

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. 1

Bradley J. Hofland, Esq.
HOFLAND & TOMSHECK
228 S. 4th Street, First Floor
Las Vegas, Nevada 89101

702-895-6760

Attorney for Petitioner

Electronically Filed
Oct 25 2021 08:23 a.m.
Elizabeth A. Brown
Clerk of Supreme Court

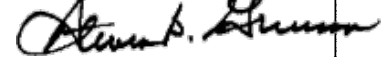
CASE NO.:

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

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CASE NO: D-19-596071-D
Department: To be determined

COMD
STEINBERG & DAWSON LAW GROUP
DANIELLE DAWSON, ESQ.
Nevada Bar No. 11792
4270 S. Decatur Blvd., Suite B10
Las Vegas, Nevada 89103
Telephone: (702) 384-9664
Facsimile: (702) 384-9668
Email: danielle@steinberglawgroup.com
Attorney for Plaintiff

DISTRICT COURT, FAMILY DIVISION
CLARK COUNTY, NEVADA

TESSIE E. WILKINSON,)	
)	
Plaintiff,	)	CASE NO:
vs.	)	DEPT NO:
)	
RODNEY WILKINSON,)	
)	
Defendant.)	

COMPLAINT FOR DIVORCE

COMES NOW the Plaintiff, **TESSIE E. WILKINSON**, by and through her legal counsel **DANIELLE DAWSON, ESQ.**, of the **STEINBERG & DAWSON LAW GROUP** and files her complaint against the Defendant, **RODNEY WILKINSON**, and alleges as follows:

I.

That Plaintiff has been physically present and domiciled in, and an actual, bona fide resident of the State of Nevada, County of Clark for more than six (6) weeks immediately preceding the commencement of this action.

II.

That Plaintiff and Defendant were duly and legally married on March 22, 2008 in Burlington, Colorado and have been since that time, and are at the present time, husband and wife.

1 **III.**

2 That there are no minor children born to the issue of this marriage. To the Plaintiff's
3 knowledge, she is not pregnant at this time and the parties have not adopted any minor children.
4

5 **IV.**

6 That there are sole and separate properties of each of the parties to be confirmed as the
7 sole and separate properties of each of the parties by the Court.

8 **VIII.**

9 That there is community property of the parties to be equitably divided and adjudicated
10 by the Court.
11

12 **IX.**

13 That there are community debts of the parties to be equitably divided and adjudicated by
14 the Court.

15 **X.**

16 That the Plaintiff be awarded spousal support/alimony from the Defendant.
17

18 **XIII.**

19 That Plaintiff has been compelled to obtain the services of an attorney to prosecute this
20 action, and is therefore entitled to reasonable attorney's fees and costs.

21 **XIV.**

22 That Plaintiff and the Defendant are incompatible in their tastes, natures, views, likes and
23 dislikes, which have become widely separate and divergent so that the parties hereto have been,
24 and now are, incompatible to such an extent that it now appears that there is no possibility of
25 reconciliation between Plaintiff and Defendant, and that a happy marital status can no longer
26 exist.
27
28

1 **WHEREFORE, PLAINTIFF** prays for judgment of this Court which:

- 2 1. Wholly dissolves the bonds of matrimony now and heretofore existing between
3 the parties and that the parties, and each of them, be restored to the status of single
4 unmarried person;
5
6 2. Confirms the sole and separate properties of each of the parties;
7
8 3. Equitably divides the community property of the parties;
9
10 4. Equitably divides the community debts of the parties;
11
12 5. Orders the Defendant to pay the Plaintiff spousal support/alimony;
13
14 6. Orders the Defendant to pay the Plaintiff's reasonable attorney's fees and her
15 costs of Court; and
16
17 7. For such other and further relief as the Court may deem just and proper in the
18 premises.

19 **DATED** this 6 day of September, 2019.

20 **STEINBERG & DAWSON LAW GROUP**

21 
DANIELLE DAWSON, ESQ.

22 Nevada Bar No. 11792
23 4270 S. Decatur Blvd., Suite B10
24 Las Vegas, Nevada 89103
25 Attorney for Plaintiff
26
27
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VERIFICATION

TESSIE E. WILKINSON, being first duly sworn upon her oath, deposes and states:

1. That I am over the age of 18 years and I am competent to testify as to the matters contained in this Affidavit.

2. That I am the Plaintiff in the above-entitled action; that I have read the above and foregoing Complaint for Divorce and know the contents thereof; the same is true of my own knowledge, except for those matters therein stated on information and belief, and as to those matters, I believe them to be true.

3. That I have lived in Nevada for at least six (6) weeks prior to the filing of the Complaint for Divorce.

4. That I have read the Complaint for Divorce and can testify that all of the allegations contained therein are true.

5. That the Defendant and I are incompatible in marriage.


6. That there is no possibility that the Defendant and I will reconcile.

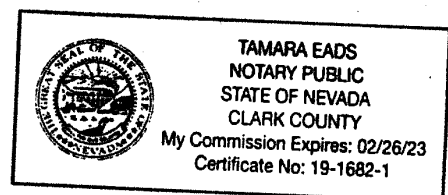
DATED this 6th day of September, 2019.

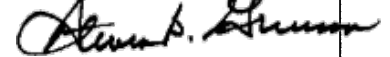

TESSIE E. WILKINSON

STATE OF NEVADA)
) ss:
COUNTY OF CLARK)

SUBSCRIBED and SWORN to before me this 6th day of September, 2019.


NOTARY PUBLIC in the State of Nevada, County of Clark





1 **RSSD**
2 **STEINBERG & DAWSON LAW GROUP**
3 **DANIELLE DAWSON, ESQ.**
4 Nevada Bar No. 11792
5 4270 S. Decatur Blvd., Suite B10
6 Las Vegas, Nevada 89103
7 Telephone: (702) 384-9664
8 Facsimile: (702) 384-9668
9 Email: Danielle@steinberglawgroup.com
10 Attorney for Plaintiff

CASE NO: D-19-596071-D
Department: To be determined

DISTRICT COURT
FAMILY DIVISION
CLARK COUNTY, NEVADA

10 **TESSIE E. WILKINSON,**)
11) CASE NO:
12 Plaintiff,) DEPT NO:
13 vs.)
14)
15 **RODNEY WILKINSON,**)
16)
17 Defendant.)

REQUEST FOR ISSUANCE OF JOINT PRELIMINARY INJUNCTION

18 I respectfully request that the Court issue a Joint Preliminary Injunction in the above-
19 entitled action pursuant to EDCR 5.517.

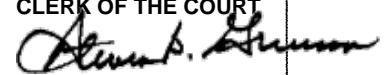
20 **DATED** this 9 day of September, 2019.

STEINBERG & DAWSON LAW GROUP



DANIELLE DAWSON, ESQ.

Nevada Bar No. 11792
4270 S. Decatur Blvd., Suite B10
Las Vegas, Nevada 89103
Attorney for Plaintiff



JPI

DISTRICT COURT
CLARK COUNTY, NEVADA

TESSIE E WILKINSON, PLAINTIFF CASE NO: D-19-596071-D
VS. DEPARTMENT G
RODNEY WILKINSON, DEFENDANT.

JOINT PRELIMINARY INJUNCTION

Notice: This injunction is effective upon the requesting party when issued and against the other party when served. This injunction shall remain in effect from the time of its issuance until trial or until dissolved or modified by the court.

TO: Plaintiff and Defendant:

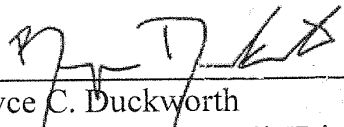
PURSUANT TO EIGHTH JUDICIAL COURT RULE 5.517, YOU, AND ANY OFFICERS, AGENTS, SERVANTS, EMPLOYEES OR A PERSON IN ACTIVE CONCERT OR PARTICIPATION WITH YOU, ARE HEREBY PROHIBITED AND RESTRAINED FROM:


1. Transferring, encumbering, concealing, selling or otherwise disposing of any of your joint, common or community property of the parties or any property which is the subject of a claim of community interest, except in the usual course of conduct or for the necessities of life or for retention of counsel for the case in which this Injunction is obtained; or cashing, borrowing against, canceling, transferring, disposing of, or changing the beneficiaries of;
 - a. Any retirement benefits or pension plan held for the benefit (or election for benefit) of the parties or any minor child; or
 - b. Any insurance coverage, including life, health, automobile, and disability coverage;
- without the written consent of the parties or the permission of the court.

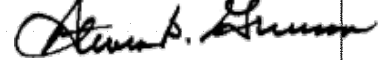
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- 2. Molesting, harassing, stalking, disturbing the peace of or committing an assault or battery on the person of the other party or any child, stepchild, other relative or family pet of the parties.
- 3. Relocating any child of the parties under the jurisdiction of the State of Nevada from the state without the prior written consent of all parties with custodial rights or the permission of the court.

DATED this 11th day of September, 2019:


Bryce C. Duckworth
Presiding Judge, Family Division





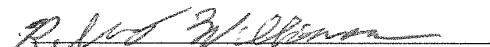
1 **ACPT**
2 **STEINBERG & DAWSON LAW GROUP**
3 **DANIELLE DAWSON, ESQ.**
4 Nevada Bar No. 11792
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6 Las Vegas, Nevada 89103
7 Telephone: (702) 384-9664
8 Facsimile: (702) 384-9668
9 Email: danielle@steinberglawgroup.com
10 Attorney for Plaintiff

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DISTRICT COURT
FAMILY DIVISION
CLARK COUNTY, NEVADA

10 **TESSIE E. WILKINSON,**)
11)
12 Plaintiff,) CASE NO: D-19-596071-D
13) DEPT NO: G
14 vs.)
15)
16 **RODNEY WILKINSON,**)
17)
18 Defendant.)

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ACCEPTANCE OF SERVICE

17 **RODNEY WILKINSON**, hereby Accepts Service of the **COMPLAINT FOR**
18 **DIVORCE, JOINT PRELIMINARY INJUNCTION and SUMMONS** in the above-
19 captioned matter, on this 25 day of November, 2019.

22
23 
24 **RODNEY WILKINSON**
25 613 Eagle drive Apt 36
26 Newtown, ND 58763
27 Defendant in Proper Person
28

Steven D. Grierson

1 **DFLT**
2 **STEINBERG & DAWSON LAW GROUP**
3 **DANIELLE DAWSON, ESQ.**
4 Nevada Bar No. 11792
5 4270 S. Decatur Blvd., Suite B10
6 Las Vegas, Nevada 89103
7 Telephone: (702) 384-9664
8 Facsimile: (702) 384-9668
9 Email: danielle@steinberglawgroup.com
10 Attorney for Plaintiff

DISTRICT COURT, FAMILY DIVISION
CLARK COUNTY, NEVADA

11 **TESSIE E. WILKINSON,**

12 Plaintiff,

13 vs.

14 **RODNEY WILKINSON,**

15 Defendant.

CASE NO: D-19-596071-D

DEPT NO: G

DEFAULT

16 It appearing from the files and records in the above entitled action that **RODNEY**
17 **WILKINSON**, Defendant herein, being duly served with a copy of the Summons and Complaint
18 on November 25, 2019; that more than 20 days, exclusive of the day of service, having expired
19 since service upon Defendant; that no Answer or other appearance having been filed; no further
20 time having been granted; no response being received, the default of **RODNEY WILKINSON**
21 for failing to Answer or otherwise plead to Plaintiff's Complaint is hereby entered.

22 **STEVEN D. GRIERSON**
23 **CLERK OF COURT**

24 By: *Desiree Darris*
25 Deputy Clerk

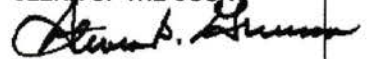
Desiree Darris

Date
12/20/2019

26 **STEINBERG & DAWSON LAW GROUP**

Electronically Issued

27 **DANIELLE DAWSON, ESQ.**
28 Nevada Bar No. 11792
Attorney for Plaintiff



1 **SAO**
2 **STEINBERG & DAWSON LAW GROUP**
3 **BRIAN J. STEINBERG, ESQ.**
4 Nevada Bar No. 5787
5 **DANIELLE DAWSON, ESQ.**
6 Nevada Bar No. 11792
7 4270 S. Decatur Blvd., Suite B10
8 Las Vegas, Nevada 89103
9 Telephone: (702) 384-9664
10 Facsimile: (702) 384-9668
11 Email: brian@steinberglawgroup.com
12 Email: danielle@steinberglawgroup.com
13 Attorney for Plaintiff

DISTRICT COURT
FAMILY DIVISION
CLARK COUNTY, NEVADA

12 **TESSIE E. WILKINSON,**
13 Plaintiff,

CASE NO: D-19-596071-D
DEPT NO: G

14 vs.

15 **RODNEY WILKINSON,**
16 Defendant.

18
19 **STIPULATION AND ORDER TO SET ASIDE DEFAULT**

20 **COMES NOW** the Plaintiff, **TESSIE E. WILKINSON**, by and through her attorney of
21 record, **DANIELLE DAWSON, ESQ.** of **STEINBERG & DAWSON LAW GROUP**, and the
22 Defendant, **RODNEY WILKINSON**, in proper person, and do hereby set forth the parties
23 Stipulation and Order as follows:
24

25 WHEREAS the Default was filed on December 20, 2019.

26 WHEREAS the parties agree to set aside the Default.

27 **RECEIVED**

JAN 23 2020

Department G

SAO
STEINBERG & DAWSON LAW GROUP
BRIAN J. STEINBERG, ESQ.
Nevada Bar No. 5787
DANIELLE DAWSON, ESQ.
Nevada Bar No. 11792
4270 S. Decatur Blvd., Suite B10
Las Vegas, Nevada 89103
Telephone: (702) 384-9664
Facsimile: (702) 384-9668
Email: brian@steinberglawgroup.com
Email: danielle@steinberglawgroup.com
Attorney for Plaintiff

DISTRICT COURT
FAMILY DIVISION
CLARK COUNTY, NEVADA

TESSIE E. WILKINSON,

Plaintiff,

VS.

RODNEY WILKINSON,

Defendant.

CASE NO: D-19-596071-D
DEPT NO: G

STIPULATION AND ORDER TO SET ASIDE DEFAULT

COMES NOW the Plaintiff, **TESSIE E. WILKINSON**, by and through her attorney of record, **DANIELLE DAWSON, ESQ.** of **STEINBERG & DAWSON LAW GROUP**, and the Defendant, **RODNEY WILKINSON**, in proper person, and do hereby set forth the parties Stipulation and Order as follows:

WHEREAS the Default was filed on December 20, 2019.

WHEREAS the parties agree to set aside the Default.


RECEIVED

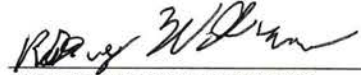
JAN 23 2020

Department G

1 **IT IS HEREBY STIPULATED** that the Default filed on December 20, 2019 shall be set
2 aside. The Answer shall be filed on or before February 14, 2020.

3 **STEINBERG & DAWSON LAW GROUP**

4
5 
6 **DANIELLE DAWSON, ESQ.**
7 Nevada Bar No. 11792
8 4270 S. Decatur Blvd., Suite B10
9 Las Vegas, Nevada 89103
10 Attorney for Plaintiff

11 
12 **RODNEY WILKINSON**
13 613 Eagle Drive Apt 36
14 Newtown, ND58763
15 Defendant in Proper Person

16 **ORDER**

17 **UPON THE FOREGOING STIPULATION** of the parties, appearing to be a proper case
18 therefore:

19 **IT IS HEREBY ORDERED** that the foregoing stipulation of the parties is adopted as an
20 order of the Court.


21 **IT IS FURTHER ORDERED** that the Default filed on December 20, 2019 shall be set
22 aside. The Answer shall be filed on or before February 14, 2020.

23 **DATED AND DONE** this 27 day of January, 2020.

24 
25 **DISTRICT JUDGE**

26 Rhonda K. Forsberg

27 **STEINBERG & DAWSON LAW GROUP**

28 
29 **DANIELLE DAWSON, ESQ.**
30 Nevada Bar No. 11792
31 Attorney for Plaintiff

Electronically Filed
01/28/2020

Heather J. Finner
CLERK OF THE COURT

ADAS

Your Name: Rodney Wilkinson
Address: 613 Eagle Dr Apt 36
City, State, Zip: Newtown, ND 58763
Phone: 785-821-4700
Email: _____
Self-Represented Defendant

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Tessie E Wilkinson
Plaintiff,
vs.
Rodney Wilkinson
Defendant.

CASE NO.: D-19-596071-D
DEPT NO.: G

ANSWER TO COMPLAINT FOR DIVORCE

Defendant (your name) Rodney E. Wilkinson, respectfully states:

1. Defendant admits the following allegations: (write the paragraph numbers from the Complaint you agree with) I, II, III, IV, VII, IX, X, XIII, XIV, 1, 2, 3, 4, 5, 6, 7
2. Defendant denies the following allegations: (write the paragraph numbers from the Complaint you disagree with) _____
3. Defendant is without sufficient knowledge to admit or deny the following allegations: (write the paragraph numbers you are unsure about) _____

Defendant requests:

1. That the marriage existing between Plaintiff and Defendant be dissolved and that Defendant be granted an absolute Decree of Divorce and that each of the parties be restored to the status of a single, unmarried person; and
2. For such other relief as the Court finds to be just and proper.

DATED this (day) 16th day of (month) January, 2020.

Submitted By: (your signature) ▶ Rodney E. Wilkinson
(print your name) Rodney E. Wilkinson

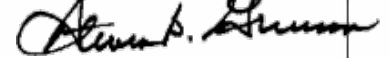
VERIFICATION

Under penalty of perjury, I declare that I am the Defendant in the above-entitled action; that I have read the foregoing Answer and know the contents thereof; that the pleading is true of my own knowledge, except for those matters therein contained stated upon information and belief, and that as to those matters, I believe them to be true.

I declare under penalty of perjury under the law of the State of Nevada that the foregoing is true and correct.

DATED this (day) 16th day of (month) January, 2020.

Submitted By: (your signature) ▶ Rodney E. Wilkinson
(print your name) Rodney E. Wilkinson



1 **NEOJ**
2 **STEINBERG & DAWSON LAW GROUP**
3 **DANIELLE DAWSON, ESQ.**
4 Nevada Bar No. 11792
5 4270 S. Decatur Blvd., Suite B10
6 Las Vegas, Nevada 89103
7 Telephone: (702) 384-9664
8 Facsimile: (702) 384-9668
9 Email: danielle@steinberglawgroup.com
10 Attorney for Plaintiff

DISTRICT COURT
FAMILY DIVISION
CLARK COUNTY, NEVADA

11 **TESSIE E. WILKINSON,**

12 Plaintiff,

13 vs.

14 **RODNEY WILKINSON,**

15 Defendant.

CASE NO: D-19-596071-D

DEPT NO: G

16 **NOTICE OF ENTRY OF STIPULATION AND ORDER TO SET ASIDE DEFAULT**

17 **PLEASE TAKE NOTICE** that a Stipulation and Order to Set Aside Default was entered
18 in the above-captioned matter on the 28th day of January 2020, a true and correct copy of which
19 is attached hereto.

20 **DATED** this 28 day of January 2020.

21 **STEINBERG & DAWSON LAW GROUP**



22 **DANIELLE DAWSON, ESQ.**

23 Nevada Bar No. 11792
24 4270 S. Decatur Blvd., Suite B10
25 Las Vegas, Nevada 89103
26 Telephone: (702) 384-9664
27 Facsimile: (702) 384-9668
28 Email: Danielle@steinberglawgroup.com
Attorney for Plaintiff

1 CERTIFICATE OF SERVICE

2 I hereby certify that I am an employee of the Steinberg & Dawson Law Group and that
3 on January 29, 2020, pursuant to N.R.C.P. 5(b)(2)(D), and EDCR 8.05, a true and correct copy
4 of the Notice of Entry Of Stipulation and Order To Set Aside Default was served on Defendant
5 by:
6

7 ☒ U.S. Mail, First Class, postage prepaid to the person(s) identified below;

8 ☐ Via Facsimile at the number(s) identified below:

9 ☐ Via Electronic mail to the person(s) identified below:

10 ☐ Via Electronic mail utilizing the Odyssey E-file and Serve system to the
11 person(s) identified below as follows:

12
13 Rodney Wilkinson
14 613 Eagle drive Apt 36
15 Newtown, ND 58763
16 Defendant in Proper Person

17 
18 An Employee of the Steinberg & Dawson Law Group
19
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ROA000017

IT IS HEREBY STIPULATED that the Default filed on December 20, 2019 shall be set aside. The Answer shall be filed on or before February 14, 2020.

STEINBERG & DAWSON LAW GROUP

DANIELLE DAWSON, ESQ.
Nevada Bar No. 11792
4270 S. Decatur Blvd., Suite B10
Las Vegas, Nevada 89103
Attorney for Plaintiff

RODNEY WILKINSON
613 Eagle Drive Apt 36
Newtown, ND58763
Defendant in Proper Person

ORDER

UPON THE FOREGOING STIPULATION of the parties, appearing to be a proper case
therefore:

IT IS HEREBY ORDERED that the foregoing stipulation of the parties is adopted as an order of the Court.

IT IS FURTHER ORDERED that the Default filed on December 20, 2019 shall be set aside. The Answer shall be filed on or before February 14, 2020.

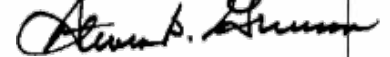
DATED AND DONE this 27 day of January, 2020.

DISTRICT JUDGE

Rhonda K. Forsberg

STEINBERG & DAWSON LAW GROUP

DANIELLE DAWSON, ESQ.
Nevada Bar No. 11792
Attorney for Plaintiff



1 **AFFR**
2 **STEINBERG & DAWSON LAW GROUP**
3 **DANIELLE DAWSON, ESQ.**
4 Nevada Bar No. 11792
5 4270 S. Decatur Blvd., Suite B10
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7 Telephone: (702) 384-9664
8 Facsimile: (702) 384-9668
9 Email: danielle@steinberglawgroup.com
10 Attorney for Plaintiff

DISTRICT COURT
FAMILY DIVISION
CLARK COUNTY, NEVADA

10 **TESSIE E. WILKINSON,**)
11)
12 Plaintiff,)

CASE NO: D-19-596071-D
DEPT NO: G

13 vs.)

14 **RODNEY WILKINSON,**)
15 Defendant.)

AFFIDAVIT OF RESIDENT WITNESS

17
18 I, Steven Zahradnik, do hereby swear to the truth of the following statement:

- 19 1. At all times relevant hereto I was and am a citizen of the United States, and I am over
20 eighteen (18) years of age;
- 21 2. That I am a resident of Clark County, Nevada, and I have resided here since April 2015.
- 22 3. That I have personal knowledge and am competent to testify that Tessie E. Wilkinson is a
23 bona fide and actual resident of Clark County, Nevada, and I have seen her physically
24 present and residing in said County and State, at 8382 Hollywood Hills Ave., Las Vegas,
25 Nevada 89178, since April 2015 and at least 4-5 times per week for the 6 weeks prior to
26 the filing of the Complaint.
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4. I know Tessie E. Wilkinson because she is my friend.

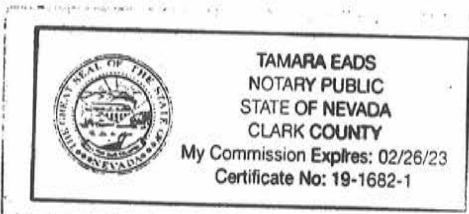

SIGNATURE

ADDRESS:
8382 Hollywood Hills Ave.
Las Vegas, NV. 89178

STATE OF NEVADA)
) ss:
COUNTY OF CLARK)

SUBSCRIBED and SWORN to before me this 30th day of January, 2020.


NOTARY PUBLIC



CLERK OF THE COURT
Ann B. Linn

Attorney for Plaintiff

Defendant.

DEPT NO: G

Attorney for Plaintiff

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**PLAINTIFF'S AFFIDAVIT IN SUPPORT OF
REQUEST FOR SUMMARY DISPOSITION**

I, Tessie Wilkinson, depose and state as follows:

1. I am the Plaintiff in *Wilkinson v. Wilkinson*, D-19-596247-D
2. I have personal knowledge about the facts contained in this affidavit, save those stated upon information and belief, and as to those matters, I believe them to be true.
3. I am competent and willing to testify in a court of law as to the facts contained in this affidavit.
4. My current address is 8382 Hollywood Hills Ave., Las Vegas, Nevada 89178.
5. I have lived in Clark County, Nevada for more than six weeks prior to the filing of the Complaint in this action.
6. Clark County, Nevada is the proper venue for this action.
7. Defendant and I were married on March 22, 2008, in Colorado Springs, Colorado.
8. Defendant and I are incompatible in marriage. Our likes and dislikes have become so divergent that we can no longer live together as husband and wife. Reconciliation is not possible.
9. That there are no minor children born the issue of this marriage. No minor children were adopted and Plaintiff is not now pregnant.
10. That the following community property shall be set over and hereby awarded to Rodney Wilkinson as his sole and separate property:
 11. The Chevrolet Suburban VIN ending in 9469;
 12. All personal property owned prior to the marriage;
 13. Any and all current and future retirement accounts, savings plans, IRA, pension plans or otherwise in his name only not otherwise herein named;

- 1 14. Any and all wearing apparel, personal ornaments, and jewelry belonging to him;
- 2 15. Any and all bank accounts in his name only not otherwise herein named; and
- 3 16. Any personal items currently in his possession.
- 4
- 5 17. That the following community property shall be set over and hereby awarded to the Tessie
- 6 Wilkinson as her sole and separate property:
- 7 US Bank account ending in the numbers 8904 with a current approximate value of \$373;
- 8 The real property located at 8382 Hollywood Hills Ave, Las Vegas, Nevada 89178;
- 9 The real property located at 5730 Road 10, Goodland, Kansas 67735;
- 10 The 2012 Chevrolet Corvette VIN ending in 0723;
- 11 The Service Truck VIN 2GCFK29K951206963;
- 12 The 1977 Kenworth Winch Truck VIN 155197SG2;
- 13
- 14 The following heavy equipment:
- 15
- 16 a. P & H 140 Ton crane , Model 9125-TC;
- 17 b. Manitowac 100 ton crane, Model 3900A, SN 39670;
- 18 c. Lima 90 ton crane, Model 990TC;
- 19 d. P & H 90 ton crane, Model 8115TC, SN 35419;
- 20 e. P & H 50 ton crane;
- 21 f. P & H 25 ton crane;
- 22 g. P & H 70 ton crane;
- 23 h. 2 bulldozers;
- 24 i. 1977 Kenworth VIN 055097SGL;
- 25 j. 1972 Peterbilt ID 41337P, FHP364802;
- 26 k. 1955 Mack VIN B705T1209;
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- l. 1955 Kenworth VIN 64338;
- m. 1959 Mack VIN B73S1370;
- n. 1962 Mack winch truck;
- o. 6000 Cherry Picker;
- p. 100 ton press;
- q. Lo Boy 35 ton Cozad Trailer # CC80062;
- r. 1993 Western Star Boom Truck Serial No. 2WKPDCCHIPK931154;
- 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.

Any and all rights assigned to Rodney Wilkinson through the contract with Dan Fontenot of Synergy Oil Field Services, LLC.

All personal property owned prior to the marriage;

Any and all current and future retirement accounts, savings plans, IRA, pension plans or otherwise in her name only;

Any and all wearing apparel, personal ornaments, and jewelry belonging to her;

Any and all bank accounts in her name only; and

Any personal items currently in her possession.

18. That the following community debts shall be set over and hereby awarded to Rodney Wilkinson as his sole and separate debts:

The loan on the real property located at 5730 Road 10, Goodland, Kansas 67735;

The loan through Dorman Renewable Fuels, LLC in the approximate amount of \$20,000;

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- Any and all tax debts in his name only;
- Any and all student loan debts in his name only;
- Any and all credit card debt in his name only;
- Any and all credit instruments in his name only.

19. That the following community debts shall be set over and hereby awarded to Tessie Wilkinson as her sole and separate debts:

The Chase credit account ending in the numbers 9416 with an approximate current balance of \$3,860;

The US Bank credit account ending in the numbers 9270 with an approximate current balance of \$4,300;

- Any and all student loan debts in her name only;
- Any and all credit card debt in her name only;
- Any and all credit instruments in her name only.

20. That Tessie Wilkinson shall receive the sum of \$3,000 per month from Rodney Wilkinson for the duration of her life as and for Spousal Support. This amount shall be due on or before the 10th day of each month.

21. That Tessie Wilkinson shall return to her maiden name to wit: Tessie Elma Almario.

22. I wish the court to enter an absolute decree of divorce without a hearing.

23. I agree to all the terms listed in the Decree of Divorce.

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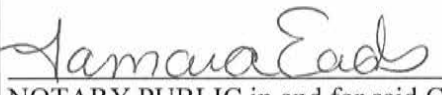
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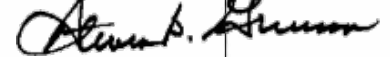
I declare under penalty of perjury that the foregoing is true and correct.


TESSIE WILKINSON

STATE OF NEVADA)
) ss:
COUNTY OF CLARK)

SUBSCRIBED and SWORN to before me this 30th day of January, 2020.


NOTARY PUBLIC in and for said County and State



1 **RQST**
2 **STEINBERG & DAWSON LAW GROUP**
3 **DANIELLE DAWSON, ESQ.**
4 Nevada Bar No. 11792
5 4270 S. Decatur Blvd., Suite B10
6 Las Vegas, Nevada 89103
7 Telephone: (702) 384-9664
8 Facsimile: (702) 384-9668
9 Email: danielle@steinberglawgroup.com
10 Attorney for Plaintiff

DISTRICT COURT
FAMILY DIVISION
CLARK COUNTY, NEVADA

11 **TESSIE WILKINSON,**)
12)
13 Plaintiff,) CASE NO: D-19-596071-D
14) DEPT NO: G
15 vs.)
16)
17 **RODNEY WILKINSON,**)
18)
19 Defendant.)

REQUEST FOR SUMMARY DISPOSITION

20 COMES NOW the Plaintiff, **TESSIE WILKINSON**, by and through her counsel of
21 record, **DANIELLE DAWSON, ESQ.**, of **STEINBERG & DAWSON LAW GROUP** and
22 requests this Court for a summary disposition of her Decree of Divorce without a hearing.

23 Dated this 30 day of January, 2020.

STEINBERG & DAWSON LAW GROUP


DANIELLE DAWSON, ESQ.

Nevada Bar No. 11792
4270 S. Decatur Blvd., Suite B10
Las Vegas, Nevada 89103
Attorney for Plaintiff

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**PLAINTIFF'S AFFIDAVIT IN SUPPORT OF
REQUEST FOR SUMMARY DISPOSITION**

I, Tessie Wilkinson, depose and state as follows:

1. I am the Plaintiff in *Wilkinson v. Wilkinson*, D-19-596247-D
2. I have personal knowledge about the facts contained in this affidavit, save those stated upon information and belief, and as to those matters, I believe them to be true.
3. I am competent and willing to testify in a court of law as to the facts contained in this affidavit.
4. My current address is 8382 Hollywood Hills Ave., Las Vegas, Nevada 89178.
5. I have lived in Clark County, Nevada for more than six weeks prior to the filing of the Complaint in this action.
6. Clark County, Nevada is the proper venue for this action.
7. Defendant and I were married on March 22, 2008, in Colorado Springs, Colorado.
8. Defendant and I are incompatible in marriage. Our likes and dislikes have become so divergent that we can no longer live together as husband and wife. Reconciliation is not possible.
9. That there are no minor children born the issue of this marriage. No minor children were adopted and Plaintiff is not now pregnant.
10. That the following community property shall be set over and hereby awarded to Rodney Wilkinson as his sole and separate property:
 11. The Chevrolet Suburban VIN ending in 9469;
 12. All personal property owned prior to the marriage;
 13. Any and all current and future retirement accounts, savings plans, IRA, pension plans or otherwise in his name only not otherwise herein named;

- 1 14. Any and all wearing apparel, personal ornaments, and jewelry belonging to him;
- 2 15. Any and all bank accounts in his name only not otherwise herein named; and
- 3 16. Any personal items currently in his possession.
- 4
- 5 17. That the following community property shall be set over and hereby awarded to the Tessie
- 6 Wilkinson as her sole and separate property:
- 7 US Bank account ending in the numbers 8904 with a current approximate value of \$373;
- 8 The real property located at 8382 Hollywood Hills Ave, Las Vegas, Nevada 89178;
- 9 The real property located at 5730 Road 10, Goodland, Kansas 67735;
- 10 The 2012 Chevrolet Corvette VIN ending in 0723;
- 11 The Service Truck VIN 2GCFK29K951206963;
- 12 The 1977 Kenworth Winch Truck VIN 155197SG2;
- 13
- 14 The following heavy equipment:
- 15 a. P & H 140 Ton crane , Model 9125-TC;
- 16 b. Manitowac 100 ton crane, Model 3900A, SN 39670;
- 17 c. Lima 90 ton crane, Model 990TC;
- 18 d. P & H 90 ton crane, Model 8115TC, SN 35419;
- 19 e. P & H 50 ton crane;
- 20 f. P & H 25 ton crane;
- 21 g. P & H 70 ton crane;
- 22 h. 2 bulldozers;
- 23 i. 1977 Kenworth VIN 055097SGL;
- 24 j. 1972 Peterbilt ID 41337P, FHP364802;
- 25 k. 1955 Mack VIN B705T1209;
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- 1 l. 1955 Kenworth VIN 64338;
- 2 m. 1959 Mack VIN B73S1370;
- 3 n. 1962 Mack winch truck;
- 4 o. 6000 Cherry Picker;
- 5 p. 100 ton press;
- 6 q. Lo Boy 35 ton Cozad Trailer # CC80062;
- 7 r. 1993 Western Star Boom Truck Serial No. 2WKPDCCHIPK931154;
- 8 s. 750 Holmes Wrecker Tow Truck;
- 9 t. Autocar Winch Truck;
- 10 u. Maritime Hydraulic Drilling Rig;
- 11 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 Dan Fontenot
15 of Synergy Oil Field Services, LLC.

16 All personal property owned prior to the marriage;

18 Any and all current and future retirement accounts, savings plans, IRA, pension plans or
19 otherwise in her name only;

20 Any and all wearing apparel, personal ornaments, and jewelry belonging to her;

22 Any and all bank accounts in her name only; and

23 Any personal items currently in her possession.

24 18. That the following community debts shall be set over and hereby awarded to Rodney
25 Wilkinson as his sole and separate debts:

26 The loan on the real property located at 5730 Road 10, Goodland, Kansas 67735;

27 The loan through Dorman Renewable Fuels, LLC in the approximate amount of \$20,000;

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Any and all tax debts in his name only;

Any and all student loan debts in his name only;

Any and all credit card debt in his name only;

Any and all credit instruments in his name only.

19. That the following community debts shall be set over and hereby awarded to Tessie Wilkinson as her sole and separate debts:

The Chase credit account ending in the numbers 9416 with an approximate current balance of \$3,860;

The US Bank credit account ending in the numbers 9270 with an approximate current balance of \$4,300;

Any and all student loan debts in her name only;

Any and all credit card debt in her name only;

Any and all credit instruments in her name only.

20. That Tessie Wilkinson shall receive the sum of \$3,000 per month from Rodney Wilkinson for the duration of her life as and for Spousal Support. This amount shall be due on or before the 10th day of each month.

21. That Tessie Wilkinson shall return to her maiden name to wit: Tessie Elma Almario.

22. I wish the court to enter an absolute decree of divorce without a hearing.

23. I agree to all the terms listed in the Decree of Divorce.

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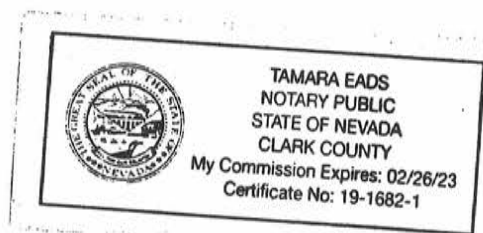
I declare under penalty of perjury that the foregoing is true and correct.


TESSIE WILKINSON

STATE OF NEVADA)
) ss:
COUNTY OF CLARK)

SUBSCRIBED and SWORN to before me this 30th day of January, 2020.


NOTARY PUBLIC in and for said County and State



Steven D. Grierson

1 **DECD**
2 **STEINBERG & DAWSON LAW GROUP**
3 **DANIELLE DAWSON, ESQ.**
4 Nevada Bar No. 11792
5 4270 S. Decatur Blvd., Suite B10
6 Las Vegas, Nevada 89103
7 Telephone: (702) 384-9664
8 Facsimile: (702) 384-9668
9 Email: danielle@steinberglawgroup.com
10 Attorney for Plaintiff

DISTRICT COURT, FAMILY DIVISION
CLARK COUNTY, NEVADA

11 **TESSIE WILKINSON,**

12 Plaintiff,

13 vs.

14 **RODNEY WILKINSON,**

15 Defendant.

CASE NO: D-19-596071-D

DEPT NO: G

DECREE OF DIVORCE

16 This cause coming before the Court on Request for Summary Disposition, the Plaintiff,
17 **TESSIE WILKINSON**, by and through her attorney, **DANIELLE DAWSON, ESQ.**, of
18 **STEINBERG & DAWSON LAW GROUP**; and the Defendant, **RODNEY WILKINSON**,
19 appearing in proper person.

20 WHEREAS the parties have reached a full resolution to the outstanding issues in this
21 matter.

22 WHEREAS throughout the last several years of marriage, Rodney Wilkinson has
23 divested the community of assets constituting substantial community waste as follows:

- 24 1. Transferred community funds including five years of earnings to Jill Strnad and or
25 Tanika Stevenson;

RECEIVED

FEB 04 2020

Department G

☐ Other
☐ Dismissed - Want of Prosecution
☐ Involuntary (Statutory) Dismissal
☐ Default Judgment
☐ Transferred
☐ Disposed After Trial/Start
☐ Judgment Reached by Trial
☒ Settled/Withdrawn
☐ Without Judicial Conf/Hrg
☐ With Judicial Conf/Hrg
☐ By ADR

2. Divested the community of gold coins valued at over \$100,000 by gifting them to Jill Strnad;
3. Divested the community of a 2004 Corvette by gifting it to Tanika Stevenson;
4. Transferred ownership of a \$1,000,000 life insurance policy on himself to Jill Strnad;

Therefore,

IT IS FURTHER STIPULATED that the following community property shall be set over and hereby awarded to Rodney Wilkinson as his sole and separate property:

1. The Chevrolet Suburban VIN ending in 9469;
2. All personal property owned prior to the marriage;
3. Any and all current and future retirement accounts, savings plans, IRA, pension plans or otherwise in his name only not otherwise herein named;
4. Any and all wearing apparel, personal ornaments, and jewelry belonging to him;
5. Any and all bank accounts in his name only not otherwise herein named; and
6. Any personal items currently in his possession.

IT IS FURTHER STIPULATED 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;
2. The real property located at 8382 Hollywood Hills Ave, Las Vegas, Nevada 89178;
3. The real property located at 5730 Road 10, Goodland, Kansas 67735;
4. The 2012 Chevrolet Corvette VIN ending in 0723;

- 1 5. The Service Truck VIN 2GCFK29K951206963;
- 2 6. The 1977 Kenworth Winch Truck VIN 155197SG2;
- 3 7. The following heavy equipment:
- 4 a. P & H 140 Ton crane , Model 9125-TC;
- 5 b. Manitowac 100 ton crane, Model 3900A, SN 39670;
- 6 c. Lima 90 ton crane, Model 990TC;
- 7 d. P & H 90 ton crane, Model 8115TC, SN 35419;
- 8 e. P & H 50 ton crane;
- 9 f. P & H 25 ton crane;
- 10 g. P & H 70 ton crane;
- 11 h. 2 bulldozers;
- 12 i. 1977 Kenworth VIN 055097SGL;
- 13 j. 1972 Peterbilt ID 41337P, FHP364802;
- 14 k. 1955 Mack VIN B705T1209;
- 15 l. 1955 Kenworth VIN 64338;
- 16 m. 1959 Mack VIN B73S1370;
- 17 n. 1962 Mack winch truck;
- 18 o. 6000 Cherry Picker;
- 19 p. 100 ton press;
- 20 q. Lo Boy 35 ton Cozad Trailer # CC80062;
- 21 r. 1993 Western Star Boom Truck Serial No. 2WKPDCCCHIPK931154;
- 22 s. 750 Holmes Wrecker Tow Truck;
- 23 t. Autocar Winch Truck;
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1 u. Maritime Hydraulic Drilling Rig;

2 v. Any and all tools located at 5730 Road 10, Goodland, Kansas 67735.

