

IN THE SUPREME COURT OF THE STATE OF NEVADA

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. 69889

District Court Case No. 11-CV-0296

Electronically Filed
Mar 22 2016 02:35 p.m.

Tracie K. Lindeman
DOCKETING STATEMENT
CIVIL APPEALS
Supreme Court

GENERAL INFORMATION

Appellants must complete this docketing statement in compliance with NRAP 14(a). The purpose of the docketing statement is to assist the Supreme Court in screening jurisdiction, identifying issues on appeal, assessing presumptive assignment to the Court of Appeals under NRAP 17, scheduling cases for oral argument and settlement conferences, classifying cases for expedited treatment and assignment to the Court of Appeals, and compiling statistical information.

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 27 on this docketing statement. Failure to attach all required documents will result in the delay of your appeal and may result in the imposition of sanctions.

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

1. **Judicial District:** 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

Attorney: Robert L. Eisenberg, Esq. Telephone: (775) 786-6868
Firm: Lemons, Grundy & Eisenberg
Address: 6005 Plumas Street, 3rd Floor, Reno NV 89519

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 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 checked="" type="checkbox"/> Other disposition |
| | (specify): <u>Special Orders</u> |
| | <u>awarding costs and attorney</u> |
| | <u>fees and quashing subpoena</u> |

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:

Pending: Nevada Supreme Court Case No. 69333

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 Heli Ops 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 Heli Ops 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 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 November 5, 2015, Judge Gregory made his prior ruling on the Motion for Judgment on the Pleadings a final summary judgment. Those orders are on appeal in Case No. 69333.

On February 10, 2016, Judge Gregory entered his order awarding attorney fees to Defendants Price and Shackelford. Judge Gregory awarded costs on February 10, 2016. He entered another order February 10, 2016 quashing subpoenas. Those three orders are on appeal in this Case No. 69889.

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

1. Whether the district court erred by awarding attorney fees to Defendants Richard Price and Mickey Shackelford, and whether the district court correctly applied the lodestar doctrine and other factors.

2. Whether the district court erred by awarding costs to Defendants Richard Price and Mickey Shackelford, when the costs were not adequately documented and were intended to reimburse Defendant Joe Baker, who had previously settled and agreed to bear his own costs and attorney fees.

3. Whether the district court erred by granting the motion to quash subpoenas and for sanctions filed by the Defendants Richard Price and Mickey Shackelford, where the court ordered the issuance commissions and letters rogatory prior to summary judgment, the case was already on appeal, and Defendants' counsel failed to meet and confer prior to filing the motion.

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:

Pending: Nevada Supreme Court Case No. 69333

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? No

- ☐ 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

13. Assignment to the Court of Appeals or Retention in the Supreme Court.

Briefly set forth whether the matter is presumptively retained by the Supreme Court or assigned to the Court of Appeals under NRAP 17, and cite the subparagraph(s) of the Rule under which the matter falls. If appellant believes that the Supreme Court should retain the case despite its presumptive assignment to the Court of Appeals, identify the specific issue(s) or circumstance(s) that warrant retaining the case and include an explanation of their importance or significance.

This appeal docket involves post-judgment orders that do not themselves fall within categories of cases presumptively retained by the Supreme Court or assigned to the Court of Appeals. Nevertheless, this appeal is directly related to appeal No. 69333, which is the appeal from the underlying judgment. Although the appeals have not yet been consolidated, appellants will be moving for consolidation of briefing and oral argument of the two appeals, if they do not settle in the settlement program. If the court reverses the judgment in No. 69333, the post-judgment orders will also necessarily be reversed in the present appeal docket. As indicated in the docketing statement in No. 69333, that appeal involves issues of first impression and issues of public policy, which would be presumptively retained by the Supreme Court. NRAP

17(a)(14). Under these circumstances, appellants respectfully contend that the two appeals should be placed on the same decisional track (i.e., retained by the Supreme Court).

- 14. Trial.** If this action proceeded to trial, how many days did the trial last?
N/A

Was it a bench or jury trial? _____

- 15. 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

- 16. Date of entry of written judgment or order appeal from:**

1. *Order Granting Attorney's Fees to Defendants Price and Shackelford* entered on February 5, 2016;
2. *Order Awarding Defendants Price and Shackelford's Costs and Denying Plaintiffs' Motion to Retax Costs* entered on February 10, 2016; and
3. *Order Granting Motion to Quash Subpoenas, For Protective Order and For Sanctions* entered on February 10, 2016.

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

- 17. Date written notice of entry of judgment or order served:**

1. 02/12/16
2. 02/16/16
3. 02/16/16

Was service by:

- ☐ Delivery
☒ Mail/electronic/fax

18. 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

19. Date notice of appeal filed: 02/25/2016

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:

20. 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)

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SUBSTANTIVE APPEALABILITY

21. 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): 3A(b)(8)

- (b) Explain how each authority provides a basis for appeal from the judgment or order: The orders awarding attorney fees and costs are appealable as special orders entered after final judgment pursuant to NRAP 3A(b)(8). Appellants have also appealed the February 10, 2015 Order Granting Motion to Quash Subpoena, For Protective Order and for Sanctions under NRAP 3A(b)(8) in an abundance of caution, although Appellants contend that the District Court lacked jurisdiction to enter such order while Case No. 69333 was pending and question whether the order is valid and final for any purpose. Appellants intend to file a motion to determine the finality of that order.

22. 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

23. 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 Appellants' \$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.

The District Court committed additional errors by awarding costs and attorney fees to Defendants Price and Shackelford, and entering the subsequent order quashing subpoenas and ordering sanctions.

24. 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

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25. If you answered “No” to question 24, 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

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

27. 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.

PEGGY CAIN, JEFFREY CAIN, and
HELI OPS INTERNATIONAL, LLC

Name of Appellant

Michael L. Matuska

Name of Counsel of Record

March 21, 2016
Date


MICHAEL L. MATUSKA, ESQ.

Nevada, Carson City

State and county where signed


PEGGY CAIN, JEFFREY CAIN, and
HELI OPS INTERNATIONAL, LLC

Name of Appellant

Robert L. Eisenberg

Name of Counsel of Record

March 21, 2016
Date


ROBERT L. EISENBERG, ESQ.

Nevada, Washoe County

State and county where signed

CERTIFICATE OF SERVICE

I certify that on the 22nd day of March 2016, I served a copy of this completed docketing statement upon all counsel of record:

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

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 22nd day of March 2016.


LIZ STERN, ALS

RECEIVED

FILED

CASE NO.: 11-CV-0296

MAR 30 2015

DEPT. NO.: II

Douglas County
District Court Clerk

2015 MAR 30 PM 4:38

This document does not contain personal information of any person.

BOBBIE R. WILLIAMS
CLERK

D. HECHT
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, L.L.C. 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

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

26 26. At the time C4 and Rawson executed the Settlement Agreement, each of the
27 individual Defendants knew or should have known that the Settlement Agreement was illusory in
28

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.

17 **IV.**
18 **SECOND CLAIM FOR RELIEF**
19 **(Fraud)**

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

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

24 31. Defendants, and each of them created this false perception in order obtain funds
25 from Plaintiffs.
26
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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.

1 40. Defendants Rawson, Baker, Price, Shackelford, Edwards, and Kavanagh are fully
2 liable to Plaintiffs in the amount of Twenty Millions Dollars (\$20,000,000), plus interest at the
3 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.

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

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

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

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

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

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

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

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

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.

53. Defendants' acts of dominion and control are in denial of and inconsistent with Plaintiffs' title and rights to the amount loaned to C4, the CMOs and the proceeds derived therefrom.

54. Defendants' acts of dominion and control are in derogation, exclusion and defiance of Plaintiffs' title and rights.

55. Plaintiffs are entitled to a judgment against the Defendants, and each of them, jointly and severally, 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.

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

**VIII.
EIGHTH CLAIM FOR RELIEF
(Constructive Trust)**

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

58. A confidential and/or fiduciary relationship existed between the Plaintiffs and the Defendants.

59. The retention by the Defendants of any of the CMOs, amounts diverted from the Plaintiffs' loan or dividends due to the Plaintiffs, and/or any proceeds derived therefrom, would be inequitable.

60. The imposition of an actual and/or constructive trust is therefore essential to the effectuation of justice.

**IX.
NINTH CLAIM FOR RELIEF
(Intentional Interference with Contractual Relations)**

61. Plaintiffs incorporate by reference herein the allegations set forth in the preceding

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

62. The Joint Venture Agreement is a valid contract.

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

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

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

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

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

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

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

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

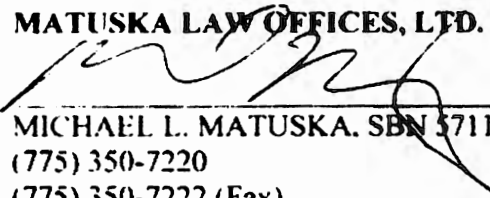
5. For the cost of suit and attorney's fees.

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

Respectfully submitted.

Dated this 30 day of March 2015.

MATUSKA LAW OFFICES, LTD.


MICHAEL L. MATUSKA, SBN 5711
(775) 350-7220
(775) 350-7222 (Fax)
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 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
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

Jeffrey Edwards
595 Chivas Court
Orange Park FL 33073

☒ **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 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.


SERGIO STERN, ALS

MATUSKA LAW OFFICES, LTD.
2310 N. Carson Street, Suite 6
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DAVID L. WILLIAMS
CLERK

Ms. BIAGGIONE DEPUTY

Case No. 11-CV-0296

Dept. No. II

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 ATTORNEY'S FEES
TO DEFENDANTS PRICE AND
SHACKELFORD**

THIS MATTER comes before the Court on *Defendants' Price and Shackelford's Motion for Attorney's Fees* filed on November 25, 2015. The motion is ripe for consideration.

