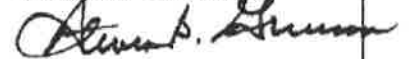


MORRIS LAW GROUP

411 E. BONNEVILLE AVE., STE. 360 - LAS VEGAS, NEVADA 89101  
702/474-9400 - FAX 702/474-9422

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NEO  
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Attorneys for Defendants  
Dickinson Wright, PLLC,  
Jodi Donetta Lowry, Jonathan M.A.  
Salls, Eric Dobberstein, and  
Michael G. Vartanian

DISTRICT COURT  
CLARK COUNTY, NEVADA

TAE-SI KIM, an Individual, and JIN- ) Case No. A-17-756785-C  
SUNG HONG, an Individual, )  
 ) Dept. No. XXIV  
Plaintiffs, )

v. )


NOTICE OF ENTRY OF ORDER

GIBSON LOWRY BURRIS, LLP, )  
(now known as GIBSON LOWRY, )  
LLP), a Nevada limited liability )  
partnership; DICKINSON WRIGHT, )  
PLLC, a Nevada Professional )  
limited liability company; STEVE A. )  
GIBSON, ESQ., an Individual; JODI )  
DONETTA LOWRY, ESQ., an )  
Individual; JONATHAN M.A. )  
SALLS, ESQ., an Individual; ERIC )  
DOBBERSTEIN, ESQ., an )  
Individual; and MICHAEL G. )  
VARTANIAN, ESQ., an Individual; )  
and DOES I through X, inclusive, )  
and ROE BUSINESS ENTITIES XI )  
through XX, inclusive, )

Defendants. )

PLEASE TAKE NOTICE that an Order Denying Plaintiffs' Motion to Reconsider Dismissal of Plaintiffs' Claims Against Dickinson Wright was entered in this action on the 12th day of December, 2017. A copy of the Order is attached hereto as Exhibit A.

MORRIS LAW GROUP

By:   
Steve Morris, NV Bar No. 1543  
Ryan M. Lower, NV Bar No. 9108  
411 E. Bonneville Ave., Ste. 360  
Las Vegas, Nevada 89101

Attorneys for Defendants  
Dickinson Wright, PLLC,  
Jodi Donetta Lowry, Jonathan M.A.  
Salls, Eric Dobberstein, and  
Michael G. Vartanian

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**CERTIFICATE OF SERVICE**


Pursuant to Nev. R. Civ. P. 5(b)(2)(D) and E.D.C.R. 8.05, I certify that I am an employee of MORRIS LAW GROUP and that on the date below, I caused the following document to be served via the Court's Odyssey E-Filing system: **NOTICE OF ENTRY OF ORDER**. The date and time of the electronic proof of service is in place of the date and place of deposit in the mail.

TO:

Brandon L. Phillips, NV Bar No. 12264  
BRANDON L. PHILLIPS, ATTORNEY AT LAW, PLLC  
1455 E. Tropicana Ave., Suite 750  
Las Vegas, Nevada 89169  
blb@abetterlegalpractice.com

Attorneys for Plaintiffs

DATED this 12<sup>th</sup> day of December, 2017.

By:   
An employee of Morris Law Group

# Exhibit A

# Exhibit A

*Steven D. Grierson*

1 ODM

2 Steve Morris, NV Bar No. 1543

3 Ryan M. Lower, NV Bar No. 9108

4 MORRIS LAW GROUP

5 411 E. Bonneville Ave., Ste. 360

6 Las Vegas, Nevada 89101

7 Telephone: (702) 474-9400

8 Email: [sm@morrislawgroup.com](mailto:sm@morrislawgroup.com)

9 Email: [rml@morrislawgroup.com](mailto:rml@morrislawgroup.com)

10 Attorneys for Defendants

11 Dickinson Wright, PLLC,

12 Jodi Donetta Lowry, Jonathan M.A.

13 Salls, Eric Dobberstein, and

14 Michael G. Vartanian

15 **DISTRICT COURT**

16 **CLARK COUNTY, NEVADA**

17 TAE-SI KIM, an Individual, and  
18 JIN-SUNG HONG, an Individual,

19 Plaintiffs,

20 v.

21 GIBSON LOWRY BURRIS, LLP,  
22 (now known as GIBSON LOWRY,  
23 LLP), a Nevada limited liability  
24 partnership; DICKINSON  
25 WRIGHT, PLLC, a Nevada  
26 Professional limited liability  
27 company; STEVE A. GIBSON, ESQ.,  
28 an Individual; JODI DONETTA  
LOWRY, ESQ., an Individual;  
JONATHAN M.A. SALLS, ESQ., an  
Individual; ERIC DOBBERSTEIN,  
ESQ., an Individual; and MICHAEL  
G. VARTANIAN, ESQ., an  
Individual; and DOES I through X,  
inclusive, and ROE BUSINESS  
ENTITIES XI through XX, inclusive,

Defendants.

) Case No. A-17-756785-C

) Dept. No. XXIV

) **ORDER DENYING PLAINTIFFS'**  
) **MOTION TO RECONSIDER**  
) **DISMISSAL OF PLAINTIFFS'**  
) **CLAIMS AGAINST DICKINSON**  
) **WRIGHT**

This matter came before the Court on December 5, 2017 for hearing on Plaintiffs' Motion to Reconsider Dismissal of Plaintiffs' Claims against Dickinson Wright. Brandon Phillips appeared for Plaintiffs. Ryan Lower appeared for Dickinson Wright, PLLC, Jodi Donetta Lowry, Jonathan M.A. Salls, Eric Dobberstein, and Michael G. Vartanian (collectively "Dickinson Wright"). Jodi Donetta Lowry appeared for Gibson Lowry Burris LLP, a non-existent entity. The Court, having considered the motion papers filed in support of and in opposition to the motion, and having heard the argument of counsel, HEREBY FINDS:

(1) Plaintiffs' motion fails to address 28 U.S.C. § 1367(d)—a dispositive part of the court's October 17, 2017 order—which renders reconsideration a moot point;

(2) Plaintiffs' motion does not meet the standard for reconsideration;

(3) Plaintiffs' motion does not present any newly discovery or substantially different evidence;

(4) Plaintiffs' motion re-argues their prior opposition to the motion to dismiss and makes arguments they could have raised before; and

(5) Plaintiffs fail to show that the dismissal order was clearly erroneous.

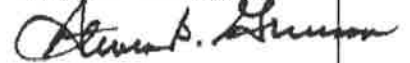
Based on these FINDINGS, and good cause appearing IT IS HEREBY ORDERED that:

(1) Plaintiffs' Motion to Reconsider Dismissal of Plaintiffs' Claims against Dickinson Wright is DENIED;

(2) Dickinson Wright's request for sanctions is DENIED.



12/11/17  
DISTRICT COURT JUDGE



**MOT**

BRANDON L. PHILLIPS, ESQ  
Nevada Bar No. 12264  
BRANDON L. PHILLIPS, ATTORNEY AT LAW, PLLC  
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Las Vegas, Nevada 89169  
(702) 795-0097, (702) 795-0098 fax  
blp@abetterlegalpractice.com  
*Attorney for Plaintiffs, Tae-Si Kim and Jin-Sung Hong*

**EIGHT JUDICIAL DISTRICT COURT  
COUNTY OF CLARK, STATE OF NEVADA**

TAE-SI KIM, an Individual, and JIN-SUNG  
HONG, an Individual.

CASE NO. A-17-756785-C

DEPT. NO. XXIV

Plaintiffs,

v.

