

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

JOHN ILIESCU, JR; AND SONNIA  
ILIESCU, TRUSTEES OF THE JOHN  
ILIESCU, JR. AND SONNIA ILIESCU  
1992 FAMILY TRUST AGREEMENT,  
DATED JANUARY 24, 1992,  
Appellants.

vs.

THE REGIONAL TRANSPORTATION  
COMMISSION OF WASHOE  
COUNTY, A SPECIAL PURPOSE  
UNIT OF THE GOVERNMENT,  
Respondent.

Electronically Filed  
May 19 2021 02:26 p.m.  
Elizabeth A. Brown  
Clerk of Supreme Court  
Supreme Court No. 81753  
District Court Case No.: CV 19-00753

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

THE HONORABLE KATHLEEN DRAKULICH

**APPELLANTS' & RESPONDENT'S JOINT APPENDIX  
VOL. III (JA394-JA480)**

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Reno, NV 89511  
*Attorneys for Respondent*

## CHRONOLOGICAL INDEX OF APPENDIX

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**CERTIFICATE OF SERVICE**

I hereby certify that I am an employee of MAUPIN, COX & LeGOY, Attorneys at Law, and in such capacity and on the date indicated below I served the foregoing document(s) as follows:

Via the E-Flex Electronic Filing System:

Gordon H. DePaoli, Esq.  
Dane W. Anderson, Esq.  
Woodburn and Wedge  
6100 Neil Road, Suite 500  
Reno, NV 89511  
*Attorneys for Respondent*

Dated this 19<sup>th</sup> day of May, 2021.

/s/ Jennifer Salisbury  
EMPLOYEE

1 **2245**

Gordon H. DePaoli, Esq.

2 Nevada Bar No. 195

Dane W. Anderson, Esq.

3 Nevada Bar No. 6883

**WOODBURN AND WEDGE**

4 6100 Neil Road, Suite 500

Reno, Nevada 89511

5 Telephone: 775-688-3000

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6 [gdepauli@woodburnandwedge.com](mailto:gdepauli@woodburnandwedge.com)

[danderson@woodburnandwedge.com](mailto:danderson@woodburnandwedge.com)

7 Attorneys for Plaintiff, the Regional Transportation

8 Commission of Washoe County

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

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

12  
13 THE REGIONAL TRANSPORTATION  
14 COMMISSION OF WASHOE COUNTY, a  
special purpose unit of the government,

Case No.: CV19-00753

Dept. No.: 1

15 Plaintiff,

16 v.

17 JOHN ILIESCU, JR. and SONNIA ILIESCU,  
18 Trustees of The John Iliescu, Jr. and Sonnia  
19 Iliescu 1992 Family Trust Agreement, dated  
January 24, 1992; The City of Reno, a  
political subdivision of the State of Nevada;  
and DOES 1 – 20, inclusive,

20 Defendants.  
21  
22

23 **MOTION IN LIMINE TO PRECLUDE EVIDENCE OR ARGUMENT**  
24 **REGARDING UNASSERTED CLAIMS**

25 Plaintiff The Regional Transportation Commission of Washoe County ("RTC")  
26 moves this Court pursuant to the authorities cited here for an order precluding Defendants  
27 from offering any evidence and from making any arguments in support of claims they did not  
28 assert in this case. This motion is made pursuant to NRS 48.025 and NRS 48.035 and is

1 supported by the following memorandum of points and authorities and the entire file in this  
2 matter.

3 **I. INTRODUCTION**

4 This is a condemnation action in which RTC seeks to acquire certain easements on  
5 property owned by The John Iliescu, Jr. and Sonnia Iliescu 1992 Family Trust dated  
6 January 24, 1992 (“the Trust”). Defendants John Iliescu, Jr. and Sonnia Iliescu are the  
7 trustees of the Trust (the Trust and these defendants are referred to collectively herein as  
8 “Defendants”). RTC seeks to acquire a permanent easement and temporary easement  
9 located upon Washoe County Assessor Parcel Number (“APN”) 014-063-11 and a  
10 temporary construction easement located upon APN 014-063-07, as further described in  
11 RTC’s Verified Complaint in Eminent Domain on file herein (“the Property”).

12 On July 15, 2019, the Court entered its Order Granting Motion for Immediate  
13 Occupancy Pending Final Judgment, finding that the use for which the Property is being  
14 condemned is a public use authorized by law and that RTC’s taking of that property is  
15 necessary to that public use. Therefore, pursuant to NRS Chapter 37, the only remaining  
16 issue in this case is the amount of just compensation due Defendants as a result of RTC’s  
17 acquisition of the Property—the value of the Property and any severance damages. See  
18 NRS 37.110.

19 Defendants have submitted an expert report that includes opinions relating to a  
20 counterclaim they never asserted—inverse condemnation. Specifically, with respect to  
21 APN 014-063-07, Mr. Wren states: “Though there is no permanent take indicated, I have  
22 been informed that the currant [sic] access to this site from S. Virginia Street will be  
23 eliminated in the after condition.” See Exhibit 1. Mr. Wren concludes that the  
24 elimination of that access will damage APN 014-063-07 in the amount of \$162,500. Id.

25 The reason Mr. Wren acknowledges there is no permanent take on APN 014-063-  
26 07 is because the driveway access from S. Virginia Street is within the existing public  
27 right-of-way. In other words, it is unnecessary for RTC to commence formal

1 condemnation proceedings to alter or eliminate that access. The temporary construction  
2 easement is necessary to facilitate construction within RTC's existing right-of-way.

3 The problem for Defendants is that they never asserted a counterclaim for inverse  
4 condemnation. As discussed below, that claim is necessary when a property owner seeks  
5 damages for the loss of an alleged property interest where there is no formal exercise of  
6 the power of eminent domain. Pursuant to the Court's Scheduling Order, the deadline to  
7 file motions to amend the pleadings was February 7, 2020. As that deadline passed four  
8 months ago and trial is less than two months away, it is far too late for Defendants to  
9 assert a claim for inverse condemnation.

## 10 **II. LAW AND ARGUMENT**

11 The purpose of a motion in limine is to determine the admissibility of evidence at  
12 the outset of trial. *Luce v. United States*, 469 U.S. 38, 40 n. 2, 105 S. Ct. 460, 462 n.2  
13 (1984); see also *Born v. Eisenman*, 114 Nev. 854, 962 P.2d 1227 (1998). Motions in  
14 limine are a simple and useful tool available to attorneys for the protection of their trial  
15 evidence. *Bridges v. City of Richardson*, 354 S.W. 2d 366 (1962). Furthermore, pretrial  
16 motions are useful tools to resolve issues which would otherwise "clutter up" the trial..."  
17 *Palmerin v. City of Riverside*, 794 F.2d 1409, 1413 (9th Circ. 1986).

18 Such motions are brought in order to suppress evidence which is either not  
19 competent or is improper. In Nevada, it has been held that the "trial court is vested with  
20 broad discretion in determining the admissibility of evidence." *State ex rel. Dept. of*  
21 *Highways v. Nevada Aggregates & Asphalt Co.*, 92 Nev. 370, 376, 551 P.2d 1095, 1098  
22 (1976). "The exercise of such discretion will not be interfered with on appeal in the  
23 absence of a showing of palpable abuse." *Id.* While relevant evidence is admissible at  
24 trial, N.R.S. § 48.025(2) provides that "evidence which is not relevant is not admissible."  
25 N.R.S. § 48.025.

26 Inverse condemnation is an "action against a governmental defendant to recover  
27 the value of property which has been taken in fact by the governmental defendant, even  
28 though no formal exercise of the power of eminent domain has been attempted by the

1 taking agency.” State, Dep't of Transp. v. Cowan, 120 Nev. 851, 854, 103 P.3d 1, 3  
2 (2004). As the counterpart of eminent domain, inverse condemnation requires a party to  
3 demonstrate the following: (1) a taking (2) of real or personal interest in private property  
4 (3) for public use (4) without just compensation being paid (5) that is proximately caused  
5 by a governmental entity (6) that has not instituted formal proceedings. Fritz v. Washoe  
6 County, 132 Nev. 580, 584, 376 P.3d 794, 796 (2016).

7 Mr. Wren opines that APN 014-063-07 will be damaged \$162,500 by the  
8 elimination of its access to S. Virginia Street. Mr. Wren acknowledges there is no  
9 permanent taking related to the elimination of that access and therefore RTC has not  
10 instituted formal proceedings to eliminate that access. This is because the driveway  
11 access to APN 014-063-07 from S. Virginia is already within the public right-of-way. For  
12 this reason, it is also unclear how the elimination of that access amounts to a taking of any  
13 real or personal interest in private property.

14 In any event, Defendants never asserted a counterclaim for inverse condemnation  
15 and therefore should be precluded from presenting any testimony or argument related to  
16 such a claim. Any such evidence is irrelevant and would cause confusion with the jury  
17 and prejudice to RTC.

### 18 **III. CONCLUSION**

19 Defendants should be precluded from presenting any evidence or argument related  
20 to an unasserted claim for inverse condemnation.

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**Affirmation pursuant to NRS 239B.030**

The undersigned does hereby affirm that the preceding document does not contain the personal information of any person.

DATED: June 4, 2020.

WOODBURN AND WEDGE

By /s/ Dane W. Anderson  
Gordon H. DePaoli, Esq.  
Nevada Bar No. 195  
Dane W. Anderson, Esq.  
Nevada Bar No. 6883  
Attorneys for Plaintiff, the Regional  
Transportation Commission of Washoe County

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**CERTIFICATE OF SERVICE**

I hereby certify that I am an employee of Woodburn and Wedge and that on this date,  
I caused to be sent via electronic delivery through the Court's E-flex system a true and correct  
copy of the ***MOTION IN LIMINE TO PRECLUDE EVIDENCE OR ARGUMENT***  
***REGARDING UNASSERTED CLAIMS*** to:

Michael James Morrison, Esq.  
1495 Ridgeview Drive, Suite 220  
Reno, NV 89519  
[venturlawusa@gmail.com](mailto:venturlawusa@gmail.com)

*Attorneys for Defendants  
John Iliescu, Jr. and Sonnia Iliescu,  
Trustees of The John Iliescu, Jr. and Sonnia  
Iliescu  
1992 Family Trust Agreement,  
Dated January 24, 1992*

Brett W. Maupin, Esq.  
Maupin, Cox & LeGoy  
4785 Caughlin Parkway  
P.O. Box 30000  
Reno, NV 89520  
[bmaupin@mcllawfirm.com](mailto:bmaupin@mcllawfirm.com)

*Attorneys for Defendant John Iliescu, Jr.  
and Sonnia Iliescu*

DATED: June 4, 2020.

/s/ Dianne M. Kelling  
Employee of Woodburn and Wedge

**EXHIBIT INDEX**

<b>EXHIBIT NO.</b>	<b>DESCRIPTION OF EXHIBIT</b>	<b>NO. OF PAGES (Including Exhibit Sheet)</b>
1	Letter from Anthony J. Wren and Associates, Iliescu000009-Iliescu000010	3

# EXHIBIT 1

# EXHIBIT 1

ANTHONY J. WREN AND ASSOCIATES

P.O. BOX 20867  
RENO, NEVADA 89515  
(775) 329-4221  
FAX (775) 329-5382

TONY WREN, MAI, SRA  
CERTIFIED GENERAL APPRAISER

SUSAN WREN  
CERTIFIED RESIDENTIAL APPRAISER

March 23, 2020

Brett W. Maupin, Esq.  
Maupin, Cox & LeGoy  
4785 Caughlin Parkway  
Reno, NV 89519

RE:

APN 014-063-07  
0 S. Virginia Street  
Reno, Washoe County, Nevada

Dear Mr. Maupin:

At your request, I have completed an appraisal of and prepared the following appraisal report for the property referenced above. The purpose of my appraisal is to estimate the market value of the property and make a recommendation of compensation for the acquisition of one temporary construction easement. The temporary construction easement is located on the east boundary of APN 014-063-07 and contains 309± sf. Though there is no permanent take indicated, I have been informed that the current access to this site from S. Virginia Street will be eliminated in the after condition. This will be analyzed in the after appraisal valuation section of this report. The site contains a total of 6,500± sf (50' x 130'). The property is owned by John Iliescu, Jr. and Sonnia Iliescu 1992 Family Trust Agreement UTD January 24, 1992.

I have performed no services as an appraiser regarding the property that is the subject of this report, within a three-year period immediately preceding acceptance of this assignment.

The report is intended to conform with Section 2-2(a) of the Uniform Standards of Appraisal Practice and is considered to be an appraisal report.

The subject property is an unimproved commercial site. After inspection of the property and a review of the proposed acquisitions for the temporary construction easement, it was determined that the acquisition does not affect any improvements. Therefore, the appraisal will be made as if the property were vacant, and the valuation "as is" will be as vacant land only.

The temporary construction easement is located in the east boundary of the site.

The reader is referred to various maps throughout this report to better visualize the location of the easements.

Based on my inspection of the subject and a thorough research of the market, my conclusions and recommendations of compensation are as follows:

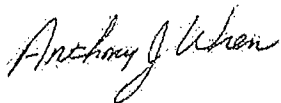
### SUMMARY OF VALUE CONCLUSIONS

(Accounting tabulation not indicative of appraisal method employed)

A.	Value of the whole, before the take:	\$357,500
B.	Value of the part taken, as part of the whole: No take, accept for access from S. Virginia Street	\$0.00
	Total Value	\$0.00
C.	Value of the Remainder as part of the whole (A - B)	\$357,500
D.	Value of the remainder, after the take:	\$195,000
E.	Damages (A - D) Cost to cure damages	-\$162,500 \$0.00
F.	Other – Temporary Easement	\$5,099
G.	Total Value of the Part Taken (B + E + F)	\$167,599

The following is an appraisal report. It has been prepared in conformance with the reporting requirements of the Appraisal Foundation as set forth in the Uniform Standards of Professional Appraisal Practice (USPAP), as well as the Supplemental Standards required by the Appraisal Institute. My conclusions and the data and analysis upon which they are based are summarized in the attached appraisal report.

Respectfully Submitted,



Anthony J. Wren, MAI, SRA  
Certified General Appraiser #A.0000090-CG

3060

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

THE REGIONAL TRANSPORTATION  
COMMISSION OF WASHOE COUNTY, a  
special purpose unit of the government,

CASE NO.: CV19-00753

Plaintiff,

DEPT. NO.: 1

vs.

JOHN ILIESCU, JR. and SONNIA ILIESCU,  
Trustees of The John Iliescu, Jr. and Sonnia Iliescu  
1992 Family Trust Agreement, dated January 24,  
1992; The City of Reno, a political subdivision of  
the State of Nevada; and DOES 1 – 20, inclusive,

Defendants.

**ORDER GRANTING MOTION IN LIMINE TO PRECLUDE DEFENDANTS FROM  
CALLING WITNESSES AND PRESENTING DOCUMENTARY EVIDENCE**

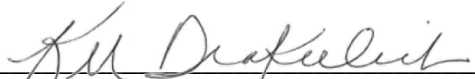
Currently before the Court is the Regional Transportation Commission of Washoe County's ("Plaintiff") *Motion in Limine to Preclude Defendants from Calling Witnesses and Presenting Documentary Evidence* ("Motion") filed May 15, 2020 and submitted to the Court for consideration on June 1, 2020. D.C.R. 13(3) provides "[f]ailure of the opposing party to serve and file his written opposition may be construed as an admission that the motion is meritorious and a consent to granting the same." Defendants did not file a response to Plaintiff's Motion. Accordingly, this Court finds good cause to grant Plaintiff's Motion.

