

IN THE SUPREME COURT OF THE STATE OF NEVADA

Case Nos. 79425 and 79526

ATHANASIOS SKARPELOS, AN INDIVIDUAL

Appellants,

v.

WEISER ASSET MANAGEMENT, LTD., A BAHAMAS COMPANY AND
WEISER (BAHAMAS) LTD., A BAHAMAS COMPANY,

Respondents.

WEISER ASSET MANAGEMENT, LTD., A BAHAMAS COMPANY AND
WEISER (BAHAMAS) LTD., A BAHAMAS COMPANY

Appellants,

v.

ATHANASIOS SKARPELOS, AN INDIVIDUAL,

Respondent.

Appeal from the Judgment of the Second Judicial District Court, Washoe County
District Court Case No.: CV15-02259
Second Judicial District Court of the State of Nevada
In and For the County of Washoe

**JOINT APPENDIX
VOLUME 13**

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Reply in Support of Skarpelos' Motion to Alter or Amend Judgment	6/7/2019	13	JA2519- JA2526
Reply in Support of Weiser's Motion for Reconsideration for Attorney's Fees Award	9/10/2019	13	JA2656- JA2662
Skarpelos' Answer to Weiser's Cross-Claim	6/17/2016	1	JA0075- JA0081
Skarpelos' Motion to Alter or Amend Judgment	4/25/2019	11	JA2183- JA2248
Skarpelos' Objections to Weiser's Pretrial Disclosures	1/11/2019	4	JA0630- JA0635
Skarpelos' Post-Trial Brief Regarding Restriction on Disposition of Stock	4/8/2019	11	JA2151- JA2155
Skarpelos' Responses to Weiser's Objections to Findings of Fact, Conclusions of Law, and Judgment	4/8/2019	10	JA2049- JA2052
Transcript of Proceedings – Bench Trial – Day 3	1/30/2019	8; 9	JA1565- JA1680; JA1681- JA1713
Transcript of Proceedings – Bench Trial – Day 4	1/31/2019	9	JA1724- JA1838

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Transcript of Proceedings - Trial - Day 1	1/28/2019	7	JA1272- JA1423
Transcript of Proceedings - Trial - Day 2	1//29/2019	7; 8	JA1425- JA1470; JA1471- JA1557
Transcript of Proceedings 02/06/2019	2/6/2019	10	JA1914- JA1950
Trial Exhibit 1, Anavex Life Sciences Corp. Share Certificate 0753 for 6,633,332 shares (WEISER000281)	1/28/2019	6	JA1135- JA1136
Trial Exhibit 11, MHNYMA Swift-Single Customer Credit Transfer (WEISER000346)	1/31/2019	9	JA1716- JA1717
Trial Exhibit 12, 12/21/2012 email Lambros Pedafronimos L. Pedaf@gmail.com to Christos Livadas (WEISER000345)	1/31/2019	9	JA1718- JA1719
Trial Exhibit 13, 1/10/2013 Corporate Indemnity to Nevada Agency and Transfer Company to Reissuance of Lost Certificate (S000007)	1/28/2019	6	JA1160- JA1161

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Trial Exhibit 14, 3/28/2013 Athanasios Skarpelos Affidavit for Lost Stock Certificate (S000008-S000009)	1/28/2019	6	JA1162-JA1164
Trial Exhibit 15, 3/29/2013 Athanasios Skarpelos Stop Transfer Order (S000010)	1/28/2019	6	JA1165-JA1166
Trial Exhibit 16, 4/4/2013 NATCO Transfer (S000011)	1/28/2019	6	JA1167-JA1168
Trial Exhibit 18, 4/26/2013 email Lambros Pedafronimos L.Pedaf@gmail.com to Christos Livadas (WEISER000338)	1/31/2019	9	JA1720-JA1721
Trial Exhibit 19, 5/09/2013 email Lambros Pedafronimos L.Pedaf@gmail.com to Christos Livadas (WEISER000312)	1/31/2019	9	JA1722-JA1723
Trial Exhibit 2, WAM New Account Opening Form (WEISER000352-361)	1/28/2019	6	JA1137-JA1147
Trial Exhibit 20, 5/24/2013 email Lambros Pedafronimos L.Pedaf@gmail.com to Christos Livadas (WEISER000340)	1/28/2019	6	JA1169-JA1170
Trial Exhibit 21, 06/24/2013 Email Christos Livadas Lambros to Pedafronimos L.Pedaf@gmail.com (S000012)	1/28/2019	6	JA1171-JA1172

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Trial Exhibit 22, 06/24/2013 Email Lambros Pedafronimos L.Pedaf@gmail.com to Christos Livadas (S000013)	1/28/2019	6	JA1173-JA1174
Trial Exhibit 23, 06/24/2013 Email Christos Livadas Lambros to Pedafronimos L.Pedaf@gmail.com (S000014)	1/28/2019	6	JA1175-JA1176
Trial Exhibit 24, 06/24/2013 Email Lambros Pedafronimos L.Pedaf@gmail.com to Christos Livadas (S000015)	1/28/2019	6	JA1177-JA1178
Trial Exhibit 25, 06/24/2013 Email Lambros Pedafronimos L.Pedaf@gmail.com to Christos Livadas (WEISER000333-000337)	1/28/2019	6	JA1179-JA1184
Trial Exhibit 26, 06/25/2013 Email Lambros Pedafronimos L.Pedaf@gmail.com to Christos Livadas (S000016)	1/28/2019	6	JA1185-JA1186
Trial Exhibit 27, 07/02/2013 Lambros Pedafronimos L.Pedaf@gmail.com to Christos Livadas (S000017)	1/28/2019	6	JA1187-JA1188
Trial Exhibit 28, 07/02/2013 Christos Livadas Lambros to Pedafronimos L.Pedaf@gmail.com (S000018)	1/28/2019	6	JA1189-JA1190

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Trial Exhibit 29, 07/03/2013 Lambros Pedafronimos L.Pedaf@gmail.com to Christos Livadas (S000019)	1/28/2019	6	JA1191-JA1192
Trial Exhibit 3, Letter dated October 30, 2015 from Montello Law Firm to NATCO (WEISER000002-WEISER000003)	1/28/2019	6	JA1148-JA1150
Trial Exhibit 30, 07/05/2013 Stock Sale and Purchase Agreement between Weiser and Skarpelos (WEISER000207-WEISER000209)	1/28/2019	6	JA1193-JA1196
Trial Exhibit 31, 07/09/2013 Lambros Pedafronimos L.Pedaf@gmail.com to Christos (S000020)	1/28/2019	6	JA1197-JA1198
Trial Exhibit 32, 07/09/2013 Blank Stock Sale and Purchase Agreement signed by Skarpelos (WEISER000161-WEISER000163)	1/28/2019	6	JA1199-JA1202
Trial Exhibit 33, 7/09/2013 Email Lambros Pedafronimos L.Pedaf@gmail.com to Christos Livadas (WEISER000328-WEISER000332)	1/28/2019	6	JA1203-JA1208
Trial Exhibit 34, Blank Stock Sale and Purchase Agreement (WEISER000156-WEISER000158)	1/28/2019	6	JA1209-JA1212

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Trial Exhibit 35, 07/12/2013 Power of Attorney to Transfer Bonds or Shares (WEISER000368)	1/28/2019	6	JA1213-JA1214
Trial Exhibit 36, 07/12/2013 Power of Attorney to Transfer Bonds or Shares (WEISER000369)	1/28/2019	6	JA1215-JA1216
Trial Exhibit 40, 10/28/2013 Email Tom Skarpelos and Christos Livadas (WEISER000339)	1/28/2019	6	JA1217-JA1218
Trial Exhibit 43, 12/31/2013 Weiser Skarpelos Statement of Account for February 1, 2013 - December 31, 2013 (WEISER000378-WEISER000380)	1/28/2019	6	JA1219-JA1222
Trial Exhibit 44, Duplicate copy of 12/31/2013 Weiser Skarpelos Statement of Account for February 1, 2013 - December 31, 2013 (WEISER000378-WEISER000380)	1/28/2019	6	JA1223-JA1226
Trial Exhibit 46, 11/02/2015 Letter Ernest A. Alvarez to Nevada Agency and Transfer Company Weiser Asset Management Ltd. (WEISER000004)	1/28/2019	6	JA1227-JA1228
Trial Exhibit 47, 11/03/2015 Letter Alexander H. Walker III to Ernest A. Alvarez (WEISER000001)	1/28/2019	6	JA1229-JA1230

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Trial Exhibit 48, 11/12/2015 Letter Elias Soursos, Weiser Asset Management Ltd. to NATCO (WEISER000011)	1/28/2019	6	JA1231-JA1232
Trial Exhibit 49, 11/12/2015 Letter Bernard Pinsky to Nevada Agency and Transfer Company (WEISER000007-WEISER000008)	1/28/2019	6	JA1233-JA1235
Trial Exhibit 50, 11/12/2015 Email Christos Livadas to Nick Boutasalis (WEISER 000214-WEISER000215)	1/28/2019	6	JA1236-JA1238
Trial Exhibit 51, 11/13/2015 Letter Ernesto A. Alvarez to Alexander Walker III, Esq. (WEISER000009)	1/28/2019	6	JA1239-JA1240
Trial Exhibit 52, 11/13/2015 Letter Ernesto A. Alvarez to Nevada Agency and Transfer Company (WEISER000005)	1/28/2019	6	JA1241-JA1242
Trial Exhibit 53, 11/13/2015 email Alexander H. Walker III to Ernesto A. Alvarez cc Amanda Cardinelli (WEISER000187-WEISER000189)	1/28/2019	6	JA1243-JA1246
Trial Exhibit 54, 11/13/2015 Letter Nick Boutasalis to NATCO (PID-00045-PID-00048)	1/28/2019	6	JA1247-JA1251

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Trial Exhibit 55, 11/16/2015 letter to Ernesto A. Alvarez to Alexander Walker III, Esq., (WEISER000012)	1/28/2019	6	JA1252- JA1253
Trial Exhibit 56, 11/17/2015 email Bill Simonitsch to Louis R. Montello cc Ernesto Alvarez (WEISER000238)	1/28/2019	6	JA1254- JA1255
Trial Exhibit 57, 11/18/2015 email Bill Simonitsch and Ernesto A. Alvarez (WEISER000216-WEISER000217)	1/28/2019	6	JA1256- JA1258
Trial Exhibit 58, 11/19/2015 Email bill Simonitsch and Ernesto A. Alvarez cc Louis Montello (WEISER000218-WEISER000219)	1/28/2019	7	JA1259- JA1261
Trial Exhibit 59, 11/19/2015 Email Christos Livadas re Tom Transfer request (WEISER000320-WEISER000322)	1/28/2019	7	JA1262- JA1265
Trial Exhibit 60, 11/19/2015 email Christos Livadas re Skarpelos Email flow 2011-2013 (WEISER000341-WEISER000343)	1/28/2019	7	JA1266- JA1269
Trial Exhibit 61, Bank documents (S000032-S000035)	1/30/2019	7	JA1560- JA1564
Trial Exhibit 7, 05/30/2011 Email between Athanasios Skarpelos and Howard Daniels re Courier Address for WAM, Ltd. (S000006)	1/28/2019	6	JA1151- JA1152

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Trial Exhibit 8, 05/31/2011 Skarpelos Identify Verification Form with Supporting Documents (WEISER000362-WEISER00367)	1/28/2019	6	JA1153-JA1159
Verified Memorandum of Costs and Disbursements	4/25/2019	11	JA2363-JA2443
Weiser's Motion for Reconsideration of Attorney's Fee Award (Request for Oral Argument)	8/19/2019	13	JA2616-JA2623
Weiser's Opposition to Motion to Compel	8/14/2017	1	JA0134-JA0137
Weiser's Opposition to Skarpelo's Motion for Attorney's Fees	5/24/2019	12	JA2502-JA2508
Weiser's Opposition to Skarpelos' Motion for Summary Judgment	4/12/2018	3	JA0466-JA0583
Weiser's Opposition to Skarpelos' Motion in Limine	4/12/2018	2; 3	JA0353-JA0420; JA0421-0465
Weiser's Answer and Cross Claim	5/24/2016	1	JA0058-JA0070
Weiser's Answer to Skarpelos' Cross-Claim	6/15/2016	1	JA0071-JA0074

1 **3795**

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12 IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
IN AND FOR THE COUNTY OF WASHOE

13 ***

14 NEVADA AGENCY AND TRANSFER
15 COMPANY, a Nevada corporation,

Case No. CV15-02259
Dept. No. 10

16 Plaintiff,

17 vs.

REPLY IN SUPPORT OF
SKARPELOS' MOTION TO ALTER
OR AMEND JUDGMENT

18 WEISER ASSET MANAGEMENT, LTD.,
19 a Bahamas company; ATHANASIOS
20 SKARPELOS, an individual; and
DOES 1-10,

21 Defendants.

22 _____/
ATHANASIOS SKARPELOS, an individual,

23 Cross-Claimant,

24 vs.

25 WEISER ASSET MANAGEMENT, LTD., a
26 Bahamas company, and WEISER (BAHAMAS)
27 LTD., a Bahamas company.

28 Cross-Defendants.

1 WEISER ASSET MANAGEMENT, LTD.,
2 a Bahamas company, WEISER (BAHAMAS), LTD.,
3 a Bahamas company,

4 Cross-Claimants.

5 vs.

6 ATHANASIOS SKARPELOS, an individual,
7 Cross-defendant.

8 **REPLY IN SUPPORT OF SKARPELOS' MOTION TO ALTER OR AMEND**
9 **JUDGMENT**

10 Athanasios Skarpelos ("Skarpelos") submits the following reply in support of his
11 Motion to Alter or Amend Judgment ("Motion") and in response to the opposition
12 ("Opposition") filed by Weiser Asset Management, Ltd. ("WAM") and Weiser (Bahamas)
13 Ltd. ("Weiser Capital") (sometimes collectively referred to as "Weiser"). This reply is based
14 on the following points and authorities and the entire file in this matter, including the Reply In
15 Support Of Motion For Attorneys' Fees filed concurrently.

16 **I. INTRODUCTION**

17 Weiser's Opposition ignores the trial testimony of Christos Livadas ("Livadas") and
18 mischaracterizes the events that preceded it. As the Court noted, Livadas' testimony
19 contradicted the allegations in Weiser's Cross-Claim, contradicted his deposition testimony
20 and contradicted the legal theory set forth in Weiser's trial statement. *See* Exhibit 1 to Motion
21 at 21:6-20. At trial, Weiser abandoned the sole basis of its claims, the July 2013 Stock Sale
22 and Purchase Agreement (the "July 2013 PSA"), which Livadas said was a meaningless
23 document he surreptitiously used for another purpose. In doing so, Weiser also abandoned
24 the theory that the July 2013 PSA "memorialized" the April 2013 transaction in which
25 Skarpelos sold the stock to Weiser Capital. For the first time at trial, Weiser admitted it was
26 not the owner of the stock but instead had incurred damages in April 2013 arising from
27 Skarpelos' agreement to sell the stock to an unidentified customer of WAM in a transaction
28 entirely unrelated to the July 2013 PSA.

1 Contrary to Weiser's pleadings alleging Skarpelos had agreed to sell the stock to
2 Weiser, the true nature of Weiser's claim was for damages arising from Skarpelos' breach of
3 the brokerage account agreement with WAM. But that claim was never pleaded. Skarpelos
4 had no fair notice of that claim because Weiser's pleadings misled Skarpelos to believe
5 Weiser was claiming *ownership* of the stock under the July 2013 PSA, and Weiser's
6 subsequent filings and deposition testimony misled Skarpelos to believe *Weiser Capital* was
7 claiming *ownership* of the stock pursuant to the April 2013 transaction as "memorialized" in
8 the July 2013 PSA.

9 The Court awarded WAM damages because WAM, as the broker, credited Skarpelos'
10 account for a transaction involving a third-party WAM customer to whom Skarpelos did not
11 deliver the stock. Those are breach of contract damages arising from the brokerage account
12 agreement, a legal remedy WAM chose not to pursue and which renders equitable relief
13 unavailable. These damages did not relate to Weiser's claims that it (either or both Weiser
14 entities) was the *owner* of the stock, which was the only issue in this interpleader action.
15 Rather, the damages related to WAM's role as the *broker* of a deal between Skarpelos and a
16 third party in a transaction which, according to Livadas, was completely unrelated to the
17 meaningless document upon which Weiser based all of its claims. Therefore, the Court
18 lacked subject matter jurisdiction to impose the judgment in favor of WAM.

19 For these reasons, the Court's award of \$245,464.64 to WAM should be removed
20 from the Court's judgment.

21 **II. ARGUMENT**

22 **A. Skarpelos did not have notice of WAM's damages claim.**

23 Weiser accuses Skarpelos of being "disingenuous" in claiming that he did not have
24 fair notice of any claim by WAM for damages based on Skarpelos' alleged breach of the
25 brokerage account agreement regarding a sale of stock to a third party. *See* Opposition at
26 4:20-21; Motion at 7:15-17. Skarpelos is not being disingenuous. He correctly points out that
27 such a claim cannot be found anywhere in Weiser's pleadings, which only mention the July
28 2013 PSA. Motion at 7:8-18. Weiser's trial statement stated that the July 2013 PSA

1 memorialized a sale of stock to Weiser Capital in April 2013 but did not mention any sale to a
2 third party from which WAM was claiming damages. Opposition at 2:21. Nor did Weiser's
3 trial statement allege a breach of the brokerage account agreement.

4 Livadas' trial testimony that there were two separate transactions and that the July
5 2013 PSA was a meaningless document was a complete departure from everything Weiser
6 had presented in this case. That Skarpelos "knew about" the April 2013 transaction is
7 irrelevant. What is relevant is what Weiser led Skarpelos and the Court to believe about the
8 nature of its claim involving that transaction, which was that it was a sale from Skarpelos to
9 Weiser Capital that was memorialized in the July 2013 PSA. But Weiser abandoned that
10 long-asserted theory at trial and presented an entirely new theory that WAM was claiming
11 damages for a different transaction that was never pleaded or argued. The Court found that
12 Livadas' testimony contradicted what Weiser had asserted in this case all along. *See* Exhibit
13 1 to Motion at 21:6-20. WAM never asserted damages as a broker arising from a transaction
14 between Skarpelos and a third-party. There was no fair notice or opportunity for Skarpelos to
15 be heard on that issue, and the award to WAM violated Skarpelos' rights to due process.

16 Contrary to Weiser's contention, this argument has not been raised and rejected by this
17 Court multiple times. Opposition at 4:21-22. In support of this contention, Weiser cites the
18 Court's Order on summary judgment, and the fact that Skarpelos objected to Livadas'
19 testimony at trial. Opposition at 10-13, 25.

20 In its Order denying Skarpelos summary judgment, the Court noted: "The primary
21 issues are (1) whether there is a contract between Skarpelos and Weiser for the sale of the
22 Disputed Shares; and (2) if so, whether Weiser performed on the contract. The resolution of
23 these issues is determinative of all claims and cross-claims in this action." Order dated June
24 21, 2018 at 4:16-18 (emphasis added). The Court went on to note that Skarpelos' motion
25 focused on Weiser's performance and assumed (for purposes of the motion only) that a
26 contract actually existed. *Id.* at 19-21. The Court noted Weiser's position that Skarpelos sold
27 the stock to Weiser in April 2013, a transaction that was documented in the July 2013 PSA.
28 *Id.* at 4:23-5:2. The Court found that the account statement reflecting the April 2013

1 transaction created an issue of fact as to Weiser's *performance* of the alleged July 2013 PSA,
2 i.e., that Weiser may have performed prior to executing the July 2013 PSA pursuant to which
3 Skarpelos was to sell the stock to Weiser Capital. *Id.* at 5:15-26.

4 After trial, the Court found there was no contract between Skarpelos and Weiser for
5 the sale of stock and that the July 2013 PSA that was the subject of the motion for summary
6 judgment was a meaningless document. The Order on summary judgment assumed the
7 existence and validity of the July 2013 PSA and assumed the contracting parties were
8 Skarpelos and Weiser. Thus, the issue of the April 2013 transaction involving damages
9 related to a sale between Skarpelos and a third party was not addressed during summary
10 judgment proceedings. Skarpelos asserted evidentiary objections to Livadas' surprising
11 testimony at trial but did not, in the midst of trial, have a fair opportunity to brief this issue.

12 Thus, the Court has not yet addressed Skarpelos' argument that he was denied due
13 process by virtue of the Court's award to WAM, and therefore Skarpelos is not relitigating old
14 matters. Skarpelos respectfully submits that he was not given fair notice of this claim, not
15 given an opportunity to assert his right to a jury trial, not given a right to fully explore that
16 claim in discovery and not given the right to be fully heard at trial on the issue.

17 **B. Equitable relief based on unjust enrichment is not available where a**
18 **contract governs the parties' relationship to each other.**

19 Weiser contends that the Court's equitable judgment in favor of Weiser was proper
20 and that the available legal remedies to Weiser are "irrelevant." Opposition at 7:22-24. This
21 is contrary to universal authorities that equitable relief is not available when there is an
22 adequate legal remedy. The Court's award to Weiser was based on the equitable theory of
23 unjust enrichment—the Court found that allowing Skarpelos to retain both the stock and the
24 funds the Court found he received would result in a windfall. Opposition at 7:11-13.

25 "Unjust enrichment is an equitable rather than a legal claim; consequently, no action
26 for unjust enrichment lies where a contract governs the parties' relationship to each other."
27 *Kizer v. PTP, Inc.*, 129 F. Supp. 3d 1000, 1005 (D. Nev. 2015), citing *McKesson HBOC, Inc.*
28 *v. N.Y. State Common Retirement Fund, Inc.*, 339 F.3d 1087, 1091 (9th Cir.2003). *Kizer v.*

1 *PTP, Inc.*, 129 F. Supp. 3d 1000, 1005 (D. Nev. 2015). Here, the Court found there is a
2 contract that governed WAM's relationship with Skarpelos, and Weiser admits the same. *See*
3 Exhibit 1 to Motion at 13:9, 22:14-17; Opposition at 3:16.

4 Thus, contrary to Weiser's assertion, its available legal remedies are entirely relevant.
5 WAM should have alleged a claim against Skarpelos for breach of contract for the damages
6 caused by Skarpelos' breach of the brokerage account agreement related to the April 2013
7 transaction, but it chose not to do so. Therefore, the Court's award to WAM based on the
8 equitable theory of unjust enrichment was manifest error.

9 **C. The Court lacked subject matter jurisdiction to make the award to**
10 **Weiser, as that award is completely unrelated to Weiser's claim of**
11 **ownership of the interplead stock, and therefore unrelated to the equities.**

12 This lawsuit was about *ownership* of the stock. Throughout this entire lawsuit, at least
13 up until Livadas testified at trial, Weiser's legal claims were based solely on the July 2013
14 PSA, by which Skarpelos agreed to sell the stock to Weiser. Even when Weiser's theory
15 evolved to include the alleged April 2013 sale to Weiser Capital, the July 2013 PSA was still
16 the document Weiser relied upon as the "memorializing" the deal. The sole question
17 presented by this lawsuit was "who owns the stock?" And the answer hinged on the validity,
18 terms and performance of the July 2013 PSA.

19 But Weiser abandoned the July 2013 PSA at trial and Livadas instead testified that
20 WAM had been damaged because Skarpelos refused to transfer the stock to an unidentified
21 third-party client of WAM pursuant to the April 2013 transaction. As discussed above, that
22 issue is a legal claim for damages arising from a transaction unrelated to the July 2013 PSA.
23 It did not involve Weiser Capital's equitable claim to ownership of the stock arising from the
24 July 2013 PSA as a memorialization of the alleged April 2013 sale of stock to Weiser Capital.
25 The Court found there was no agreement for Skarpelos to sell the stock to either Weiser
26 entity. Livadas admitted neither Weiser entity owned the stock.

27 While Nevada courts have broad powers in equity, they may consider only the
28 circumstances that bear upon the "equities." *Shadow Wood HOA v. N.Y. Cmty Bancorp.*, 132

1 Nev. Adv. Op. 5, 366 P.2d 1105, 1114 (2016). Here, the “equities” were limited to ownership
2 of the stock, which the Court resolved in Skarpelos’ favor. The award was not related to
3 Weiser’s and Skarpelos’ competing claims to *ownership* of the stock. It related to damages
4 arising from the broker account agreement, which was a legal claim not asserted in this case.

5 Therefore, the court lacked subject matter jurisdiction to award WAM those damages.

6 **III. CONCLUSION**

7 Skarpelos’ acknowledges that he seeks an extraordinary remedy but contends that this
8 case presents an extraordinary circumstance justifying its application. The Court enjoys
9 considerable discretion to do so. *Stevo Design, Inc. v. SBR Mktg. Ltd.*, 919 F.Supp.2d 1112,
10 1117 (D. Nev. 2013). Skarpelos respectfully requests that the Court amend its judgment to
11 remove the award of \$245,464.64 to WAM.

12 **AFFIRMATION**

13 The undersigned does hereby affirm that the preceding document does not contain the
14 personal information of any person.

15 DATED: June 7, 2019.

WOODBURN AND WEDGE

17 By /s/ Dane W. Anderson

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21 *Attorneys for Defendant/
22 Cross-Claimant
23 Athanasios Skarpelos*
24
25
26
27
28

1 **CERTIFICATE OF SERVICE**

2 I hereby certify that I am an employee of Woodburn and Wedge and that on this date,
3 I caused to be sent via electronic delivery through the Court's E-flex system a true and correct
4 copy of **REPLY IN SUPPORT OF SKARPELOS' MOTION TO ALTER OR**
5 **AMEND JUDGMENT** to:

6
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22 DATED: June 7, 2019.

23 /s/ Dianne M. Kelling
24 Dianne M. Kelling, an employee of
25 Woodburn and Wedge
26
27
28

IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
IN AND FOR THE COUNTY OF WASHOE

NEVADA AGENCY AND TRANSFER
COMPANY, a Nevada corporation,

Plaintiff,

Case No. CV15-02259

vs.

Dept. No. 10

WEISER ASSET MANAGEMENT, LTD.,
a Bahamas company, WEISER (BAHAMAS)
LTD., a Bahamas company, ATHANASIOS
SKARPELOS, an individual, and DOES 1
through 10,

Defendants.

ORDER GRANTING IN PART AND DENYING IN PART MOTION TO RETAX COSTS

Presently before the Court is DEFENDANTS/CROSS-CLAIMANTS WEISER'S MOTION TO RETAX COSTS ("the Motion") filed by Defendants WEISER ASSET MANAGEMENT, LTD. and WEISER (BAHAMAS) LTD. (collectively, "Weiser") on May 3, 2019. Defendant ATHANASIOS SKARPELOS ("Mr. SkarpeLOS") filed the OPPOSITION TO MOTION TO RETAX COSTS ("the Opposition") on May 14, 2019. Weiser filed DEFENDANTS/CROSS-CLAIMANTS WEISER'S REPLY IN SUPPORT OF MOTION TO RETAX COSTS ("the Reply") on May 20, 2019, and contemporaneously submitted the matter for the Court's consideration.

1 This case was initiated by Plaintiff NEVADA AGENCY AND TRANSFER COMPANY
2 (“the Plaintiff”) as an interpleader action to resolve a dispute over ownership of 3,316,666 shares of
3 stock in Anavex Life Sciences Corp.¹ The Court presided over a five-day bench trial beginning on
4 January 28, 2019, to resolve the competing claims between Weiser and Mr. Skarpelos to the shares.
5 The Court entered the FINDINGS OF FACT, CONCLUSIONS OF LAW AND JUDGMENT (“the
6 FFCLJ”) on April 22, 2019. The Court determined that Mr. Skarpelos was the rightful owner of the
7 shares. The FFCLJ, p. 7 ¶ 25. However, the Court invoked its equitable jurisdiction to enter
8 judgment against Mr. Skarpelos in the amount of \$245,464.64. The FFCLJ, p. 7-8 ¶ 28.

9
10 Mr. Skarpelos filed the VERIFIED MEMORANDUM OF COSTS AND
11 DISBURSEMENTS (“the Memorandum”) on April 25, 2019. In the Memorandum, Mr. Skarpelos
12 seeks to recover \$27,683.48 in costs incurred during the pendency of this litigation. Weiser seeks
13 to retax the costs incurred for photocopies, messenger service, parking, research, meals, and
14 attorney travel expenses. Weiser generally contends the costs are not supported by justifying
15 documentation, are unreasonable and are unrecoverable pursuant to statute.² Mr. Skarpelos
16 generally responds all costs are reasonable, necessary and supported by adequate documentation.
17 Weiser generally responds the documentation and explanation supplied by Mr. Skarpelos are
18 insufficient to meet his burden to recover costs.

19 NRS 18.020(2) requires an award of costs to the prevailing party “[i]n an action to recover
20 the possession of personal property, where the value of the property amounts to more than \$2,500.”
21 NRS 18.110 provides in relevant part:

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27 ¹ The Plaintiff was discharged from the action in the ORDER GRANTING MOTION FOR DISCHARGE filed on
January 23, 2019.

28 ² The Court will summarize the parties’ specific arguments for each category of costs in the corresponding section.

