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Attorney for Appellant

Electronically Filed  
Mar 24 2021 12:19 p.m.  
Elizabeth A. Brown  
Clerk of Supreme Court

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

PLATTE RIVER INSURANCE) Case No.: 81974  
COMPANY )  
)  
Appellant, )  
)  
vs. )  
)  
SUSAN JACKSON; and LANCE) )  
JACKSON )  
)  
Respondents )  
)

---

**APPELLANT'S APPENDIX**

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APPEAL  
From the Ninth Judicial District Court, Douglas County  
The Honorable THOMAS W. GREGORY, District Judge  
District Court Case No. 19CV0197

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District Court Clerk

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2019 JUL -2 AM 12:00

BOBBIE R. WILLIAMS  
CLERK

M. BIAGGINI  
DEPUTY

Peter Dubowsky, Esq.  
Nevada Bar No. 4972  
Amanda C. Vogler-Heaton, Esq.  
Nevada Bar No. 13609  
DUBOWSKY LAW OFFICE, CHTD.  
300 South Fourth Street, Suite 1020  
Las Vegas, Nevada 89101  
(702) 360-3500  
Fax (702) 360-3515  
Attorney for Plaintiff

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.: 11         |
|  | ) |                      |
| 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                                   | ) |                      |

COMPLAINT

Plaintiff, by and through their counsel of record, Peter Dubowsky, Esq. of the DUBOWSKY LAW OFFICE, CHTD. appears and alleges as follows:

1. Plaintiff is licensed to execute surety bonds in the State of Nevada under the provisions of the Nevada Insurance Code.
2. Defendant, EUREKA BUILDERS, INC., is a revoked Nevada corporation.
3. Defendants, LANCE JACKSON and SUSAN JACKSON, are at all times relevant herein believed to be residents of Douglas County, Nevada.

1           4.       That the true names or capacities, whether individual, corporate, associate or  
2 otherwise of the Defendants named herein as DOES I-X, inclusive, and ROE Corporations  
3 I-X, are unknown to Plaintiff who therefore sue said Defendants by such fictitious names.  
4 Plaintiff alleges that each Defendant designated herein as a DOE or ROE Corporation is  
5 negligently, willfully, contractually, intentionally or otherwise legally responsible for the  
6 events and happenings herein referred to and proximately caused injury and damage  
7 thereby to the Plaintiff as herein alleged. Plaintiff shall ask leave of this Court to amend the  
8 Complaint, pursuant to N.R.C.P. 10(a), to insert the true names and capacities of each  
9 Defendant named as DOES and/or ROE, when the same has been ascertained, and will  
10 further seek leave to join said Defendants in these proceedings.  
11

12           5.       On or about April 7, 2010, Defendants executed a Bond  
13 Application/Agreement of Indemnity ("Agreement") in favor of Plaintiff.

14           6.       Pursuant to the Agreement, Defendants agreed to pay SURETY upon  
15 demand all loss and expense, including attorney's fees, for which SURETY shall become  
16 liable by reason of such suretyship, whether or not SURETY shall have paid such loss and  
17 expense at the time of demand, and all attorney's fees and costs incurred by SURETY in  
18 enforcing this agreement.  
19

20           7.       Plaintiff issued Bond No. 41200892 (the "Bond") in the penal sum of  
21 \$20,000.00 which was filed with the Nevada State Contractors Board.

22           8.       On or about November 22, 2016, Claim No. 183462-01 (the "Claim") was  
23 made against the Bond by certain claimants, for which the Plaintiff became liable in  
24 suretyship for losses of \$20,000.00, as well as \$4,102.46 in attorney's fees and costs  
25 incurred in the defense of bond claims, pursuant to the Agreement.

1 9. Defendants are liable to Plaintiff for the \$24,102.46 loss for the Claim made  
2 against the Bond.

3 10. Defendants, LANCE JACKSON and SUSAN JACKSON, each personally  
4 guaranteed the balance.

5 11. Defendants are liable for the total principal balance due of \$24,102.46 plus  
6 collection fees of \$9,640.68 for a total balance due of \$33,743.44.

7 12. The Plaintiff made demand for payment, which demands have been refused.

8 13. Plaintiff is entitled to a reasonable attorney's fee.

9 WHEREFORE, Plaintiff prays for relief as follows:  
10

- 11 1. For damages in excess of \$15,000.00 plus statutory interest from November  
12 22, 2016;  
13 2. Costs of court and reasonable attorney's fees; and  
14 3. Such other relief as this court may deem just and proper.

15 **AFFIRMATION**

16 Pursuant to N.R.S. 239B.030, the undersigned does hereby affirm that the preceding  
17 filed in District Court does not contain the social security number of any person.

18 Dated: June 24, 2017

19 DUBOWSKY LAW OFFICE, CHTD.

20  
21 By: [Signature]  
22 Peter Dubowsky, Esq.  
23 Nevada Bar No. 4972  
24 Amanda C. Vogler-Heaton, Esq.  
25 Nevada Bar No. 13609  
300 South Fourth Street, Suite 1020  
Las Vegas, Nevada 89101  
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Fax (702) 360-3515  
Attorney for Plaintiff



1 Michael G. Millward, Esq.  
2 Bar No.: 11212  
3 Millward Law, Ltd.  
4 1591 Mono Ave.  
5 Minden, NV 89423  
6 775-600-2776  
7 This document does not contain personal  
8 Information, pursuant to NRS 603A.040

9 IN THE NINTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA  
10  
11 IN AND FOR THE COUNTY OF DOUGLAS  
12 \*\*\*\*\*

13 PLATTE RIVER INSURANCE COMPANY )  
14 )  
15 Plaintiff, )  
16 )  
17 vs. )  
18 )  
19 EUREKA BUILDERS, INC. a revoked )  
20 Nevada corporation; and LANCE JACKSON )  
21 and SUSAN JACKSON each individually as )  
22 personal indemnitators; and DOES I-X and )  
23 ROE CORPORATIONS I-X inclusive )  
24 )  
25 Defendants. )  
26 )  
27 )  
28 )

Case No. 19-CV-0197  
Dept. II

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ANSWER

COMES NOW, Lance Jackson and Susan Jackson, (hereinafter "Defendants"), by and through their attorney, Michael G. Millward of Millward Law, Ltd., and hereby answers PLATTE RIVER INSURANCE COMPANY (hereinafter "Plaintiff") Complaint. Defendants' admits, denies and states as follows:

1. Defendants' admits the allegations set forth in paragraphs 1, 2, 3, and 7 of Plaintiff's Complaint.
2. Defendants' are without sufficient knowledge to form a belief of the truth or falsity of the allegations in the following listed paragraphs of the Plaintiff's Complaint and denies the same: 5, 6, 8, 9, 11 and 12.
3. Defendants' deny the allegations in paragraph four and any remaining allegations of Plaintiff's Complaint for which no admission or denial is required.





1 been alleged inasmuch as insufficient facts and other relevant information may not have  
2 been available after reasonable inquiry, and therefore, Answering Defendants' reserve the  
3 right to amend this Answer to allege additional affirmative defenses if subsequent  
4 investigation warrants the same.

5 WHEREFORE Defendants' pray as follows:

- 6 1. That Plaintiff take nothing by way of the Complaint;
- 7 2. That the Court dismiss Plaintiff's Complaint with prejudice;
- 8 3. That the Court award as damages cost of suit and attorney's fees; and
- 9 4. For such other and further relief as the Court may deem just and equitable in  
10 the premises.

11 **AFFIRMATION**

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

15 Dated this 5<sup>th</sup> day of September, 2019

16  
17 By: \_\_\_\_\_

Lance Jackson

18  
19 By: \_\_\_\_\_

Susan Jackson

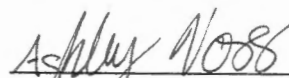


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**CERTIFICATE OF SERVICE**

Pursuant to NRCP 5(b) I certify that I am an employee of Millward Law, Ltd. and on September 6<sup>th</sup>, 2019, I deposited for delivery the foregoing document described as *ANSWER* for service by placing an original or true copy thereof in a sealed envelope placed for collection and mailing in Minden, Nevada, on said date, following ordinary business practices to:

Dubowsky Law Office, CHTD.  
Peter Dubowsky, Esq.  
Amanda C. Vogler-Heaton, Esq.  
300 South Fourth Street, Suite 1020  
Las Vegas, Nevada 89101

  
\_\_\_\_\_  
Ashley Voss, Legal Assistant

17773

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BOBBIE R. WILLIAMS  
A. NEWLON

BY \_\_\_\_\_ DEPUTY

Case No. 2019-CV-00197

Dept. No. 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.

ORDER GRANTING SUMMARY  
JUDGMENT (NRCP 56)

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

Defendants.

THIS MATTER comes before the Court on Plaintiff's Motion for  
Summary Judgment, filed November 21, 2019. The motion has been  
fully briefed and is ripe for consideration. Good cause  
appearing, the Court finds and orders as follows:

Overview

Defendants, Lance and Susan Jackson ("Indemnitor") executed a  
bond application/agreement of indemnity ("Indemnity Agreement") in  
favor of Plaintiff, Platte River Insurance Company ("Surety").  
Surety issued a bond. Surety paid claims made against the bond in  
an interpleader action in the Second Judicial District Court.  
Surety demanded payment from Indemnitor. Indemnitor refused

THOMAS W. GREGORY  
DISTRICT JUDGE  
NINTH JUDICIAL  
DISTRICT COURT  
P.O. BOX 218  
MINDEN, NV 89423



1 payment and this action ensued.

2 Indemnitor does not assert that Surety made the payments  
3 unreasonably, in bad faith, in contravention of the Indemnity  
4 Agreement or in contravention of the law. Nor does Indemnitor  
5 challenge the claims against the bond. Instead, Indemnitor argues  
6 it does not have to indemnify Surety because Indemnitor was a  
7 necessary party to the interpleader action and was not joined,  
8 thereby violating Indemnitor's right to due process.

9 The Court finds that Indemnitor's due process rights have not  
10 been violated. Upon being given notice and an opportunity to be  
11 heard, Indemnitor has failed to dispute the material facts  
12 requiring it to indemnify Surety. Summary judgment in favor of  
13 Surety is warranted.

#### 14 Procedural History

15 Surety filed a *Complaint* for indemnification on July 2, 2019.  
16 Indemnitor filed an *Answer* on September 6, 2019. Indemnitor did  
17 not file a counterclaim.

18 Surety filed the pending *Motion for Summary Judgment* on  
19 November 21, 2019. Indemnitor filed an *Opposition to Platte River*  
20 *Insurance Company's Motion for Summary Judgment* on December 19,  
21 2019. Indemnitor acknowledged its burden to show that Surety's  
22 payment under the bond was not reasonable or was done in bad  
23 faith. Indemnitor did not claim that Surety paid claims on the  
24 bond unreasonably or in bad faith. Indemnitor did not offer  
25 challenge to the claims against the bond. Indemnitor argued that  
26 consideration of the motion should be deferred pending discovery.  
27 Indemnitor also argued that Surety forwent indemnification by  
28 failing to add Indemnitor to the interpleader action.

1 The Court deferred consideration of the motion pending  
2 discovery. On March 24, 2020, the Court issued an *Order for*  
3 *Supplemental Briefing*. The Court ordered Indemnitor, if it  
4 intended to defend on the basis that Surety paid claims against  
5 the bond unreasonably or in bad faith, to file and serve a  
6 supplemental brief and any supporting affidavits/exhibits.

7 Indemnitor filed a *Supplemental Brief to Opposition to*  
8 *Summary Judgment* and supporting exhibits on April 10, 2020.  
9 Therein, Indemnitor focused entirely on procedural due process.  
10 Indemnitor abandoned any claim that Surety's payments against the  
11 bond were unreasonable or done in bad faith. Indemnitor provided  
12 no supporting affidavits or exhibits reflecting that Surety's  
13 payments of the claims against the bond were done unreasonably or  
14 in bad faith. Indemnitor did not dispute material facts.

15 Surety filed a Supplemental Reply to Motion for Summary  
16 Judgment on April 27 2020.

17 Neither party requested a hearing. NJDCR 6.

18 Undisputed Material Facts

19 1. Lance Jackson established Eureka Builders, Inc. as a  
20 Nevada Corporation.

21 2. Susan Jackson is Lance Jackson's spouse.

22 3. As a condition precedent to obtaining a contractor's  
23 license pursuant to NRS Chapter 624, Eureka Builders was required  
24 to post a security bond.

25 4. Lance and Susan Jackson, as personal indemnitors and on  
26 behalf of Eureka, executed a written bond application and  
27 Indemnity Agreement in favor of Surety, Platte River Insurance



1 Company.<sup>1</sup>

2 5. Indemnitor (Lance and Susan Jackson) agreed, in relevant  
3 part, "to pay Surety, upon demand, all loss and expense, including  
4 attorney's fees, for which Surety shall become liable by reason of  
5 such suretyship, whether or not Surety shall have paid such loss  
6 and expense at the time of demand..All attorney's fees and costs  
7 incurred by Surety in enforcing this agreement..An amount  
8 sufficient to discharge any claim against Surety by way of such  
9 suretyship."

10 6. Indemnitor agreed, in relevant part, "Surety shall have  
11 the exclusive right to determine whether any claim or suit shall,  
12 on the basis of liability, expediency or otherwise, be paid,  
13 compromised, defended or appealed."

14 7. Indemnitor agreed, in relevant part, "An itemized  
15 statement of loss and expense incurred by Surety, sworn to by an  
16 officer of Surety, shall be prima facie evidence of the fact and  
17 extent of my (our) obligation to Surety."

18 8. Surety issued Eureka a bond in the penal sum of \$20,000.

19 9. Surety received claims against the bond exceeding the  
20 penal sum.

21 10. Surety sent Indemnitor a letter referencing the claims  
22 and naming the claimants. The letter stated in relevant part:  
23 "Please provide our office with a written statement detailing your  
24 defenses to each of the claims referenced above, if any, along  
25 with any documentation supporting those defenses by May 5, 2017.  
26 Failure to respond by May 8, 2017, may result in any action Platte

27  
28 <sup>1</sup> Defendant and Principal, Lance Jackson, did not submit an affidavit.  
Defendant and Principal, Susan Jackson, submitted an affidavit indicating  
that she did not recall signing the Indemnity Agreement. Ms. Jackson does  
not claim, however, that her purported signature on the Indemnification  
Agreement is either not her signature.

1 River deems appropriate, including the filing of an action against  
2 you personally for indemnification. In light of the number of  
3 claims and the amounts of the claims, Platte River will file an  
4 interpleader action for the bond unless you provide us with solid  
5 defenses and evidence in support thereof by the indicated date."  
6 Further, Surety "demands that you post collateral security in the  
7 amount of \$20,000...."

8 11. Indemnitor did not respond to Surety and did not post  
9 the requested collateral.

10 12. Surety filed an action for interpleader naming claimants  
11 in the Second Judicial District Court, State of Nevada. Surety  
12 interpled \$19,495.25 (penal sum minus court costs of \$504.75).  
13 The court ordered distribution of the \$19,495.25 in the manner  
14 stipulated by the claimants.

15 13. Surety incurred attorney's fees and costs of \$4,102.46,  
16 Indemnity Agreement 1(a), and attorney's fees and costs of  
17 \$9,640.80, Indemnity Agreement 1(c).

18 14. Surety's payment of the claims was not unreasonable or  
19 made in bad faith.<sup>2</sup>

20 15. Indemnitor refused Surety's demands for payment.

21 16. Surety has incurred attorney's fees and costs in  
22 bringing this action to enforce the Indemnity Agreement.

23 ///

---

24  
25 <sup>2</sup> Principal does not claim that Surety acted unreasonably or in bad faith and  
26 has not supplied any affidavits or exhibits reflecting unreasonableness or  
27 bad faith on the part Surety. By previously delaying ruling on the motion  
28 pending discovery and allowing Principal to provide a supplemental brief and  
materials, the Court already deferred consideration of summary judgment,  
allowed time to obtain affidavits or declarations or to take discovery, and  
gave an opportunity to properly support or address the fact. NRCP 56(d)(1)  
and (2) and NRCP 56(e)(1). The fact is considered undisputed for the  
purpose of the motion. NRCP 56(e)(2); See also, *Transamerica Premier Ins.*  
*v. Nelson*, 110 Nev. 951, 957 (1994).

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Conclusions of Law

A court shall grant summary judgment if the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law. NRCP 56.

The material elements of the Indemnity Agreement are unambiguous and undisputed. The Indemnity Agreement provides that "Surety shall have the exclusive right to determine whether any claim or suit shall, on the basis of liability, expediency or otherwise, be paid, compromised, defended or appealed." NRS 624.273(4) provides that a surety may make payment "without awaiting court action" and reduce the bond to the extent the payment is made in good faith. Nevada case law also adopts a good faith standard and places the burden on the indemnitor under these circumstances to show that a surety's payment of obligations was not reasonable or was done in bad faith. *Transamerica Premier Ins. v. Nelson*, 110 Nev. 951, 957 (1994) (internal citations omitted). Indemnitor voices agreement, has not disputed that Surety acted in good faith and has not attempted to reach its burden.<sup>3</sup>

Indemnitor has reduced its defense of summary judgment to the singular argument that Surety was required to join Indemnitor as a party to the interpleader action in the Second Judicial District Court. Surety's failure to do so stripped Indemnitor's of its opportunity to argue against the reasonableness of the claims against the bond. Because Indemnitor is now "forever unable to contest the reasonableness of the payment of any claim which was finally adjudicated in that matter," *Supplemental Brief to*

<sup>3</sup> In its mandatory disclosure, Principal states, "Defendants do not have any documentation in their possession to provide which is relevant to Plaintiff's claims."

1 *Opposition to Summary Judgment*, p. 6, Surety is precluded from  
2 seeking indemnification. In accord, Indemnitor gets a freebie.  
3 Indemnitor cites a string of cases with *Jennings v. United States*,  
4 374 F.2d 983, 986 (4<sup>th</sup> Cir. 1967) as the lead case.

5 The Court disagrees. Surety sent Indemnitor a letter in  
6 advance of initiating interpleader, warning that interpleader  
7 would be pursued if Indemnitor did not respond and offer defenses.  
8 Indemnitor did not respond. Indemnitor was not a necessary party  
9 to the interpleader action. NRS 624.273(5), NRCP 22, and NRCP 14.  
10 Any failure of Surety to permissively join Indemnitor or give  
11 Indemnitor more notice of the interpleader action, did not render  
12 Indemnitor "forever unable to contest the reasonableness of the  
13 payment of any claim which was finally adjudicated in that  
14 matter," *Supplemental Brief to Opposition to Summary Judgment*, p.  
15 6. Even *Jennings*, a tort action brought pursuant to the Federal  
16 Tort Claim Act, makes clear that failure to join the principal in  
17 the initial action is not a complete bar to indemnity. *Jennings*,  
18 374 F.2d at 985.

19 The current action for indemnity was Indemnitor's opportunity  
20 to contest the payments. Instead of taking advantage of the  
21 opportunity, Indemnitor has failed to challenge the claims against  
22 the bond or allege unreasonableness or bad faith by Surety and has  
23 not produced any evidence to demonstrate a disputed material fact,  
24 even after having been given an extended period of time to  
25 investigate and conduct discovery (the case was initiated 10  
26 months ago). Nor did Indemnitor file a counterclaim.  
27 Indemnitor's due process rights have not been violated.

28 Indemnitor ignores the unambiguous and undisputed terms of

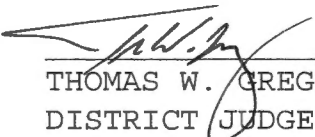
1 the Indemnity Agreement requiring it to indemnify Surety for the  
2 penal sum of \$20,000; attorney's fees and costs for the  
3 interpleader action in the sum of \$4,607.21; additional fees of  
4 \$9,640.68; a reasonable attorney's fee incurred by Surety in  
5 enforcing the agreement; court costs; and statutory interest.

6 **IT IS HEREBY ORDERED** that Plaintiff, Platte River Insurance  
7 Company's *Motion for Summary Judgment* is **GRANTED**. NRCP 56.

8 **IT IS FURTHER ORDERED** that Plaintiff shall file and serve any  
9 request for attorney's fees and court costs incurred in this  
10 action, plus supporting affidavits and exhibits no later than May  
11 18, 2020.

12 **IT IS FURTHER ORDERED** that Plaintiff shall prepare a proposed  
13 judgment consistent with the findings herein, leaving a blank  
14 space for attorney's fees and costs incurred in this action, and  
15 containing an order the Plaintiff serve notice of the judgment  
16 within 14 days of its entry. NRCP 58.

17 DATED this 1st day of May, 2020.

18  
19   
20 THOMAS W. GREGORY  
21 DISTRICT JUDGE  
22  
23  
24  
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26  
27

1 Copies served by mail on May <sup>1st</sup>\_\_\_\_\_, 2020, addressed to:

2 Peter Dubowsky, Esq.  
3 300 South Fourth Street, Suite 1020  
4 Las Vegas Nevada 89101

5 Michael G. Millward, Esq.  
6 1591 Mono Avenue  
7 Minden, Nevada 89423

8 Joan Neuffer, Esq.  
9 1692 County Road, Suite C  
10 Minden, Nevada 89423

Erin C. Plante  
Erin C. Plante



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District Court Clerk

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BOBBIE R. WILLIAMS  
CLERK

BY M. BIAGGINI DEPUTY

Peter Dubowsky, Esq.  
Nevada Bar No. 4972  
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300 South Fourth Street, Suite 1020  
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Fax (702) 360-3515  
Attorney for Plaintiff

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

**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 ENTRY OF JUDGMENT**

Please take notice that on June 2, 2020, a JUDGMENT was entered by the Clerk of  
the Court in the above-referenced matter. A true and correct copy of the order is attached.

Dated: June 8, 2020

DUBOWSKY LAW OFFICE, CHTD.

By: 

Peter Dubowsky, Esq.  
Attorney for Plaintiff

DUBOWSKY LAW OFFICE, CHTD.



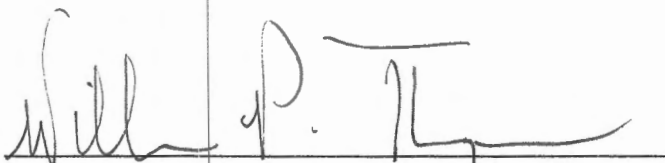
**CERTIFICATE OF MAILING**

I hereby certify that on the 8<sup>th</sup> day of June 2020, the NOTICE OF ENTRY OF JUDGMENT 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

Joan E. Neuffer, Esq.  
1692 County Road, Suite C  
Minden, Nevada 89423  
Arbitrator

  
An employee of Dubowsky Law Office, Chtd.

