

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

\* \* \* \*

TESSIE ELMA ALMARIO,

Petitioner,

vs.

EIGHTH JUDICIAL DISTRICT COURT  
OF THE STATE OF NEVADA, CLARK  
COUNTY, AND THE HONORABLE  
DAWN R. THRONE,

Respondents,

And

SHERYL ATTERBERG, ON BEHALF  
OF HER ADULT WARD RODNEY  
WILKINSON,

Real Party in Interest,

And

PUBLIC EMPLOYEE'S RETIREMENT  
SYSTEM OF NEVADA,

Real Party in Interest.

\_\_\_\_\_ /

***Petition for Writ of Mandamus or Prohibition***

From the Eighth Judicial District Court, Family Division, Clark County

Honorable Dawn R. Throne, District Court Judge

**APPENDIX**

***VOL. 3***

**Bradley J. Hofland, Esq.**  
**HOFLAND & TOMSHECK**  
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702-895-6760

*Attorney for Petitioner*

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Oct 25 2021 08:24 a.m.  
Elizabeth A. Brown  
Clerk of Supreme Court

CASE NO.:

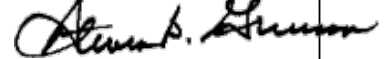
District Court Case No.  
D-19-596071-D

### **CHRONOLOGICAL INDEX OF APPENDIX**

<b>Description</b>	<b>Date Filed</b>	<b>Vol.</b>	<b>Page No.</b>	<b>Bate No.</b>
Plaintiff's Notice of Motion and Motion for Summary Judgment and Related Relief	06/16/21	3	003-078	ROA000451-ROA000526
Defendant's Opposition to Plaintiff's Notice of Motion and Motion for Summary Judgment and Related Relief and Countermotion for Attorney's Fees and Costs and All Other Related Relief	06/30/21	3	079-110	ROA000527-ROA000558
Plaintiff's Pre-Trial Memorandum	07/02/21	3	111-200	ROA000559-ROA000648
Defendant's Rodney Wilkinson Pre-Trial Memorandum	07/02/21	3	201-233	ROA000649-ROA000681

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Steven D. Grierson  
CLERK OF THE COURT



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**EIGHTH JUDICIAL DISTRICT COURT, FAMILY DIVISION  
CLARK COUNTY, NEVADA**

TESSIE ELMA ALMARIO,	)	CASE NO.: D-19-596071-D
	)	DEPT NO.: U
Plaintiff,	)	<b>PLAINTIFF'S NOTICE OF MOTION</b>
	)	<b>AND MOTION FOR SUMMARY</b>
vs.	)	<b>JUDGMENT AND RELATED RELIEF</b>
	)	<b>ORAL AGRUMENT REQUESTED</b>
SHERYL ATTERBERG, ON	)	
BEHALF OF HER WARD	)	
RODNEY WILKINSON,	)	
	)	
Defendant.	)	
	)	
	)	

TO: Defendant Sheryl Atterberg, on behalf of her ward Rodney Wilkinson  
and your attorney of record, James W. Kwon, Esq.

**YOU ARE REQUIRED TO FILE A WRITTEN RESPONSE TO THIS  
MOTION WITH THE CLERK OF THE COURT AND TO PROVIDE THE  
UNDER-SIGNED WITH A COPY OF YOUR RESPONSE WITHIN  
FOURTEEN (14) DAYS OF YOUR RECEIPT OF THIS MOTION.  
FAILURE TO FILE A WRITTEN RESPONSE WITH THE CLERK OF THE  
COURT WITHIN FOURTEEN (14) DAYS OF YOUR RECEIPT OF THIS  
MOTION MAY RESULT IN THE REQUESTED RELIEF BEING  
GRANTED BY THE COURT WITHOUT HEARING PRIOR TO THE  
SCHEDULED HEARING DATE.**

**YOU, AND EACH OF YOU, WILL PLEASE TAKE NOTICE** that the undersigned will bring the above and foregoing Motion on for hearing at the courtroom of the above-entitled court, located at 601 North Pecos Road, Las Vegas, Nevada, 89101 on the date and time set by the Court.

COMES NOW, Plaintiff Tessie Elma Almario (“Tessie”), by and through her attorney, Bradley J. Hofland, Esq. of Hofland & Tomsheck, and hereby submits this motion against Defendant Rodney Wilkinson (“Rodney”) because no genuine issues of material fact exist because Rodney was found to be competent by another court at the time he executed the Decree and when it was entered. As a matter of law, Tessie is entitled to judgment as a matter of law finding Rodney was competent at the time the Decree was executed and entered, and more importantly, Rodney is collaterally estopped from relitigating the issue of his competency.

This motion is made and based on the following Memorandum of Points and Authorities, the papers and pleadings already on file herein, and any argument the Court may permit at the hearing of this matter.

Dated this 16<sup>th</sup> day of June, 2021.

HOF LAND &amp; TOMSHECK

By: /s/ *Bradley J. Hofland*

Bradley J. Hofland, Esq.  
State Bar of Nevada No. 6343  
228 South 4th Street, First Floor  
Las Vegas, Nevada 89101  
(702) 895-6760  
*Attorneys for Plaintiff*

1                                    **MEMORANDUM OF POINTS AND AUTHORITIES**

2                                    **I.**

3                                    **Introduction**

4                    Under Nevada law, if a party has no evidence to support an essential element  
5 of its claim, summary judgment is appropriate. This Court confirmed the crux of  
6 this case, or the essential element of Defendant's action, when it established the  
7 parameters of the Evidentiary Hearing to determine (1) "Defendant's *competency* at  
8 the time of the signing of the Decree of Divorce and" (2) "how much Plaintiff knew  
9 about Defendant's *competency*."

10                  As established herein, the Defendant's competency was previously  
11 adjudicated and confirmed by a court of competent jurisdiction, and therefore, issue  
12 preclusion, or collateral estoppel, now precludes Defendant from relitigating the  
13 issue of his competency. The Nevada Supreme Court has clearly held "[i]ssue  
14 preclusion, or collateral estoppel, is a proper basis for granting summary  
15 judgment." *LaForge v. State ex rel. univ. & Cmty. College Sys.*, 116 Nev. 415, 997  
16 P.2d 130 (2000). Accordingly, Plaintiff's motion must be granted.

17                                    **II.**

18                                    **Statement of Facts**

19                  Rodney and Tessie were married on March 22, 2009 in Burlington, Colorado.  
20 On September 9, 2019, Tessie filed a Complaint for Divorce in Clark County,  
21 Nevada under Case No. D-19-596071-D. Rodney filed his Answer to the Complaint  
22 for Divorce on January 28, 2020 and admitted to all of the allegations set forth in  
23 the Complaint. The Stipulated Decree of Divorce was entered on February 12,  
24 2020. The Decree confirms Rodney's substantial marital waste (which Rodney  
25 admitted and considered), represents their agreement, and found and confirmed by  
26 the Court as being equitable and fair. Notice of Entry of the Decree of Divorce was  
27 filed on February 13, 2020.

On January 25, 2021, Rodney moved to set aside the decree of divorce *alleging*, among other things, that Tessie exerted undue influence upon Mr. Wilkinson to procure his signature on the Stipulated Decree of Divorce, that Rodney was diagnosed with Dementia less than three months *after* the Decree's entry, and that Tessie knew Rodney was incapacitated. Tessie denied/denies the allegations and contends that Rodney was competent at the time he signed the Decree of Divorce and that there was an equitable distribution of the marital estate.

Discovery has confirmed the veracity of Tessie's position, as well as Rodney competency at the time of the parties' agreement and divorce. Indeed, in December of 2020, Rodney's competency to enter into contracts in February of 2020, after the parties' settlement agreement and Decree, was tried, adjudicated and confirmed!

### III.

#### STATEMENT OF UNDISPUTED FACTS

It is significant to note the very issue the subject of the instant action before this Court, to wit: Rodney's competency in 2020, was actually and fully litigated in December of 2020 after Rodney asserted he was not competent to enter into contracts which resulted in a specific findings that Rodney was competent at the time *this Decree was executed and entered*. Notably, this adverse determination was concealed from this Court.

The following facts are undisputed:

	Statement of Undisputed Fact	Source
1	<b>This matter was tried to the Court on the 17th day of December 2020 on the Plaintiff's complaint for claim and delivery of certain personal property and the Defendant's counterclaim for breach of written contract and for foreclosure of liens. The trial was conducted by Zoom with the Plaintiff not appearing, but his legal guardians, Sheryl and Steven Atterberg, appearing by Zoom and the Defendant appearing</b>	Judgment in the District Court of the Fort Berthold Indian Reservation Case No. CV-2020-0303 Exhibit "1".

1	by Zoom with his wife who also testified as the	
2	Defendant's business manager. The Court adjourned	
3	the proceedings in order to permit the guardians to	
4	gain the presence of the Plaintiff by Zoom but they	
5	were not able to do so, despite the Court noticing	
6	this matter for trial and notifying the Parties on	
7	November 24, 2020 that it would permit the	
8	Plaintiff to appear by phone or Zoom. The Court	
9	thus permitted the guardians to testify for the	
10	<b>Plaintiff and also permitted them to supplement</b>	
11	<b>the complaint with their assertions that the</b>	
12	<b>Plaintiff was incompetent to enter into the</b>	
13	<b>contracts offered into evidence</b> by the Defendant	
14	and thus they should be held to be void ab initio.	
15	1.The Plaintiff is a 65-year old resident of the	Judgment in the District
16	State of Kansas who lives in assisted living in	Court of the Fort Berthold
17	Goodland, Sherman County Kansas.' He is a non-	Indian Reservation Case
18	member of the Fort Berthold reservation but who	No. CV-2020-0303
19	engaged in business transactions with the	Exhibit "1".
20	Defendant, a member of the Tribe, and who also	
21	worked for a short period of time on the Fort	
22	Berthold reservation for the Defendant's company;	
23	2. The Plaintiff's sister, Sheryl Atterburg, and	
24	Steven Atteburg were designated powers of	
25	attorney for the Plaintiff on September 4, 2020	
26	when the Plaintiff executed a written power of	
27	attorney. The Atterburgs were also appointed as	
28	legal guardians over the Plaintiff by court order.	
	<b>No power of attorney or guardianship</b>	
	<b>appointment was in place when during the</b>	
	<b>relevant periods of time described herein;</b>	
	3. The Plaintiff suffered a traumatic brain injury in	
	1974 and has also suffered three strokes, most	
	recently in 2017. <b>Despite this the Plaintiff was</b>	
	<b>working and maintained a Commercial Driver's</b>	
	<b>License in Colorado and Kansas as recently as</b>	
	<b>September of 2020. There is no evidence that the</b>	
	<b>Defendant knew or should have known of his</b>	
	<b>cognitive shortcomings as even the Plaintiff's</b>	
	<b>POA noted that he still maintained expert</b>	
	<b>mechanical skills as late as 2020;</b>	
	...	
	6.The Plaintiff started working as a mechanic for the	
	Defendant's company, Synergy on June 21, 2019 at	
	\$45 per hour. The Defendant's agents noticed that	

1 the Plaintiff was quite slow in his work performance  
2 and he would oftentimes linger on the job site not  
3 working so the Defendant's agents decided to  
4 demote him and reduce his wages to \$25 per hour.  
5 **The Plaintiffs POA's denied that the Plaintiff's**  
6 **work skills were diminished at all and believed**  
7 **that he was a superior mechanic during this**  
8 **period of time,** but there is no evidence that they  
9 were observing him during this period of time  
10 because they remained in Colorado.  
11 ...  
12 **12.The Plaintiff continued to work for the**  
13 **Defendant's LLC and was paid wages in the**  
14 **amount of \$26,803.17 up until February of 2020**  
15 **and the payments were also made on the purchase**  
16 **agreements.**  
17 **13.In February of 2020 the Parties entered into**  
18 **another contract expressly rescinding the prior**  
19 **contracts** and was an attempt to close the  
20 transaction between the parties because the  
21 Defendant testified he was becoming increasing  
22 frustrated with the fact the Plaintiff was being paid  
23 wages to try to get his own equipment into  
24 working condition and he no longer wanted him as  
25 an employee because of his anger and  
26 confrontations with other employees.  
27 **14.The February 21, 2020 contract admitted**  
28 **into evidence is an agreement between the**  
**parties wherein the Parties agreed that the**  
**purchase contracts for the 1979 Ford Truck**  
**920 and 1980 Cozad Jeep Trailer would be**  
**deemed satisfied from the prior payments**  
**made to the Plaintiff for those vehicles as well**  
**as the salary paid to the Plaintiff (total**  
**amount of both was approximately\$65,000).**  
**The Defendant also tested that he provided the**  
**Plaintiff free lodging**  
**for himself for two months after he was**  
**terminated as well as two months free use of his**  
**wife's car which was also consideration for the**  
**February 21,2020 contract.** The Plaintiff also  
agreed to remove all liens from these vehicles and  
to provide the titles to them. The Defendant  
testified that he was not aware that there were



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actually three titles to the Jeep Trailer and the Plaintiff has refused to deliver them to him despite his agreeing to travel to Kansas to get them. Because of this failure he has been unable to sell the Lowboy Trailer which he wished to do'- because his businesses went into a tailspin due to Covid 19.

..

**17. The Plaintiff signed this last contract on February 24, 2020 and there has been no evidence presented to this Court to show that the Plaintiff was incompetent or not able to enter into a binding contact at that time. The Court also finds no evidence to prove that the Defendant and his agents knew or should have known of any cognitive limitations on the part of the Plaintiff.**

...

**19. The Plaintiff left the Fort Berthold reservation in late February or early March of 2020 and has not been back since. The property remains on lands being leased by the Defendant and the Plaintiff has paid no storage fees.**

...

**21. In May of 2020 the guardians of the Plaintiff reported to Kansas Adult Protective Services officials that the Plaintiff had been financially exploited by the Defendant and Kansas officials commenced an investigation. In June of 2020 after investigating the matter. Kansas officials found that the allegations were unsubstantiated and closed the investigation. The guardians for the Plaintiff testified that they believed this was because Kansas found that the matter was a civil dispute not a criminal case, but the letter of June of 2020 does not make that distinction and the Court concludes that Kansas officials did not find sufficient evidence of any exploitation.**

**22. The Plaintiff then commenced this action seeking a return of his personal property. The Defendant counterclaimed for enforcement of the three contracts between the Parties and for storage fees for the three items of property that**

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they assert were not sold to him as well as for loss of income due to the Plaintiff failing to provide the titles for the lowboy as well as for 30 hours of work done by his wife to get the financial evidence ready for trial.

The total amount prayed for by the Defendant in his counterclaim at trial was for \$126,000 plus a finding that the Wrecker and Lowboy were lawfully sold to him;

**23. The Plaintiff's guardians were permitted to argue that the written contracts between the parties were void due to the Plaintiffs alleged incompetency to contract and they requested that the Court order the return of all of the property to the Plaintiff with nothing on the counterclaim.**

NOW THEREFORE based upon the foregoing findings of fact the Court enters the following:  
CONCLUSIONS

**2. The Court finds that the Plaintiff at all relevant times related to his cause 'of action and the counterclaim was competent to contract and had not been found incompetent by a court of law. Although it appears he did suffer from some cognitive issues he still maintained a CDL in two states, was able to work as a mechanic, and never advised the Defendant or his agents of any cognitive limitations. Even if he were operating under some limitations on his cognitive functioning nothing in the record before this Court reveals that the Defendant or his agents knew or should have known of this. The fact that the State of Kansas looked into this issue and found no validity to the allegations that the Plaintiff has been financially exploited buttresses the Court's findings on this issue;**

**3. The February 21,2020 contract between the Parties executed on February 24, 2020 is a binding contract with the exception of certain**

1 provisions that are unconscionable. The Court  
2 will not enforce that part of the contract that  
3 stipulates that failure on the part of the Plaintiff  
4 to remove the remaining items of property from  
5 the Defendant's leased lands within 30 days  
6 would result in title to said property being vested  
7 in Defendant. Such a provision would result in a  
8 \$200,000 drill and other property of substantial  
9 value defaulting to the Defendant. The Court  
10 notes that the Defendant does not seek  
11 enforcement of that provision of the contract in  
12 his counterclaim but instead seeks damages for  
13 storing the property as well as for loss of income  
14 and expenses of his wife;  
15 4. The Court finds that the Defendant lawfully  
16 purchased the 1979 Ford Truck 920 VIN  
17 ID4429ICOL (wrecker) and the 1980 Cozad  
18 Jeep Trailer YIN CC80062 (lowboy trailer) and  
19 the Plaintiff shall immediately transfer titles to  
20 that property to the Defendant. Failure to do so  
21 within 30 days may result in further orders  
22 directing that alternative titles be issued;  
23 5. The Court further finds that the remaining  
24 property of the Plaintiff referenced in the  
25 February 21, 2020 contract remains the  
26 property of the Plaintiff but is subject to a  
27 storage lien that must be paid prior to removal of  
28 said property;  
6. The Court finds for the Defendant in the  
amount of \$100 per day from the date of March  
24, 2020 (the date the property was to be removed  
pursuant to the February contract) for a total  
amount of \$27,700. The amount of \$100 per day  
represents about half of the land lease the  
Defendant was required to pay to retain the lease  
where the property sits;  
7. The Court finds for the Defendant in the  
amount of \$60,000 for loss of income due to the  
**Plaintiff's failure to comply with the February  
24, 2020 contract** selling the lowboy and wrecker  
to the Defendant as he has not been able to use the  
lowboy since February or 2020 due to the Plaintiff  
not conveying lawful title in breach of the

1		agreement. The other claims for business expenses of his wife to prepare records is part of preparing for litigation and is not granted.	
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4	2	<b>REQUEST FOR PRODUCTION NO. 20:</b> Please provide any and all documentation showing a full and itemized accounting for any and all assets and property, including real property, that you owned between March 22, 2008 and February 12, 2020.	Defendant's Responses to Plaintiff's Second Set of Request for Production of Documents Numbers 20, 21, 29 , 30, 31, 32, & 36, Exhibit "2".
5		<b>RESPONSE TO REQUEST FOR PRODUCTION NO. 20:</b>	
6		Objection. Defendant objects to this Request as vague, ambiguous, overbroad, and unduly burdensome on its face due to its use of "any and all" in order to identify a broad range of documents. Defendant further objects to this Request as vague and ambiguous as to the terms "showing," "full," "accounting," "assets," "property," and "owned." Without waiving said objections, Defendant responds as follows:	
7		None. Please refer <i>Plaintiff's First Supplemental List of Witnesses and Disclosure of Documents</i> , electronically served May 24, 2021.	
8		Discovery is ongoing and Defendant will supplement this response if and when additional documentation becomes available in accordance with Nev.R.Civ.P. Rule 26(e).	
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20	4	<b>REQUEST FOR PRODUCTION NO. 21:</b> Please provide any and all documentation showing a full and itemized accounting for any and all assets and property, including real property, that you sold between March 22, 2008 and February 12, 2020.	
21		<b>RESPONSE TO REQUEST FOR PRODUCTION NO. 21:</b>	
22		Objection. Defendant objects to this Request as vague, ambiguous, overbroad, and unduly burdensome on its face due to its use of "any and all" in order to identify a broad range of documents. Defendant further objects to this Request as vague and ambiguous as to the terms	
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1		“showing,” “full,” “accounting,” “assets,”	
2		“property,” and “sold.” Without waiving said	
3		objections, Defendant responds as follows:	
4		Please refer to <i>Defendant’s First Supplemental</i>	
5		<i>NRCP 16.2 Disclosure</i> , served concurrently with	
6		this response. Discovery is ongoing and	
7		Defendant will supplement this response if and	
8		when additional documentation becomes	
9		available in accordance with Nev.R.Civ.P. Rule	
10		26(e).	
11	5	<b>REQUEST FOR PRODUCTION NO. 29:</b>	
12		Please provide any and all documents	
13		evidencing all real property purchased during	
14		marriage, including purchase agreements, deeds,	
15		mortgages and mortgage applications, taxes and	
16		improvements made on the real property.	
17		<b>RESPONSE TO REQUEST FOR</b>	
18		<b>PRODUCTION NO. 29:</b>	
19		Objection. Defendant objects to this Request as	
20		vague, ambiguous, overbroad, and unduly	
21		burdensome on its face due to its use of “any	
22		and all” and “all” in order to identify a broad	
23		range of documents. Defendant further objects to	
24		this Request as vague and ambiguous as to the	
25		term “purchased.” Without waiving said	
26		objections, Defendant responds as follows:	
27		None in Sheryl Atterberg’s possession. If this	
28		documentation existed, it would either be in the	
		Farmhouse in which Plaintiff has forbidden	
		Sheryl Atterberg access to or were appropriated	
		by Plaintiff and are, therefore, in her possession.	
		Discovery is ongoing and Defendant will	
		supplement this response if and when additional	
		documentation becomes available in accordance	
		with Nev.R.Civ.P. Rule 26(e).	
	6	<b>REQUEST FOR PRODUCTION NO. 30:</b>	
		Please provide any and all documents in support	
		of your allegations contained in page 6,	
		paragraph 12 of your motion titled Defendant’s	
		Motion to Set Aside the Divorce Decree	

1	Pursuant to NRCP 60(b) filed on January 25,	
2	2021 which reads:	
3	Tessie committed fraud when she knew full well	
4	that Rodney was suffering from severe mental	
5	deficiencies and was incompetent.	
6	<b>RESPONSE TO REQUEST FOR</b>	
7	<b>PRODUCTION NO. 30:</b>	
8	Objection. Defendant objects to this Request as	
9	vague, ambiguous, overbroad, and unduly	
10	burdensome on its face due to its use of “any	
11	and all” in order to identify a broad range of	
12	documents. Defendant further objects to this	
13	Request as vague and ambiguous as to the terms	
14	“support” and “contained.” Without waiving	
15	said objections, Defendant responds as follows:	
16	Please refer to <i>Defendant’s Initial NRCP 16.2</i>	
17	<i>Disclosure</i> , served April 15, 2021. Additionally,	
18	please refer to <i>Defendant’s First Supplemental</i>	
19	<i>NRCP 16.2 Disclosure</i> , served concurrently with	
20	this response.	
21	Discovery is ongoing and Defendant will	
22	supplement this response if and when additional	
23	documentation becomes available in accordance	
24	with Nev.R.Civ.P. Rule 26(e).	
25	<b>REQUEST FOR PRODUCTION NO. 31:</b>	
26	Please provide any and all documents in support	
27	of your allegations contained in page 6,	
28	paragraph 14 of your motion titled Defendant’s	
	Motion to Set Aside the Divorce Decree	
	Pursuant to NRCP 60(b) filed on January 25,	
	2021 which reads:	
	Tessie intentionally concealed that Rodney was	
	suffering from severe mental deficiencies and	
	otherwise lacked contractual capacity from the	
	Court not only when she filed for divorce but	
	when she obtained a Decree of Divorce.	
	<b>RESPONSE TO REQUEST FOR</b>	
	<b>PRODUCTION NO. 31:</b>	
	Objection. Defendant objects to this Request as	
	vague, ambiguous, overbroad, and unduly	
	burdensome on its face due to its use of “any	
	and all” in order to identify a broad range of	

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	<p>documents. Defendant further objects to this Request as vague and ambiguous as to the terms “support” and “contained.” Without waiving said objections, Defendant responds as follows: Please refer to <i>Defendant’s Initial NRCP 16.2 Disclosure</i>, served April 15, 2021. Additionally, please refer to <i>Defendant’s First Supplemental NRCP 16.2 Disclosure</i>, served concurrently with this response.</p> <p>Discovery is ongoing and Defendant will supplement this response if and when additional documentation becomes available in accordance with Nev.R.Civ.P. Rule 26(e).</p>	
8	<p><b>REQUEST FOR PRODUCTION NO. 32:</b></p> <p>Please provide any and all documents in support of your allegations contained in page 6, paragraph 15 of your motion titled Defendant’s Motion to Set Aside the Divorce Decree Pursuant to NRCP 60(b) filed on January 25, 2021 which reads:</p> <p>Tessie used this knowledge to commit fraud upon the Court and obtain an unequal distribution of the marital estate.</p> <p><b>RESPONSE TO REQUEST FOR PRODUCTION NO. 32:</b></p> <p>Objection. Defendant objects to this Request as vague, ambiguous, overbroad, and unduly burdensome on its face due to its use of “any and all” in order to identify broad range of documents. Defendant further objects to this Request as vague and ambiguous as to the terms “support” and “contained.” Without waiving said objections, Defendant responds as follows: Please refer to <i>Defendant’s Initial NRCP 16.2 Disclosure</i>, served April 15, 2021. Additionally, please refer to <i>Defendant’s First Supplemental NRCP 16.2 Disclosure</i>, served concurrently with this response. Discovery is ongoing and Defendant will supplement this response if and when additional documentation becomes available in accordance with Nev.R.Civ.P. Rule 26(e).</p>	

1	9	<b>REQUEST FOR PRODUCTION NO. 35:</b>	
2		Please provide any and all documents in support	
3		of your allegations contained in page 7,	
4		paragraph 18 of your motion titled Defendant's	
5		Motion to Set Aside the Divorce Decree	
6		Pursuant to NRCP 60(b) filed on January 25,	
7		2021 which reads:	
8		During the parties' marriage, it was Tessie, not	
9		Rodney, who engaged in marital waste.	
10		<b>RESPONSE TO REQUEST FOR</b>	
11		<b>PRODUCTION NO. 35:</b>	
12		Objection. Defendant objects to this Request as	
13		vague, ambiguous, overbroad, and unduly	
14		burdensome on its face due to its use of "any	
15		and all" in order to identify a broad range of	
16		documents. Defendant further objects to this	
17		Request as vague and ambiguous as to the terms	
18		"support" and "contained." Without waiving	
19		said objections, Defendant responds as follows:	
20		Please refer to <i>Defendant's Initial NRCP 16.2</i>	
21		<i>Disclosure</i> , served April 15, 2021. Additionally,	
22		please refer to <i>Defendant's First Supplemental</i>	
23		<i>NRCP 16.2 Disclosure</i> , served concurrently with	
24		this response.	
25		Discovery is ongoing and Defendant will	
26		supplement this response if and when additional	
27		documentation becomes available in accordance	
28		with Nev.R.Civ.P. Rule 26(e).	
	10	<b>REQUEST FOR PRODUCTION NO. 36:</b>	
		Please provide any and all documents in support	
		of your allegations contained in page 12, lines	
		13 through 16 of your motion titled Defendant's	
		Motion to Set Aside the Divorce Decree	
		Pursuant to NRCP 60(b) filed on January 25,	
		2021 which reads:	
		Tessie kept the fact that Rodney had suffered a	
		Traumatic Brain Injury in 2017 from this Court	
		and her counsel, and she otherwise concealed	
		that Rodney, due to his cognitive impairments,	
		was legally incapacitated and otherwise lacked	
		contractual capacity.	
		<b>RESPONSE TO REQUEST FOR</b>	



**PRODUCTION NO. 36:**

Objection. Defendant objects to this Request as vague, ambiguous, overbroad, and unduly burdensome on its face due to its use of “any and all” in order to identify a broad range of documents. Defendant further objects to this Request as vague and ambiguous as to the terms “support” and “contained.” Without waiving said objections, Defendant responds as follows: Please refer to *Defendant’s Initial NRCP 16.2 Disclosure*, served April 15, 2021. Additionally, please refer to *Defendant’s First Supplemental NRCP 16.2 Disclosure*, served concurrently with this response.

Discovery is ongoing and Defendant will supplement this response if and when additional documentation becomes available in accordance with Nev.R.Civ.P. Rule 26(e).

**IV.**  
**Legal Analysis**

***A. Standards for a motion for summary judgment.***

The standard for granting summary judgment is a familiar one. A district court should grant summary judgment when “there are no genuine issues as to any material fact and... the moving party is entitled to judgment as a matter of law.”<sup>1</sup> “[A] genuine issue of material fact is one where the evidence is such that a

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<sup>1</sup>NRCP 56(c); *Posadas v. City of Reno*, 109 Nev 448, 452, 851 P.2d 438, 441-42 (1993); *Bird v. Casa Royale West*, 97 Nev. 67, 69 (1981); *Boland v. Nevada Rock & Sand Co.*, 111 Nev. 608, 610 (1995).

1 reasonable jury could return a verdict for the non-moving party.”<sup>2</sup> Also, a “material  
2 fact” is a fact “that might affect the outcome of the suit under the governing law.”<sup>3</sup>

3 Pursuant to N.R.C.P. 56, summary judgment “*shall* be rendered forthwith if  
4 the pleadings, depositions, answers to interrogatories, and admissions on file,  
5 together with the affidavits, if any, show that there is no genuine issue as to any  
6 material fact and that the moving party is entitled to a judgment as a matter of law.”  
7 N.R.C.P. 56(c) (emphasis supplied).

8 “There is *no* genuine issue of material fact if the party opposing the motion  
9 ‘fails to make an adequate showing sufficient to establish the existence of an  
10 element essential to that party’s case, and on which that party will bear the burden  
11 of proof at trial.’”<sup>4</sup> Notably, issues of material fact *must* be supported by evidence,  
12 and conclusory allegations that are unsupported *cannot* defeat a motion for  
13 summary judgment.<sup>5</sup>

14 With respect to burdens of proof and persuasion in the summary judgment  
15 context, Nevada courts have adopted the federal approach as outlined in *Celotex v.*  
16 *Catrett*, 477 U.S. 317 (1986)<sup>6</sup>. Specifically, the party moving for summary  
17 judgment bears the initial burden of production to show the absence of a genuine  
18 issue of material fact<sup>7</sup>. Upon such a showing, *the party opposing summary*  
19 *judgment assumes a burden of production to show the existence of a genuine*  
*issue of material fact*<sup>8</sup>.

20 The manner in which each party may satisfy its burden of production  
21 depends on which party will bear the burden of persuasion on the challenged claim

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22 <sup>2</sup> *Riley v. OPP IX, L.P.*, 112 Nev. 826, 830, 919 P.2d 1071, 1074 (1996), citing  
23 *Valley Bank v. Marble*, 105 Nev. 366, 266, 775 P.2d 1278, 1279 (1989).

24 <sup>3</sup> *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 106 S. Ct. 2505 (1986).

25 <sup>4</sup> *Taylor v. List*, 880 F.2d 1040, 1045 (1989), *quoting Celotex Corp. v. Catrett*, 477  
26 U.S. 317, 322 (1986); *see also Ray v. Continental W. Ins. Co.*, 920 F. Supp. 1094,  
1097 (1994) (emphasis supplied).

27 <sup>5</sup> *Taylor*, at 880 F.2d at 1045; *Ray*, 920 F. Supp. At 1097 (emphasis supplied).

28 <sup>6</sup> *See Cuzze v. Univ. and Comm. Col. Sys of NV*, 172 P.3d 131, 134 (2007)

<sup>7</sup> *Id.*

<sup>8</sup> *Id.*

1 at trial<sup>9</sup>. If the moving party will bear the burden of persuasion, that party must  
2 present evidence that would entitle it to a judgment as a matter of law in the  
3 absence of contrary evidence<sup>10</sup>. But if the non-moving party will bear the burden of  
4 persuasion at trial, the party moving for summary judgment may satisfy the burden  
5 of production by either (1) submitting evidence that negates an essential element of  
6 the non-moving party's claim or (2) pointing out ... that there is an absence of  
7 evidence to support the non-moving party's case<sup>11</sup>. In such instances, in order to  
8 defeat summary judgment, the non-moving party must transcend the pleading and,  
9 by affidavit or other admissible evidence, introduce specific facts that show a  
genuine issue of material fact<sup>12</sup>.

10 Although the Court must view the facts in the light most favorable to the  
11 nonmoving party, the nonmoving party may not rest on "the mere allegations or  
12 denials of his pleading"<sup>13</sup> but **must** "set forth specific facts demonstrating the  
13 existence of a genuine issue for trial or have summary judgment entered against  
14 him."<sup>14</sup>

15 Indeed, the nonmoving party may **not** rely on "the gossamer threads of  
16 whimsy, speculation and conjecture."<sup>15</sup> When the nonmoving party bears the  
17 burden of persuasion, the moving party can submit evidence that negates an  
18 element of the nonmoving party's claim or point out the lack of evidence to support  
19 the nonmoving party's claims<sup>16</sup>. The nonmoving party is unable to successfully  
20

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21 <sup>9</sup> *Id.*

22 <sup>10</sup> *Id.*

23 <sup>11</sup> *Id.*

<sup>12</sup> *Id.*

24 <sup>13</sup> *Anderson, supra*, 477 U.S. at 248.

25 <sup>14</sup> *Wood v. Safeway, Inc.*, 121 Nev. 724, 732, 121 P.3d 1026, 1031 (2005); *see also*  
26 *Matsushita Electric Indus. Co. v. Zenith Radio Corp.*, 475 U.S. 574 (1986) (non-  
moving party must do more than just show there is some "metaphysical doubt"; the  
non-moving party must show genuine issues for trial).

27 <sup>15</sup> *Id.*; *see also Anderson, supra*, 477 U.S. at 252 (holding a mere "scintilla" of  
evidence will not suffice to meet that burden).

28 <sup>16</sup> *Cuzze*, 123 Nev. at 602-3.

1 rebut the motion for summary judgment unless he is able to point to facts supported  
2 by the record which demonstrate a genuine issue of material fact<sup>17</sup>. In this case,  
3 Rodney is unable to meet his burden.

4 The Nevada Rules of Civil Procedure Rule 56(c) governing Summary  
5 Judgment provides in its pertinent part:

6 The judgment sought *shall be rendered forthwith* if the  
7 pleadings, depositions, answers to interrogatories, and admissions on  
8 file, together with the affidavits, if any show that there is no genuine  
9 issue as to any material fact and that the moving party is entitled to a  
10 judgment as a matter of law. (Emphasis added)

11 The United States Supreme Court has explained that the “[s]ummary  
12 judgment procedure is properly regarded not as a disfavored procedural shortcut,  
13 but rather as an integral part of the [procedural process] as a whole, which [is]  
14 designed ‘to secure the just, speedy and inexpensive determination of every  
15 action.’”<sup>18</sup> (See *Celotex*, 477 at 327; *Wood* at 1030). Although the Supreme Court  
16 was quoting from the Federal Rules of Civil Procedure, the Nevada Courts are  
17 likewise admonished to construe and administer available procedural mechanisms  
18 “to secure the just, speedy, and inexpensive determination of every action.” (See  
19 NRCP 1).

20 ***B. The Decision of the District Court is binding and Nevada Law***  
21 ***requires Dismissal of the Plaintiff’s Complaint.***

22 Under the federal Full Faith and Credit Act, 28 U.S.C. § 1738, the acts of  
23 state tribunals are given the same "full faith and credit" as they have by law in the  
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25 <sup>17</sup> See *Thames v. LVH Corp.*, 211 Fed. Appx. 618 (9<sup>th</sup> Cir. 2006) (non-moving party  
26 must set forth “affirmative admissible evidence establishing a triable issue of fact”);  
27 see also *Orr v. Bank of America, NT & SA*, 285 F.3d 764, 773 (9<sup>th</sup> Cir. 2002) (party  
28 opposing summary judgment cannot establish triable issue of fact by relying on  
inadmissible evidence or unauthenticated documents).

<sup>18</sup> See *Celotex*, 477 at 327; *Wood* at 1030

1 states of their origin. Accordingly, federal courts generally are bound to recognize  
2 the preclusion effects of state court judgments. See *Migra v. Warren City School*  
3 *District Bd. of Educ. et al.*, 465 U.S. 75, 81, 79 L. Ed. 2d 56, 104 S. Ct. 892 (1983).  
4 The foregoing result applies to the decisions of arbitrators as well. See, e.g., *Clark*  
5 *v. Bear Stearns & Co., Inc.*, 966 F.2d 1318, 1321 (9th Cir. 1992); *Seborowski v.*  
6 *Pittsburgh Press Co.*, 188 F.3d 163, 169-71 (3d Cir. 1999); and *Dalow Industries,*  
7 *Inc. v. Jordache Enterprises, Inc.*, 631 F. Supp. 774, 778 (S.D.N.Y. 1985).  
8 [Arbitration awards are treated as if it were a judicial decision for purposes of  
9 applying the preclusion doctrines].

10 Issue preclusion, or collateral estoppel, is applied to conserve judicial  
11 resources, maintain consistency, and avoid harassment or oppression of the adverse  
12 party. *Berkson v. LePome*, 126 Nev. 492, 245 P.3d 560, 566 (2010). For this  
13 doctrine to apply, the following four elements must be met:

14 (1) the issue decided in the prior litigation must be identical to the issue  
15 presented in the current action; (2) the initial ruling must have been on the  
16 merits and have become final; (3) the party against whom the judgment is  
17 asserted must have been a party or in privity with a party to the prior  
18 litigation; and (4) the issue was actually and necessarily litigated.

19 *Five Star Capital Corp. v. Ruby*, 124 Nev.1048, 1055, 194 P.3d at 709, 713 (2008)  
20 quoting *Tarkanian*, 110 Nev. at 598, 879 P.2d at 1191); See also *Elyousef v.*  
21 *O'Reilly & Ferrario, LLC*, 126 Nev. 441, 245 P.3d 547 (2010).

22 Considering these requirements pursuant to the doctrine of issue preclusion,  
23 Rodney is precluded from relitigating the issue of his competency in early 2020  
24 because the issue of his competency in early 2020 was actually litigated in Case  
25 Number CV-2020-0303 in December 2020. The Court in Case Number CV-2020-  
26 0303, on the assertion of Rodney's "incompetency" in early 2020, and pursued by  
27 Rodney through his Guardians to avoid a contract entered in 2019 where Rodney  
28 was paid wages through February of 2020 (one month after the Decree was signed)

1 and which was then renegotiated by Rodney. After carefully considering the merits,  
2 the District Court issued a thorough and comprehensive thirteen-page decision and  
3 corresponding findings concerning the evidenced presented by Rodney surrounding  
4 his assertion of “incompetency” in early 2020 pursued by his Guardian. *Notably,*  
5 *the Court in Case Number CV-2020-0303 issued a final decision finding Rodney*  
6 *was competent during the time the Decree was executed and entered.*

7 Because the issue of Rodney’s competency both preceding and following his  
8 agreement and divorce with Plaintiff, was necessarily and properly raised in the  
9 prior district court case, issue preclusion applies to prevent Guardian from  
10 relitigating the issue of Rodney’s competency at the time of the divorce. *See*  
11 *Alcantara v. Wal-Mart Stores, Inc.*, 130 Nev. 252, (2014) (finding of nonliability in  
12 prior action bars relitigation of liability in separate action).

13 Courts have determined that litigants have the right to try their case, but  
14 public interest and case precedent firmly establish that they are limited to one such  
15 opportunity. Rodney is disallowed, as a matter of law, to have another opportunity  
16 to rehash his “competency” during the time of his agreement and divorce of  
17 Plaintiff, by switching adversaries.

18 As this Court knows, public reliance upon judicial pronouncements requires  
19 that which has been finally determined by competent tribunals be accepted as  
20 undeniable legal truth. Its legal efficacy is not to be undermined, and Rodney’s  
21 endeavors to do so must not be allowed.

22 ***C. Tessie is entitled to an award of attorney’s fees and costs for***  
23 ***having to seek summary judgment on Rodney’s frivolous motion.***

24 In the case at bar, Rodney has acted in bad faith. In their endeavor to  
25 manipulate this Court, Rodney not only violates the duty of candor that is owed to  
26 this Court, Rodney has violated NRCP 11. Quite frankly, Rodney’s conduct  
27 mandates an award of attorney’s fees to Tessie for having to defend and respond to  
28 such a frivolous pleading.