Based upon the foregoing and good cause appearing,

1 IT IS HEREBY ORDERED that Plaintiff's *Motion in Limine to Preclude Defendants from*  
2 *Calling Witnesses and Presenting Documentary Evidence* is GRANTED.

3 IT IS SO ORDERED.

4 DATED this 4<sup>th</sup> day of June, 2020.

5   
6 \_\_\_\_\_  
7 KATHLEEN M. DRAKULICH  
8 District Court Judge  
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**CERTIFICATE OF SERVICE**

CASE NO. CV19-00753

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<sup>th</sup> day of June, 2020, I electronically filed the **ORDER GRANTING MOTION IN LIMINE TO PRECLUDE DEFENDANTS FROM CALLING WITNESSES AND PRESENTING DOCUMENTARY EVIDENCE** with the Clerk of the Court by using the ECF system.

I further certify that I transmitted a true and correct copy of the foregoing document by the method(s) noted below:

**Electronically filed with the Clerk of the Court by using the ECF system which will send a notice of electronic filing to the following:**

SUSAN ROTHE, ESQ. for CITY OF RENO

BRETT MAUPIN, ESQ. for JOHN ILIESCU & SONNIA ILIESCU, TRUSTEES

MICHAEL MORRISON, ESQ. for JOHN ILIESCU & SONNIA ILIESCU, TRUSTEES

GORDON DEPAOLI, ESQ. for THE REGIONAL TRANSPORTATION COMMISSION OF WASHOE COUNTY

DANE ANDERSON, ESQ. for THE REGIONAL TRANSPORTATION COMMISSION OF WASHOE COUNTY

**Deposited 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:**

**[NONE]**

  
DANIELLE REDMOND  
Department 1 Judicial Assistant

1 Code: 3795  
2 Brett W. Maupin, Esq., NV Bar. #12443  
3 MAUPIN, COX & LeGOY  
4 4785 Caughlin Parkway  
5 P. O. Box 30000  
6 Reno, NV 89520  
7 (775) 827-2000  
8 (775) 827-2185 (fax)  
9 [bmaupin@mcllawfirm.com](mailto:bmaupin@mcllawfirm.com)  
10 *Attorneys Defendant John Iliescu, Jr. and*  
11 *Sonnia Iliescu*

12 IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

13 IN AND FOR THE COUNTY OF WASHOE

14 THE REGIONAL TRANSPORTATION  
15 COMMISSION OF WASHOE COUNTY, a  
16 special purpose unit of the government,

17 Plaintiff,

18 vs.

19 JOHN ILIESCU, JR. and SONNIA ILIESCU,  
20 Trustees of The John Iliescu, Jr. and Sonnia  
21 Iliescu 1992 Family Trust Agreement, dated  
22 January 24, 1992 The City of Reno, a political  
23 subdivision of the State of Nevada; and DOES  
24 1 – 20, inclusive,

25 Defendants.

Case No. CV19-00753

Dept. No. 1

26 **DEFENDANTS' OPPOSITION TO PLAINTIFF'S MOTION**

27 **IN LIMINE**

28 Defendants, JOHN ILIESCU, JR. and SONNIA ILESCU, Trustees of The John Iliescu,  
Jr. and Sonnia Iliescu 1992 Family Trust Agreement ("Defendant"), hereby oppose the Plaintiff's  
Motion in Limine filed June 1, 2020 (the "Motion"), by the Plaintiff, The Regional

1 Transportation Commission of Washoe County ("RTC"). This opposition is supported by the  
2 following memorandum of points and authorities.

3  
4 **1. INTRODUCTION**

5 This is a condemnation action in which RTC seeks to acquire certain easements on  
6 properties owned by Defendant. Defendant owns two adjacent properties in the City of Reno,  
7 known as Washoe County Assessor Parcel Numbers ("APN") 014-063-11 and 014-063-07, as  
8 further described in RTC's Verified Complaint in Eminent Domain on file herein ("the  
9 Property").  
10

11 On July 15, 2019, the Court entered its Order Granting Motion for Immediate Occupancy  
12 Pending Final Judgment, finding that the use for which the Property is being condemned is a  
13 "public use" authorized by law and that RTC's "taking" of that Property is necessary to that  
14 public use. Therefore, the only material fact left to be determined in connection with the  
15 condemnation is the amount of "just compensation" due and owing to Defendant as a result of  
16 RTC's condemnation of the Property. See NRS 37.110.  
17

18 On February 7, 2020, Plaintiff submitted its expert appraisal of the Property, together  
19 with the expert's estimation of damages resulting from the condemnation.  
20

21 Defendant's disclosure of its expert witness and providing the related reports and  
22 appraisal was not timely filed due to Mr. Morrison's health conditions and related medical tests  
23 and treatments.

24 At that time, Mr. Morrison was Defendant's sole lawyer, but due to his debilitating health  
25 problems, Defendant searched for and engaged the firm of MAUPIN, COX & LeGOY to  
26 represent Defendant in the on-going case, effective February 25, 2020.  
27

28 However, prior to the engagement of Mr. Maupin, Plaintiff, on February 11, 2020, filed

1 a Motion in Limine ("Feb Motion") seeking to preclude Defendant from its use of expert  
2 witnesses in this case.

3 After filing his notice of appearance, On February 26, 2020, Mr. Maupin spoke with Mr.  
4 Anderson advising him of his involvement in the case and, most importantly, discussing a  
5 resolution of the Feb Motion. Mr. Maupin mentioned to Mr. Anderson that he was in the process  
6 of engaging an expert witness to support Defendant's position that the Plaintiff's appraisal was  
7 fundamentally flawed by characterizing the two (2) separate parcels as one single parcel for  
8 valuation purposes. Thereafter, Mr. Anderson sent the following email to Mr. Morrison  
9 confirming his discussion with Mr. Maupin:  
10  
11

12  
13 **Dane**  
14 **Anderson <DAnderson@woodburna**  
15 **ndwedge.com>**  
16 to me, Dianne

Mar 2, 2020,  
5:02 PM

17 Mike,

18 Can I have an extension to file a reply? I spoke to Brett Maupin last week. I  
19 am hopeful we can work out a resolution. Would your client be willing to  
20 pay RTC's fees in having to bring the motion if we withdraw it and agree on  
21 a date of the report. I don't have authority to formally offer this but if your  
22 clients would agree to that I will discuss it with my client.

23 On March 2, 2020, Defendant's counsel engaged Tony Wren to appraise the subject  
24 property, but given the pendency of the Feb Motion, Defendant's counsel was reluctant to file or  
25 serve any disclosures related to the use of an expert witness.

26 Then, without notice or comment, on March 31, 2020, Plaintiff filed a Motion for  
27 Summary Judgement ("MSJ"), focusing on Defendant's failure to present any evidence. Quite  
28 significantly, this MSJ was filed while Plaintiff's Feb Motion had been submitted and was still

1 pending. (As of this date, this Court has filed its May Order granting Defendant the right to  
2 present rebuttal evidence, yet the MSJ was still prosecuted by Plaintiff.)

3  
4 On April 6, 2020, Counsel for the parties (Mssrs. Maupin and Morrison (“Defendant’s  
5 Counsel”), for Defendant, and Mr. Anderson for RTC), had a telephone conference to discuss  
6 various outstanding discovery and motion matters, together with related filing dates and  
7 deadlines, and most importantly, Defendant’s filing of the expert appraisal and report. During  
8 that teleconference, Mr. Maupin related to Mr. Anderson his recollection that he had exchanged  
9 telephone calls wherein he and Mr. Anderson discussed the fact that Mr. Maupin had been very  
10 diligent in obtaining an expert to perform the appraisal; advised Mr. Anderson of the identity of  
11 such appraiser; advised Mr. Anderson that the expert’s appraisal was received and would be  
12 disclosed very shortly.  
13

14 After a lengthy discussion regarding these matters, Mr. Anderson kindly advised  
15 Defendant’s Counsel that he recalled the facts and circumstances, including related e-mails and  
16 telephone conversations surrounding the expert appraisal and report, and based thereon, he  
17 agreed with Mr. Maupin’s opinion that the Feb Motion should be withdrawn and Defendant  
18 should be permitted to submit its expert appraisal and report. Mr. Anderson did advise that, while  
19 he would recommend this protocol to his client, his client would have the final say about  
20 withdrawing the Feb Motion.  
21

22  
23 On April 8, 2020, Defendant delivered its disclosures of its expert witness and appraisal  
24 and report to Plaintiff’s counsel through both mail and electronic mail. In that email, Defendant’s  
25 counsel acknowledged his reluctance to file the expert witness disclosure with the Court since  
26 the Feb Motion was still outstanding. The email is set forth on Exhibit “1.”  
27  
28

1 After a month of no communication with Plaintiff's counsel, on May 7, 2020, Mr.  
2 Anderson emailed Defendant's counsel notifying them that his client would not agree to  
3 withdraw the pending motions.  
4

5 Then, very significantly, on May 14, 2020, this Court filed an Order Granting in Part and  
6 Denying in Part Plaintiff's Feb Motion ("May Order"). Pursuant to the May Order, Defendant  
7 was precluded from calling an expert witness as part of its case-in-chief, but this Court  
8 specifically granted Defendant the right to use an expert as a rebuttal witness to Plaintiff's expert  
9 witness. Defendants' expert witness, Tony Wren, MAI, SRA, Certified General Appraiser, is a  
10 real property appraiser who has viewed and appraised the Real Property subject to this  
11 Condemnation proceeding. Mr. Wren will serve as an expert for the purpose of providing  
12 rebuttal scientific, technical or other specialized knowledge, which will assist this Court in  
13 understanding evidence or to determine a fact in issue related to this litigation.  
14  
15

16 Shortly after the Court's Order on the February Motion was entered, Plaintiff submitted  
17 another Motion in Limine (the "May Motion") seeking to suppress the Defendants from  
18 submitting any reports or materials as they had not been timely disclosed.  
19

20 Defendant's counsel filed their Opposition to the MSJ on May 22, 2020 ("May  
21 Opposition") including the disclosure of Defendant's expert witness and his appraisal and other  
22 materials as exhibits thereto. The Defendant also filed a Notice with the Court acknowledging  
23 Defendant's compliance with the May Order and referring to the exhibits to the May Opposition  
24 as evidence of such compliance, and also attaching a copy of the April 8, 2020, email  
25 correspondence with Plaintiff's counsel transmitting those materials.  
26  
27  
28

1 At this point, Defendant's counsel was of the opinion that it had provided satisfactory  
2 proof that Plaintiff's May Motion was factually inaccurate, and therefore, consistent with  
3 discussions between counsel for the parties, it would be withdrawn by Plaintiff's counsel.  
4

5 On June 1, 2020, Plaintiff's Counsel filed another Motion in Limine (the "June 1  
6 Motion"), stating that Plaintiff's disclosure of Mr. Wren as its expert witness back on April 8,  
7 2020, did not satisfy the Court's May Order.  
8

9 On June 4, 2020, to the surprise of Defendant's counsel, this Court entered an Order  
10 granting the May Motion. Defendant did not file an opposition to the May Motion based solely  
11 upon Defendant's good faith belief that Plaintiff would withdraw the May Motion, especially  
12 after being reminded of the accurate and dispositive facts described in the May Opposition, as  
13 well as the Notice.  
14

15 Also on June 4, 2020, Plaintiff submitted yet another Motion in Limine seeking to further  
16 suppress Defendant's ability to prove and receive just compensation for the condemnation of  
17 Defendant's property by Plaintiff (the "June 4 Motion").  
18

19 On June 11, 2020, Defendant's counsel called Plaintiff's counsel in an attempt to discuss  
20 both the June Order, and the pending Motions in Limine. On June 12, 2020, Plaintiff's counsel  
21 responded to Defendant's Counsel in the email attached as Exhibit "2" acknowledging his  
22 availability for a call to discuss on Monday June 15 in the "late morning or early afternoon."  
23 Quite significantly, Plaintiff's counsel appeared willing to have a conversation based on a sincere  
24 request to know the subject matter of such call in order to prepare. Defendant's counsel  
25 responded proposing a 10:30 AM call to discuss the matters described in Exhibit "2." However,  
26 upon learning of the subject matter of the proposed discussion, Plaintiff's counsel did not  
27 respond in any respect to Defendant's counsel's email proposing a conference call time and,  
28

1 instead, and notwithstanding his clear representation that he was, indeed, available for a call,  
2 Plaintiff's counsel filed a Request for Submission on June 16, 2020 for a ruling on its June 1  
3 Motion.  
4

## 5 **2. LAW AND ARGUMENT**

6

7 Defendant has identified Mr. Anthony Wren pursuant to NRCP 16.1(a)(2) as an expert  
8 witness. While Defendant's disclosure of Mr. Wren as an expert witness in this case was made  
9 over a month prior to this Court's May Order preventing the Defendant's use of Mr. Wren as an  
10 expert witness in its case in chief, it was clear that Mr. Wren would still be used to rebut the  
11 Plaintiff's expert witness's testimony and report. The appraisal and other materials submitted to  
12 Plaintiff on April 8, 2020, were clearly in direct opposition to the Plaintiff's expert's report. Mr.  
13 Wren would rebut Plaintiff's expert's expected testimony, in that he would state that the  
14 Plaintiff's expert appraisal was fundamentally flawed in treating the two (2) distinct parcels of  
15 property owned by Defendant affected by the Plaintiff's condemnation as one (1) parcel, and  
16 therefore the valuation of the just compensation for the condemnation is fatally flawed.  
17 Plaintiff's insistence that the irrefutable and undeniable disclosure of Mr. Wren as an expert  
18 witness in this case (which was provided to Plaintiff's counsel by Defendants' counsel on April  
19 8, 2020), was not a "sufficient disclosure" of a rebuttal witness in this case ignores, the report  
20 submitted by Defendant's expert which clearly contradicts the Plaintiff's expert's report in both  
21 method and valuation.  
22  
23  
24

25 Furthermore, and very significantly, Plaintiff's counsel's conduct in communicating with  
26 Defendant's counsel since the end of February, 2020, has been less than acceptable or otherwise  
27 consistent with a spirit of courtesy or candor under the Rules. Since Mr. Maupin's first  
28



1 discussion with Plaintiff's counsel in February, 2020, Plaintiff's counsel has implied, and led the  
2 undersigned to believe, that the February Motion in Limine would be withdrawn, contingent only  
3 upon Defendant's disclosure of its expert witness. Yet almost one month passed after Defendant  
4 formally disclosed its expert and provided copies of the expert report before Plaintiff's counsel  
5 advised Defendant's counsel that it would not withdraw the February Motion in Limine. Then,  
6 immediately following this Court's May Order granting in part, and denying in part, the February  
7 Motion, Plaintiff's counsel filed the May Motion in Limine seeking to suppress all written  
8 disclosures made by Defendant, on the unsupported, indeed, insupportable and undeniably  
9 erroneous assertion that Defendant **"failed to provide any such documents"**. Manifestly, such  
10 bold assertion, to be accurate, must necessarily and implicitly conclude, and more significantly,  
11 represent to this Court, that Mr. Wren's written report, undeniably received by Plaintiff's counsel  
12 on April 8, 2020, did not constitute a **"document"**, as specified in the discovery rules. A  
13 troubling and highly questionable representation.

14  
15 In fact, Plaintiff's entire course of conduct in this case has an unmistakable thrust of  
16 doing anything and everything to keep Defendant from having its "Day in Court", and,  
17 concurrently, denying Defendant of its Due Process and opportunity to present evidence.

