREY CAIN,
an individual; and HELI OPS
INTERNATIONAL, LLC, an Oregon limited
liability company,

Plaintiffs,

v.

NOTICE OF ENTRY OF ORDER

D.R. RAWSON, an individual;
C4 WORLDWIDE, INC., a Nevada corporation;
RICHARD PRICE, an individual; JOE BAKER,
an individual; MICKEY SHACKELFORD,
an individual; MICHAEL K. KAVANAGH,
an individual; and JEFFREY EDWARDS, an
individual,

Defendants.

PLEASE TAKE NOTICE that on July 28, 2015, the Court entered its ORDER
GRANTING IN PART DEFENDANT JOE BAKER'S MOTION FOR JUDGMENT ON THE
PLEADINGS AND DENYING PLAINTIFF'S [sic] CROSS-MOTION FOR JUDGMENT ON
THE PLEADINGS in the above-entitled matter, a copy of which is attached hereto as *Exhibit 1*.

Dated this 25th day of July 2015.

MATUSKA LAW OFFICES, LTD.

By:

MICHAEL L. MATUSKA, SBN 5711
2310 South Carson Street, Suite 6
Carson City, NV 89701
Attorneys for Plaintiffs

CERTIFICATE OF SERVICE

Pursuant to NRCP 5(b), I certify that I am an employee of Matuska Law Offices, Ltd., and that on the 29th day of July 2015, I served a true and correct copy of the preceding document entitled **NOTICE OF ENTRY OF ORDER** as follows:

Michael K. Johnson, Esq.
Rollston, Henderson, Crabb & Johnson, Ltd.
P.O. Box 4848
Stateline NV 89449-4848

Attorney for Defendant Joe Baker

Richard A. Oshinski, Esq.
Mark Forsberg, Esq.
Oshinski & Forsberg, Ltd.
504 E. Musser Street, Suite 302
Carson City NV 89701

Attorney for Defendants Richard Price and Mickey Shackelford

☒ **BY U.S. MAIL:** I deposited for mailing in the United States mail, with postage fully prepaid, an envelope containing the above-identified document(s) at Carson City, Nevada, in the ordinary course of business.

☐ **BY EMAIL ONLY:**

☐ **BY PERSONAL SERVICE:** I personally delivered the above-identified document(s) by hand delivery to the office(s) of the person(s) named above.

☐ **BY FACSIMILE:**

☐ **BY FEDERAL EXPRESS ONE-DAY DELIVERY.**

☐ **BY MESSENGER SERVICE:** I delivered the above-identified document(s) to Reno-Carson Messenger Service for delivery.


LIZ STERN, ALS

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Case No. 11-CV-0296 AUG 17 2015

Dept. No. II Douglas County
District Court Clerk

2015 AUG 17 AM 9:57

BOB R. WILLIAMS
CLERK

BY ~~B. WILLIAMS~~

IN THE NINTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
IN AND FOR THE COUNTY OF DOUGLAS

PEGGY CAIN, an individual;
JEFFREY CAIN, an individual;
and HELI OPS INTERNATIONAL,
LLC, an Oregon limited
liability company,

Plaintiffs,

vs.

DR RAWSON, an individual; C4
WORLDWIDE, INC., a Nevada
corporation; RICHARD PRICE,
an individual; JOE BAKER, an
individual; MICKEY
SHACKELFORD, an individual;
MICHAEL K. KAVANAGH, an
individual; JEFFREY EDWARDS,
an individual; and DOES 1-10,
inclusive,
Defendants.

ORDER GRANTING, IN PART, JOE
BAKER'S MOTION FOR (1)
HEARING AND/OR TO BIFURCATE
TRIAL AND (2) TO STAY A
PORTION OF TRIAL PROCEEDINGS

THIS MATTER comes before the Court on Defendant Joe
Baker's (Baker) Motion for (1) Hearing and/or to Bifurcate
Trial and (2) To Stay a Portion of Trial Proceedings filed on
July 17, 2015. Defendants Richard Price (Price) and Mickey
Shackelford (Shackelford) joined in Baker's motion on July 31,
2015. Plaintiff's Peggy Cain, Jeffrey Cain and Heli Ops
International, LLC (Plaintiffs) filed an Opposition to Motion

1 for (1) Hearing and/or to Bifurcate Trial and (2) To Stay a
2 Portion of Trial Proceedings on July 31, 2015. Baker filed a
3 Reply Brief Re: Plaintiff's Opposition to Motion for (1)
4 Hearing and/or to Bifurcate Trial and (2) To Stay a Portion of
5 Trial Proceedings on August 10, 2015.

