

1 Opposition to Dismiss but that it was not file stamped. TOWNSEND reiterated again to KOZAK  
2 that no Opposition had ever been received by his office.

3 9. On or about June 20, 2016, Defendant filed an Opposition to HUGHES'  
4 Motion to Dismiss, which was received by TOWNSEND on or about June 28, 2016. On the day  
5 TOWNSEND received the aforementioned Opposition, TOWNSEND called KOZAK to inquire as  
6 to why Defendant was filing an Opposition to a Motion six months after it was due and more than  
7 five months after the Motion had already been granted. KOZAK asserted that the June 20, 2016  
8 Opposition was filed in response to the May 19, 2016 Order. TOWNSEND noted the May 19, 2016  
9 Order required a supplement to the May 17, 2016 Motion to Set Aside Dismissal and KOZAK  
10 responded that the June 20, 2016 Opposition was the same thing as a supplement to the Motion to  
11 Set Aside Dismissal.

12 10. That on June 29, 2016, TOWNSEND sent an email to KOZAK in which he  
13 demanded that the June 20, 2016 Opposition be withdrawn and that a filing responsive to the Court's  
14 May 19, 2016 Order be filed in its place.

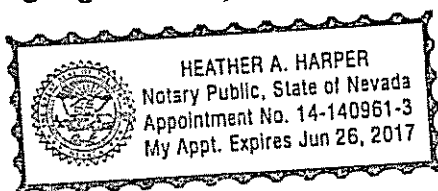
15 11. That on penalty of perjury, the averments made herein are true to the best of  
16 TOWNSEND's knowledge, except as to those averments made on information and belief, and as to  
17 those matters, he believes them to be true.

18 DATED this 27<sup>th</sup> day of July, 2016.

19  
20   
JUSTIN M. TOWNSEND, ESQ.

21  
22 STATE OF NEVADA )  
23 CARSON CITY ) ss.

24  
25 On July 27, 2016, personally appeared before me, a Notary Public, JUSTIN M.  
26 TOWNSEND, personally known (or proved) to me to be the person whose name is subscribed to the  
27 foregoing document, and who acknowledged to me that he executed the above document.



  
NOTARY PUBLIC

CERTIFICATE OF SERVICE

Pursuant to NRCP Rule 5(b), I hereby certify that I am an employee of ALLISON, MacKENZIE, LTD., Attorneys at Law, and that on this date, I caused the foregoing document to be served on all parties to this action by:

- ☒ Placing a true copy thereof in a sealed postage prepaid envelope in the United States Mail in Carson City, Nevada [NRCP 5(b)(2)(B)]
- ☐ Hand-delivery - via Reno/Carson Messenger Service [NRCP 5(b)(2)(A)]
- ☐ Facsimile
- ☐ Federal Express, UPS, or other overnight delivery
- ☐ E-filing pursuant to Section IV of District of Nevada Electronic Filing Procedures [NRCP 5(b)(2)(D)]

fully addressed as follows:

CHARLES R. KOZAK, ESQ.  
KOZAK LAW FIRM  
3100 Mill Street, Suite 115  
Reno, NV 89502

DATED this 27<sup>th</sup> day of July, 2016.

  
NANCY FONTENOT

4843-0079-1349, v. 1

ALLISON MacKENZIE, LTD.  
402 North Division Street, P.O. Box 646, Carson City, NV 89702  
Telephone: (775) 687-0202 Fax: (775) 882-7918  
E-Mail Address: law@allisonmackenzie.com

Case No. 15-10DC-0876

Dept. No. I

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

  
JUSTIN M. TOWNSEND, Esq.

BY \_\_\_\_\_ DEPUTY

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FILED

IN THE TENTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA  
IN AND FOR THE COUNTY OF CHURCHILL

SHAUGHNAN L. HUGHES, an  
individual,

Plaintiff,

vs.

ELIZABETH C. HOWARD, an  
individual; and DOES I through  
XX, inclusive.

Defendants.

MOTION FOR SANCTIONS

COMES NOW, Plaintiff, SHAUGHNAN L. HUGHES ("HUGHES"), by and through his attorneys, ALLISON MacKENZIE, LTD., and hereby moves this Court for an order of sanctions against Defendant, ELIZABETH C. HOWARD and/or her attorney, CHARLES R. KOZAK, ESQ. ("KOZAK"). This Motion is made and based upon the pleadings and documents on file herein as well as the following Memorandum of Points & Authorities and the Affidavit of Justin M. Townsend, Esq. ("Aff. of J. Townsend").

MEMORANDUM OF POINTS AND AUTHORITIES

I.

LEGAL AUTHORITY FOR SANCTIONS

This Court is empowered to impose sanctions on a party and/or her attorney by the Nevada Rules of Civil Procedure ("NRCPP") and the Tenth Judicial District Court Rules ("10JDCR") as set forth herein. First, NRCPP 11(b) provides that an attorney who presents a pleading, written

1 motion, or other paper to the Court is certifying as follows with regard to said pleading, motion, or  
2 paper:

3 “(1) it is not being presented for any improper purpose, such as to  
4 harass or to cause unnecessary delay or needless increase in the  
cost of litigation;

5 (2) the claims, defenses, and other legal contentions therein are  
6 warranted by existing law or by a nonfrivolous argument for the  
extension, modification, or reversal of existing law or the  
7 establishment of new law;

8 (3) the allegations and other factual contentions have evidentiary  
9 support or, if specifically so identified, are likely to have  
evidentiary support after a reasonable opportunity for further  
investigation or discovery; and

10 (4) the denials of factual contentions are warranted on the evidence  
11 or, if specifically so identified, are reasonably based on a lack of  
information or belief.”

12 NRCP 11(c) provides that this Court, after notice and a reasonable opportunity to  
13 respond, may impose sanctions upon attorneys, law firms, or parties that have violated NRCP 11(b).  
14 Proceedings for sanctions may be initiated by motion, which shall “describe the specific conduct  
15 alleged to violate subdivision (b)” or on the Court’s own initiative, which shall direct “an attorney,  
16 law firm, or party to show cause why it has not violated subdivision (b).” NRCP 11(c)(1)(A) and  
17 (B). Sanctions may include an order directing the violating attorney, law firm, or party to pay the  
18 moving party “some or all of the reasonable attorney’s fees and other expenses incurred as a direct  
19 result of the violation.” NRCP 11(c)(2). Sanctions may also include “directives of a nonmonetary  
20 nature [or] an order to pay a penalty into court.” *Id.*

21 In addition, sanctions are allowed pursuant to 10JDCR 8(6) and 10JDCR 25.  
22 10JDCR 8(6) allows for sanctions specific to an attorney’s failure to participate in a pretrial  
23 conference in good faith. 10JDCR 25 provides that the Court may impose sanctions “[i]f a party or  
24 an attorney fails, refuses, or neglects to comply with these rules, the District Court Rules, the Nevada  
25 Rules of Civil Procedure, the Supreme Court Rules, or any statutory requirements.” Sanctions  
26 allowable under 10JDCR 25 include without limitation the following actions:

- 27 “1. Hold the disobedient party or attorney in contempt of court.  
28 2. Continue any hearing until the disobedient party or attorney  
has complied with the requirements imposed and require the  
disobedient party to pay the other party’s expenses, including costs

and attorney's fees incurred in preparing for and attending such hearing.

3. Set the case for immediate trial.

4. Impose a fine.

5. Continue the trial subject to prescribed conditions.

6. Where such party or attorney has failed to make an adequate and fair disclosure of any matters in his pretrial memorandum or at the pretrial conference, refuse to allow the disobedient party or attorney to support or oppose designated claims or defenses, or prohibit him from introducing evidence of physical or mental condition or from introducing in evidence designated documents or things or items of testimony.

7. Enter the default of the disobedient party or attorney and, in the Court's sound discretion, dismiss the action or strike the defense of the disobedient party or attorney, with or without prejudice."

## II.

### ARGUMENT

A. Specific conduct by Defendant and KOZAK in violation of the rules governing this matter warrants the imposition of sanctions in order to deter further sanctionable actions and to move this matter forward to its end pursuant to NRS Chapter 39.

i. The Defendant and KOZAK failed to timely file a pleading in response to the Complaint.

On July 27, 2015, HUGHES, pursuant to the provisions of NRS Chapter 39, filed an action for partition of certain real property located at 11633 Fulkerson Road, Fallon, Nevada 89406 (the "Property"), title to which is held jointly by HUGHES and the Defendant. A summons was issued for Defendant on that same date and was thereafter delivered with a copy of the Complaint to the Churchill County Sheriff's Office for service thereof on Defendant. The Sheriff's Office made several attempts to serve the Defendant between August 5, 2015 and September 15, 2015. The Sheriff's Office was unable to serve Defendant but did leave cards at the Property, which is where she resided, requesting that the Defendant contact the Sheriff's Office. She never did. Aff. of J. Townsend at ¶ 2. On September 15, 2015, the Sheriff's Office provided to HUGHES' counsel a Return of Non-Service, a copy of which is hereby incorporated and attached hereto as **Exhibit "1"**.

On September 21, 2015, the undersigned counsel for HUGHES filed an Affidavit in Support of Service by Publication of Summons. On September 23, 2015, this Court issued an Order Granting Publication of Summons. On November 2, 2015, the undersigned counsel for HUGHES filed a Proof of Publication in which it was noted that the Summons was published in the Lahontan

1 Valley News commencing on September 30, 2015 and ending on October 21, 2015. Sometime in  
2 early October, the undersigned counsel for HUGHES received a call from an attorney claiming to  
3 represent the Defendant. The attorney, who said she was in Las Vegas, requested information about  
4 the litigation. In response, the undersigned asked that she enter an appearance so that the matter  
5 could move forward. That attorney never entered an appearance nor did she contact the undersigned  
6 again. Aff. of J. Townsend at ¶ 3.

7 A few days later, still prior to the completion of service by publication, KOZAK  
8 contacted the undersigned and noted that he had been retained to represent the Defendant. KOZAK  
9 and the undersigned briefly discussed the matter and the undersigned requested that KOZAK enter  
10 an appearance so this matter could proceed. Aff. of J. Townsend at ¶ 4. He did not enter an  
11 appearance at that time. In fact, neither KOZAK nor the Defendant filed anything in this matter  
12 prior to the deadline to file a pleading in response to the Complaint, which was due no later than  
13 November 17, 2015. On November 17, 2015, the undersigned verified with this Court that nothing  
14 had been filed. Upon learning that nothing had been filed, the undersigned prepared and sent a letter  
15 to KOZAK with a Notice of Intent to Take Default if no responsive pleading was filed by Friday,  
16 November 20, 2015. A copy of the November 17, 2015 letter and the Notice of Intent to Take  
17 Default are hereby incorporated and attached hereto as **Exhibit "2"**.

18 Other than any inference this Court may make about Defendant's evasion of service,  
19 this is the first instance in which Defendant and KOZAK clearly failed to adhere to applicable rules,  
20 specifically NRCP 12, which requires the filing of a responsive pleading within 20 days after being  
21 served with the summons and complaint. The Court may also wish to note that this was KOZAK's  
22 and the Defendant's first opportunity to comply with the rules in this matter. It would not, however,  
23 be their last time to disregard the rules.

24 Just after midnight on Saturday, November 21, 2015, KOZAK faxed to the  
25 undersigned a copy of Defendant's Answer and Counterclaim. A copy of the first page of the fax  
26 received from KOZAK, which shows the date and time the fax came through, is hereby incorporated  
27 and attached hereto as **Exhibit "3"**. The Court will note that the face page of the Answer and  
28 Counterclaim received by the undersigned was not file-stamped, so it is not clear when the pleading

1 was actually filed. It is not unreasonable to assume, based on the timing of the fax, that the pleading  
2 could not have been filed with the Court until Monday, November 23, 2015, at the earliest, which is  
3 three days after the deadline to avoid entry of default pursuant to NRCP 55. The Answer and  
4 Counterclaim were not timely filed, which is a violation of NRCP 12 and 55. Entry of Defendant's  
5 default may be warranted under NRCP 55 and as a sanction under 10JDCR 25(7).

6 **ii. Defendant's counterclaims were not well pleaded, contained unsubstantiated**  
7 **allegations of a scandalous and impertinent nature, and Defendant failed to**  
8 **timely file an Opposition to HUGHES' Motion to Dismiss on those grounds.**

9 On December 10, 2015, HUGHES timely filed a Motion to Dismiss; Motion to  
10 Strike, noting that Defendant had failed to plead fraud with particularity as required by NRCP 9(b)  
11 and had failed to plead any other claim for which relief can be granted as required by NRCP  
12 12(b)(5). HUGHES also moved to strike all allegations of a scandalous, immaterial, or impertinent  
13 nature pursuant to NRCP 12(f), in which he noted the numerous allegations contained in the  
14 Counterclaim that were designed to denigrate HUGHES and his family and were immaterial to the  
15 claims Defendant had alleged. HUGHES also posited in his Motion to Dismiss that the motive for  
16 filing the Counterclaim was to delay these proceedings and to drive up HUGHES' litigation costs.  
17 Drawing inferences from all that Defendant and KOZAK have done to utterly disregard the rules  
18 time and time again as shown herein, which has in reality delayed these proceedings, HUGHES'  
19 early concerns regarding Defendant's motives have been proven to be accurate.

20 Service of HUGHES' Motion to Dismiss; Motion to Strike was accomplished by  
21 placing a true and correct copy thereof in a sealed postage prepaid envelope in the United States mail  
22 in Carson City, Nevada on December 10, 2015 addressed to Defendant's counsel pursuant to NRCP  
23 (5)(b)(2)(B). A copy of the Certificate of Service is hereby incorporated and attached hereto as  
24 Exhibit "4". According to 10JDCR 15(9), an opposition to a motion is due "[w]ithin 10 days after  
25 the service of the motion." The date of service and intermediate Saturdays, Sundays, and legal  
26 holidays are not counted when computing the time for filing the opposition pursuant to 10JDCR  
27 4(1). In addition, 3 calendar days are added to the prescribed period for service by mail. 10JDCR  
28 4(3). By the foregoing calculations, Defendant's Opposition was due Sunday, December 27, 2015.

1 According to 10JDCR 4(2), Defendant would not be required to file on a Sunday, but should have  
2 filed no later than the following judicial day, which was Monday, December 28, 2015.

3 On Tuesday, December 29, 2015, counsel for HUGHES confirmed with the Court  
4 that no Opposition had been filed and on that date HUGHES filed a Reply to the Failure to Oppose  
5 Motion to Dismiss; Motion to Strike together with a Request for Submission. Aff. of J. Townsend at  
6 ¶ 5. The aforementioned Reply was served on Defendant by placing a true and correct copy thereof  
7 in the mail addressed to Defendant's counsel. A copy of the Certificate of Service is hereby  
8 incorporated and attached hereto as Exhibit "5". On January 7, 2016, this Court, having not  
9 received any opposition to HUGHES' Motion to Dismiss; Motion to Strike, entered an Order  
10 Granting Plaintiff's Motion to Dismiss; Motion to Strike in its entirety. On January 11, 2016,  
11 HUGHES filed a Notice of Entry of the aforementioned Order and served the same on Defendant by  
12 placing a true and correct copy thereof in the mail addressed to Defendant's counsel. A copy of the  
13 Certificate of Service is hereby incorporated and attached hereto as Exhibit "6".

14 Defendant's failure to timely file an Opposition to HUGHES' Motion to Dismiss;  
15 Motion to Strike is a violation of 10JDCR 15.\* Further, violations of NRCP 9(b) and 12 are  
16 discussed in detail in and HUGHES directs the Court's attention for an analysis of those violations to  
17 HUGHES' December 10, 2015, Motion to Dismiss; Motion to Strike and in HUGHES' July 27,  
18 2016, Opposition to Motion to Set Aside Dismissal of Counterclaim.

19 **iii. KOZAK was unprepared to participate in the mandated NRCP 16.1 early case**  
20 **conference.**

21 On December 14, 2015, counsel for HUGHES contacted KOZAK and suggested that  
22 the NRCP 16.1 early case conference be continued for a period of up to 90 days as allowed by  
23 NRCP 16.1, pending the outcome of HUGHES' Motion to Dismiss. KOZAK agreed. HUGHES'  
24 counsel followed this up with a confirming email dated December 14, 2015, to which KOZAK never  
25 responded. Aff. of J. Townsend at ¶ 6. A copy of the aforementioned email is hereby incorporated  
26 and attached hereto as Exhibit "7".

27 On or about February 4, 2016, after this Court had granted HUGHES' Motion to  
28 Dismiss, counsel for HUGHES called KOZAK to arrange the NRCP 16.1 early case conference.



1 During this call, counsel for the parties agreed on a date for a telephonic early case conference. Aff.  
2 of J. Townsend at ¶ 7. On February 4, 2016, HUGHES also served Defendant with a Notice of Early  
3 Case Conference and Request for Production of Documents. A copy of the February 4, 2016, Notice  
4 of Early Case Conference and Request for Production of Documents is hereby incorporated and  
5 attached hereto as **Exhibit "8"**.

6 The early case conference was held telephonically on February 16, 2016. When the  
7 undersigned began speaking about the procedures for this matter as the same are set forth in NRS  
8 Chapter 39, KOZAK stated to the undersigned that he had never even looked at NRS Chapter 39.  
9 When the undersigned suggested to KOZAK that the case conference was going to be difficult if  
10 KOZAK was not familiar with the statutes that govern this dispute and the procedures for resolving  
11 the same, KOZAK offered nothing but a chuckle. Aff. of J. Townsend at ¶ 8. Needless to say, the  
12 case management conference was not as productive as it should have been had KOZAK followed  
13 NRCP 16.1(b)(1), which mandates that the attorneys for the parties attend the early case conference  
14 to "confer and consider the nature and basis of their claims and defenses and the possibilities for a  
15 prompt settlement or resolution of the case." KOZAK did not take the early case conference  
16 seriously and had made no inquiry whatsoever of NRS Chapter 39 in preparation for the conference.  
17 Therefore, a meaningful consideration of the nature and basis of HUGHES' partition claim during  
18 the early case conference was not possible. Sanctions therefor are hereby requested.

19 **iv. KOZAK and the Defendant failed to timely provide the mandatory discovery**  
20 **required by NRCP 16.1 or to timely file the required case conference report.**

21 NRCP 16.1(a)(1) mandates that the parties provide certain initial disclosures "at or  
22 within 14 days of the [early case] conference." Failure to abide by this rule is sanctionable under the  
23 specific sanctions provided for in NRCP 37(c)(1) in addition to those provided in NRCP 11 and  
24 10JDCR 25. NRCP 37(c)(1) provides that the Court may prohibit the violating party from using at  
25 trial any material not timely or properly disclosed pursuant to NRCP 16.1.

26 As noted above, HUGHES served on Defendant a Notice of Early Case Conference  
27 and Request for Production of Documents. See Exhibit "8". The Request for Production of  
28

Documents noted the deadline to provide the initial disclosures required by NRCP 16.1(a)(1), which was 14 days after the February 16, 2016 early case conference, or March 1, 2016.

NRCP 16.1 also provides that “[w]ithin 30 days after each case conference, the parties must file a joint case conference report or, if the parties are unable to agree upon the contents of a joint report, **each party must serve and file a case conference report.**” (emphasis added). Therefore, the case conference report was due on or before March 14, 2016.

On March 1, 2016, HUGHES timely served the Defendant with his NRCP 16.1 initial disclosures. Counsel for HUGHES also provided to KOZAK on March 1, 2016 a draft Joint Case Conference Report. On the evening of March 7, 2016, KOZAK’s office sent via email to the undersigned’s office a revised draft Joint Case Conference Report and stated that “[t]he initial disclosure will be sent tomorrow, 3/8/16.” A copy of the March 7, 2016 email is hereby incorporated (without attachments) and attached hereto as **Exhibit “9”**. The initial disclosures were not sent as promised on March 8, 2016.

Indeed, at the May 17, 2016 pretrial conference the Court, on learning that Defendant had not yet served HUGHES with her initial disclosures, ordered KOZAK to serve the undersigned with the same no later than May 19, 2016 via Reno-Carson Messenger Service (“RCMS”). When RCMS came to the undersigned’s office on May 19, 2016 for the last time that day, no initial disclosures were delivered. The undersigned sent an email to KOZAK asking for the status of the disclosures and KOZAK responded that he “was under the impression they went out [on the 19<sup>th</sup>]”. A copy of an email string from May 19-20, 2016 is hereby incorporated and attached hereto as **Exhibit “10”**. The initial disclosures were finally received by the undersigned on May 20, 2016, nearly three months after they were due. Aff. of J. Townsend at ¶ 9.

As it concerns the case conference report, KOZAK’s May 7, 2016, revisions included two changes that the undersigned could not agree to, including an assertion that Defendant had demanded a jury trial, which was simply untrue. On March 8, 2016, the undersigned sent an email to KOZAK in which he outlined his concerns with only two of KOZAK’s revisions and noted that all other revisions were accepted. Whereas the case conference report was due to be filed on Monday, March 14, 2016, the undersigned requested that KOZAK respond no later than Friday,

1 March 11, 2016. A copy of the undersigned's March 8, 2016 email is hereby incorporated and  
2 attached hereto as Exhibit "11". He never responded, so HUGHES sent Plaintiff's Case  
3 Management Report on May 14, 2016 to be filed with the Court. A copy of Plaintiff's Case  
4 Management Report was served on Defendant on the same day.

5 At the May 17, 2016 pretrial conference, which was requested by HUGHES as a  
6 means of raising before the Court the many issues with KOZAK's failures to follow the rules, the  
7 Court noted that it had not received a case management report from Defendant. The undersigned  
8 also noted that he had not been served with a copy of a case management report from Defendant.  
9 KOZAK insisted at the pretrial conference that he had filed Defendant's Case Conference Report, so  
10 the Court requested that KOZAK have his office fax or email proof of the same. In response thereto,  
11 KOZAK's office emailed a copy of Defendant's Case Conference Report, which was not file-  
12 stamped, a copy of which was provided by the Court to the undersigned during the pretrial  
13 conference. A copy of a May 17, 2016, email and attachment from KOZAK's office to the Court is  
14 hereby incorporated and attached hereto as Exhibit "12". At the May 17, 2016, pretrial conference  
15 was the first time the Court or the undersigned had seen Defendant's Case Conference Report, more  
16 than two months after it was due.

17 KOZAK and his client failed in every material respect to comply with the provisions  
18 of NRCP 16.1. For this reason, sanctions are warranted against KOZAK and the Defendant.

19 **v. Defendant's Motion to Set Aside Dismissal is sanctionable under NRCP 11.**

20 When HUGHES' counsel called KOZAK on February 16, 2016 for the telephonic  
21 case management conference, the telephone was answered by Nan Adams, a secretary at Kozak  
22 Lusiani Law Firm, who asked if HUGHES or his counsel had not received an opposition to  
23 HUGHES' Motion to Dismiss. Counsel for HUGHES confirmed in no uncertain terms that no  
24 opposition had ever been received by his office and indicated his belief and understanding that the  
25 Court had not received any opposition either. Counsel for HUGHES was then transferred to  
26 KOZAK, who again asked if an opposition had ever been received. HUGHES' counsel reiterated  
27 directly to KOZAK that no opposition had ever been received. This was the first time KOZAK or  
28

1 anybody associated with Defendant had mentioned to HUGHES' counsel a claim that an opposition  
2 had been filed. Aff. of J. Townsend at ¶ 10.

3 Exactly three months later, on May 16, 2016, Defendant filed a Motion to Set Aside  
4 Dismissal of Counterclaim, which alleges that Defendant had filed an Opposition to HUGHES'  
5 Motion to Dismiss on December 30, 2016, but that it was "never filed by this Court" due to "post  
6 office mistake or being misplaced somewhere at the Court." Motion to Set Aside Dismissal, p. 5, ll.  
7 23-24. Defendant also claimed in that Motion that "Mr. Hughes' counsel acknowledged to Ms.  
8 Howard's counsel that he had received the Opposition; however, he noted that it was not a file-  
9 stamped copy." Motion to Set Aside Dismissal, p. 5, ll. 25-28. The assertion about the undersigned  
10 acknowledging receipt of an Opposition to the Motion to Dismiss is nothing short of a lie in  
11 violation of NRCP 11(b). At no time did the undersigned acknowledge to KOZAK that he had  
12 received a copy of an Opposition because no such Opposition was ever filed with the Court or  
13 served on HUGHES. Aff. of J. Townsend at ¶ 11. The assertions about the Court and/or post office  
14 losing the Opposition are dubious as well.

15 Further, the Motion to Set Aside Dismissal was styled as a Notice of Motion, which  
16 was filed on May 16, 2016, one day before the May 17, 2016 pretrial conference. The Notice of  
17 Motion purported to give notice to HUGHES that a hearing on the Motion to Set Aside Dismissal  
18 would occur on May 17, 2016. The notice was insufficient and in violation of NRCP 6(d), which  
19 requires a minimum of 5 days' notice prior to notice of a hearing on a motion.

20 The merits of Defendant's Motion to Set Aside Dismissal are set forth in detail in  
21 HUGHES' July 27, 2016, Opposition to Motion to Set Aside Dismissal of Counterclaim, which is  
22 currently pending before the Court. For convenience, HUGHES does not repeat those matters here.  
23 However, it suffices to say here that the allegations contained in the Motion to Set Aside Dismissal  
24 are not supported by any evidence as required by NRCP 11(b)(3).

25 Further, the Court, on May 19, 2016, issued a briefing schedule with regard to  
26 Defendant's Motion to Set Aside Dismissal in which Defendant was ordered to supplement her  
27 Motion with additional evidence no later than July 8, 2016. Instead of filing a supplement,  
28 Defendant filed on or about June 20, 2016, a pleading styled as an Opposition to HUGHES' Motion

1 to Dismiss, which was not received by the undersigned counsel for HUGHES until June 28, 2016.  
2 On the day the undersigned received the aforementioned Opposition, he called KOZAK to inquire as  
3 to why Defendant was filing an Opposition to a Motion six months after it was due and more than  
4 five months after the Motion had already been granted. KOZAK asserted that the June 20, 2016  
5 Opposition was filed in response to the May 19, 2016 Order. Counsel for HUGHES noted the May  
6 19, 2016 Order required a supplement to the May 17, 2016 Motion to Set Aside Dismissal and  
7 KOZAK responded that the June 20, 2016 Opposition was the same thing as a supplement to the  
8 Motion to Set Aside Dismissal. Aff. of J. Townsend at ¶ 12.

9 On June 29, 2016, counsel for HUGHES sent an email to KOZAK in which he  
10 demanded that the June 20, 2016 Opposition be withdrawn and that a filing responsive to the Court's  
11 May 19, 2016 Order be filed in its place by the deadline set therein. *Id.* at ¶ 13. A copy of the June  
12 29, 2016 email to Kozak is hereby incorporated and attached hereto as Exhibit "13". On or about  
13 July 7, 2016, Defendant withdrew the June 20, 2016 Opposition and filed a Supplement to Motion to  
14 Set Aside Dismissal, which failed to address the Court's concerns with the original Motion.

15 The Court's May 19, 2016 Order provided that HUGHES had until July 27, 2016 to  
16 file an Opposition to the Motion to Set Aside Dismissal and any supplements thereto. As noted  
17 above, HUGHES filed an Opposition on July 27, 2016. The May 19, 2016 Order provided that the  
18 Defendant then had until August 5, 2016 to file a Reply. No Reply was ever filed.

19 **vi. KOZAK did not participate in the May 17, 2016, pretrial conference in good**  
20 **faith in violation of 10JDCR 8(6).**

21 As noted above, KOZAK filed a Motion to Set Aside Dismissal one day before the  
22 previously scheduled pretrial conference. At the pretrial conference, KOZAK stood before the Court  
23 and insisted that he had (a) filed an Opposition to Motion to Dismiss on December 30, 2016; (b)  
24 served HUGHES with a copy of an Opposition to Motion to Dismiss on December 30, 2016; (c)  
25 filed a case conference report with the Court; (d) served HUGHES with a copy of a case conference  
26 report; (e) served HUGHES with the initial disclosures required by NRCP 16.1; and (f) that his  
27 office had proof of filing and/or serving each of these documents, including without limitation,  
28 having in his possession file-stamped copies of one or more of these documents. The Court briefly

recessed the pretrial conference and ordered that KOZAK have his office fax or email the proof he claimed to have. He was unable to do so. Indeed, all that KOZAK's office provided to the Court during the pretrial conference was the email string and documents attached here as Exhibit 12. To date, KOZAK has failed to provide any evidence whatsoever of any of the actions listed above. There is no file-stamped Opposition to Motion to Dismiss or case conference report. There is no evidence that he had previously served any of the above-referenced documents on HUGHES or his counsel. The fact of the matter is that KOZAK misrepresented actions he has taken in this matter. His representations to the Court at the May 17, 2016 pretrial conference were made in bad faith in violation of 10JDCR 8(6) and for improper purposes of delay, harassment, or perhaps concealment of earlier rules violations that conceivably have affected his client's case, all of which are violations of NRCP 11(b)(1). One can only guess what his motives for doing so are. Nevertheless, these actions have caused delays to these proceedings and further actions of this type must be deterred by the imposition of sanctions.

**vii. Defendant's Motion for Summary Judgment contains legal contentions that are not supported by existing law as required by NRCP 11(b)(2) and was brought only as a means of delay and harassment in violation of NRCP 11(b)(1).**

Defendant filed a Motion for Summary Judgment that was based in large part on case law that does not apply to the factual situation at issue here. The merits of Defendant's Motion for Summary Judgment are analyzed in HUGHES' July 20, 2016, Opposition to Motion for Summary Judgment and, for convenience, will not be repeated here. Further, the Motion for Summary Judgment is currently pending before the Court. Suffice it to say here that Defendant's Reply, which was filed on July 29, 2016, fails to address the deficiencies in Defendant's arguments as raised by HUGHES' Opposition. Further, Defendant failed to adequately address the case law raised in HUGHES' Opposition.

**viii. Defendant has delayed submitting her Motion to Set Aside Dismissal and her Motion for Summary Judgment for no other purpose than to further delay these proceedings.**

In addition to KOZAK's failures to follow the May 19, 2016 Order concerning the briefing schedule for Defendant's Motion to Set Aside Dismissal, KOZAK has not, as of the date of this pleading, filed a Request for Submission of Defendant's Motion to Set Aside Dismissal.

1 Likewise, he has not filed a Request for Submission of Defendant's Motion for Summary Judgment.  
2 While 10JDCR 15(15) allows for any party to file such a Request, it is customary for the moving  
3 party to do so after or in connection with filing a reply. Nevertheless, HUGHES is filing Requests  
4 for Submission of both of Defendant's outstanding Motions in connection with the instant Motion so  
5 as to avoid further delays of these proceedings.

6 On August 24, 2016, the undersigned received several pieces of correspondence from  
7 KOZAK's office concerning Requests for Submission. Aff. of J. Townsend at ¶14. The  
8 correspondence is dated June 22, 2016 and the meaning of the correspondence is unclear. A copy of  
9 two June 22, 2016 letters are hereby incorporated and attached hereto as Exhibit "14". The letters  
10 seem to indicate that KOZAK's office has submitted at least one Request for Submission to the  
11 Court, but it is not clear whether both Motions are meant to have been submitted or when the  
12 Request(s) would have been filed. On August 24, 2016, the undersigned's office contacted the Court  
13 to inquire as to the receipt of any Requests for Submission and the Court indicated that none had  
14 been received from KOZAK's office at that time. Aff. of J. Townsend at ¶ 14. The Court may  
15 receive Requests for Submission from KOZAK's office in the next few days after this filing, but the  
16 inference to be drawn from the delay in filing the same may be that KOZAK and his client wish to  
17 delay these proceedings, which is a sanctionable violation of NRCPP 11.

18 **B. The violations of the NRCPP and 10JDCR have caused HUGHES to incur substantial**  
19 **amounts of attorneys' fees for which he seeks reimbursement as a sanction under**  
20 **NRCPP 11(c)(2) and 10JDCR.**

21 The Court is empowered by NRCPP 11(c)(2) to order the violating party and/or her  
22 attorney to "[direct] payment to the movant of some or all of the reasonable attorney's fees and other  
23 expenses incurred as a direct result of the violation." HUGHES has incurred substantial amounts of  
24 attorneys' fees in responding to meritless motions, in fighting over whether KOZAK filed  
25 documents on time or at all, in requesting and attending a pretrial conference to discuss KOZAK's  
26 rules violations, in fruitless correspondence with KOZAK about his failures, and in preparing this  
27 Motion. The delays and wasted time caused by KOZAK's multiple violations are such that  
28 HUGHES respectfully requests an award of attorneys' fees for all such fees incurred as a direct  
result of said violations. To date, inclusive of the research for and preparation of this Motion,

ALLISON MacKENZIE, LTD.  
402 North Division Street, P.O. Box 646, Carson City, NV 89702  
Telephone: (775) 687-0202 Fax: (775) 882-7918  
E-Mail Address: law@allisonmackenzie.com

1 HUGHES has incurred \$20,693.75 in direct response to KOZAK's violations. Aff. of J. Townsend  
2 at ¶ 15. Copies of the undersigned's relevant billings are hereby incorporated and attached hereto as  
3 Exhibit "15". HUGHES respectfully requests an order directing Defendant and/or KOZAK to pay  
4 for these expenses and any additional fees that are incurred in replying to any opposition filed by  
5 KOZAK herein.

6 **C. Conclusion.**

7 A review of the docket in this matter and the facts set forth herein reveals that  
8 Defendant and her attorney have violated the rules more often than they have complied therewith.  
9 For these reasons, HUGHES respectfully requests an order imposing sanctions as determined by the  
10 Court. Without limiting the Court's options for sanctions under NRCP 11, NRCP 37, 10JDCR 8(6),  
11 or 10JDCR 25, HUGHES respectfully requests an award of attorneys' fees incurred as a direct result  
12 of the violations discussed herein and any others the Court deems to be sanctionable thereunder.

