IN THE SUPREME COURT OF THE STATE OF NEVADA

IN RE:

DISCIPLINE OF
BRIAN C. PADGETT, ESQ.
STATE BAR NO. 7474

Case No.

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Volume VII

**RECORD OF DISCIPLINARY PROCEEDINGS,
PLEADINGS
AND TRANSCRIPT OF HEARINGS**

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Docket 83347 Document 2021-23268

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1 view of inside the premises, I look for any type of
2 movement.
3 **Q Okay. And it is your testimony today that on**
4 **September 29th of 2020, that there was some sort of**
5 **movement inside that Liege address?**
6 A Yes, there was.
7 **Q Did anybody come to the door when you rang the**
8 **doorbell?**
9 A Just the dog.
10 MR. GOSIOCO: Thank you. No further questions.
11 CHAIRMAN WILLIAMSON: Mr. Keseday, I just have
12 one quick question.
13 When you rang the doorbell, could you hear that
14 the doorbell actually sounded inside the house?
15 THE WITNESS: I don't recall.
16 CHAIRMAN WILLIAMSON: Okay. I do want to give
17 Mr. Padgett an opportunity to cross-examine Mr. Keseday,
18 so let's give him another minute or two. It is now --
19 I've got 10:10. There's still no Mr. Padgett.
20 I've just sent Mr. Padgett an email with a copy
21 to the other panel members and the State Bar asking him
22 to rejoin immediately. We will give him until 10:15, and
23 then we will go ahead and excuse you, Mr. Keseday, if he
24 has not arrived.

1 THE WITNESS: Thank you.
2 CHAIRMAN WILLIAMSON: Okay. I've got 10:15.
3 Ms. Hoogs, are we still on the record?
4 THE REPORTER: Yes, we are.
5 CHAIRMAN WILLIAMSON: Thank you.
6 Can the State Bar confirm there's nobody in the
7 waiting room for Zoom?
8 MS. PETERS: I can confirm that.
9 CHAIRMAN WILLIAMSON: Thank you, Ms. Peters.
10 All right. It is now after 10:15. We still do
11 not have Mr. Padgett. Based on his prior comments, I'm
12 not sure if he even intends to participate.
13 Mr. Keseday, I thank you for your time and
14 coming back today as I know that you also were waiting
15 and trying to get involved last time, so we really do
16 appreciate it. If none of the panel members have any
17 questions for you, then I've got nothing else.
18 Mr. Keseday, you are excused, and thank you for
19 your time.
20 THE WITNESS: Thank you, sir.
21 CHAIRMAN WILLIAMSON: Okay. Mr. Gosioco, it is
22 now 10:16. Do you have another witness?
23 MR. GOSIOCO: Yes, Mr. Chairman.
24 The State Bar would like to call Amy Sugden to

1 the stand.

2 /////

3 /////

4 /////

5 /////

6 /////

7 AMY SUGDEN,

8 having been first duly sworn,

9 was examined and testified as follows:

10

11 DIRECT EXAMINATION

12 BY MR. GOSIOCO:

13 **Q Good morning, Ms. Sugden. How are you doing?**

14 A I'm all right. How are you?

15 **Q I'm doing well. Thank you for asking.**

16 **Could you please state your full name and spell**

17 **it for the record.**

18 A Amy Sugden, A-m-y S-u-g-d-e-n.

19 **Q Thank you so much.**

20 **Ms. Sugden, do you know an individual by the**

21 **name of Brian Padgett?**

22 A Yes, I do.

23 **Q And how do you know Mr. Padgett?**

24 A I worked for him for about nine years.

1 **Q And when you worked for him, are you referring**
2 **to the Law Offices of Brian C. Padgett?**
3 A Correct.
4 **Q Ms. Sugden, approximately when did you work for**
5 **Mr. Padgett's law firm?**
6 A Approximately, to the best of my recollection,
7 May, June of 2011 to the spring of 2019.
8 **Q Okay. So approximately eight years; is that**
9 **correct?**
10 A Yes.
11 **Q When you were hired at Mr. Padgett's law firm,**
12 **were you an associate for him? Were you an independent**
13 **contractor? How were you hired?**
14 A So I began as an associate attorney doing work.
15 I was retained as an independent contractor. I would say
16 the scope of my employment started out in the traditional
17 independent contractor standpoint but then morphed into
18 more an employee-employer relationship as the years
19 progressed.
20 **Q So it's your testimony today that initially you**
21 **were hired as an independent contractor; however, through**
22 **time it was more of a supervisor-type relationship with**
23 **Mr. Padgett?**
24 A Yes. To my knowledge, all people that worked

1 for Mr. Padgett were always independent contractors
2 because he preferred it that way, was my understanding,
3 for tax purposes.
4 **Q Okay. Thank you so much.**
5 **When paychecks were issued, were they issued**
6 **under your name or another entity?**
7 A They were issued to Ace Legal Corp., which is
8 my S corporation that I do work under.
9 **Q Okay. And you are calling on a phone; is that**
10 **correct, Ms. Sugden?**
11 A Yes. I'm sorry. I'm in transit. I know
12 originally this was continued to last week, and I could
13 have appeared on a computer, but, unfortunately, I'm not
14 in a spot where I can appear on the computer.
15 **Q Not a problem.**
16 **I guess I will ask this: In any of your**
17 **correspondence while working -- do you remember what your**
18 **email address was while you worked for the Law Office of**
19 **Brian C. Padgett?**
20 A Yes. I had an email that was
21 amy@briancpadgett.com for, I'd say, 90 percent of the
22 time. I didn't have it initially, but I think about 2012
23 I got that email address.
24 **Q Okay. Thank you, Ms. Sugden. I apologize for**

1 **cutting you off.**

2 **In your correspondence with your clients or**

3 **particularly with the DiFrancescos, was there any mention**

4 **of Ace Legal in your signature or email address or**

5 **anything like that?**

6 A No.

7 **Q Now, with regard to Mr. Padgett and the law**

8 **office, did you at any point represent Mr. Padgett**

9 **individually and/or the Law Office of Brian Padgett?**

10 A I never represented the law office. I worked

11 for Brian on some matters related to a company called

12 CW Nevada, which he was the -- I think he called himself

13 the chairman and CEO for several years, so that

14 particular legal entity, but, no, I didn't have any other

15 personal representation that I recall during my time

16 working for him. I can't think of any other legal

17 individual matters he would have been involved in.

18 **Q So at no point was there ever an**

19 **attorney-client privilege between yourself and Brian**

20 **Padgett individually; correct?**

21 A Correct.

22 **Q Thank you, Ms. Sugden.**

23 **Now, do you know an individual by the name of**

24 **John DiFrancesco?**

1 A I do.

2 **Q And how do you know him?**

3 A He was a client of the Law Office of Brian C.

4 Padgett, and that's how I got to know him. His trust

5 actually was a plaintiff in an action that was filed from

6 the firm, and as the trustee, he would have been the

7 client on that behalf.

8 **Q What about Bob Feron? Do you know that**

9 **individual, Ms. Sugden?**

10 A Yes. Robert and Jacalyn Feron were the other

11 half of that lawsuit in that it was 50-50 ownership of

12 the property that was at issue in the lawsuit I just

13 referenced.

14 **Q Thank you, Ms. Sugden.**

15 **You testified earlier that initially you**

16 **started off as more of an independent contractor, and**

17 **then eventually it turned into Mr. Padgett being more of**

18 **a supervisor.**

19 **Were you in fact -- I guess would you -- in**

20 **your opinion, was Mr. Padgett more of your supervisor or**

21 **more of an equal partner?**

22 A Well, even when I first started working for him

23 in that role, I would always defer -- you know, Brian was

24 my supervisor. We had, you know, things like weekly

1 meetings; he reviewed emails that I would send; we would
2 go over pleadings and strategies. So I always worked
3 under his direction.
4 **Q Okay. You stated you had weekly meetings. How**
5 **long did those go on for?**
6 A So the meetings themselves could be anywhere
7 from an hour to three hours. A lot of times we'd do them
8 over lunch and things like that, but they went on for
9 several years. It didn't start out initially back in
10 that 2011-'12 time frame. I want to say -- I'm going off
11 memory -- probably 2015 would be a good estimate.
12 **Q Okay. So you had stated that you submitted**
13 **things for Mr. Padgett's approval; correct?**
14 A Yes.
15 **Q What kinds of things would you submit for his**
16 **approval?**
17 A I would submit emails, certainly motions,
18 strategy that came to the case and what we were working
19 on, particularly in dealing with clients and how to
20 manage that, things like that.
21 **Q Okay. What about hours, Ms. Sugden? Did you**
22 **create your own schedule, or how did that work?**
23 A Initially I was on my own schedule. That was
24 part of the reason why I left my old firm. I wanted some

1 more flexibility.

2 And as time moved on, there was another lawyer

3 that left Brian's office, and when that individual left,

4 Brian wanted me more in the office. He did have certain

5 time frames that he wanted me in by, at least -- I think

6 it was either 9:00 or 9:30. I had two small children at

7 the time -- they're still small, but a little bigger

8 now -- but definitely wanted, you know, certain time

9 frames were expected I would be there.

10 **Q Okay. Thank you.**

11 **Now, I guess during your representation of John**

12 **DiFrancesco and Bob Feron, how would you characterize**

13 **your professional relationship with Mr. Padgett during**

14 **your representation of those clients?**

15 A The same as the other cases in which, you know,

16 he was -- he always made it clear that his name was on

17 the door, that he had the final say in how things would

18 be handled and the direction the cases would go, whether

19 there were experts, depositions, motions. So there was

20 always that supervisory relationship.

21 **Q Now, Ms. Sugden, were you the primary point of**

22 **contact for Mr. DiFrancesco and Mr. Feron throughout the**

23 **law firm's representation of them?**

24 A Yes.

1 **Q At any point did Mr. Padgett take over your**
2 **responsibilities as being the point of contact that you**
3 **can recall?**
4 A During the end of, I believe it was 2018, I had
5 what I would call a much more strong need for Brian to
6 participate in the communications directly. A lot of
7 times he would be involved in them, like, for instance,
8 in reviewing communications, but I did feel there was a
9 divergence in what I felt we should probably be focused
10 on in the case in terms of a settlement and focusing on
11 that and what the clients' direction was as far as a
12 trial setting.
13 So I did ask Mr. Padgett, I said, "Honestly, I
14 can't handle this because I don't have control of the
15 clients." I can't think of a better way to explain it.
16 And so he was taking over as the point person in late
17 fall 2018, I'd say October, November and there on.
18 **Q Okay. And do you recall if there was a reason**
19 **for him taking over around that time?**
20 A Well, as I mentioned, I had really hit a point
21 where -- you know, in this type of inverse condemnation
22 work, which is kind of rare in and of itself, I felt that
23 given some recent case law that had come out, that we
24 really didn't have the same sort of claims we initially

1 thought, and so I was focused on trying to do a
2 settlement that was based with Washoe County, I think,
3 and the Truckee River Flood Management Authority in
4 particular, their counsel, in purchasing the property in
5 its entirety, so I was really focused on that.
6 And so when we couldn't get things onboard, I
7 had sent an email -- you know, I was sending it to Brian
8 to review with kind of getting onboard with the strategy,
9 and in that, for instance, what I had done was I typed --
10 I was trying to send it to Brian, asking him to send it
11 to the client because I thought it would be better coming
12 from him, and so I had tried to provide email addresses,
13 and I typed in DiFrancesco's email address in the cc line
14 to copy it, and I forgot to take it out when I forwarded
15 it to Brian.
16 And in there I was expressing my frustration
17 with the clients because, honestly, I felt like I was
18 trying to do everything I could possibly to resolve the
19 case in their best interest, and I wasn't getting -- we
20 weren't being able to focus on the same thing.
21 So, really, that email was kind of the last --
22 I think I might have said they were a pain in the ass.
23 So Brian, you know, was very upset, of course, when I
24 sent that out to the clients, and I remember, again, I

1 kind of reiterated my request to him to come in and just
2 be the primary point person because, really, the
3 relationship had disintegrated on my behalf with the
4 clients.
5 **Q Thank you, Ms. Sugden.**
6 **At any point after your representation of**
7 **Mr. DiFrancesco and Mr. Feron, did you receive a**
8 **grievance regarding that representation?**
9 A I did.
10 **Q And were disciplinary proceedings initiated**
11 **against you?**
12 A They were.
13 **Q And did you receive any type of sanction that**
14 **resulted from that grievance?**
15 A Yes. In working, in particular, with you and
16 your office, I had negotiated, if you want to call it,
17 through my counsel a letter of reprimand, a public Letter
18 of reprimand, on that matter.
19 **Q Okay. Thank you, Ms. Sugden.**
20 **And in that public reprimand, did you**
21 **voluntarily and willfully agree to violations of RPC 1.2,**
22 **1.3, 1.4, and 3.2?**
23 A You know, I do not have the letter of reprimand
24 right in front of me, but I'm sure that that's accurate.

1 Based on my recollection, there was numerous violations
2 I know that went back and forth and were discussed with
3 my counsel, but I don't have any reason to disagree with
4 what you had just stated.
5 **Q And that's not a problem, Ms. Sugden. If it**
6 **makes it a little easier, I will go through each**
7 **violation and see if you recall that since I can't show**
8 **you the exhibits.**
9 **As to RPC 1.2, which is the scope and**
10 **allocation of authority between client and lawyer, did**
11 **you agree that you violated that rule because you failed**
12 **to abide by your clients' decisions to set the matter for**
13 **trial and schedule depositions at the times requested by**
14 **the clients?**
15 A Yes.
16 **Q Thank you.**
17 **And as to Rule 1.3, which is diligence, and**
18 **Rule 3.2, expediting litigation, did you knowingly agree**
19 **that you violated those rules because you failed to**
20 **reschedule your clients' matter for trial prior to the**
21 **expiration of the five-year rule and failed to promptly**
22 **file responsive pleadings?**
23 A Yes.
24 **Q Now, as to the five-year rule, Ms. Sugden, what**

1 **is your understanding of that rule?**
2 A My understanding of that in any case is that a
3 matter must be brought to a trial within five years of
4 the date of the filing of the complaint. I do know
5 that -- yeah, that's my understanding.
6 **Q Okay. And did the five-year rule, in fact,**
7 **expire during your representation of Mr. DiFrancesco and**
8 **Mr. Feron?**
9 A It did. And, you know, my -- my understanding
10 was, you know, that I had what we call a gentlemen's
11 agreement with the opposing counsel on that issue as we
12 were trying to work out the settlement that I referenced
13 earlier, and so I had a different understanding on what
14 was going to result and the fact that even months went by
15 from that July -- actually, quite a bit of time from the
16 five-year rule, which I believe was filed in July of
17 2012.
18 Anyhow, so, yes, ultimately, you know, the case
19 wasn't dismissed, but I guess it could have been
20 dismissed -- you know, later it was -- I'm talking about
21 the judge not issuing a mandatory dismissal. However, at
22 the end of the day, I understand and I accept
23 responsibility for that in that the trial did not occur
24 within the first five years.

1 **Q And you testified that you had a gentlemen's**
2 **agreement with opposing counsel; is that right?**
3 A That's correct.
4 **Q Did you ever codify that agreement in writing?**
5 A I believe that I had some emails, but it was
6 not a stipulation, something like that, that would be,
7 you know, submitted to the Court.
8 **Q Did you ever discuss this five-year rule with**
9 **your clients?**
10 A You know, it was something that came up with
11 the clients. I know we did discuss it. The timing of
12 that became something I had to go back through and try to
13 find out exactly when -- I think I found an email about
14 six months prior that I submitted in my case, my
15 disciplinary case with the Bar, that showed I had
16 referenced it to the clients.
17 We had several phone calls and a multitude of
18 emails over the several years of representation, so I
19 don't recall exactly. I know we had discussions about
20 it, and, you know, that's the best of my recollection.
21 **Q Okay. Thank you, Ms. Sugden.**
22 **And, lastly, as to Rule 1.4, which is**
23 **communication, did you knowingly agree that you violated**
24 **that rule because you failed to inform your clients when**

1 **pleadings would be filed?**

2 A Yes, I did.

3 **Q And did you also knowingly agree to that**

4 **violation because you failed to inform them of whether**

5 **depositions would be scheduled or taken?**

6 A Yes.

7 **Q And during the course of all that conduct that**

8 **we just discussed, is it your belief that Mr. Padgett was**

9 **your supervisor at the time that conduct occurred?**

10 A Yes.

11 MR. GOSIOCO: No further questions,

12 Mr. Chairman.

13 CHAIRMAN WILLIAMSON: Okay. I see we still

14 don't have Mr. Padgett.

15 Do any of the panel members have any questions

16 for Ms. Sugden?

17 I got a "no" from Mr. Aman. Ms. Westlake, no.

18 Let me look at my notes.

19 Ms. Sugden, good morning. This is Rich

20 Williamson. I think we may have been on a case together

21 last summer. Just one quick question.

22 You discussed the gentlemen's agreement you

23 thought you had with opposing counsel.

24 Did you discuss that at all with Mr. Padgett?

1 THE WITNESS: Yes, I did. We had worked with
2 this opposing counsel for years, actually ever since I
3 knew Brian and started working for him, and it wasn't
4 unusual that that was the type of agreements, I would
5 say, in working with that firm for a long time, and,
6 actually, Mr. Sullivan had moved, because Michael
7 Chapman, I know, who is a Northern attorney -- I'm sure
8 you guys probably know him -- so when I say this
9 attorney, it's in a different firm, but, yeah,
10 Mr. Padgett, to answer your question, did know about
11 those discussions.
12 CHAIRMAN WILLIAMSON: Okay. That's the only
13 question I had. Thank you.
14 If there's no other questions, I see it is
15 10:36, and we still do not have Mr. Padgett, so,
16 Ms. Sugden, you are excused. Thank you for your time and
17 your cooperation with the rescheduled hearing.
18 THE WITNESS: Thank you all. I appreciate it.
19 Thank you.
20 CHAIRMAN WILLIAMSON: Okay. Mr. Gosioco, do
21 you have another witness other than Mr. DiFrancesco and
22 Mr. Sullivan, who I'd like to save for Mr. Padgett if he
23 returns?
24 MR. GOSIOCO: Court's indulgence. Let me just

1 double-check.

2 No, sir, I do not. We just need to finish

3 Mr. DiFrancesco's testimony as well as Mr. Sullivan's

4 and, assuming Mr. Padgett returns, his cross-examination

5 of himself.

6 CHAIRMAN WILLIAMSON: Got it.

7 And do you anticipate calling Mr. Feron?

8 MR. GOSIOCO: No, sir, I do not. I believe

9 that Mr. DiFrancesco's testimony was more than sufficient

10 in our case in chief.

11 CHAIRMAN WILLIAMSON: I'm just making a note

12 here.

13 Okay. All right. Well, then yeah. So you've

14 just got Mr. DiFrancesco and -- I guess you're done with

15 Mr. Sullivan; correct?

16 MR. GOSIOCO: Yes, sir.

17 CHAIRMAN WILLIAMSON: Well, it sounds like

18 Mr. DiFrancesco is the only person left, so I guess I'm

19 going to limit you to rebuttal testimony on just what

20 Mr. Padgett asked Mr. DiFrancesco about. I will let you

21 know that if Mr. Padgett shows up, I will allow him to

22 jump back in time and continue his cross-examination of

23 Mr. DiFrancesco, and then you would have an opportunity

24 to do redirect of Mr. DiFrancesco at that point on any

1 new testimony.

2 Let's get your first redirect of what

3 Mr. Padgett was able to cross-examine Mr. DiFrancesco

4 about, and then we'll see where we get.

5 MR. GOSIOCO: Absolutely, Mr. Chairman.

6 The State Bar would like to recall Mr. John

7 DiFrancesco to the stand.

8 Good morning, Mr. DiFrancesco. How are you

9 doing?

10 Can you hear me, Mr. DiFrancesco?

11 CHAIRMAN WILLIAMSON: Looks like he may still

12 be connecting to audio.

13 MR. GOSIOCO: Hi, Mr. DiFrancesco. Can you

14 hear me?

15 THE WITNESS: Yes, I can.

16 MR. GOSIOCO: Perfect.

17 Madam Court Reporter, could you reswear

18 Mr. DiFrancesco in.

19

20 JOHN DiFRANCESCO,

21 having been first duly sworn,

22 was examined and testified as follows:

23

24 REDIRECT EXAMINATION

1 BY MR. GOSIOCO:

2 **Q Thank you, Mr. DiFrancesco, and thank you so**

3 **much for returning to the continued hearing today.**

4 **I'd like to ask you some questions based off of**

5 **what Mr. Padgett had previously asked you, and I**

6 **believe -- correct me if I'm wrong, sir, but I believe he**

7 **had asked you about your complaints with the**

8 **representation; is that correct?**

9 A Yes.

10 **Q Could you remind us what your complaints were**

11 **again of the Law Office of Brian Padgett in your case?**

12 A Yes. There was several concerns that we had.

13 They were basically nonresponsive. Towards the end of

14 the representation, they were nonresponsive, and they

15 didn't follow through with the filing. There was a

16 motion filed, and there was not a confirmation of that

17 filing, and we were never notified about a five-year

18 rule, and that five-year rule expired. The five-year

19 time went by without us even knowing about it. There was

20 several issues with Mrs. Sugden when she did not notify

21 us about information that was being withheld by the

22 plaintiffs' attorney. Those are just a series of things,

23 and it happened repeatedly.

24 **Q Thank you, Mr. DiFrancesco.**

1 **I did want to get a bit of clarification on**
2 **some things you just testified to.**
3 **You said there was a motion in limine you had**
4 **issues with; is that correct?**
5 A Yes. It was filed incorrectly, and there
6 weren't attachments with the filing, and then we had to
7 constantly follow up and find out why we weren't getting
8 any responses, and the clerk's office told us that there
9 was no attachments. So, you know, we complained to Brian
10 Padgett's office and Mrs. Sugden about that.
11 And they sent -- they sent in the attachments,
12 and then we were waiting for a ruling from the judge, and
13 a couple months had gone by, and there was no ruling, and
14 we kept pushing him why there wasn't a ruling, and we
15 couldn't find it where the case was even filed with the
16 clerk's office.
17 And then we were told -- we were notified at a
18 later date that the confirmation of the filing was never
19 made, that Mrs. Sugden never confirmed the filing, so the
20 case just basically withered away because that motion was
21 never looked at by the judge.
22 **Q Okay. And just briefly I'm going to share my**
23 **screen, Mr. DiFrancesco.**
24 **Showing you what's been previously marked and**

1 **admitted as Exhibit 27, can you see my screen,**
2 **Mr. DiFrancesco?**
3 A Yes, I do. I see Exhibit 27.
4 **Q Thank you, sir.**
5 **I'm going to scroll down just a little bit.**
6 **Does this look familiar to you?**
7 A Yes, it does.
8 **Q What is this motion, Mr. DiFrancesco?**
9 A Can you scroll down? Could I look at the date
10 on that?
11 **Q Yes, sir. It looks like it was filed June 29,**
12 **2018.**
13 A Yes. That's the motion that I'm speaking of.
14 **Q Okay. And you had stated that there was no**
15 **exhibits; is that correct?**
16 A Yeah. The first time there was no exhibits
17 attached to this motion.
18 **Q And do you recall, at any point did Ms. Sugden**
19 **or Mr. Padgett file exhibits to this motion?**
20 A Yeah. Ms. Sugden went back, and she did file
21 the exhibits with this.
22 **Q Do you recall when that was, approximately?**
23 A I want to say that that was a good six or eight
24 weeks after the filing -- this filing.

1 **Q Okay. And showing you what's been previously**
2 **marked and admitted as Exhibit 30, do you see my screen,**
3 **Mr. DiFrancesco?**
4 A Yeah. Exhibit 30.
5 **Q Thank you.**
6 **I'm going to scroll down. Do you know what**
7 **this document is? It looks like it was filed**
8 **September 5, 2018.**
9 A Okay. Those are the Exhibits 1 through 26.
10 **Q Okay. And are these the exhibits that you were**
11 **referring to that were not included in the motion in**
12 **limine filed June 29, 2018?**
13 A Yes. What was happening is we were contacting
14 the clerk's office trying to find out why the motion had
15 not been accepted by the Court, and that's when we found
16 out these exhibits were missing, and Ms. Sugden said that
17 she sent them, but there was some kind of a mix-up with
18 the filing.
19 But then subsequent to these exhibits being
20 filed, I guess there's a confirmation process that has to
21 be confirmed, like a confirmation of the filing of the
22 motion, and she never filed that. She never filed that
23 confirmation.
24 **Q Okay. Now, I want to turn your attention to --**

1 **I believe you had testified about the five-year rule; is**
2 **that correct?**
3 A Correct.
4 **Q Now, what is your understanding of the**
5 **five-year rule, Mr. DiFrancesco?**
6 A Can you repeat your question?
7 **Q What is your understanding of the five-year**
8 **rule?**
9 A Well, we come to find out that after five years
10 the plaintiff can file a motion to have the judge throw
11 the case out for not moving forward. And we were never
12 notified, first of all, that we were approaching that
13 five-year time limit, and we were actually notified after
14 the fact about the time limit. Ms. Sugden actually told
15 us that the plaintiff was going to -- was going to file
16 this motion for dismissal because of the five-year
17 expiration.
18 **Q Okay. And you had just testified,**
19 **Mr. DiFrancesco, that you did not hear about the**
20 **five-year rule until after its expiration; is that**
21 **correct?**
22 A After the fact, yes.
23 **Q And how were you notified of the five-year**
24 **rule?**

1 A Well, it was a conference call between me, Bob
2 Feron, and Ms. Sugden where she was explaining to us that
3 the plaintiff had this hanging over our head, that he
4 could file this motion and that we couldn't go ahead.
5 We subsequently found out that she had some
6 kind of unwritten understanding with the plaintiffs'
7 attorney that he would not file this if -- there were
8 some conditions about some things that he wanted under
9 discovery, and we had some things that we wanted under
10 discovery, that he wasn't turning over discovery items,
11 and this was an issue that appeared, from our point of
12 view, Bob Feron and mine, that it was a delay tactic on
13 the part of the plaintiffs' attorney, and Ms. Sugden was
14 just going along with this verbal agreement she had with
15 him that he wasn't going to file this motion to terminate
16 the law case because of the fact that it had exceeded the
17 five-year time period.
18 **Q But it is your testimony today that you did not**
19 **even know about the five-year rule until after it**
20 **expired; correct?**
21 A That's correct.
22 **Q So you testified that you discussed this**
23 **five-year rule with Ms. Sugden; is that right?**
24 A Yes.

1 **Q Did you discuss that rule with Mr. Padgett?**

2 A Not at the time, no. It was subsequently that

3 we talked to Mr. Padgett about this.

4 MR. GOSIOCO: No further questions,

5 Mr. Chairman.

6 CHAIRMAN WILLIAMSON: Okay. Thank you,

7 Mr. Gosioco.

8 I may have a couple questions, but do any of

9 the other panel members have any questions?

10 No? Okay.

11 Just a couple --

12 THE WITNESS: Can you turn your volume up, or

13 can I turn my volume up?

14 CHAIRMAN WILLIAMSON: I'll speak up. I

15 apologize. I know I get hoarse and raspy and mumbly, so

16 I'll try to speak up for you.

17 Can you hear me now?

18 THE WITNESS: Yes, I can.

19

20 EXAMINATION

21 BY CHAIRMAN WILLIAMSON:

22 **Q Sir, I know last time we went through the**

23 **checks a little bit. I just wanted to confirm and**

24 **clarify my confusion.**

1 **Did you ever receive a regular statement or**
2 **bill or invoice or anything like that from Mr. Padgett's**
3 **office?**
4 A Yes, we did. For about two years we were
5 getting a regular monthly invoice, and then they kind of
6 stopped.
7 **Q Stopped in about 2016, was it?**
8 A Could you repeat that?
9 **Q It stopped in about 2016?**
10 A Approximately, yes. I couldn't give you the
11 exact date.
12 **Q No problem. I think I know what you meant.**
13 **You mentioned in your testimony, you know, they**
14 **were nonresponsive, and they never got confirmation of**
15 **the filing.**
16 **I assume when you say, "they," you're referring**
17 **to both Mr. Padgett and Ms. Sugden?**
18 A That's correct.
19 MR. WILLIAMSON: Okay. I think those are the
20 only questions I've got. Thank you.
21 If there's no other questions -- and, again,
22 it's now 10:52, and we do not have Mr. Padgett, so I
23 will --
24 Yes, Mr. DiFrancesco?

1 THE WITNESS: Mr. Chairman, can I ask a
2 question?
3 CHAIRMAN WILLIAMSON: Please.
4 THE WITNESS: Is it appropriate or could you
5 ask Mr. Padgett whether or not he had errors and
6 omissions insurance during the case?
7 CHAIRMAN WILLIAMSON: That's a fair question.
8 That's not really the scope of this hearing. Certainly,
9 I appreciate you filed, you know, a grievance with the
10 State Bar. You may also want to consult with a lawyer
11 and see whether or not you've got any other rights if you
12 feel like you've been wronged by either Ms. Sugden or
13 Mr. Padgett, but that's not really what this -- you know,
14 we are more of an administrative body dealing with
15 Mr. Padgett's license. His liability, if any, for the
16 job he did would be a civil action you'd need to hire
17 your own lawyer for.
18 Does that make sense?
19 THE WITNESS: But in the state of Nevada it's
20 not a requirement that an attorney has errors and
21 omission insurance?
22 CHAIRMAN WILLIAMSON: I don't believe it's one
23 of the Rules of Professional Conduct that we're operating
24 under today.

1 THE WITNESS: I see. Okay. I don't have any
2 more questions.
3 CHAIRMAN WILLIAMSON: No problem. And like I
4 said, I invite you -- since we have a very limited scope,
5 I don't want you to think this is your only remedy. You
6 should certainly explore any remedies you think you may
7 have.
8 MS. WESTLAKE: I have one question.
9 John, you had mentioned that you had been
10 paying them on retainer for, it sounds like, two, two and
11 a half years.
12 How much did you pay their firm entirely?
13 THE WITNESS: The number that I recall was
14 approximately $161,000.
15 MS. WESTLAKE: Okay. That was the one question
16 I did have. Thank you.
17 CHAIRMAN WILLIAMSON: Perfect. Thank you.
18 Okay. Mr. DiFrancesco, I think that's it.
19 It's now 10:54, and you are excused. I promise we won't
20 schedule another hearing and yank you back again.
21 THE WITNESS: Thank you very much.
22 CHAIRMAN WILLIAMSON: Mr. Gosioco, there was
23 some cross-examination of Mr. Sullivan. Do you want to
24 do redirect on any of that, or are you fine?

1 MR. GOSIOCO: No, sir, not as to Mr. Sullivan.
2 However, I did mistakenly say I did not have any other
3 witnesses. I still do have one more witness I'd like to
4 call besides Mr. Sullivan.
5 CHAIRMAN WILLIAMSON: Why don't you go ahead
6 and call that witness.
7 MR. GOSIOCO: Thank you so much, Mr. Chairman.
8 The State Bar would like to call Mary Jorgensen
9 to the stand, please.
10 Madam Court Reporter, would you please swear in
11 Ms. Jorgensen.
12
13 MARY JORGENSEN,
14 having been first duly sworn,
15 was examined and testified as follows:
16
17 MR. GOSIOCO: Thank you so much, Madam Court
18 Reporter.
19
20 DIRECT EXAMINATION
21 BY MR. GOSIOCO:
22 **Q Good morning, Ms. Jorgensen. How are you**
23 **doing?**
24 A Good morning. I'm well. Thank you.

1 **Q Could you please state your name and spell it**
2 **for the record.**
3 A Mary Jorgensen, M-a-r-y J-o-r-g-e-n-s-e-n.
4 **Q Thank you so much, Ms. Jorgensen.**
5 **Now, Ms. Jorgensen, how are you employed?**
6 A I'm employed by the State Bar of Nevada as the
7 member services director.
8 **Q Okay. As the member services director, what**
9 **are your duties?**
10 A I'm responsible for annual attorney renewals,
11 attorney status changes, multijurisdictional firm
12 registrations, attorneys who want to register as
13 specialists. Let's see. I do administrative
14 suspensions, and I maintain two different databases for
15 the Bar, and I handle some of the database conversions
16 when we make changes.
17 **Q Okay.**
18 A Those are the big things.
19 **Q Perfect. Thank you so much.**
20 **I did want to touch upon a few of those duties**
21 **that you had mentioned.**
22 **First, you had stated that you were in charge**
23 **of the attorney annual renewals; is that correct?**
24 A Yes.

1 **Q What do you mean by that exactly?**
2 A I handle -- I handle all the attorney renewals
3 normally in December, which is the attorney renewal
4 invoice as well as their disclosures, and then I'm
5 responsible for sending out notices.
6 **Q Now, you had stated annual disclosures. What**
7 **are included in those disclosures, if I may ask?**
8 A That would be a report of existence or absence
9 of child support, professional liability insurance, any
10 trust accounts that the attorneys maintain, and reports
11 of pro bono for the previous reporting year.
12 **Q Okay. You had also mentioned that one of your**
13 **duties -- you have two different databases; is that**
14 **correct?**
15 A Yes.
16 **Q Could you elaborate a little bit more on what**
17 **those databases are?**
18 A We have one that's called Cabinet. That's
19 software that contains all of our electronic attorney
20 files, so anything that comes through the mail or is
21 emailed to us, we put a copy in there. It's like an
22 electronic file cabinet for each attorney, and each
23 attorney has a file in there.
24 **Q Okay. And what are the content of those files**

1 **for each attorney?**

2 A Gosh, we keep tons of stuff in there. We keep
3 copies of any kind of disciplinary or administrative
4 suspensions, reinstatements, email -- miscellaneous
5 emails that attorneys would send us, copies of Bar exam
6 applications for some attorneys. If we have certified
7 members, we keep copies of their applications, orders for
8 certificates of good standing, obituaries, just about
9 anything that the attorney would mail to us and many
10 emails.

11 **Q So you stated that one of those databases is**
12 **called Cabinet; is that right?**

13 A Yes.

14 **Q What's the other database that you maintain?**

15 A The other one is called ClearVantage, and
16 that's our membership database, and that contains the
17 attorney information, Bar numbers, type and status,
18 pay-through dates, invoices, payments. It holds two
19 different addresses. Let's see. What else? It has
20 admit dates for different bars. We have a section just
21 for notes that we can type in, names, of course, Social
22 Security numbers for some attorneys, date of birth, that
23 type of thing.