GIBSON LOWRY BURRIS, LLP, (now  
known as GIBSON LOWRY, LLP), a Nevada  
limited liability partnership; DICKINSON  
WRIGHT, PLLC, a Nevada Professional  
limited liability company; STEVE A.  
GIBSON, ESQ., an Individual; JODI  
DONETTA LOWRY, ESQ. an Individual;  
JONATHAN M.A. SALLS, ESQ., an  
Individual; ERIC DOBBERSTEIN, ESQ., an  
Individual; and MICHAEL G.  
VARTANIAN, ESQ., an Individual; and  
DOES I through X, inclusive, and ROE  
BUSINESS ENTITIES XI through XX,  
inclusive,

Defendants.

**PLAINTIFFS' MOTION TO RECONSIDER DISMISSAL OF PLAINTIFFS' CLAIMS  
AGAINST DICKINSON WRIGHT**

COMES NOW, Plaintiffs TAE-SI KIM and JIN-SUNG HONG, by and through their  
counsel of record, Brandon L. Phillips, Esq., of Brandon L. Phillips, PLLC, and hereby submit  
their Motion for Reconsideration of this Court's Order Granting Dismissal of Plaintiff's Claims  
Against Dickinson Wright.

\*\*\*

1 This Motion is made and based upon the pleadings and papers on file herein, the  
2 accompanying Memorandum of Points and Authorities, the attached exhibits, including an and  
3 any and all oral argument, this Court may entertain at the time of the hearing on this matter.  
4

5 DATED this 6<sup>th</sup> day of November, 2017.

6 **BRANDON L. PHILLIPS,**  
7 **ATTORNEY AT LAW, PLLC**

8 

9 BRANDON L. PHILLIPS, ESQ.  
10 Nevada Bar No. 12264  
11 1455 E. Tropicana Ave., Suite 750  
12 Las Vegas, Nevada 89119  
13 Phone: (702) 795-0097, Fax: (702) 795-0098  
14 *Attorney for Plaintiffs*

15 **NOTICE OF MOTION**

16 TO: ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

17 **PLEASE TAKE NOTICE** that the undersigned will bring the foregoing **PLAINTIFFS'**  
18 **MOTION FOR RECONSIDERATION**, on for hearing before the above-entitled Court on the  
19 **7** day of **DEC.**, 2017, at the hour of **9:00** a.m/p.m., in Department No. XXIV,  
20 or as soon thereafter as counsel for Plaintiff can be heard.

21 DATED this 6<sup>th</sup> day of November, 2017.

22 **BRANDON L. PHILLIPS,**  
23 **ATTORNEY AT LAW, PLLC**

24 

25 BRANDON L. PHILLIPS, ESQ.  
26 Nevada Bar No. 12264  
27 1455 E. Tropicana Ave., Suite 750  
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(702) 795-0097, (702) 795-0098 fax  
*Attorney for Plaintiffs*



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I.

**Introduction**

Plaintiffs bring the instant Motion for Reconsideration pursuant to EDCR 2.24 and NRC 15, and request that the Court reconsider its decision granting Defendants' Motion to Dismiss. It is Plaintiffs' position that Defendants' Motion should have been denied based on the legal authority cited by Defendants. In particular, Defendants' Motion should have been denied as there were multiple factual issues that should have prevented this Court from granting the Motion, which includes:

1. Whether an underlying action existed. Plaintiffs' argue herein that there was no underlying action, in which, the malpractice had been committed because the malpractice alleged against Damus arose out of the fact that he failed to timely file any action prior expiration of the statutory period to prevent the sale of Plaintiffs' property. Thus, the conclusion of the Federal case was irrelevant and did not toll the action against Damus.
2. Whether Plaintiffs' damages against Damus were realized at the time Defendants' filed the action against Damus. Plaintiffs' argue their damages were realized since they had lost their real property due to foreclosure. The loss of real property causes irreparable harm. Since, Plaintiffs had their real property there was no need to look any further than filing a claim against Damus. Failure to properly proceed with a claim against Damus was malpractice.
3. Whether the attorney judgment rule was applicable to the instant circumstances. There is no dispute that Plaintiffs' hired the Defendants to pursue an action against Damus. Defendants in fact did pursue a claim against Damus, confirming their obligation to sue Damus. Defendants were paid by Plaintiffs to sue. The fact that Defendants' sued Damus in federal court, which had no jurisdiction, does not relieve Defendants responsibility to sue Damus in a proper venue.
4. Whether Plaintiffs' Claims Were Barred by NRS 11.207.

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**II.**  
**Statement of Facts**

On August 20, 2009, Plaintiffs retained the legal services of Defendant, GLB, memorialized through a written agreement. In accordance with the terms of the Legal Services Agreement, Plaintiffs were required to and did tender \$30,000.00 with payments to be paid in six (6) equal monthly payments. In accordance with the Agreement the Defendants were to represent the clients in litigation against the defendants named in the action.

In accordance with the Agreement "Litigation" was defined as an action in a court in Nevada against the Relevant Persons that the Client and the Firm has a good faith belief have perpetrated civil wrongs against the Client(s) in connection with the Investment and/or breached contractual obligation(s) with respect to Client in connection with the Investment.

In accordance with the Agreement "Relevant Persons" was defined as any Person who solicited (or participated in the solicitation of) the Investment and/or any Person who engaged in effecting the Investment (whether directly or indirectly) during the time period that the Client engaged in activities aimed at securing ownership of the Investment.

In accordance with the Agreement "Defendants" was defined as the Relevant Persons that were named as "defendants" in the Litigation.

On October 15, 2009, GLB filed a Complaint in the United States District Court, District of Nevada under case No. 2:09-cv-02008-RFB-GWF. On March 2, 2010, GLB filed an Amended Complaint in which additional Defendants were named and additional claims were brought. Specifically, claims against Charles M. Damus, Esq. for legal malpractice and negligent undertaking to perform services.

On December 17, 2008, Plaintiffs had originally retained the services of Charles M.

1 Damus, Esq., to litigate and dispute certain real estate and other related claims regarding real  
2 property. Importantly, Damus was retained to prevent the foreclosure of the Property of which  
3 Plaintiffs had tendered all payments. On September of 2009, Plaintiffs terminated Damus due to  
4 the fact that no complaint had been filed and the foreclosure had occurred.

5  
6 In the Amended Complaint it was alleged that Damus committed legal malpractice and  
7 negligent undertaking to perform services. In Damus' Motion to Dismiss for Lack of Subject  
8 Matter Jurisdiction it was admitted that he attempted to negotiate with Adam Kearney and was  
9 aware of the pending foreclosure. After the foreclosure sale, without the filing of case to prevent  
10 the foreclosure, Damus was terminated. Since Plaintiffs lost title to the Property and Damus had  
11 taken no reasonable steps to prevent the foreclosure sale, malpractice was clear and obvious.

12  
13 On October 5, 2010, Damus filed a Motion to Dismiss for Lack of Subject Matter  
14 Jurisdiction. On October 22, 2010, the firm Dickinson Wright, PLLC filed Plaintiffs' Response  
15 to Defendant Charles M. Damus, Esq.'s Motion to Dismiss for Lack of Subject Matter  
16 Jurisdiction.

17  
18 On November 1, 2010, Damus filed a Reply to the Opposition. On December 6, 2010, the Court  
19 entered an Order Granting Damus' Motion to Dismiss.

20  
21 The Defendants admitted they never initiated a claim in the District Court against Damus.  
22 Any claim against Damus for malpractice should have been brought on or before the termination  
23 date two years later.

