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Peter Dubowsky, Esq.
Nevada Bar No. 4972

DUBOWSKY LAW OFFICE, CHTD Douglas County
300 South Fourth Street Suite 1020 District Court Clerk

Las Vegas, Nevada 89101

(702) 360-3500

Fax (702) 360-3515

Attorney for Plaintiff

This document does not contain the personal information of any individual.

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Oct 21 2020 12:00 p.m.
BY Elizabeth A. Brown
Clerk of Supreme Court

IN THE NINTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

IN AND FOR THE COUNTY OF DOUGLAS

PLATTE RIVER INSURANCE COMPANY) Case No.: 19-CV-0197

Plaintiff,

) Dept No.: II

vs.

EUREKA BUILDERS, INC. a revoked Nevada
corporation; and LANCE JACKSON and
SUSAN JACKSON each individually as
personal indemnitators; and DOES I-X and ROE
CORPORATIONS I-X, inclusive

Defendants

NOTICE OF APPEAL

The Judgment Creditor PLATTE RIVER INSURANCE COMPANY ("Judgment
Creditor") by and through their counsel of record, Peter Dubowsky, Esq. of the DUBOWSKY
LAW OFFICE, CHTD. appeals the September 29, 2020 Order Upon Claim of Exemptions.

Dated: October 15, 2020

DUBOWSKY LAW OFFICE, CHTD.

By: 

Peter Dubowsky, Esq.

Nevada Bar No. 4972

300 South Fourth Street Suite 1020

Las Vegas, Nevada 89101

(702) 360-3500

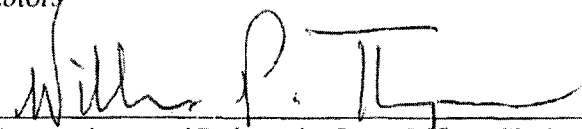
Fax (702) 360-3515

Attorney for Judgment Creditor

CERTIFICATE OF MAILING

I hereby certify that on the 15th day of October 2020 the NOTICE OF APPEAL was deposited in a sealed envelope, postage pre-paid, in the United States Mail, addressed as follows:

Michael G. Millward, Esq.
MILLWARD LAW, LTD.
1591 Mono Avenue
Minden, NV 89423
Attorney for Defendants/Judgment Debtors


An employee of Dubowsky Law Office, Chtd.

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OCT 16 2020

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Peter Dubowsky, Esq.
Nevada Bar No. 4972

Douglas County
District Court Clerk

2020 OCT 16 PM 2:47

DUBOWSKY LAW OFFICE, CHTD.

300 South Fourth Street Suite 1020

Las Vegas, Nevada 89101

(702) 360-3500

Fax (702) 360-3515

Attorney for Plaintiff/Judgment Creditor

This document does not contain the personal information of any individual.

BUSHE P. WILLIAMS
CLERK

BY *[Signature]*

IN THE NINTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

IN AND FOR THE COUNTY OF DOUGLAS

PLATTE RIVER INSURANCE COMPANY) Case No.: 19-CV-0197

Plaintiff,

) Dept No.: II

vs.

EUREKA BUILDERS, INC. a revoked Nevada)
corporation; and LANCE JACKSON and)
SUSAN JACKSON each individually as)
personal indemnitators; and DOES I-X and ROE)
CORPORATIONS I-X, inclusive

Defendants

CASE APPEAL STATEMENT

The Plaintiff/Judgment Creditor PLATTE RIVER INSURANCE COMPANY
("Judgment Creditor") by and through their counsel of record, Peter Dubowsky, Esq. of the
DUBOWSKY LAW OFFICE, CHTD. submits the following Case Appeal Statement in
accordance with N.R.A.P. 3(f):

1. HON. THOMAS W. GREGORY issued the Order that is the subject of this
Appeal;
2. The Appellant is Plaintiff/Judgment Creditor PLATTE RIVER INSURANCE
COMPANY, represented by Peter Dubowsky, Esq. of the Dubowsky Law Office,
Chtd. 300 South Fourth Street; Suite 1020; Las Vegas, Nevada 89101;

DUBOWSKY LAW OFFICE, CHTD.

- 1 3. The Respondents are Defendants/Judgment Debtors SUSAN and LANCE
- 2 JACKSON represented by Michael G. Millward, Esq. of the MILLWARD LAW,
- 3 LTD.; 1591 Mono Avenue; Minden, NV 89423;
- 4 4. The Respondents' attorney is licensed in Nevada;
- 5 5. The Appellant was not represented by appointed counsel;
- 6 6. The Appellant is not proceeding in forma pauperis;
- 7 7. Proceedings commenced in the District Court on July 2, 2019;
- 8 8. The Plaintiff/Appellant is the Judgment Creditor of Respondent Susan Jackson.
- 9 The Appellant levied a wage garnishment on Defendant / Judgment Debtor Susan
- 10 Jackson. Susan Jackson claimed the \$10,000 "wildcard" exemption on her wages,
- 11 among other exemptions. The District Court granted the exemption. The
- 12 Appellant's position is that the \$10,000 "wildcard" exemption cannot be claimed
- 13 on wages and that the District Court Judge misinterpreted the statute. Appellant
- 14 appeals from that Order granting he exemption;
- 15 9. This case has not previously been the subject of an appeal;
- 16 10. This Appeal does not involve child custody or visitation;
- 17 11. The Appeal does not involve the possibility of settlement.

18 Dated: October 16, 2020

DUBOWSKY LAW OFFICE, CHTD.

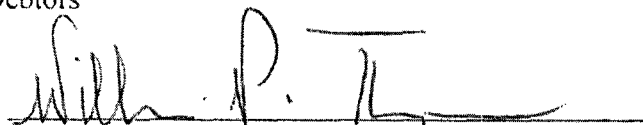
19 By: 

20 Peter Dubowsky, Esq.
21 Nevada Bar No. 4972
22 300 South Fourth Street
23 Suite 1020
24 Las Vegas, Nevada 89101
25 (702) 360-3500
Fax (702) 360-3515
Attorney for Plaintiff/
Judgment Creditor

CERTIFICATE OF MAILING

I hereby certify that on the 16th day of October 2020 the CASE APPEAL
STATEMENT was deposited in a sealed envelope, postage pre-paid, in the United States
Mail, addressed as follows:

Michael G. Millward, Esq.
MILLWARD LAW, LTD.
1591 Mono Avenue
Minden, NV 89423
Attorney for Defendants/Judgment Debtors


An employee of Dubowsky Law Office, Chtd.