24 **Q So correct me if I'm wrong, Ms. Jorgensen. It**

1 **sounds like generally the contact information of**
2 **attorneys for the Bar in Nevada are stored in**
3 **ClearVantage; is that correct?**
4 A Yes.
5 **Q Does that include SCR 79 information?**
6 A Yes.
7 **Q So if an attorney were to send you an email or**
8 **a letter updating their SCR 79 information, it would be**
9 **placed into that ClearVantage database you're speaking**
10 **of?**
11 A Sort of. The data would be put into
12 ClearVantage if the -- through an email, so we would take
13 the data and type it in so the database is updated, but
14 the email itself would be stored in Cabinet as a PDF,
15 which would be backup as to why we made a change to the
16 attorney record.
17 **Q So just for my own edification, if an attorney,**
18 **for example, sends a letter to you updating their contact**
19 **information, the actual letter would be scanned into**
20 **Cabinet, and the information itself would be put into**
21 **ClearVantage; is that correct?**
22 A Correct.
23 **Q Thank you so much.**
24 **Are you familiar with an attorney named Brian**

1 **Padgett?**

2 A Yes.

3 **Q And did you, in fact, execute an affidavit for**

4 **this disciplinary proceeding?**

5 A Yes.

6 **Q I will be sharing my screen, showing you what's**

7 **been previously marked and admitted as Exhibit 52.**

8 **Can you see my screen, Ms. Jorgensen?**

9 A Yes.

10 **Q I'm going to scroll down just a little bit.**

11 **Do you recognize what this document is?**

12 A Yes.

13 **Q What is this document?**

14 A That was an affidavit regarding changes to

15 Brian Padgett's address.

16 **Q And scrolling down to the bottom, is this your**

17 **signature?**

18 A Yes.

19 **Q And you had this affidavit notarized; is that**

20 **correct?**

21 A Yes.

22 **Q Thank you so much.**

23 **Now, Ms. Jorgensen --**

24 CHAIRMAN WILLIAMSON: Sorry to interrupt,

1 Mr. Gosioco. That was Exhibit 52?

2 MR. GOSIOCO: Yes, sir.

3 CHAIRMAN WILLIAMSON: Thank you. Sorry.

4 BY MR. GOSIOCO:

5 **Q Ms. Jorgensen, do you recall ever receiving a**

6 **letter from Mr. Padgett or anyone associated with**

7 **Mr. Padgett around February of 2020?**

8 A No.

9 **Q And so it's your testimony today that you never**

10 **received anything from anyone associated with Mr. Padgett**

11 **or himself updating the State Bar's contact information**

12 **for this Liege address, is that correct, in February of**

13 **2020?**

14 A That's correct.

15 **Q Do you recall approximately when Mr. Padgett**

16 **finally made a request to update his information to**

17 **include that Liege address?**

18 A I can look at my affidavit, but I think it was

19 just a month or two ago.

20 **Q If I show you the affidavit, would that refresh**

21 **your recollection?**

22 A Sure.

23 **Q Give me one moment. Let me share my screen one**

24 **more time, again, showing you what's been previously**

1 **marked as Exhibit 52.**

2 A There you go. There's the Liege address in

3 January.

4 **Q Okay. So if you just want to again read this**

5 **highlighted portion to yourself and let me know when**

6 **you're finished.**

7 A Got it.

8 **Q Thank you so much.**

9 **Did that refresh your recollection,**

10 **Ms. Jorgensen?**

11 A Yes.

12 **Q Do you recall approximately when Mr. Padgett**

13 **updated the State Bar's records to include the Liege**

14 **address?**

15 A Sure. That was January 5th of 2021. He logged

16 in and did that via his online account.

17 **Q Okay. Thank you so much.**

18 **Now, Ms. Jorgensen, just briefly, I do want to**

19 **go over the procedures that you go through when an**

20 **attorney submits an update on their contact information.**

21 **So when an attorney submits, say, a letter to**

22 **the State Bar, what are your next steps?**

23 A The mailroom will give it to my department, one

24 of three people, and it is scanned into Cabinet, so we

1 keep -- so we have a PDF of it, and our membership
2 database is updated.
3 **Q Okay. And how often did you check the mail**
4 **since this COVID pandemic?**
5 A We get it every day.
6 **Q Okay. And so every day you are receiving mail?**
7 A Yes.
8 **Q Thank you.**
9 **And you had stated there's one of three**
10 **employees who would handle these updates; is that right?**
11 A Well, there's myself, one other full-time, and
12 I have a part-time person.
13 **Q Okay. But is it the standard operating**
14 **procedure to do exactly what you had stated? It gets**
15 **scanned into Cabinet and then put into ClearVantage?**
16 A Yes.
17 **Q So if any of those other -- if any of the other**
18 **two employees were to receive a letter updating contact**
19 **information, they would go through the exact same steps**
20 **you described?**
21 A Yes.
22 MR. GOSIOCO: Thank you, Ms. Jorgensen. No
23 further questions.
24 CHAIRMAN WILLIAMSON: Does the panel have any

1 questions for Ms. Jorgensen?

2 Okay. I've got no questions.

3 Ms. Jorgensen, thank you for your time.

4 THE WITNESS: Thank you.

5 CHAIRMAN WILLIAMSON: Okay. Mr. Gosioco, it is

6 11:05. If you have any other witnesses, please feel free

7 to call them.

8 MR. GOSIOCO: No, sir. The State Bar has no

9 more witnesses, and the State Bar would rest.

10 CHAIRMAN WILLIAMSON: Okay. Again, it's 11:05.

11 Mr. Padgett has not joined us again. I think I stated

12 this for the record earlier, but I just want to make

13 clear I sent an email to Mr. Padgett at 10:13 a.m. asking

14 him to join the hearing via some method right away. I

15 have neither received a response nor has he appeared.

16 Ms. Peters, can you confirm whether anyone is

17 in the waiting room?

18 MS. PETERS: The only person in the waiting

19 room is Mike Sullivan.

20 CHAIRMAN WILLIAMSON: Got it. Okay. Sounds

21 like he may be able to be excused, but I'll defer to

22 Mr. Gosioco on that.

23 In that case, if Mr. Gosioco is resting and we

24 still don't have Mr. Padgett, then I'm going to close the

1 evidence of this hearing.

2 Mr. Gosioco, are you ready to go right into a

3 brief closing?

4 MR. GOSIOCO: Yes, sir, I am.

5 CHAIRMAN WILLIAMSON: Okay. Then let's do it.

6 MR. GOSIOCO: Thank you so much, Mr. Chairman,

7 and thank you, members of the panel, for bearing with us

8 these last two hearing dates.

9 As I stated in my opening statement, we must

10 protect the public from people who are unfit to serve as

11 attorneys. The State Bar vs. Claiborne case states that

12 the paramount objective of bar disciplinary proceedings

13 is not additional punishment of the attorney but, rather,

14 to protect the public from persons unfit to serve as

15 attorneys and to maintain public confidence in the bar as

16 a whole. And as I stated again in my opening, the

17 respondent, Brian Padgett, is as plain as day unfit to

18 serve as an attorney.

19 Now, the ABA recommends that in disciplinary

20 proceedings we're to look at four different factors when

21 deciding whether or not sanctions are warranted: First,

22 we look at the duties violated; next, we look at the

23 mental state; third, we look at the injury, and once we

24 have that, we get a baseline standard; and then after we

1 get to a baseline standard, we apply any aggravating or
2 mitigating factors, if any.
3 Now, going to the first three factors, --
4 duties, mental state, and injury -- as I stated,
5 Mr. Padgett is unfit to serve as an attorney. He
6 violated multiple Rules of Professional Conduct. The
7 Amended Complaint filed in this case charged Mr. Padgett
8 of six separate violations: One count of 1.15,
9 safekeeping property violation; the second count is 5.1,
10 responsibilities of partners, managers, and supervisors
11 of lawyers; Counts 3 and 4 are violations of Rule 8.1,
12 which is bar admission and disciplinary matters; and,
13 lastly, Counts 5 and 6 are violations of 8.4, misconduct.
14 As to the first count, RPC 1.15, safekeeping
15 property, Mr. Padgett violated this duty because he
16 negligently failed to keep accounting documents
17 pertaining to the grievance after November 2016, and that
18 resulted in injury and/or potential injury to
19 Mr. DiFrancesco and Mr. Feron.
20 Specifically, Rule 1.15(a) states that
21 "Complete records of such account funds and other
22 property shall be kept by the lawyer and shall be
23 preserved for a period of seven years after termination
24 of the representation."

1 As Mr. DiFrancesco and Mr. Sullivan had
2 testified, Mr. Sullivan was hired approximately
3 March 12th of 2019. Therefore, Mr. Padgett should have
4 kept any accounting records of his representation of the
5 DiFrancesco case up until 2026. Assuming arguendo that
6 it even started when they hired Mr. Padgett way back in
7 2012, Mr. Padgett still would have been required to keep
8 accounting records until 2019. Ms. Watson testified, and
9 Mr. Padgett confirmed in his testimony, that he, in fact,
10 only provided the State Bar with records up until
11 November 2016, and the remainder of his accounting
12 records were being created.
13 As to Count 2, RPC 5.1, responsibilities of
14 partners, managers, and supervising lawyers, Mr. Padgett
15 violated this duty because he negligently failed to make
16 reasonable efforts to ensure that Ms. Sugden conformed to
17 the Rules of Professional Conduct in her representation
18 of the clients.
19 Specifically, Rule 5.1(b) states that "A lawyer
20 having direct supervisory authority over another lawyer
21 shall make reasonable efforts to ensure that the other
22 lawyer conforms to the Rules of Professional Conduct."
23 As Ms. Sugden testified, she did, in fact,
24 receive a public reprimand for her conduct in the

1 underlying matter with the DiFrancescos and Ferons. She
2 admitted and agreed to violating Rules 1.2, 1.3, 1.4, and
3 3.2.
4 Ms. Sugden testified that although she was
5 hired initially as an independent contractor, really, the
6 substance of the relationship for practical purposes was
7 that Mr. Padgett was Ms. Sugden's supervisor. Ms. Sugden
8 testified that they held weekly meetings, that she
9 submitted things such as drafts, emails, pleadings to
10 Mr. Padgett for his review, that Mr. Padgett scheduled
11 the times in which Ms. Sugden was required to be at the
12 office, and Mr. DiFrancesco's testimony confirmed that it
13 was his opinion that Mr. Padgett was always Ms. Sugden's
14 supervisor.
15 In fact, when Mr. Padgett was testifying, we
16 had gone over an email where the breakdown in
17 communication between Ms. Sugden and Mr. DiFrancesco
18 happened when she inadvertently cc'd Mr. DiFrancesco, and
19 Mr. Padgett's response, as he confirmed during his
20 testimony, was that he wrote in this email to
21 Mr. DiFrancesco that he told Ms. Sugden to remove that
22 language because that is not the way his office works or
23 something. I quote: "At that time I told her to remove
24 the 'or find another attorney' language because that is

1 not the way my office works," and that was an email in
2 Exhibit 32.
3 So based on all the testimony, it's clear that
4 Mr. Padgett was, in fact, Ms. Sugden's supervisor when
5 she engaged in the misconduct in the underlying case.
6 As to Counts 3 and 4, those are violations of
7 Rule 8.1, bar admission and disciplinary matters. Now,
8 Mr. Padgett violated that rule as to Count 3 as he
9 intentionally failed to respond to a lawful demand for
10 information from a disciplinary authority by failing to
11 supplement his previously submitted incomplete response.
12 As Ms. Watson testified, she sent Mr. Padgett a
13 letter of investigation. She testified that Mr. Padgett
14 did submit a response. Ms. Watson testified that she had
15 asked for a copy of the entire file to include accounting
16 documents, and Mr. Padgett, in his response, confirmed
17 that he only kept records up until 2016 and again
18 confirmed that in his testimony. For those reasons,
19 Mr. Padgett violated that duty as to Count 3 by failing
20 to provide a supplement to what was previously asked by
21 Ms. Watson, and that resulted in injury to the
22 profession.
23 As to Count 4, Mr. Padgett violated that duty
24 under 8.1 because he intentionally made a false statement

1 of material fact by stating that Ms. Sugden was not
2 subject to his supervision, and that resulted in injury
3 to the profession. Specifically, 8.1(a) states that "a
4 lawyer in connection with...a disciplinary matter shall
5 not knowingly make a false statement of material fact."
6 Ms. Watson had asked about his relationship
7 with Ms. Sugden, and he stated on numerous times, as well
8 as in his testimony at these hearings, that Ms. Sugden
9 was an independent contractor, that he had no supervision
10 of her whatsoever. However, Ms. Sugden's testimony
11 clearly contradicts what Mr. Padgett was testifying to
12 and what he wrote in his response. Therefore, he
13 violated Count 4, 8.1, because he intentionally made a
14 false statement of material fact regarding Ms. Sugden's
15 relationship with him.
16 As to Counts 5 and 6, those are violations of
17 Rule 8.4, misconduct. Going to Count 5, Mr. Padgett
18 violated his duty under 8.4 when he intentionally engaged
19 in conduct involving dishonesty, fraud, deceit or
20 misrepresentation by claiming to inform the State Bar of
21 his address change in or around February of 2020. That
22 resulted in injury to the profession.
23 Throughout the testimony of this hearing, we
24 heard from Mr. Padgett where he stated that he didn't

1 hear about the instant proceedings until very late. In
2 fact, as we had mentioned today, he sent an email to
3 myself and Ms. Peters requesting a continuance of the
4 hearing the morning of October 15, 2020, when we were
5 initially supposed to have this formal hearing.
6 In fact, a lot of his reasoning was because we
7 failed to provide notice, that the State Bar was sending
8 the pleadings to wrong addresses, that those were not his
9 addresses. However, at the time his Supreme Court Rule
10 79 information had different addresses. The State Bar
11 went above and beyond, not just sending pleadings to his
12 SCR 79 address, which was a Sixth Street address at the
13 time, but we found an alternate address on Demilla
14 (phonetic) Drive as well as Liege Drive, and which
15 Mr. Padgett claims that he informed the State Bar of that
16 change in February of 2020.
17 Notwithstanding those facts, as Mr. Keseday
18 testified, the State Bar actually attempted to serve
19 Mr. Padgett on three separate occasions to notify him of
20 these proceedings at the end of September and early
21 October of 2020 at that Liege address. Mr. Keseday
22 testified he saw a dog come up to the door, and then he
23 saw a woman's heels through the clear portion of the
24 glass in the front door as well as a male's set of feet

1 and that nobody came to the door when he rang the
2 doorbell. So, in fact, the State Bar did attempt to send
3 Mr. Padgett these pleadings or at least notify him of
4 these proceedings prior to the initial formal hearing on
5 October 15, 2020.
6 Now, more importantly, Ms. Jorgensen, who you
7 just heard from, testified that she did not receive any
8 letter changing Mr. Padgett's contact information in or
9 around February of 2020. In fact, the first time the
10 State Bar's records reflected that the Liege address was
11 associated with Mr. Padgett was January 5th of this year.
12 Therefore, Mr. Padgett intentionally engaged in conduct
13 involving dishonesty, fraud, deceit, or misrepresentation
14 to get this formal hearing continued.
15 As to Count 6, similarly, Mr. Padgett violated
16 this duty by intentionally violating or attempting to
17 violate the Rules of Professional Conduct through the
18 acts of another when he submitted an affidavit from his
19 secretary claiming that she did, in fact, mail a notice
20 of change of address to the State Bar. This resulted in
21 injury to the profession.
22 As Ms. Jorgensen testified, she received mail
23 on a daily basis contrary to Mr. Padgett's assertions
24 that the State Bar only receives mail every few days or

1 what have you.

2 Ms. Jorgensen testified that any of the other

3 employees who are in charge of updating attorneys'

4 contact information, they go through the same procedures,

5 and it would be located in one of two of the State Bar's

6 electronic databases.

7 Now, taking all that into consideration, we are

8 to look at a baseline standard for this conduct, and the

9 most appropriate standard in this particular case would

10 be ABA Standard 6.11.

11 Standard 6.11, as I pointed out in my trial

12 brief, is generally appropriate in cases involving

13 conduct that is prejudicial to the administration of

14 justice or that involves dishonesty, fraud, deceit, or

15 misrepresentation.

16 Specifically, Standard 6.11 states that

17 "Disbarment is generally appropriate when a lawyer, with

18 the intent to deceive the court, makes a false statement,

19 submits a false document, or improperly withholds

20 material information, and causes serious or potentially

21 serious injury to a party, or causes a significant or

22 potentially significant adverse effect on the legal

23 proceeding."

24 Now, I discussed in my trial brief that conduct

1 and that specific standard does not only apply to cases
2 in front of courts, but it also applies in disciplinary
3 proceedings. In my trial brief, I mentioned a few cases.
4 I noted People vs. Goodman, Colorado 2014, where they
5 applied Standard 6.11 and disbarred an attorney who
6 submitted false evidence during the course of his
7 disciplinary trial as well as In Re: Rawls, an Indiana
8 case in 2010, citing Standard 6.11 and disbarred a lawyer
9 for misconduct that included making a series of
10 intentional misrepresentations to the disciplinary
11 commission during its investigation and intentionally
12 forging a fraudulent receipt and submitting it to the
13 commission, as well as Weiss vs. Commission for Lawyer
14 Discipline, a 1998 Texas case, where they found that
15 disbarment was appropriate for a lawyer who made
16 misrepresentations to the grievance committee.
17 Throughout the course of this disciplinary
18 proceeding, this case was initially filed -- the initial
19 complaint was filed more than a year ago. It was May of
20 2020 when this case was first initiated. That case
21 resulted -- initially it resulted in a default because
22 there was no communication, no participation from
23 Mr. Padgett.
24 The first time we heard from Mr. Padgett was

1 the morning of October 15, 2020, when we were supposed to
2 have a formal hearing. At that point Mr. Padgett began a
3 series of conduct that involved dishonesty and fraud and
4 misrepresentation where he stated that this should be
5 continued because he did not receive notice as the State
6 Bar sent items to the wrong address. However, as I
7 stated, testimony refutes Mr. Padgett's assertions, and
8 as you can see in my trial brief, there are multiple
9 times where Mr. Padgett was attempting to delay the
10 instant proceedings, stay the proceedings, and taking any
11 means necessary to drag this case on.
12 As to Zoom hearings, Mr. Padgett knew, at least
13 since February of this year at the ICC, that this hearing
14 would be conducted via Zoom. Even then he would still
15 appear late on the first date. He failed to -- as
16 Mr. Chairman stated, we started the hearing on May 28th
17 at approximately 9:54 in the morning. Mr. Padgett didn't
18 join Zoom until around 10:23 that morning. In fact,
19 Mr. Padgett testified that he was trying for about an
20 hour to log on, but then he decided, after an hour and a
21 half, enough was enough, that he would call. It's
22 Mr. Padgett's own conduct that has caused multiple delays
23 in these proceedings.
24 As I stated, on January 13, 2021, he requested

1 a stay of these proceedings based on his recently filed
2 Supreme Court brief. He filed a motion to remove myself
3 from this case, which was very late, 25 days after the
4 deadline had passed, and, in fact, this morning,
5 23 minutes before this continued formal hearing,
6 Mr. Padgett filed yet another motion trying to dismiss
7 this case. There's no reason that he could not have made
8 these arguments prior to the deadline.
9 And not only that, Mr. Padgett talks about
10 prejudice to himself. However, the State Bar's position
11 is we were the ones, in fact, prejudiced. As
12 Mr. Chairman stated and as the exhibits will show, the
13 Amended Scheduling Order required that the State Bar and
14 Mr. Padgett submit the initial disclosures and final
15 disclosures by a certain date. Mr. Padgett refused.
16 After receiving an extension, he filed an incomplete set
17 of initial disclosures, did not identify any witnesses
18 other than himself, and after the State Bar contacted
19 Mr. Padgett to fix those issues, he willfully did not --
20 refused to provide the State Bar with any witness
21 identities as well as documents. Not only that, he did
22 not file any final disclosures, so the State Bar had no
23 idea what would happen or what Mr. Padgett was
24 discussing. So any prejudice that Mr. Padgett allegedly

1 encountered was due to his own conduct.

2 Based on all that, that ABA Standard 6.11 is

3 completely appropriate in this case because time and

4 again throughout the course of these proceedings,

5 Mr. Padgett engaged in conduct that involved dishonesty,

6 fraud, deceit, or misrepresentation, and, again, State

7 Bar vs. Claiborne says the paramount objective is to

8 protect the public. Simply put, Mr. Padgett is not fit

9 to continue practicing as a lawyer in the state of

10 Nevada.

11 Now, once again, as I stated, I believe

12 Standard 6.11 is appropriate in this case. Now, once we

13 receive the standard, we are to look at any aggravating

14 or mitigating factors, and that's codified in Supreme

15 Court Rule 102.5.

16 As to any aggravating factors, that is under

17 SCR 102.5(1). First and foremost, the first aggravating

18 factor is sub (a), which is prior disciplinary offenses.

19 On May 21st of this year -- that's Exhibit 2A --

20 Mr. Padgett received a five-year suspension for

21 violations of Rule 1.2, 1.4, 1.8, 1.15, 3.3, 8.1, and

22 8.4.

23 Another aggravating factor that applies in this

24 case is sub (b), a dishonest or selfish motive; sub (c),

1 a pattern of misconduct; (d), multiple offenses; (e), bad
2 faith obstruction of the disciplinary proceeding by
3 intentionally failing to comply with rules or orders --
4 as I stated earlier, Mr. Padgett's own conduct is what
5 caused the multiple delays in the instant proceedings --
6 sub (f), submission of false evidence, false statements,
7 or other deceptive practices during the disciplinary
8 hearing -- as I stated, Mr. Padgett knew that the formal
9 hearing would be held via Zoom, and yet he allegedly is
10 only able to access Zoom on his phone by calling in --
11 sub (g), refusal to acknowledge the wrongful nature of
12 conduct; and sub (i), substantial experience in the
13 practice of law. Mr. Padgett has been barred since
14 December 28th of 2000.
15 As to any mitigating factors, SCR 102.5(2), the
16 State Bar finds that there are no applicable mitigating
17 factors, and for those reasons, the State Bar would
18 highly recommend that Mr. Padgett be disbarred and that
19 SCR 120 costs of $3,000 plus the actual costs of this
20 disciplinary proceeding be imposed.
21 In the alternative, if the panel feels that
22 disbarment is a little too harsh, the alternative
23 recommendation would be that Mr. Padgett be suspended for
24 a period of five years consecutive to his May 21, 2021,

1 order, but, again, I will reiterate that the State Bar is
2 seeking a disbarment in this matter.
3 Thank you.
4 CHAIRMAN WILLIAMSON: Thank you, Mr. Gosioco.
5 Well, again, it's 11:28. We still don't have
6 Mr. Padgett, so I think that will conclude things.
7 Unless either Mr. Aman or Ms. Westlake have any
8 questions for you, I think maybe then we can break out
9 into a deliberation session.
10 MR. WESTLAKE: I do not have any questions at
11 this time. Thank you so much.
12 MR. AMAN: I do not have any questions either.
13 CHAIRMAN WILLIAMSON: Okay. Laura, are you
14 able to -- so I guess with that, we will close the
15 submission of evidence and arguments in the matter of
16 State Bar of Nevada v. Padgett, and I guess we'll go off
17 the record so that the panel can deliberate.
18 (A recess was taken.)
19 CHAIRMAN WILLIAMSON: Let's officially go back
20 on the record, and I will go through the panel's
21 findings, and then I'll ask Mr. Gosioco to prepare an
22 order and submit it to me in Word in case we need to make
23 any edits.
24 Okay. So the panel has received the evidence

1 over the original hearing date on May 28th as well as the
2 continued hearing date today, June 16th, has carefully
3 considered all the evidence, the testimony, and the
4 various arguments of counsel.
5 The panel finds that Respondent Padgett did
6 violate RPC 1.5, as stated in Count 1; RPC 5.1, as stated
7 in Count 2; RPC 8.1, as stated in Counts 3 and 4; and
8 RPC 8.4, as stated in Counts 5 and 6.
9 In addition, in terms of the mental state, the
10 panel finds that Mr. Padgett knew what he was doing, that
11 his acts were intentional and willful and -- now, this is
12 somewhat going to the aggravating factors -- but more
13 importantly, that Mr. Padgett has absolutely showed no
14 remorse whatsoever with regard to his conduct.
15 In terms of reviewing the aggravating and
16 mitigating factors set forth in SCR 102.5(1) and (2), the
17 panel does find that the following aggravating
18 circumstances are present: 102.5(1)(a), (b), (c), (d),
19 (e), (g), (i), and (j). The panel did not find a
20 mitigating circumstances in Mr. Padgett's favor.
21 The panel extensively deliberated over the
22 appropriate outcome in this case and really sort of
23 weighed against the seriousness of the offenses but also
24 the numerous aggravating factors, most importantly,

1 again, the sort of refusal to acknowledge the wrongful
2 nature of his conduct, Mr. Padgett's indifference
3 apparently to making restitution, and his ongoing
4 obstruction of these disciplinary proceedings.
5 The panel does appreciate the arguments of bar
6 counsel and very seriously considered disbarment.
7 Ultimately, however, the panel concluded that
8 reinstatement -- excuse me -- that suspension would be
9 more appropriate and found specifically a suspension of
10 five years that would run consecutively following the
11 suspension of five years that the Supreme Court already
12 assessed against Mr. Padgett last month. We believe this
13 was part of the rule anyway but would want to confirm
14 that any reinstatement would be conditioned upon
15 Mr. Padgett retaking the bar exam and retaking the ethics
16 exam, the NPRE.
17 In addition, Mr. Padgett is required to repay
18 all of the State Bar's costs and the investigative costs
19 incurred in this matter, and reinstatement would be
20 conditioned upon Mr. Padgett repaying restitution to
21 Mr. DiFrancesco and the Ferons in the form of fees they
22 paid, which was approximately $161,000, and his time to
23 repay that, importantly, is within five years, and so
24 that is not the concurrent period of the suspension, but

1 within the next five years starting from today he would
2 need to have repaid that to be eligible for reinstatement
3 in what would be approximately ten years.
4 Unless I've missed anything, I think that
5 encapsulates the panel's findings.
6 Ms. Westlake, Mr. Aman, did I miss anything?
7 MR. AMAN: No.
8 MS. WESTLAKE: No, you did not.
9 CHAIRMAN WILLIAMSON: Does the Bar have any
10 questions?
11 MR. GOSIOCO: Just briefly, Mr. Williamson.
12 Did you make a ruling as to the injury for each
13 of the counts violated?
14 CHAIRMAN WILLIAMSON: Yeah. We discussed it.
15 I'll be happy to go through it expressly. I also --
16 again, what I may have failed to state is the restitution
17 of the fees should be with statutory interest, and,
18 again, that is all due within the next five years.
19 But in terms of the injury, yeah, I will --
20 I'll go through each one. Importantly, as to Count 1,
21 the injury to the grievants was obviously the loss of
22 money and the loss of significant amounts of money
23 without any proper accounting and without actually
24 performing the work that was required, particularly on

1 several of the checks that were specifically issued to
2 Mr. Padgett and conditioned upon the clients' expectation
3 that he would conduct depositions and do other discovery
4 work. So, again, that conduct there reflects poorly on
5 the Bar, it is a threat to the public, and, most
6 importantly, Mr. DiFrancesco and the Ferons suffered
7 significant injury with regard to Count 1.
8 With regard to Count 2, again, it reflects
9 negatively on the profession and for sure burdened the
10 court system for Count 2, and, most importantly,
11 ultimately the grievants, Mr. Padgett's clients, lost
12 their case or their case was dismissed, and so that is a
13 grievous injury that they suffered with regard to
14 Count 2.
15 With regard to Counts 3, 4, 5, and 6, generally
16 that misconduct injured the profession, and I will state
17 I don't think the injury on these counts was as grievous.
18 It was certainly aggravating, I'm sure, for bar counsel.
19 It was aggravating for the panel. It necessitated
20 calling additional witnesses. You know, the failure to
21 admit facts and the failure to acknowledge the truth and
22 the obfuscation that occurred did cause significant delay
23 and frustration of the disciplinary proceedings, but
24 certainly, you know, was nowhere near the serious injury

1 involved with Counts 1 and 2. So I believe that covers
2 the injury with respect to all six counts.
3 Anything else from the Bar?
4 MR. GOSIOCO: Again, just one last question,
5 Mr. Chairman.
6 I know that initially the baseline standard I
7 had recommended for disbarment was 6.11, so seeing that
8 the recommendation is a five-year suspension, are you
9 basing that off of Standard 6.12 instead?
10 CHAIRMAN WILLIAMSON: Yes. I realize the goal
11 is to follow the standards, but, generally, the panel's
12 experience and the very particularized facts of this case
13 seem to justify the five-year suspension. So, yes, we
14 tried to follow the ABA guidelines but also realized we
15 needed some departure from those more strict standards.
16 MR. GOSIOCO: Thank you.
17 I apologize. Lastly, you mentioned the bar
18 exam and the NPRE. I know that suspensions five years or
19 more prior to reinstatement does require taking the bar
20 exam, but you are also requiring that Mr. Padgett retake
21 and pass the NPRE prior to his petition for reinstatement
22 if he does apply?
23 CHAIRMAN WILLIAMSON: Correct.
24 MR. GOSIOCO: Thank you.

1 CHAIRMAN WILLIAMSON: And then the fees the
2 DiFrancescos and the Ferons had paid with interest and
3 then, of course, the investigative fees and bar counsel
4 fees as well.
5 MR. GOSIOCO: Perfect. I believe that's it,
6 Mr. Chairman.
7 CHAIRMAN WILLIAMSON: Okay. So that will be
8 the order, and, Mr. Gosioco, if you could prepare both
9 that proposed order and also the order denying the motion
10 that was filed this morning. Again, no incredible rush
11 other than I think we have 15 days -- we do have some
12 timeline in the rules to get these things entered, but if
13 you could get them to us at your convenience, we would
14 appreciate it.
15 MR. GOSIOCO: Absolutely.
16 CHAIRMAN WILLIAMSON: Just so you know, I will
17 actually be out starting tomorrow until the 24th, so if
18 I'm nonresponsive, that's why.
19 MR. GOSIOCO: Sounds good. Thank you so much,
20 Mr. Chairman.
21 CHAIRMAN WILLIAMSON: Thank you, all. And,
22 again, I want to thank the panel members for their
23 patience in what was a very slow, aggravating hearing,
24 and they did a terrific job, so thank you, all.

1 MR. GOSIOCO: Thank you, everyone.

2 CHAIRMAN WILLIAMSON: We'll be adjourned.

3 (Proceedings concluded at 12:36 p.m.)

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1 REPORTER'S CERTIFICATION

2 I, Peggy B. Hoogs, Certified Court Reporter in
3 and for the State of Nevada, do hereby certify:
4 That the foregoing proceedings were taken
5 remotely by me via Zoom videoconference at the time
6 herein set forth; that the proceedings were recorded
7 stenographically by me and thereafter transcribed via
8 computer under my supervision; that the foregoing is a
9 full, true, and correct transcription of the proceedings
10 to the best of my knowledge, skill, and ability.
11 I further certify that I am not a relative nor
12 an employee of any attorney or any of the parties, nor am
13 I financially or otherwise interested in this action.
14 I declare under penalty of perjury under the
15 laws of the State of Nevada that the foregoing statements
16 are true and correct.
17 Dated this 9th day of July, 2021.
18
19 Peggy B. Hoogs
20 Peggy B. Hoogs, CCR #160, RDR
21
22
23
24

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3 and state laws and regulations ("Privacy Laws") governing the
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22 recommended that your office review its policies regarding sharing of
23 transcripts and exhibits - including access, storage, use, and
24 disclosure - for compliance with Privacy Laws.

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Exhibit 2a

Exhibit 2a

DECLARATION OF LAURA PETERS
CUSTODIAN OF RECORDS

LAURA PETERS, under penalty of perjury, being first duly sworn, deposes and says as follows:

That Declarant is employed as a paralegal for the discipline department of the State Bar of Nevada and in such capacity is the custodian of records for the State Bar of Nevada;

That Declarant has reviewed the State Bar of Nevada membership records regarding Respondent Brian C. Padgett, Esq., Nevada Bar No. 7474, and has verified that he was admitted to practice law in the State of Nevada on December 28, 2000. Respondent received an Order of Suspension, issued May 21, 2021, attached hereto.

Dated this 24th day of May 2021.

Laura Peters

_____
Laura Peters, Paralegal
Office of Bar Counsel

IN THE SUPREME COURT OF THE STATE OF NEVADA

IN THE MATTER OF DISCIPLINE OF BRIAN C. PADGETT, BAR NO. 7474.

No. 81918

FILED

MAY 21 2021

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY
CHIEF DEPUTY CLERK

ORDER OF SUSPENSION

This is an automatic review of a Southern Nevada Disciplinary Board hearing panel's recommendation that attorney Brian C. Padgett be suspended from the practice of law in Nevada for five years based on violations of RPC 1.2 (scope of representation and allocation of authority between client and lawyer); RPC 1.4 (communication); RPC 1.8 (conflict of interest: current clients); RPC 1.15 (safekeeping property); RPC 3.3 (candor toward the tribunal); RPC 8.1 (disciplinary matters); and RPC 8.4(d) (misconduct).

The State Bar has the burden of showing by clear and convincing evidence that Padgett committed the violations charged. *In re Discipline of Drakulich*, 111 Nev. 1556, 1566, 908 P.2d 709, 715 (1995). Here, after Padgett failed to answer the complaint, the State Bar entered a default and the hearing proceeded on a default basis. SCR 105(2) (providing that when an attorney fails to answer the complaint, "bar counsel shall enter a default and the charges shall be deemed admitted" and allowing a defaulted attorney to move the hearing panel chair to set aside the default if failure to answer is "attributable to mistake, inadvertence, surprise, or excusable neglect"). In his briefing in this court, Padgett argues that the panel's findings of fact, conclusions of law, and recommendation should be set aside because the disciplinary proceedings did not afford him due process. In particular, although Padgett does not dispute receiving the State Bar complaint, he asserts that after he notified Bar counsel of his

intention not to respond to the complaint based on issues he was having with his cannabis business, he assumed the Bar stayed the disciplinary proceedings but it instead moved forward with proceedings without properly notifying him.