1 NRS 18.010 deals with awards of attorney's fees and provides in relevant  
2 part:

3 (b) Without regard to the recovery sought, when the court finds that  
4 the claim, counterclaim, cross-claim or third-party complaint or  
5 defense of the opposing party was brought or maintained without  
6 reasonable ground or to harass the prevailing party. ***The court shall***  
7 ***liberally construe the provisions of this paragraph in favor of***  
8 ***awarding attorney's fees in all appropriate situations.*** It is the intent  
9 of the Legislature that the court award attorney's fees pursuant to this  
10 paragraph and impose sanctions pursuant to Rule 11 of the Nevada  
11 Rules of Civil Procedure in all appropriate situations ***to punish for and***  
12 ***deter frivolous or vexatious claims*** and defenses because such claims  
13 and defenses overburden limited judicial resources, hinder the timely  
14 resolution of meritorious claims and increase the costs of engaging in  
15 business and providing professional services to the public. (Emphasis  
16 supplied).

17 Additionally, EDCR 7.60 provides, in relevant part:

18 (b) The court may, after notice and an opportunity to be heard, impose  
19 upon an attorney or a party any and all sanctions which may, under the  
20 facts of the case, be reasonable, including the imposition of fines, costs  
21 or attorney's fees when an attorney or a party without just cause:

22 (1) ***Presents to the court a motion*** or an opposition to a motion ***which***  
23 ***is obviously frivolous, unnecessary or unwarranted.***

24 (3) So multiplies the proceedings in a case as to increase costs  
25 unreasonably and vexatiously. (Emphasis supplied).

26 In this case, there was no basis for the request to set aside the Decree based  
27 upon Rodney being incompetent in January of 2020 as another court already  
28 specifically found Rodney to be competent when the Decree was executed and  
entered. Rodney apparently believes he can ignore court rules, violate his duty of  
candor, dismiss the damning effect of issue preclusion, collateral estoppel, and  
controlling precedent, in order to manipulate this Court and the legal system as a  
whole. Such a belief is misguided, and such a tactic ill-judged.

Further, NRS 7.085 also provides this Court with the requisite authority to  
make Tessie whole for the malicious and baseless litigation costs that she has  
incurred defending Rodney's frivolous filing. Therein, it states:

1 1. If a court finds that an attorney has:

2 (a) Filed, maintained or defended a civil action or proceeding in any  
3 court in this State and such action or defense is ***not well-grounded in***  
4 ***fact*** or is not warranted by existing law or by an argument for  
changing the existing law that is made in good faith; or

5 (b) Unreasonably and vexatiously extended a civil action or  
6 proceeding before any court in this State,

7 the court shall require the attorney personally to pay the additional  
8 costs, expenses and attorney's fees reasonably incurred because of such  
conduct.

9 ***2. The court shall liberally construe the provisions of this section in***  
10 ***favor of awarding costs, expenses and attorney's fees in all***  
11 ***appropriate situations.*** It is the intent of the Legislature that the court  
12 award costs, expenses and attorney's fees pursuant to this section and  
13 impose sanctions pursuant to Rule 11 of the Nevada Rules of Civil  
14 Procedure in all appropriate situations to punish for and deter frivolous  
or vexatious claims and defenses because such claims and defenses  
overburden limited judicial resources, hinder the timely resolution of  
meritorious claims and increase the costs of engaging in business and  
providing professional services to the public. (emphasis added).

15 Thus, “NRS 7.085 allows a district court to make an attorney personally  
16 liable for the attorney fees and costs an opponent incurs when the attorney files,  
17 maintains or defends a civil action that is not well-grounded in fact or is not  
18 warranted by existing law or by a good-faith argument for changing the existing  
19 law.”<sup>19</sup>

20 NRCP 11 also enables this Court to impose sanctions if any pleading, written  
21 motion, or other paper is filed that is being filed for any improper purpose, such as  
22 to “***harass, cause unnecessary delay, or needlessly increase the cost of litigation.***”

23 The Nevada Supreme Court, in *Watson Rounds*, held that NRCP 11 and NRS  
24 7.085 each represent a distinct, independent mechanism for sanctioning attorney  
25 misconduct. 131 Nev. at 791.

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28 <sup>19</sup> *Watson Rounds, P.C., v. Eighth Judicial Dist. Ct. (Himelfarb & Associates)*, 131  
Nev. 783, 784, 358 P.3d 228, 230 (2015).



1 Lastly, in *Barney v. Mt. Rose Heating & Air Conditioning*, 192 P.3d 730, 736  
2 (2008) citing *Brunzell v. Golden Gate National Bank*, 85 Nev 345, 455 P.2d 31  
3 (1969), the Court enumerated factors that the district court should consider in  
4 awarding attorney fees, with no one factor controlling, as follows:

- 5 (1) the advocate's qualities, including ability, training, education,  
experience, professional standing, and skill;
- 6 (2) the character of the work, including its difficulty, intricacy,  
7 importance, as well as the time and skill required, the responsibility  
8 imposed, and the prominence and character of the Parties when  
affecting the importance of the litigation;
- 9 (3) the work performed, including the skill, time, and attention given  
to the work; and
- 10 (4) the result--whether the attorney was successful and what benefits  
11 were derived.

12 Tessie's counsel met the factors outlined in *Brunzell*. Tessie's counsel is  
13 qualified and has considerable experience, ability and training in the field of  
14 family law and civil litigation. It is the responsibility of Tessie's counsel to  
15 finalize outstanding issues to ensure the rights of Tessie are preserved and  
16 litigated, to ensure the Orders of the Court are proper, and that the legal system is  
17 not manipulated. Tessie's counsel was attentive to work performed.

18 Accordingly, based upon the foregoing, it is not only fair, but also  
19 reasonable under the circumstances that Rodney and/or his counsel, be responsible  
20 for Tessie's reasonable attorney fees and costs in the sum of \$5,000.00 pursuant to  
21 NRS §18.010, EDCR 7.60, the additional authority cited herein, and the holding  
22 of *Brunzell*.

#### 23 IV.

#### 24 Conclusion

25 Based upon the foregoing, Tessie reasonable requests summary judgment be  
26 entered because no genuine issues of material fact exist because Rodney was found  
27 to be competent by another court at the time he entered into his agreement with  
28 Plaintiff and executed the Decree. As a matter of law, Tessie is entitled to

1 judgment as a matter of law finding Rodney was competent at the time the Decree  
2 was executed and entered; Rodney is barred/estopped as a matter of law from  
3 relitigating his “competency”, and Plaintiff should be awarded attorney fees and  
4 costs associated with defending the frivolous unsupported claim filed and pursed by  
5 Rodney.

6 Dated this 16<sup>th</sup> day of June, 2021.

7  
8 **HOFLAND & TOMSHECK**

9 By: /s/ Bradley J. Hofland

10 Bradley J. Hofland, Esq.  
11 State Bar of Nevada No. 6343  
12 228 South 4th Street, First Floor  
13 Las Vegas, Nevada 89101  
14 (702) 895-6760  
15 *Attorneys for Plaintiff*  
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1                                   **DECLARATION OF TESSIE ELMA ALMARIO**

2           I, Tessie Elma Almario, declare under penalty of perjury under the laws of  
3 the State of Nevada that the following is true and correct.

4           1.     That I am the Plaintiff in this action and am competent to testify as to  
5 the matters stated herein.

6           2.     I have read the foregoing Motion for Summary Judgment, and the  
7 factual averments it contains are true and correct to the best of my knowledge,  
8 except as to those matters based on information and belief, and as to those matters, I  
9 believe them to be true. Those factual averments contained in the referenced filing  
10 are incorporated here as if set forth in full.

11           DATED this 16<sup>th</sup> day of June, 2021.

12                                   /s/ Tessie Elma Almario  
13                                   Tessie Elma Almario  
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1                                   **AFFIDAVIT OF BRADLEY J. HOFLAND, ESQ.**

2           I, Bradley J. Hofland, Esq., hereby state and declare as follows:


3           1. That I am an attorney for Plaintiff *Tessie Elma Almario* ("Tessie") in this  
4 action.

5           2. That Exhibit 1 attached hereto is a true and correct copy of documents  
6 received from Opposing Counsel on June 14, 2021 8:47 PM served in Defendant's  
7 First Supplemental NRCP 16.2 Disclosure.

8           3. That Exhibit 2 attached hereto is a true a correct copy of Defendant Rodney  
9 Wilkinson's Responses to Plaintiff Tessie Elma Almario's Second Set of Request  
10 for Production of Documents to Defendant Rodney Wilkinson served by Opposing  
11 Counsel on June 14, 2021 at 8:47 PM.

12           I declare under penalty of perjury under the laws of the State of Nevada, that  
13 the foregoing is true and correct.

14           DATED this 16<sup>th</sup> day of June, 2021.

15                                     
16                                   Bradley J. Hofland, Esq.



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# EXHIBIT “1”

**IN THE DISTRICT COURT  
FOR THE FORT BERTHOLD INDIAN RESERVATION**

	)	
Rodney Wilkinson,	)	Case No. CV-2020-0303
	)	
Plaintiff,	)	
	)	
vs.	)	
	)	
Darrell Fontenot,	)	
	)	
Defendant.	)	
	)	

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**JUDGMENT**

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The Court having entered its findings and order for judgment and being duly advised it is hereby

ORDERED, ADJUDGED AND DECREED that judgment is entered for the Defendant on his counterclaim in the amount of \$87,700 for storage fees and loss of income due to the Plaintiff's breach of contract and it is further

ORDERED, ADJUDGED AND DECREED that the Defendant has lawfully purchased the 1979 Ford Truck 920 VIN ID4429ICOLOR (wrecker) and the 1980 Cozad Jeep Trailer VIN CC80062 (lowboy trailer) and the Plaintiff shall immediately transfer titles to that property to the Defendant. Failure to do so within 30 days may result in further orders directing that alternative titles be issued and it is further

ORDERED, ADJUDGED AND DECREED that the Plaintiff shall have 120 days from the date of this order to remove his remaining property, the 1993

**WILK000431**

ROA000479

Western Star WS-4964S, VIIN 2WKPDCCCH1PK31154, the 1983 Auto Truck 315 VIN# 1WBRHCVH1DU094972, and the Peerless Drill CH-48-12S provided he satisfies the judgment amount of \$87,700 plus \$100 per day for each day after this order is entered until the property is removed. The Defendant shall have a lien on said property until the judgment amount is paid and failure to pay the amount owed within 120 days shall result in the Defendant being granted leave to execute on his lien and sell said property at a public auction or private sale.

Each side will bear their own costs and fees.

Duly executed this \_\_\_\_ day of December 2020.

---

Clerk of District Court

**WILK000432**

ROA000480



**IN THE DISTRICT COURT  
FOR THE FORT BERTHOLD INDIAN RESERVATION**

Rodney Wilkinson,

Plaintiff,

vs.

Darrell Fontenot,

Defendant.

Case No. CV-2020-0303

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**FINDINGS OF FACT AND CONCLUSIONS OF LAW AND ORDER FOR JUDGMENT**

---

This matter was tried to the Court on the 17<sup>th</sup> day of December 2020 on the Plaintiff's complaint for claim and delivery of certain personal property and the Defendant's counterclaim for breach of written contract and for foreclosure of liens. The trial was conducted by Zoom with the Plaintiff not appearing, but his legal guardians, Sheryl and Steven Atterberg, appearing by Zoom and the Defendant appearing by Zoom with his wife who also testified as the Defendant's business manager. The Court adjourned the proceedings in order to permit the guardians to gain the presence of the Plaintiff by Zoom but they were not able to do so, despite the Court noticing this matter for trial and notifying the Parties on November 24, 2020 that it would permit the Plaintiff to appear by phone or Zoom. The Court thus permitted the guardians to testify for the Plaintiff and also permitted them to supplement the complaint with their assertions that the Plaintiff was incompetent to

enter into the contracts offered into evidence by the Defendant and thus they should be held to be void ab initio.

The Defendant offered his testimony as did his wife, Tina Fontenot, who was the operations manager for the Defendant's LLC, Synergy Oilfield Services, an Idaho LLC. The Court also received into evidence several exhibits filed by each side. Based on the evidence submitted as well as the exhibits offered the Court finds as follows:

1. The Plaintiff is a 65-year old resident of the State of Kansas who lives in assisted living in Goodland, Sherman County Kansas. He is a non-member of the Fort Berthold reservation but who engaged in business transactions with the Defendant, a member of the Tribe, and who also worked for a short period of time on the Fort Berthold reservation for the Defendant's company;
2. The Plaintiff's sister, Sheryl Atterburg, and Steven Atteburg were designated powers of attorney for the Plaintiff on September 4, 2020 when the Plaintiff executed a written power of attorney. The Atterburgs were also appointed as legal guardians over the Plaintiff by court order. No power of attorney or guardianship appointment was in place when during the relevant periods of time described herein;
3. The Plaintiff suffered a traumatic brain injury in 1974 and has also suffered three strokes, most recently in 2017. Despite this the Plaintiff was working

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and maintained a Commercial Driver's License in Colorado and Kansas as recently as September of 2020. There is no evidence that the Defendant knew or should have known of his cognitive shortcomings as even the Plaintiffs' POA noted that he still maintained expert mechanical skills as late as 2020;

4. The Defendant Darrell Gene Fontenot is an enrolled member of the Three Affiliated Tribes residing on the Fort Berthold reservation. He owns two companies, Synergy Oilfield Services LLC (Idaho) and Avea Oilfield Services LLC, licensed in North Dakota. Both are Tier I companies licensed by TERO on the Fort Berthold reservation.
5. On June 13, 2019 the Plaintiff answered Defendant's Craig's list ad for a mechanic and the Plaintiff drove to the Fort Berthold reservation in a very nice rig and seemed very knowledgeable of mechanic work. He was interviewed by the Defendant's truck manager and fleet supervisor who were impressed with his mechanical knowledge and he was hired. He never mentioned to the Defendant's agents any cognitive limitations and none were noticed except the Plaintiff did seem to have quite a temper;
6. The Plaintiff started working as a mechanic for the Defendant's company, Synergy on June 21, 2019 at \$45 per hour. The Defendant's agents noticed that the Plaintiff was quite slow in his work performance and he would oftentimes linger on the job site not working so the Defendant's agents

decided to demote him and reduce his wages to \$25 per hour. The Plaintiffs POA's denied that the Plaintiff's work skills were diminished at all and believed that he was a superior mechanic during this period of time, but there is no evidence that they were observing him during this period of time because they remained in Colorado.

7. While working for the Defendant's companies in July of 2019 the Plaintiff mentioned to the Defendant's lead mechanic that he had heavy equipment in Kansas that he wished to put to use for a profit because it was idle. The lead mechanic mentioned this to the Defendant who indicated he could use the equipment but because TERO regulations prohibited an Indian-owned business from using the equipment in the oilfields of a non-Indian that he had to have some ownership interest in the equipment. At that time the Plaintiff did not have the money to even purchase insurance for the equipment;
8. The Plaintiff indicated that his equipment was in good shape and that he could operate the drilling rig he had. He also referred the Defendant to a friend of his, Steven Ulland, could also operate a Coil Tube Oil Rig and Mr. Ulland was also hired at the request of the Plaintiff. He only lasted a few months however until December of 2019 when he quit and moved away.
9. In mid-July of 2019 the Plaintiff and his wife and the Defendant went to Kansas to try and move the equipment of Plaintiff to North Dakota. The

equipment was in poor condition however and the Parties were only able to bring back a Lowboy Trailer, a Boom Truck, Wench Truck and Auto truck. The equipment was in such poor shape that the Defendant had to expend monies to get it in condition to bring to North Dakota. This was followed by two additional trips in September that again were delayed due to the equipment being in bad shape and the Plaintiff needing to purchase permits to transport the Coil Tube Oil Rig. Some parts for the rig are still in Kansas and could not be transported.

10. The Defendant estimated at trial that it would cost about \$150,000 to make the equipment operational for the oil fields. The Plaintiff's guardians disputed this and believed that the equipment was all in working condition but the evidence demonstrates that they had no personal knowledge of this but were relying upon the statements made to them by the Plaintiff;

11. The Parties entered into several contracts for the use/purchase of the Plaintiff's property so it could be utilized. The first contract dated August 21, 2019 was offered into evidence and was between the Plaintiff and Synergy Oil Services and pertained only to a 1979 Ford Truck 920 VIN ID4429ICOL0 (wrecker) and was to be purchased in 24 months at the rate of \$333.33 per month. There was a second purchase agreement the same date between the

Parties for a 1980 Cozad Jeep Trailer VIN CC80062 (lowboy trailer) for \$833.33 per month for 36 months;

12. The Plaintiff continued to work for the Defendant's LLC and was paid wages in the amount of \$26,803.17 up until February of 2020 and the payments were also made on the purchase agreements.

13. In February of 2020 the Parties entered into another contract expressly rescinding the prior contracts and was an attempt to close the transaction between the parties because the Defendant testified he was becoming increasingly frustrated with the fact the Plaintiff was being paid wages to try to get his own equipment into working condition and he no longer wanted him as an employee because of his anger and confrontations with other employees.

14. The February 21, 2020 contract admitted into evidence is an agreement between the parties wherein the Parties agreed that the purchase contracts for the 1979 Ford Truck 920 and 1980 Cozad Jeep Trailer would be deemed satisfied from the prior payments made to the Plaintiff for those vehicles as well as the salary paid to the Plaintiff (total amount of both was approximately \$65,000). The Defendant also testified that he provided the Plaintiff free lodging for himself for two months after he was terminated as well as two months free use of his wife's car which was also consideration for the February 21, 2020 contract. The Plaintiff also agreed to remove all liens from these vehicles and

to provide the titles to them. The Defendant testified that he was not aware that there were actually three titles to the Jeep Trailer and the Plaintiff has refused to deliver them to him despite his agreeing to travel to Kansas to get them. Because of this failure he has been unable to sell the Lowboy Trailer which he wished to do, because his businesses went into a tailspin due to Covid 19;

15. The remaining property on the Defendant's land- the 1993 Western Star, the 1983 Auto Truck 315 and the Peerless Drill – would be preserved on the Defendant's business land for 30 days and if the Plaintiff did not pick them up the contract purported to permit the Defendant and Synergy to take full possession of them and sell them as they pleased.

16. The Defendant's wife testified that the land where the property was being held was being leased for about \$6000 month and that his explains why there was an urgent need to remove the property because Synergy was in bad financial shape and it could not continue to maintain the lease just to keep the Plaintiff's property there;

17. The Plaintiff signed this last contract on February 24, 2020 and there has been no evidence presented to this Court to show that the Plaintiff was incompetent or not able to enter into a binding contact at that time. The Court also finds no

evidence to prove that the Defendant and his agents knew or should have known of any cognitive limitations on the part of the Plaintiff.

18. When the Plaintiff continued to refuse to provide the titles for the Lowboy Trailer which the Defendant was trying to sell the Defendant decided to give notice to the Plaintiff that he had 30 days to come and retrieve the remaining property or there would be a lien imposed upon it that would have to be paid in order to retrieve the property back. The Plaintiff failed to retrieve the property although his guardians believed he had arranged to come and pick up the Peerless Drill but the Defendant disputed this.

19. The Plaintiff left the Fort Berthold reservation in late February or early March of 2020 and has not been back since. The property remains on lands being leased by the Defendant and the Plaintiff has paid no storage fees.

20. The guardians for the Plaintiff testified that there was an oral amendment to the February contract where the Defendant agreed to permit the Plaintiff to store his property rent-free on his land he was leasing. The Defendant denied this and the Court finds under the parole evidence rule that the claim of an oral modification of a written contract is not legitimize.

21. In May of 2020 the guardians of the Plaintiff reported to Kansas Adult Protective Services officials that the Plaintiff had been financially exploited by the Defendant and Kansas officials commenced an investigation. In June



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of 2020 after investigating the matter Kansas officials found that the allegations were unsubstantiated and closed the investigation. The guardians for the Plaintiff testified that they believed this was because Kansas found that the matter was a civil dispute not a criminal case, but the letter of June of 2020 does not make that distinction and the Court concludes that Kansas officials did not find sufficient evidence of any exploitation.

22. The Plaintiff then commenced this action seeking a return of his personal property. The Defendant counterclaimed for enforcement of the three contracts between the Parties and for storage fees for the three items of property that they assert were not sold to him as well as for loss of income due to the Plaintiff failing to provide the titles for the lowboy as well as for 30 hours of work done by his wife to get the financial evidence ready for trial. The total amount prayed for by the Defendant in his counterclaim at trial was for \$126,000 plus a finding that the Wrecker and Lowboy were lawfully sold to him;

23. The Plaintiff's guardians were permitted to argue that the written contracts between the parties were void due to the Plaintiff's alleged incompetency to contract and they requested that the Court order the return of all of the property to the Plaintiff with nothing on the counterclaim.

NOW THEREFORE based upon the foregoing findings of fact the Court enters the following:

#### CONCLUSIONS OF LAW

1. This Court has jurisdiction over both the subject matter of this action and personal jurisdiction over the Parties to this proceeding. The Parties entered into a contractual relationship on the Fort Berthold reservation and one of the Parties- the Defendant- is a tribal member;
2. The Court finds that the Plaintiff at all relevant times related to his cause of action and the counterclaim was competent to contract and had not been found incompetent by a court of law. Although it appears he did suffer from some cognitive issues he still maintained a CDL in two states, was able to work as a mechanic, and never advised the Defendant or his agents of any cognitive limitations. Even if he were operating under some limitations on his cognitive functioning nothing in the record before this Court reveals that the Defendant or his agents knew or should have known of this. The fact that the State of Kansas looked into this issue and found no validity to the allegations that the Plaintiff has been financially exploited buttresses the Court's findings on this issue;

3. The February 21, 2020 contract between the Parties executed on February 24, 2020 is a binding contract with the exception of certain provisions that are unconscionable. The Court will not enforce that part of the contract that stipulates that failure on the part of the Plaintiff to remove the remaining items of property from the Defendant's leased lands within 30 days would result in title to said property being vested in Defendant. Such a provision would result in a \$200,000 drill and other property of substantial value defaulting to the Defendant. The Court notes that the Defendant does not seek enforcement of that provision of the contract in his counterclaim but instead seeks damages for storing the property as well as for loss of income and expenses of his wife;
4. The Court finds that the Defendant lawfully purchased the 1979 Ford Truck 920 VIN ID4429ICOLOR ( wrecker) and the 1980 Cozad Jeep Trailer VIN CC80062 (lowboy trailer) and the Plaintiff shall immediately transfer titles to that property to the Defendant. Failure to do so within 30 days may result in further orders directing that alternative titles be issued;
5. The Court further finds that the remaining property of the Plaintiff referenced in the February 21, 2020 contract remains the property of the Plaintiff but is subject to a storage lien that must be paid prior to removal of said property;

6. The Court finds for the Defendant in the amount of \$100 per day from the date of March 24, 2020 (the date the property was to be removed pursuant to the February contract) for a total amount of \$27,700. The amount of \$100 per day represents about half of the land lease the Defendant was required to pay to retain the lease where the property sits;
7. The Court finds for the Defendant in the amount of \$60,000 for loss of income due to the Plaintiff's failure to comply with the February 24, 2020 contract selling the lowboy and wrecker to the Defendant as he has not been able to use the lowboy since February or 2020 due to the Plaintiff not conveying lawful title in breach of the agreement. The other claims for business expenses of his wife to prepare records is part of preparing for litigation and is not granted.

#### ORDER FOR JUDGMENT

Now therefore based on the foregoing findings of fact and conclusions of law it is hereby

ORDERED, ADJUDGED AND DECREED that judgment is entered for the Defendant on his counterclaim in the amount of \$87,700 for stooge fees and loss of income due to the Plaintiff's breach of contract and it is further

ORDERED, ADJUDGED AND DECREED that the Defendant has lawfully purchased the 1979 Ford Truck 920 VIN ID4429ICOL ( wrecker) and the 1980 Cozad Jeep Trailer VIN CC80062 (lowboy trailer) and the Plaintiff shall immediately transfer titles to that property to the Defendant. Failure to do so within 30 days may result in further orders directing that alternative titles be issued and it is further

ORDERED, ADJUDGED AND DECREED that the Plaintiff shall have 120 days from the date of this order to remove his remaining property, the 1993 Western Star WS-4964S, VIIN 2WKPDCCCH1PK31154, the 1983 Auto Truck 315 VIN# 1WBRHCVH1DU094972, and the Peerless Drill CH-48-12S provided he satisfies the judgment amount of \$87,700 plus \$100 per day for each day after this order is entered until the property is removed. The Defendant shall have a lien on said property until the judgment amount is paid and failure to pay the amount owed within 120 days shall result in the Defendant being granted leave to execute on his lien and sell said property at a public auction or private sale.

Each side will bear their own costs and fees

LET JUDGMENT BE ENTERED ACCORDINGLY.

So ordered this 29<sup>th</sup> day of December 2020.

BY ORDER OF THE COURT:

ORDERED, ADJUDGED AND DECREED that the Defendant has lawfully purchased the 1979 Ford Truck 920 VIN ID4429ICOLOR ( wrecker) and the 1980 Cozad Jeep Trailer VIN CC80062 (lowboy trailer) and the Plaintiff shall immediately transfer titles to that property to the Defendant. Failure to do so within 30 days may result in further orders directing that alternative titles be issued and it is further

ORDERED, ADJUDGED AND DECREED that the Plaintiff shall have 120 days from the date of this order to remove his remaining property, the 1993 Western Star WS-4964S, VIIN 2WKPDCCCH1PK31154, the 1983 Auto Truck 315 VIN# 1WBRHCVH1DU094972, and the Peerless Drill CH-48-12S provided he satisfies the judgment amount of \$87,700 plus \$100 per day for each day after this order is entered until the property is removed. The Defendant shall have a lien on said property until the judgment amount is paid and failure to pay the amount owed within 120 days shall result in the Defendant being granted leave to execute on his lien and sell said property at a public auction or private sale.

Each side will bear their own costs and fees

LET JUDGMENT BE ENTERED ACCORDINGLY.

So ordered this 29<sup>th</sup> day of December 2020.

BY ORDER OF THE COURT:

*B. J. Jones*

Associate Judge BJ Jones **WILK000446**

# EXHIBIT “2”

JAMES KWON, LLC

6280 SPRING MOUNTAIN ROAD, SUITE 100  
LAS VEGAS, NEVADA 89146  
TEL.: (702) 515-1200 – FAX: (702) 515-1201

**RESP**  
JAMES W. KWON, ESQ.  
Nevada Bar No. 8146  
**JAMES KWON, LLC**  
6280 Spring Mountain Rd., Suite 100  
Las Vegas, Nevada 89146  
P: (702) 515-1200  
F: (702) 515-1201  
jkwon@jwklawfirm.com  
*Attorney for Sheryl Atterberg,*  
*On behalf of her Adult Ward,*  
*Defendant, Rodney Wilkinson*

**EIGHTH JUDICIAL DISTRICT COURT  
FAMILY DIVISION  
COUNTY OF CLARK, STATE OF NEVADA**

TESSIE E. WILKINSON a/k/a TESSIE  
ELMA ALMARIO,  
Plaintiff,  
vs.  
RODNEY WILKINSON,  
Defendant.

Case No.: D-19-596071-D  
Dept.: U

**DEFENDANT RODNEY WILKINSON'S RESPONSES TO**  
**PLAINTIFF TESSIE ELMA ALMARIO'S SECOND SET OF REQUESTS**  
**FOR PRODUCTION OF DOCUMENTS TO DEFENDANT RODNEY**  
**WILKINSON**

Pursuant to Rules 26 and 34 of the Nevada Rules of Civil Procedure, Sheryl Atterberg, on behalf of her Adult Ward, Defendant, Rodney Wilkinson, by and through her attorney of record, James W. Kwon, Esq., of the law firm James Kwon, LLC, hereby responds and objects to *Plaintiff Tessie Elma Almario's Second Set of*



1 *Requests for Production of Documents to Defendant Rodney Wilkinson as follows:*

2 **GENERAL OBJECTIONS**

3 1. Defendant objects to the Document Requests, including the definitions  
4 and instructions contained therein, to the extent that they attempt to impose  
5 obligations on Defendant greater than those imposed by the Nevada Rules of Civil  
6 Procedure and the Local Rules of the Eighth Judicial District Court.

7 2. Defendant objects to the Document Requests to the extent that they may  
8 be construed to request disclosure of information that was prepared in anticipation of  
9 litigation, constitutes attorney work product, discloses the mental impressions,  
10 conclusions, opinions or legal theories of any attorneys for Defendant, contains  
11 privileged attorney-client communications, contains confidential, trade secret or  
12 proprietary information, or is otherwise protected from disclosure under applicable  
13 privileges, laws or rules.

14 3. Defendant objects to the Document Requests to the extent that they may  
15 be construed to request the disclosure of information that is neither relevant to the  
16 subject matter of any claims or defenses of any party to this action nor reasonably  
17 calculated to lead to the discovery of admissible evidence.

18 4. Defendant objects to the Document Requests to the extent that there are  
19 more practical methods of obtaining the information Plaintiff seeks.  
20

1           5.     Defendant objects to the Document Requests to the extent that they are  
2 vague, ambiguous, overly broad, oppressive and/or unduly burdensome.

3           6.     Defendant objects to the Document Requests to the extent that they  
4 seek information that is already within Plaintiff's possession, custody or control, is  
5 publicly available, and/or is more readily and more appropriately collected from  
6 sources other than Defendant.

7           7.     Defendant objects to the Document Requests to the extent that they  
8 purport to require Defendant to conduct an investigation to obtain information  
9 beyond Defendant's own records.

10          8.     These objections and responses are made by Defendant without  
11 prejudice to Defendant, Defendant's using or relying at trial on subsequently  
12 discovered information, or on information omitted from these objections and  
13 responses as a result of good-faith oversight or error.

14          9.     If any privileged document is produced pursuant to the Document  
15 Requests, the production is inadvertent, the privilege is not waived, and the  
16 privileged document should be returned as soon as possible.

17          10.    Defendant has exercised due and reasonable diligence in responding to  
18 the Document Requests. Defendant reserves the right to supplement or amend any  
19 and all parts of the responses provided herein, and to object to the admissibility of  
20 any of the information contained in the responses.

1 11. Defendant submits these responses without conceding the relevancy or  
2 materiality of the subject matter of any individual Document Request or response  
3 thereto.

4 12. Defendant objects to the time set for production and will produce  
5 documents and information responsive to the Document Requests on a rolling basis.

6 13. Defendant will produce documents and information responsive to the  
7 Document Requests following entry of an appropriate protective order governing the  
8 use and disclosure of confidential information.

9 14. Defendant's General Objections shall be deemed to continue  
10 throughout, and be incorporated in, each and every response to the specific  
11 Document Requests that follow, even where not also referenced in such responses.

12 **REQUESTS FOR PRODUCTION OF DOCUMENTS**

13 As discovery is ongoing in this matter, Defendant reserves the right to amend  
14 and/or supplement any or all responses delineated below as well as *Defendant's*  
15 *Initial NRCP 16.2 Disclosure*, served on April 15, 2021, in accordance with  
16 Nev.R.Civ.P. Rule 26(e).

17 **REQUEST FOR PRODUCTION NO. 9:**

18 Please produce and identify by bates stamp number a copy of all pay stubs or  
19 other proof of income or employment that reflect Rodney's earnings from March 22,  
20 2008 through February 12, 2020.

**RESPONSE TO REQUEST FOR PRODUCTION NO. 9:**

Objection. Defendant objects to this Request as it is intended to be an unwarranted annoyance, is oppressive and is intended to harass Defendant as it seeks documentation that Defendant could not provide as an incapacitated person and Sheryl Atterberg would not be in possession for the vast majority of the requested documentation. Without waiving said objections, Defendant responds as follows:

Please refer to *Defendant's First Supplemental NRCP 16.2 Disclosure*, served concurrently with this response.

Discovery is ongoing and Defendant will supplement this response if and when additional documentation becomes available in accordance with Nev.R.Civ.P. Rule 26(e).

**REQUEST FOR PRODUCTION NO. 10:**

Please produce and identify by bates stamp number copies of all retirement, 401k, pension or retirement accounts from March 22, 2008 through February 12, 2020.

**RESPONSE TO REQUEST FOR PRODUCTION NO. 10:**

Objection. Defendant objects to this Request as it is intended to be an unwarranted annoyance, is oppressive and is intended to harass Defendant as it seeks documentation that Defendant could not provide as an incapacitated person and Sheryl Atterberg does not possess said documentation. Without waiving said

1 objections, Defendant responds as follows:

2 None.

3 Discovery is ongoing and Defendant will supplement this response if and  
4 when additional documentation becomes available in accordance with Nev.R.Civ.P.  
5 Rule 26(e).

6 **REQUEST FOR PRODUCTION NO. 11:**

7 Please produce and identify by bates stamp number true and correct copies of  
8 your credit card statements from March 22, 2008 through February 12, 2020.

9 **RESPONSE TO REQUEST FOR PRODUCTION NO. 11:**

10 Objection. Defendant objects to this Request as it is intended to be an  
11 unwarranted annoyance, is oppressive and is intended to harass Defendant as it seeks  
12 documentation that Defendant could not provide as an incapacitated person and  
13 Sheryl Atterberg does not possess said documentation. Without waiving said  
14 objections, Defendant responds as follows:

15 Please refer to *Defendant's First Supplemental NRCP 16.2 Disclosure*, served  
16 concurrently with this response.

17 Discovery is ongoing and Defendant will supplement this response if and  
18 when additional documentation becomes available in accordance with Nev.R.Civ.P.  
19 Rule 26(e).

20

1 **REQUEST FOR PRODUCTION NO. 12:**

2 Please produce and identify by bates stamp number true and correct copies of  
3 any and all documents or other writing as it concerns to your financial statements, or  
4 lists of your assets and liabilities that you prepared or was prepared for you FROM  
5 March 22, 2008 through February 12, 2020.

6 **RESPONSE TO REQUEST FOR PRODUCTION NO. 12:**

7 Objection. Defendant objects to this Request as vague, ambiguous, overbroad,  
8 and unduly burdensome on its face due to its use of “any and all” and “as it  
9 concerns,” and “each and every” in order to identify a broad range of documents.  
10 Defendant further objects to this Request as vague and ambiguous as to the terms  
11 “other writing” and “lists.” Without waiving said objections, Defendant responds as  
12 follows:

13 Please refer to the *Decree of Divorce* filed on February 12, 2020 as was  
14 prepared by Plaintiff.

15 Discovery is ongoing and Defendant will supplement this response if and  
16 when additional documentation becomes available in accordance with Nev.R.Civ.P.  
17 Rule 26(e).

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**REQUEST FOR PRODUCTION NO. 13:**

Please produce and identify by bates stamp number true and correct copies of any and all documents or other writing as it concerns to each and every source of income from March 22, 2008 through February 12, 2020.

**RESPONSE TO REQUEST FOR PRODUCTION NO. 13:**

Objection. Defendant objects to this Request as vague, ambiguous, overbroad, and unduly burdensome on its face due to its use of “any and all,” “as it concerns,” and “each and every” in order to identify a broad range of documents. Defendant further objects to this Request as vague and ambiguous as to the terms “other writing” and “source.” Without waiving said objections, Defendant responds as follows:

Please refer to *Defendant’s First Supplemental NRCP 16.2 Disclosure*, served concurrently with this response.

Discovery is ongoing and Defendant will supplement this response if and when additional documentation becomes available in accordance with Nev.R.Civ.P. Rule 26(e).

**REQUEST FOR PRODUCTION NO. 14:**

Please produce and identify by bates stamp number true and correct copies of any and all documents or other writing as it concerns all savings and commercial accounts in your name or in which you have an interest or have had an interest from

1 March 22, 2008 through February 12, 2020, including all checking, savings, money  
2 market, certificates of deposit, Christmas clubs, or other accounts, not produced in  
3 response to a preceding request including but not limited to:

- 4 a) Monthly statements;
- 5 b) Cancelled checks;
- 6 c) Deposit slips;
- 7 d) Withdrawal statements;
- 8 e) Check registers;
- 9 f) Documents sent to or from the bank or financial institutions; and
- 10 g) Check registers maintained on a computer accounting software such  
11 as Quicken.

12 **RESPONSE TO REQUEST FOR PRODUCTION NO. 14:**

13 Objection. Defendant objects to this Request as vague, ambiguous, overbroad,  
14 and unduly burdensome on its face due to its duplicative use of “any and all,” “as it  
15 concerns,” and “all” in order to identify a broad range of documents. Defendant  
16 further objects to this Request as vague and ambiguous as to the terms “other  
17 writings,” “interest,” and “request.” Without waiving said objections, Defendant  
18 responds as follows:

19 Please refer to *Defendant’s First Supplemental NRCP 16.2 Disclosure*, served  
20 concurrently with this response.



1       Discovery is ongoing and Defendant will supplement this response if and  
2 when additional documentation becomes available in accordance with Nev.R.Civ.P.  
3 Rule 26(e).

4       **REQUEST FOR PRODUCTION NO. 15:**

5       Please produce and identify by bates stamp number all documents or written  
6 communications not previously identified which evidence, relate to, support or  
7 contradict the Tessie's position in this action.

8       **RESPONSE TO REQUEST FOR PRODUCTION NO. 15:**

9       Objection. Defendant objects to this Request as vague, ambiguous, overbroad,  
10 and unduly burdensome on its face due to its use of "all" and "relate to" in order to  
11 identify a broad range of documents. Defendant further objects to this Request as  
12 vague and ambiguous as to the terms "evidence" and "contradict." Defendant further  
13 objects to this Request as it is likely already in the possession of Plaintiff. Without  
14 waiving said objections, Plaintiff responds as follows:

15       None. Defendant is an incapacitated person and, therefore, cannot attest to any  
16 communications between himself and Plaintiff. Sheryl Atterberg is unaware of any  
17 physical documentation of any communications between Defendant and Plaintiff.

18       Discovery is ongoing and Defendant will supplement this response if and  
19 when additional documentation becomes available in accordance with Nev.R.Civ.P.  
20 Rule 26(e).

1 **REQUEST FOR PRODUCTION NO. 16:**

2 Please produce and identify by bates stamp number copies of any and all  
3 communications between you and Tessie between March 22, 2008 through the  
4 present.

5 **RESPONSE TO REQUEST FOR PRODUCTION NO. 16:**

6 Objection. Defendant objects to this Request as vague, ambiguous, overbroad,  
7 and unduly burdensome on its face due to its use of “any and all” in order to identify  
8 a broad range of documents. Defendant further objects to this Request as vague and  
9 ambiguous as to the terms “supporting” and “pertaining to.” Defendant further  
10 objects to this Request as it is likely already in the possession of Plaintiff. Without  
11 waiving said objections, Plaintiff responds as follows:

12 None. Defendant is an incapacitated person and, therefore, cannot attest to any  
13 communications between himself and Plaintiff. Sheryl Atterberg is unaware of any  
14 physical documentation of any communications between Defendant and Plaintiff.

15 Discovery is ongoing and Defendant will supplement this response if and  
16 when additional documentation becomes available in accordance with Nev.R.Civ.P.  
17 Rule 26(e).

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**REQUEST FOR PRODUCTION NO. 17:**

Please produce any and all documents evidencing an interest you had, have, or may have in any association, partnership, corporation, fictitious name, enterprise or entity between March 22, 2008 and February 12, 2020.