Douglas County District Court

Case Summary Report

Case #: 2019-CV-00197
Case Title: Platte River Insurance vs. Eureka Builders, Inc.
Filed: 07/01/2019
Cause: Insurance Carrier DV: N

Case Status: Reopened Date: 08/27/2020

Archived: 03/25/2020, 12/11/2019

Parties

<u>Party</u>	<u>Name</u>	<u>Status</u>		
Plaintiff	Platte River Insurance Company			
Defendant	Eureka Builders, Inc.			
Defendant	Jackson, Lance			
Defendant	Jackson, Susan			

<u>Party</u>	<u>Name</u>	<u>Bar #</u>	<u>Status</u>	<u>Representing</u>
Attorney	Millward, Michael	11212	Current	
Attorney	Dubowsky, Peter	004972	Current	

Events

<u>Date/Time</u>	<u>Type</u>	<u>Result</u>	<u>Reason</u>
09/04/2020	Motion Hearing	Concluded	

Documents

<u>Date</u>	<u>Code</u>	<u>Description</u>
	MINS	Minutes
09/06/2016	DASR	Answer - AnswerFiled by DEF002-Jackson, Lance, DEF003-Jackson, Susan
07/01/2019	DSBA	Summons Issued - Summons Issued
07/01/2019	DCOM	Complaint - Complaint
07/25/2019	DDMD	Demand For - Demand that Foreign Corporation PostCash to Secure Costs, Charges Filed by DEF003-Jackson, Susan, DEF002-Jackson, Lance, DEF001-Eureka Builders, Inc.,
07/26/2019	DSF	Summons Filed - Summons Filed
07/26/2019	DDEC	Declaration of - Declaration of Service
07/26/2019	DDEC	Declaration of - Declaration of Service
08/01/2019	DCOS	Certificate of Service - Certificate of Service
08/29/2019	DWIT	Withdrawal of - Withdrawal of Demand that ForeignCorporation Post Cash to Secure Costs, Charges (NRS 18.130(1)) Filed by DEF003-Jackson, Susan, DEF002-Jackson, Lance
10/15/2019	DAPT	Appointment of - Appointment of Arbitrator
11/21/2019	MJSM	Motion for Summary Judgment
11/21/2019	DAIS	Affidavit in Support of - Motion for Summary Judgment
12/19/2019	DOPP	Opposition to Motion - Opposition to Platte River Insurance Company's Motion for Summary Judgment
01/08/2020	DREP	Reply to - Plaintiff's Reply to Defendants' Opposition to Motion for Summary Judgment
01/21/2020	DRSU	Request for Submission - of Motion
03/24/2020	DORD	Order - for Supplemental Briefing
03/30/2020	DEXM	Ex Parte Motion - for an Order Extending Time
03/31/2020	DOET	Order Extending Time - for Supplemental Briefing
04/10/2020	DSUP	Supplement - Supplemental Brief
04/27/2020	DSUP	Supplement - Plaintiff's Supplemental Reply to Motion for Summary Judgment
05/01/2020	DORD	Order - Granting Summary Judgment (NRCP 56)
05/08/2020	DNEO	Notice of Entry of Order
05/08/2020	DMEM	Memorandum of Costs and Disbursements

<u>Date</u>	<u>Code</u>	<u>Description</u>
05/11/2020	MMOT	Motion - Plaintiff's Motion for Attorney's Fees
05/13/2020	DNEO	Notice of Entry of Order
05/13/2020	DMEM	Memorandum of Costs and Disbursements
06/02/2020	DJJJ	Judgment
06/10/2020	DNEJ	Notice of Entry of Judgment
07/31/2020	DIEX	Issued Execution
08/20/2020	DAFF	Affidavit of - Claim Exemption
08/20/2020	DAFF	Affidavit of - Claim Exemption
08/27/2020	MMOT	Motion - to Determine the Issue of Exemption
09/01/2020	DOSH	Order Setting Hearing
09/01/2020	DNEO	Notice of Entry of Order - Setting Hearing
09/01/2020	DOPT	Opposition to - Platte River's Motion Regarding Exemption
09/11/2020	DCOS	Certificate of Service - Regarding Submission of Proposed Order
09/29/2020	DORD	Order - Upon Claim of Exemptions
10/07/2020	DNEO	Notice of Entry of Order
10/15/2020	DNOA	Notice of Appeal
10/16/2020	DCAP	Case Appeal Statement

Case No. 19-CV-0197

Dept.: II

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SEP 11 2020

Douglas County
District Court Clerk

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2020 SEP 29 AM 11:20

BODDIE P. WILLIAMS
CLERK

BY  DEPUTY

IN THE NINTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

IN AND FOR THE COUNTY OF DOUGLAS

* * * * *

PLATTE RIVER INSURANCE COMPANY)
Plaintiff,)
vs.)
EUREKA BUILDERS, INC. a revoked)
Nevada corporation; and LANCE)
JACKSON and SUSAN JACKSON each)
individually as personal indemnitators;)
and DOES I-X and ROE)
CORPORATIONS I-X inclusive)
Defendants.)

**ORDER UPON
CLAIM OF EXEMPTIONS**

THIS MATTER came before the Court at the time set for hearing upon the *Motion to Determine the Issue of Exemption*, filed by Plaintiff Platte River Insurance Company on August 27, 2020, therein objecting in part to the *Affidavit of Claim of Exemption*, filed by Defendant Susan Jackson on August 20, 2020. On September 1, 2020, pursuant to NRS 21.112(6) the Court entered its *Order Setting Hearing*, therein setting a hearing upon Platte River Insurance Company's motion to be heard by the Court at 8:30 a.m. on Friday September 4, 2020.