13 DATED this 25<sup>th</sup> day of August, 2016.

14 ALLISON MacKENZIE, LTD.  
15 402 North Division Street  
16 Carson City, NV 89703-4168

17 By: 

18 JUSTIN M. TOWNSEND, ESQ.  
19 Nevada State Bar No. 12293

20 Attorneys for Plaintiff,  
21 SHAUGHNAN L. HUGHES  
22  
23  
24  
25  
26  
27  
28



CERTIFICATE OF SERVICE

Pursuant to NRCP Rule 5(b), I hereby certify that I am an employee of ALLISON, MacKENZIE, LTD., Attorneys at Law, and that on this date, I caused the foregoing document to be served on all parties to this action by:

- X Placing a true copy thereof in a sealed postage prepaid envelope in the United States Mail in Carson City, Nevada [NRCP 5(b)(2)(B)]
- \_\_\_\_\_ Hand-delivery - via Reno/Carson Messenger Service [NRCP 5(b)(2)(A)]
- \_\_\_\_\_ Facsimile
- \_\_\_\_\_ Federal Express, UPS, or other overnight delivery
- \_\_\_\_\_ E-filing pursuant to Section IV of District of Nevada Electronic Filing Procedures [NRCP 5(b)(2)(D)]

fully addressed as follows:

CHARLES R. KOZAK, ESQ.  
KOZAK LAW FIRM  
3100 Mill Street, Suite 115  
Reno, NV 89502

DATED this 25<sup>th</sup> day of August, 2016.

  
NANCY FONTENOT

## INDEX OF EXHIBITS

<u>Exhibit No.</u>	<u>Description</u>	<u>Number of Pages (Not Including Cover Page)</u>
"1"	Return of Non-Service	1
"2"	November 17, 2015 letter and the Notice of Intent to Take Default	2
"3"	First page of the fax received from KOZAK	1
"4"	December 10, 2015 Certificate of Service	1
"5"	December 29, 2015 Certificate of Service	1
"6"	January 11, 2016 Certificate of Service	1
"7"	December 14, 2015 email	1
"8"	February 4, 2016 Notice of Early Case Conference and Request for Production of Documents	3
"9"	March 7, 2016 email	1
"10"	May 19-20, 2016 email string	2
"11"	March 8, 2016 email	1
"12"	May 17, 2016 email	11
"13"	June 29, 2016 email	1
"14"	Two June 22, 2016 letters	2
"15"	Relevant billings	13

4825-7285-6631, v. 3

**EXHIBIT “1”**

**EXHIBIT “1”**

SHERIFF'S RETURN OF NON-SERVICE

STATE OF NEVADA )

COUNTY OF CHURCHILL )

Case # 1510DC0876

I hereby certify that our agency received the within the **Summons & Complaint** on the 5<sup>th</sup> day of August, 2015, and this agency was ~~unable to serve~~ the same after 4 attempt(s) upon Elizabeth Carole Howard at 11633 Fulkerson Rd., Fallon, NV 89406.

Reason for non-service is: **Unable to make contact. Return papers per call from attorney's office.**

Dated: This 15<sup>th</sup> day of September, 2015.

Ben Trotter, Sheriff  
Churchill County, Nevada

by:

S. Openshaw

S. Openshaw #754

**EXHIBIT “2”**

**EXHIBIT “2”**

MIKE PAVLAKIS  
JOAN C. WRIGHT  
KAREN A. PETERSON  
JAMES R. CAVLIA  
CHRIS MACKENZIE  
DAWN ELLERBROCK  
RYAN D. RUSSELL  
JOEL W. LOCKE



ALLISON · MACKENZIE

November 17, 2015

JUSTIN TOWNSEND  
THORAN TOWLER  
S. JORDAN DUNLAP  
KYLE A. WINTER  
GEORGE V. ALLISON  
ANDREW MACKENZIE  
PATRICK V. FAGAN  
CHARLES P. COCKERILL  
OF COUNSEL  
MIKE SOUMBENIOTIS  
(1932-1997)

Via Facsimile & U.S. Mail  
(775) 800-1767

Charles R. Kozak, Esq.  
3100 Mill Street, Suite 115  
Reno, NV 89502

Re: Notice of Intent to Take Default –  
Hughes v. Howard, 10th Judicial District Court Case No. 15-10DC-0876

Dear Mr. Kozak:

You contacted me in regards to the above-referenced case over a month ago and indicated your intention to file an answer therein. It is not clear whether or not you have been retained by Ms. Howard in this matter, but we have confirmed with the Court that no appearances have been filed on behalf of Ms. Howard.

Nevertheless, be advised that today is the deadline to file a responsive pleading. We will not grant any requests for extensions of time as Ms. Howard has dragged this out by deliberately avoiding service and our earlier attempts to resolve this matter out of court. Therefore, please find enclosed a Notice of Intent to Take Default.

If you intend to participate in these proceedings, please file an appearance in the above-referenced case and file a responsive pleading no later than Friday, November 20, 2015. If no such action is taken, we will apply for entry of default.

Sincerely,

*ALLISON MacKENZIE, LTD.*

By:   
JUSTIN M. TOWNSEND, ESQ.

JMT/nf  
Enclosure(s) as stated

cc: Elizabeth C. Howard (via U.S. Mail)  
Client

4850-4433-0027, v. 1

ALLISON MacKENZIE, LTD.  
402 North Division Street, P.O. Box 646, Carson City, NV 89702  
Telephone: (775) 687-0202 Fax: (775) 882-7918  
E-Mail Address: law@allisonmackenzie.com

1 Case No.15-10DC-0876

2 Dept. No. I

3 The undersigned hereby affirms that  
4 this document does not contain the  
5 social security number of any person.

6   
7 JUSTIN M. TOWNSEND, Esq.

8 IN THE TENTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA  
9 IN AND FOR THE COUNTY OF CHURCHILL

10 SHAUGHNAN L. HUGHES, an  
11 individual,

12 Plaintiff,

13 vs.

14 ELIZABETH C. HOWARD, an  
15 individual; and DOES I through  
16 XX, inclusive.

17 Defendants.

**NOTICE OF INTENT  
TO TAKE DEFAULT**

18 TO: Defendant, Elizabeth C. Howard, and her attorney, Charles R. Kozak, Esq.

19 Please take notice that Plaintiff intends to take the Default of the Defendant above  
20 named unless an Answer or other responsive pleading is filed herein on or before Friday, November  
21 20, 2015, which is three (3) days from the date of this Notice.

22 DATED this 17<sup>th</sup> day of November, 2015.

23 ALLISON MacKENZIE, LTD.  
24 402 North Division Street  
25 Carson City, NV 89703-4168

26 By:   
27 JUSTIN M. TOWNSEND, ESQ.  
28 Nevada State Bar No. 12293

Attorneys for Plaintiff,  
SHAUGHNAN L. HUGHES

4824-7695-7227, v. 1

**EXHIBIT “3”**


**EXHIBIT “3”**



1 Case No. 15-10DC-0876

2 Dept. No. 1

3 The undersigned hereby affirms that  
4 this document does not contain the  
5 social security number of any person.

6   
7 CHARLES R. KOZAK, ESQ.

8 IN THE TENTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA  
9 IN AND FOR THE COUNTY OF CHURCHILL

10 SHAUGHNAN L. HUGHES, an  
11 individual,

12 Plaintiff,

ANSWER AND COUNTERCLAIM

13 vs.

14 ELIZABETH C. HOWARD, an  
15 individual; and DOES I through  
16 XX, inclusive,

17 Defendants

18 ELIZABETH C. HOWARD, an  
19 individual,

20 Counterclaimant,

21 vs.

22 SHAUGHAN L. HUGHES, an  
23 individual; and DOES 1 through  
24 XX, inclusive,

25 Counterdefendants

ANSWER

26 ELIZABETH HOWARD, an individual (hereinafter "Defendant/Counterclaimant"), by  
27 and through her attorney of record, Charles R. Kozak, Esq., answers SHAUGHAN L.  
28

**EXHIBIT “4”**

**EXHIBIT “4”**

ALLISON MacKENZIE, LTD.  
402 North Division Street, P.O. Box 646, Carson City, NV 89702  
Telephone: (775) 687-0202 Fax: (775) 882-7918  
E-Mail Address: law@allisonmackenzie.com

CERTIFICATE OF SERVICE


Pursuant to NRCP Rule 5(b), I hereby certify that I am an employee of ALLISON, MacKENZIE, LTD., Attorneys at Law, and that on this date, I caused the foregoing document to be served on all parties to this action by:

- X Placing a true copy thereof in a sealed postage prepaid envelope in the United States Mail in Carson City, Nevada [NRCP 5(b)(2)(B)]
- \_\_\_\_\_ Hand-delivery - via Reno/Carson Messenger Service [NRCP 5(b)(2)(A)]
- \_\_\_\_\_ Facsimile
- \_\_\_\_\_ Federal Express, UPS, or other overnight delivery
- \_\_\_\_\_ E-filing pursuant to Section IV of District of Nevada Electronic Filing Procedures [NRCP 5(b)(2)(D)]

fully addressed as follows:

CHARLES R. KOZAK, ESQ.  
KOZAK LAW FIRM  
3100 Mill Street, Suite 115  
Reno, NV 89502

DATED this 10<sup>th</sup> day of December, 2015.

  
NANCY FONTENOT

**EXHIBIT “5”**

**EXHIBIT “5”**

CERTIFICATE OF SERVICE

Pursuant to NRCP Rule 5(b), I hereby certify that I am an employee of ALLISON, MacKENZIE, LTD., Attorneys at Law, and that on this date, I caused the foregoing document to be served on all parties to this action by:

- X Placing a true copy thereof in a sealed postage prepaid envelope in the United States Mail in Carson City, Nevada [NRCP 5(b)(2)(B)]
- Hand-delivery - via Reno/Carson Messenger Service [NRCP 5(b)(2)(A)]
- Facsimile
- Federal Express, UPS, or other overnight delivery
- E-filing pursuant to Section IV of District of Nevada Electronic Filing Procedures [NRCP 5(b)(2)(D)]

fully addressed as follows:

CHARLES R. KOZAK, ESQ.  
KOZAK LAW FIRM  
3100 Mill Street, Suite 115  
Reno, NV 89502

DATED this 29<sup>th</sup> day of December, 2015.

  
NANCY FONTENOT

4850-8275-3324, v. 1

**EXHIBIT “6”**

**EXHIBIT “6”**

ALLISON MacKENZIE, LTD.  
402 North Division Street, P.O. Box 646, Carson City, NV 89702  
Telephone: (775) 687-0202 Fax: (775) 882-7918  
E-Mail Address: law@allisonmackenzie.com

CERTIFICATE OF SERVICE

Pursuant to NRCP Rule 5(b), I hereby certify that I am an employee of ALLISON, MacKENZIE, LTD., Attorneys at Law, and that on this date, I caused the foregoing document to be served on all parties to this action by:

- ☒ Placing a true copy thereof in a sealed postage prepaid envelope in the United States Mail in Carson City, Nevada [NRCP 5(b)(2)(B)]
- ☐ Hand-delivery - via Reno/Carson Messenger Service [NRCP 5(b)(2)(A)]
- ☐ Facsimile
- ☐ Federal Express, UPS, or other overnight delivery
- ☐ E-filing pursuant to Section IV of District of Nevada Electronic Filing Procedures [NRCP 5(b)(2)(D)]

fully addressed as follows:

CHARLES R. KOZAK, ESQ.  
KOZAK LAW FIRM  
3100 Mill Street, Suite 115  
Reno, NV 89502

DATED this 11<sup>th</sup> day of January, 2016.

  
NANCY FONTENOT

4814-6544-3372, v. 1

**EXHIBIT “7”**

**EXHIBIT “7”**



**Nancy Fontenot**

---

**From:** Justin Townsend <jtownsend@allisonmackenzie.com>  
**Sent:** Monday, December 14, 2015 1:53 PM  
**To:** chuck@kozaklawfirm.com  
**Cc:** Nancy Fontenot  
**Subject:** Hughes v. Howard

Chuck,

To confirm our telephone conversation of this afternoon, we have agreed to extend the deadline to hold the 16.1 early case conference for a period of up to 90 days. Please respond that you are in agreement with this extension.

Kind regards,

Justin Townsend, Esq.  
Allison MacKenzie, Ltd.  
402 N. Division Street  
P.O. Box 646  
Carson City, NV 89702  
(775) 687-0202 telephone  
(775) 882-7918 fax  
email: [jtownsend@allisonmackenzie.com](mailto:jtownsend@allisonmackenzie.com)

**EXHIBIT “8”**

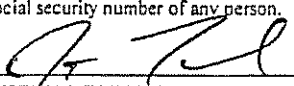
**EXHIBIT “8”**

ALLISON MacKENZIE, LTD.  
402 North Division Street, P.O. Box 646, Carson City, NV 89702  
Telephone: (775) 687-0202 Fax: (775) 882-7918  
E-Mail Address: law@allisonmackenzie.com

1 Case No.15-10DC-0876

2 Dept. No. I

3 The undersigned hereby affirms that  
4 this document does not contain the  
5 social security number of any person.

6   
7 JUSTIN M. TOWNSEND, Esq.

8 IN THE TENTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA  
9 IN AND FOR THE COUNTY OF CHURCHILL

10 SHAUGHNAN L. HUGHES, an  
11 individual,

12 Plaintiff,

13 vs.

14 ELIZABETH C. HOWARD, an  
15 individual; and DOES I through  
16 XX, inclusive.

17 Defendants.  
18

19 NOTICE OF EARLY CASE CONFERENCE AND  
20 REQUEST FOR PRODUCTION OF DOCUMENTS

21 TO: The Defendant above-named, and her attorney of record:

22 PLEASE TAKE NOTICE that the telephonic early case conference in the above-  
23 entitled action will be held at 11:00 a.m. on February 16, 2016. Plaintiff's attorneys will initiate  
24 the telephone conference. The attorneys must have knowledge of the case, and possess authority to  
25 act.

26 Pursuant to NRCP 16.1(a), Plaintiff hereby requests that Defendant provides prior to  
27 the early case conference, but no later than March 1, 2016, the following:

28 A. DOCUMENTS REQUESTED:

1. Any and all documents which Defendant contemplates to be used in  
this matter;

2. All recorded statements, written or oral, by any witness concerning Defendant's admissions, denials and/or affirmative defenses;

3. Copies of any and all correspondence between the parties relating to the allegations in the Complaint and/or Answer in this action;

4. All records, notes, memoranda and documents of or relating to the allegations in the Complaint and/or Answer in this action; and

5. Any and all writings, books, records, accounts, diaries and other material of or relating to the claims and defenses raised in the pleadings in this case.

B. TANGIBLE THINGS:

Identify and describe all tangible things which constitute or contain matters within the scope of Rule 16.1(a) and which are in the possession, custody or control of another party.

C. WITNESS LIST:

A list of persons who Defendant believes has knowledge of any of the subject matter of the allegations, claims, denials or affirmative defenses raised in this litigation. Each person must be identified by name and location, along with a general description of the subject matter of his/her testimony.

In addition, at or prior to the case conference, counsel for the parties must propose a plan and schedule of discovery; discuss settlement and alternative methods of dispute resolution, and any other matter which may aid in the resolution of the case.

AFFIRMATION

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

DATED this 4<sup>th</sup> day of February, 2016.

ALLISON MacKENZIE, LTD.  
402 North Division Street  
Carson City, NV 89703-4168

By: 

JUSTIN M. TOWNSEND, ESQ.  
Nevada State Bar No. 12293

Attorneys for Plaintiff,  
SHAUGHNAN L. HUGHES

ALLISON MacKENZIE LTD.  
402 North Division Street, P.O. Box 646, Carson City, NV 89702  
Telephone: (775) 687-0202 Fax: (775) 882-7918  
E-Mail Address: lmv@allisonmackenzie.com

CERTIFICATE OF SERVICE

Pursuant to NRCP Rule 5(b), I hereby certify that I am an employee of ALLISON MacKENZIE, LTD., Attorneys at Law, and that on this date, I caused the foregoing document to be served on all parties to this action by:

- ☒ Placing a true copy thereof in a sealed postage prepaid envelope in the United States Mail in Carson City, Nevada [NRCP 5(b)(2)(B)]
- ☒ Electronic Transmission
- ☐ Facsimile
- ☐ Federal Express, UPS, or other overnight delivery
- ☐ E-filing pursuant to Section IV of District of Nevada Electronic Filing Procedures [NRCP 5(b)(2)(D)]

fully addressed as follows:

CHARLES R. KOZAK, ESQ.  
KOZAK LAW FIRM  
3100 Mill Street, Suite 115  
Reno, NV 89502  
[chuck@kozaklawfirm.com](mailto:chuck@kozaklawfirm.com)

DATED this 4<sup>th</sup> day of February, 2016.

  
NANCY FONTENOT

4840-9696-4397, v. 1

**EXHIBIT “9”**

**EXHIBIT “9”**

**Nancy Fontenot**

---

**From:** Nan Adams <nan@kozaklawfirm.com>  
**Sent:** Monday, March 07, 2016 9:24 PM  
**To:** Nancy Fontenot  
**Subject:** Case No. 15-10DC-0876 Hughes v. Howard  
**Attachments:** Joint Case Conference Report Draft CRK rev. 3.7.16.doc

Hi Nancy,

Please find attached the Joint Case Conference Report draft with Mr. Kozak's additions. The initial disclosure will be sent tomorrow, 3/8/16 (as per the indication in the draft).

Nancy, thank you for your assistance.

Nan Adams  
Legal Secretary  
Kozak Law Firm  
3100 Mill Street, Suite 115  
Reno, NV 89502  
(775) 322-1239

**EXHIBIT “10”**

**EXHIBIT “10”**



Justin Townsend

---

**From:** Chuck Kozak <chuck@kozaklusianilaw.com>  
**Sent:** Friday, May 20, 2016 11:14 AM  
**To:** Justin Townsend  
**Subject:** Re: Hughes v. Howard - 16.1 Initial Production

Dear Mr. Townsend,

I was under the impression they went out yesterday. However they will be delivered today without fail.

Thanks,

Chuck Kozak

On Thu, May 19, 2016 at 4:07 PM, Justin Townsend <[jtownsend@allisonmackenzie.com](mailto:jtownsend@allisonmackenzie.com)> wrote:

Mr. Kozak,

As you know, at the pretrial conference on Tuesday the Court ordered you to provide me with your initial production of documents and list of witnesses. You were ordered to provide these documents to me via Reno Carson Messenger Service ("RCMS") for delivery no later than today. RCMS comes by our office twice daily. They have just completed their second delivery of the day to our office and there has been no delivery of your initial production.

Please advise the status of this matter ASAP.

Regards,

Justin Townsend, Esq.

Allison MacKenzie, Ltd.

402 N. Division Street

P.O. Box 646

Carson City, NV 89702

(775) 687-0202 telephone

(775) 882-7918 fax

email: jtownsend@allisonmackenzie.com

***PERSONAL AND CONFIDENTIAL:** This message originates from the law firm of Allison MacKenzie, Ltd. This message and any file(s) or attachment(s) transmitted with it are confidential and may include information subject to the attorney-client privilege, information protected by the attorney work product doctrine, or information which is otherwise proprietary, a trade secret or protected against unauthorized use or disclosure. This message and any file(s) or attachment(s) transmitted with it are transmitted based on a reasonable expectation of privacy. Any disclosure, distribution, copying, or use of this information by anyone other than the intended recipient, regardless of address or routing, is strictly prohibited. If you receive this message in error, please advise the sender by immediate reply and delete the original message.*

A&M-ver.-xz1.1

**EXHIBIT “11”**

**EXHIBIT “11”**

## Justin Townsend

---

**From:** Justin Townsend  
**Sent:** Tuesday, March 08, 2016 9:35 AM  
**To:** chuck@kozaklawfirm.com  
**Cc:** nan@kozaklawfirm.com; Nancy Fontenot  
**Subject:** Joint Case Conference Report  
**Attachments:** Joint Case Conference Report.pdf

Mr. Kozak,

I am in receipt of your proposed modifications to the Joint Case Conference Report. I am also informed that you intend to serve your initial disclosures today. Please be advised that your initial disclosures were due on March 1, 2016 under NRCp 16.1(a)(1). On February 4, 2016 we served you with a Notice of Early Case Conference and Request for Production of Documents, which informed you of the March 1, 2016 deadline and demanded your initial disclosures by said deadline. Moreover, we complied with the foregoing rule and served you with our initial disclosures on March 1, 2016.

In what has become a constant in this litigation, you and your client are late and your disregard for the rules will not be tolerated. Not once have you asked for an extension of time to file or serve any of the numerous documents that have been filed and/or served late. We will be filing a request for a pre-trial conference at which the Court will be made aware of these multiple failures. Sanctions will also be on the table.

One of the changes you have requested to the Joint Case Conference Report is to the section concerning jury demands. There are at least two reasons I will not consent to your requested change. First, you have not made a jury demand and a jury demand cannot be made via the joint case conference report. Second, this is an action for partition and nothing more. An action for partition is an action in equity for which a jury trial may not be appropriate. You are free to make a formal jury demand under the rules in which case the propriety of a jury trial in this matter can be discussed at the pre-trial conference I will request.

One other change I cannot agree to. You suggest that dispositive motions be filed no later than close of discovery. This deadline should come after the close of discovery so that all discovery may be used in support of any filed dispositive motion. If discovery is produced on the last day of the discovery period, which may give rise to a potential dispositive motion, some time to craft that motion should be allowed. I suggest that the deadline to file dispositive motions be set at 30 days after close of discovery (I had originally suggested 30 days prior to trial). I have made that change in the attached document. Please advise if this is acceptable.

The rest of your changes are acceptable to me. Therefore, please find attached a pdf version of the Joint Case Conference Report, which includes the changes noted in this email. Please sign and return the original signed document to me today so that we can get this on file. If I do not have a signed Joint Case Conference Report in hand from you by this Friday (3/11), we will proceed to file an individual case conference report.

Regards,

Justin Townsend, Esq.  
Allison MacKenzie, Ltd.  
402 N. Division Street  
P.O. Box 646  
Carson City, NV 89702  
(775) 687-0202 telephone  
(775) 882-7918 fax

**EXHIBIT “12”**

**EXHIBIT “12”**

**Tiffany Josephs**

---

**From:** Nan Adams <nan@kozaklusianilaw.com>  
**Sent:** Tuesday, May 17, 2016 2:37 PM  
**To:** Tiffany Josephs  
**Subject:** Re: Case No. 15-10DC-0876 Hughes v. Howard  
**Attachments:** Howard Defendant's Case Conference Report.pdf

On Tue, May 17, 2016 at 1:57 PM, Nan Adams <nan@kozaklusianilaw.com> wrote:

----- Forwarded message -----

**From:** Nan Adams <nan@kozaklusianilaw.com>  
**Date:** Tue, May 17, 2016 at 1:53 PM  
**Subject:** Re: Case No. 15-10DC-0876 Hughes v. Howard  
**To:** Nan Adams <nan@kozaklawfirm.com>

On Tue, Feb 9, 2016 at 12:51 PM, Chuck Kozak <chuck@kozaklawfirm.com> wrote:  
Nan,

We need to email this to Tiffany right away. Might as well fax too.

----- Forwarded message -----

**From:** Tiffany Josephs <tjosephs@churchillcourts.org>  
**Date:** Tue, Feb 9, 2016 at 10:43 AM  
**Subject:** Case No. 15-10DC-0876 Hughes v. Howard  
**To:** "chuck@kozaklawfirm.com" <chuck@kozaklawfirm.com>  
**Cc:** Sue Sevon <ssevon@churchillcourts.org>

Good morning Mr. Kozak,

Per our conversation last week, you indicated you would be faxing a file-stamped copy of your Opposition to the Motion to Dismiss. As of this time, we have not received a fax from your office. That same evening, Ms. Howard called us asking if we had found the document. I informed her that you were going to be sending us a copy.

We are reaching out to you because we are concerned you may have faxed it and we did not receive it. If it's more convenient, you can email the document to me.

We are staying on top of this because we are concerned we have misfiled a document and this is a high priority for this office to avoid. Your cooperation with this is appreciated.

Thank you,

Tiffany Josephs

Deputy Court Clerk

Tenth Judicial District Court

73 N. Maine Street, Suite B

Fallon, NV 89406

775-423-6088 ext. 260

775-423-8578 Fax

tjosephs@churchillcourts.org

www.churchillcounty.org

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--

Charles R. Kozak

chuck@kozaklawfirm.com

Charles R. Kozak Attorney at Law, LLC

3100 Mill Street #115

Reno, NV 89502

775-322-1239

--  
Nan Adams  
Kozak Lusiani Law  
3100 Mill Street, Suite 115  
Reno, Nevada 89502  
Telephone: (775) 322-1239  
Facsimile: (775) 800-1767

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Facsimile: (775) 800-1767



1 Case No. 15-10DC-0876

2 Dept. No. I

3  
4 IN THE TENTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

5  
6 IN AND FOR THE COUNTY OF CHURCHILL

7 SHAUGHNAN L. HUGHES, an  
8 individual,

9 Plaintiff,  
10 vs.

11 ELIZABETH C. HOWARD, an  
12 individual; and DOES I through  
13 XX, inclusive,

14 Defendants

15 ELIZABETH C. HOWARD, an  
16 individual,

17 Counterclaimant,  
18 vs.

19 SHAUGHAN L. HUGHES, an  
20 individual; and DOES I through  
21 XX, inclusive,

22 Counterdefendants

23 DEFENDANT'S CASE CONFERENCE REPORT

24  
25 DISCOVERY PLANNING/DISPUTE CONFERENCE REQUESTED: YES \_\_\_ NO X  
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I.

PROCEEDINGS PRIOR TO CASE CONFERENCE REPORT

- A. DATE OF FILING OF COMPLAINT: July 27, 2015.
- B. DATE OF FILING OF ANSWER BY DEFENDANT: November 20, 2015.
- C. DATE THAT EARLY CASE CONFERENCE WAS HELD AND WHO ATTENDED: The early case conference was held telephonically on February 16, 2016. JUSTIN M. TOWNSEND, Esq. attended on behalf of Plaintiff and CHARLES R. KOZAK, Esq. attended on behalf of Defendant.

II.

A BRIEF DESCRIPTION OF THE NATURE OF THE ACTION

AND EACH CLAIM FOR RELIEF OR DEFENSE: [16.1(c)(1)]

- A. Description of the action: Plaintiff and Defendant own, in joint tenancy, an undivided one hundred percent (100%) interest in real property commonly referred to as 11633 Fulkerson Road, Fallon, Nevada 89406. Plaintiff seeks a partition or sale of the aforementioned property under NRS Chapter 39.
- B. Defendant should not be placed in the position of having to partition the Property and to sell the property as the Plaintiff no legal equitable investment in the property.
- C. Plaintiff exerted undue influence on Defendant to quit claim on the deed five (5) days after she closed the sale.
- D. Plaintiff used Conversion as he knew the monies had by Defendant were for herself and Defendant's mother.
- E. Plaintiff's threatening and wrongful behavior resulted in abusive mental anguish and anguish to the Defendant/Counterclaimant, and such was the Plaintiff's malicious intent.
- F. The only adequate remedy is have the Court Order the Plaintiff to execute the proper documents for Defendant to have sole ownership of the property.

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III.

LIST OF ALL DOCUMENTS, DATA COMPILATIONS AND TANGIBLE THINGS  
IN THE POSSESSION, CUSTODY OR CONTROL OF EACH PARTY WHICH  
WERE IDENTIFIED OR PROVIDED AT THE EARLY CASE CONFERENCE  
OR AS A RESULT THEREOF: [16.1(a)(1)(B) and 16.1(c)(4)]

A. Plaintiff: Provided to Defendant on March 1, 2016, see Exhibit "1" attached hereto.

B. Defendants: Provided to Plaintiff on March 8, 2016.

IV.

LIST OF PERSONS IDENTIFIED BY EACH PARTY AS LIKELY TO HAVE  
INFORMATION DISCOVERABLE UNDER RULE 26(b). INCLUDING  
IMPEACHMENT OR REBUTTAL WITNESSES: [16.1(a)(1)(A) and 16.1(c)(3)]

A. Plaintiff: Provided to Defendants on March 1, 2016, see Exhibit "1" attached hereto.

B. Defendants: Provided to Plaintiff on March 8, 2016.

V.

DISCOVERY PLAN: [16.1(b)(2) and 16.1(c)(2)]

A. What changes, if any, should be made in the timing, form or requirements for disclosures under 16.1(a):

1. Plaintiff's view: None.

2. Defendant's view: None.

When disclosures under 16.1(a)(1) were made or will be made:

1. Plaintiff's disclosures: March 1, 2016.

2. Defendant's disclosures: March 8, 2016.

B. Subjects on which discovery may be needed:

1. Plaintiff's view: Discoverable areas within the Rules of Civil Procedure on the Complaint allegations and Defendants' denials and defenses.

2. Defendants' view: Discoverable areas within the Rules of Civil Procedure on the Complaint allegations and Defendant's denials and defenses.

C. Should discovery be conducted in phases or limited to or focused upon particular issues?

1. Plaintiff's view: Discovery should be focused upon ascertaining the value of the property, each party's respective interest therein, and whether partition or sale under NRS Chapter 39 makes more sense under the existing circumstances.

2. Defendant's view: All Discovery which could lead to admissible evidence.

D. What changes, if any, should be made in limitations on discovery imposed under these rules and what, if any, other limitations should be imposed?

1. Plaintiff's view: None.

2. Defendant's view: None.

E. What, if any, other orders should be entered by Court under Rule 26(c) or Rule 16(b) and (c):

1. Plaintiff's view: None.

2. Defendant's view: None.

F. Estimated time for trial:

1. Plaintiff's view: 1 day.

2. Defendant's view: 4 days.

#### VI.

#### DISCOVERY AND MOTION DATES: [16.1(c)(5)-(8)]

A. Dates agreed by the parties:

1. Close of discovery: June 30, 2016

2. Final date to file motions to amend pleadings or add parties (without a further court order): 90 days before close of discovery.

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3. Final dates for expert disclosures:

- i. initial disclosure: 45 days before close of discovery
- ii. rebuttal disclosures: 30 days after initial disclosure

4. Final date to file dispositive motions: 30 days prior to trial

B. In the event the parties do not agree on dates, the following section must be completed:

1. Plaintiff's suggested close of discovery: N/A  
enter calendar date

2. Defendant's suggested close of discovery: N/A  
enter calendar date

1. Final date to file motions to amend pleadings or add parties (without a further court order):

Plaintiff's suggested: N/A  
enter calendar date  
(Not later than 90 days before close of discovery)

Defendant's suggested: N/A

enter calendar date  
(Not later than 90 days before close of discovery)

1. Final dates for expert disclosures:

i. Plaintiff's suggested initial disclosure: N/A

enter calendar date  
(Not later than 90 days before discovery cut-off date)

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Defendant's suggested initial disclosure: N/A

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enter calendar date  
(Not later than 90 days  
before discovery cut-  
off date)

ii. Plaintiff's suggested rebuttal disclosures: N/A

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enter calendar date  
(Not later than 30 days  
after initial disclosure  
of experts)

Defendant's suggested rebuttal disclosures: N/A

\_\_\_\_\_

enter calendar date  
(Not later than 30 days  
after initial disclosure  
of experts)

2. Final date to file dispositive motions:

Plaintiff's suggested: N/A

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enter calendar date  
(Not later than 30 days  
after discovery cut-off  
date)

Defendant's suggested: Close of Discovery

enter calendar date  
(Not later than 30 days  
after discovery cut-off  
date)

Failure to agree on the calendar dates in this subdivision shall result in a  
discovery planning conference.

VII.

JURY DEMAND: [16.1(c)(10)]

A jury demand has not been filed.

Defendant: Jury is demanded.

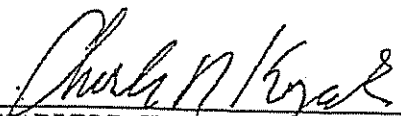
VIII.

INITIAL DISCLOSURES/OBJECTIONS: [16.1(a)(1)]

If a party objects during the Early Case Conference that initial disclosures are not appropriate in the circumstances of this case, those objections must be stated herein. The Court shall determine what disclosures, if any, are to be made and shall set the time for such disclosure.

This report is signed in accordance with Rule 26(g)(1) of the Nevada Rules of Civil Procedure. Each signature constitutes a certification that to the best of the signer's knowledge, information and belief, formed after a reasonable inquiry, the disclosures made by the signer are complete and correct as of this time.

DATED this 10<sup>th</sup> day of March 2016.

  
CHARLES R. KOZAK, ESQ. (SBN #11179)  
[chuck@kozaklusianilaw.com](mailto:chuck@kozaklusianilaw.com)  
R. CRAIG LUSIANI, ESQ. (SBN #552)  
[craig@kozaklusianilaw.com](mailto:craig@kozaklusianilaw.com)  
KOZAK LUSIANI LAW  
3100 Mill Street, Suite 115  
Reno, Nevada 89502  
Tel (775) 322-1239; Fax (775) 800-1767  
ATTORNEYS FOR PLAINTIFF

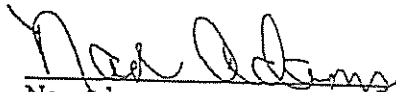
1  
2 CERTIFICATE OF SERVICE  
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4 I certify that I am an employee working for Kozak Law Firm and am a citizen of the  
5 United States, over twenty-one years of age, and not a party to the within action. My business  
6 address is 3100 Mill Street, Suite 115, Reno, Nevada 89502.

7 On the 10<sup>th</sup> March 2016, I caused to be delivered via facsimile and U.S.  
8 Mail, postage fully prepaid, a true and correct copy of the foregoing document in Case No. 15-  
9 10DC-0876, Dept. I, to the following party(ies):  
10

11 Justin M. Townsend, Esq.  
12 Allison MacKenzie, Ltd.  
13 Nevada State Bar No. 12293  
14 402 N. Division Street  
15 P. O. Box 646  
16 Carson City, Nevada 89702  
17 Phone (775) 687-0202  
18 Facsimile (775) 882-7918  
19 Attorney for Plaintiff

20 DATED this 10<sup>th</sup> day of March 2016.  
21

22   
23 Nan Adams  
24 Employee of Kozak Law Firm  
25  
26  
27  
28



**EXHIBIT “13”**

**EXHIBIT “13”**

**Nancy Fontenot**

---

**From:** Justin Townsend <jtownsend@allisonmackenzie.com>  
**Sent:** Wednesday, June 29, 2016 4:25 PM  
**To:** chuck@kozaklawfirm.com  
**Cc:** nan@kozaklawfirm.com  
**Subject:** Opposition to Motion to Dismiss

Mr. Kozak,

Yesterday, you told me on the phone that the Opposition to Motion to Dismiss you filed on or about June 20, 2016 was in response to the Court's May 19, 2016 Order After Pretrial Conference. Per the Court's May 19, 2016 Order After Pretrial Conference:

"ELIZABETH C. HOWARD shall have until July 8, 2016 to file a supplement to her Motion to Set Aside Dismissal of Counterclaim filed on May 17, 2016."