1 1. The party in whose favor judgment is rendered, and who claims costs, must file with
2 the clerk, and serve a copy upon the adverse party, within 5 days after the entry of
3 judgment, or such further time as the court or judge may grant, a memorandum of
4 the items of the costs in the action or proceeding, which memorandum must be
5 verified by the oath of the party, or the party's attorney or agent, or by the clerk of
6 the party's attorney, stating that to the best of his or her knowledge and belief the
7 items are correct, and that the costs have been necessarily incurred in the action or
8 proceeding

9 4. Within 3 days after service of a copy of the memorandum, the adverse party may
10 move the court, upon 2 days' notice, to retax and settle the costs, notice of which
11 motion shall be filed and served on the prevailing party claiming costs. Upon the
12 hearing of the motion the court or judge shall settle the costs.

13 District courts have broad, but not unlimited, discretion to award costs. *Bobby Berosini, Ltd. v.*
14 *PETA*, 114 Nev. 1348, 1352, 971 P.2d 383, 385 (1998). An award of costs requires "justifying
15 documentation" demonstrating the costs were "reasonable, necessary and actually incurred." *Cadle*
16 *Co. v. Woods & Erickson, LLP*, 131 Nev. 115, 120-21, 345 P.3d 1049, 1054 (2015) (explaining
17 "justifying documentation" requires more than memorandum of costs).

18 Photocopies

19 Mr. Skarpelos claims \$652.00 in photocopying costs. Costs for photocopies are recoverable
20 pursuant to NRS 18.005(12). Weiser claims the documentation provided by Mr. Skarpelos is
21 insufficient to recover these costs. The Motion 3:1-9. Mr. Skarpelos claims there is no mechanism
22 to track the purpose of the photocopies, but all photocopies were reasonable and necessary. The
23 Opposition 2:20-26. Weiser responds that itemized documentation in addition to justifying
24 documentation is required to recover costs for photocopies. The Reply 2:27-28; 3:1-3.

25 The Court will deny this category of costs in its entirety. Mr. Skarpelos failed to adequately
26 describe the documents copied, and prevailing case law has clearly established the requirement of
27 documentation for each copy. *See Vill. Builders 96, L.P. v. U.S. Labs., Inc.*, 121 Nev. 261, 277,
28

1 112 P.3d 1082, 1093 (2005) (“[D]ocumentation [for each copy made] is precisely what is required
2 under Nevada law . . .”). For these reasons, Mr. Skarpelos will not be awarded costs for
3 photocopies.
4

5
6 **Messenger Service**

7 Mr. Skarpelos claims \$38.30 in messenger service costs. Messenger service costs are
8 recoverable pursuant to NRS 18.020(17), the catch-all provision for reasonable litigation expenses.
9 Weiser claims Mr. Skarpelos failed to provide justifying documentation and demonstrate the
10 messenger costs were reasonable. The Motion 3:20-22. Mr. Skarpelos claims the costs were
11 incurred by using runners to deliver various documents for trial and that invoices for each runner
12 request have been provided. The Opposition 3:1-7. Weiser responds the invoices do not
13 adequately describe the documents being delivered nor their purpose. The Reply 3:4-12.
14

15 The Court will award Mr. Skarpelos all of the costs requested for messenger services. Such
16 an award is justified under NRS 18.020(17). Mr. Skarpelos has demonstrated it was necessary to
17 use messenger services to deliver documents and supplies to opposing counsel, Mr. Skarpelos’
18 counsel during trial, and to the court reporter, at various times before and during trial. It was
19 reasonable to use a messenger service to accomplish these tasks, as doing so is an efficient way to
20 deliver documents and supplies and is well-accepted in the legal field. Mr. Skarpelos provided all
21 necessary invoices showing the costs were actually incurred. The Memorandum Ex. 1, p. 9-16.
22 Because the messenger service costs were reasonable, necessary and actually incurred, the Court
23 will award Mr. Skarpelos **\$38.30** in messenger service costs.
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1 **Postage**

2 Mr. Skarpelos requests \$28.67 in postage fees. Postage is recoverable pursuant to NRS
3 18.020(14). Weiser did not contest the award of these costs. *See* D.C.R. 13(3) (“Failure of the
4 opposing party to serve and file his written opposition may be construed as an admission that the
5 motion is meritorious and a consent to granting the same.”). For these reasons, the Court will
6 award **\$28.67** in postage fees.
7

8
9 **Filing Fees**

10 Mr. Skarpelos requests \$413.00 in filing fees. Filing fees are recoverable pursuant to NRS
11 18.005(1).³ Pursuant to NRS 18.110(3), a prevailing party is not required to include filing fees in
12 the memorandum of costs. In this case, the filing fees were incurred by filing the ANSWER TO
13 COMPLAINT AND CROSS-CLAIM and ATHANSIOS SKARPELOS’ MOTION FOR
14 SUMMARY JUDGMENT, both of which are customary and essential pieces of any litigation. *See*
15 NRCP 12(a)(1) and NRCP 56. Such costs were reasonable, necessary and actually incurred, and
16 the Weiser does not challenge their recovery. *See* the Memorandum Ex. 1, p. 21-24. For these
17 reasons, the Court will award **\$413.00** in filing fees.
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22 **Parking**

23 Mr. Skarpelos requests \$139.25 in parking costs. Parking costs are recoverable pursuant to
24 NRS 18.020(17), the catch-all provision for reasonable litigation expenses. Weiser contends Mr.
25 Skarpelos has failed to justify or explain the request for parking fees. The Motion 4:1-3.
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27
28 ³ While the statute uses the term “clerk’s fees,” this term is synonymous with filing fees.

1 Mr. Skarpelos responds that these costs represent the costs were incurred by counsel during the
2 bench trial. The Opposition 4:8-12. Weiser argues Mr. Skarpelos has failed to provide any
3 information regarding where his attorneys parked during trial. The Reply 5:1-4.
4

5 The Court will award all of the parking costs. Such an award is justified by the catch-all
6 provision of NRS 18.020(17). First, it was reasonable for Mr. Skarpelos' counsel to incur parking
7 expenses during the bench trial because all of the parking near the Second Judicial District Court is
8 paid parking. Such costs were necessary because they represent the costs incurred to attend and
9 appear at the trial. Finally, Mr. Skarpelos provided invoices demonstrating the parking costs were
10 actually incurred at parking meters on the days of the bench trials, was well as for the hearing on
11 February 6, 2019. *See* the Memorandum Ex. 1, p. 24-29. For these reasons, the Court will award
12 Mr. Skarpelos \$139.25 in parking costs.
13
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15 **Court Reporter Fees for Depositions**

16 Mr. Skarpelos seeks \$8,100.14 in court reporter fees incurred from taking depositions in
17 Athens, Greece.⁴ Reporter's fees for depositions are recoverable pursuant to NRS 18.005(2).
18 Weiser does not challenge this category of costs.
19

20 The Court will permit Mr. Skarpelos to recover the full amount of reporter's fees for
21 depositions. Depositions are an inevitable component of civil litigation and thus represent a
22 necessary cost which can be recovered by the prevailing party. Moreover, the costs for the
23 depositions were reasonable and actually incurred, as the invoices from Sunshine Litigation
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26
27 ⁴ \$86.59 appears to have been mistakenly included in the reporter's fees category. This amount represents the purchase
28 of an adapter for the computer belonging to Mr. Skarpelos' counsel, Dane Anderson ("Mr. Anderson"). The Court will
permit the recovery of this cost as it is reasonable to purchase an adapter for electronic devices in a foreign country, and
such a cost was necessary and actually incurred.

1 Services demonstrate. *See* the Memorandum Ex. 1, p. 30-34. The Court will permit Mr. Skarpelos
2 to recover \$8,013.55 in reporter fees for depositions and \$86.59 for the purchase of an adapter for
3 Mr. Anderson's computer.

4 5 6 Court Reporter Travel Expenses

7 Mr. Skarpelos requests \$2,334.61 in reporter travel expenses for depositions in Athens,
8 Greece. Travel expenses are a miscellaneous expense encompassed by NRS 18.020(17). Weiser
9 does not challenge this category of costs.

10
11 The Court will permit Mr. Skarpelos to recover all requested travel expenses for the court
12 reporter. This case required travel to Greece in order to take key depositions, and all primary
13 parties attended these depositions. Additionally, it is well-accepted that court reporters are
14 necessary to transcribe depositions. The invoices from Sunshine Litigation Services itemized
15 relevant travel expenses and demonstrated they were actually incurred. *See* the Memorandum Ex.
16 1, p. 30-34. Because the court reporter travel expenses were reasonable, necessary and actually
17 incurred, the Court will award Mr. Skarpelos \$2,334.61 in reporter travel expenses.

18 19 20 Trial Transcripts

21 Mr. Skarpelos requests \$407.24 in trial transcript costs.⁵ These costs are recoverable
22 pursuant to NRS 18.005(17), as expenses incurred during litigation. Weiser does not challenge this
23 category of costs.
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27 ⁵ While this category is listed as "trial transcript costs," one of the invoices is for the court reporter's appearance on the
28 second day of the bench trial. Court reporter fees are recoverable pursuant to NRS 18.005(8). The reporter appeared for
seven hours on the second day of trial and charged \$20.00 per hour, which is a reasonable rate. Mr. Skarpelos provided
the invoice to demonstrate the cost was actually incurred. *See* the Memorandum Ex. 1, p. 39. For these reasons, the
Court will permit Mr. Skarpelos to recover the appearance fee for the court reporter.

1 The Court will permit Mr. Skarpelos to recover all requested trial transcript costs in this
2 case. Obtaining trial transcripts is a reasonable and often necessary expense of trial, especially in
3 the preparation of post-judgment motion practice. Moreover, Mr. Skarpelos provided the invoices
4 from Sunshine Litigation Services, demonstrating these costs were actually incurred. See the
5 Memorandum Ex. 1, p. 37-38. The Court will permit Mr. Skarpelos to recover \$267.24 in trial
6 transcript costs as well as \$140.00 for court reporter fees during trial for a total of \$407.24.
7

8
9 **Research**

10 Mr. Skarpelos requests \$8,006.38 in research costs.⁶ Computerized legal research costs are
11 recoverable pursuant to NRS 18.020(17). Weiser contends Mr. Skarpelos has failed to explain how
12 the research costs were calculated and demonstrate their reasonableness. The Motion 4:4-17. Mr.
13 Skarpelos responds that records from Westlaw and Pacer do not describe the purpose of the
14 research. The Opposition 3:13-19. Mr. Skarpelos insists the costs were incurred in connection
15 with researching the following issues: 1) compelling the testimony of foreign witnesses; 2) the
16 motion for summary judgment; 3) evidentiary issues raised by Weiser in its opposition brief; 4) the
17 parties' burdens of proof in an interpleader action; and 5) various pretrial and trial issues, such as
18 surprise testimony. The Opposition 3:20-28; 4:1-10. Weiser responds that the estimates and
19 explanation provided are insufficient to warrant an award of costs. The Reply 3:13-21.
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23 The Court will award Mr. Skarpelos the entirety of the research costs. The explanation
24 provided by Mr. Skarpelos in the Opposition is sufficient to demonstrate the research costs were
25 reasonable and necessary. To require more of an explanation could potentially infringe upon the
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27
28 ⁶ The correct calculation according to the invoices is \$8,003.08.

1 attorney work-product protections. *See generally Cotter v. Eighth Jud. Dist. Ct.*, 134 Nev. Adv.
2 Op. 32, 416 P.3d 228, 232 (2018) (discussing attorney work-product privilege). Moreover, Mr.
3 Skarpelos provided the Westlaw invoices which demonstrate the research costs were actually
4 incurred by Mr. Skarpelos' counsel in connection with research on his case. *See* the Memorandum
5 Ex. 1, p. 41-45. For these reasons, the Court will award **\$8,003.08** in research costs.
6

7
8 **Meals**

9 Mr. Skarpelos requests \$284.89 in meal costs. Weiser argues meal costs during trial are not
10 recoverable because other courts have refused to award such costs. The Motion 4:18-28; 5:1-3.
11 Mr. Skarpelos responds that Weiser has failed to cite any Nevada authority prohibiting an award for
12 meal costs during trial. The Opposition 4:11-19. Weiser contends Mr. Skarpelos has provided
13 inadequate information regarding the location of the meals. The Reply 5:1-9.
14

15 The Court will award \$249.50 in meal costs.⁷ Meal costs are recoverable pursuant to NRS
16 18.005(17), the catch all exception for reasonable and necessary costs incurred by virtue of
17 litigation. It was reasonable and necessary for Mr. Skarpelos to incur meal costs during trial, as
18 trial began at approximately 8:30 a.m. every morning and concluded no earlier than 3:30 p.m. each
19 day, except for the final day. Mr. Skarpelos demonstrated these costs were actually incurred by
20 providing all invoices, whose dates corresponded to the dates of the bench trial. Mr. Skarpelos and
21 his counsel ate at Brasserie St. James, Starbucks, and Wild Garlic Pizza Pub. *See* the Memorandum
22 Ex. 1, p. 46-51. None of the expenses incurred were unreasonable. For all of these reasons, the
23 Court will award **\$249.50** in meal costs.
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28 ⁷ This represents the total of all meal receipts provided to the Court.

1 **Attorney Travel Expenses**

2 Mr. Skarpelos requests \$7,204.00 in costs for attorney travel expenses for depositions in
3 Athens, Greece. Weiser contends Mr. Skarpelos should not be permitted to recover this cost
4 because the costs were incurred from October 21 through October 26, when depositions only took
5 place on October 23 and 24. The Motion 5:4-21. Weiser also contends these costs unreasonably
6 include the cost of a hotel in San Francisco. *Id.* Mr. Skarpelos responds that his counsel needed
7 extra time to prepare him for the deposition and that it was unclear how long depositions would
8 take. The Opposition 4:20-28; 5:1-12. Mr. Skarpelos also insists his counsel needed to stay
9 overnight in San Francisco due to an early flight the following morning. *Id.* Weiser argues Mr.
10 Skarpelos cannot recover costs related to his own deposition preparation, and the documentation
11 provided fails to distinguish between costs incurred while taking depositions versus preparing Mr.
12 Skarpelos. The Reply 4:4-22.

15 The Court will award Mr. Skarpelos \$6,038.81 in attorney travel expenses. Attorney travel
16 expenses are recoverable pursuant to NRS 18.005(17), the reasonable expenses catch-all. This
17 amount represents the cost of Mr. Skarpelos' counsel's flight, baggage fees, a hotel in San
18 Francisco, the conference room for depositions, meals, transportation from the Athens airport, and
19 five nights in a hotel in Athens.⁸ First, these costs were reasonable and necessary because the
20 nature of the case and the parties involved required taking depositions in Greece. As such, it was
21 necessary for Mr. Skarpelos' counsel to fly from Reno to Athens and spend the night in San
22 Francisco. It was also reasonable for Mr. Skarpelos' counsel to incur baggage fees, as the trip was
23 scheduled for a week and likely required him to transport various materials from Reno to Athens.

26 _____
27 ⁸ The Court declined to award fees for travel protection, the sixth night in the Athens hotel and other expenses, the latter
28 of which were not reasonably described in the Memorandum. The Court believes the additional night should be retaxed
to Mr. Skarpelos, as it was in excess of the time needed to travel and take depositions.

1 It was reasonable and necessary to reserve a hotel conference room to take depositions and also
2 reasonable and necessary to incur meal costs in various airports while traveling. Mr. Skarpelos
3 provided all necessary invoices reflecting these costs, thus demonstrating they were actually
4 incurred. For these reasons, the Court will award Mr. Skarpelos \$6,038.81 in attorney travel
5 expenses.
6

7 **IT IS ORDERED** that DEFENDANTS/CROSS-CLAIMANTS WEISER'S MOTION TO
8 RETAX COSTS is hereby **GRANTED** in part and **DENIED** in part. Mr. Skarpelos will be
9 permitted to recover \$25,752.60 in costs. \$1,930.88 will be retaxed to Mr. Skarpelos.
10

11 **DATED** this 6 day of August, 2019.

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14 ELLIOTT A. SATTLER
15 District Judge
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CERTIFICATE OF MAILING

Pursuant to NRCP 5(b), I certify that I am an employee of the Second Judicial District Court of the State of Nevada, County of Washoe; that on this ____ day of August, 2019, I deposited in the County mailing system for postage and mailing with the United States Postal Service in Reno, Nevada, a true copy of the attached document addressed to:

CERTIFICATE OF ELECTRONIC SERVICE

I hereby certify that I am an employee of the Second Judicial District Court of the State of Nevada, in and for the County of Washoe; that on the 6 day of August, 2019, I electronically filed the foregoing with the Clerk of the Court by using the ECF system which will send a notice of electronic filing to the following:

- JOHN F. MURTHA, ESQ.
- DANE W. ANDERSON, ESQ.
- JEREMY J. NORK, ESQ.
- FRANK Z. LAFORGE, ESQ.


Sheila Mansfield
Judicial Assistant

IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
IN AND FOR THE COUNTY OF WASHOE

NEVADA AGENCY AND TRANSFER
COMPANY, a Nevada corporation,

Plaintiff,

Case No. CV15-02259

vs.

Dept. No. 10

WEISER ASSET MANAGEMENT, LTD.,
a Bahamas company, WEISER (BAHAMAS)
LTD., a Bahamas company, ATHANASIOS
SKARPELOS, an individual, and DOES 1
through 10,

Defendants.

ORDER DENYING MOTION TO ALTER OR AMEND JUDGMENT

Presently before the Court is SKARPELOS' MOTION TO ALTER OR AMEND
JUDGMENT ("the Motion") filed by Defendant ATHANASIOS SKARPELOS ("Mr. Skarpelos")
on April 25, 2019. Defendants WEISER ASSET MANAGEMENT, LTD. ("WAM") and WEISER
(BAHAMAS) LTD. ("Weiser Capital") filed DEFENDANTS/CROSS-CLAIMANTS WEISER'S
OPPOSITION TO SKARPELOS'S MOTION TO ALTER OR AMEND JUDGMENT ("the
Opposition") on May 24, 2019. Mr. Skarpelos filed the REPLY IN SUPPORT OF SKARPELOS'
MOTION TO ALTER OR AMEND JUDGMENT ("the Reply") on June 7, 2019, and
contemporaneously submitted the matter for the Court's consideration.

1 This case was initiated by Plaintiff NEVADA AGENCY AND TRANSFER COMPANY
2 (“the Plaintiff”) as an interpleader action to resolve a dispute over ownership of 3,316,666 shares of
3 stock in Anavex Life Sciences Corp.¹ The Court presided over a bench trial beginning on January
4 28, 2019, to resolve the competing claims between Weiser Capital and WAM (collectively, “the
5 Weiser Defendants”) and Mr. Skarpelos to the shares. The Court entered the FINDINGS OF
6 FACT, CONCLUSIONS OF LAW AND JUDGMENT (“the FFCLJ”) on April 22, 2019. The
7 Court determined that Mr. Skarpelos was the rightful owner of the shares. The FFCLJ 7 ¶ 25.
8 However, the Court invoked its equitable jurisdiction to require Mr. Skarpelos to make restitution
9 to WAM in the amount of \$245,464.64, for money WAM credited to his account and from which
10 Mr. Skarpelos benefitted. The FFCLJ ¶ 28.

13 Mr. Skarpelos argues the FFCLJ should be amended to remove the judgment against him
14 for \$245,464.64. The Motion 2:9-14. Mr. Skarpelos argues amendment is appropriate for three
15 reasons: 1) Mr. Skarpelos was denied due process because the award was outside of the pleadings;
16 2) the Weiser Defendants had an adequate legal remedy it chose not to pursue; and 3) the Court
17 lacked subject matter jurisdiction to make the award because the award did not relate to the
18 disputed stock. The Motion 2:16-27; 6:20-28; 7:1-4. The Weiser Defendants contend the
19 following in support of the award: 1) Mr. Skarpelos had fair notice of the potential award because
20 the money was deposited in his brokerage account; 2) the award was not manifestly unjust; and 3)
21 the award relates to the disputed stock. The Opposition 4:17-26; 6:6-11; 8:3-18. Mr. Skarpelos
22 responds by contending: 1) he did not have notice of the Weiser Defendants’ damages claim from
23 the pleadings or its trial statement; 2) equitable relief premised on unjust enrichment is unavailable

27 ¹ The Plaintiff was discharged from the action in the ORDER GRANTING MOTION FOR DISCHARGE filed on
28 January 23, 2019.

1 where a contract governs the parties' relationships; and 3) the Court lacked subject matter
2 jurisdiction to make the award because it was completely unrelated to the Weiser Defendants'
3 claim of ownership and thus unrelated to the equities of the case. The Reply 3:21-28; 4:1-3; 5:17-
4 24; 6:9-26.

5
6 NRCP 59(e) permits a party to file a motion to alter or amend a judgment within ten days
7 after service of written notice of entry of the judgment.² Such a motion is permitted for any
8 appealable order; a final judgment is not required. *Lytle v. Rosemere Estate Prop. Owners*, 129
9 Nev. 923, 926, 314 P.3d 946, 948 (2013). A motion to alter or amend must be in writing and state
10 the grounds for relief with particularity and identify the relief sought. *United Pac. Ins. Co. v. St.*
11 *Denis*, 81 Nev. 103, 106, 399 P.2d 135, 137 (1956). Motions to alter or amend may be used to
12 correct manifest errors of law or fact, address newly discovered or previously unavailable
13 evidence, avoid manifest injustice or adjust to a change in controlling law. *AA Primo Builders,*
14 *LLC v. Washington*, 126 Nev. 578, 582, 245 P.3d 1190, 1193 (2010). A district court has
15 considerable discretion in determining whether a motion to amend or alter should be granted.
16 *Stevo Design, Inc. v. SBR Mktg. Ltd*, 919 F. Supp. 2d 1112, 1117 (D. Nev. 2013) (explaining
17 FRCP 59 may be consulted in interpretation of NRCP 59). *See also AA Primo*, 126 Nev. at 582,
18 245 P.3d at 1193. A motion to alter or amend constitutes "an extraordinary remedy which should
19 be used sparingly." *Stevo Design*, 919 F. Supp. 2d at 1117 ("[T]he district court enjoys
20 considerable discretion in granting or denying the motion.").

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² The Motion was timely filed.

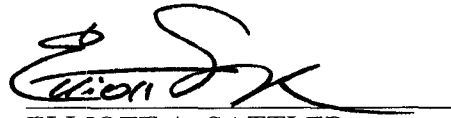
1 The Court will not amend the FFCLJ because it properly invoked its equitable jurisdiction
2 to require Mr. Skarpelos to make restitution to WAM and to prevent him from receiving a windfall
3 in this matter. First, Mr. Skarpelos was on notice of the potential for equitable relief given the
4 nature of this case and the relief requested. As an interpleader action, this matter originated in
5 equity to determine ownership of the shares. *See Balish v. Farnham*, 92 Nev. 133, 137, 546 P.2d
6 1297, 1299 (1976) (identifying interpleader as equitable proceeding). Restitution was a
7 foreseeable equitable ruling in an action already predicated on principles of equity. *See also*
8 *Landex, Inc. v. State ex rel. List*, 94 Nev. 469, 477, 582 P.2d 786, 791 (1978) (“[A] court has the
9 inherent power, ancillary to its general equity jurisdiction, to order restitution in an appropriate
10 case.”). Furthermore, Mr. Skarpelos requested “such other and further relief as to the Court seems
11 just and equitable under the circumstances.” ANSWER TO COMPLAINT AND CROSS-CLAIM
12 (Defendant Cross-Claimant Skarpelos) 9:26-27 (Feb. 18, 2016).
13
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15 Second, the Court properly afforded equitable relief to comprehensively resolve this matter
16 without affording Mr. Skarpelos a windfall. The Court found Weiser had proven by a
17 preponderance of the evidence WAM had credited Mr. Skarpelos’ WAM account in April of 2013,
18 and Mr. Skarpelos had received the benefit of this money. The FFCLJ ¶ 28. *See also* Tr. of Hr’g
19 36-38 (Feb. 6, 2019). As the Court stated in the FFCLJ, Mr. Skarpelos allegedly transferred the
20 stock to a third party, and his WAM account was credited \$249,580.00 to reflect the transfer. *See*
21 the FFCLJ 7:24-28; 8:1. Moreover, the judgment of restitution was directly related, and not
22 ancillary, to the shares at issue in this case. The Court found Mr. Skarpelos had funded his WAM
23 account with stock certificate 753 and was permitted to borrow against that account. *See the*
24 FFCLJ ¶ 5. *See also* Tr. of Hr’g 14-16; 17:15-19. If the Court would have refused to invoke its
25 equitable jurisdiction, Mr. Skarpelos would have been permitted to retain ownership of the stock
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1 as well as the amount paid for it, a windfall for Mr. Skarpelos and a forfeiture for WAM. *See*
2 *MacDonald v. Krause*, 77 Nev. 312, 318, 362 P.2d 724, 727 (1961) (explaining province of courts
3 of equity is “to do complete justice between the parties . . .”). For these reasons, the Court
4 properly invoked its equitable jurisdiction to order Mr. Skarpelos to make restitution to WAM.
5

6 **IT IS ORDERED** that SKARPELOS’ MOTION TO ALTER OR AMEND JUDGMENT
7 is hereby **DENIED**.

8 **DATED** this 6 day of August, 2019.

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11 ELLIOTT A. SATTLER
12 District Judge
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1 **CERTIFICATE OF MAILING**

2 Pursuant to NRCp 5(b), I certify that I am an employee of the Second Judicial District Court
3 of the State of Nevada, County of Washoe; that on this ____ day of August, 2019, I deposited in the
4 County mailing system for postage and mailing with the United States Postal Service in Reno,
5 Nevada, a true copy of the attached document addressed to:

6
7
8 **CERTIFICATE OF ELECTRONIC SERVICE**

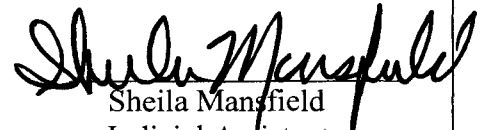
9 I hereby certify that I am an employee of the Second Judicial District Court of the State of
10 Nevada, in and for the County of Washoe; that on the 6 day of August, 2019, I electronically filed
11 the foregoing with the Clerk of the Court by using the ECF system which will send a notice of
12 electronic filing to the following:

13
14 JOHN F. MURTHA, ESQ.

15 DANE W. ANDERSON, ESQ.

16 JEREMY J. NORK, ESQ.

17 FRANK Z. LAFORGE, ESQ.

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20 Sheila Mansfield
21 Judicial Assistant
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Return Of NEF

Recipients

DANE ANDERSON, ESQ. - Notification received on 2019-08-06 10:17:44.218.

SETH ADAMS, ESQ. - Notification received on 2019-08-06 10:17:44.296.

JEREMY NORK, ESQ. - Notification received on 2019-08-06 10:17:44.281.

FRANK LAFORGE, ESQ. - Notification received on 2019-08-06 10:17:44.25.

ALEXANDER WALKER III - Notification received on 2019-08-06 10:17:44.187.

CLAYTON BRUST, ESQ. - Notification received on 2019-08-06 10:17:44.14.

JOHN MURTHA, ESQ. - Notification received on 2019-08-06 10:17:44.328.

***** IMPORTANT NOTICE - READ THIS INFORMATION *****

PROOF OF SERVICE OF ELECTRONIC FILING

-

A filing has been submitted to the court RE: CV15-02259

Judge:

HONORABLE ELLIOTT A. SATTLER

Official File Stamp:

08-06-2019:10:16:47

Clerk Accepted:

08-06-2019:10:17:13

Court:

Second Judicial District Court - State of Nevada
Civil

Case Title:

NV AGENCY & TRANSFER CO VS WEISER
ASSET ET AL (D10

Document(s) Submitted:

Ord Denying Motion

Filed By:

Judicial Asst. SMansfield

You may review this filing by clicking on the following link to take you to your cases.

This notice was automatically generated by the courts auto-notification system.

-

If service is not required for this document (e.g., Minutes), please disregard the below language.

The following people were served electronically:

DANE W. ANDERSON, ESQ. for ATHANASIOS
SKARPELOS

SETH J. ADAMS, ESQ for ATHANASIOS
SKARPELOS

ALEXANDER H. WALKER III for NEVADA
AGENCY AND TRANSFER COMPANY

JEREMY J. NORK, ESQ. for WEISER
(BAHAMAS) LTD, WEISER ASSET
MANAGEMENT, LTD

FRANK Z. LAFORGE, ESQ. for WEISER
(BAHAMAS) LTD, WEISER ASSET
MANAGEMENT, LTD

JA2546

JOHN FRANCIS MURTHA, ESQ. for
ATHANASIOS SKARPELOS

CLAYTON P. BRUST, ESQ. for NEVADA
AGENCY AND TRANSFER COMPANY

The following people have not been served electronically and must be served by traditional means (see Nevada Electronic Filing Rules.):

IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
IN AND FOR THE COUNTY OF WASHOE

NEVADA AGENCY AND TRANSFER
COMPANY, a Nevada corporation,

Plaintiff,

Case No. CV15-02259

vs.

Dept. No. 10

WEISER ASSET MANAGEMENT, LTD.,
a Bahamas company, WEISER (BAHAMAS)
LTD., a Bahamas company, ATHANASIOS
SKARPELOS, an individual, and DOES 1
through 10,

Defendants.