At the time set for hearing Platte River Insurance Company appeared through its counsel, Peter Dubowsky, Esq., of Dubowsky Law Office, Chtd., and Defendants Lance Jackson and Susan Jackson appeared in person with their counsel Michael G. Millward, of Millward Law., Ltd.

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On July 31, 2020, at Platte River's request, the Court Clerk issued a Writ of Execution, directing the Sheriff of Carson City to satisfy the judgment. Thereafter, on August 20, 2020, upon receipt of the notice of the Writ of Execution, Susan Jackson (hereinafter individually as "Susan") filed her *Affidavit of Claim of Exemption* (hereinafter "Affidavit") claiming an exemption of her earning pursuant to NRS 21.090(1)(g) and NRS 21.090(1)(z).¹

9 In Platte River's Motion, Platte requests the Court determine that Susan is not
10 entitled to exempt her wages levied upon pursuant to NRS 21.090(1)(z).² Platte River
11 argues that Nevada's "wildcard exemption" under NRS 21.090(1)(z) "expressly does not
12 apply to wages."³ Platte River argued that because Susan's wages are exempt pursuant to
13 NRS 21.090(1)(g), Susan is not entitled to claim her wages pursuant to NRS 21.090(1)(z)
14 because her wages are "otherwise exempt."⁴

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1 In support of its argument, Platte River cites to the legislative history from the 74th
2 Session of the Nevada Legislature, and also to the Dodge City Healthcare Group v.
3 Chaudhry (D. Nev. June 9, 2010, Case No. 09-00091), a non-binding decision of the U.S.
4 District Court for the District of Nevada.⁵

5 In Susan's Opposition, she argued that NRS 21.090(1)(g)(2) and NRS 21.090(1)(z)
6 can be read together, and that NRS 21.090(1)(z) plainly and unambiguously cumulatively
7 exempts any all personal property selected by a debtor up to the \$10,000 where a
8 remainder of the property is not exempt under another claimed exemption.⁶ Regarding the
9 25% of her disposable earnings not exempt under NRS 21.090(1)(g), Susan argues that
10 NRS 21.090(1)(z) may be claimed to exempt disposable earnings because the term
11 "earnings" as defined under NRS 21.090(1)(g)(2) is applicable to financial accounts also
12 specifically exempt under NRS 21.090(1)(z).⁷

13 In support of the argument that NRS 21.090(1)(z) maybe cumulatively applied to
14 property not otherwise fully exempt under other exemption, Susan directed the Court to its
15 prior decision in *Victoria A. Stroud v. Professional Finance Company, Inc.*, Ninth Judicial
16 District Court Case No. 18-CV-0136, concerning an appeal taken from an Order of the East
17 Fork Justice Court in case no. 13-CV-104, in which this Court had held that earnings maybe
18 cumulatively exempted under NRS 21.090(1)(g) and NRS 21.090(1)(z).⁸ In response to
19 Platte River's supporting authority, Susan also argued against the Court's consideration of
20 the legislative history, or application of the U.S. District Court's decision in *Chaudhry*.⁹

21 At the September 4, 2020 hearing, the counsel for the respective parties made
22 argument consistent with their arguments submitted in the Motion and Opposition. During
23 Platte River's argument, its counsel took the position that NRS 21.090(1)(z) is
24 unambiguous. Platte River's counsel also argued that the "not otherwise exempt" language
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27 ⁵ Id. at pp.3-4.

⁶ Susan Jackson's Opposition to Platte River's Motion Regarding Exemption, pp.3-9.

28 ⁷ Id. at. pp.5-6.

⁸ Id. at pp.7-9.

⁹ Id. at pp.7-11.

1 found in NRS 21.090(1)(z), is not applicable where any other exemption would apply under
2 NRS 21.090(1).

3 Susan's Counsel argued that NRS 21.090(1)(z) exemption can be applied
4 cumulatively with other exemptions and that NRS 21.090(1) limits a debtor's entitlement to
5 exemptions only in instances where the limitation is specifically stated within the
6 subsections of NRS 21.090(1).

7 **LEGAL STANDARD**

8 Nevada court's review of a creditor's objection to a debtor's claim of exemption from
9 execution of a judgment under NRS 21.112(6) which provides as follows in pertinent part:

10 Unless the court continues the hearing for good cause shown, the
11 hearing on an objection to a claim of exemption to determine
12 whether the property or money is exempt must be held within 7
13 judicial days after the objection to the claim and notice for a
14 hearing is filed. The judgment debtor has the burden to prove that
15 he or she is entitled to the claimed exemption at such a hearing.
16 After determining whether the judgment debtor is entitled to an
17 exemption, the court shall mail a copy of the order to the
18 judgment debtor, the judgment creditor, any other named party,
19 the sheriff and any garnishee.

20 Neither Platte River nor Susan have taken the position that the other party failed to
21 meet their filing deadlines required under NRS 21.112. Based upon a review of the recent
22 filings, the Court finds that the timing requirements set forth in NRS 21.112 have been
23 satisfied, and that Susan's *Affidavit of Claim of Exemption* and Platte River's objection
24 stated within its Motion are properly before the Court.

21 **ANALYSIS**

22 The Court has been asked to decide whether Susan is entitled to claim an exemption
23 of 75% of her disposable earnings under NRS 21.090(1)(g) cumulatively with her claim of
24 exemption of the remaining 25% of her disposable earnings up to \$10,000 pursuant to NRS
25 21.090(1)(z).

