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

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11 MICHAEL EDWARD HATCH, an  
12 individual; and ALISHA SUZANNE  
13 HATCH, an individual,

14 Appellants,

15 v.

16 KARI ANNE JOHNSON,

17 Respondent.

**Supreme Court No.: 83692**  
(District Court Case No. CV21-00246)

18  
19 **APPELLANTS'**  
20 **OPENING BRIEF**

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## NRAP 26.1 DISCLOSURE

The undersigned counsel of record certifies that the following are persons and entities described in NRAP 26.1(a) and must be disclosed. These representations are made in order that the justices of this Court may evaluate possible disqualifications or recusal.

The Appellants are individuals and the undersigned counsel at SIMONS HALL JOHNSTON PC appeared in these proceedings on behalf of Appellants.

DATED this 3<sup>rd</sup> day of March, 2022.

SIMONS HALL JOHNSTON PC  
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BY: 

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1  
2 **JURISDICTIONAL STATEMENT**

3 Pursuant to NRAP 28(a)(4), Appellant provides the following jurisdictional  
4 statement. This appeal arises from a district court order granting in part and  
5 denying in part a Motion for Attorney's Fees ("Motion") filed by Michael Edward  
6 Hatch and Alisha Suzanne Hatch (the "Hatches") against respondent Kari Anne  
7 Johnson ("Johnson"). The district court's Order was filed on October 1, 2021 (the  
8 "Order").<sup>1</sup> Notice of Entry of the Order was filed on October 21, 2021.<sup>2</sup> The  
9 Hatches' Notice of Appeal was filed on October 21, 2021.<sup>3</sup>

10  
11  
12 **NRAP 17 ROUTING STATEMENT**

13 Pursuant to NRAP 28(a)(5), the Hatches provide the following routing  
14 statement. This appeal appears to present an issue governed by NRAP 17(b)(7)  
15 since the Order subject to this appeal is a post judgment order in a civil case.  
16

17  
18 **STATEMENT OF THE ISSUES**

19 1. Whether the district court erred in arbitrarily awarding only \$15,165  
20 in attorney's fees when \$68,507.20 were sought?<sup>4</sup>  
21

22  
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 <sup>1</sup> 5 JA 1234-1238.

24 <sup>2</sup> 6 JA 1242-1251

25 <sup>3</sup> 6 JA 1252-1254.

26 <sup>4</sup> The district court only awarded 22% of the amount of fees sought.

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## STATEMENT OF THE CASE<sup>5</sup>

The basic facts of this case, as alleged by Johnson, are that seven (7) years ago she entered into an agreement with the Hatches “to loan” them money to buy the home commonly known as 9845 Firefoot Lane, Reno, Nevada (the “Property”). Johnson alleges this loan was purportedly evidenced by an unsecured installment Note. Johnson terminated her friendship with the Hatches then instituted this litigation as a punitive and vindictive assault on the Hatches seeking to punish them and force them to needlessly incur attorney’s fees and costs in defending themselves and protecting their home.

In order to defend against the factually, legally and procedurally baseless lawsuit, the Hatches were forced to engage in extensive litigation practice necessitating the filing of eleven (11) separate briefs<sup>6</sup>; filing two (2) requests for

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<sup>5</sup> For ease of reading, this section will omit appendix citations, but citations will be provided for procedural and factual statements in the body of the brief.

<sup>6</sup> The ten motions are as follows: 1-Motion to Dismiss Original Complaint (1 JA 22-154); 2-Motion to Expunge Lis Pendens (1 JA 90-121); 3-Reply in Support of Motion to Expunge Lis Pendens (3 JA 571-586); 4-Motion for Order Shortening Time on Motion to Expunge Lis Pendens (1 JA 86-89); 5-Reply in Motion for Order Shortening Time on Motion to Expunge Lis Pendens (1 JA 159-163); 6-Motion to Dismiss 1<sup>st</sup> Amended Complaint (3 JA 698 – 4 JA 773); 7-Reply in support of Motion to Dismiss 1<sup>st</sup> Amended Complaint (4 JA 876-885); 8-Opposition to Johnsons’ Motion to File 2<sup>nd</sup> Amended Complaint (4 JA 823-859); 9-Opposition to Motion for Reconsideration (4 JA 941-944); 10-Motion for Award



1 judicial notice<sup>7</sup>; participated in two (2) separate hearings<sup>8</sup> and filed one (1)  
2  
3 memorandum of costs<sup>9</sup>. This litigation practice was necessitated because Johnson  
4 filed two complaints and sought to file a third, and also pursued a baseless lis  
5 pendens against the Hatches' home seeking recovery of over \$665,838,40 against  
6  
7 them. At the conclusion of the litigation when Johnson's First Amended  
8 Complaint was dismissed, the district admonished Johnson that further pursuit of  
9  
10 her baseless claims would subject her to NRCP Rule 11 sanctions.  
11  
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14 of Attorney's Fees (5 JA 1117-1173) and 11-Reply in Support of Motion for  
15 Award of Attorney's Fees (5 JA 1198-1214).

16 <sup>7</sup> These requests for judicial notice were necessitated due to Johnson's contention  
17 she was inexperienced in real property transactions, that her signature on an  
18 Endorsement removing her from the purchase transaction was a forgery, and that  
19 she did not discover her exclusion from the Deed so as to prevent the statutes of  
20 limitations from running from the date of the recordation of the Deed. To refute  
21 Johnson's self-serving statement, Hatches filed two (2) requests for judicial notice  
22 requesting the district court take judicial notice of numerous deeds and  
23 commensurate notary public journal entries and other public documents  
24 demonstrating Johnson's extensive history of buying and selling real property  
25 valued far in excess of \$10 million and her execution of a multitude of deeds and  
26 associated documents. 1- Request for Judicial Notice [Deeds] (4 JA 951 - 5 JA  
1069) and 2-Requests for Judicial Notice Re: Notary Public Documents and  
Signatures (5 JA 1074-1096).