ORDER GRANTING MOTION FOR ATTORNEY'S FEES

Presently before the Court is the MOTION FOR ATTORNEYS' FEES ("the Motion") filed by Defendant ATHANASIOS SKARPELOS ("Mr. Skarpelos") on April 25, 2019. Mr. Skarpelos contemporaneously filed the DECLARATION OF DANE W. ANDERSON IN SUPPORT OF MOTION FOR ATTORNEYS' FEES ("the Declaration"). Defendants WEISER ASSET MANAGEMENT, LTD. and WEISER (BAHAMAS) LTD. (collectively, "Weiser") filed WEISER'S OPPOSITION TO SKARPELOS'S MOTION FOR ATTORNEY'S FEES ("the Opposition") on May 24, 2019. Mr. Skarpelos filed the REPLY IN SUPPORT OF MOTION FOR ATTORNEY'S FEES ("the Reply") on June 7, 2019, and contemporaneously submitted the matter for the Court's consideration.

1 This case was initiated by Plaintiff NEVADA AGENCY AND TRANSFER COMPANY
2 (“the Plaintiff”) as an interpleader action to resolve a dispute over ownership of 3,316,666 shares of
3 stock in Anavex Life Sciences Corp.¹ On May 24, 2016, Weiser filed WEISER’S ANSWER AND
4 CROSS-CLAIM (“the A&C”) which contained three cross-claims: 1) Declaratory Judgment; 2)
5 Breach of Contract; and 3) Breach of the Implied Covenant of Good Faith and Fair Dealing. The
6 A&C 10-12. The Court presided over a bench trial beginning on January 28, 2019, to resolve the
7 competing claims between Weiser and Mr. Skarpelos to the shares. The Court entered the
8 FINDINGS OF FACT, CONCLUSIONS OF LAW AND JUDGMENT (“the FFCLJ”) on April 22,
9 2019. The Court determined that Mr. Skarpelos was the rightful owner of the shares. The FFCLJ,
10 p. 7 ¶ 25. However, the Court invoked its equitable jurisdiction to enter judgment against Mr.
11 Skarpelos in the amount of \$245,464.64. The FFCLJ, p. 7-8 ¶ 28.

12
13
14 Mr. Skarpelos contends he is entitled to an award of \$216,900.50 in attorney’s fees because
15 Weiser’s cross-claims and defenses were maintained without reasonable grounds or to harass Mr.
16 Skarpelos. The Motion 2:9-17; 7:21-28. Mr. Skarpelos contends Weiser changed its legal theory
17 during trial and that its cross-claims and defenses were not supported by credible evidence and are
18 thus frivolous. The Motion 7:1-11. Weiser makes the following arguments in response: 1) Weiser
19 won a quarter-million dollar judgment, which demonstrates its claims were not frivolous; 2) even if
20 Weiser’s claims were unsuccessful, they were supported by substantial evidence and reasonable
21 grounds; 3) Weiser did not change its legal theory and, even if it did, changing a legal theory is not
22 a basis for an award of attorney’s fees; and 4) Mr. Skarpelos fails to explain how the requested
23 amount is reasonable and necessary. The Opposition 1:25-28; 2:1-7; 3-6. Mr. Skarpelos responds
24
25
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27 ¹ The Plaintiff was discharged from the action in the ORDER GRANTING MOTION FOR DISCHARGE filed on
28 January 23, 2019.

1 as follows: 1) Weiser changed its argument at trial regarding the July 2013 Purchase and Sale
2 Agreement ("the July PSA"), and began arguing it was a meaningless document; 2) the award of
3 \$245,464.64 was not based on any of Weiser's claims; 3) Weiser presented no credible evidence to
4 supports its claims because all of the claims were premised on the July PSA; 4) Weiser abandoned
5 its pleadings and legal theories at trial; and 5) the requested fees are reasonable considering the
6 duration and nature of the litigation. The Reply 3:2-27; 5:1-6; 6:24-26; 7:4-17; 8:4-24.

8 Attorney's fees are recoverable where authorized by agreement, statute or rule. *Wheeler*
9 *Springs Plaza, LLC v. Beemon*, 119 Nev. 260, 268, 71 P.3d 1258, 1263 (2003) (quoting *Young v.*
10 *Nev. Title Co.*, 103 Nev. 436, 442, 744 P.2d 902, 905 (1987)). NRS 18.010(2)(b) permits an award
11 of attorney's fees where:
12

13 Without regard to the recovery sought, when the court finds that the claim, counterclaim,
14 cross-claim or third-party complaint or defense of the opposing party was brought or
15 maintained without reasonable ground or to harass the prevailing party. The court shall
16 liberally construe the provisions of this paragraph in favor of awarding attorney's fees in all
17 appropriate situations. It is the intent of the Legislature that the court award attorney's fees
18 pursuant to this paragraph and impose sanctions pursuant to Rule 11 of the Nevada Rules of
19 Civil Procedure in all appropriate situations to punish for and deter frivolous or vexatious
20 claims and defenses because such claims and defenses overburden limited judicial resources,
21 hinder the timely resolution of meritorious claims and increase the costs of engaging in
22 business and providing professional services to the public.

23 NRCP 11(b) provides:

24 Representations to the Court. By presenting to the court a pleading, written motion, or other
25 paper--whether by signing, filing, submitting, or later advocating it--an attorney or
26 unrepresented party certifies that to the best of the person's knowledge, information, and
27 belief, formed after an inquiry reasonable under the circumstances:

28 (1) it is not being presented for any improper purpose, such as to harass, cause
unnecessary delay, or needlessly increase the cost of litigation;

(2) the claims, defenses, and other legal contentions are warranted by existing law or by
a nonfrivolous argument for extending, modifying, or reversing existing law or for
establishing new law;

1 (3) the factual contentions have evidentiary support or, if specifically so identified, will
2 likely have evidentiary support after a reasonable opportunity for further
3 investigation or discovery; and

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

6 A claim will be considered groundless or frivolous if there is no credible evidence at trial to
7 support it. *Frederic and Barbara Rosenberg Living Tr. v. MacDonald Highlands Realty, LLC*, 134
8 Nev. Adv. Op. 69, 427 P.3d 104, 113 (2018) (citing *Semenza v. Caughlin Crafted Homes*, 111 Nev.
9 1089, 1095, 901 P.2d 684, 687-88 (1995)). See also *Capanna v. Orth*, 134 Nev. Adv. Op. 108, 432
10 P.3d 726, 734 (2018). “Determining whether attorney fees should be awarded under NRS
11 18.010(2)(b) requires the court to inquire into the actual circumstances of the case, ‘rather than a
12 hypothetical set of facts favoring plaintiff’s averments.’” *Baldonaldo v. Wynn Las Vegas, LLC*, 124
13 Nev. 951, 967-68, 194 P.3d 96, 106-07 (2008) (citations omitted). Per *Brunzell*, the court must
14 analyze whether the requested attorney’s fees are reasonable using the following factors:
15

16 (1) the qualities of the advocate: his ability, his training, education, experience, professional
17 standing and skill; (2) the character of the work to be done: its difficulty, its intricacy, its
18 importance, time and skill required, the responsibility imposed and the prominence and
19 character of the parties where they affect the importance of the litigation; (3) the work
20 actually performed by the lawyer: the skill, time and attention given to the work; (4) the
21 result: whether the attorney was successful and what benefits were derived.

22 *Brunzell v. Golden Gate Nat. Bank*, 95 Nev. 345, 349, 455 P.2d 31, 33 (1969).

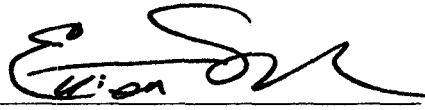
23 The Court will grant the Motion because Weiser unreasonably maintained its claim to
24 ownership of the stock by virtue of the July PSA. While the Court awarded Weiser equitable relief,
25 the award was unrelated to Weiser’s claims for relief and was an exercise of the Court’s equitable
26 jurisdiction over this matter. See the FFCLJ 7-8 ¶ 28. Until trial, Weiser indicated its cross-claims
27 were supported by the July PSA. See the A&C 10-12. See also Trial Ex. 30. At trial, Weiser
28 abandoned the theory that its claim of ownership was supported by the July PSA, and Mr. Livadas

1 testified the July PSA was meaningless and used for another purpose. The FFCLJ 3-4 ¶ 9. The
2 Court found this testimony extremely troubling, given the consistency with which Weiser had held
3 its position about the July PSA before trial. Had Weiser admitted the July PSA was meaningless
4 before trial, the Court may have been able to dismiss or summarily adjudicate this matter, thus
5 obviating the costs incurred during trial. While Weiser is correct that evidence may develop over
6 the course of a trial, a sudden change in legal theory undermines pretrial procedure and motion
7 practice and can result in the accumulation of needless costs. For these reasons, Weiser
8 unreasonably maintained its claim to ownership by virtue of the July PSA.
9

10
11 The Court will award \$216,900.50 in attorney's fees because the requested fees are
12 reasonable. Considering the qualities of Mr. Skarpelos' legal team, both Dane Anderson ("Mr.
13 Anderson") and John Murtha ("Mr. Murtha") are experienced litigators with a shared total of 55
14 years of legal experience. *See* the Declaration 2:12-20. Mr. Anderson and Mr. Murtha charged
15 reasonable fees, ranging from \$350.00 to \$375.00 per hour, and billed \$150.00 to \$300.00 per hour
16 for their associates' work. Mr. Skarpelos' legal team worked diligently on this matter over the
17 course of three years, including traveling to Greece to take key depositions and representing Mr.
18 Skarpelos during a five-day bench trial. The number of hours spent on this matter were also
19 reasonable, given the three-year duration of this case and the fact it proceeded to trial. *See* the
20 Declaration Ex. 1, p. 19. Furthermore, Mr. Skarpelos' legal team obtained a successful result in
21 this litigation. Mr. Skarpelos prevailed on his claim for declaratory relief, and he was ultimately
22 declared the owner of the stock. The equitable award to Weiser does not cast doubt on the efficacy
23 of Mr. Skarpelos' legal team, and the Court will award \$216,900.50 in attorney's fees.
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1 **IT IS ORDERED** the MOTION FOR ATTORNEYS' FEES is hereby **GRANTED**.

2 **DATED** this 9 day of August, 2019.

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5 ELLIOTT A. SATTLER
6 District Judge
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1 **CERTIFICATE OF MAILING**

2 Pursuant to NRCP 5(b), I certify that I am an employee of the Second Judicial District Court
3 of the State of Nevada, County of Washoe; that on this ____ day of August, 2019, I deposited in the
4 County mailing system for postage and mailing with the United States Postal Service in Reno,
5 Nevada, a true copy of the attached document addressed to:
6
7

8 **CERTIFICATE OF ELECTRONIC SERVICE**

9 I hereby certify that I am an employee of the Second Judicial District Court of the State of
10 Nevada, in and for the County of Washoe; that on the 9 day of August, 2019, I electronically filed
11 the foregoing with the Clerk of the Court by using the ECF system which will send a notice of
12 electronic filing to the following:
13

14 JOHN F. MURTHA, ESQ.

15 DANE W. ANDERSON, ESQ.

16 JEREMY J. NORK, ESQ.

17 FRANK Z. LAFORGE, ESQ.
18
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26
27
28


Sheila Mansfield
Judicial Assistant

1 **2540**

JOHN F. MURTHA, ESQ.

2 Nevada Bar No. 835

DANE W. ANDERSON, ESQ.

3 Nevada Bar No. 6883

4 SETH J. ADAMS, ESQ.

Nevada Bar No. 11034

5 **WOODBURN AND WEDGE**

Sierra Plaza

6 6100 Neil Road, Ste. 500

P.O. Box 2311

7 Reno, Nevada 89505

8 Telephone : (775) 688-3000

jmurtha@woodburnandwedge.com

9 danderson@woodburnandwedge.com

sadams@woodburnandwedge.com

10 *Attorneys for Defendant/Cross-Claimant*

11 *Athanasios Skarpepos*

12 IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
IN AND FOR THE COUNTY OF WASHOE

13 ***

14 NEVADA AGENCY AND TRANSFER
15 COMPANY, a Nevada corporation,

Case No. CV15-02259

Dept. No. 10

16 Plaintiff,

17 vs.

NOTICE OF ENTRY OF ORDER

18 WEISER ASSET MANAGEMENT, LTD.,
19 a Bahamas company; ATHANASIOS
20 SKARPELOS, an individual; and
DOES 1-10,

21 Defendants.

22 _____/
ATHANASIOS SKARPELOS, an individual,

23 Cross-Claimant,

24 vs.

25 WEISER ASSET MANAGEMENT, LTD., a
26 Bahamas company, and WEISER (BAHAMAS)
27 LTD., a Bahamas company.

28 Cross-Defendants.
_____/
-1-

1 WEISER ASSET MANAGEMENT, LTD.,
2 a Bahamas company, WEISER (BAHAMAS), LTD.,
3 a Bahamas company,

4 Cross-Claimants.

5 vs.

6 ATHANASIOS SKARPELOS, an individual,
7 Cross-defendant.

8 **NOTICE OF ENTRY OF ORDER**

9 **PLEASE TAKE NOTICE** that on August 6, 2019, the Court entered its Order
10 Granting in Part and Denying in Part Motion to Retax Costs, a true and correct copy of which
11 is attached hereto as **Exhibit 1**.

12 **AFFIRMATION**

13 The undersigned does hereby affirm that the preceding document does not contain the
14 personal information of any person.

15 DATED: August 9, 2019

WOODBURN AND WEDGE

17 By /s/ Dane W. Anderson
18 John F. Murtha, Esq.
19 Nevada Bar No. 835
20 Dane W. Anderson, Esq.
21 Nevada Bar No. 6883
22 Seth J. Adams, Esq.
23 Nevada Bar No. 11034

24 *Attorneys for Defendant/
25 Cross-Claimant
26 Athanasios Skarpelos*

1 **CERTIFICATE OF SERVICE**

2 I hereby certify that I am an employee of Woodburn and Wedge and that on this date,
3 I caused to be sent via electronic delivery through the Court's E-flex system a true and correct
4 copy of *Notice of Entry of Order* to:

5
6 Alexander H. Walker III, Esq.
7 57 West 200 South, Ste. 400
8 Salt Lake City, Utah 84101
9 awalker@law@aol.com

10 *Attorneys for Plaintiff*

11 Clay P. Brust, Esq.
12 Robison, Sharp, Sullivan & Brust
13 71 Washington Street
14 Reno, NV 89503
15 cbrust@rbsllaw.com

16 *Attorneys for Plaintiff*

17 Jeremy J. Nork, Esq.
18 Frank Z. LaForge, Esq.
19 Holland & Hart LLP
20 5441 Kietzke Lane, 2nd Floor
21 Reno, Nevada 89511
22 inork@hollandandhart.com
23 fzlaforge@hollandandhart.com

24 *Attorneys for Defendants*
25 *Weiser Asset Management, Ltd.*
26 *and Weiser (Bahamas), Ltd.*

27 DATED: August 9, 2019.

28 /s/ Dianne M. Kelling
Dianne M. Kelling, an employee of
Woodburn and Wedge

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EXHIBIT LIST

<u>Exhibit No.</u>	<u>Exhibit Title</u>	<u>Pages</u> (Including Exhibit Sheet)
1	Order Granting In Part and Denying in Part Motion to Retax Costs	13

EXHIBIT 1

EXHIBIT 1

IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
IN AND FOR THE COUNTY OF WASHOE

NEVADA AGENCY AND TRANSFER
COMPANY, a Nevada corporation,

Plaintiff,

Case No. CV15-02259

vs.

Dept. No. 10

WEISER ASSET MANAGEMENT, LTD.,
a Bahamas company, WEISER (BAHAMAS)
LTD., a Bahamas company, ATHANASIOS
SKARPELOS, an individual, and DOES 1
through 10,

Defendants.

ORDER GRANTING IN PART AND DENYING IN PART MOTION TO RETAX COSTS

Presently before the Court is DEFENDANTS/CROSS-CLAIMANTS WEISER'S MOTION TO RETAX COSTS ("the Motion") filed by Defendants WEISER ASSET MANAGEMENT, LTD. and WEISER (BAHAMAS) LTD. (collectively, "Weiser") on May 3, 2019. Defendant ATHANASIOS SKARPELOS ("Mr. Skarpelos") filed the OPPOSITION TO MOTION TO RETAX COSTS ("the Opposition") on May 14, 2019. Weiser filed DEFENDANTS/CROSS-CLAIMANTS WEISER'S REPLY IN SUPPORT OF MOTION TO RETAX COSTS ("the Reply") on May 20, 2019, and contemporaneously submitted the matter for the Court's consideration.

1 This case was initiated by Plaintiff NEVADA AGENCY AND TRANSFER COMPANY
2 (“the Plaintiff”) as an interpleader action to resolve a dispute over ownership of 3,316,666 shares of
3 stock in Anavex Life Sciences Corp.¹ The Court presided over a five-day bench trial beginning on
4 January 28, 2019, to resolve the competing claims between Weiser and Mr. Skarpelos to the shares.
5 The Court entered the FINDINGS OF FACT, CONCLUSIONS OF LAW AND JUDGMENT (“the
6 FFCLJ”) on April 22, 2019. The Court determined that Mr. Skarpelos was the rightful owner of the
7 shares. The FFCLJ, p. 7 ¶ 25. However, the Court invoked its equitable jurisdiction to enter
8 judgment against Mr. Skarpelos in the amount of \$245,464.64. The FFCLJ, p. 7-8 ¶ 28.

9
10
11 Mr. Skarpelos filed the VERIFIED MEMORANDUM OF COSTS AND
12 DISBURSEMENTS (“the Memorandum”) on April 25, 2019. In the Memorandum, Mr. Skarpelos
13 seeks to recover \$27,683.48 in costs incurred during the pendency of this litigation. Weiser seeks
14 to retax the costs incurred for photocopies, messenger service, parking, research, meals, and
15 attorney travel expenses. Weiser generally contends the costs are not supported by justifying
16 documentation, are unreasonable and are unrecoverable pursuant to statute.² Mr. Skarpelos
17 generally responds all costs are reasonable, necessary and supported by adequate documentation.
18 Weiser generally responds the documentation and explanation supplied by Mr. Skarpelos are
19 insufficient to meet his burden to recover costs.
20

21
22 NRS 18.020(2) requires an award of costs to the prevailing party “[i]n an action to recover
23 the possession of personal property, where the value of the property amounts to more than \$2,500.”
24 NRS 18.110 provides in relevant part:
25

26
27 ¹ The Plaintiff was discharged from the action in the ORDER GRANTING MOTION FOR DISCHARGE filed on
January 23, 2019.

28 ² The Court will summarize the parties’ specific arguments for each category of costs in the corresponding section.

- 1 1. The party in whose favor judgment is rendered, and who claims costs, must file with
2 the clerk, and serve a copy upon the adverse party, within 5 days after the entry of
3 judgment, or such further time as the court or judge may grant, a memorandum of
4 the items of the costs in the action or proceeding, which memorandum must be
5 verified by the oath of the party, or the party's attorney or agent, or by the clerk of
6 the party's attorney, stating that to the best of his or her knowledge and belief the
7 items are correct, and that the costs have been necessarily incurred in the action or
8 proceeding
- 9 4. Within 3 days after service of a copy of the memorandum, the adverse party may
10 move the court, upon 2 days' notice, to retax and settle the costs, notice of which
11 motion shall be filed and served on the prevailing party claiming costs. Upon the
12 hearing of the motion the court or judge shall settle the costs.

13 District courts have broad, but not unlimited, discretion to award costs. *Bobby Berosini, Ltd. v.*
14 *PETA*, 114 Nev. 1348, 1352, 971 P.2d 383, 385 (1998). An award of costs requires "justifying
15 documentation" demonstrating the costs were "reasonable, necessary and actually incurred." *Cadle*
16 *Co. v. Woods & Erickson, LLP*, 131 Nev. 115, 120-21, 345 P.3d 1049, 1054 (2015) (explaining
17 "justifying documentation" requires more than memorandum of costs).

18 Photocopies

19 Mr. Skarpelos claims \$652.00 in photocopying costs. Costs for photocopies are recoverable
20 pursuant to NRS 18.005(12). Weiser claims the documentation provided by Mr. Skarpelos is
21 insufficient to recover these costs. The Motion 3:1-9. Mr. Skarpelos claims there is no mechanism
22 to track the purpose of the photocopies, but all photocopies were reasonable and necessary. The
23 Opposition 2:20-26. Weiser responds that itemized documentation in addition to justifying
24 documentation is required to recover costs for photocopies. The Reply 2:27-28; 3:1-3.

25 The Court will deny this category of costs in its entirety. Mr. Skarpelos failed to adequately
26 describe the documents copied, and prevailing case law has clearly established the requirement of
27 documentation for each copy. *See Vill. Builders 96, L.P. v. U.S. Labs., Inc.*, 121 Nev. 261, 277,
28

1 112 P.3d 1082, 1093 (2005) (“[D]ocumentation [for each copy made] is precisely what is required
2 under Nevada law . . .”). For these reasons, Mr. Skarpelos will not be awarded costs for
3 photocopies.
4

5
6 **Messenger Service**

7 Mr. Skarpelos claims \$38.30 in messenger service costs. Messenger service costs are
8 recoverable pursuant to NRS 18.020(17), the catch-all provision for reasonable litigation expenses.
9 Weiser claims Mr. Skarpelos failed to provide justifying documentation and demonstrate the
10 messenger costs were reasonable. The Motion 3:20-22. Mr. Skarpelos claims the costs were
11 incurred by using runners to deliver various documents for trial and that invoices for each runner
12 request have been provided. The Opposition 3:1-7. Weiser responds the invoices do not
13 adequately describe the documents being delivered nor their purpose. The Reply 3:4-12.
14

15 The Court will award Mr. Skarpelos all of the costs requested for messenger services. Such
16 an award is justified under NRS 18.020(17). Mr. Skarpelos has demonstrated it was necessary to
17 use messenger services to deliver documents and supplies to opposing counsel, Mr. Skarpelos’
18 counsel during trial, and to the court reporter, at various times before and during trial. It was
19 reasonable to use a messenger service to accomplish these tasks, as doing so is an efficient way to
20 deliver documents and supplies and is well-accepted in the legal field. Mr. Skarpelos provided all
21 necessary invoices showing the costs were actually incurred. The Memorandum Ex. 1, p. 9-16.
22 Because the messenger service costs were reasonable, necessary and actually incurred, the Court
23 will award Mr. Skarpelos **\$38.30** in messenger service costs.
24
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1 **Postage**

2 Mr. Skarpelos requests \$28.67 in postage fees. Postage is recoverable pursuant to NRS
3 18.020(14). Weiser did not contest the award of these costs. *See* D.C.R. 13(3) (“Failure of the
4 opposing party to serve and file his written opposition may be construed as an admission that the
5 motion is meritorious and a consent to granting the same.”). For these reasons, the Court will
6 award **\$28.67** in postage fees.
7

8
9 **Filing Fees**

10 Mr. Skarpelos requests \$413.00 in filing fees. Filing fees are recoverable pursuant to NRS
11 18.005(1).³ Pursuant to NRS 18.110(3), a prevailing party is not required to include filing fees in
12 the memorandum of costs. In this case, the filing fees were incurred by filing the ANSWER TO
13 COMPLAINT AND CROSS-CLAIM and ATHANSIOS SKARPELOS’ MOTION FOR
14 SUMMARY JUDGMENT, both of which are customary and essential pieces of any litigation. *See*
15 NRCP 12(a)(1) and NRCP 56. Such costs were reasonable, necessary and actually incurred, and
16 the Weiser does not challenge their recovery. *See* the Memorandum Ex. 1, p. 21-24. For these
17 reasons, the Court will award **\$413.00** in filing fees.
18
19
20

21 **Parking**

22 Mr. Skarpelos requests \$139.25 in parking costs. Parking costs are recoverable pursuant to
23 NRS 18.020(17), the catch-all provision for reasonable litigation expenses. Weiser contends Mr.
24 Skarpelos has failed to justify or explain the request for parking fees. The Motion 4:1-3.
25
26

27
28 ³ While the statute uses the term “clerk’s fees,” this term is synonymous with filing fees.

1 Mr. Skarpelos responds that these costs represent the costs were incurred by counsel during the
2 bench trial. The Opposition 4:8-12. Weiser argues Mr. Skarpelos has failed to provide any
3 information regarding where his attorneys parked during trial. The Reply 5:1-4.
4

5 The Court will award all of the parking costs. Such an award is justified by the catch-all
6 provision of NRS 18.020(17). First, it was reasonable for Mr. Skarpelos' counsel to incur parking
7 expenses during the bench trial because all of the parking near the Second Judicial District Court is
8 paid parking. Such costs were necessary because they represent the costs incurred to attend and
9 appear at the trial. Finally, Mr. Skarpelos provided invoices demonstrating the parking costs were
10 actually incurred at parking meters on the days of the bench trials, was well as for the hearing on
11 February 6, 2019. *See* the Memorandum Ex. 1, p. 24-29. For these reasons, the Court will award
12 Mr. Skarpelos \$139.25 in parking costs.
13
14

15 **Court Reporter Fees for Depositions**

16 Mr. Skarpelos seeks \$8,100.14 in court reporter fees incurred from taking depositions in
17 Athens, Greece.⁴ Reporter's fees for depositions are recoverable pursuant to NRS 18.005(2).
18 Weiser does not challenge this category of costs.
19

20 The Court will permit Mr. Skarpelos to recover the full amount of reporter's fees for
21 depositions. Depositions are an inevitable component of civil litigation and thus represent a
22 necessary cost which can be recovered by the prevailing party. Moreover, the costs for the
23 depositions were reasonable and actually incurred, as the invoices from Sunshine Litigation
24
25

26
27 ⁴ \$86.59 appears to have been mistakenly included in the reporter's fees category. This amount represents the purchase
28 of an adapter for the computer belonging to Mr. Skarpelos' counsel, Dane Anderson ("Mr. Anderson"). The Court will
permit the recovery of this cost as it is reasonable to purchase an adapter for electronic devices in a foreign country, and
such a cost was necessary and actually incurred.

1 Services demonstrate. *See* the Memorandum Ex. 1, p. 30-34. The Court will permit Mr. Skarpelos
2 to recover \$8,013.55 in reporter fees for depositions and \$86.59 for the purchase of an adapter for
3 Mr. Anderson's computer.
4

5 6 Court Reporter Travel Expenses

7 Mr. Skarpelos requests \$2,334.61 in reporter travel expenses for depositions in Athens,
8 Greece. Travel expenses are a miscellaneous expense encompassed by NRS 18.020(17). Weiser
9 does not challenge this category of costs.
10

11 The Court will permit Mr. Skarpelos to recover all requested travel expenses for the court
12 reporter. This case required travel to Greece in order to take key depositions, and all primary
13 parties attended these depositions. Additionally, it is well-accepted that court reporters are
14 necessary to transcribe depositions. The invoices from Sunshine Litigation Services itemized
15 relevant travel expenses and demonstrated they were actually incurred. *See* the Memorandum Ex.
16 1, p. 30-34. Because the court reporter travel expenses were reasonable, necessary and actually
17 incurred, the Court will award Mr. Skarpelos \$2,334.61 in reporter travel expenses.
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20 Trial Transcripts

21 Mr. Skarpelos requests \$407.24 in trial transcript costs.⁵ These costs are recoverable
22 pursuant to NRS 18.005(17), as expenses incurred during litigation. Weiser does not challenge this
23 category of costs.
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26 ⁵ While this category is listed as "trial transcript costs," one of the invoices is for the court reporter's appearance on the
27 second day of the bench trial. Court reporter fees are recoverable pursuant to NRS 18.005(8). The reporter appeared for
28 seven hours on the second day of trial and charged \$20.00 per hour, which is a reasonable rate. Mr. Skarpelos provided
the invoice to demonstrate the cost was actually incurred. *See* the Memorandum Ex. 1, p. 39. For these reasons, the
Court will permit Mr. Skarpelos to recover the appearance fee for the court reporter.

1 The Court will permit Mr. Skarpelos to recover all requested trial transcript costs in this
2 case. Obtaining trial transcripts is a reasonable and often necessary expense of trial, especially in
3 the preparation of post-judgment motion practice. Moreover, Mr. Skarpelos provided the invoices
4 from Sunshine Litigation Services, demonstrating these costs were actually incurred. See the
5 Memorandum Ex. 1, p. 37-38. The Court will permit Mr. Skarpelos to recover \$267.24 in trial
6 transcript costs as well as \$140.00 for court reporter fees during trial for a total of \$407.24.
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10 Research

11 Mr. Skarpelos requests \$8,006.38 in research costs.⁶ Computerized legal research costs are
12 recoverable pursuant to NRS 18.020(17). Weiser contends Mr. Skarpelos has failed to explain how
13 the research costs were calculated and demonstrate their reasonableness. The Motion 4:4-17. Mr.
14 Skarpelos responds that records from Westlaw and Pacer do not describe the purpose of the
15 research. The Opposition 3:13-19. Mr. Skarpelos insists the costs were incurred in connection
16 with researching the following issues: 1) compelling the testimony of foreign witnesses; 2) the
17 motion for summary judgment; 3) evidentiary issues raised by Weiser in its opposition brief; 4) the
18 parties' burdens of proof in an interpleader action; and 5) various pretrial and trial issues, such as
19 surprise testimony. The Opposition 3:20-28; 4:1-10. Weiser responds that the estimates and
20 explanation provided are insufficient to warrant an award of costs. The Reply 3:13-21.
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23 The Court will award Mr. Skarpelos the entirety of the research costs. The explanation
24 provided by Mr. Skarpelos in the Opposition is sufficient to demonstrate the research costs were
25 reasonable and necessary. To require more of an explanation could potentially infringe upon the
26

27
28 ⁶ The correct calculation according to the invoices is \$8,003.08.