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MAY 11 2020

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District Court Clerk

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A. NEWTON

Peter Dubowsky, Esq.  
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Fax (702) 360-3515  
Attorney for Plaintiff

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

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

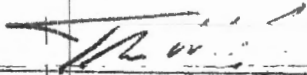
JUDGMENT

Pursuant to this Court's May 1, 2020 Order Granting Summary Judgment (NRCP 56) in favor of Plaintiff PLATTE RIVER INSURANCE COMPANY, it is hereby ORDERED that Plaintiff shall be awarded Judgment against Defendants EUREKA BUILDERS, INC. and LANCE JACKSON and SUSAN JACKSON in the principal amount of \$34,274.89 plus statutory pre-judgment interest (pursuant to N.R.S. §99.040(1) from May 9, 2017, the date of loss by depositing the Interpleader) of \$4,638.00 plus costs of \$\_\_\_\_\_ (pursuant to N.R.S. §18.110 Memo of Costs) and attorneys' fees in the amount

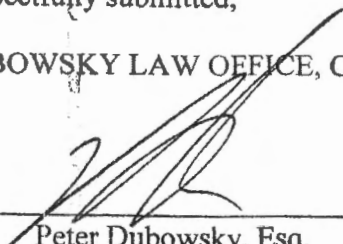
1 of \$ 7,000.00 with statutory interest accruing on the total foregoing until the Judgment  
2 is satisfied; and it is further

3 ORDERED that Plaintiff is designated as the party to serve notice of the Judgment  
4 within 14 days of its entry in accordance with N.R.C.P. 58.

5 Dated: June 2, 2020

7  
8   
DISTRICT COURT JUDGE

9  
10 Respectfully submitted,  
11 DUBOWSKY LAW OFFICE, CHTD.

12  
13 By:   
14 Peter Dubowsky, Esq.  
15 Nevada Bar No. 4972  
16 300 South Fourth Street  
17 Suite 1020  
18 Las Vegas, Nevada 89101  
19 (702) 360-3500  
20 Attorney for Plaintiff  
21  
22  
23  
24  
25

DUBOWSKY LAW OFFICE, CHTD.

Peter Dubowsky, Esq.  
Nevada Bar No. 4972  
DUBOWSKY LAW OFFICE, CHTD.  
300 South Fourth Street, Suite 1020  
Las Vegas, Nevada 89101  
(702) 360-3500  
Fax (702) 360-3515  
Attorney for Plaintiff

**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 indemniters; and DOES I-X and ROE) | ) |                      |
| CORPORATIONS I-X, inclusive                 | ) |                      |
|   | ) |                      |
| Defendants                                  | ) |                      |

**EXECUTION**

**THE PEOPLE OF THE STATE OF NEVADA:**

**TO THE SHERIFF OF CARSON CITY:**

On June 2, 2020, a judgment was entered by this Court in the above-entitled action in favor of  
PLATTE RIVER INSURANCE COMPANY as judgment creditor and against LANCE JACKSON and  
SUSAN JACKSON as judgment debtor for:  
\$ 34,274.89 Principal,  
\$ 0.00 attorney fee  
\$ 4,638.00 interest, and  
\$ 9,000.00 costs, making a total amount of  
\$ 47,912.89 the judgment as entered and

1 WHEREAS, according to an affidavit or a memorandum of costs after judgment, or both, filed herein,  
2 it appears that further sums have accrued since the entry of judgment, to wit:

3 \$ 337.69 accrued interest, and

4 \$ 0.00 accrued costs, together with

5 \$ 10.00 fee, for the issuance of this writ, make a total of

6 \$ 347.69 accrued costs, accrued interest and fees.

7 CREDIT must be given for payments and partial satisfaction in the amount of

8 \$ 0.00 which is to be first credited against the total accrued costs and accrued interest, with any excess  
9 credited against the judgment as entered, leaving a net balance of

10 \$ 48,260.58 actually due on the date of the issuance of this writ, of which

11 \$ 47,912.89 bears statutory interest at 5.25% per annum, in the amount of \$6.89 per day, from the date of  
12 the judgment, to the date of levy, to which must be added the commissions and costs of the officer  
13 executing this writ.

14 NOW, THEREFORE, SHERIFF OF CARSON CITY, you are hereby commanded to satisfy this  
15 judgment with interest and costs as provided by law, out of the personal property of the judgment debtor, except  
16 that for any workweek, 82 percent of the disposable earnings of the debtor during that week if the gross weekly  
17 salary or wage of the debtor on the date the most recent writ of garnishment was issued was \$770 or less, 75 percent  
18 of the disposable earnings of the debtor during that week if the gross weekly salary or wage of the debtor on the  
19 date the most recent writ of garnishment was issued exceeded \$770, or 50 times the minimum hourly wage  
20 prescribed by section 206(a)(1) of the federal Fair Labor Standards Act of 1938, 29 U.S.C. §§ 201 et. seq., and in  
21 effect at the time the earnings are payable, whichever is greater, is exempt from any levy of execution pursuant to  
22 this writ, and if sufficient personal property cannot be found, then out of the real property belonging to the debtor in  
23 the aforesaid county, and make return to this writ within not less than 10 days or more than 60 days endorsed  
24 thereon with what you have done.

25 Dated: July 31, 2020

CLERK OF COURT

By: M. Bragg

Deputy Clerk

Date 7/31/2020

**SHERIFF INFORMATION**

I hereby certify that I have this date returned the foregoing Writ of Execution with the results of the levy endorsed thereon.

SHERIFF/CONSTABLE, CARSON CITY

By: \_\_\_\_\_  
Deputy Date

**RETURN**

\_\_\_\_ Not Satisfied  
 \_\_\_\_ Satisfied in the sum of \$ \_\_\_\_\_  
 \_\_\_\_ Costs retained \$ \_\_\_\_\_  
 \_\_\_\_ Commission retained \$ \_\_\_\_\_  
 \_\_\_\_ Costs incurred \$ \_\_\_\_\_  
 \_\_\_\_ Commission incurred \$ \_\_\_\_\_  
 \_\_\_\_ Costs Received \$ \_\_\_\_\_

REMITTED TO JUDGMENT CREDITOR \$ \_\_\_\_\_







STATE OF NEVADA  
CONTROLLER'S OFFICE

101 N Carson St, Ste 5  
Carson City, NV 89701-4786  
775-684-5750

RE: SUSAN JACKSON  
AKA SUSAN L. JACKSON



SSN: \*\*\*-\*\*-9145  
CASE NO. 19CV0197

RECEIVED  
AUG 19 2020

INTERROGATORIES TO BE ANSWERED BY THE GARNISHEE UNDER OATH:

1. Are you in any manner indebted to the defendant(s), or either of them, either in property or money, and is the same now due? If not due, when is the debt to become due? State fully all particulars.  
**ANSWER: Defendant is due money for the next pay day on 9/4/20.**
2. Are you an employer of one or all of the defendant (s)? If so, state the length of your pay period and the amount each defendant presently earns during a pay period. **ANSWER: Yes. The State uses a biweekly pay period. Defendant is employed by the Parole Board and presently earns \$41.28 per hour.**
3. Did you have in your possession, in your charge or under your control, on the date the Writ of Garnishment was served upon you, any money, property, effects, goods, chattels, rights, credits or chooses in action of the defendant, or either of them, or in which (he/she/they) is interested? If so, state its value and fully state all particulars. **ANSWER: No.**
4. Do you know of any debts owing to the defendant(s), whether due or not due, or any money, property, effects, goods, chattels, rights, credits or chooses in action belonging to (him/her) or in which (he/she) is interested and now is in the possession or under the control of others? If so, state fully all particulars.  
**ANSWER: No.**
5. State your correct name and address, or the name and address of your attorney upon whom written notice of further proceedings in this action may be served. **ANSWER: State of Nevada, Office of the State Controller, 101 N Carson St, Suite 5, Carson City, NV 89701-4786.**

PRINT THE NAME AND JOB TITLE OF THE PERSON WHO FILLED OUT THIS FORM:  
**Chrissy Moresi Accounting Assistant IV, 775-684-5606. Information provided by Central Payroll at Payroll, 775-687-9077.**

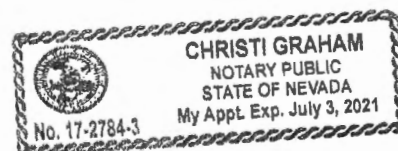
I, Heather Cerniglia, Business Process Analyst, do solemnly swear (or affirm) that the answers to the foregoing interrogatories are true.

  
Heather Cerniglia, Business Process Analyst

STATE OF NEVADA, COUNTY OF CARSON CITY  
SUBSCRIBED AND SWORN to before me this

14<sup>th</sup> Day of August, 2020.

By   
NOTARY PUBLIC



Case No: 19-CV-0197

Dept.: II

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

RECEIVED  
AUG 24 2020

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

\* \* \* \* \*

PLATTE RIVER INSURANCE COMPANY )  
Plaintiff, )

vs. )

**AFFIDAVIT OF CLAIM EXEMPTION**

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. )

I, SUSAN JACKSON, also known as Susan Jacobsen, being duly sworn, deposes and  
says the following under the pains and penalties of perjury:

1. That I am informed and believe that on or about July 31, 2020, a Writ of  
Execution was issued by the Court Clerk of the Ninth Judicial District Court of Douglas  
County, Nevada (hereinafter "Court Clerk") in favor of and at the request of PLATTE RIVER  
INSURANCE COMPANY;

2. That upon information and belief the writ of execution was mailed by the  
Carson City Sheriff on August 13, 2020.

3. That I received a copy of the Notice of Execution from PLATTE RIVER  
INSURANCE COMPANY, by mail on August 15, 2020;

4. That this Affidavit of Claim of Exemption is made pursuant to NRS 21.090, NRS  
115.010;

AFFIDAVIT OF CLAIM OF EXEMPTION

PAGE 1 OF 4

AA026

1           5.     That I claim the following property as exempt pursuant to NRS 21.090, NRS  
2     115.010, and NRS 115.050:

- 3           a. All equity that I have in my homesteaded residence which does not  
4           exceed \$605,000. I have recorded a claim of Homestead concerning my  
5           residence located at 1663 Lantana Drive, Minden, NV 89423, which  
6           homestead was recorded with the records of the Douglas County  
7           Recorder on September 27, 2017, as Document Number 904846. This  
8           claim of homestead is made pursuant to NRS 21.090(1)(m), NRS  
9           115.010, NRS 115.050 as amended by AB481 which was signed into law  
10          on May 15, 2019;
- 11          b. All of my private library, works of art, musical instruments, jewelry not  
12          exceeding \$5,000 in value as well as all of my keepsakes and family  
13          pictures as exempt from execution pursuant to NRS 251.090(1)(a);
- 14          c. All of my necessary household goods, furnishings, electronics, wearing  
15          apparel, and other personal effects not to exceed \$12,000 in value as  
16          exempt from execution pursuant to NRS 21.090(1)(b);
- 17          d. Seventy-five percent of my "disposable earnings" which are my earnings  
18          after the deduction of federal income tax, Medicare and Social Security  
19          taxes as exempt from execution pursuant to NRS 21.090(1)(g);
- 20          e. All other income and "disposable earnings" that are not otherwise exempt  
21          in NRS 21.090(1)(g) up to \$10,000 pursuant to NRS 21.090(1)(z); and
- 22          f. All money, up to \$1,000,000, held in a retirement plan in accordance  
23          with Internal Revenue Code, including but not limited to, an IRA, 401k,  
24          403B, or other qualified stock bonus, pension, or profit-sharing plan to be  
25          exempt from execution pursuant to NRS 21.090(1)(r); and
- 26          g. My 2019 Jeep Grand Cherokee not to exceed \$15,000 in equity pursuant  
27          to NRS 21.090(1)(f).
- 28     \\

1 Further Affiant sayeth naught.

2 DATED this 19 day of August, 2020.

3 Susan L. Jackson  
4 SUSAN JACKSON

5 SUBSCRIBED and SWORN to before me  
6 this 19 day of August, 2020.

7 Ashley Voss  
8 NOTARY PUBLIC



**CERTIFICATE OF SERVICE**

Pursuant to NRCP 5(b), I hereby certify that service of the *Affidavit of Claim Exemption* was made on August \_\_\_\_\_, 2020, by depositing a true and correct copy of the same for mailing, postage prepaid, addressed to the following:

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

Carson City Sheriff's Office  
911 E Musser St.  
Carson City, NV 89701

Douglas County Sheriff's Office  
P.O. Box 218  
Minden, NV 89423

\_\_\_\_\_  
Ashley Voss, Legal Assistant



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AUG 27 2020

FILED

2020 AUG 27 AM 9:45

BOBBIE R. WILLIAMS

CLERK

BY ANOM DEPUTY

Peter Dubowsky, Esq.  
Nevada Bar No. 4972

DUBOWSKY LAW OFFICE, CHTD.

300 South Fourth Street Suite 1020

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.

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

HEARING REQUESTED

(N.R.S. §21.112(6)

and NJDCR 6(e)(2))

Defendants

MOTION TO DETERMINE THE ISSUE OF EXEMPTION

The Judgment Creditor PLATTE RIVER INSURANCE COMPANY ("Judgment Creditor") pursuant to N.R.S. §21.112, moves this Court for a determination that Susan's Jackson's wages that were levied upon are not exempt from execution. Pursuant to N.R.S. §21.112(6), "The judgment debtor has the burden to prove that he or she is entitled to the claimed exemption at such a hearing."

The Judgment Creditor has levied solely on the non-exempt wages of Judgment Debtor Susan Jackson, who is employed by the Nevada Parole Board. The Judgment Creditor

1 has not executed on any property of Judgment Debtor Lance Jackson. As demonstrated  
 2 herein, the Judgment Creditor has not executed on any asset that is exempt from execution.

3 For clarification, the Judgment Debtors' Affidavits of Claim Exemption  
 4 ("Affidavits") are alleging several exemptions, almost all of which do not apply because the  
 5 Judgment Creditor is not executing on any of the following: The homestead exemption,  
 6 (N.R.S. §21.090(1)(m)), "private libraries..." (N.R.S. §21.090(1)(a)), "household goods..."  
 7 (N.R.S. §21.090(1)(b)), "tools of the trade" (N.R.S. §21.090(1)(d)), Individual Retirement  
 8 Account (N.R.S. §21.090(1)(g)), or a 2019 Jeep Grand Cherokee (N.R.S. §21.090(1)(f)). The  
 9 Judgment Creditor is not executing on any of those assets, and therefore, none of these  
 10 exemptions apply.

11 The Judgment Creditor is solely executing on the non-exempt wages of Susan  
 12 Jackson, who works for the State of Nevada. (see attached) The State of Nevada's Central  
 13 Payroll workers are experts at correctly processing wage garnishments, and remitting only  
 14 the non-exempt portion of a Judgment Debtor's wages. Therefore, there is no valid Claim of  
 15 Exemption under N.R.S. §21.112(1)(g).

16 The Affidavit also appears to improperly claim a wage exemption under Nevada's  
 17 "wildcard" exemption (N.R.S. §21.112(1)(z)). According to the section's language,  
 18 legislative history, and a federal decision on this issue, that section expressly does not apply  
 19 to wages. Section N.R.S. §21.090(1) states in pertinent part:

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

22 (z) Any personal property not otherwise exempt from execution pursuant to  
 23 this subsection belonging to the judgment debtor. . . (emphasis added)

24 As stated by the Nevada Supreme Court in In re Christensen, 122 Nev. 1309, 1322 (2006),  
 25 "While we will liberally construe exemption statutes in favor of the debtor, it is not within  
our power to enlarge or extend the provisions of the legislative grant. (emphasis added)



Subsection (1)(z) explicitly states that it exempts “personal property not otherwise exempt from execution.” Wages are “otherwise exempt from execution” under N.R.S. §21.112(1)(g), and therefore, subsection (1)(z) expressly does not apply to wages.

According to the legislative history, this “wildcard” exemption is not an enlargement or extension of the wage garnishment exemption. When the “wildcard” exemption was proposed to the Nevada Legislature, the bill’s sponsor, Assemblywoman Barbara Buckley, testified at the hearing:

The first exemption is sometimes called the “wildcard exemption” . . . This small exemption I am requesting allows a person to be able to pay for essentials. In addition, this modest amount of protection has only a minor impact on creditors. *Nothing eliminates their just claims to garnish wages and seize non-exempt assets...* (emphasis added)

Hearing before Assembly Comm. On Judiciary, 74<sup>th</sup> Session (April 10, 2007)(statement of Barbary Buckley, Assemblywoman). (see attached)

The Federal Court in Nevada has also decided that the “wildcard” exemption does not apply to wages. The Nevada U.S. District Court in Dodge City Healthcare Group v. Chaudhry (D. Nev. June 9, 2010 Case No. 09-00091).<sup>1</sup> In Chaudhry, the Federal Court denied a judgment debtor’s attempt to claim wages under the “wildcard” exemption. The U.S. District Court stated:

Additionally, as stated above, Plaintiff also seeks that the Court declare "that the total value of the wildcard exemption [pursuant to NRS 21.090(1)(z)] for Dr. Chaudhry cannot exceed \$1,000<sup>2</sup> in this case." (#32 at 5.) Due to Plaintiff's failure to file a timely Affidavit of Exemption, the Court finds that such a declaration is unnecessary. However, even if Defendant's Affidavit of Exemption had been timely filed, **NRS 21.090(1)(z) does not provide for an ongoing exemption of \$1,000.00 per execution or garnishment in addition to the 75% of earnings already exempt pursuant to NRS 21.090(1)(g).** In the vast majority of cases, an additional exemption of \$1000.00 for earnings

<sup>1</sup> Unpublished Federal district court dispositions may be cited for their persuasive, if nonbinding, precedential value. Schuck v. Signature Flight Support of Nev., 126 Nev. 434 n. 2 (2011)

<sup>2</sup> The \$1,000 was increased to \$10,000 in 2017.

1 would render garnishment of earnings a meaningless remedy for judgment  
2 creditors. Also, were it the intent of the legislature to grant an additional  
3 exemption of \$1,000 for earnings, it would have logically included the  
4 provision in subsection (g). (emphasis added)

5 Therefore, there is no valid claim of wage exemption under N.R.S. §21.090(1)(z).

### 6 CONCLUSION

7 Based on the foregoing, the Judgment Debtors' Claims of Exemption should be  
8 DENIED in their entirety.

9 Dated: August 25, 2020

10 DUBOWSKY LAW OFFICE, CHTD.

11 By: 

12 Peter Dubowsky, Esq.  
13 Nevada Bar No. 4972  
14 300 South Fourth Street Suite 1020  
15 Las Vegas, Nevada 89101  
16 (702) 360-3500  
17 Fax (702) 360-3515  
18 Attorney for Judgment Creditor

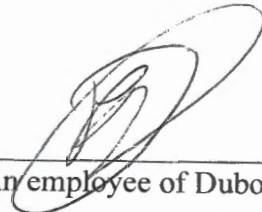
### 19 CERTIFICATE OF MAILING

20 I hereby certify that on the 25 day of August 2020 the MOTION TO  
21 DETERMINE THE ISSUE OF EXEMPTION was deposited in a sealed envelope, postage  
22 pre-paid, in the United States Mail, addressed as follows:

23 Michael G. Millward, Esq.  
24 MILLWARD LAW, LTD.  
25 1591 Mono Avenue  
Minden, NV 89423

Carson City Sheriff  
911 East Musser Street  
Carson City, Nevada 89701

Douglas County Sheriff  
P.O. Box 208  
Minden, Nevada 89423

  
An employee of Dubowsky Law Office, Chtd.



STATE OF NEVADA  
CONTROLLER'S OFFICE

101 N Carson St, Ste 5  
Carson City, NV 89701-4786  
775-684-5750

RE: SUSAN JACKSON  
AKA SUSAN L. JACKSON



SSN: [REDACTED]  
CASE NO. 19CV0197

RECEIVED  
AUG 19 2020

INTERROGATORIES TO BE ANSWERED BY THE GARNISHEE UNDER OATH:

- Are you in any manner indebted to the defendant(s), or either of them, either in property or money, and is the same now due? If not due, when is the debt to become due? State fully all particulars.  
**ANSWER: Defendant is due money for the next pay day on 9/4/20.**
- Are you an employer of one or all of the defendant (s)? If so, state the length of your pay period and the amount each defendant presently earns during a pay period. **ANSWER: Yes. The State uses a biweekly pay period. Defendant is employed by the Parole Board and presently earns \$41.28 per hour.**
- Did you have in your possession, in your charge or under your control, on the date the Writ of Garnishment was served upon you, any money, property, effects, goods, chattels, rights, credits or chooses in action of the defendant, or either of them, or in which (he/she/they) is interested? If so, state its value and fully state all particulars. **ANSWER: No.**
- Do you know of any debts owing to the defendant(s), whether due or not due, or any money, property, effects, goods, chattels, rights, credits or chooses in action belonging to (him/her) or in which (he/she) is interested and now is in the possession or under the control of others? If so, state fully all particulars.  
**ANSWER: No.**
- State your correct name and address, or the name and address of your attorney upon whom written notice of further proceedings in this action may be served. **ANSWER: State of Nevada, Office of the State Controller, 101 N Carson St, Suite 5, Carson City, NV 89701-4786.**

PRINT THE NAME AND JOB TITLE OF THE PERSON WHO FILLED OUT THIS FORM:

**Chrissy Moresi Accounting Assistant IV, 775-684-5606. Information provided by Central Payroll at Payroll, 775-687-9077.**

**I, Heather Cerniglia, Business Process Analyst, do solemnly swear (or affirm) that the answers to the foregoing interrogatories are true.**

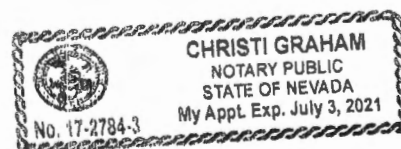
**Heather Cerniglia, Business Process Analyst**

STATE OF NEVADA, COUNTY OF CARSON CITY  
SUBSCRIBED AND SWORN to before me this

14<sup>th</sup> Day of August, 2020.

