

IN THE SUPREME COURT OF THE STATE OF NEVADA

INDICATE FULL CAPTION:

GREGORY O. GARMONG,
Appellant,

vs.

WESPAC; GREG CHRISTIAN,
Respondents.

No. 80376

Electronically Filed
Jan 14 2020 06:29 a.m.

DOCKETING STATEMENT
CIVIL APPEALS
Elizabeth Brown
Clerk of Supreme Court

GENERAL INFORMATION

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

WARNING

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

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

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

1. Judicial District Second Department 6
County Washoe Judge Lynne K. Simons
District Ct. Case No. CV12-01271

2. Attorney filing this docketing statement:

Attorney Carl M. Hebert, Esq. Telephone 775-323-5556
Firm Sole practitioner
Address 202 California Ave.
Reno, NV 89509

Client(s) Plaintiff/Appellant Gregory O. Garmong

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 respondents(s):

Attorney Thomas C. Bradley, Esq. Telephone 775-323-5178
Firm Sole practitioner
Address 435 Marsh Ave.
Reno, NV 89509

Client(s) Defendants/Respondents WESPAC; Greg Christian

Attorney _____ Telephone _____
Firm _____
Address _____

Client(s) _____

(List additional counsel on separate sheet if necessary)

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

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

5. Does this appeal raise issues concerning any of the following?

- ☐ 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:

There was a previous petition for a writ of prohibition following an order compelling arbitration. The docket number was 65899; the caption was "Gregory Garmong, petitioner, vs. The Second Judicial District Court of the State of Nevada, in and for the County of Washoe; and the Honorable Brent T. Adams, District Judge, respondents, and WESPAC and Greg Christian, real parties in interest."

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:

None.

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

This was an action for negligent investment advice. The defendants/respondents compelled arbitration. An arbitration award was entered in their favor. The District Court confirmed the award.

9. Issues on appeal. State concisely the principal issue(s) in this appeal (attach separate sheets as necessary):

1. Whether the arbitrator should have been disqualified for not applying the governing law and disregarding undisputed facts in evidence.
2. Whether the arbitration award should not be enforced because it was made in manifest disregard of the law.
3. Whether the arbitrator improperly applied NRCP 68 in awarding attorney's fees.

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 issue raised:

None known.

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?

☐ 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:

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 case should be assigned to the Court of Appeals under NRAP 17(b)(5).

14. Trial. If this action proceeded to trial, how many days did the trial last? _____

Was it a bench or jury trial? NA _____

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 8/8/2019

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 8/8/2019

Was service by:

☐ Delivery

☒ Mail/electronic/fax

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

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

☐ NRCP 50(b) Date of filing _____

☐ NRCP 52(b) Date of filing _____

☒ NRCP 59 Date of filing 9/5/2019

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 12/6/2019

(c) Date written notice of entry of order resolving tolling motion was served 12/9/2019

Was service by:

☐ Delivery

☒ Mail

19. Date notice of appeal filed 1/7/2020

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

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

- | | |
|---|---------------------------------------|
| <input checked="" type="checkbox"/> NRAP 3A(b)(1) | <input type="checkbox"/> NRS 38.205 |
| <input type="checkbox"/> NRAP 3A(b)(2) | <input type="checkbox"/> NRS 233B.150 |
| <input type="checkbox"/> NRAP 3A(b)(3) | <input type="checkbox"/> NRS 703.376 |
| <input type="checkbox"/> Other (specify) _____ | |

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

The order of August 8, 2019 confirmed an arbitration award and therefore was "a final judgment entered in an action or proceeding commenced in the court in which the judgment is rendered." NRAP 3A(b)(1).

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

(a) Parties:

Gregory O. Garmong, plaintiff

WESPAC and Greg Christian, defendants

(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:

NA

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.

Plaintiff Garmong alleged that defendants WESPAC and Christian, investment advisors, gave him negligent investment advice and negligently failed to follow his instructions in managing his accounts.

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:

(a) Specify the claims remaining pending below:

(b) Specify the parties remaining below:

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

☐ Yes

☐ No

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

☐ Yes

☐ No

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

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

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

VERIFICATION

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

Gregory O. Garmon

Name of appellant

Carl M. Hebert, Esq.

Name of counsel of record

1/14/2020

Date

/S/ Carl M. Hebert

Signature of counsel of record

Nevada, Washoe County

State and county where signed

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): (NOTE: If all names and addresses cannot fit below, please list names below and attach a separate sheet with the addresses.)

By using the Court's electronic filing system. Nevada Electronic Filing and Conversion Rule 9(c).

Dated this 14th day of January, 2020

/S/ Carl M. Hebert

Signature

ORIGINAL

FILED

Code: \$1425
Gregory Garmong
11 Dee Court
Smith, NV 89430
Tel No. 775-465-2981
Plaintiff In Proper Person

2012 MAY -9 AM 10:18

JULY ORDONIA HASTINGS
CLERK OF THE COURT

BY [Signature]
DEPUTY

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

GREGORY GARMONG,)

Plaintiff)

vs.)

WESPAC, GREG CHRISTIAN,)

and Does 1-10)

Defendants)

CV12 01271

Case No. _____

Dept. No. 6

COMPLAINT

1 COMES NOW Plaintiff, GREGORY GARMONG, appearing In Proper
2 Person, as and for claims for relief against Defendants Wespac,
3 Greg Christian ("Christian"), and Does 1-10 (collectively,
4 "Defendants"), alleges as follows:

5 1. At all times relevant hereto, Plaintiff was a resident
6 of Douglas County Nevada and Lyon County Nevada.

7 2. At all times relevant hereto, Defendants held
8 themselves out to the public as investment advisors and
9 investment managers performing fiduciary and other services for
10 customers; Christian was affiliated with Wespac.

11 3. Does 1-10 are owners/shareholders and/or employees
12 and/or are otherwise associated with Defendants whose identities
13 are unknown to Plaintiff at this time. Plaintiff will ascertain
14 the identities of Does 1-10 during discovery and will move to
15 add these persons to the list of named Defendants.

16 4. At all times relevant hereto, Defendants did business
17 in Washoe County, Nevada.

18 5. The Second Judicial District Court in and for Washoe
19 County, Nevada is a proper venue for this action because of the
20 place of business of Defendants.

21 6. The Second Judicial District Court in and for Washoe
22 County, Nevada has subject matter jurisdiction of this matter
23 because of the dollar amount of damages alleged.

24 7. At a time prior to 2007, Plaintiff entered a contract
25 ("Contract") with Defendants and became a client of Defendants.
26 Plaintiff entrusted a major portion of his life savings and
27 retirement savings to Defendants to manage. The life savings
28 and retirement savings were held in accounts at Schwab, and

1 Defendants had signature authority and control over these
2 accounts for management purposes. Plaintiff had other accounts
3 with Schwab with which Defendants had no involvement.

4 8. In late 2007 and early 2008, Defendant Christian
5 solicited, urged, and begged Plaintiff to allow Defendants to
6 take over the sole management of Plaintiff's accounts because of
7 their investment expertise, leaving all discretionary actions to
8 Defendants. Defendant Christian proposed that Plaintiff should
9 not be involved in the active management of his life savings and
10 retirement accounts, and that ultimate investment decisions
11 should be made by Defendants. Plaintiff accepted the proposal.

12 9. In conjunction with Defendants taking over sole
13 management of Plaintiff's accounts, Plaintiff informed
14 Defendants that he had recently retired. Plaintiff further
15 established general investment guidelines with Defendants that
16 it was therefore important that his accounts be managed to
17 conserve capital, and that Defendants' management should be
18 within those guidelines. Plaintiff instructed the Defendants
19 that it was preferable to sacrifice potential gains so as not to
20 lose capital. When losses first appeared, Defendant Christian
21 assured Plaintiff that Defendants were following their plan to
22 manage Plaintiff's life savings and retirement accounts to
23 conserve Plaintiff's capital, and that Defendants should be
24 given the opportunity to allow their plan to work out.

25 10. Despite Defendants' assurances to Plaintiff that they
26 would follow his investment guidelines and manage Plaintiff's
27 life savings and retirement accounts to conserve capital,
28 Defendants failed to do so. Defendants mismanaged Plaintiff's

1 life savings and retirement accounts, and caused the loss of and
2 wasted a significant portion of Plaintiff's life savings and
3 retirement accounts. When it became apparent in late 2008 that
4 Defendants were not properly managing Plaintiff's life savings
5 and retirement accounts within Plaintiff's guidelines and had
6 misled Plaintiff, Plaintiff ended Defendants' management of
7 Plaintiff's life savings and retirement accounts.

8
9 FIRST CLAIM FOR RELIEF

10 (Breach of Contract)

11 11. Plaintiff incorporates the allegations of Para. 1-10.

12 12. Plaintiff fulfilled all of his obligations under the
13 Contract.

14 13. The Defendants breached their obligations under the
15 Contract, causing damage to Plaintiff.

16 14. Plaintiff was damaged in an amount in excess of
17 \$10,000 of general damages and special damages.

18
19 SECOND CLAIM FOR RELIEF

20 (Breach of Nevada Deceptive Trade Practices Act)

21 15. Plaintiff incorporates the allegations of Para. 1-10.

22 16. At all times relevant hereto, Plaintiff was at least
23 60 years of age.

24 17. When the Defendants induced Plaintiff to enter the
25 Contract, and thereafter, Defendants failed to disclose material
26 information to Plaintiff. Specifically, Defendants did not
27 disclose to Plaintiff that they would not follow his investment
28 guidelines, would conceal the fact that they would not follow

1 his investment guidelines, and would concentrate their energies
2 on obtaining and providing services to other clients to the
3 exclusion of Plaintiff's interests. Had Plaintiff known this
4 material information, he would not have entered the Contract.

5 18. Plaintiff was damaged as a result of the breach by
6 Defendants of the Nevada Deceptive Trade Practices Act in an
7 amount in excess of \$10,000.

8
9 THIRD CLAIM FOR RELIEF

10 (Breach of Implied Covenant of Good Faith and Fair Dealing)

11 19. Plaintiff incorporates the allegations of Para. 1-10.

12 20. By failing to follow Plaintiff's investment guidelines
13 and not properly managing Plaintiff's life savings and
14 retirement accounts, Defendants breached their covenant of good
15 faith and fair dealing implied under the Contract.

16 21. Plaintiff was damaged as a result of the breach by
17 Defendants of the covenant of good faith and fair dealing in an
18 amount in excess of \$10,000.

19
20 FOURTH CLAIM FOR RELIEF

21 (Unjust Enrichment)

22 22. Plaintiff incorporates the allegations of Para. 1-10.

23 23. Plaintiff made payments to Defendants during their
24 business relationship, which payments were accepted and retained
25 by the Defendants.

26 24. Defendants failed to provide the services for which
27 Plaintiff was paying Defendants. Defendants were unjustly
28 enriched by the payments that Plaintiff made to them.

1 25. Plaintiff was damaged as a result of the unjust
2 enrichment of Defendants in an amount in excess of \$10,000.

3
4 FIFTH CLAIM FOR RELIEF

5 (Breach of Fiduciary Duty)

6 26. Plaintiff incorporates the allegations of Para. 1-10.

7 27. Defendants had a fiduciary duty to Plaintiff arising
8 from their investment advisory and management relation to
9 Plaintiff.

10 28. Defendants breached their fiduciary duty to Plaintiff
11 by failing to exercise a fiduciary responsibility to their
12 management of Plaintiff's life savings and retirement accounts
13 and by deceiving Plaintiff as to their actions and inaction.

14 29. Plaintiff was damaged as a result of the Defendant's
15 breach of their fiduciary duties in an amount in excess of
16 \$10,000.

17
18 SIXTH CLAIM FOR RELIEF

19 (Malpractice)

20 30. Plaintiff incorporates the allegations of Para. 1-10.

21 31. Defendants owed Plaintiff a duty of care as a result
22 of their relationship. Defendants committed malpractice against
23 Plaintiff in their mismanagement of his life savings and
24 retirement accounts by breaching that duty, causing damage to
25 Plaintiff.

26 32. Plaintiff was damaged as a result of the Defendant's
27 malpractice in an amount in excess of \$10,000.

1 deem proper.

2

3

THIRD CLAIM FOR RELIEF

4

5

1. For general and special damages in excess of TEN THOUSAND DOLLARS (\$10,000) according to proof.

6

2. For punitive and exemplary damages.

7

3. For Plaintiff's costs of suit and attorney's fees.

8

9

4. For such other and further relief as the Court may deem proper.

10

11

FOURTH CLAIM FOR RELIEF

12

13

1. For general and special damages in excess of TEN THOUSAND DOLLARS (\$10,000) according to proof.

14

2. For punitive and exemplary damages.

15

3. For Plaintiff's costs of suit and attorney's fees.

16

17

4. For such other and further relief as the Court may deem proper.

18

19

FIFTH CLAIM FOR RELIEF

20

21

1. For general and special damages in excess of TEN THOUSAND DOLLARS (\$10,000) according to proof.

22

2. For punitive and exemplary damages.

23

3. For Plaintiff's costs of suit and attorney's fees.

24

25

4. For such other and further relief as the Court may deem proper.

26

27

SIXTH CLAIM FOR RELIEF

28

1. For general and special damages in excess of TEN

1 THOUSAND DOLLARS (\$10,000) according to proof.

2 2. For punitive and exemplary damages.

3 3. For Plaintiff's costs of suit and attorney's fees.

4 4. For such other and further relief as the Court may
5 deem proper.

6

7

SEVENTH CLAIM FOR RELIEF

8 1. For general and special damages in excess of TEN
9 THOUSAND DOLLARS (\$10,000) according to proof.

10 2. For punitive and exemplary damages.

11 3. For Plaintiff's costs of suit and attorney's fees.

12 4. For such other and further relief as the Court may
13 deem proper.

14

15 The undersigned hereby affirms that this document does not
16 contain a social security number.

17

18 Dated this 8th day of May, 2012

19

20

21

22

23

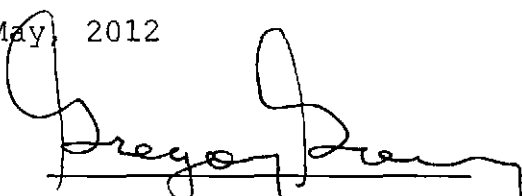
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27

28


GREGORY GARMONG
In Proper Person
11 Dee Court, Smith, NV 89430
775-465-2981 (voice)

CARL M. HEBERT, ESQ.
Nevada Bar #250
202 California Avenue
Reno, NV 89509
(775) 323-5556

Attorney for plaintiff

IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

IN AND FOR THE COUNTY OF WASHOE

GREGORY O. GARMONG,

Plaintiff,

vs.

CASE NO. : CV12-01271

WESPAC; GREG CHRISTIAN;
DOES 1-10, inclusive,

DEPT. NO. : 6

Defendants.

**PLAINTIFF'S MOTION TO ALTER OR AMEND
"ORDER RE MOTIONS" ENTERED AUGUST 8, 2019**

Petitioner moves the Court pursuant to NRCP 59(e) to substantively alter or amend the judgment found in the "Order Re Motions" entered August 8, 2019. ("Order").

The requested substantive alterations or amendments to the judgment are to

- Deny Defendants' Petition for an Order Confirming Arbitrator's Final Award and Reduce Award to Judgment, including Attorneys' Fees and Costs.

- Grant Plaintiff's Motion to Vacate Arbitrator's Final Award.

- Grant Plaintiff's Motion to Vacate Arbitrator's Award of Attorney's Fees.

- Grant Plaintiff's Motions to Vacate Arbitrator's Award of Denial of Plaintiff's Motion

1 for Partial Summary Judgment (“PMPSJ”) and for the Court to Decide and Grant Plaintiff’s
2 Motion for Partial Summary Judgment.

3 This Motion is based upon the Order, the following Points and Authorities, the
4 papers filed with the Court, the papers filed in the arbitration, and the other papers in the
5 case.
6

7 **POINTS AND AUTHORITIES**

8 **I. REQUESTED RELIEF, THE DISTRICT COURT’S MANDATORY DUTY TO**
9 **REVIEW AND PRELIMINARY MATTERS**

10 **A. The requested relief**

11 The Order Granted Defendants’ Petition for an Order Confirming Arbitrator’s Final
12 Award and Reduce Award to Judgment, including Attorneys’ Fees and Costs; Denied
13 Plaintiff’s Motion to Vacate Arbitrator’s Final Award; Denied Plaintiff’s Motion to Vacate
14 Arbitrator’s Award of Attorney’s Fees and denied Plaintiff’s Motions to Vacate Arbitrator’s
15 Award of Denial of Plaintiff’s Motion for Partial Summary Judgment and for the Court to
16 Decide and Grant Plaintiff’s Motion for Partial Summary Judgment (“PMPSJ”).
17

18 Each of these decisions was erroneous for reasons set forth below. Plaintiff Mr.
19 Garmong asks that they be vacated and reversed.
20

21 **B. The District Court has a duty to review the actions and rulings**
22 **of the arbitrator to determine whether he disregarded the facts or manifestly**
23 **disregarded the law.**

24 See NRS § 38.241(1) and case authority discussed at Plaintiff’s Motion to Vacate
25 Arbitrator’s Final Award at 3:3-4:21, including, among others, Graber v. Comstock Bank,
26 111 Nev. 1421, 1427-28, 905 P.2d 1112, 1115-16 (1995) (“[T]he district court had the
27 authority and obligation to review the arbitrator’s award to determine whether the arbitrator
28

1 manifestly disregarded the law. To the extent the arbitration transcript and exhibits
2 contained substantial evidence of a manifest disregard for the law, the district court acted
3 improperly by failing to review the arbitration transcript and exhibits before confirming the
4 arbitration award.”); WPH Architecture, Inc. v. Vegas VP, LP, 131 Nev. Adv. Op. 88, 360
5 P.3d 1145, 1147 (2015); Clark County Educ. Ass'n v. Clark County School Dist., 122 Nev.
6 337, 341-42, 131 P.3d 5, 8 (2006). The District Court has a mandatory legal obligation
7 to perform that review of the arbitrator’s award including, in this case, the arbitrator’s denial
8 of Plaintiff’s Motion for Partial Summary Judgment and the arbitrator’s Final Award.
9

10 **C. The matter of purported delays and alleged reluctance to**
11 **participate in arbitration is not relevant to the Court’s duty to review.**
12

13 The Order discusses at some length purported delays in the proceeding. Neither
14 party raised an objection on this basis. Any such purported delays are not relevant to the
15 issues presented by the various motions decided by the Order. However, the plaintiff
16 wishes to note that he appealed (petitioned for a writ of mandamus or prohibition) the order
17 of the District Court committing the case to arbitration. This appellate process consumed
18 11 months. Further, the parties had could not agree on selection of the arbitrator and
19 sought the assistance of this Court. This took additional time.
20

21 Considerations of reluctance to arbitrate, which the Court raised on its on own
22 motion, cannot justify a refusal to follow mandatory requirements of the law.

23 **D. Scope of this Motion**
24

25 This Motion addresses errors found in the Order, and explains why the rulings in
26 the Order should be reversed. Those errors relate primarily to the Order attempting to
27 justify avoiding addressing the substantive issues. There is no attempt here to address in
28 detail the substantive issues raised in the briefs that led to the Order, which discussion is

1 found in those briefs.

2 **II. LEGAL STANDARDS FOR AMENDING JUDGMENTS**

3 The "Order Re Motions" entered on August 8, 2019 decided all of the claims
4 between the parties and left nothing for future disposition by the Court; therefore, it is a
5 final judgment, Valley Bank of Nevada v. Ginsburg, 110 Nev. 440, 445, 874 P.2d 729, 733
6 (1994), for which a NRCP 59(e) motion to alter or amend judgment may be brought.

8 More recently, in Valley Bank of Nevada v. Ginsburg, 110 Nev. 440, 445, 874
9 P.2d 729, 733 (1994), we reiterated that '[t]his court determines the finality
10 of an order or judgment by looking to what the order or judgment actually
11 does, not what it is called.' We thus found labels to be inconclusive when
12 determining finality; instead, we recognized that this court has consistently
13 determined the finality of an order or judgment by what it substantively
14 accomplished. Id. at 444–45, 874 P.2d at 733 (citing State, Taxicab Authority
15 v. Greenspun, 109 Nev. 1022, 1025, 862 P.2d 423, 425 (1993); Hallicrafters
16 Co. v. Moore, 102 Nev. 526, 528–29, 728 P.2d 441, 443 (1986)); see also
17 Bally's Grand Hotel v. Reeves, 112 Nev. 1487, 1488, 929 P.2d 936, 937
18 (1996) (" 'This court has consistently looked past labels in interpreting NRAP
19 3A(b)(1), and has instead taken a functional view of finality, which seeks to
20 further the rule's main objective: promoting judicial economy by avoiding the
21 specter of piecemeal appellate review.' ") (quoting Ginsburg, 110 Nev. at
22 444, 874 P.2d at 733).

23 Thus, whether the district court's decision is entitled a 'judgment' or an 'order'
24 is not dispositive in determining whether it may be appealed; what is
25 dispositive is whether the decision is final.

26 Lee v. GNLV Corp., 116 Nev. 424, 427, 996 P.2d 416, 418 (2000)(emphasis added).

27 NRCP 59(e) does not state the permissible grounds for the motion, but AA Primo
28 Builders, 126 Nev. 578, 582, 245 P.3d 1190, 1192-93 (2010), identifies the grounds. After
observing that "NRCP 59(e) and NRAP 4(a)(4)(C) echo Fed.R.Civ.P. 59(e) and Fed.
R.App. P. 4(a)(4)(A)(iv), and we may consult federal law in interpreting them," AA Primo
Builders holds:

Because its terms are so general, Federal Rule 59(e) 'has been interpreted
as permitting a motion to vacate a judgment rather than merely amend it,' 11
C. Wright, A. Miller & M. Kane, Federal Practice and Procedure § 2810.1, at

1 119 (2d ed.1995), and as ‘cover[ing] a broad range of motions, [with] the only
2 real limitation on the type of motion permitted [being] that it must request a
3 substantive alteration of the judgment, not merely correction of a clerical
4 error, or relief of a type wholly collateral to the judgment.’ Id. at 121, 976 P.2d
5 518 (citing Osterneck v. Ernst & Whinney, 489 U.S. 169, 109 S.Ct. 987, 103
6 L.Ed.2d 146 (1989); Buchanan v. Stanships, Inc., 485 U.S. 265, 108 S.Ct.
7 1130, 99 L.Ed.2d 289 (1988)). Among the ‘basic grounds’ for a Rule 59(e)
8 motion are ‘correct[ing] manifest errors of law or fact,’ ‘newly discovered or
9 previously unavailable evidence,’ the need ‘to prevent manifest injustice,’ or
10 a ‘change in controlling law.’ Id. at 124–27, 976 P.2d 518.

11 (Emphasis added).

12 In the present case, there was ‘newly discovered or previously unavailable
13 evidence,” the Order makes “manifest errors of law or fact,” and the Order promulgates
14 “manifest injustice,” for reasons that will be discussed in the Argument.

15 To the extent that this motion to alter or amend requires the Court to revisit earlier
16 rulings in light of subsequent events, the standard for reconsideration by a district court
17 was stated in Masonry and Tile Contractors Association of Southern Nevada v. Jolley, Urga
18 & Wirth, Ltd, 113 Nev. 737, 741, 941 P.2d 486, 489 (1997), and is similar to the standards
19 for consideration of a Rule 59 motion: “A district court may reconsider a previously decided
20 issue if substantially different evidence is subsequently introduced or the decision is clearly
21 erroneous.” (Emphasis added). Again, in this case, substantially different evidence was
22 subsequently introduced, and the decision is clearly erroneous.

23 **III. ARGUMENT**

24 The Order at 10-15 includes Sections A-C, dealing respectively with (A) Defendants’
25 Motion to Confirm Final Award, (B) Plaintiff’s Motion to Vacate Final Award, and Motions
26 to Vacate Arbitrator’s Award of Denial of Plaintiff’s Motion for Partial Summary Judgment
27 and for the Court to Decide and Grant Plaintiff’s Motion for Partial Summary Judgment, and
28 (C) Plaintiff’s Motion to Vacate Arbitrator’s Award of Attorney’s Fees. The Argument is

1 organized in the same manner.

2 **A. Defendants' Motion to Confirm Final Award**

3 **1. Basis as set forth in AA Primo Builders**

4
5 The need to "correct manifest errors of law or fact," consider "newly discovered or
6 previously unavailable evidence" (e.g., the introduction by the defendants of additional
7 versions of the alleged "arbitration agreement"), manifest errors of law and fact, and the
8 need "to prevent manifest injustice" all form the bases for a motion to alter or amend.