From the Pretrial Conference itself the Court noted the deficiencies in your Motion to Set Aside Dismissal include, but may not be limited to, failure to attach the Opposition you supposedly filed on December 30, 2016, failure to provide adequate proof of such a filing, and failure to provide proof of service of the Opposition on my office.

The Opposition you filed on or about June 20, 2016 does not meet the requirements of the Court's May 19, 2016 Order. Please withdraw the June 20, 2016 Opposition and refile by July 8, 2016 the supplement required by the Court. If you do not withdraw the June 20, 2016 Opposition (which is 6 months late) by July 8, 2016, we will file a Motion to Strike the pleading and ask the Court for attorneys' fees.

Regards,

Justin Townsend, Esq.  
Allison MacKenzie, Ltd.  
402 N. Division Street  
P.O. Box 646  
Carson City, NV 89702  
(775) 687-0202 telephone  
(775) 882-7918 fax  
email: [jtownsend@allisonmackenzie.com](mailto:jtownsend@allisonmackenzie.com)

**EXHIBIT “14”**

**EXHIBIT “14”**



**KOZAK LUSIANI LAW, LLC**

3100 Mill Street  
Suite 115  
Reno, NV 89502  
P: 775.323.1239  
F: 775.800.1767  
KozakLusianiLaw.com

June 22, 2016

Dear Allison,

I apologize, I accidently sent out the Request for Submission of Elizabeth Howards Notice of Motion and Motion to Set Aside Dismissal of Counterclaim. I did send the correct copy to the Court. I apologize for any inconvenience.

Respectfully,

Dedra Sonne  
Paralegal

Attorneys:

**Charles R. Kozak**  
Chuck@KozakLusianiLaw.com  
Admitted States:  
Nevada  
California

**R. Craig Lusiani**  
Craig@KozakLusianiLaw.com  
Admitted States:  
Nevada  
California  
US Supreme Court

**Susan M. Leeder**  
Susan@KozakLusianiLaw.com  
Admitted States:  
California



**KOZAK LUSTANI LAW, LLC**

3100 Mill Street  
Suite 115  
Reno, NV 89502  
P: 775-322-1239  
F: 775-800-1267  
KozakLusianiLaw.com

June 22, 2016

Dear Justin,

I apologize, I accidently sent out the Request for Submission of Elizabeth Howards Notice of Motion and Motion to Set Aside Dismissal of Counterclaim. I did send the correct copy to the Court. I apologize for any inconvenience.

Respectfully,

Dedra Sonne  
Paralegal

Attorneys:

**Charles R. Kozak**  
Chuck@KozakLusianiLaw.com  
Admitted States:  
Nevada  
California

**R. Craig Lusiani**  
Craig@KozakLusianiLaw.com  
Admitted States:  
Nevada  
California  
US Supreme Court

**Susan M. Leeder**  
Susan@KozakLusianiLaw.com  
Admitted States:  
California

**EXHIBIT “15”**

**EXHIBIT “15”**

ALLISON MacKENZIE, LTD.

Invoice No.: 161591

September 10, 2015

PROFESSIONAL SERVICES RENDERED

Date	Atty	Description of Services Rendered	Hours
8/19/15	JMT	correspondence with client re status of service	.20

ALLISON MACKENZIE, LTD.

Invoice No.: 162377

October 1, 2015

**PROFESSIONAL SERVICES RENDERED**

<b>Date</b>	<b>Atty</b>	<b>Description of Services Rendered</b>	<b>Hours</b>
9/18/15	JMT	Attention to drafting, signing, and filing affidavit for publication of summons and proposed order re the same	.75
9/28/15	JMT	Attention to revising summons for publication	.50



ALLISON MACKENZIE, LTD.

Invoice No.: 162920

November 10, 2015

**PROFESSIONAL SERVICES RENDERED**

Date	Atty	Description of Services Rendered	Hours
10/27/15	JMT	Telephone calls with client; review Elizabeth's gofundme account; review service rules to determine timing of filing for default	1.30
10/28/15	JMT	Receipt and review voicemail and email from client re service issues; respond to the same	.75

ALLISON MACKENZIE, LTD.

Invoice No.: 163499

December 3, 2015

**PROFESSIONAL SERVICES RENDERED**

<b>Date</b>	<b>Atty</b>	<b>Description of Services Rendered</b>	<b>Hours</b>
11/03/15	JMT	Receipt and review correspondence from client re Elizabeth's most recent statements	.60
11/17/15	JMT	Prepare notice of intent to take default; prepare and send letter with notice to Charles Kozak, Esq. and Elizabeth Howard	2.50
11/19/15	JMT	Receipt and review faxed notice of appearance filed by Charles Kozak, Esq., on behalf of Elizabeth	.30
11/23/15	JMT	Receipt and review answer and counterclaim	.80
11/24/15	JMT	Correspondence with client re answer and counterclaim	.20

ALLISON MacKENZIE, LTD.

Invoice No.: 164071

January 14, 2016

PROFESSIONAL SERVICES RENDERED

Date	Atty	Description of Services Rendered	Hours	Rate	Amount
12/01/15	JMT	Meeting with client	2.00	275.00	550.00
12/04/15	JMT	Receipt and review documents from client	.50	275.00	137.50
12/08/15	JMT	Attention to drafting motion to dismiss and motion to strike; correspondence with client re the same	1.30	275.00	357.50
12/10/15	JMT	Finish drafting motion to dismiss	3.50	275.00	962.50
12/11/15	JMT	Finalize and file motion to dismiss and motion to strike	.80	275.00	220.00
12/14/15	JMT	Telephone call with Chuck Kozak re confirmation that he received motion to dismiss and to discuss extending deadline to hold 16.1 early case conference	.50	275.00	137.50
12/18/15	JMT	Correspondence with client re status of motion to dismiss	.20	275.00	55.00
12/29/15	JMT	Confirm with court that no opposition has been filed; prepare reply, proposed order, and request to submit; file the same with the court	1.20	275.00	330.00

ALLISON MACKENZIE, LTD.

Invoice No.: 164944

February 4, 2016

**PROFESSIONAL SERVICES RENDERED**

Date	Atty	Description of Services Rendered	Hours	Rate	Amount
1/08/16	JMT	Receipt and review order granting motion to dismiss	.50	275.00	137.50
1/28/16	JMT	Attention to preparing notice of early case conference	.50	275.00	137.50

ALLISON MACKENZIE, LTD.

Invoice No.: 165440

March 9, 2016

**PROFESSIONAL SERVICES RENDERED**

Date	Atty	Description of Services Rendered	Hours	Rate	Amount
2/04/16	JMT	Telephone call to Charles Kozak to coordinate early case conference	.50	275.00	137.50
2/16/16	JMT	Early case conference with opposing counsel via telephone	.60	275.00	165.00
2/18/16	JMT	Correspondence with client re outcome of early case conference with Charles Kozak; attention to drafting joint case conference report	1.20	275.00	330.00

ALLISON MACKENZIE, LTD.

Invoice No.: 165988

April 5, 2016

**PROFESSIONAL SERVICES RENDERED**

Date	Atty	Description of Services Rendered	Hours	Rate	Amount
3/08/16	JMT	Receipt and review email from Kozak's office with comments to joint case conference report; respond to the same; discuss the same with client	.80	275.00	220.00

**ALLISON MacKENZIE, LTD.**

Invoice No.: 166473

May 9, 2016

**PROFESSIONAL SERVICES RENDERED**

Date	Atty	Description of Services Rendered	Hours	Rate	Amount
4/01/16	JMT	Prepare and file request for pretrial conference; prepare and file reply to non-opposition and request to submit	1.60	275.00	440.00
4/04/16	JMT	Communications with court and with client re setting pretrial conference	.50	275.00	137.50
4/07/16	JMT	Correspondence from opposing counsel and court re setting pretrial conference	.20	275.00	55.00
4/13/16	JMT	Correspondence with client re court's setting of pretrial conference	.20	275.00	55.00
4/20/16	JMT	Meeting with client	1.00	275.00	275.00

ALLISON MACKENZIE, LTD.

Invoice No.: 166960

June 6, 2016

PROFESSIONAL SERVICES RENDERED

Date	Atty	Description of Services Rendered	Hours	Rate	Amount
5/17/16	JMT	Prepare for and attend meeting with client and pretrial conference in Fallon	5.30	275.00	1,457.50
5/18/16	JMT	Communications with client re status of counterclaim and to discuss concerns from pretrial conference	.75	275.00	206.25
5/20/16	JMT	Correspondence with opposing counsel re status of initial production; receipt and review initial production from Kozak; receipt and review order after pretrial conference	1.50	275.00	412.50



ALLISON MACKENZIE, LTD.

Invoice No.: 167433

July 12, 2016

PROFESSIONAL SERVICES RENDERED

Date	Atty	Description of Services Rendered	Hours	Rate	Amount
6/07/16	JMT	Receipt and review emails from client re harassment from Elizabeth	.40	275.00	110.00
6/28/16	JMT	Receipt and review motion for summary judgment; receipt and review purported opposition to our motion to dismiss; telephone calls to opposing counsel to discuss merits and timing of the same; prepare for settlement conference	2.50	275.00	687.50

Invoice No.: 167888

August 8, 2016

**PROFESSIONAL SERVICES RENDERED**

Date	Atty	Description of Services Rendered	Hours	Rate	Amount
7/01/16	JMT	Correspondence from client re motion for summary judgment	.40	275.00	110.00
7/05/16	JMT	Receipt and review information from client re motion for summary judgment	.60	275.00	165.00
7/06/16	JMT	Receipt and review documents dropped off by client	.50	275.00	137.50
7/07/16	JMT	Receipt and review notice of withdrawal of June 20 opposition to motion to dismiss and filing of supplement to motion to set aside dismissal	.80	275.00	220.00
7/08/16	JMT	Attention to drafting opposition to motion for summary judgment	1.30	275.00	357.50
7/11/16	JMT	Meet with client to go over documents and discuss motion for summary judgment; further attention to drafting opposition	1.60	275.00	440.00
7/12/16	JMT	Further attention to drafting opposition to motion to summary judgment; attention to drafting affidavits of counsel and client; send request for extension of time to file opposition	4.20	275.00	1,155.00
7/13/16	JMT	Correspondence from client re taxes and other issues re summary judgment	.30	275.00	82.50
7/15/16	JMT	Further attention to drafting opposition to motion for summary judgment	1.80	275.00	495.00
7/18/16	JMT	Finish drafting opposition to motion for summary judgment; draft affidavit of client in support of the same; meeting with client to go over his comments to draft opposition and to sign affidavit	3.40	275.00	935.00
7/19/16	JMT	Revise opposition to motion for summary judgment re client's comments; compile and attach all exhibits; prepare affidavit of counsel; finalize and file opposition and all affidavits	2.30	275.00	632.50
7/26/16	JMT	Attention to drafting opposition to motion to set aside dismissal	4.20	275.00	1,155.00
7/27/16	JMT	Receipt and review reply to opposition to motion for summary judgment; finalize and file opposition to motion to set aside dismissal; prepare and execute affidavit of counsel in support of opposition to set aside dismissal; telephone calls with client	3.40	275.00	935.00

Invoice No.: 168154

August 25, 2016

## PROFESSIONAL SERVICES RENDERED

Date	Atty	Description of Services Rendered	Hours	Rate	Amount
8/15/16	JMT	Communications with client re potential motion for sanctions; begin researching the same	1.30	275.00	357.50
8/17/16	JMT	Attention to research re sanctions and applicability here	1.40	275.00	385.00
8/18/16	JMT	Further attention to research re sanctions; begin drafting motion for sanctions	2.70	275.00	742.50
8/19/16	JMT	Further attention to drafting motion for sanctions	2.80	275.00	770.00
8/24/16	JMT	Receipt and review correspondence from opposing counsel re requests for submission; finish drafting motion for sanctions	3.80	275.00	1,045.00
8/25/16	JMT	Finalize and file motion for sanctions; prepare, execute, and file affidavit in support thereof	2.50	275.00	687.50

JUSTIN M. TOWNSEND, ESQ.  
Nevada State Bar No. 12293  
ALLISON MacKENZIE, LTD.  
402 North Division Street  
Carson City, NV 89703-4168  
Telephone: (775) 687-0202  
Facsimile: (775) 882-7918  
E-mail: [jtownsend@allisonmackenzie.com](mailto:jtownsend@allisonmackenzie.com)

Electronically Filed  
Feb 09 2018 10:02 a.m.  
Elizabeth A. Brown  
Clerk of Supreme Court

Attorneys for Respondent,  
SHAUGHNAN L. HUGHES

**IN THE SUPREME COURT OF THE STATE OF NEVADA**

ELIZABETH C. HOWARD,  
AN INDIVIDUAL,

**Supreme Court Case No. 72685**

District Court Case No. 15-10DC-0876

Appellant,

vs.

SHAUGHNAN L. HUGHES,  
AN INDIVIDUAL,

Respondent.

\_\_\_\_\_ /

**RESPONDENT'S APPENDIX**

**Volume 2 of 5**

**CHRONOLOGICAL APPENDIX TO APPEAL FROM THE  
ORDER AFTER FEBRUARY 6, 2017 HEARING**

<b>DOCUMENT</b>	<b>DATE</b>	<b>VOL</b>	<b>RA NO.</b>
Motion to Dismiss Counterclaim; Motion to Strike	12/11/2015	1	0001-0020
Plaintiff's Reply to the Failure to Oppose Motion to Dismiss Counterclaim; Motion to Strike	12/30/2015	1	0021-0024
Order Granting Plaintiff's Motion to Dismiss Counterclaim; Motion to Strike	01/07/2016	1	0025-0026
Plaintiff's Case Conference Report	03/15/2016	1	0027-0043
Request for Pretrial Conference	03/15/2016	1	0044-0046
Setting Memo	04/08/2016	1	0047-0048
Notice of Motion and Motion to Set Aside Dismissal of Counterclaim	05/16/2016	1	0049-0065
Elizabeth Howard's Opposition to Motion to Dismiss; Motion to Strike	06/20/2016	1	0066-0081
Elizabeth Howard's Motion for Summary Judgment	06/28/2016	1	0082-0207
Notice of Withdrawal of Elizabeth Howard's Opposition to Motion to Dismiss; Motion to Strike Filed June 20, 2016	07/07/2016	1	0208-0210
Supplement to Elizabeth Howard's Motion to Set Aside Dismissal of Counterclaim Filed May 17, 2016	07/07/2016	1	0211-0227
Opposition to Motion for Summary Judgment	07/20/2016	2	0228-0305
Affidavit of Justin M. Townsend, Esq.	07/20/2016	2	0306-0312
Affidavit of Shaughnan L. Hughes	07/20/2016	2	0313-0317
Reply to Opposition to Motion for Summary Judgment	07/27/2016	2	0318-0326
Opposition to Motion to Set Aside Dismissal of Counterclaim	07/28/2016	2	0327-0365
Affidavit of Justin M. Townsend, Esq.	07/28/2016	2	0366-0369

Motion for Sanctions	08/26/2016	2	0370-0442
Affidavit of Justin M. Townsend, Esq.	08/26/2016	3	0443-0447
Verified Opposition to Motion for Sanctions	09/09/2016	3	0448-0459
Reply to Verified Opposition to Motion for Sanctions	09/21/2016	3	0460-0467
Defendant's Case Conference Report	01/03/2017	3	0468-0493
Motion in Limine	01/09/2017	3	0494-0527
Defendant's Pre-Trial Disclosures Pursuant to NRCP 16.1(3)	01/17/2017	3	0528-0538
Opposition to Plaintiff's Motion in Limine or in the Alternative Motion for Leave to Amend Answer	01/20/2017	3	0539-0545
Plaintiff's Pretrial Disclosures	01/23/2017	3	0546-0551
Reply to Opposition to Motion in Limine and Opposition to Motion for Leave to Amend Answer	01/25/2017	3	0552-0558
Supplemental Pretrial Witness Disclosure	01/25/2017	3	0559-0561
Trial Statement	01/27/2017	3	0562-0628
Trial Statement	01/31/2017	3	0629-0650
Plaintiff's Trial Exhibit 1		3	0651-0653
Plaintiff's Trial Exhibit 2		4	0654-0671
Plaintiff's Trial Exhibit 3		4	0672-0676
Plaintiff's Trial Exhibit 4		4	0677-0726
Plaintiff's Trial Exhibit 5		4	0727-0858
Plaintiff's Trial Exhibit 8		4	0859-0871
Plaintiff's Trial Exhibit 9		4	0872
Plaintiff's Trial Exhibit 10		4	0873
Plaintiff's Trial Exhibit 11		4	0874
Plaintiff's Trial Exhibit 12		4	0875
Plaintiff's Trial Exhibit 13		4	0876
Plaintiff's Trial Exhibit 14		4	0877
Defendant's Trial Exhibit J		5	0878-0901
Defendant's Trial Exhibit L		5	0902-0989

**ALPHABETICAL APPENDIX TO APPEAL FROM THE  
ORDER AFTER FEBRUARY 6, 2017 HEARING**

<b>DOCUMENT</b>	<b>DATE</b>	<b>VOL</b>	<b>AA NO.</b>
Affidavit of Justin M. Townsend, Esq.	07/20/2016	2	0306-0312
Affidavit of Justin M. Townsend, Esq.	07/28/2016	2	0366-0369
Affidavit of Justin M. Townsend, Esq.	08/26/2016	3	0443-0447
Affidavit of Shaughnan L. Hughes	07/20/2016	2	0313-0317
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Elizabeth Howard's Opposition to Motion to Dismiss; Motion to Strike	06/20/2016	1	0066-0081
Motion for Sanctions	08/26/2016	2	0370-0442
Motion in Limine	01/09/2017	3	0494-0527
Motion to Dismiss Counterclaim; Motion to Strike	12/11/2015	1	0001-0020
Notice of Motion and Motion to Set Aside Dismissal of Counterclaim	05/16/2016	1	0049-0065
Notice of Withdrawal of Elizabeth Howard's Opposition to Motion to Dismiss; Motion to Strike Filed June 20, 2016	07/07/2016	1	0208-0210
Opposition to Motion for Summary Judgment	07/20/2016	2	0228-0305
Opposition to Motion to Set Aside Dismissal of Counterclaim	07/28/2016	2	0327-0365
Opposition to Plaintiff's Motion in Limine or in the Alternative Motion for Leave to Amend Answer	01/20/2017	3	0539-0545
Order Granting Plaintiff's Motion to Dismiss Counterclaim; Motion to Strike	01/07/2016	1	0025-0026

Plaintiff's Case Conference Report	03/15/2016	1	0027-0043
Plaintiff's Pretrial Disclosures	01/23/2017	3	0546-0551
Plaintiff's Reply to the Failure to Oppose Motion to Dismiss Counterclaim; Motion to Strike	12/30/2015	1	0021-0024
Plaintiff's Trial Exhibit 1		3	0651-0653
Plaintiff's Trial Exhibit 2		4	0654-0671
Plaintiff's Trial Exhibit 3		4	0672-0676
Plaintiff's Trial Exhibit 4		4	0677-0726
Plaintiff's Trial Exhibit 5		4	0727-0858
Plaintiff's Trial Exhibit 8		4	0859-0871
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Reply to Opposition to Motion for Summary Judgment	07/27/2016	2	0318-0326
Reply to Opposition to Motion in Limine and Opposition to Motion for Leave to Amend Answer	01/25/2017	3	0552-0558
Reply to Verified Opposition to Motion for Sanctions	09/21/2016	3	0460-0467
Request for Pretrial Conference	03/15/2016	1	0044-0046
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Supplemental Pretrial Witness Disclosure	01/25/2017	3	0559-0561
Trial Statement	01/27/2017	3	0562-0628
Trial Statement	01/31/2017	3	0629-0650
Verified Opposition to Motion for Sanctions	09/09/2016	3	0448-0459



CERTIFICATE OF APPENDIX - NRAP 30(g)(1)

In compliance with NRAP 30(g)(1), I hereby certify that this Appendix consists of true and correct copies of the papers in the District Court file.

DATED this 8<sup>th</sup> day of February, 2018.

**ALLISON MacKENZIE, LTD.**

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By: /s/ Justin M. Townsend  
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jtownsend@allisonmackenzie.com

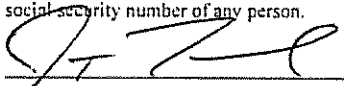
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1 Case No.15-10DC-0876

2 Dept. No. I

3 The undersigned hereby affirms that  
4 this document does not contain the  
5 social security number of any person.

6   
7 JUSTIN M. TOWNSEND, Esq.

BY Sue Syron DEPUTY

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8 IN THE TENTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA  
9 IN AND FOR THE COUNTY OF CHURCHILL

10 SHAUGHNAN L. HUGHES, an  
11 individual,

12 Plaintiff,

13 vs.

14 ELIZABETH C. HOWARD, an  
15 individual; and DOES I through  
16 XX, inclusive.

17 Defendants.

OPPOSITION TO MOTION FOR  
SUMMARY JUDGMENT

18 COMES NOW, Plaintiff, SHAUGHNAN L. HUGHES ("HUGHES"), by and  
19 through his attorneys, ALLISON MacKENZIE, LTD., and hereby opposes the Motion for Summary  
20 Judgment filed by Defendant, ELIZABETH C. HOWARD. This Opposition is made and based  
21 upon the pleadings and documents on file herein as well as the following Memorandum of Points &  
22 Authorities, the Affidavit of Justin M. Townsend, Esq. ("Aff. of J. Townsend"), and the Affidavit of  
23 SHAUGHNAN L. HUGHES ("Aff. of HUGHES").

MEMORANDUM OF POINTS AND AUTHORITIES

24 I.

NOTE ON DEFENDANT'S COUNTERCLAIMS

25 Defendant refers to herself as a Counterclaimant in the caption of her Motion and  
26 baldly states right from the start that she "has asserted claims of fraud, undue influence and  
27 emotional distress." Motion, p. 2, l. 7. Defendant's Motion for Summary Judgment seems to be  
28

1 largely based on these claims. Indeed, her request for relief includes a demand that her "request for  
2 specific performance of rescission of the Quit Claim Deed should be granted" and that after  
3 summary judgment is granted that the "case should proceed thereafter on Ms. Howard's  
4 counterclaims against Hughes." Motion, p. 6, l. 28 to p. 7, l. 9.

5 Defendant ignores that her counterclaims were dismissed by this Court on January 7,  
6 2016, more than six months prior to her filing of the instant Motion. To the extent her Motion for  
7 Summary Judgment is based on the claims contained in the dismissed counterclaim, this is reason  
8 alone to deny Defendant's Motion for Summary Judgment.

9 On or about May 16, 2016, Defendant moved to set aside the dismissal of her  
10 counterclaims. The Court, at a pretrial conference held on May 17, 2016, noted several concerns  
11 with the contents of Defendant's Motion to Set Aside Dismissal and ordered her to file a supplement  
12 thereto by July 8, 2016. The verbal order to supplement the Motion to Set Aside Dismissal was later  
13 embodied in a written order dated May 19, 2016. On or about June 20, 2016, Defendant filed an  
14 Opposition to HUGHES' Motion to Dismiss, which was received by counsel for HUGHES on or  
15 about June 28, 2016. Aff. of J. Townsend at ¶ 2. On the day counsel for HUGHES received the  
16 aforementioned Opposition, he called counsel for Defendant to inquire as to why Defendant was  
17 filing an Opposition to a Motion six months after it was due and more than five months after the  
18 Motion had already been granted. *Id.* at ¶ 3. Defendant's counsel asserted that the June 20, 2016  
19 Opposition was filed in response to the May 19, 2016 Order. *Id.* at ¶ 4. Counsel for HUGHES  
20 noted the May 19, 2016 Order required a supplement to the May 17, 2016 Motion to Set Aside  
21 Dismissal and Defendant's counsel responded that the Opposition was the same thing as a  
22 supplement to the Motion to Set Aside Dismissal. *Id.* at ¶ 5.

23 On June 29, 2016, counsel for HUGHES sent an email to counsel for Defendant in  
24 which he demanded that the June 20, 2016 Opposition be withdrawn and that a filing responsive to  
25 the Court's May 19, 2016 Order be filed in its place by the deadline set therein. *Id.* at ¶ 6. On or  
26 about July 7, 2016, Defendant withdrew the June 20, 2016 Opposition and filed a Supplement to  
27 Motion to Set Aside Dismissal. Pursuant to the Court's May 19, 2016 Order, HUGHES has until  
28 July 27, 2016 to file an opposition to Defendant's Supplement, but suffice it say here that the

1 Supplement wholly fails to address the Court's concerns with the Motion to Set Aside Dismissal.  
2 Namely, Defendant offers no proof that she timely filed an Opposition to HUGHES' Motion to  
3 Dismiss or that the Court or the Post Office "lost" Defendant's filing. Further, Defendant does not  
4 even address the fact that HUGHES never received the Opposition she claims to have filed and  
5 served on him on December 30, 2015.

6 Thus, while there is a Motion to Set Aside the Dismissal of Defendant's  
7 counterclaims, those counterclaims have no bearing on this matter at the present time. Defendant  
8 and her counsel know this and to bring the instant Motion for Summary Judgment on the basis of the  
9 dismissed counterclaims is improper and is grounds for an award of attorneys' fees pursuant to NRS  
10 18.010(2)(b), which is to be liberally construed in favor of awarding fees in all appropriate  
11 situations. Further, Defendant is unlikely to prevail on her Motion to Set Aside Dismissal, which  
12 means her counterclaims will not have any bearing on this matter in the future.

## 13 II.

### 14 LEGAL STANDARD

15 NRCP 56(b) provides that "[a] party against whom a claim, counterclaim, or cross-  
16 claim is asserted or a declaratory judgment is sought may, at any time, move with or without  
17 supporting affidavits for a summary judgment in the party's favor as to all or any part thereof."  
18 Summary judgment may only be rendered "if the pleadings, depositions, answers to interrogatories,  
19 and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to  
20 any material fact and that the moving party is entitled to a judgment as a matter of law." NRCP  
21 56(c).

22 When reviewing the record, the Court must construe the evidence and pleadings, and  
23 any reasonable inferences drawn therefrom, "in a light most favorable to the nonmoving party."  
24 *Anderson v. Mandalay Corp.*, 358 P.3d 242, 245, 131 Nev. Adv. Op. 82 (2015) (quoting *Wood v.*  
25 *Safeway, Inc.*, 121 Nev. 724, 729, 121 P.3d 1026, 1029 (2005)). Summary judgment is improper  
26 whenever a reasonable trier of fact could return a verdict in favor of the nonmoving party. *Id.*  
27 (quoting *Sprague v. Lucky Stores, Inc.*, 109 Nev. 247, 249, 849 P.2d 320, 322 (1993)).

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III.

SUMMARY OF ARGUMENT

As this case stands right now, there is but one claim for relief asserted: HUGHES' claim for partition of real property held jointly by HUGHES and the Defendant. A claim for partition is governed by the provisions of NRS Chapter 39. Curiously, Defendant makes no reference to any provision of NRS Chapter 39 in her Motion for Summary Judgment. Instead, she cites two cases to support her assertion that HUGHES has no interest in the property because Defendant purchased the property without financial contribution from HUGHES towards the purchase price. The cases cited by Defendant are inapplicable to the facts of this case because after her purchase of the property, she granted a joint interest therein to HUGHES pursuant to a subsequently recorded quitclaim deed and joint tenants are presumed to hold equal interests. Moreover, even if the Court accepts that Defendant's original payment for the purchase of the property renders the later quitclaim deed meaningless, HUGHES also contributed time and money towards improving the property in amounts that are valued in excess of the original purchase price thereof.

IV.

ARGUMENT

A. The provisions of NRS Chapter 39 govern this matter and HUGHES is entitled to the relief he seeks.

This action is a dispute that is governed by NRS Chapter 39, which authorizes any person in possession of real property as joint tenant to bring an action for partition of said property. NRS 39.010. The provisions of NRS Chapter 39 govern how the partition is to be handled. It is straightforward. The rights of the parties claiming interest in the property is determined by the Court. NRS 39.080. The Court may order a sale or a partition of the property in accordance with the rights of the parties. NRS 39.120. A sale is proper by consent of the parties or where partition of the property "cannot be made without great prejudice to the owners" of the property. NRS 39.120.

A sale of the property, if ordered by the Court, is conducted by the Court pursuant to specific provisions of NRS Chapter 39, including without limitation NRS 39.250 to 39.280,

1 inclusive, NRS 39.340 to 39.350, inclusive, and other relevant provisions. A bench trial in this  
2 matter has been set for October 3, 2016. At trial, HUGHES will present argument and evidence of  
3 his interests in the subject real property and ask the Court for an equitable partition of the property or  
4 for an order to sell the property on terms and conditions that comply with the provisions of NRS  
5 Chapter 39. As a joint tenant, he has the right to request relief under NRS Chapter 39.

6 **B. Common law distinctions between joint tenancy and tenancy in common.**

7 While recognizing the statutory manner of creating a joint tenancy, Nevada has long  
8 recognized the common law aspects of joint tenancy. *Smolen for Smolen v. Smolen*, 114 Nev. 342,  
9 344, 956 P.2d 128, 130 (1998) (noting that creation of a joint tenancy interest is as provided for by  
10 NRS 111.065). At common law, joint tenancy exists when the following four unities exist: (1) unity  
11 of time, (2) unity of title, (3) unity of interest, and (4) unity of possession. *Id.* Nevada courts have  
12 not clearly expounded on the definitions of these interests as such, but outside jurisdictions lay out  
13 the definitions plainly.

14 Unity of time refers to the requirement that the joint tenants acquire title as joint  
15 tenants at the same time. *Edwin Smith, L.L.C. v. Synergy Operating, L.L.C.*, 285 P.3d 656, 662  
16 (N.M. 2012). Unity of title means that joint tenants must acquire their interest by the same  
17 conveyance. *Id.* Here, HUGHES and Defendant acquired title as joint tenants pursuant to a  
18 quitclaim deed dated July 11, 2012, thus satisfying the unities of time and title. A copy of the July  
19 11, 2012 quitclaim deed is hereby incorporated by reference and attached hereto as Exhibit "1".

20 Unity of interest refers to the requirement that joint tenants' shares in the property are  
21 equal and that the duration of their estates are the same. *Id.* Nevada Courts have recognized the  
22 principle of joint tenants presumably holding equal shares. *See Gorden v. Gorden*, 93 Nev. 494, 569  
23 P.2d 397 (1977). Further, in Nevada, placing of property by one party into joint tenancy with  
24 another party, as is the situation here, is presumed to be a gift of one-half the value of the property.  
25 *Id.* at 497. These presumptions are overcome only by clear and convincing evidence to the contrary.  
26 *Id.*

27 Finally, unity of possession exists when each joint tenant has the right to possess the  
28 entire estate and also refers to the right of each joint tenant to an equal undivided share of the whole.

1 *Edwin Smith*, 285 P.3d at 662. HUGHES and Defendant each have the right to possession of the  
2 subject property, although Defendant has infringed on HUGHES' right to possession by locking him  
3 out.

4 At common law, a tenancy in common exists and a joint tenancy may be terminated  
5 when any of the four unities is not present. *See e.g., Alexander v. Boyer*, 253 Md. 511, 519-20, 253  
6 A.2d 359, 364 (1969). Each of the four unities is present in this case, thus reinforcing the joint  
7 tenancy interests of HUGHES and Defendant.

8 **C. The cases cited by Defendant have no application to the facts here.**

9 Defendant cites two cases in the argument portion of her Motion: *Sack v. Tomlin*,  
10 110 Nev. 204, 871 P.2d 298 (1994) and *Langevin v. York*, 111 Nev. 1481, 907 P.2d 981 (1995).  
11 Both of these cases concern suits for partition of real property owned by unmarried cohabitants, but  
12 are distinguished from the facts of the matter at hand.

13 **i. *Sack v. Tomlin***

14 *Sack* concerns property held by unmarried cohabitants, Cathy and Rickey, as tenants  
15 in common. Cathy had acquired the property in fee simple pursuant to a divorce decree in exchange  
16 for a promissory note due to her ex-husband. Later, she conveyed the property to herself and  
17 Rickey, who had previously moved in with Cathy. *Sack*, 110 Nev. at 206-07. That is where the  
18 similarities between that case and the matter hand end.

19 However, there are several important distinctions. First, as previously mentioned,  
20 Cathy conveyed the property to herself and Rickey as tenants in common. *Id.* at 206. Here,  
21 Defendant conveyed the subject property to herself and HUGHES as joint tenants.

22 Second, the reason Cathy conveyed the property to herself and Rickey was so that  
23 they, together, could refinance the property in order that she could pay off the note owed to her ex-  
24 husband as well as another mortgage owed to First Interstate Bank. *Id.* at 206-07. Further, the  
25 parties expected to share the mortgage expenses equally, but Rickey stopped paying his one-half of  
26 the mortgage shortly after moving out. *Id.* at 207. Here there is no mortgage associated with the  
27 parties joint ownership of the property.

1           Lastly, Cathy had built equity in the property for approximately 13 years prior to  
2     conveying an interest to Rickey and at the time of said conveyance, the property was valued at  
3     \$170,000. *Id.* at 208; *see also Id.* at fn. 12. Cathy and Rickey borrowed \$126,000 against the  
4     property, meaning Cathy had \$44,000 in equity built in to the property. *Id.* at fn. 12. The Supreme  
5     Court upheld the lower court's finding that there was no evidence of an intent to grant Rickey an  
6     interest in Cathy's equity. *Id.* at 211-12. This is an important distinction because had the  
7     conveyance from Cathy to Cathy and Rickey as tenants in common been a conveyance of a joint  
8     tenancy interest instead, the presumption is that such a conveyance is a conveyance of one-half the  
9     value of the property. *See Gorden, supra.*, 93 Nev. at 497.