24  
25 On May 31, 2012, Plaintiffs entered into an Amended and Restated Legal services  
26 Agreement with Dickinson Wright PLLC, which combined practices with GLB. Defendants  
27 continued to pursue claims against the remaining defendants in the case. On July 30, 2015,  
28

1 Plaintiffs received an email from Defendant Vartanian acknowledging that no suit had been filed  
2 against Damus and that as of the date of that email representation of the Plaintiffs had ended.

### 3 4 III.

#### 5 Legal Argument

#### 6 A. EDCR 2.24 Provides This Court Authority to Reconsider Its Order Granting 7 Defendant's Motions to Dismiss.

8 EDCR 2.24, entitled "Rehearing of motions," governs the instant Motion for  
9 Reconsideration, and provides this Court with the authority to reconsider its decision granting  
10 Defendants' Motion to Dismiss. Specifically, EDCR 2.24 states, in pertinent part, as follows:  
11

12 (a) No motions once heard and disposed of may be renewed in the  
13 same cause, nor may the same matters therein embraced be reheard,  
14 **unless by leave of the court granted upon motion therefor**, after  
notice of such motion to the adverse parties.

15 . . . .

16 (c) If a motion for rehearing is granted, the court may make a final  
17 disposition of the cause without reargument or may reset it for  
18 reargument or resubmission or **may make such other orders as**  
19 **are deemed appropriate under the circumstances of the**  
**particular case.**

20 EDCR 2.24(a) (emphasis added). Thus, the Nevada Supreme Court has long held, "A district  
21 court may reconsider a previously decided issue if substantially different evidence is  
22 subsequently introduced or the decision is clearly erroneous." *Masonry and Tile Contractor's*  
23 *Association of Southern Nevada v. Jolley, Urga & Wirth, Ltd.*, 113 Nev. 737, 741, 941 P.2d 486,  
24 489 (1997). Therefore, this Court has the authority, pursuant to EDCR 2.24 to reconsider the  
25 previously decided issues raised in Defendant's Motion to Dismiss and to make such other  
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1 orders as are deemed appropriate under the circumstances of this case, specifically to confirm  
2 that issues of fact exist and a motion to dismiss at this stage in the litigation is improper.

3 **B. The Was No Underlying Action.**

4 Defendants' Motion to Dismiss and Reply argue that the claims against Damus were tolled  
5 until the underlying lawsuit in which the malpractice allegedly occurred had been resolved. *Brady,*  
6 *Vorwerck, Ryder & Caspino v. New Albertson's Inc.*, 130 Nev. Adv. Op. 68, 333 P.3d 229, 235  
7 (2014). In Defendant's Reply they state, "The underlying federal litigation in which Damus was  
8 alleged to have committed malpractice did not finally conclude until September 4, 2015, when it  
9 was dismissed with prejudice." (Reply Pg. 6, Ln. 7-9). The argument misconstrues the facts of the  
10 present action. In the *Brady* case, the malpractice occurred during the litigation process, thus the  
11 plaintiff therein was not required to bring an action for malpractice until the case had concluded,  
12 the claim for malpractice was tolled. Those issues are substantially factually different than the  
13 present set of facts. Specifically, Damus had allegedly committed malpractice prior to the  
14 institution of the Federal case against him, he did not commit malpractice during the Federal  
15 litigation, his alleged malpractice had already been committed. Therefore, there was no action to  
16 toll against Damus because Damus could not cure the malpractice. As Plaintiffs' referenced in  
17 their Opposition, it is important that their damages were realized because it is an essential element  
18 of the malpractice claim. The only tolling that would have occurred, would by Plaintiffs' claims  
19 against the present Defendants. Not Plaintiffs' alleged claims against Damus.

20 Further, Plaintiffs' argument is supported by *Semenza v. Nev. Med. Liab. Ins. Co.*, 104  
21 Nev. 666, 668, 765 P.2d 184, 186 (1998). The Court in *Semenza*, again details that a claim of  
22 malpractice is speculative when the underlying case is still pending. In applying that same  
23 reasoning to the instant matter, this Court must determine whether Plaintiffs claims against Damus  
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1 were speculative, even though there was no underlying action, essentially, could Damus cure his  
2 malpractice by resolution of the case. The answer to the question is a resounding, negative. The  
3 claims against Damus were realized in that Plaintiffs' had lost their property to foreclosure by  
4 failure of Damus to timely file suit. (This is the underlying action. Damus failed to file that action,  
5 thus sealing his fate, a valid malpractice claim, as Plaintiffs' were statutorily barred from bringing  
6 their claims to prevent the foreclosure or set aside the foreclosure).

8 Since, Plaintiffs' claims against Damus were realized, his dismissal from the Federal Court  
9 action allowed the statute to continue to run. There could be no tolling of Plaintiffs' malpractice  
10 claims against Damus as the damages had already been realized. Therefore, Defendants' argument  
11 that Plaintiff's claims must be dismissed as they still could bring suit against Damus do not hold  
12 water. The resolution of the underlying case, using the term loosely as there was no actual  
13 underlying case, had been completed or worded alternatively the malpractice had been completed,  
14 the damages were realized, and Damus had no ability to cure/offset the damages. Thus, a claim  
15 had to brought against Damus no later than December 6, 2012.

### 17 **C. Plaintiffs' Damages Were Realized.**

18  
19 As alluded to above, Plaintiffs' damages were realized thereby setting in motion the  
20 malpractice claims against Damus. This is a critical factor in Plaintiffs' claims against the present  
21 Defendants. In *Brady* and *Semenza*, the Court's focused on the fact that the plaintiffs therein had  
22 speculative damages because the underlying case was not procedurally completed and there were  
23 still reasonable alternatives for resolution of the matters. Those factual matters are in contrast to  
24 the Plaintiffs' claims against Damus. The claims against Damus were valid as the malpractice had  
25 been committed and the statutory time to cure that malpractice had run. Since, Plaintiffs could no  
26 longer reacquire their real property, their damages were realized. Therefore, Plaintiffs' claims for  
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1 malpractice against Damus were valid and not speculative. Defendants confuse this matter by  
2 claiming the underlying action was the Federal suit. Damus did not commit malpractice during  
3 the Federal suit as he did not represent the Plaintiffs during that action. The only malpractice  
4 claims that could be tolled during the Federal action would be claims against the present  
5 Defendants.  
6

7 **D. Attorney Judgment Rule is Not Applicable.**

8 Defendants allege that they informed Plaintiffs that they could sue Damus at the  
9 conclusion of the Federal Action. (*Defendants' Reply*, Pg. 7, Ln. 5-6). Defendants' allege that  
10 they reviewed the alleged relevant statutes and concluded that Plaintiffs could bring their claims  
11 against Damus at the conclusion of the Federal Action. This alone does not relieve the Defendants  
12 of a possible malpractice claim. Based the cases, as referenced above, it is clear that since there  
13 was no underlying action, the claims against Damus should have been brought prior to the  
14 conclusion of the Federal action. Further, as Plaintiffs' alleged in the Complaint, malpractice was  
15 committed when Defendants brought suit against Damus in Federal Court. The Federal Court had  
16 no jurisdiction over Damus based on the state law claims of malpractice and unjust enrichment  
17 and the lack of diversity between the parties. Since the Defendants had been retained to bring an  
18 action against Damus there remains a factual dispute as to whether the filing of the Federal Action  
19 against Damus constituted malpractice. Additionally, a factual issue remains regarding whether  
20 the Defendants had a duty, within their scope of their representation of the Plaintiffs, to bring a  
21 state action against Damus.  
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25 **E. Plaintiff's Malpractice Claim Was Timely Filed.**

