

In the Supreme Court of the State of Nevada

RICHARD PRICE, AN INDIVIDUAL; AND
MICKEY SHACKELFORD, AN INDIVIDUAL,

Appellants/Cross-Respondents,

vs.

PEGGY CAIN, AN INDIVIDUAL; JEFFREY
CAIN, AN INDIVIDUAL; AND HELI OPS
INTERNATIONAL, LLC, AN OREGON
LIMITED LIABILITY COMPANY,

Respondents/Cross-Appellants.

Electronically Filed
Jan 14 2020 04:58 p.m.
Elizabeth A. Brown
Clerk of Supreme Court
Supreme Court No. 20-00296
District Court Case No. 20-00296

DOCKETING STATEMENT CIVIL APPEALS

GENERAL INFORMATION

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

WARNING

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

A complete list of the documents that must be attached appears as Question 27 on this docketing statement. Failure to attach all required documents will result in the delay of your appeal and may result in the imposition of sanctions.

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

Revised December 2015

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

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

Attorney Mark Forsberg, Esq. Telephone 775-301-4250
Firm Oshinski & Forsberg, Ltd.
Address 504 E. Musser Street, Suite 202
Carson City, NV 89701
Client Richard Price and Mickey Shackelford

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

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

Attorney Michael L. Matuska Telephone 775-350-7220
Firm Matuska Law Offices, Ltd.
Address 2310 S. Carson Street, Suite 6
Carson City, NV 89701
Client Peggy Cain, Jeffrey Cain, and Heli Ops International, LLC,
an Oregon limited liability company

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

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

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

☐ Child custody
☐ Venue
☐ Termination of parental rights

6. **Pending and prior proceedings in this court.** List the case name and docket number of all appeals or original proceedings presently or previously pending before this court which are related to this appeal

A. Peggy Cain, an individual; Jeffrey Cain, an individual; and Heli Ops International,

LLC, an Oregon limited liability company, Appellants, vs. Richard Price, an individual; and Mickey Shackelford, an individual, Respondents
Nevada Supreme Court Case No. 69333

B. Peggy Cain, an individual; Jeffrey Cain, an individual; and Heli Ops International, LLC, an Oregon limited liability company, Appellants, vs. Richard Price, an individual; and Mickey Shackelford, an individual, Respondents
Nevada Supreme Court Case No. 69889

C. Peggy Cain, an individual; Jeffrey Cain, an individual; and Heli Ops International, LLC, an Oregon limited liability company, Appellants, vs. Richard Price, an individual; and Mickey Shackelford, an individual, Respondents
Nevada Supreme Court Case No. 70864

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

Plaintiffs' claims against DR Rawson were litigated in the United States Bankruptcy for the Central District of California-Santa Ana Division, Case No. 8:13-bk-18261-MW, adversary no. 8:14-ap-01013-MW

Cain v. Price, 133 Nev. Adv. Op. No. 44 (2017); 134 Nev. Adv. Op. No. 26 (2018)

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

Plaintiffs brought this action asserting claims against a Nevada corporation, C4, Inc. and its officers and directors asserting claims for breach of contract, fraud, civil conspiracy, negligence, conversion, and intentional interference with contractual relations. Plaintiffs' claim was filed on September 14, 2011. The district court dismissed the case with prejudice on plaintiffs' motion and denied defendants request for leave to seek attorney's fees and costs based on their status as prevailing parties and their offers of judgment. Motions challenging the jurisdiction of the court, to pierce the corporate veil as to Price and Shackelford, and for summary judgment on the fraud, civil conspiracy and conversion claims were pending at the time of dismissal and had not been decided by the court. Plaintiffs' claims were decided on the merits in the action below.

9. **Issues on appeal.** State concisely the principal issue(s) in this appeal:

1. Did the district court err by granting plaintiffs' motion to dismiss with prejudice conditioned upon the parties to bear their own fees and costs?
2. Did the district court abuse its discretion by granting plaintiffs' motion to dismiss with prejudice conditioned upon each side to bear its own fees and costs when, at the time of the dismissal, the district court failed to decide defendant Price and

Shackelford's motion to dismiss for lack of jurisdiction over them personally, their motion for summary judgment based on the fraud and civil conspiracy claims, a motion, to be decided as a matter of law by the court, whether the corporate veil could be pierced to reach and impose personal liability on Price and Shackelford for the acts of C4, Inc.?