18  
19 From the commencement of this case, Plaintiff has requested disclosure of Defendant's  
20 expert witness and his/her expert report. These disclosure requests continued during February  
21 and March, 2020; and then, commencing shortly after April 8, 2020 (the undeniable date of  
22 delivery of Defendant's expert's report to Plaintiff), and after Plaintiff suddenly realized that  
23 Defendant's expert's written report directly contradicted, and clearly demonstrated/poked gaping  
24 holes in very significant parts of Plaintiff's expert's report, and most critically, the valuation  
25 submitted by Plaintiff's expert, Plaintiff has been very aggressively trying to ensure that  
26  
27  
28

1 Defendant's expert will not be allowed to testify or present his report, which, very cogently and  
2 compellingly identifies the many fatal flaws in the report submitted by Plaintiff.

3 The efforts to silence Defendant and its expert have intensified since April 2020. In fact,  
4 after Defendant submitted its opposition to Plaintiff's MSJ detailing Defendant's disclosure of its  
5 expert witness and the strong and compelling written materials provided therewith, Plaintiff  
6 failed to withdraw the May Motion. Rather than seek to correct its error, Plaintiff's counsel has  
7 seemingly doubled down in its attempt to prevent Defendant from receiving just compensation  
8 for the condemnation by filing multiple Motions in Limine to suppress Defendant's use of its  
9 expert witness on various theories. And rather than respond to Defendant's Counsel's request to  
10 discuss all these items, Plaintiff's counsel filed a request for submission to ramrod the June 1  
11 Motion. This type of hide-the-ball approach to litigation should not be rewarded, especially when  
12 dealing with a citizen's constitutional right to receive due process, an opportunity to be heard and  
13 present evidence, and receive just compensation for governmental taking of property.  
14  
15  
16

### 17 3. CONCLUSION

18  
19 For all of the reasons set forth above, Defendant requests the Court enter an Order  
20 denying Plaintiff's June 1, 2020 Motion in Limine.

21 ///

22 ///

23 ///

24 ///

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Dated this 17<sup>th</sup> day of June, 2020.

By:

*Attorneys for Defendant Iliescu*

1  
2 CERTIFICATE OF SERVICE

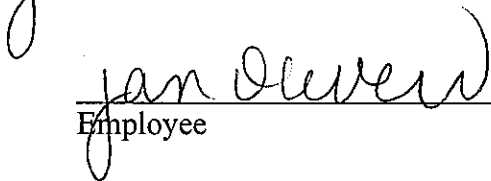
3 I hereby certify that I am an employee of MAUPIN, COX & LeGOY, Attorneys at Law,  
4 and in such capacity and on the date indicated below, I caused to be sent via electronic delivery  
5 through the Court's E-flex system a true and correct copy of the DEFENDANTS' OPPOSITION  
6 TO PLAINTIFF'S MOTION IN LIMINE to:  
7

8 Susan Ball Roth, Esq.  
9 City of Reno Attorney's Office  
10 Deputy, Civil Division  
11 1 E. First St., 3<sup>rd</sup> Floor  
12 PO Box 1900  
13 Reno, NV 89505

14 Gordon H. DePoali, Esq.  
15 Dane W. Anderson, Esq.  
16 Woodburn and Wedge  
17 6100 Neil Road, Suite 500  
18 Reno, NV 89511

19 Michael J. Morrison, Esq.  
20 1495 Ridgeview Dr., Ste. 220  
21 Reno, NV 89519

22 Dated this 18<sup>th</sup> day of June, 2020.

23  
24  
25  
26  
27  
28  
  
Employee

INDEX OF EXHIBITS

<u>NO.</u>	<u>DESCRIPTION</u>	<u>PAGES</u>
1.	Email Correspondence	3
2.	Email Correspondence	2

# EXHIBIT 1

# EXHIBIT 1

## Brett Maupin

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**From:** Brett Maupin  
**Sent:** Wednesday, April 8, 2020 4:37 PM  
**To:** Dane Anderson; Michael J. Morrison, Chtd.  
**Subject:** RE: RTC - Iliescu (Virginia Street)  
**Attachments:** Def Designation of Expert Witness.pdf; Def Designation of Expert Witness.Ex1.pdf

Dane,

I do and it is attached. However, the exhibit file containing the appraisals is a very large file so please let me know if you have problems receiving or opening it. Thank you

Brett W. Maupin, Esq.  
Maupin, Cox & LeGoy  
4785 Caughlin Parkway  
Reno, NV 89519  
(775) 827-2000 (phone)  
(775) 827-2185 (fax)  
Email: [bmaupin@mcllawfirm.com](mailto:bmaupin@mcllawfirm.com)  
Legal Assistant: Jan Olivero  
Email: [jolivero@mcllawfirm.com](mailto:jolivero@mcllawfirm.com)  
Website: [www.mcllawfirm.com](http://www.mcllawfirm.com)

---

**From:** Dane Anderson [mailto:[DAnderson@woodburnandwedge.com](mailto:DAnderson@woodburnandwedge.com)]  
**Sent:** Wednesday, April 8, 2020 4:12 PM  
**To:** Brett Maupin <[bmaupin@mcllawfirm.com](mailto:bmaupin@mcllawfirm.com)>; Michael J. Morrison, Chtd. <[venturelawusa@gmail.com](mailto:venturelawusa@gmail.com)>  
**Subject:** RE: RTC - Iliescu (Virginia Street)

[WARNING! EXTERNAL MESSAGE]

Hi Brett,

Do you have an electronic copy you can email to me? My assistant may not be in the office tomorrow and I am trying to avoid going there.

**Dane W. Anderson**



Woodburn and Wedge  
6100 Neil Road, Suite 500  
Reno, Nevada 89511-1159  
775.688.3000  
Direct Dial: 775.688.3018  
[danderson@woodburnandwedge.com](mailto:danderson@woodburnandwedge.com)

---

**From:** Brett Maupin <[bmaupin@mcllawfirm.com](mailto:bmaupin@mcllawfirm.com)>  
**Sent:** Wednesday, April 08, 2020 4:10 PM

**To:** Dane Anderson <[DDAnderson@woodburnandwedge.com](mailto:DDAnderson@woodburnandwedge.com)>; Michael J. Morrison, Chtd. <[venturelawusa@gmail.com](mailto:venturelawusa@gmail.com)>  
**Subject:** Re: RTC - Iliescu (Virginia Street)

Dane and Michael,

The expert witness disclosure and copies of his appraisal reports were mailed out to all counsel of record this afternoon. I am hesitant to file anything with the Court on this while the motion is pending but please let me know if you want us to file something on this. Thank you

Brett W. Maupin, Esq.  
Maupin, Cox & LeGoy  
4785 Caughlin Parkway  
Reno, NV 89519  
(775) 827-2000 (phone)  
(775) 827-2185 (fax)  
Email: [bmaupin@mcllawfirm.com](mailto:bmaupin@mcllawfirm.com)  
Legal Assistant: Jan Olivero  
Email: [jolivero@mcllawfirm.com](mailto:jolivero@mcllawfirm.com)  
Website: [www.mcllawfirm.com](http://www.mcllawfirm.com)

---

**From:** Dane Anderson <[DDAnderson@woodburnandwedge.com](mailto:DDAnderson@woodburnandwedge.com)>  
**Sent:** Monday, April 6, 2020 2:37 PM  
**To:** Michael J. Morrison, Chtd. <[venturelawusa@gmail.com](mailto:venturelawusa@gmail.com)>; Brett Maupin <[bmaupin@mcllawfirm.com](mailto:bmaupin@mcllawfirm.com)>  
**Subject:** FW: RTC - Iliescu (Virginia Street)

[WARNING! EXTERNAL MESSAGE]

FYI, below is the email to Mike that I mentioned during our call this afternoon and to which I did not receive a response.

## Dane W. Anderson



Woodburn and Wedge  
6100 Neil Road, Suite 500  
Reno, Nevada 89511-1159  
775.688.3000  
Direct Dial: 775.688.3018  
[danderson@woodburnandwedge.com](mailto:danderson@woodburnandwedge.com)

---

**From:** Dane Anderson  
**Sent:** Monday, March 02, 2020 5:03 PM  
**To:** Michael J. Morrison, Chtd. <[venturelawusa@gmail.com](mailto:venturelawusa@gmail.com)>; Dianne Kelling <[DKelling@woodburnandwedge.com](mailto:DKelling@woodburnandwedge.com)>  
**Subject:** RE: RTC - Iliescu (Virginia Street)

Mike,

Can I have an extension to file a reply? I spoke to Brett Maupin last week. I am hopeful we can work out a resolution. Would your client be willing to pay RTC's fees in having to bring the motion if we withdraw it and agree on a date of the report. I don't have authority to formally offer this but if your clients would agree to that I will discuss it with my client.



**Dane W. Anderson**



Woodburn and Wedge  
6100 Neil Road, Suite 500  
Reno, Nevada 89511-1159  
775.688.3000  
Direct Dial: 775.688.3018  
[danderson@woodburnandwedge.com](mailto:danderson@woodburnandwedge.com)

**From:** Michael J. Morrison, Chtd. <[venturelawusa@gmail.com](mailto:venturelawusa@gmail.com)>

**Sent:** Monday, March 02, 2020 10:45 AM

**To:** Dane Anderson <[DAnderson@woodburnandwedge.com](mailto:DAnderson@woodburnandwedge.com)>; Dianne Kelling <[DKelling@woodburnandwedge.com](mailto:DKelling@woodburnandwedge.com)>

**Subject:** RTC - Iliescu

Hi Dane -

Thank you again for the kind words you related in your message to Christelle.

Having read the motion again, and after speaking with Sonnia, I decided to file an Errata addressing the (a) expert's involvement with the RTC and the Iliescu and (b) time needed for the expert to present his report.

A courtesy copy is attached hereto.

Thanks, Mike

# EXHIBIT 2

# EXHIBIT 2

**Brett Maupin**

---

**From:** Michael J. Morrison, Chtd. <venturelawusa@gmail.com>  
**Sent:** Friday, June 12, 2020 2:55 PM  
**To:** Dane Anderson  
**Cc:** Brett Maupin  
**Subject:** Re: RTC v. Iliescu (S. Virginia)

[WARNING! EXTERNAL MESSAGE]

Hey, Dane -

No surprise, I'm sure.

We'd appreciate an opportunity to discuss with you a reconsideration of the Motion/Order re: our use of witnesses. We sincerely believe the facts before the Judge simply did not support her Order.

In addition, the Order is both (1) unclear/ambiguous and (2) inconsistent with her prior Order re: our witnesses.

Is 10:30 good for you?

On Fri, Jun 12, 2020 at 1:47 PM Dane Anderson <[DAnderson@woodburnandwedge.com](mailto:DAnderson@woodburnandwedge.com)> wrote:

Mike,

I received the voicemail you left yesterday. I am available on Monday late morning or early afternoon for a call. Please let me know what works.

Your voicemail did not indicate what specifically you would like to discuss. Please let me know so I can be prepared. Thanks.

**Dane W. Anderson**



Woodburn and Wedge

6100 Neil Road, Suite 500

Reno, Nevada 89511-1159

775.688.3000

Direct Dial: 775.688.3018

[danderson@woodburnandwedge.com](mailto:danderson@woodburnandwedge.com)

1 **3795**

2 Gordon H. DePaoli, Esq.

3 Nevada Bar No. 195

4 Dane W. Anderson, Esq.

5 Nevada Bar No. 6883

6 **WOODBURN AND WEDGE**

7 6100 Neil Road, Suite 500

8 Reno, Nevada 89511

9 Telephone: 775-688-3000

10 Facsimile: 775-688-3088

11 [gdepaoli@woodburnandwedge.com](mailto:gdepaoli@woodburnandwedge.com)

12 [danderson@woodburnandwedge.com](mailto:danderson@woodburnandwedge.com)

13 Attorneys for Plaintiff, the Regional Transportation

14 Commission of Washoe County

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

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

17 THE REGIONAL TRANSPORTATION  
18 COMMISSION OF WASHOE COUNTY, a  
19 special purpose unit of the government,

20 Plaintiff,

21 v.

22 JOHN ILIESCU, JR. and SONNIA ILIESCU,  
23 Trustees of The John Iliescu, Jr. and Sonnia  
24 Iliescu 1992 Family Trust Agreement, dated  
25 January 24, 1992; The City of Reno, a  
26 political subdivision of the State of Nevada;  
27 and DOES 1 – 20, inclusive,

28 Defendants.

Case No.: CV19-00753

Dept. No.: 1

29 **RTC'S REPLY TO DEFENDANTS' UNTIMELY OPPOSITION TO MOTION IN**  
30 **LIMINE TO PRECLUDE DEFENDANTS FROM PRESENTING A REBUTTAL**  
31 **EXPERT WITNESS**

32 Plaintiff The Regional Transportation Commission of Washoe County ("RTC")  
33 submits the following brief in response to "Defendants' Opposition To Plaintiff's Motion In  
34 Limine" filed on June 18, 2020. That brief specifically states it is filed in opposition to the

1 RTC's motion in limine filed on June 1, 2020, which seeks to preclude Defendants from  
2 presenting a rebuttal expert witness.

3 **I. DEFENDANTS' OPPOSITION BRIEF IS UNTIMELY AND SHOULD BE**  
4 **STRICKEN AS A FUGITIVE DOCUMENT**

5 RTC's Motion in Limine to Preclude Defendants from Presenting a Rebuttal  
6 Expert Witness was filed and served on June 1, 2020. WDCR 12(2) provides the  
7 responding party must file and serve its response within 14 days thereafter. Thus,  
8 Defendants were required to file and serve their answering brief no later than June 15,  
9 2020. No request for extension of time was requested or granted. Defendants failed to  
10 timely file an opposition and RTC submitted its motion on June 16, 2020. Two days later,  
11 Defendants filed an opposition brief without requesting or being granted leave to do so.  
12 Defendants' opposition is untimely and should be stricken as a fugitive document.

13 **II. DEFENDANTS NEVER PROPERLY DISCLOSED A REBUTTAL EXPERT**

14 Even if the Court considers Defendants' untimely opposition, RTC's motion  
15 should be granted. Defendants simply have failed to properly disclose a rebuttal expert.  
16 Under NRCP 16.1, an expert is either an "initial" expert *or* a "rebuttal" expert. The rule  
17 expressly provides that a rebuttal expert cannot testify about matters "that should have  
18 been expected and anticipated" by that party. NRCP 16.1(a)(2)(E)(ii). Such matters must  
19 be supported by a timely disclosed initial expert and report.

20 Mr. Wren prepared an appraisal, the express purpose of which was "to estimate the  
21 market value of the property and make a recommendation of just compensation" for the  
22 easements at issue. See Exhibit 1, attached. These issues are elements of Defendants'  
23 case in chief and clearly were expected and anticipated by Defendants. It is obvious Mr.  
24 Wren's report was not prepared "solely to contradict or rebut" the report of RTC's expert,  
25 Scott Griffin—it was prepared to provide an independent basis of value and just  
26 compensation. Mr. Wren's report does not even mention Scott Griffin or his opinions.  
27 That Mr. Wren's report contains opinions that differ from those of Mr. Griffin does not  
28 convert it to a proper "rebuttal" report. Indeed, NRCP 16.1(a)(2)(E)(ii) expressly

1 precludes Defendants from offering Mr. Wren's "initial" expert opinions in their rebuttal  
2 case.