**RESPONSE TO REQUEST FOR PRODUCTION NO. 17:**

Objection. Defendant objects to this Request as vague, ambiguous, overbroad, and unduly burdensome on its face due to its use of “any and all” and “any” in order to identify a broad range of documents. Defendant further objects to this Request as vague and ambiguous as to the terms “health,” “any,” “other,” “type,” “medical analysis,” “other healthcare professionals.” Without waiving said objections, Defendant responds as follows:

Please refer to *Defendant’s First Supplemental NRCP 16.2 Disclosure*, served concurrently with this response.

Discovery is ongoing and Defendant will supplement this response if and when additional documentation becomes available in accordance with Nev.R.Civ.P. Rule 26(e).

**REQUEST FOR PRODUCTION NO. 18:**

Please provide any and all documentation showing your income and earnings, to include copies of any and all Federal Income Tax Returns, W-2 statements, 1099 forms, gambling winnings, retirement distributions and/or paystubs received by you

1 from any employer for which you are, or were, employed, for the period beginning  
2 January 1, 2008 to February 12, 2020, including income earned through investments,  
3 real property rental and self-employment, if applicable.

4 **RESPONSE TO REQUEST FOR PRODUCTION NO. 18:**

5 Objection. Defendant objects to this Request as vague, ambiguous, overbroad,  
6 and unduly burdensome on its face due to its use of “any and all” and “any” in order  
7 to identify a broad range of documents. Defendant further objects to this Request as  
8 vague and ambiguous as to the terms “earnings,” “employer,” “investments,” “real  
9 property rental.” Without waiving said objections, Defendant responds as follows:

10 Please refer to *Defendant’s First Supplemental NRCP 16.2 Disclosure*, served  
11 concurrently with this response. Additionally, please refer to *Plaintiff’s First*  
12 *Supplemental List of Witnesses and Disclosure of Documents*, electronically served  
13 May 24, 2021.

14 Discovery is ongoing and Defendant will supplement this response if and  
15 when additional documentation becomes available in accordance with Nev.R.Civ.P.  
16 Rule 26(e).

17 **REQUEST FOR PRODUCTION NO. 19:**

18 Please provide true and correct copies of any and all documents or other  
19 writing as it concerns to a person or entity holding property, real or personal, for  
20 your benefit (e.g., real estate or a trust fund).

**RESPONSE TO REQUEST FOR PRODUCTION NO. 19:**

Objection. Defendant objects to this Request as vague, ambiguous, overbroad, and unduly burdensome on its face due to its use of “any and all” and “concerns to” in order to identify a broad range of documents. Defendant further objects to this Request as vague and ambiguous as to the terms “true and correct,” “other writings,” and “holding.” Without waiving said objections, Defendant responds as follows:

Please refer to *Defendant’s Initial NRCP 16.2 Disclosure*, served April 15, 2021, specifically WILK000325 to WILK000328. Additionally, please refer to *Defendant’s First Supplemental NRCP 16.2 Disclosure*, served concurrently with this response.

Discovery is ongoing and Defendant will supplement this response if and when additional documentation becomes available in accordance with Nev.R.Civ.P. Rule 26(e).

**REQUEST FOR PRODUCTION NO. 20:**

Please provide any and all documentation showing a full and itemized accounting for any and all assets and property, including real property, that you owned between March 22, 2008 and February 12, 2020.

**RESPONSE TO REQUEST FOR PRODUCTION NO. 20:**

Objection. Defendant objects to this Request as vague, ambiguous, overbroad, and unduly burdensome on its face due to its use of “any and all” in order to identify

1 a broad range of documents. Defendant further objects to this Request as vague and  
2 ambiguous as to the terms “showing,” “full,” “accounting,” “assets,” “property,” and  
3 “owned.” Without waiving said objections, Defendant responds as follows:

4 None. Please refer *Plaintiff’s First Supplemental List of Witnesses and*  
5 *Disclosure of Documents*, electronically served May 24, 2021.

6 Discovery is ongoing and Defendant will supplement this response if and  
7 when additional documentation becomes available in accordance with Nev.R.Civ.P.  
8 Rule 26(e).

9 **REQUEST FOR PRODUCTION NO. 21:**

10 Please provide any and all documentation showing a full and itemized  
11 accounting for any and all assets and property, including real property, that you sold  
12 between March 22, 2008 and February 12, 2020.

13 **RESPONSE TO REQUEST FOR PRODUCTION NO. 21:**

14 Objection. Defendant objects to this Request as vague, ambiguous, overbroad,  
15 and unduly burdensome on its face due to its use of “any and all” in order to identify  
16 a broad range of documents. Defendant further objects to this Request as vague and  
17 ambiguous as to the terms “showing,” “full,” “accounting,” “assets,” “property,” and  
18 “sold.” Without waiving said objections, Defendant responds as follows:

19 Please refer to *Defendant’s First Supplemental NRCP 16.2 Disclosure*, served  
20 concurrently with this response.

1 Discovery is ongoing and Defendant will supplement this response if and  
2 when additional documentation becomes available in accordance with Nev.R.Civ.P.  
3 Rule 26(e).

4 **REQUEST FOR PRODUCTION NO. 22:**

5 Provide any and all records pertaining to real estate (including oil, gas and  
6 other minerals) in which you have an interest, including, but not limited to, any and  
7 all deeds, mortgages, deeds of trust, liens, leases, promissory notes, surveys, and  
8 settlement statements, purchaser's or seller's, together with any evidence showing  
9 monthly payments and present outstanding balance of principal and interest, for the  
10 past ten years through the date of your response to this request.

11 **RESPONSE TO REQUEST FOR PRODUCTION NO. 22:**

12 Objection. Defendant objects to this Request as vague, ambiguous, overbroad,  
13 and unduly burdensome on its face due to its use of "any and all," "pertaining to,"  
14 "not limited to," and "any" in order to identify a broad range of documents.  
15 Defendant further objects to this Request as vague and ambiguous as to the terms  
16 "records," "interest," and "evidence." Without waiving said objections, Defendant  
17 responds as follows:

18 Any and all records pertaining to real estate were appropriated by Plaintiff  
19 and, therefore, in her possession. Additionally, please refer to *Defendant's First*  
20 *Supplemental NRCP 16.2 Disclosure*, served concurrently with this response.

1 Discovery is ongoing and Defendant will supplement this response if and  
2 when additional documentation becomes available in accordance with Nev.R.Civ.P.  
3 Rule 26(e).

4 **REQUEST FOR PRODUCTION NO. 23:**

5 Provide any and all Certificates of Title and all other records pertaining to any  
6 and all motor vehicles in which you have any interest, including, but not limited to,  
7 automobiles, trucks, vans, boats, trailers, tractors, aircraft or recreational vehicles,  
8 including any and all motor vehicles you have driven for the past ten years through  
9 the date of your response to this request.

10 **RESPONSE TO REQUEST FOR PRODUCTION NO. 23:**

11 Objection. Defendant objects to this Request as vague, ambiguous, overbroad,  
12 and unduly burdensome on its face due to its use of “any and all,” “all other,” “any,”  
13 “pertaining to,” and “not limited to” in order to identify a broad range of documents.

14 Defendant further objects to this Request as vague and ambiguous as to the terms  
15 “records,” “interest,” and “motor vehicles.” Without waiving said objections,  
16 Defendant responds as follows:

17 None. Any and all records pertaining to motor vehicles were appropriated by  
18 Plaintiff and, therefore, in her possession.

19 Discovery is ongoing and Defendant will supplement this response if and  
20 when additional documentation becomes available in accordance with Nev.R.Civ.P.



1 Rule 26(e).

2 **REQUEST FOR PRODUCTION NO. 24:**

3 Provide copies of any and all brokerage account statements of securities in  
4 which you have an interest, whether held by you, individually, jointly with any  
5 person or entity, or as a Trustee, Guardian, or Custodian, including all records  
6 pertaining to acquisitions, transfer and sale of all securities, such records to include  
7 any and all information relative to gains and/or losses realized from transactions  
8 involving such securities for the past ten years through the date of your response to  
9 this request.

10 **RESPONSE TO REQUEST FOR PRODUCTION NO. 24:**

11 Objection. Defendant objects to this Request as vague, ambiguous, overbroad,  
12 and unduly burdensome on its face due to its use of “any and all,” “any,” “all,” and  
13 “relative” in order to identify a broad range of documents. Defendant further objects  
14 to this Request as vague and ambiguous as to the terms “securities,” “acquisitions,”  
15 “information,” “realized,” and “transactions.” Without waiving said objections,  
16 Defendant responds as follows:

17 None in Sheryl Atterberg’s possession. If this documentation existed, it would  
18 either be in the Farmhouse in which Plaintiff has forbidden Sheryl Atterberg access  
19 to or were appropriated by Plaintiff and are, therefore, in her possession.

20 Discovery is ongoing and Defendant will supplement this response if and

1 when additional documentation becomes available in accordance with Nev.R.Civ.P.  
2 Rule 26(e).

3 **REQUEST FOR PRODUCTION NO. 25:**

4 Provide copies of any and all securities and investments in which you have an  
5 interest, whether held by you or another, and not reflected in any brokerage  
6 accounts, records or statements requested in Request for Production No. 24, above,  
7 for the past ten years through the date of your response to this request.

8 **RESPONSE TO REQUEST FOR PRODUCTION NO. 25:**

9 Objection. Defendant objects to this Request as vague, ambiguous, overbroad,  
10 and unduly burdensome on its face due to its use of “any and all” in order to identify  
11 a broad range of documents. Defendant further objects to this Request as vague and  
12 ambiguous as to the terms “securities,” “investments,” and “interest.” Without  
13 waiving said objections, Defendant responds as follows:

14 None in Sheryl Atterberg’s possession. If this documentation exists, it would  
15 either be in the Farmhouse in which Plaintiff has forbidden Sheryl Atterberg access  
16 to or were appropriated by Plaintiff and are, therefore, in her possession.

17 Discovery is ongoing and Defendant will supplement this response if and  
18 when additional documentation becomes available in accordance with Nev.R.Civ.P.  
19 Rule 26(e).

20

1 **REQUEST FOR PRODUCTION NO. 26:**

2 Provide copies of life insurance policies of Certificates of Life Insurance,  
3 insuring your life, and any disability insurance currently in existence; life insurance  
4 policies or certificates of life insurance currently in existence insuring the life of any  
5 person in which you are named as either owner of beneficiary for the past ten years  
6 through the date of your response to this request.

7 **RESPONSE TO REQUEST FOR PRODUCTION NO. 26:**

8 Objection. Defendant objects to this Request as vague, ambiguous, overbroad,  
9 and unduly burdensome on its face due to its use of “any” in order to identify a  
10 broad range of documents. Defendant further objects to this Request as vague and  
11 ambiguous as to the terms “disability insurance,” and “owner of beneficiary.”  
12 Without waiving said objections, Defendant responds as follows:

13 None. Please refer *Plaintiff’s First Supplemental List of Witnesses and*  
14 *Disclosure of Documents*, electronically served May 24, 2021.

15 Discovery is ongoing and Defendant will supplement this response if and  
16 when additional documentation becomes available in accordance with Nev.R.Civ.P.  
17 Rule 26(e).

18 ///

19 ///

20 ///

**REQUEST FOR PRODUCTION NO. 27:**

Provide any and all notes, promissory notes, bills, statements, invoices and/or “pledge agreements” evidencing any current indebtedness and/or obligation payable by you for the past ten years through the date of your response to this request.

**RESPONSE TO REQUEST FOR PRODUCTION NO. 27:**

Objection. Defendant objects to this Request as vague, ambiguous, overbroad, and unduly burdensome on its face due to its use of “any and all” and “any” in order to identify a broad range of documents. Defendant further objects to this Request as vague and ambiguous as to the terms “notes,” “statements,” “pledge agreements,” “indebtedness,” and “obligations.” Without waiving said objections, Defendant responds as follows:

Please refer to *Defendant’s First Supplemental NRCP 16.2 Disclosure*, served concurrently with this response.

Discovery is ongoing and Defendant will supplement this response if and when additional documentation becomes available in accordance with Nev.R.Civ.P. Rule 26(e).

**REQUEST FOR PRODUCTION NO. 28:**

Please provide any and all documents which regarding any education you have obtained during the marriage, including an updated resume, and copies of any

1 degrees, certificates or other documents indicated what training, certification or  
2 licensing you currently possess or are entitled to possess.

3 **RESPONSE TO REQUEST FOR PRODUCTION NO. 28:**

4       Objection. Defendant objects to this Request as vague, ambiguous, overbroad,  
5 and unduly burdensome on its face due to its use of “any and all,” “regarding,” and  
6 “any” in order to identify a broad range of documents. Defendant further objects to  
7 this Request as vague and ambiguous as to the terms “education,” “obtained,”  
8 “updated,” “degrees,” “certificates,” “other,” and “entitled to possess.” Without  
9 waiving said objections, Defendant responds as follows:

10       None in Sheryl Atterberg’s possession. If this documentation exists, it would  
11 either be in the Farmhouse in which Plaintiff has forbidden Sheryl Atterberg access  
12 to or were appropriated by Plaintiff and are, therefore, in her possession.

13       Discovery is ongoing and Defendant will supplement this response if and  
14 when additional documentation becomes available in accordance with Nev.R.Civ.P.  
15 Rule 26(e).

16 **REQUEST FOR PRODUCTION NO. 29:**

17       Please provide any and all documents evidencing all real property purchased  
18 during marriage, including purchase agreements, deeds, mortgages and mortgage  
19 applications, taxes and improvements made on the real property.

20

**RESPONSE TO REQUEST FOR PRODUCTION NO. 29:**

Objection. Defendant objects to this Request as vague, ambiguous, overbroad, and unduly burdensome on its face due to its use of “any and all” and “all” in order to identify a broad range of documents. Defendant further objects to this Request as vague and ambiguous as to the term “purchased.” Without waiving said objections, Defendant responds as follows:

None in Sheryl Atterberg’s possession. If this documentation existed, it would either be in the Farmhouse in which Plaintiff has forbidden Sheryl Atterberg access to or were appropriated by Plaintiff and are, therefore, in her possession.

Discovery is ongoing and Defendant will supplement this response if and when additional documentation becomes available in accordance with Nev.R.Civ.P. Rule 26(e).

**REQUEST FOR PRODUCTION NO. 30:**

Please provide any and all documents in support of your allegations contained in page 6, paragraph 12 of your motion titled Defendant’s Motion to Set Aside the Divorce Decree Pursuant to NRCP 60(b) filed on January 25, 2021 which reads:

Tessie committed fraud when she knew full well that Rodney was suffering from severe mental deficiencies and was incompetent.

///

///

1 **RESPONSE TO REQUEST FOR PRODUCTION NO. 30:**

2       Objection. Defendant objects to this Request as vague, ambiguous, overbroad,  
3 and unduly burdensome on its face due to its use of “any and all” in order to identify  
4 a broad range of documents. Defendant further objects to this Request as vague and  
5 ambiguous as to the terms “support” and “contained.” Without waiving said  
6 objections, Defendant responds as follows:

7       Please refer to *Defendant’s Initial NRCP 16.2 Disclosure*, served April 15,  
8 2021. Additionally, please refer to *Defendant’s First Supplemental NRCP 16.2*  
9 *Disclosure*, served concurrently with this response.

10       Discovery is ongoing and Defendant will supplement this response if and  
11 when additional documentation becomes available in accordance with Nev.R.Civ.P.  
12 Rule 26(e).

13 **REQUEST FOR PRODUCTION NO. 31:**

14       Please provide any and all documents in support of your allegations contained  
15 in page 6, paragraph 14 of your motion titled Defendant’s Motion to Set Aside the  
16 Divorce Decree Pursuant to NRCP 60(b) filed on January 25, 2021 which reads:

17               Tessie intentionally concealed that Rodney was suffering  
18               from severe mental deficiencies and otherwise lacked  
19               contractual capacity from the Court not only when she filed  
20               for divorce but when she obtained a Decree of Divorce.

///  
20

///  
20

1 **RESPONSE TO REQUEST FOR PRODUCTION NO. 31:**

2       Objection. Defendant objects to this Request as vague, ambiguous, overbroad,  
3 and unduly burdensome on its face due to its use of “any and all” in order to identify  
4 a broad range of documents. Defendant further objects to this Request as vague and  
5 ambiguous as to the terms “support” and “contained.” Without waiving said  
6 objections, Defendant responds as follows:

7       Please refer to *Defendant’s Initial NRCP 16.2 Disclosure*, served April 15,  
8 2021. Additionally, please refer to *Defendant’s First Supplemental NRCP 16.2*  
9 *Disclosure*, served concurrently with this response.

10       Discovery is ongoing and Defendant will supplement this response if and  
11 when additional documentation becomes available in accordance with Nev.R.Civ.P.  
12 Rule 26(e).

13 **REQUEST FOR PRODUCTION NO. 32:**

14       Please provide any and all documents in support of your allegations contained  
15 in page 6, paragraph 15 of your motion titled Defendant’s Motion to Set Aside the  
16 Divorce Decree Pursuant to NRCP 60(b) filed on January 25, 2021 which reads:

17               Tessie used this knowledge to commit fraud upon the Court  
18               and obtain an unequal distribution of the marital estate.

19 **RESPONSE TO REQUEST FOR PRODUCTION NO. 32:**

20       Objection. Defendant objects to this Request as vague, ambiguous, overbroad,  
and unduly burdensome on its face due to its use of “any and all” in order to identify



1 a broad range of documents. Defendant further objects to this Request as vague and  
2 ambiguous as to the terms “support” and “contained.” Without waiving said  
3 objections, Defendant responds as follows:

4 Please refer to *Defendant’s Initial NRCP 16.2 Disclosure*, served April 15,  
5 2021. Additionally, please refer to *Defendant’s First Supplemental NRCP 16.2*  
6 *Disclosure*, served concurrently with this response.

7 Discovery is ongoing and Defendant will supplement this response if and  
8 when additional documentation becomes available in accordance with Nev.R.Civ.P.  
9 Rule 26(e).

10 **REQUEST FOR PRODUCTION NO. 33:**

11 Please provide any and all documents in support of your allegations contained  
12 in page 6, paragraph 16 of your motion titled Defendant’s Motion to Set Aside the  
13 Divorce Decree Pursuant to NRCP 60(b) filed on January 25, 2021 which reads:

14 When she moved to Las Vegas, Nevada, in February 2013,  
15 Tessie absconded with one million dollars from Rodney's  
bank account.

16 **RESPONSE TO REQUEST FOR PRODUCTION NO. 33:**

17 Objection. Defendant objects to this Request as vague, ambiguous, overbroad,  
18 and unduly burdensome on its face due to its use of “any and all” in order to identify  
19 a broad range of documents. Defendant further objects to this Request as vague and  
20 ambiguous as to the terms “support” and “contained.” Without waiving said

1 objections, Defendant responds as follows:

2 Please refer to *Defendant's Initial NRCP 16.2 Disclosure*, served April 15,  
3 2021. Additionally, please refer to *Defendant's First Supplemental NRCP 16.2*  
4 *Disclosure*, served concurrently with this response.

5 Discovery is ongoing and Defendant will supplement this response if and  
6 when additional documentation becomes available in accordance with Nev.R.Civ.P.  
7 Rule 26(e).

8 **REQUEST FOR PRODUCTION NO. 34:**

9 Please provide any and all documents in support of your allegations contained  
10 in page 6, paragraph 17 of your motion titled Defendant's Motion to Set Aside the  
11 Divorce Decree Pursuant to NRCP 60(b) filed on January 25, 2021 which reads:

12 Tessie also stole more than \$60,000.00 in gold coins, which  
13 Rodney purchased with his inheritance money.

14 **RESPONSE TO REQUEST FOR PRODUCTION NO. 34:**

15 Objection. Defendant objects to this Request as vague, ambiguous, overbroad,  
16 and unduly burdensome on its face due to its use of "any and all" in order to identify  
17 a broad range of documents. Defendant further objects to this Request as vague and  
18 ambiguous as to the terms "support" and "contained." Without waiving said  
19 objections, Defendant responds as follows:

20 Please refer to *Defendant's Initial NRCP 16.2 Disclosure*, served April 15,  
2021. Additionally, please refer to *Defendant's First Supplemental NRCP 16.2*

1 *Disclosure*, served concurrently with this response.

2       Discovery is ongoing and Defendant will supplement this response if and  
3 when additional documentation becomes available in accordance with Nev.R.Civ.P.  
4 Rule 26(e).

5 **REQUEST FOR PRODUCTION NO. 35:**

6       Please provide any and all documents in support of your allegations contained  
7 in page 7, paragraph 18 of your motion titled Defendant's Motion to Set Aside the  
8 Divorce Decree Pursuant to NRCP 60(b) filed on January 25, 2021 which reads:

9               During the parties' marriage, it was Tessie, not Rodney, who  
10              engaged in marital waste.

11 **RESPONSE TO REQUEST FOR PRODUCTION NO. 35:**

12       Objection. Defendant objects to this Request as vague, ambiguous, overbroad,  
13 and unduly burdensome on its face due to its use of "any and all" in order to identify  
14 a broad range of documents. Defendant further objects to this Request as vague and  
15 ambiguous as to the terms "support" and "contained." Without waiving said  
16 objections, Defendant responds as follows:

17       Please refer to *Defendant's Initial NRCP 16.2 Disclosure*, served April 15,  
18 2021. Additionally, please refer to *Defendant's First Supplemental NRCP 16.2*  
19 *Disclosure*, served concurrently with this response.

20       Discovery is ongoing and Defendant will supplement this response if and  
when additional documentation becomes available in accordance with Nev.R.Civ.P.

1 Rule 26(e).

2 **REQUEST FOR PRODUCTION NO. 36:**

3 Please provide any and all documents in support of your allegations contained  
4 in page 12, lines 13 through 16 of your motion titled Defendant's Motion to Set  
5 Aside the Divorce Decree Pursuant to NRCP 60(b) filed on January 25, 2021 which  
6 reads:

7 Tessie kept the fact that Rodney had suffered a Traumatic  
8 Brain Injury in 2017 from this Court and her counsel, and  
9 she otherwise concealed that Rodney, due to his cognitive  
impairments, was legally incapacitated and otherwise lacked  
contractual capacity.

10 **RESPONSE TO REQUEST FOR PRODUCTION NO. 36:**

11 Objection. Defendant objects to this Request as vague, ambiguous, overbroad,  
12 and unduly burdensome on its face due to its use of "any and all" in order to identify  
13 a broad range of documents. Defendant further objects to this Request as vague and  
14 ambiguous as to the terms "support" and "contained." Without waiving said  
15 objections, Defendant responds as follows:

16 Please refer to *Defendant's Initial NRCP 16.2 Disclosure*, served April 15,  
17 2021. Additionally, please refer to *Defendant's First Supplemental NRCP 16.2*  
18 *Disclosure*, served concurrently with this response.

19 Discovery is ongoing and Defendant will supplement this response if and  
20 when additional documentation becomes available in accordance with Nev.R.Civ.P.

1 Rule 26(e).

2 DATED this 14th day of June 2021.

3 JAMES KWON, LLC

4 /s/ James W. Kwon, Esq.

JAMES W. KWON, ESQ.

5 Nevada Bar No. 8146

6 6280 Spring Mountain Rd., Suite 100

Las Vegas, Nevada 89146

7 *Attorney for Sheryl Atterberg, on behalf*  
8 *of her Adult Ward, Defendant, Rodney*  
9 *Wilkinson*

**CERTIFICATE OF SERVICE**

Pursuant to NRCP 5(b) I certify that I am an employee of James Kwon, LLC, and that on this 14th day of June 2021, I caused the above and foregoing document entitled *Defendant Rodney Wilkinson's Responses to Plaintiff Tessie Elma Almario's Second Set of Requests for Production of Documents to Defendant Rodney Wilkinson* to be served as follows:

BY ELECTRONIC SERVICE: Pursuant to NRCP 5 and NEFCR 9, by mandatory electronic service through the Eighth Judicial District Court's electronic filing system to the attorney(s) listed below at the address, email address, and/or facsimile number indicated below:

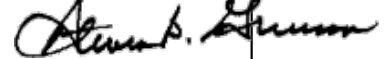
Dina DeSausa Cabral [DinaD@HoflandLaw.com](mailto:DinaD@HoflandLaw.com)

Bradley J. Hofland, Esq. [BradH@HoflandLaw.com](mailto:BradH@HoflandLaw.com)

Nikki Woulfe [Clerk@HoflandLaw.com](mailto:Clerk@HoflandLaw.com)

DATED this 14th day of June 2021.

/s/ Crystal Ann Gorzalski  
An employee of James Kwon, LLC



1 **OPPC**

JAMES W. KWON, ESQ.

2 Nevada Bar No. 8146

**JAMES KWON, LLC**

3 6280 Spring Mountain Rd., Suite 100

Las Vegas, Nevada 89146

4 P: (702) 515-1200

F: (702) 515-1201

5 jkwon@jwklawfirm.com

*Attorney for Sheryl Atterberg,*

6 *on behalf of Her Adult Ward,*

*Defendant, Rodney Wilkinson*

7  
8 **EIGHTH JUDICIAL DISTRICT COURT**  
9 **FAMILY DIVISION**  
10 **COUNTY OF CLARK, STATE OF NEVADA**

TESSIE E. WILKINSON a/k/a TESSIE  
ELMA ALMARIO,

Plaintiff,

11 vs.

12 SHERYL ATTERBERG, ON BEHALF  
OF HER ADULT WARD, RODNEY  
13 WILKINSON,

Defendant.

Case No.: D-19-596071-D

Dept.: U

Date of Hearing: July 7, 2021

Time of Hearing: 11:00 AM

14  
15 **DEFENDANT'S OPPOSITION TO**  
16 **PLAINTIFF'S NOTICE OF MOTION AND MOTION FOR**  
17 **SUMMARY JUDGMENT AND RELATED RELIEF**  
18 **AND**  
19 **COUNTERMOTION FOR ATTORNEY'S FEES AND COSTS**  
20 **AND ALL OTHER RELATED RELIEF**

COMES NOW Sheryl Atterberg, as Co-Guardian for and on behalf of her  
Adult Ward, Defendant, Rodney Wilkinson, by and through their attorney of

1 record, James W. Kwon, Esq., of the law firm James Kwon, LLC, and respectfully  
2 submits *Defendant's Opposition to Plaintiff's Notice of Motion and Motion for*  
3 *Summary Judgment and Related Relief and Countermotion for Attorney's Fees*  
4 *and Costs and All Other Related Relief.*

5 This *Opposition* is based upon all pleadings and papers on file in this matter,  
6 the memorandum of points and authorities delineated herein, the Declarations  
7 included herewith, any exhibits provided hereto, and any oral argument that the  
8 Court may entertain at the time of hearing.

9 Dated this 30 day of June 2021.

10 JAMES KWON, LLC

11   
12 JAMES W. KWON, ESQ.

13 Nevada Bar No. 8146

6280 Spring Mountain Rd., Suite 100

Las Vegas, Nevada 89146

14 *Attorney for Sheryl Atterberg,*

15 *on behalf of Her Adult Ward,*

16 *Defendant, Rodney Wilkinson*

17 **MEMORANDUM OF POINTS AND AUTHORITIES**

18 **I.**

19 **STATEMENT OF FACTS**

20 On or about November 23, 2020, the Eighteenth Judicial District Court in  
the County of Lincoln, the State of Colorado, in Case No. 2020PR30016, entered



1 an *Order Appointing Guardian for Adult* in which Sheryl Atterberg and Steven  
2 Atterberg were appointed **permanent** co-guardians for Defendant, Rodney  
3 Wilkinson (hereinafter “Rodney”). *See Exhibit A*, specifically WILK000321. In  
4 said *Order*, “the court finds, determines and orders:”

5           The evidence is clear and convincing that [Rodney] is an  
6           incapacitated person and [Rodney’s] needs cannot be  
7           met by less restrictive means, including the use of  
          appropriate and reasonably available technological  
          assistance.

8 *Id.* The court further delineated the nature and extent of Rodney’s incapacity as  
9 follows:

10           [Rodney] is not capable of completely caring for himself.  
11           Due to his strokes and Traumatic brain Injuries he  
12           “forgets” simply tasks such as how to use a microwave  
          or other household appliances. [Rodney] cannot always  
          remember to feed himself or to visit his medical doctors  
          and take prescriptions on time.

13 *Id.* Additionally, “[t]he powers and duties of the guardian are unrestricted.” *See*  
14 **Exhibit A**, specifically WILK000323. On or about November 23, 2020, *Letters*  
15 *of Permanent Co-Guardianship for an Adult* were issued by the Clerk of the Court  
16 for the Eighteenth Judicial District Court in the County of Lincoln, the State of  
17 Colorado, in Case No. 2020PR30016. *See Exhibit A*, specifically WILK000324.

18           On or about November 23, 2020, the Eighteenth Judicial District Court in  
19 the County of Lincoln, the State of Colorado, in Case No. 2020PR30016, the court  
20 entered an *Order Appointing Permanent Conservator for Adult* in which Sheryl

1 Atterberg and Steven Atterberg were appointed *permanent* co-conservators for  
2 Rodney. In said *Order*, the court determined:

3 **The court finds by clear and convincing evidence that**  
4 **a basis exists for a conservatorship because:**

5 The protected person is unable to manage property and  
6 business affairs because of an *inability to effectively*  
7 *receive or evaluate information or to make or*  
8 *communicate decisions*, even with the use of  
9 appropriate and reasonably available technological  
10 assistance.

11 *See Exhibit A*, specifically WILK000325. On or about December 1, 2020,  
12 *Amended Letters of Permanent Co-Conservatorship for an Adult* were issued by  
13 the Clerk of the Court for the Eighteenth Judicial District Court in the County of  
14 Lincoln, the State of Colorado, in Case No. 20PR30016. *See Exhibit A*,  
15 specifically WILK000328.

16 In Dr. Paul H. Janda, Esq.'s Expert Report dated April 17, 2021, Dr. Paul  
17 H. Janda, Esq. stated multiple times throughout that Rodney's dementia and  
18 obvious cognitive deficits were prevalent, and Rodney's neurocognitive deficits  
19 had to have been deteriorating and on a steadily increasing decline for years prior  
20 to his official diagnosis. This does not take into consideration that Rodney also  
had a Traumatic Brain Injury in 2017 and at least 3 strokes prior to being officially  
diagnosed with dementia in July 2020.

Tessie was accurate in stating that the Court had:

1 established the parameters of the Evidentiary Hearing to  
2 determine (1) “Defendant’s competency at the time of  
3 the signing of the Decree of Divorce and” (2) “how much  
4 Plaintiff knew about Defendant’s competency.”

5 *See* Plaintiff’s Motion for Summary Judgment, filed June 16, 2021, specifically p.  
6 3, lines 6-9. However, Tessie’s sole supporting argument in her Motion for  
7 Summary Judgment is dependent upon Tessie’s interpretation of “Issue  
8 Preclusion” as it relates to the Judgment issued by the Three Affiliated Tribes in  
9 District Court, Civil Division, Fort Berthold Indian Reservation, New Town,  
10 North Dakota, Case No. CV-2020-0303 against Rodney and in favor of Darrell  
11 Fontenot. Tessie argues that Rodney’s competency was previously adjudicated  
12 and confirmed by a court of competent jurisdiction, the North Dakota Tribunal  
13 Court; thus, issue preclusion (collateral estoppel) now precludes Defendant from  
14 relitigating the issue of his competency.

## 15 **II.**

### 16 **LEGAL ANALYSIS**

#### 17 **A. SUMMARY JUDGMENT STANDARD**

##### 18 **NRCP Rule 56. Summary Judgment**

19 **(a) Motion for Summary Judgment or Partial**  
20 **Summary Judgment.** A party may move for summary  
judgment, identifying each claim or defense — or the  
part of each claim or defense — on which summary  
judgment is sought. The court shall grant summary  
judgment if the movant shows that there is no genuine  
dispute as to any material fact and the movant is entitled  
to judgment as a matter of law. The court should state on

1 the record the reasons for granting or denying the  
2 motion.

3 (b) **Time to File a Motion.** Unless a different time is  
4 set by local rule or the court orders otherwise, a party  
5 may file a motion for summary judgment at any time  
6 until 30 days after the close of all discovery.

7 (c) **Procedures.**

8 (1) **Supporting Factual Positions.** A party  
9 asserting that a fact cannot be or is genuinely disputed  
10 must support the assertion by:

11 (A) citing to particular parts of materials in  
12 the record, including depositions, documents,  
13 electronically stored information, affidavits or  
14 declarations, stipulations (including those made for  
15 purposes of the motion only), admissions, interrogatory  
16 answers, or other materials; or

17 (B) showing that the materials cited do not  
18 establish the absence or presence of a genuine dispute, or  
19 that an adverse party cannot produce admissible  
20 evidence to support the fact.

(2) **Objection That a Fact Is Not Supported by  
Admissible Evidence.** A party may object that the  
material cited to support or dispute a fact cannot be  
presented in a form that would be admissible in evidence.

(3) **Materials Not Cited.** The court need  
consider only the cited materials, but it may consider  
other materials in the record.

(4) **Affidavits or Declarations.** An affidavit or  
declaration used to support or oppose a motion must be  
made on personal knowledge, set out facts that would be  
admissible in evidence, and show that the affiant or  
declarant is competent to testify on the matters stated.

(d) **When Facts Are Unavailable to the Nonmovant.**  
If a nonmovant shows by affidavit or declaration that, for  
specified reasons, it cannot present facts essential to  
justify its opposition, the court may:

- (1) defer considering the motion or deny it;
- (2) allow time to obtain affidavits or declarations  
or to take discovery; or
- (3) issue any other appropriate order.

1           **(e) Failing to Properly Support or Address a Fact.**

2           If a party fails to properly support an assertion of fact or  
3           fails to properly address another party's assertion of fact  
4           as required by Rule 56(c), the court may:

5                 (1) give an opportunity to properly support or  
6                 address the fact;

7                 (2) consider the fact undisputed for purposes of  
8                 the motion;

9                 (3) grant summary judgment if the motion and  
10                supporting materials — including the facts considered  
11                undisputed — show that the movant is entitled to it; or

12                (4) issue any other appropriate order.

13           **(f) Judgment Independent of the Motion.** After  
14           giving notice and a reasonable time to respond, the court  
15           may:

16                 (1) grant summary judgment for a nonmovant;

17                 (2) grant the motion on grounds not raised by a  
18                 party; or

19                 (3) consider summary judgment on its own after  
20                 identifying for the parties material facts that may not be  
                  genuinely in dispute.

**(g) Failing to Grant All the Requested Relief.** If the  
              court does not grant all the relief requested by the  
              motion, it may enter an order stating any material fact —  
              including an item of damages or other relief — that is not  
              genuinely in dispute and treating the fact as established  
              in the case.

**(h) Affidavit or Declaration Submitted in Bad Faith.**

              If satisfied that an affidavit or declaration under this rule  
              is submitted in bad faith or solely for delay, the court —  
              after notice and a reasonable time to respond — may  
              order the submitting party to pay the other party the  
              reasonable expenses, including attorney fees, it incurred  
              as a result. An offending party or attorney may also be  
              held in contempt or subjected to other appropriate  
              sanctions.

              Summary judgment is appropriate when “the pleadings, depositions,  
              answers to interrogatories, and admissions on file, together with affidavits, if any,

1 show that there is no genuine issue as to any material fact and that the moving  
2 party is entitled to a judgment as a matter of law.” Fed. R. Civ. P. 56(c). One of  
3 the principal purposes of the rule is to dispose of factually unsupported claims or  
4 defenses. *Celotex Corp. v. Catrett*, 477 U.S. 317, 325 (1986).

5 Summary judgment is a very drastic remedy, saying to the losing party that  
6 the court is so certain that nothing you have said even raises a material issue of  
7 fact that you will be denied the opportunity to have your day in court on your  
8 claims; emphasis in motion for summary judgment is that the court must be  
9 certain that it is not depriving a party of a fundamental right to trial, and this is  
10 why the law puts a great burden of proof upon the movant and allows  
11 presumptions in favor of the opposing party. *Johnson Foils, Inc. v Huyck Corp.*  
12 (1973, ND NY) 61 FRD 405, 180 USPQ 243.

13 In considering a motion for summary judgment, the court must examine  
14 all the evidence in the light most favorable to the non-moving party (*United*  
15 *States v. Diebold, Inc.*, 369 U.S. 654, 655 (1962)), and draw all reasonable  
16 inferences in non-moving party’s favor. *PLANS, Inc.*, 319 F.3d at 507, citing *Cole*  
17 *v. Oroville Union High Sch. Dist.*, 228 F.3d 1092, 1097 (9th Cir. 2000). Once the  
18 moving party meets the requirements of Rule 56 by showing there is an absence  
19 of evidence to support the non-moving party’s case, the burden shifts to the party  
20 resisting the motion to “set forth specific facts showing that there is a genuine

1 issue for trial.” *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 256 (1986).  
2 Genuine factual issues must exist that “can be resolved only by a finding of fact,  
3 because they may reasonably be resolved in favor of either party.” *Id.* at 250. In  
4 judging evidence at the summary judgment stage, the court does not make  
5 credibility determinations or weigh conflicting evidence. *T.W. Elec. v. Pacific*  
6 *Elec. Contractors Ass’n.*, 809 F.2d 629, 630-631 (9th Cir. 1987), citing  
7 *Matsushita Elec. Indus. Co., Ltd. v. Zenith Radio Corp.*, 475 U.S. 574 (1986);  
8 *Ting v. United States*, 927 F.2d 1504, 1509 (9th Cir. 1991). The evidence  
9 presented by the parties must be admissible. FED. R. CIV. P. 56(e). Conclusory  
10 or speculative testimony in affidavits and moving papers is insufficient to raise  
11 genuine issues of fact and defeat summary judgment. *Falls Riverway Realty, Inc.*  
12 *v. City of Niagara Falls*, 754 F.2d 49 (2d Cir. 1985); *Thornhill Publishing Co.,*  
13 *Inc. v. GTE Corp.*, 594 F.2d 730, 738 (9th Cir. 1979). The moving party’s failure  
14 to provide a sufficient statement of uncontroverted facts is ground by itself for  
15 denial of the motion. *Orr v. Bank of America, NT & SA*, 285 F.3d 764, 774-775  
16 (9th Cir. 2002).

17 Tessie will be unable to overcome her burden of proof and persuasion,  
18 negating the burden ever shifting to Rodney. Tessie will not be able to meet the  
19 requirements of NRCP 56, which will then destroy any supporting argument  
20 Tessie may have. Thus, Tessie’s motion for summary judgment must be denied.

1           **B.    PLAINTIFF IS NOT ENTITLED TO A JUDGMENT AS A**  
2           **MATTER OF LAW AS GENUINE ISSUES OF MATERIAL**  
3           **FACT EXIST.**

4           Issue preclusion, or collateral estoppel, is applied to conserve judicial  
5           resources, maintain consistency, and avoid harassment or oppression of the  
6           adverse party. *Berkson v. LePome*, 126 Nev. 492, 245 P.3d 560, 566 (2010). For  
7           this doctrine to apply, the following four elements must be met:

- 8           (1) the issue decided in the prior litigation must be identical to the issue  
9           presented in the current action;  
10          (2) the initial ruling must have been on the merits and have become final;  
11          (3) the party against whom the judgment is asserted must have been a  
12          party or in privity with a party to the prior litigation; and  
13          (4) the issue was actually and necessarily litigated.

14          *Five Star Capital Corp. v. Ruby*, 124 Nev.1048, 1055, 194 P.3d at 709, 713  
15          (2008) quoting *Tarkanian*, 110 Nev. at 598, 879 P.2d at 1191); See also *Elyousef*  
16          *v. O'Reilly & Ferrario, LLC*, 126 Nev. 441, 245 P.3d 547 (2010).