<sup>8</sup> Hearing to Expunge Lis Pendens (4 JA 940); Hearing on Motion to Dismiss 1<sup>st</sup>  
Amended Complaint (5 JA 1104-1105).

<sup>9</sup> 5 JA 1174-1182.

1 After prevailing, the Hatches filed their Motion for Attorney's Fees seeking  
2 \$68,507.20 in fees incurred and paid by the Hatches to their counsel.<sup>10</sup> The district  
3 court arbitrarily reduced the Hatches' fees from \$68,507.20, to \$15,165.00—a 78%  
4 reduction in the amount of fees sought. The district court's reasoning for its  
5 arbitrary massive reduction in the fees sought was based on the perceived  
6 "unnecessary animus expressed by the Defendants in their pleadings":  
7

8 The unnecessary animus expressed by the Defendants in their  
9 pleadings weighs against a full award. The Court suspects that had the  
10 animus been left out, the parties likely could have avoided the volume and  
11 tenor of the pleadings actually filed.  
12

13 5 JA 1236:16-19. The Hatches contend that the district court's "suspicion" and/or  
14 the tenor of the pleadings is not the responsibility of the Hatches. It arises from the  
15 factually, legally and procedurally baseless nature of Johnson's actions. Further,  
16 denying a request for fees based upon an unsubstantiated subjective "suspicion"  
17 does not comport with Nevada law.  
18

19 On the other hand, Johnson's actions were so egregious the district court  
20 advised Johnson that should she continue to pursue her baseless claims in district  
21 court, the district court would likely grant NRCP Rule 11 sanctions and award  
22 "substantial" fees to Hatches as follows:  
23  
24

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25  
26 <sup>10</sup> The Hatches also requested an award of their costs, which was granted and is not  
part of Hatches' appeal.

1 If in fact there is a motion to dismiss in the future, as I know there  
2 will be, and it is granted, as I fear it may be, the fees that will accrue  
3 to the plaintiff may likely be very substantial, because I likely would  
4 be in the position of finding that pursuant to Rule 11 there was no  
good faith basis for the claims factually.

5 5 JA 1152:11-16.

6  
7 The Hatches prevailed on every single aspect of the baseless litigation  
8 initiated by Johnson. Instead of being made whole with an award of attorney's  
9 fees equal to what they were required to incur, the district court punished the  
10 Hatches and rewarded Johnson for her abusive conduct. In the face of the district  
11 court's arbitrary conduct, this appeal follows.<sup>11</sup>  
12

## 13 **PROCEDURAL BACKGROUND**

### 14 **A. JOHNSON'S ORIGINAL VERIFIED COMPLAINT.**

15  
16 On February 10, 2021, Johnson filed her Original Verified Complaint  
17 ("Original Complaint") and recorded a Lis Pendens (the "Lis Pendens") against the  
18 Hatches' Property. 1 JA 1-67; 68-69.<sup>12</sup> Johnson's Original Complaint attached a  
19 copy of the Hatches' Deed for the Property ("Deed"), which Johnson claimed  
20  
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22  
23 <sup>11</sup> *Compare Anderson v. Melwani*, 179 F.3d 763, 766 (9th Cir. 1999) (a court  
24 "abuses its discretion if it awards . . . attorney's fees under circumstances that make  
25 the award inequitable or unreasonable or fails to award such fees in a situation  
where inequity will not result." (citation omitted)).

26 <sup>12</sup> Johnson sought to impose a pre-judgment lien via the wrongfully recorded Lis  
Pendens trying to recover the amount of \$665,838.40. 2 JA 380:21.

1 wrongfully did not include her as an “owner” of the Property along with the  
2 Hatches. 1 JA 40-46. Johnson made this assertion even though she acknowledged  
3 her signature on an Endorsement removing herself from the transaction whereby  
4 the Hatches solely purchased the home (the “Endorsement”).<sup>13</sup>  
5  
6

7 Johnson affirmed under the penalty of perjury that the Deed attached to her  
8 Original Complaint was a “true and correct copy” of the Deed. 1 JA 3:17-18. On  
9 August 6, 2015, the Deed was recorded with the Washoe County Recorder’s Office  
10 as Document Number 4500519. *Id.* Johnson’s Original Complaint was filed 5  
11 years, 6 months and 4 days after the recordation of the Deed and facially triggered  
12 the applicable statutes of limitations due to Nevada’s constructive notice statute  
13 and case law (triggering the initiation of all statutes of limitations based upon the  
14 recordation of a deed in the public records).<sup>14</sup>  
15  
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18 Of critical import, Johnson judicially admitted three (3) dispositive facts in  
19 her Original Complaint that demonstrated the factually, procedurally, and legally  
20 baseless nature of the action. First, Johnson admitted the Note was an installment  
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23 <sup>13</sup> 1 JA 3, 20-25. Johnson factually alleged the following contradictory facts: her  
24 signature was a forgery, her signature was valid but obtained by false pretenses;  
25 her signature was valid but she did not remember signing it. *Id.*

26 <sup>14</sup> For an analysis of the bar of the applicable statutes of limitations triggered by the  
recordation of the Deed, see 1 JA 129-131.