3 8. Any and all rights assigned to Rodney Wilkinson through the contract with Dan
4 Fontenot of Synergy Oil Field Services, LLC.

5 9. All personal property owned prior to the marriage;

6 10. Any and all current and future retirement accounts, savings plans, IRA, pension
7 plans or otherwise in her name only;

8 11. Any and all wearing apparel, personal ornaments, and jewelry belonging to her;

9 12. Any and all bank accounts in her name only; and

10 13. Any personal items currently in her possession.

11 **IT IS FURTHER STIPULATED** that the following community debts shall be set over
12 and hereby awarded to Rodney Wilkinson as his sole and separate debts:

13 1. The loan on the real property located at 5730 Road 10, Goodland, Kansas 67735;

14 2. The loan through Dorman Renewable Fuels, LLC in the approximate amount of
15 \$20,000;

16 3. Any and all tax debts in his name only;

17 4. Any and all student loan debts in his name only;

18 5. Any and all credit card debt in his name only;

19 6. Any and all credit instruments in his name only.

20 **IT IS FURTHER STIPULATED** that the following community debts shall be set over
21 and hereby awarded to Tessie Wilkinson as her sole and separate debts:

22 1. The Chase credit account ending in the numbers 9416 with an approximate
23 current balance of \$3,860;

1 **THAT** the parties were duly and legally married on March 22, 2008 in Burlington,
2 Colorado and have been since that time, and are at the present time, husband and wife.

3 **THAT** the Plaintiff believes that all of the allegations contained in her Complaint for
4 Divorce are true and that the Plaintiff is entitled to the relief sought subject to the terms as set
5 forth in this Decree of Divorce;
6

7 **THAT** the parties have waived Findings of Fact, Conclusions of Law, written Notice of
8 Entry of Judgment, and to move for a new Trial in said cause;
9

10 **THAT** there are no minor children born the issue of this marriage. No minor children
11 were adopted and Plaintiff is not now pregnant.

12 **NOW, THEREFORE**, by reason of the law in such cases made and provided, and the
13 Court deeming this a proper case therefore,

14 **IT IS HEREBY ORDERED** that the bonds of matrimony heretofore and now existing
15 between Plaintiff and Defendant be, and the same are hereby wholly dissolved, and an absolute
16 Decree of Divorce is hereby granted to the Plaintiff and each of the parties hereto is hereby
17 restored to the status of a single, unmarried person.
18

19 **IT IS FURTHER ORDERED** that the following community property shall be set over
20 and hereby awarded to Rodney Wilkinson as his sole and separate property:

- 21 1. The Chevrolet Suburban VIN ending in 9469;
- 22 2. All personal property owned prior to the marriage;
- 23 3. Any and all current and future retirement accounts, savings plans, IRA, pension plans or
24 otherwise in his name only not otherwise herein named;
- 25 4. Any and all wearing apparel, personal ornaments, and jewelry belonging to him;
- 26 5. Any and all bank accounts in his name only not otherwise herein named; and
27
- 28

1 6. Any personal items currently in his possession.

2 **IT IS FURTHER ORDERED** that the following community property shall be set over
3 and hereby awarded to the Tessie Wilkinson as her sole and separate property:
4

- 5 1. US Bank account ending in the numbers 8904 with a current approximate value of
6 \$373;
- 7 2. The real property located at 8382 Hollywood Hills Ave, Las Vegas, Nevada
8 89178;
- 9 3. The real property located at 5730 Road 10, Goodland, Kansas 67735;
- 10 4. The 2012 Chevrolet Corvette VIN ending in 0723;
- 11 5. The Service Truck VIN 2GCFK29K951206963;
- 12 6. The 1977 Kenworth Winch Truck VIN 155197SG2;
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 - 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 Dan 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.

IT IS FURTHER ORDERED that in the event that any property has been omitted from this Decree that would have been community property or otherwise jointly-held property under applicable law as of the date hereof, the concealing or possessory Party will transfer or convey to the other Party, at the other Party's election:

1 (1) The full market value of the other Party's interest on the date of this Decree, plus
2 statutory interest through and including the date of transfer or conveyance; or

3 (2) The full market value of the other Party's interest at the time that Party discovers that
4 he has an interest in such property, plus statutory interest through and including the date
5 of transfer or conveyance; or
6

7 (3) An amount of the omitted property equal to the other Party's interest herein, if it is
8 reasonably susceptible to division.

9 **IT IS FURTHER ORDERED** that, except as otherwise specified herein, any and all
10 property acquired or income received by either party from and after the date of entry of this
11 Decree shall be the sole and separate property of that party, and each party respectively grants to
12 the other all such further acquisitions of property as the sole and separate property of the one so
13 acquiring the same. Each party shall have an immediate right to dispose of, or bequeath by Will,
14 his respective interest in and to any and all property belonging to him from and after the date
15 hereof, and such rights shall extend to all of the future acquisitions of property as well as to all
16 property set over to either of the parties hereto by this Decree.
17
18

19 **IT IS FURTHER ORDERED** that the following community debts shall be set over and
20 hereby awarded to Rodney Wilkinson as his sole and separate debts:

- 21 1. The loan on the real property located at 5730 Road 10, Goodland, Kansas 67735;
- 22 2. The loan through Dorman Renewable Fuels, LLC in the approximate amount of
23 \$20,000;
- 24 3. Any and all tax debts in his name only;
- 25 4. Any and all student loan debts in his name only;
- 26 5. Any and all credit card debt in his name only;
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1 6. Any and all credit instruments in his name only.

2 **IT IS FURTHER ORDERED** that the following community debts shall be set over and
3 hereby awarded to Tessie Wilkinson as her sole and separate debts:

4 1. The Chase credit account ending in the numbers 9416 with an approximate
5 current balance of \$3,860;

6 2. The US Bank credit account ending in the numbers 9270 with an approximate
7 current balance of \$4,300;

8 3. Any and all student loan debts in her name only;

9 4. Any and all credit card debt in her name only;

10 5. Any and all credit instruments in her name only.

11 **IT IS FURTHER ORDERED** that if any claim, action or proceeding is brought seeking
12 to hold the other party liable on account of any debt, obligation, liability act or omission assumed
13 by the other Party, such party will, at his or her sole expense, defend the other against any such
14 claim or demand and that he or she will indemnify, defend, and hold harmless the other Party.

15 **IT IS FURTHER ORDERED** that Tessie Wilkinson shall receive the sum of \$3,000 per
16 month from Rodney Wilkinson for the duration of her life as and for Spousal Support. This
17 amount shall be due on or before the 10th day of each month.

18 **IT IS FURTHER ORDERED** that if any claim, action or proceeding is brought seeking
19 to hold the other party liable on account of any debt, obligation, liability act or omission assumed
20 by the other Party, such party will, at his sole expense, defend the other against any such claim or
21 demand and that he will indemnify, defend, and hold harmless the other Party.

22 **IT IS FURTHER ORDERED** that each Party shall execute any and all legal documents,
23 certificates of title, bills of sale, deeds or other evidence transfer necessary to effectuate this
24

1 Decree and the division of community assets within thirty (30) days of the entry of this Decree,
2 except as otherwise provided herein. Should either party fail to execute any of said documents to
3 transfer interest to the other, then this Decree shall constitute a full transfer of the interest of one
4 to the other, as herein provided. It is further agreed that pursuant to NRCP 70, the Clerk of the
5 Court shall be deemed to have hereby been appointed and empowered to sign, on behalf of the
6 non-signing party, any of the said documents of transfer which have not been executed by the
7 party otherwise responsible for such.
8

9 **IT IS FURTHER ORDERED** that it is hereby mutually understood and agreed by and
10 between the parties hereto that this Decree of Divorce is deemed to be a final, conclusive and
11 integrated agreement between the parties, and that except as herein specified, each party hereto is
12 hereby released and absolved from any and all liabilities and obligations for the future and past
13 acts and duties of the other, and that each of the said parties hereby releases the other from any
14 and all liabilities, future accounts, alimony and support or otherwise, or debts or obligations of
15 any kind or character incurred by the other except as provided herein provided, it being
16 understood that his instrument is intended to settle finally and conclusively the rights of the
17 parties hereto in all respects arising out of their marital relationship except as provided herein.
18

19 **IT IS FURTHER ORDERED** that the provisions in this Decree are fair and reasonable
20 and the parties agree to be bound by all its terms. The parties further acknowledge that they have
21 made an independent investigation into the existence and value of the assets and liabilities
22 divided hereunder, and the tax consequences, if any. The parties hereby waive any and all claims
23 against Danielle Dawson, Esq. of Steinberg Law Group related to the value and/or existence of
24 any asset divided hereunder or the tax consequences resulting therefrom. The parties further
25 acknowledge that they did not receive tax advice from Danielle Dawson, Esq. and have been
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1 advised to seek the advice of a tax expert for any tax related questions they may have. The
2 parties have further been advised to seek the advice of independent counsel regarding these
3 terms.
4

5 **IT IS FURTHER ORDERED** that each party acknowledges that they have read this
6 Decree of Divorce and fully understand the contents and accept the same as equitable and just,
7 that the parties agree this Decree of Divorce has been reached via negotiation and in the spirit of
8 compromise, and that there has been no promise, agreement or understanding of either of the
9 parties to the other except as set forth herein, which have been relied upon by either as a matter
10 of inducement to enter into this agreement, and each party hereto has had the time and
11 opportunity to be advised by an attorney and has been encouraged to do so. The parties further
12 acknowledge that this stipulated Decree of Divorce is a global resolution of their case and that
13 each provision herein is made in consideration of all the terms in the Decree of Divorce as a
14 whole. The parties further acknowledge that they have entered into this stipulated Decree of
15 Divorce without undue influence or coercion, or misrepresentation, or for any other cause except
16 as stated herein.
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19 **IT IS FURTHER ORDERED** that should it be necessary for either Party to enforce the
20 terms of this Decree, the prevailing party shall be entitled to recover their attorneys' fees and
21 costs.
22

23 **IT IS FURTHER ORDERED** that the parties shall submit the information required in
24 NRS 125B.055, NRS 125.130 and NRS 125.230 on a separate form to the Court and the Welfare
25 Division of the Department of Human Resources within ten days from the date this Decree is
26 filed. Such information shall be maintained by the Clerk in a confidential manner and not part of
27 the public record. The parties shall update the information filed with the Court and the Welfare
28

1 Division of the Department of Human Resources within ten days should any of that information
2 become inaccurate.


3 **IT IS FURTHER ORDERED** that Tessie Wilkinson shall return to her maiden name to
4 wit: Tessie Elma Almario.


5 **DATED** this 11th day of February, 2020.

6
7
8 
DISTRICT COURT JUDGE

9 Rhonda K. Forsberg

10 **STEINBERG & DAWSON LAW GROUP**

11
12 
13 **DANIELLE DAWSON, ESQ.**
14 Nevada Bar No. 11792
15 4270 S. Decatur Blvd., Suite B10
16 Las Vegas, Nevada 89103
17 Attorney for Defendant

18 
19 **RODNEY WILKINSON**
20 613 Eagle Drive Apt 36
21 Newtown, ND 58763
22 Defendant in Proper Person

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TESSIE WILKINSON

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VERIFICATION OF TESSIE WILKINSON

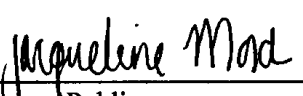
I, Tessie Wilkinson, being duly sworn under the penalties of perjury, depose and say:

I am the Plaintiff herein, and I have read the foregoing Stipulated Decree of Divorce and know the contents thereof; that the same is true to the best of my own knowledge, except as to those matters therein stated upon information and belief, and as to those matters, I believe them to be true.

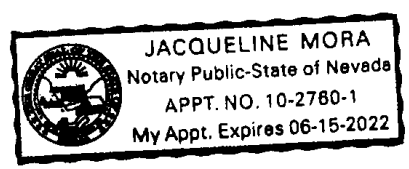

TESSIE WILKINSON

STATE OF NEVADA)
) ss.
COUNTY OF CLARK)

SUBSCRIBED and SWORN to before me this 21 day of January, 2020.



Notary Public



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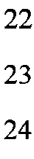
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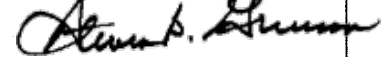
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1 **NEOJ**
2 **STEINBERG & DAWSON LAW GROUP**
3 **DANIELLE DAWSON, ESQ.**
4 Nevada Bar No. 11792
5 4270 S. Decatur Blvd., Suite B10
6 Las Vegas, Nevada 89103
7 Telephone: (702) 384-9664
8 Facsimile: (702) 384-9668
9 Email: danielle@steinberglawgroup.com
10 Attorney for Plaintiff

DISTRICT COURT, FAMILY DIVISION
CLARK COUNTY, NEVADA

9 **TESSIE E. WILKINSON,**

10 Plaintiff,

11 vs.

12 **RODNEY WILKINSON,**

13 Defendant.

CASE NO: D-19-596071-D

DEPT NO: G

14
15 **NOTICE OF ENTRY OF DECREE OF DIVORCE**

16 **PLEASE TAKE NOTICE** that a Decree of Divorce was entered in the above-captioned
17 matter on February 12, 2020, a true and correct copy of which is attached hereto.

18 **DATED** this 13 day of February, 2020.

19 **STEINBERG & DAWSON LAW GROUP**

20
21 
22 **DANIELLE DAWSON, ESQ.**

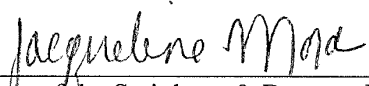
23 Nevada Bar No. 11792
24 4270 S. Decatur Blvd., Suite B10
25 Las Vegas, Nevada 89103
26 Attorney for Plaintiff
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CERTIFICATE OF SERVICE

I hereby certify that I am an employee of the Steinberg & Dawson Law Group and that on February 13, 2020, pursuant to N.R.C.P. 5(b)(2)(D), and EDCR 8.05, a true and correct copy of the Notice of Entry of Decree of Divorce was served on Defendant by U.S. Mail, First Class, postage prepaid to the person(s) identified below:

Rodney Wilkinson
613 Eagle Drive Apt 36
Newtown, ND 58763
Defendant in Proper Person



An Employee of the Steinberg & Dawson Law Group

Steven D. Grierson

1 **DECD**
2 **STEINBERG & DAWSON LAW GROUP**
3 **DANIELLE DAWSON, ESQ.**
4 Nevada Bar No. 11792
5 4270 S. Decatur Blvd., Suite B10
6 Las Vegas, Nevada 89103
7 Telephone: (702) 384-9664
8 Facsimile: (702) 384-9668
9 Email: danielle@steinberglawgroup.com
10 Attorney for Plaintiff

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

14 **TESSIE WILKINSON,**

15 Plaintiff,

16 vs.

17 **RODNEY WILKINSON,**

18 Defendant.

)
)
) CASE NO: D-19-596071-D
) DEPT NO: G
)
)
)

19 **DECREE OF DIVORCE**

20 This cause coming before the Court on Request for Summary Disposition, the Plaintiff,
21 **TESSIE WILKINSON**, by and through her attorney, **DANIELLE DAWSON, ESQ.**, of
22 **STEINBERG & DAWSON LAW GROUP**; and the Defendant, **RODNEY WILKINSON**,
23 appearing in proper person.

24 WHEREAS the parties have reached a full resolution to the outstanding issues in this
25 matter.

26 WHEREAS throughout the last several years of marriage, Rodney Wilkinson has
27 divested the community of assets constituting substantial community waste as follows:

- 28 1. Transferred community funds including five years of earnings to Jill Strnad and or
Tanika Stevenson;

RECEIVED

FEB 04 2020

Department G

☐ Other
☐ Dismissed - Want of Prosecution
☐ Involuntary (Settlement) Dismissal
☐ Default Judgment
☐ Transferred
☐ Disposed After Trial/Sign
☐ Judgment Reached by Trial
Non-Trial Dispositions:
☒ Settled/Withdrawn
☐ Without Judicial Conf/Htg
☐ With Judicial Conf/Htg
By ADR

- 1 2. Divested the community of gold coins valued at over \$100,000 by gifting them to
- 2 Jill Strnad;
- 3 3. Divested the community of a 2004 Corvette by gifting it to Tanika Stevenson;
- 4 4. Transferred ownership of a \$1,000,000 life insurance policy on himself to Jill
- 5 Strnad;
- 6

7 Therefore,

8 **IT IS FURTHER STIPULATED** that the following community property shall be set

9 over and hereby awarded to Rodney Wilkinson as his sole and separate property:

- 10 1. The Chevrolet Suburban VIN ending in 9469;
- 11 2. All personal property owned prior to the marriage;
- 12 3. Any and all current and future retirement accounts, savings plans, IRA, pension
- 13 plans or otherwise in his name only not otherwise herein named;
- 14 4. Any and all wearing apparel, personal ornaments, and jewelry belonging to him;
- 15 5. Any and all bank accounts in his name only not otherwise herein named; and
- 16 6. Any personal items currently in his possession.
- 17
- 18

19 **IT IS FURTHER STIPULATED** that the following community property shall be set

20 over and hereby awarded to the Tessie Wilkinson as her sole and separate property:

- 21 1. US Bank account ending in the numbers 8904 with a current approximate value of
- 22 \$373;
- 23 2. The real property located at 8382 Hollywood Hills Ave, Las Vegas, Nevada
- 24 89178;
- 25 3. The real property located at 5730 Road 10, Goodland, Kansas 67735;
- 26 4. The 2012 Chevrolet Corvette VIN ending in 0723;
- 27
- 28

- 1 5. The Service Truck VIN 2GCFK29K951206963;
- 2 6. The 1977 Kenworth Winch Truck VIN 155197SG2;
- 3 7. The following heavy equipment:
- 4 a. P & H 140 Ton crane , Model 9125-TC;
- 5 b. Manitowac 100 ton crane, Model 3900A, SN 39670;
- 6 c. Lima 90 ton crane, Model 990TC;
- 7 d. P & H 90 ton crane, Model 8115TC, SN 35419;
- 8 e. P & H 50 ton crane;
- 9 f. P & H 25 ton crane;
- 10 g. P & H 70 ton crane;
- 11 h. 2 bulldozers;
- 12 i. 1977 Kenworth VIN 055097SGL;
- 13 j. 1972 Peterbilt ID 41337P, FHP364802;
- 14 k. 1955 Mack VIN B705T1209;
- 15 l. 1955 Kenworth VIN 64338;
- 16 m. 1959 Mack VIN B73S1370;
- 17 n. 1962 Mack winch truck;
- 18 o. 6000 Cherry Picker;
- 19 p. 100 ton press;
- 20 q. Lo Boy 35 ton Cozad Trailer # CC80062;
- 21 r. 1993 Western Star Boom Truck Serial No. 2WKPDCCHIPK931154;
- 22 s. 750 Holmes Wrecker Tow Truck;
- 23 t. Autocar Winch Truck;
- 24
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1 u. Maritime Hydraulic Drilling Rig;

2 v. Any and all tools located at 5730 Road 10, Goodland, Kansas 67735.

3 8. Any and all rights assigned to Rodney Wilkinson through the contract with Dan
4 Fontenot of Synergy Oil Field Services, LLC.

5 9. All personal property owned prior to the marriage;

6 10. Any and all current and future retirement accounts, savings plans, IRA, pension
7 plans or otherwise in her name only;

8 11. Any and all wearing apparel, personal ornaments, and jewelry belonging to her;

9 12. Any and all bank accounts in her name only; and

10 13. Any personal items currently in her possession.

11
12
13 **IT IS FURTHER STIPULATED** that the following community debts shall be set over
14 and hereby awarded to Rodney Wilkinson as his sole and separate debts:

15 1. The loan on the real property located at 5730 Road 10, Goodland, Kansas 67735;

16 2. The loan through Dorman Renewable Fuels, LLC in the approximate amount of
17 \$20,000;

18 3. Any and all tax debts in his name only;

19 4. Any and all student loan debts in his name only;

20 5. Any and all credit card debt in his name only;

21 6. Any and all credit instruments in his name only.

22
23 **IT IS FURTHER STIPULATED** that the following community debts shall be set over
24 and hereby awarded to Tessie Wilkinson as her sole and separate debts:

25 1. The Chase credit account ending in the numbers 9416 with an approximate
26 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.

IT IS FURTHER STIPULATED that each party shall bear their own attorney's fees and costs in this matter.

IT IS FURTHER STIPULATED that Tessie Wilkinson shall return to her maiden name
to wit: Tessie Elma Almario.

IT IS SO STIPULATED.

DATED this 21 day of January 2020.

DATED this 17th day of January, 2020.

DANIELLE DAWSON, ESQ.
Nevada Bar No. 11792
Attorney for Plaintiff

RODNEY WILKINSON
Defendant in Proper Person

ORDER

UPON THE FOREGOING STIPULATION of the parties, and this appearing to be a proper case therefor:

THAT the Court has complete jurisdiction in the premises, both as to the subject matter thereof as well as the parties thereto;

THAT the Plaintiff now is, and has been, an actual bona fide resident of the County of Clark, State of Nevada, and has been actually domiciled therein for more than six (6) weeks immediately preceding the verification of the Complaint for Divorce in this action;

1 **THAT** the parties were duly and legally married on March 22, 2008 in Burlington,
2 Colorado and have been since that time, and are at the present time, husband and wife.

3 **THAT** the Plaintiff believes that all of the allegations contained in her Complaint for
4 Divorce are true and that the Plaintiff is entitled to the relief sought subject to the terms as set
5 forth in this Decree of Divorce;
6

7 **THAT** the parties have waived Findings of Fact, Conclusions of Law, written Notice of
8 Entry of Judgment, and to move for a new Trial in said cause;

9 **THAT** there are no minor children born the issue of this marriage. No minor children
10 were adopted and Plaintiff is not now pregnant.
11

12 **NOW, THEREFORE**, by reason of the law in such cases made and provided, and the
13 Court deeming this a proper case therefore,

14 **IT IS HEREBY ORDERED** that the bonds of matrimony heretofore and now existing
15 between Plaintiff and Defendant be, and the same are hereby wholly dissolved, and an absolute
16 Decree of Divorce is hereby granted to the Plaintiff and each of the parties hereto is hereby
17 restored to the status of a single, unmarried person.
18

19 **IT IS FURTHER ORDERED** that the following community property shall be set over
20 and hereby awarded to Rodney Wilkinson as his sole and separate property:

- 21 1. The Chevrolet Suburban VIN ending in 9469;
- 22 2. All personal property owned prior to the marriage;
- 23 3. Any and all current and future retirement accounts, savings plans, IRA, pension plans or
24 otherwise in his name only not otherwise herein named;
- 25 4. Any and all wearing apparel, personal ornaments, and jewelry belonging to him;
- 26 5. Any and all bank accounts in his name only not otherwise herein named; and
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1 6. Any personal items currently in his possession.

2 **IT IS FURTHER ORDERED** that the following community property shall be set over
3 and hereby awarded to the Tessie Wilkinson as her sole and separate property:

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5 \$373;

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8 3. The real property located at 5730 Road 10, Goodland, Kansas 67735;

9 4. The 2012 Chevrolet Corvette VIN ending in 0723;

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12 7. The following heavy equipment:

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15 c. Lima 90 ton crane, Model 990TC;

16 d. P & H 90 ton crane, Model 8115TC, SN 35419;

17 e. P & H 50 ton crane;

18 f. P & H 25 ton crane;

19 g. P & H 70 ton crane;

20 h. 2 bulldozers;

21 i. 1977 Kenworth VIN 055097SGL;

22 j. 1972 Peterbilt ID 41337P, FHP364802;

23 k. 1955 Mack VIN B705T1209;

- l. 1955 Kenworth VIN 64338;
 - m. 1959 Mack VIN B73S1370;
 - n. 1962 Mack winch truck;
 - o. 6000 Cherry Picker;
 - p. 100 ton press;
 - q. Lo Boy 35 ton Cozad Trailer # CC80062;
 - r. 1993 Western Star Boom Truck Serial No. 2WKPDCCHIPK931154;
 - 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 Dan 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.

IT IS FURTHER ORDERED that in the event that any property has been omitted from this Decree that would have been community property or otherwise jointly-held property under applicable law as of the date hereof, the concealing or possessory Party will transfer or convey to the other Party, at the other Party's election:

1 (1) The full market value of the other Party's interest on the date of this Decree, plus
2 statutory interest through and including the date of transfer or conveyance; or

3 (2) The full market value of the other Party's interest at the time that Party discovers that
4 he has an interest in such property, plus statutory interest through and including the date
5 of transfer or conveyance; or
6

7 (3) An amount of the omitted property equal to the other Party's interest herein, if it is
8 reasonably susceptible to division.

9 **IT IS FURTHER ORDERED** that, except as otherwise specified herein, any and all
10 property acquired or income received by either party from and after the date of entry of this
11 Decree shall be the sole and separate property of that party, and each party respectively grants to
12 the other all such further acquisitions of property as the sole and separate property of the one so
13 acquiring the same. Each party shall have an immediate right to dispose of, or bequeath by Will,
14 his respective interest in and to any and all property belonging to him from and after the date
15 hereof, and such rights shall extend to all of the future acquisitions of property as well as to all
16 property set over to either of the parties hereto by this Decree.
17

18
19 **IT IS FURTHER ORDERED** that the following community debts shall be set over and
20 hereby awarded to Rodney Wilkinson as his sole and separate debts:

- 21 1. The loan on the real property located at 5730 Road 10, Goodland, Kansas 67735;
22 2. The loan through Dorman Renewable Fuels, LLC in the approximate amount of
23 \$20,000;
24 3. Any and all tax debts in his name only;
25 4. Any and all student loan debts in his name only;
26 5. Any and all credit card debt in his name only;
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6 2. The US Bank credit account ending in the numbers 9270 with an approximate
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9 4. Any and all credit card debt in her name only;

10 5. Any and all credit instruments in her name only.

11 **IT IS FURTHER ORDERED** that if any claim, action or proceeding is brought seeking
12 to hold the other party liable on account of any debt, obligation, liability act or omission assumed
13 by the other Party, such party will, at his or her sole expense, defend the other against any such
14 claim or demand and that he or she will indemnify, defend, and hold harmless the other Party.

15 **IT IS FURTHER ORDERED** that Tessie Wilkinson shall receive the sum of \$3,000 per
16 month from Rodney Wilkinson for the duration of her life as and for Spousal Support. This
17 amount shall be due on or before the 10th day of each month.

18 **IT IS FURTHER ORDERED** that if any claim, action or proceeding is brought seeking
19 to hold the other party liable on account of any debt, obligation, liability act or omission assumed
20 by the other Party, such party will, at his sole expense, defend the other against any such claim or
21 demand and that he will indemnify, defend, and hold harmless the other Party.

22 **IT IS FURTHER ORDERED** that each Party shall execute any and all legal documents,
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1 Decree and the division of community assets within thirty (30) days of the entry of this Decree,
2 except as otherwise provided herein. Should either party fail to execute any of said documents to
3 transfer interest to the other, then this Decree shall constitute a full transfer of the interest of one
4 to the other, as herein provided. It is further agreed that pursuant to NRCP 70, the Clerk of the
5 Court shall be deemed to have hereby been appointed and empowered to sign, on behalf of the
6 non-signing party, any of the said documents of transfer which have not been executed by the
7 party otherwise responsible for such.
8

9 **IT IS FURTHER ORDERED** that it is hereby mutually understood and agreed by and
10 between the parties hereto that this Decree of Divorce is deemed to be a final, conclusive and
11 integrated agreement between the parties, and that except as herein specified, each party hereto is
12 hereby released and absolved from any and all liabilities and obligations for the future and past
13 acts and duties of the other, and that each of the said parties hereby releases the other from any
14 and all liabilities, future accounts, alimony and support or otherwise, or debts or obligations of
15 any kind or character incurred by the other except as provided herein provided, it being
16 understood that his instrument is intended to settle finally and conclusively the rights of the
17 parties hereto in all respects arising out of their marital relationship except as provided herein.
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19 **IT IS FURTHER ORDERED** that the provisions in this Decree are fair and reasonable
20 and the parties agree to be bound by all its terms. The parties further acknowledge that they have
21 made an independent investigation into the existence and value of the assets and liabilities
22 divided hereunder, and the tax consequences, if any. The parties hereby waive any and all claims
23 against Danielle Dawson, Esq. of Steinberg Law Group related to the value and/or existence of
24 any asset divided hereunder or the tax consequences resulting therefrom. The parties further
25 acknowledge that they did not receive tax advice from Danielle Dawson, Esq. and have been
26
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1 advised to seek the advice of a tax expert for any tax related questions they may have. The
2 parties have further been advised to seek the advice of independent counsel regarding these
3 terms.

4
5 **IT IS FURTHER ORDERED** that each party acknowledges that they have read this
6 Decree of Divorce and fully understand the contents and accept the same as equitable and just,
7 that the parties agree this Decree of Divorce has been reached via negotiation and in the spirit of
8 compromise, and that there has been no promise, agreement or understanding of either of the
9 parties to the other except as set forth herein, which have been relied upon by either as a matter
10 of inducement to enter into this agreement, and each party hereto has had the time and
11 opportunity to be advised by an attorney and has been encouraged to do so. The parties further
12 acknowledge that this stipulated Decree of Divorce is a global resolution of their case and that
13 each provision herein is made in consideration of all the terms in the Decree of Divorce as a
14 whole. The parties further acknowledge that they have entered into this stipulated Decree of
15 Divorce without undue influence or coercion, or misrepresentation, or for any other cause except
16 as stated herein.
17

18
19 **IT IS FURTHER ORDERED** that should it be necessary for either Party to enforce the
20 terms of this Decree, the prevailing party shall be entitled to recover their attorneys' fees and
21 costs.

22
23 **IT IS FURTHER ORDERED** that the parties shall submit the information required in
24 NRS 125B.055, NRS 125.130 and NRS 125.230 on a separate form to the Court and the Welfare
25 Division of the Department of Human Resources within ten days from the date this Decree is
26 filed. Such information shall be maintained by the Clerk in a confidential manner and not part of
27 the public record. The parties shall update the information filed with the Court and the Welfare
28

1 Division of the Department of Human Resources within ten days should any of that information
2 become inaccurate.


3 **IT IS FURTHER ORDERED** that Tessie Wilkinson shall return to her maiden name to
4 wit: Tessie Elma Almario.


5 **DATED** this 11th day of February, 2020.

6
7
8 
DISTRICT COURT JUDGE

9 Rhonda K. Forsberg

10 **STEINBERG & DAWSON LAW GROUP**

11
12 
13 **DANIELLE DAWSON, ESQ.**
14 Nevada Bar No. 11792
15 4270 S. Decatur Blvd., Suite B10
16 Las Vegas, Nevada 89103
17 Attorney for Defendant

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RODNEY WILKINSON
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Defendant in Proper Person

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TESSIE WILKINSON

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VERIFICATION OF TESSIE WILKINSON

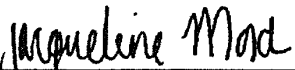
I, Tessie Wilkinson, being duly sworn under the penalties of perjury, depose and say:

I am the Plaintiff herein, and I have read the foregoing Stipulated Decree of Divorce and know the contents thereof; that the same is true to the best of my own knowledge, except as to those matters therein stated upon information and belief, and as to those matters, I believe them to be true.

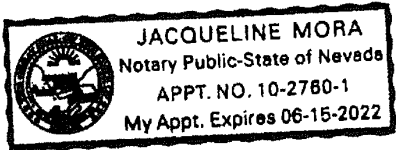

TESSIE WILKINSON

STATE OF NEVADA)
) ss.
COUNTY OF CLARK)

SUBSCRIBED and SWORN to before me this 21 day of January, 2020.



Notary Public



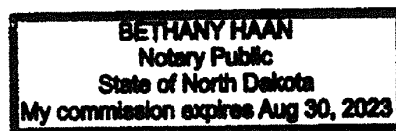
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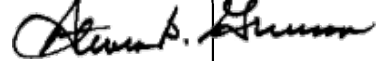
I am the Defendant herein, and I have read the foregoing Stipulated Decree of Divorce and know the contents thereof; that the same is true to the best of my own knowledge, except as to those matters therein stated upon information and belief, and as to those matters, I believe them to be true.

I have been informed of my right to retain my own counsel.

STATE OF North Dakota)
COUNTY OF Mountain) ss.

Bethany K. Kan
Notary Public





MOT

JAMES W. KWON, ESQ.
Nevada Bar No. 8146
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*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 ELMA ALMARIO,

Plaintiff,

vs.

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

Defendant.

Case No.: D-19-596071-D

Dept.: U

HEARING REQUESTED

**DEFENDANT'S MOTION TO SET ASIDE THE DIVORCE DECREE
PURSUANT TO NRCP 60(b)**

**NOTICE: YOU MAY FILE A WRITTEN RESPONSE TO THIS MOTION WITH THE
CLERK OF THE COURT AND PROVIDE THE UNDERSIGNED 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 A HEARING PRIOR TO THE SCHEDULED HEARING DATE.**

1 **DEFENDANT’S MOTION TO SET ASIDE THE DIVORCE DECREE**
2 **PURSUANT TO NRCP 60(b)**

3 COMES NOW Sheryl Atterberg, Co-Guardian for her Adult Ward,
4 Defendant, Rodney Wilkinson, by and through her attorney of record, James W.
5 Kwon, Esq., of the law firm James Kwon, LLC, and respectfully submits
6 *Defendant’s Motion to Set Aside Divorce Decree Pursuant to NRCP 60(b) on*
7 *Order Shortening Time*. Sheryl Atterberg is requesting that the Court set aside the
8 Decree of Divorce, filed February 12, 2020 in the above-stated matter, as well as
9 Defendant Rodney Wilkinson’s Answer, filed January 17, 2020.

10 This is a clear case of Fraud Upon the Court. This fraud circumvented
11 Nevada Policy requiring equal distribution of marital property and led to the Court
12 becoming complicit in Elder Abuse. As this Court is aware, the Nevada Supreme
13 Court has consistently overturned a District Court’s decision not to grant relief
14 under Rule 60 when there has been an inequitable distribution of the marital estate.

15 Plaintiff, Tessie E. Wilkinson a/k/a Tessie Elma Almario (hereinafter
16 “Tessie”), knew that Defendant, Rodney Wilkinson (hereinafter “Rodney”)¹, had
17 Dementia and that it was so far advance that she could have a divorce decree
18 rubber-stamped that awarded her millions and Rodney nothing.

19 _____
20 ¹ For clarity sake when discussing the Plaintiff, the focus will be on Rodney rather than
references to his guardian, Mrs. Sheryl Atterberg, who brings this motion as a friend of the
Court.

1 Rodney² was diagnosed with Dementia less than three months after the
2 Decree's entry. A diagnosis that determined Rodney's Dementia was so far
3 advanced that he required a permanent guardian as he was incapable of caring for
4 himself. Put another way, this case is not one in which someone comes back to
5 the Court years later screaming fraud. Additionally, a Colorado Court determined
6 that Rodney's 2017 Traumatic Brain Injury and Dementia required the
7 appointment of a permanent guardianship.

8 Tessie knew that Rodney was incapacitated. She hid his cognitive
9 impairment from both the Court and her attorney to gain an unfair advantage by
10 stealing millions of dollars of assets from her husband, a 65-year-old man.

11 Under the Decree prepared by Tessie and adopted by the Court, she gets
12 everything, and Rodney gets nothing. That fact alone should shock the conscious
13 of this Court and have led the Court to hold a prove-up hearing in the first
14 instance—which it did not do.

15 Accordingly, this Court should set aside the February 12, 2020 Decree of
16 Divorce and Rodney's pro per answer, which Tessie also prepared and had
17 Rodney file and set this case for ordinary proceedings.

18 This Motion is based upon all pleadings and papers on file in this matter,
19

20 ² It should be noted that Rodney has filed the Foreign Judgment (Guardianship) in Case No. G-21-054224-A.

1 the points and authorities contained herein, the Declarations included herewith,
2 and any evidence or oral argument adduced at the time of the hearing on this
3 matter.

4 Dated this 25th day of January 2021.

5 JAMES KWON, LLC

6 /s/ James W. Kwon, Esq.

7 JAMES W. KWON, ESQ.

8 Nevada Bar No. 8146

9 6280 Spring Mountain Rd., Suite 100

10 Las Vegas, Nevada 89146

11 *Attorney for Sheryl Atterberg, on behalf of*
12 *Her Adult Ward, Defendant, Rodney*
13 *Wilkinson*

14 **MEMORANDUM OF POINTS AND AUTHORITIES**

15 **I. INTRODUCTION AND STATEMENT OF ESSENTIAL FACTS**

16 1. The parties wed on March 22, 2009, in Burlington, Colorado.

17 2. In February 2013, the parties separated, and Tessie moved to Las
18 Vegas, Nevada, where she remained.

19 3. In 2017, two (2) years before Tessie filed for divorce, Rodney
20 sustained a Traumatic Brain Injury.³ Whether Rodney's Traumatic Brain Injury
caused his Dementia is unknown, and that will be an issue for expert witnesses to

³ See Exhibit 1 (Professional Opinion of Kathy Dyer, LPN) submitted under seal.

1 determine.

2 4. On September 9, 2019, after being separated from Rodney for over
3 six (6) years, Tessie filed for divorce.⁴

4 5. On January 17, 2020, before he filed his answer in the divorce case,
5 Rodney, who was suffering from Dementia, was forced into signing the Decree of
6 Divorce by Tessie, who flew to North Dakota to get him to sign said Decree of
7 Divorce.

8 6. Bethany Hann (hereinafter “Ms. Hann”), the Notary who stamped
9 Rodney’s Verification, specifically recalls that Rodney did not speak, that he did
10 not seem to know what was going on, and that Tessie was in complete control on
11 January 17, 2020, when Rodney signed his Verification.

12 7. Ms. Hann was so concerned that before stamping the Verification,
13 she spoke to her supervisor, who advised her that she could stamp the Verification
14 since all she was attesting to be the fact that Rodney was signing the Verification.

15 8. Nine days later, Rodney, proceeding in proper person, filed his
16 answer, a document prepared by Tessie.⁵

17 9. On February 12, 2020, the Court filed the Stipulated Decree of
18 Divorce.

19

20 ⁴ See Case No. D-19-596071-D.

⁵ See Case No. D-19-596071-D.

1 10. Upon information and belief, Tessie's counsel Danielle Dawson,
2 Esq., never once met with or otherwise spoke to Rodney during the parties'
3 divorce proceedings.

4 11. Upon information and belief, Tessie instructed her counsel to include
5 the Stipulated Decree language to justify her award of millions of dollars and
6 nothing to Rodney.

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

9 13. Upon information and belief, Tessie hid that fact from her counsel,
10 Danielle Dawson, to secure an award of millions of dollars and nothing to Rodney.

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

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

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

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

1 18. During the parties' marriage, it was Tessie, not Rodney, who
2 engaged in marital waste.

3 19. If Rodney made poor financial decisions that devalued the marital
4 estate, such decisions resulted directly from his Traumatic Brain Injury, Dementia,
5 and cognitive decline.

6 20. On or about May 4, 2020, less than three months after the Court
7 entered the Decree of Divorce, Rodney was formally diagnosed with Dementia.⁶

8 21. On May 18, 2020, Tessie herself informed the medical personnel
9 treating Rodney:⁷

- 10 • That Rodney lived alone;
- 11 • That Rodney had refused in-home healthcare services and would not
12 accept help from anyone;
- 13 • That Tessie had called social services and police to conduct welfare
14 checks on Rodney; and
- 15 • That Rodney was not taking care of himself and failing to eat and
16 drink properly.

17 22. On November 23, 2020, a Colorado Court appointed Sheryl
18 Atterberg and Steven Atterberg, Rodney's sister and brother-in-law, his
19

20 ⁶ See Exhibit 2 (Medical Records for Rodney Dated 05/18/2020) submitted under seal.

⁷ See Exhibit 2 (Medical Records for Rodney Dated 05/18/2020) submitted under seal.

1 permanent guardians.

2 23. Dementia is a slow-progressing disease and does not appear
3 overnight.

4 24. The Global Deterioration Scale / Reisberg Scale provides the
5 following illustrative chart for the progression of Dementia, which given that
6 Rodney requires caretakers, shows that at the time of the Decree as well as at the
7 time of filing for Divorce, Rodney would not have had Contractual capacity as he
8 would have been in at least Stage 5 and thus been suffering cognitive decline for
9 years.⁸

Diagnosis	Stage	Signs and Symptoms	Expected Duration of Stage
No Dementia	Stage 1: No Cognitive Decline	–Normal function –No memory loss –People with no Dementia are considered in Stage 1	N/A
No Dementia	Stage 2: Very Mild Cognitive Decline	–Forgets names –Misplaces familiar objects –Symptoms not evident to loved ones or doctors	Unknown.