17          The four elements of Issue Preclusion cannot be met in the instant matter.  
18          First, the issue decided in the prior litigation must be identical to the issue  
19          presented in the current action, which it is not. The issue presented in the North  
20          Dakota Tribal Court matter was a simple breach of contract dispute. The issue at  
hand in the present matter, as stated by Tessie, was specifically established by  
the Court in that the parameters of the Evidentiary Hearing are specifically to  
determine: (1) Defendant's competency at the time of the signing of the Decree  
of Divorce and (2) how much Plaintiff knew about Defendant's competency.  
Neither of those issues are identical to or even related to a breach of contract  
dispute. Therefore, on this element alone, Tessie cannot meet her burden to claim



1 Issue Preclusion.

2 The second element is satisfied because the North Dakota Tribal Court  
3 matter was decided on the merits and has since become final. Third, the party  
4 against whom the judgment is asserted must have been a party or in privity with  
5 a party to the prior litigation. The parties involved in the North Dakota Tribal  
6 Court matter were Rodney Wilkinson as Plaintiff and Darrell Fortenot as  
7 Defendant. Sheryl Atterberg and Steven Atterberg appeared on Rodney's behalf,  
8 but were not actually a party to the action themselves, only in their capacity as  
9 Co-Guardians and Co-Conservators of Rodney. Tessie mentions that she,  
10 herself, spoke during the trial and was requesting her time be reimbursed, but  
11 that did not make Tessie a party to the action. The parties in the present action  
12 are Tessie Almario as Plaintiff and Rodney Wilkinson as Defendant. Therefore,  
13 on this element alone, Tessie cannot meet her burden to claim Issue Preclusion.

14 Lastly, the fourth element requires that the issue was actually and  
15 necessarily litigated. Tessie incorrectly argues that the North Dakota Tribal  
16 Court "issued a final decision finding Rodney was competent during the time the  
17 Decree was executed and entered." See Plaintiff's Motion, specifically p. 20,  
18 lines 5-6. This is a false premise for multiple reasons as follows:

- 19 (1) The Decree of Divorce itself, the execution and filing thereof, nor  
20 the Eighth Judicial District Court Case No. D-19-596071-D were  
discussed in or even fleetingly alluded to in the North Dakota Tribal  
Court's *Findings of Fact and Conclusions of Law and Order for  
Judgment*, entered on or about December 29, 2020 in the District  
Court for the Fort Berthold Indian Reservation Case No. CV-2020-  
0303. Therefore, the issues at hand in the present matter could not  
have been "actually and necessarily litigated" in the prior contract

1 dispute if the issues present here were not even mentioned in the  
2 prior contract dispute.

- 3 (2) The North Dakota Tribal Court did not find or conclude that  
4 Rodney was competent to enter into a binding contract agreement,  
5 also making it clear that the North Dakota Tribal Court DID NOT  
6 associate Rodney's competency with and pleading associated with  
7 the present divorce suit, but indicates that the Court did not have  
8 any evidence to support a finding that Rodney was incompetent,  
9 NOT that Rodney was competent. This very important linguistic  
10 discrepancy can be substantiated from Tessie's own Motion:

- 11 (a) "[T]here has been no evidence presented to this Court to  
12 show that the Plaintiff was incompetent or not able to enter  
13 into a binding contract at that time." *See* Plaintiff's Motion,  
14 specifically p. 7, lines 7-9.
- 15 (b) "Plaintiff at all relevant times related to his cause of action  
16 and the counterclaim was competent to contract and had not  
17 been found incompetent by a court of law." *See* Plaintiff's  
18 Motion, specifically p. 8, lines 15-17.
- 19 (c) The North Dakota Tribal Court even hypothesized that  
20 "[e]ven if [Rodney] were operating under some limitations  
on his cognitive functioning nothing in the record before this  
Court reveals that the Defendant or his agents knew or should  
have known of this." *See* Plaintiff's Motion, specifically p. 8,  
lines 20-24.

The present issue regarding Rodney's competency to contract was not  
found to be competent by the North Dakota Tribal Court but found that no

1 evidence was provided to the Court that would have permitted them to make a  
2 finding of Rodney being incompetent. Thus, the fourth element could not be met  
3 either. Since Tessie is unable to satisfy the four elements required to assert a  
4 claim of Issue Preclusion.

5       Lastly, Tessie argues that Rodney did not participate in written discovery  
6 in good faith. Unfortunately, Sheryl Atterberg would not have been in possession  
7 of many of the documents Tessie has requested, such as documents evidencing  
8 all real property purchased, which Tessie made sure she obtained prior to this  
9 matter being brought forth, or for financial documents for Rodney, which Sheryl  
10 has looked for but could not find anywhere in Rodney's farmhouse. Rodney  
11 cannot assist with this information, which was demonstrated during the medical  
12 examination by Dr. Brown when Rodney answered that it was currently "1980,  
13 no, 1990." Sheryl cannot be expected to provide documentation that she simply  
14 does not have. As for the objections, even if Rodney's objections are deemed less  
15 detailed than desired, Rodney's objects provided much more descriptive  
16 information regarding the objections made than any of Tessie's objections in her  
17 responses.

18       Tessie failed to meet the requirements of NRCP 56 by failing to show that  
19 there is a complete absence of evidence to support Rodney's claims, thus  
20 negating a shift of the burden of proof and persuasion over to Rodney. NRCP 56

1 dictates that Tessie is not entitled to a judgment as a matter of law as genuine  
2 issues of material fact exist. Therefore, Tessie's motion for summary judgment  
3 must be denied in its entirety.

4 **C. PLAINTIFF SHOULD NOT BE GRANTED AN AWARD OF**  
5 **HER ATTORNEY'S FEES AND COSTS.**

6 Rodney has not acted in bad faith; Rodney is a middle-aged man that has  
7 been taken advantage of his entire life who now suffers from severe dementia  
8 among other neurocognitive deficiencies and disorders. Rodney will never again  
9 have a "normal life." Rodney will never get better. And Tessie knew this, took  
10 advantage of his kindness and his severely deteriorating mental health, to take all  
11 that remained from his life, literally leaving Rodney with nothing. Rodney did  
12 not act in bad faith, Tessie did. Rodney did not violate his duty of candor as he is  
13 no longer reliable due to illness, not by choice. Quite frankly, Tessie's conduct  
14 and behavior throughout this divorce suit mandates that Rodney should receive  
15 an award of his attorney's fees and costs if nothing else.

16 NRS 18.010(b) permits the Court to award attorney's fees to the prevailing  
17 party in all appropriate situations. Additionally, NRS 18.010(b) permits the Court  
18 to impose sanctions pursuant to NRCP Rule 11 in all appropriate situations to  
19 punish for and deter frivolous claims and defenses. Pursuant to NRS 18.010(b),  
20 the Court should award Rodney his attorney's fees and costs due to Tessie  
bringing and maintaining her defense without reasonable grounds or to harass

1 Rodney as she has done for decades. Rodney should also be awarded his  
2 attorney's fees and costs in order to impose sanctions, pursuant to NRCP 11, to  
3 punish Tessie for and deter frivolous or vexatious claims or defenses.

4 EDCR 7.60 authorizes the Court to impose any and all sanctions, including  
5 fines, costs or attorney's fees when the opposing party submits an obviously  
6 frivolous, unnecessary or unwarranted motion as well as so multiples the  
7 proceedings in a case to increase legal costs unreasonably and vexatiously. The  
8 Court should impose such sanctions, pursuant to EDCR 7.60, against Tessie as  
9 her motion is frivolous, unnecessary and unwarranted as well as so multiplying  
10 the legal fees incurred herein.

11 "NRS 7.085 allows a district court to make an attorney personally liable  
12 for the attorney fees and costs an opponent incurs when the attorney files,  
13 maintains or defends a civil action that is not well-grounded in fact or is not  
14 warranted by existing law or by a good-faith argument for changing the existing  
15 law." *Watson Rounds, P.C. v. Eighth Judicial Dist. Ct. (Himelfarb & Associates)*,  
16 131 Nev. 783, 784, 358 P.3d 228, 230 (2015). In accordance with NRS 7.085,  
17 the Court should exercise its authority to impose liability of the attorney's fees  
18 and costs incurred by Rodney from the prolific degree and sheer quantity of  
19 never-ending motions, objections, subpoenas, requests for written discovery,  
20 letters regarding EDCR 2.34, 2.67, and 5.602, and anything else that could cause

1 undue stress and harassment against not only Rodney, but Sheryl Atterberg and  
2 the residential facility staff as well, especially when Tessie's factual allegations  
3 and legal arguments continually contradict themselves, evidencing that Tessie's  
4 claims and defenses are not well-grounded in fact and contain factual arguments  
5 meant to oppress and harass through copious falsehoods, manipulative  
6 distortions, and significant omissions. Good faith appearances seemingly only  
7 when mandated by the Court, continued filings meant to "harass, cause  
8 unnecessary delay, or needlessly increase the cost of litigation," the barrage of  
9 filings improper in purpose, authorizing the imposition of sanctions for attorney  
10 misconduct. *Watson 131 Nev. At 791.*

11 In addition to the Rules and Statutes vesting the Court with the authority  
12 to grant such awards and sanctions, in Brunzell v. Golden Gate Nat'l Bank, 85  
13 Nev. 345, 455 P.2d 31 (1969), *citing* Schwartz v. Schwerin, 336 P.2d 144, 146  
14 (Ariz. 1959), the court classified the factors in determining the reasonable value  
15 of an attorney's services under four general headings. They are as follows:

- 16 (1) *The qualities of the advocate:* his ability, his training, education,  
17 experience, professional standing and skill;
- 18 (2) *The character of the work to be done:* its difficulty, its intricacy, its  
19 importance, time and skill required, the responsibility imposed and  
the prominence and character of the parties where they affect the  
importance of the litigation;
- 20 (3) *The work actually performed by the lawyer:* the skill, time and  
attention given to the work; and

1 (4) *The result:* whether the attorney was successful and what benefits  
2 were derived. (Emphasis by court.)

3 Brunzell, 85 Nev. at 349. As set forth herein, the attorney's fees requested are  
4 reasonable and each of the *Brunzell* factors weigh in favor of an award of  
5 attorney's fees.

6 1. The qualities of the advocate

7 The undersigned counsel, James W. Kwon, Esq., is the sole proprietor of  
8 his law firm, James Kwon, LLC. Mr. Kwon has tried numerous trials in both  
9 federal and state court throughout his 16+ year career as an attorney in Nevada.  
10 During that time, he has served the legal needs of the Las Vegas Korean-  
11 American community, among his many other clients, and he has extensive  
12 experience in civil and pretrial litigation, such as that involved in the instant  
13 matter.

14 2. The Character of the Work to be Done.

15 The character of the work to be done in this matter was of a sensitive  
16 nature and required copious meetings, research and strategy. This matter has  
17 been prolific with discovery requests and responses, notices of deficiencies,  
18 subpoenas duces tecum, the Deposition of Tessie Almario, a multitude of never-  
19 ending motions and hearings. Accordingly, the character of the work was of  
20 importance to Rodney as well as that of his permanent Co-Guardians and Co-  
Conservators and in favor of public policy.

1                   3.     The Work Actually Performed

2             The hours expended on this matter were reasonable and necessary. The  
3 reasonable hourly rate for undersigned counsel is \$450.00 per hour, which has  
4 been the normal rate for the undersigned counsel for the past several years. It is  
5 an amount normally and customarily charged in this jurisdiction for attorneys of  
6 undersigned counsel's skills and abilities.

7                   4.     The Result

8             The result should be in Rodney's favor. Therefore, these factors support an  
9 award of attorney's fees and costs in favor of Rodney. A *Memorandum of Fees*  
10 *and Costs* will be filed and provided to the Court upon request.

11            For the above-stated reasoning, Tessie should be ordered by the Court to  
12 pay for Rodney's attorney's fees and costs in having to defend against Tessie's  
13 *Motion*. Additionally, the Court should impose sanctions against Tessie as well as  
14 hold opposing counsel liable for sanctions personally, authorized under and in  
15 accordance with Nevada law.

16                                 IV.  
17                                 CONCLUSION

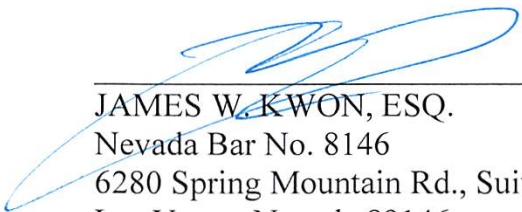
18            WHEREFORE, for the reasoning delineated hereinabove, Sheryl Atterberg,  
19 on behalf of her Adult Ward, Defendant, Rodney Wilkinson, respectfully requests  
20 that the Court deny *Plaintiff's Notice of Motion and Motion for Summary*  
*Judgment and Related Relief* in its entirety, Tessie taking nothing by way of her



1 prayer for relief, and grant Defendant Rodney Wilkinson's relief requested  
2 hereinabove such as an award for his attorney's fees and costs including the  
3 imposition of sanctions in accordance with Nevada law.

4 Dated this 30 day of June 2021.

5 JAMES KWON, LLC

6  
7   
8 JAMES W. KWON, ESQ.  
9 Nevada Bar No. 8146  
10 6280 Spring Mountain Rd., Suite 100  
11 Las Vegas, Nevada 89146  
12 *Attorney for Sheryl Atterberg,*  
13 *on behalf of Her Adult Ward,*  
14 *Defendant, Rodney Wilkinson*  
15  
16  
17  
18  
19  
20

1                    **DECLARATION OF JAMES W. KWON, ESQ**  
2                    **IN SUPPORT OF**  
3                    **DEFENDANT'S OPPOSITION TO PLAINTIFF'S NOTICE OF MOTION**  
4                    **AND MOTION FOR SUMMARY JUDGMENT AND RELATED RELIEF**  
5                    **AND COUNTERMOTION FOR ATTORNEY'S FEES AND COSTS AND**  
6                    **ALL OTHER RELATED RELIEF**

7                    I, James W. Kwon, Esq., being first duly sworn, deposes and states as  
8                    follows:

9                    1.        I am the attorney of record for Defendant, Rodney Wilkinson, in the  
10                    above-stated matter, and Sheryl Atterberg in her role as permanent Co-Guardian  
11                    and Co-Conservator for and on behalf of Her Adult Ward, Rodney Wilkinson.

12                    2.        I have read the foregoing *Defendant's Opposition to Plaintiff's*  
13                    *Notice of Motion and Motion for Summary Judgment and Related Relief and*  
14                    *Counter-motion for Attorney's Fees and Costs and All Other Related Relief* and  
15                    the factual averments it contains are true and correct to the best of my knowledge,  
16                    except as to those matters based upon information and belief, and as to those  
17                    matters, I believe them to be true. Those factual averments contained in the  
18                    foregoing *Opposition* are incorporated herein as if set forth in full.

19                    3.        Pursuant to NRS 53.045, I declare under penalty of perjury under the  
20                    law of the State of Nevada that the foregoing is true and correct.

Executed on the 30 day of June 2021.

  
JAMES W. KWON, ESQ.

**CERTIFICATE OF SERVICE**

I hereby certify that on the 30<sup>th</sup> day of June 2021, pursuant to NRCP 5, I caused service of a true and correct copy of the foregoing *Defendant's Opposition to Plaintiff's Notice of Motion and Motion for Summary Judgment and Related Relief and Countermotion for Attorney's Fees and Costs and All Other Related Relief* to be made electronically via the Eighth Judicial District Court electronic filing system upon the following parties at the e-mail addresses listed below:

Dina M. DeSousa-Cabral, Esq.      DinaD@HoflandLaw.com

Bradley J. Hofland, Esq.      BradH@HoflandLaw.com

Nikki Woulfe      Clerk@HoflandLaw.com

Dated this 30<sup>th</sup> day of June 2021.

  
An employee of James Kwon, LLC

11/12/2011

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# **EXHIBIT A**

# **EXHIBIT A**

District Court, Lincoln County, Colorado 103 Third Ave, PO Box 128 Hugo, CO 80821	DATE FILED: November 23, 2020 1:22 PM
	COURT USE ONLY
In the Matter of the Estate of:  Rodney Edward Wilkinson	Case Number: 2020PR30016  Division: 1
<b>ORDER APPOINTING GUARDIAN FOR ADULT</b>	

Upon consideration of the Petition for Appointment of Guardian for the above respondent and hearing on November 23, 2020 (date),

The court has considered any express wishes of the respondent concerning the selection of the guardian. The court has considered the powers and duties of the guardian, the scope of the guardianship, and the priority and qualifications of the nominee.

**The court finds, determines and orders:**

1. Venue is proper and required notices have been given or waived.
2. The evidence is clear and convincing that the respondent is an incapacitated person and the respondent's needs cannot be met by less restrictive means, including the use of appropriate and reasonably available technological assistance.
3. The nature and extent of the respondent's incapacity is as follows:  
Ward is not capable of completely caring for himself. Due to his strokes and Traumatic brain Injuries he "forgets" simple tasks such as how to use a microwave or other household appliances. Ward cannot always remember to feed himself or to visit his medical doctors and take prescriptions on time.
4. **The court appoints the following persons as co-guardian for the ward:**

Sheryl Kay Atterberg  
PO Box 4109  
Idaho Springs, CO 80452  
520-820-8338  
k9ul@icloud.com

Steven Atterberg  
PO Box 4109  
Idaho Springs, CO 80452  
520-820-8338  
k9ul@icloud.com

5. The guardian must promptly notify the court if the guardian's street address, email address, or phone number changes or of any change of address for the ward.
6. The guardian may not establish or move the ward's custodial dwelling outside the State of Colorado without a court order.
7. Within 30 days of appointment, the guardian must provide a copy of this Order Appointing Guardian for Adult to the ward and persons given notice of the petition and must advise those persons using Notice of Appointment of Guardian and/or Conservator (JDF 812) that they have the right to request termination or modification of the guardianship.
8. The guardian must file the initial Guardian's Report - Adult (JDF 850) by January 14, 2021 (date 60 days from appointment) and must file annual Guardian's Report - Adult (JDF 850) by each February 28 (date) beginning in 2022 (year), for the duration of the guardianship.
9. ☐ The guardian must manage the day-to-day finances for the support, care, education, health and welfare of the ward. The guardian is required to maintain supporting documentation for all receipts and all disbursements during the duration of this appointment. The court further orders the following:  
  
\_\_\_\_\_  
\_\_\_\_\_
10. ☒ Medical powers of attorney, whether executed prior to or following the entry of this order, are terminated, except as follows:  
  
\_\_\_\_\_  
\_\_\_\_\_

11. Copies of all future court filings must be provided to the following interested persons:

Name	Relationship to the Ward
Rodney Edward Wilkinson	Ward
Sheryl Atterberg	Guardian
Steve Atterberg	Co-Guardian

12. The guardian is authorized to access the ward's medical records and information. The guardian is deemed to be ward's personal representative for all purposes relating to ward's protected health information, as provided in HIPAA, Section 45 CFR 164.502(g)(2).
13. The guardian does not have the authority to obtain hospital or institutional care and treatment for mental illness, developmental disability, alcoholism or substance abuse against the will of the ward.
14. If the ward is an "at risk elder" or "at risk adult with an intellectual and developmental disability," and if the guardian has reasonable cause to believe that the ward has been abused or exploited or is at imminent risk of abuse or exploitation, the guardian is required to make a report to law enforcement within 24 hours after the observation or discovery pursuant to C.R.S. § 18-6.5-108(1)(b)(XII).

15. **Letters of Guardianship will be issued.**

☒ The powers and duties of the guardian are unrestricted.

☐ The powers and duties of the guardian are limited by the following restrictions:

\_\_\_\_\_  
\_\_\_\_\_

16. **The court further orders:**

\_\_\_\_\_  
\_\_\_\_\_

Date: November 23, 2020

  
\_\_\_\_\_  
☒ Judge ☐ Magistrate



District Court, Lincoln County, Colorado 103 Third Ave, PO Box 128 Hugo, CO 80821	COURT USE ONLY
In the Matter of the Estate of:  Rodney Edward Wilkinson	Case Number: 2020PR30016  Division: 1
LETTERS OF PERMANENT CO-GUARDIANSHIP FOR AN ADULT	

Sheryl Atterberg and Steven Atterberg (co-guardians) were appointed by court order on  
November 23, 2020 (date) as:  
 Co-Guardians pursuant to § 15-14-311, C.R.S.

The guardians must have access to respondent's/ward's medical records and information to the same extent that the respondent/ward is entitled. The guardians must be deemed to be the respondent's /ward's personal representative for all purposes relating to his or her protected health information, as provided in HIPAA, Section 45 CFR 164.502(g)(2).

These Letters of Guardianship are proof of the guardian's full authority to act, except for the following restrictions:

The guardians do not have the authority to obtain hospital or institutional care and treatment for mental illness, developmental disability, or alcoholism against the will of the respondent/ward pursuant to § 15-14-316(4), C.R.S.

The respondent /ward's place of residence must not be changed from the State of Colorado without an order of the court pursuant to § 15-14-315(1)(b), C.R.S.

☐ Other limitations:

Date: December 1, 2020



*Jaime Seymour*  
 Probate Registrar / (Deputy) Clerk of Court

### CERTIFICATION

Certified to be a true copy of the original in my custody and to be in full force and effect as of:

December 1, 2020 (date).

*Jaime Seymour*  
 Probate Registrar / (Deputy) Clerk of Court

WILK000324

ROA000553

District Court, Lincoln County, Colorado 103 Third Ave, PO Box 128 Hugo, CO 80821	DATE FILED: November 23, 2020 12:04 PM  COURT USE ONLY
In the Interest of:  Rodney Edward Wilkinson	Case Number: 20PR30016  Division: 1
<b>PROPOSED ORDER APPOINTING PERMANENT CONSERVATOR FOR ADULT</b>	

Upon consideration of the Petition for Appointment of Conservator for the above person and hearing on November 23, 2020 (date),

**The court finds that:**

1. Venue is proper and required notices have been given or waived.
2. An interested person seeks the appointment of a conservator.
3. The protected person's best interest will be served by appointment of a conservator.

**The court finds by clear and convincing evidence that a basis exists for a conservatorship because:**

The protected person is unable to manage property and business affairs because of an inability to effectively receive or evaluate information or both or to make or communicate decisions, even with the use of appropriate and reasonably available technological assistance.

**The court further finds by a preponderance of evidence that:**

The protected person has property that will be wasted or dissipated unless proper management is provided.

The court has considered any expressed wishes of the protected person concerning the selection of the conservator. The court has considered the powers and duties of the conservator, the scope of the conservatorship, and the priority and qualifications of the nominee.

**The court appoints the following persons as conservator of the protected person:**

Sheryl Kay Atterberg and Steve Atterberg  
 400 Alpine Way Idaho Springs, CO 80452  
 PO Box 4109 Idaho Springs, CO 80452  
 (520) 820-8338 / 720-810 -6100 /720-801-8177

**WILK000325**

**ROA000554**

k9ul@icloud.com

The court directs the issuance of Letters of Conservatorship as follows:

- ☒ The conservator may exercise all the powers granted in § 15-14-425, C.R.S., subject to the exclusions in § 15-14-411, C.R.S. The powers and duties of the conservator are otherwise unrestricted.
- ☐ The powers and duties of the conservator are limited by the following restrictions, if any:

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

☒ The conservator must not, without prior court order, convey or encumber any real estate owned by the protected person.

To insure notice of this prohibition, the conservator must record the letters evidencing appointment with the Clerk & Recorder of the County in which such real estate is located. The conservator must provide proof of the recording to the court.

The court orders the following:

1. The conservator must notify the court within 30 days if his or her home address, email address, or phone number changes and/or of any change of address for the protected person.
2. Within 30 days of appointment, the conservator must provide a copy of this Order Appointing Conservator for Adult to the protected person and persons given notice of the Petition and must advise those persons using Notice of Appointment of Guardian and/or Conservator (DF 812) that they have the right to request termination or modification of the conservatorship.

3. The conservator must file for approval with the court a Conservator's Financial Plan with Inventory (DF 882) on or before February 15, 2021 (date within 90 days from appointment). The value of the assets must be reported as of the date of this order.

4. The conservator must file a Conservator's Report (DF 885) with the court each year on or before February 28th (date). The time period covered in the report will begin on January 1st (date) and end on December 31 (date). The conservator is required to maintain all supporting documentation, including receipts and disbursements.

5. ☒ All financial powers of attorney, whether executed prior to or following the entry of this order, are terminated, except as follows:

WILK000326

6. The conservator will  
☒ serve without bond for the following reason(s): Nominated by Respondent and family.

☐ serve with bond in the amount of \$ \_\_\_\_\_. The bond must be posted with the court by \_\_\_\_\_ (date). If bond is posted by a surety, notice of any proceeding must be provided to the surety.

7. Copies of all future court filings must be provided to the following:

Name of Interested Person	Relationship to the Protected Person
Rodney Edward Wilkinson	The protected person
	Spouse or partner in a civil union
	Adult Children
	Parents
Sheryl Kay Atterberg and Steve Atterberg	Conservator

8. If the protected person is an "at-risk elder" or "at-risk adult with an intellectual and developmental disability" and if conservator has reasonable cause to believe that the protected person has been abused or exploited or is at imminent risk of abuse or exploitation, conservator is required to make a report to law enforcement within 24 hours after the observation or discovery pursuant to C.R.S. § 18-6.5-108(1)(b)(XII).

9. The court further orders:

Co-Conservators are authorized to file appropriate legal proceedings and Lis Pendes to protect preserve and marshal the protected person's estate.

H. Clay Hunt  
☒ Judge ☐ Magistrate

November 23, 2020  
Date

WILK000327

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District Court, Lincoln County, Colorado 103 Third Ave, PO Box 128 Hugo, CO 80821	
	COURT USE ONLY
In the Interest of:  Rodney Edward Wilkinson	Case Number: 20PR30016  Division: 1
AMENDED LETTERS OF PERMANENT CO-CONSERVATORSHIP FOR AN ADULT	

Sheryl Kay Atterberg and Steven Atterberg (co-conservators) was appointed by court order on  
November 23, 2020 (date) as:

Conservator pursuant to § 15-14-409, C.R.S.

These Letters of Conservatorship are proof of:

☒ The conservator's authority to exercise all the powers in § 15-14-425, C.R.S., subject to the exclusions in § 15-14-411, C.R.S. The powers and duties of the conservator are otherwise unrestricted.

☒ the conservator's authority to exercise the powers in § 15-14-425, C.R.S., are limited by the following restrictions:

☒ the conservator must not, without prior court order, convey or encumber any real estate owned by the protected person.

☒ Co-Conservators are authorized to file appropriate legal proceedings and Lis Pendes to protect preserve and marshal the protected person's estate.

Date: December 1, 2020



*Kimberly Borch*

CLERK

Probate Registrar/(Deputy)Clerk of Court

### CERTIFICATION

Certified to be a true copy of the original in my custody and to be in full force and effect as of  
DECEMBER 1, 2020 (date).

*Kimberly Borch*

Probate Registrar/(Deputy)Clerk of Court

MOFI

DISTRICT COURT  
FAMILY DIVISION  
CLARK COUNTY, NEVADA

TESSIE E. WILKINSON

Plaintiff/Petitioner

v.

RODNEY WILKINSON (Sheryl Atterberg as

Defendant/Respondent Co-Guardian for her Adult Ward,  
Defendant, Rodney Wilkinson)

Case No. D-19-596071-D

Dept. U

**MOTION/OPPOSITION  
FEE INFORMATION SHEET**

**Notice:** Motions and Oppositions filed after entry of a final order issued pursuant to NRS 125, 125B or 125C are subject to the reopen filing fee of \$25, unless specifically excluded by NRS 19.0312. Additionally, Motions and Oppositions filed in cases initiated by joint petition may be subject to an additional filing fee of \$129 or \$57 in accordance with Senate Bill 388 of the 2015 Legislative Session.

**Step 1.** Select either the \$25 or \$0 filing fee in the box below.

<input type="checkbox"/>	<b>\$25</b>	The Motion/Opposition being filed with this form is subject to the \$25 reopen fee.
-OR-		
<input checked="" type="checkbox"/>	<b>\$0</b>	The Motion/Opposition being filed with this form is not subject to the \$25 reopen fee because:
<input type="checkbox"/>		The Motion/Opposition is being filed before a Divorce/Custody Decree has been entered.
<input type="checkbox"/>		The Motion/Opposition is being filed solely to adjust the amount of child support established in a final order.
<input type="checkbox"/>		The Motion/Opposition is for reconsideration or for a new trial, and is being filed within 10 days after a final judgment or decree was entered. The final order was entered on _____.
<input checked="" type="checkbox"/>		Other Excluded Motion (must specify) <u>Opp for SJ</u>

**Step 2.** Select the \$0, \$129 or \$57 filing fee in the box below.

<input checked="" type="checkbox"/>	<b>\$0</b>	The Motion/Opposition being filed with this form is not subject to the \$129 or the \$57 fee because:
<input type="checkbox"/>		The Motion/Opposition is being filed in a case that was not initiated by joint petition.
<input type="checkbox"/>		The party filing the Motion/Opposition previously paid a fee of \$129 or \$57.
-OR-		
<input type="checkbox"/>	<b>\$129</b>	The Motion being filed with this form is subject to the \$129 fee because it is a motion to modify, adjust or enforce a final order.
-OR-		
<input type="checkbox"/>	<b>\$57</b>	The Motion/Opposition being filing with this form is subject to the \$57 fee because it is an opposition to a motion to modify, adjust or enforce a final order, or it is a motion and the opposing party has already paid a fee of \$129.

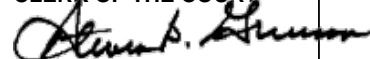
**Step 3.** Add the filing fees from Step 1 and Step 2.

The total filing fee for the motion/opposition I am filing with this form is:											
<input checked="" type="checkbox"/>	<b>\$0</b>	<input type="checkbox"/>	<b>\$25</b>	<input type="checkbox"/>	<b>\$57</b>	<input type="checkbox"/>	<b>\$82</b>	<input type="checkbox"/>	<b>\$129</b>	<input type="checkbox"/>	<b>\$154</b>

Party filing Motion/Opposition: Sheryl Atterberg, on Behalf of Her Adult Ward, Defendant, Rodney Wilkinson Date 6/30/2021

Signature of Party or Preparer /s/ Crystal Ann Gorzalski

ROA000558



1 **PTM**  
2 **HOFLAND & TOMSHECK**  
3 Bradley J. Hofland, Esq.  
4 Nevada Bar No. 6343  
5 [BradH@hoflandlaw.com](mailto:BradH@hoflandlaw.com)  
6 228 South 4th Street, 1<sup>st</sup> Floor  
7 Las Vegas, Nevada 89101  
8 Ph.: (702) 895-6760  
9 Fax: (702) 731-6910  
10 *Attorneys for Plaintiff Tessie Elma Almario*

11 **DISTRICT COURT, FAMILY DIVISION**  
12 **CLARK COUNTY, NEVADA**

13 TESSIE ELMA ALMARIO,	)	Case No.: D-19-596071-D
	)	Dept No.: U
14 Plaintiff,	)	
15 -vs-	)	
16 SHERYL ATTERBERG, ON	)	<b>PLAINTIFFS' PRE-TRIAL</b>
17 BEHALF OF HER WARD	)	<b>MEMORANDUM</b>
18 RODNEY WILKINSON,	)	
	)	
19 Defendant.	)	
20	)	

21 COMES NOW, Plaintiff Tessie Elma Almario ("Tessie"), by and through her  
22 attorney Bradley J. Hofland, Esq. of Hofland & Tomscheck and submits this Pre-  
23 Trial Memorandum for this Court's consideration and reference:

24 **I.**

25 **STATEMENT OF ESSENTIAL FACTS**

26 Name of Parties:

27 **A. Name of the Parties:**

28 Plaintiff: TESSIE ELMA ALMARIO

Defendant: RODNEY WILKINSON

Guardian: SHERYL ATTERBERG

1 II.

2 **STATEMENT OF RESOLVED ISSUES\***

3 A. The Defendant's competency at the time of the subject Decree of  
4 Divorce and Separation has already been determined by a court of competent  
5 jurisdiction. As a result of that dispositive District Court ruling, the Defendant and  
6 Guardian is collaterally estopped from relitigating that matter in another forum as a  
7 matter of law.

8 Accordingly, the Evidentiary Hearing currently scheduled is moot—and  
9 improper. A motion for summary judgment has been filed addressing the above  
10 fact—that is fatal to the relief Defendant now seeks from this Court, but is currently  
11 set on calendar for a date after this scheduled Evidentiary Hearing. An Order  
12 Shortening Time has been prepared and submitted for this Court's consideration.

13 III.

14 **STATEMENT OF UNRESOLVED ISSUES\***

15 A. Defendant's competency at the time of the Decree of Divorce is the  
16 issue Defendant wishes to relitigate, but as noted above, Defendant is barred, as a  
17 matter of law, from relitigating the fact that he was already found to be competent  
18 during (and after) the time the Decree of Divorce was agreed upon and filed.

19 IV.

20 **MEMORANDUM OF POINTS AND AUTHORITIES.**

21 Rodney and Tessie were married on March 22, 2009 in Burlington, Colorado.  
22 On September 9, 2019, Tessie filed a Complaint for Divorce in Clark County,  
23 Nevada under Case No. D-19-596071-D. Rodney filed his Answer to the Complaint  
24 for Divorce on January 28, 2020 and admitted to all of the allegations set forth in  
25 the Complaint. The Stipulated Decree of Divorce was entered on February 12,  
26 2020. The Decree confirms Rodney's substantial marital waste (which Rodney



1 admitted and considered), represents their agreement, and found and confirmed by  
2 the Court as being equitable and fair. Notice of Entry of the Decree of Divorce was  
3 filed on February 13, 2020.

4 On January 25, 2021, Rodney moved to set aside the decree of divorce  
5 *alleging*, among other things, that Tessie exerted undue influence upon Mr.  
6 Wilkinson to procure his signature on the Stipulated Decree of Divorce, that  
7 Rodney was diagnosed with Dementia less than three months *after* the Decree's  
8 entry, and that Tessie knew Rodney was incapacitated. Tessie denied/denies the  
9 allegations and contends that Rodney was competent at the time he signed the  
10 Decree of Divorce and that there was an equitable distribution of the marital estate.

11 Discovery has confirmed the veracity of Tessie's position, as well as Rodney  
12 competency at the time of the parties' agreement and divorce. Indeed, in December  
13 of 2020, Rodney's competency to enter into contracts in February of 2020, after the  
14 parties' settlement agreement and Decree, was tried, adjudicated and confirmed! In  
15 other words, the very issue the subject of the instant action before this Court, to wit:  
16 Rodney's competency in 2020, was actually and fully litigated in December of  
17 2020 after Rodney asserted he was not competent to enter into contracts which  
18 resulted in a specific findings that Rodney was competent at the time *this Decree*  
19 *was executed and entered*. Notably, this adverse determination was concealed  
20 from this Court.

21 The dispositive facts and findings are set forth in greater detail in Plaintiff's  
22 motion for summary judgment<sup>1</sup>, and for purposes of brevity, those will be  
23 incorporated herein by reference.

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25 <sup>1</sup> Plaintiff's motion for summary judgment was filed on June 16, 2021, and a copy  
26 of that motion is submitted herewith as Exhibit "1" for the Court's convenience and  
27 review.

V.

**LEGAL ANALYSIS**

***A. The Prior Decision of the District Court is binding upon the Defendant and Nevada Law bars Defendant from relitigating the issue of his competency.***

Under the federal Full Faith and Credit Act, 28 U.S.C. § 1738, the acts of state tribunals are given the same "full faith and credit" as they have by law in the states of their origin. Accordingly, federal courts generally are bound to recognize the preclusion effects of state court judgments. See *Migra v. Warren City School District Bd. of Educ. et al.*, 465 U.S. 75, 81, 79 L. Ed. 2d 56, 104 S. Ct. 892 (1983). The foregoing result applies to the decisions of arbitrators as well. See, e.g., *Clark v. Bear Stearns & Co., Inc.*, 966 F.2d 1318, 1321 (9th Cir. 1992); *Seborowski v. Pittsburgh Press Co.*, 188 F.3d 163, 169-71 (3d Cir. 1999); and *Dalow Industries, Inc. v. Jordache Enterprises, Inc.*, 631 F. Supp. 774, 778 (S.D.N.Y. 1985). [Arbitration awards are treated as if it were a judicial decision for purposes of applying the preclusion doctrines].

Issue preclusion, or collateral estoppel, is applied to conserve judicial resources, maintain consistency, and avoid harassment or oppression of the adverse party. *Berkson v. LePome*, 126 Nev. 492, 245 P.3d 560, 566 (2010). For this doctrine to apply, the following four elements must be met:

(1) the issue decided in the prior litigation must be identical to the issue presented in the current action; (2) the initial ruling must have been on the merits and have become final; (3) the party against whom the judgment is asserted must have been a party or in privity with a party to the prior litigation; and (4) the issue was actually and necessarily litigated.

*Five Star Capital Corp. v. Ruby*, 124 Nev.1048, 1055, 194 P.3d at 709, 713 (2008) quoting *Tarkanian*, 110 Nev. at 598, 879 P.2d at 1191); See also *Elyousef v.*

1 *O'Reilly & Ferrario, LLC*, 126 Nev. 441, 245 P.3d 547 (2010).

2       Considering these requirements pursuant to the doctrine of issue preclusion,  
3 Rodney is precluded from relitigating the issue of his competency in early 2020  
4 because the issue of his competency in early 2020 was actually litigated in Case  
5 Number CV-2020-0303 in December 2020. The Court in Case Number CV-2020-  
6 0303, on the assertion of Rodney's "incompetency" in early 2020, and pursued by  
7 Rodney through his Guardians to avoid a contract entered in 2019 where Rodney  
8 was paid wages through February of 2020 (one month after the Decree was signed)  
9 and which was then renegotiated by Rodney. After carefully considering the merits,  
10 the District Court issued a thorough and comprehensive thirteen-page decision and  
11 corresponding findings concerning the evidenced presented by Rodney surrounding  
12 his assertion of "incompetency" in early 2020 pursued by his Guardian. ***Notably,***  
13 ***the Court in Case Number CV-2020-0303 issued a final decision finding Rodney***  
14 ***was competent during the time the Decree was executed and entered.***

15       Because the issue of Rodney's competency both preceding and following his  
16 agreement and divorce with Plaintiff, was necessarily and properly raised in the  
17 prior district court case, issue preclusion applies to prevent Guardian from  
18 relitigating the issue of Rodney's competency at the time of the divorce. *See*  
19 *Alcantara v. Wal-Mart Stores, Inc.*, 130 Nev. 252, (2014) (finding of nonliability in  
20 prior action bars relitigation of liability in separate action).

21       Courts have determined that litigants have the right to try their case, but  
22 public interest and case precedent firmly establish that they are limited to one such  
23 opportunity. Rodney is disallowed, as a matter of law, to have another opportunity  
24 to rehash his "competency" during the time of his agreement and divorce of  
25 Plaintiff, by switching adversaries.

26       As this Court knows, public reliance upon judicial pronouncements requires

1 that which has been finally determined by competent tribunals be accepted as  
2 undeniable legal truth. Its legal efficacy is not to be undermined, and Rodney's  
3 endeavors to do so must not be allowed.

