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

LARRY J. WILLARD, individually and as
Trustee of the Larry James Willard Trust Fund;
et al.,

Plaintiffs,

vs.

BERRY-HINCKLEY INDUSTRIES, a Nevada
corporation; et al.,

Defendants.

Case No. CV14-01712

Dept. No. 6

NOTICE OF APPEAL

Notice is hereby given that Plaintiff Larry J. Willard, individually and as trustee of the Larry James Willard Trust Fund, and Plaintiff Overland Development Corporation, hereby appeal to the Nevada Supreme Court from the Order After Remand Denying Plaintiffs' Rule 60(b) Motion for Relief, entered on September 13, 2021 (attached as Exhibit 1). These Plaintiffs also appeal from all other rulings and orders made final and appealable by the foregoing.¹

¹ These Plaintiffs previously appealed from (1) the Findings of Fact, Conclusions of Law, and Order on Defendant's Motions for Sanctions, entered on March 6, 2018; (2) the Order Denying Plaintiffs' Rule 60(b) Motion for Relief, entered on November 30, 2018; and (3) the Judgment entered on December 11, 2018. (Nevada Supreme

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DATED this 11th day of October, 2021.

By: /s/ Richard D. Williamson
Richard D. Williamson, Esq.
Jonathan Joel Tew, Esq.

LEMONS, GRUNDY & EISENBERG

*Attorneys for the
Plaintiffs/Counterdefendants/Appellants*

Court docket number 77780). The appeal from these orders and judgments resulted in a remand to the district court for further proceedings, and the remand resulted in the September 13, 2021 Order from which the present appeal is taken. To the extent necessary to preserve challenges relating to the prior orders and judgments described in this footnote, this notice of appeal includes the prior orders and judgments.

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Index of Exhibits

<u>Exhibit</u>	<u>Description</u>	<u>Pages</u>
1	Order After Remand Denying Plaintiffs’ Rule 60(b) Motion for Relief, entered on September 13, 2021	46

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EXHIBIT “1”

EXHIBIT “1”

EXHIBIT “1”

1 CODE NO. 2842

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

8 LARRY J. WILLARD, individually and as
9 trustee of the Larry James Willard Trust Fund;
10 OVERLAND DEVELOPMENT
11 CORPORATION, a California corporation;
12 EDWARD C. WOOLEY AND JUDITH A
13 WOOLEY, individually and as trustees of the
14 Edward C. Wooley and Judith A. Wooley
15 Intervivos Revocable Trust 2000,

16 Plaintiffs,

17 vs.

18 BERRY-HINCKLEY INDUSTRIES, a Nevada
19 Corporation; and JERRY HERBST, an
20 individual,

21 Defendants.
22 _____/

23 BERRY-HINCKLEY INDUSTRIES, a
24 Nevada corporation; and JERRY HERBST,
25 an individual,

26 Counterclaimants,

27 vs

28 LARRY J. WILLARD, individually and as
trustee of the Larry James Willard Trust Fund;
OVERLAND DEVELOPMENT
CORPORATION, a California corporation,

Counter-defendants.
_____/

Case No. CV14-01712

Dept. No. 6

**ORDER AFTER REMAND
DENYING PLAINTIFFS'
RULE 60(b) MOTION FOR RELIEF**

1 **ORDER AFTER REMAND DENYING PLAINTIFFS' RULE 60(b) MOTION FOR RELIEF**

2 Before this Court is Plaintiffs' Rule 60(b) Motion for Relief ("*60(b) Motion*") filed by
3 Plaintiffs Larry J. Willard, individually and as trustee of the Larry James Willard Trust Fund
4 and Overland Development Corporation, a California Corporation (collectively, "Willard" or
5 "Plaintiffs"), by and through counsel, Robertson, Johnson, Miller & Williamson. Pursuant to
6 NRCP 60(b), Plaintiffs seek to set aside: (1) this Court's January 4, 2018, *Order Granting*
7 *Defendants'/Counterclaimants' Motion to Strike and/or Motion in Limine to Exclude the*
8 *Expert Testimony of Daniel Gluhaich*; (2) this Court's January 4, 2018, *Order Granting*
9 *Defendants'/Counterclaimants' Motion for Sanctions*; and (3) this Court's March 6, 2018,
10 *Findings of Fact, Conclusions of Law, and Order on Defendants' Motion for Sanctions.*
11 (*60(b) Motion*).

12 In opposition, Defendants Berry-Hinckley Industries ("BHI") and Jerry Herbst
13 (collectively, "Defendants") filed their *Opposition to Rule 60(b) Motion for Relief ("60(b)*
14 *Opposition"*), by and through their counsel, Dickinson Wright PLLC.

15 Plaintiffs then filed their *Reply in Support of the Willard Plaintiffs' Rule 60(b) Motion*
16 *for Relief*. Prior to remand, oral arguments were held before this Court on September 4,
17 2018.

18 After consideration of the papers submitted, the arguments of counsel, and the entire
19 court file, this Court entered its *Order Denying Plaintiffs' Rule 60(b) Motion for Relief* (the
20 "*Prior 60(b) Order*").

21 Plaintiffs appealed the *Prior 60(b) Order*. On August 6, 2020, the Nevada Supreme
22 Court entered its Opinion (the "*Opinion*") in which it reversed the *Prior 60(b) Order* and
23 remanded the case to this Court, with instructions the Court issue explicit and detailed
24 written findings on each of the factors identified in *Yochum v. Davis*, 98 Nev. 484, 486, 653
25 P.2d 1215, 1216 (1982).

26 After consideration of the instant papers submitted, the arguments of counsel, and
27 the entire court file, and in compliance with the Nevada Supreme Court's instructions, the
28

1 Court makes the following findings of fact, conclusions of law and orders as follows:

2 **I. FINDINGS OF FACT.**

3 The Court makes the following Findings of Fact:

4 **A. PLAINTIFFS' COMPLAINT.**

5 1. On August 8, 2014, Plaintiffs commenced this action by filing their *Complaint*
6 against Defendants.¹ *Complaint*, generally.

7 2. By the *Complaint* and the *First Amended Complaint* ("FAC"), Plaintiffs sought
8 the following damages against Defendants for an alleged breach of the lease between
9 Willard and BHI: (1) "rental income" for \$19,443,836.94, discounted by 4% per the lease to
10 \$15,741,360.75 as of March 1, 2013; and (2) certain property-related damages, such as
11 insurance and installation of a security fence. *FAC*.

12 3. Willard also sought several other categories of damages which have since
13 been dismissed or withdrawn. May 30, 2017, *Order*.

14
15 **B. PLAINTIFFS FAILED TO COMPLY WITH THE NEVADA RULES**
16 **OF CIVIL PROCEDURE AND THIS COURT'S ORDERS.**

17 4. Plaintiffs failed to provide a compliant damages disclosure in this action².

18 5. Plaintiffs failed to provide a damages computation in their initial disclosures, as
19 required under NRCP 16.1(a)(1)(C). *Findings of Fact, Conclusions of Law, and Order on*
20 *Defendants' Motion for Sanctions* ("Sanctions Order") ¶ 12. Plaintiffs also failed to provide
21 damages computations at any time despite numerous demands on both Brian Moquin and
22 David O'Mara, of which Plaintiffs personally were aware. *Sanctions Order* ¶¶ 14-16, 25, 27-
23 33, 39, 43-44 and 51-54; *January 10, 2017, Transcript*.

24
25 _____
26 ¹ Willard filed the initial complaint jointly with Edward E. Wooley and Judith A. Wooley, individually
27 and as Trustees of the Edward C. Wooley and Judith A. Wooley Intervivos Revocable Trust 2000
28 (collectively, "Wooley"). However, Defendants and Wooley entered into a settlement agreement and
stipulation for dismissal. This Court entered its Order on April 13, 2018 dismissing Wooley's claims
with prejudice.

² The Court numbers the Findings of Fact sequentially after each sub-point and continuing through
the next sub-point, rather than beginning the sequence with "1" again.

1 6. Plaintiffs failed to provide complete and adequate responses to interrogatories
2 requesting information about Plaintiffs' damages in the normal course of discovery.

3 7. Plaintiffs failed to provide complete and adequate responses to interrogatories
4 in violation of this Court's *Order Granting Defendants' Motion to Compel* and failed to
5 comply with this Court's *Order* ("January Hearing Order") issued after the parties discussed
6 Plaintiffs' failure to provide damages computations at the January 10, 2017, hearing
7 attended by Mr. Moquin, Mr. O'Mara, and Plaintiff Larry J. Willard. *Sanctions Order* ¶¶ 17-
8 25.

9 8. The *January Hearing Order* required Plaintiffs to provide damages
10 computations and supporting materials. *Sanctions Order* ¶¶ 46-49, 54, 59-64, 67-68;
11 *Defendants' Opposition to Plaintiffs' Rule 60(b) Motion*, Ex. 2; *January 10, 2017, Transcript*
12 at 61-63, 68; *January Hearing Order*.

13 9. Plaintiffs failed to properly disclose Daniel Gluhaich as an expert witness as
14 required by NRCP 16.1(a)(2). *Sanctions Order* ¶¶ 34-37.

15 10. In contravention of this Court's *January Hearing Order*, Plaintiffs failed to
16 provide an amended disclosure of Mr. Gluhaich, although Defendants' counsel made
17 multiple requests. *Sanctions Order* ¶¶ 38-45, 50-64.

18
19 **C. PLAINTIFFS' SUMMARY JUDGMENT MOTION.**

20 11. Pursuant to the February 9, 2017, *Stipulation and Order to Continue Trial*,
21 discovery closed in mid-November, 2017.

22 12. On October 18, 2017, less than a month before the close of discovery,
23 Plaintiffs filed their *Motion of Summary Judgment* asserting they were entitled, as a matter
24 of law, to more than triple the amount of damages alleged in and requested by their *First*
25 *Amended Complaint*. *Sanctions Order* ¶¶ 69, 73.
26
27
28

1 13. The damages asserted in Plaintiffs' *Motion for Summary Judgment* were not
2 previously disclosed. The motion was also supported by previously undisclosed expert
3 opinions and documents. *Sanctions Order* ¶¶ 74-79.

4 14. The expert's documents had been in Plaintiffs' possession throughout the
5 pendency of this case, but had not been previously disclosed, despite Defendants' requests
6 for such documents. *Id.* at ¶¶ 79, 136.

7 15. On November 13, 2017, Defendants filed their Opposition to Plaintiffs' *Motion*
8 *for Summary Judgment*.

9 16. Plaintiffs did not submit the *Motion for Summary Judgment* for decision.

10 **D. DEFENDANTS' MOTION TO STRIKE AND/OR MOTION IN LIMINE TO**
11 **EXCLUDE THE EXPERT TESTIMONY OF DANIEL GLUHAICH AND**
12 **MOTION FOR SANCTIONS.**

13 17. On November 14, 2017, Defendants filed their *Motion to Strike and/or Motion*
14 *in Limine to Exclude Expert Testimony of Daniel Gluhaich* ("Motion to Strike").

15 18. In the *Motion to Strike*, Defendants maintained this Court should preclude
16 Plaintiffs from offering Mr. Gluhaich's testimony on the grounds: (1) Plaintiffs failed to
17 adequately disclose Mr. Gluhaich as an expert witness because they failed to provide "a
18 summary of the facts and opinions to which the witness is expected to testify" as required by
19 NRCP 16.1(a)(2)(B); (2) the opinions offered by Mr. Gluhaich in support of Plaintiffs' *Motion*
20 *for Summary Judgment* were based upon inadmissible hearsay and were based solely on
21 the opinions of others; and (3) Mr. Gluhaich was not qualified to offer the opinions included
22 in his declaration filed in support of Plaintiffs' *Motion for Summary Judgment*.

23 19. On November 15, 2017, Defendants filed their *Motion for Sanctions* (the
24 "*Sanctions Motion*").

25 20. In the *Sanctions Motion*, Defendants argued this Court should sanction
26 Plaintiffs for their continued and intentional conduct in failing to comply with the Nevada
27 Rules of Civil Procedure and this Court's orders requiring Plaintiffs to provide damages
28 computations and full and adequate expert disclosures, and dismiss Plaintiffs' claims with

1 prejudice or, in the alternative, preclude Plaintiffs from seeking new damages or relying
2 upon their undisclosed expert and appraisals.

3 21. Defendants agreed to give Plaintiffs several extensions of time to oppose the
4 *Motion to Strike* and *Sanctions Motion*, but no oppositions were filed.

5 22. On December 6, 2017, Plaintiffs, through Mr. O'Mara, requested relief from the
6 Court by extension to respond until "December 7, 2017 at 4:29 p.m." *Sanctions Order* 94;
7 *Plaintiffs' Request for a Brief Extension of Time* (the "*Extension Request*").

8 23. In the *Extension Request*, Mr. O'Mara also represented that "[c]ounsel has
9 been diligently working for weeks to respond to Defendant's (sic) serial motions, which
10 include seeking dismissal with prejudice of Plaintiffs' case." *Id.* at 2.

11 24. This Court held a status conference on December 12, 2017, attended by
12 Defendants' counsel and Plaintiffs' counsel, Mr. Moquin and Mr. O'Mara. At the status
13 conference, after observing Mr. Moquin, having a significant dialogue with Mr. Moquin, and
14 over vehement objection by Defendants' counsel, this Court granted *Plaintiffs' Brief*
15 *Extension Request* plus granted more time than was requested. The Court directed Plaintiffs
16 to respond to the outstanding motions no later than Monday, December 18, 2017, at 10:00
17 am. *Sanctions Order* ¶ 95.

18 25. This Court further directed Defendants to file their reply briefs no later than
19 January 8, 2018. The Court set the parties' outstanding Motions for oral argument on
20 January 12, 2018. *Sanctions Order* ¶ 96.

21 26. This Court admonished Plaintiffs, stating "you need to know going into these
22 oppositions, that I'm very seriously considering granting all of it...I haven't decided it, but I
23 need to see compelling opposition not to grant it." *Opposition to Rule 60(b) Motion*, Ex. 3,
24 December 12, 2017, *Transcript of Status Conference*, in part.

25 27. Plaintiffs did not file an opposition or response to the *Motion to Strike* or
26 *Sanctions Motion* by December 18, 2017, or any time thereafter, nor did Plaintiffs request
27 any further extension.
28

1 28. This Court entered its *Order Granting Defendants'/Counterclaimants' Motion to*
2 *Strike and/or Motion in Limine to Exclude the Expert Testimony of Daniel Gluhaich* on
3 January 4, 2018 ("*Order Granting Motion to Strike*").

4 29. This Court entered its *Order Granting Defendants'/Counterclaimants' Motion*
5 *for Sanctions* on January 4, 2018 ("*Order Granting Sanctions Motion*").

6 30. This Court entered its *Findings of Fact, Conclusions of Law, and Order on*
7 *Defendants' Motion for Sanctions* on March 6, 2018 ("*Sanctions Order*").³

8 **E. WITHDRAWAL OF LOCAL COUNSEL.**

9 31. On March 15, 2018, Mr. O'Mara filed a *Notice of Withdrawal of Local Counsel*
10 (*"Notice"*). The *Notice* states, "[c]ounsel has had no contact with lead counsel Mr. Moquin for
11 many months with a total failure just prior to the Court's first decisions being filed in this
12 case," and "Mr. Moquin was unresponsive during the time in which this Court was deciding
13 the pending motions, even after counsel begged him for a response to be filed with the
14 Court and was told he would provide such a response." *Notice*, 1.

15 32. The *Notice* describes the terms of retention of Mr. O'Mara as "undersigned
16 counsel was retained solely as local counsel, and provided Mr. Moquin with the necessary
17 information related to the Court's filing requirement and timelines. Undersigned Counsel
18 was retained only to provide services as directed by Mr. Moquin, and would be relieved of
19 services if Mr. Moquin was removed." *Id.*

20 **F. PLAINTIFFS' RULE 60(B) MOTION.**

21 33. On March 26, 2018, Robertson, Johnson, Miller & Williamson filed a notice of
22 appearance on behalf of Plaintiffs.

23 34. On April 18, 2018, Plaintiffs filed the prior *Rule 60(b) Motion*. Plaintiffs argued
24 this Court should set aside its *Order Granting the Motion to Strike, Order Granting Sanctions*
25

26 _____
27 ³The *Order Granting Sanctions* imposed sanctions and directed Defendants to "submit a Proposed
28 Order granting *Defendants'/Counterclaimants' Motion for Sanctions*, including factual and legal
analysis and discussion, to Department 6 within twenty (20) days of the date of this *Order* in
accordance with WDCR 9." *Order Granting Sanctions Motion*, 4. For purposes of the instant motion,
the Court considers the *Order Granting Sanctions Motion and Sanctions Order*, as one for the
purposes of the analysis herein.

1 *Motion*, and *Sanctions Order*, based upon Mr. Moquin’s excusable neglect. Plaintiffs further
2 argued the *Sanctions Order* was insufficient under *Young v. Johnny Ribeiro*, 106 Nev. 88,
3 787 P.2d 777 (1990), because the Court did not consider whether sanctions unfairly operate
4 to penalize Plaintiffs for the misconduct of their attorney.

5 35. Plaintiffs argued their failure to provide the damages computations and
6 adequate expert disclosures, as required by the Nevada Rules of Civil Procedure and this
7 Court’s orders and their failure to file oppositions to the *Motion to Strike* and *Sanctions*
8 *Motion* were all due to Mr. Moquin’s failure “to properly prosecute this case due to a serious
9 mental illness and a personal life that was apparently in shambles.” (*Rule 60(b) Motion* 1).

10 36. The *Rule 60(b) Motion* purported to support its arguments primarily through
11 the *Declaration of Larry J. Willard* (the “*Willard Declaration*” and “*WD*” in citations to the
12 record).⁴

13 37. The *Willard Declaration* included several statements about Mr. Moquin’s
14 alleged mental disorder. It stated that Mr. Willard is “**convinced**” Mr. Moquin was dealing
15 with issues and demons beyond his control. WD ¶ 66. It further stated that he “**learned**”
16 that Mr. Moquin was struggling with constant marital conflict that greatly interfered with his
17 work. *Id.* The *Willard Declaration* stated that Mr. Moquin suffered a “total mental
18 breakdown.” WD ¶ 68. It stated that Mr. Moquin **explained** to Mr. Willard he had been
19 diagnosed with bipolar disorder. WD ¶ 70. Mr. Willard also declared that he believed Mr.
20 Moquin’s disorder to be “severe and debilitating.” WD ¶ 73. He stated that he **now sees**
21 “that Mr. Moquin was suffering from [symptoms of bipolar disorder] throughout his work on
22 the case.” WD ¶ 76. And, Mr. Willard declared that he **can now see** how Mr. Moquin’s
23 alleged psychological issues affected Plaintiffs’ case. WD ¶ 87. (Bolded emphasis supplied
24 on all paragraphs cited).

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28 ⁴The *Willard Declaration* includes paragraphs discussing the underlying facts of the action and the
initial filing of the suit in California. These paragraphs are not relevant to the Court’s determination of
the *Rule 60(b) Motion* and are not considered. See e.g., WD ¶¶ 1-51, 100.

1 38. The *Rule 60(b) Motion* also included an internet printout purporting to list
2 symptoms of bipolar disorder, (*Rule 60(b) Motion*, Ex. 5), and several documents related to
3 alleged spousal abuse by Mr. Moquin, some of which referenced Mr. Moquin's alleged
4 bipolar disorder, and which included an Emergency Protective Order from a California
5 proceeding, (*Rule 60(b) Motion*, Ex. 6), a Pre-Booking Information Sheet from a California
6 proceeding (*Rule 60(b) Motion*, Ex. 7), and a Request for Domestic Violence Restraining
7 Order, also from a California proceeding (*Rule 60(b) Motion*, Ex. 8). The documents from
8 the California proceedings were not certified by the clerk of the court.

9 39. The *Rule 60(b) Motion* did not include any supporting declaration by Mr.
10 O'Mara, even though Mr. O'Mara was a counsel of record for Plaintiffs from the inception of
11 the case through March 15, 2018. *See generally id.*

12 40. Defendants filed their *Opposition to the Rule 60(b) Motion* on May 18, 2018
13 (the "*Opposition*").

14 41. Plaintiffs filed their *Reply in Support of the Willard Plaintiffs' Rule 60(b) Motion*
15 on May 29, 2018 (the "*Reply*"). The *Reply* attached 11 new exhibits, including a new
16 *Declaration of Larry J. Willard in Response to Defendants' Opposition to Rule 60(b) Motion*
17 *for Relief. Reply*, Ex. 1 ("*Reply Willard Declaration*" and "*RWD*" for record citations).⁵ The
18 *Reply* exhibits included copies of text messages between Mr. Willard and Mr. Moquin,
19 (*Reply*, Exs. 3, 6, 8, and 10), a receipt detailing an alleged payment made by Mr. Willard to
20 Mr. Moquin's doctor on March 13, 2018 (*Reply*, Ex. 5), and a letter from Mr. Williamson to
21 Mr. Moquin dated May 14, 2018. (*Reply*, Ex. 9).

22 42. On June 6, 2018, Defendants filed their *Motion to Strike, or in the Alternative,*
23 *Motion for Leave to File Sur-Reply*, arguing this Court should strike Exhibits 1-10 to the
24 *Reply* because (a) Defendants did not have the opportunity to respond to those exhibits in
25 their *Opposition to the Rule 60(b) Motion*; (b) exhibits contained inadmissible hearsay and/or
26
27

28 ⁵The Court disregards the paragraphs included in the *Willard Declaration* and the *Reply Willard Declaration* that can be construed to be stated appeal to the Court's sympathy. *See e.g., WD ¶¶91 - 100; RWD ¶67.*

1 inadmissible lay opinion testimony; and (c) a number of exhibits were not relevant to this
2 Court's determination of excusable neglect.

3 43. Defendants' *Motion to Strike, or in the Alternative, Motion for Leave to File*
4 *Sur-Reply* was fully briefed and submitted to this Court for decision on June 29, 2018.
5 Subsequently, Plaintiffs' counsel stipulated to the filing of a sur-reply.

6 44. In its *Sanctions Order*, the Court made the following findings of fact and
7 conclusions of law, among others: First, plaintiffs failed to provide damages disclosures and
8 failed to properly disclose an expert witness in violation of this Court's express Orders.
9 *Sanctions Order* ¶¶ 67, 68. Plaintiffs acknowledged their failure to properly disclose an
10 expert witness in accordance with NRCP 16.1(a)(2)(B). *Stipulation and Order*, February 9,
11 2017. Plaintiffs did not thereafter attempt to properly disclose the expert witness for the
12 entirety of 2017. Plaintiffs failed to comply with multiple orders of this Court. Defendants
13 filed several motions to compel, and Plaintiffs' non-compliance forced extension of trial and
14 discovery deadlines on three separate occasions. This Court sanctioned Plaintiffs by
15 ordering payment of Defendants' expenses incurred in filing the *Motion to Compel*.
16

17 45. Plaintiffs did not oppose the *Sanctions Motion* despite this Court's express
18 admonitions that the Court was "seriously considering" dismissal.

19 **G. PLAINTIFFS' APPEAL,**

20 46. On November 30, 2018, this Court entered its *Prior 60(b) Order*, wherein this
21 Court denied Plaintiffs' *Rule 60(b) Motion*.

22 47. Plaintiffs timely appealed this Court's *Prior 60(b) Order*.

23 48. On August 6, 2020, the Nevada Supreme Court entered its published opinion
24 (the "*Opinion*").

25 49. B the *Opinion*, the Nevada Supreme Court reversed this Court's *Prior 60(b)*
26 *Order*, concluding that this Court abused its discretion by failing to address the factors
27 articulated in *Yochum v. Davis*, 98 Nev. 484, 486, 653 P.2d 1215, 1216 (1982), *overruled in*
28

1 *part on other grounds by Epstein v. Epstein*, 113 Nev. 1401, 1405, 950 P.2d 771, 773
2 (1997), when ruling on the Plaintiffs' *Rule 60(b) Motion*.

3 50. The Nevada Supreme Court remanded the proceedings back to this Court for
4 further consideration consistent with the *Opinion* and directed this Court to issue explicit and
5 detailed written findings with respect to each of the four *Yochum* factors in considering the
6 Plaintiffs' *Rule 60(b) Motion*.

7 51. The Nevada Supreme Court subsequently clarified "neither party may present
8 any new arguments or evidence on remand; the district court's consideration of the factors
9 set forth in *Yochum v. Davis*, 98 Nev. 484, 486, 653 P.2d 1215, 1216 (1982), is limited to
10 the record currently before the court." (*Order Denying En Banc Reconsideration*).

11 52. If any of the following Conclusions of Law contain or may be construed to
12 contain Findings of Fact, they are incorporated here and shall be treated as appropriately
13 identified and designated.
14

15 **II. CONCLUSIONS OF LAW.**

16 Based on the Court's Findings of Fact, the Court makes its Conclusions of Law as
17 follows.

18 53. If any of the foregoing Findings of Fact contain or may be construed to contain
19 Conclusions of Law, they are incorporated here and shall be treated as appropriately
20 identified and designated.

21 **A. RULE 60(B) STANDARD.**

22 54. NRCP 60(b)(1) is a remedial rule that gives due consideration to our court
23 system's preference to adjudicate cases on the merits, without compromising the dignity of
24 the court process. *Opinion*.

25 55. Under NRCP 60(b)(1), on motion, this Court may relieve a party from an order
26 or final judgment on grounds of mistake, inadvertence, surprise, or excusable neglect.
27 NRCP 60(b)(1); *Opinion*.
28

1 56. A party who seeks to set aside an order pursuant to NRCP 60(b)(1) “has the
2 burden to prove mistake, inadvertence, surprise, or excusable neglect by a preponderance
3 of the evidence.” *Polivka v. Kuller*, 128 Nev. 926, 381 P.3d 651 (2012) (citations omitted);
4 *see also Britz v. Consolidated Casinos Corp.*, 87 Nev. 441, 446, 488 P.2d 911, 915 (1971)
5 (“the burden of proof on [a motion to set aside under Rule 60(b)] is on the moving party who
6 must establish his position by a preponderance of the evidence.” (quoting *Luz v. Lopes*, 55
7 Cal. 2d 54, 10 Cal. Rptr. 161, 166, 358 P.2d 289, 294 (1960))).

8 57. A district court must address the factors set forth in *Yochum v. Davis*, 98 Nev.
9 484, 486, 653 P.2d 1215, 1216 (1982), *overruled in part on other grounds by Epstein v.*
10 *Epstein*, 113 Nev. 1401, 1405, 950 P.2d 771, 773 (1997), when determining if the NRCP
11 60(b)(1) movant established, by a preponderance of the evidence, that sufficient grounds
12 exist to set aside a final judgment, order, or proceeding. *Opinion*.

13
14 **B. THE RULE 60(B) MOTION IS NOT SUPPORTED BY COMPETENT,**
15 **ADMISSIBLE, AND SUBSTANTIAL EVIDENCE.**

16 58. Plaintiffs moved to set aside the *Order Granting Defendants’ Motion to Strike,*
17 *Order Granting the Motion for Sanctions, and Sanctions Order*⁶ because Mr. Moquin “failed
18 to properly prosecute this case due to a serious mental illness and a personal life that was
19 apparently in shambles.” *Rule 60(b) Motion* 1.

20 59. While this Court “has wide discretion in deciding whether to grant or deny a
21 motion to set aside a judgment under NRCP 60(b),” *Stoecklein v. Johnson Electric, Inc.*, 109
22 Nev. 268, 271, 849 P.2d 305, 307 (1993), *holding modified by Willard v. Berry-Hinckley*
23 *Indus.*, 136 Nev. Adv. Op. 53, 469 P.3d 176 (2020), this discretion is “a legal discretion and
24 **cannot be sustained where there is no competent evidence** to justify the court’s action.
25 *Id.* (emphasis added) (citing *Lukey v. Thomas*, 75 Nev. 20, 22, 333 P.2d 979 (1959)); *cf.*
26

27 ⁶Plaintiffs argue that the *Sanctions Order* was insufficient under *Young v. Johnny Ribeiro*, 106 Nev.
28 88, 93, 787 P.2d 777, 780 (1990) because the *Sanctions Order* did not consider “whether sanctions
unfairly operate to penalize a party for the misconduct of his or her attorney.” *Rule 60(b) Motion*, 12.
This is addressed by the Court hereinafter.

1 *generally Otak Nev. LLC v. Eighth Judicial Dist. Ct.*, 129 Nev. 799, 805, 312 P.3d 491, 496
2 (2013) (a court abuses its discretion when its decision is not supported by substantial
3 evidence).

4 60. A party who seeks to set aside an order pursuant to NRCP 60(b)(1) bears the
5 burden of proof to show excusable neglect “by a preponderance of the evidence.” *Kahn v.*
6 *Orme*, 108 Nev. 510, 835 P.2d 790 (1992), *overruled on other grounds by Epstein v.*
7 *Epstein*, 113 Nev. 1401, 950 P.2d 771 (1997); *Britz v. Consolidated Casinos Corp.*, 87 Nev.
8 441, 446, 448 P.2d 911, 915 (1971). In fact, “before a...judgment may be set aside under
9 NRCP 60(b) (1), the party so moving **must show to the court** that his neglect was
10 excusable.” *McClellan v. David*, 84 Nev. 283, 439 P.2d 673 (1968) (emphasis added).

11 61. Where “there was no credible evidence before the lower court to show that the
12 neglect of the movant was excusable under the circumstances,” the Nevada Supreme Court
13 reversed a district court’s order setting aside a judgment, stating “no excusable neglect was
14 shown as a matter of law.” *McClellan*, 84 Nev. at 284, 289, 439 P.2d at 674, 677.

15 62. The *Rule 60(b) Motion* purports to provide substantial evidence to support its
16 legal argument through the *Willard Declaration* and the *Reply Willard Declaration* together
17 with the attached exhibits, all of which contain inadmissible statements, some inadmissible
18 on multiple grounds.

19 63. The *Willard Declaration* includes several statements about Mr. Moquin’s
20 alleged mental disorder. As set forth in the Findings of Fact, *supra*, Mr. Willard declares that
21 he is “convinced” that Mr. Moquin was dealing with issues and demons beyond his control
22 (*WD* ¶ 66); he “learned” Mr. Moquin was struggling with constant marital conflict that greatly
23 interfered with his work (*WD* ¶ 67; *RWD* ¶ 15); Mr. Moquin suffered a “total mental
24 breakdown”) (*WD* ¶ 68; *RWD* ¶ 16); Mr. Moquin explained to Mr. Willard he had been
25 diagnosed with bipolar disorder (*WD* ¶ 70; *RWD* ¶ 37); Mr. Willard believes Mr. Moquin’s
26 disorder to be “severe and debilitating” (*WD* ¶ 73); Mr. Willard now sees that “Mr. Moquin
27 was suffering from [symptoms of bipolar disorder] throughout his work on the case (*WD* ¶
28

76); and, Mr. Willard can now see how Mr. Moquin's alleged psychological issues affected his case (*WD* ¶ 87).⁷

64. The *Willard Declaration* addresses Mr. Moquin's private life, including his personal mental status and conflict in his marriage.

65. Mr. Willard's statements are not derived from his own perceptions.

66. The nature of the subject matter, itself, establishes Mr. Willard could not have obtained this information by personal observation.

67. Mr. Willard lacks personal knowledge to testify to the assertions included in the *Willard Declaration* and the *Reply Willard Declaration* regarding Mr. Moquin's mental disorder, private personal life, and private marital conflicts.

⁷The *Willard Declaration* and the *Reply Willard Declaration* contain many nearly identical statements. They compare as follows:

<i>Willard Declaration</i> Paragraph	<i>Reply Willard Declaration</i>
53	7
54	8
59	9
63	11
64	12 (slightly differs)
65	13
67	15
68	16
69	35
70	38
71	39
82	10 Similar – not exact)
89	3
91	67

1 68. It also logically follows that Mr. Willard could only have obtained this
2 information by communication from Mr. Moquin (or Mr. Moquin's wife), although not overtly
3 stated.

4 69. The *Willard Declaration* and *Reply Willard Declaration* include inadmissible
5 hearsay under NRS 51.035 and 51.065. See *New Image Indus. v. Rice*, 603 So.2d 895
6 (Ala. 1992) (affirming denial of 60(b) relief where the only evidence of excusable neglect
7 was an affidavit containing inadmissible hearsay and speculation); *Agnello v. Walker*, 306
8 S.W.3d 666, 673 (Mo. Ct. App. 2010), *as modified* (Apr. 27, 2010) (a motion to set aside a
9 default judgment is not a "self-proving motion," and "[i]t is not sufficient to attach hearsay
10 testimonial documentation in support of a motion to set aside....").

11 70. Separate and apart from the challenge to the *Willard Declaration* and the
12 *Reply Willard Declaration* on hearsay grounds, Mr. Willard's statements are also speculative
13 and therefore inadmissible. He does not declare that he personally observed Mr. Moquin's
14 alleged condition until he draws this unqualified conclusion late in the case, and, even if he
15 had, he speculates what the mental disorder could cause and caused, offering an internet
16 article to boost his credibility, which is also hearsay with no applicable exception offered.

17 71. The assertion describing Mr. Moquin's statement to Mr. Willard that Dr. Mar
18 diagnosed Mr. Moquin with bipolar disorder (*WD* ¶ 69; *RWD* ¶ 35) is inadmissible hearsay
19 with no exception under NRS 51.105(1) because Mr. Willard's declaration does not
20 constitute Mr. Moquin's declaration of "then existing state of mind, emotion, sensation or
21 physical condition, such as intent, plan, motive, design, mental feeling, pain and bodily
22 health." Instead, Dr. Mar purportedly diagnosed Mr. Moquin; Mr. Moquin told Mr. Willard of
23 Dr. Mar's purported diagnosis; and Mr. Willard makes the statement of Mr. Moquin's
24 diagnosis. The statements were not spontaneous and instead were a basis for Mr. Moquin
25 to request monetary assistance.
26

27 72. Even if Mr. Moquin's report of Dr. Mar's diagnosis is construed as constituting
28 Mr. Moquin's statement of then-existing mental condition, Mr. Willard's statements are not

1 admissible as contemporaneous statements made by Mr. Moquin about his own present
2 physical symptoms or feelings. See 2 McCormick on Evid. 273 (7th ed.) (“Statements of the
3 declarant’s present bodily condition and symptoms, including pain and other feelings,
4 offered to prove the truth of the statements, have been generally recognized as an
5 exception to the hearsay rule. Special reliability is provided by the spontaneous quality of
6 the declarations, assured by the requirement that the declaration purport to describe a
7 condition presently existing at the time of the statement.”). No spontaneous statement of
8 Mr. Moquin, as the declarant, was offered.

9 73. The *Willard Declaration* and the *Reply Willard Declaration* also contain
10 hearsay within hearsay, which is inadmissible under NRS 51.067.

11 74. Mr. Willard purports to declare Mr. Moquin had a complete mental breakdown,
12 how Mr. Moquin’s symptoms of his alleged bipolar disorder might manifest, and how those
13 symptoms might have affected Mr. Moquin’s work. (*WD* ¶ 68, 73-76, 87-88; *RWD* ¶ 16, 38).

14 75. These statements are inadmissible as impermissible lay opinion under NRS
15 50.265. Mr. Willard is not a licensed healthcare provider qualified to opine on Mr. Moquin’s
16 mental condition, mental disorder, or symptoms of any disorder or condition that manifested.

17 76. Mr. Willard surmises, speculates, and draws conclusions. He is not qualified
18 to testify about any medical, physical, or mental condition Mr. Moquin may have, or the
19 effect of that condition on his work. *White v. Com*, 616 S.E.2d 49, 54 (Va. Ct. App. 2005)
20 (“While lay witnesses may testify to the attitude and demeanor of the defendant, lay
21 witnesses cannot express an opinion as to the existence of a particular mental disease or
22 condition.”) (citations omitted).

23 77. Plaintiffs contend Mr. Willard’s opinions of how Mr. Moquin’s alleged condition
24 might manifest with symptoms and how these symptoms may have affected Mr. Moquin’s
25 work are appropriate because “lay witnesses can offer testimony as to a person’s sanity.”
26 *Reply*, 2. Plaintiffs cite *Criswell v. State*, 84 Nev. 459, 464, 443 P.2d 552, 555 (1968) for the
27 proposition that lay witnesses can offer testimony as to a person’s sanity. However,
28

1 *Criswell* was overruled in 2001. See *Finger v. State*, 117 Nev. 548, 576-77, 27 P.3d 66, 85
2 (2001) (en banc decision regarding the legal insanity defense and statutorily-created “guilty,
3 but mentally ill plea” and holding the legislative abolishment of insanity as a complete
4 defense to a criminal offense unconstitutional, among other holdings, that lay witnesses
5 cannot testify as to “insanity” because the term has a precise and narrow definition under
6 Nevada law).

7 78. The *Finger* holdings are not applicable here. First, the *Finger* case involves a
8 defense to criminal charges. Second, Mr. Willard did not testify that Mr. Moquin was sane
9 or insane; rather, he testified about the diagnosis of bipolar disorder, possible symptoms of
10 bipolar disorder, and how those symptoms, if present, might have affected Mr. Moquin’s
11 work.

12 79. Section 50.265 of the Nevada Revised Statutes provides a lay witness may
13 testify to opinions or inferences that are “[r]ationally based on the perception of the witness;
14 and...[h]elpful to a clear understanding of the testimony of the witness or the determination
15 of a fact in issue.” NRS 50.265. A qualified expert may testify to matters within his/her
16 “special knowledge, skill, experience, training or education” when “scientific, technical or
17 other specialized knowledge will assist the trier of fact to understand the evidence or to
18 determine a fact in issue.” NRS 50.275; *Burnside v. State*, 131 Nev. 371, 382, 352 P.3d
19 627, 636 (death penalty case detective allowed to testify about cell phone records as lay
20 witness). Further,

21
22 The key to determining whether testimony constitutes lay or expert testimony
23 lies with a careful consideration of the substance of the testimony—does the
24 testimony concern information within the common knowledge of or capable of
25 perception by the average layperson or does it require some specialized
26 knowledge or skill beyond the realm of everyday experience? See *Randolph v.*
27 *Collectramatic, Inc.*, 590 F.2d 844, 846 (10th Cir. 1979) (observing that lay
28 witness may not express opinion ‘as to matters which are beyond the realm of
common experience and which require the special skill and knowledge of an
expert witness”); Fed. R. Evid. 701 advisory committee’s note (2000 amend.)
 (“[T]he distinction between lay and expert witness testimony is that lay
testimony results from a process of reasoning familiar in everyday life, while

1 expert testimony results from a process of reasoning which can be mastered
2 only be specialists in the field.” (internal quotation marks omitted)); *State v.*
3 *Tierrney*, 389 A.2d 38, 46 (N.H. 2003) (“Lay testimony must be confined to
personal observations that any layperson would be capable of making.”).

4 *Id.*

5 80. While the Nevada Supreme Court and Nevada Court of Appeals have not
6 addressed lay witness testimony, like that contained in the *Willard Declaration and Reply*
7 *Willard Declaration*, regarding bipolar disorder, it has been specifically addressed by the
8 Pennsylvania court and is persuasive here. In the case of *In re Petition for Involuntary*
9 *Commitment of Joseph R. Barbour*, the Superior Court of Pennsylvania held a “[l]ay witness
10 and non-expert could not provide expert testimony regarding involuntary committee’s
11 medical diagnosis, specifically the existence of mood disorder known as bipolar disorder.” *In*
12 *re Petition for Involuntary Commitment of Joseph R. Barbour*, 733 A.2d 1286 (Pa. 1999).
13 This Court therefore concludes such testimony is inadmissible to support the *Rule 60(b)*
14 *Motion*.

15 81. Exhibits 6, 7, and 8 to the *Rule 60(b) Motion* which purport to detail Mr.
16 Moquin’s alleged domestic abuse of his family and contain statements about Mr. Moquin’s
17 alleged bipolar condition, are inadmissible as discussed, *supra*, to establish he had bipolar
18 disorder.

19 82. Exhibits 6, 7, and 8 to the *Rule 60(b) Motion* are not, and cannot be,
20 authenticated by Mr. Willard. Mr. Willard is not the author of the documents and has no
21 personal knowledge of their authenticity. He therefore cannot authenticate or identify the
22 documents pursuant to NRS 52.015(1) or NRS 52.025.

23 83. Exhibits 6, 7, and 8 do not meet the requirements for presumed authenticity
24 under NRS 52.125, as the exhibits are not certified copies of public records.

25 84. Pursuant to NRS 47.150, a judge or court may take judicial notice, whether
26 requested or not. Further, a judge or court shall take judicial notice if requested by a party
27 and supplied with the necessary information. NRS 47.150. Here, no party requested this
28

1 Court to take judicial notice based on certified copies of the California court records,
2 contained in the exhibits to the *Rule 60(b) Motion* and the *Reply*. The Court exercises its
3 discretion and declines to take judicial notice here.

4 85. Moreover, even if Exhibits 6, 7, and 8 could be authenticated, the statements
5 contained in those exhibits regarding Mr. Moquin's alleged mental disorder and condition
6 are inadmissible lay opinion about bipolar disorder and would still constitute inadmissible
7 hearsay, as they were apparently authored by Mr. Moquin's wife, and Plaintiffs offer them to
8 prove that Mr. Moquin suffers from bipolar disorder and his life was in "shambles."

9 86. Several *Reply* Exhibits discussed in the *Reply Willard Declaration* also contain
10 inadmissible hearsay.

11 87. All the texts and emails offered by Plaintiffs and authored by Mr. Moquin or Mr.
12 O'Mara constitute inadmissible hearsay under NRS 51.035 and NRS 51.065.

13 88. Specifically, Exhibits 2 and 3 to the *Reply*, the text messages authored by Mr.
14 Moquin in Exhibit 4, the text messages authored by Mr. Moquin in Exhibit 7, the email
15 authored by Mr. Moquin in Exhibit 8, and the emails authored by Mr. Moquin in exhibit 10
16 are inadmissible hearsay.

17 89. Exhibits attached to the *Reply* also contain communications occurring after
18 this Court issued its *Order Granting Motion to Strike* and its *Order Granting Sanctions*.

19 90. Competent and substantial evidence has not been presented to establish *Rule*
20 *60(b)* relief.
21

22 **C. PLAINTIFFS FAILED TO ESTABLISH EXCUSABLE NEGLIGENCE**
23 **UNDER THE YOCHUM V. DAVIS FACTORS.**

24 91. In *Yochum v. Davis*, 98 Nev. 484, 486, 653 P.2d 1215, 1216 (1982), *overruled*
25 *in part on other grounds by Epstein v. Epstein*, 113 Nev. 1401, 1405, 950 P.2d 771, 773
26 (1997), the Nevada Supreme Court held, to determine whether grounds for NRCP 60(b)(1)
27 relief exist, a district court must apply four factors: (1) a prompt application to remove the
28

1 judgment; (2) the absence of an intent to delay the proceedings; (3) a lack of knowledge of
2 procedural requirements; and (4) good faith.

3 92. The burden of proof is on the movant, in this case, Plaintiffs, who must show
4 “mistake, inadvertence, surprise or excusable neglect, either singly or in combination... ‘by a
5 preponderance of the evidence....’” *Kahn v. Orme*, 108 Nev. 510, 513–14, 835 P.2d 790,
6 793 (1992) (quoting *Britz v. Consolidated Casinos Corp.*, 87 Nev. at 446, 488 P.2d at 911).

7 93. A district court must issue explicit findings on each of the *Yochum* factors in
8 rendering its decision. *Opinion*.

9 94. A district court must also consider Nevada’s bedrock policy to decide cases on
10 the merits whenever feasible when evaluating an NRCP 60(b)(1) motion. *Id*.

11 95. However, other policy concerns are also considered, such as the swift
12 administration of justice and enforcement of procedural requirements, “even when the result
13 is dismissal of a plaintiff’s case.” *Rodriguez v. Fiesta Palms, LLC*, 134 Nev. 654, 654, 428
14 P.3d 255, 256 (2018), *holding modified by Willard v. Berry-Hinckley Indus.*, 136 Nev. Adv.
15 Op. 53, 469 P.3d 176 (2020); NRCP 1.

16 96. Here, while considering Nevada’s policy to decide cases on the merits when
17 feasible, this Court determines, by the following detailed and explicit findings on each
18 *Yochum v. Davis* factor, NRCP 60(b)(1) relief is not warranted.

19
20 **(1) A prompt application to remove the judgment:**

21 97. A motion for NRCP 60(b)(1) relief must be filed “within a reasonable time” and
22 “not more than 6 months after the proceeding was taken or the date that written notice of
23 entry of the judgment or order was served.” *Rodriguez*, 134 Nev. at 657, 428 P.3d at 257.

24 98. “[The six-month period represents the **extreme limit** of reasonableness.” *Id*.
25 (emphasis added) (quotations omitted).

26 99. As such, even in cases in which a movant has filed an NRCP 60(b) Motion
27 within six (6) months, it may nevertheless be found to have not acted promptly. See, e.g.,
28

1 *Kahn v. Orme*, 108 Nev. 510, 514, 835 P.2d 790, 793 (1992) (concluding that a movant
2 failed to act promptly where a default judgment was entered against him in February, he
3 knew as early as March, did not seek counsel until late May, and did not move to set aside
4 the default judgment until August, nearly six months after the judgment).

5 100. Here, Plaintiffs and O'Mara were contemporaneously aware of Plaintiffs'
6 failure to oppose the *Sanctions Motion*.

7 101. Specifically, Exhibit 2 to the *Reply* appears to be a text string between Mr.
8 Willard and Mr. Moquin from December 2, 2017, through December 6, 2017, in which Mr.
9 Willard inquires about the status of Plaintiffs' filing in response to the *Motion for Sanctions*.
10 *Reply*, Exhibit 2. The text messages reflect Mr. Willard was aware of the initial deadline,
11 December 4, 2017, for Plaintiffs to respond to the *Motion for Sanctions* (based on the
12 November 15, 2017, filing date and electronic service). *Prior 60(b) Order 23 ¶49*.

13 102. Defendants agreed to extensions through 3:00 pm on December 6, 2017, for
14 Plaintiffs to file their oppositions. *Prior 60(b) Order 23 ¶50*.

15 103. This Court granted an additional extension through December 18, 2018. *Prior*
16 *60(b) Order 23 ¶51*.

17 104. Plaintiffs knew of the initial filing deadline. They were aware no opposition
18 papers were filed. Mr. Willard continued to communicate with both Mr. Moquin and Mr.
19 O'Mara from December 11 until December 25, 2017, regarding the delinquent filings (*Reply*
20 Exs. 3, 4), well after this Court's final filing deadline of December 18, 2017. *Prior 60(b)*
21 *Order 24 ¶52, 56; Sanctions Order ¶95*.

22 105. Despite knowing no oppositions had been filed, neither Mr. Willard (through
23 Mr. O'Mara), Mr. Moquin, nor Mr. O'Mara contacted Defendants' counsel or this Court to
24 address the status of this case. *Prior 60(b) Order 24 ¶53; Sanctions Order ¶98*.

25 106. On January 4, 2018, this Court entered its *Order Granting Defendants'/*
26 *Counterclaimants' Motion for Sanctions* (the "*Initial Sanctions Order*").
27
28

1 107. The *Initial Sanctions Order* granted Defendants' *Motion for Sanctions* based
2 upon (1) DCR 13(3) and Plaintiffs' failure to oppose Defendants' *Motion*; and (2) the fact
3 that Defendants' *Motion* had merit "due to Plaintiffs' egregious discovery violations
4 throughout the pendency of this litigation and repeated failure to comply with this Court's
5 orders." *Id.* at 3.

6 108. Therefore, this Court found, "Plaintiffs' conduct warrants dismissal of this
7 action under NRCP 16.1(e)(3), NRCP 37(b)(2), NRCP 41(b), and the Nevada Supreme
8 Court's decision in *Bianco v. Bianco*, 129 Nev. Adv. Op. 77, 311 P.3d 1170." *Id.* at 3-4. The
9 *Initial Sanctions Order* was served upon both Mr. Moquin and Mr. O'Mara. *Id.*

10 109. The *Initial Sanctions Order* directed Defendants to submit to the Court within
11 twenty (20) days a proposed order granting the *Sanctions Motion*, including factual and
12 legal analysis and discussion, in accordance with WDCR 9.

13 110. This Court entered its *Sanctions Order* on March 6, 2018. (*Sanctions Order*).

14 111. On March 15, 2018, Mr. O'Mara filed his *Notice of Withdrawal of Local*
15 *Counsel*. Therein, he stated, "[c]ounsel has had no contact with lead counsel Mr. Moquin
16 for **many months** with a **total failure just prior to the Court's first decisions being filed**
17 **in this case.**" *Notice*, 1 (emphases added).

18 112. Plaintiffs took no action to request that Mr. O'Mara, who remained Plaintiffs'
19 counsel of record until March 15, 2018, promptly inform this Court—on even a cursory
20 basis—of Plaintiffs' alleged circumstances.

21 113. Plaintiffs did nothing to apprise this Court of any issues until they filed the *Rule*
22 *60(b) Motion* in April, 2018. *Prior 60(b) Order* 24 ¶¶54.

23 114. Mr. O'Mara did not report any issues to this Court until the filing of his *Notice*
24 on March 15, 2018. *Prior 60(b) Order* 25 ¶¶60; *Notice*, 1.

25 115. This failure to promptly notify the Court is another act in the continuum of
26 Plaintiffs' repeated delay throughout this case with respect to each of Plaintiffs' obligations,
27 as discussed *infra*.
28

1 116. While Plaintiffs should and could have acted in a more prompt manner,
2 Plaintiffs filed their *Rule 60(b) Motion* within a reasonable amount of time of the *Initial*
3 *Sanctions Order* and the *Sanctions Order*. Thus, this Court finds that the first *Yochum* factor
4 is satisfied here.⁸

5 117. Although the Plaintiffs met this factor, the remaining three *Yochum* factors,
6 weigh strongly against NRCP 60(b) relief. *Cf., e.g., Rodriguez*, 134 Nev. at 659, 428 P.3d at
7 259 (“Even assuming Rodriguez acted in good faith, we affirm the district court’s decision
8 based on the first three *Yochum* factors, all of which favor denial of Rodriguez’s NRCP
9 60(b)(1) motion.”).

10 **(2) The absence of intent to delay the proceedings:**

11 118. The next *Yochum* factor is the absence of intent to delay the proceedings.

12 119. “As to [this] factor, an intent to delay the proceedings may be inferred from the
13 parties’ prior actions.” *ABD Holdings, Inc. v. JMR Inv. Properties, LLC*, 441 P.3d 548 (Nev.
14 2019) (unpublished) (citing *Rodriguez*, 134 Nev. at 657, 428 P.3d at 258).

15 120. The Nevada Supreme Court has inferred intent to delay where the movant
16 “exhibited a pattern of repeatedly requesting continuances [of the trial date] and filed his
17 NRCP 60(b)(1) motion just before the six-month outer limit,” exhibited conduct which
18 “differed markedly from that of a litigant who wishes to swiftly move toward trial,” and
19 exhibited conduct which “indicate[d] that he intended to delay trial until he secured new
20 counsel, rather than proceeding without representation.” *Rodriguez*, 134 Nev. at 658, 428
21 P.3d at 258.
22
23

24 ⁸ This Court also notes that all of the statements in the *Reply Willard Declaration* set forth after
25 Paragraph 37 detail events and communications from late January, 2018 through late May, 2018, all
26 of which occurred after this Court issued its *Order Granting Motion to Strike, Order Granting*
27 *Sanctions, and Sanctions Order*. RWD ¶¶ 37-67. Exhibits 5, 6, 7, 8, 9, and 10 to the *Reply* contain
28 only communications and descriptions of events that occurred after this Court issued its *Order*
Granting Motion to Strike, Order Granting Sanctions, and Sanctions Order. Logically, relevant events
asserted to support Plaintiffs’ argument of excusable neglect must have necessarily occurred prior to
the entry of the orders Plaintiffs seek to set aside. Thus, while these Exhibits may support a finding
of promptness under the first *Yochum* factor, which this Court has already found that Plaintiffs have
satisfied, they are irrelevant to Plaintiffs’ arguments that excusable neglect occurred.

1 121. The Nevada Supreme Court has also inferred intent to delay where, among
2 other things, “[t]he record demonstrate[d] a pattern of delay from the case’s inception: [the
3 defendants] asked for extensions of the time to file their answer, hired an attorney the day
4 the answer was due and then subsequently filed an untimely demand for securities of costs
5 instead of answering the complaint—and thereafter still failed to answer the complaint.”
6 *ABD*, 441 P.3d 548 (unpublished).

7 122. Additionally, the Nevada Supreme Court has concluded that there was
8 evidence of a movant’s intent to delay because, in part, the movant “failed to file a single
9 motion” in opposition to the respondent’s motions. *Kahn*, 108 Nev. at 514, 835 P.2d at 793.

10 123. The Plaintiffs have not demonstrated an absence of intent to delay the
11 proceedings for multiple, independent reasons.

12 124. First, Plaintiffs’ sole asserted basis for satisfying this factor is that “Mr.
13 Moquin’s mental illness demonstrates that Plaintiffs have at all times acted...without the
14 intent to delay the proceedings,” and that “Plaintiffs are, in fact, the victims of Mr. Moquin’s
15 assurances.” *60(b) Motion* 11.

16 125. However, as discussed, Plaintiffs provided no admissible evidence in support
17 of their *60(b) Motion*, and certainly provided no admissible evidence demonstrating that
18 Moquin had a mental illness, or the effect of such mental illness, if any, on Plaintiffs’ case.
19 *See supra*.

20 126. Accordingly, Plaintiffs have failed to satisfy their burden to demonstrate an
21 absence of intent to delay proceedings.

22 127. Second, even beyond the evidentiary shortcomings, which alone are fatal to
23 Plaintiffs’ argument, the record before this Court demonstrates a repeated delays in the
24 proceedings at the hands of the Plaintiffs.