10           In *Sack*, however, as tenants in common, where each party was responsible for one-  
11     half of the new mortgage debt, or \$63,000, the Supreme Court equated said mortgage "value" to  
12     each party's financial interest in the property from the time of conveyance going forward.  
13     Therefore, the Supreme Court concluded that Rickey had a 63/170 interest while Cathy's was 63/170  
14     plus her equity, which accounts for the remaining 44/170. *Sack*, 110 Nev.at 211-12. So, Cathy's  
15     interest, at the time the property was conveyed to herself and Rickey, was equal to 107/170. *Id.* at  
16     211. Thus, the "purchase" of the property at the time title was conveyed to Cathy and Rickey as  
17     tenants in common was unequal and the Supreme Court ordered a split of the sale proceeds in  
18     accordance with the parties' respective tenancy in common interests. *Id.* Further, the Supreme  
19     Court allowed an offset for reimbursement of Cathy's payment of several mortgage payments  
20     without contribution from Rickey. *Id.* at 215-16.

21           Finally, important statements of law comes from *Sack*, but are ignored by Defendant.  
22     First, the Supreme Court notes that "fractional shares held by tenants in common are usually equal  
23     and are presumed to be equal unless circumstances indicate otherwise." *Id.* at 213 (internal citations  
24     omitted). Further, "unequal contributions toward acquisition of property by cotenants who are not  
25     related and show no donative intent can rebut the presumption of equal shares." *Id.* (emphasis  
26     added).

27           HUGHES contends that *Sack* is largely inapplicable to the facts of the matter at hand  
28     due to the distinctions outlined above, principally that tenancy in common is fundamentally distinct



1 from joint tenancy. However, to the extent this Court finds the case useful, HUGHES respectfully  
2 requests that the Court consider one final distinction. That is that Defendant executed a deed  
3 conveying title to herself and HUGHES that cannot be construed to be anything other than a gift.  
4 Unlike *Sack*, Defendant's purpose in conveying title to herself and HUGHES was not for purposes  
5 of refinancing – the property was unencumbered prior to and remained so after conveyance to  
6 Defendant and HUGHES as joint tenants. Unlike *Sack* there is no "purchase" associated with the  
7 later deed from Defendant to HUGHES. The presumption here is plainly that Defendant's intent in  
8 conveying the property to herself and HUGHES was donative in nature. Defendant offers no  
9 plausible alternative. At the very least, Defendant's intent, and whether it was donative or  
10 otherwise, is a question of material fact, which precludes entry of summary judgment.

11 ii. *Langevin v. York*

12 *Langevin* concerns four properties held by unmarried cohabitants, Norman and  
13 Laurie. *Langevin*, 111 Nev. at 1482. *Langevin* is cited by Defendant for the proposition that there is  
14 a presumption that cotenants intended to share in proportion to the amount contributed toward the  
15 purchase price where they have shared unequally. Motion, p. 5, ll. 25-28. There are several  
16 distinguishing factors between *Langevin* and the matter at hand. First, Norman sold property he  
17 owned as his separate property in order that he could move in with Laurie. *Langevin*, 111 Nev. at  
18 1482.

19 The Supreme Court noted that the nature of the relationship between Norman and  
20 Laurie was unclear – Norman was much older than Laurie and Laurie was a real estate agent. *Id.*  
21 After moving in together, Laurie found two parcels for which Norman paid the entire purchase price.  
22 Laurie received real estate commissions from these transactions and Norman and Laurie were listed  
23 on the deed as joint tenants. *Id.*

24 A third parcel was acquired jointly by the parties after a widow deeded it to them  
25 when she could no longer make payments under an encumbrance on the property. *Id.* Norman and  
26 Laurie "took over the payments" but Norman paid all of the closing costs associated with the  
27 acquisition of the property and subsequently made all of the monthly mortgage payments. *Id.*  
28

1 The property into which Norman moved to live with Laurie was owned by Laurie, her  
2 mother, and her stepfather. *Id.* Norman paid Laurie's mother and stepfather to transfer their  
3 interests to Laurie, who then transferred the property to herself and Norman as joint tenants. *Id.*  
4 Norman subsequently made nearly all of the mortgage payments associated with this property. *Id.*

5 Thus, it is clear that all four properties were acquired by Norman and Laurie as joint  
6 tenants at the time of purchase and that the purchase prices, closing costs, and mortgage payments  
7 were made by Norman almost without exception. In contrast, title to the property at issue here was  
8 acquired in joint tenancy by HUGHES and the Defendant AFTER the purchase thereof by  
9 Defendant. This is an important distinction because, as noted above, the law in Nevada is that when  
10 one party places property she owns into joint tenancy with another party, as is the situation here,  
11 such a transfer is presumed to be a gift of one-half the value of the property. *Gorden, supra*, 93 Nev.  
12 at 497.

13 The legal principle set out in *Gorden* does not apply to the situation laid out in  
14 *Langevin* because title was taken by the parties to that case as joint tenants at the time of purchase  
15 rather than after, as here. Thus, the Supreme Court applied the principles laid out in *Sack*, and  
16 concluded that Norman was entitled to share in proportion to his contributions to the acquisition of  
17 the property. *Langevin*, 111 Nev. at 1485-86.

18 The Supreme Court noted the major distinction between *Sack* and *Langevin* being that  
19 in *Sack* the parties held title as tenants in common and in *Langevin* the parties held title as joint  
20 tenants. *Id.* at 1485. The basis for applying the principles of *Sack* in spite of this distinction was that  
21 the Supreme Court in *Sack* had relied on a California decision in which the parties held title as joint  
22 tenants. *Id.*; see also *Kershman v. Kershman*, 192 Cal.App.2d 23 (1961).

23 However, the California Appellate Court in *Kershman* provides an additional  
24 distinction from this case. That court recognized that property may be found to be held other than  
25 what is provided in the deed only where there is an agreement, whether oral or verbal, as to the  
26 intended ownership thereof or where such understanding may be inferred from the conduct of the  
27 parties. 192 Cal.App.2d at 26 (citing *Thomasset v. Thomasset*, 122 Cal.App.2d 116, 133, 264, P.2d  
28 626, 637 (1953)). In *Kershman*, the evidence showed that the parties had an agreement to share

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1 ownership of the property in proportion to their contributions until such time as the party who had  
2 contributed less than the other had reimbursed the other party.

3 Here, there is no agreement, written or verbal, between the parties that would indicate  
4 that the subject property should be held other than as joint tenants with presumed equal ownership  
5 interests. On the contrary, HUGHES will testify that the Defendant on numerous occasions and in  
6 front of various other witnesses told him and others that he was an equal owner with her of the  
7 property and further that he had "earned" his joint interest via his substantial work on and  
8 contributions to the improvements to the property. See Aff. of HUGHES at ¶¶ 3-4.

9 For the reasons set forth herein, neither *Sack* nor *Langevin* apply to the facts at issue  
10 here. Instead, the presumptions set forth in *Gorden* and *Kershman* apply. Absent clear and  
11 convincing evidence to the contrary, it is presumed that the Defendant intended a gift of one-half of  
12 the value of the property to HUGHES. Further, a joint tenancy interest, as set forth on the deed, is  
13 presumed absent evidence of agreement to the contrary. At the very least, these are questions of  
14 material fact to be decided at trial and Defendant has failed to show indisputable facts to overcome  
15 the presumptions required by *Gorden* and *Kershman*. For this reason, Defendant's Motion for  
16 Summary Judgment must be denied.

17 **D. The documents complained of and produced by Defendant do not show**  
18 **fraudulent intent on the part of HUGHES and prove HUGHES' involvement**  
19 **in the improvement of the subject property.**

20 Defendant asserts that she paid for all improvements to the property and that she paid  
21 all expenses on the property in full. Motion, p. 2, ll. 27-28. These assertions are demonstrably false.  
22 First, as the simplest example of evidence refuting this point, HUGHES has always paid the property  
23 taxes on the property. Indeed, he continues to do so even after being ousted from the property by  
24 Defendant. A copy of the most recent receipt for HUGHES' payments of the property taxes are  
25 hereby incorporated and attached hereto as Exhibit "2". Thus, it is obvious that Defendant has not  
26 paid all expenses as she claims. Further, the prior property tax records attached as Exhibit "3" were  
27 produced to Defendant on March 1, 2016, and show HUGHES' payment of the same, so she has no  
28 excuse to claim she was unaware of these facts or that HUGHES could not prove these facts when  
she made the false statement in her Motion that she paid all expenses on the property in full.

1 This brings us to the next point, which is very important. Defendant claims that  
2 HUGHES has altered and forged documents in this matter. Motion, p. 2, l. 27 to p. 3, l. 4. In  
3 support of this assertion, Defendant produces several documents supposedly from HUGHES' initial  
4 NRCP 16.1 production of documents, which she claims are altered and/or forged. This is a bald  
5 faced lie that is so easily disproved that HUGHES questions the motives of Defendant and her  
6 counsel in making the claim.

7 As a preliminary matter, Defendant and her counsel fundamentally misunderstand the  
8 purpose of NRCP 16.1, which mandates that litigants produce all discoverable documents to all other  
9 litigants. Under NRCP 26(b), a discoverable document is any document that is relevant to the  
10 proceedings. Thus, HUGHES has produced all documents in his possession, whether or not they  
11 support his claims that he paid for some expense related to the property or whether they demonstrate  
12 that Defendant paid for some other expense. All such documents are relevant to these proceedings.

13 Unlike Defendant, HUGHES has never claimed he paid for all expenses related to the  
14 property. Indeed, HUGHES does not dispute that Defendant made contributions to the expenses and  
15 improvements to the property. He has produced all documents relevant to these proceedings,  
16 whether they support his claims of contribution or show Defendant's contributions.<sup>1</sup> He has never  
17 claimed to do otherwise.

18 *i. Kent's Supply Invoices*

19 One set of documents Defendant claims to be altered or forged, which Defendant  
20 attaches to her Motion at Exhibits 6A through 9A and Exhibits 12A and 13A, are invoices from  
21 Kent's Supply, which provided various materials used in making improvements on the subject  
22 property. To be clear, HUGHES did not produce these invoices to show that he paid for all of the  
23 materials listed. He produced them because they are discoverable under NRCP 16.1 and 26(b).  
24 Further, much of the material obtained from Kent's Supply was used in building fencing and  
25  
26

27 <sup>1</sup> As a side note, HUGHES contends that Defendant has failed to satisfy her obligations under NRCP 16.1. In addition to  
28 her failure to timely produce documents to HUGHES under NRCP 16.1, HUGHES is aware of hundreds of photographs  
taken by Defendant of the subject property, including photographs in Defendant's possession that depict HUGHES  
working on the property to install various improvements. Defendant's ongoing failure to produce these and other  
relevant documents subjects her to a motion to compel and possibly to a motion for sanctions.

1 retaining walls at the property and HUGHES did all of the actual construction and installation of  
2 these improvements himself. Aff. of HUGHES at ¶ 5.

3 With regard to Exhibit 6A, Defendant claims that HUGHES produced a copy with a  
4 missing signature line. Motion, p. 3, ll. 8-10. She attaches a document purporting to be a document  
5 produced by HUGHES and which was bates stamped HUGHES0051. The document HUGHES  
6 actually produced as HUGHES0051 is incorporated by this reference and attached hereto as Exhibit  
7 "4". Ironically, by comparing the two documents, it is clear that Defendant is the one altering  
8 documents. The document produced by HUGHES in his initial production does contain a signature  
9 line, although it is blank. Further, the document attached to Defendant's Motion as Exhibit 6A  
10 contains an annotation not included on HUGHES' original.

11 The invoices attached to Defendant's Motion as Exhibits 9A and 9B do not show  
12 alteration by HUGHES. Defendant herself acknowledges that these invoices are carbon copies.  
13 Motion p. 3, ll. 7-28. The material from these particular invoices was delivered to the property and  
14 HUGHES signed the copy he produced as evidence of his acceptance of the materials. Aff. of  
15 HUGHES at ¶ 6. HUGHES does not dispute that an individual named Mike Smith was charged and  
16 may have paid for the materials. Again, the purpose of producing this particular document was not  
17 to prove he paid for the material. Incidentally, this particular document and the fact that HUGHES  
18 signed for the delivery of the material demonstrates HUGHES' contribution to improvements on the  
19 property.

20 To the extent Defendant claims alteration of the remaining Kent's Supply invoices,  
21 again, Defendant herself acknowledges that these invoices are carbon copies. Motion, p. 3, ll. 7-28.  
22 As shown herein, it is not implausible that each party has carbon copies of the same document or  
23 that the documents in HUGHES' possession do not match exactly those in Defendant's for one  
24 reason or another as demonstrated with respect to those invoices attached as Exhibits 9A and 9B to  
25 Defendant's Motion. HUGHES has in his possession the original carbon copy documents used in  
26 producing the Kent's Supply invoices should the Court wish to examine them or compare them  
27 against any originals Defendant claims to have. Aff. of HUGHES at ¶ 7.

28 ///

ii. *Country Financial Receipt*

Next, Defendant submits as Exhibit 10A a document produced by HUGHES demonstrating his payment of a home insurance premium on December 17, 2015, which was months after Defendant locked HUGHES out of the property. There is an annotation on the document produced by HUGHES that states Defendant had defaulted on her payment of the insurance premium. In response, she submits as Exhibit 10B a copy of a check dated December 18, 2015, wherein she paid the same premium.

The circumstances of these payments are instructive. Included with the copy of Defendant's check is some sort of printout from the insurer, which shows that the subject payment was due on November 30, 2015. On or about December 17, 2015, a representative of Country Financial called HUGHES to inform him that the invoice was past due and that the insurance policy was going to lapse without immediate payment of the policy plus a \$20 late fee. Aff. of HUGHES at ¶ 8. The representative further informed HUGHES that Country Financial had sent overdue notices to the Defendant and had attempted to call her directly for payment, but she had not responded to the attempts to collect. *Id.* at ¶ 9. On that basis, HUGHES made an immediate payment so the policy would not lapse. *Id.* at ¶ 10. The following day, the Defendant apparently pulled up the account information as evidenced by the printout she produced, which shows, incidentally, that payment had already been received on December 17, 2015. Notwithstanding this fact, she wrote a check on December 18, 2015 to cover the premium, but failed to include payment of the late fee.

These documents do not prove fraud. Indeed, they prove HUGHES' story that he paid the premium in order to avoid having the policy lapse and also provides additional evidence of HUGHES' contribution to the expenses associated with the property, thus evidencing his joint tenancy interest therein. HUGHES is informed and believes, based on conversations with Mr. Schank, that Defendant wishes for the policy to lapse in a misguided effort to have him removed from the policy because she thinks this would be evidence that HUGHES has no actual interest in the property or perhaps that he has abandoned the same. Aff. of HUGHES at ¶ 11. Defendant has allowed the near policy lapse to occur on at least two additional occasions. *Id.* Copies of a June 7, 2016 cancellation notice and two receipts showing HUGHES' payment of the insurance premiums

are hereby incorporated and attached hereto as Exhibit "5". Obviously, HUGHES has a joint tenancy interest in the property and he has not abandoned the same, but these actions beg the question of who is really trying to defraud whom.

*iii. Receipts for Refrigerator, Freezer, and Bed*

Next, Defendant claims HUGHES submitted partial copies of receipts for a freezer and a refrigerator in a nefarious attempt to claim those expenses for his own when Defendant claims that HUGHES removed Defendant's signature from the same. Motion, p. 3, ll. 19-22; see Exhibit 11A. This is also demonstrably false. Copies of the full receipts are hereby incorporated and attached hereto as Exhibit "6". As the Court can see, there is no signature at all on either of these receipts. In preparing the NRCP 16.1 initial production of documents, these receipts were simply folded for ease of copying, nothing more. Further, with regard to the Lowe's receipt, the Court will note that payment for the \$728.36 freezer was made with \$500 cash while \$228.36 was put on a Lowes Credit Card (denoted as "LCC"). HUGHES paid the \$500 cash and the Lowes Credit Card used to pay the remaining balance belonged to Defendant. Aff. of HUGHES at ¶ 12.

The Court will also note that the Sears receipt for the freezer lists HUGHES as the customer and that this purchase was made entirely in cash. The receipts submitted by Defendant in response have nothing to do with the purchases of the refrigerator or the freezer. HUGHES has not altered the submitted receipts in any way and Defendant offers no evidence to the contrary. Further, as evidence that the parties were sharing in household expenses, HUGHES hereby incorporates and attaches as Exhibit "7" copies of a receipt for the parties' bed, which shows equal credit card payment amounts paid to Reno Gallery of Furniture and as Exhibit "8" an email Defendant sent to HUGHES' father wherein she mentions household expenses paid for by HUGHES.

*iv. Churchill County Special Use Permit*

Next, Defendant claims HUGHES attempted to "show" his involvement with the issuance of a special use permit by Churchill County and attaches as Exhibit 14A a recorded special use permit issued by Churchill County Planning addressed to HUGHES and the Defendant and containing an acknowledgement signed by both HUGHES and the Defendant as joint owners of the property. For some inexplicable reason, Defendant attempts to rebut this official document with a

1 copy of the application for the special use permit, which contains only her signature. *See* Exhibit  
2 14B attached to the Motion. HUGHES does not contend that he signed the application for special  
3 use permit. Indeed, HUGHES concedes that Defendant alone signed the application. However,  
4 HUGHES will take the opportunity here to note that the Defendant listed herself **AND HUGHES** as  
5 the owners of the property on the application, which she signed before a notary public. This would  
6 seem to be Defendant's confirmation of her understanding that she and HUGHES owned the  
7 property in joint tenancy. The application was signed in August 2013, more than one year after she  
8 deeded the property to herself and HUGHES as joint tenants. That ought to be reason alone to deny  
9 Defendant's Motion for Summary Judgment.

10 *v. A & K Earth Movers*

11 Next, Defendant submits two A & K Earth Movers invoices with HUGHES' name on  
12 them. *See* Exhibits 15A and 16A to Defendant's Motion. These documents show HUGHES'  
13 involvement in the extensive dirt work and other tasks he performed at the property. In response to  
14 Exhibit 15A, Defendant submits a receipt showing her payment for the work listed on Exhibit 15.

15 This is an important fact to be cleared up. HUGHES unequivocally asserts that he  
16 had a verbal agreement with the Defendant to generally divide the costs of labor and materials in  
17 installing improvements with HUGHES also contributing most of the labor himself to save both  
18 parties money. *Aff.* of HUGHES at ¶ 13. HUGHES does not like to deal with banks and generally  
19 keeps most of his money in the form of liquid assets. *Id.* at ¶ 14. This is a lifestyle choice made and  
20 practiced by HUGHES long before he met the Defendant and which he has continued to practice  
21 during and subsequent to his relationship with Defendant. *Id.* Further, it was his practice in paying  
22 for many of the improvements on the property that HUGHES would give cash for his portion of the  
23 cost directly to the Defendant, who would then pay the invoices in full, most often by personal  
24 check, but sometimes in cash. *Id.* at ¶ 15.

25 HUGHES did not keep receipts of cash he gave directly to the Defendant because he  
26 had no reason to think she would turn around and claim he did not pay for anything on the property.  
27 However, HUGHES does have several personal receipts from his dealings in buying and selling fire  
28 arms, minerals, antiques, etc., which show that he primarily deals in cash. *Id.* at ¶ 16. He is willing,



1 if required by the Court, to disclose personal and private financial information, including tax returns  
2 for the relevant time period and the aforementioned receipts in order to further demonstrate his  
3 reliance on cash. *Id.* at ¶ 17. Should the Court wish to see those documents to prove his practice of  
4 dealing primarily in cash, HUGHES will submit them for the Court's consideration, preferably in  
5 camera.

6 With regard to Defendant's Exhibits 16A and 16B, which are identical except for  
7 annotations apparently made by the parties, these documents only show that Defendant's mother  
8 paid one invoice to A & K Earth Movers while the parties' disagree as to the reason for this  
9 payment. Nevertheless, the invoice clearly shows HUGHES' name thereon, which shows his  
10 involvement in the work performed on the property.

11 *vi. Hiskett & Sons, LLC*

12 Next, Defendant takes exception with HUGHES' production of several invoices from  
13 Hiskett & Sons, LLC, which show HUGHES name and contain his signature. *See* Exhibit 17A to  
14 Defendant's Motion. These invoices are provided again to show HUGHES' involvement in the dirt  
15 and concrete work performed at the property. In response, Defendant submits evidence that she paid  
16 for these invoices with her personal checks. HUGHES does not dispute this, but does assert that he  
17 gave cash to Defendant for his portion of the payment. *Aff.* of HUGHES at ¶ 18. Further,  
18 Defendant does not dispute that HUGHES provided some of the labor for which these materials  
19 were supplied.

20 *vii. Dan O Construction*

21 Dan O Construction was hired in connection with the construction of the second  
22 home on the property into which Defendant's mother eventually moved. Defendant takes exception  
23 to HUGHES' claim that he saved the parties any money by performing some of this labor himself,  
24 which is corroborated by the letter from Dan O Construction attached as Exhibit 18A to Defendant's  
25 Motion. In response thereto, Defendant simply submits evidence of payment for the work that Dan  
26 O Construction actually performed. *See* Exhibit 18B to Defendant's Motion. These documents do  
27 not disprove HUGHES' claim to have performed some of the labor. Indeed, Defendant in prior  
28 submissions seems to acknowledge HUGHES' contributions to this particular labor. A copy of

1 Defendant's Application for Temporary Protective Order dated March 16, 2015, is hereby  
2 incorporated and attached as Exhibit "9". On page five, beginning at line 8 of the aforementioned  
3 document, Defendant acknowledges HUGHES' work, begrudging as it may have been, on this  
4 project.

5 As with much of Defendant's Motion, Defendant fails to link the documents in any  
6 meaningful way towards proving fraud or alteration of documents as she claims. At best, the table  
7 she includes to compare various documents only serves to reinforce the fact that there are clearly  
8 issues of material fact left to be decided. At worst, she's wasting HUGHES' and the Court's time  
9 and ought to be ordered to pay HUGHES' attorneys' fees incurred in preparing this Opposition  
10 pursuant to NRS 18.010(2)(b).

11 *viii. Lahontan Valley Electric*

12 Next, Defendant implies that the Lahontan Valley Electric invoice submitted by  
13 HUGHES must be fraudulent on the basis that she has a contract and other invoices with differing  
14 amounts than what is shown on the invoice submitted by HUGHES. See Exhibits 19A and 19B to  
15 Defendant's Motion. HUGHES does not dispute the documents submitted by Defendant as work  
16 paid for by Defendant and/or her mother. However, a careful review of the documents reveals that  
17 the work performed under the documents submitted by Defendant is different than that performed  
18 under the invoice provided by HUGHES. The invoices with Defendant's name on them are  
19 numbered 401468, 401469, and 401471 and relate to electrical work in bringing electrical wiring to  
20 the accessory dwelling and from a new electrical panel to a garage stub, where it stopped. Motion,  
21 Exhibit 19B. The invoice with HUGHES' name on it is numbered 401470 and relates to work to  
22 extend the electrical wiring from the garage stub, to accommodate HUGHES' future business needs,  
23 into the interior of the garage to install fixtures, to install an additional stub for contemplated future  
24 electrical work, to install an RV plug, and to install other outside plugs on the garage, all of which  
25 was paid for by HUGHES as reflected on the invoice submitted by HUGHES. Aff. of HUGHES at ¶  
26 19.

27 ///

28 ///

ix. *Contributions from HUGHES' father*

Lastly, Defendant takes exception with a document submitted by HUGHES showing contributions made by HUGHES' father to HUGHES and the Defendant for various purposes. Motion, Exhibit 20A. Defendant makes the unfounded assertion that this document must have been submitted to show "[s]elf-claimed contributions to Property by Hughes without documentation." Motion, p. 4, ll. 19-21. HUGHES has made no such contention. This is clearly a document showing contributions TO HUGHES and TO Defendant from someone else. Further, HUGHES concedes that these contributions were made by his father. In addition to its relevancy under NRCP 26(b), the reason for the production of this document was merely to show, again, that Defendant was not making all payments towards expenses on the property by herself as she has claimed.

Defendant claims she "has conducted discovery specific to Hughes' contributions on the property." Motion, p. 2, l. 27. This is a stretch of the truth. The only discovery that has been conducted in this case is the parties' initial disclosures pursuant to NRCP 16.1. The documents complained of here, including Exhibit 20A to Defendant's Motion, were timely produced as part of HUGHES' initial production of documents as required by NRCP 16.1.<sup>2</sup> Defendant could have saved some time by actually conducting discovery, at least as it relates to Exhibit 20A, by serving interrogatories or requests for admissions to ascertain what was meant by producing Exhibit 20A. To be clear, nothing nefarious was meant and the conclusion reached by Defendant that Exhibit 20A shows contributions made by HUGHES' father is exactly right. HUGHES never contended otherwise.

V.

CONCLUSION

Defendant seeks summary judgment based on her own claims of fraud, undue influence, emotional distress, and specific performance, but each of her claims has been dismissed. Further, she alleges that HUGHES has altered or forged several documents, but the evidence fails to support any such claim except to show that, at least on one occasion, Defendant herself altered a

<sup>2</sup> The Court is aware, but HUGHES reminds the Court, that Defendant did not timely serve HUGHES with her initial disclosures, which were due on March 1, 2016. Counsel for HUGHES did not receive Defendant's initial disclosures until May 20, 2016 after several requests and the Court ordering counsel for Defendant to immediately produce the same during the May 17, 2016 pretrial conference. Aff. of J. Townsend at ¶ 8.

ALLISON MacKENZIE, LTD.  
402 North Division Street, P.O. Box 646, Carson City, NV 89702  
Telephone: (775) 687-0202 Fax: (775) 882-7918  
E-Mail Address: law@allisonmackenzie.com

1 document. Finally, there are material issues of fact yet to be decided. Namely, the nature of  
2 Defendant's intent in executing a deed to transfer the subject property to herself and HUGHES as  
3 joint tenants and, should an inquiry be necessary, the nature and extent of the contributions of the  
4 parties toward the expenses and work performed on the subject property to install improvements  
5 thereon. For these reasons, HUGHES respectfully requests an order denying Defendant's Motion  
6 for Summary Judgment. Further, HUGHES respectfully requests an award of attorneys' fees  
7 pursuant to NRS 18.010(2)(b).

8 DATED this 20<sup>th</sup> day of July, 2016.

9 ALLISON MacKENZIE, LTD.  
10 402 North Division Street  
Carson City, NV 89703-4168

11 By:   
12

JUSTIN M. TOWNSEND, ESQ.  
Nevada State Bar No. 12293

13 Attorneys for Plaintiff,  
14 SHAUGHNAN L. HUGHES  
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ALLISON MacKENZIE, LTD.  
402 North Division Street, P.O. Box 646, Carson City, NV 89702  
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E-Mail Address: lmv@allisonmackenzie.com

CERTIFICATE OF SERVICE

Pursuant to NRCP Rule 5(b), I hereby certify that I am an employee of ALLISON, MacKENZIE, LTD., Attorneys at Law, and that on this date, I caused the foregoing document to be served on all parties to this action by:

- ☒ Placing a true copy thereof in a sealed postage prepaid envelope in the United States Mail in Carson City, Nevada [NRCP 5(b)(2)(B)]
- ☐ Hand-delivery - via Reno/Carson Messenger Service [NRCP 5(b)(2)(A)]
- ☐ Facsimile
- ☐ Federal Express, UPS, or other overnight delivery
- ☐ E-filing pursuant to Section IV of District of Nevada Electronic Filing Procedures [NRCP 5(b)(2)(D)]

fully addressed as follows:

CHARLES R. KOZAK, ESQ.  
KOZAK LAW FIRM  
3100 Mill Street, Suite 115  
Reno, NV 89502

DATED this 20<sup>th</sup> day of July, 2016.

  
NANCY FONTENOT

# INDEX OF EXHIBITS

<u>Exhibit No.</u>	<u>Description</u>	<u>Number of Pages (Including Cover Page)</u>
"1"	Copy of the July 11, 2012 quitclaim deed	4
"2"	Copy of the most recent receipt for HUGHES' payments of the property taxes	2
"3"	Property tax records produced to Defendant on March 1, 2016	18
"4"	HUGHES0051	2
"5"	June 7, 2016 cancellation notice and two receipts showing HUGHES' payment of the insurance premiums	4
"6"	Copies of the full receipts	3
"7"	Copies of a receipt for the parties' bed	3
"8"	Email Defendant sent to HUGHES' father wherein she mentions household expenses paid for by HUGHES	3
"9"	Copy of Defendant's Application for Temporary Restraining Order dated March 16, 2015	18

4815-5876-3316, v. 5

# EXHIBIT “1”

DOC # 428132

07/11/2012 11:37 AM

Official Record

Recording requested By  
ELIZABETH HOWARD

Churchill County - NV

Jean Sims - Recorder

Page 1 of 2 Fee: \$15.00  
Recorded By: TH RPTT: \$274.70



428132

APN: 7-111-45

Recording requested by and mail documents and  
tax statements to:

Name: Elizabeth C. Howard

Address: 11633 Fulkerson Rd.

City/State/Zip: Fallon, NV 89406

DED104mk

Nevada Legal Forms & Tax Services, Inc.

www.nevadalegalforms.com

RPTT: \_\_\_\_\_

QUITCLAIM DEED

THIS INDENTURE WITNESS That the GRANTOR(S): Elizabeth C. Howard

for and in consideration of One Dollars (\$ 1.00) do hereby QUITCLAIM  
the right, title and interest, if any, which GRANTOR may have in all that real property, the receipt of  
which is hereby acknowledged, to the GRANTEE(S): Elizabeth C. Howard  
and Shaughnan L. Hughes as Joint  
tenants.

all that real property situated in the City of Fallon, County of Churchill,  
State of Nevada, bounded and described as follows: (Set forth legal description  
and commonly known address)

11633 Fulkerson Rd.

Quitclaim Deed

Page 1 of 2

Initials \_\_\_\_\_

HUGHES001

RA0250





428132

07/11/2012  
002 of 2

parcel 2 as shown on the parcel map for  
Ammeron Enterprises, Recorded in the  
office of the Churchill County  
Recorder's office on December 28th,  
2000 as file No. 333468, official Records.

Together with all and singular hereditament and appurtenances thereunto belonging or in any way  
appertaining to.

In Witness Whereof, I/We have hereunto set my hand/our hands on 11 day of July,  
2012.

[Signature]  
Signature of Grantor

\_\_\_\_\_  
Signature of Grantor

Elizabeth C. Howard  
Print or Type Name Here

\_\_\_\_\_  
Print or Type Name Here

STATE OF Nevada )  
COUNTY OF Churchill )

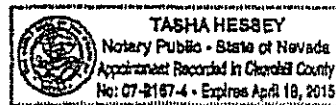
On this 11 day of July, 2012, personally appeared before me,  
a Notary Public, Elizabeth Carole Howard VXX.

☐ personally known to me OR ☒ proved to me on the basis of satisfactory evidence to be the  
person(s) described in and who executed the foregoing instrument in the capacity set forth therein,  
who acknowledged to me that they executed the same freely and voluntarily and for the uses and  
purposes therein mentioned. Witness my hand and official seal.

[Signature]  
Notary Public

My commission expires: \_\_\_\_\_

Consult an attorney if you doubt this form's fitness for your purpose.



Quitclaim Deed

Page 2 of 2

Initials \_\_\_\_\_

HUGHE5002

RA0251

DOC # DV-428132

07/11/2012

11:37 AM

Official Record

Recording requested By  
ELIZABETH HOWARD

Churchill County - NV

Joan Sims - Recorder

Page 1 of 1 Fee: \$15.00  
Recorded By: TH RPTT: \$274.70STATE OF NEVADA  
DECLARATION OF VALUE

## 1. Assessor Parcel Number(s)

a) 7-111-45  
b) \_\_\_\_\_  
c) \_\_\_\_\_  
d) \_\_\_\_\_

## 2. Type of Property:

a) ☐ Vacant Land b) ☒ Single Fam. Res.  
c) ☐ Condo/Twnhse d) ☐ 2-4 Plex  
e) ☐ Apt. Bldg f) ☐ Comm'l/Ind'l  
g) ☐ Agricultural h) ☐ Mobile Home  
Other \_\_\_\_\_

## FOR RECORDERS OPTIONAL USE ONLY

Document/Instrument #: \_\_\_\_\_  
Book \_\_\_\_\_ Page: \_\_\_\_\_  
Date of Recording: \_\_\_\_\_  
Notes: TH AHV

## 3. Total Value/Sales Price of Property

Deed in Lieu of Foreclosure Only (value of property)

Transfer Tax Value:

Real Property Transfer Tax Due

\$ 67,000.  
( \_\_\_\_\_ )  
\$ \_\_\_\_\_  
\$ 274.70

## 4. If Exemption Claimed:

- a. Transfer Tax Exemption per NRS 375.090, Section \_\_\_\_\_
- 
- b. Explain Reason for Exemption: \_\_\_\_\_

## 5. Partial Interest: Percentage being transferred: \_\_\_\_\_ %

The undersigned declares and acknowledges, under penalty of perjury, pursuant to NRS.375.060 and NRS 375.110, that the information provided is correct to the best of their information and belief, and can be supported by documentation if called upon to substantiate the information provided herein. Furthermore, the parties agree that disallowance of any claimed exemption, or other determination of additional tax due, may result in a penalty of 10% of the tax due plus interest at 1% per month. Pursuant to NRS 375.030, the Buyer and Seller shall be jointly and severally liable for any additional amount owed.