4 **B. *Tessie is entitled to an award of attorney's fees and costs for***  
5 ***having to seek summary judgment on Rodney's frivolous motion.***

6 In the case at bar, Rodney has acted in bad faith. In their endeavor to  
7 manipulate this Court, Rodney not only violates the duty of candor that is owed to  
8 this Court, Rodney has violated NRCF 11. Quite frankly, Rodney's conduct  
9 mandates an award of attorney's fees to Tessie for having to defend and respond to  
10 such a frivolous pleading.

11 NRS 18.010 deals with awards of attorney's fees and provides in relevant  
12 part:

13 (b) Without regard to the recovery sought, when the court finds that  
14 the claim, counterclaim, cross-claim or third-party complaint or  
15 defense of the opposing party was brought or maintained without  
16 reasonable ground or to harass the prevailing party. ***The court shall***  
17 ***liberally construe the provisions of this paragraph in favor of***  
18 ***awarding attorney's fees in all appropriate situations.*** It is the intent  
19 of the Legislature that the court award attorney's fees pursuant to this  
20 paragraph and impose sanctions pursuant to Rule 11 of the Nevada  
21 Rules of Civil Procedure in all appropriate situations ***to punish for and***  
***deter frivolous or vexatious claims*** and defenses because such claims  
and defenses overburden limited judicial resources, hinder the timely  
resolution of meritorious claims and increase the costs of engaging in  
business and providing professional services to the public. (Emphasis  
supplied).

22 Additionally, EDCR 7.60 provides, in relevant part:

23 (b) The court may, after notice and an opportunity to be heard, impose  
24 upon an attorney or a party any and all sanctions which may, under the  
25 facts of the case, be reasonable, including the imposition of fines, costs  
or attorney's fees when an attorney or a party without just cause:

26 (1) ***Presents to the court a motion*** or an opposition to a motion ***which***  
27 ***is obviously frivolous, unnecessary or unwarranted.***

1 (3) So multiplies the proceedings in a case as to increase costs  
2 unreasonably and vexatiously. (Emphasis supplied).

3 In this case, there was no basis for the request to set aside the Decree based  
4 upon Rodney being incompetent in January of 2020 as another court already  
5 specifically found Rodney to be competent when the Decree was executed and  
6 entered. Rodney apparently believes he can ignore court rules, violate his duty of  
7 candor, dismiss the damning effect of issue preclusion, collateral estoppel, and  
8 controlling precedent, in order to manipulate this Court and the legal system as a  
9 whole. Such a belief is misguided, and such a tactic ill-judged.

10 Further, NRS 7.085 also provides this Court with the requisite authority to  
11 make Tessie whole for the malicious and baseless litigation costs that she has  
12 incurred defending Rodney's frivolous filing. Therein, it states:

13 1. If a court finds that an attorney has:

14 (a) Filed, maintained or defended a civil action or proceeding in any  
15 court in this State and such action or defense is ***not well-grounded in***  
16 ***fact*** or is not warranted by existing law or by an argument for  
changing the existing law that is made in good faith; or

17 (b) Unreasonably and vexatiously extended a civil action or  
proceeding before any court in this State,

18 the court shall require the attorney personally to pay the additional  
19 costs, expenses and attorney's fees reasonably incurred because of such  
conduct.

20 ***2. The court shall liberally construe the provisions of this section in***  
21 ***favor of awarding costs, expenses and attorney's fees in all***  
22 ***appropriate situations.*** It is the intent of the Legislature that the court  
23 award costs, expenses and attorney's fees pursuant to this section and  
24 impose sanctions pursuant to Rule 11 of the Nevada Rules of Civil  
25 Procedure in all appropriate situations to punish for and deter frivolous  
26 or vexatious claims and defenses because such claims and defenses  
overburden limited judicial resources, hinder the timely resolution of  
meritorious claims and increase the costs of engaging in business and  
providing professional services to the public. (emphasis added).

1 Thus, “NRS 7.085 allows a district court to make an attorney personally  
2 liable for the attorney fees and costs an opponent incurs when the attorney files,  
3 maintains or defends a civil action that is not well-grounded in fact or is not  
4 warranted by existing law or by a good-faith argument for changing the existing  
5 law.”<sup>2</sup>

6 NRCP 11 also enables this Court to impose sanctions if any pleading, written  
7 motion, or other paper is filed that is being filed for any improper purpose, such as  
8 to “*harass, cause unnecessary delay, or needlessly increase the cost of litigation.*”

9 The Nevada Supreme Court, in *Watson Rounds*, held that NRCP 11 and NRS  
10 7.085 each represent a distinct, independent mechanism for sanctioning attorney  
11 misconduct. 131 Nev. at 791.

12 Lastly, in *Barney v. Mt. Rose Heating & Air Conditioning*, 192 P.3d 730, 736  
13 (2008) citing *Brunzell v. Golden Gate National Bank*, 85 Nev 345, 455 P.2d 31  
14 (1969), the Court enumerated factors that the district court should consider in  
15 awarding attorney fees, with no one factor controlling, as follows:

- 16 (1) the advocate's qualities, including ability, training, education,  
experience, professional standing, and skill;
- 17 (2) the character of the work, including its difficulty, intricacy,  
18 importance, as well as the time and skill required, the responsibility  
19 imposed, and the prominence and character of the Parties when  
affecting the importance of the litigation;
- 20 (3) the work performed, including the skill, time, and attention given  
to the work; and
- 21 (4) the result--whether the attorney was successful and what benefits  
22 were derived.

23 Tessie’s counsel met the factors outlined in *Brunzell*. Tessie’s counsel is  
24 qualified and has considerable experience, ability and training in the field of

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25  
26 <sup>2</sup> *Watson Rounds, P.C., v. Eighth Judicial Dist. Ct. (Himelfarb & Associates)*, 131  
27 Nev. 783, 784, 358 P.3d 228, 230 (2015).

1 family law and civil litigation. It is the responsibility of Tessie's counsel to  
2 finalize outstanding issues to ensure the rights of Tessie are preserved and  
3 litigated, to ensure the Orders of the Court are proper, and that the legal system is  
4 not manipulated. Tessie's counsel was attentive to work performed.

5 Accordingly, based upon the foregoing, it is not only fair, but also  
6 reasonable under the circumstances that Rodney and/or his counsel, be responsible  
7 for Tessie's reasonable attorney fees and costs in the sum of \$5,000.00 pursuant to  
8 NRS §18.010, EDCR 7.60, the additional authority cited herein, and the holding  
9 of *Brunzell*.

10 **VI.**  
11 **List of Witnesses**

- 12 1. Tessie E. Wilkinson a/k/a Tessie Elma Almario, Plaintiff  
13 c/o Bradley J. Hofland, Esq.  
14 HOFLAND & TOMSHECK  
15 228 S. 4<sup>th</sup> Street, 1<sup>st</sup> Floor  
Las Vegas, NV 89101

16 Ms. Wilkinson is expected to testify as to all relevant facts and  
17 circumstances.

- 18 2. Sheryl Atterberg, On Behalf Of Her Adult Ward Rodney Wilkinson,  
19 Defendant  
20 c/o James W. Kwon, Esq.  
21 JAME KWON, LLC  
6280 Spring Mountain Rd., Suite 100  
Las Vegas, NV 89146

22 Mrs. Atterberg is expected to testify as to all relevant facts and  
23 circumstances.

- 24 3. Gregory P. Brown, MD  
25 1489 West Warm Springs road, Suite 110  
26 Henderson, NV 89014  
(702) 232-3256

1 Dr. Brown is expected to testify about his analysis, opinions and conclusions  
2 regarding Defendant Rodney Wilkinson's competency at the time of signing the  
3 Answer and Decree of Divorce.

4 4. Rodney Wilkinson  
5 Aspen Leaf Assisted Living Residence  
6 2050 6<sup>th</sup> Street  
7 Limon, Colorado 80828

8 Mr. Wilkinson is expected to testify as to all relevant facts and  
9 circumstances.

10 **VI.**  
**Exhibits**

- 11 1. Gregory P. Brown, M.D. Curriculum Vitae (TW000001-000005);  
12 2. Gregory P. Brown, M.D. Court Testimony and Deposition History:  
13 Expert Witness History (TW000006-000010);  
14 3. Gregory P. Brown, M.D. Fee Schedule (TW000011);  
15 4. Medical Records for Rodney Wilkinson dated May 19, 2020  
16 (TW000012-TW000013);  
17 5. The Rodney E. Wilkinson Trust dated August 14, 2007 (TW000014-  
18 TW000022);  
19 6. Purchase Agreement dated February 21, 2020 (TW000023-  
20 TW000029);  
21 7. Order Appointing Guardian for Adult filed in Colorado Case No.  
22 2020PR30016 on November 23, 2020 (TW000030-TW000035);  
23 8. Medical Records (Dr. Lick at the Medical Center of Aurora) for  
24 Rodney Wilkinson dated July 01, 2020 (TW000036);  
25 9. Audio Recordings of Rodney Wilkinson and Tessie Wilkinson;  
26 10. 2017 Taxes (TW000037-TW000042);  
27 11. 2018 Taxes (TW000043-TW000046);  
28



12. W2's for Rodney Wilkinson (TW000047-TW000053);
13. Settlement Statement for Farm in KS (TW000054);
14. Sales Tax on the Farm in KS paid via check no.'s 1031 & 1032 (TW000055);
15. Purchase Agreement from Synergy dated February 21, 2020 (TW000056-TW000057);
16. Memo from Rodney Wilkinson regarding Synergy Oil Services (TW000058);
17. Memo from Tessie Wilkinson regarding Synergy Oil Services (TW000059);
18. Letter from Tessie to Dan at Synergy Oil Services (TW000060);
19. Tribal Employment Rights Ordinance Office Complaint of Charging Party dated November 26, 2019 (TW000061-TW000064);
20. Receipts for Tessie Wilkinson (TW000065-TW000091);
21. Banner Life Insurance Company for Rodney Wilkinson (TW000092-TW000098);
22. E-mail from Tessie to Sheryl regarding Rodney Wilkinson (TW000099-TW000102);
23. The Eastern Colorado Bank Statements for Account ending in 0288 from 2013 to 2016 for Rodney Wilkinson (and Jill Strand) (TW000103-TW000204);
24. Bank of the West Statements for Account ending in 7690 for Tessie Wilkinson from 2012 to 2014 (TW000205-TW000256);
25. The Eastern Colorado Bank Statements for Account ending in 0299 from 2013 to 2015 for Tessie Wilkinson (TW000257-TW000286);
26. Cornerstone Bank Statements for Account Ending in 1655 for

1 Rodney Wilkinson and Tessie Wilkinson from August 2019 to  
2 November 2019 (TW000287-TW000306);  
3 27. Forensic Psychiatric Report from Dr. Gregory P. Brown  
4 (TW000307-TW000320);  
5 28. Documents disclosed by Defendant (WILK000001-WILK002325).  
6 Dated this 2<sup>nd</sup> day of July, 2021.

7 **HOFLAND & TOMSHECK**

8  
9 By: /s/ Bradley J. Hofland  
10 Bradley Hofland, Esq.  
11 State Bar of Nevada No. 6343  
12 228 South 4th Street  
13 Las Vegas, Nevada 89101  
14 (702) 895-6760  
15 *Attorney for Tessie Almario*  
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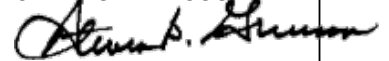
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# EXHIBIT “1”

HOFLAND & TOMSHECK - Attorneys at Law  
228 South 4<sup>th</sup> Street, First Floor  
Las Vegas NV 89101  
PH: (702) 895-6760 ♦ FAX: (702) 731-6910

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Steven D. Grierson  
CLERK OF THE COURT



**HOFLAND & TOMSHECK**

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*Attorney for Plaintiff, Tessie Elma Almario*

**EIGHTH JUDICIAL DISTRICT COURT, FAMILY DIVISION  
CLARK COUNTY, NEVADA**

TESSIE ELMA ALMARIO,	)	CASE NO.: D-19-596071-D
	)	DEPT NO.: U
Plaintiff,	)	<b>PLAINTIFF'S NOTICE OF MOTION</b>
	)	<b>AND MOTION FOR SUMMARY</b>
vs.	)	<b>JUDGMENT AND RELATED RELIEF</b>
	)	<b>ORAL AGRUMENT REQUESTED</b>
SHERYL ATTERBERG, ON	)	
BEHALF OF HER WARD	)	
RODNEY WILKINSON,	)	
	)	
Defendant.	)	
	)	
	)	

TO: Defendant Sheryl Atterberg, on behalf of her ward Rodney Wilkinson  
and your attorney of record, James W. Kwon, Esq.

**YOU ARE REQUIRED TO FILE A WRITTEN RESPONSE TO THIS  
MOTION WITH THE CLERK OF THE COURT AND TO PROVIDE THE  
UNDER-SIGNED WITH A COPY OF YOUR RESPONSE WITHIN  
FOURTEEN (14) DAYS OF YOUR RECEIPT OF THIS MOTION.  
FAILURE TO FILE A WRITTEN RESPONSE WITH THE CLERK OF THE  
COURT WITHIN FOURTEEN (14) DAYS OF YOUR RECEIPT OF THIS  
MOTION MAY RESULT IN THE REQUESTED RELIEF BEING  
GRANTED BY THE COURT WITHOUT HEARING PRIOR TO THE  
SCHEDULED HEARING DATE.**

**YOU, AND EACH OF YOU, WILL PLEASE TAKE NOTICE** that the undersigned will bring the above and foregoing Motion on for hearing at the courtroom of the above-entitled court, located at 601 North Pecos Road, Las Vegas, Nevada, 89101 on the date and time set by the Court.

COMES NOW, Plaintiff Tessie Elma Almario (“Tessie”), by and through her attorney, Bradley J. Hofland, Esq. of Hofland & Tomsheck, and hereby submits this motion against Defendant Rodney Wilkinson (“Rodney”) because no genuine issues of material fact exist because Rodney was found to be competent by another court at the time he executed the Decree and when it was entered. As a matter of law, Tessie is entitled to judgment as a matter of law finding Rodney was competent at the time the Decree was executed and entered, and more importantly, Rodney is collaterally estopped from relitigating the issue of his competency.

This motion is made and based on the following Memorandum of Points and Authorities, the papers and pleadings already on file herein, and any argument the Court may permit at the hearing of this matter.

Dated this 16<sup>th</sup> day of June, 2021.

HOF LAND &amp; TOMSHECK

By: /s/ *Bradley J. Hofland*

Bradley J. Hofland, Esq.  
State Bar of Nevada No. 6343  
228 South 4th Street, First Floor  
Las Vegas, Nevada 89101  
(702) 895-6760  
*Attorneys for Plaintiff*

1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I.**

3 **Introduction**

4 Under Nevada law, if a party has no evidence to support an essential element  
5 of its claim, summary judgment is appropriate. This Court confirmed the crux of  
6 this case, or the essential element of Defendant's action, when it established the  
7 parameters of the Evidentiary Hearing to determine (1) "Defendant's *competency* at  
8 the time of the signing of the Decree of Divorce and" (2) "how much Plaintiff knew  
9 about Defendant's *competency*."

10 As established herein, the Defendant's competency was previously  
11 adjudicated and confirmed by a court of competent jurisdiction, and therefore, issue  
12 preclusion, or collateral estoppel, now precludes Defendant from relitigating the  
13 issue of his competency. The Nevada Supreme Court has clearly held "[i]ssue  
14 preclusion, or collateral estoppel, is a proper basis for granting summary  
15 judgment." *LaForge v. State ex rel. univ. & Cmty. College Sys.*, 116 Nev. 415, 997  
16 P.2d 130 (2000). Accordingly, Plaintiff's motion must be granted.

17 **II.**

18 **Statement of Facts**

19 Rodney and Tessie were married on March 22, 2009 in Burlington, Colorado.  
20 On September 9, 2019, Tessie filed a Complaint for Divorce in Clark County,  
21 Nevada under Case No. D-19-596071-D. Rodney filed his Answer to the Complaint  
22 for Divorce on January 28, 2020 and admitted to all of the allegations set forth in  
23 the Complaint. The Stipulated Decree of Divorce was entered on February 12,  
24 2020. The Decree confirms Rodney's substantial marital waste (which Rodney  
25 admitted and considered), represents their agreement, and found and confirmed by  
26 the Court as being equitable and fair. Notice of Entry of the Decree of Divorce was  
27 filed on February 13, 2020.

On January 25, 2021, Rodney moved to set aside the decree of divorce *alleging*, among other things, that Tessie exerted undue influence upon Mr. Wilkinson to procure his signature on the Stipulated Decree of Divorce, that Rodney was diagnosed with Dementia less than three months *after* the Decree's entry, and that Tessie knew Rodney was incapacitated. Tessie denied/denies the allegations and contends that Rodney was competent at the time he signed the Decree of Divorce and that there was an equitable distribution of the marital estate.

Discovery has confirmed the veracity of Tessie's position, as well as Rodney competency at the time of the parties' agreement and divorce. Indeed, in December of 2020, Rodney's competency to enter into contracts in February of 2020, after the parties' settlement agreement and Decree, was tried, adjudicated and confirmed!

### III.

#### STATEMENT OF UNDISPUTED FACTS

It is significant to note the very issue the subject of the instant action before this Court, to wit: Rodney's competency in 2020, was actually and fully litigated in December of 2020 after Rodney asserted he was not competent to enter into contracts which resulted in a specific findings that Rodney was competent at the time *this Decree was executed and entered*. Notably, this adverse determination was concealed from this Court.

The following facts are undisputed:

	Statement of Undisputed Fact	Source
1	<b>This matter was tried to the Court on the 17th day of December 2020 on the Plaintiff's complaint for claim and delivery of certain personal property and the Defendant's counterclaim for breach of written contract and for foreclosure of liens. The trial was conducted by Zoom with the Plaintiff not appearing, but his legal guardians, Sheryl and Steven Atterberg, appearing by Zoom and the Defendant appearing</b>	Judgment in the District Court of the Fort Berthold Indian Reservation Case No. CV-2020-0303 Exhibit "1".



1	by Zoom with his wife who also testified as the	
2	Defendant's business manager. The Court adjourned	
3	the proceedings in order to permit the guardians to	
4	gain the presence of the Plaintiff by Zoom but they	
5	were not able to do so, despite the Court noticing	
6	this matter for trial and notifying the Parties on	
7	November 24, 2020 that it would permit the	
8	Plaintiff to appear by phone or Zoom. The Court	
9	thus permitted the guardians to testify for the	
10	<b>Plaintiff and also permitted them to supplement</b>	
11	<b>the complaint with their assertions that the</b>	
12	<b>Plaintiff was incompetent to enter into the</b>	
13	<b>contracts offered into evidence</b> by the Defendant	
14	and thus they should be held to be void ab initio.	
15	1.The Plaintiff is a 65-year old resident of the	Judgment in the District
16	State of Kansas who lives in assisted living in	Court of the Fort Berthold
17	Goodland, Sherman County Kansas.' He is a non-	Indian Reservation Case
18	member of the Fort Berthold reservation but who	No. CV-2020-0303
19	engaged in business transactions with the	Exhibit "1".
20	Defendant, a member of the Tribe, and who also	
21	worked for a short period of time on the Fort	
22	Berthold reservation for the Defendant's company;	
23	2. The Plaintiff's sister, Sheryl Atterburg, and	
24	Steven Atteburg were designated powers of	
25	attorney for the Plaintiff on September 4, 2020	
26	when the Plaintiff executed a written power of	
27	attorney. The Atterburgs were also appointed as	
28	legal guardians over the Plaintiff by court order.	
	<b>No power of attorney or guardianship</b>	
	<b>appointment was in place when during the</b>	
	<b>relevant periods of time described herein;</b>	
	3. The Plaintiff suffered a traumatic brain injury in	
	1974 and has also suffered three strokes, most	
	recently in 2017. <b>Despite this the Plaintiff was</b>	
	<b>working and maintained a Commercial Driver's</b>	
	<b>License in Colorado and Kansas as recently as</b>	
	<b>September of 2020. There is no evidence that the</b>	
	<b>Defendant knew or should have known of his</b>	
	<b>cognitive shortcomings as even the Plaintiff's</b>	
	<b>POA noted that he still maintained expert</b>	
	<b>mechanical skills as late as 2020;</b>	
	...	
	6.The Plaintiff started working as a mechanic for the	
	Defendant's company, Synergy on June 21, 2019 at	
	\$45 per hour. The Defendant's agents noticed that	

1 the Plaintiff was quite slow in his work performance  
2 and he would oftentimes linger on the job site not  
3 working so the Defendant's agents decided to  
4 demote him and reduce his wages to \$25 per hour.  
5 **The Plaintiffs POA's denied that the Plaintiff's**  
6 **work skills were diminished at all and believed**  
7 **that he was a superior mechanic during this**  
8 **period of time,** but there is no evidence that they  
9 were observing him during this period of time  
10 because they remained in Colorado.

11 ...

12 **12.The Plaintiff continued to work for the**  
13 **Defendant's LLC and was paid wages in the**  
14 **amount of \$26,803.17 up until February of 2020**  
15 **and the payments were also made on the purchase**  
16 **agreements.**

17 **13.In February of 2020 the Parties entered into**  
18 **another contract expressly rescinding the prior**  
19 **contracts** and was an attempt to close the  
20 transaction between the parties because the  
21 Defendant testified he was becoming increasing  
22 frustrated with the fact the Plaintiff was being paid  
23 wages to try to get his own equipment into  
24 working condition and he no longer wanted him as  
25 an employee because of his anger and  
26 confrontations with other employees.

27 **14.The February 21, 2020 contract admitted**  
28 **into evidence is an agreement between the**  
parties wherein the Parties agreed that the  
purchase contracts for the 1979 Ford Truck  
920 and 1980 Cozad Jeep Trailer would be  
deemed satisfied from the prior payments  
made to the Plaintiff for those vehicles as well  
as the salary paid to the Plaintiff (total  
amount of both was approximately\$65,000).

The Defendant also tested that he provided the  
Plaintiff free lodging

for himself for two months after he was  
terminated as well as two months free use of his  
wife's car which was also consideration for the  
February 21,2020 contract. The Plaintiff also  
agreed to remove all liens from these vehicles and  
to provide the titles to them. The Defendant  
testified that he was not aware that there were

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actually three titles to the Jeep Trailer and the Plaintiff has refused to deliver them to him despite his agreeing to travel to Kansas to get them. Because of this failure he has been unable to sell the Lowboy Trailer which he wished to do'- because his businesses went into a tailspin due to Covid 19.

..

**17. The Plaintiff signed this last contract on February 24, 2020 and there has been no evidence presented to this Court to show that the Plaintiff was incompetent or not able to enter into a binding contact at that time. The Court also finds no evidence to prove that the Defendant and his agents knew or should have known of any cognitive limitations on the part of the Plaintiff.**

...

**19.The Plaintiff left the Fort Berthold reservation in late February or early March of 2020 and has not been back since. The property remains on lands being leased by the Defendant and the Plaintiff has paid no storage fees.**

...

**21. In May of 2020 the guardians of the Plaintiff reported to Kansas Adult Protective Services officials that the Plaintiff had been financially exploited by the Defendant and Kansas officials commenced an investigation. In June of 2020 after investigating the matter. Kansas officials found that the allegations were unsubstantiated and closed the investigation. The guardians for the Plaintiff testified that they believed this was because Kansas found that the matter was a civil dispute not a criminal case, but the letter of June of 2020 does not make that distinction and the Court concludes that Kansas officials did not find sufficient evidence of any exploitation.**

22.The Plaintiff then commenced this action seeking a return of his personal property. The Defendant counterclaimed for enforcement of the three contracts between the Parties· and for storage 'lees for the three items of property that

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they assert were not sold to him as well as for loss of income due to the Plaintiff failing to provide the titles for the lowboy as well as for 30 hours of work done by his wife to get the financial evidence ready for trial.

The total amount prayed for by the Defendant in his counterclaim at trial was for \$126,000 plus a finding that the Wrecker and Lowboy were lawfully sold to him;

**23. The Plaintiff's guardians were permitted to argue that the written contracts between the parties were void due to the Plaintiffs alleged incompetency to contract and they requested that the Court order the return of all of the property to the Plaintiff with nothing on the counterclaim.**

NOW THEREFORE based upon the foregoing findings of fact the Court enters the following:  
CONCLUSIONS

**2. The Court finds that the Plaintiff at all relevant times related to his cause 'of action and the counterclaim was competent to contract and had not been found incompetent by a court of law. Although it appears he did suffer from some cognitive issues he still maintained a CDL in two states, was able to work as a mechanic, and never advised the Defendant or his agents of any cognitive limitations. Even if he were operating under some limitations on his cognitive functioning nothing in the record before this Court reveals that the Defendant or his agents knew or should have known of this. The fact that the State of Kansas looked into this issue and found no validity to the allegations that the Plaintiff has been financially exploited buttresses the Court's findings on this issue;**

**3. The February 21,2020 contract between the Parties executed on February 24, 2020 is a binding contract with the exception of certain**

1 provisions that are unconscionable. The Court  
2 will not enforce that part of the contract that  
3 stipulates that failure on the part of the Plaintiff  
4 to remove the remaining items of property from  
5 the Defendant's leased lands within 30 days  
6 would result in title to said property being vested  
7 in Defendant. Such a provision would result in a  
8 \$200,000 drill and other property of substantial  
9 value defaulting to the Defendant. The Court  
10 notes that the Defendant does not seek  
11 enforcement of that provision of the contract in  
12 his counterclaim but instead seeks damages for  
13 storing the property as well as for loss of income  
14 and expenses of his wife;  
15 4. The Court finds that the Defendant lawfully  
16 purchased the 1979 Ford Truck 920 VIN  
17 ID4429ICOL (wrecker) and the 1980 Cozad  
18 Jeep Trailer YIN CC80062 (lowboy trailer) and  
19 the Plaintiff shall immediately transfer titles to  
20 that property to the Defendant. Failure to do so  
21 within 30 days may result in further orders  
22 directing that alternative titles be issued;  
23 5. The Court further finds that the remaining  
24 property of the Plaintiff referenced in the  
25 February 21, 2020 contract remains the  
26 property of the Plaintiff but is subject to a  
27 storage lien that must be paid prior to removal of  
28 said property;  
29 6. The Court finds for the Defendant in the  
30 amount of \$100 per day from the date of March  
31 24, 2020 (the date the property was to be removed  
32 pursuant to the February contract) for a total  
33 amount of \$27,700. The amount of \$100 per day  
34 represents about half of the land lease the  
35 Defendant was required to pay to retain the lease  
36 where the property sits;  
37 7. The Court finds for the Defendant in the  
38 amount of \$60,000 for loss of income due to the  
39 Plaintiff's failure to comply with the February  
40 24, 2020 contract selling the lowboy and wrecker  
41 to the Defendant as he has not been able to use the  
42 lowboy since February or 2020 due to the Plaintiff  
43 not conveying lawful title in breach of the

1		agreement. The other claims for business expenses of his wife to prepare records is part of preparing for litigation and is not granted.	
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4	2	<p><b>REQUEST FOR PRODUCTION NO. 20:</b></p> <p>Please provide any and all documentation showing a full and itemized accounting for any and all assets and property, including real property, that you owned between March 22, 2008 and February 12, 2020.</p> <p><b>RESPONSE TO REQUEST FOR PRODUCTION NO. 20:</b></p> <p>Objection. Defendant objects to this Request as vague, ambiguous, overbroad, and unduly burdensome on its face due to its use of “any and all” in order to identify a broad range of documents. Defendant further objects to this Request as vague and ambiguous as to the terms “showing,” “full,” “accounting,” “assets,” “property,” and “owned.” Without waiving said objections, Defendant responds as follows: None. Please refer <i>Plaintiff’s First Supplemental List of Witnesses and Disclosure of Documents</i>, electronically served May 24, 2021. Discovery is ongoing and Defendant will supplement this response if and when additional documentation becomes available in accordance with Nev.R.Civ.P. Rule 26(e).</p>	Defendant’s Responses to Plaintiff’s Second Set of Request for Production of Documents Numbers 20, 21, 29 , 30, 31, 32, & 36, Exhibit “2”.
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20	4	<p><b>REQUEST FOR PRODUCTION NO. 21:</b></p> <p>Please provide any and all documentation showing a full and itemized accounting for any and all assets and property, including real property, that you sold between March 22, 2008 and February 12, 2020.</p> <p><b>RESPONSE TO REQUEST FOR PRODUCTION NO. 21:</b></p> <p>Objection. Defendant objects to this Request as vague, ambiguous, overbroad, and unduly burdensome on its face due to its use of “any and all” in order to identify a broad range of documents. Defendant further objects to this Request as vague and ambiguous as to the terms</p>	
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1		“showing,” “full,” “accounting,” “assets,”	
2		“property,” and “sold.” Without waiving said	
3		objections, Defendant responds as follows:	
4		Please refer to <i>Defendant’s First Supplemental</i>	
5		<i>NRCP 16.2 Disclosure</i> , served concurrently with	
6		this response. Discovery is ongoing and	
7		Defendant will supplement this response if and	
8		when additional documentation becomes	
9		available in accordance with Nev.R.Civ.P. Rule	
10		26(e).	
11	5	<b>REQUEST FOR PRODUCTION NO. 29:</b>	
12		Please provide any and all documents	
13		evidencing all real property purchased during	
14		marriage, including purchase agreements, deeds,	
15		mortgages and mortgage applications, taxes and	
16		improvements made on the real property.	
17		<b>RESPONSE TO REQUEST FOR</b>	
18		<b>PRODUCTION NO. 29:</b>	
19		Objection. Defendant objects to this Request as	
20		vague, ambiguous, overbroad, and unduly	
21		burdensome on its face due to its use of “any	
22		and all” and “all” in order to identify a broad	
23		range of documents. Defendant further objects to	
24		this Request as vague and ambiguous as to the	
25		term “purchased.” Without waiving said	
26		objections, Defendant responds as follows:	
27		None in Sheryl Atterberg’s possession. If this	
28		documentation existed, it would either be in the	
		Farmhouse in which Plaintiff has forbidden	
		Sheryl Atterberg access to or were appropriated	
		by Plaintiff and are, therefore, in her possession.	
		Discovery is ongoing and Defendant will	
		supplement this response if and when additional	
		documentation becomes available in accordance	
		with Nev.R.Civ.P. Rule 26(e).	
	6	<b>REQUEST FOR PRODUCTION NO. 30:</b>	
		Please provide any and all documents in support	
		of your allegations contained in page 6,	
		paragraph 12 of your motion titled Defendant’s	
		Motion to Set Aside the Divorce Decree	

1	Pursuant to NRCP 60(b) filed on January 25,	
2	2021 which reads:	
3	Tessie committed fraud when she knew full well	
4	that Rodney was suffering from severe mental	
5	deficiencies and was incompetent.	
6	<b>RESPONSE TO REQUEST FOR</b>	
7	<b>PRODUCTION NO. 30:</b>	
8	Objection. Defendant objects to this Request as	
9	vague, ambiguous, overbroad, and unduly	
10	burdensome on its face due to its use of “any	
11	and all” in order to identify a broad range of	
12	documents. Defendant further objects to this	
13	Request as vague and ambiguous as to the terms	
14	“support” and “contained.” Without waiving	
15	said objections, Defendant responds as follows:	
16	Please refer to <i>Defendant’s Initial NRCP 16.2</i>	
17	<i>Disclosure</i> , served April 15, 2021. Additionally,	
18	please refer to <i>Defendant’s First Supplemental</i>	
19	<i>NRCP 16.2 Disclosure</i> , served concurrently with	
20	this response.	
21	Discovery is ongoing and Defendant will	
22	supplement this response if and when additional	
23	documentation becomes available in accordance	
24	with Nev.R.Civ.P. Rule 26(e).	
25	<b>REQUEST FOR PRODUCTION NO. 31:</b>	
26	Please provide any and all documents in support	
27	of your allegations contained in page 6,	
28	paragraph 14 of your motion titled Defendant’s	
	Motion to Set Aside the Divorce Decree	
	Pursuant to NRCP 60(b) filed on January 25,	
	2021 which reads:	
	Tessie intentionally concealed that Rodney was	
	suffering from severe mental deficiencies and	
	otherwise lacked contractual capacity from the	
	Court not only when she filed for divorce but	
	when she obtained a Decree of Divorce.	
	<b>RESPONSE TO REQUEST FOR</b>	
	<b>PRODUCTION NO. 31:</b>	
	Objection. Defendant objects to this Request as	
	vague, ambiguous, overbroad, and unduly	
	burdensome on its face due to its use of “any	
	and all” in order to identify a broad range of	



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	<p>documents. Defendant further objects to this Request as vague and ambiguous as to the terms “support” and “contained.” Without waiving said objections, Defendant responds as follows: Please refer to <i>Defendant’s Initial NRCP 16.2 Disclosure</i>, served April 15, 2021. Additionally, please refer to <i>Defendant’s First Supplemental NRCP 16.2 Disclosure</i>, served concurrently with this response.</p> <p>Discovery is ongoing and Defendant will supplement this response if and when additional documentation becomes available in accordance with Nev.R.Civ.P. Rule 26(e).</p>	
8	<p><b>REQUEST FOR PRODUCTION NO. 32:</b></p> <p>Please provide any and all documents in support of your allegations contained in page 6, paragraph 15 of your motion titled Defendant’s Motion to Set Aside the Divorce Decree Pursuant to NRCP 60(b) filed on January 25, 2021 which reads:</p> <p>Tessie used this knowledge to commit fraud upon the Court and obtain an unequal distribution of the marital estate.</p> <p><b>RESPONSE TO REQUEST FOR PRODUCTION NO. 32:</b></p> <p>Objection. Defendant objects to this Request as vague, ambiguous, overbroad, and unduly burdensome on its face due to its use of “any and all” in order to identify broad range of documents. Defendant further objects to this Request as vague and ambiguous as to the terms “support” and “contained.” Without waiving said objections, Defendant responds as follows: Please refer to <i>Defendant’s Initial NRCP 16.2 Disclosure</i>, served April 15, 2021. Additionally, please refer to <i>Defendant’s First Supplemental NRCP 16.2 Disclosure</i>, served concurrently with this response. Discovery is ongoing and Defendant will supplement this response if and when additional documentation becomes available in accordance with Nev.R.Civ.P. Rule 26(e).</p>	

1	9	<b>REQUEST FOR PRODUCTION NO. 35:</b>	
2		Please provide any and all documents in support	
3		of your allegations contained in page 7,	
4		paragraph 18 of your motion titled Defendant's	
5		Motion to Set Aside the Divorce Decree	
6		Pursuant to NRCP 60(b) filed on January 25,	
7		2021 which reads:	
8		During the parties' marriage, it was Tessie, not	
9		Rodney, who engaged in marital waste.	
10		<b>RESPONSE TO REQUEST FOR</b>	
11		<b>PRODUCTION NO. 35:</b>	
12		Objection. Defendant objects to this Request as	
13		vague, ambiguous, overbroad, and unduly	
14		burdensome on its face due to its use of "any	
15		and all" in order to identify a broad range of	
16		documents. Defendant further objects to this	
17		Request as vague and ambiguous as to the terms	
18		"support" and "contained." Without waiving	
19		said objections, Defendant responds as follows:	
20		Please refer to <i>Defendant's Initial NRCP 16.2</i>	
21		<i>Disclosure</i> , served April 15, 2021. Additionally,	
22		please refer to <i>Defendant's First Supplemental</i>	
23		<i>NRCP 16.2 Disclosure</i> , served concurrently with	
24		this response.	
25		Discovery is ongoing and Defendant will	
26		supplement this response if and when additional	
27		documentation becomes available in accordance	
28		with Nev.R.Civ.P. Rule 26(e).	
	10	<b>REQUEST FOR PRODUCTION NO. 36:</b>	
		Please provide any and all documents in support	
		of your allegations contained in page 12, lines	
		13 through 16 of your motion titled Defendant's	
		Motion to Set Aside the Divorce Decree	
		Pursuant to NRCP 60(b) filed on January 25,	
		2021 which reads:	
		Tessie kept the fact that Rodney had suffered a	
		Traumatic Brain Injury in 2017 from this Court	
		and her counsel, and she otherwise concealed	
		that Rodney, due to his cognitive impairments,	
		was legally incapacitated and otherwise lacked	
		contractual capacity.	
		<b>RESPONSE TO REQUEST FOR</b>	

**PRODUCTION NO. 36:**

Objection. Defendant objects to this Request as vague, ambiguous, overbroad, and unduly burdensome on its face due to its use of “any and all” in order to identify a broad range of documents. Defendant further objects to this Request as vague and ambiguous as to the terms “support” and “contained.” Without waiving said objections, Defendant responds as follows: Please refer to *Defendant’s Initial NRCP 16.2 Disclosure*, served April 15, 2021. Additionally, please refer to *Defendant’s First Supplemental NRCP 16.2 Disclosure*, served concurrently with this response.

Discovery is ongoing and Defendant will supplement this response if and when additional documentation becomes available in accordance with Nev.R.Civ.P. Rule 26(e).

**IV.**  
**Legal Analysis**

***A. Standards for a motion for summary judgment.***

The standard for granting summary judgment is a familiar one. A district court should grant summary judgment when “there are no genuine issues as to any material fact and... the moving party is entitled to judgment as a matter of law.”<sup>1</sup>

“[A] genuine issue of material fact is one where the evidence is such that a

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<sup>1</sup>NRCP 56(c); *Posadas v. City of Reno*, 109 Nev 448, 452, 851 P.2d 438, 441-42 (1993); *Bird v. Casa Royale West*, 97 Nev. 67, 69 (1981); *Boland v. Nevada Rock & Sand Co.*, 111 Nev. 608, 610 (1995).

1 reasonable jury could return a verdict for the non-moving party.”<sup>2</sup> Also, a “material  
2 fact” is a fact “that might affect the outcome of the suit under the governing law.”<sup>3</sup>

3 Pursuant to N.R.C.P. 56, summary judgment “*shall* be rendered forthwith if  
4 the pleadings, depositions, answers to interrogatories, and admissions on file,  
5 together with the affidavits, if any, show that there is no genuine issue as to any  
6 material fact and that the moving party is entitled to a judgment as a matter of law.”  
7 N.R.C.P. 56(c) (emphasis supplied).

8 “There is *no* genuine issue of material fact if the party opposing the motion  
9 ‘fails to make an adequate showing sufficient to establish the existence of an  
10 element essential to that party’s case, and on which that party will bear the burden  
11 of proof at trial.’”<sup>4</sup> Notably, issues of material fact *must* be supported by evidence,  
12 and conclusory allegations that are unsupported *cannot* defeat a motion for  
13 summary judgment.<sup>5</sup>

14 With respect to burdens of proof and persuasion in the summary judgment  
15 context, Nevada courts have adopted the federal approach as outlined in *Celotex v.*  
16 *Catrett*, 477 U.S. 317 (1986)<sup>6</sup>. Specifically, the party moving for summary  
17 judgment bears the initial burden of production to show the absence of a genuine  
18 issue of material fact<sup>7</sup>. Upon such a showing, *the party opposing summary*  
19 *judgment assumes a burden of production to show the existence of a genuine*  
*issue of material fact*<sup>8</sup>.

20 The manner in which each party may satisfy its burden of production  
21 depends on which party will bear the burden of persuasion on the challenged claim

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22 <sup>2</sup> *Riley v. OPP IX, L.P.*, 112 Nev. 826, 830, 919 P.2d 1071, 1074 (1996), citing  
23 *Valley Bank v. Marble*, 105 Nev. 366, 266, 775 P.2d 1278, 1279 (1989).