By

Christi Graham  
NOTARY PUBLIC



**MINUTES OF THE MEETING  
OF THE  
ASSEMBLY COMMITTEE ON JUDICIARY**

**Seventy-Fourth Session  
April 10, 2007**

The Committee on Judiciary was called to order by Chairman Bernie Anderson at 8:35 a.m., on Tuesday, April 10, 2007, in Room 3138 of the Legislative Building, 401 South Carson Street, Carson City, Nevada. The meeting was videoconferenced to Room 4401 of the Grant Sawyer State Office Building, 555 East Washington Avenue, Las Vegas, Nevada. Copies of the minutes, including the Agenda (Exhibit A), the Attendance Roster (Exhibit B), and other substantive exhibits are available and on file in the Research Library of the Legislative Counsel Bureau and on the Nevada Legislature's website at [www.leg.state.nv.us/74th/committees/](http://www.leg.state.nv.us/74th/committees/). In addition, copies of the audio record may be purchased through the Legislative Counsel Bureau's Publications Office (email: [publications@lcb.state.nv.us](mailto:publications@lcb.state.nv.us); telephone: 775-684-6835).

**COMMITTEE MEMBERS PRESENT:**

Assemblyman Bernie Anderson, Chairman  
Assemblyman William Horne, Vice Chairman  
Assemblywoman Francis Allen  
Assemblyman John C. Carpenter  
Assemblyman Ty Cobb  
Assemblyman Marcus Conklin  
Assemblywoman Susan Gerhardt  
Assemblyman Ed Goedhart  
Assemblyman Garn Mabey  
Assemblyman Mark Manendo  
Assemblyman Harry Mortenson  
Assemblyman John Ocegüera  
Assemblyman James Ohrenschall  
Assemblyman Tick Segerblom

**GUEST LEGISLATORS PRESENT:**

Assemblywoman Barbara Buckley, Assembly District No. 8

Minutes ID: 820



a debtor to keep cash? The classic case involves a debtor needing to pay a utility bill, a car payment, or rent. The goal of saving folks from execution, a judgment, or bankruptcy is not to put the person out on the street; a debtor needs to keep a bare minimum of protected cash to pay that essential bill before next payday. This small exemption I am requesting allows a person to be able to pay for essentials. In addition, this modest amount of protection has only a minor impact on creditors. Nothing eliminates their just claims to garnish wages and seize nonexempt assets. It just means that the debtor will have the opportunity to make sure his lights are not turned off and that he is able to put gas in his car.

The second exemption requested is the EITC refund. The EITC is for lower income working citizens and it reduces their tax liability. Essentially, it returns to taxpayers a portion of their federal income taxes due to their income level. The federal government does not count the EITC as income when determining whether a taxpayer is eligible for all federal benefits. Nevada's exemption law already exempts from the definition of income any state public assistance received by the debtor. Should a federal government tax benefit—only available to lower income households, which the federal government does not treat as income—be treated any differently under Nevada law? At least seven other states have answered this question in the negative and have made this credit an exemption. These are minor additions to the bankruptcy exemption statutes. Nevadans who are overwhelmed by debts and who need fresh starts should be entitled to the opportunity.

In my 12 years on the Judiciary Committee, we have taken thoughtful, prudent steps concerning what the exemption should be, while balancing the rights of creditors and the rights of debtors. In the past several years, we have adopted measures such as increasing the amount for a homestead. What should the proper amount be? Should the amount be unlimited, like Florida, or should we protect just a median-priced home? So we have a homestead for \$350,000. We also made a policy decision to protect pension plans—qualified retirement plans up to \$500,000. With these exemptions, we have helped those with means who found themselves in a situation they could not control—folks who own homes or have up to \$500,000 in a retirement plan. These exemptions we are discussing today would help bring some equity to those without a home; perhaps, without a retirement plan; and folks who we have not paid enough attention to in the past.

**Thomas Fell, Attorney, Gordon and Silver, Las Vegas:**

My primary area of practice is in the bankruptcy arena. My law firm generally does not handle the usual consumer bankruptcies, but rather handles corporate Chapter 11 work. I have been practicing with Gordon and Silver for 18 years

RECEIVED

SEP - 1 2020

Douglas County  
District Court Clerk

FILED

2020 SEP -1 AM 11:31

ROBBIE R. WILLIAMS  
D. GOELZ  
BY DEPUTY

Peter Dubowsky, Esq.  
Nevada Bar No. 4972  
DUBOWSKY LAW OFFICE, CHTD.  
300 South Fourth Street Suite 1020  
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.

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 )       | Date: September 4, 2020 |
| corporation; and LANCE JACKSON and )           |                         |
| SUSAN JACKSON each individually as )           | Time: 8:30am            |
| personal indemnitators; and DOES I-X and ROE ) |                         |
| CORPORATIONS I-X, inclusive )                  |                         |
| )  |                         |
| Defendants )                                   |                         |

ORDER SETTING HEARING

The Judgment Creditor PLATTE RIVER INSURANCE COMPANY's Motion to  
Determine Issue of Exemption shall be heard Friday September 4, 2020 at 8:30am in the  
above District Court.

Dated: 9/1/20

  
DISTRICT COURT JUDGE



Case No: 19-CV-01976

Dept.: II

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

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. )

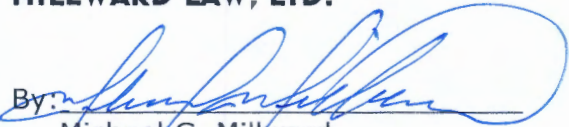
**OPPOSITION TO PLATTE RIVER'S  
MOTION REGARDING EXEMPTION**

COME NOW, Defendants Lance Jackson and Susan Jackson by and through their  
attorney, Michael G. Millward, Esq., of Millward Law, Ltd., and hereby submit their  
Opposition to the *Motion to Determine Issue of Exemption*.

Defendants' Opposition is supported by the attached memorandum of points and  
authorities and supporting exhibits filed herewith, and the pleadings and papers on file  
herein.

Dated this 1st day of September, 2020.

**MILLWARD LAW, LTD.**

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



## **I. INTRODUCTION**

Platte River Insurance Company (hereinafter "Plaintiff") seeks to enforce its judgment by Writ of Execution and Writ of Garnishment upon Defendants' exempt assets. Plaintiff's Motion primarily concerns the proper interpretation of Section 21.090(1) of the Nevada Revised Statutes (NRS). Specifically, whether NRS 21.090(1)(g) and NRS 21.090(1)(z) can be applied cumulatively to exempt the wages of Defendant Susan Jackson (hereinafter "Susan").

On or about July 31, 2020, a Writ of Execution was issued by the Court Clerk of the Ninth Judicial District Court of Douglas County in favor of and at the request of Plaintiff. The Notice of Execution was served and thereafter received by Counsel for the Jacksons on August 15, 2020. Thereafter, Susan Jackson filed her Affidavit of Claim of Exemption on August 20, 2020.

In Susan's Affidavit of Claim of Exemption, she claimed that 75% of her earnings after deduction of amounts withheld were exempt pursuant to NRS 21.090(1)(g)(1). Susan also claimed that "\$10,000" of her remaining "income sought to be garnished," that is not otherwise exempt under NRS 21.090, are exempt pursuant to NRS 21.090(1)(z).

Based upon the argument set forth herein, the Court should find that Susan has, by way of NRS 21.090(1)(z), an "unqualified and absolute" right to cumulatively exempt "any personal property not otherwise exempt from execution" including her economic interest in wages that are not exempt under the Wage Exemption (NRS 21.090(1)(g)) up to the amount of \$10,000.

## **II. ARGUMENT**

Susan filed her Claim of Exemption seeking to cumulatively exempt her earnings pursuant to NRS 21.090(1)(g) (hereinafter "Wage Exemption") and NRS 21.090(1)(z) (hereinafter "NRS 21.090(1)(z)" or "Wildcard Exemption").

Plaintiff seeks to have the Court rule that only NRS 21.090(1)(g) may be utilized to exempt a portion of Susan's wages, and that the remaining unexempt portion of her earnings cannot be exempted and are subject to garnishment.

1 In Plaintiff's Motion, Plaintiff states that it "is solely executing on the non-exempt  
2 wages of Susan Jackson." Pl. Mot., p.2. Plaintiff continues by alleging that Susan's Affidavit  
3 "improperly claim[s] a wage exemption under Nevada's "Wildcard" exemption (NRS  
4 21.112(1)(z))." *Id.*

5 In making this argument, Plaintiff cites to NRS 21.090(1)(z), legislative history  
6 pertaining to the "Wildcard Exemption," and a federal decision on the issue which are  
7 addressed herein below.

8 **A. The Wildcard Exemption Exempts Any Claimed Personal Property**

9 The Wildcard Exemption found in NRS 21.090 plainly and unambiguously states that  
10 the debtor may claim any and all personal property valued up to \$10,000 as exempt.

11 The debtor exemptions found in NRS 21.090 are rooted in the rights provided under  
12 Nevada's Constitution. Section 14 of Article One of the Nevada Constitution mandates "[t]he  
13 privilege of the debtor to enjoy the necessary comforts of life be recognized by wholesome  
14 laws, exempting a reasonable amount of property from seizure or sale for payment of any  
15 debts or liabilities." Nev. Const. art. 1, § 14.

16 "The legislative purpose of NRS 21.090 is 'to secure to the debtor the necessary  
17 means of gaining a livelihood, while doing as little injury as possible to the creditor.'" *In re*  
18 *Galvez*, 115 Nev. 417, 419, 990 P.2d 187, 188 (1999) (quoting *Krieg v. Fellows*, 21 Nev.  
19 307, 310, 30 P. 994, 995 (1892)).

20 The Nevada Supreme Court has gone so far as to state that "the exemptions set forth  
21 in NRS 21.090 are 'absolute and unqualified,' with few exceptions, 'and [their] effect is to  
22 remove property beyond the reach of the legal process.'" *Savage v. Pierson*, 123 Nev. 86,  
23 90, 157 P.3d 697, 700 (2007) (quoting *Elder v. Williams*, 16 Nev. 416, 423 (1882)).

24 When interpreting NRS 21.090(1)(z), the Court should " apply the plain meaning of a  
25 statute unless it is ambiguous." *People Nev. v. Miller*, 124 Nev. 874, 881, 192 P.3d 1166,  
26 1171 (2008). A statutory provision will be found to be ambiguous if "it is susceptible to two  
27 or more reasonable but inconsistent interpretations." *Id.* (citations omitted). When possible,  
28



Nevada courts are to construe terms in statutes "harmoniously." See *Southern Nevada Homebuilders Ass'n v. Clark County*, 121 Nev. 446, 449 (2005).

\\

NRS 21.090(1) and NRS 21.090(1)(z) as recently amended by Assembly Bill 314 during the 2017 Legislature, provides as follows in pertinent part:

NRS 21.090(1): The **following property is exempt from execution**, except as otherwise specifically provided in this section or required by federal law:

...

(z) **Any personal property not otherwise exempt from execution** pursuant to this subsection belonging to the judgment debtor, **including, without limitation**, the judgment debtor's equity in **any 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.

NRS 21.090(1)(z) (emphasis added).

Before looking elsewhere to determine what was intended by NRS 21.090(1)(z), the Court must first determine if the statutory language on its face is plain and unambiguous.

Plaintiff's Motion seems to imply that an ambiguity exists in the statutory language, because Plaintiff quickly jumps directly to legislative history to determine the meaning and purpose of the statute.

The meaning of NRS 21.090(1)(z) can more easily be ascertained by defining the terms used by the statute.

Chapter 10 ("General Provisions") within Title 2 ("Civil Practice") of the Nevada Revised Statutes provides definitions that are applicable to the Chapters 10 through 22 of Title 2.

Pursuant to NRS 10.045, "[p]ersonal property' includes money, goods, things in action, and evidences of debt." In other words, the exemption includes everything except for real property. See NRS 10.065 (defining "property"); NRS 10.075 (defining "real property").

1 The definitions of "personal property," "real property," and "property" found in  
2 Chapter 10 are repeated verbatim in Chapter 28 of Title 3 ("Remedies; Special Actions and  
3 Proceedings"), which also pertains to Chapters 28 through 43 of the Nevada Revised  
4 Statutes which includes Chapter 31 ("Attachment, Garnishment and Other Extraordinary  
5 Remedies"). See NRS 28.050 (defining "personal property"; NRS 28.080 (defining "real  
6 property"); NRS 28.070 ("property").

7 "Money" is defined in Chapter 17 ("Judgments") of Title 2 in NRS 17.500 as "a  
8 medium of exchange for the payment of obligations or a store of value authorized or adopted  
9 by a government or by intergovernmental agreement." NRS 17.500.

10 Even though frequently used in Nevada Revised Statutes, the phrase "evidence of  
11 indebtedness" is not defined in Chapter 10. Under the U.S. Securities Act of 1933, Section  
12 2, 15 U.S.C.A. § 77b(a)(1) "evidence of indebtedness" "mean[s] 'all contractual obligations  
13 to pay in the future for consideration presently received.'" *U.S v. Austin*, 462 F.2d 724, 736  
14 (10th Cir.1972). In other words, evidence of a debt owed.

15 A "thing in action," also known as a "chose in action," is defined as a "right to bring an  
16 action to recover a debt, money, or thing." Black's Law Dictionary 1617, 275 (9th ed.2009).

17 Thus, because "wages" and "earnings" are paid by way of "money," "a medium of  
18 exchange for payment," and because the future right to receive the payment of "money"  
19 would be "evidence of indebtedness" and a "thing in action," they must be included as  
20 "personal property" as defined in NRS 10.045 and NRS 28.050.

21 Accordingly, because "wages" and "earnings" are the equivalent of "money" and can  
22 be both "a thing in action" and an "evidence of debt", they are all "personal property" and  
23 NRS 21.090(1)(z) may be applied to any unexempt portion of the same by a judgment  
24 debtor.

25 Now that NRS 21.090(1)(z) as defined by statute is clearly applicable to any and all  
26 personal property, including earnings, we must address Plaintiff's primary contention that  
27 earnings are excluded where they are subject to a claim of exemption under NRS  
28 21.090(1)(g). Plaintiff specifically argues in its Motion that NRS 21.090(1)(z) is inapplicable



1 to Susan's "Wages" because her earnings are "otherwise exempt from execution" under NRS  
2 21.090(1)(g). See Pl. Mot. p.3, Ins 2-3.

3 Plaintiff's position is not supported by the plain and unambiguous language of NRS  
4 21.090(1)(g).

5 NRS 21.090(1)(g)(2) pertaining to the Wage Garnishment Exemption found in NRS  
6 21.090(1)(g)(2) defines "earnings" as follows:

7 "Earnings" mean the compensation **paid or payable** for personal  
8 services performed by a judgment debtor in the regular course of  
9 business, including, without limitation, compensation designated as  
10 income, wages, tips, a salary, a commission or a bonus. The term  
11 includes compensation **received** by a judgment debtor **that is in**  
12 **the possession of the judgment debtor, compensation held**  
13 **in accounts maintained in a bank or any other financial**  
14 **institution** or, in the case of a receivable, compensation that is  
15 due the judgment debtor.

12 NRS 21.090(1)(g)(2) (emphasis added).

13 Thus, under this definition "earnings" can also be money in a judgment debtor's  
14 pocket, bank account, or even hidden away in the mattress. See *id.* For the definition to  
15 apply, the debtor only needed to receive the sum as "compensation" for "services performed  
16 . . . in the regular course of business." *Id.*

17 Plaintiff does not discuss the definition of "earnings" in its Motion or the conundrum  
18 the definition creates for its argument. If Plaintiff's position were correct, then any money  
19 identified as earnings would be excluded from being subject to the Wildcard Exemption  
20 under NRS 21.090(1)(z). Thus, no amount of saved "earnings" in a debtor's bank account  
21 would be exemptible under the Wildcard Exemption, because only the Wage Garnishment  
22 Exemption under NRS 21.090(1)(g) could ever possibly apply. See Pl. Mot. P.1; cf. NRS  
23 21.090(1)(g)(2).

24 Under this understanding, the exemption of "money" claimed and owned by the  
25 debtor under NRS 21.090(1)(z) would only be applicable to funds not received as  
26 "compensation, income, wages, tips, a salary, a commission, or a bonus," such as gifts and  
27 inheritance. Plaintiff's argument that NRS 21.090(1)(g) exclusively applies to earnings is  
28 simply unworkable under a plain reading of the statute.

1        Additionally, Plaintiff's argument is unworkable when applied to all other exemptions  
2 provided under NRS 21.090(1). For example, if a debtor were to choose to exempt his or  
3 her vehicle under NRS 21.090(1)(f) (\$15,000 vehicle exemption), under Plaintiff's argument  
4 no amount of the Wildcard exemption could be applied to exempt equity in the vehicle  
5 exceeding \$15,000 because a portion of the vehicle is "otherwise exempt" pursuant to NRS  
6 21.090(1)(f).

7        The exemptions found in NRS 21.090(1), not including NRS 21.090(1)(z) encompass  
8 the vast majority of the property an individual owns in some degree. The adoption of a rule  
9 that the Wildcard Exemption be exclusively applicable to property not otherwise claimable  
10 under NRS 21.090(1) would make application of the statute meaningless, and would turn its  
11 plain meaning of NRS 21.090(1)(z) on its head. See NRS 21.090(1).

12        The Court should easily conclude that the definition of "earnings" found in NRS  
13 21.090(1)(g)(2) must be read in concert with NRS 21.090(1)(z)'s exemption of "[a]ny  
14 personal property not otherwise exempt from execution." NRS 21.090(1)(z). In doing so  
15 the Court should further conclude that the only harmonious reading of the two statutes  
16 requires cumulative application.

17        Therefore, the Court should conclude that NRS 21.090(1)(z) and NRS 21.090(1)(g)  
18 are plain and unambiguous and can easily be read together. Thus, the Court should further  
19 conclude that NRS 21.090(1)(z) exempts "[a]ny personal property not otherwise exempt"  
20 claimed by Susan including her earnings that remain unexempt after exempting "75% of her  
21 disposable earnings under the Wage Garnishment Exemption. See NRS 21.090(1)(z); NRS  
22 21.090(1)(g).

23        **B.        NRS 21.090(1)(z) Permits the Cumulative Claim Exemptions.**

24        This Court and the Nevada Supreme Court have previously determined that NRS  
25 21.090(1)(z) may be claimed by a debtor cumulatively after application of the other  
26 exemptions provided for in NRS 21.090(1).

27        In the case *Victoria A. Stroud v. Professional Finance Company, Inc.*, involving an  
28 appeal presented to this Court in the Ninth Judicial District Court Case No. 18-CV-0136,



concerning an appeal taken from an Order of the East Fork Justice Court in case no. 13-CV-104, the Court determined NRS 21.090(1)(z) may be cumulatively applied to unexempt earnings after application of NRS 21.090(1)(g). A copy of the Court's December 5, 2018 Order on Appeal is attached as Exhibit 1.

In the Stroud case, the Justice Court denied the debtor's cumulative application of the Wildcard Exemption over a portion of the debtor's earnings not otherwise exempt under the Wage Exemption. Ex. 1, p.1-2. This Court determined that pursuant to NRS 21.090(1)(g) 75% of the debtor's earnings were "absolutely exempt without qualification." *Id.* (citing NRS 21.090(1)(g)). The Court then went on to state that "[t]he wildcard exemption applies to that portion of Stroud's earnings that 'are not otherwise exempt from execution' by the earnings exemption" *Id.* (citing NRS 21.090(1)(z)).

The Court reasoned that the "plain application of the unambiguous wild card exemption is consistent with the purpose of [the exemption] and does not render the earnings exemptions superfluous or create an absurd result." *Id.* Thereafter, this Court reversed the Justice Court's determination. *Id.*

The Court's analysis in the Stroud case is directly applicable to this case. The relevant facts are nearly identical, and the law has not changed. Accordingly, cumulative application of NRS 21.090(1)(z) after application of the Wage Exemption under NRS 21.090(1)(g) is appropriate.

Plaintiff, however, would ask the Court to apply the dicta of a U.S. Federal District Court briefly touching on the subject in the case *Dodge City Healthcare Group v. Chaudhry* (D. Nev. June 9, 2010, Case No. 09-00091). A copy of the Federal District Court's Order, dated June 9, 2010 entered in the *Chaudhry* case is attached as Exhibit 2.

In *Chaudhry*, the Federal District Court determined that the debtor's claim of exemption was wholly invalid for not being timely filed. *Id.* However, in Court's dicta, the Court made a brief analysis of the cumulative application of NRS 21.090(1)(z) to the portion of the debtor's earnings not otherwise exempt under NRS 21.090(1)(g). The *Chaudhry* Court determined that "[i]n the vast majority of cases, an additional exemption of \$1,000.00 for



1 earnings would render the garnishment of earnings a meaningless remedy for judgment  
2 creditors." Ex. 2, p.3-4. The *Chaudhry* Court continued stating that "were it the intent of  
3 the legislature to grant an additional exemption of \$1,000 for earnings, it would have  
4 logically included the provision in subsection (g)." Ex. 2, p.4.

5 In analyzing the issue, it is likely that the *Chaudhry* Court did not consider the  
6 definition of "earnings" found in NRS 21.090(1)(g)(2), which includes "compensation held in  
7 accounts maintained in a bank or any other financial institution," and the overlap that exists  
8 under the Wildcard Exemption of "any personal property" which includes "equity in any  
9 property, money, stocks, bonds or other funds on deposit with a financial institution." See  
10 NRS 21.090(1)(g)(2); NRS 21.090(1)(z).

11 If the *Chaudhry* Court had done so, it would have discovered that the legislature had  
12 created two separate exemptions that overlap and that earnings can be claimed by either  
13 exemption. Thus, because the legislature intended to create an exemption to apply to  
14 anything remaining unexempt, it is logical that the legislature established the wildcard  
15 exemptions rather than change the earnings garnishment to exempt an additional sum. *Id.*

16 Application of the *Chaudhry* court's dicta here would narrowly define the application of  
17 the Wildcard Exemption, even though it is supposed to be, by definition, applicable to  
18 personal property "not otherwise." See *id.* As noted above, an exclusive application of NRS  
19 21.090(1)(z) is not workable because of the scope of exemptions allowed under NRS  
20 21.090(1).

21 Accordingly, the Court should conclude that the *Chaudhry* court's dicta is not  
22 applicable to this case, and that it does not accurately represent the plain meaning of NRS  
23 21.090(1)(z) and NRS 21.090(1)(g).

24 **C. Nevada Caselaw Supports Cumulative Application of NRS 21.090(1)(z)**

25 In the *Stroud* case, this Court cited to the Nevada Supreme Court case *Becker v.*  
26 *Becker* 362 P.3d 641 (2015), to support the position that a debtor can claim the Earnings  
27 Exemption and the Wildcard Exemption in the aggregate. Ex. 1, p.4.  
28

1 In *Becker*, the Nevada Supreme Court was tasked with determining the scope of NRS  
2 21.090(1)(bb) pertaining to a debtor's right to exempt an interest in stock in a closely held  
3 corporation. *Id.* at 642. The Nevada Supreme Court determined that a debtor could exempt  
4 the debtor's noneconomic interest in a closely held corporation, but the economic interests in  
5 the stock, dividends and income distributions were subject to a charging order remedy  
6 provided by NRS 78.746(1). A charging order attaches to a "debtor's stream of income from  
7 the corporation." *See id.* at 644.