1 attorney work-product protections. *See generally Cotter v. Eighth Jud. Dist. Ct.*, 134 Nev. Adv.
2 Op. 32, 416 P.3d 228, 232 (2018) (discussing attorney work-product privilege). Moreover, Mr.
3 Skarpelos provided the Westlaw invoices which demonstrate the research costs were actually
4 incurred by Mr. Skarpelos' counsel in connection with research on his case. *See* the Memorandum
5 Ex. 1, p. 41-45. For these reasons, the Court will award **\$8,003.08** in research costs.
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8 **Meals**

9 Mr. Skarpelos requests \$284.89 in meal costs. Weiser argues meal costs during trial are not
10 recoverable because other courts have refused to award such costs. The Motion 4:18-28; 5:1-3.
11 Mr. Skarpelos responds that Weiser has failed to cite any Nevada authority prohibiting an award for
12 meal costs during trial. The Opposition 4:11-19. Weiser contends Mr. Skarpelos has provided
13 inadequate information regarding the location of the meals. The Reply 5:1-9.
14

15 The Court will award \$249.50 in meal costs.⁷ Meal costs are recoverable pursuant to NRS
16 18.005(17), the catch all exception for reasonable and necessary costs incurred by virtue of
17 litigation. It was reasonable and necessary for Mr. Skarpelos to incur meal costs during trial, as
18 trial began at approximately 8:30 a.m. every morning and concluded no earlier than 3:30 p.m. each
19 day, except for the final day. Mr. Skarpelos demonstrated these costs were actually incurred by
20 providing all invoices, whose dates corresponded to the dates of the bench trial. Mr. Skarpelos and
21 his counsel ate at Brasserie St. James, Starbucks, and Wild Garlic Pizza Pub. *See* the Memorandum
22 Ex. 1, p. 46-51. None of the expenses incurred were unreasonable. For all of these reasons, the
23 Court will award **\$249.50** in meal costs.
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27 _____
28 ⁷ This represents the total of all meal receipts provided to the Court.

1 **Attorney Travel Expenses**

2 Mr. Skarpelos requests \$7,204.00 in costs for attorney travel expenses for depositions in
3 Athens, Greece. Weiser contends Mr. Skarpelos should not be permitted to recover this cost
4 because the costs were incurred from October 21 through October 26, when depositions only took
5 place on October 23 and 24. The Motion 5:4-21. Weiser also contends these costs unreasonably
6 include the cost of a hotel in San Francisco. *Id.* Mr. Skarpelos responds that his counsel needed
7 extra time to prepare him for the deposition and that it was unclear how long depositions would
8 take. The Opposition 4:20-28; 5:1-12. Mr. Skarpelos also insists his counsel needed to stay
9 overnight in San Francisco due to an early flight the following morning. *Id.* Weiser argues Mr.
10 Skarpelos cannot recover costs related to his own deposition preparation, and the documentation
11 provided fails to distinguish between costs incurred while taking depositions versus preparing Mr.
12 Skarpelos. The Reply 4:4-22.

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15 The Court will award Mr. Skarpelos \$6,038.81 in attorney travel expenses. Attorney travel
16 expenses are recoverable pursuant to NRS 18.005(17), the reasonable expenses catch-all. This
17 amount represents the cost of Mr. Skarpelos' counsel's flight, baggage fees, a hotel in San
18 Francisco, the conference room for depositions, meals, transportation from the Athens airport, and
19 five nights in a hotel in Athens.⁸ First, these costs were reasonable and necessary because the
20 nature of the case and the parties involved required taking depositions in Greece. As such, it was
21 necessary for Mr. Skarpelos' counsel to fly from Reno to Athens and spend the night in San
22 Francisco. It was also reasonable for Mr. Skarpelos' counsel to incur baggage fees, as the trip was
23 scheduled for a week and likely required him to transport various materials from Reno to Athens.

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28 ⁸ The Court declined to award fees for travel protection, the sixth night in the Athens hotel and other expenses, the latter of which were not reasonably described in the Memorandum. The Court believes the additional night should be retaxed to Mr. Skarpelos, as it was in excess of the time needed to travel and take depositions.

1 It was reasonable and necessary to reserve a hotel conference room to take depositions and also
2 reasonable and necessary to incur meal costs in various airports while traveling. Mr. Skarpelos
3 provided all necessary invoices reflecting these costs, thus demonstrating they were actually
4 incurred. For these reasons, the Court will award Mr. Skarpelos \$6,038.81 in attorney travel
5 expenses.
6

7 **IT IS ORDERED** that DEFENDANTS/CROSS-CLAIMANTS WEISER'S MOTION TO
8 RETAX COSTS is hereby **GRANTED** in part and **DENIED** in part. Mr. Skarpelos will be
9 permitted to recover \$25,752.60 in costs. \$1,930.88 will be retaxed to Mr. Skarpelos.
10

11 DATED this 6 day of August, 2019.

12 
13 ELLIOTT A. SATTLER
14 District Judge
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1 **CERTIFICATE OF MAILING**

2 Pursuant to NRCp 5(b), I certify that I am an employee of the Second Judicial District Court
3 of the State of Nevada, County of Washoe; that on this ____ day of August, 2019, I deposited in the
4 County mailing system for postage and mailing with the United States Postal Service in Reno,
5 Nevada, a true copy of the attached document addressed to:
6
7

8 **CERTIFICATE OF ELECTRONIC SERVICE**

9 I hereby certify that I am an employee of the Second Judicial District Court of the State of
10 Nevada, in and for the County of Washoe; that on the 6 day of August, 2019, I electronically filed
11 the foregoing with the Clerk of the Court by using the ECF system which will send a notice of
12 electronic filing to the following:
13

14 JOHN F. MURTHA, ESQ.

15 DANE W. ANDERSON, ESQ.

16 JEREMY J. NORK, ESQ.

17 FRANK Z. LAFORGE, ESQ.
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Sheila Mansfield
Judicial Assistant

1 **2540**

JOHN F. MURTHA, ESQ.

2 Nevada Bar No. 835

DANE W. ANDERSON, ESQ.

3 Nevada Bar No. 6883

4 SETH J. ADAMS, ESQ.

Nevada Bar No. 11034

5 **WOODBURN AND WEDGE**

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10 *Attorneys for Defendant/Cross-Claimant*

11 *Athanasios Skarpelos*

12 IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
IN AND FOR THE COUNTY OF WASHOE

13 ***

14 NEVADA AGENCY AND TRANSFER
15 COMPANY, a Nevada corporation,

Case No. CV15-02259

Dept. No. 10

16 Plaintiff,

17 vs.

NOTICE OF ENTRY OF ORDER

18 WEISER ASSET MANAGEMENT, LTD.,
19 a Bahamas company; ATHANASIOS
20 SKARPELOS, an individual; and
DOES 1-10,

21 Defendants.

22 _____/
ATHANASIOS SKARPELOS, an individual,

23 Cross-Claimant,

24 vs.

25 WEISER ASSET MANAGEMENT, LTD., a
26 Bahamas company, and WEISER (BAHAMAS)
27 LTD., a Bahamas company.

28 Cross-Defendants.
_____/

1 WEISER ASSET MANAGEMENT, LTD.,
2 a Bahamas company, WEISER (BAHAMAS), LTD.,
3 a Bahamas company,

4 Cross-Claimants.

5 vs.

6 ATHANASIOS SKARPELOS, an individual,
7 Cross-defendant.

8 **NOTICE OF ENTRY OF ORDER**

9 **PLEASE TAKE NOTICE** that on August 6, 2019, the Court entered its Order
10 Denying Motion to Alter or Amend Judgment, a true and correct copy of which is attached
11 hereto as **Exhibit 1**.

12 **AFFIRMATION**

13 The undersigned does hereby affirm that the preceding document does not contain the
14 personal information of any person.

15 DATED: August 9, 2019

WOODBURN AND WEDGE

17 By /s/ Dane W. Anderson

18 John F. Murtha, Esq.
19 Nevada Bar No. 835
Dane W. Anderson, Esq.
20 Nevada Bar No. 6883
Seth J. Adams, Esq.
Nevada Bar No. 11034

21 *Attorneys for Defendant/
22 Cross-Claimant
23 Athanasios Skarpelos*

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jnork@hollandandhart.com
fzlaforge@hollandandhart.com

DATED: August 9, 2019.

/s/ Dianne M. Kelling
Dianne M. Kelling, an employee of
Woodburn and Wedge

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EXHIBIT LIST

<u>Exhibit No.</u>	<u>Exhibit Title</u>	<u>Pages</u> (including exhibit sheet)
1	Order Denying Motion to Alter or Amend Judgment	7

EXHIBIT 1

EXHIBIT 1

IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
IN AND FOR THE COUNTY OF WASHOE

NEVADA AGENCY AND TRANSFER
COMPANY, a Nevada corporation,

Plaintiff,

Case No. CV15-02259

vs.

Dept. No. 10

WEISER ASSET MANAGEMENT, LTD.,
a Bahamas company, WEISER (BAHAMAS)
LTD., a Bahamas company, ATHANASIOS
SKARPELOS, an individual, and DOES 1
through 10,

Defendants.

ORDER DENYING MOTION TO ALTER OR AMEND JUDGMENT

Presently before the Court is SKARPELOS' MOTION TO ALTER OR AMEND
JUDGMENT ("the Motion") filed by Defendant ATHANASIOS SKARPELOS ("Mr. Skarpelos")
on April 25, 2019. Defendants WEISER ASSET MANAGEMENT, LTD. ("WAM") and WEISER
(BAHAMAS) LTD. ("Weiser Capital") filed DEFENDANTS/CROSS-CLAIMANTS WEISER'S
OPPOSITION TO SKARPELOS'S MOTION TO ALTER OR AMEND JUDGMENT ("the
Opposition") on May 24, 2019. Mr. Skarpelos filed the REPLY IN SUPPORT OF SKARPELOS'
MOTION TO ALTER OR AMEND JUDGMENT ("the Reply") on June 7, 2019, and
contemporaneously submitted the matter for the Court's consideration.

1 This case was initiated by Plaintiff NEVADA AGENCY AND TRANSFER COMPANY
2 (“the Plaintiff”) as an interpleader action to resolve a dispute over ownership of 3,316,666 shares of
3 stock in Anavex Life Sciences Corp.¹ The Court presided over a bench trial beginning on January
4 28, 2019, to resolve the competing claims between Weiser Capital and WAM (collectively, “the
5 Weiser Defendants”) and Mr. Skarpelos to the shares. The Court entered the FINDINGS OF
6 FACT, CONCLUSIONS OF LAW AND JUDGMENT (“the FFCLJ”) on April 22, 2019. The
7 Court determined that Mr. Skarpelos was the rightful owner of the shares. The FFCLJ 7 ¶ 25.
8 However, the Court invoked its equitable jurisdiction to require Mr. Skarpelos to make restitution
9 to WAM in the amount of \$245,464.64, for money WAM credited to his account and from which
10 Mr. Skarpelos benefitted. The FFCLJ ¶ 28.

13 Mr. Skarpelos argues the FFCLJ should be amended to remove the judgment against him
14 for \$245,464.64. The Motion 2:9-14. Mr. Skarpelos argues amendment is appropriate for three
15 reasons: 1) Mr. Skarpelos was denied due process because the award was outside of the pleadings;
16 2) the Weiser Defendants had an adequate legal remedy it chose not to pursue; and 3) the Court
17 lacked subject matter jurisdiction to make the award because the award did not relate to the
18 disputed stock. The Motion 2:16-27; 6:20-28; 7:1-4. The Weiser Defendants contend the
19 following in support of the award: 1) Mr. Skarpelos had fair notice of the potential award because
20 the money was deposited in his brokerage account; 2) the award was not manifestly unjust; and 3)
21 the award relates to the disputed stock. The Opposition 4:17-26; 6:6-11; 8:3-18. Mr. Skarpelos
22 responds by contending: 1) he did not have notice of the Weiser Defendants’ damages claim from
23 the pleadings or its trial statement; 2) equitable relief premised on unjust enrichment is unavailable

27 ¹ The Plaintiff was discharged from the action in the ORDER GRANTING MOTION FOR DISCHARGE filed on
28 January 23, 2019.

1 where a contract governs the parties' relationships; and 3) the Court lacked subject matter
2 jurisdiction to make the award because it was completely unrelated to the Weiser Defendants'
3 claim of ownership and thus unrelated to the equities of the case. The Reply 3:21-28; 4:1-3; 5:17-
4 24; 6:9-26.

5
6 NRCP 59(e) permits a party to file a motion to alter or amend a judgment within ten days
7 after service of written notice of entry of the judgment.² Such a motion is permitted for any
8 appealable order; a final judgment is not required. *Lytle v. Rosemere Estate Prop. Owners*, 129
9 Nev. 923, 926, 314 P.3d 946, 948 (2013). A motion to alter or amend must be in writing and state
10 the grounds for relief with particularity and identify the relief sought. *United Pac. Ins. Co. v. St.*
11 *Denis*, 81 Nev. 103, 106, 399 P.2d 135, 137 (1956). Motions to alter or amend may be used to
12 correct manifest errors of law or fact, address newly discovered or previously unavailable
13 evidence, avoid manifest injustice or adjust to a change in controlling law. *AA Primo Builders,*
14 *LLC v. Washington*, 126 Nev. 578, 582, 245 P.3d 1190, 1193 (2010). A district court has
15 considerable discretion in determining whether a motion to amend or alter should be granted.
16 *Stevo Design, Inc. v. SBR Mktg. Ltd*, 919 F. Supp. 2d 1112, 1117 (D. Nev. 2013) (explaining
17 FRCP 59 may be consulted in interpretation of NRCP 59). *See also AA Primo*, 126 Nev. at 582,
18 245 P.3d at 1193. A motion to alter or amend constitutes "an extraordinary remedy which should
19 be used sparingly." *Stevo Design*, 919 F. Supp. 2d at 1117 ("[T]he district court enjoys
20 considerable discretion in granting or denying the motion.").

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28 ² The Motion was timely filed.

1 The Court will not amend the FFCLJ because it properly invoked its equitable jurisdiction
2 to require Mr. Skarpelos to make restitution to WAM and to prevent him from receiving a windfall
3 in this matter. First, Mr. Skarpelos was on notice of the potential for equitable relief given the
4 nature of this case and the relief requested. As an interpleader action, this matter originated in
5 equity to determine ownership of the shares. *See Balish v. Farnham*, 92 Nev. 133, 137, 546 P.2d
6 1297, 1299 (1976) (identifying interpleader as equitable proceeding). Restitution was a
7 foreseeable equitable ruling in an action already predicated on principles of equity. *See also*
8 *Landex, Inc. v. State ex rel. List*, 94 Nev. 469, 477, 582 P.2d 786, 791 (1978) (“[A] court has the
9 inherent power, ancillary to its general equity jurisdiction, to order restitution in an appropriate
10 case.”). Furthermore, Mr. Skarpelos requested “such other and further relief as to the Court seems
11 just and equitable under the circumstances.” ANSWER TO COMPLAINT AND CROSS-CLAIM
12 (Defendant Cross-Claimant Skarpelos) 9:26-27 (Feb. 18, 2016).
13
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15 Second, the Court properly afforded equitable relief to comprehensively resolve this matter
16 without affording Mr. Skarpelos a windfall. The Court found Weiser had proven by a
17 preponderance of the evidence WAM had credited Mr. Skarpelos’ WAM account in April of 2013,
18 and Mr. Skarpelos had received the benefit of this money. The FFCLJ ¶ 28. *See also* Tr. of Hr’g
19 36-38 (Feb. 6, 2019). As the Court stated in the FFCLJ, Mr. Skarpelos allegedly transferred the
20 stock to a third party, and his WAM account was credited \$249,580.00 to reflect the transfer. *See*
21 the FFCLJ 7:24-28; 8:1. Moreover, the judgment of restitution was directly related, and not
22 ancillary, to the shares at issue in this case. The Court found Mr. Skarpelos had funded his WAM
23 account with stock certificate 753 and was permitted to borrow against that account. *See the*
24 FFCLJ ¶ 5. *See also* Tr. of Hr’g 14-16; 17:15-19. If the Court would have refused to invoke its
25 equitable jurisdiction, Mr. Skarpelos would have been permitted to retain ownership of the stock
26
27
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1 as well as the amount paid for it, a windfall for Mr. Skarpelos and a forfeiture for WAM. *See*
2 *MacDonald v. Krause*, 77 Nev. 312, 318, 362 P.2d 724, 727 (1961) (explaining province of courts
3 of equity is “to do complete justice between the parties . . .”). For these reasons, the Court
4 properly invoked its equitable jurisdiction to order Mr. Skarpelos to make restitution to WAM.
5

6 **IT IS ORDERED** that SKARPELOS’ MOTION TO ALTER OR AMEND JUDGMENT
7 is hereby **DENIED**.

8 **DATED** this 6 day of August, 2019.

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11 ELLIOTT A. SATTLER
12 District Judge
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1 **2540**

JOHN F. MURTHA, ESQ.

2 Nevada Bar No. 835

DANE W. ANDERSON, ESQ.

3 Nevada Bar No. 6883

4 SETH J. ADAMS, ESQ.

Nevada Bar No. 11034

5 **WOODBURN AND WEDGE**

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10 *Attorneys for Defendant/Cross-Claimant*

11 *Athanasios Skarpelos*

12 IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
13 IN AND FOR THE COUNTY OF WASHOE

14 NEVADA AGENCY AND TRANSFER
15 COMPANY, a Nevada corporation,

Case No. CV15-02259

Dept. No. 10

16 Plaintiff,

17 vs.

NOTICE OF ENTRY OF ORDER

18 WEISER ASSET MANAGEMENT, LTD.,
19 a Bahamas company; ATHANASIOS
20 SKARPELOS, an individual; and
DOES 1-10,

21 Defendants.

22 _____/
ATHANASIOS SKARPELOS, an individual,

23 Cross-Claimant,

24 vs.

25 WEISER ASSET MANAGEMENT, LTD., a
26 Bahamas company, and WEISER (BAHAMAS)
27 LTD., a Bahamas company.

28 Cross-Defendants.
_____ /

1 WEISER ASSET MANAGEMENT, LTD.,
2 a Bahamas company, WEISER (BAHAMAS), LTD.,
3 a Bahamas company,

4 Cross-Claimants.

5 vs.

6 ATHANASIOS SKARPELOS, an individual,
7 Cross-defendant.

8 **NOTICE OF ENTRY OF ORDER**

9 **PLEASE TAKE NOTICE** that on August 9, 2019, the Court entered its Order
10 Granting Motion for Attorney's Fees, a true and correct copy of which is attached hereto as
11 **Exhibit 1.**

12 **AFFIRMATION**

13 The undersigned does hereby affirm that the preceding document does not contain the
14 personal information of any person.

15 DATED: August 9, 2019

WOODBURN AND WEDGE

17 By /s/ Dane W. Anderson

18 John F. Murtha, Esq.
19 Nevada Bar No. 835
Dane W. Anderson, Esq.
20 Nevada Bar No. 6883
Seth J. Adams, Esq.
21 Nevada Bar No. 11034

22 *Attorneys for Defendant/
23 Cross-Claimant
24 Athanasios Skarpelos*

1 **CERTIFICATE OF SERVICE**

2 I hereby certify that I am an employee of Woodburn and Wedge and that on this date,
3 I caused to be sent via electronic delivery through the Court's E-flex system a true and correct
4 copy of *Notice of Entry of Order* to:

5
6 Alexander H. Walker III, Esq.
7 57 West 200 South, Ste. 400
8 Salt Lake City, Utah 84101
9 awalker@law@aol.com

10 *Attorneys for Plaintiff*

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14 5441 Kietzke Lane, 2nd Floor
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16 jnork@hollandandhart.com
17 fzlaforge@hollandandhart.com

18 *Attorneys for Defendants*
19 *Weiser Asset Management, Ltd.*
20 *and Weiser (Bahamas), Ltd.*

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DATED: August 9, 2019.

/s/ Dianne M. Kelling
Dianne M. Kelling, an employee of
Woodburn and Wedge

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EXHIBIT LIST

<u>Exhibit No.</u>	<u>Exhibit Title</u>	<u>Pages</u> (Including Exhibit Sheet)
1	Order Granting Motion for Attorney’s Fees	8

EXHIBIT 1

EXHIBIT1

IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
IN AND FOR THE COUNTY OF WASHOE

NEVADA AGENCY AND TRANSFER
COMPANY, a Nevada corporation,

Plaintiff,

Case No. CV15-02259

vs.

Dept. No. 10

WEISER ASSET MANAGEMENT, LTD.,
a Bahamas company, WEISER (BAHAMAS)
LTD., a Bahamas company, ATHANASIOS
SKARPELOS, an individual, and DOES 1
through 10,

Defendants.

ORDER GRANTING MOTION FOR ATTORNEY'S FEES

Presently before the Court is the MOTION FOR ATTORNEYS' FEES ("the Motion") filed by Defendant ATHANASIOS SKARPELOS ("Mr. Skarpelos") on April 25, 2019. Mr. Skarpelos contemporaneously filed the DECLARATION OF DANE W. ANDERSON IN SUPPORT OF MOTION FOR ATTORNEYS' FEES ("the Declaration"). Defendants WEISER ASSET MANAGEMENT, LTD. and WEISER (BAHAMAS) LTD. (collectively, "Weiser") filed WEISER'S OPPOSITION TO SKARPELOS'S MOTION FOR ATTORNEY'S FEES ("the Opposition") on May 24, 2019. Mr. Skarpelos filed the REPLY IN SUPPORT OF MOTION FOR ATTORNEY'S FEES ("the Reply") on June 7, 2019, and contemporaneously submitted the matter for the Court's consideration.

1 This case was initiated by Plaintiff NEVADA AGENCY AND TRANSFER COMPANY
2 (“the Plaintiff”) as an interpleader action to resolve a dispute over ownership of 3,316,666 shares of
3 stock in Anavex Life Sciences Corp.¹ On May 24, 2016, Weiser filed WEISER’S ANSWER AND
4 CROSS-CLAIM (“the A&C”) which contained three cross-claims: 1) Declaratory Judgment; 2)
5 Breach of Contract; and 3) Breach of the Implied Covenant of Good Faith and Fair Dealing. The
6 A&C 10-12. The Court presided over a bench trial beginning on January 28, 2019, to resolve the
7 competing claims between Weiser and Mr. Skarpelos to the shares. The Court entered the
8 FINDINGS OF FACT, CONCLUSIONS OF LAW AND JUDGMENT (“the FFCLJ”) on April 22,
9 2019. The Court determined that Mr. Skarpelos was the rightful owner of the shares. The FFCLJ,
10 p. 7 ¶ 25. However, the Court invoked its equitable jurisdiction to enter judgment against Mr.
11 Skarpelos in the amount of \$245,464.64. The FFCLJ, p. 7-8 ¶ 28.

14 Mr. Skarpelos contends he is entitled to an award of \$216,900.50 in attorney’s fees because
15 Weiser’s cross-claims and defenses were maintained without reasonable grounds or to harass Mr.
16 Skarpelos. The Motion 2:9-17; 7:21-28. Mr. Skarpelos contends Weiser changed its legal theory
17 during trial and that its cross-claims and defenses were not supported by credible evidence and are
18 thus frivolous. The Motion 7:1-11. Weiser makes the following arguments in response: 1) Weiser
19 won a quarter-million dollar judgment, which demonstrates its claims were not frivolous; 2) even if
20 Weiser’s claims were unsuccessful, they were supported by substantial evidence and reasonable
21 grounds; 3) Weiser did not change its legal theory and, even if it did, changing a legal theory is not
22 a basis for an award of attorney’s fees; and 4) Mr. Skarpelos fails to explain how the requested
23 amount is reasonable and necessary. The Opposition 1:25-28; 2:1-7; 3-6. Mr. Skarpelos responds
24

27 ¹ The Plaintiff was discharged from the action in the ORDER GRANTING MOTION FOR DISCHARGE filed on
28 January 23, 2019.

1 as follows: 1) Weiser changed its argument at trial regarding the July 2013 Purchase and Sale
2 Agreement (“the July PSA”), and began arguing it was a meaningless document; 2) the award of
3 \$245,464.64 was not based on any of Weiser’s claims; 3) Weiser presented no credible evidence to
4 supports its claims because all of the claims were premised on the July PSA; 4) Weiser abandoned
5 its pleadings and legal theories at trial; and 5) the requested fees are reasonable considering the
6 duration and nature of the litigation. The Reply 3:2-27; 5:1-6; 6:24-26; 7:4-17; 8:4-24.
7

8 Attorney’s fees are recoverable where authorized by agreement, statute or rule. *Wheeler*
9 *Springs Plaza, LLC v. Beemon*, 119 Nev. 260, 268, 71 P.3d 1258, 1263 (2003) (quoting *Young v.*
10 *Nev. Title Co.*, 103 Nev. 436, 442, 744 P.2d 902, 905 (1987)). NRS 18.010(2)(b) permits an award
11 of attorney’s fees where:
12

13 Without regard to the recovery sought, when the court finds that the claim, counterclaim,
14 cross-claim or third-party complaint or defense of the opposing party was brought or
15 maintained without reasonable ground or to harass the prevailing party. The court shall
16 liberally construe the provisions of this paragraph in favor of awarding attorney's fees in all
17 appropriate situations. It is the intent of the Legislature that the court award attorney's fees
18 pursuant to this paragraph and impose sanctions pursuant to Rule 11 of the Nevada Rules of
19 Civil Procedure in all appropriate situations to punish for and deter frivolous or vexatious
claims and defenses because such claims and defenses overburden limited judicial resources,
hinder the timely resolution of meritorious claims and increase the costs of engaging in
business and providing professional services to the public.

20 NRCP 11(b) provides:

21 Representations to the Court. By presenting to the court a pleading, written motion, or other
22 paper--whether by signing, filing, submitting, or later advocating it--an attorney or
23 unrepresented party certifies that to the best of the person's knowledge, information, and
belief, formed after an inquiry reasonable under the circumstances:

24 (1) it is not being presented for any improper purpose, such as to harass, cause
25 unnecessary delay, or needlessly increase the cost of litigation;

26 (2) the claims, defenses, and other legal contentions are warranted by existing law or by
27 a nonfrivolous argument for extending, modifying, or reversing existing law or for
28 establishing new law;

1 (3) the factual contentions have evidentiary support or, if specifically so identified, will
2 likely have evidentiary support after a reasonable opportunity for further
3 investigation or discovery; and

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

6 A claim will be considered groundless or frivolous if there is no credible evidence at trial to
7 support it. *Frederic and Barbara Rosenberg Living Tr. v. MacDonald Highlands Realty, LLC*, 134
8 Nev. Adv. Op. 69, 427 P.3d 104, 113 (2018) (citing *Semenza v. Caughlin Crafted Homes*, 111 Nev.
9 1089, 1095, 901 P.2d 684, 687-88 (1995)). See also *Capanna v. Orth*, 134 Nev. Adv. Op. 108, 432
10 P.3d 726, 734 (2018). “Determining whether attorney fees should be awarded under NRS
11 18.010(2)(b) requires the court to inquire into the actual circumstances of the case, ‘rather than a
12 hypothetical set of facts favoring plaintiff’s averments.’” *Baldonaldo v. Wynn Las Vegas, LLC*, 124
13 Nev. 951, 967-68, 194 P.3d 96, 106-07 (2008) (citations omitted). Per *Brunzell*, the court must
14 analyze whether the requested attorney’s fees are reasonable using the following factors:
15

16 (1) the qualities of the advocate: his ability, his training, education, experience, professional
17 standing and skill; (2) the character of the work to be done: its difficulty, its intricacy, its
18 importance, time and skill required, the responsibility imposed and the prominence and
19 character of the parties where they affect the importance of the litigation; (3) the work
20 actually performed by the lawyer: the skill, time and attention given to the work; (4) the
21 result: whether the attorney was successful and what benefits were derived.

22 *Brunzell v. Golden Gate Nat. Bank*, 95 Nev. 345, 349, 455 P.2d 31, 33 (1969).