This litigation regards a joint venture agreement between Heli Ops International and C4 Worldwide and a subsequently entered into settlement agreement. Plaintiffs have been at liberty over the course of the past four years to direct their lawsuit. Plaintiffs have secured \$20,000,000 in default

1 judgments against C4 Worldwide, Inc., and individual defendants
2 DR Rawson, Michael Kavanagh, Joe Baker and Jeffrey Edwards
3 premised upon the settlement agreement. Price and Shackelford,
4 directors/officers of C4, are the only remaining Defendants.

5 **Findings of Fact and Conclusions of Law**

6 Heli Ops International, LLC ("Heli Ops"), is an Oregon
7 corporation for which Jeffrey Cain is a member. Peggy Cain is
8 married to Jeffrey Cain. C4 Worldwide, Inc. ("C4") is a Nevada
9 Corporation whose officers/directors include DR Rawson, Richard
10 Price, Mickey Shackelford, Michael Kavanagh, Joe Baker, and,
11 allegedly, Jeffrey Edwards.

12 On November 29, 2009, Heli Ops entered into a joint venture
13 agreement ("JVA") with C4. The JVA required Heli Ops to loan C4
14 \$1,000,000 USD. The funds were to be used by C4 as the capital
15 to acquire and then leverage Collateralized Mortgage Obligations
16 ("CMO") with a face value of "up to \$1,000,000,000 USD."

17 Under the JVA, C4 was to have a 51% ownership interest in
18 the CMO's and Heli Ops a 49% ownership interest. The JVA
19 designated that the first \$20,000,000 in profits obtained from
20 leveraging the CMO's in international trade would go to Heli Ops.
21 If that occurred, Heli Ops was to transfer its ownership interest
22 in the CMO's to C4, making C4 the sole owner of the CMO's and
23 entitled to all further profits. The "objective" of the JVA was
24 to "gain \$40,000,000 USD or more from the results thereof" for
25 the parties to the JVA.

26 On the same day the JVA was entered into, and in conjunction
27 therewith, C4 and Heli Ops executed a Promissory Note and
28 Security Interest in the CMO ("Promissory Note"). The Promissory

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

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

12 On March 1, 2010, a document entitled *Settlement Agreement*
13 *and Release of All Claims* ("SA") was executed by Heli Ops and C4
14 with Jeffrey Cain, Peggy Cain and DR Rawson joining in their
15 individual capacities. Price and Shackelford were not parties to
16 the SA.

17 The SA begins with the following statement of intent:

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

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

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

28 Section 1 of the SA, entitled "CONSIDERATION" states in

1 relevant part:

2 1.1 In consideration of the Releases set forth below in
3 Section 2 and the other terms set for herein, C4
4 WorldWide stipulates that it owes the Cains Twenty
5 Million USD (\$20,000,000) and that said amount was due
6 on December 29, 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...

7 Consistent with the JVA, section 1.2 requires that C4 assign
8 a 49% interest in the CMO's to the Cains. Upon payment of the
9 \$20,000,000 plus interest, the SA and JVA require the Cains to
10 transfer their 49% ownership interest in the CMO's back to C4.

11 Section 2 of the SA, entitled "RELEASE" states in relevant
12 part:

13 2.1 The Cains...and all other affiliated persons, firms
14 or corporations, hereby fully and forever releases and
15 discharges C4 WorldWide, from any and all claims that
16 exist arising out of C4 WorldWide's financial
17 misfortunes and resultant inability to timely pay the
18 Promissory Note and Security Interest in CMO Securities
19 dated November 29, 2009 (a true and correct copy of
20 which is attached hereto as Exhibit A and is
21 incorporated herein by reference). Such release covers
22 the Cains...hereby fully and forever release and
23 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.

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

26 3.1 The parties expressly acknowledge and agree that
27 the Release set forth in Section 2 is a general release
of the matters described above.

28 ...

1 3.3 The parties expressly acknowledge and agree that
2 the purpose and effect of this Agreement is to fully
3 and forever resolve all issues relating to claims
4 arising out of and which could be asserted in this case
5 and that no party will pursue the other for anything
6 relating in any way to the claims being released.

7 3.4 The parties expressly acknowledge and agree that
8 the terms of this Agreement are contractual in nature
9 and not merely a recital.

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

17 Over the next four years the landscape of the case shifted
18 through four different complaints and many motions. The
19 Plaintiffs obtained default judgments against C4, Rawson,
20 Kavanagh and Edwards for \$20,000,000 under the SA.

21 On July 28, 2015, the Court granted partial judgment on the
22 pleadings in favor of Baker, Price and Shackelford. The Court
23 held that given the release provision of the SA, Plaintiffs
24 cannot, as a matter of law, enforce the SA against Price and
25 Shackelford, non-party beneficiaries to the SA. However, based
26 upon limited language in the TAC wherein Plaintiffs seemingly
27 contest the validity of the SA, the Court stated:

28 As already indicated, the allegation in the TAC that the
Settlement Agreement was illusory could form the basis to
set aside the Settlement Agreement in its entirety,
including the Release. In which case, Plaintiffs could
pursue personal liability under the Joint Venture Agreement
on the theory of alter ego. Material issues of fact thus
exists that prevent a determination with respect to the

1 enforceability of the Release on those portions of the
2 remaining claims for Relief relating to the Joint Venture
Agreement.

3 *Order Granting in Part Defendant Joe Baker's Motion for Judgment*
4 *on the Pleadings and Denying Plaintiff's Cross-Motion for*
5 *Judgment on the Pleadings*, p. 12, lines 5-14, filed July 28,
6 2015.

7 Subsequent to the July 28, 2015, Order, Baker was dismissed
8 out of the case at the joint request of Plaintiffs and Baker,
9 leaving Price and Shackelford as the only remaining Defendants.
10 Price and Shackelford moved for summary judgment on the basis
11 that Plaintiffs should be precluded from seeking rescision of the
12 SA and its sweeping release provision.

13 In opposing the motion, Plaintiffs finally, after four years
14 of litigation, made it clear that they never intended to seek
15 rescision of the SA. Specifically, Plaintiffs stated, "Rescision
16 does not apply to this case, as Baker has never offered to
17 restore the Cain's to their former position. Hence, the
18 Settlement Agreement cannot be rescinded and the correct course
19 of action was for the Cains to sue for money damages, which they
20 have done." Plaintiffs' Opposition, page 6, lines 17-21.

21 This clarification by Plaintiffs removed the material issue
22 that had previously deterred the Court from granting complete
23 judgment on the pleadings in favor of Price, Shackelford and
24 Baker. It also meant that all remaining parties, Plaintiffs
25 included, acknowledged the validity of the SA.

26 This led the Court to conclude, "as a matter of law, from
27 the clear and unambiguous terms of the Settlement Agreement and
28 Release of All Claims, that Plaintiffs bargained for the

1 liability of C4 and Rawson to the tune of \$20,000,000 plus
2 interest in return for the general and sweeping release of the
3 likes of Price and Shackelford, non-parties to the JVA. The
4 release preempts all of the claims in Plaintiffs' TAC against
5 Price and Shackelford. Construing the SA in such a manner is
6 consistent with the clear and unambiguous terms of the SA, and
7 requires no inferences or reading into of terms." November 2015
8 *Order Granting Summary Judgement.*

9 Through the Court's July 28, 2015, *Order Granting Partial*
10 *Summary Judgment* and November 5, 2015, *Order Granting Summary*
11 *Judgment*, Price and Shackelford became "prevailing parties"
12 pursuant to NRS 18.010. *MB America, Inc., v. Alaska Pacific*
13 *Leasing Co.*, 132 Nev.Adv.Op. 8, (February 4, 2016). Price and
14 Shackelford now request attorney's fees under three different
15 theories: (1) Attorney's fees as a condition of the SA; (2) NRCP
16 68 and NRS 17.115; and (3) NRS 18.010(2)(b). Because the Court
17 exercises its discretions to award of attorney's fees to Price
18 and Shackelford pursuant to NRS 18.010(2)(b), the Court does not
19 reach the merits of the remaining alternative theories.

20 **NRS 18.010(2)(b)**

21 A court has discretion to allow attorney's fees to a
22 prevailing party:

23 Without regard to the recovery sought, when the court
24 finds that the claim...of the opposing party was
25 brought or maintained without reasonable grounds or to
26 harass the prevailing party. The court shall liberally
27 construe the provisions of this paragraph in favor of
awarding attorney's fees in all appropriate situations.
It is the intent of the Legislature that the court
award fees pursuant to this paragraph...in all
appropriate situations...

28 NRS 18.010(2)(b).

1 The Court does not fault Plaintiffs, who were not paid under
2 either the JVA or the SA, for seeking legal recourse. That
3 Plaintiffs achieved success against many of the Defendants
4 demonstrates legitimacy of their dispute and general good faith.
5 Through the current motion, however, the Court is tasked with
6 reviewing Plaintiffs action as it relates specifically to
7 prevailing Defendants Price and Shackelford.

8 Like all plaintiffs, Plaintiffs herein were at liberty to
9 craft their lawsuit in the sense of what theories to raise and
10 against whom to raise them. In so doing, Plaintiffs were aware
11 of and party to the operative documents, i.e., the JVA and SA,
12 the material terms of which this Court has found to be clear and
13 unambiguous. Plaintiffs attached the SA to the TAC.

14 Amongst the decisions for Plaintiffs to make in crafting
15 their lawsuit, was whether to seek relief pursuant to the SA
16 (\$20,000,000 generally), the JVA (\$1,000,000 generally), or both.
17 In so deciding, the SA provided clear and unambiguous notice to
18 Plaintiffs that if the SA was deemed to be valid and enforceable,
19 the tremendous upside to Plaintiffs (\$20,000,000 liability for C4
20 and Rawson), came at the cost of releasing Price and Shackelford.

21 Of course, Plaintiffs also controlled who to name as
22 defendants. In all versions of Plaintiff's Complaint, through
23 and including the TAC, Plaintiffs made claims against C4 as well
24 as C4's directors/officers in their individual capacities,
25 including Price and Shackelford.