25 128. Although Plaintiffs satisfied the first *Yochum* factor by promptly moving to
26 remove the judgment, the totality of the record before this Court, prior to Plaintiffs seeking
27 NRCP 60(b) relief, is replete with evidence of willful delay.
28

1 129. This Court has previously ruled on Plaintiffs' numerous egregious and
2 intentional delays from the inception of this case. As reflected in the court file, Plaintiffs'
3 multiple instances of non-compliance, including the Plaintiffs' failure to provide a compliant
4 damages disclosure, occurred well before Mr. Moquin's purported breakdown in December
5 2017, or January 2018, which was asserted as preventing him from opposing the motions.
6 *Prior 60(b) Order 24 ¶¶59.*

7 130. The Court's prior findings include:

8 a. Plaintiffs have exhibited a longstanding pattern of failure to ignore fundamental
9 discovery obligations and deadlines imposed by this Court and the Nevada Rules of Civil
10 Procedure. *Sanctions Order ¶¶ 13-79, 124-141, 153.*

11 b. Plaintiffs' conduct of ignoring or failing to comply with multiple separate
12 discovery obligations throughout this case forced Defendants to repeatedly file motions to
13 compel, and necessitated extensions of trial and discovery deadlines on three occasions to
14 accommodate Plaintiffs' continued non-compliance. *Sanctions Order ¶ 121.*

15 c. Plaintiffs willfully failed to timely disclose the appraisals upon which many of
16 their damages calculations were based. (*Sanctions Order ¶ 133, 135-136, 139*).

17 d. "Plaintiffs' repeated and **willful delay** in providing necessary information to
18 Defendants has necessarily prejudiced Defendants." *Sanctions Order ¶ 141* (emphasis
19 added).

20 e. Before the present case, Plaintiffs filed a case against Defendants in
21 California, based upon the same set of facts, which was dismissed for a lack of personal
22 jurisdiction. *Sanctions Order ¶ 142-144.*

23 131. The conduct of Plaintiffs' freely-selected attorney is attributable to Plaintiffs
24 personally (particularly where, as here, Plaintiffs have provided no admissible evidence to
25 demonstrate otherwise) and, therefore, willful delay is personally attributable to Plaintiffs.
26

27 132. For example, Plaintiffs had personal and contemporaneous knowledge of their
28 failure to disclose their NRCP 16.1 damages, (*Sanctions Order ¶ 46-47, 125*), which was a

critical basis for dismissal. *Sanctions Order* ¶ 146; *see also infra* (discussing the absence of good faith).

133. This failure was also a critical basis for the continued delay of the trial date. *See, e.g., Stipulation and Order to Continue Trial (Third Request)* ¶ 7, 10 (stipulating Plaintiffs had not yet provided a compliant NRCP 16.1 damages disclosure as discussed at the January 10, 2017, hearing, “[b]ecause Plaintiffs have not yet provided a complete NRCP 16.1 damages disclosure, Defendants will not be able to complete necessary fact discovery on Plaintiffs’ damages, or to disclose an updated expert report...within the time currently allowed for discovery... Moreover, any further extension of the discovery deadlines would prevent the parties from being able to [timely] file and submit dispositive motions [prior to trial],” and the “[u]ndersigned counsel certifies that their respective clients have been advised that a stipulation for continuance is to be submitted on their behalf and that the parties have no objection thereto”); *Sanctions Order* ¶ 150.

134. Plaintiffs have similarly failed to demonstrate an absence of intent to delay the proceedings with respect to the entry of the *Sanctions Order*.

135. Specifically, as discussed *supra*, Plaintiffs knew of the initial filing and resulting opposition deadline. They were aware no opposition papers were filed. Mr. Willard continued to communicate with both Mr. Moquin and Mr. O’Mara from December 11 until December 25, 2017, regarding the delinquent filings (*Reply* Exs. 3, 4), well after this Court’s final filing deadline of December 18, 2017. *Prior 60(b) Order 24* ¶¶52, 56; *Sanctions Order* ¶95.

136. Despite knowing no oppositions had been filed, neither Mr. Willard (through Mr. O’Mara), Mr. Moquin, nor Mr. O’Mara contacted Defendants’ counsel or this Court to address the status of this case. *Prior 60(b) Order 24* ¶53; *Sanctions Order* ¶98.

137. Indeed, in his March 15, 2018, *Notice*, Mr. O’Mara stated “[c]ounsel has had no contact with lead counsel Mr. Moquin for **many months** with a **total failure just prior to the Court’s first decisions being filed in this case.**” *Notice*, 1 (emphases added).

1 138. Plaintiffs did nothing to apprise this Court of any issues until they filed the *Rule*
2 *60(b) Motion* in April, 2018.⁹ *Prior 60(b) Order 24 ¶54.*

3 139. Similarly, Mr. O'Mara did not report any issues to this Court until the filing of
4 his *Notice* on March 15, 2018. *Prior 60(b) Order 25 ¶60; Notice, 1.*

5 140. Finally, Plaintiffs have failed to demonstrate an absence of intent to delay the
6 proceedings with respect to their claims about Mr. Moquin.

7 141. In fact, Mr. Willard admits he was informed by Mr. O'Mara **prior to the**
8 **dismissal** of Plaintiffs' claims that Mr. Moquin was not responsive. *Prior 60(b) Order 26*
9 *¶66.* Plaintiffs failed to replace Mr. Moquin or take other action due to perceived financial
10 reasons. *Prior 60(b) Order 26 ¶66; WD ¶ 81.* Plaintiffs' knowledge and inaction vitiates
11 excuse for neglect. *Prior 60(b) Order 26 ¶66; see also 60(b) Motion 15* ("It was only in **late**
12 **2017** that it became clear to Mr. Willard that something was terribly wrong and that Mr.
13 Moquin was suffering from mental illness.").

14 142. Plaintiffs started looking for attorneys who might be able to help. *RWD ¶ 36.*
15 Plaintiffs instead provided personal financial assistance to Mr. Moquin and did not terminate
16 his services. *Prior 60(b) Order 24 ¶55; WD ¶ 71; RWD ¶ 39.*

17 143. Plaintiffs chose to retain Mr. Moquin and did not terminate his representation,
18 even after becoming aware he did not file a timely response to the *Motion for Sanctions*.
19 Plaintiffs cannot now avoid the consequences of the acts or omissions of their freely
20 selected agent. *Prior 60(b) Order 24 ¶57.*
21
22
23
24

25 ⁹Plaintiffs had contemporaneous knowledge of the *Sanctions Order*. Yet, rather than appeal from the
26 *Sanctions Order* within thirty days of the *Notice of Entry of Sanctions Order*, filed on March 6, 2018,
27 Plaintiffs instead improperly challenged the propriety of the *Sanctions Order* in their *Rule 60(b)*
28 *Motion*, which was filed on April 18, 2018, more than thirty days after the *Notice of Entry of the*
Sanctions Order. Cf. generally, e.g., *Mathews v. Carreira*, 770 N.E.2d 560 (Ma. App. 2002) ("Rule
60(b) cannot be used as a substitute for the regular appeal procedure."); *Carrabine v. Brown*, 1993
WL 318809 (Ohio Ct. App. 1993) (A motion for relief from judgment under Civ.R. 60(B)(1) cannot be
predicated upon the argument that the trial court made a mistake in rendering its decision); *Morgan*
v. Estate of Morgan, 688 So. 2d 862, 864 (Ala. Civ. App. 1997).

1 144. Plaintiffs voluntarily chose to stop looking for new counsel to assist and chose
2 to continue to rely on Mr. Moquin solely for financial reasons. *Prior 60(b) Order 24 ¶¶58; WD*
3 *¶¶81.*

4 145. Indeed, Mr. Willard was aware of Mr. Moquin’s alleged problems prior to this
5 Court’s *Order Granting Motion to Strike and Sanctions Order* yet continued to allow Mr.
6 Moquin to represent Plaintiffs. *Prior 60(b) Order 25-26 ¶¶64.*

7 146. Plaintiffs have not established by substantial evidence that they exercised
8 diligence to rectify representation in their case despite ample knowledge of Mr. Moquin’s
9 non-responsiveness. *Prior 60(b) Order 27 ¶¶69.* As discussed *supra*, all of Plaintiffs’
10 proffered evidence regarding Mr. Moquin’s alleged mental condition is inadmissible and
11 does not establish Mr. Moquin had any mental illness or that any alleged mental illness
12 affected Plaintiffs’ case.

13 147. Further, Mr. Willard’s claim he had no choice but to continue working with Mr.
14 Moquin due to financial issues lacks credibility, as he admits he was able to borrow money
15 to fund Mr. Moquin’s personal life needs and medical treatment. It logically follows he had
16 the resources to retain new attorneys at the time. *Prior 60(b) Order 27 ¶¶68.*

17 148. Thus, as in *Rodriguez*, Plaintiffs’ conduct—both pre- and post- *Sanctions*
18 *Order*—has “differed markedly from that of a litigant who wishes to swiftly move toward
19 trial.” 134 Nev. at 658, 428 P.3d at 258.

20 149. In sum, Plaintiffs have failed to establish the absence of an intent to delay the
21 proceedings.
22

23 **(3) A lack of knowledge of procedural requirements:**
24

25 150. The next *Yochum* factor is whether the movant lacks knowledge of the
26 procedural requirements.

27 151. “As to the third factor, a party is generally deemed to have knowledge of the
28 procedural requirements where the facts establish either knowledge or legal notice, where

1 under the facts the party should have inferred the consequences of failing to act, or where
2 the party's attorney acquired legal notice or knowledge." *ABD Holdings, Inc. v. JMR Inv.*
3 *Properties, LLC*, 441 P.3d 548 (Nev. 2019) (unpublished) (citing *Rodriguez*, 428 P.3d at
4 258, and *Stoecklein*, 109 Nev. at 273, 849 P.2d at 308).

5 152. The Nevada Supreme Court has also explained "[t]o condone the actions of a
6 party who has sat on its rights only to make a last-minute rush to set aside judgment would
7 be to turn NRCP 60(b) into a device for delay rather than the means for relief from an
8 oppressive judgment that it was intended to be." *Union Petrochemical Corp. of Nevada v.*
9 *Scott*, 96 Nev. 337, 339, 609 P.2d 323, 324 (1980).

10 153. The Nevada Supreme Court has concluded a movant has failed to satisfy this
11 factor when the movant "personally witnessed the court grant [the defendant's] motion in
12 limine because he did not file a written opposition." *Rodriguez*, 134 Nev. at 658, 428 P.3d at
13 258. The Court explained under such circumstances, the movant "should have inferred the
14 consequences of not opposing the motion to dismiss, especially in light of the court's
15 express warning to take action." *Id.*

16 154. The Nevada Supreme Court has also concluded (albeit in an unpublished
17 order) this factor disfavored NRCP 60(b)(1) relief where the movants "knew the answer was
18 due, knew it was not timely filed, knew [the plaintiff] was seeking a default and money
19 damages, and should have inferred that failing to file their answer and losing on the
20 subsequent motions would result in a default judgment." *ABD Holdings*, 441 P.3d 548.

21 155. Here, the record reflects Plaintiffs have unequivocally failed to establish a lack
22 of knowledge of procedural requirements.

23 156. As a threshold matter, Plaintiffs have admitted as much, conceding "this is,
24 candidly, a little bit of a difficult one," and that Mr. Willard "did, candidly, know that things
25 needed to be filed, he knew that. He knew that trial was coming up and he knew that they
26 were both motions that he wanted to see filed and oppositions that he understood needed to
27
28

1 be filed because he was an active participant in this case and he wants to continue to be.”
2 *60(b) Transcript* 9, 11.

3 157. Additionally, the record before this Court is replete with evidence
4 demonstrating Plaintiffs had knowledge of the pertinent procedural requirements.

5 158. This Court previously found Mr. Willard had **knowledge** of the initial filing
6 deadline to oppose BHI’s Sanctions Motion. Plaintiffs **knew** timely oppositions were not
7 filed. *Prior 60(b) Order* 24 ¶¶52, 55.

8 159. Further, as this Court found, Mr. Willard was **aware** of Mr. Moquin’s inaction
9 which distinguishes this case from the cases upon which Plaintiffs rely in the *Rule 60(b)*
10 *Motion*. *Prior 60(b) Order* 26 ¶¶65.

11 160. Plaintiffs also had personal knowledge of procedural requirements leading to
12 the *Sanctions Order*. *Prior 60(b) Order* 26 ¶¶65.

13 161. For example, Mr. Willard attended the hearing in which Defendants’ counsel
14 informed this Court “[w]e’ve never received a specific damages computation from any of the
15 plaintiffs in this case under 16.1, as they are required to do, **despite multiple demands**
16 **from us.**” *Sanctions Order* ¶¶46; *January 10, 2017, Hearing Transcript* 18.

17 162. Plaintiffs’ counsel admitted, in open court, “with respect to Willard, they do not”
18 have an up-to-date, clear picture of Plaintiffs’ damages claims.” *Sanctions Order* ¶¶47;
19 *January 10, 2017, Hearing Transcript* 42-43.

20 163. This Court ordered, during the hearing, that Plaintiffs “serve, within 15 days
21 after the entry of summary judgment, an updated 16.1 damages disclosure.” *Sanctions*
22 *Order* ¶¶49; *January 10, 2017, Hearing Transcript* 68.

23 164. Thus, Plaintiffs indisputably had personal knowledge of this procedural
24 requirement, their failure to comply therewith, and this Court’s order they comply by a
25 particular deadline.

26 165. Further, the failure to comply with this requirement was a critical basis for the
27 *Sanctions Order*. As this Court found, “Plaintiffs’ failure to provide damages disclosures are
28

1 so central to this litigation, and to Defendants' rights and ability to defend this case, that
2 dismissal of the entire case is necessary." *Sanctions Order* ¶119, 146.

3 166. Finally, even beyond Plaintiffs' personal knowledge of the salient procedural
4 requirements and procedural facts, Plaintiffs were represented by **two** attorneys
5 **throughout** the proceedings who, as this Court found, did not abandon Plaintiffs. *Prior*
6 *60(b) Order* 25 ¶ 62; *see also infra* (discussing that a party cannot seek to avoid a dismissal
7 based on arguments that his or her attorney's acts or omissions led to the dismissal).

8 167. It is unequivocal, both Mr. Moquin and Mr. O'Mara had ample knowledge of
9 every salient procedural requirement and procedural fact. This cannot be overstated: even
10 beyond the general procedural knowledge expected of a practicing attorney, Defendants'
11 counsel wrote numerous letters detailing the pertinent procedural requirements and their
12 application to this case, and Plaintiffs' failures to comply therewith. *See generally Sanctions*
13 *Order*. Plaintiffs also entered into three stipulations which plainly reflected their knowledge
14 of the pertinent deadlines and procedural requirements. *See, e.g., id.* ¶126. This Court also
15 entered multiple orders directly informing Plaintiffs of the pertinent procedural requirements
16 and deadlines. *See generally Sanctions Order* (discussing other orders entered by this
17 Court).

18
19 168. In sum, Plaintiffs' clear knowledge of salient procedural requirements strongly
20 disfavors NRCP 60(b)(1) relief.

21 **(4) Good faith:**

22 169. "Good faith is an intangible and abstract quality with no technical meaning or
23 definition and encompasses, among other things, an honest belief, the absence of malice,
24 and absence of design to defraud." *Rodriguez*, 134 Nev. at 659, 428 P.3d at 259 (quoting
25 *Stoecklein*, 109 Nev. at 273, 849 P.2d at 309).

26 170. The Nevada Supreme Court has noted (albeit by unpublished order), "[t]he
27 facts evidencing an intent to delay the proceedings [can] likewise support the district court's
28

1 findings that [the movants] did not act in good faith....” *ABD Holdings*, 441 P.3d 458
2 (concluding that applied and this factor disfavored NRCP 60(b)(1) relief).

3 171. In this case, Plaintiffs have unequivocally failed to demonstrate they acted in
4 good faith.

5 172. As a threshold matter, once again, Plaintiffs provided no admissible evidence
6 in support of their position.

7 173. Specifically, Plaintiffs’ sole asserted basis for allegedly satisfying this factor is,
8 “Mr. Moquin’s mental illness demonstrates that Plaintiffs have at all times acted in good
9 faith,” and that “Plaintiffs are, in fact, the victims of Mr. Moquin’s assurances.” *60(b) Motion*
10 11.

11 174. However, as this Court has ruled, Plaintiffs provided no admissible evidence in
12 support of their *60(b) Motion*, and certainly provided no admissible evidence demonstrating
13 that Moquin had a mental illness, or the effect of such mental illness, if any, on Plaintiffs’
14 case. *See supra*.

15 175. Thus, Plaintiffs have unequivocally failed to satisfy their burden to
16 demonstrate, by a preponderance of evidence, they acted in good faith. *See Kahn v. Orme*,
17 108 Nev. 510, 513–14, 835 P.2d 790, 793.

18 176. Further, even beyond the lack of admissible evidentiary support, the record
19 clearly demonstrates Plaintiffs have failed to establish they acted in good faith.

20 177. First, the findings discussed *supra* evidencing an intent to delay the
21 proceedings and knowledge of procedural requirements likewise support the finding
22 Plaintiffs did not act in good faith.

23 178. This Court previously found “Willard’s claim that he had no choice but to
24 continue working with Mr. Moquin due to financial issues **lacks credibility**....,” (*Prior 60(b)*
25 *Order 27* ¶68), and in light of the circumstances of this case, dismissal of Willard’s claims
26 did not unfairly penalize Willard for Moquin’s alleged conduct. *Id.* at 29 ¶ 80.
27
28

1 179. Second, Plaintiffs committed multiple willful violations throughout the
2 proceedings, which compelled issuance of the *Sanctions Order* in the first instance.

3 180. Among other things, this Court found that Plaintiffs' eleventh-hour request for
4 nearly \$40 million more in damages based on information which had been in Plaintiffs'
5 possession but not disclosed was willful and in bad faith.

6 181. Specifically, this Court found that after three (3) years of delay due to Plaintiffs'
7 "obstinate refusal" to comply with the Nevada Rules of Civil Procedure, Plaintiffs filed their
8 *Motion for Summary Judgment* with only four (4) weeks remaining in discovery, in which
9 they requested "brand new, never-disclosed types, categories, and amounts of damages."
10 *Sanctions Order* ¶¶ 69, 71; *Willard's Motion for Summary Judgment*.

11 182. Indeed, "Willard sought more than triple the amount of damages (nearly \$40
12 million more) than he sought in the complaint and ostensibly throughout the case," and had
13 new claims and new alleged bases for his alleged damages. *Sanctions Order* ¶¶ 73-79.

14 183. This Court found the timing of the *Motion for Summary Judgment* was such it
15 put "Defendants in the exact same predicament that they were placed in February of 2017—
16 Defendants could not engage in the discovery (fact or expert) necessary to adequately
17 respond to Plaintiffs' brand new information, untimely disclosures, and new requests for
18 relief." *Id.* at ¶¶ 69, 87-88.

19 184. "This timing of these Motions undeniably deprived Defendants of the process
20 that the parties expressly agreed was necessary to rebut any properly-disclosed expert
21 opinions or properly-disclosed NRCP 16.1 damages calculations, as ordered by this Court."
22 *Id.*

23 185. This Court also found "Willard and his purported witness relied upon
24 appraisals from 2008 and 2014 which were never disclosed in this litigation, despite
25 Willard's NRCP 16.1 and NRCP 26(e) obligations and affirmative discovery requests served
26 by Defendants" asking Willard to "[p]lease produce any and all appraisals for the Property
27 from January 1, 2012 through present." *Sanctions Order* ¶ 79.
28

1 186. Indeed, this Court found that “Plaintiffs’ new damages and new expert
2 opinions were all based upon information that was in Plaintiffs’ possession throughout this
3 case, meaning that there was no reason that Plaintiffs could not have timely disclosed a
4 computation of their damages and the documents on which such computations are based.”
5 *Sanctions Order* ¶ 72.

6 187. This Court found this conduct was intentional, strategic, and in bad faith. See
7 *generally Sanctions Order*.

8 188. Specifically, this Court found that this conduct evidenced “Plaintiffs’ bad faith
9 motives in waiting to ambush Defendants,” and, “Plaintiffs’ strategic decision to only disclose
10 their damages in their Motion for Summary Judgment prejudiced Defendants by depriving
11 them of the opportunity to defend against damages that had never previously been
12 disclosed.” *Sanctions Order* ¶ 128.

13 189. This Court found “it is clear that Plaintiffs’ failure to disclose the appraisals
14 upon which many of their calculations were based was...willful.” *Sanctions Order* ¶ 135.

15 190. This Court also found “[g]iven that Willard freely admits that these appraisals
16 were commissioned prior to the commencement of the case, and were in his possession,
17 this is clearly willful omission.” *Sanctions Order* ¶ 136.

18 191. Further, it may be logically inferred Willard, who authored a 15-page affidavit
19 in support of his *Motion for Summary Judgment*, averred “[m]y counsel and I collaborated to
20 create” the damages spreadsheet in support of the *Motion for Summary Judgment*, and
21 personally described his new damages in detail, was aware the damages he sought in the
22 motion were significantly different than those ostensibly sought in the *Complaint* which was
23 verified by Mr. O’Mara, or in his Interrogatory Responses which he personally verified.
24 *Affidavit of Larry J. Willard in Support of Motion for Summary Judgment*.

25 192. The record before this Court clearly demonstrates Plaintiffs have acted in bad
26 faith. This Court gave Plaintiffs’ counsel, including Mr. O’Mara, notice of the seriousness of
27 Plaintiffs’ repeated violations and expressed it was considering dismissal based on those
28

1 violations even before Plaintiffs failed to oppose the *Sanctions Motion. Opposition to Rule*
2 *60(b) Motion* Ex. 3; *December 12, 2017, Transcript* (“you need to know going into these
3 oppositions, that I’m very seriously considering granting all of it...I haven’t decided it, but I
4 need to see compelling opposition not to grant it.”).

5 193. As an independent basis, this Court also found Plaintiffs’ failure to disclose
6 their NRCP 16.1 damages was done in bad faith. *Sanctions Order* ¶ 124-126.

7 194. Indeed, this Court found that “[t]his Court has ordered Plaintiffs to provide their
8 damages disclosures, but Plaintiffs blatantly disregarded these orders.” *Sanctions Order* ¶
9 125.

10 195. Again, this conduct is personally attributable to Plaintiffs, who attended the
11 January 10, 2017, hearing wherein Plaintiffs admitted they had failed to provide compliant
12 NRCP 16.1 damages disclosures and heard this Court order them to do so.

13 196. In sum, Plaintiffs have unequivocally failed to satisfy their burden to
14 demonstrate good faith. To the contrary, the record before this Court is replete with
15 evidence of Plaintiffs’ bad faith. Indeed, as this Court has found, “Plaintiffs have exhibited
16 complete disregard for this Court’s Orders, deadlines imposed by this Court, and the judicial
17 process in general.” *Sanctions Order*; see also *id.* ¶ 31 (finding “Plaintiffs have completely
18 ignored multiple Orders from this Court, deadlines imposed by this Court, and their
19 obligations pursuant to the Nevada Rules of Civil Procedure,” and, “Plaintiffs have received
20 multiple opportunities and extensions to rectify their noncompliance, but have not even
21 attempted to do so”).

22
23 **(5) Consideration of the case on the merits:**

24 197. Finally, Nevada’s bedrock policy that cases be considered on the merits
25 wherever possible does not warrant the relief Plaintiffs seek here.

26 198. This Court has already addressed this factor in detail in the *Sanctions Order*,
27 concluding, in part:
28

1 a. Although there is a policy favoring adjudication on the merits, Plaintiffs
2 themselves have frustrated this policy by refusing to provide Defendants with their damages
3 calculations or proper expert disclosures. Defendants have not frustrated this policy;
4 instead, the record is clear that Defendants, and this Court, have repeatedly attempted to
5 force Plaintiffs to comply with basic discovery obligations, to no avail. *Sanctions Order* ¶155.

6 b. Indeed, Defendants have served multiple rounds of written discovery upon
7 Plaintiffs to obtain basic information on Plaintiffs' damages, have taken multiple depositions,
8 and have been requesting compliant disclosures throughout this case so that they can
9 address the merits. *Id.* ¶156; Exhibits 24-35 to *Defendants' Sanctions Motion*.

10 c. Plaintiffs should not be permitted to hide behind the policy of adjudicating
11 cases on the merits when it is they who have frustrated this policy throughout the litigation.
12 Defendants cannot reach the merits when they must spend the entire case asking Plaintiffs
13 for threshold information and receiving no meaningful responses. *Id.* ¶157.

14 d. As the Nevada Supreme Court has held, the policy favoring adjudication on
15 the merits "is not boundless and must be weighed against any other policy considerations,
16 including the public's interest in expeditious...resolution, which coincides with the parties'
17 interests in bringing litigation to a final and stable judgment, prejudice to the opposing party;
18 and administration concerns, such as the court's need to manage its large and growing
19 docket." *Huckabay Props v. NC Auto Parts*, 130 Nev. 196, 203, 322 P.3d 429, 432 (2014).

20 199. The Nevada Supreme Court has similarly so held in the context of upholding
21 the denial of an NRCP 60(b) motion to set aside a default judgment based upon alleged
22 excusable neglect. *Kahn v. Orme*, 108 Nev. 510, 516, 835 P.2d 790, 794 (1992).

23 200. The Nevada Supreme Court explained:
24

25 We wish not to be understood, however, that this judicial tendency to grant
26 relief from a default judgment implies that the trial court should always grant
27 relief from a default judgment. Litigants and their counsel may not properly be
28 allowed to disregard process or procedural rules with impunity. Lack of good
faith or diligence...may very well warrant a denial of the motion for relief from
the judgment.

1 *Id.* (quotations omitted); *see also ABD Holdings*, 441 P.3d 548 (“We conclude the district
2 court did not abuse its discretion by concluding that the policy in favor of resolving cases on
3 the merits does not warrant reversal here, given the facts demonstrating that Barra and
4 Giebler disregarded the process and procedural rules by failing to timely answer the
5 complaint.”).

7 201. In sum, after a careful consideration of each of the *Yochum* factors, and on
8 explicit findings, this Court concludes analysis of the *Yochum* factors precludes NRCP
9 60(b)(1) relief here.

10 **D. PLAINTIFFS’ ASSERTED BASES FOR SEEKING NRCP 60(B) RELIEF**
11 **DO NOT WARRANT THE RELIEF PLAINTIFFS SEEK.**

12 202. Under Nevada law, “clients must be held accountable for the acts and
13 omissions of their attorneys.” *Huckabay Props*, 130 Nev. at 204, 322 P.3d at 433 (citing
14 *Pioneer Inv. Servs. Co. v. Brunswick Assocs. Ltd. P’ship*, 507 U.S. 380, 396-97 (1993)).
15 The client “voluntarily chose this attorney as his representative in the action, and he cannot
16 now avoid the consequences of the acts or omissions of this freely selected agent.”
17 *Huckabay Props*, 130 Nev. at 204, 322 P.3d at 433 (citing *Link v. Wabash R.R. Co.*, 370
18 U.S. 626, 633-34 (1962) (rejecting the argument that petitioner’s claim should not have
19 been dismissed based on counsel’s unexcused conduct because petitioner voluntarily
20 chose his attorney).

22 203. In *Huckabay Props*, the Nevada Supreme Court dismissed an appeal where
23 appellant’s counsel failed to file an opening brief following two granted extensions and a
24 court order granting appellants a final extension. 130 Nev. at 209, 322 P.3d at 437. The
25 appellant was represented by two attorneys. In dismissing the appeal, and applicable to
26 civil litigation at the trial court level here, the Court held:

27 While Nevada’s jurisprudence expresses a policy preference for merits-based
28 resolution of appeals, and our appellate procedure rules embody this policy,
among others, litigants should not read the rules or any of this court’s

1 decisions as endorsing noncompliance with court rules and directives, as to do
2 so risks forfeiting appellate relief. In these appeals, appellants failed to timely
3 file the opening brief and appendix after having been warned that failure to do
4 so could result in the appeals' dismissals. Appellants actually had two
5 attorneys who received copies of this court's notices and orders regarding the
6 briefing deadline, but they nevertheless failed to comply with briefing deadlines
7 and court rules and orders. Although they assert that *Hansen v. Universal*
8 *Health Services of Nevada, Inc.*, 112 Nev. 1245, 924 P.2d 1345 (1996),
9 mandates reconsideration and reinstatement of their appeals, Hansen was a
10 fact-specific decision to some extent, and an appeal may be dismissed for
11 failure to comply with court rules and orders and still be consistent with the
12 court's preference for deciding cases on their merits, as that policy must be
13 balanced against other policies, including the public's interest in an
expeditious appellate process, the parties' interests in bringing litigation to a
final and stable judgment, prejudice to the opposing side, and judicial
administration considerations, such as case and docket management. As for
declining to dismiss the appeal because the dilatory conduct was occasioned
by counsel, and not the client, that reasoning does not comport with general
agency principles, under which a client is bound by its civil attorney's actions
or inactions....

14 *Huckabay Props*, 130 Nev. at 209, 322 P.3d at 437.

15 204. In *Huckabay Props.*, however, the court recognized exceptional circumstances
16 providing two possible exceptions "to the general agency rule that the 'sins' of the lawyer
17 are visited upon his client where the lawyer's addictive disorder and abandonment of his
18 legal practice or criminal conduct justified relief for the victimized client." *Id.* at 204 n.4, 322
19 P.3d at 434 n.4 (citing *Passarelli*, 102 Nev. at 286). Notably, these exceptions noted in
20 *Huckabay Props.* are not present here, as the facts of *Passarelli* are readily distinguishable.

21 205. First, in *Passarelli*, the record included evidence the attorney suffered from a
22 substance abuse disorder that resulted in missed office days and appointments and an
23 inability to function. *Passarelli*, 102 Nev. at 285. Second, the attorney voluntarily closed his
24 law practice. *Id.* Third, the attorney was placed on disability inactive status by the Nevada
25 Bar. *Id.* Finally, the client in *Passarelli* had only one attorney. *Id.*

26 206. None of these facts are present in this case. As concluded *supra*, no
27 competent, reliable, and admissible evidence of Mr. Moquin's claimed mental disorder is
28 before this Court. Further, there is no evidence of missed meetings or absence from office

1 due to the claimed conditions. There is no evidence that Mr. Moquin closed his law practice
2 at the times pertinent to the *60(b) Motion*.

3 207. As of the date of the *Prior 60(b) Order*, and on the record before this Court,
4 Mr. Moquin was on active status with the California Bar. *Opposition to Rule 60(b) Motion*,
5 Ex. 5; *Attorney Search, State Bar of California*, [http://members.calbar.ca.gov/fal/Licensee/](http://members.calbar.ca.gov/fal/Licensee/Detail/257583)
6 [Detail/257583](http://members.calbar.ca.gov/fal/Licensee/Detail/257583) (last visited November 30, 2018).

7 208. Applied here, the *Huckabay Props./Passarelli* analysis compels denial of the
8 *Rule 60(b) Motion*. The standard for “excusable neglect” based on activities of a party’s
9 attorney requires the attorney to be completely unable to respond or appear in the
10 proceedings. *See Passarelli*, 102 Nev. at 285 (court found excusable neglect where
11 attorney failed to attend trial due to psychiatric disorder which caused him to shut down his
12 practice and was placed on disability inactive status by the State Bar of Nevada); *see also*
13 *Cicerchia v. Cicerchia*, 77 Nev. 158, 160-61, 360 P.2d 839, 841 (1961) (court found
14 excusable neglect where respondent lived out of state and suffered a nervous breakdown
15 shortly after retaining out of state counsel, who was unaware and uninformed of the time to
16 appear).

17 209. Here, Plaintiffs’ attorneys did not completely abandon the case. Rather, the
18 Nevada Rules of Civil Procedure, this Court’s express orders, and Defendants’ requests for
19 damages computations and exert disclosures were willfully ignored.
20

21 210. Plaintiffs attempt to excuse this conduct in their *Rule 60(b) Motion* by claiming
22 Mr. Moquin suffered a complete mental breakdown, and his personal life was “in shambles.”
23 In addition to the preclusion of evidence discussed *supra*, the evidence is vague at best
24 regarding these assertions and vague regarding if, and when, Mr. Moquin’s alleged disorder
25 impaired him and vague in asserting when any of the alleged events took place. Plaintiffs
26 attached additional exhibits to their *Reply* to offer some information on timing but are
27 inadequate for the Court’s determination.
28

1 211. Mr. Moquin did not abandon Plaintiffs. He appeared at status hearings,
2 participated in depositions, and filed motions and other papers, including a lengthy
3 opposition to Defendants' motion for partial summary judgment. Mr. Moquin participated in
4 oral arguments and filed two summary judgment motions with substantial supporting
5 exhibits and detailed declarations.

6 212. As discussed *supra*, Plaintiffs had contemporaneous notice of the deadline to
7 oppose the *Sanctions Motion*, of Plaintiffs' failure to oppose the *Sanctions Motion*, and of
8 the *Sanctions Order*. Yet, Plaintiffs did nothing to apprise this Court of any issues until they
9 filed the *Rule 60(b) Motion*. *Prior 60(b) Order* ¶¶ 49-60.

10 213. Additionally, the Court gave counsel, including Mr. O'Mara, notice of the
11 seriousness of Plaintiffs' violations and expressed it was considering dismissal based on
12 those violations. *Opposition to Rule 60(b) Motion* Ex. 3; *December 12, 2017, Transcript*
13 ("you need to know going into these oppositions, that I'm very seriously considering granting
14 all of it...I haven't decided it, but I need to see compelling opposition not to grant it.").
15 Plaintiffs and their attorneys were given notice of the potential consequences of failing to file
16 an opposition to the *Sanctions Motion*.
17

18 214. A party "cannot be relieved from a judgment [order] taken against him in
19 consequence of the neglect, carelessness, forgetfulness, or inattention of his attorney."
20 *Cicerchia*, 77 Nev. at 161.

21 **F. PLAINTIFFS KNEW OF MR. MOQUIN'S ALLEGED CONDITION**
22 **AND ALLEGED NON-RESPONSIVENESS PRIOR TO THE**
23 **SANCTIONS ORDER AND DID NOTHING; THEREFORE**
24 **PLAINTIFFS CANNOT ESTABLISH EXCUSABLE NEGLIGENCE.**

25 215. Even if Mr. Moquin's statements were admissible, which they are not, such
26 statements would only go to show that Mr. Willard should have acted more diligently than he
27 did so here.

28 216. In the *Willard Declaration* and the *Reply Willard Declaration*, Mr. Willard
admits he knew Mr. Moquin was having personal financial difficulties and that he borrowed

1 money from friends and family to fund Mr. Moquin's personal expenses. WD ¶¶ 63-65;
2 RWD ¶¶ 11-13. Mr. Willard also admits that he recommended a psychiatrist to Mr. Moquin,
3 and he again borrowed money from a friend to pay for Mr. Moquin's treatment. WD ¶¶ 68-
4 71; RWD ¶¶ 11-13. Mr. Willard was aware of Mr. Moquin's alleged problems prior to this
5 Court's *Order Granting Motion to Strike and Sanctions Order* yet continued to allow Mr.
6 Moquin to represent Plaintiffs.

7 217. Mr. Willard was aware of Mr. Moquin's inaction which distinguishes this case
8 from the cases upon which Plaintiffs rely in the *Rule 60(b) Motion*, where the parties were
9 unaware of their attorneys' problems. See, e.g., *Passarelli*, 102 Nev. at 286 ("Passarelli
10 was effectually and unknowingly deprived of legal representation"); *US v. Cirami*, 563 F.2d
11 26, 29-31 (2d Cir. 1977) (client discovered that attorney had a mental disorder that
12 prevented him from opposing summary judgment more than two years later); *Boehner v.*
13 *Heise*, 2009 WL 1360975 at *2 (S.D.N.Y. 2009) (client did not learn case had been
14 dismissed or and did not learn of attorney's mental condition until several months after
15 dismissal). Here, Mr. Willard knew of the actions that supported the *Sanctions Order*.
16

17 218. Mr. Willard admits that he was informed by Mr. O'Mara **prior to the dismissal**
18 of Plaintiffs' claims that Mr. Moquin was not responsive. Plaintiffs failed to replace Mr.
19 Moquin or take other action due to perceived financial reasons. WD ¶ 81. Plaintiffs'
20 knowledge and inaction vitiates excuse for neglect.

21 219. The *Rule 60(b) Motion* cites authority for the proposition "where an attorney's
22 mishandling of a movant's case stems from the attorney's mental illness," this might justify
23 relief under Rule 60(b). However, "client diligence must still be shown." *Cobos v. Adelphi*
24 *Univ.*, 179 F.R.D. 381, 388 (E.D.N.Y. 1998); see also *Edward H. Bohlin Co., Inc. v. Banning*
25 *Co., Inc.*, 6 F.3d 350, 357 (5th Cir. 1993) ("A party has a duty of diligence to inquire about
26 the status of a case...."); *Pryor v. U.S. Postal Service*, 769 F.2d 281, 287 (5th Cir. 1985)
27 ("This Court has pointedly announced that a party has a duty of diligence to inquire about
28 the status of a case....").

1 220. Mr. Willard's claim that he had no choice but to continue working with Mr.
2 Moquin due to financial issues lacks credibility as he admits he was able to borrow money to
3 fund Mr. Moquin's personal life and medical treatment. It logically follows he had resources
4 to retain new attorneys at the time.

5 221. Plaintiffs have not established by substantial evidence that they exercised
6 diligence to rectify representation in their case despite ample knowledge of Mr. Moquin's
7 non-responsiveness.

8 **G. PLAINTIFFS ARE NOT ENTITLED TO 60(B) RELIEF BECAUSE TWO**
9 **ATTORNEYS REPRESENTED PLAINTIFFS WHO BOTH HAD AN**
10 **OBLIGATION TO ENSURE COMPLIANCE WITH THE NEVADA**
11 **RULES OF CIVIL PROCEDURE AND THIS COURT'S ORDERS.**

12 222. Plaintiffs' *Rule 60(b) Motion* ignores the fact David O'Mara served as local
13 counsel. In Nevada, the responsibilities of local counsel are clearly defined, and
14 encompass active responsibility to represent the client and manage the case:

15 (a) The Nevada attorney of record shall be responsible for and actively
16 participate in the representation of a client in any proceeding that is subject to
17 this rule.

18 (b) The Nevada attorney of record shall be present at all motions, pre-trials, or
19 any matters in open court unless otherwise ordered by the court.

20 (c) The Nevada attorney of record shall be responsible to the court...for the
21 administration of any proceeding that is subject to this rule and for compliance
22 with all state and local rules of practice. It is the responsibility of Nevada
23 counsel to ensure that the proceeding is tried and managed in accordance with
24 all applicable Nevada procedural and ethical rules.

25 Supreme Court Rule ("SCR") 42(14).

26 223. Mr. O'Mara's representation, even if contractually limited, was governed by
27 this rule.

28 224. Mr. O'Mara expressly "consent[ed] as Nevada Counsel of Record to the
designation of Petitioner to associate in this cause pursuant to SCR 42" as part of his
Motion to Associate Counsel.

1 225. Mr. O'Mara attended every hearing and court conference in this case. And,
2 among other things, Mr. O'Mara signed the Verified Complaint and the First Amended
3 Verified Complaint. *Complaint; FAC.*

4 226. WDCR 23(1) provides:

5 Counsel who has appeared for any party shall represent that party in the case
6 and shall be recognized by the court and by all parties as having control of the
7 client's case, until counsel withdraws, another attorney is substituted, or until
8 counsel is discharged by the client in writing, filed with the filing office, in
accordance with SCR 46 and this rule.

9 WDCR 23.

10 227. Mr. O'Mara was the sole signatory on Plaintiffs' deficient initial disclosure,
11 (*Opposition to Rule 60(b) Motion*, Ex. 6), the uncured deficiencies of which were a basis for
12 sanction of dismissal. *Sanctions Order.*

13 228. Mr. O'Mara also signed and filed the *Brief Extension Request* with this Court,
14 representing that:

15 Counsel has been diligently working for weeks to respond to Defendant's
16 serial motions, which include seeking dismissal of Plaintiffs' case. With the full
17 intention of submitting said responses, Counsel for Plaintiffs encountered
18 unforeseen computer issues.... Counsel for Plaintiffs is confident that with a
19 one-day extension they will be able to recreate and submit the oppositions to
Defendants' three motions.

20 229. Plaintiffs do not provide any declaration by Mr. O'Mara in support of their *Rule*
21 *60(b) Motion*.

22 230. Mr. O'Mara's involvement precludes a conclusion of excusable neglect here.

23 **H. THE SANCTIONS ORDER WAS SUFFICIENT UNDER NEVADA LAW.**

24 231. Plaintiffs assert that the *Sanctions Order* was insufficient under *Young v.*
25 *Johnny Ribeiro*, 106 Nev. 88, 93, 787 P.2d 777, 780 (1990) because the *Sanctions Order*
26 did not consider "whether sanctions unfairly operate to penalize a party for the misconduct
27 of his or her attorney." *Rule 609b) Motion* at 12. However, consideration of this factor is
28 discretionary, not mandatory. See *Young*, 106 Nev. at 93 ("The factors a court **may**

properly consider include...whether sanctions unfairly operate to penalize a party for the misconduct of his or her attorney”) (emphasis added).

232. The Court concludes the factors enumerated in *Young v. Johnny Ribeiro Bldg. Inc.* were met by the *Sanctions Order*. Specifically, the Nevada Supreme Court held where a court issues an order of dismissal with prejudice as a discovery sanction, a court may consider, among others, the degree of willfulness of the offending party, the extent to which the non-offending party would be prejudiced by a lesser sanction, the severity of the sanction of dismissal relative to the severity of the discovery abuse, and the feasibility and fairness of alternative, less severe sanctions. *Young*, 106 Nev. at 93. The factors are not mandatory so long as the Court supports the order with “an express, careful and preferably written explanation of the court’s analysis of the pertinent factors.” *Id.*

233. While each suggested factor discussed in the *Sanctions Order* was not labeled by factor, the Court addressed the factors it deemed appropriate.

234. In the circumstances of this case, the dismissal of Plaintiffs’ claims did not unfairly penalize Plaintiffs based on the factors analyzed in the *Sanctions Order*.

I. THE RULE 60(B) MOTION SHOULD BE DENIED.

235. After weighing the credibility and admissibility of the evidence provided in support of the *Rule 60(b) Motion*, substantial evidence has not been presented to establish excusable neglect.

236. Plaintiffs have failed to meet their burden of proving, by a preponderance of the evidence, excusable neglect sufficient to justify relief under NRCP 60(b).

237. Similarly, careful analysis of each *Yochum* factor demonstrates that the *Yochum* factors warrant, if not compel, denial of NRCP 60(b)(1) relief.

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1 **III. ORDER.**

2 Based upon the foregoing, and good cause appearing therefor,

3 IT IS HEREBY ORDERED Plaintiffs' Rule 60(b) Motion is DENIED in its entirety.

4 DATED this 13th day of September, 2021.

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7 _____
8 DISTRICT JUDGE
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1 **CERTIFICATE OF SERVICE**

2 I certify that I am an employee of THE SECOND JUDICIAL DISTRICT
3 COURT; that on the 13th day of September, 2021, I electronically filed the foregoing
4 with the Clerk of the Court system which will send a notice of electronic filing to the
5 following:

6 ROBERT EISENBERG, ESQ.
7 BRIAN IRVINE, ESQ.
8 ANJALI WEBSTER, ESQ.
9 RICHARD WILLIAMSON, ESQ.
10 JONATHAN TEW, ESQ.
11 JOHN DESMOND, ESQ.

12 And, I deposited in the County mailing system for postage and mailing with the
13 United States Postal Service in Reno, Nevada, a true and correct copy of the attached
14 document addressed as follows:
15
16
17
18
19
20
21
22
23
24
25
26
27
28

Holly Longe

CODE: 1310
Richard D. Williamson, Esq., SBN 9932
Jonathan Joel Tew, Esq., SBN 11874
ROBERTSON, JOHNSON, MILLER & WILLIAMSON
50 West Liberty Street, Suite 600
Reno, Nevada 89501
(775) 329-5600
Rich@nvlawyers.com
Jon@nvlawyers.com

Robert L. Eisenberg, Esq., SBN 0950
LEMONS, GRUNDY & EISENBERG
6005 Plumas Street, Third Floor
Reno, Nevada 89519
(775) 786-6868
rle@lge.net

Attorneys for Plaintiffs/Counterdefendants/Appellants

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

LARRY J. WILLARD, individually and as
Trustee of the Larry James Willard Trust Fund;
OVERLAND DEVELOPMENT
CORPORATION, a California corporation;
EDWARD E. WOOLEY AND JUDITH A.
WOOLEY, individually and as trustees of the
Edward C. Wooley and Judith A. Wooley
Intervivos Revocable Trust 2000,

Plaintiffs,

vs.

BERRY-HINCKLEY INDUSTRIES, a Nevada
corporation; and JERRY HERBST,

Defendants.

BERRY-HINCKLEY INDUSTRIES a Nevada
corporation; and JERRY HERBST,

Counterclaimants,

vs.

LARRY J. WILLARD, individually and as
Trustee of the Larry James Willard Trust Fund;
OVERLAND DEVELOPMENT
CORPORATION, a California corporation,

Counterdefendants.

Case No. CV14-01712

Dept. No. 6

CASE APPEAL STATEMENT

Pursuant to NRAP 3(f), Plaintiff Larry J. Willard, individually and as trustee of the Larry James Willard Trust Fund, and Plaintiff Overland Development Corporation (collectively, the “Willard Plaintiffs”) hereby submit the following case appeal statement:

A. District court case number and caption, showing names of all parties to the proceedings (without using *et al.*):

LARRY J. WILLARD, individually and as
Trustee of the Larry James Willard Trust Fund;
OVERLAND DEVELOPMENT
CORPORATION, a California corporation;
EDWARD E. WOOLEY AND JUDITH A.
WOOLEY, individually and as trustees of the
Edward C. Wooley and Judith A. Wooley
Intervivos Revocable Trust 2000,

Plaintiffs,

vs.

BERRY-HINCKLEY INDUSTRIES, a Nevada
corporation; and JERRY HERBST, an individual,

Defendants.

Case No. CV14-01712

Dept. No. 6

BERRY-HINCKLEY INDUSTRIES a Nevada
corporation; and JERRY HERBST, an individual,

Counterclaimants,

vs.

LARRY J. WILLARD, individually and as
Trustee of the Larry James Willard Trust Fund;
OVERLAND DEVELOPMENT
CORPORATION, a California corporation,

Counterdefendants.

On February 22, 2019, Defendant Berry-Hinckley Industries and Timothy P. Herbst, Special Administrator of the Estate of Jerry Herbst, filed a Suggestion of Death explaining that Defendant Jerry Herbst passed away on November 27, 2018. That same day, Defendant Berry-Hinckley Industries filed a Motion to Substitute Proper Party to substitute Timothy P. Herbst, as Special Administrator of the Estate of Jerry Herbst, deceased, for Defendant Jerry Herbst. That

1 motion included a proposed order. On February 26, 2019, Defendant Berry-Hinckley Industries
2 filed an Addendum to Motion to Substitute Proper Party, which attached a revised proposed
3 order. On March 29, 2019, Willard Plaintiffs filed a Notice of Non-Opposition to Substitution
4 confirming that they did not oppose either the Motion to Substitute Proper Party or the
5 Addendum to Motion to Substitute Proper Party. To date however, the Court has not ruled on
6 that motion. Therefore, the caption has not yet officially changed.

7 B. Name of judge who entered order or judgment being appealed:

8 Hon. Lynne K. Simons

9 C. Name of each appellant, and name and address of counsel for each appellant:

10 Appellants are Plaintiff Larry J. Willard, individually and as trustee of the Larry James Willard
11 Trust Fund, and Plaintiff Overland Development Corporation

12 Counsel for Appellants are:

13 Robert L. Eisenberg (SBN 950)
14 Lemons, Grundy & Eisenberg
6005 Plumas Street, Third Floor
Reno NV 89519

15 Richard D. Williamson (SBN 9932)
16 Jonathan Joel Tew (SBN 11874)
Robertson, Johnson, Miller, & Williamson
17 50 W. Liberty St. Suite 600
Reno, NV 89501

18 D. Name of each respondent, and name and address of each respondent's appellate
19 counsel, if known:

20 Respondents are Defendant Berry-Hinckley Industries and Defendant Jerry Herbst (and/or
21 Timothy P. Herbst, as Special Administrator of the Estate of Jerry Herbst, deceased, for
22 Defendant Jerry Herbst).

23 Counsel for Respondents are:

24 John P. Desmond, Esq.
25 Brian R. Irvine, Esq.
26 Anjali D. Webster, Esq.
Dickinson Wright
100 West Liberty Street, Suite 940
27 Reno, NV 89501

1 E. Whether attorneys identified in subparagraph D are not licensed to practice law in
2 Nevada; and if so, whether the district court granted permission to appear under SCR 42 (include
3 copy of district court order granting permission):

4 All of the attorneys that are currently representing the parties are licensed to practice law in
5 Nevada.

6 F. Whether appellant was represented by appointed counsel in the district court or on
7 appeal: No appointed counsel; retained counsel only.

8 G. Whether any appellant was granted leave to proceed *in forma pauperis*: No.

9 H. Date proceedings were commenced in district court: August 8, 2014.

10 I. Brief description of nature of the action and result in district court, including type
11 of judgment or order being appealed and relief granted by district court:

12 This litigation involves the lease, strategic breach, and ultimate abandonment of
13 commercial property in Reno. After plaintiffs' former counsel failed to oppose several pending
14 motions, the district court issued a sanction consisting of dismissal of plaintiffs' claims. The
15 district court also denied a motion for relief under NRCP 60(b)(1) and entered judgment.

16 After a first appeal, the Nevada Supreme Court entered an opinion, which stated in part
17 that "district courts must issue express factual findings, preferably in writing, pursuant to each
18 *Yochum* factor to facilitate our appellate review. Accordingly, we reverse the district court's
19 order denying the NRCP 60(b)(1) motion and remand to the district court for further
20 consideration." *Willard v. Berry-Hinckley Indus.*, 136 Nev. 467, 468, 469 P.3d 176, 178 (2020).

21 Defendants sought rehearing of that opinion, which was denied. Defendants then sought
22 en banc reconsideration of that opinion. On February 23, 2021, the Nevada Supreme Court
23 entered an Order Denying En Banc Reconsideration, in which it ordered that "neither party may
24 present any new arguments or evidence on remand; the district court's consideration of the
25 factors set forth in *Yochum v. Davis*, 98 Nev. 484, 486, 653 P.2d 1215, 1216 (1982), is limited to
26 the record currently before the court."

27 Despite that limitation, the Defendants submitted a proposed order that included 107
28 paragraphs of new analysis on the *Yochum* factors that had never before existed in the record.

Over the Willard Plaintiffs' objection, the district court adopted that proposed order and again denied the Willard Plaintiffs any relief under NRCP 60(b)(1).

J. Whether case was previously subject of appeal or writ proceeding in Nevada Supreme Court or Court of Appeals, and if so, caption and docket number of prior proceeding:

Yes, this case has been the subject on one prior appeal. The caption and docket number for that appeal are set forth below:

LARRY J. WILLARD, individually and as
Trustee of the Larry James Willard Trust Fund;
and OVERLAND DEVELOPMENT
CORPORATION, a California corporation,

Docket No. 77780

Appellants,

vs.

BERRY-HINCKLEY INDUSTRIES, a Nevada
corporation; and JERRY HERBST, an individual,

Respondents.

K. Whether appeal involves child custody or visitation: No

L. Whether appeal involves possibility of settlement: Yes

AFFIRMATION: Pursuant to NRS § 239B.030, the undersigned does hereby affirm that the preceding document does not contain the social security number of any person.

DATED this 11th day of October, 2021.

ROBERTSON, JOHNSON,
MILLER & WILLIAMSON

By: /s/ Richard D. Williamson
Richard D. Williamson, Esq.
Jonathan Joel Tew, Esq.

and

LEMONS, GRUNDY & EISENBERG

By: /s/ Robert L. Eisenberg
Robert L. Eisenberg, Esq.