9 The Order fails to address the fact that defendants earlier misrepresented to Judge
10 Adams that Version 1 of the purported Agreement was "true, complete and correct," when
11 Version 1 was plainly not "true, complete and correct" because it lacked exhibits expressly
12 required by Version 1. Defendants had in their possession at that time, and concealed
13 from Judge Adams, a Version 2 that they later introduced into the record and claimed it
14 was "true, complete and correct." Two different versions of a purported contract cannot
15 both be "true, complete and correct."
16

17 Version 2 of the purported contract is "previously unavailable evidence" that requires
18 the Court to grant the Rule 59(e) motion as to Defendants' Motion to Confirm Final Award.
19

20 These fraudulent misrepresentations were successful in persuading Judge Adams
21 to refer the matter to arbitration. After Defendants' misrepresentations and fraud as to
22 Version 1 and the concealment of Version 2 from Judge Adams were successful and he
23 was induced to refer the matter, Defendants renounced Version 1 and switched to Version
24 2—and got away with it before the arbitrator.
25
26
27
28

1 2. Errors of law or fact in the Order, and the revelation of
2 “previously unavailable evidence” that Defendants had concealed from Judge
3 Adams.

4 (a) A party asserting an agreement to arbitrate must identify the
5 requirements imposed upon the party asserting an agreement to arbitrate.

6 As discussed at, *inter alia*, 1:20-23 of “Plaintiff’s Opposition to Defendants’ Motion
7 to Confirm Arbitrator’s Award,” NRS § 38.221(1) and case authority such as Obstetrics and
8 Gynecologists v. Pepper, 101 Nev. 105, 107, 693 P.2d 1259, 1260 (1985) require that the
9 party asserting an agreement to arbitrate, here defendants, must make of record a binding
10 contract that includes an arbitration provision. This is a statutory requirement that the
11 Court may not disregard. This Court and plaintiff are entitled to have defendants identify
12 the documents from the record that the defendants contend constitute the single,
13 complete, binding purported contract that they claim includes an arbitration provision. If
14 defendants cannot identify one, and only one, true, complete, correct, certain,
15 unambiguous, definite, verified and binding contract in the record as it now exists, the
16 arbitrator’s Final Award cannot be confirmed because there was no agreement to arbitrate
17 as required by NRS §38.221(1) and case authority such as Obstetrics and Gynecologists..

18 An incomplete, uncertain, indefinite collection of paper purporting to be a “contract”
19 or an “agreement” cannot be enforced or be binding upon the victimized party. See Dodge
20 Bros., Inc. v. Williams Estate, 52 Nev. 364, 287 P. 282, 283-4 (1930), holding that “There
21 is no better established principle of equity jurisprudence than that specific performance will
22 not be decreed when the contract is incomplete, uncertain, or indefinite.”

23 Defendants have never identified a single document that they can show is not
24 “incomplete, uncertain, or indefinite,” and the Order does not address this requirement.
25

1 Instead, Defendants have identified two documents as purported “agreements,” neither of
2 which is “true, complete and correct.”

3 Even if either of Version 1 and Version 2 had been “true, complete and correct,” the
4 content of the Agreement remains uncertain and indefinite. When a party introduces two
5 different versions of a “contract,” and swears that each is “true, complete and correct,” to
6 which the other party is to be bound, a court and the other party cannot determine which
7 of the two versions is the actual “true, complete, and correct” contract.

8
9 **(b) The Order does not address the differences in Version 1 and**
10 **Version 2 of the purported Agreement, and Defendants’ fraudulent**
11 **misrepresentations to Judge Adams.**

12
13 “Plaintiff’s Opposition to Defendants’ Motion to Confirm Arbitrator’s Award,” at 5:2
14 discusses in detail Version 1 of the purported Agreement, and at 6:26-8:10 discusses in
15 detail Version 2.

16 The Order relies on Judge Adams’ Orders of December 13, 2012 and April 2, 2014,
17 both of which hold that the Version 1 of the purported agreement is valid. However, the
18 Order makes no mention of the impact of “previously unavailable evidence” on Judge
19 Adams’ Orders, where the Defendants substantially admitted that they had misled Judge
20 Adams with Version 1, while they had Version 2 in their possession the entire time.

21
22 Judge Adams’ Orders are not controlling for two reasons under the applicable legal
23 standards. First, in 2012-2014 Defendants concealed from Judge Adams Version 2 of the
24 Agreement, the version they ultimately advanced in the arbitration. Version 2, which is new
25 and substantially different “previously unavailable evidence,” was not disclosed by
26 Defendants until 2017.

27
28 Second, Judge Adams’ Orders cannot be construed as “law of the case.” “Law of

1 the case” arises only from an express ruling on a matter by an appellate court. Hsu v.
2 County of Clark, 123 Nev. 625, 629-30, 173 P.3d 724, 728 (2007), holds: “Under the law
3 of the case doctrine, ‘[w]hen an appellate court states a principle or rule of law necessary
4 to a decision, the principle or rule becomes the law of the case and must be followed
5 throughout its subsequent progress, both in the lower court and upon subsequent appeal.”
6 (Emphasis added). In the present case the Supreme Court did not speak to the question
7 of validity of Version 1 of the purported Agreement.
8

9 Defendants misrepresented Version 1 of their purported Agreement to Judge
10 Adams in 2012-2014, in order to persuade him to refer the matter to arbitration. Then
11 when the matter reached arbitration in 2017, Defendants realized that they could not
12 possibly rely on Version 1 in the arbitration, and presented the second, inconsistent
13 Version 2 of the purported Agreement to the arbitrator. Inasmuch as no further purported
14 Agreement papers were prepared after 2012, Defendants clearly had Version 2 in their
15 possession when they misrepresented Version 1 to Judge Adams in 2012-2014, and
16 concealed that Version 2 from Judge Adams, from the Supreme Court, and from Mr.
17 Garmong. Neither Version 1 nor Version 2 were in fact “true, complete and correct.”
18

19 The Order focuses on Judge Adams’ Orders of December 13, 2012 and April 2,
20 2014 dealing with Version 1, but fails to address Version 2 that was available to
21 Defendants when they misrepresented Version 1 to Judge Adams as “true, complete and
22 correct,” but was concealed by Defendants at that time and later introduced into the
23 arbitration. The points that the Order overlooks are, first, that the introduction of Version
24 2 constitutes evidence that was “previously unavailable” because Defendants concealed
25 it, and, second, that by failing to address Version 2 in the Order, the Court effectively
26 ratifies Defendants’ strategy of misrepresenting Version 1 in 2012-2014 as “true, complete
27 and correct.”
28

1 and correct” in order to obtain referral to arbitration, while concealing from the Court
2 Version 2, which was later also represented to be “true, complete and correct.

3 Even in 2012-2014, it was apparent that the purported Version 1 could not serve as
4 the basis for the arbitration. For this reason Mr. Garmong argued that Version 1 was not
5 a valid contract including a valid agreement for arbitration. Subsequent events proved that
6 he was correct. His arguments in 2012 were limited by the fact that Version 2 was then
7 being concealed by the Defendants. That is no longer the case, and the significance of
8 Version 2 must be considered as new, previously unavailable evidence.

10 **(c) Factual and legal errors in the Order**

11 The Order disregards the two different versions of the purported Agreement. It also
12 disregards the fact that both versions are incomplete. Neither version has the required
13 number of Exhibits A and B. Version 1 calls for two different Exhibits A and two different
14 Exhibits B, while Version 2 calls for three different Exhibits A and three different Exhibits
15 B. Both Versions call for a “Confidential Client Profile.” Version 1 had a blank-form
16 “Confidential Client Profile,” while Version 2 had an incomplete “Confidential Client Profile.”
17 Defendants represented, under oath, both Version 1 and Version 2 to be “true, complete
18 and correct. Obviously, Version 1 and Version 2 cannot both be “true, complete and
19 correct.”

20 This Court and plaintiff are entitled to have identified for them the document from
21 the record that the defendants contend constitutes the single, complete, binding, “true,
22 complete and correct” purported contract, and which they claim includes an arbitration
23 provision. NRS § 38.221(1) and case authority such as Obstetrics and Gynecologists
24 require that the party asserting an agreement to arbitrate, here defendants, must make of
25 record a binding contract that includes an arbitration provision.

1 The Order fails to address the requirements of NRS § 38.221(1) and case authority
2 such as Obstetrics and Gynecologists, and also fails to address the omission of Exhibits
3 A and B from the record, and the different versions of the Confidential Client profile that
4 were advanced by defendants.

5
6 Defendants refused to address this issue during the arbitration, and in their Motion
7 to Confirm Final Award, and Reply. The reason that they refused to address the issue is
8 that if they chose Version 2, the version introduced during the arbitration proceeding, they
9 would have to admit perjury when Defendant Christian swore under oath that Version 1
10 was “true, complete and correct.” If, on the other hand, they chose Version 1, they would
11 have to admit that Version 2 was falsely represented to the arbitrator and to the Court,
12 They would also be forced to admit that the Final Order, which was based upon Version
13 2, was invalid.
14

15 **3. In response to this Rule 59 motion, the Court should require**
16 **defendants to elect either Version 1 or Version 2.**

17 NRS § 38.221(1) and case authority such as Obstetrics and Gynecologists require
18 that the party asserting the existence of the contract including the agreement to arbitrate
19 must identify that agreement. The Court may not properly disregard this statutory
20 requirement. The Court should require Defendants to elect either Version 1 or Version 2.
21 Of courser, once Defendants make this election, the fraud in asserting the non-elected
22 version becomes even more apparent. Once the election is made, the Defendants must
23 identify in the record the required exhibits.
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1 **4. Absent a demonstration by the Defendants that there was an**
2 **enforceable agreement to arbitrate, the Court must vacate the Final Award pursuant**
3 **to NRS § 38.241(e).**

4 If Defendants do not demonstrate the existence of a single, valid, “true, complete
5 and correct” contract including an agreement to arbitrate, NRS § 38.221(1) and case
6 authority such as Obstetrics and Gynecologists, the court “shall” vacate the final award.
7 NRS § 38.241(e). Two inconsistent versions, Version 1 and Version 2, do not meet this
8 requirement.
9

10 **5. Order to Show Cause Why Action Should not be Dismissed for**
11 **Want of Prosecution Pursuant to NRCP 41(e).**

12 On a related issue, Order at 11:12-14 references the Court’s Order to Show Cause,
13 characterized as “holding Mr. Garmong was ordered numerous times to participate in
14 arbitration.” This Order to Show Cause was prompted solely by the Court’s failure to
15 consider properly NRS §38.221(7) and Judge Adams’ Order of December 13, 2012,
16 holding at 21-22, “In addition, in accordance with NRS 38.221(7), this judicial proceeding
17 shall be stayed pending the arbitration.”
18

19 This Order to Show Cause was also discussed at Order 5:8-15 and 13:6-9,
20 attempting likewise to cast some sort of blame on Mr. Garmong because the arbitration did
21 not move faster. However, nowhere is there recognition of the fact that there is no
22 evidence that Mr. Garmong had declined to participate in arbitration or otherwise acted
23 improperly. After Judge Adams’ Order of December 13, 2012, Mr. Garmong appealed that
24 Order, as he was permitted to do. After the Supreme Court affirmed, he fully participated
25 in the arbitration, despite his continuing objection that arbitration was never proper in the
26 first instance.
27
28

1 Nor is there any mention of the fact that the Order to Show Cause was satisfied
2 when Mr. Garmong drew the Court's attention to NRS §38.221(7) and the above-quoted
3 sentence from Judge Adams' Order of December 13, 2012. The repeated reference to the
4 Order to Show Cause is an improper attempt to blame Mr. Garmong for a demonstrable
5 error by the Court.
6

7 In the end, regardless of the speed at which the arbitration moved, Defendants are
8 still required to identify the single "true, complete and correct" document in the record that
9 contains the purported agreement to arbitrate, NRS § 38.221(1) and Obstetrics and
10 Gynecologists v. Pepper, and the Court is still required to follow the statutory law and case
11 authority. If Mr. Garmong's position is not correct, pointing out such a single "true,
12 complete and correct" document in the record should pose no burden for either Defendants
13 or the Court.
14

15 **B. Motion to Vacate Final Award; Motions to Vacate Arbitrator's Award of**
16 **Denial of Plaintiff's Motion for Partial Summary Judgment and for the Court to**
17 **Decide and Grant Plaintiff's Motion for Partial Summary Judgment ("PMPSJ").**

18 **1. Basis as set forth in AA Primo Builders**
19

20 The need to "correct manifest errors of law or fact," consider "newly discovered or
21 previously unavailable evidence," and the need "to prevent manifest injustice" serve as the
22 grounds for this portion of the motion to alter or amend.

23 The Order at 11:20-13:20 asserts that these motions were previously decided by the
24 Court, and that Mr. Garmong may not reassert them. This position disregards the content
25 of the prior motions and the content of this Court's Order of November 29, 2018.
26
27
28

1 **2. Errors of law or fact in the Order**

2 **(a). The Order of November 29, 2018 did not address or decide**
3 **either of these motions as presented by Mr. Garmong.**

4 The Order at 11:19-13:19 consolidates these two issues under a single heading,
5 but Mr. Garmong will discuss them separately in this subsection (i) and the following
6 subsection (ii). The thrust of the Order at 11:20-24 is that Mr. Garmong had previously
7 raised these two matters and that the Court had already decided these two matters in its
8 Order of November 29, 2018.

9 The present Order overlooks the Court's Order of November 29, 2018 at 8:23-25,
10 holding, "Here, Mr. Garmong does not seek review of a final arbitration award. Instead, Mr.
11 Garmong is asking the Court to challenge the continued service of Judge Pro and vacate
12 Judge Pro's order regarding summary judgment." (Emphasis added). Plainly, this sentence
13 recognizes that Mr. Garmong's motion leading to the Court's Order of November 29, 2018
14 does not relate in any way to the arbitration Final Award, and therefore DCR 13(7) could
15 not apply. The sentence also recognizes that the challenge to the summary judgement
16 was based solely upon the disqualification of the arbitrator, and not the substance of the
17 arbitrator's decision on PMPSJ.

18 The Order also overlooks the statutory and case authority of a party to bring motions
19 to vacate a Final Award.

20 **(i) Motion to Vacate Final Award**

21 The date of the arbitration Final Award was March 11, 2019, some four months after
22 the date of the Order of November 29, 2018. Consequently, Mr. Garmong's motion of July
23 5, 2018 leading to the Court's Order of November 29, 2018, and the Court's Order of
24 November 29, 2018, could not possibly have dealt with the subject matter of the Final
25

1 Award. The Order at 11:20-24 asserts that Mr. Garmong did not follow the procedure of
2 DCR 13(7) in seeking vacating of the arbitrator's Final Award, but failed to recognize that
3 the Final Award was announced months after the Order of November 29, 2018. Surely the
4 Court does not contend that Mr. Garmong's motion of July 5, 2018 contested, or that the
5 Court's own Order of November 29, 2018 could have addressed, the arbitrator's Final
6 Award that was made months later, on March 11, 2019.

8 **(ii) Motions to Vacate Arbitrator's Award of Denial of Plaintiff's**
9 **Motion for Partial Summary Judgment and for the Court to Decide and Grant**
10 **Plaintiff's Motion for Partial Summary Judgment.**

11 Although it had a similar title, the earlier motion to vacate the arbitrator's denial of
12 the PMPSJ differed for two important reasons from the one addressed in the Order;
13 therefore, it was not the same motion, and did not require permission under DCR 13(7).
14 First, as the above-quoted sentence from the Order recognizes, the earlier motion to
15 vacate was based upon requested disqualification of the arbitrator, not on the substance
16 of the PMPSJ; second, the earlier motion to vacate did not request the Court to decide the
17 PMPSJ on the merits, only to vacate the decision of the arbitrator and appoint a new
18 arbitrator who would then hopefully decide the PMPSJ according to Nevada law. The
19 Court's Order of November 29, 2018 at 8:11-9:8 did not remotely suggest that it had
20 decided the PMPSJ on the substantive merits. In fact, the Order of November 29, 2018
21 states at 9:2-5, "This Court . . . declines to consider an appeal of a motion for summary
22 disposition of claims."

23
24
25 The result of that Order of November 29, 2018 and the present Order, taken
26 together, is that the arbitration Final Award has never previously been addressed by this
27 Court, and that the PMPSJ has never been decided by this Court according to the
28

1 substantive law of Nevada dealing with summary judgment.

2 **(b). The Order of November 29, 2018 expressly invited and**
3 **authorized Mr. Garmong to assert the motions after a Final Order was entered,**
4 **stating, “Mr. Garmong will have the opportunity to appeal the final arbitration award**
5 **to this Court in accordance with JAMS rules, should he wish to do so.”**
6

7 After the arbitrator refused to decide the PMPSJ according to the law, Mr. Garmong
8 moved the Court for the arbitrator’s disqualification. The purpose of seeking the
9 disqualification of an arbitrator who clearly disregarded Nevada law was for the Court to
10 appoint a new arbitrator who would obey the law of Nevada. Hoping that the arbitrator
11 would do the right thing and recuse himself because of his obvious refusal to follow the law
12 of Nevada, Mr. Garmong sent the arbitrator a pre-filing courtesy copy of a draft of the
13 motion; see Exhibit 9 to the Motion to Disqualify. The motion was not directed to JAMS,
14 but was directed to this Court. JAMS improperly issued an advisory opinion on a motion
15 directed to this Court. Not surprisingly, JAMS ignored the facts and law, and supported
16 the arbitrator’s refusal to follow the law of Nevada and his improper decision on the
17 PMPSJ.
18

19
20 Mr. Garmong then sent the actual motion to this Court, which denied it in the Order
21 of November 29, 2018. The Order misinterpreted the actions of JAMS as a proper
22 decision on the motion directed to this Court, stating at 8:23-9:7:

23 Here, Mr. Garmong does not seek judicial review of a final arbitration award.
24 Instead, Mr. Garmong is asking this Court to challenge the continued service
25 of Judge Pro and vacate Judge Pro’s order regarding summary judgment.
26 Mr. Garmong makes this motion after making an identical request to the
27 JAMS Arbitration Appeals Committee, which was denied. As set forth
28 ‘[JAMS] will make the final determination as to whether an Arbitrator is
unable to fulfill his or her duties, and that decision shall be final.’ JAMS
Comprehensive Rules & Procedures Rule 15(i). Accordingly, this Court will
not interfere to supersede the Committee’s final determination regarding the

1 continued service of an arbitrator and declines to consider an appeal of a
2 motion for summary disposition of claims. Mr. Garmong will have the
3 opportunity to appeal the final arbitration award to this Court in accordance
4 with JAMS rules, should he wish to do so.

(Emphasis added).

5 The Court's decision on the present Order re Motions is erroneous in light of the
6 decision of the Order of November 29, 2018 for several reasons. First, there was never
7 any motion directed to JAMS, and it had no authority to decide a courtesy copy of a motion
8 directed to this Court. Second, the rules of JAMS do not supersede the authority of this
9 Court, which appointed the arbitrator and had the power to disqualify the arbitrator. Third,
10 the argument that the Court already decided the motion to vacate the PMPSJ is
11 incorrect—the Court plainly stated that it “declines to consider an appeal of a motion for
12 summary disposition of claims.” Fourth, the Disqualification Motion of July 5, 2018 never
13 asked this court to decide the PMPSJ; it only asked this Court to vacate the arbitrator's
14 decision. Fifth, the Order of November 29, 2018 expressly authorized Mr. Garmong to
15 appeal the final arbitration award, which final arbitration award includes the Final Award
16 and the arbitrator's decision on the PMPSJ. Sixth, the arbitrator's denial of the PMPSJ was
17 solely for the reason that he maintained that assessment of the credibility of witnesses was
18 necessary to decide the PMPSJ, and determinations of credibility on summary judgment
19 are expressly forbidden by Nevada case law. The Court's Order of November 29, 2018
20 and the present Order do not address this point at all. There has never been a decision
21 on the PMPSJ utilizing the proper legal approach, either by the arbitrator or by the Court.

22 The special significance of the arbitrator refusing to follow the law of Nevada in
23 deciding the PMPSJ is that the resolution of a summary judgment motion must follow a
24 highly specific and tightly defined procedure pursuant to Nevada authority, see Wood v.
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1 Safeway, 121 Nev. 724, 121 P.3d 1026 (2005). In this case, the arbitrator refused to follow
2 Nevada law, and instead decided the PMPSJ on a basis—determining credibility of the
3 declarants—that is expressly forbidden by Nevada law. The arbitrator’s refusal to follow the
4 law of Nevada in deciding PMPSJ did not bode well for the remainder of the arbitration,
5 and that concern was borne out.
6

7 The Disqualification Motion of July 5, 2018 discussed at 3:18-4:26 this Court’s
8 statutory and equitable powers to disqualify an arbitrator that the Court had appointed.
9 NRS §28.241 provides “Upon motion to the court by a party to an arbitral proceeding, the
10 court shall vacate an award . . . [upon specified conditions].” There is no limitation that the
11 Court shall vacate only a final award or final decision on an otherwise-dispositive motion
12 such as the PMPSJ. In the case of the disqualification motion, Mr. Garmong sought
13 vacating of the decision on the PMPSJ, and the Court refused. Mr. Garmong also sought
14 disqualification of the arbitrator based on the Court’s equitable powers as utilized by other
15 courts.
16

17 After the final decision of the arbitrator, which necessarily included his denial of the
18 PMPSJ, Mr. Garmong took the Court at its word as giving him permission and for the first
19 time moved to vacate the final determination of the arbitrator and for the Court to decide
20 PMPSJ.
21

22 As is plain from the above quotation, Mr. Garmong had not previously moved to
23 vacate the Final Award (which could not have been done prior to the date of the Final
24 Award). Plaintiff’s Motion to Vacate Arbitrator’s Final Award, filed April 22, 2019 sets forth
25 at 3:2-4:16 the legal standards for deciding a motion to vacate a final award, and at 4:18-
26 21: “The District Court has a duty to review the actions and rulings of the arbitrator to
27 determine whether the arbitrator manifestly disregarded the law or the facts.” Graber v.
28

1 Comstock Bank, 111 Nev. 1421, 1427-28, 905 P.2d 1112, 1115-16 (1995).

2 Further, the Motion after Final Order was brought under NRS §38.241(1), expressly
3 authorizing and permitting a party to challenge the final decisions of an arbitrator.

4 The attempted reliance on DCR 13(7) at 11:20-12:21 in the Court's Order of August
5 8, 2019 is misplaced. The authority cited above supports the Court's granting of Mr.
6 Garmong's motion to alter or amend. New facts are presented in the motion to vacate,
7 specifically the facts brought forth in the arbitration proceeding, and the errors of law and
8 fact underlying the Court's Order are detailed.

9
10 **C. Motion to Vacate Attorney's Fees**

11 **1. Basis as set forth in AA Primo Builders**

12 The need to "correct manifest errors of law or fact," consider "newly discovered or
13 previously unavailable evidence," and the need "to prevent manifest injustice" is the basis
14 for this portion of the motion to alter or amend.

15 **2. Errors of law or fact in the Order**

16 **(a). The Court's decision is a clear abuse of discretion because it**
17 **failed to follow the controlling legal authority.**

18 The Order at 13:20-15:2 denies the motion to vacate attorney's fees, employing
19 several arguments which are based upon erroneous assumptions and without citation to
20 any relevant supporting legal principles.

21 The Order evidences an abuse of discretion on the part of the District Court, based
22 upon the very case whose holding it paraphrased. The Order at 14:14-16 addressed and
23 misstated the holding of the one case authority cited in this section, Bidart v. American Title
24 Ins. Co., 103 Nev. 175, 734 P.2d 732 (1987). Bidart, 103 Nev. at 179, 734 P.2d at 735,
25 held,
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2 The trial court properly considered the factors laid out by this court in Beattie
3 v. Thomas, 99 Nev. 579, 668 P.2d 268 (1983). Where the court properly
4 weighs the Beattie factors, an award of attorneys fees based on NRCP 68
is discretionary with the court. Its discretion will not be disturbed absent a
clear abuse.

5 There is no indication in the Order that it considered the Beattie factors.
6 Accordingly, its decision was a clear abuse of discretion because the Court failed to follow
7 the principles of Bidart. “An arbitrary or capricious exercise of discretion is one founded
8 on prejudice or preference rather than on reason, or contrary to the evidence or
9 established rules of law.” State v. Eighth Judicial Dist. Court (Zogheib), 130 Nev.158, 161,
10 321 P.3d 882, 884 (2014) (internal quotations omitted).