17
18 ⁸ See Exhibit 3 (Print out of the Global Deterioration Scale / Reisberg Scale); *See also*
19 <https://www.dementiacarecentral.com/aboutdementia/facts/stages/#:~:text=Global%20Deterioration%20Scale%20%2F%20Reisberg%20Scale,-The%20most%20commonly&text=Someone%20in%20stages%201%2D3,symptoms%20for%20a%20dementia%20diagnosis.&text=Stage%204%20is%20considered%20%E2%80%9Cearly,is%20considered%20%E2%80%9Clate%20dementia.%E2%80%9D> and
20 <https://www2.gov.bc.ca/assets/gov/health/practitioner-pro/bc-guidelines/cogimp-global-deterioration-scale.pdf>

No Dementia	Stage 3: Mild Cognitive Decline	<ul style="list-style-type: none"> –Increased forgetfulness –Slight difficulty concentrating –Decreased work performance –Gets lost more frequently –Difficulty finding right words –Loved ones begin to notice 	Average duration of this stage is between 2 years and 7 years.
Early-stage	Stage 4: Moderate Cognitive Decline	<ul style="list-style-type: none"> –Difficulty concentrating –Forgets recent events –Cannot manage finances –Cannot travel alone to new places –Difficulty completing tasks –In denial about symptoms –Socialization problems: Withdraw from friends or family –Physician can detect cognitive problems 	Average duration of this stage is 2 years.
Mid-Stage	Stage 5: <i>Moderately Severe Cognitive Decline</i>	<ul style="list-style-type: none"> –<i>Major memory deficiencies</i> –<i>Need assistance with ADLs (dressing, bathing, etc.)</i> –<i>Forgets details like address or phone number</i> –<i>Does not know time or date</i> –<i>Does not know where they are</i> 	<i>Average duration of this stage is 1.5 years.</i>

II. LEGAL STANDARD

The purpose of Rule 60(b) “is to redress any injustices that may have resulted due to excusable neglect or a wrong of an opposing party.” *Nev. Indus.*

1 *Dev. V. Benedetti*, 103 Nev. 360, 364, 741 P.2d 802, 805 (1987). This rule is
2 liberally construed to effectuate that purpose. *Carlson v. Carlson*, 108 Nev. 358,
3 362, 832 P.2d 380, 382 (1992).⁹ As such, the rule is remedial in nature and must
4 be liberally construed to relieve the harshness of rigid form by applying the
5 flexibility of discretion. *La-Tex Pshp. v. Deters*, 111 Nev. 471, 472, 893 P.2d 361,
6 362 (1995) and *Carlson v. Carlson*, 108 Nev. 358, 359, 832 P.2d 380, 381 (1992).

7 **A. THIS COURT HAS INHERENT AUTHORITY TO SET**
8 **ASIDE THE DECREE OF DIVORCE AT ANY TIME NO**
9 **MATTER HOW MUCH TIME HAS PASSED SINCE THE**
10 **ENTRY OF THE DECREE BECAUSE THERE IS NO TIME**
11 **LIMIT IN OBTAINING REDRESS FOR FRAUD UPON**
12 **THE COURT.**

13 “Fraud upon the court” has been recognized for centuries as a basis for
14 setting aside a final judgment, sometimes even years after it was entered. *Hazel-*
15 *Atlas Co. v. Hartford Co.*, 322 U.S. 238, 245, 64 S. Ct. 997, 88 L. Ed. 1250, 1944
16 Dec. Comm’r Pat. 675 (1944) (discussing “the historic power of equity to set aside
17 fraudulently begotten judgments” and canvassing cases and treatises and vacating
18 a judgment entered nine years earlier), *overruled on other grounds by Standard*
19 *Oil Co. v. United States*, 429 U.S. 17, 18, 97 S. Ct. 31, 50 L. Ed. 2d 21 (1976). It

20 ⁹ NRCP 60(d)(1) and (3) also allow for relief from a judgment through an independent action and to set aside a judgment due to fraud, which are not barred by the six-month limitations described in NRCP 60(c), “Other Powers to Grant Relief. This rule does not limit a court’s power to: (1) entertain an independent action to relieve a party from a judgment, order, or proceeding; (3) set aside a judgment for fraud upon the court.

1 is, of course, true that “in most instances, society is best served by putting an end
2 to litigation after a case has been tried and judgment entered.” *Id.* At 244, 97 S.
3 Ct. 31, 50 L. Ed. 2d 21.

4 For this reason, a final judgment, once entered, normally is not subject to
5 challenge. However, the policy of repose yields when “the court finds after a
6 proper hearing that fraud has been practiced upon it, or the very temple of justice
7 has been defiled.” *Universal Oil Prods. Co. v. Root Refin. Co.*, 328 U.S. 575, 580,
8 66 S. Ct. 1176, 90 L. Ed. 1447 (1946). “[A] case of fraud upon the court [calls]
9 into question the very legitimacy of the judgment.” *Calderon v. Thompson*, 523
10 U.S. 538, 557, 118 S. Ct. 1489, 140 L. Ed. 2d 728 (1998). Put another way,
11 “[w]hen a judgment is shown to have been procured” by fraud upon the court, “no
12 worthwhile interest is served in protecting the judgment.” Restatement (Second)
13 of Judgments § 70 cmt. B (1982).

14 The concept of “fraud upon the court” embraces only that species of fraud
15 which does, or attempts to, subvert the integrity of the court itself, or is a fraud
16 perpetrated by officers of the court so the judicial machinery cannot perform in
17 the usual manner its impartial task of adjudging cases and relief should be denied
18 in the absence of such conduct. *NC-DSH, Inc. v. Garner*, 125 Nev. 647, 649, 218
19 P.3d 853, 855 (2009).

20 Although a six-month time limitation shall apply to most grounds for which

1 relief under NRCF 60(b) may be sought, no time limitation shall apply to grounds
2 alleging fraud, as the court's jurisdiction to remedy fraud is inherent because a
3 court can proceed to remedy fraud in the absence of further action by a party.
4 *Murphy v. Murphy*, 103 Nev. 185, 185, 734 P.2d 738, 739 (1987).

5 Fraud upon the Court has been held to exist when the unsuccessful party is
6 kept away from the Court by such conduct as prevents a real trial on the
7 issues. *Price v. Dunn*, 106 Nev. 100, 104, 787 P.2d 785, 787 (1990). Tessie
8 committed fraud upon this Court by preparing and having Rodney sign an Answer
9 and Decree of Divorce knowing full well Rodney was incompetent.

10 Rodney was legally incapacitated and otherwise lacked contractual capacity
11 when Tessie filed for and obtained the Divorce. Tessie knew that and sought to
12 exploit such an advantage by having Rodney's Answer and the Stipulated Decree
13 prepared according to her terms for Rodney to sign. Tessie kept the fact that
14 Rodney had suffered a Traumatic Brain Injury in 2017 from this Court and her
15 counsel, and she otherwise concealed that Rodney, due to his cognitive
16 impairments, was legally incapacitated and otherwise lacked contractual capacity.

17 Tessie did so to circumvent public policy and Nevada law that requires that
18 a court "to the extent practicable, make an equal disposition of the community
19 property of the parties." Nev. Rev. Stat. § 125.150(1)(b).

20 Tessie will undoubtedly attempt to argue that more than six months has

1 passed since the entry of the Decree, and thus relief cannot be granted; however,
2 the Nevada Supreme Court rejected such an argument in *Murphy* and held that no
3 time limitation shall apply to grounds alleging fraud upon the court. *Id* at 185.

4 In short, Tessie has subverted the integrity of this Court itself and, therefore,
5 relief is warranted.

6 **B. THE DECREE OF DIVORCE SHOULD BE SET ASIDE**
7 **BECAUSE IT SHOCKS THE CONSCIOUS BY MAKING A**
8 **GROSSLY INEQUITABLE DISTRIBUTION OF THE**
9 **MARITAL ESTATE.**

10 Unconscionability is not an easy term to define, involving both procedural
11 and substantive unconscionability for a court to exercise its discretion to refuse to
12 enforce an agreement as unconscionable. If the case involves predominately
13 procedural unconscionability, then less evidence of substantive unconscionability
14 is required. *D.R. Horton, Inc. v. Green*, 120 Nev. 549, 551, 96 P.3d 1159, 1160
15 (2004) (overruled on other grounds by *United States Home Corp. v. Ballesteros*
16 *Tr.*, 415 P.3d 32, 41 (Nev. 2018); see also *Burch v. Second Judicial Dist. Court*,
17 118 Nev. 438, 439, 49 P.3d 647, 648 (2002).

18 Here, of course, we have both. Tessie, being well aware of Rodney's
19 medical condition and his mental limitations resulting therefrom, exploited those
20 limitations to secure a windfall of millions of dollars while leaving Rodney
destitute. Tessie knew his diminished capacity precluded him from fully
understanding any and all of the aspects of the Answer and Decree, which she

1 prepared and had Rodney agree to. Then, Tessie fully enforced the Decree of the
2 law even though she knew it was fundamentally unfair and procured by fraud.

3 Unconscionability is said to exist when enforcement of the agreement
4 results in one spouse having insufficient property to provide for his or her
5 reasonable needs. There are a number of factors that this Court may consider when
6 determining the fairness of an Agreement:

- 7 • Duration of the marriage;
- 8 • Assets owned by each party;
- 9 • Income and earning capacity of each party;
- 10 • Property each party brought into the marriage;
- 11 • Children of prior marriage(s);
- 12 • Future support needs of each party;
- 13 • Age and health of each party;
- 14 • Standard of living during the marriage;
- 15 • What each party would have received in the absence of the
- 16 agreement; and
- 17 • Each party's contribution to the marriage, including homemaker and
- 18 childcare contributions.¹⁰

19
20 ¹⁰ See *Del Vecchio v. Del Vecchio*, 143 So. 2d 17 (Fla. 1962); *Button v. Button*, 131 Wis. 2d 84,
86, 388 N.W.2d 546, 547 (1986); *Austin v. Austin*, 62 Mass. App. Ct. 719, 719, 819 N.E.2d 623,

1 Here, all factors point to unconscionability. This was a seven (7) year
2 marriage with the parties living in separate states for at least six (6) of those years.
3 When the parties married, Rodney brought substantial wealth into the marriage,
4 while Tessie brought *nothing* but her love of Rodney's money. However, when
5 they divorced, Tessie left the marriage unjustly enriched financially speaking,
6 while Rodney was left destitute.

7 Furthermore, Nevada Policy and Law are clear that a Court must, absent a
8 compelling reason otherwise, make an equitable distribution of the marital estate.
9 Nev. Rev. Stat. Ann. § 125.150.

10 The policy is so strong that the Nevada Supreme Court has consistently
11 reversed a District Court's decision not to set aside a decree under NRCP 60(b)
12 when an inequitable distribution was made.

13 For example, in *Petersen v. Petersen*, 105 Nev. 133, 771 P.2d 159 (1989),
14 the Wife figured out about 90 days after the Divorce that she had received about
15 10 percent of the parties' property, but her motion to set it aside was not filed until
16 the day before the six months would have elapsed. The Supreme Court rejected
17 the trial court's conclusion that the motion was untimely and held that when such
18 a motion is filed at any time within the six months allowed by NRCP 60(b),
19
20

624 (2004)

1 alleging fraud or mutual mistake, and seeks for the first time to address the fairness
2 of the Decree of Divorce, the motion should be considered on its merits. The
3 Supreme Court specifically stated, “the trial judge’s denial of Wife’s motion on
4 the basis that it was not filed within a ‘reasonable time’ produces harsh results
5 which are inconsistent with the spirit of Rule 60(b).” Id. at 134.

6 In *Carlson v. Carlson*, 108 Nev. 358, 832 P.2d 380 (1992), the Supreme
7 Court reversed the district court’s refusal to set aside a property distribution under
8 NRCP 60(b), where a private pension had been greatly undervalued in the original
9 divorce proceedings. Both parties were represented by counsel, but the Wife
10 discovered (just days before the six-month period of NRCP 60(b) expired) that
11 the representation by the husband and his counsel that the property division was
12 “essentially equal” was false because the pension was worth much more than had
13 been thought. The Wife received about 29 percent property and moved to set aside
14 the property distribution under NRCP 60(b). On appeal, the Supreme Court
15 reversed the district court’s order refusing to set aside the Decree as an abuse of
16 discretion.

17 In *Cook v. Cook*, 112 Nev. 179, 912 P.2d 264 (1996), the husband drafted
18 a property settlement agreement providing that he received the law practice as his
19 separate property and including the Wife’s waiver of any interest in his firm’s
20 income. The Wife had an attorney review the property settlement agreement, but

1 she signed it in proper person. The husband filed for Divorce, and the Wife signed
2 a proper person answer. The Decree was granted the same day. Days before the
3 six-month NRCP 60(b) time limit ran, the Wife filed a motion to “vacate the
4 divorce decree and for a new trial.” The Wife’s expert evaluated the community
5 property and concluded that the Wife had received approximately \$100,000 to the
6 husband’s \$600,000 in net community property assets, that in his “professional
7 opinion, the [agreement] was grossly inequitable and unfair to the wife.” *Cook*,
8 112 Nev. at 181, FN 1, 912 P.2d at 265. The Nevada Supreme Court found an
9 abuse of the lower court’s “wide discretion in deciding whether to grant or deny”
10 a motion under NRCP 60(b) and reversed the lower court’s denial of her motion
11 to set aside the Decree.

12 In the case at hand, the Decree of Divorce on its face violates Nevada
13 Policy. Not only does it award Tessie millions of dollars’ worth of assets, but it
14 gives Rodney nothing. Furthermore, there was no compelling reason to make such
15 a grossly disproportionate award. Not only was such an award obtained by fraud,
16 but the court failed to hold a Prove Up hearing to determine the validity of such
17 an award and if there was, in fact, a compelling reason to award one person
18 millions and leave the other completely destitute.

19 Accordingly, this Court must set aside the Decree of Divorce and Rodney’s
20 Answer.

1 **C. THE DECREE OF DIVORCE IS VOID AB INTIO**
2 **BECAUSE RODNEY LACKED CONTRACTUAL**
3 **CAPACITY.**

4 Nevada courts have retained “the discretion to apply lack of diligence
5 principals to NRCP 60(b)(4) void judgment challenges.” *Teriano v. Nev. State*
6 *Bank (In re Harrison Living Tr.)*, 121 Nev. 217, 222, 112 P.3d 1058, 1061 (2005).
7 A judgment is considered void when there is a defect in the court’s authority to
8 enter the judgment due to lack of jurisdiction over the subject matter or
9 parties. *See Gassett v. Snappy Car Rental*, 111 Nev. 1416, 1419, 906 P.2d 258,
10 261 (1995), *superseded by rule on other grounds as stated in Fritz Hansen A/S v.*
11 *Eighth Judicial Dist. Court*, 116 Nev. 650, 654–56, 6 P.3d 982, 984–85
12 (2000); *see also Lindblom v. Prime Hosp. Corp.*, 120 Nev. 372, 377, 90 P.3d 1283,
13 1285–86 (2004).

14 The six-month limitation is inapplicable to a void judgment. *Moore v.*
15 *Moore*, 75 Nev. 189, 193 n.2, 336 P.2d 1073, 1075 n.2 (1959); *but see Teriano*,
16 121 Nev. at 222, 112 P.3d at 1061 (adopting reasonableness requirement).

17 Tessie initiated a case against Rodney even though he was legally
18 incapacitated and otherwise lacked contractual capacity. In doing so, the Decree
19 of Divorce is *void* ab initio not only because Rodney lacked the capacity to sign
20 said Decree but because the Family Court never properly obtained personal
jurisdiction over Rodney. Rodney lacked the legal capacity to accept services and

1 to answer the divorce Complaint.

2 Therefore, relief is warranted and should be granted forthwith.

3 **D. IF THE COURT IS NOT INCLINED TO SET THE**
4 **DECREE ASIDE BASED ON THE PLEADINGS, THEN**
5 **THE COURT SHOULD OPEN DISCOVERY AND SET**
6 **THIS MATTER FOR AN EVIDENTIARY HEARING.**

7 *Hale v. Hale*, 130 Nev. 1184 (2014) provides a roadmap for addressing
8 matters like those raise here. In *Hale*, the husband claimed he lacked contractual
9 capacity when executing the Decree of Divorce due to his Dementia. The district
10 court then, as acknowledged by the Supreme Court, properly held an evidentiary
11 hearing to determine whether the husband could prove such incapacity. The
12 district court heard from multiple witnesses, including expert witnesses, before
13 determining that Arthur Hale did, in fact, have contractual capacity at the time of
14 the divorce proceedings.

15 Such a determination, however, could not have been reached without the
16 aid of expert witnesses. Rodney's guardians have contacted expert witnesses and
17 are in the process of hiring one to provide this Court with all the information that
18 it needs to render a decision. As this Court can imagine, the process has been
19 slowed by the global pandemic. Therefore, if this Court is not inclined to set aside
20 Rodney's Answer and the Decree based on the pleadings, it should open discovery
and set the matter for an evidentiary hearing.

1 **III. CONCLUSION**

2 Based on the foregoing, this Court not only set aside the Decree of Divorce
3 but also Rodney's answer.

4 Dated this 25th day of January 2021.

5 JAMES KWON, LLC

6 /s/ James W. Kwon, Esq.
7 JAMES W. KWON, ESQ.
8 Nevada Bar No. 8146
9 6280 Spring Mountain Rd., Suite 100
10 Las Vegas, Nevada 89146
11 *Attorney for Sheryl Atterberg, on behalf of*
12 *Her Adult Ward, Defendant, Rodney*
13 *Wilkinson*
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JAMES KWON, LLC

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

DECLARATION OF SHERYL ATTERBERG

I, Sheryl Atterberg, being first duly sworn, deposes and states as follows:

1. I am the Co-Guardian for Defendant, Rodney Wilkinson, an Adult Ward, in the aforementioned matter.

2. I have read the foregoing *Defendant's Motion to Set Aside Divorce Decree Pursuant to NRCP 60(b)* and the factual averments it contains are true and correct to the best of my knowledge, except as to those matters based upon information and belief, and as to those matters, I believe them to be true. Those factual averments contained in the foregoing *Motion* are incorporated herein as if set forth in full.

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

EXECUTED on this 25th day of January, 2021.

/s/ Sheryl Atterberg
SHERYL ATTERBERG

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EXHIBIT 1
Submitted Under Seal

EXHIBIT 2
Submitted Under Seal

EXHIBIT 3

Global Deterioration Scale / Reisberg Scale

The most commonly used scale is often referred to simply as GDS, or by its more formal name, the Reisberg Scale (or by the lengthy name "Global Deterioration Scale for Assessment of Primary Degenerative Dementia"). The GDS divides into seven stages based on the amount of cognitive decline. This test is most relevant for people who have Alzheimer's disease because some other types of dementia (i.e. Frontotemporal dementia) do not always include memory loss.

Someone in stages 1-3 does not typically exhibit enough symptoms for a dementia diagnosis. By the time a diagnosis has been made, a dementia patient is typically in stage 4 or beyond. Stage 4 is considered "early dementia," stages 5 and 6 are considered "middle dementia," and stage 7 is considered "late dementia."

Global Deterioration Scale (CGS) / Reisberg Scale

Diagnosis	Stage	Signs and Symptoms	Expected Duration of Stage
No Dementia	Stage 1: No Cognitive Decline	<ul style="list-style-type: none"> – Normal function – No memory loss – People with NO dementia are considered in Stage 1 	N/A
No Dementia	Stage 2: Very Mild Cognitive Decline	<ul style="list-style-type: none"> – Forgets names – Misplaces familiar objects – Symptoms not evident to loved ones or doctors 	Unknown
No Dementia	Stage 3: Mild Cognitive Decline	<ul style="list-style-type: none"> – Increased forgetfulness – Slight difficulty concentrating – Decreased work performance – Gets lost more frequently – Difficulty finding right words – Loved ones begin to notice 	Average duration of this stage is between 2 years and 7 years.
Early-stage	Stage 4: Moderate Cognitive Decline	<ul style="list-style-type: none"> – Difficulty concentrating – Forgets recent events – Cannot manage finances – Cannot travel alone to new places – Difficulty completing tasks – In denial about symptoms – Socialization problems: Withdraw from friends or family – Physician can detect cognitive problems 	Average duration of this stage is 2 years.
Mid-Stage	Stage 5: Moderately Severe Cognitive Decline	<ul style="list-style-type: none"> – Major memory deficiencies – Need assistance with ADLs (dressing, bathing, etc.) – Forgets details like address or phone number – Doesn't know time or date – Doesn't know where they are 	Average duration of this stage is 1.5 years.

Mid- Stage	Stage 6: Severe Cognitive Decline (Middle Dementia)	<ul style="list-style-type: none">– Cannot carry out ADLs without help– Forgets names of family members– Forgets recent events– Forgets major events in past– Difficulty counting down from 10– Incontinence (loss of bladder control)– Difficulty speaking– Personality and emotional changes– Delusions– Compulsions– Anxiety	Average duration of this stage is 2.5 years
Late- Stage	Stage 7: Very Severe Cognitive Decline (Late Dementia)	<ul style="list-style-type: none">– Cannot speak or communicate– Require help with most activities– Loss of motor skills– Cannot walk	Average duration of this stage is 1.5 to 2.5 years.

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"/>	\$25	The Motion/Opposition being filed with this form is subject to the \$25 reopen fee.
-OR-		
<input checked="" type="checkbox"/>	\$0	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>Motion to Set Aside</u> .

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

<input checked="" type="checkbox"/>	\$0	The Motion/Opposition being filed with this form is not subject to the \$129 or the \$57 fee because:
<input checked="" 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"/>	\$129	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"/>	\$57	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"/>	\$0	<input type="checkbox"/>	\$25	<input type="checkbox"/>	\$57	<input type="checkbox"/>	\$82	<input type="checkbox"/>	\$129	<input type="checkbox"/>	\$154

Party filing Motion/Opposition: Sheryl Atterberg, on Behalf of Her Adult Ward, Date 1/20/2021
Defendant, Rodney Wilkinson

Signature of Party or Preparer /s/ Crystal Ann Garzalski

ROA000093

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Steven D. Grierson
CLERK OF THE COURT

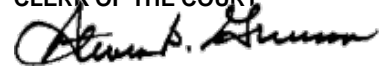


EXHIBIT 1

Submitted Under Seal

**FLAGLER**

419 Pawnee Avenue
PO Box 426
Flagler, CO 80815

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STRATTON

410 Main Street
Stratton, CO 80836

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LIMON

1750 Circle Ln
Limon, CO 80828

phone 719-775-9031
fax 888-684-2050

LIMON

2050 6th Street
Limon, CO 80828

phone 719-775-9412
fax 888-684-2050

To Whom it May Concern:

Rodney Wilkerson moved into our assisted living facility on 10/1/2020. He was given the following diagnoses upon move in: 1) neurocognitive disorder 2) depression 3) history of stroke 4) insomnia 5) psychosis / agitation and 6) traumatic brain injury (TBI).

During this time Rodney has exhibited daily concerns with his short-term memory 1) He forgets on a daily basis how to use his phone 2) can't turn on or change channel on tv 3) forgets that he ate meals (often reports to his family that he hasn't ate) 4) is verbally aggressive to staff at times over showers and personal care 5) difficulty organizing thoughts – stops and starts sentences and conversations about care 6) difficulty remembering things – we have to give constant reminders of the sequence of tasks and daily routines. 7) constantly misplaces items in room – phone, remote, comb etc. 8) Can't find things even when they are next to him – blanket 9) Forgets how to use walker for safety.

In my professional opinion as someone who has been involved in this field for 35+ years and also being a nurse, It appears like most of the concerns with Rodney's memory concerns are normal symptoms of the Traumatic Brain Injury that Rodney received in 2017. Noticing these concerns would probably not be possible unless you resided with Rodney 24/7. He presents well in a short simple conversation. He appears to answer yes and no questions appropriately. He can also talk about things from the past somewhat clear. Rodney definitely is not capable of safely making decisions in regard to day-to-day issues and has probably had this concern for quite some time. Because of the lack of people that truly spent significant time with him this problem was not as accentuated as it is in our setting. Because of these issues, it is my opinion that Rodney will never be able to live independently and make independent decisions.

Sincerely,

Kathy Dyer
Administrator/LPN

"Exceptional Care For Your Finest Seasons"
www.aspenleafassistedliving.com

ROA000095

EXHIBIT 2
Submitted Under Seal

6. renal insufficiency - Cr 1.7 from 1.9, BP elevated during stay, however he is reluctant to take any medication will initiate amlodipine 5mg QD.

7. social - Will again contact APS for follow up on home safety.

8. Hypothyroidism-TSH 6.559, initiated levothyroxine at 50mcg QD.

Goodland Regional Medical Center • 220 W 2ND ST, GOODLAND KS 67735-1602

WILKINSON, RODNEY E (id #371832, dob: 02/28/1955)

Supervising Provider Comment

despite coming for services and evaluation, he has refused further testing, therapy , or medications for pain. I feel he has a significant

psychiatric diagnosis. Likely he has schizophrenia and potentially dementia. He needs assistance and treatment but he refuses. we will

continue to pursue social work interventions as he is medically stable and demands to go home.

Date: 05/18/2020 16:29

Chief Complaint

shoulder pain

Assessment & Plan

1. dehydration - i suspect he has had poor po intake by his history and difficulty with self cares. we will admit and give IVF.

2. malnutrition - strong suspicion due to dementia and self care deficit. check prealbumin

3. dementia - 19/30 on initial MME 2 weeks ago.

4. right shoulder pain - likely rotator cuff pathology. he previously refused MRI. consult

PT/OT

5. paranoia - psych consult/ social work consult.

6. renal insufficiency - recheck lab. Cr was 1.9 previously

7. social - report was made for APS and to our knowledge no f/u was done.

Inpatient Diagnoses

dementia - primary - Onset: 05/18/2020

dehydration - primary - Onset: 05/18/2020

renal insufficiency - primary - Onset: 05/18/2020

Precautions

None recorded.

HPI

pt here to f/u up on right arm and neck pt states their still hurting. pt declined the mri's keeps saying it doesn't matter bad things

have happened to him.

"Not doing too good". I have right shoulder pain that radiates down his arm. "I don't want an MRI, I had bad things happen to me".

Patient denies anyone coming to visit him. No one has come to check on him. Patient c/o mid back pain, patient states that this happened this morning. Patient reports that he is not in favor of taking any pain medication, has not been taking the tramadol. Patient gives consent to talk with patient's ex-wife. Patient called ex-wife and put her on speaker phone during visit. Wife reports

that patient is alone at the house, wife notified that patient refused home health. Ex-wife reports that Brian Ballman comes and visits

patient and brings him food and talks with patient. Ex-wife reports that DCF has not come and seen patient. Ex-wife of patient has

called social services and police for welfare checks, pt gets scared when they come around. Patient will not take help from anyone,

wont even let his sister come and help him. Ex-wife of patient reports that patient is only taking vitamin b 12. The tramadol that was

given to patient at last visit has not been taken, patient told his ex-wife that the tramadol is against his religion, so patient threw the

medication away. Ex-wife last seen patient three weeks ago. Ex-wife reports that patient is not eating or drinking well. Patient states

that he is not eating well during the day, eats when Brian comes. Patient reports that he is not consuming much water.

Patient states that he does not do anger very well. "North Dakota is the worse place that I have ever seen". "I continue to have a

bad experience". Patient reports that he has a oil rig that is doing well in North Dakota and a "preacher" is trying to take it from him. "It seems like when someone is down and out that everyone wants to rob you". Patient states that when he gets angry that he

just wants to throw stuff. Patient does not think about hurting others, or himself, it is against his religion.

Created by Jessica Gittinger, APRN 08:20, 05-19-2020

Signed by Jessica Gittinger, APRN 08:35, 05-19-2020

Co-signed by Travis Daise, MD 08:55, 05-19-2020

Goodland Regional Medical Center • 220 W 2ND ST, GOODLAND KS 67735-1602

WILKINSON, RODNEY E (id #371832, dob: 02/28/1955)

Patient would like to cut his arm off due to the severity of pain.

Patient denies wanting to go into an assisted living facility, "I don't have any use for it". Patient would like his wife to come home for

a little bit. Patient asked if it was a permeant thing, unknown. Patient informed of why MRI's need to and what they are going to evaluate.

"I don't want to deal with my sister, she infuriates me".

ROS

Patient reports diminished activity but reports no significant weight change, good appetite, no fever, and no fatigue. He reports no

ear pain, no ear discharge, no hearing loss, no sinus pressure, no drooling, no facial swelling, no congestion, no sore throat, no hoarseness, and no mouth lesions; Positional dizziness is noted by patient.. He reports limited motion; right arm, right

shoulder. He reports shooting pain and dizziness but reports no numbness, no tingling, no burning, and no headache; right sided neck pain.. He reports anxiety but reports no depression. He reports no eye pain, no blurry vision, no eye redness, no eye itchiness, no eye swelling, no eye discharge, and normal movement. He reports no chest pain and normal heart rate. He reports no

cough, no wheezing, no chest tightness, no pain with respiration, and normal respiration. He reports no sneezing and no runny nose.

Problems

None recorded.

Surgical History

None recorded.

Home Medications

None Recorded

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WILKINSON, RODNEY E (id #371832, dob: 02/28/1955)

Patient states he is noncompliant with home meds as he forgets to take them.

Allergies

PENICILLINS: Itching

Family History

Father - Myocardial infarction (onset age: 62) (died age: 62)

Mother - Asthma (died age: 74)

- Mother had curvature of the spine

Social History

Cardiology and Urgent Care

Occupation: Oil field worker

Marital status: Married (Notes: Wife does not live with the patient.)

Live alone or with others?: alone

Diet: Regular

Exercise level: Occasional

Tobacco Smoking Status: Never smoker

Non-smoker

Chewing tobacco: none

Alvin B. Hanson

Bradley J. Hofland, Esq.
Nevada Bar No. 6343
228 South 4th Street, 1st Floor
Las Vegas, Nevada 89101
Telephone: (702) 895-6760
Facsimile: (702) 731-6910
bradh@hoflandlaw.com
Attorney for Plaintiff, Tessie Elma Almario

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

TESSIE ELMA ALMARIO,
Plaintiff,

VS.

SHERYL ATTERBERG, ON
BEHALF OF HER WARD
RODNEY WILKINSON,

Defendant.

) CASE NO.: D-19-596071-D
) DEPT NO.: U
)
) Date of Hearing: February 4, 2021
) Time of Hearing: 1:30 p.m.
)
) **ORAL ARGUMENT REQUESTED**
)
) **PLAINTIFF'S OPPOSITION TO**
) **DEFENDANT'S MOTION TO SET**
) **ASIDE THE DIVORCE DECREE**
) **PURSUANT TO NRCP 60(b) and**
) **COUNTERMOTION FOR**
) **ATTORNEY'S FEES AND RELATED**
) **RELIEF.**

COMES NOW, Plaintiff, Tessie Elma Almario (“Tessie”), and hereby submits Opposition to Defendant’s Motion to set aside the divorce decree pursuant to NRCP 60(b) and Countermotion for attorney’s fees and related relief.

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

1 Based upon the facts of this case, coupled with applicable precedent, Tessie
2 respectfully requests that this Court enter an Order:

- 3 1. Denying Defendant's motion in its entirety;
4 2. Awarding Tessie attorney's fees for having to respond to a patently
5 frivolous motion and to misstatements of fact and law; and
6 3. Addressing any additional relief this Court deems necessary.

7 Dated this 2nd day of February, 2021.

8
9 **HOFLAND & TOMSHECK**

10
11 By: /s/ Bradley J. Hofland
12 Bradley J. Hofland, Esq.
13 State Bar of Nevada No. 6343
14 228 South 4th Street, First Floor
15 Las Vegas, Nevada 89101
16 (702) 895-6760
17 *Attorneys for Plaintiff*
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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I.**

3 **Introduction**

4 There is no question the Defendant's "guardian"¹, Sheryl Atterberg
5 ("Sheryl") is attempting to pull a fast one on this Court. Indeed, Sheryl further
6 conceals the fact that she initiated a civil action² against Tessie on December 3,
7 2020, wherein she *makes the same* false claims³ and misstatements of fact. *It is*
8 *significant to note Sheryl did not seek any injunctive relief or an order shortening*
9 *time in the civil matter*—which confirms her doing so in this matter was done in
10 bad faith. Perhaps she thinks a newly elected judge is more gullible and will
11 succumb to baseless allegations designed to improperly inflame the Court rather
12 than follow the law. Respectfully, such an expectation is ill-judged and offensive.

13 Comparison of the instant motion with Sheryl's filings in the civil action
14 confirms this action is unquestionably a frantic, yet transparent maneuver, to
15 manipulate this Honorable Court. Because relevant facts and applicable precedent
16 lend no support to her claims, Defendant substitutes fact with fiction, misstates,
17 misapplies, and conceals applicable precedent, and egregiously violates the duty of
18 candor that is owed this Honorable Court. In short, Defendant demonstrates an ill-

19
20 ¹ As detailed *infra*, Defendant's "Guardian" is an *estranged sister* who had ***nothing***
21 to do with her brother for decades, a fact conspicuously concealed from this Court.
22 Her efforts and concerns have nothing to do with Rodney Wilkinson's benefit, but
23 rather, the personal gain she believes she will realize if her campaign of greed and
24 dishonesty is successful.

25 ² Case # A-20-825785-C; Notably, ***a motion to dismiss that action is Scheduled to***
26 ***be heard on February 9, 2021.*** The motion and Tessie's reply is submitted
27 herewith as Exhibit "6" for the Court's convenience and review. Seeing the writing
28 on the wall, Sheryl "jumps ship" and hopes for better luck with a "new" judge. The
fact truth and the law remain the same confirms the foolishness of Sheryl's latest
maneuver.

³ Making claims of (1) Elder Abuse, (2) Constructive Fraud, and (3) Declaratory
Relief, all predicated upon the patently false, and objectively disprovable, claims of
the "guardian".

1 judged belief that deceit and manipulation is appropriate if she will gain from such
2 conduct.

3 Sheryl resurrects the baseless argument a defamatory narrative she presented
4 in the civil action, only this time she presents the matter before the court under the
5 guise of “urgency”, hoping to prevent Tessie from informing the Court of her bad
6 faith and deceit.

7 Make no mistake—Defendant’s actions are not done for altruistic reasons.
8 The dispositive facts—*deliberately concealed by Defendant*, confirms Defendant is
9 simply selfish and opportunistic. Aside from Defendant’s misguided belief that she
10 is not bound by candor, Defendant’s actions and arguments also illuminates a
11 disturbing willingness to ignore rules of the Court and controlling precedent.

12 Lastly, the narrative that Defendant has crafted is patently false, devoid of
13 support and accuracy, and deliberately misleading. Defendant shamelessly
14 endeavors to manipulate this Court at all cost. As a result, it is necessary to address
15 Defendant’s dishonesty, provide the vital facts and corrections that Defendant has
16 concealed, and reference the applicable precedent that is fatal to the relief
17 Defendant seeks from this Court. Sheryl’s motion is baseless.

18 II.

19 The Gross Errors of Defendants Prefatory Remarks

20 Defendant’s motion is a gallimaufry⁴, comprised of false, misleading, and
21 incomplete claims, liberally laced with naked allegations bearing no relation to the
22 actual facts of this case and misstatements of both fact and law. Furthermore,
23 Defendant conceals earlier actions and the procedural history that confirms the
24 instant motion, along with the request for an Order Shortening Time, was baseless
25 and a manipulation of the legal system.

26
27
28 ⁴ A confused jumble or medley of things, or a dish made from diced or minced
meat, especially a hash.

1 From the onset of Defendant's remarks to this Court, there is a disturbing
2 lack of candor. For example, Defendant falsely represents to this Court that "[t]his
3 is a clear case of Fraud Upon the Court."⁵ The statement is patently false and
4 contrary to well-established law⁶. Defendant then follows up with additional false
5 and unsupported claims as she maligns Plaintiff and makes material
6 misrepresentation of fact⁷. The truth is Defendant Rodney Wilkinson ("Rodney")
7 **did not have** Dementia, let alone "so far advance[d] (as represented by Sheryl)"⁸,
8 when the Decree was entered⁹, and Sheryl's narrative (rehearsed in the civil matter
9 and polished by this point, but nevertheless false) ignores the express findings of
10 this Court.

11 When Rodney initiated the divorce, he did **not** have Dementia, or
12 "incapacitated", as a matter of law. The "onset" was only diagnosed following the
13 entry of the Divorce, and a guardian wasn't even given until six months after the
14 diagnosis—and even then, the guardian's powers were limited¹⁰.

15 As noted above, the professed guardian in this action is Rodney's sister,
16 Sheryl Atterberg ("Sheryl" or "guardian"), a fact she conveniently conceals from
17 this Court. Sheryl also fails to disclose to this Court that the relationship between
18 her and Rodney was estranged¹¹, and had been for decades. Coincidentally, Sheryl
19 had absolutely **no** relationship with Rodney until 2020—when she appears with
20

21 ⁵ Defendant's motion, page 2 of 23, line 9.

22 ⁶ Addressed and confirmed *infra* at Section IV, B, pages 12-14.

23 ⁷ Defendant's motion, page 2 of 23, lines 14-15.

24 ⁸ *Id.*, line 16.

25 ⁹ The evidence, detailed *infra*, confirms that Rodney was not diagnosed with
26 Dementia until May of 2019, after Rodney requested the divorce, and that diagnosis
27 confirmed his Dementia was not "so far advanced" but rather at its "**onset**" (or very
beginning!). Defendant is being intentionally dishonest.

28 ¹⁰ See Colorado Guardianship Order, submitted herewith as Exhibit "1" for the
Court's convenience and review.

¹¹ Rodney disclosed to others his belief that Sheryl wanted to put him in a mental
facility—something he did not want and was fearful of it happening.

1 hopes of financial gain. Rodney made this point clear as far back as 2007 (years
2 before the parties were even married), when he prepared “The Rodney E.
3 Wilkinson Trust” and provides therein that “[u]nder no circumstances, is a
4 distribution of income or principal to be made to either my brother, John
5 Wilkinson or my sister, Sheryl Atterberg.”¹²

6 While Sheryl professes to be Rodney’s guardian, given the nature of the
7 relationship between she and Rodney, coupled with her documented lack of candor,
8 there is reason to believe Rodney was not properly served, which would render the
9 Order Appointing Guardian for Adult void *ab initio*. Because void judgments can
10 be attacked collaterally, the fact Sheryl does not validate the Colorado Order should
11 be addressed and validation required—if, in fact, Sheryl can do so.

12 Since Sheryl has had virtually *no* contact with her brother, Rodney, for
13 decades, she clearly has no knowledge of what Rodney did, of his capacities, of his
14 interests, of his activities, or anything else for that matter. Thus, her claims are
15 nothing more than speculation, that cannot be relied upon by this Court.

16 The evidence, however, confirms that Rodney and Tessie had a close,
17 profound, and caring relationship, long before they married. Rodney’s intentions
18 towards Tessie were memorialized and made clear long *before* they married. In his
19 trust, he provided:

20 The balance of the trust assets (after expenses), of whatsoever kind and
21 whosoever situated, shall be distrusted, as follows:

- 22 (a) To my friend and confidant Tessie Mae Brown, (address omitted);
23 (b) If the said Tessie Elma Brown shall fail to survive me, then all of the
24 proceeds of the trust shall be distributed to Erica Sarai Bell (address
25 omitted);
26 (c) If neither of the foregoing survive me, then I direct that all trust
27 proceeds be distributed to Sheryl Atterberg, my sister.

28 Rodney prepared his trust in 2007. Rodney and Tessie were married in 2009.

¹² See Article II of The Rodney E. Wilkinson Trust, pages 1-2, submitted herewith
as Exhibit “2” for the Court’s convenience and review.

1 Sheryl claims Rodney sustained a “Traumatic Brain Injury” in 2017—but
2 *does not claim* that caused his “Dementia”¹³—nor does Sheryl provide proof such
3 diagnosis was made, or even considered, before May of 2020. Sheryl simply hopes
4 that with her false claims the Court “assumes” such a fact (that is disproved by the
5 evidence). Sheryl claims Rodney was suffering from Dementia before he filed his
6 Answer in the Divorce Case—but submits no evidence to support her claim. In
7 fact, the Colorado Order (Guardianship Order—if not void) wasn’t signed until
8 almost a year later (and the medical records confirm the onset of Rodney’s
9 dementia wasn’t until May of 2020¹⁴.