*Attorneys for the
Plaintiffs/Counterdefendants/Appellants*

CERTIFICATE OF SERVICE

Pursuant to NRCP 5(b), I hereby certify that I am an employee of Robertson, Johnson, Miller & Williamson, 50 West Liberty Street, Suite 600, Reno, Nevada 89501, over the age of 18, and not a party within this action. I further certify that on the 11th day of October, 2021, I electronically filed the foregoing **CASE APPEAL STATEMENT** with the Clerk of the Court by using the ECF system which served the following parties electronically:

John P. Desmond, Esq.
Brian R. Irvine, Esq.
Anjali D. Webster, Esq.
Dickinson Wright
100 West Liberty Street, Suite 940
Reno, NV 89501
Attorneys for Defendants/Counterclaimants

Robert L. Eisenberg, Esq.
Lemons, Grundy & Eisenberg
6005 Plumas Street, Third Floor
Reno NV 89519
775-786-6868
*Attorneys for Plaintiffs/
Counterdefendants/Appellants*

/s/ Stefanie E. Smith

An Employee of Robertson, Johnson, Miller & Williamson

SECOND JUDICIAL DISTRICT COURT**STATE OF NEVADA****COUNTY OF WASHOE****Case History - CV14-01712****Case Description: LARRY J. WILLARD, ETAL VS BERRY-HINCKLEY, ETAL (D6)****Case Number: CV14-01712 Case Type: OTHER CONTRACTS/ACCT/JUDG - Initially Filed On: 8/8/2014****Parties**

<u>Party Type & Name</u>	<u>Party Status</u>
JUDG - LYNNE K. SIMONS - D6	Active
PLTF - OVERLAND DEVELOPMENT CORPORATION - @1262966	Active
PLTF - LARRY J WILLARD - @1262965	Active
PLTF - JUDITH A WOOLEY - @1166448	Active
PLTF - LARRY JAMES WILLARD TRUST FUND - @1262967	Active
PLTF - EDWARD C WOOLEY - @1166447	Active
PLTF - EDWARD C WOOLEY AND JUDITH A WOOLEY REVOCABLE TRUST - @1166449	Active
DEFT - JH, INC. - @1135067	Active
DEFT - BERRY-HINCKLEY INDUSTRIES - @14113	Active
DEFT - JERRY HERBST - @1251632	Active
ATTY - David C. O'Mara, Esq. - 8599	Party ended on: 3/15/2018 12:00:00AM
ATTY - John P. Desmond, Esq. - 5618	Active
ATTY - Jonathan J. Tew, Esq. - 11874	Active
ATTY - Richard D. Williamson, Esq. - 9932	Active
ATTY - Brian R. Irvine, Esq. - 7758	Active
ATTY - Kathleen M. Brady, Esq. - 11525	Party ended on: 2/10/2017 12:00:00AM
ATTY - Robert L. Eisenberg, Esq. - 950	Active
ATTY - Anjali D. Webster, Esq. - 12515	Active
OATP - Brian P. Moquin, Esq. - A1237	Active

Disposed Hearings

- 1 Department: D6 -- Event: Request for Submission -- Scheduled Date & Time: 6/26/2015 at 14:29:00
Extra Event Text: REQUEST FOR SUBMISSION OF DEFENDANTS' MOTION TO COMPEL DISCOVERY RESPONSES - UNOPPOSED, MICHAEL HAS PROPOSED
Event Disposition: S200 - 7/1/2015
- 2 Department: D6 -- Event: STATUS HEARING -- Scheduled Date & Time: 8/17/2015 at 11:00:00
Extra Event Text: RE: DISCOVERY ISSUES
Event Disposition: D435 - 8/17/2015
- 3 Department: D6 -- Event: Request for Submission -- Scheduled Date & Time: 8/17/2015 at 13:48:00
Extra Event Text: DEFENDANTS' SECOND MOTION TO COMPEL DISCOVERY RESPONSES
Event Disposition: S200 - 8/18/2015
- 4 Department: B -- Event: STATUS CONFERENCE -- Scheduled Date & Time: 8/31/2015 at 10:00:00
Extra Event Text: RE: DISCOVERY
Event Disposition: D855 - 8/31/2015
- 5 Department: D6 -- Event: TRIAL - NON JURY -- Scheduled Date & Time: 1/11/2016 at 09:00:00
Extra Event Text: NO 1, BENCH, 8 DAYS
Event Disposition: D870 - 9/3/2015

Report Does Not Contain Sealed Cases or Confidential Information

- 6 Department: D6 -- Event: PRE-TRIAL CONFERENCE -- Scheduled Date & Time: 7/26/2016 at 10:00:00
Extra Event Text: TRIAL: 8/29/16
Event Disposition: D870 - 5/2/2016
- 7 Department: D6 -- Event: TRIAL - NON JURY -- Scheduled Date & Time: 8/29/2016 at 09:00:00
Extra Event Text: NO 1, 8 DAYS, BENCH
Event Disposition: D870 - 5/2/2016
- 8 Department: D6 -- Event: Request for Submission -- Scheduled Date & Time: 9/19/2016 at 10:55:00
Extra Event Text: MOTION FOR PARTIAL SUMMARY JUDGMENT
Event Disposition: S200 - 12/9/2016
- 9 Department: D6 -- Event: ORAL ARGUMENTS -- Scheduled Date & Time: 1/10/2017 at 09:30:00
Extra Event Text: RE: MOTION FOR PARTIAL SJ
Event Disposition: D425 - 1/10/2017
- 10 Department: D6 -- Event: PRE-TRIAL CONFERENCE -- Scheduled Date & Time: 3/14/2017 at 13:30:00
Extra Event Text: TRIAL - 5/1/17
Event Disposition: D870 - 2/9/2017
- 11 Department: D6 -- Event: TRIAL - NON JURY -- Scheduled Date & Time: 5/1/2017 at 09:00:00
Extra Event Text: NO 2, BENCH, 8 DAYS
Event Disposition: D870 - 2/9/2017
- 12 Department: D6 -- Event: Request for Submission -- Scheduled Date & Time: 12/8/2017 at 09:20:00
Extra Event Text: MOTION FOR PARTIAL SUMMARY JUDGMENT FILED 11-15--17
Event Disposition: S200 - 12/12/2017
- 13 Department: D6 -- Event: Request for Submission -- Scheduled Date & Time: 12/8/2017 at 09:19:00
Extra Event Text: MOTION TO STRIKE AND/OR MOTION IN LIMINE TO EXCLUDE THE EXPERT TESTIMONY OF DANIEL GLUHAICH FILED 11-14-17
Event Disposition: S200 - 12/12/2017
- 14 Department: D6 -- Event: Request for Submission -- Scheduled Date & Time: 12/8/2017 at 09:20:00
Extra Event Text: MOTION FOR SANCTIONS FILED 11-15-17
Event Disposition: S200 - 12/12/2017
- 15 Department: D6 -- Event: PRE-TRIAL CONFERENCE -- Scheduled Date & Time: 12/12/2017 at 10:00:00
Extra Event Text: TRIAL - 1/29/18
Event Disposition: D435 - 12/12/2017
- 16 Department: D6 -- Event: Request for Submission -- Scheduled Date & Time: 12/18/2017 at 13:22:00
Extra Event Text: DEFENDANTS/COUNTERCLAIMANTS' MOTION FOR PARTIAL SUMMARY JUDGMENT
Event Disposition: S200 - 1/4/2018
- 17 Department: D6 -- Event: Request for Submission -- Scheduled Date & Time: 12/18/2017 at 13:46:00
Extra Event Text: DEFENDANTS/COUNTERCLAIMANTS' MOTION TO STRIKE AND/OR MOTION IN LIMINE TO EXCLUDE THE EXPERT TESTIMONY OF DANIE
Event Disposition: S200 - 1/4/2018
- 18 Department: D6 -- Event: Request for Submission -- Scheduled Date & Time: 12/18/2017 at 13:22:00
Extra Event Text: DEFENDANTS/COUNTERCLAIMANTS' MOTION FOR SANCTIONS
Event Disposition: S200 - 1/4/2018
- 19 Department: D6 -- Event: ORAL ARGUMENTS -- Scheduled Date & Time: 1/12/2018 at 13:00:00
Extra Event Text: (ALL PENDING MOTIONS)
Event Disposition: D845 - 1/4/2018

- 20 Department: D6 -- Event: Request for Submission -- Scheduled Date & Time: 1/23/2018 at 07:00:00
Extra Event Text: PROPOSED ORDERS SUBMITTED TO D6
Event Disposition: S200 - 3/6/2018
- 21 Department: D6 -- Event: TRIAL - NON JURY -- Scheduled Date & Time: 1/29/2018 at 09:00:00
Extra Event Text: NO 2, BENCH, 8 DAYS
Event Disposition: D845 - 1/18/2018
- 22 Department: D6 -- Event: Request for Submission -- Scheduled Date & Time: 3/27/2018 at 10:33:00
Extra Event Text: MOTION TO DISMISS COUNTERCLAIMS - PROPOSED ORDER ATTACHED TO NOTICE OF NON-OPPO FILED 3/27
Event Disposition: S200 - 4/13/2018
- 23 Department: D6 -- Event: Request for Submission -- Scheduled Date & Time: 3/27/2018 at 15:34:00
Extra Event Text: REQUEST FOR ENTRY OF JUDGMENT FILED 3/09/18 - PROPOSED ORDER ATTACHED TO REQUEST
Event Disposition: S200 - 6/4/2018
- 24 Department: D6 -- Event: Request for Submission -- Scheduled Date & Time: 5/31/2018 at 08:46:00
Extra Event Text: REPLY IN SUPPORT OF WILLARD PLAINTIFFS' RULE 60(B) MOTION FOR RELIEF
Event Disposition: S200 - 7/11/2018
- 25 Department: D6 -- Event: Request for Submission -- Scheduled Date & Time: 6/6/2018 at 10:24:00
Extra Event Text: REQUEST FOR SUBMISSION OF DEFENDANTS' MOTION TO EXCEED PAGE LIMIT ON DEFENDANTS' OPPOSITION TO THE WILLARD PLA
Event Disposition: S200 - 7/11/2018
- 26 Department: D6 -- Event: Request for Submission -- Scheduled Date & Time: 6/11/2018 at 11:22:00
Extra Event Text: DEFENDANTS/COUNTERCLAIMANTS' MOTION FOR ATTORNEYS' FEES FILED 4-27-18
Event Disposition: S200 - 7/11/2018
- 27 Department: D6 -- Event: Request for Submission -- Scheduled Date & Time: 6/29/2018 at 13:26:00
Extra Event Text: DEFENDANTS/COUNTERCLAIMANTS' MOTION TO STRIKE, OR IN THE ALTERNATIVE, MOTION FOR LEAVE TO FILE SUR-REPLY FILED 6-1
Event Disposition: S200 - 9/4/2018
- 28 Department: D6 -- Event: Request for Submission -- Scheduled Date & Time: 9/4/2018 at 17:00:00
Extra Event Text: PLAINTIFF'S RULE 60(B) MOTION TAKEN UNDER ADVISMENT
Event Disposition: S200 - 11/30/2018
- 29 Department: D6 -- Event: ORAL ARGUMENTS -- Scheduled Date & Time: 9/4/2018 at 13:30:00
Extra Event Text: PLAINTIFF'S RULE 60(b) MOTION
Event Disposition: D840 - 9/4/2018
- 30 Department: D6 -- Event: Request for Submission -- Scheduled Date & Time: 12/4/2018 at 16:03:00
Extra Event Text: REQUEST FOR ENTRY OF JUDGMENT
Event Disposition: S200 - 12/11/2018
- 31 Department: D6 -- Event: Request for Submission -- Scheduled Date & Time: 1/3/2019 at 10:06:00
Extra Event Text: MOTION FOR ATTORNEYS' FEES FIELD 427-18 AND ITS SUPPLEMENT TO MOTION FOR ATTORNEYS FEE (SUPPLEMENT) FILED 12-11-18
Event Disposition: S200 - 3/8/2019
- 32 Department: D6 -- Event: STATUS HEARING -- Scheduled Date & Time: 4/21/2021 at 11:00:00
Extra Event Text: REMAND FROM SUP CT
Event Disposition: D260 - 4/21/2021
- 33 Department: D6 -- Event: Request for Submission -- Scheduled Date & Time: 6/29/2021 at 16:14:00
Extra Event Text: MOTION TO STRIKE DEFENDANTS PROPOSED ORDER OR IN THE ALTERNATIVE OBJECTION TO DEFENDANTS PROPOSED ORDER ON
Event Disposition: S200 - 9/10/2021

Actions

	<u>Filing Date</u>	<u>-</u>	<u>Docket Code & Description</u>
1	8/8/2014	-	\$1425 - \$Complaint - Civil Additional Text: Transaction 4554518 - Approved By: MFERNAND : 08-11-2014:08:58:03
2	8/8/2014	-	\$PLTF - \$Addl Plaintiff/Complaint Additional Text: EDWARD C. WOOLEY - Transaction 4554518 - Approved By: MFERNAND : 08-11-2014:08:58:03
3	8/8/2014	-	\$PLTF - \$Addl Plaintiff/Complaint Additional Text: JUDITH A. WOOLEY - Transaction 4554518 - Approved By: MFERNAND : 08-11-2014:08:58:03
4	8/8/2014	-	\$PLTF - \$Addl Plaintiff/Complaint Additional Text: OVERLAND DEVELOPMENT CORPORATION - Transaction 4554518 - Approved By: MFERNAND : 08-11-2014:08:58:03
5	8/8/2014	-	\$PLTF - \$Addl Plaintiff/Complaint Additional Text: LARRY JAMES WILLARD TRUST FUND - Transaction 4554518 - Approved By: MFERNAND : 08-11-2014:08:58:03
6	8/8/2014	-	\$PLTF - \$Addl Plaintiff/Complaint Additional Text: EDWARD C. WOOLEY AND JUDITH A. WOOLEY REVOCABLE TRUST - Transaction 4554518 - Approved By: MFERNAND : 08-11-2014:08:58:03
7	8/11/2014	-	PAYRC - **Payment Receipted Additional Text: A Payment of \$410.00 was made on receipt DCDC465428.
8	8/11/2014	-	4090 - ** Summons Issued Additional Text: X3
9	9/5/2014	-	1005 - Acceptance of Service Additional Text: ACCEPTANCE OF SERVICE OF SUMMONS AND COMPLAINT ON BEHALF OF DEFTS, BERRY-HINCKLEY INDUSTRIES, JERRY HERBST, AND JH, INC - Transaction 4594499 - Approved By: ADEGAYNE : 09-05-2014:16:46:20
10	9/5/2014	-	NEF - Proof of Electronic Service Additional Text: Transaction 4594520 - Approved By: NOREVIEW : 09-05-2014:16:47:29
11	10/6/2014	-	1130 - Answer ... Additional Text: DEFENDANTS' ANSWER TO PLAINTIFFS' COMPLAINT - Transaction 4638541 - Approved By: YVILORIA : 10-06-2014:15:04:52
12	10/6/2014	-	\$1560 - \$Def 1st Appearance - CV Additional Text: BERRY HINCKLEY INDUSTRIES - Transaction 4638541 - Approved By: YVILORIA : 10-06-2014:15:04:52
13	10/6/2014	-	\$DEFT - \$Addl Def/Answer - Prty/Appear Additional Text: JERRY HERBST - Transaction 4638541 - Approved By: YVILORIA : 10-06-2014:15:04:52
14	10/6/2014	-	2155 - Mtn Partial Dismissal ... Additional Text: MOTION TO PARTIALLY DISMISS PLAINTIFF'S COMPLAINT - Transaction 4638582 - Approved By: ASMITH : 10-06-2014:15:19:30
15	10/6/2014	-	PAYRC - **Payment Receipted Additional Text: A Payment of \$243.00 was made on receipt DCDC473125.
16	10/6/2014	-	NEF - Proof of Electronic Service Additional Text: Transaction 4638911 - Approved By: NOREVIEW : 10-06-2014:15:05:49

- 17 10/6/2014 - NEF - Proof of Electronic Service
Additional Text: Transaction 4638981 - Approved By: NOREVIEW : 10-06-2014:15:20:28
- 18 10/6/2014 - 3975 - Statement ...
Additional Text: DEFENDANTS' NEVADA RULE OF CIVIL PROCEDURE 7.1 DISCLOSURE STATEMENT - Transaction 4639344 - Approved By: MCHOLICO : 10-07-2014:08:46:06
- 19 10/7/2014 - NEF - Proof of Electronic Service
Additional Text: Transaction 4639781 - Approved By: NOREVIEW : 10-07-2014:08:46:58
- 20 10/28/2014 - 2490 - Motion ...
Additional Text: MOTION TO ASSOCIATE COUNSEL - Transaction 4672894 - Approved By: YLLOYD : 10-29-2014:10:48:19
- 21 10/29/2014 - NEF - Proof of Electronic Service
Additional Text: Transaction 4673457 - Approved By: NOREVIEW : 10-29-2014:10:49:16
- 22 10/29/2014 - 2610 - Notice ...
Additional Text: DEFT'S NOTICE OF NON-OPPOSITION TO PLAINTIFFS' MOTION TO ASSOCIATE COUNSEL - Transaction 4674760 - Approved By: YLLOYD : 10-30-2014:10:29:56
- 23 10/30/2014 - NEF - Proof of Electronic Service
Additional Text: Transaction 4675503 - Approved By: NOREVIEW : 10-30-2014:10:30:41
- 24 11/3/2014 - A190 - Exempt from Arb (over \$50,000)
Additional Text: Transaction 4679022 - Approved By: NMASON : 11-03-2014:15:33:29
- 25 11/3/2014 - NEF - Proof of Electronic Service
Additional Text: Transaction 4679128 - Approved By: NOREVIEW : 11-03-2014:15:34:32
- 26 11/10/2014 - 1250E - Application for Setting eFile
Additional Text: TRIAL - 1/11/16 - Transaction 4689820 - Approved By: NOREVIEW : 11-10-2014:15:33:00
- 27 11/10/2014 - 3696 - Pre-Trial Order
Additional Text: Transaction 4689820 - Approved By: NOREVIEW : 11-10-2014:15:33:00
- 28 11/10/2014 - NEF - Proof of Electronic Service
Additional Text: Transaction 4689825 - Approved By: NOREVIEW : 11-10-2014:15:33:59
- 29 11/13/2014 - 2673 - Ord Admit to Practice PerSCR42
Additional Text: BRIAN P. MOQUIN, ESQ. - Transaction 4693280 - Approved By: NOREVIEW : 11-13-2014:09:50:52
- 30 11/13/2014 - NEF - Proof of Electronic Service
Additional Text: Transaction 4693285 - Approved By: NOREVIEW : 11-13-2014:09:51:38
- 31 11/19/2014 - 2540 - Notice of Entry of Ord
Additional Text: Transaction 4703771 - Approved By: NOREVIEW : 11-19-2014:16:23:04
- 32 11/19/2014 - NEF - Proof of Electronic Service
Additional Text: Transaction 4703780 - Approved By: NOREVIEW : 11-19-2014:16:25:59
- 33 1/21/2015 - 1090 - Amended Complaint
Additional Text: Transaction 4782758 - Approved By: YLLOYD : 01-22-2015:09:05:39
- 34 1/22/2015 - NEF - Proof of Electronic Service
Additional Text: Transaction 4783171 - Approved By: NOREVIEW : 01-22-2015:09:06:37

- 35 1/23/2015 - 1360 - Certificate of Service
Additional Text: Transaction 4787093 - Approved By: YLLOYD : 01-26-2015:09:25:25
- 36 1/26/2015 - NEF - Proof of Electronic Service
Additional Text: Transaction 4787443 - Approved By: NOREVIEW : 01-26-2015:09:26:20
- 37 2/2/2015 - 1140 - Answer to Amended Complaint
Additional Text: DEFENDANTS' ANSWER TO PLAINTIFFS' AMENDED COMPLAINT - Transaction 4799508 - Approved By: MCHOLICO : 02-02-2015:16:58:17
- 38 2/2/2015 - NEF - Proof of Electronic Service
Additional Text: Transaction 4799673 - Approved By: NOREVIEW : 02-02-2015:16:59:09
- 39 2/4/2015 - 1835 - Joint Case Conference Report
Additional Text: Transaction 4803603 - Approved By: MCHOLICO : 02-04-2015:16:57:00
- 40 2/4/2015 - NEF - Proof of Electronic Service
Additional Text: Transaction 4803731 - Approved By: NOREVIEW : 02-04-2015:16:57:58
- 41 4/13/2015 - IMG - **Entered/Imaged on Wrong Case
Additional Text: 04-13-2015:13:48:16
- 42 4/13/2015 - NEF - Proof of Electronic Service
Additional Text: Transaction 4903899 - Approved By: NOREVIEW : 04-13-2015:13:49:15
- 43 4/13/2015 - 3980 - Stip and Order...
Additional Text: TO AMEND DEFENDANTS ANSWER PURSUANT TO NRCP 15(a) - Transaction 4904023 - Approved By: NOREVIEW : 04-13-2015:14:18:07
- 44 4/13/2015 - NEF - Proof of Electronic Service
Additional Text: Transaction 4904031 - Approved By: NOREVIEW : 04-13-2015:14:18:57
- 45 4/21/2015 - 1085 - Amended Answer
Additional Text: DEFENDANTS' AMENDED ANSWER TO PLAINTIFFS' AMENDED COMPLAINT AND COUNTERCLAIM - Transaction 4916942 - Approved By: CSULEZIC : 04-22-2015:09:00:25
- 46 4/22/2015 - NEF - Proof of Electronic Service
Additional Text: Transaction 4917536 - Approved By: NOREVIEW : 04-22-2015:09:01:26
- 47 4/23/2015 - 1650 - Errata...
Additional Text: Transaction 4920285 - Approved By: YLLOYD : 04-23-2015:13:13:29
- 48 4/23/2015 - NEF - Proof of Electronic Service
Additional Text: Transaction 4920643 - Approved By: NOREVIEW : 04-23-2015:13:14:20
- 49 5/27/2015 - 1145 - Answer to Counterclaim-Civil
Additional Text: PLAINTIFFS LARRY J. WILLARD AND OVERLAND DEVELOPMENT CORPORATION'S ANSWER TO DEFENDANT'S COUNTERCLAIM - Transaction 4971207 - Approved By: YVILORIA : 05-27-2015:14:17:34
- 50 5/27/2015 - NEF - Proof of Electronic Service
Additional Text: Transaction 4971317 - Approved By: NOREVIEW : 05-27-2015:14:18:34
- 51 6/17/2015 - 2610 - Notice ...
Additional Text: NOTICE OF CHANGE OF LAW FIRM AFFILIATION - Transaction 5004813 - Approved By: MCHOLICO : 06-17-2015:14:09:31
- 52 6/17/2015 - NEF - Proof of Electronic Service
Additional Text: Transaction 5005081 - Approved By: NOREVIEW : 06-17-2015:14:10:34

- 53 6/17/2015 - 3373 - Other ...
Additional Text: COMMISSION AND AUTHORITY FOR ISSUANCE OF A SUBPOENA DUCES TECUM - Transaction 5005238 - Approved By: BRAMIREZ : 06-17-2015:14:50:51
- 54 6/17/2015 - 1030 - Affidavit in Support...
Additional Text: AFFIDAVIT OF BRIAN R IRVINE IN SUPPORT OF APPLICATION FOR ISSUANCE OF A COMMISSION TO SERVE SUBPOENA DUCES TECUM OUT OF STATE - Transaction 5005238 - Approved By: BRAMIREZ : 06-17-2015:14:50:51
- 55 6/17/2015 - 1270 - Application ...
Additional Text: APPLICATION FOR ISSUANCE OF COMMISSION TO SERVE OUT OF STATE SUBPOENA DUCES TECUM - Transaction 5005238 - Approved By: BRAMIREZ : 06-17-2015:14:50:51
- 56 6/17/2015 - NEF - Proof of Electronic Service
Additional Text: Transaction 5005242 - Approved By: NOREVIEW : 06-17-2015:14:51:54
- 57 6/18/2015 - 1270 - Application ...
Additional Text: APPLICATION FOR ISSUANCE OF COMMISSION TO SERVE OUT OF STATE SUBPOENA DUCES TECUM
- 58 6/18/2015 - 1417 - Comm/Take Out/State Depo
No additional text exists for this entry.
- 59 6/18/2015 - 1030 - Affidavit in Support...
Additional Text: AFFIDAVIT OF BRIAN R. IRVINE IN SUPPORT OF APPLICATION FOR ISSUANCE OF A COMMISSION TO SERVE SUBPOENA DUCES TECUM OUT OF STATE
- 60 6/23/2015 - 2270 - Mtn to Compel...
Additional Text: DEFENDANTS' MOTION TO COMPEL DISCOVERY RESPONSES - Transaction 5013490 - Approved By: MCHOLICO : 06-23-2015:16:22:19
- 61 6/23/2015 - 1670 - Ex-Parte Mtn...
Additional Text: DEFENDANTS' EX PARTE MOTION FOR AN ORDER SHORTENING TIME - Transaction 5013506 - Approved By: MCHOLICO : 06-23-2015:16:31:02
- 62 6/23/2015 - 2520 - Notice of Appearance
Additional Text: ANJALI D. WEBSTER, ESQ FOR BERRY HINCKLEY IND. & JERRY HERBST - Transaction 5013655 - Approved By: CSULEZIC : 06-23-2015:16:46:47
- 63 6/23/2015 - NEF - Proof of Electronic Service
Additional Text: Transaction 5013929 - Approved By: NOREVIEW : 06-23-2015:16:24:03
- 64 6/23/2015 - NEF - Proof of Electronic Service
Additional Text: Transaction 5013982 - Approved By: NOREVIEW : 06-23-2015:16:32:00
- 65 6/23/2015 - NEF - Proof of Electronic Service
Additional Text: Transaction 5014062 - Approved By: NOREVIEW : 06-23-2015:16:50:18
- 66 6/24/2015 - 3245 - Ord Shortening Time
Additional Text: Transaction 5014294 - Approved By: NOREVIEW : 06-24-2015:08:14:51
- 67 6/24/2015 - NEF - Proof of Electronic Service
Additional Text: Transaction 5014298 - Approved By: NOREVIEW : 06-24-2015:08:15:51
- 68 6/24/2015 - 2540 - Notice of Entry of Ord
Additional Text: Transaction 5014829 - Approved By: NOREVIEW : 06-24-2015:10:19:12
- 69 6/24/2015 - NEF - Proof of Electronic Service
Additional Text: Transaction 5014833 - Approved By: NOREVIEW : 06-24-2015:10:20:14

- 70 6/26/2015 - 2610 - Notice ...
Additional Text: NOTICE OF NON-OPPOSITION TO DEFENDANTS' MOTION TO COMPEL DISCOVERY RESPONSES - Transaction 5019676 - Approved By: YVILORIA : 06-26-2015:14:11:11
- 71 6/26/2015 - 3860 - Request for Submission
Additional Text: Transaction 5019704 - Approved By: YVILORIA : 06-26-2015:14:28:09
DOCUMENT TITLE: REQUEST FOR SUBMISSION OF DEFENDANTS' MOTION TO COMPEL DISCOVERY RESPONSES
PARTY SUBMITTING: JOHN P. DESMON
DATE SUBMITTED: JUNE 26, 2015
SUBMITTED BY: YVILORIA
DATE RECEIVED JUDGE OFFICE:
- 72 6/26/2015 - NEF - Proof of Electronic Service
Additional Text: Transaction 5020106 - Approved By: NOREVIEW : 06-26-2015:14:12:09
- 73 6/26/2015 - NEF - Proof of Electronic Service
Additional Text: Transaction 5020165 - Approved By: NOREVIEW : 06-26-2015:14:29:52
- 74 6/30/2015 - 1005 - Acceptance of Service
Additional Text: ACCEPTANCE OF SERVICE FOR DANIEL GLUHAICH - Transaction 5023355 - Approved By: YVILORIA : 06-30-2015:11:05:41
- 75 6/30/2015 - NEF - Proof of Electronic Service
Additional Text: Transaction 5023756 - Approved By: NOREVIEW : 06-30-2015:11:08:21
- 76 7/1/2015 - S200 - Request for Submission Complet
Additional Text: order
- 77 7/1/2015 - 3060 - Ord Granting Mtn ...
Additional Text: TO COMPEL DISCOVERY RESPONSES - Transaction 5026316 - Approved By: NOREVIEW : 07-01-2015:11:06:30
- 78 7/1/2015 - NEF - Proof of Electronic Service
Additional Text: Transaction 5026318 - Approved By: NOREVIEW : 07-01-2015:11:07:28
- 79 7/1/2015 - 2540 - Notice of Entry of Ord
Additional Text: Notice of Entry of Order Granting Defendants' Motion to Compel Discovery Responses - Transaction 5026791 - Approved By: NOREVIEW : 07-01-2015:13:36:34
- 80 7/1/2015 - NEF - Proof of Electronic Service
Additional Text: Transaction 5026802 - Approved By: NOREVIEW : 07-01-2015:13:37:39
- 81 7/2/2015 - 3725 - Proof ...
Additional Text: RETURNED PROOF OF SERVICE - Transaction 5028916 - Approved By: YVILORIA : 07-02-2015:13:44:54
- 82 7/2/2015 - NEF - Proof of Electronic Service
Additional Text: Transaction 5029075 - Approved By: NOREVIEW : 07-02-2015:13:45:57
- 83 7/10/2015 - 1270 - Application ...
Additional Text: APPLICATION FOR ISSUANCE OF COMMISSION TO SERVE OUT OF STATE SUBPOENA - Transaction 5039738 - Approved By: PMSEWELL : 07-10-2015:11:14:57
- 84 7/10/2015 - 1030 - Affidavit in Support...
Additional Text: AFFIDAVIT OF BRIAN R. IRVINE IN SUPPORT OF APPLICATION FOR ISSUANCE OF A COMMISSION TO SERVE SUBPOENA OUT OF STATE - Transaction 5039738 - Approved By: PMSEWELL : 07-10-2015:11:14:57
- 85 7/10/2015 - 2610 - Notice ...
Additional Text: NOTICE OF DEPOSITION OF DANIEL GLUHAICH - Transaction 5039738 - Approved By: PMSEWELL : 07-10-2015:11:14:57

- 86 7/10/2015 - NEF - Proof of Electronic Service
Additional Text: Transaction 5039742 - Approved By: NOREVIEW : 07-10-2015:11:15:53
- 87 7/23/2015 - 1005 - Acceptance of Service
Additional Text: ACCEPTANCE OF SERVICE FOR DANIEL GLUHAICH - Transaction 5060473 - Approved By: YVILORIA : 07-24-2015:09:15:29
- 88 7/24/2015 - NEF - Proof of Electronic Service
Additional Text: Transaction 5060803 - Approved By: NOREVIEW : 07-24-2015:09:16:24
- 89 7/24/2015 - 2490 - Motion ...
Additional Text: MOTION FOR CONTEMPT PURSUANT TO NRCP 45(e) AND MOTION FOR SANCTIONS AGAINST PLAINTIFFS' COUNSEL PURSUANT TO NRCP 37 - Transaction 5062411 - Approved By: MCHOLICO : 07-27-2015:09:20:48
- 90 7/24/2015 - 1670 - Ex-Parte Mtn...
Additional Text: DEFENDANTS' EX PARTE MOTION FOR AN ORDER SHORTENING TIME - Transaction 5062424 - Approved By: MCHOLICO : 07-27-2015:09:37:07
- 91 7/27/2015 - NEF - Proof of Electronic Service
Additional Text: Transaction 5062618 - Approved By: NOREVIEW : 07-27-2015:09:21:38
- 92 7/27/2015 - NEF - Proof of Electronic Service
Additional Text: Transaction 5062697 - Approved By: NOREVIEW : 07-27-2015:09:38:09
- 93 7/28/2015 - 3245 - Ord Shortening Time
Additional Text: Transaction 5065501 - Approved By: NOREVIEW : 07-28-2015:11:36:06
- 94 7/28/2015 - NEF - Proof of Electronic Service
Additional Text: Transaction 5065510 - Approved By: NOREVIEW : 07-28-2015:11:37:16
- 95 7/28/2015 - 2540 - Notice of Entry of Ord
Additional Text: ORDER SHORTENING TIME ON DEFENDANTS' MOTION FOR CONTEMPT - Transaction 5066050 - Approved By: NOREVIEW : 07-28-2015:14:21:21
- 96 7/28/2015 - NEF - Proof of Electronic Service
Additional Text: Transaction 5066057 - Approved By: NOREVIEW : 07-28-2015:14:22:46
- 97 8/7/2015 - 2270 - Mtn to Compel...
Additional Text: DEFENDANTS' SECOND MOTION TO COMPEL DISCOVERY RESPONSES - Transaction 5084135 - Approved By: CSULEZIC : 08-07-2015:16:17:01
- 98 8/7/2015 - 1670 - Ex-Parte Mtn...
Additional Text: DEFENDANTS' EX PARTE MOTION FOR AN ORDER SHORTENING TIME - Transaction 5084148 - Approved By: CSULEZIC : 08-07-2015:16:21:37
- 99 8/7/2015 - 3870 - Request
Additional Text: EMERGENCY REQUEST FOR STATUS CONFERENCE - Transaction 5084160 - Approved By: CSULEZIC : 08-07-2015:16:25:16
- 100 8/7/2015 - NEF - Proof of Electronic Service
Additional Text: Transaction 5084332 - Approved By: NOREVIEW : 08-07-2015:16:18:02
- 101 8/7/2015 - NEF - Proof of Electronic Service
Additional Text: Transaction 5084356 - Approved By: NOREVIEW : 08-07-2015:16:22:25
- 102 8/7/2015 - NEF - Proof of Electronic Service
Additional Text: Transaction 5084369 - Approved By: NOREVIEW : 08-07-2015:16:26:03

- 103 8/11/2015 - 3245 - Ord Shortening Time
Additional Text: Transaction 5088563 - Approved By: NOREVIEW : 08-11-2015:15:22:38
- 104 8/11/2015 - NEF - Proof of Electronic Service
Additional Text: Transaction 5088569 - Approved By: NOREVIEW : 08-11-2015:15:23:39
- 105 8/11/2015 - 2540 - Notice of Entry of Ord
Additional Text: ORDER SHORTENING TIME ON DEFENDANTS' SECOND MOTION TO COMPEL DISCOVERY RESPONSES - Transaction 5088869 - Approved By: NOREVIEW : 08-11-2015:16:27:10
- 106 8/11/2015 - NEF - Proof of Electronic Service
Additional Text: Transaction 5088888 - Approved By: NOREVIEW : 08-11-2015:16:31:19
- 107 8/12/2015 - 3242 - Ord Setting Hearing
Additional Text: Transaction 5089844 - Approved By: NOREVIEW : 08-12-2015:11:20:20
- 108 8/12/2015 - NEF - Proof of Electronic Service
Additional Text: Transaction 5089849 - Approved By: NOREVIEW : 08-12-2015:11:21:09
- 109 8/17/2015 - 3860 - Request for Submission
Additional Text: Transaction 5096449 - Approved By: YLLOYD : 08-17-2015:13:48:20
DOCUMENT TITLE: DEFENDANTS' SECOND MOTION TO COMPEL DISCOVERY RESPONSES (NO PAPER ORDER)
PARTY SUBMITTING: BRIAN IRVINE ESQ
DATE SUBMITTED: 8/17/15
SUBMITTED BY: YLLOYD
DATE RECEIVED JUDGE OFFICE:
- 110 8/17/2015 - 3105 - Ord Granting ...
Additional Text: Order Granting Defendant's Second Motion to Compel Discovery Responses - Transaction 5096818 - Approved By: NOREVIEW : 08-17-2015:12:19:57
- 111 8/17/2015 - NEF - Proof of Electronic Service
Additional Text: Transaction 5096819 - Approved By: NOREVIEW : 08-17-2015:12:20:47
- 112 8/17/2015 - NEF - Proof of Electronic Service
Additional Text: Transaction 5097014 - Approved By: NOREVIEW : 08-17-2015:13:49:20
- 113 8/18/2015 - S200 - Request for Submission Complet
Additional Text: order
- 114 9/3/2015 - MIN - ***Minutes
Additional Text: Status Hearing re: Discovery Issues - Transaction 5125808 - Approved By: NOREVIEW : 09-03-2015:10:32:40
- 115 9/3/2015 - NEF - Proof of Electronic Service
Additional Text: Transaction 5125811 - Approved By: NOREVIEW : 09-03-2015:10:33:42
- 116 9/3/2015 - 4045 - Stipulation to Continuance
Additional Text: STIPULATION AND ORDER TO CONTINUE TRIAL (FIRST REQUEST) - Transaction 5126559 - Approved By: TBTRITON : 09-03-2015:14:11:20
- 117 9/3/2015 - NEF - Proof of Electronic Service
Additional Text: Transaction 5126780 - Approved By: NOREVIEW : 09-03-2015:14:14:02
- 118 9/3/2015 - 4030 - Stip & Ord Continue Trial
Additional Text: Transaction 5127223 - Approved By: NOREVIEW : 09-03-2015:15:34:46

- 119 9/3/2015 - NEF - Proof of Electronic Service
Additional Text: Transaction 5127225 - Approved By: NOREVIEW : 09-03-2015:15:35:49
- 120 9/18/2015 - 1250 - Application for Setting
Additional Text: 7/26/16 (PTC) - 8/29/16 (TRIAL) - Transaction 5148698 - Approved By: CSULEZIC : 09-18-2015:15:36:20
- 121 9/18/2015 - NEF - Proof of Electronic Service
Additional Text: Transaction 5148919 - Approved By: NOREVIEW : 09-18-2015:15:37:20
- 122 3/14/2016 - 3980 - Stip and Order...
Additional Text: TO AMEND EXPERT DISCLOSURE DEADLINE - Transaction 5415641 - Approved By: NOREVIEW : 03-14-2016:14:36:14
- 123 3/14/2016 - NEF - Proof of Electronic Service
Additional Text: Transaction 5415644 - Approved By: NOREVIEW : 03-14-2016:14:37:12
- 124 5/2/2016 - 4030 - Stip & Ord Continue Trial
Additional Text: Transaction 5493313 - Approved By: NOREVIEW : 05-02-2016:11:05:40
- 125 5/2/2016 - NEF - Proof of Electronic Service
Additional Text: Transaction 5493317 - Approved By: NOREVIEW : 05-02-2016:11:06:38
- 126 5/9/2016 - 1250E - Application for Setting eFile
Additional Text: Transaction 5506807 - Approved By: NOREVIEW : 05-09-2016:16:44:27
- 127 5/9/2016 - NEF - Proof of Electronic Service
Additional Text: Transaction 5506809 - Approved By: NOREVIEW : 05-09-2016:16:45:16
- 128 6/22/2016 - 1320 - Case Conference Report
Additional Text: AMENDED JOINT RULE 16.1 CASE CONFERENCE REPORT - Transaction 5575415 - Approved By: RKWATKIN : 06-22-2016:16:35:54
- 129 6/22/2016 - NEF - Proof of Electronic Service
Additional Text: Transaction 5575550 - Approved By: NOREVIEW : 06-22-2016:16:37:08
- 130 8/1/2016 - 2490 - Motion ...
Additional Text: DEFENDANTS' MOTION TO EXCEED PAGE LIMIT ON DEFENDANTS/COUNTERCLAIMANTS' MOTION FOR PARTIAL SUMMARY JUDGMENT - Transaction 5636441 - Approved By: BRAMIREZ : 08-01-2016:16:18:11
- 131 8/1/2016 - NEF - Proof of Electronic Service
Additional Text: Transaction 5636797 - Approved By: NOREVIEW : 08-01-2016:16:19:06
- 132 8/1/2016 - \$2160 - \$Mtn Partial Sum Judgment
Additional Text: DEFENDANTS/COUNTERCLAIMANTS' MOTION FOR PARTIAL SUMMARY JUDGMENT - Transaction 5636821 - Approved By: CSULEZIC : 08-02-2016:09:07:09
- 133 8/2/2016 - PAYRC - **Payment Receipted
Additional Text: A Payment of \$200.00 was made on receipt DCDC548267.
- 134 8/2/2016 - NEF - Proof of Electronic Service
Additional Text: Transaction 5637206 - Approved By: NOREVIEW : 08-02-2016:09:10:13
- 135 8/16/2016 - 3060 - Ord Granting Mtn ...
Additional Text: ORDER GRANTING MOTION TO EXCEED PAGE LIMIT - Transaction 5660710 - Approved By: NOREVIEW : 08-16-2016:11:58:17
- 136 8/16/2016 - NEF - Proof of Electronic Service
Additional Text: Transaction 5660712 - Approved By: NOREVIEW : 08-16-2016:11:59:08

- 137 8/30/2016 - 2650 - Opposition to ...
Additional Text: PLAINTIFFS' OPPOSITION TO DEFENDANTS' MOTION FOR PARTIAL SUMMARY JUDGMENT - Transaction 5685608 - Approved By: TBRIITON : 08-31-2016:11:07:54
- 138 8/30/2016 - 1046 - Affidavit of Plaintiff
Additional Text: AFFIDAVIT OF LARRY J. WILLARD - Transaction 5685608 - Approved By: TBRIITON : 08-31-2016:11:07:54
- 139 8/30/2016 - 1046 - Affidavit of Plaintiff
Additional Text: AFFIDAVIT OF EDWARD C. WOOLEY - Transaction 5685608 - Approved By: TBRIITON : 08-31-2016:11:07:54
- 140 8/30/2016 - 1075 - Affidavit ...
Additional Text: AFFIDAVIT OF BRIAN P. MOQUIN - Transaction 5685608 - Approved By: TBRIITON : 08-31-2016:11:07:54
- 141 8/31/2016 - NEF - Proof of Electronic Service
Additional Text: Transaction 5686337 - Approved By: NOREVIEW : 08-31-2016:11:09:26
- 142 9/16/2016 - 2490 - Motion ...
Additional Text: DEFENDANTS/COUNTERCLAIMANTS' MOTION TO EXCEED PAGE LIMIT ON REPLY IN SUPPORT OF MOTION FOR PARTIAL SUMMARY JUDGMENT - Transaction 5712301 - Approved By: YLLOYD : 09-16-2016:16:36:36
- 143 9/16/2016 - NEF - Proof of Electronic Service
Additional Text: Transaction 5712779 - Approved By: NOREVIEW : 09-16-2016:16:37:39
- 144 9/16/2016 - 3795 - Reply...
Additional Text: DEFENDANTS' REPLY BRIEF IN SUPPORT OF MOTION FOR PARTIAL SUMMARY JUDGMENT - Transaction 5712853 - Approved By: YVILORIA : 09-19-2016:08:59:36
- 145 9/19/2016 - NEF - Proof of Electronic Service
Additional Text: Transaction 5713129 - Approved By: NOREVIEW : 09-19-2016:09:00:52
- 146 9/19/2016 - 3860 - Request for Submission
Additional Text: MOTION FOR PARTIAL SUMMARY JUDGMENT - Transaction 5713181 - Approved By: CSULEZIC : 09-19-2016:10:06:50
PARTY SUBMITTING: BRIAN IRVINE ESQ
DATE SUBMITTED: 9/19/16
SUBMITTED BY: CS
DATE RECEIVED JUDGE OFFICE:
- 147 9/19/2016 - NEF - Proof of Electronic Service
Additional Text: Transaction 5713382 - Approved By: NOREVIEW : 09-19-2016:10:07:48
- 148 9/20/2016 - 3105 - Ord Granting ...
Additional Text: MOTION TO EXCEED PAGE LIMIT ON REPLY & ORDER FOR COURTESY COPIES - Transaction 5717232 - Approved By: NOREVIEW : 09-20-2016:16:05:56
- 149 9/20/2016 - NEF - Proof of Electronic Service
Additional Text: Transaction 5717243 - Approved By: NOREVIEW : 09-20-2016:16:07:14
- 150 12/2/2016 - 1610 - Disclosure of Expert Witness
Additional Text: DEFENDANTS' DISCLOSURE OF EXPERT WITNESS MICHELLE SALAZAR - Transaction 5834869 - Approved By: YVILORIA : 12-05-2016:08:47:13
- 151 12/5/2016 - NEF - Proof of Electronic Service
Additional Text: Transaction 5835126 - Approved By: NOREVIEW : 12-05-2016:08:48:11
- 152 12/5/2016 - 1368 - Certificate ...
Additional Text: AMENDED CERTIFICATE OF SERVICE - Transaction 5835833 - Approved By: PMSEWELL : 12-05-2016:11:50:59
- 153 12/5/2016 - NEF - Proof of Electronic Service
Additional Text: Transaction 5835928 - Approved By: NOREVIEW : 12-05-2016:11:52:16

- 154 12/9/2016 - 3242 - Ord Setting Hearing
Additional Text: Transaction 5846456 - Approved By: NOREVIEW : 12-09-2016:14:51:10
- 155 12/9/2016 - S200 - Request for Submission Complet
Additional Text: ORDER
- 156 12/9/2016 - NEF - Proof of Electronic Service
Additional Text: Transaction 5846469 - Approved By: NOREVIEW : 12-09-2016:14:52:30
- 157 12/14/2016 - 1250 - Application for Setting
Additional Text: DEFENDANTS' MOTION FOR PARTIAL SUMMARY JUDGMENT - JANUARY 10, 2017 AT 9:30 AM - Transaction 5853591
- Approved By: TBRITTON : 12-14-2016:13:34:24
- 158 12/14/2016 - NEF - Proof of Electronic Service
Additional Text: Transaction 5853762 - Approved By: NOREVIEW : 12-14-2016:13:35:07
- 159 12/20/2016 - 4105 - Supplemental ...
Additional Text: SUPPLEMENT TO DEFENDANTS/COUNTERCLAIMANTS' MOTION FOR PARTIAL SUMMARY JUDGMENT - Transaction 5863245 - Approved By: CSULEZIC : 12-20-2016:11:23:38
- 160 12/20/2016 - NEF - Proof of Electronic Service
Additional Text: Transaction 5863359 - Approved By: NOREVIEW : 12-20-2016:11:26:30
- 161 1/16/2017 - 4185 - Transcript
Additional Text: 1/10/17 - Hearing on Motion for Partial Summary Judgment - Transaction 5898584 - Approved By: NOREVIEW : 01-16-2017:15:25:36
- 162 1/16/2017 - NEF - Proof of Electronic Service
Additional Text: Transaction 5898585 - Approved By: NOREVIEW : 01-16-2017:15:26:26
- 163 1/30/2017 - 2630 - Objection to ...
Additional Text: PLAINTIFFS' OBJECTIONS TO DEFENDANTS' PROPOSED ORDER GRANTING PARTIAL SUMMARY JUDGMENT IN FAVOR OF DEFENDANTS - Transaction 5923951 - Approved By: YVILORIA : 01-30-2017:15:07:08
- 164 1/30/2017 - NEF - Proof of Electronic Service
Additional Text: Transaction 5924139 - Approved By: NOREVIEW : 01-30-2017:15:08:04
- 165 1/31/2017 - MIN - ***Minutes
Additional Text: Oral Arguments 1/10/17 - Transaction 5926360 - Approved By: NOREVIEW : 01-31-2017:14:21:22
- 166 1/31/2017 - NEF - Proof of Electronic Service
Additional Text: Transaction 5926384 - Approved By: NOREVIEW : 01-31-2017:14:23:01
- 167 2/2/2017 - 3880 - Response...
Additional Text: DEFENDANTS/COUNTERCLAIMANTS' RESPONSE TO PLAINTIFFS' OBJECTIONS TO DEFENDANTS' PROPOSED ORDER GRANTING PARTIAL SUMMARY JUDGMENT IN FAVOR OF DEFENDANTS - Transaction 5931033 - Approved By: TBRITTON : 02-02-2017:13:27:12
- 168 2/2/2017 - NEF - Proof of Electronic Service
Additional Text: Transaction 5931052 - Approved By: NOREVIEW : 02-02-2017:13:28:11
- 169 2/9/2017 - 4030 - Stip & Ord Continue Trial
Additional Text: Transaction 5943531 - Approved By: NOREVIEW : 02-09-2017:13:14:43
- 170 2/9/2017 - NEF - Proof of Electronic Service
Additional Text: Transaction 5943534 - Approved By: NOREVIEW : 02-09-2017:13:15:43

- 171 2/9/2017 - 2610 - Notice ...
Additional Text: NOTICE OF DISASSOCIATION OF COUNSEL AND REQUEST TO BE REMOVED FROM ELECTRONIC NOTICING ON THIS MATTER - Transaction 5944914 - Approved By: YVILORIA : 02-10-2017:08:07:24
- 172 2/10/2017 - NEF - Proof of Electronic Service
Additional Text: Transaction 5944986 - Approved By: NOREVIEW : 02-10-2017:08:08:27
- 173 2/16/2017 - 1250E - Application for Setting eFile
Additional Text: Transaction 5954691 - Approved By: NOREVIEW : 02-16-2017:12:39:34
- 174 2/16/2017 - NEF - Proof of Electronic Service
Additional Text: Transaction 5954693 - Approved By: NOREVIEW : 02-16-2017:12:40:26
- 175 5/30/2017 - 3105 - Ord Granting ...
Additional Text: PARTIAL SUMMARY JUDGMENT IN FAVOR OF DEFENDANTS - Transaction 6123806 - Approved By: NOREVIEW : 05-30-2017:16:42:21
- 176 5/30/2017 - NEF - Proof of Electronic Service
Additional Text: Transaction 6123812 - Approved By: NOREVIEW : 05-30-2017:16:43:22
- 177 5/31/2017 - 2540 - Notice of Entry of Ord
Additional Text: Transaction 6124745 - Approved By: NOREVIEW : 05-31-2017:11:10:55
- 178 5/31/2017 - NEF - Proof of Electronic Service
Additional Text: Transaction 6124752 - Approved By: NOREVIEW : 05-31-2017:11:11:55
- 179 10/17/2017 - \$2200 - \$Mtn for Summary Judgment
Additional Text: DFX: INDEX OF EXHIBITS IS MARKED AS EXHIBIT ONE INSTEAD OF ATTACHED TO THE MOTION - MOTION FOR SUMMARY JUDGMENT OF PLAINTIFFS EDWARD C. WOOLEY AND JUDITH A. WOOLEY - Transaction 6351933 - Approved By: CSULEZIC : 10-18-2017:09:35:48
- 180 10/17/2017 - 1520 - Declaration
Additional Text: Affidavit of Edward C. Wooley - Transaction 6351933 - Approved By: CSULEZIC : 10-18-2017:09:35:48
- 181 10/17/2017 - 1520 - Declaration
Additional Text: Affidavit of Daniel Gluhaich - Transaction 6351933 - Approved By: CSULEZIC : 10-18-2017:09:35:48
- 182 10/17/2017 - 1520 - Declaration
Additional Text: Affidavit of Brian P. Moquin - Transaction 6351933 - Approved By: CSULEZIC : 10-18-2017:09:35:48
- 183 10/18/2017 - PAYRC - **Payment Receipted
Additional Text: A Payment of \$200.00 was made on receipt DCDC589507.
- 184 10/18/2017 - NEF - Proof of Electronic Service
Additional Text: Transaction 6352252 - Approved By: NOREVIEW : 10-18-2017:09:37:52
- 185 10/18/2017 - \$2200 - \$Mtn for Summary Judgment
Additional Text: MOTION FOR SUMMARY JUDGMENT OF PLAINTIFFS LARRY J. WILLARD AND OVERLAND DEVELOPMENT CORPORATION - Transaction 6353981 - Approved By: CSULEZIC : 10-18-2017:16:18:43
- 186 10/18/2017 - 1520 - Declaration
Additional Text: Affidavit of Larry J. Willard - Transaction 6353981 - Approved By: CSULEZIC : 10-18-2017:16:18:43
- 187 10/18/2017 - 1520 - Declaration
Additional Text: Affidavit of Daniel Gluhaich - Transaction 6353981 - Approved By: CSULEZIC : 10-18-2017:16:18:43

- 188 10/18/2017 - 1520 - Declaration
Additional Text: Affidavit of Brian P. Moquin - Transaction 6353981 - Approved By: CSULEZIC : 10-18-2017:16:18:43
- 189 10/18/2017 - PAYRC - **Payment Receipted
Additional Text: A Payment of \$200.00 was made on receipt DCDC589603.
- 190 10/18/2017 - NEF - Proof of Electronic Service
Additional Text: Transaction 6354049 - Approved By: NOREVIEW : 10-18-2017:16:19:50
- 191 10/25/2017 - COC - Evidence Chain of Custody Form
No additional text exists for this entry.
- 192 11/13/2017 - 2490 - Motion ...
Additional Text: DEFENDANTS'/COUNTERCLAIMANTS' MOTION TO EXCEED PAGE LIMIT ON DEFENDANTS'/COUNTERCLAIMANTS' OPPOSITION TO LARRY J. WILLARD AND OVERLAND DEVELOPMENT CORPORATIONS' MOTION FOR SUMMARY JUDGMENT - Transaction 6391047 - Approved By: CSULEZIC : 11-13-2017:13:14:15
- 193 11/13/2017 - 2490 - Motion ...
Additional Text: DEFENDANTS'/COUNTERCLAIMANTS' MOTION TO EXCEED PAGE LIMIT ON DEFENDANTS'/COUNTERCLAIMANTS' OPPOSITION TO EDWARD C. WOOLEY AND JUDITH A. WOOLEYS' MOTION FOR SUMMARY JUDGMENT - Transaction 6391080 - Approved By: CSULEZIC : 11-13-2017:13:24:51
- 194 11/13/2017 - 2645 - Opposition to Mtn ...
Additional Text: DEFENDANTS'/COUNTERCLAIMANTS' OPPOSITION TO EDWARD C. WOOLEY AND JUDITH A. WOOLEYS' MOTION FOR SUMMARY JUDGMENT - Transaction 6391524 - Approved By: BVIRREY : 11-13-2017:14:15:42
- 195 11/13/2017 - 2645 - Opposition to Mtn ...
Additional Text: DEFENDANTS'/COUNTERCLAIMANTS' OPPOSITION TO LARRY WILLARD AND OVERLAND DEVELOPMENT CORPORATION'S MOTION FOR SUMMARY JUDGMENT - Transaction 6391650 - Approved By: BVIRREY : 11-13-2017:14:20:27
- 196 11/13/2017 - NEF - Proof of Electronic Service
Additional Text: Transaction 6391676 - Approved By: NOREVIEW : 11-13-2017:13:15:15
- 197 11/13/2017 - NEF - Proof of Electronic Service
Additional Text: Transaction 6391740 - Approved By: NOREVIEW : 11-13-2017:13:25:48
- 198 11/13/2017 - NEF - Proof of Electronic Service
Additional Text: Transaction 6391999 - Approved By: NOREVIEW : 11-13-2017:14:18:32
- 199 11/13/2017 - NEF - Proof of Electronic Service
Additional Text: Transaction 6392044 - Approved By: NOREVIEW : 11-13-2017:14:22:46
- 200 11/14/2017 - 2490 - Motion ...
Additional Text: DEFENDANTS'/COUNTERCLAIMANTS' MOTION TO EXCEED PAGE LIMIT ON DEFENDANTS'/COUNTERCLAIMANTS' MOTION TO STRIKE AND/OR MOTION IN LIMINE TO EXCLUDE THE EXPERT TESTIMONY OF D. GLUHAICH - Transaction 6393437 - Approved By: PMSEWELL : 11-14-2017:11:33:30
- 201 11/14/2017 - NEF - Proof of Electronic Service
Additional Text: Transaction 6393683 - Approved By: NOREVIEW : 11-14-2017:11:34:33
- 202 11/14/2017 - 2475 - Mtn to Strike...
Additional Text: DEFENDANTS'/COUNTERCLAIMANTS' MOTION TO STRIKE AND/OR MOTION IN LIMINE TO EXCLUDE THE EXPERT TESTIMONY OF DANIEL. GLUHAICH - Transaction 6394696 - Approved By: PMSEWELL : 11-14-2017:16:33:26
- 203 11/14/2017 - NEF - Proof of Electronic Service
Additional Text: Transaction 6394868 - Approved By: NOREVIEW : 11-14-2017:16:34:30
- 204 11/15/2017 - \$2160 - \$Mtn Partial Sum Judgment
Additional Text: DEFENDANTS' MOTION FOR PARTIAL SUMMARY JUDGMENT - Transaction 6395866 - Approved By: PMSEWELL : 11-15-2017:13:23:11

- 205 11/15/2017 - PAYRC - **Payment Received
Additional Text: A Payment of \$200.00 was made on receipt DCDC592564.
- 206 11/15/2017 - NEF - Proof of Electronic Service
Additional Text: Transaction 6396015 - Approved By: NOREVIEW : 11-15-2017:13:24:25
- 207 11/15/2017 - 2490 - Motion ...
Additional Text: DEFENDANTS'/COUNTERCLAIMANTS' MOTION TO EXCEED PAGE LIMIT ON DEFENDANTS'/COUNTERCLAIMANTS' MOTION FOR SANCTIONS - Transaction 6397062 - Approved By: PMSEWELL : 11-16-2017:08:37:10
- 208 11/15/2017 - 2185 - Mtn for Sanctions
Additional Text: DEFENDANTS'/COUNTERCLAIMANTS' MOTION FOR SANCTIONS - Transaction 6397083 - Approved By: PMSEWELL : 11-16-2017:08:44:30
- 209 11/16/2017 - NEF - Proof of Electronic Service
Additional Text: Transaction 6397241 - Approved By: NOREVIEW : 11-16-2017:08:38:11
- 210 11/16/2017 - NEF - Proof of Electronic Service
Additional Text: Transaction 6397290 - Approved By: NOREVIEW : 11-16-2017:08:46:14
- 211 12/6/2017 - 2075 - Mtn for Extension of Time
Additional Text: PLTF'S REQUEST FOR A BRIEF EXTENSION OF TIME TO RESPOND TO DEFTS' THREE PENDING MOTIONS, AND TO EXTEND THE DEADLINE FOR SUBMISSION OF DISPOSITIVE MOTIONS - Transaction 6426442 - Approved By: SWILLIAM : 12-06-2017:15:21:41
- 212 12/6/2017 - NEF - Proof of Electronic Service
Additional Text: Transaction 6426533 - Approved By: NOREVIEW : 12-06-2017:15:22:42
- 213 12/7/2017 - 2610 - Notice ...
Additional Text: NOTICE OF NON-OPPOSITION TO DEFENDANTS'/COUNTERCLAIMANTS MOTION FOR PARTIAL SUMMARY JUDGMENT - Transaction 6429596 - Approved By: PMSEWELL : 12-08-2017:08:45:16
- 214 12/7/2017 - 2610 - Notice ...
Additional Text: NOTICE OF NON-OPPOSITION TO DEFENDANTS'/COUNTERCLAIMANTS MOTION FOR SANCTIONS - Transaction 6429615 - Approved By: PMSEWELL : 12-08-2017:09:14:54
- 215 12/7/2017 - 2610 - Notice ...
Additional Text: NOTICE OF NON-OPPOSITION TO DEFENDANTS'/COUNTERCLAIMANTS MOTION TO STRIKE AND/OR MOTION IN LIMINE TO EXCLUDE THE EXPERT TESTIMONY OF DANIEL GLUHAICH - Transaction 6429645 - Approved By: YVILORIA : 12-08-2017:08:34:57
- 216 12/7/2017 - 3860 - Request for Submission
Additional Text: Transaction 6429670 - Approved By: YVILORIA : 12-08-2017:08:42:59
DOCUMENT TITLE: MOTION FOR PARTIAL SUMMARY JUDGMENT FILED 11-15--17
PARTY SUBMITTING: BRIAN R. IRVINE ESQ
DATE SUBMITTED: DEC 8, 2017
SUBMITTED BY: YV
DATE RECEIVED JUDGE OFFICE:
- 217 12/7/2017 - 3860 - Request for Submission
Additional Text: Transaction 6429683 - Approved By: YVILORIA : 12-08-2017:08:44:11
DOCUMENT TITLE: MOTION FOR SANCTIONS FILED 11-15-17 -
PARTY SUBMITTING: BRIAN R IRVINE ESQ
DATE SUBMITTED: DEC 8, 2017
SUBMITTED BY: YVILORIA
DATE RECEIVED JUDGE OFFICE:
- 218 12/7/2017 - 3860 - Request for Submission

Additional Text: Transaction 6429701 - Approved By: YVILORIA : 12-08-2017:08:45:30
DOCUMENT TITLE: MOTION TO STRIKE AND/OR MOTION IN LIMINE TO EXCLUDE THE EXPERT TESTIMONY OF DANIEL GLUHAICH
FILED 11-14-17
PARTY SUBMITTING: BRIAN R. IRVINE ESQ
DATE SUBMITTED: DEC 8, 2017
SUBMITTED BY: YVILORIA
DATE RECEIVED JUDGE OFFICE:

219 12/8/2017 - NEF - Proof of Electronic Service

Additional Text: Transaction 6429874 - Approved By: NOREVIEW : 12-08-2017:08:35:56

220 12/8/2017 - NEF - Proof of Electronic Service

Additional Text: Transaction 6429886 - Approved By: NOREVIEW : 12-08-2017:08:43:59

221 12/8/2017 - NEF - Proof of Electronic Service

Additional Text: Transaction 6429889 - Approved By: NOREVIEW : 12-08-2017:08:45:08

222 12/8/2017 - NEF - Proof of Electronic Service

Additional Text: Transaction 6429893 - Approved By: NOREVIEW : 12-08-2017:08:46:18

223 12/8/2017 - NEF - Proof of Electronic Service

Additional Text: Transaction 6429895 - Approved By: NOREVIEW : 12-08-2017:08:46:27

224 12/8/2017 - NEF - Proof of Electronic Service

Additional Text: Transaction 6429948 - Approved By: NOREVIEW : 12-08-2017:09:16:17

225 12/12/2017 - S200 - Request for Submission Complet

Additional Text: PLAINTIFF SHALL RESPOND NO LATER THAN 12/18/17; DEFENDANT SHALL REPLY NO LATER THAN 1/8/18; ORAL
ARGUMENTS SET FOR 1/12/18 AT 1:00 P.M.