8 In the *Becker* Court's analysis of the "Wildcard Exemption," the Court determined that  
9 "the debtor can still apply the wildcard exemption to retain up to [\$10,000] in distributions  
10 from the corporation." *Id.* at 645 (modified exemption amount per AB 314)(citations  
11 omitted).

12 The *Becker* Court concluded that prospective economic distributions exemptible under  
13 the Wildcard Exemption even though the charging order exemption was applicable to the  
14 equity interest of the corporate asset. *See id.* In other words, the Wildcard Exemption was  
15 not excluded because of the application of the charging order. *See id.*

16 The *Becker* Court's analysis establishes that the Wildcard Exemption can be applied to  
17 a charging order which is an ongoing attachment of an economic interest similar to a wage  
18 garnishment up to the maximum amount allowed under the exemption. *See id.*

19 Here, Susan seeks to exempt 75% of her economic interest in her earnings under  
20 NRS 21.090(1)(g), and also the otherwise un-exempt portion of her earnings (the remaining  
21 25%) pursuant to NRS 21.090(1)(z). Def. Claim of Exemption, p. 3.

22 As was the case in *Becker*, where all of current and prospective interest in the closely  
23 held corporation was found to be exempt from being taken by way of a charging order, the  
24 Wildcard Exemption is applicable to Susan's current and prospective economic interest in her  
25 wages up to \$10,000. *See Becker*, 362 P.3d 641, 644.

26 Plaintiff does not consider *Becker* in its Motion, and relies solely on the *Chaudhry* and  
27 the legislative history, addressed below, in support of its position. Notably, the *Becker* case  
28 was decided more than four years the *Chaudhry* case. *See id*; Ex. 2.



1 Thus, the Court should find the *Becker* decision to be more persuasive than the  
2 Chaudhry Court's brief review of the applicability of the wildcard exemption.

3 An argument that the exemptions under NRS 21.090 are not cumulative is  
4 unsupported by the NRS 21.090 and *Becker*. Most notably, NRS 21.090(1)(z) implies a  
5 cumulative application.

6 In *Becker*, the Nevada Supreme Court had no qualms applying the exemptions in  
7 NRS 21.090 cumulatively. See 362 P.3d at 644-645. The *Becker* Court noted that even  
8 though exemption of the debtor's stock under NRS 21.090(1)(bb) "does not provide for a  
9 complete exemption of stock in small corporations . . . the debtor can still apply the  
10 wildcard exemption . . ." *Id.* at 644-645.

11 Therefore, as demonstrated in *Becker*, nothing in NRS 21.090(1) should be found to  
12 prohibit Susan from exempting the otherwise unexempt portion of her earnings after  
13 application of NRS 21.090(1)(g), by way of NRS 21.090(1)(z). See *id.*

14 **D. Legislative History Does Not Support Plaintiff's Position.**

15 Even if the Court looks beyond the plain and ambiguous language of NRS 21.090(1)  
16 and NRS 21.090(1)(g) in reviewing Susan's claims of exemption, the Court should find that  
17 the legislative history cited by Plaintiff supports Susan's claim of exemptions.

18 In support of its position for the application of the Wildcard Exemption, Plaintiff quotes  
19 to the Judiciary Committee of the 74<sup>th</sup> Session of the Nevada Legislature. Plaintiff attributes  
20 Barbara Buckley with having said that the "wildcard exemption . . . allows a person to be  
21 able to pay for the essentials." See Pl. Mot. p.3.

22 Concerning rights or Creditors to garnish, Ms. Buckley continued stating that  
23 "[n]othing eliminates their just claims to garnish wages and seize non-exempt assets." Pl.  
24 Mot. p.3. In context, a portion of a debtor's earnings have been exemptible under Nevada  
25 Law since 1921. See A.B. 15 (1921). At the time Ms. Buckley was making this statement  
26 NRS 21.090(1)(g) limited garnishment to 75% of a debtor's disposable earnings.  
27 Furthermore, Ms. Buckley's statements are made in the context of a much smaller wildcard  
28 exemption of \$1,000 which was extended to \$10,000 in 2017.

1 Contrary to the insinuation by Plaintiff, Ms. Buckley's statements can be read to  
2 support Defendants interpretation of NRS 21.090(1)(z). Ms. Buckley's statement indicates  
3 that the Wildcard Exemption does not eliminate a creditor's right to "garnish wages and seize  
4 non-exempt assets." Pl. Mot p.3.

5 Ms. Buckley's statement is correct under the Defendants' interpretation presented  
6 herein. The Wildcard Exemption does not make garnishment impossible, but rather provides  
7 an additional exemption over property that will prohibit execution until the value of the  
8 property exceeds the exemption. By providing this additional exemption, a debtor maintains  
9 the ability to purchase the essentials with earnings that would be otherwise garnishable  
10 under the definition of "earnings" found in NRS 21.090(1)(g)(2).

11 Therefore, the Court should conclude that the legislative history presented by Plaintiff  
12 does not by itself establish Plaintiff's position that NRS 21.090(1)(z) was to only exclusively  
13 apply to personal property not otherwise covered by any other another other exemption  
14 provided in 21.090(1).

### 15 **III. CONCLUSION**

16 Therefore, for the reasons set forth above, it is respectfully requested that the Court  
17 conclude Susan has, by way of NRS 21.090(1)(z), an "unqualified and absolute" right to  
18 exempt "any personal property not otherwise exempt from execution" including her  
19 economic interest in earnings that are not otherwise exempt under the Wage Exemption  
20 (NRS 21.090(1)(g)) up to the amount of \$10,000.

21 Dated this 1st day of September, 2020.

22 **Millward Law, Ltd.**

23  
24 By: 

25 Michael G. Millward, Esq.

26 NSB# 11212

27 1591 Mono Ave

28 Minden NV, 89423

(775) 600-2776



**CERTIFICATE OF SERVICE**

Pursuant to NRCP 5(b), I hereby certify that service of the *Opposition to Platte River's Motion Regarding Exemption* was made on September \_\_\_\_, 2020, by depositing a true and correct copy of the same for mailing, postage prepaid, addressed to the following:

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

\_\_\_\_\_  
Ashley Voss, Legal Assistant

# Exhibit 1



RECEIVED

DEC - 5 2018

Douglas County  
District Court Clerk

FILED

NO

18 DEC -5 A10:46

BOBBIE R. WILLIAMS  
CLERK  
BY A. NEWTON DEPUTY

1 Case No. 18-CV-0136

2 Dept. No. II

3  
4  
5  
6 IN THE NINTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA  
7 IN AND FOR THE COUNTY OF DOUGLAS  
8

9 VICTORIA A. STROUD,

10 Appellant,

ORDER ON APPEAL

11 vs.

12 PROFESSIONAL FINANCE COMPANY,  
13 INC.,

14 Respondent.

15 THIS MATTER comes before the Court on appeal from the Justice  
16 Court of East Fork Township (EFJC), case number 13-CV-104.

17 Appellant, Victoria A. Stroud ("Stroud"), appeals from the Order  
18 of EFJC entered May 16, 2018. The Court has considered the  
19 parties' briefs on appeal, the Order, the Transcript of  
20 Proceedings from the May 8, 2018 hearing and the entirety of the  
21 EFJC record, all of which are made part of the record herein.

22 Good cause appearing, the Court finds and orders as follows:

23 Procedural and Factual Background

24 On March 5, 2013, Professional Finance Company, Inc. ("PFC")  
25 filed a Complaint against Stroud in EFJC, case number 13-CV-104.  
26 PFC alleged having been assigned a \$485.25 debt owed by Stroud for  
27 hospital services rendered. An Order for Default Judgment for  
28 \$485.25, plus interest, costs and attorney's fees entered on

1 November 19, 2013.

2 A writ of garnishment was served on Stroud's employer on  
3 March 27, 2018. Stroud filed a *Claim of Exemption from Execution*  
4 in EFJC on April 11, 2018. Stroud claimed the partial earnings  
5 exemption (NRS 21.090(1)(g)) and the personal property wildcard  
6 exemption (NRS 21.090(1)(z)).

7 A hearing was held before EFJC on May 8, 2018. The parties  
8 agreed that Stroud's earnings are such that 75 percent of such  
9 earnings are exempt per NRS 21.090(1)(g). The parties disagreed  
10 regarding applicability of the wildcard exemption, NRS 21.090-  
11 (1)(z), to the remaining 25 percent of Stroud's earnings. Neither  
12 party cited or argued the applicability of NRS 21.105.

13 Citing NRS 21.105, EFJC held that Stroud's earnings are  
14 exempt only to the extent provided by the partial earnings  
15 exemption contained in NRS 21.090(1)(g). Order, May 16, 2016  
16 ("Order"). EFJC did not address Stroud's claim of the wildcard  
17 exemption, NRS 21.090(1)(z). This appeal ensued.

18 Standard of Review

19 Stroud and PFC posit that NRS 21.105 is inapplicable and was  
20 not raised or argued by either party below. The Court agrees.  
21 EFJC erred by relying on NRS 21.105 in overruling Stroud's claim  
22 of exemption. The issue presented is to what extent, if any, the  
23 NRS 21.090(1)(z) wildcard exemption applies to Stroud's earnings.  
24 Also for consideration is the interplay between the wildcard  
25 exemption and the partial earnings exemption provided for in NRS  
26 21.090(1)(g). Determinations of legal issues, such as statutory  
27 interpretation, are reviewed *de novo*. *SIIS v. United Exposition*  
28 *Services Co.*, 109 Nev. 28, 30 (1993).





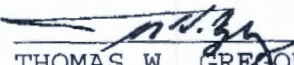
1 Dictionary 1617 (9<sup>th</sup> ed. 2009) (defining "thing in action").

2       The interplay between the wildcard exemption and the earnings  
3 exemption is also clear. The wildcard exemption applies to that  
4 portion of Stroud's earnings that "are not otherwise exempt from  
5 execution" by the earnings exemption. NRS 21.090(1)(z). Hence,  
6 Stroud may claim the earnings exemption and the wildcard exemption  
7 in the aggregate. NRS 21.090(1)(z) and (1)(g); See also, *Becker*  
8 *v. Becker*, 362 P.3d 641, 645 (2015); *In re McNutt*, 87 B.R. 84, 88  
9 (U.S. Bankruptcy Panel of the Ninth Cir. 1987) (interpreting the  
10 federal wildcard statute).

11       75% of Stroud's earnings are absolutely exempt without  
12 qualification. NRS 21.090(1)(g). The portion of Stroud's  
13 earnings that are not exempted by NRS 21.090(1)(g), i.e., 25%, are  
14 absolutely exempt without qualification up to \$10,000. NRS  
15 21.090(1)(z). This plain application of the unambiguous wildcard  
16 exemption is consistent with the purpose of exemptions and does  
17 not render the earnings exemption superfluous or create an absurd  
18 result. Because the statute is not ambiguous, the Court does not  
19 delve further into legislative intent or policy.

20       IT IS HEREBY ORDERED that the May 16, 2018 Order of East Fork  
21 Township Justice Court, case number 13-CV-104, is **REVERSED**.

22       DATED this 5<sup>th</sup> day of December, 2018

23  
24   
25 THOMAS W. GREGORY  
26 DISTRICT JUDGE  
27  
28

1 Copies served by mail/hand delivery on December 5<sup>th</sup>, 2018,  
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5 Minden, Nevada 89423  
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Erin Plante

# Exhibit 2



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**UNITED STATES DISTRICT COURT  
DISTRICT OF NEVADA**

DODGE CITY HEALTHCARE GROUP,  
LP,

Plaintiff,

v.

KHALID A. CHAUDHRY, M.D.,

Defendant.

Case No. 2:09-CV-00091-KJD-LRL

**ORDER**

Currently before the Court is Plaintiff Dodge City Healthcare Group LP's ("Dodge City") Motion for Hearing to Determine Whether Money is Exempt from Execution (#30). Defendant Dr. Khalid A. Chaudhry ("Chaudhry" or "Dr. Chaudhry") filed a Response in Opposition (#31), to which Plaintiff filed a Reply (#32).

**I. Background**

On July 20, 2009, the Court entered an Order of Final Judgment (#11) in the amount of \$407,151.68 against Dr. Chaudhry and in favor of Dodge City Healthcare. Plaintiff now avers that since that time, Dr. Chaudhry has failed to voluntarily pay any amount towards said judgment. Dodge City avers that it filed a Writ of Execution upon the Heart Center of Nevada that was returned executed (#27) on December 30, 2009.<sup>1</sup> Additionally, Dodge City avers that it filed a Writ of Garnishment in aid of execution pursuant to NRS 31.240 on February 5, 2010. On February 11,

---

<sup>1</sup>Plaintiff's initial Motions for Writ of Execution (## 12, 14, 16, 18) filed November 18, 2009, were rejected by the Court because they were not filed upon the proper "Writ of Execution" form from the District Court's website. On November 19, 2009, the Court advised counsel for Plaintiff to download said form and refile the writs using the "Notice of Corrected Image" link on the CM/ECF System. (See #20). Counsel for Plaintiff filed the writs again on November 23, 2009 (see #21), however, the forms were not fully completed, as noted in the utility function of the CM/ECF system on November 30, 2009. Counsel for Plaintiff filed Notices of Corrected Image on December 1 and 2, 2009, and the Writ of Execution (#24) was issued on December 4, 2009.

1 2010, Dr. Chaudhry filed an Affidavit of Claim of Exemption (#29), claiming an exemption in the  
2 wages paid to him by the Heart Center of Nevada pursuant to NRS 21.090(1)(g) and 21.090(1)(z).

3 Here, Dodge City seeks that the Court issue an order striking Dr. Chaudhry's Affidavit as  
4 untimely, declare that the money in question is subject to execution because Dr. Chaudhry waived  
5 any exemptions by failing to file a timely Affidavit, and declare that the subject writ of garnishment  
6 is valid and enforceable.

7 Specifically, Dodge City avers that the U.S. Marshal personally served the writ of execution  
8 upon agents of the Heart Center of Nevada on December 28, 2009. Additionally, Plaintiff attaches  
9 an Affidavit of Elizabeth Norman in the U.S. Attorney's office, demonstrating that counsel for  
10 Plaintiff provided the office with "everything . . . require[d] to serve the writ, including extra copies  
11 of both the writ itself and the notice of execution and envelopes addressed to the judgment debtor's  
12 attorney." (#32 Ex. 4.) Subsequently, the Heart Center of Nevada answered Plaintiff's  
13 interrogatories, confirming that Dr. Chaudhry earns \$25,000 per month.

14 Additionally, though Plaintiff does not oppose Chaudry's claim to exemption pursuant to  
15 NRS 21.090(1)(g), it opposes his claim to exemption made pursuant to NRS 21.090(z).<sup>2</sup>  
16 Specifically, Dodge City avers that the total value of the exemption under NRS 21.090(z) is \$1,000  
17 and can only be claimed once, as opposed to every payday—which Dodge City avers Dr. Chaudhry is  
18 attempting to assert.

19 Dr. Chaudhry, in opposition, avers that his Affidavit of Exemption was timely filed because  
20 he did not receive notice of the writ of garnishment until February 4, 2010. (#31 at 1.) Specifically,  
21 Defendant avers that "[t]he U.S. Marshal apparently, never mailed the notice required by NRS  
22 21.075 to Chaudhry or Chaudrhy's counsel as required by NRS 21.076." That is insufficient to meet  
23 Defendant's burden of introducing direct evidence to dispute the presumptions that official duty was  
24

---

25  
26 <sup>2</sup>NRS 21.090(1)(g) exempts from execution 75% of a debtor's disposable earnings. Dodge City admits  
however, that it is "not attempting to garnish more than 25% of Dr. Chaudhry's wages anyway." (#30 at 3.)



1 regularly performed (the mailing of the notification letter by the Marshal) and that the notification  
2 letter duly directed and mailed was received in the regular course of the mail. NRS 47.250(9)(13).

3 **II. Analysis**

4 Pursuant to NRS 21.112, any exemptions from an execution of judgment must be claimed by  
5 a judgment debtor within eight (8) days of service of a writ of execution. Here, Plaintiff has  
6 demonstrated that the Writ of Execution was sent to Defendant's counsel on or about December 28,  
7 2009. Accordingly, the original due date for Defendant to file for an exemption pursuant to NRS  
8 21.112 was January 5, 2010. As stated above however, Dr. Chaudrhy did not file his Affidavit of  
9 Exemption until February 11, 2010.

10 Pursuant to NRS 21.075 and 21.112(1) the failure to timely file an exemption operates as a  
11 waiver of exemption rights. Accordingly, because Defendant failed to file his Affidavit of  
12 Exemption within the time period allotted under NRS 21.075 and 21.112(1), the Court finds that  
13 Plaintiff waived his right to said exemption.

14 Additionally, as stated above, Plaintiff also seeks that the Court declare "that the total value  
15 of the wildcard exemption [pursuant to NRS 21.090(1)(z)] for Dr. Chaudhry cannot exceed \$1,000  
16 in this case." (#32 at 5.) Due to Plaintiff's failure to file a timely Affidavit of Exemption, the Court  
17 finds that such a declaration is unnecessary. However, even if Defendant's Affidavit of Exemption  
18 had been timely filed, NRS 21.090(1)(z) does not provide for an ongoing exemption of \$1,000.00 per  
19 execution or garnishment in addition to the 75% of earnings already exempt pursuant to NRS  
20 21.090(1)(g). In the vast majority of cases, an additional exemption of \$1000.00 for earnings would

21 ///

22 ///

23 ///

1 render garnishment of earnings a meaningless remedy for judgment creditors. Also, were it the intent  
2 of the legislature to grant an additional exemption of \$1,000 for earnings, it would have logically  
3 included the provision in subsection (g).

4 **IT IS SO ORDERED.**

5 DATED this 9th day of June 2010.

6 

7  
8 Kent J. Dawson  
United States District Judge

1 Case No. 19-CV-0197

2 Department No. II

CERTIFIED  
COPY

3

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

5 IN AND FOR THE COUNTY OF DOUGLAS

6 THE HONORABLE THOMAS W. GREGORY

7

-oOo-

8 PLATTE RIVER INSURANCE  
9 COMPANY,

9

Plaintiff,

10

vs.

11

12 EUREKA BUILDERS, INC, a  
13 revoked Nevada  
14 corporation; and LANCE  
15 JACKSON and SUSAN JACKSON  
16 each individually as  
17 personal indemnitors; and  
18 DOES I-X and ROE  
19 CORPORATIONS I-X,  
20 inclusive,

16

Defendants.

17

18

JAVS-RECORDED TRANSCRIPT OF PROCEEDINGS

19

HEARING

20

FRIDAY, SEPTEMBER 4, 2020

21

MINDEN, NEVADA

22

23

24 Transcribed by:

Shellie Loomis, RPR

1 APPEARANCES:

2  
3 For the Plaintiff:

Dubowsky Law Office, Chtd,  
By: Peter Dubowsky, Esq.  
300 South Fourth Street, Ste. 1020  
Las Vegas, NV 89101

5  
6 For the Defendants:

Millward Law, Ltd.,  
By: Michael Millward, Esq.  
1591 Mono Avenue  
Minden, NV 89423



1           **MINDEN, NEVADA, FRIDAY, SEPTEMBER 4, 2020, A.M. SESSION**

2                               -oOo-

3  
4           THE COURT:   Good morning, everybody.

5           MR. DUBOWSKY:   Good morning, Your Honor.

6           THE COURT:   This is Case Number 19-CV-1976,  
7   Platte River Insurance Company versus Eureka Builders and  
8   Lance and Susan Jackson.

9                       Show the appearance of Mr. Dubowsky on behalf of  
10   the Plaintiffs.   Good morning, Mr. Dubowsky.

11          MR. DUBOWSKY:   Good morning, Your Honor.

12          THE COURT:   And Michael Millward is appearing  
13   together with his clients.   Good morning.

14          MR. MILLWARD:   Good morning.

15          THE COURT:   We are here today for a hearing on  
16   the claim of exemption.   Mr. Dubowsky filed a motion to  
17   terminate an issue of exemption on August 27th.   The Court,  
18   following the statute, set the matter for today's date for  
19   hearing and Mr. Millward filed his opposition on  
20   September 1st.

21                       Mr. Dubowsky, did you get a copy of the  
22   opposition?

23          MR. DUBOWSKY:   Yes, I did, Your Honor.

24          THE COURT:   Okay.   Very good.   Mr. Dubowsky, I'm

1 go to go ahead and start with you. If there's any additional  
2 evidence you would like to present or arguments you'd like to  
3 make, you may do so.

4 MR. DUBOWSKY: Thank you, Your Honor.

5 THE COURT: You're welcome.

6 MR. DUBOWSKY: I do. Whenever you're ready.

7 THE COURT: Go ahead.

8 MR. DUBOWSKY: Thank you, Your Honor. Thank you  
9 very much. I have in here the opposition. I am going to show  
10 Your Honor that there's absolutely no way that the wild card  
11 exemption could apply to earnings. And what I'm about to say,  
12 Your Honor, if Your Honor wishes me to put this in paper and  
13 additional briefing, I'd be glad to do it.

14 Obviously with time constraints, this hearing has  
15 been expedited. It was only set on Tuesday and I got the  
16 opposition after hours, so if you want it in writing, I'd be  
17 glad to do any briefing Your Honor requests. What I'll do  
18 here should be at least sufficient for you to understand what  
19 the argument is and why the wild card cannot apply to  
20 earnings.

21 Let me just point out what I do -- obviously the  
22 opposition show that Your Honor has already seen this issue.

23 THE COURT: Yes.

24 MR. DUBOWSKY: And has, in that decision,

1 believed that it could apply. This is not a final dollar  
2 small claim Justice Court case. This is a larger case and  
3 you'll see as I go through this, there's no way to interpret  
4 the statute as the --

5 THE COURT: Mr. Dubowsky, does the amount have  
6 anything to do with the legal issue?

7 MR. DUBOWSKY: I think it does, Your Honor.

8 THE COURT: Okay.

9 MR. DUBOWSKY: Which I was going to show because  
10 you have to show -- there's two things you need to do with the  
11 statute. Number one, no part of the statute can be  
12 meaningless and you cannot reach a certain result.