10 Thus, as a matter of law, at the time of the parties’ divorce, Rodney had the
11 legal capacity to contract. In reality, Rodney continued working, traveling, hauling
12 loads, and negotiating with various parties up to and after Rodney and Tessie
13 divorced.

14 As for the divorce, **Rodney** is the one who had initiated it. Rodney disclosed
15 he no longer wanted to own or be responsible for anything—he simply wanted to
16 live at the farmhouse and work. Rodney had his reasons, followed up to ensure it
17 was being accomplished repeatedly, and the phone records confirm this fact.
18 During this process, the parties reached an agreement and Rodney was content,
19 stopping work only because of shoulder trouble. Sheryl’s tale surrounding
20 Rodney’s verification is pure fiction—intended only to unfairly prejudice this Court
21 and deflect from the facts that disprove Sheryl’s claims. As noted above, Rodney
22 did not, in truth and as a matter of law, lack contractual capacity, and Sheryl’s
23 allegation of fraud is self-serving and defamatory.

26 ¹³ Defendant’s Opposition, page 4 of 23, lines 16-18.

27 ¹⁴ Such medical records, confirming the diagnosis of the onset of dementia wasn’t
28 made until May of 2020, long after the parties divorced, are submitted herewith as
Exhibit “3” for the Court’s convenience and review.

1 Sheryl has no idea what Tessie did or did not do, and her speculation is just
2 that—bearing no relation to the truth (which is why there is a conspicuous absence
3 of proof, support, or evidence to substantiate her defamatory claims). For example,
4 Sheryl maligns Tessie and claims she “absconded” with one million dollars in 2013
5 (while the parties were married). What Sheryl conceals from the Court is the
6 parties had just sold some real estate for 2.5 million dollars¹⁵. At Rodney’s
7 insistence, Rodney and Tessie placed 1million in her account and the balance in his
8 account. Rodney also deposited the approximate 300k from the sale of the corn that
9 had been harvested in his account. On top of that, Rodney placed the proceeds of
10 the combines and related equipment that was sold in his account. Sheryl’s
11 characterization of “absconding” is absurd and patently false.

12 Continuing, the \$60,000 in gold coins Sheryl blames Tessie for taking is
13 incorrect in value and blame is misplaced. In reality, the value of the gold coins
14 was closer to \$100k and were given to a woman named Tanika Stevenson by
15 Rodney. During the parties’ marriage, Rodney gave Ms. Stevenson considerable
16 amounts of money, took a 20k loan and gave her the proceeds, and Tessie has
17 cancelled checks substantiating this fact. Sheryl’s confusion of the two women is
18 understandable given her absence in her brother’s life.

19 Between 2014 and 2018, Rodney lived with a woman named Jill Strnad.
20 During this time, Rodney was still driving truck and gave her his income, with the
21 belief she would take care of the bills and expenses. Jill chose to write checks to
22 herself (again, Tessie has some of the cancelled checks), and neglected paying the
23 bills, property taxes, income taxes, and legal bills. In late 2018, Rodney contacted
24 Tessie, promised he was done with Jill and Tanika, hoping to reconcile their
25 relationship. During this time Rodney worked, had contractual capacity, and
26

27
28 ¹⁵ A copy of the settlement statement is submitted herewith as Exhibit “4” for the
Court’s convenience and review.

1 showed no signs of “dementia”. The truth is, during the marriage Rodney
2 committed considerable marital waste and admitted that fact on multiple occasions.

3 *After* the divorce the parties remained close and got along well. Tessie
4 visited him on numerous occasions, spoke to him often, and there is no truth the
5 Divorce was “rushed”; it was initiated by Rodney, discussed, considered, and
6 reflective of Rodney’s intent (expressed long before the parties were even
7 married)¹⁶. Phone records will substantiate these facts, and Plaintiff’s medical
8 records confirm Tessie remained involved in Rodney’s life and was concerned with
9 his well-being.

10 In the **Spring of 2020**, Rodney’s health began to decline and *Tessie* was
11 concerned¹⁷ and solicited *and* provided assistance (unlike Sheryl). In fact, Sheryl
12 concedes Tessie contacted social services, law enforcement—as well as neighbors,
13 and sending her son to check on him on multiple occasions¹⁸. Indeed, the very
14 medical record that Sheryl submits shows that in May of 2020 a diagnosis of the
15 *onset* of dementia was made¹⁹.

16 Sheryl is desperate, and quick to state, that Rodney lacked contractual
17 capacity five months earlier when he negotiated and agreed to the terms of the
18 Divorce and verified his Answer. However, the Trust Rodney prepared 13 years
19 before the divorce, and prior to the parties’ marriage, confirms the provisions of the
20 Decree are consistent with his intent.

21 As noted above, in May of 2020, the diagnosis of dementia noted it was at its
22 *onset (the beginning)*²⁰. The Court did not find him in need of a guardian
23

24 ¹⁶ See Exhibit “2”.

25 ¹⁷ As confirmed through Rodney’s Trust, created before the parties’ marriage, the
26 parties had feelings and interest in one another, regardless of status. This concern
and closeness remained after the divorce as well.

27 ¹⁸ See Defendant’s motion, page 7 of 23, lines 13.

28 ¹⁹ See Exhibit “3”.

²⁰ Sheryl argues dementia “is a slow-progressing disease that does not appear
overnight”, but conceals the fact that with dementia, contractual incapacity likewise

1 (assuming the Order was properly obtained and isn't void). Sheryl is unable to
2 provide any support for her claim Rodney lacked contractual incapacity at the time
3 of divorce.

4 In sum, Sheryl wasn't even involved in Rodney's life until the latter part of
5 2020. Sheryl's narrative is patently false, defamatory, and self-serving. The
6 evidence shows she lacks credibility and the litigation that she has commenced is
7 improper, flawed, and inconsistent with established precedent.

8 III.

9 Statement of Facts

10 Rodney and Tessie married on March 22, 2009 and divorced at the beginning
11 of 2020. Rodney initiated the divorce, directing and monitoring its progress and
12 content of the pleadings²¹. The Decree confirms Rodney's substantial marital waste
13 (which Rodney admitted and considered), represents their agreement, and found
14 and confirmed by the Court as being equitable and fair²².

15 Notice of Entry of the Decree of Divorce was filed on February 13, 2020.
16 Rodney did not seek reconsideration or move for any of the relief that was available
17 pursuant to NRCP 60(b)—because it reflected his agreement and was unwarranted.
18 Almost a year has passed and the Decree is, and remains, valid and enforceable²³.
19 Because there was no factual or legal basis in which to set aside the Decree,
20 Sheryl's endeavors to manipulate the legal system by filing a baseless motion that
21 completely ignores the above, that conceals the dispositive facts that are fatal to
22

23 does not occur overnight or accompany the initial diagnosis. While Guardian ship
24 was established on November 23, 2020, Rodney's contractual incapacity wasn't
determined.

25 ²¹ If requested of the Court, Tessie has phone recordings between the parties
26 confirming this fact as well as the absence of dementia.

27 ²² See e.g. Decree, page 6, line 5; page 11, line 20; page 12, line 6, submitted
28 herewith as Exhibit "5" for the Court's convenience and review. Sheryl's portrayal
of the Notary is patently false.

²³ See *Cavell v. Cavell*, 90 Nev. 334, 526 P.2d 330 (1974).

1 Sheryl's undertaking. The Stipulated Decree is an enforceable contract and the law
2 of the case²⁴--and while Sheryl may choose to ignore this fact, this Court certainly
3 cannot.

4 According to Sheryl, on November 23, 2020, "a Court in Lincoln County,
5 Colorado appointed Mrs. Atterberg Mr. Wilkinson's guardian due to the fact that
6 Mr. Wilkinson was and is unable manage his finances or otherwise care for himself
7 as a result of cognitive impairment"²⁵. Review of the Colorado Court's Order,
8 however, confirms Sheryl's statement is false and deliberately misleading. In fact,
9 the Colorado Order expressly *excluded* guardian (Sheryl) from managing the day-
10 to-day finances for Rodney²⁶ (Rodney's medical records likewise disprove Sheryl's
11 representations). Notably, Rodney does not, and did not assert he is, or was, unable
12 and/or lacked the capacity to enter into contractual relations.

13 IV.

14 Legal Analysis

15 A. Standard of Review.

16 Sheryl cites to N.R.C.P. 60(b) as support "to redress any injustices that may
17 have resulted due to excusable neglect or a wrong of an opposing party."
18 Shamelessly, however, Sheryl ignores the fact there has been no injustice, no
19 excusable neglect, and certainly no wrong committed by Tessie.

20 Apparently, Sheryl concedes *she is unable, and not entitled, to obtain relief*
21 *pursuant to NRCP 60(b) because absolutely no relief of any kind was sought*
22

23 ²⁴ See *Grisham v. Grisham*, 128 Nev. 679, 289 P.3d 230 (2012); see also *Kramer v.*
24 *Kramer*, 96 Nev. 759, 616 P.2d 395 (1980) (holding "A decree of divorce cannot be
25 modified or set aside except as provided by rule or statute").

25 ²⁵ Sheryl's Complaint at ¶ 17.

26 ²⁶ See Colorado Order, page 2 of 3, paragraph 9, submitted herewith as Exhibit "1"
27 for the Court's convenience and review. The Court also prevented Sheryl from
28 obtaining hospital or institutional care and treatment for mental illness,
developmental disability, alcoholism or substance abuse against the will of the
ward. (Paragraph 13).

1 *within the six-month time period designated for such relief.* Though not
2 addressed by Sheryl²⁷, the “fraud” in NRCP 60 (b) (committed by an opposing
3 party) is different from “fraud upon the Court” (generally committed by an officer
4 of the court)²⁸ and Sheryl misapplies the applicability and content of NRCP 60(d).

5 In sum, the facts of this case and applicable law firmly establish Sheryl is
6 unable to obtain any relief from this Court pursuant to NRCP 60(b).

7 **B. There has been no fraud upon the Court**

8 Sheryl submits she is entitled to file the instant motion claiming Tessie
9 committed “fraud upon the court”—which renders failing to seek relief within six
10 months as set forth in NRCP 60(b) meaningless. Sheryl is grossly mistaken.
11 Indeed, Sheryl, misstates, misapplies, and clearly misunderstands what constitutes
12 “fraud upon the court”.

13 As this Court knows, “[a] party seeking to vacate based on fraud upon
14 the court “bears a heavy burden” and must provide clear and convincing evidence
15 establishing the attorney defrauded the court²⁹. Further, NRCP 60(b) motions based
16 on fraud upon the court are available *only* “to prevent a grave miscarriage of
17 justice.”³⁰

18 In *Occhiuto*, quoting *United States v. International Telephone & Tel. Corp.*,
19 the Nevada Supreme Court held³¹:

22 ²⁷ Through ignorance or a misunderstanding of the law at best, or at worst,
23 intentionally ignored and concealed from the Court, making such conduct a
violation of candor and sanctionable.

24 ²⁸ See *Occhiuto v. Occhiuto*, 97 Nev. 143, 625 P.2d 568 (1981); *Mohney v. Eliades*,
2017 Nev. App. Unpub. LEXIS 742; *NC-DSH, Inc. v. Garner*, 125 Nev. 647, 218
25 P.3d 853 (2009); *Estate of Adams v. Fallini*, 132 Nev. 814, 386 P.3d 621 (2016).

26 ²⁹ NC-DSH, *supra*, at 657-58, 218 P.3d at 860-61.

27 ³⁰ *Bonnell v. Lawrence*, 128 Nev. 394, 404, 282 P.3d 712, 715 (2012) (quoting
28 *United States v. Beggeerly*, 524 U.S. 38, 47, 118 S.Ct. 1862) (internal quotation
marks omitted).

³¹ 349 F.Supp. 22, 29 (D.Conn. 1972), *aff’d* without opinion, 410 U.S. 919 (1973).

1 Generally speaking, *only* the most egregious misconduct, such as
2 bribery of a judge or members of a jury, or the fabrication of evidence
3 by a party *in which an attorney is implicated*, will constitute
4 a fraud on the court. See *Hazel-Atlas Glass Co. v. Hartford-Empire*
5 *Co.*, 322 U.S. 238, 64 S.Ct. 997, 88 L.Ed. 1250 (1944); *Root Refin.*
6 *Co. v. Universal Oil Products*, 169 F.2d 514 (3d Cir. 1948); 7 J. W.
7 Moore, Federal Practice, para. 60.33 at 510-11. *Less egregious*
8 *misconduct, such as nondisclosure to the court of facts allegedly*
9 *pertinent to the matter before it will not ordinarily rise to the level*
10 *of fraud on the court.* See *Kupferman v. Consolidated Research &*
11 *Mfg. Co.*, 459 F.2d 1072 (2d Cir. 1972); see also *England v. Doyle*,
12 281 F.2d 304, 310 (9th Cir. 1960) (emphasis supplied).

13 The Court further noted:

14 "[I]n order to set aside a judgment or order because of fraud upon
15 the court under Rule 60(b). . . it is necessary to show an
16 unconscionable plan or scheme which is designed to improperly
17 influence the court in its decision." *England v. Doyle*, supra, 281 F.2d
18 at 309. See also *United States v. Standard Oil Co. of California*, 73
19 F.R.D. 612, 615 (N.D.Cal. 1977).

20 As noted in *NC-DSH, Inc. v. Garner*³², "fraud upon the court" does not mean
21 any conduct of a party or lawyer of which the court disapproves and thus defined
22 "fraud upon the court" as embracing:

23 only that species of fraud which does, or attempts to, subvert the
24 integrity of the court itself, or is a fraud perpetrated by officers of the
25 court so that the judicial machinery cannot perform in the usual
26 manner its impartial task of adjudging cases ... and relief should be
27 denied in the absence of such conduct.

28 *NC-DSH* recognized fraudulent conduct of an attorney/officer of the Court,
and distinguished "fraud 'by an opposing party'" from that by an attorney. "Where
a judgment is obtained by fraud perpetrated by an attorney acting as an officer of
the court, the judgment may be attacked for fraud on the court." Indeed, fraud on
the court:

³² 125 Nev. 647, 218 P.3d 853 (2009) (dealing with fraud committed by a lawyer
who is an officer of the court—noting attorney involvement is "a signal
characteristic of many of the fraud on the court cases).

1 embrace[s] **only** that species of fraud which does, or attempts to,
2 subvert the integrity of the court itself, or is a fraud perpetrated by
3 officers of the court so that the judicial machinery cannot perform in
4 the usual manner its impartial task of adjudging cases ... and **relief**
should be denied in the absence of such conduct³³ (emphasis
supplied).

5 "Where a judgment is obtained by fraud perpetrated by an attorney acting as
6 an officer of the court, the judgment may be attacked for fraud on the court."³⁴
7 "Although not present in all fraud on the court cases, attorney involvement in
8 the fraud is a signal characteristic of many." (citation omitted)³⁵

9 While it has been established that Tessie engaged in no fraudulent conduct,
10 nor committed any fraud, assuming arguendo such, it could not constitute fraud
11 upon the court. Rodney initiated the divorce, Rodney instructed Tessie to begin the
12 process and Rodney monitored the status and actively negotiated its terms³⁶. As a
13 matter of law, Rodney was not incapacitated nor lacked contractual capacity.

14 In conclusion, Sheryl's position and argument is untenable. Accordingly, the
15 entirety of Sheryl's argument and application of "fraud on the court" is inaccurate,
16 factually and legally unsustainable, and misplaced.
17
18

19 ³³ *NC-DSH, supra*; *Demjanjuk v. Petrovsky*, 10 F.3d 338, 352 (6th Cir.
20 1994) (citing 7 Moore's Federal Practice § 60.33 (2d ed. 1978) (now at
21 12 Moore's Federal Practice, § 60.21[4][a] (3d ed. 2009)); *Kupferman*, 459 F.2d at
22 1078 (noting the Second Circuit adopted Moore's formulation); *In re Intermagnetics*
23 *America, Inc.*, 926 F.2d 912, 916 (9th Cir. 1991) (also adopting Moore's
formulation); see *Occhiuto*, 97 Nev. at 146 n.2, 625 P.2d at 570 n.2 (citing this
section of Moore's but without referring to the passage quoted in *Demjanjuk*).

24 ³⁴ *Id.*, *In re Tri-Cran*, 98 B.R. 609, 616 (Bankr. D. Mass. 1989).

25 ³⁵ *Id.*; see also *Demjanjuk*, 10 F.3d at 352 (noting that "[c]ases dealing with fraud on
26 the court often turn on whether the improper actions are those of parties alone, or if
the attorneys in the case are involved"); *Eastern Financing Corp. v. JSC Alchevsk*
27 *Iron*, 258 F.R.D. 76, 85 (S.D.N.Y. 2008) (analyzing *Hazel-Atlas*,
Kupferman, and *H. K. Porter Co.* in these terms).

28 ³⁶ Including Rodney providing Tessie a list of the vehicles he wanted included in
the divorce settlement.

1 **C. The Decree of Divorce is fair and equitable as a matter of law.**

2 It is significant to note that Rodney had, *as a matter of law*, contractual
3 capacity at the time the parties divorced and did not lack the legal capacity to
4 initiate, direct, and negotiate the Decree and execute his Answer. Indeed, Rodney
5 wasn't even appointed a guardian until almost a year later—and even then, Sheryl's
6 powers were limited. Moreover, that court did not declare Rodney lacked
7 contractual capacity—and did not declare Rodney lacked contractual capacity when
8 negotiating and agreeing to the terms of the Decree (which are consistent with the
9 Trust Rodney prepared years before the parties ever married)³⁷.

10 Furthermore, as a matter of law³⁸, the Decree of Divorce (and Order of this
11 Court) expressly provides that the terms of the Divorce Decree are “fair and
12 reasonable” and “equitable and just”³⁹—making Sheryl's claim the Decree did “not
13 provide for an equitable distribution” patently *false* and serves only to further
14 confirm Sheryl's bad faith and greed. Sheryl needlessly argues “unconscionability”
15 knowing it is not applicable in this matter, hoping to mislead this Court with use of
16 the catchphrase alone.

17 Sheryl violates the duty of candor that is owed to this Court when she falsely
18 claims Tessie exploited Rodney's limitations—*because Rodney was legally*
19 *competent, had contractual capacity as a matter of law, and he initiated the*
20 *decree and negotiated terms that were admittedly fair, equitable and just*. Sheryl
21 defames Tessie when stating Tessie knew of Rodney's “diminished capacity”
22 because at the time of their divorce he had no “diminished capacity”. Lastly,
23 Sheryl lies when she states the divorce was fundamentally unfair because it
24
25

26 ³⁷ Assuming the Colorado Guardianship Order is not void, Sheryl's failure to seek
27 such relief at that time now precludes/estops her (res judicata, claim preclusion,
28 issue preclusion) from seeking such relief at this time.

³⁸ See Section D, *infra*.

³⁹ Decree, Exhibit “5”, page 11, line 20, page 12, line 6.

1 represents Rodney's intent and directives (consistent with his Trust of 2007—prior
2 to the parties' marriage).

3 Further, the legal authority cited by Sheryl provides no support to her
4 position. The case of *DelVecchio v. DelVecchio*, 143 So.2d 17 (Fla. 1962),
5 addressed antenuptial agreements, the disclosure rule stated therein has been
6 superseded by statute, and is inapplicable in this case. Sheryl also cites *Petersen v.*
7 *Petersen*⁴⁰, that involves a *default* judgment and a NRCP 60(b) motion that *was*
8 filed within 6 months. Significantly, the *Petersen* Court expressly noted it was not
9 commenting on the merits of the claim she was “defrauded”. The case is inapposite
10 to the case at hand.

11 In the case of *Carlson v. Carlson*⁴¹ that Sheryl cites, the Husband
12 “misrepresented the value of his pension” and “the record clearly demonstrate[d]
13 that the representations were the result of either mistake or fraud.” In this case,
14 there was *no* misrepresentation and *no* misunderstanding as to the value of the
15 property and debt that was distributed. *Carlson* has no application to this case.

16 Lastly, the final case cited by Sheryl, *Cook v. Cook*⁴², is likewise immaterial
17 and unrelated to this matter. In *Cook*, the Husband, who drafted the property
18 settlement agreement, was an attorney who breached his duty of full and fair
19 disclosure and notably⁴³, the wife *timely* filed a motion to vacate the divorce decree.

22 ⁴⁰ 105 Nev. 133, 771 P.2d 159 (1989).

23 ⁴¹ 108 Nev. 358, 832 P.2d 380 (1992).

24 ⁴² 112 Nev. 179, 912 P.2d 264 (1996).

25 ⁴³ The *Cook* court noted the Husbands efforts of drafting the agreement constituted
26 an attorney-client relationship giving rise to legal ramifications. These ramifications
27 included (1) the agreement being subject to this court's close scrutiny on appeal; the
28 attorney having a duty of full and fair disclosure; and the attorney having to
demonstrate by a higher standard of clear and satisfactory evidence that the
transaction was fundamentally fair and free of professional
overreaching. *Williams*, 108 Nev. at 471-472, 836 P.2d at 618.

1 In this case, Rodney memorialized his intent to dispose of his assets to Tessie
2 long before the parties were married when he prepared his Trust. Rodney also
3 admitted to, and disclosed, significant marital waste and freely negotiated the terms
4 of the Decree of Divorce. The parties deemed the Decree to be fair and reasonable,
5 equitable and just, and is, by no means, unconscionable. Lastly, contrary to
6 Sheryl's misguided interpretation, the division of the marital estate was equitable
7 and consistent with the policy and laws of this State.

8 **D. The Decree was, at best, voidable—not void.**

9 Sheryl confuses (or mischaracterizes) void judgments with voidable ones. As
10 a threshold matter, the Decree of Divorce is valid, enforceable, and precludes
11 Sheryl from setting aside the Decree of Divorce between Rodney and Tessie. There
12 is no question the Family Court had jurisdiction to render the Decree of Divorce,
13 and neither party challenged its terms or validity. Accordingly, even if there was a
14 sufficient basis to set aside the Decree (which there was not), the time for doing so
15 has long lapsed.⁴⁴ It is long-established law that when a court has jurisdiction the
16 Decree would be voidable, not void. Hence, Sheryl's claim the Decree is "void"
17 and "void ab intio [sic]" is contrary to the law.

18 "If a judgment is deemed void, it is considered a legal nullity which can be
19 attacked collaterally⁴⁵. It is significant to note that *only* a void judgment may be
20 attacked collaterally⁴⁶. In *State Eng'r v. Sustacha*, the Nevada Supreme Court
21 confirmed that only void judgments are subject to collateral attack and ruled that
22 one district court could not set aside another district court's order⁴⁷.

23 Citing *Rohlfing v. District Court*, 106 Nev. 902, 906, 803 P.2d 659, 662
24 (1990), the *Sustacha* Court affirmed "[t]he district courts of this state have equal
25

26 ⁴⁴ See NRCP 60(b).

27 ⁴⁵ *In re Vance*, 2009 Tex. App. LEXIS 9154.

28 ⁴⁶ See *State ex rel. Smith v. Sixth Judicial Dist. Court*, 63 Nev. 249 (1946).

⁴⁷ 108 Nev. 223, 826 P.2d 959 (1992).

1 and coextensive jurisdiction; therefore, the various district courts lack jurisdiction
2 to review the acts of other district courts.”⁴⁸

3 A voidable judgment, on the other hand, is one rendered by a court having
4 jurisdiction, and although seemingly valid, is irregular and erroneous⁴⁹.
5 Significantly, a voidable decree *will have the effect of a proper legal order unless*
6 *its propriety is successfully challenged through a direct attack on the merits*⁵⁰.

7 In this case, the Decree of Divorce is a valid and enforceable Decree. As a
8 voidable Decree (at best), no challenge was made and as a matter of law, remains
9 binding and the law of the case. Because there was no challenge to the Decree of
10 Divorce between Rodney and Tessie before Judge Forsberg, the Decree remains
11 valid, enforceable, and binding. More importantly, there has been an agreement
12 and a judicial determination and Order that the terms of the Divorce Decree are
13 “fair and reasonable” and “equitable and just”⁵¹—making Sheryl’s claim the Decree
14 did “not provide for an equitable distribution” *false as a matter of law*.

15 As noted above, this Court clearly had jurisdiction and the Decree was
16 voidable—not void. Sheryl’s argument of void judgments and the inapplicability of
17 the “six-month limitation” to void judgments, has no bearing to this case. Rodney
18 was *not* legally incapacitated nor lacked contractual capacity when he submitted to
19
20

21 ⁴⁸ 108 Nev. at 226.

22 ⁴⁹ Black’s law Dictionary (7 Ed. 1999) 848.

23 ⁵⁰ *State ex rel. Newitt v. Fourth Judicial Dist. Court*, 61 Nev. 164, 121 P.2d 442
24 (1942); *Vaile v. Eighth Judicial Dist. Court*, 118 Nev. 262, 44 P.3d 506 (2002)
25 (court action “valid until it is set aside by a direct proceeding for that
26 purpose”); *Orrway Motor Service, Inc. v. Illinois Commerce Com.*, 353 N.E.2d 253
27 (1976); *Moore v. Moore*, 75 Nev. 189, 336 P.2d 1073 (1959) (voidable Decree is
28 valid until vacated and set aside (cited with approval on many occasions and [court]
consider[ed] the rule well settled.); *State ex rel. Newitt v. Fourth Judicial Dist.*
Court, 61 Nev. 164, 121 P.2d 442 (1942) (holding voidable judgment valid and
subsisting unless set aside).

⁵¹ Decree, Exhibit “5”, page 11, line 20, page 12, line 6.

1 the jurisdiction of this Court and Sheryl's representations are baseless, false, and
2 disproved by the evidence.

3 Further, it is significant to note Sheryl fails to provide any legal authority to
4 support her argument that the Court lacked personal jurisdiction over Rodney. This
5 failure alone enables this Court to deem that an admission that her motion is *not*
6 meritorious⁵². Sheryl also fails to address those factors that must be considered
7 when a party seeks to defeat personal jurisdiction⁵³.

8 **E. Sheryl's insatiable quest for financial gain does not entitle her a**
9 **fishing expedition or an evidentiary hearing.**

10 Sheryl admits she *doesn't* know what caused Rodney's dementia,⁵⁴ but there
11 is no question Rodney wasn't born with it and upon reaching the age of maturity,
12 obtained legal competence and contractual capacity, and exercised such throughout
13 his life. There was no judicial determination that Rodney was legally incompetent
14 or lacked contractual capacity, and a guardianship wasn't established until long
15 after he initiated and obtained a divorce from Tessie, and thus, as a matter of law,
16 he was both legally competent and capable of entering into contractual relations at
17 the time he negotiated the terms of the Decree and executed his Answer.

18 Further, the medical records that Sheryl disclosed to the Court reveal the
19 onset of dementia began in May of 2020—again, after the Decree was obtained.
20 Despite Sheryl's admissions, coupled with the evidence and applicable precedent,

21 ⁵² See EDCR 5.503.

22 ⁵³ See *Mattel, Inc. v. Greiner & Hausser GmbH*, 354 F.3d 857 (9th Cir. Ct. of App.
23 2003), wherein the court identified the following factors: (1) the extent of the
24 defendants' purposeful interjection into the forum state's affairs; (2) the burden on
25 the defendant of defending in the forum; (3) the extent of conflict with the
26 sovereignty of the defendants' state; (4) the forum state's interest in adjudicating the
27 dispute; (5) the most efficient judicial resolution of the controversy; (6) the
28 importance of the forum to the plaintiff's interest in convenient and effective relief;
and (7) the existence of an alternative forum. No one factor is dispositive; rather,
the court balances all seven.

⁵⁴ Sheryl's "Opposition" in the civil action, submitted herewith as Exhibit "7" for
the Court's convenience and review, page 3 of 18, lines 25-26.

1 Sheryl's claim Rodney was legally incompetent and lacked contractual capacity is
2 disingenuous and untenable. It is significant to note Sheryl admits, following the
3 parties divorce, that Tessie arranged for law enforcement and social services to
4 check on Rodney, and even sending her son on occasions, to see how Rodney was
5 doing.

6 Notably, *none of these agencies*—skilled and entrusted with recognizing
7 legally incapable persons, found Rodney to be lacking in capacity. When Sheryl
8 sought guardianship, the Court did not find Rodney was legally incapacitated or
9 lacked contractual capacity when the Decree was entered. Hence, there is no legal
10 or factual basis for Sheryl seeking to set aside the Decree, or for this Court to
11 sanction a fishing expedition.

12 Sheryl's reliance on *Hale v. Hale*⁵⁵, is misplaced and the ruling actually
13 confirms the impropriety of Sheryl commencing litigation before this Court or in
14 the civil action and reinforces the corresponding need to dismiss the action in its
15 entirety. In *Hale*, the appellant represented himself in the summary divorce
16 proceedings and subsequently filed a 60(b) motion to set aside the decree based
17 upon his dementia. Unlike this case, Hale had been diagnosed with dementia
18 *before* executing the agreement—the onset of Rodney's dementia did not happen
19 until after the divorce. *Hale* confirms that the Decree of Divorce under such
20 circumstances is voidable—and must be brought before the Court that executed the
21 Decree. Seeking such relief before this Court is improper and disallowed by law.

22 It is also significant to note that in *Hale*, the Decree of Divorce was *not* set
23 aside. *The only party that is acting in bad faith is Sheryl.*

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⁵⁵ 130 Nev. 1184 (2014).

1 **F. Tessie is entitled to an award of Attorney's fees and costs for**
2 **having to respond to and oppose a baseless motion that was**
3 **filed in bad faith.**

4 Sheryl should be ordered to pay Tessie's attorney's fees and costs for having
5 to respond to a Motion to Dismiss devoid of merit, riddled with gross misstatements
6 of fact and law, and lacking of dispositive facts. NRS 18.010 provides, in pertinent
7 part, as follows:

8 1. The compensation of an attorney and counselor for his or her
9 services is governed by agreement, express or implied, which is not
10 restrained by law.

11 2. In addition to the cases where an allowance is authorized by specific
12 statute, the court may make an allowance of attorney's fees to a
13 prevailing party:

14 (a) When the prevailing party has not recovered more than \$20,000; or

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

28 Additionally, E.D.C.R. 7.60(b) states:

 (b) The court may, after notice and an opportunity to be heard, impose
 upon an attorney or a party any and all sanctions which may, under the
 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:

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

 (2) Fails to prepare for a presentation.

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

3 (4) Fails or refuses to comply with these rules.

4 (5) Fails or refuses to comply with any order of a judge of the court.

5 Further, NRS 7.085 also provides this Court with the requisite authority to
6 make Tessie whole for Sheryl's bad faith and frivolous filing. Therein, it states:

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

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

12 (b) *Unreasonably and vexatiously extended a civil action or*
13 *proceeding before any court in this State*, the court *shall* require the
14 attorney personally to pay the additional costs, expenses and attorney's
15 fees reasonably incurred because of such conduct.

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

26 Thus, "NRS 7.085 allows a district court to make an attorney personally
27 liable for the attorney fees and costs an opponent incurs when the attorney files,
28 maintains or defends a civil action that is not well-grounded in fact or is not
warranted by existing law or by a good-faith argument for changing the existing
law."⁵⁶

⁵⁶ *Watson Rounds, P.C., v. Eighth Judicial Dist. Ct. (Himelfarb & Associates)*, 131
Nev. 783, 784, 358 P.3d 228, 230 (2015).

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

4 The Nevada Supreme Court, in *Watson Rounds*, held that NRCP 11 and NRS
5 7.085 each represent a distinct, independent mechanism for sanctioning attorney
6 misconduct. 131 Nev. at 791.

7 With specific reference to Family Law matters, the Court has adopted “well-
8 known basic elements,” which in addition to hourly time schedule kept by the
9 attorney, are to be considered in determining the reasonable value of an attorney’s
10 services and qualities, commonly referred to as the *Brunzell* factors. The Nevada
11 Supreme Court in *Brunzell v. Golden Gate National Bank*⁵⁷ identifies those factors
12 as follows:

- 13 1. The Qualities of the Advocate: his ability, his training, education,
14 experience, professional standing and skill;
- 15 2. The Character of the Work to Be Done: its difficulty, its intricacy,
16 its importance, time and skill required, the responsibility imposed
17 and the prominence and character of the parties where they affect
18 the importance of the litigation;
- 19 3. The Work Actually Performed by the Lawyer: the skill, time and
20 attention given to the work; and
- 21 4. The Result: whether the attorney was successful and what benefits
22 were derived.

23 Each of these factors should be given consideration, and no one element
24 should predominate or be given undue weight.⁵⁸ Additional guidance is provided by
25 reviewing the “attorney’s fees” cases most often cited in Family Law.⁵⁹ The

26 ⁵⁷85 Nev. 345, 349, 455 P.2d 31, 33 (1969)

27 ⁵⁸*Miller v. Wilfong*, 121 Nev. 619, 119 P.3d 727, 730 (2005).

28 ⁵⁹*Fletcher v. Fletcher*, 89 Nev. 540, 516 P.2d 103 (1973); *Levy v. Levy*, 96 Nev.
902, 620 P.2d 860 (1980), *Hybarger v. Hybarger*, 103 Nev. 255, 737 P.2d 889
(1987).

1 *Brunzell* factors require counsel to make a representation as to the “qualities of the
2 advocate,” the character and difficulty of the work performed, and the work
3 actually performed by the attorney.

4 Those factors, when applied to the facts of this case, warrant Sheryl being
5 directed to reimburse Tessie for the attorney’s fees she has incurred having to bring
6 Sheryl’s bad faith, material misrepresentations, and violation of her duty of candor,
7 to the attention of this court.

8 Tessie’s counsel has considerable experience in the fields of civil and family
9 law litigation. As demonstrated, *supra*, the work presented has been legally and
10 factually adequate and representative of a diligent review of the applicable law and
11 relevant facts. Tessie should be awarded fees sufficient to reimburse her for the
12 fees she has incurred in preparing this opposition and counter motion.

13 V.

14 Conclusion

15 Sheryl is opportunistic, greedy, and dishonest. Her quest for financial gain,
16 now that she has obtained guardianship over an estranged brother, has resulted in a
17 frantic maneuver to mislead the Court. Sheryl grossly misstates the facts and
18 applicable law. Based on the foregoing Tessie respectfully requests this Court to
19 enter an Order:

- 20 1. Denying Defendant’s motion in its entirety;
21 2. Awarding Tessie attorney’s fees for having to respond to a patently
22 frivolous motion and to misstatements of fact and law; and
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1 3. Addressing any additional relief this Court deems necessary.

2 Dated this 2nd day of February, 2021.

3
4 **HOFLAND & TOMSHECK**

5 By: /s/ Bradley J. Hofland

6 Bradley J. Hofland, Esq.

7 State Bar of Nevada No. 6343

8 228 South 4th Street, First Floor

9 Las Vegas, Nevada 89101

(702) 895-6760

10 Attorneys for Plaintiff

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2 **DECLARATION OF TESSIE ELMA ALMARIO**

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

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

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

12 DATED this 2nd day of February, 2021.

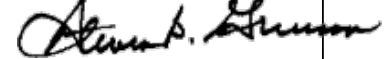
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14 /s/ Tessie Elma Almario
15 Tessie Elma Almario
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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I am an employee of HOFLAND & TOMSHECK, that pursuant to Administrative Order 14-2, NEFCR 9, and NRCP 5(b), on the 2nd day of February, 2021, I served the forgoing **PLAINTIFF'S OPPOSITION TO DEFENDANT'S MOTION TO SET ASIDE THE DIVORCE DECREE PURSUANT TO NRCP 60(b) and COUNTERMOTION FOR ATTORNEY'S FEES AND RELATED RELIEF** on the following parties by E-Service through the Odyssey filing system and/or U.S. Mail addressed as follows:

JAMES W. KWON, ESQ.
jkwon@jwklawfirm.com
Attorney for Defendant

BY: /s/ Nikki Woulfe
An Employee of HOFLAND & TOMSHECK



HOFLAND & TOMSHECK
Bradley J. Hofland, Esq.
Nevada Bar No. 6343
bradh@hoflandlaw.com
228 South 4th Street, 1st Floor
Las Vegas, Nevada 89101
Telephone: (702) 895-6760
Facsimile: (702) 731-6910
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,	)	Date of Hearing: February 4, 2021
	)	Time of Hearing: 1:30 p.m.
vs.)	
	)	APPENDIX OF EXHIBITS IN
SHERYL ATTERBERG, ON BEHALF	)	SUPPORT OF PLAINTIFF'S
OF HER WARD	)	OPPOSITION TO DEFENDANT'S
RODNEY WILKINSON,	)	MOTION TO SET ASIDE THE
	)	DIVORCE DECREE PURSUANT
	)	TO NRCP 60(b) and
Defendant.	)	COUNTERMOTION FOR
	)	ATTORNEY'S FEES AND
	)	RELATED RELIEF.

Plaintiff, Tessie Elma Almario appearing by and through her attorney, Bradley J. Hofland, Esq. of Hofland & Tomsheck, respectfully submits her Appendix of Exhibits in Support of Plaintiff's Opposition to Defendant's Motion to Set Aside the Divorce Decree pursuant to NRCP 60(b) and Countermotion for Attorney's fees and Related Relief.

Exhibit	Description	Bate Stamp No.
1	Order Appointing Guardian for Adult filed November 23, 2020	PLT000001- PLT000006

2	The Rodney E. Wilkinson Trust	PLT000007- PLT000015
3	Medical Records for Rodney Wilkinson – Not Produced -Submitted Under Seal	PLT000016- PLT000017
4	U.S. Department of Housing & Urban Development Settlement Statement	PLT000018
5	Decree of Divorce filed in Case No. D-19-596071-D filed February 12, 2020	PLT000019- PLT000033
6	Defendant's Notice of Motion and Motion to Dismiss Complaint Pursuant to NRCP 12(b)(1), NRCP 12(b)(5), and NRCP 12(h)(2) and Defendant's Reply to Plaintiff's Opposition To Defendant's Motion To Dismiss Complaint Pursuant To NRCP 12(B)(1), NRCP 12(B)(5), And NRCP 12(H)(2); And Defendant's Opposition To Plaintiff's Countermotion For Relief Pursuant To NRCP 60 in Case No. A-20- 825785-C	PLT000034- PLT000100
7	Plaintiff's Opposition to Defendant's Notice of Motion and motion to Dismiss Complaint Pursuant to NRCP 12(b)(1), NRCP 12(b)(5), and NRCP 12(h)(2) and Plaintiff's Countermotion for Relief Pursuant to NRCP 60 in Case No. A-20-825-785-C	PLT000101- PLT000121

DATED this 2nd day of February, 2021.

HOFLAND & TOMSHECK

By: /s/ Bradley J. Hofland

Bradley J. Hofland, Esq.
Nevada Bar No. 6343
228 South 4th Street, 1st Floor
Las Vegas, Nevada 89101
Telephone: (702) 895-6760
Attorney for Plaintiff,
Tessie Elma Almario

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CERTIFICATE OF SERVICE

I hereby certify that I am an employee of Hofland & Tomsheck, that Pursuant to NRCP 5(b) and EDCR 7.26, I certify that on the 2nd day of February, 2021, I served the foregoing **APPENDIX OF EXHIBITS IN SUPPORT OF PLAINTIFF’S OPPOSITION TO DEFENDANT’S MOTION TO SET ASIDE THE DIVORCE DECREE PURSUANT TO NRCP 60(b) and COUNTERMOTION FOR ATTORNEY’S FEES AND RELATED RELIEF** on the following party via E-Service through Odyssey and/or U.S. Mail addressed, as follows:

JAMES W. KWON, ESQ.
jkwon@jwklawfirm.com
Attorney for Defendant

By: /s/ Nikki Woulfe
An Employee of Hofland & Tomsheck

EXHIBIT “1”

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
ORDER APPOINTING GUARDIAN FOR ADULT	

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

PLT000004
 ROA000133



LINCOLN COUNTY COMBINED COURT

103 3rd Avenue
P O Box 128
Hugo, CO 80821-0128

Telephone:
(719) 743-2455

December 1, 2020

Steve Atterberg
PO Box 4109
Idaho Springs, CO 80452

RE: Case No. 20PR30016

Mr. Atterberg,

Enclosed you will find five certified copies of Amended Letters of Permanent Co-Conservatorship for an Adult. We added one more piece to the Letters per Judge Hurst's instructions. On the Amended Letters you will see a fourth box that says *Co-Conservators are authorized to file appropriate legal proceedings and Lis Pendes to protect preserve and marshal the protected person's estate.*

I am sorry for any inconvenience.