226 12/12/2017 - S200 - Request for Submission Complet

Additional Text: PLAINTIFF SHALL RESPOND NO LATER THAN 12/18/17; DEFENDANT SHALL REPLY NO LATER THAN 1/8/18; ORAL
ARGUMENTS SET FOR 1/12/18 AT 1:00 P.M.

227 12/12/2017 - S200 - Request for Submission Complet

Additional Text: PLAINTIFF SHALL RESPOND NO LATER THAN 12/18/17; DEFENDANT SHALL REPLY NO LATER THAN 1/8/18; ORAL
ARGUMENTS SET FOR 1/12/18 AT 1:00 P.M.

228 12/14/2017 - 4185 - Transcript

Additional Text: 121217.hearing - Transaction 6440497 - Approved By: NOREVIEW : 12-14-2017:19:02:37

229 12/14/2017 - NEF - Proof of Electronic Service

Additional Text: Transaction 6440498 - Approved By: NOREVIEW : 12-14-2017:19:03:36

230 12/18/2017 - 2610 - Notice ...

Additional Text: NOTICE OF NON-OPPOSITION TO DEFENDANTS/COUNTERCLAIMANTS MOTION FOR PARTIAL SUMMARY JUDGMENT -
Transaction 6443150 - Approved By: YVILORIA : 12-18-2017:13:09:06

231 12/18/2017 - 2610 - Notice ...

Additional Text: NOTICE OF NON-OPPOSITION TO DEFENDANTS/COUNTERCLAIMANTS MOTION FOR SANCTIONS - Transaction
6443159 - Approved By: YVILORIA : 12-18-2017:13:09:20

232 12/18/2017 - 2610 - Notice ...

Additional Text: NOTICE OF NON-OPPOSITION TO DEFENDANTS/COUNTERCLAIMANTS' MOTION TO STRIKE AND/OR MOTION IN LIMINE
TO EXCLUDE THE EXPERT TESTIMONY OF DANIEL GLUHAICH - Transaction 6443172 - Approved By: YVILORIA : 12-18-2017:13:14:14

233 12/18/2017 - 3860 - Request for Submission

Additional Text: - Transaction 6443177 - Approved By: YVILORIA : 12-18-2017:13:15:42
DOCUMENT TITLE: DEFENDANTS/COUNTERCLAIMANTS' MOTION FOR PARTIAL SUMMARY JUDGMENT
PARTY SUBMITTING: BRIAN R IRVINE ESQ
DATE SUBMITTED: DEC 18, 2017
SUBMITTED BY: YV
DATE RECEIVED JUDGE OFFICE:

234 12/18/2017 - 3860 - Request for Submission

Additional Text: Transaction 6443180 - Approved By: YVILORIA : 12-18-2017:13:19:02
DOCUMENT TITLE: DEFENDANTS/COUNTERCLAIMANTS' MOTION FOR SANCTIONS
PARTY SUBMITTING: BRIAN R IRVINE ESQ
DATE SUBMITTED: DEC 18, 2017
SUBMITTED BY: YV
DATE RECEIVED JUDGE OFFICE:

235 12/18/2017 - 3860 - Request for Submission

Additional Text: Transaction 6443182 - Approved By: YVILORIA : 12-18-2017:13:29:09
DOCUMENT TITLE: DEFENDANTS/COUNTERCLAIMANTS' MOTION TO STRIKE AND/OR MOTION IN LIMINE TO EXCLUDE THE EXPERT
TESTIMONY OF DANIEL GLUHAICH
PARTY SUBMITTING: BRIAN R IRVINE ESQ
DATE SUBMITTED: DEC 18, 2017
SUBMITTED BY: YV
DATE RECEIVED JUDGE OFFICE:

236 12/18/2017 - NEF - Proof of Electronic Service

Additional Text: Transaction 6443364 - Approved By: NOREVIEW : 12-18-2017:13:10:02

237 12/18/2017 - NEF - Proof of Electronic Service

Additional Text: Transaction 6443366 - Approved By: NOREVIEW : 12-18-2017:13:10:21

238 12/18/2017 - NEF - Proof of Electronic Service

Additional Text: Transaction 6443378 - Approved By: NOREVIEW : 12-18-2017:13:15:11

239 12/18/2017 - NEF - Proof of Electronic Service

Additional Text: Transaction 6443382 - Approved By: NOREVIEW : 12-18-2017:13:16:41

240 12/18/2017 - NEF - Proof of Electronic Service

Additional Text: Transaction 6443387 - Approved By: NOREVIEW : 12-18-2017:13:20:01

241 12/18/2017 - NEF - Proof of Electronic Service

Additional Text: Transaction 6443418 - Approved By: NOREVIEW : 12-18-2017:13:29:52

242 1/4/2018 - 3060 - Ord Granting Mtn ...

Additional Text: DEFENDANTS/COUNTERCLAIMANTS MOTION TO STRIKE AND/OR MOTION IN LIMINE TO EXCLUDE THE EXPERT
TESTIMONY OF DANIEL GLUHAICH - Transaction 6466778 - Approved By: NOREVIEW : 01-04-2018:16:54:34

243 1/4/2018 - S200 - Request for Submission Complet

Additional Text: ORDER

244 1/4/2018 - NEF - Proof of Electronic Service

Additional Text: Transaction 6466789 - Approved By: NOREVIEW : 01-04-2018:16:55:44

245 1/4/2018 - S200 - Request for Submission Complet

Additional Text: ORDER

246 1/4/2018 - S200 - Request for Submission Complet

Additional Text: ORDER

- 247 1/4/2018 - 3060 - Ord Granting Mtn ...
Additional Text: DEFENDANTS/COUNTERCLAIMANTS MOTION FOR SANCTIONS - Transaction 6466861 - Approved By: NOREVIEW : 01-04-2018:17:32:10
- 248 1/4/2018 - 3105 - Ord Granting ...
Additional Text: DEFENDANTS' MOTION FOR PARTIAL SUMMARY JUDGMENT - Transaction 6466867 - Approved By: NOREVIEW : 01-04-2018:17:33:20
- 249 1/4/2018 - NEF - Proof of Electronic Service
Additional Text: Transaction 6466866 - Approved By: NOREVIEW : 01-04-2018:17:33:19
- 250 1/4/2018 - NEF - Proof of Electronic Service
Additional Text: Transaction 6466870 - Approved By: NOREVIEW : 01-04-2018:17:34:16
- 251 1/5/2018 - 2540 - Notice of Entry of Ord
Additional Text: Notice of Entry of Order Granting Defendants'/Counterclaimants' Motion to Strike and/or Motion in Limine to Exclude the Expert Testimony of Daniel Gluhaich - Transaction 6468337 - Approved By: NOREVIEW : 01-05-2018:13:39:54
- 252 1/5/2018 - NEF - Proof of Electronic Service
Additional Text: Transaction 6468341 - Approved By: NOREVIEW : 01-05-2018:13:40:49
- 253 1/5/2018 - 2540 - Notice of Entry of Ord
Additional Text: Notice of Entry of Order Granting Defendants' Motion for Partial Summary Judgment - Transaction 6468348 - Approved By: NOREVIEW : 01-05-2018:13:44:00
- 254 1/5/2018 - NEF - Proof of Electronic Service
Additional Text: Transaction 6468351 - Approved By: NOREVIEW : 01-05-2018:13:44:59
- 255 1/5/2018 - 2540 - Notice of Entry of Ord
Additional Text: Notice of Entry of Order Granting Defendants'/Counterclaimants' Motion for Sanctions - Transaction 6468357 - Approved By: NOREVIEW : 01-05-2018:13:46:53
- 256 1/5/2018 - NEF - Proof of Electronic Service
Additional Text: Transaction 6468366 - Approved By: NOREVIEW : 01-05-2018:13:49:38
- 257 3/6/2018 - S200 - Request for Submission Complet
Additional Text: orders
- 258 3/6/2018 - 3370 - Order ...
Additional Text: FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER RE: DEFENDANTS' MOTION FOR SANCTIONS - Transaction 6564287 - Approved By: NOREVIEW : 03-06-2018:16:23:04
- 259 3/6/2018 - NEF - Proof of Electronic Service
Additional Text: Transaction 6564290 - Approved By: NOREVIEW : 03-06-2018:16:23:52
- 260 3/6/2018 - 2842 - Ord Denying Motion
Additional Text: MOTION TO PARTIALLY DISMISS PLAINTIFFS' COMPLAINT AS MOOT - Transaction 6564297 - Approved By: NOREVIEW : 03-06-2018:16:25:44
- 261 3/6/2018 - NEF - Proof of Electronic Service
Additional Text: Transaction 6564302 - Approved By: NOREVIEW : 03-06-2018:16:26:43
- 262 3/6/2018 - 2540 - Notice of Entry of Ord
Additional Text: NOTICE OF ENTRY OF FINDINGS OF FACTS AND CONCLUSIONS OF LAW AND ORDER - Transaction 6564488 - Approved By: NOREVIEW : 03-06-2018:17:45:50
- 263 3/6/2018 - NEF - Proof of Electronic Service
Additional Text: Transaction 6564489 - Approved By: NOREVIEW : 03-06-2018:17:48:40

- 264 3/6/2018 - 2540 - Notice of Entry of Ord
Additional Text: NOTICE OF ENTRY OF ORDER DENYING PLAINTIFFS' MOTION TO PARTIALLY DISMISS PLAINTIFFS' COMPLAINT AS MOOT - Transaction 6564490 - Approved By: NOREVIEW : 03-06-2018:17:50:50
- 265 3/6/2018 - NEF - Proof of Electronic Service
Additional Text: Transaction 6564493 - Approved By: NOREVIEW : 03-06-2018:17:51:50
- 266 3/8/2018 - 2490 - Motion ...
Additional Text: DEFENDANTS/COUNTERCLAIMANTS' MOTION TO DISMISS COUNTERCLAIMS - Transaction 6567830 - Approved By: JAPARICI : 03-08-2018:14:00:24
- 267 3/8/2018 - NEF - Proof of Electronic Service
Additional Text: Transaction 6567942 - Approved By: NOREVIEW : 03-08-2018:14:01:30
- 268 3/9/2018 - 3870 - Request
Additional Text: REQUEST FOR ENTRY OF JUDGMENT - Transaction 6569817 - Approved By: CSULEZIC : 03-09-2018:12:40:53
- 269 3/9/2018 - NEF - Proof of Electronic Service
Additional Text: Transaction 6570047 - Approved By: NOREVIEW : 03-09-2018:12:41:55
- 270 3/12/2018 - MIN - ***Minutes
Additional Text: 12/12/17 PRE-TRIAL CONFERENCE - Transaction 6572395 - Approved By: NOREVIEW : 03-12-2018:13:45:47
- 271 3/12/2018 - NEF - Proof of Electronic Service
Additional Text: Transaction 6572398 - Approved By: NOREVIEW : 03-12-2018:13:46:37
- 272 3/15/2018 - 4300 - Withdrawal of Counsel
Additional Text: DAVID C. O'MARA ESQ / PLAINTIFFS - Transaction 6580103 - Approved By: YVILORIA : 03-15-2018:16:43:38
- 273 3/15/2018 - NEF - Proof of Electronic Service
Additional Text: Transaction 6580237 - Approved By: NOREVIEW : 03-15-2018:16:44:39
- 274 3/26/2018 - 2520 - Notice of Appearance
Additional Text: RICHARD WILLIAMSON, ESQ. AND JONATHAN TEW, ESQ. FOR PLAINTIFFS - Transaction 6596669 - Approved By: PMSEWELL : 03-26-2018:16:28:40
- 275 3/26/2018 - 2645 - Opposition to Mtn ...
Additional Text: OPPOSITION TO REQUEST FOR ENTRY OF JUDGMENT - Transaction 6596669 - Approved By: PMSEWELL : 03-26-2018:16:28:40
- 276 3/26/2018 - NEF - Proof of Electronic Service
Additional Text: Transaction 6596727 - Approved By: NOREVIEW : 03-26-2018:16:29:39
- 277 3/27/2018 - 2610 - Notice ...
Additional Text: NOTICE OF NON-OPPOSITION TO DEFENDANTS/COUNTERCLAIMANTS' MOTION TO DISMISS COUNTERCLAIMS - Transaction 6597394 - Approved By: CSULEZIC : 03-27-2018:10:27:01
- 278 3/27/2018 - 3860 - Request for Submission
Additional Text: MOTION TO DISMISS COUNTERCLAIMS - Transaction 6597399 - Approved By: CSULEZIC : 03-27-2018:10:32:07
PARTY SUBMITTING: BRIAN IRVINE ESQ
DATE SUBMITTED: 3/27/18
SUBMITTED BY: CS
DATE RECEIVED JUDGE OFFICE:
- 279 3/27/2018 - NEF - Proof of Electronic Service
Additional Text: Transaction 6597509 - Approved By: NOREVIEW : 03-27-2018:10:28:15
- 280 3/27/2018 - NEF - Proof of Electronic Service
Additional Text: Transaction 6597543 - Approved By: NOREVIEW : 03-27-2018:10:33:10

281 3/27/2018 - 3795 - Reply...
Additional Text: REPLY IN SUPPORT OF DEFENDANTS/COUNTERCLAIMANTS' REQUEST FOR ENTRY OF JUDGMENT - Transaction 6598618 - Approved By: PMSEWELL : 03-27-2018:15:42:39

282 3/27/2018 - 3860 - Request for Submission
Additional Text: REQUEST FOR ENTRY OF JUDGMENT FILED 3/09/18 - Transaction 6598628 - Approved By: CSULEZIC : 03-27-2018:15:25:30
PARTY SUBMITTING: BRIAN IRVINE ESQ
DATE SUBMITTED: 3/27/18
SUBMITTED BY: CS
DATE RECEIVED JUDGE OFFICE:

283 3/27/2018 - NEF - Proof of Electronic Service
Additional Text: Transaction 6598694 - Approved By: NOREVIEW : 03-27-2018:15:26:30

284 3/27/2018 - NEF - Proof of Electronic Service
Additional Text: Transaction 6598792 - Approved By: NOREVIEW : 03-27-2018:15:43:46

285 4/12/2018 - 4050 - Stipulation ...
Additional Text: STIPULATION FOR DISMISAL WITH PREJUDICE AND [PROPOSED] ORDER - Transaction 6626047 - Approved By: JAPARICI : 04-12-2018:12:53:41

286 4/12/2018 - NEF - Proof of Electronic Service
Additional Text: Transaction 6626396 - Approved By: NOREVIEW : 04-12-2018:12:54:36

287 4/13/2018 - 3060 - Ord Granting Mtn ...
Additional Text: DEFENDANTS/COUNTERCLAIMANTS' MOTION TO DISMISS COUNTERCLAIMS - Transaction 6628496 - Approved By: NOREVIEW : 04-13-2018:11:10:22

288 4/13/2018 - NEF - Proof of Electronic Service
Additional Text: Transaction 6628507 - Approved By: NOREVIEW : 04-13-2018:11:11:56

289 4/13/2018 - 2910 - Ord Dismissal w/Prejudice
Additional Text: CLAIMS OF WOOLEY PLAINTIFFS - Transaction 6628513 - Approved By: NOREVIEW : 04-13-2018:11:13:04

290 4/13/2018 - NEF - Proof of Electronic Service
Additional Text: Transaction 6628519 - Approved By: NOREVIEW : 04-13-2018:11:13:59

291 4/13/2018 - S200 - Request for Submission Complet
Additional Text: ORDER

292 4/16/2018 - 2540 - Notice of Entry of Ord
Additional Text: NOTICE OF ENTRY OF ORDER DISMISSING THE CLAIMS OF WOOLEY PLAINTIFFS WITH PREJUDICE - Transaction 6630140 - Approved By: NOREVIEW : 04-16-2018:09:31:58

293 4/16/2018 - NEF - Proof of Electronic Service
Additional Text: Transaction 6630152 - Approved By: NOREVIEW : 04-16-2018:09:33:14

294 4/16/2018 - 2540 - Notice of Entry of Ord
Additional Text: NOTICE OF ENTRY OF ORDER GRANTING DEFENDANTS/COUNTERCLAIMANTS' MOTION TO DISMISS COUNTERCLAIMS - Transaction 6630162 - Approved By: NOREVIEW : 04-16-2018:09:35:13

295 4/16/2018 - NEF - Proof of Electronic Service
Additional Text: Transaction 6630166 - Approved By: NOREVIEW : 04-16-2018:09:36:08

296 4/18/2018 - 2490 - Motion ...
Additional Text: WILLARD PLAINTIFFS' RULE 60(b) MOTION FOR RELIEF - Transaction 6636476 - Approved By: YVILORIA : 04-18-2018:16:00:05

- 297 4/18/2018 - NEF - Proof of Electronic Service
Additional Text: Transaction 6636763 - Approved By: NOREVIEW : 04-18-2018:16:01:24
- 298 4/27/2018 - 2010 - Mtn for Attorney's Fee
Additional Text: MOTION FOR ATTORNEYS' FEES - Transaction 6651655 - Approved By: CSULEZIC : 04-27-2018:11:04:25
- 299 4/27/2018 - NEF - Proof of Electronic Service
Additional Text: Transaction 6651822 - Approved By: NOREVIEW : 04-27-2018:11:06:35
- 300 5/18/2018 - 2490 - Motion ...
Additional Text: DEFENDANTS' MOTION TO EXCEED PAGE LIMIT ON DEFENDANTS' OPPOSITION TO THE WILLARD PLAINTIFFS' RULE 60(b) MOTION FOR RELIEF - Transaction 6687914 - Approved By: CVERA : 05-18-2018:15:11:09
- 301 5/18/2018 - 2645 - Opposition to Mtn ...
Additional Text: DEFENDANTS/COUNTERCLAIMANTS' OPPOSITION TO RULE 60(b) MOTION FOR RELIEF - Transaction 6687973 - Approved By: JAPARICI : 05-18-2018:15:21:02
- 302 5/18/2018 - NEF - Proof of Electronic Service
Additional Text: Transaction 6687981 - Approved By: NOREVIEW : 05-18-2018:15:12:29
- 303 5/18/2018 - NEF - Proof of Electronic Service
Additional Text: Transaction 6688034 - Approved By: NOREVIEW : 05-18-2018:15:22:00
- 304 5/29/2018 - 3795 - Reply...
Additional Text: REPLY IN SUPPORT OF THE WILLARD PLAINTIFFS' RULE 60(b) MOTION FOR RELIEF - Transaction 6702327 - Approved By: CVERA : 05-30-2018:08:39:48
- 305 5/29/2018 - 2645 - Opposition to Mtn ...
Additional Text: Plaintiffs' Opposition to Defendants' Motion to Exceed Page Limit - Transaction 6702439 - Approved By: CSULEZIC : 05-30-2018:08:41:21
- 306 5/30/2018 - NEF - Proof of Electronic Service
Additional Text: Transaction 6702532 - Approved By: NOREVIEW : 05-30-2018:08:40:53
- 307 5/30/2018 - NEF - Proof of Electronic Service
Additional Text: Transaction 6702538 - Approved By: NOREVIEW : 05-30-2018:08:42:26
- 308 5/30/2018 - 3860 - Request for Submission
Additional Text: Transaction 6704564 - Approved By: CVERA : 05-31-2018:08:26:48
DOCUMENT TITLE: REPLY IN SUPPORT OF WILLARD PLAINTIFFS' RULE 60(B) MOTION FOR RELIEF
PARTY SUBMITTING: RICHARD D. WILLIAMSON, ESQ.
DATE SUBMITTED: 05/31/18
SUBMITTED BY: CVERA
DATE RECEIVED JUDGE OFFICE:
- 309 5/31/2018 - NEF - Proof of Electronic Service
Additional Text: Transaction 6705232 - Approved By: NOREVIEW : 05-31-2018:08:27:47
- 310 6/1/2018 - 2645 - Opposition to Mtn ...
Additional Text: OPPOSITION TO MOTION FOR ATTORNEYS' FEES - Transaction 6709193 - Approved By: YVILORIA : 06-01-2018:16:16:55
- 311 6/1/2018 - NEF - Proof of Electronic Service
Additional Text: Transaction 6709459 - Approved By: NOREVIEW : 06-01-2018:16:19:42
- 312 6/4/2018 - 2682 - Ord Addressing Motions
Additional Text: REQUEST FOR ENTRY OF JUDGMENT - Transaction 6710052 - Approved By: NOREVIEW : 06-04-2018:10:13:27

- 313 6/4/2018 - S200 - Request for Submission Complet
Additional Text: ORDER
- 314 6/4/2018 - NEF - Proof of Electronic Service
Additional Text: Transaction 6710055 - Approved By: NOREVIEW : 06-04-2018:10:14:29
- 315 6/5/2018 - 3795 - Reply...
Additional Text: DEFENDANTS' REPLY IN SUPPORT OF MOTION TO EXCEED PAGE LIMIT ON DEFENDANTS' OPPOSITION TO THE WILLARD PLAINTIFFS' RULE 60(B) MOTION FOR RELIEF - Transaction 6713926 - Approved By: JAPARICI : 06-06-2018:08:59:51
- 316 6/5/2018 - 3860 - Request for Submission
Additional Text: - Transaction 6713948 - Approved By: JAPARICI : 06-06-2018:08:56:44
DOCUMENT TITLE: REQUEST FOR SUBMISSION OF DEFENDANTS' MOTION TO EXCEED PAGE LIMIT ON DEFENDANTS' OPPOSITION TO THE WILLARD PLAINTIFFS' RULE 60(b) MOTION FOR RELIEF
PARTY SUBMITTING: BRIAN R. IRVINE, ESQ
DATE SUBMITTED: 06/06/2018
SUBMITTED BY: JAPARICIO
DATE RECEIVED JUDGE OFFICE:
- 317 6/6/2018 - NEF - Proof of Electronic Service
Additional Text: Transaction 6714239 - Approved By: NOREVIEW : 06-06-2018:08:57:53
- 318 6/6/2018 - NEF - Proof of Electronic Service
Additional Text: Transaction 6714263 - Approved By: NOREVIEW : 06-06-2018:09:01:28
- 319 6/6/2018 - 2475 - Mtn to Strike...
Additional Text: DEFENDANTS' MOTION TO STRIKE, OR IN THE ALTERNATIVE, MOTION FOR LEAVE TO FILE SUR-REPLY - Transaction 6716429 - Approved By: CSULEZIC : 06-06-2018:16:47:17
- 320 6/6/2018 - NEF - Proof of Electronic Service
Additional Text: Transaction 6716521 - Approved By: NOREVIEW : 06-06-2018:16:48:24
- 321 6/11/2018 - 3795 - Reply...
Additional Text: DEFENDANTS' REPLY IN SUPPORT OF MOTION FOR ATTORNEYS' FEES - Transaction 6722044 - Approved By: CVERA : 06-11-2018:11:20:35
- 322 6/11/2018 - 3860 - Request for Submission
Additional Text: Transaction 6722061 - Approved By: YVILORIA : 06-11-2018:11:21:31
DOCUMENT TITLE: DEFENDANTS/COUNTERCLAIMANTS' MOTION FOR ATTORNEYS' FEES FILED 4-27-18
PARTY SUBMITTING: BRIAN IRVINE ESQ
DATE SUBMITTED: JUN 11, 2018
SUBMITTED BY: YV
DATE RECEIVED JUDGE OFFICE:
- 323 6/11/2018 - NEF - Proof of Electronic Service
Additional Text: Transaction 6722062 - Approved By: NOREVIEW : 06-11-2018:11:21:35
- 324 6/11/2018 - NEF - Proof of Electronic Service
Additional Text: Transaction 6722066 - Approved By: NOREVIEW : 06-11-2018:11:22:31
- 325 6/22/2018 - 2645 - Opposition to Mtn ...
Additional Text: OPPOSITION TO DEFENDANTS' MOTION TO STRIKE, OR IN THE ALTERNATIVE, MOTION FOR LEAVE TO FILE SUR-REPLY - Transaction 6743308 - Approved By: YVILORIA : 06-22-2018:15:46:45
- 326 6/22/2018 - NEF - Proof of Electronic Service
Additional Text: Transaction 6743466 - Approved By: NOREVIEW : 06-22-2018:15:47:46
- 327 6/29/2018 - 3795 - Reply...
Additional Text: REPLY IN SUPPORT OF MOTION TO STRIKE, OR IN THE ALTERNATIVE, MOTION FOR LEAVE TO FILE SUR-REPLY - Transaction 6754895 - Approved By: YVILORIA : 06-29-2018:13:24:33

- 328 6/29/2018 - 3860 - Request for Submission
Additional Text: Transaction 6754925 - Approved By: YVILORIA : 06-29-2018:13:25:47
DOCUMENT TITLE: DEFENDANTS/COUNTERCLAIMANTS' MOTION TO STRIKE, OR IN THE ALTERNATIVE, MOTION FOR LEAVE TO FILE SUR-REPLY FILED 6-6-18
PARTY SUBMITTING: BRIAN R IRVINE ESQ
DATE SUBMITTED: JUNE 29, 2018
SUBMITTED BY: YV
DATE RECEIVED JUDGE OFFICE:
- 329 6/29/2018 - NEF - Proof of Electronic Service
Additional Text: Transaction 6754952 - Approved By: NOREVIEW : 06-29-2018:13:25:35
- 330 6/29/2018 - NEF - Proof of Electronic Service
Additional Text: Transaction 6754955 - Approved By: NOREVIEW : 06-29-2018:13:26:44
- 331 7/11/2018 - 3370 - Order ...
Additional Text: RE: MOTION FOR ATTORNEYS' FEES - Transaction 6771891 - Approved By: NOREVIEW : 07-11-2018:16:39:18
- 332 7/11/2018 - NEF - Proof of Electronic Service
Additional Text: Transaction 6771896 - Approved By: NOREVIEW : 07-11-2018:16:41:58
- 333 7/11/2018 - 3060 - Ord Granting Mtn ...
Additional Text: DEFENDANTS' MOTION TO EXCEED PAGE LIMIT ON DEFENDANTS' OPPOSITION TO WILLARD PLAINTIFFS' RULE 60(B) MOTION FOR RELIEF - Transaction 6771902 - Approved By: NOREVIEW : 07-11-2018:16:42:02
- 334 7/11/2018 - 3242 - Ord Setting Hearing
Additional Text: Transaction 6771906 - Approved By: NOREVIEW : 07-11-2018:16:42:54
- 335 7/11/2018 - S200 - Request for Submission Complet
Additional Text: ORDER SETTING HEARING
- 336 7/11/2018 - S200 - Request for Submission Complet
Additional Text: ORDER
- 337 7/11/2018 - S200 - Request for Submission Complet
Additional Text: ORDER
- 338 7/11/2018 - NEF - Proof of Electronic Service
Additional Text: Transaction 6771912 - Approved By: NOREVIEW : 07-11-2018:16:44:03
- 339 7/11/2018 - NEF - Proof of Electronic Service
Additional Text: Transaction 6771922 - Approved By: NOREVIEW : 07-11-2018:16:45:11
- 340 7/19/2018 - 1250E - Application for Setting eFile
Additional Text: Transaction 6785734 - Approved By: NOREVIEW : 07-19-2018:13:41:19
- 341 7/19/2018 - NEF - Proof of Electronic Service
Additional Text: Transaction 6785739 - Approved By: NOREVIEW : 07-19-2018:13:42:23
- 342 9/4/2018 - S200 - Request for Submission Complet
Additional Text: IN ORAL ARGUMENTS, COUNSEL FOR PLAINTIFF STIPULATED TO THE FILING OF THE SUR-REPLY. MOTION IS NOW MOOT.
- 343 11/30/2018 - 2840 - Ord Denying ...
Additional Text: Transaction 7001598 - Approved By: NOREVIEW : 11-30-2018:16:08:53

- 344 11/30/2018 - NEF - Proof of Electronic Service
Additional Text: Transaction 7001607 - Approved By: NOREVIEW : 11-30-2018:16:10:25
- 345 11/30/2018 - S200 - Request for Submission Complet
Additional Text: PLAINTIFF'S RULE 60B MOTION DENIED
- 346 12/3/2018 - 2540 - Notice of Entry of Ord
Additional Text: NOTICE OF ENTRY OF ORDER DENYING PLAINTIFFS' RULE 60(b) MOTION FOR RELIEF - Transaction 7002654 -
Approved By: NOREVIEW : 12-03-2018:11:18:07
- 347 12/3/2018 - NEF - Proof of Electronic Service
Additional Text: Transaction 7002658 - Approved By: NOREVIEW : 12-03-2018:11:19:07
- 348 12/4/2018 - 3860 - Request for Submission
Additional Text: Transaction 7006848 - Approved By: YVILORIA : 12-04-2018:16:01:43
DOCUMENT TITLE: REQUEST FOR ENTRY OF JUDGMENT
PARTY SUBMITTING: BRIAN IRVINE ESQ
DATE SUBMITTED: 12-4-18
SUBMITTED BY: YV
DATE RECEIVED JUDGE OFFICE:
- 349 12/4/2018 - NEF - Proof of Electronic Service
Additional Text: Transaction 7006993 - Approved By: NOREVIEW : 12-04-2018:16:04:09
- 350 12/11/2018 - 1880 - Judgment
Additional Text: Transaction 7018896 - Approved By: NOREVIEW : 12-11-2018:15:23:30
- 351 12/11/2018 - S200 - Request for Submission Complet
Additional Text: JUDGMENT
- 352 12/11/2018 - NEF - Proof of Electronic Service
Additional Text: Transaction 7018899 - Approved By: NOREVIEW : 12-11-2018:15:24:28
- 353 12/11/2018 - 4105 - Supplemental ...
Additional Text: SUPPLEMENT TO MOTION FOR ATTORNEYS' FEES - Transaction 7019323 - Approved By: YVILORIA :
12-12-2018:10:09:12
- 354 12/11/2018 - 2535 - Notice of Entry of Judgment
Additional Text: NOTICE OF ENTRY OF JUDGMENT - Transaction 7019340 - Approved By: NOREVIEW : 12-11-2018:16:42:20
- 355 12/11/2018 - NEF - Proof of Electronic Service
Additional Text: Transaction 7019360 - Approved By: NOREVIEW : 12-11-2018:16:44:21
- 356 12/12/2018 - NEF - Proof of Electronic Service
Additional Text: Transaction 7019849 - Approved By: NOREVIEW : 12-12-2018:10:10:20
- 357 12/21/2018 - 2645 - Opposition to Mtn ...
Additional Text: OPPOSITION TO SUPPLEMENT TO MOTION FOR ATTORNEY FEES - Transaction 7037083 - Approved By: YVILORIA :
12-21-2018:15:50:27
- 358 12/21/2018 - NEF - Proof of Electronic Service
Additional Text: Transaction 7037186 - Approved By: NOREVIEW : 12-21-2018:15:53:04
- 359 12/28/2018 - \$2515 - \$Notice/Appeal Supreme Court
No additional text exists for this entry.

360 12/28/2018 - 1310 - Case Appeal Statement

No additional text exists for this entry.

361 12/28/2018 - 2547 - Notice of Filing Costs/Appeal

No additional text exists for this entry.

362 12/28/2018 - PAYRC - **Payment Received

Additional Text: A Payment of -\$34.00 was made on receipt DCDC627800.

363 12/28/2018 - SAB - **Supreme Court Appeal Bond

Additional Text: Bond ID: SAB-18-00104; Total Bond Amount: \$500.00.

Bond Code, SAB, Receipted for: SITE DEFINED TRUST DEPOSIT, on 28-DEC-2018 in the amount of \$500.00 on case ID CV14-01712.

364 12/28/2018 - 1350 - Certificate of Clerk

Additional Text: CERTIFICATE OF CLERK AND TRANSMITTAL - NOTICE OF APPEAL - Transaction 7043398 - Approved By: NOREVIEW : 12-28-2018:14:44:23

365 12/28/2018 - NEF - Proof of Electronic Service

Additional Text: Transaction 7043401 - Approved By: NOREVIEW : 12-28-2018:14:45:24

366 1/2/2019 - 1187 - **Supreme Court Case No. ...

Additional Text: SUPREME COURT NO. 77780 - WILLARD

367 1/3/2019 - 3795 - Reply...

Additional Text: DEFENDANT'S REPLY IN SUPPORT OF SUPPLEMENT TO MOTION FOR ATTORNEYS' FEES - Transaction 7048760 - Approved By: YVILORIA : 01-03-2019:09:59:36

368 1/3/2019 - 3860 - Request for Submission

Additional Text: REQUEST FOR SUBMISSION OF MOTION FOR ATTORNEYS' FEES AND SUPPLEMENT TO MOTION FOR ATTORNEYS' FEES - Transaction 7048774 - Approved By: YVILORIA : 01-03-2019:10:02:36

DOCUMENT TITLE: MOTION FOR ATTORNEYS' FEES FIELD 427-18 AND ITS SUPPLEMENT TO MOTION FOR ATTORNEYS FEE (SUPPLEMENT) FILED 12-11-18

PARTY SUBMITTING: BRIAN IRVINE ESQ

DATE SUBMITTED: 1-3-19

SUBMITTED BY: YV

DATE RECEIVED JUDGE OFFICE:

369 1/3/2019 - NEF - Proof of Electronic Service

Additional Text: Transaction 7048806 - Approved By: NOREVIEW : 01-03-2019:10:00:39

370 1/3/2019 - NEF - Proof of Electronic Service

Additional Text: Transaction 7048824 - Approved By: NOREVIEW : 01-03-2019:10:06:21

371 1/7/2019 - 1188 - Supreme Court Receipt for Doc

Additional Text: SUPREME COURT NO. 77780 / RECEIPT FOR DOCUMENTS - Transaction 7053501 - Approved By: NOREVIEW : 01-07-2019:10:00:06

372 1/7/2019 - NEF - Proof of Electronic Service

Additional Text: Transaction 7053507 - Approved By: NOREVIEW : 01-07-2019:10:01:07

373 1/7/2019 - 1188 - Supreme Court Receipt for Doc

Additional Text: SUPREME COURT NO. 77780 / RECEIPT FOR DOCUMENTS - Transaction 7053521 - Approved By: NOREVIEW : 01-07-2019:10:03:37

374 1/7/2019 - NEF - Proof of Electronic Service

Additional Text: Transaction 7053525 - Approved By: NOREVIEW : 01-07-2019:10:04:53

375 1/17/2019 - MIN - ***Minutes
Additional Text: 09/04/18 ORAL ARGUMENTS - Transaction 7072472 - Approved By: NOREVIEW : 01-17-2019:09:18:17

376 1/17/2019 - NEF - Proof of Electronic Service
Additional Text: Transaction 7072484 - Approved By: NOREVIEW : 01-17-2019:09:19:40

377 2/22/2019 - 4080 - Suggestion of Death on Record
Additional Text: DEFENDANT JERRY HERBST - Transaction 7130195 - Approved By: SACORDAG : 02-22-2019:08:23:54

378 2/22/2019 - 2490 - Motion ...
Additional Text: MOTION TO SUBSTITUTE PROPER PARTY - Transaction 7130207 - Approved By: SACORDAG : 02-22-2019:08:41:39

379 2/22/2019 - NEF - Proof of Electronic Service
Additional Text: Transaction 7130215 - Approved By: NOREVIEW : 02-22-2019:08:24:51

380 2/22/2019 - NEF - Proof of Electronic Service
Additional Text: Transaction 7130278 - Approved By: NOREVIEW : 02-22-2019:08:42:35

381 2/26/2019 - 1020 - Addendum
Additional Text: ADDENDUM TO MOTION TO SUBSTITUTE PROPER PARTY - Transaction 7137399 - Approved By: YVILORIA : 02-26-2019:15:54:10

382 2/26/2019 - NEF - Proof of Electronic Service
Additional Text: Transaction 7137510 - Approved By: NOREVIEW : 02-26-2019:15:55:20

383 3/8/2019 - 3370 - Order ...
Additional Text: RE SUPPLEMENT TO MOTION FOR ATTORNEY'S FEES - Transaction 7156344 - Approved By: NOREVIEW : 03-08-2019:11:59:18

384 3/8/2019 - NEF - Proof of Electronic Service
Additional Text: Transaction 7156347 - Approved By: NOREVIEW : 03-08-2019:12:00:22

385 3/8/2019 - S200 - Request for Submission Complet
Additional Text: ORDER

386 3/14/2019 - 2540 - Notice of Entry of Ord
Additional Text: Transaction 7167607 - Approved By: NOREVIEW : 03-14-2019:16:51:39

387 3/14/2019 - NEF - Proof of Electronic Service
Additional Text: Transaction 7167615 - Approved By: NOREVIEW : 03-14-2019:16:52:42

388 3/29/2019 - 2501 - Non-Opposition ...
Additional Text: NOTICE OF NON-OPPOSITION TO SUBSTITUTION - Transaction 7193724 - Approved By: CSULEZIC : 04-01-2019:08:43:46

389 4/1/2019 - NEF - Proof of Electronic Service
Additional Text: Transaction 7193904 - Approved By: NOREVIEW : 04-01-2019:08:47:25

390 5/28/2019 - 4185 - Transcript
Additional Text: Transaction 7289424 - Approved By: NOREVIEW : 05-28-2019:08:30:26

391 5/28/2019 - NEF - Proof of Electronic Service
Additional Text: Transaction 7289425 - Approved By: NOREVIEW : 05-28-2019:08:31:15

392 6/3/2019 - 3870 - Request
Additional Text: REQUEST FOR TRANSCRIPT OF PROCEEDINGS - Transaction 7300871 - Approved By: YVILORIA : 06-03-2019:16:44:51

- 393 6/3/2019 - NEF - Proof of Electronic Service
Additional Text: Transaction 7301476 - Approved By: NOREVIEW : 06-03-2019:16:46:05
- 394 8/26/2019 - 4125 - Supreme Court Order...
Additional Text: SUPREME COURT NO. 77780 / ORDER PARTIALLY DISMISSING APPEAL AND REINSTATING BRIEFING - Transaction 7449838 - Approved By: NOREVIEW : 08-26-2019:14:10:27
- 395 8/26/2019 - NEF - Proof of Electronic Service
Additional Text: Transaction 7449842 - Approved By: NOREVIEW : 08-26-2019:14:11:27
- 396 8/19/2020 - 2610 - Notice ...
Additional Text: NOTICE OF RELATED ACTION - Transaction 8028006 - Approved By: CSULEZIC : 08-19-2020:16:51:34
- 397 8/19/2020 - NEF - Proof of Electronic Service
Additional Text: Transaction 8028025 - Approved By: NOREVIEW : 08-19-2020:16:52:34
- 398 9/18/2020 - 3347 - Ord to Set
Additional Text: AFTER REMAND - Transaction 8074358 - Approved By: NOREVIEW : 09-18-2020:11:46:09
- 399 9/18/2020 - NEF - Proof of Electronic Service
Additional Text: Transaction 8074361 - Approved By: NOREVIEW : 09-18-2020:11:47:08
- 400 11/5/2020 - 4128 - Supreme Court Order Denying
Additional Text: SUPREME COURT NO. 77780 / ORDER DENYING REHEARING - Transaction 8150014 - Approved By: NOREVIEW : 11-05-2020:16:57:03
- 401 11/5/2020 - NEF - Proof of Electronic Service
Additional Text: Transaction 8150021 - Approved By: NOREVIEW : 11-05-2020:16:58:04
- 402 2/26/2021 - 4128 - Supreme Court Order Denying
Additional Text: SUPREME COURT 77780 / ORDER DENYING EN BANC RECONSIDERATION - Transaction 8316787 - Approved By: NOREVIEW : 02-26-2021:15:47:40
- 403 2/26/2021 - NEF - Proof of Electronic Service
Additional Text: Transaction 8316793 - Approved By: NOREVIEW : 02-26-2021:15:48:38
- 404 3/25/2021 - 4145 - Supreme Court Remittitur
Additional Text: SUPREME COURT NO. 77780 / REMITTITUR - Transaction 8361828 - Approved By: NOREVIEW : 03-25-2021:16:34:53
- 405 3/25/2021 - 4111 - Supreme Ct Clk's Cert & Judg
Additional Text: SUPREME COURT NO. 77780 / CLERK'S CERTIFICATE & JUDGMENTS - Transaction 8361828 - Approved By: NOREVIEW : 03-25-2021:16:34:53
- 406 3/25/2021 - 4128 - Supreme Court Order Denying
Additional Text: SUPREME COURT NO. 77780 / ORDER DENYING EN BANC RECONSIDERATION - Transaction 8361828 - Approved By: NOREVIEW : 03-25-2021:16:34:53
- 407 3/25/2021 - 4128 - Supreme Court Order Denying
Additional Text: SUPREME COURT NO. 77780 / ORDER DENYING REHEARING - Transaction 8361828 - Approved By: NOREVIEW : 03-25-2021:16:34:53
- 408 3/25/2021 - 4120 - Supreme Court Opinion
Additional Text: SUPREME COURT NO. 77780 / 136 NEV., ADVANCE OPINION 53 - Transaction 8361828 - Approved By: NOREVIEW : 03-25-2021:16:34:53
- 409 3/25/2021 - NEF - Proof of Electronic Service
Additional Text: Transaction 8361830 - Approved By: NOREVIEW : 03-25-2021:16:35:43

410 3/25/2021 - 3863 - **Submit regarding Appeals
Additional Text: DOCUMENT TITLE: SUPREME COURT NO. 77780 / 136 NEV., ADVANCE OPINION 53 (no s1 built)
PARTY SUBMITTING: NEVADA SUPREME COURT
DATE SUBMITTED: 3-25-21
SUBMITTED BY: YV
DATE RECEIVED JUDGE OFFICE:

411 3/29/2021 - 2610 - Notice ...
Additional Text: NOTICE OF ASSOCIATION OF COUNSEL - ROBERT EISENBERG, ESQ - Transaction 8366724 - Approved By: CSULEZIC : 03-30-2021:08:20:36

412 3/30/2021 - NEF - Proof of Electronic Service
Additional Text: Transaction 8367060 - Approved By: NOREVIEW : 03-30-2021:08:21:47

413 3/30/2021 - 3870 - Request
Additional Text: REQUEST FOR STATUS CONFERENCE - Transaction 8368965 - Approved By: CSULEZIC : 03-30-2021:16:11:03

414 3/30/2021 - NEF - Proof of Electronic Service
Additional Text: Transaction 8369037 - Approved By: NOREVIEW : 03-30-2021:16:12:24

415 4/1/2021 - 2980 - Ord Return of Appeal Bond
Additional Text: Transaction 8373755 - Approved By: NOREVIEW : 04-01-2021:15:49:41

416 4/1/2021 - NEF - Proof of Electronic Service
Additional Text: Transaction 8373763 - Approved By: NOREVIEW : 04-01-2021:15:50:47

417 4/2/2021 - 3347 - Ord to Set
Additional Text: Transaction 8374555 - Approved By: NOREVIEW : 04-02-2021:10:03:55

418 4/2/2021 - NEF - Proof of Electronic Service
Additional Text: Transaction 8374561 - Approved By: NOREVIEW : 04-02-2021:10:06:53

419 4/6/2021 - CHECK - **Trust Disbursement
Additional Text: A Disbursement of \$500.00 on Check Number 12341

420 4/14/2021 - 3370 - Order ...
Additional Text: AND NOTICE OF AV HEARING - Transaction 8394054 - Approved By: NOREVIEW : 04-14-2021:10:16:16

421 4/14/2021 - NEF - Proof of Electronic Service
Additional Text: Transaction 8394059 - Approved By: NOREVIEW : 04-14-2021:10:17:10

422 5/21/2021 - 2610 - Notice ...
Additional Text: NOTICE OF SUBMISSION OF PROPOSED ORDER - Transaction 8458742 - Approved By: CSULEZIC : 05-21-2021:16:42:08

423 5/21/2021 - NEF - Proof of Electronic Service
Additional Text: Transaction 8458805 - Approved By: NOREVIEW : 05-21-2021:16:44:15

424 5/21/2021 - 2610 - Notice ...
Additional Text: NOTICE OF SUBMISSION OF PROPOSED ORDER - Transaction 8459005 - Approved By: CSULEZIC : 05-24-2021:08:22:06

425 5/24/2021 - NEF - Proof of Electronic Service
Additional Text: Transaction 8459322 - Approved By: NOREVIEW : 05-24-2021:08:23:16

426 6/9/2021 - 2475 - Mtn to Strike...
Additional Text: MOTION TO STRIKE DEFENDANTS' PROPOSED ORDER OR, IN THE ALTERNATIVE, OBJECTION TO DEFENDANTS' PROPOSED ORDER - Transaction 8487759 - Approved By: CSULEZIC : 06-09-2021:15:00:17

- 427 6/9/2021 - NEF - Proof of Electronic Service
Additional Text: Transaction 8487769 - Approved By: NOREVIEW : 06-09-2021:15:01:05
- 428 6/23/2021 - 2645 - Opposition to Mtn ...
Additional Text: DEFENDANTS BERRY-HINCKLEY INDUSTRIES AND JERRY HERBST'S OPPOSITION TO PLAINTIFF LARRY J. WILLARD'S MOTION TO STRIKE DEFTS' PROPOSED ORDER OR, IN THE ALTERNATIVE, OBJECTION TO DEFTS' PROPOSED ORDER - Transaction 8509034 - Approved By: CSULEZIC : 06-23-2021:13:14:13
- 429 6/23/2021 - NEF - Proof of Electronic Service
Additional Text: Transaction 8509379 - Approved By: NOREVIEW : 06-23-2021:13:15:24
- 430 6/29/2021 - 3795 - Reply...
Additional Text: REPLY IN SUPPORT OF MOTION TO STRIKE DEFENDANTS' PROPOSED ORDER OR, IN THE ALTERNATIVE, OBJECTION TO DEFENDANTS' PROPOSED ORDER - Transaction 8518226 - Approved By: YVILORIA : 06-29-2021:14:30:13
- 431 6/29/2021 - NEF - Proof of Electronic Service
Additional Text: Transaction 8518357 - Approved By: NOREVIEW : 06-29-2021:14:31:34
- 432 6/29/2021 - 3860 - Request for Submission
Additional Text: Transaction 8518924 - Approved By: NOREVIEW : 06-29-2021:16:18:50
DOCUMENT TITLE: MOTION TO STRIKE DEFENDANTS PROPOSED ORDER OR IN THE ALTERNATIVE OBJECTION TO DEFENDANTS PROPOSED ORDER ON JUNE 9, 2021
PARTY SUBMITTING: RICHARD WILLIASON ESQ
DATE SUBMITTED: 6/29/2021
SUBMITTED BY: CS
DATE RECEIVED JUDGE OFFICE:
- 433 6/29/2021 - NEF - Proof of Electronic Service
Additional Text: Transaction 8518932 - Approved By: NOREVIEW : 06-29-2021:16:19:48
- 434 7/13/2021 - 2490 - Motion ...
Additional Text: WILLARD PLAINTIFFS' MOTION FOR RELIEF UNDER NRCP 60(b)(5)&(6) - Transaction 8539625 - Approved By: CSULEZIC : 07-13-2021:09:53:58
- 435 7/13/2021 - NEF - Proof of Electronic Service
Additional Text: Transaction 8539853 - Approved By: NOREVIEW : 07-13-2021:09:55:05
- 436 8/10/2021 - 2490 - Motion ...
Additional Text: DEFENDANTS' MOTION TO EXCEED PAGE LIMITS ON DEFENDANTS' OPPOSITION TO THE WILLARD PLAINTIFFS' MOTION FOR RELIEF UNDER NRCP 60(b)(5) &(6) - Transaction 8587786 - Approved By: CSULEZIC : 08-10-2021:13:19:39
- 437 8/10/2021 - NEF - Proof of Electronic Service
Additional Text: Transaction 8587801 - Approved By: NOREVIEW : 08-10-2021:13:20:38
- 438 8/10/2021 - 2645 - Opposition to Mtn ...
Additional Text: DEFENDANTS' OPPOSITION TO THE WILLARD PLAINTIFFS' MOTION FOR RELIEF UNDER NRCP 60(b)(5) &(6) - Transaction 8587831 - Approved By: CSULEZIC : 08-10-2021:13:36:06
- 439 8/10/2021 - NEF - Proof of Electronic Service
Additional Text: Transaction 8587869 - Approved By: NOREVIEW : 08-10-2021:13:37:08
- 440 8/17/2021 - 3795 - Reply...
Additional Text: REPLY IN SUPPORT OF WILLARD PLAINTIFFS' MOTION FOR RELIEF UNDER NRCP 60(b)(5)&(6) - Transaction 8600025 - Approved By: CSULEZIC : 08-17-2021:14:57:46
- 441 8/17/2021 - NEF - Proof of Electronic Service
Additional Text: Transaction 8600103 - Approved By: NOREVIEW : 08-17-2021:14:59:32
- 442 8/19/2021 - 3860 - Request for Submission

Additional Text: Transaction 8603923 - Approved By: NOREVIEW : 08-19-2021:09:43:44
DOCUMENT TITLE: MOTION FOR RELIEF UNDER NRCP 60(B)(5)&(6) FILED 7/13/2021
PARTY SUBMITTING: RICHARD WILLIAMSON ESQ
DATE SUBMITTED: 8/19/2021
SUBMITTED BY: CS
DATE RECEIVED JUDGE OFFICE:

443 8/19/2021 - NEF - Proof of Electronic Service

Additional Text: Transaction 8603928 - Approved By: NOREVIEW : 08-19-2021:09:44:46

444 8/24/2021 - 2645 - Opposition to Mtn ...