13 Well, I think with the \$500 judgment, you want to  
14 spend 10,000 of it, it may be pretty straight forward. But  
15 when we're talking about a judgment of this size, which I  
16 believe is in excess of 40,000 and you're doing the wage  
17 exemption, the statute plays out and the way it plays out with  
18 the interpretation they're trying to say is completely  
19 different.

20 THE COURT: Well, where does the statute say that  
21 the amount is relevant?

22 MR. DUBOWSKY: Well, if you want, Your Honor, I  
23 can show you. But if -- I can certainly show that, but the  
24 point is this. The absurd result comes from this, Your Honor.

1 The statute does not contemplate putting the wild card under  
2 (indiscernible). So how does it affect the amount?

3 Well, we already served a wage garnishment on Ms.  
4 Jackson's wages, Platt River has. It's in effect for 180 days  
5 under the statute. The statute says how the person in the  
6 payroll office there takes that money out.

7 Now, the statute tells you this is what you do if  
8 you make over this amount, you take out this percentage, you  
9 make other than that amount and 50 times wage, you take out  
10 this amount. So the payroll office knows what to do. They  
11 say, yeah, we got to calculate this, calculate this. This  
12 goes to the sheriff and this goes -- and this stays with the  
13 judgment debtor.

14 The problem is we are dealing with an ongoing  
15 wage function and wage functions are much different,  
16 Your Honor, and I would like to get the statute of  
17 interpretation in.

18 I did read what Your Honor wrote and there's a  
19 lot more to say about statutory interpretation that is not in  
20 that, and certainly not in the opposition. And I will point  
21 out there's actually one more written decision on this issue,  
22 which I'll mention in a moment -- actually I should mention  
23 now.

24 There is, Your Honor, the -- it can only be



1 persuasive, if there's no binding decision. But Judge  
2 Saragosa back in February has the same exact issue. She  
3 issued a very well reasoned, in my opinion, 12-page decision  
4 citing to cases statutory history, cases from other  
5 jurisdictions. She found that, no, the wild card cannot apply  
6 to earnings.

7 I would like to get Your Honor a copy of that of,  
8 I'm sorry because of timing constraints.

9 THE COURT: What is the citation?

10 MR. DUBOWSKY: Well, I can give you the -- again,  
11 it's Justice Court, I should point out. So it's not -- again,  
12 just persuasive, just like any written decision, it's  
13 persuasive, not binding. But I do have a copy and it's -- the  
14 case is called Coster Finance versus Ken Vi Lu. And it's -- I  
15 have --

16 THE COURT: So this is not -- obviously it's not  
17 a published decision.

18 MR. DUBOWSKY: No, not published decision. It's  
19 only Justice Court. That's why I said it's more persuasive  
20 because it's justice court and we don't publish Justice Court  
21 decisions. And so -- but the 12-page decision does go through  
22 and explain how it does not apply.

23 So, Your Honor, I can -- if it's more helpful, I  
24 can go through the statutory interpretation and kind of fill

1 in some blanks, so I go to why the amount matters because I  
2 don't want to get too much off point with the amount that  
3 matters. But, if we're going to take Mr. Millward's  
4 interpretation, what is the Appeal Office supposed to do?

5 They get through garnishment and they say, okay,  
6 we know what to do because they know it. But on top of the  
7 wage garnishment, which is very specific and instructive to  
8 the payroll office, we're going to take another \$10,000 on top  
9 of that. \$10,000 on top of what?

10 On top of the first pay check, because that's the  
11 only thing they've earned at the time they've written. Is it  
12 \$10,000 -- is it \$10,000 up to the first 180 days because the  
13 exemption is only up to \$10,000. So does that mean for the  
14 first six months, we -- the payroll office has to start taking  
15 money out, putting money back in.

16 If the statute contemplated that for an amount --  
17 for a regular judgment this size, the statute would have said  
18 this is what you do when you're applying the wild card to  
19 earnings.

20 And again, Your Honor, it gets more absurd  
21 because then if you have -- after six months, based upon Ms.  
22 Jackson's earnings, this whole judgment will not be paid off,  
23 which means we have to renew the rent because, again, it's  
24 more than \$500.

1 THE COURT: Mr. Dubowsky, could you point me to  
2 where in the statute it talks about the amount?

3 MR. DUBOWSKY: The -- just the amount itself?

4 THE COURT: Well, you keep saying that it matters  
5 that -- in the former case I did, it was a lesser amount than  
6 what the debt is here, and I'm asking you -- I've asked you  
7 now a couple of times to direct me to where in the statute it  
8 says the amount has any relevance.

9 MR. DUBOWSKY: Okay. Your Honor, the --

10 THE COURT: Can you just tell me that?

11 MR. DUBOWSKY: Yeah, well -- yes, Your Honor. It  
12 doesn't say the exact amount. It gives instructions as to  
13 withholding, and that matters because if it's more than a  
14 certain amount, it means it's going to be renewed  
15 garnishments.

16 And if it's going to be renewed garnishments  
17 every six months, the statute really would need to instruct  
18 someone at the payroll office to say, well, what do you do?  
19 How do you apply -- or to this court, how do you apply this  
20 wild card to this exemption when the two things clearly do not  
21 mix.

22 So when it's over a certain amount and you're  
23 renewing garnishments, it does affect. Where is that 10,000?  
24 Is that 10,000 on the first pay check because it's going to be

1 less than 10,000 on the first pay check. Is it for the whole  
2 180 days? 180 days will give you less than 10,000.

3 Does that mean they get to carry the next -- of  
4 what the difference is into the next renewal? So that amount  
5 is very important as to how we interpret the statute, how this  
6 garnishment is carried out.

7 So there is no way you could have any practical  
8 application of a garnishment on earnings and still try to take  
9 a wild card and try to slap that wild card on that exemption  
10 on a garnishment this size with someone who's trying to  
11 process this payroll garnishment and trying to do two things  
12 at once. It just doesn't work.

13 So that's where the amount comes in. I'm not  
14 saying that the statute says over a certain amount, the  
15 statute changes.

16 THE COURT: So the statute doesn't say that?

17 MR. DUBOWSKY: No, it doesn't say that.

18 THE COURT: Okay.

19 MR. DUBOWSKY: But I'm saying the -- what's the  
20 absurd result of the interpretation? That's what I'm trying  
21 to point to, Your Honor.

22 So, again, to repeat the payroll office, again,  
23 the earnings garnishment is quite different because the  
24 earnings garnishment, Your Honor, is one of the only



1 garnishments -- excuse me, is one of the only exemptions  
2 listed that is not a presently existing property, tangible or  
3 intangible. The earnings garnishment is something that is in  
4 effect for 180 days.

5 At the time the garnishment is levied, the person  
6 has no real interest or equity in their future pay because  
7 their future pay is in the future. They may change jobs, they  
8 may quit, they may get fired. They may get a pay cut, they  
9 may get a pay raise. It doesn't matter. And so it's a very  
10 strange animal onto its own (indiscernible).

11 So if you go to try to say, okay, it's \$10,000,  
12 \$10,000 on what? How do you apply that when you have a  
13 judgment that's going in excess of \$10,000 and you're doing  
14 the garnishment?

15 Now, again, Your Honor, let's just -- and I'm  
16 just going with Your Honor's question. You have this judgment  
17 here which is over 40,000. When you renew, what happens? And  
18 if you're going to say, well, I think it -- (indiscernible)  
19 say and we don't know because the office doesn't tell us how  
20 to apply his statutory interpretation.

21 THE COURT: Mr. Dubowsky, do you find the statute  
22 is ambiguous?

23 MR. DUBOWSKY: No. The statute is clear. The  
24 statute excludes earnings from the wild card. The statute

1 says in Subsection 1(z) -- first of all, I'll go to  
2 Subsection 1. It says: The following property is exempt  
3 except as otherwise specifically provided in this section.

4 So it's telling you right now this is what's  
5 exempt, but certain things are not exempt that are  
6 specifically excluded.

7 And we already know from the cases that Your  
8 Honor has cited to, including Weinstein versus Fox, you cannot  
9 go -- you cannot take a -- you cannot extend the legislative  
10 grant and (indiscernible). You're stuck with what the statute  
11 says.

12 They're limited. There's limiting way in  
13 Subsection 1. Now, let's look at Subsection Z. This is  
14 completely unambiguous. Any personal property not otherwise  
15 exempt from execution pursuant to this subsection.

16 Your Honor, that is telling you right there  
17 unambiguously if it's already in a new rated exemption, the  
18 wild card doesn't apply. And we already know from statutory  
19 interpretation, Your Honor.

20 THE COURT: So hold on. If it's not ambiguous,  
21 why are you -- why does you -- why do you get into the  
22 legislative history in your motion?

23 MR. DUBOWSKY: Oh, just to show --

24 THE COURT: Well, you --

1 MR. DUBOWSKY: Well, it's still relevant to show  
2 why it says it the way it says it. But it's not --

3 THE COURT: Well, if it's not ambiguous, why do  
4 we go to the legislative history?

5 MR. DUBOWSKY: We don't even have to go to the  
6 legislative history, but the legislative history answers the  
7 exact same question. It's still --

8 THE COURT: So you agree if it's not ambiguous,  
9 we don't go to the legislative history.

10 MR. DUBOWSKY: It's always helpful to see the  
11 legislative history. Again, I'm not saying that we have to  
12 look at it, but it looks --

13 THE COURT: Well, in your motion, that's where  
14 you told me to go. It seemed like you were saying the statute  
15 is ambiguous and so I need to look at the legislative history.  
16 But today you're telling me that the statute is unambiguous.

17 MR. DUBOWSKY: The statute is unambiguous. If  
18 you don't want to look at the legislative history, I  
19 understand that, but it's certainly relevant to see that it's  
20 worded in such a way because legislative history specifically  
21 says we're excluding garnishments.

22 But if you don't want to look at it because it's  
23 already unambiguous, we don't have to look at it. But it's  
24 certainly relevant to what this -- to this analysis.

1                   Now, again, Your Honor, I want to look at why the  
2 statute is unambiguous. And, again, I know Your Honor has  
3 already looked at this, but I think a lot of things that did  
4 not come up in the other case that I think Your Honor will  
5 find very persuasive.

6                   And I think if we want to use it, Your Honor's  
7 going to say, yeah, I don't think you could apply this wild  
8 card onto wages and certainly the legislature did not want you  
9 to apply wild card to wages.

10                  So again, Your Honor, looking at the unambiguous  
11 statute, not otherwise exempt from execution pursuant to this  
12 subsection. The wild card is telling you, you can -- you have  
13 your choice what you want to apply it to, but you can't apply  
14 it to one of the already enumerated exemptions.

15                  Now, one more thing, by the way, Your Honor.  
16 There's actually -- this is -- this language is unique to  
17 Nevada, but the concept is not.

18                  So, for example, I found that in Oregon, the  
19 Oregon statute also has a wild card and the wild card says you  
20 can use the wild card as long as the exemption is not used to  
21 increase the amount of any other exemption. So the concept  
22 that you can't use a wild card, another exemption --

23                  THE COURT: Give me an example. Under your view,  
24 give me an example of when the wild card exemption would



1     apply.

2                   MR. DUBOWSKY: Let's take an example. I think  
3     that being Mr. Millward has his brief, if a person has some  
4     cash lying around and the person doesn't want to exempt this  
5     cash, it's my cash, okay, that cash lying around, you can't  
6     touch.

7                   THE COURT: Okay.

8                   MR. DUBOWSKY: Okay. It's not enumerated.

9                   THE COURT: Give me another example.

10                  MR. DUBOWSKY: Okay. Well, we have -- this  
11     person has other kinds of stocks, not otherwise in the  
12     enumerated exemption. Those can be seized. Okay. Some kind  
13     of brokerage account with those stocks, you can seize that.  
14     It's not an enumerated exemption. But I want to have those  
15     stocks apply to the wild card, you can do that.

16                  But one thing you'll notice, Your Honor, in this  
17     and this is very important in the statute. As I think as  
18     Your Honor probably knows, the most common garnishments are  
19     wage garnishments and probably also bank garnishments.

20                  As Your Honor knows, I've been doing judgment  
21     enforcement in Nevada since (indiscernible) '93 and pretty  
22     much all that time and except for the first year or so, I've  
23     been doing only judgment enforcement and commercial  
24     litigation. This is what I do. So, Your Honor, if you look

1 at the statute, it gives examples (indiscernible). It gives  
2 examples of what you can apply the wild card to.

3 Now, when the legislature is drafting this,  
4 you're probably thinking, well, the most common garnishment is  
5 the wage garnishment. And, again, I haven't done a study, but  
6 I totally -- the wage garnishment, I think Your Honor will  
7 agree is so common, the earnings garnishment.

8 When it give descriptions of what you can apply  
9 this garnishment to, you would think if they wanted the wild  
10 card to apply to such a common garnishment and such a common  
11 item of property, that it would say any property including  
12 stocks, bonds and earnings of the judgment debtor. It doesn't  
13 say that. So, Your Honor, that's just descriptive.

14 But this language, if you have language that's  
15 not otherwise exempt from execution pursuant to this  
16 subsection, we have to give meaning to it because you can  
17 interpret the statute as the defendants are trying to do by  
18 taking that out and getting the exact same interpretation,  
19 then that interpretation cannot be correct. No part of the  
20 statute can be redundant and no part can be meaningless.

21 THE COURT: So 25 percent of Ms. Jackson's  
22 earnings are not exempt under this subsection. Do you agree  
23 with that?

24 MR. DUBOWSKY: Under the G, correct.

1 THE COURT: Yes.

2 MR. DUBOWSKY: Yes, Your Honor.

3 THE COURT: Okay.

4 MR. DUBOWSKY: Yes.

5 So, again, looking at this, it's specifically  
6 saying that not otherwise exempt pursuant to this subsection.  
7 Well, they're saying, well, that means any property that's not  
8 exempt.

9 Well, why would the statute have to tell you that  
10 you don't have to -- that you can't -- you don't have to  
11 exempt something that's already exempt.

12 THE COURT: Well, you just told me 25 percent of  
13 her earnings are not exempt; right?

14 MR. DUBOWSKY: Correct, Your Honor, but it's  
15 talking about -- but the wage garnishment is not --

16 THE COURT: 25 percent of her earnings are not  
17 otherwise exempt. Do you agree with that?

18 MR. DUBOWSKY: Well, the wage garnishment on its  
19 own says that it's a partial exemption and that partial  
20 exemption allows the 25 percent to the judgment creditor.

21 THE COURT: So 25 percent of her earnings are not  
22 otherwise exempt. Do you agree with that?

23 MR. DUBOWSKY: They're not exempt, correct,  
24 Your Honor. But I see what you're trying to say is that,

1 well, this is talking about -- the wild card is talking about  
2 the 25 percent. Your Honor, why would it have to say that?  
3 Why is he not otherwise exempt from execution from this  
4 subsection? Because if you're saying that, then why not just  
5 say any personal property belonging to the judgment debtor?

6 Well, she's got earnings that belong to her.  
7 That 25 percent, just go ahead and take that. No, it says not  
8 otherwise exempt from execution pursuant to this subsection.  
9 Why does it say that unless it's telling what you don't exempt  
10 something? Your Honor, I want to exempt this piece of  
11 property and I want to exempt it so bad, I want to exempt it  
12 twice at the same time. It doesn't, Your Honor.

13 THE COURT: Does the 25 percent isn't exempted  
14 twice.

15 MR. DUBOWSKY: But, Your Honor, why would you --

16 THE COURT: You told me it's unexempted.

17 MR. DUBOWSKY: It's not exempt, but why does the  
18 statute have to say not otherwise exempt from execution. Is a  
19 person going to exempt something that's already exempt?

20 THE COURT: Well, the statute -- so, again,  
21 25 percent, you agree is not exempt. The statute says that  
22 wild card applies to anything that's not exempt, otherwise  
23 exempted. So I'm not understanding your argument that the  
24 25 percent somehow cannot be used for the wild card.



1 MR. DUBOWSKY: Well, I guess I'd ask this  
2 question, Your Honor: If -- why would the 25 percent also be  
3 exempt if this language was not in there that's excluding  
4 other enumerated exemptions?

5 THE COURT: Well, if what language wasn't in  
6 that?

7 MR. DUBOWSKY: So let's say here -- here, I'm  
8 going to -- let's say here we're going to rewrite the statute.

9 THE COURT: Well, no, we're not going to rewrite  
10 the statute. And that's the thing, Mr. Dubowsky, I don't  
11 write the law. We're both looking at a statute that we both  
12 agree is unambiguous.

13 And so I'm not going to rewrite it. I'm not  
14 going to say they could have written it differently or what  
15 if. I want to look at the actual statute.

16 And the actual statute says the wild card applies  
17 to other things that aren't otherwise exempt. 25 percent of  
18 her earnings are not otherwise exempt. You've agreed with me  
19 on that.

20 So I'm having a hard time understanding why you  
21 believe you can get to the -- can't use the wild card for her  
22 earnings, the 25 percent.

23 MR. DUBOWSKY: Your Honor, we have to give  
24 operation to this language.

1 THE COURT: Okay. Go ahead.

2 MR. DUBOWSKY: This language is telling you, you  
3 already have an earnings exemption. So this doesn't apply to  
4 them.

5 THE COURT: Not to the 25 percent.

6 MR. DUBOWSKY: Well, it's a partial exemption and  
7 the partial exemption is already laid out there and it says  
8 this much is exempt, this much is not exempt and not otherwise  
9 exempt. For this language to have any kind of operation, it's  
10 not redundant language. It must mean we're talking about an  
11 exemption that's not already enumerated.

12 So the statute does not need to tell us that we  
13 can exempt something that's already exempt. So again,  
14 Your Honor, it is saying if it's not already enumerated. The  
15 language has to be given effect. The only way that language  
16 has effect is to say, listen, it's already enumerated as an  
17 exemption. This doesn't apply. This applies to other  
18 personal property, cash in the mattress, whatever the --  
19 whatever stocks, whatever else. It does not apply to  
20 earnings.

21 And again, Your Honor, I need to go back because  
22 we need to explore how this application --

23 THE COURT: Well, where does it say it does not  
24 apply to earnings?

1 MR. DUBOWSKY: Well, I'm just saying, Your Honor,  
2 why would it not -- well, the exemption not otherwise exempt,  
3 see the subsection, Z is already the earnings.

4 THE COURT: Well, the word earnings does not  
5 appear in Subsection Z; correct?

6 MR. DUBOWSKY: That's correct, Your Honor.

7 THE COURT: Okay.

8 MR. DUBOWSKY: And as I said, Your Honor, just  
9 the point, why would it not say earnings if we wanted this  
10 garnishment to apply? Your Honor, I might just go through  
11 also the fact that these two do not interplay, we need just a  
12 little bit of the legislative history. The wage garnishment  
13 has been around for many years, probably since 1911.

14 In 2007 the wild card is cast. The wild card  
15 said \$1,000. The earnings garnishment did not make any  
16 reference to the wild card and the wild card doesn't make any  
17 reference to the earnings exemption.

18 2017, there's a ten-fold increase in the wild  
19 card and the earnings exemption is also increased. And the  
20 earnings exemption is very technical. It says this dollar  
21 amount, then this dollar amount. This dollar amount, then  
22 this dollar amount. It's very specific.

23 The same year, why would the legislature not say  
24 and by the way, this is how you take a huge \$10,000 and throw

1 it right on top of that wage garnishment that you just spent  
2 so much time calculating the dollar amounts. They don't  
3 interplay. And what I was trying to explain before,  
4 Your Honor, is why the amount matters.

5 I'd like to get to the absurd result if you want  
6 to hear that, because if we're going to say that the wild card  
7 applies to earnings, then we have to say, okay, if that's what  
8 the statute is telling us, then how do we carry that out? And  
9 there is no way to carry that out. Allow me to explain.

10 The wage garnishment comes in. The payroll --  
11 again, falls upon the payroll office, whether it's the State  
12 of Nevada or some small mom and pop business, they have to  
13 calculate.

14 Well, under NRS 21.025, it has in the notice,  
15 this is how you calculate it and it says under this amount,  
16 under this amount. Okay. So now it's saying, well, now you  
17 got -- now you have an additional amount.

18 So what do I do with this amount? You put -- you  
19 take that out and you put it back in, but then you keep a  
20 record of -- to each party you take in, take out, take in,  
21 take out until it reaches 10,000. We don't know because the  
22 statute doesn't contemplate it. It's absurd.

23 Does that mean that it's up to 10,000 on the  
24 first pay check because at the time they were served, that's



1 the interest that the judgment debtor has is that first pay  
2 check. Does that continue for 100 -- just that pay check?  
3 Does it go for 180 days?

4 If it goes for 180 days, Your Honor, it's still  
5 an absurd result because it's -- does it -- it didn't exist at  
6 the time the writ was served, which means, Your Honor, when I  
7 get to renew this writ, which I probably have to do in  
8 180 days because they already used up the exemption, all that  
9 money that was not taken out will still have to come out,  
10 because when that writ is renewed, it's going to have  
11 additional post judgment interests and additional  
12 post-judgment costs.

13 So it's not like a normal piece of property.  
14 These are the stocks, this is the cash and I exempted, you  
15 can't take it. No. When it applies to wages, it's a  
16 completely different animal.

17 So in the end, the garnishment will just continue  
18 and continue and continue. That first 10,000 for the wage  
19 garnishment, if that's the interpretation they're going with  
20 is not going to come out.

21 So it's just going to accrue more post-judgment  
22 interest, more post-judgment costs. Eventually years down the  
23 road, that first 10,000 will be paid back. That can't be what  
24 the statute is contemplating. That's absurd. That's why you

1 can see it just doesn't apply.

2 And if this is how it applies, Your Honor, then  
3 the statute should say, and by the way, this is how you take  
4 that giant 10,000 exemption and you apply it to a garnishment  
5 that's going to be in effect for maybe a matter of years.

6 And we don't know how it applies because there  
7 is -- it's not supposed to apply. It's not contemplated it  
8 applies. And if you tell your payroll office, well, you guys  
9 figure it out.

10 Well, we can't figure it out because the statute  
11 doesn't tell us. We don't know, is it the first -- is it only  
12 the first withholding? Is it the first 180 days? Does the  
13 first 180 days use up to ten? Does that mean the second one,  
14 the 10,000 is already used up.

15 Does that mean that when it's renewed, you have a  
16 balance left on the 10,000? You can use up your balance on  
17 the second writ? Does that mean that you can renew the wild  
18 card so that you can take that 10,000, but you can take 20,000  
19 into infinity, because every six months you can just renew  
20 this wild card exemption?