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1 The exemptions found under NRS 21.090 protect the rights of debtors provided by
2 the Nevada Constitution.¹⁰ The exemptions are "absolute and unqualified" and have the
3 effect of removing property "beyond the reach of legal process."¹¹

4 The Nevada Supreme Court has stated that "[w]e liberally and beneficially construe
5 our state exemption statutes in favor of the debtor."¹² Further, "unless ambiguous, a
6 statute's language is applied in accordance with its plain meaning."¹³ The NRS 21.090(1)(z)
7 exemption, referred to as the "wildcard exemption," allows a debtor to exempt "any
8 personal property" up to the statutory amount.¹⁴

9 As is applicable here NRS 21.090(1) and subsections (1)(g) and (1)(z) provide as
10 follows in pertinent part:

11 The following property is exempt from execution, except as
12 otherwise specifically provided in this section or required by
13 federal law:

14 (g) For any workweek, . . . 75 percent of the disposable earnings
15 of a judgment debtor during that week if the gross weekly salary
16 or wage of the judgment debtor on the date the most recent writ
17 of garnishment was issued exceeded \$770 . . . Except as
18 otherwise provided in paragraphs (o), (s) and (t), the exemption
19 provided in this paragraph does not apply in the case of any order
20 of a court of competent jurisdiction for the support of any person,
21 any order of a court of bankruptcy or of any debt due for any state
22 or federal tax. As used in this paragraph:

23 (1) "Disposable earnings" means that part of the earnings of a
24 judgment debtor remaining after the deduction from those
25 earnings of any amounts required by law to be withheld.

26 (2) "Earnings" means compensation paid or payable for
27 personal services performed by a judgment debtor in the regular
28 course of business, including, without limitation, compensation
designated as income, wages, tips, a salary, a commission or a
bonus. The term includes compensation received by a judgment
debtor that is in the possession of the judgment debtor,
compensation held in accounts maintained in a bank or any other
financial institution or, in the case of a receivable, compensation
that is due the judgment debtor.

10 Nevada Constitution, Article 1, Section 14.

11 *Savage v. Pierson*, 123 Nev. 86, 90 (2007) (quoting *Elder v. Williams*, 16 Nev. 416, 423 (1882).

12 *In re Christensen*, 122 Nev. 1309, 1314 (2006) (citing *Jackman v. Nance*, 109 Nev. 716 (1993).

13 *We the People Nevada v. Secretary of State*, 124 Nev. 874, 881 (2008).

14 *Becker v. Becker*, 362 P.3d 641, 645 (2015)

1 (z) Any personal property not otherwise exempt from execution
2 pursuant to this subsection belonging to the judgment debtor,
3 including, without limitation, the judgment debtor's equity in any
4 property, money, stocks, bonds or other funds on deposit with a
financial institution, not to exceed \$10,000 in total value, to be
selected by the judgment debtor.¹⁵

5 NRS 21.090(1) leaves no room for dispute that an exemption thereunder claimed by
6 a judgment debtor exempts the judgment debtor's specific property unless an exception to
7 the exemptions application is "specifically provided" for under NRS 21.090(1) or as
8 "required by federal law."¹⁶

9 In this regard it is notable that NRS 21.090(1)(g) does provide specific exceptions for
10 the 75% or 82% exemption of disposable earnings which is determined upon the total
11 earnings of the judgment debtor.¹⁷ Additionally, the earnings exemption specifically
12 provides that it is not applicable where the judgment or order sought to be enforced is from
13 a federal bankruptcy court, where it is for the support of any person, or where the
14 underlying debt is for state or federal taxes due.¹⁸ NRS 21.090(1)(g) and its subsections do
15 not mention or otherwise refer to NRS 21.090(1)(z).

16 The Wildcard Exemption under NRS 21.090(1)(z) does not include any limitations to
17 its application and unambiguously applies up to \$10,000 of the debtor's interest in "any
18 personal property . . . selected by the judgment debtor".¹⁹ NRS 21.090(1)(z) dictates that
19 all personal property "without limitation" may be selected by the judgment debtor.²⁰ The
20 examples of "any personal property" includes "equity in any property, money, stocks, bonds
21 or other funds on deposit with a financial institution . . ."²¹

22 Even though NRS 21.090(1)(z) does not specifically state that "earnings" are
23 included as "personal property," Nevada law defines provides that Susan's earnings are, by
24

25
26 ¹⁵ NRS 21.090(1).

¹⁶ NRS 21.090(1).

27 ¹⁷ See NRS 21.090(1)(g)(exempting 75% and 82% of the debtor's earnings based upon amount of earnings).

¹⁸ *Id.*

28 ¹⁹ NRS 21.090(1)(z).

²⁰ *Id.*

²¹ *Id.*

1 definition, her personal property.²² Likewise, the definition of earnings under NRS
2 21.090(1)(g)(2) establishes that there exists an overlap between the exemption of property
3 that can be claimed under both statutes.²³ Both NRS 21.090(1)(g) and NRS 21.090(1)(z)
4 are specifically applicable to the compensation of the debtor where debtor's interest is then
5 held by financial institution.²⁴

6 Based upon the unambiguous language of NRS 21.090(1), *et seq.*, the interplay
7 between NRS 21.090(1)(z) and NRS 21.090(1)(g) is clear. The Wildcard Exemption applies
8 not only to property selected by the debtor where no other exemption is applicable, but also
9 to the portion of the personal property selected by the debtor where such portion of the
10 property is not completely exempt under another applicable exemption.²⁵

11 Thus, according to the plain and unambiguous provisions of NRS 21.090(1), this
12 Court concludes that the NRS 21.090(1)(z) "Wildcard Exemption" applies to that portion of
13 Susan's disposable earnings that "are not otherwise exempt from execution" up to
14 \$10,000.²⁶ Seventy-five percent of Susan's earnings are absolutely exempt without
15 qualification pursuant to NRS 21.090(1)(g).²⁷ The portion of Susan's earnings that are not
16 exempt by NRS 21.090(1)(g), are absolutely exempt without qualification up to \$10,000.²⁸

17 The Court finds that the application of the unambiguous wildcard exemption as
18 claimed by Susan is consistent with the purposes of exemptions, and it does not render the
19 earnings exemption superfluous or create an absurd result. Because it is undisputed that
20 no ambiguity in the statutes in question exists, the Court does not delve into intent or policy
21 of the Nevada Legislature.

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24
25 ²² NRS 10.045 (defining "personal property"); NRS 21.090 (1) (g) (2) (defining "earnings"); *See also* NRS 10.065; NRS
26 10.075; NRS 28.050; NRS 28.080; NRS 28.070; NRS 17.500 (defining "money") ; *U.S. v. Austin*, 462 F. 2d 724, 736
(10th Cir. 1972) (defining "evidence of indebtedness"); and Black's Law Dictionary 1617 (9th ed. 2009) (defining "thing
in action.")