Additional Text: WILLARD PLAINTIFF'S OPPOSITION TO DEFENDANTS' MOTION TO EXCEED - Transaction 8612490 - Approved By: CSULEZIC : 08-25-2021:08:14:06

445 8/25/2021 - NEF - Proof of Electronic Service

Additional Text: Transaction 8612665 - Approved By: NOREVIEW : 08-25-2021:08:15:12

446 8/27/2021 - 3795 - Reply...

Additional Text: DEFENDANTS' REPLY IN SUPPORT OF MOTION TO EXCEED PAGE LIMITS ON DEFENDANTS' OPPOSITION TO THE WILLARD PLAINTIFFS' MOTION FOR RELIEF UNDER NRCP 60(b)(5) &(6) - Transaction 8618499 - Approved By: CSULEZIC : 08-27-2021:14:22:50

447 8/27/2021 - 3860 - Request for Submission

Additional Text: - Transaction 8618516 - Approved By: NOREVIEW : 08-27-2021:14:13:39
DOCUMENT TITLE: REQUEST FOR SUBMISSION OF DEFENDANTS' MOTION TO EXCEED PAGE LIMITS ON DEFENDANTS' OPPOSITION TO THE WILLARD PLAINTIFFS' MOTION FOR RELIEF UNDER NRCP 60(b)(5) &(6)
PARTY SUBMITTING: BRIAN IRVINE ESQ
DATE SUBMITTED: 8/27/2021
SUBMITTED BY: CS
DATE RECEIVED JUDGE OFFICE:

448 8/27/2021 - NEF - Proof of Electronic Service

Additional Text: Transaction 8618530 - Approved By: NOREVIEW : 08-27-2021:14:15:00

449 8/27/2021 - NEF - Proof of Electronic Service

Additional Text: Transaction 8618556 - Approved By: NOREVIEW : 08-27-2021:14:23:53

450 9/10/2021 - 2842 - Ord Denying Motion

Additional Text: to Strike Defendants' Proposed Order or, in the Alternative, Objection to Defendants' Proposed Order - Transaction 8640059 - Approved By: NOREVIEW : 09-10-2021:10:38:03

451 9/10/2021 - S200 - Request for Submission Complet

Additional Text: Order Denying Motion to Strike Defendants' Proposed Order filed 10 SEP 2021

452 9/10/2021 - NEF - Proof of Electronic Service

Additional Text: Transaction 8640066 - Approved By: NOREVIEW : 09-10-2021:10:39:21

453 9/13/2021 - 2540 - Notice of Entry of Ord

Additional Text: Transaction 8642360 - Approved By: NOREVIEW : 09-13-2021:10:18:22

454 9/13/2021 - NEF - Proof of Electronic Service

Additional Text: Transaction 8642367 - Approved By: NOREVIEW : 09-13-2021:10:19:44

455 9/13/2021 - 3370 - Order ...

Additional Text: After Remand Denying Plaintiffs' Rule 60(b) Motion for Relief - Transaction 8643933 - Approved By: NOREVIEW : 09-13-2021:16:28:25

456 9/13/2021 - NEF - Proof of Electronic Service

Additional Text: Transaction 8643946 - Approved By: NOREVIEW : 09-13-2021:16:29:26

457 9/14/2021 - 2540 - Notice of Entry of Ord
Additional Text: Transaction 8644717 - Approved By: NOREVIEW : 09-14-2021:10:04:43

458 9/14/2021 - NEF - Proof of Electronic Service
Additional Text: Transaction 8644722 - Approved By: NOREVIEW : 09-14-2021:10:05:40

459 10/11/2021 - 1310 - Case Appeal Statement
Additional Text: Transaction 8691728 - Approved By: YVILORIA : 10-12-2021:08:09:50

460 10/11/2021 - \$2515 - \$Notice/Appeal Supreme Court
Additional Text: Transaction 8691728 - Approved By: YVILORIA : 10-12-2021:08:09:50

461 10/11/2021 - 2547 - Notice of Filing Costs/Appeal
Additional Text: Transaction 8691728 - Approved By: YVILORIA : 10-12-2021:08:09:50

462 10/12/2021 - PAYRC - **Payment Receipted
Additional Text: A Payment of \$24.00 was made on receipt DCDC681218.

463 10/12/2021 - NEF - Proof of Electronic Service
Additional Text: Transaction 8692076 - Approved By: NOREVIEW : 10-12-2021:08:10:57

464 10/12/2021 - SAB - **Supreme Court Appeal Bond
Additional Text: LARRY J. WILLARD - Transaction 8692149 - Approved By: YVILORIA : 10-12-2021:08:41:09

465 10/12/2021 - PAYRC - **Payment Receipted
Additional Text: A Payment of \$500.00 was made on receipt DCDC681220.

466 10/12/2021 - NEF - Proof of Electronic Service
Additional Text: Transaction 8692159 - Approved By: NOREVIEW : 10-12-2021:08:43:15

467 10/12/2021 - 4113 - District Ct Deficiency Notice
Additional Text: NOTICE OF APPEAL DEFICIENCY NOTICE - SUPREME COURT FEE - Transaction 8692462 - Approved By: NOREVIEW : 10-12-2021:09:58:13

468 10/12/2021 - 1350 - Certificate of Clerk
Additional Text: CERTIFICATE OF CLERK AND TRANSMITTAL - NOTICE OF APPEAL - Transaction 8692462 - Approved By: NOREVIEW : 10-12-2021:09:58:13

1 CODE NO. 2842

2
3
4
5 IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
6 IN AND FOR THE COUNTY OF WASHOE
7

8 LARRY J. WILLARD, individually and as
9 trustee of the Larry James Willard Trust Fund;
10 OVERLAND DEVELOPMENT
11 CORPORATION, a California corporation;
12 EDWARD C. WOOLEY AND JUDITH A
13 WOOLEY, individually and as trustees of the
14 Edward C. Wooley and Judith A. Wooley
15 Intervivos Revocable Trust 2000,

16 Plaintiffs,

17 vs.

18 BERRY-HINCKLEY INDUSTRIES, a Nevada
19 Corporation; and JERRY HERBST, an
20 individual,

21 Defendants.
22 _____/

23 BERRY-HINCKLEY INDUSTRIES, a
24 Nevada corporation; and JERRY HERBST,
25 an individual,

26 Counterclaimants,

27 vs

28 LARRY J. WILLARD, individually and as
trustee of the Larry James Willard Trust Fund;
OVERLAND DEVELOPMENT
CORPORATION, a California corporation,

Counter-defendants.
_____/

Case No. CV14-01712

Dept. No. 6

**ORDER AFTER REMAND
DENYING PLAINTIFFS'
RULE 60(b) MOTION FOR RELIEF**

1 **ORDER AFTER REMAND DENYING PLAINTIFFS' RULE 60(b) MOTION FOR RELIEF**

2 Before this Court is Plaintiffs' Rule 60(b) Motion for Relief ("*60(b) Motion*") filed by
3 Plaintiffs Larry J. Willard, individually and as trustee of the Larry James Willard Trust Fund
4 and Overland Development Corporation, a California Corporation (collectively, "Willard" or
5 "Plaintiffs"), by and through counsel, Robertson, Johnson, Miller & Williamson. Pursuant to
6 NRCPC 60(b), Plaintiffs seek to set aside: (1) this Court's January 4, 2018, *Order Granting*
7 *Defendants'/Counterclaimants' Motion to Strike and/or Motion in Limine to Exclude the*
8 *Expert Testimony of Daniel Gluhaich*; (2) this Court's January 4, 2018, *Order Granting*
9 *Defendants'/Counterclaimants' Motion for Sanctions*; and (3) this Court's March 6, 2018,
10 *Findings of Fact, Conclusions of Law, and Order on Defendants' Motion for Sanctions.*
11 (*60(b) Motion*).

12 In opposition, Defendants Berry-Hinckley Industries ("BHI") and Jerry Herbst
13 (collectively, "Defendants") filed their *Opposition to Rule 60(b) Motion for Relief ("60(b)*
14 *Opposition"*), by and through their counsel, Dickinson Wright PLLC.

15 Plaintiffs then filed their *Reply in Support of the Willard Plaintiffs' Rule 60(b) Motion*
16 *for Relief*. Prior to remand, oral arguments were held before this Court on September 4,
17 2018.

18 After consideration of the papers submitted, the arguments of counsel, and the entire
19 court file, this Court entered its *Order Denying Plaintiffs' Rule 60(b) Motion for Relief* (the
20 "*Prior 60(b) Order*").

21 Plaintiffs appealed the *Prior 60(b) Order*. On August 6, 2020, the Nevada Supreme
22 Court entered its Opinion (the "*Opinion*") in which it reversed the *Prior 60(b) Order* and
23 remanded the case to this Court, with instructions the Court issue explicit and detailed
24 written findings on each of the factors identified in *Yochum v. Davis*, 98 Nev. 484, 486, 653
25 P.2d 1215, 1216 (1982).

26 After consideration of the instant papers submitted, the arguments of counsel, and
27 the entire court file, and in compliance with the Nevada Supreme Court's instructions, the
28

1 Court makes the following findings of fact, conclusions of law and orders as follows:

2 **I. FINDINGS OF FACT.**

3 The Court makes the following Findings of Fact:

4 **A. PLAINTIFFS' COMPLAINT.**

5 1. On August 8, 2014, Plaintiffs commenced this action by filing their *Complaint*
6 against Defendants.¹ *Complaint*, generally.

7 2. By the *Complaint* and the *First Amended Complaint* ("FAC"), Plaintiffs sought
8 the following damages against Defendants for an alleged breach of the lease between
9 Willard and BHI: (1) "rental income" for \$19,443,836.94, discounted by 4% per the lease to
10 \$15,741,360.75 as of March 1, 2013; and (2) certain property-related damages, such as
11 insurance and installation of a security fence. *FAC*.

12 3. Willard also sought several other categories of damages which have since
13 been dismissed or withdrawn. May 30, 2017, *Order*.

14
15 **B. PLAINTIFFS FAILED TO COMPLY WITH THE NEVADA RULES**
16 **OF CIVIL PROCEDURE AND THIS COURT'S ORDERS.**

17 4. Plaintiffs failed to provide a compliant damages disclosure in this action².

18 5. Plaintiffs failed to provide a damages computation in their initial disclosures, as
19 required under NRCP 16.1(a)(1)(C). *Findings of Fact, Conclusions of Law, and Order on*
20 *Defendants' Motion for Sanctions* ("Sanctions Order") ¶ 12. Plaintiffs also failed to provide
21 damages computations at any time despite numerous demands on both Brian Moquin and
22 David O'Mara, of which Plaintiffs personally were aware. *Sanctions Order* ¶¶ 14-16, 25, 27-
23 33, 39, 43-44 and 51-54; *January 10, 2017, Transcript*.

24
25 _____
26 ¹ Willard filed the initial complaint jointly with Edward E. Wooley and Judith A. Wooley, individually
27 and as Trustees of the Edward C. Wooley and Judith A. Wooley Intervivos Revocable Trust 2000
28 (collectively, "Wooley"). However, Defendants and Wooley entered into a settlement agreement and
stipulation for dismissal. This Court entered its Order on April 13, 2018 dismissing Wooley's claims
with prejudice.

² The Court numbers the Findings of Fact sequentially after each sub-point and continuing through
the next sub-point, rather than beginning the sequence with "1" again.

1 6. Plaintiffs failed to provide complete and adequate responses to interrogatories
2 requesting information about Plaintiffs' damages in the normal course of discovery.

3 7. Plaintiffs failed to provide complete and adequate responses to interrogatories
4 in violation of this Court's *Order Granting Defendants' Motion to Compel* and failed to
5 comply with this Court's *Order* ("January Hearing Order") issued after the parties discussed
6 Plaintiffs' failure to provide damages computations at the January 10, 2017, hearing
7 attended by Mr. Moquin, Mr. O'Mara, and Plaintiff Larry J. Willard. *Sanctions Order* ¶¶ 17-
8 25.

9 8. The *January Hearing Order* required Plaintiffs to provide damages
10 computations and supporting materials. *Sanctions Order* ¶¶ 46-49, 54, 59-64, 67-68;
11 *Defendants' Opposition to Plaintiffs' Rule 60(b) Motion*, Ex. 2; *January 10, 2017, Transcript*
12 at 61-63, 68; *January Hearing Order*.

13 9. Plaintiffs failed to properly disclose Daniel Gluhaich as an expert witness as
14 required by NRCP 16.1(a)(2). *Sanctions Order* ¶¶ 34-37.

15 10. In contravention of this Court's *January Hearing Order*, Plaintiffs failed to
16 provide an amended disclosure of Mr. Gluhaich, although Defendants' counsel made
17 multiple requests. *Sanctions Order* ¶¶ 38-45, 50-64.

18
19 **C. PLAINTIFFS' SUMMARY JUDGMENT MOTION.**

20 11. Pursuant to the February 9, 2017, *Stipulation and Order to Continue Trial*,
21 discovery closed in mid-November, 2017.

22 12. On October 18, 2017, less than a month before the close of discovery,
23 Plaintiffs filed their *Motion of Summary Judgment* asserting they were entitled, as a matter
24 of law, to more than triple the amount of damages alleged in and requested by their *First*
25 *Amended Complaint*. *Sanctions Order* ¶¶ 69, 73.

1 13. The damages asserted in Plaintiffs' *Motion for Summary Judgment* were not
2 previously disclosed. The motion was also supported by previously undisclosed expert
3 opinions and documents. *Sanctions Order* ¶¶ 74-79.

4 14. The expert's documents had been in Plaintiffs' possession throughout the
5 pendency of this case, but had not been previously disclosed, despite Defendants' requests
6 for such documents. *Id.* at ¶¶ 79, 136.

7 15. On November 13, 2017, Defendants filed their Opposition to Plaintiffs' *Motion*
8 *for Summary Judgment*.

9 16. Plaintiffs did not submit the *Motion for Summary Judgment* for decision.

10 **D. DEFENDANTS' MOTION TO STRIKE AND/OR MOTION IN LIMINE TO**
11 **EXCLUDE THE EXPERT TESTIMONY OF DANIEL GLUHAICH AND**
12 **MOTION FOR SANCTIONS.**

13 17. On November 14, 2017, Defendants filed their *Motion to Strike and/or Motion*
14 *in Limine to Exclude Expert Testimony of Daniel Gluhaich* ("Motion to Strike").

15 18. In the *Motion to Strike*, Defendants maintained this Court should preclude
16 Plaintiffs from offering Mr. Gluhaich's testimony on the grounds: (1) Plaintiffs failed to
17 adequately disclose Mr. Gluhaich as an expert witness because they failed to provide "a
18 summary of the facts and opinions to which the witness is expected to testify" as required by
19 NRCP 16.1(a)(2)(B); (2) the opinions offered by Mr. Gluhaich in support of Plaintiffs' *Motion*
20 *for Summary Judgment* were based upon inadmissible hearsay and were based solely on
21 the opinions of others; and (3) Mr. Gluhaich was not qualified to offer the opinions included
22 in his declaration filed in support of Plaintiffs' *Motion for Summary Judgment*.

23 19. On November 15, 2017, Defendants filed their *Motion for Sanctions* (the
24 "*Sanctions Motion*").

25 20. In the *Sanctions Motion*, Defendants argued this Court should sanction
26 Plaintiffs for their continued and intentional conduct in failing to comply with the Nevada
27 Rules of Civil Procedure and this Court's orders requiring Plaintiffs to provide damages
28 computations and full and adequate expert disclosures, and dismiss Plaintiffs' claims with

1 prejudice or, in the alternative, preclude Plaintiffs from seeking new damages or relying
2 upon their undisclosed expert and appraisals.

3 21. Defendants agreed to give Plaintiffs several extensions of time to oppose the
4 *Motion to Strike* and *Sanctions Motion*, but no oppositions were filed.

5 22. On December 6, 2017, Plaintiffs, through Mr. O'Mara, requested relief from the
6 Court by extension to respond until "December 7, 2017 at 4:29 p.m." *Sanctions Order* 94;
7 *Plaintiffs' Request for a Brief Extension of Time* (the "*Extension Request*").

8 23. In the *Extension Request*, Mr. O'Mara also represented that "[c]ounsel has
9 been diligently working for weeks to respond to Defendant's (sic) serial motions, which
10 include seeking dismissal with prejudice of Plaintiffs' case." *Id.* at 2.

11 24. This Court held a status conference on December 12, 2017, attended by
12 Defendants' counsel and Plaintiffs' counsel, Mr. Moquin and Mr. O'Mara. At the status
13 conference, after observing Mr. Moquin, having a significant dialogue with Mr. Moquin, and
14 over vehement objection by Defendants' counsel, this Court granted *Plaintiffs' Brief*
15 *Extension Request* plus granted more time than was requested. The Court directed Plaintiffs
16 to respond to the outstanding motions no later than Monday, December 18, 2017, at 10:00
17 am. *Sanctions Order* ¶ 95.

18 25. This Court further directed Defendants to file their reply briefs no later than
19 January 8, 2018. The Court set the parties' outstanding Motions for oral argument on
20 January 12, 2018. *Sanctions Order* ¶ 96.

21 26. This Court admonished Plaintiffs, stating "you need to know going into these
22 oppositions, that I'm very seriously considering granting all of it...I haven't decided it, but I
23 need to see compelling opposition not to grant it." *Opposition to Rule 60(b) Motion*, Ex. 3,
24 December 12, 2017, *Transcript of Status Conference*, in part.

25 27. Plaintiffs did not file an opposition or response to the *Motion to Strike* or
26 *Sanctions Motion* by December 18, 2017, or any time thereafter, nor did Plaintiffs request
27 any further extension.
28

1 28. This Court entered its *Order Granting Defendants'/Counterclaimants' Motion to*
2 *Strike and/or Motion in Limine to Exclude the Expert Testimony of Daniel Gluhaich* on
3 January 4, 2018 ("*Order Granting Motion to Strike*").

4 29. This Court entered its *Order Granting Defendants'/Counterclaimants' Motion*
5 *for Sanctions* on January 4, 2018 ("*Order Granting Sanctions Motion*").

6 30. This Court entered its *Findings of Fact, Conclusions of Law, and Order on*
7 *Defendants' Motion for Sanctions* on March 6, 2018 ("*Sanctions Order*").³

8 **E. WITHDRAWAL OF LOCAL COUNSEL.**

9 31. On March 15, 2018, Mr. O'Mara filed a *Notice of Withdrawal of Local Counsel*
10 (*"Notice"*). The *Notice* states, "[c]ounsel has had no contact with lead counsel Mr. Moquin for
11 many months with a total failure just prior to the Court's first decisions being filed in this
12 case," and "Mr. Moquin was unresponsive during the time in which this Court was deciding
13 the pending motions, even after counsel begged him for a response to be filed with the
14 Court and was told he would provide such a response." *Notice*, 1.

15 32. The *Notice* describes the terms of retention of Mr. O'Mara as "undersigned
16 counsel was retained solely as local counsel, and provided Mr. Moquin with the necessary
17 information related to the Court's filing requirement and timelines. Undersigned Counsel
18 was retained only to provide services as directed by Mr. Moquin, and would be relieved of
19 services if Mr. Moquin was removed." *Id.*

20 **F. PLAINTIFFS' RULE 60(B) MOTION.**

21 33. On March 26, 2018, Robertson, Johnson, Miller & Williamson filed a notice of
22 appearance on behalf of Plaintiffs.

23 34. On April 18, 2018, Plaintiffs filed the prior *Rule 60(b) Motion*. Plaintiffs argued
24 this Court should set aside its *Order Granting the Motion to Strike, Order Granting Sanctions*
25

26 _____
27 ³The *Order Granting Sanctions* imposed sanctions and directed Defendants to "submit a Proposed
28 Order granting *Defendants'/Counterclaimants' Motion for Sanctions*, including factual and legal
analysis and discussion, to Department 6 within twenty (20) days of the date of this *Order* in
accordance with WDCR 9." *Order Granting Sanctions Motion*, 4. For purposes of the instant motion,
the Court considers the *Order Granting Sanctions Motion and Sanctions Order*, as one for the
purposes of the analysis herein.

1 *Motion*, and *Sanctions Order*, based upon Mr. Moquin’s excusable neglect. Plaintiffs further
2 argued the *Sanctions Order* was insufficient under *Young v. Johnny Ribeiro*, 106 Nev. 88,
3 787 P.2d 777 (1990), because the Court did not consider whether sanctions unfairly operate
4 to penalize Plaintiffs for the misconduct of their attorney.

5 35. Plaintiffs argued their failure to provide the damages computations and
6 adequate expert disclosures, as required by the Nevada Rules of Civil Procedure and this
7 Court’s orders and their failure to file oppositions to the *Motion to Strike* and *Sanctions*
8 *Motion* were all due to Mr. Moquin’s failure “to properly prosecute this case due to a serious
9 mental illness and a personal life that was apparently in shambles.” (*Rule 60(b) Motion* 1).

10 36. The *Rule 60(b) Motion* purported to support its arguments primarily through
11 the *Declaration of Larry J. Willard* (the “*Willard Declaration*” and “*WD*” in citations to the
12 record).⁴

13 37. The *Willard Declaration* included several statements about Mr. Moquin’s
14 alleged mental disorder. It stated that Mr. Willard is “**convinced**” Mr. Moquin was dealing
15 with issues and demons beyond his control. WD ¶ 66. It further stated that he “**learned**”
16 that Mr. Moquin was struggling with constant marital conflict that greatly interfered with his
17 work. *Id.* The *Willard Declaration* stated that Mr. Moquin suffered a “total mental
18 breakdown.” WD ¶ 68. It stated that Mr. Moquin **explained** to Mr. Willard he had been
19 diagnosed with bipolar disorder. WD ¶ 70. Mr. Willard also declared that he believed Mr.
20 Moquin’s disorder to be “severe and debilitating.” WD ¶ 73. He stated that he **now sees**
21 “that Mr. Moquin was suffering from [symptoms of bipolar disorder] throughout his work on
22 the case.” WD ¶ 76. And, Mr. Willard declared that he **can now see** how Mr. Moquin’s
23 alleged psychological issues affected Plaintiffs’ case. WD ¶ 87. (Bolded emphasis supplied
24 on all paragraphs cited).

25
26
27
28 ⁴The *Willard Declaration* includes paragraphs discussing the underlying facts of the action and the
initial filing of the suit in California. These paragraphs are not relevant to the Court’s determination of
the *Rule 60(b) Motion* and are not considered. See e.g., WD ¶¶ 1-51, 100.

1 38. The *Rule 60(b) Motion* also included an internet printout purporting to list
2 symptoms of bipolar disorder, (*Rule 60(b) Motion*, Ex. 5), and several documents related to
3 alleged spousal abuse by Mr. Moquin, some of which referenced Mr. Moquin's alleged
4 bipolar disorder, and which included an Emergency Protective Order from a California
5 proceeding, (*Rule 60(b) Motion*, Ex. 6), a Pre-Booking Information Sheet from a California
6 proceeding (*Rule 60(b) Motion*, Ex. 7), and a Request for Domestic Violence Restraining
7 Order, also from a California proceeding (*Rule 60(b) Motion*, Ex. 8). The documents from
8 the California proceedings were not certified by the clerk of the court.

9 39. The *Rule 60(b) Motion* did not include any supporting declaration by Mr.
10 O'Mara, even though Mr. O'Mara was a counsel of record for Plaintiffs from the inception of
11 the case through March 15, 2018. See generally *id.*

12 40. Defendants filed their *Opposition to the Rule 60(b) Motion* on May 18, 2018
13 (the "*Opposition*").

14 41. Plaintiffs filed their *Reply in Support of the Willard Plaintiffs' Rule 60(b) Motion*
15 on May 29, 2018 (the "*Reply*"). The *Reply* attached 11 new exhibits, including a new
16 *Declaration of Larry J. Willard in Response to Defendants' Opposition to Rule 60(b) Motion*
17 *for Relief. Reply*, Ex. 1 ("*Reply Willard Declaration*" and "*RWD*" for record citations).⁵ The
18 *Reply* exhibits included copies of text messages between Mr. Willard and Mr. Moquin,
19 (*Reply*, Exs. 3, 6, 8, and 10), a receipt detailing an alleged payment made by Mr. Willard to
20 Mr. Moquin's doctor on March 13, 2018 (*Reply*, Ex. 5), and a letter from Mr. Williamson to
21 Mr. Moquin dated May 14, 2018. (*Reply*, Ex. 9).

22 42. On June 6, 2018, Defendants filed their *Motion to Strike, or in the Alternative,*
23 *Motion for Leave to File Sur-Reply*, arguing this Court should strike Exhibits 1-10 to the
24 *Reply* because (a) Defendants did not have the opportunity to respond to those exhibits in
25 their *Opposition to the Rule 60(b) Motion*; (b) exhibits contained inadmissible hearsay and/or
26
27

28 ⁵The Court disregards the paragraphs included in the *Willard Declaration* and the *Reply Willard Declaration* that can be construed to be stated appeal to the Court's sympathy. See e.g., *WD* ¶¶91 - 100; *RWD* ¶67.

1 inadmissible lay opinion testimony; and (c) a number of exhibits were not relevant to this
2 Court's determination of excusable neglect.

3 43. Defendants' *Motion to Strike, or in the Alternative, Motion for Leave to File*
4 *Sur-Reply* was fully briefed and submitted to this Court for decision on June 29, 2018.
5 Subsequently, Plaintiffs' counsel stipulated to the filing of a sur-reply.

6 44. In its *Sanctions Order*, the Court made the following findings of fact and
7 conclusions of law, among others: First, plaintiffs failed to provide damages disclosures and
8 failed to properly disclose an expert witness in violation of this Court's express Orders.
9 *Sanctions Order* ¶¶ 67, 68. Plaintiffs acknowledged their failure to properly disclose an
10 expert witness in accordance with NRCP 16.1(a)(2)(B). *Stipulation and Order*, February 9,
11 2017. Plaintiffs did not thereafter attempt to properly disclose the expert witness for the
12 entirety of 2017. Plaintiffs failed to comply with multiple orders of this Court. Defendants
13 filed several motions to compel, and Plaintiffs' non-compliance forced extension of trial and
14 discovery deadlines on three separate occasions. This Court sanctioned Plaintiffs by
15 ordering payment of Defendants' expenses incurred in filing the *Motion to Compel*.
16

17 45. Plaintiffs did not oppose the *Sanctions Motion* despite this Court's express
18 admonitions that the Court was "seriously considering" dismissal.

19 **G. PLAINTIFFS' APPEAL,**

20 46. On November 30, 2018, this Court entered its *Prior 60(b) Order*, wherein this
21 Court denied Plaintiffs' *Rule 60(b) Motion*.

22 47. Plaintiffs timely appealed this Court's *Prior 60(b) Order*.

23 48. On August 6, 2020, the Nevada Supreme Court entered its published opinion
24 (the "*Opinion*").

25 49. B the *Opinion*, the Nevada Supreme Court reversed this Court's *Prior 60(b)*
26 *Order*, concluding that this Court abused its discretion by failing to address the factors
27 articulated in *Yochum v. Davis*, 98 Nev. 484, 486, 653 P.2d 1215, 1216 (1982), *overruled in*
28

1 *part on other grounds by Epstein v. Epstein*, 113 Nev. 1401, 1405, 950 P.2d 771, 773
2 (1997), when ruling on the Plaintiffs' *Rule 60(b) Motion*.

3 50. The Nevada Supreme Court remanded the proceedings back to this Court for
4 further consideration consistent with the *Opinion* and directed this Court to issue explicit and
5 detailed written findings with respect to each of the four *Yochum* factors in considering the
6 Plaintiffs' *Rule 60(b) Motion*.

7 51. The Nevada Supreme Court subsequently clarified "neither party may present
8 any new arguments or evidence on remand; the district court's consideration of the factors
9 set forth in *Yochum v. Davis*, 98 Nev. 484, 486, 653 P.2d 1215, 1216 (1982), is limited to
10 the record currently before the court." (*Order Denying En Banc Reconsideration*).

11 52. If any of the following Conclusions of Law contain or may be construed to
12 contain Findings of Fact, they are incorporated here and shall be treated as appropriately
13 identified and designated.
14

15 **II. CONCLUSIONS OF LAW.**

16 Based on the Court's Findings of Fact, the Court makes its Conclusions of Law as
17 follows.

18 53. If any of the foregoing Findings of Fact contain or may be construed to contain
19 Conclusions of Law, they are incorporated here and shall be treated as appropriately
20 identified and designated.

21 **A. RULE 60(B) STANDARD.**

22 54. NRCP 60(b)(1) is a remedial rule that gives due consideration to our court
23 system's preference to adjudicate cases on the merits, without compromising the dignity of
24 the court process. *Opinion*.

25 55. Under NRCP 60(b)(1), on motion, this Court may relieve a party from an order
26 or final judgment on grounds of mistake, inadvertence, surprise, or excusable neglect.
27 NRCP 60(b)(1); *Opinion*.
28

1 56. A party who seeks to set aside an order pursuant to NRCP 60(b)(1) “has the
2 burden to prove mistake, inadvertence, surprise, or excusable neglect by a preponderance
3 of the evidence.” *Polivka v. Kuller*, 128 Nev. 926, 381 P.3d 651 (2012) (citations omitted);
4 *see also Britz v. Consolidated Casinos Corp.*, 87 Nev. 441, 446, 488 P.2d 911, 915 (1971)
5 (“the burden of proof on [a motion to set aside under Rule 60(b)] is on the moving party who
6 must establish his position by a preponderance of the evidence.” (quoting *Luz v. Lopes*, 55
7 Cal. 2d 54, 10 Cal. Rptr. 161, 166, 358 P.2d 289, 294 (1960))).

8 57. A district court must address the factors set forth in *Yochum v. Davis*, 98 Nev.
9 484, 486, 653 P.2d 1215, 1216 (1982), *overruled in part on other grounds by Epstein v.*
10 *Epstein*, 113 Nev. 1401, 1405, 950 P.2d 771, 773 (1997), when determining if the NRCP
11 60(b)(1) movant established, by a preponderance of the evidence, that sufficient grounds
12 exist to set aside a final judgment, order, or proceeding. *Opinion*.

13
14 **B. THE RULE 60(B) MOTION IS NOT SUPPORTED BY COMPETENT,**
15 **ADMISSIBLE, AND SUBSTANTIAL EVIDENCE.**

16 58. Plaintiffs moved to set aside the *Order Granting Defendants’ Motion to Strike,*
17 *Order Granting the Motion for Sanctions, and Sanctions Order*⁶ because Mr. Moquin “failed
18 to properly prosecute this case due to a serious mental illness and a personal life that was
19 apparently in shambles.” *Rule 60(b) Motion* 1.

20 59. While this Court “has wide discretion in deciding whether to grant or deny a
21 motion to set aside a judgment under NRCP 60(b),” *Stoecklein v. Johnson Electric, Inc.*, 109
22 Nev. 268, 271, 849 P.2d 305, 307 (1993), *holding modified by Willard v. Berry-Hinckley*
23 *Indus.*, 136 Nev. Adv. Op. 53, 469 P.3d 176 (2020), this discretion is “a legal discretion and
24 **cannot be sustained where there is no competent evidence** to justify the court’s action.
25 *Id.* (emphasis added) (citing *Lukey v. Thomas*, 75 Nev. 20, 22, 333 P.2d 979 (1959)); *cf.*
26

27 ⁶Plaintiffs argue that the *Sanctions Order* was insufficient under *Young v. Johnny Ribeiro*, 106 Nev.
28 88, 93, 787 P.2d 777, 780 (1990) because the *Sanctions Order* did not consider “whether sanctions
unfairly operate to penalize a party for the misconduct of his or her attorney.” *Rule 60(b) Motion*, 12.
This is addressed by the Court hereinafter.

1 *generally Otak Nev. LLC v. Eighth Judicial Dist. Ct.*, 129 Nev. 799, 805, 312 P.3d 491, 496
2 (2013) (a court abuses its discretion when its decision is not supported by substantial
3 evidence).

4 60. A party who seeks to set aside an order pursuant to NRCP 60(b)(1) bears the
5 burden of proof to show excusable neglect “by a preponderance of the evidence.” *Kahn v.*
6 *Orme*, 108 Nev. 510, 835 P.2d 790 (1992), *overruled on other grounds by Epstein v.*
7 *Epstein*, 113 Nev. 1401, 950 P.2d 771 (1997); *Britz v. Consolidated Casinos Corp.*, 87 Nev.
8 441, 446, 448 P.2d 911, 915 (1971). In fact, “before a...judgment may be set aside under
9 NRCP 60(b) (1), the party so moving **must show to the court** that his neglect was
10 excusable.” *McClellan v. David*, 84 Nev. 283, 439 P.2d 673 (1968) (emphasis added).

11 61. Where “there was no credible evidence before the lower court to show that the
12 neglect of the movant was excusable under the circumstances,” the Nevada Supreme Court
13 reversed a district court’s order setting aside a judgment, stating “no excusable neglect was
14 shown as a matter of law.” *McClellan*, 84 Nev. at 284, 289, 439 P.2d at 674, 677.

15 62. The *Rule 60(b) Motion* purports to provide substantial evidence to support its
16 legal argument through the *Willard Declaration* and the *Reply Willard Declaration* together
17 with the attached exhibits, all of which contain inadmissible statements, some inadmissible
18 on multiple grounds.

19 63. The *Willard Declaration* includes several statements about Mr. Moquin’s
20 alleged mental disorder. As set forth in the Findings of Fact, *supra*, Mr. Willard declares that
21 he is “convinced” that Mr. Moquin was dealing with issues and demons beyond his control
22 (*WD* ¶ 66); he “learned” Mr. Moquin was struggling with constant marital conflict that greatly
23 interfered with his work (*WD* ¶ 67; *RWD* ¶ 15); Mr. Moquin suffered a “total mental
24 breakdown”) (*WD* ¶ 68; *RWD* ¶ 16); Mr. Moquin explained to Mr. Willard he had been
25 diagnosed with bipolar disorder (*WD* ¶ 70; *RWD* ¶ 37); Mr. Willard believes Mr. Moquin’s
26 disorder to be “severe and debilitating” (*WD* ¶ 73); Mr. Willard now sees that “Mr. Moquin
27 was suffering from [symptoms of bipolar disorder] throughout his work on the case (*WD* ¶
28

76); and, Mr. Willard can now see how Mr. Moquin's alleged psychological issues affected his case (*WD* ¶ 87).⁷

64. The *Willard Declaration* addresses Mr. Moquin's private life, including his personal mental status and conflict in his marriage.

65. Mr. Willard's statements are not derived from his own perceptions.

66. The nature of the subject matter, itself, establishes Mr. Willard could not have obtained this information by personal observation.

67. Mr. Willard lacks personal knowledge to testify to the assertions included in the *Willard Declaration* and the *Reply Willard Declaration* regarding Mr. Moquin's mental disorder, private personal life, and private marital conflicts.

⁷The *Willard Declaration* and the *Reply Willard Declaration* contain many nearly identical statements. They compare as follows:

<i>Willard Declaration</i> Paragraph	<i>Reply Willard Declaration</i>
53	7
54	8
59	9
63	11
64	12 (slightly differs)
65	13
67	15
68	16
69	35
70	38
71	39
82	10 Similar – not exact)
89	3
91	67

1 68. It also logically follows that Mr. Willard could only have obtained this
2 information by communication from Mr. Moquin (or Mr. Moquin's wife), although not overtly
3 stated.

4 69. The *Willard Declaration* and *Reply Willard Declaration* include inadmissible
5 hearsay under NRS 51.035 and 51.065. See *New Image Indus. v. Rice*, 603 So.2d 895
6 (Ala. 1992) (affirming denial of 60(b) relief where the only evidence of excusable neglect
7 was an affidavit containing inadmissible hearsay and speculation); *Agnello v. Walker*, 306
8 S.W.3d 666, 673 (Mo. Ct. App. 2010), *as modified* (Apr. 27, 2010) (a motion to set aside a
9 default judgment is not a "self-proving motion," and "[i]t is not sufficient to attach hearsay
10 testimonial documentation in support of a motion to set aside....").

11 70. Separate and apart from the challenge to the *Willard Declaration* and the
12 *Reply Willard Declaration* on hearsay grounds, Mr. Willard's statements are also speculative
13 and therefore inadmissible. He does not declare that he personally observed Mr. Moquin's
14 alleged condition until he draws this unqualified conclusion late in the case, and, even if he
15 had, he speculates what the mental disorder could cause and caused, offering an internet
16 article to boost his credibility, which is also hearsay with no applicable exception offered.

17 71. The assertion describing Mr. Moquin's statement to Mr. Willard that Dr. Mar
18 diagnosed Mr. Moquin with bipolar disorder (*WD* ¶ 69; *RWD* ¶ 35) is inadmissible hearsay
19 with no exception under NRS 51.105(1) because Mr. Willard's declaration does not
20 constitute Mr. Moquin's declaration of "then existing state of mind, emotion, sensation or
21 physical condition, such as intent, plan, motive, design, mental feeling, pain and bodily
22 health." Instead, Dr. Mar purportedly diagnosed Mr. Moquin; Mr. Moquin told Mr. Willard of
23 Dr. Mar's purported diagnosis; and Mr. Willard makes the statement of Mr. Moquin's
24 diagnosis. The statements were not spontaneous and instead were a basis for Mr. Moquin
25 to request monetary assistance.
26

27 72. Even if Mr. Moquin's report of Dr. Mar's diagnosis is construed as constituting
28 Mr. Moquin's statement of then-existing mental condition, Mr. Willard's statements are not

1 admissible as contemporaneous statements made by Mr. Moquin about his own present
2 physical symptoms or feelings. See 2 McCormick on Evid. 273 (7th ed.) (“Statements of the
3 declarant’s present bodily condition and symptoms, including pain and other feelings,
4 offered to prove the truth of the statements, have been generally recognized as an
5 exception to the hearsay rule. Special reliability is provided by the spontaneous quality of
6 the declarations, assured by the requirement that the declaration purport to describe a
7 condition presently existing at the time of the statement.”). No spontaneous statement of
8 Mr. Moquin, as the declarant, was offered.

9 73. The *Willard Declaration* and the *Reply Willard Declaration* also contain
10 hearsay within hearsay, which is inadmissible under NRS 51.067.

11 74. Mr. Willard purports to declare Mr. Moquin had a complete mental breakdown,
12 how Mr. Moquin’s symptoms of his alleged bipolar disorder might manifest, and how those
13 symptoms might have affected Mr. Moquin’s work. (*WD* ¶ 68, 73-76, 87-88; *RWD* ¶ 16, 38).

14 75. These statements are inadmissible as impermissible lay opinion under NRS
15 50.265. Mr. Willard is not a licensed healthcare provider qualified to opine on Mr. Moquin’s
16 mental condition, mental disorder, or symptoms of any disorder or condition that manifested.

17 76. Mr. Willard surmises, speculates, and draws conclusions. He is not qualified
18 to testify about any medical, physical, or mental condition Mr. Moquin may have, or the
19 effect of that condition on his work. *White v. Com*, 616 S.E.2d 49, 54 (Va. Ct. App. 2005)
20 (“While lay witnesses may testify to the attitude and demeanor of the defendant, lay
21 witnesses cannot express an opinion as to the existence of a particular mental disease or
22 condition.”) (citations omitted).

23 77. Plaintiffs contend Mr. Willard’s opinions of how Mr. Moquin’s alleged condition
24 might manifest with symptoms and how these symptoms may have affected Mr. Moquin’s
25 work are appropriate because “lay witnesses can offer testimony as to a person’s sanity.”
26 *Reply*, 2. Plaintiffs cite *Criswell v. State*, 84 Nev. 459, 464, 443 P.2d 552, 555 (1968) for the
27 proposition that lay witnesses can offer testimony as to a person’s sanity. However,
28

1 *Criswell* was overruled in 2001. See *Finger v. State*, 117 Nev. 548, 576-77, 27 P.3d 66, 85
2 (2001) (en banc decision regarding the legal insanity defense and statutorily-created “guilty,
3 but mentally ill plea” and holding the legislative abolishment of insanity as a complete
4 defense to a criminal offense unconstitutional, among other holdings, that lay witnesses
5 cannot testify as to “insanity” because the term has a precise and narrow definition under
6 Nevada law).

7 78. The *Finger* holdings are not applicable here. First, the *Finger* case involves a
8 defense to criminal charges. Second, Mr. Willard did not testify that Mr. Moquin was sane
9 or insane; rather, he testified about the diagnosis of bipolar disorder, possible symptoms of
10 bipolar disorder, and how those symptoms, if present, might have affected Mr. Moquin’s
11 work.
12

13 79. Section 50.265 of the Nevada Revised Statutes provides a lay witness may
14 testify to opinions or inferences that are “[r]ationally based on the perception of the witness;
15 and...[h]elpful to a clear understanding of the testimony of the witness or the determination
16 of a fact in issue.” NRS 50.265. A qualified expert may testify to matters within his/her
17 “special knowledge, skill, experience, training or education” when “scientific, technical or
18 other specialized knowledge will assist the trier of fact to understand the evidence or to
19 determine a fact in issue.” NRS 50.275; *Burnside v. State*, 131 Nev. 371, 382, 352 P.3d
20 627, 636 (death penalty case detective allowed to testify about cell phone records as lay
21 witness). Further,
22

23 The key to determining whether testimony constitutes lay or expert testimony
24 lies with a careful consideration of the substance of the testimony—does the
25 testimony concern information within the common knowledge of or capable of
26 perception by the average layperson or does it require some specialized
27 knowledge or skill beyond the realm of everyday experience? See *Randolph v.*
28 *Collectramatic, Inc.*, 590 F.2d 844, 846 (10th Cir. 1979) (observing that lay
witness may not express opinion ‘as to matters which are beyond the realm of
common experience and which require the special skill and knowledge of an
expert witness”); Fed. R. Evid. 701 advisory committee’s note (2000 amend.)
 (“[T]he distinction between lay and expert witness testimony is that lay
testimony results from a process of reasoning familiar in everyday life, while

1 expert testimony results from a process of reasoning which can be mastered
2 only be specialists in the field.” (internal quotation marks omitted)); *State v.*
3 *Tierrney*, 389 A.2d 38, 46 (N.H. 2003) (“Lay testimony must be confined to
personal observations that any layperson would be capable of making.”).

4 *Id.*

5 80. While the Nevada Supreme Court and Nevada Court of Appeals have not
6 addressed lay witness testimony, like that contained in the *Willard Declaration and Reply*
7 *Willard Declaration*, regarding bipolar disorder, it has been specifically addressed by the
8 Pennsylvania court and is persuasive here. In the case of *In re Petition for Involuntary*
9 *Commitment of Joseph R. Barbour*, the Superior Court of Pennsylvania held a “[l]ay witness
10 and non-expert could not provide expert testimony regarding involuntary committee’s
11 medical diagnosis, specifically the existence of mood disorder known as bipolar disorder.” *In*
12 *re Petition for Involuntary Commitment of Joseph R. Barbour*, 733 A.2d 1286 (Pa. 1999).
13 This Court therefore concludes such testimony is inadmissible to support the *Rule 60(b)*
14 *Motion*.

15 81. Exhibits 6, 7, and 8 to the *Rule 60(b) Motion* which purport to detail Mr.
16 Moquin’s alleged domestic abuse of his family and contain statements about Mr. Moquin’s
17 alleged bipolar condition, are inadmissible as discussed, *supra*, to establish he had bipolar
18 disorder.

19 82. Exhibits 6, 7, and 8 to the *Rule 60(b) Motion* are not, and cannot be,
20 authenticated by Mr. Willard. Mr. Willard is not the author of the documents and has no
21 personal knowledge of their authenticity. He therefore cannot authenticate or identify the
22 documents pursuant to NRS 52.015(1) or NRS 52.025.

23 83. Exhibits 6, 7, and 8 do not meet the requirements for presumed authenticity
24 under NRS 52.125, as the exhibits are not certified copies of public records.

25 84. Pursuant to NRS 47.150, a judge or court may take judicial notice, whether
26 requested or not. Further, a judge or court shall take judicial notice if requested by a party
27 and supplied with the necessary information. NRS 47.150. Here, no party requested this
28

1 Court to take judicial notice based on certified copies of the California court records,
2 contained in the exhibits to the *Rule 60(b) Motion* and the *Reply*. The Court exercises its
3 discretion and declines to take judicial notice here.

4 85. Moreover, even if Exhibits 6, 7, and 8 could be authenticated, the statements
5 contained in those exhibits regarding Mr. Moquin's alleged mental disorder and condition
6 are inadmissible lay opinion about bipolar disorder and would still constitute inadmissible
7 hearsay, as they were apparently authored by Mr. Moquin's wife, and Plaintiffs offer them to
8 prove that Mr. Moquin suffers from bipolar disorder and his life was in "shambles."

9 86. Several *Reply* Exhibits discussed in the *Reply Willard Declaration* also contain
10 inadmissible hearsay.

11 87. All the texts and emails offered by Plaintiffs and authored by Mr. Moquin or Mr.
12 O'Mara constitute inadmissible hearsay under NRS 51.035 and NRS 51.065.

13 88. Specifically, Exhibits 2 and 3 to the *Reply*, the text messages authored by Mr.
14 Moquin in Exhibit 4, the text messages authored by Mr. Moquin in Exhibit 7, the email
15 authored by Mr. Moquin in Exhibit 8, and the emails authored by Mr. Moquin in exhibit 10
16 are inadmissible hearsay.

17 89. Exhibits attached to the *Reply* also contain communications occurring after
18 this Court issued its *Order Granting Motion to Strike* and its *Order Granting Sanctions*.

19 90. Competent and substantial evidence has not been presented to establish *Rule*
20 *60(b)* relief.
21

22 **C. PLAINTIFFS FAILED TO ESTABLISH EXCUSABLE NEGLIGENCE**
23 **UNDER THE YOCHUM V. DAVIS FACTORS.**

24 91. In *Yochum v. Davis*, 98 Nev. 484, 486, 653 P.2d 1215, 1216 (1982), *overruled*
25 *in part on other grounds by Epstein v. Epstein*, 113 Nev. 1401, 1405, 950 P.2d 771, 773
26 (1997), the Nevada Supreme Court held, to determine whether grounds for NRCP 60(b)(1)
27 relief exist, a district court must apply four factors: (1) a prompt application to remove the
28

1 judgment; (2) the absence of an intent to delay the proceedings; (3) a lack of knowledge of
2 procedural requirements; and (4) good faith.

3 92. The burden of proof is on the movant, in this case, Plaintiffs, who must show
4 “mistake, inadvertence, surprise or excusable neglect, either singly or in combination... ‘by a
5 preponderance of the evidence....’” *Kahn v. Orme*, 108 Nev. 510, 513–14, 835 P.2d 790,
6 793 (1992) (quoting *Britz v. Consolidated Casinos Corp.*, 87 Nev. at 446, 488 P.2d at 911).

7 93. A district court must issue explicit findings on each of the *Yochum* factors in
8 rendering its decision. *Opinion*.

9 94. A district court must also consider Nevada’s bedrock policy to decide cases on
10 the merits whenever feasible when evaluating an NRCP 60(b)(1) motion. *Id*.

11 95. However, other policy concerns are also considered, such as the swift
12 administration of justice and enforcement of procedural requirements, “even when the result
13 is dismissal of a plaintiff’s case.” *Rodriguez v. Fiesta Palms, LLC*, 134 Nev. 654, 654, 428
14 P.3d 255, 256 (2018), *holding modified by Willard v. Berry-Hinckley Indus.*, 136 Nev. Adv.
15 Op. 53, 469 P.3d 176 (2020); NRCP 1.

16 96. Here, while considering Nevada’s policy to decide cases on the merits when
17 feasible, this Court determines, by the following detailed and explicit findings on each
18 *Yochum v. Davis* factor, NRCP 60(b)(1) relief is not warranted.

19
20 **(1) A prompt application to remove the judgment:**

21 97. A motion for NRCP 60(b)(1) relief must be filed “within a reasonable time” and
22 “not more than 6 months after the proceeding was taken or the date that written notice of
23 entry of the judgment or order was served.” *Rodriguez*, 134 Nev. at 657, 428 P.3d at 257.

24 98. “[The six-month period represents the **extreme limit** of reasonableness.” *Id*.
25 (emphasis added) (quotations omitted).

26 99. As such, even in cases in which a movant has filed an NRCP 60(b) Motion
27 within six (6) months, it may nevertheless be found to have not acted promptly. See, e.g.,
28

1 *Kahn v. Orme*, 108 Nev. 510, 514, 835 P.2d 790, 793 (1992) (concluding that a movant
2 failed to act promptly where a default judgment was entered against him in February, he
3 knew as early as March, did not seek counsel until late May, and did not move to set aside
4 the default judgment until August, nearly six months after the judgment).

5 100. Here, Plaintiffs and O'Mara were contemporaneously aware of Plaintiffs'
6 failure to oppose the *Sanctions Motion*.

7 101. Specifically, Exhibit 2 to the *Reply* appears to be a text string between Mr.
8 Willard and Mr. Moquin from December 2, 2017, through December 6, 2017, in which Mr.
9 Willard inquires about the status of Plaintiffs' filing in response to the *Motion for Sanctions*.
10 *Reply*, Exhibit 2. The text messages reflect Mr. Willard was aware of the initial deadline,
11 December 4, 2017, for Plaintiffs to respond to the *Motion for Sanctions* (based on the
12 November 15, 2017, filing date and electronic service). *Prior 60(b) Order 23 ¶49*.

13 102. Defendants agreed to extensions through 3:00 pm on December 6, 2017, for
14 Plaintiffs to file their oppositions. *Prior 60(b) Order 23 ¶50*.

15 103. This Court granted an additional extension through December 18, 2018. *Prior*
16 *60(b) Order 23 ¶51*.

17 104. Plaintiffs knew of the initial filing deadline. They were aware no opposition
18 papers were filed. Mr. Willard continued to communicate with both Mr. Moquin and Mr.
19 O'Mara from December 11 until December 25, 2017, regarding the delinquent filings (*Reply*
20 Exs. 3, 4), well after this Court's final filing deadline of December 18, 2017. *Prior 60(b)*
21 *Order 24 ¶52, 56; Sanctions Order ¶95*.

22 105. Despite knowing no oppositions had been filed, neither Mr. Willard (through
23 Mr. O'Mara), Mr. Moquin, nor Mr. O'Mara contacted Defendants' counsel or this Court to
24 address the status of this case. *Prior 60(b) Order 24 ¶53; Sanctions Order ¶98*.

25 106. On January 4, 2018, this Court entered its *Order Granting Defendants'/*
26 *Counterclaimants' Motion for Sanctions* (the "*Initial Sanctions Order*").
27
28

1 107. The *Initial Sanctions Order* granted Defendants' *Motion for Sanctions* based
2 upon (1) DCR 13(3) and Plaintiffs' failure to oppose Defendants' *Motion*; and (2) the fact
3 that Defendants' *Motion* had merit "due to Plaintiffs' egregious discovery violations
4 throughout the pendency of this litigation and repeated failure to comply with this Court's
5 orders." *Id.* at 3.

6 108. Therefore, this Court found, "Plaintiffs' conduct warrants dismissal of this
7 action under NRCP 16.1(e)(3), NRCP 37(b)(2), NRCP 41(b), and the Nevada Supreme
8 Court's decision in *Bianco v. Bianco*, 129 Nev. Adv. Op. 77, 311 P.3d 1170." *Id.* at 3-4. The
9 *Initial Sanctions Order* was served upon both Mr. Moquin and Mr. O'Mara. *Id.*

10 109. The *Initial Sanctions Order* directed Defendants to submit to the Court within
11 twenty (20) days a proposed order granting the *Sanctions Motion*, including factual and
12 legal analysis and discussion, in accordance with WDCR 9.

13 110. This Court entered its *Sanctions Order* on March 6, 2018. (*Sanctions Order*).

14 111. On March 15, 2018, Mr. O'Mara filed his *Notice of Withdrawal of Local*
15 *Counsel*. Therein, he stated, "[c]ounsel has had no contact with lead counsel Mr. Moquin
16 for **many months** with a **total failure just prior to the Court's first decisions being filed**
17 **in this case.**" *Notice*, 1 (emphases added).

18 112. Plaintiffs took no action to request that Mr. O'Mara, who remained Plaintiffs'
19 counsel of record until March 15, 2018, promptly inform this Court—on even a cursory
20 basis—of Plaintiffs' alleged circumstances.

21 113. Plaintiffs did nothing to apprise this Court of any issues until they filed the *Rule*
22 *60(b) Motion* in April, 2018. *Prior 60(b) Order* 24 ¶¶54.

23 114. Mr. O'Mara did not report any issues to this Court until the filing of his *Notice*
24 on March 15, 2018. *Prior 60(b) Order* 25 ¶¶60; *Notice*, 1.

25 115. This failure to promptly notify the Court is another act in the continuum of
26 Plaintiffs' repeated delay throughout this case with respect to each of Plaintiffs' obligations,
27 as discussed *infra*.
28

1 116. While Plaintiffs should and could have acted in a more prompt manner,
2 Plaintiffs filed their *Rule 60(b) Motion* within a reasonable amount of time of the *Initial*
3 *Sanctions Order* and the *Sanctions Order*. Thus, this Court finds that the first *Yochum* factor
4 is satisfied here.⁸

5 117. Although the Plaintiffs met this factor, the remaining three *Yochum* factors,
6 weigh strongly against NRCP 60(b) relief. *Cf., e.g., Rodriguez*, 134 Nev. at 659, 428 P.3d at
7 259 (“Even assuming Rodriguez acted in good faith, we affirm the district court’s decision
8 based on the first three *Yochum* factors, all of which favor denial of Rodriguez’s NRCP
9 60(b)(1) motion.”).