3. Did the district court err by finding that offers of judgment made by Price and Shackelford were not unreasonably rejected after more than three years of litigation?
4. Did the district court err by failing to address whether plaintiffs' offer of judgment for \$0.00 and subsequently moving to dismiss without any recovery based on their complaint make Price and Shackelford the prevailing parties in the litigation, where the merits of any of the claims were never decided by the court or jury?
5. Did the district court abuse its discretion by finding that dismissing a case with prejudice in a manner that precludes an award of attorney's fees is not an extraordinary circumstance that justifies an award of attorney's fees to the prevailing parties?

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

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

☒ N/A

☐ Yes

☐ No

If not, explain:

12. Other issues. Does this appeal involve any of the following issues? No

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

If so, explain: N/A

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

This matter should be presumptively retained by the Supreme Court under NRAP 17(a)(11). The district court below dismissed the action with prejudice with the parties to bear their own attorney's fees and costs notwithstanding Appellants' previous offers of judgment that were rejected. NRCP 41(a)(2) grants the court discretion to determine the conditions that it deems proper when a motion is brought pursuant to that rule, but no reported Nevada case has construed what terms may be considered proper. Here, plaintiffs below litigated this case for more than eight years before moving to dismiss it with prejudice, thereby giving up all of the claims raised in their complaint and with no meaningful justification other than their own convenience. The rules exists chiefly for the protection of defendants and this court should give a guiding opinion as to whether plaintiffs who simply give up on their claims, leaving defendants with eight years' worth of litigation costs and attorney's fees does or does not give a proper basis for awarding fees notwithstanding the existence of offers of judgment and defendants' opposition to the motion.

- 14. Trial.** If this action proceeded to trial, how many days did the trial last? N/A
Was it a bench or jury trial? N/A
- 15. Judicial Disqualification.** Do you intend to file a motion to disqualify or have a justice recuse him/herself from participation in this appeal? If so, which Justice? No

TIMELINESS OF NOTICE OF APPEAL

- 16. Date of entry of written judgment or order appealed from:** 11/01/19

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

- 17. Date written notice of entry of judgment or order was served** 11/06/19

Was service by

☐ Delivery

☒ Mail/electronic/fax

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

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

☐ NRCP 50(b) Date of filing _____

☐ NRCP 52(b)

Date of filing _____

☐ NRCP 59 Date of filing _____

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

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

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

Was service by:

☐ Delivery

☐ Mail

19. Date notice of appeal was filed 12/06/19

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

20. Specify statute or rule governing the time limit for filing the notice of appeal, e.g., NRAP 4(a), or other NRAP 4(a)(1)

SUBSTANTIVE APPEALABILITY

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

(a)

☒ NRAP 3A(b)(1)

☐ NRS 38.205

☐ NRAP 3A(b)(2)

☐ NRS 233B.150

☐ NRAP 3A(b)(3)

☐ NRS 703.376

☐ Other: _____

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

The district court's order dismissing the action terminated all claims as to all parties and prevented Appellants from seeking attorney's fees based on their offers of judgment, notwithstanding the fact that Plaintiffs obtained a result less favorable as

a result of their dismissal of their complaint with prejudice, thus barring any possible post-judgment motions.

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

(a) Parties:

Plaintiffs: Peggy Cain, Jeffrey Cain, Heli Ops International

Defendants: DR Rawson, C4 Worldwide, Inc., Richard Price, Joe Baker, Mickey Shackelford, Michael K. Kavanagh, Jeffrey Edwards

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

DR Rawson is not a party to this appeal; a default judgment was taken against him. C4 Worldwide, Inc. is not a party to this appeal; a default judgment was taken against C4 Worldwide.

Joe Baker is not a party to this appeal; Baker settled.

Michael K. Kavanagh is not a party to this appeal; default judgment was taken against Kavanagh.

Jeffrey Edwards is not a party to this appeal; default judgment was taken against Edwards.

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

Plaintiffs brought claims for breach of contract, fraud, civil conspiracy, conversion, and intentional interference with contractual relations. All claims were dismissed by the district court as set forth herein. There are no counterclaims, crossclaims or third-party claims raised in the district court.