26 Dickinson Wright alleged that they terminated their representation as of July 30, 2015.  
27 Plaintiffs brought their cause of action against the Defendants on June 12, 2017. As detailed  
28

1 above, any claim against the Defendants for malpractice were tolled so long as the action was  
2 pending. The Federal Action was not dismissed until September of 2017. NRS 11.207, requires  
3 that a claim of malpractice be brought “. . . 4 years after the plaintiff sustains damage or within 2  
4 years after the plaintiff discovers or through the use of reasonable diligence should have  
5 discovered the material facts which constitute the cause of action, whichever occurs earlier.”  
6 Defendants cannot have it both ways. Defendants allege this prevents Plaintiffs from bringing  
7 their cause of action of malpractice because they knew their damages in 2011. Assuming that is  
8 true, which was also confirmed by Defendants filing the complaint against Damus, it remained  
9 Defendants responsibility to sue Damus in Federal Court. Unless, as Plaintiffs’ argue their claims  
10 of malpractice were tolled as confirmed by *Bradley* and *Semenza*. Thus, Plaintiffs’ action was  
11 timely.  
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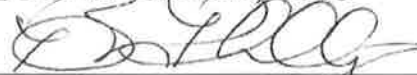
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15 **IV.**

16 **CONCLUSION**

17 Based on the foregoing reasons, Plaintiffs respectfully requests this Court reconsider its  
18 decision granting Defendants’ Motion to Dismiss and find that factual and legal issues exists as  
19 to whether Defendants committed malpractice.

20 DATED this 6<sup>th</sup> day of November, 2017.

21 **BRANDON L. PHILLIPS,**  
22 **ATTORNEY AT LAW, PLLC**

23 

24 **BRANDON L. PHILLIPS, ESQ.**

25 Nevada Bar No. 12264

26 1455 E. Tropicana Ave., Suite 750

27 Las Vegas, Nevada 89119

28 Phone: (702) 795-0097, Fax: (702) 795-0098

*Attorney for Plaintiffs*





NEO  
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Email: [rml@morrislawgroup.com](mailto:rml@morrislawgroup.com)

Attorneys for Defendants  
Dickinson Wright, PLLC,  
Jodi Donetta Lowry, Jonathan M.A.  
Salls, Eric Dobberstein, and  
Michael G. Vartanian


DISTRICT COURT  
CLARK COUNTY, NEVADA

TAE-SI KIM, an Individual, and JIN- ) Case No. A-17-756785-C  
SUNG HONG, an Individual, )  
 ) Dept. No. XXIV  
Plaintiffs, )  
v. )

GIBSON LOWRY BURRIS, LLP, ) NOTICE OF ENTRY OF ORDER  
(now known as GIBSON LOWRY, )  
LLP), a Nevada limited liability )  
partnership; DICKINSON WRIGHT, )  
PLLC, a Nevada Professional )  
limited liability company; STEVE A. )  
GIBSON, ESQ., an Individual; JODI )  
DONETTA LOWRY, ESQ., an )  
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DOBBERSTEIN, ESQ., an )  
Individual; and MICHAEL G. )  
VARTANIAN, ESQ., an Individual; )  
and DOES I through X, inclusive, )  
and ROE BUSINESS ENTITIES XI )  
through XX, inclusive, )  
Defendants. )

PLEASE TAKE NOTICE that an Order Granting Dickinson Wright's Motion to Dismiss ("Order") was entered in this action on the 17th day of October, 2017. A copy of the Order is attached hereto as Exhibit A.

MORRIS LAW GROUP

By:   
Steve Morris, NV Bar No. 1543  
Ryan M. Lower, NV Bar No. 9108  
411 E. Bonneville Ave., Ste. 360  
Las Vegas, Nevada 89101

Attorneys for Defendants  
Dickinson Wright, PLLC,  
Jodi Donetta Lowry, Jonathan M.A.  
Salls, Eric Dobberstein, and  
Michael G. Vartanian

1 **CERTIFICATE OF SERVICE**

2 Pursuant to Nev. R. Civ. P. 5(b)(2)(D) and E.D.C.R. 8.05, I  
3 certify that I am an employee of MORRIS LAW GROUP and that on the  
4 date below, I caused the following document to be served via the Court's  
5 Odyssey E-Filing system: **NOTICE OF ENTRY OF ORDER**. The date and  
6 time of the electronic proof of service is in place of the date and place of  
7 deposit in the mail.

8 TO:

9 Brandon L. Phillips, NV Bar No. 12264  
10 BRANDON L. PHILLIPS, ATTORNEY AT LAW, PLLC  
11 1455 E. Tropicana Ave., Suite 750  
12 Las Vegas, Nevada 89169  
blb@abetterlegalpractice.com

13 Attorneys for Plaintiffs

14 DATED this 17<sup>th</sup> day of October, 2017.

15 By: Patty Cammer  
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MORRIS LAW GROUP  
411 E. BONNEVILLE AVE., STE. 360 · LAS VEGAS, NEVADA 89101  
702/474-9400 · FAX 702/474-9422

# EXHIBIT A

Albert B. Hanson

Attorneys for Defendants  
Dickinson Wright, PLLC,  
Jodi Donetta Lowry, Jonathan M.A.  
Salls, Eric Dobberstein, and  
Michael G. Vartanian

TAE-SI KIM, an Individual, and ) Case No. A-17-756785-C  
JIN-SUNG HONG, an Individual, )  
 )  
 ) Dept. No. XXIV  
Plaintiffs, )  
v. )

GIBSON LOWRY BURRIS, LLP,  
(now known as GIBSON LOWRY,  
LLP), a Nevada limited liability  
partnership; DICKINSON  
WRIGHT, PLLC, a Nevada  
Professional limited liability  
company; STEVE A. GIBSON, ESQ.,  
an Individual; JODI DONETTA  
LOWRY, ESQ., an Individual;  
JONATHAN M.A. SALLS, ESQ., an  
Individual; ERIC DOBBERSTEIN,  
ESQ., an Individual; and MICHAEL  
G. VARTANIAN, ESQ., an  
Individual; and DOES I through X,  
inclusive, and ROE BUSINESS  
ENTITIES XI through XX, inclusive,  
  
Defendants.

1 This matter came before the Court on September 26, 2017 for  
2 hearing on Defendants Dickinson Wright, PLLC, Jodi Donetta Lowry,  
3 Jonathan M.A. Salls, Eric Dobberstein, and Michael G. Vartanian's  
4 (collectively "Dickinson Wright") Motion to Dismiss. Brandon Phillips  
5 appeared for Plaintiffs. Ryan Lower appeared for Dickinson Wright. The  
6 Court, having considered the motion papers filed in support of and in  
7 opposition to Dickinson Wright's motion to dismiss, and having heard the  
8 argument of counsel, HEREBY FINDS:

9 (1) The plaintiffs allege the defendants committed malpractice  
10 because they did not file a legal malpractice action in state court against  
11 attorney Charles Damus on or before September 2011, after that claim  
12 against Damus in a multi-party case in federal court had been dismissed on  
13 December 6, 2010 in a non-final and non-appealable order;

14 (2) Under 28 U.S.C. § 1367(d), the statute of limitations against  
15 Damus was tolled until September 4, 2015 when the federal action was  
16 finally dismissed. Plaintiffs' claims against Damus could have been  
17 brought in state court at that time and thereafter, as Dickinson Wright  
18 clearly advised plaintiffs when the firm terminated its representation of  
19 them on July 30, 2015;

20 (3) Based on Nevada's litigation tolling rule, plaintiffs' legal  
21 malpractice claim against Damus did not accrue until the conclusion of the  
22 federal action when their damages became certain;

23 (4) Under the attorney judgment rule, Dickinson Wright's  
24 exercise of professional judgment as to when plaintiffs could re-file their  
25 claims against Damus in state court is not, as a matter of law, actionable in  
26 this case;

27 (5) The plaintiffs' claims against Dickinson Wright are time-  
28 barred under NRS 11.270;  
<sup>207</sup>  
(NRS)

(6) Plaintiffs included new allegations in their opposition (Opp. 2:27-3:11, 5:17-22, 8:11-9:2, 10:14-11:7) that were not alleged in the complaint and an improper request for leave to amend (Opp. 12:4-9) that did not comply with EDCR 2.30(a); nevertheless, the new allegations did not plead any facts or legal theories that would overcome the deficiencies in the complaint or require the Court to deny this motion.