26 Plaintiffs' TAC was equivocal regarding whether Plaintiffs's
27 were arguing for or against the validity of the SA. For
28 instance, Plaintiffs claimed that the SA had been breached by

1 Defendants while also claiming that the SA was illusory.

2 Recognizing and respecting Plaintiffs' discretion to frame
3 their case and raise various and alternative claims for relief,
4 Plaintiffs were given every opportunity by the Court over four
5 years of litigation to drive their case. During that time,
6 Plaintiffs generally focused on the big prize, that being C4's
7 \$20,000,000 obligation, but did not disavow or retract their
8 claim that the SA was illusory nor withdraw their claims against
9 Price and Shackelford (even after Plaintiffs were successful in
10 enforcing the SA against C4 and Rawson).

11 While Plaintiffs' pursuit of damages against C4 and Rawson
12 under the SA was not surprising or unreasonable, the same cannot
13 be said of Plaintiffs' pursuit of Price and Shackelford under the
14 SA. Plaintiffs maintained that Price and Shackelford were liable
15 to Plaintiffs for \$20,000,000 under the SA, even though Price and
16 Shackelford were not parties to the SA and were clearly the
17 beneficiary of the SA's release.

18 In essence, Plaintiffs sought to enforce the aspects of the
19 SA beneficial to Plaintiffs, \$20,000,000, while ignoring the
20 required release. This prompted the Court's July 28, 2015, Order
21 wherein the Court stated the obvious: As a matter of law, Price
22 and Shackelford cannot be held liable under the SA as they were
23 not parties to the SA but were beneficiaries of its clear and
24 unambiguous release provision.

25 The Court left unaffected Plaintiffs ability to claim that
26 the SA was subject to rescission or was otherwise unenforceable,
27 thereby voiding the release of Price and Shackelford. In
28 responding to Price and Shackelford's *Motion for Summary*

1 Judgment, however, Plaintiffs finally, after four years of
2 litigation, made it patently clear that they have no desire to
3 void the SA (not surprising since doing so would frustrate
4 Plaintiffs' pursuit of the attenuate \$20,000,000 obligation of C4
5 and Rawson).

6 Remarkably, however, Plaintiffs never released Price and
7 Shackelford from the lawsuit nor did Plaintiffs amend the TAC to
8 remove the claim that the SA was illusory. Plaintiffs' position
9 prompted the Court's November 2015 *Order Granting Summary*
10 *Judgment* wherein the Court, once again, stated the obvious: As a
11 matter of law, if the SA is valid and enforceable, Price and
12 Shackelford must be released from all claims.

13 It is now clear to the Court that Plaintiffs never intended
14 to argue, as an alternative theory or otherwise, against the
15 enforceability of the SA despite language in the TAC (and prior
16 versions of the Complaint) to the contrary and despite
17 Plaintiffs' pursuit of Price and Shackelford. Rather, Plaintiffs
18 always insisted that they should reap the benefits of the SA
19 while being impervious to the required release of Price and
20 Shackelford. Plaintiffs' position was unreasonable from the
21 inception of the lawsuit through the granting of summary
22 judgment.

23 Accordingly, given the clarity of the release provision of
24 the SA, as well as its other material terms, the Court finds that
25 Plaintiffs' claims against Price and Shackelford were brought and
26 maintained without reasonable ground. NRS 18.010(2)(b). That
27 Plaintiffs never produced evidence that Price or Shackelford made
28 a false representation or suppressed a material fact which in

1 turn induced Plaintiffs to enter into either the JVA or the SA, a
2 point admitted to by Jeffrey Cain in his deposition, only
3 bolsters this finding.

4 The Court pays heed to the clearly stated legislative intent
5 regarding awarding attorney's fees in such circumstances, and
6 exercises its discretion to award Price and Shackelford
7 reasonable attorney's fees. In analyzing the reasonableness of
8 the requested fees, the Court has considered the following
9 factors without giving any singular factor undue weight: (1) The
10 qualities of the advocate; (2) The character of the work done;
11 (3) The work actually performed by the lawyer; and (4) The result
12 obtained. *Brunzell v. Golden Gate National Bank*, 85 Nev. 345,
13 349-350, 455 P.2d 31 (1969).

14 Price and Shackelford jointly retained Oshinski & Forsberg,
15 Ltd, to represent them in this matter. Price and Shackelford
16 have provided sufficient proof that they incurred legal fees in
17 defending this action through summary judgment at a rate of
18 \$350.00 per hour for a total of \$95,843.56.

19 The Court finds that the rate per hour of legal services
20 charged by Oshinski & Forsberg, Ltd., \$350, is reasonable
21 considering the experience of counsel, the nature of the case,
22 Mr. Forsberg's averment that the rate is within the range of fees
23 charged by other attorneys in the community and the Court's
24 knowledge of the same.

25 The Court finds that the amount of hours spent by Oshinski &
26 Forsberg, Ltd., in defending this matter through summary
27 judgement was likewise reasonable. Four years of litigation at a
28 total cost of \$95,843.56 representing two clients (\$47,921.78

1 each), is not unreasonable, particularly considering how hard
2 this case was fought and the number and complexity of motions
3 both filed and opposed.

4 That the result for Price and Shackelford could not have
5 been better is a testament to the quality of work performed.
6 Plaintiffs' contend that the attorney's fee award should be
7 limited to time spent on the motion providing the ultimate
8 result, i.e., the *Motion for Summary Judgment*, because the result
9 achieved by Price and Shackelford could have been achieved
10 earlier. While that argument may be taken and an acknowledgment
11 by Plaintiffs that their maintenance of the lawsuit against Price
12 and Shackelford was unreasonable in its inception, it it does not
13 provide a compelling reason to reduce the award of attorney's
14 fees.

15 The Court does not find fault in the resilient and
16 aggressive efforts of Price and Shackelford to defend against a
17 \$20,000,000 claim under an SA that they were not parties to that
18 purported to grant them a complete release of liability. There
19 is no indication that Price and Shackelford had clairvoyance at
20 the beginning of the lawsuit regarding the granting of summary
21 judgment and, knowing the same, maliciously dragged out the
22 litigation for four years so as to increase the amount of money
23 owed to counsel. It is Plaintiffs who chose to pursue Price and
24 Shackelford for four years despite the SA's clear and unambiguous
25 release provision. It is also Plaintiffs who chose,
26 unreasonably, to reject reasonable offers of judgement even after
27 they had successfully enforced the SA against C4 and Rawson.

28 Having weighed all of the *Brunzell* factors, the Court finds

1 that Price and Shackelford's request for attorney's fees is
2 reasonable as is the amount requested. The Court exercises its
3 discretion to award the requested fees of \$95,843.56. Good cause
4 appearing,

5 **IT IS HEREBY ORDERED** that Defendants' Price and
6 Shackelford's Motion for Attorney's Fees is **GRANTED**. Plaintiffs
7 are ordered to pay Defendant Price and Shackelford's attorney's
8 fees in the amount of \$95,843.56 to Oshinski & Forsberg, Ltd.

9 Dated this 5th day of February, 2016.

10

11

12

13

14 Copies served by mail this 5 day of February, 2016, to:

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

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

23

24

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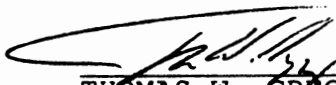
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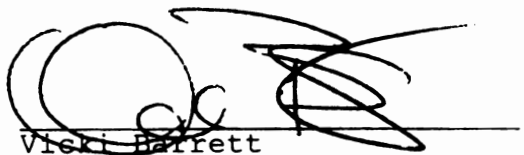
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THOMAS W. GREGORY
DISTRICT COURT JUDGE


Vicki Barrett

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Case No. 11-CV-0296

FEB 10 2016

2016 FEB 10 AM 8:43

Dept. No. II

M. BIAGGINI
DEPUTY

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,

Plaintiffs,

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.

**ORDER AWARDING
DEFENDANTS PRICE AND
SHACKELFORD'S COSTS
AND DENYING PLAINTIFFS'
MOTION TO RETAX COSTS**

This matter is before the Court on Defendants Richard Price and Mickey Shackelford's Verified Memorandum of Costs and Plaintiffs' Motion to Retax Costs. The Court has reviewed the motion, the opposition and reply thereto and finds as follows.

Plaintiffs objected to the Verified Memorandum of Costs, generally asserting that the Memorandum did not comply with NRS 18.110 because it failed to sufficiently identify how the claimed costs were necessary to and incurred in the present action as required by the statute. Plaintiffs also asserted that Price and Shackelford were attempting to recover costs they did not incur or

1 alternatively were attempting to recover on behalf of former defendant Joe Baker, who was dismissed
2 by stipulation of the Plaintiffs after reaching a settlement with Baker.

3 In their Reply, Price and Shackelford cured any perceived deficiency in the Verified
4 Memorandum of Costs. Counsel for Price and Shackelford submitted an affidavit establishing that his
5 clients had agreed with Baker to share in the costs of depositions and the expert witness retained by the
6 Defendants and that as a result of the agreement, Price, Shackelford and Baker each were responsible
7 for one-third of the costs incurred for depositions and the expert. As a result of the agreement, Price
8 and Shackelford together are responsible for two-thirds of the cost of depositions and one transcript of
9 the depositions of Plaintiff Jeffrey Cain and witnesses Kerry Rucker, Dan Witt and William Parker and
10 for two-thirds of the costs incurred to retain an expert witness, Arun Upadhyay, whose expert testimony
11 was to be offered to address various issues and principles of corporate governance and to explain to the
12 jury the legitimacy of collateralized mortgage obligations and how they are traded and tracked -- all
13 issues central to the claims advanced by Plaintiffs in this case.

14 Price and Shackelford also provided more detailed billing records documenting the amounts for
15 which they were responsible pursuant to the agreement. Price and Shackelford seek only those costs
16 for which they were obligated by their agreement with Baker.