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

☒ Yes

☐ No

25. If you answered "No" to question 24, complete the following: N/A

(a) Specify the claims remaining pending below:

(b) Specify the parties remaining below:

(c) Did the district court certify the judgment or order appealed from as a final judgment pursuant to NRCP 54(b)?

☐ Yes

☐ No

- (d) Did the district court make an express determination, pursuant to NRCP 54(b), that there is no just reason for delay and an express direction for the entry of judgment?

☐ Yes

☐ No

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

- 27. Attach file-stamped copies of the following documents:**

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

VERIFICATION

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

Richard Price
Mickey Shackelford
Name of Appellants

Mark Forsberg, Esq.
Name of counsel of record

Date January 14, 2020

/s/ Mark Forsberg, Esq.
Signature of Counsel of record

Carson City, Nevada
State and county where signed

LIST OF ATTACHMENTS

Attachment No.	Description	No. Pages
1	Third Amended Complaint	11
2	Order Dismissing Third Amended Complaint with Prejudice	6
3	Notice of Entry of Order - Order Dismissing Third Amended Complaint with Prejudice	2

CERTIFICATE OF SERVICE

I certify that on the 14th day of January, 2020, I served a copy of this completed Docketing Statement upon all counsel of record:

☐ By personally serving it upon him/her; or

☒ By mailing it by first class mail with sufficient postage prepaid to the following address(es):

Michael L. Matuska, Esq.
Matuska Law Offices, Ltd.
2310 S. Carson Street, Suite 6
Carson City, NV 89701
Attorney for
Respondents/Cross-Appellants

Margaret M. Crowley, Esq.
121 Washington Street
Reno, NV 89503
Settlement Judge

Dated this 14th day of January, 2020.

/s/ Linda Gilbertson
Linda Gilbertson

EXHIBIT 1

EXHIBIT 1

MATUSKA LAW OFFICES, LTD.
2310 S. Carson Street, Suite 6
Carson City, NV 89701
(775) 350-2320

RECEIVED

MAR 30 2015

FILED

CASE NO.: 11-CV-0296

DEPT. NO.: 11

Douglas County
District Court Clerk

2015 MAR 30 PM 4:38

This document does not contain personal information of any person.

BOBBIE R. WILLIAMS
CLERK

D. HECHMAYR

THE NINTH JUDICIAL DISTRICT COURT OF NEVADA

IN AND FOR THE COUNTY OF DOUGLAS

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

Plaintiffs.

v.

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

Defendants.

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

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

I.
PARTIES

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

///

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

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

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

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

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

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

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

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

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

11. The true names or capacities, whether individual, corporate, associate or otherwise, of the defendants sued herein as Does 1 through 10, inclusive, are unknown to Plaintiffs, who are informed and believe, and thereon allege, that each of these fictitiously named defendants is in

1 some way liable to Plaintiffs on the causes of action below, and therefore sues these Defendants
2 by such fictitious names. Plaintiffs will move to amend this Complaint and insert the true names
3 and capacities of said fictitiously named defendants when the same have been ascertained.

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

11 H.
12 BACKGROUND TO CLAIMS

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

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

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

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

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

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

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

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

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

10
11 **III.**
12 **FIRST CLAIM FOR RELIEF**
13 **(Breach of Contract)**

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

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

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

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

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

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

1 that C4 was a mere shell corporation with no ability to repay the amounts owed, and Rawson had
2 no intention of repaying the loan.

3 27. Plaintiffs are informed and believe, and thereon allege, that at all times relevant
4 herein C4 was a mere sham and was organized and operated as the alter ego of the individual
5 Defendants named herein for their personal benefit and advantage, in that the individual
6 Defendants have at all times herein mentioned exercised total dominion and control over C4. The
7 individual Defendants and C4 have so intermingled their personal and financial affairs that C4
8 was, and is, the alter ego of the individual Defendants, and should be disregarded. By reason of
9 the failure of C4, each individual Defendant should be and is liable to Plaintiff for the relief prayed
10 for herein.
11

12 28. Plaintiffs are further informed and believe and on that basis allege that C4 was
13 created for the sole purpose of transacting business with the Plaintiffs and does not conduct any
14 other business; that C4 owns no assets other than assets described in this Complaint; that C4 was
15 never funded or capitalized; and that the individually named defendants have comingled their
16 personal finances with that of C4 and disregarded the corporate entity by taking loans from C4 to
17 pay personal expenses.
18