1 contract and only \$5,614.40 was owed at the time Johnson filed her Original  
2 Verified Complaint. 1 JA 5:18.<sup>15</sup> Second, Johnson admitted that the Deed was  
3 recorded on August 6, 2015, and that she knew of the recordation of the Deed and  
4 even specifically requested a copy of the Deed when it was recorded—thereby  
5 establishing her claims were barred by the applicable statutes of limitations. 1 JA  
6 4, ¶16. Third, Johnson affirmed under penalty of perjury that she had allegedly  
7 made an unsecured “loan” to the Hatches and, therefore, did not have any  
8 ownership interest in the Property supporting the wrongful recordation of the Lis  
9 Pendens.<sup>16</sup> Lastly, Johnson’s Original Complaint did not even allege appropriate  
10 subject matter jurisdiction of the district court as required by NRCP 8(a)(1).  
11

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15 **B. HATCHES’ MOTION TO DISMISS AND MOTION TO**  
16 **EXPUNGE LIS PENDENS.**

17 In response to Johnson’s Original Complaint and the recordation of the Lis  
18 Pendens, Hatches were forced to file a Motion to Dismiss the Original Complaint  
19

20  
21 <sup>15</sup>Compare Nev. Const. art. 6, § 6(1); NRS 4.370 (monetary claims in district court  
22 must exceed \$15,000).

23 <sup>16</sup> 1 JA 8, Orig. Comp., ¶53 (“The Property is believed to be the only possible  
24 source of repayment of the Loan.”). The Nevada Supreme Court has held  
25 Johnson’s conduct to be abusive and inappropriate litigation activity as follows:  
26 “[L]is pendens are not appropriate instruments for use in promoting  
recoveries in actions for personal or money judgments.” *Levinson v. Eighth  
Judicial Dist. Court*, 109 Nev. 747, 750, 857 P.2d 18, 20 (1993) (emphasis  
added)).

1 (“1<sup>st</sup> Motion to Dismiss”)<sup>17</sup> and a Motion to Expunge the Lis Pendens (“Motion to  
2 Expunge”)<sup>18</sup>. The Hatches also filed their Motion for Order Shortening Time to  
3 ensure that the hearing on the Motion to Expunge was timely addressed by the  
4 district court.<sup>19</sup> Subsequently, Hatches filed their corresponding reply briefs in  
5 support of their Motion to Expunge and Motion for Order Shortening Time.<sup>20</sup>  
6  
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8 **C. JOHNSON’S RESPONSE TO HATCHES’ MOTION TO**  
9 **DISMISS AND MOTION TO EXPUNGE LIS PENDENS.**

10 When faced with the Hatches initial Motion to Dismiss and Motion to  
11 Expunge Lis Pendens, Johnson then embarked on a course of action of repeatedly  
12 amending her verified complaint to assert new and more egregious claims for  
13 relief—which claims became more outlandish and contradicted established Nevada  
14 law.  
15  
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17 When faced with the Motion to Dismiss, Johnson immediately filed her  
18 Amended Verified Complaint (“1<sup>st</sup> Amended Complaint”). 1 JA 185 – 2 JA 254.  
19 Johnson’s 1<sup>st</sup> Amended Complaint attempted to plead around the fatal deficiencies  
20 identified in Hatch’s Motion to Dismiss. Johnson also filed an opposition to the  
21  
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23 <sup>17</sup> 1 JA 22-154.

24 <sup>18</sup> 1 JA 90-121.

25 <sup>19</sup> 1 JA 86-89.

26 <sup>20</sup> 3 JA 571-586 and 1 JA 86-89 respectively.

1 Motion to Expunge necessitating further legal fees and costs to be incurred by the  
2 Hatches demanding a hearing on the Hatches' motion.  
3

4 Of critical note, Johnson's 1<sup>st</sup> Amended Complaint sought to avoid the  
5 consequences of pleading the installment note (clearly recognizing the debt on the  
6 alleged installment note did not trigger this Court's subject matter jurisdiction) and  
7 sought to avoid Nevada's constructive notice statute that recordation of a deed  
8 imparts constructive notice triggering the commencement of all statutes of  
9 limitation.<sup>21</sup>  
10  
11

12 Johnson's 1<sup>st</sup> Amended Complaint removed the non-existent pled claim of  
13 "demand on loan documents" and added three (3) new claims including a claim for  
14 an alleged breach of the original Purchase and Sale Agreement (the "PSA") under  
15 which Johnson had voluntarily removed herself from the purchase via execution of  
16 the Endorsement.<sup>22</sup> 1 JA 185 – 2 JA 254.  
17  
18

19 **D. HATCHES' MOTION TO DISMISS 1<sup>ST</sup> AMENDED**  
20 **COMPLAINT.**

21 The Hatches were then forced to file their second motion to dismiss seeking  
22 dismissal of Johnson's 1<sup>st</sup> Amended Complaint demonstrating the original claims  
23

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24 <sup>21</sup> *Bemis v. Bemis*, 114 Nev. 1021, 1026, fn.2, 967 P.2d 437, 441 fn. 2 (1998)  
25 (reiterating the "well-known principal that the public recording of real estate deeds  
26 constitutes constructive notice of the transaction.").

<sup>22</sup> Johnson plead this claim to fabricate a claim based on a 6 year statute of  
limitations so as to avoid dismissal of her action.