Based on these FINDINGS, and good cause appearing IT IS  
HEREBY ORDERED that:

- (1) Dickinson Wright's Motion to Dismiss is GRANTED;
- (2) The action is DISMISSED, without prejudice; and
- (3) Plaintiffs' request for leave to amend is DENIED.

  
DISTRICT COURT JUDGE

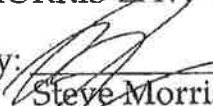
DATED: October 12, 2017

Approved by:  
BRANDON L. PHILLIPS,  
ATTORNEY AT LAW, PLLC

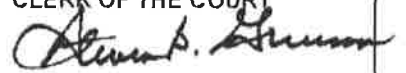
By: **NOT SIGNED**

Brandon L. Phillips, NV Bar No. 12264  
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Submitted by:  
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By:   
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Attorneys for Defendants  
Dickinson Wright, PLLC,  
Jodi Donetta Lowry, Jonathan M.A.  
Salls, Eric Dobberstein, and  
Michael G. Vartanian



**OPP**

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*Attorney for Plaintiff. Tae-Si Kim and Jin-Sung Hong*

**EIGHT JUDICIAL DISTRICT COURT  
COUNTY OF CLARK, STATE OF NEVADA**

TAE-SI KIM, an Individual, and JIN-SUNG  
HONG, an Individual.

CASE NO. A-17-756785-C

DEPT. NO. XXIV

Plaintiffs,

v.

**PLAINTIFFS' OPPOSITION  
TO DEFENDANTS'  
MOTION TO DISMISS**

GIBSON LOWRY BURRIS, LLP, (now  
known as GIBSON LOWRY, LLP), a  
Nevada limited liability partnership;  
DICKINSON WRIGHT, PLLC, a Nevada  
Professional limited liability company;  
STEVE A. GIBSON, ESQ., an Individual;  
JODI DONETTA LOWRY, ESQ. an  
Individual; JONATHAN M.A. SALLS,  
ESQ., an Individual; ERIC DOBBERSTEIN,  
ESQ., an Individual; and MICHAEL G.  
VARTANIAN, ESQ., an Individual; and  
DOES I through X, inclusive, and ROE  
BUSINESS ENTITIES XI through XX,  
inclusive,

Defendants.

COMES NOW, Plaintiffs, TAE-SI KIM and JIN-SUNG HONG, by and through their  
attorney, BRANDON L. PHILLIPS, ESQ., of the law firm of BRANDON L. PHILLIPS,  
ATTORNEY AT LAW, PLLC and hereby submit their Opposition to the Motion to Dismiss filed  
by Defendants Dickinson Wright.

This Opposition is made and based upon the following Memorandum of Points and  
Authorities, any attachments thereto, the papers and pleadings already on file herein, and any oral



1  
2  
3 argument the Court may permit at a hearing of this matter.

4 DATED this 7th day of August, 2017.

5 BRANDON L. PHILLIPS, ATTORNEY AT LAW, PLLC

6  
7 /S/ Brandon L Phillips  
8 BRANDON L. PHILLIPS, ESQ.  
9 Nevada Bar No. 12264  
10 1455 E. Tropicana Ave., Suite 750  
11 Las Vegas, Nevada 89119  
12 *Attorney for Plaintiffs, Kim and Hong*

13 **MEMORANDUM OF POINTS AND AUTHORITIES**

14 **I. INTRODUCTION**

15 Without dispute, Plaintiffs retained the services of Gibson Lowry LLP/Dickinson Wright  
16 to bring a claim of malpractice against Plaintiffs former attorney Charles Damus. Defendants filed  
17 a claim of malpractice against Damus and therefore, admittedly knew that certain damages had  
18 occurred to Plaintiffs as a result of his negligence. The position that Defendants did not know the  
19 damages or whether there was a cause of action against Damus is an admission that they filed a  
20 lawsuit without honoring their ethical obligations in presenting claims to the Court. Regardless,  
21 Defendants knew that Damus had committed malpractice because he failed to bring a timely cause  
22 of action or file any documents to prevent the foreclosure of certain real property. There is no  
23 dispute that the Plaintiffs lost real property as a direct result of Damus' negligence. All of this was  
24 known prior to Defendants' filing of the Amended Complaint alleging malpractice against Damus.

25  
26 The instant Motion, is merely an attempt to shift the blame to another. Defendant Vartanian  
27 stated in an email to Plaintiffs' counsel, sent on June 14, 2017 the following:  
28

Under Nevada law, as I am sure you know, a legal malpractice claim must be commenced

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2  
3 within 4 years after the plaintiff (your client) sustains damage or within 2 years after the  
4 plaintiff discovers the material facts which constitute the cause of action, whichever occurs  
5 earlier. Those statutes also apply to the misrepresentation and breach of fiduciary claims  
in your complaint. By the admissions in the complaint, all claims against all defendants  
are barred by the statute of repose and/or limitations.

6 This email recognizes that the Defendants knew or reasonable did know that they had two years  
7 to bring a claim against Damus and by failing to do so malpractice had been committed. Only after  
8 Plaintiffs' counsel claimed that the Plaintiffs' claims against the Defendants were tolled so long as  
9 they continued representation did Defendants attempt to construe the tolling statutes in their favor  
10 and shift the blame back upon Damus.

11  
12 The tolling statutes do not apply to the malpractice claims against Damus because the  
13 damages and negligence of Damus had already been confirmed by the filing of the Complaint. The  
14 most important fact is that Defendants filed an Amended Complaint thereby admitting knowledge  
15 that they had discovered facts which constitute the cause of action, malpractice. Once Damus was  
16 dismissed, the statute continued to run. Further, Plaintiffs had retained the Defendants to sue  
17 Damus for malpractice and Defendants had a duty to continue pursuit of Plaintiffs' valid claims  
18 against Damus, which they failed to do.

19  
20 Finally, Defendants do not address the fact that Plaintiffs' claim that malpractice also  
21 occurred by the mere filing of the claims against Damus in the Federal Court. The claims against  
22 Damus arose out of his failure to timely file any claim to prevent the foreclosure of Plaintiffs'  
23 property. Therefore, the claim against Damus was merely a straightforward claim of malpractice.  
24 As there was no federal question and no diversity, the Federal Court did not have jurisdiction. The  
25 Federal Court ruled as such, as admitted in the instant Motion. Therefore, Defendants knew they  
26 had a duty to pursue the claims against Damus in state court, which they failed to ever do.