19 IV.
20 SECOND CLAIM FOR RELIEF
21 (Fraud)

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

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

26 31. Defendants, and each of them created this false perception in order obtain funds
27 from Plaintiffs.
28

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

VI.
FOURTH CLAIM FOR RELIEF
(Negligence)

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

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

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

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

VII.
FIFTH CLAIM FOR RELIEF
(Conversion)

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

46. The Joint Venture Agreement provided in pertinent part:

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

///

///

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

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

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

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

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

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

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

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

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

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

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

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

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

11
12 VIII.
13 EIGHTH CLAIM FOR RELIEF
14 (Constructive Trust)

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

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

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

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

24
25 IX.
26 NINTH CLAIM FOR RELIEF
27 (Intentional Interference with Contractual Relations)

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

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

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

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

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

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

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

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

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

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

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

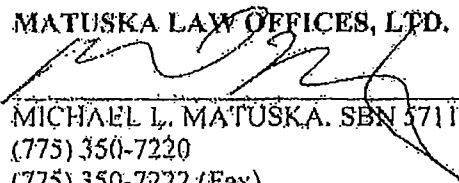
17 4. For the cost of suit and attorney's fees.

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

19 Respectfully submitted.

20 Dated this 30 day of March 2015.

21 MATUSKA LAW OFFICES, LTD.

22 
23 MICHAEL L. MATUSKA, SBN 5711

24 (775) 350-7220

25 (775) 350-7222 (Fax)

26 Attorneys for Plaintiffs

CERTIFICATE OF SERVICE

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

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

Attorney for Defendant Joe Baker

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

Attorney for Defendants Richard Price and Mickey Shackelford

Jeffrey Edwards
595 Chivas Court
Orange Park FL 33073

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

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

☐ **BY FACSIMILE:**

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

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

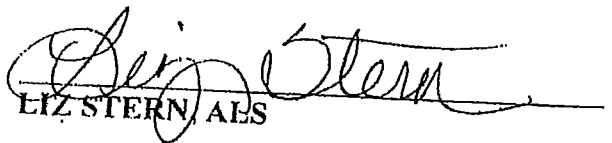

LIZ STERN, ALS

EXHIBIT 2

EXHIBIT 2

RECEIVED

FILED

1 Case No. 11-CV-0296

NOV - 1 2019

2 Dept. No. II

Douglas County
District Court Clerk

2019 NOV -1 PM 4:45

DELLER WILLIAMS
CLERK

DEPUTY
A. NEWTON

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

7 IN AND FOR THE COUNTY OF DOUGLAS

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

12 Plaintiffs,

13 vs.

ORDER DISMISSING THIRD
AMENDED COMPLAINT WITH
PREJUDICE

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

19 Defendants.

20
21 THIS MATTER COMES before the Court on *Motion to Dismiss with*
22 *Prejudice*, filed September 23, 2019. The motion has been fully
23 briefed and is ripe for consideration. Good cause appearing, the
24 Court finds and orders as follows:

25 Plaintiffs seek to voluntarily dismiss the *Third Amended*
26 *Complaint* as to remaining Defendants, Richard Price and Mickey
27 Shackelford ("Defendants" herein). Because Defendants have filed
28 answers, Plaintiffs request is made pursuant NRCP 41(a)(2).

1 Defendants do not oppose dismissal with prejudice, but argue
2 said dismissal should be conditioned upon payment of their
3 attorney's fees by Plaintiffs. Plaintiffs are opposed to the
4 condition.

5 Post-answer, a case may be dismissed at the plaintiff's
6 request "only by court order, on terms that the court considers
7 proper." NRCP 41(a)(2). Defendants represent that no reported
8 Nevada case has construed this portion of the rule and point the
9 Court to federal cases interpreting FRCP 41(a)(2), which is
10 identical to NRCP 41(a)(2). Defendants cite *Steinert v. Winn*
11 *Group, Inc.*, 440 F.3d 1214 (10th Cir. 2006) for the proposition
12 that while attorney's fees and costs should not ordinarily be
13 imposed as a condition of voluntary dismissals with prejudice,
14 attorney's fees and costs may be imposed in exceptional
15 circumstances.

16 Defendants argue the existence of exceptional circumstances
17 in this case. The Court now turns to assessing each of the five
18 considerations interposed by Defendants.