11
12 **(b). The arbitrator’s Discovery Plan and Scheduling Order set forth**
13 **the rules and procedures to govern the entire arbitration. It was not limited to**
14 **discovery matters.**

15 In an attempt to justify the arbitrator’s retroactive application of NRCP Rule 68,
16 Order at 14:17-26 incorrectly suggests that the arbitrator’s Discovery Plan and Scheduling
17 Order (“Plan”) of August 11, 2017 dealt solely with, and was limited to, “specific NRCP
18 rules relating to discovery.” The arbitrator made the same argument in the Final Order,
19 page 10, fourth paragraph, stating, “However, the agreement of the parties to specific
20 NRCP rules relating to discovery does not automatically exclude the applicability of others,
21 particularly where the arbitrator deems that necessary. See JAMS Rule 24.” JAMS Rule
22 24 has no such provision. The word “necessary” appears in JAMS Rule 24 twice, once in
23 JAMS Rule 24(e) relating to “interim measures,” and again in JAMS Rule 24(j) relating to
24 “correct any computational, typographical or other similar error in an Award.” JAMS Rule
25 24 has no provision for changing the scope of the previously identified rules that govern
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1 an arbitration proceeding, to take retroactive effect to the detriment of a party.

2 This argument of the Court and the arbitrator is apparently intended to excuse the
3 omission of NRCP Rule 68 from the Plan, and justify its later introduction by the arbitrator
4 to take retroactive effect to Mr. Garmong's detriment. That argument is incorrect. The
5 Plan dealt with the entire range of rules and matters governing the arbitration, not just
6 discovery. It expressly included NRCP 6 (Plan 1:17), dealing with time periods; NRCP 56
7 (Plan 2:12-13), dealing with motions for summary judgment; Washoe District Court Rule
8 12 (Plan 1:19-20), dealing with deadlines, and the filing of status reports (Plan 2:16-17).
9 It also addressed opening arbitration briefs (Plan 2:6-7), pre-hearing briefs (Plan 2:14-15),
10 and amended complaints and answers (Plan 2:18-20). It was not limited to discovery
11 matters. Certainly a limitation of the Plan to discovery matters was not intended by either
12 the parties or the arbitrator, as these rules were stated (Plan 1:20) to "generally govern this
13 case." Accordingly, the agreement and order of the Plan was properly relied upon by Mr.
14 Garmong as a statement of the broad range of rules governing the arbitration.

15 The parties entered into an agreement (Plan 1:17) concerning the rules governing
16 the arbitration, and the arbitrator ordered those agreed-upon provisions (Plan 1:16). Thus,
17 Defendants' argument, repeated at Order 14:25-26, that the agreement and order "does
18 not automatically exclude the applicability of others to the matter, particularly where the
19 arbitrator determines it necessary," is not found in the Plan itself and is not valid. The
20 parties and the arbitrator agreed, after a conference (Plan 1:20) that the entirety of the
21 arbitration, not just discovery, would be governed by a limited set of rules and procedures
22 set forth in the Plan. Neither the arbitrator nor the Court has the authority unilaterally to
23 alter that agreement.
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1 **(c). The arbitrator never ruled that NRCP Rule 68 would be included**
2 **in the rules governing the arbitration.**

3 Regarding the inclusion of the phrase “unless the arbitrator rules otherwise” in the
4 Plan at 1:20, the arbitrator never ruled that Rule 68, governing offers of judgement, would
5 be included in the set of rules governing the arbitration. Garmong pointed this out in his
6 Motion to Vacate Award of Attorney’s Fees at 3:21-27, 20:18-23, and 20:26-27. Neither
7 the arbitrator, the defendants, nor this Court identified any oral or written ruling of the
8 arbitrator where he extended the rules governing the arbitration to include NRCP Rule 68.
9

10 Nor was there any finding by the arbitrator that adding NRCP Rule 68 to the list of
11 governing rules of the arbitration, long after the offer of judgment was made and after the
12 time that Mr. Garmong was permitted to respond, was “necessary” as argued by
13 Defendants and echoed by the Order at 8:24-9:3. A determination of “necessary” in this
14 context requires specific findings of fact and conclusions of law. In this case such a finding
15 of fact and conclusion of law would have had to demonstrate that retroactive addition of
16 Rule 68 to the governing rules, prior to the time that the purported offer of judgment was
17 made, and without notice to Mr. Garmong or an opportunity to be heard, is somehow
18 justified by statute or case authority, and did not prejudice Mr. Garmong.
19
20

21 **(d). Even if the arbitrator had ruled that NRCP Rule 68 would be**
22 **included in the rules governing the arbitration, no such ruling was made prior to the**
23 **offer of judgment of September 12, 2017, and the required date of action by Mr.**
24 **Garmong.**

25 Although Defendants allege that they sent, and Mr. Garmong received, an offer of
26 judgment on September 12, 2017, the governing law of the case at that time and during
27 the 10-day period thereafter when Mr. Garmong could accept the offer of judgment, was
28

1 that Rule 68 was not included in the rules governing the arbitration set forth in the Plan of
2 a month earlier. The Defendants did not at that time return to the arbitrator and ask him
3 to modify the Plan to add Rule 68 to that group of rules, and consequently Rule 68 was not
4 a governing rule of the arbitration.
5

6 Had Mr. Garmong responded to the purported offer of judgment of September 12,
7 2017, he would have opened the door to an argument by defendants, the arbitrator, and
8 the Court that by this action he acquiesced in the addition of Rule 68 to the set of rules set
9 out in the Plan to govern the arbitration. He did not acquiesce. To the contrary, if
10 Defendants wished to add Rule 68 to the set of rules governing the arbitration, it was their
11 obligation to return to the arbitrator and move for the addition.
12

13 **(e). The taking of Garmong's property without due process is a**
14 **violation of both the United States and Nevada Constitutions.**

15 The action of the arbitrator, and rationalization in the Order, is an attempt to justify
16 a denial of Due Process under the Fourteenth Amendment to the United States
17 Constitution ("nor shall any State deprive any person of life, liberty, or property, without due
18 process of law") and Art. 1, § 8(5) of the Nevada Constitution ("No person shall be deprived
19 of life, liberty, or property, without due process of law.").

20
21 Both of these constitutional provisions forbid government from the kinds of actions
22 perpetrated by the arbitrator and approved by the Order, the taking of Garmong's property
23 without proper notice. A fundamental requirement of due process is that the party whose
24 property is to be affected must be given fair notice and an opportunity to speak to the
25 grounds under which his property is to be taken, before the event—here the purported offer
26 of judgement—underlying the taking had occurred. At the time of the purported offer of
27 judgment of September 12, 2017, Mr. Garmong had been given no notice that the
28

1 arbitrator might later make a ruling consistent with Rule 68 becoming a part of the rules
2 governing the arbitration, and in fact the listing of governing rules in the Plan of August 11,
3 2017 gave him clear notice to the contrary. Arguing and appealing an already-ordered
4 taking of property is not the same as fair notice and an opportunity to speak prior to the
5 events--here the purported offer of judgment--leading to the taking. On this fundamental
6 point the United States Supreme Court stated, Armstrong v. Manzo, 380 U.S. 545, 552
7 (1965):
8

9 A fundamental requirement of due process is 'the opportunity to be heard.'
10 Grannis v. Ordean, 234 U.S. 385, 394, 34 S. Ct. 779, 783. It is an
11 opportunity which must be granted at a meaningful time and in a meaningful
12 manner. The trial court could have fully accorded this right to the petitioner
13 only by granting his motion to set aside the decree and consider the case
14 anew. Only that would have wiped the slate clean. Only that would have
15 restored the petitioner to the position he would have occupied had due
16 process of law been accorded to him in the first place. His motion should
17 have been granted For the reasons stated, the judgment is reversed
18 and the case is remanded for further proceedings not inconsistent with this
19 opinion.

20 The Order at 13:24-14:16 references and apparently relies upon the language "or
21 allowed by applicable law." NRCP Rule 68 was not "applicable law" according to the
22 arbitrator's own Plan at the time the offer of judgment was made on September 12, 2017,
23 and during the 10-day period thereafter. The arbitrator never at any time made any ruling
24 that NRCP Rule 68 would be one of the rules governing the arbitration, nor have the
25 arbitrator, the defendants, or the Court identified any such ruling.

26 Prior to September 12, 2017, had the defendants moved that the arbitrator amend
27 the Plan to include NRCP Rule 68 and the arbitrator made this change after giving Mr.
28 Garmong the opportunity to oppose the change, the Due Process argument of this
29 subsection and the fundamental fairness argument of the next subsection would lose much
30 of their force. But defendants did not do so, and the arbitrator never amended the Plan to

1 include NRCP Rule 68.

2 The attempt to take Mr. Garmong's property in violation of Due Process is founded
3 solely upon the purported offer of judgment, which was not applicable to the arbitration
4 proceeding by the arbitrator's own Plan at the time the purported offer of judgment was
5 made, or at a later time.
6

7 **(f). The award under NRCP 68 also violates principles of fundamental**
8 **fairness.**

9 Constitutional Due Process expresses the principles of fundamental fairness in
10 relation to the taking of property. The taking of Mr. Garmong's property based solely upon
11 an offer of judgment under NRCP Rule 68, when that rule was not one of the arbitrator's
12 enumerated rules governing the arbitration, is the height of unfairness.
13

14 Had the parties agreed, and the arbitrator ordered in the Plan, that NRCP Rule 68
15 would be part of the arbitration proceedings, Mr. Garmong's view of the case and strategy
16 would have been entirely different. For example, he might have made his own offer of
17 judgment before the PMPSJ was filed, under the assumption (wrongly, as it turned out) that
18 it would be fairly decided according to the applicable legal principles. This was the guiding
19 principle in Davidsohn v. Steffens, 112 Nev. 136, 140, 911 P.2d 855, 857 (1996). In that
20 case the prevailing party at trial moved for attorney's fees well after the time ran for the
21 filing of a notice of appeal. The losing party had not filed a notice of appeal. The Nevada
22 Supreme Court reversed a grant of fees, stating that:
23

24 We conclude that Doyle's [the prevailing party] delay of more than three
25 months after the judgment before filing her request for attorney's fees was
26 unreasonable. She has not offered any reason to justify this delay, and
27 Davidsohn [the losing party] was prejudiced by the delay since he received
28 no notice that Doyle would seek fees until after the deadline for filing an
appeal had passed. Although the parties dispute whether or not Doyle
agreed not to seek attorney's fees in return for Davidsohn's forgoing his right

1 to appeal, it is undisputed that on October 20, 1993, Davidsohn's attorney at
2 the very least informed Doyle's attorney that Doyle's decision regarding
3 attorney's fees was important to Davidsohn's decision whether to appeal.
4 Doyle then did not request attorney's fees during the running of the period
5 for filing an appeal. We conclude that it was therefore reasonable for
Davidsohn to believe that Doyle had decided not to seek fees and in reliance
on that belief not to act on his right to appeal and, conversely, that it was
unreasonable for Doyle to delay in this fashion before seeking fees.

6 (Emphasis added). The point is that, as in Davidsohn, if the plaintiff here had advance
7 notice of the rules by which he was playing, he could have conducted himself differently.
8 Here, if the plaintiff was informed that NRCP 68 was a part of the rules governing the
9 arbitration, he might have accepted the offer of judgment. Instead, the decision to employ
10 NRCP 68 and award fees was made well after the plaintiff could have done anything under
11 the rule. In short, he was effectively misled to his disadvantage.

13 The Order takes the position that Mr. Garmong should not suggest that the arbitrator
14 was biased against him. But the evidence is so strong that it may not be ignored. The
15 arbitrator refused to decide fairly the PMPSJ, which if decided according to the applicable
16 principles of law would have required the arbitrator to decide the entire arbitration in Mr.
17 Garmong's favor, and avoided the subsequent lengthy and expensive arbitrator process.
18 The arbitrator's Final Award was based upon Version 2 of the alleged Agreement, which
19 was demonstrated to have been the beneficiary of Defendants' misrepresentation to this
20 Court. The arbitrator's Final Award refused to decide those issues presented in the First
21 Amended Complaint which would have mandated a decision in Mr. Garmong's favor, and
22 the arbitrator refused to give reasons for most of his decisions on the claims that he did
23 decide. The arbitrator awarded attorneys fees based upon an offer of judgment under
24 NRCP Rule 68, that was not included in the Discovery Plan and Scheduling Order of
25 August 11, 2017. An objective consideration of these facts mandates a decision that the
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1 arbitrator was biased against Mr. Garmong.

2 **IV. SUMMARY AND CONCLUSION**

3 The Order seeks improperly to avoid the District Court's obligation to review the
4 arbitrator's award to determine whether the arbitrator manifestly disregarded the law or
5 facts. Graber v. Comstock Bank, *supra*. The Court may not use diversions such as
6 irrelevant claims of delays or reluctance to arbitrate, assertions of decisions on issues
7 which were in fact not presented or decided previously and claims that Judge Adams'
8 2012-2014 orders constitute law of the case, when new facts later arose. Instead, the
9 Court should recognize that manifest errors of law have infected this entire proceeding, for
10 example, the steadfast refusal of the arbitrator to rule on a partial motion for summary
11 judgment upon which the plaintiff would have prevailed and the use of a rule of civil
12 procedure (NRCP 68) which unfairly surprised the plaintiff at a time when he could take no
13 action.
14

15
16 Consistent with the arguments and points and authorities stated above, the plaintiff
17 urges this Court to alter or amend the Order Re Motions to grant the following:

18 • Deny Defendants' Petition for an Order Confirming Arbitrator's Final Award and
19 Reduce Award to Judgment, including Attorneys' Fees and Costs.

20 • Grant Plaintiff's Motion to Vacate Arbitrator's Final Award.

21 • Grant Plaintiff's Motion to Vacate Arbitrator's Award of Attorney's Fees.

22 • Grant Plaintiff's Motions to Vacate Arbitrator's Award of Denial of Plaintiff's Motion
23 for Partial Summary Judgment ("PMPSJ") and for the Court to Decide and Grant Plaintiff's
24

1 Motion for Partial Summary Judgment.

2 **THE UNDERSIGNED DOES HEREBY AFFIRM THAT THIS DOCUMENT DOES NOT**
3 **CONTAIN THE SOCIAL SECURITY NUMBER OF ANY PERSON.**

4 DATED this 5th day of September, 2019.

5 /S/ Carl M. Hebert
6 CARL M. HEBERT, ESQ.

7 Counsel for plaintiff
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1 CODE NO. 3370

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

8 GREGORY O. GARMONG,
9 Plaintiff,

Case No. CV12-01271
Dept. No. 6

10 vs.
11

12 WESPAC; GREG CHRISTIAN; DOES 1-10,
13 inclusive,

14 Defendants.
15 _____/

16 **ORDER DENYING PLAINTIFF'S MOTION TO DISQUALIFY ARBITRATOR PRO;**
17 **ORDER DENYING MOTION TO VACATE ORDER DENYING**
18 **MOTION FOR SUMMARY JUDGMENT;**
ORDER DENYING MOTION TO APPOINT NEW ARBITRATOR

19 Before this Court is *Plaintiff's Motion to Disqualify Arbitrator Pro, Vacate Order*
20 *Denying Motion for Summary Judgment and Appoint New Arbitrator* ("Motion") filed by
21 Plaintiff GREGORY O. GARMONG ("Mr. Garmong"), by and through counsel, Carl M.
22 Hebert, Esq. Defendants WESPAC and GREG CHRISTIAN (collectively "Defendants"
23 unless individually referenced), by and through counsel, Thomas C. Bradley, filed their
24 *Opposition to Motion to Disqualify Arbitrator Pro, Vacate Order Denying Motion for*
25 *Summary Judgment and Appoint New Arbitrator* ("Opposition"). Mr. Garmong filed *Plaintiff's*
26 *Reply to Opposition to Motion to Disqualify Arbitrator* ("Reply") and the matter was submitted
27
28 for decision thereafter.

1 **I. FACTS AND PROCEDURAL HISTORY**

2 This is an action for breach of contract. Mr. Garmong filed his Complaint on May 9,
3 2012. On September 19, 2012, Defendants WESPAC and Greg Christian filed their *Motion*
4 *to Dismiss and Compel Arbitration*. On December 13, 2012, this Court¹ entered its *Order*
5 granting Defendants' request to compel arbitration but denying the motion to dismiss. The
6 Court found, "the arbitration agreement contained in paragraph 16 of the 'Investment
7 Management Agreement' entered into by the parties is not unconscionable and is therefore
8 enforceable." *Order*, p. 1. Mr. Garmong then filed a motion to reconsider the Court's
9 December 13, 2012 Order. The motion was opposed by Defendants. However, Mr.
10 Garmong did not file a reply and this case was stagnant for nearly a year until January 13,
11 2014, when this Court entered its *Order to Proceed*. Mr. Garmong filed his reply on
12 February 3, 2014. The motion for reconsideration was denied on April 2, 2014.

13
14 Mr. Garmong then sought writ relief from the Nevada Supreme Court. However, at
15 the time there was no stay of this proceeding entered by this Court or by the Nevada
16 Supreme Court.² On December 18, 2014, the Nevada Supreme Court entered its *Order*
17 *Denying Petition for Writ of Mandamus or Prohibition*. The Supreme Court next entered its
18 *Order Denying Rehearing* on March 18, 2015, and, subsequently, entered its *Order Denying*
19 *En Banc Reconsideration* on May 1, 2015. During this time, no court-ordered stays tolled
20 the time within which Mr. Garmong must bring this action to trial.³

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24
25 ¹ Judge Brent T. Adams originally presided over this proceeding in Department 6 before his
26 retirement. Judge Lynne K. Simons was sworn in on January 5, 2015, and now presides in
Department 6.

27 ² A court-ordered stay tolls the time for a plaintiff to bring a case to trial for purposes of NRCP 41.
28 See D.R. Horton, Inc. v. Eighth Jud. Dist. Ct., 131 Nev. Adv. Op. 86, 358 P.3d 925, 929 (2015).

³ This Court subsequently entered its *Order Granting Motion to Strike*, staying the proceedings
pending the outcome of arbitration on November 13, 2017.

1 After the Nevada Supreme Court's orders were entered, this Court again entered an
2 *Order for Response*, instructing the parties to proceed with this case. *Order*, November 17,
3 2015. In response, the parties indicated they had initiated an arbitration proceeding with
4 JAMS in Las Vegas. *Notice of Status Report*, December 1, 2015.

6 On June 8, 2016, Mr. Garmong filed his *Motion for a Court-Appointed Arbitrator*,
7 arguing Defendants prejudiced the JAMS arbitrators against Mr. Garmong. This matter was
8 fully briefed; and, on July 12, 2016, this Court entered its *Order re: Arbitration*. The *Order*
9 *re: Arbitration* instructed the parties to submit three names each to this Court. The Court
10 would then select an arbitrator. After the parties submitted names, the Court appointed a
11 panel of arbitrators to hear this dispute consistent with the applicable JAMS rules and
12 procedures and in consideration of overall fairness to all parties. *Order Appointing*
14 *Arbitration Panel* entered September 13, 2016. The parties then stipulated to select one
15 arbitrator, to reduce costs. *Stipulation to Select One Arbitrator*, October 17, 2016. In
16 accordance, this Court entered its *Order Appointing Arbitrator* on October 31, 2016,
17 appointing Michael G. Ornstil, Esq., as arbitrator. After it was determined Mr. Ornstil was
18 unavailable, Mr. Garmong stipulated to the appointment of either retired Judge Phillip M.
19 Pro,⁴ or Lawrence R. Mills. Esq. Pursuant to the parties' stipulation, on February 21, 2017,
21 this Court entered its *Order Appointing Arbitrator*, appointing Judge Phillip M. Pro ("Judge
22 Pro").

24 //

25 //

26 //

28 ⁴ Mr. Garmong ironically stipulated to Judge Pro although he previously moved to preclude a judge from serving as an arbitrator.

1 On March 27, 2017, Mr. Garmong filed *Plaintiff's Objection Pursuant to NRS*
2 *38.231(3) and 38.241(e) That There is No Agreement to Arbitrate; Notification of Objection*
3 *to the Court*. Despite prior determinative orders from this Court, Mr. Garmong again
4 objected to arbitration on the basis there was no agreement to arbitrate.⁵

5
6 On May 23, 2017, this Court entered its *Order to Show Cause Why Action Should not*
7 *be Dismissed for Want of Prosecution Pursuant to NRCP 41(E)*, finding "Mr. Garmong and
8 Defendants have been ordered numerous times to participate in arbitration as early as
9 December 13, 2012. There is no evidence before this Court the parties have proceeded to
10 arbitration." *Order*, p. 4. Accordingly, the Court ordered the parties to show cause why the
11 action should not be dismissed for want of prosecution. *Order*, p. 4.

12
13 The parties had their first arbitration conference in April 2017. *Arbitrator's Order Re:*
14 *Summary Judgment* ("SJ Order"), p. 1. Seven months later, Mr. Garmong filed his *Motion*
15 *for Partial Summary Judgment* ("MSJ") pursuant to NRCP 56. *SJ Order*, p. 1. On January
16 25, 2018, Judge Pro entered an *Order Re Summary Judgment*, denying Mr. Garmong's
17 MSJ. *SJ Order*, p. 1. On February 12, 2018, Mr. Garmong filed a *Motion for*
18 *Reconsideration of the Order Denying Partial Summary Judgment* which was thereafter
19 denied by Judge Pro.

20
21
22 On June 5, 2018, Mr. Garmong moved to disqualify Judge Pro by filing the instant
23 *Motion* with the JAMS' National Arbitration Committee (the "Committee"), which oversees all
24 appeals through JAMS. *Opposition*, Exhibit 4. The matter was fully briefed and on June 26,
25 2018 the Committee denied Mr. Garmong's appeal, noting the Committee's decision is the
26 final decision. *Opposition*, Exhibit 4.

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⁵ The Court will consider this objection as Mr. Garmong preserving his rights pursuant to NRS
38.231(2) and NRS 38.241(1)(e).

1 Mr. Garmong thereafter filed the instant *Motion* requesting the Court disqualify Judge
2 Pro, vacate the arbitration *Order Re Summary Judgment*, and appoint a new arbitrator.
3 First, Mr. Garmong argues Judge Pro must be disqualified because he failed to “honor” the
4 court’s decision in Wood v. Safeway, Inc., 121 Nev. 724, 121 P.3d 1026 (2005). *Motion*, p.
5 2. Specifically, Mr. Garmong argues Judge Pro denied the MSJ because “the summary
6 judgment papers of the parties consumed ‘nearly 100 pages’” and there were “allegedly
7 issues of fact and credibility.” *Motion*. p. 10. Mr. Garmong further contends Judge Pro’s
8 Order was inconsistent with his previous rulings as a United States District Court Judge.
9 *Motion*. p. 16. As such, Mr. Garmong argues, the Order must be both set aside and Judge
10 Pro must be disqualified because “[t]here is no reason to believe. . . [Judge] Pro will not take
11 the same approach of disregarding the established facts and disregarding Nevada law in
12 subsequent proceedings in this arbitration.” *Motion*. p. 23.

15 Mr. Garmong further contends Judge Pro failed to disclose that he was “heavily
16 involved in another, much larger arbitration of cigarette-industry cases,” and, therefore, he
17 has an undisclosed conflict which “interferes with his conduct of the arbitration.” *Motion*. p.
18 24. Moreover, Mr. Garmong maintains Judge Pro showed “partiality” to Defendants.
19 *Motion*. p. 26. In support, Mr. Garmong asserts “[b]y refusing to decide plaintiff’s MSJ
20 according to NRCP 56 . . . [Judge] Pro expressed partiality in favor of the [D]efendants.”
21 *Motion*. P. 26.

24 In its *Opposition*, Defendants oppose the *Motion* on six grounds. First, Defendants
25 maintain the Arbitration Committee’s decision that the instant *Motion* should be denied was
26 final pursuant to JAMS Rule 15(i), which states in pertinent part, “JAMS shall make the final
27 determination [of an appeal]. Such determination shall take into account the materiality of
28

1 the facts and any prejudice to the Parties. That decision will be final.” *Opposition*, p. 5.
2 Accordingly, Defendants conclude Mr. Garmong’s *Motion* is improper because he seeks to
3 appeal a final order rendered by the JAMS Appeals Panel. *Opposition*, p. 5.

4
5 Second, Defendants argue Mr. Garmong blatantly disregarded this Court’s *Order*
6 *Granting Motion to Strike and Order Denying Plaintiff’s Motion for Leave to Reconsider and*
7 *Motion for Reconsideration of Order of November 13, 2017*, when he filed the instant *Motion*
8 during the pendency of a stay “solely for the purpose of harassing Defendants and delaying
9 the October 2018 arbitration hearing.” *Opposition*, p. 6. As such, Defendants argue the
10 Court should *sua sponte* deny the *Motion*.