23 The Court will grant the Motion because Weiser unreasonably maintained its claim to
24 ownership of the stock by virtue of the July PSA. While the Court awarded Weiser equitable relief,
25 the award was unrelated to Weiser’s claims for relief and was an exercise of the Court’s equitable
26 jurisdiction over this matter. See the FFCLJ 7-8 ¶ 28. Until trial, Weiser indicated its cross-claims
27 were supported by the July PSA. See the A&C 10-12. See also Trial Ex. 30. At trial, Weiser
28 abandoned the theory that its claim of ownership was supported by the July PSA, and Mr. Livadas

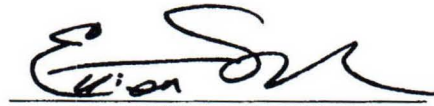
1 testified the July PSA was meaningless and used for another purpose. The FFCLJ 3-4 ¶ 9. The
2 Court found this testimony extremely troubling, given the consistency with which Weiser had held
3 its position about the July PSA before trial. Had Weiser admitted the July PSA was meaningless
4 before trial, the Court may have been able to dismiss or summarily adjudicate this matter, thus
5 obviating the costs incurred during trial. While Weiser is correct that evidence may develop over
6 the course of a trial, a sudden change in legal theory undermines pretrial procedure and motion
7 practice and can result in the accumulation of needless costs. For these reasons, Weiser
8 unreasonably maintained its claim to ownership by virtue of the July PSA.
9

10
11 The Court will award \$216,900.50 in attorney's fees because the requested fees are
12 reasonable. Considering the qualities of Mr. Skarpelos' legal team, both Dane Anderson ("Mr.
13 Anderson") and John Murtha ("Mr. Murtha") are experienced litigators with a shared total of 55
14 years of legal experience. See the Declaration 2:12-20. Mr. Anderson and Mr. Murtha charged
15 reasonable fees, ranging from \$350.00 to \$375.00 per hour, and billed \$150.00 to \$300.00 per hour
16 for their associates' work. Mr. Skarpelos' legal team worked diligently on this matter over the
17 course of three years, including traveling to Greece to take key depositions and representing Mr.
18 Skarpelos during a five-day bench trial. The number of hours spent on this matter were also
19 reasonable, given the three-year duration of this case and the fact it proceeded to trial. See the
20 Declaration Ex. 1, p. 19. Furthermore, Mr. Skarpelos' legal team obtained a successful result in
21 this litigation. Mr. Skarpelos prevailed on his claim for declaratory relief, and he was ultimately
22 declared the owner of the stock. The equitable award to Weiser does not cast doubt on the efficacy
23 of Mr. Skarpelos' legal team, and the Court will award \$216,900.50 in attorney's fees.
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IT IS ORDERED the MOTION FOR ATTORNEYS' FEES is hereby **GRANTED**.

DATED this 9 day of August, 2019.

A handwritten signature in black ink, appearing to read "Elliott A. Sattler", written over a horizontal line.

ELLIOTT A. SATTLER
District Judge

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1 **\$2515**

2 JOHN F. MURTHA, ESQ.

3 Nevada Bar No. 835

4 DANE W. ANDERSON, ESQ.

5 Nevada Bar No. 6883

6 SETH J. ADAMS, ESQ.

7 Nevada Bar No. 11034

8 **WOODBURN AND WEDGE**

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17 *Attorneys for Cross-Claimant*

18 *Athanasios Skarpelos*

19
20 IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
21 IN AND FOR THE COUNTY OF WASHOE

22 ***

23 NEVADA AGENCY AND TRANSFER
24 COMPANY, a Nevada corporation,

Case No. CV15-02259
Dept. No. 10

25 Plaintiff,

26 vs.

NOTICE OF APPEAL

27 WEISER ASSET MANAGEMENT, LTD.,
28 a Bahamas company; ATHANASIOS
29 SKARPELOS, an individual; and
30 DOES 1-10,

31 Defendants.

32 ATHANASIOS SKARPELOS, an individual,

33 Cross-Claimant,

34 vs.

35 WEISER ASSET MANAGEMENT, LTD., a
36 Bahamas company, and WEISER (BAHAMAS)
37 LTD., a Bahamas company.

38 Cross-Defendants.

39 WEISER ASSET MANAGEMENT, LTD.,

1 a Bahamas company, WEISER (BAHAMAS), LTD.,
2 a Bahamas company,

3 Cross-Claimants.

4 vs.

5 ATHANASIOS SKARPELOS, an individual,
6 Cross-defendant.

7
8 **NOTICE OF APPEAL**

9 Notice is hereby given that Cross-Claimant Athanasios Skarpelos, hereby appeals to
10 the Supreme Court of Nevada from the Court's Findings of Fact, Conclusions of Law, and
11 Judgment entered in the above-referenced case on April 22, 2019, a copy of which is attached
12 hereto as **Exhibit 1**, and the Court's Order Denying Motion to Alter or Amend Judgment
13 entered in the above-referenced case on August 6, 2019, a copy of which is attached hereto as
14 **Exhibit 2**.

15 **AFFIRMATION**

16 The undersigned does hereby affirm that the preceding document does not contain the
17 personal information of any person.

18 DATED: August 15, 2019.

WOODBURN AND WEDGE

19 By: 

20 John F. Murtha, Esq.
21 Nevada Bar No. 835
22 Dane W. Anderson, Esq.
23 Nevada Bar No. 6883
24 Seth J. Adams, Esq.
25 Nevada Bar No. 11034

26 *Attorneys for Cross-Claimant*
27 *Athanasios Skarpelos*

1 **CERTIFICATE OF SERVICE**

2 Pursuant to NRCP 5(b), I hereby certify that I am an employee of Woodburn and
3 Wedge, and that on this date I deposited in the United States Mail at Reno, Nevada, a true and
4 correct copy of the **NOTICE OF APPEAL** addressed to:

5
6 Alexander H. Walker III, Esq.
7 57 West 200 South, Ste. 400
8 Salt Lake City, Utah 84101

9 *Attorneys for Plaintiff*

10 Jeremy J. Nork, Esq.
11 Frank Z. LaForge, Esq.
12 Holland & Hart LLP
13 5441 Kietzke Lane, 2nd Floor
14 Reno, Nevada 89511

15 *Attorneys for Defendants*
16 *Weiser Asset Management, Ltd.*
17 *and Weiser (Bahamas), Ltd.*

18 DATED: August 15, 2019.

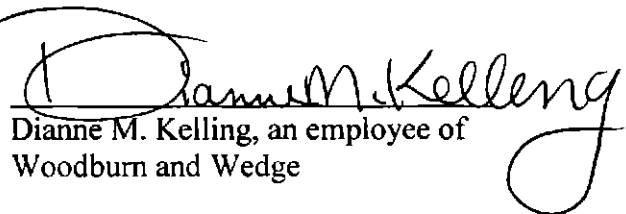
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Dianne M. Kelling, an employee of
Woodburn and Wedge

EXHIBIT INDEX TO NOTICE OF APPEAL

Exhibit No.	Description	No. of Pages (including exhibit sheet)
1	Findings of Fact, Conclusions of Law, and Judgment	10
2	Order Denying Motion to Alter or Amend Judgment	7

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EXHIBIT 1

EXHIBIT 1

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6 IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
7 IN AND FOR THE COUNTY OF WASHOE

8 NEVADA AGENCY AND TRANSFER
9 COMPANY, a Nevada corporation,

Case No. CV15-02259
Dept. No. 10

10 Plaintiff,

11 vs.

FINDINGS OF FACT,
CONCLUSIONS OF LAW, AND
JUDGMENT

12 WEISER ASSET MANAGEMENT, LTD.,
13 a Bahamas company; ATHANASIOS
14 SKARPELOS, an individual; and
DOES 1-10,

15 Defendants.

16 _____/
ATHANASIOS SKARPELOS, an individual,

17 Cross-Claimant,

18 vs.

19 WEISER ASSET MANAGEMENT, LTD., a
20 Bahamas company, and WEISER (BAHAMAS)
21 LTD., a Bahamas company.

22 Cross-Defendants.

23 _____/
WEISER ASSET MANAGEMENT, LTD.,
24 a Bahamas company, WEISER (BAHAMAS), LTD.,
a Bahamas company,

25 Cross-Claimants.

26 vs.

27 ATHANASIOS SKARPELOS, an individual,
28 Cross-defendant.

1 **FINDINGS OF FACT, CONCLUSIONS OF LAW, AND JUDGMENT**

2 This action came before this Court for a bench trial on January 28, 2019. This is
3 an interpleader action filed by Nevada Agency and Transfer Company ("NATCO"),
4 which was discharged from liability and dismissed from the case prior to trial. The
5 operative pleadings to be resolved by the Court at trial were: (1) the Answer To Amended
6 Complaint and Crossclaim filed by defendant Athanasios Skarpelos ("Skarpelos") on May
7 23, 2016 and (2) the Answer and Cross-Claim filed by defendants Weiser Asset
8 Management, Ltd. ("WAM") and Weiser (Bahamas) Ltd. ("Weiser Capital") (WAM and
9 Weiser Capital are sometimes collectively referred to herein as "Weiser"). As framed by
10 the pleadings, Skarpelos and Weiser asserted competing claims to 3,316,666 shares of
11 stock (the "Disputed Stock") in Anavex Life Sciences Corp. ("Anavex").

12 During the trial, the Court listened to the testimony of the following people:
13 Christos Livadas ("Livadas"), Skarpelos, Alexander Walker ("Walker") and Lambros
14 Pedafronimos ("Pedafronimos"). The Court also reviewed and considered documentary
15 evidence that was admitted at trial.

16 Based on the evidence presented at trial, the Court enters the following findings
17 of fact, conclusions of law and judgment in this matter.

18 **FINDINGS OF FACT**

19 1. WAM is a Class 1 broker-dealer registered with and regulated by the
20 Financial Services Authority and Securities Commission of the Bahamas. WAM is also a
21 registered foreign broker-dealer in Canada, regulated by the Ontario Securities
22 Commission.

23 2. Weiser Capital is an affiliate entity to WAM and provides investment
24 banking advisory services and deal arrangements as an investor and principal on behalf of
25 WAM and its clients. Basically, Weiser Capital would direct clients to WAM. Livadas is
26 the owner and director of Weiser Capital.

27 3. Livadas is also the owner and director of Weiser Holdings, Ltd. ("Weiser
28 Holdings"). Weiser Holdings acquired WAM in 2014 and is now the parent company of

1 WAM. Prior to that acquisition, WAM and Weiser Capital were two entirely separate
2 entities.

3 4. The prior owner of WAM was Equity Trust Bahamas, Ltd. ("Equity
4 Trust"). One of the principals of Equity Trust was Howard Daniels ("Daniels"), who later
5 became one of two contacts that Skarpelos had at WAM in 2011.

6 5. In 2011, Skarpelos applied for and opened an account with WAM.
7 Skarpelos funded the account with his Anavex Stock Certificates Nos. 0660 ("Certificate
8 No. 660") and No. 0753 ("Certificate No. 753"). Certificate 660 represents 92,500 shares
9 of Anavex stock and was issued to Skarpelos in 2007. Certificate 753 represents
10 6,633,332 shares of Anavex stock and was issued to Skarpelos in 2009. In opening the
11 account, Skarpelos was assisted by Daniels and Pedafronimos.

12 6. Skarpelos withdrew money, or had people withdraw money on his behalf,
13 from his WAM account. In doing so, Skarpelos took his account balance into a negative
14 position in the amount of \$153,679.54 as of March 25, 2013.

15 7. In early 2013, Skarpelos caused NATCO to cancel Stock Certificates No.
16 660 and No. 753, falsely reporting them as "lost" when in fact he knew the certificates had
17 been deposited with WAM in 2011.

18 8. On April 2, 2013, there was a sale of 3,316,666 shares of Skarpelos'
19 Anavex stock represented by Certificate 753 to an unidentified third party. Pursuant to
20 this transaction, WAM credited Skarpelos' account in the amount of \$249,580, taking it to
21 a positive balance of \$95,775.46. Thereafter, a substantial portion of that money was
22 withdrawn from Skarpelos' account leaving a balance of \$4,115.36 as of December 31,
23 2013. The withdrawn money was provided from Skarpelos' WAM account to
24 Pedafronimos, and Pedafronimos withdrew that money through transactions in May, July,
25 August and September of 2013 and presumably gave that money to Skarpelos.

26 9. The Answer and Cross-Claim filed by WAM and Weiser Capital claimed
27 ownership of the Disputed Stock under the terms of a July 5, 2013 Stock Sale and
28 Purchase Agreement ("July 2013 PSA"). The July 2013 PSA does not evidence a sale of

1 any kind to anybody. At trial, Livadas testified he used this document for something other
2 than its intended purpose and that, contrary to Weiser's claims throughout this case, it is a
3 meaningless document.

4 10. There is no evidence of a contract between Skarpelos and either WAM or
5 Weiser Capital for the sale of Anavex stock at any time. Although Weiser asserted
6 throughout this case that "it" was the owner of the Disputed Stock by virtue of the July
7 2013 PSA, Livadas and WAM abandoned that claim at trial and instead relied on a new
8 theory that WAM is the owner of the stock by virtue of the April 2, 2013 transaction.
9 However, Livadas also testified that WAM was not even the purchaser of the stock under
10 the April 2, 2013 transaction and that the stock was just transferred through WAM to a
11 third party.

12 11. Weiser Capital had absolutely nothing to do with any sale by Skarpelos of
13 any Anavex stock at any time. At best what happened in this case was that, arguably,
14 WAM was just transferring the stock sold on April 2, 2013 to somebody else. WAM was
15 never intended to be the purchaser of that stock, and there was no such agreement between
16 Skarpelos and WAM.

17 12. No contract was formed for the sale of Anavex stock from Skarpelos to
18 either WAM or Weiser Capital at any time. Because there is no contract between
19 Skarpelos and WAM and/or Weiser Capital, the Weiser claims for declaratory relief,
20 breach of contract and breach of the implied covenant of good faith and fair dealing all
21 fail because they all rely entirely upon the existence of a contract.

22 13. Any conclusion of law set forth below which is more appropriately a
23 finding of fact is hereby incorporated as a finding of fact.

24 **CONCLUSIONS OF LAW**

25 14. "Basic contract principles require, for an enforceable contract, an offer and
26 acceptance, meeting of the minds, and consideration." *Certified Fire Prot. Inc. v.*
27 *Precision Construction, Inc.*, 128 Nev. 371, 378, 283 P.3d 250, 255 (2012), citing *May v.*
28 *Anderson*, 121 Nev. 668, 672, 119 P.3d 1254, 1257 (2005). "A meeting of the minds

1 exists when the parties have agreed upon the contract's essential terms." *Id.*, citing *Roth v.*
2 *Scott*, 112 Nev. 1078, 1083, 921 P.2d 1262, 1296 (1996). "Which terms are essential
3 depends on the agreement and its context and also on the subsequent conduct of the
4 parties, including the dispute which arises and the remedy sought." *Id.*, citing
5 Restatement (Second) of Contracts § 131 cmt. g (1981). Whether a contract exists is a
6 question of fact entitled to deference unless clearly erroneous or not based on substantial
7 evidence. *Id.*, citing *May v. Anderson*, 121 Nev. at 672-73, 119 P.3d at 1257.

8 15. When the essential terms of a contract have yet to be agreed upon by the
9 parties, a contract cannot be formed. *Certified Fire*, 128 Nev. at 379, 283 P.3d at 255,
10 citing *Nevada Power Co. v. Public Util. Comm'n*, 122 Nev. 821, 839-840, 138 P.3d 486,
11 498-499 (2006).

12 16. Here, there is no evidence of an offer and acceptance between Skarpelos
13 and either WAM or Weiser Capital, nor is there any meeting of the minds as to the
14 relevant and essential terms of any contract. The Court concludes as a matter of law that
15 there was no contract between Skarpelos and either WAM or Weiser Capital for the sale
16 and purchase of any Anavex stock at any time, much less the Disputed Stock.

17 17. In order to establish a claim for breach of contract, the claiming party must
18 establish: (1) the existence of a valid contract; (2) a breach by the defendant; and (3)
19 damage as a result of the breach. *Saini v. Int'l Game Tech.*, 434 F.Supp.2d 913, 919-920
20 (D. Nev. 2006), citing *Richardson v. Jones*, 1 Nev. 405, 405 (Nev. 1865).

21 18. Because the Court has found that no valid contract existed between
22 Skarpelos and either WAM or Weiser Capital, Weiser's claim for breach of contract fails.

23 19. In order to establish a claim for breach of the implied covenant of good
24 faith and fair dealing, the claiming party must establish: (1) that the plaintiff and
25 defendant were parties to an agreement; (2) that defendant owed a duty of good faith to
26 the plaintiff; (3) the defendant breached that duty by performing in a manner that is
27 unfaithful to the purpose of the contract; and (4) that plaintiff's justified expectations were
28

1 denied. *Hilton Hotels Corp. v. Butch Lewis Prod., Inc.*, 107 Nev. 226, 234, 808 P.2d 919,
2 923 (1991).

3 20. Because the Court has found that no valid contract existed between
4 Skarpelos and either WAM or Weiser Capital, Weiser's claim for breach of the implied
5 covenant of good faith and fair dealing fails.

6 21. Although not raised by Weiser's pleadings, the Court further concludes that
7 there is no contract implied-in-fact between Skarpelos and either WAM or Weiser Capital.
8 Quantum meruit applies in actions based upon contracts implied-in-fact. *Certified Fire*,
9 128 Nev. at 379, 283 P.3d at 256. "A contract implied-in-fact must be manifested by
10 conduct; it is a true contract that arises from the tacit agreement of the parties." *Id.*
11 (internal quotations and citations omitted). "To find a contract implied-in-fact, the fact-
12 finder must conclude that the parties intended to contract and promises were exchanged,
13 the general obligations for which must be sufficiently clear. *Id.*, 128 Nev. at 379-380, 238
14 P.3d at 257. "It is at that point that a party may invoke quantum meruit as a gap-filer to
15 supply the absent term." *Id.*, 128 Nev. at 380, 238 P.3d at 257. "Where such a contract
16 exists, then, quantum meruit ensures the laborer receives the reasonable value, usually
17 market price, for his services." *Id.*

18 22. Even if Weiser had timely raised this issue in its pleadings, the Court
19 concludes there is no contract implied-in-fact because there is no evidence that Skarpelos
20 intended to contract with either WAM or Weiser Capital. The Court concludes that the
21 parties to the contract must be identified, and in this case Livadas' testimony was unclear
22 whether WAM or Weiser Capital was the supposed purchaser of the stock. If the Court
23 cannot even establish that basic premise, it cannot find or conclude that there is an oral
24 contract, a written contract, or even an implied-in-fact contract. The Court cannot find or
25 conclude there was a meeting of the minds because neither WAM nor Weiser Capital
26 seems to know who claims to be the owner.

27 23. "When sitting in equity, however, courts must consider the entirety of the
28 circumstances that bear upon the equities." *Shadow Wood Homeowners Ass'n, Inc. v.*

1 *New York Community Bancorp., Inc.*, 132 Nev. Adv. Op. 5, 366 P.3d 1105, 1114 (2016).
2 “This includes considering the status and actions of all parties involved, including whether
3 an innocent party may be harmed by granting the desired relief.” *Id.*, 366 P.3d at 1115,
4 citing *Smith v. U.S.*, 373 F.2d 419, 424 (4th Cir. 1996) (“Equitable relief will not be
5 granted to the possible detriment of innocent third parties.”) (other citations omitted). It is
6 a “recognized province” of a court sitting in equity to do “complete justice between the
7 parties.” *MacDonald v. Krause*, 77 Nev. 312, 318, 362 P.2d 724, 727 (1961).

8 24. “Interpleader is an equitable proceeding to determine the rights of rival
9 claimants to property held by a third person having no interest therein.” *Balish v.*
10 *Farnham*, 92 Nev. 133, 137, 546 P.2d 1297, 1299 (1976). “In such a proceeding, each
11 claimant is treated as a plaintiff and must recover on the strength of his own right to title
12 and not upon the weakness of his adversary’s. *Id.*, 92 Nev. at 137, 546 P.2d at 1300. In
13 an interpleader action, each claimant must succeed in establishing his right to the property
14 by a preponderance of the evidence. *Midland Ins. Co. v. Friedgood*, 577 F.Supp. 1407
15 (S.D.N.Y. 1984).

16 25. Based on the foregoing, Skarpelos’ single cause of action for declaratory
17 relief is granted. Skarpelos is the owner of all shares of Anavex stock previously
18 represented by Certificates Nos. 660 and 753 and now represented by Certificate No. 975.

19 26. Neither WAM nor Weiser Capital, nor anyone claiming through WAM or
20 Weiser Capital, has any ownership interest in Anavex stock represented by Certificates
21 Nos. 660, 753 or 975.

22 27. Weiser’s claims for declaratory relief, breach of contract and breach of the
23 implied covenant of good faith and fair dealing are all dismissed.

24 28. However, as indicated above, the Court finds that Skarpelos agreed to sell
25 shares on April 2, 2013 to an unknown third party and that, as a result, WAM credited
26 Skarpelos’ account \$249,580 pursuant to that transaction. This credit took the account
27 from a balance of negative \$153,679.54 to a positive balance of \$95,775.46. The Court
28 further found that Skarpelos subsequently withdrew and received a substantial portion of

1 those funds, eventually leaving a balance of \$4,115.36. Therefore, despite Weiser's
2 failure to plead this claim for relief, the Court concludes it has equitable jurisdiction to
3 enter judgment against Skarpelos and in favor of WAM in the total amount of
4 \$245,464.64. Allowing Skarpelos to retain ownership of the Disputed Stock and the funds
5 he received would result in a windfall. This is an obligation that is separate from and
6 independent of Skarpelos' ownership of stock in Anavex and has no bearing on his
7 ownership.

8 29. Any finding of fact set forth above which is more appropriately a
9 conclusion of law is hereby incorporated as a conclusion of law.

10 **JUDGMENT**

11 Based on the foregoing findings of fact and conclusions of law,

12 IT IS HEREBY ORDERED AND ADJUDGED that Athanasios "Tom" Skarpelos
13 is the sole, true and rightful owner of all shares of stock in Anavex Life Sciences Corp.,
14 previously represented by Certificates Nos. 660 and 753 and now represented by
15 Certificate No. 975.

16 IT IS HEREBY FURTHER ORDERED AND ADJUDGED that neither Weiser
17 Asset Management, Ltd. (referred to above as WAM) nor Weiser (Bahamas) Ltd.
18 (referred to above as Weiser Capital) have any claim of ownership to any of the shares
19 previously represented by Certificates No. 660 and 753 and now represented by
20 Certificate No. 975, nor does any other person or entity claiming any ownership to said
21 shares by or through Weiser Asset Management, Ltd. or Weiser (Bahamas) Ltd.

22 IT IS HEREBY FURTHER ORDERED that Nevada Agency and Transfer
23 Company shall take such action as is necessary to reflect in Anavex's stock register,
24 corporate books and records that Athanasios "Tom" Skarpelos is the sole, true and rightful
25 owner of all the legal and equitable interest in all the shares previously represented by
26 Certificates No. 660 and 753 and now represented by Certificate No. 975.

1 IT IS HEREBY FURTHER ORDERED AND ADJUDGED that judgment is
2 entered against Athanasios "Tom" Skarpelos and in favor of WAM in the total amount of
3 \$245,464.64.

4 Dated this 22 day of April, 2019.

5 
6 DISTRICT JUDGE

CV15-02259 DC-09900088951-090
NW AGENCY & TRANSFER CO VS W 7 Pages
District Court 08/15/2019 03:29 PM
Washoe County \$2515
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-v2

EXHIBIT 2

EXHIBIT 2

IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
IN AND FOR THE COUNTY OF WASHOE

NEVADA AGENCY AND TRANSFER
COMPANY, a Nevada corporation,

Plaintiff,

Case No. CV15-02259

vs.

Dept. No. 10

WEISER ASSET MANAGEMENT, LTD.,
a Bahamas company, WEISER (BAHAMAS)
LTD., a Bahamas company, ATHANASIOS
SKARPELOS, an individual, and DOES 1
through 10,

Defendants.

ORDER DENYING MOTION TO ALTER OR AMEND JUDGMENT

Presently before the Court is SKARPELOS' MOTION TO ALTER OR AMEND
JUDGMENT ("the Motion") filed by Defendant ATHANASIOS SKARPELOS ("Mr. Skarpelos")
on April 25, 2019. Defendants WEISER ASSET MANAGEMENT, LTD. ("WAM") and WEISER
(BAHAMAS) LTD. ("Weiser Capital") filed DEFENDANTS/CROSS-CLAIMANTS WEISER'S
OPPOSITION TO SKARPELOS'S MOTION TO ALTER OR AMEND JUDGMENT ("the
Opposition") on May 24, 2019. Mr. Skarpelos filed the REPLY IN SUPPORT OF SKARPELOS'
MOTION TO ALTER OR AMEND JUDGMENT ("the Reply") on June 7, 2019, and
contemporaneously submitted the matter for the Court's consideration.

1 This case was initiated by Plaintiff NEVADA AGENCY AND TRANSFER COMPANY
2 ("the Plaintiff") as an interpleader action to resolve a dispute over ownership of 3,316,666 shares of
3 stock in Anavex Life Sciences Corp.¹ The Court presided over a bench trial beginning on January
4 28, 2019, to resolve the competing claims between Weiser Capital and WAM (collectively, "the
5 Weiser Defendants") and Mr. Skarpelos to the shares. The Court entered the FINDINGS OF
6 FACT, CONCLUSIONS OF LAW AND JUDGMENT ("the FFCLJ") on April 22, 2019. The
7 Court determined that Mr. Skarpelos was the rightful owner of the shares. The FFCLJ 7 ¶ 25.
8 However, the Court invoked its equitable jurisdiction to require Mr. Skarpelos to make restitution
9 to WAM in the amount of \$245,464.64, for money WAM credited to his account and from which
10 Mr. Skarpelos benefitted. The FFCLJ ¶ 28.

13 Mr. Skarpelos argues the FFCLJ should be amended to remove the judgment against him
14 for \$245,464.64. The Motion 2:9-14. Mr. Skarpelos argues amendment is appropriate for three
15 reasons: 1) Mr. Skarpelos was denied due process because the award was outside of the pleadings;
16 2) the Weiser Defendants had an adequate legal remedy it chose not to pursue; and 3) the Court
17 lacked subject matter jurisdiction to make the award because the award did not relate to the
18 disputed stock. The Motion 2:16-27; 6:20-28; 7:1-4. The Weiser Defendants contend the
19 following in support of the award: 1) Mr. Skarpelos had fair notice of the potential award because
20 the money was deposited in his brokerage account; 2) the award was not manifestly unjust; and 3)
21 the award relates to the disputed stock. The Opposition 4:17-26; 6:6-11; 8:3-18. Mr. Skarpelos
22 responds by contending: 1) he did not have notice of the Weiser Defendants' damages claim from
23 the pleadings or its trial statement; 2) equitable relief premised on unjust enrichment is unavailable

27 ¹ The Plaintiff was discharged from the action in the ORDER GRANTING MOTION FOR DISCHARGE filed on
28 January 23, 2019.

1 where a contract governs the parties' relationships; and 3) the Court lacked subject matter
2 jurisdiction to make the award because it was completely unrelated to the Weiser Defendants'
3 claim of ownership and thus unrelated to the equities of the case. The Reply 3:21-28; 4:1-3; 5:17-
4 24; 6:9-26.

5
6 NRCP 59(e) permits a party to file a motion to alter or amend a judgment within ten days
7 after service of written notice of entry of the judgment.² Such a motion is permitted for any
8 appealable order; a final judgment is not required. *Lytle v. Rosemere Estate Prop. Owners*, 129
9 Nev. 923, 926, 314 P.3d 946, 948 (2013). A motion to alter or amend must be in writing and state
10 the grounds for relief with particularity and identify the relief sought. *United Pac. Ins. Co. v. St.*
11 *Denis*, 81 Nev. 103, 106, 399 P.2d 135, 137 (1956). Motions to alter or amend may be used to
12 correct manifest errors of law or fact, address newly discovered or previously unavailable
13 evidence, avoid manifest injustice or adjust to a change in controlling law. *AA Primo Builders,*
14 *LLC v. Washington*, 126 Nev. 578, 582, 245 P.3d 1190, 1193 (2010). A district court has
15 considerable discretion in determining whether a motion to amend or alter should be granted.
16
17 *Stevo Design, Inc. v. SBR Mktg. Ltd*, 919 F. Supp. 2d 1112, 1117 (D. Nev. 2013) (explaining
18 FRCP 59 may be consulted in interpretation of NRCP 59). *See also AA Primo*, 126 Nev. at 582,
19 245 P.3d at 1193. A motion to alter or amend constitutes "an extraordinary remedy which should
20 be used sparingly." *Stevo Design*, 919 F. Supp. 2d at 1117 ("[T]he district court enjoys
21 considerable discretion in granting or denying the motion.").

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28 ² The Motion was timely filed.

1 The Court will not amend the FFCLJ because it properly invoked its equitable jurisdiction
2 to require Mr. Skarpelos to make restitution to WAM and to prevent him from receiving a windfall
3 in this matter. First, Mr. Skarpelos was on notice of the potential for equitable relief given the
4 nature of this case and the relief requested. As an interpleader action, this matter originated in
5 equity to determine ownership of the shares. *See Balish v. Farnham*, 92 Nev. 133, 137, 546 P.2d
6 1297, 1299 (1976) (identifying interpleader as equitable proceeding). Restitution was a
7 foreseeable equitable ruling in an action already predicated on principles of equity. *See also*
8 *Landex, Inc. v. State ex rel. List*, 94 Nev. 469, 477, 582 P.2d 786, 791 (1978) (“[A] court has the
9 inherent power, ancillary to its general equity jurisdiction, to order restitution in an appropriate
10 case.”). Furthermore, Mr. Skarpelos requested “such other and further relief as to the Court seems
11 just and equitable under the circumstances.” ANSWER TO COMPLAINT AND CROSS-CLAIM
12 (Defendant Cross-Claimant Skarpelos) 9:26-27 (Feb. 18, 2016).