27 ²³ *Cf.* NRS 21.090(1)(g)(2); NRS 21.090(1)(z).

28 ²⁴ *Id.*

²⁵ *See* NRS 21.090(1)(z); *Becker v. Becker*, 362 P.3d 641, 645 (2015).

²⁶ *Id.*

²⁷ NRS 21.090(1)(g).

²⁸ NRS 21.090(1)(z).

1 NOW THEREFORE, GOOD CAUSE APPEARING, the Court hereby ORDERS as follows:

2 1. That Seventy-Five percent (75%) of Susan Jackson's earnings are determined
3 to be exempt pursuant to the NRS 21.090(1)(g) from levy and execution.

4 2. That the remaining Twenty-Five percent (25%) of Susan Jackson's earnings
5 not otherwise exempt pursuant to NRS 21.090(1)(g) are determined to be exempt from
6 levy and execution up to the total sum of \$10,000 pursuant to NRS 21.090(1)(z).

7 3. That the Carson City Sherriff is directed to deliver to Susan Jackson all exempt
8 earnings it has received by the Garnishee State of Nevada, Office of the State Controller,
9 101 N. Carson Street, Carson City, Nevada 89701-4786 (hereinafter "Garnishee"), where
10 the Garnishee has not provided a calculation establishing that said leviable earnings are in
11 in excess \$10,000.

12 4. That during the pendency of the garnishment (180 days from the date of the
13 issuance of the Writ of Garnishment), at the time of each intervening pay period the
14 Garnishee shall determine the total sum of Susan Jackson's leviable earnings, which shall
15 constitute 25% of Susan Jackson's disposable earnings pursuant to NRS 21.090(1)(g), from
16 the date of Issuance of the Writ of Garnishment to the present date.

17 5. That the Garnishee shall not provide to the Carson City Sheriff with the
18 leviable earnings of Susan Jackson pursuant to NRS 21.090(1)(g), until the total sum of
19 Susan Jackson's leviable earnings earned during the pendency of the garnishment exceeds
20 \$10,000.

21 6. That once Susan Jackson's leviable earnings exceed \$10,000, the Garnishee
22 shall provide the Carson City Sheriff evidence of its calculation of total leviable earnings and
23 Susan Jackson's leviable earnings which are then in excess of the \$10,000.

24 Dated this 24th day of September, 2020.

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THOMAS W. GREGORY
DISTRICT JUDGE

AFFIRMATION

The undersigned hereby affirms pursuant to NRS 239B.03 that the foregoing does not contain the social security number of any person, or other personal information as defined by NRS 603A.040.

Submitted this 11th day of September, 2020

By: 

Michael G. Millward
NSB# 11212
Millward Law, Ltd.
1591 Mono Avenue
Minden, Nevada 89423
(775) 600-2776

1 Case No: 19-CV-0197

2 Dept. II

3 The undersigned affirms that this document does not
4 contain personal information, pursuant to NRS 603A.040

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OCT - 7 2020

Douglas County
District Court Clerk

FILED

2020 OCT -7 PM 4:03

ROBERT R WILLIAMS
CLERK
DEPUTY

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

8 * * * * *

9 PLATTE RIVER INSURANCE COMPANY,)

10 Plaintiff,)

11 vs.)

12 EUREKA BUILDERS, INC., a revoked)
13 Nevada corporation; Lance Jackson and)
14 Susan Jackson, each individually as)
15 personal indemnitors; and DOES I-X and)
16 ROE CORPORATIONS I-X, inclusive)

Defendants.)

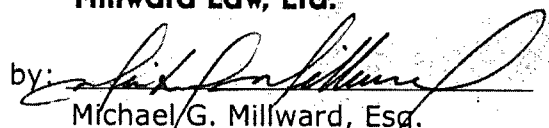
NOTICE OF ENTRY OF ORDER

17 TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

18 PLEASE TAKE NOTICE that on September 29, 2020, the Court entered the
19 attached *Order Upon Claim of Exemptions*.

20 Dated this 6th day of October, 2020

21 **Millward Law, Ltd.**

22 by: 
23 Michael G. Millward, Esq.
24 Millward Law, Ltd.
25 1591 Mono Ave.
26 Minden, NV 89423
27 (775) 600-2776
28



1 **CERTIFICATE OF SERVICE**

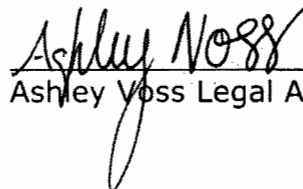
2 Pursuant NRCP5(b), I hereby certify that service of the *Notice of Entry of Order* were made
3 on October 6, 2020, by depositing the original above mentioned documents for mailing
4 via US Postal mail, addressed to the following:

5 Carson City Sheriff
6 911 East Musser Street
7 Carson City, NV 89701

Peter Dubowsky, Esq.
300 South Fourth Street
Suite 1020
Las Vegas, Nevada 89101

8 Douglas County Sheriff
9 PO Box 208
Minden, NV 89423

State of Nevada
Office of the State Controller
101 N. Carson Street
Carson City, NV 89701-4786

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13 Ashley Voss Legal Assistant
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RECEIVED

SEP 11 2020

Douglas County
District Court Clerk

FILED

2020 SEP 29 AM 11:20

DOUGLAS COUNTY

D. GOELZ

BY: JUDITH

Case No. 19-CV-0197

Dept.: II

IN THE NINTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

IN AND FOR THE COUNTY OF DOUGLAS

* * * * *

PLATTE RIVER INSURANCE COMPANY)

Plaintiff,)

vs.)

EUREKA BUILDERS, INC. a revoked)
Nevada corporation; and LANCE)
JACKSON and SUSAN JACKSON each)
individually as personal indemniters;)
and DOES I-X and ROE)
CORPORATIONS I-X inclusive)

Defendants.)