24 <sup>3</sup> *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 106 S. Ct. 2505 (1986).

25 <sup>4</sup> *Taylor v. List*, 880 F.2d 1040, 1045 (1989), *quoting Celotex Corp. v. Catrett*, 477  
26 U.S. 317, 322 (1986); *see also Ray v. Continental W. Ins. Co.*, 920 F. Supp. 1094,  
1097 (1994) (emphasis supplied).

27 <sup>5</sup> *Taylor*, at 880 F.2d at 1045; *Ray*, 920 F. Supp. At 1097 (emphasis supplied).

28 <sup>6</sup> *See Cuzze v. Univ. and Comm. Col. Sys of NV*, 172 P.3d 131, 134 (2007)

<sup>7</sup> *Id.*

<sup>8</sup> *Id.*

1 at trial<sup>9</sup>. If the moving party will bear the burden of persuasion, that party must  
2 present evidence that would entitle it to a judgment as a matter of law in the  
3 absence of contrary evidence<sup>10</sup>. But if the non-moving party will bear the burden of  
4 persuasion at trial, the party moving for summary judgment may satisfy the burden  
5 of production by either (1) submitting evidence that negates an essential element of  
6 the non-moving party's claim or (2) pointing out ... that there is an absence of  
7 evidence to support the non-moving party's case<sup>11</sup>. In such instances, in order to  
8 defeat summary judgment, the non-moving party must transcend the pleading and,  
9 by affidavit or other admissible evidence, introduce specific facts that show a  
genuine issue of material fact<sup>12</sup>.

10 Although the Court must view the facts in the light most favorable to the  
11 nonmoving party, the nonmoving party may not rest on "the mere allegations or  
12 denials of his pleading"<sup>13</sup> but **must** "set forth specific facts demonstrating the  
13 existence of a genuine issue for trial or have summary judgment entered against  
14 him."<sup>14</sup>

15 Indeed, the nonmoving party may **not** rely on "the gossamer threads of  
16 whimsy, speculation and conjecture."<sup>15</sup> When the nonmoving party bears the  
17 burden of persuasion, the moving party can submit evidence that negates an  
18 element of the nonmoving party's claim or point out the lack of evidence to support  
19 the nonmoving party's claims<sup>16</sup>. The nonmoving party is unable to successfully  
20

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21 <sup>9</sup> *Id.*

22 <sup>10</sup> *Id.*

23 <sup>11</sup> *Id.*

<sup>12</sup> *Id.*

24 <sup>13</sup> *Anderson, supra*, 477 U.S. at 248.

25 <sup>14</sup> *Wood v. Safeway, Inc.*, 121 Nev. 724, 732, 121 P.3d 1026, 1031 (2005); *see also*  
26 *Matsushita Electric Indus. Co. v. Zenith Radio Corp.*, 475 U.S. 574 (1986) (non-  
moving party must do more than just show there is some "metaphysical doubt"; the  
non-moving party must show genuine issues for trial).

27 <sup>15</sup> *Id.*; *see also Anderson, supra*, 477 U.S. at 252 (holding a mere "scintilla" of  
evidence will not suffice to meet that burden).

28 <sup>16</sup> *Cuzze*, 123 Nev. at 602-3.

1 rebut the motion for summary judgment unless he is able to point to facts supported  
2 by the record which demonstrate a genuine issue of material fact<sup>17</sup>. In this case,  
3 Rodney is unable to meet his burden.

4 The Nevada Rules of Civil Procedure Rule 56(c) governing Summary  
5 Judgment provides in its pertinent part:

6 The judgment sought *shall be rendered forthwith* if the  
7 pleadings, depositions, answers to interrogatories, and admissions on  
8 file, together with the affidavits, if any show that there is no genuine  
9 issue as to any material fact and that the moving party is entitled to a  
10 judgment as a matter of law. (Emphasis added)

11 The United States Supreme Court has explained that the “[s]ummary  
12 judgment procedure is properly regarded not as a disfavored procedural shortcut,  
13 but rather as an integral part of the [procedural process] as a whole, which [is]  
14 designed ‘to secure the just, speedy and inexpensive determination of every  
15 action.’”<sup>18</sup> (See *Celotex*, 477 at 327; *Wood* at 1030). Although the Supreme Court  
16 was quoting from the Federal Rules of Civil Procedure, the Nevada Courts are  
17 likewise admonished to construe and administer available procedural mechanisms  
18 “to secure the just, speedy, and inexpensive determination of every action.” (See  
19 NRCP 1).

20 ***B. The Decision of the District Court is binding and Nevada Law***  
21 ***requires Dismissal of the Plaintiff’s Complaint.***

22 Under the federal Full Faith and Credit Act, 28 U.S.C. § 1738, the acts of  
23 state tribunals are given the same "full faith and credit" as they have by law in the

24  
25 <sup>17</sup> See *Thames v. LVH Corp.*, 211 Fed. Appx. 618 (9<sup>th</sup> Cir. 2006) (non-moving party  
26 must set forth “affirmative admissible evidence establishing a triable issue of fact”);  
27 see also *Orr v. Bank of America, NT & SA*, 285 F.3d 764, 773 (9<sup>th</sup> Cir. 2002) (party  
28 opposing summary judgment cannot establish triable issue of fact by relying on  
inadmissible evidence or unauthenticated documents).

<sup>18</sup> See *Celotex*, 477 at 327; *Wood* at 1030

1 states of their origin. Accordingly, federal courts generally are bound to recognize  
2 the preclusion effects of state court judgments. See *Migra v. Warren City School*  
3 *District Bd. of Educ. et al.*, 465 U.S. 75, 81, 79 L. Ed. 2d 56, 104 S. Ct. 892 (1983).  
4 The foregoing result applies to the decisions of arbitrators as well. See, e.g., *Clark*  
5 *v. Bear Stearns & Co., Inc.*, 966 F.2d 1318, 1321 (9th Cir. 1992); *Seborowski v.*  
6 *Pittsburgh Press Co.*, 188 F.3d 163, 169-71 (3d Cir. 1999); and *Dalow Industries,*  
7 *Inc. v. Jordache Enterprises, Inc.*, 631 F. Supp. 774, 778 (S.D.N.Y. 1985).  
8 [Arbitration awards are treated as if it were a judicial decision for purposes of  
9 applying the preclusion doctrines].

10 Issue preclusion, or collateral estoppel, is applied to conserve judicial  
11 resources, maintain consistency, and avoid harassment or oppression of the adverse  
12 party. *Berkson v. LePome*, 126 Nev. 492, 245 P.3d 560, 566 (2010). For this  
13 doctrine to apply, the following four elements must be met:

14 (1) the issue decided in the prior litigation must be identical to the issue  
15 presented in the current action; (2) the initial ruling must have been on the  
16 merits and have become final; (3) the party against whom the judgment is  
17 asserted must have been a party or in privity with a party to the prior  
18 litigation; and (4) the issue was actually and necessarily litigated.

19 *Five Star Capital Corp. v. Ruby*, 124 Nev.1048, 1055, 194 P.3d at 709, 713 (2008)  
20 quoting *Tarkanian*, 110 Nev. at 598, 879 P.2d at 1191); See also *Elyousef v.*  
21 *O'Reilly & Ferrario, LLC*, 126 Nev. 441, 245 P.3d 547 (2010).

22 Considering these requirements pursuant to the doctrine of issue preclusion,  
23 Rodney is precluded from relitigating the issue of his competency in early 2020  
24 because the issue of his competency in early 2020 was actually litigated in Case  
25 Number CV-2020-0303 in December 2020. The Court in Case Number CV-2020-  
26 0303, on the assertion of Rodney's "incompetency" in early 2020, and pursued by  
27 Rodney through his Guardians to avoid a contract entered in 2019 where Rodney  
28 was paid wages through February of 2020 (one month after the Decree was signed)

1 and which was then renegotiated by Rodney. After carefully considering the merits,  
2 the District Court issued a thorough and comprehensive thirteen-page decision and  
3 corresponding findings concerning the evidenced presented by Rodney surrounding  
4 his assertion of “incompetency” in early 2020 pursued by his Guardian. *Notably,*  
5 *the Court in Case Number CV-2020-0303 issued a final decision finding Rodney*  
6 *was competent during the time the Decree was executed and entered.*

7 Because the issue of Rodney’s competency both preceding and following his  
8 agreement and divorce with Plaintiff, was necessarily and properly raised in the  
9 prior district court case, issue preclusion applies to prevent Guardian from  
10 relitigating the issue of Rodney’s competency at the time of the divorce. *See*  
11 *Alcantara v. Wal-Mart Stores, Inc.*, 130 Nev. 252, (2014) (finding of nonliability in  
12 prior action bars relitigation of liability in separate action).

13 Courts have determined that litigants have the right to try their case, but  
14 public interest and case precedent firmly establish that they are limited to one such  
15 opportunity. Rodney is disallowed, as a matter of law, to have another opportunity  
16 to rehash his “competency” during the time of his agreement and divorce of  
17 Plaintiff, by switching adversaries.

18 As this Court knows, public reliance upon judicial pronouncements requires  
19 that which has been finally determined by competent tribunals be accepted as  
20 undeniable legal truth. Its legal efficacy is not to be undermined, and Rodney’s  
21 endeavors to do so must not be allowed.

22 ***C. Tessie is entitled to an award of attorney’s fees and costs for***  
23 ***having to seek summary judgment on Rodney’s frivolous motion.***

24 In the case at bar, Rodney has acted in bad faith. In their endeavor to  
25 manipulate this Court, Rodney not only violates the duty of candor that is owed to  
26 this Court, Rodney has violated NRCP 11. Quite frankly, Rodney’s conduct  
27 mandates an award of attorney’s fees to Tessie for having to defend and respond to  
28 such a frivolous pleading.



1 NRS 18.010 deals with awards of attorney's fees and provides in relevant  
2 part:

3 (b) Without regard to the recovery sought, when the court finds that  
4 the claim, counterclaim, cross-claim or third-party complaint or  
5 defense of the opposing party was brought or maintained without  
6 reasonable ground or to harass the prevailing party. ***The court shall***  
7 ***liberally construe the provisions of this paragraph in favor of***  
8 ***awarding attorney's fees in all appropriate situations.*** It is the intent  
9 of the Legislature that the court award attorney's fees pursuant to this  
10 paragraph and impose sanctions pursuant to Rule 11 of the Nevada  
11 Rules of Civil Procedure in all appropriate situations ***to punish for and***  
12 ***deter frivolous or vexatious claims*** and defenses because such claims  
13 and defenses overburden limited judicial resources, hinder the timely  
14 resolution of meritorious claims and increase the costs of engaging in  
15 business and providing professional services to the public. (Emphasis  
16 supplied).

17 Additionally, EDCR 7.60 provides, in relevant part:

18 (b) The court may, after notice and an opportunity to be heard, impose  
19 upon an attorney or a party any and all sanctions which may, under the  
20 facts of the case, be reasonable, including the imposition of fines, costs  
21 or attorney's fees when an attorney or a party without just cause:

22 (1) ***Presents to the court a motion*** or an opposition to a motion ***which***  
23 ***is obviously frivolous, unnecessary or unwarranted.***

24 (3) So multiplies the proceedings in a case as to increase costs  
25 unreasonably and vexatiously. (Emphasis supplied).

26 In this case, there was no basis for the request to set aside the Decree based  
27 upon Rodney being incompetent in January of 2020 as another court already  
28 specifically found Rodney to be competent when the Decree was executed and  
entered. Rodney apparently believes he can ignore court rules, violate his duty of  
candor, dismiss the damning effect of issue preclusion, collateral estoppel, and  
controlling precedent, in order to manipulate this Court and the legal system as a  
whole. Such a belief is misguided, and such a tactic ill-judged.

Further, NRS 7.085 also provides this Court with the requisite authority to  
make Tessie whole for the malicious and baseless litigation costs that she has  
incurred defending Rodney's frivolous filing. Therein, it states:

1 1. If a court finds that an attorney has:

2 (a) Filed, maintained or defended a civil action or proceeding in any  
3 court in this State and such action or defense is ***not well-grounded in***  
4 ***fact*** or is not warranted by existing law or by an argument for  
changing the existing law that is made in good faith; or

5 (b) Unreasonably and vexatiously extended a civil action or  
6 proceeding before any court in this State,

7 the court shall require the attorney personally to pay the additional  
8 costs, expenses and attorney's fees reasonably incurred because of such  
conduct.

9 ***2. The court shall liberally construe the provisions of this section in***  
10 ***favor of awarding costs, expenses and attorney's fees in all***  
11 ***appropriate situations.*** It is the intent of the Legislature that the court  
12 award costs, expenses and attorney's fees pursuant to this section and  
13 impose sanctions pursuant to Rule 11 of the Nevada Rules of Civil  
14 Procedure in all appropriate situations to punish for and deter frivolous  
or vexatious claims and defenses because such claims and defenses  
overburden limited judicial resources, hinder the timely resolution of  
meritorious claims and increase the costs of engaging in business and  
providing professional services to the public. (emphasis added).

15 Thus, “NRS 7.085 allows a district court to make an attorney personally  
16 liable for the attorney fees and costs an opponent incurs when the attorney files,  
17 maintains or defends a civil action that is not well-grounded in fact or is not  
18 warranted by existing law or by a good-faith argument for changing the existing  
19 law.”<sup>19</sup>

20 NRCP 11 also enables this Court to impose sanctions if any pleading, written  
21 motion, or other paper is filed that is being filed for any improper purpose, such as  
22 to “***harass, cause unnecessary delay, or needlessly increase the cost of litigation.***”

23 The Nevada Supreme Court, in *Watson Rounds*, held that NRCP 11 and NRS  
24 7.085 each represent a distinct, independent mechanism for sanctioning attorney  
25 misconduct. 131 Nev. at 791.

26  
27  
28 <sup>19</sup> *Watson Rounds, P.C., v. Eighth Judicial Dist. Ct. (Himelfarb & Associates)*, 131  
Nev. 783, 784, 358 P.3d 228, 230 (2015).

1 Lastly, in *Barney v. Mt. Rose Heating & Air Conditioning*, 192 P.3d 730, 736  
2 (2008) citing *Brunzell v. Golden Gate National Bank*, 85 Nev 345, 455 P.2d 31  
3 (1969), the Court enumerated factors that the district court should consider in  
4 awarding attorney fees, with no one factor controlling, as follows:

- 5 (1) the advocate's qualities, including ability, training, education,  
experience, professional standing, and skill;
- 6 (2) the character of the work, including its difficulty, intricacy,  
7 importance, as well as the time and skill required, the responsibility  
8 imposed, and the prominence and character of the Parties when  
affecting the importance of the litigation;
- 9 (3) the work performed, including the skill, time, and attention given  
to the work; and
- 10 (4) the result--whether the attorney was successful and what benefits  
11 were derived.

12 Tessie's counsel met the factors outlined in *Brunzell*. Tessie's counsel is  
13 qualified and has considerable experience, ability and training in the field of  
14 family law and civil litigation. It is the responsibility of Tessie's counsel to  
15 finalize outstanding issues to ensure the rights of Tessie are preserved and  
16 litigated, to ensure the Orders of the Court are proper, and that the legal system is  
17 not manipulated. Tessie's counsel was attentive to work performed.

18 Accordingly, based upon the foregoing, it is not only fair, but also  
19 reasonable under the circumstances that Rodney and/or his counsel, be responsible  
20 for Tessie's reasonable attorney fees and costs in the sum of \$5,000.00 pursuant to  
21 NRS §18.010, EDCR 7.60, the additional authority cited herein, and the holding  
22 of *Brunzell*.

#### 23 IV.

#### 24 Conclusion

25 Based upon the foregoing, Tessie reasonable requests summary judgment be  
26 entered because no genuine issues of material fact exist because Rodney was found  
27 to be competent by another court at the time he entered into his agreement with  
28 Plaintiff and executed the Decree. As a matter of law, Tessie is entitled to

1 judgment as a matter of law finding Rodney was competent at the time the Decree  
2 was executed and entered; Rodney is barred/estopped as a matter of law from  
3 relitigating his “competency”, and Plaintiff should be awarded attorney fees and  
4 costs associated with defending the frivolous unsupported claim filed and pursed by  
5 Rodney.

6 Dated this 16<sup>th</sup> day of June, 2021.

7  
8 **HOFLAND & TOMSHECK**

9 By: /s/ Bradley J. Hofland

10 Bradley J. Hofland, Esq.  
11 State Bar of Nevada No. 6343  
12 228 South 4th Street, First Floor  
13 Las Vegas, Nevada 89101  
14 (702) 895-6760  
15 *Attorneys for Plaintiff*  
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1                                   **DECLARATION OF TESSIE ELMA ALMARIO**

2           I, Tessie Elma Almario, declare under penalty of perjury under the laws of  
3 the State of Nevada that the following is true and correct.

4           1.     That I am the Plaintiff in this action and am competent to testify as to  
5 the matters stated herein.

6           2.     I have read the foregoing Motion for Summary Judgment, and the  
7 factual averments it contains are true and correct to the best of my knowledge,  
8 except as to those matters based on information and belief, and as to those matters, I  
9 believe them to be true. Those factual averments contained in the referenced filing  
10 are incorporated here as if set forth in full.

11           DATED this 16<sup>th</sup> day of June, 2021.

12                                   /s/ Tessie Elma Almario  
13                                   Tessie Elma Almario  
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1                                   **AFFIDAVIT OF BRADLEY J. HOFLAND, ESQ.**

2           I, Bradley J. Hofland, Esq., hereby state and declare as follows:


3           1. That I am an attorney for Plaintiff *Tessie Elma Almario* ("Tessie") in this  
4 action.

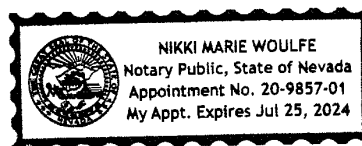
5           2. That Exhibit 1 attached hereto is a true and correct copy of documents  
6 received from Opposing Counsel on June 14, 2021 8:47 PM served in Defendant's  
7 First Supplemental NRCP 16.2 Disclosure.

8           3. That Exhibit 2 attached hereto is a true a correct copy of Defendant Rodney  
9 Wilkinson's Responses to Plaintiff Tessie Elma Almario's Second Set of Request  
10 for Production of Documents to Defendant Rodney Wilkinson served by Opposing  
11 Counsel on June 14, 2021 at 8:47 PM.

12           I declare under penalty of perjury under the laws of the State of Nevada, that  
13 the foregoing is true and correct.

14           DATED this 16<sup>th</sup> day of June, 2021.

15                                     
16                                   Bradley J. Hofland, Esq.



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# EXHIBIT “1”



**IN THE DISTRICT COURT  
FOR THE FORT BERTHOLD INDIAN RESERVATION**

	)	
Rodney Wilkinson,	)	Case No. CV-2020-0303
	)	
Plaintiff,	)	
	)	
vs.	)	
	)	
Darrell Fontenot,	)	
	)	
Defendant.	)	
	)	

---

**JUDGMENT**

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The Court having entered its findings and order for judgment and being duly advised it is hereby

ORDERED, ADJUDGED AND DECREED that judgment is entered for the Defendant on his counterclaim in the amount of \$87,700 for storage fees and loss of income due to the Plaintiff's breach of contract and it is further

ORDERED, ADJUDGED AND DECREED that the Defendant has lawfully purchased the 1979 Ford Truck 920 VIN ID4429ICOLOR (wrecker) and the 1980 Cozad Jeep Trailer VIN CC80062 (lowboy trailer) and the Plaintiff shall immediately transfer titles to that property to the Defendant. Failure to do so within 30 days may result in further orders directing that alternative titles be issued and it is further

ORDERED, ADJUDGED AND DECREED that the Plaintiff shall have 120 days from the date of this order to remove his remaining property, the 1993

**WILK000431**

ROA000601

Western Star WS-4964S, VIIN 2WKPDCCCH1PK31154, the 1983 Auto Truck 315 VIN# 1WBRHCVH1DU094972, and the Peerless Drill CH-48-12S provided he satisfies the judgment amount of \$87,700 plus \$100 per day for each day after this order is entered until the property is removed. The Defendant shall have a lien on said property until the judgment amount is paid and failure to pay the amount owed within 120 days shall result in the Defendant being granted leave to execute on his lien and sell said property at a public auction or private sale.

Each side will bear their own costs and fees.

Duly executed this \_\_\_\_ day of December 2020.

---

Clerk of District Court

**WILK000432**

ROA000602

**IN THE DISTRICT COURT  
FOR THE FORT BERTHOLD INDIAN RESERVATION**

Rodney Wilkinson,

Plaintiff,

vs.

Darrell Fontenot,

Defendant.

Case No. CV-2020-0303

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**FINDINGS OF FACT AND CONCLUSIONS OF LAW AND ORDER FOR JUDGMENT**

---

This matter was tried to the Court on the 17<sup>th</sup> day of December 2020 on the Plaintiff's complaint for claim and delivery of certain personal property and the Defendant's counterclaim for breach of written contract and for foreclosure of liens. The trial was conducted by Zoom with the Plaintiff not appearing, but his legal guardians, Sheryl and Steven Atterberg, appearing by Zoom and the Defendant appearing by Zoom with his wife who also testified as the Defendant's business manager. The Court adjourned the proceedings in order to permit the guardians to gain the presence of the Plaintiff by Zoom but they were not able to do so, despite the Court noticing this matter for trial and notifying the Parties on November 24, 2020 that it would permit the Plaintiff to appear by phone or Zoom. The Court thus permitted the guardians to testify for the Plaintiff and also permitted them to supplement the complaint with their assertions that the Plaintiff was incompetent to

enter into the contracts offered into evidence by the Defendant and thus they should be held to be void ab initio.

The Defendant offered his testimony as did his wife, Tina Fontenot, who was the operations manager for the Defendant's LLC, Synergy Oilfield Services, an Idaho LLC. The Court also received into evidence several exhibits filed by each side. Based on the evidence submitted as well as the exhibits offered the Court finds as follows:

1. The Plaintiff is a 65-year old resident of the State of Kansas who lives in assisted living in Goodland, Sherman County Kansas. He is a non-member of the Fort Berthold reservation but who engaged in business transactions with the Defendant, a member of the Tribe, and who also worked for a short period of time on the Fort Berthold reservation for the Defendant's company;
2. The Plaintiff's sister, Sheryl Atterburg, and Steven Atteburg were designated powers of attorney for the Plaintiff on September 4, 2020 when the Plaintiff executed a written power of attorney. The Atterburgs were also appointed as legal guardians over the Plaintiff by court order. No power of attorney or guardianship appointment was in place when during the relevant periods of time described herein;
3. The Plaintiff suffered a traumatic brain injury in 1974 and has also suffered three strokes, most recently in 2017. Despite this the Plaintiff was working

( (

and maintained a Commercial Driver's License in Colorado and Kansas as recently as September of 2020. There is no evidence that the Defendant knew or should have known of his cognitive shortcomings as even the Plaintiffs' POA noted that he still maintained expert mechanical skills as late as 2020;

4. The Defendant Darrell Gene Fontenot is an enrolled member of the Three Affiliated Tribes residing on the Fort Berthold reservation. He owns two companies, Synergy Oilfield Services LLC (Idaho) and Avea Oilfield Services LLC, licensed in North Dakota. Both are Tier I companies licensed by TERO on the Fort Berthold reservation.
5. On June 13, 2019 the Plaintiff answered Defendant's Craig's list ad for a mechanic and the Plaintiff drove to the Fort Berthold reservation in a very nice rig and seemed very knowledgeable of mechanic work. He was interviewed by the Defendant's truck manager and fleet supervisor who were impressed with his mechanical knowledge and he was hired. He never mentioned to the Defendant's agents any cognitive limitations and none were noticed except the Plaintiff did seem to have quite a temper;
6. The Plaintiff started working as a mechanic for the Defendant's company, Synergy on June 21, 2019 at \$45 per hour. The Defendant's agents noticed that the Plaintiff was quite slow in his work performance and he would oftentimes linger on the job site not working so the Defendant's agents

decided to demote him and reduce his wages to \$25 per hour. The Plaintiffs POA's denied that the Plaintiff's work skills were diminished at all and believed that he was a superior mechanic during this period of time, but there is no evidence that they were observing him during this period of time because they remained in Colorado.

7. While working for the Defendant's companies in July of 2019 the Plaintiff mentioned to the Defendant's lead mechanic that he had heavy equipment in Kansas that he wished to put to use for a profit because it was idle. The lead mechanic mentioned this to the Defendant who indicated he could use the equipment but because TERO regulations prohibited an Indian-owned business from using the equipment in the oilfields of a non-Indian that he had to have some ownership interest in the equipment. At that time the Plaintiff did not have the money to even purchase insurance for the equipment;
8. The Plaintiff indicated that his equipment was in good shape and that he could operate the drilling rig he had. He also referred the Defendant to a friend of his, Steven Ulland, could also operate a Coil Tube Oil Rig and Mr. Ulland was also hired at the request of the Plaintiff. He only lasted a few months however until December of 2019 when he quit and moved away.
9. In mid-July of 2019 the Plaintiff and his wife and the Defendant went to Kansas to try and move the equipment of Plaintiff to North Dakota. The

equipment was in poor condition however and the Parties were only able to bring back a Lowboy Trailer, a Boom Truck, Wench Truck and Auto truck. The equipment was in such poor shape that the Defendant had to expend monies to get it in condition to bring to North Dakota. This was followed by two additional trips in September that again were delayed due to the equipment being in bad shape and the Plaintiff needing to purchase permits to transport the Coil Tube Oil Rig. Some parts for the rig are still in Kansas and could not be transported.

10. The Defendant estimated at trial that it would cost about \$150,000 to make the equipment operational for the oil fields. The Plaintiff's guardians disputed this and believed that the equipment was all in working condition but the evidence demonstrates that they had no personal knowledge of this but were relying upon the statements made to them by the Plaintiff;

11. The Parties entered into several contracts for the use/purchase of the Plaintiff's property so it could be utilized. The first contract dated August 21, 2019 was offered into evidence and was between the Plaintiff and Synergy Oil Services and pertained only to a 1979 Ford Truck 920 VIN ID4429ICOL0 (wrecker) and was to be purchased in 24 months at the rate of \$333.33 per month. There was a second purchase agreement the same date between the

Parties for a 1980 Cozad Jeep Trailer VIN CC80062 (lowboy trailer) for \$833.33 per month for 36 months;

12. The Plaintiff continued to work for the Defendant's LLC and was paid wages in the amount of \$26,803.17 up until February of 2020 and the payments were also made on the purchase agreements.

13. In February of 2020 the Parties entered into another contract expressly rescinding the prior contracts and was an attempt to close the transaction between the parties because the Defendant testified he was becoming increasingly frustrated with the fact the Plaintiff was being paid wages to try to get his own equipment into working condition and he no longer wanted him as an employee because of his anger and confrontations with other employees.

14. The February 21, 2020 contract admitted into evidence is an agreement between the parties wherein the Parties agreed that the purchase contracts for the 1979 Ford Truck 920 and 1980 Cozad Jeep Trailer would be deemed satisfied from the prior payments made to the Plaintiff for those vehicles as well as the salary paid to the Plaintiff (total amount of both was approximately \$65,000). The Defendant also testified that he provided the Plaintiff free lodging for himself for two months after he was terminated as well as two months free use of his wife's car which was also consideration for the February 21, 2020 contract. The Plaintiff also agreed to remove all liens from these vehicles and



to provide the titles to them. The Defendant testified that he was not aware that there were actually three titles to the Jeep Trailer and the Plaintiff has refused to deliver them to him despite his agreeing to travel to Kansas to get them. Because of this failure he has been unable to sell the Lowboy Trailer which he wished to do, because his businesses went into a tailspin due to Covid 19;

15. The remaining property on the Defendant's land- the 1993 Western Star, the 1983 Auto Truck 315 and the Peerless Drill – would be preserved on the Defendant's business land for 30 days and if the Plaintiff did not pick them up the contract purported to permit the Defendant and Synergy to take full possession of them and sell them as they pleased.

16. The Defendant's wife testified that the land where the property was being held was being leased for about \$6000 month and that his explains why there was an urgent need to remove the property because Synergy was in bad financial shape and it could not continue to maintain the lease just to keep the Plaintiff's property there;

17. The Plaintiff signed this last contract on February 24, 2020 and there has been no evidence presented to this Court to show that the Plaintiff was incompetent or not able to enter into a binding contact at that time. The Court also finds no

evidence to prove that the Defendant and his agents knew or should have known of any cognitive limitations on the part of the Plaintiff.

18. When the Plaintiff continued to refuse to provide the titles for the Lowboy Trailer which the Defendant was trying to sell the Defendant decided to give notice to the Plaintiff that he had 30 days to come and retrieve the remaining property or there would be a lien imposed upon it that would have to be paid in order to retrieve the property back. The Plaintiff failed to retrieve the property although his guardians believed he had arranged to come and pick up the Peerless Drill but the Defendant disputed this.

19. The Plaintiff left the Fort Berthold reservation in late February or early March of 2020 and has not been back since. The property remains on lands being leased by the Defendant and the Plaintiff has paid no storage fees.

20. The guardians for the Plaintiff testified that there was an oral amendment to the February contract where the Defendant agreed to permit the Plaintiff to store his property rent-free on his land he was leasing. The Defendant denied this and the Court finds under the parole evidence rule that the claim of an oral modification of a written contract is not legitimize.

21. In May of 2020 the guardians of the Plaintiff reported to Kansas Adult Protective Services officials that the Plaintiff had been financially exploited by the Defendant and Kansas officials commenced an investigation. In June

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of 2020 after investigating the matter Kansas officials found that the allegations were unsubstantiated and closed the investigation. The guardians for the Plaintiff testified that they believed this was because Kansas found that the matter was a civil dispute not a criminal case, but the letter of June of 2020 does not make that distinction and the Court concludes that Kansas officials did not find sufficient evidence of any exploitation.

22. The Plaintiff then commenced this action seeking a return of his personal property. The Defendant counterclaimed for enforcement of the three contracts between the Parties and for storage fees for the three items of property that they assert were not sold to him as well as for loss of income due to the Plaintiff failing to provide the titles for the lowboy as well as for 30 hours of work done by his wife to get the financial evidence ready for trial. The total amount prayed for by the Defendant in his counterclaim at trial was for \$126,000 plus a finding that the Wrecker and Lowboy were lawfully sold to him;

23. The Plaintiff's guardians were permitted to argue that the written contracts between the parties were void due to the Plaintiff's alleged incompetency to contract and they requested that the Court order the return of all of the property to the Plaintiff with nothing on the counterclaim.

NOW THEREFORE based upon the foregoing findings of fact the Court enters the following:

#### CONCLUSIONS OF LAW

1. This Court has jurisdiction over both the subject matter of this action and personal jurisdiction over the Parties to this proceeding. The Parties entered into a contractual relationship on the Fort Berthold reservation and one of the Parties- the Defendant- is a tribal member;
2. The Court finds that the Plaintiff at all relevant times related to his cause of action and the counterclaim was competent to contract and had not been found incompetent by a court of law. Although it appears he did suffer from some cognitive issues he still maintained a CDL in two states, was able to work as a mechanic, and never advised the Defendant or his agents of any cognitive limitations. Even if he were operating under some limitations on his cognitive functioning nothing in the record before this Court reveals that the Defendant or his agents knew or should have known of this. The fact that the State of Kansas looked into this issue and found no validity to the allegations that the Plaintiff has been financially exploited buttresses the Court's findings on this issue;

3. The February 21, 2020 contract between the Parties executed on February 24, 2020 is a binding contract with the exception of certain provisions that are unconscionable. The Court will not enforce that part of the contract that stipulates that failure on the part of the Plaintiff to remove the remaining items of property from the Defendant's leased lands within 30 days would result in title to said property being vested in Defendant. Such a provision would result in a \$200,000 drill and other property of substantial value defaulting to the Defendant. The Court notes that the Defendant does not seek enforcement of that provision of the contract in his counterclaim but instead seeks damages for storing the property as well as for loss of income and expenses of his wife;
4. The Court finds that the Defendant lawfully purchased the 1979 Ford Truck 920 VIN ID4429ICOLOR (wrecker) and the 1980 Cozad Jeep Trailer VIN CC80062 (lowboy trailer) and the Plaintiff shall immediately transfer titles to that property to the Defendant. Failure to do so within 30 days may result in further orders directing that alternative titles be issued;
5. The Court further finds that the remaining property of the Plaintiff referenced in the February 21, 2020 contract remains the property of the Plaintiff but is subject to a storage lien that must be paid prior to removal of said property;

6. The Court finds for the Defendant in the amount of \$100 per day from the date of March 24, 2020 (the date the property was to be removed pursuant to the February contract) for a total amount of \$27,700. The amount of \$100 per day represents about half of the land lease the Defendant was required to pay to retain the lease where the property sits;
7. The Court finds for the Defendant in the amount of \$60,000 for loss of income due to the Plaintiff's failure to comply with the February 24, 2020 contract selling the lowboy and wrecker to the Defendant as he has not been able to use the lowboy since February or 2020 due to the Plaintiff not conveying lawful title in breach of the agreement. The other claims for business expenses of his wife to prepare records is part of preparing for litigation and is not granted.

#### ORDER FOR JUDGMENT

Now therefore based on the foregoing findings of fact and conclusions of law it is hereby

ORDERED, ADJUDGED AND DECREED that judgment is entered for the Defendant on his counterclaim in the amount of \$87,700 for stooge fees and loss of income due to the Plaintiff's breach of contract and it is further

ORDERED, ADJUDGED AND DECREED that the Defendant has lawfully purchased the 1979 Ford Truck 920 VIN ID4429ICOL ( wrecker) and the 1980 Cozad Jeep Trailer VIN CC80062 (lowboy trailer) and the Plaintiff shall immediately transfer titles to that property to the Defendant. Failure to do so within 30 days may result in further orders directing that alternative titles be issued and it is further

ORDERED, ADJUDGED AND DECREED that the Plaintiff shall have 120 days from the date of this order to remove his remaining property, the 1993 Western Star WS-4964S, VIIN 2WKPDCCCH1PK31154, the 1983 Auto Truck 315 VIN# 1WBRHCVH1DU094972, and the Peerless Drill CH-48-12S provided he satisfies the judgment amount of \$87,700 plus \$100 per day for each day after this order is entered until the property is removed. The Defendant shall have a lien on said property until the judgment amount is paid and failure to pay the amount owed within 120 days shall result in the Defendant being granted leave to execute on his lien and sell said property at a public auction or private sale.

Each side will bear their own costs and fees

LET JUDGMENT BE ENTERED ACCORDINGLY.

So ordered this 29<sup>th</sup> day of December 2020.

BY ORDER OF THE COURT:

ORDERED, ADJUDGED AND DECREED that the Defendant has lawfully purchased the 1979 Ford Truck 920 VIN ID4429ICOLOR ( wrecker) and the 1980 Cozad Jeep Trailer VIN CC80062 (lowboy trailer) and the Plaintiff shall immediately transfer titles to that property to the Defendant. Failure to do so within 30 days may result in further orders directing that alternative titles be issued and it is further

ORDERED, ADJUDGED AND DECREED that the Plaintiff shall have 120 days from the date of this order to remove his remaining property, the 1993 Western Star WS-4964S, VIIN 2WKPDCCCH1PK31154, the 1983 Auto Truck 315 VIN# 1WBRHCVH1DU094972, and the Peerless Drill CH-48-12S provided he satisfies the judgment amount of \$87,700 plus \$100 per day for each day after this order is entered until the property is removed. The Defendant shall have a lien on said property until the judgment amount is paid and failure to pay the amount owed within 120 days shall result in the Defendant being granted leave to execute on his lien and sell said property at a public auction or private sale.

Each side will bear their own costs and fees

LET JUDGMENT BE ENTERED ACCORDINGLY.

So ordered this 29<sup>th</sup> day of December 2020.

BY ORDER OF THE COURT:

*B. J. Jones*

Associate Judge BJ Jones **WILK000446**



# EXHIBIT “2”

JAMES KWON, LLC

6280 SPRING MOUNTAIN ROAD, SUITE 100  
LAS VEGAS, NEVADA 89146  
TEL.: (702) 515-1200 – FAX: (702) 515-1201

**RESP**  
JAMES W. KWON, ESQ.  
Nevada Bar No. 8146  
**JAMES KWON, LLC**  
6280 Spring Mountain Rd., Suite 100  
Las Vegas, Nevada 89146  
P: (702) 515-1200  
F: (702) 515-1201  
jkwon@jwklawfirm.com  
*Attorney for Sheryl Atterberg,*  
*On behalf of her Adult Ward,*  
*Defendant, Rodney Wilkinson*

**EIGHTH JUDICIAL DISTRICT COURT  
FAMILY DIVISION  
COUNTY OF CLARK, STATE OF NEVADA**

TESSIE E. WILKINSON a/k/a TESSIE  
ELMA ALMARIO,  
Plaintiff,  
vs.  
RODNEY WILKINSON,  
Defendant.

Case No.: D-19-596071-D  
Dept.: U

**DEFENDANT RODNEY WILKINSON'S RESPONSES TO**  
**PLAINTIFF TESSIE ELMA ALMARIO'S SECOND SET OF REQUESTS**  
**FOR PRODUCTION OF DOCUMENTS TO DEFENDANT RODNEY**  
**WILKINSON**

Pursuant to Rules 26 and 34 of the Nevada Rules of Civil Procedure, Sheryl Atterberg, on behalf of her Adult Ward, Defendant, Rodney Wilkinson, by and through her attorney of record, James W. Kwon, Esq., of the law firm James Kwon, LLC, hereby responds and objects to *Plaintiff Tessie Elma Almario's Second Set of*

1 *Requests for Production of Documents to Defendant Rodney Wilkinson as follows:*

2 **GENERAL OBJECTIONS**

3 1. Defendant objects to the Document Requests, including the definitions  
4 and instructions contained therein, to the extent that they attempt to impose  
5 obligations on Defendant greater than those imposed by the Nevada Rules of Civil  
6 Procedure and the Local Rules of the Eighth Judicial District Court.

7 2. Defendant objects to the Document Requests to the extent that they may  
8 be construed to request disclosure of information that was prepared in anticipation of  
9 litigation, constitutes attorney work product, discloses the mental impressions,  
10 conclusions, opinions or legal theories of any attorneys for Defendant, contains  
11 privileged attorney-client communications, contains confidential, trade secret or  
12 proprietary information, or is otherwise protected from disclosure under applicable  
13 privileges, laws or rules.

14 3. Defendant objects to the Document Requests to the extent that they may  
15 be construed to request the disclosure of information that is neither relevant to the  
16 subject matter of any claims or defenses of any party to this action nor reasonably  
17 calculated to lead to the discovery of admissible evidence.

18 4. Defendant objects to the Document Requests to the extent that there are  
19 more practical methods of obtaining the information Plaintiff seeks.  
20

1           5. Defendant objects to the Document Requests to the extent that they are  
2 vague, ambiguous, overly broad, oppressive and/or unduly burdensome.

3           6. Defendant objects to the Document Requests to the extent that they  
4 seek information that is already within Plaintiff's possession, custody or control, is  
5 publicly available, and/or is more readily and more appropriately collected from  
6 sources other than Defendant.

7           7. Defendant objects to the Document Requests to the extent that they  
8 purport to require Defendant to conduct an investigation to obtain information  
9 beyond Defendant's own records.

10          8. These objections and responses are made by Defendant without  
11 prejudice to Defendant, Defendant's using or relying at trial on subsequently  
12 discovered information, or on information omitted from these objections and  
13 responses as a result of good-faith oversight or error.