27  
28 Valid claims against the Defendants exist. Issues of fact, concerning knowledge of claims  
against Damus and Defendants' conduct in the legal proceedings are factual issues that prevent the

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2  
3 dismissal of this suit. Based on the foregoing, Plaintiffs' request that Defendants' Motion to  
4 Dismiss be denied in its' entirety.

## 5 II. STATEMENT OF FACTS

6 When considering a motion to dismiss, courts consider all factual assertions to be true and  
7 draw all reasonable inferences in favor of the plaintiff. (*Shoen v. SAC Holding Corp.*, 122 Nev.  
8 621, 634-35, 137 P.3d 1171, 1180 (2006). The following factual assertions, among others, are pled  
9 in the Complaint and therefore for purposes of resolving the motion to dismiss, must be considered  
10 as true.

### 11 A. Plaintiffs Contracted with the Defendants to Sue Damus.

12  
13 On August 20, 2009, Plaintiffs retained the legal services of Defendant, GLB,  
14 memorialized through a written agreement. In accordance with the terms of the Legal Services  
15 Agreement, Plaintiffs were required to and did tender \$30,000.00 with payments to be paid in six  
16 (6) equal monthly payments. In accordance with the Agreement the Defendants were to represent  
17 the clients in litigation against the defendants named in the action.  
18

19 In accordance with the Agreement "Litigation" was defined as an action in a court in  
20 Nevada against the Relevant Persons that the Client and the Firm has a good faith belief have  
21 perpetrated civil wrongs against the Client(s) in connection with the Investment and/or breached  
22 contractual obligation(s) with respect to Client in connection with the Investment.  
23

24 In accordance with the Agreement "Relevant Persons" was defined as any Person who  
25 solicited (or participated in the solicitation of) the Investment and/or any Person who engaged in  
26 effecting the Investment (whether directly or indirectly) during the time period that the Client  
27 engaged in activities aimed at securing ownership of the Investment.  
28

In accordance with the Agreement "Defendants" was defined as the Relevant Persons that

1  
2 were named as “defendants” in the Litigation.  
3

4 On October 15, 2009, GLB filed a Complaint in the United States District Court, District  
5 of Nevada under case No. 2:09-cv-02008-RFB-GWF. On March 2, 2010, GLB filed an Amended  
6 Complaint in which additional Defendants were named and additional claims were brought.  
7 Specifically, claims against Charles M. Damus, Esq. for legal malpractice and negligent  
8 undertaking to perform services.  
9

10 On December 17, 2008, Plaintiffs had originally retained the services of Charles M.  
11 Damus, Esq., to litigate and dispute certain real estate and other related claims regarding real  
12 property. Importantly, Damus was retained to prevent the foreclosure of the Property of which  
13 Plaintiffs had tendered all payments. On September of 2009, Plaintiffs terminated Damus due to  
14 the fact that no complaint had been filed and the foreclosure had occurred.  
15

16 In the Amended Complaint it was alleged that Damus committed legal malpractice and  
17 negligent undertaking to perform services. In Damus’ Motion to Dismiss for Lack of Subject  
18 Matter Jurisdiction it was admitted that he attempted to negotiate with Adam Kearney and was  
19 aware of the pending foreclosure. After the foreclosure sale, without the filing of case to prevent  
20 the foreclosure, Damus was terminated. Since Plaintiffs lost title to the Property and Damus had  
21 taken no reasonable steps to prevent the foreclosure sale, malpractice was clear and obvious.  
22

23 On October 5, 2010, Damus filed a Motion to Dismiss for Lack of Subject Matter  
24 Jurisdiction. On October 22, 2010, the firm Dickinson Wright, PLLC filed Plaintiffs’ Response to  
25 Defendant Charles M. Damus, Esq.’s Motion to Dismiss for Lack of Subject Matter Jurisdiction.  
26 On November 1, 2010, Damus filed a Reply to the Opposition. On December 6, 2010, the Court  
27 entered an Order Granting Damus’ Motion to Dismiss.  
28

The Defendants admitted they never initiated a claim in the District Court against Damus.

1  
2 Any claim against Damus for malpractice should have been brought on or before the termination  
3 date two years later.  
4

5 On May 31, 2012, Plaintiffs entered into an Amended and Restated Legal services  
6 Agreement with Dickinson Wright PLLC, which combined practices with GLB. Defendants  
7 continued to pursue claims against the remaining defendants in the case. On July 30, 2015,  
8 Plaintiffs received an email from Defendant Vartanian acknowledging that no suit had been filed  
9 against Damus and that as of the date of that email representation of the Plaintiffs had ended.  
10

### 11 III.

### 12 LEGAL ARGUMENT

#### 13 A. Under a Motion to Dismiss Standard, All of Plaintiffs' Allegations are Assumed 14 to be True. 15

16 A party may move for dismissal of claims when a pleading fails to state a claim upon which  
17 relief may be granted. NRCP 12(b)(5). When considering a motion to dismiss, courts consider all  
18 factual assertions to be true and draw all reasonable inferences in favor of the plaintiff. (*Shoen v.*  
19 *SAC Holding Corp.*, 122 Nev. 621, 624-35, 137 P.3d 1171, 1180 (2006)). Dismissing a complaint  
20 is appropriate “only if it appears beyond a doubt that [the complaint] could prove no set of facts,  
21 which, if true, would entitle [the plaintiff] to relief.” (*Buzz Stew, LLC v. City of N. Las Vegas*, 124  
22 Nev. 224, 227-28, 181 P.3d 670, 672 (2008); see also *In re Amerco Derivative Litig.*, 127 Nev.  
23 Adv. Op. 17, 252 P.3d 681, 692 (2011)).  
24  
25

26 Thus, when considering a motion to dismiss, this Court must determine “whether or not  
27 the challenged pleading sets forth allegations sufficient to make out the elements of a right to  
28 relief.” (*Edgar v. Wager*, 101 Nev. 226, 227, 699 P.2d 110, 111 (1985) Emphasis added. The focus  
is on the allegations in Plaintiff's Complaint.

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2  
3 Additionally, a court should consider certain documents without converting a motion to  
4 dismiss into a motion for summary judgment:

5 While a district court must normally ignore those matters that lie outside the pleadings, it  
6 may consider: (1) documents physically attached to the complaint, *see Durning v. First*  
7 *Boston Corp.*, 815 F.2d 1265, 1267 (9<sup>th</sup> Cir.), cert denied. 484 U.S. 944, 108 S.Ct. 330, 98  
8 L.Ed.2d 358 (1987); (2) documents of undisputed authenticity that are alleged or  
9 referenced within the complaint, *see Parrino v. FIIP, Inc.*, 146 F.3d 699, 706 (9<sup>th</sup> Cir.  
10 1998); *Branch v. Tunnell*, 14 F.3d 449, 454 (9<sup>th</sup> Cir. 1994); and (3) public records and other  
11 judicially noticeable evidence, *see Baron v. Reich*, 13 F.3d 1370, 1377 (9<sup>th</sup> Cir. 1994);  
12 *MGIC Indem. Corp., v. Weisman*, 803 F.2d 500, 504 (9<sup>th</sup> Cir. 1986).

13 *Venetian Casino Resort, LLC v. Cortez*, 96 F.Supp.2d 110, 1106, (D. Nev. 200) (emphasis added).  
14 “Documentation whose contents are alleged in a complaint and whose authenticity no party  
15 questions, but which are not physically attached to the pleading may [also] be considered in ruling  
16 on a ... motion to dismiss.” (*Branch v. Tunnell*, 14. F.3d 449, 454 (9<sup>th</sup> Cir. 1994) (cited in *Brown*  
17 *v. Ramsfeld*, 211 F.R.D. 601, 604 (N.D. Cal. 2002)).