Having reviewed the record and considered the arguments, we perceive no due process violation and conclude that the matter properly proceeded on a default basis. Copies of the complaint, first amended complaint, and notice of intent to proceed by default were served on Padgett via regular and certified mail at his SCR 79 mailing and email addresses.[1] Additionally, the State Bar sent copies of the order appointing hearing panel chair and notice of initial case conference by mail and email to Padgett's SCR 79 addresses. The State Bar also sent Padgett the default order by mail and email and sent to him by email the scheduling order, order appointing hearing panel, and notice of amended hearing date. It also unsuccessfully attempted six times to serve Padgett personally with all of the documents, twice at his SCR 79 address; once at his former home address; and three times at his current home address. On May 22, 2020, the State Bar sent by first class mail to Padgett's SCR 79 mailing address, and by email, the notice of formal hearing, which was held on June 8, 2020. These efforts to notify Padgett of the charges against him[2] and the hearing comply with SCR 109, which incorporates due process requirements.[3] SCR

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[1]The State Bar received receipts for the certified mailings, confirming delivery to Padgett's SCR 79 address.

[2]As noted above, Padgett does not dispute receiving the complaint.

[3]In his reply brief, Padgett asks this court to set aside the panel's findings of fact, conclusions of law, and recommendation under NRCP 60(b), on the basis that the State Bar failed to provide proper notice of the disciplinary proceedings and he lacked an opportunity to defend against the

109 (providing that service of a disciplinary complaint must be made by personal service "in the manner prescribed by Nevada Rule of Civil Procedure 4(c), or by registered or certified mail at the current address shown in the state bar's records or other last known address," and that other papers and notices must be served in accordance with NRCP 5); *see Dutchess Bus. Servs., Inc. v. Nev. State Bd. of Pharm.*, 124 Nev. 701, 712, 191 P.3d 1159, 1167 (2008) (observing that administrative bodies must follow their established guidelines for notifying a defending party, and due process requirements are satisfied where the party has been served with notice of the charges so the party may rebut issues on which a decision will turn); *Durango Fire Prot., Inc. v. Troncoso*, 120 Nev. 658, 663, 98 P.3d 691, 694 (2004) (rejecting a party's claimed lack of knowledge of a scheduled hearing when notice of the hearing was mailed to the party's address of record because, under NRCP 5(b), service is complete upon mailing).

With the default properly entered under SCR 105(2), the record therefore establishes that Padgett violated the above-referenced rules by (1) having his client's judgment (plus interest) of $151,599.83, which had been

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charges. This court is not the appropriate forum in which to raise this claim, as NRCP 60(b) provides parties with a mechanism to seek relief from a decision in the court, or in this case, disciplinary board panel, that issued the decision based upon a reason justifying relief. NRCP 60(b) (stating that on a motion and just cause, the court may relieve a party from the court's order or proceedings); *see* SCR 105(2) (allowing a defaulted attorney to move the hearing panel chair to set aside the default if failure to answer is "attributable to mistake, inadvertence, surprise, or excusable neglect"); SCR 119(3) (stating that the Nevada Rules of Civil Procedure generally apply in disciplinary cases); *see also Yochum v. Davis*, 98 Nev. 484, 653 P.2d 1215 (1982) (observing that the decision to grant or deny NRCP 60(b) relief is fact-based), *overruled on other grounds by Willard v. Berry-Hinkley Indus.*, 136 Nev., Adv. Op 53, 469 P.3d 176 (2020); *Zugel v. Miller*, 99 Nev. 100, 659 P.2d 296 (1983) (recognizing that appellate courts are not suited to address disputes that raise factual issues).

deposited with the district court pending appeal, released to Padgett's firm by filing an ex parte motion without the client and appellate counsel's knowledge or authorization and attempting to have an additional $13,845.45 of the client's funds on deposit with the court released to his firm by submitting a proposed order directly to the court without notifying the client or any other parties; (2) agreeing to represent a client in a suit in which the plaintiff claimed that the client violated a no-compete agreement, even though the client allegedly breached the agreement by forming a new security company and accepting employment with Padgett's cannabis business, advising the client to agree to joint and several liability for breaching the agreement, offering to pay any judgment against the client, and filing an appeal after judgment was entered but then withdrawing his representation leading to the appeal's dismissal and an unpaid $130,000 judgment against the client; and (3) failing to meaningfully respond to the State Bar's inquiries about the two grievances and misrepresenting a material fact to the State Bar.

Turning to the appropriate discipline, we review the hearing panel's recommendation de novo. SCR 105(3)(b). In determining the appropriate discipline, we weigh four factors: "the duty violated, the lawyer's mental state, the potential or actual injury caused by the lawyer's misconduct, and the existence of aggravating or mitigating factors." *In re Discipline of Lerner*, 124 Nev. 1232, 1246, 197 P.3d 1067, 1077 (2008).

Padgett violated duties owed to his clients (safekeeping client funds, communication, allocation of authority, conflict of interest), the profession (candor, failure to respond to lawful requests for information by a disciplinary authority), and the public (misconduct). The record supports the panel's finding that Padgett's mental state was intentional as to the

RPC 1.2 violation and knowing as to the remaining violations. His misconduct harmed his clients and the legal profession.

The baseline sanction for Padgett's misconduct, before considering aggravating and mitigating circumstances, is suspension. *See* Standards for Imposing Lawyer Sanctions, *Compendium of Professional Responsibility Rules and Standards*, Standard 4.12 (Am. Bar Ass'n 2017) providing that suspension is appropriate when "a lawyer knows or should know that he is dealing improperly with client property and causes injury or potential injury to a client"); Standard 7.2 ("Suspension is generally appropriate when a lawyer knowingly engages in conduct that is a violation of a duty owed as a professional and causes injury or potential injury to a client, the public, or the legal system."). The panel found and the record supports seven aggravating circumstances (dishonest or selfish motive, pattern of misconduct, multiple offenses, bad faith obstruction of the disciplinary proceedings by intentionally failing to comply with rules or orders, refusal to acknowledge wrongful nature of conduct, substantial experience in the practice of law, and indifference to making restitution), and one mitigating circumstance (absence of a prior disciplinary record).

Considering all the factors, including the balance of aggravating and mitigating circumstances and the scope of Padgett's misconduct, we agree with the panel's recommendation for a five-year suspension. *State Bar of Nev. v. Claiborne*, 104 Nev. 115, 213, 756 P.2d 464, 527-28 (1988) (observing the purpose of attorney discipline is to protect the public, the courts, and the legal profession, not to punish the attorney). Accordingly, we hereby suspend attorney Brian Padgett from the practice of law in Nevada for five years commencing from the date of this order.

Further, Padgett shall pay the costs of the disciplinary proceedings, including $2,500 under SCR 120, within 30 days from the date of this order.[4]

It is so ORDERED.

_____, C.J.
Hardesty

_____, J.
Parraguirre

_____, J.
Stiglich

_____, J.
Cadish

_____, J.
Silver

_____, J.
Pickering

_____, J.
Herndon

cc: Chair, Southern Nevada Disciplinary Board
Law Offices of Brian C. Padgett
Bar Counsel, State Bar of Nevada
Executive Director, State Bar of Nevada
Admissions Office, U.S. Supreme Court

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[4]In reaching this disposition, we considered Padgett's other arguments, including that the State Bar failed to disclose a conflict of interest with a panel member, that it failed to update Padgett's mailing address, and that it violated Padgett's due process rights by holding one hearing for two separate grievances. We conclude that Padgett either waived these arguments by failing to raise them to the hearing panel in a post-decision motion or they otherwise are unsupported and lack merit.

Exhibit 3

Exhibit 3

Law Offices of
BRIAN C. PADGETT
Nevada's Eminent Domain and Property Rights Attorneys™

March 6, 2012

DiFrancesco Family Trust
Feron Family Trust
Attn: John DiFrancesco
Bob Feron

Re: Retention of the Law Offices of Brian C. Padgett pertaining to the Condemnation/Inverse Condemnation of 35 and 65 N. Edison Way, Reno, Nevada ("Property") for the Truckee River Flood Control Project

Dear Mr. Di Francesco and Mr. Feron,

This Engagement Letter is sent to confirm our discussions and engagement relative to your retention of this Firm for the taking of the above-referenced properties for the Truckee River Flood Control Project (the "Scope of Representation"). Bills will be rendered in accordance with this Engagement Letter and the Policies Relating to Professional Fees and Services ("Policies") that is incorporated with this Engagement Letter.

With respect to any individuals that may work on this matter, the current billing rates are as follows: (1) Brian Padgett - $350.00 per hour; (2) Associates - $275.00 per hour; and (3) Paralegals - $125.00 per hour. A $5,000.00 retainer is required prior to commencement of work.

Pursuant to our agreement, the Firm agrees to bill you on a monthly basis for hourly services rendered. However, the parties have agreed that the DiFrancesco Family Trust and the Feron Family Trust ("Clients") shall pay $2,450.00 toward any monthly attorney's fees due and owing to the Firm and the remainder of fees billed each month along with case costs incurred shall be paid at the conclusion of this inverse condemnation/condemnation lawsuit. However, should the Clients sell their interest in one or more of their two cellular towers prior to the conclusion of this case, all fees and costs deferred to that point shall be paid in full at that time and in full each month thereafter, with no deferment until the conclusion of this lawsuit.

611 South Sixth Street, Las Vegas, Nevada 89101
Tel. (702) 304-0123 Fax (702) 368-0123

It is also agreed that case costs, until paid in full by Clients, shall accrue carrying charges of 1.5 percent per month from the date they are incurred until these case costs are paid in full.

Please execute this Engagement Letter and return a signed copy to our office along with the initial retainer check, to acknowledge that you have engaged this firm within the Scope of Representation and accept the terms contained in this Engagement Letter, including the Policies set forth below and starting on page 3 of this document.

We look forward to working with you.

Very truly yours,

Brian C. Padgett

READ, APPROVED, AND ACCEPTED BY:

I have read this Engagement Letter and hereby accept all terms of this Engagement Letter, including the Policies.

By: _____
DiFrancesco Family Trust

Print Name: JOHN DiFRANCESCO

Its: EXECUTOR

Date: 3/6/12

By: _____
Feron Family Trust

Print Name: _____

Its: _____

Date: _____

It is also agreed that case costs, until paid in full by Clients, shall accrue carrying charges of 1.5 percent per month from the date they are incurred until these case costs are paid in full.

Please execute this Engagement Letter and return a signed copy to our office along with the initial retainer check, to acknowledge that you have engaged this firm within the Scope of Representation and accept the terms contained in this Engagement Letter, including the Policies set forth below and starting on page 3 of this document.

We look forward to working with you.

Very truly yours,

Brian C. Padgett

READ, APPROVED, AND ACCEPTED BY:

I have read this Engagement Letter and hereby accept all terms of this Engagement Letter, including the Policies.

By: _____
DiFrancesco Family Trust

Print Name: _____

Its: _____

Date: _____

By: _____
Feron Family Trust

Print Name: Robert Feroni

Its: Trustor

Date: 3/6/12

Law Offices of Brian C. Padgett
Policies Relating to Professional Fees and Services

This statement of Policies Relating to Professional Fees and Services ("**Policies**") describes how the Law Offices of Brian C. Padgett bills for legal services rendered and expenses incurred in connection with client matters. We believe that we can better serve our clients if they are informed about our billing policies at the beginning of our representation.

In order to help us determine the value of services that we render on behalf of our clients, our attorneys and paralegals maintain written records of the actual time they spend working for each client in 1/6 hour increments. Billed time includes all time spent on the case and encompasses activities including, but not limited to, conferences, telephone calls, pretrial discovery of data, trial preparation, drafting of documents, correspondence and pleadings, negotiations, legal research, court time, and travel time. Those professionals rendering services are assigned an hourly rate based upon the type of work that they perform and their level of experience and skill. We periodically review our rates and make adjustments as necessary. Although our hourly rates are the most common component of our fees, they are not the only factor that we take into account in determining the value of our services. For example, consideration will be given to the type of services that we have been asked to perform, any special level of skill or expertise required, the size and scope of the matter, any special time constraints imposed, expedited matters, and the results of our efforts.

In addition to our fees for services, our clients are responsible for all out-of-pocket case costs that we incur on their behalf. For example, charges for court reporting services, expenses associated with travel, long-distance telephone calls, photocopies, computerized research services, courier services, fax and other forms of communication, and any other out-of-pocket expenses including expert witness fees will be billed to the client. While we may sometimes advance our funds to cover out-of-pocket expenses incurred on behalf of a client, we reserve the right to pass any such expenses on to our clients for payment directly to the person who provided the services. We will make every effort to include the out-of-pocket disbursements that we make on our clients' behalf in their next monthly statement. However, some disbursements are not immediately available to us and, as a result, may not appear on a statement until sometime after the charges were actually incurred.

Our statements for services rendered and costs incurred are sent to our clients on a monthly basis as set forth in the Engagement Letter above (pages 1 and 2 of this document). All statements are due and payable as set forth in the Engagement Letter. Any statements not paid as set forth in the Engagement Letter within thirty (30) calendar days of the statement date will be assessed a late charge on the unpaid balance at the rate of one and one-half percent (1.5%) per month and late charges are due on the first day of each subsequent thirty (30) calendar day period. Whether or not the client calls with an inquiry, any dispute as to the accuracy or validity of any billed charges, or requests for adjustment of any costs, expenses, or fees for legal services billed to the client, must be

made in writing to the Firm within ten (10) calendar days of the date of the statement containing that cost, expense, or fee for legal services. If the client does not do so within ten (10) calendar days of a billing statement, the statement will be conclusively presumed to be correct. In other words, if the client does not contact us in writing within ten (10) calendar days of a dated billing statement, the client will have irrevocably agreed that the statement is accurate and correct. We reserve the right to withdraw from representation in the matter if timely payment is not received. The client will pay any fees and costs that are incurred by us to collect any fees, costs, or expenses from the client, including reasonable attorney fees.

We also have the right at our discretion to withdraw from a client's case if the client misrepresents or fails to disclose material facts to us, fails to follow our advice, fails to cooperate in the preparation of the case, or in the event we determine it is not in our mutual interests to continue the representation. A client may discharge us at any time for any reason. The client will be responsible for any fees and costs incurred prior to any withdrawal or discharge, and time and costs expended to turn over the files and other information to the client or to substitute counsel.

We expect a client to be truthful in all communications to us and to keep us informed of developments as they occur during the pendency of the case. In addition, we expect to be accurately informed of a client's address, telephone number, and other contact information at all times throughout our representation of the client.

The firm requires a $5,000.00 refundable retainer fee before commencing work. At our discretion, this retainer will be credited against the time expended by us and against the costs incurred on the client's behalf. Alternatively, we may require, again at our discretion, a client to pay on a monthly basis for time expended by us on the client's representation and costs incurred on the client's behalf without using the retainer funds for that purpose, permitting us to maintain the retainer fee as security for payment of future fees and costs. Any retainer deposit not used for costs, expenses, and fees for legal services will be refunded to the client at the conclusion of the representation.

We are sometimes asked to estimate the legal fees and other costs that will be incurred in connection with a particular matter. While we are happy to do so when possible, it should be understood that any such estimate necessarily incorporates a number of assumptions, is our best estimate at that time, and is not guaranteed to accurately reflect actual future fees and costs. There are almost always uncertainties involved in the handling of any legal matter, particularly when other parties are involved whose actions may significantly impact the work required to protect our client's interest. Accordingly, no such estimate is to be interpreted as a guarantee or maximum unless expressly stated and in writing. The actual fees and costs may be more or less than any estimate, and the client will be charged on the basis described above without regard to that estimate. The fees and costs incurred in connection with our representation of a client are not contingent upon the successful completion of any project.

We will, at our discretion, use associate counsel, legal assistants, or paralegals for work on a particular matter as we might deem appropriate. Such person shall be billed at their regular billing rate. We endeavor to apportion work to such persons so as to minimize costs and maximize effectiveness for our client. Under certain circumstances, more than one member of our staff may work on a matter for the client simultaneously, in which case both members of our staff should be expected to bill for the time spent. An example would include a trial or contested evidentiary hearing during which, at our discretion, the full participation of more than one person is necessary to properly attend the client's case. Another typical example is when an attorney may need another attorney or a paralegal present to assist at a hearing or trial.

If a court awards attorney fees and/or costs to our client (or to us on our client's behalf), and such sums are actually collected, they shall first be applied against any outstanding charges on the client's bill. The client, however, remains responsible for payment of our services. A court order awarding attorney fees from the opposing party does not relieve our client of the primary responsibility for paying our invoice for fees and advanced costs, or make any work done to collect the attorney fees and/or costs awarded any different from any other work performed by us. All attorney fees awarded and actually collected that are not needed to pay the client's invoice from us (or to replenish the retainer fee deposit) shall be paid to the client. Likewise, a court could order our client to pay attorney fees or costs to the opposing party under certain circumstances, such obligation will be the exclusive responsibility of our client.

It may become necessary in the preparation of the clients' case for us to hire expert witnesses, consultants, or investigators. The Firm shall have sole discretion to retain such persons. Any such hirings are considered case costs and their payment shall be the sole responsibility of the Landowners as set forth in the Engagement Letter.

The client grants us a lien on any and all claims or causes of action that are related to the subject of our representation. This attorney lien will be for any sums due and owing to us at the conclusion of our services. The lien will attach to any recovery the client may obtain, whether by arbitration award, judgment, settlement, or otherwise. Any amounts received by us on the client's behalf may be used to pay the client's account.

We will retain possession of the client's file and all information therein until full payment of all costs, expenses, and fees for legal services, subject to turnover or destruction of the file as set forth below. After payment of all sums due and upon the client's request, we will deliver the client's file (other than our personal notes, briefs, and work product that we elect to retain) to the client, along with any of the client funds or property in our possession. If we are not instructed otherwise, the client's file will be kept in our office for a limited time after completion of the case and then sent to off-site storage, where it will be held for a period not to exceed seven years. Files are destroyed seven years after the closure of the case file without any further notice.

The client may discharge us at any time, although court rules might still require us to file a motion to withdraw and/or substitution of counsel. We may withdraw from our representation of any client at any time at our discretion. In either such circumstances, the client shall sign any documents necessary to permit us to withdraw. If the client shall desire to retain other counsel, then we shall be paid the amount then due and owing for work performed for the client.

Nothing in our statements to the client will be construed as a promise or guarantee about the outcome of the client's matter. We make no such promises or guarantees. Our comments about the outcome of the client's matter, if any, are expressions of opinion only. It is impossible to predict how long a case will take, how much it will cost, or what the resulting outcome may be. Similarly, we do not make any guarantees to the client about the expense of the client's case. It is quite typical that the costs, expenses, and fees for legal services incurred in the client's case will substantially exceed the initial retainer fee deposit.

We encourage our clients to contact the attorneys responsible for their matters if they have any questions about our billings, policies, or procedures.

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Joey Orduna Hastings
Clerk of the Court
Transaction # 3066602

$1425
LAW OFFICES OF BRIAN C. PADGETT
Brian C. Padgett, Bar No. 7474
John P. Shannon, Bar No. 7906
611 South Sixth Street
Las Vegas, Nevada 89101
Telephone: (702) 304-0123
Facsimile: (702) 368-0123

Attorneys for Plaintiffs JOHN DIFRANCESCO TRUST and ROBERT & JACALYN A. FERON FAMILY TRUST

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IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

IN AND FOR THE COUNTY OF WASHOE

*****

JOHN DIFRANCESCO TRUST, and ROBERT & JACALYN A. FERON FAMILY TRUST, Plaintiff vs. WASHOE COUNTY, the CITY OF RENO, the CITY OF SPARKS, and the TRUCKEE RIVER FLOOD MANAGEMENT AUTHORITY, Defendants.	Case No.: Dept. No.: **COMPLAINT IN INVERSE CONDEMNATION, PRECONDEMNATION DAMAGES AND OTHER RELIEF** **Arbitration Exempt: Action Concerning Title To Real Property**

COMES NOW PLAINTIFF, JOHN DIFRANCESCO TRUST and ROBERT & JACALYN A. FERON FAMILY TRUST (hereinafter referred to as the "Landowners"), by and through their attorneys, the Law Offices of Brian C. Padgett, as and for its Complaint in Inverse Condemnation and Precondemnation Damages alleges as follows:

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GENERAL ALLEGATIONS

1.

Defendants WASHOE COUNTY, the CITY OF RENO, the CITY OF SPARKS, and the TRUCKEE RIVER FLOOD MANAGEMENT AUTHORITY (hereinafter referred to as the "Defendant" or "Defendants") are political subdivisions of the state of Nevada and are subject to the provisions of the Nevada Revised Statutes, including NRS 342.105, which makes obligatory on Defendants all of the Federal Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, 42 USC§4601-4655, and the regulations adopted pursuant thereto. Defendants are also subject to all of the provisions of Article 1, section 22 of the Nevada Constitution.

2.

At all times relevant herein, the Landowners were the fee simple owner of parcels of real property located on North Edison Way, north of Mill Street and directly abutting the south bank of the Truckee River, in Reno, County of Washoe, State of Nevada. The parcels are also known as 35 North Edison Way, Reno, Nevada 89052, APN 012-272-12; and 65 North Edison Way, Reno, Nevada 89052, APN 012-272-10, respectively. These properties in controversy were part of a larger commercial industrial park, and are hereinafter referred to as the "Landowners' Property" or the "Subject Property."

3.

The true names and capacities, whether individual, corporate, associate or otherwise of Defendants named herein as DOE GOVERNMENT AGENCIES I-X, DOE INDIVIDUALS I-X, DOE CORPORATIONS I-X, and DOE PARTNERSHIPS I-X (hereinafter "Defendants"), inclusive are unknown to the Landowners at this time, who therefore sue said Defendants by fictitious names, and will ask leave of the Court to amend this Complaint to show the true names and capacities of Defendants when the same are ascertained; that said Defendants are sued as principals, and all of the acts performed by them were within the source and scope of their authority and employment which resulted in the takings set forth below which require payment of just compensation to the Landowners.

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4.

On or about January 31, 1989, the Landowners obtained fee title ownership of the Subject Property. The Landowners have paid for numerous improvements to the Subject Property including, but not limited to: public walkways; parking areas; public restrooms; sand oil interceptors over the storm drains; and a private 325 foot concrete-reinforced riprap floodway.

5.

The Truckee River Flood Management Project (hereinafter referred to as the "Project") was finally approved on March 11, 2003 by the Board of County Commissioners of Washoe County for the purpose of flood management. The Project was paired with an Early Land Acquisition Plan (hereinafter referred to as the "ELAP") to acquire fee title for properties in the affected project areas.

6.

The Subject Property was not part of the Project affected area under the originally approved plan. However, on or about April 24, 2005, the Subject Property was added to the list of properties to be acquired under the ELAP. A total of seven additional properties were included with the new acquisition list. ELAP's budget for property acquisition was increased from $8,000,000.00 to $20,000,000.00 to purchase the seven additional properties, including the Subject Property.

7.

The Subject Property is and was located in a commercial industrial park, and along with its various positive attributes, it enjoyed convenient access, on-site parking as well as its attractive location directly abutting the Truckee River. Accordingly, at all times prior to the Defendants' acts and omissions described herein, the Landowners had consistently maintained at or near one hundred percent (100%) tenant occupancy in the Subject Property, along with a prospective tenant waiting list in 2005.

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8.

On or about February 9, 2006, the Landowners received a letter from Defendants that announced the Defendants' intent to acquire the Subject Property for the Project.

9.

On or about, August 8, 2006, the Landowners tendered a proposal to Defendants that, in lieu of any compensation for the acquisition of the Subject Property, they instead proposed to exchange the Subject Property for another property located nearby. The plan would have passed the Subject Property's title to the Defendants for the Project and simultaneously and efficiently created a relocation plan for the Landowners' approximately fifty (50) tenants. The Landowners expressed their concern for the tenants and that the tenants be treated fairly in this process with a timely resolution of this matter. Nevertheless, Defendants failed to respond to Landowners' proposal until sixteen (16) months later on or about, December 11, 2007.

10.

When the Defendants finally responded to the Landowners' offer, on or about December 11, 2007, an agent of the Defendants accused the Landowners of trying to profit from the Defendants' Project. The Landowners disputed this, and again offered to exchange the Subject Property for another property instead of receiving any monetary compensation. In response, the Defendants' agent led the Landowners to believe that the land exchange proposal was a viable option for roughly another three (3) months before ultimately notifying the Landowners that the Defendants would not agree to such an exchange.

11.

In the interim period, the Defendants had acquired nearly every adjacent property for the Project by October 29, 2007; the Defendants' acquisitions of surrounding properties in the area began on or about, May 12, 2006. The acquired properties included: 85 North Edison Way (APN 012-272-11); 105 North Edison Way (APN 012-272-04); 125 North Edison Way (APN 012-272-05); 155 North Edison Way (APN 012-272-06); 185 North Edison Way (APN 012-272-07); 195 North Edison Way (APN 012-272-08); 5205 Mill Street (APN 012-271-09); and 5305 Mill Street (APN 012-320-05). The effect of these acquisitions left the Subject Property

surrounded with vacant properties that were not maintained and contributed to a decrease in the Subject Property's value.

12.

On or about November 25, 2009, the Landowners submitted a letter to the Defendants that advised of the detrimental impact of the Defendants' delays in acquiring the Subject Property on the Landowners' ability to maintain their tenants on the Property. Accordingly, the Landowners requested that Defendants expedite the acquisition process for the Subject Property. Nevertheless, despite their request, the Defendants failed to respond to the Landowners' request notification or update the Landowners until seven (7) months later on or about June 24, 2010.

13.

Upon information and belief, the Defendants previously hired an appraiser to appraise the Subject Property on or about November 19, 2009. The appraiser completed his appraisal report on or about February 25, 2010, and valued the Subject Property at $3,100,000.00. Defendants finally responded to the Landowners' inquiries, on about June 24, 2010, and tendered an offer with a copy of the appraisal to the Landowners for $3,100.000.00 as compensation for the acquisition of the Subject Property.

14.

The Landowners promptly informed Defendants of problems with their appraisal that resulted, incorrectly, in a substantially decreased value of the Subject Property, and rejected the Defendants' offer. Thereafter, on or about August 18, 2010, the Landowners tendered a counter-offer of $4,526,016.00 to the Defendants for their acquisition of the Subject Property.

15.

On information and belief, on or about September 26, 2010, representatives of the Defendants contacted the Landowners' tenants to inform them of Defendants' intent to acquire the Subject Property and that the tenants would have to vacate the Property.

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16.

On or about December 10, 2010, the Defendants' representative acknowledged problems with the Defendants' appraisal, but nevertheless advised that the Defendant was not willing to increase the Defendants' offer by more than five (5%) percent.

17.

Defendants thereafter retained the same appraiser who had completed the prior February 25, 2010 appraisal of the Subject Property for a second appraisal that was completed on or about January 28, 2011, wherein the appraiser valued the Subject Property at $3,485,000.00. On or about January 31, 2011, Defendants subsequently submitted another offer to the Landowners in the amount of $3,485,000.00 as compensation for the Defendants' acquisition of the Subject Property.

18.

On or about February 2, 2011, the Landowners again informed the Defendants of systemic errors prevalent in the February 25, 2010 appraisal as well as the January 28, 2011 appraisal of the subject property. Thereafter, on or about February 28, 2011, the Landowners provided a counter-offer of $4,997,000.00 to the Defendants as compensation for acquisition of the Subject Property.

19.

Instead, on or about March 24, 2011, the Defendants offered and the Landowners subsequently agreed to obtain an independent appraisal of the property in an effort to reach a resolution of this matter. The independent appraiser completed his appraisal on or about August 1, 2011, and valued the Subject Property at $4,700,000.00. Accordingly, on or about August 22, 2011, the Landowners tendered an offer to sell the Subject Property to the Defendants for $4,700,000.00.

20.

On information and belief, on or about September 2011, Defendants conveyed a new offer to the Landowners to purchase the Subject Property for $4,200,000.00 as compensation. The Landowners subsequently requested information regarding the details of the Defendants'

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20.

On information and belief, on or about September 2011, Defendants conveyed a new offer to the Landowners to purchase the Subject Property for $4,200,000.00 as compensation. The Landowners subsequently requested information regarding the details of the Defendants'

new offer, but never received any response. It was later learned that the Defendants' agents misrepresented the Landowners' response as a rejection of the Defendants' offer during a subsequent Board of Directors meeting.

21.

Thereafter, at a Board of Directors meeting on or about November 17, 2011, the Defendants again acknowledged that their acquisition of the Subject Property was crucial to the needs of the Flood Project. However, it was further revealed that the Defendants had not budgeted sufficient funds to cover the $4,200,000.00 previously offered to the Landowners on or about September 2011.

22.

Throughout the relevant time period, the Defendants have taken several actions against the Landowners that substantially interfered with the Landowners' and their tenants' use and enjoyment of the Subject Property. Upon information and belief, to wit, Defendants have permitted the Reno Police, Washoe County Sheriff, Nevada Highway Patrol, Reno Police SWAT teams, and Reno Police K9 units to conduct training exercises in the buildings and areas surrounding the Subject Property. The training exercises began in 2007, and continued on a bi-weekly basis, without any notice to the Landowners, and included, but were not limited to, the following repeated incidents:

- The entry of Reno Police officers and SWAT team members into empty buildings adjacent to the Subject Property with forced entry percussion bombs;
- The continuous presence of Reno Police SWAT team members dressed in full gear with automatic rifles on or near the Subject Property, without the authorization of the Landowners;
- An incident whereby a police officer appeared to be aiming a rifle at or near the Landowner and/or the Subject Property; and
- Police and/or SWAT vehicles affiliated with the training exercises continuously entered the Subject Property, without the Landowners' authorization, and blocked access

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driveways to the Subject Property, which inhibited parking, loading and unloading for the Landowners' tenants.

23.

On information and belief, Defendants further approved the relocation of an overflow homeless shelter to 85 North Edison Way, Reno, NV 89052 in violation of local zoning, health, and safety codes. The overflow homeless shelter was located immediately across the parking lot from the Subject Property, operated from 2007 to 2009, and created a substantial build-up of trash on the Subject Property that the Landowners and tenants were forced to clean up. Additionally, the proximity of the shelter often resulted in the presence of individuals who repeatedly and continuously entered the Subject Property, without the authorization of the Landowners, and engaged in activities that were disruptive to the Landowners' and their tenants' use and enjoyment of the Subject Property, including: the public consumption alcohol on the Subject Property, littering, and publicly urinating on the Subject Property. Ultimately, the Landowners and some of the tenants were forced to relocate to another building to avoid the unsafe environment. The overflow homeless shelter was removed from 85 North Edison Way shortly after the Landowners vacated their office on the Subject Property.

24.

On information and belief, and on or about April 2008, Defendants approved the placement of a grey water trucking facility next to the Subject Property in violation of local zoning provisions. The facility operated twenty-four (24) hours per day and seven (7) days per week, and further disrupted the Landowners' use and enjoyment of the Subject Property.

25.

In addition to the above-referenced acts and omissions, upon information and belief, the Defendants and their representatives have participated in several local televised, radio and written news releases, including public interviews that that detailed the Defendants intent to condemn the North Edison Way properties, including the Subject Property, for the Project. In these releases, the Defendants and their representatives further explained that the properties on North Edison Way, including the subject property, would be demolished by February 2012.

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26.

In addition to the above-referenced acts and omissions, the Defendants further interfered with the Landowners and their tenants use and enjoyment of the Subject Property by allowing neighboring properties the Defendants had acquired to remain vacant, without any security or maintenance, and as a result, caused those neighboring properties as well as the Subject Property to fall into disrepair, to remain open to squatters and vandalism. Furthermore, nearly all of the buildings surrounding the Subject Property have been demolished.

FIRST CAUSE OF ACTION FOR THE INVERSE CONDEMNATION OF THE PLAINTIFF'S PROPERTY

27.

Paragraphs 1 through 26 of the Landowners' Complaint are incorporated herein by reference.

28.

Upon information and belief, Defendants' acts and omissions set forth herein, and all of them, including any additional acts or omissions not fully documented herein, and to be determined during discovery in this action, constitute an actual physical invasion and/or appropriation of the Subject Property by the Defendants, which is a recognized taking of the Landowner's property rights as a matter of law.

29.

Upon information and belief, Defendants' actions, and all of them, including any additional acts or omissions not fully documented herein, and to be determined during discovery in this action, further constitute a physical taking of the Subject Property and/or substantially deprived the Landowners of any reasonable or viable economic use for the Subject Property such as to constitute a recognized taking as a matter of law.

30.

Upon information and belief, Defendants' actions, and all of them, including any additional acts or omissions not fully documented herein, and to be determined during discovery in this action, further substantially deprived the Landowners of their investment backed expectations to continue to operate the Subject Property for leasing to commercial tenants so as to constitute a recognized taking as a matter of law.

31.

Because the Landowner reasonably believed that Defendants had made it clear that it had effectively taken the Subject Property, the Landowners, who had been losing tenants on the property and had not been able to obtain new tenants to fill a growing number of vacancies due to Defendants' actions, were compelled by the practical reality of the circumstances to vacate the Subject Property and initiate this action in Inverse Condemnation for the taking of their property.

32.

As a result of Defendants' actions, and all of them, as well as other actions to be determined during discovery in this action, the Landowners have been unable to develop the Subject Property and the marketability, leasing potential, development potential and/or investment value have been taken and/or frozen and/or substantially damaged.

33.

As direct and proximate result Defendants' actions, and all of them, as well as other actions to be determined during discovery in this action, the Landowners are entitled to Just Compensation for the taking and/or damaging of the Subject Property pursuant to the Fifth Amendment of the Constitution of the United States, Article I, Sections 6 and 22 of the Constitution of the State of Nevada, and Nevada Revised Statutes, Chapter 37, et. seq., and all other applicable law(s).

34.

Defendants' actions, as stated above, have resulted in a partial or total taking of the Subject Property.

35.

Defendants have not paid Just Compensation to the Landowner for the partial or total taking of the Subject Property.

36.