3 Defendants cite no authority whatsoever for the proposition they ask this Court to  
4 accept—that an appraisal intended to provide opinions on anticipated issues is  
5 automatically converted to a rebuttal report because Defendants failed disclose the report  
6 by the initial expert deadline. Permitting Mr. Wren to testify to opinions of market value  
7 and just compensation in Defendants' rebuttal case would contravene the express  
8 language and intent of NRCPP 16.1(a)(2)(E)(ii). It would be highly prejudicial to RTC, as  
9 RTC would have no opportunity to rebut Mr. Wren's opinions during RTC's case because  
10 Defendants will have no witnesses testify during their case in chief.

11 Mr. Wren should be precluded from testifying as a rebuttal expert, as Defendants  
12 have failed to disclose an expert rebuttal report.

### 13 **III. RESPONSE TO COUNSEL'S MUDSLINGING**

14 Mr. Maupin spends much of the opposition brief attacking me.<sup>1</sup> See Opposition at  
15 7:25-9:16. He accuses me of violating my duty of candor under "the Rules" (7:28), of  
16 being discourteous (7:28), misleading counsel (8:1-3), making misrepresentations to this  
17 Court (8:16), attempting to deny Defendants their "Day in Court" (8:17-19), and playing  
18 "hide-the-ball" in an effort to prevent Defendants from receiving the just compensation to  
19 which they are entitled (9:3-16).

20 These are serious accusations. They are false and constitute an inappropriate and  
21 unfounded attack on my character and professional reputation. The accusations appear to  
22 revolve around 5 issues: (1) whether RTC would agree to withdraw its February 11, 2020  
23 Motion In Limine To Exclude Evidence Pursuant To NRS 50.275, 50.285 and 50.305  
24 based on Defendants' failure to timely disclose an expert witness; (2) RTC filing a Motion  
25 for Summary Judgment; (3) RTC's May 15, 2020 Motion In Limine To Preclude  
26 Defendants From Calling Witnesses And Presenting Documentary Evidence based on  
27 Defendants failure to make any disclosures pursuant to NRCPP 16.1(a)(1), which

28  

---

<sup>1</sup> Defendants also are represented by Michael Morrison, Esq., but his name does not appear in the caption or the signature block. It is unclear whether he joins in this attack.

1 Defendants did not oppose and which the Court granted on June 4, 2020; (4) RTC's June  
2 1, 2020 Motion In Limine To Preclude Defendants From Presenting A Rebuttal Expert  
3 Witness based on the well-supported contention that Anthony Wren was not a proper  
4 rebuttal witness (which is the subject of Defendants' belated Opposition and this reply);  
5 and (5) RTC's June 4, 2020 Motion In Limine To Preclude Evidence Or Argument  
6 Regarding Unasserted Claims, based on Defendants' failure to plead a counterclaim for  
7 inverse condemnation, which Defendants did not oppose and which has been submitted  
8 for decision. Each issue is addressed in turn.

9 **(1) RTC's counsel never agreed to withdraw its February 11, 2020 motion in**  
10 **limine nor did its counsel represent that it would be withdrawn.**

11 On February 26, 2020, I spoke with Mr. Maupin about his becoming involved in  
12 the case and about *possible* resolution of Defendants' failure to timely disclose an expert  
13 witness. I sent a follow up email to Michael Morrison on March 2, 2020 in which I  
14 inquired whether Defendants would be willing to pay RTC's fees associated with the  
15 motion if RTC agreed to withdraw it. The email advises: **"I don't have authority to**  
16 **formally offer this but if your clients would agree to that I will discuss it with my**  
17 **client."** See Exhibit 2, attached (emphasis added). There was no representation that the  
18 motion would be withdrawn. In fact, it was made clear that I had no authority to agree to  
19 withdraw the motion but would discuss the *possibility* of doing so with RTC *if* the  
20 Defendants would agree to pay RTC's fees in bringing the motion.

21 Defendants' counsel never responded with an indication that Defendants would  
22 pay RTC's expenses, so I did not present the idea to RTC. The bold print quote above  
23 directly contradicts Mr. Maupin's statement that I led him to believe the motion would be  
24 withdrawn "contingent only upon Defendant's [sic] disclosure of its expert witness."  
25 Opposition at 7:25-8:3. Rather, the *possibility* of withdrawal of the motion clearly was  
26 contingent upon Defendants first agreeing to pay RTC's expenses associated with the  
27 motion. That contingency never happened.

28 ///



1           There is a difference between basic professional courtesies and waivers of strategic  
2 advantage generated by the opposing party's failure to comply with critical deadlines.  
3 Defendants' request that RTC waive its right to object to Defendants' failure to timely  
4 disclose an expert is not something I could agree to without client consent, and I made  
5 that clear to Mr. Maupin and Mr. Morrison. In turn, they never responded to my idea for a  
6 possible resolution of the issue that was made contingent on my client's approval.

7           The follow up discussion on April 6, 2020 is no different. I again told both Mr.  
8 Maupin and Mr. Morrison that I could not agree to withdraw the motion without my  
9 client's consent. Mr. Maupin acknowledges this. Opposition at 4:14-22. Again, at no  
10 time did Defendants offer to pay RTC's fees associated with the motion. Further, at no  
11 time did I ever tell either Mr. Maupin or Mr. Morrison that the motion would be  
12 withdrawn.

13           On May 7, 2020, I sent an email to both counsel indicating that RTC would not  
14 agree to withdraw the motion or its motion for summary judgment. See Exhibit 3,  
15 attached. I also indicated: "I thought I has [sic] sent you an email in April but I cannot  
16 locate it." Id. I believed I emailed them earlier but was mistaken. There was no bad faith  
17 in the one-month delay. I would also note that neither Mr. Maupin nor Mr. Morrison  
18 contacted me about these issues during that time.

19           **(2) RTC filed its motion for summary judgment in good faith.**

20           As discussed above, Defendants' counsel never responded to my inquiry about  
21 Defendants paying RTC's expenses in exchange for withdrawing the February 11, 2020  
22 motion in limine. Furthermore, I was not required to provide "notice or comment" prior  
23 to filing RTC's motion for summary judgment. Opposition at 3:25. The ball was in their  
24 court. They were the ones that failed to timely disclose an expert and the motion for  
25 summary judgment was proper based on that failure. Defendants opposed the motion and  
26 it is pending.

27   ///

28   ////

1           **(3) RTC's May 15, 2020 motion in limine was accurate and appropriate**  
2           **and was granted without opposition.**

3           On May 15, 2020, RTC filed its Motion In Limine To Preclude Defendants From  
4 Calling Witnesses And Presenting Documentary Evidence. RTC filed this motion  
5 because Defendants failed to serve *any* disclosures required by NRCP 16.1(a)(1). Motion  
6 at 3:1-2. RTC requested that Defendants be precluded from calling any witnesses and  
7 from presenting any documentation but noted the Court may allow Defendants to present  
8 a properly disclosed rebuttal expert witness during their rebuttal case.

9           Mr. Maupin takes great issue with this motion, although he did not bother to  
10 oppose it. He alleges that the contents of the motion are unsupported, undeniably  
11 erroneous and are based on my "bold assertion" and "troubling and highly questionable"  
12 representation to the Court that Mr. Wren's expert report served on April 8, 2020 is not a  
13 "document." Opposition at 8:6-16.

14           It appears Mr. Maupin is confused about the difference between NRCP 16.1(a)(1)  
15 and NRCP 16.1(a)(2). Yes, Defendants served Mr. Wren's expert report on April 8, 2020,  
16 two months after the deadline. However, RTC's motion in limine was based on  
17 Defendants' failure to make *any* disclosures pursuant to NRCP 16.1(a)(1), which requires  
18 all parties to make initial disclosures of documents and witnesses early in the case and to  
19 supplement such disclosures as appropriate prior to close of discovery. It is undisputed  
20 Defendants never made these disclosures, despite agreeing in the Joint Case Conference  
21 Report to do so no later than August 19, 2019. On September 18, 2019, I sent Mr.  
22 Morrison an email inquiring about the status of those disclosures. See Exhibit 4,  
23 attached. I never received a response and Defendants never made any disclosures  
24 pursuant to NRCP 16.1(a)(1).

25           I also never represented to Mr. Maupin or Mr. Morrison that I would withdraw this  
26 motion, nor did they make such a request. That they were "surprised" that the Court  
27 granted the motion after they did not oppose is nonsense.

28 ///

1           There is nothing erroneous or misleading about this motion. What is troubling and  
2 highly questionable is Defendants' complete failure to comply with NRCP 16.1(a)(1) and  
3 their failure to respond to the motion.

4           **(4)     RTC's June 1, 2020 was filed in good faith.**

5           RTC filed its Motion In Limine To Preclude Defendants From Presenting A  
6 Rebuttal Expert Witness because Defendants had not timely disclosed a rebuttal expert or  
7 report, despite being given an extension of time to do so. The bases of that motion are set  
8 forth in detail in that motion and will not be repeated here.

9           Mr. Maupin claims "Defendant's counsel" called me on June 11, 2020 "to discuss  
10 both the June Order and the pending Motions in Limine." Opposition at 6:18-19. It is  
11 true that Mr. Morrison left me a voice message but he did not specify what he wished to  
12 discuss. So I sent him an email inquiring. See Exhibit 5, attached. He responded that he  
13 wanted to discuss "reconsideration" of the Court's June 4 order granting RTC's May 15,  
14 2020 motion in limine. Id. He made no mention of RTC's pending June 1 or June 4  
15 motions in limine. Id. I did not respond because I disagreed that "reconsideration" of the  
16 June 4 order would be appropriate. I did not hear further from Mr. Maupin or Mr.  
17 Morrison regarding reconsideration of the Court's June 4, order. More importantly,  
18 neither Mr. Maupin nor Mr. Morrison contacted me about RTC's June 1 motion in limine  
19 prior to its submittal, whether to request an extension of time to respond or otherwise.

20           Contrary to Mr. Maupin's accusations, RTC's June 1 motion in limine is not a  
21 "doubled down" attempt to play "hide-the-ball" in an effort to deny Defendants their "Day  
22 in Court." Opposition at 8:17-9:16. RTC agrees Defendants are entitled to just  
23 compensation, but that does not permit Defendants to constantly ignore the Nevada Rules  
24 of Civil Procedure, this Court's Scheduling Order and our local rules regarding deadlines  
25 to file responses to motions. What Mr. Maupin calls an "intensified" effort since April  
26 2020 I call "preparing for trial and filing appropriate motions in limine based on the  
27 circumstances of this case." RTC has offered what it believes is just compensation. It is  
28 Defendants' burden to demonstrate what they believe is just compensation. That they

1 have not taken the appropriate steps meet their burden of proof is not due to any bad faith  
2 on the part of RTC or its counsel.

3 **(5) RTC's June 4, 2020 motion in limine is proper because Defendants**  
4 **failed to assert a counterclaim for inverse condemnation yet seek to**  
5 **offer expert opinion based on that theory.**

6 On June 4, 2020, RTC filed its Motion In Limine To Preclude Evidence Or  
7 Argument Regarding Unasserted Claims. It is undisputed that Defendants' purported  
8 "rebuttal" expert intends to testify that RTC should pay Defendants a substantial amount  
9 for property that RTC is not taking. Defendants seek compensation for the elimination of  
10 a driveway cup that is located within RTC's existing right of way. This is a claim for  
11 inverse condemnation that Defendants failed to assert as a counterclaim. The deadline to  
12 amend the pleadings was over 4 months ago.

13 While Mr. Maupin may perceive this motion as "very aggressive" or "doubling  
14 down," it is simply an attempt to limit the evidence to the claims framed by the pleadings  
15 and to prevent the jury from hearing evidence about a claim Defendants failed to assert.  
16 One would think that if Mr. Maupin believed this motion was inappropriate or lacked  
17 merit, he would have filed an opposition. He did not.

#### 18 Summary

19 Mr. Maupin's attacks on me are inappropriate and inaccurate. Contrary to what he  
20 attempts to portray, Defendants are in their current position because of the failures of their  
21 counsel in this case. It is my responsibility to zealously and competently represent RTC  
22 in this case consistent with the law, and I have done so.

#### 23 **IV. CONCLUSION**

24 Defendants' untimely opposition should be stricken and RTC's motion to preclude  
25 Mr. Wren from testifying as a rebuttal expert should be granted. Mr. Wren's report is  
26 clearly not a rebuttal report. Defendants never served a true rebuttal expert report, and  
27 therefore should not be allowed to call a rebuttal expert witness at trial. The character

1 attacks on RTC's counsel are inaccurate and have no bearing on the issue presented by  
2 RTC's instant motion.

3 **Affirmation pursuant to NRS 239B.030**

4 The undersigned does hereby affirm that the preceding document does not contain  
5 the personal information of any person.

6 DATED: June 24, 2020.

7 WOODBURN AND WEDGE

8  
9 By: /s/ Dane W. Anderson  
10 Gordon H. DePaoli, Esq.  
11 Nevada Bar No. 195  
12 Dane W. Anderson, Esq.  
13 Nevada Bar No. 6883  
14 Attorneys for Plaintiff, the Regional  
15 Transportation Commission of Washoe County  
16  
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**CERTIFICATE OF SERVICE**

I hereby certify that I am an employee of Woodburn and Wedge and that on this date, I caused to be sent via electronic delivery through the Court's E-flex system a true and correct copy of the **RTC'S REPLY TO DEFENDANTS' UNTIMELY OPPOSITION TO MOTION IN LIMINE TO PRECLUDE DEFENDANTS FROM PRESENTING A REBUTTAL EXPERT WITNESS** to:

Michael James Morrison, Esq. 1495 Ridgeview Drive, Suite 220 Reno, NV 89519 <a href="mailto:venturelawusa@gmail.com">venturelawusa@gmail.com</a>	<i>Attorneys for Defendants John Iliescu, Jr. and Sonnia Iliescu, Trustees of The John Iliescu, Jr. and Sonnia Iliescu 1992 Family Trust Agreement, Dated January 24, 1992</i>
Brett W. Maupin, Esq. Maupin, Cox & LeGoy 4785 Caughlin Parkway P.O. Box 30000 Reno, NV 89520 <a href="mailto:bmaupin@mcllawfirm.com">bmaupin@mcllawfirm.com</a>	<i>Attorneys for Defendant John Iliescu, Jr. and Sonnia Iliescu</i>

DATED: June 24, 2020.

/s/ Dianne M. Kelling  
Employee of Woodburn and Wedge

**EXHIBIT INDEX**

<b>EXHIBIT NO.</b>	<b>DESCRIPTION OF EXHIBIT</b>	<b>NO. OF PAGES (Including exhibit sheet)</b>
1	Appraisal Anthony J. Wren, dated March 23, 2020	3
2	Email from Dane Anderson to Michael J. Morrison and Dianne Kelling, dated March 2, 2020	3
3	Email from Dane Anderson to Michael J. Morrison and Brett Maupin, dated May 7, 2020	2
4	Email from Dane Anderson to Michael J. Morrison, dated September 18, 2019	2
5	Emails between Dane Anderson and Michael J. Morrison and Brett Maupin, dated June 12, 2020	3

# EXHIBIT 1

# EXHIBIT 1



ANTHONY J. WREN AND ASSOCIATES

P.O. BOX 20867  
RENO, NEVADA 89515  
(775) 329-4221  
FAX (775) 329-5382

TONY WREN, MAI, SRA  
CERTIFIED GENERAL APPRAISER

SUSAN WREN  
CERTIFIED RESIDENTIAL APPRAISER

March 23, 2020

Brett W. Maupin, Esq.  
Maupin, Cox & LeGoy  
4785 Caughlin Parkway  
Reno, NV 89519

RE:

APN 014-063-07  
0 S. Virginia Street  
Reno, Washoe County, Nevada

Dear Mr. Maupin:

At your request, I have completed an appraisal of and prepared the following appraisal report for the property referenced above. The purpose of my appraisal is to estimate the market value of the property and make a recommendation of compensation for the acquisition of one temporary construction easement. The temporary construction easement is located on the east boundary of APN 014-063-07 and contains 309± sf. Though there is no permanent take indicated, I have been informed that the current access to this site from S. Virginia Street will be eliminated in the after condition. This will be analyzed in the after appraisal valuation section of this report. The site contains a total of 6,500± sf (50' x 130'). The property is owned by John Iliescu, Jr. And Sonnia Iliescu 1992 Family Trust Agreement UTD January 24, 1992.