1 and all of Johnson’s “new” claims were also factually, legally and procedurally  
2 baseless (the “2<sup>nd</sup> Motion to Dismiss”). 3 JA 698 – 4 JA 773. The Hatches also  
3 were forced to file their reply in support of this motion. 4 JA 876-885. The 2<sup>nd</sup>  
4 Motion to Dismiss detailed the abusiveness of the “new” claims and the factual and  
5 legal reasoning demonstrating not a single “new” claim survived dismissal.  
6

7  
8 The Hatches’ 2<sup>nd</sup> Motion to Dismiss demonstrated that Johnson’s claim of a  
9 breach of the PSA by the Hatches was facially baseless due to seven (7) separate  
10 reasons. 3 JA 714-719. In addition, because Johnson continued to argue that the  
11 recordation of the Deed did not bar her claims because she did not “discover” she  
12 was not on the Deed until only recently, the Hatches had to conduct extensive  
13 research and extensively brief the law of constructive notice—since the issue of  
14 constructive notice was paramount to resolving the dismissal of Johnson’s  
15 claims.<sup>23</sup>  
16  
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18 **E. JOHNSON’S SECOND AMENDED VERIFIED COMPLAINT.**  
19

20 When faced with the Hatches’ 2<sup>nd</sup> Motion to Dismiss, Johnson again refused  
21 to acknowledge the meritless basis of her claims and instead, doubled-down and  
22 filed a Motion for Leave to File Second Amended Complaint (“Motion for Leave”)  
23 seeking leave to file her third iteration of her complaint adding even more claims.  
24

25  
26 <sup>23</sup> A review of the application of constructive notice due to the public recordation  
of the Deed is demonstrated at 3 JA 708-713.



1 Specifically, Johnson sought leave to file her Second Amended Verified Complaint  
2 (“2<sup>nd</sup> Amended Complaint”) alleging three (3) additional and more tenuous claims  
3 against the Hatches.<sup>24</sup> 3 JA 617-697. The Hatches were again forced to file an  
4 opposition to this motion. 4 JA 823-859.  
5

6  
7 **F. HATCHES’ OPPOSITION TO JOHNSON’S MOTION FOR**  
8 **LEAVE TO FILE 2<sup>ND</sup> AMENDED COMPLAINT.**

9 Johnson sought to file her 2<sup>nd</sup> Amended Complaint alleging a breach and  
10 intentional interference with the PSA which again is facially invalid as a matter of  
11 law. For instance, Johnson alleged she had an ownership right in the Hatches  
12 Property because she originally signed the PSA. Johnson filed this claim even  
13 though this contention was specifically rejected by the Nevada Supreme Court in  
14 *Dimick v. Dimick*, 112 Nev. 402, 915 P.2d 254 (1996) when the court held:  
15 “pursuant to NRS 111.105, merely signing a purchase agreement is insufficient to  
16 convey an interest in property.” *Id.* at 407, 915 P.2d at 257. Johnson’s claim also  
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21 <sup>24</sup> Specifically, Johnson alleged a claim for breach of the implied covenant of good  
22 faith and fair dealing in the PSA (a contract to which she was not a party); a claim  
23 for intentional interference with the PSA (which is legally baseless because the  
24 Hatches cannot legally interfere with a contract to which they are a party) and a  
25 claim for reformation of the Deed to include Johnson as an “owner” (which was  
26 baseless because Johnson judicially admitted she made a loan—and, therefore, had  
no ownership interest in the Hatches’ Property). Hatches were forced to research  
and brief the baseless nature of these “new” claims and to rebrief why the  
remaining “old” claims were also subject to dismissal. *See* 4 JA 827-837 (baseless  
natures of “new” claims); 4 JA 837-857 (baseless nature of “old” claims).

1 ignored her execution of the Endorsement voluntarily removing herself from the  
2 transaction. Similarly, Johnson's new claim for reformation was facially barred by  
3 Nevada's three-year statute of limitations. Lastly, Johnson's 1<sup>st</sup> Amended  
4 Complaint also failed to comply with NRCP 8(a)(1)'s provision containing the  
5 mandatory jurisdictional basis of the action.<sup>25</sup>  
6  
7

8 **G. THE HEARING ON HATCHES' MOTION TO EXPUNGE.**

9 On March 22, 2021, the district court conducted oral arguments on Hatches'  
10 Motion to Expunge. The Court found that Johnson's action was an attempt to  
11 collect on a "simple note." 3 JA 613:14. The district court found that Johnson's  
12 Lis Pendens sought "to color" the Hatches title in their Property claiming a security  
13 interest in the Hatches' Property. *Id.* 613:21. Simply stated, the district court  
14 found that Johnson wanted security for repayment of the installment Note. *Id.*,  
15 614:2.  
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19 The district court also recognized that Johnson executed the Endorsement  
20 removing her from any claim of title to the Hatches' Property and that Johnson  
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24 <sup>25</sup> Johnson's proposed 2<sup>nd</sup> Amended Complaint continued to ignore NRCP 8(a)(1)'s  
25 mandatory provision even after the Hatches continued to point out this facial  
26 deficiency in multiple filings with the district court. 4 JA 824:22-23; 4 JA 825:6-7.  
Hatches assert that continuing to file and/or seek to file amended complaints which  
facially violate NRCP 8 demonstrated the abusive conduct by Johnson mandating a  
full award of attorney's fees in favor of the Hatches.

1 specifically admitted she asked for a copy of the recorded Deed. *Id.* 614:8-17. In  
2 granting the Hatches' motion, the Court found:  
3

4 **[T]he plaintiff is [not] likely to prevail or has a fair chance of success**  
5 **given my understanding of the additional legal could relating to the**  
6 **statute of limitations . . . .**

7 **I do not find the plaintiff is likely to prevail or even has a fair chance of**  
8 **success . . . .**

9 *Id.*, 614:19-615:2 (emphasis added).