Defendants' failure to pay Just Compensation to the Landowner for the partial or total taking of the Subject Property is a violation of the United States Constitution, as well the Constitution of the State of Nevada and the Nevada Revised Statutes, which require the payment of Just Compensation *prior* to the taking of private property for public use.

LAW OFFICES OF BRIAN C. PADGETT
611 SOUTH 6TH STREET
LAS VEGAS, NEVADA 89101
PHONE (702) 304-0123
FACSIMILE (702) 368-0123

37.

Therefore, the Landowners are compelled to bring this cause of action to recover its right to Just Compensation for the Defendants' partial or total taking of the Subject Property.

38.

The Landowners hereby seek as Just Compensation for the taking of their property an amount in excess of Ten Thousand Dollars ($10,000.00).

39.

As the Landowners were compelled to bring this cause of action for Inverse Condemnation, they are entitled to a further award of their actual and/or reasonable attorney's fees, costs and expenses, including but not limited to expert and appraisal fees, together with prejudgment interest.

SECOND CAUSE OF ACTION FOR PRECONDEMNATION DAMAGES

40.

Paragraphs 1 through 39 of the Landowners' Complaint are incorporated herein by reference.

41.

As a result of Defendants' actions, and all of them, as well as other actions to be determined during discovery in this action, the Landowners have been unable to develop the Subject Property and the marketability, leasing potential, development potential and/or investment value have been taken and/or frozen and/or substantially damaged.

42.

Upon information and belief, Defendants have intentionally, oppressively or unreasonably delayed the formal condemnation of the Landowner' property in an effort to land bank the Subject Property and purchase the Subject Property for less than its market value.

43.

Upon information and belief, Defendants' activities, as set forth herein, and all of them, constitute condemnation, steps taken toward condemnation of the Subject Property or otherwise

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LAS VEGAS, NEVADA 89101
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constitute official acts or expressions amounting to an announcement of Defendants' intent to condemn the Subject Property, and Defendants have intentionally, oppressively and/or unreasonably delayed filing an eminent domain action to condemn the Landowners' property, or otherwise engaged in other intentional, oppressive or unreasonable conduct regarding the Subject Property.

44.

That notwithstanding whether Defendants' actions constitute an actionable taking, Defendants' actions, and all of them, including any additional acts or omissions not fully documented herein, constitute unreasonable or oppressive precondemnation activities, which are separately and independently actionable as a matter of law.

45.

That as a direct and proximate result of Defendants' precondemnation activities, and all of them, including any additional acts or omissions not fully documented herein and to be determined during discovery in this action, the Subject Property and the Landowners have incurred damages, including but not limited to lost rents and/or a decrease in the market value of the Subject Property, and/or some other indicia of value, according to proof.

46.

Defendants' actions amount to oppressive and unreasonable conduct, a violation of the Landowners' constitutional rights and those rights given under Nevada law. The Landowners and the Subject Property have been substantially damaged and continue to incur substantial ongoing damages as a result of Defendants' actions, and have been required to bring this action to help mitigate their damages as a result.

47.

The Landowners hereby seek as a separate award for their Precondemnation Damages an amount in excess of Ten Thousand Dollars ($10,000.00).

48.

As the Landowners were compelled to bring this cause of action for Precondemnation Damages, they are entitled to a further award of their actual and/or reasonable attorney's fees, costs and expenses, including but not limited to expert and appraisal fees, together with prejudgment interest.

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LAS VEGAS, NEVADA 89101
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49.

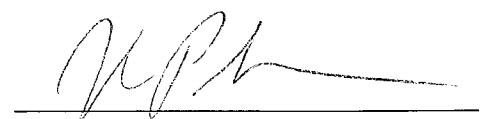
Upon information and belief, only facts currently known to the Landowners that may give rise to the Landowners' claim for Precondemnation Damages have been set forth herein; to the extent that additional facts or basis for such claims are later discovered by the Landowners, the Landowners hereby reserve their right to amend their pleadings accordingly by way of either stipulation or by leave of Court.

WHEREFORE, the Landowner prays for:

1. An award of just compensation according to proof for the partial or total taking and/or damaging of his real and/or personal property by inverse condemnation,
2. An award for precondemnation damages;
3. An award for any and all other category of damages recognized by law;
4. Attorney fees, litigation costs, and expert/appraisal fees actually or reasonably incurred in this action;
5. An award for prejudgment interest;
6. Such other relief as this Court deems just and proper.

DATED this 14th day of June, 2012.

LAW OFFICES OF BRIAN C. PADGETT



Brian C. Padgett
Nevada Bar No. 7474
John P. Shannon
Nevada Bar No. 7906

Attorneys for Plaintiff JOHN DIFRANCESCO TRUST and ROBERT & JACALYN A. FERON FAMILY TRUST

LAW OFFICES OF BRIAN C. PADGETT
611 SOUTH 6TH STREET
LAS VEGAS, NEVADA 89101
PHONE (702) 304-0123
FACSIMILE (702) 368-0123

AFFIRMATION

The undersigned does hereby affirm that the preceding _____

Complaint
(Title of Document)

filed in District Court Case number _____

☒ Does not contain the social security number of any person.

-OR-

☐ Contains the social security number of a person as required by:

A. A specific state or federal law, to wit:

_____
(State specific law)

-or-

B. For the administration of a public program or for an application for a federal or state grant.

Signature

7-9-12
Date

Brian C. Padgett
Print Name

Attorney
Title

EXHIBIT	TITLE	PAGES
1	VERIFICATIONS	3

F I L E D
Electronically
07-09-2012:12:19:33 PM
Joey Orduna Hastings
Clerk of the Court
Transaction # 3066602

EXHIBIT I

LAW OFFICES OF BRIAN C. PADGETT
611 SOUTH 6TH STREET
LAS VEGAS, NEVADA 89101
PHONE (702) 304-0123
FACSIMILE (702) 368-0123

VERIFICATION

STATE OF CALIFORNIA)
) :ss
COUNTY OF RIVERSIDE)

Marilyn Ann Feron, as CO - trustor, being first duly sworn, upon oath, deposes and says: that he has read the foregoing COMPLAINT IN INVERSE CONDEMNATION, PRECONDEMNATION DAMAGES AND OTHER RELIEF, and knows the contents thereof; that the same is true of his own knowledge, except as to those matters stated on information and belief, and as to those matters he believes them to be true.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed this 5 day of June, 2012.

Name: Marilyn Feron

Title: CO - trustor

SUBSCRIBED and SWORN to before me
this 5 day of June, 2012.

Victoria Carnovale

NOTARY REPUBLIC, in and for the
County of Riverside, State of California

VICTORIA CARNOVALE
Commission # 1847826
Notary Public - California
Riverside County
My Comm. Expires May 7, 2013

LAW OFFICES OF BRIAN C. PADGETT
611 SOUTH 6TH STREET
LAS VEGAS, NEVADA 89101
PHONE (702) 304-0123
FACSIMILE (702) 368-0123

VERIFICATION

STATE OF CALIFORNIA)
) :ss
COUNTY OF RIVERSIDE)

Robert Feizor, as CO-TRUSTOR, being first duly sworn, upon oath, deposes and says: that he has read the foregoing COMPLAINT IN INVERSE CONDEMNATION, PRECONDEMNATION DAMAGES AND OTHER RELIEF, and knows the contents thereof; that the same is true of his own knowledge, except as to those matters stated on information and belief, and as to those matters he believes them to be true.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed this 5 day of June, 2012.

Name: [signature]

Title: CO-TRUSTOR

SUBSCRIBED and SWORN to before me
this 5 day of June, 2012.

[signature]
NOTARY REPUBLIC, in and for the
County of Riverside, State of California

VICTORIA CARNOVALE
Commission # 1847826
Notary Public - California
Riverside County
My Comm. Expires May 7, 2013

LAW OFFICES OF BRIAN C. PADGETT
611 SOUTH 6TH STREET
LAS VEGAS, NEVADA 89101
PHONE (702) 304-0123
FACSIMILE (702) 368-0123

VERIFICATION

STATE OF NEVADA)
) :ss
COUNTY OF WASHOE)

_____, as JOHN DiFRANCESCO, being first duly sworn, upon oath, deposes and says: that he has read the foregoing COMPLAINT IN INVERSE CONDEMNATION, PRECONDEMNATION DAMAGES AND OTHER RELIEF, and knows the contents thereof; that the same is true of his own knowledge, except as to those matters stated on information and belief, and as to those matters he believes them to be true.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed this 11 day of JUNE, 2012.

JOHN DiFRANCESCO TRUST

Name: [signature]

Title: TRUSTEE

SUBSCRIBED and SWORN to before me
this 11th day of June, 2012.

M. Hendrix

NOTARY REPUBLIC, in and for the
County of Washoe, State of Nevada

M. HENDRIX
Notary Public - State of Nevada
Appointment Recorded in Washoe County
No: 11-5560-2 - Expires August 16, 2015

Exhibit 5

Exhibit 5

DIFRANCESCO - FERON
RENTAL ACCOUNT
PO. BOX 7116
RENO, NV 89510

5096

5/3/18

PAY TO THE ORDER OF Law Offices of Brian C. Padgett $ 5000.00

Five Thousand 00/100 DOLLARS

VOID AFTER 90 DAYS

MEMO Deposition Expenses

#005096# ⑆121201814⑆ [redacted]6698#

#5096 5/15/18 $5,000.00

DIFRANCESCO - FERON
RENTAL ACCOUNT
PO. BOX 7116
RENO, NV 89510

5097

5/4/18

PAY TO THE ORDER OF Office Depot $ 61.04

Sixty one & 04/100 DOLLARS

VOID AFTER 90 DAYS

MEMO

#005097# ⑆121201814⑆ [redacted]6698#

#5097 5/15/18 $61.04

SBN 0028

5/22/18 $30.00

AIR CENTER, LLC
P.O. Box 7116
RENO, NV 89510
(775) 813-3670

1401 S. Virginia Street
P.O. Box 11320
Reno, Nevada 89510

3455

4/13/2018

PAY TO THE ORDER OF Law Offices of Brian C. Padgett $ **2,500.00

Two Thousand Five Hundred and 00/100********** DOLLARS

Law Offices of Brian C. Padgett
611 So. Sixth Street
Las Vegas NV 89101

VOID AFTER 90 DAYS

MEMO DEPOSITION EXPENSES

003455 [redacted] 5140*

#3455 5/29/18 $2,500.00

AIR CENTER, LLC
P.O. Box 7116
RENO, NV 89510
(775) 813-3670

1401 S. Virginia Street
P.O. Box 11320
Reno, Nevada 89510

3458

4/27/2018

PAY TO THE ORDER OF NV Energy $ **427.55

Four Hundred Twenty Seven and 55/100********** DOLLARS

NV Energy
P.O. Box 30065
Reno, NV 89520

VOID AFTER 90 DAYS

MEMO Aircenter Utilities 4910- 4890 Several Accounts April

003458 [redacted] 5140*

#3458 5/01/18 $427.55

AIR CENTER, LLC
P.O. BOX 7116
RENO, NV 89510
(775) 813-3670

1401 S. Virginia Street
P.O. Box 11320
Reno, Nevada 89510

3459

4/27/2018

PAY TO THE ORDER OF Truckee Meadows Water Authority $ **124.23

One Hundred Twenty Four and 23/100********** DOLLARS

VOID AFTER 90 DAYS

SBN 00029

DIFRANCESCO - FERON
RENTAL ACCOUNT
PO. BOX 7116
RENO, NV 89510

5096

5/3/18

PAY TO THE ORDER OF Law Offices of Brian C. Padgett $ 5000.00

Five Thousand 00/100 DOLLARS

VOID AFTER 90 DAYS

MEMO Deposition Expenses

#005096# [redacted]

#5096 5/15/18 $5,000.00

DIFRANCESCO - FERON
RENTAL ACCOUNT
PO. BOX 7116
RENO, NV 89510

5097

5/4/18

PAY TO THE ORDER OF Office Depot $ 61.04

Sixty one & 04/100 DOLLARS

VOID AFTER 90 DAYS

MEMO

#005097# [redacted]

#5097 5/15/18 $61.04

SBN 0030

5/22/18 $30.00

AIR CENTER, LLC
P.O. Box 7116
RENO, NV 89510
(775) 813-3670

1401 S. Virginia Street
P.O. Box 11320
Reno, Nevada 89510

3455

4/13/2018

PAY TO THE ORDER OF Law Offices of Brian C. Padgett $ **2,500.00

Two Thousand Five Hundred and 00/100********** DOLLARS

Law Offices of Brian C. Padgett
611 So. Sixth Street
Las Vegas NV 89101

VOID AFTER 90 DAYS

MEMO DEPOSITION EXPENSES

003455 [redacted] 514.0*

#3455 5/29/18 $2,500.00

AIR CENTER, LLC
P.O. Box 7116
RENO, NV 89510
(775) 813-3670

1401 S. Virginia Street
P.O. Box 11320
Reno, Nevada 89510

3458

4/27/2018

PAY TO THE ORDER OF NV Energy $ **427.55

Four Hundred Twenty Seven and 55/100********** DOLLARS

NV Energy
P.O. Box 30065
Reno, NV 89520

VOID AFTER 90 DAYS

MEMO Aircenter Utilities 4910- 4890 Several Accounts April

003458 [redacted] 514.0*

#3458 5/01/18 $427.55

AIR CENTER, LLC
P.O. BOX 7116
RENO, NV 89510
(775) 813-3670

1401 S. Virginia Street
P.O. Box 11320
Reno, Nevada 89510

3459

4/27/2018

PAY TO THE ORDER OF Truckee Meadows Water Authority $ **124.23

One Hundred Twenty Four and 23/100********** DOLLARS

VOID AFTER 90 DAYS

SBN00031

NV Energy
P.O. Box 30086
Reno, NV 89520

VOID AFTER 90 DAYS

MEMO April Payments for Several Units see invoices

⑈005059⑈ ⑆121201814⑆ ⑈[redacted]6698⑈

4 of 9

#5059 5/02/18 $2,696.80

DIFRANCESCO - FERON
RENTAL ACCOUNT
PO BOX 7116
RENO, NV 89510
(775) 813-3678

5076

4/13/2018

PAY TO THE ORDER OF The Law Office of Brian C. Padgett $ **2,500.00

Two Thousand Five Hundred and 00/100 DOLLARS

The Law Office of Brian C. Padgett
611 South Sixth St
Las Vegas, NV 89101

VOID AFTER 90 DAYS

MEMO

⑈005076⑈ ⑆121201814⑆ ⑈[redacted]6698⑈

Seq: 67
Batch: 269155
Date: 05/25/18

0920911872
2018-05-29

PAY TO THE ORDER OF
BRIAN C. PADGETT
LAW OFFICE OF BRIAN C. PADGETT LLC
FOR DEPOSIT ONLY
LAS VEGAS, NV 89101-4404

#5076 5/29/18 $2,500.00

DIFRANCESCO - FERON
RENTAL ACCOUNT
PO BOX 7116
RENO, NV 89510
(775) 813-3678

5082

4/29/2018

PAY TO THE ORDER OF Truckee Meadows Water Authority $ **208.28

Two Hundred Eight and 28/100 DOLLARS

Truckee Meadows Water Authority
P.O. Box 659565
San Antonio, TX 78265-9565

VOID AFTER 90 DAYS

MEMO 35 55 65 April 2018

⑈005082⑈ ⑆121201814⑆ ⑈[redacted]6698⑈

0926533061
2018-05-03

#5082 5/03/18 $208.28

DIFRANCESCO - FERON
RENTAL ACCOUNT
PO BOX 7116
RENO, NV 89510
(775) 813-3678

5083

4/29/2018

PAY TO THE ORDER OF PDI Security Systems $ **421.20

Four Hundred Twenty-One and 20/100 DOLLARS

PDI Security Systems
P.O. Box 12512
Reno, NV 89510

VOID AFTER 90 DAYS

MEMO Inv. # 8774 April 7, 2018

⑈005083⑈ ⑆121201814⑆ ⑈[redacted]6698⑈

Seq: 30
Dep: 000730
Date: 05/01/18

0920446085
2018-05-02

Our Deposit Acct. is
PROTECTION DEVICES INC
PROTECTION DEVICES INC
Deposited By: CB

#5083 5/02/18 $421.20

DIFRANCESCO - FERON
RENTAL ACCOUNT
PO BOX 7116
RENO, NV 89510
(775) 813-3678

5084

4/29/2018

PAY TO THE ORDER OF PDI Security Systems $ **170.00

Seq: 29
Dep: 000730
Date: 05/01/18

0920446084
2018-05-03

Our Deposit Acct. is
PROTECTION DEVICES INC
PROTECTION DEVICES INC
Deposited By: CB

Exhibit 6

Exhibit 6

FILED
Electronically
CV12-01788
2019-04-09 04:05:02 PM
Jacqueline Bryant
Clerk of the Court
Transaction # 7209970

Code: 2540
Michael E. Sullivan, Esq. (SBN 5142)
Michael A. Burke, Esq. (SBN 11527)
Hannah Winston, Esq. (SBN 14520)
ROBISON, SHARP, SULLIVAN & BRUST
71 Washington Street
Reno, Nevada 89503
Telephone: (775) 329-3151
Facsimile: (775) 329-7169
Attorneys for Plaintiffs

IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

IN AND FOR THE COUNTY OF WASHOE

JOHN DIFRANCESCO TRUST, and ROBERT & JACALYN A. FERON FAMILY TRUST, Plaintiffs, vs. WASHOE COUNTY, the CITY OF RENO, the CITY OF SPARKS, and the TRUCKEE RIVER FLOOD MANAGEMENT AUTHORITY, Defendants. _____/	CASE NO.: CV12-01788 DEPT. NO.: 3

NOTICE OF ENTRY OF ORDER

PLEASE TAKE NOTICE that on the 8th day of April 2019, the Court entered a **Stipulation and Order for Dismissal with Prejudice** in the above-entitled action, a copy of which is attached hereto.

AFFIRMATION: The undersigned does hereby affirm that this document does not contain the social security number of any person.

DATED this 9th day of April 2019.

ROBISON, SHARP, SULLIVAN & BRUST

MICHAEL E. SULLIVAN, ESQ.
MICHAEL A. BURKE, ESQ.
HANNAH WINSTON, ESQ.
Attorneys for Plaintiffs

CERTIFICATE OF SERVICE

Pursuant to NRCP 5(b), I certify that on this date I caused to be served a true copy of the **NOTICE OF ENTRY OF ORDER** on all parties to this action by the method(s) indicated below:

____ by placing true copy thereof in a sealed envelope, with sufficient postage affixed thereto, in the United States mail at Reno, Nevada, addressed to:

_____ by email addressed to:

✓ by using the Court's CM/ECF Electronic Notification System addressed to:

STEVEN M. SILVA, Esq.
BLANCHARD, KRASNER & FRENCH, P.C.
ssilva@bkflaw.com

_____ by personal delivery/hand delivery addressed to:

_____ by facsimile (fax) addressed to:

_____ by Federal Express/UPS or other overnight delivery addressed to:

DATED: This 9 day of April 2019

Leslie M. Lucey
An Employee of Robison, Sharp, Sullivan & Brust

Robison, Sharp,
Sullivan & Brust
71 Washington St.
Reno, NV 89503
(775) 329-3151

FILED
Electronically
CV12-01788
2019-04-08 11:18:44 AM
Jacqueline Bryant
Clerk of the Court
Transaction # 7206093

Code: 3990
Michael E. Sullivan, Esq. (SBN 5142)
Michael A. Burke, Esq. (SBN 11527)
Hannah Winston, Esq. (SBN 14520)
ROBISON, SHARP, SULLIVAN & BRUST
71 Washington Street
Reno, Nevada 89503
Telephone: (775) 329-3151
Facsimile: (775) 329-7169
Email: msullivan@rssblaw.com
mburke@rssblaw.com
hwinston@rssblaw.com
Attorneys for Plaintiffs

IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

IN AND FOR THE COUNTY OF WASHOE

JOHN DIFRANCESCO TRUST; and ROBERT & JACALYN A. FERON FAMILY TRUST,	CASE NO.: CV12-01788 DEPT. NO.: 3
Plaintiffs,	
vs.	
WASHOE COUNTY, the CITY OF RENO, the CITY OF SPARKS, and the TRUCKEE RIVER FLOOD MANAGEMENT AUTHORITY,	
Defendants.	

STIPULATION AND ORDER FOR DISMISSAL WITH PREJUDICE

Plaintiffs JOHN DIFRANCESCO TRUST and ROBERT & JACALYN A. FERON FAMILY TRUST by and through their counsel of record Michael E. Sullivan, Esq., Michael A. Burke, Esq. and Hannah Fuetsch, Esq. of the law offices of Robison, Sharp, Sullivan and Brust and the Defendants WASHOE COUNTY and TRUCKEE RIVER FLOOD MANAGEMENT AUTHORITY by and through their counsel of record Steven M. Silva, Esq., of the law offices of Blanchard, Krasner & French, P.C. hereby stipulate to dismiss the

above entitled action with prejudice, with the parties to bear their own costs and attorneys' fees; and

IT IS FURTHER STIPULATED AND AGREED, that the parties may obtain, if applicable, the return of any jury demand fees previously submitted to the Court.

AFFIRMATION: The undersigned does hereby affirm that this document does not contain the social security number of any person.

Dated this 5th of April, 2019

BLANCHARD, KRASNER & FRENCH, P.C.

By: _____
Steven M. Silva, Esq.
Attorney for the Defendants WASHOE COUNTY and TRUCKEE RIVER FLOOD MANAGEMENT AUTHORITY

Dated this 5th of April, 2019

ROBISON, SHARP, SULLIVAN & BRUST

By: _____
Michael E. Sullivan, Esq.
Michael A. Burke, Esq.
Hannah Winston, Esq.
Attorneys for Plaintiffs JOHN DIFRANCESCO TRUST, and ROBERT & JACALYN A. FERON FAMILY TRUST

ORDER

Upon the stipulation of the parties;

IT IS HEREBY ORDERED, that the above-entitled action be dismissed with prejudice, each party to bear their own costs and attorneys' fees; and

IT IS FURTHER ORDERED, that any jury fees deposited by the parties shall be returned.

DATED this 8th of April, 2019

_____
DISTRICT JUDGE

Robison, Sharp, Sullivan & Brust
71 Washington St.
Reno, NV 89503
(775) 329-3151

Exhibit 7

Exhibit 7

FILED
Electronically
2016-01-25 04:33:38 PM
Jacqueline Bryant
Clerk of the Court
Transaction # 5335699

SAO
LAW OFFICES OF BRIAN C. PADGETT
BRIAN C. PADGETT
Nevada Bar No. 7474
AMY L. SUGDEN
Nevada Bar No. 9983
JEREMY B. DUKE
Nevada Bar No. 13110
611 South Sixth Street
Las Vegas, Nevada 89101
Telephone: (702) 304-0123
Facsimile: (702) 368-0123

Attorneys for Plaintiffs JOHN DIFRANCESCO TRUST and ROBERT & JACALYN A. FERON FAMILY TRUST

LAW OFFICES OF BRIAN C. PADGETT
611 South Sixth Street, Las Vegas, Nevada 89101
Telephone: (702) 304-0123 – Facsimile (702) 368-0123

IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

IN AND FOR THE COUNTY OF WASHOE

*****

JOHN DIFRANCESCO TRUST, and ROBERT & JACALYN A. FERON FAMILY TRUST, Plaintiffs vs. WASHOE COUNTY, the CITY OF RENO, the CITY OF SPARKS, and the TRUKEE RIVER FLOOD MANAGEMENT AUTHORITY, Defendants.	Case No.: CV 12-01788 Division: D3 **STIPULATION AND ORDER TO DISMISS PLAINTIFF JOHN DIFRANCESCO TRUST AND ROBERT & JACALYN A. FERON FAMILY TRUST'S INVERSE CONDEMNATION CLAIM** **Arbitration Exempt: Action Concerning Title To Real Property**

Plaintiffs, JOHN DIFRANCESCO TRUST, and ROBERT & JACALYN A. FERON FAMILY TRUST, ("Plaintiffs") by and through their undersigned counsel, the LAW OFFICES OF BRIAN C. PADGETT; and Defendants, WASHOE COUNTY, and the TRUCKEE RIVER FLOOD MANAGEMENT AUTHORITY, (collectively "Defendants") by and through their counsel the CHAPMAN LAW FIRM, hereby stipulate to the dismissal of Plaintiffs' First Cause Of Action For The Inverse Condemnation Of The Plaintiffs' Property as set forth in Plaintiffs

JOHN DIFRANCESCO TRUST, and ROBERT & JACALYN A. FERON FAMILY TRUST's Complaint in Inverse Condemnation, Precondemnation Damages and Other Relief ("Complaint"). The parties hereby agree that the stipulated dismissal as to the First Cause of Action is with prejudice to the extent that the claim is that a taking had occurred as of July 9, 2012, the date of filing of the Complaint.

Dated this 20th day of January, 2016

LAW OFFICES OF BRIAN C. PADGETT

AMY L. SUGDEN, ESQ.
Bar No. 9983
Attorneys for Plaintiffs JOHN DIFRANCESCO TRUST and ROBERT & JACALYN A. FERON FAMILY TRUST

Dated this 22nd day of January, 2016

STEVEN SILVA, ESQ.
Bar No. 12492
Attorney for Defendants Washoe County and the Truckee River Flood Management Authority

LAW OFFICES OF BRIAN C. PADGETT
611 South Sixth Street, Las Vegas, Nevada 89101
Telephone: (702) 304-0123 – Facsimile (702) 368-0123

ORDER

IT IS HEREBY ORDERED that the Stipulation And Order To Dismiss JOHN DIFRANCESCO TRUST, and ROBERT & JACALYN A. FERON FAMILY TRUST'S Inverse Condemnation Claim in connection with the matter entitled John DiFrancesco Trust, and Robert & Jacalyn A. Feron Family Trust v. Washoe County, the City of Reno, The City of Sparks, and the Truckee River Flood Management Authority, Case No. CV12-01788 is APPROVED and GRANTED.

IT IS SO ORDERED this 25th day of January, 2016.

DISTRICT COURT JUDGE

Respectfully Submitted By:

LAW OFFICES OF BRIAN C. PADGETT

By:

BRIAN C. PADGETT
AMY L. SUGDEN
611 S. 6th St., Suite 210
Las Vegas, NV 89101
Attorneys for Plaintiffs

LAW OFFICES OF BRIAN C. PADGETT
611 South Sixth Street, Las Vegas, Nevada 89101
Telephone: (702) 304-0123 – Facsimile (702) 368-0123

Exhibit 8

Exhibit 8

ORIGINAL

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CV12-01788
2016-06-01 11:48:52 AM
Jacqueline Bryant
Clerk of the Court
Transaction # 5540709

3980
LAW OFFICES OF BRIAN C. PADGETT
Brian C. Padgett, Bar No. 7474
Amy L. Sugden, Bar No. 9983
611 South Sixth Street
Las Vegas, Nevada 89101
Telephone: (702) 304-0123
Attorneys for Plaintiffs

IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

IN AND FOR THE COUNTY OF WASHOE

JOHN DIFRANCESCO TRUST, and ROBERT & JACALYN A. FERON FAMILY TRUST, Plaintiff vs. WASHOE COUNTY, the CITY OF RENO, the CITY OF SPARKS, and the TRUCKEE RIVER FLOOD MANAGEMENT AUTHORITY, Defendants	Case No.: CV12-01788 Dept. No.: 3

STIPULATION AND ORDER TO VACATE TRIAL

Plaintiffs, JOHN DIFRANCESCO TRUST, and ROBERT & JACALYN A. FERON FAMILY TRUST, ("Plaintiffs") by and through their attorneys, the Law Offices of Brian C. Padgett and Defendants, WASHOE COUNTY, and the TRUCKEE RIVER FLOOD MANAGEMENT AUTHORITY, (collectively "Defendants") by and through their counsel the Chapman Law Firm, do hereby stipulate and agree as follows:

1. The parties to this action have been proceeding constructively with one another in good faith towards a speedy resolution to this matter, including working on completing discovery and preparing this matter for trial;

2. The parties to this action set a trial date at the request of Plaintiff with the expectation that certain matters of discovery would be completed in a prompt manner;

///

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611 SOUTH 6TH STREET
LAS VEGAS, NEVADA 89101
PHONE (702) 304-0123
FACSIMILE (702) 368-0123

3. Due to an unforeseeable and gravely serious event, Plaintiff has been unable to produce its initial expert report within the timeframe that both parties had expected;

4. Defendants agree that this event was grave and unforeseeable;

5. The parties agree that the current trial date is nonviable in light of the current status of the case;

THEREFORE:

6. The parties agree to VACATE the current trial set for December 5, 2016;

7. The parties agree to VACATE the current pretrial conference set for June 3, 2016:

8. The parties agree that they will complete and submit a stipulation concerning discovery within 30 days from approval of this stipulation;

9. The parties agree that they will set a new trial date within 45 days from the approval of this stipulation.

Affirmation Pursuant to NRS239B.030

The undersigned hereby affirm that this document does not contain the security number of any person.

DATED this 26 day of May, 2016

By: _____

MICHAEL CHAPMAN
STEVEN SILVA
Chapman Law Firm
9585 Prototype Court, #C
Reno, NV 89521
Attorneys for Defendants

DATED this 26th day of May, 2016

By: _____

BRIAN C. PADGETT
AMY L. SUGDEN
Law Offices of Brian C. Padgett
611 S. 6th St., Suite 210
Las Vegas, NV 89101
Attorneys for Plaintiffs

LAW OFFICES OF BRIAN C. PADGETT
611 SOUTH 6TH STREET
LAS VEGAS, NEVADA 89101
PHONE (702) 304-0123
FACSIMILE (702) 368-0123

ORDER

The Court having considered the foregoing and good cause appearing:

IT IS HEREBY ORDERED that the Stipulation and Order to Vacate Trial is APPROVED and GRANTED.

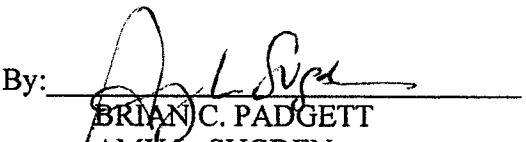
IT IS SO ORDERED this 3/4 day of May, 2016.

DISTRICT COURT JUDGE

Prepared and Respectfully Submitted by:

By:_____

MICHAEL CHAPMAN
STEVEN SILVA
Chapman Law Firm
9585 Prototype Court, #C
Reno, NV 89521
Attorneys for Defendants



By:_____

BRIAN C. PADGETT
AMY L. SUGDEN
Law Offices of Brian C. Padgett
611 S. 6th St., Suite 210
Las Vegas, NV 89101
Attorneys for Plaintiffs

LAW OFFICES OF BRIAN C. PADGETT
611 SOUTH 6TH STREET
LAS VEGAS, NEVADA 89101
PHONE (702) 304-0123
FACSIMILE (702) 368-0123

Exhibit 9

Exhibit 9

From: **John Di Francesco** nv ndustr a 1@yahoo.com [redacted]
Subject: Re: D scovery
Date: August 16, 2016 at 9:12 PM
To: Amy Sugden amy@br ancpadgett.com
Cc: Robert Feron robertpferon@ver zon.net

JD

Amy,

The statements will show a substantial increase in our net income. The maintenance expense items are lower because there are several deferred maintenance items. Our current maintenance man is off the books and paid in cash . We also have not been making improvements to the property like we have always done in the past. Bob and I need the cash flow to pay back private loans borrowed in the past years because this suit has dragged on for so long. In the past year and a half we have paid back over $ 90,000 in private loans to other partnerships. The payments for legal fees are not completely shown on the Edison statements because they are paid by Air Center.

The other thing is, that the tenants we rent to are the least desirable and the junks cars on site are the worst its has ever been.

I really drove this point home with George. At least 30% of our tenants are non-conforming to the IB zoning code. The City has been turning a blind eye to the occupancy, but at **anytime** they could come down on us and we could lose substantial potion of our income. This alone makes this property completely unsaleable at any price.

Also the actual management takes 3 times as much time as a normal industrial project. I see some tenants personally 3 or 4 times a month to collect their rent. Only because I am on-site often that I have a rapore that keeps tenants from moving out.

Also, on the expense statement I have only charged about half of the normal management fees and no leasing commissions for years. Amy, It takes years of experience, talent , tricks and techniques to keep the income flowing on this project.

I say we politely tell Mr.Steve to go F-himself and see if Judge Jerry compels us to provide any more discovery. Seems to us he has broke an agreement with you regarding additional discovery. Maybe we should do depositions on some of the flood projects former employees and find out why they put the homeless shelter right next to our office, allowed police training in a non-conforming environment and with dozens of other sites put the grey water truck terminal next to our offices.Why they don't maintain their property to the standards they require the public to maintain their property.
If nothing else it will make they them look stupid, incompetent and grossly negligence.

I would vote to pay for that.

John

On Tuesday, August 16, 2016 4:28 AM, Amy Sugden <amy@briancpadgett.com> wrote:

Hi guys,

John, I hope you had a good site visit with George today. I sent over the executed fee agreement per your approvals. Attached is a copy for your records. I don't see that a retainer is required, so it looks like you just pay the fee when the report is finalized.

I had a chat with Steve about his renewed request for rent rolls from August 2013-present. (We supplied them previously up to August 2013 as that is when we responded last to their request for production of documents).

Steve is insistent that he is entitled the rent rolls to present, regardless of our theory, as he wants them for his defense. He wants to file a motion to compel them if we don't produce them. The problem with a motion to compel discovery is that he will also seek attorney's fees in having to file the motion.

His argument that he is entitled to the rent rolls is plausible (as it goes to the income valuation approach to the subject properties) even though it focuses on a different track of valuation than ours.

Therefore, in light of having to face paying attorney's fees or further delay (as he will argue he can't do his rebuttal report until he gets those rent rolls), it is advisable that we should go ahead and produce the requested rent rolls.

John, how long will it take you to provide the requested documentation?

Amy L. Sugden, Esq.
Law Offices of Brian C. Padgett
611 South 6th Street
Las Vegas, Nevada 89101
(702) 304-0123 Tel
(702) 368-0123 Fax

Exhibit 10

Exhibit 10

From: **Robert Feron** robertpferon@ver zon.net [redacted]
Subject: RE: D scovery
Date: August 16, 2016 at 7:52 PM
To: Amy Sugden amy@br ancpadgett.com, John D Francesco nv ndustr a 1@yahoo.com

RF

Amy,

I spoke with John today and he had a very good meeting with George.