Sincerely,

Kimberly Graham
Clerk of Court

PLT000005
ROA000134

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 B. Breen

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 B. Breen

Probate Registrar/(Deputy)Clerk of Court

EXHIBIT “2”

THE RODNEY E. WILKINSON TRUST

Dated this 14 DAY OF August, 2007

THIS TRUST AGREEMENT made and entered into this 14th day of August, 2007, made and entered into by and between

Rodney E. Wilkinson

whose current address is 5730 Road 10, Goodland, Sherman County, Ks 67735, hereinafter referred to "Settlor," and

Rodney E. Wilkinson

hereinafter referred to as the TRUSTEE, is as follows:

The Settlers hereby transfer to the Trustees the property described in Schedule "A" which is hereto attached and made a part of this agreement, and the Trustees accept that property and agree to hold the property in trust pursuant to the terms hereof. That property and any other property added to the trust in accordance with the provisions of this instrument and all investments and reinvestments hereof shall be held in trust under the following terms and conditions:

ARTICLE I

NAME OF TRUST

This instrument of trust is hereby named "The Rodney E. Wilkinson Trust dated the 14th day of August, 2007."

ARTICLE II

FAMILY OF THE SETTLOR

Rodney E. Wilkinson has never been married, has no children, either living or dead, and has one brother, John Wilkinson, and one sister, Sheryl Atterberg. Under no

circumstances, is a distribution of income or principal to be made to either my brother, John Wilkinson or my sister, Sheryl Atterberg.

ADDITIONS TO AND WITHDRAWALS FROM THE TRUST ESTATE

The Settlor or any other person may transfer, by will or otherwise, any other property to the trust estate with the consent of the trustees to be administered under the terms and provisions of this trust agreement.

ARTICLE IV

AMENDMENT AND REVOCATION

The Settlor may, from time to time, amend this trust agreement in any respect or revoke it in whole or in part by an instrument in writing signed by the Settlor and delivered to the trustees during the Settlor's lifetime, provided that the duties and compensation of the trustees shall not be materially changed by any amendment without their written approval. Settlor shall have the right to alter, amend, change or revoke this instrument during their lifetimes, or during the lifetime of the survivor of them.

ARTICLE V

DISTRIBUTION OF INCOME AND/OR PRINCIPAL DURING SETTLOR'S LIFETIME

The Trustee may distribute the trust income and or principal, to the extent of exhausting the trust assets, to Rodney E. Wilkinson, during his lifetime. However, if the settlor become incapacitated through illness, age or other causes, the trustee may, in his or her discretion, from time to time, during the period the trustees believes such incapacity continues, use so much of the net income and any portion or all of the principal of the trust for the reasonable support, maintenance and health of the settlor as the trustees from

time to time determines to be necessary; and the trustee, or successor trustees, may in their uncontrolled discretion.

ARTICLE VI

DISPOSITION OF THE TRUST PROPERTY AFTER THE SETTLOR'S DEATH

After the Settlor's death, the trustees shall pay all the just and provable debts of the Settlor, the expenses of last illness, funeral expenses, cost of administration and claims allowed in the administration of the settlor's estate, if any, and pay all death taxes imposed on said estate, whether federal or state. All such payments shall be made prior to the distribution of my assets to a beneficiary hereunder.

The balance of the trust assets, of whatsoever kind and whosoever situated, shall be distrusted, as follows:

(a) To my friend and confidant Tessie Mae Brown, whose current address is 5730 Road 10, Goodland, Ks 67735;

RW ^{*EL ma*} (b) If the said Tessie ~~Mae~~ Brown shall fail to survive me, then all of the proceeds of the trust shall be distributed to Erica Sarai Bell, whose address is 377 Alta Vista Drive, S., San Francisco, CA 94080.

RW (c) If neither of the foregoing survive me, then I direct that all trust proceeds be distributed to Sheeryl Attetberg, my sister.

ARTICLE VI

CONTESTING THE PROVISIONS OF THIS INSTRUMENT OF TRUST

I have carefully considered the provisions of this trust instrument and the distribution of the assets there under. I feel that the provisions are very fair and should be enforced as we have stated herein. Should any distributee or heir, whether named herein or not, threaten or attempt to contest any of the trust provisions, then his or her

distributive share shall be reduced to the sum of one dollar (\$1.00) and all costs which are incurred in such contest, whether the same be for attorneys, accountants, or any other individual or court costs, will be paid by the person contesting the provisions thereof and not from the trust proceeds

ARTICLE VI

INCAPACITY OF SETTLOR OR TRUSTEES

If at any time the Settlor or a trustee named herein shall receive a written statement signed by the personal physician of either of the Settlor or a Trustee stating that the said physician considers either the Settlor, or either of them, or a Trustee to be so mentally or physically incapacitated as to be unable to effectively manage or apply her estate to necessary ends, and if the other Trustees shall concur in any such statement and shall file a similar statement in the records of the trust, then, whether or not that a Settlor or a Trustee may have been adjudicated or certified an incapacitated or incompetent person and notwithstanding any contrary direction from Settlor or the Trustee, that Settlor or that Trustee may be considered incapacitated.

If a Settlor or a Trustee is determined to be incapacitated, then, during the period of such incapacity, (a) if a Settlor or a Trustee is then acting as a Trustee hereunder, he or she shall be deemed to have resigned; (b) any attempt by Settlor or Trustee to exercise any of the powers under this agreement shall be without force and effect; (c) if a disinterested trustee shall have power and authority to exercise or perform any act, power, duty, right or obligation whatsoever that Settlor or a Trustee may have, relating to any person, matter, transaction or property, real or personal, tangible or intangible, whether in the trust estate or owned by Settlor, including, with limitation, power to transfer to itself upon the terms set forth in this agreement any property owned by the Settlor. The power

granted to the Trustee or Trustees under (c) shall be construed and interpreted as a general, durable power of attorney to act as Settlers' attorney-in-fact and agent in their names and for their benefit and shall in addition to all other powers bestowed upon the Trustee or Trustees by this agreement.

ARTICLE VII

ADMINISTRATIVE PROVISIONS

The following administrative provisions are for the express purpose of guiding the trustees in the prudent administration of this trust:

1. If at any time a beneficiary eligible to receive net income or principal distributions is under legal disability, or in the opinion of the trustees is incapable of properly managing her personal financial affairs, then the trustees may make those distributions directly to the beneficiary, to a lawful guardian of the beneficiary or to a custodian selected by the trustee for the beneficiary under a Uniform Trustees to Minors Act or similar applicable law, or may otherwise expend the amounts to be distributed for the benefit of the beneficiary in such manner as the trustees deems advisable.

2. As used throughout this instrument, the term lawful guardian shall mean successively in the order named: (i) the court-appointed guardian of the estate; (ii) either parent, or (iii) the individual having personal custody (whether or not a court-appointed guardian) where no guardian of the estate has been appointed.

3. The trustees may withhold distribution of principal or interest to the beneficiary in such cases to make certain that the income and principal distributions are used wisely and prudently for the benefit of that beneficiary. If a dispute arises, then they are directed to seek the guidance of the District Court of the State of Kansas having jurisdiction of the trust instrument under Kansas law to assist them in their decisions.

4. Except as may otherwise be provided by law, no power of appointment or power of withdrawal shall be subject to involuntary exercise, and no interest of any beneficiary shall be subject to anticipation, to claims for alimony or support, to the payment of medical, doctor, hospitalization or nursing home expenses, to voluntary transfer without the written consent of the trustees, or to involuntary transfer in any event.

5 . If there is a dispute concerning who is rightfully entitled to distribution under the terms and conditions of this trust, then the trustees shall use their own discretion in making that distribution and be guided by Kansas law in such cases made and provided.

ARTICLE VIII

TRUSTEES POWERS

The Trustee or trustees serving under the terms of this trust shall have full power as set forth under the Uniform Trustees' Power Act, specifically K.S.A. 58-12-01, et seq., and the trustees herein appointed shall have the specific authority to sell lease, mortgage or other side dispose of or lease real or personal property, as they deem best, without interference from or an order from the District Court of any county or state. The purchaser of real or personal property from the trustees of the trust shall be under no duty to follow the proceeds of such sale.

ARTICLE IX

TRUSTEES

Any trustee may resign at any time by giving prior written notice to the co trustee, if then living, or if the cotrustee is not then living, to the beneficiaries to whom the current trust income may or must then be distributed.

There shall always be at least two successor trustees under this trust who shall

serve as co-trustees. I respectfully ask that a corporate trustee not be appointed to serve as co-trustee or as trustee under the provisions of this instrument.

Any successor trustee shall not be liable for acts, defaults or omissions of prior trustees. A successor trustee shall have the title, duties, powers and discretion of the trustee succeeded without the necessity of conveyance or transfer.

RESIGATION AND APPOINTMENT OF SUCCESSOR TRUSTEES

If the original trustee hereunder shall die, resign, become incapacitated or unwilling or unable to perform the duties of a trustee, then a successor trustee shall be appointed. I direct that Kenneth Yoke and Bernard E. Whalen be appointed as co-trustees. The successor trustees shall not incur any liability or be under any legal duty to act, until they have accepted their position in writing. The trustees, shall be entitled to a reasonable fee while service in office. It is my intention that family members shall not serve as trustees at any time or for any reason.

IN WITNESS WHEREOF, the Settlor have affixed their hands and seals and the trustees have executed this instrument all on this 14 day of August, 2007..

SETTLOR:

Rodney E. Wilkinson
Rodney E. Wilkinson

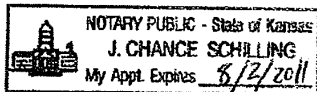
TRUSTEES:

Rodney E. Wilkinson
Rodney E. Wilkinson

ACKNOWLEDGEMENT

STATE OF KANSAS, SHERMAN COUNTY, SS

On this 14 day of August, 2007, came before me, the undersigned, a notary public in and for the county and state aforesaid, came Rodney E. Wilkinson, Settlor of said trust in my presence and duly acknowledged the execution thereof.



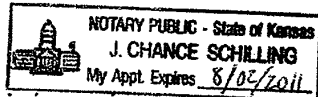
J. C. Schilling
Notary Public

My appointment expires: _____

STATE OF KANSAS, SHERMAN COUNTY, SS

ACKNOWLEDGMENT

On this 14 day of August, 2007, came before me, the undersigned, a notary public in and for the county and state aforesaid, came Rodney E. Wilkinson, and duly acknowledged the foregoing instrument as the Trustees of said Trust.



J. C. Schilling
Notary Public

My commission expires: _____

SCHEDULE "A"

**RODNEY E. WILKINSON TRUST
DATED ____ DAY OF AUGUST, 2007**

Rodney E. Wilkinson does on this ____ day of August, 2007, transfer, assign full and complete ownership in and to all the following described property to Rodney E. Wilkinson, Trustee, and his successor trustees, the following described real and personal property:

Real Estate:

The Northeast one-quarter (¼) of Section Twenty-Six (26), and
The South one-half of Section Twenty-Eight (28),
All in Township Nine (9), S, Range Forty-one (41)
West of the P.M. in
Sherman County, Kansas.

Personal Property:

Four thousand shares of Western Crane and Rigging, Inc., a
Kansas Corporation, represented by stock certificate number
Five (5), of said corporation.

All farm equipment owned by Rodney E. Wilkinson, of every
kind and description, including tractors, combines, cornheads,
and all personal property used in the care and repair of said
described equipment, with specifically listed herein, or not.

All cars, trucks and other licensed vehicles, whether the title
has yet been transferred, or not.

All furniture, household effects and other personal property
in the home of Rodney E. Wilkinson, whether specifically
listed herein, or not.

Dated at Goodland, Ks this ____ day of August, 2007.

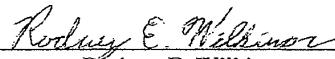

Rodney E. Wilkinson

EXHIBIT A

PLT000015
ROA000145

Submitted Under Seal
PLT000016-PLT000017

EXHIBIT “3”

EXHIBIT “4”

A. U.S. DEPARTMENT OF HOUSING & URBAN DEVELOPMENT SETTLEMENT STATEMENT		B. TYPE OF LOAN: 1. <input type="checkbox"/> FHA 2. <input type="checkbox"/> FinHA 3. <input type="checkbox"/> CONV. UNINS. 4. <input type="checkbox"/> VA 5. <input type="checkbox"/> CONV. INS. 6. FILE NUMBER: WILKINSON-PRIBIL 152 7. LOAN NUMBER: 8. MORTGAGE INS CASE NUMBER:	
C. NOTE: This form is furnished to give you a statement of actual settlement costs. Amounts paid to and by the settlement agent are shown. Items marked "POC" were paid outside the closing; they are shown here for informational purposes and are not included in the totals.			
D. NAME AND ADDRESS OF BUYER: Larry Jerome Pribil single 5638 220th Lane Gordon, NE 68343		E. NAME AND ADDRESS OF SELLER: Rodney E. Wilkinson and Tesse E. Wilkinson husband and wife 5730 Rd. 10 Goodland, KS 67735	
G. PROPERTY LOCATION: SE 1/4 28-9-41; less tract, SW 1/4 28-9-41, NW 1/4 28-9-41 Sherman County, Kansas		H. SETTLEMENT AGENT: Northwest Kansas Title Company, LLC PLACE OF SETTLEMENT: 1202 Main Street Goodland, KS 67735	
I. SETTLEMENT DATE: December 31, 2012			

J. SUMMARY OF BUYER'S TRANSACTION	K. SUMMARY OF SELLER'S TRANSACTION
100. GROSS AMOUNT DUE FROM BUYER: 101. Contract Sales Price 2,500,000.00 102. Personal Property 103. Settlement Charges to Buyer (Line 1400) 2,852.00 104. 105. Adjustments For Items Paid By Seller in advance 106. City/Town Taxes to 107. County Taxes to 108. Assessments to 109. 110. 111. 112. 120. GROSS AMOUNT DUE FROM BUYER 2,502,852.00 200. AMOUNTS PAID BY OR IN BEHALF OF BUYER: 201. Deposit or earnest money 50,000.00 202. Principal Amount of New Loan(s) 203. Existing loan(s) taken subject to 204. 205. 206. 207. 208. 209. Adjustments For Items Unpaid By Seller 210. City/Town Taxes to 211. County Taxes to 212. Assessments to 213. 214. 215. 216. 217. 218. 219. 220. TOTAL PAID BY/FOR BUYER 50,000.00 300. CASH AT SETTLEMENT FROM/TO BUYER: 301. Gross Amount Due From Buyer (Line 120) 2,502,852.00 302. Less Amount Paid By/For Buyer (Line 220) (50,000.00) 303. CASH (X FROM) (TO) BUYER 2,452,852.00	400. GROSS AMOUNT DUE TO SELLER: 401. Contract Sales Price 2,500,000.00 402. Personal Property 403. 404. 405. Adjustments For Items Paid By Seller in advance 406. City/Town Taxes to 407. County Taxes to 408. Assessments to 409. 410. 411. 412. 420. GROSS AMOUNT DUE TO SELLER 2,500,000.00 500. REDUCTIONS IN AMOUNT DUE TO SELLER: 501. Excess Deposit (See Instructions) 502. Settlement Charges to Seller (Line 1400) 7,371.41 503. Existing loan(s) taken subject to 504. Payoff of first Mortgage to United States Department 89,488.33 505. Payoff of second Mortgage to Western Kansas Farm C 122,073.17 506. 507. (Deposit disb. as proceeds) 508. 509. Adjustments For Items Unpaid By Seller 510. City/Town Taxes to 511. County Taxes to 512. Assessments to 513. 514. 515. 516. 517. 518. 519. 520. TOTAL REDUCTION AMOUNT DUE SELLER 218,932.91 600. CASH AT SETTLEMENT TO/FROM SELLER: 601. Gross Amount Due To Seller (Line 420) 2,500,000.00 602. Less Reductions Due Seller (Line 520) X 218,932.91 603. CASH (X TO) (FROM) SELLER 2,281,067.09

By moving page 2 of this statement, the signatories acknowledge receipt of a completed copy of page 1 of this two page statement.

EXHIBIT “5”

Steven D. Grierson

1 **DECD**
2 **STEINBERG & DAWSON LAW GROUP**
3 **DANIELLE DAWSON, ESQ.**
4 Nevada Bar No. 11792
5 4270 S. Decatur Blvd., Suite B10
6 Las Vegas, Nevada 89103
7 Telephone: (702) 384-9664
8 Facsimile: (702) 384-9668
9 Email: danielle@steinberglawgroup.com
10 Attorney for Plaintiff

DISTRICT COURT, FAMILY DIVISION
CLARK COUNTY, NEVADA

9 **TESSIE WILKINSON,**)
10)
11 Plaintiff,) **CASE NO: D-19-596071-D**
12 vs.) **DEPT NO: G**
13 **RODNEY WILKINSON,**)
14)
15 Defendant.)

DECREE OF DIVORCE

16 This cause coming before the Court on Request for Summary Disposition, the Plaintiff,
17 **TESSIE WILKINSON**, by and through her attorney, **DANIELLE DAWSON, ESQ.**, of
18 **STEINBERG & DAWSON LAW GROUP**; and the Defendant, **RODNEY WILKINSON**,
19 appearing in proper person.

20 WHEREAS the parties have reached a full resolution to the outstanding issues in this
21 matter.

22 WHEREAS throughout the last several years of marriage, Rodney Wilkinson has
23 divested the community of assets constituting substantial community waste as follows:

- 24 1. Transferred community funds including five years of earnings to Jill Strnad and or
25 Tanika Stevenson;

RECEIVED

FEB 04 2020

Department G

☐ Other
☐ Dismissed - Want of Prosecution
☐ Involuntary (Statutory) Dismissal
☐ Default Judgment
☐ Transferred
☐ Disposed After Trial Set
☐ Judgment Reached by Trial
☒ Settled/Withdrawn
☐ Without Judicial Conf/Htg
☐ With Judicial Conf/Htg
☐ By ADR
Total Dispositions: ☒ Judgment Reached by Trial

- 1 2. Divested the community of gold coins valued at over \$100,000 by gifting them to
- 2 Jill Strnad;
- 3 3. Divested the community of a 2004 Corvette by gifting it to Tanika Stevenson;
- 4 4. Transferred ownership of a \$1,000,000 life insurance policy on himself to Jill
- 5 Strnad;
- 6

7 Therefore,

8 **IT IS FURTHER STIPULATED** that the following community property shall be set
9 over and hereby awarded to Rodney Wilkinson as his sole and separate property:

- 10 1. The Chevrolet Suburban VIN ending in 9469;
- 11 2. All personal property owned prior to the marriage;
- 12 3. Any and all current and future retirement accounts, savings plans, IRA, pension
- 13 plans or otherwise in his name only not otherwise herein named;
- 14 4. Any and all wearing apparel, personal ornaments, and jewelry belonging to him;
- 15 5. Any and all bank accounts in his name only not otherwise herein named; and
- 16 6. Any personal items currently in his possession.
- 17
- 18

19 **IT IS FURTHER STIPULATED** that the following community property shall be set
20 over and hereby awarded to the Tessie Wilkinson as her sole and separate property:

- 21 1. US Bank account ending in the numbers 8904 with a current approximate value of
- 22 \$373;
- 23 2. The real property located at 8382 Hollywood Hills Ave, Las Vegas, Nevada
- 24 89178;
- 25 3. The real property located at 5730 Road 10, Goodland, Kansas 67735;
- 26 4. The 2012 Chevrolet Corvette VIN ending in 0723;
- 27
- 28

- 1 5. The Service Truck VIN 2GCFK29K951206963;
- 2 6. The 1977 Kenworth Winch Truck VIN 155197SG2;
- 3 7. The following heavy equipment:
- 4 a. P & H 140 Ton crane , Model 9125-TC;
- 5 b. Manitowac 100 ton crane, Model 3900A, SN 39670;
- 6 c. Lima 90 ton crane, Model 990TC;
- 7 d. P & H 90 ton crane, Model 8115TC, SN 35419;
- 8 e. P & H 50 ton crane;
- 9 f. P & H 25 ton crane;
- 10 g. P & H 70 ton crane;
- 11 h. 2 bulldozers;
- 12 i. 1977 Kenworth VIN 055097SGL;
- 13 j. 1972 Peterbilt ID 41337P, FHP364802;
- 14 k. 1955 Mack VIN B705T1209;
- 15 l. 1955 Kenworth VIN 64338;
- 16 m. 1959 Mack VIN B73S1370;
- 17 n. 1962 Mack winch truck;
- 18 o. 6000 Cherry Picker;
- 19 p. 100 ton press;
- 20 q. Lo Boy 35 ton Cozad Trailer # CC80062;
- 21 r. 1993 Western Star Boom Truck Serial No. 2WKPDCCHIPK931154;
- 22 s. 750 Holmes Wrecker Tow Truck;
- 23 t. Autocar Winch Truck;
- 24
- 25
- 26
- 27
- 28

- 1 u. Maritime Hydraulic Drilling Rig;
- 2 v. Any and all tools located at 5730 Road 10, Goodland, Kansas 67735.
- 3 8. Any and all rights assigned to Rodney Wilkinson through the contract with Dan
- 4 Fontenot of Synergy Oil Field Services, LLC.
- 5 9. All personal property owned prior to the marriage;
- 6 10. Any and all current and future retirement accounts, savings plans, IRA, pension
- 7 plans or otherwise in her name only;
- 8 11. Any and all wearing apparel, personal ornaments, and jewelry belonging to her;
- 9 12. Any and all bank accounts in her name only; and
- 10 13. Any personal items currently in her possession.

11 **IT IS FURTHER STIPULATED** that the following community debts shall be set over

12 and hereby awarded to Rodney Wilkinson as his sole and separate debts:

- 13 1. The loan on the real property located at 5730 Road 10, Goodland, Kansas 67735;
- 14 2. The loan through Dorman Renewable Fuels, LLC in the approximate amount of
- 15 \$20,000;
- 16 3. Any and all tax debts in his name only;
- 17 4. Any and all student loan debts in his name only;
- 18 5. Any and all credit card debt in his name only;
- 19 6. Any and all credit instruments in his name only.

20 **IT IS FURTHER STIPULATED** that the following community debts shall be set over

21 and hereby awarded to Tessie Wilkinson as her sole and separate debts:

- 22 1. The Chase credit account ending in the numbers 9416 with an approximate
- 23 current balance of \$3,860;
- 24

1 2. The US Bank credit account ending in the numbers 9270 with an approximate
2 current balance of \$4,300;

3 3. Any and all student loan debts in her name only;

4 4. Any and all credit card debt in her name only;

5 5. Any and all credit instruments in her name only.

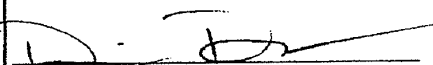
6
7 **IT IS FURTHER STIPULATED** that each party shall bear their own attorney's fees
8 and costs in this matter.

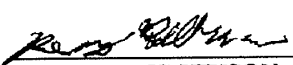
9 **IT IS FURTHER STIPULATED** that Tessie Wilkinson shall return to her maiden name
10 to wit: Tessie Elma Almario.

11 **IT IS SO STIPULATED.**

12
13 **DATED** this 21 day of January, 2020.

DATED this 17th day of January, 2020.

14
15
16 
DANIELLE DAWSON, ESQ.
Nevada Bar No. 11792
Attorney for Plaintiff

17 
RODNEY WILKINSON
Defendant in Proper Person

18
19 **ORDER**

20 **UPON THE FOREGOING STIPULATION** of the parties, and this appearing to be a
21 proper case therefor:

22 **THAT** the Court has complete jurisdiction in the premises, both as to the subject matter
23 thereof as well as the parties thereto;

24 **THAT** the Plaintiff now is, and has been, an actual bona fide resident of the County of
25 Clark, State of Nevada, and has been actually domiciled therein for more than six (6) weeks
26 immediately preceding the verification of the Complaint for Divorce in this action;
27
28

1 **THAT** the parties were duly and legally married on March 22, 2008 in Burlington,
2 Colorado and have been since that time, and are at the present time, husband and wife.

3 **THAT** the Plaintiff believes that all of the allegations contained in her Complaint for
4 Divorce are true and that the Plaintiff is entitled to the relief sought subject to the terms as set
5 forth in this Decree of Divorce;
6

7 **THAT** the parties have waived Findings of Fact, Conclusions of Law, written Notice of
8 Entry of Judgment, and to move for a new Trial in said cause;

9 **THAT** there are no minor children born the issue of this marriage. No minor children
10 were adopted and Plaintiff is not now pregnant.

11 **NOW, THEREFORE**, by reason of the law in such cases made and provided, and the
12 Court deeming this a proper case therefore,
13

14 **IT IS HEREBY ORDERED** that the bonds of matrimony heretofore and now existing
15 between Plaintiff and Defendant be, and the same are hereby wholly dissolved, and an absolute
16 Decree of Divorce is hereby granted to the Plaintiff and each of the parties hereto is hereby
17 restored to the status of a single, unmarried person.
18

19 **IT IS FURTHER ORDERED** that the following community property shall be set over
20 and hereby awarded to Rodney Wilkinson as his sole and separate property:

- 21 1. The Chevrolet Suburban VIN ending in 9469;
- 22 2. All personal property owned prior to the marriage;
- 23 3. Any and all current and future retirement accounts, savings plans, IRA, pension plans or
24 otherwise in his name only not otherwise herein named;
- 25 4. Any and all wearing apparel, personal ornaments, and jewelry belonging to him;
- 26 5. Any and all bank accounts in his name only not otherwise herein named; and
27
- 28

1 6. Any personal items currently in his possession.

2 **IT IS FURTHER ORDERED** that the following community property shall be set over
3 and hereby awarded to the Tessie Wilkinson as her sole and separate property:

4 1. US Bank account ending in the numbers 8904 with a current approximate value of
5 \$373;
6

7 2. The real property located at 8382 Hollywood Hills Ave, Las Vegas, Nevada
8 89178;

9 3. The real property located at 5730 Road 10, Goodland, Kansas 67735;

10 4. The 2012 Chevrolet Corvette VIN ending in 0723;

11 5. The Service Truck VIN 2GCFK29K951206963;

12 6. The 1977 Kenworth Winch Truck VIN 155197SG2;

13 7. The following heavy equipment:

14 a. P & H 140 Ton crane , Model 9125-TC;

15 b. Manitowac 100 ton crane, Model 3900A, SN 39670;

16 c. Lima 90 ton crane, Model 990TC;

17 d. P & H 90 ton crane, Model 8115TC, SN 35419;

18 e. P & H 50 ton crane;

19 f. P & H 25 ton crane;

20 g. P & H 70 ton crane;

21 h. 2 bulldozers;

22 i. 1977 Kenworth VIN 055097SGL;

23 j. 1972 Peterbilt ID 41337P, FHP364802;

24 k. 1955 Mack VIN B705T1209;

- 1 l. 1955 Kenworth VIN 64338;
2 m. 1959 Mack VIN B73S1370;
3 n. 1962 Mack winch truck;
4 o. 6000 Cherry Picker;
5 p. 100 ton press;
6 q. Lo Boy 35 ton Cozad Trailer # CC80062;
7 r. 1993 Western Star Boom Truck Serial No. 2WKPDCCHIPK931154;
8 s. 750 Holmes Wrecker Tow Truck;
9 t. Autocar Winch Truck;
10 u. Maritime Hydraulic Drilling Rig;
11 v. Any and all tools located at 5730 Road 10, Goodland, Kansas 67735.
12
13 14. Any and all rights assigned to Rodney Wilkinson through the contract with Dan
14 Fontenot of Synergy Oil Field Services, LLC.
15
16 8. All personal property owned prior to the marriage;
17
18 9. Any and all current and future retirement accounts, savings plans, IRA, pension
19 plans or otherwise in her name only;
20
21 10. Any and all wearing apparel, personal ornaments, and jewelry belonging to her;
22
23 11. Any and all bank accounts in her name only; and
24
25 12. Any personal items currently in her possession.
26
27 **IT IS FURTHER ORDERED** that in the event that any property has been omitted from
28 this Decree that would have been community property or otherwise jointly-held property under
applicable law as of the date hereof, the concealing or possessory Party will transfer or convey to
the other Party, at the other Party's election:

1 (1) The full market value of the other Party's interest on the date of this Decree, plus
2 statutory interest through and including the date of transfer or conveyance; or

3 (2) The full market value of the other Party's interest at the time that Party discovers that
4 he has an interest in such property, plus statutory interest through and including the date
5 of transfer or conveyance; or
6

7 (3) An amount of the omitted property equal to the other Party's interest herein, if it is
8 reasonably susceptible to division.

9 **IT IS FURTHER ORDERED** that, except as otherwise specified herein, any and all
10 property acquired or income received by either party from and after the date of entry of this
11 Decree shall be the sole and separate property of that party, and each party respectively grants to
12 the other all such further acquisitions of property as the sole and separate property of the one so
13 acquiring the same. Each party shall have an immediate right to dispose of, or bequeath by Will,
14 his respective interest in and to any and all property belonging to him from and after the date
15 hereof, and such rights shall extend to all of the future acquisitions of property as well as to all
16 property set over to either of the parties hereto by this Decree.
17

18
19 **IT IS FURTHER ORDERED** that the following community debts shall be set over and
20 hereby awarded to Rodney Wilkinson as his sole and separate debts:

- 21 1. The loan on the real property located at 5730 Road 10, Goodland, Kansas 67735;
22 2. The loan through Dorman Renewable Fuels, LLC in the approximate amount of
23 \$20,000;
24 3. Any and all tax debts in his name only;
25 4. Any and all student loan debts in his name only;
26 5. Any and all credit card debt in his name only;
27
28

1 6. Any and all credit instruments in his name only.

2 **IT IS FURTHER ORDERED** that the following community debts shall be set over and
3 hereby awarded to Tessie Wilkinson as her sole and separate debts:

4 1. The Chase credit account ending in the numbers 9416 with an approximate
5 current balance of \$3,860;

6 2. The US Bank credit account ending in the numbers 9270 with an approximate
7 current balance of \$4,300;

8 3. Any and all student loan debts in her name only;

9 4. Any and all credit card debt in her name only;

10 5. Any and all credit instruments in her name only.

11 **IT IS FURTHER ORDERED** that if any claim, action or proceeding is brought seeking
12 to hold the other party liable on account of any debt, obligation, liability act or omission assumed
13 by the other Party, such party will, at his or her sole expense, defend the other against any such
14 claim or demand and that he or she will indemnify, defend, and hold harmless the other Party.

15 **IT IS FURTHER ORDERED** that Tessie Wilkinson shall receive the sum of \$3,000 per
16 month from Rodney Wilkinson for the duration of her life as and for Spousal Support. This
17 amount shall be due on or before the 10th day of each month.

18 **IT IS FURTHER ORDERED** that if any claim, action or proceeding is brought seeking
19 to hold the other party liable on account of any debt, obligation, liability act or omission assumed
20 by the other Party, such party will, at his sole expense, defend the other against any such claim or
21 demand and that he will indemnify, defend, and hold harmless the other Party.

22 **IT IS FURTHER ORDERED** that each Party shall execute any and all legal documents,
23 certificates of title, bills of sale, deeds or other evidence transfer necessary to effectuate this
24

1 Decree and the division of community assets within thirty (30) days of the entry of this Decree,
2 except as otherwise provided herein. Should either party fail to execute any of said documents to
3 transfer interest to the other, then this Decree shall constitute a full transfer of the interest of one
4 to the other, as herein provided. It is further agreed that pursuant to NRCP 70, the Clerk of the
5 Court shall be deemed to have hereby been appointed and empowered to sign, on behalf of the
6 non-signing party, any of the said documents of transfer which have not been executed by the
7 party otherwise responsible for such.
8

9 **IT IS FURTHER ORDERED** that it is hereby mutually understood and agreed by and
10 between the parties hereto that this Decree of Divorce is deemed to be a final, conclusive and
11 integrated agreement between the parties, and that except as herein specified, each party hereto is
12 hereby released and absolved from any and all liabilities and obligations for the future and past
13 acts and duties of the other, and that each of the said parties hereby releases the other from any
14 and all liabilities, future accounts, alimony and support or otherwise, or debts or obligations of
15 any kind or character incurred by the other except as provided herein provided, it being
16 understood that his instrument is intended to settle finally and conclusively the rights of the
17 parties hereto in all respects arising out of their marital relationship except as provided herein.
18

19 **IT IS FURTHER ORDERED** that the provisions in this Decree are fair and reasonable
20 and the parties agree to be bound by all its terms. The parties further acknowledge that they have
21 made an independent investigation into the existence and value of the assets and liabilities
22 divided hereunder, and the tax consequences, if any. The parties hereby waive any and all claims
23 against Danielle Dawson, Esq. of Steinberg Law Group related to the value and/or existence of
24 any asset divided hereunder or the tax consequences resulting therefrom. The parties further
25 acknowledge that they did not receive tax advice from Danielle Dawson, Esq. and have been
26
27
28

1 advised to seek the advice of a tax expert for any tax related questions they may have. The
2 parties have further been advised to seek the advice of independent counsel regarding these
3 terms.

4 **IT IS FURTHER ORDERED** that each party acknowledges that they have read this
5 Decree of Divorce and fully understand the contents and accept the same as equitable and just,
6 that the parties agree this Decree of Divorce has been reached via negotiation and in the spirit of
7 compromise, and that there has been no promise, agreement or understanding of either of the
8 parties to the other except as set forth herein, which have been relied upon by either as a matter
9 of inducement to enter into this agreement, and each party hereto has had the time and
10 opportunity to be advised by an attorney and has been encouraged to do so. The parties further
11 acknowledge that this stipulated Decree of Divorce is a global resolution of their case and that
12 each provision herein is made in consideration of all the terms in the Decree of Divorce as a
13 whole. The parties further acknowledge that they have entered into this stipulated Decree of
14 Divorce without undue influence or coercion, or misrepresentation, or for any other cause except
15 as stated herein.


16 **IT IS FURTHER ORDERED** that should it be necessary for either Party to enforce the
17 terms of this Decree, the prevailing party shall be entitled to recover their attorneys' fees and
18 costs.

19 **IT IS FURTHER ORDERED** that the parties shall submit the information required in
20 NRS 125B.055, NRS 125.130 and NRS 125.230 on a separate form to the Court and the Welfare
21 Division of the Department of Human Resources within ten days from the date this Decree is
22 filed. Such information shall be maintained by the Clerk in a confidential manner and not part of
23 the public record. The parties shall update the information filed with the Court and the Welfare
24


1 Division of the Department of Human Resources within ten days should any of that information
2 become inaccurate.


3 **IT IS FURTHER ORDERED** that Tessie Wilkinson shall return to her maiden name to
4 wit: Tessie Elma Almario.

5 **DATED** this 11th day of February, 2020.

6
7
8 
9 **DISTRICT COURT JUDGE**
Rhonda K. Forsberg

10 **STEINBERG & DAWSON LAW GROUP**

11
12 
13 **DANIELLE DAWSON, ESQ.**
14 Nevada Bar No. 11792
15 4270 S. Decatur Blvd., Suite B10
16 Las Vegas, Nevada 89103
17 Attorney for Defendant

18 
19 **RODNEY WILKINSON**
20 613 Eagle Drive Apt 36
21 Newtown, ND 58763
22 Defendant in Proper Person

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TESSIE WILKINSON

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VERIFICATION OF TESSIE WILKINSON

I, Tessie Wilkinson, being duly sworn under the penalties of perjury, depose and say:

I am the Plaintiff herein, and I have read the foregoing Stipulated Decree of Divorce and know the contents thereof; that the same is true to the best of my own knowledge, except as to those matters therein stated upon information and belief, and as to those matters, I believe them to be true.

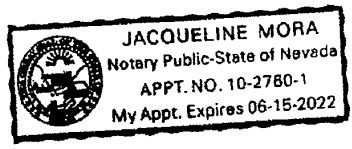

TESSIE WILKINSON

STATE OF NEVADA)
) ss.
COUNTY OF CLARK)

SUBSCRIBED and SWORN to before me this 21 day of January, 2020.



Notary Public



1 VERIFICATION OF RODNEY WILKINSON

2 I, Rodney Wilkinson, being duly sworn under the penalties of perjury, deposes and says:

3 I am the Defendant herein, and I have read the foregoing Stipulated Decree of Divorce
4 and know the contents thereof; that the same is true to the best of my own knowledge, except as
5 to those matters therein stated upon information and belief, and as to those matters, I believe
6 them to be true.
7

8 I understand that the foregoing document has been prepared by Danielle Dawson, Esq., of
9 the Law Firm of Steinberg & Dawson Law Group, who represents the interests of the Plaintiff,
10 Tessie Wilkinson, in the within action, and does not represent my interests in this matter.
11

12 I have been informed of my right to retain my own counsel.
13

14 Rodney Wilkinson
15 **RODNEY WILKINSON**

16 STATE OF North Dakota)
17) ss.
18 COUNTY OF Mauritius)

19 SUBSCRIBED and SWORN to before Me this 17 day of January, 2020.

20 Bethany Haan
21 Notary Public

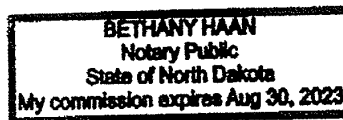
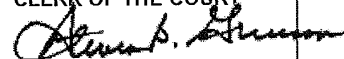


EXHIBIT “6”



1 **HOFLAND & TOMSHECK**
Bradley J. Hofland, Esq.
2 Nevada Bar No. 6343
228 South 4th Street, 1st Floor
3 Las Vegas, Nevada 89101
Telephone: (702) 895-6760
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bradh@hoflandlaw.com
5 *Attorney for Defendant, Tessie Elma Almario*

6
7 **DISTRICT COURT**
8 **CLARK COUNTY, NEVADA**

9 SHERYL ATTERBERG, ON BEHALF) CASE NO.: A-20-825785-C
10 OF HER WARD RODNEY) DEPT NO.: 14
WILKINSON;)
11) **DEFENDANTS' NOTICE OF**
Plaintiff,) **MOTION AND MOTION TO**
12) **DISMISS COMPLAINT**
13 vs.) **PURSUANT TO NRCP 12(b)(1),**
14 TESSIE ELMA ALMARIO,) **NRCP 12(b)(5), and NRCP 12(h)(2).**
15)
Defendant.)
16)
17)
18)

19 **TO: PLAINTIFF SHERYL ATTERBERG, ON BEHALF OF HER WARD**
20 **RODNEY WILKINSON AND YOUR ATTORNEY OF RECORD:**

21 COMES NOW, Defendant, Tessie Elma Almario, and hereby submits this
22 motion to Dismiss the Complaint pursuant to NRCP 12(b)(5) and moves the Court
23 for an order dismissing the complaint for failure to state a claim pursuant to NRCP
24 12(b)(5) because, quite simply, there lacks a recognizable and sufficient legal basis
25 to maintain an action in Nevada because Decree of Divorce predates the date of
26 appointment of guardianship in Colorado and the guardianship order was not
27 registered in Nevada.
28

1 This motion is made and based on the following Memorandum of Points and
2 Authorities, the declarations and exhibits, attached hereto, the papers and pleadings
3 already on file herein, and any argument the Court may permit at the hearing of this
4 matter.

5 Dated this 28th day of December, 2020

6
7 **HOFLAND & TOMSHECK**

8
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 Defendant
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NOTICE OF MOTION AND MOTION

**TO ALL PARTIES IN INTEREST AND THEIR ATTORNEYS OF
RECORD:**

Please take notice that Defendant, Tessie Elma Almario, by and through her counsel, Bradley Hofland, Esq., of Hofland & Tomsheck, hereby move that the Complaint be dismissed pursuant to NRCP 12(b)(5), and towards that end hereby submits her Motion to Dismiss the Complaint, which shall be brought on for hearing on the date and time set by the court, before Department 14 of the above-entitled Court, located at 200 Lewis Avenue, Las Vegas, Nevada.

1 MEMORANDUM OF POINTS AND AUTHORITIES

2 I.

3 Statement of Facts

4 Rodney Wilkinson ("Mr. Wilkinson") and Defendant Tessie Elma Almario
5 ("Tessie") were married on March 22, 2009 in Burlington, Colorado. (Complaint at
6 ¶ 1). On September 9, 2019, Tessie filed a Complaint for Divorce in Clark County,
7 Nevada under Case No. D-19-596071-D¹ ("Divorce Action"). (Complaint at ¶ 6).
8 Notably, Mr. Wilkinson engaged in and committed "substantial community waste"²
9 throughout the last several years of marriage³.