10 **(2) The absence of intent to delay the proceedings:**

11 118. The next *Yochum* factor is the absence of intent to delay the proceedings.

12 119. “As to [this] factor, an intent to delay the proceedings may be inferred from the
13 parties’ prior actions.” *ABD Holdings, Inc. v. JMR Inv. Properties, LLC*, 441 P.3d 548 (Nev.
14 2019) (unpublished) (citing *Rodriguez*, 134 Nev. at 657, 428 P.3d at 258).

15 120. The Nevada Supreme Court has inferred intent to delay where the movant
16 “exhibited a pattern of repeatedly requesting continuances [of the trial date] and filed his
17 NRCP 60(b)(1) motion just before the six-month outer limit,” exhibited conduct which
18 “differed markedly from that of a litigant who wishes to swiftly move toward trial,” and
19 exhibited conduct which “indicate[d] that he intended to delay trial until he secured new
20 counsel, rather than proceeding without representation.” *Rodriguez*, 134 Nev. at 658, 428
21 P.3d at 258.
22
23

24
25 ⁸ This Court also notes that all of the statements in the *Reply Willard Declaration* set forth after
26 Paragraph 37 detail events and communications from late January, 2018 through late May, 2018, all
27 of which occurred after this Court issued its *Order Granting Motion to Strike, Order Granting*
28 *Sanctions, and Sanctions Order*. RWD ¶¶ 37-67. Exhibits 5, 6, 7, 8, 9, and 10 to the *Reply* contain
only communications and descriptions of events that occurred after this Court issued its *Order*
Granting Motion to Strike, Order Granting Sanctions, and Sanctions Order. Logically, relevant events
asserted to support Plaintiffs’ argument of excusable neglect must have necessarily occurred prior to
the entry of the orders Plaintiffs seek to set aside. Thus, while these Exhibits may support a finding
of promptness under the first *Yochum* factor, which this Court has already found that Plaintiffs have
satisfied, they are irrelevant to Plaintiffs’ arguments that excusable neglect occurred.

1 121. The Nevada Supreme Court has also inferred intent to delay where, among
2 other things, “[t]he record demonstrate[d] a pattern of delay from the case’s inception: [the
3 defendants] asked for extensions of the time to file their answer, hired an attorney the day
4 the answer was due and then subsequently filed an untimely demand for securities of costs
5 instead of answering the complaint—and thereafter still failed to answer the complaint.”
6 *ABD*, 441 P.3d 548 (unpublished).

7 122. Additionally, the Nevada Supreme Court has concluded that there was
8 evidence of a movant’s intent to delay because, in part, the movant “failed to file a single
9 motion” in opposition to the respondent’s motions. *Kahn*, 108 Nev. at 514, 835 P.2d at 793.

10 123. The Plaintiffs have not demonstrated an absence of intent to delay the
11 proceedings for multiple, independent reasons.

12 124. First, Plaintiffs’ sole asserted basis for satisfying this factor is that “Mr.
13 Moquin’s mental illness demonstrates that Plaintiffs have at all times acted...without the
14 intent to delay the proceedings,” and that “Plaintiffs are, in fact, the victims of Mr. Moquin’s
15 assurances.” *60(b) Motion* 11.

16 125. However, as discussed, Plaintiffs provided no admissible evidence in support
17 of their *60(b) Motion*, and certainly provided no admissible evidence demonstrating that
18 Moquin had a mental illness, or the effect of such mental illness, if any, on Plaintiffs’ case.
19 *See supra*.

20 126. Accordingly, Plaintiffs have failed to satisfy their burden to demonstrate an
21 absence of intent to delay proceedings.

22 127. Second, even beyond the evidentiary shortcomings, which alone are fatal to
23 Plaintiffs’ argument, the record before this Court demonstrates a repeated delays in the
24 proceedings at the hands of the Plaintiffs.

25 128. Although Plaintiffs satisfied the first *Yochum* factor by promptly moving to
26 remove the judgment, the totality of the record before this Court, prior to Plaintiffs seeking
27 NRCP 60(b) relief, is replete with evidence of willful delay.
28

1 129. This Court has previously ruled on Plaintiffs' numerous egregious and
2 intentional delays from the inception of this case. As reflected in the court file, Plaintiffs'
3 multiple instances of non-compliance, including the Plaintiffs' failure to provide a compliant
4 damages disclosure, occurred well before Mr. Moquin's purported breakdown in December
5 2017, or January 2018, which was asserted as preventing him from opposing the motions.
6 *Prior 60(b) Order 24 ¶59.*

7 130. The Court's prior findings include:

8 a. Plaintiffs have exhibited a longstanding pattern of failure to ignore fundamental
9 discovery obligations and deadlines imposed by this Court and the Nevada Rules of Civil
10 Procedure. *Sanctions Order ¶¶ 13-79, 124-141, 153.*

11 b. Plaintiffs' conduct of ignoring or failing to comply with multiple separate
12 discovery obligations throughout this case forced Defendants to repeatedly file motions to
13 compel, and necessitated extensions of trial and discovery deadlines on three occasions to
14 accommodate Plaintiffs' continued non-compliance. *Sanctions Order ¶ 121.*

15 c. Plaintiffs willfully failed to timely disclose the appraisals upon which many of
16 their damages calculations were based. (*Sanctions Order ¶ 133, 135-136, 139*).

17 d. "Plaintiffs' repeated and **willful delay** in providing necessary information to
18 Defendants has necessarily prejudiced Defendants." *Sanctions Order ¶ 141* (emphasis
19 added).

20 e. Before the present case, Plaintiffs filed a case against Defendants in
21 California, based upon the same set of facts, which was dismissed for a lack of personal
22 jurisdiction. *Sanctions Order ¶ 142-144.*

23 131. The conduct of Plaintiffs' freely-selected attorney is attributable to Plaintiffs
24 personally (particularly where, as here, Plaintiffs have provided no admissible evidence to
25 demonstrate otherwise) and, therefore, willful delay is personally attributable to Plaintiffs.
26

27 132. For example, Plaintiffs had personal and contemporaneous knowledge of their
28 failure to disclose their NRCP 16.1 damages, (*Sanctions Order ¶ 46-47, 125*), which was a

1 critical basis for dismissal. *Sanctions Order* ¶ 146; *see also infra* (discussing the absence of
2 good faith).

3 133. This failure was also a critical basis for the continued delay of the trial date.
4 *See, e.g., Stipulation and Order to Continue Trial (Third Request)* ¶ 7, 10 (stipulating
5 Plaintiffs had not yet provided a compliant NRCP 16.1 damages disclosure as discussed at
6 the January 10, 2017, hearing, “[b]ecause Plaintiffs have not yet provided a complete NRCP
7 16.1 damages disclosure, Defendants will not be able to complete necessary fact discovery
8 on Plaintiffs’ damages, or to disclose an updated expert report...within the time currently
9 allowed for discovery... Moreover, any further extension of the discovery deadlines would
10 prevent the parties from being able to [timely] file and submit dispositive motions [prior to
11 trial],” and the “[u]ndersigned counsel certifies that their respective clients have been
12 advised that a stipulation for continuance is to be submitted on their behalf and that the
13 parties have no objection thereto”); *Sanctions Order* ¶ 150.

14
15 134. Plaintiffs have similarly failed to demonstrate an absence of intent to delay the
16 proceedings with respect to the entry of the *Sanctions Order*.

17 135. Specifically, as discussed *supra*, Plaintiffs knew of the initial filing and resulting
18 opposition deadline. They were aware no opposition papers were filed. Mr. Willard
19 continued to communicate with both Mr. Moquin and Mr. O’Mara from December 11 until
20 December 25, 2017, regarding the delinquent filings (*Reply* Exs. 3, 4), well after this Court’s
21 final filing deadline of December 18, 2017. *Prior 60(b) Order 24* ¶¶52, 56; *Sanctions Order*
22 ¶95.

23 136. Despite knowing no oppositions had been filed, neither Mr. Willard (through
24 Mr. O’Mara), Mr. Moquin, nor Mr. O’Mara contacted Defendants’ counsel or this Court to
25 address the status of this case. *Prior 60(b) Order 24* ¶53; *Sanctions Order* ¶98.

26 137. Indeed, in his March 15, 2018, *Notice*, Mr. O’Mara stated “[c]ounsel has had
27 no contact with lead counsel Mr. Moquin for **many months** with a **total failure just prior to**
28 **the Court’s first decisions being filed in this case.**” *Notice*, 1 (emphases added).

1 138. Plaintiffs did nothing to apprise this Court of any issues until they filed the *Rule*
2 *60(b) Motion* in April, 2018.⁹ *Prior 60(b) Order 24 ¶¶54.*

3 139. Similarly, Mr. O'Mara did not report any issues to this Court until the filing of
4 his *Notice* on March 15, 2018. *Prior 60(b) Order 25 ¶¶60; Notice, 1.*

5 140. Finally, Plaintiffs have failed to demonstrate an absence of intent to delay the
6 proceedings with respect to their claims about Mr. Moquin.

7 141. In fact, Mr. Willard admits he was informed by Mr. O'Mara **prior to the**
8 **dismissal** of Plaintiffs' claims that Mr. Moquin was not responsive. *Prior 60(b) Order 26*
9 *¶¶66.* Plaintiffs failed to replace Mr. Moquin or take other action due to perceived financial
10 reasons. *Prior 60(b) Order 26 ¶¶66; WD ¶ 81.* Plaintiffs' knowledge and inaction vitiates
11 excuse for neglect. *Prior 60(b) Order 26 ¶¶66; see also 60(b) Motion 15* ("It was only in **late**
12 **2017** that it became clear to Mr. Willard that something was terribly wrong and that Mr.
13 Moquin was suffering from mental illness.").

14 142. Plaintiffs started looking for attorneys who might be able to help. *RWD ¶ 36.*
15 Plaintiffs instead provided personal financial assistance to Mr. Moquin and did not terminate
16 his services. *Prior 60(b) Order 24 ¶¶55; WD ¶ 71; RWD ¶ 39.*

17 143. Plaintiffs chose to retain Mr. Moquin and did not terminate his representation,
18 even after becoming aware he did not file a timely response to the *Motion for Sanctions*.
19 Plaintiffs cannot now avoid the consequences of the acts or omissions of their freely
20 selected agent. *Prior 60(b) Order 24 ¶¶57.*
21
22
23
24

25 ⁹Plaintiffs had contemporaneous knowledge of the *Sanctions Order*. Yet, rather than appeal from the
26 *Sanctions Order* within thirty days of the *Notice of Entry of Sanctions Order*, filed on March 6, 2018,
27 Plaintiffs instead improperly challenged the propriety of the *Sanctions Order* in their *Rule 60(b)*
28 *Motion*, which was filed on April 18, 2018, more than thirty days after the *Notice of Entry of the*
Sanctions Order. Cf. generally, e.g., *Mathews v. Carreira*, 770 N.E.2d 560 (Ma. App. 2002) ("Rule
60(b) cannot be used as a substitute for the regular appeal procedure."); *Carrabine v. Brown*, 1993
WL 318809 (Ohio Ct. App. 1993) (A motion for relief from judgment under Civ.R. 60(B)(1) cannot be
predicated upon the argument that the trial court made a mistake in rendering its decision); *Morgan*
v. Estate of Morgan, 688 So. 2d 862, 864 (Ala. Civ. App. 1997).

1 144. Plaintiffs voluntarily chose to stop looking for new counsel to assist and chose
2 to continue to rely on Mr. Moquin solely for financial reasons. *Prior 60(b) Order 24 ¶¶58; WD*
3 *¶¶81.*

4 145. Indeed, Mr. Willard was aware of Mr. Moquin’s alleged problems prior to this
5 Court’s *Order Granting Motion to Strike and Sanctions Order* yet continued to allow Mr.
6 Moquin to represent Plaintiffs. *Prior 60(b) Order 25-26 ¶¶64.*

7 146. Plaintiffs have not established by substantial evidence that they exercised
8 diligence to rectify representation in their case despite ample knowledge of Mr. Moquin’s
9 non-responsiveness. *Prior 60(b) Order 27 ¶¶69.* As discussed *supra*, all of Plaintiffs’
10 proffered evidence regarding Mr. Moquin’s alleged mental condition is inadmissible and
11 does not establish Mr. Moquin had any mental illness or that any alleged mental illness
12 affected Plaintiffs’ case.

13 147. Further, Mr. Willard’s claim he had no choice but to continue working with Mr.
14 Moquin due to financial issues lacks credibility, as he admits he was able to borrow money
15 to fund Mr. Moquin’s personal life needs and medical treatment. It logically follows he had
16 the resources to retain new attorneys at the time. *Prior 60(b) Order 27 ¶¶68.*

17 148. Thus, as in *Rodriguez*, Plaintiffs’ conduct—both pre- and post- *Sanctions*
18 *Order*—has “differed markedly from that of a litigant who wishes to swiftly move toward
19 trial.” 134 Nev. at 658, 428 P.3d at 258.

20 149. In sum, Plaintiffs have failed to establish the absence of an intent to delay the
21 proceedings.
22

23 **(3) A lack of knowledge of procedural requirements:**
24

25 150. The next *Yochum* factor is whether the movant lacks knowledge of the
26 procedural requirements.

27 151. “As to the third factor, a party is generally deemed to have knowledge of the
28 procedural requirements where the facts establish either knowledge or legal notice, where

1 under the facts the party should have inferred the consequences of failing to act, or where
2 the party's attorney acquired legal notice or knowledge." *ABD Holdings, Inc. v. JMR Inv.*
3 *Properties, LLC*, 441 P.3d 548 (Nev. 2019) (unpublished) (citing *Rodriguez*, 428 P.3d at
4 258, and *Stoecklein*, 109 Nev. at 273, 849 P.2d at 308).

5 152. The Nevada Supreme Court has also explained "[t]o condone the actions of a
6 party who has sat on its rights only to make a last-minute rush to set aside judgment would
7 be to turn NRCP 60(b) into a device for delay rather than the means for relief from an
8 oppressive judgment that it was intended to be." *Union Petrochemical Corp. of Nevada v.*
9 *Scott*, 96 Nev. 337, 339, 609 P.2d 323, 324 (1980).

10 153. The Nevada Supreme Court has concluded a movant has failed to satisfy this
11 factor when the movant "personally witnessed the court grant [the defendant's] motion in
12 limine because he did not file a written opposition." *Rodriguez*, 134 Nev. at 658, 428 P.3d at
13 258. The Court explained under such circumstances, the movant "should have inferred the
14 consequences of not opposing the motion to dismiss, especially in light of the court's
15 express warning to take action." *Id.*

16 154. The Nevada Supreme Court has also concluded (albeit in an unpublished
17 order) this factor disfavored NRCP 60(b)(1) relief where the movants "knew the answer was
18 due, knew it was not timely filed, knew [the plaintiff] was seeking a default and money
19 damages, and should have inferred that failing to file their answer and losing on the
20 subsequent motions would result in a default judgment." *ABD Holdings*, 441 P.3d 548.

21 155. Here, the record reflects Plaintiffs have unequivocally failed to establish a lack
22 of knowledge of procedural requirements.

23 156. As a threshold matter, Plaintiffs have admitted as much, conceding "this is,
24 candidly, a little bit of a difficult one," and that Mr. Willard "did, candidly, know that things
25 needed to be filed, he knew that. He knew that trial was coming up and he knew that they
26 were both motions that he wanted to see filed and oppositions that he understood needed to
27
28

1 be filed because he was an active participant in this case and he wants to continue to be.”
2 *60(b) Transcript* 9, 11.

3 157. Additionally, the record before this Court is replete with evidence
4 demonstrating Plaintiffs had knowledge of the pertinent procedural requirements.

5 158. This Court previously found Mr. Willard had **knowledge** of the initial filing
6 deadline to oppose BHI’s Sanctions Motion. Plaintiffs **knew** timely oppositions were not
7 filed. *Prior 60(b) Order* 24 ¶¶52, 55.

8 159. Further, as this Court found, Mr. Willard was **aware** of Mr. Moquin’s inaction
9 which distinguishes this case from the cases upon which Plaintiffs rely in the *Rule 60(b)*
10 *Motion*. *Prior 60(b) Order* 26 ¶¶65.

11 160. Plaintiffs also had personal knowledge of procedural requirements leading to
12 the *Sanctions Order*. *Prior 60(b) Order* 26 ¶¶65.

13 161. For example, Mr. Willard attended the hearing in which Defendants’ counsel
14 informed this Court “[w]e’ve never received a specific damages computation from any of the
15 plaintiffs in this case under 16.1, as they are required to do, **despite multiple demands**
16 **from us.**” *Sanctions Order* ¶¶46; *January 10, 2017, Hearing Transcript* 18.

17 162. Plaintiffs’ counsel admitted, in open court, “with respect to Willard, they do not”
18 have an up-to-date, clear picture of Plaintiffs’ damages claims.” *Sanctions Order* ¶¶47;
19 *January 10, 2017, Hearing Transcript* 42-43.

20 163. This Court ordered, during the hearing, that Plaintiffs “serve, within 15 days
21 after the entry of summary judgment, an updated 16.1 damages disclosure.” *Sanctions*
22 *Order* ¶¶49; *January 10, 2017, Hearing Transcript* 68.

23 164. Thus, Plaintiffs indisputably had personal knowledge of this procedural
24 requirement, their failure to comply therewith, and this Court’s order they comply by a
25 particular deadline.

26 165. Further, the failure to comply with this requirement was a critical basis for the
27 *Sanctions Order*. As this Court found, “Plaintiffs’ failure to provide damages disclosures are
28

1 so central to this litigation, and to Defendants' rights and ability to defend this case, that
2 dismissal of the entire case is necessary." *Sanctions Order* ¶119, 146.

3 166. Finally, even beyond Plaintiffs' personal knowledge of the salient procedural
4 requirements and procedural facts, Plaintiffs were represented by **two** attorneys
5 **throughout** the proceedings who, as this Court found, did not abandon Plaintiffs. *Prior*
6 *60(b) Order* 25 ¶ 62; *see also infra* (discussing that a party cannot seek to avoid a dismissal
7 based on arguments that his or her attorney's acts or omissions led to the dismissal).

8 167. It is unequivocal, both Mr. Moquin and Mr. O'Mara had ample knowledge of
9 every salient procedural requirement and procedural fact. This cannot be overstated: even
10 beyond the general procedural knowledge expected of a practicing attorney, Defendants'
11 counsel wrote numerous letters detailing the pertinent procedural requirements and their
12 application to this case, and Plaintiffs' failures to comply therewith. *See generally Sanctions*
13 *Order*. Plaintiffs also entered into three stipulations which plainly reflected their knowledge
14 of the pertinent deadlines and procedural requirements. *See, e.g., id.* ¶126. This Court also
15 entered multiple orders directly informing Plaintiffs of the pertinent procedural requirements
16 and deadlines. *See generally Sanctions Order* (discussing other orders entered by this
17 Court).

18
19 168. In sum, Plaintiffs' clear knowledge of salient procedural requirements strongly
20 disfavors NRCP 60(b)(1) relief.

21 **(4) Good faith:**

22 169. "Good faith is an intangible and abstract quality with no technical meaning or
23 definition and encompasses, among other things, an honest belief, the absence of malice,
24 and absence of design to defraud." *Rodriguez*, 134 Nev. at 659, 428 P.3d at 259 (quoting
25 *Stoecklein*, 109 Nev. at 273, 849 P.2d at 309).

26 170. The Nevada Supreme Court has noted (albeit by unpublished order), "[t]he
27 facts evidencing an intent to delay the proceedings [can] likewise support the district court's
28

1 findings that [the movants] did not act in good faith....” *ABD Holdings*, 441 P.3d 458
2 (concluding that applied and this factor disfavored NRCP 60(b)(1) relief).

3 171. In this case, Plaintiffs have unequivocally failed to demonstrate they acted in
4 good faith.

5 172. As a threshold matter, once again, Plaintiffs provided no admissible evidence
6 in support of their position.

7 173. Specifically, Plaintiffs’ sole asserted basis for allegedly satisfying this factor is,
8 “Mr. Moquin’s mental illness demonstrates that Plaintiffs have at all times acted in good
9 faith,” and that “Plaintiffs are, in fact, the victims of Mr. Moquin’s assurances.” *60(b) Motion*
10 11.

11 174. However, as this Court has ruled, Plaintiffs provided no admissible evidence in
12 support of their *60(b) Motion*, and certainly provided no admissible evidence demonstrating
13 that Moquin had a mental illness, or the effect of such mental illness, if any, on Plaintiffs’
14 case. *See supra*.

15 175. Thus, Plaintiffs have unequivocally failed to satisfy their burden to
16 demonstrate, by a preponderance of evidence, they acted in good faith. *See Kahn v. Orme*,
17 108 Nev. 510, 513–14, 835 P.2d 790, 793.

18 176. Further, even beyond the lack of admissible evidentiary support, the record
19 clearly demonstrates Plaintiffs have failed to establish they acted in good faith.

20 177. First, the findings discussed *supra* evidencing an intent to delay the
21 proceedings and knowledge of procedural requirements likewise support the finding
22 Plaintiffs did not act in good faith.

23 178. This Court previously found “Willard’s claim that he had no choice but to
24 continue working with Mr. Moquin due to financial issues **lacks credibility**.....,” (*Prior 60(b)*
25 *Order 27* ¶68), and in light of the circumstances of this case, dismissal of Willard’s claims
26 did not unfairly penalize Willard for Moquin’s alleged conduct. *Id.* at 29 ¶ 80.
27
28

1 179. Second, Plaintiffs committed multiple willful violations throughout the
2 proceedings, which compelled issuance of the *Sanctions Order* in the first instance.

3 180. Among other things, this Court found that Plaintiffs' eleventh-hour request for
4 nearly \$40 million more in damages based on information which had been in Plaintiffs'
5 possession but not disclosed was willful and in bad faith.

6 181. Specifically, this Court found that after three (3) years of delay due to Plaintiffs'
7 "obstinate refusal" to comply with the Nevada Rules of Civil Procedure, Plaintiffs filed their
8 *Motion for Summary Judgment* with only four (4) weeks remaining in discovery, in which
9 they requested "brand new, never-disclosed types, categories, and amounts of damages."
10 *Sanctions Order* ¶¶ 69, 71; *Willard's Motion for Summary Judgment*.

11 182. Indeed, "Willard sought more than triple the amount of damages (nearly \$40
12 million more) than he sought in the complaint and ostensibly throughout the case," and had
13 new claims and new alleged bases for his alleged damages. *Sanctions Order* ¶¶ 73-79.

14 183. This Court found the timing of the *Motion for Summary Judgment* was such it
15 put "Defendants in the exact same predicament that they were placed in February of 2017—
16 Defendants could not engage in the discovery (fact or expert) necessary to adequately
17 respond to Plaintiffs' brand new information, untimely disclosures, and new requests for
18 relief." *Id.* at ¶¶ 69, 87-88.

19 184. "This timing of these Motions undeniably deprived Defendants of the process
20 that the parties expressly agreed was necessary to rebut any properly-disclosed expert
21 opinions or properly-disclosed NRCP 16.1 damages calculations, as ordered by this Court."
22 *Id.*

23 185. This Court also found "Willard and his purported witness relied upon
24 appraisals from 2008 and 2014 which were never disclosed in this litigation, despite
25 Willard's NRCP 16.1 and NRCP 26(e) obligations and affirmative discovery requests served
26 by Defendants" asking Willard to "[p]lease produce any and all appraisals for the Property
27 from January 1, 2012 through present." *Sanctions Order* ¶ 79.
28

1 186. Indeed, this Court found that “Plaintiffs’ new damages and new expert
2 opinions were all based upon information that was in Plaintiffs’ possession throughout this
3 case, meaning that there was no reason that Plaintiffs could not have timely disclosed a
4 computation of their damages and the documents on which such computations are based.”
5 *Sanctions Order* ¶ 72.

6 187. This Court found this conduct was intentional, strategic, and in bad faith. See
7 *generally Sanctions Order*.

8 188. Specifically, this Court found that this conduct evidenced “Plaintiffs’ bad faith
9 motives in waiting to ambush Defendants,” and, “Plaintiffs’ strategic decision to only disclose
10 their damages in their Motion for Summary Judgment prejudiced Defendants by depriving
11 them of the opportunity to defend against damages that had never previously been
12 disclosed.” *Sanctions Order* ¶ 128.

13 189. This Court found “it is clear that Plaintiffs’ failure to disclose the appraisals
14 upon which many of their calculations were based was...willful.” *Sanctions Order* ¶ 135.

15 190. This Court also found “[g]iven that Willard freely admits that these appraisals
16 were commissioned prior to the commencement of the case, and were in his possession,
17 this is clearly willful omission.” *Sanctions Order* ¶ 136.

18 191. Further, it may be logically inferred Willard, who authored a 15-page affidavit
19 in support of his *Motion for Summary Judgment*, averred “[m]y counsel and I collaborated to
20 create” the damages spreadsheet in support of the *Motion for Summary Judgment*, and
21 personally described his new damages in detail, was aware the damages he sought in the
22 motion were significantly different than those ostensibly sought in the *Complaint* which was
23 verified by Mr. O’Mara, or in his Interrogatory Responses which he personally verified.
24 *Affidavit of Larry J. Willard in Support of Motion for Summary Judgment*.

25 192. The record before this Court clearly demonstrates Plaintiffs have acted in bad
26 faith. This Court gave Plaintiffs’ counsel, including Mr. O’Mara, notice of the seriousness of
27 Plaintiffs’ repeated violations and expressed it was considering dismissal based on those
28

1 violations even before Plaintiffs failed to oppose the *Sanctions Motion. Opposition to Rule*
2 *60(b) Motion* Ex. 3; *December 12, 2017, Transcript* (“you need to know going into these
3 oppositions, that I’m very seriously considering granting all of it...I haven’t decided it, but I
4 need to see compelling opposition not to grant it.”).

5 193. As an independent basis, this Court also found Plaintiffs’ failure to disclose
6 their NRCP 16.1 damages was done in bad faith. *Sanctions Order* ¶ 124-126.

7 194. Indeed, this Court found that “[t]his Court has ordered Plaintiffs to provide their
8 damages disclosures, but Plaintiffs blatantly disregarded these orders.” *Sanctions Order* ¶
9 125.

10 195. Again, this conduct is personally attributable to Plaintiffs, who attended the
11 January 10, 2017, hearing wherein Plaintiffs admitted they had failed to provide compliant
12 NRCP 16.1 damages disclosures and heard this Court order them to do so.

13 196. In sum, Plaintiffs have unequivocally failed to satisfy their burden to
14 demonstrate good faith. To the contrary, the record before this Court is replete with
15 evidence of Plaintiffs’ bad faith. Indeed, as this Court has found, “Plaintiffs have exhibited
16 complete disregard for this Court’s Orders, deadlines imposed by this Court, and the judicial
17 process in general.” *Sanctions Order*; see also *id.* ¶ 31 (finding “Plaintiffs have completely
18 ignored multiple Orders from this Court, deadlines imposed by this Court, and their
19 obligations pursuant to the Nevada Rules of Civil Procedure,” and, “Plaintiffs have received
20 multiple opportunities and extensions to rectify their noncompliance, but have not even
21 attempted to do so”).

22
23 **(5) Consideration of the case on the merits:**

24 197. Finally, Nevada’s bedrock policy that cases be considered on the merits
25 wherever possible does not warrant the relief Plaintiffs seek here.

26 198. This Court has already addressed this factor in detail in the *Sanctions Order*,
27 concluding, in part:
28

1 a. Although there is a policy favoring adjudication on the merits, Plaintiffs
2 themselves have frustrated this policy by refusing to provide Defendants with their damages
3 calculations or proper expert disclosures. Defendants have not frustrated this policy;
4 instead, the record is clear that Defendants, and this Court, have repeatedly attempted to
5 force Plaintiffs to comply with basic discovery obligations, to no avail. *Sanctions Order* ¶155.

6 b. Indeed, Defendants have served multiple rounds of written discovery upon
7 Plaintiffs to obtain basic information on Plaintiffs' damages, have taken multiple depositions,
8 and have been requesting compliant disclosures throughout this case so that they can
9 address the merits. *Id.* ¶156; Exhibits 24-35 to *Defendants' Sanctions Motion*.

10 c. Plaintiffs should not be permitted to hide behind the policy of adjudicating
11 cases on the merits when it is they who have frustrated this policy throughout the litigation.
12 Defendants cannot reach the merits when they must spend the entire case asking Plaintiffs
13 for threshold information and receiving no meaningful responses. *Id.* ¶157.

14 d. As the Nevada Supreme Court has held, the policy favoring adjudication on
15 the merits "is not boundless and must be weighed against any other policy considerations,
16 including the public's interest in expeditious...resolution, which coincides with the parties'
17 interests in bringing litigation to a final and stable judgment, prejudice to the opposing party;
18 and administration concerns, such as the court's need to manage its large and growing
19 docket." *Huckabay Props v. NC Auto Parts*, 130 Nev. 196, 203, 322 P.3d 429, 432 (2014).

20 199. The Nevada Supreme Court has similarly so held in the context of upholding
21 the denial of an NRCP 60(b) motion to set aside a default judgment based upon alleged
22 excusable neglect. *Kahn v. Orme*, 108 Nev. 510, 516, 835 P.2d 790, 794 (1992).

23 200. The Nevada Supreme Court explained:
24

25 We wish not to be understood, however, that this judicial tendency to grant
26 relief from a default judgment implies that the trial court should always grant
27 relief from a default judgment. Litigants and their counsel may not properly be
28 allowed to disregard process or procedural rules with impunity. Lack of good
faith or diligence...may very well warrant a denial of the motion for relief from
the judgment.

1 *Id.* (quotations omitted); *see also ABD Holdings*, 441 P.3d 548 (“We conclude the district
2 court did not abuse its discretion by concluding that the policy in favor of resolving cases on
3 the merits does not warrant reversal here, given the facts demonstrating that Barra and
4 Giebler disregarded the process and procedural rules by failing to timely answer the
5 complaint.”).

7 201. In sum, after a careful consideration of each of the *Yochum* factors, and on
8 explicit findings, this Court concludes analysis of the *Yochum* factors precludes NRCP
9 60(b)(1) relief here.

10 **D. PLAINTIFFS’ ASSERTED BASES FOR SEEKING NRCP 60(B) RELIEF**
11 **DO NOT WARRANT THE RELIEF PLAINTIFFS SEEK.**

12 202. Under Nevada law, “clients must be held accountable for the acts and
13 omissions of their attorneys.” *Huckabay Props*, 130 Nev. at 204, 322 P.3d at 433 (citing
14 *Pioneer Inv. Servs. Co. v. Brunswick Assocs. Ltd. P’ship*, 507 U.S. 380, 396-97 (1993)).
15 The client “voluntarily chose this attorney as his representative in the action, and he cannot
16 now avoid the consequences of the acts or omissions of this freely selected agent.”
17 *Huckabay Props*, 130 Nev. at 204, 322 P.3d at 433 (citing *Link v. Wabash R.R. Co.*, 370
18 U.S. 626, 633-34 (1962) (rejecting the argument that petitioner’s claim should not have
19 been dismissed based on counsel’s unexcused conduct because petitioner voluntarily
20 chose his attorney).

22 203. In *Huckabay Props*, the Nevada Supreme Court dismissed an appeal where
23 appellant’s counsel failed to file an opening brief following two granted extensions and a
24 court order granting appellants a final extension. 130 Nev. at 209, 322 P.3d at 437. The
25 appellant was represented by two attorneys. In dismissing the appeal, and applicable to
26 civil litigation at the trial court level here, the Court held:

27 While Nevada’s jurisprudence expresses a policy preference for merits-based
28 resolution of appeals, and our appellate procedure rules embody this policy,
among others, litigants should not read the rules or any of this court’s

1 decisions as endorsing noncompliance with court rules and directives, as to do
2 so risks forfeiting appellate relief. In these appeals, appellants failed to timely
3 file the opening brief and appendix after having been warned that failure to do
4 so could result in the appeals' dismissals. Appellants actually had two
5 attorneys who received copies of this court's notices and orders regarding the
6 briefing deadline, but they nevertheless failed to comply with briefing deadlines
7 and court rules and orders. Although they assert that *Hansen v. Universal*
8 *Health Services of Nevada, Inc.*, 112 Nev. 1245, 924 P.2d 1345 (1996),
9 mandates reconsideration and reinstatement of their appeals, Hansen was a
10 fact-specific decision to some extent, and an appeal may be dismissed for
11 failure to comply with court rules and orders and still be consistent with the
12 court's preference for deciding cases on their merits, as that policy must be
13 balanced against other policies, including the public's interest in an
expeditious appellate process, the parties' interests in bringing litigation to a
final and stable judgment, prejudice to the opposing side, and judicial
administration considerations, such as case and docket management. As for
declining to dismiss the appeal because the dilatory conduct was occasioned
by counsel, and not the client, that reasoning does not comport with general
agency principles, under which a client is bound by its civil attorney's actions
or inactions....

14 *Huckabay Props*, 130 Nev. at 209, 322 P.3d at 437.

15 204. In *Huckabay Props.*, however, the court recognized exceptional circumstances
16 providing two possible exceptions "to the general agency rule that the 'sins' of the lawyer
17 are visited upon his client where the lawyer's addictive disorder and abandonment of his
18 legal practice or criminal conduct justified relief for the victimized client." *Id.* at 204 n.4, 322
19 P.3d at 434 n.4 (citing *Passarelli*, 102 Nev. at 286). Notably, these exceptions noted in
20 *Huckabay Props.* are not present here, as the facts of *Passarelli* are readily distinguishable.

21 205. First, in *Passarelli*, the record included evidence the attorney suffered from a
22 substance abuse disorder that resulted in missed office days and appointments and an
23 inability to function. *Passarelli*, 102 Nev. at 285. Second, the attorney voluntarily closed his
24 law practice. *Id.* Third, the attorney was placed on disability inactive status by the Nevada
25 Bar. *Id.* Finally, the client in *Passarelli* had only one attorney. *Id.*

26 206. None of these facts are present in this case. As concluded *supra*, no
27 competent, reliable, and admissible evidence of Mr. Moquin's claimed mental disorder is
28 before this Court. Further, there is no evidence of missed meetings or absence from office

1 due to the claimed conditions. There is no evidence that Mr. Moquin closed his law practice
2 at the times pertinent to the *60(b) Motion*.

3 207. As of the date of the *Prior 60(b) Order*, and on the record before this Court,
4 Mr. Moquin was on active status with the California Bar. *Opposition to Rule 60(b) Motion*,
5 Ex. 5; *Attorney Search, State Bar of California*, [http://members.calbar.ca.gov/fal/Licensee/](http://members.calbar.ca.gov/fal/Licensee/Detail/257583)
6 [Detail/257583](http://members.calbar.ca.gov/fal/Licensee/Detail/257583) (last visited November 30, 2018).

7 208. Applied here, the *Huckabay Props./Passarelli* analysis compels denial of the
8 *Rule 60(b) Motion*. The standard for “excusable neglect” based on activities of a party’s
9 attorney requires the attorney to be completely unable to respond or appear in the
10 proceedings. *See Passarelli*, 102 Nev. at 285 (court found excusable neglect where
11 attorney failed to attend trial due to psychiatric disorder which caused him to shut down his
12 practice and was placed on disability inactive status by the State Bar of Nevada); *see also*
13 *Cicerchia v. Cicerchia*, 77 Nev. 158, 160-61, 360 P.2d 839, 841 (1961) (court found
14 excusable neglect where respondent lived out of state and suffered a nervous breakdown
15 shortly after retaining out of state counsel, who was unaware and uninformed of the time to
16 appear).
17

18 209. Here, Plaintiffs’ attorneys did not completely abandon the case. Rather, the
19 Nevada Rules of Civil Procedure, this Court’s express orders, and Defendants’ requests for
20 damages computations and exert disclosures were willfully ignored.

21 210. Plaintiffs attempt to excuse this conduct in their *Rule 60(b) Motion* by claiming
22 Mr. Moquin suffered a complete mental breakdown, and his personal life was “in shambles.”
23 In addition to the preclusion of evidence discussed *supra*, the evidence is vague at best
24 regarding these assertions and vague regarding if, and when, Mr. Moquin’s alleged disorder
25 impaired him and vague in asserting when any of the alleged events took place. Plaintiffs
26 attached additional exhibits to their *Reply* to offer some information on timing but are
27 inadequate for the Court’s determination.
28

1 211. Mr. Moquin did not abandon Plaintiffs. He appeared at status hearings,
2 participated in depositions, and filed motions and other papers, including a lengthy
3 opposition to Defendants' motion for partial summary judgment. Mr. Moquin participated in
4 oral arguments and filed two summary judgment motions with substantial supporting
5 exhibits and detailed declarations.

6 212. As discussed *supra*, Plaintiffs had contemporaneous notice of the deadline to
7 oppose the *Sanctions Motion*, of Plaintiffs' failure to oppose the *Sanctions Motion*, and of
8 the *Sanctions Order*. Yet, Plaintiffs did nothing to apprise this Court of any issues until they
9 filed the *Rule 60(b) Motion*. *Prior 60(b) Order* ¶¶ 49-60.

10 213. Additionally, the Court gave counsel, including Mr. O'Mara, notice of the
11 seriousness of Plaintiffs' violations and expressed it was considering dismissal based on
12 those violations. *Opposition to Rule 60(b) Motion* Ex. 3; *December 12, 2017, Transcript*
13 ("you need to know going into these oppositions, that I'm very seriously considering granting
14 all of it...I haven't decided it, but I need to see compelling opposition not to grant it.").
15 Plaintiffs and their attorneys were given notice of the potential consequences of failing to file
16 an opposition to the *Sanctions Motion*.

17 214. A party "cannot be relieved from a judgment [order] taken against him in
18 consequence of the neglect, carelessness, forgetfulness, or inattention of his attorney."
19 *Cicerchia*, 77 Nev. at 161.

20
21 **F. PLAINTIFFS KNEW OF MR. MOQUIN'S ALLEGED CONDITION**
22 **AND ALLEGED NON-RESPONSIVENESS PRIOR TO THE**
23 **SANCTIONS ORDER AND DID NOTHING; THEREFORE**
24 **PLAINTIFFS CANNOT ESTABLISH EXCUSABLE NEGLIGENCE.**

25 215. Even if Mr. Moquin's statements were admissible, which they are not, such
26 statements would only go to show that Mr. Willard should have acted more diligently than he
27 did so here.

28 216. In the *Willard Declaration* and the *Reply Willard Declaration*, Mr. Willard
admits he knew Mr. Moquin was having personal financial difficulties and that he borrowed

1 money from friends and family to fund Mr. Moquin's personal expenses. WD ¶¶ 63-65;
2 RWD ¶¶ 11-13. Mr. Willard also admits that he recommended a psychiatrist to Mr. Moquin,
3 and he again borrowed money from a friend to pay for Mr. Moquin's treatment. WD ¶¶ 68-
4 71; RWD ¶¶ 11-13. Mr. Willard was aware of Mr. Moquin's alleged problems prior to this
5 Court's *Order Granting Motion to Strike and Sanctions Order* yet continued to allow Mr.
6 Moquin to represent Plaintiffs.

7 217. Mr. Willard was aware of Mr. Moquin's inaction which distinguishes this case
8 from the cases upon which Plaintiffs rely in the *Rule 60(b) Motion*, where the parties were
9 unaware of their attorneys' problems. See, e.g., *Passarelli*, 102 Nev. at 286 ("Passarelli
10 was effectually and unknowingly deprived of legal representation"); *US v. Cirami*, 563 F.2d
11 26, 29-31 (2d Cir. 1977) (client discovered that attorney had a mental disorder that
12 prevented him from opposing summary judgment more than two years later); *Boehner v.*
13 *Heise*, 2009 WL 1360975 at *2 (S.D.N.Y. 2009) (client did not learn case had been
14 dismissed or and did not learn of attorney's mental condition until several months after
15 dismissal). Here, Mr. Willard knew of the actions that supported the *Sanctions Order*.
16

17 218. Mr. Willard admits that he was informed by Mr. O'Mara **prior to the dismissal**
18 of Plaintiffs' claims that Mr. Moquin was not responsive. Plaintiffs failed to replace Mr.
19 Moquin or take other action due to perceived financial reasons. WD ¶ 81. Plaintiffs'
20 knowledge and inaction vitiates excuse for neglect.

21 219. The *Rule 60(b) Motion* cites authority for the proposition "where an attorney's
22 mishandling of a movant's case stems from the attorney's mental illness," this might justify
23 relief under Rule 60(b). However, "client diligence must still be shown." *Cobos v. Adelphi*
24 *Univ.*, 179 F.R.D. 381, 388 (E.D.N.Y. 1998); see also *Edward H. Bohlin Co., Inc. v. Banning*
25 *Co., Inc.*, 6 F.3d 350, 357 (5th Cir. 1993) ("A party has a duty of diligence to inquire about
26 the status of a case...."); *Pryor v. U.S. Postal Service*, 769 F.2d 281, 287 (5th Cir. 1985)
27 ("This Court has pointedly announced that a party has a duty of diligence to inquire about
28 the status of a case....").

1 220. Mr. Willard's claim that he had no choice but to continue working with Mr.
2 Moquin due to financial issues lacks credibility as he admits he was able to borrow money to
3 fund Mr. Moquin's personal life and medical treatment. It logically follows he had resources
4 to retain new attorneys at the time.

5 221. Plaintiffs have not established by substantial evidence that they exercised
6 diligence to rectify representation in their case despite ample knowledge of Mr. Moquin's
7 non-responsiveness.

8 **G. PLAINTIFFS ARE NOT ENTITLED TO 60(B) RELIEF BECAUSE TWO**
9 **ATTORNEYS REPRESENTED PLAINTIFFS WHO BOTH HAD AN**
10 **OBLIGATION TO ENSURE COMPLIANCE WITH THE NEVADA**
11 **RULES OF CIVIL PROCEDURE AND THIS COURT'S ORDERS.**

12 222. Plaintiffs' *Rule 60(b) Motion* ignores the fact David O'Mara served as local
13 counsel. In Nevada, the responsibilities of local counsel are clearly defined, and
14 encompass active responsibility to represent the client and manage the case:

15 (a) The Nevada attorney of record shall be responsible for and actively
16 participate in the representation of a client in any proceeding that is subject to
17 this rule.

18 (b) The Nevada attorney of record shall be present at all motions, pre-trials, or
19 any matters in open court unless otherwise ordered by the court.

20 (c) The Nevada attorney of record shall be responsible to the court...for the
21 administration of any proceeding that is subject to this rule and for compliance
22 with all state and local rules of practice. It is the responsibility of Nevada
23 counsel to ensure that the proceeding is tried and managed in accordance with
24 all applicable Nevada procedural and ethical rules.

25 Supreme Court Rule ("SCR") 42(14).

26 223. Mr. O'Mara's representation, even if contractually limited, was governed by
27 this rule.

28 224. Mr. O'Mara expressly "consent[ed] as Nevada Counsel of Record to the
designation of Petitioner to associate in this cause pursuant to SCR 42" as part of his
Motion to Associate Counsel.

1 225. Mr. O'Mara attended every hearing and court conference in this case. And,
2 among other things, Mr. O'Mara signed the Verified Complaint and the First Amended
3 Verified Complaint. *Complaint; FAC.*

4 226. WDCR 23(1) provides:

5 Counsel who has appeared for any party shall represent that party in the case
6 and shall be recognized by the court and by all parties as having control of the
7 client's case, until counsel withdraws, another attorney is substituted, or until
8 counsel is discharged by the client in writing, filed with the filing office, in
accordance with SCR 46 and this rule.

9 WDCR 23.

10 227. Mr. O'Mara was the sole signatory on Plaintiffs' deficient initial disclosure,
11 (*Opposition to Rule 60(b) Motion*, Ex. 6), the uncured deficiencies of which were a basis for
12 sanction of dismissal. *Sanctions Order.*

13 228. Mr. O'Mara also signed and filed the *Brief Extension Request* with this Court,
14 representing that:

15 Counsel has been diligently working for weeks to respond to Defendant's
16 serial motions, which include seeking dismissal of Plaintiffs' case. With the full
17 intention of submitting said responses, Counsel for Plaintiffs encountered
18 unforeseen computer issues.... Counsel for Plaintiffs is confident that with a
19 one-day extension they will be able to recreate and submit the oppositions to
Defendants' three motions.

20 229. Plaintiffs do not provide any declaration by Mr. O'Mara in support of their *Rule*
21 *60(b) Motion*.

22 230. Mr. O'Mara's involvement precludes a conclusion of excusable neglect here.

23 **H. THE SANCTIONS ORDER WAS SUFFICIENT UNDER NEVADA LAW.**

24 231. Plaintiffs assert that the *Sanctions Order* was insufficient under *Young v.*
25 *Johnny Ribeiro*, 106 Nev. 88, 93, 787 P.2d 777, 780 (1990) because the *Sanctions Order*
26 did not consider "whether sanctions unfairly operate to penalize a party for the misconduct
27 of his or her attorney." *Rule 609b) Motion* at 12. However, consideration of this factor is
28 discretionary, not mandatory. See *Young*, 106 Nev. at 93 ("The factors a court **may**

properly consider include...whether sanctions unfairly operate to penalize a party for the misconduct of his or her attorney”) (emphasis added).

232. The Court concludes the factors enumerated in *Young v. Johnny Ribeiro Bldg. Inc.* were met by the *Sanctions Order*. Specifically, the Nevada Supreme Court held where a court issues an order of dismissal with prejudice as a discovery sanction, a court may consider, among others, the degree of willfulness of the offending party, the extent to which the non-offending party would be prejudiced by a lesser sanction, the severity of the sanction of dismissal relative to the severity of the discovery abuse, and the feasibility and fairness of alternative, less severe sanctions. *Young*, 106 Nev. at 93. The factors are not mandatory so long as the Court supports the order with “an express, careful and preferably written explanation of the court’s analysis of the pertinent factors.” *Id.*

233. While each suggested factor discussed in the *Sanctions Order* was not labeled by factor, the Court addressed the factors it deemed appropriate.

234. In the circumstances of this case, the dismissal of Plaintiffs’ claims did not unfairly penalize Plaintiffs based on the factors analyzed in the *Sanctions Order*.

I. THE RULE 60(B) MOTION SHOULD BE DENIED.

235. After weighing the credibility and admissibility of the evidence provided in support of the *Rule 60(b) Motion*, substantial evidence has not been presented to establish excusable neglect.

236. Plaintiffs have failed to meet their burden of proving, by a preponderance of the evidence, excusable neglect sufficient to justify relief under NRCP 60(b).

237. Similarly, careful analysis of each *Yochum* factor demonstrates that the *Yochum* factors warrant, if not compel, denial of NRCP 60(b)(1) relief.

//

//

1 **III. ORDER.**

2 Based upon the foregoing, and good cause appearing therefor,

3 IT IS HEREBY ORDERED Plaintiffs' Rule 60(b) Motion is DENIED in its entirety.

4 DATED this 13th day of September, 2021.

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7 DISTRICT JUDGE
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ROBERT EISENBERG, ESQ.
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IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

IN AND FOR THE COUNTY OF WASHOE

LARRY J. WILLARD, individually and as
trustee of the Larry James Willard Trust Fund;
OVERLAND DEVELOPMENT
CORPORATION, a California corporation;
EDWARD E. WOOLEY AND JUDITH A.
WOOLEY, individually and as trustees of the
Edward C. Wooley and Judith A. Wooley
Intervivos Revocable Trust 2000,

Plaintiffs,

vs.

BERRY-HINCKLEY INDUSTRIES, a Nevada
corporation; and JERRY HERBST, an
Individual;

Defendants.

CASE NO. CV14-01712

DEPT. 6

BERRY-HINCKLEY INDUSTRIES, a
Nevada corporation; and JERRY HERBST,
an individual;

Counterclaimants,

vs

LARRY J. WILLARD, individually and as
trustee of the Larry James Willard Trust Fund;
OVERLAND DEVELOPMENT
CORPORATION, a California corporation;

Counter-defendants.

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NOTICE OF ENTRY OF ORDER

PLEASE TAKE NOTICE that on September 13, 2021, an Order After Remand Denying Plaintiffs' Rule 60(B) Motion For Relief was entered in the above-captioned matter. A true and correct copy of the Order is attached hereto as **Exhibit 1**.

AFFIRMATION

Pursuant to NRS 239B.030, the undersigned does hereby affirm that the preceding document does not contain the social security number of any person.

DATED this 14th day of September 2021.

DICKINSON WRIGHT, PLLC

/s/ Brian R. Irvine
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CERTIFICATE OF SERVICE

I certify that I am an employee of DICKINSON WRIGHT PLLC, and that on this date, pursuant to NRCp 5(b); I am serving a true and correct copy of the attached NOTICE OF ENTRY OF ORDER on the parties through the Second Judicial District Court's E-Flex filing system to the following:

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rle@lge.net

Attorneys for Plaintiffs/Counterdefendants

Attorneys for Plaintiffs/Counterdefendants

DATED this 14th day of September 2021.

/s/ Mina Reel
An employee of DICKINSON WRIGHT PLLC

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EXHIBIT TABLE

Exhibit	Description	Pages ¹
1	ORDER AFTER REMAND DENYING PLAINTIFFS' RULE 60(b) MOTION FOR RELIEF	46

¹ Exhibit Page counts are exclusive of exhibit slip sheets.

FILED
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Alicia L. Lerud
Clerk of the Court
Transaction # 8644717

EXHIBIT 1

EXHIBIT 1

1 CODE NO. 2842

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

8 LARRY J. WILLARD, individually and as
9 trustee of the Larry James Willard Trust Fund;
10 OVERLAND DEVELOPMENT
11 CORPORATION, a California corporation;
12 EDWARD C. WOOLEY AND JUDITH A
13 WOOLEY, individually and as trustees of the
14 Edward C. Wooley and Judith A. Wooley
15 Intervivos Revocable Trust 2000,

16 Plaintiffs,

17 vs.

18 BERRY-HINCKLEY INDUSTRIES, a Nevada
19 Corporation; and JERRY HERBST, an
20 individual,

21 Defendants.
22 _____/

23 BERRY-HINCKLEY INDUSTRIES, a
24 Nevada corporation; and JERRY HERBST,
25 an individual,

26 Counterclaimants,

27 vs

28 LARRY J. WILLARD, individually and as
trustee of the Larry James Willard Trust Fund;
OVERLAND DEVELOPMENT
CORPORATION, a California corporation,

Counter-defendants.
_____/

Case No. CV14-01712

Dept. No. 6

**ORDER AFTER REMAND
DENYING PLAINTIFFS'
RULE 60(b) MOTION FOR RELIEF**

1 **ORDER AFTER REMAND DENYING PLAINTIFFS' RULE 60(b) MOTION FOR RELIEF**

2 Before this Court is Plaintiffs' Rule 60(b) Motion for Relief ("*60(b) Motion*") filed by
3 Plaintiffs Larry J. Willard, individually and as trustee of the Larry James Willard Trust Fund
4 and Overland Development Corporation, a California Corporation (collectively, "Willard" or
5 "Plaintiffs"), by and through counsel, Robertson, Johnson, Miller & Williamson. Pursuant to
6 NRCPC 60(b), Plaintiffs seek to set aside: (1) this Court's January 4, 2018, *Order Granting*
7 *Defendants'/Counterclaimants' Motion to Strike and/or Motion in Limine to Exclude the*
8 *Expert Testimony of Daniel Gluhaich*; (2) this Court's January 4, 2018, *Order Granting*
9 *Defendants'/Counterclaimants' Motion for Sanctions*; and (3) this Court's March 6, 2018,
10 *Findings of Fact, Conclusions of Law, and Order on Defendants' Motion for Sanctions.*
11 (*60(b) Motion*).

12 In opposition, Defendants Berry-Hinckley Industries ("BHI") and Jerry Herbst
13 (collectively, "Defendants") filed their *Opposition to Rule 60(b) Motion for Relief ("60(b)*
14 *Opposition"*), by and through their counsel, Dickinson Wright PLLC.

15 Plaintiffs then filed their *Reply in Support of the Willard Plaintiffs' Rule 60(b) Motion*
16 *for Relief*. Prior to remand, oral arguments were held before this Court on September 4,
17 2018.

18 After consideration of the papers submitted, the arguments of counsel, and the entire
19 court file, this Court entered its *Order Denying Plaintiffs' Rule 60(b) Motion for Relief* (the
20 "*Prior 60(b) Order*").

21 Plaintiffs appealed the *Prior 60(b) Order*. On August 6, 2020, the Nevada Supreme
22 Court entered its Opinion (the "*Opinion*") in which it reversed the *Prior 60(b) Order* and
23 remanded the case to this Court, with instructions the Court issue explicit and detailed
24 written findings on each of the factors identified in *Yochum v. Davis*, 98 Nev. 484, 486, 653
25 P.2d 1215, 1216 (1982).
26

27 After consideration of the instant papers submitted, the arguments of counsel, and
28 the entire court file, and in compliance with the Nevada Supreme Court's instructions, the

1 Court makes the following findings of fact, conclusions of law and orders as follows:

2 **I. FINDINGS OF FACT.**

3 The Court makes the following Findings of Fact:

4 **A. PLAINTIFFS' COMPLAINT.**

5 1. On August 8, 2014, Plaintiffs commenced this action by filing their *Complaint*
6 against Defendants.¹ *Complaint*, generally.

7 2. By the *Complaint* and the *First Amended Complaint* ("FAC"), Plaintiffs sought
8 the following damages against Defendants for an alleged breach of the lease between
9 Willard and BHI: (1) "rental income" for \$19,443,836.94, discounted by 4% per the lease to
10 \$15,741,360.75 as of March 1, 2013; and (2) certain property-related damages, such as
11 insurance and installation of a security fence. *FAC*.