Signature [Signature] Capacity Grantor  
Signature \_\_\_\_\_ Capacity \_\_\_\_\_SELLER (GRANTOR) INFORMATION  
(REQUIRED)Print Name: Elizabeth C. Howard  
Address: 11633 Fulkerson Rd.  
City: Fallon  
State: NV Zip: 89406BUYER (GRANTEE) INFORMATION  
(REQUIRED)Print Name: Elizabeth C. Howard  
Address: 11633 Fulkerson Rd.  
City: Fallon  
State: NV Zip: 89406

## COMPANY/PERSON REQUESTING RECORDING (required if not seller or buyer)

Print Name: \_\_\_\_\_ Escrow # \_\_\_\_\_  
Address: \_\_\_\_\_  
City: \_\_\_\_\_ State: \_\_\_\_\_ Zip: \_\_\_\_\_

(AS A PUBLIC RECORD THIS FORM MAY BE RECORDED/MICROFILMED)

\* Shaughnan L. Hughes

HUGHES003

RA0252

C

C

## **EXHIBIT “2”**

# Your Receipt

support@pointandpay.com

Sat 7/9/2016 6:08 AM

Inbox

To: shaughnanhughes@hotmail.com <shaughnanhughes@hotmail.com>;

Greetings,

The Churchill County Treasurer thanks you for your payment. For questions about your account, please call 775-423-6028. Credit card payments will show up as Churchill Co Treasurer. E-check payments will show up as PNP BILLPAYMENT 8888916064

Your payment ID is: 25263939

## Items Paid For:

Description: Property Tax  
Amount Paid: \$2,042.31  
Parcel Number: 007-111-45  
Name:

## Customer Information:

First Name: shaughnan  
Last Name: hughes  
Address Line 1: 5420 caleb dr  
Address Line 2:  
City: FALLON  
State: Nevada  
Zip Code: 89406-6376  
Phone Number: 775-685-6538  
Email Address: shaughnanhughes@hotmail.com

## Payment Information:

Subtotal: \$2,042.31  
Fee Total: \$50.04  
Total: \$2,092.35  
Datetime: 07/09/2016 06:08:19

HUGHES00217

RA0254

# EXHIBIT “3”

This is a "printer friendly" page. Please use the "print" option in your browser to print this screen.

## OFFICIAL PAYMENTS

Official Payments Equivalent

Transaction ID: 010351

Transaction Date:

010351

Friday, July 10, 2015

10:14AM PT

Amount:

Amount Due: \$100.00

Amount Paid:

\$100.00

Amount Due:

Amount Due: \$100.00

Amount Paid:

\$100.00

Amount Due: \$100.00

Amount Paid:

Amount:

Amount Due: \$100.00

Official Payments Equivalent

Transaction ID:

Transaction Date:

Amount:

Amount Due:

Official Payments

This is a "printer friendly" page. Please use the 'print' option in your browser to print the page.

OFFICIAL  
PAYMENTS

010241  
FEB 10 1968  
010241Z

[illegible]

Search:



Kelly G. Helton  
Churchill County Treasurer  
155 N Taylor St, Ste 110  
Fallon, NV 89406

**CHURCHILL COUNTY**  
**REAL PROPERTY TAXES FOR FISCAL YEAR**  
**2013 - 2014**  
**TAXES FROM JULY 1, 2013 THRU JUNE 30, 2014**

PARCEL NUMBER 007-111-46 DISTRICT 2.0 ROLL NUMBER 007616 PROPERTY LOCATION 11633 FULKERSON RD



006415 L2TCHU92  
HOWARD E C & HUGHES S L  
11633 FULKERSON RD  
FALLON NV 89406-6376

MAKE REMITTANCE PAYABLE TO:  
CHURCHILL COUNTY TREASURER  
155 N Taylor St, Ste 110  
Fallon, NV 89406

YOUR CHECK IS YOUR RECEIPT  
IF ADDITIONAL RECEIPT IS NEEDED, RETURN  
ENTIRE TAX BILL WITH PAYMENT AND  
SELF-ADDRESSED STAMPED ENVELOPE.

Office Phone: (775) 423-6028

DESCRIPTION	VALUE	TAXING AGENCY	RATE	PREABATEMENT AMOUNT	ABATEMENT/RECAPTURE AMOUNT	TAX AMOUNT
Real Estate	\$ 9,625	General Co	0.6240	\$ 233.03		\$ 233.03
Bldg./improvements	18,654	Social Svcs	0.0879	24.86		24.86
		Ag Extension	0.0200	5.66		5.66
		Public Librar	0.0641	18.13		18.13
		Cap Imp Fund	0.0500	14.14		14.14
		Tax Act 1991	0.0219	6.19		6.19
		Hosp Care MVA	0.0150	4.24		4.24
		Fire Equip	0.0300	8.48		8.48
		Mosq & Weed	0.0800	22.62		22.62
		School Dist	0.7500	212.09		212.09
		School Debt	0.5500	155.53		155.53
		St of Nevada	0.1700	48.07		48.07
		Youth Svcs	0.0500	14.14		14.14
		Ind Med Care	0.0600	16.97		16.97
		CWS District	0.0300	8.48		8.48
		Ad Valorem Totals	2.8029	792.63		792.63
		TCID District Gen.				44.36

NET ASSESSED \$ 28,279

Information concerning taxing authorization,  
rates and uses of taxes collected can be  
found at [www.tax.state.nv.us](http://www.tax.state.nv.us) or by calling  
(775) 623-6444

TOTAL TAX DUE \$836.99

Please see the reverse side of this tax bill for important information and address change instructions.

HUGHES007

RA0259

NOTICE OF  
 ASSESSED VALUATION  
 THIS IS NOT A TAX BILL. IT IS A NOTICE OF  
 VALUE ONLY

DISTRICT	APPRAISAL YEAR	MAILING DATE
2.0	2013	11/22/13
THIS FISCAL YEAR		
2013-14	NEXT FISCAL YEAR	
ASSESSED VALUES	2014-15	
LAND	ASSESSED VALUES	
9,625	7,700	
STRUCTURES, ETC	STRUCTURES, ETC	
18,654	23,627	
PERSONAL PROPERTY	PERSONAL PROPERTY	
EXEMPTIONS	EXEMPTIONS	
ASSESSED TOTAL	ASSESSED TOTAL	
28,279	31,327	
TAXABLE TOTAL	TAXABLE TOTAL	
80,797	89,506	
VALUE EXCLUDED FROM	VALUE EXCLUDED FROM	
PARTIAL ABATEMENT	PARTIAL ABATEMENT	
6,805	6,805	

NORMA J. GREEN  
 CHURCHILL CO ASSESSOR  
 155 N TAYLOR ST. STE. 200  
 FALLON NV 89406  
 (775) 423-6584  
 www.churchillcounty.org  
 FALLON, NV  
 51

2014-2015 ASSESSMENT NOTICE (NRS 361.300)  
 IN 007-111-45

11633 FULKERSON RD

SEE OTHER SIDE FOR ADDITIONAL INFORMATION.

YOUR PROPERTY TAX BILL IS CAPED. NOT YOUR ASSESSED VALUE  
 The Assessment Roll is available per NRS 361.3

HOWARD E C & HUGHES S L  
 11633 FULKERSON RD  
 FALLON NV 89406-6376

894066376 H002

KELLY G. HELTON  
CHURCHILL COUNTY TREASURER  
155 N. TAYLOR ST. SUITE 110  
FALLON, NV 89406

SECURED TAXES (OTHER) Churchill County

B 81803

PAYMENT DATE 7/29/13

TAXES ASSESSED FOR YEAR 2013-2014  
PAID THROUGH INSTALLMENT 1

PARCEL NUMBER 005-11-00  
RECEIVED FROM EDWARD L. HUGHES  
AMOUNT 209.99  
RECEIVED BY JHE

TAXES PAID 209.99  
PENALTIES PAID  
CASH AMOUNT 209.99

HUGHES009

RA0261

KELLY G. HELTON  
CHURCHILL COUNTY TREASURER  
155 N. TAYLOR ST. SUITE 110  
FALLON, NV 89406

SECURED TAXES RECEIPT -Churchill County

# 84439

PAYMENT DATE - 9/30/13

TAXES ASSESSED FOR YEAR - 2013-2014  
PAID THROUGH INSTALLMENT - 2

PARCEL NUMBER - 007-111-45  
RECEIVED FROM - SHAUGHAN HUGES

AMOUNT - 209.00 \*\*\*  
RECEIVED BY: \_\_\_\_\_

TAXES PAID - 209.00  
PENALTIES PAID -

CASH AMOUNT - 209.00

HUGHES0010

RA0262

KELLY G. HELTON  
CHURCHILL COUNTY TREASURER  
155 N. TAYLOR ST. SUITE 110  
FALLON, NV 89406

SECURED TAXES RECEIPT -Churchill County

# 88064

PAYMENT DATE - 2/07/14

TAXES ASSESSED FOR YEAR - 2013-2014  
PAID THROUGH INSTALLMENT - 3

PARCEL NUMBER - 007-111-45

RECEIVED FROM - HOWARD E C & HUGHES

AMOUNT - 200.00 \*\*\*  
RECEIVED BY: ERIN

TAXES PAID - 200.00

PENALTIES PAID -

CASH AMOUNT - 200.00

CHURCHILL CO TREASURER  
155 N TAYLOR ST STE 110  
FALLON, NV 89406

TERMINAL ID: 001986256  
MERCHANT #: 107800254992

VISA  
XXXXXXXXXXXXXXXX8768

SALE  
BATCH: 000917 INVOICE: 017698011  
DATE: FEB 07: 14 TIME: 12:  
SQ: 005 AUTH ID: 0303

TOTAL \$9.0

CUSTOMER COPY

HUGHES0011

RA0263

KELLY G. HELTON  
CHURCHILL COUNTY TREASURER  
155 N. TAYLOR ST. SUITE 110  
FALLON, NV 89406

SECURED TAXES RECEIPT -Churchill County

# 88065

PAYMENT DATE - 2/07/14

TAXES ASSESSED FOR YEAR - 2013-2014  
PAID THROUGH INSTALLMENT - 4

PARCEL NUMBER - 007-111-45

RECEIVED FROM - HOWARD E C & HUGHES

AMOUNT - 9.00 \*\*\*  
RECEIVED BY: ERIN

TAXES PAID - 9.00

PENALTIES PAID -

CREDIT CARD - 9.00 VISA VISAB768

HUGHES0012

RA0264

KELLY G. HELTON  
CHURCHILL COUNTY TREASURER  
155 N. TAYLOR ST. SUITE 110  
FALLON, NV 89406

SECURED TAXES RECEIPT -Churchill County

# 86603

PAYMENT DATE - 12/23/13

TAXES ASSESSED FOR YEAR - 2013 2014  
PAID THROUGH INSTALLMENT -

PARCEL NUMBER - 007-111-45

RECEIVED FROM - HUGHES SHAUGHNAN L

AMOUNT 209.00 \*\*\*  
RECEIVED BY: EPH

TAXES PAID - 209.00

PENALTIES PAID -

CREDIT CARD - 209.00 VISA #1EAB76B

CHURCHILL CO TREASURER  
155 N TAYLOR ST STE 110  
FALLON, NV 89406

TERMINAL ID: 001986256  
MERCHANT ID: 107000254998

VISA  
#XXXXXXXXXXXX876B

SALE  
BATCH: 000887 INVOICE: 0874110100  
DATE: DEC 23, 13 TIME: 11:07  
SQ: 006 AUTH ID: 207939

TOTAL \$209.00

CUSTOMER COPY

HUGHES0013

RA0265

55A

HUGHES0014

RA0266



Kelly G. Helton  
Churchill County Treasurer  
155 N Taylor St, Ste 110  
Fallon, NV 89406

**CHURCHILL COUNTY**  
**REAL PROPERTY TAXES FOR FISCAL YEAR**  
**2014 - 2015**  
**TAXES FROM JULY 1, 2014 THRU JUNE 30, 2015**



PARCEL NUMBER 007-111-45 DISTRICT 2.0 ROLL NUMBER 007694 PROPERTY LOCATION 11633 FULKERSON RD



003466 L2TCHU92  
HOWARD E C & HUGHES S L  
11633 FULKERSON RD  
FALLON NV 89406-6376

MAKE REMITTANCE PAYABLE TO:  
CHURCHILL COUNTY TREASURER  
155 N Taylor St, Ste 110  
Fallon, NV 89406

YOUR CHECK IS YOUR RECEIPT  
IF ADDITIONAL RECEIPT IS NEEDED, RETURN  
ENTIRE TAX BILL WITH PAYMENT AND  
SELF-ADDRESSED STAMPED ENVELOPE.

Office Phone: (775) 423-6028

DESCRIPTION	VALUE	TAXING AGENCY	RATE	PREABATEMENT AMOUNT	ABATEMENT/RECAPTURE AMOUNT	TAX AMOUNT
Real Estate	\$ 7,700	General Co	0.8619	\$ 574.43		\$ 574.43
Bldg./Improvements	58,946	Social Svcs	0.0500	33.32		33.32
		Ag Extension	0.0200	13.33		13.33
		Public Librar	0.0641	42.72		42.72
		Cap Imp Fund	0.0500	33.32		33.32
		Tax Act 1991	0.0219	14.60		14.60
		Senior Center	0.0300	19.99		19.99
		Hosp Care MVA	0.0150	10.00		10.00
		Fire Equip	0.0300	19.99		19.99
		Mosq & Weed	0.0800	53.32		53.32
		School Dist	0.7500	499.84		499.84
		School Debt	0.5500	366.55		366.55
		St of Nevada	0.1700	113.30		113.30
		Youth Svcs	0.0500	33.32		33.32
		Ind Med Care	0.0600	39.99		39.99
		CWS District	0.0300	19.99		19.99
Ad Valorem Totals			2.8329	1,888.01		1,888.01
TCID District Gen.						55.45

NET ASSESSED \$ 66,646

Information concerning taxing authorization,  
rates and uses of taxes collected can be  
found at [www.tax.state.nv.us](http://www.tax.state.nv.us) or by calling  
(775) 423-6028

TOTAL TAX DUE

\$1,943.46

Please see the reverse side of this tax bill for important information and address change instructions.

HUGHES0015

RA0267

NOTICE OF  
ASSESSED VALUATION  
THIS IS NOT A TAX BILL - IT IS A NOTICE OF  
VALUE ONLY

NORMA J. GREEN  
CHURCHILL CO ASSESSOR  
155 N TAYLOR ST. STE. 200  
FALLON NV 89406  
(775) 423-6584  
www.churchillcounty.org

PRE-SORTED  
FIRST CLASS  
US POSTAGE PAID  
FALLON, NV  
PERMIT 51

DISTRICT	APPRAISAL YEAR	MAILING DATE
2.0	2014	12/02/14
THIS FISCAL YEAR	NEXT FISCAL YEAR	
2014-15 ASSESSED VALUE LAND	2015-16 ASSESSED VALUE LAND	
7,700	7,700	
STRUCTURES, ETC	STRUCTURES, ETC	
58,946	62,905	
PERSONAL PROPERTY	PERSONAL PROPERTY	
EXEMPTIONS	EXEMPTIONS	
ASSESSMENT TOTAL	ASSESSMENT TOTAL	
66,646	70,605	
TAXABLE TOTAL	TAXABLE TOTAL	
190,417	201,729	
VALUE EXCLUDED FROM PARTIAL ABATEMENT	VALUE EXCLUDED FROM PARTIAL ABATEMENT	
42,815		

2015-2016 ASSESSMENT NOTICE (NRS 361.300)

PHONE 775-423-6584

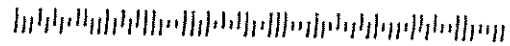
11633 FULKERSON RD

SEE OTHER SIDE FOR ADDITIONAL INFORMATION.

YOUR PROPERTY TAX BILL IS CAPPED, NOT YOUR ASSESSED VALUE.  
Assessment Roll is available per NRS 361.300

HOWARD E C & HUGHES S L  
11633 FULKERSON RD  
FALLON NV 89406-6376

894066376 H002



KELLY G. HELTON  
CHURCHILL COUNTY TREASURER  
155 N. TAYLOR ST. SUITE 110  
FALLON, NV 89406

SECURED TAXES RECEIPT - Churchill County

# 93451

PAYMENT DATE - 10/01/14

TAXES ASSESSED FOR YEAR - 2014-2015  
PAID THROUGH INSTALLMENT - 2

PARCEL NUMBER - 007-111-45

RECEIVED FROM - HUGHES SHAUGHMAN L.

AMOUNT 485.00  
RECEIVED BY: ERIN

TAXES PAID - 485.00  
PENALTIES PAID

CREDIT CARD - 485.00 VISA VISA8768

CHURCHILL CO TREASURER  
155 N TAYLOR ST STE 110  
FALLON, NV 89406

TERMINAL ID: 001986256  
MERCHANT #: 107800254998

VISA  
XXXXXXXXXXXX8768

SALE  
BATCH: 001069 INVOICE: 0697870100  
DATE: OCT 01, 14 TIME: 11:27  
SQ: 008 AUTH NO: 14281

TOTAL \$485.0

CUSTOMER COPY

HUGHES0017

RA0269

KELLY G. HELTON  
CHURCHILL COUNTY TREASURER  
155 N. TAYLOR ST. SUITE 110  
FALLON, NV 89406

SECURED TAXES RECEIPT - Churchill County

# 95670

PAYMENT DATE - 12/29/14

TAXES ASSESSED FOR YEAR - 2014-2015  
PAID THROUGH INSTALLMENT - 3

PARCEL NUMBER - 007-111-45  
RECEIVED FROM - HUGHES S L

AMOUNT - 485.00 \*\*\*  
RECEIVED BY: JAG

TAXES PAID - 485.00  
PENALTIES PAID -

CASH AMOUNT - 485.00

HUGHES0018

RA0270

KELLY G. HELTON  
CHURCHILL COUNTY TREASURER  
155 N. TAYLOR ST. SUITE 110  
FALLON, NV 89406

SECURED TAXES RECEIPT - Churchill County

# 91231

PAYMENT DATE - 8/07/14

TAXES ASSESSED FOR YEAR - 2014-2015  
PAID THROUGH INSTALLMENT - 1

PARCEL NUMBER - 007-111-45

RECEIVED FROM - HOWARD E C & HUGHES

AMOUNT - 488.46 \*\*\*  
RECEIVED BY: JAB

TAXES PAID - 488.46

PENALTIES PAID -

CASH AMOUNT - 488.46

HUGHES0019

RA0271

KELLY G. HELTON  
CHURCHILL COUNTY TREASURER  
155 N. TAYLOR ST. SUITE 110  
FALLON, NV 89406

SECURED TAXES RECEIPT - Churchill County

# 97320

PAYMENT DATE - 2/17/15

\*\* DUPLICATE RECEIPT \*\*  
\*\* NOT AN ORIGINAL \*\*

TAXES ASSESSED FOR YEAR - 2014-2015

PARCEL NUMBER - 007-111-45  
RECEIVED FROM - HUGHES S L

AMOUNT - 485.00 \*\*\*  
RECEIVED BY: ERIN

TAXES PAID - 485.00  
PENALTIES PAID -

CASH AMOUNT - 485.00

HUGHES0020

RA0272

C C

## **EXHIBIT “4”**

**KENT'S SUPPLY**  
Building • Lumber • Hardware • Feed

260 N. Maine Street • Fallon, NV 89406  
(775) 423-2126 • (Fax) 423-1038

Since  
1892

HUGHES0051

X AUTHORIZED CHARGE • SEE REVERSE SIDE FOR TERMS AND CONDITIONS OF SALE

RA0274



# EXHIBIT “5”

# COUNTRY

## FINANCIAL

Agent Information      Agent Don Schank - 05078  
560 W Williams Ave  
Fallon, NV 89406-0000  
Northern Nevada - 775-423-7168

Receipt Number	0008213635	Electronic Payment Amount	149.60
Receipt Date	08/12/2015 01:15:15 PM	Electronic Payment Account Number	5111
Electronic Payment Method	CREDIT	Electronic Payment Confirmation Number	900770
Account Name	HUGHES SHAUGHNAN L		

### Receipt Detail

Company Name	Account	Policy	Policy Type/Description	Amount
	9959601		Property/Casualty Account	149.60
TOTAL				\$149.60

Thank you for your business!

Don Schank  
Agency Representative

8-12-15  
Date

Payments are not final until successfully processed by the Home Office.

Payments are allocated first to fees (such as service charge, late payment fee, or returned bank item fee) and then to premium amounts.

Late payment - a late payment fee\* will be assessed as allowed by state law when invoices are not paid by the due date.

Returned bank item - a returned bank item fee\* will be assessed as allowed by state law for each item returned to us for non-sufficient funds.

If you have questions about these fees, please discuss with your agent.

\*Fee amounts may vary by state.

ACH on 9/15  
154  
Elizabeth 8/13

# COUNTRY

FINANCIAL

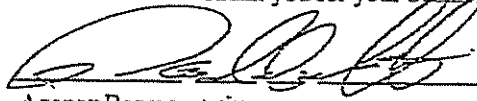
Agent Information      Agent Don Schank - 05078  
560 W Williams Ave  
Fallon, NV 89406-0000  
Northern Nevada - 775-423-7168

Receipt Number	0008882984	Electronic Payment Amount	178.98
Receipt Date	06/13/2016 01:35:56 PM	Electronic Payment Account Number	2576
Electronic Payment Method	CREDIT	Electronic Payment Confirmation Number	013905
Account Name	HUGHES SHAUGHNAN L		

## Receipt Detail

Company Name	Account	Policy	Policy Type/Description	Amount
	9959601		Property/Casualty Account	178.98
<b>TOTAL</b>				<b>\$178.98</b>

Thank you for your business!

  
\_\_\_\_\_  
Agency Representative      Date

Payments are not final until successfully processed by the Home Office.

Payments are allocated first to fees (such as service charge, late payment fee, or returned bank item fee) and then to premium amounts.

Late payment - a late payment fee\* will be assessed as allowed by state law when invoices are not paid by the due date.

Returned bank item - a returned bank item fee\* will be assessed as allowed by state law for each item returned to us for non-sufficient funds.

If you have questions about these fees, please discuss with your agent.

\*Fee amounts may vary by state.

TCR01(02-06)

COUNTRY Financial  
1701 N Townsend Ave, Bloomington, IL 61701  
1 of 1

HUGHES00219

RA0277



CANCELLATION

COUNTRY Mutual Insurance Company  
Box 14151, Salem, Oregon 97309-5069

CERTIFICATE OF MAILING

DATE OF NOTICE June 07, 2016	INSURANCE OFFICE/AGENT 27001 NNEV /05078
COVERAGE TERMINATION DATE: June 19, 2016 AT 12:01 A.M. STANDARD TIME AT YOUR ADDRESS	

HUGHES SHAUGHNAN L  
+ HOWARD ELIZABETH C  
11633 FULKERSON RD  
FALLON NV 89406

COUNTRY Mutual Home Insurance  
Policy A27K4910223  
Account Number 9959601-001-00001

We are following up regarding the invoice sent to you and to express concern that you may soon be without insurance protection. As of the date of this mailing, the total billed amount for your policy hasn't been received. This means the policy, and the coverage it provides you, ends on the date shown above.

To keep your insurance protection in force, please submit payment of \$158.98, including any applicable fees. You may send payment by check or by credit card by calling 1-866-COUNTRY.

Upon written request from you, we will notify you in writing of the reasons for this cancellation. This information will be sent within six days after receipt of your request.

If you have questions or need further assistance, please contact Donald H Schank at 775-423-7168. Your financial representative can also discuss other payment options offered by COUNTRY Financial if you're interested in switching to a different option.

Thank you for entrusting us to serve your insurance needs. We look forward to hearing from you soon.

Sincerely,

COUNTRY Mutual Insurance Company

# **EXHIBIT “6”**

Sears

Freezer

Sears

SEARS  
FALLON - AUTH HOMETOWN 03859  
1430 W WILLIAMS AVE  
FALLON, NV 89406-2640  
775-423-2629



RETAIN FOR COMPARISON WITH MONTHLY  
STATEMENT OR FOR RETURN OR EXCHANGE

SALESCHECK #  
038599018963

Sears

DELIVER TO: STORE 03859

PURCHASER: SHAUGHNAN HUGHES  
CUSTOMER: SHAUGHNAN HUGHES  
ADDRESS: 1550 MELANIE DRIVE  
CITY/STATE: FALLON, NV  
ZIP CODE: 89406  
PHONE: 775-885-6533

Sears

EXPECTED DATE: 10/26/11

DELIV INSTR:  
CUSTOMER WILL PICK UP

Sears

TRAN# PG/STORE REG# ASSOC#  
8363 10 03859 901 1032

MERCHANDISE ORDERED  
CUSTOMER PICKUP

46 16922 KM FRZR,WH SAL 267.74  
ORDERED

SUBTOTAL 267.74  
TAX 07.600% 20.34  
AMOUNT TENDERED 300.00  
CHANGE DUE 11.92  
CASH TOTAL 288.03

Sears

RC: 1529-8963-8971-2719-0619

\*\*\*\*\*

SEARS  
HOMETOWN STORES  
VALUE YOUR FEEDBACK!

Sears

TELL US ABOUT YOUR EXPERIENCE AND YOU  
COULD WIN A \$4,000 SEARS GIFT CARD.  
PLEASE VISIT OUR WEBSITE WITHIN 7 DAYS  
OF THE DATE OF PURCHASE.

DO NOT USE A SEARCH ENGINE.  
TYPE DIRECTLY INTO THE ADDRESS BAR AT  
THE TOP OF YOUR INTERNET BROWSER:

WWW.SEARSHOMETOWNFEEDBACK.COM

Sears

Sears

Sears

Sears

Sears

Sears

Sears

New Fridge at Fulkerson



NEVER STOP  
IMPROVING

LOWE'S HOME CENTERS, LLC  
375 STANLEY DRIVE  
FERRELL, NV 89406 (775) 980-4000

- SALE -

SALES#: 52661861 1264130 TRANS#: 13393850 07-14-14

590242 69.97  
3YR EFF MAJ APPL \$500-299  
107204 0.00 K  
LCC SYSTEM USE ONLY  
INVOICE 76264 SUBTOTAL: 69.97



- SALE -

SALES#: 52661861 1264130 TRANS#: 13393850 07-14-14

355453 VRTILITZYU 614.74  
UP 21 LF TM KEF VRTILITZY  
647.10 DISCOUNT EACH -32.36  
355962 ECKMFE21 0.00  
UP EZ ICEMAKER KIT ECKMFE  
49.68 DISCOUNT EACH -45.89  
INVOICE 76265 SUBTOTAL: 614.74



INVOICE 76264 SUBTOTAL: 69.97  
INVOICE 76265 SUBTOTAL: 614.74  
SUBTOTAL: 684.71  
TAX: 43.65  
BALANCE DUE: 728.36

CASH: 500.00  
LCC: 228.36

TOTAL DISCOUNT: 82.24

MYLOVE'S CARD NUMBER: 481000333453338

LCC:XXXXXXXXXXXX161 AMOUNT:229.36 AUTHCD:001239  
SWIPED REFID:393830266113 07/14/14 20:10:30

STORE: 2661 TERMINAL: 13 07/14/14 20:11:01  
# OF ITEMS PURCHASED: 2  
EXCLUDES FEES, SERVICES AND SPECIAL ORDER ITEMS

THANK YOU FOR SHOPPING LOWE'S.  
SEE REVERSE SIDE FOR RETURN POLICY.  
STORE MANAGER: CHRIS HART

WE HAVE THE LOWEST PRICES, GUARANTEED!  
IF YOU FIND A LOWER PRICE, WE WILL BEAT IT BY 10%.  
SEE STORE FOR DETAILS.

HUGHES00221

TAX 07.60 20.34  
 AMOUNT TENDERED 300.00  
 CHANGE DUE 11.92  
 CASH TOTAL 288.09

10/11/11

RC: 1529-8953-8971-2719-0619

SEARS  
 HOMETOWN STORES  
 VALUE YOUR FEEDBACK!

TELL US ABOUT YOUR EXPERIENCE AND YOU  
 COULD WIN A \$4,000 SEARS GIFT CARD.  
 PLEASE VISIT OUR WEBSITE WITHIN 7 DAYS  
 OF THE DATE OF PURCHASE.

DO NOT USE A SEARCH ENGINE.  
 TYPE DIRECTLY INTO THE ADDRESS BAR AT  
 THE TOP OF YOUR INTERNET BROWSER:

WWW.SEARSHOMETOWNFEEDBACK.COM

TO COMPLETE THE SURVEY YOU WILL NEED  
 THE 12 DIGIT SALES CHECK NUMBER ON  
 YOUR RECEIPT

NO PURCHASE NECESSARY. VOID WHERE  
 PROHIBITED. ENTRIES MUST BE ENTERED  
 WITHIN 7 DAYS OF DATE OF PURCHASE.  
 ENTRANTS MUST BE 18 OR OLDER TO ENTER.  
 SEE COMPLETE RULES ON WEBSITE.

SATISFACTION GUARANTEED  
 OR YOUR MONEY BACK  
 A RECEIPT DATED WITHIN 90 DAYS  
 IS REQUIRED FOR A RETURN OR EXCHANGE  
 WHICH WOULD BE 01/09/12. OTHER RULES  
 APPLY. SEE BACK OF RECEIPT FOR DETAILS.  
 RETURNED MERCHANDISE MUST INCLUDE ALL  
 COMPONENT PARTS. REFUND WILL BE ISSUED  
 IN THE ORIGINAL TENDER.

IN THE EVENT OF A RETURN OF  
 ORIGINAL QUALIFYING MERCHANDISE,  
 REWARD CARD(S) WILL BE DEDUCTED  
 FROM ANY REFUND AMOUNT.

SHOP ANYTIME ON SEARS.COM



INVOICE 76264 SUBTOTAL: 69.97  
 INVOICE 76265 SUBTOTAL: 614.74  
 SUBTOTAL: 684.71  
 TAX: 49.65

BALANCE DUE: 728.36  
 CASH: 500.00  
 LCC: 228.36

TOTAL DISCOUNT: 82.24

MYLOVE'S CARD NUMBER: 481000333453338

LCC: XXXXXXXXXXXX161 AMOUNT: 228.36 AUTHCD: 001239

SWIFTED REFID: 393830266113 07/14/14 20:10:30

STORE: 2661 TERMINAL: 13 07/14/14 20:11:01

# OF ITEMS PURCHASED: 2  
 EXCLUDES FEES, SERVICES AND SPECIAL ORDER ITEMS

THANK YOU FOR SHOPPING LOVE'S.  
 SEE REVERSE SIDE FOR RETURN POLICY.  
 STORE MANAGER: CHRIS HART

WE HAVE THE LOWEST PRICES, GUARANTEED!  
 IF YOU FIND A LOWER PRICE, WE WILL BEAT IT BY 10%  
 SEE STORE FOR DETAILS.

\*\*\*\*\*  
 YOUR OPINIONS COUNT!  
 REGISTER FOR A CHANCE TO WIN A  
 \$5,000 LOVE'S GIFT CARD!  
 \* REGISTRARSE PARA GANAR LA OPORTUNIDAD DE GANAR UNA  
 TARJETA DE REGALO DE LOVE'S DE \$5000!  
 \*  
 \* REGISTER BY COMPLETING A GUEST SATISFACTION SURVEY  
 WITHIN ONE WEEK AT: www.loves.com/survey  
 \* YOUR ID # 13166 2661 195  
 \*  
 \* NO PURCHASE NECESSARY TO ENTER OR WIN.  
 \* VOID WHERE PROHIBITED. MUST BE 18 OR OLDER TO ENTER.  
 \* OFFICIAL RULES & WINNERS AT: www.loves.com/survey  
 \*  
 \*\*\*\*\*  
 STORE: 2661 TERMINAL: 13 07/14/14 20:11:01

Area of Alleged  
 removal of her  
 signature.

Receipts in full  
 was folded for  
 copying purposes

Does Elizabeth  
 have her receipt for  
 this refrigerator?

# EXHIBIT “7”



RENO GALLERY OF FURNITU  
115 E MAINA LN  
RENO, NV. 89502-4212

TERMINAL I.D.: 0017340000000513464000

MERCHANT #: 0006134640

VISA

\*\*\*\*\*7691

SALE

RECORD #: 3

DATE: DEC 03, 19

BATCH: 852

INV:

000003

TIME: 09:20

AUTH:

101022

TOTAL \$887.16

SHAUGHN L HUGHES

I AGREE TO PAY ABOVE TOTAL AMOUNT  
ACCORDING TO CARD ISSUER AGREEMENT  
(MERCHANT AGREEMENT IF CREDIT VOUCHER)

CUSTOMER COPY

RENO GALLERY OF FURNITU  
115 E MAINA LN  
RENO, NV. 89502-4212

TERMINAL I.D.: 0017340000000513464000

MERCHANT #: 0006134640

VISA

\*\*\*\*\*1746

SALE

RECORD #: 2

DATE: DEC 03, 19

BATCH: 852

INV:

000002

TIME: 09:19

AUTH:

101225

TOTAL \$887.16

ELIZABETH C HOWARD

I AGREE TO PAY ABOVE TOTAL AMOUNT  
ACCORDING TO CARD ISSUER AGREEMENT  
(MERCHANT AGREEMENT IF CREDIT VOUCHER)

CUSTOMER COPY

PERSON

# Reno Gallery of Furniture

# Mattress World

**THIS ORDER IS CORRECT**

☐ 3405 Kietzke Lane • Reno, NV 89502  
(775) 825-2299

1151 Steamboat Pkwy • Reno, NV 89521  
(775) 851-3995

CUSTOMER

# SALES

115 E. Moana Lane • Reno, NV 89502  
(775) 827-4777

3375 Kietzke Lane • Reno, NV 89502  
(775) 825-9696

**SOLD TO:**

E-mail

## X-STREET:

HOME PHONE:

M WK#

F-WK#

OLD FURNITURE TO PICKUP?

ITEMS:

DELIVERY INSTRUCTIONS:

SETUP BY:

[illegible]

CUSTOMER IS SOLELY RESPONSIBLE FOR THE PROPER LOADING AND SECURING OF ALL CARRY-OUT MERCHANDISE

DELIVERY DATE

YOUR RECEIPT IS PROOF OF PURCHASE. IT MUST BE PRESENTED FOR ANY ALL-WARRANTY CLAIMS.

Delivered By:

Goods received in good condition:

**ALL SALES FINAL - NO CASH REFUND**

White-Original Copy

Canary-Weirho

HUGHES00224

Delivery Copy

Gold- Customer Copy

# EXHIBIT “8”

Subject: Re: Hi dad.  
From: john hughes (z109z209@yahoo.com)  
To: howardelizabeth@hotmail.com;  
Date: Saturday, March 15, 2014 10:45 PM

On , john hughes <z109z209@yahoo.com> wrote:

This e-mail has a time on it but not a date. when did you write this?