14          9. If any privileged document is produced pursuant to the Document  
15 Requests, the production is inadvertent, the privilege is not waived, and the  
16 privileged document should be returned as soon as possible.

17          10. Defendant has exercised due and reasonable diligence in responding to  
18 the Document Requests. Defendant reserves the right to supplement or amend any  
19 and all parts of the responses provided herein, and to object to the admissibility of  
20 any of the information contained in the responses.

1 11. Defendant submits these responses without conceding the relevancy or  
2 materiality of the subject matter of any individual Document Request or response  
3 thereto.

4 12. Defendant objects to the time set for production and will produce  
5 documents and information responsive to the Document Requests on a rolling basis.

6 13. Defendant will produce documents and information responsive to the  
7 Document Requests following entry of an appropriate protective order governing the  
8 use and disclosure of confidential information.

9 14. Defendant's General Objections shall be deemed to continue  
10 throughout, and be incorporated in, each and every response to the specific  
11 Document Requests that follow, even where not also referenced in such responses.

12 **REQUESTS FOR PRODUCTION OF DOCUMENTS**

13 As discovery is ongoing in this matter, Defendant reserves the right to amend  
14 and/or supplement any or all responses delineated below as well as *Defendant's*  
15 *Initial NRCP 16.2 Disclosure*, served on April 15, 2021, in accordance with  
16 Nev.R.Civ.P. Rule 26(e).

17 **REQUEST FOR PRODUCTION NO. 9:**

18 Please produce and identify by bates stamp number a copy of all pay stubs or  
19 other proof of income or employment that reflect Rodney's earnings from March 22,  
20 2008 through February 12, 2020.

**RESPONSE TO REQUEST FOR PRODUCTION NO. 9:**

Objection. Defendant objects to this Request as it is intended to be an unwarranted annoyance, is oppressive and is intended to harass Defendant as it seeks documentation that Defendant could not provide as an incapacitated person and Sheryl Atterberg would not be in possession for the vast majority of the requested documentation. Without waiving said objections, Defendant responds as follows:

Please refer to *Defendant's First Supplemental NRCP 16.2 Disclosure*, served concurrently with this response.

Discovery is ongoing and Defendant will supplement this response if and when additional documentation becomes available in accordance with Nev.R.Civ.P. Rule 26(e).

**REQUEST FOR PRODUCTION NO. 10:**

Please produce and identify by bates stamp number copies of all retirement, 401k, pension or retirement accounts from March 22, 2008 through February 12, 2020.

**RESPONSE TO REQUEST FOR PRODUCTION NO. 10:**

Objection. Defendant objects to this Request as it is intended to be an unwarranted annoyance, is oppressive and is intended to harass Defendant as it seeks documentation that Defendant could not provide as an incapacitated person and Sheryl Atterberg does not possess said documentation. Without waiving said

1 objections, Defendant responds as follows:

2 None.

3 Discovery is ongoing and Defendant will supplement this response if and  
4 when additional documentation becomes available in accordance with Nev.R.Civ.P.  
5 Rule 26(e).

6 **REQUEST FOR PRODUCTION NO. 11:**

7 Please produce and identify by bates stamp number true and correct copies of  
8 your credit card statements from March 22, 2008 through February 12, 2020.

9 **RESPONSE TO REQUEST FOR PRODUCTION NO. 11:**

10 Objection. Defendant objects to this Request as it is intended to be an  
11 unwarranted annoyance, is oppressive and is intended to harass Defendant as it seeks  
12 documentation that Defendant could not provide as an incapacitated person and  
13 Sheryl Atterberg does not possess said documentation. Without waiving said  
14 objections, Defendant responds as follows:

15 Please refer to *Defendant's First Supplemental NRCP 16.2 Disclosure*, served  
16 concurrently with this response.

17 Discovery is ongoing and Defendant will supplement this response if and  
18 when additional documentation becomes available in accordance with Nev.R.Civ.P.  
19 Rule 26(e).

20

1 **REQUEST FOR PRODUCTION NO. 12:**

2 Please produce and identify by bates stamp number true and correct copies of  
3 any and all documents or other writing as it concerns to your financial statements, or  
4 lists of your assets and liabilities that you prepared or was prepared for you FROM  
5 March 22, 2008 through February 12, 2020.

6 **RESPONSE TO REQUEST FOR PRODUCTION NO. 12:**

7 Objection. Defendant objects to this Request as vague, ambiguous, overbroad,  
8 and unduly burdensome on its face due to its use of “any and all” and “as it  
9 concerns,” and “each and every” in order to identify a broad range of documents.  
10 Defendant further objects to this Request as vague and ambiguous as to the terms  
11 “other writing” and “lists.” Without waiving said objections, Defendant responds as  
12 follows:

13 Please refer to the *Decree of Divorce* filed on February 12, 2020 as was  
14 prepared by Plaintiff.

15 Discovery is ongoing and Defendant will supplement this response if and  
16 when additional documentation becomes available in accordance with Nev.R.Civ.P.  
17 Rule 26(e).

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**REQUEST FOR PRODUCTION NO. 13:**

Please produce and identify by bates stamp number true and correct copies of any and all documents or other writing as it concerns to each and every source of income from March 22, 2008 through February 12, 2020.

**RESPONSE TO REQUEST FOR PRODUCTION NO. 13:**

Objection. Defendant objects to this Request as vague, ambiguous, overbroad, and unduly burdensome on its face due to its use of “any and all,” “as it concerns,” and “each and every” in order to identify a broad range of documents. Defendant further objects to this Request as vague and ambiguous as to the terms “other writing” and “source.” Without waiving said objections, Defendant responds as follows:

Please refer to *Defendant’s First Supplemental NRCP 16.2 Disclosure*, served concurrently with this response.

Discovery is ongoing and Defendant will supplement this response if and when additional documentation becomes available in accordance with Nev.R.Civ.P. Rule 26(e).

**REQUEST FOR PRODUCTION NO. 14:**

Please produce and identify by bates stamp number true and correct copies of any and all documents or other writing as it concerns all savings and commercial accounts in your name or in which you have an interest or have had an interest from

1 March 22, 2008 through February 12, 2020, including all checking, savings, money  
2 market, certificates of deposit, Christmas clubs, or other accounts, not produced in  
3 response to a preceding request including but not limited to:

- 4 a) Monthly statements;
- 5 b) Cancelled checks;
- 6 c) Deposit slips;
- 7 d) Withdrawal statements;
- 8 e) Check registers;
- 9 f) Documents sent to or from the bank or financial institutions; and
- 10 g) Check registers maintained on a computer accounting software such  
11 as Quicken.

12 **RESPONSE TO REQUEST FOR PRODUCTION NO. 14:**

13 Objection. Defendant objects to this Request as vague, ambiguous, overbroad,  
14 and unduly burdensome on its face due to its duplicative use of “any and all,” “as it  
15 concerns,” and “all” in order to identify a broad range of documents. Defendant  
16 further objects to this Request as vague and ambiguous as to the terms “other  
17 writings,” “interest,” and “request.” Without waiving said objections, Defendant  
18 responds as follows:

19 Please refer to *Defendant’s First Supplemental NRCP 16.2 Disclosure*, served  
20 concurrently with this response.

1 Discovery is ongoing and Defendant will supplement this response if and  
2 when additional documentation becomes available in accordance with Nev.R.Civ.P.  
3 Rule 26(e).

4 **REQUEST FOR PRODUCTION NO. 15:**

5 Please produce and identify by bates stamp number all documents or written  
6 communications not previously identified which evidence, relate to, support or  
7 contradict the Tessie's position in this action.

8 **RESPONSE TO REQUEST FOR PRODUCTION NO. 15:**

9 Objection. Defendant objects to this Request as vague, ambiguous, overbroad,  
10 and unduly burdensome on its face due to its use of "all" and "relate to" in order to  
11 identify a broad range of documents. Defendant further objects to this Request as  
12 vague and ambiguous as to the terms "evidence" and "contradict." Defendant further  
13 objects to this Request as it is likely already in the possession of Plaintiff. Without  
14 waiving said objections, Plaintiff responds as follows:

15 None. Defendant is an incapacitated person and, therefore, cannot attest to any  
16 communications between himself and Plaintiff. Sheryl Atterberg is unaware of any  
17 physical documentation of any communications between Defendant and Plaintiff.

18 Discovery is ongoing and Defendant will supplement this response if and  
19 when additional documentation becomes available in accordance with Nev.R.Civ.P.  
20 Rule 26(e).

1 **REQUEST FOR PRODUCTION NO. 16:**

2 Please produce and identify by bates stamp number copies of any and all  
3 communications between you and Tessie between March 22, 2008 through the  
4 present.

5 **RESPONSE TO REQUEST FOR PRODUCTION NO. 16:**

6 Objection. Defendant objects to this Request as vague, ambiguous, overbroad,  
7 and unduly burdensome on its face due to its use of “any and all” in order to identify  
8 a broad range of documents. Defendant further objects to this Request as vague and  
9 ambiguous as to the terms “supporting” and “pertaining to.” Defendant further  
10 objects to this Request as it is likely already in the possession of Plaintiff. Without  
11 waiving said objections, Plaintiff responds as follows:

12 None. Defendant is an incapacitated person and, therefore, cannot attest to any  
13 communications between himself and Plaintiff. Sheryl Atterberg is unaware of any  
14 physical documentation of any communications between Defendant and Plaintiff.

15 Discovery is ongoing and Defendant will supplement this response if and  
16 when additional documentation becomes available in accordance with Nev.R.Civ.P.  
17 Rule 26(e).

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**REQUEST FOR PRODUCTION NO. 17:**

Please produce any and all documents evidencing an interest you had, have, or may have in any association, partnership, corporation, fictitious name, enterprise or entity between March 22, 2008 and February 12, 2020.

**RESPONSE TO REQUEST FOR PRODUCTION NO. 17:**

Objection. Defendant objects to this Request as vague, ambiguous, overbroad, and unduly burdensome on its face due to its use of “any and all” and “any” in order to identify a broad range of documents. Defendant further objects to this Request as vague and ambiguous as to the terms “health,” “any,” “other,” “type,” “medical analysis,” “other healthcare professionals.” Without waiving said objections, Defendant responds as follows:

Please refer to *Defendant’s First Supplemental NRCP 16.2 Disclosure*, served concurrently with this response.

Discovery is ongoing and Defendant will supplement this response if and when additional documentation becomes available in accordance with Nev.R.Civ.P. Rule 26(e).

**REQUEST FOR PRODUCTION NO. 18:**

Please provide any and all documentation showing your income and earnings, to include copies of any and all Federal Income Tax Returns, W-2 statements, 1099 forms, gambling winnings, retirement distributions and/or paystubs received by you

1 from any employer for which you are, or were, employed, for the period beginning  
2 January 1, 2008 to February 12, 2020, including income earned through investments,  
3 real property rental and self-employment, if applicable.

4 **RESPONSE TO REQUEST FOR PRODUCTION NO. 18:**

5 Objection. Defendant objects to this Request as vague, ambiguous, overbroad,  
6 and unduly burdensome on its face due to its use of “any and all” and “any” in order  
7 to identify a broad range of documents. Defendant further objects to this Request as  
8 vague and ambiguous as to the terms “earnings,” “employer,” “investments,” “real  
9 property rental.” Without waiving said objections, Defendant responds as follows:

10 Please refer to *Defendant’s First Supplemental NRCP 16.2 Disclosure*, served  
11 concurrently with this response. Additionally, please refer to *Plaintiff’s First*  
12 *Supplemental List of Witnesses and Disclosure of Documents*, electronically served  
13 May 24, 2021.

14 Discovery is ongoing and Defendant will supplement this response if and  
15 when additional documentation becomes available in accordance with Nev.R.Civ.P.  
16 Rule 26(e).

17 **REQUEST FOR PRODUCTION NO. 19:**

18 Please provide true and correct copies of any and all documents or other  
19 writing as it concerns to a person or entity holding property, real or personal, for  
20 your benefit (e.g., real estate or a trust fund).

**RESPONSE TO REQUEST FOR PRODUCTION NO. 19:**

Objection. Defendant objects to this Request as vague, ambiguous, overbroad, and unduly burdensome on its face due to its use of “any and all” and “concerns to” in order to identify a broad range of documents. Defendant further objects to this Request as vague and ambiguous as to the terms “true and correct,” “other writings,” and “holding.” Without waiving said objections, Defendant responds as follows:

Please refer to *Defendant’s Initial NRCP 16.2 Disclosure*, served April 15, 2021, specifically WILK000325 to WILK000328. Additionally, please refer to *Defendant’s First Supplemental NRCP 16.2 Disclosure*, served concurrently with this response.

Discovery is ongoing and Defendant will supplement this response if and when additional documentation becomes available in accordance with Nev.R.Civ.P. Rule 26(e).

**REQUEST FOR PRODUCTION NO. 20:**

Please provide any and all documentation showing a full and itemized accounting for any and all assets and property, including real property, that you owned between March 22, 2008 and February 12, 2020.

**RESPONSE TO REQUEST FOR PRODUCTION NO. 20:**

Objection. Defendant objects to this Request as vague, ambiguous, overbroad, and unduly burdensome on its face due to its use of “any and all” in order to identify

1 a broad range of documents. Defendant further objects to this Request as vague and  
2 ambiguous as to the terms “showing,” “full,” “accounting,” “assets,” “property,” and  
3 “owned.” Without waiving said objections, Defendant responds as follows:

4 None. Please refer *Plaintiff’s First Supplemental List of Witnesses and*  
5 *Disclosure of Documents*, electronically served May 24, 2021.

6 Discovery is ongoing and Defendant will supplement this response if and  
7 when additional documentation becomes available in accordance with Nev.R.Civ.P.  
8 Rule 26(e).

9 **REQUEST FOR PRODUCTION NO. 21:**

10 Please provide any and all documentation showing a full and itemized  
11 accounting for any and all assets and property, including real property, that you sold  
12 between March 22, 2008 and February 12, 2020.

13 **RESPONSE TO REQUEST FOR PRODUCTION NO. 21:**

14 Objection. Defendant objects to this Request as vague, ambiguous, overbroad,  
15 and unduly burdensome on its face due to its use of “any and all” in order to identify  
16 a broad range of documents. Defendant further objects to this Request as vague and  
17 ambiguous as to the terms “showing,” “full,” “accounting,” “assets,” “property,” and  
18 “sold.” Without waiving said objections, Defendant responds as follows:

19 Please refer to *Defendant’s First Supplemental NRCP 16.2 Disclosure*, served  
20 concurrently with this response.



1 Discovery is ongoing and Defendant will supplement this response if and  
2 when additional documentation becomes available in accordance with Nev.R.Civ.P.  
3 Rule 26(e).

4 **REQUEST FOR PRODUCTION NO. 22:**

5 Provide any and all records pertaining to real estate (including oil, gas and  
6 other minerals) in which you have an interest, including, but not limited to, any and  
7 all deeds, mortgages, deeds of trust, liens, leases, promissory notes, surveys, and  
8 settlement statements, purchaser's or seller's, together with any evidence showing  
9 monthly payments and present outstanding balance of principal and interest, for the  
10 past ten years through the date of your response to this request.

11 **RESPONSE TO REQUEST FOR PRODUCTION NO. 22:**

12 Objection. Defendant objects to this Request as vague, ambiguous, overbroad,  
13 and unduly burdensome on its face due to its use of "any and all," "pertaining to,"  
14 "not limited to," and "any" in order to identify a broad range of documents.  
15 Defendant further objects to this Request as vague and ambiguous as to the terms  
16 "records," "interest," and "evidence." Without waiving said objections, Defendant  
17 responds as follows:

18 Any and all records pertaining to real estate were appropriated by Plaintiff  
19 and, therefore, in her possession. Additionally, please refer to *Defendant's First*  
20 *Supplemental NRCP 16.2 Disclosure*, served concurrently with this response.

1       Discovery is ongoing and Defendant will supplement this response if and  
2 when additional documentation becomes available in accordance with Nev.R.Civ.P.  
3 Rule 26(e).

4       **REQUEST FOR PRODUCTION NO. 23:**

5       Provide any and all Certificates of Title and all other records pertaining to any  
6 and all motor vehicles in which you have any interest, including, but not limited to,  
7 automobiles, trucks, vans, boats, trailers, tractors, aircraft or recreational vehicles,  
8 including any and all motor vehicles you have driven for the past ten years through  
9 the date of your response to this request.

10       **RESPONSE TO REQUEST FOR PRODUCTION NO. 23:**

11       Objection. Defendant objects to this Request as vague, ambiguous, overbroad,  
12 and unduly burdensome on its face due to its use of “any and all,” “all other,” “any,”  
13 “pertaining to,” and “not limited to” in order to identify a broad range of documents.  
14 Defendant further objects to this Request as vague and ambiguous as to the terms  
15 “records,” “interest,” and “motor vehicles.” Without waiving said objections,  
16 Defendant responds as follows:

17       None. Any and all records pertaining to motor vehicles were appropriated by  
18 Plaintiff and, therefore, in her possession.

19       Discovery is ongoing and Defendant will supplement this response if and  
20 when additional documentation becomes available in accordance with Nev.R.Civ.P.

1 Rule 26(e).

2 **REQUEST FOR PRODUCTION NO. 24:**

3 Provide copies of any and all brokerage account statements of securities in  
4 which you have an interest, whether held by you, individually, jointly with any  
5 person or entity, or as a Trustee, Guardian, or Custodian, including all records  
6 pertaining to acquisitions, transfer and sale of all securities, such records to include  
7 any and all information relative to gains and/or losses realized from transactions  
8 involving such securities for the past ten years through the date of your response to  
9 this request.

10 **RESPONSE TO REQUEST FOR PRODUCTION NO. 24:**

11 Objection. Defendant objects to this Request as vague, ambiguous, overbroad,  
12 and unduly burdensome on its face due to its use of “any and all,” “any,” “all,” and  
13 “relative” in order to identify a broad range of documents. Defendant further objects  
14 to this Request as vague and ambiguous as to the terms “securities,” “acquisitions,”  
15 “information,” “realized,” and “transactions.” Without waiving said objections,  
16 Defendant responds as follows:

17 None in Sheryl Atterberg’s possession. If this documentation existed, it would  
18 either be in the Farmhouse in which Plaintiff has forbidden Sheryl Atterberg access  
19 to or were appropriated by Plaintiff and are, therefore, in her possession.

20 Discovery is ongoing and Defendant will supplement this response if and

1 when additional documentation becomes available in accordance with Nev.R.Civ.P.  
2 Rule 26(e).

3 **REQUEST FOR PRODUCTION NO. 25:**

4 Provide copies of any and all securities and investments in which you have an  
5 interest, whether held by you or another, and not reflected in any brokerage  
6 accounts, records or statements requested in Request for Production No. 24, above,  
7 for the past ten years through the date of your response to this request.

8 **RESPONSE TO REQUEST FOR PRODUCTION NO. 25:**

9 Objection. Defendant objects to this Request as vague, ambiguous, overbroad,  
10 and unduly burdensome on its face due to its use of “any and all” in order to identify  
11 a broad range of documents. Defendant further objects to this Request as vague and  
12 ambiguous as to the terms “securities,” “investments,” and “interest.” Without  
13 waiving said objections, Defendant responds as follows:

14 None in Sheryl Atterberg’s possession. If this documentation exists, it would  
15 either be in the Farmhouse in which Plaintiff has forbidden Sheryl Atterberg access  
16 to or were appropriated by Plaintiff and are, therefore, in her possession.

17 Discovery is ongoing and Defendant will supplement this response if and  
18 when additional documentation becomes available in accordance with Nev.R.Civ.P.  
19 Rule 26(e).

20

1 **REQUEST FOR PRODUCTION NO. 26:**

2 Provide copies of life insurance policies of Certificates of Life Insurance,  
3 insuring your life, and any disability insurance currently in existence; life insurance  
4 policies or certificates of life insurance currently in existence insuring the life of any  
5 person in which you are named as either owner of beneficiary for the past ten years  
6 through the date of your response to this request.

7 **RESPONSE TO REQUEST FOR PRODUCTION NO. 26:**

8 Objection. Defendant objects to this Request as vague, ambiguous, overbroad,  
9 and unduly burdensome on its face due to its use of “any” in order to identify a  
10 broad range of documents. Defendant further objects to this Request as vague and  
11 ambiguous as to the terms “disability insurance,” and “owner of beneficiary.”  
12 Without waiving said objections, Defendant responds as follows:

13 None. Please refer *Plaintiff’s First Supplemental List of Witnesses and*  
14 *Disclosure of Documents*, electronically served May 24, 2021.

15 Discovery is ongoing and Defendant will supplement this response if and  
16 when additional documentation becomes available in accordance with Nev.R.Civ.P.  
17 Rule 26(e).

18 ///

19 ///

20 ///

**REQUEST FOR PRODUCTION NO. 27:**

Provide any and all notes, promissory notes, bills, statements, invoices and/or “pledge agreements” evidencing any current indebtedness and/or obligation payable by you for the past ten years through the date of your response to this request.

**RESPONSE TO REQUEST FOR PRODUCTION NO. 27:**

Objection. Defendant objects to this Request as vague, ambiguous, overbroad, and unduly burdensome on its face due to its use of “any and all” and “any” in order to identify a broad range of documents. Defendant further objects to this Request as vague and ambiguous as to the terms “notes,” “statements,” “pledge agreements,” “indebtedness,” and “obligations.” Without waiving said objections, Defendant responds as follows:

Please refer to *Defendant’s First Supplemental NRCP 16.2 Disclosure*, served concurrently with this response.

Discovery is ongoing and Defendant will supplement this response if and when additional documentation becomes available in accordance with Nev.R.Civ.P. Rule 26(e).

**REQUEST FOR PRODUCTION NO. 28:**

Please provide any and all documents which regarding any education you have obtained during the marriage, including an updated resume, and copies of any

1 degrees, certificates or other documents indicated what training, certification or  
2 licensing you currently possess or are entitled to possess.

3 **RESPONSE TO REQUEST FOR PRODUCTION NO. 28:**

4       Objection. Defendant objects to this Request as vague, ambiguous, overbroad,  
5 and unduly burdensome on its face due to its use of “any and all,” “regarding,” and  
6 “any” in order to identify a broad range of documents. Defendant further objects to  
7 this Request as vague and ambiguous as to the terms “education,” “obtained,”  
8 “updated,” “degrees,” “certificates,” “other,” and “entitled to possess.” Without  
9 waiving said objections, Defendant responds as follows:

10       None in Sheryl Atterberg’s possession. If this documentation exists, it would  
11 either be in the Farmhouse in which Plaintiff has forbidden Sheryl Atterberg access  
12 to or were appropriated by Plaintiff and are, therefore, in her possession.

13       Discovery is ongoing and Defendant will supplement this response if and  
14 when additional documentation becomes available in accordance with Nev.R.Civ.P.  
15 Rule 26(e).

16 **REQUEST FOR PRODUCTION NO. 29:**

17       Please provide any and all documents evidencing all real property purchased  
18 during marriage, including purchase agreements, deeds, mortgages and mortgage  
19 applications, taxes and improvements made on the real property.

20

**RESPONSE TO REQUEST FOR PRODUCTION NO. 29:**

Objection. Defendant objects to this Request as vague, ambiguous, overbroad, and unduly burdensome on its face due to its use of “any and all” and “all” in order to identify a broad range of documents. Defendant further objects to this Request as vague and ambiguous as to the term “purchased.” Without waiving said objections, Defendant responds as follows:

None in Sheryl Atterberg’s possession. If this documentation existed, it would either be in the Farmhouse in which Plaintiff has forbidden Sheryl Atterberg access to or were appropriated by Plaintiff and are, therefore, in her possession.

Discovery is ongoing and Defendant will supplement this response if and when additional documentation becomes available in accordance with Nev.R.Civ.P. Rule 26(e).

**REQUEST FOR PRODUCTION NO. 30:**

Please provide any and all documents in support of your allegations contained in page 6, paragraph 12 of your motion titled Defendant’s Motion to Set Aside the Divorce Decree Pursuant to NRCP 60(b) filed on January 25, 2021 which reads:

Tessie committed fraud when she knew full well that Rodney was suffering from severe mental deficiencies and was incompetent.

///

///



**RESPONSE TO REQUEST FOR PRODUCTION NO. 30:**

Objection. Defendant objects to this Request as vague, ambiguous, overbroad, and unduly burdensome on its face due to its use of “any and all” in order to identify a broad range of documents. Defendant further objects to this Request as vague and ambiguous as to the terms “support” and “contained.” Without waiving said objections, Defendant responds as follows:

Please refer to *Defendant’s Initial NRCP 16.2 Disclosure*, served April 15, 2021. Additionally, please refer to *Defendant’s First Supplemental NRCP 16.2 Disclosure*, served concurrently with this response.

Discovery is ongoing and Defendant will supplement this response if and when additional documentation becomes available in accordance with Nev.R.Civ.P. Rule 26(e).

**REQUEST FOR PRODUCTION NO. 31:**

Please provide any and all documents in support of your allegations contained in page 6, paragraph 14 of your motion titled Defendant’s Motion to Set Aside the Divorce Decree Pursuant to NRCP 60(b) filed on January 25, 2021 which reads:

Tessie intentionally concealed that Rodney was suffering from severe mental deficiencies and otherwise lacked contractual capacity from the Court not only when she filed for divorce but when she obtained a Decree of Divorce.

///

///

**RESPONSE TO REQUEST FOR PRODUCTION NO. 31:**

Objection. Defendant objects to this Request as vague, ambiguous, overbroad, and unduly burdensome on its face due to its use of “any and all” in order to identify a broad range of documents. Defendant further objects to this Request as vague and ambiguous as to the terms “support” and “contained.” Without waiving said objections, Defendant responds as follows:

Please refer to *Defendant’s Initial NRCP 16.2 Disclosure*, served April 15, 2021. Additionally, please refer to *Defendant’s First Supplemental NRCP 16.2 Disclosure*, served concurrently with this response.

Discovery is ongoing and Defendant will supplement this response if and when additional documentation becomes available in accordance with Nev.R.Civ.P. Rule 26(e).

**REQUEST FOR PRODUCTION NO. 32:**

Please provide any and all documents in support of your allegations contained in page 6, paragraph 15 of your motion titled Defendant’s Motion to Set Aside the Divorce Decree Pursuant to NRCP 60(b) filed on January 25, 2021 which reads:

Tessie used this knowledge to commit fraud upon the Court and obtain an unequal distribution of the marital estate.

**RESPONSE TO REQUEST FOR PRODUCTION NO. 32:**

Objection. Defendant objects to this Request as vague, ambiguous, overbroad, and unduly burdensome on its face due to its use of “any and all” in order to identify

1 a broad range of documents. Defendant further objects to this Request as vague and  
2 ambiguous as to the terms “support” and “contained.” Without waiving said  
3 objections, Defendant responds as follows:

4 Please refer to *Defendant’s Initial NRCP 16.2 Disclosure*, served April 15,  
5 2021. Additionally, please refer to *Defendant’s First Supplemental NRCP 16.2*  
6 *Disclosure*, served concurrently with this response.

7 Discovery is ongoing and Defendant will supplement this response if and  
8 when additional documentation becomes available in accordance with Nev.R.Civ.P.  
9 Rule 26(e).

10 **REQUEST FOR PRODUCTION NO. 33:**

11 Please provide any and all documents in support of your allegations contained  
12 in page 6, paragraph 16 of your motion titled Defendant’s Motion to Set Aside the  
13 Divorce Decree Pursuant to NRCP 60(b) filed on January 25, 2021 which reads:

14 When she moved to Las Vegas, Nevada, in February 2013,  
15 Tessie absconded with one million dollars from Rodney's  
bank account.

16 **RESPONSE TO REQUEST FOR PRODUCTION NO. 33:**

17 Objection. Defendant objects to this Request as vague, ambiguous, overbroad,  
18 and unduly burdensome on its face due to its use of “any and all” in order to identify  
19 a broad range of documents. Defendant further objects to this Request as vague and  
20 ambiguous as to the terms “support” and “contained.” Without waiving said

1 objections, Defendant responds as follows:

2 Please refer to *Defendant's Initial NRCP 16.2 Disclosure*, served April 15,  
3 2021. Additionally, please refer to *Defendant's First Supplemental NRCP 16.2*  
4 *Disclosure*, served concurrently with this response.

5 Discovery is ongoing and Defendant will supplement this response if and  
6 when additional documentation becomes available in accordance with Nev.R.Civ.P.  
7 Rule 26(e).

8 **REQUEST FOR PRODUCTION NO. 34:**

9 Please provide any and all documents in support of your allegations contained  
10 in page 6, paragraph 17 of your motion titled Defendant's Motion to Set Aside the  
11 Divorce Decree Pursuant to NRCP 60(b) filed on January 25, 2021 which reads:

12 Tessie also stole more than \$60,000.00 in gold coins, which  
13 Rodney purchased with his inheritance money.

14 **RESPONSE TO REQUEST FOR PRODUCTION NO. 34:**

15 Objection. Defendant objects to this Request as vague, ambiguous, overbroad,  
16 and unduly burdensome on its face due to its use of "any and all" in order to identify  
17 a broad range of documents. Defendant further objects to this Request as vague and  
18 ambiguous as to the terms "support" and "contained." Without waiving said  
19 objections, Defendant responds as follows:

20 Please refer to *Defendant's Initial NRCP 16.2 Disclosure*, served April 15,  
2021. Additionally, please refer to *Defendant's First Supplemental NRCP 16.2*

1 *Disclosure*, served concurrently with this response.

2       Discovery is ongoing and Defendant will supplement this response if and  
3 when additional documentation becomes available in accordance with Nev.R.Civ.P.  
4 Rule 26(e).

5 **REQUEST FOR PRODUCTION NO. 35:**

6       Please provide any and all documents in support of your allegations contained  
7 in page 7, paragraph 18 of your motion titled Defendant’s Motion to Set Aside the  
8 Divorce Decree Pursuant to NRCP 60(b) filed on January 25, 2021 which reads:

9               During the parties' marriage, it was Tessie, not Rodney, who  
10              engaged in marital waste.

11 **RESPONSE TO REQUEST FOR PRODUCTION NO. 35:**

12       Objection. Defendant objects to this Request as vague, ambiguous, overbroad,  
13 and unduly burdensome on its face due to its use of “any and all” in order to identify  
14 a broad range of documents. Defendant further objects to this Request as vague and  
15 ambiguous as to the terms “support” and “contained.” Without waiving said  
16 objections, Defendant responds as follows:

17       Please refer to *Defendant’s Initial NRCP 16.2 Disclosure*, served April 15,  
18 2021. Additionally, please refer to *Defendant’s First Supplemental NRCP 16.2*  
19 *Disclosure*, served concurrently with this response.

20       Discovery is ongoing and Defendant will supplement this response if and  
when additional documentation becomes available in accordance with Nev.R.Civ.P.

1 Rule 26(e).

2 **REQUEST FOR PRODUCTION NO. 36:**

3 Please provide any and all documents in support of your allegations contained  
4 in page 12, lines 13 through 16 of your motion titled Defendant's Motion to Set  
5 Aside the Divorce Decree Pursuant to NRCP 60(b) filed on January 25, 2021 which  
6 reads:

7 Tessie kept the fact that Rodney had suffered a Traumatic  
8 Brain Injury in 2017 from this Court and her counsel, and  
9 she otherwise concealed that Rodney, due to his cognitive  
impairments, was legally incapacitated and otherwise lacked  
contractual capacity.

10 **RESPONSE TO REQUEST FOR PRODUCTION NO. 36:**

11 Objection. Defendant objects to this Request as vague, ambiguous, overbroad,  
12 and unduly burdensome on its face due to its use of "any and all" in order to identify  
13 a broad range of documents. Defendant further objects to this Request as vague and  
14 ambiguous as to the terms "support" and "contained." Without waiving said  
15 objections, Defendant responds as follows:

16 Please refer to *Defendant's Initial NRCP 16.2 Disclosure*, served April 15,  
17 2021. Additionally, please refer to *Defendant's First Supplemental NRCP 16.2*  
18 *Disclosure*, served concurrently with this response.

19 Discovery is ongoing and Defendant will supplement this response if and  
20 when additional documentation becomes available in accordance with Nev.R.Civ.P.

1 Rule 26(e).

2 DATED this 14th day of June 2021.

3 JAMES KWON, LLC

4 /s/ James W. Kwon, Esq.

JAMES W. KWON, ESQ.

5 Nevada Bar No. 8146

6 6280 Spring Mountain Rd., Suite 100

Las Vegas, Nevada 89146

7 *Attorney for Sheryl Atterberg, on behalf*  
8 *of her Adult Ward, Defendant, Rodney*  
9 *Wilkinson*

**CERTIFICATE OF SERVICE**

Pursuant to NRCP 5(b) I certify that I am an employee of James Kwon, LLC, and that on this 14th day of June 2021, I caused the above and foregoing document entitled *Defendant Rodney Wilkinson's Responses to Plaintiff Tessie Elma Almario's Second Set of Requests for Production of Documents to Defendant Rodney Wilkinson* to be served as follows:

BY ELECTRONIC SERVICE: Pursuant to NRCP 5 and NEFCR 9, by mandatory electronic service through the Eighth Judicial District Court's electronic filing system to the attorney(s) listed below at the address, email address, and/or facsimile number indicated below:

Dina DeSausa Cabral [DinaD@HoflandLaw.com](mailto:DinaD@HoflandLaw.com)

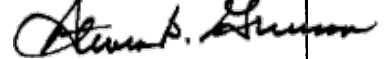
Bradley J. Hofland, Esq. [BradH@HoflandLaw.com](mailto:BradH@HoflandLaw.com)

Nikki Woulfe [Clerk@HoflandLaw.com](mailto:Clerk@HoflandLaw.com)

DATED this 14th day of June 2021.

/s/ Crystal Ann Gorzalski  
An employee of James Kwon, LLC





1 **PMEM**  
2 JAMES W. KWON, ESQ.  
3 Nevada Bar No. 8146  
4 **JAMES KWON, LLC**  
5 6280 Spring Mountain Road, Suite 100  
6 Las Vegas, Nevada 89146  
7 T: (702) 515-1200  
8 F: (702) 515-1201  
9 jkwon@jwkfirm.com  
10 *Attorney for Sheryl Atterberg, on Behalf of*  
11 *Her Adult Ward, Defendant, Rodney Wilkinson*

8 **EGHTH JUDICIAL DISTRICT COURT**  
9 **FAMILY DIVISION**  
10 **COUNTY OF CLARK, STATE OF NEVADA**

10 TESSIE E. WILKINSON a/k/a TESSIE  
11 ELMA ALMARIO,

12 Plaintiff,

13 vs.

13 SHERYL ATTERBERG, ON BEHALF  
14 OF HER ADULT WARD, RODNEY  
15 WILKINSON,

16 Defendant.

Case No.: D-19-596071-D

Dept.: U

Date of Evidentiary Hearing: 7/16/2021

Time of Evidentiary Hearing: 9:00 AM

17 **DEFENDANT RODNEY WILKINSON'S PRE-TRIAL MEMORANDUM**

18 COMES NOW Sheryl Atterberg, for and on behalf of Her Adult Ward,  
19 Defendant, Rodney Wilkinson, in her capacity as his permanent Co-Guardian and  
20 Co-Conservator, by and through their attorney of record, James W. Kwon, Esq., of  
21 the law firm JAMES KWON, LLC, and hereby submits the following *Defendant*  
22 *Rodney Wilkinson's Pre-Trial Memorandum.*  
23  
24

**I.**  
**STATEMENT OF ESSENTIAL FACTS**

**A. Names and Ages of the Parties:**

Plaintiff, Tessie Elma Almario f/k/a Tessie Wilkinson, age 58.

Defendant, Rodney Edward Wilkinson, age 66.

**B. Date of Marriage:**

The parties were married on or about March 22, 2009; however, it is important to note that Plaintiff did not reside with Defendant or even in the same state as Defendant for the vast majority of their marriage. Beginning in 2009, when the parties were married, to end of 2012, Tessie resided in New Mexico, which is evidenced by her annual tax returns that she filed with the IRS stating that her residence was in New Mexico. Then, in January 2013, Plaintiff relocated to Las Vegas, Nevada after absconding with approximately \$1.5 million of Defendant's inheritance. It is believed that Plaintiff's boyfriend, Steve, whom she introduces as her husband, has continuously resided with her in her residence, that she purchased with the ill begotten funds, since 2013. Subsequently, Plaintiff intentionally had no contact with Defendant from 2013 until 2019 when presumably her \$1.5 million dollars was exhausted.

**C. Resolved Issues:**

None.

1           **D.     Statement of Unresolved Issues:**

- 2           1.     If *Defendant's Motion to Set Aside Decree of Divorce* should be
- 3                     granted based on Plaintiff's fraud;
- 4           2.     If *Defendant's Motion to Set Aside Decree of Divorce* should be
- 5                     granted because the Decree of Divorce is unconscionable from
- 6                     the grossly inequitable distribution of assets and debts; or
- 7           3.     If *Defendant's Motion to Set Aside Decree of Divorce* should be
- 8                     granted because Defendant was incompetent and lacked the
- 9                     capacity to contract at the time he notarized the Decree of
- 10                    Divorce and Plaintiff knew or should have known that
- 11                    Defendant was incompetent and lacked capacity.

12                                     **II.**

13                                     **CHILD CUSTODY**

14                     There are no children stemming from the parties' marriage, no children were

15                     adopted by the parties, and Plaintiff is not now pregnant.

16                                     **III.**

17                                     **CHILD SUPPORT**

18                     There are no children stemming from the parties' marriage, no children were

19                     adopted by the parties, and Plaintiff is not now pregnant.

20                                     **IV.**

21                                     **SPOUSAL SUPPORT**

22                     The Evidentiary Hearing in this matter is to assist the Court in deciding

23

24

1 whether to set aside the Decree of Divorce, filed February 12, 2020, wherein the  
2 provision regarding spousal support requires Defendant, Rodney Wilkinson, to pay  
3 Plaintiff, Tessie Elma Almario, spousal support in the amount of \$3,000.00 per  
4 month. Defendant would not be able to comply with said provision considering  
5 Defendant has been found to be incompetent by a court in a competent jurisdiction  
6 and is unable to work or even care for himself.  
7

8  
9 **V.**  
**PROPERTY AND DEBTS**

10 The distribution of the parties' assets and debts as delineated in the Decree of  
11 Divorce, filed February 12, 2020, is unconscionable and wholly one-sided. The  
12 *Decree of Divorce* divided the community assets and debts as follows:

13 IT IS FURTHER ORDERED that the following  
14 community property shall be set over and hereby awarded to  
15 Rodney Wilkinson as his sole and separate property:

- 16 1. The Chevrolet Suburban VIN ending in 9469;
- 17 2. All personal property owned prior to the marriage;
- 18 3. Any and all current and future retirement accounts,  
19 savings plans, IRA, pension plans or otherwise in his name  
20 only not otherwise herein named;
- 21 4. Any and all wearing apparel, personal ornaments, and  
22 jewelry belonging to him;
- 23 5. Any and all bank accounts in his name only not  
24 otherwise herein named; and
6. Any personal items currently in his possession.