10 **H. JOHNSON'S MOTION FOR LEAVE TO FILE MOTION FOR**  
11 **RECONSIDERATION.**

12 On May 21, 2021, the district court issued its order for hearing on the  
13 Hatches' 2<sup>nd</sup> Motion to Dismiss and Johnson's Motion to File a 2<sup>nd</sup> Amended  
14 Complaint. 4 JA 925-927. In response, on May 25, 2021, Johnson filed her  
15 Motion for Leave to File Motion for Reconsideration of Order to Set, or,  
16 Alternatively, Request for Clarification of Order to Set. 4 JA 928-936. Hatches  
17 Opposed this unwarranted motion filed by Johnson. 4 JA 941-944. The district  
18 court then entered its Order essentially restating its prior Order and confirming oral  
19 argument was scheduled as stated in its prior order. 5 JA 1070-1073.  
20  
21

22 **I. THE HEARING ON HATCHES' 2<sup>ND</sup> MOTION TO DISMISS**  
23 **AND JOHNSON'S MOTION FOR LEAVE TO FILE 2<sup>ND</sup>**  
24 **AMENDED COMPLAINT.**

25 On July 8, 2021, the Court conducted oral arguments on Hatches' 2<sup>nd</sup>  
26 Motion to Dismiss and Johnson's Motion for Leave to file her 2<sup>nd</sup> Amended

1 Complaint. 5 JA 1104-1105. The Court granted the Hatches' 2<sup>nd</sup> Motion to  
2 Dismiss seeking dismissal of Johnson's 1<sup>st</sup> Amended Complaint for failure to  
3 contain the mandatory jurisdictional statement required by NRCP 8(a)(1). 5 JA  
4 1106-1107. The district court also denied Johnson's Motion to file her 2<sup>nd</sup>  
5 Amended Complaint because her proposed complaint also failed to include the  
6 mandatory jurisdictional statement required by NRCP 8(a)(1). *Id.*

7  
8  
9 The district court denied Johnson's request to file her proposed 2<sup>nd</sup> Amended  
10 Complaint because it violated NRCP 8(a)(1)'s provisions. 5 JA 1106:27.

11  
12 However, the district court allowed Johnson to file a revised 2<sup>nd</sup> Amended  
13 Complaint with the clear admonishment that the court believed filing another  
14 complaint would result in NRCP Rule 11 sanctions and a "substantial" award of  
15 attorney's fees against Johnson stating:

- 16  
17 1. "I expunged the lien in this case, because I believed there was no  
18 legal basis or factual basis for it. I am very deeply concerned all but  
19 one of the plaintiff's proposed claims are precluded by the statute of  
20 limitations and that all of their claims are precluded by the jurisdiction  
21 of the Court." 5 JA 1152:5-7.
- 22 2. "If in fact there is a motion to dismiss in the future, as I know there  
23 will be, and it is granted, as I fear it may be, the fees that will accrue  
24 to the plaintiff may likely be very substantial, because I likely would  
25 be in the position of finding that pursuant to Rule 11 there was no  
26 good faith basis for the claims factually. That is not a statement about  
the lawyers involved. It is instead a statement about the factual  
allegations of the client." *Id.*, 1152: 11-18.

1 The district court's August 2, 2021, Order allowed Johnson 14 days to file a  
2 second amended complaint. 5 JA 1106-1107. Johnson did not file a 2<sup>nd</sup> Amended  
3 Complaint.<sup>26</sup>

4  
5 Accordingly, as of August 2, 2021, Johnson's 1<sup>st</sup> Amended Complaint was  
6 dismissed and no action was pending. Johnson was granted leave to file a second  
7 amended complaint, however, Johnson, finally recognizing the factually and  
8 legally baseless contentions asserted against the Hatches in her pleadings,  
9 conceded the lack of merit. Johnson thereafter filed a putative and facially invalid  
10 Notice of Voluntary Dismissal.  
11  
12

### 13 **FACTUAL BACKGROUND**

14  
15 The factual background of the case is essentially undisputed. A few basic  
16 facts gave rise to the litigation initiated by Johnson. The first category of facts  
17 detailed below will demonstrate the factually, legally and procedurally baseless  
18  
19

---

20 <sup>26</sup>Rather than file a 2<sup>nd</sup> Amended Complaint, Johnson filed a purported NRCP 41  
21 Notice of Voluntary Dismissal on August 12, 2021. 5 JA 1114-1116. However,  
22 Hatches contend such filing was procedurally improper because no action was  
23 pending since the prior complaint had been dismissed by the district court. Next,  
24 NRCP 41 requires as a condition precedent to a voluntary dismissal the payment of  
25 the Hatches' filing fees incurred in the action. NRCP 41(a)(1)(C). Johnson never  
26 paid the Hatches' filing fees as required by NRCP 41(a)(1)(C) to effectuate a  
NRCP 41 voluntary dismissal. 5 JA 1119, fn. 1. Accordingly, Hatches contend the  
Notice of Voluntary Dismissal is a legally nullity. However, Hatches do contend  
that the filing of this document constituted Johnson's recognition her action was  
frivolous mandating a full award of attorney's fees and costs in the Hatches' favor.