21 Well, this is what we have to know, Your Honor,  
22 and this statute doesn't tell us. If the statute doesn't tell  
23 us something so obvious, it means that this is not what the  
24 statute is talking about. And I know Your Honor is saying,

1 well, it's otherwise not exempt.

2 Well, no, otherwise not exempt has to have  
3 meaning and the only meaning it could possibly have, unless  
4 it's completely redundant language, is that it's talking about  
5 another exemption that's already enumerated, and therefore,  
6 you can't double up on that exemption.

7 And, Your Honor, I'll just point out that there  
8 is no case that says you can do stacking of exemptions in  
9 Nevada. I'll mention briefly, I know the Becker case has been  
10 cited to.

11 The Becker case says the exact opposite of what  
12 is being interpreted. The Becker case says, Your Honor,  
13 that -- excuse me, the Becker case says that the economic  
14 interest in the stock is not exempt.

15 It's not an enumerated exemption, therefore, if  
16 you want to use your wild card, it says in dicta, you can use  
17 the wild card on that exemption. Why? Because it's not an  
18 already enumerated exemption.

19 And again, Your Honor, I point out the case  
20 doesn't help the judgment debtors in this case because that  
21 case -- the exemption, the case when it gets to the judgment  
22 debtor in that case.

23 So the case says the exact opposite of how it's  
24 being advanced. It says the exact opposite. It says because

1 it's not an enumerated exemption, then you can put the wild  
2 card on it. That's what that case says. So, again, I just  
3 want to go back, Your Honor.

4 It is the judgment debtor's burden at this  
5 hearing, as Your Honor is aware, as in the Statute 21.116.  
6 The judgment debtor has the burden. So it's their burden to  
7 prove. We have here -- we know we cannot extend the  
8 legislative grant of the exemptions. That, we can't do.

9 Also we cannot cause injury to creditors and  
10 that's also in the Savage versus Pierce case. It says we  
11 can't cause injury to creditors.

12 We have a statute that says that there's limiting  
13 language in this statute and we have this language, Your  
14 Honor, that we have to do something with. Not otherwise  
15 exempt execution pursuant to this subsection.

16 Well, the interpretation that Your Honor sounds  
17 like you're looking at is, well, then that means any property  
18 in the world. What is any property in the world? It doesn't  
19 have to tell us that.

20 It's telling us that otherwise exempt pursuant to  
21 the subsection means we are excluding these otherwise  
22 enumerated exemptions. Otherwise, that language means  
23 nothing. It means just take any -- it's just telling you to  
24 take any property in the world that you choose that you have



1 and you want to apply your wild card.

2 But that can't be what it's saying because it  
3 doesn't need that language to tell you that, and it doesn't  
4 need that language to tell you that you can exempt something  
5 that you already exempted. So the language has to have  
6 meaning and the only meaning it has is saying if it's  
7 otherwise exempt, then that exemption is excluded from the  
8 wild card.

9 And again, just reading the wild card, it would  
10 be a very glaring, glaring omission that they would write this  
11 wild card statute, albeit it says not limited to, but the most  
12 common garnishment of earnings, why would you not just say  
13 more earnings and then would answer the question? Instead, it  
14 doesn't say earnings, which means that it's certainly not  
15 something that they're contemplating.

16 And if when they try to apply it, Your Honor,  
17 then we're going to have to sit here and say, well, how do we  
18 apply this wild card or this to entirely separate evidence?  
19 It's a continuing wage garnishment.

20 How do you affect the wild card? Now, again, the  
21 wild card normally is you have a piece of property, tangible,  
22 intangible, you can't touch this. Wages are different because  
23 those wages continue. They continue and the judgment  
24 continues to accrue interests and court costs.

1                   So if you're telling me, Your Honor, that the way  
2 to apply this interpretation is that they get to claim a  
3 10,000 exemption, which means for six months, my client sits  
4 on its hands and waits out the six months to see where it  
5 goes.

6                   And then after six months, what do we do next?  
7 Do we get a 10,000 credit on what was already taken out, then  
8 put back? Is there extra? Do they get to renew it for a  
9 balance? I don't think that's how you do it, but again, we  
10 have no statute that explains this. So we just have to think  
11 beyond, okay, what's the absurd result that this  
12 interpretation -- that this statute interpretation leads us  
13 to? And we have no idea what to do with this wild card.

14                  It leaves us with too many alternatives. And if  
15 the legislature had contemplated, yes, this is what's going to  
16 happen when you do a wild card on a wage, the two things that  
17 cannot mix, then this is how you resolve these two things  
18 together. But you cannot harmonize those things together.

19                  So, again, respectfully, if you're just saying  
20 any property in the world that's not exempt, it doesn't need  
21 to tell us that. Just say any property. It doesn't tell us  
22 anything else. If there's any property in the world, then you  
23 can exempt any property in the world. No, there's limiting  
24 language not otherwise exempt from execution.

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1 Well, as opposed to what? Property that's  
2 already exempt from execution? I know I'm repeating myself,  
3 but I know Your Honor is stuck on that language. The language  
4 has to be given some operation.

5 THE COURT: Well, Mr. Dubowsky, I'm stuck on that  
6 language because that's the language the legislature uses, and  
7 I'm going to give Mr. Millward a chance here. So let's wrap  
8 up your argument.

9 MR. DUBOWSKY: Okay. So, again, Your Honor, the  
10 language is there. It's in there because it's saying that  
11 this does not apply to wage garnishments. That's what it's  
12 saying.

13 So if you're giving it meaning, and I'm telling  
14 you that's what the meaning is. Otherwise, it has absolutely  
15 no meaning. Otherwise, you do not need that language because  
16 it means that any property in the world can be exempt under  
17 the wild card. But this is the limiting language. It's  
18 limiting the grant saying that otherwise exempt from  
19 execution. That language is key and that language, again,  
20 Your Honor --

21 THE COURT: And Ms. Jackson's 25 percent of her  
22 earnings is not otherwise exempted.

23 MR. DUBOWSKY: It's -- in the colloquial sense,  
24 what you're saying is correct. Then why does the statute need

1 to tell us that? If the statute says not otherwise exempt  
2 pursuant to the subsection means that that 25 percent is not  
3 part of the wild card. Otherwise, you could reach that same  
4 exact conclusion without reading that clause.

5 Any personal property belonging to judgment  
6 debtor. Okay. Well, that's (indiscernible) belongs --  
7 belongs to that 25 percent, then take that.

8 No, it's taking away from the legislative grant  
9 not otherwise exempt from execution pursuant to the  
10 subsection. It's telling you, yes, but if we already told you  
11 what this subsection allows you to take, that, we don't mess  
12 with.

13 This wild card deals with other property. That's  
14 what that language says, Your Honor, and we have to give  
15 meaning to that language. The only meaning that language can  
16 have is that it's saying do not combine this with other  
17 enumerated exemptions. That's the only meaning that language  
18 could have, Your Honor.

19 THE COURT: Okay.

20 MR. DUBOWSKY: Otherwise, the language is  
21 completely unnecessary and then I would have to at least agree  
22 that the language that they could take it, but then we'd still  
23 be left with how do we apply it?

24 And there's no way to apply it without coming up



1 with the most absurd results with the legislature obviously  
2 not contemplating what to do with these wage garnishments if a  
3 person is going to try and take a wild card on top of a wage  
4 garnishment, and what havoc that would have on big employers,  
5 small employers who look at this and say what am I supposed to  
6 do?

7 Does this money go to the sheriff? Does it not  
8 go to the sheriff? Do I add it up? Do I not add it up. Do I  
9 wait until it's ten? Does it renew? When it renews, what's  
10 left? Do they get 10,000 again so it's 10,000 a year.

11 I've said this before, Your Honor, but I think it  
12 cannot be understated how absurd the result is if we're going  
13 to go with the interpretation that Mr. Millward is advancing.  
14 It just doesn't work. It doesn't work in practice and it  
15 doesn't work based upon the language of the statute.

16 THE COURT: Okay.

17 MR. DUBOWSKY: (Indiscernible) result.

18 THE COURT: Mr. Dubowsky, thank you. You've  
19 taken about a half hour, I appreciate your comments and I  
20 wanted to give you that time because clearly as you can see in  
21 Mr. Millward's motion, as you've indicated, the Court did  
22 previously address the issue. And unless you were to give me  
23 some good reason to not follow what I've done in the past,  
24 then, you know, most likely I'd be ruling in Mr. Millward's

1 favor. So I wanted to give you that opportunity to fully --  
2 and I wanted to hear your argument and your response to his  
3 opposition.

4 So I've given you that chance to do that now over  
5 the course of a half hour. If there's something else you  
6 haven't stated yet, something new that you really wanted me to  
7 know about, I want to give you that chance. So go ahead and  
8 then I'm going to hear from Mr. Millward.

9 MR. DUBOWSKY: May I reserve it until after  
10 Mr. Millward speaks?

11 THE COURT: You can do that.

12 MR. DUBOWSKY: Okay. Thank you.

13 THE COURT: Yes. And again, I'm not looking for  
14 the same arguments that you've given, but if you have  
15 something else that you wanted to add, I -- we want to make  
16 sure you had that opportunity.

17 MR. DUBOWSKY: Thank you, Your Honor.

18 THE COURT: Mr. Millward, go ahead.

19 MR. MILLWARD: Your Honor, just in response to  
20 that last colloquy, if he does have something new that he  
21 wants to present --

22 THE COURT: Yeah, let me --

23 MR. MILLWARD: -- can I have an opportunity to  
24 respond?

1 THE COURT: It's a good point, Mr. Millward.

2 So, Mr. Dubowsky, if there's something new that  
3 you haven't said yet that you want me to know, now is the time  
4 to do that, not in reply after Mr. Millward goes.

5 So if you have some new or different argument  
6 other than what you've stated so far, I'm all ears.  
7 Otherwise, I'm going to hear from Mr. Millward.

8 MR. DUBOWSKY: Let's go ahead and hear  
9 Mr. Millward, Your Honor.

10 THE COURT: Okay. Go ahead, Mr. Millward.

11 MR. MILLWARD: Thank you, Your Honor.

12 You know, I was trying to follow Mr. Dubowsky's  
13 argument and I understand the point that he's trying to make  
14 and where he's trying to take the Court. But I think the  
15 Court, in its questioning of Mr. Dubowsky as to the statute,  
16 points out that we don't have an ambiguous statute here.

17 But then in Mr. Dubowsky's argument, he argues  
18 that the point of the statute as the Court has previously  
19 interpreted it as I'm asking the Court to interpret it now, he  
20 says we created an absurd result because the statute doesn't  
21 say what to do. The statute doesn't say what happens.

22 And so I think he's arguing that the statute is  
23 ambiguous. Otherwise, you can't get to the absurd result  
24 because the statute has something missing in it. And so I

1 think we have to start there at the -- looking at the statute  
2 from his point of view, whether or not the statute is missing  
3 anything.

4 And I think that when we do that, we have to look  
5 at the statute NRS 21.090 as a whole and how it deals with  
6 these issues in other areas. And so I want to take the Court  
7 back to the Becker case because the Becker case concerns  
8 NRS 21.0901(b)(d). And NRS 21.090(b)(d) says that the  
9 exemption applies to stock. All right.

10 And then it says, except as it's limited in NRS  
11 76, which pertains to corporations and which specifically the  
12 provision cited pertains to the charging order remedy.

13 It would appear that if the intention of the  
14 legislature in writing NRS 21.0901(b)(d) was to give a debtor  
15 the right to exempt other stock interest, but to limit that  
16 interest by what would otherwise be achieved by a creditor in  
17 a charging order remedy under NRS 76, that the legislature  
18 would have done the same exact thing with NRS 21.0901(z) if  
19 their intention was to limit it to the garnishment provision  
20 under NRS 21.0901(g) and that's not there. There is no  
21 limitation.

22 So in one instance, the legislature specifically  
23 excluded an economic interest under a charging order remedy  
24 because they wanted that remedy available to creditors. Here,



1 that exclusion doesn't exist. When the legislature doesn't do  
2 something where they've done it in another area, the Court has  
3 to infer that it's done for a particular purpose.

4 And in this instance, it would be so that the Z  
5 wild card exemption would apply to anything that the statute  
6 doesn't already exempt in some other exemption just as the  
7 Court's analyzed.

8 And so with regards to that, Your Honor, and I  
9 think that's really kind of the crux of our argument, we have  
10 NRS 21.0901(g), which defines in G2 earnings to be funds that  
11 could, in many instances, already be received, already be in  
12 the debtor's account; right? 75 percent of what's already  
13 been received by the debtor already in the debtor's account.  
14 25 percent's not exempt.

15 Mr. Dubowsky's application of the statute in that  
16 instance would be that that 25 percent that the debtor already  
17 has can't be exempted under Z, even though Z specifically says  
18 that it applies to a cash in account, that it applies to what  
19 otherwise would be garnished property or at least which the  
20 garnishment statute would apply to, the garnishment exemption  
21 statute would apply to.

22 And so it doesn't make sense under those  
23 circumstances to exclude Z at all, because Z absolutely would  
24 apply to money that's already in the debtor's account

1 according to Z's own specific terms.

2 And so in looking at that -- and then when you  
3 kind of step back and look at the whole big picture, I think  
4 you have to go back to the very first statute we're looking at  
5 and it's NRS 21.0901 which says that the unless the  
6 property -- that the property is exempt unless specifically  
7 stated not to be.

8 When you look at that statute, it should make it  
9 clear that the exemption should apply if claimed and if the  
10 debtors met their burden to prove that it applies. Unless the  
11 statute specifically does not apply by specific statement in  
12 the statute, which it says it would specifically do and it  
13 doesn't in Z.

14 With regards to his argument about the Becker  
15 case, I think we have to go directly to Becker. If you look  
16 at the Becker case, if you look at how -- even the holding,  
17 for example, holding says we hold that NRS 21.0901(b)(d) does  
18 not provide for a complete exemption of stock in small  
19 corporation.

20 They said that it's not a complete  
21 (indiscernible). They then, above their holding, talked about  
22 these other exemption that would apply, that apply to economic  
23 interest. They talk about the Z exemption. They talked  
24 about -- I believe it's an insurance proceeds exemption.

1 Let's see what the other exemptions that they cite are.

2 THE COURT: Mr. Millward, I'm going to -- the  
3 Court has another proceeding that was set to begin at 9:00,  
4 which is fine.

5 MR. MILLWARD: I understand. I'll --

6 THE COURT: But, no, it -- what would be helpful  
7 for me to have you answer is --

8 MR. MILLWARD: Yes.

9 THE COURT: -- Mr. Dubowsky's claim that the  
10 Court's reading of the statute would create absurd results.

11 MR. MILLWARD: Right.

12 THE COURT: So if you could address that  
13 specifically, that would be helpful.

14 MR. MILLWARD: I certainly can. I think that for  
15 the Court to determine what an absurd result would be, would  
16 be to look at what the legislature intended. I think that  
17 that's the only way for the Court to even determine what the  
18 result -- whether there was -- the result is absurd.

19 So if the exemption applies completely to my  
20 client's wages, was the legislature's intention to provide my  
21 client with a 75 percent exemption of her wages and then on  
22 top of it a \$10,000 exemption of what she needs to survive?

23 If that's the intention of the legislature, then  
24 it's not an absurd result that my client's wages are not

1 garnishable after she claims the Z exemption and after she  
2 claims the G exemption. I think that's as simple as that. I  
3 don't -- I think the result -- to determine whether or not the  
4 result is absurd is to determine whether or not the  
5 legislature's intention in creating the statute by application  
6 of the statute.

7 THE COURT: How do you see this playing out if I  
8 were to interpret this as I did in the other case?

9 MR. MILLWARD: Um-hum.

10 THE COURT: How does it work out in application  
11 and address, you know, what Mr. Dubowsky says about, you know,  
12 what happens in six months? What happens, you know, down the  
13 road?

14 MR. MILLWARD: Right.

15 THE COURT: Tell me what your thoughts are about  
16 how this actually gets played out.

17 MR. MILLWARD: Well, I think that what -- and  
18 I've thought some of about that over the last few days. I  
19 think that the way the Court would have to apply the exemption  
20 statutes would be somewhat in the way the Court analyzed in  
21 the Christenson case. I don't think I cited to it in my  
22 brief.

23 The Christenson case relates to overturning the  
24 Galvez case. The Galvez case limited the garnishment

1 provision to only cyclical payments.

2           So in Galvez, they said that -- I believe it was  
3 a realtor's commission because it wasn't a cyclical payment,  
4 wasn't exempt under G. And so in Christenson, they said,  
5 yeah, that's true. The legislature changed it to not be  
6 periodic anymore, and therefore, the legislature intended it  
7 to be ongoing.

8           And so if we apply that as to this situation, if  
9 the exemption is an ongoing exemption, meaning the \$10,000 can  
10 be claimed, essentially each successive garnishment, that  
11 would be appropriate as the Court stated in Christenson.  
12 Otherwise, the statute would have to say that the exemption is  
13 limited specifically like is stated in NRS 21.0901.

14           And so when you claim your claim of exemption,  
15 these are the available exemptions. And so if there was  
16 another execution, for example. Let's say my client owned  
17 real property that was being executed upon or personal  
18 property that was being executed upon.

19           We don't go back and subtract the exemptions have  
20 already been done. You make your claim of exemptions at the  
21 time that you make your claim, and they are according to  
22 statute what -- as delineated in NRS 21.090.

23           It's not -- there's no instruction anywhere in  
24 the statute or in any case that you ever deduct what was prior



1 done or previously done by any execution, whether it pertains  
2 to this creditor or whether it pertains to five creditors. I  
3 mean, you could see in one case, the debtor claims an  
4 exemption of \$10,000, and if the statute said that was limited  
5 only by the \$10,000 claimed in that case, that you'd then have  
6 to start talking in the next case that the debtor may have  
7 about what they claimed in the prior case because they've  
8 already exempted property and used property up from a previous  
9 execution. And there's nothing like that in the statute  
10 limiting the Court's analysis.

11 So I think it's at the time of execution that we  
12 look at what property there is and what's exempt and that the  
13 statute does not require any limitation as to reduction of the  
14 exemption.

15 THE COURT: Is the effect of the application that  
16 you urge, is the effect of that that earnings are completely  
17 exempt?

18 MR. MILLWARD: Well, so I kind of think that the  
19 legislature has done two things here. I think that they have  
20 said to the unsophisticated debtor that doesn't file their  
21 exemption that they're absolutely going to lose 25 percent of  
22 their wages if they don't stand up and take advantage of their  
23 rights, and I would imagine that that's because the vast  
24 majority of debtors that have judgments don't. They don't

1 file a claim of exemption.

2 But I think that also if a debtor makes that  
3 claim and makes that filing, that there is no other  
4 alternative for the Court to apply the statute as written,  
5 unless we're getting into, you know, believing that the  
6 statute is, by the way it's written, ambiguous or would create  
7 an absurd result that the legislature intended something else.

8 So I think you're right as to most debtors. Now,  
9 you know, I'm sure there are people in the world that within  
10 180 days exceed \$10,000 -- you know, 180 days exceed \$10,000  
11 when that \$10,000 would equate to 25 percent of their  
12 otherwise exempt income under G. But this debtor is not that  
13 person.

14 THE COURT: Thank you.

15 Mr. Dubowsky, because I previously ruled on this  
16 issue, I want you to fully understand and know that I am very  
17 open minded to somebody telling me I was wrong and educating  
18 me on that, and if you prove that, I would be the first to say  
19 I'm wrong and thank you for correcting me.

20 That's why I peppered you with questions because  
21 I wanted to be challenged with my prior order. And so, again,  
22 here today, I'm giving you every opportunity to say why  
23 that -- really why my prior order was wrong, because  
24 otherwise, I'm going to rule consistently with that.

1           And it really -- it comes down to, first and  
2           foremost, the statute itself and we have three people here,  
3           the two counsel and myself saying it's an unambiguous statute.

4           And so I'm going to give you a chance here to  
5           reply to Mr. Millward, but I'm going to tell you what's of the  
6           biggest import to me is the statute itself and its wording,  
7           and your concerns seem to be more with the application of it  
8           later on and difficulty with that.

9           But my job here is to read what the legislature  
10          said and to apply it. And so I want you to pay particular  
11          attention in your reply to the statute itself and why the  
12          Court should look at it the way you are, and I welcome your  
13          comments on that.

14          But I don't want to rehash what you already spent  
15          the first half hour on. I really need to wrap this up. But I  
16          kind of wanted to tell you what's important here to me. If  
17          I'm wrong on how I'm reading that statute, this is your  
18          opportunity to straighten me out on that.

19          Go ahead.

20          MR. DUBOWSKY: Thank you, Your Honor, and I do  
21          know Your Honor is always open to reconsidering. As  
22          Your Honor knows, we've had some cases together and you've  
23          done exactly that in the past. So that's when you had a  
24          beard, so it was --

1           Your Honor, listening to what Mr. Millward said  
2 proves my point because as the Carson-Tahoe Hospital says, you  
3 cannot make any interpretation where the statutory language is  
4 meaningless or absurd result.

5           Mr. Millward just told you that if we don't reach  
6 10,000 on this wage garnishment, we renew in six months, he's  
7 going to say I want another 10,000.

8           Where in the statute does it say you can do  
9 10,000, 10,000, 10,000, 10,000? You renew the judgment in six  
10 years, I'll do 10,000, 10,000, 10,000. It's obvious that  
11 that's not what the statute is contemplating because that's an  
12 absurd result.

13           And again, Your Honor, I think I cited to it  
14 before, you can't do -- and it's the Savage versus Pierson  
15 case, you must do as little injury as possible to the  
16 creditor.

17           But we have a judgment creditor, Platte River,  
18 with what Mr. Millward is persuading Your Honor to do is say,  
19 well, lock them out of court basically when it comes to  
20 judgment enforcement. They cannot touch those wages, we're  
21 going to take 10,000, 10,000, 10,000. We're going to make  
22 that exemption, we're going to keep it, literally, Your Honor,  
23 in a (indiscernible) amount. They cannot -- that absurd  
24 result cannot follow.

1                   And again, I know I said it before, Your Honor,  
2 but if that language any property not otherwise exempt  
3 pursuant to subsection, if the statute means the same thing  
4 with or without that language, then Your Honor's  
5 interpretation is wrong with all due respect to say Your Honor  
6 is wrong.

7                   But if you're interpreting the same way with that  
8 language or without that language, then you're making that  
9 language meaningless and you cannot do that.

10                  THE COURT: Okay. Thank you very much. I  
11 appreciate the arguments of both counsel and I'm ready to  
12 issue a ruling.