I have performed no services as an appraiser regarding the property that is the subject of this report, within a three-year period immediately preceding acceptance of this assignment.

The report is intended to conform with Section 2-2(a) of the Uniform Standards of Appraisal Practice and is considered to be an appraisal report.

The subject property is an unimproved commercial site. After inspection of the property and a review of the proposed acquisitions for the temporary construction easement, it was determined that the acquisition does not affect any improvements. Therefore, the appraisal will be made as if the property were vacant, and the valuation "as is" will be as vacant land only.

The temporary construction easement is located in the east boundary of the site.

The reader is referred to various maps throughout this report to better visualize the location of the easements.

Based on my inspection of the subject and a thorough research of the market, my conclusions and recommendations of compensation are as follows:

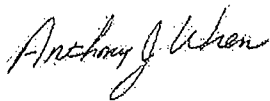
#### SUMMARY OF VALUE CONCLUSIONS

(Accounting tabulation not indicative of appraisal method employed)

A.	Value of the whole, before the take:	\$357,500
B.	Value of the part taken, as part of the whole: No take, accept for access from S. Virginia Street	\$0.00
	Total Value	\$0.00
C.	Value of the Remainder as part of the whole (A - B)	\$357,500
D.	Value of the remainder, after the take:	\$195,000
E.	Damages (A - D) Cost to cure damages	-\$162,500 \$0.00
F.	Other – Temporary Easement	\$5,099
G.	Total Value of the Part Taken (B + E + F)	\$167,599

The following is an appraisal report. It has been prepared in conformance with the reporting requirements of the Appraisal Foundation as set forth in the Uniform Standards of Professional Appraisal Practice (USPAP), as well as the Supplemental Standards required by the Appraisal Institute. My conclusions and the data and analysis upon which they are based are summarized in the attached appraisal report.

Respectfully Submitted,



Anthony J. Wren, MAI, SRA  
Certified General Appraiser #A.0000090-CG

# EXHIBIT 2

# EXHIBIT 2

## Dane Anderson

---

**From:** Dane Anderson  
**Sent:** Monday, March 02, 2020 5:03 PM  
**To:** Michael J. Morrison, Chtd.; Dianne Kelling  
**Subject:** RE: RTC - Iliescu (Virginia Street)

Mike,

Can I have an extension to file a reply? I spoke to Brett Maupin last week. I am hopeful we can work out a resolution. Would your client be willing to pay RTC's fees in having to bring the motion if we withdraw it and agree on a date of the report. I don't have authority to formally offer this but if your clients would agree to that I will discuss it with my client.

## Dane W. Anderson



Woodburn and Wedge  
6100 Neil Road, Suite 500  
Reno, Nevada 89511-1159  
775.688.3000  
Direct Dial: 775.688.3018  
[danderson@woodburnandwedge.com](mailto:danderson@woodburnandwedge.com)

**From:** Michael J. Morrison, Chtd. <venturelawusa@gmail.com>  
**Sent:** Monday, March 02, 2020 10:45 AM  
**To:** Dane Anderson <DAnderson@woodburnandwedge.com>; Dianne Kelling <DKelling@woodburnandwedge.com>  
**Subject:** RTC - Iliescu

Hi Dane -

Thank you again for the kind words you related in your message to Christelle.

Having read the motion again, and after speaking with Sonnia, I decided to file an Errata addressing the (a) expert's involvement with the RTC and the Iliescus and (b) time needed for the expert to present his report.

A courtesy copy is attached hereto.

Thanks, Mike

# EXHIBIT 3

# EXHIBIT 3

## Dane Anderson

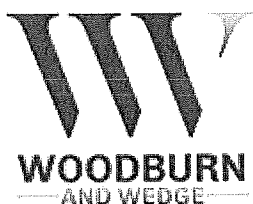
---

**From:** Dane Anderson  
**Sent:** Thursday, May 07, 2020 1:23 PM  
**To:** Michael J. Morrison, Chtd.; Brett Maupin  
**Subject:** RTC v. Iliescu (South Virginia)

Gentlemen

I hope you and your families are well. I thought I has sent you an email in April but I cannot locate it. My client will not agree to withdraw the pending motions. Therefore, I must ask you to file your opposition to the motion for summary judgment within 14 days.

### Dane W. Anderson



Woodburn and Wedge  
6100 Neil Road, Suite 500  
Reno, Nevada 89511-1159  
775.688.3000  
Direct Dial: 775.688.3018  
[danderson@woodburnandwedge.com](mailto:danderson@woodburnandwedge.com)

# EXHIBIT 4

# EXHIBIT 4



## Dane Anderson

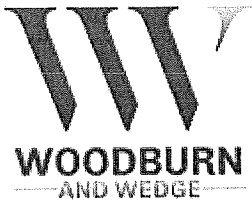
---

**From:** Dane Anderson  
**Sent:** Wednesday, September 18, 2019 8:43 PM  
**To:** Michael J. Morrison, Chtd.  
**Subject:** RTC v. Iliescu (South Virginia)

Mike,

In reviewing my records, I do not see that the Iliescus have served their initial 16.1 disclosures. Per the joint case conference report, they were due on August 19. Can you please let me know when we can expect those disclosures? Thank you.

## Dane W. Anderson



Woodburn and Wedge  
6100 Neil Road, Suite 500  
Reno, Nevada 89511-1159  
775.688.3000  
Direct Dial: 775.688.3018  
[danderson@woodburnandwedge.com](mailto:danderson@woodburnandwedge.com)

# EXHIBIT 5

# EXHIBIT 5

## Dane Anderson

---

**From:** Michael J. Morrison, Chtd. <venturelawusa@gmail.com>  
**Sent:** Friday, June 12, 2020 2:55 PM  
**To:** Dane Anderson  
**Cc:** Brett Maupin  
**Subject:** Re: RTC v. Iliescu (S. Virginia)

Hey, Dane -

No surprise, I'm sure.

We'd appreciate an opportunity to discuss with you a reconsideration of the Motion/Order re: our use of witnesses. We sincerely believe the facts before the Judge simply did not support her Order.

In addition, the Order is both (1) unclear/ambiguous and (2) inconsistent with her prior Order re: our witnesses.

Is 10:30 good for you?

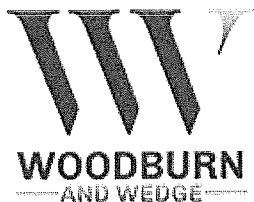
On Fri, Jun 12, 2020 at 1:47 PM Dane Anderson <[DAnderson@woodburnandwedge.com](mailto:DAnderson@woodburnandwedge.com)> wrote:

Mike,

I received the voicemail you left yesterday. I am available on Monday late morning or early afternoon for a call. Please let me know what works.

Your voicemail did not indicate what specifically you would like to discuss. Please let me know so I can be prepared. Thanks.

**Dane W. Anderson**



Woodburn and Wedge

6100 Neil Road, Suite 500

Reno, Nevada 89511-1159

775.688.3000

Direct Dial: 775.688.3018

[danderson@woodburnandwedge.com](mailto:danderson@woodburnandwedge.com)

3060

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

THE REGIONAL TRANSPORTATION  
COMMISSION OF WASHOE COUNTY, a  
special purpose unit of government,

Case No. CV19-00753

Plaintiff,

Dept. No. 1

vs.

JOHN ILIESCU, JR., and SONNIA ILIESCU,  
Trustees of The John Iliescu, Jr. and Sonnia  
Iliescu 1992 Family Trust Agreement, dated  
January 24, 1992; The City of Reno, a political  
subdivision of the State of Nevada; and DOES 1  
-20, inclusive,

Defendants

**ORDER GRANTING PLAINTIFF'S MOTION IN LIMINE TO PRECLUDE EVIDENCE  
OR ARGUMENT REGARDING UNASSERTED CLAIMS**

Currently before the Court is Plaintiff The Regional Transportation Commission of Washoe County's ("RTC") *Motion in Limine to Preclude Evidence or Argument Regarding Unasserted Claims* filed June 4, 2020 and submitted to the Court for consideration on June 22, 2020. D.C.R. 13(3) provides "[f]ailure of the opposing party to serve and file his written opposition may be construed as an admission that the motion is meritorious and a consent to granting the same." Defendants did not file a response to Plaintiff's Motion. Accordingly, this Court finds good cause to grant Plaintiff's Motion.

Based on the foregoing and good cause appearing,

1 IT IS HEREBY ORDERED that Plaintiff's *Motion in Limine to Preclude Evidence or*  
2 *Argument Regarding Unasserted Claims* is GRANTED.

3 IT IS SO ORDERED.

4 DATED this 26<sup>th</sup> day of June, 2020.

5  
6   
7 \_\_\_\_\_  
8 KATHLEEN DRAKULICH  
9 DISTRICT JUDGE  
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1 **CERTIFICATE OF SERVICE**

2 CASE NO. CV19-00753

3 I certify that I am an employee of the SECOND JUDICIAL DISTRICT COURT of the  
4 STATE OF NEVADA, COUNTY OF WASHOE; that on the 26<sup>th</sup> day of June, 2020, I electronically  
5 filed the **ORDER GRANTING PLAINTIFF'S MOTION IN LIMINE TO PRECLUDE**  
6 **EVIDENCE OR ARGUMENT REGARDING UNASSERTED CLAIMS** with the Clerk of the  
7 Court by using the ECF system.

8 I further certify that I transmitted a true and correct copy of the foregoing document by the  
9 method(s) noted below:

10 **Electronically filed with the Clerk of the Court by using the ECF system which will send a notice**  
11 **of electronic filing to the following:**

12 SUSAN ROTHE, ESQ. for CITY OF RENO

13 BRETT MAUPIN, ESQ. for JOHN ILIESCU & SONNIA ILIESCU, TRUSTEES

14 MICHAEL MORRISON, ESQ. for JOHN ILIESCU & SONNIA ILIESCU, TRUSTEES

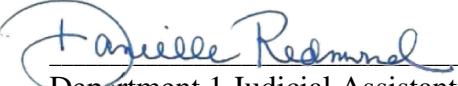
15 GORDON DEPAOLI, ESQ. for THE REGIONAL TRANSPORTATION COMMISSION  
16 OF WASHOE COUNTY

17 DANE ANDERSON, ESQ. for THE REGIONAL TRANSPORTATION COMMISSION  
18 OF WASHOE COUNTY

19 BRONAGH KELLY, ESQ. for THE REGIONAL TRANSPORTATION COMMISSION  
20 OF WASHOE COUNTY

21 **Deposited to the Second Judicial District Court mailing system in a sealed envelope for postage**  
22 **and mailing by Washoe County using the United States Postal Service in Reno, Nevada:**

23 [NONE]

24   
25 Department 1 Judicial Assistant  
26  
27  
28

3060

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

THE REGIONAL TRANSPORTATION  
COMMISSION OF WASHOE COUNTY, a  
special purpose unit of the government,

CASE NO.: CV19-00753

Plaintiff,

DEPT. NO.: 1

vs.

JOHN ILIESCU, JR. and SONNIA ILIESCU,  
Trustees of The John Iliescu, Jr. and Sonnia Iliescu  
1992 Family Trust Agreement, dated January 24,  
1992; The City of Reno, a political subdivision of  
the State of Nevada; and DOES 1 – 20, inclusive,

Defendants.

**ORDER GRANTING MOTION FOR SUMMARY JUDGMENT**

Currently before the Court is the Regional Transportation Commission of Washoe County's ("Plaintiff") *Motion for Summary Judgment and Declaration of Scott Q. Griffin in Support of Motion for Summary Judgment* ("Summary Judgment Motion") filed March 31, 2020. On May 22, 2020, Defendants John Iliescu, Jr. and Sonnia Iliescu, Trustees of The John Iliescu Jr. and Sonnia Iliescu 1992 Family Trust Agreement filed an *Opposition to Plaintiff's Motion for Summary Judgment* ("Summary Judgment Opposition"). On May 28, 2020, Plaintiff filed a *Reply in Support of Motion for Summary Judgment* ("Summary Judgment Reply") and submitted the Summary Judgment Motion to the Court for consideration.

///



1       **I. Background**

2       On July 25, 2019, this Court issued its *Scheduling Order* which set the initial expert  
3 disclosure deadline as February 7, 2020 and the rebuttal expert disclosure deadline as March 9, 2020.  
4 *Scheduling Order* at 2:4–8. The *Scheduling Order* noted that the requirement that experts submit  
5 written reports had not been waived. *Id.* at 2:9. The *Scheduling Order* further noted that a  
6 “continuance of the trial date does not modify, alter, change or continue the discovery schedule  
7 unless specifically agreed to by the parties, in writing, and ordered by the Court.” *Id.* at 2:27–3:1.

8       On February 11, 2020, Plaintiff filed its *Motion in Limine to Exclude Evidence Pursuant to*  
9 *NRS 50.275, 50.285 and 50.305* that alleged Defendants had failed to disclose a rebuttal expert.  
10 Plaintiff filed a *Supplemental Reply in Support of Motion in Limine to Exclude Evidence Pursuant*  
11 *to NRS 50.275, 50.285 and 50.305* on March 27, 2020 that confirmed Defendants had still failed to  
12 disclose an expert witness.

13       On May 14, 2020, this Court issued its *Order Granting in Part and Denying in Part Motion*  
14 *in Limine to Exclude Evidence Pursuant to NRS 50.275, 50.285 and 50.305* (“May 14 Order”).  
15 Among other things, the Order stated:

16               Defendants will be barred from disclosing an initial expert in this case . . .  
17               This Court will extend the discovery deadline and the deadline to make  
18               rebuttal expert disclosures pursuant to NRCP 16.1(a)(2) to May 22, 2020.  
19               This extension is for the limited purpose of allowing Defendants to disclose  
20               a rebuttal expert whose testimony will be limited to rebutting the expert  
21               testimony filed by Plaintiff.