Liz, its 10:30 pm and I have finally managed to get my dizziness to a point where I can make a few feet at a time. This is the first I have ented any of my e-mails in several days and I cannot tell you how shocked I am at this e-mail. What or when did he undergo the Barium Swallow? How bad did you short urself when you tried to pay down your bills? What kind of balance are you looking at that needs to get paid off? How much do you need to get all your bills under control?

"thanks for spoiling him!" I guess I deserve that .

How much do you need to get the girls up and running. I'm talking about you saying they need undies, outies, female necessities or anything else they "NEED!" Please keep me posted on this and get me a figure of what the girls need. Love you, Dad

On Saturday, March 15, 2014 11:42 AM, Elizabeth Howard <howardelizabeth@hotmail.com> wrote:  
I know that your son has probably called you and filled your head full of crap about me, but take it with a grain of salt. He has more than likely told you that he has to make up for bills I can't pay and bullshit all around. The truth is I pay the bills and he gives me half for the

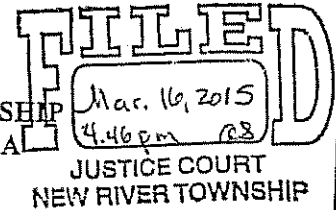
house security, 35.00 for electric no matter how high the bill, 33 for car insurance and 25 for the internet. And he pays the yearly taxes of about 850 or around there in 3 payments. I have proof of all the bills I pay! Now 130.00 a month for home owners insurance on me, I have a teeth bill of 3000. I'm trying to pay down but have to use the visa for food. My mom and I buy food when we go to town. This house thing has taken a lot of time and energy and he insists that I'm spending my money on her house! And I'm not. I tried to pay down my bills not really realizing I shorted myself bad. So this month I will pay the minimums. Shaughnan wanted chicks and I went along with him because if I don't he gets mad! Thanks for spoiling him, he now gets what he wants by brow beating me. He's always right and I'm always wrong! I'm just the maid and cook and someone to be here and that's it. He insists that he is sick and in worse shape than me and insists on lots of sympathy and talks aaaaaaIIIIII day about his ailments. He is not satisfied with the barium swallow and now wants a 2500. MRI, because he is just sure he has something wrong. He is the worst hypochondriac I have ever met. If I complained about my neck as much as he complains about his made up illnesses he would leave me. He gets mad if I'm hurting because the attention is off him and on me and in his eyes that's unacceptable. I was even thinking about what I can do for extra money that won't take away my disability because I may need my neck operated on sooner than I think, but he would want me to put it to the chickens and yard, so why bother. I was for hatching a few chicks, but it's turned into a full Tim thing and the 150 watt lights will send the electric bill soaring and he doesn't want to increase what he is paying me now. Mom pays 100 and I pay the rest. He sticks with 35. That is kicking my ass. When we have made the 2 year mark with the house security system, I'm dumping it. Too much going out, not enough coming in. Shaughnan thinks he's dying and I'm not getting any richer and Fallon is getting more defiant and Savannah follows him to the bathroom practically. He needs to buy them some new clothes, but he is too busy paying the doctors to find something wrong with him. I can't afford pants, bras, shirts, socks, under ware and what not for two growing teens, but he will not spend a dime on them for clothes. They need Kotex and they can't take mine anymore because I'm full blown menopause and no more period. And the hot flashes are horrible all day and night and I can't afford 80.00 a month for the meds, so I'm suffering with that on top of everything else. I wish a Mack truck would veer off the highway and end my life. I am not happy right now. Love ya. Liz

Sent from my iPad

# **EXHIBIT “9”**

Case No. 15 PO 00051

IN THE JUSTICE COURT OF NEW RIVER TOWNSHIP  
COUNTY OF CHURCHILL, STATE OF NEVADA



Elizabeth C Howard  
Applicant,

VS.

APPLICATION FOR A TEMPORARY AND/OR  
EXTENDED ORDER FOR PROTECTION  
AGAINST DOMESTIC VIOLENCE

Shaughnan L. Hughes  
Adverse Party,

Please write or print CLEARLY. Use black or dark blue ink.  
Complete this Application to the best of your knowledge.

Applicant states the following facts under penalty of perjury:

1. Applicant's Date of Birth: 5-14-1962 Adverse Party's  
Relationship: I am the girlfriend (for example, wife,  
sister, etc.) of the Adverse Party. *Hear*

(a) Length of relationship: 5 1/2 yrs

(b) Have you ever lived together? Yes ☒ No ☐ If so,

(c) Are you living together now? Yes ☒ No ☐

(d) Date of Separation: 3-15-2015

(e) We have child(ren) TOGETHER: Yes ☐ or No ☒ If yes, where and with whom are  
these child(ren) living? \_\_\_\_\_

2. My address is: ☐ CONFIDENTIAL. (If confidential, do not write address here)

☒ If address is not confidential, write below:

Address 11633 Fulkerson Rd.

City Fallon State NV Zip Code 89406

I ☒ own ☐ rent this residence. Lease/title is held in all the following name(s):

Elizabeth C Howard & Shaughnan L. Hughes

How long have you been living in this residence? July 2012

Adverse Party's address is:

Address 11633 Fulkerson Rd.

City Fallon State NV Zip Code 89406

How long has the Adverse Party been living in this residence? July 2012

4. My place of employment is ☐ CONFIDENTIAL. (If confidential, do not write address here)

☒ If not confidential, state place(s) of employment:

Name of employer Disabled

Address: \_\_\_\_\_ Phone \_\_\_\_\_

City \_\_\_\_\_ County \_\_\_\_\_ State \_\_\_\_\_

Name of employer \_\_\_\_\_

Address: \_\_\_\_\_ Phone \_\_\_\_\_

City \_\_\_\_\_ County \_\_\_\_\_ State \_\_\_\_\_

5. Adverse Party's employer is: Unemployed, <sup>Self</sup> employed

Address: \_\_\_\_\_ <sup>FFI dealer</sup> Phone \_\_\_\_\_

City \_\_\_\_\_ County \_\_\_\_\_ State \_\_\_\_\_

6. (a) The name(s) and date(s) of birth of the minor child(ren) of whom I am the parent, appointed guardian, or who live in my home, are as follows:

NAME (first and last)	DATE OF BIRTH	APPLICANT'S CHILD (Yes/No) CIRCLE ONE	ADVERSE PARTY'S CHILD (Yes/No) CIRCLE ONE	WHO CHILD LIVES WITH
1. <sup>ECH</sup> <del>Savannah Hughes</del>	<del>11-6-98</del>	YES or <u>NO</u>	<u>YES</u> or NO	<u>US</u>
2. <sup>ECH</sup> <del>Totten Hughes</del>	<del>10-2-00</del>	YES or <u>NO</u>	<u>YES</u> or NO	<u>US</u>
3.		YES or NO	YES or NO	
4.		YES or NO	YES or NO	
5.		YES or NO	YES or NO	
6.		YES or NO	YES or NO	

(b) Have you or the Adverse Party ever been awarded custody/guardianship of the minor child(ren) by Court Order? ☒ Yes ☐ No

Who was awarded custody/guardianship? ☐ Applicant ☒ Adverse Party

By what Court? Merced, Ca Court Case No. (If known) ?



- 1 7. Please check the appropriate box, IF YOU or the ADVERSE PARTY have ever filed a case in  
2 any court for a ☒ Divorce, ☐ Custody, ☐ Paternity, ☐ Child Support, ☐ Guardianship,  
3 ☒ Order for Protection Against Domestic Violence, or ☐ Stalking/Harassment Order. Please  
4 indicate when and where the case(s) was filed, and list the case number(s) if known.

5 Elizabeth Howard - Solano County <sup>CA</sup> divorce 2001  
6 Shaughnessy Hughes - ~~Merced~~, CA, divorce ?

- 7 8. (a) Has CHILD PROTECTIVE SERVICES (CPS) ever been contacted regarding any member of  
8 the household in the past year? ☐ Yes ☒ No

9 (b) Is CPS currently involved with your family? ☐ Yes ☒ No

10 If yes, give details, including the caseworker's name:

11 \_\_\_\_\_  
12 \_\_\_\_\_  
13 \_\_\_\_\_

- 14 9. (a) Does the Adverse Party possess a firearm, or does the Adverse Party have a firearm under his  
15 or her custody or control? ☒ Yes ☐ No ☐ I don't know FFL Dealer + SOT

16 (b) Has the Adverse Party ever threatened, harassed, or injured you, the minor child(ren), or  
17 anyone else with a firearm or any other weapon? ☐ Yes ☒ No ☐ I don't know

18 If yes, give details:

19 The adverse party had his oldest daughter push me  
20 backwards off our back steps in Sept  
21 2014 I fear her and what she is capable  
of doing again. she does his bidding

- 22 10. (a) ☒ I have been or reasonably believe I will become a victim of domestic violence committed  
23 by the Adverse Party or his teenage daughters, towards me.  
24 (b) ☐ The child(ren) have been or are in danger of becoming a victim of domestic violence  
25 committed by the Adverse Party.  
26  
27  
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**DO NOT WRITE ON THE BACK OF ANY PAGES**

In the following space, state the facts that support your Application. Be as specific as you can, starting with the most recent incident. Include the approximate dates and locations, and whether law enforcement or medical personnel have been involved.

**THIS APPLICATION IS A PUBLIC RECORD**  
**PLEASE WRITE CLEARLY**

I was under severe duress in 2012, and was pushed to put my boyfriend on my house deed, that I had purchased with money from a 3<sup>rd</sup> party Law suit in 2012, and was tormented into doing so because of his fear of being thrown out into the street "as he put it" by my family if I died while making one of many journeys to California, to a work camp doctor appt. So I did, and he has had custody of his children, 14 & 16, since Sept 2011, in which do not like me because I try to get them to help me around the house, and he viciously tells me to leave them alone, that I'm mean & nasty and vicious to them & says it right in front of them. He has been nasty & Condescending since his name was put on the deed, and can't stand to listen to me complain about how much pain I'm in. I have been disabled since July 2008, due to an accident

CONTINUE TO THE NEXT PAGE IF YOU NEED MORE ROOM FOR YOUR STATEMENT.

1 on a dock while I was a truck driver.  
2 I was cut off all my meds, including,  
3 but not limited to pain meds, anti-inflammatories  
4 anti-depressants, Lidocaine patches, I  
5 was cut off cold turkey, and did not  
6 have the funds to afford co-pays in order  
7 to find a new doctor. This happened in  
8 Nov 1, 2013. My mother sold her home  
9 of 65 years to come here so I could  
10 help take care of her and build her  
11 an accessory dwelling in our back yard.  
12 during the construction, Shaughnan  
13 and his father & Kids were not to  
14 happy that I took this on. Shaughnan  
15 was upset because he was having to  
16 do work he didn't want to do, and his  
17 Father would call and bawl me out.  
18 in 2014 Sept, I was becoming more &  
19 more depressed due to the constant  
20 put downs by Shaughnan & his Kids  
21 were allowed to ignore me, and if I  
22 asked them a question, they wouldn't  
23 answer me, then Shaughnan would  
24 rip me apart about how horrible I  
25 was and on & on until one day in  
26 Sept 2014, his daughters and he & I  
27 went to Fernley to go to Walmart,  
28

PLEASE DO NOT WRITE ON THE BACKS OF ANY PAGES.

SEPT 2014  
IN 10/11

because the town was in a "blackout"  
"Fallon"<sup>Town</sup>. And I asked his daughter  
Fallon<sup>daughter</sup> a question about her mother,  
and she ignored me finally Shaughnan  
made her answer me, but was mad  
at me for even asking her a  
question, and we went home very  
upset, him blaming me for  
everything as usual. We got home  
and I went up to some trees.  
I have + started watering them  
while crying and here came  
Shaughnan, Blaming me for  
everything he could, until I  
stood up screaming at him to  
leave me alone! I bent down  
to try and grab some pebbles  
that were stuck in the mud to  
throw at him because of his  
insane accusations and the  
pebbles wouldn't budge. [Shaughnan  
went running and screaming to  
his two daughters that I  
was going to kill him. He dove  
into the garage long enough to  
either grab a gun or get rid

of a gun, and by the time I got there, he was hiding behind his 13 & 15 year old screaming like a girl and yelling at them to push me off the stairs! Be it now, he is 6'2" & 210 lbs. I was saying, "why are you acting like this, what are you doing", and grabbed the handle of the door, only to get pushed backwards off the steps and having my lower back re-injured. [They called the police and said I was crazy & lied to them and tried to get me thrown off my property] The police that came were nice & I told them what happened, and how Shaughnan was getting meaner & meaner to me as the days went by, I was alone because my mother had gone to visit my sister in Oregon. The kids were caustic and vicious to me & when it went to come in the house the next evening, both

of his children started yelling at me to get out, that I wasn't allowed in my house anymore, which was a lie their father told them, and they were going to hurt me! but their father came from the bedroom, gloating, smiling ear to ear, and very condescendingly & patronizing me saying "if you be a good girl, maybe we will let you in to visit." I had never been forced to leave & the police told me to just stay away from them that one evening, but I could go back, I was so distraught that I couldn't function & he & his kids would walk by my mothers house laughing and talking about me, which didn't help the situation, & he was going to lie to the police & try to have me thrown off the property permanently, I overheard him talking to his father by the open window.

That situation ended in me  
having to go on meds in order  
to put up with Shaughnan  
& his teenage daughters abuse.

[Fast forward: Sunday March  
15. I was at my mothers house  
since early morning, laying  
stick & peel flooring by her front  
door.] I went back into the  
house for something in my  
bedroom, and noticed a pile of  
dirty clothes on my bed. It was  
the clothes that I was going to  
wash that were in the dryer.

Savannah "16 yr old" had taken my  
dirty dry laundry, and had put it  
in the dryer and then thrown it  
on my bed. I told her what she  
had done & she lied and said  
that the clothes were wet!

I said to just leave my things  
alone from now on or come and  
ask me before you do things  
with my clothes. Shaughnan heard  
us and Savannah  
wouldn't admit she was wrong.

and made it out that I was harassing her! in which Shaughnecan took her side as always and called his dad whom now lives about 4 miles away, and lied to him and said I was harassing his kids and he needs to come & take them.

They both lied to their grandfather "as always" and had him believing that I was crazy and trying to start a fight. None of that happened! These two girls lie to get attention, and it works! They all showed up at the house about an hour later, and Shaughnecan left to his dad's. I took my mother shopping, and when I got home, they were right behind me on the road and came to pack clothes, spewing lies and accusations at me in my home. Shaughnecan is the instigator and has told the kids that I'm mean



and to not listen to me.  
I was afraid for my life  
when Shaughnan, his two girls  
14 & 16 and 300 lb 6" father  
surrounded me in the house  
yelling at me and saying I'm  
a horrible person & I'm never  
nice to them and one accusation  
after another of lies after  
lies, instigated by their father.  
It is odd thought that Shaughnan  
told me all the time up to  
that point how nice & sweet  
I was to everyone! Now I'm  
a monster because I wasn't  
supposed to make any comments  
to his mentally disturbed older  
daughter "That I'm afraid will  
try to mortally injure me!  
Whom sleeps with a huge  
knife under her pillow and  
whom carries knives all over"  
who does her fathers bidding.  
She will do anything he tells  
her to, and I'm afraid she  
will harm or kill my mother  
or me or our animals. Her

Father has her butcher all the birds, pheasants, Roosters, chickens, and she enjoys it, and likes to get real bloody to show off she is not all there. I'm afraid for my life with all of the Hughes clan. I have a Text Shaughnan sent me that is very degrading and threatening & I fear for my life. I will print it out. I had an attorney read it and said I should get a TPO, he felt it was very odd & threatening too. Again! I'm afraid of his kids, they are mean & hate me. I had surgery on Dec 31<sup>st</sup>, diskectomy & fusion & I have spinal stenosis L-spine. I am in horrible pain & am afraid of being re-injured. spinal chord injury! according to my doctors. *ip-c Huf*

1 11. Have YOU ever been arrested or charged with domestic violence, or any other crime committed  
2 against your spouse, partner, or child(ren)? ☐ Yes ☒ No

3 If yes, WHEN and where?  
4 \_\_\_\_\_  
5 \_\_\_\_\_

6 12. To your knowledge, has the ADVERSE PARTY ever been arrested or charged with domestic  
7 violence, or any other crime committed against his/her spouse, partner, or child(ren)?

8 ☐ Yes ☐ No ☒ I don't know If yes, WHEN and where?  
9 \_\_\_\_\_  
10 \_\_\_\_\_

11 13. An emergency exists, and I need a TEMPORARY ORDER FOR PROTECTION AGAINST  
12 DOMESTIC VIOLENCE issued immediately, without notice to the Adverse Party, to avoid  
13 irreparable injury or harm. I request that it include the following relief, and any other relief the  
14 Court deems necessary in an emergency situation. (Please check all the choice(s) that may apply  
15 to YOU):

16 ☒ (A) Prohibit the <sup>and kids</sup> Adverse Party, either directly or through an agent, from threatening,  
17 physically injuring, or harassing me and/or the minor child(ren).

18 ☒ (B) Prohibit the Adverse Party from any contact with me whatsoever.

19 ☒ (C) Exclude the Adverse Party from my residence and order the Adverse Party to stay at  
20 least 100 yards away from my residence.

21 ☐ (D) Obtain law enforcement assistance to ☐ accompany me to the following residence,

22 \_\_\_\_\_ OR  
23 ☐ to accompany the Adverse Party to the following residence,

24 \_\_\_\_\_ to obtain personal property.

25 ☐ (E) Grant temporary custody of the minor child(ren) to me.

26 ☐ (F) Order that custody, visitation, and support of the minor child(ren) remain as ordered in  
27 the Decree of Divorce/Order entered in Case Number \_\_\_\_\_ in the  
28 \_\_\_\_\_ Court of the State of \_\_\_\_\_.

☐ (G) Order the Adverse Party to stay at least 100 yards away from the minor child(ren)'s  
school(s), or day care(s), located at ☐ CONFIDENTIAL

(If confidential, do not write name of a school/day care and address here.)

☐ If NOT confidential, write name of school(s)/day care(s) and address(es) below:

(1) Name of school or day care N/A

Address \_\_\_\_\_

City \_\_\_\_\_ County \_\_\_\_\_ State \_\_\_\_\_

(2) Name of school or day care \_\_\_\_\_

Address \_\_\_\_\_

City \_\_\_\_\_ County \_\_\_\_\_ State \_\_\_\_\_

☐ (H) Order the Adverse Party to stay at least 100 yards away from my place(s) of employment.

☐ (I) Order the Adverse Party to stay at least 100 yards away from the following places, which I or the minor child(ren) frequent regularly:

(1) Name N/A

Address \_\_\_\_\_

City \_\_\_\_\_ County \_\_\_\_\_ State \_\_\_\_\_

(2) Name \_\_\_\_\_

Address \_\_\_\_\_

City \_\_\_\_\_ County \_\_\_\_\_ State \_\_\_\_\_

(J) ☒ (1) Prohibit the Adverse Party, either directly or through an agent, from physically injuring or threatening to injure any animal that is owned or kept by ~~the Adverse Party, the minor child(ren),~~ or me!

☒ (2) Prohibit the Adverse Party, either directly or through an agent, from taking possession of any animal owned or kept by me, ~~or the minor child(ren).~~

(K) I further request the following other conditions:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

1 IF YOU WISH TO APPLY FOR A HEARING FOR AN EXTENDED ORDER  
2 FOR PROTECTION COMPLETE THE FOLLOWING INFORMATION

- 3 14. ☒ I request the Court hold a hearing for an EXTENDED ORDER FOR PROTECTION  
4 AGAINST DOMESTIC VIOLENCE (which could be in effect for up to one year), and at that  
5 hearing the Court issue an Extended Order for Protection Against Domestic Violence and that it  
6 include the following relief and any other relief the Court deems appropriate.

7 (Please check all the choice(s) that may apply to YOU).

- 8 ☒ (A) Prohibit the Adverse Party, either directly or through an agent, from threatening,  
9 physically injuring, or harassing me and/or the minor child(ren).  
10 ☒ (B) Prohibit the Adverse Party from any contact with me whatsoever.  
11 ☒ (C) Exclude the Adverse Party from my residence and order the Adverse Party to stay at  
12 least 100 yards away from my residence.  
13 ☐ (D) Grant temporary custody of the minor child(ren) to me.  
14 ☐ (E) Grant the Adverse Party visitation with the minor child(ren).  
15 ☐ (F) Order the Adverse Party to pay support and maintenance of the minor child(ren). (You  
16 may be required to file an Affidavit of Financial Condition prior to the hearing).  
17 ☐ (G) Order the Adverse Party to pay the rent or make payments on a mortgage or pay  
18 towards my support and maintenance.  
19 ☐ (H) Order that custody, visitation, and support of the minor child(ren) remain as ordered in  
20 the Decree of Divorce/Order entered in Case Number \_\_\_\_\_ in the  
21 \_\_\_\_\_ Court of the State of \_\_\_\_\_.  
22 ☐ (I) Order the Adverse Party to stay at least 100 yards away from the minor child(ren)'s  
23 school, or day care, located at: ☐ CONFIDENTIAL  
24 (If confidential, do not write name of school and address here).  
25 ☐ If address is not confidential, please write name of school or day care and address(es)  
26 below:  
27 (1) Name of school or day care \_\_\_\_\_  
28 Address: \_\_\_\_\_  
City \_\_\_\_\_ County \_\_\_\_\_ State \_\_\_\_\_

(2) Name of school or day care N/A  
Address \_\_\_\_\_  
City \_\_\_\_\_ County \_\_\_\_\_ State \_\_\_\_\_

3) Name of school or day care \_\_\_\_\_  
Address \_\_\_\_\_  
City \_\_\_\_\_ County \_\_\_\_\_ State \_\_\_\_\_

- ☐ (J) Order the Adverse Party to stay at least 100 yards away from my place of employment. ☐ CONFIDENTIAL  
If address is not confidential, please write name of employer and address(es) below:

(1) Name of Employer N/A  
Address: \_\_\_\_\_  
City \_\_\_\_\_ County \_\_\_\_\_ State \_\_\_\_\_

(2) Name of Employer N/A  
Address \_\_\_\_\_  
City \_\_\_\_\_ County \_\_\_\_\_ State \_\_\_\_\_

- ☐ (K) Order the Adverse Party to stay at least 100 yards away from the following places, which I or the minor child(ren) frequent regularly:

(1) Name N/A  
Address: \_\_\_\_\_  
City \_\_\_\_\_ County \_\_\_\_\_ State \_\_\_\_\_

(2) Name N/A  
Address \_\_\_\_\_  
City \_\_\_\_\_ County \_\_\_\_\_ State \_\_\_\_\_

(3) Name N/A  
Address \_\_\_\_\_  
City \_\_\_\_\_ County \_\_\_\_\_ State \_\_\_\_\_

1 (L) (1) ☒ Prohibit the Adverse Party, either directly or through an agent, from physically  
2 injuring or threatening to injure any animal that is owned or kept by the Adverse Party,  
3 the minor child(ren), or me.

4 (2) ☒ Prohibit the Adverse Party, either directly or through an agent, from taking  
5 possession of any animal owned or kept by me or the minor child(ren).

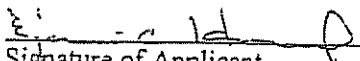
6 (3) ☐ I request the Court to specify the arrangements for the possession and care of any  
7 animal owned or kept by the Adverse Party, the minor child(ren), or me.

8 ☐ (M) Order the Adverse Party to pay for lost earnings and expenses incurred as a result of  
9 my attendance at any hearing concerning this Application.

10 ☐ (N) I further request the following other conditions:  
11  
12  
13  
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15

16 I DECLARE UNDER PENALTY OF PERJURY UNDER THE LAWS OF THE  
17 STATE OF NEVADA THAT I HAVE READ THE STATEMENTS CONTAINED IN  
18 THIS APPLICATION. KNOW THE CONTENTS THEREOF. AND BELIEVE THEM  
19 TO BE TRUE AND CORRECT

20 Dated: 3-16-2015

21   
22 Signature of Applicant

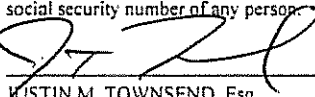
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24 Elizabeth C. Howard  
25 Applicant's Name (Please Print)  
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ALLISON MacKENZIE, LTD.  
402 North Division Street, P.O. Box 646, Carson City, NV 89702  
Telephone: (775) 687-0202 Fax: (775) 882-7918  
E-Mail Address: law@allisonmackenzie.com

1 Case No.15-10DC-0876

2 Dept. No. I

3 The undersigned hereby affirms that  
4 this document does not contain the  
5 social security number of any person.

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JUSTIN M. TOWNSEND, Esq.

FILED  
2016 JUL 20 PM 3:32  
CLERK OF COURT  
J. S. SEYON

IN THE TENTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA  
IN AND FOR THE COUNTY OF CHURCHILL

SHAUGHNAN L. HUGHES, an  
individual,

Plaintiff,

vs.

ELIZABETH C. HOWARD, an  
individual; and DOES I through  
XX, inclusive.

Defendants.

**AFFIDAVIT OF  
JUSTIN M. TOWNSEND, ESQ.**

STATE OF NEVADA )  
CARSON CITY ) ss.

JUSTIN M. TOWNSEND, ESQ. ("TOWNSEND"), being first duly sworn, deposes  
and says:

1. That he is the attorney of record for Plaintiff, SHAUGHNAN L. HUGHES, in  
the above entitled action.

2. That on or about June 28, 2016, he received from counsel for Defendant a  
document entitled Opposition to Motion to Dismiss/Motion to Strike ("Opposition"), which was  
dated June 20, 2016.

3. That on or about June 28, 2016, TOWNSEND called counsel for Defendant to  
inquire as to why Defendant had filed said Opposition six months after it was due and more than five  
months after the Court had already granted the Motion to Dismiss/Motion to Strike.



1 4. That during the June 28, 2016 telephone call, counsel for Defendant informed  
2 TOWNSEND that the June 20, 2016 Opposition was filed in response to this Court's May 19, 2016  
3 Order.

4 5. That TOWNSEND then stated to Defendant's counsel that the June 20, 2016  
5 Opposition was not responsive to the May 19, 2016 Order, which required that counsel for  
6 Defendant file a supplement to Defendant's May 16, 2016 Motion to Set Aside dismissal, to which  
7 counsel for Defendant responded that the June 20, 2016 Opposition was the same thing as a  
8 Supplement to the May 16, 2016 Motion to Set Aside Dismissal.

9 6. That on June 29, 2016, TOWNSEND sent an email to Defendant's counsel in  
10 which he demanded that the June 20, 2016 Opposition be withdrawn and that a filing responsive to  
11 the Court's May 19, 2016 Order be filed in its place.

12 7. That a true and correct copy of TOWNSEND's June 29, 2016 email to  
13 Defendant's counsel is hereby incorporated and attached hereto as Exhibit "1".

14 8. That TOWNSEND did not receive Defendant's NRCP 16.1 Initial List of  
15 Witnesses and Production of Documents until May 20, 2016 after making multiple requests for the  
16 same from Defendant's counsel.

17 9. That on penalty of perjury, the averments made herein are true to the best of  
18 TOWNSEND's knowledge, except as to those averments made on information and belief, and as to  
19 those matters, he believes them to be true.

20 DATED this 20<sup>th</sup> day of July, 2016.

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22   
23 JUSTIN M. TOWNSEND, ESQ.

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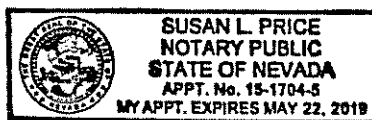
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1 STATE OF NEVADA )  
2 CARSON CITY ) ss.  
3

4 On July 20, 2016, personally appeared before me, a Notary Public, JUSTIN M.  
5 TOWNSEND, personally known (or proved) to me to be the person whose name is subscribed to the  
6 foregoing document, and who acknowledged to me that he executed the above document.

7  
8   
9 NOTARY PUBLIC



ALLISON MacKENZIE, LTD.  
402 North Division Street, P.O. Box 646, Carson City, NV 89702  
Telephone: (775) 687-0202 Fax: (775) 882-7918  
E-Mail Address: law@allisonmackenzie.com

1 CERTIFICATE OF SERVICE


2 Pursuant to NRCP Rule 5(b), I hereby certify that I am an employee of ALLISON,  
3 MacKENZIE, LTD., Attorneys at Law, and that on this date, I caused the foregoing document to be  
4 served on all parties to this action by:

- 5 X Placing a true copy thereof in a sealed postage prepaid envelope in the United States  
6 Mail in Carson City, Nevada [NRCP 5(b)(2)(B)]  
7 \_\_\_\_\_ Hand-delivery - via Reno/Carson Messenger Service [NRCP 5(b)(2)(A)]  
8 \_\_\_\_\_ Facsimile  
9 \_\_\_\_\_ Federal Express, UPS, or other overnight delivery  
10 \_\_\_\_\_ E-filing pursuant to Section IV of District of Nevada Electronic Filing Procedures  
[NRCP 5(b)(2)(D)]

11 fully addressed as follows:

12 CHARLES R. KOZAK, ESQ.  
13 KOZAK LAW FIRM  
14 3100 Mill Street, Suite 115  
Reno, NV 89502

15 DATED this 20<sup>th</sup> day of July, 2016.

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17 NANCY FONTENOT  
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ALLISON MacKENZIE, LTD.  
402 North Division Street, P.O. Box 646, Carson City, NV 89702  
Telephone: (775) 687-0202 Fax: (775) 882-7918  
E-Mail Address: law@allisonmackenzie.com

INDEX OF EXHIBITS

<u>Exhibit No.</u>	<u>Description</u>	<u>Number of Pages (Including Cover Page)</u>
"1"	TOWNSEND's June 29, 2016 email to Defendant's counsel	2
4829-6882-4885, v. 1		

# EXHIBIT “1”

## Justin Townsend

---

**From:** Justin Townsend  
**Sent:** Wednesday, June 29, 2016 4:25 PM  
**To:** chuck@kozaklawfirm.com  
**Cc:** 'nan@kozaklawfirm.com'  
**Subject:** Opposition to Motion to Dismiss

Mr. Kozak,

Yesterday, you told me on the phone that the Opposition to Motion to Dismiss you filed on or about June 20, 2016 was in response to the Court's May 19, 2016 Order After Pretrial Conference. Per the Court's May 19, 2016 Order After Pretrial Conference:

"ELIZABETH C. HOWARD shall have until July 8, 2016 to file a supplement to her Motion to Set Aside Dismissal of Counterclaim filed on May 17, 2016."

From the Pretrial Conference itself the Court noted the deficiencies in your Motion to Set Aside Dismissal include, but may not be limited to, failure to attach the Opposition you supposedly filed on December 30, 2016, failure to provide adequate proof of such a filing, and failure to provide proof of service of the Opposition on my office.

The Opposition you filed on or about June 20, 2016 does not meet the requirements of the Court's May 19, 2016 Order. Please withdraw the June 20, 2016 Opposition and refile by July 8, 2016 the supplement required by the Court. If you do not withdraw the June 20, 2016 Opposition (which is 6 months late) by July 8, 2016, we will file a Motion to Strike the pleading and ask the Court for attorneys' fees.

Regards,

Justin Townsend, Esq.  
Allison MacKenzie, Ltd.  
402 N. Division Street  
P.O. Box 646  
Carson City, NV 89702  
(775) 687-0202 telephone  
(775) 882-7918 fax  
email: [jtownsend@allisonmackenzie.com](mailto:jtownsend@allisonmackenzie.com)

ALLISON MacKENZIE, LTD.  
402 North Division Street, P.O. Box 646, Carson City, NV 89702  
Telephone: (775) 687-0202 Fax: (775) 882-7918  
E-Mail Address: law@allisonmackenzie.com

Case No.15-10DC-0876

Dept. No. I

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

  
JUSTIN M. TOWNSEND, Esq.

FILED  
2016 JUL 20 PM 3:32  
CLERK OF COURT  
Sue Savon  
DEPUTY

IN THE TENTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA  
IN AND FOR THE COUNTY OF CHURCHILL

SHAUGHNAN L. HUGHES, an  
individual,

Plaintiff,

vs.

ELIZABETH C. HOWARD, an  
individual; and DOES I through  
XX, inclusive.

Defendants.

AFFIDAVIT OF  
SHAUGHNAN L. HUGHES

STATE OF NEVADA           )  
  : ss.  
CARSON CITY                )

SHAUGHNAN L. HUGHES ("HUGHES"), being first duly sworn, deposes and says:

1. That he is the Plaintiff in the above entitled action.
2. That he owns in joint tenancy with Defendant, ELIZABETH C. HOWARD, certain real property situated at 11633 Fulkerson Road in Fallon, Nevada (the "Property").
3. That prior to, during, and subsequent to Defendant conveying the Property to HUGHES, she told HUGHES on numerous occasions that he was to be an equal owner with her of the Property.
4. That Defendant, on many occasions, also told HUGHES and others in front of various witnesses that he had earned his joint interest in the property via his substantial work on and

1 contributions to the improvements to the Property during all phases of the construction of  
2 improvements on the Property.

3 5. That HUGHES used material from Kent's Supply in performing labor in  
4 building fencing and retaining walls on the Property.

5 6. That HUGHES received and signed for material delivered to the Property by  
6 Kent's Supply.

7 7. That HUGHES has in his possession the original carbon copies of all Kent's  
8 Supply invoices produced to Defendant in his NRCP 16.1 initial production of documents.

9 8. That on or about December 17, 2015, HUGHES received a telephone call  
10 from a representative of Country Financial, to inform him that the homeowners insurance policy on  
11 the Property was going to lapse without immediate payment of a premium payment that was due on  
12 November 30, 2015 plus applicable late fees.

13 9. That during the aforementioned phone call, the representative informed  
14 HUGHES that Country Financial had sent overdue notices to Defendant at the Property and had  
15 attempted to call her directly for payment, but that she had not responded to the attempts to collect.

16 10. On the basis of the information received from Country Financial, HUGHES  
17 made a payment of the insurance premium plus a late fee on December 17, 2015.