6
7 Procedural Background

8 On November 20, 2012, the Court entered an Order Denying
9 Renewed Motion to Dismiss Re Personal Jurisdiction or for
10 Summary Judgment, and Granting Second Motion for Leave to
11 Amend. In ruling on the motion, the Court confined the parties
12 to the pleadings and corresponding affidavits relating to the
13 challenge to personal jurisdiction. In so doing, the Court
14 determined the Cains had made a *prima facie* showing of
15 jurisdictional facts to defeat the pending motion. Consistent
16 with the law, the Court made clear that the Cains "still must
17 establish personal jurisdiction by a preponderance of the
18 evidence at a hearing or the trial." Order dated November 20,
19 2012, citing *Trump v. Eighth Judicial District Court*, 109 Nev.
20 687, 694 (1993).

21
22 Baker's pending motion, joined by Price and Shackelford,
23 requests that the Court hold a separate hearing or bifurcate
24 the trial such that the Court would rule on the issues of
25 personal jurisdiction and alter ego separate from and prior to
26 the jury trial. The Cains agree that they must prove personal
27 jurisdiction and alter ego by a preponderance of the evidence
28 and that the Court is to determine those issues as opposed to

1 the jury. The Cains posit, however, that all of the issues are
2 so intertwined that it would be a better use of resources to
3 try all issues together.

4 A pre-trial conference was held on August 10, 2015, the
5 same day that briefing closed on the pending motion. During
6 the course of the pre-trial conference, the parties agreed to
7 vacate the September 15, 2015 jury trial setting and continue
8 the trial until April 19, 2016. The parties also agreed to set
9 a hearing for December 8, 2015 to address all outstanding
10 motions.
11

12 Analysis

13 There are compelling reasons in this case to try the non-
14 jury issues of personal jurisdiction and alter ego in advance
15 of seating a jury. Given the agreement of all remaining
16 parties to continue the trial that was to begin one month from
17 now and set a motions hearing, it is now practical to try the
18 issues of personal jurisdiction and alter ego at the time of
19 the motions hearing. This is particularly true when
20 considering the case is now four years old.

21 The issue of personal jurisdiction over Baker, Price and
22 Shackelford has permeated much of the pre-trial litigation in
23 this case. That is not surprising considering that Baker,
24 Price and Shackelford are being sued in their individual
25 capacity for their involvement as officers in a Nevada
26 corporation when neither reside in Nevada and have had few, if
27 any, personal contacts with Nevada.
28

1 When the Court first ruled on personal jurisdiction in
2 2012, discovery had yet to be completed and the issue was
3 decided upon affidavits at the lower *prima facie* standard.
4 Now, nearly three years later, discovery has been completed,
5 including the depositions of Baker, Price and Shackelford
6 earlier this week. There should now be a much clearer picture
7 regarding personal jurisdiction.
8

9 Also, when the Court ruled on personal jurisdiction in
10 2012, the Cains had yet to add the theory of alter ego to their
11 *Complaint*. Like personal jurisdiction, the parties agree that
12 alter ego is a determination for the Court. Alter ego is very
13 intertwined with personal jurisdiction. The parties will be
14 relying upon many of the same facts for each issue. It would
15 make no sense for the Court to hear these issues separately.
16

17 Combined, these two issue have dominated pre-trial
18 litigation. The Court's determination of each will greatly
19 impact the course of the case. The issues also appear to the
20 Court to be very triable issues and have in common the
21 potential for being dispositive.

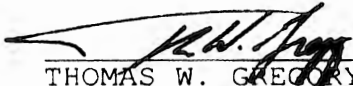
22 Under these circumstances, the Court finds that the best
23 course is to bifurcate the issues of personal jurisdiction and
24 alter ego from the issues to be tried to a jury. Now that the
25 jury trial has been continued out until April of 2016, it will
26 be of benefit to all parties to have a full evidentiary hearing
27 regarding personal jurisdiction and alter ego as part of the
28 motions hearing already scheduled for December 8, 2015. This

1 will make for the best use of judicial resources. The parties
2 will then have the benefit of knowing the determination of
3 these issues in advance of trial.

4 **IT IS HEREBY ORDERED** that Baker's Motion for Hearing
5 and/or to Bifurcate Trial, joined by Price and Shackelford, is
6 **GRANTED**. A full evidentiary hearing on the issues of personal
7 jurisdiction and alter ego will be held during the motions
8 hearing set to begin on December 8, 2015. At the hearing, the
9 Cains will bear the burden and the burden is a preponderance of
10 the evidence. *Trump*, 109 Nev. at 693.

12 **IT IS FURTHER ORDERED** that Baker's Motion to Stay a
13 Portion of Trial Proceedings, joined by Price and Shackelford,
14 is **DENIED** as being moot given the continuance of the trial.

15 Dated this 17 day of August, 2015.

17 
18 THOMAS W. GREGORY
19 DISTRICT COURT JUDGE

20 Copies served by mail this 17 day of August, 2015, to:

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