22       Order at 5:21–6:2.

23       On May 15, 2020, Plaintiff filed a *Motion in Limine to Preclude Defendants From Calling*  
24 *Witnesses and Presenting Documentary Evidence* (“Motion to Preclude”). In the Motion to  
25 Preclude, Plaintiff states that on July 23, 2019, the parties filed a Joint Case Conference report  
26 agreeing that they would make their initial disclosure of witnesses and documents pursuant to NRCP  
27 16.1(a)(1). Motion to Preclude at 2:19–21. Defendants never served any disclosures. *Id.* at 2:21–  
28 22. Plaintiff provides that the May 8, 2020 deadline to complete discovery was extended by the  
Court to May 22, 2020, but only for the limited purpose of allowing Defendants to disclose a rebuttal  
expert. *Id.* at 22–25. Plaintiff stated that for all other purposes, discovery was closed, Defendants

1 had made no disclosures required by NRCP 16.1(a)(1) and should be precluded from calling any  
2 witnesses in their case. *Id.* at 3:1-3. Defendants failed to respond to the Motion to Preclude and  
3 Plaintiff submitted this motion on June 1, 2020. This Court entered an *Order Granting Motion in*  
4 *Limine to Preclude Defendants From Calling Witnesses and Presenting Documentary Evidence* on  
5 June 4, 2020 (“June 4 Order”) that precludes Defendants from “from calling any witnesses in their  
6 case in chief and from presenting any other evidence at trial. . . .” Motion to Preclude at 4:6–7.

7 On May 22, 2020, Defendants filed a *Notice* indicating that its expert witness would be Mr.  
8 Tony Wren, MAI, SRA, Certified General Appraiser. Notice at 1:24–28. Exhibit 1 to the Notice  
9 indicates Mr. Wren’s report was emailed to Defendants on April 8, 2020, sixty-one days after the  
10 initial expert disclosure deadline. Notice at Ex. 1. Exhibit 1 to the Notice also includes a statement  
11 by defense counsel on April 8, 2020 that states “I am hesitant to file anything with the Court on this  
12 while the motion is pending but please let me know if you want us to file something on this.” *Id.*

13 On June 1, 2020, Plaintiff filed a *Motion in Limine to Preclude Defendants from Presenting*  
14 *a Rebuttal Expert Witness* (“Rebuttal Expert Motion”). Plaintiff waited the requisite fourteen days  
15 as required by WDCR 12(2) and then submitted it to the Court for consideration on June 16, 2020.  
16 On June 18, 2020, or three days after the fourteen-day deadline imposed by WDCR 12(2),  
17 Defendants filed an *Opposition to Plaintiff’s Motion in Limine*.<sup>1</sup> On June 24, 2020, Plaintiff filed a  
18 *Reply to Defendants’ Untimely Opposition to Motion in Limine to Preclude Defendants from*  
19 *Presenting a Rebuttal Expert Witness*.

## 20 **II. Relevant Legal Authority**

### 21 **a. Summary Judgment**

22 NRCP 56(c) provides, “[summary judgment] shall be rendered if the pleadings, depositions,  
23 answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there  
24 is no genuine issue as to any material fact and that the moving party is entitled to judgment as a  
25 matter of law.” A genuine issue of material fact exists when the evidence is such that a rational trier  
26 of fact could return a verdict for the nonmoving party. *Woods v. Safeway*, 121 Nev. 724, 731, 121

27 <sup>1</sup> The title does not indicate which Motion in Limine the Motion is regarding but the conclusion of the Motion  
28 requests an order denying Plaintiff’s June 1, 2020 Motion in Limine and this was the only motion filed that  
day. Opp. at 9:19–20.

1 P.3d 1026, 1031 (2005). When deciding whether summary judgment is appropriate, the court must  
2 view all evidence in the light most favorable to the non-moving party and accept all properly  
3 supported evidence, factual allegations, and reasonable inferences favorable to the non-moving party  
4 as true. *C. Nicholas Pereos, Ltd. v. Bank of Am.*, 131 Nev. Adv. Op. 44, 352 P.3d 1133, 1136 (2015);  
5 *NGA No. 2 Ltd. Liab. Co. v. Rains*, 113 Nev. 1151, 1157, 946 P.2d 163, 167 (1997).

6 The Nevada Supreme Court has adopted the federal approach outlined in *Celotex Corp. v.*  
7 *Catrett*, 477 U.S. 317 (1986), with respect to burdens of proof and persuasion in summary judgment  
8 proceedings. See *Cuzze v. Univ. & Cmty. College Sys. of Nev.*, 123 Nev. 598, 602, 172 P.3d 131,  
9 134 (2007). The party moving for summary judgment must meet his or her initial burden of  
10 production and show there is no genuine issue of material fact. *Id.* “The manner in which each party  
11 may satisfy its burden of production depends on which party will bear the burden of persuasion on  
12 the challenged claim at trial.” *Id.* When the moving party bears the burden at trial, that party must  
13 present evidence that would entitle it to judgment as a matter of law absent contrary evidence. *Id.*  
14 If the burden of persuasion at trial will rest on the nonmoving party, “the party moving for summary  
15 judgment may satisfy the burden of production by either (1) submitting evidence that negates an  
16 essential element of the nonmoving party’s claim, or (2) pointing out that there is an absence of  
17 evidence to support the nonmoving party’s case.” *Id.* After the moving party meets his or her initial  
18 burden of production, the opposing party “must transcend the pleadings and by affidavit or other  
19 admissible evidence, introduce specific facts that show a genuine issue of material fact.” *Id.*

20 When deciding a motion for summary judgment, “a district court cannot make findings  
21 concerning the credibility of witnesses or weight of evidence.” *Sawyer v. Sugarless Shops Inc.*, 106  
22 Nev. 265, 267–68, 792 P.2d 14, 15–16 (1990). Moreover, if documentary evidence is required, it  
23 “must be construed in the light most favorable to the non-moving party. All of the non-movant’s  
24 statements must be accepted as true and a district court may not pass on the credibility of affidavits.”  
25 *Id.* (internal citation omitted)).

#### 26 **b. Rebuttal Expert Witness**

27 In Nevada, once the issues of public use and necessity are established by the condemning  
28 agency, the property owner has the burden of proving, by a preponderance of the evidence, the value

1 of the land taken and any severance damages. *State v. Pinson*, 66 Nev. 227, 236-238, 207 P.2d 1105,  
2 1109–10 (1949); *City of Las Vegas v. Bustos*, 119 Nev. 360, 362, 75 P.3d 351, 352 (2003); *Pappas*  
3 *v. State*, 104 Nev. 572, 575, 763 P.2d 348, 350 (1988).

4 In dictating when a party must make disclosure of expert witnesses, NRCP  
5 16.1(a)(2)(E)(i)(b) provides that “if the evidence is intended solely to contradict or rebut evidence  
6 on the same subject matter identified by another party under Rule 16.1(a)(2)(B), (C), or (D), within  
7 30 days after the other party’s disclosure.” However, sub-section (ii) states that the thirty-day  
8 deadline “does not apply to any party’s witness whose purpose is to contradict a portion of another  
9 party’s case in chief that should have been expected and anticipated by the disclosing party, or to  
10 present any opinions outside of the scope of another party’s disclosure.” NRCP 16.1(a)(2)(E)(ii).

11 The contours of this rule were discussed at length in *R&O Const. Co. v. Rox Pro Intern.*  
12 *Group Ltd.*, No. 2:09–CV–01749–LRH–LRL, 2011 WL 2923703, \*2 (D. Nev. July 18, 2011). First,  
13 rebuttal expert reports are not the proper place to present new arguments. *Id.* (citations omitted).  
14 Second, if the purpose of the expert testimony in question is to contradict an expected or anticipated  
15 portion of the other party’s case in chief, the witness is not a rebuttal witness or anything analogous  
16 to one. *Id.* (citations omitted). Third, rebuttal testimony “is limited to new unforeseen facts brought  
17 out in the other side’s case.” *Id.* (internal quotation marks omitted).

### 18 **III. Analysis**

19 The parties agree the only remaining fact in dispute in this case is the amount of just  
20 compensation due to Defendants for Plaintiff’s acquisition of the property and any severance  
21 damages. Summ. J. Mot. at 2:10–17; Summ. J. Opp. at 2:13–17. Plaintiff argues it timely filed the  
22 expert opinion of Mr. Scott Griffin who opined that the value of just compensation due to Defendants  
23 is \$15,955. Summ. J. Mot. at 2:19–24. Plaintiff argues because Defendants failed to timely disclose  
24 any experts to satisfy their burden of proving the value of the land taken or the existence and amount  
25 of any severance damages, summary judgment is proper. *Id.* at 3:20–21. Plaintiff contends that  
26 because Defendants cannot satisfy their burden, this Court should enter summary judgment in favor  
27 of Plaintiff and find that the amount of just compensation due to Defendants is \$15,955. *Id.* at 3:22–  
28 4:3.

1 Defendants respond<sup>2</sup> that their disclosure of expert witness and related reports were not  
2 timely filed due to Mr. Morrison's health conditions and related medical tests and treatments. Summ.  
3 J. Opp. at 2:20–23. Defendants assert at the time expert disclosures were due, Mr. Morrison was  
4 Defendants' sole lawyer, but Defendants engaged Mr. Maupin to represent them on February 25,  
5 2020. *Id.* at 2:24–27. Defendants assert that while the parties were engaged in settlement  
6 discussions, Plaintiff filed the Summary Judgment Motion. *Id.* at 3:4–22. Defendants represent that  
7 in a phone conversation, counsel for the Plaintiff had mentioned Mr. Maupin's diligent efforts to  
8 obtain and perform an appraisal and expert report. *Id.* at 3:24–4:6. Defendants state that counsel for  
9 the Plaintiff agreed that the *Motion in Limine to Exclude Evidence Pursuant to NRS 50.275, 50.285*  
10 *and 50.305* should be withdrawn but that the Plaintiff would have the final decision. *Id.* at 4:7–15.  
11 Ultimately, Plaintiff decided not to withdraw the motion. *Id.* at 4:18–19. Defendants maintain that  
12 this Court's May 14 Order that permits them to call a rebuttal expert witness is sufficient to create a  
13 general issue of material fact. *Id.* at 4:21–5:2.

14 Defendants argue that because this Court had not issued the May 14 Order when the  
15 Summary Judgment Motion was filed, it was premature and that Plaintiff's counsel's statements  
16 adversely impacted Defendants' ability to disclose an expert witness. *Id.* at 6:4–13. Defendants  
17 contend that by granting Defendants the ability to call a rebuttal expert witness in the May 14 Order,  
18 this Court essentially made the Summary Judgment Motion moot in its current form. *Id.* at 6:19–24.  
19 Defendants state that by disclosing Mr. Wren on April 8, 2020 and disclosing his appraisal report  
20 that directly rebuts Plaintiff's expert's testimony, that creates a genuine dispute of material fact as  
21 to the proper amount of just compensation. *Id.* at 7:3–10.

22 Plaintiff replies that there is no requirement that it file a motion in limine and filing this  
23 Summary Judgment Motion is proper and timely. Summ. J. Reply at 2:6–13. Plaintiff contends this  
24 Court's May 14 Order makes this Summary Judgment Motion ripe because Defendants are unable  
25 to meet their burden of proof using a rebuttal expert and thus Plaintiff is entitled to judgment as a  
26 matter of law. *Id.* at 2:14–18. Plaintiff contends Mr. Wren's appraisals are not rebuttal reports as

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27 <sup>2</sup> While Plaintiff filed the Summary Judgment Motion on March 31, 2020, Defendants did not file the  
28 Summary Judgment Opposition until May 22, 2020, after this Court's *Order Granting in Part and Denying*  
*in Part Motion in Limine to Exclude Evidence Pursuant to NRS 50.275, 50.285 and 50.305.*

1 they do not mention Mr. Griffin or his report, do not contradict or rebut Mr. Griffin's report, and are  
2 presented for the purpose of estimating the market value and just compensation. *Id.* at 3:3–7.  
3 Plaintiff argues a rebuttal expert cannot be used to meet a party's burden of proof in their case in  
4 chief. *Id.* at 3:11–12. Plaintiff states that NRCP 16.1(a)(2)(E)(ii) makes clear that if the party's  
5 expert's purpose is to contradict a matter that should have been expected or anticipated the expert  
6 disclosure deadline does not apply. *Id.* at 3:13–20.

7 Plaintiff contends that Mr. Wren's report is based on the elimination of access to South  
8 Virginia Street on parcel APN 014-063-07, but that access is entirely within the right of way meaning  
9 that the alleged taking is not part of this condemnation proceeding and should have been the subject  
10 of an inverse condemnation counterclaim that Defendants failed to assert in this case. *Id.* at 3:21–  
11 4:1. Plaintiff points out the deadline to amend pleadings in this case has passed and Defendants  
12 cannot produce any evidence supporting a claim clearly beyond the scope of Plaintiff's alleged  
13 taking. *Id.* at 4:1–5. Plaintiff adds that statements of Plaintiff's counsel are irrelevant and did not  
14 prevent Defendants from complying with the expert disclosure deadline in this case, or any of the  
15 other deadlines Defendants have failed to comply with in this case. *Id.* at 4:14–28. Plaintiff states  
16 that while Defendants demanded a jury trial, they have not identified any witnesses or produced any  
17 documents that would be admissible to establish just compensation and summary judgment is proper  
18 for the \$15,955 figure suggested in Mr. Griffin's report. *Id.* at 5:1–6.

19 Having reviewed the pleadings on file and the facts and legal support set forth therein, this  
20 Court finds good cause to grant the Summary Judgment Motion. Defendants bear the burden to  
21 prove the value of the land taken and any severance damages. *Bustos*, 119 Nev. at 362. Defendants  
22 are unable to satisfy this burden relying upon a rebuttal expert. This Court does not agree with  
23 Defendants that the Court's May 14 Order made the Summary Judgment Motion moot in its current  
24 form. The logical extension of this assertion results in impermissibly shifting the burden to Plaintiff  
25 to establish the value of the land taken and any severance damages. Plaintiff's hypothetical  
26 illustrates this point: at trial, the jury would hear opening statements, Defendants who bear the  
27 burden of proof would have no witnesses, and Plaintiff would stand up and move for judgment as a  
28 matter of law. Summ. J. Reply at 3:28.

1 Despite this Court's May 14 Order, Defendants nonetheless failed to disclose a proper  
2 rebuttal expert. The *Notice* filed by Defendants on May 22, 2020 attempts to repackage Mr. Wren's  
3 initial expert report as a rebuttal expert report, but the actual report attached to the Summary  
4 Judgment Opposition is very clearly an initial expert report as it doesn't mention Plaintiff's expert  
5 report. Summ. J. Opp. at Ex. 2. Further, Mr. Wren's report is not a proper rebuttal expert report as  
6 it presents opinions outside the scope of Plaintiff's expert report and provides Mr. Wren's valuation  
7 of the land and proposes just compensation, which Defendants not only should have expected or  
8 anticipated but is also a fact they bear the burden of proving; and contains no facts that are new or  
9 unforeseen such that they would be proper subject matter for a rebuttal expert report.<sup>3</sup> NRCP  
10 16.1(a)(2)(E)(ii); *R&O Const. Co.*, 2011 WL 2923703 at \*2. Further, this Court is persuaded by  
11 Plaintiff's argument that Mr. Wren's evaluation is based upon the loss of access to South Virginia  
12 Street and to claim damages on that basis Defendants would have needed to assert a counterclaim  
13 for inverse condemnation. Defendants have asserted no such counterclaim and the time for doing  
14 so has passed.

15 As to their case in chief, Defendants have failed to produce evidence that would prove the  
16 value of the land taken and any severance damages and will be unable to carry their burden to prove  
17 the same. *Bustos*, 119 Nev. at 362. Importantly, this Court's June 4 Order granted Plaintiff's Motion  
18 to Preclude after Defendants failed to file a response. The June 4 Order provides Defendants are  
19 precluded "from calling any witnesses in their case in chief and from presenting any other evidence  
20 at trial. . . ." Motion to Preclude at 4:6-7. As to the ability to call a rebuttal expert witness,  
21 Defendants have failed to provide a proper rebuttal expert witness report. In summary, Defendants  
22 have failed to produce admissible evidence that shows a genuine dispute of material fact as to the  
23 only remaining issue in this case. Accordingly, summary judgment is proper and the amount of just  
24 compensation due to Defendants is \$15,955.