18 11. That based on his conversations with Country Financial, HUGHES is  
19 informed and believes that Defendant wants to remove HUGHES from the insurance policy and  
20 desired to let the policy lapse for that purpose and that she has allowed the near lapse to occur on at  
21 least two additional occasions.

22 12. That on July 14, 2014, HUGHES and the Defendant purchased a new  
23 refrigerator from Lowe's and that HUGHES paid \$500 in cash therefor while Defendant put the  
24 remaining balance of \$228.36 on her Lowe's credit card as shown on the receipt attached to  
25 HUGHES' Opposition to Motion for Summary Judgment as Exhibit "6".

26 13. That HUGHES and the Defendant entered into a verbal agreement to generally  
27 divide the costs of labor and materials in installing improvements on the Property with HUGHES  
28 also contributing most of the labor himself to save both parties money.





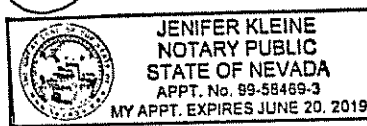
ALLISON MACKENZIE, LTD.  
402 North Division Street, P.O. Box 646, Carson City, NV 89702  
Telephone: (775) 687-0202 Fax: (775) 882-7918  
E-Mail Address: law@allisonmackenzie.com

1 STATE OF NEVADA )  
2 CARSON CITY ) : ss.

3  
4 On July 18, 2016, personally appeared before me, a Notary Public, SHAUGHNAN L.  
5 HUGHES, personally known (or proved) to me to be the person whose name is subscribed to the  
6 foregoing document, and who acknowledged to me that he executed the above document.

7  
8 NOTARY PUBLIC

9 4848-3337-9381, v. 2



1 CERTIFICATE OF SERVICE

2 Pursuant to NRCP Rule 5(b), I hereby certify that I am an employee of ALLISON,  
3 MacKENZIE, LTD., Attorneys at Law, and that on this date, I caused the foregoing document to be  
4 served on all parties to this action by:

- 5 X Placing a true copy thereof in a sealed postage prepaid envelope in the United States  
6 Mail in Carson City, Nevada [NRCP 5(b)(2)(B)]  
7 \_\_\_\_\_ Hand-delivery - via Reno/Carson Messenger Service [NRCP 5(b)(2)(A)]  
8 \_\_\_\_\_ Facsimile  
9 \_\_\_\_\_ Federal Express, UPS, or other overnight delivery  
10 \_\_\_\_\_ E-filing pursuant to Section IV of District of Nevada Electronic Filing Procedures  
[NRCP 5(b)(2)(D)]

11 fully addressed as follows:

12 CHARLES R. KOZAK, ESQ.  
13 KOZAK LAW FIRM  
14 3100 Mill Street, Suite 115  
Reno, NV 89502

15 DATED this 19<sup>th</sup> day of July, 2016.

16   
17 NANCY FONTENOT

18 4848-3337-9381, v. 2  
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1 Case No. 15-10DC-0876

2 Dept. No. I

3 The undersigned hereby affirms that  
4 this document does not contain the  
5 social security number of any person.

6 

7 CHARLES R. KOZAK, Esq.

8 **IN THE TENTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA**  
9 **IN AND FOR THE COUNTY OF CHURCHILL**

10 SHAUGHNAN L. HUGHES, an  
11 individual,

12 vs.

13 Plaintiff,

**REPLY TO OPPOSITION TO  
MOTION FOR SUMMARY  
JUDGMENT**

14 ELIZABETH C. HOWARD, an  
15 individual; and DOES I through  
16 XX, inclusive,

17 Defendants  
18 \_\_\_\_\_ /

19 ELIZABETH C. HOWARD, an  
20 individual,

21 Counterclaimant,

22 vs.

23 SHAUGHAN L. HUGHES, an  
24 individual; and DOES I through  
25 XX, inclusive,

26 Counterdefendants.  
27 \_\_\_\_\_ /

28 COMES NOW Defendant and Counterclaimant, ELIZABETH HOWARD, and presents  
her Reply to Opposition to Motion for Summary Judgment based on the following

1 Memorandum of Points and Authorities along with the record on file herein.

2  
3 **MEMORANDUM OF POINTS AND AUTHORITIES**

4 **1. PROCEDURAL AND FACTUAL BACKGROUND**

5 Defendant/Counterclaimant ELIZABETH C. HOWARD (hereinafter "Ms. Howard")  
6 moved for Summary Judgment in this matter against Plaintiff SHAUGHNAN L. HUGHES'  
7 (hereinafter "Plaintiff") on his claim for a partition action on her property at 11633 Fulkerson  
8 Road (hereinafter "Property"). While Ms. Howard's Motion for Summary Judgment noted  
9 procedurally that she had counterclaimed for fraud, undue influence and emotional distress  
10 inflicted on her by Hughes, her Motion for Summary Judgment is only against Plaintiff's  
11 partition action, based on no genuine issue of material fact regarding Plaintiff's lack of financial  
12 contribution to the Property.  
13

14 This Motion for Summary Judgment is separate and distinct from Ms. Howard's  
15 counterclaims; dismissal of which is pending in this matter. As Plaintiff notes, Ms. Howard's  
16 counterclaims were dismissed on January 7, 2016, and Ms. Howard filed a Motion to Set Aside  
17 that ruling on May 16, 2016. On May 17, 2016 this court ordered Ms. Howard to file a  
18 supplement to her Motion to Set Aside, which she did on June 20, 2016. Plaintiff took issue  
19 with the format of the supplement, and in response, Ms. Howard withdrew and refiled on July 7,  
20 2016. Ms. Howard agrees that the counterclaims have no bearing on this Motion for Summary  
21 Judgment, which is brought solely against Plaintiff's partition action. As discussed below,  
22 applicable law requires that for a partition of interest in the Property, Plaintiff would need to  
23 show a contribution to the property. Ms. Howard brings her Motion for Summary Judgment  
24 based on Plaintiff demonstrated lack of financial contribution. Discrepancies in documents are  
25 used to show fraudulent action by Plaintiff, not to raise any issue related to her counterclaims,  
26  
27  
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1 but only to demonstrate that his claims of contributions are disingenuous and warrant Summary  
2 Judgment.

3       Notably, Plaintiffs Opposition to Motion for Summary Judgment (hereinafter  
4 “Opposition”) fails to make any reference to the fact asserted that Plaintiff made no financial  
5 contribution to the purchase of the property; and thereby concedes that Ms. Howard purchased  
6 the Property solely with her own funds from her worker’s compensation award and owned it  
7 outright in her name alone. Please see Exhibits 2, 3, and 4 to Motion for Summary Judgment.  
8 Plaintiff also does not dispute that Ms. Howard’s mother sold her home and paid for an  
9 addition, which she lived in. It follows that the only contribution Plaintiff could have made to  
10 the Property would be based on other improvements or paid expenses. However, when faced  
11 with the discrepancy of the documents attached as Exhibits 6 through 20 to the Motion for  
12 Summary Judgment, Plaintiff back pedals to admit that he actually did not pay for the expenses,  
13 stating “HUGHES did not produce these invoices to show that he paid for all the materials  
14 listed.” See Opposition page 11, lines 22-23, regarding *Kent's Supply Invoices*. He goes on to  
15 make similar concessions regarding *A & K Earth Movers*, Opposition, page 15, lines 12-13;  
16 *Hiskett & Sons, LLC*, Opposition, page 16, lines 14-15; *Dan O Construction*, Opposition, page  
17 16, lines 25-27; *Lahontan Valley Electric*, Opposition, page 17, lines 15-16. Additionally,  
18 Plaintiff has made no claim for any amount for value of labor he may have contributed.  
19 Plaintiff’s claims of financial contribution to the Property boil down to at best a couple tax  
20 and/or insurance payments. What is relevant and what Plaintiff fails to note, is that for a  
21 significant period of time, Plaintiff and his daughters lived with Ms. Howard rent free, except  
22 for these minor payments.  
23

24       Even if Plaintiff had any claim for these payments, it is not an interest sufficient for a  
25  
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1 partial action to proceed in this matter, as shown below. If he has a claim, Plaintiff would more  
2 properly file a claim for reimbursement or labor in small claims court. Based on the following,  
3 and in the interests of judicial economy, Summary Judgment should be granted in this matter.  
4

## 5 **2. LEGAL ARGUMENT**

### 6 **a. "Great Prejudice" Under NRS Chapter 39 Should Prevent Partition**

7 As provided in NRS 39.010, for possession of real property as joint tenants or as  
8 tenants in common, "an action may be brought by one or more of such persons for a partial  
9 partition thereof according to the respective rights of the persons interested therein . . . if a  
10 partition cannot be made without great prejudice to the owners. The statute goes on to specify  
11 that prior to making a ruling for a partition, "the court may first ascertain and determine the  
12 shares or interest respectively held by the original cotenants".  
13

14 Pursuant to this statute, this court should look to the undisputed facts that Plaintiffs  
15 interest, if any is extremely minimal. First, it is undisputed that he contributed absolutely  
16 nothing to the purchase price of the property. Second, he admits he did not pay for  
17 improvements, but only provided receipts "to show his involvement". Third, even if he did  
18 make a few hundred dollars of payments on taxes or insurance, he otherwise lived in the house  
19 rent free with his daughters. Fourth, Plaintiff has provided no evidence of any amount of value  
20 for labor he may have contributed. Based on this, this Court should find that Plaintiff has no  
21 recognizable financial contribution to the Property.  
22

24 Even if this Court finds that Plaintiff has some minimal amount of interest, partition  
25 would cause great prejudice to Ms. Howard. Ms. Howard purchased this Property outright with  
26 her worker's compensation settlement so that she would have somewhere to live without a  
27 mortgage payment in her disability. To force a sale and cause Ms. Howard, a disabled person to  
28

1 be forced to leave her home and find alternative lodging, would be a great prejudice to her.  
2 This Court should find if Plaintiff has any small interest in reimbursement for his labor or tax  
3 payments, there are other less prejudicial remedies he may seek.  
4

5 **b. Presumption of Equal Shares to Joint Tenants Does Not Apply to**  
6 **Cohabitants**  
7

8 Plaintiff uses the case of Gorden v. Gorden, 93 Nev. 494, 497, 569 P.2d 397, 398 (1977)  
9 to attempt to claim a "principle of joint tenants presumably holding equal shares". See  
10 Opposition, Page 5, lines 21-23. However, in context that case is referring to married couples  
11 and actually states "[w]hen separate funds of a spouse are used to acquire property in the names  
12 of the husband and wife as joint tenants, it is presumed that a gift of one-half of the value of the  
13 joint tenancy property was intended." Plaintiff and Ms. Howard were never married and  
14 therefore, this case does not apply here. Id. The doctrine of contribution for community  
15 property apportionment does not apply to a dispute between unmarried cohabitants concerning  
16 division of proceeds from sale of residence where cohabitants were not married, did not hold  
17 themselves out as being married, no community property was ever held, and they purposely  
18 held title to residence as tenants in common. Sack v. Tomlin, 110 Nev. 204, 871 P.2d 298  
19 (1994). Although the Sack case addresses title as tenants in common, a partition action under  
20 NRS 39.010 applies to either *joint tenants or as tenants in common*. The Sack case is directly  
21 on point here, because it was a suit for partition of real property by unmarried cohabitants  
22 seeking the proper division of net proceeds from the sale of a residence. Id. The Sack court held  
23 that the rights in interest were directly in proportion to the amount each contributed to the  
24 purchase price of the property. Here, it is undisputed that Plaintiff contributed nothing toward  
25 the purchase price of the Property.  
26  
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1 Plaintiff again attempts to assert a presumption of equal shares to joint tenants by citing  
2 Kershman v. Kershman, 192 Cal.App.2d 23, 13 Cal.Rptr. 290 (1961). However, the Kershman  
3 court, found under pleadings in partition suit, that the Court had power to order a division of  
4 proceeds other than equal, even though title was taken in names of the parties as joint tenants.  
5 Id. In Kershman, court based the division on an agreement of the parties but did not say that  
6 that was the only way to divide interests for a partition action. NRS 39 states a partition, if it is  
7 done should be according to the respective rights of the persons interested. To do this, the court  
8 must first ascertain and determine the shares or interest respectively held.  
9

10  
11 Plaintiff has failed to reasonably or reliably show that he made any amount of contribution  
12 to the Property that would warrant a partition in this matter because it is undisputed he made no  
13 contribution to the purchase price of the Property and he admits that he actually did not pay for  
14 the expenses on the invoices provided. Plaintiff's claims of financial contribution to the  
15 Property amount to a couple tax and insurance payments, which in comparison to the value of  
16 the home, are no more than "the gossamer threads of whimsy, speculation, and conjecture"  
17 which cannot be relied on to avoid Summary Judgment. Wood v. Safeway, Inc., 121 Nev. 724,  
18 121 P.3d 1026 (2005).  
19

### 20 3. CONCLUSION

21  
22 Based on the foregoing, Ms. Howard's Motion for Summary Judgment should be granted  
23 and Plaintiff's claim for partition of the Property should be denied in full. Ms. Howard's  
24 respectfully requests this Court grant specific performance of rescission of the Quit Claim Deed  
25 and an order to vest the title in the Property entirely in her name.  
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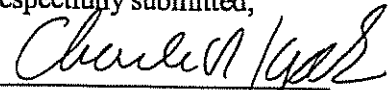
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**Affirmation: Pursuant to NRS 239B.030, the undersigned does hereby affirm that this document does not contain the social security of any person.**

DATED this 27 day of July 2016.

Respectfully submitted,



CHARLES R. KOZAK, ESQ.  
KOZAK LUSIANI LAW, LLC  
Nevada State Bar #11179  
3100 Mill Street, Suite 115  
Reno, Nevada 89502  
Phone (775) 322-1239  
Facsimile (775) 800-1767  
chuck@kozaklusianilaw.com  
*Attorney for Elizabeth C. Howard*

VERIFICATION

STATE OF WASHOE       )  
                                  :SS  
COUNTY OF CHURCHILL)

I, ELIZABETH C. HOWARD, am the Defendant and Counterclaimant in the foregoing case. I have reviewed the attached document, REPLY TO OPPOSITION TO MOTION FOR SUMMARY JUDGMENT, and know the contents thereof, and I certify that the same is true of my own knowledge, except as to those matters which are therein stated upon my information or belief, and as to those matters I believe it to be true.

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

Executed on this 27 day of July 2016 at Fallon, Nevada.

  
ELIZABETH C. HOWARD

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On the 27<sup>th</sup> day of July 2016, I caused to be delivered via facsimile and U.S.

Justin M. Townsend, Esq.  
Allison MacKenzie, Ltd.  
Nevada State Bar No. 12293  
402 N. Division Street  
P. O. Box 646  
Carson City, Nevada 89702  
Phone (775) 687-0202  
Facsimile (775) 882-7918  
Attorney for Plaintiff

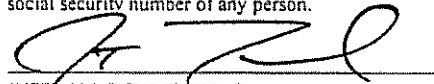
Nan Adams  
Nan Adams  
Employee of Kozak Lusiani Law, LLC

ALLISON MacKENZIE, LTD.  
402 North Division Street, P.O. Box 646, Carson City, NV 89702  
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1 Case No.15-10DC-0876

2 Dept. No. I

3 The undersigned hereby affirms that  
4 this document does not contain the  
5 social security number of any person.

6 

JUSTIN M. TOWNSEND, Esq.

FILED  
2016 JUL 28 PM 2:09  
SUE SEVON  
CLERK  
BY Sue Sevon DEPUTY

7 IN THE TENTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA  
8 IN AND FOR THE COUNTY OF CHURCHILL  
9

10 SHAUGHNAN L. HUGHES, an  
11 individual,

12 Plaintiff,

13 vs.

14 ELIZABETH C. HOWARD, an  
15 individual; and DOES I through  
16 XX, inclusive.

Defendants.  
17 \_\_\_\_\_/

**OPPOSITION TO MOTION TO SET  
SET ASIDE DISMISSAL OF  
COUNTERCLAIM**

18 COMES NOW, Plaintiff, SHAUGHNAN L. HUGHES ("HUGHES"), by and  
19 through his attorneys, ALLISON MacKENZIE, LTD., and hereby opposes the Motion to Set Aside  
20 Dismissal of Counterclaim filed by Defendant, ELIZABETH C. HOWARD. This Opposition is  
21 made and based upon the pleadings and documents on file herein as well as the following  
22 Memorandum of Points & Authorities and the Affidavit of Justin M. Townsend, Esq. ("Aff. of J.  
Townsend").

**MEMORANDUM OF POINTS AND AUTHORITIES**

24 **A. Defendant did not timely file an Opposition to HUGHES' Motion to Dismiss her**  
25 **Counterclaim.**

26 On July 27, 2015, HUGHES, pursuant to the provisions of NRS Chapter 39, filed an  
27 action for partition of certain real property located at 11633 Fulkerson Road, Fallon, Nevada 89406  
28 (the "Property"), title to which is held jointly by HUGHES and the Defendant. After service by

1 publication and service of notice of intent to take default, Defendant finally filed an Answer and  
2 Counterclaim on or about November 20, 2015. Defendant's Counterclaim alleged claims for fraud,  
3 conversion, intentional infliction of emotional distress, and specific performance.

4 On December 10, 2015, HUGHES timely filed a Motion to Dismiss, noting that  
5 Defendant had failed to plead fraud with particularity as required by NRCP 9(b) and failed to plead  
6 any other claim for which relief can be granted as required by NRCP 12(b)(5). HUGHES also  
7 moved to strike all allegations of a scandalous, immaterial, or impertinent nature pursuant to NRCP  
8 12(f), in which he noted the numerous allegations contained in the Counterclaim that were designed  
9 to denigrate HUGHES and his family and were immaterial to the claims Defendant had alleged.

10 On December 14, 2015, counsel for HUGHES contacted Defendant's counsel, Chuck  
11 Kozak, Esq. ("Kozak"), and suggested that the NRCP 16.1 early case conference be continued for a  
12 period of up to 90 days as allowed by NRCP 16.1, pending the outcome of HUGHES' Motion to  
13 Dismiss. Kozak agreed. HUGHES' counsel followed this up with a confirming email dated  
14 December 14, 2015, to which Defendant's counsel never responded. Aff. of J. Townsend at ¶ 2. A  
15 copy of the aforementioned email is hereby incorporated and attached hereto as Exhibit "A".

16 Service of HUGHES' Motion to Dismiss; Motion to Strike was accomplished by  
17 placing a true and correct copy thereof in a sealed postage prepaid envelope in the United States mail  
18 in Carson City, Nevada on December 10, 2015 addressed to Defendant's counsel pursuant to NRCP  
19 (5)(b)(2)(B). A copy of the Certificate of Service is hereby incorporated and attached hereto as  
20 Exhibit "B". According to 10JDCR 15(9), an opposition to a motion is due "[w]ithin 10 days after  
21 the service of the motion." The date of service and intermediate Saturdays, Sundays, and legal  
22 holidays are not counted when computing the time for filing the opposition pursuant to 10JDCR  
23 4(1). In addition, 3 calendar days are added to the prescribed period for service by mail. 10JDCR  
24 4(3). By the foregoing calculations, Defendant's Opposition was due Sunday, December 27, 2015.  
25 According to 10JDCR 4(2), Defendant would not be required to file on a Sunday, but should have  
26 filed no later than the following judicial day, which was Monday, December 28, 2015.

27 On Tuesday, December 29, 2015, counsel for HUGHES confirmed with the Court  
28 that no Opposition had been filed and on that date HUGHES filed a Reply to the Failure to Oppose

1 Motion to Dismiss Counterclaim; Motion to Strike together with a Request for Submission. Aff. of  
2 J. Townsend at ¶ 3. The aforementioned Reply was served on Defendant by placing a true and  
3 correct copy thereof in the mail addressed to Defendant's counsel. A copy of the Certificate of  
4 Service is hereby incorporated and attached hereto as Exhibit "C". On January 7, 2016, this Court,  
5 having not received any opposition to HUGHES' Motion to Dismiss Counterclaim; Motion to Strike,  
6 entered an Order Granting Plaintiff's Motion to Dismiss Counterclaim; Motion to Strike. On  
7 January 11, 2016, HUGHES filed a Notice of Entry of the aforementioned Order and served the  
8 same on Defendant by placing a true and correct copy thereof in the mail addressed to Defendant's  
9 counsel. A copy of the Certificate of Service is hereby incorporated and attached hereto as Exhibit  
10 "D".

11 On or about February 4, 2016, counsel for HUGHES called Kozak to arrange the  
12 NRCP 16.1 early case conference. During this call, counsel for the parties agreed on a date for a  
13 telephonic early case conference, but Kozak said nothing at all about Defendant's counterclaim, its  
14 dismissal, or any alleged opposition having been filed. Aff. of J. Townsend at ¶ 4. On February 4,  
15 2016, HUGHES also served Defendant with a Notice of Early Case Conference and Request for  
16 Production of Documents. *Id.* ¶ 5. A copy of the February 4, 2016, Notice of Early Case  
17 Conference and Request for Production of Documents is hereby incorporated and attached hereto as  
18 Exhibit "E".

19 The early case conference was held telephonically on February 16, 2016, with  
20 counsel for HUGHES initiating the call. When HUGHES' counsel called Kozak on February 16,  
21 2016, the telephone was answered by Nan Adams, a secretary at Kozak Lusiani Law Firm, who  
22 asked if HUGHES or his counsel had not received an opposition to HUGHES' Motion to Dismiss.  
23 Counsel for HUGHES confirmed in no uncertain terms that no opposition had ever been received by  
24 his office and indicated his belief and understanding that the Court had not received any opposition  
25 either. Counsel for HUGHES was then transferred to Kozak, who again asked if an opposition had  
26 ever been received. HUGHES' counsel reiterated directly to Kozak that no opposition had ever been  
27 received. This was the first time Kozak or anybody associated with Defendant had mentioned to  
28 HUGHES' counsel a claim that an opposition had been filed. Aff. of J. Townsend at ¶ 6.

Exactly three months later, on May 16, 2016, Defendant filed the instant Motion to Set Aside Dismissal of Counterclaim, which alleges that Defendant had filed an Opposition to HUGHES' Motion to Dismiss on December 30, 2016, but that it was "never filed by this Court" due to "post office mistake or being misplaced somewhere at the Court." Motion to Set Aside Dismissal, p. 5, ll. 23-24. Defendant's counsel also claims that he "had no knowledge that the Opposition had not been received or filed until weeks after the Order had been granted." Motion to Set Aside Dismissal, p. 6, ll. 2-4. Finally, Defendant also claims that "Mr. Hughes' counsel acknowledged to Ms. Howard's counsel that he had received the Opposition; however, he noted that it was not a file-stamped copy." Motion to Set Aside Dismissal, p. 5, ll. 25-28. Based on the fact that HUGHES' counsel knows beyond doubt that the last of these three claims is false, the previous two assertions defy credulity as well.<sup>1</sup> Defendant was served with no less than three documents giving notice that no Opposition had been filed or served on HUGHES: HUGHES' December 29, 2015 Reply to Failure to Oppose Motion to Dismiss; the Court's January 7, 2016 Order Granting Motion to Dismiss; and HUGHES' January 11, 2016 Notice of Entry of the January 7, 2016 Order. Kozak's claim that he did not know that his Opposition had not been filed by the Court "until weeks after the Order had been granted," Motion to Set Aside Dismissal, p. 7, ll. 7-8, is implausible, at best.

On May 17, 2016, this Court held a pretrial conference at HUGHES' request.<sup>2</sup> At the pretrial conference, this Court noted several concerns with Defendant's Motion to Set Aside Dismissal. First, Defendant's Motion to Set Aside Dismissal failed to include as an attachment a copy of the Opposition to Motion to Dismiss supposedly filed on December 30, 2015.

Next, the only attachment included in the Motion is a copy of a corner of an envelope, which Defendant asserts is proof of mailing of the Opposition to the Court. However, at the pretrial conference the Court noted that Defendant had failed to include a copy of the entire envelope, which

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<sup>1</sup> Further, the law firm which employs counsel for HUGHES is not in the practice of not responding to documents served on it which are not file-stamped. Regardless of whether or not a served document is file-stamped, counsel for HUGHES has always filed the appropriate responsive pleadings and never at any time indicated to Kozak that he would not respond to a document that did not have a file stamp. Aff. of J. Townsend at ¶ 7.

<sup>2</sup> In addition to a failure to timely file an opposition to the Motion to Dismiss, Defendant had failed to timely produce her NRCP 16.1 initial production of documents and list of witnesses, her counsel had failed to communicate with HUGHES' counsel in preparing a Joint Case Conference Report, and she had failed to timely file an Individual Case Conference Report, all of which had prevented this Court from setting this matter for trial and from setting other relevant deadlines. Therefore, HUGHES filed a Request for Pretrial Conference on March 14, 2016.



1 would show who sent the envelope and the address to which it was sent. The only evidence that the  
2 envelope contained what Defendant asserts it contained is a self-serving affidavit of Ms. Nan Adams  
3 of Kozak's law firm in which she asserts she placed an Opposition in the mail on December 30,  
4 2015. However, the question is begged: if you are going to make a copy of an envelope as proof of  
5 mailing, why not make a copy of the entire envelope to show from whence it came and to where it  
6 was mailed? The postage stamp, which is the only portion of the envelope that Defendant shows,  
7 offers no proof whatsoever that any document was mailed to the Court on December 30, 2015.

8 Lastly, the Court noted that Defendant had failed to provide any proof that the  
9 Opposition supposedly filed on December 30, 2015 had been served on HUGHES. Counsel for  
10 HUGHES emphatically denied on the record at the pretrial conference that he had ever seen any  
11 Opposition to the Motion to Dismiss from Kozak's office.

12 On questioning from the Court at the May 17, 2016 pretrial conference, Kozak  
13 asserted that he had a file-stamped copy of the Opposition to Motion to Dismiss in his possession.  
14 He also claimed to have proof that he had filed and served Defendant's Individual Case Conference  
15 Report, which had been due on or about March 14, 2016. Kozak claimed that proof of these matters  
16 was at his office, so the Court recessed the pretrial conference so that Kozak could ask his office to  
17 send said proof via fax and/or email. During the brief recess, HUGHES' counsel spoke with Kozak  
18 and indicated his displeasure with Kozak's false assertion in the Motion to Set Aside Dismissal that  
19 HUGHES' counsel had stated that he had received a copy of Defendant's Opposition to Dismiss but  
20 that it was not file stamped and he reiterated again to Kozak that no Opposition had ever been  
21 received by his office. Aff. of J. Townsend at ¶ 8. After the brief recess, Kozak was unable to  
22 provide to the Court the documents he claimed to have.<sup>3</sup>

23 All that was produced by Kozak's office at the pretrial conference was an email string  
24 from February 9, 2016 wherein the Court Clerk followed up with Kozak on his promise to send over  
25 a file stamped copy of the Opposition and his instruction to his secretary, Ms. Nan Adams, to fax  
26 and email the same to the Court. There was no evidence that Ms. Adams ever did fax or email the  
27 requested document, presumably because Kozak's office did not, in fact, have in its possession a

28 <sup>3</sup> At the very least, neither HUGHES nor his counsel have seen any file-stamped Opposition to Motion to Dismiss dated December 30, 2015 or a file-stamped Defendant's Individual Case Conference Report dated on or about March 14, 2016.

1 file-stamped copy of the documents it claimed to. The foregoing email string was forwarded to the  
2 Court on May 17, 2016 and included as an attachment a copy of Defendant's Case Conference  
3 Report without any file stamp. A copy of the aforementioned email string and attachment, which  
4 was provided to counsel for HUGHES by the Court during the pretrial conference, is hereby  
5 incorporated and attached hereto as Exhibit "F".

6 Based on the lack of evidence contained in the Motion to Set Aside Dismissal and  
7 provided at the pretrial conference to support Defendant's claims that an Opposition to Motion to  
8 Dismiss had been timely filed, this Court told Defendant at the pretrial conference that she had until  
9 July 8, 2016 to file a supplement to her Motion to Set Aside Dismissal in order to address the  
10 deficiencies described above. This allowance was later embodied in a written Order of the Court  
11 dated May 19, 2016.

12 On or about June 20, 2016, Defendant filed an Opposition to HUGHES' Motion to  
13 Dismiss, which was received by counsel for HUGHES on or about June 28, 2016. On the day  
14 counsel for HUGHES received the aforementioned Opposition, he called Kozak to inquire as to why  
15 Defendant was filing an Opposition to a Motion six months after it was due and more than five  
16 months after the Motion had already been granted. Kozak asserted that the June 20, 2016  
17 Opposition was filed in response to the May 19, 2016 Order. Counsel for HUGHES noted the May  
18 19, 2016 Order required a supplement to the May 17, 2016 Motion to Set Aside Dismissal and  
19 Kozak responded that the June 20, 2016 Opposition was the same thing as a supplement to the  
20 Motion to Set Aside Dismissal. Aff. of J. Townsend at ¶ 9.

21 On June 29, 2016, counsel for HUGHES sent an email to Kozak in which he  
22 demanded that the June 20, 2016 Opposition be withdrawn and that a filing responsive to the Court's  
23 May 19, 2016 Order be filed in its place by the deadline set therein. *Id.* at ¶ 10. A copy of the June  
24 29, 2016 email to Kozak is hereby incorporated and attached hereto as Exhibit "G". On or about  
25 July 7, 2016, Defendant withdrew the June 20, 2016 Opposition and filed a Supplement to Motion to  
26 Set Aside Dismissal. The Supplement contains a single paragraph noting that Kozak had "timely  
27 prepared" an Opposition to the Motion to Dismiss, a copy of which was attached to the Supplement,  
28 and otherwise relying solely on the language and attachments contained in the original May 16, 2016

1 Motion to Set Aside Dismissal. Supplement, p. 2, ll. 3-15. The Opposition to Motion to Dismiss  
2 attached to the Supplement is dated December 30, 2015, but does not contain a file stamp.

3 To date, Kozak has been unable to provide any proof that he filed an Opposition on  
4 December 30, 2015. There is no file stamp to indicate his filing of any document on December 30,  
5 2015 contrary to his assertions that he had a file-stamped copy in his possession. There is no proof  
6 that the postage attached to the Motion to Set Aside Dismissal is associated with Defendant's filing  
7 of any document with this Court. Finally, Defendant wholly fails to address the problem of  
8 HUGHES never being served with an Opposition to the Motion to Dismiss. Thus, the only plausible  
9 conclusion to be reached here is that the Opposition was never filed nor was it served on HUGHES.  
10 HUGHES can only hazard to speculate as to what actually happened here, but Kozak's version of  
11 events simply does not add up.

12 **B. Defendant cannot satisfy the strict prerequisites for relief under NRCP 60(b)(1).**

13 Defendant requests relief pursuant to NRCP 60(b)(1), which allows for relief from a  
14 final judgment on the grounds of mistake, inadvertence, surprise, or excusable neglect. Defendant  
15 cites *Yochum v. Davis*, 98 Nev. 484, 653 P.2d 1215 (1982), in which the Nevada Supreme Court  
16 outlined and analyzed the basic criteria for setting aside a *default judgment*, not an order of  
17 dismissal. While *Yochum* does not expressly apply to an order of dismissal, even if the principles of  
18 *Yochum* are applied here, Defendant does not meet the criteria asserted. First, NRCP 60(b)(1)  
19 requires that each of the following factors be met:

- 20 (1) a prompt application to remove the judgment;  
21 (2) the absence of an intent to delay the proceedings;  
22 (3) lack of knowledge of procedural requirements; and  
23 (4) good faith.

24 *See Yochum*, 98 Nev. at 486.

25 As shown above, Defendant's and Kozak's actions reveal a clear failure to meet any  
26 of these criteria. According to the email string between Kozak's office and this Court on February 9,  
27 2016, attached hereto as Exhibit "F", Kozak knew at least by then that Defendant's Opposition was  
28 not on file with the Court. Yet he waited until May 16, 2016 to file the instant Motion and did not

1 file the Opposition until July 7, 2016. While NRCP 60(b)(1) may allow up to six months to file a  
2 motion to set aside a final judgment, the spirit of that law is to allow a party the necessary time to  
3 discover the need to file such a motion and Nevada courts have regularly found a lack of promptness  
4 despite a filing within six months. *See Kahn v. Orme*, 108 Nev. 510, 514, 835 P.2d 790, 793 (1992)  
5 (upholding entry of default judgment where evidence showed that appellant knew of default  
6 judgment no later than about one month after entry of the same but where motion to set aside was  
7 not filed until nearly six months after entry); *see also Union Petrochemical Corp. of Nevada v. Scott*,  
8 96 Nev. 337, 609 P.2d 323 (1980) (upholding denial of motion to set aside default judgment and  
9 reasoning that although the appellant had filed within the six month deadline, it had failed to act  
10 promptly where the evidence showed a lack of diligence in pursuing the motion to set aside).

11 Here, the facts reveal a pattern more akin to *Kahn* and *Union Petrochemical*, where  
12 Kozak knew by no later than February 9, 2016 that Defendant's Opposition was not on file, yet  
13 waited until May 16, 2016 to file a Motion to Set Aside the Dismissal. Further, in reality, Defendant  
14 was served with notice that her Opposition was not on file on December 29, 2015, which was more  
15 than a week before the Court entered its Order Granting Motion to Dismiss. Thus, it is clear that  
16 Defendant was not prompt in seeking to have the Court's January 7, 2016 Order set aside.