10 Rodney filed his Answer to the Complaint for Divorce on January 28, 2020
11 and admitted to all of the allegations set forth in the Complaint⁴. The Stipulated
12 Decree of Divorce was entered on February 12, 2020⁵. Plaintiff falsely alleges that
13 the Stipulated Decree "does not provide for an equitable distribution of the marital
14 estate"⁶, but conveniently omits that the Mr. Wilkinson "divested the community of
15 assets constituting substantial community waste"⁷, and conceals the fact the
16 Court/Decree repeatedly affirmed the division of community property was indeed
17 equitable and fair⁸.

18 In short, the finding and fact there was an equitable distribution of the marital
19

20 ¹ A copy of the Complaint for Divorce in the Divorce Action is attached hereto as
21 Exhibit "1".

22 ² Mr. Wilkinson admitted the marital waste he committed included transferring five
23 years of earnings to Jill Strnad and or Tanika Stevenson; gifting Jill Strnad
24 community gold coins valued in excess of \$100,000, gifting a 2004 Corvette to
Tanika Stevenson, and transferring his \$1,000,00 life insurance policy to Jill
Strnad.

³ Decree of Divorce, page 1.

25 ⁴ A copy of the Answer in the Divorce Action is attached hereto as Exhibit "2".

26 ⁵ A copy of the Decree of Divorce in the Divorce Action is attached hereto as
Exhibit "3"

27 ⁶ Subject Complaint at ¶ 9.

28 ⁷ Decree of Divorce, p. 1, line 23 – p. 2, line 6

⁸ See e.g. Decree, page 6, line 5; page 11, line 20; page 12, line 6

1 estate is the law of the case, binding upon the parties, and Plaintiff's representation
2 otherwise is false and violates the duty of candor owed to this Court⁹.

3 Significantly, the Notice of Entry of the Decree of Divorce was filed on
4 February 13, 2020. Mr. Wilkinson did not seek reconsideration or move for any of
5 the relief that was available pursuant to NRCP 60(b). More than 10 months have
6 passed and the Decree is, and remains, valid and enforceable¹⁰. Because there was
7 no factual or legal basis in which to set aside the Decree, Plaintiff endeavors to
8 manipulate the legal system by filing a baseless independent action that completely
9 ignores the above, that conceals the dispositive facts that are fatal to Plaintiff's
10 action. The Stipulated Decree is an enforceable contract and the law of the case¹¹--
11 and while Plaintiff may choose to ignore this fact, this Court certainly cannot.

12 According to Plaintiff, on November 23, 2020, "a Court in Lincoln County,
13 Colorado appointed Mrs. Atterberg Mr. Wilkinson's guardian due to the fact that
14 Mr. Wilkinson was and is unable manage his finances or otherwise care for himself
15 as a result of cognitive impairment" on November 23, 2020¹². Notably, Plaintiff
16 does not assert he is, or was, unable and/or lacked the capacity to enter into
17 contractual relations.

18 Equally disturbing is that in the complaint, Plaintiff further alleges that
19 Tessie "exerted undue influence upon Mr. Wilkinson to procure his signature on the
20

21 ⁹ Plaintiff also misstates the Decree and his duty of candor with his claim that
22 "100% of Mr. Wilkinson's future earnings [were] awarded to [Defendant]
23 (Complaint at ¶ 9). Review of the Decree will confirm no such award was made,
24 and significantly, as this Court knows, alimony awards are subject to modification
25 based upon changed circumstances—however, doing so would require Plaintiff to
disclose his finances in their entirety and the fact Plaintiff has not sought such relief
is telling.

26 ¹⁰ See *Cavell v. Cavell*, 90 Nev. 334, 526 P.2d 330 (1974).

27 ¹¹ See *Grisham v. Grisham*, 128 Nev. 679, 289 P.3d 230 (2012); see also *Kramer v.*
28 *Kramer*, 96 Nev. 759, 616 P.2d 395 (1980) (holding "A decree of divorce cannot be
modified or set aside except as provided by rule or statute").

¹² Complaint at ¶ 17.

1 Stipulated Decree of Divorce.” (Complaint at ¶ 14). However, the allegation is
2 false, unsupported, and Plaintiff fails to provide any independent, objective facts as
3 to what and how there was purported “undue influence”.

4 Comparison of Plaintiff’s complaint, coupled with a review of applicable
5 legal authority, confirms Plaintiff’s Complaint is improper, without merit, and
6 cannot survive the instant motion to dismiss.

7 II.

8 Legal Analysis

9 A. Standard of Review.

10 N.R.C.P. 12 states in pertinent part:

11 (b) Every defense, in law or fact, to a claim for relief in
12 any pleading, whether a claim, counterclaim, cross-
13 claim, or third-party claim, shall be asserted in the
14 responsive pleading thereto if one is required,
except that the following defenses may at the
option of the pleader be made by motion:

15 (5) Failure to state a claim upon which relief can be
16 granted, (6) failure to join a party under Rule 19. . .
17 If, on a motion asserting the defense number (5) to
18 dismiss for failure of the pleading to state a claim
19 upon which relief can be granted, matters outside
20 the pleading are presented to and not excluded by
21 the court, the motion shall be treated as one for
22 summary judgment and disposed of as provided in
Rule 56, and all parties shall be given reasonable
opportunity to present all material made pertinent
to such a motion by Rule 56.

23 It has long been held a court must dismiss a cause of action for failure to state
24 a claim upon which relief can be granted. See NRCP 12(b)(5). A motion to dismiss
25 under Rule 12(b)(5) tests the complaint’s sufficiency. *See Morris v. Bank of*
26 *America Nevada*, 110 Nev. 1274, 1276-77, 886 P.2d 454, 456 (1994) (stating that a
27 court must take the allegations stated in the complaint “at face value” when ruling
28 upon a NRCP 12(b)(5) motion); *N. Star Int’l v. Ariz. Corp. Comm’n.*, 720 F.2d 578,

1 581 (9th Cir. 1983). All material allegations in the complaint, “even if doubtful in
2 fact,” are assumed to be true. *Id.* The court must assume the truth of all factual
3 allegations and must “construe them in light most favorable to the nonmoving
4 party.” *Gompper v. VISX, Inc.*, 298 F.3d 893, 895 (9th Cir. 2002); *see also Walleri*
5 *v. Fed. Home Loan Bank of Seattle*, 83 F.3d 1575, 1580 (9th Cir. 1996).

6 Courts have long and consistently held that when considering whether a
7 motion to dismiss should be granted, if a plaintiff is unable to “prove no set of facts,
8 if accepted by the trier of fact, would entitle him or her to relief”, dismissal is
9 warranted and appropriate. *Simpson v. Mars, Inc.*, 113 Nev. 188, 190, 929 P.2d
10 966, 967 (1997) (citing *Vacation Village v. Hitachi America*, 110 Nev. 481, 484,
11 874 P.2d 744, 746 (1994)). “The test for determining whether the allegations of a
12 cause of action are sufficient to assert a claim for relief is whether the allegations
13 give fair notice of the nature and basis of the claim and the relief requested.”
14 *Ravera v. City of Reno*, 100 Nev. 68, 70; 675 P.2d 407, 408 (1984). While simple
15 conclusions of law can at times be acceptable under this rule, the plaintiff still must
16 prove enough information to give “fair notice of the nature and basis of the claim.”
17 *Crucil v. Carson City*, 95 Nev 583, 585, 600 P.2d 216, 217 (1979).

18 However, as the Supreme Court has explained, “[w]hile a complaint attacked
19 by a Rule [12(b)(5)] motion to dismiss does not need detailed factual allegations, a
20 plaintiff’s obligation to provide the ‘grounds’ of his ‘entitlement to relief’ *requires*
21 more than labels and conclusions, and a formulaic recitation of the elements of a
22 cause of action will not do.” (emphasis supplied). *Bell Atl. Corp. v. Twombly*, 127
23 S.Ct. 1955, 1964 (2007). Instead, the allegations in the complaint “must be enough
24 to raise a right to relief above the speculative level.” *Id.* at 1964-65. *A complaint*
25 *may be dismissed as a matter of law either for lack of a cognizable legal theory or*
26 *for insufficient facts under a cognizable theory.* *Robertson v. Dean Witter*
27 *Reynolds, Inc.*, 749 F.2d 530, 534 (9th Cir. 1984).

28 Generally, courts may not consider material outside the complaint when

1 ruling on a motion to dismiss. *Hal Roach Studios, Inc. v. Richard Feiner & Co.*,
2 896 F.2d 1542, 1555 n.19 (9th Cir. 1990). However, courts may consider
3 documents specifically identified in the complaint whose authenticity is not
4 questioned by parties. *Fecht v. Price Co.*, 70 F.3d 1078, 1080 n.1 (9th Cir. 1995)
5 (superseded by statutes on other grounds). Moreover, courts may consider the full
6 text of those documents, even when the complaint quotes only selected portions. *Id.*
7 The court may also consider material properly subject to judicial notice without
8 converting the motion into one for summary judgment. *Barron v. Reich*, 13 F.3d
9 1370, 1377 (9th Cir. 1994). Lastly, a court is permitted to consider exhibits that are
10 attached to the pleading. *Breliant v. Preferred Equities Corp.*, 109 Nev 842, 846,
11 858 P.2d 258, 1260 (1993).

12 Moreover, the law is clear that a complaint should be dismissed when it fails
13 to “state a claim upon which relief can be granted.” NRCP 12(b)(5). Even the
14 most liberal reading of Plaintiff’s complaint reveals a failure on its part to state a
15 claim for which relief can be granted. NRCP 8(a) provides, in pertinent part, that in
16 order to plead sufficiently the plaintiff must include, “(1) a short and plain
17 statement of the claim showing that the pleader is entitled to relief, and (2) a
18 demand for judgment for the relief the pleader seeks.” In his complaint, a plaintiff
19 must set forth “sufficient facts to establish all necessary elements of a claim for
20 relief.” *Hay v. Hay*, 100 Nev 196, 198, 678 P.2d 672 (1984) quoting *Johnson v.*
21 *Travelers, Ins. Co.*, 89 Nev 467, 472, 515 P.2d 68, 71 1973).

22 As noted above, and established herein, the Plaintiff’s complaint is deficient
23 and cannot survive the instant motion to dismiss.

24 ***B. The Premise of Plaintiff’s Complaint establishes its lack of merit***
25 ***and is insufficient to stave off dismissal.***

26 At the time Mr. Wilkinson signed *his* Answer to the Complaint and the
27 Decree of Divorce in January, 2020, there was no determination, by any court, that
28 Mr. Wilkinson was incompetent or lacked contractual capacity. Indeed, Mr.

1 Wilkinson regularly engaged in, and honored, contractual/financial transactions.
2 Following notice of entry of the Decree there was no motion for reconsideration,
3 motion to set aside, appeal, or other challenge to the Decree. Thus, the Decree
4 remains valid, enforceable, and the law of the case¹³.

5 Nine months *after* Mr. Wilkinson signed the Decree, “a Court in Lincoln
6 County, Colorado appointed Mrs. Atterberg Mr. Wilkinson’s guardian due to the
7 fact that Mr. Wilkinson was and is unable manage his finances or otherwise care for
8 himself as a result of cognitive impairment”¹⁴. It is well-established that upon and
9 following the appointment of a guardian that an individual placed under the care of
10 a guardianship, lacks contractual capacity. However, in the absence of judicial
11 declaration and appointment of a guardian, an individual not placed under the care
12 of a guardian does *not* lack contractual capacity and any such transactions prior to
13 the appointment of guardian are valid and binding.

14 Further, Plaintiff alleges in his complaint that Mr. Wilkinson was legally
15 incapacitated within the meaning of NRS 132.175 at the time Defendant filed the
16 Complaint for Divorce referenced above (D-19-596071-D) and when he signed the
17 Stipulated Decree of Divorce on January 17, 2020¹⁵. Of course, as noted above,
18 there was *no* such determination made, the facts, evidence, and court record,
19 disprove such claims, and the time to challenge the validity of the Decree has long
20 passed. Thus, Plaintiff’s claims are false and legally insufficient to support
21 Plaintiff’s ancillary attack of Defendant.

22 ***C. The guardianship order was not registered in Nevada.***

23 Pursuant to NRS §159.2027, after a guardian has been appointed in another
24 state and or country is *registered* in Nevada pursuant to NRS §159.2025, the
25

26 ¹³ See FN 11, *supra*.

27 ¹⁴ Complaint at ¶ 17.

28 ¹⁵ Complaint at ¶ 10-11.

1 powers of the guardianship appointed in another state and or country becomes
2 effective in Nevada except as prohibited under the laws of Nevada.

3 Pursuant to NRS §159.2023, where a guardian of the estate of the
4 nonresident has not been appointed in Nevada, but the nonresident has a foreign
5 guardian, the nonresident may deliver the property and such delivery shall
6 constitute a release and discharge with respect to such property or debt.

7 Significantly, *no action was ever* filed by Mr. Wilkinson or anyone else on
8 his behalf to find Mr. Wilkinson *retroactively* incompetent from prior to Divorce
9 Action, nor at any other time, by a Nevada Court This deficiency is fatal to the
10 survival of Plaintiff's complaint. Therefore, as a matter of law, Mr. Wilkinson
11 possessed the contractual capacity to engage in and conclude the domestic action.

12 Under Nevada law, Mr. Wilkinson was legally competent on January 16,
13 2020 when he executed the Answer and on January 17, 2020 when he executed the
14 Decree of Divorce because he had not been found incompetent or in need of a
15 guardianship prior to or during the domestic proceedings. As noted above, the
16 Stipulated Decree is valid. The Colorado Case didn't find Mr. Wilkinson in need of
17 a guardian until November of 2020; the order, however, was not filed, nor
18 registered in Nevada pursuant to NRS § 159.2025.

19 ***D. Plaintiff's allegations for Cause of Actions for Elder Abuse and***
20 ***Constructive Fraud are Vague, Unintelligible, and insufficient to***
21 ***prevent the dismissal of the claims.***

22 1. Elder Abuse.

23 In order to sustain a cause of action of Elder Abuse in Nevada, the Plaintiff
24 must prove culpability beyond mere negligence—he must demonstrate by clear and
25 convincing evidence that the defendant is guilty of recklessness, oppression, fraud,
26 or malice¹⁶. Recklessness refers “to a subjective state of culpability greater than
27 simple negligence, which has been described as a ‘deliberate disregard’ of the ‘high

28 ¹⁶ See *Delaney v. Baker*, 971 P.2d 986 (1999).

1 degree of probability' that an injury will occur."¹⁷ Oppression, fraud and malice
2 "involve 'intentional,' 'willful,' or 'conscious' wrongdoing of a 'despicable' or
3 'injurious' nature."¹⁸

4 The elements for a claim of elder abuse, applicable to the instant complaint,
5 are¹⁹:

- 6 1. A person over the age of 60 years or is vulnerable as defined by NRS
7 41.1395 (physical or mental impairment);
- 8 2. Suffers a loss of money or property by reason of their exploitation by
9 another;
- 10 3. The defendant knows or has reason to know that the plaintiff is elderly or
11 vulnerable;
- 12 4. If the defendant acted with recklessness, oppression, fraud or malice, the
13 plaintiff shall be entitled to an award of attorney fees and costs of the
14 suit.

15 Notably, these provisions do not apply to a person who caused injury,
16 death or loss to a vulnerable person if he did not know or have reason to
17 know that the harmed person was a vulnerable person.

18 Review of these elements with the Plaintiff's allegations and irrefutable facts
19 of this case confirm Plaintiff (1) fails to adequately state a claim for elder abuse; (2)
20 is unable to prove such a cause of action, and (3) is unable to defeat Defendant's
21 motion to dismiss.

22 First, it has already been judicially determined that Mr. Wilkinson
23 effectuated "substantial community waste" for years²⁰. As a result of such waste,
24 the division of the marital estate, of which Plaintiff complains, has been judicially
25 determined to be fair and equitable²¹. Being a valid Decree, Mr. Wilkinson is
26

27 ¹⁷ *Ibid.*

28 ¹⁸ *Ibid*; see also *Covenant Care, Inc. v. Superior Court Conduct*, 86 P.3d 290
(2004) (holding conduct giving rise to the enhanced remedies available under the
Elder Abuse Act is "essentially equivalent to conduct that would support recovery
of punitive damages

¹⁹ See *DeRuisse v. Progressive Cas. Ins. Co. Inc.*, 2011 U.S. Dist. LEXIS 92433.

²⁰ Decree, pages 1-2.

²¹ See e.g., Decree, page 6, line 5; page 11, line 20; page 12, line 6

1 judicially estopped from asserting a monetary loss due to exploitation, and the
2 cause of action cannot be met as a matter of law. Dismissal of the cause of action is
3 warranted.

4 Additionally, while Plaintiff makes a general claim that Defendant “knew or
5 had reason to know that Mr. Wilkinson was vulnerable”²², the facts prove the
6 statement to be false and unsupportable. As detailed above, Mr. Wilkinson has
7 been competent and possessed with contractual capacity for more than 46 years.²³
8 Mr. Wilkinson was not a vulnerable, incompetent, or in need of a guardian at any
9 time during his 46 plus years of adulthood, including during the time he chose to
10 marry, during the years he chose to commit substantial marital waste, and when he
11 prepared his Answer and stipulated to the Decree of Divorce.

12 In fact, it wasn’t until November 23, 2020, when “a Court in Lincoln County,
13 Colorado” identified Mr. Wilkinson’s cognitive impairment and determined that
14 from that time forward, Mr. Wilkinson was in need of a guardian. Significantly,
15 there was no hearing or determination that Mr. Wilkinson’s “cognitive impairment”
16 was retroactively recognized or determined. As a result, Mr. Wilkinson was, as a
17 matter of law, competent, not vulnerable, and contractually capable—just like any
18 other adult who has not been judicially declared otherwise.

19 Accordingly, Plaintiff’s allegation that Defendant knew Mr. Wilkinson was
20 “legally incapacitated” is false as a matter of law! The truth is, Mr. Wilkinson was
21 not legally incapacitated at the time of the dissolution proceedings and nobody—no
22 court—possessed such knowledge—because Mr. Wilkinson, as a matter of law,
23 **was not!** Therefore, no person knew or should have known that Mr. Wilkinson was
24

25 ²² Complaint at ¶ 22.

26 ²³ Until November of 2020, Mr. Wilkinson had never been found to have been
27 vulnerable, incompetent, or in need of a guardian; Mr. Wilkinson is now 65 years of
28 age. Of course, until Mr. Wilkinson turned 18 years of age, he lacked contractual
capacity as a matter of law—the difference between that age and the Colorado
ruling is more than 46 years.

1 vulnerable, and Plaintiff certainly cannot establish that Defendant knew or should
2 have known Mr. Wilkinson was vulnerable, and Plaintiff's motion for elder abuse
3 cannot stand.

4 Lastly, notwithstanding the above fatal deficiencies, Plaintiff also claims
5 Defendant "acted with fraud, malice, oppression, and or conscious disregard". As
6 noted above, the law requires the Complaint to provide the Defendant "fair notice
7 of the nature and basis of the claim". However, Plaintiff's Complaint fails to do so.
8 Plaintiff's use of the disjunctive/alternative word "or" is legally insufficient to
9 apprise Defendant of what intent/state of mind she would need to know to
10 adequately defend at trial (assuming the cause of action was not so deficient and
11 went to trial). Which one(s) is it?

12 Of course, as this Court knows, fraud claims must meet a heightened
13 pleading standard under NRCP 9(b). Pleading fraud with sufficient/adequate
14 particularity requires "an account of the time, place, and specific content of the
15 false representations, as well as the identities of the parties to the
16 misrepresentations."²⁴ Rule 9(b) requires "the circumstances constituting the
17 alleged fraud [to] be specific enough to give defendants notice of the particular
18 misconduct so that they can defend against the charge and not just deny that they
19 have done anything wrong."²⁵ To survive a challenge based on Rule 9(b), a
20 complaint must allege the "who, what, when, where, and how" of the
21 misrepresentation²⁶. The complaint must also explain why the representation
22 complained of was false²⁷.

23
24
25 ²⁴ See *Swartz v. KPMG, LLP*, 476 F.3d 756, 764 (9th Cir. 2007); see also *Morris v.*
26 *Bank of Nev.*, 110 Nev. 1274, 886 P.2d 454, 456, n.1 (1994).

27 ²⁵ *Vess v. CibaGeigy Corp. USA*, 317 F.3d 1097, 1106 (9th Cir. 2003) (internal
28 citations and quotation marks omitted).

²⁶ *Id.*

²⁷ *Id.*

1 Further, under Nevada law, a claim for fraud (or fraudulent
2 misrepresentation) requires a party to show each of the following elements: (1) a
3 false representation; (2) knowledge or belief that the representation was false (or
4 knowledge that the defendant had an insufficient basis for making the
5 representation); (3) intent to induce the plaintiff to act or refrain from acting; (4)
6 justifiable reliance upon the misrepresentation; and (5) damage resulting from such
7 reliance²⁸.

8 It is clear Plaintiff has failed to adequately plead fraud and the cause of
9 action must fail.

10 2. Constructive Fraud.

11 While Plaintiff references fraud in the disjunctive when addressing the
12 untenable claim of elder abuse, this cause of action is specifically pled as
13 constructive fraud. Obviously, fraud is an essential element of the claim, yet the
14 particularity that is required with claims of fraud, set forth in detail above and
15 incorporated herein by reference, is absent.

16 To sustain a claim of constructive fraud in Nevada, Plaintiff must allege and
17 be able to prove:

- 18 1. The existence of a confidential relationship or some legal or equitable
19 duty or fiduciary duty;
- 20 2. Breach of that duty in a way that the law declares fraudulent because of
21 its tendency to deceive others or to violate a duty or confidence; and
- 22 3. Causation and damages²⁹.

23 In both claims where fraud is referenced, Plaintiff did not provide the
24 specific facts as to what acts are to have been taken by Defendant to exerted undue
25 influence upon Mr. Wilkinson in order to procure his signature on the Stipulated

26 ²⁸ *J.A. Jones Constr. Co. v. Lehrer McGovern Bovis, Inc.*, 89 P.3d 1009, 1017 (Nev.
27 2004); *see also Barmettler v. Reno Air, Inc.*, 956 P.2d 1382, 1386 (Nev. 1998).

28 ²⁹ *See Perry v. Jordan*, 111 Nev. 943, 947, 900 P.2d 335, 337 – 338 (1995); *Long v.*
Towne, 98 Nev. 11, 13, 639 P.2d 528, 530 (1982); *Exec. Mgmt. v. Ticor Title Ins.*
Co., 114 Nev. 823, 963 P. 2d 465 (Nev. 1998).

1 Decree of Divorce” in the Divorce Action. As shown *supra*, Mr. Wilkinson signed
2 the answer and decree of divorce nine months before Mr. Wilkinson was appointed
3 a guardian and when, for the first time in Mr. Wilkinson’s life, he was determined
4 to be in need of a guardian.

5 Moreover, Plaintiff miserably fails to provide the requisite detail pertaining
6 to the fraud, and in this claim, the necessary details on what duty was owed, and the
7 details of how the duty was ostensibly breached as required by law. The requisite
8 facts are missing. The facts of this case, confirm Mr. Wilkinson was not
9 incapacitated at the time he signed the divorce papers. Lastly, given the judicial
10 findings and order that the division of the marital estate was fair and reasonable,
11 Plaintiff cannot, as a matter of law, be able to show “causation and damages”.

12 Accordingly, while Defendant is entitled to the necessary detail pertaining to
13 fraud, the fact Plaintiff cannot satisfy the third element obviates the need and calls
14 for the dismissal of the claim in its entirety.

15 3. Declaratory Relief.

16 The elements for an equitable claim of declaratory relief are:

- 17 1. A justifiable controversy exists between two or more parties;
- 18 2. Regarding their respective rights pursuant to a contract;
- 19 3. Such that the plaintiff asserts a claim of a legally protected right;
- 20 4. The issue is ripe for judicial determination; and
- 21 5. Plaintiff asks the court to determine the parties’ relative rights under the
22 contract³⁰.

23 In support of Plaintiff’s claim for declaratory relief, Plaintiff alleges the
24 following:

- 25 32. A justifiable controversy exists between Mr. Wilkinson and Ms.
26 Almario. Regarding their respective rights pursuant to the February 12, 2020
27 Decree of Divorce, such that the plaintiff asserts a claim of a legally

28 ³⁰ See NRCP 57, NRS 30 et. seq.; *Kress v. Corey*, 65 Nev. 1, 189 P.2d 352 (1948);
MB Am., Inc. v. Alaska Pac. Leasing Co., 132 Nev. 78, 367 P.3d 1286 (2016).

1 protected right.

2 33. The issue is ripe for judicial determination; and

3 34. Mr. Wilkinson asks the Court to rule that the Decree of Divorce is either
4 void for lack of subject matter jurisdiction given that it signed by a legally
5 incapacitated person or in the alternate determine that the Decree of Divorce
6 was procured as a result of Ms. Almario's fraudulent and/or improper
7 conduct.

8 Comparison of those allegations to the necessary elements for a claim of
9 declaratory relief, coupled with application of the dispositive, irrefutable facts of
10 this case, confirm that Plaintiff has failed, and is unable, to satisfy the elements
11 necessary to prove a claim for declaratory relief.

12 First, *there is no justifiable controversy*. Plaintiff references the "Divorce
13 Decree", but the Decree actually reflects the *absence* of a justifiable controversy.
14 Any controversy that may have otherwise existed commenced with the filing of
15 Defendant's complaint for divorce. The justifiable controversy in that pleading was
16 resolved when Mr. Wilkinson filed his answer and stipulated to the Decree of
17 Divorce. Just the absence of a justifiable controversy mandates dismissal of this
18 action. It is also significant to note *Plaintiff is not challenging or seeking the
19 return of the hundreds of thousands of dollars of marital waste* that Mr.
20 Wilkinson accomplished through Jill Strnad and or Tanika Stevenson.

21 Second, because Mr. Wilkinson did not appeal or file for any NRCP 60(b)
22 post entry relief, the Decree of Divorce is no longer subject to challenge and is a
23 valid and enforceable Decree. Accordingly, the validity of the Decree is moot.
24 Failure to satisfy this element likewise warrants the dismissal of this claim for
25 relief.

26 Continuing, Plaintiff's suggestion the Family Court lacked subject matter
27 jurisdiction is simply misguided, untrue, and legally unsupportable³¹. Of course,

28 ³¹ Indeed, Family Court was created and expressly vested with the authority to hear
dissolution matters. See NRS 3.223.

1 Mr. Wilkinson did not lack contractual capacity when he signed his answer and the
2 stipulated Decree and no court has ever found him lacking such capacity³². In fact,
3 Plaintiff admits it wasn't until November 23, 2020—more than 9 months after the
4 entry of the Decree, that a Colorado court found “as a result of his (unquantified)
5 cognitive impairment” that he was appointed a guardian. If Mr. Wilkinson lacks
6 contractual capacity, that status did not exist until November 23, 2020.

7 Lastly, Plaintiff again gratuitously inserts unfounded, unspecific, and
8 undetailed allegations of fraud. Plaintiff's use of and/or is legally insufficient, but
9 any reliance on fraud must be sufficiently pled as detailed at length herein—
10 something Plaintiff fails to do.

11 Clearly, Plaintiff is unable to meet and sustain the burden to seek declaratory
12 relief. As established above, there are multiple reasons that mandate the cause of
13 action for declaratory relief be dismissed.

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28 ³² As addressed herein, no court has ever found Mr. Wilkinson to be incapacitated,
nor made any ruling of retroactive application.

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III.

Conclusion

Based on the foregoing pursuant to NRCP 12(b)(5), Defendants respectfully request an order is entered dismissing the three causes of actions contained therein and the complaint in its entirety for failure to state a claim pursuant to NRCP 12(b)(5) and because there lacks a recognizable and sufficient factual and legal basis to maintain an action in Nevada.

Dated this 28th day of December, 2020

HOFLAND & 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 Defendant

CERTIFICATE OF SERVICE

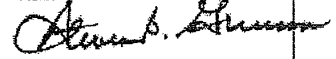
I HEREBY CERTIFY that I am an employee of HOFLAND & TOMSHECK, that pursuant to Administrative Order 14-2, NEFCR 9, and NRCP 5(b), on the 28th day of December, 2020, I served the forgoing **DEFENDANTS' NOTICE OF MOTION AND MOTION TO DISMISS THE COMPLAINT PURSUANT TO NRCP 12(b)(5)** on the following parties by E-Service through the Odyssey filing system and/or U.S. Mail addressed as follows:

JAMES W. KWON, ESQ.
jkwon@jwklawfirm.com
Attorney for Plaintiff

BY: /s/ Nikki Woulfe
An Employee of HOFLAND & TOMSHECK

EXHIBIT "1"

PLT000053
ROA000185



1 **COMD**
2 **STEINBERG & DAWSON LAW GROUP**
3 **DANIELLE DAWSON, ESQ.**
4 Nevada Bar No. 11792
5 4270 S. Decatur Blvd., Suite B10
6 Las Vegas, Nevada 89103
7 Telephone: (702) 384-9664
8 Facsimile: (702) 384-9668
9 Email: danielle@steinberglawgroup.com
10 Attorney for Plaintiff

CASE NO: D-19-596071-D
Department: To be determined

DISTRICT COURT, FAMILY DIVISION
CLARK COUNTY, NEVADA

11 **TESSIE E. WILKINSON,**

Plaintiff,

vs.

12 **RODNEY WILKINSON,**

Defendant.

CASE NO:
DEPT NO:

COMPLAINT FOR DIVORCE

13 COMES NOW the Plaintiff, **TESSIE E. WILKINSON**, by and through her legal
14 counsel **DANIELLE DAWSON, ESQ.**, of the **STEINBERG & DAWSON LAW GROUP** and
15 files her complaint against the Defendant, **RODNEY WILKINSON**, and alleges as follows:

I.

16 That Plaintiff has been physically present and domiciled in, and an actual, bona fide
17 resident of the State of Nevada, County of Clark for more than six (6) weeks immediately
18 preceding the commencement of this action.

II.

19 That Plaintiff and Defendant were duly and legally married on March 22, 2008 in
20 Burlington, Colorado and have been since that time, and are at the present time, husband and
21 wife.

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III.

That there are no minor children born to the issue of this marriage. To the Plaintiff's knowledge, she is not pregnant at this time and the parties have not adopted any minor children.

IV.

That there are sole and separate properties of each of the parties to be confirmed as the sole and separate properties of each of the parties by the Court.

VIII.

That there is community property of the parties to be equitably divided and adjudicated by the Court.

IX.

That there are community debts of the parties to be equitably divided and adjudicated by the Court.

X.

That the Plaintiff be awarded spousal support/alimony from the Defendant.

XIII.

That Plaintiff has been compelled to obtain the services of an attorney to prosecute this action, and is therefore entitled to reasonable attorney's fees and costs.

XIV.

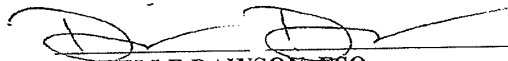
That Plaintiff and the Defendant are incompatible in their tastes, natures, views, likes and dislikes, which have become widely separate and divergent so that the parties hereto have been, and now are, incompatible to such an extent that it now appears that there is no possibility of reconciliation between Plaintiff and Defendant, and that a happy marital status can no longer exist.

1 WHEREFORE, PLAINTIFF prays for judgment of this Court which:

- 2 1. Wholly dissolves the bonds of matrimony now and heretofore existing between
3 the parties and that the parties, and each of them, be restored to the status of single
4 unmarried person;
5
6 2. Confirms the sole and separate properties of each of the parties;
7
8 3. Equitably divides the community property of the parties;
9
10 4. Equitably divides the community debts of the parties;
11
12 5. Orders the Defendant to pay the Plaintiff spousal support/alimony;
13
14 6. Orders the Defendant to pay the Plaintiff's reasonable attorney's fees and her
15 costs of Court; and
16
17 7. For such other and further relief as the Court may deem just and proper in the
18 premises.

19 DATED this 6 day of September, 2019.

20 STEINBERG & DAWSON LAW GROUP

21 
22 DANIELLE DAWSON, ESQ.
23 Nevada Bar No. 11792
24 4270 S. Decatur Blvd., Suite B10
25 Las Vegas, Nevada 89103
26 Attorney for Plaintiff
27
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VERIFICATION

TESSIE E. WILKINSON, being first duly sworn upon her oath, deposes and states:

1. That I am over the age of 18 years and I am competent to testify as to the matters contained in this Affidavit.

2. That I am the Plaintiff in the above-entitled action; that I have read the above and foregoing Complaint for Divorce and know the contents thereof; the same is true of my own knowledge, except for those matters therein stated on information and belief, and as to those matters, I believe them to be true.

3. That I have lived in Nevada for at least six (6) weeks prior to the filing of the Complaint for Divorce.

4. That I have read the Complaint for Divorce and can testify that all of the allegations contained therein are true.

5. That the Defendant and I are incompatible in marriage.


6. That there is no possibility that the Defendant and I will reconcile.

DATED this 6th day of September, 2019.


TESSIE E. WILKINSON

STATE OF NEVADA)
) ss:
COUNTY OF CLARK)

SUBSCRIBED and SWORN to before me this 6th day of September, 2019.


NOTARY PUBLIC in the State of Nevada, County of Clark

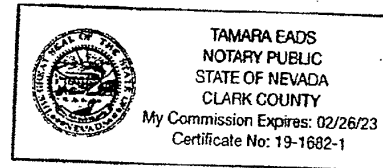


EXHIBIT "2"

PLT000058
ROA000190

Electronically Filed
01/28/2020

Alvin J. Lewis
CLERK OF THE COURT

ADAS

Your Name: Rodney Wilkinson

Address: 613 Eagle Dr Apt 26

City, State, Zip: Newtown, ND 58763

Phone: 785-824-4700

Email: _____

Self-Represented Defendant

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Tessie E Wilkinson

Plaintiff,

vs.

Rodney Wilkinson

Defendant.

CASE NO.: 0-19-596071-D

DEPT NO.: G

ANSWER TO COMPLAINT FOR DIVORCE

Defendant (your name) Rodney E. Wilkinson, respectfully states:

1. Defendant admits the following allegations: (write the paragraph numbers from the Complaint you agree with) I, II, III, IV, VIII, IX, X, XIII, XIV, 1, 2, 3, 4, 5, 6, 7
2. Defendant denies the following allegations: (write the paragraph numbers from the Complaint you disagree with) _____
3. Defendant is without sufficient knowledge to admit or deny the following allegations: (write the paragraph numbers you are unsure about) _____

Defendant requests:

1. That the marriage existing between Plaintiff and Defendant be dissolved and that Defendant be granted an absolute Decree of Divorce and that each of the parties be restored to the status of a single, unmarried person; and
2. For such other relief as the Court finds to be just and proper.

DATED this (day) 16th day of (month) January, 2020.

Submitted By: (your signature) ▶ Rodney E. Wilkinson
(print your name) Rodney E. Wilkinson

VERIFICATION

Under penalty of perjury, I declare that I am the Defendant in the above-entitled action; that I have read the foregoing Answer and know the contents thereof; that the pleading is true of my own knowledge, except for those matters therein contained stated upon information and belief, and that as to those matters, I believe them to be true.

I declare under penalty of perjury under the law of the State of Nevada that the foregoing is true and correct.

DATED this (day) 16th day of (month) January, 2020.

Submitted By: (your signature) ▶ Rodney E. Wilkinson
(print your name) Rodney E. Wilkinson

EXHIBIT "3"

PLT000061
ROA000193

Steven D. Grierson

1 **DECD**
2 **STEINBERG & DAWSON LAW GROUP**
3 **DANIELLE DAWSON, ESQ.**
4 Nevada Bar No. 11792
5 4270 S. Decatur Blvd., Suite B10
6 Las Vegas, Nevada 89103
7 Telephone: (702) 384-9664
8 Facsimile: (702) 384-9668
9 Email: danielle@steinberglawgroup.com
10 Attorney for Plaintiff

DISTRICT COURT, FAMILY DIVISION
CLARK COUNTY, NEVADA

11 **TESSIE WILKINSON,**

12 Plaintiff,

13 vs.

14 **RODNEY WILKINSON,**

15 Defendant.

CASE NO: D-19-596071-D
DEPT NO: G

DECREE OF DIVORCE

16 This cause coming before the Court on Request for Summary Disposition, the Plaintiff,
17 **TESSIE WILKINSON**, by and through her attorney, **DANIELLE DAWSON, ESQ.**, of
18 **STEINBERG & DAWSON LAW GROUP**; and the Defendant, **RODNEY WILKINSON**,
19 appearing in proper person.

20 WHEREAS the parties have reached a full resolution to the outstanding issues in this
21 matter.

22 WHEREAS throughout the last several years of marriage, Rodney Wilkinson has
23 divested the community of assets constituting substantial community waste as follows:

- 24 1. Transferred community funds including five years of earnings to Jill Strnad and or
25 Tanika Stevenson;

26 **RECEIVED**

27 FEB 04 2020

28 Department G

Non-Trial Dispositions:
☐ Other
☐ Dismissed - Want of Prosecution
☐ Involuntary (Statutory) Dismissal
☐ Default Judgment
☐ Transferred
☐ Disposed After Trial Start
☒ Settled/Withdrawn
☐ With Judicial Conf/Htg
☐ By ADR
Trial Dispositions:
☐ Judgment Reached by Trial

- 1 2. Divested the community of gold coins valued at over \$100,000 by gifting them to
2 Jill Strnad;
3 3. Divested the community of a 2004 Corvette by gifting it to Tanika Stevenson;
4 4. Transferred ownership of a \$1,000,000 life insurance policy on himself to Jill
5 Strnad;
6

7 Therefore,

8 **IT IS FURTHER STIPULATED** that the following community property shall be set
9 over and hereby awarded to Rodney Wilkinson as his sole and separate property:

- 10 1. The Chevrolet Suburban VIN ending in 9469;
11 2. All personal property owned prior to the marriage;
12 3. Any and all current and future retirement accounts, savings plans, IRA, pension
13 plans or otherwise in his name only not otherwise herein named;
14 4. Any and all wearing apparel, personal ornaments, and jewelry belonging to him;
15 5. Any and all bank accounts in his name only not otherwise herein named; and
16 6. Any personal items currently in his possession.
17
18

19 **IT IS FURTHER STIPULATED** that the following community property shall be set
20 over and hereby awarded to the Tessie Wilkinson as her sole and separate property:

- 21 1. US Bank account ending in the numbers 8904 with a current approximate value of
22 \$373;
23 2. The real property located at 8382 Hollywood Hills Ave, Las Vegas, Nevada
24 89178;
25 3. The real property located at 5730 Road 10, Goodland, Kansas 67735;
26 4. The 2012 Chevrolet Corvette VIN ending in 0723;
27
28

- 1 5. The Service Truck VIN 2GCFK29K951206963;
- 2 6. The 1977 Kenworth Winch Truck VIN 155197SG2;
- 3 7. The following heavy equipment:
- 4 a. P & H 140 Ton crane , Model 9125-TC;
- 5 b. Manitowac 100 ton crane, Model 3900A, SN 39670;
- 6 c. Lima 90 ton crane, Model 990TC;
- 7 d. P & H 90 ton crane, Model 8115TC, SN 35419;
- 8 e. P & H 50 ton crane;
- 9 f. P & H 25 ton crane;
- 10 g. P & H 70 ton crane;
- 11 h. 2 bulldozers;
- 12 i. 1977 Kenworth VIN 055097SGL;
- 13 j. 1972 Peterbilt ID 41337P, FHP364802;
- 14 k. 1955 Mack VIN B705T1209;
- 15 l. 1955 Kenworth VIN 64338;
- 16 m. 1959 Mack VIN B73S1370;
- 17 n. 1962 Mack winch truck;
- 18 o. 6000 Cherry Picker;
- 19 p. 100 ton press;
- 20 q. Lo Boy 35 ton Cozad Trailer # CC80062;
- 21 r. 1993 Western Star Boom Truck Serial No. 2WKPDCCCHIPK931154;
- 22 s. 750 Holmes Wrecker Tow Truck;
- 23 t. Autocar Winch Truck;
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- 1 u. Maritime Hydraulic Drilling Rig;
- 2 v. Any and all tools located at 5730 Road 10, Goodland, Kansas 67735.
- 3 8. Any and all rights assigned to Rodney Wilkinson through the contract with Dan
- 4 Fontenot of Synergy Oil Field Services, LLC.
- 5
- 6 9. All personal property owned prior to the marriage;
- 7 10. Any and all current and future retirement accounts, savings plans, IRA, pension
- 8 plans or otherwise in her name only;
- 9 11. Any and all wearing apparel, personal ornaments, and jewelry belonging to her;
- 10 12. Any and all bank accounts in her name only; and
- 11 13. Any personal items currently in her possession.