11
12 Third, Defendants contend Mr. Garmong’s allegations that Judge Pro is impartial and
13 has a conflict of interest is without merit. *Opposition*, p. 7. Defendants assert Mr.
14 Garmong’s claim that Judge Pro did not follow Nevada law because he asserted certain
15 facts were “undisputed” mischaracterizes his Order. *Opposition*, p. 7. Specifically, Judge
16 Pro was referring to non-material facts which were not in dispute. *Opposition*, p. 7. Further,
17 Judge Pro is not required to recite every single argument in his Order, as asserted by Mr.
18 Garmong. *Opposition*, p. 9

19
20 Next, Defendants maintain Judge Pro has no undisclosed conflict of interest.
21 *Opposition*, p. 9. Defendants argue Judge Pro is not limited to presiding over only one
22 arbitration at a time. *Opposition*, p. 9. Defendants assert any allegation that Judge Pro’s
23 caseload was too voluminous to handle the instant arbitration is nothing more than
24 speculation and, regardless, does not amount to a conflict. *Opposition*, p. 9.

25
26 Additionally, Defendants maintain there is no actual evidence of bias. *Opposition*, p.
27 10. Instead, Mr. Garmong is “simply unhappy with the ruling of Judge Pro. ‘However, ruling
28

1 and actions of a judge during the course of official judicial proceedings do[es] not establish
2 bias sufficient to disqualify a district court judge.” *Opposition*, p. 10; citing City of Las Vegas
3 Downtown Redevelopment Agency v. Hecht, 113 Nev. 644, 940 P.2d 134 (1997).

4 Moreover, Defendants contend Judge Pro does not meet the requirements for
5 disqualification pursuant to NCJC Canon 3E(1). *Opposition*, p. 12.

7 Defendants further assert Mr. Garmong’s *Motion* is untimely. *Opposition*, p. 12.
8 Specifically, “[g]rounds for disqualifying a judge *can be waived by failure to timely assert*
9 *such grounds.*” *Opposition*, p. 12; citing City of Las Vegas Downtown Redevelopment
10 Agency v. Hecht, 113 Nev. at 651, 940 P.2d at 139. Because Mr. Garmong did not file his
11 *Motion* for seven months after Judge Pro entered his Order denying Mr. Garmong’s *Motion*
12 *for Summary Judgment*, he waived his right to now object. *Opposition*, p. 12. Should Judge
13 Pro be disqualified, Defendants argue the purpose of arbitration would be defeated.
14 *Opposition*, p. 12.

17 Lastly, Defendants assert Mr. Garmong “has a history of filing meritless motions to
18 disqualify when judges do not rule in his favor.” *Opposition*, p. 13; citing e.g., *Judge*
19 *Flanagan’s Order Denying Motion to Disqualify Judge Freeman*, filed in Garmong v. Gary
20 Silverman et al., CV11-00741; *Petition for Writ of Mandamus*, filed in Garmong v. Patrick
21 Flanagan et al., NV S.Ct. Case 62565, Doc. 13-03795.

23 In his *Reply*, Mr. Garmong reiterates that Judge Pro “disregarded the law of Nevada
24 in the arbitration.” *Reply*, p. 2. Specifically, the “technicality” of Rule 37 was disregarded.
25 *Reply*, p. 5. Mr. Garmong further reiterates Judge Pro had a conflict of interest and asserts
26 the *Motion* was not previously filed, argued, and denied as Defendant claims. *Reply*, p. 7.
27 Moreover, Mr. Garmong denies he violated this Court’s Order by filing the instant *Motion*
28

1 because “the arbitration has continued” and the *Motion* “deals with the arbitrator’s disregard
2 of the law of Nevada . . .” *Reply*, p. 7. Mr. Garmong further asserts “[m]uch of the
3 Opposition’s argument approaches silliness, but that does not stop Defendants from making
4 the arguments.” *Reply*, p. 10.

5
6 Mr. Garmong further contends the *Motion* is timely because “Defendants have
7 identified no prejudice to their case by any alleged delay.” *Reply*, p. 13. Mr. Garmong
8 additionally contends Defendants have a history of “fraud and deception” including filing
9 false affidavits. *Reply*, p. 14.

10 11 **II. LAW AND ANALYSIS**

12 JAMS Optional Appeal Procedure Rule (f) allows a party to appeal a *final arbitration*
13 *award* rendered by a JAMS Arbitrator or appeals panel to a district court.⁶ *JAMS Optional*
14 *Appeal Procedure Rule (f)* (“upon service of the Appeal Panel decision, the [Arbitration]
15 Award will be final for purposes of judicial review.”). However, the Court finds no supporting
16 authority which allows this Court to consider appeals of an arbitrator’s decision on a motion
17 for summary disposition of claims. See JAMS Comprehensive Rules & Procedures Rule 18.
18 Further, this Court expressly lacks authority to consider a JAMS decision regarding a
19 challenge to the continued service of an arbitrator. JAMS Comprehensive Rules &
20 Procedures Rule 15(i).

21
22
23 Here, Mr. Garmong does not seek judicial review of a final arbitration award. Instead,
24 Mr. Garmong is asking this Court to challenge the continued service of Judge Pro and
25 vacate Judge Pro’s Order regarding summary judgment. Mr. Garmong makes this *Motion*
26 after making an identical request to the JAMS Arbitration Appeals Committee, which was
27 denied. As set forth, “[JAMS] will make the final determination as to whether an Arbitrator is
28

⁶ Notice of Completion of Arbitration was filed on October 22, 2018.

1 unable to fulfill his or her duties, and that decision shall be final." JAMS Comprehensive
2 Rules & Procedures Rule 15(i). Accordingly, this Court will not interfere to supersede the
3 Committee's final determination regarding the continued service of an arbitrator and
4 declines to consider an appeal of a motion for summary disposition of claims. Mr. Garmong
5 will have the opportunity to appeal the final arbitration award to this Court in accordance
6 with JAMS rules, should he wish to do so.

8 Accordingly, the Court denies Mr. Garmong's *Motion*.

9
10 IT IS SO ORDERED *Plaintiff's Motion to Disqualify Arbitrator Pro, Vacate Order*
11 *Denying Motion for Summary Judgment and Appoint New Arbitrator* is DENIED in its
12 entirety.

13 DATED this 24th day of November, 2018.

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17 DISTRICT JUDGE
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CERTIFICATE OF SERVICE

I certify that I am an employee of THE SECOND JUDICIAL DISTRICT COURT;
that on the 29th day of November, 2018, I electronically filed the foregoing with the
Clerk of the Court system which will send a notice of electronic filing to the following:

THOMAS BRADLEY, ESQ.

CARL HEBERT, ESQ.

And, I deposited in the County mailing system for postage and mailing with the
United States Postal Service in Reno, Nevada, a true and correct copy of the attached
document addressed as follows:

Judi Bore

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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

9 GREGORY O. GARMONG,

Case No. CV12-01271

10 Plaintiff,

Dept. No. 6

11 vs.
12

13 WESPAC; GREG CHRISTIAN; DOES 1-10,
14 inclusive,

15 Defendants.
16 _____/

17 **ORDER RE MOTIONS**

18 Five related motions are pending before this Court.

19 **First pending is *Defendants' Petition for an Order Confirming Arbitrator's Final***
20 ***Award and Reduce Award to Judgment, Including, Attorneys' Fees and Costs*** ("Motion
21 *Confirm Final Award*"), filed by Defendant WESPAC and GREG CHRISTIAN (collectively
22 "Defendants" unless individually referenced), by and through their attorney of record,
23 Thomas C. Bradley, Esq. Plaintiff GREGORY GARMONG ("Mr. Garmong") filed *Plaintiff's*
24 *Opposition to Defendants' Motion to Confirm Arbitrator's Award* ("Opposition to Motion to
25 *Confirm Final Award*"), by and through his attorney of record, Carl M. Herbert, Esq.
26 Defendants filed *Defendants' Reply to Plaintiff's Opposition to Defendants' Motion to*
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1 Confirm Arbitrator's Award ("Reply to Motion to Confirm Final Award") and the matter was
2 submitted for decision thereafter.

3 **Second pending is Plaintiff's Motion to Vacate Arbitrator's Final Award** ("Motion
4 to Vacate Final Award"), filed by Mr. Garmong. Defendants filed *Defendants' Opposition to*
5 *Plaintiff's Motion to Vacate Arbitrator's Final Award (Opposition to Motion to Vacate)*. Mr.
6 Garmong filed *Plaintiff's Reply to Defendants' Opposition to Plaintiff's Motion to Vacate*
7 *Arbitrator's Final Award ("Reply to Motion to Vacate")* and the matter was submitted for
8 decision thereafter.
9

10 **Third pending is Plaintiff's Motion to Vacate Arbitrator's Award of Attorney's**
11 **Fees** ("Motion to Vacate Award of Fees"), filed by Mr. Garmong. Defendants filed
12 *Defendants' Opposition to Plaintiff's Motion to Vacate Arbitrator's Award of Attorney's Fees*
13 *and Reply to Plaintiff's Opposition to Defendants' Petition for Order Confirming Arbitrator's*
14 *Final Award and Reduce Award to Judgment, Including, Attorneys' Fees and Costs*
15 *("Opposition to Motion to Vacate Award of Fees")*. Mr. Garmong filed *Plaintiff's Reply to*
16 *Defendants' Opposition to Plaintiff's Motion to Vacate Arbitrator's Award of Attorney's Fees*
17 *and Reply to Plaintiff's Opposition to Defendants' Petition for an Order Confirming*
18 *Arbitrator's Final Award and Reduce Award to Judgment, Including, Attorneys' Fees and*
19 *Costs ("Reply to Motion to Vacate Award of Fees")* and the matter was submitted for
20 decision thereafter.
21

22 **Fourth pending is the combined Plaintiff's Motions to Vacate Arbitrator's**
23 **Award of Denial of Plaintiff's Motion for Partial Summary Judgment and for the Court**
24 **to Decide and Grant Plaintiff's Motion for Partial Summary Judgment** ("Motion to
25 Vacate MSJ Decision"), filed by Mr. Garmong. Defendants filed *Defendants' Opposition to*
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1 *Plaintiff's Motions to Vacate Arbitrator's Award of Denial of Plaintiff's Motion for Partial*
2 *Summary Judgment and for the Court to Decide and Grant Plaintiff's Motion for Partial*
3 *Summary Judgment ("Opposition to Motion to Vacate MSJ Decision").* Mr. Garmong filed
4 *Plaintiff's Reply to Defendants' Opposition to Plaintiff's Motions to Vacate Arbitrator's Award*
5 *of Denial of Plaintiff's Motion for Partial Summary Judgment and for the Court to Decide and*
6 *Grant Plaintiff's Motion for Partial Summary Judgment ("Reply to Motion to Vacate MSJ*
7 *Decision")* and the matter was submitted for decision thereafter.

9 **Fifth pending is Defendants' Motion for an Order to File Exhibit as Confidential**
10 *("Motion to File Exhibit as Confidential"),* filed by Defendants. Mr. Garmong filed *Plaintiff's*
11 *Opposition to Defendants' Motion for an Order to File Exhibit as Confidential ("Opposition to*
12 *Motion to File Exhibit as Confidential").* Defendants filed their *Reply to Plaintiff's Opposition*
13 *to Defendants' Motion for an Order to File Exhibit as Confidential ("Reply to Motion to File*
14 *Exhibit as Confidential"),* and the matter was submitted for decision thereafter.

17 **I. FACTS AND PROCEDURAL HISTORY.**

18 This is an action for breach of contract. Mr. Garmong filed his Complaint on May 9,
19 2012. On September 19, 2012, Defendants filed their *Motion to Dismiss and Compel*
20 *Arbitration.* On December 13, 2012, this Court¹ entered its *Order* granting Defendants'
21 request to compel arbitration but denying the motion to dismiss. Mr. Garmong then filed a
22 motion to reconsider the Court's December 13, 2012 Order. The motion was opposed by
23 Defendants. However, Mr. Garmong did not file a reply and this case was stagnant for
24 nearly a year until January 13, 2014, when this Court entered its *Order to Proceed.* Mr.

27 ¹ Judge Brent T. Adams originally presided over this proceeding in Department 6 before his
28 retirement. Judge Lynne K. Simons was sworn in on January 5, 2015, and now presides in
Department 6.

1 Garmong filed his reply on February 3, 2014. The motion for reconsideration was denied on
2 April 2, 2014.

3 Mr. Garmong then sought writ relief from the Nevada Supreme Court. On December
4 18, 2014, the Nevada Supreme Court entered its *Order Denying Petition for Writ of*
5 *Mandamus or Prohibition*. The Supreme Court next entered its *Order Denying Rehearing*
6 on March 18, 2015, and, subsequently, entered its *Order Denying En Banc Reconsideration*
7 on May 1, 2015.

8
9 After the Nevada Supreme Court's orders were entered, this Court again entered an
10 *Order for Response*, instructing the parties to proceed with this case. *Order*, November 17,
11 2015. In response, the parties indicated they had initiated an arbitration proceeding with
12 JAMS in Las Vegas. *Notice of Status Report*, December 1, 2015.

13
14 On June 8, 2016, Mr. Garmong filed his *Motion for a Court-Appointed Arbitrator*,
15 arguing Defendants prejudiced the JAMS arbitrators against Mr. Garmong. This matter was
16 fully briefed; and, on July 12, 2016, this Court entered its *Order re: Arbitration*. The parties
17 then stipulated to select one arbitrator, to reduce costs. *Stipulation to Select One Arbitrator*,
18 October 17, 2016. In accordance, this Court entered its *Order Appointing Arbitrator* on
19 October 31, 2016, appointing Michael G. Ornstil, Esq., as arbitrator. After it was determined
20 Mr. Ornstil was unavailable, Mr. Garmong stipulated to the appointment of either retired
21 Judge Phillip M. Pro,² or Lawrence R. Mills. Esq.

22
23 On November 13, 2016, this Court entered its *Order Granting Motion to Strike*, which
24 stayed the proceeding pending the outcome of the arbitration. *Order Granting Motion to*
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28 ² Mr. Garmong stipulated to Judge Pro although he previously moved to preclude a judge from
serving as an arbitrator.

1 *Strike*, p. 2. On February 21, 2017, this Court entered its *Order Appointing Arbitrator*,
2 appointing Judge Phillip M. Pro (“Judge Pro”).

3 On March 27, 2017, Mr. Garmong filed *Plaintiff's Objection Pursuant to NRS*
4 *38.231(3) and 38.241(e) That There is No Agreement to Arbitrate; Notification of Objection*
5 *to the Court*. Despite prior determinative orders from this Court, Mr. Garmong again
6 objected to arbitration on the basis there was no agreement to arbitrate.

7 On May 23, 2017, this Court entered its *Order to Show Cause Why Action Should not*
8 *be Dismissed for Want of Prosecution Pursuant to NRCP 41(E)*, finding “Mr. Garmong and
9 Defendants were ordered numerous times to participate in arbitration as early as December
10 13, 2012. The Court held no evidence was presented establishing the parties had
11 proceeded to arbitration as ordered. *Order*, p. 4. Accordingly, the Court ordered the parties
12 to show cause why the action should not be dismissed for want of prosecution. *Order*, p. 4.

13 The parties had their first arbitration conference in April 2017. On June 22, 2018,
14 without asking for leave of Court, Mr. Garmong filed his *Motion to Disqualify Arbitrator Pro,*
15 *Vacate Order Denying Motion for Summary Judgment and Appoint New Arbitrator (“Motion*
16 *to Disqualify”).*

17 Defendants thereafter filed the *Defendants' Motion for Limited Relief From Stay to*
18 *File Motion for Attorney's Fees and Sanctions (“Motion for Sanctions”)* requesting limited
19 relief from this Court's order staying the proceeding pending the outcome of arbitration.
20 However, on October 22, 2018, Defendants filed their *Notice of Completion of Arbitration*
21 *Hearing*. The Court held that, with completion of the arbitration, Defendants' *Motion for*
22 *Sanctions* was moot. Additionally, the Court took notice of Defendants' *Notice of*
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1 *Completion of Arbitration* and determined there are no additional decisions to be rendered
2 regarding the *Notice*.

3 **II. PENDING MOTIONS.**

4 **A. Motion to Confirm Final Award**

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6 In its *Motion to Confirm Final Award*, Defendants petition the Court for an order
7 confirming the arbitration award pursuant to Rule 38.239 of the Nevada Revised Statutes.
8 *Motion to Confirm Final Award*, p. 5. Defendants assert the arbitration Final Award in JAMS
9 Arbitration Case No. 1260003474 was entered April 11, 2019, in favor of Defendants and
10 against Mr. Garmong in the total sum of \$111,649.96, including reasonable attorney's fees
11 and costs. Defendants further request interest accrued on the total sum at the legal rate of
12 7.5% per annum, from the date this Court enters judgment until the date judgment is
13 satisfied in full. *Motion to Confirm Final Award*, p. 5.

14
15 Mr. Garmong opposed the *Motion to Confirm Final Award* on the grounds he did not
16 enter into a "binding contract including an agreement providing for arbitration" as required
17 by NRS 38.221(1). *Opposition to Motion to Confirm Final Award*, p. 1. Mr. Garmong argues
18 if Defendants "cannot identify one, and only one, true, complete, correct, certain,
19 unambiguous, definite, verified and binding Contract in the record as it now exists, the
20 arbitrator's Final Award cannot be confirmed because there was no agreement to arbitrate."
21 *Opposition to Motion to Confirm Final Award*, p. 2. Mr. Garmong further argues Defendants'
22 *Motion to Confirm Final Award* must be denied because Defendants perpetrated fraud upon
23 the Court, arbitrator, and Plaintiff by falsely representing the first version of the Investment
24 Management Agreement was correct.

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26 In their *Reply*, Defendants assert the parties entered into a valid and enforceable
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1 Investment Management Agreement (the "Agreement"), the final version of which was
2 executed on August 31, 2005. *Reply to Motion to Confirm Final Award*, p. 5. Defendants
3 maintain the Arbitration Clause is included in the Agreement at paragraph 16, pages 17 and
4 18. *Reply to Motion to Confirm Final Award*, p. 5. Moreover, the fully executed Agreement
5 was submitted in support of Defendants' *Motion to Dismiss and to Compel Arbitration*, and is
6 therefore part of the record. *Reply to Motion to Confirm Final Award*, p. 9.

8 **B. Plaintiff's Motion to Vacate Arbitrator's Final Award**

9 In his *Motion to Vacate Final Award*, Mr. Garmong first maintains the Final Award
10 must be vacated pursuant to NRS 38.241(1) because there is no agreement to arbitrate.
11 *Motion to Vacate Final Award*, p. 5. Second, Mr. Garmong contends the arbitration
12 provision contained in the Agreement is void pursuant to NRS 597.995 because it has no
13 "specific authorization." *Motion to Vacate Final Award*, p. 8. Mr. Garmong argues the
14 arbitration provision is also void because it is not conspicuous and does not warn the
15 consumer he is foregoing important rights under Nevada law. *Motion to Vacate Final*
16 *Award*, p. 9.

17 Mr. Garmong further contends the award was procured by corruption, fraud or other
18 undue means. *Motion to Vacate Final Award*, p. 10. Additionally, Mr. Garmong maintains
19 the arbitrator refused to consider evidence material to the controversy and that the arbitrator
20 showed partiality. *Motion to Vacate Final Award*, p. 15. Lastly, Mr. Garmong contends the
21 Final Award may be vacated on nonstatutory grounds, such as disregard of facts or
22 manifest disregard of legal authority. *Motion to Vacate Final Award*, p. 43.

23 **C. Motion to Vacate MSJ Decision**

24 In his *Motion to Vacate MSJ Decision*, Mr. Garmong requests an order from this
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1 Court vacating Judge Pro's decision denying his *Motion for Partial Summary Judgment*, filed
2 in the course of arbitration, and to further consider the *Motion for Partial Summary*
3 *Judgment* and grant it *de novo*. *Motion to Vacate MSJ Decision*, p.1. In support, Mr.
4 Garmong contends Judge Pro disregarded the applicable substantive legal principles.
5 *Motion to Vacate MSJ Decision*, generally.

7 Defendants oppose the *Motion to Vacate MSJ Decision* on the following grounds:
8 First, Defendants argue it is well established that an order denying summary judgment is not
9 appealable after a hearing on the merits because it is not a final judgment. *Opposition to*
10 *Motion to Vacate MSJ*, p. 2. Second, Defendants assert Judge Pro properly denied Mr.
11 Garmong's *Motion for Partial Summary Judgment*. *Motion to Vacate MSJ Decision*, p. 5.
12 Lastly, Defendants assert Judge Pro did not evaluate witness credibility when he ruled on
13 the *MSJ*. *Opposition to Motion to Vacate MSJ*, p. 6.

15 **D. Plaintiff's Motion to Vacate Arbitrator's Award of Attorney's Fees**

16 In his *Motion to Vacate Award of Fees*, Mr. Garmong argues Rule 68 of the Nevada
17 Revised Statutes does not apply to this case because the parties did not agree it would
18 apply. *Motion to Vacate Award of Fees*, p. 5. In support, Mr. Garmong argues JAMS Rule
19 24 provides the award of the arbitrator may include attorney's fees if agreed to by the
20 parties. *Motion to Vacate Award of Fees*, p. 6. Moreover, Mr. Garmong argues the award
21 was procured by corruption, fraud, or other undue means.

22 In their *Opposition to Motion to Vacate Fees*, Defendants maintains Judge Pro's
23 award of attorney's fees and costs was proper pursuant to NRCP Rule 68 and JAMS Rule
24 24(g). Defendants assert, Judge Pro set forth:

25 There is no dispute that the issues in this case are governed by Nevada law,
26 and procedurally by JAMS Rules and the provisions of the Nevada Rules of
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1 Civil Procedure enumerated in the Stipulation for arbitration entered by the
2 Parties on February 8, 2017. However, the agreement of the Parties to
3 specific NRCP rules relating to discovery does not automatically exclude the
4 applicability of others, particularly where the Arbitrator determines that
5 necessary.

6 *Opposition to Motion to Vacate Award of Fees*, p. 3; citing *Arbitrator's Final Award*.

7 In addition to arguing the award is proper under NRCP Rule 68 and JAMS Rule
8 24(g), Defendants argue the evidence supports Judge Pro's determination that the fees are
9 reasonable. *Opposition to Motion to Vacate Award of Fees*, p. 14.

10 **E. Motion to File Exhibit as Confidential**

11 Defendants filed their *Motion to File Exhibit as Confidential* asking this Court for an
12 Order to File Exhibit "4" to Defendants' *Reply to Motion to Confirm Final Award*, filed May 6,
13 2019, as confidential. Defendants assert after filing their *Reply to Motion to Confirm Final*
14 *Award*, Mr. Garmong informed Defendants' counsel Exhibit 4 contained his social security
15 number. *Motion to File Exhibit as Confidential*, p. 2. Defendants maintain they immediately
16 apologized for the inadvertent error and hand delivered a Stipulation to file the Exhibit as
17 confidential to Mr. Garmong's counsel. *Motion to File Exhibit as Confidential*, p. 2.
18 Defendants additionally called the Second Judicial District Court Clerk's office and
19 requested the Exhibit be marked and filed as confidential. However, Defendants assert Mr.
20 Garmong refused to sign the Stipulation. *Motion to File Exhibit as Confidential*, p. 2.

21 Mr. Garmong opposed the *Motion to File Exhibit as Confidential* on the grounds that
22 he "seeks protection from the exposure by the Defendants and their attorney to potential
23 identity or financial theft, but opposes the requested relief as insufficient and having no
24 basis in law." *Opposition to Motion to File Exhibit as Confidential*, p. 3. Mr. Garmong further
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1 maintains he “needs the Court’s help in protecting his sensitive personal and financial
2 information” *Opposition to Motion to File Exhibit as Confidential*, p. 3.

3 **III. APPLICABLE LAW AND ANALYSIS.**

4 **A. Motion to Confirm Final Award**

5 Section 38.239 of the Nevada Revised Statutes provides,
6

7 After a party to an arbitral proceeding receives notice of an award, the party
8 may make a motion to the court for an order confirming the award at which
9 time the court shall issue a confirming order unless the award is modified or
10 corrected pursuant to NRS 38.237 or 38.242 or is vacated pursuant to NRS
11 38.241.