1 nature of Johnson's lawsuit. The second category of facts will focus upon the  
2 extensive attorney's fees incurred in responding to Johnson's egregious and  
3 abusive litigation behavior.  
4

5 **A. JOHNSON'S LITIGATION ABUSES.**  
6

7 Johnson's Original Verified Complaint attached the Deed and included  
8 Johnson's acknowledgement she was aware of the recordation of the Deed on  
9 August 6, 2015. This facially established Johnson's claims were timed barred by  
10 the applicable three or four year statutes of limitation except the claim on the  
11 installment Note which was six years. 1 JA 129-138. However, the amount  
12 claimed under the installment contract was well below the district court's subject  
13 matter jurisdiction. 1 JA 132-133. Johnson also asserted as her 2<sup>nd</sup> claim a claim  
14 for "Demand on Loan Documents", which claim was legally nonexistent. 1 JA  
15 126.  
16  
17

18 Further, Johnson contradictory claimed she was both a lender yet claimed  
19 an ownership in the Hatches' Property. 5 JA 1121. Johnson also claimed as  
20 contradictory "facts" that the Endorsement removing her from the PSA was a  
21 forgery, was valid and obtained by false pretenses and was valid but Johnson just  
22 didn't remember signing it. 1 JA 3:20-27. Johnson's Original Verified  
23 Complaint also failed to include the mandatory jurisdiction requirement detailed  
24 in NRCP 8(a)(1). 4 JA 824:22-23.  
25  
26

1 Johnson filed her Lis Pendens based upon the foregoing factually, legally  
2 and procedurally baseless complaint solely to secure a source of funds upon  
3 which she could try to execute in the amount of \$665,838.40. 1 JA 8, ¶53 (“The  
4 Property is believed to be the only possible source of repayment of the Loan.”); 2  
5 JA 308:21. Johnson’s conduct was a clear breach of Nevada law holding the  
6 filing of a lis pendens simply to recover in actions for money judgments is  
7 abusive. *Levinson v. Eighth Judicial Dist. Court*, 109 Nev. 747, 750, 857 P.2d  
8 18, 20 (1993) (“[L]is pendens are not appropriate instruments for use in  
9 promoting recoveries in actions for personal or money judgments.”  
10 (emphasis added)). The district court agreed that Johnson’s conduct was facially  
11 abusive and entered its order expunging the Lis Pendens.<sup>27</sup>

12 When faced with Hatches’ Motion to Dismiss and Motion to Expunge,  
13 Johnson filed an even more aggressive 1<sup>st</sup> Amended Complaint. 1 JA 185 – 2 JA  
14 254. Demonstrating the abusive nature of Johnson’s lawsuit, Johnson then  
15 alleged that the installment note was an accelerated debt because the Hatches had  
16 anticipatorily repudiated the obligation. 1 JA 190:14-21. Johnson’s allegations  
17 ignored Nevada law’s adoption of the Restatement (Second) of Contracts Section  
18  
19  
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22  
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26 <sup>27</sup> 5 JA 1152:5-7 (“I expunged the lien in this case, because I believed there was no  
legal basis or factual basis for it.”).

1 243 (holding that an installment loan cannot be accelerated by claiming  
2 anticipatory repudiation).<sup>28</sup>  
3

4 Johnson's Original Complaint contained 7 causes of action. 1 JA 1-67.  
5 Johnson's 1<sup>st</sup> Amended Complaint dropped the "demand on loan documents"  
6 claim and added another 3 new claims for a total of 10 claims having been  
7 asserted. 1 JA 185 – 2 JA 254. Johnson's proposed 2<sup>nd</sup> Amended Complaint  
8 sought to add three additional claims. 3 JA 624-642.  
9

10 **B. HATCHES' LEGAL FEES INCURRED.**  
11

12 The Hatches' attorney's fees were detailed at 5 JA 1158-1163 and 5 JA  
13 1214. The fees incurred commenced at the initiation with client meetings and  
14 consultation all the way through this appeal. Each activity performed by the  
15 Hatches' attorneys was documented with time entries. While there were  
16 contentions of duplicate billing, a review of the time entries show no duplicate  
17 billing occurred.  
18

19  
20 Further, Johnson's objection to the requested fees was merely a generalized  
21 objection that the amounts sought were excessive and/or certain arguments in  
22 briefs were duplicative of prior briefing. 5 JA 1206. While some of the briefing  
23  
24

25  
26 

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<sup>28</sup> See 3 JA 720-722 for Hatches' analysis of the applicability of §243 barring  
Johnson's claim of anticipatory repudiation as a basis to accelerate the total debt  
under an installment contract.



1 submitted to the district court contained duplication of prior briefing, the billing  
2 entries demonstrate that the work performed for each of the various briefs  
3 prepared contained distinct legal research and analysis due to Johnson's ever-  
4 expanding claims and arguments presented. The district court ignored Johnson's  
5 ever-expanding claims and legal theories presented.  
6  
7

## 8 **SUMMARY OF THE ARGUMENT**

9 The Hatches argue the district court's arbitrary reduction of Hatches'  
10 attorney's fees sought from \$68,507.20 to \$15,165 was an abuse of discretion.<sup>29</sup>  
11

## 12 **ARGUMENT**

### 13 **I. STANDARD OF REVIEW.**

14 This appeal presents the issue of whether the district court abused its  
15 discretion in reducing the attorney's fees awarded to the Hatches by 78% of the  
16 amount requested—*i.e.*, from \$68,507.20 to \$15,165.00. The standard of review is  
17 abuse of discretion. *Collins v. Murphy*, 113 Nev. 1380, 1383, 951 P.2d 598, 600  
18 (1997) ("It is well settled that an award of attorney's fees to a prevailing party  
19 under NRS 18.010(2)(a) is within the discretion of the district court.").

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22  
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24  
25 <sup>29</sup> The Hatches' Opening Motion requested an award of fees in the amount of  
26 \$62,731.50 and noted additional fees incurred would be included in the reply brief  
would also be supplemented. 5 JA 1135. The Hatches' reply brief included the  
request for an additional \$5,775.70 in attorney's fees totaling the request of  
\$68,507.20. 5 JA 1207.