IT IS FURTHER ORDERED that the following  
community property shall be set over and hereby awarded to  
the Tessie Wilkinson as her sole and separate property:

1. US Bank account ending in the numbers 8904 with a  
current approximate value of \$373;

- 1           2.     The real property located at 8382 Hollywood Hills
- 2           Ave, Las Vegas, Nevada 89178;
- 3           3.     The real property located at 5730 Road 10, Goodland,
- 4           Kansas 67735;
- 5           4.     The 2012 Chevrolet Corvette VIN ending in 0723;
- 6           5.     The Service Truck VIN 2GCFK29K951206963;
- 7           6.     The 1977 Kenworth Winch Truck VIN 155197SG2;
- 8           7.     The following heavy equipment:
  - 9           a.     P & H 140 Ton crane , Model 9125-TC;
  - 10           b.    Manitowac 100 ton crane, Model 3900A, SN
  - 11           39670;
  - 12           c.    Lima 90 ton crane, Model 990TC;
  - 13           d.    P & H 90 ton crarAc, Model 8115TC, SN 35419;
  - 14           e.    P & H 50 ton crane;
  - 15           f.    P & H 25 ton crane;
  - 16           g.    P & H 70 ton crane;
  - 17           h.    2 bulldozers;
  - 18           i.    1977 Kenworth YIN 055097SGL;
  - 19           j.    1972 Peterbilt ID 41337P, FHP364802;
  - 20           k.    1955 Mack VIN B70511209;
  - 21           l.    1955       Kenworth       VIN       64338;
  - 22           m. 1959 Mack VIN B73S1370;
  - 23           n.    1962 Mack winch truck;
  - 24           o.    6000 Cherry Picker;
  - p.    100 ton press;
  - q.    Lo Boy 35 ton Cozad Trailer CC80062;
  - r.    1993 Western Star Boom Truck Serial No.
  - 2WKIIDCCHIPK931154;
  - s.    750 Holmes Wrecker Tow Truck;
  - t.    Autocar Winch Truck;
  - u.    Maritime Hydraulic Drilling Rig;
  - v.    Any and all tools located at 5730 Road 10,
  - Goodland, Kansas 67735.
14.    Any and all rights assigned to Rodney Wilkinson
- through the contract with Da Fontenot of Synergy Oil Field
- Services, LLC.
8.     All personal property owned prior to the marriage;
9.     Any and all current and future retirement accounts,
- savings plans, IRA, pension plans or otherwise in her name
- only;

10. Any and all wearing apparel, personal ornaments, and jewelry belonging to her;
11. Any and all bank accounts in her name only; and
12. Any personal items currently in her possession.

The *Decree of Divorce* divided the community debts as follows:

IT IS FURTHER ORDERED that the following community debts shall be set over and hereby awarded to Rodney Wilkinson as his sole and separate debts:

1. The loan on the real property located at 5730 Road 10, Goodland, Kansas 67735;
2. The loan through Dorman Renewable Fuels, LLC in the approximate amount of \$20,000;
3. Any and all tax debts in his name only;
4. Any and all student loan debts in his name only;
5. Any and all credit card debt in his name only;
6. Any and all credit instruments in his name only.

IT IS FURTHER ORDERED that the following community debts shall be set over and hereby awarded to Tessie Wilkinson as her sole and separate debts:

1. The Chase credit account ending in the numbers 9416 with an approximate current balance of \$3,860;
2. The US Bank credit account ending in the numbers 9270 with an approximate current balance of \$4,300;
3. Any and all student loan debts in her name only;
4. Any and all credit card debt in her name only;
5. Any and all credit instruments in her name only.

This is the division of assets and debts for a marriage wherein Tessie brought no assets into the marriage and contributed absolutely nothing during the marriage that lasted less than 12 years. It is important to note that Tessie did not live with Rodney or even in the same state as Rodney for the vast majority of the marriage and had no contact with Rodney from at least February 2013 until sometime in

2019 when, presumably, the approximate \$1.5 million dollars that Tessie had absconded with had run out. Even after a cursory review of the foregoing division, a reasonable person with no legal training would determine that this division is not fair or equitable by any means. Tessie's argument that "Rodney disclosed he no longer wanted to own or be responsible for anything – he simply wanted to live at the farmhouse and work" is profoundly ridiculous, especially taking into consideration that Tessie was awarded the farmhouse in the *Decree of Divorce* and then proceeded to evict Rodney from the farmhouse.

**VI.**  
**ATTORNEY'S FEES**

Attorney's Fees accrued as of 5.31.2021:	\$81,045.00
Costs incurred as of 5.31.2021:	\$ 1,443.62
Payments by Client as of 5.31.2021:	\$40,925.00
Balance Due and Owing by Client:	\$41,563.62 ***

\*\*\* Client has only received invoices up to and including 5.31.2021.

**VII.**  
**DEFENDANT'S LIST OF WITNESSES**

1. Sheryl Atterberg, Co-Guardian & Co-Conservator for Defendant  
c/o James W. Kwon, Esq.  
JAMES KWON, LLC  
6280 Spring Mountain Road, Suite 100  
Las Vegas, Nevada 89146  
(702) 515-1200

Mrs. Atterberg is the permanent Co-Guardian and permanent Co-Conservator

1 of her Adult Ward, Defendant, Rodney Wilkinson, in the above-stated matter. She  
2 may be called to testify as to her knowledge of the facts and circumstances  
3 surrounding this matter.

- 4  
5 2. Steven Atterberg, Co-Guardian & Co-Conservator for Defendant  
6 c/o James W. Kwon, Esq.  
7 JAMES KWON, LLC  
8 6280 Spring Mountain Road, Suite 100  
9 Las Vegas, Nevada 89146  
10 (702) 515-1200

11 Mr. Atterberg is the Co-Guardian and Co-Conservator of his Adult Ward,  
12 Defendant, Rodney Wilkinson, in the above-stated matter. He may be called to  
13 testify as to his knowledge of the facts and circumstances surrounding this matter.

- 14 3. Dr. Paul H. Janda, Esq., FAAN  
15 Las Vegas Neurology Center  
16 1930 Village Center Circle #3-717  
17 Las Vegas, Nevada 89134  
18 (702) 432-2233

19 Dr. Janda is expected to testify as to his expert report regarding his review and  
20 analysis, opinions, and conclusions regarding the competency of Defendant, Rodney  
21 Wilkinson, at the time he signed his Answer to Complaint and Decree of Divorce in  
22 January 2020.

- 23 4. Gregory P. Brown, M.D.  
24 1489 W. Warm Springs Road, Suite 110  
Henderson, Nevada 89014  
(702) 232-3256

Dr. Brown is expected to testify as to his expert report regarding his review



1 and analysis, opinions, and conclusions regarding the competency of Defendant,  
2 Rodney Wilkinson, at the time he signed his Answer to Complaint and Decree of  
3 Divorce in January 2020.

4  
5 5. Tessie Elma Almario, Plaintiff  
6 c/o Bradley J. Hofland, Esq.  
7 HOFLAND & TOMSHECK  
8 228 South 4<sup>th</sup> Street, 1<sup>st</sup> Floor  
9 Las Vegas, Nevada 89101  
10 (702) 895-6760

11 Ms. Almario is the Plaintiff in the above-stated matter and may be called to  
12 testify as to her knowledge of the facts and circumstances surrounding this matter.

13 6. Steven Zahradnik  
14 8382 Hollywood Hills Avenue  
15 Las Vegas, Nevada 89178

16 Mr. Zahradnik has been intimately acquainted with and living with Plaintiff  
17 since approximately 2013 and may be called to testify as to his knowledge of the  
18 facts and circumstances surrounding this matter.

19 7. Susan Perks  
20 8391 Hollywood Hills Avenue  
21 Las Vegas, Nevada 89178

22 Mrs. Perks is Plaintiff's neighbor and may be called to testify as to her  
23 knowledge of the facts and circumstances surrounding this matter.

24 8. Bethany Haan, Business Banking Associate and Notary  
Cornerstone Bank  
2280 45<sup>th</sup> Street South  
Fargo, North Dakota  
(701) 364-9630

1 Ms. Haan was the notary utilized by Plaintiff and Defendant when Defendant  
2  
3 notarized the Decree of Divorce on or about January 17, 2020 and may be called to  
4 testify as to her knowledge of the facts and circumstances surrounding this matter.

5 9. Erica Sarai Bell, Plaintiff's Daughter  
6 Address Unknown  
7 (415) 806-3533

8 Ms. Bell is Plaintiff's daughter and may be called to testify as to her  
9 knowledge of the facts and circumstances surrounding this matter.

10 10. Derrin M. Bell, Plaintiff's Son  
11 Address Unknown  
12 (719) 360-1983

13 Mr. Bell is Plaintiff's son and may be called to testify as to his knowledge of  
14 the facts and circumstances surrounding this matter.

15 11. Person Most Knowledgeable  
16 Cornerstone Bank  
17 323 South Main Street  
18 New Town, North Dakota 58763  
19 (701) 627-4717

20 The Person Most Knowledgeable for Cornerstone Bank may be called to  
21 testify as to his or her knowledge of the facts and circumstances surrounding this  
22 matter, specifically regarding Plaintiff's and/or Defendant's bank accounts, the  
23 contents thereof, and any and all other financial accounts Plaintiff and/or Defendant  
24 currently holds therewith.

12. Heather Licke, M.D.  
Cheyenne County Clinic  
221 W. 1<sup>st</sup> Street  
Saint Francis, KS 67756  
(785) 332-2682

Dr. Licke has previously treated Defendant and may be called to testify as to her knowledge of the facts and circumstances surrounding this matter.

13. Person Most Knowledgeable  
Cheyenne County Hospital  
210 W. 1<sup>st</sup> Street  
Saint Francis, KS 67756  
(785) 332-2104

The Person Most Knowledgeable for Cheyenne County Hospital may be called to testify as to his or her knowledge of the facts and circumstances surrounding this matter.

14. Person Most Knowledgeable  
Swedish Medical Center  
501 East Hampden Avenue  
Englewood, CO 80113  
(720) 570-3304

The Person Most Knowledgeable for Swedish Medical Center may be called to testify as to his or her knowledge of the facts and circumstances surrounding this matter.

15. Person Most Knowledgeable  
Goodland Regional Medical Center  
220 W. 2<sup>nd</sup> Street  
Goodland, Kansas 67735  
(785) 890-3625

1 The Person Most Knowledgeable for Goodland Regional Medical Center may  
2 be called to testify as to his or her knowledge of the facts and circumstances  
3 surrounding this matter.

4  
5 16. John E. Fox, M.D.  
6 Aspen Leaf Assisted Living Residence  
7 2050 6<sup>th</sup> Street  
8 Limon, CO 80828  
9 (719) 775-9412

10 Dr. Fox is a resident at Aspen Leaf Assisted Living Residence and may be  
11 called to testify as to his knowledge of the facts and circumstances surrounding this  
12 matter.

13 17. Person Most Knowledgeable  
14 Aspen Leaf Assisted Living Residence  
15 2050 6<sup>th</sup> Street  
16 Limon, CO 80828  
17 (719) 775-9412

18 The Person Most Knowledgeable for Aspen Leaf Assisted Living Residence  
19 may be called to testify as to his or her knowledge surrounding the facts and  
20 circumstances of this matter.

21 18. Kathy Dyer  
22 Aspen Leaf Assisted Living Residence  
23 2050 6<sup>th</sup> Street  
24 Limon, CO 80828  
(719) 775-9412

Kathy Dyer is the Administrator and LPN for Aspen Leaf Assisted Living  
Residence and may be called to testify as to his or her knowledge surrounding the

1 facts and circumstances of this matter.

- 2 19. Person Most Knowledgeable  
3 Lincoln Community Hospital and Care Center  
4 111 6<sup>th</sup> Street  
5 Hugo, CO 80821  
(719) 743-2421

6 The Person Most Knowledgeable for Lincoln Community Hospital and Care  
7 Center may be called to testify as to his or her knowledge surrounding the facts and  
8 circumstances of this matter.

- 9 20. Person Most Knowledgeable  
10 Medical Center of Aurora  
11 1501 S. Potomac Street  
12 Aurora, CO 80012  
(303) 695-2600

13 The Person Most Knowledgeable for Medical Center of Aurora may be called  
14 to testify as to his or her knowledge surrounding the facts and circumstances of this  
15 matter.

- 16 21. Person Most Knowledgeable  
17 CHI Hospital / St. Alexius Dickinson Medical Center  
18 2500 Fairway Street  
19 Dickinson, ND 58601  
(701) 456-4000

20 The Person Most Knowledgeable for CHI Hospital / St. Alexius Dickinson  
21 Medical Center may be called to testify as to his or her knowledge surrounding the  
22 facts and circumstances of this matter.

- 23 22. Person Most Knowledgeable  
24 Cheyenne County Clinic

1 221 W. 1<sup>st</sup> Street  
2 Saint Francis, KS 67756  
3 (785) 332-2682

4 The Person Most Knowledgeable for Cheyenne County Clinic may be called  
5 to testify as to his or her knowledge surrounding the facts and circumstances of this  
6 matter.

7 23. Person Most Knowledgeable  
8 Larnard State Mental Hospital  
9 1301 KS-264  
10 Larnard, KS 67550  
11 (620) 285-4380

12 The Person Most Knowledgeable for Larnard State Mental Hospital may be  
13 called to testify as to his or her knowledge surrounding the facts and circumstances  
14 of this matter.

15 24. Jeffrey Laird, MMS, PA-C  
16 Goodland Regional Medical Center Emergency Department  
17 220 West 2<sup>nd</sup> Street  
18 Goodland, KS 67735  
19 (720) 987-5822

20 Mr. Laird has previously treated Defendant and may be called to testify as to  
21 his or her knowledge surrounding the facts and circumstances of this matter.

22 25. Jeff Henderson  
23 Jeff Henderson Farms, Inc.  
24 5850 Road 8  
Goodland, KS 67735  
(785) 821-0084

Mr. Henderson was a neighbor of Defendant in Goodland, Kansas and may be

1 called to testify as to his knowledge surrounding the facts and circumstances of this  
2 matter.

3 26. Mike Dorman  
4 19230 County Road 55  
5 Burlington, CO 80807  
6 (719) 340-7970

7 Mr. Dorman is an acquaintance of Defendant and may be called to testify as to  
8 his knowledge surrounding the facts and circumstances of this matter.

9 27. Terry Richardson  
10 Homestead Realty and Action  
11 1023 Main Street  
12 Goodland, KS 67735  
13 (785) 899-3060

14 Mr. Richardson was hired by Plaintiff to list the Goodland, Kansas residence  
15 for sale after Plaintiff evicted Defendant therefrom and may be called to testify as to  
16 his knowledge surrounding the facts and circumstances of this matter.

17 28. Steven O. Brown  
18 Address Unknown  
19 Albuquerque, NM

20 Mr. Brown was an acquaintance of Plaintiff and may be called to testify as to  
21 his knowledge surrounding the facts and circumstances of this matter.

22 29. Mark Gambino  
23 Address Unknown

24 Mr. Gambino was an acquaintance of Plaintiff and may be called to testify as  
to his knowledge surrounding the facts and circumstances of this matter.

1           30.   Danielle Dawson, Esq.  
2               Nevada Family Law Group  
3               10120 S. Eastern Avenue, Suite 140  
4               Henderson, NV 89052  
5               (702) 910-4300

6           Ms. Dawson represented Plaintiff and drafted the Decree of Divorce in the  
7           above-stated matter. Ms. Dawson may be called to testify as to her knowledge  
8           surrounding the facts and circumstances of this matter.

9           31.   Tanika Stevenson  
10               Address Unknown

11          Ms. Stevenson was an acquaintance of Defendant and may be called to testify  
12          as to her knowledge surrounding the facts and circumstances of this matter.

13          32.   Jill E. Strnad  
14               Address Unknown

15          Ms. Strnad was an acquaintance of Defendant and may be called to testify as  
16          to her knowledge surrounding the facts and circumstances of this matter.

17          33.   Dan Fontenot  
18               Synergy Oil Field Services, LLC  
19               BIA Road 17  
20               Mandaree, ND  
21               (701) 509-7086

22          Mr. Fontenot was a prior employer of Defendant, has purchased equipment  
23          from Defendant, and may be called to testify as to his knowledge surrounding the  
24          facts and circumstances of this matter.

34.   Any witnesses identified and/or called by Plaintiff.



35. Any rebuttal witnesses.

**VIII.**  
**DEFENDANT'S LIST OF EXHIBITS**

Defendant Rodney Wilkinson's List of Exhibits is as follows:

Exhibit Letter	Description of Exhibit	Bate Stamp No.
A	Medical Records from Goodland Regional Medical Center	WILK000001 – WILK000104
B	Medical Records from Cheyenne County Hospital	WILK000105 – WILK000107
C	Medical Records from Medical Center of Aurora	WILK000108 – WILK000143
D	Long Term Care Professional Medical Information by Dr. Heather Licke	WILK000144 – WILK000145
E	Letter from Aspen Leaf Assisted Living Residence	WILK000146
F	Medical Records from Lincoln Community Hospital and Care Center	WILK000147 – WILK000225
G	MRI Reports from June 2020	WILK000226 – WILK000237
H	Medical Records from Swedish Medical Center	WILK000238 – WILK000278
I	CHI Hospital Records from March 2, 2020	WILK000279 – WILK000308
J	Newspaper Article regarding Auto Accident involving Rodney Wilkinson (age 19 at time of accident)	WILK000309 – WILK000310
K	Curriculum Vitae of Dr. Paul H. Janda, Esq., FAAN	WILK000311 – WILK000319
L	Fee Schedule of Dr. Paul H. Janda, Esq., FAAN	WILK000320
M	Order Appointing Guardian for Adult dated November 23, 2020	WILK000321 – WILK000323
N	Letters of Permanent Co-Guardianship for an Adult dated November 23, 2020	WILK000324
O	Proposed Order Appointing Permanent Conservator for Adult dated November 23, 2020	WILK000325 – WILK000327

Exhibit Letter	Description of Exhibit	Bate Stamp No.
P	Amended Letter of Permanent Co-Conservatorship for an Adult dated December 1, 2020	WILK000328
Q	Letter from Tessie Almario evicting Rodney Wilkinson dated September 29, 2020 and mailing envelope	WILK000329 – WILK000330
R	Statement by Co-Guardians regarding Social History of Defendant, Rodney Wilkinson	WILK000331
S	Expert Report by Dr. Paul H. Janda, Esq., FAAN	WILK000332 – WILK000347
T	Letter from John E. Fox, M.D. dated May 13, 2021	WILK000348
U	Montreal Cognitive Assessment (MoCA) Test for Dementia by Andrew Rosenzweig, M.D. dated September 23, 2020	WILK000349 – WILK000361
V	Invoices from Ritchie Bros Auctioneers (America) Inc.	WILK000362 – WILK000376
W	Defendant Rodney Wilkinson's 2010 Federal Income Tax Return	WILK000377 – WILK000395
X	Subpoenaed Records produced by Cornerstone Bank, N.A.	WILK000396 – WILK000414
Y	Conservator's Financial Plan with Inventory – Initial Report Inventory Values as of Date of Appointment as of November 23, 2020	WILK000415 – WILK000425
Z	Cornerstone Bank Statement Ending January 15, 2021 for Account Ending 950	WILK000426 – WILK000430
AA	Judgment and Order for Judgment Against Rodney Wilkinson in the District Court for the Fort Berthold Indian Reservation Case No. CV-2020-0303 dated December 29, 2020	WILK000431 – WILK000446
BB	Medical Records for Rodney Wilkinson from Cheyenne County Clinic and Hospital	WILK000447 – WILK000816
CC	Subpoenaed Records produced by U.S. Bank	WILK000817 – WILK001526
DD	Elite Investigation's Confidential Report dated January 6, 2021	WILK001527 – WILK001530
EE	Samples of Rodney Wilkinson's drawing abilities prior to 2017	WILK001531

1	<b>Exhibit</b>	<b>Description of Exhibit</b>	<b>Bate Stamp No.</b>
2	<b>Letter</b>		
3	<b>FF</b>	Master Care Plan by Aspen Leaf Assisted Living Residence - Limon dated May 24, 2021	WILK001532 – WILK001538
4	<b>GG</b>	Kansas Guardianship Order for Dismissal, filed October 1, 2020	WILK001539 – WILK001540
5	<b>HH</b>	Medical Records for Rodney Wilkinson from Larnard Mental Hospital	WILK001541 – WILK001842
6	<b>II</b>	Records from Silver Spring Pharmacy for Rodney Wilkinson	WILK001843 – WILK001847
7	<b>JJ</b>	Deposition Transcript of Tessie Elma Wilkinson taken May 27, 2021	WILK001848 – WILK002136
8			
9	<b>KK</b>	Plaintiff Tessie Elma Almario's Response to Defendant Rodney Wilkinson's First Set of Requests for Admissions to Plaintiff Tessie Almario served April 1, 2021	WILK002137 – WILK002143
10			
11	<b>LL</b>	Plaintiff Tessie Elma Almario's Response to Defendant Rodney Wilkinson's First Set of Interrogatories to Plaintiff Tessie Almario served April 1, 2021	WILK002144 – WILK002160
12			
13	<b>MM</b>	Plaintiff Tessie Elma Almario's Response to Defendant Rodney Wilkinson's First Set of Requests for Production of Documents to Plaintiff Tessie Almario served April 1, 2021	WILK002161 – WILK002171
14			
15	<b>NN</b>	Plaintiff Tessie Elma Almario's [Supplemental] Response to Defendant Rodney Wilkinson's First Set of Requests for Admissions to Plaintiff Tessie Almario served May 24, 2021	WILK002172 – WILK002177
16			
17	<b>OO</b>	Plaintiff Tessie Elma Almario's Supplemental Response to Defendant Rodney Wilkinson's First Set of Interrogatories to Plaintiff Tessie Almario served May 24, 2021	WILK002178 – WILK002195
18			
19	<b>PP</b>	Plaintiff Tessie Elma Almario's Supplemental Response to Defendant Rodney Wilkinson's First Set of Requests for Production of Documents to Plaintiff Tessie Almario served May 24, 2021	WILK002196 – WILK002207
20			
21			
22			
23			
24			

Exhibit Letter	Description of Exhibit	Bate Stamp No.
QQ	Eight Authorizations for the Release of Protected Health Information notarized by Sheryl Atterberg, in her capacity as Defendant, Rodney Wilkinson's Co-Guardian, on May 25, 2019	WILK002208 - WILK002223
RR	Complaint for Divorce filed September 9, 2019	WILK002224 - WILK002227
SS	Answer to Complaint for Divorce filed January 28, 2020	WILK002228 - WILK002229
TT	Decree of Divorce filed February 12, 2020	WILK002230 - WILK002244
UU	Plaintiff's Eight (8) Notices of Intent to Serve Subpoena Duces Tecum served on Defendant on May 18, 2021	WILK002245 - WILK002325
VV	Purchase Agreement dated February 21, 2020	TW000023 - TW000029
WW	Plaintiff's 2017 IRS Federal Tax Return	TW000037 - TW000042
XX	Plaintiff's 2018 IRS Federal Tax Return	TW000043 - TW000046
YY	Defendant's IRS Federal Tax Documents	TW000047 - TW000053
ZZ	Settlement Statement for Farm in Kansas	TW000054
AAA	Check No. 1031 and 1032	TW000055
BBB	Purchase Agreement from Synergy dated February 21, 2020	TW000056 - TW000057
CCC	Tribal Employment Rights Ordinance Office Complaint of Charging Party dated November 26, 2019	TW000061 - TW000064
DDD	Plaintiff's Receipts	TW000065 - TW000091
EEE	Emails from Plaintiff to Sheryl Atterberg	TW000099 - TW000102
FFF	Bank of the West Statements for Account Ending in 7690 from 2012 to 2014	TW000205 - TW000256
GGG	Eastern Colorado Bank Statements for Account Ending in 0299 from 2013 to 2015	TW000257 - TW000286

Exhibit Letter	Description of Exhibit	Bate Stamp No.
HHH	Cornerstone Bank Statements for Account Ending in 1655 from August 2019 to November 2019	TW000287 - TW000306

Defendant, Rodney Wilkinson, reserves the right to use any document and/or item designated or disclosed by any other party to this action. Defendant, Rodney Wilkinson, further reserves the right to use any document filed or served at any time during the instant matter.

**IX.**  
**UNUSUAL LEGAL OR FACTUAL ISSUES PRESENTED**

**A. Issues for Evidentiary Hearing:**

On or about February 4, 2021, the Court set an Evidentiary Hearing to assist in its decision on *Defendant's Motion to Set Aside the Divorce Decree Pursuant to NRCP 60(b)*, filed January 25, 2021. On or about April 28, 2021, the Court clarified the issues to be decided at the present Evidentiary Hearing as follows:

1. Whether Defendant was incompetent and lacked the capacity to contract, on or about January 17, 2020, when Defendant notarized the *Decree of Divorce*, filed February 12, 2020; and
2. Whether Plaintiff knew or should have known about Defendant's incompetency at or around the time the terms of the *Decree of Divorce* were discussed and agreed upon by the parties.

1 The Court conveyed that evidence of whether the division of assets and debts  
2 was fair, whether Plaintiff's contention regarding marital waste can be  
3 substantiated, whether Plaintiff was overreaching, the extent of Plaintiff's  
4 overreaching, if any, as well as Defendant's capacity are all relevant in deciding on  
5 a motion to set aside a decree of divorce. The Court noted that Defendant's capacity  
6 and the degree to which the division of assets and debts in the Decree of Divorce is  
7 equal are tied together. The Court further noted that the evidence from discovery of  
8 the parties' finances at the time of entry of the Decree of Divorce or prior to said  
9 entry may evince that there was no marital waste by Defendant and Plaintiff's  
10 contention of marital waste was a cover for why the assets and debts were  
11 distributed significantly unequal. The Court acknowledged that the Decree of  
12 Divorce on its face looks very skewed in favor of Plaintiff, which may substantiate  
13 whether there was overreaching and fraud by Plaintiff, and whether the asset and  
14 debt distribution in the Decree of Divorce is as skewed as it looks on its face is  
15 relevant.  
16  
17

18 **B. Legal Authority & Position of Law**

19  
20 1. Defendant's Motion to Set Aside Decree of Divorce should be  
21 granted based on Plaintiff's fraud.

22 Fraud upon the court has been recognized for centuries as a basis for setting  
23 aside a final judgment, sometimes even years after it was entered. *Hazel-Atlas Co.*  
24 *v. Hartford Co.*, 322 U.S. 238, 245, 64 S. Ct. 997, 88 L. Ed. 1250, 1944 Dec.

1 Comm'r Pat. 675 (1944) (discussing "the historic power of equity to set aside  
2 fraudulently begotten judgments" and canvassing cases and treatises and vacating a  
3 judgment entered nine years earlier), *overruled on other grounds by Standard Oil*  
4 *Co. v. United States*, 429 U.S. 17, 18, 97 S. Ct. 31, 50 L. Ed. 2d 21 (1976). A final  
5 judgment, once entered, normally is not subject to challenge. However, the policy  
6 of repose yields when "the court finds after a proper hearing that fraud has been  
7 practiced upon it, or the very temple of justice has been defiled." *Universal Oil*  
8 *Prods. Co. v. Root Refin. Co.*, 328 U.S. 575, 580, 66 S. Ct. 1176, 90 L. Ed. 1447  
9 (1946). "[A] case of fraud upon the court [calls] into question the very legitimacy of  
10 the judgment." *Calderon v. Thompson*, 523 U.S. 538, 557, 118 S. Ct. 1489, 140 L.  
11 Ed. 2d 728 (1998). Put another way, "[w]hen a judgment is shown to have been  
12 procured" by fraud upon the court, "no worthwhile interest is served in protecting  
13 the judgment." Restatement (Second) of Judgments § 70 cmt. B (1982). Fraud upon  
14 the court has been held to exist when the unsuccessful party is kept away from the  
15 Court by such conduct as prevents a real trial on the issues. *Price v. Dunn*, 106 Nev.  
16 100, 104, 787 P.2d 785, 787 (1990).

17  
18  
19  
20 Tessie committed fraud upon the Court by preparing and demanding Rodney  
21 sign the Answer and Decree of Divorce in the present matter despite and more  
22 likely because of Plaintiff knowing and being fully aware that Rodney was an  
23 incompetent person at the time he signed the Decree of Divorce. Rodney was  
24

1 incompetent and lacked the capacity to contract when Tessie filed for and obtained  
2 the Divorce. Tessie knew that and willfully sought to exploit such a malignant  
3 advantage by having Rodney's Answer and the Decree of Divorce prepared  
4 according to her terms and for Rodney to simply sign. Tessie kept the fact that  
5 Rodney had suffered a Traumatic Brain Injury in 2017 from the Court and her  
6 counsel, and she otherwise concealed that Rodney, due to his severe and palpably  
7 evident cognitive impairments, was incompetent and lacked the capacity to  
8 contract. Tessie did so to circumvent public policy and Nevada law that requires  
9 that a court "to the extent practicable, make an equal disposition of the community  
10 property of the parties." Nev. Rev. Stat. § 125.150(1)(b). Tessie has subverted the  
11 integrity of the Court itself and, therefore, warrants *Defendant's Motion to Set Aside*  
12 *the Divorce Decree Pursuant to NRCPP 60(b)* to be granted.

- 13  
14  
15 2. *If Defendant's Motion to Set Aside Decree of Divorce should be*  
16 *granted because the Decree of Divorce is unconscionable from*  
17 *the grossly inequitable distribution of assets and debts.*

18 Unconscionability involves both procedural and substantive  
19 unconscionability in order for a court to exercise its discretion to refuse  
20 enforcement of an agreement under the premise of unconscionability. If the case  
21 involves predominately procedural unconscionability, then less evidence of  
22 substantive unconscionability is required. *D.R. Horton, Inc. v. Green*, 120 Nev. 549,  
23 551, 96 P.3d 1159, 1160 (2004) (overruled on other grounds by *United States Home*  
24





1 *Corp. v. Ballesteros Tr.*, 415 P.3d 32, 41 (Nev. 2018); see also *Burch v. Second*  
2 *Judicial Dist. Court*, 118 Nev. 438, 439, 49 P.3d 647, 648 (2002).

3       Here, we have both procedural and substantive unconscionability. Tessie,  
4 being fully aware of Rodney's medical conditions and his mental limitations  
5 resulting therefrom, willfully exploited those limitations to Rodney's detriment in  
6 order for Tessie to secure a windfall of millions of dollars while leaving Rodney  
7 destitute. *It is important to note that, in January 2013, Tessie similarly absconded*  
8 *with approximately \$1.5 million dollars of Rodney's inheritance, immediately*  
9 *relocating to Las Vegas, Nevada, and intentionally had no contact with Rodney*  
10 *until her ill begotten nest egg had been depleted and she required another "pay*  
11 *day" in order to maintain her unencumbered lifestyle.* Tessie knew Rodney's  
12 severely diminished and continued downward deterioration of his mental faculties  
13 precluded Rodney from comprehending the implication of the provisional terms  
14 themselves or any consequences and/or long-term effects of said provisions  
15 included in Rodney's Answer to Complaint for Divorce and the Decree of Divorce.  
16 *It is also important to note that Tessie prepared Rodney's Answer in its entirety,*  
17 *only requiring Rodney to sign, and likely without explaining what the cited*  
18 *paragraph numbers actually referred to, as well as Tessie solely providing each*  
19 *and every term of the Decree of Divorce to her former attorney of record.* Then,  
20 Tessie immediately began enforcing the provisions in the Decree of Divorce,  
21  
22  
23  
24

1 entered February 12, 2020, even though she knew it was significantly unfair and  
2 procured by fraud. Tessie argues that “Rodney disclosed he no longer wanted to  
3 own or be responsible for anything – he simply wanted to live at the farmhouse and  
4 work” is profoundly ridiculous, especially considering that Tessie was awarded the  
5 farmhouse in the *Decree of Divorce* and then proceeded to evict Rodney from the  
6 farmhouse.  
7

8 Unconscionability is said to exist when enforcement of the agreement results  
9 in one spouse having insufficient property to provide for his or her reasonable  
10 needs. There are a number of factors that this Court may consider when determining  
11 the fairness of an Agreement:  
12

- 13 • Duration of the marriage.
- 14 • Assets owned by each party.
- 15 • Income and earning capacity of each party.
- 16 • Property each party brought to the marriage.
- 17 • Children of prior marriage(s).
- 18 • Future support needs of each party.
- 19 • Age and health of each party.
- 20 • Standard of living during the marriage.
- 21 • What each party would have received in the absence of the agreement.
- 22 • Each party’s contribution to the marriage, including homemaker and  
23  
24

1                   childcare contributions.<sup>1</sup>

2                   Here, all factors point to unconscionability. At the time Tessie filed her  
3 Complaint for Divorce, the parties had been legally married, at least on paper, for  
4 ten (10) years with the parties living in separate states for the vast majority of those  
5 years, Tessie basically “visiting” Rodney from time to time. When the parties  
6 married, Rodney brought substantial wealth into the marriage, while Tessie brought  
7 *nothing* but her love of Rodney’s money. However, when they divorced, Tessie left  
8 the marriage unjustly enriched financially speaking, while Rodney was left  
9 destitute, with a mountain of debt, and only social security to survive on.

10                   Nevada Policy and Law are clear that a Court must, absent a compelling  
11 reason otherwise, make an equitable distribution of the marital estate. Nev. Rev.  
12 Stat. Ann. § 125.150. The policy is so strong that the Nevada Supreme Court has  
13 consistently reversed a District Court’s decision not to set aside a decree under  
14 NRCP 60(b) when an inequitable distribution was made. For example, in *Petersen*  
15 *v. Petersen*, 105 Nev. 133, 771 P.2d 159 (1989), the Wife figured out about 90 days  
16 after the Divorce she had received about 10 percent of the parties’ property, but her  
17 motion to set it aside was not filed until the day before the six months would have  
18 elapsed. The Supreme Court rejected the trial court’s conclusion that the motion  
19 was untimely and held that when such a motion is filed at any time within the six  
20 months.

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24 <sup>1</sup> See *Del Vecchio v. Del Vecchio*, 143 So. 2d 17 (Fla. 1962); *Button v. Button*, 131 Wis. 2d 84, 86, 388

1 months allowed by NRCP 60(b), alleging fraud or mutual mistake, and seeks for the  
2 first time to address the fairness of the Decree of Divorce, the motion should be  
3 considered on its merits. The Supreme Court specifically stated, “the trial judge’s  
4 denial of Wife’s motion on the basis that it was not filed within a ‘reasonable time’  
5 produces harsh results which are inconsistent with the spirit of Rule 60(b).” Id. at  
6 134.  
7

8 In *Carlson v. Carlson*, 108 Nev. 358, 832 P.2d 380 (1992), the Supreme  
9 Court reversed the district court’s refusal to set aside a property distribution under  
10 NRCP 60(b), where a private pension had been greatly undervalued in the original  
11 divorce proceedings. Both parties were represented by counsel, but the Wife  
12 discovered (just days before the six-month period of NRCP 60(b) expired) that the  
13 representation by the husband and his counsel that the property division was  
14 “essentially equal” was false because the pension was worth much more than had  
15 been thought. The Wife received about 29 percent property and moved to set aside  
16 the property distribution under NRCP 60(b). On property and moved to set aside the  
17 property distribution under NRCP 60(b). On appeal, the Supreme Court reversed  
18 the district court’s order refusing to set aside the Decree as an abuse of discretion.  
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21 In *Cook v. Cook*, 112 Nev. 179, 912 P.2d 264 (1996), the husband drafted a  
22 property settlement agreement providing that he received the law practice as his  
23

24 N.W.2d 546, 547 (1986); *Austin v. Austin*, 62 Mass. App. Ct. 719, 819 N.E.2d 623, 624 (2004)

1 separate property and including the Wife's waiver of any interest in his firm's  
2 income. The Wife had an attorney review the property settlement agreement, but  
3 she signed it in proper person. The husband filed for Divorce, and the Wife signed a  
4 proper person answer. The Decree was granted the same day. Days before the six-  
5 month NRCP 60(b)-time limit ran, the Wife filed a motion to "vacate the divorce  
6 decree and for a new trial." The Wife's expert evaluated the community property  
7 and concluded that the Wife had received approximately \$100,000 to the husband's  
8 \$600,000 in net community property assets, that in his "professional opinion, the  
9 [agreement] was grossly inequitable and unfair to the wife." 112 Nev. at 181, FN 1,  
10 912 P.2d at 265. The Nevada Supreme Court found an abuse of the lower court's  
11 "wide discretion in deciding whether to grant or deny" a motion under NRCP 60(b)  
12 and reversed the lower court's denial of her motion to set aside the Decree.  
13

14  
15 In the case at hand, the Decree of Divorce on its face violates Nevada Policy.  
16 Not only does it award Tessie assets worth millions of dollars, but it gives Rodney  
17 nothing but the entirety of the debt. Furthermore, there was no compelling reason to  
18 make such a grossly disproportionate award. Not only was such an award obtained  
19 by fraud, but the Court failed to hold a Prove Up hearing to determine the validity  
20 of such an award and if there was, in fact, a compelling reason to award one person  
21 millions and leave the other completely destitute. Accordingly, this Court must set  
22 aside the Decree of Divorce.  
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- 1                   3.     Defendant's Motion to Set Aside Decree of Divorce should be  
2                   granted because Defendant was incompetent and lacked the  
3                   capacity to contract at the time he notarized the Decree of  
4                   Divorce and Plaintiff knew or should have known that  
5                   Defendant was incompetent and lacked capacity at that time,  
6                   which renders Rodney's alleged agreement with and signing of  
7                   the Decree of Divorce as well as the Court never actually  
8                   obtaining personal jurisdiction over Rodney in this matter.

9                   Nevada courts have retained “the discretion to apply lack of diligence  
10                  principals to NRCP 60(b)(4) void judgment challenges.” *Teriano v. Nev. State Bank*  
11                  (*In re Harrison Living Tr.*), 121 Nev. 217, 222, 112 P.3d 1058, 1061 (2005). A  
12                  judgment is considered void when there is a defect in the court’s authority to enter  
13                  the judgment due to lack of jurisdiction over the subject matter or parties. *See*  
14                  *Gassett v. Snappy Car Rental*, 111 Nev. 1416, 1419, 906 P.2d 258, 261  
15                  (1995), *superseded by rule on other grounds as stated in Fritz Hansen A/S v. Eighth*  
16                  *Judicial Dist. Court*, 116 Nev. 650, 654–56, 6 P.3d 982, 984–85 (2000); *see also*  
17                  *Lindblom v. Prime Hosp. Corp.*, 120 Nev. 372, 377, 90 P.3d 1283, 1285–86 (2004).

18                  Tessie initiated a case against Rodney even though he was incompetent and  
19                  lacked the capacity to contract despite Tessie knowing or should have known of  
20                  Rodney’s incompetence. In doing so, the Decree of Divorce is *void* ab initio not  
21                  only because Rodney lacked the capacity to sign said Decree but because the  
22                  Family Court never properly obtained personal jurisdiction over Rodney. Rodney  
23                  lacked the legal capacity to accept services and to answer the Divorce complaint.  
24

## X.

**LENGTH OF EVIDENTIARY HEARING**

The Court has allocated one full day for the present Evidentiary Hearing.

Dated this 2 day of July 2021.

JAMES KWON, LLC

  
\_\_\_\_\_  
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Her Adult Ward, Defendant, Rodney Wilkinson*

**CERTIFICATE OF SERVICE**

Pursuant to NRCP 5(b), I hereby certify that service of the foregoing  
*Defendant Rodney Wilkinson's Pre-Trial Memorandum* was made this 2<sup>ND</sup> day  
of July 2021 via the Court's electronic filing system upon the following:

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BradH@HoflandLaw.com

Clerk@HoflandLaw.com

DATED this 2<sup>ND</sup> day of July 2021.

  
\_\_\_\_\_  
An employee of JAMES KWON, LLC



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