12 NRS 38.239. “[T]he scope of judicial review of an arbitration award is limited and is nothing
13 like the scope of an appellate court’s review of a trial court’s decision.” Health Plan of
14 Nevada v. Rainbow Med., 120 Nev. 689, 695, 100 P.3d 172, 177 (2004). “A ‘reviewing court
15 should not concern itself with the “correctness” of an arbitration award’ and thus does not
16 review the merits of the dispute.” Bohlmann v. Byron John Printz, 120 Nev. at 547, 96 P.3d
17 1158 (2004) (quoting Thompson v. Tega–Rand Intern., 740 F.2d 762, 763 (9th Cir.1984));
18 see also Clark Ctv. Educ. Ass’n v. Clark Cty. Sch. Dist., 122 Nev. 337, 342, 131 P.3d 5, 8
19 (2006). Thus, “[a] party seeking to vacate an arbitration award based on manifest disregard
20 of the law may not merely object to the results of the arbitration.” Clark Ctv. Edu. Ass’n,
21 122 Nev. at 342, 131 P.3d at 8 (quoting Bohlmann, 120 Nev. at 547, 96 P.3d at 1158).
22 Rather, “[t]he party seeking to attack the validity of an arbitration award has the burden of
23 proving, by clear and convincing evidence, the statutory or common-law ground relied upon
24 for challenging the award.” Rainbow Med., 120 Nev. at 695, 100 P.3d at 176.

25
26 Here, Mr. Garmong argues the arbitration award must be set aside pursuant to NRS
27 38.221 because Defendants “cannot identify one, and only one, true, complete, correct,
28

1 certain, unambiguous, definite, verified and binding Contract in the record as it now exists;
2 and, therefore, "the arbitrator's Final Award cannot be confirmed because there was no
3 agreement to arbitrate." *Opposition to Motion to Confirm Final Award*, p. 2.

4
5 This Court has repeatedly ruled, unequivocally, that an enforceable agreement to
6 arbitrate exists in the record and that the parties were properly ordered to arbitrate pursuant
7 to NRS 38.221. See Order, December 13, 2012 (holding the arbitration agreement
8 contained in paragraph 16 of the Agreement is not unconscionable and is enforceable);
9 Order, April 2, 2014 (denying motion for reconsideration, and again holding arbitration
10 agreement to be enforceable, based on identical arguments as raised in in Mr. Garmong's
11 *Motion to Vacate Final Award*); *Order to Show Cause Why Action Should not be Dismissed*
12 *for Want of Prosecution Pursuant to NRCP 41(E)*) (holding Mr. Garmong was ordered
13 numerous times to participate in arbitration.
14

15
16 In accordance with this Court's prior Orders, the record in this case, and the pending
17 *Motion*, the Court, again, holds a valid and enforceable agreement exists. As such, this
18 Court grants Defendants *Motion to Confirm Final Award* pursuant to NRS 38.239.

19 **B. Motion to Vacate Final Award; Motion to Vacate MSJ Decision**

20 Rule 13 of the District Court Rules for the State of Nevada provides, "No motion once
21 heard and disposed of shall be renewed in the same cause, nor shall the same matters
22 therein embraced be reheard, unless by leave of the court granted upon motion therefor,
23 after notice of such motion to the adverse parties." DCR 13(7).
24

25 Well-established authority in this State governs reconsideration of previously-decided
26 issues. In Masonry & Tile Contractors Ass'n of S. Nevada v. Jolley, Urga & Wirth, Ltd., the
27 Nevada Supreme Court held:
28

1 A district court may reconsider a previously decided issue if substantially
2 different evidence is subsequently introduced or the decision is clearly
3 erroneous. See *Little Earth of United Tribes v. Department of Housing*, 807
4 F.2d 1433, 1441 (8th Cir.1986); see also *Moore v. City of Las Vegas*, 92 Nev.
5 402, 405, 551 P.2d 244, 246 (1976) ("Only in very rare instances in which *new*
6 *issues of fact or law* are raised supporting a ruling contrary to the ruling
7 already reached should a motion for rehearing be granted.") (Emphasis
8 added).

9 113 Nev. 737, 741, 941 P.2d 486, 489 (1997) (alterations and citations in original). In

10 Masonry & Tile Contractors Ass'n, the Nevada Supreme Court upheld a district court's
11 reconsideration of a previously decided issue in light of new clarifying case law. Id.

12 Because of new case law, the decision by the prior district judge was properly determined to
13 be "clearly erroneous." Id. When a motion for reconsideration raises "no new issues of law
14 and [makes] reference to no new or additional facts," reconsideration is "superfluous" and
15 constitutes an "abuse of discretion" by the district court to entertain such a motion. Moore v.
16 City of Las Vegas, 92 Nev. 402, 405, 551 P.2d 244, 246 (1976). Such motions are granted
17 in "rare instances." Id. Further, it is well settled the decision of whether to grant
18 reconsideration is within "the sound discretion of the court." Navajo Nation v. Confederated
19 Tribes & Bands of the Yakama Indian Nation, 331 F.3d 1041, 1046 (9th Cir. 2003); see also
20 Riger v. Hometown Mortg., LLC, 104 F. Supp. 3d 1092, 1095 (D. Nev. 2015) (district court's
21 decision to grant reconsideration after entry of an order is within its discretion).

22 Mr. Garmong filed two *Motions*, the subject of which have been previously decided by
23 this Court and for which he does not raise new issues of law or fact. First, Mr. Garmong
24 filed his *Motion to Vacate Final Award*, in which he argues the Final Award must be vacated
25 pursuant to NRS 38.241(1) because there is no agreement to arbitrate. *Motion to Vacate*
26 *Final Award*, p. 5. However, as stated, this Court has previously held a valid and
27 enforceable arbitration agreement exists in the record pursuant to NRS 38.241. Moreover,
28

1 Mr. Garmong does not raise new issues of law or fact. See Order, December 13, 2012
2 (holding the arbitration agreement contained in paragraph 16 of the Agreement is not
3 unconscionable and is enforceable); Order, April 2, 2014 (denying motion for
4 reconsideration and again holding arbitration agreement to be enforceable based on
5 identical arguments as raised in in Mr. Garmong's *Motion to Vacate Final Award*); Order to
6 Show Cause Why Action Should not be Dismissed for Want of Prosecution Pursuant to
7 NRCP 41(E) (holding Mr. Garmong was ordered numerous time to participate in arbitration).
8

9 Second, Mr. Garmong filed his *Motion to Vacate MSJ Decision*, arguing the arbitrator
10 disregarded the applicable substantive legal principles. Again, this Court previously
11 considered and decided this issue. See Order Denying Plaintiff's Motion to Disqualify
12 *Arbitrator Pro*; Order Denying Motion to Vacate Order Denying Motion for Summary
13 Judgment; Order Denying Motion to Appoint New Arbitrator, entered September 29, 2018.
14

15 Accordingly, Mr. Garmong did not properly move to renew the *Motions* pursuant to
16 DCR 13(7). Moreover, Mr. Garmong does not present the Court with any new issues of law
17 or fact; and as such, his *Motion to Vacate Final Award* based on a lack of enforceable
18 agreement, and his *Motion to Vacate MSJ Decision* are meritless and should be denied.
19

20 **C. Motion to Vacate Attorney's Fees**

21 Rule 24(g) of JAMS Comprehensive Arbitration Rules & Procedures (JAMS Rule)
22 provides an arbitrator may award attorney's fees, expenses, and interest if provided by the
23 Parties' Agreement or allowed by applicable law. JAMS Rule 24(g). Defendants made an
24 Offer of Judgment in the amount of \$10,000 on February 12, 2017. *Final Award*, p. 10.
25

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1 Rule 68 of the Nevada Rules of Civil Procedure provides, in pertinent part:

2 (a) The Offer. At any time more than 10 days before trial, any party may
3 serve an offer in writing to allow judgment to be taken in accordance with its
4 terms and conditions.

* * * *

5 (e) Failure to Accept Offer...Any offeree who fails to accept the offer may be
6 subject to the penalties of this rule.

7 (f) Penalties for Rejection of Offer. If the offeree rejects an offer and fails to
8 obtain a more favorable judgment,

9 (1) the offeree cannot recover any costs or attorney's fees and shall
10 not recover interest for the period after the service of the offer and before the
11 judgment; and

12 (2) the offeree shall pay the offeror's post-offer costs, applicable
13 interest on the judgment from the time of the offer to the time of entry of the
14 judgment and reasonable attorney's fees, if any be allowed, actually incurred
15 by the offeror from the time of the offer.

16 NRCP 68. An award of fees pursuant to NRCP 68 is discretionary with the Court and will
17 not be disturbed absent clear abuse. Bidart v. American Title Ins. Co., 103 Nev. 175, 734
18 P.2d 732 (1987).

19 Mr. Garmong argues Judge Pro's award of attorney's fees should be vacated
20 because the Scheduling Order entered in Arbitration between the parties on August 11,
21 2017 enumerated specific provisions of the Nevada Rules of Civil Procedure as applicable
22 to discovery in Arbitration, but omitted any reference to NRCP 68.

23 However, as Judge Pro properly found, there is no dispute that the issues in this case
24 are governed by Nevada law, and procedurally by JAMS Rules. The agreement of the
25 Parties to specific NRCP rules relating to discovery does not automatically exclude the
26 applicability of others to the matter, particularly where the Arbitrator determines it necessary.

27 Moreover, although Mr. Garmong argued the award was procured by corruption,
28 fraud, or other undue means, no evidence exists to support this assertion. Accordingly, the

1 Court finds Judge Pro awarded attorney's fees, interest, and expenses in accordance with
2 NRCP 68 and JAMS Rule 24(g).

3 **D. Motion to File Exhibit as Confidential**

4
5 Section 205.4605(1) of the Nevada Revised Statutes provides, a person shall not
6 **willfully and intentionally** post or display in any public manner the social security number
7 of another person unless the person is authorized or required to do so by law. NRS
8 205.4605(1). Here, it is clear that Defendants filed Mr. Garmong's social security number in
9 their moving papers and took immediate steps to remedy the disclosure.

10
11 Mr. Garmong opposes the *Motion to File Exhibit as Confidential* on the grounds the
12 request is insufficient to protect his identity and has no basis in law. However, Mr. Garmong
13 refused to sign the Stipulation which would provide for protection of his personal
14 information. The Court further notes Mr. Garmong has offered no remedy for a clearly
15 inadvertent disclosure of his social security number. It is clear from the parties'
16 communications that Defendants were not aware of the disclosure and took all necessary
17 steps to remedy the disclosure at the time they gained knowledge of such. See Motion to
18 File Exhibit as Confidential, Exhibit 1-3. The Court finds this was not a willful and intentional
19 disclosure. Moreover, the Court finds the inadvertent disclosure is remedied by ordering the
20 Exhibit filed as confidential.
21

22
23 **IV. CONCLUSION AND ORDER**

24 Accordingly, and good cause appearing therefor,

25 IT IS HEREBY ORDERED:

26 1. *Defendants' Petition for an Order Confirming Arbitrator's Final Award and*
27 *Reduce Award to Judgment, Including, Attorneys' Fees and Costs* is GRANTED;
28

2. Defendants are directed to submit a proposed judgment within ten (14) days from the entry of this Order;

3. *Plaintiff's Motion to Vacate Arbitrator's Final Award* is DENIED;

4. *Plaintiff's Motion to Vacate Arbitrator's Award of Attorney's Fees* is DENIED;

5. *Plaintiff's Motions to Vacate Arbitrator's Award of Denial of Plaintiff's Motion for Partial Summary Judgment and for the Court to Decide and Grant Plaintiff's Motion for Partial Summary Judgment* is DENIED;

6. *Defendants' Motion for an Order to File Exhibit as Confidential* is GRANTED.

DATED this 14 day of August, 2019.

DISTRICT JUDGE

1 CERTIFICATE OF SERVICE

2 I certify that I am an employee of THE SECOND JUDICIAL DISTRICT COURT;
3 that on the 8th day of August, 2019, I electronically filed the foregoing with the Clerk of
4 the Court system which will send a notice of electronic filing to the following:

5 CARL HEBERT, ESQ.

6 THOMAS BRADLEY, ESQ.

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12 And, I deposited in the County mailing system for postage and mailing with the
13 United States Postal Service in Reno, Nevada, a true and correct copy of the attached
14 document addressed as follows:

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CV12-01271

1 CODE NO. 3060
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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

9 GREGORY O. GARMONG,

Case No. CV12-01271

10 Plaintiff,

Dept. No. 6

11 vs.

12 WESPAC; GREG CHRISTIAN; DOES 1-10,
13 inclusive,

14 Defendants.
15 _____/

16 **ORDER DENYING MOTION TO ALTER OR AMEND JUDGMENT**
17

18 Before this Court is *Plaintiff's Motion to Alter or Amend "Order Re Motions" Entered*
19 *August 8, 2019 ("Motion")* filed by Plaintiff GREGORY GARMONG ("Mr. Garmong") through
20 his attorney of record, Carl M. Herbert, Esq. Defendants WESPAC and GREG CHRISTIAN
21 (collectively "Defendants" unless individually referenced), through their attorney of record,
22 Thomas C. Bradley, Esq., filed their *Opposition to Plaintiff's Motion to Alter or Amend "Order*
23 *Re Motions" Entered August 8, 2019 ("Opposition")*. Thereafter, *Plaintiff's Reply Points and*
24 *Authorities in Support of Motion to Alter or Amend "Order Re Motions" Entered on August 8,*
25 *2019 ("Reply")* was filed and the matter was submitted for decision.
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1 briefed; and, on July 12, 2016, this Court entered its *Order re: Arbitration* requiring three
2 arbitrators. The parties then stipulated to select one arbitrator, to reduce costs. *Stipulation*
3 *to Select One Arbitrator*, October 17, 2016. In accordance, this Court entered its *Order*
4 *Appointing Arbitrator* on October 31, 2016, appointing Michael G. Ornstil, Esq., as arbitrator.
5 After it was determined Mr. Ornstil was unavailable, Mr. Garmong stipulated to the
6 appointment of either retired Judge Phillip M. Pro,² or Lawrence R. Mills. Esq.
7

8 On November 13, 2017, this Court entered its *Order Granting Motion to Strike*, which
9 stayed the proceeding pending the outcome of the arbitration, and directed the parties to file
10 an amended complaint and other responsive papers at the direction of Judge Phillip M. Pro.
11 *Order Granting Motion to Strike*, p. 2. On February 21, 2017, this Court entered its *Order*
12 *Appointing Arbitrator*, appointing Judge Phillip M. Pro ("Judge Pro").
13

14 On March 27, 2017, Mr. Garmong filed *Plaintiff's Objection Pursuant to NRS*
15 *38.231(3) and 38.241(e) That There is No Agreement to Arbitrate; Notification of Objection*
16 *to the Court*. Despite prior determinative orders from this Court, Mr. Garmong again
17 objected to arbitration on the basis there was no agreement to arbitrate.
18

19 On May 23, 2017, this Court entered its *Order to Show Cause Why Action Should not*
20 *be Dismissed for Want of Prosecution Pursuant to NRCP 41(E)*, finding "Mr. Garmong and
21 Defendants were ordered numerous times to participate in arbitration as early as December
22 13, 2012." The Court held the file did not contain any evidence the parties had proceeded
23 to arbitration as ordered. *Order*, p. 4. Accordingly, the Court ordered the parties to show
24 cause why the action should not be dismissed for want of prosecution. *Order*, p. 4.
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28 ² Mr. Garmong stipulated to Judge Pro although he previously moved to preclude a judge from
serving as an arbitrator.

1 The parties had their first arbitration conference in April, 2017. On June 22, 2018,
2 without asking for leave of Court because the matter was stayed, Mr. Garmong filed his
3 *Motion to Disqualify Arbitrator Pro, Vacate Order Denying Motion for Summary Judgment*
4 *and Appoint New Arbitrator ("Motion to Disqualify")*.
5

6 Defendants thereafter filed *Defendants' Motion for Limited Relief From Stay to File*
7 *Motion for Attorney's Fees and Sanctions ("Motion for Sanctions")* requesting limited relief
8 from this Court's order staying the proceeding pending the outcome of arbitration. While the
9 *Motion for Sanctions* was under consideration, Defendants filed their *Notice of Completion*
10 *of Arbitration Hearing* on October 22, 2018. The Court therefore held, with completion of
11 the arbitration, Defendants' *Motion for Sanctions* was moot. Additionally, the Court took
12 notice of Defendants' *Notice of Completion of Arbitration* and determined there were
13 additional decisions to be rendered regarding the *Notice*.
14

15 Judge Pro found Mr. Garmong's claims for (1) Breach of Contract; (2) Breach of
16 Implied Warranty; (3) Breach of the Implied Covenant of Good Faith and Fair Dealing; (4)
17 Nevada's Deceptive Trade Practices Act; (5) Breach of Fiduciary Duty of Full Disclosure; (6)
18 Intentional Infliction of Emotional Distress; and, (7) Unjust Enrichment all failed as a matter
19 of law because Mr. Garmong did not establish his claims by a preponderance of the
20 evidence. *Final Award*, p. 8-9. Furthermore, after weighing the necessary factors required
21 by Brunzell v. Golden Gate National Bank, 455 P.2d 31, 33 (1969), Judge Pro found
22 Defendants were entitled to an award of reasonable attorneys' fees in the total sum of
23 \$111,649.96. *Final Award*, p. 11.
24

25 The litigation proceeded with several filings. On August 8, 2019, this Court entered
26 its *Order Re Motions ("ORM")*: (1) granting *Defendants' Petition for an Order Confirming*
27
28

1 *Arbitrator's Final Award and Reducing Award to Judgment, Including, Attorneys' Fees and*
2 *Costs; (2) denying Plaintiff's Motion to Vacate Arbitrator's Final Award; (3) denying Plaintiff's*
3 *Motion to Vacate Arbitrator's Award of Attorneys' Fees; (4) denying Plaintiff's Motions to*
4 *Vacate Arbitrator's Award of Denial of Plaintiff's Motion for Partial Summary Judgment and*
5 *for the Court to Decide and Grant Plaintiff's Motion for Partial Summary Judgment ("Motion*
6 *to Vacate MSJ Decision"); and, (5) granting Defendants' Motion for an Order to File Exhibit*
7 *as Confidential. ORM, p. 15-16.*

9
10 On August 27, 2019, this Court entered its *Order* directing: (1) WESPAC to file an
11 *Amended Motion for the Award of Attorneys' Fees; (2) allowing Mr. Garmong the standard*
12 *response time to file and serve his opposition to Defendants' Amended Motion for the*
13 *Award of Attorneys' Fees; and, (3) providing WESPAC would not be required to file a*
14 *Proposed Final Judgment* until ten (10) days following this Court's ruling on WESPAC's
15 *Amended Motion for the Award of Attorneys' Fees. Order, p. 1.*

17 In his present *Motion*, Mr. Garmong contends this Court has a duty to review Judge
18 Pro's actions and rulings to determine whether he disregarded facts, or manifestly
19 disregarded the law. *Motion*, p. 2-3. Further, Mr. Garmong claims Judge Adams allegedly
20 relied on Version 1 of the Contract, instead of Version 2 of the Contract, which was
21 fraudulently used to compel arbitration between the parties. *Motion*, p. 6-13. As a result,
22 Version 2 of the Contract constitutes "previously unavailable evidence" which should, *inter*
23 *alia*, be used to identify the validity of the arbitration agreement and the final award. *Motion*,
24 p. 7-12. Additionally, Mr. Garmong argues DCR 13(7) does not apply to his precluded
25 claims because the *Motion to Vacate MSJ Decision* was not decided on substantive merits.
26 *Motion*, p. 14-15. Mr. Garmong also claims there was no valid offer of judgment for
27
28

1 attorneys' fees because, in short, NRCP 68 was not a governing rule of arbitration under
2 Judge Pro's Discovery Plan. *Motion*, p. 20-26. Finally, Mr. Garmong claims his due process
3 rights were violated after failing to receive proper notice regarding the offer of judgment and
4 attorneys' fees award. *Motion*, p. 25-26.

6 In their *Opposition*, Defendants contend Mr. Garmong fails to identify a clear error, or
7 a fundamental miscarriage of justice, because Judge Pro provided an eleven (11) page
8 explanation of his factual findings supported by law. *Opposition*, p. 3-4. Defendants also
9 argue Mr. Garmong's *Motion* seeks to relitigate old matters which provide no basis for relief
10 under NRCP 59. *Opposition*, p. 5. Defendants emphasize this Court is only obligated to
11 "consider [and] not address" every argument posited by Mr. Garmong. *Opposition*, p. 2, 5.
12 Moreover, Defendants maintain Judge Pro properly found they were entitled to attorneys'
13 fees after weighing the necessary factors required by Brunzell, 455 P.2d at 33. *Opposition*,
14 p. 6. More importantly, Defendants purport Mr. Garmong's allegations regarding the
15 differing versions of the Contract does not constitute "new evidence" because Mr. Garmong
16 raised the same arguments to Judge Pro before the final decision on the arbitration award,
17 and to the Court through his previous papers. *Opposition*, p. 6 citing *Plaintiff's Opposition to*
18 *Defendants' Motion to Confirm Arbitrator's Award*, p. 4:16–15:16; *Motion to Vacate*
19 *Arbitrator's Final Award*, p. 3:3–4:21. Defendants contend Mr. Garmong continues to raise
20 the same arguments in his *Motion to Vacate MSJ Decision*. *Opposition*, p. 7. Additionally,
21 Defendants argue Mr. Garmong failed to timely raise his due process arguments because
22 he could have raised them in any of the motions or oppositions filed during arbitration, or
23 before this Court previously. *Opposition*, p. 7-8. Finally, Defendants state there is no

24 //

1 evidence Judge Pro was biased and agree the argument has been raised and rejected
2 many times before. *Opposition*, p. 9.

3 In his *Reply*, Mr. Garmong re-asserts this Court failed to fulfill its obligation of
4 reviewing the arbitrator's award because the Court did not consider the differing versions of
5 the Contract. *Reply*, p. 5-10. In addition, Mr. Garmong re-emphasizes DCR 13(7) is
6 inapplicable to the claims set forth in his *Motion to Vacate MSJ Decision* because the claims
7 were not substantively addressed on the merits. *Reply*, p. 10-13. Finally, Mr. Garmong
8 stresses there was no valid offer of judgment for attorneys' fees because, in short, NRCP 68
9 was not a governing rule of arbitration under Judge Pro's Discovery Plan, and Judge Pro
10 failed to address the factors mandated by Beattie v. Thomas, 99 Nev. 579, 668 P.2d 268
11 (1983) and Brunzell, 455 P.2d at 33 to award attorneys' fees. *Reply*, p. 13-17.

14 **II. APPLICABLE LAW AND ANALYSIS.**

15 Pursuant to NRCP 59(e), a motion to alter or amend a judgment must be filed no
16 later than twenty-eight (28) days after service of written notice of entry of judgment. A
17 motion to alter or amend judgment may not be used to relitigate old matters, or to raise
18 arguments or present evidence that could have been raised prior to the entry of judgment.
19 Stevo Design, Inc. v. SBR Mktg. Ltd., 919 F. Supp. 2d 1112, 1117 (D. Nev. 2013). The
20 basic grounds for granting a NRCP 59(e) motion include "correct[ing] manifest errors of law
21 or fact," "newly discovered or previously unavailable evidence," the need "to prevent
22 manifest injustice," or a "change in controlling law." AA Primo Builders, LLC v. Washington,
23 126 Nev. 578, 582, 245 P.3d 1190, 1193 (2010). Nevada courts may consult federal law in
24 interpreting NRCP 59(e) due to its similarity to the federal standard. Id.

1 The Nevada Supreme Court will not disturb a judgment sustained by substantial
2 evidence when the moving party cannot specify, and when the court cannot find anything in
3 the record from which the Court could conclude that it is clear that a wrong conclusion had
4 been reached in judgment. Brechan v. Scott, 1976, 555 P.2d 1230, 92 Nev. 633
5 (interpreting NRCP 52(b) and 59(e)). A motion to alter or amend judgment under Rule 59(e)
6 is "an extraordinary remedy which should be used sparingly." Stevo Design, Inc. v. SBR
7 Mktg. Ltd., 919 F. Supp. 2d 1112, 1117 (D. Nev. 2013). Motions made under Rule 59(e)
8 "should not be granted absent highly unusual circumstances." 389 Orange St. Partners v.
9 Arnold, 179 F.3d 656, 665 (9th Cir. 1999).

12 **A. Defendants' Motion to Confirm Final Award.**

13 As discussed *supra*, Mr. Garmong claims Judge Adams relied on Version 1 of the
14 Contract, which was fraudulently utilized to compel arbitration between the parties, instead
15 of relying on Version 2 of the Contract. *Motion*, p. 6-13.