1 A district court abuses its discretion, however, if it acts arbitrary or  
2 capricious in its analysis to award or deny attorney's fees. *See e.g., Schouweiler v.*  
3 *Yancey Co.*, 101 Nev. 827, 833, 712 P.2d 786, 790 (1985) (district court commits  
4 error if its "exercise of discretion is arbitrary or capricious."). Further, "where a  
5 trial court exercises its discretion in clear disregard of the guiding legal principles"  
6 the district court abuses its discretion. *Bergmann v. Boyce*, 109 Nev. 670, 674, 856  
7 P.2d 560, 563 (1993).

## 8 **II. NRS 18.010(2)(b) ATTORNEY'S FEES INCURRED.**

### 9 **A. NEVADA'S PUBLIC POLICY.**

10 Nevada's Legislature has made it abundantly clear that it is public policy to  
11 deter frivolous litigation by *shifting the burden of defending frivolous litigation to*  
12 *the wrongdoer*. This policy was aptly discussed in 2003 when the Legislature  
13 enhanced the application of NRS 18.010(2)(b) by instructing Courts to "liberally"  
14 award attorney's fees in all "appropriate situations":

15 **to punish for and deter frivolous or vexatious claims and defenses**  
16 **because such claims and defenses overburden limited judicial resources,**  
17 **hinder the timely resolution of meritorious claims and increase the costs**  
18 **of engaging in business and providing professional services to the**  
19 **public.**

20 NRS 18.010(2)(b) (emphasis added); *see also Barnes v. Eighth Judicial Dist. Ct.*,  
21 103 Nev. 679, 682, 748 P.2d 483, 486 (1987) (imperative to have "economic  
22 deterrents to filing frivolous lawsuits . . .").  
23  
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1 In the present case, the district court repeatedly held that Johnson's claims  
2 were factually, legally and procedurally baseless.<sup>30</sup> Accordingly, the focus then  
3 shifts to the appropriateness of what the consequences are—*i.e.*, the amount of  
4 attorney's fees incurred by the Hatches in defending against the baseless claims  
5 asserted by Johnson. Johnson sought over \$665,000 in damages and to impose a  
6 Lis Pendens on the Hatches' Property. The Hatches prevailed and incurred  
7 approximately 10% of the amount at issue in attorney's fees.  
8

9  
10  
11 **III. NO OBJECTIVE ANALYSIS OF THE ATTORNEY'S FEES**  
12 **REQUESTED.**

13 The district court arbitrarily reduced the Hatches' fees from \$68,507.20, to  
14 \$15,165.00 based on the perceived "unnecessary animus expressed by the  
15 Defendants in their pleadings":  
16

17 The unnecessary animus expressed by the Defendants in their  
18 pleadings weighs against a full award. The Court suspects that had the  
19 animus been left out, the parties likely could have avoided the volume and  
20 tenor of the pleadings actually filed.

21 5 JA 1236:16-19. Further, denying a request for fees based upon an  
22 unsubstantiated subjective "suspicion" does not comport with Nevada law or with  
23

24  
25 <sup>30</sup> 5 JA 1152:5-7 ("I expunged the lien in this case, because I believed there was no  
26 legal basis or factual basis for it."). The district court also denied Johnson's  
request to file her proposed 2<sup>nd</sup> Amended Complaint because it failed to comply  
with NRCP 8(a)(1)'s mandate. 5 JA 1106:26-27.

1 the predicates of NRS 18.010(2)(b). In further support, the district court explained  
2 that due to Johnson’s egregious conduct, it would likely grant NRCP Rule 11  
3 sanctions and award “substantial” fees to Hatches as follows:  
4

5       If in fact there is a motion to dismiss in the future, as I know there  
6       will be, and it is granted, as I fear it may be, the fees that will accrue  
7       to the plaintiff may likely be very substantial, because I likely would  
8       be in the position of finding that pursuant to Rule 11 there was no  
9       good faith basis for the claims factually.

10 5 JA 1152:11-16.

11       The Hatches prevailed on every single aspect of the baseless litigation  
12 initiated by Johnson. Instead of being made whole with an award of attorney’s  
13 fees equal to what they were required to incur, the district court punished the  
14 Hatches and rewarded Johnson for her abusive conduct necessitating this appeal.  
15

#### 16 **IV. NO *SCHOUWEILER* ANALYSIS.**

17       The district court found that the Hatches were the prevailing party for  
18 purposes of NRS 18.10(2)(b) because “[Johnson’s] claims were brought without  
19 reasonable grounds” and Johnson wrongfully pursued a lis pendens for use in  
20 promoting a recovery for a money judgment. 5 JA 1235:21-26. The district court  
21 also found that the Hatches prevailed because they “succeeded in expunging the  
22 lien on the property and revealing the defects in the [Johnson’s] claims . . . .” Id.  
23 1236:5-7.  
24  
25  
26

1 In determining whether the requested attorney fees and costs are reasonable,  
2 the district court is required to consider: (1) the qualities of the advocate; (2) the  
3 character of the work to be done; (3) the work actually performed; and (4) the  
4 result. *Schouweiler v. Yancy Co.*, 101 Nev. 827, 712 P.2d 786, 790 (1985). The  
5 district court did not conduct an analysis of the foregoing factors mandating  
6 reversal and remand.  
7