17 Further, Defendant makes no argument whatsoever concerning the required lack of  
18 intent to delay these proceedings except to make a conclusory statement that neither Defendant nor  
19 her counsel "had any intent to delay the proceedings." Motion to Set Aside Dismissal, p. 6, ll. 23-  
20 25. Defendant bears the burden to prove that she meets each element of NRCP 60(b)(1). *Kahn*, 108  
21 Nev. at 513-14. She has not even attempted to do so with the second element and the actions of  
22 Defendant and her counsel throughout this matter are evidence to the contrary. To wit, Defendant  
23 evaded service by traditional means, which required the delay of service by publication. Even after  
24 service by publication, she did not timely file an answer to HUGHES' Complaint for Quiet Title.  
25 The Counterclaim she filed contained numerous allegations of fact that were scandalous in nature  
26 and entirely impertinent to the matters at hand. She did not file an Opposition to HUGHES' Motion  
27 to Dismiss. Even if this Court accepts that she did file an Opposition on December 30, 2015, such a  
28 filing was untimely. Defendant did not timely serve HUGHES with her NRCP 16.1 Initial

1 Production of Documents and List of Witnesses. Defendant served a Notice of Motion with her  
2 Motion to Set Aside Dismissal on May 16, 2016 in which she purported to give notice to HUGHES  
3 that said motion would be heard the following day at the pretrial conference when NRCP 6(d)  
4 requires at least 5 days' notice before setting a motion for hearing. Defendant failed to provide  
5 evidence with her Motion to Set Aside Dismissal of filing or serving an Opposition to HUGHES'  
6 Motion to Dismiss. Defendant filed a Motion for Summary Judgment one day before a scheduled  
7 settlement conference in this matter, which ultimately led to an unproductive settlement conference.  
8 Further, her Motion for Summary Judgment was based, at least in part, on the counterclaims that  
9 have been dismissed by this Court. In sum, substantially every action taken by Defendant and her  
10 counsel in this matter has been an action to delay these proceedings and to distract from what should  
11 be a simple and straightforward partition pursuant to NRS Chapter 39. In addition, to set aside the  
12 dismissal and move forward on the Motion to Dismiss will only invite further delay, where trial on  
13 the partition has been set. If Defendant's counterclaims are allowed to proceed at this juncture, the  
14 trial date will likely have to be vacated and continued in order to allow the parties to conduct  
15 discovery on the counterclaims.

16 The third required element under NRCP 60(b) is that the party seeking to set aside the  
17 judgment have a lack of knowledge of the procedural requirements. Defendant fails to address this  
18 requirement at all. Further, it would be a stretch for Kozak to claim ignorance of procedural  
19 requirements when he is a seasoned veteran attorney with at least twenty-five years of experience.<sup>4</sup>  
20 Cases where courts have found this element to exist generally involve parties appearing in proper  
21 person rather than with representation of legal counsel. *See e.g., Bauwens v. Evans*, 109 Nev. 537,  
22 853 P.2d 121 (1993).

23 The last required element is that the party seeking to set aside the dismissal must act  
24 in good faith. Here, Kozak has claimed that he filed an Opposition to Motion to Dismiss on  
25 December 30, 2015 and that his office is in possession of a file-stamped copy showing the same.  
26 His office repeated this assertion to the Court Clerk who asked for a copy of the same. *See Exhibit*  
27 *"F"*. To date, Kozak has yet to provide a file-stamped copy of the Opposition. Further, in the

28 <sup>4</sup> Kozak has been licensed to practice law in California since October 1989.

1 Motion to Set Aside Dismissal, Kozak asserts that HUGHES' counsel told Kozak that he had  
2 received a copy of the Opposition, but that he would not respond because it was not file stamped.  
3 Motion to Set Aside Dismissal, p. 5, ll. 25-28. These are nothing more than misrepresentations.  
4 Kozak has not acted in good faith in perpetuating the falsehood that he filed an Opposition with this  
5 Court on December 30, 2015 or that he served the same on HUGHES' counsel. He offers no proof  
6 whatsoever of any of it. The delay tactics mentioned above are further indications of Defendant's  
7 and Kozak's bad faith.

8 Finally, unlike the appellant in *Yochum*, who had not received actual notice of the  
9 proceedings in which default judgment was entered, Defendant received plenty of notice both of  
10 HUGHES' Motion to Dismiss and her failure to timely oppose. 98 Nev. at 487. *See also* Exhibits  
11 "B" and "C".

12 Defendant has not in any way met the criteria for relief under NRCP 60(b)(1). For  
13 these reasons, HUGHES respectfully requests an order denying Defendant's Motion to Set Aside  
14 Dismissal.

15 **C. Defendant cannot show a meritorious defense to the Motion to Dismiss.**

16 Defendant cites *Hotel Last Frontier Corp. v. Frontier Properties, Inc.*, 79 Nev. 150,  
17 380 P.2d 293 (1963), for the proposition that a meritorious defense may be shown essentially on the  
18 affidavit of a party's counsel and on that basis Defendant attached an affidavit of her attorney, which  
19 states essentially Kozak's position that Defendant has a meritorious defense against HUGHES'  
20 Motion to Dismiss. Again, this case is applicable on its face to a motion to set aside a default  
21 judgment, not a dismissal of a counterclaim.

22 Here, the more appropriate inquiry would be to look at the Opposition attached to  
23 Defendant's Supplement to Motion to Set Aside Dismissal and determine whether such an  
24 Opposition gives rise to defeating HUGHES' Motion to Dismiss. In short, Defendant fails to  
25 address the heightened pleading standards required for pleading claims of fraud and otherwise fails  
26 to address any of the legal authorities cited in HUGHES' Motion to Dismiss. For this reason, she is  
27 unable to demonstrate that she has a meritorious defense to the Motion to Dismiss and HUGHES  
28 respectfully requests an order denying Defendant's Motion to Set Aside the Dismissal.

1           D. Conclusion.

2                     For the reasons set forth herein, HUGHES respectfully requests an order denying  
3 Defendant's Motion to Set Aside Dismissal.

4                     DATED this 27<sup>th</sup> day of July, 2016.

5                             ALLISON MacKENZIE, LTD.  
6                             402 North Division Street  
7                             Carson City, NV 89703-4168

8                     By: 

9                             JUSTIN M. TOWNSEND, ESQ.  
10                            Nevada State Bar No. 12293

11                           Attorneys for Plaintiff,  
12                           SHAUGHNAN L. HUGHES

CERTIFICATE OF SERVICE

Pursuant to NRCP Rule 5(b), I hereby certify that I am an employee of ALLISON, MacKENZIE, LTD., Attorneys at Law, and that on this date, I caused the foregoing document to be served on all parties to this action by:

- ☒ Placing a true copy thereof in a sealed postage prepaid envelope in the United States Mail in Carson City, Nevada [NRCP 5(b)(2)(B)]
- ☐ Hand-delivery - via Reno/Carson Messenger Service [NRCP 5(b)(2)(A)]
- ☐ Facsimile
- ☐ Federal Express, UPS, or other overnight delivery
- ☐ E-filing pursuant to Section IV of District of Nevada Electronic Filing Procedures [NRCP 5(b)(2)(D)]

fully addressed as follows:

CHARLES R. KOZAK, ESQ.  
KOZAK LAW FIRM  
3100 Mill Street, Suite 115  
Reno, NV 89502

DATED this 27<sup>th</sup> day of July, 2016.

  
NANCY FONTENOT



# INDEX OF EXHIBITS

<u>Exhibit No.</u>	<u>Description</u>	<u>Number of Pages (Including Cover Page)</u>
"A"	December 14, 2016 email	2
"B"	December 10, 2015 Certificate of Service	2
"C"	December 29, 2015 Certificate of Service	2
"D"	January 11, 2016 Certificate of Service	2
"E"	Notice of Early Case Conference and Request for Production of Documents	4
"F"	May 7, 2016 email string and attachment	12
"G"	June 29, 2016 email	2

4828-5624-7093, v. 1

# EXHIBIT “A”

## Justin Townsend

---

**From:** Justin Townsend  
**Sent:** Monday, December 14, 2015 1:53 PM  
**To:** 'chuck@kozaklawfirm.com'  
**Cc:** Nancy Fontenot  
**Subject:** Hughes v. Howard

Chuck,

To confirm our telephone conversation of this afternoon, we have agreed to extend the deadline to hold the 16.1 early case conference for a period of up to 90 days. Please respond that you are in agreement with this extension.

Kind regards,

Justin Townsend, Esq.  
Allison MacKenzie, Ltd.  
402 N. Division Street  
P.O. Box 646  
Carson City, NV 89702  
(775) 687-0202 telephone  
(775) 882-7918 fax  
email: [jtownsend@allisonmackenzie.com](mailto:jtownsend@allisonmackenzie.com)

# **EXHIBIT “B”**

ALLISON MacKENZIE, LTD.  
402 North Division Street, P.O. Box 646, Carson City, NV 89702  
Telephone: (775) 687-0202 Fax: (775) 882-7918  
E-Mail Address: law@allisonmackenzie.com

CERTIFICATE OF SERVICE


Pursuant to NRCP Rule 5(b), I hereby certify that I am an employee of ALLISON, MacKENZIE, LTD., Attorneys at Law, and that on this date, I caused the foregoing document to be served on all parties to this action by:

- X Placing a true copy thereof in a sealed postage prepaid envelope in the United States Mail in Carson City, Nevada [NRCP 5(b)(2)(B)]
- Hand-delivery - via Reno/Carson Messenger Service [NRCP 5(b)(2)(A)]
- Facsimile
- Federal Express, UPS, or other overnight delivery
- E-filing pursuant to Section IV of District of Nevada Electronic Filing Procedures [NRCP 5(b)(2)(D)]

fully addressed as follows:

CHARLES R. KOZAK, ESQ.  
KOZAK LAW FIRM  
3100 Mill Street, Suite 115  
Reno, NV 89502

DATED this 10<sup>th</sup> day of December, 2015.

  
NANCY FONTENOT

# EXHIBIT “C”

ALLISON MacKENZIE, LTD.  
402 North Division Street, P.O. Box 646, Carson City, NV 89702  
Telephone: (775) 687-0202 Fax: (775) 882-7918  
E-Mail Address: law@allisonmackenzie.com

CERTIFICATE OF SERVICE

Pursuant to NRCP Rule 5(b), I hereby certify that I am an employee of ALLISON, MacKENZIE, LTD., Attorneys at Law, and that on this date, I caused the foregoing document to be served on all parties to this action by:

- X Placing a true copy thereof in a sealed postage prepaid envelope in the United States Mail in Carson City, Nevada [NRCP 5(b)(2)(B)]
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- \_\_\_\_\_ Facsimile
- \_\_\_\_\_ Federal Express, UPS, or other overnight delivery
- \_\_\_\_\_ E-filing pursuant to Section IV of District of Nevada Electronic Filing Procedures [NRCP 5(b)(2)(D)]

fully addressed as follows:

CHARLES R. KOZAK, ESQ.  
KOZAK LAW FIRM  
3100 Mill Street, Suite 115  
Reno, NV 89502

DATED this 29<sup>th</sup> day of December, 2015.

  
NANCY FONTENOT

4850-8275-3324, v. 1

# **EXHIBIT “D”**



ALLISON MacKENZIE, LTD.  
402 North Division Street, P.O. Box 646, Carson City, NV 89702  
Telephone: (775) 687-0202 Fax: (775) 882-7918  
E-Mail Address: law@allisonmackenzie.com

CERTIFICATE OF SERVICE

Pursuant to NRCP Rule 5(b), I hereby certify that I am an employee of ALLISON, MacKENZIE, LTD., Attorneys at Law, and that on this date, I caused the foregoing document to be served on all parties to this action by:

- ☒ Placing a true copy thereof in a sealed postage prepaid envelope in the United States Mail in Carson City, Nevada [NRCP 5(b)(2)(B)]
- ☐ Hand-delivery - via Reno/Carson Messenger Service [NRCP 5(b)(2)(A)]
- ☐ Facsimile
- ☐ Federal Express, UPS, or other overnight delivery
- ☐ E-filing pursuant to Section IV of District of Nevada Electronic Filing Procedures [NRCP 5(b)(2)(D)]

fully addressed as follows:

CHARLES R. KOZAK, ESQ.  
KOZAK LAW FIRM  
3100 Mill Street, Suite 115  
Reno, NV 89502

DATED this 11<sup>th</sup> day of January, 2016.

  
NANCY FONTENOT

4814-6544-3372, v. 1

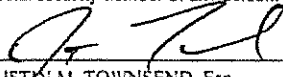
# **EXHIBIT “E”**

ALLISON MacKENZIE, J.D.  
402 North Division Street, P.O. Box 646, Carson City, NV 89702  
Telephone: (775) 687-0202 Fax: (775) 882-7918  
E-Mail Address: law@allisonmackenzie.com

1 Case No.15-10DC-0876

2 Dept. No. I

3 The undersigned hereby affirms that  
4 this document does not contain the  
5 social security number of any person.

6   
7 JUSTIN M. TOWNSEND, Esq.

8 IN THE TENTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA  
9 IN AND FOR THE COUNTY OF CHURCHILL

10 SHAUGHNAN L. HUGHES, an  
11 individual,

12 Plaintiff,

13 vs.

14 ELIZABETH C. HOWARD, an  
15 individual; and DOES I through  
16 XX, inclusive.

17 Defendants.  
18 \_\_\_\_\_/

19 NOTICE OF EARLY CASE CONFERENCE AND  
20 REQUEST FOR PRODUCTION OF DOCUMENTS

21 TO: The Defendant above-named, and her attorney of record:

22 PLEASE TAKE NOTICE that the telephonic early case conference in the above-  
23 entitled action will be held at 11:00 a.m. on February 16, 2016. Plaintiff's attorneys will initiate  
24 the telephone conference. The attorneys must have knowledge of the case, and possess authority to  
25 act.

26 Pursuant to NRCP 16.1(a), Plaintiff hereby requests that Defendant provides prior to  
27 the early case conference, but no later than March 1, 2016, the following:

28 A. DOCUMENTS REQUESTED:

1. Any and all documents which Defendant contemplates to be used in  
this matter;

2. All recorded statements, written or oral, by any witness concerning Defendant's admissions, denials and/or affirmative defenses;

3. Copies of any and all correspondence between the parties relating to the allegations in the Complaint and/or Answer in this action;

4. All records, notes, memoranda and documents of or relating to the allegations in the Complaint and/or Answer in this action; and

5. Any and all writings, books, records, accounts, diaries and other material of or relating to the claims and defenses raised in the pleadings in this case.

**B. TANGIBLE THINGS:**

Identify and describe all tangible things which constitute or contain matters within the scope of Rule 16.1(a) and which are in the possession, custody or control of another party.

**C. WITNESS LIST:**

A list of persons who Defendant believes has knowledge of any of the subject matter of the allegations, claims, denials or affirmative defenses raised in this litigation. Each person must be identified by name and location, along with a general description of the subject matter of his/her testimony.

In addition, at or prior to the case conference, counsel for the parties must propose a plan and schedule of discovery; discuss settlement and alternative methods of dispute resolution, and any other matter which may aid in the resolution of the case.

**AFFIRMATION**

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

DATED this 4<sup>th</sup> day of February, 2016.

ALLISON MacKENZIE, LTD.  
402 North Division Street  
Carson City, NV 89703-4168

By: 

JUSTIN M. TOWNSEND, ESQ.  
Nevada State Bar No. 12293

Attorneys for Plaintiff,  
SHAUGHNAN L. HUGHES

ALLISON MacKENZIE LTD.  
402 North Division Street, P.O. Box 646, Carson City, NV 89702  
Telephone: (775) 687-0202 Fax: (775) 882-7918  
E-Mail Address: law@allisonmackenzie.com

CERTIFICATE OF SERVICE

Pursuant to NRCP Rule 5(b), I hereby certify that I am an employee of ALLISON MacKENZIE, LTD., Attorneys at Law, and that on this date, I caused the foregoing document to be served on all parties to this action by:

- ☒ Placing a true copy thereof in a sealed postage prepaid envelope in the United States Mail in Carson City, Nevada [NRCP 5(b)(2)(B)]
- ☒ Electronic Transmission
- ☐ Facsimile
- ☐ Federal Express, UPS, or other overnight delivery
- ☐ E-filing pursuant to Section IV of District of Nevada Electronic Filing Procedures [NRCP 5(b)(2)(D)]

fully addressed as follows:

CHARLES R. KOZAK, ESQ.  
KOZAK LAW FIRM  
3100 Mill Street, Suite 115  
Reno, NV 89502  
[chuck@kozaklawfirm.com](mailto:chuck@kozaklawfirm.com)

DATED this 4<sup>th</sup> day of February, 2016.

  
NANCY FONTENOT

4840-9696-4397, v. 1

# EXHIBIT “F”

**Tiffany Josephs**

---

From: Nan Adams <nan@kozaklusianilaw.com>  
Sent: Tuesday, May 17, 2016 2:37 PM  
To: Tiffany Josephs  
Subject: Re: Case No. 15-10DC-0876 Hughes v. Howard  
Attachments: Howard Defendant's Case Conference Report.pdf

On Tue, May 17, 2016 at 1:57 PM, Nan Adams <nan@kozaklusianilaw.com> wrote:

----- Forwarded message -----

From: Nan Adams <nan@kozaklusianilaw.com>  
Date: Tue, May 17, 2016 at 1:53 PM  
Subject: Re: Case No. 15-10DC-0876 Hughes v. Howard  
To: Nan Adams <nan@kozaklawfirm.com>

On Tue, Feb 9, 2016 at 12:51 PM, Chuck Kozak <chuck@kozaklawfirm.com> wrote:  
Nan,

We need to email this to Tiffany right away. Might as well fax too.

----- Forwarded message -----

From: Tiffany Josephs <tjosephs@churchillcourts.org>  
Date: Tue, Feb 9, 2016 at 10:43 AM  
Subject: Case No. 15-10DC-0876 Hughes v. Howard  
To: "chuck@kozaklawfirm.com" <chuck@kozaklawfirm.com>  
Cc: Sue Sevon <ssevonn@churchillcourts.org>

Good morning Mr. Kozak,

Per our conversation last week, you indicated you would be faxing a file-stamped copy of your Opposition to the Motion to Dismiss. As of this time, we have not received a fax from your office. That same evening, Ms. Howard called us asking if we had found the document. I informed her that you were going to be sending us a copy.

We are reaching out to you because we are concerned you may have faxed it and we did not receive it. If it's more convenient, you can email the document to me.

We are staying on top of this because we are concerned we have misfiled a document and this is a high priority for this office to avoid. Your cooperation with this is appreciated.

Thank you,

Tiffany Josephs

Deputy Court Clerk

Tenth Judicial District Court

73 N. Maine Street, Suite B

Fallon, NV 89406

775-423-6088 ext. 260

775-423-8578 Fax

tjosephs@churchillcourts.org

www.churchillcountv.org

NOTICE: This e-mail message and any attachments thereto may contain confidential, privileged or non-public information. Use, dissemination, distribution or reproduction of this information by unintended recipients is strictly prohibited. If you have received this message in error, please notify the sender immediately and destroy all copies. The opinions expressed in this message are my own, and not necessarily those of the Tenth Judicial District Court or Churchill County.

--  
Charles R. Kozak

chuck@kozaklawfirm.com

Charles R. Kozak Attorney at Law, LLC

3100 Mill Street #115

Reno, NV 89502

775-322-1239



--  
*Nan Adams*  
*Kozak Lusiani Law*  
*3100 Mill Street, Suite 115*  
*Reno, Nevada 89502*  
*Telephone: (775) 322-1239*  
*Facsimile: (775) 800-1767*

--  
*Nan Adams*  
*Kozak Lusiani Law*  
*3100 Mill Street, Suite 115*  
*Reno, Nevada 89502*  
*Telephone: (775) 322-1239*  
*Facsimile: (775) 800-1767*

--  
*Nan Adams*  
*Kozak Lusiani Law*  
*3100 Mill Street, Suite 115*  
*Reno, Nevada 89502*  
*Telephone: (775) 322-1239*  
*Facsimile: (775) 800-1767*

1 Case No. 15-10DC-0876

2 Dept. No. I

3  
4 IN THE TENTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA  
5  
6 IN AND FOR THE COUNTY OF CHURCHILL

7 SHAUGHNAN L. HUGHES, an  
8 individual,

9 Plaintiff,

10 vs.

11 ELIZABETH C. HOWARD, an  
12 individual; and DOES I through  
13 XX, inclusive,

14 Defendants

15 ELIZABETH C. HOWARD, an  
16 individual,

17 Counterclaimant,

18 vs.

19 SHAUGHAN L. HUGHES, an  
20 individual; and DOES 1 through  
21 XX, inclusive,

22 Counterdefendants

23 DEFENDANT'S CASE CONFERENCE REPORT

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25 DISCOVERY PLANNING/DISPUTE CONFERENCE REQUESTED: YES \_\_\_ NO X  
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I.

PROCEEDINGS PRIOR TO CASE CONFERENCE REPORT

- A. DATE OF FILING OF COMPLAINT: July 27, 2015.
- B. DATE OF FILING OF ANSWER BY DEFENDANT: November 20, 2015.
- C. DATE THAT EARLY CASE CONFERENCE WAS HELD AND WHO  
ATTENDED: The early case conference was held telephonically on February 16, 2016.  
JUSTIN M. TOWNSEND, Esq. attended on behalf of Plaintiff and CHARLES R. KOZAK,  
Esq. attended on behalf of Defendant.

II.

A BRIEF DESCRIPTION OF THE NATURE OF THE ACTION  
AND EACH CLAIM FOR RELIEF OR DEFENSE: [16.1(c)(1)]

- A. Description of the action: Plaintiff and Defendant own, in joint tenancy, an  
undivided one hundred percent (100%) interest in real property commonly referred to as  
11633 Fulkerson Road, Fallon, Nevada 89406. Plaintiff seeks a partition or sale of the  
aforementioned property under NRS Chapter 39.
- B. Defendant should not be placed in the position of having to partition the Property  
and to sell the property as the Plaintiff no legal equitable investment in the property.
- C. Plaintiff exerted undue influence on Defendant to quit claim on the deed five (5)  
days after she closed the sale.
- D. Plaintiff used Conversion as he knew the monies had by Defendant were for  
herself and Defendant's mother.
- E. Plaintiff's threatening and wrongful behavior resulted in abusive mental anguish  
and anguish to the Defendant/Counterclaimant, and such was the Plaintiff's  
malicious intent.
- F. The only adequate remedy is have the Court Order the Plaintiff to execute the proper  
documents for Defendant to have sole ownership of the property.

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III.

LIST OF ALL DOCUMENTS, DATA COMPILATIONS AND TANGIBLE THINGS  
IN THE POSSESSION, CUSTODY OR CONTROL OF EACH PARTY WHICH  
WERE IDENTIFIED OR PROVIDED AT THE EARLY CASE CONFERENCE  
OR AS A RESULT THEREOF: [16.1(a)(1)(B) and 16.1(c)(4)]

A. Plaintiff: Provided to Defendant on March 1, 2016, see Exhibit "1" attached hereto.

B. Defendants: Provided to Plaintiff on March 8, 2016.

IV.

LIST OF PERSONS IDENTIFIED BY EACH PARTY AS LIKELY TO HAVE  
INFORMATION DISCOVERABLE UNDER RULE 26(b). INCLUDING  
IMPEACHMENT OR REBUTTAL WITNESSES: [16.1(a)(1)(A) and 16.1(c)(3)]

A. Plaintiff: Provided to Defendants on March 1, 2016, see Exhibit "1" attached hereto.

B. Defendants: Provided to Plaintiff on March 8, 2016.

V.

DISCOVERY PLAN: [16.1(b)(2) and 16.1(c)(2)]

A. What changes, if any, should be made in the timing, form or requirements for disclosures under 16.1(a):

1. Plaintiff's view: None.

2. Defendant's view: None.

When disclosures under 16.1(a)(1) were made or will be made:

1. Plaintiff's disclosures: March 1, 2016.

2. Defendant's disclosures: March 8, 2016.

B. Subjects on which discovery may be needed:

1. Plaintiff's view: Discoverable areas within the Rules of Civil Procedure on the Complaint allegations and Defendants' denials and defenses.

2. Defendants' view: Discoverable areas within the Rules of Civil Procedure on the Complaint allegations and Defendant's denials and defenses.

C. Should discovery be conducted in phases or limited to or focused upon particular issues?

1. Plaintiff's view: Discovery should be focused upon ascertaining the value of the property, each party's respective interest therein, and whether partition or sale under NRS Chapter 39 makes more sense under the existing circumstances.

2. Defendant's view: All Discovery which could lead to admissible evidence.

D. What changes, if any, should be made in limitations on discovery imposed under these rules and what, if any, other limitations should be imposed?

1. Plaintiff's view: None.

2. Defendant's view: None.

E. What, if any, other orders should be entered by Court under Rule 26(c) or Rule 16(b) and (c):

1. Plaintiff's view: None.

2. Defendant's view: None.

F. Estimated time for trial:

1. Plaintiff's view: 1 day.

2. Defendant's view: 4 days.

#### VI.

#### DISCOVERY AND MOTION DATES: [16.1(c)(5)-(8)]

A. Dates agreed by the parties:

1. Close of discovery: June 30, 2016

2. Final date to file motions to amend pleadings or add parties (without a further court order): 90 days before close of discovery.

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3. Final dates for expert disclosures:
- i. initial disclosure: 45 days before close of discovery
  - ii. rebuttal disclosures: 30 days after initial disclosure
4. Final date to file dispositive motions: 30 days prior to trial

B. In the event the parties do not agree on dates, the following section must be completed:

1. Plaintiff's suggested close of discovery: N/A  
enter calendar date
2. Defendant's suggested close of discovery: N/A  
enter calendar date

1. Final date to file motions to amend pleadings or add parties (without a further court order):

Plaintiff's suggested: N/A  
enter calendar date  
(Not later than 90 days before close of discovery)

Defendant's suggested: N/A  
enter calendar date  
(Not later than 90 days before close of discovery)

1. Final dates for expert disclosures:
- i. Plaintiff's suggested initial disclosure: N/A  
enter calendar date  
(Not later than 90 days before discovery cut-off date)

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Defendant's suggested initial disclosure: N/A

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enter calendar date  
(Not later than 90 days  
before discovery cut-  
off date)

ii. Plaintiff's suggested rebuttal disclosures: N/A

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enter calendar date  
(Not later than 30 days  
after initial disclosure  
of experts)

Defendant's suggested rebuttal disclosures: N/A

\_\_\_\_\_

enter calendar date  
(Not later than 30 days  
after initial disclosure  
of experts)

2. Final date to file dispositive motions:

Plaintiff's suggested: N/A

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enter calendar date  
(Not later than 30 days  
after discovery cut-off  
date)

Defendant's suggested: Close of Discovery

enter calendar date  
(Not later than 30 days  
after discovery cut-off  
date)

Failure to agree on the calendar dates in this subdivision shall result in a  
discovery planning conference.

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VII.

JURY DEMAND: [16.1(c)(10)]

A jury demand has not been filed.

Defendant: Jury is demanded.

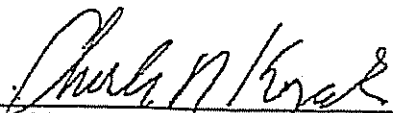
VIII.

INITIAL DISCLOSURES/OBJECTIONS: [16.1(a)(1)]

If a party objects during the Early Case Conference that initial disclosures are not appropriate in the circumstances of this case, those objections must be stated herein. The Court shall determine what disclosures, if any, are to be made and shall set the time for such disclosure.

This report is signed in accordance with Rule 26(g)(1) of the Nevada Rules of Civil Procedure. Each signature constitutes a certification that to the best of the signer's knowledge, information and belief, formed after a reasonable inquiry, the disclosures made by the signer are complete and correct as of this time.

DATED this 10<sup>th</sup> day of March 2016.

  
CHARLES R. KOZAK, ESQ. (SBN #11179)  
[chuck@kozaklusiianilaw.com](mailto:chuck@kozaklusiianilaw.com)  
R. CRAIG LUSIANI, ESQ. (SBN #552)  
[craig@kozaklusiianilaw.com](mailto:craig@kozaklusiianilaw.com)  
KOZAK LUSIANI LAW  
3100 Mill Street, Suite 115  
Reno, Nevada 89502  
Tel (775) 322-1239; Fax (775) 800-1767  
ATTORNEYS FOR PLAINTIFF




1  
2 CERTIFICATE OF SERVICE  
3

4 I certify that I am an employee working for Kozak Law Firm and am a citizen of the  
5 United States, over twenty-one years of age, and not a party to the within action. My business  
6 address is 3100 Mill Street, Suite 115, Reno, Nevada 89502.

7 On the 10<sup>th</sup> March 2016, I caused to be delivered via facsimile and U.S.  
8 Mail, postage fully prepaid, a true and correct copy of the foregoing document in Case No. 15-  
9 10DC-0876, Dept. I, to the following party(ies):  
10

11 Justin M. Townsend, Esq.  
12 Allison MacKenzie, Ltd.  
13 Nevada State Bar No. 12293  
14 402 N. Division Street  
15 P. O. Box 646  
16 Carson City, Nevada 89702  
17 Phone (775) 687-0202  
18 Facsimile (775) 882-7918  
19 Attorney for Plaintiff  
20

21 DATED this 10<sup>th</sup> day of March 2016.  
22

23  
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Nan Adams  
Employee of Kozak Law Firm

# EXHIBIT “G”

## Justin Townsend

---

**From:** Justin Townsend  
**Sent:** Wednesday, June 29, 2016 4:25 PM  
**To:** chuck@kozaklawfirm.com  
**Cc:** 'nan@kozaklawfirm.com'  
**Subject:** Opposition to Motion to Dismiss

Mr. Kozak,

Yesterday, you told me on the phone that the Opposition to Motion to Dismiss you filed on or about June 20, 2016 was in response to the Court's May 19, 2016 Order After Pretrial Conference. Per the Court's May 19, 2016 Order After Pretrial Conference:

"ELIZABETH C. HOWARD shall have until July 8, 2016 to file a supplement to her Motion to Set Aside Dismissal of Counterclaim filed on May 17, 2016."

From the Pretrial Conference itself the Court noted the deficiencies in your Motion to Set Aside Dismissal include, but may not be limited to, failure to attach the Opposition you supposedly filed on December 30, 2016, failure to provide adequate proof of such a filing, and failure to provide proof of service of the Opposition on my office.

The Opposition you filed on or about June 20, 2016 does not meet the requirements of the Court's May 19, 2016 Order. Please withdraw the June 20, 2016 Opposition and refile by July 8, 2016 the supplement required by the Court. If you do not withdraw the June 20, 2016 Opposition (which is 6 months late) by July 8, 2016, we will file a Motion to Strike the pleading and ask the Court for attorneys' fees.

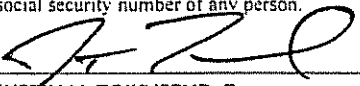
Regards,

Justin Townsend, Esq.  
Allison MacKenzie, Ltd.  
402 N. Division Street  
P.O. Box 646  
Carson City, NV 89702  
(775) 687-0202 telephone  
(775) 882-7918 fax  
email: [jtownsend@allisonmackenzie.com](mailto:jtownsend@allisonmackenzie.com)

1 Case No.15-10DC-0876

2 Dept. No. I

3 The undersigned hereby affirms that  
4 this document does not contain the  
5 social security number of any person.

6   
7 JUSTIN M. TOWNSEND, Esq.

FILED  
BY: Sue Sevon DEPUTY

FILED  
COURT CLERK

2016 JUL 28 PM 2:10

FILED

8 IN THE TENTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA  
9 IN AND FOR THE COUNTY OF CHURCHILL

10 SHAUGHNAN L. HUGHES, an  
11 individual,

12 Plaintiff,

13 vs.

AFFIDAVIT OF  
JUSTIN M. TOWNSEND, ESQ.

14 ELIZABETH C. HOWARD, an  
15 individual; and DOES I through  
16 XX, inclusive.

17 Defendants.  
18 \_\_\_\_\_/

19 STATE OF NEVADA )  
20 : ss.  
21 CARSON CITY )

22 JUSTIN M. TOWNSEND, ESQ. ("TOWNSEND"), being first duly sworn, deposes  
23 and says:

24 1. That he is the attorney of record for Plaintiff, SHAUGHNAN L. HUGHES  
25 ("HUGHES"), in the above entitled action.

26 2. That on December 14, 2015, TOWNSEND contacted Defendant's counsel,  
27 Chuck Kozak, Esq. ("KOZAK"), and suggested that the NRCP 16.1 early case conference be  
28 continued for a period of up to 90 days as allowed by NRCP 16.1, pending the outcome of  
HUGHES' Motion to Dismiss. KOZAK agreed. TOWNSEND followed this up with a confirming  
email dated December 14, 2015, to which KOZAK never responded.

1           3.       That on Tuesday, December 29, 2015, TOWNSEND confirmed with the  
2 Court that no Opposition had been filed and on that date HUGHES filed a Reply to the Failure to  
3 Oppose Motion to Dismiss Counterclaim; Motion to Strike together with a Request for Submission.

4           4.       That on or about February 4, 2016, TOWNSEND called KOZAK to arrange  
5 the NRCP 16.1 early case conference. During this call, counsel for the parties agreed on a date for a  
6 telephonic early case conference, but KOZAK said nothing at all about Defendant's counterclaim, its  
7 dismissal, or any alleged opposition having been filed.

8           5.       On February 4, 2016, HUGHES also served Defendant with a Notice of Early  
9 Case Conference and Request for Production of Documents.

10          6.       That the early case conference was held telephonically on February 16, 2016,  
11 with TOWNSEND initiating the call. When TOWNSEND called KOZAK on February 16, 2016,  
12 the telephone was answered by Nan Adams, a secretary at Kozak Lusiani Law Firm, who asked if  
13 HUGHES or TOWNSEND had not received an opposition to HUGHES' Motion to Dismiss.  
14 TOWNSEND confirmed in no uncertain terms that no opposition had ever been received by his  
15 office and indicated his belief and understanding that the Court had not received any opposition  
16 either. TOWNSEND was then transferred to KOZAK, who again asked if an opposition had ever  
17 been received. TOWNSEND reiterated directly to KOZAK that no opposition had ever been  
18 received. This was the first time KOZAK or anybody associated with Defendant had mentioned to  
19 TOWNSEND a claim that an opposition had been filed.

20          7.       The law firm which employs TOWNSEND is not in the practice of not  
21 responding to documents served on it which are not file-stamped. Regardless of whether or not a  
22 served document is file-stamped, TOWNSEND has always filed the appropriate responsive  
23 pleadings and never at any time indicated to KOZAK that he would not respond to a document that  
24 did not have a file stamp.

25          8.       On May 17, 2016, during a recess in the pretrial conference, TOWNSEND  
26 spoke with KOZAK and indicated his displeasure with KOZAK's false assertion in the Motion to  
27 Set Aside dismissal that TOWNSEND had stated that he had received a copy of Defendant's  
28