Rent rolls up to date could be a problem because the rental rates have slightly increased but the expenses have decreased due to less maintenance, repairs, less turnovers and better quality tenants (actually paying rent).

Motion to produce: Don't we have an agreement with Chapman that the date we filed the Motion was July 2012 and that all discovery stopped at that date? If we agree to his up to date request, does that open the door for additional discovery? If he uses the rent rolls through 2016, the difference between 2006 and today might be nil. Might be cooking our own goose. Also, of what value are our appraisals if we stop at 2012 and Chapman goes to August 2016? Seems confusing to a jury.

Why do we pay for Chapman's Motion to produce? If we have an agreement with Chapman, it seems that the judge would deny the Motion.

Is the December 5th court date cast in concrete or with Chapman's request, could that date be pushed forward?

Looks like Chapman's defense will be based on the fact that we are still collecting rent. Sounds like he's pushing towards Ad America with a favorable Supreme Court verdict.

John will gather the past rent rolls and see how they look.

Thanks,

Bob

From: Amy Sugden [mailto:amy@briancpadgett.com]
Sent: Tuesday, August 16, 2016 4:28 AM
To: Bob Feron <robertpferon@verizon.net>; John Di Francesco <nvindustrial1@yahoo.com>
Subject: Discovery

Hi guys,

John, I hope you had a good site visit with George today. I sent over the executed fee agreement per your approvals. Attached is a copy for your records. I don't see that a retainer is required, so it looks like you just pay the fee when the report is finalized.

I had a chat with Steve about his renewed request for rent rolls from August 2013-present. (We supplied them previously up to August 2013 as that is when we responded

last to their request for production of documents).

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Therefore, in light of having to face paying attorney's fees or further delay (as he will argue he can't do his rebuttal report until he gets those rent rolls), it is advisable that we should go ahead and produce the requested rent rolls.

John, how long will it take you to provide the requested documentation?

Amy L. Sugden, Esq.
Law Offices of Brian C. Padgett
611 South 6th Street
Las Vegas, Nevada 89101
(702) 304-0123 Tel
(702) 368-0123 Fax

Exhibit 11

Exhibit 11

From: **John Di Francesco** nv ndustr a 1@yahoo.com
Subject: S ver s request
Date: September 10, 2016 at 7:00 PM
To: Amy Sugden amy@br ancpadgett.com
Cc: Robert Feron rferon@dc.rr.com

JD

Hi Amy,

Bob and I have been discussing at length the circumstances of Silver's request for additional financial information. We both recall a discussion where it was agreed that no additional financials would have to be provided. With that understanding we made changes in our spending and expenses to maximize our cash flow.

Needless to say we feel blindsided by this request which is contrary to our agreement. As I made clear, this is Not and accurate picture on the operating expenses. No amount of attached explanations will diminish the bottom line and Silver will seize upon those numbers and keep driving it home and we will be on the defense.

We are trying to find a compromise position and we think we have found one.

Recall we asked Silver for the Shiffmacher appraisals for 125 and 155 N. Edison. **Silver refused.** Recall we asked Silver for the application for demolition funds. **Sliver refused.**

Silver asked us for additional financials and we find out if he has to go to the judge to compel us to comply then we have to pay for their attorney's fees.

Here is our compromise. 1.) Silver turns over the appraisals for 125 and 155 N. Edison. 2.) They turn over the Flood Authority's complete training log for all the police agencies that have been using N. Edison for training since they started 2008 forward. Names of Agencies, dates, duration and contact persons. Mimi told me personally she has kept track of the training. Please remind them we have Caroline's calendar with dates and news reports of accidents and injuries.

3.) Back in 2010 the Flood project did environmental testing on our site looking for contamination. We did grant then access permission and cooperation.

What we found out much later when we had a phase I report of our own. The Flood project requested and received a grant for the money for that testing. It was under a program called BROWNSTONE. As I understand it its like a Superfund cleanup grant like 3 Mile Island on a State level.

To explain the item which somehow is recorded and clouds our property record I had to track down the State Engineer who issued the grant/money. He was Not happy that the property had not been acquired and express that he felt that he had been misled about the imminent acquisition of the property.

So tell Silver we also want a copy of the application for Funds for that Grant which still makes our property listed under BROWNSTONE.

If he does not comply with all three items tell him we will not comply with his request either.

If he says he will go to the court for an order to comply. Then we will do the same and the legal fees will wash.

In addition please put him on notice if he wants **any** additional depositions we intend to depose Naomi Duerr(she was fired by the Flood Board), Doug DuBois (he was fired my Naomi Duerr), and Paul Urban(head engineer for 15+ years) also fired by the Flood Project. There is tons of acrimony between all these parties and no loyalty between agency or individuals.

You want the Truth? Can they handle the Truth?

We are standing by to pay Charlie please give us an update.

Have a good weekend.

John and Bob

Exhibit 12

Exhibit 12

From: **John Di Francesco** nv ndustr a 1@yahoo.com [redacted]
Subject: Re: Mot ons!
Date: December 28, 2016 at 12:05 PM
To: Amy Sugden amy@br ancpadgett.com

JD

Amy,

Thanks for the update. I m a so work ng on 15 and 16 financ a s. I don t have a 2015 rent ro , had no occas on to update one. 14 s done and 16 s n process.

Sent from Yahoo Ma on Andro d

On Wed, Dec 28, 2016 at 11:51 AM, Amy Sugden <amy@br ancpadgett.com> wrote:

> Hi guys,
>
> Hope you both had great Christmases. We are working away over here on the legal research and getting our drafts into shape.
>
> Given the amount of time we have taken to focus on the case law, I have requested a brief extension from Steve to next Wed. I think these three extra days will be well worth the time.
>
> I will email you regarding factual portion for your input later today.
>
> Thanks!
>
> **Amy L. Sugden, Esq.**
> Law Offices of Brian C. Padgett
> 611 South 6th Street
> Las Vegas, Nevada 89101
> (702) 304-0123 Tel
> (702) 368-0123 Fax

EMINENT DOMAIN AND
CONDEMNATION LAW
TIER 1
LAS VEGAS
2016

From: **Robert Feron** robertpferon@ver zon.net [redacted]
Subject: RE: Out ne of D sputed Facts
Date: December 29, 2016 at 9:06 AM
To: Amy Sugden amy@br ancpadgett.com, John D Francesco nv ndustr a 1@yahoo.com

RF

Amy,

Have reviewed your Outline and have a few questions and comments. Do you want to have a conference call after John has had a chance to review?
Thanks,
Bob

From: Amy Sugden [mailto:amy@briancpadgett.com]
Sent: Wednesday, December 28, 2016 11:50 PM
To: John Di Francesco <nvindustrial1@yahoo.com>; Bob Feron <robertpferon@verizon.net>
Subject: Re: Outline of Disputed Facts

Sorry – attached was not the most recent version.

From: Amy Sugden <amy@briancpadgett.com>
Date: Wednesday, December 28, 2016 at 4:56 PM
To: "nvindustrial1@yahoo.com" <nvindustrial1@yahoo.com>, Bob Feron <robertpferon@verizon.net>
Subject: Outline of Disputed Facts

Hi there,

Attached is a list of the facts that I want to dispute in the motion for summary judgment. You will see the allegation set forth and then my "response" below it.

Let me know what you think!

Thanks,

Amy L. Sugden, Esq.
Law Offices of Brian C. Padgett
611 South 6th Street
Las Vegas, Nevada 89101
(702) 304-0123 Tel
(702) 368-0123 Fax

Best Lawyers

Law Offices of
BRIAN C. PADGETT
Nevada's Eminent Domain and Property Rights Attorneys

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EMINENT DOMAIN AND
CONDEMNATION LAW
TIER 1
LAS VEGAS
2016

From: **Robert Feron** robertpferon@ver zon.net [redacted]
Subject: RE: Out ne of D sputed Facts
Date: January 1, 2017 at 10:54 AM
To: Amy Sugden amy@br ancpadgett.com, John D Francesco nv ndustr a 1@yahoo.com

RF

Amy,

Some thoughts:

#4. The purpose of the ELAP is to acquire properties and demo then to prevent additional flood damage and rebuilding costs. Yet, here we are many years (10) later facing potential food damage to the buildings and tenants. Another flood as we have seen in the past and Truckee Flood Control doesn't look good.

#6. 2nd point. G25 should be 125?

"Just Comp "of $3,100,000 seems light compared to other comps on Edison that don't have an additional acre of land.

#15 & 16. If there is not intent to purchase our properties, then the tax payers are entitled to question the purchases of all the land and buildings between Rock and McCarran and Mill and the Truckee River. They can't complete that portion of the project without our buildings. There may be no final, authorized project now but there was in the past. Seems he is using fuzzy wording.

Any cases to counter his claim of Sovereign Immunity (the King can do no wrong)? Seem they do more wrong than right.

Is Steve saying that Just Compensation is only due when property is purchased?

Just some idle thoughts.

Thanks,
Bob

From: Amy Sugden [mailto:amy@briancpadgett.com]
Sent: Thursday, December 29, 2016 10:18 AM
To: Robert Feron <robertpferon@verizon.net>; 'John Di Francesco' <nvindustrial1@yahoo.com>
Subject: Re: Outline of Disputed Facts

Sure. Let me know when! I am in a settlement conf today that starts at 11 am though and I expect it'll take most of the day.

Thanks,
Amy

From: Bob Feron <robertpferon@verizon.net>
Date: Thursday, December 29, 2016 at 9:06 AM
To: Amy Sugden <amy@briancpadgett.com>, "nvindustrial1@yahoo.com" <nvindustrial1@yahoo.com>
Subject: RE: Outline of Disputed Facts

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To: John Di Francesco <nvindustrial1@yahoo.com>; Bob Feron <robertpferon@verizon.net>
Subject: Re: Outline of Disputed Facts

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Date: Wednesday, December 28, 2016 at 4:56 PM
To: "nvindustrial1@yahoo.com" <nvindustrial1@yahoo.com>, Bob Feron <robertpferon@verizon.net>
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Let me know what you think!

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Law Offices of Brian C. Padgett
611 South 6th Street
Las Vegas, Nevada 89101
(702) 304-0123 Tel
(702) 368-0123 Fax

(702) 368-0123 Fax

From: **Robert Feron** robertpferon@ver zon.net [redacted]
Subject: RE: Out ne of D sputed Facts
Date: January 3, 2017 at 1:36 PM
To: Amy Sugden amy@br ancpadgett.com, John D Francesco nv ndustr a 1@yahoo.com

RF

Amy,

I sent you some thoughts on your response to Steve. Spoke with John and he will review your email again for any comments. If there is nothing outstanding, why don't you respond to Steve and keep the ball rolling. It doesn't seem that anything he stated should be much of a concern. You have more than adequate responses. If you feel you need a conference call, let us know.
Thanks,
Bob

From: Amy Sugden [mailto:amy@briancpadgett.com]
Sent: Thursday, December 29, 2016 10:18 AM
To: Robert Feron <robertpferon@verizon.net>; 'John Di Francesco' <nvindustrial1@yahoo.com>
Subject: Re: Outline of Disputed Facts

Sure. Let me know when! I am in a settlement conf today that starts at 11 am though and I expect it'll take most of the day.

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Amy

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Date: Thursday, December 29, 2016 at 9:06 AM
To: Amy Sugden <amy@briancpadgett.com>, "nvindustrial1@yahoo.com" <nvindustrial1@yahoo.com>
Subject: RE: Outline of Disputed Facts

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From: Amy Sugden [mailto:amy@briancpadgett.com]
Sent: Wednesday, December 28, 2016 11:50 PM
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Subject: Re: Outline of Disputed Facts

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From: Amy Sugden <amy@briancpadgett.com>
Date: Wednesday, December 28, 2016 at 4:56 PM
To: "nvindustrial1@yahoo.com" <nvindustrial1@yahoo.com>, Bob Feron <robertpferon@verizon.net>
Subject: Outline of Disputed Facts

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Attached is a list of the facts that I want to dispute in the motion for summary judgment. You will see the allegation set forth and then my "response" below it.

Let me know what you think!

Thanks,

Amy L. Sugden, Esq.
Law Offices of Brian C. Padgett
611 South 6th Street
Las Vegas, Nevada 89101
(702) 304-0123 Tel
(702) 368-0123 Fax

Exhibit 13

Exhibit 13

From: **Steve Silva** ss va@m chae chapman.com
Subject: RE: F ve Year Ru e
Date: February 17, 2017 at 3:02 PM
To: Amy Sugden amy@br ancpadgett.com

SS

Received. I will discuss with my client and respond in due course.

Please advise when I can expect to receive updated financials from your client so that the discovery phase of this matter may actually proceed.

Best,

Steve

DO NOT read, copy or disseminate this communication unless you are the intended addressee. This e-mail communication contains confidential and/or privileged information intended only for the addressee. If you have received this communication in error, please call us (toll free) immediately at 800/804-7810 and ask to speak to the sender of the communication. Also, please e-mail the sender and notify him or her immediately that you have received the communication in error.

From: Amy Sugden [mailto:amy@briancpadgett.com]
Sent: Friday, February 17, 2017 3:02 PM
To: Steve Silva
Subject: Five Year Rule

Steve,

Pursuant to our prior discussions, please consider my clients' request to stipulate to extend the NRCP 41(e) five-year rule to accommodate final resolution of this matter.

Thank you,

Amy L. Sugden, Esq.
Law Offices of Brian C. Padgett
611 South 6th Street
Las Vegas, Nevada 89101
(702) 304-0123 Tel
(702) 368-0123 Fax

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CONDEMNATION LAW
TIER 1
LAS VEGAS
2017

Exhibit 14

Exhibit 14

From: SSILVA@fc aw.com [redacted]
Subject: Re: D Francesco
Date: March 25, 2017 at 7:00 PM
To: Amy Sugden amy@br ancpadgett.com

S

Your understand ng s correct. Let s see whether the case s mov ng forward before try ng to move the case forward.

-Steve

Sent from my Pad

Steven M. Silva, Associate

FENNEMORE CRAIG

300 E. 2nd St, Suite 1510, Reno, NV 89501-1591
T: 775.788.2295 | F: 775.788.2255
ssilva@fclaw.com

CONFIDENTIALITY NOTICE: The information contained in this message may be protected by the attorney-client privilege. If you believe that it has been sent to you in error, do not read it. Please immediately reply to the sender that you have received the message in error. Then delete it. Thank you.

On Mar 25, 2017, at 7:22 AM, Amy Sugden <amy@br ancpadgett.com> wrote:

> Hello Steve,
>
> This confirms our conversation in which we agreed to an informal stay of discovery until the rulings on your pending dispositive motions are received.
>
> Please let me know if my understanding is incorrect.
>
> Thank you!
>
>
> **Amy L. Sugden, Esq.**
> Law Offices of Brian C. Padgett
> 611 South 6th Street
> Las Vegas, Nevada 89101
> (702) 304-0123 Tel
> (702) 368-0123 Fax
>
>
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Exhibit 15

Exhibit 15

FILED
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CV12-01788
2017-05-04 02:33:56 PM
Jacqueline Bryant
Clerk of the Court
Transaction # 6084995

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

JOHN DIFRANCESCO TRUST, and ROBERT & JACALYN A. FERON FAMILY TRUST,

Plaintiffs,

vs.

WASHOE COUNTY, the CITY OF RENO, the CITY OF SPARKS, and the TRUCKEE RIVER FLOOD MANAGEMENT AUTHORITY,

Defendants.

_____/

Case No.: CV12-01788

Dep. No.: 3

ORDER

Currently before the Court is WASHOE COUNTY, the CITY OF RENO, the CITY OF SPARKS, and the TRUCKEE RIVER FLOOD MANAGEMENT AUTHORITY'S (collectively "Defendants/Government/Public") MOTION FOR SUMMARY JUDGMENT ("Motion") filed December 7, 2016. JOHN DIFRANCESCO TRUST, and ROBERT & JACALYN A. FERON FAMILY TRUST (collectively "Plaintiffs/Trusts") filed the Opposition on January 5, 2017. Defendants filed the Reply on February 13, 2017.

///

///

FACTUAL CONCLUSIONS

This matter arises out of a Complaint alleging two causes of action against Defendants, including Inverse Condemnation and Precondemnation Damages. [Compl., Jul. 9, 2012]. However, the parties stipulated to dismissal of Plaintiffs' First Cause of Action for Inverse Condemnation. [Stip. & Order, Jan. 25, 2016].

The relevant property in this action is located at North Edison Way, and consists of two parcels of land commonly known as 35 and 55 N. Edison Way ("Subject Property"). The Plaintiffs/Trusts have owned the subject property since 1989. After the 1997 flood, the Community Coalition was formed to discuss the prevention of future flood damage. In 2003, the Public approved the Early Land Acquisition Plan ("ELAP") to acquire properties from sellers through voluntary purchase agreements, in anticipation of a future flood mitigation project. [MSJ Ex. 1, Opp. MSJ Ex 1].

In 2005, the Flood Project Coordination Committee was formed between Washoe County, the cities of Reno and Sparks, and the University of Nevada to design and fund a flood mitigation project through local taxes and possible participation by the Army Corps of Engineers. From about May 12, 2006 through October 27, 2006, the Public purchased the properties neighboring the Subject Property. [Opp. MSJ Ex. 2]. Those properties were purchased through voluntary negotiations and sales and based upon valuation obtained from appraisal prepared for the project. [Opp. MSJ Ex. 3]. The Public also obtained demolition permits for flood prone structures along Edison Way. [Opp. MSJ Ex. 4]. Several tenants of the Subject Property were contacted by the Truckee River Flood Management Authority ("TRFMA"), and/or Washoe County, or an agent thereof, who informed them that they were acquiring the Property and would need to relocate. [Opp. MSJ Ex. 6, 7].

The Public permitted the use of its various owned properties, which the Public had voluntarily purchased from neighboring land owners as grey water trucking facilities, law enforcement training, and a homeless shelter. [Opp. MSJ. Ex. 8, 9]. The police and/or SWAT vehicles affiliated with the frequent and regular training exercises entered and blocked access to the Property, including inhibiting parking and loading/unloading for tenants. [Opp. MSJ Ex. 6 at ¶ 4]. Due to the overflow homeless shelter, people were found urinating, smoking cigarettes, and drinking liquor on and around the Subject Property. [Opp. MSJ Ex. 7].

In 2006, the Public approached the Plaintiffs/Trusts to see if they were interested in selling the property. From 2006 through 2010, the parties exchanged various proposals for a possible sale, including offers to purchase and sell supported by appraisals. The November 17, 2011 Truckee River Flood Management Authority Report provided:

> "The acquisition of 36/65 Edison Way is currently on-hold pending a 3rd party confirmation of previous appraisals. No offers are currently active. This property however is crucial to the needs of the Flood Project. It is located within the Truckee River's floodway as designated by FEMA and it further impacts this area of the river during a storm event with a hydraulic constriction. It is recommended that TRFMA continue to pursue this acquisition due to the eventual need of this property. If the Board decides to lower the priority of this item, the tenant relocation item listed associated with the purchase of this property may be reprioritized as well."

[Opp. MSJ Ex. 5]. An appraisal dated June 29, 2016 states that the fee simple value of the Subject Property as of November 7, 2007 was $5,100,000.00 and as of July 9, 2012 was $2,860,000.00. [MSJ Ex. 3]. Therefore, the resulting just compensation due to the landowners for precondemnation damages, as stated in the appraisal, is $2,240,000.00. *Id.*

LEGAL CONCLUSIONS

I. Motion for Summary Judgment Standard

Under NRCP 56, a party seeking to recover upon a claim may move for summary judgment upon all or any part of the claim. Such relief is appropriate when the pleadings, discovery and

exhibits show there is no genuine dispute as to any material fact and that the moving party is entitled to judgment as a matter of law. NRCP 56(c); *Nelson v. Calif. State Auto Ass'n Inter-Ins. Bureau*, 114 Nev. 345, 956 P.2d 803 (1998). The burden on the moving party may be met by showing that there is an absence of evidence to support any one or more of the prima facie elements of the non-moving party's case. *See*, *NGA #2, LLC v. Rains*, 113. Nev. 1151, 1156 (1997) (citing *Celotex Corp. v Catrett*, 477 U.S. 317, 331, 106 S. Ct. 2548 (1986). Once the moving party has met its burden to show that no genuine issue of material fact exists, the non-moving party must produce specific facts supported by competent admissible evidence that demonstrates the presence of a genuine issue of material fact for trial. *See*, *Elizabeth E. v. ADT Security Sys. W.,* 108 Nev. 889, 892 (1992). While the pleadings and other proof must be construed in a light most favorable to the non-moving party, that party must do more than simply show there is some metaphysical doubt as to the operative facts in order to avoid entry of summary judgment, and is not entitled to build a case on the gossamer threads of whimsy, speculation and conjecture. *Wood v. Safeway, Inc.*, 121 Nev. 724, 732, 121 P.3d 1026, 1031 (2005). The mere existence of some issues of fact does not necessarily preclude summary judgment. *Scott v. Harris.* 550 U.S. 372 (2007). An issue of material fact is "genuine" if the evidence is such that a reasonable jury, in applying the correct standard of proof, could return a verdict for the non-moving party. *Anderson v. Liberty Lobby, Inc.,* 477 U.S. 242, 248 (1986). A fact is "material" if it must be decided in order to resolve the substantive issue of the claim or defense to which the motion is directed. *Id.*

a. Precondemnation Damages

The purpose of precondemnation damages is to dissuade public agencies from "prematurely announcing their intent to condemn private property." *Buzz Stew, L.L.C. v. City of N. Las Vegas,* 124 Nev. 224, 229, 181 P.3d 670, 673 (2008). Precondemnation damages are recoverable if (1) the

entity has taken official action amounting to an announcement of its intent to condemn, (2) the entity "acted improperly" after taking such official action, and (3) these actions result in damage to the landowner. *Id.* at 228-29, 181 P.3d at 672-73. "When the precondemnation activities of the government are unreasonable or oppressive and the affected property has diminished in market value as a result of the governmental misconduct, the owner of the property may be entitled to compensation." *Sproul Homes of Nevada v. State ex rel. Dep't of Highways*, 96 Nev. 441, 444–45, 611 P.2d 620, 622 (1980).

The pivotal issue regarding an announcement of intent is whether the "activities have gone beyond the planning stage to reach the acquiring stage." *Buzz Stew I,* at 229, 181 P.3d at 673. "The acquiring stage occurs 'when condemnation has taken place, steps have been taken to commence eminent domain proceedings, or there has been an official act or expression of intent to condemn.' " *Id.* (quoting *State ex rel. Dep't of Transp. v. Barsy,* 113 Nev. 712, 720, 941 P.2d 971, 977 (1997), *overruled on other grounds by GES, Inc. v. Corbitt,* 117 Nev. 265, 268 n. 6, 21 P.3d 11, 13 n. 6 (2001)). Next, a landowner can show that a government entity acted improperly if it unreasonably delayed an eminent domain action after announcing its intent to condemn the landowner's property. *Buzz Stew I,* 124 Nev. at 229, 181 P.3d at 673. Improper conduct includes a delay or oppressive conduct that decreases the market value of a property. *Id.* Finally, the Nevada Supreme Court has expressly held that there needs to be no taking before a party may bring a claim for precondemnation damages. *Buzz Stew, LLC v. City of N. Las Vegas*, 131 Nev. Adv. Op. 1, 341 P.3d 646, 650 (2015). However, "not every decrease in market value as a result of precondemnation activities is compensable." *Sproul*, 96 Nev. at 444–45, 611 P.2d at 622 (*citing Klopping v. City of Whittier*, 8 Cal.3d 39, 104 Cal.Rptr. 1, 500 P.2d 1345, 1355 (1972)).

In the Motion, Defendants contend that any statements made do not equate to an announcement of an intent to condemn, and further, no resolution of need and necessity following a public meeting has been adopted pursuant to NRS 241.034. Defendants differentiate when the public acts through a government entity in its sovereign capacity and declares that it will condemn land through eminent domain, from when the public merely offers to buy land from landowners and the value of the property decreases as a result. In the latter, constitutional requirements are not implicated.

In the Opposition, Plaintiffs argue there is a genuine issue of material fact as to what constituted the government's official announcement of its intent to condemn. Defendants were not merely in the "planning stage" and engaging in negotiations. The government was actively acquiring properties on N. Edison Way for its project. Further, the government acquired properties based on valuations from appraisals prepared for the project, obtained demolition permits for those properties, and stated in correspondence that it needed to acquire the Subject Property for its project. The government further made use of surrounding buildings in a way that was harmful and in contravention with local zoning and municipal codes. Neighboring properties were used for police training exercises, a homeless shelter and grey water trucking facility, which Plaintiffs claim decreased the market value of the Subject Property. Plaintiffs state that it was never clear during this time that the government *was not acquiring* the Subject Property. Further, Plaintiffs argue that the Government engaged in oppressive conduct following its announcement of intent to condemn and then engaged in unreasonable delay by not moving forward to condemn the property.

In the Reply, Defendants assert that the "acquiring phase" is synonymous with "condemnation phase." The test clearly correlates the acquisition stage with the exercise of condemnation through eminent domain. The Defendants argue they have taken no steps to

commence eminent domain proceedings against the Trusts' property and have made no official acts or expressions of an intent to condemn. The facts and evidence provided by Plaintiffs are not material because they do not show an intent to condemn the Subject Property under relevant case law. Further, the government's acquisition and use of neighboring properties is immaterial to this action because Plaintiffs have no property right or interest in adjacent land.

Here, the record is devoid of evidence that the Government condemned the Subject Property or has taken steps to commence eminent domain proceedings. *See Buzz Stew I,* at 229, 181 P.3d at 673. However, this Court must determine whether there has been "an official act or expression of intent to condemn." *Id.* The Defendants in this case adopted a plan to acquire the Subject Property for the flood management project. While mere designation of a property for acquisition is insufficient to recover precondemnation damages, even when affecting the marketability of the property, the Government's actions in this case exceeded the planning phase. The Government acquired various properties along the river, evidencing finality of the project rather than mere planning or preparation. *Sproul,* 96 Nev. at 445, 611 P.2d at 622. The Government also expressly provided that the Subject Property was "crucial" to the flood management project and that "TRFMA continue to pursue this acquisition due to the eventual need of this property." While Defendants contend they communicated the termination of relocation efforts, that proposition is unsupported by the record. In fact, the sworn Affidavits of John Difrancesco, James Rosival, George McHenry, Jim Bowman and Rosemary Lewis provide that Defendants advised them that they were acquiring the property and tenants would need to relocate. While this early notice apparently did not result in the loss of existing tenants and/or an inability to secure replacement tenants, the 2016 appraisal demonstrates the overall decrease in the fair market value of the

property. This Court construes these foregoing efforts as evidencing the Government's intent to purchase the Subject Property and moving beyond the planning stage into the acquiring stage.

Further, the Nevada Legislature has not passed legislation expressly defining what qualifies as extraordinary delay or oppressive conduct, therefore, it has been held that this is a question for the fact-finder. *Buzz Stew I,* 124 Nev. at 230, 181 P.3d at 673. However, California Courts have held that recovery under *Klopping v. City of Whittier* requires some "direct" and "special" interference with the landowner's use of the property. Plaintiffs produce evidence that there has been an invasion of their property right. The Affidavits of various tenants of the Subject Property demonstrate that activity on neighboring properties was not confined to the adjacent land in which Plaintiffs' have no interest, but in fact infringed on Plaintiffs' use and enjoyment of their own property. *See Contra Costa Water Dist. v. Vaquero Farms, Inc.* 58 Cal.App.4th 883, 899, 68 Cal.Rptr.2d 272 (1997) (ruling that absent a formal resolution of condemnation, the public entity's conduct must have "significantly invaded or appropriated the use or enjoyment of" the property). In *Barthelemy v. Orange Cty. Flood Control Dist.*, 65 Cal. App. 4th 558, 565, 76 Cal. Rptr. 2d 575, 579 (1998), the Court found that adopting a flood control plan, designating the plaintiffs' property for future acquisition, and acquiring adjacent properties was insufficient to trigger damages under *Klopping,* as the entity did nothing to interfere with the plaintiffs' use of their property. Plaintiffs chose to mitigate their losses by acquiring an alternative site for their business, therefore any impairment of their dairy farm's operation was a direct result of their own conduct in purchasing the alternative property. *Id. at* 571, 76 Cal. Rptr. 2d at 584. However, the invasion of Plaintiffs' property in this case was not a result of their own actions to mitigate harm, but the Government's acquisition of neighboring properties. As a result of the project, prohibited individuals from the homeless shelter and law enforcement accessed the Subject Property, blocked entrances, and

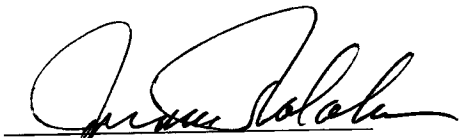
physically burdened the Subject Property. Thus, there is also an issue of fact as to whether delay or oppressive conduct decreased the market value of the Subject Property.

Therefore, this Court finds a genuine issue of material fact as to an announcement of the Government's intent to condemn and whether it acted improperly after taking such action.

Accordingly, and good cause appearing,

IT IS HEREBY ORDERED that Defendants' Motion for Summary Judgment on Plaintiffs' claim for Precondemnation Damages is DENIED.

Dated this 2d day of May, 2017.



JEROME POLAHA
DISTRICT JUDGE

CERTIFICATE OF MAILING

I certify that I am an employee of the SECOND JUDICIAL DISTRICT COURT of the STATE OF NEVADA, COUNTY OF WASHOE; that on the 4 day of May, 2017, I did the following:

☑Electronically filed with the Clerk of the Court, using the eFlex system which constitutes effective service for all eFiled documents pursuant to the eFile User Agreement:

BRIAN C. PADGETT, ESQ.

MICHAEL GLENN CHAPMAN, ESQ.

☐Transmitted document to the Second Judicial District Court mailing system in a sealed envelope for postage and mailing by Washoe County using the United States Postal Service in Reno, Nevada:

Exhibit 16

Exhibit 16

FILED
Electronically
CV12-01788
2017-05-04 02:36:35 PM
Jacqueline Bryant
Clerk of the Court
Transaction # 6085003

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

JOHN DIFRANCESCO TRUST, and ROBERT & JACALYN A. FERON FAMILY TRUST,

Plaintiffs,

vs.

WASHOE COUNTY, the CITY OF RENO, the CITY OF SPARKS, and the TRUCKEE RIVER FLOOD MANAGEMENT AUTHORITY,

Defendants.

_____/

Case No.: CV12-01788

Dep. No.: 3

ORDER

Currently before the Court is WASHOE COUNTY, the CITY OF RENO, the CITY OF SPARKS, and the TRUCKEE RIVER FLOOD MANAGEMENT AUTHORITY'S (collectively "Defendants") MOTION FOR JUDGMENT ON THE PLEADINGS ("Motion") filed December 7, 2016. JOHN DIFRANCESCO TRUST, and ROBERT & JACALYN A. FERON FAMILY TRUST (collectively "Plaintiffs") filed the Opposition on January 5, 2017. Defendants filed the Reply on February 13, 2017.

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FACTS

This matter arises out of a Complaint alleging two causes of action against Defendants, including Inverse Condemnation and Precondemnation Damages. However, the parties stipulated to dismissal of Plaintiffs' First Cause of Action for Inverse Condemnation.

The relevant property in this action is located at North Edison Way, and consists of two parcels of land commonly known as 35 and 55 N. Edison Way ("Subject Property"). The Plaintiffs/Trusts have owned the subject property since 1989. After the 1997 flood, the Community Coalition was formed to discuss the prevention of future flood damage. In 2003, the Public approved the Early Land Acquisition Plan ("ELAP") to acquire properties from sellers through voluntary purchase agreements, in anticipation of a future flood mitigation project.

In 2005, the Flood Project Coordination Committee was formed between Washoe County, the cities of Reno and Sparks, and the University of Nevada to design and fund a flood mitigation project through local taxes and possible participation by the Army Corps of Engineers. From about May 12, 2006 through October 27, 2006, the Public purchased the properties neighboring the Subject Property. Those properties were purchased through voluntary negotiations and sales and based upon valuation obtained from appraisal prepared for the project. The Public also obtained demolition permits for flood prone structures along Edison Way. Several tenants of the Subject Property were contacted by the Truckee River Flood Management Authority ("TRFMA"), and/or Washoe County, or an agent thereof, who informed them that they were acquiring the Property and would need to relocate.

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frequent and regular training exercises entered and blocked access to the Property, including inhibiting parking and loading/unloading for tenants. Due to the overflow homeless shelter, people were found urinating, smoking cigarettes, and drinking liquor on and around the Subject Property.

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An appraisal dated June 29, 2016 states that the fee simple value of the Subject Property as of November 7, 2007 was $5,100,000.00 and as of July 9, 2012 was $2,860,000.00. Therefore, the resulting just compensation due to the landowners for precondemnation damages, as stated in the appraisal, is $2,240,000.00. *Id.*

ANALYSIS

I. Motion for Judgment on the Pleadings

NRCP 12(c) states:

> After the pleadings are closed but within such time as not to delay the trial, any party may move for judgment on the pleadings. If, on a motion for judgment on the pleadings, matters outside the pleadings are presented to and not excluded by the court, the motion shall be treated as one for summary judgment and disposed of as provided in Rule 56, and all parties shall be given reasonable opportunity to present all material made pertinent to such a motion by Rule 56.

A motion under NRCP 12(c) "is designed to provide a means of disposing of cases when material facts are not in dispute and a judgment on the merits can be achieved by focusing on the content of the pleadings." *Bernard v. Rockhill Dev. Co.*, 103 Nev. 132, 135, 734 P.2d 1238, 1241 (1987). A motion for judgment on the pleadings should be granted when all material allegations of fact are admitted in the pleadings and the movant is entitled to judgment as a matter of law. *Duff v. Lewis*, 114 Nev. 564, 568, 958 P.2d 82, 85 (1998). Regardless of the law applicable to a case, a defendant may prevent a 12(c) motion by denials in his answer. *Bernard,* 103 Nev. at 136, 734 P.2d at 1241. However, "a defendant will not succeed on a motion under Rule 12(c) if there are allegations in the plaintiff's pleading that, if proved, would permit recovery." *Id.* Further, in the court's determination, all well-pleaded material allegations of the opposing party's pleading are to be taken as true, and all allegations of the moving party which have been denied are taken as false. *Hosp. Bldg. Co. v. Trustees of Rex Hosp.*, 425 U.S. 738, 96 S. Ct. 1848 (1976).