**ORDER UPON
CLAIM OF EXEMPTIONS**

THIS MATTER came before the Court at the time set for hearing upon the *Motion to Determine the Issue of Exemption*, filed by Plaintiff Platte River Insurance Company on August 27, 2020, therein objecting in part to the *Affidavit of Claim of Exemption*, filed by Defendant Susan Jackson on August 20, 2020. On September 1, 2020, pursuant to NRS 21.112(6) the Court entered its *Order Setting Hearing*, therein setting a hearing upon Platte River Insurance Company's motion to be heard by the Court at 8:30 a.m. on Friday September 4, 2020.

At the time set for hearing Platte River Insurance Company appeared through its counsel, Peter Dubowsky, Esq., of Dubowsky Law Office, Chtd., and Defendants Lance Jackson and Susan Jackson appeared in person with their counsel Michael G. Millward, of Millward Law., Ltd.

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1 In support of its argument, Platte River cites to the legislative history from the 74th
2 Session of the Nevada Legislature, and also to the Dodge City Healthcare Group v.
3 Chaudhry (D. Nev. June 9, 2010, Case No. 09-00091), a non-binding decision of the U.S.
4 District Court for the District of Nevada.⁵

5 In Susan's Opposition, she argued that NRS 21.090(1)(g)(2) and NRS 21.090(1)(z)
6 can be read together, and that NRS 21.090(1)(z) plainly and unambiguously cumulatively
7 exempts any all personal property selected by a debtor up to the \$10,000 where a
8 remainder of the property is not exempt under another claimed exemption.⁶ Regarding the
9 25% of her disposable earnings not exempt under NRS 21.090(1)(g), Susan argues that
10 NRS 21.090(1)(z) may be claimed to exempt disposable earnings because the term
11 "earnings" as defined under NRS 21.090(1)(g)(2) is applicable to financial accounts also
12 specifically exempt under NRS 21.090(1)(z).⁷

13 In support of the argument that NRS 21.090(1)(z) maybe cumulatively applied to
14 property not otherwise fully exempt under other exemption, Susan directed the Court to its
15 prior decision in *Victoria A. Stroud v. Professional Finance Company, Inc.*, Ninth Judicial
16 District Court Case No. 18-CV-0136, concerning an appeal taken from an Order of the East
17 Fork Justice Court in case no. 13-CV-104, in which this Court had held that earnings maybe
18 cumulatively exempted under NRS 21.090(1)(g) and NRS 21.090(1)(z).⁸ In response to
19 Platte River's supporting authority, Susan also argued against the Court's consideration of
20 the legislative history, or application of the U.S. District Court's decision in *Chaudhry*.⁹

21 At the September 4, 2020 hearing, the counsel for the respective parties made
22 argument consistent with their arguments submitted in the Motion and Opposition. During
23 Platte River's argument, its counsel took the position that NRS 21.090(1)(z) is
24 unambiguous. Platte River's counsel also argued that the "not otherwise exempt" language
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27 ⁵ Id. at pp.3-4.

⁶ Susan Jackson's Opposition to Platte River's Motion Regarding Exemption, pp.3-9.

28 ⁷ Id. at. pp.5-6.

⁸ Id. at pp.7-9.

⁹ Id. at pp.7-11.

1 found in NRS 21.090(1)(z), is not applicable where any other exemption would apply under
2 NRS 21.090(1).

3 Susan's Counsel argued that NRS 21.090(1)(z) exemption can be applied
4 cumulatively with other exemptions and that NRS 21.090(1) limits a debtor's entitlement to
5 exemptions only in instances where the limitation is specifically stated within the
6 subsections of NRS 21.090(1).

7 **LEGAL STANDARD**

8 Nevada court's review of a creditor's objection to a debtor's claim of exemption from
9 execution of a judgment under NRS 21.112(6) which provides as follows in pertinent part:

10 Unless the court continues the hearing for good cause shown, the
11 hearing on an objection to a claim of exemption to determine
12 whether the property or money is exempt must be held within 7
13 judicial days after the objection to the claim and notice for a
14 hearing is filed. The judgment debtor has the burden to prove that
15 he or she is entitled to the claimed exemption at such a hearing.
After determining whether the judgment debtor is entitled to an
exemption, the court shall mail a copy of the order to the
judgment debtor, the judgment creditor, any other named party,
the sheriff and any garnishee.

16 Neither Platte River nor Susan have taken the position that the other party failed to
17 meet their filing deadlines required under NRS 21.112. Based upon a review of the recent
18 filings, the Court finds that the timing requirements set forth in NRS 21.112 have been
19 satisfied, and that Susan's *Affidavit of Claim of Exemption* and Platte River's objection
20 stated within its Motion are properly before the Court.

21 **ANALYSIS**

22 The Court has been asked to decide whether Susan is entitled to claim an exemption
23 of 75% of her disposable earnings under NRS 21.090(1)(g) cumulatively with her claim of
24 exemption of the remaining 25% of her disposable earnings up to \$10,000 pursuant to NRS
25 21.090(1)(z).

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1 The exemptions found under NRS 21.090 protect the rights of debtors provided by
2 the Nevada Constitution.¹⁰ The exemptions are "absolute and unqualified" and have the
3 effect of removing property "beyond the reach of legal process."¹¹

4 The Nevada Supreme Court has stated that "[w]e liberally and beneficially construe
5 our state exemption statutes in favor of the debtor."¹² Further, "unless ambiguous, a
6 statute's language is applied in accordance with its plain meaning."¹³ The NRS 21.090(1)(z)
7 exemption, referred to as the "wildcard exemption," allows a debtor to exempt "any
8 personal property" up to the statutory amount.¹⁴

9 As is applicable here NRS 21.090(1) and subsections (1)(g) and (1)(z) provide as
10 follows in pertinent part:

11 The following property is exempt from execution, except as
12 otherwise specifically provided in this section or required by
13 federal law:

14 (g) For any workweek, . . . 75 percent of the disposable earnings
15 of a judgment debtor during that week if the gross weekly salary
16 or wage of the judgment debtor on the date the most recent writ
17 of garnishment was issued exceeded \$770 . . . Except as
18 otherwise provided in paragraphs (o), (s) and (t), the exemption
19 provided in this paragraph does not apply in the case of any order
20 of a court of competent jurisdiction for the support of any person,
21 any order of a court of bankruptcy or of any debt due for any state
22 or federal tax. As used in this paragraph:

23 (1) "Disposable earnings" means that part of the earnings of a
24 judgment debtor remaining after the deduction from those
25 earnings of any amounts required by law to be withheld.