25 ///

26 ///

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27  
28 <sup>3</sup> This renders moot Plaintiff's *Motion in Limine to Preclude Defendants from Presenting a Rebuttal Expert Witness*.

1 Based upon the foregoing and good cause appearing,


2 IT IS HEREBY ORDERED that Plaintiff Regional Transportation Commission of Washoe  
3 County's *Motion for Summary Judgment* is GRANTED.

4 IT IS HEREBY FURTHER ORDERED that the amount of just compensation due to  
5 Defendants John Ilescu, Jr. and Sonnia Ilescu, Trustees of The John Ilescu Jr. and Sonnia Ilescu  
6 1992 Family Trust Agreement is \$15,955.

7 IT IS HEREBY FURTHER ORDERED that submission of Plaintiff Regional Transportation  
8 Commission of Washoe County's pending *Motion in Limine to Preclude Defendants from*  
9 *Presenting a Rebuttal Expert Witness* is vacated as moot.

10 IT IS SO ORDERED.

11 DATED this 3<sup>rd</sup> day of August, 2020.

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13 \_\_\_\_\_  
14 KATHLEEN M. DRAKULICH  
15 District Court Judge  
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**CERTIFICATE OF SERVICE**

CASE NO. CV19-00753

I certify that I am an employee of the SECOND JUDICIAL DISTRICT COURT of the STATE OF NEVADA, COUNTY OF WASHOE; that on the 3<sup>rd</sup> day of August, 2020, I electronically filed the **ORDER GRANTING MOTION FOR SUMMARY JUDGMENT** with the Clerk of the Court by using the ECF system.

I further certify that I transmitted a true and correct copy of the foregoing document by the method(s) noted below:

**Electronically filed with the Clerk of the Court by using the ECF system which will send a notice of electronic filing to the following:**

SUSAN ROTHE, ESQ. for CITY OF RENO

MICHAEL MORRISON, ESQ. for JOHN ILIESCU & SONNIA ILIESCU, TRUSTEES

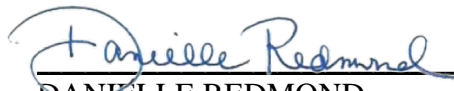
DANE ANDERSON, ESQ. for THE REGIONAL TRANSPORTATION COMMISSION  
OF WASHOE COUNTY

BRONAGH KELLY, ESQ. for THE REGIONAL TRANSPORTATION COMMISSION  
OF WASHOE COUNTY

GORDON DEPAOLI, ESQ. for THE REGIONAL TRANSPORTATION COMMISSION  
OF WASHOE COUNTY

BRETT MAUPIN, ESQ. for JOHN ILIESCU & SONNIA ILIESCU, TRUSTEES

**Deposited 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:**  
**[NONE]**

  
DANIELLE REDMOND  
Department 1 Judicial Assistant

1 **2540**

2 Gordon H. DePaoli, Esq.

3 Nevada Bar No. 195

4 Dane W. Anderson, Esq.

5 Nevada Bar No. 6883

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8 **WOODBURN AND WEDGE**

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16 Attorneys for Plaintiff, the Regional Transportation  
17 Commission of Washoe County

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

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

20 THE REGIONAL TRANSPORTATION  
21 COMMISSION OF WASHOE COUNTY, a  
22 special purpose unit of the government,

Case No.: CV19-00753

Dept. No.: 1

Plaintiff,

v.

23 JOHN ILIESCU, JR. and SONNIA ILIESCU,  
24 Trustees of The John Iliescu, Jr. and Sonnia  
25 Iliescu 1992 Family Trust Agreement, dated  
26 January 24, 1992; The City of Reno, a  
27 political subdivision of the State of Nevada;  
28 and DOES 1 – 20, inclusive,

Defendants.

**NOTICE OF ENTRY OF ORDER**

TO: ALL INTERESTED PARTIES:

PLEASE TAKE NOTICE that an Order Granting Motion for Summary Judgment was entered in the above-entitled action on August 3, 2020, by this Court. A copy of the Order is attached hereto as **Exhibit 1**.

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**Affirmation pursuant to NRS 239B.030**

The undersigned does hereby affirm that the preceding document does not contain the personal information of any person.

DATED: August 4, 2020.

**WOODBURN AND WEDGE**

By: /s/ Dane W. Anderson  
Gordon H. DePaoli, Esq.  
Nevada Bar No. 195  
Dane W. Anderson, Esq.  
Nevada Bar No. 6883  
Bronagh M. Kelly, Esq.  
Nevada Bar No. 14555

Attorneys for Plaintiff, the Regional  
Transportation Commission of Washoe County

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**CERTIFICATE OF SERVICE**

I hereby certify that I am an employee of Woodburn and Wedge and that on this date, I caused to be sent via electronic delivery through the Court's E-flex system a true and correct copy of the **NOTICE OF ENTRY OF ORDER** to:

Michael James Morrison, Esq.  
1495 Ridgeview Drive, Suite 220  
Reno, NV 89519  
[venturelawusa@gmail.com](mailto:venturelawusa@gmail.com)

*Attorneys for Defendants  
John Iliescu, Jr. and Sonnia Iliescu,  
Trustees of The John Iliescu, Jr. and Sonnia  
Iliescu  
1992 Family Trust Agreement,  
Dated January 24, 1992*

Brett W. Maupin, Esq.  
Maupin, Cox & LeGoy  
4785 Caughlin Parkway  
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Reno, NV 89520  
[bmaupin@mcllawfirm.com](mailto:bmaupin@mcllawfirm.com)

*Attorneys for Defendant John Iliescu, Jr.  
and Sonnia Iliescu*

DATED: August 4, 2020.

/s/ Dianne M. Kelling  
Employee of Woodburn and Wedge

**EXHIBIT INDEX**

<b>EXHIBIT NO.</b>	<b>DESCRIPTION OF EXHIBIT</b>	<b>NO OF PAGES INCLUDING EXHIBIT PAGES</b>
1	Order Granting Motion for Summary Judgment	11

# EXHIBIT 1

# EXHIBIT 1

3060

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

THE REGIONAL TRANSPORTATION  
COMMISSION OF WASHOE COUNTY, a  
special purpose unit of the government,

Plaintiff,

CASE NO.: CV19-00753

DEPT. NO.: 1

vs.

JOHN ILIESCU, JR. and SONNIA ILIESCU,  
Trustees of The John Iliescu, Jr. and Sonnia Iliescu  
1992 Family Trust Agreement, dated January 24,  
1992; The City of Reno, a political subdivision of  
the State of Nevada; and DOES 1 – 20, inclusive,

Defendants.

**ORDER GRANTING MOTION FOR SUMMARY JUDGMENT**

Currently before the Court is the Regional Transportation Commission of Washoe County's ("Plaintiff") *Motion for Summary Judgment and Declaration of Scott Q. Griffin in Support of Motion for Summary Judgment* ("Summary Judgment Motion") filed March 31, 2020. On May 22, 2020, Defendants John Iliescu, Jr. and Sonnia Iliescu, Trustees of The John Iliescu Jr. and Sonnia Iliescu 1992 Family Trust Agreement filed an *Opposition to Plaintiff's Motion for Summary Judgment* ("Summary Judgment Opposition"). On May 28, 2020, Plaintiff filed a *Reply in Support of Motion for Summary Judgment* ("Summary Judgment Reply") and submitted the Summary Judgment Motion to the Court for consideration.

///



1       **I.       Background**

2       On July 25, 2019, this Court issued its *Scheduling Order* which set the initial expert  
3 disclosure deadline as February 7, 2020 and the rebuttal expert disclosure deadline as March 9, 2020.  
4 *Scheduling Order* at 2:4–8. The *Scheduling Order* noted that the requirement that experts submit  
5 written reports had not been waived. *Id.* at 2:9. The *Scheduling Order* further noted that a  
6 “continuance of the trial date does not modify, alter, change or continue the discovery schedule  
7 unless specifically agreed to by the parties, in writing, and ordered by the Court.” *Id.* at 2:27–3:1.

8       On February 11, 2020, Plaintiff filed its *Motion in Limine to Exclude Evidence Pursuant to*  
9 *NRS 50.275, 50.285 and 50.305* that alleged Defendants had failed to disclose a rebuttal expert.  
10 Plaintiff filed a *Supplemental Reply in Support of Motion in Limine to Exclude Evidence Pursuant*  
11 *to NRS 50.275, 50.285 and 50.305* on March 27, 2020 that confirmed Defendants had still failed to  
12 disclose an expert witness.

13       On May 14, 2020, this Court issued its *Order Granting in Part and Denying in Part Motion*  
14 *in Limine to Exclude Evidence Pursuant to NRS 50.275, 50.285 and 50.305* (“May 14 Order”).  
15 Among other things, the Order stated:

16               Defendants will be barred from disclosing an initial expert in this case . . .  
17               This Court will extend the discovery deadline and the deadline to make  
18               rebuttal expert disclosures pursuant to NRCp 16.1(a)(2) to May 22, 2020.  
19               This extension is for the limited purpose of allowing Defendants to disclose  
20               a rebuttal expert whose testimony will be limited to rebutting the expert  
21               testimony filed by Plaintiff.

22       Order at 5:21–6:2.

23       On May 15, 2020, Plaintiff filed a *Motion in Limine to Preclude Defendants From Calling*  
24 *Witnesses and Presenting Documentary Evidence* (“Motion to Preclude”). In the Motion to  
25 Preclude, Plaintiff states that on July 23, 2019, the parties filed a Joint Case Conference report  
26 agreeing that they would make their initial disclosure of witnesses and documents pursuant to NRCp  
27 16.1(a)(1). Motion to Preclude at 2:19–21. Defendants never served any disclosures. *Id.* at 2:21–  
28 22. Plaintiff provides that the May 8, 2020 deadline to complete discovery was extended by the  
Court to May 22, 2020, but only for the limited purpose of allowing Defendants to disclose a rebuttal  
expert. *Id.* at 22–25. Plaintiff stated that for all other purposes, discovery was closed. Defendants



1 had made no disclosures required by NRCP 16.1(a)(1) and should be precluded from calling any  
2 witnesses in their case. *Id.* at 3:1-3. Defendants failed to respond to the Motion to Preclude and  
3 Plaintiff submitted this motion on June 1, 2020. This Court entered an *Order Granting Motion in*  
4 *Limine to Preclude Defendants From Calling Witnesses and Presenting Documentary Evidence* on  
5 June 4, 2020 (“June 4 Order”) that precludes Defendants from “from calling any witnesses in their  
6 case in chief and from presenting any other evidence at trial. . . .” Motion to Preclude at 4:6–7.

7 On May 22, 2020, Defendants filed a *Notice* indicating that its expert witness would be Mr.  
8 Tony Wren, MAI, SRA, Certified General Appraiser. Notice at 1:24–28. Exhibit 1 to the Notice  
9 indicates Mr. Wren’s report was emailed to Defendants on April 8, 2020, sixty-one days after the  
10 initial expert disclosure deadline. Notice at Ex. 1. Exhibit 1 to the Notice also includes a statement  
11 by defense counsel on April 8, 2020 that states “I am hesitant to file anything with the Court on this  
12 while the motion is pending but please let me know if you want us to file something on this.” *Id.*

13 On June 1, 2020, Plaintiff filed a *Motion in Limine to Preclude Defendants from Presenting*  
14 *a Rebuttal Expert Witness* (“Rebuttal Expert Motion”). Plaintiff waited the requisite fourteen days  
15 as required by WDCR 12(2) and then submitted it to the Court for consideration on June 16, 2020.  
16 On June 18, 2020, or three days after the fourteen-day deadline imposed by WDCR 12(2),  
17 Defendants filed an *Opposition to Plaintiff’s Motion in Limine*.<sup>1</sup> On June 24, 2020, Plaintiff filed a  
18 *Reply to Defendants’ Untimely Opposition to Motion in Limine to Preclude Defendants from*  
19 *Presenting a Rebuttal Expert Witness*.

## 20 II. Relevant Legal Authority

### 21 a. Summary Judgment

22 NRCP 56(c) provides, “[summary judgment] shall be rendered if the pleadings, depositions,  
23 answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there  
24 is no genuine issue as to any material fact and that the moving party is entitled to judgment as a  
25 matter of law.” A genuine issue of material fact exists when the evidence is such that a rational trier  
26 of fact could return a verdict for the nonmoving party. *Woods v. Safeway*, 121 Nev. 724, 731, 121

27 <sup>1</sup> The title does not indicate which Motion in Limine the Motion is regarding but the conclusion of the Motion  
28 requests an order denying Plaintiff’s June 1, 2020 Motion in Limine and this was the only motion filed that  
day. Opp. at 9:19–20.

1 P.3d 1026, 1031 (2005). When deciding whether summary judgment is appropriate, the court must  
2 view all evidence in the light most favorable to the non-moving party and accept all properly  
3 supported evidence, factual allegations, and reasonable inferences favorable to the non-moving party  
4 as true. *C. Nicholas Pereos, Ltd. v. Bank of Am.*, 131 Nev. Adv. Op. 44, 352 P.3d 1133, 1136 (2015);  
5 *NGA No. 2 Ltd. Liab. Co. v. Rains*, 113 Nev. 1151, 1157, 946 P.2d 163, 167 (1997).

6 The Nevada Supreme Court has adopted the federal approach outlined in *Celotex Corp. v.*  
7 *Catrett*, 477 U.S. 317 (1986), with respect to burdens of proof and persuasion in summary judgment  
8 proceedings. See *Cuzze v. Univ. & Cmty. College Sys. of Nev.*, 123 Nev. 598, 602, 172 P.3d 131,  
9 134 (2007). The party moving for summary judgment must meet his or her initial burden of  
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13 present evidence that would entitle it to judgment as a matter of law absent contrary evidence. *Id.*  
14 If the burden of persuasion at trial will rest on the nonmoving party, “the party moving for summary  
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20 When deciding a motion for summary judgment, “a district court cannot make findings  
21 concerning the credibility of witnesses or weight of evidence.” *Sawyer v. Sugarless Shops Inc.*, 106  
22 Nev. 265, 267–68, 792 P.2d 14, 15–16 (1990). Moreover, if documentary evidence is required, it  
23 “must be construed in the light most favorable to the non-moving party. All of the non-movant’s  
24 statements must be accepted as true and a district court may not pass on the credibility of affidavits.”  
25 *Id.* (internal citation omitted)).

#### 26 **b. Rebuttal Expert Witness**

27 In Nevada, once the issues of public use and necessity are established by the condemning  
28 agency, the property owner has the burden of proving, by a preponderance of the evidence, the value

1 of the land taken and any severance damages. *State v. Pinson*, 66 Nev. 227, 236-238, 207 P.2d 1105,  
2 1109-10 (1949); *City of Las Vegas v. Bustos*, 119 Nev. 360, 362, 75 P.3d 351, 352 (2003); *Pappas*  
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8 deadline “does not apply to any party’s witness whose purpose is to contradict a portion of another  
9 party’s case in chief that should have been expected and anticipated by the disclosing party, or to  
10 present any opinions outside of the scope of another party’s disclosure.” NRCP 16.1(a)(2)(E)(ii).