13                  Mr. Dubowsky, you can go ahead and have a seat  
14 and, Mr. Millward, I'm going to ask that you prepare an order  
15 from today's hearing consistent with the arguments you raised  
16 in your opposition, which are also, of course, consistent with  
17 the Court's prior ruling in Stroud.

18                  It's important that Court's rulings are  
19 consistent and as I've indicated to Mr. Dubowsky, it's okay to  
20 not be consistent if you're proven to be wrong.

21                  But here, Mr. Dubowsky, the arguments you made  
22 have not swayed me that I was incorrect in the prior case.  
23 And again, I look at this court's role. I'm not the  
24 legislature and it's really not my function to figure out how



1 the law might later be applied and what issues that might  
2 create and whether it's a good law or not.

3 The question here is: What does the statute say?  
4 And I define that the statute is unambiguous and rather than  
5 restate everything, it is a legal issue, purely a legal issue.

6 Mr. Millward, I'm going to ask that, again, you  
7 create an order that's consistent with your position in the  
8 motion -- or your opposition as well as my prior order.

9 The only part of your opposition that I do not  
10 want to get into is the legislative history. Because the  
11 statute is unambiguous and we've all agreed on that, there is  
12 no basis to go to legislative history. And so I think that is  
13 in your opposition beginning at page 11 and Mr. Dubowsky also  
14 talked about the legislative history.

15 But in any event, my order should not that it all  
16 go into the legislative history, it's basically straight  
17 statutory construction. And I disagree that the Court's  
18 interpretation is rendering any portion of Subsection Z to be  
19 without meaning or that I'm reading something out of the  
20 statute or that a part of the statute is superfluous.

21 Each of those arguments, by the way, were  
22 addressed in my prior order, including that this would have  
23 absurd results. The Court weighed in on that already on the  
24 prior case. I do not need to decide today and I'm not

1 deciding today how payroll should handle this.

2 That, again, is not my function, nor am I called  
3 upon today to decide what happens in six months. We might be  
4 back here again and we'll see what happens. I don't know.  
5 But my decision here today is as restrictive as can be. I'm  
6 not going to guess where this case might go or where other  
7 cases might go in the future.

8 So I'm basing my decision solely on what's in  
9 front of me today and what the statute states.

10 Mr. Millward, are you -- I know I've just kind of  
11 referred to your opposition and to my prior motion or my prior  
12 order, but are you clear on what my ruling is and do you have  
13 anything you would ask to be clarified?

14 MR. MILLWARD: No, Your Honor, I don't believe I  
15 have any questions and I will look to your prior order as kind  
16 of the basis for this order for the most part.

17 And is there anything in that prior order that  
18 you would not want included in this order or at least the  
19 Court's analysis.

20 THE COURT: Well, not from the analysis  
21 standpoint, no. I think one thing that is in your opposition  
22 that is important to add is your citation to the very first  
23 part of the statute. So 21.090, Subsection 1, that very first  
24 language that you emphasized in your brief and also in your

1 argument today I think is important. That specifically states  
2 the following property is exempt from execution except as  
3 otherwise specifically provided in this section.

4 MR. MILLWARD: Okay.

5 THE COURT: I would spend a little bit more time  
6 with my findings if we didn't -- if I didn't have another case  
7 pending.

8 MR. MILLWARD: I understand.

9 THE COURT: But I figured with the prior order as  
10 well as your opposition, that it was pretty clear what my  
11 rulings are.

12 Mr. Dubowsky, I'd like to give you a chance, too.  
13 Is there anything you would ask that I clarify so that we have  
14 a clear record here today?

15 MR. DUBOWSKY: No, Your Honor. I think you  
16 already addressed it. I was concerned about the -- this  
17 ongoing garnishment, if it exceeds 10,000, then we know it's  
18 not exempt, but to keep that the future garnishment in six  
19 months is an open issue, and that's what's important. So  
20 we'll probably be back here again if we don't get it resolved.

21 THE COURT: All right.

22 MR. DUBOWSKY: So as long as that's open --

23 THE COURT: All right. Very good.

24 MR. DUBOWSKY: -- then, you know, you haven't

1 made a decision as to that.

2 THE COURT: Sounds good. And then of course  
3 nothing prohibits the parties from talking about that and  
4 maybe avoiding further litigation and needing to be back in  
5 court. If that doesn't happen, though, I'll be here to help  
6 you out. All right?

7 MR. MILLWARD: Thank you, Your Honor.

8 THE COURT: The Court stands in recess.

9 MR. DUBOWSKY: Thank you, Your Honor.

10 (Proceedings concluded.)  
11  
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1 STATE OF NEVADA, )  
2 ) ss.  
3 CARSON CITY. )

4 I, Shellie Loomis, Transcriber, do hereby certify:  
5 That I transcribed from CD-ROM the within-entitled  
6 hearing;

7 That the foregoing transcript, consisting of pages  
8 1 through 48, is a full, true and correct transcript of  
9 said hearing to the best of my ability.

10  
11 Dated at Carson City, Nevada, this 5th day of  
12 January, 2021.

13

14

15

  
//SHELLIE LOOMIS//  
Shellie Loomis, RPR

16

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1 Shellie Loomis  
2 Capitol Reporters  
3 628 East John Street, Ste. 3  
4 Carson City, NV, 89706  
5 (775) 882-5322

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

7 IN AND FOR THE COUNTY OF DOUGLAS

8 THE HONORABLE THOMAS W. GREGORY

9 PLATTE RIVER INSURANCE COMPANY,

10 Plaintiff,

11 vs.

12 EUREKA BUILDERS, INC, a revoked  
13 Nevada corporation; and  
14 LANCE JACKSON and SUSAN JACKSON  
15 Each individually as personal  
16 Indemnitors; and  
17 DOES I-X and ROE CORPORATIONS  
18 I-X, inclusive,

19 Defendants.

20 **AFFIRMATION**

21 Pursuant to NRS 239B.030

22 The undersigned does hereby affirm that the following  
23 document **DOES NOT** contain the social security number of  
24 any person:

25   
26 SHELLIE LOOMIS  
27 Shellie Loomis

28 CAPITOL REPORTERS (775) 882-5322

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

5  
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.

NOTICE OF ENTRY OF ORDER

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.

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 6<sup>th</sup> 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

NOTICE OF ENTRY OF ORDER

PAGE 1 OF 2



AA112

**CERTIFICATE OF SERVICE**

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

Carson City Sheriff  
911 East Musser Street  
Carson City, NV 89701

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

Douglas County Sheriff  
PO Box 208  
Minden, NV 89423

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

Ashley Voss Legal Assistant





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SEP 11 2020

Douglas County  
District Court Clerk

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DOUGLAS COUNTY

D. GOELZ

CLERK

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 indemnitors; )  
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 74<sup>th</sup>  
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.<sup>5</sup>

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.<sup>6</sup> 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).<sup>7</sup>

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).<sup>8</sup> 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*.<sup>9</sup>

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  
25  
26

27 <sup>5</sup> Id. at pp.3-4.

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

28 <sup>7</sup> Id. at pp.5-6.

<sup>8</sup> Id. at pp.7-9.

<sup>9</sup> 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.

### 25 ANALYSIS

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

26 \\\

27 \\\

28 \\\



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

4 The Nevada Supreme Court has stated that "[w]e liberally and beneficially construe  
5 our state exemption statutes in favor of the debtor."<sup>12</sup> Further, "unless ambiguous, a  
6 statute's language is applied in accordance with its plain meaning."<sup>13</sup> 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.<sup>14</sup>

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.

<sup>10</sup> Nevada Constitution, Article 1, Section 14.

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

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

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

<sup>14</sup> *Becker v. Becker*, 362 P.3d 641, 645 (2015).



(2) Any personal property not otherwise exempt from execution pursuant to this subsection belonging to the judgment debtor, including, without limitation, the judgment debtor's equity in any 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.<sup>15</sup>

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

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

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

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

<sup>15</sup> NRS 21.090(1).

<sup>16</sup> NRS 21.090(1).

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

<sup>18</sup> *Id.*

<sup>19</sup> NRS 21.090(1)(z).

<sup>20</sup> *Id.*

<sup>21</sup> *Id.*



1 definition, her personal property.<sup>22</sup> 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.<sup>23</sup> 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.<sup>24</sup>

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.<sup>25</sup>

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.<sup>26</sup> Seventy-five percent of Susan's earnings are absolutely exempt without  
15 qualification pursuant to NRS 21.090(1)(g).<sup>27</sup> 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.<sup>28</sup>

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.

22 \ \

23 \ \

24  
25 <sup>22</sup> 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 <sup>23</sup> *Cf.* NRS 21.090(1)(g)(2); NRS 21.090(1)(z).

28 <sup>24</sup> *Id.*

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

<sup>26</sup> *Id.*

<sup>27</sup> NRS 21.090(1)(g).

<sup>28</sup> 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).

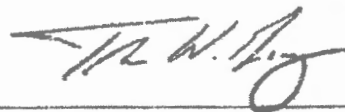
7 3. That the Carson City Sherriff is directed to deliver to Susan Jackson all exempt  
8 earnings it has received by the Garnishee State of Nevada, Office of the State Controller,  
9 101 N. Carson Street, Carson City, Nevada 89701-4786 (hereinafter "Garnishee"), where  
10 the Garnishee has not provided 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 29<sup>th</sup> day of September, 2020.

25  
26 

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 11<sup>th</sup> day of September, 2020

By: 

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

RECEIVED

FILED

OCT 15 2020

2020 OCT 15 PM 2:00

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.

BOBBIE R. WILLIAMS  
CLERK

BY *W. R. Williams* DEPUTY

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*

Peter Dubowsky, Esq.

Nevada Bar No. 4972

300 South Fourth Street Suite 1020

Las Vegas, Nevada 89101

(702) 360-3500

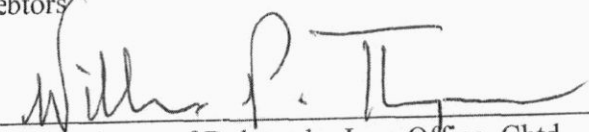
Fax (702) 360-3515

Attorney for Judgment Creditor

**CERTIFICATE OF MAILING**

I hereby certify that on the 15<sup>th</sup> 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.



12/2/20

Case No: 19-CV-0197

Dept.: II

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

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

\* \* \* \* \*

PLATTE RIVER INSURANCE COMPANY )  
Plaintiff, )

vs. )

**AFFIDAVIT OF CLAIM EXEMPTION**

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. )

I, SUSAN JACKSON, also known as Susan Jacobsen, being duly sworn, deposes and  
says the following under the pains and penalties of perjury:

1. That I am informed and believe that on or about November 16, 2020, a Writ of  
Execution was issued by the Court Clerk of the Ninth Judicial District Court of Douglas  
County, Nevada (hereinafter "Court Clerk") in favor of and at the request of PLATTE RIVER  
INSURANCE COMPANY;

2. That I received a copy of the Notice of Execution from Ninth Judicial District  
Court Clerk on December 1, 2020 via a personal request of a copy of the document by  
Millward Law, Ltd;

3. That this Affidavit of Claim of Exemption is made pursuant to NRS 21.090, NRS  
115.010;

1           4.     That I claim the following property as exempt pursuant to NRS 21.090, NRS  
2 115.010, and NRS 115.050:

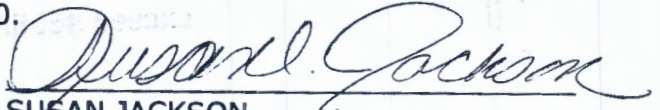
- 3           a. All equity that I have in my homesteaded residence which does not  
4           exceed \$605,000. I have recorded a claim of Homestead concerning my  
5           residence located at 1663 Lantana Drive, Minden, NV 89423, which  
6           homestead was recorded with the records of the Douglas County  
7           Recorder on September 27, 2017, as Document Number 904846. This  
8           claim of homestead is made pursuant to NRS 21.090(1)(m), NRS  
9           115.010, NRS 115.050 as amended by AB481 which was signed into law  
10          on May 15, 2019;
- 11          b. All of my private library, works of art, musical instruments, jewelry not  
12          exceeding \$5,000 in value as well as all of my keepsakes and family  
13          pictures as exempt from execution pursuant to NRS 251.090(1)(a);
- 14          c. All of my necessary household goods, furnishings, electronics, wearing  
15          apparel, and other personal effects not to exceed \$12,000 in value as  
16          exempt from execution pursuant to NRS 21.090(1)(b);
- 17          d. Seventy-five percent of my "disposable earnings" which are my earnings  
18          after the deduction of federal income tax, Medicare and Social Security  
19          taxes as exempt from execution pursuant to NRS 21.090(1)(g),  
20          including funds held in any account at a financial institution;
- 21          e. All other income and "disposable earnings" that are not otherwise  
22          exempt in NRS 21.090(1)(g) up to \$10,000 pursuant to NRS  
23          21.090(1)(z), including funds held in any account at a financial  
24          institution;
- 25          f. All money, up to \$1,000,000, held in a retirement plan in accordance  
26          with Internal Revenue Code, including but not limited to, an IRA, 401k,  
27          403B, or other qualified stock bonus, pension, or profit-sharing plan to  
28          be exempt from execution pursuant to NRS 21.090(1)(r); and



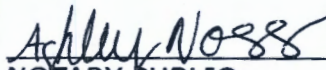
1 g. My 2019 Jeep Grand Cherokee not to exceed \$15,000 in equity pursuant  
2 to NRS 21.090(1)(f).

3 Further Affiant sayeth naught.

4 DATED this 2<sup>nd</sup> day of December, 2020.

5   
6 SUSAN JACKSON

7 SUBSCRIBED and SWORN to before me  
8 this 2<sup>nd</sup> day of December, 2020.

9   
10 NOTARY PUBLIC



**CERTIFICATE OF SERVICE**

Pursuant to NRCF 5(b), I hereby certify that service of the *Affidavit of Claim Exemption* was made on December \_\_\_\_, 2020, by depositing a true and correct copy of the same for mailing, postage prepaid, addressed to the following:

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

Carson City Sheriff's Office  
911 E Musser St.  
Carson City, NV 89701

Douglas County Sheriff's Office  
P.O. Box 218  
Minden, NV 89423

\_\_\_\_\_  
Ashley Voss, Legal Assistant



Case No: 19-CV-0197

Dept.: II

The undersigned affirms that this document does not  
contain personal information, pursuant to NRS 603A.04C

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 indemnitors; and )  
DOES I-X and ROE CORPORATIONS I-X )  
inclusive )  
Defendants. )

**BRIEF IN SUPPORT OF LANCE  
JACKSON & SUSAN JACKSON'S  
AFFIDAVITS OF EXEMPTION**

COME NOW, Defendants Lance Jackson and Susan Jackson by and through their  
attorney, Michael G. Millward, Esq., of Millward Law, Ltd., and hereby submits their Brief in  
Support of their Affidavits of Exemption.

Dated this 18<sup>th</sup> day of January, 2021.

**MILLWARD LAW, LTD.**

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

**I. INTRODUCTION**

Platte River Insurance Company (hereinafter "Plaintiff" or "Platte River") filed its *Motion to Determine Issue of Exemption* (hereinafter "Objection") to enforce its judgment by executing upon Lance Jackson (hereinafter "Lance") and Susan Jackson's (hereinafter "Susan") earnings held in Susan's Wells Fargo Checking and Savings accounts.

Platte River and the Sheriff involved with the execution have not provided the requisite notices required by NRS 21.112 for the Court to have jurisdiction to consider Platte River's Objection. Accordingly, this matter is not properly before the Court and the levied or garnished funds should be ordered returned to Susan and Lance pursuant to NRS 21.112(4).

Even though Platte River asserts otherwise, Susan and Lance have between them over \$14,000 in unused Wild Card Exemption as provided by NRS 21.090(1)(z). To date, Lance has not used or applied any of his \$10,000 exemption in the matter.

Additionally, the sums levied are also exempt pursuant to NRS 21.090(1)(g). In Lance and Susan's respective *Affidavit of Claim of Exemption*, they each claimed that 75% of their earnings after deduction of amounts withheld were exempt pursuant to NRS 21.090(1)(g) "including funds held in any account at a financial institution." (1).

Based upon the argument set forth hereinbelow, the Court should conclude that Lance and Susan Jackson have not been received or been served with the requisite statutory notices required by NRS 21.112 for the Court to be able to consider Platte River's Objection.

Alternatively, if the Court concludes that it does have jurisdiction over Platte River's Objection and it is appropriate to require the matter be decided under the framework set forth under NRS 21.112, Lance and Susan request that the Court carefully consider the evidence provided as well as the summaries, and determine that the funds levied or garnished by Platte River are fully exempt from execution pursuant to NRS 21.090(1)(g) and NRS 21.090(1)(z).

\\

\\

\\



1 **II. ISSUES PRESENTED**

2 The following issues are presented to the Court within this brief:

3 A. Whether Platte River's Motion/Objection is properly before the Court?

4 B. Whether the levied or garnished funds are exempt from execution?

5 **III. FACTS AND PROCEDURAL HISTORY**

6 On June 2, 2020, the Court entered Judgment against Defendants Eureka Builders,  
7 Inc., and Lance Jackson (hereinafter "Lance") and Susan Jackson (hereinafter "Susan") in  
8 the total sum of \$47,912.89.

9 On July 31, 2020, at Platte River's request, the Court Clerk issued a Writ of Execution  
10 directing the Sheriff of Carson City to satisfy the judgment.

11 On August 20, 2020, upon receipt of the notice of the Writ of Execution, Lance and  
12 Susan Jackson filed their respective *Affidavit of Claim of Exemption* (hereinafter "Affidavit")  
13 claiming an exemption of their earnings pursuant to NRS 21.090(1)(g) and NRS  
14 21.090(1)(z).

15 On August 27, 2020, Platte River objected to Susan's Affidavit by filing its *Motion to*  
16 *Determine the Issue of Exemption* (hereinafter "Motion").

17 Lance and Susan filed their *Opposition to Platte River's Motion Regarding Exemption*  
18 (hereinafter "Opposition") on September 1, 2020.

19 On Friday September 4, 2020, the Court held a hearing upon Plaintiff's *Motion to*  
20 *Determine the Issue of Exemption*.

21 On September 29, 2020, the Court entered its Order Upon Claim of Exemptions,  
22 determining therein that seventy-five percent (75%) of Susan's earnings are exempt from  
23 execution pursuant to NRS 21.090(1)(g). The Court further determined that the remaining  
24 twenty-five percent (25%) of Susan's earnings are exempt up to the total sum of \$10,000  
25 "during the pendency of the garnishment."

26 On November 16, 2020, a Writ of Execution was issued by the Court Clerk of the  
27 Ninth Judicial District Court at the request of Defendant.  
28

1 On November 16, 2020, Joshua Burns filed with the Carson City Sheriff's Office his  
2 Declaration of Service pertaining to the service of the July 31, 2020 Writ of Execution and  
3 Writ of Garnishment. Mr. Burn's Declaration provides that service was made August 13,  
4 2020, and that the Writs were served by serving Christina Moresi.

5 On or about November 30, 2020, Susan Jackson became aware that \$727.71 had  
6 been garnished from her Wells Fargo Checking Account and \$10,317.35 had been garnished  
7 from her Wells Fargo savings account.

8 On December 1, 2020, counsel for Lance and Susan requested and received a copy of  
9 the November 16, 2020 *Notice of Execution* from the Ninth Judicial District Court Clerk.

10 On December 2, 2020, Lance and Susan filed their respective *Affidavits of Claim of*  
11 *Exemption* and served the same upon the Douglas County Sheriff, the Carson City Sheriff,  
12 and Plaintiff's Counsel.

13 On December 7, 2020, Plaintiff filed its *Motion to Determine the Issue of Exemption*  
14 (hereinafter "Objection"), therein indicating that the Objection had been served upon the  
15 Douglas County Sheriff, the Carson City Sheriff, and Millward Law. The Court Clerk's docket  
16 does not indicate that Plaintiff has filed a Certificate of Service indicating that Wells Fargo  
17 was served with a copy of the Objection.

18 On December 14, 2020, Ashley Voss, an employee of Millward Law served Wells Fargo  
19 with a copy of Lance and Susan's Affidavits of Exemption.

#### 20 **IV. ARGUMENT**

##### 21 **A. Whether Platte River's Motion/Objection is properly before the Court?**

22 Platte River's Objection to the affidavits of claim of exemption filed herein is not  
23 properly before the Court under the provisions of NRS 21.112.

24 NRS 21.112 requires the sheriff and judgment creditor do several things in order for  
25 the Court to have Jurisdiction over the matter.

26 The United State Supreme Court has stated that "[a]n essential principle of due  
27 process is that a deprivation of life, liberty, or property 'be preceded by notice and  
28 opportunity for hearing appropriate to the nature of the case.'" *Cleveland Bd. of Educ. v.*



1 *Loudermill*, 470 U.S. 532, 542 (1985)(quoting *Mullane v. Central Hanover Bank & Trust Co.*,  
2 339 U.S. 306, 313 (1950)).

3 Unfortunately, the following argument demonstrates that the notice provisions  
4 established under NRS 21.112 for the purpose of protecting the due process rights of  
5 Judgment Debtors and other interested parties has not been followed concerning the subject  
6 garnishment / levy of the Jacksons' financial account:

7 **1. Required Notice of Writ of Execution not Served**

8 Nevada law protects Judgment Debtors' due process right from the unlawful seizure of  
9 otherwise exempt property by way of the requirements and process outlined in NRS 21.112.

10 Pursuant to NRS 21.112(1), a Sheriff must serve a notice of Writ of Execution or Writ  
11 of Garnishment identifying "the specific property that is being levied" upon "the judgment  
12 debtor by mail pursuant to NRS 21.076." NRS 21.112(1).

13 Under NRS 21.076 the notice "**must** be served by the sheriff on the judgment debtor  
14 by regular mail **at the debtor's last known address or, if the debtor is represented by**  
15 **an attorney, at the attorney's office.**" NRS 21.076.

16 In this case, the Execution underlying the recent execution or garnishment of funds  
17 from Susan Jackson and Lance Jackson's Wells Fargo bank account was issued by the Ninth  
18 Judicial District Court Clerk on November 16, 2020.

19 To date no Notice of Execution concerning the November 16, 2020, Writ of Execution  
20 has been filed and served upon the Jacksons or the undersigned by Platte River, or by the  
21 Douglas County or Carson City Sheriff's offices.