13
14
15 Second, the Court properly afforded equitable relief to comprehensively resolve this matter
16 without affording Mr. Skarpelos a windfall. The Court found Weiser¹ had proven by a
17 preponderance of the evidence WAM had credited Mr. Skarpelos’ WAM account in April of 2013,
18 and Mr. Skarpelos had received the benefit of this money. The FFCLJ ¶ 28. *See also* Tr. of Hr’g
19 36-38 (Feb. 6, 2019). As the Court stated in the FFCLJ, Mr. Skarpelos allegedly transferred the
20 stock to a third party, and his WAM account was credited \$249,580.00 to reflect the transfer. *See*
21 the FFCLJ 7:24-28; 8:1. Moreover, the judgment of restitution was directly related, and not
22 ancillary, to the shares at issue in this case. The Court found Mr. Skarpelos had funded his WAM
23 account with stock certificate 753 and was permitted to borrow against that account. *See* the
24 FFCLJ ¶ 5. *See also* Tr. of Hr’g 14-16; 17:15-19. If the Court would have refused to invoke its
25 equitable jurisdiction, Mr. Skarpelos would have been permitted to retain ownership of the stock
26
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1 as well as the amount paid for it, a windfall for Mr. Skarpelos and a forfeiture for WAM. *See*
2 *MacDonald v. Krause*, 77 Nev. 312, 318, 362 P.2d 724, 727 (1961) (explaining province of courts
3 of equity is "to do complete justice between the parties . . ."). For these reasons, the Court
4 properly invoked its equitable jurisdiction to order Mr. Skarpelos to make restitution to WAM.
5

6 **IT IS ORDERED** that SKARPELOS' MOTION TO ALTER OR AMEND JUDGMENT
7 is hereby **DENIED**.

8 **DATED** this 6 day of August, 2019.

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10 
11 ELLIOTT A. SATTLER
12 District Judge
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CERTIFICATE OF MAILING

Pursuant to NRCP 5(b), I certify that I am an employee of the Second Judicial District Court of the State of Nevada, County of Washoe; that on this ____ day of August, 2019, I deposited in the County mailing system for postage and mailing with the United States Postal Service in Reno, Nevada, a true copy of the attached document addressed to:

CERTIFICATE OF ELECTRONIC SERVICE

I hereby certify that I am an employee of the Second Judicial District Court of the State of Nevada, in and for the County of Washoe; that on the 6 day of August, 2019, I electronically filed the foregoing with the Clerk of the Court by using the ECF system which will send a notice of electronic filing to the following:

- JOHN F. MURTHA, ESQ.
- DANE W. ANDERSON, ESQ.
- JEREMY J. NORK, ESQ.
- FRANK Z. LAFORGE, ESQ.


Sheila Mansfield
Judicial Assistant

1 **2175**

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4 HOLLAND & HART LLP
5 5441 Kietzke Lane, Second Floor
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8 jnork@hollandhart.com
9 fzlaforge@hollandhart.com

10 Attorneys for Defendants/Cross-Claimants Weiser

11 **IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA**

12 **IN AND FOR THE COUNTY OF WASHOE**

13 NEVADA AGENCY AND TRANSFER
14 COMPANY, a Nevada Corporation,

Case No. CV15 02259

Dept. No. 10

15 Plaintiff,

16 **WEISER'S MOTION FOR
17 RECONSIDERATION OF ATTORNEY'S
18 FEES AWARD**

19 v.

[Request for Oral Argument]

20 WEISER ASSET MANAGEMENT, LTD., a
21 Bahamas company, ATHANASIOS
22 SKARPELOS, an individual, and DOES 1
23 through 10,

24 Defendants.

25 **AND RELATED ACTIONS.**

26 Defendants Weiser Asset Management ("WAM") and Weiser (Bahamas) Ltd. ("Weiser
27 Capital") (collectively, "Weiser") seek leave of the Court to reconsider its Order Granting
28 Motion For Attorney's Fees ("Order"), dated August 9, 2019, under WDCR 12(8) and DCR
13(7). *See also Trail v. Faretto*, 536 P.2d 1026, 1027 (Nev. 1975) ("[A] court may, for
sufficient cause shown, amend, correct, resettle, modify, or vacate, as the case may be, an order
previously made and entered on motion in the progress of the cause or proceeding."). "[A]
district court may consider a motion for reconsideration concerning a previously decided issue if
the decision was clearly erroneous." *Masonry and Tile v. Jolley, Urga & Wirth*, 941 P.2d 486,
489 (Nev. 1997).

Here the Order grants attorney's fees under NRS 18.010(2) on the following basis:

Weiser unreasonably maintained its claim to ownership of the stock by virtue of the July PSA. . . . Until trial, Weiser indicated its cross-claims were supported by the July PSA. At trial, Weiser abandoned the theory that its claim of ownership was supported by the July PSA, and Mr. Lividas testified the July PSA was meaningless and used for another purpose. . . . Had Weiser admitted the July PSA was meaningless before trial, the Court may have been able to dismiss or summarily adjudicate this matter, thus obviating the costs incurred during trial. While Weiser is correct that evidence may develop over the course of a trial, a sudden change in legal theory undermines pretrial procedure and motion practice and can result in the accumulation of needless costs. For these reasons, Weiser unreasonably maintained its claim to ownership by virtue of the July PSA.

Order at 4–5 (citations omitted). As demonstrated below, the Order is clearly erroneous for three reasons.

A. The Order misunderstands Weiser's legal theory.

The Order asserts that Weiser's claim to the Anavex shares was "supported by the July PSA." Order at 5. But Weiser's claim to the shares was that Skarpelos sold the shares to Weiser in April 2013 for \$250,000. The July 2013 PSA was merely the retroactive memorialization of that *already performed* transaction. Weiser explained its theory in its April 2018 Opposition to Skarpelos's Motion for Summary Judgment ("MSJ Opposition") more than nine months before trial. Here is the table of contents:

TABLE OF CONTENTS	
I. INTRODUCTION.....	1
II. FACTS.....	2
A. Skarpelos opens an account with WAM in 2011 by depositing Certificate Numbers 660 and 753 as collateral.....	2
B. After he had withdrawn \$140,288 from his WAM account that was funded with the Anavex stock, Skarpelos falsely informs NATCO that he lost Certificate Numbers 660 and 753 and seeks replacements.....	3
C. Skarpelos sells 3,316,666 Anavex shares to Weiser for \$250,000 in April 2013.....	4
D. After memorializing the April 2013 sale in July 2013, Skarpelos withdraws the remainder of his post-sale balance from his WAM account.....	4
III. PROCEEDINGS IN THIS CASE.....	5

11	IV. ARGUMENT	6
12	A. Skarpelos received \$250,000 in his WAM account in exchange for 3,316,666 of the Anavex shares that Skarpelos had previously deposited.	6
13	B. In the alternative, Skarpelos is liable for the \$245,464.64 he withdrew from WAM on the basis of his Anavex stock.	8
14	C. Weiser is entitled to further discovery under NRCP 56(f) before summary judgement is appropriate.	10
15	V. CONCLUSION	11
16		
17		

Weiser explained that the April 2013 sales transaction was supported by Livadas’s declaration, by Skarpelos’s account statement with Weiser, and by Skarpelos’s subsequent cash withdrawals. *Id.* at 1, 4–5, 6, 7. Indeed, Weiser attempted to disabuse Skarpelos of his misbelief that the July 2013 PSA was the basis for its claim to the Anavex shares:

But Skarpelos misconstrues the nature of the PSA. It was meant to memorialize the April 2013 transaction, which the parties had already performed. Indeed, given that performance, Weiser did not even need a written contract. From its perspective, it only eventually needed the power of attorney so that it could resell the Anavex stock to third parties.

Id. at 6. In its order denying Skarpelos’s motion, the Court seemed to understand that Weiser’s argument was that Skarpelos sold the shares to Weiser in April 2013 and the July 2013 PSA was merely a retroactive memorialization of that completed transaction. Order (dated June 21, 2018) (“The Opposition claims Skarpelos sold the Disputed Shares to Weiser for \$250,000.00 in April 2013, for which Weiser delivered \$249,580.001 into Skarpelos’ WAM Account on April 2, 2013. The Opposition alleges the contract, although performed upon in April 2013, was not memorialized in writing and executed until July 2013.”) (citations omitted).

Accordingly, the July 2013 PSA was merely *additional* support for Weiser’s underlying argument that Skarpelos sold his Anavex shares to Weiser in April 2013. While Skarpelos has long labored to treat the April 2013 and July 2013 PSA as *two separate transactions*, they are indisputably part of the same essential sales transaction. At trial, it became clear that the PSA had no legal effect, but its failure as a written memorialization of the April 2013 sale does not invalidate a transaction that was already performed. As Weiser argued and Skarpelos never disputed, the July 2013 PSA was never a necessary component to the fully performed sale. MSJ

1 Opposition at 6; *see also id.* at 7 (“Moreover, even in the absence of the PSA, Weiser still has
2 an enforceable oral agreement that is demonstrated by Livadas’s testimony and the parties’
3 performance: WAM credited Skarpelos \$250,000 for the sale of 3,316,666 shares of Anavex
4 stock, which were already in its possession, and Skarpelos withdrew 98% of that amount from
5 his WAM account.”) (record and legal citations omitted).

6 Further, as explained in its Opposition to Skarpelos’s Motion To Alter or Amend
7 Judgment, Weiser asserted an alternative defense that Weiser could not retain the full value of
8 the Anavex shares due to the cash he had accepted on the basis of those shares under the
9 doctrine of unjust enrichment in its Seventh Affirmative Defense to Skarpelos’s Cross-Claim:

10
11 **SEVENTH AFFIRMATIVE DEFENSE**

12 Skarpelos is barred from retaining the full amount of the disputed stock by the doctrine
13 of unjust enrichment.

14 Weiser’s Answer to Skarpelos’s Cross-Claim.

15 Accordingly, the Orders’ assertion that Weiser’s sole claim was for entitlement to the
16 Anavex shares on the basis of the July 2013 PSA is contradicted by the prior pleadings in this
17 case.

18 **B. Weiser produced evidence supporting its legal theories.**

19 As the Order notes, a claim is considered groundless or frivolous when there is no
20 credible evidence at trial to support it. Order at 4. If Weiser’s *sole* claim in this case was that it
21 was entitled to the Anavex shares on the basis of the July 2013 PSA, perhaps relief under NRS
22 18.010(2)(b) would be justified. But critically, as shown above, this was not Weiser’s only
23 argument.

24 Rather, Weiser claimed entitlement to the shares on the basis of a fully executed sale
25 transaction that occurred in April 2013. This claim is supported by the following evidence:

- 26 1. Livadas’s testimony as to that transaction both at trial and in his declaration to
27 Skarpelos’s summary-judgment motion. Declaration of Christos Livadas In
28 Support Of Weiser’s Opposition To Skarpelos’s (1) Motion For Summary
Judgment And (2) Motion In Limine ¶13.

2. Skarpelos's account statement with Weiser for 2013 setting forth an entry for the "stock sale" in the amount of \$250,000, which corroborates Livadas's testimony:

	10,000 EUR			
03/25/2013	*Wire Out Fee	(125.00)		(153,804.54)
04/02/2013	*STOCK SALE ANAVEX LIFE SCIENCE CORP \$ 316,896	04/02/2013	249,580.00	96,775.48
05/09/2013	*Transfer TRANS USD TO EUR W200802992060913 15,000 EUR	05/14/2013	(20,068.40)	75,706.08

3. Evidence—the account statement's entries, emails, and testimony—that Skarpelos withdrew nearly \$250,000 cash from his Weiser account through a number of transactions (frequently involving his agent, Lambros Pedafronimos).
4. It was undisputed that Weiser was given physical possession of the stock certificates by Skarpelos.

Moreover, the Court held that much of the foregoing evidence was credible in its Judgment. Judgment ¶8.

Weiser believes that there continues to be a misunderstanding as to the nature of the April 2013 transaction. Simply, Skarpelos wanted cash in exchange for the securities he deposited with Weiser. Thus, from Skarpelos's view, he agreed to liquidate a certain amount of his Anavex stock in exchange for cash through Weiser, and it was immaterial who purchased or ultimately took possession of the stock so long as his Weiser account was credited with the cash. The only relevant terms of the transaction for Skarpelos were (a) the number of shares and (b) how much cash. From Weiser's perspective, it would pay cash for the shares and then immediately sell the stock, transferring the stock from Skarpelos's account ledger to the account ledger of the new owner.

Moreover, Weiser indisputably produced credible evidence in favor of its affirmative defense for unjust enrichment:

1. Livadas's testimony that Skarpelos withdrew nearly \$250,000 in cash from his Weiser account and that he never repaid Weiser.
2. Skarpelos's account statement, which corroborates Livadas's testimony:
3. Evidence of Skarpelos's numerous withdrawals.

1 Indeed, the Court not only found this evidence credible, it awarded judgment in Weiser’s favor
2 in the amount of \$245,464.64. Judgment ¶28. The Order notes that this award was “unrelated to
3 Weiser’s claims for relief.” Order at 4. To be sure, Weiser’s overriding aim was to demonstrate
4 its entitlement to the Anavex shares. But the Court’s award related directly to Weiser’s
5 affirmative defense for unjust enrichment.

6 Given the foregoing, it is indisputable that Weiser produced credible evidence
7 supporting both its claim to the Anavex shares and its unjust enrichment claim for Skarpelos’s
8 cash withdrawals.

9 **C. Skarpelos cannot claim prejudice.**

10 In addition to the foregoing, Skarpelos cannot claim to have been prejudiced as to the
11 nature of Weiser’s claims in this case. First, while Skarpelos claims that Weiser changed its
12 theory at trial, as explained above, Weiser articulated its theory that its claim to the stock was
13 based on the April 2013 sales transaction in its April 2018 opposition to Skarpelos’s motion for
14 summary judgment.¹ MSJ Opposition at 1, 4–5, 6, 7. Second, Weiser disclosed the account
15 statement showing the April 2013 sales transaction at the inception of the case. Third, in any
16 event, whether the sale took place in April or July 2013 was totally irrelevant to Skarpelos
17 because *he claimed that there was never any sale of his Anavex shares*. Accordingly, it mattered
18 not whether Weiser’s claim to the Anavex stock was based on the April 2013 sale or the July
19 2013 PSA that at one time was believed to memorialize it because Skarpelos maintained that
20 there was never any sale whatsoever and in fact Skarpelos claimed that he never even opened
21 account.

22 The Order reasons that “[h]ad Weiser admitted the July PSA was meaningless before
23 trial, the Cour may have been able to dismiss or summarily adjudicate this matter, thus
24 obviating the need for trial.” Order at 5. Not so. Again, Skarpelos claimed there was never any
25 stock sale in the first place, which the Court rejected. And the July 2013 PSA was never

26 _____
27 ¹ If the Court were to award fees on the basis of any confusion caused by the July 2013 PSA—
28 which Weiser does not believe is legally supportable in any event—at most its award must be
limited to fees accrued before Weiser clarified its position in its opposition to Skarpelos’s
motion for summary judgment.

1 necessary to Weiser's claim to the stock, which was based on the fully performed April 2013
2 sale transaction. *See, e.g., Stanley v. A. Levy & J. Zentner Co.*, 112 P.2d 1047, 1052 (Nev. 1941)
3 ("We agree that an oral contract which is capable of being fully performed within a year from
4 its execution, is not within the statute of frauds."); *Gravelle v. Burchett*, 73 Nev. 333, 341, 319
5 P.2d 140, 144 (1957) ("The proof of the oral agreement and the proof of partial, if not complete,
6 performance by the plaintiffs thereunder and of the partial performance by the defendant amply
7 justified the application of the rule" that part performance takes an agreement outside the statute
8 of frauds).

9 Moreover, because Skarpelos claimed there was no stock sale at all in 2013, a trial was
10 necessary on Weiser's unjust enrichment defense. Indeed, Skarpelos proclaimed throughout this
11 case that he never even opened an account with Weiser. Thus, even assuming Weiser had
12 stipulated that July 2013 PSA was void and relinquished its claim to the stock before trial, that
13 trial still would have been necessary on the issue of unjust enrichment because Skarpelos
14 adamantly denied that he ever made the nearly \$250,000 in withdrawals from his Weiser
15 account or that he even had a Weiser account.

16 II. CONCLUSION

17 Weiser asks that the Court reconsider its order granting Skarpelos his full attorney's fees
18 under NRS 18.010. Because of the magnitude of that award (\$216,900.50), Weiser asks that the
19 Court hold oral argument on this issue.

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

22 DATED this 19th day of August, 2019.

23
24 By /s/ Frank Z. LaForge
Jeremy J. Nork (SBN 4017)
Frank Z. LaForge (SBN 12246)
HOLLAND & HART LLP
5441 Kietzke Lane, Second Floor
Reno, NV 89511

25
26
27 Attorneys for Defendants/Cross-Claimants
Weiser
28

CERTIFICATE OF SERVICE

I, Martha Hauser, certify:

I am employed in the City of Reno, County of Washoe, State of Nevada by the law offices of Holland & Hart LLP. My business address is 5441 Kietzke Lane, Second Floor, Reno, Nevada 89511. I am over the age of 18 years and not a party to this action.

On August 19, 2019, I electronically filed the foregoing **WEISER'S MOTION FOR RECONSIDERATION OF ATTORNEY'S FEES AWARD**, with the Clerk of the Second Judicial District Court via the Court's e-Flex system. Service will be made by e-Flex on all registered participants.

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/s/ Martha Hauser
Martha Hauser

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1 **2645**

JOHN F. MURTHA, ESQ.

2 Nevada Bar No. 835

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3 Nevada Bar No. 6883

4 SETH J. ADAMS, ESQ.

Nevada Bar No. 11034

5 **WOODBURN AND WEDGE**

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10 *Attorneys for Defendant/Cross-Claimant*

11 *Athanasios Skarpepos*

12 IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
IN AND FOR THE COUNTY OF WASHOE

13 ***

14 NEVADA AGENCY AND TRANSFER
15 COMPANY, a Nevada corporation,

Case No. CV15-02259

Dept. No. 10

16 Plaintiff,

17 vs.

OPPOSITION TO MOTION
FOR RECONSIDERATION OF
ATTORNEY'S FEE AWARD

18 WEISER ASSET MANAGEMENT, LTD.,
19 a Bahamas company; ATHANASIOS
20 SKARPELOS, an individual; and
DOES 1-10,

21 Defendants.

22 _____/
ATHANASIOS SKARPELOS, an individual,

23 Cross-Claimant,

24 vs.

25 WEISER ASSET MANAGEMENT, LTD., a
26 Bahamas company, and WEISER (BAHAMAS)
27 LTD., a Bahamas company.

28 Cross-Defendants.
_____ /

1 WEISER ASSET MANAGEMENT, LTD.,
2 a Bahamas company, WEISER (BAHAMAS), LTD.,
3 a Bahamas company,

4 Cross-Claimants.

5 vs.

6 ATHANASIOS SKARPELOS, an individual,
7 Cross-defendant.

8 **OPPOSITION TO MOTION FOR RECONSIDERATION**
9 **OF ATTORNEY'S FEE AWARD**

10 Athanasios Skarpelos ("Skarpelos") opposes the Motion For Reconsideration of
11 Award Of Attorney's Fees ("Motion") filed by defendants Weiser Asset Management,
12 Ltd. ("WAM") and Weiser (Bahamas) Ltd. ("Weiser Capital").

13 **I. INTRODUCTION**

14 Weiser claims that the Court's Order Granting Motion For Attorney's Fees
15 ("Order") is "clearly erroneous" for three reasons: (1) the Order "misunderstands"
16 Weiser's legal theory; (2) Weiser produced evidence supporting its legal theories; and (3)
17 Skarpelos was not prejudiced by Weiser changing its legal theory at trial.

18 None of these arguments justify reconsideration. Initially, Weiser's motion is
19 procedurally defective and should not be considered by the Court. Further, Weiser's
20 arguments either (1) were already made in its opposition brief and rejected by the Court;
21 or (2) were not made and therefore were waived.¹ Weiser's Motion is an improper
22 attempt to get a second bite at the apple by rehashing arguments that were not persuasive
23 to the Court in the first instance. The Motion should be denied in its entirety.

24 **II. WEISER'S MOTION IS PROCEDURALLY DEFECTIVE**

25 As the basis of their motion, Weiser cites WDCR 12(8) and DCR 13(7). WDCR
26 12(8) provides that the rehearing of motions must be done in conformity with DCR 13(7).

27
28 ¹ Skarpelos incorporates by reference all of the briefing on his original Motion For Attorney's Fees. That briefing demonstrates that Weiser's Motion is unfounded and that nearly all of Weiser's arguments have already been made and are simply rehashed in its Motion.

1 DCR 13(7) provides: “No motion once heard and disposed of shall be renewed in the
2 same cause, nor shall the same matters therein embraced be reheard, unless by leave of the
3 court granted upon motion therefor, after notice of such motion to the adverse parties.”

4 Weiser has filed its motion for reconsideration without filing a motion for leave to
5 do so, and without the Court having granted such leave.² Therefore, Weiser’s motion is
6 procedurally defective and should not be entertained by the Court.

7 **III. WEISER FAILS TO DEMONSTRATE THAT THE COURT’S ORDER IS**
8 **“CLEARLY ERRONEOUS”**

9 **A. Legal Standard for Reconsideration**

10 Motions for reconsideration are not the proper vehicles for rehashing old
11 arguments or advancing theories that could have been presented earlier but were not.
12 *Resolution Trust Corp. v. Holmes*, 846 F.Supp. 1310, 1316 (S.D. Tex. 1994). Nor are
13 motions for reconsideration “intended to give an unhappy litigant one additional chance to
14 sway the judge.” *Durkin v. Taylor*, 444 F.Supp. 879, 889 (E.D.Va.1977).

15 Reconsideration is appropriate only when “substantially different evidence is
16 subsequently introduced or the decision is clearly erroneous.” *Masonry & Tile*
17 *Contractors Ass’n of S.Nev. v. Jolley, Urga & Wirth, Ltd.*, 113 Nev. 737, 741, 941 P.2d
18 486, 489 (1997). “To be clearly erroneous, a decision must strike [the court] as more than
19 just maybe or probably wrong; it must strike [the court] as wrong with the force of a five-
20 week-old unrefrigerated dead fish.” *Ocean Garden, Inc. v. Marktrade Co., Inc.*, 953 F.2d
21 500, 502 (9th Cir. 1991), citing *Parts & Elec. Motors, Inc. v. Sterling Elec., Inc.*, 866 F.2d
22 228, 233 (7th Cir. 1988) (to be clearly erroneous, the decision must be “dead wrong”).

23 There is no such stench here. The Court’s Order is not “dead wrong.” To the
24 contrary, it accurately summarizes the history of Weiser’s ownership claim in this matter
25 and that Weiser abandoned that claim at trial and further testified that it was not the
26 intended purchaser of the stock. The Order should stand as written.

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² Weiser’s motion briefly mentions seeking leave, but fully sets forth its grounds for reconsideration without the Court first having granted leave to do so.

1 **B. The Court accurately stated Weiser’s legal theory.**

2 Weiser claims the Court’s Order “misunderstands” Weiser’s legal theory, stating
3 that its claim to ownership of the disputed shares “was that Skarpelos sold the shares to
4 Weiser in April 2013 for \$250,000,” and that “[t]he July 2013 PSA was merely the
5 retroactive memorialization of that *already performed* transaction.” Motion at 2:12-16
6 (emphasis in original). Weiser goes on to state that this theory was explained in its April
7 2018 opposition to Skarpelos’ motion for summary judgment and attaches the table of
8 contents from that document, and that the Court “seemed to understand” Weiser’s
9 argument in its order denying summary judgment. *Id.* at 2:16-3:21.³

10 This is a rehash of the same argument Weiser made in its Opposition To
11 Skarpelos’ Motion For Attorneys’ Fees filed on May 24, 2019 (“Opposition to Fee
12 Motion”). In that brief, Weiser argued it “consistently held that its right to Anavex stock”
13 was based on the sale that occurred in April 2013 that was memorialized in the July 2013
14 PSA. Opposition to Fee Motion at 4:19-5:20. The Court already considered that argument
15 and rejected it, noting that Weiser abandoned that theory at trial. Order at 4:25-5:4; see
16 also Skarpelos’ Motion for Attorneys’ Fees at 2:19-4:28 (outlining the history of Weiser’s
17 claims through trial).

18 In both its Opposition to Fee Motion and the instant Motion, Weiser ignores the
19 trial testimony of its only witness, Christos Livadas (“Livadas”). Livadas testified that the
20 July 2013 PSA was intended for another transaction—not the April 2013 transaction—and
21 when that transaction didn’t happen, he used the document for another purpose, calling it
22 “meaningless.” He also departed from the position Weiser took during summary
23 judgment, at his deposition, and in Weiser’s trial statement that Weiser Capital was the
24 owner of the stock by virtue of the July 2013 PSA (memorializing a prior transaction), and
25 instead testified that the April 2013 transaction involved a sale to an unidentified third
26 party, but that WAM should somehow be deemed the owner of the disputed stock. This
27

28

³ It is ironic that Weiser attempted to “disabuse” Skarpelos that the July 2013 was the basis of Weiser’s claims, when that is exactly the allegation Weiser made in its cross-claims. Motion at 3:9-10.

1 was different than the initial representation to NATCO, that WAM was the owner of the
2 stock by virtue of the July 2013 PSA.

3 The Court correctly found that Livadas' trial testimony was different than the
4 position Weiser had taken all along. See Transcript of Proceedings, February 6, 2019
5 ("Transcript") at 21:6-20. The Court also noted Livadas' testimony that WAM was not
6 the owner of the stock. Id. at 21:21-22:2. The Court found that Weiser Capital had
7 absolutely nothing to do with the sale. Id. at 23:16-17. The Court concluded: "[T]here is
8 no evidence I can use to conclude that there was in fact a contract for the sale of shares of
9 stock to either Weiser Asset Management or to Weiser Capital." Id. at 20:23-21:3.

10 Thus, contrary to Weiser's contention, the Court perfectly understood Weiser's
11 legal theory all along and that Livadas' testimony was a radical departure from that
12 theory. As a last ditch-effort, Weiser offers a legal argument it did not assert in its
13 Opposition to Fee Motion—that somehow its affirmative defense of unjust enrichment
14 makes the Order "clearly erroneous." Motion at 4: 6-17. Not only has that argument been
15 waived, it lacks merit as well. The affirmative defense is that Skarpelos should be barred
16 from retaining the "full amount of the disputed stock." Motion at 4:11-13. The language
17 suggests that Weiser should be given some amount of the disputed stock, presumably
18 based on the alleged contract by which it was supposed to acquire the stock—the July
19 2013 PSA. Again, that was abandoned by Weiser and trial.

20 The award of fees was appropriate because Weiser maintained throughout the case
21 that it was the owner of the stock based on the July 2013 PSA. It abandoned that theory at
22 trial and Livadas testified that WAM was not the purchaser of the stock in the April 2013
23 transaction. Weiser's ownership claim was brought and maintained without reasonable
24 grounds. NRS 18.010(2)(b). Courts are directed to "liberally construe" that statute in
25 favor of awarding fees in all appropriate situations. The fee ward should not be disturbed.

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1 **C. There was no evidence supporting Weiser's claim to ownership of the**
2 **disputed stock.**

3 Weiser argues it presented evidence at trial to support its claim of ownership of the
4 disputed stock. Motion at 4:18-6:8. Specifically, Weiser cites:

- 5 1. Livadas' testimony re the April 2013 transaction both at trial and his
6 declaration during summary judgment briefing. Motion at 26-28.
- 7 2. Skarpelos' account statement, which was Exhibit 44 at trial. Id. at 5:1-6.
- 8 3. Evidence that Skarpelos withdrew money from his Weiser account. Id. at 7-8.
- 9 4. Weiser had physical possession of the stock certificates.

10 If these arguments sound familiar, it's because Weiser made the exact same
11 arguments in its Opposition to Fee Motion three months ago: (1) Weiser already argued
12 that Livadas' testimony supported its claim of ownership (see Opposition to Fee Motion at
13 4:3-10); (2) Weiser already argued that the account statement supported its claim of
14 ownership (Id. at 3:20-21); (3) Weiser already argued that the account statement entries
15 and related emails and testimony supported its claim of ownership (Id. at 3:22-25); and (4)
16 Weiser already argued that its physical possession of the stock certificate supported its
17 claim of ownership. (Id. at 3:13).

18 The Court has already heard and rejected those exact arguments. Weiser fails to
19 show how the Court's conclusion was "clearly erroneous." As Skarpelos argued in his
20 Reply in Support of Motion for Attorneys' Fees filed on June 7, 2019, none of that
21 evidence supports a conclusion that Weiser is the owner of the disputed stock. See Reply
22 at 5:1-7:2.