12

13 **IT IS FURTHER STIPULATED** that the following community debts shall be set over

14 and hereby awarded to Rodney Wilkinson as his sole and separate debts:

- 15 1. The loan on the real property located at 5730 Road 10, Goodland, Kansas 67735;
- 16 2. The loan through Dorman Renewable Fuels, LLC in the approximate amount of
- 17 \$20,000;
- 18
- 19 3. Any and all tax debts in his name only;
- 20 4. Any and all student loan debts in his name only;
- 21 5. Any and all credit card debt in his name only;
- 22 6. Any and all credit instruments in his name only.

23 **IT IS FURTHER STIPULATED** that the following community debts shall be set over

24 and hereby awarded to Tessie Wilkinson as her sole and separate debts:

- 25 1. The Chase credit account ending in the numbers 9416 with an approximate
- 26 current balance of \$3,860;
- 27
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1 2. The US Bank credit account ending in the numbers 9270 with an approximate
2 current balance of \$4,300;

3 3. Any and all student loan debts in her name only;

4 4. Any and all credit card debt in her name only;

5 5. Any and all credit instruments in her name only.

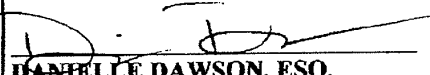
6
7 **IT IS FURTHER STIPULATED** that each party shall bear their own attorney's fees
8 and costs in this matter.


9 **IT IS FURTHER STIPULATED** that Tessie Wilkinson shall return to her maiden name
10 to wit: Tessie Elma Almario.

11 **IT IS SO STIPULATED.**

12
13 **DATED** this 21 day of January, 2020.

14 **DATED** this 17th day of January, 2020.

15
16 
17 **DANIELLE DAWSON, ESQ.**
18 Nevada Bar No. 11792
19 Attorney for Plaintiff

20 
21 **RODNEY WILKINSON**
22 Defendant in Proper Person

23 **ORDER**

24 **UPON THE FOREGOING STIPULATION** of the parties, and this appearing to be a
25 proper case therefor:

26 **THAT** the Court has complete jurisdiction in the premises, both as to the subject matter
27 thereof as well as the parties thereto;

28 **THAT** the Plaintiff now is, and has been, an actual bona fide resident of the County of
Clark, State of Nevada, and has been actually domiciled therein for more than six (6) weeks
immediately preceding the verification of the Complaint for Divorce in this action;

1 **THAT** the parties were duly and legally married on March 22, 2008 in Burlington,
2 Colorado and have been since that time, and are at the present time, husband and wife.

3 **THAT** the Plaintiff believes that all of the allegations contained in her Complaint for
4 Divorce are true and that the Plaintiff is entitled to the relief sought subject to the terms as set
5 forth in this Decree of Divorce;
6

7 **THAT** the parties have waived Findings of Fact, Conclusions of Law, written Notice of
8 Entry of Judgment, and to move for a new Trial in said cause;

9 **THAT** there are no minor children born the issue of this marriage. No minor children
10 were adopted and Plaintiff is not now pregnant.

11 **NOW, THEREFORE**, by reason of the law in such cases made and provided, and the
12 Court deeming this a proper case therefore,
13

14 **IT IS HEREBY ORDERED** that the bonds of matrimony heretofore and now existing
15 between Plaintiff and Defendant be, and the same are hereby wholly dissolved, and an absolute
16 Decree of Divorce is hereby granted to the Plaintiff and each of the parties hereto is hereby
17 restored to the status of a single, unmarried person.
18

19 **IT IS FURTHER ORDERED** that the following community property shall be set over
20 and hereby awarded to Rodney Wilkinson as his sole and separate property:

- 21 1. The Chevrolet Suburban VIN ending in 9469;
- 22 2. All personal property owned prior to the marriage;
- 23 3. Any and all current and future retirement accounts, savings plans, IRA, pension plans or
24 otherwise in his name only not otherwise herein named;
- 25 4. Any and all wearing apparel, personal ornaments, and jewelry belonging to him;
- 26 5. Any and all bank accounts in his name only not otherwise herein named; and
27
- 28

1 6. Any personal items currently in his possession.

2 **IT IS FURTHER ORDERED** that the following community property shall be set over
3 and hereby awarded to the Tessie Wilkinson as her sole and separate property:

4 1. US Bank account ending in the numbers 8904 with a current approximate value of
5 \$373;

6 2. The real property located at 8382 Hollywood Hills Ave, Las Vegas, Nevada
7 89178;

8 3. The real property located at 5730 Road 10, Goodland, Kansas 67735;

9 4. The 2012 Chevrolet Corvette VIN ending in 0723;

10 5. The Service Truck VIN 2GCFK29K951206963;

11 6. The 1977 Kenworth Winch Truck VIN 155197SG2;

12 7. The following heavy equipment:

13 a. P & H 140 Ton crane , Model 9125-TC;

14 b. Manitowac 100 ton crane, Model 3900A, SN 39670;

15 c. Lima 90 ton crane, Model 990TC;

16 d. P & H 90 ton crane, Model 8115TC, SN 35419;

17 e. P & H 50 ton crane;

18 f. P & H 25 ton crane;

19 g. P & H 70 ton crane;

20 h. 2 bulldozers;

21 i. 1977 Kenworth VIN 055097SGL;

22 j. 1972 Peterbilt ID 41337P, FHP364802;

23 k. 1955 Mack VIN B705T1209;

- 1 l. 1955 Kenworth VIN 64338;
2 m. 1959 Mack VIN B73S1370;
3 n. 1962 Mack winch truck;
4 o. 6000 Cherry Picker;
5 p. 100 ton press;
6 q. Lo Boy 35 ton Cozad Trailer # CC80062;
7 r. 1993 Western Star Boom Truck Serial No. 2WKPDCCHIPK931154;
8 s. 750 Holmes Wrecker Tow Truck;
9 t. Autocar Winch Truck;
10 u. Maritime Hydraulic Drilling Rig;
11 v. Any and all tools located at 5730 Road 10, Goodland, Kansas 67735.
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14 14. Any and all rights assigned to Rodney Wilkinson through the contract with Dan
15 Fontenot of Synergy Oil Field Services, LLC.
16
17 8. All personal property owned prior to the marriage;
18 9. Any and all current and future retirement accounts, savings plans, IRA, pension
19 plans or otherwise in her name only;
20 10. Any and all wearing apparel, personal ornaments, and jewelry belonging to her;
21 11. Any and all bank accounts in her name only; and
22 12. Any personal items currently in her possession.
23
24 **IT IS FURTHER ORDERED** that in the event that any property has been omitted from
25 this Decree that would have been community property or otherwise jointly-held property under
26 applicable law as of the date hereof, the concealing or possessory Party will transfer or convey to
27 the other Party, at the other Party's election:
28

1 (1) The full market value of the other Party's interest on the date of this Decree, plus
2 statutory interest through and including the date of transfer or conveyance; or

3 (2) The full market value of the other Party's interest at the time that Party discovers that
4 he has an interest in such property, plus statutory interest through and including the date
5 of transfer or conveyance; or
6

7 (3) An amount of the omitted property equal to the other Party's interest herein, if it is
8 reasonably susceptible to division.

9 **IT IS FURTHER ORDERED** that, except as otherwise specified herein, any and all
10 property acquired or income received by either party from and after the date of entry of this
11 Decree shall be the sole and separate property of that party, and each party respectively grants to
12 the other all such further acquisitions of property as the sole and separate property of the one so
13 acquiring the same. Each party shall have an immediate right to dispose of, or bequeath by Will,
14 his respective interest in and to any and all property belonging to him from and after the date
15 hereof, and such rights shall extend to all of the future acquisitions of property as well as to all
16 property set over to either of the parties hereto by this Decree.
17

18 **IT IS FURTHER ORDERED** that the following community debts shall be set over and
19 hereby awarded to Rodney Wilkinson as his sole and separate debts:
20

- 21 1. The loan on the real property located at 5730 Road 10, Goodland, Kansas 67735;
- 22 2. The loan through Dorman Renewable Fuels, LLC in the approximate amount of
23 \$20,000;
- 24 3. Any and all tax debts in his name only;
- 25 4. Any and all student loan debts in his name only;
- 26 5. Any and all credit card debt in his name only;
- 27
- 28

1 6. Any and all credit instruments in his name only.

2 **IT IS FURTHER ORDERED** that the following community debts shall be set over and
3 hereby awarded to Tessie Wilkinson as her sole and separate debts:

4 1. The Chase credit account ending in the numbers 9416 with an approximate
5 current balance of \$3,860;

6 2. The US Bank credit account ending in the numbers 9270 with an approximate
7 current balance of \$4,300;

8 3. Any and all student loan debts in her name only;

9 4. Any and all credit card debt in her name only;

10 5. Any and all credit instruments in her name only.

11 **IT IS FURTHER ORDERED** that if any claim, action or proceeding is brought seeking
12 to hold the other party liable on account of any debt, obligation, liability act or omission assumed
13 by the other Party, such party will, at his or her sole expense, defend the other against any such
14 claim or demand and that he or she will indemnify, defend, and hold harmless the other Party.

15 **IT IS FURTHER ORDERED** that Tessie Wilkinson shall receive the sum of \$3,000 per
16 month from Rodney Wilkinson for the duration of her life as and for Spousal Support. This
17 amount shall be due on or before the 10th day of each month.

18 **IT IS FURTHER ORDERED** that if any claim, action or proceeding is brought seeking
19 to hold the other party liable on account of any debt, obligation, liability act or omission assumed
20 by the other Party, such party will, at his sole expense, defend the other against any such claim or
21 demand and that he will indemnify, defend, and hold harmless the other Party.

22 **IT IS FURTHER ORDERED** that each Party shall execute any and all legal documents,
23 certificates of title, bills of sale, deeds or other evidence transfer necessary to effectuate this
24

1 Decree and the division of community assets within thirty (30) days of the entry of this Decree,
2 except as otherwise provided herein. Should either party fail to execute any of said documents to
3 transfer interest to the other, then this Decree shall constitute a full transfer of the interest of one
4 to the other, as herein provided. It is further agreed that pursuant to NRCP 70, the Clerk of the
5 Court shall be deemed to have hereby been appointed and empowered to sign, on behalf of the
6 non-signing party, any of the said documents of transfer which have not been executed by the
7 party otherwise responsible for such.
8

9 **IT IS FURTHER ORDERED** that it is hereby mutually understood and agreed by and
10 between the parties hereto that this Decree of Divorce is deemed to be a final, conclusive and
11 integrated agreement between the parties, and that except as herein specified, each party hereto is
12 hereby released and absolved from any and all liabilities and obligations for the future and past
13 acts and duties of the other, and that each of the said parties hereby releases the other from any
14 and all liabilities, future accounts, alimony and support or otherwise, or debts or obligations of
15 any kind or character incurred by the other except as provided herein provided, it being
16 understood that his instrument is intended to settle finally and conclusively the rights of the
17 parties hereto in all respects arising out of their marital relationship except as provided herein.
18

19 **IT IS FURTHER ORDERED** that the provisions in this Decree are fair and reasonable
20 and the parties agree to be bound by all its terms. The parties further acknowledge that they have
21 made an independent investigation into the existence and value of the assets and liabilities
22 divided hereunder, and the tax consequences, if any. The parties hereby waive any and all claims
23 against Danielle Dawson, Esq. of Steinberg Law Group related to the value and/or existence of
24 any asset divided hereunder or the tax consequences resulting therefrom. The parties further
25 acknowledge that they did not receive tax advice from Danielle Dawson, Esq. and have been
26
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1 advised to seek the advice of a tax expert for any tax related questions they may have. The
2 parties have further been advised to seek the advice of independent counsel regarding these
3 terms.

4 **IT IS FURTHER ORDERED** that each party acknowledges that they have read this
5 Decree of Divorce and fully understand the contents and accept the same as equitable and just,
6 that the parties agree this Decree of Divorce has been reached via negotiation and in the spirit of
7 compromise, and that there has been no promise, agreement or understanding of either of the
8 parties to the other except as set forth herein, which have been relied upon by either as a matter
9 of inducement to enter into this agreement, and each party hereto has had the time and
10 opportunity to be advised by an attorney and has been encouraged to do so. The parties further
11 acknowledge that this stipulated Decree of Divorce is a global resolution of their case and that
12 each provision herein is made in consideration of all the terms in the Decree of Divorce as a
13 whole. The parties further acknowledge that they have entered into this stipulated Decree of
14 Divorce without undue influence or coercion, or misrepresentation, or for any other cause except
15 as stated herein.

16 **IT IS FURTHER ORDERED** that should it be necessary for either Party to enforce the
17 terms of this Decree, the prevailing party shall be entitled to recover their attorneys' fees and
18 costs.

19 **IT IS FURTHER ORDERED** that the parties shall submit the information required in
20 NRS 125B.055, NRS 125.130 and NRS 125.230 on a separate form to the Court and the Welfare
21 Division of the Department of Human Resources within ten days from the date this Decree is
22 filed. Such information shall be maintained by the Clerk in a confidential manner and not part of
23 the public record. The parties shall update the information filed with the Court and the Welfare
24


1 Division of the Department of Human Resources within ten days should any of that information
2 become inaccurate.


3 **IT IS FURTHER ORDERED** that Tessie Wilkinson shall return to her maiden name to
4 wit: Tessie Elma Almario.


5 **DATED** this 11th day of February, 2020.

6
7
8 
9 **DISTRICT COURT JUDGE**
Rhonda K. Forsberg

10 **STEINBERG & DAWSON LAW GROUP**

11
12 
13 **DANIELLE DAWSON, ESQ.**
14 Nevada Bar No. 11792
15 4270 S. Decatur Blvd., Suite B10
Las Vegas, Nevada 89103
Attorney for Defendant


RODNEY WILKINSON
613 Eagle Drive Apt 36
Newtown, ND 58763
Defendant in Proper Person

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18 **TESSIE WILKINSON**

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VERIFICATION OF TESSIE WILKINSON

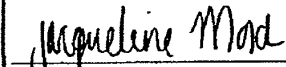
I, Tessie Wilkinson, being duly sworn under the penalties of perjury, depose and say:

I am the Plaintiff herein, and I have read the foregoing Stipulated Decree of Divorce and know the contents thereof; that the same is true to the best of my own knowledge, except as to those matters therein stated upon information and belief, and as to those matters, I believe them to be true.

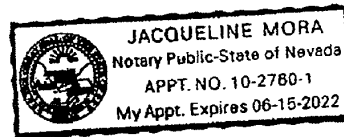

TESSIE WILKINSON

STATE OF NEVADA)
) ss.
COUNTY OF CLARK)

SUBSCRIBED and SWORN to before me this 21 day of January, 2020.



Notary Public



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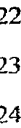
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228 South 4th Street, First Floor
Las Vegas NV 89101
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Attorney for Defendant, Tessie Elma Almario

**DISTRICT COURT
CLARK COUNTY, NEVADA**

SHERYL ATTERBERG, ON
BEHALF OF HER WARD
RODNEY WILKINSON;

Plaintiff,

vs.

TESSIE ELMA ALMARIO,

Defendant.

) CASE NO.: A-20-825785-C
) DEPT NO.: 14/XIV
) Date of Hearing: February 9, 2021
) Time of Hearing: 9:30 a.m.
) **ORAL ARGUMENT REQUESTED**
) **DEFENDANTS' REPLY TO**
) **PLAINTIFF'S OPPOSITION TO**
) **DEFENDANT'S MOTION TO DISMISS**
) **COMPLAINT PURSUANT TO NRCP**
) **12(b)(1), NRCP 12(b)(5), and NRCP**
) **12(h)(2); AND DEFENDANT'S**
) **OPPOSITION TO PLAINTIFF'S**
) **COUNTERMOTION FOR RELIEF**
) **PURSUANT TO NRCP 60.**

COMES NOW, Defendant, Tessie Elma Almario, and hereby submits this
reply to Plaintiff's opposition to her motion to Dismiss the Complaint pursuant to
NRCP 12(b)(1), NRCP 12(b)(5), and NRCP 12(h)(2); and her opposition to
Plaintiff's countermotion for relief pursuant to NRCP 60, and moves the Court for
an order dismissing the complaint for failure to state a claim pursuant to NRCP
12(b)(5) because, quite simply, there lacks a recognizable and sufficient legal basis
to maintain an action in Nevada because Decree of Divorce predates the date of
appointment of guardianship in Colorado and the guardianship order was not
registered in Nevada.

1 This reply and opposition is made and based on the following Memorandum
2 of Points and Authorities, the declarations and exhibits, attached hereto, the papers
3 and pleadings already on file herein, and any argument the Court may permit at the
4 hearing of this matter.

5 Dated this 2nd day of February, 2021.

6
7 **HOFLAND & TOMSHECK**

8
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 Defendant
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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I.**

3 **Introduction**

4 Make no mistake—Plaintiff’s actions are not done for altruistic reasons. The
5 dispositive facts—deliberately concealed by Plaintiff, confirms Plaintiff is simply
6 selfish and opportunistic. Because the facts of this case and applicable precedent
7 lend no support to her claims, Plaintiff substitutes fact with fiction, misstates,
8 misapplies, and conceals applicable precedent, and egregiously violates the duty of
9 candor that is owed this Honorable Court. In short, Plaintiff shows deceit and
10 manipulation is acceptable when she will gain from such conduct.

11 Aside from Plaintiff’s misguided belief that she is not bound by truth,
12 Plaintiff’s actions and arguments also illuminates a disturbing belief that Plaintiff
13 can ignore Orders and controlling precedent. Lastly, the narrative that Plaintiff has
14 crafted is patently false, devoid of support and accuracy, and deliberately
15 misleading. Plaintiff shamelessly endeavors to manipulate this Court at all cost.
16 As a result, it is necessary to address Plaintiff’s dishonesty, provide the vital facts
17 and corrections that Plaintiff has concealed, and reference the applicable precedent
18 that is fatal to the relief Plaintiff seeks from this Court.

19 **II.**

20 **Correction and Clarification**
21 **(to Sheryl’s False Narrative)**

22 ***A. From the beginning, Plaintiff’s dishonesty is manifest.***

23 Plaintiff does not characterize the first three pages of the “opposition”, but
24 even a cursory review of Plaintiff’s ramblings confirms the absence of support, the
25 absence of accuracy, and more disturbing, the absence of validity. Indeed:

- 26 • Plaintiff falsely states the Divorce Decree was rushed—it was *not*.
27 • Plaintiff grossly misstates Rodney Wilkinson’s condition as “Dementia
28 *[so far advanced]*”—the Colorado Court, however, described the
nature and extent of Rodney’s incapacity as:

1 “Ward is not capable of *completely* caring for himself. Due to his
2 strokes and Traumatic brain Injuries he “forgets” simple tasks such
3 as how to use a microwave or other household appliances. Ward
4 cannot always remember to feed himself or to visit his medical
5 doctors and take prescriptions on time.” (emphasis supplied)¹.

- 6 • Plaintiff is not being candid with the Court and the evidence *disproves*
7 her representations. Significantly, Plaintiff has no support for her
8 claim.
- 9 • Plaintiff is the only party seeking to mislead the Court.
- 10 • Plaintiff falsely and incorrectly characterizes the procurement of the
11 Decree. Plaintiff fails to disclose the fact that Rodney initiated, sought,
12 and pushed the Divorce—*not* Tessie—and there was no exploitation.
- 13 • Plaintiff falsely states Rodney lacked contractual capacity when the
14 Decree was entered—notably, there is no evidence to support her
15 claim. Plaintiff’s claim it was obtained by fraud is defamatory and
16 contrary to the evidence.
- 17 • There is absolutely no evidence that Rodney “lacked contractual
18 capacity before the Divorce case was even initiated” and Plaintiff’s
19 representations of what *will be* shown convenient, fanciful speculation,
20 and meaningless—Plaintiff is unable to show anything now to support
21 Plaintiff’s claims.
- 22 • Plaintiff grossly misstates the law. This action is improper,
23 impermissible and must be dismissed.

24
25 ***B. Plaintiff conceals dispositive facts—particularly those that are***
26 ***crippling to her legal maneuvers, in her purported “introduction***
27 ***and statement of essential facts”.***

28 As a threshold matter, the professed guardian in this action is Rodney’s
sister, Sheryl Atterberg (“Sheryl” or “guardian”). Sheryl fails to disclose to this
Court that the relationship between her and Rodney was estranged², and had been
for decades. Coincidentally, Sheryl had no relationship with Rodney until 2020.
Rodney made this point clear as far back as 2007 (years before the parties were

¹ More importantly, the very medical records that Plaintiff provides the Court
proves Plaintiff’s dishonesty and shows that the onset of Rodney’s dementia didn’t
happen until many months *after* the parties divorced. (See Exhibit “1”) Clearly, her
claim Rodney’s dementia was “so far advanced” is untrue—and sanctionable.

² Rodney disclosed to others his belief that Sheryl wanted to put him in a mental
facility—something he did not want and was fearful of it happening.

1 even married), when he prepared “The Rodney E. Wilkinson Trust” and provides
2 therein that “[u]nder no circumstances, is a distribution of income or principal to
3 be made to either my brother, John Wilkinson or my sister, Sheryl Atterberg.”³

4 While Sheryl professes to be Rodney’s guardian, given the nature of the
5 relationship between she and Rodney, coupled with her documented lack of candor,
6 there is reason to believe Rodney was not properly served, which would render the
7 Order Appointing Guardian for Adult *void ab initio*. Because void judgments can
8 be attacked collaterally, the fact Sheryl does not validate the Colorado Order should
9 be addressed and validation required—if, in fact, Sheryl can do so.

10 Since Sheryl has had virtually *no* contact with her brother, Rodney, for
11 decades, she clearly has no knowledge of what Rodney did, of his capacities, of his
12 interests, of his activities, or anything else for that matter. Thus, her claims are
13 nothing more than speculation, that cannot be relied upon by this Court.

14 The evidence, however, confirms that Rodney and Tessie had a close,
15 profound, and caring relationship, long before they married. Rodney’s intentions
16 towards Tessie were memorialized and made clear long *before* they married. In his
17 trust, he provided:

18 The balance of the trust assets (after expenses), of whatsoever kind and
19 whosoever situated, shall be distrusted, as follows:

- 20 (a) To my friend and confidant Tessie Mae Brown, (address omitted);
21 (b) If the said Tessie Elma Brown shall fail to survive me, then all of the
22 proceeds of the trust shall be distributed to Erica Sarai Bell (address
23 omitted);
24 (c) If neither of the foregoing survive me, then I direct that all trust
25 proceeds be distributed to Sheryl Atterberg, my sister.

26 Rodney prepared his trust in 2007. Rodney and Tessie were married in 2009.

27 Sheryl claims Rodney sustained a “Traumatic Brain Injury” in 2017—but
28 *does not claim* that caused his “Dementia”—nor does Sheryl provide proof such

³ See Article II of The Rodney E. Wilkinson Trust, pages 1-2, submitted herewith as Exhibit “2” for the Court’s convenience and review.

1 diagnosis. Sheryl claims Rodney was suffering from Dementia before he filed his
2 Answer in the Divorce Case—but submits no evidence to support her claim. In
3 fact, the Colorado Order (Guardianship Order—if not void) wasn't signed until
4 almost a year later (and the medical records confirm the onset of Rodney's
5 dementia wasn't until May of 2020⁴. Thus, as a matter of law, at the time of the
6 parties' divorce, Rodney had the legal capacity to contract. In reality, Rodney
7 continued working, traveling, hauling loads, and negotiating with various parties up
8 to and after Rodney and Tessie divorced.

9 As for the divorce, **Rodney** is the one who had initiated it. Rodney disclosed
10 he no longer wanted to own or be responsible for anything—he simply wanted to
11 live at the farmhouse and work. Rodney had his reasons, followed up to ensure it
12 was being accomplished repeatedly, and the phone records confirm this fact.
13 During this process, the parties reached an agreement and Rodney was content,
14 stopping work only because of shoulder trouble. Sheryl's tale surrounding
15 Rodney's verification is pure fiction—intended only to unfairly prejudice this Court
16 and deflect from the facts that disprove Sheryl's claims. As noted above, Rodney
17 did not, in truth and as a matter of law, lack contractual capacity, and Sheryl's
18 allegation of fraud is self-serving and defamatory.

19 Sheryl has no idea what Tessie did or did not do, and her speculation is just
20 that—bearing no relation to the truth (which is why there is a conspicuous absence
21 of proof, support, or evidence to substantiate her defamatory claims). For example,
22 Sheryl maligns Tessie and claims she “absconded” with one million dollars in 2013
23 (while the parties were married). What Sheryl conceals from the Court is the
24 parties had just sold some real estate for 2.5 million dollars⁵. At Rodney's
25

26 ⁴ Such medical records, confirming the diagnosis of the onset of dementia wasn't
27 made until May of 2020, long after the parties divorced, are submitted herewith as
Exhibit “1” for the Court's convenience and review.

28 ⁵ A copy of the settlement statement is submitted herewith as Exhibit “3” for the
Court's convenience and review.

1 insistence, Rodney and Tessie placed 1million in her account and the balance in his
2 account. Rodney also deposited the approximate 300k from the sale of the corn that
3 had been harvested in his account. On top of that, Rodney placed the proceeds of
4 the combines and related equipment that was sold in his account. Sheryl's
5 characterization of "absconding" is absurd and patently false.

6 Continuing, the \$60,000 in gold coins Sheryl blames Tessie for taking is
7 incorrect in value and blame is misplaced. In reality, the value of the gold coins
8 was closer to \$100k and were given to a woman named Tanika Stevenson by
9 Rodney. During the parties' marriage, Rodney gave Ms. Stevenson considerable
10 amounts of money, took a 20k loan and gave her the proceeds, and Tessie has
11 cancelled checks substantiating this fact. Sheryl's confusion of the two women is
12 understandable given her absence in her brother's life.

13 Between 2014 and 2018, Rodney lived with a woman named Jill Strnad.
14 During this time, Rodney was still driving truck and gave her his income, with the
15 belief she would take care of the bills and expenses. Jill chose to write checks to
16 herself (again, Tessie has some of the cancelled checks), and neglected paying the
17 bills, property taxes, income taxes, and legal bills. In late 2018, Rodney contacted
18 Tessie, promised he was done with Jill and Tanika, hoping to reconcile their
19 relationship. During this time Rodney worked, had contractual capacity, and
20 showed no signs of "dementia". The truth is, during the marriage Rodney
21 committed considerable marital waste and admitted that fact on multiple occasions.

22 *After* the divorce the parties remained close and got along well. Tessie
23 visited him on numerous occasions, spoke to him often, and there is no truth the
24 Divorce was "rushed"; it was initiated by Rodney, discussed, considered, and
25 reflective of Rodney's intent (expressed long before the parties were even
26 married)⁶. Phone records will substantiate these facts, and Plaintiff's medical
27

28 ⁶ See Exhibit "2".

1 records confirm Tessie remained involved in Rodney's life and was concerned with
2 his well-being.

3 In the Spring of 2020, Rodney's health began to decline and Tessie was
4 concerned (unlike Sheryl). Plaintiff concedes Tessie contacted social services, law
5 enforcement—as well as neighbors, and sending her son to check on him on
6 multiple occasions. Indeed, the very medical record that Sheryl submits shows that
7 in May of 2020 a diagnosis of the *onset* of dementia was made⁷.

8 Sheryl is desperate, and quick to state, that Rodney lacked contractual
9 capacity five months earlier when he negotiated and agreed to the terms of the
10 Divorce and verified his Answer. However, the Trust Rodney prepared 13 years
11 before the divorce, and prior to the parties' marriage, confirms the provisions of the
12 Decree are consistent with his intent.

13 As noted above, in May of 2020, the diagnosis of dementia noted it was at its
14 *onset (the beginning)*⁸. The Court did not find him in need of a guardian
15 (assuming the Order was properly obtained and isn't void). Sheryl is unable to
16 provide any support for her claim Rodney lacked contractual incapacity at the time
17 of divorce.

18 In sum, Sheryl wasn't even involved in Rodney's life until the latter part of
19 2020. Sheryl's narrative is patently false, defamatory, and self-serving. The
20 evidence shows she lacks credibility and the litigation that she has commenced is
21 improper, flawed, and inconsistent with established precedent.

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25 ⁷ See Exhibit "1".

26 ⁸ Sheryl argues dementia "is a slow-progressing disease that does not appear
27 overnight", but conceals the fact that with dementia, contractual incapacity likewise
28 does not occur overnight or accompany the initial diagnosis. While Guardian ship
was established on November 23, 2020, Rodney's contractual incapacity wasn't
determined.

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III.

Statement of Facts

Rodney and Tessie married on March 22, 2009 and divorced at the beginning of 2020. The Decree confirms Rodney's substantial marital waste, represents their agreement, and found and confirmed by the Court as being equitable and fair⁹.

Notice of Entry of the Decree of Divorce was filed on February 13, 2020. Mr. Wilkinson did not seek reconsideration or move for any of the relief that was available pursuant to NRCP 60(b). More than 10 months have passed and the Decree is, and remains, valid and enforceable¹⁰. Because there was no factual or legal basis in which to set aside the Decree, Plaintiff endeavors to manipulate the legal system by filing a baseless independent action that completely ignores the above, that conceals the dispositive facts that are fatal to Plaintiff's action. The Stipulated Decree is an enforceable contract and the law of the case¹¹--and while Plaintiff may choose to ignore this fact, this Court certainly cannot.

According to Plaintiff, on November 23, 2020, "a Court in Lincoln County, Colorado appointed Mrs. Atterberg Mr. Wilkinson's guardian due to the fact that Mr. Wilkinson was and is unable manage his finances or otherwise care for himself as a result of cognitive impairment"¹². Review of the Colorado Court's Order, however, confirms Sheryl's statement is false and deliberately misleading. In fact, the Colorado Order expressly *excluded* guardian (Sheryl) from managing the day-

⁹ See e.g. Decree, page 6, line 5; page 11, line 20; page 12, line 6, submitted herewith as Exhibit "4" for the Court's convenience and review.

¹⁰ See *Cavell v. Cavell*, 90 Nev. 334, 526 P.2d 330 (1974).

¹¹ See *Grisham v. Grisham*, 128 Nev. 679, 289 P.3d 230 (2012); see also *Kramer v. Kramer*, 96 Nev. 759, 616 P.2d 395 (1980) (holding "A decree of divorce cannot be modified or set aside except as provided by rule or statute").

¹² Plaintiff's Complaint at ¶ 17.

1 to-day finances for Rodney¹³ (Rodney's medical records likewise disprove Sheryl's
2 representations). Notably, Plaintiff does not, and did not assert he is, or was,
3 unable and/or lacked the capacity to enter into contractual relations.

4 IV.

5 Legal Analysis

6 A. Standard of Review.

7 N.R.C.P. 12(b) expressly provides the defenses of lack of subject-matter
8 jurisdiction and failure to state a claim upon which relief can be granted by motion.
9 Plaintiff cites NRCP 12 as well, and thus, there is no challenge to the authority.
10 Defendant incorporates argument in the underlying motion by reference.

11 As clearly established, *infra*, Plaintiff is unable to “prove no set of facts, if
12 accepted by the trier of fact, would entitle him or her to relief”, and dismissal is
13 warranted and appropriate¹⁴. Rodney had, as a matter of law, legal capacity to seek,
14 negotiate, and obtain a divorce. The Decree, as a matter of law, is valid,
15 enforceable, and binding—preventing Plaintiff from bringing the claims of “Elder
16 Abuse” and “Constructive Fraud” claims against Defendant. Lastly, this Court
17 lacks jurisdiction and ability to set aside or invalidate the Decree of Divorce entered
18 by Judge Forsberg.

19 Plaintiff's discussion of “summary judgment” is misplaced and inapposite.
20 Defendant is seeking the dismissal of Plaintiff's action/claims pursuant to NRCP
21 12—for the failure to state a claim upon which relief can be granted and lack of
22

23 ¹³ See Colorado Order, page 2 of 3, paragraph 9, submitted herewith as Exhibit “5”
24 for the Court's convenience and review. The Court also prevented Sheryl from
25 obtaining hospital or institutional care and treatment for mental illness,
developmental disability, alcoholism or substance abuse against the will of the
ward. (Paragraph 13).

26 ¹⁴ *Simpson v. Mars, Inc.*, 113 Nev. 188, 190, 929 P.2d 966, 967 (1997) (citing
27 *Vacation Village v. Hitachi America*, 110 Nev. 481, 484, 874 P.2d 744, 746
28 (1994)).

1 jurisdiction. Nevertheless, NRCP 12(c) does allow the Court to render judgment on
2 the pleadings.

3 **B. The marital decree is valid, enforceable, and necessitates the**
4 **dismissal of the complaint initiated by Plaintiff.**

5 As a threshold matter, the Decree of Divorce is valid, enforceable, and
6 precludes Plaintiff from seeking the relief sought in the civil action she
7 commenced. There is no question Family Court had jurisdiction to render the
8 Decree of Divorce, and neither party challenged its terms or validity. Accordingly,
9 even if there was a sufficient basis to set aside the Decree (which there was not), the
10 time for doing so has long lapsed.¹⁵ In addition, if any challenge was made, it
11 would have needed to be made before Department G of Family Court because,
12 having jurisdiction, if there were any irregularities (which there were none), the
13 Decree would be voidable, not void.

14 Indeed, “[i]f a judgment is deemed void, it is considered a legal nullity which
15 can be attacked collaterally¹⁶. It is significant to note that *only* a void judgment
16 may be attacked collaterally¹⁷. In *State Eng’r v. Sustacha*, the Nevada Supreme
17 Court confirmed that only void judgments are subject to collateral attack and ruled
18 that one district court could not set aside another district court’s order¹⁸.

19 Citing *Rohlfing v. District Court*, 106 Nev. 902, 906, 803 P.2d 659, 662
20 (1990), the *Sustacha* Court affirmed “[t]he district courts of this state have equal
21 and coextensive jurisdiction; therefore, the various district courts lack jurisdiction
22 to review the acts of other district courts.”¹⁹

23 A voidable judgment, on the other hand, is one rendered by a court having
24 jurisdiction, and although seemingly valid, is irregular and erroneous²⁰.

25 ¹⁵ See NRCP 60(b).

26 ¹⁶ *In re Vance*, 2009 Tex. App. LEXIS 9154.

27 ¹⁷ See *State ex rel. Smith v. Sixth Judicial Dist. Court*, 63 Nev. 249 (1946).

28 ¹⁸ 108 Nev. 223, 826 P.2d 959 (1992).

¹⁹ 108 Nev. at 226.

²⁰ Black’s law Dictionary (7 Ed. 1999) 848.

1 Conversely, if a judgment is deemed voidable, *it will have the effect of a proper*
2 *legal order unless its propriety is successfully challenged through a direct attack*
3 *on the merits*²¹.

4 In this case, the Decree of Divorce is a valid and enforceable Decree that
5 precludes the civil action before this Court. As a voidable Decree (at best), no
6 challenge was made and as a matter of law, remains binding until set aside. As
7 noted above, while a void judgment may be collaterally attacked, a voidable
8 judgment *cannot* be collaterally attacked and is subject only to direct attack²². As
9 this Court knows, a direct attack “is an action or motion for the specific and
10 primary purpose of setting aside or annulling the judgment.”²³ The Supreme Court
11 of Nevada has confirmed that a motion to vacate an order is a direct attack²⁴. Of
12 course, NRCp 60(b) relief “*must be made to the trial court that rendered the*
13 *judgment from which relief is sought.*”²⁵

14 Because there was no challenge to the Decree of Divorce between Rodney
15 and Tessie before Judge Forsberg, the Decree remains valid, enforceable, and
16 binding. There has been a judicial determination and Order that the terms of the
17

18
19 ²¹ *State ex rel. Newitt v. Fourth Judicial Dist. Court*, 61 Nev. 164, 121 P.2d 442
20 (1942); *Vaile v. Eighth Judicial Dist. Court*, 118 Nev. 262, 44 P.3d 506 (2002)
21 (court action “valid until it is set aside by a direct proceeding for that
22 purpose”); *Orrway Motor Service, Inc. v. Illinois Commerce Com.*, 353 N.E.2d 253
23 (1976); *Moore v. Moore*, 75 Nev. 189, 336 P.2d 1073 (1959) (voidable Decree is
24 valid until vacated and set aside (cited with approval on many occasions and [court]
25 consider[ed] the rule well settled.); *State ex rel. Newitt v. Fourth Judicial Dist.*
26 *Court*, 61 Nev. 164, 121 P.2d 442 (1942) (holding voidable judgment valid and
27 subsisting unless set aside).

28 ²² Restatement (Second) Judgments, Chapter 5 Introductory Note, *comment c* at 143
(1982).

²³ *See Intermill v. Nash*, 75 P.2d 157 (1938).

²⁴ *Abel v. Lowry*, 68 Nev. 284, 231 P.2d 191 (1951).

²⁵ *See supra*; see also *State v. Montgomery*, 2003 Ohio App LEXIS 3652
(emphasis supplied); *Wagenbrenner v. Wagenbrenner*, 2011 Ohio App. LEXIS
2356; *Cochenour v. Cochenour*, 2014 Ohio App. LEXIS 3055; *Vance, supra*.

1 Divorce Decree are “fair and reasonable” and “equitable and just”²⁶—making
2 Sheryl’s claim the Decree did “not provide for an equitable distribution” *false as a*
3 *matter of law*.

4 Accordingly, by Judicial Order (Decree of Divorce), Rodney did not sustain
5 a loss of money or property as required by NRS 41.1395 and relied upon by
6 Plaintiff. The *absence* of such element is fatal to Plaintiff’s action, and without
7 such, the claims of Elder Abuse and Constructive Fraud are untenable, and must be
8 dismissed as a matter of law. Lastly, because this Court lacks the ability to review
9 and/or set aside the Decree of Divorce, again as a matter of law, Plaintiff cannot
10 bring, nor can this Court entertain, a claim for the Declaratory Relief sought by
11 Plaintiff.

12 **C. Plaintiff’s claim Rodney was legally incompetent and lacked**
13 **contractual capacity at the time of his divorce is patently false.**

14 Plaintiff admits she *doesn’t* know what caused Rodney’s dementia,²⁷ but
15 there is no question Rodney wasn’t born with it and upon reaching the age of
16 maturity, obtained legal competence and contractual capacity, and exercised such
17 throughout his life. There was no judicial determination that Rodney was legally
18 incompetent or lacked contractual capacity, and a guardianship wasn’t established
19 until long after he initiated and obtained a divorce from Tessie, and thus, as a matter
20 of law, he was both legally competent and capable of entering into contractual
21 relations at the time he negotiated the terms of the Decree and executed his Answer.

22 Further, the medical records that Plaintiff disclosed to the Court reveal the
23 onset of dementia began in May of 2020—again, after the Decree was obtained.
24 Despite Plaintiff’s admissions, coupled with the evidence and applicable precedent,
25 Plaintiff’s claim Rodney was legally incompetent and lacked contractual capacity is
26 disingenuous and untenable.

27
28 ²⁶ Decree, Exhibit “4”, page 11, line 20, page 12, line 6.

²⁷ Plaintiff’s “Opposition”, page 3 of 18, lines 25-26.

1 Plaintiff's reliance on *Hale v. Hale*²⁸, is misplaced and the ruling actually
2 confirms the impropriety of Plaintiff's litigation before this Court and the
3 corresponding need to dismiss the action in its entirety. In *Hale*, the appellant
4 represented himself in the summary divorce proceedings and subsequently filed a
5 60(b) motion to set aside the decree based upon his dementia. Unlike this case,
6 Hale had been diagnosed with dementia *before* executing the agreement—the onset
7 of Rodney's dementia did not happen until after the divorce. *Hale* confirms that the
8 Decree of Divorce under such circumstances is voidable—and must be brought
9 before the Court that executed the Decree. Seeking such relief before this Court is
10 improper and disallowed by law.

11 It is also significant to note that in *Hale*, the Decree of Divorce was not set
12 aside. ***The only party that is acting in bad faith is Sheryl.*** Sheryl cites authority
13 that confirms her bringing suit before this Court is impermissible and improper, but
14 she files the instant complaint anyway²⁹. The Decree of Divorce is valid and must
15 be accepted and followed. Because the decree is fair and equitable by judicial
16 decree, the claims she raised are untenable and must be dismissed.

17 Moreover, Sheryl states under penalty of perjury, that she *doesn't know*
18 when Rodney succame to dementia, and that it is a disease that progresses over the
19 course of several years³⁰. The evidence relied upon by Sheryl confirms Rodney's
20 *initial* diagnosis of the "*onset*" of dementia was not made until months *after* the
21 Decree³¹, guardianship was not obtained until six months after Rodney's initial
22
23

24 ²⁸ 130 Nev. 1184 (2014).