17 "[T]he scope of judicial review of an arbitration award is limited and is nothing like the
18 scope of an appellate court's review of a trial court's decision." Health Plan of Nevada v.
19 Rainbow Med., 120 Nev. 689, 695, 100 P.3d 172, 177 (2004). "A 'reviewing court should not
20 concern itself with the 'correctness' of an arbitration award' and thus does not review the
21 merits of the dispute." Bohlmann v. Byron John Printz, 120 Nev. at 547, 96 P.3d 1158
22 (2004) (quoting Thompson v. Tega-Rand Intern., 740 F.2d 762, 763 (9th Cir.1984)); see
23 also Clark Ctv. Educ. Ass'n v. Clark Cty. Sch. Dist., 122 Nev. 337, 342, 131 P.3d 5, 8
24 (2006). Rather, "[t]he party seeking to attack the validity of an arbitration award has the
25 burden of proving, **by clear and convincing evidence**, the statutory or common-law
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1 ground relied upon for challenging the award.” Rainbow Med., 120 Nev. at 695, 100 P.3d at
2 176 (emphasis added).

3 After considering this matter pursuant to the present papers filed, the Court finds Mr.
4 Garmong has failed to provide clear and convincing evidence to challenge the award.
5 Moreover, Mr. Garmong has failed to provide clear and convincing evidence Defendants
6 fraudulently induced Judge Adams and the Nevada Supreme Court to compel arbitration.
7

8 Notably, Mr. Garmong does not cite to anything in the record with specificity to
9 substantiate his claims in the *Reconsider Motion*. Instead, Mr. Garmong rehashes his same
10 argument, the Contract is not “true, complete and correct.” Compare Motion, p. 6, 7, 13,
11 with Opposition to Motion to Confirm Final Award, p. 2. Despite this, the Court finds no
12 grounds to change its prior ruling that an enforceable agreement to arbitrate exists in the
13 record, and the parties were properly ordered to arbitrate. See ORM, p. 11; see also Order,
14 December 13, 2012 (holding the arbitration agreement contained in paragraph 16 of the
15 Agreement is not unconscionable and is enforceable); Order, April 2, 2014 (denying motion
16 for reconsideration, and again holding arbitration agreement to be enforceable, based on
17 identical arguments as raised in in Mr. Garmong’s *Motion to Vacate Final Award*); *Order to*
18 *Show Cause Why Action Should not be Dismissed for Want of Prosecution Pursuant to*
19 *NRCP 41(E)*) (holding Mr. Garmong was ordered numerous times to participate in
20 arbitration).
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24 Therefore, this Court rejects Mr. Garmong’s arguments and denies his request to
25 amend the Court’s findings regarding the confirmation of the award.
26

27 //

28 //

1 **B. Plaintiff's Motion to Vacate Arbitrator's Final Award and**
2 **Plaintiff's Motion to Vacate MSJ Decision.**

3 Rule 13 of the District Court Rules for the State of Nevada provides, "No motion once
4 heard and disposed of shall be renewed in the same cause, **nor shall the same matters**
5 **therein embraced be reheard**, unless by leave of the court granted upon motion therefor,
6 after notice of such motion to the adverse parties." DCR 13(7) (emphasis supplied).
7

8 Well-established authority in this state governs reconsideration of previously-decided
9 issues. In Masonry & Tile Contractors Ass'n of S. Nevada v. Jolley, Urga & Wirth, Ltd., the
10 Nevada Supreme Court held:

11 A district court may reconsider a previously decided issue if substantially
12 different evidence is subsequently introduced or the decision is clearly
13 erroneous. See *Little Earth of United Tribes v. Department of Housing*, 807
14 F.2d 1433, 1441 (8th Cir.1986); see also *Moore v. City of Las Vegas*, 92 Nev.
15 402, 405, 551 P.2d 244, 246 (1976) ("Only in very rare instances in which *new*
16 *issues of fact or law* are raised supporting a ruling contrary to the ruling
already reached should a motion for rehearing be granted.") (Emphasis
added).

17 113 Nev. 737, 741, 941 P.2d 486, 489 (1997) (alterations and citations in original). In
18 Masonry & Tile Contractors Ass'n, the Nevada Supreme Court upheld a district court's
19 reconsideration of a previously decided issue in light of new clarifying case law. Id.
20 Because of new case law, the decision by the prior district judge was properly determined to
21 be "clearly erroneous." Id. When a motion for reconsideration raises "no new issues of law
22 and [makes] reference to no new or additional facts," reconsideration is "superfluous" and
23 constitutes an "abuse of discretion" by the district court to entertain such a motion. Moore v.
24 City of Las Vegas, 92 Nev. 402, 405, 551 P.2d 244, 246 (1976). Such motions are granted
25 in "rare instances." Id. Further, it is well-settled the decision of whether to grant
26 reconsideration is within "the sound discretion of the court." Navajo Nation v. Confederated
27
28

1 Tribes & Bands of the Yakama Indian Nation, 331 F.3d 1041, 1046 (9th Cir. 2003); see also
2 Riger v. Hometown Mortg., LLC, 104 F. Supp. 3d 1092, 1095 (D. Nev. 2015) (district court's
3 decision to grant reconsideration after entry of an order is within its discretion).

4 Mr. Garmong's *Motion to Vacate Final Award* argues the Final Award must be
5 vacated pursuant to NRS 38.241(1) because there was no agreement to arbitrate, and even
6 *arguendo* if there was an agreement to arbitrate, it is invalid based on statutory and non-
7 statutory grounds. *Motion to Vacate Final Award*, p. 5-9. However, as stated, this Court
8 has previously held a valid and enforceable arbitration agreement exists in the record
9 pursuant to NRS 38.241 on numerous occasions. See *ORM*, p. 12; see also *Order*,
10 December 13, 2012 (holding the arbitration agreement contained in paragraph 16 of the
11 Agreement is not unconscionable and is enforceable); *Order*, April 2, 2014 (denying motion
12 for reconsideration and again holding arbitration agreement to be enforceable based on
13 identical arguments as raised in in Mr. Garmong's *Motion to Vacate Final Award*); *Order to*
14 *Show Cause Why Action Should not be Dismissed for Want of Prosecution Pursuant to*
15 *NRCP 41(E)* (holding Mr. Garmong was ordered numerous time to participate in arbitration).

16 As such, Mr. Garmong's argument constitutes "similar matters" or matters
17 "embraced" under DCR 13(7) requiring leave of court. Therefore, this Court declines to re-
18 entertain Mr. Garmong's arguments in this *Motion*, and therefore, declines to amend its
19 findings and confirmation of the award.

20 Second, Mr. Garmong contends the Court's *Nov. Order* did not decide the *Motion to*
21 *Vacate MSJ* on the substantive merits, thereby obviating application of DCR 13(7). *Motion*,
22 p. 15. However, the Court again finds Mr. Garmong previously raised the same argument
23 regarding Judge Pro disregarding applicable substantive legal principles. See *ORM*, p. 13;

1 Compare Motion, p. 16-19, with Plaintiff's Opposition to Defendants' Motion to Confirm
2 Arbitrator's Award, p. 4:16–15:16; Motion to Vacate Arbitrator's Final Award, p. 3:3–4:21;
3 Plaintiff's Motions to Vacate MSJ Decision, p. 10:12–31:6. Thus, this Court has previously
4 considered and decided this issue in accordance with JAMS Comprehensive Rules &
5 Procedures Rule (JAMS Rules). See Nov. Order, p. 8-9.

7 Accordingly, Mr. Garmong did not properly move to reconsider *Plaintiff's Motion to*
8 *Vacate MSJ Decision* as required by DCR 13(7). Therefore, this Court declines to amend
9 its findings regarding Judge Pro's summary disposition of claims.

11 **C. Plaintiff's Motion to Vacate Arbitrator's Award of Attorney's Fees.**

12 Mr. Garmong asserts there was no valid offer of judgment for attorneys' fees
13 because NRCP 68 was not a governing rule of arbitration under Judge Pro's Discovery
14 Plan. *Motion*, p. 20-26.

15 JAMS Rule 24(g) provides an arbitrator may award attorney's fees, expenses, and
16 interest if provided by the Parties' Agreement **or allowed by applicable law**. JAMS Rule
17 24(g) (emphasis added). Defendants propounded an Offer of Judgment in the amount of
18 \$10,000 on February 12, 2017 pursuant to applicable Nevada law. *Final Award*, p. 10.
19 Rule 68 of the Nevada Rules of Civil Procedure provides, in pertinent part:
20

21 (a) The Offer. At any time more than 10 days before trial, any party may
22 serve an offer in writing to allow judgment to be taken in accordance with its
23 terms and conditions.

24 (e) Failure to Accept Offer...Any offeree who fails to accept the offer may be
25 subject to the penalties of this rule.

26 (f) Penalties for Rejection of Offer. If the offeree rejects an offer and fails to
27 obtain a more favorable judgment,
28

1 (1) the offeree cannot recover any costs or attorney's fees and shall
2 not recover interest for the period after the service of the offer and before the
3 judgment; and

4 (2) the offeree shall pay the offeror's post-offer costs, applicable
5 interest on the judgment from the time of the offer to the time of entry of the
6 judgment and reasonable attorney's fees, if any be allowed, actually incurred
7 by the offeror from the time of the offer.

8 NRCP 68. An award of fees pursuant to NRCP 68 is discretionary with the Court and will
9 not be disturbed absent clear abuse. Bidart v. American Title Ins. Co., 103 Nev. 175, 734
10 P.2d 732 (1987).

11 The Court does not change its conclusion Judge Pro properly found the issues in
12 this case are governed by applicable Nevada law and JAMS Rules. *ORM*, p. 14. The
13 application of NRCP rules relating to discovery does not automatically exclude or preclude
14 the applicability of other NRCP rules to the matter, particularly where the Arbitrator
15 determines it necessary to apply them. *ORM*, p. 14.

16 Accordingly, the Court finds Judge Pro awarded attorneys' fees, interest, and
17 expenses in accordance with NRCP 68 and JAMS Rule 24(g). Therefore, this Court
18 declines to amend its findings regarding Judge Pro's award of attorneys' fees.

19
20 **D. Due Process Claim.**

21 Mr. Garmong claims his due process rights were violated because he did not receive
22 proper notice regarding the offer of judgment and award of attorneys' fees. *Motion*, p. 25-
23 26. A motion to alter or amend judgment may not be used to relitigate old matters, or to
24 raise arguments or present evidence that could have been raised prior to the entry of
25 judgment. Stevo Design, Inc., 919 F. Supp. 2d at 1117. Mr. Garmong's new claim
26 regarding due process violations is not appropriate for NRCP 59(e) as it could have been
27 raised prior to the entry of judgment. Therefore, this Court declines to consider Mr.
28

1 Garmong's due process claim as it could have been raised before this Court or the arbitrator
2 prior to the entry of judgment.

3 **D. Potential Sanctions.**

4 This Court notes Mr. Garmong's continued indifference to the previous orders issued
5 by this Court. The Court will consider imposing sanctions in the future should Mr. Garmong
6 continue to disregard this Court's orderst.

7
8 **III. CONCLUSION AND ORDER.**

9 For the foregoing reasons, and good cause appearing therefor,

10 **IT IS HEREBY ORDERED** Mr. Garmong's *Motion to Alter or Amend "Order Re*
11 *Motions" Entered August 8, 2019 ("Motion")* is **DENIED**.

12 Dated this 6th day of December, 2019.

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16 DISTRICT JUDGE
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1 **CERTIFICATE OF SERVICE**

2 I certify that I am an employee of THE SECOND JUDICIAL DISTRICT COURT;
3 that on the 6th day of December, 2019, I electronically filed the foregoing with the
4 Clerk of the Court system which will send a notice of electronic filing to the following:
5

6 CARL HEBERT, ESQ.

7 THOMAS BRADLEY, ESQ.
8
9

10
11
12
13 And, I deposited in the County mailing system for postage and mailing with the
14 United States Postal Service in Reno, Nevada, a true and correct copy of the attached
15 document addressed as follows:
16
17
18

19 Heidi Bre
20
21
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23
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25
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27
28

CV12-01271

1 CODE: 2540
2 Thomas C. Bradley, Esq.
3 NV Bar. No. 1621
4 448 Hill Street
5 Reno, NV 89501-1814
6 Telephone: (775) 323-5178
7 Facsimile: (775) 323-0709
8 Attorney for Defendants

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

11 GREGORY O. GARMONG,

12 Plaintiff,

Case No. CV12-01271

13 vs.

Dept. No. 6

14 WESPAC; GREG CHRISTIAN;
15 DOES 1-10, inclusive

16 Defendants.
17 _____/

18 **NOTICE OF ENTRY OF ORDER**

19 TO: Plaintiff, GREGORY O. GARMONG; through his counsel, CARL M.
20 HERBERT, ESQ.:

21
22 YOU WILL PLEASE TAKE NOTICE that the above-entitled Court entered its
23 *ORDER DENYING PLAINTIFF'S MOTION TO DISQUALIFY ARBITRATOR PRO; ORDER*
24 *DENYING MOTION TO VACATE ORDER DENYING MOTION FOR SUMMARY JUDGMENT;*
25 *ORDER DENYING MOTION TO APPOINT NEW ARBITRATOR* herein on the 29TH day of
26 November, 2018.

27
28 A copy of said *ORDER DENYING PLAINTIFF'S MOTION TO DISQUALIFY*

THOMAS C. BRADLEY, ESQ.
448 HILL STREET
RENO, NEVADA 89501
(775) 323-5178 • (775) 323-0709 FACSIMILE

THOMAS C. BRADLEY, ESQ.
448 HILL STREET
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*ARBITRATOR PRO; ORDER DENYING MOTION TO VACATE ORDER DENYING MOTION
FOR SUMMARY JUDGMENT; ORDER DENYING MOTION TO APPOINT NEW ARBITRATOR*
is attached hereto as Exhibit 1.

AFFIRMATION Pursuant to NRS 239B.030

*The foregoing document does not contain the Social Security number of any
individual.*

DATED this 12 day of December, 2018.

By 
THOMAS C. BRADLEY, ESQ.

THOMAS C. BRADLEY, ESQ.
448 HILL STREET
RENO, NEVADA 89501
(775) 323-5178 • (775) 323-0709 FACSMILE

CERTIFICATE OF SERVICE

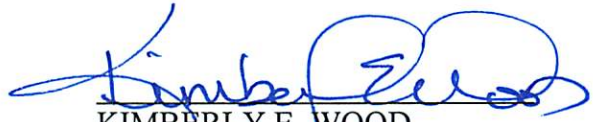
I certify that I am an employee of THOMAS C. BRADLEY, ESQ. and that on the 12th day of December, 2018, pursuant to I electronically filed the foregoing with the Clerk of the Court System, which will sent a notice of electronic filing to the following to:

THOMAS C. BRADLEY, ESQ.

CARL M. HERBERT, ESQ.

And, I deposited in the County mailing system for postage and mailing with the United States Postal Service in Reno, Nevada, a true and correct copy if the attached document addressed as follows to:

CARL M. HERBERT, ESQ.
202 California Avenue
Reno, Nevada 89509


KIMBERLY E. WOOD

THOMAS C. BRADLEY, ESQ.
448 HILL STREET
RENO, NEVADA 89501
(775) 323-5178 • (775) 323-0709 FACSMILE

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INDEX OF EXHIBITS

<u>Exhibit No.</u>	<u>Description</u>	<u>No. of Pages</u>
1.	ORDER DENYING PLAINTIFF'S MOTION TO DISQUALIFY ARBITRATOR PRO; ORDER DENYING MOTION TO VACATE ORDER DENYING MOTION FOR SUMMARY JUDGMENT; ORDER DENYING MOTION TO APPOINT NEW ARBITRATOR	10

1 CODE: 2540
2 THOMAS C. BRADLEY, ESQ.
3 NV Bar. No. 1621
4 435 Marsh Avenue
5 Reno, Nevada 89509
6 Telephone: (775) 323-5178
7 Tom@TomBradleyLaw.com
8 Attorney for Defendants

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

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

11 GREGORY GARMONG,

CASE NO. CV12-01271

12 Plaintiff,

DEPT. NO. 6

13 v.

14 WESPAC, GREG CHRISTIAN, and
15 Does 1-10,

16 Defendants.

17 **NOTICE OF ENTRY OF ORDER**

18 PLEASE TAKE NOTICE that an ORDER was entered in the above-referenced case on
19 August 8, 2019, a copy of which is attached.

20 *Affirmation: The undersigned verifies that this document does not contain the personal*
21 *information of any person.*

22 DATED this 8th day of August, 2019.

23 /s/ Thomas C. Bradley
24 THOMAS C. BRADLEY, ESQ.
25 Attorney for Defendants
26
27
28

1 **CERTIFICATE OF SERVICE**

2 Pursuant to NRCP 5(b), I certify that I am an employee of Thomas C. Bradley, Esq., and the
3 date set forth below, I served a true copy of the foregoing document on the party(ies) identified
4 herein, via the following means:

- 5 ☐ Personal Delivery
6 ☐ Professional Courier
7 ☐ Federal Express or Other Overnight Delivery Service
8 ☐ US Mail with Sufficient Postage Affixed
9 ☐ Facsimile to the Facsimile Number specified
10 ☐ Electronic Mail to the e-mail address(es) specified
11 ☒ Second Judicial District Court eFlex system

12 Carl Hebert, Esq.
13 carl@cmhebertlaw.com
14 202 California Avenue
15 Reno, Nevada 89509
16 Attorney for Plaintiff

17 Dated this 8th day of August, 2019.

18 By: /s/ Mehi Aonga
19 Employee of Thomas C. Bradley, Esq.
20
21
22
23
24
25
26
27
28

1 CODE NO. 3370
2
3
4
5

6 IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
7 IN AND FOR THE COUNTY OF WASHOE
8

9 GREGORY O. GARMONG,

Case No. CV12-01271

10 Plaintiff,

Dept. No. 6

11 vs.
12

13 WESPAC; GREG CHRISTIAN; DOES 1-10,
14 inclusive,

15 Defendants.
16 _____/

17 **ORDER RE MOTIONS**

18 Five related motions are pending before this Court.

19 **First pending is *Defendants' Petition for an Order Confirming Arbitrator's Final***
20 ***Award and Reduce Award to Judgment, Including, Attorneys' Fees and Costs*** ("Motion
21 *Confirm Final Award*"), filed by Defendant WESPAC and GREG CHRISTIAN (collectively
22 "Defendants" unless individually referenced), by and through their attorney of record,
23 Thomas C. Bradley, Esq. Plaintiff GREGORY GARMONG ("Mr. Garmong") filed *Plaintiff's*
24 *Opposition to Defendants' Motion to Confirm Arbitrator's Award* ("Opposition to Motion to
25 *Confirm Final Award*"), by and through his attorney of record, Carl M. Herbert, Esq.
26 Defendants filed *Defendants' Reply to Plaintiff's Opposition to Defendants' Motion to*
27
28

1 Confirm Arbitrator's Award ("Reply to Motion to Confirm Final Award") and the matter was
2 submitted for decision thereafter.

3 **Second pending is Plaintiff's Motion to Vacate Arbitrator's Final Award** ("Motion
4 to Vacate Final Award"), filed by Mr. Garmong. Defendants filed *Defendants' Opposition to*
5 *Plaintiff's Motion to Vacate Arbitrator's Final Award (Opposition to Motion to Vacate)*. Mr.
6 Garmong filed *Plaintiff's Reply to Defendants' Opposition to Plaintiff's Motion to Vacate*
7 *Arbitrator's Final Award ("Reply to Motion to Vacate")* and the matter was submitted for
8 decision thereafter.
9

10 **Third pending is Plaintiff's Motion to Vacate Arbitrator's Award of Attorney's**
11 **Fees** ("Motion to Vacate Award of Fees"), filed by Mr. Garmong. Defendants filed
12 *Defendants' Opposition to Plaintiff's Motion to Vacate Arbitrator's Award of Attorney's Fees*
13 *and Reply to Plaintiff's Opposition to Defendants' Petition for Order Confirming Arbitrator's*
14 *Final Award and Reduce Award to Judgment, Including, Attorneys' Fees and Costs*
15 *("Opposition to Motion to Vacate Award of Fees")*. Mr. Garmong filed *Plaintiff's Reply to*
16 *Defendants' Opposition to Plaintiff's Motion to Vacate Arbitrator's Award of Attorney's Fees*
17 *and Reply to Plaintiff's Opposition to Defendants' Petition for an Order Confirming*
18 *Arbitrator's Final Award and Reduce Award to Judgment, Including, Attorneys' Fees and*
19 *Costs ("Reply to Motion to Vacate Award of Fees")* and the matter was submitted for
20 decision thereafter.
21

22 **Fourth pending is the combined Plaintiff's Motions to Vacate Arbitrator's**
23 **Award of Denial of Plaintiff's Motion for Partial Summary Judgment and for the Court**
24 **to Decide and Grant Plaintiff's Motion for Partial Summary Judgment** ("Motion to
25 Vacate MSJ Decision"), filed by Mr. Garmong. Defendants filed *Defendants' Opposition to*
26
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1 *Plaintiff's Motions to Vacate Arbitrator's Award of Denial of Plaintiff's Motion for Partial*
2 *Summary Judgment and for the Court to Decide and Grant Plaintiff's Motion for Partial*
3 *Summary Judgment ("Opposition to Motion to Vacate MSJ Decision").* Mr. Garmong filed
4 *Plaintiff's Reply to Defendants' Opposition to Plaintiff's Motions to Vacate Arbitrator's Award*
5 *of Denial of Plaintiff's Motion for Partial Summary Judgment and for the Court to Decide and*
6 *Grant Plaintiff's Motion for Partial Summary Judgment ("Reply to Motion to Vacate MSJ*
7 *Decision")* and the matter was submitted for decision thereafter.

9 **Fifth pending is Defendants' Motion for an Order to File Exhibit as Confidential**
10 *("Motion to File Exhibit as Confidential"),* filed by Defendants. Mr. Garmong filed *Plaintiff's*
11 *Opposition to Defendants' Motion for an Order to File Exhibit as Confidential ("Opposition to*
12 *Motion to File Exhibit as Confidential").* Defendants filed their *Reply to Plaintiff's Opposition*
13 *to Defendants' Motion for an Order to File Exhibit as Confidential ("Reply to Motion to File*
14 *Exhibit as Confidential"),* and the matter was submitted for decision thereafter.

16
17 **I. FACTS AND PROCEDURAL HISTORY.**

18 This is an action for breach of contract. Mr. Garmong filed his Complaint on May 9,
19 2012. On September 19, 2012, Defendants filed their *Motion to Dismiss and Compel*
20 *Arbitration.* On December 13, 2012, this Court¹ entered its *Order* granting Defendants'
21 request to compel arbitration but denying the motion to dismiss. Mr. Garmong then filed a
22 motion to reconsider the Court's December 13, 2012 Order. The motion was opposed by
23 Defendants. However, Mr. Garmong did not file a reply and this case was stagnant for
24 nearly a year until January 13, 2014, when this Court entered its *Order to Proceed.* Mr.

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27

¹ Judge Brent T. Adams originally presided over this proceeding in Department 6 before his
28 retirement. Judge Lynne K. Simons was sworn in on January 5, 2015, and now presides in
Department 6.

1 Garmong filed his reply on February 3, 2014. The motion for reconsideration was denied on
2 April 2, 2014.

3 Mr. Garmong then sought writ relief from the Nevada Supreme Court. On December
4 18, 2014, the Nevada Supreme Court entered its *Order Denying Petition for Writ of*
5 *Mandamus or Prohibition*. The Supreme Court next entered its *Order Denying Rehearing*
6 on March 18, 2015, and, subsequently, entered its *Order Denying En Banc Reconsideration*
7 on May 1, 2015.
8

9 After the Nevada Supreme Court's orders were entered, this Court again entered an
10 *Order for Response*, instructing the parties to proceed with this case. *Order*, November 17,
11 2015. In response, the parties indicated they had initiated an arbitration proceeding with
12 JAMS in Las Vegas. *Notice of Status Report*, December 1, 2015.
13

14 On June 8, 2016, Mr. Garmong filed his *Motion for a Court-Appointed Arbitrator*,
15 arguing Defendants prejudiced the JAMS arbitrators against Mr. Garmong. This matter was
16 fully briefed; and, on July 12, 2016, this Court entered its *Order re: Arbitration*. The parties
17 then stipulated to select one arbitrator, to reduce costs. *Stipulation to Select One Arbitrator*,
18 October 17, 2016. In accordance, this Court entered its *Order Appointing Arbitrator* on
19 October 31, 2016, appointing Michael G. Ornstil, Esq., as arbitrator. After it was determined
20 Mr. Ornstil was unavailable, Mr. Garmong stipulated to the appointment of either retired
21 Judge Phillip M. Pro,² or Lawrence R. Mills. Esq.
22

23 On November 13, 2016, this Court entered its *Order Granting Motion to Strike*, which
24 stayed the proceeding pending the outcome of the arbitration. *Order Granting Motion to*
25
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27

28 ² Mr. Garmong stipulated to Judge Pro although he previously moved to preclude a judge from
serving as an arbitrator.