19 Defendants first point to NRCP 68(f). While NRCP 68(f)
20 supplies a statutory basis for consideration of an award of
21 attorney's fees and costs where the offeree of a rejected offer of
22 judgment fails to obtain a more favorable judgment, the existence
23 of such circumstances does not equate to exceptional circumstances
24 for the purpose of NRCP 41(a)(2). Even so, the Court would not
25 exercise its discretion to award attorney's fees and costs
26 pursuant to NRCP 68(f).

27 Generally, Plaintiffs' lawsuit, initiated in 2011, seeks
28 redress for \$20,000,000 alleged to be owed to Plaintiffs by

1 Defendants pursuant to a joint venture agreement and/or settlement
2 agreement.

3 On or about April 30, 2015, Defendant Shackelford made an
4 offer of judgment against him in the amount of \$2,500, "including
5 all accrued interest, costs, attorney's fees and any other sums
6 that could be claimed by Plaintiffs. In the event \$2,500 is paid
7 within ten (10) days after acceptance of this offer, Mickey
8 Shackelford instead shall be entitled to dismissal with prejudice
9 of said complaint as a means of avoiding entry of judgment."
10 *Offer of Judgment, Exhibit 1, Opposition to Plaintiffs' Motion to*
11 *Dismiss with Prejudice.*

12 On or about April 30, 2015, Defendant Price made an offer of
13 judgment against him in the amount of \$7,000, "including all
14 accrued interest, costs, attorney's fees and any other sums that
15 could be claimed by Plaintiffs. In the event \$7,000 is paid
16 within ten (10) days after acceptance of this offer, Mickey
17 Shackelford instead shall be entitled to dismissal with prejudice
18 of said complaint as a means of avoiding entry of judgment."
19 *Offer of Judgment, Exhibit 1, Opposition to Plaintiffs' Motion to*
20 *Dismiss with Prejudice.*

21 At the time the foregoing offers of judgment were made, the
22 lawsuit had been pending for four years. Defendants Rawson, C4,
23 Kavanagh and Edwards had defaulted. Plaintiffs had received
24 favorable rulings against the remaining defendants, including an
25 *Order Denying Motion to Dismiss, January 19, 2012, and an Order*
26 *Denying Renewed Motion to Dismiss Regarding Personal Jurisdiction*
27 *or for Summary Judgment, November 20, 2012 (subsequent to the*
28 *offers of judgment, Plaintiffs also successfully reversed an*

1 order granting summary judgment).

2 It is against this backdrop that the Court assesses the
3 factors supplied in *Beattie v. Thomas*, 99 Nev. 579, 588-89 (1983).
4 As indicated in a prior court order and based upon the lawsuit
5 surviving motions to dismiss and for summary judgment, Plaintiffs
6 claims were not brought in bad faith. Defendants' offers of
7 judgment to resolve the \$20,000,000 lawsuit for \$9,500, including
8 interests, costs and attorney's fees, were not reasonable in
9 amount at the time. Plaintiffs' rejection of the offers was not,
10 at the time, grossly unreasonable or in bad faith when considering
11 the nature of the claims and the posture of the case. The Court
12 is in no position to assess the reasonableness of the fees sought
13 as the Court does not know the amount of fees requested by
14 Defendants or the nature of the support for said fees.

15 The *Beattie* factors weigh against an award for attorney's
16 fees pursuant to NRCP 68, even if Plaintiffs failed to obtain a
17 more favorable verdict and even if Defendants requested fees were
18 ultimately deemed reasonable. *Frazier v. Drake*, 131 Nev. 632, 642
19 (2015). Due to this finding, the Court does not assess other
20 aspects of Plaintiffs' opposition to utilizing NRCP 68, such as
21 the import of subsequent offers to settle, although these
22 arguments also appear to favor Plaintiffs.

23 Defendants next argue, as an extraordinary circumstance, that
24 Plaintiffs' claims are not meritorious. Defendants' disagreement
25 with Plaintiffs as to the merits of their claims, is not an
26 extraordinary circumstance. In any event, Plaintiffs have
27 repeatedly and successfully defended against motions to dismiss
28 and motions for summary judgment.

1 Defendants next attack the affidavit of Plaintiff Jeffrey
2 Cain as being disingenuous as to his reasons for volunteering to
3 dismiss with prejudice. Defendants ask the Court to disregard
4 Cain's affidavit.