17 NRS 18.005 identifies costs that may be recovered by prevailing parties under NRS 18.020.
18 The costs that may be recovered include the costs sought by Price and Shackelford. NRS 18.005
19 identifies as costs at subsection (1) clerk's fees; (2) reporter's fees for depositions, including a reporter's
20 fee for one copy of each deposition; (5) reasonable fees of not more than five expert witnesses in an
21 amount of not more than \$1,500 for each witness, unless the court allows a larger fee after determining
22 that the circumstances surrounding the expert's testimony were of such necessity as to require the larger
23 fee; and (15) reasonable costs for travel and lodging incurred taking depositions and conducting
24 discovery. NRS 18.005(17) provides that "costs" also includes "any other reasonable and necessary
25 expense incurred in connection with the action. . ."

26 NRS 18.020 provides that costs "must be allowed of course to the prevailing party against any
27 adverse party against whom judgment is rendered, in the following cases: . . . (3) In an action for the
28 recovery of money or damages, where the plaintiff seeks to recover more than \$2,500. . ."

1 Here, Price and Shackelford are the prevailing parties. This court held in its order granting
2 summary judgment that the release executed by Plaintiffs was broad enough to reach all of the claims
3 in the Third Amended Complaint. Plaintiffs thus could not succeed on any of their claims and Price
4 and Shackelford prevailed as to each claim. The Third Amended Complaint sought the recovery of
5 money damages in excess of the \$2,500 threshold set forth in the statute. Therefore, costs must be
6 awarded "of course" to Price and Shackelford.

7 Price and Shackelford have properly documented the costs that must be allowed in their
8 Memorandum of Costs and in their Opposition to the Motion to Retax Costs by providing not only
9 affidavits but bills from court reporters and the expert witness that establish their obligation to pay such
10 costs. Therefore, they have met the statutory requirements and the mandate of the Nevada Supreme
11 Court in *Bobby Berosini, Ltd. v. People for the Ethical Treatment of Animals*, 114 Nev. 1348 (1998)
12 and *Cadle Co. v. Woods & Erickson, LLP*, 131 Nev. Adv. Op. 15 (2015). Price and Shackelford have
13 established that awarding the costs set forth in their Memorandum of Costs are well within the discretion
14 of this Court to award and are those authorized by NRS 18.

15 In the exercise of its discretion, the Court also finds that the fee of the expert witness is justified
16 under NRS 18.005(5), because the circumstances surrounding the expert's testimony were of such
17 necessity as to require a fee in excess of \$1,500. The claims in this case presented complicated issues
18 of corporate governance involving whether some or all of the defendants were in such control of the
19 corporation so as to allow piercing of the corporate veil, and it involved collateralized mortgage
20 obligations, a form of financial investment far beyond the knowledge of a lay jury. The Court finds
21 that the testimony of the expert was necessary to the defense of theories of liability raised in the Third
22 Amended Complaint and in extensive motion practice. Therefore, the fee of \$3,250 for the expert is
23 justified under the circumstances.

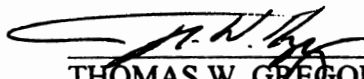
24 The remaining costs also were reasonable and permitted by the statute, either by express
25 definition or as other reasonable and necessary expenses incurred in connection with the action as
26 allowable under NRS 18.005.

27 Therefore, it is the order of the Court that the costs in the amount of \$7,729.20 properly
28 documented in Price and Shackelford's Memorandum of Costs are awarded and shall be paid by

1 Plaintiffs to Price and Shackelford. Plaintiffs' Motion to Retax Costs is hereby denied.

2 IT IS SO ORDERED.

3 Dated this 10th day of February, 2016.

4
5
6 
7 THOMAS W. GREGORY
8 JUDGE OF DISTRICT COURT
9

10 Copies served by mail this 10 day of February, 2016, to:

11 Michael Matuska, Esq.
12 2310 South Carson Street, #6
13 Carson City, Nevada 89701

14 Richard A. Oshinski, Esq.
15 Mark Forsberg, Esq.
16 Oshinski & Forsberg, Ltd.
17 504 E. Musser Street, Suite 302
18 Carson City, Nevada 89701

19 
20 Vicki Barrett
21
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23
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25
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27
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District Court Clerk

2016 FEB 10 AM 8:43

M. BIAGGINI DEPUTY

Case No. 11-CV-0296

Dept. No. II

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,

Plaintiffs,

vs.

ORDER GRANTING MOTION
TO QUASH SUBPOENAS, FOR
PROTECTIVE ORDER AND FOR
SANCTIONS

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.

This matter is before the Court on a motion by Defendants Richard Price and Mickey Shackelford to quash subpoenas issued by Plaintiff's counsel after this Court dismissed this action in its entirety and after a notice of appeal of that dismissal was filed by Plaintiffs. The Court has considered the motion, the opposition and the reply and for the reasons set forth herein, the motion is granted.

This Court entered its order granting summary judgment in favor of the only remaining defendants in this case, Richard Price and Mickey Shackelford, on November 5, 2015. Plaintiffs filed

1 a notice of appeal on November 30, 2015. On December 28, 2015 Plaintiffs' counsel, Michael L.
2 Matuska, served Price and Shackelford and also a former defendant in the action, Joe Baker, with a
3 Notice of Subpoena Duces Tecum to be served on two third-party banks, Wells Fargo at an address in
4 Las Vegas, Nevada, and Bank of America at an address in Wilmington, Delaware. The Notice of
5 Subpoena and the subpoenas bear the caption of this Court, including the case and department numbers,
6 and were issued by Michael Matuska, Esq., counsel for Plaintiffs. The documents bear his electronic
7 signature and Nevada Bar number. The Notice of Subpoena, but not the subpoenas themselves, also
8 bear the name of a Texas attorney who is not licensed to practice law in the State of Nevada and has
9 not appeared *pro hac vice* in this case pursuant to Nevada Supreme Court Rule 42. The subpoenas
10 required that the requested documents be returned to the law office of Mr. Matuska, in care of a Texas
11 company.

12 Plaintiffs' counsel has conceded that these subpoenas were not issued in furtherance of
13 execution on a default judgment against any party against whom a default judgment was entered and
14 that the subpoenas are therefore not subject to the discovery provisions set forth in NRCP 69. Moreover,
15 Plaintiffs did not move this Court for leave to conduct any post-judgment discovery allowed by NRCP
16 27 to perpetuate testimony or seek this Court's order of the character provided for by NRCP 34,
17 including the for the issuance of subpoenas duces tecum.

18 The issuance of a subpoena, whether by the clerk of the court or an attorney acting as an officer
19 of the court, invokes the power of the court to act in a matter pending before the court. NRCP 45(a)(B)
20 requires that a subpoena state the title of the action, and the name of the court in which it is pending.
21 NRCP 45(a)(3) permits an attorney, as an officer of the court, to issue a subpoena "on behalf of the
22 court." Since this case has been dismissed, no action is pending before this Court and absent leave
23 granted by the Court, an officer of the court, including counsel for Plaintiffs, cannot issue a subpoena
24 invoking both the authority of the Court and purporting to act on its behalf.

25 Moreover, except as authorized by NRCP 27 or 69, a district court is without jurisdiction to act
26 on matters related to the merits of the case after dismissal. *Emerson v. Eighth Judicial Dist. Court*, 127
27 Nev. Adv. Op. 61 (2011), citing *Jeep Corp. v. District Court*, 98 Nev. 440 (1982). In addition, the
28 filing of a notice of appeal removes the district court's jurisdiction to determine any matters involved

1 in the appeal. *Fishman v. Las Vegas Sun, Inc.*, 75 Nev. 13 (1959).

2 *Emerson* held that a district court lacks jurisdiction after dismissal to consider matters related to
3 the merits of the case, but retains jurisdiction to consider collateral matters, and thus retains jurisdiction
4 to impose sanctions for attorney misconduct that occurred prior to dismissal. The Court also has
5 jurisdiction to consider motions for attorney's fees and other matters that have no bearing on the merits
6 of an appeal or the underlying case. Here, the subpoenas issued by Plaintiffs' counsel are directly
7 related to the merits of both the district court case and the appeal of the dismissal, because they are
8 plainly attempting to acquire information relating to the potential culpability of the defendants
9 identified in the subpoenas, including Price and Shackelford. Also supportive of the conclusion that
10 they are not collateral to the merits of the case or pending appeal is the fact that they are also signed by
11 Texas counsel, suggesting that there is some other purpose for the subpoenas related to the merits of
12 the action, rather than for the purposes permitted by NRCP 27 or 69 or some other permissible collateral
13 matter.

14 Therefore, absent the issuance of subpoenas with leave of court following entry of judgment
15 seeking discovery related to a permissible collateral matter, the Court is without jurisdiction to issue
16 them, and no person acting on behalf of the Court may invoke its power where the Court lacks
17 jurisdiction.

18 Contrary to the assertions of Plaintiff's counsel in the Opposition to the motion to quash, the
19 issuance of the challenged subpoenas was not authorized the Court's September 29, 2015 Order
20 Granting Plaintiffs' Motion for Issuance of Commissions for Out-of-State Depositions. That order
21 directed the clerk to issue commissions to an out-of-state court, in the jurisdiction where depositions
22 were contemplated. A commission, permitted by NRCCP 28(a), is a request by a Nevada court to a
23 court of another jurisdiction to issue process in accordance with the law of that jurisdiction. It is not an
24 approval of the issuance of process in Nevada under the authority of this Court. Therefore, that order
25 has no bearing on the issuance of post-judgment subpoenas by counsel acting as an officer of this Court

26 For the reasons set forth herein, it is the order of the Court that the Notice of Subpoena and the
27 subpoenas duces tecum served on December 28, 2015, after dismissal of this action and after the filing
28 of a notice of appeal, are quashed. Counsel for Plaintiffs is hereby ordered to serve a copy of this order

1 on the parties who were served with a Notice of Subpoena Duces Tecum and on Texas counsel whose
2 name appears on the Notice of Subpoena. Counsel for Plaintiffs shall also serve a copy of this order on
3 Wells Fargo and Bank of America, the nonparties who were commanded to produce documents.
4 Counsel for Plaintiffs is hereby directed to cease any further discovery in this case without filing a
5 motion and obtaining leave of this Court to do so. Lastly, because Price and Shackelford were obliged
6 to respond to the issuance of subpoenas in the absence of jurisdiction of this Court, Price and
7 Shackelford are entitled to their reasonable attorney's fees incurred in prosecuting the successful motion
8 to quash. Price and Shackelford are granted leave to file a motion for those attorney's fees.