12 3. Willard also sought several other categories of damages which have since
13 been dismissed or withdrawn. May 30, 2017, *Order*.

14
15 **B. PLAINTIFFS FAILED TO COMPLY WITH THE NEVADA RULES**
16 **OF CIVIL PROCEDURE AND THIS COURT'S ORDERS.**

17 4. Plaintiffs failed to provide a compliant damages disclosure in this action².

18 5. Plaintiffs failed to provide a damages computation in their initial disclosures, as
19 required under NRCP 16.1(a)(1)(C). *Findings of Fact, Conclusions of Law, and Order on*
20 *Defendants' Motion for Sanctions* ("Sanctions Order") ¶ 12. Plaintiffs also failed to provide
21 damages computations at any time despite numerous demands on both Brian Moquin and
22 David O'Mara, of which Plaintiffs personally were aware. *Sanctions Order* ¶¶ 14-16, 25, 27-
23 33, 39, 43-44 and 51-54; *January 10, 2017, Transcript*.

24
25 _____
26 ¹ Willard filed the initial complaint jointly with Edward E. Wooley and Judith A. Wooley, individually
27 and as Trustees of the Edward C. Wooley and Judith A. Wooley Intervivos Revocable Trust 2000
28 (collectively, "Wooley"). However, Defendants and Wooley entered into a settlement agreement and
stipulation for dismissal. This Court entered its Order on April 13, 2018 dismissing Wooley's claims
with prejudice.

² The Court numbers the Findings of Fact sequentially after each sub-point and continuing through
the next sub-point, rather than beginning the sequence with "1" again.

1 6. Plaintiffs failed to provide complete and adequate responses to interrogatories
2 requesting information about Plaintiffs' damages in the normal course of discovery.

3 7. Plaintiffs failed to provide complete and adequate responses to interrogatories
4 in violation of this Court's *Order Granting Defendants' Motion to Compel* and failed to
5 comply with this Court's *Order* ("January Hearing Order") issued after the parties discussed
6 Plaintiffs' failure to provide damages computations at the January 10, 2017, hearing
7 attended by Mr. Moquin, Mr. O'Mara, and Plaintiff Larry J. Willard. *Sanctions Order* ¶¶ 17-
8 25.

9 8. The *January Hearing Order* required Plaintiffs to provide damages
10 computations and supporting materials. *Sanctions Order* ¶¶ 46-49, 54, 59-64, 67-68;
11 *Defendants' Opposition to Plaintiffs' Rule 60(b) Motion*, Ex. 2; *January 10, 2017, Transcript*
12 at 61-63, 68; *January Hearing Order*.

13 9. Plaintiffs failed to properly disclose Daniel Gluhaich as an expert witness as
14 required by NRCP 16.1(a)(2). *Sanctions Order* ¶¶ 34-37.

15 10. In contravention of this Court's *January Hearing Order*, Plaintiffs failed to
16 provide an amended disclosure of Mr. Gluhaich, although Defendants' counsel made
17 multiple requests. *Sanctions Order* ¶¶ 38-45, 50-64.

18
19 **C. PLAINTIFFS' SUMMARY JUDGMENT MOTION.**

20 11. Pursuant to the February 9, 2017, *Stipulation and Order to Continue Trial*,
21 discovery closed in mid-November, 2017.

22 12. On October 18, 2017, less than a month before the close of discovery,
23 Plaintiffs filed their *Motion of Summary Judgment* asserting they were entitled, as a matter
24 of law, to more than triple the amount of damages alleged in and requested by their *First*
25 *Amended Complaint*. *Sanctions Order* ¶¶ 69, 73.
26
27
28

1 13. The damages asserted in Plaintiffs' *Motion for Summary Judgment* were not
2 previously disclosed. The motion was also supported by previously undisclosed expert
3 opinions and documents. *Sanctions Order* ¶¶ 74-79.

4 14. The expert's documents had been in Plaintiffs' possession throughout the
5 pendency of this case, but had not been previously disclosed, despite Defendants' requests
6 for such documents. *Id.* at ¶¶ 79, 136.

7 15. On November 13, 2017, Defendants filed their Opposition to Plaintiffs' *Motion*
8 *for Summary Judgment*.

9 16. Plaintiffs did not submit the *Motion for Summary Judgment* for decision.

10 **D. DEFENDANTS' MOTION TO STRIKE AND/OR MOTION IN LIMINE TO**
11 **EXCLUDE THE EXPERT TESTIMONY OF DANIEL GLUHAICH AND**
12 **MOTION FOR SANCTIONS.**

13 17. On November 14, 2017, Defendants filed their *Motion to Strike and/or Motion*
14 *in Limine to Exclude Expert Testimony of Daniel Gluhaich* ("Motion to Strike").

15 18. In the *Motion to Strike*, Defendants maintained this Court should preclude
16 Plaintiffs from offering Mr. Gluhaich's testimony on the grounds: (1) Plaintiffs failed to
17 adequately disclose Mr. Gluhaich as an expert witness because they failed to provide "a
18 summary of the facts and opinions to which the witness is expected to testify" as required by
19 NRCP 16.1(a)(2)(B); (2) the opinions offered by Mr. Gluhaich in support of Plaintiffs' *Motion*
20 *for Summary Judgment* were based upon inadmissible hearsay and were based solely on
21 the opinions of others; and (3) Mr. Gluhaich was not qualified to offer the opinions included
22 in his declaration filed in support of Plaintiffs' *Motion for Summary Judgment*.

23 19. On November 15, 2017, Defendants filed their *Motion for Sanctions* (the
24 "*Sanctions Motion*").

25 20. In the *Sanctions Motion*, Defendants argued this Court should sanction
26 Plaintiffs for their continued and intentional conduct in failing to comply with the Nevada
27 Rules of Civil Procedure and this Court's orders requiring Plaintiffs to provide damages
28 computations and full and adequate expert disclosures, and dismiss Plaintiffs' claims with

1 prejudice or, in the alternative, preclude Plaintiffs from seeking new damages or relying
2 upon their undisclosed expert and appraisals.

3 21. Defendants agreed to give Plaintiffs several extensions of time to oppose the
4 *Motion to Strike* and *Sanctions Motion*, but no oppositions were filed.

5 22. On December 6, 2017, Plaintiffs, through Mr. O'Mara, requested relief from the
6 Court by extension to respond until "December 7, 2017 at 4:29 p.m." *Sanctions Order* 94;
7 *Plaintiffs' Request for a Brief Extension of Time* (the "*Extension Request*").

8 23. In the *Extension Request*, Mr. O'Mara also represented that "[c]ounsel has
9 been diligently working for weeks to respond to Defendant's (sic) serial motions, which
10 include seeking dismissal with prejudice of Plaintiffs' case." *Id.* at 2.

11 24. This Court held a status conference on December 12, 2017, attended by
12 Defendants' counsel and Plaintiffs' counsel, Mr. Moquin and Mr. O'Mara. At the status
13 conference, after observing Mr. Moquin, having a significant dialogue with Mr. Moquin, and
14 over vehement objection by Defendants' counsel, this Court granted *Plaintiffs' Brief*
15 *Extension Request* plus granted more time than was requested. The Court directed Plaintiffs
16 to respond to the outstanding motions no later than Monday, December 18, 2017, at 10:00
17 am. *Sanctions Order* ¶ 95.

18 25. This Court further directed Defendants to file their reply briefs no later than
19 January 8, 2018. The Court set the parties' outstanding Motions for oral argument on
20 January 12, 2018. *Sanctions Order* ¶ 96.

21 26. This Court admonished Plaintiffs, stating "you need to know going into these
22 oppositions, that I'm very seriously considering granting all of it...I haven't decided it, but I
23 need to see compelling opposition not to grant it." *Opposition to Rule 60(b) Motion*, Ex. 3,
24 December 12, 2017, *Transcript of Status Conference*, in part.

25 27. Plaintiffs did not file an opposition or response to the *Motion to Strike* or
26 *Sanctions Motion* by December 18, 2017, or any time thereafter, nor did Plaintiffs request
27 any further extension.
28

1 28. This Court entered its *Order Granting Defendants'/Counterclaimants' Motion to*
2 *Strike and/or Motion in Limine to Exclude the Expert Testimony of Daniel Gluhaich* on
3 January 4, 2018 ("*Order Granting Motion to Strike*").

4 29. This Court entered its *Order Granting Defendants'/Counterclaimants' Motion*
5 *for Sanctions* on January 4, 2018 ("*Order Granting Sanctions Motion*").

6 30. This Court entered its *Findings of Fact, Conclusions of Law, and Order on*
7 *Defendants' Motion for Sanctions* on March 6, 2018 ("*Sanctions Order*").³

8 **E. WITHDRAWAL OF LOCAL COUNSEL.**

9 31. On March 15, 2018, Mr. O'Mara filed a *Notice of Withdrawal of Local Counsel*
10 (*"Notice"*). The *Notice* states, "[c]ounsel has had no contact with lead counsel Mr. Moquin for
11 many months with a total failure just prior to the Court's first decisions being filed in this
12 case," and "Mr. Moquin was unresponsive during the time in which this Court was deciding
13 the pending motions, even after counsel begged him for a response to be filed with the
14 Court and was told he would provide such a response." *Notice*, 1.

15 32. The *Notice* describes the terms of retention of Mr. O'Mara as "undersigned
16 counsel was retained solely as local counsel, and provided Mr. Moquin with the necessary
17 information related to the Court's filing requirement and timelines. Undersigned Counsel
18 was retained only to provide services as directed by Mr. Moquin, and would be relieved of
19 services if Mr. Moquin was removed." *Id.*

20 **F. PLAINTIFFS' RULE 60(B) MOTION.**

21 33. On March 26, 2018, Robertson, Johnson, Miller & Williamson filed a notice of
22 appearance on behalf of Plaintiffs.

23 34. On April 18, 2018, Plaintiffs filed the prior *Rule 60(b) Motion*. Plaintiffs argued
24 this Court should set aside its *Order Granting the Motion to Strike, Order Granting Sanctions*
25

26 _____
27 ³The *Order Granting Sanctions* imposed sanctions and directed Defendants to "submit a Proposed
28 Order granting *Defendants'/Counterclaimants' Motion for Sanctions*, including factual and legal
analysis and discussion, to Department 6 within twenty (20) days of the date of this *Order* in
accordance with WDCR 9." *Order Granting Sanctions Motion*, 4. For purposes of the instant motion,
the Court considers the *Order Granting Sanctions Motion and Sanctions Order*, as one for the
purposes of the analysis herein.

1 *Motion*, and *Sanctions Order*, based upon Mr. Moquin’s excusable neglect. Plaintiffs further
2 argued the *Sanctions Order* was insufficient under *Young v. Johnny Ribeiro*, 106 Nev. 88,
3 787 P.2d 777 (1990), because the Court did not consider whether sanctions unfairly operate
4 to penalize Plaintiffs for the misconduct of their attorney.

5 35. Plaintiffs argued their failure to provide the damages computations and
6 adequate expert disclosures, as required by the Nevada Rules of Civil Procedure and this
7 Court’s orders and their failure to file oppositions to the *Motion to Strike* and *Sanctions*
8 *Motion* were all due to Mr. Moquin’s failure “to properly prosecute this case due to a serious
9 mental illness and a personal life that was apparently in shambles.” (*Rule 60(b) Motion* 1).

10 36. The *Rule 60(b) Motion* purported to support its arguments primarily through
11 the *Declaration of Larry J. Willard* (the “*Willard Declaration*” and “*WD*” in citations to the
12 record).⁴

13 37. The *Willard Declaration* included several statements about Mr. Moquin’s
14 alleged mental disorder. It stated that Mr. Willard is “**convinced**” Mr. Moquin was dealing
15 with issues and demons beyond his control. WD ¶ 66. It further stated that he “**learned**”
16 that Mr. Moquin was struggling with constant marital conflict that greatly interfered with his
17 work. *Id.* The *Willard Declaration* stated that Mr. Moquin suffered a “total mental
18 breakdown.” WD ¶ 68. It stated that Mr. Moquin **explained** to Mr. Willard he had been
19 diagnosed with bipolar disorder. WD ¶ 70. Mr. Willard also declared that he believed Mr.
20 Moquin’s disorder to be “severe and debilitating.” WD ¶ 73. He stated that he **now sees**
21 “that Mr. Moquin was suffering from [symptoms of bipolar disorder] throughout his work on
22 the case.” WD ¶ 76. And, Mr. Willard declared that he **can now see** how Mr. Moquin’s
23 alleged psychological issues affected Plaintiffs’ case. WD ¶ 87. (Bolded emphasis supplied
24 on all paragraphs cited).

25
26
27
28 ⁴The *Willard Declaration* includes paragraphs discussing the underlying facts of the action and the
initial filing of the suit in California. These paragraphs are not relevant to the Court’s determination of
the *Rule 60(b) Motion* and are not considered. See e.g., WD ¶¶ 1-51, 100.

1 38. The *Rule 60(b) Motion* also included an internet printout purporting to list
2 symptoms of bipolar disorder, (*Rule 60(b) Motion*, Ex. 5), and several documents related to
3 alleged spousal abuse by Mr. Moquin, some of which referenced Mr. Moquin's alleged
4 bipolar disorder, and which included an Emergency Protective Order from a California
5 proceeding, (*Rule 60(b) Motion*, Ex. 6), a Pre-Booking Information Sheet from a California
6 proceeding (*Rule 60(b) Motion*, Ex. 7), and a Request for Domestic Violence Restraining
7 Order, also from a California proceeding (*Rule 60(b) Motion*, Ex. 8). The documents from
8 the California proceedings were not certified by the clerk of the court.

9 39. The *Rule 60(b) Motion* did not include any supporting declaration by Mr.
10 O'Mara, even though Mr. O'Mara was a counsel of record for Plaintiffs from the inception of
11 the case through March 15, 2018. See generally *id.*

12 40. Defendants filed their *Opposition to the Rule 60(b) Motion* on May 18, 2018
13 (the "*Opposition*").

14 41. Plaintiffs filed their *Reply in Support of the Willard Plaintiffs' Rule 60(b) Motion*
15 on May 29, 2018 (the "*Reply*"). The *Reply* attached 11 new exhibits, including a new
16 *Declaration of Larry J. Willard in Response to Defendants' Opposition to Rule 60(b) Motion*
17 *for Relief. Reply*, Ex. 1 ("*Reply Willard Declaration*" and "*RWD*" for record citations).⁵ The
18 *Reply* exhibits included copies of text messages between Mr. Willard and Mr. Moquin,
19 (*Reply*, Exs. 3, 6, 8, and 10), a receipt detailing an alleged payment made by Mr. Willard to
20 Mr. Moquin's doctor on March 13, 2018 (*Reply*, Ex. 5), and a letter from Mr. Williamson to
21 Mr. Moquin dated May 14, 2018. (*Reply*, Ex. 9).

22 42. On June 6, 2018, Defendants filed their *Motion to Strike, or in the Alternative,*
23 *Motion for Leave to File Sur-Reply*, arguing this Court should strike Exhibits 1-10 to the
24 *Reply* because (a) Defendants did not have the opportunity to respond to those exhibits in
25 their *Opposition to the Rule 60(b) Motion*; (b) exhibits contained inadmissible hearsay and/or
26
27

28 ⁵The Court disregards the paragraphs included in the *Willard Declaration* and the *Reply Willard Declaration* that can be construed to be stated appeal to the Court's sympathy. See e.g., *WD* ¶¶91 - 100; *RWD* ¶67.

1 inadmissible lay opinion testimony; and (c) a number of exhibits were not relevant to this
2 Court's determination of excusable neglect.

3 43. Defendants' *Motion to Strike, or in the Alternative, Motion for Leave to File*
4 *Sur-Reply* was fully briefed and submitted to this Court for decision on June 29, 2018.
5 Subsequently, Plaintiffs' counsel stipulated to the filing of a sur-reply.

6 44. In its *Sanctions Order*, the Court made the following findings of fact and
7 conclusions of law, among others: First, plaintiffs failed to provide damages disclosures and
8 failed to properly disclose an expert witness in violation of this Court's express Orders.
9 *Sanctions Order* ¶¶ 67, 68. Plaintiffs acknowledged their failure to properly disclose an
10 expert witness in accordance with NRCP 16.1(a)(2)(B). *Stipulation and Order*, February 9,
11 2017. Plaintiffs did not thereafter attempt to properly disclose the expert witness for the
12 entirety of 2017. Plaintiffs failed to comply with multiple orders of this Court. Defendants
13 filed several motions to compel, and Plaintiffs' non-compliance forced extension of trial and
14 discovery deadlines on three separate occasions. This Court sanctioned Plaintiffs by
15 ordering payment of Defendants' expenses incurred in filing the *Motion to Compel*.
16

17 45. Plaintiffs did not oppose the *Sanctions Motion* despite this Court's express
18 admonitions that the Court was "seriously considering" dismissal.

19 **G. PLAINTIFFS' APPEAL,**

20 46. On November 30, 2018, this Court entered its *Prior 60(b) Order*, wherein this
21 Court denied Plaintiffs' *Rule 60(b) Motion*.

22 47. Plaintiffs timely appealed this Court's *Prior 60(b) Order*.

23 48. On August 6, 2020, the Nevada Supreme Court entered its published opinion
24 (the "*Opinion*").

25 49. B the *Opinion*, the Nevada Supreme Court reversed this Court's *Prior 60(b)*
26 *Order*, concluding that this Court abused its discretion by failing to address the factors
27 articulated in *Yochum v. Davis*, 98 Nev. 484, 486, 653 P.2d 1215, 1216 (1982), *overruled in*
28

1 *part on other grounds by Epstein v. Epstein*, 113 Nev. 1401, 1405, 950 P.2d 771, 773
2 (1997), when ruling on the Plaintiffs' *Rule 60(b) Motion*.

3 50. The Nevada Supreme Court remanded the proceedings back to this Court for
4 further consideration consistent with the *Opinion* and directed this Court to issue explicit and
5 detailed written findings with respect to each of the four *Yochum* factors in considering the
6 Plaintiffs' *Rule 60(b) Motion*.

7 51. The Nevada Supreme Court subsequently clarified "neither party may present
8 any new arguments or evidence on remand; the district court's consideration of the factors
9 set forth in *Yochum v. Davis*, 98 Nev. 484, 486, 653 P.2d 1215, 1216 (1982), is limited to
10 the record currently before the court." (*Order Denying En Banc Reconsideration*).

11 52. If any of the following Conclusions of Law contain or may be construed to
12 contain Findings of Fact, they are incorporated here and shall be treated as appropriately
13 identified and designated.
14

15 **II. CONCLUSIONS OF LAW.**

16 Based on the Court's Findings of Fact, the Court makes its Conclusions of Law as
17 follows.

18 53. If any of the foregoing Findings of Fact contain or may be construed to contain
19 Conclusions of Law, they are incorporated here and shall be treated as appropriately
20 identified and designated.

21 **A. RULE 60(B) STANDARD.**

22 54. NRCP 60(b)(1) is a remedial rule that gives due consideration to our court
23 system's preference to adjudicate cases on the merits, without compromising the dignity of
24 the court process. *Opinion*.

25 55. Under NRCP 60(b)(1), on motion, this Court may relieve a party from an order
26 or final judgment on grounds of mistake, inadvertence, surprise, or excusable neglect.
27 NRCP 60(b)(1); *Opinion*.
28

1 56. A party who seeks to set aside an order pursuant to NRCP 60(b)(1) “has the
2 burden to prove mistake, inadvertence, surprise, or excusable neglect by a preponderance
3 of the evidence.” *Polivka v. Kuller*, 128 Nev. 926, 381 P.3d 651 (2012) (citations omitted);
4 *see also Britz v. Consolidated Casinos Corp.*, 87 Nev. 441, 446, 488 P.2d 911, 915 (1971)
5 (“the burden of proof on [a motion to set aside under Rule 60(b)] is on the moving party who
6 must establish his position by a preponderance of the evidence.” (quoting *Luz v. Lopes*, 55
7 Cal. 2d 54, 10 Cal. Rptr. 161, 166, 358 P.2d 289, 294 (1960))).

8 57. A district court must address the factors set forth in *Yochum v. Davis*, 98 Nev.
9 484, 486, 653 P.2d 1215, 1216 (1982), *overruled in part on other grounds by Epstein v.*
10 *Epstein*, 113 Nev. 1401, 1405, 950 P.2d 771, 773 (1997), when determining if the NRCP
11 60(b)(1) movant established, by a preponderance of the evidence, that sufficient grounds
12 exist to set aside a final judgment, order, or proceeding. *Opinion*.

13
14 **B. THE RULE 60(B) MOTION IS NOT SUPPORTED BY COMPETENT,**
15 **ADMISSIBLE, AND SUBSTANTIAL EVIDENCE.**

16 58. Plaintiffs moved to set aside the *Order Granting Defendants’ Motion to Strike,*
17 *Order Granting the Motion for Sanctions, and Sanctions Order*⁶ because Mr. Moquin “failed
18 to properly prosecute this case due to a serious mental illness and a personal life that was
19 apparently in shambles.” *Rule 60(b) Motion* 1.

20 59. While this Court “has wide discretion in deciding whether to grant or deny a
21 motion to set aside a judgment under NRCP 60(b),” *Stoecklein v. Johnson Electric, Inc.*, 109
22 Nev. 268, 271, 849 P.2d 305, 307 (1993), *holding modified by Willard v. Berry-Hinckley*
23 *Indus.*, 136 Nev. Adv. Op. 53, 469 P.3d 176 (2020), this discretion is “a legal discretion and
24 **cannot be sustained where there is no competent evidence** to justify the court’s action.
25 *Id.* (emphasis added) (citing *Lukey v. Thomas*, 75 Nev. 20, 22, 333 P.2d 979 (1959)); *cf.*
26

27 ⁶Plaintiffs argue that the *Sanctions Order* was insufficient under *Young v. Johnny Ribeiro*, 106 Nev.
28 88, 93, 787 P.2d 777, 780 (1990) because the *Sanctions Order* did not consider “whether sanctions
unfairly operate to penalize a party for the misconduct of his or her attorney.” *Rule 60(b) Motion*, 12.
This is addressed by the Court hereinafter.

1 *generally Otak Nev. LLC v. Eighth Judicial Dist. Ct.*, 129 Nev. 799, 805, 312 P.3d 491, 496
2 (2013) (a court abuses its discretion when its decision is not supported by substantial
3 evidence).

4 60. A party who seeks to set aside an order pursuant to NRCP 60(b)(1) bears the
5 burden of proof to show excusable neglect “by a preponderance of the evidence.” *Kahn v.*
6 *Orme*, 108 Nev. 510, 835 P.2d 790 (1992), *overruled on other grounds by Epstein v.*
7 *Epstein*, 113 Nev. 1401, 950 P.2d 771 (1997); *Britz v. Consolidated Casinos Corp.*, 87 Nev.
8 441, 446, 448 P.2d 911, 915 (1971). In fact, “before a...judgment may be set aside under
9 NRCP 60(b) (1), the party so moving **must show to the court** that his neglect was
10 excusable.” *McClellan v. David*, 84 Nev. 283, 439 P.2d 673 (1968) (emphasis added).

11 61. Where “there was no credible evidence before the lower court to show that the
12 neglect of the movant was excusable under the circumstances,” the Nevada Supreme Court
13 reversed a district court’s order setting aside a judgment, stating “no excusable neglect was
14 shown as a matter of law.” *McClellan*, 84 Nev. at 284, 289, 439 P.2d at 674, 677.

15 62. The *Rule 60(b) Motion* purports to provide substantial evidence to support its
16 legal argument through the *Willard Declaration* and the *Reply Willard Declaration* together
17 with the attached exhibits, all of which contain inadmissible statements, some inadmissible
18 on multiple grounds.

19 63. The *Willard Declaration* includes several statements about Mr. Moquin’s
20 alleged mental disorder. As set forth in the Findings of Fact, *supra*, Mr. Willard declares that
21 he is “convinced” that Mr. Moquin was dealing with issues and demons beyond his control
22 (WD ¶ 66); he “learned” Mr. Moquin was struggling with constant marital conflict that greatly
23 interfered with his work (WD ¶ 67; RWD ¶ 15); Mr. Moquin suffered a “total mental
24 breakdown”) (WD ¶ 68; RWD ¶ 16); Mr. Moquin explained to Mr. Willard he had been
25 diagnosed with bipolar disorder (WD ¶ 70; RWD ¶ 37); Mr. Willard believes Mr. Moquin’s
26 disorder to be “severe and debilitating” (WD ¶ 73); Mr. Willard now sees that “Mr. Moquin
27 was suffering from [symptoms of bipolar disorder] throughout his work on the case (WD ¶
28

76); and, Mr. Willard can now see how Mr. Moquin's alleged psychological issues affected his case (*WD* ¶ 87).⁷

64. The *Willard Declaration* addresses Mr. Moquin's private life, including his personal mental status and conflict in his marriage.

65. Mr. Willard's statements are not derived from his own perceptions.

66. The nature of the subject matter, itself, establishes Mr. Willard could not have obtained this information by personal observation.

67. Mr. Willard lacks personal knowledge to testify to the assertions included in the *Willard Declaration* and the *Reply Willard Declaration* regarding Mr. Moquin's mental disorder, private personal life, and private marital conflicts.

⁷The *Willard Declaration* and the *Reply Willard Declaration* contain many nearly identical statements. They compare as follows:

<i>Willard Declaration</i> Paragraph	<i>Reply Willard Declaration</i>
53	7
54	8
59	9
63	11
64	12 (slightly differs)
65	13
67	15
68	16
69	35
70	38
71	39
82	10 Similar – not exact)
89	3
91	67

1 68. It also logically follows that Mr. Willard could only have obtained this
2 information by communication from Mr. Moquin (or Mr. Moquin's wife), although not overtly
3 stated.

4 69. The *Willard Declaration* and *Reply Willard Declaration* include inadmissible
5 hearsay under NRS 51.035 and 51.065. See *New Image Indus. v. Rice*, 603 So.2d 895
6 (Ala. 1992) (affirming denial of 60(b) relief where the only evidence of excusable neglect
7 was an affidavit containing inadmissible hearsay and speculation); *Agnello v. Walker*, 306
8 S.W.3d 666, 673 (Mo. Ct. App. 2010), *as modified* (Apr. 27, 2010) (a motion to set aside a
9 default judgment is not a "self-proving motion," and "[i]t is not sufficient to attach hearsay
10 testimonial documentation in support of a motion to set aside....").

11 70. Separate and apart from the challenge to the *Willard Declaration* and the
12 *Reply Willard Declaration* on hearsay grounds, Mr. Willard's statements are also speculative
13 and therefore inadmissible. He does not declare that he personally observed Mr. Moquin's
14 alleged condition until he draws this unqualified conclusion late in the case, and, even if he
15 had, he speculates what the mental disorder could cause and caused, offering an internet
16 article to boost his credibility, which is also hearsay with no applicable exception offered.

17 71. The assertion describing Mr. Moquin's statement to Mr. Willard that Dr. Mar
18 diagnosed Mr. Moquin with bipolar disorder (*WD* ¶ 69; *RWD* ¶ 35) is inadmissible hearsay
19 with no exception under NRS 51.105(1) because Mr. Willard's declaration does not
20 constitute Mr. Moquin's declaration of "then existing state of mind, emotion, sensation or
21 physical condition, such as intent, plan, motive, design, mental feeling, pain and bodily
22 health." Instead, Dr. Mar purportedly diagnosed Mr. Moquin; Mr. Moquin told Mr. Willard of
23 Dr. Mar's purported diagnosis; and Mr. Willard makes the statement of Mr. Moquin's
24 diagnosis. The statements were not spontaneous and instead were a basis for Mr. Moquin
25 to request monetary assistance.
26

27 72. Even if Mr. Moquin's report of Dr. Mar's diagnosis is construed as constituting
28 Mr. Moquin's statement of then-existing mental condition, Mr. Willard's statements are not

1 admissible as contemporaneous statements made by Mr. Moquin about his own present
2 physical symptoms or feelings. See 2 McCormick on Evid. 273 (7th ed.) (“Statements of the
3 declarant’s present bodily condition and symptoms, including pain and other feelings,
4 offered to prove the truth of the statements, have been generally recognized as an
5 exception to the hearsay rule. Special reliability is provided by the spontaneous quality of
6 the declarations, assured by the requirement that the declaration purport to describe a
7 condition presently existing at the time of the statement.”). No spontaneous statement of
8 Mr. Moquin, as the declarant, was offered.

9 73. The *Willard Declaration* and the *Reply Willard Declaration* also contain
10 hearsay within hearsay, which is inadmissible under NRS 51.067.

11 74. Mr. Willard purports to declare Mr. Moquin had a complete mental breakdown,
12 how Mr. Moquin’s symptoms of his alleged bipolar disorder might manifest, and how those
13 symptoms might have affected Mr. Moquin’s work. (*WD* ¶ 68, 73-76, 87-88; *RWD* ¶ 16, 38).

14 75. These statements are inadmissible as impermissible lay opinion under NRS
15 50.265. Mr. Willard is not a licensed healthcare provider qualified to opine on Mr. Moquin’s
16 mental condition, mental disorder, or symptoms of any disorder or condition that manifested.

17 76. Mr. Willard surmises, speculates, and draws conclusions. He is not qualified
18 to testify about any medical, physical, or mental condition Mr. Moquin may have, or the
19 effect of that condition on his work. *White v. Com*, 616 S.E.2d 49, 54 (Va. Ct. App. 2005)
20 (“While lay witnesses may testify to the attitude and demeanor of the defendant, lay
21 witnesses cannot express an opinion as to the existence of a particular mental disease or
22 condition.”) (citations omitted).

23 77. Plaintiffs contend Mr. Willard’s opinions of how Mr. Moquin’s alleged condition
24 might manifest with symptoms and how these symptoms may have affected Mr. Moquin’s
25 work are appropriate because “lay witnesses can offer testimony as to a person’s sanity.”
26 *Reply*, 2. Plaintiffs cite *Criswell v. State*, 84 Nev. 459, 464, 443 P.2d 552, 555 (1968) for the
27 proposition that lay witnesses can offer testimony as to a person’s sanity. However,
28

1 *Criswell* was overruled in 2001. See *Finger v. State*, 117 Nev. 548, 576-77, 27 P.3d 66, 85
2 (2001) (en banc decision regarding the legal insanity defense and statutorily-created “guilty,
3 but mentally ill plea” and holding the legislative abolishment of insanity as a complete
4 defense to a criminal offense unconstitutional, among other holdings, that lay witnesses
5 cannot testify as to “insanity” because the term has a precise and narrow definition under
6 Nevada law).

7 78. The *Finger* holdings are not applicable here. First, the *Finger* case involves a
8 defense to criminal charges. Second, Mr. Willard did not testify that Mr. Moquin was sane
9 or insane; rather, he testified about the diagnosis of bipolar disorder, possible symptoms of
10 bipolar disorder, and how those symptoms, if present, might have affected Mr. Moquin’s
11 work.
12

13 79. Section 50.265 of the Nevada Revised Statutes provides a lay witness may
14 testify to opinions or inferences that are “[r]ationally based on the perception of the witness;
15 and...[h]elpful to a clear understanding of the testimony of the witness or the determination
16 of a fact in issue.” NRS 50.265. A qualified expert may testify to matters within his/her
17 “special knowledge, skill, experience, training or education” when “scientific, technical or
18 other specialized knowledge will assist the trier of fact to understand the evidence or to
19 determine a fact in issue.” NRS 50.275; *Burnside v. State*, 131 Nev. 371, 382, 352 P.3d
20 627, 636 (death penalty case detective allowed to testify about cell phone records as lay
21 witness). Further,
22

23 The key to determining whether testimony constitutes lay or expert testimony
24 lies with a careful consideration of the substance of the testimony—does the
25 testimony concern information within the common knowledge of or capable of
26 perception by the average layperson or does it require some specialized
27 knowledge or skill beyond the realm of everyday experience? See *Randolph v.*
28 *Collectramatic, Inc.*, 590 F.2d 844, 846 (10th Cir. 1979) (observing that lay
witness may not express opinion ‘as to matters which are beyond the realm of
common experience and which require the special skill and knowledge of an
expert witness”); Fed. R. Evid. 701 advisory committee’s note (2000 amend.)
 (“[T]he distinction between lay and expert witness testimony is that lay
testimony results from a process of reasoning familiar in everyday life, while

1 expert testimony results from a process of reasoning which can be mastered
2 only be specialists in the field.” (internal quotation marks omitted)); *State v.*
3 *Tierrney*, 389 A.2d 38, 46 (N.H. 2003) (“Lay testimony must be confined to
personal observations that any layperson would be capable of making.”).

4 *Id.*

5 80. While the Nevada Supreme Court and Nevada Court of Appeals have not
6 addressed lay witness testimony, like that contained in the *Willard Declaration and Reply*
7 *Willard Declaration*, regarding bipolar disorder, it has been specifically addressed by the
8 Pennsylvania court and is persuasive here. In the case of *In re Petition for Involuntary*
9 *Commitment of Joseph R. Barbour*, the Superior Court of Pennsylvania held a “[l]ay witness
10 and non-expert could not provide expert testimony regarding involuntary committee’s
11 medical diagnosis, specifically the existence of mood disorder known as bipolar disorder.” *In*
12 *re Petition for Involuntary Commitment of Joseph R. Barbour*, 733 A.2d 1286 (Pa. 1999).
13 This Court therefore concludes such testimony is inadmissible to support the *Rule 60(b)*
14 *Motion*.

15 81. Exhibits 6, 7, and 8 to the *Rule 60(b) Motion* which purport to detail Mr.
16 Moquin’s alleged domestic abuse of his family and contain statements about Mr. Moquin’s
17 alleged bipolar condition, are inadmissible as discussed, *supra*, to establish he had bipolar
18 disorder.

19 82. Exhibits 6, 7, and 8 to the *Rule 60(b) Motion* are not, and cannot be,
20 authenticated by Mr. Willard. Mr. Willard is not the author of the documents and has no
21 personal knowledge of their authenticity. He therefore cannot authenticate or identify the
22 documents pursuant to NRS 52.015(1) or NRS 52.025.

23 83. Exhibits 6, 7, and 8 do not meet the requirements for presumed authenticity
24 under NRS 52.125, as the exhibits are not certified copies of public records.

25 84. Pursuant to NRS 47.150, a judge or court may take judicial notice, whether
26 requested or not. Further, a judge or court shall take judicial notice if requested by a party
27 and supplied with the necessary information. NRS 47.150. Here, no party requested this
28

1 Court to take judicial notice based on certified copies of the California court records,
2 contained in the exhibits to the *Rule 60(b) Motion* and the *Reply*. The Court exercises its
3 discretion and declines to take judicial notice here.

4 85. Moreover, even if Exhibits 6, 7, and 8 could be authenticated, the statements
5 contained in those exhibits regarding Mr. Moquin's alleged mental disorder and condition
6 are inadmissible lay opinion about bipolar disorder and would still constitute inadmissible
7 hearsay, as they were apparently authored by Mr. Moquin's wife, and Plaintiffs offer them to
8 prove that Mr. Moquin suffers from bipolar disorder and his life was in "shambles."

9 86. Several *Reply* Exhibits discussed in the *Reply Willard Declaration* also contain
10 inadmissible hearsay.

11 87. All the texts and emails offered by Plaintiffs and authored by Mr. Moquin or Mr.
12 O'Mara constitute inadmissible hearsay under NRS 51.035 and NRS 51.065.

13 88. Specifically, Exhibits 2 and 3 to the *Reply*, the text messages authored by Mr.
14 Moquin in Exhibit 4, the text messages authored by Mr. Moquin in Exhibit 7, the email
15 authored by Mr. Moquin in Exhibit 8, and the emails authored by Mr. Moquin in exhibit 10
16 are inadmissible hearsay.

17 89. Exhibits attached to the *Reply* also contain communications occurring after
18 this Court issued its *Order Granting Motion to Strike* and its *Order Granting Sanctions*.

19 90. Competent and substantial evidence has not been presented to establish *Rule*
20 *60(b)* relief.
21

22 **C. PLAINTIFFS FAILED TO ESTABLISH EXCUSABLE NEGLIGENCE**
23 **UNDER THE YOCHUM V. DAVIS FACTORS.**

24 91. In *Yochum v. Davis*, 98 Nev. 484, 486, 653 P.2d 1215, 1216 (1982), *overruled*
25 *in part on other grounds by Epstein v. Epstein*, 113 Nev. 1401, 1405, 950 P.2d 771, 773
26 (1997), the Nevada Supreme Court held, to determine whether grounds for NRCP 60(b)(1)
27 relief exist, a district court must apply four factors: (1) a prompt application to remove the
28

1 judgment; (2) the absence of an intent to delay the proceedings; (3) a lack of knowledge of
2 procedural requirements; and (4) good faith.

3 92. The burden of proof is on the movant, in this case, Plaintiffs, who must show
4 “mistake, inadvertence, surprise or excusable neglect, either singly or in combination... ‘by a
5 preponderance of the evidence....’” *Kahn v. Orme*, 108 Nev. 510, 513–14, 835 P.2d 790,
6 793 (1992) (quoting *Britz v. Consolidated Casinos Corp.*, 87 Nev. at 446, 488 P.2d at 911).

7 93. A district court must issue explicit findings on each of the *Yochum* factors in
8 rendering its decision. *Opinion*.

9 94. A district court must also consider Nevada’s bedrock policy to decide cases on
10 the merits whenever feasible when evaluating an NRCP 60(b)(1) motion. *Id*.

11 95. However, other policy concerns are also considered, such as the swift
12 administration of justice and enforcement of procedural requirements, “even when the result
13 is dismissal of a plaintiff’s case.” *Rodriguez v. Fiesta Palms, LLC*, 134 Nev. 654, 654, 428
14 P.3d 255, 256 (2018), *holding modified by Willard v. Berry-Hinckley Indus.*, 136 Nev. Adv.
15 Op. 53, 469 P.3d 176 (2020); NRCP 1.

16 96. Here, while considering Nevada’s policy to decide cases on the merits when
17 feasible, this Court determines, by the following detailed and explicit findings on each
18 *Yochum v. Davis* factor, NRCP 60(b)(1) relief is not warranted.

19
20 **(1) A prompt application to remove the judgment:**

21 97. A motion for NRCP 60(b)(1) relief must be filed “within a reasonable time” and
22 “not more than 6 months after the proceeding was taken or the date that written notice of
23 entry of the judgment or order was served.” *Rodriguez*, 134 Nev. at 657, 428 P.3d at 257.

24 98. “[The six-month period represents the **extreme limit** of reasonableness.” *Id*.
25 (emphasis added) (quotations omitted).

26 99. As such, even in cases in which a movant has filed an NRCP 60(b) Motion
27 within six (6) months, it may nevertheless be found to have not acted promptly. See, e.g.,
28

1 *Kahn v. Orme*, 108 Nev. 510, 514, 835 P.2d 790, 793 (1992) (concluding that a movant
2 failed to act promptly where a default judgment was entered against him in February, he
3 knew as early as March, did not seek counsel until late May, and did not move to set aside
4 the default judgment until August, nearly six months after the judgment).

5 100. Here, Plaintiffs and O'Mara were contemporaneously aware of Plaintiffs'
6 failure to oppose the *Sanctions Motion*.

7 101. Specifically, Exhibit 2 to the *Reply* appears to be a text string between Mr.
8 Willard and Mr. Moquin from December 2, 2017, through December 6, 2017, in which Mr.
9 Willard inquires about the status of Plaintiffs' filing in response to the *Motion for Sanctions*.
10 *Reply*, Exhibit 2. The text messages reflect Mr. Willard was aware of the initial deadline,
11 December 4, 2017, for Plaintiffs to respond to the *Motion for Sanctions* (based on the
12 November 15, 2017, filing date and electronic service). *Prior 60(b) Order 23 ¶49*.

13 102. Defendants agreed to extensions through 3:00 pm on December 6, 2017, for
14 Plaintiffs to file their oppositions. *Prior 60(b) Order 23 ¶50*.

15 103. This Court granted an additional extension through December 18, 2018. *Prior*
16 *60(b) Order 23 ¶51*.

17 104. Plaintiffs knew of the initial filing deadline. They were aware no opposition
18 papers were filed. Mr. Willard continued to communicate with both Mr. Moquin and Mr.
19 O'Mara from December 11 until December 25, 2017, regarding the delinquent filings (*Reply*
20 Exs. 3, 4), well after this Court's final filing deadline of December 18, 2017. *Prior 60(b)*
21 *Order 24 ¶52, 56; Sanctions Order ¶95*.

22 105. Despite knowing no oppositions had been filed, neither Mr. Willard (through
23 Mr. O'Mara), Mr. Moquin, nor Mr. O'Mara contacted Defendants' counsel or this Court to
24 address the status of this case. *Prior 60(b) Order 24 ¶53; Sanctions Order ¶98*.

25 106. On January 4, 2018, this Court entered its *Order Granting Defendants'/*
26 *Counterclaimants' Motion for Sanctions* (the "*Initial Sanctions Order*").
27
28

1 107. The *Initial Sanctions Order* granted Defendants' *Motion for Sanctions* based
2 upon (1) DCR 13(3) and Plaintiffs' failure to oppose Defendants' *Motion*; and (2) the fact
3 that Defendants' *Motion* had merit "due to Plaintiffs' egregious discovery violations
4 throughout the pendency of this litigation and repeated failure to comply with this Court's
5 orders." *Id.* at 3.

6 108. Therefore, this Court found, "Plaintiffs' conduct warrants dismissal of this
7 action under NRCP 16.1(e)(3), NRCP 37(b)(2), NRCP 41(b), and the Nevada Supreme
8 Court's decision in *Bianco v. Bianco*, 129 Nev. Adv. Op. 77, 311 P.3d 1170." *Id.* at 3-4. The
9 *Initial Sanctions Order* was served upon both Mr. Moquin and Mr. O'Mara. *Id.*

10 109. The *Initial Sanctions Order* directed Defendants to submit to the Court within
11 twenty (20) days a proposed order granting the *Sanctions Motion*, including factual and
12 legal analysis and discussion, in accordance with WDCR 9.

13 110. This Court entered its *Sanctions Order* on March 6, 2018. (*Sanctions Order*).

14 111. On March 15, 2018, Mr. O'Mara filed his *Notice of Withdrawal of Local*
15 *Counsel*. Therein, he stated, "[c]ounsel has had no contact with lead counsel Mr. Moquin
16 for **many months** with a **total failure just prior to the Court's first decisions being filed**
17 **in this case.**" *Notice*, 1 (emphases added).

18 112. Plaintiffs took no action to request that Mr. O'Mara, who remained Plaintiffs'
19 counsel of record until March 15, 2018, promptly inform this Court—on even a cursory
20 basis—of Plaintiffs' alleged circumstances.

21 113. Plaintiffs did nothing to apprise this Court of any issues until they filed the *Rule*
22 *60(b) Motion* in April, 2018. *Prior 60(b) Order* 24 ¶¶54.

23 114. Mr. O'Mara did not report any issues to this Court until the filing of his *Notice*
24 on March 15, 2018. *Prior 60(b) Order* 25 ¶¶60; *Notice*, 1.

25 115. This failure to promptly notify the Court is another act in the continuum of
26 Plaintiffs' repeated delay throughout this case with respect to each of Plaintiffs' obligations,
27 as discussed *infra*.
28

1 116. While Plaintiffs should and could have acted in a more prompt manner,
2 Plaintiffs filed their *Rule 60(b) Motion* within a reasonable amount of time of the *Initial*
3 *Sanctions Order* and the *Sanctions Order*. Thus, this Court finds that the first *Yochum* factor
4 is satisfied here.⁸

5 117. Although the Plaintiffs met this factor, the remaining three *Yochum* factors,
6 weigh strongly against NRCP 60(b) relief. *Cf., e.g., Rodriguez*, 134 Nev. at 659, 428 P.3d at
7 259 (“Even assuming Rodriguez acted in good faith, we affirm the district court’s decision
8 based on the first three *Yochum* factors, all of which favor denial of Rodriguez’s NRCP
9 60(b)(1) motion.”).

10 **(2) The absence of intent to delay the proceedings:**

11 118. The next *Yochum* factor is the absence of intent to delay the proceedings.

12 119. “As to [this] factor, an intent to delay the proceedings may be inferred from the
13 parties’ prior actions.” *ABD Holdings, Inc. v. JMR Inv. Properties, LLC*, 441 P.3d 548 (Nev.
14 2019) (unpublished) (citing *Rodriguez*, 134 Nev. at 657, 428 P.3d at 258).

15 120. The Nevada Supreme Court has inferred intent to delay where the movant
16 “exhibited a pattern of repeatedly requesting continuances [of the trial date] and filed his
17 NRCP 60(b)(1) motion just before the six-month outer limit,” exhibited conduct which
18 “differed markedly from that of a litigant who wishes to swiftly move toward trial,” and
19 exhibited conduct which “indicate[d] that he intended to delay trial until he secured new
20 counsel, rather than proceeding without representation.” *Rodriguez*, 134 Nev. at 658, 428
21 P.3d at 258.
22
23

24 ⁸ This Court also notes that all of the statements in the *Reply Willard Declaration* set forth after
25 Paragraph 37 detail events and communications from late January, 2018 through late May, 2018, all
26 of which occurred after this Court issued its *Order Granting Motion to Strike, Order Granting*
27 *Sanctions, and Sanctions Order*. RWD ¶¶ 37-67. Exhibits 5, 6, 7, 8, 9, and 10 to the *Reply* contain
28 only communications and descriptions of events that occurred after this Court issued its *Order*
Granting Motion to Strike, Order Granting Sanctions, and Sanctions Order. Logically, relevant events
asserted to support Plaintiffs’ argument of excusable neglect must have necessarily occurred prior to
the entry of the orders Plaintiffs seek to set aside. Thus, while these Exhibits may support a finding
of promptness under the first *Yochum* factor, which this Court has already found that Plaintiffs have
satisfied, they are irrelevant to Plaintiffs’ arguments that excusable neglect occurred.

1 121. The Nevada Supreme Court has also inferred intent to delay where, among
2 other things, “[t]he record demonstrate[d] a pattern of delay from the case’s inception: [the
3 defendants] asked for extensions of the time to file their answer, hired an attorney the day
4 the answer was due and then subsequently filed an untimely demand for securities of costs
5 instead of answering the complaint—and thereafter still failed to answer the complaint.”
6 *ABD*, 441 P.3d 548 (unpublished).

7 122. Additionally, the Nevada Supreme Court has concluded that there was
8 evidence of a movant’s intent to delay because, in part, the movant “failed to file a single
9 motion” in opposition to the respondent’s motions. *Kahn*, 108 Nev. at 514, 835 P.2d at 793.

10 123. The Plaintiffs have not demonstrated an absence of intent to delay the
11 proceedings for multiple, independent reasons.

12 124. First, Plaintiffs’ sole asserted basis for satisfying this factor is that “Mr.
13 Moquin’s mental illness demonstrates that Plaintiffs have at all times acted...without the
14 intent to delay the proceedings,” and that “Plaintiffs are, in fact, the victims of Mr. Moquin’s
15 assurances.” *60(b) Motion* 11.

16 125. However, as discussed, Plaintiffs provided no admissible evidence in support
17 of their *60(b) Motion*, and certainly provided no admissible evidence demonstrating that
18 Moquin had a mental illness, or the effect of such mental illness, if any, on Plaintiffs’ case.
19 *See supra*.

20 126. Accordingly, Plaintiffs have failed to satisfy their burden to demonstrate an
21 absence of intent to delay proceedings.

22 127. Second, even beyond the evidentiary shortcomings, which alone are fatal to
23 Plaintiffs’ argument, the record before this Court demonstrates a repeated delays in the
24 proceedings at the hands of the Plaintiffs.

25 128. Although Plaintiffs satisfied the first *Yochum* factor by promptly moving to
26 remove the judgment, the totality of the record before this Court, prior to Plaintiffs seeking
27 NRCP 60(b) relief, is replete with evidence of willful delay.
28

1 129. This Court has previously ruled on Plaintiffs' numerous egregious and
2 intentional delays from the inception of this case. As reflected in the court file, Plaintiffs'
3 multiple instances of non-compliance, including the Plaintiffs' failure to provide a compliant
4 damages disclosure, occurred well before Mr. Moquin's purported breakdown in December
5 2017, or January 2018, which was asserted as preventing him from opposing the motions.
6 *Prior 60(b) Order 24 ¶¶59.*

7 130. The Court's prior findings include:

8 a. Plaintiffs have exhibited a longstanding pattern of failure to ignore fundamental
9 discovery obligations and deadlines imposed by this Court and the Nevada Rules of Civil
10 Procedure. *Sanctions Order ¶¶ 13-79, 124-141, 153.*

11 b. Plaintiffs' conduct of ignoring or failing to comply with multiple separate
12 discovery obligations throughout this case forced Defendants to repeatedly file motions to
13 compel, and necessitated extensions of trial and discovery deadlines on three occasions to
14 accommodate Plaintiffs' continued non-compliance. *Sanctions Order ¶ 121.*

15 c. Plaintiffs willfully failed to timely disclose the appraisals upon which many of
16 their damages calculations were based. (*Sanctions Order ¶ 133, 135-136, 139*).

17 d. "Plaintiffs' repeated and **willful delay** in providing necessary information to
18 Defendants has necessarily prejudiced Defendants." *Sanctions Order ¶ 141* (emphasis
19 added).

20 e. Before the present case, Plaintiffs filed a case against Defendants in
21 California, based upon the same set of facts, which was dismissed for a lack of personal
22 jurisdiction. *Sanctions Order ¶ 142-144.*

23 131. The conduct of Plaintiffs' freely-selected attorney is attributable to Plaintiffs
24 personally (particularly where, as here, Plaintiffs have provided no admissible evidence to
25 demonstrate otherwise) and, therefore, willful delay is personally attributable to Plaintiffs.
26

27 132. For example, Plaintiffs had personal and contemporaneous knowledge of their
28 failure to disclose their NRCP 16.1 damages, (*Sanctions Order ¶ 46-47, 125*), which was a

1 critical basis for dismissal. *Sanctions Order* ¶ 146; *see also infra* (discussing the absence of
2 good faith).

3 133. This failure was also a critical basis for the continued delay of the trial date.
4 *See, e.g., Stipulation and Order to Continue Trial (Third Request)* ¶ 7, 10 (stipulating
5 Plaintiffs had not yet provided a compliant NRCP 16.1 damages disclosure as discussed at
6 the January 10, 2017, hearing, “[b]ecause Plaintiffs have not yet provided a complete NRCP
7 16.1 damages disclosure, Defendants will not be able to complete necessary fact discovery
8 on Plaintiffs’ damages, or to disclose an updated expert report...within the time currently
9 allowed for discovery... Moreover, any further extension of the discovery deadlines would
10 prevent the parties from being able to [timely] file and submit dispositive motions [prior to
11 trial],” and the “[u]ndersigned counsel certifies that their respective clients have been
12 advised that a stipulation for continuance is to be submitted on their behalf and that the
13 parties have no objection thereto”); *Sanctions Order* ¶ 150.

14
15 134. Plaintiffs have similarly failed to demonstrate an absence of intent to delay the
16 proceedings with respect to the entry of the *Sanctions Order*.

17 135. Specifically, as discussed *supra*, Plaintiffs knew of the initial filing and resulting
18 opposition deadline. They were aware no opposition papers were filed. Mr. Willard
19 continued to communicate with both Mr. Moquin and Mr. O’Mara from December 11 until
20 December 25, 2017, regarding the delinquent filings (*Reply* Exs. 3, 4), well after this Court’s
21 final filing deadline of December 18, 2017. *Prior 60(b) Order 24* ¶¶52, 56; *Sanctions Order*
22 ¶95.

23 136. Despite knowing no oppositions had been filed, neither Mr. Willard (through
24 Mr. O’Mara), Mr. Moquin, nor Mr. O’Mara contacted Defendants’ counsel or this Court to
25 address the status of this case. *Prior 60(b) Order 24* ¶53; *Sanctions Order* ¶98.

26 137. Indeed, in his March 15, 2018, *Notice*, Mr. O’Mara stated “[c]ounsel has had
27 no contact with lead counsel Mr. Moquin for **many months** with a **total failure just prior to**
28 **the Court’s first decisions being filed in this case.**” *Notice*, 1 (emphases added).

1 138. Plaintiffs did nothing to apprise this Court of any issues until they filed the *Rule*
2 *60(b) Motion* in April, 2018.⁹ *Prior 60(b) Order 24 ¶54.*

3 139. Similarly, Mr. O'Mara did not report any issues to this Court until the filing of
4 his *Notice* on March 15, 2018. *Prior 60(b) Order 25 ¶60; Notice, 1.*

5 140. Finally, Plaintiffs have failed to demonstrate an absence of intent to delay the
6 proceedings with respect to their claims about Mr. Moquin.

7 141. In fact, Mr. Willard admits he was informed by Mr. O'Mara **prior to the**
8 **dismissal** of Plaintiffs' claims that Mr. Moquin was not responsive. *Prior 60(b) Order 26*
9 *¶66.* Plaintiffs failed to replace Mr. Moquin or take other action due to perceived financial
10 reasons. *Prior 60(b) Order 26 ¶66; WD ¶ 81.* Plaintiffs' knowledge and inaction vitiates
11 excuse for neglect. *Prior 60(b) Order 26 ¶66; see also 60(b) Motion 15* ("It was only in **late**
12 **2017** that it became clear to Mr. Willard that something was terribly wrong and that Mr.
13 Moquin was suffering from mental illness.").