Pursuant to the Complaint filed July 9, 2012, Plaintiffs brought causes of action for 1) Inverse Condemnation of the Plaintiff's Property and 2) Precondemnation Damages. On January 25, 2016, Plaintiffs dismissed their Claim for Inverse Condemnation against all Defendants. Therefore, the only claim subject to this Motion is Plaintiffs' claim for precondemnation damages.

a. <u>Application of Sovereign Immunity to the Takings Clause and Precondemnation Damages</u>

NRS 41.032(2) provides complete immunity from claims based on a state employee's exercise or performance of a discretionary function or duty:

> [N]o action may be brought under NRS 41.031 ... which is:
> 2. Based upon the exercise or performance or the failure to exercise or perform a discretionary function or duty on the part of the State or any of its agencies or political subdivisions or of any officer, employee o\r immune contractor of any of these, whether or not the discretion involved is abused.

Both parties concede that sovereign immunity is waived in actions for eminent domain because it requires just compensation for a taking. This Court agrees and finds that both the Nevada and United States Constitutions waive immunity for the taking of property for public use. Other jurisdictions have held that sovereign immunity does not bar just compensation claims brought against the state. *Manning v. N.M. Energy, Minerals & Nat. Res. Dep't,*, 140 N.M. 528, 532, 144 P.3d 87, 91 (2006) (*citing First English Evangelical Lutheran Church of Glendale v. Los Angeles County,* 482 U.S. 304, 316 n. 9, 107 S. Ct. 2378 (1987)); *Benson v. State,* 710 N.W.2d 131 (S.D. 2006); *Boise Cascade,* 164 Or. App. 114, 991 P.2d 563 (1999); *SDDS, Inc. v. State,* 650 N.W.2d 1, 9 (S.D. 2002); *State ex rel. Smith v. 0.24148, 0.23831 & 0.12277 Acres of Land*, 53 Del. 439, 171 A.2d 228 (1961) (holding that the prohibition of the taking of private property for public use without just compensation operates as a self-executing waiver of the state's sovereign immunity); *Koch v. Texas Gen. Land Office*, 273 S.W.3d 451, 457 (Tex. App. 2008) (holding sovereign immunity does not shield the state from a claim based on an unconstitutional taking of property because the Texas Constitution itself waives immunity).

More importantly, Nevada Constitutional and statutory law support the proposition that sovereign immunity does not bar takings claims when asserted against the state for just compensation. Both the Nevada Constitution and statutory authority require just compensation when the state takes private property for public use. *See* Nev. Const. art. 1, § 8, cl. 6 ("[p]rivate property shall not be taken for public use without just compensation having been first made...); NRS § 37.120 ("[i]n all actions in eminent domain, the court shall award just compensation to the owner of the property that is being taken"). Therefore, this Court finds that the state has waived immunity for actions alleging the taking of property without just compensation. However, this

Court must further inquire as to whether precondemnation damages fall within an action for eminent domain and thus not barred by sovereign immunity.

The parties disagree as to whether precondemnation damages fall within a tort action or an eminent domain action for the taking of property. In the Motion, Defendants essentially argue that Plaintiffs' claim for precondemnation damages is independent and distinct from a claim for just compensation due to a taking. It is clear from Nevada's common law that a claim for precondemnation damages is recognizable as a tort and not mandated by the Constitution, which solely addresses takings. The Opposition asserts that precondemnation damages stem from the constitutional right to just compensation, and therefore not barred by sovereign immunity. Plaintiffs further state that even if this Court finds precondemnation damages to fall within tort law, the two-prong test for discretionary immunity is not satisfied. In the Reply, Defendants reiterate that the Constitution does not provide just compensation for anything short of a taking, and there has been no taking here. Further, Plaintiffs cite to no authority for the proposition that sovereign immunity does not apply to precondemnation damages in Nevada. Plaintiffs merely assert that NRS 41.035(1) does not apply because it only applies to tort claims. Thus, Plaintiffs have conceded that NRS 41.035(1) does apply if this Court finds precondemnation damages to be an action in tort. Both parties provide lengthy discussions and interpretations of Nevada case law on precondemnation damages and sovereign immunity.

The Takings Clause of the United States Constitution provides, "[N]or shall private property be taken for public use, without just compensation." U.S. Const., Am. 5. Similarly, the Takings Clause of the Nevada Constitution provides that "[p]rivate property shall not be taken for public use without just compensation having been first made, or secured, except in cases of war, riot, fire, or great public peril, in which case compensation shall be afterward made." Nev. Const. art. 1, § 8, cl.

6. "Private property" is plain on its face and held to be broad and apply to all types of privately owned property, including personal property. *ASAP Storage, Inc. v. City of Sparks*, 123 Nev. 639, 646-47, 173 P.3d 734, 739 (2007). For a taking to occur, a claimant must have a stick in the bundle of property rights. *McCarran Int'l Airport v. Sisolak*, 122 Nev. 645, 658, 137 P.3d 1110, 1119 (2006). The bundle of property rights includes all rights inherent in ownership, including the inalienable right to possess, use, and enjoy the property. *Id.* A taking can occur when the government physically appropriates an individual's private property or personal property, or when a government regulation authorizes permanent physical invasion of private property or completely deprives an owner of all economically beneficial use of her property. *Lingle v. Chevron U.S.A., Inc.*, 544 U.S. 528, 537–38, 125 S. Ct. 2074 (2005). Physical appropriation exists when the government seizes or occupies private property or ousts owners from their private property. *Id.* A taking also occurs when a government entity requires an unlawful exaction in exchange for approval of a land-use permit. *See generally Koontz,* 570 U.S. ——, 133 S. Ct. 2586 (2013). Nearly all other takings claims turn on situation-specific factual inquiries. *Arkansas Game,* 568 U.S. ——, 133 S. Ct. 511 (2012).

In addition to just compensation for a "taking," a government entity may be liable for precondemnation damages. The purpose of precondemnation damages is to dissuade public agencies from "prematurely announcing their intent to condemn private property." *Buzz Stew, L.L.C. v. City of N. Las Vegas,* 124 Nev. 224, 229, 181 P.3d 670, 673 (2008). Precondemnation damages are recoverable if (1) the entity has taken official action amounting to an announcement of its intent to condemn, (2) the entity "acted improperly" after taking such official action, and (3) these actions result in damage to the landowner. *Id.* at 228-29, 181 P.3d at 672-73. The pivotal issue regarding an announcement of intent is whether the "activities have gone beyond the planning stage

to reach the acquiring stage." *Id.* at 229, 181 P.3d at 673. "The acquiring stage occurs 'when condemnation has taken place, steps have been taken to commence eminent domain proceedings, or there has been an official act or expression of intent to condemn.' " *Id.* (quoting *State ex rel. Dep't of Transp. v. Barsy,* 113 Nev. 712, 720, 941 P.2d 971, 977 (1997), *overruled on other grounds by GES, Inc. v. Corbitt,* 117 Nev. 265, 268 n. 6, 21 P.3d 11, 13 n. 6 (2001)). Next, a landowner can show that a government entity acted improperly if it unreasonably delayed an eminent domain action after announcing its intent to condemn the landowner's property. *Buzz Stew,* 124 Nev. at 229, 181 P.3d at 673. Improper conduct includes a delay or oppressive conduct that decreases the market value of a property. *Id.*

In *Buzz Stew I*, the Nevada Supreme Court held that a landowner may "assert a cause of action for precondemnation damages, independent from those resulting from the taking of its property." *Id.; See also State v. Eighth Jud. Dist. Ct.*, 131 Nev. Adv. Op. 41, 351 P.3d 736, 744 (2015). The Court further provided in *Buzz Stew II* that there needs to be no taking before a party may bring a claim for precondemnation damages, recognizing that "regardless of whether property has actually been taken, the just compensation provision requires compensating a landowner for a lesser invasion of his property rights when a could be condemnor acts improperly following its announcement of intent to condemn, such as by unreasonably delaying condemnation of the property."[1] *Buzz Stew, LLC v. City of N. Las Vegas*, 131 Nev. Adv. Op. 1, 341 P.3d 646, 647 (2015). However, "not every decrease in market value as a result of precondemnation activities is compensable." *Sproul Homes of Nevada v. State ex rel. Dep't of Highways*, 96 Nev. 441, 444–45, 611 P.2d 620, 622 (1980) (*citing Klopping v. City of Whittier*, 8 Cal.3d 39, 104 Cal.Rptr. 1, 500 P.2d 1345, 1355 (1972)). "When the precondemnation activities of the government are

[1] This Court disagrees with Defendants' contention that this passage from the *Buzz Stew II* is merely dicta and not binding.

unreasonable or oppressive and the affected property has diminished in market value as a result of the governmental misconduct, the owner of the property may be entitled to compensation." *Sproul,* 96 Nev. at 444-45, 611 P.2d at 622.

Based on the foregoing law, this Court finds that precondemnation damages emanate from the constitution rather than tort law. It is clear that precondemnation damages are independent from an award of just compensation and a taking is not required to recover precondemnation damages. *See Buzz Stew,* 124 Nev. at 229, 181 P.3d at 673. However, it has also been held that damages are rooted in eminent domain law. *City of N. Las Vegas v. 5th & Centennial*, 130 Nev. Adv. Op. 66, 331 P.3d 896 (2014) (holding that although separate from inverse condemnation claims, there is no reason to apply a different statute of limitations period to precondemnation claims, which are usually brought with inverse condemnation claims). The purpose of the takings clause is to prevent a government taking of property before just compensation is paid. Precondemnation damages serve a similar purpose to dissuade the government from prematurely announcing their intent to condemn private property before eminent domain proceedings are commenced. Both causes of action provide damages measured by the market value or decrease in the market value of the property, and aim to protect property rights of private citizens instilled in the constitution. Finding that precondemnation damages are barred would essentially gut the eminent domain exception to sovereign immunity by preventing private parties from seeking relief when the value of their property decreases due to improper government action. Precondemnation damages serve an important, vital purpose in protecting property rights of private citizens, which both the Nevada Constitution and United States Constitution aspire to safeguard and preserve. Precondemnation damages provide relief when a lesser invasion of property rights occurs, and while not amounting to a "taking," property rights are infringed nonetheless. *See Buzz Stew II,* 131 Nev. Adv. Op. 1, 341 P.3d at 647. Additionally,

Defendants fail to cite to any authority providing that precondemnation damages specifically fall within a tort action. Therefore, this Court finds that sovereign immunity is waived in an action for precondemnation damages and Defendants may be liable to Plaintiffs, subject to this Court's analysis below.

b. Economic Loss Doctrine

"The economic loss doctrine is a judicially created rule that primarily emanates from products liability jurisprudence." *Terracon Consultants W., Inc. v. Mandalay Resort Grp.,* 125 Nev. 66, 72, 206 P.3d 81, 85–86 (2009) (*Calloway v. City of Reno,* 116 Nev. 250, 257, 993 P.2d 1259, 1263 (2000), *overruled on other grounds by Olson v. Richard,* 120 Nev. 240, 241–44, 89 P.3d 31, 31–33 (2004)). The Nevada Supreme Court has held that the doctrine bars unintentional tort actions when the plaintiff seeks to recover "purely economic losses." *Local Joint Exec. Bd. v. Stern,* 98 Nev. 409, 411, 651 P.2d 637, 638 (1982). However, exceptions to the doctrine apply in certain categories of cases when strong countervailing considerations weigh in favor of imposing liability. *Terracon Consultants,* 125 Nev. at 73, 206 P.3d at 86. The doctrine draws a legal line between contract and tort liability that forbids tort compensation for "certain types of foreseeable, negligently caused, financial injury." *Id.* at 75, 206 P.3d at 87 (*quoting Barber Lines A/S v. M/V Donau Maru,* 764 F.2d 50, 52 (1st Cir.1985)). It expresses the policy that the need for useful commercial economic activity and the desire to make injured plaintiffs whole is best balanced by allowing tort recovery only to those plaintiffs who have suffered personal injury or property damage. *Id.* (*citing Public Service Ent. Group v. Philadelphia Elec.,* 722 F.Supp. 184, 211 (D.N.J.1989)). Further, the application of the doctrine protects parties from unlimited economic liability, which could result from negligent actions taken in commercial settings. *Halcrow, Inc. v. Eighth Jud. Dist. Ct.*, 129 Nev. Adv. Op. 42, 302 P.3d 1148, 1152 (2013), *as corrected* (Aug. 14, 2013).

In the Motion, Defendants argue that Plaintiffs' claim for precondemnation damages arises in tort and is for purely economic loss. No physical injury or property damage has been identified. In Opposition, Plaintiffs contend the economic loss doctrine is both antithetical and inapplicable to precondemnation damage actions. Precondemnation damages flow from the constitutional right to just compensation, therefore the economic loss doctrine cannot apply to this matter. Even if precondemnation damages fall within tort law, precondemnation damages are measured by the decrease in market value of the landowner's property. Nevada's jurisprudence does not require physical taking of the property and recognize the landowner's right to compensation for damages from the diminution in value. Defendants assert in the Reply that Plaintiffs fail to cite to any known exception to the economic loss doctrine. The Complaint makes no allegation of any specific and direct interference with any property right owned by the Trusts.

Here, the first step is to ascertain whether the damages are purely economic in nature. *Terracon,* 125 Nev. at 73, 206 P.3d at 86 (*citing Arco Prods. Co. v. May,* 113 Nev. 1295, 1297, 948 P.2d 263, 265 (1997)). A purely economic loss is "the loss of the benefit of the user's bargain including pecuniary damage for inadequate value, the cost of repair and replacement of the defective product, or consequent loss of profits, without any claim of personal injury or damage to other property." *Calloway v. City of Reno,* 116 Nev. 250, 993 P.2d 1259, 1263 (2000), *overruled on other grounds by Olson v. Richard,* 120 Nev. 240, 89 P.3d 31 (2004) (en banc)). Plaintiffs' alleged damages are purely economic and do not involve bodily injury or other property damage. However, the second step is to determine whether the economic loss doctrine applies to Plaintiff's claims. *Copper Sands Homeowners Ass'n, Inc. v. Copper Sands Realty, LLC*, No. 2:10-CV-00510-GMN, 2012 WL 1044311, at *4 (D. Nev. Mar. 27, 2012). It is clear that the economic loss doctrine is intended to prevent liability when the plaintiff has suffered no personal or property damage in an

action for tort, however, this Court found that precondemnation damages arise from the constitution. Further, this Court agrees with Plaintiffs' contention that the economic loss doctrine is antithetical to the valuation of precondemnation damages, which are measured by the decrease in the market value of the landowner's property. The purpose of precondemnation damages is to compensate landowners for the monetary value loss in their property, thus the economic loss doctrine cannot be reconciled or applied to an action for precondemnation damages. Therefore, the economic loss doctrine does not bar Plaintiffs' claim.

Accordingly, and good cause appearing,

IT IS HEREBY ORDERED that Defendants' Motion for Judgment on the Pleadings is DENIED in its entirety.

Dated this 2nd day of May, 2017.

JEROME POLAHA
DISTRICT JUDGE

CERTIFICATE OF MAILING

I certify that I am an employee of the SECOND JUDICIAL DISTRICT COURT of the STATE OF NEVADA, COUNTY OF WASHOE; that on the 4 day of May, 2017, I did the following:

☑ Electronically filed with the Clerk of the Court, using the eFlex system which constitutes effective service for all eFiled documents pursuant to the eFile User Agreement:

BRIAN C. PADGETT, ESQ.

MICHAEL GLENN CHAPMAN, ESQ.

☐ Transmitted document to the Second Judicial District Court mailing system in a sealed envelope for postage and mailing by Washoe County using the United States Postal Service in Reno, Nevada:

Exhibit 17

Exhibit 17

Subject: RE: Touching Base
Date: Thursday, July 6, 2017 at 6:21:10 PM Pacific Daylight Time
From: Robert Feron
To: Amy Sugden, 'John Di Francesco'
Attachments: image001.png, image002.png, image003.jpg, image004.jpg, image005.png

Amy,

How about an afternoon call next week ? What's good for you?
Bob

From: Amy Sugden [mailto:amy@briancpadgett.com]
Sent: Thursday, July 6, 2017 3:07 PM
To: John Di Francesco <nvindustrial1@yahoo.com>; Bob Feron <robertpferon@verizon.net>
Subject: Touching Base

Hi guys!

Hope you are doing well and had a nice 4th of July.

I wanted to reach out to chat about your interest in potential settlement. Steve-o asked me for about the following two options:

1. What does it take to settle this case for the precondemnation damages claim alone?
2. If the Washoe/TRFMA could buy the property outright, what would you want for it?

In order to answer these two inquiries, I wanted to present a few things to consider:

As you'll recall, Tio's initial expert report opines to a precondemnation damage of $2,240,000 based on the difference in value between 11/1/2007 and 6/9/2012 (the date we filed our lawsuit). This is of course based on our premise that the property should have been acquired no later than 2007 (as that's when the last other property was acquired on N. Edison Way).

The most uphill battle we have in these precondemnation damages cases is proving the actual damage. There's been a few reported decisions where the jury/judge did not buy that there was a damage. And we know the TRFMA/Washoe are going to argue you guys haven't been harmed because you have continued to make rents. We, of course, know that not to be true and I think can present a great series of facts at trial that show all the horrible stuff you guys have had to live through to just try and stay alive.

However, the government is also going to try and argue that the value of the property should not be compared from 2007 to 2012 – when we filed – but from 2007 to now (or the trial date). With the prices of real estate going up, this is a potentially problematic issue but not one that we can't fight like all the others we have ☺

What I'd like to do is have a phone call to discuss these two questions and determine if there's room for settlement discussions at this point.

Let me know when you have time here in the next week!

Thanks,

Amy L. Sugden, Esq.
Law Offices of Brian C. Padgett
611 South 6th Street
Las Vegas, Nevada 89101
(702) 304-0123 Tel
(702) 368-0123 Fax

Exhibit 18

Exhibit 18

Subject: RE: Moving forward!
Date: Saturday, July 22, 2017 at 2:05:44 PM Pacific Daylight Time
From: Robert Feron
To: Amy Sugden, 'John Di Francesco'
Attachments: image001.png, image002.png, image003.jpg, image004.jpg, image005.png

Amy,

Thanks for the update. In talking with Steve, when does it look like a trial will take place? Have you received the transcript yet? I'm looking forward to finding the agreement by all parties that 2012 is the drop date. The financials will be forthcoming. John is in the middle of preparing a draw to send to One Nevada. He is scheduled for surgery next week and will be out of the office for a short time. Is there any discovery outstanding?

Bob

From: Amy Sugden [mailto:amy@briancpadgett.com]
Sent: Saturday, July 22, 2017 8:19 AM
To: John Di Francesco <nvindustrial1@yahoo.com>; Bob Feron <robertpferon@verizon.net>
Subject: Moving forward!

Hi guys,

I spoke to Steve and let him where we are at in moving forward. What we need to do now is just close out discovery and prepare for trial.

In order to do that, I need to get those updated financials so I can review and bates label them for production. (I will also be getting the training logs).

John, please go ahead and forward those over to me.

Also, for jury trials in Washoe, it's typically 8 jurors and you need a ¾ majority for a verdict ☺

Thanks!

Amy L. Sugden, Esq.
Law Offices of Brian C. Padgett
611 South 6th Street
Las Vegas, Nevada 89101
(702) 304-0123 Tel
(702) 368-0123 Fax

Exhibit 19

Exhibit 19

Robert Feron

From: Amy Sugden <amy@briancpadgett.com>
Sent: Saturday, September 16, 2017 11:14 AM
To: John Di Francesco; Robert Feron
Subject: Re: Labor Day

John,

Thank you for the email. I really do appreciate your and Bob's thoughts as we have navigated what has seemed at times to be a never-ending stream of motion practice that has prolonged the ultimate goal of bringing this to trial. And I do realize that you guys are appreciative of our efforts and so thank you for the kind words.

Normally, we proceed through discovery fully, it closes and then we proceed to dispositive motions. But no two eminent domain cases are alike and this one was hit from day 1 with motions from Chapman's office trying to summarily dispose of our case. Once we defeated those, we moved to set the date of valuation for which we could proceed to prepare expert reports.

But as you guys know, while this was going on, the Ad America decision came down clarifying the Nevada Supreme Court's position that in order for a condemnor to have liability for an inverse condemnation action, there must be a total deprivation of income/use of the property – which unfortunately set the standard too high for us to meet in your case. So we agreed to dismiss that cause of action and proceeded to present expert reports for our precondemnation damages' claim. And then we got hit with our second round of motions from Steve that tried to once again summarily dispose of our precondemnation damages' claim.

Now that we have succeeded on those, we need to close discovery and prepare for trial. I understand your guys' position completely as outlined below but there is now a new issue that factors into the overall situation.

Under NRCP 41, a case shall be dismissed by the judge if it is not brought to trial UNLESS the parties otherwise agree in writing. I presented Steve with a stipulation to set the close of discovery and acquiesce to the 5-year rule. We need his consent to extend what is known as "the five year rule" under NRCP 41. Thus, while we need to deal with the discovery that's outstanding, there's a bigger issue of concern.

Here are our options/issues:

(1) We get Steve to agree in writing to the extension of the 5-year rule
(2) We don't get Steve to agree and he moves for dismissal with prejudice (meaning we can't file again) Even Steve admits he doesn't think that this judge would grant his motion for dismissal with prejudice (and it would be likely without prejudice, allowing us to file again) But if that happens, and we file again, then we are stuck at evaluating the damages from 2007-2017, instead of 2007-2012 (our prior filing date). There are pros and cons to both scenarios but overall, I don't want to lose this judge and we run that risk if we have to refile.

I think Steve will agree to the extension if we agree to the simultaneous exchange of the training logs and financials.

I know you aren't keen on this and made a lot of comments about his lack of good faith and gamesmanship in not producing the logs but I see that in every case I do and we do it as well – and in this case, Steve's argument is that just as he needs to produce the training logs, we need to produce the updated financials (as there's a rule of civil procedure stating you have a duty to supplement your responses when new information becomes available and as they asked for financials, that duty is triggered). Thus, if we go to the Court on simultaneous motions to compel, where both sides will seek attorneys' fees/sanctions from the other for failure to comply, we both are arguably just doing the same thing. But there's more to gain now with a simultaneous exchange, preservation of our case in front of Judge Pohela.

Brian and I want to do what makes the most sense to us – hand over the additonal financials, we get the training logs and agreement on the five year rule. THEN, I will file a motion in limine to exclude anything after the July 2012 date. I can't move for that now without losing Steve on the 5 year rule.

Thank you,
Amy

From: "nvindustrial1@yahoo.com" <nvindustrial1@yahoo.com>
Reply-To: "nvindustrial1@yahoo.com" <nvindustrial1@yahoo.com>
Date: Monday, September 4, 2017 at 3:51 PM
To: Amy Sugden <amy@briancpadgett.com>, Bob Feron <robertpferon@verizon.net>
Subject: Re: Labor Day

Hi Amy,

Thanks for getting back to us. Sorry you are working this weekend and not spending time with your kids.

Believe me when I say it is not our intention to criticize you personally in our case. We have said many time over how much we appreciate your efforts and attention to the details of our case.

This is more a back handed complement of Steve's effort to avoid and obstinate our efforts to obtain evidence that would be helpful to our case and hurtful to their defense. All his efforts stays under the radar of the court and the Board of the TRFMA . It also costs them very little of his time and therefore does not draw attention to a case that has dragged on for over five years. It is hardly a footnote on the Board's agenda month after month , year after year.

Our intention is to take the offence and expose his delay tactics. It would be naive to say he ever intended to turn over full and complete records of all the training activities over the years. He already answered, that those records would be onerous and burdensome for them to produce. Which is a boldface lie. He has a track record of not turning over what we asked for and delaying his responses for months and even complaining we were not asking the right questions. If he wasn't controlling the narrative he would have responded respectfully to you and given you those records many months ago, certainly immediately after the last motion that was ruled in our behalf. Bob says that was May 4th.

Every successful enterprise, military battle, sporting event, and court case must self critique and make course corrections if results are not getting produced. Setting our egos aside for self criticism of our game plan is a show of character, strength and intelligence.

From: **John Di Francesco** nv ndustr a 1@yahoo.com
Subject: Mov ng forward!
Date: September 16, 2017 at 4:34 PM
To: Amy Sugden amy@br ancpadgett.com
Cc: Robert Feron robertpferon@ver zon.net

JD

Hi Amy,

Bob and I are glad to hear that the motion is almost done. Before you file or notify Steve of our intentions, please send us a draft ASAP. We have decided that the Judge should also decide if we should be required to provide the financials and rent rolls to the current date.

If the Judge rules we should, please put in our motion a demand for training logs to the current dates or same date as the financials; because that has affected our tenants in a negative manner. We lost some very long term and loyal tenants during that time.

We are not the least bit concerned about extending damages to 2017, 5 more years. If that happens it will only add substantial damages to our claim. Tio will only have to update his reports. As usual we have supporting receipts, reports and repair proposals.

Our witnesses/tenants are like race horses chomping at the starting gate to get to witness stand.

John, Bob and Jackie.

Exhibit 20

Exhibit 20

Robert Feron

From: Amy Sugden <amy@briancpadgett.com>
Sent: Wednesday, September 20, 2017 4:22 PM
To: Robert Feron; John Di Francesco
Subject: Re: Labor Day

Steve is amenable to executing the stipulation for the extension too! We just need to get the discovery issues sorted out first.

From: Bob Feron <robertpferon@verizon.net>
Date: Wednesday, September 20, 2017 at 4:04 PM
To: Amy Sugden <amy@briancpadgett.com>, "nvindustrial1@yahoo.com" <nvindustrial1@yahoo.com>
Subject: Re: Labor Day

Thanks for the reply. What about the extension? Seems most important. When would that take place? Looks like it is something we could work with needs to be refined.
Bob

Sent from my Verizon, Samsung Galaxy smartphone

-------- Original message --------
From: Amy Sugden <amy@briancpadgett.com>
Date: 9/20/17 2:52 PM (GMT-08:00)
To: Robert Feron <robertpferon@verizon.net>, John Di Francesco <nvindustrial1@yahoo.com>
Subject: Re: Labor Day

Bob & John,

I have spent a number of hours working on this matter and analyzing the best course of action – as well as conferring again with Steve on our confirming the close of discovery. After a lengthy conversation with Steve, I got him to agree to the following, as long as I can just tell him I have the financials in my possession, he will release the training logs for us to review.

Meaning, I don't have to turn the financials over for him to give me the training logs but as long as I represent to him that I have them in my possession, he will give me the training logs. Then, if we approve of what is received, then we will provide the financials.

Given what you guys indicated, it behooves us to potentially include the data after 2012 as it is further evidence of damages (so filing the motion about stopping damages in 2012 doesn't make sense at this point).

This is the best way to proceed and is most efficient in moving this case forward. Accordingly, I need you to please provide me the updated financials. I will absolutely not release them until I have your express consent based upon the process I laid out above. Please be aware though, Steve has the power to subpoena the updated financials from us, and the court could order the documents be disclosed (my conversations with Steve have kept him from doing so).

We're happy to work with you as the clients to help brainstorm arguments regarding your property, the circumstances surrounding it, and the injuries it sustained. You will always have the last word on whether or not to settle (and for how much), as well as the big picture objective of the litigation. That said, our firm's intimate knowledge of the nuances involved in eminent domain law, procedural law, the court system, and motion practice is a weapon that we wield on your behalf, and we will always use our most effective means to achieve your objective. With that in mind, the strategy on how we deploy our weapons and means must stay in our control under the attorney-client relationship to assure we are maximally effective. We've scored some big wins in this case and I think we'll amass many more before we cross the finish line.

Thank you,

Amy

From: Bob Feron <robertpferon@verizon.net>
Date: Wednesday, September 20, 2017 at 12:17 PM
To: Amy Sugden <amy@briancpadgett.com>, "nvindustrial1@yahoo.com" <nvindustrial1@yahoo.com>
Subject: Re: Labor Day

Amy,

Lets set up a conference call so that we know where we are and where we are going.

Bob

Exhibit 21

Exhibit 21

Subject: Financials
Date: Monday, October 2, 2017 at 1:15:45 PM Pacific Daylight Time
From: John Di Francesco
To: Amy Sugden
CC: Robert Feron

Amy,

I'm sending you and Bob the 2014, 2015, and 2016 rent rolls and Profit and Loss statements today by Priority Mail. You should expect to receive them on Wednesday.

John

Exhibit 22

Exhibit 22

Subject: RE: Training Logs
Date: Thursday, November 30, 2017 at 10:31:11 AM Pacific Standard Time
From: Robert Feron
To: Amy Sugden, 'John Di Francesco'
Attachments: image001.png, image002.jpg, image003.jpg, image004.png, image005.png

Amy,

The Excel logs start with 2010. We are missing 2007, 2008, 2009. Also , other agencies used the building- where is that information? We are also missing the important logs for the multi buildings on Edison. A lot happen in and around those buildings that would be beneficial at the trial. Please do not release our financial information until these logs are produced and we review.

Thanks,

Bob

From: Amy Sugden [mailto:amy@briancpadgett.com]
Sent: Wednesday, November 29, 2017 10:03 AM
To: John Di Francesco <nvindustrial1@yahoo.com>; Bob Feron <robertpferon@verizon.net>
Subject: Training Logs

Please see the attached training logs for review.

Thanks,

Amy L. Sugden, Esq.
Law Offices of Brian C. Padgett
611 South 6th Street
Las Vegas, Nevada 89101
(702) 304-0123 Tel
(702) 368-0123 Fax

Exhibit 23

Exhibit 23

To: Robert Feron <robertpferon@verizon.net>; nvindustrial1@yahoo.com
Subject: Re: Moving Forward!

Yes, you are correct! Thanks Bob.

I'll work on the list and get that over to you guys.

From: Bob Feron <robertpferon@verizon.net>
Date: Friday, December 29, 2017 at 10:17 AM
To: Amy Sugden <amy@briancpadgett.com>, "nvindustrial1@yahoo.com" <nvindustrial1@yahoo.com>
Subject: RE: Moving Forward!

Amy,

Also need to schedule any remaining depositions that you believe are necessary. We would like to review that list when available.

Thanks,

Bob

From: Amy Sugden [mailto:amy@briancpadgett.com]
Sent: Friday, December 29, 2017 10:04 AM
To: Bob Feron <robertpferon@verizon.net>; nvindustrial1@yahoo.com
Subject: Moving Forward!
Importance: High

Hi guys,

It was really good to speak with you both yesterday. I think we are all on the same page that we want to move this forward as fast as possible.

In order to do so, the agreed upon game plan is as follows:

(1) Turn over the updated financials to Steve
(2) Amy and Steve finalize discovery deadlines and stipulation for waiver of the 5 year rule (or in the event we cannot, I will submit my own discovery proposal to the discovery commissioner asking to move this forward as quickly as possible)
(3) Once discovery schedule is finalized, move to obtain trial date.

If you have any concerns, let me know ASAP as I'm turning over the financials by COB today so we can get going on #2-#3.

Thank you and Happy New Year!!

Amy L. Sugden, Esq.
Law Offices of Brian C. Padgett

Exhibit 24

Exhibit 24

From: **SILVA, STEVEN** SSILVA@fc aw.com [redacted]
Subject: RE: D Francesco
Date: January 19, 2018 at 9:09 AM
To: Amy Sugden amy@br ancpadgett.com

SS

I will be in South Carolina Tuesday through Friday.

Steven M. Silva, Associate

FENNEMORE CRAIG

300 E. 2nd St, Suite 1510, Reno, NV 89501-1591
T: 775.788.2295 | F: 775.788.2255
ssilva@fclaw.com | View Bio

CONFIDENTIALITY NOTICE: The information contained in this message may be protected by the attorney-client privilege. If you believe that it has been sent to you in error, do not read it. Please immediately reply to the sender that you have received the message in error. Then delete it. Thank you.

From: Amy Sugden [mailto:amy@briancpadgett.com]
Sent: Thursday, January 18, 2018 11:10 PM
To: SILVA, STEVEN
Subject: DiFrancesco

Hi Steve!

I wanted to follow up on our prior conversations about the financial information provided by Mr. DiFrancesco. I inquired as to whether he has monthly rent rolls (in addition to what he supplied for the past few years) or the raw data behind the same, etc.

This is the response I received: "I don't keep a running monthly rent roll on the Edison Property. You have what I have. I don't have any additional raw data."

Let's talk early next week (I'm out tomorrow) as I'd like to see if we can't get some stipulations in place to move forward.

Thank you,

Amy L. Sugden, Esq.
Law Offices of Brian C. Padgett
611 South 6th Street
Las Vegas, Nevada 89101
(702) 304-0123 Tel
(702) 368-0123 Fax

Law Offices of
BRIAN C. PADGETT
Nevada's Eminent Domain and Property Rights Attorneys
Best Lawyers
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LAW FIRMS
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EMINENT DOMAIN AND CONDEMNATION LAW
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TIER 1
LAS VEGAS
2017
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LAW FIRMS
U.S.News
2018

Exhibit 25

Exhibit 25

Robert Feron

From: Amy Sugden <amy@briancpadgett.com>
Sent: Friday, April 20, 2018 5:19 PM
To: Bob Feron; John Di Francesco
Subject: Recap

This is what we agreed:

Proceed with depositions
Amy to file Motion (probably a motion in limine) to exclude evidence after July 2012
Consider filing a motion to bring City of Reno back in for activities related to business licenses
Make Steve work and bill bill bill

Thank you!!

Have a nice weekend.

Amy L. Sugden, Esq.
Law Offices of Brian C. Padgett
611 South 6th Street
Las Vegas, Nevada 89101
(702) 304-0123 Tel
(702) 368-0123 Fax

Exhibit 26

Exhibit 26

Robert Feron

From: John Di Francesco <nvindustrial1@yahoo.com>
Sent: Saturday, April 21, 2018 11:41 PM
To: Amy Sugden; Robert Feron
Subject: Counter Offer

Hi Amy,

Bob and I further discussed the suggestion from Steve regarding our interest in selling the Edison property and settling the Pre-Condemnation case. We would like you to present this counter proposal to Steve.