9 IT IS SO ORDERED.

10 Dated this 10th day of February, 2016.

11
12 
13 THOMAS W. GREGORY
14 JUDGE OF DISTRICT COURT
15
16
17

18 Copies served by mail this 10 day of February, 2016, to:

19 Michael Matuska, Esq.
20 2310 South Carson Street, #6
21 Carson City, Nevada 89701

22 Richard A. Oshinski, Esq.
23 Mark Forsberg, Esq.
24 Oshinski & Forsberg, Ltd.
25 504 E. Musser Street, Suite 302
26 Carson City, Nevada 89701
27
28

25 
26 Vicki Barrett

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Douglas County
District Court Clerk

2016 FEB 12 PM 3:27

CLERK
K. WILFERT DEPUTY

1 Mark Forsberg, Esq., NSB 4265
2 Rick Oshinski, Esq., NSB 4127
3 OSHINSKI & FORSBERG, LTD.
4 504 E. Musser Street, Suite 302
5 Carson City, NV 89701
6 T 775-301-4250 | F 775-301-4251
7 Mark@OshinskiForsberg.com
8 Attorney for Defendants
9 MICKEY SHACKELFORD and
10 RICHARD PRICE
11
12

IN THE NINTH JUDICIAL DISTRICT COURT OF NEVADA

IN AND FOR THE COUNTY OF DOUGLAS

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

Case No. 11 CV 0296

Dept. No. II

16 Plaintiffs,

NOTICE OF ENTRY OF ORDER

17 vs.

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

23 Defendants.
24 _____/


25 PLEASE TAKE NOTICE that this Court entered its *Order Granting Attorney's Fees to*
26 *Defendants Price and Shackelford* on the 5th day of February, 2016, a true and correct copy of which
27 is attached hereto as Exhibit 1.
28

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

Dated this 10th day of February, 2016.

OSHINSKI & FORSBERG, LTD.

By


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

1 **CERTIFICATE OF SERVICE**

2 I hereby certify that I am an employee of Oshinski & Forsberg, Ltd., and that on this date, I served the
3 within **Notice of Entry of Order Granting Attorney's Fees to Price and Shackelford** on the following
4 individuals or entities by serving a true copy thereof by the following method(s):

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

7 ☐ via electronic filing pursuant to Nevada Electronic Filing and Conversion Rules ("NEFCR")
8 9(b);

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

10 ☐ electronic transmission (e-mail) to the address(es) listed below, pursuant to NRCP
11 5(b)(2)(D);and/or

12 ☐ Federal Express, UPS, or other overnight delivery

13 fully addressed as follows:

14 Michael L. Matuska, Esq.
15 Matuska Law Offices, Ltd.
16 2310 S. Carson Street, Suite 6
17 Carson City, NV 89701
18 F 775-350-7222
19 *Attorneys for Plaintiffs*

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

21 Executed on this 10th day of February, 2016, in Carson City, Nevada.

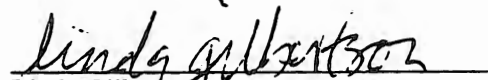
22 
23 Linda Gilbertson
24
25
26
27
28

EXHIBIT 1

EXHIBIT 1

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FEB -5 2016

FILED

1 Case No. 11-CV-0296

2 Dept. No. II

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M. BIAGGINI
DEPUTY

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,
12 LLC, an Oregon limited
13 liability company,

14 Plaintiffs,

15 vs.

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

26 Defendants.

ORDER GRANTING ATTORNEY'S FEES
TO DEFENDANTS PRICE AND
SHACKELFORD

27 THIS MATTER comes before the Court on *Defendants' Price and*
28 *Shackelford's Motion for Attorney's Fees* filed on November 25,
2015. The motion is ripe for consideration.

29 This litigation regards a joint venture agreement between
30 Heli Ops International and C4 Worldwide and a subsequently
31 entered into settlement agreement. Plaintiffs have been at
32 liberty over the course of the past four years to direct their
33 lawsuit. Plaintiffs have secured \$20,000,000 in default

1 judgments against C4 Worldwide, Inc., and individual defendants
2 DR Rawson, Michael Kavanagh, Joe Baker and Jeffrey Edwards
3 premised upon the settlement agreement. Price and Shackelford,
4 directors/officers of C4, are the only remaining Defendants.

5 **Findings of Fact and Conclusions of Law**

6 Heli Ops International, LLC ("Heli Ops"), is an Oregon
7 corporation for which Jeffrey Cain is a member. Peggy Cain is
8 married to Jeffrey Cain. C4 Worldwide, Inc. ("C4") is a Nevada
9 Corporation whose officers/directors include DR Rawson, Richard
10 Price, Mickey Shackelford, Michael Kavanagh, Joe Baker, and,
11 allegedly, Jeffrey Edwards.

12 On November 29, 2009, Heli Ops entered into a joint venture
13 agreement ("JVA") with C4. The JVA required Heli Ops to loan C4
14 \$1,000,000 USD. The funds were to be used by C4 as the capital
15 to acquire and then leverage Collateralized Mortgage Obligations
16 ("CMO") with a face value of "up to \$1,000,000,000 USD."

17 Under the JVA, C4 was to have a 51% ownership interest in
18 the CMO's and Heli Ops a 49% ownership interest. The JVA
19 designated that the first \$20,000,000 in profits obtained from
20 leveraging the CMO's in international trade would go to Heli Ops.
21 If that occurred, Heli Ops was to transfer its ownership interest
22 in the CMO's to C4, making C4 the sole owner of the CMO's and
23 entitled to all further profits. The "objective" of the JVA was
24 to "gain \$40,000,000 USD or more from the results thereof" for
25 the parties to the JVA.

26 On the same day the JVA was entered into, and in conjunction
27 therewith, C4 and Heli Ops executed a Promissory Note and
28 Security Interest in the CMO ("Promissory Note"). The Promissory

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

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

12 On March 1, 2010, a document entitled *Settlement Agreement*
13 *and Release of All Claims* ("SA") was executed by Heli Ops and C4
14 with Jeffrey Cain, Peggy Cain and DR Rawson joining in their
15 individual capacities. Price and Shackelford were not parties to
16 the SA.

17 The SA begins with the following statement of intent:

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

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

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

28 Section 1 of the SA, entitled "CONSIDERATION" states in

1 relevant part:

2 1.1 In consideration of the Releases set forth below in
3 Section 2 and the other terms set forth herein, C4
4 WorldWide stipulates that it owes the Cains Twenty
5 Million USD (\$20,000,000) and that said amount was due
6 on December 29, 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...

7 Consistent with the JVA, section 1.2 requires that C4 assign
8 a 49% interest in the CMO's to the Cains. Upon payment of the
9 \$20,000,000 plus interest, the SA and JVA require the Cains to
10 transfer their 49% ownership interest in the CMO's back to C4.

11 Section 2 of the SA, entitled "RELEASE" states in relevant
12 part:

13 2.1 The Cains...and all other affiliated persons, firms
14 or corporations, hereby fully and forever releases and
discharges C4 WorldWide, from any and all claims that
15 exist arising out of C4 WorldWide's financial
misfortunes and resultant inability to timely pay the
16 Promissory Note and Security Interest in CMO Securities
dated November 29, 2009 (a true and correct copy of
17 which is attached hereto as Exhibit A and is
incorporated herein by reference). Such release covers
18 the Cains...hereby fully and forever release and
discharge C4 WorldWide, its successors, predecessors,
19 parents, assigns, agents, employees, officers,
directors, insurers, and all other affiliated persons,
20 firms or corporations, of and from any and all past,
present and future claims, demands, obligations, causes
21 of action for damages of any kind, known and unknown,
the basis of which now exist or hereafter may become
22 manifest that are directly or indirectly related to the
facts in any of the claims of any kind asserted against
23 or which could have been asserted in any of the claims.

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

26 3.1 The parties expressly acknowledge and agree that
27 the Release set forth in Section 2 is a general release
of the matters described above.

28 ...

1 3.3 The parties expressly acknowledge and agree that
2 the purpose and effect of this Agreement is to fully
3 and forever resolve all issues relating to claims
4 arising out of and which could be asserted in this case
5 and that no party will pursue the other for anything
6 relating in any way to the claims being released.

7 3.4 The parties expressly acknowledge and agree that
8 the terms of this Agreement are contractual in nature
9 and not merely a recital.

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

17 Over the next four years the landscape of the case shifted
18 through four different complaints and many motions. The
19 Plaintiffs obtained default judgments against C4, Rawson,
20 Kavanagh and Edwards for \$20,000,000 under the SA.

21 On July 28, 2015, the Court granted partial judgment on the
22 pleadings in favor of Baker, Price and Shackelford. The Court
23 held that given the release provision of the SA, Plaintiffs
24 cannot, as a matter of law, enforce the SA against Price and
25 Shackelford, non-party beneficiaries to the SA. However, based
26 upon limited language in the TAC wherein Plaintiffs seemingly
27 contest the validity of the SA, the Court stated:

28 As already indicated, the allegation in the TAC that the
29 Settlement Agreement was illusory could form the basis to
30 set aside the Settlement Agreement in its entirety,
31 including the Release. In which case, Plaintiffs could
32 pursue personal liability under the Joint Venture Agreement
33 on the theory of alter ego. Material issues of fact thus
34 exists that prevent a determination with respect to the

1 enforceability of the Release on those portions of the
2 remaining claims for Relief relating to the Joint Venture
3 Agreement.