23 Weiser argues that it presented evidence that supports its affirmative defense of
24 unjust enrichment. Motion at 5:22-6:8. As discussed above, this argument was not made
25 in Weiser's Opposition to Fee Motion and has been waived. Further, that defense was
26 also tied to Weiser's claim of ownership of the disputed stock, as it essentially asked the
27 Court to award Weiser *some* of the stock. As the Court pointed out at trial, however,
28 Weiser was never intended to be the owner of the stock.

1 Weiser has failed to demonstrate that the Court's Order was "clearly erroneous."

2 **D. Weiser's argument re prejudice to Skarpelos is simply a rehash of its**
3 **prior arguments.**

4 Weiser argues that "Skarpelos cannot claim to have been prejudiced as to the
5 nature of Weiser's claims in this case," citing the following:

- 6 (1) Weiser argued its theory in opposition to summary judgment in April 2018;
- 7 (2) Weiser disclosed the account statement at the inception of the case;
- 8 (3) Whether the sale of stock took place in April or July of 2013 is irrelevant.

9 In its Opposition to Fee Motion, Weiser argued that Skarpelos had not been misled
10 as to Weiser's claims because: (1) Weiser explained the nature of the April 2013
11 transaction and subsequent memorialization in its opposition to summary judgment.
12 Opposition to Fee Motion at 5:8-10; (2) Weiser produced the account statement in its
13 initial disclosures. Id. at 5:6-7. Thus, those arguments have been heard and rejected.

14 Weiser's argument that the timing of the sale and the identity of the alleged
15 purchaser are irrelevant is new to the Motion, not having been raised in the Opposition to
16 the Fee Motion, and therefore has been waived. In any event, the Court has already noted
17 that the parties to a contract do have to be identified. See Transcript at 31:4-21. Further,
18 the timing matters because the July 2013 PSA that gave rise to all of Weiser's claims as
19 pleaded contained provisions that may have given rise to defenses that might not be
20 applicable to a separate transaction. In any event, Livadas' testimony at trial was that the
21 April 2013 transaction was a sale by Skarpelos to a third party, not to WAM or Weiser
22 Capital. This was different than any position Weiser had taken all along and entirely
23 inconsistent with Weiser's claim to ownership. In reality, Weiser's actual claim was for
24 damages, not ownership of the disputed stock.

25 Weiser then challenges the Court's statement that, had Weiser admitted before trial
26 that the July 2013 PSA was meaningless, the Court may have been able to dismiss or
27 summarily adjudicate this matter. Motion at 6:22-24. Weiser then tries to argue that the
28 July 2013 PSA was not necessary to Weiser's claims, even though it is the only document

1 and transaction referenced in its cross-claim for ownership of the disputed stock. Id. at
2 6:25-7:2. Weiser tries to persuade the Court that the April 2013 transaction was a
3 standalone oral contract by which “Weiser” (apparently WAM, not Weiser Capital this
4 time) became the owner of the stock. This again ignores Livadas’ testimony that WAM
5 was not the intended purchaser under that transaction.

6 Finally, Weiser again throws out the unjust enrichment defense, which was not
7 raised in its Opposition to Fee Motion and thus has been waived. Weiser claims that, if it
8 had relinquished its ownership claim before trial, a trial still would have been necessary
9 on its unjust enrichment defense. Motion at 7:11-13. Again, that defense was tied to
10 Weiser’s ownership claim, of which no evidence was produced. Further, if Weiser had
11 never asserted *ownership*, there would be no interpleader and therefore no equitable
12 defenses. Weiser would have to sue Skarpelos for breach of the account agreement,
13 which it never did.

14 Weiser improperly focuses on hypotheticals rather than what actually happened in
15 this case. What happened is that Weiser filed pleadings alleging the July 2013 PSA as the
16 basis of its claim for ownership in this case, and then after three years of litigation failed
17 to present any credible evidence at trial to establish itself as the owner of the stock. The
18 Court’s Order properly awarded Skarpelos the fees he sought.

19 **IV. SKARPELOS SHOULD BE AWARDED ADDITIONAL FEES**

20 The Motion is a rehash of Weiser’s prior Opposition to Fee Motion. It is a
21 frivolous filing, and Skarpelos should be awarded an additional \$3,500 for having to
22 respond to the Motion.

23 **V. THE REQUEST FOR ORAL ARGUMENT SHOULD BE DENIED**

24 Weiser requests oral argument, citing the “magnitude of the award.” Motion at
25 7:18-19. The amount awarded was the exact amount requested in Skarpelos’ Motion For
26 Attorneys’ Fees filed on April 25, 2019. Yet Weiser did not request oral argument in its
27 Opposition to Fee Motion. Only after receiving an adverse decision does Weiser suggest
28 that the magnitude of fees warrants oral argument.

1 WDCR 12(5) provides that decisions on motion “shall be rendered without oral
2 argument unless oral argument is ordered by the court....” There is no good reason for
3 oral argument on Weiser’s Motion. The Court has already considered and rejected
4 Weiser’s arguments as to why the Court should not award fees. It would be a waste of
5 time, money and judicial resources to schedule an oral argument in which Weiser could
6 present these same arguments for a third time.

7 **VI. CONCLUSION**

8 Weiser has failed to demonstrate that the Court’s Order is clearly erroneous or
9 otherwise appropriate for reconsideration. Its Motion is procedurally defective and
10 substantively deficient. Weiser has failed to demonstrate that the Order is “wrong with
11 the force of a five-week-old unrefrigerated dead fish.” Thus, Weiser’s Motion should be
12 denied in its entirety.

13 **AFFIRMATION**

14 The undersigned does hereby affirm that the preceding document does not contain the
15 personal information of any person.

16 DATED: August 28, 2019.

WOODBURN AND WEDGE

18 By /s/ Dane W. Anderson

19 John F. Murtha, Esq.
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20 Dane W. Anderson, Esq.
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21 Seth J. Adams, Esq.
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7 **IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA**

8 **IN AND FOR THE COUNTY OF WASHOE**

9
10 NEVADA AGENCY AND TRANSFER
COMPANY, a Nevada Corporation,

Case No. CV15 02259

Dept. No. 10

11
12 Plaintiff,

NOTICE OF CROSS-APPEAL

13 v.

14 WEISER ASSET MANAGEMENT, LTD., a
Bahamas company, ATHANASIOS
15 SKARPELOS, an individual, and DOES 1
through 10,

16 Defendants.

17
18 AND RELATED ACTIONS.

19
20 NOTICE IS HEREBY GIVEN that Defendants/Cross-Claimants Weiser Asset
21 Management, Ltd., and Weiser (Bahamas) Ltd., appeal to the Supreme Court of Nevada from
22 the Second Judicial District Court's Order Granting Motion For Attorney's Fees, entered in this
23 action on August 9, 2019, and attached hereto as **Exhibit 1**, as well as the District Court's
24 Findings of Fact, Conclusions of Law and Judgment on April 22, 2019, a copy of which is
25 attached as **Exhibit 2**.

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

3 DATED this 29th day of August, 2019.

4
5 By /s/ Jeremy J. Nork
6 Jeremy J. Nork (SBN 4017)
7 Frank Z. LaForge (SBN 12246)
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15 Attorneys for Defendants/Cross-Claimants
16 Weiser
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EXHIBIT INDEX

EXHIBIT #	DESCRIPTION	# OF PAGES
1	Notice of Entry of Order Granting Motion for Attorney's Fees	12
2	District Court's Findings of Fact, Conclusions of Law and Judgment on April 22, 2019.	9

CERTIFICATE OF SERVICE

I, Amanda De La Rosa, certify:

I am employed in the City of Reno, County of Washoe, State of Nevada by the law offices of Holland & Hart LLP. My business address is 5441 Kietzke Lane, Second Floor, Reno, Nevada 89511. I am over the age of 18 years and not a party to this action.

On August 29, 2019, I electronically filed the foregoing **NOTICE OF CROSS-APPEAL**, with the Clerk of the Second Judicial District Court via the Court's e-Flex system. Service will be made by e-Flex on all registered participants.

John F. Murtha, Esq.
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Seth J. Adams, Esq.
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/s/ Amanda De La Rosa
Amanda De La Rosa

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EXHIBIT 1

IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
IN AND FOR THE COUNTY OF WASHOE

NEVADA AGENCY AND TRANSFER
COMPANY, a Nevada corporation,

Plaintiff,

Case No. CV15-02259

vs.

Dept. No. 10

WEISER ASSET MANAGEMENT, LTD.,
a Bahamas company, WEISER (BAHAMAS)
LTD., a Bahamas company, ATHANASIOS
SKARPELOS, an individual, and DOES 1
through 10,

Defendants.

ORDER GRANTING MOTION FOR ATTORNEY'S FEES

Presently before the Court is the MOTION FOR ATTORNEYS' FEES ("the Motion") filed by Defendant ATHANASIOS SKARPELOS ("Mr. Skarpelos") on April 25, 2019. Mr. Skarpelos contemporaneously filed the DECLARATION OF DANE W. ANDERSON IN SUPPORT OF MOTION FOR ATTORNEYS' FEES ("the Declaration"). Defendants WEISER ASSET MANAGEMENT, LTD. and WEISER (BAHAMAS) LTD. (collectively, "Weiser") filed WEISER'S OPPOSITION TO SKARPELOS'S MOTION FOR ATTORNEY'S FEES ("the Opposition") on May 24, 2019. Mr. Skarpelos filed the REPLY IN SUPPORT OF MOTION FOR ATTORNEY'S FEES ("the Reply") on June 7, 2019, and contemporaneously submitted the matter for the Court's consideration.

1 This case was initiated by Plaintiff NEVADA AGENCY AND TRANSFER COMPANY
2 ("the Plaintiff") as an interpleader action to resolve a dispute over ownership of 3,316,666 shares of
3 stock in Anavex Life Sciences Corp.¹ On May 24, 2016, Weiser filed WEISER'S ANSWER AND
4 CROSS-CLAIM ("the A&C") which contained three cross-claims: 1) Declaratory Judgment; 2)
5 Breach of Contract; and 3) Breach of the Implied Covenant of Good Faith and Fair Dealing. The
6 A&C 10-12. The Court presided over a bench trial beginning on January 28, 2019, to resolve the
7 competing claims between Weiser and Mr. Skarpelos to the shares. The Court entered the
8 FINDINGS OF FACT, CONCLUSIONS OF LAW AND JUDGMENT ("the FFCLJ") on April 22,
9 2019. The Court determined that Mr. Skarpelos was the rightful owner of the shares. The FFCLJ,
10 p. 7 ¶ 25. However, the Court invoked its equitable jurisdiction to enter judgment against Mr.
11 Skarpelos in the amount of \$245,464.64. The FFCLJ, p. 7-8 ¶ 28.

14 Mr. Skarpelos contends he is entitled to an award of \$216,900.50 in attorney's fees because
15 Weiser's cross-claims and defenses were maintained without reasonable grounds or to harass Mr.
16 Skarpelos. The Motion 2:9-17; 7:21-28. Mr. Skarpelos contends Weiser changed its legal theory
17 during trial and that its cross-claims and defenses were not supported by credible evidence and are
18 thus frivolous. The Motion 7:1-11. Weiser makes the following arguments in response: 1) Weiser
19 won a quarter-million dollar judgment, which demonstrates its claims were not frivolous; 2) even if
20 Weiser's claims were unsuccessful, they were supported by substantial evidence and reasonable
21 grounds; 3) Weiser did not change its legal theory and, even if it did, changing a legal theory is not
22 a basis for an award of attorney's fees; and 4) Mr. Skarpelos fails to explain how the requested
23 amount is reasonable and necessary. The Opposition 1:25-28; 2:1-7; 3-6. Mr. Skarpelos responds

27 ¹ The Plaintiff was discharged from the action in the ORDER GRANTING MOTION FOR DISCHARGE filed on
28 January 23, 2019.

1 as follows: 1) Weiser changed its argument at trial regarding the July 2013 Purchase and Sale
2 Agreement ("the July PSA"), and began arguing it was a meaningless document; 2) the award of
3 \$245,464.64 was not based on any of Weiser's claims; 3) Weiser presented no credible evidence to
4 supports its claims because all of the claims were premised on the July PSA; 4) Weiser abandoned
5 its pleadings and legal theories at trial; and 5) the requested fees are reasonable considering the
6 duration and nature of the litigation. The Reply 3:2-27; 5:1-6; 6:24-26; 7:4-17; 8:4-24.

8 Attorney's fees are recoverable where authorized by agreement, statute or rule. *Wheeler*
9 *Springs Plaza, LLC v. Beemon*, 119 Nev. 260, 268, 71 P.3d 1258, 1263 (2003) (quoting *Young v.*
10 *Nev. Title Co.*, 103 Nev. 436, 442, 744 P.2d 902, 905 (1987)). NRS 18.010(2)(b) permits an award
11 of attorney's fees where:
12

13 Without regard to the recovery sought, when the court finds that the claim, counterclaim,
14 cross-claim or third-party complaint or defense of the opposing party was brought or
15 maintained without reasonable ground or to harass the prevailing party. The court shall
16 liberally construe the provisions of this paragraph in favor of awarding attorney's fees in all
17 appropriate situations. It is the intent of the Legislature that the court award attorney's fees
18 pursuant to this paragraph and impose sanctions pursuant to Rule 11 of the Nevada Rules of
19 Civil Procedure in all appropriate situations to punish for and deter frivolous or vexatious
claims and defenses because such claims and defenses overburden limited judicial resources,
hinder the timely resolution of meritorious claims and increase the costs of engaging in
business and providing professional services to the public.

20 NRCP 11(b) provides:

21 Representations to the Court. By presenting to the court a pleading, written motion, or other
22 paper--whether by signing, filing, submitting, or later advocating it--an attorney or
23 unrepresented party certifies that to the best of the person's knowledge, information, and
belief, formed after an inquiry reasonable under the circumstances:

24 (1) it is not being presented for any improper purpose, such as to harass, cause
25 unnecessary delay, or needlessly increase the cost of litigation;

26 (2) the claims, defenses, and other legal contentions are warranted by existing law or by
27 a nonfrivolous argument for extending, modifying, or reversing existing law or for
28 establishing new law;

1 (3) the factual contentions have evidentiary support or, if specifically so identified, will
2 likely have evidentiary support after a reasonable opportunity for further
3 investigation or discovery; and

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

6 A claim will be considered groundless or frivolous if there is no credible evidence at trial to
7 support it. *Frederic and Barbara Rosenberg Living Tr. v. MacDonald Highlands Realty, LLC*, 134
8 Nev. Adv. Op. 69, 427 P.3d 104, 113 (2018) (citing *Semenza v. Caughlin Crafted Homes*, 111 Nev.
9 1089, 1095, 901 P.2d 684, 687-88 (1995)). See also *Capanna v. Orth*, 134 Nev. Adv. Op. 108, 432
10 P.3d 726, 734 (2018). "Determining whether attorney fees should be awarded under NRS
11 18.010(2)(b) requires the court to inquire into the actual circumstances of the case, 'rather than a
12 hypothetical set of facts favoring plaintiff's averments.'" *Baldonaldo v. Wynn Las Vegas, LLC*, 124
13 Nev. 951, 967-68, 194 P.3d 96, 106-07 (2008) (citations omitted). Per *Brunzell*, the court must
14 analyze whether the requested attorney's fees are reasonable using the following factors:
15

16 (1) the qualities of the advocate: his ability, his training, education, experience, professional
17 standing and skill; (2) the character of the work to be done: its difficulty, its intricacy, its
18 importance, time and skill required, the responsibility imposed and the prominence and
19 character of the parties where they affect the importance of the litigation; (3) the work
20 actually performed by the lawyer: the skill, time and attention given to the work; (4) the
21 result: whether the attorney was successful and what benefits were derived.

22 *Brunzell v. Golden Gate Nat. Bank*, 95 Nev. 345, 349, 455 P.2d 31, 33 (1969).

23 The Court will grant the Motion because Weiser unreasonably maintained its claim to
24 ownership of the stock by virtue of the July PSA. While the Court awarded Weiser equitable relief,
25 the award was unrelated to Weiser's claims for relief and was an exercise of the Court's equitable
26 jurisdiction over this matter. See the FFCLJ 7-8 ¶ 28. Until trial, Weiser indicated its cross-claims
27 were supported by the July PSA. See the A&C 10-12. See also Trial Ex. 30. At trial, Weiser
28 abandoned the theory that its claim of ownership was supported by the July PSA, and Mr. Livadas

1 testified the July PSA was meaningless and used for another purpose. The FFCLJ 3-4 ¶ 9. The
2 Court found this testimony extremely troubling, given the consistency with which Weiser had held
3 its position about the July PSA before trial. Had Weiser admitted the July PSA was meaningless
4 before trial, the Court may have been able to dismiss or summarily adjudicate this matter, thus
5 obviating the costs incurred during trial. While Weiser is correct that evidence may develop over
6 the course of a trial, a sudden change in legal theory undermines pretrial procedure and motion
7 practice and can result in the accumulation of needless costs. For these reasons, Weiser
8 unreasonably maintained its claim to ownership by virtue of the July PSA.
9

10
11 The Court will award \$216,900.50 in attorney's fees because the requested fees are
12 reasonable. Considering the qualities of Mr. Skarpelos' legal team, both Dane Anderson ("Mr.
13 Anderson") and John Murtha ("Mr. Murtha") are experienced litigators with a shared total of 55
14 years of legal experience. See the Declaration 2:12-20. Mr. Anderson and Mr. Murtha charged
15 reasonable fees, ranging from \$350.00 to \$375.00 per hour, and billed \$150.00 to \$300.00 per hour
16 for their associates' work. Mr. Skarpelos' legal team worked diligently on this matter over the
17 course of three years, including traveling to Greece to take key depositions and representing Mr.
18 Skarpelos during a five-day bench trial. The number of hours spent on this matter were also
19 reasonable, given the three-year duration of this case and the fact it proceeded to trial. See the
20 Declaration Ex. 1, p. 19. Furthermore, Mr. Skarpelos' legal team obtained a successful result in
21 this litigation. Mr. Skarpelos prevailed on his claim for declaratory relief, and he was ultimately
22 declared the owner of the stock. The equitable award to Weiser does not cast doubt on the efficacy
23 of Mr. Skarpelos' legal team, and the Court will award \$216,900.50 in attorney's fees.
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1 **IT IS ORDERED** the MOTION FOR ATTORNEYS' FEES is hereby **GRANTED**.

2 **DATED** this 9 day of August, 2019.

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5 ELLIOTT A. SATTLER
6 District Judge
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1 **CERTIFICATE OF MAILING**

2 Pursuant to NRCP 5(b), I certify that I am an employee of the Second Judicial District Court
3 of the State of Nevada, County of Washoe; that on this ____ day of August, 2019, I deposited in the
4 County mailing system for postage and mailing with the United States Postal Service in Reno,
5 Nevada, a true copy of the attached document addressed to:
6
7

8 **CERTIFICATE OF ELECTRONIC SERVICE**

9 I hereby certify that I am an employee of the Second Judicial District Court of the State of
10 Nevada, in and for the County of Washoe; that on the 9 day of August, 2019, I electronically filed
11 the foregoing with the Clerk of the Court by using the ECF system which will send a notice of
12 electronic filing to the following:
13

14 JOHN F. MURTHA, ESQ.

15 DANE W. ANDERSON, ESQ.

16 JEREMY J. NORK, ESQ.

17 FRANK Z. LAFORGE, ESQ.
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Sheila Mansfield
Judicial Assistant

EXHIBIT 2

1 1750

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6 IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
7 IN AND FOR THE COUNTY OF WASHOE

8 NEVADA AGENCY AND TRANSFER
9 COMPANY, a Nevada corporation,

Case No. CV15-02259
Dept. No. 10

10 Plaintiff,

11 vs.

FINDINGS OF FACT,
CONCLUSIONS OF LAW, AND
JUDGMENT

12 WEISER ASSET MANAGEMENT, LTD.,
13 a Bahamas company; ATHANASIOS
14 SKARPELOS, an individual; and
DOES 1-10,

15 Defendants.

16 _____/
ATHANASIOS SKARPELOS, an individual,

17 Cross-Claimant,

18 vs.

19 WEISER ASSET MANAGEMENT, LTD., a
20 Bahamas company, and WEISER (BAHAMAS)
21 LTD., a Bahamas company.

22 Cross-Defendants.

23 _____/
WEISER ASSET MANAGEMENT, LTD.,
24 a Bahamas company, WEISER (BAHAMAS), LTD.,
a Bahamas company,

25 Cross-Claimants.

26 vs.

27 ATHANASIOS SKARPELOS, an individual,
28 Cross-defendant.

1 **FINDINGS OF FACT, CONCLUSIONS OF LAW, AND JUDGMENT**

2 This action came before this Court for a bench trial on January 28, 2019. This is
3 an interpleader action filed by Nevada Agency and Transfer Company ("NATCO"),
4 which was discharged from liability and dismissed from the case prior to trial. The
5 operative pleadings to be resolved by the Court at trial were: (1) the Answer To Amended
6 Complaint and Crossclaim filed by defendant Athanasios Skarpelos ("Skarpelos") on May
7 23, 2016 and (2) the Answer and Cross-Claim filed by defendants Weiser Asset
8 Management, Ltd. ("WAM") and Weiser (Bahamas) Ltd. ("Weiser Capital") (WAM and
9 Weiser Capital are sometimes collectively referred to herein as "Weiser"). As framed by
10 the pleadings, Skarpelos and Weiser asserted competing claims to 3,316,666 shares of
11 stock (the "Disputed Stock") in Anavex Life Sciences Corp. ("Anavex").

12 During the trial, the Court listened to the testimony of the following people:
13 Christos Livadas ("Livadas"), Skarpelos, Alexander Walker ("Walker") and Lambros
14 Pedafronimos ("Pedafronimos"). The Court also reviewed and considered documentary
15 evidence that was admitted at trial.

16 Based on the evidence presented at trial, the Court enters the following findings
17 of fact, conclusions of law and judgment in this matter.

18 **FINDINGS OF FACT**

19 1. WAM is a Class 1 broker-dealer registered with and regulated by the
20 Financial Services Authority and Securities Commission of the Bahamas. WAM is also a
21 registered foreign broker-dealer in Canada, regulated by the Ontario Securities
22 Commission.

23 2. Weiser Capital is an affiliate entity to WAM and provides investment
24 banking advisory services and deal arrangements as an investor and principal on behalf of
25 WAM and its clients. Basically, Weiser Capital would direct clients to WAM. Livadas is
26 the owner and director of Weiser Capital.

27 3. Livadas is also the owner and director of Weiser Holdings, Ltd. ("Weiser
28 Holdings"). Weiser Holdings acquired WAM in 2014 and is now the parent company of

1 WAM. Prior to that acquisition, WAM and Weiser Capital were two entirely separate
2 entities.

3 4. The prior owner of WAM was Equity Trust Bahamas, Ltd. ("Equity
4 Trust"). One of the principals of Equity Trust was Howard Daniels ("Daniels"), who later
5 became one of two contacts that Skarpelos had at WAM in 2011.

6 5. In 2011, Skarpelos applied for and opened an account with WAM.
7 Skarpelos funded the account with his Anavex Stock Certificates Nos. 0660 ("Certificate
8 No. 660") and No. 0753 ("Certificate No. 753"). Certificate 660 represents 92,500 shares
9 of Anavex stock and was issued to Skarpelos in 2007. Certificate 753 represents
10 6,633,332 shares of Anavex stock and was issued to Skarpelos in 2009. In opening the
11 account, Skarpelos was assisted by Daniels and Pedafronimos.

12 6. Skarpelos withdrew money, or had people withdraw money on his behalf,
13 from his WAM account. In doing so, Skarpelos took his account balance into a negative
14 position in the amount of \$153,679.54 as of March 25, 2013.

15 7. In early 2013, Skarpelos caused NATCO to cancel Stock Certificates No.
16 660 and No. 753, falsely reporting them as "lost" when in fact he knew the certificates had
17 been deposited with WAM in 2011.

18 8. On April 2, 2013, there was a sale of 3,316,666 shares of Skarpelos'
19 Anavex stock represented by Certificate 753 to an unidentified third party. Pursuant to
20 this transaction, WAM credited Skarpelos' account in the amount of \$249,580, taking it to
21 a positive balance of \$95,775.46. Thereafter, a substantial portion of that money was
22 withdrawn from Skarpelos' account leaving a balance of \$4,115.36 as of December 31,
23 2013. The withdrawn money was provided from Skarpelos' WAM account to
24 Pedafronimos, and Pedafronimos withdrew that money through transactions in May, July,
25 August and September of 2013 and presumably gave that money to Skarpelos.

26 9. The Answer and Cross-Claim filed by WAM and Weiser Capital claimed
27 ownership of the Disputed Stock under the terms of a July 5, 2013 Stock Sale and
28 Purchase Agreement ("July 2013 PSA"). The July 2013 PSA does not evidence a sale of

1 any kind to anybody. At trial, Livadas testified he used this document for something other
2 than its intended purpose and that, contrary to Weiser's claims throughout this case, it is a
3 meaningless document.

4 10. There is no evidence of a contract between Skarpelos and either WAM or
5 Weiser Capital for the sale of Anavex stock at any time. Although Weiser asserted
6 throughout this case that "it" was the owner of the Disputed Stock by virtue of the July
7 2013 PSA, Livadas and WAM abandoned that claim at trial and instead relied on a new
8 theory that WAM is the owner of the stock by virtue of the April 2, 2013 transaction.
9 However, Livadas also testified that WAM was not even the purchaser of the stock under
10 the April 2, 2013 transaction and that the stock was just transferred through WAM to a
11 third party.

12 11. Weiser Capital had absolutely nothing to do with any sale by Skarpelos of
13 any Anavex stock at any time. At best what happened in this case was that, arguably,
14 WAM was just transferring the stock sold on April 2, 2013 to somebody else. WAM was
15 never intended to be the purchaser of that stock, and there was no such agreement between
16 Skarpelos and WAM.

17 12. No contract was formed for the sale of Anavex stock from Skarpelos to
18 either WAM or Weiser Capital at any time. Because there is no contract between
19 Skarpelos and WAM and/or Weiser Capital, the Weiser claims for declaratory relief,
20 breach of contract and breach of the implied covenant of good faith and fair dealing all
21 fail because they all rely entirely upon the existence of a contract.

22 13. Any conclusion of law set forth below which is more appropriately a
23 finding of fact is hereby incorporated as a finding of fact.

24 CONCLUSIONS OF LAW

25 14. "Basic contract principles require, for an enforceable contract, an offer and
26 acceptance, meeting of the minds, and consideration." *Certified Fire Prot. Inc. v.*
27 *Precision Construction, Inc.*, 128 Nev. 371, 378, 283 P.3d 250, 255 (2012), citing *May v.*
28 *Anderson*, 121 Nev. 668, 672, 119 P.3d 1254, 1257 (2005). "A meeting of the minds

1 exists when the parties have agreed upon the contract's essential terms." *Id.*, citing *Roth v.*
2 *Scott*, 112 Nev. 1078, 1083, 921 P.2d 1262, 1296 (1996). "Which terms are essential
3 depends on the agreement and its context and also on the subsequent conduct of the
4 parties, including the dispute which arises and the remedy sought." *Id.*, citing
5 Restatement (Second) of Contracts § 131 cmt. g (1981). Whether a contract exists is a
6 question of fact entitled to deference unless clearly erroneous or not based on substantial
7 evidence. *Id.*, citing *May v. Anderson*, 121 Nev. at 672-73, 119 P.3d at 1257.

8 15. When the essential terms of a contract have yet to be agreed upon by the
9 parties, a contract cannot be formed. *Certified Fire*, 128 Nev. at 379, 283 P.3d at 255,
10 citing *Nevada Power Co. v. Public Util. Comm'n*, 122 Nev. 821, 839-840, 138 P.3d 486,
11 498-499 (2006).

12 16. Here, there is no evidence of an offer and acceptance between Skarpelos
13 and either WAM or Weiser Capital, nor is there any meeting of the minds as to the
14 relevant and essential terms of any contract. The Court concludes as a matter of law that
15 there was no contract between Skarpelos and either WAM or Weiser Capital for the sale
16 and purchase of any Anavex stock at any time, much less the Disputed Stock.

17 17. In order to establish a claim for breach of contract, the claiming party must
18 establish: (1) the existence of a valid contract; (2) a breach by the defendant; and (3)
19 damage as a result of the breach. *Saini v. Int'l Game Tech.*, 434 F.Supp.2d 913, 919-920
20 (D. Nev. 2006), citing *Richardson v. Jones*, 1 Nev. 405, 405 (Nev. 1865).

21 18. Because the Court has found that no valid contract existed between
22 Skarpelos and either WAM or Weiser Capital, Weiser's claim for breach of contract fails.

23 19. In order to establish a claim for breach of the implied covenant of good
24 faith and fair dealing, the claiming party must establish: (1) that the plaintiff and
25 defendant were parties to an agreement; (2) that defendant owed a duty of good faith to
26 the plaintiff; (3) the defendant breached that duty by performing in a manner that is
27 unfaithful to the purpose of the contract; and (4) that plaintiff's justified expectations were
28

1 denied. *Hilton Hotels Corp. v. Butch Lewis Prod., Inc.*, 107 Nev. 226, 234, 808 P.2d 919,
2 923 (1991).

3 20. Because the Court has found that no valid contract existed between
4 Skarpelos and either WAM or Weiser Capital, Weiser's claim for breach of the implied
5 covenant of good faith and fair dealing fails.