5 The Court does not question Cain's credibility as to his
6 reasoning to dismiss the case. But even if the Court were to
7 disregard Cain's affidavit, that would not have the effect of
8 creating an extraordinary circumstance warranting the conditioning
9 of the dismissal with prejudice on payment of attorney's fees.

10 Lastly, Defendants argue as an extraordinary circumstance,
11 that Plaintiffs have previously been sanctioned by the Court for
12 violating court rules and orders.

13 Plaintiffs have, on occasion, been sanctioned by the Court
14 for various violations of rules and/or orders unattributed to the
15 merits. For instance, Plaintiffs recently had to pay Defendants
16 \$8,315.50 in attorney's fees as a court-imposed sanction. As
17 another example, on July 17, 2019, and well before Plaintiffs
18 filed the pending motion, the Court awarded Defendants reasonable
19 attorney's fees for their efforts to oppose a motion. Order
20 *Denying Plaintiffs' Motion for Extension of Time*. The amount of
21 the fees and the timing of payment is contained in the Court's
22 *Order Determining Amount of Attorney's Fees to be Paid by*
23 *Plaintiffs and Directing Payment Thereof*, entered November 1,
24 2019.

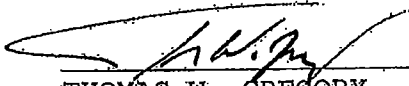
25 Plaintiffs have already been penalized for their violations.
26 Plaintiffs' violations are not so pervasive in nature and kind as
27 to create an extraordinary circumstance for the purpose of NRCP
28 41. The Court finds it proper, however, to condition dismissal

1 on payment of the outstanding sanction in the manner ordered.

2 NRCP 41(a)(2).

3 IT IS HEREBY ORDERED Plaintiffs' Third Amended Complaint is
4 DISMISSED WITH PREJUDICE, conditioned upon Plaintiffs' compliance
5 with the November 1, 2019 Order Determining Amount of Attorney's
6 Fees to be Paid by Plaintiffs and Directing Payment Thereof.

7 DATED this 1st day of November, 2019.

8
9 
10 THOMAS W. GREGORY
DISTRICT JUDGE

11 Copies served by mail/messenger/hand delivered on November 1,
12 2019, addressed to:

13 Michael Matuska, Esq.
14 2310 South Carson Street, #6
Carson City, Nevada 89701

15 Mark Forsberg, Esq.
16 504 E. Musser Street, Suite 202
Carson City, Nevada 89701

17
18
19 
20 Erin C. Plante
21
22
23
24
25
26
27
28

EXHIBIT 3

EXHIBIT 3

1 CASE NO.: 11-CV-0296

2 DEPT. NO.: II

3
4 This document does not contain personal information of any person.

5
6 THE NINTH JUDICIAL DISTRICT COURT OF NEVADA
7 IN AND FOR THE COUNTY OF DOUGLAS
8

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

13 Plaintiffs,

14 v.

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

23 Defendants.

24 NOTICE OF ENTRY OF ORDER

25 PLEASE TAKE NOTICE that on November 1, 2019, the Court entered its *ORDER*
26 *DISMISSING THIRD AMENDED COMPLAINT WITH PREJUDICE* in the above-entitled matter,
27 a copy of which is attached hereto as *Exhibit 1*.

28 Dated this 6th day of November 2019.

MATUSKA LAW OFFICES, LTD.

By: 

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

1 **CERTIFICATE OF SERVICE**

2 Pursuant to NRCP 5(b), I certify that I am an employee of Matuska Law Offices, Ltd., and
3 that on the 6th day of November 2019, I served a true and correct copy of the preceding document
4 entitled **NOTICE OF ENTRY OF ORDER** as follows:

5 Mark Forsberg, Esq.
6 504 E. Musser Street, Suite 202
Carson City, NV 89701

7 Attorneys for Defendants Richard Price and Mickey Shackelford

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

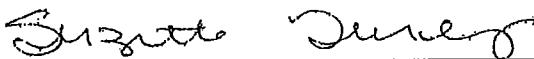
11 ☐ **BY EMAIL ONLY:**

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

14 ☐ **BY FACSIMILE:**

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

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

18 
19 **SUZETTE TURLEY**