4 *Order Granting in Part Defendant Joe Baker's Motion for Judgment*
5 *on the Pleadings and Denying Plaintiff's Cross-Motion for*
6 *Judgment on the Pleadings*, p. 12, lines 5-14, filed July 28,
7 2015.

8 Subsequent to the July 28, 2015, Order, Baker was dismissed
9 out of the case at the joint request of Plaintiffs and Baker,
10 leaving Price and Shackelford as the only remaining Defendants.
11 Price and Shackelford moved for summary judgment on the basis
12 that Plaintiffs should be precluded from seeking rescision of the
13 SA and its sweeping release provision.

14 In opposing the motion, Plaintiffs finally, after four years
15 of litigation, made it clear that they never intended to seek
16 rescision of the SA. Specifically, Plaintiffs stated, "Rescision
17 does not apply to this case, as Baker has never offered to
18 restore the Cain's to their former position. Hence, the
19 Settlement Agreement cannot be rescinded and the correct course
20 of action was for the Cains to sue for money damages, which they
21 have done." Plaintiffs' Opposition, page 6, lines 17-21.

22 This clarification by Plaintiffs removed the material issue
23 that had previously deterred the Court from granting complete
24 judgment on the pleadings in favor of Price, Shackelford and
25 Baker. It also meant that all remaining parties, Plaintiffs
26 included, acknowledged the validity of the SA.

27 This led the Court to conclude, "as a matter of law, from
28 the clear and unambiguous terms of the Settlement Agreement and
29 Release of All Claims, that Plaintiffs bargained for the

1 liability of C4 and Rawson to the tune of \$20,000,000 plus
2 interest in return for the general and sweeping release of the
3 likes of Price and Shackelford, non-parties to the JVA. The
4 release preempts all of the claims in Plaintiffs' TAC against
5 Price and Shackelford. Construing the SA in such a manner is
6 consistent with the clear and unambiguous terms of the SA, and
7 requires no inferences or reading into of terms." November 2015
8 *Order Granting Summary Judgement.*

9 Through the Court's July 28, 2015, *Order Granting Partial*
10 *Summary Judgment* and November 5, 2015, *Order Granting Summary*
11 *Judgment*, Price and Shackelford became "prevailing parties"
12 pursuant to NRS 18.010. *MB America, Inc., v. Alaska Pacific*
13 *Leasing Co.*, 132 Nev.Adv.Op. 8, (February 4, 2016). Price and
14 Shackelford now request attorney's fees under three different
15 theories: (1) Attorney's fees as a condition of the SA; (2) NRCP
16 68 and NRS 17.115; and (3) NRS 18.010(2)(b). Because the Court
17 exercises its discretions to award of attorney's fees to Price
18 and Shackelford pursuant to NRS 18.010(2)(b), the Court does not
19 reach the merits of the remaining alternative theories.

20 **NRS 18.010(2)(b)**

21 A court has discretion to allow attorney's fees to a
22 prevailing party:

23 Without regard to the recovery sought, when the court
24 finds that the claim...of the opposing party was
25 brought or maintained without reasonable grounds or to
26 harass the prevailing party. The court shall liberally
27 construe the provisions of this paragraph in favor of
awarding attorney's fees in all appropriate situations.
It is the intent of the Legislature that the court
award fees pursuant to this paragraph...in all
appropriate situations...

28 NRS 18.010(2)(b).

1 The Court does not fault Plaintiffs, who were not paid under
2 either the JVA or the SA, for seeking legal recourse. That
3 Plaintiffs achieved success against many of the Defendants
4 demonstrates legitimacy of their dispute and general good faith.
5 Through the current motion, however, the Court is tasked with
6 reviewing Plaintiffs action as it relates specifically to
7 prevailing Defendants Price and Shackelford.

8 Like all plaintiffs, Plaintiffs herein were at liberty to
9 craft their lawsuit in the sense of what theories to raise and
10 against whom to raise them. In so doing, Plaintiffs were aware
11 of and party to the operative documents, i.e., the JVA and SA,
12 the material terms of which this Court has found to be clear and
13 unambiguous. Plaintiffs attached the SA to the TAC.

14 Amongst the decisions for Plaintiffs to make in crafting
15 their lawsuit, was whether to seek relief pursuant to the SA
16 (\$20,000,000 generally), the JVA (\$1,000,000 generally), or both.
17 In so deciding, the SA provided clear and unambiguous notice to
18 Plaintiffs that if the SA was deemed to be valid and enforceable,
19 the tremendous upside to Plaintiffs (\$20,000,000 liability for C4
20 and Rawson), came at the cost of releasing Price and Shackelford.

21 Of course, Plaintiffs also controlled who to name as
22 defendants. In all versions of Plaintiff's Complaint, through
23 and including the TAC, Plaintiffs made claims against C4 as well
24 as C4's directors/officers in their individual capacities,
25 including Price and Shackelford.

26 Plaintiffs' TAC was equivocal regarding whether Plaintiffs's
27 were arguing for or against the validity of the SA. For
28 instance, Plaintiffs claimed that the SA had been breached by

1 Defendants while also claiming that the SA was illusory.

2 Recognizing and respecting Plaintiffs' discretion to frame
3 their case and raise various and alternative claims for relief,
4 Plaintiffs were given every opportunity by the Court over four
5 years of litigation to drive their case. During that time,
6 Plaintiffs generally focused on the big prize, that being C4's
7 \$20,000,000 obligation, but did not disavow or retract their
8 claim that the SA was illusory nor withdraw their claims against
9 Price and Shackelford (even after Plaintiffs were successful in
10 enforcing the SA against C4 and Rawson).

11 While Plaintiffs' pursuit of damages against C4 and Rawson
12 under the SA was not surprising or unreasonable, the same cannot
13 be said of Plaintiffs' pursuit of Price and Shackelford under the
14 SA. Plaintiffs maintained that Price and Shackelford were liable
15 to Plaintiffs for \$20,000,000 under the SA, even though Price and
16 Shackelford were not parties to the SA and were clearly the
17 beneficiary of the SA's release.

18 In essence, Plaintiffs sought to enforce the aspects of the
19 SA beneficial to Plaintiffs, \$20,000,000, while ignoring the
20 required release. This prompted the Court's July 28, 2015, Order
21 wherein the Court stated the obvious: As a matter of law, Price
22 and Shackelford cannot be held liable under the SA as they were
23 not parties to the SA but were beneficiaries of its clear and
24 unambiguous release provision.

25 The Court left unaffected Plaintiffs ability to claim that
26 the SA was subject to rescission or was otherwise unenforceable,
27 thereby voiding the release of Price and Shackelford. In
28 responding to Price and Shackelford's *Motion for Summary*

1 Judgment, however, Plaintiffs finally, after four years of
2 litigation, made it patently clear that they have no desire to
3 void the SA (not surprising since doing so would frustrate
4 Plaintiffs' pursuit of the attenuate \$20,000,000 obligation of C4
5 and Rawson).

6 Remarkably, however, Plaintiffs never released Price and
7 Shackelford from the lawsuit nor did Plaintiffs amend the TAC to
8 remove the claim that the SA was illusory. Plaintiffs' position
9 prompted the Court's November 2015 *Order Granting Summary*
10 *Judgment* wherein the Court, once again, stated the obvious: As a
11 matter of law, if the SA is valid and enforceable, Price and
12 Shackelford must be released from all claims.

13 It is now clear to the Court that Plaintiffs never intended
14 to argue, as an alternative theory or otherwise, against the
15 enforceability of the SA despite language in the TAC (and prior
16 versions of the Complaint) to the contrary and despite
17 Plaintiffs' pursuit of Price and Shackelford. Rather, Plaintiffs
18 always insisted that they should reap the benefits of the SA
19 while being impervious to the required release of Price and
20 Shackelford. Plaintiffs' position was unreasonable from the
21 inception of the lawsuit through the granting of summary
22 judgment.

23 Accordingly, given the clarity of the release provision of
24 the SA, as well as its other material terms, the Court finds that
25 Plaintiffs' claims against Price and Shackelford were brought and
26 maintained without reasonable ground. NRS 18.010(2)(b). That
27 Plaintiffs never produced evidence that Price or Shackelford made
28 a false representation or suppressed a material fact which in

1 turn induced Plaintiffs to enter into either the JVA or the SA, a
2 point admitted to by Jeffrey Cain in his deposition, only
3 bolsters this finding.

4 The Court pays heed to the clearly stated legislative intent
5 regarding awarding attorney's fees in such circumstances, and
6 exercises its discretion to award Price and Shackelford
7 reasonable attorney's fees. In analyzing the reasonableness of
8 the requested fees, the Court has considered the following
9 factors without giving any singular factor undue weight: (1) The
10 qualities of the advocate; (2) The character of the work done;
11 (3) The work actually performed by the lawyer; and (4) The result
12 obtained. *Brunzell v. Golden Gate National Bank*, 85 Nev. 345,
13 349-350, 455 P.2d 31 (1969).

14 Price and Shackelford jointly retained Oshinski & Forsberg,
15 Ltd, to represent them in this matter. Price and Shackelford
16 have provided sufficient proof that they incurred legal fees in
17 defending this action through summary judgment at a rate of
18 \$350.00 per hour for a total of \$95,843.56.

19 The Court finds that the rate per hour of legal services
20 charged by Oshinski & Forsberg, Ltd., \$350, is reasonable
21 considering the experience of counsel, the nature of the case,
22 Mr. Forsberg's averment that the rate is within the range of fees
23 charged by other attorneys in the community and the Court's
24 knowledge of the same.