11 The contours of this rule were discussed at length in *R&O Const. Co. v. Rox Pro Intern.*  
12 *Group Ltd.*, No. 2:09-CV-01749-LRH-LRL, 2011 WL 2923703, \*2 (D. Nev. July 18, 2011). First,  
13 rebuttal expert reports are not the proper place to present new arguments. *Id.* (citations omitted).  
14 Second, if the purpose of the expert testimony in question is to contradict an expected or anticipated  
15 portion of the other party’s case in chief, the witness is not a rebuttal witness or anything analogous  
16 to one. *Id.* (citations omitted). Third, rebuttal testimony “is limited to new unforeseen facts brought  
17 out in the other side’s case.” *Id.* (internal quotation marks omitted).

### 18 **III. Analysis**

19 The parties agree the only remaining fact in dispute in this case is the amount of just  
20 compensation due to Defendants for Plaintiff’s acquisition of the property and any severance  
21 damages. Summ. J. Mot. at 2:10-17; Summ. J. Opp. at 2:13-17. Plaintiff argues it timely filed the  
22 expert opinion of Mr. Scott Griffin who opined that the value of just compensation due to Defendants  
23 is \$15,955. Summ. J. Mot. at 2:19-24. Plaintiff argues because Defendants failed to timely disclose  
24 any experts to satisfy their burden of proving the value of the land taken or the existence and amount  
25 of any severance damages, summary judgment is proper. *Id.* at 3:20-21. Plaintiff contends that  
26 because Defendants cannot satisfy their burden, this Court should enter summary judgment in favor  
27 of Plaintiff and find that the amount of just compensation due to Defendants is \$15,955. *Id.* at 3:22-  
28 4:3.

1 Defendants respond<sup>2</sup> that their disclosure of expert witness and related reports were not  
2 timely filed due to Mr. Morrison's health conditions and related medical tests and treatments. Summ.  
3 J. Opp. at 2:20–23. Defendants assert at the time expert disclosures were due, Mr. Morrison was  
4 Defendants' sole lawyer, but Defendants engaged Mr. Maupin to represent them on February 25,  
5 2020. *Id.* at 2:24–27. Defendants assert that while the parties were engaged in settlement  
6 discussions, Plaintiff filed the Summary Judgment Motion. *Id.* at 3:4–22. Defendants represent that  
7 in a phone conversation, counsel for the Plaintiff had mentioned Mr. Maupin's diligent efforts to  
8 obtain and perform an appraisal and expert report. *Id.* at 3:24–4:6. Defendants state that counsel for  
9 the Plaintiff agreed that the *Motion in Limine to Exclude Evidence Pursuant to NRS 50.275, 50.285*  
10 *and 50.305* should be withdrawn but that the Plaintiff would have the final decision. *Id.* at 4:7–15.  
11 Ultimately, Plaintiff decided not to withdraw the motion. *Id.* at 4:18–19. Defendants maintain that  
12 this Court's May 14 Order that permits them to call a rebuttal expert witness is sufficient to create a  
13 general issue of material fact. *Id.* at 4:21–5:2.

14 Defendants argue that because this Court had not issued the May 14 Order when the  
15 Summary Judgment Motion was filed, it was premature and that Plaintiff's counsel's statements  
16 adversely impacted Defendants' ability to disclose an expert witness. *Id.* at 6:4–13. Defendants  
17 contend that by granting Defendants the ability to call a rebuttal expert witness in the May 14 Order,  
18 this Court essentially made the Summary Judgment Motion moot in its current form. *Id.* at 6:19–24.  
19 Defendants state that by disclosing Mr. Wren on April 8, 2020 and disclosing his appraisal report  
20 that directly rebuts Plaintiff's expert's testimony, that creates a genuine dispute of material fact as  
21 to the proper amount of just compensation. *Id.* at 7:3–10.

22 Plaintiff replies that there is no requirement that it file a motion in limine and filing this  
23 Summary Judgment Motion is proper and timely. Summ. J. Reply at 2:6–13. Plaintiff contends this  
24 Court's May 14 Order makes this Summary Judgment Motion ripe because Defendants are unable  
25 to meet their burden of proof using a rebuttal expert and thus Plaintiff is entitled to judgment as a  
26 matter of law. *Id.* at 2:14–18. Plaintiff contends Mr. Wren's appraisals are not rebuttal reports as

27 <sup>2</sup> While Plaintiff filed the Summary Judgment Motion on March 31, 2020, Defendants did not file the  
28 Summary Judgment Opposition until May 22, 2020, after this Court's *Order Granting in Part and Denying*  
*in Part Motion in Limine to Exclude Evidence Pursuant to NRS 50.275, 50.285 and 50.305.*

1 they do not mention Mr. Griffin or his report, do not contradict or rebut Mr. Griffin's report, and are  
2 presented for the purpose of estimating the market value and just compensation. *Id.* at 3:3–7.  
3 Plaintiff argues a rebuttal expert cannot be used to meet a party's burden of proof in their case in  
4 chief. *Id.* at 3:11–12. Plaintiff states that NRCP 16.1(a)(2)(E)(ii) makes clear that if the party's  
5 expert's purpose is to contradict a matter that should have been expected or anticipated the expert  
6 disclosure deadline does not apply. *Id.* at 3:13–20.

7 Plaintiff contends that Mr. Wren's report is based on the elimination of access to South  
8 Virginia Street on parcel APN 014-063-07, but that access is entirely within the right of way meaning  
9 that the alleged taking is not part of this condemnation proceeding and should have been the subject  
10 of an inverse condemnation counterclaim that Defendants failed to assert in this case. *Id.* at 3:21–  
11 4:1. Plaintiff points out the deadline to amend pleadings in this case has passed and Defendants  
12 cannot produce any evidence supporting a claim clearly beyond the scope of Plaintiff's alleged  
13 taking. *Id.* at 4:1–5. Plaintiff adds that statements of Plaintiff's counsel are irrelevant and did not  
14 prevent Defendants from complying with the expert disclosure deadline in this case, or any of the  
15 other deadlines Defendants have failed to comply with in this case. *Id.* at 4:14–28. Plaintiff states  
16 that while Defendants demanded a jury trial, they have not identified any witnesses or produced any  
17 documents that would be admissible to establish just compensation and summary judgment is proper  
18 for the \$15,955 figure suggested in Mr. Griffin's report. *Id.* at 5:1–6.

19 Having reviewed the pleadings on file and the facts and legal support set forth therein, this  
20 Court finds good cause to grant the Summary Judgment Motion. Defendants bear the burden to  
21 prove the value of the land taken and any severance damages. *Bustos*, 119 Nev. at 362. Defendants  
22 are unable to satisfy this burden relying upon a rebuttal expert. This Court does not agree with  
23 Defendants that the Court's May 14 Order made the Summary Judgment Motion moot in its current  
24 form. The logical extension of this assertion results in impermissibly shifting the burden to Plaintiff  
25 to establish the value of the land taken and any severance damages. Plaintiff's hypothetical  
26 illustrates this point: at trial, the jury would hear opening statements, Defendants who bear the  
27 burden of proof would have no witnesses, and Plaintiff would stand up and move for judgment as a  
28 matter of law. *Summ. J. Reply* at 3:28.

1 Despite this Court's May 14 Order, Defendants nonetheless failed to disclose a proper  
2 rebuttal expert. The *Notice* filed by Defendants on May 22, 2020 attempts to repackage Mr. Wren's  
3 initial expert report as a rebuttal expert report, but the actual report attached to the Summary  
4 Judgment Opposition is very clearly an initial expert report as it doesn't mention Plaintiff's expert  
5 report. Summ. J. Opp. at Ex. 2. Further, Mr. Wren's report is not a proper rebuttal expert report as  
6 it presents opinions outside the scope of Plaintiff's expert report and provides Mr. Wren's valuation  
7 of the land and proposes just compensation, which Defendants not only should have expected or  
8 anticipated but is also a fact they bear the burden of proving; and contains no facts that are new or  
9 unforeseen such that they would be proper subject matter for a rebuttal expert report.<sup>3</sup> NRCP  
10 16.1(a)(2)(E)(ii); *R&O Const. Co.*, 2011 WL 2923703 at \*2. Further, this Court is persuaded by  
11 Plaintiff's argument that Mr. Wren's evaluation is based upon the loss of access to South Virginia  
12 Street and to claim damages on that basis Defendants would have needed to assert a counterclaim  
13 for inverse condemnation. Defendants have asserted no such counterclaim and the time for doing  
14 so has passed.

15 As to their case in chief, Defendants have failed to produce evidence that would prove the  
16 value of the land taken and any severance damages and will be unable to carry their burden to prove  
17 the same. *Bustos*, 119 Nev. at 362. Importantly, this Court's June 4 Order granted Plaintiff's Motion  
18 to Preclude after Defendants failed to file a response. The June 4 Order provides Defendants are  
19 precluded "from calling any witnesses in their case in chief and from presenting any other evidence  
20 at trial. . . ." Motion to Preclude at 4:6-7. As to the ability to call a rebuttal expert witness,  
21 Defendants have failed to provide a proper rebuttal expert witness report. In summary, Defendants  
22 have failed to produce admissible evidence that shows a genuine dispute of material fact as to the  
23 only remaining issue in this case. Accordingly, summary judgment is proper and the amount of just  
24 compensation due to Defendants is \$15,955.

25 ///

26 ///

27 \_\_\_\_\_  
28 <sup>3</sup> This renders moot Plaintiff's *Motion in Limine to Preclude Defendants from Presenting a Rebuttal Expert Witness*.

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Based upon the foregoing and good cause appearing,

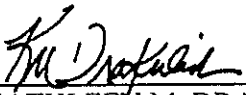
IT IS HEREBY ORDERED that Plaintiff Regional Transportation Commission of Washoe County's *Motion for Summary Judgment* is GRANTED.

IT IS HEREBY FURTHER ORDERED that the amount of just compensation due to Defendants John Iliescu, Jr. and Sonnia Iliescu, Trustees of The John Iliescu Jr. and Sonnia Iliescu 1992 Family Trust Agreement is \$15,955.

IT IS HEREBY FURTHER ORDERED that submission of Plaintiff Regional Transportation Commission of Washoe County's pending *Motion in Limine to Preclude Defendants from Presenting a Rebuttal Expert Witness* is vacated as moot.

IT IS SO ORDERED.

DATED this 3<sup>rd</sup> day of August, 2020.

  
KATHLEEN M. DRAKULICH  
District Court Judge

1 **CERTIFICATE OF SERVICE**

2 CASE NO. CV19-00753

3 I certify that I am an employee of the SECOND JUDICIAL DISTRICT COURT of the  
4 STATE OF NEVADA, COUNTY OF WASHOE; that on the 3<sup>rd</sup> day of August, 2020, I  
5 electronically filed the **ORDER GRANTING MOTION FOR SUMMARY JUDGMENT** with  
6 the Clerk of the Court by using the ECF system.

7 I further certify that I transmitted a true and correct copy of the foregoing document by the  
8 method(s) noted below:

9 **Electronically filed with the Clerk of the Court by using the ECF system which will send a**  
10 **notice of electronic filing to the following:**

11 SUSAN ROTHE, ESQ. for CITY OF RENO

12 MICHAEL MORRISON, ESQ. for JOHN ILIESCU & SONNIA ILIESCU, TRUSTEES

13 DANE ANDERSON, ESQ. for THE REGIONAL TRANSPORTATION COMMISSION  
14 OF WASHOE COUNTY

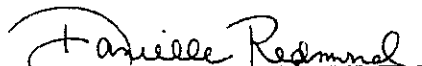
15 BRONAGH KELLY, ESQ. for THE REGIONAL TRANSPORTATION COMMISSION  
16 OF WASHOE COUNTY

17 GORDON DEPAOLI, ESQ. for THE REGIONAL TRANSPORTATION COMMISSION  
18 OF WASHOE COUNTY

19 BRETT MAUPIN, ESQ. for JOHN ILIESCU & SONNIA ILIESCU, TRUSTEES

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

22 [NONE]

23  
24  
25   
26 DANIELLE REDMOND  
27 Department 1 Judicial Assistant  
28



1 \$2515  
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14 *Attorneys Defendant John Iliescu, Jr. and*  
15 *Sonnia Iliescu*

16 IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

17 IN AND FOR THE COUNTY OF WASHOE

18 THE REGIONAL TRANSPORTATION  
19 COMMISSION OF WASHOE COUNTY, a  
20 special purpose unit of the government,

21 Plaintiff,

22 vs.

23 JOHN ILIESCU, JR. and SONNIA ILIESCU,  
24 Trustees of The John Iliescu, Jr. and Sonnia  
25 Iliescu 1992 Family Trust Agreement, dated  
26 January 24, 1992 The City of Reno, a political  
27 subdivision of the State of Nevada; and DOES  
28 1 – 20, inclusive,

Defendants.

Case No. CV19-00753

Dept. No. 1

**NOTICE OF APPEAL**

Please take notice that Defendants, JOHN ILIESCU, JR. and SONNIA ILESCU, Trustees  
of The John Iliescu, Jr. and Sonnia Iliescu 1992 Family Trust Agreement (“Defendants”), by and

1 through their counsel of record, Donald A. Lattin, Esq., Carolyn K. Renner, Esq., and Brett W.  
2 Maupin, Esq., of the law firm of Maupin, Cox & LeGoy, hereby appeal to the Supreme Court of  
3 the State of Nevada from the following orders of the District Court: (1) *Order Granting Motion*  
4 *for Summary Judgment* filed on August 3, 2020; (2) *Order Granting in Part and Denying in Part*  
5 *Motion in Limine to Exclude Evidence Pursuant to NRS 50.275, 50.285, and 50.305*, filed on May  
6 14, 2020; (3) *Order Granting Motion in Limine to Preclude Defendants From Calling Witnesses*  
7 *and Presenting Documentary Evidence*, filed on June 4, 2020; and (4) *Order Granting Plaintiff's*  
8 *Motion in Limine to Preclude Evidence or Argument Regarding Unasserted Claims*, filed on June  
9 26, 2020.  
10  
11

12 **NRS 239B.030 AFFIRMATION**

13 The undersigned does hereby affirm that the preceding document does not contain  
14 the social security number of any person.  
15

16 Dated this 3<sup>rd</sup> day of September, 2020.

17 MAUPIN, COX & LeGOY

18  
19 By:   
20 Donald A. Lattin, Esq., SBN 693  
21 Carolyn K. Renner, Esq., SBN 9614  
22 Brett W. Maupin, Esq., SBN 12443  
23 4785 Caughlin Parkway  
24 Reno, NV 89519  
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26 [crenner@mcllawfirm.com](mailto:crenner@mcllawfirm.com)  
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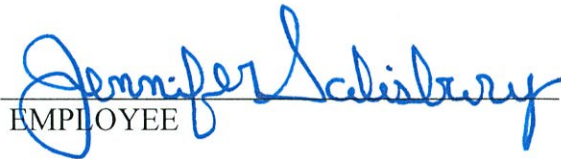
1 **CERTIFICATE OF SERVICE**

2 I hereby certify that I am an employee of Maupin, Cox and LeGoy, and in such capacity  
3 and on the date indicated below, I served the foregoing document(s) as follows:  
4

5 Via the E-Flex Electronic Filing System:

6 Gordon H. DePaoli, Esq.  
7 Dane W. Anderson, Esq.  
8 Bronagh M. Kelly, Esq.  
9 Woodburn and Wedge  
6100 Neil Road, Suite 500  
Reno, NV 89511  
10 *Attorneys for Plaintiff*

11 DATED this 3rd day of September, 2020.

12  
13   
14 EMPLOYEE