22 Pursuant to NRS 21.076, the notice of the writ "must be mailed by the next business  
23 day after the day the writ of execution was served." Assuming that the Writ of Execution  
24 and/or Writ of Garnishment was served upon Wells Fargo on or before November 30, 2020,  
25 then the sheriff serving the writ had a duty to provide service by mail to Lance, Susan,  
26 and/or the undersigned by December 1, 2020. NRS 21.112(1).

27 The Jacksons were able to obtain a copy of the Writ of Execution from the Ninth  
28 Judicial District Court Clerk after being notified by Wells Fargo that the funds in their account

1 had been levied or garnished. A copy of the Writ of Execution obtained from the Ninth  
2 Judicial District Court is attached as **Exhibit 1**.

3 However, the Jacksons have not received any notice regarding how the funds were  
4 seized and/or garnished from Wells Fargo, or whether or not the funds executed against  
5 them constitute the full extent of the property executed against. In fact, the Jacksons are  
6 unaware of which Sheriff's Office was involved with the service of the writ of garnishment or  
7 writ execution on Wells Fargo.

8 Even though this defect in notice may not be the fault of Platte River, as a judgment  
9 creditor seeking to execute against property by way of the government of the State of  
10 Nevada, Platte River jointly bears the burden to ensure that Susan and Lance's Due Process  
11 rights are not being violated.

12 Accordingly, the Court should conclude that the failure to provide statutory notice as  
13 to the current proceedings is fatal to Platte River's efforts to execute against the Jacksons'  
14 Wells Fargo Accounts. The Court must therefore direct the funds be returned to the  
15 Jacksons.

## 16 **2. Improper Service of Objection to Affidavits of Claim of Exemption**

17 Nevada law requires that a Judgment Creditor serve their Objection to a claim for  
18 Exemption on the Judgment Debtor, Sheriff and any garnishee. NRS 21.112(3) provides  
19 that once a claim of exemption is served, the judgment creditors "objection to the claim of  
20 exemption and notice for a hearing must be filed . . . and served on the judgment debtor,  
21 the sheriff and any garnishee. NRS 21.112(3).

22 Platte River's Objection was not served on the Wells Fargo Bank as required by NRS  
23 21.112(3). Accordingly, Wells Fargo's statutory rights to notice of Platte River's Objection  
24 and to appear or comment on the same in respect to the levy and / or garnishment have  
25 gone unobserved.

26 Failure of Platte River to provide requisite Notice to Wells Fargo should weigh in favor  
27 of a determination that the Court does not have jurisdiction to consider Platte River's  
28 Objection.



**3. No Notice of Hearing within 5 Judicial Days.**

Once a hearing has been set upon a Judgment Creditor's objection to a judgment debtor's claim of exemption, Nevada law requires that the Judgment Creditor "serve notice of the date of the hearing on the judgment debtor, the sheriff and any garnishee not less than 5 judicial days before the date set for the hearing. NRS 21.112(3).

The filing made in this case establish that neither the Douglas County Sheriff or the Carson City Sheriff or Lance, Susan, or the undersigned received a Notice of Hearing filed by Platte River prior to the hearing upon the Objection to Lance and Susan's claims of exemption.

It is true that this matter was set for hearing by way of Court Order six days prior to the date of the hearing, however, it is Platte River's obligation under NRS 21.112(3) to provide proper notice, and not the Courts.

Lance and Susan have clearly objected to Platte River's failure to give proper notice of the hearing. Furthermore, failure to meet statutorily required notice requirements is jurisdictional. See NRS 21.112. Failure to comply with statutory notice statutes creates a jurisdictional defect that renders the subsequent proceedings void. See *e.g. Bogart v. Lathrop*, 90 Nev. 230, 523 P.2d 838 (1974)(*holding* that "failure to give the statutorily required notice renders subsequent tax deed void. . . . Failure to send such notice resulted in a jurisdictional defect, which rendered all subsequent proceedings void."); *Bell v. Anderson*, 109 Nev. 363, 849 P.2d 350 (1993).

Because NRS 21.112 specifically requires that certain persons and entities be provided with specific notice prior to the hearing the Court is without jurisdiction to conduct a hearing upon Platte River's Objection. Accordingly, the Objection must be taken as improperly before the Court, and the provision of NRS 21.112(4) which provides that "the property of the judgment debtor be released by the person who has control or possession of the property in accordance with the instructions set forth on the form for the claim of exemption provided pursuant to Subsection 2 within 9 judicial days after the claim of exemption has been served." NRS 21.112(4).

1 Therefore, Lance and Susan Jackson request that the Court conclude that it does not  
2 have jurisdiction to consider Platte River's Objection, and that it is appropriate under the  
3 circumstances that any and all seized funds and other property be returned to Lance and  
4 Susan within nine days of the Court's Order.

5 **A. Whether the Jacksons are able to Exempt the Levied Funds?**

6 Assuming that the Court determines that it has jurisdiction in this matter to hear  
7 Plaintiff's Objection, the Court should conclude that the levied funds from Lance and Susan's  
8 Wells Fargo accounts are fully exempt.

9 In Platte River's Objection, it seeks to have the Court rule that none of the garnished  
10 funds levied upon are exempt, because Platte River alleges, without providing any specific  
11 facts or documentation, that Lance and Susan had already exhausted their exemptions. See  
12 Pl. 12/7/2020 Mot., p.2

13 However, Platte River does not assert that Lance and Susan are unable to claim the  
14 wage garnishment exemption under NRS 21.090(1)(g) (hereinafter "Wage Exemption") as to  
15 the levied funds from the Wells Fargo Checking and Savings Accounts and Platte River fails  
16 to address whether any portion of the "wildcard exemption" provided for under NRS  
17 21.090(1)(z) (hereinafter "Wildcard Exemption") remains available to Lance.

18 NRS 21.112 provides that debtor's "burden to prove that he or she is entitled to the  
19 claim of exemption" arises at the hearing upon the objection to the claim of exemption. NRS  
20 21.112(6). Accordingly, Lance and Susan's obligation to provide substantiating evidence  
21 that the garnished funds are exempt that would arise at the time of the hearing, arises  
22 within this brief as agreed by the parties.

23 To determine whether all or a portion of the \$727.71 that was garnished or levied  
24 from the Wells Fargo Checking Account ending in 7749 (hereinafter "7749 Account") and the  
25 \$10,317.35 garnished from the Wells Fargo Savings Account ending in 1744 (hereinafter  
26 "1744 Account") are exempt, three separate issues must be resolved, to wit: (1) whether  
27 Susan and Lance have any exemptions remaining available to them; (2) whether the funds  
28



1 levied are from a source that available exemptions may be applicable; and (3) what portion  
2 of levied funds are exempt.

3 **1. Susan and Lance have not Exhausted their Exemptions**

4 Susan and Lance previously filed Affidavits of Claim of Exemption on August 20, 2020  
5 in response to a Notice of Writ of Execution. In Susan's August 20<sup>th</sup> Affidavit of Exemption,  
6 she exempted 75% of her earnings pursuant to the Wage Exemption found under NRS  
7 21.090(1)(g) and she exempted the remaining 25% under the Wildcard Exemption found in  
8 NRS 21.090(1)(z).

9 Even though Platte River Objected to Susan's August 20, 2020 Affidavit of Exemption,  
10 the Court determined that Susan was able to claim both the Wage Exemption and the  
11 Wildcard Exemption. The Court further determined that the remaining 25% percent of  
12 Susan's earnings not otherwise exempt by the Wage Exemption were exempt up to the total  
13 sum of \$10,000 "during the pendency of the garnishment." Ct. 9/29/2020 Ord., p.8.

14 The Wage Exemption is an unlimited exemption. See NRS 21.090(1)(g). However,  
15 the Wildcard Exemption has a dollar limitation preventing a debtor from exempting more  
16 than the \$10,000 in property at any given time. See NRS 21.090(1)(z).

17 Regardless of the application of NRS 21.090(1)(z), whether it be a onetime  
18 exemption, or a continuing exemption, Susan continues to have a considerable amount of  
19 the Wildcard Exemption remaining available to her. As well, Lance Jackson's Wildcard  
20 Exemption remains untouched and the \$10,000 is fully available to be claimed by him over  
21 the levied or garnished funds.

22 To establish the amount available to Susan, it is necessary to review her bank  
23 statements for her Wells Fargo Checking Account ending 7749 and her Wells Fargo Savings  
24 Account ending 1744 for the time period of July of 2020 through December of 2020. Susan's  
25 Wells Fargo Statements are attached hereto as **Exhibit 2**. Additionally, Susan has provided  
26 the Court with her Payroll Statements for the same timeframe and attached hereto as  
27 **Exhibit 3**. Lance also provides the Court with copies of his Wells Fargo Checking Account  
28 statements for June of 2020 through December of 2020 for his checking account ending



1 1176. Lance's Wells Fargo statements are attached as **Exhibit 4**. In addition to Lance's  
2 Wells Fargo statements, Lance provides the Court with his Declaration therein attesting that  
3 he is an independent contractor and that the deposits to his Wells Fargo account constitute  
4 his earnings. Lance's Declaration is attached as **Exhibit 5**.

5 As additional support for Susan and Lance's positions taken herein, Susan has  
6 summarized her Wells Fargo Statements, and her Payroll Statements in several  
7 spreadsheets. A summary of the Wells Fargo Savings Account ending in 1744 for each  
8 monthly statement provided in Exhibit 1 is attached for demonstrative and illustrative  
9 purposes as **Exhibit 6**. A summarized application of the Wage Exemption and the Wildcard  
10 Exemption is attached for demonstrative and illustrative purposes as **Exhibit 7** (hereinafter  
11 "Exemption Spreadsheet" or "Exhibit 6"). A summary of Lance and Susan's deposit of wages  
12 and earnings to Susan's Wells Fargo Checking and Savings Account is attached for  
13 demonstrative and illustrative purposes as **Exhibit 8**.

14 The Exemption Spreadsheet summarizes information that may be verified by Susan's  
15 Wells Fargo Statements and her Payroll Statements. The based upon Susan's earnings, and  
16 the sums exempt from garnishment under the Court's September 29, 2020 Order, the  
17 Exemption Spreadsheet provides that as of December 11, 2020, Susan has utilized a total of  
18 \$5,129.13 of her Wildcard Exemption. This computes to be about \$641.14 per pay check.

19 Thus, between Susan and Lance, they each have an unlimited amount of Wage  
20 Exemption available under NRS 21.090(1)(g), and as of December 11, 2020, a total of  
21 \$14,870.87 (\$10,000 - \$5,129.13 + \$10,000) of Wildcard Exemption available under NRS  
22 21.090(1)(z).

## 23 **2. FIFO Establishes Wage Exemption is Applicable to Levied Funds**

24 After application of the "First-In First-Out" method of tracing to the garnished Wells  
25 Fargo accounts, the Court should determine that the funds levied were subject to the Wage  
26 Exemption.

27 On November 30, 2020, Platte River executed or garnished Susan's Wells Fargo  
28 Checking and Savings Accounts. The amount taken from Susan's Wells Fargo Checking



1 Account ending in 7749 was \$727.71. The amount taken from Susan's Wells Fargo Savings  
2 Account ending in 1744 was \$10,317.35.

3 From June 2020 to December 2020 Lance and Susan contributed their wages and  
4 earnings to Susan's Wells Fargo accounts 7749 and 1744. During the same timeframe, they  
5 paid expenditures out of said accounts. In order to determine whether NRS 21.090(1)(g) is  
6 applicable to the funds in accounts 7749 and 1744, we to determine the source of funds.

7 To trace out deposits into a comingled account Nevada Courts employ the first in and  
8 first out accounting method (hereinafter "FIFO"). *In re Christensen*, 122 Nev. 1309, 1325,  
9 149 P.3d 40, 49 (2006).

10 The Nevada legislature has also codified the use of FIFO in NRS 21.105(5). Pursuant  
11 to NRS 21.105(5), "[t]o determine whether such money in the account is exempt, the  
12 judgment creditor must use the method of accounting which applies to the standard that the  
13 first money deposited in the account is the first money withdrawn from the account." *Id.*

14 Thus, Lance and Susan provided the following tracing for funds for the 7749 Account  
15 and the 1744 Account:

16 **Wells Fargo Checking Account ending in 7749**

17 Utilizing FIFO, Lance and Susan's Wells Fargo Account statements easily establish that  
18 the funds in account 7749 are Lance and Susan's wages. In Susan's November 11, 2020  
19 Wells Fargo Statement attached as part of **Exhibit 2**, account 7749 had a balance of  
20 \$846.59 on October 14, 2020. See Ex. 2 (October 20, 2020 Statement).

21 Between October 14, 2020 and November 11, 2020, account 7749 had deposits of  
22 \$8,934.92. See Ex. 2, November 11, 2020 Statement. The deposits and transfers in during  
23 the period consist of \$3,900 derived from Lance's earnings that were transferred from  
24 Lance's Account ending 1176 via ATM Transfer, and \$4,434.01 from Susan's wages as  
25 reflected on the Account statement for 7749 and Susan's Payroll Statement. See Ex. 2  
26 (November 11, 2020 Statement); Ex. 4 (October 20, 2020 Statement and November 19,  
27 2020 Statement); Ex. 8. The remaining \$600 is actually a reflection of funds transferred to  
28 Account 1744 and back to 7749. See Ex. 2 (November 11, 2020 Statement); Ex. 8.

1 Thus, because the deposits to the account were exclusively from Lance and Susan's  
2 wages, and because the expenditures easily exceed the balance on October 14, 2020,  
3 applying FIFO, the remaining balance on November 11, 2020 was entirely Lance and Susan's  
4 wages and earnings.

5 During the Month of November, from the 11<sup>th</sup> to the 30<sup>th</sup>, Susan received only one  
6 paycheck of \$2,532.95. See Ex. 2 (December 10, 2020 Statement), Ex. 8. The checking  
7 account had no other deposits of wages or earnings or otherwise until the funds were seized.

8 Accordingly, the funds taken from Account 7749 on November 30, were funds derived  
9 from Susan and Lances wages and earnings and were subject to the Wage Exemption as well  
10 as the NRS 21.105(2) default \$400 personal account exemption (automatically applied by  
11 Wells Fargo bank). See *id.*

12 **Wells Fargo Savings Account ending 1744**

13 FIFO is not so easily applied to the Wells Fargo Savings Account ending 1744. This is  
14 because \$10,317.35 was levied from Account 1744 rather than just \$727.71. Accordingly,  
15 the analysis must begin being earlier in time.

16 The beginning balance of Susan's Wells Fargo Savings account on June 11, 2020 was  
17 \$10,798. See Ex. 2 June Statement. Lance and Susan assert that the \$10,798 balance was  
18 primarily derived from their respective wages and is therefore 75% exempt pursuant to the  
19 Wage Exemption. However, to alleviate the chore of proving the same, and for the sake of  
20 simplification, we will start with the assumption that 100% of the funds held in Account 1744  
21 on June 11, 2020 were not wages, and were only subject to a claim of the Wildcard  
22 Exemption.

23 In order to apply FIFO to this account to reduce balance not subject to the Wage  
24 Exemption, according to the assumption made above, the total combined expenditures from  
25 the account from June 11, 2020 forward must exceed \$10,798. Once the combined  
26 expenditures of account 1744 exceed \$10,798, the funds remaining in the account will be  
27 exclusively from Lance and Susan's wages.



The following table reflects the wages added and expenditures taken from the 1744 Account from June 11, 2020 through October 14, 2020:

| Date       | Balance     | Wages Added | Expenses   | Remaining Nonexempt Balance After FIFO. |
|------------|-------------|-------------|------------|---|
| 6/11/2020  | \$10,729.58 | \$3,400.09  | \$3,550.40 | \$7,179.18                              |
| 7/11/2020  | \$10,579.27 | \$2,800.10  | \$2,860.40 | \$4,618.78                              |
| 8/13/2020  | \$10,518.97 | \$1,200.08  | \$1,342.29 | \$3,276.49                              |
| 9/12/2020  | \$10,376.76 | \$1,200.09  | \$2,192.29 | \$1,084.20                              |
| 10/14/2020 | \$9,292.35  | \$1,200.08  | \$1,292.29 | \$-208.09                               |

The above table reflects the transactions upon June 2020 through November 2020 taken the Well Fargo Bank Account Statement. See Ex. 2; Ex. 8. Based upon the above analysis supported by the Statements provided in Exhibit 2 and summarized in Exhibit 8, as of October 14, 2020, no portion of the \$10,729.58 remained in the Wells Fargo Savings Account. *Id.* Accordingly, from October 14, 2020 forward 100% of the balance of Account 1744 was derived from traceable deposits of Lance and Susan's Wages and Earnings. *Id.* going forward for that account included deposits and transfers of wages made from June 11, 2020 forward.

Therefore, as a result of the foregoing analysis, the entire \$10,317.35 levied from the Wells Fargo Savings Account ending 1744 on November 30, 2020 was derived from traceable deposits occurring from June 11, 2020 to November 30, 2020.

### **3. The Wage Exemption and Wildcard Exemption Apply**

Lance and Susan's wages levied upon by Platte River are exempt pursuant to the Wage Exemption and the Wildcard Exemption.

As shown in the exhibits attached herewith, including Susan's Payroll Statements, and the Wells Fargo Bank Statements, as well as the Declaration of Lance Jackson attached hereto, the sums deposited into Accounts 1744 and 7749 are Lance and Susan's wages and earnings. See Ex. 2; Ex. 3; Ex. 4; Ex. 5.

1 NRS 21.090(1) and NRS 21.090(1)(g) provides that as follows in pertinent part:

2 (1) The following property is exempt from execution . . . :

3 (g) For any workweek . . . 75 percent of the disposable earnings  
4 of a judgment debtor during that week if the gross weekly salary. . .  
5 As used in this paragraph:

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

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

18 Pursuant to NRS 21.090(1)(g)(2), funds possessed by the judgment debtor that were  
19 received as compensation and held in a bank account remain exempt from execution. See  
20 *id.*

21 The Nevada Supreme Court in *In Re Christensen*, determined that "the purpose of  
22 NRS 21.090(1)(g) would be thwarted if earnings lost their exempt status once deposited into  
23 a debtor's bank account" . . . and "that NRS 21.090(1)(g) protects the proceeds of any  
24 deposits of earnings." *In re Christensen*, 122 Nev. 1309, 1317, 149 P.3d 40, 49 (2006).

25 The Court continued stating that "we agree with the majority position and conclude  
26 that the commingling of the proceeds of exempt earnings with nonexempt funds does not  
27 destroy the exemption so long as tracing is possible." 122 Nev. at 1323, 149 P.3d 40.

28 Platte River will likely argue that the transfers to and from saving wipe out the  
applicability of the Wage Exemption. However, the Nevada Supreme Court has been very  
clear, so long as tracing can be done, the funds will be found to be exempt. See *id.*

Furthermore, Platte River has executed on funds that were already exempt from  
execution based upon the Court's September 29, 2020 Order and Susan's August Affidavit of  
Exemption. Ex. 6; Ex. 2; Ex. 3.



Between September 4, 2020 and December 11, 2020, Susan has received and deposited \$17,708.70 fully exempt funds to the 7749 and 1744 accounts. See Ex. 2, Ex. 3, Ex. 4, Ex. 6. All of the funds garnished from the Checking account on November 30<sup>th</sup> were funds previously exempted. As well, Susan transferred \$3,650 of her earnings from the 7749 Checking Account to the 1744 Savings Account since the filing her Affidavit of Exemption. See Ex. 2; Ex. 6.

Accordingly, of the \$727.71 garnished or levied from Account 7749, 100% of the funds were previously exempted by Susan and should be returned to her. As well, of the \$10,317.35, \$3,650 of the funds were previously exempted by Susan, and the remaining \$6,667.35 garnished is now subject to Lance and Susan's claim the Wage Exemption and the Wildcard Exemption by way of their Affidavits of Exemption filed on December 2, 2020.

Accordingly, based upon the foregoing analysis establishing that the balance of Account 1744 can be traced to Lance and Susan's wages and earnings, 75% of the remaining \$6,667.35 not previously exempted should be found to be exempt pursuant to NRS 21.090(1)(g), which sum equates to be \$5,000.51. This leaves \$1,666.84 to be property not otherwise exempt, and exemptable pursuant to NRS 21.090(1)(z).

Further because Susan and Lance together have \$14,870.87 of Wildcard Exemption remaining available to them, even if the Court were to determine that they had failed to establish that the balance of the accounts traces back to their wages and NRS 21.090(1)(g) were deemed to be not applicable, Lance and Susan have sufficient remaining Wildcard Exemption to exempt the entire sum levied.

However, Lance and Susan are confident that the Court will apply NRS 21.090(1)(g) to the fund levied upon. Accordingly, Lance and Susan request that Lance's Wildcard exemption be utilized to exempt the \$1,666.84 in remaining unexempt property so that Susan's Wildcard Exemption can continue to protect her income from Garnishment.

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**V. CONCLUSION**

Therefore, for the reasons set forth above, it is respectfully requested that the Court determine that it does not have jurisdiction to consider Platte River's Objection without having the notice requirements set forth in NRS 21.112 met.

Alternatively, if the Court determines that it does have jurisdiction to consider Platte Rivers Objection, it is respectfully requested that the Court find and conclude that Lance and Susan's wages and earnings were levied upon and that the same are exempt pursuant to NRS 21.090(1)(g) and NRS 21.090(1)(z) and should be ordered returned.

Dated this 18<sup>th</sup> day of January, 2021.

**Millward Law, Ltd.**

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## INDEX OF EXHIBITS

|           |  |          |
|-----------|--|----------|
| Exhibit 1 | Writ of Execution  | 7 Pages  |
| Exhibit 2 | Susan Jackson's Wells Fargo Statements   | 48 Pages |
| Exhibit 3 | Susan Jackson's Payroll Statements   | 11 Pages |
| Exhibit 4 | Lance Jackson's Wells Fargo Statements   | 30 Pages |
| Exhibit 5 | Declaration of Lance Jackson   | 1 Page   |
| Exhibit 6 | Exemption Spreadsheet  | 1 Page   |
| Exhibit 7 | Summary of Deposits to Susan Jackson's Wells Fargo Checking and Savings Accounts | 1 Page   |
| Exhibit 8 | Summary of Monthly Statements for Wells Fargo Account ending 1744                | 6 Pages  |

**CERTIFICATE OF SERVICE**

Pursuant to NRCP 5(b), I hereby certify that service of the *Brief in Support of Lance Jackson and Susan Jackson's Claim of Exemption* was made on January \_\_\_\_\_, 2021, by depositing a true and correct copy of the same for mailing by US Mail, First Class, postage prepaid, addressed to the following:

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

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Ashley Voss, Legal Assistant