25 The Court finds that the amount of hours spent by Oshinski &
26 Forsberg, Ltd., in defending this matter through summary
27 judgement was likewise reasonable. Four years of litigation at a
28 total cost of \$95,843.56 representing two clients (\$47,921.78

1 each), is not unreasonable, particularly considering how hard
2 this case was fought and the number and complexity of motions
3 both filed and opposed.

4 That the result for Price and Shackelford could not have
5 been better is a testament to the quality of work performed.
6 Plaintiffs' contend that the attorney's fee award should be
7 limited to time spent on the motion providing the ultimate
8 result, i.e., the *Motion for Summary Judgment*, because the result
9 achieved by Price and Shackelford could have been achieved
10 earlier. While that argument may be taken and an acknowledgment
11 by Plaintiffs that their maintenance of the lawsuit against Price
12 and Shackelford was unreasonable in its inception, it it does not
13 provide a compelling reason to reduce the award of attorney's
14 fees.

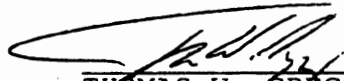
15 The Court does not find fault in the resilient and
16 aggressive efforts of Price and Shackelford to defend against a
17 \$20,000,000 claim under an SA that they were not parties to that
18 purported to grant them a complete release of liability. There
19 is no indication that Price and Shackelford had clairvoyance at
20 the beginning of the lawsuit regarding the granting of summary
21 judgment and, knowing the same, maliciously dragged out the
22 litigation for four years so as to increase the amount of money
23 owed to counsel. It is Plaintiffs who chose to pursue Price and
24 Shackelford for four years despite the SA's clear and unambiguous
25 release provision. It is also Plaintiffs who chose,
26 unreasonably, to reject reasonable offers of judgement even after
27 they had successfully enforced the SA against C4 and Rawson.

28 Having weighed all of the *Brunzell* factors, the Court finds

1 that Price and Shackelford's request for attorney's fees is
2 reasonable as is the amount requested. The Court exercises its
3 discretion to award the requested fees of \$95,843.56. Good cause
4 appearing,

5 **IT IS HEREBY ORDERED** that Defendants' Price and
6 Shackelford's Motion for Attorney's Fees is **GRANTED**. Plaintiffs
7 are ordered to pay Defendant Price and Shackelford's attorney's
8 fees in the amount of \$95,843.56 to Oshinski & Forsberg, Ltd.

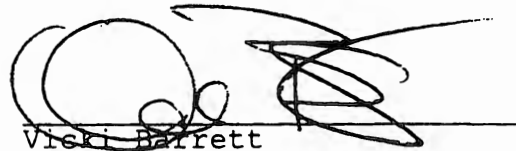
9 Dated this 5th day of February, 2016.

10
11 
12 THOMAS W. GREGORY
13 DISTRICT COURT JUDGE

14 Copies served by mail this 5 day of February, 2016, to:

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

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

23
24
25
26
27
28 
Vicki Barrett

1 Mark Forsberg, Esq., NSB 4265
2 Rick Oshinski, Esq., NSB 4127
3 OSHINSKI & FORSBERG, LTD.
4 504 E. Musser Street, Suite 302
5 Carson City, NV 89701
6 T 775-301-4250 | F 775-301-4251
7 Mark@OshinskiForsberg.com
8 Attorney for Defendants
9 MICKEY SHACKELFORD and
10 RICHARD PRICE
11

RECEIVED

FEB 17 2016

Douglas County
District Court Clerk

2016 FEB 17 PM 2:56

K. WILFERT DEPUTY

IN THE NINTH JUDICIAL DISTRICT COURT OF NEVADA

IN AND FOR THE COUNTY OF DOUGLAS

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

Case No. 11 CV 0296

Dept. No. II

Plaintiffs,

NOTICE OF ENTRY OF ORDER

vs.

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

Defendants.


26 PLEASE TAKE NOTICE that this Court entered its *Order Granting Motion to Quash*
27 *Subpoenas, For Protective Order and For Sanctions* on the 10th day of February, 2016, a true and
28 correct copy of which is attached hereto as Exhibit 1.

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

Dated this 16th day of February, 2016.

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 Motion to Quash Subpoenas, For Protective Order and For Sanctions** 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

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

Executed on this 16th day of February, 2016, in Carson City, Nevada.


Linda Gilbertson

EXHIBIT 1

EXHIBIT 1

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FEB 10 2016

Douglas County
District Court Clerk

2016 FEB 10 AM 8:43

M. BIAGGINI DEPUTY

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,

Plaintiffs,

vs.

ORDER GRANTING MOTION
TO QUASH SUBPOENAS, FOR
PROTECTIVE ORDER AND FOR
SANCTIONS

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.

This matter is before the Court on a motion by Defendants Richard Price and Mickey Shackelford to quash subpoenas issued by Plaintiff's counsel after this Court dismissed this action in its entirety and after a notice of appeal of that dismissal was filed by Plaintiffs. The Court has considered the motion, the opposition and the reply and for the reasons set forth herein, the motion is granted.

This Court entered its order granting summary judgment in favor of the only remaining defendants in this case, Richard Price and Mickey Shackelford, on November 5, 2015. Plaintiffs filed

1 a notice of appeal on November 30, 2015. On December 28, 2015 Plaintiffs' counsel, Michael L.
2 Matuska, served Price and Shackelford and also a former defendant in the action, Joe Baker, with a
3 Notice of Subpoena Duces Tecum to be served on two third-party banks, Wells Fargo at an address in
4 Las Vegas, Nevada, and Bank of America at an address in Wilmington, Delaware. The Notice of
5 Subpoena and the subpoenas bear the caption of this Court, including the case and department numbers,
6 and were issued by Michael Matuska, Esq., counsel for Plaintiffs. The documents bear his electronic
7 signature and Nevada Bar number. The Notice of Subpoena, but not the subpoenas themselves, also
8 bear the name of a Texas attorney who is not licensed to practice law in the State of Nevada and has
9 not appeared *pro hac vice* in this case pursuant to Nevada Supreme Court Rule 42. The subpoenas
10 required that the requested documents be returned to the law office of Mr. Matuska, in care of a Texas
11 company.

12 Plaintiffs' counsel has conceded that these subpoenas were not issued in furtherance of
13 execution on a default judgment against any party against whom a default judgment was entered and
14 that the subpoenas are therefore not subject to the discovery provisions set forth in NRCP 69. Moreover,
15 Plaintiffs did not move this Court for leave to conduct any post-judgment discovery allowed by NRCP
16 27 to perpetuate testimony or seek this Court's order of the character provided for by NRCP 34,
17 including the for the issuance of subpoenas duces tecum.

18 The issuance of a subpoena, whether by the clerk of the court or an attorney acting as an officer
19 of the court, invokes the power of the court to act in a matter pending before the court. NRCP 45(a)(B)
20 requires that a subpoena state the title of the action, and the name of the court in which it is pending.
21 NRCP 45(a)(3) permits an attorney, as an officer of the court, to issue a subpoena "on behalf of the
22 court." Since this case has been dismissed, no action is pending before this Court and absent leave
23 granted by the Court, an officer of the court, including counsel for Plaintiffs, cannot issue a subpoena
24 invoking both the authority of the Court and purporting to act on its behalf.

25 Moreover, except as authorized by NRCP 27 or 69, a district court is without jurisdiction to act
26 on matters related to the merits of the case after dismissal. *Emerson v. Eighth Judicial Dist. Court*, 127
27 Nev. Adv. Op. 61 (2011), citing *Jeep Corp. v. District Court*, 98 Nev. 440 (1982). In addition, the
28 filing of a notice of appeal removes the district court's jurisdiction to determine any matters involved

1 in the appeal. *Fishman v. Las Vegas Sun, Inc.*, 75 Nev. 13 (1959).

2 *Emerson* held that a district court lacks jurisdiction after dismissal to consider matters related to
3 the merits of the case, but retains jurisdiction to consider collateral matters, and thus retains jurisdiction
4 to impose sanctions for attorney misconduct that occurred prior to dismissal. The Court also has
5 jurisdiction to consider motions for attorney's fees and other matters that have no bearing on the merits
6 of an appeal or the underlying case. Here, the subpoenas issued by Plaintiffs' counsel are directly
7 related to the merits of both the district court case and the appeal of the dismissal, because they are
8 plainly attempting to acquire information relating to the potential culpability of the defendants
9 identified in the subpoenas, including Price and Shackelford. Also supportive of the conclusion that
10 they are not collateral to the merits of the case or pending appeal is the fact that they are also signed by
11 Texas counsel, suggesting that there is some other purpose for the subpoenas related to the merits of
12 the action, rather than for the purposes permitted by NRCP 27 or 69 or some other permissible collateral
13 matter.

14 Therefore, absent the issuance of subpoenas with leave of court following entry of judgment
15 seeking discovery related to a permissible collateral matter, the Court is without jurisdiction to issue
16 them, and no person acting on behalf of the Court may invoke its power where the Court lacks
17 jurisdiction.

18 Contrary to the assertions of Plaintiff's counsel in the Opposition to the motion to quash, the
19 issuance of the challenged subpoenas was not authorized the Court's September 29, 2015 Order
20 Granting Plaintiffs' Motion for Issuance of Commissions for Out-of-State Depositions. That order
21 directed the clerk to issue commissions to an out-of-state court, in the jurisdiction where depositions
22 were contemplated. A commission, permitted by NRCCP 28(a), is a request by a Nevada court to a
23 court of another jurisdiction to issue process in accordance with the law of that jurisdiction. It is not an
24 approval of the issuance of process in Nevada under the authority of this Court. Therefore, that order
25 has no bearing on the issuance of post-judgment subpoenas by counsel acting as an officer of this Court

26 For the reasons set forth herein, it is the order of the Court that the Notice of Subpoena and the
27 subpoenas duces tecum served on December 28, 2015, after dismissal of this action and after the filing
28 of a notice of appeal, are quashed. Counsel for Plaintiffs is hereby ordered to serve a copy of this order

1 on the parties who were served with a Notice of Subpoena Duces Tecum and on Texas counsel whose
2 name appears on the Notice of Subpoena. Counsel for Plaintiffs shall also serve a copy of this order on
3 Wells Fargo and Bank of America, the nonparties who were commanded to produce documents.
4 Counsel for Plaintiffs is hereby directed to cease any further discovery in this case without filing a
5 motion and obtaining leave of this Court to do so. Lastly, because Price and Shackelford were obliged
6 to respond to the issuance of subpoenas in the absence of jurisdiction of this Court, Price and
7 Shackelford are entitled to their reasonable attorney's fees incurred in prosecuting the successful motion
8 to quash. Price and Shackelford are granted leave to file a motion for those attorney's fees.