26 (2) "Earnings" means compensation paid or payable for
27 personal services performed by a judgment debtor in the regular
28 course of business, including, without limitation, compensation
designated as income, wages, tips, a salary, a commission or a
bonus. The term includes compensation received by a judgment
debtor that is in the possession of the judgment debtor,
compensation held in accounts maintained in a bank or any other
financial institution or, in the case of a receivable, compensation
that is due the judgment debtor.

29 ¹⁰ Nevada Constitution, Article 1, Section 14.

30 ¹¹ *Savage v. Pierson*, 123 Nev. 86, 90 (2007) (quoting *Elder v. Williams*, 16 Nev. 416, 423 (1882).

31 ¹² *In re Christensen*, 122 Nev. 1309, 1314 (2006) (citing *Jackman v. Nance*, 109 Nev. 716 (1993).

32 ¹³ *We the People Nevada v. Secretary of State*, 124 Nev. 874, 881 (2008).

33 ¹⁴ *Becker v. Becker*, 362 P.3d 641, 645 (2015)

1 (z) Any personal property not otherwise exempt from execution
2 pursuant to this subsection belonging to the judgment debtor,
3 including, without limitation, the judgment debtor's equity in any
4 property, money, stocks, bonds or other funds on deposit with a
financial institution, not to exceed \$10,000 in total value, to be
selected by the judgment debtor.¹⁵

5 NRS 21.090(1) leaves no room for dispute that an exemption thereunder claimed by
6 a judgment debtor exempts the judgment debtor's specific property unless an exception to
7 the exemptions application is "specifically provided" for under NRS 21.090(1) or as
8 "required by federal law."¹⁶

9 In this regard it is notable that NRS 21.090(1)(g) does provide specific exceptions for
10 the 75% or 82% exemption of disposable earnings which is determined upon the total
11 earnings of the judgment debtor.¹⁷ Additionally, the earnings exemption specifically
12 provides that it is not applicable where the judgment or order sought to be enforced is from
13 a federal bankruptcy court, where it is for the support of any person, or where the
14 underlying debt is for state or federal taxes due.¹⁸ NRS 21.090(1)(g) and its subsections do
15 not mention or otherwise refer to NRS 21.090(1)(z).

16 The Wildcard Exemption under NRS 21.090(1)(z) does not include any limitations to
17 its application and unambiguously applies up to \$10,000 of the debtor's interest in "any
18 personal property . . . selected by the judgment debtor".¹⁹ NRS 21.090(1)(z) dictates that
19 all personal property "without limitation" may be selected by the judgment debtor.²⁰ The
20 examples of "any personal property" includes "equity in any property, money, stocks, bonds
21 or other funds on deposit with a financial institution . . ."²¹

22 Even though NRS 21.090(1)(z) does not specifically state that "earnings" are
23 included as "personal property," Nevada law defines provides that Susan's earnings are, by
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26 ¹⁵ NRS 21.090(1).

27 ¹⁶ NRS 21.090(1).

28 ¹⁷ See NRS 21.090(1)(g)(exempting 75% and 82% of the debtor's earnings based upon amount of earnings).

¹⁸ *Id.*

¹⁹ NRS 21.090(1)(z).

²⁰ *Id.*

²¹ *Id.*

1 definition, her personal property.²² Likewise, the definition of earnings under NRS
2 21.090(1)(g)(2) establishes that there exists an overlap between the exemption of property
3 that can be claimed under both statutes.²³ Both NRS 21.090(1)(g) and NRS 21.090(1)(z)
4 are specifically applicable to the compensation of the debtor where debtor's interest is then
5 held by financial institution.²⁴

6 Based upon the unambiguous language of NRS 21.090(1), *et seq.*, the interplay
7 between NRS 21.090(1)(z) and NRS 21.090(1)(g) is clear. The Wildcard Exemption applies
8 not only to property selected by the debtor where no other exemption is applicable, but also
9 to the portion of the personal property selected by the debtor where such portion of the
10 property is not completely exempt under another applicable exemption.²⁵

11 Thus, according to the plain and unambiguous provisions of NRS 21.090(1), this
12 Court concludes that the NRS 21.090(1)(z) "Wildcard Exemption" applies to that portion of
13 Susan's disposable earnings that "are not otherwise exempt from execution" up to
14 \$10,000.²⁶ Seventy-five percent of Susan's earnings are absolutely exempt without
15 qualification pursuant to NRS 21.090(1)(g).²⁷ The portion of Susan's earnings that are not
16 exempt by NRS 21.090(1)(g), are absolutely exempt without qualification up to \$10,000.²⁸

17 The Court finds that the application of the unambiguous wildcard exemption as
18 claimed by Susan is consistent with the purposes of exemptions, and it does not render the
19 earnings exemption superfluous or create an absurd result. Because it is undisputed that
20 no ambiguity in the statutes in question exists, the Court does not delve into intent or policy
21 of the Nevada Legislature.

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25 ²² NRS 10.045 (defining "personal property"); NRS 21.090 (1) (g) (2) (defining "earnings"); See also NRS 10.065; NRS
26 10.075; NRS 28.050; NRS 28.080; NRS 28.070; NRS 17.500 (defining "money") ; *U.S. v. Austin*, 462 F.2d 724, 736
(10th Cir. 1972) (defining "evidence of indebtedness"); and Black's Law Dictionary 1617 (9th ed. 2009) (defining "thing
in action.")

27 ²³ Cf. NRS 21.090(1)(g)(2); NRS 21.090(1)(z).

28 ²⁴ *Id.*

²⁵ See NRS 21.090(1)(z); *Becker v. Becker*, 362 P.3d 641, 645 (2015).

²⁶ *Id.*

²⁷ NRS 21.090(1)(g).

²⁸ NRS 21.090(1)(z).