We would settle the lawsuit for $1,000,000 plus all of your attorney fees. This offer is good for 60 days from Monday April 23, 2018. If not accepted the offer is withdrawn at the time of their rejection.

In addition we would be willing to sell the Edison property to TRFMA after August 2018. The sales price would be determined by a new Yellow Book appraisal prepared by David Yerke MAI. The appraisal will commence after August 1 and would take approximately 60 days to complete. Please convey our willingness to cooperate and sell the property as we have always been. If after the appraisal is received and reviewed; TRFMA does not proceed with the purchase they will be responsible to reimburse us for the appraisal and any other out of pocket expenses we incurred related to the preparation of the sale. This is not a free look at our expense.They must demonstrate sincerity and good faith.

Regardless of this proposal we want you to immediately continue the depositions and the filling of the Motion with the Court.We want to eliminate any downtime or stall tactics by Steve. If Steve even suggests a pause while the offer is being considered please immediately and strongly shoot down that suggestion as not acceptable to us.

Lets not take any action at this time regarding bringing the City of Reno into the suit, it would be an distraction.

If you would like to discuss this proposal or have any additional suggestions please call us Monday afternoon. Bob and I will give your call priority, just text us an approximate time. Thanks again.

John and Bob

Exhibit 27

Exhibit 27

F I L E D
Electronically
CV12-01788
2018-06-29 04:57:51 PM
Jacqueline Bryant
Clerk of the Court
Transaction # 6755788 : yviloria

MLIM
LAW OFFICES OF BRIAN C. PADGETT
BRIAN C. PADGETT
Nevada Bar No. 7474
AMY L. SUGDEN
Nevada Bar No. 9983
611 South Sixth Street
Las Vegas, Nevada 89101
Telephone: (702) 304-0123
Facsimile: (702) 368-0123
Attorneys for Plaintiffs JOHN DIFRANCESCO TRUST and ROBERT & JACALYN A. FERON FAMILY TRUST

LAW OFFICES OF BRIAN C. PADGETT
611 South Sixth Street, Las Vegas, Nevada 89101
Telephone: (702) 304-0123 – Facsimile (702) 368-0123

IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

IN AND FOR THE COUNTY OF WASHOE

*****

JOHN DIFRANCESCO TRUST, and ROBERT & JACALYN A. FERON FAMILY TRUST, Plaintiffs, vs. WASHOE COUNTY, the CITY OF RENO, the CITY OF SPARKS, and the TRUCKEE RIVER FLOOD MANAGEMENT AUTHORITY, Defendants.	Case No.: CV 12-01788 Division: D3

PLAINTIFFS' MOTION IN LIMINE TO EXCLUDE EVIDENCE AFTER AUGUST 2012

Plaintiffs, JOHN DIFRANCESCO TRUST, and ROBERT & JACALYN A. FERON FAMILY TRUST (hereinafter "**Landowners**" or "**Plaintiffs**") by and through their attorneys of record, THE LAW OFFICES OF BRIAN C. PADGETT, hereby submits the following Motion In Limine To Exclude Evidence After August 2012 ("Motion").

This Motion is based on the attached Memorandum of Points and Authorities, together with such other and further evidence and argument as may be presented and considered by this Court at any hearing on this Motion.

DATED this 20th day of June, 2018.

LAW OFFICES OF BRIAN C. PADGETT

By: /s/ Amy L. Sugden

BRIAN C. PADGETT
Nevada Bar No. 7474
AMY L. SUGDEN
Nevada Bar No. 9983
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Phone: (702) 304-0123

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LAW OFFICES OF BRIAN C. PADGETT
611 South Sixth Street, Las Vegas, Nevada 89101
Telephone: (702) 304-0123 – Facsimile (702) 368-0123

MEMORANDUM OF POINTS AND AUTHORITIES

I.

PROCEDURAL BACKGROUND

Landowners filed this action against Defendant Washoe County and Defendant Truckee River Flood Management Authority (collectively "Defendants") on July 9, 2012 alleging both an inverse taking of the Landowners' property located at 35-65 North Edison Way, Reno, NV 89502 (collectively, the "Property"), and claiming damages resulting from Defendants' oppressive and unreasonable precondemnation activities. See July 12, 2012 Complaint on file herein. Defendants were served on August 2, 2012. See Service of Summons on file herein. The Defendants immediately moved to dismiss the Landowners' Complaint and this Court issued its Order on November 28, 2012 denying the Defendants' request noting their request without merit. See November 28, 2018, Order on file herein.

Thereafter, the Landowners filed their Motion to Set Date of Valuation in order to properly determine the date certain on which to value the inverse taking alleged. See March 5, 2014, Motion to Set Date of Valuation on file herein; see also January 29, 2014, Stipulation to Extend Discovery Deadline on file herein (stating the parties' collective need to set a date certain in order to exchange initial expert reports on valuation for the Property). The parties requested an oral argument on the Landowners' Motion to Set Date of Valuation which was brought on for hearing before the Honorable Jerome Polaha on August 6, 2014. Judge Polaha entered an order on August 21, 2014, granting the Landowners' request "to the extent that 2006 will be the date of valuation if they can prove a taking has occurred at that time." Id. at p.2, lines 15-16. Subsequently, the Nevada Supreme Court issued an opinion clarifying its jurisprudence on inverse takings which prompted the Landowners to reconsider and eventually stipulate to dismiss its claim for an inverse taking. See January 25, 2016, Stipulation and Order to Dismiss Inverse Condemnation Claim on file herein. Thus, leaving the Landowners to prosecute their claim for precondemnation delay damages.

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"A governmental entity may be liable for precondemnation damages if (1) the entity has taken official action amounting to an announcement of its intent to condemn, (2) the entity "acted improperly" after taking such official action, and (3) these actions result in damage to the landowner". See Buzz Stew, LLC v. City of N. Las Vegas, 124 Nev. 224, 230, 181 P.3d 670, 674 (2008) (holding "to the extent that . . . a taking must occur to recover [precondemnation] damages . . . , that requirement has been eliminated"). Thus, the Landowners assert that just like in their claim for a taking, there must be a ***date certain*** by which to evaluate the damages that the Landowners have suffered as a result of the precondemnation delay activities by Defendants. Without a date certain to value those damages, this case will consistently be revolving around a moving target that will never end. In order to provide, once again, certainty and clarity to the scope of compensation to be assessed, the Landowners submit this Motion to Exclude Any Evidence After August 2012, as this is the date by which the Landowners were forced to "take the bull by the horn" by initiating and serving their Complaint against the Defendants to address their precondemnation delay activities. To not have a date certain on which to evaluate the Landowners' precondemnation delay damages allows this case to proceed ad infinium.

II.

POINTS AND AUTHORITIES

A. Motions In Limine Generally.

Motions in limine have long been recognized as an appropriate use of a district court's discretionary authority to rule on the admissibility of evidence and narrow evidentiary issues prior to trial. Richmond v. State, 59 P.3d 1249, 1252-54 (2002); State ex rel. Dept. of Highways v. Nevada Aggregates & Asphalt, Co., 551 P.2d 1095, 1098 (1976). Moreover, NRCP 16(c)(3) contemplates advance rulings from the court on the admissibility of evidence.

NRS 48.015, 48.025(2), and 48.035(1)-(2) establish the guidelines in this state for determining what evidence is relevant and admissible at trial.

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NRS 48.015 provides, as follows:

> As used in this chapter, relevant evidence means evidence having any tendency to make the existence of any fact that is or consequence to the determination of the action more or less probable that it would be without the evidence.

NRS 48.025(2) provides, as follows:

> Evidence which is not relevant is not admissible.

NRS 48.035(1)-(2) provides, as follows:

> 1. Although relevant, evidence is not admissible if its probative value is substantially outweighed by the danger of unfair prejudice, of confusion of the issues or of misleading the jury.
>
> 2. Although relevant, evidence may be excluded if its probative value is substantially outweighed by considerations of undue delay, waste of time or needless presentation of cumulative evidence.

"The trial judge is vested with discretion to simplify the issues and to exclude even relevant evidence if its probative value is substantially outweighed by the danger that it will confuse the issues or mislead the jury. Questions of probative value are left to the sound discretion of the district court and will not be disturbed absent a showing of abuse." Uniroyal Goodrich Tire Co. v. Mercer, 111 Nev. 318, 320-21, 890 P.2d 785, 787 (1995) (citations omitted).

As will be set forth below, the Landowner seeks an advance ruling to exclude any evidence *after* the Landowner initiated and served this action as that is the date upon which the Landowners were forced to take action to address the precondemnation delay damages and the date upon which the Landowners' damages should be quantified. If there is no date certain upon which to determine the Landowners' losses, then this case will never be able to be brought to a conclusion as the valuation will be a moving target that constantly needs updating.

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A. Background Of Landowners' Property And Governmental Actions Affecting Landowners' Property

The Landowners purchased the Property on or about October 9, 1990. See Grant, Bargain, Sale Deed for the Property, attached hereto as Exhibit "1". The Property consists of two contiguous parcels, collectively totaling approximately 4.23 acres. Located on the Property are two, single story, multi-tenant industrial flex buildings that have approximately 65 individual units.

In 2003, the Washoe County Board of County Commissioners approved the "Land Acquisition and Early Project Implementation Plan" for the purposes of selecting and prioritizing the acquisition of real property needed for the Project. See September 9, 2003, Washoe County Board of County Commissioners Minutes attached hereto as Exhibit "2". While originally the Property was not identified as part of the affected area under the approved plan for the Project, on or about April 24, 2005, the Property was added to the list of properties to be acquired and the corresponding budget for acquisition was increased by $12,000,000.00 for this purpose along with the acquisition of six other additional properties. See April 27, 2005, Washoe County Staff Report, including Truckee River Flood Management Project Early Land Acquisition Plan – Real Property List, attached hereto as Exhibit "3".

On or about February 9, 2006, the Landowners received a letter from Defendants that announced the Defendants' intent to acquire the Property for the Project and requesting an opportunity to meet with the Landowners to discuss the matter further. See February 9, 2006, Letter from the Nevada Land Conservancy to John Di Francesco, attached hereto as Exhibit "4".[1] The Landowners responded on February 14, 2006, explaining that there was interest from other entities as well in acquiring the Landowners' Property and that the Landowners have had a history of 100% occupancy in addition to a waiting list of several prospective tenants; however the Landowners were amenable to meeting with Defendants for further discussions. See February 14,

[1] It is noted in Exhibit "5" that "it is recommended that the Board of County Commissioners authorize staff to work with the Nevada Land Conservancy and Great Basin Land and Water, both doing similar work already for the County, to provide support in contacting and negotiating with owners and developing the necessary agreements and due diligence documentation for the purchase of the real property described on the list." Thus, the Nevada Land Conservancy was acting on behalf of the joint effort of Defendants for the Project.

2006, Letter from John Di Francesco to the Nevada Land Conservancy, attached hereto as Exhibit "5".

Meanwhile, Defendants moved to acquire the Landowners' neighbors properties located at 85, 105 and 195 North Edison Way. See April 14, 2006, Minutes from Truckee River Flood Management Authority, attached hereto as Exhibit "6"; see also Truckee River Flood Project – Property Management Profiles, attached hereto as Exhibit "7".

In early August 2006, the Landowners met with an agent of the Defendants to discuss Defendants need to acquire the Property. See August 8, 2006, Letter to the Nevada Land Conservancy from John Di Francesco, attached hereto as Exhibit "8". The Landowners explained that they had taken steps to prepare a tentative map to develop the Property as a condo conversion and sell individual units. Id. However, to the extent that the Property was going to be needed for the Project, the Landowners were careful to monitor and take note of Defendants' progress on the Project. Id. The Landowners expressed their greatest concern was for protecting the approximate fifty (50) tenants they had in place at the Property. The Landowners then proposed an exchange of the Property for another parcel of property owned by Defendants, located at 365 South Rock Boulevard. The Landowners intended to take the vacant space at 365 South Rock Boulevard and construct new buildings to relocate their tenants. Defendants never responded to the Landowners' August 8, 2006, correspondence, other than to leave a voicemail confirming they had received the letter and would get back to the Landowners in the future. See December 12, 2007, Letter to Doug Dubois, Truckee River Flood Management Project, attached hereto as Exhibit "9".

In December, 2007, Doug Dubois, on behalf of Defendants made a visit to the Landowners' Property. Id. By the time of Mr. Dubois' visit, Defendants had acquired nearly every adjacent property around the Landowners' Property for the Project. See "Truckee River Flood Project Accomplishments" Website Printout, attached hereto as Exhibit "10""; see also. Truckee River Flood Project Land Acquisition Summary, attached hereto as Exhibit "11". The properties at 125, 155 and 185 N. Edison Way were acquired on or about August, 2007. Id. This ultimately left the Landowners as the ***only*** remaining building on Edison Way that was not acquired by Defendants.

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Nevertheless, as the Landowners had intended to proceed with developing a condo conversion on the Property; their reiterated that because they had not heard back they were proceeding with at least investigating that option for development. See Exhibit "8". By this juncture, however, Defendants had not only acquired the entire neighborhood, (except for the Landowners' Property), but they had proceeded to occupy and/or otherwise demolish the buildings that they had acquired. See Landowners' Calendar Notes, attached hereto as Exhibit 12". The Landowners had to deal with operating in a severely blighted area that had begun to severely hinder their tenants' business operations. See Affidavits of Tenants and John DiFranceso on behalf of the Landowners, collectively attached hereto as Exhibit "13".

Defendants specifically engaged in several affirmative activities that further specifically and substantially interfered with the Landowners' and their tenants' use and enjoyment of the Property. Id. Defendants allowed the Reno Police, Washoe County Sheriff, Nevada Highway Patrol, Reno Police SWAT and Reno Police K9 to conduct training exercises in the building adjacent to the Property which had also been acquired for the Project. Id. The training exercises, which began in 2007, and continued on a bi-weekly basis, without any notice to the Landowners, included entry by the Reno Police and SWAT team into empty buildings adjacent to the Property with forced entry percussion bombs. Id. There was a continuous presence of Reno Police SWAT team members dressed in full gear with automatic rifles on the Property, without the authorization of the Landowners, and at least one instance whereby a police officer appeared to be aiming a rifle at or near one of the Landowners and/or the Property. Id. The police and/or SWAT vehicles affiliated with the training exercises continuously entered the Property, again without the Landowners' permission, and blocked access to the Property, including inhibiting parking and loading/unloading for the Landowners' tenants. Id.

Additionally, Defendants, in violation of local zoning, health and safety codes, approved an overflow homeless shelter for another property immediately neighboring the Landowners' Property (which was also bought by Defendants for the Project). See November 13, 2007, Washoe County Press Release, attached hereto as Exhibit "14". The homeless shelter created a substantial

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build-up of trash on the Property which tenants were forced to clean up. See Exhibit "13". Due to the close proximity of the shelter, shelter residents often entered the Property, without authorization of the Landowners, and engaged in disruptive activities such as public urination, littering, and consuming alcohol on the Property. Id. Ultimately, the Landowners had to make a number of concessions to try and maintain tenancy (causing a substantial loss to Plaintiffs' ability to derive rental income from the Property). See Exhibit "14".

Defendants further approved the placement of a grey water trucking facility next to the Property. See Contract for Grey water Trucking Facility, attached hereto as Exhibit 16". This trucking facility operated twenty-four hours a day, seven days a week and further disrupted the Landowners' use and enjoyment of their Property. Id. See also, Exhibit "14".

Delays regarding Defendants acquisition of the Landowners' Property continued to occur to such an extent that on or about November 25, 2009, the Landowners were compelled to submit a letter to Defendants specifically advising of the detrimental impact of Defendants' delay in acquiring the Property on the Landowners' ability to maintain their tenants on the Property. See November 25, 2009, Letter from Plaintiffs to Defendants, attached hereto as Exhibit "16". Despite this correspondence, Defendants failed to respond to the Landowners until seven months later on or about June 24, 2010, whereby Defendants submitted their first offer to Landowners for acquisition of their Property, in the amount of $3,100,000.00. See June 24, 2010, Letter from the Defendants to Plaintiffs, attached hereto as Exhibit "17". In that correspondence, Defendants specifically advised the Landowners, "We ask you do not enter into any lease or rental agreements with new tenants pending closing of the sale . . . ." Id.

The Landowners tendered a detailed counteroffer in the amount of $4,526,016.00 for the Property, along with a detailed explanation in support of their counteroffer. See August 16, 2010, Letter from Plaintiffs to Defendants (with selected attachments), attached hereto as Exhibit "18". In that detailed response to Defendants, the Landowners made it abundantly clear that the income potential on the Property had been constrained by the Project and that as they had been expecting

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an acquisition or exchange to have occurred by late 2006 or early 2007, they had foregone making substantial capital improvements to the Property. Id.

Approximately one month later, representatives for Defendants contacted the Landowners' tenants on the Property to inform them of the intention to acquire the Property and that the tenants would have to vacate the Property. See Exhibit "14", see also October 4, 2010, Letter to Edison Way Tenants from Defendants, attached hereto as Exhibit "19". It would not be until December 10, 2010, however, that Defendants' representative advised that Defendants were not willing to increase their prior offer by more than five percent. Shortly, thereafter Defendants reengaged the same appraiser who had completed the February 2010 appraisal to complete a second appraisal for purposes of acquiring the Property. See January 31, 2011, Letter to Landowners from Defendants, attached hereto as Exhibit "20". This second appraisal was completed on or about January 29, 2011, and it valued the Property at $3,485,000.00. Defendants then offered this amount to the Landowners for the acquisition of the entire Property. Id.

In response, Landowners again informed Defendants of the concerns they had with the second appraisal and proceeded to provide a counteroffer which was quickly rejected by Defendants on or about March 24, 2011, for not being supported by an independent assessment of value (as opposed to the Landowners' opinions of value). See March 24, 2011, Letter from Defendants to Plaintiffs, attached hereto as Exhibit "21". The Landowners thereafter offered to obtain an independent appraisal of the property to try and resolve the matter. Id. The independent appraiser completed his analysis on or about August 1, 2011, valuing the Property at $4,700,000.00. See August 22, 2011, Letter from Landowners to Defendants, attached hereto as Exhibit "22". Accordingly, the Landowners offered to sell the Property to Defendants for the appraised amount of $4,700,000.00. Id.

Shortly thereafter however, in October 2011, Defendants conveyed a new offer to the Landowners in the amount of $4,200,000.00, which was not based upon any appraisal. See October 4, 2011, Email Correspondence to Plaintiffs from Steven Harris on behalf of Defendants, attached hereto as Exhibit "23". The Landowners then requested information to support the

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$4,200,000.00 offer (as the most recent jointly obtained appraisal was for $500,000.00 more than this most recent purchase offer). See October 19, 2011, Letter from Landowners to Defendants, attached hereto as Exhibit "24". Despite this request, the Landowners never heard directly back from the Defendants. Nevertheless, at a Board of Directors' meeting in November, 2011, Defendants again acknowledged that their acquisition of the Property was necessary for the Project. See November 17, 2011, Minutes from the Truckee River Flood Management Authority, attached hereto as Exhibit "25". The Minutes themselves confirm that "The acquisition of 35/65 Edison Way is currently on-hold pending a third party confirmation of previous appraisals . . . ***This property however is crucial to the needs of the Flood Project***." This was yet another public announcement that was heard by the public at large – including Plaintiffs' tenants. It further confirmed that Landowners had become involuntary trustees of their own property for the Defendants who had made enough public statements so that the public was well-aware the Property had been set aside by the Defendants for acquisition.

All told, the Defendants systematically acquired every other single property in the subdivision and either demolished the buildings or occupied them with tenants whose nature of business and use substantially interfered with the Landowners' use and their tenants' use of their Property. All of this was done while the Defendants and their representatives continued to participate in several local televised, radio and written news releases, including public interviews that detailed Defendants' intent to condemn the Landowners' Property in conjunction with those other properties in the subdivision located on North Edison Way. Due to the extent of the Defendants' cumulative actions and repeated public statements which substantially and directly interfered with the Landowners' ownership of their own Property, the Landowners were left with no alternative but to file an inverse condemnation lawsuit for the taking of their Property.

As a result of the foregoing, the Landowners were stuck with property that had tenants leaving due to the Project, Landowners' Property was generating less rents due to the Project, and Landowners were unable to attract new renters or to re-develop the Property to a higher and better use potential due to the Project – all as a result of the fact that the Landowners' Property was in

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the path of the Project and was clearly being taken. A direct example of the Project's effects on Landowners' Property is shown by Defendants' own records. When the appraiser completed his opinion of value to support the Defendants' acquisition of 125 N. Edison Way he remarked, "The subject's current economic conditions have been affected by its pending acquisition for the flood control project. Based on my analysis, the pending acquisition has affected the subject's occupancy, the length of the existing leases, and the rental rates being paid by the tenants." See Staff Report for Washoe County dated June 3, 2007, attached hereto as Exhibit "26".

It is incredulous for Defendants to assert that Defendants' can acquire all the immediately surrounding parcels of land to Plaintiffs' Property; make numerous public announcements regarding its intent to acquire the Property and not recognize that Plaintiffs could do nothing with its Property other than wait for its tenants to leave due to the Project, negotiate concessions with tenants who were willing to temporarily remain, and wait for Defendants to file their eminent domain action to officially take the Landowners' Property. Once it was clear that Defendants would not be timely filing their own eminent domain action against the Property, the Landowners had no choice but to file this action on July 9, 2012, which was served on the Defendants on August 2, 2012. This is the date certain by which the Landowners' damages should be evaluated. Any evidence subsequent to this date is irrelevant. To NOT enter a date certain would leave the parties in a perpetual state of needing to assess and update their respective position on damages. This is not an efficient or practical result.

B. Precondemnation Delay Damages

As set forth above, "A governmental entity may be liable for precondemnation damages if (1) the entity has taken official action amounting to an announcement of its intent to condemn, (2) the entity "acted improperly" after taking such official action, and (3) these actions result in damage to the landowner". See Buzz Stew, LLC v. City of N. Las Vegas, 124 Nev. 224, 230, 181 P.3d 670, 674 (2008). By way of the instant Motion, the Landowners focus on element number three, in asking this Court to solidify the proper timeframe to value the damage to the Landowners.

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Without this clarification, the parties cannot efficiently proceed to bring this case to a conclusion on its merits.

The Nevada Supreme Court stated, "In *Barsy*, we used the terms "unreasonable delay" and "extraordinary delay" interchangeably and concluded that an extraordinary delay or oppressive conduct following an announcement of intent to condemn, **which results in a decrease in the market value of the property**, was improper." Id. at 229, 673 (emphasis added). The decrease in the market value of the property must be established as of a "date certain" – just as is done in all eminent domain cases that must establish the value of the property being condemned. See NRS 37.009(1) ("Date of valuation" means the date on which the value of the property actually taken, and the damages, if any, to the remaining property, must be determined.); see also NRS 37.009(6) ("Value" means the highest price, **on the date of valuation**, that would be agreed to by a seller, who is willing to sell on the open market and has reasonable time to find a purchaser, and a buyer, who is ready, willing and able to buy, if both the seller and the buyer had full knowledge of all the uses and purposes for which the property is reasonably adaptable and available.")(emphasis added); see also NRS 37.120(1)("To assess compensation and damages as provided in NRS 37.110, **the date of the first service of the summons is the date of valuation** . . . .").

Buzz Stew also held that it is not necessary for a taking to have occurred to recover on a claim for precondemnation damages. Id. at 270, 674. This premise has been recognized in several other states as well. For instance, in the Missouri, its highest court has pronounced "Property Owners need not wait until their property is condemned to seek precondemnation damages, as suits can seek awards of damages for harm that is ongoing". See Davis v. Laclede Gas Co., 603 S.W.2d 554, 556 (Mo. banc 1980). In Laclede Gas Co., the Court held "where the wrong may be said to continue from day to day, and to create fresh injury from day to day, and the wrong is capable of being terminated, a right of action exists for the damages suffered within the statutory period immediately preceding suit" . Id. The Landowners' right of action herein is based on the damages that stemmed from the alleged announcement of intent to condemn until the filing of the suit. Thus, the scope of damages needs to be assessed within that window of time. Anytime

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beyond the filing of the suit will only trigger a continual need to supplement and address the Landowners' value of their Property, preventing a final ascertain of the damages as of a date certain.

Moreover, Nevada adopted precondemnation delay damage claim in the case of State ex rel. Dept. of Transp. v. Barsy, 113 Nev. 712, 941 P.2d 971 (1997) stating that "we elect to follow the leading case [Klopping v. City of Whittier, 8 Cal.3d 39, 500 P.2d 1345 (1972)] on the rights of property owners who sustain damages as a result of precondemnation activities by the condemning authority". In Klopping, the California Supreme Court held

> However, when the condemner acts unreasonably[8 Cal.3d 52] in issuing precondemnation statements, either by excessively delaying eminent domain action or by other oppressive conduct, our constitutional concern over property rights requires that the owner be compensated. This requirement applies even though the activities which give rise to such damages may be significantly less than those which would constitute a de facto taking of the property so as to measure the fair market value as of a date earlier than that set statutorily by Code of Civil Procedure section 1249. **Under our conclusion here in most instances the valuation date remains fixed at the date of the issuance of the summons**.

8 Cal. 3d at 52; 500 P.2d at 1355.

Thus, the valuation date for purposes of determining precondemnation damages, in the seminal case by which Nevada adopted its precondemnation damages' standard, clearly states the valuation date for purposes of assessing precondemnation damages remains fixed at the initiation of service of the lawsuit. Accordingly, the Landowners ask this Court to exclude any evidence after that date so that the parties can efficiently proceed to value the precondemnation damages for purposes of trial by assessing the damages up to the filing and service of the instant action.

III.

CONCLUSION

Based on all of the foregoing, Plaintiffs respectfully requests that this Honorable Court grant their Motion and exclude any evidence after the August 2012.

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AFFIRMATION

In accordance with NRS 239B.030, the undersigned hereby Affirms that the foregoing Motion to Exclude Evidence After August 2012 does not contain the Social Security number of any person.

DATED this 20th day of June, 2018.

LAW OFFICES OF BRIAN C. PADGETT

By: /s/ Amy L. Sugden

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CERTIFICATE OF SERVICE

Pursuant to NRCP 5(b), the undersigned, an employee of the LAW OFFICES OF BRIAN C. PADGETT, hereby certifies that on the 29th day of June, 2018, s/he served a true and correct copy of the foregoing, **LANDOWNERS' MOTION TO EXCLUDE EVIDENCE AFTER AUGUST 2012**, by:

_____ Depositing for mailing, in a sealed envelope, U.S. postage prepaid, at Las Vegas, Nevada

_____ Personal Delivery

_____ Facsimile

_____ Federal Express/Airborne Express/Other Overnight Delivery

__X__ E-File Service

addressed as follows:

MICHAEL CHAPMAN
STEVEN SILVA
Fennemore Craig, P.C.
9585 Prototype Court, #C
Reno, NV 89521
Attorneys for Defendants Washoe County and TRFMA

/s/ Ruth Ramos-Ayala
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PLAINTIFF'S MOTION TO EXCLUDE EVIDENCE AFTER AUGUST 2012

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Exhibit 28

Exhibit 28

Robert Feron

From: Amy Sugden <amy@briancpadgett.com>
Sent: Monday, August 27, 2018 12:10 AM
To: Robert Feron
Cc: 'John Di Francesco'
Subject: Re: Edison

Hi Bob,

We did submit a notice of non-opp. I'll follow up with my assistant re the e-filing system to double check and get you file-stamped copy!

Thanks,
Amy

From: Bob Feron <robertpferon@verizon.net>
Date: Thursday, August 23, 2018 at 11:25 AM
To: Amy Sugden <amy@briancpadgett.com>
Cc: "nvindustrial1@yahoo.com" <nvindustrial1@yahoo.com>
Subject: RE: Edison

Amy,

Just checked with the court docket and nothing filed by either Steve or you. Please give us an update on the non-opposition motion that us discussed. This seems like an opportunity we have not had in the past to move this along and get closer to a conclusion. It's been almost 30 days since Steve was required to reply and hasn't.

Thanks,

Bob

From: Robert Feron <robertpferon@verizon.net>
Sent: Thursday, August 9, 2018 6:21 AM
To: 'Amy Sugden' <amy@briancpadgett.com>
Cc: 'John Di Francesco' <nvindustrial1@yahoo.com>
Subject: RE: Edison

Sounds like a good idea. Could this be a sign of surrender? Just checked the Court Docket and no reply received from Steve. I'll talk with John later on and send you another email.

Thanks,

Bob

From: Amy Sugden <amy@briancpadgett.com>
Sent: Thursday, August 9, 2018 12:09 AM

To: Robert Feron <robertpferon@verizon.net>
Cc: 'John Di Francesco' <nvindustrial1@yahoo.com>
Subject: Re: Edison

Hi Bob,

Nothing has been filed (or at least I haven't seen it!) His opposition was due on 7/26. I can't file a reply without an opposition, but I can do a notice of "non-opposition" and hopefully the Court will then grant our request in short order 😊

Thanks,
Amy

From: Bob Feron <robertpferon@verizon.net>
Date: Tuesday, August 7, 2018 at 6:47 PM
To: Amy Sugden <amy@briancpadgett.com>
Cc: "nvindustrial1@yahoo.com" <nvindustrial1@yahoo.com>
Subject: RE: Edison

Amy,

Just wanted to follow up on the Motion. It's been over a month since you filed the Motion. If I remember correctly, Steve needs to reply within 30 days. We are wondering if he has replied or has an extension because of his move? Anyhow, please give us an update.

Thanks,

Bob

From: Amy Sugden <amy@briancpadgett.com>
Sent: Tuesday, July 3, 2018 10:05 AM
To: Robert Feron <robertpferon@verizon.net>
Cc: 'John Di Francesco' <nvindustrial1@yahoo.com>
Subject: Re: Edison

Yes, you can just dial into this number (it's our conf call line)

720.820.1245 (no pin needed)

Thank you,
Amy

From: Bob Feron <robertpferon@verizon.net>
Date: Tuesday, July 3, 2018 at 8:05 AM
To: Amy Sugden <amy@briancpadgett.com>
Cc: John Di Francesco <nvindustrial1@yahoo.com>
Subject: RE: Edison

Exhibit 29

Exhibit 29

Second Judicial District Court
State of Nevada
Washoe County

Electronic Filing

Case Summary for Case: CV12-01788

JOHN DIFRANCESCO TRUST ETAL vs WASHOE COUNTY ETAL

Case Number	CV12-01788	**Plaintiff**	JOHN DIFRANCESCO TRUST et al
Case Type	CONDEMNATION/EMINENT DOMAIN	**Defendant**	WASHOE COUNTY et al
Opened	07-09-2012	**Judge**	HONORABLE JEROME M. POLAHA - Division D3
Status	DISPOSED		

⊞ Show/Hide Participants

File Date	Case History
04-09-2019	Notice of Electronic Filing Filed Proof of Electronic Service Transaction 7209989 - Approved By: NOREVIEW : 04-09-2019:16:08:25
04-09-2019 Plaintiff	Notice of Entry of Ord Filed by: MICHAEL E. SULLIVAN, ESQ. Notice of Entry of Ord Transaction 7209970 - Approved By: NOREVIEW : 04-09-2019:16:06:09
04-08-2019	Notice of Electronic Filing Filed Proof of Electronic Service Transaction 7206097 - Approved By: NOREVIEW : 04-08-2019:11:20:10
04-08-2019	Stip & Ord Dismiss W/Prejudice Filed Stip & Ord Dismiss W/Prejudice Transaction 7206093 - Approved By: NOREVIEW : 04-08-2019:11:19:16
04-05-2019	Notice of Electronic Filing Filed Proof of Electronic Service Transaction 7204904 - Approved By: NOREVIEW : 04-05-2019:15:44:55
04-05-2019 Plaintiff	Request for Submission Filed by: MICHAEL E. SULLIVAN, ESQ. Request for Submission Transaction 7204781 - Approved By: BBLOUGH : 04-05-2019:15:43:55 DOCUMENT TITLE: STIPULATION AND ORDER FOR DISMISSAL WITH PREJUDICE (ORDER ATTACHED AS EXHIBIT 1) PARTY SUBMITTING: MICHAEL E SULLIVAN, ESQ. DATE SUBMITTED: APRIL 5, 2019 SUBMITTED BY: BBLOUGH DATE RECEIVED JUDGE OFFICE: - Exhibit 1
03-19-2019	Notice of Electronic Filing Filed Proof of Electronic Service Transaction 7172973 - Approved By: NOREVIEW : 03-19-2019:08:47:06
03-18-2019 Plaintiff	Substitution of Counsel Filed by: MICHAEL E. SULLIVAN, ESQ. Substitution of Counsel MICHAEL SULLIVAN ESQ - Transaction 7172393 - Approved By: CSULEZIC : 03-19-2019:08:46:10
09-05-2018	Notice of Electronic Filing Filed Proof of Electronic Service Transaction 6864892 - Approved By: NOREVIEW : 09-05-2018:15:42:52
09-05-2018 Court	Supplemental ... Filed by: BRIAN C. PADGETT, ESQ. Supplemental ... Exhibits 1-26 to Motion to Exclude Evidence After August 2012 - Transaction 6864867 - Approved By: CSULEZIC : 09-05-2018:15:41:17 - Exhibit 1 - Exhibit 2 - Exhibit 3 - Exhibit 4 - Exhibit 5 - Exhibit 21
07-17-2018	Notice of Electronic Filing Filed Proof of Electronic Service Transaction 6780704 - Approved By: NOREVIEW : 07-17-2018:14:13:57
07-17-2018	Notice of Change of Attorney Filed Notice of Change of Attorney Notice of Change of Firm for Steven M. Silva - Transaction 6780463 - Approved By: CSULEZIC : 07-17-2018:14:12:51
07-02-2018	Notice of Electronic Filing Filed

Proof of Electronic Service Transaction 6756087 - Approved By: NOREVIEW : 07-02-2018:08:48:17

Mtn in Limine

06-29-2018 Court

Filed by: BRIAN C. PADGETT, ESQ.