14 142. Plaintiffs started looking for attorneys who might be able to help. *RWD ¶ 36.*
15 Plaintiffs instead provided personal financial assistance to Mr. Moquin and did not terminate
16 his services. *Prior 60(b) Order 24 ¶55; WD ¶ 71; RWD ¶ 39.*

17 143. Plaintiffs chose to retain Mr. Moquin and did not terminate his representation,
18 even after becoming aware he did not file a timely response to the *Motion for Sanctions*.
19 Plaintiffs cannot now avoid the consequences of the acts or omissions of their freely
20 selected agent. *Prior 60(b) Order 24 ¶57.*
21
22
23
24

25 ⁹Plaintiffs had contemporaneous knowledge of the *Sanctions Order*. Yet, rather than appeal from the
26 *Sanctions Order* within thirty days of the *Notice of Entry of Sanctions Order*, filed on March 6, 2018,
27 Plaintiffs instead improperly challenged the propriety of the *Sanctions Order* in their *Rule 60(b)*
28 *Motion*, which was filed on April 18, 2018, more than thirty days after the *Notice of Entry of the*
Sanctions Order. Cf. generally, e.g., *Mathews v. Carreira*, 770 N.E.2d 560 (Ma. App. 2002) ("Rule
60(b) cannot be used as a substitute for the regular appeal procedure."); *Carrabine v. Brown*, 1993
WL 318809 (Ohio Ct. App. 1993) (A motion for relief from judgment under Civ.R. 60(B)(1) cannot be
predicated upon the argument that the trial court made a mistake in rendering its decision); *Morgan*
v. Estate of Morgan, 688 So. 2d 862, 864 (Ala. Civ. App. 1997).

1 144. Plaintiffs voluntarily chose to stop looking for new counsel to assist and chose
2 to continue to rely on Mr. Moquin solely for financial reasons. *Prior 60(b) Order 24 ¶¶58; WD*
3 *¶¶81.*

4 145. Indeed, Mr. Willard was aware of Mr. Moquin’s alleged problems prior to this
5 Court’s *Order Granting Motion to Strike and Sanctions Order* yet continued to allow Mr.
6 Moquin to represent Plaintiffs. *Prior 60(b) Order 25-26 ¶¶64.*

7 146. Plaintiffs have not established by substantial evidence that they exercised
8 diligence to rectify representation in their case despite ample knowledge of Mr. Moquin’s
9 non-responsiveness. *Prior 60(b) Order 27 ¶¶69.* As discussed *supra*, all of Plaintiffs’
10 proffered evidence regarding Mr. Moquin’s alleged mental condition is inadmissible and
11 does not establish Mr. Moquin had any mental illness or that any alleged mental illness
12 affected Plaintiffs’ case.

13 147. Further, Mr. Willard’s claim he had no choice but to continue working with Mr.
14 Moquin due to financial issues lacks credibility, as he admits he was able to borrow money
15 to fund Mr. Moquin’s personal life needs and medical treatment. It logically follows he had
16 the resources to retain new attorneys at the time. *Prior 60(b) Order 27 ¶¶68.*

17 148. Thus, as in *Rodriguez*, Plaintiffs’ conduct—both pre- and post- *Sanctions*
18 *Order*—has “differed markedly from that of a litigant who wishes to swiftly move toward
19 trial.” 134 Nev. at 658, 428 P.3d at 258.

20 149. In sum, Plaintiffs have failed to establish the absence of an intent to delay the
21 proceedings.
22

23 **(3) A lack of knowledge of procedural requirements:**
24

25 150. The next *Yochum* factor is whether the movant lacks knowledge of the
26 procedural requirements.

27 151. “As to the third factor, a party is generally deemed to have knowledge of the
28 procedural requirements where the facts establish either knowledge or legal notice, where

1 under the facts the party should have inferred the consequences of failing to act, or where
2 the party's attorney acquired legal notice or knowledge." *ABD Holdings, Inc. v. JMR Inv.*
3 *Properties, LLC*, 441 P.3d 548 (Nev. 2019) (unpublished) (citing *Rodriguez*, 428 P.3d at
4 258, and *Stoecklein*, 109 Nev. at 273, 849 P.2d at 308).

5 152. The Nevada Supreme Court has also explained "[t]o condone the actions of a
6 party who has sat on its rights only to make a last-minute rush to set aside judgment would
7 be to turn NRCP 60(b) into a device for delay rather than the means for relief from an
8 oppressive judgment that it was intended to be." *Union Petrochemical Corp. of Nevada v.*
9 *Scott*, 96 Nev. 337, 339, 609 P.2d 323, 324 (1980).

10 153. The Nevada Supreme Court has concluded a movant has failed to satisfy this
11 factor when the movant "personally witnessed the court grant [the defendant's] motion in
12 limine because he did not file a written opposition." *Rodriguez*, 134 Nev. at 658, 428 P.3d at
13 258. The Court explained under such circumstances, the movant "should have inferred the
14 consequences of not opposing the motion to dismiss, especially in light of the court's
15 express warning to take action." *Id.*

16 154. The Nevada Supreme Court has also concluded (albeit in an unpublished
17 order) this factor disfavored NRCP 60(b)(1) relief where the movants "knew the answer was
18 due, knew it was not timely filed, knew [the plaintiff] was seeking a default and money
19 damages, and should have inferred that failing to file their answer and losing on the
20 subsequent motions would result in a default judgment." *ABD Holdings*, 441 P.3d 548.

21 155. Here, the record reflects Plaintiffs have unequivocally failed to establish a lack
22 of knowledge of procedural requirements.

23 156. As a threshold matter, Plaintiffs have admitted as much, conceding "this is,
24 candidly, a little bit of a difficult one," and that Mr. Willard "did, candidly, know that things
25 needed to be filed, he knew that. He knew that trial was coming up and he knew that they
26 were both motions that he wanted to see filed and oppositions that he understood needed to
27
28

1 be filed because he was an active participant in this case and he wants to continue to be.”

2 *60(b) Transcript* 9, 11.

3 157. Additionally, the record before this Court is replete with evidence
4 demonstrating Plaintiffs had knowledge of the pertinent procedural requirements.

5 158. This Court previously found Mr. Willard had **knowledge** of the initial filing
6 deadline to oppose BHI’s Sanctions Motion. Plaintiffs **knew** timely oppositions were not
7 filed. *Prior 60(b) Order* 24 ¶¶52, 55.

8 159. Further, as this Court found, Mr. Willard was **aware** of Mr. Moquin’s inaction
9 which distinguishes this case from the cases upon which Plaintiffs rely in the *Rule 60(b)*
10 *Motion*. *Prior 60(b) Order* 26 ¶¶65.

11 160. Plaintiffs also had personal knowledge of procedural requirements leading to
12 the *Sanctions Order*. *Prior 60(b) Order* 26 ¶¶65.

13 161. For example, Mr. Willard attended the hearing in which Defendants’ counsel
14 informed this Court “[w]e’ve never received a specific damages computation from any of the
15 plaintiffs in this case under 16.1, as they are required to do, **despite multiple demands**
16 **from us.**” *Sanctions Order* ¶¶46; *January 10, 2017, Hearing Transcript* 18.

17 162. Plaintiffs’ counsel admitted, in open court, “with respect to Willard, they do not”
18 have an up-to-date, clear picture of Plaintiffs’ damages claims.” *Sanctions Order* ¶¶47;
19 *January 10, 2017, Hearing Transcript* 42-43.

20 163. This Court ordered, during the hearing, that Plaintiffs “serve, within 15 days
21 after the entry of summary judgment, an updated 16.1 damages disclosure.” *Sanctions*
22 *Order* ¶¶49; *January 10, 2017, Hearing Transcript* 68.

23 164. Thus, Plaintiffs indisputably had personal knowledge of this procedural
24 requirement, their failure to comply therewith, and this Court’s order they comply by a
25 particular deadline.

26 165. Further, the failure to comply with this requirement was a critical basis for the
27 *Sanctions Order*. As this Court found, “Plaintiffs’ failure to provide damages disclosures are
28

1 so central to this litigation, and to Defendants' rights and ability to defend this case, that
2 dismissal of the entire case is necessary." *Sanctions Order* ¶119, 146.

3 166. Finally, even beyond Plaintiffs' personal knowledge of the salient procedural
4 requirements and procedural facts, Plaintiffs were represented by **two** attorneys
5 **throughout** the proceedings who, as this Court found, did not abandon Plaintiffs. *Prior*
6 *60(b) Order* 25 ¶ 62; *see also infra* (discussing that a party cannot seek to avoid a dismissal
7 based on arguments that his or her attorney's acts or omissions led to the dismissal).

8 167. It is unequivocal, both Mr. Moquin and Mr. O'Mara had ample knowledge of
9 every salient procedural requirement and procedural fact. This cannot be overstated: even
10 beyond the general procedural knowledge expected of a practicing attorney, Defendants'
11 counsel wrote numerous letters detailing the pertinent procedural requirements and their
12 application to this case, and Plaintiffs' failures to comply therewith. *See generally Sanctions*
13 *Order*. Plaintiffs also entered into three stipulations which plainly reflected their knowledge
14 of the pertinent deadlines and procedural requirements. *See, e.g., id.* ¶126. This Court also
15 entered multiple orders directly informing Plaintiffs of the pertinent procedural requirements
16 and deadlines. *See generally Sanctions Order* (discussing other orders entered by this
17 Court).

18
19 168. In sum, Plaintiffs' clear knowledge of salient procedural requirements strongly
20 disfavors NRCP 60(b)(1) relief.

21 **(4) Good faith:**

22 169. "Good faith is an intangible and abstract quality with no technical meaning or
23 definition and encompasses, among other things, an honest belief, the absence of malice,
24 and absence of design to defraud." *Rodriguez*, 134 Nev. at 659, 428 P.3d at 259 (quoting
25 *Stoecklein*, 109 Nev. at 273, 849 P.2d at 309).

26 170. The Nevada Supreme Court has noted (albeit by unpublished order), "[t]he
27 facts evidencing an intent to delay the proceedings [can] likewise support the district court's
28

1 findings that [the movants] did not act in good faith....” *ABD Holdings*, 441 P.3d 458
2 (concluding that applied and this factor disfavored NRCP 60(b)(1) relief).

3 171. In this case, Plaintiffs have unequivocally failed to demonstrate they acted in
4 good faith.

5 172. As a threshold matter, once again, Plaintiffs provided no admissible evidence
6 in support of their position.

7 173. Specifically, Plaintiffs’ sole asserted basis for allegedly satisfying this factor is,
8 “Mr. Moquin’s mental illness demonstrates that Plaintiffs have at all times acted in good
9 faith,” and that “Plaintiffs are, in fact, the victims of Mr. Moquin’s assurances.” *60(b) Motion*
10 11.

11 174. However, as this Court has ruled, Plaintiffs provided no admissible evidence in
12 support of their *60(b) Motion*, and certainly provided no admissible evidence demonstrating
13 that Moquin had a mental illness, or the effect of such mental illness, if any, on Plaintiffs’
14 case. *See supra*.

15 175. Thus, Plaintiffs have unequivocally failed to satisfy their burden to
16 demonstrate, by a preponderance of evidence, they acted in good faith. *See Kahn v. Orme*,
17 108 Nev. 510, 513–14, 835 P.2d 790, 793.

18 176. Further, even beyond the lack of admissible evidentiary support, the record
19 clearly demonstrates Plaintiffs have failed to establish they acted in good faith.

20 177. First, the findings discussed *supra* evidencing an intent to delay the
21 proceedings and knowledge of procedural requirements likewise support the finding
22 Plaintiffs did not act in good faith.

23 178. This Court previously found “Willard’s claim that he had no choice but to
24 continue working with Mr. Moquin due to financial issues **lacks credibility**.....,” (*Prior 60(b)*
25 *Order 27* ¶68), and in light of the circumstances of this case, dismissal of Willard’s claims
26 did not unfairly penalize Willard for Moquin’s alleged conduct. *Id.* at 29 ¶ 80.
27
28

1 179. Second, Plaintiffs committed multiple willful violations throughout the
2 proceedings, which compelled issuance of the *Sanctions Order* in the first instance.

3 180. Among other things, this Court found that Plaintiffs' eleventh-hour request for
4 nearly \$40 million more in damages based on information which had been in Plaintiffs'
5 possession but not disclosed was willful and in bad faith.

6 181. Specifically, this Court found that after three (3) years of delay due to Plaintiffs'
7 "obstinate refusal" to comply with the Nevada Rules of Civil Procedure, Plaintiffs filed their
8 *Motion for Summary Judgment* with only four (4) weeks remaining in discovery, in which
9 they requested "brand new, never-disclosed types, categories, and amounts of damages."
10 *Sanctions Order* ¶¶ 69, 71; *Willard's Motion for Summary Judgment*.

11 182. Indeed, "Willard sought more than triple the amount of damages (nearly \$40
12 million more) than he sought in the complaint and ostensibly throughout the case," and had
13 new claims and new alleged bases for his alleged damages. *Sanctions Order* ¶¶ 73-79.

14 183. This Court found the timing of the *Motion for Summary Judgment* was such it
15 put "Defendants in the exact same predicament that they were placed in February of 2017—
16 Defendants could not engage in the discovery (fact or expert) necessary to adequately
17 respond to Plaintiffs' brand new information, untimely disclosures, and new requests for
18 relief." *Id.* at ¶¶ 69, 87-88.

19 184. "This timing of these Motions undeniably deprived Defendants of the process
20 that the parties expressly agreed was necessary to rebut any properly-disclosed expert
21 opinions or properly-disclosed NRCP 16.1 damages calculations, as ordered by this Court."
22 *Id.*

23 185. This Court also found "Willard and his purported witness relied upon
24 appraisals from 2008 and 2014 which were never disclosed in this litigation, despite
25 Willard's NRCP 16.1 and NRCP 26(e) obligations and affirmative discovery requests served
26 by Defendants" asking Willard to "[p]lease produce any and all appraisals for the Property
27 from January 1, 2012 through present." *Sanctions Order* ¶ 79.
28

1 186. Indeed, this Court found that “Plaintiffs’ new damages and new expert
2 opinions were all based upon information that was in Plaintiffs’ possession throughout this
3 case, meaning that there was no reason that Plaintiffs could not have timely disclosed a
4 computation of their damages and the documents on which such computations are based.”
5 *Sanctions Order* ¶ 72.

6 187. This Court found this conduct was intentional, strategic, and in bad faith. See
7 *generally Sanctions Order*.

8 188. Specifically, this Court found that this conduct evidenced “Plaintiffs’ bad faith
9 motives in waiting to ambush Defendants,” and, “Plaintiffs’ strategic decision to only disclose
10 their damages in their Motion for Summary Judgment prejudiced Defendants by depriving
11 them of the opportunity to defend against damages that had never previously been
12 disclosed.” *Sanctions Order* ¶ 128.

13 189. This Court found “it is clear that Plaintiffs’ failure to disclose the appraisals
14 upon which many of their calculations were based was...willful.” *Sanctions Order* ¶ 135.

15 190. This Court also found “[g]iven that Willard freely admits that these appraisals
16 were commissioned prior to the commencement of the case, and were in his possession,
17 this is clearly willful omission.” *Sanctions Order* ¶ 136.

18 191. Further, it may be logically inferred Willard, who authored a 15-page affidavit
19 in support of his *Motion for Summary Judgment*, averred “[m]y counsel and I collaborated to
20 create” the damages spreadsheet in support of the *Motion for Summary Judgment*, and
21 personally described his new damages in detail, was aware the damages he sought in the
22 motion were significantly different than those ostensibly sought in the *Complaint* which was
23 verified by Mr. O’Mara, or in his Interrogatory Responses which he personally verified.
24 *Affidavit of Larry J. Willard in Support of Motion for Summary Judgment*.

25 192. The record before this Court clearly demonstrates Plaintiffs have acted in bad
26 faith. This Court gave Plaintiffs’ counsel, including Mr. O’Mara, notice of the seriousness of
27 Plaintiffs’ repeated violations and expressed it was considering dismissal based on those
28

1 violations even before Plaintiffs failed to oppose the *Sanctions Motion. Opposition to Rule*
2 *60(b) Motion* Ex. 3; *December 12, 2017, Transcript* (“you need to know going into these
3 oppositions, that I’m very seriously considering granting all of it...I haven’t decided it, but I
4 need to see compelling opposition not to grant it.”).

5 193. As an independent basis, this Court also found Plaintiffs’ failure to disclose
6 their NRCP 16.1 damages was done in bad faith. *Sanctions Order* ¶ 124-126.

7 194. Indeed, this Court found that “[t]his Court has ordered Plaintiffs to provide their
8 damages disclosures, but Plaintiffs blatantly disregarded these orders.” *Sanctions Order* ¶
9 125.

10 195. Again, this conduct is personally attributable to Plaintiffs, who attended the
11 January 10, 2017, hearing wherein Plaintiffs admitted they had failed to provide compliant
12 NRCP 16.1 damages disclosures and heard this Court order them to do so.

13 196. In sum, Plaintiffs have unequivocally failed to satisfy their burden to
14 demonstrate good faith. To the contrary, the record before this Court is replete with
15 evidence of Plaintiffs’ bad faith. Indeed, as this Court has found, “Plaintiffs have exhibited
16 complete disregard for this Court’s Orders, deadlines imposed by this Court, and the judicial
17 process in general.” *Sanctions Order*; see also *id.* ¶ 31 (finding “Plaintiffs have completely
18 ignored multiple Orders from this Court, deadlines imposed by this Court, and their
19 obligations pursuant to the Nevada Rules of Civil Procedure,” and, “Plaintiffs have received
20 multiple opportunities and extensions to rectify their noncompliance, but have not even
21 attempted to do so”).

22
23 **(5) Consideration of the case on the merits:**

24 197. Finally, Nevada’s bedrock policy that cases be considered on the merits
25 wherever possible does not warrant the relief Plaintiffs seek here.

26 198. This Court has already addressed this factor in detail in the *Sanctions Order*,
27 concluding, in part:
28

1 a. Although there is a policy favoring adjudication on the merits, Plaintiffs
2 themselves have frustrated this policy by refusing to provide Defendants with their damages
3 calculations or proper expert disclosures. Defendants have not frustrated this policy;
4 instead, the record is clear that Defendants, and this Court, have repeatedly attempted to
5 force Plaintiffs to comply with basic discovery obligations, to no avail. *Sanctions Order* ¶155.

6 b. Indeed, Defendants have served multiple rounds of written discovery upon
7 Plaintiffs to obtain basic information on Plaintiffs' damages, have taken multiple depositions,
8 and have been requesting compliant disclosures throughout this case so that they can
9 address the merits. *Id.* ¶156; Exhibits 24-35 to *Defendants' Sanctions Motion*.

10 c. Plaintiffs should not be permitted to hide behind the policy of adjudicating
11 cases on the merits when it is they who have frustrated this policy throughout the litigation.
12 Defendants cannot reach the merits when they must spend the entire case asking Plaintiffs
13 for threshold information and receiving no meaningful responses. *Id.* ¶157.

14 d. As the Nevada Supreme Court has held, the policy favoring adjudication on
15 the merits "is not boundless and must be weighed against any other policy considerations,
16 including the public's interest in expeditious...resolution, which coincides with the parties'
17 interests in bringing litigation to a final and stable judgment, prejudice to the opposing party;
18 and administration concerns, such as the court's need to manage its large and growing
19 docket." *Huckabay Props v. NC Auto Parts*, 130 Nev. 196, 203, 322 P.3d 429, 432 (2014).

20 199. The Nevada Supreme Court has similarly so held in the context of upholding
21 the denial of an NRCP 60(b) motion to set aside a default judgment based upon alleged
22 excusable neglect. *Kahn v. Orme*, 108 Nev. 510, 516, 835 P.2d 790, 794 (1992).

23 200. The Nevada Supreme Court explained:
24

25 We wish not to be understood, however, that this judicial tendency to grant
26 relief from a default judgment implies that the trial court should always grant
27 relief from a default judgment. Litigants and their counsel may not properly be
28 allowed to disregard process or procedural rules with impunity. Lack of good
faith or diligence...may very well warrant a denial of the motion for relief from
the judgment.

1 *Id.* (quotations omitted); *see also ABD Holdings*, 441 P.3d 548 (“We conclude the district
2 court did not abuse its discretion by concluding that the policy in favor of resolving cases on
3 the merits does not warrant reversal here, given the facts demonstrating that Barra and
4 Giebler disregarded the process and procedural rules by failing to timely answer the
5 complaint.”).

7 201. In sum, after a careful consideration of each of the *Yochum* factors, and on
8 explicit findings, this Court concludes analysis of the *Yochum* factors precludes NRCP
9 60(b)(1) relief here.

10 **D. PLAINTIFFS’ ASSERTED BASES FOR SEEKING NRCP 60(B) RELIEF**
11 **DO NOT WARRANT THE RELIEF PLAINTIFFS SEEK.**

12 202. Under Nevada law, “clients must be held accountable for the acts and
13 omissions of their attorneys.” *Huckabay Props*, 130 Nev. at 204, 322 P.3d at 433 (citing
14 *Pioneer Inv. Servs. Co. v. Brunswick Assocs. Ltd. P’ship*, 507 U.S. 380, 396-97 (1993)).
15 The client “voluntarily chose this attorney as his representative in the action, and he cannot
16 now avoid the consequences of the acts or omissions of this freely selected agent.”
17 *Huckabay Props*, 130 Nev. at 204, 322 P.3d at 433 (citing *Link v. Wabash R.R. Co.*, 370
18 U.S. 626, 633-34 (1962) (rejecting the argument that petitioner’s claim should not have
19 been dismissed based on counsel’s unexcused conduct because petitioner voluntarily
20 chose his attorney).

22 203. In *Huckabay Props*, the Nevada Supreme Court dismissed an appeal where
23 appellant’s counsel failed to file an opening brief following two granted extensions and a
24 court order granting appellants a final extension. 130 Nev. at 209, 322 P.3d at 437. The
25 appellant was represented by two attorneys. In dismissing the appeal, and applicable to
26 civil litigation at the trial court level here, the Court held:

27 While Nevada’s jurisprudence expresses a policy preference for merits-based
28 resolution of appeals, and our appellate procedure rules embody this policy,
among others, litigants should not read the rules or any of this court’s

1 decisions as endorsing noncompliance with court rules and directives, as to do
2 so risks forfeiting appellate relief. In these appeals, appellants failed to timely
3 file the opening brief and appendix after having been warned that failure to do
4 so could result in the appeals' dismissals. Appellants actually had two
5 attorneys who received copies of this court's notices and orders regarding the
6 briefing deadline, but they nevertheless failed to comply with briefing deadlines
7 and court rules and orders. Although they assert that *Hansen v. Universal*
8 *Health Services of Nevada, Inc.*, 112 Nev. 1245, 924 P.2d 1345 (1996),
9 mandates reconsideration and reinstatement of their appeals, Hansen was a
10 fact-specific decision to some extent, and an appeal may be dismissed for
11 failure to comply with court rules and orders and still be consistent with the
12 court's preference for deciding cases on their merits, as that policy must be
13 balanced against other policies, including the public's interest in an
expeditious appellate process, the parties' interests in bringing litigation to a
final and stable judgment, prejudice to the opposing side, and judicial
administration considerations, such as case and docket management. As for
declining to dismiss the appeal because the dilatory conduct was occasioned
by counsel, and not the client, that reasoning does not comport with general
agency principles, under which a client is bound by its civil attorney's actions
or inactions....

14 *Huckabay Props*, 130 Nev. at 209, 322 P.3d at 437.

15 204. In *Huckabay Props.*, however, the court recognized exceptional circumstances
16 providing two possible exceptions "to the general agency rule that the 'sins' of the lawyer
17 are visited upon his client where the lawyer's addictive disorder and abandonment of his
18 legal practice or criminal conduct justified relief for the victimized client." *Id.* at 204 n.4, 322
19 P.3d at 434 n.4 (citing *Passarelli*, 102 Nev. at 286). Notably, these exceptions noted in
20 *Huckabay Props.* are not present here, as the facts of *Passarelli* are readily distinguishable.

21 205. First, in *Passarelli*, the record included evidence the attorney suffered from a
22 substance abuse disorder that resulted in missed office days and appointments and an
23 inability to function. *Passarelli*, 102 Nev. at 285. Second, the attorney voluntarily closed his
24 law practice. *Id.* Third, the attorney was placed on disability inactive status by the Nevada
25 Bar. *Id.* Finally, the client in *Passarelli* had only one attorney. *Id.*

26 206. None of these facts are present in this case. As concluded *supra*, no
27 competent, reliable, and admissible evidence of Mr. Moquin's claimed mental disorder is
28 before this Court. Further, there is no evidence of missed meetings or absence from office

1 due to the claimed conditions. There is no evidence that Mr. Moquin closed his law practice
2 at the times pertinent to the *60(b) Motion*.

3 207. As of the date of the *Prior 60(b) Order*, and on the record before this Court,
4 Mr. Moquin was on active status with the California Bar. *Opposition to Rule 60(b) Motion*,
5 Ex. 5; *Attorney Search, State Bar of California*, [http://members.calbar.ca.gov/fal/Licensee/](http://members.calbar.ca.gov/fal/Licensee/Detail/257583)
6 [Detail/257583](http://members.calbar.ca.gov/fal/Licensee/Detail/257583) (last visited November 30, 2018).

7 208. Applied here, the *Huckabay Props./Passarelli* analysis compels denial of the
8 *Rule 60(b) Motion*. The standard for “excusable neglect” based on activities of a party’s
9 attorney requires the attorney to be completely unable to respond or appear in the
10 proceedings. *See Passarelli*, 102 Nev. at 285 (court found excusable neglect where
11 attorney failed to attend trial due to psychiatric disorder which caused him to shut down his
12 practice and was placed on disability inactive status by the State Bar of Nevada); *see also*
13 *Cicerchia v. Cicerchia*, 77 Nev. 158, 160-61, 360 P.2d 839, 841 (1961) (court found
14 excusable neglect where respondent lived out of state and suffered a nervous breakdown
15 shortly after retaining out of state counsel, who was unaware and uninformed of the time to
16 appear).
17

18 209. Here, Plaintiffs’ attorneys did not completely abandon the case. Rather, the
19 Nevada Rules of Civil Procedure, this Court’s express orders, and Defendants’ requests for
20 damages computations and exert disclosures were willfully ignored.

21 210. Plaintiffs attempt to excuse this conduct in their *Rule 60(b) Motion* by claiming
22 Mr. Moquin suffered a complete mental breakdown, and his personal life was “in shambles.”
23 In addition to the preclusion of evidence discussed *supra*, the evidence is vague at best
24 regarding these assertions and vague regarding if, and when, Mr. Moquin’s alleged disorder
25 impaired him and vague in asserting when any of the alleged events took place. Plaintiffs
26 attached additional exhibits to their *Reply* to offer some information on timing but are
27 inadequate for the Court’s determination.
28

1 211. Mr. Moquin did not abandon Plaintiffs. He appeared at status hearings,
2 participated in depositions, and filed motions and other papers, including a lengthy
3 opposition to Defendants' motion for partial summary judgment. Mr. Moquin participated in
4 oral arguments and filed two summary judgment motions with substantial supporting
5 exhibits and detailed declarations.

6 212. As discussed *supra*, Plaintiffs had contemporaneous notice of the deadline to
7 oppose the *Sanctions Motion*, of Plaintiffs' failure to oppose the *Sanctions Motion*, and of
8 the *Sanctions Order*. Yet, Plaintiffs did nothing to apprise this Court of any issues until they
9 filed the *Rule 60(b) Motion*. *Prior 60(b) Order* ¶¶ 49-60.

10 213. Additionally, the Court gave counsel, including Mr. O'Mara, notice of the
11 seriousness of Plaintiffs' violations and expressed it was considering dismissal based on
12 those violations. *Opposition to Rule 60(b) Motion* Ex. 3; *December 12, 2017, Transcript*
13 ("you need to know going into these oppositions, that I'm very seriously considering granting
14 all of it...I haven't decided it, but I need to see compelling opposition not to grant it.").
15 Plaintiffs and their attorneys were given notice of the potential consequences of failing to file
16 an opposition to the *Sanctions Motion*.

17 214. A party "cannot be relieved from a judgment [order] taken against him in
18 consequence of the neglect, carelessness, forgetfulness, or inattention of his attorney."
19 *Cicerchia*, 77 Nev. at 161.

20
21 **F. PLAINTIFFS KNEW OF MR. MOQUIN'S ALLEGED CONDITION**
22 **AND ALLEGED NON-RESPONSIVENESS PRIOR TO THE**
23 **SANCTIONS ORDER AND DID NOTHING; THEREFORE**
24 **PLAINTIFFS CANNOT ESTABLISH EXCUSABLE NEGLIGENCE.**

25 215. Even if Mr. Moquin's statements were admissible, which they are not, such
26 statements would only go to show that Mr. Willard should have acted more diligently than he
27 did so here.

28 216. In the *Willard Declaration* and the *Reply Willard Declaration*, Mr. Willard
admits he knew Mr. Moquin was having personal financial difficulties and that he borrowed

1 money from friends and family to fund Mr. Moquin's personal expenses. WD ¶¶ 63-65;
2 RWD ¶¶ 11-13. Mr. Willard also admits that he recommended a psychiatrist to Mr. Moquin,
3 and he again borrowed money from a friend to pay for Mr. Moquin's treatment. WD ¶¶ 68-
4 71; RWD ¶¶ 11-13. Mr. Willard was aware of Mr. Moquin's alleged problems prior to this
5 Court's *Order Granting Motion to Strike and Sanctions Order* yet continued to allow Mr.
6 Moquin to represent Plaintiffs.

7 217. Mr. Willard was aware of Mr. Moquin's inaction which distinguishes this case
8 from the cases upon which Plaintiffs rely in the *Rule 60(b) Motion*, where the parties were
9 unaware of their attorneys' problems. See, e.g., *Passarelli*, 102 Nev. at 286 ("Passarelli
10 was effectually and unknowingly deprived of legal representation"); *US v. Cirami*, 563 F.2d
11 26, 29-31 (2d Cir. 1977) (client discovered that attorney had a mental disorder that
12 prevented him from opposing summary judgment more than two years later); *Boehner v.*
13 *Heise*, 2009 WL 1360975 at *2 (S.D.N.Y. 2009) (client did not learn case had been
14 dismissed or and did not learn of attorney's mental condition until several months after
15 dismissal). Here, Mr. Willard knew of the actions that supported the *Sanctions Order*.
16

17 218. Mr. Willard admits that he was informed by Mr. O'Mara **prior to the dismissal**
18 of Plaintiffs' claims that Mr. Moquin was not responsive. Plaintiffs failed to replace Mr.
19 Moquin or take other action due to perceived financial reasons. WD ¶ 81. Plaintiffs'
20 knowledge and inaction vitiates excuse for neglect.

21 219. The *Rule 60(b) Motion* cites authority for the proposition "where an attorney's
22 mishandling of a movant's case stems from the attorney's mental illness," this might justify
23 relief under Rule 60(b). However, "client diligence must still be shown." *Cobos v. Adelphi*
24 *Univ.*, 179 F.R.D. 381, 388 (E.D.N.Y. 1998); see also *Edward H. Bohlin Co., Inc. v. Banning*
25 *Co., Inc.*, 6 F.3d 350, 357 (5th Cir. 1993) ("A party has a duty of diligence to inquire about
26 the status of a case...."); *Pryor v. U.S. Postal Service*, 769 F.2d 281, 287 (5th Cir. 1985)
27 ("This Court has pointedly announced that a party has a duty of diligence to inquire about
28 the status of a case....").

1 220. Mr. Willard's claim that he had no choice but to continue working with Mr.
2 Moquin due to financial issues lacks credibility as he admits he was able to borrow money to
3 fund Mr. Moquin's personal life and medical treatment. It logically follows he had resources
4 to retain new attorneys at the time.

5 221. Plaintiffs have not established by substantial evidence that they exercised
6 diligence to rectify representation in their case despite ample knowledge of Mr. Moquin's
7 non-responsiveness.

8 **G. PLAINTIFFS ARE NOT ENTITLED TO 60(B) RELIEF BECAUSE TWO**
9 **ATTORNEYS REPRESENTED PLAINTIFFS WHO BOTH HAD AN**
10 **OBLIGATION TO ENSURE COMPLIANCE WITH THE NEVADA**
11 **RULES OF CIVIL PROCEDURE AND THIS COURT'S ORDERS.**

12 222. Plaintiffs' *Rule 60(b) Motion* ignores the fact David O'Mara served as local
13 counsel. In Nevada, the responsibilities of local counsel are clearly defined, and
14 encompass active responsibility to represent the client and manage the case:

15 (a) The Nevada attorney of record shall be responsible for and actively
16 participate in the representation of a client in any proceeding that is subject to
17 this rule.

18 (b) The Nevada attorney of record shall be present at all motions, pre-trials, or
19 any matters in open court unless otherwise ordered by the court.

20 (c) The Nevada attorney of record shall be responsible to the court...for the
21 administration of any proceeding that is subject to this rule and for compliance
22 with all state and local rules of practice. It is the responsibility of Nevada
23 counsel to ensure that the proceeding is tried and managed in accordance with
24 all applicable Nevada procedural and ethical rules.

25 Supreme Court Rule ("SCR") 42(14).

26 223. Mr. O'Mara's representation, even if contractually limited, was governed by
27 this rule.

28 224. Mr. O'Mara expressly "consent[ed] as Nevada Counsel of Record to the
designation of Petitioner to associate in this cause pursuant to SCR 42" as part of his
Motion to Associate Counsel.

1 225. Mr. O'Mara attended every hearing and court conference in this case. And,
2 among other things, Mr. O'Mara signed the Verified Complaint and the First Amended
3 Verified Complaint. *Complaint; FAC.*

4 226. WDCR 23(1) provides:

5 Counsel who has appeared for any party shall represent that party in the case
6 and shall be recognized by the court and by all parties as having control of the
7 client's case, until counsel withdraws, another attorney is substituted, or until
8 counsel is discharged by the client in writing, filed with the filing office, in
accordance with SCR 46 and this rule.

9 WDCR 23.

10 227. Mr. O'Mara was the sole signatory on Plaintiffs' deficient initial disclosure,
11 (*Opposition to Rule 60(b) Motion*, Ex. 6), the uncured deficiencies of which were a basis for
12 sanction of dismissal. *Sanctions Order.*

13 228. Mr. O'Mara also signed and filed the *Brief Extension Request* with this Court,
14 representing that:

15 Counsel has been diligently working for weeks to respond to Defendant's
16 serial motions, which include seeking dismissal of Plaintiffs' case. With the full
17 intention of submitting said responses, Counsel for Plaintiffs encountered
18 unforeseen computer issues.... Counsel for Plaintiffs is confident that with a
19 one-day extension they will be able to recreate and submit the oppositions to
Defendants' three motions.

20 229. Plaintiffs do not provide any declaration by Mr. O'Mara in support of their *Rule*
21 *60(b) Motion*.

22 230. Mr. O'Mara's involvement precludes a conclusion of excusable neglect here.

23 **H. THE SANCTIONS ORDER WAS SUFFICIENT UNDER NEVADA LAW.**

24 231. Plaintiffs assert that the *Sanctions Order* was insufficient under *Young v.*
25 *Johnny Ribeiro*, 106 Nev. 88, 93, 787 P.2d 777, 780 (1990) because the *Sanctions Order*
26 did not consider "whether sanctions unfairly operate to penalize a party for the misconduct
27 of his or her attorney." *Rule 609b) Motion* at 12. However, consideration of this factor is
28 discretionary, not mandatory. See *Young*, 106 Nev. at 93 ("The factors a court **may**

properly consider include...whether sanctions unfairly operate to penalize a party for the misconduct of his or her attorney”) (emphasis added).

232. The Court concludes the factors enumerated in *Young v. Johnny Ribeiro Bldg. Inc.* were met by the *Sanctions Order*. Specifically, the Nevada Supreme Court held where a court issues an order of dismissal with prejudice as a discovery sanction, a court may consider, among others, the degree of willfulness of the offending party, the extent to which the non-offending party would be prejudiced by a lesser sanction, the severity of the sanction of dismissal relative to the severity of the discovery abuse, and the feasibility and fairness of alternative, less severe sanctions. *Young*, 106 Nev. at 93. The factors are not mandatory so long as the Court supports the order with “an express, careful and preferably written explanation of the court’s analysis of the pertinent factors.” *Id.*

233. While each suggested factor discussed in the *Sanctions Order* was not labeled by factor, the Court addressed the factors it deemed appropriate.

234. In the circumstances of this case, the dismissal of Plaintiffs’ claims did not unfairly penalize Plaintiffs based on the factors analyzed in the *Sanctions Order*.

I. THE RULE 60(B) MOTION SHOULD BE DENIED.

235. After weighing the credibility and admissibility of the evidence provided in support of the *Rule 60(b) Motion*, substantial evidence has not been presented to establish excusable neglect.

236. Plaintiffs have failed to meet their burden of proving, by a preponderance of the evidence, excusable neglect sufficient to justify relief under NRCP 60(b).

237. Similarly, careful analysis of each *Yochum* factor demonstrates that the *Yochum* factors warrant, if not compel, denial of NRCP 60(b)(1) relief.

//

//

1 **III. ORDER.**

2 Based upon the foregoing, and good cause appearing therefor,

3 IT IS HEREBY ORDERED Plaintiffs' Rule 60(b) Motion is DENIED in its entirety.

4 DATED this 13th day of September, 2021.

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7 _____
8 DISTRICT JUDGE
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ROBERT EISENBERG, ESQ.
BRIAN IRVINE, ESQ.
ANJALI WEBSTER, ESQ.
RICHARD WILLIAMSON, ESQ.
JONATHAN TEW, ESQ.
JOHN DESMOND, ESQ.

Holly Longe

CASE NO. CV14-01712 LARRY WILLARD ET AL V BERRY-HINCKLEY ET AL

**DATE, JUDGE
OFFICERS OF
COURT PRESENT**

APPEARANCES - HEARING

CONT'D TO

8/17/2015
HONORABLE
LYNNE SIMONS
DEPT. NO. 6
Y. GENTRY
(Clerk)
Amundson
(Reporter)
A. Bickerton
(Bailiff)

ORDER TO SHOW CAUSE

Attorney David O'Mara was present on behalf of Plaintiffs. Attorney Brian Moquin was present, via telephone, on behalf of Plaintiffs. Attorney Brian Irvine was present on behalf of Defendants.

COURT advised this is the time set for a Status Hearing.

Appearances put on the record.

COURT advised that it has requested Discovery Commissioner Ayers to be present today. COURT further advised that there are several motions in front of the Court and with lack of opposition: Defendant's second motion to compel discovery responses and a motion for contempt.

Counsel O'Mara addressed the Court and advised the Motion for Contempt is for Third Party.

COURT GRANTED Second Motion for Discovery; that there was no opposition; no response filed.

COURT further advised that the jury trial is approaching in January; that there is not a lot of room regarding production; that Plaintiffs should be in position to file all documents and to go forward with full production.

COURT further advised that Commissioner Ayers is going to handle discovery and set scheduling and hearings regarding status.

Counsel Moquin addressed the Court and advised that Plaintiffs have not filed an opposition to Defendant's Second Motion to Compel Discovery. Counsel presented argument of why not, personal issues; that there shouldn't be any other issues going forward.

COURT GRANTED Second Motion to Compel Discovery Responses. Court read order into record for Counsel Moquin, who was present by phone.

**DATE, JUDGE
OFFICERS OF
COURT PRESENT****APPEARANCES - HEARING****CONT'D TO**

8/17/2015
HONORABLE
LYNNE SIMONS
DEPT. NO. 6
Y. GENTRY
(Clerk)
Amundson
(Reporter)
A. Bickerton
(Bailiff)

ORDER TO SHOW CAUSE

COURT further advised it will entertain fees and costs, but Defendants did not file affidavit.

Counsel Irvine advised there are several depositions coming up back to back and is requesting response by Noon Wednesday; that another motion to compel has not been filed and counsel does not want to file, but need production of documents. Counsel presented argument regarding four (4) outstanding documents; that counsel just wants discovery pursuant to 16.1.

COURT issued general admonishment; that delays have to stop; that consequences will come if further delays. "If you can produce it, you can use it."

Counsel O'Mara addressed the Court and requested to keep hearing going with Commissioner Ayers since everyone is present.

Counsel Irvin concurred with Counsel O'Mara.

COURT closed the hearing before the Court and handed over to Discovery Commission Ayers.

COURT and staff left courtroom.

CASE NO. CV14-01712 LARRY WILLARD ET AL V BERRY-HINCKLEY ETAL

DATE, JUDGE
OFFICERS OF
COURT PRESENT

APPEARANCES - HEARING

CONT'D TO

1/10/17

HONORABLE
LYNNE SIMONS
DEPT. NO. 6
Y. GENTRY
(Clerk)
Eisenberg
(Reporter)
Masters
(Bailliff)

ORAL ARGUMENTS RE: MOTION FOR PARTIAL SUMMARY JUDGMENT

Attorneys David O'Mara and Brian Moquin were present on behalf of Plaintiffs. Plaintiffs Larry Willard and Edward Wooley were present. Attorney Brian Irvine was present on behalf of Defendants, Berry-Hinckley et al.
Appearances put on the record.

COURT advised it has read pleadings. Counsel may proceed with arguments.

Counsel Irvine addressed the Court regarding filing motion for summary judgment; that counsel would like to focus remaining issues to streamline presentation regarding future motions for summary judgments and trial. Counsel presented argument regarding Plaintiffs seeking damages for future restitution and unforeseeable damages in the future; damages are overreaching and Plaintiffs are not entitled. Counsel argued Willard Plaintiffs are seeking 4.4 million in earnest money; 3 million in tax consequences; and \$500k in closing costs; that Willard Plaintiffs are also seeking attorney fees damages. Counsel presented further argument regarding fee damages associated with Plaintiff's bankruptcy. Counsel presented further argument regarding Plaintiff's Baring Boulevard claim of damages; that all damages are precluded under Nevada law. Counsel cited Hilton Hotel case.

Discussion ensued between Court and Counsel Irvine regarding Hilton case.

Counsel presented further argument requesting partial summary judgment; that burden has not been met by Plaintiffs. Counsel cited Margolese, Enak Realty, and Boise cases regarding rents/leases; that summary judgment should be granted under Rule 56e.

Counsel presented argument regarding claim of damages for Baring Boulevard property and when lease was executed; that Wooley Plaintiffs did not own property at time of executed lease. Counsel Irvine presented argument regarding attorney fees damages; cited Homes v Liu. Counsel reiterated that all damages are precluded as a matter of law under Nevada law.

Discussion ensued regarding Margolese case being binding on this case.

Counsel Irving further addressed the Court regarding section 20b (of the lease) is sole source of remedy.

Further discussion ensued.

Counsel Moquin addressed the Court and presented argument in opposition of section 20b; that it is not the sole source of remedy; that section 15 also applies.

Discussion ensued between Court and Counsel Moquin regarding language in agreements and damages.

Counsel Moquin advised Court that Plaintiffs are withdrawing on closing costs and cost associated with short sale. Counsel argued further regarding tax consequences and earnest monies.

DATE, JUDGE
OFFICERS OF
COURT PRESENT

APPEARANCES - HEARING

CONT'D TO

1/10/17

HONORABLE
LYNNE SIMONS
DEPT. NO. 6
Y. GENTRY
(Clerk)Eisenberg
(Reporter)
Masters
(Bailiff)ORAL ARGUMENTS RE: MOTION FOR PARTIAL SUMMARY JUDGMENT

Discussion between Court and Counsel Moquin regarding withdrawing of claims and diminution of value claim.

Counsel Moquin presented further argument opposing summary judgment and argued further regarding indemnification clause.

10:53 a.m. Court recessed for morning break.

11:25 a.m. Court reconvened. All parties present.

Counsel Moquin advised that Plaintiff Wooley paid taxes. Counsel presented further argument regarding lease agreements; subrogation agreement; damages provisions. Counsel Irvine further addressed the Court and argued further for summary judgment; argued concept of foreseeability; that Plaintiffs didn't argue attorney fees.

Counsel Irvine argued regarding indemnity provision regarding third party claims and damages. Cited Boise, May Department Store, Pacificorp, and Kmart cases. Counsel argued further opposing attorney fees; that they can only be recovered as special damages; that plaintiff should be precluded from seeking; that all damages sought by Plaintiffs are all precluded as a matter of law. Counsel further argued regarding Plaintiffs claims and 16.1 issues.

COURT advised it has applied Rule 56 standards.

COURT FOUND Motion for summary Judgment should be GRANTED: As to Willard Plaintiffs, short sale damages incurred as a result of selling property, tax consequence because of canceling mortgage debt and closing costs, and attorney fees because of voluntary bankruptcy and California action. As to Wooley Plaintiffs, the Court is considering Summary Judgment as it relates to \$600,000.00 in damages because of selling of Baring property and attorney fees in California action.

COURT FOUND Christopher Holmes v Liu case applies regarding special damages regarding attorney fees.

COURT ORDERED Counsel Irvine to prepare proposed order with conclusions of law and applicable authority. Proposed order is to be prepared within 15 days.

COURT FURTHER ORDERED Plaintiffs to serve within 15 days an entry of Summary Judgment and an updated 16.1 disclosure.

Court adjourned.

**DATE, JUDGE
OFFICERS OF
COURT PRESENT****APPEARANCES-HEARING****CONT'D TO**

12/12/17
HONORABLE
LYNNE K. SIMONS
DEPT. NO. 6
J. Martin
(Clerk)
D. Cecere
(Reporter)

PRE-TRIAL CONFERENCE

David O'Mara, Esq. was present on behalf of the Plaintiffs. Brian Moquin, Esq. was present on behalf of the Plaintiffs. Brian Irvine, Esq. was present on behalf of the Defendants, Berry Hinckley and Jerry Herbst.

COURT directed respective counsel to submit proposed orders to the Court; discussed Oral Arguments; and inquired as to the expected length of Trial.

Counsel O'Mara discussed late filing of the oppositions.

Counsel Irvine argued the Plaintiff's lack of compliance should result in dismissal of the matter. Counsel Irvine argued in opposition to a 4th continuance of the Trial date.

Counsel Irvine indicated the Motion for Contempt filed July 24, 2015, was never submitted and he will withdraw that Motion.

Discussion ensued regarding the procedural history of the matter.

COURT granted Defendant extension to reply to the Motion for Summary Judgment until this Friday.

Counsel O'Mara requested subsequent time to file oppositions to pending motions.

Counsel Irvine argued against any extensions of time as the deadlines have passed.

Counsel Moquin stated that the morning the oppositions were due he had computer issues and all of his work was lost. Counsel Moquin requested until Monday or Friday to respond.

Counsel Irvine discussed the upcoming holidays and argued that there has been no compliance with rules or Court orders through this matter by Plaintiff.

COURT indicated it is not inclined to continue the current Trial date; Plaintiff granted extension to oppose Defendant's three Motions; Plaintiff shall respond no later than December 18, 2017, at 10:00 a.m.; Defendant shall reply no later than January 8, 2018; Oral Arguments set for January 12, 2018, at 1:00 p.m.; Court further indicated there will be no further extensions of time granted; Court directed respective counsel to file Trial Statements no later than five judicial days prior to Trial and to include proposed findings of fact and conclusions of law.

**DATE, JUDGE
OFFICERS OF
COURT PRESENT****APPEARANCES-HEARING****CONT'D TO**

09/04/18
HONORABLE
LYNNE K. SIMONS
DEPT. NO. 6
L. Gillings
(Clerk)
E. Ferretto
(Reporter)

ORAL ARGUMENTS/PLAINTIFFS RULE 60(b) MOTION

Richard Williamson, Esq. and Jonathan Tew, Esq. were present on behalf of Larry Willard who was also present. Richard Williamson, Esq. and Johnathan Tew, Esq. were also present on behalf of the Plaintiffs, Larry James Willard Trust Fund, Overland Development Corporation, Edward and Judith Wooley. Brian Irvine, Esq. and Brooks Westergard, Esq. were present on behalf of the Defendants, Berry Hinckley Industries and Jerry Herbst.

COURT reviewed the procedural history of the matter.

Counsel Irvine addressed the Court and presented arguments in support of Defendant's Motion to Strike, or in the Alternative, Motion for Leave to File Sur-Reply filed June 29, 2018 and the attached exhibits to reply Briefs filed by the Plaintiffs.

Counsel Williamson argued in opposition of Defendant's Motion to Strike, or in the Alternative, Motion for Leave to File Sur-Reply, and stated exhibits were proper rebuttal and the Defendant has had multiple opportunities to respond.

COURT noted opposition filed by Plaintiffs and confirmed that a stipulation was reached to allow for sur-reply to be filed. There, the Court determined that there is no need to rule on the Motion to Strike.

Counsel Williamson addressed the Court on behalf of Plaintiff's Motions and provided information regarding counsel Moquin's mental health status.

Counsel Irvine provided further arguments in opposition of Rule 60(b) Motion.

Counsel Williamson addressed the merits of the case and discussed any attorney's fees or costs awarded to the Defendants as sanction should be the obligation of Counsel Moquin and argued that Plaintiff's burden should be resolved via diminution of the value of damages.

Counsel Irvine discussed damages and disclosure requirements per NRCP 16.1 and discussed prejudice the Defendant's. Counsel Irvine commented on Plaintiff's alleged damages and responded to Rule 60(b) Motion and discussed role of Moquin. Counsel Irvine provided further reasoning to the Court to dismiss Motion.

COURT noted if failure to proceed in favor of denying the Motion rules was solely due to counsel Moquin's mental health status should Plaintiff be responsible.

Counsel Irvine responded to the Court and argued that Plaintiff's should be penalized and further discussed Court's rulings. Counsel Irvine discussed deadlines to which the Plaintiff's should be held responsible for. Counsel Irvine further discussed Moquin's mental health issues and

DATE, JUDGE OFFICERS OF COURT PRESENT	APPEARANCES-HEARING	CONT'D TO
09/04/18 HONORABLE LYNNE K. SIMONS DEPT. NO. 6 L. Gillings (Clerk) E. Ferretto (Reporter)	<p>role of counsel pertaining to case law.</p> <p>Discussion ensued regarding the amount of attorney's fees owed.</p> <p>Counsel Irvine further argued in opposition to Rule 60(b) Motion.</p> <p>Counsel Williamson argued in support of Rule 60(b) Motion and discussed evidence in the case.</p> <p>COURT ORDER Rule 60(b) Motion will be taken under advisement; Respective counsel shall have two days to provide additional information to the Court for the Court's consideration. The Court directed respective counsel to inform Court staff if no additional information will be provided.</p>	

Code 1350

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

LARRY J. WILLARD, individually and as
trustee of the **Larry James Willard Trust**
Fund; OVERLAND DEVELOPMENT
CORPORATION, a California corporation;
EDWARD C. WOOLEY AND JUDITH A
WOOLEY, individually and as trustees of the
Edward C. Wooley and Judith A. Wooley
Intervivos Revocable Trust 2000,

Case No. CV14-01712

Dept. No. 6

Plaintiff,

vs.

BERRY-HINCKLEY INDUSTRIES, a Nevada
Corporation; and **JERRY HERBST**, an
individual,

Defendants.

BERRY-HINCKLEY INDUSTRIES, a
Nevada corporation; and **JERRY HERBST**,
an individual,

Counterclaimants,

vs.

LARRY J. WILLARD, individually and as
trustee of the **Larry James Willard Trust Fund**;
OVERLAND DEVELOPMENT
CORPORATION, a California corporation,

Counter-defendants.

CERTIFICATE OF CLERK AND TRANSMITTAL – NOTICE OF APPEAL

1 I certify that I am an employee of the Second Judicial District Court of the State of
2 Nevada, County of Washoe; that on the 12th day of October, 2021, I electronically filed the
3 Notice of Appeal in the above entitled matter to the Nevada Supreme Court.

4 I further certify that the transmitted record is a true and correct copy of the original
5 pleadings on file with the Second Judicial District Court.

6 Dated this 12th day of October, 2021.

7 Alicia L. Lerud
8 Clerk of the Court
9 By /s/Y.VILORIA
10 Y.VILORIA
11 Deputy Clerk
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1 Code 4132

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IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

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IN AND FOR THE COUNTY OF WASHOE

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**LARRY J. WILLARD, individually and as
trustee of the Larry James Willard Trust
Fund; OVERLAND DEVELOPMENT
CORPORATION, a California corporation;
EDWARD C. WOOLEY AND JUDITH A
WOOLEY, individually and as trustees of the
Edward C. Wooley and Judith A. Wooley
Intervivos Revocable Trust 2000,**

Case No. CV14-01712

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Dept. No. 6

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Plaintiff,

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vs.

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**BERRY-HINCKLEY INDUSTRIES, a Nevada
Corporation; and JERRY HERBST, an
individual,**

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NOTICE OF APPEAL

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Defendants.

DEFICIENCY

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**BERRY-HINCKLEY INDUSTRIES, a
Nevada corporation; and JERRY HERBST,
an individual,**

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Counterclaimants,

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vs.

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**LARRY J. WILLARD, individually and as
trustee of the Larry James Willard Trust Fund;
OVERLAND DEVELOPMENT
CORPORATION, a California corporation,**

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Counter-defendants.

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On October 11, 2021, Attorney D. Williamson, Esq., for Plaintiff, Larry J. Willard, filed a Notice of Appeal with the Court. Plaintiff failed to include the Two Hundred Fifty Dollar (\$250.00) Supreme Court filing fee.

Pursuant to NRAP 3(a)(3), on October 12th, 2021, the Notice of Appeal was filed with the Nevada Supreme Court. By copy of this notice Attorney Williamson, was apprised of the deficiency.

Alicia L. Lerud, Interim
Clerk of the Court

By: /s/Y.VILORIA
Y.VILORIA
Deputy Clerk

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CERTIFICATE OF SERVICE

CASE NO. CV14-01712

I certify that I am an employee of the Second Judicial District Court of the State of Nevada, County Of Washoe; that on the 12th day of October, 2021, I electronically filed the Notice of Appeal Deficiency 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:

ROBERT EISENBERG, ESQ. for LARRY JAMES WILLARD TRUST FUND et al
BRIAN IRVINE, ESQ. for BERRY-HINCKLEY INDUSTRIES, JERRY HERBST
ANJALI WEBSTER, ESQ. for BERRY-HINCKLEY INDUSTRIES, JERRY HERBST
RICHARD WILLIAMSON, ESQ. for LARRY JAMES WILLARD TRUST FUND et al
JONATHAN TEW, ESQ. for LARRY JAMES WILLARD TRUST FUND et al
JOHN DESMOND, ESQ. for BERRY-HINCKLEY INDUSTRIES, JERRY HERBST

Deposited in the Washoe County mailing system for postage and mailing with the United States Postal Service in Reno, Nevada:

By:/s/Y.VILORIA
Y.VILORIA
Deputy Clerk