8  
9 Second, although the district court awarded the Hatches \$10,665.00<sup>31</sup> in  
10 defending against the improper recordation of the Lis Pendens against the Hatches'  
11 Property, the district court arbitrarily and subjectively awarded 10 hours at the  
12 reduced hourly rate of \$450 per hour for all other activities performed. *Id.*, 5 JA  
13 1237:6-7. The district court's reasoning for its award is facially arbitrary and  
14 capricious and was based on pure speculative conduct by the judge.  
15  
16

17 The district court's reasoning for its arbitrary massive reduction in the fees  
18 sought was based on the perceived "unnecessary animus expressed by the  
19 Defendants in their pleadings . . . [which] [t]he Court suspects that had the animus  
20 been left out, the parties likely could have avoided the volume and tenor of the  
21 pleadings actually filed." 5 JA 1236:16-19. The Hatches contend that the district  
22  
23  
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25  
26

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<sup>31</sup> 23.7 hours at the reduced rate of \$450.00 per hour. 5 JA 1237:5-6.

1 court's "suspicion" and/or the court's perceived tenor of the pleadings is not  
2  
3 proper grounds to deny the request for fees incurred by the Hatches.

4 Yes, the Hatches' eleven briefs, two requests for judicial notice,  
5 participation in two (2) hearings and the filing of a memorandum of costs were all  
6 *responsive to conduct initiated by Johnson*. The Hatches were not the aggressors.  
7  
8 The Hatches simply defended against abusive and baseless claims asserted by  
9  
10 Johnson.

11 Johnson's conduct was so egregious the district court admonished Johnson  
12 further litigation would subject her to a "substantial" award of attorney's fees  
13 pursuant to NRCP 11. Yet when faced with the Hatches' motion for fees, the  
14 district court arbitrarily reduced the Hatches' fee request by 78%. The Hatches  
15 sought recovery of their attorney's fees which were merely 10% of the amount of  
16  
17 Johnson's total claim of \$665,000. It is suggested that an award of fees in the  
18 amount of 10% in successfully defending against a claim is reasonable and  
19  
20 justified under NRS 18.010(2)(b) and the basis to deny the requested fees was  
21  
22 arbitrary, capricious and in contravention of the procedural safeguards imposed by  
23  
24 Nevada law.

1 Third, the district court's ruling violates Nevada's public policy supporting a  
2 full award of fees in favor of the Hatches. The Nevada Legislature instructed  
3 courts to "liberally" award attorney's fees in all "appropriate situations":

4  
5 **to punish for and deter frivolous or vexatious claims and defenses**  
6 **because such claims and defenses overburden limited judicial resources,**  
7 **hinder the timely resolution of meritorious claims and increase the costs**  
8 **of engaging in business and providing professional services to the**  
9 **public.**

10 NRS 18.010(2)(b) (emphasis added); *see also Barnes v. Eighth Judicial Dist. Ct.*,  
11 103 Nev. 679, 682, 748 P.2d 483, 486 (1987) (imperative to have "economic  
12 deterrents to filing frivolous lawsuits . . .").

13 The district court repeatedly held that Johnson's claims were factually,  
14 legally and procedurally baseless.<sup>32</sup> Yet, the district court's decision to arbitrarily  
15 reduce the award of fees to the Hatches by 78% violates Nevada's public policy  
16 and rewarded Johnson for pursuing frivolous and vexations claims against the  
17 Hatches. Further, the district court's analysis did not comply with the analysis  
18 enunciated in *Schouweiler v. Yancy Co.*, 101 Nev. 827, 712 P.2d 786, 790 (1985).  
19  
20

## 21 CONCLUSION

22  
23 Based upon the foregoing, the Hatches request this Court reverse and  
24 remand this matter back to the district court with instructions to award attorney's  
25

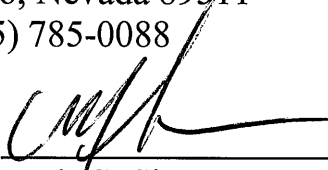
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26 <sup>32</sup> See footnote 30.

1 fees in favor of the Hatches consistent with the policy stated in NRS 18.010(2)(b)  
2  
3 and the factors enunciated in *Schouweiler v. Yancy Co.*, 101 Nev. 827, 712 P.2d  
4 786, 790 (1985).

5 DATED this 3<sup>rd</sup> day of March, 2022.

6  
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**CERTIFICATE OF COMPLIANCE  
PURSUANT TO RULE 28.2**

1. I hereby certify that this brief complies with the formatting requirements of NRAP 32(a)(4), the typeface requirements of NRAP 32(a)(5), and the type style requirements of NRAP 32(a)(6) because:

This brief has been prepared in a proportionally spaced typeface using Microsoft Word in 14 font and Times New Roman type.

2. I further certify that this brief complies with the page- or type-volume limitations of NRAP 32(a)(7) because, excluding the parts of the brief exempted by NRAP 32(a)(7)(C), it is proportionately spaced, has a typeface of 14 points or more, and contains 5,827 words.

3. Finally, I hereby certify that I have read this brief, and to the best of my knowledge, information, and belief, it is not frivolous or interposed for any improper purpose. I further certify that this brief complies with all applicable Nevada Rules of Appellate Procedure, in particular NRAP 28(e)(1), which requires every assertion in the brief regarding matters in the record to be supported by a reference to the page and volume number, if any, of the transcript or appendix where the matter relied on is to be found. I understand that I may be subject to

///

///

1 sanctions in the event that the accompanying brief is not in conformity with the  
2 requirements of the Nevada Rules of Appellate Procedure.  
3

4 DATED this 3<sup>rd</sup> day of March, 2022.

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JODI ALHASAN