1 *Strike*, p. 2. On February 21, 2017, this Court entered its *Order Appointing Arbitrator*,
2 appointing Judge Phillip M. Pro ("Judge Pro").

3 On March 27, 2017, Mr. Garmong filed *Plaintiff's Objection Pursuant to NRS*
4 *38.231(3) and 38.241(e) That There is No Agreement to Arbitrate; Notification of Objection*
5 *to the Court*. Despite prior determinative orders from this Court, Mr. Garmong again
6 objected to arbitration on the basis there was no agreement to arbitrate.
7

8 On May 23, 2017, this Court entered its *Order to Show Cause Why Action Should not*
9 *be Dismissed for Want of Prosecution Pursuant to NRCP 41(E)*, finding "Mr. Garmong and
10 Defendants were ordered numerous times to participate in arbitration as early as December
11 13, 2012. The Court held no evidence was presented establishing the parties had
12 proceeded to arbitration as ordered. *Order*, p. 4. Accordingly, the Court ordered the parties
13 to show cause why the action should not be dismissed for want of prosecution. *Order*, p. 4.
14

15 The parties had their first arbitration conference in April 2017. On June 22, 2018,
16 without asking for leave of Court, Mr. Garmong filed his *Motion to Disqualify Arbitrator Pro*,
17 *Vacate Order Denying Motion for Summary Judgment and Appoint New Arbitrator ("Motion*
18 *to Disqualify")*.
19

20 Defendants thereafter filed the *Defendants' Motion for Limited Relief From Stay to*
21 *File Motion for Attorney's Fees and Sanctions ("Motion for Sanctions")* requesting limited
22 relief from this Court's order staying the proceeding pending the outcome of arbitration.
23 However, on October 22, 2018, Defendants filed their *Notice of Completion of Arbitration*
24 *Hearing*. The Court held that, with completion of the arbitration, Defendants' *Motion for*
25 *Sanctions* was moot. Additionally, the Court took notice of Defendants' *Notice of*
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1 *Completion of Arbitration* and determined there are no additional decisions to be rendered
2 regarding the *Notice*.

3 **II. PENDING MOTIONS.**

4 **A. Motion to Confirm Final Award**

5
6 In its *Motion to Confirm Final Award*, Defendants petition the Court for an order
7 confirming the arbitration award pursuant to Rule 38.239 of the Nevada Revised Statutes.
8 *Motion to Confirm Final Award*, p. 5. Defendants assert the arbitration Final Award in JAMS
9 Arbitration Case No. 1260003474 was entered April 11, 2019, in favor of Defendants and
10 against Mr. Garmong in the total sum of \$111,649.96, including reasonable attorney's fees
11 and costs. Defendants further request interest accrued on the total sum at the legal rate of
12 7.5% per annum, from the date this Court enters judgment until the date judgment is
13 satisfied in full. *Motion to Confirm Final Award*, p. 5.

14
15 Mr. Garmong opposed the *Motion to Confirm Final Award* on the grounds he did not
16 enter into a "binding contract including an agreement providing for arbitration" as required
17 by NRS 38.221(1). *Opposition to Motion to Confirm Final Award*, p. 1. Mr. Garmong argues
18 if Defendants "cannot identify one, and only one, true, complete, correct, certain,
19 unambiguous, definite, verified and binding Contract in the record as it now exists, the
20 arbitrator's Final Award cannot be confirmed because there was no agreement to arbitrate."
21 *Opposition to Motion to Confirm Final Award*, p. 2. Mr. Garmong further argues Defendants'
22 *Motion to Confirm Final Award* must be denied because Defendants perpetrated fraud upon
23 the Court, arbitrator, and Plaintiff by falsely representing the first version of the Investment
24 Management Agreement was correct.

25
26 In their *Reply*, Defendants assert the parties entered into a valid and enforceable
27
28

1 Investment Management Agreement (the "Agreement"), the final version of which was
2 executed on August 31, 2005. *Reply to Motion to Confirm Final Award*, p. 5. Defendants
3 maintain the Arbitration Clause is included in the Agreement at paragraph 16, pages 17 and
4 18. *Reply to Motion to Confirm Final Award*, p. 5. Moreover, the fully executed Agreement
5 was submitted in support of Defendants' *Motion to Dismiss and to Compel Arbitration*, and is
6 therefore part of the record. *Reply to Motion to Confirm Final Award*, p. 9.

8 **B. Plaintiff's Motion to Vacate Arbitrator's Final Award**

9 In his *Motion to Vacate Final Award*, Mr. Garmong first maintains the Final Award
10 must be vacated pursuant to NRS 38.241(1) because there is no agreement to arbitrate.
11 *Motion to Vacate Final Award*, p. 5. Second, Mr. Garmong contends the arbitration
12 provision contained in the Agreement is void pursuant to NRS 597.995 because it has no
13 "specific authorization." *Motion to Vacate Final Award*, p. 8. Mr. Garmong argues the
14 arbitration provision is also void because it is not conspicuous and does not warn the
15 consumer he is foregoing important rights under Nevada law. *Motion to Vacate Final*
16 *Award*, p. 9.

17 Mr. Garmong further contends the award was procured by corruption, fraud or other
18 undue means. *Motion to Vacate Final Award*, p. 10. Additionally, Mr. Garmong maintains
19 the arbitrator refused to consider evidence material to the controversy and that the arbitrator
20 showed partiality. *Motion to Vacate Final Award*, p. 15. Lastly, Mr. Garmong contends the
21 Final Award may be vacated on nonstatutory grounds, such as disregard of facts or
22 manifest disregard of legal authority. *Motion to Vacate Final Award*, p. 43.

23 **C. Motion to Vacate MSJ Decision**

24 In his *Motion to Vacate MSJ Decision*, Mr. Garmong requests an order from this
25

1 Court vacating Judge Pro's decision denying his *Motion for Partial Summary Judgment*, filed
2 in the course of arbitration, and to further consider the *Motion for Partial Summary*
3 *Judgment* and grant it *de novo*. *Motion to Vacate MSJ Decision*, p.1. In support, Mr.
4 Garmong contends Judge Pro disregarded the applicable substantive legal principles.
5 *Motion to Vacate MSJ Decision*, generally.

7 Defendants oppose the *Motion to Vacate MSJ Decision* on the following grounds:
8 First, Defendants argue it is well established that an order denying summary judgment is not
9 appealable after a hearing on the merits because it is not a final judgment. *Opposition to*
10 *Motion to Vacate MSJ*, p. 2. Second, Defendants assert Judge Pro properly denied Mr.
11 Garmong's *Motion for Partial Summary Judgment*. *Motion to Vacate MSJ Decision*, p. 5.
12 Lastly, Defendants assert Judge Pro did not evaluate witness credibility when he ruled on
13 the *MSJ*. *Opposition to Motion to Vacate MSJ*, p. 6.

15 **D. Plaintiff's Motion to Vacate Arbitrator's Award of Attorney's Fees**

16 In his *Motion to Vacate Award of Fees*, Mr. Garmong argues Rule 68 of the Nevada
17 Revised Statutes does not apply to this case because the parties did not agree it would
18 apply. *Motion to Vacate Award of Fees*, p. 5. In support, Mr. Garmong argues JAMS Rule
19 24 provides the award of the arbitrator may include attorney's fees if agreed to by the
20 parties. *Motion to Vacate Award of Fees*, p. 6. Moreover, Mr. Garmong argues the award
21 was procured by corruption, fraud, or other undue means.

22 In their *Opposition to Motion to Vacate Fees*, Defendants maintains Judge Pro's
23 award of attorney's fees and costs was proper pursuant to NRCP Rule 68 and JAMS Rule
24 24(g). Defendants assert, Judge Pro set forth:

25 There is no dispute that the issues in this case are governed by Nevada law,
26 and procedurally by JAMS Rules and the provisions of the Nevada Rules of
27
28

1 Civil Procedure enumerated in the Stipulation for arbitration entered by the
2 Parties on February 8, 2017. However, the agreement of the Parties to
3 specific NRCP rules relating to discovery does not automatically exclude the
4 applicability of others, particularly where the Arbitrator determines that
5 necessary.

6 *Opposition to Motion to Vacate Award of Fees*, p. 3; citing *Arbitrator's Final Award*.

7 In addition to arguing the award is proper under NRCP Rule 68 and JAMS Rule
8 24(g), Defendants argue the evidence supports Judge Pro's determination that the fees are
9 reasonable. *Opposition to Motion to Vacate Award of Fees*, p. 14.

10 **E. Motion to File Exhibit as Confidential**

11 Defendants filed their *Motion to File Exhibit as Confidential* asking this Court for an
12 Order to File Exhibit "4" to Defendants' *Reply to Motion to Confirm Final Award*, filed May 6,
13 2019, as confidential. Defendants assert after filing their *Reply to Motion to Confirm Final*
14 *Award*, Mr. Garmong informed Defendants' counsel Exhibit 4 contained his social security
15 number. *Motion to File Exhibit as Confidential*, p. 2. Defendants maintain they immediately
16 apologized for the inadvertent error and hand delivered a Stipulation to file the Exhibit as
17 confidential to Mr. Garmong's counsel. *Motion to File Exhibit as Confidential*, p. 2.
18 Defendants additionally called the Second Judicial District Court Clerk's office and
19 requested the Exhibit be marked and filed as confidential. However, Defendants assert Mr.
20 Garmong refused to sign the Stipulation. *Motion to File Exhibit as Confidential*, p. 2.

21 Mr. Garmong opposed the *Motion to File Exhibit as Confidential* on the grounds that
22 he "seeks protection from the exposure by the Defendants and their attorney to potential
23 identity or financial theft, but opposes the requested relief as insufficient and having no
24 basis in law." *Opposition to Motion to File Exhibit as Confidential*, p. 3. Mr. Garmong further
25
26
27
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1 maintains he “needs the Court’s help in protecting his sensitive personal and financial
2 information” *Opposition to Motion to File Exhibit as Confidential*, p. 3.

3 **III. APPLICABLE LAW AND ANALYSIS.**

4 **A. Motion to Confirm Final Award**

5 Section 38.239 of the Nevada Revised Statutes provides,

6
7 After a party to an arbitral proceeding receives notice of an award, the party
8 may make a motion to the court for an order confirming the award at which
9 time the court shall issue a confirming order unless the award is modified or
10 corrected pursuant to NRS 38.237 or 38.242 or is vacated pursuant to NRS
11 38.241.

12 NRS 38.239. “[T]he scope of judicial review of an arbitration award is limited and is nothing
13 like the scope of an appellate court’s review of a trial court’s decision.” Health Plan of
14 Nevada v. Rainbow Med., 120 Nev. 689, 695, 100 P.3d 172, 177 (2004). “A ‘reviewing court
15 should not concern itself with the “correctness” of an arbitration award’ and thus does not
16 review the merits of the dispute.” Bohlmann v. Byron John Printz, 120 Nev. at 547, 96 P.3d
17 1158 (2004) (quoting Thompson v. Tega–Rand Intern., 740 F.2d 762, 763 (9th Cir.1984));
18 see also Clark Ctv. Educ. Ass’n v. Clark Cty. Sch. Dist., 122 Nev. 337, 342, 131 P.3d 5, 8
19 (2006). Thus, “[a] party seeking to vacate an arbitration award based on manifest disregard
20 of the law may not merely object to the results of the arbitration.” Clark Ctv. Edu. Ass’n,
21 122 Nev. at 342, 131 P.3d at 8 (quoting Bohlmann, 120 Nev. at 547, 96 P.3d at 1158).
22 Rather, “[t]he party seeking to attack the validity of an arbitration award has the burden of
23 proving, by clear and convincing evidence, the statutory or common-law ground relied upon
24 for challenging the award.” Rainbow Med., 120 Nev. at 695, 100 P.3d at 176.

25
26 Here, Mr. Garmong argues the arbitration award must be set aside pursuant to NRS
27 38.221 because Defendants “cannot identify one, and only one, true, complete, correct,
28

1 certain, unambiguous, definite, verified and binding Contract in the record as it now exists;"
2 and, therefore, "the arbitrator's Final Award cannot be confirmed because there was no
3 agreement to arbitrate." *Opposition to Motion to Confirm Final Award*, p. 2.

4
5 This Court has repeatedly ruled, unequivocally, that an enforceable agreement to
6 arbitrate exists in the record and that the parties were properly ordered to arbitrate pursuant
7 to NRS 38.221. See Order, December 13, 2012 (holding the arbitration agreement
8 contained in paragraph 16 of the Agreement is not unconscionable and is enforceable);
9 Order, April 2, 2014 (denying motion for reconsideration, and again holding arbitration
10 agreement to be enforceable, based on identical arguments as raised in in Mr. Garmong's
11 *Motion to Vacate Final Award*); *Order to Show Cause Why Action Should not be Dismissed*
12 *for Want of Prosecution Pursuant to NRCP 41(E)*) (holding Mr. Garmong was ordered
13 numerous times to participate in arbitration.
14

15
16 In accordance with this Court's prior Orders, the record in this case, and the pending
17 *Motion*, the Court, again, holds a valid and enforceable agreement exists. As such, this
18 Court grants Defendants *Motion to Confirm Final Award* pursuant to NRS 38.239.

19 **B. Motion to Vacate Final Award; Motion to Vacate MSJ Decision**

20 Rule 13 of the District Court Rules for the State of Nevada provides, "No motion once
21 heard and disposed of shall be renewed in the same cause, nor shall the same matters
22 therein embraced be reheard, unless by leave of the court granted upon motion therefor,
23 after notice of such motion to the adverse parties." DCR 13(7).
24

25 Well-established authority in this State governs reconsideration of previously-decided
26 issues. In Masonry & Tile Contractors Ass'n of S. Nevada v. Jolley, Urga & Wirth, Ltd., the
27 Nevada Supreme Court held:
28

1 A district court may reconsider a previously decided issue if substantially
2 different evidence is subsequently introduced or the decision is clearly
3 erroneous. See *Little Earth of United Tribes v. Department of Housing*, 807
4 F.2d 1433, 1441 (8th Cir.1986); see also *Moore v. City of Las Vegas*, 92 Nev.
5 402, 405, 551 P.2d 244, 246 (1976) ("Only in very rare instances in which *new*
6 *issues of fact or law* are raised supporting a ruling contrary to the ruling
7 already reached should a motion for rehearing be granted.") (Emphasis
8 added).

9 113 Nev. 737, 741, 941 P.2d 486, 489 (1997) (alterations and citations in original). In

10 Masonry & Tile Contractors Ass'n, the Nevada Supreme Court upheld a district court's
11 reconsideration of a previously decided issue in light of new clarifying case law. Id.

12 Because of new case law, the decision by the prior district judge was properly determined to
13 be "clearly erroneous." Id. When a motion for reconsideration raises "no new issues of law
14 and [makes] reference to no new or additional facts," reconsideration is "superfluous" and
15 constitutes an "abuse of discretion" by the district court to entertain such a motion. Moore v.
16 City of Las Vegas, 92 Nev. 402, 405, 551 P.2d 244, 246 (1976). Such motions are granted
17 in "rare instances." Id. Further, it is well settled the decision of whether to grant
18 reconsideration is within "the sound discretion of the court." Navajo Nation v. Confederated
19 Tribes & Bands of the Yakama Indian Nation, 331 F.3d 1041, 1046 (9th Cir. 2003); see also
20 Riger v. Hometown Mortg., LLC, 104 F. Supp. 3d 1092, 1095 (D. Nev. 2015) (district court's
21 decision to grant reconsideration after entry of an order is within its discretion).

22 Mr. Garmong filed two *Motions*, the subject of which have been previously decided by
23 this Court and for which he does not raise new issues of law or fact. First, Mr. Garmong
24 filed his *Motion to Vacate Final Award*, in which he argues the Final Award must be vacated
25 pursuant to NRS 38.241(1) because there is no agreement to arbitrate. *Motion to Vacate*
26 *Final Award*, p. 5. However, as stated, this Court has previously held a valid and
27 enforceable arbitration agreement exists in the record pursuant to NRS 38.241. Moreover,
28

1 Mr. Garmong does not raise new issues of law or fact. See Order, December 13, 2012
2 (holding the arbitration agreement contained in paragraph 16 of the Agreement is not
3 unconscionable and is enforceable); Order, April 2, 2014 (denying motion for
4 reconsideration and again holding arbitration agreement to be enforceable based on
5 identical arguments as raised in in Mr. Garmong's *Motion to Vacate Final Award*); Order to
6 *Show Cause Why Action Should not be Dismissed for Want of Prosecution Pursuant to*
7 *NRCP 41(E)* (holding Mr. Garmong was ordered numerous time to participate in arbitration).
8

9
10 Second, Mr. Garmong filed his *Motion to Vacate MSJ Decision*, arguing the arbitrator
11 disregarded the applicable substantive legal principles. Again, this Court previously
12 considered and decided this issue. See Order Denying Plaintiff's Motion to Disqualify
13 *Arbitrator Pro*; *Order Denying Motion to Vacate Order Denying Motion for Summary*
14 *Judgment*; *Order Denying Motion to Appoint New Arbitrator*, entered September 29, 2018.
15

16 Accordingly, Mr. Garmong did not properly move to renew the *Motions* pursuant to
17 DCR 13(7). Moreover, Mr. Garmong does not present the Court with any new issues of law
18 or fact; and as such, his *Motion to Vacate Final Award* based on a lack of enforceable
19 agreement, and his *Motion to Vacate MSJ Decision* are meritless and should be denied.
20

21 **C. Motion to Vacate Attorney's Fees**

22 Rule 24(g) of JAMS Comprehensive Arbitration Rules & Procedures (JAMS Rule)
23 provides an arbitrator may award attorney's fees, expenses, and interest if provided by the
24 Parties' Agreement or allowed by applicable law. JAMS Rule 24(g). Defendants made an
25 Offer of Judgment in the amount of \$10,000 on February 12, 2017. *Final Award*, p. 10.
26

27 //

28 //

1 Rule 68 of the Nevada Rules of Civil Procedure provides, in pertinent part:

2 (a) The Offer. At any time more than 10 days before trial, any party may
3 serve an offer in writing to allow judgment to be taken in accordance with its
4 terms and conditions.

* * * *

5 (e) Failure to Accept Offer...Any offeree who fails to accept the offer may be
6 subject to the penalties of this rule.

7 (f) Penalties for Rejection of Offer. If the offeree rejects an offer and fails to
8 obtain a more favorable judgment,

9 (1) the offeree cannot recover any costs or attorney's fees and shall
10 not recover interest for the period after the service of the offer and before the
11 judgment; and

12 (2) the offeree shall pay the offeror's post-offer costs, applicable
13 interest on the judgment from the time of the offer to the time of entry of the
14 judgment and reasonable attorney's fees, if any be allowed, actually incurred
15 by the offeror from the time of the offer.

16 NRCP 68. An award of fees pursuant to NRCP 68 is discretionary with the Court and will
17 not be disturbed absent clear abuse. Bidart v. American Title Ins. Co., 103 Nev. 175, 734
18 P.2d 732 (1987).

19 Mr. Garmong argues Judge Pro's award of attorney's fees should be vacated
20 because the Scheduling Order entered in Arbitration between the parties on August 11,
21 2017 enumerated specific provisions of the Nevada Rules of Civil Procedure as applicable
22 to discovery in Arbitration, but omitted any reference to NRCP 68.

23 However, as Judge Pro properly found, there is no dispute that the issues in this case
24 are governed by Nevada law, and procedurally by JAMS Rules. The agreement of the
25 Parties to specific NRCP rules relating to discovery does not automatically exclude the
26 applicability of others to the matter, particularly where the Arbitrator determines it necessary.

27 Moreover, although Mr. Garmong argued the award was procured by corruption,
28 fraud, or other undue means, no evidence exists to support this assertion. Accordingly, the

1 Court finds Judge Pro awarded attorney's fees, interest, and expenses in accordance with
2 NRCF 68 and JAMS Rule 24(g).

3 **D. Motion to File Exhibit as Confidential**

4
5 Section 205.4605(1) of the Nevada Revised Statutes provides, a person shall not
6 **willfully and intentionally** post or display in any public manner the social security number
7 of another person unless the person is authorized or required to do so by law. NRS
8 205.4605(1). Here, it is clear that Defendants filed Mr. Garmong's social security number in
9 their moving papers and took immediate steps to remedy the disclosure.
10

11 Mr. Garmong opposes the *Motion to File Exhibit as Confidential* on the grounds the
12 request is insufficient to protect his identity and has no basis in law. However, Mr. Garmong
13 refused to sign the Stipulation which would provide for protection of his personal
14 information. The Court further notes Mr. Garmong has offered no remedy for a clearly
15 inadvertent disclosure of his social security number. It is clear from the parties'
16 communications that Defendants were not aware of the disclosure and took all necessary
17 steps to remedy the disclosure at the time they gained knowledge of such. See Motion to
18 File Exhibit as Confidential, Exhibit 1-3. The Court finds this was not a willful and intentional
19 disclosure. Moreover, the Court finds the inadvertent disclosure is remedied by ordering the
20 Exhibit filed as confidential.
21

22
23 **IV. CONCLUSION AND ORDER**

24 Accordingly, and good cause appearing therefor,

25 IT IS HEREBY ORDERED:

26 1. *Defendants' Petition for an Order Confirming Arbitrator's Final Award and*
27 *Reduce Award to Judgment, Including, Attorneys' Fees and Costs* is GRANTED;
28

2. Defendants are directed to submit a proposed judgment within ten (14) days from the entry of this Order;

3. *Plaintiff's Motion to Vacate Arbitrator's Final Award* is DENIED;

4. *Plaintiff's Motion to Vacate Arbitrator's Award of Attorney's Fees* is DENIED;

5. *Plaintiff's Motions to Vacate Arbitrator's Award of Denial of Plaintiff's Motion for Partial Summary Judgment and for the Court to Decide and Grant Plaintiff's Motion for Partial Summary Judgment is DENIED;*

6. *Defendants' Motion for an Order to File Exhibit as Confidential* is GRANTED.

DATED this 18th day of August, 2019.

DISTRICT JUDGE

CERTIFICATE OF SERVICE

I certify that I am an employee of THE SECOND JUDICIAL DISTRICT COURT;
that on the 8th day of August, 2019, I electronically filed the foregoing with the Clerk of
the Court system which will send a notice of electronic filing to the following:

CARL HEBERT, ESQ.

THOMAS BRADLEY, ESQ.

And, I deposited in the County mailing system for postage and mailing with the
United States Postal Service in Reno, Nevada, a true and correct copy of the attached
document addressed as follows:

Hudi Bre

CV12-01271

1 CODE: 2540
2 THOMAS C. BRADLEY, ESQ.
3 NV Bar. No. 1621
4 435 Marsh Avenue
5 Reno, Nevada 89509
6 Telephone: (775) 323-5178
7 Tom@TomBradleyLaw.com
8 Attorney for Defendants

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

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

11 GREGORY GARMONG,

CASE NO. CV12-01271

12 Plaintiff,

DEPT. NO. 6

13 v.

14 WESPAC, GREG CHRISTIAN, and
15 Does 1-10,

16 Defendants.

17 **NOTICE OF ENTRY OF ORDER**

18 PLEASE TAKE NOTICE that an ORDER was entered in the above-referenced case on
19 December 6, 2019, a copy of which is attached.

20 ***Affirmation:** The undersigned verifies that this document does not contain the personal*
21 *information of any person.*

22 DATED this 9th day of December, 2019.

23 /s/ Thomas C. Bradley
24 THOMAS C. BRADLEY, ESQ.
25 Attorney for Defendants
26
27
28

1 **CERTIFICATE OF SERVICE**

2 Pursuant to NRCP 5(b), I certify that I am an employee of Thomas C. Bradley, Esq., and the
3 date set forth below, I served a true copy of the foregoing document on the party(ies) identified
4 herein, via the following means:

- 5 ☐ Personal Delivery
6 ☐ Professional Courier
7 ☐ Federal Express or Other Overnight Delivery Service
8 ☐ US Mail with Sufficient Postage Affixed
9 ☐ Facsimile to the Facsimile Number specified
10 ☐ Electronic Mail to the e-mail address(es) specified
11 ☒ Second Judicial District Court eFlex system

12 Carl Hebert, Esq.
13 carl@cmhebertlaw.com
14 202 California Avenue
15 Reno, Nevada 89509
16 Attorney for Plaintiff

17 Dated this 9th day of December, 2019.

18 By: /s/ Mehi Aonga
19 Employee of Thomas C. Bradley, Esq.
20
21
22
23
24
25
26
27
28

1 CODE NO. 3060
2
3
4
5

6 IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
7 IN AND FOR THE COUNTY OF WASHOE
8

9 GREGORY O. GARMONG,

Case No. CV12-01271

10 Plaintiff,

Dept. No. 6

11 vs.