9 IT IS SO ORDERED.

10 Dated this 10th day of February, 2016.

11
12 
13 THOMAS W. GREGORY
14 JUDGE OF DISTRICT COURT
15
16
17

18 Copies served by mail this 10 day of February, 2016, to:

19 Michael Matuska, Esq.
20 2310 South Carson Street, #6
21 Carson City, Nevada 89701

22 Richard A. Oshinski, Esq.
23 Mark Forsberg, Esq.
24 Oshinski & Forsberg, Ltd.
25 504 E. Musser Street, Suite 302
26 Carson City, Nevada 89701

27 
28 Vicki Barrett

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FEB 17 2016

Douglas County
District Court Clerk

2016 FEB 17 PM 2:56

K. WILFERT DEPUTY

1 Mark Forsberg, Esq., NSB 4265
2 Rick Oshinski, Esq., NSB 4127
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4 504 E. Musser Street, Suite 302
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6 T 775-301-4250 | F 775-301-4251
7 Mark@OshinskiForsberg.com
8 Attorney for Defendants
9 MICKEY SHACKELFORD and
10 RICHARD PRICE
11
12

13 IN THE NINTH JUDICIAL DISTRICT COURT OF NEVADA

14 IN AND FOR THE COUNTY OF DOUGLAS

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

Case No. 11 CV 0296

Dept. No. II

19 Plaintiffs,

NOTICE OF ENTRY OF ORDER

20 vs.

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

28 Defendants.

PLEASE TAKE NOTICE that this Court entered its *Order Awarding Defendants Price and Shackelford's Costs and Denying Plaintiffs' Motion to Retax Costs* on the 10th day of February, 2016, 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 16th day of February, 2016.

OSHINSKI & FORSBERG, LTD.

By

R. Shih

Mark Forsberg, Esq., NSB 4265

Rick Oshinski, Esq., NSB 4127

*Attorneys for Defendants Richard Price
and Mickey Shackelford*

1 **CERTIFICATE OF SERVICE**

2 I hereby certify that I am an employee of Oshinski & Forsberg, Ltd., and that on this date, I served the
3 within **Notice of Entry of Order Awarding Defendants Price and Shackelford's Costs and Denying**
4 **Plaintiffs' Motion to Retax Costs** on the following individuals or entities by serving a true copy thereof by the
5 following method(s):

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

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

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

11 ☐ electronic transmission (e-mail) to the address(es) listed below, pursuant to NRCP
12 5(b)(2)(D);and/or

13 ☐ Federal Express, UPS, or other overnight delivery
14 fully addressed as follows:

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

19
20 I declare under penalty of perjury that the foregoing is true and correct.

21 Executed on this 16th day of February, 2016, in Carson City, Nevada.

22 
23 Linda Gilbertson

EXHIBIT 1

EXHIBIT 1

RECEIVED

FEB 10 2016

Douglas County
District Court Clerk

2016 FEB 10 AM 8:43

CLERK
M. BIAGGINI
DEPUTY

Case No. 11-CV-0296

Dept. No. II

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,

Plaintiffs,

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.

**ORDER AWARDING
DEFENDANTS PRICE AND
SHACKELFORD'S COSTS
AND DENYING PLAINTIFFS'
MOTION TO RETAX COSTS**

This matter is before the Court on Defendants Richard Price and Mickey Shackelford's Verified Memorandum of Costs and Plaintiffs' Motion to Retax Costs. The Court has reviewed the motion, the opposition and reply thereto and finds as follows.

Plaintiffs objected to the Verified Memorandum of Costs, generally asserting that the Memorandum did not comply with NRS 18.110 because it failed to sufficiently identify how the claimed costs were necessary to and incurred in the present action as required by the statute. Plaintiffs also asserted that Price and Shackelford were attempting to recover costs they did not incur or

1 alternatively were attempting to recover on behalf of former defendant Joe Baker, who was dismissed
2 by stipulation of the Plaintiffs after reaching a settlement with Baker.

3 In their Reply, Price and Shackelford cured any perceived deficiency in the Verified
4 Memorandum of Costs. Counsel for Price and Shackelford submitted an affidavit establishing that his
5 clients had agreed with Baker to share in the costs of depositions and the expert witness retained by the
6 Defendants and that as a result of the agreement, Price, Shackelford and Baker each were responsible
7 for one-third of the costs incurred for depositions and the expert. As a result of the agreement, Price
8 and Shackelford together are responsible for two-thirds of the cost of depositions and one transcript of
9 the depositions of Plaintiff Jeffrey Cain and witnesses Kerry Rucker, Dan Witt and William Parker and
10 for two-thirds of the costs incurred to retain an expert witness, Arun Upadhyay, whose expert testimony
11 was to be offered to address various issues and principles of corporate governance and to explain to the
12 jury the legitimacy of collateralized mortgage obligations and how they are traded and tracked -- all
13 issues central to the claims advanced by Plaintiffs in this case.

14 Price and Shackelford also provided more detailed billing records documenting the amounts for
15 which they were responsible pursuant to the agreement. Price and Shackelford seek only those costs
16 for which they were obligated by their agreement with Baker.

17 NRS 18.005 identifies costs that may be recovered by prevailing parties under NRS 18.020.
18 The costs that may be recovered include the costs sought by Price and Shackelford. NRS 18.005
19 identifies as costs at subsection (1) clerk's fees; (2) reporter's fees for depositions, including a reporter's
20 fee for one copy of each deposition; (5) reasonable fees of not more than five expert witnesses in an
21 amount of not more than \$1,500 for each witness, unless the court allows a larger fee after determining
22 that the circumstances surrounding the expert's testimony were of such necessity as to require the larger
23 fee; and (15) reasonable costs for travel and lodging incurred taking depositions and conducting
24 discovery. NRS 18.005(17) provides that "costs" also includes "any other reasonable and necessary
25 expense incurred in connection with the action. . ."

26 NRS 18.020 provides that costs "must be allowed of course to the prevailing party against any
27 adverse party against whom judgment is rendered, in the following cases: . . . (3) In an action for the
28 recovery of money or damages, where the plaintiff seeks to recover more than \$2,500. . ."

1 Here, Price and Shackelford are the prevailing parties. This court held in its order granting
2 summary judgment that the release executed by Plaintiffs was broad enough to reach all of the claims
3 in the Third Amended Complaint. Plaintiffs thus could not succeed on any of their claims and Price
4 and Shackelford prevailed as to each claim. The Third Amended Complaint sought the recovery of
5 money damages in excess of the \$2,500 threshold set forth in the statute. Therefore, costs must be
6 awarded "of course" to Price and Shackelford.

7 Price and Shackelford have properly documented the costs that must be allowed in their
8 Memorandum of Costs and in their Opposition to the Motion to Retax Costs by providing not only
9 affidavits but bills from court reporters and the expert witness that establish their obligation to pay such
10 costs. Therefore, they have met the statutory requirements and the mandate of the Nevada Supreme
11 Court in *Bobby Berosini, Ltd. v. People for the Ethical Treatment of Animals*, 114 Nev. 1348 (1998)
12 and *Cadle Co. v. Woods & Erickson, LLP*, 131 Nev. Adv. Op. 15 (2015). Price and Shackelford have
13 established that awarding the costs set forth in their Memorandum of Costs are well within the discretion
14 of this Court to award and are those authorized by NRS 18.

15 In the exercise of its discretion, the Court also finds that the fee of the expert witness is justified
16 under NRS 18.005(5), because the circumstances surrounding the expert's testimony were of such
17 necessity as to require a fee in excess of \$1,500. The claims in this case presented complicated issues
18 of corporate governance involving whether some or all of the defendants were in such control of the
19 corporation so as to allow piercing of the corporate veil, and it involved collateralized mortgage
20 obligations, a form of financial investment far beyond the knowledge of a lay jury. The Court finds
21 that the testimony of the expert was necessary to the defense of theories of liability raised in the Third
22 Amended Complaint and in extensive motion practice. Therefore, the fee of \$3,250 for the expert is
23 justified under the circumstances.

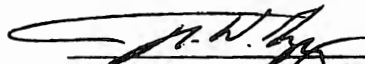
24 The remaining costs also were reasonable and permitted by the statute, either by express
25 definition or as other reasonable and necessary expenses incurred in connection with the action as
26 allowable under NRS 18.005.

27 Therefore, it is the order of the Court that the costs in the amount of \$7,729.20 properly
28 documented in Price and Shackelford's Memorandum of Costs are awarded and shall be paid by

1 Plaintiffs to Price and Shackelford. Plaintiffs' Motion to Retax Costs is hereby denied.

2 IT IS SO ORDERED.

3 Dated this 10th day of February, 2016.

4
5
6 

7 THOMAS W. GREGORY
8 JUDGE OF DISTRICT COURT
9

10 Copies served by mail this 10 day of February, 2016, to:

11 Michael Matuska, Esq.
12 2310 South Carson Street, #6
13 Carson City, Nevada 89701

14 Richard A. Oshinski, Esq.
15 Mark Forsberg, Esq.
16 Oshinski & Forsberg, Ltd.
17 504 E. Musser Street, Suite 302
18 Carson City, Nevada 89701

19 

20 Vicki Barrett
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