6 21. Although not raised by Weiser's pleadings, the Court further concludes that
7 there is no contract implied-in-fact between Skarpelos and either WAM or Weiser Capital.
8 Quantum meruit applies in actions based upon contracts implied-in-fact. *Certified Fire*,
9 128 Nev. at 379, 283 P.3d at 256. "A contract implied-in-fact must be manifested by
10 conduct; it is a true contract that arises from the tacit agreement of the parties." *Id.*
11 (internal quotations and citations omitted). "To find a contract implied-in-fact, the fact-
12 finder must conclude that the parties intended to contract and promises were exchanged,
13 the general obligations for which must be sufficiently clear. *Id.*, 128 Nev. at 379-380, 238
14 P.3d at 257. "It is at that point that a party may invoke quantum meruit as a gap-filer to
15 supply the absent term." *Id.*, 128 Nev. at 380, 238 P.3d at 257. "Where such a contract
16 exists, then, quantum meruit ensures the laborer receives the reasonable value, usually
17 market price, for his services." *Id.*

18 22. Even if Weiser had timely raised this issue in its pleadings, the Court
19 concludes there is no contract implied-in-fact because there is no evidence that Skarpelos
20 intended to contract with either WAM or Weiser Capital. The Court concludes that the
21 parties to the contract must be identified, and in this case Livadas' testimony was unclear
22 whether WAM or Weiser Capital was the supposed purchaser of the stock. If the Court
23 cannot even establish that basic premise, it cannot find or conclude that there is an oral
24 contract, a written contract, or even an implied-in-fact contract. The Court cannot find or
25 conclude there was a meeting of the minds because neither WAM nor Weiser Capital
26 seems to know who claims to be the owner.

27 23. "When sitting in equity, however, courts must consider the entirety of the
28 circumstances that bear upon the equities." *Shadow Wood Homeowners Ass'n, Inc. v.*

1 *New York Community Bancorp., Inc.*, 132 Nev. Adv. Op. 5, 366 P.3d 1105, 1114 (2016).
2 “This includes considering the status and actions of all parties involved, including whether
3 an innocent party may be harmed by granting the desired relief.” *Id.*, 366 P.3d at 1115,
4 citing *Smith v. U.S.*, 373 F.2d 419, 424 (4th Cir. 1996) (“Equitable relief will not be
5 granted to the possible detriment of innocent third parties.”) (other citations omitted). It is
6 a “recognized province” of a court sitting in equity to do “complete justice between the
7 parties.” *MacDonald v. Krause*, 77 Nev. 312, 318, 362 P.2d 724, 727 (1961).

8 24. “Interpleader is an equitable proceeding to determine the rights of rival
9 claimants to property held by a third person having no interest therein.” *Balish v.*
10 *Farnham*, 92 Nev. 133, 137, 546 P.2d 1297, 1299 (1976). “In such a proceeding, each
11 claimant is treated as a plaintiff and must recover on the strength of his own right to title
12 and not upon the weakness of his adversary’s. *Id.*, 92 Nev. at 137, 546 P.2d at 1300. In
13 an interpleader action, each claimant must succeed in establishing his right to the property
14 by a preponderance of the evidence. *Midland Ins. Co. v. Friedgood*, 577 F.Supp. 1407
15 (S.D.N.Y. 1984).

16 25. Based on the foregoing, Skarpelos’ single cause of action for declaratory
17 relief is granted. Skarpelos is the owner of all shares of Anavex stock previously
18 represented by Certificates Nos. 660 and 753 and now represented by Certificate No. 975.

19 26. Neither WAM nor Weiser Capital, nor anyone claiming through WAM or
20 Weiser Capital, has any ownership interest in Anavex stock represented by Certificates
21 Nos. 660, 753 or 975.

22 27. Weiser’s claims for declaratory relief, breach of contract and breach of the
23 implied covenant of good faith and fair dealing are all dismissed.

24 28. However, as indicated above, the Court finds that Skarpelos agreed to sell
25 shares on April 2, 2013 to an unknown third party and that, as a result, WAM credited
26 Skarpelos’ account \$249,580 pursuant to that transaction. This credit took the account
27 from a balance of negative \$153,679.54 to a positive balance of \$95,775.46. The Court
28 further found that Skarpelos subsequently withdrew and received a substantial portion of

1 those funds, eventually leaving a balance of \$4,115.36. Therefore, despite Weiser's
2 failure to plead this claim for relief, the Court concludes it has equitable jurisdiction to
3 enter judgment against Skarpelos and in favor of WAM in the total amount of
4 \$245,464.64. Allowing Skarpelos to retain ownership of the Disputed Stock and the funds
5 he received would result in a windfall. This is an obligation that is separate from and
6 independent of Skarpelos' ownership of stock in Anavex and has no bearing on his
7 ownership.

8 29. Any finding of fact set forth above which is more appropriately a
9 conclusion of law is hereby incorporated as a conclusion of law.

10 **JUDGMENT**

11 Based on the foregoing findings of fact and conclusions of law,

12 IT IS HEREBY ORDERED AND ADJUDGED that Athanasios "Tom" Skarpelos
13 is the sole, true and rightful owner of all shares of stock in Anavex Life Sciences Corp.,
14 previously represented by Certificates Nos. 660 and 753 and now represented by
15 Certificate No. 975.

16 IT IS HEREBY FURTHER ORDERED AND ADJUDGED that neither Weiser
17 Asset Management, Ltd. (referred to above as WAM) nor Weiser (Bahamas) Ltd.
18 (referred to above as Weiser Capital) have any claim of ownership to any of the shares
19 previously represented by Certificates No. 660 and 753 and now represented by
20 Certificate No. 975, nor does any other person or entity claiming any ownership to said
21 shares by or through Weiser Asset Management, Ltd. or Weiser (Bahamas) Ltd.

22 IT IS HEREBY FURTHER ORDERED that Nevada Agency and Transfer
23 Company shall take such action as is necessary to reflect in Anavex's stock register,
24 corporate books and records that Athanasios "Tom" Skarpelos is the sole, true and rightful
25 owner of all the legal and equitable interest in all the shares previously represented by
26 Certificates No. 660 and 753 and now represented by Certificate No. 975.

1 IT IS HEREBY FURTHER ORDERED AND ADJUDGED that judgment is
2 entered against Athanasios "Tom" Skarpelos and in favor of WAM in the total amount of
3 \$245,464.64.

4 Dated this 22 day of April, 2019.

5 
6 DISTRICT JUDGE

1 **3785**

2 Jeremy J. Nork (SBN 4017)
3 Frank Z. LaForge (SBN 12246)
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6 Attorneys for Defendants/Cross-Claimants Weiser

7 **IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA**

8 **IN AND FOR THE COUNTY OF WASHOE**

9 NEVADA AGENCY AND TRANSFER
10 COMPANY, a Nevada Corporation,

Case No. CV15 02259

Dept. No. 10

11 Plaintiff,

**REPLY IN SUPPORT OF WEISER'S
MOTION FOR RECONSIDERATION
OF ATTORNEY'S FEES AWARD**

12 v.

13 WEISER ASSET MANAGEMENT, LTD., a
14 Bahamas company, ATHANASIOS
15 SKARPELOS, an individual, and DOES 1
16 through 10,

Defendants.

17
18 AND RELATED ACTIONS.
19

20 Weiser's Motion For Reconsideration Of Attorney's Fees Award (the "Motion")
21 explained that the Court's determination to award Skarpelos his full attorney's fees for
22 \$216,900 was clearly erroneous for three reasons: (1) The Court misunderstood Weiser's theory
23 to be dependent on the July PSA, contrary to Weiser's stated position before trial; (2) Weiser
24 provided evidence in support of its entitlement to the Anavex shares or, at a minimum, payback
25 for the amounts Skarpelos withdrew from his account; and (3) Skarpelos knew of Weiser's
26 position and his denial of having ever opened a Weiser account or sold any stock through
27 Weiser necessitated a trial, regardless of the July PSA. As shown below, Skarpelos does not
28 refute any of these three points.

In the opening brief, Weiser carefully explained that the July 2013 PSA was not central to its claim to entitlement to the Anavex shares. Motion at 2–4. It was *additional support* for a transaction that was performed months earlier in April 2013, rather than the “basis” for Weiser’s claims, as construed by the Court’s Order. *Id.* In response, Skarpelos does not deny that Weiser explained this position in its opposition to his motion for summary judgment in Spring 2018. Nor does he dispute that the July 2013 PSA was unnecessary to Weiser’s ultimate claims for relief. And, again, *Weiser unaware of any authority for the proposition that a court can award full attorney’s fees under NRS 18.010(2) because a party fails to prove a subpoint that is ultimately unnecessary to the overarching argument.* Tellingly, Skarpelos does not provide any authority to the contrary.

Weiser also explained that it prevailed on its affirmative defense of unjust enrichment. Motion at 4. Skarpelos responds by characterizing this affirmative defense as pertaining only to the number of shares and not to any repayment for the cash withdrawals he made from Weiser. But the affirmative defense is not so limited. Moreover, it makes little sense that Weiser would not seek, at a minimum, repayment for the quarter-million dollars that Skarpelos withdrew and refused to pay back in lieu of the Anavex shares at issue. Skarpelos also argues that Weiser waived this argument by not making it previously. Opposition at 5. But Weiser raised this point in its Opposition To Skarpelos's Motion To Alter Or Amend Judgment:

JA2657

1 Claim 3, June 15, 2016). The Court's Judgment was based on the inequity of
2 allowing Skarpelos to retain the money provided for the stock and the stock itself.
3 Skarpelos had more than adequate notice of the April 2013 transaction and that
4 Weiser's claim to the ownership of the stock arose from that transaction. The
5 record before the Court shows that Skarpelos had notice of the April 2013
6 transaction and the Court, therefore, is well within its discretion to deny the
7 Motion to Alter or Amend the Judgment.

8 *Id.* at 5.

9 **B. Skarpelos does not refute that Weiser produced evidence supporting its legal**
10 **theories.**

11 The opening brief next identified the various categories of credible evidence that Weiser
12 produced at trial that supported both its claims for entitlement to the Anavex stock and for
13 unjust enrichment. Motion at 4–6.

14 In response, Skarpelos argues that Weiser is repeating its previous argument and that the
15 Court has rejected that argument.¹ But, if this is in fact the case, Weiser believes that the Court's
16 determination was clear error. For example, Weiser's claim that Skarpelos sold the stock to it in
17 April 2013 for \$249,580 is supported by Weiser's account statement entry showing a "STOCK
18 SALE / ANAVEX LIFE SCIENCE CORP. 3,316,686" for \$249,580 on April 2, 2013 as well as
19 Skarpelos's cash withdrawals from his Weiser account in approximately the same amount. *Id.* at
20 5. The Court found that this evidence was credible, and so it appears to constitute "credible
21 evidence to support" Weiser's claim to entitlement to the Anavex shares under NRS
22 18.010(2)(b). If it is not, neither the Court nor Skarpelos have adequately explained why.

23 At best, Skarpelos mischaracterizes Weiser's testimony and explanation of the April
24 2013 transaction. At trial and in the Motion, Weiser explained that the transaction at issue in
25 this case was between Skarpelos as an account holder and Weiser as the financial entity that
26 provided the account. Motion at 5. In this regard, the only terms of the sale that mattered to
27 Skarpelos were the amount of stock and cash exchanged. *Id.* Skarpelos, however, claims that

28 ¹ Skarpelos's approach to motions for reconsideration is apparently that they must always be
denied because they either (a) raise old points already rejected by the court or (b) raise new
arguments waived because they were not raised initially.

1 Livadas testified that “the April 2013 transaction was a sale by Skarpelos to a third party, not to
2 WAM or Weiser Capital.” Opposition at 7. He further concludes that the third party was never
3 identified. *Id.* This mischaracterizes both Livadas’s testimony and the nature of the transaction.
4 To use limited analogy, the transaction between WAM and Skarpelos was like the one between
5 a used-car dealership and a seller. When the seller sells a car to the dealership, that sale is itself
6 a standalone transaction between the dealership and seller, regardless of the dealership’s
7 intention to subsequently sell the car to another party. And from the seller’s perspective, the
8 dealership’s subsequent plans are immaterial to the seller’s deal with the dealership. So too
9 here. Livadas testified that the initial sale was between WAM and Skarpelos. They are the
10 identified parties to the transaction. While WAM may have initially had another WAM account
11 holder in place to purchase the stock, that secondary transaction fell through and WAM was
12 left, like a dealership with a used car in its inventory, holding the title to the stock. Therefore,
13 Weiser, and not the third party, sought possession of the Anavex shares at issue in this case.
14 Skarpelos’s claims that he did not actually sell his shares to WAM because Weiser never
15 identified the third party to whom the stock would have been sold in a secondary transaction
16 therefore rings hollow. He sold his stock to WAM, as evidenced by the account statement, his
17 withdrawals, Livadas’s testimony, and the fact that Weiser had possession of the stock until
18 Skarpelos covertly cancelled the stock certificate on a fraudulent basis.

19 Last, it is indisputable that Weiser presented credible evidence in favor of its unjust
20 enrichment defense—that Skarpelos withdrew nearly \$250,000 from his account that he
21 received in exchange for his Anavex shares and never paid Weiser back. Skarpelos repeats his
22 prior arguments about the nature of the unjust enrichment defense and waiver, which fail for the
23 reasons provided in the preceding section. More importantly, Skarpelos does not dispute this
24 point and therefore concedes it.

25 **C. Skarpelos does not dispute that he has not suffered prejudice or that a trial**
26 **would have been necessary in any event.**

27 Weiser made two final arguments in the Motion. First, Weiser demonstrated that
28 Skarpelos cannot claim prejudice in this case because, among other reasons, Weiser explained

1 its position in its opposition to his motion for summary judgment that was filed more than nine
2 months before trial. Motion at 6. Second, Weiser showed that, contrary to the Order's
3 conclusion, a trial would have been necessary regardless of the validity of the July 2013 PSA
4 because Weiser's entitlement theory was founded on the April 2013 sale transaction and
5 Skarpelos denied he ever sold his stock or even had an account at Weiser. *Id.* at 6–7.

6 While he repeats his prior arguments, Skarpelos does not actually dispute either of these
7 two points.

8 **D. Weiser's motion is procedurally proper; Skarpelos's casual request for more**
9 **attorney's fees is not.**

10 Skarpelos also claims that Weiser's Motion is procedurally improper because Weiser did
11 not also file a motion for leave to file the motion for reconsideration under DCR 13(7).
12 Opposition at 2–3. Skarpelos notes that Weiser requested leave in the Motion, but he appears to
13 believe that a party must file two separate motions rather than one: (1) a motion for leave and
14 (2) the motion for reconsideration. *Id.* But DCR 13(7) does not require parties to waste the
15 paper, pixels, or effort of filing two separate, redundant motions that serve the same end. It
16 provides that motion for reconsideration will not be heard “unless by leave of the court granted
17 upon motion therefor, after notice of motion to the adverse parties.” Weiser's Motion asked for
18 the Court's leave on the first page and explained in detail why reconsideration is necessary
19 under the circumstances, thus satisfying DCR 13(7)'s requirements. Further, in Weiser's
20 counsel's experience, this is the predominant approach by practitioners in the Second Judicial
21 District.

22 Skarpelos also summarily claims the Motion “is a frivolous filing, and Skarpelos should
23 be awarded an additional \$3,500 for having to respond to the Motion.” Opposition at 8. Weiser
24 vehemently objects to Skarpelos's characterization. It stands to reason that an award of
25 \$216,900.50 in fees should be subject to close scrutiny. Weiser was surprised by the Order and
26 believes it to have been entered in error for the three reasons above. If Weiser is wrong, then
27 neither the Court's Order nor Skarpelos has satisfactorily explained why. In any event,
28 Skarpelos fails to show how Weiser's Motion is frivolous. He seems to believe that all motions

1 for reconsideration are frivolous because they are either (a) raising arguments already dismissed
2 or (b) raising new arguments that are waived because they were not previously raised, which
3 cannot be true if motions for reconsideration are to have any place in Nevada procedure. Nor
4 has Skarpelos satisfactorily shown that he is entitled to \$3,500, which might approximate the
5 fees Skarpelos accrued to file his opposition or might be an arbitrary amount that he picked at
6 random.

7 Last, Skarpelos claims that there “is no good reason for oral argument.” Opposition at 9.
8 Weiser disagrees. While the standard damages awarded in a case are the result of months of
9 discovery, motions, hearings, and a trial, a large fees award under NRS 18.010 is done relatively
10 summarily. Weiser believes it is only fair that it is given the opportunity to present its complete
11 argument before the Court before it is the recipient of a \$216,900 sanction.

12 **II. CONCLUSION**

13 Weiser repeats its requests that the Court reconsider its order granting Skarpelos his full
14 attorney’s fees under NRS 18.010 and that the Court hold oral argument on this important issue.

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

17 DATED this 10th day of September, 2019.

18
19 By /s/ Frank Z. LaForge
20 Jeremy J. Nork (SBN 4017)
21 Frank Z. LaForge (SBN 12246)
22 HOLLAND & HART LLP
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26
27 Attorneys for Defendants/Cross-Claimants
28 Weiser

CERTIFICATE OF SERVICE

I, Martha Hauser, certify:

I am employed in the City of Reno, County of Washoe, State of Nevada by the law offices of Holland & Hart LLP. My business address is 5441 Kietzke Lane, Second Floor, Reno, Nevada 89511. I am over the age of 18 years and not a party to this action.

On September 10, 2019, I electronically filed **REPLY IN SUPPORT OF WEISER'S MOTION FOR RECONSIDERATION OF ATTORNEY'S FEES AWARD**, with the Clerk of the Second Judicial District Court via the Court's e-Flex system. Service will be made by e-Flex on all registered participants.

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/s/ Martha Hauser
Martha Hauser

13434406_v2

IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
IN AND FOR THE COUNTY OF WASHOE

NEVADA AGENCY AND TRANSFER
COMPANY, a Nevada corporation,

Plaintiff,

Case No. CV15-02259

vs.

Dept. No. 10

WEISER ASSET MANAGEMENT, LTD.,
a Bahamas company, WEISER (BAHAMAS)
LTD., a Bahamas company, ATHANASIOS
SKARPELOS, an individual, and DOES 1
through 10,

Defendants.

ORDER DENYING MOTION FOR RECONSIDERATION

Presently before the Court is WEISER'S MOTION FOR RECONSIDERATION OF ATTORNEY'S FEES AWARD ("the Motion") filed by Defendants WEISER ASSET MANAGEMENT, LTD. ("WAM") and WEISER (BAHAMAS) LTD. ("Weiser Capital") on August 19, 2019. Defendant ATHANASIOS SKARPELOS ("Mr. Skarpelos") filed the OPPOSITION TO MOTION FOR RECONSIDERATION OF ATTORNEY'S FEE AWARD ("the Opposition") on August 28, 2019. WAM and Weiser Capital (collectively, "Weiser") filed the REPLY IN SUPPORT OF WEISER'S MOTION FOR RECONSIDERATION OF ATTORNEY'S FEES AWARD ("the Reply") on September 10, 2019, and contemporaneously submitted the matter for the Court's consideration.

1 This case was initiated by Plaintiff NEVADA AGENCY AND TRANSFER COMPANY
2 (“the Plaintiff”) as an interpleader action to resolve a dispute over ownership of 3,316,666 shares of
3 stock in Anavex Life Sciences Corp.¹ On May 24, 2016, the Weiser filed WEISER’S ANSWER
4 AND CROSS-CLAIM (“the A&C”) which contained three cross-claims: 1) Declaratory Judgment;
5 2) Breach of Contract; and 3) Breach of the Implied Covenant of Good Faith and Fair Dealing. The
6 A&C 10-12. The Court presided over a bench trial beginning on January 28, 2019, to resolve the
7 competing claims between Weiser and Mr. Skarpelos to the shares. The Court entered the
8 FINDINGS OF FACT, CONCLUSIONS OF LAW AND JUDGMENT (“the FFCLJ”) on April 22,
9 2019. The Court determined that Mr. Skarpelos was the rightful owner of the shares. The FFCLJ,
10 p. 7 ¶ 25. However, the Court invoked its equitable jurisdiction to enter judgment against Mr.
11 Skarpelos in the amount of \$245,464.64. The FFCLJ 7-8 ¶ 28. The Court subsequently awarded
12 Mr. Skarpelos \$216,900.50 in attorney’s fees on the ground that Weiser unreasonably maintained
13 its claim to ownership of the stock under NRCP 11. See ORDER GRANTING MOTION FOR
14 ATTORNEY’S FEES 4:21-28 (Aug. 9, 2019) (“the August Order”). Weiser has appealed the
15 August Order. See NOTICE OF CROSS APPEAL (Aug. 29, 2019).

16 Weiser asks the Court to reconsider the August Order awarding Mr. Skarpelos the full
17 amount of requested attorney’s fees. The Motion 1:20-28; 2:1-11. Weiser contends the August
18 Order is clearly erroneous for the following reasons: 1) the Court misunderstands Weiser’s legal
19 theory as being dependent on the July 2013 Purchase and Sale Agreement (“the July 2013 PSA”);
20 2) Weiser produced evidence in support of its legal theories at trial; and 3) Mr. Skarpelos cannot
21 claim prejudice in regards to the nature of Weiser’s claims. The Motion 2:12-18; 3:7-28; 4:15-23;

22 ¹ The Plaintiff was discharged from the action in the ORDER GRANTING MOTION FOR DISCHARGE filed on
23 January 23, 2019.
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1 5:1-12; 6:9-21. Mr. Skarpelos responds by making the following arguments: 1) the Motion is
2 procedurally defective because Weiser did not request leave to file the Motion before doing so; and
3 2) Weiser fails to demonstrate the August Order is clearly erroneous and is merely rehashing
4 arguments already made to and rejected by the Court. The Opposition 3:23-26; 4-5; 6:18-22; 9:7-
5 12. Mr. Skarpelos also requests \$3,500.00 in additional fees incurred by virtue of responding to the
6 Motion. The Opposition 8:19-23. Weiser makes the following arguments in response: 1) Mr.
7 Skarpelos continues to misunderstand or misrepresent Weiser's legal theory, which was not
8 dependent on the July 2013 PSA, but rather on the April 2013 transaction; 2) Mr. Skarpelos has
9 failed to refute the fact that Weiser produced credible evidence at trial in support of its claims; and
10 3) Mr. Skarpelos has failed to refute the argument he has not suffered prejudice or that a trial would
11 have been necessary in this matter. The Reply 2:1-18; 3:7-20; 4:19-28; 5:1-7. Mr. Skarpelos also
12 contends the Motion is procedurally proper, and Mr. Skarpelos' request for additional attorney's
13 fees is improper. The Reply 5:21; 6:3-6.

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17 WDCR 12(8) provides in relevant part:

18 The hearing of motions must be done in conformity with DCR 13, Section 7. A
19 party seeking reconsideration of a ruling of the court, other than an order which may
20 be addressed by motion pursuant to NRCP 50(b), 52(b), 59 or 60, must file a motion
21 for such relief within 10 days after service of written notice of entry of the order or
22 judgment, unless the time is shortened or enlarged by order.

23 Emphasis added. D.C.R. 13(7) provides:

24 No motion once heard and dispose of shall be renewed in the same cause, nor shall the same
25 matters therein embraced be reheard, *unless by leave of the court granted upon motion*
26 *therefor*, after notice of such motion to the adverse parties.

27 Emphasis added. The *Huneycutt* Court outlined a procedure whereby a party to an appeal could file
28 a motion for relief from the order of judgment and petition the district court to certify its intent to
grant the requested relief. *Huneycutt v. Huneycutt*, 94 Nev. 79, 79-81, 575 P.2d 585, 585-86

1 (1978). Following the certification, the party may file a motion for remand in the Nevada Supreme
2 Court. *Foster v. Dingwall*, 126 Nev. 49, 52, 228 P.3d 453, 455 (2010). While the district court
3 retains discretion to direct briefing on the motion for relief, hold a hearing on the motion or deny it
4 altogether, the district court lacks jurisdiction to grant the motion for relief. *Dingwall*, 126 Nev. at
5 52-53, 228 P.3d at 455. The district court also has the authority to consider motions regarding
6 matters collateral to and independent of the matter on appeal. *Mack-Manley*, 122 Nev. at 855, 138
7 P.3d at 529-30.
8

9 The Court will deny the Motion because the August Order is not clearly erroneous. The
10 Court would first note the Motion is procedurally improper, as D.C.R. 13(7) requires the party
11 seeking reconsideration to request leave to file a motion for reconsideration before actually doing
12 so. Despite the procedural impropriety, the Court will deny the Motion on substantive grounds.
13 The A&C stated Weiser's claim to ownership stemmed from the July 2013 PSA. The A&C states,
14 "[i]n July 2013, Weiser and Skarpelos entered into a contract for the sale of a certain amount of
15 stock. Skarpelos, the former owner of the stock, agreed to sell it to Weiser." The A&C ¶ 4. The
16 A&C further contends, "Weiser and Skarpelos have each asserted competing and conflicting claims
17 over the entitlement to the stock at issue in their July 2013 contract," and "Weiser and Skarpelos
18 entered into a binding contract in July 2013 concerning the sale of certain stock." The A&C ¶ 10;
19 ¶ 13. Weiser never mentions the April 2013 transaction or provides notice of this claim in the
20 A&C. See NRCP 8(a) (emphasis added) ("A pleading that states a claim for relief *must* contain . . .
21 a short and plain statement of the claim showing that the pleader is entitled to relief.") and NRCP
22 8(d) ("A party may set out two or more statements of a claim or defense alternatively or
23 hypothetically . . ."). See also *Hay v. Hay*, 100 Nev. 196, 198, 678 P.2d 672, 674 (1984)
24 (emphasis added) (explaining pleadings are liberally construed "to place into issue matters which
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1 are *fairly noticed* to the adverse party.”). Moreover, Weiser never sought leave of the Court to
2 amend the A&C to include the April 2013 transaction. *See also* NRCP 15(a) (discussing
3 amendment of pleadings). *See also Nutton v. Sunset Station*, 131 Nev. 279, 284, 357 P.3d 966, 970
4 (Nev. Ct. App. 2015) (enumerating liberal pleading amendment standard).

5
6 Contrary to Weiser’s argument, the FFCLJ did not determine Weiser’s claims were
7 supported by credible evidence. In the FFCLJ, the Court noted the shares were sold “to an
8 unidentified third party,” not Weiser. The FFCLJ ¶ 8. The Court also noted, “[t]here is no
9 evidence of a contract between Skarpelos and either WAM or Weiser Capital for the sale of
10 Anavex stock *at any time*.” The FFCLJ ¶ 10 (emphasis added). The Court further noted,

11
12 Although Weiser asserted throughout this case that ‘it’ was the owner of the Disputed Stock
13 by virtue of the July 2013 PSA, Livadas and WAM abandoned that claim at trial and instead
14 relied on a new theory that WAM is the owner of the stock by virtue of the April 2, 2013
15 transaction. However, Livadas also testified that *WAM was not even the purchaser of the*
16 *stock under the April 2, 2013 transaction*
17 *Id.* (emphasis added). Weiser’s argument that it did not rely exclusively on the July 2013 PSA is
18 belied by the record. The A&C is clearly premised on the July 2013 PSA alone, not the April 2013
19 transaction. Even if the A&C had been premised on the April 2013 transaction, Mr. Livadas
20 testified WAM was not the purchaser of the stock in April 2013. A comparison of the A&C with
21 the trial testimony in this matter reveals the frivolity of Weiser’s counterclaims. For all of these
22 reasons, the Court properly awarded Mr. Skarpelos attorney’s fees pursuant to NRCP 11.

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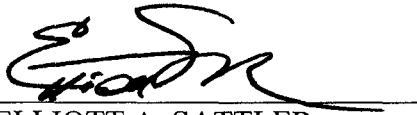
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1 **IT IS ORDERED** WEISER'S MOTION FOR RECONSIDERATION OF ATTORNEY'S
2 FEES AWARD is hereby **DENIED**.

3 **DATED** this 24 day of October, 2019.

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7 ELLIOTT A. SATTLER
8 District Judge

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CERTIFICATE OF MAILING

Pursuant to NRCP 5(b), I certify that I am an employee of the Second Judicial District Court of the State of Nevada, County of Washoe; that on this ____ day of October, 2019, I deposited in the County mailing system for postage and mailing with the United States Postal Service in Reno, Nevada, a true copy of the attached document addressed to:

CERTIFICATE OF ELECTRONIC SERVICE

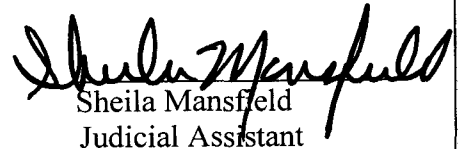
I hereby certify that I am an employee of the Second Judicial District Court of the State of Nevada, in and for the County of Washoe; that on the 24 day of October, 2019, I electronically filed the foregoing with the Clerk of the Court by using the ECF system which will send a notice of electronic filing to the following:

JOHN F. MURTHA, ESQ.

DANE W. ANDERSON, ESQ.

JEREMY J. NORK, ESQ.

FRANK Z. LAFORGE, ESQ.


Sheila Mansfield
Judicial Assistant