12 WESPAC; GREG CHRISTIAN; DOES 1-10,
13 inclusive,

14 Defendants.
15 _____/

16 **ORDER DENYING MOTION TO ALTER OR AMEND JUDGMENT**
17

18 Before this Court is *Plaintiff's Motion to Alter or Amend "Order Re Motions" Entered*
19 *August 8, 2019 ("Motion")* filed by Plaintiff GREGORY GARMONG ("Mr. Garmong") through
20 his attorney of record, Carl M. Herbert, Esq. Defendants WESPAC and GREG CHRISTIAN
21 (collectively "Defendants" unless individually referenced), through their attorney of record,
22 Thomas C. Bradley, Esq., filed their *Opposition to Plaintiff's Motion to Alter or Amend "Order*
23 *Re Motions" Entered August 8, 2019 ("Opposition")*. Thereafter, *Plaintiff's Reply Points and*
24 *Authorities in Support of Motion to Alter or Amend "Order Re Motions" Entered on August 8,*
25 *2019 ("Reply")* was filed and the matter was submitted for decision.
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1 briefed; and, on July 12, 2016, this Court entered its *Order re: Arbitration* requiring three
2 arbitrators. The parties then stipulated to select one arbitrator, to reduce costs. *Stipulation*
3 *to Select One Arbitrator*, October 17, 2016. In accordance, this Court entered its *Order*
4 *Appointing Arbitrator* on October 31, 2016, appointing Michael G. Ornstil, Esq., as arbitrator.
5 After it was determined Mr. Ornstil was unavailable, Mr. Garmong stipulated to the
6 appointment of either retired Judge Phillip M. Pro,² or Lawrence R. Mills. Esq.
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8 On November 13, 2017, this Court entered its *Order Granting Motion to Strike*, which
9 stayed the proceeding pending the outcome of the arbitration, and directed the parties to file
10 an amended complaint and other responsive papers at the direction of Judge Phillip M. Pro.
11 *Order Granting Motion to Strike*, p. 2. On February 21, 2017, this Court entered its *Order*
12 *Appointing Arbitrator*, appointing Judge Phillip M. Pro ("Judge Pro").
13

14 On March 27, 2017, Mr. Garmong filed *Plaintiff's Objection Pursuant to NRS*
15 *38.231(3) and 38.241(e) That There is No Agreement to Arbitrate; Notification of Objection*
16 *to the Court*. Despite prior determinative orders from this Court, Mr. Garmong again
17 objected to arbitration on the basis there was no agreement to arbitrate.
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19 On May 23, 2017, this Court entered its *Order to Show Cause Why Action Should not*
20 *be Dismissed for Want of Prosecution Pursuant to NRCP 41(E)*, finding "Mr. Garmong and
21 Defendants were ordered numerous times to participate in arbitration as early as December
22 13, 2012." The Court held the file did not contain any evidence the parties had proceeded
23 to arbitration as ordered. *Order*, p. 4. Accordingly, the Court ordered the parties to show
24 cause why the action should not be dismissed for want of prosecution. *Order*, p. 4.
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28 ² Mr. Garmong stipulated to Judge Pro although he previously moved to preclude a judge from
serving as an arbitrator.

1 The parties had their first arbitration conference in April, 2017. On June 22, 2018,
2 without asking for leave of Court because the matter was stayed, Mr. Garmong filed his
3 *Motion to Disqualify Arbitrator Pro, Vacate Order Denying Motion for Summary Judgment*
4 *and Appoint New Arbitrator ("Motion to Disqualify")*.
5

6 Defendants thereafter filed *Defendants' Motion for Limited Relief From Stay to File*
7 *Motion for Attorney's Fees and Sanctions ("Motion for Sanctions")* requesting limited relief
8 from this Court's order staying the proceeding pending the outcome of arbitration. While the
9 *Motion for Sanctions* was under consideration, Defendants filed their *Notice of Completion*
10 *of Arbitration Hearing* on October 22, 2018. The Court therefore held, with completion of
11 the arbitration, Defendants' *Motion for Sanctions* was moot. Additionally, the Court took
12 notice of Defendants' *Notice of Completion of Arbitration* and determined there were
13 additional decisions to be rendered regarding the *Notice*.
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15 Judge Pro found Mr. Garmong's claims for (1) Breach of Contract; (2) Breach of
16 Implied Warranty; (3) Breach of the Implied Covenant of Good Faith and Fair Dealing; (4)
17 Nevada's Deceptive Trade Practices Act; (5) Breach of Fiduciary Duty of Full Disclosure; (6)
18 Intentional Infliction of Emotional Distress; and, (7) Unjust Enrichment all failed as a matter
19 of law because Mr. Garmong did not establish his claims by a preponderance of the
20 evidence. *Final Award*, p. 8-9. Furthermore, after weighing the necessary factors required
21 by Brunzell v. Golden Gate National Bank, 455 P.2d 31, 33 (1969), Judge Pro found
22 Defendants were entitled to an award of reasonable attorneys' fees in the total sum of
23 \$111,649.96. *Final Award*, p. 11.
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25 The litigation proceeded with several filings. On August 8, 2019, this Court entered
26 its *Order Re Motions ("ORM")*: (1) granting *Defendants' Petition for an Order Confirming*
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1 *Arbitrator's Final Award and Reducing Award to Judgment, Including, Attorneys' Fees and*
2 *Costs; (2) denying Plaintiff's Motion to Vacate Arbitrator's Final Award; (3) denying Plaintiff's*
3 *Motion to Vacate Arbitrator's Award of Attorneys' Fees; (4) denying Plaintiff's Motions to*
4 *Vacate Arbitrator's Award of Denial of Plaintiff's Motion for Partial Summary Judgment and*
5 *for the Court to Decide and Grant Plaintiff's Motion for Partial Summary Judgment ("Motion*
6 *to Vacate MSJ Decision"); and, (5) granting Defendants' Motion for an Order to File Exhibit*
7 *as Confidential. ORM, p. 15-16.*

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10 On August 27, 2019, this Court entered its *Order* directing: (1) WESPAC to file an
11 *Amended Motion for the Award of Attorneys' Fees; (2) allowing Mr. Garmong the standard*
12 *response time to file and serve his opposition to Defendants' Amended Motion for the*
13 *Award of Attorneys' Fees; and, (3) providing WESPAC would not be required to file a*
14 *Proposed Final Judgment* until ten (10) days following this Court's ruling on WESPAC's
15 *Amended Motion for the Award of Attorneys' Fees. Order, p. 1.*

17 In his present *Motion*, Mr. Garmong contends this Court has a duty to review Judge
18 Pro's actions and rulings to determine whether he disregarded facts, or manifestly
19 disregarded the law. *Motion*, p. 2-3. Further, Mr. Garmong claims Judge Adams allegedly
20 relied on Version 1 of the Contract, instead of Version 2 of the Contract, which was
21 fraudulently used to compel arbitration between the parties. *Motion*, p. 6-13. As a result,
22 Version 2 of the Contract constitutes "previously unavailable evidence" which should, *inter*
23 *alia*, be used to identify the validity of the arbitration agreement and the final award. *Motion*,
24 p. 7-12. Additionally, Mr. Garmong argues DCR 13(7) does not apply to his precluded
25 claims because the *Motion to Vacate MSJ Decision* was not decided on substantive merits.
26 *Motion*, p. 14-15. Mr. Garmong also claims there was no valid offer of judgment for
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1 attorneys' fees because, in short, NRCP 68 was not a governing rule of arbitration under
2 Judge Pro's Discovery Plan. *Motion*, p. 20-26. Finally, Mr. Garmong claims his due process
3 rights were violated after failing to receive proper notice regarding the offer of judgment and
4 attorneys' fees award. *Motion*, p. 25-26.

6 In their *Opposition*, Defendants contend Mr. Garmong fails to identify a clear error, or
7 a fundamental miscarriage of justice, because Judge Pro provided an eleven (11) page
8 explanation of his factual findings supported by law. *Opposition*, p. 3-4. Defendants also
9 argue Mr. Garmong's *Motion* seeks to relitigate old matters which provide no basis for relief
10 under NRCP 59. *Opposition*, p. 5. Defendants emphasize this Court is only obligated to
11 "consider [and] not address" every argument posited by Mr. Garmong. *Opposition*, p. 2, 5.
12 Moreover, Defendants maintain Judge Pro properly found they were entitled to attorneys'
13 fees after weighing the necessary factors required by Brunzell, 455 P.2d at 33. *Opposition*,
14 p. 6. More importantly, Defendants purport Mr. Garmong's allegations regarding the
15 differing versions of the Contract does not constitute "new evidence" because Mr. Garmong
16 raised the same arguments to Judge Pro before the final decision on the arbitration award,
17 and to the Court through his previous papers. *Opposition*, p. 6 citing *Plaintiff's Opposition to*
18 *Defendants' Motion to Confirm Arbitrator's Award*, p. 4:16–15:16; *Motion to Vacate*
19 *Arbitrator's Final Award*, p. 3:3–4:21. Defendants contend Mr. Garmong continues to raise
20 the same arguments in his *Motion to Vacate MSJ Decision*. *Opposition*, p. 7. Additionally,
21 Defendants argue Mr. Garmong failed to timely raise his due process arguments because
22 he could have raised them in any of the motions or oppositions filed during arbitration, or
23 before this Court previously. *Opposition*, p. 7-8. Finally, Defendants state there is no

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1 evidence Judge Pro was biased and agree the argument has been raised and rejected
2 many times before. *Opposition*, p. 9.

3 In his *Reply*, Mr. Garmong re-asserts this Court failed to fulfill its obligation of
4 reviewing the arbitrator's award because the Court did not consider the differing versions of
5 the Contract. *Reply*, p. 5-10. In addition, Mr. Garmong re-emphasizes DCR 13(7) is
6 inapplicable to the claims set forth in his *Motion to Vacate MSJ Decision* because the claims
7 were not substantively addressed on the merits. *Reply*, p. 10-13. Finally, Mr. Garmong
8 stresses there was no valid offer of judgment for attorneys' fees because, in short, NRCP 68
9 was not a governing rule of arbitration under Judge Pro's Discovery Plan, and Judge Pro
10 failed to address the factors mandated by Beattie v. Thomas, 99 Nev. 579, 668 P.2d 268
11 (1983) and Brunzell, 455 P.2d at 33 to award attorneys' fees. *Reply*, p. 13-17.

14 **II. APPLICABLE LAW AND ANALYSIS.**

15 Pursuant to NRCP 59(e), a motion to alter or amend a judgment must be filed no
16 later than twenty-eight (28) days after service of written notice of entry of judgment. A
17 motion to alter or amend judgment may not be used to relitigate old matters, or to raise
18 arguments or present evidence that could have been raised prior to the entry of judgment.
19 Stevo Design, Inc. v. SBR Mktg. Ltd., 919 F. Supp. 2d 1112, 1117 (D. Nev. 2013). The
20 basic grounds for granting a NRCP 59(e) motion include "correct[ing] manifest errors of law
21 or fact," "newly discovered or previously unavailable evidence," the need "to prevent
22 manifest injustice," or a "change in controlling law." AA Primo Builders, LLC v. Washington,
23 126 Nev. 578, 582, 245 P.3d 1190, 1193 (2010). Nevada courts may consult federal law in
24 interpreting NRCP 59(e) due to its similarity to the federal standard. Id.

1 The Nevada Supreme Court will not disturb a judgment sustained by substantial
2 evidence when the moving party cannot specify, and when the court cannot find anything in
3 the record from which the Court could conclude that it is clear that a wrong conclusion had
4 been reached in judgment. Brechan v. Scott, 1976, 555 P.2d 1230, 92 Nev. 633
5 (interpreting NRCP 52(b) and 59(e)). A motion to alter or amend judgment under Rule 59(e)
6 is "an extraordinary remedy which should be used sparingly." Stevo Design, Inc. v. SBR
7 Mktg. Ltd., 919 F. Supp. 2d 1112, 1117 (D. Nev. 2013). Motions made under Rule 59(e)
8 "should not be granted absent highly unusual circumstances." 389 Orange St. Partners v.
9 Arnold, 179 F.3d 656, 665 (9th Cir. 1999).

12 **A. Defendants' Motion to Confirm Final Award.**

13 As discussed *supra*, Mr. Garmong claims Judge Adams relied on Version 1 of the
14 Contract, which was fraudulently utilized to compel arbitration between the parties, instead
15 of relying on Version 2 of the Contract. *Motion*, p. 6-13.

17 "[T]he scope of judicial review of an arbitration award is limited and is nothing like the
18 scope of an appellate court's review of a trial court's decision." Health Plan of Nevada v.
19 Rainbow Med., 120 Nev. 689, 695, 100 P.3d 172, 177 (2004). "A 'reviewing court should not
20 concern itself with the 'correctness' of an arbitration award' and thus does not review the
21 merits of the dispute." Bohlmann v. Byron John Printz, 120 Nev. at 547, 96 P.3d 1158
22 (2004) (quoting Thompson v. Tega-Rand Intern., 740 F.2d 762, 763 (9th Cir.1984)); see
23 also Clark Ctv. Educ. Ass'n v. Clark Cty. Sch. Dist., 122 Nev. 337, 342, 131 P.3d 5, 8
24 (2006). Rather, "[t]he party seeking to attack the validity of an arbitration award has the
25 burden of proving, **by clear and convincing evidence**, the statutory or common-law
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1 ground relied upon for challenging the award.” Rainbow Med., 120 Nev. at 695, 100 P.3d at
2 176 (emphasis added).

3 After considering this matter pursuant to the present papers filed, the Court finds Mr.
4 Garmong has failed to provide clear and convincing evidence to challenge the award.
5 Moreover, Mr. Garmong has failed to provide clear and convincing evidence Defendants
6 fraudulently induced Judge Adams and the Nevada Supreme Court to compel arbitration.
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8 Notably, Mr. Garmong does not cite to anything in the record with specificity to
9 substantiate his claims in the *Reconsider Motion*. Instead, Mr. Garmong rehashes his same
10 argument, the Contract is not “true, complete and correct.” Compare Motion, p. 6, 7, 13,
11 with Opposition to Motion to Confirm Final Award, p. 2. Despite this, the Court finds no
12 grounds to change its prior ruling that an enforceable agreement to arbitrate exists in the
13 record, and the parties were properly ordered to arbitrate. See ORM, p. 11; see also Order,
14 December 13, 2012 (holding the arbitration agreement contained in paragraph 16 of the
15 Agreement is not unconscionable and is enforceable); Order, April 2, 2014 (denying motion
16 for reconsideration, and again holding arbitration agreement to be enforceable, based on
17 identical arguments as raised in in Mr. Garmong’s *Motion to Vacate Final Award*); *Order to*
18 *Show Cause Why Action Should not be Dismissed for Want of Prosecution Pursuant to*
19 *NRCP 41(E)*) (holding Mr. Garmong was ordered numerous times to participate in
20 arbitration).
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24 Therefore, this Court rejects Mr. Garmong’s arguments and denies his request to
25 amend the Court’s findings regarding the confirmation of the award.
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1 **B. Plaintiff's Motion to Vacate Arbitrator's Final Award and**
2 **Plaintiff's Motion to Vacate MSJ Decision.**

3 Rule 13 of the District Court Rules for the State of Nevada provides, "No motion once
4 heard and disposed of shall be renewed in the same cause, **nor shall the same matters**
5 **therein embraced be reheard**, unless by leave of the court granted upon motion therefor,
6 after notice of such motion to the adverse parties." DCR 13(7) (emphasis supplied).
7

8 Well-established authority in this state governs reconsideration of previously-decided
9 issues. In Masonry & Tile Contractors Ass'n of S. Nevada v. Jolley, Urga & Wirth, Ltd., the
10 Nevada Supreme Court held:

11 A district court may reconsider a previously decided issue if substantially
12 different evidence is subsequently introduced or the decision is clearly
13 erroneous. See *Little Earth of United Tribes v. Department of Housing*, 807
14 F.2d 1433, 1441 (8th Cir.1986); see also *Moore v. City of Las Vegas*, 92 Nev.
15 402, 405, 551 P.2d 244, 246 (1976) ("Only in very rare instances in which *new*
16 *issues of fact or law* are raised supporting a ruling contrary to the ruling
already reached should a motion for rehearing be granted.") (Emphasis
added).

17 113 Nev. 737, 741, 941 P.2d 486, 489 (1997) (alterations and citations in original). In
18 Masonry & Tile Contractors Ass'n, the Nevada Supreme Court upheld a district court's
19 reconsideration of a previously decided issue in light of new clarifying case law. Id.
20 Because of new case law, the decision by the prior district judge was properly determined to
21 be "clearly erroneous." Id. When a motion for reconsideration raises "no new issues of law
22 and [makes] reference to no new or additional facts," reconsideration is "superfluous" and
23 constitutes an "abuse of discretion" by the district court to entertain such a motion. Moore v.
24 City of Las Vegas, 92 Nev. 402, 405, 551 P.2d 244, 246 (1976). Such motions are granted
25 in "rare instances." Id. Further, it is well-settled the decision of whether to grant
26 reconsideration is within "the sound discretion of the court." Navajo Nation v. Confederated
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1 Tribes & Bands of the Yakama Indian Nation, 331 F.3d 1041, 1046 (9th Cir. 2003); see also
2 Riger v. Hometown Mortg., LLC, 104 F. Supp. 3d 1092, 1095 (D. Nev. 2015) (district court's
3 decision to grant reconsideration after entry of an order is within its discretion).

4 Mr. Garmong's *Motion to Vacate Final Award* argues the Final Award must be
5 vacated pursuant to NRS 38.241(1) because there was no agreement to arbitrate, and even
6 *arguendo* if there was an agreement to arbitrate, it is invalid based on statutory and non-
7 statutory grounds. *Motion to Vacate Final Award*, p. 5-9. However, as stated, this Court
8 has previously held a valid and enforceable arbitration agreement exists in the record
9 pursuant to NRS 38.241 on numerous occasions. See *ORM*, p. 12; see also *Order*,
10 December 13, 2012 (holding the arbitration agreement contained in paragraph 16 of the
11 Agreement is not unconscionable and is enforceable); *Order*, April 2, 2014 (denying motion
12 for reconsideration and again holding arbitration agreement to be enforceable based on
13 identical arguments as raised in in Mr. Garmong's *Motion to Vacate Final Award*); *Order to*
14 *Show Cause Why Action Should not be Dismissed for Want of Prosecution Pursuant to*
15 *NRCP 41(E)* (holding Mr. Garmong was ordered numerous time to participate in arbitration).

16 As such, Mr. Garmong's argument constitutes "similar matters" or matters
17 "embraced" under DCR 13(7) requiring leave of court. Therefore, this Court declines to re-
18 entertain Mr. Garmong's arguments in this *Motion*, and therefore, declines to amend its
19 findings and confirmation of the award.

20 Second, Mr. Garmong contends the Court's *Nov. Order* did not decide the *Motion to*
21 *Vacate MSJ* on the substantive merits, thereby obviating application of DCR 13(7). *Motion*,
22 p. 15. However, the Court again finds Mr. Garmong previously raised the same argument
23 regarding Judge Pro disregarding applicable substantive legal principles. See *ORM*, p. 13;

1 Compare Motion, p. 16-19, with Plaintiff's Opposition to Defendants' Motion to Confirm
2 Arbitrator's Award, p. 4:16–15:16; Motion to Vacate Arbitrator's Final Award, p. 3:3–4:21;
3 Plaintiff's Motions to Vacate MSJ Decision, p. 10:12–31:6. Thus, this Court has previously
4 considered and decided this issue in accordance with JAMS Comprehensive Rules &
5 Procedures Rule (JAMS Rules). See Nov. Order, p. 8-9.

7 Accordingly, Mr. Garmong did not properly move to reconsider *Plaintiff's Motion to*
8 *Vacate MSJ Decision* as required by DCR 13(7). Therefore, this Court declines to amend
9 its findings regarding Judge Pro's summary disposition of claims.

11 **C. Plaintiff's Motion to Vacate Arbitrator's Award of Attorney's Fees.**

12 Mr. Garmong asserts there was no valid offer of judgment for attorneys' fees
13 because NRCP 68 was not a governing rule of arbitration under Judge Pro's Discovery
14 Plan. *Motion*, p. 20-26.

15 JAMS Rule 24(g) provides an arbitrator may award attorney's fees, expenses, and
16 interest if provided by the Parties' Agreement **or allowed by applicable law**. JAMS Rule
17 24(g) (emphasis added). Defendants propounded an Offer of Judgment in the amount of
18 \$10,000 on February 12, 2017 pursuant to applicable Nevada law. *Final Award*, p. 10.
19 Rule 68 of the Nevada Rules of Civil Procedure provides, in pertinent part:
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21 (a) The Offer. At any time more than 10 days before trial, any party may
22 serve an offer in writing to allow judgment to be taken in accordance with its
23 terms and conditions.

24 (e) Failure to Accept Offer...Any offeree who fails to accept the offer may be
25 subject to the penalties of this rule.

26 (f) Penalties for Rejection of Offer. If the offeree rejects an offer and fails to
27 obtain a more favorable judgment,
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1 (1) the offeree cannot recover any costs or attorney's fees and shall
2 not recover interest for the period after the service of the offer and before the
3 judgment; and

4 (2) the offeree shall pay the offeror's post-offer costs, applicable
5 interest on the judgment from the time of the offer to the time of entry of the
6 judgment and reasonable attorney's fees, if any be allowed, actually incurred
7 by the offeror from the time of the offer.

8 NRCP 68. An award of fees pursuant to NRCP 68 is discretionary with the Court and will
9 not be disturbed absent clear abuse. Bidart v. American Title Ins. Co., 103 Nev. 175, 734
10 P.2d 732 (1987).

11 The Court does not change its conclusion Judge Pro properly found the issues in
12 this case are governed by applicable Nevada law and JAMS Rules. *ORM*, p. 14. The
13 application of NRCP rules relating to discovery does not automatically exclude or preclude
14 the applicability of other NRCP rules to the matter, particularly where the Arbitrator
15 determines it necessary to apply them. *ORM*, p. 14.

16 Accordingly, the Court finds Judge Pro awarded attorneys' fees, interest, and
17 expenses in accordance with NRCP 68 and JAMS Rule 24(g). Therefore, this Court
18 declines to amend its findings regarding Judge Pro's award of attorneys' fees.

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20 **D. Due Process Claim.**

21 Mr. Garmong claims his due process rights were violated because he did not receive
22 proper notice regarding the offer of judgment and award of attorneys' fees. *Motion*, p. 25-
23 26. A motion to alter or amend judgment may not be used to relitigate old matters, or to
24 raise arguments or present evidence that could have been raised prior to the entry of
25 judgment. Stevo Design, Inc., 919 F. Supp. 2d at 1117. Mr. Garmong's new claim
26 regarding due process violations is not appropriate for NRCP 59(e) as it could have been
27 raised prior to the entry of judgment. Therefore, this Court declines to consider Mr.
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1 Garmong's due process claim as it could have been raised before this Court or the arbitrator
2 prior to the entry of judgment.

3 **D. Potential Sanctions.**

4 This Court notes Mr. Garmong's continued indifference to the previous orders issued
5 by this Court. The Court will consider imposing sanctions in the future should Mr. Garmong
6 continue to disregard this Court's orderst.

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8 **III. CONCLUSION AND ORDER.**

9 For the foregoing reasons, and good cause appearing therefor,

10 **IT IS HEREBY ORDERED** Mr. Garmong's *Motion to Alter or Amend "Order Re*
11 *Motions" Entered August 8, 2019 ("Motion")* is **DENIED**.

12 Dated this 6th day of December, 2019.

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16 DISTRICT JUDGE
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1 **CERTIFICATE OF SERVICE**

2 I certify that I am an employee of THE SECOND JUDICIAL DISTRICT COURT;
3 that on the 6th day of December, 2019, I electronically filed the foregoing with the
4 Clerk of the Court system which will send a notice of electronic filing to the following:
5

6 CARL HEBERT, ESQ.

7 THOMAS BRADLEY, ESQ.
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13 And, I deposited in the County mailing system for postage and mailing with the
14 United States Postal Service in Reno, Nevada, a true and correct copy of the attached
15 document addressed as follows:
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19 Heidi Bre
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CV12-01271