1 NOW THEREFORE, GOOD CAUSE APPEARING, the Court hereby ORDERS as follows:

2 1. That Seventy-Five percent (75%) of Susan Jackson's earnings are determined
3 to be exempt pursuant to the NRS 21.090(1)(g) from levy and execution.

4 2. That the remaining Twenty-Five percent (25%) of Susan Jackson's earnings
5 not otherwise exempt pursuant to NRS 21.090(1)(g) are determined to be exempt from
6 levy and execution up to the total sum of \$10,000 pursuant to NRS 21.090(1)(z).

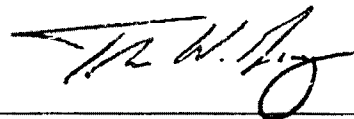
7 3. That the Carson City Sherriff is directed to deliver to Susan Jackson all exempt
8 earnings it has received by the Garnishee State of Nevada, Office of the State Controller,
9 101 N. Carson Street, Carson City, Nevada 89701-4786 (hereinafter "Garnishee"), where
10 the Garnishee has not provided a calculation establishing that said leviable earnings are in
11 in excess \$10,000.

12 4. That during the pendency of the garnishment (180 days from the date of the
13 issuance of the Writ of Garnishment), at the time of each intervening pay period the
14 Garnishee shall determine the total sum of Susan Jackson's leviable earnings, which shall
15 constitute 25% of Susan Jackson's disposable earnings pursuant to NRS 21.090(1)(g), from
16 the date of Issuance of the Writ of Garnishment to the present date.

17 5. That the Garnishee shall not provide to the Carson City Sheriff with the
18 leviable earnings of Susan Jackson pursuant to NRS 21.090(1)(g), until the total sum of
19 Susan Jackson's leviable earnings earned during the pendency of the garnishment exceeds
20 \$10,000.

21 6. That once Susan Jackson's leviable earnings exceed \$10,000, the Garnishee
22 shall provide the Carson City Sheriff evidence of its calculation of total leviable earnings and
23 Susan Jackson's leviable earnings which are then in excess of the \$10,000.

24 Dated this 29th day of September, 2020.

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27 THOMAS W. GREGORY
28 DISTRICT JUDGE

AFFIRMATION

The undersigned hereby affirms pursuant to NRS 239B.03 that the foregoing does not contain the social security number of any person, or other personal information as defined by NRS 603A.040.

Submitted this 11th day of September, 2020

By: 

Michael G. Millward
NSB# 11212
Millward Law, Ltd.
1591 Mono Avenue
Minden, Nevada 89423
(775) 600-2776

CASE NO: 2019-CV-00197

DEPT NO. II

Platte River Insurance

v.

Eureka Builders, Inc.

DATE: 09/04/2020

JUDGE: Thomas W. Gregory

CLERK: Autumn Newton

COURT REPORTER: Not Reported

PLAINTIFFS COUNSEL: Peter Dubowsky

DEFENDANTS COUNSEL: Michael Millward

LAW CLERK: Bethany Towne

BAILIFFS: Bill Addington

The above-entitled matter was before the Court this being the time set for MOTION TO DETERMINE ISSUE OF EXEMPTION. The plaintiff was not present in court but was represented by counsel. The defendants were present in court and represented by counsel.

Mr. Dubowsky presented argument.

Mr. Millward presented argument.


The Court finds that the statute is unambiguous and Mr. Dubowsky's arguments have not swayed the Court that it was incorrect in its ruling in the Stroud case.

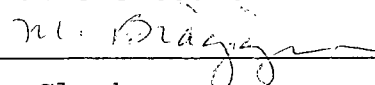
Mr. Millward will prepare an order consistent with the arguments raised in his Opposition and consistent with the Court's prior ruling in Stroud.

1 STATE OF NEVADA)
2) ss
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4 COUNTY OF DOUGLAS)
5

6 I, BOBBIE R. WILLIAMS, Clerk of the Ninth Judicial
7 District Court, State of Nevada, in and for the said County of
8 Douglas; said Court being a Court of Record, having common law
9 jurisdiction, and a Clerk and a Seal, do hereby certify that the
10 foregoing are the full, true copies of the original pleadings
11 filed in Case No. 2019-cv-00197 (PLATTE RIVER INSURANCE COMPANY
12 VS. EUREKA BUILDERS, TE. AL.); Notice of Appeal, Case Appeal
13 Statement, District Court Docket Entries, Order Upon Claim of
14 Exemption, Notice of Entry of Order, and District Court Minutes.
15

16 IN TESTIMONY WHEREOF, I have hereunto set my hand and
17 affixed my Official Seal at Minden, in said County and State this
18 9th day of October, 20th, 2020.

19 
Clerk of the Court

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21 Deputy Clerk
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BOBBIE R. WILLIAMS
CLERK OF COURT
COURT ADMINISTRATOR
JURY COMMISSIONER

District Court Clerk's Office
(775) 782-9820
Tahoe Justice Court
(775) 586-7200
East Fork Justice Court
(775) 782-9955

Transmittal to the Supreme Court

To: Nevada Supreme Court
210 South Carson Street
Carson City, Nevada 89710

Date: October 20, 2020

Re: District Court Case #: 2019-CV-00197

District Court Case Name: PLATTE RIVER INSURANCE COMPANY VS. EUREKA BUILDERS,
ET.AL.

The following documents are transmitted to the Supreme Court pursuant to the July 22, 1996 revisions to the Nevada Rules of Appellate Procedure. Checked items are **NOT** included in this appeal:

- ☐ Notice of Appeal
- ☐ Case Appeal Statement
- ☒ Second Notice of Posting of Appeal Bond
- ☐ District Court Docket entries
- ☒ Request for Transcript
- ☐ Judgment(s) or order(s) appealed from
- ☒ Order (NRAP FORM 4)
- ☐ Notice of entry of the judgment(s) or order(s) appealed from
- ☒ Certification order directing entry of judgment pursuant to NRCP 54(b)
- ☐ District Court Minutes
- ☒ Exhibit List
- ☒ Supreme Court filing fee (\$250.00) under separate cover.

Respectfully,
BOBBIE WILLIAMS
CLERK OF THE COURT

By: M. Bragg
Deputy Court Clerk