18 Nevada’s “notice pleading” requirement mandates that a plaintiff only set forth the facts  
19 which support a legal theory. NRCP 8(a)(1), (e); *Liston v. Las Vegas Metro Police Dept.*, 111 Nev.  
20 1575, 1578-79, 908 P.2d 720, 723 (1995). The court’s “task is to determine whether ... the  
21 challenged pleadings sets forth allegations sufficient to make out the elements of a right to relief.”  
22 (*Breliant v. Preferred Equities Corp.*, 109 Nev. 842, 845-46, 858 P.2d 1258, 1260 (1993)).  
23 Allegations of a complaint are sufficient to assert a claim for relief when they give **fair notice of**  
24 the nature and basis of a legally sufficient claim and the relief requested. (*Western States Constr.*  
25 *v. Michoff*, 108 Nev. 931, 840 P.2d 1220, 1223 (1992); *Ravera v. City of Reno*, 100 Nev. 68, 70,  
26 675 P.2d 407, 408 (1984). Emphasis Added).

27 **B. Defendants’ Motion Should be Denied in its Entirety as Each of Plaintiff’s Causes**  
28 **of Action Adequately State a Claim Upon Which Relief May be Granted.**

Defendants are seeking dismissal of all of Plaintiff’s claims on the primary basis that  
Plaintiffs’ claims against Damus tolled during the litigation against the Defendants named in the

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3 Federal Case No. 2:09-cv-02008-PMP-PAL.

4 First, Plaintiffs' Complaint properly pleads a malpractice claim against all named  
5 Defendants. Plaintiffs' malpractice claim against the Defendants was timely filed, within two years  
6 of Defendants last date of legal representation of the Plaintiffs. (NRS 11.207). There is no dispute  
7 that the claim was timely filed.

8 Second, Plaintiffs' original claims of malpractice did not continue to toll during the Federal  
9 litigation matter after Damus was dismissed.

10 (a) Plaintiffs retained Damus to file a claim to prevent the foreclosure of a property  
11 they lawfully owned. Plaintiffs' tendered all required payments to Damus to  
12 satisfy their part in retaining his legal services.

13 (b) Damus was retained prior to the foreclosure and failed to file any claims to  
14 prevent said foreclosure. As a result of Damus' conduct the foreclosure sale  
15 went forward.

16 (c) Under NRS 107.080(b) a party may have up to forty-five (45) days to file a  
17 motion to set aside the foreclosure sale. Damus also failed to file any claim to  
18 set aside the foreclosure sale.

19 (d) As a direct result of Damus' conduct, the foreclosure sale occurred and  
20 Plaintiffs' lost the property.

21 While Plaintiffs' may have had causes of action against the named defendants in the  
22 Federal Case, the Plaintiffs' clearly had a cause of action for malpractice against Damus. Further,  
23 as articulated in the Amended Complaint, it was alleged that Damus breached his fiduciary duty  
24 and was unjustly enriched when he failed to take any legal action to prevent the foreclosure sale.  
25 The claims against the Federal defendants were separate and distinct from the claims against  
26 Damus. Only Damus had the ability, through a legal action, to prevent the foreclosure and retaining  
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28

1  
2 the Plaintiffs' property.

3  
4 There is long standing case law in Nevada that would have easily supported a cause of  
5 action to prevent the foreclosure sale. As the Nevada Supreme Court has explained, injunctions  
6 are issued to protect plaintiffs from irreparable injury and to preserve the court's power to render  
7 a meaningful decision after a trial on the merits. *See Ottenheimer v. Real Estate Division*, 91 Nev.  
8 338, 535 P.2d 1284 (1975). A temporary restraining order or preliminary injunction may be  
9 granted "when it appears by the complaint that the plaintiff is entitled to the requested relief, and  
10 such relief or any part thereof consists in restraining the commission or continuance of the act  
11 complained of, either for a limited period or perpetually. NRS 33.010. Generally, "[a] preliminary  
12 injunction is available if the applicant can show a likelihood of success on the merits and a  
13 reasonable probability that the non-moving party's conduct, if allowed to continue, will cause  
14 irreparable harm for which compensatory damages is an inadequate remedy." *Dangberg Holdings*  
15 *Nevada, LLC v. Douglas County*, 115 Nev. 129, 142, 978 P.2d 311, 319 (1999) (citing *Pickett v.*  
16 *Comanche Construction Inc.*, 108 Nev. 422, 426, 836 P.2d 42, 44 (1992)).  
17  
18

19 The Plaintiffs' were irreparably harmed by Damus' conduct. Therefore, there is no question  
20 that at the time of filing the amended complaint the instant Defendants were well aware of the  
21 alleged damages against Damus. Defendants request that this Court ignore the fact that they filed  
22 an Amended Complaint against Damus, which would allow the statute to toll. How is it ethically  
23 possible that the Defendants could file a complaint for malpractice against Damus, yet fail to  
24 legally understand whether Plaintiffs had any damages against Damus. The filing of the Amended  
25 Complaint refutes any possible argument that they were unaware of the damages against Damus.  
26

27 Under NRS 11.207(1), an aggrieved party " . . . within 2 years after the plaintiff discovers  
28 or through the use of reasonable diligence should have discovered the material facts which  
constitute the cause of action" must bring their complaint. At the latest possible date of March 2,



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3 2010, filing of Amended Complaint, Defendants were well aware of the malpractice claim against  
4 Damus. Even if the statute tolled during the time the litigation was pending against Damus, which  
5 it likely did not, the statute would have began to run again on the date of dismissal, December 6,  
6 2010. Giving Defendants all benefit of the doubt the claims against Damus had to be brought no  
7 later than December 6, 2012. (Plaintiff believes such claims would likely have had to been brought  
8 much sooner than the proposed date above. However, for argument sake only, it is clear that  
9 Defendants did not bring a state court action against Damus.)

10  
11 Therefore, the litigation tolling allowance would have never applied against Damus  
12 because there can be no dispute that Plaintiffs and the counsel, Defendants, were well aware at the  
13 time of filing the Amended Complaint of Damus' malpractice and unjust enrichment claims.

14 Further, the issue with Damus may not be the only malpractice claim against the  
15 Defendants. Per the Federal Court Order Dismissing the Case filed September 4, 2015, it was clear  
16 that Defendants failed to follow court orders and the case was dismissed. (Exhibit 1 – Order  
17 Dismissing Case). The Court stated, “The Court also instructed Plaintiffs to show cause in writing  
18 why this case should not be dismissed with prejudice, given that (1) a recent Stipulation filed by the  
19 parties (ECF No. 416) included a Proposed Order stating that the case be dismissed with prejudice,  
20 and (2) it appears that there are no active Defendants remaining in this case. Plaintiffs were  
21 required to show cause in writing by August 14, 2015, and have not done so.” The Court also  
22 stated, “The Court originally ordered Plaintiffs to serve Kearney with a copy of the Court’s  
23 previous order, and provide proof of service to the Court, on October 16, 2014. ECF No. 408.  
24 Plaintiffs did not do so. Further, Plaintiffs to date have not responded to the Court’s Order to Show  
25 Cause, even after the Court has waited an additional three weeks beyond the deadline it gave  
26 Plaintiffs. This delay of almost a full year, with no action by Plaintiffs, weighs heavily in favor of  
27 dismissal.” The Court finally finds, “Plaintiffs have failed to obey two Orders of the Court despite  
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3 being informed that the case would be dismissed with prejudice if they did not provide an  
4 explanation for their inaction and the lack of clarity in their recent Stipulation. Based on Plaintiffs'  
5 failure to comply, the Court can only conclude that they have abandoned their claims and have no  
6 intention of moving forward." The statements of the Federal Court scream malpractice. However,  
7 this case is in its early stages and these actions/non-actions, may also constitute malpractice.