Mtn in Limine PLAINTIFF'S MOTION IN LIMINE TO EXCLUDE EVIDENCE AFTER AUGUST 2012 - Transaction 6755788 - Approved By: YVILORIA : 07-02-2018:08:46:00

Notice of Electronic Filing

05-04-2017

Filed

Proof of Electronic Service Transaction 6085006 - Approved By: NOREVIEW : 05-04-2017:14:38:07

Ord Denying

05-04-2017

Filed

Ord Denying ... DEFENDANTS' MOTION FOR JUDGMENT ON THE PLEADINGS IS DENIED - Transaction 6085003 - Approved By: NOREVIEW : 05-04-2017:14:37:06

Notice of Electronic Filing

05-04-2017

Filed

Proof of Electronic Service Transaction 6084998 - Approved By: NOREVIEW : 05-04-2017:14:35:25

Ord Denying

05-04-2017

Filed

Ord Denying ... DEFENDANTS' MOTION FOR SUMMARY JUDGMENT ON PLAINNTIFFS' CLAIM FOR RECONDEMNATION DAMAGES IS DENIED - Transaction 6084995 - Approved By: NOREVIEW : 05-04-2017:14:34:26

Notice of Electronic Filing

03-16-2017

Filed

Proof of Electronic Service Transaction 6000312 - Approved By: NOREVIEW : 03-16-2017:09:37:42

Notice of Change of Address

03-16-2017 Defendant

Filed by: MICHAEL GLENN CHAPMAN, ESQ.

Notice of Change of Address NOTICE OF CHANGE OF FIRM FOR CHAPMAN LAW FIRM, P.C. - Transaction 6000283 - Approved By: TBRITTON : 03-16-2017:09:35:52

Notice of Electronic Filing

02-13-2017

Filed

Proof of Electronic Service Transaction 5949234 - Approved By: NOREVIEW : 02-13-2017:16:40:43

Notice of Electronic Filing

02-13-2017

Filed

Proof of Electronic Service Transaction 5949166 - Approved By: NOREVIEW : 02-13-2017:16:28:43

Notice of Electronic Filing

02-13-2017

Filed

Proof of Electronic Service Transaction 5949069 - Approved By: NOREVIEW : 02-13-2017:16:12:51

Request for Submission

02-13-2017 Defendant

Filed by: MICHAEL GLENN CHAPMAN, ESQ.

Request for Submission Transaction 5948905 - Approved By: YVILORIA : 02-13-2017:16:38:54 DOCUMENT TITLE: MOTION FOR JUDGMENT ON THE PLEADINGS, FILED 12-7-16 PARTY SUBMITTING: MICHAEL GLENN CHAPMAN ESQ DATE SUBMITTED: FEB 13, 2017 SUBMITTED BY: YVILORIA DATE RECEIVED JUDGE OFFICE:

Request for Submission

02-13-2017 Defendant

Filed by: MICHAEL GLENN CHAPMAN, ESQ.

Request for Submission Transaction 5948905 - Approved By: YVILORIA : 02-13-2017:16:38:54 DOCUMENT TITLE: MOTION FOR SUMMARY JUDGMENT FILED 12-7-16 PARTY SUBMITTING: MICHAEL GLENN CHAPMAN ESQ DATE SUBMITTED: FEB 13, 2017 SUBMITTED BY: YVILORIA DATE RECEIVED JUDGE OFFICE:

Reply

02-13-2017 Defendant

Filed by: MICHAEL GLENN CHAPMAN, ESQ.

Reply... REPLY IN SUPPORT OF MOTION FOR JUDGMENT ON THE PLEADINGS - Transaction 5948872 - Approved By: YVILORIA : 02-13-2017:16:09:49

Reply

02-13-2017 Defendant

Filed by: MICHAEL GLENN CHAPMAN, ESQ.

Reply... REPLY IN SUPPORT OF MOTION FOR SUMMARY JUDGMENT - Transaction 5948862 - Approved By: YVILORIA : 02-13-2017:16:27:46

Notice of Electronic Filing

01-06-2017

Filed

Proof of Electronic Service Transaction 5887062 - Approved By: NOREVIEW : 01-06-2017:08:34:20

Opposition to Mtn

01-05-2017 Court

Filed by: BRIAN C. PADGETT, ESQ.

Opposition to Mtn ... DFX: EXHIBITS PRESENTED INCORRECTLY - LANDOWNERS' OPPOSITION TO DEFENDANT TRUCKEE RIVER FLOOD MANAGEMENT AUTHORITY AND DEFENDANT WASHOE COUNTY'S MOTION FOR SUMMARY JUDGMENT - Transaction 5886959 - Approved By: PMSEWELL : 01-06-2017:08:33:12

- Exhibit 1

- Exhibit 2
- Exhibit 3

Notice of Electronic Filing
Filed
Proof of Electronic Service Transaction 5884824 - Approved By: NOREVIEW : 01-05-2017:08:34:29

01-05-2017
Court
Opposition to Mtn
Filed by: BRIAN C. PADGETT, ESQ.
Opposition to Mtn ... Opposition to Motion for Judgment on the Pleadings - Transaction 5884775 - Approved By: YVILORIA : 01-05-2017:08:33:29

12-07-2016
Notice of Electronic Filing
Filed
Proof of Electronic Service Transaction 5840974 - Approved By: NOREVIEW : 12-07-2016:13:49:39

12-07-2016
Notice of Electronic Filing
Filed
Proof of Electronic Service Transaction 5840964 - Approved By: NOREVIEW : 12-07-2016:13:46:08

12-07-2016
Defendant
Mtn for Summary Judgment
Filed by: MICHAEL GLENN CHAPMAN, ESQ.
Mtn for Summary Judgment Transaction 5840771 - Approved By: YVILORIA : 12-07-2016:13:48:17
- Exhibit 1
- Exhibit 2
- Exhibit 3
- Exhibit 4

12-07-2016
Defendant
Motion
Filed by: MICHAEL GLENN CHAPMAN, ESQ.
Motion ... Motion for Judgment on the Pleadings NRCP 12(c) - Transaction 5840755 - Approved By: YVILORIA : 12-07-2016:13:45:05

06-03-2016
Notice of Electronic Filing
Filed
Proof of Electronic Service Transaction 5545311 - Approved By: NOREVIEW : 06-03-2016:09:36:40

06-03-2016
Defendant
Notice of Entry ...
Filed by: MICHAEL GLENN CHAPMAN, ESQ.
Notice of Entry ... of Stipulation and Order to Vacate Trial - Transaction 5545308 - Approved By: NOREVIEW : 06-03-2016:09:35:39
- Continuation

06-01-2016
Notice of Electronic Filing
Filed
Proof of Electronic Service Transaction 5540710 - Approved By: NOREVIEW : 06-01-2016:11:50:12

06-01-2016
Stip and Order
Filed
Stip and Order... TO VACATE TRIAL - Transaction 5540709 - Approved By: NOREVIEW : 06-01-2016:11:49:22

04-13-2016
Notice of Electronic Filing
Filed
Proof of Electronic Service Transaction 5463467 - Approved By: NOREVIEW : 04-13-2016:10:53:26

04-13-2016
Defendant
Stipulation
Filed by: MICHAEL GLENN CHAPMAN, ESQ.
Stipulation ... Stipulation Regarding Amendment of Truckee River Flood Management Authority and Washoe County's Answer to Complaint in Inverse Condemnation - Transaction 5463411 - Approved By: MCHOLICO : 04-13-2016:10:52:27
- Exhibit 1
- Exhibit 2

03-04-2016
Notice of Electronic Filing
Filed
Proof of Electronic Service Transaction 5401493 - Approved By: NOREVIEW : 03-04-2016:14:08:01

03-04-2016
Defendant
Application for Setting
Filed by: MICHAEL GLENN CHAPMAN, ESQ.
Application for Setting CONDEMNATION - 6/03/16 @9:30 & 12/05/16 @8:30 - Transaction 5401423 - Approved By: CSULEZIC : 03-04-2016:14:07:14

02-18-2016
Notice of Electronic Filing
Filed
Proof of Electronic Service Transaction 5374643 - Approved By: NOREVIEW : 02-18-2016:11:17:37

02-18-2016
Court
Notice to Set
Filed by: BRIAN C. PADGETT, ESQ.
Notice to Set PLAINTIFF'S NOTICE TO SET - Transaction 5374321 - Approved By: YVILORIA : 02-18-2016:11:16:00

02-18-2016
Notice of Electronic Filing

Filed
Proof of Electronic Service Transaction 5373713 - Approved By: NOREVIEW : 02-17-2016:16:52:00

Application for Setting
Filed by: BRIAN C. PADGETT, ESQ.
Application for Setting TRIAL - Transaction 5373419 - Approved By: YVILORIA : 02-17-2016:16:51:03

Notice of Electronic Filing
Filed
Proof of Electronic Service Transaction 5335703 - Approved By: NOREVIEW : 01-25-2016:16:35:14

Stip and Order
01-25-2016
Filed
Stip and Order... TO DISMISS PLAINTIFF JOHN DIFRANCESCO TRUST AND ROBERT & JACALYN FERON FAMILY TRUST INVERSE CONDEMNATION CLAIM - Transaction 5335699 - Approved By: NOREVIEW : 01-25-2016:16:34:14

Notice of Electronic Filing
10-15-2014
Filed
Proof of Electronic Service Transaction 4653398 - Approved By: NOREVIEW : 10-15-2014:14:46:37

Ord Denying Motion
10-15-2014
Filed
Ord Denying Motion FOR RECONSIDERATION - Transaction 4653397 - Approved By: NOREVIEW : 10-15-2014:14:45:47

Notice of Electronic Filing
10-10-2014
Filed
Proof of Electronic Service Transaction 4647379 - Approved By: NOREVIEW : 10-10-2014:15:46:53

Notice of Electronic Filing
10-10-2014
Filed
Proof of Electronic Service Transaction 4647364 - Approved By: NOREVIEW : 10-10-2014:15:44:59

Request for Submission
Filed by: MICHAEL GLENN CHAPMAN, ESQ.
Request for Submission MOTION FOR PARTIAL RECONSIDERATION OF ORDER (NO PAPER ORDER PROVIDED) - Transaction 4646637 - Approved By: MCHOLICO : 10-10-2014:15:45:47 PARTY SUBMITTING: MICHAEL CHAPMAN, ESQ. DATE SUBMITTED: 10/10/14 SUBMITTED BY: MCHOLICO DATE RECEIVED JUDGE OFFICE:

Reply
10-10-2014
Defendant
Filed by: MICHAEL GLENN CHAPMAN, ESQ.
Reply... DEFENDANTS TRUCKEE RIVER FLOOD MANAGMENT AUTHORITY AND WASHOE COUNTY'S REPLY IN SUPPORT OF MOTION FOR PARTIAL RECONSIDERATION OF ORDER - Transaction 4646621 - Approved By: MCHOLICO : 10-10-2014:15:43:57

Notice of Electronic Filing
Filed
Proof of Electronic Service Transaction 4635715 - Approved By: NOREVIEW : 10-03-2014:08:56:45

Opposition to Mtn
Filed by: BRIAN C. PADGETT, ESQ.
Opposition to Mtn ... PLTF'S OPPOSITION TO DEFT'S TRUCKEE RIVER FLOOD MANAGEMENT AUTHORITY AND WASHOE COUNTY'S MOTION FOR PARTIAL RECONSIDERATION OF ORDER - Transaction 4635120 - Approved By: MELWOOD : 10-03-2014:08:55:28

Notice of Electronic Filing
09-16-2014
Filed
Proof of Electronic Service Transaction 4608699 - Approved By: NOREVIEW : 09-16-2014:13:19:39

Mtn for Reconsideration
Filed by: MICHAEL GLENN CHAPMAN, ESQ.
Mtn for Reconsideration DEFENDANTS TRUCKEE RIVER FLOOD MANAGMENT AUTHORITY AND WASHOE COUNTY'S MOTION FOR PARTIAL RECONSIDERATION OF ORDER - Transaction 4608359 - Approved By: MCHOLICO : 09-16-2014:13:18:45

Notice of Electronic Filing
08-21-2014
Filed
Proof of Electronic Service Transaction 4572498 - Approved By: NOREVIEW : 08-21-2014:16:15:48

Order...
08-21-2014
Filed
Order ... Transaction 4572490 - Approved By: NOREVIEW : 08-21-2014:16:14:39

Notice of Electronic Filing
Filed
Proof of Electronic Service Transaction 4558972 - Approved By: NOREVIEW : 08-12-2014:17:08:23

***Minutes
Filed
***Minutes ORAL ARGUMENTS - 8-6-14 - Transaction 4558971 - Approved By: NOREVIEW : 08-12-2014:17:07:32

Notice of Electronic Filing

Filed
Proof of Electronic Service Transaction 4513426 - Approved By: NOREVIEW : 07-11-2014:14:31:40

07-11-2014 Court
Application for Setting
Filed by: BRIAN C. PADGETT, ESQ.
Application for Setting 8/6/2014 AT 9:30 A.M. - Transaction 4513145 - Approved By: APOMA : 07-11-2014:14:30:52

07-02-2014
Notice of Electronic Filing
Filed
Proof of Electronic Service Transaction 4501789 - Approved By: NOREVIEW : 07-02-2014:14:44:27

07-02-2014
Ord to Set
Filed
Ord to Set HEARING - Transaction 4501784 - Approved By: NOREVIEW : 07-02-2014:14:43:35

06-16-2014
Notice of Electronic Filing
Filed
Proof of Electronic Service Transaction 4477791 - Approved By: NOREVIEW : 06-16-2014:11:05:37

06-16-2014 Court
Request for Submission
Filed by: BRIAN C. PADGETT, ESQ.
Request for Submission PLTF LANDOWNERS' MOTION TO SET DATE OF VALUATION AND ORAL ARGUMENT - Transaction 4477685 - Approved By: AZION : 06-16-2014:11:04:32 DOCUMENT TITLE: PLTF LANDOWNERS' MOTION TO SET DATE OF VALUATION AND ORAL ARGUMENT PARTY SUBMITTING: BRIAN PADGETT ESQ DATE SUBMITTED: 06-16-14 SUBMITTED BY: AZION DATE RECEIVED JUDGE OFFICE:

05-21-2014
Notice of Electronic Filing
Filed
Proof of Electronic Service Transaction 4442596 - Approved By: NOREVIEW : 05-21-2014:14:19:59

05-21-2014 Court
Request for Hearing
Filed by: BRIAN C. PADGETT, ESQ.
Request for Hearing REQUEST FOR ORAL ARGUMENT ON PLAINTIFF LANDOWNERS' MOTION TO SET DATE OF VALUATION - Transaction 4442484 - Approved By: MCHOLICO : 05-21-2014:14:18:57

05-21-2014
Notice of Electronic Filing
Filed
Proof of Electronic Service Transaction 4441325 - Approved By: NOREVIEW : 05-21-2014:08:35:20

05-20-2014 Court
Reply to/in Opposition
Filed by: BRIAN C. PADGETT, ESQ.
Reply to/in Opposition PLAINTIFF'S REPLY TO DEFENDANTS TRUCKEE RIVER FLOOD MANAGMENT AUTHORITY AND WASHOE COUNTY'S OPPOSITION TO MOTION TO SET DATE OF VALUATION - Transaction 4441099 - Approved By: YLLOYD : 05-21-2014:08:34:22
- Exhibit 1
- Exhibit 2
- Exhibit 3

05-15-2014
Notice of Electronic Filing
Filed
Proof of Electronic Service Transaction 4434638 - Approved By: NOREVIEW : 05-15-2014:16:12:25

05-15-2014 Court
Notice
Filed by: BRIAN C. PADGETT, ESQ.
Notice ... NOTICE OF VACATED DEPOSITION - Transaction 4434481 - Approved By: YLLOYD : 05-15-2014:16:11:21

05-08-2014
Notice of Electronic Filing
Filed
Proof of Electronic Service Transaction 4423796 - Approved By: NOREVIEW : 05-08-2014:14:56:33

05-08-2014 Court
Affidavit of Service
Filed by: BRIAN C. PADGETT, ESQ.
Affidavit of Service AFFIDAVIT OF SERVICE FOR ELIZABETH ASHBY FOR THE SUBPOENA-CIVIL DUCES TECUM AND NOTICE OF DEPOSITION DUCES TECUM - Transaction 4423658 - Approved By: MFERNAND : 05-08-2014:14:53:39

04-24-2014
Notice of Electronic Filing
Filed
Proof of Electronic Service Transaction 4402013 - Approved By: NOREVIEW : 04-24-2014:13:49:18

04-24-2014 Court
Subpoena Duces Tecum
Filed by: BRIAN C. PADGETT, ESQ.
Subpoena Duces Tecum SUBPOENA - CIVIL DUCES TECUM AND NOTICE OF DEPSOITION DUCES TECUM - MS. ELIZABETH ASHBY, STATE OF NEVADA - Transaction 4401855 - Approved By: MFERNAND : 04-24-2014:13:48:21

04-23-2014
Notice of Electronic Filing
Filed
Proof of Electronic Service Transaction 4400417 - Approved By: NOREVIEW : 04-23-2014:16:14:16

04-23-2014

Court	Supplemental ... Filed by: BRIAN C. PADGETT, ESQ. Supplemental ... SECOND SUPPLEMENT TO PLAINTIFF'S MOTION TO SET DATE OF VALUATION - Transaction 4400058 - Approved By: MCHOLICO : 04-23-2014:16:13:16 - Exhibit 1
04-18-2014	Notice of Electronic Filing Filed Proof of Electronic Service Transaction 4394211 - Approved By: NOREVIEW : 04-18-2014:16:57:11
04-18-2014 Defendant	Opposition to Mtn Filed by: MICHAEL GLENN CHAPMAN, ESQ. Opposition to Mtn ... DEFENDANTS TRUCKEE RIVER FLOOD MANAGEMENT AUTHORITY AND WASHOE COUNTY'S OPPOSITION TO MOTION TO SET DATE OF VALUE - Transaction 4394112 - Approved By: MFERNAND : 04-18-2014:16:56:12 - Exhibit 1 - Exhibit 2 - Exhibit 3 - Exhibit 4 - Exhibit 5 - Exhibit 6
04-09-2014	Notice of Electronic Filing Filed Proof of Electronic Service Transaction 4380529 - Approved By: NOREVIEW : 04-09-2014:14:26:43
04-09-2014 Court	Supplemental ... Filed by: BRIAN C. PADGETT, ESQ. Supplemental ... SUPPLEMENT TO PLAINTIFF'S MOTION TO SET DATE OF VALUATION - Transaction 4380288 - Approved By: MFERNAND : 04-09-2014:14:25:47 - Exhibit 1
04-09-2014	Notice of Electronic Filing Filed Proof of Electronic Service Transaction 4379658 - Approved By: NOREVIEW : 04-09-2014:10:19:28
04-09-2014	Ord Denying Motion Filed Ord Denying Motion MOTIOM FOR STAY OF PROCEEDINGS DENIED - Transaction 4379652 - Approved By: NOREVIEW : 04-09-2014:10:18:32
03-27-2014	Notice of Electronic Filing Filed Proof of Electronic Service Transaction 4362627 - Approved By: NOREVIEW : 03-27-2014:13:17:15
03-27-2014 Defendant	Request for Submission Filed by: MICHAEL GLENN CHAPMAN, ESQ. Request for Submission MOTION FOR STAY OF PROCEEDINGS - Transaction 4362581 - Approved By: AZION : 03-27-2014:13:16:12 DOCUMENT TITLE: MOTION FOR STAY OF PROCEEDINGS PARTY SUBMITTING: MICHAEL CHAPMAN ESQ DATE SUBMITTED: 03-27-14 SUBMITTED BY: AZION DATE RECEIVED JUDGE OFFICE:
03-27-2014	Notice of Electronic Filing Filed Proof of Electronic Service Transaction 4362093 - Approved By: NOREVIEW : 03-27-2014:10:06:20
03-26-2014 Defendant	Reply Filed by: MICHAEL GLENN CHAPMAN, ESQ. Reply... TRUCKEE RIVER FLOOD MANAGEMENT AUTHORITY AND WASHOE COUNTY'S REPLY TO OPPOSITION TO MOTION FOR STAY OF PROCEEDINGS - Transaction 4361430 - Approved By: MCHOLICO : 03-27-2014:10:05:26 - Exhibit 1 - Exhibit 2 - Exhibit 3
03-17-2014	Notice of Electronic Filing Filed Proof of Electronic Service Transaction 4346956 - Approved By: NOREVIEW : 03-17-2014:16:25:58
03-17-2014 Court	Opposition to Mtn Filed by: BRIAN C. PADGETT, ESQ. Opposition to Mtn ... PLAINTIFFS' OPPOSITION TO DEFENDANT TRUCKEE RIVER FLOOD MANAGEMENT AUTHORITY AND DEFENDANT WASHOE COUNTY'S MOTION FOR STAY OF PROCEEDINGS - Transaction 4346417 - Approved By: MCHOLICO : 03-17-2014:16:24:22 - Exhibit 1 - Exhibit 2 - Exhibit 3
03-05-2014	Notice of Electronic Filing Filed Proof of Electronic Service Transaction 4330449 - Approved By: NOREVIEW : 03-05-2014:13:34:20

Motion

Filed by: BRIAN C. PADGETT, ESQ.

Motion ... PLAINTIFF'S MOTION TO SET DATE OF VALUATION - Transaction 4329595 - Approved By: ASMITH : 03-05-2014:13:32:36

- Exhibit 1
- Exhibit 2
- Exhibit 3
- Exhibit 4
- Exhibit 4
- Exhibit 5
- Exhibit 6
- Exhibit 7
- Exhibit 8
- Exhibit 9
- Exhibit 10
- Exhibit 11
- Exhibit 12
- Exhibit 13
- Exhibit 13
- Exhibit 13
- Exhibit 13
- Exhibit 13
- Exhibit 13
- Exhibit 13
- Exhibit 14
- Exhibit 15
- Exhibit 16
- Exhibit 16
- Exhibit 16
- Exhibit 17
- Exhibit 18
- Exhibit 19
- Exhibit 20
- Exhibit 21
- Exhibit 22
- Exhibit 23
- Exhibit 24
- Exhibit 25
- Exhibit 26
- Exhibit 27

Mtn for Stay

Filed

Mtn for Stay ... DEFENDANTS TRUCKEE RIVER FLOOD MANAGEMENT AUTHORITY AND WASHOE COUNTY'S MOTION FOR STAY OF PROCEEDINGS

- Exhibit 1
- Exhibit 2
- Exhibit 3
- Exhibit 4
- Exhibit 5

Notice of Electronic Filing

Filed

Proof of Electronic Service Transaction 4297801 - Approved By: NOREVIEW : 02-10-2014:11:25:45

Notice of Entry ...

Filed by: MICHAEL GLENN CHAPMAN, ESQ.

Notice of Entry ... of Order Granting Stipulation to Extend Discovery Deadlines - Transaction 4297797 - Approved By: NOREVIEW : 02-10-2014:11:24:33

- Continuation

Notice of Electronic Filing

Filed

Proof of Electronic Service Transaction 4285354 - Approved By: NOREVIEW : 01-31-2014:13:24:23

Ord Granting

Filed

Ord Granting ... STIPULATION TO EXTEND DISCOVERY DEADLINES - Transaction 4285351 - Approved By: NOREVIEW : 01-31-2014:13:23:20

Stipulation

Filed by: BRIAN C. PADGETT, ESQ.

Stipulation ... STIPULATION TO EXTEND DISCOVERY DEADLINES

Notice of Electronic Filing

Filed

Proof of Electronic Service Transaction 3998192 - Approved By: NOREVIEW : 09-16-2013:11:01:20

Joint Case Conference Report

Defendant
Filed by: MICHAEL GLENN CHAPMAN, ESQ.
Joint Case Conference Report FIRST AMENDED JOINT CASE CONFERENCE REPORT - Transaction 3998099 - Approved By: ACROGHAN : 09-16-2013:10:55:07
- Exhibit 1
- Exhibit 2

Joint Case Conference Report
02-21-2013 Court
Filed by: BRIAN C. PADGETT, ESQ.
Joint Case Conference Report
- Exhibit 1
- Exhibit 2

Demand for Jury
02-13-2013 Court
Filed by: BRIAN C. PADGETT, ESQ.
Demand for Jury PLAINTIFF'S

Notice of Electronic Filing
02-07-2013
Filed
Proof of Electronic Service Transaction 3516794 - Approved By: NOREVIEW : 02-07-2013:10:19:10

Exemption from Arbitration
02-07-2013
Filed
Exemption from Arbitration Transaction 3516661 - Approved By: MCHOLICO : 02-07-2013:10:15:48

Notice of Electronic Filing
01-16-2013
Filed
Proof of Electronic Service Transaction 3471049 - Approved By: NOREVIEW : 01-16-2013:15:55:54

Notice of Early Case Conferenc
01-16-2013 Court
Filed by: BRIAN C. PADGETT, ESQ.
Notice of Early Case Conferenc Transaction 3471010 - Approved By: NOREVIEW : 01-16-2013:15:52:48

Answer
01-09-2013 Defendant
Filed by: MICHAEL GLENN CHAPMAN, ESQ.
Answer ... ANSWER TO COMPLAINT

Notice of Electronic Filing
11-28-2012
Filed
Proof of Electronic Service Transaction 3373411 - Approved By: NOREVIEW : 11-28-2012:15:46:33

Order...
11-28-2012
Filed
Order ... ORDER DENYING DEFENDANTS' MOTION TO DISMISS - Transaction 3373405 - Approved By: NOREVIEW : 11-28-2012:15:45:05

Request for Submission
10-12-2012 Defendant
Filed by: MICHAEL GLENN CHAPMAN, ESQ.
Request for Submission DOCUMENT TITLE: DEFENDANTS' REPLY TO PLAINTIFFS' OPPOSITION TO MOTION TO DISMISS COMPLAINT (NO PAPER ORDER PROVIDED) PARTY SUBMITTING: MICHAEL GLENN CHAPMAN, ESQ. DATE SUBMITTED: OCTOBER 15, 2012 SUBMITTED BY: LBARRAGAN DATE RECEIVED JUDGE OFFICE:

Reply
10-12-2012 Defendant
Filed by: MICHAEL GLENN CHAPMAN, ESQ.
Reply... DEFENDANTS' REPLY TO PLAINTIFFS' OPPOSITION TO MOTION TO DISMISS COMPLAINT

Notice of Electronic Filing
10-02-2012
Filed
Proof of Electronic Service Transaction 3254976 - Approved By: NOREVIEW : 10-02-2012:11:23:32

Opposition to Mtn
10-02-2012 Court
Filed by: BRIAN C. PADGETT, ESQ.
Opposition to Mtn ... PLTFS' OPPOSITION TO DEFT TRUCKEE RIVER FLOOD MANAGEMENT AUTHORITY AND DEFT WASHOE COUNTY'S MOTION TO DISMISS COMPLAINT - Transaction 3254954 - Approved By: AZION : 10-02-2012:11:22:03

Mtn to Dismiss Case
09-17-2012 Defendant
Filed by: MICHAEL GLENN CHAPMAN, ESQ.
Mtn to Dismiss Case MOTION TO DISMISS COMPLAINT

Notice of Electronic Filing
09-14-2012
Filed
Proof of Electronic Service Transaction 3219975 - Approved By: NOREVIEW : 09-14-2012:16:06:13

Stip & Ord Dismiss W/O Prej
09-14-2012
Filed
Stip & Ord Dismiss W/O Prej AS TO CITY OF RENO - Transaction 3219969 - Approved By: NOREVIEW : 09-14-2012:16:04:35

09-14-2012
Notice of Electronic Filing
Filed

Proof of Electronic Service Transaction 3219942 - Approved By: NOREVIEW : 09-14-2012:15:58:01

09-14-2012 Stip & Ord Dismiss W/O Prej
Filed
Stip & Ord Dismiss W/O Prej Transaction 3219929 - Approved By: NOREVIEW : 09-14-2012:15:55:42

09-04-2012 Notice of Electronic Filing
Filed
Proof of Electronic Service Transaction 3191902 - Approved By: NOREVIEW : 09-04-2012:11:34:09

09-04-2012 Notice of Electronic Filing
Filed
Proof of Electronic Service Transaction 3191901 - Approved By: NOREVIEW : 09-04-2012:11:33:26

09-04-2012 Notice of Electronic Filing
Filed
Proof of Electronic Service Transaction 3191890 - Approved By: NOREVIEW : 09-04-2012:11:31:28

09-04-2012 Notice of Electronic Filing
Filed
Proof of Electronic Service Transaction 3191849 - Approved By: NOREVIEW : 09-04-2012:11:26:21

09-04-2012 Summons Filed
Court
Filed by: BRIAN C. PADGETT, ESQ.
Summons Filed THE CITY OF SPARKS - 08-02-12 - Transaction 3191821 - Approved By: AZION : 09-04-2012:11:30:01

09-04-2012 Summons Filed
Court
Filed by: BRIAN C. PADGETT, ESQ.
Summons Filed THE TRUCKEE RIVER FLOOD MANAGEMENT AUTHORITY - 08-02-12 - Transaction 3191816 - Approved By: AZION : 09-04-2012:11:29:36

09-04-2012 Summons Filed
Court
Filed by: BRIAN C. PADGETT, ESQ.
Summons Filed THE CITY OF RENO - 08-02-12 - Transaction 3191786 - Approved By: AZION : 09-04-2012:11:28:23

09-04-2012 Summons Filed
Court
Filed by: BRIAN C. PADGETT, ESQ.
Summons Filed THE OFFICE OF THE ATTORNEY GENERAL - 08-03-12 - Transaction 3191779 - Approved By: AZION : 09-04-2012:11:22:59

08-02-2012 ** Summons Issued
Filed

07-09-2012 Complaint - Civil
Court
Filed by: BRIAN C. PADGETT, ESQ.
$Complaint - Civil (JOHN DIFRANCESCO TRUST) - Transaction 3066602 - Approved By: MCHOLICO : 07-09-2012:15:13:34
- Exhibit 1

Exhibit 30

Exhibit 30

FILED
Electronically
CV12-01788
2018-09-05 03:35:33 PM
Jacqueline Bryant
Clerk of the Court
Transaction # 6864867 : csulezic

LAW OFFICES OF BRIAN C. PADGETT
BRIAN C. PADGETT
Nevada Bar No. 7474
AMY L. SUGDEN
Nevada Bar No. 9983
611 South Sixth Street
Las Vegas, Nevada 89101
Telephone: (702) 304-0123
Facsimile: (702) 368-0123

Attorneys for Plaintiffs JOHN DIFRANCESCO TRUST and ROBERT & JACALYN A. FERON FAMILY TRUST

IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

IN AND FOR THE COUNTY OF WASHOE

*****

JOHN DIFRANCESCO TRUST, and ROBERT & JACALYN A. FERON FAMILY TRUST, Plaintiffs, vs. WASHOE COUNTY, the CITY OF RENO, the CITY OF SPARKS, and the TRUCKEE RIVER FLOOD MANAGEMENT AUTHORITY, Defendants.	Case No.: CV 12-01788 Division: D3

Attached are the Exhibits 1 through 26 as continuation to Plaintiff's Motion In Limine To Exclude Evidence After August 2012.

This document does not contain the Social Security number of any person. I declare, under penalty of perjury under the law of the State of Nevada, that the foregoing is true and correct.

Date: 9/5/18 Your Signature: Amy L. Sugden

Print Your Name: Amy L. Sugden

LAW OFFICES OF BRIAN C. PADGETT
611 South Sixth Street, Las Vegas, Nevada 89101
Telephone: (702) 304-0123 – Facsimile (702) 368-0123

F I L E D
Electronically
CV12-01788
2018-09-05 03:35:33 PM
Jacqueline Bryant
Clerk of the Court
Transaction # 6864867 : csulezic

EXHIBIT "1"

EXHIBIT "1"

Order No. _____

Escrow No. 156840-TH

WHEN RECORDED, MAIL TO:
John A. DiFrancesco, etal
P O Box 5549
Incline Village, NV 89450

1449364

COPY - has not been compared with the Original Document - WCR

AP#012-272-10, #012-272-12 Space above this line for recorder's use

R.P.T.T. Ø

GRANT, BARGAIN and SALE DEED

FOR A VALUABLE CONSIDERATION, receipt of which is hereby acknowledged,

THE FIRST AMERICAN FINANCIAL CORPORATION, a California Corporation

do(es) hereby GRANT, BARGAIN and SELL to
JOHN A. DI FRANCESCO, an unmarried man as to an undivided one-half interest and ROBERT FERON and JACALYN ANN FERON, husband and wife as Community Property as to an undivided one-half interest
the real property situate in the County of Washoe, State of Nevada, described as follows:

Parcels B and C as shown on Parcel Map No. 27 filed in the office of the County Recorder of Washoe County, State of Nevada on November 19, 1973 as Document No. 308853 Official Records.

TOGETHER with all tenements, hereditaments and appurtenances, including easements and water rights, if any, thereto belonging or appertaining, and any reversions, remainders, rents, issues or profits thereof.

THE FIRST AMERICAN FINANCIAL CORPORATION

Dated October 9, 1990.

BY: _____
Wayne A. Condict Attorney-In-Fact

By _____
Joan Henderson Attorney-In-Fact

STATE OF CALIFORNIA)
)
COUNTY OF Orange)

On Oct 15, 1990, before me, the undersigned, a Notary Public in and for said State personally appeared Wayne A. Condict and Joan Henderson, known to me (or proved to me on the basis of satisfactory evidence) to be the person(s) whose name(s) is (are) subscribed to the within instrument as attorney(s) in fact for The First American Financial Corporation and acknowledged to me that he (she or they) executed the within instrument as attorney in fact for the corporation pursuant to a valid power of a attorney authorizing such act, and said corporation executed the within instrument pursuant to its by-laws or a resolution of its board of directors.

WITNESS my hand and official seal.

Elise Roberts
(signature)

(Seal)

OFFICIAL SEAL
ELISE ROBERTS
NOTARY PUBLIC-CALIFORNIA
ORANGE COUNTY
My Comm. Exp. August 28, 1994

DEC 20 1990

OFFICIAL RECORDS, WASHOE COUNTY, NEVADA
Record Requested by
FIRST AMERICAN TITLE COMPANY OF NEVADA
. COUNTY RECORDER
FEE _____ DEPUTY _____