8           **C. The Only Tolling Applies to Plaintiffs' Claims of Malpractice Against the**  
9           **Defendants.**

10           The purpose of the tolling statutes and supporting case law support Plaintiffs' current  
11 claims of malpractice. The Nevada Supreme Court was clear in *Brady, Vorwerck, Ryder &*  
12 *Casino v. New Albertson's Inc.*, 130 Nev. Adv. Op. 68, 333 P.3d 229 (August 7, 2014), where  
13 the Court adopted the "litigation malpractice tolling" rule, which provided that the damages for a  
14 malpractice claim do not accrue until the underlying litigation is complete and, thus, a malpractice  
15 claim does not accrue and its statute of limitations does not begin to run during a pending appeal  
16 of an adverse ruling from the underlying litigation. The *Brady* Court further concluded that so long  
17 as the litigation in which the malpractice occurred continues, the damages on which the attorney  
18 malpractice action is based remain uncertain. At present, Plaintiffs were unaware that the claims  
19 against Damus had not been brought in state court and/or unaware that they would not be brought  
20 timely. Therefore, the Plaintiffs' actions are supported by *Brady* and thus the filing of the instant  
21 litigation was timely and should not be dismissed.

22           The Defendants also request dismissal on the allegation that since Plaintiffs' allegedly  
23 knew claims had not been brought against Damus they are time barred from their malpractice  
24 claims. Such a finding would allow attorneys to commit malpractice and then draw out the  
25 litigation until after the statutory period to bring a claim. This would put the onus on the uneducated  
26 plaintiffs to monitor their attorneys' actions for the possibility of malpractice. The purpose of the  
27  
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1  
2 litigation tolling period is to prevent exactly such conduct.  
3

4 **D. Request to Amend the Complaint**

5 Plaintiffs do not believe that Defendants' Motion has any merit. However, should the Court  
6 find that a claim should have been brought against Damus, Plaintiffs request that this Court allow  
7 Plaintiffs' to file an amended Complaint. However, it remains Plaintiffs' position that their claims  
8 of malpractice against Defendants are valid.

9 **IV. CONCLUSION**

10  
11 Based on the foregoing, Plaintiffs' Motion should be denied in its entirety.

12 DATED this 7<sup>th</sup> day of September, 2017.

13 BRANDON L. PHILLIPS, ATTORNEY AT LAW, PLLC  
14

15 /S/ Brandon L Phillips  
16 BRANDON L. PHILLIPS, ESQ.  
17 Nevada Bar No. 12264  
18 1455 E. Tropicana Ave., Suite 750  
19 Las Vegas, Nevada 89119  
20 *Attorney for Plaintiffs, Kim and Hong*  
21  
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## **EXHIBIT 1**

## **EXHIBIT 1**

UNITED STATES DISTRICT COURT  
DISTRICT OF NEVADA

\* \* \*

TAE-SI KIM and JIN-SUNG HONG,

Plaintiffs,

v.

ADAM B. KEARNEY, *et al.*,

Defendants.

Case No. 2:09-cv-02008-RFB-GWF

**ORDER DISMISSING CASE**

**I. INTRODUCTION**

This case is before the Court on an Order to Show Cause, issued August 6, 2015. ECF No. 424. In its Order, the Court dismissed Plaintiffs Tae-Si Kim and Jin-Sung Hong's (collectively, "Plaintiffs") Motion for Order to Show Cause filed on September 10, 2014 for failure to obey the Court's earlier order requiring them to provide proof that they had served Defendant Adam Kearney with a copy of an earlier Order. The Court also instructed Plaintiffs to show cause in writing why this case should not be dismissed with prejudice, given that (1) a recent Stipulation filed by the parties (ECF No. 416) included a Proposed Order stating that the case be dismissed with prejudice, and (2) it appears that there are no active Defendants remaining in this case. Plaintiffs were required to show cause in writing by August 14, 2015, and have not done so.

"Courts are to weigh five factors in deciding whether to dismiss a case for failure to comply with a court order: (1) the public's interest in expeditious resolution of litigation; (2) the court's need to manage its docket; (3) the risk of prejudice to the defendants; (4) the public policy

1 favoring disposition of cases on their merits; and (5) the availability of less drastic sanctions.” In  
2 re Phenylpropanolamine (PPA) Products Liab. Litig., 460 F.3d 1217, 1226 (9th Cir. 2006)  
3 (citations and internal quotation marks omitted).

4 Here, the public’s interest and the court’s interest in managing its docket favor dismissing  
5 this case. The Court originally ordered Plaintiffs to serve Kearney with a copy of the Court’s  
6 previous order, and provide proof of service to the Court, on October 16, 2014. ECF No. 408.  
7 Plaintiffs did not do so. Further, Plaintiffs to date have not responded to the Court’s Order to  
8 Show Cause, even after the Court has waited an additional three weeks beyond the deadline it  
9 gave Plaintiffs. This delay of almost a full year, with no action by Plaintiffs, weighs heavily in  
10 favor of dismissal.

11 The third factor, prejudice to Defendants, also favors dismissal. While it appears all  
12 Defendants may have been dismissed from the case, Defendants are faced with continuing  
13 uncertainty and risk incurring additional costs as long as this case remains open despite  
14 Plaintiffs’ demonstrated inaction.

15 Fourth, “the public policy favoring disposition of cases on their merits strongly counsels  
16 against dismissal.” PPA Products, 460 F.3d at 1228 (citation omitted). Nevertheless, “this factor  
17 lends little support to a party whose responsibility it is to move a case toward disposition on the  
18 merits but whose conduct impedes progress in that direction.” Id. (internal quotation marks  
19 omitted). Because Plaintiffs are responsible for moving a case forward, their conduct in causing  
20 delay and impeding progress supports dismissal.

21 Finally, the Court finds that no less drastic sanctions are available. Plaintiffs have failed  
22 to obey two Orders of the Court despite being informed that the case would be dismissed with  
23 prejudice if they did not provide an explanation for their inaction and the lack of clarity in their  
24 recent Stipulation. Based on Plaintiffs’ failure to comply, the Court can only conclude that they  
25 have abandoned their claims and have no intention of moving forward.

26 For these reasons,

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1           **IT IS ORDERED** that this case is DISMISSED WITH PREJUDICE. The Clerk of Court  
2 is instructed to close this case.

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4           DATED: September 4, 2015.

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**RICHARD F. BOULWARE, II**  
United States District Judge

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

Tae-Si Kim as an individual; and Jin-Sung Hong, as an individual.

Appellants,

v.

Dickinson Wright, PLLC, a Nevada Professional Limited Liability Company; Jodi Donetta Lowry, Esq., an individual; Jonathan M. A. Salls, Esq., an individual; Eric Dobberstein, Esq., an individual; and Michael G. Vartanian, Esq., an Individual

Respondents.

SUPREME COURT CASE

NO. 74803

Electronically Filed  
Jun 21 2018 10:08 a.m.

Elizabeth A. Brown

DISTRICT COURT CASE  
Clerk of Supreme Court

NO. A-756785

**APPELLANTS' APPENDIX  
VOLUME IV OF IV**

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