25 ²⁹ Plaintiff falsely represents Tessie's argument that "no court could ever void or
26 correct a judgment obtained while a party was incapacitated". Tessie simply
27 reiterates the law that a void judgment can be collaterally attacked, and a voidable
28 decree—like in *Hale*, must be done in a timely manner directly (before the Court
rendering the Decree).

³⁰ Plaintiff's "Opposition", page 9 of 18, lines 20-21.

³¹ Exhibit "I"

1 diagnosis and onset of dementia³², and even then, Rodney's contractual capacity
2 was not addressed and Sheryl was not ordered to manage Rodney's day to day
3 finances³³.

4 Continuing, Sheryl makes defamatory claims against Tessie, including she
5 exploited Rodney (which the Decree and Rodney's Trust he established in 2007
6 disprove), obtained a multimillion-dollar windfall (also disproved by the Decree
7 and Trust) and "hid" Rodney's "incapacity" (but Sheryl concedes and the evidence
8 confirms, Tessie is actually the one who helped and contacted multiple
9 others/agencies to monitor and assist Rodney.

10 Lastly, Sheryl is not "a friend of the Court", she engaged in forum shopping
11 to find a court that would give her guardianship over her brother (being
12 unsuccessful when first attempted in another court—casting concern over the
13 validity of the instant order), and is ignoring and violating established and
14 controlling precedent by filing an independent action before this Court and seeking
15 relief that is unsustainable.

16 **D. Plaintiff's Complaint did not properly plead each cause of**
17 **action and, in fact, violates NRCP 11**

18 The above facts and precedent warrant and mandate the dismissal of the
19 instant Complaint. Notwithstanding, Plaintiff incorrectly states her causes of action
20 were properly pled; a lack of candor that merits correction and clarification.

21 First, Rodney was competent and capable when he sought the divorce from
22 Tessie and negotiated its terms, as a matter of law. *No Court* has ever found him to
23 be legally incompetent or lacking contractual capacity. The onset of dementia was
24 after the divorce—the guardianship was after the divorce—and the Decree remains
25 valid, enforceable and binding as a matter of law!

26 Accordingly, by judicial determination, Rodney was not exploited and the
27

28 ³² Exhibit "5"

³³ *Id.*

1 claim of Elder Abuse cannot stand, nor can the claim of “Constructive Fraud”, for
2 the same reasons. Lastly, this Court cannot set aside Judge Forsberg’s Decree as a
3 matter of law, and thus, Plaintiff’s claim for declaratory relief cannot stand. Hence,
4 Plaintiff cannot sustain her claims or justify the filing of the instant action and *a*
5 *complaint may be dismissed as a matter of law either for lack of a cognizable*
6 *legal theory or for insufficient facts under a cognizable theory*³⁴.

7 Elder Abuse.

8 In short, the elements for a claim of elder abuse, applicable to the instant
9 complaint, include³⁵:

- 10 1. Suffers a loss of money or property by reason of their exploitation by
another;
- 11 2. The defendant knows or has reason to know that the plaintiff is elderly or
12 vulnerable;
- 13 3. If the defendant acted with recklessness, oppression, fraud or malice, the
14 plaintiff shall be entitled to an award of attorney fees and costs of the
suit.

15 The Decree of Divorce has adjudicated Rodney did *not* suffer the requisite
16 loss—thereby precluding the preservation of the claim of Elder Abuse—and
17 warranting its dismissal.

18 Of course, as this Court knows, fraud claims must meet a heightened
19 pleading standard under NRCP 9(b). Pleading fraud with sufficient/adequate
20 particularity requires “an account of the time, place, and specific content of the
21 false representations, as well as the identities of the parties to the
22 misrepresentations.”³⁶ Rule 9(b) requires “the circumstances constituting the
23 alleged fraud [to] be specific enough to give defendants notice of the particular
24 misconduct so that they can defend against the charge and not just deny that they
25

26 ³⁴ *Robertson v. Dean Witter Reynolds, Inc.*, 749 F.2d 530, 534 (9th Cir. 1984).

27 ³⁵ *See DeRuise v. Progressive Cas. Ins. Co. Inc.*, 2011 U.S. Dist. LEXIS 92433.

28 ³⁶ *See Swartz v. KPMG, LLP*, 476 F.3d 756, 764 (9th Cir. 2007); *see also Morris v. Bank of Nev.*, 110 Nev. 1274, 886 P.2d 454, 456, n.1 (1994).

1 have done anything wrong.”³⁷ To survive a challenge based on Rule 9(b), a
2 complaint must allege the “who, what, when, where, and how” of the
3 misrepresentation³⁸. The complaint must also explain why the representation
4 complained of was false³⁹.

5 Constructive Fraud.

6 While Plaintiff references fraud in the disjunctive when addressing the
7 untenable claim of elder abuse (which was insufficiently pled), this cause of action
8 is specifically pled as constructive fraud.

9 To sustain a claim of constructive fraud in Nevada, Plaintiff must allege and
10 be able to prove:

- 11 1. The existence of a confidential relationship or some legal or equitable
12 duty or fiduciary duty;
- 13 2. Breach of that duty in a way that the law declares fraudulent because of
14 its tendency to deceive others or to violate a duty or confidence; and
- 15 3. Causation and damages⁴⁰.

16 In both claims where fraud is referenced, Plaintiff did not provide the
17 specific facts as to what acts were to have been taken or statements made by
18 Defendant to exerted undue influence upon Rodney. Plaintiff miserably fails to
19 provide the requisite detail pertaining to the fraud, including disclosing the duty
20 that was owed, and the additional “who, what, when, where, and how” that must be
21 provided.⁴¹.

22 Declaratory Relief.

23 The elements for an equitable claim of declaratory relief are:

24 ³⁷ *Vess v. CibaGeigy Corp. USA*, 317 F.3d 1097, 1106 (9th Cir. 2003) (internal
25 citations and quotation marks omitted).

26 ³⁸ *Id.*

27 ³⁹ *Id.*

28 ⁴⁰ *See Perry v. Jordan*, 111 Nev. 943, 947, 900 P.2d 335, 337 – 338 (1995); *Long v.*
Towne, 98 Nev. 11, 13, 639 P.2d 528, 530 (1982); *Exec. Mgmt. v. Ticor Title Ins.*
Co., 114 Nev. 823, 963 P. 2d 465 (Nev. 1998).

⁴¹ *Id.*

- 1 1. A justifiable controversy exists between two or more parties;
- 2 2. Regarding their respective rights pursuant to a contract;
- 3 3. Such that the plaintiff asserts a claim of a legally protected right;
- 4 4. The issue is ripe for judicial determination; and
- 5 5. Plaintiff asks the court to determine the parties' relative rights under the
- 6 contract⁴².

7 This Court did not enter the Decree of Divorce and has no jurisdiction to
8 review and set it aside. There is no justifiable controversy, the parties' rights have
9 been adjudicated, and the Decree is valid and binding. This cause of action must be
10 dismissed.

11 Lastly, Plaintiff's request for leave to amend the Complaint to remedy the
12 above noted deficiencies fatal to the stated causes of action is ill-judged and legally
13 unsupportable. The Decree of Divorce has already made findings and adjudicated
14 matters that render the claims of Elder Abuse and Constructive Fraud untenable,
15 and this Court lacks the ability to set aside or render declaratory relief pertaining to
16 the Decree of Divorce. No number of revisions of Plaintiff's complaint will enable
17 her to stave off the dismissal of the instant Complaint.

18 **OPPOSITION TO PLAINTIFF'S "COUNTERMOTION"**

19 ***A. Legal Standard.***

20 Initially, it must be remembered that Plaintiff's "opposition and
21 countermotion" was untimely and should not be considered pursuant to court rule.

22 Continuing, while Tessie agrees NRCP 60(b) is designed to redress any
23 injustices that may have resulted because of excusable neglect or the wrongs of an
24 opposing party, the facts of this case, including Orders of the Court (Decree),
25 confirm there has been neither excusable neglect or wrongdoing by either party
26 (other than the baseless litigation commenced by Plaintiff). Moreover, NRCP

27
28 ⁴² See NRCP 57, NRS 30 et. seq.; *Kress v. Corey*, 65 Nev. 1, 189 P.2d 352 (1948);
MB Am., Inc. v. Alaska Pac. Leasing Co., 132 Nev. 78, 367 P.3d 1286 (2016).

1 60(b) does not contemplate, nor allow, litigation as initiated and maintained by
2 Plaintiff.

3 ***B. Plaintiff's claims of fraud upon the Court are inaccurate and***
4 ***contrary to established precedent.***

5 With Plaintiff's arguments and positions espoused, Plaintiff apparently
6 confuses (or deliberately misstates) a void and a voidable Decree and what
7 constitutes "fraud upon the court".

8 Plaintiff needlessly argues "fraud upon the court" and citing cases that have
9 no bearing or application to the subject motion. The Nevada Supreme Court, in
10 *Occhiuto v. Occhiuto*⁴³, noted the meaning of "fraud on the court" is distinguishable
11 from "fraud" otherwise found in NRCP 60(b). Therein, quoting *United States v.*
12 *International Telephone & Tel. Corp.*⁴⁴, the Court held:

13 Generally speaking, only the most egregious misconduct, such as
14 bribery of a judge or members of a jury, or the fabrication of evidence
15 by a party in which an attorney is implicated, will constitute a fraud on
16 the court. See *Hazel-Atlas Glass Co. v. Hartford-Empire Co.*, 322 U.S.
17 238, 64 S. Ct. 997, 88 L. Ed. 1250 (1944); *Root Refin. Co. v.*
18 *Universal Oil Products*, 169 F.2d 514 (3d Cir. 1948); 7 J. W. Moore,
19 *Federal Practice*, para. 60.33 at 510-11. Less egregious misconduct,
20 such as nondisclosure to the court of facts allegedly pertinent to the
21 matter before it will not ordinarily rise to the level of fraud on the
22 court. See *Kupferman v. Consolidated Research & Mfg. Co.*, 459 F.2d
23 1072 (2d Cir. 1972); see also *England v. Doyle*, 281 F.2d 304, 310
24 (9th Cir. 1960).

25 The Court further noted:

26 "[I]n order to set aside a judgment or order because of fraud upon
27 the court under Rule 60(b). . . it is necessary to show an
28 unconscionable plan or scheme which is designed to improperly
influence the court in its decision." *England v. Doyle*, supra, 281 F.2d
at 309. See also *United States v. Standard Oil Co. of California*, 73
F.R.D. 612, 615 (N.D.Cal. 1977).

27 ⁴³ 97 Nev. 143, 625 P.2d 568 (1981).

28 ⁴⁴ 349 F. Supp. 22, 29 (D. Conn. 1972), aff'd without opinion, 410 U.S. 919,
(1973).

1 As noted in *NC-DSH, Inc. v. Garner*⁴⁵, “fraud upon the court” does not mean
2 any conduct of a party or lawyer of which the court disapproves and thus defined
3 “fraud upon the court” as embracing:

4 only that species of fraud which does, or attempts to, subvert the
5 integrity of the court itself, or is a fraud perpetrated by officers of the
6 court so that the judicial machinery cannot perform in the usual
7 manner its impartial task of adjudging cases ... and relief should be
8 denied in the absence of such conduct.

9 *NC-DSH* recognized fraudulent conduct of an attorney/officer of the Court,
10 and distinguished “fraud ‘by an opposing party’” from that by an attorney. Indeed:

11 ‘Fraud upon the court’ ... embrace[s] **only** that species of fraud which
12 does or attempts to, defile the court itself, or is a fraud perpetrated **by**
13 **officers of the court** so that the judicial machinery can not perform in
14 the usual manner its impartial task of adjudging cases that are
15 presented for adjudication.⁴⁶(emphasis provided)

16 While it has been established that Tessie engaged in no fraudulent conduct,
17 nor committed any fraud, assuming arguendo such, it could not constitute fraud
18 upon the court. Rodney initiated the divorce, Rodney instructed Tessie to begin the
19 process and Rodney monitored the status and actively negotiated its terms. As a
20 matter of law, Rodney was not incapacitated nor lacked contractual capacity.

21 In conclusion, Sheryl’s speculation, misrepresentations, baseless conclusions,
22 and most importantly, controlling legal authority, lend no support to her position
23 and render her “countermotion” baseless.

24 ***C. Plaintiff’s claim the Decree of Divorce is Void ab initio is a gross***
25 ***misstatement of law.***

26 Plaintiff confuses void judgments with voidable ones. Obviously, a
27 judgment obtained through insufficient service of process is void⁴⁷, but this case

28 ⁴⁵ 125 Nev. 647, 218 P.3d 853 (2009) (dealing with fraud committed by a lawyer
who is an officer of the court—noting attorney involvement is “a signal
characteristic of many of the fraud on the court cases).

⁴⁶ *Jones v. Wainwright*, 2008 U.S. Dist. LEXIS 1111585 (U.S. Dist. Ct. 9th Cir)

⁴⁷ See e.g., *C.H.A. Venture v. G. C. Wallace Consulting*, 106 Nev. 381, 794 P.2d
707 (1990) (judgment reversed because service was not properly effectuated and

1 does not involve insufficient service of process, and thus Plaintiff's reference to
2 NRCP 60(b)(4) is misplaced and has *no* bearing on this case. Moreover, there is no
3 question Judge Forsberg had jurisdiction over the parties and subject matter
4 jurisdiction, therefore rendering the Decree voidable (*see* Section IV (C), *supra*).
5 Accordingly, any discussion Plaintiff's makes pertaining to "void" judgments is
6 misplaced and irrelevant.

7 Family Court clearly has jurisdiction/subject matter jurisdiction to render
8 Decrees of Divorce⁴⁸. With personal jurisdiction of the parties thereto, any Decree
9 is merely voidable—and not void. Voidable Decrees cannot be attacked
10 collaterally—and can only be set aside through a direct challenge. In this case, no
11 such challenge was ever made, and the law is also absolute with its ruling that
12 voidable decrees, judgments, and orders are valid and enforceable, and remain so,
13 unless and until set aside or reversed.

14 Of course, in this case, there was no challenge, no appeal, and the Decree is
15 not only binding, it renders Plaintiff's litigation improper and unsustainable.
16 Plaintiff's causes of action fail to state a claim upon which relief can be granted,
17 Plaintiff's complaint lacks merit and is frivolous, and must be dismissed in their/its
18 entirety.

19 V.

20 Conclusion

21 Based on the foregoing pursuant Defendant respectfully request an order is
22 entered dismissing the three causes of actions contained therein and the complaint
23 in its entirety for failure to state a claim pursuant to NRCP 12(b)(5) and because
24

25
26 thus, jurisdiction did not attach); *Foster v. Lewis*, 78 Nev. 330, 372 P.2d 679 (1962)
27 (a judgment based on a void order of publication is void); *Doyle v. Jorgensen*, 82
28 Nev. 196, 414 P.2d 707 (1966) (a judgment not supported by proper service is
void).

⁴⁸ See NRS 3.223

1 there lacks a recognizable and sufficient factual and legal basis to maintain an
2 action in Nevada.

3 Dated this 2nd day of February, 2021.

4
5 **HOFLAND & TOMSHECK**

6 By: /s/ Bradley J. Hofland

7 Bradley J. Hofland, Esq.
8 State Bar of Nevada No. 6343
9 228 South 4th Street, First Floor
10 Las Vegas, Nevada 89101
11 (702) 895-6760
12 Attorneys for Defendant
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28

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 Defendant in this action and am competent to testify as to
5 the matters stated herein.

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

11 DATED this 2nd day of February, 2021.

12
13 /s/ Tessie Elma Almario
14 Tessie Elma Almario

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28 **CERTIFICATE OF SERVICE**

1 I HEREBY CERTIFY that I am an employee of HOFLAND &
2 TOMSHECK, that pursuant to Administrative Order 14-2, NEFCR 9, and NRCP
3 5(b), on the 2nd day of February, 2021, I served the forgoing **REPLY TO**
4 **PLAINTIFF'S OPPOSITION TO DEFENDANT'S MOTION TO DISMISS**
5 **COMPLAINT PURSUANT TO NRCP 12(b)(1), NRCP 12(b)(5), and NRCP**
6 **12(h)(2); AND DEFENDANT'S OPPOSITION TO PLAINTIFF'S**
7 **COUNTERMOTION FOR RELIEF PURSUANT TO NRCP 60** on the
8 following parties by E-Service through the Odyssey filing system and/or U.S. Mail
9 addressed as follows:

10
11 JAMES W. KWON, ESQ.
12 jkwon@jwklawfirm.com
13 *Attorney for Plaintiff*

14 BY: /s/ Nikki Woulfe
15 An Employee of HOFLAND & TOMSHECK
16
17
18
19
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21
22
23
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25
26
27
28

EXHIBIT “7”



1 **OPPC**

2 JAMES W. KWON, ESQ.

3 Nevada Bar No. 8146

4 JAMES KWON, LLC

5 6280 Spring Mountain Rd., Suite 100

6 Las Vegas, Nevada 89146

7 P: (702) 515-1200

8 F: (702) 515-1201

9 jkwon@jwklawfirm.com

10 Attorney for Plaintiff

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

13 **SHERYL ATTERBERG, ON BEHALF OF**
14 **HER WARD RODNEY WILKINSON;**

15 Plaintiff,

16 vs.

17 **TESSIE ELMA ALMARIO,**

18 Defendant.

Case No.: **A-20-825785-C**

Dept No.: **14**

Hearing Date: February 9, 2021

Hearing Time: 9:30 a.m.

19 **OPPOSITION TO DEFENDANT'S**
20 **NOTICE OF MOTION AND MOTION**
21 **TO DISMISS COMPLAINT**
22 **PURSUANT TO NRCP 12(b)(1),**
23 **NRCP 12(b)(5), and NRCP 12(h)(2);**
24 **and PLAINTIFF'S**
25 **COUNTERMOTION FOR RELIEF**
26 **PURSUANT TO NRCP 60**

27 To be clear, we are not talking about a difference of years or decades, between the
28 rushed entry of a Divorce Decree and a medical determination that Plaintiff Rodney
29 Wilkinson's ("Rodney")¹ Dementia was so far advanced that he not only was but is
30 incapable of caring for himself and thus requiring a permanent guardian, but a matter of
31 months. A Colorado Court determined that Rodney's 2017 Traumatic Brain Injury and

¹ For clarity sake when discussing the Plaintiff, the focus will be on Rodney rather than references to his guardian Mrs. Sheryl Atterberg.

1 Dementia required the appointment of a permanent guardianship.

2 Defendant Tessie Elma Almario's ("Tessie") Motion to Dismiss is nothing more
3 than a continued attempt to mislead this Court.

4 First, Tessie improperly relies on the parties' Divorce, which Tessie secured by
5 exploiting Rodney's inability to think and be cognizant. Frankly, Tessie's reliance on the
6 Decree of Divorce and the Answer in the parties' family law case, which she had prepared
7 and had Rodney sign in proper person, while he lacked contractual capacity, and without
8 the benefit of counsel, is pure misdirection. Tessie cannot rely on legal documents she
9 obtained by fraud.

10 Rodney will show through discovery and a subsequent trial that he lacked (a) he
11 lacked contractual capacity before the Divorce case was even initiated, (b) he lacked
12 contractual capacity when the Divorce Decree was signed, and (c) Tessie knew he lacked
13 such capacity.

14 The Decree prepared by Tessie and adopted by the Court provides that she gets
15 everything, and Rodney gets nothing. That fact alone should shock the conscious of this
16 Court.

17 Second, there is no basis for Tessie's to rely on federal court precedent as this
18 matter raises issues of State Law in State Court. And in Nevada, after taking every
19 allegation as true and making all reasonable inferences in Rodney's favor, this Court only
20 may dismiss a case if it appears **"beyond a doubt"** Rodney can prove no set of facts that
21 would entitle him to relief. A rigorous standard that Tessie cannot even come close to
22 meeting.

23 Tessie's next argues that Rodney failed to register the Colorado Guardianship in
24 Nevada—so what. Tessie does not dispute that a Court of Competent Jurisdiction
25 determined that Mrs. Atterberg proved by clear and convincing evidence that Rodney's
26 2017 Traumatic Brain Injury and Dementia required the appointment of a permanent
27 guardianship. Nor does she claim that Rodney or his guardians reside in Nevada, own
28 property in Nevada, or otherwise conduct business in the State of Nevada. And Tessie

1 makes no such claim, given they do not live here, nor do they own property here, or
2 conduct any business in the State. Therefore, they should be treated simply as friends of
3 this Court, and thus there was no need to register any Foreign Judgment.

4 It should be noted that Rodney has filed the Foreign Judgment (Guardianship) in
5 Case No. G-21-054224-A.

6 Last, Tessie again bases her entire position on the language in the Answer and
7 Divorce Decree, both of which she had drafted, and had executed while Rodney lacked
8 contractual capacity, attempts to argue that Rodney has failed to state a claim for which
9 relief can be granted. Tessie cannot rely on her own fraud which kept Rodney from the
10 courthouse doors.

11 Common sense dictates that a false statement of fact obtained via fraud cannot later
12 be used to establish an irrefutable fact.

13 However, if a civil action was not the proper vehicle to address the issues raised in
14 this matter, which Rodney disputes. *See Bonnell v. Lawrence*, 128 Nev. 394, 398, 282
15 P.3d 712, 714 (2012) (Relief under Rule 60(b) can be sought by either (1) a motion in the
16 same case where the final order or judgment is entered; or (2) by filing an independent
17 action). Then this Court should *transfer this matter* to the Family Court to address
18 Rodney's Countermotion for relief under NRCP 60(b).

19 MEMORANDUM OF POINTS AND AUTHORITIES

20 I. INTRODUCTION AND STATEMENT OF ESSENTIAL FACTS

21 1. The parties wed on March 22, 2009, in Burlington, Colorado.

22 2. In February 2013, the parties separated, and Tessie moved to Las Vegas,
23 Nevada, where she remained.

24 3. In 2017, two years before Tessie filed for Divorce, Rodney sustained a
25 Traumatic Brain Injury.² Whether Rodney's Traumatic Brain Injury caused his Dementia
26 is unknown, and that will be an issue for expert witnesses to determine.

27

28

² See Exhibit 1 (Professional Opinion of Kathy Dyer, LPN) submitted under seal.

1 4. On September 9, 2019, after being separated from Rodney for over six years,
2 Tessie filed for Divorce.³

3 5. On January 17, 2020, before he filed his answer in the Divorce Case,
4 Rodney, who was suffering from Dementia, was forced into signing the Decree of Divorce
5 by Tessie, who flew out to North Dakota to get him to sign said Decree of Divorce.

6 6. Bethany Hann, the Notary who stamped Rodney's Verification, specifically
7 recalls that Rodney did not speak, that he did not seem to know what was going on, and
8 that Tessie was in complete control on January 17, 2020 when Rodney signed his
9 Verification.

10 7. Ms. Hann was so concerned that before stamping the Verification, she spoke
11 to her supervisor, who advised her Ms. Hann could stamp the Verification since all she
12 was attesting that the fact that Rodney was signing the Verification.

13 8. Nine days later, Rodney, proceeding in proper person, filed his answer, a
14 document prepared by Tessie.⁴

15 9. On February 12, 2020, the Court filed the Stipulated Decree of Divorce.

16 10. Upon information and belief, Tessie's counsel Danielle Dawson, Esq., never
17 once met with or otherwise spoke to Rodney during the parties' Divorce proceedings.

18 11. Upon information and belief, Tessie instructed her counsel to include the
19 language in the Stipulated Decree to justify her award of millions and dollars, and nothing
20 to Rodney.

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

23 13. Upon information and belief, Tessie hid that fact from her counsel, Danielle
24 Dawson, to secure an award of millions of dollars and nothing to Rodney.

25 14. Tessie intentionally concealed that Rodney was suffering from severe mental
26 deficiencies and was otherwise lacked contractual capacity from the Court not only when
27

28 ³ See Case No. D-19-596071-D.

⁴ See Case No. D-19-596071-D.

1 she filed for Divorce but when she obtained a Decree of Divorce.

2 15. Tessie used this knowledge to commit a fraud upon the Court and obtain an
3 unequal distribution of the marital estate.

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

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

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

10 19. If Rodney made poor financial decisions that devalued the marital estate,
11 such decisions resulted directly from his Traumatic Brain Injury, Dementia, and cognitive
12 decline.

13 20. On or about May 4, 2020, less than three months after the Court entered the
14 Decree of Divorce, Rodney was formally diagnosed with Dementia.⁵

15 21. On May 18, 2020, Tessie herself informed the medical personnel treating
16 Rodney:⁶

- 17 • That Rodney lived alone;
18 • That Rodney had refused in-home health care services and would not accept
19 help from anyone;
20 • That Tessie had called social services and police to conduct welfare checks
21 on Rodney;
22 • That Rodney was not taking care of himself and failing to properly eat and
23 drink.

24 22. On November 23, 2020, the Colorado Court appointed Mr. Stevonn, and Mrs.
25 Sheryl Atterberg, Rodney's sister and brother-in-law, his permanent guardians.

26 23. Dementia is a slow-progressing disease and does not appear overnight.
27

28 ⁵ See Exhibit 2 (Medical Records for Rodney Dated 05/18/2020) submitted under seal.

⁶ See Exhibit 2 (Medical Records for Rodney Dated 05/18/2020) submitted under seal.

II. LEGAL STANDARD FOR THE OPPOSITION

1. MOTION TO DISMISS

For a defendant to prevail on a motion to dismiss for failure to state a claim, they *must show beyond a doubt that Plaintiff is entitled to no relief under any set of facts that could be proved in support of the claim.* See *Buzz Stew, L.L.C. v. City of N. Las Vegas*, 124 Nev. 224, 228 (2008); *Stockmeier v. Nev. Dep't of Corr. Psych. Review Panel*, 124 Nev. 313, 316, 183 P.3d 133, 135 (2008); *Pankopf v. Peterson*, 124 Nev. 43, 175 P.3d 910, 912 (2008) (emphasis added).

When ruling on an NRCP 12(b)(5) motion, a court must accept the allegations as true and draw all inferences in favor of the nonmoving party. See *Buzz Stew, L.L.C. v. City of N. Las Vegas*, 181 P.3d 670, 672 (Nev. 2008); *Seput v. Lacayo*, 122 Nev. 499, 501, 134 P.3d 733, 734 (2006) (abrogated on other grounds) *Stockmeier*, 124 Nev. At 316, 183 P.3d at 135; *Snyder v. Viani*, 110 Nev. 1339, 885 P.2d 610 (1994); *Haertel v. Sonshine Carpet Co.*, 102 Nev. 614, 730 P.2d 428 (1986).

a. DEFENDANT'S MOTION IS IN ACTUALITY A MOTION FOR SUMMARY JUDGMENT AND CANNOT BE GRANTED.

When matters outside the actual pleadings are considered, a motion to dismiss for failure to state a claim converts to a motion for summary judgment under NRCP 56. NRCP 12(d) ("If, on a motion under Rule 12(b)(5) or 12(c), matters outside the pleadings are presented to and not excluded by the court, the motion must be treated as one for summary judgment under Rule 56."); *Stevens v. McGimsey*, 99 Nev. 840, 841, 673 P.2d 499, 500 (1983) (holding that, "Because matters outside the pleadings were presented to and not excluded by the court, the motion was correctly treated as one for summary judgment and disposed of under NRCP 56. See NRAP 12(b), (c)."); *Cummings v. City of Las Vegas Mun. Corp.*, 88 Nev. 479, 481, 499 P.2d 650, 651 (1972) (holding that when matters outside the pleadings are considered in a 12(b)(5) motion, the motion converts to one of summary judgment).

For a summary judgment motion to be granted, it must be properly supported with evidence and affidavits from the moving party. In *Buss v. Consol. Casinos Corp.*, 82 Nev. 355,

1 357, 418 P.2d 815, 816 (1966) the Court recognized that the district court had erred in granting
2 summary judgment on a 12(b)(5) motion which attached improper evidence as support:

3 The difficulty in this case is that the record fails to show that ‘matters outside the
4 pleading’ were offered in any acceptable fashion. Affidavits, depositions, answers
5 to interrogatories, were not presented in support of the motion. See NRCP 56(e).
6 Attached to the motion was a copy of the rules and regulations governing drawings
7 for the grand prize and an advertisement. Neither was authenticated. In this context
8 the lower court was not authorized to treat the Rule 12(b)(5) motion as a motion for
9 summary judgment under Rule 56. The court's error resulted in its failure to rule
10 upon the legal sufficiency of the complaint. We have studied that pleading and
11 conclude that it is sufficient to defeat a Rule 12(b)(5) motion to dismiss. We
12 therefore reverse the judgment, with direction that the defendant assert its defenses
13 by a responsive pleading.

14 Buss, 82 Nev. at 357. [emphasis added].

15 Furthermore, summary judgment can only be granted upon a showing of an actual
16 evidence, when in the view most favorable to the nonmoving party there is no genuine issue of
17 material fact and the moving party is entitled to judgment as a matter of law. *Palmieri v. Clark*
18 *Cty.*, 131 Nev. Adv. Op. 102, 367 P.3d 442, 449 (Nev. App. 2015) (citing NRCP 56(c); *Wood v.*
19 *Safeway, Inc.*, 121 Nev. 724, 729, 121 P.3d 1026, 1029 (2005)).

20 The failure of Defendant to conform their argument to a 12(b) analysis is evident, based
21 on the numerous allegations which contradict the Complaint or are outside of the matters directly
22 addressed. See NRCP 12(d). Defendant fails to establish that there are no set of facts from the
23 actual Complaint which if accepted as true, and which must be accepted as true, would not grant
24 relief for the Plaintiffs. See *Edgar*, 101 Nev. at 228. Notwithstanding the fact that Defendant
25 has not conformed his arguments solely to a 12(b)(5) analysis, even assuming that Defendant had
26 accepted the Complaint’s fact as true, their arguments would still fail.

27 2. THE PLAUSIBILITY STANDARD DOES NOT APPLY IN NEVADA

28 Contrary to Tessie’s arguments, Nevada has not adopted the “plausibility”
pleading standard followed by the federal courts under *Bell Atl. Corp. v. Twombly*, 550
U.S. 544, 570 (2007) and *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009). See Advisory
Committee Note—2019 Amendment, NRCP 12.

1 Therefore, Tessie should *not have* cited such a standard or otherwise based any
2 arguments on said standard as it is not the law in Nevada.

3 **3. PLEADING FRAUD**

4 NRCP 9 governs the pleading of special matters, including capacity, fraud, mistake,
5 condition of mind, conditions precedent, official document or act, judgment, time and
6 place, and special damages. When these specified matters are material to a pleading, the
7 party must assert in some detail the factual basis. *See, e.g., Ivory Ranch v. Quinn River*
8 *Ranch*, 101 Nev. 471, 705 P.2d 673 (1985) (Rule 9(b), mistake); *Shaw v. Stutchman*, 105
9 Nev. 128, 771 P.2d 156 (1989) (Rule 9(a), the capacity of a party).

10 An allegation of fraud must provide the circumstances with particularity and must
11 include the time, place, and identity of the parties and the nature of the fraud. *Rocker v.*
12 *KPMG L.L.P.*, 122 Nev. 1185, 148 P.3d 703, 704 (2006), *abrogated on other grounds*
13 *by Buzz Stew, L.L.C.*, 124 Nev. 224.

14 **III. ARGUMENT**

15 **1. RODNEY WAS LEGALLY INCOMPETENT AND LACKED**
16 **CANTRACTUALY CAPACITY AT THE TIME TESSIE FILED FOR AND**
17 **OBTAINED A DIVORCE.**

18 **Nev. Rev. Stat. § 132.175 states:**

19 “Incapacitated person” means a person who is impaired by reason of mental
20 illness, mental deficiency, advanced age, disease, weakness of mind, or any
21 other cause except minority, to the extent of lacking sufficient understanding or
22 capacity to make or communicate responsible decisions.

23 The mere fact that a Court had not at the time of the entry of the Divorce Decree,
24 the filing of Rodney’s Answer, or the filing of Tessie’s Divorce Complaint, determined
25 that Rodney was incapacitated or otherwise lacked contractual capacity is irrelevant.

26 The question is not whether a court had determined that Rodney was incapacitated
27 or otherwise lacking contractual capacity but was Rodney an incapacitated person or
28

1 lacking contractual capacity when he executed the Decree of Divorce and the Answer to
2 the Divorce Complaint.

3 To accept Tessie's argument would mean that no court could ever void or correct a
4 judgment obtained while a party was incapacitated. Such a position is backward and,
5 thankfully, not the law.

6 *Hale v. Hale*, 130 Nev. 1184 (2014) illustrates that a district court must determine
7 after the fact if a party lacked capacity when executing a Divorce Decree. In *Hale*, the
8 husband claimed he lacked contractual capacity when executing the Decree of Divorce
9 due to his Dementia. The district court then, as acknowledged by the Supreme Court,
10 properly held an evidentiary to determine whether the husband could prove such
11 incapacity. It did so even though when the Decree was executed, no court had yet
12 determined the husband's capacity or lack thereof.

13 Honestly, Tessie's argument on this point is made in bad faith. It is alleged that
14 Tessie knew of Rodney's incapacity, exploited it to her advantage, and kept it a secret
15 from the Court to obtain a multimillion-dollar windfall. It is alleged that Tessie hid
16 Rodney's decline from her own counsel. The underlying allegations, if proven, would
17 show that Tessie not only committed fraud upon the Court, but it would then allow this
18 Court to set aside or otherwise annul the Divorce Decree.

19 The context of this case is important. A Traumatic Brain Injury is not a trivial
20 matter, and Dementia is not a disease that appears overnight but progresses over the
21 course of several years. Rodney was formally diagnosed with Dementia in May 2020, not
22 even 90 days after the entry of the Divorce Decree.

23 Rodney's Dementia, which may well have been exacerbated or caused by⁷ his 2017
24 Traumatic Brain Injury,⁸ is so far advanced that as of November 23, 2020, just ten months
25 after the entry of the Divorce Decree, a Court of Competent Jurisdiction appointed Mr.

26 _____
27 ⁷ Expert witnesses will need to be retained to determine with reasonable medical certainty whether
28 Rodney's Dementia predates his Traumatic Brain Injury or was caused by said injury. Either way, said
Dementia set on before Tessie filed for Divorce.

⁸ See Exhibit 1 (Professional Opinion of Kathy Dyer, LPN) submitted under seal.

1 Steven and Mrs. Sheryl Atterberg as his permanent guardians. The Court did so after it
2 was proven by clear and convincing evidence that Rodney is an incapacitated person and
3 an "at-risk elder" or "at-risk adult with an intellectual and developmental disability."⁹

4 Dismissal is not warranted here, given that further factual development and a trial
5 may result in Rodney proving he lacked contractual capacity at the time of the Divorce
6 Decree and that Tessie committed fraud when she obtained a decree that awarded her
7 millions and Rodney nothing.

8 **2. THE GUARDIANSHIP DOCUMENTS DO NOT NEED TO BE**
9 **REGISTERED IN NEVADA.**

10 There is and was no requirement that the Colorado Order appointing Rodney's
11 permanent guardians be registered in the State of Nevada, and Tessie reliance on Nev.
12 Rev. Stat. § 159.2027 to argue otherwise is misplaced.

13 Mrs. Atterberg, Rodney's sister is acting as a friend of the Court in these
14 proceedings. Neither Mrs. Atterberg nor Rodney live in the State of Nevada, own property
15 in Nevada, or otherwise do business in this State. *See* Nev. Rev. Stat. §§ 159.1998,
16 159.2024 (Limiting jurisdiction to instances where the ward is physically present or will
17 be physically present in Nevada); 159.037 (Limiting venue to where the county in which
18 the ward resides).

19 The statutory scheme found in chapter 159 is contingent upon the location of the
20 ward, and since Rodney does not reside in Nevada, there is no need to register the Colorado
21 guardianship as a Foreign Judgment. However, has effectuated the filing of a Foreign
22 Judgment as it relates to the Colorado guardianship in Case No. G-21-054224-A.

23 Accordingly, dismissal is not warranted.

24 ///

25 ///

26 ///

27 _____

28 ⁹ See Exhibit 3 (Amended Letters of Permanent Co-Conservatorship for an Adult and Order Appointing
Guardian for Adult).

1 **3. THE COMPLAINT PROPERLY PLED EACH CAUSE OF ACTION AND**
2 **REQUEST FOR RELIEF.**

3 As a preliminary matter, Tessie's Motion to Dismiss spends a good amount of time
4 talking about what Rodney can or cannot prove. However, such considerations are beyond
5 the scope of a motion to dismiss. Tessie cannot slam the Courthouse doors shut on Rodney
6 by relying on the same documents she fraudulently obtained by exploiting Rodney's lack
7 of capacity.

8 When ruling on a motion, a court must accept the allegations of the complaint as
9 true and draw all inferences in favor of the nonmoving party. *See Buzz Stew* at 228, *Buzz*
10 *Stew, L.L.C.*, 181 P.3d at 672; *Seput*, 122 Nev. At 501, 134 P.3d at 734 (abrogated on
11 other grounds) *Stockmeier*, 124 Nev. At 316, 183 P.3d at 135; *Snyder*, 110 Nev. 1339,
12 885 P.2d 610; *Haertel*, 102 Nev. 614, 730 P.2d 428.

13 The standard of review for a dismissal for failure to state a claim is rigorous, as the
14 Court must construe the pleading liberally and draw every fair inference in favor of the
15 nonmoving party. *Simpson v. Mars Inc.*, 113 Nev. 188, 929 P.2d 966 (1997)

16 Put another way; this Court may only grant Tessie's motion if she can show beyond
17 a doubt that Rodney is not entitled to any relief under any set of facts that could be proved
18 in support of his claims. *See Buzz Stew, LLC, Buzz Stew, L.L.C.*, 124 Nev.
19 At 228; *Stockmeier*, 124 Nev. At 316, 183 P.3d at 135; *Pankopf*, 124 Nev. 43, 175 P.3d
20 at 912.

21 By relying on the very pleadings that Rodney alleges were obtained fraudulently
22 and improperly, Tessie demonstrates that her motion must be denied. Rodney alleges that
23 he was incapacitated and otherwise lacking contractual capacity due to his 2017
24 Traumatic Brain Injury and his Dementia when Tessie filed for and obtained a Divorce.
25 Rodney claims that Tessie knew he was suffering from such a cognitive impairment and
26 that she used said knowledge to secure a windfall.

27 As it stands Rodney's 2017 Traumatic Brain Injury, the proximity in time between
28 the entry of the Decree—a Decree that awarded Tessie millions and Rodney nothing—

1 Rodney's diagnoses of Dementia, and the entry of permanent guardianship, any
2 reasonable person could conclude that Rodney can prove a set of facts that would entitle
3 him to relief. Therefore, Tessie's motion must be denied.

4 **1. IF THIS COURT DETERMINES THAT RODNEY'S COMPLAINT IS**
5 **INSUFFICIENT, IT SHOULD ALLOW RODNEY LEAVE TO AMEND THE**
6 **COMPLAINT TO CORRECT ANY SUCH DEFICIENCIES.**

7 Leave to amend is routinely granted based on Nevada court's strong policy to have
8 cases heard on their merits. See *Cohen v. Mirage Resorts, Inc.*, 119 Nev. 1, 23, 62 P.3d
9 720, 734-35 (2003); *Nelson v. Sierra Constr. Corp.*, 77 Nev. 334, 343, 364 P.2d 402, 406
10 (1961).

11 If this Court determines that Rodney's complaint fails to properly plead fraud or
12 any other cause of action, rather than dismiss this case, it should allow Rodney 14 days
13 to file an amended complaint to correct any such deficiencies.

14 **COUNTERMOTION**

15 **A. LEGAL STANDARD**

16 The purpose of Rule 60(b) "is to redress any injustices that may have resulted due
17 to excusable neglect or a wrong of an opposing party." *Nev. Indus. Dev. V. Benedetti*, 103
18 Nev. 360, 364, 741 P.2d 802, 805 (1987). This rule is liberally construed to effectuate
19 that purpose. *Carlson v. Carlson*, 108 Nev. 358, 362, 832 P.2d 380, 382 (1992).¹⁰

20 **B. THE DECREE OF DIVORCE MUST BE SET ASIDE BECAUSE TESSIE**
21 **COMMITTED FRAUD UPON THE COURT.**

22 Fraud upon the court" has been recognized for centuries as a basis for setting aside
23 a final judgment, sometimes even years after it was entered. *Hazel-Atlas Co. v. Hartford*
24 *Co.*, 322 U.S. 238, 245, 64 S. Ct. 997, 88 L. Ed. 1250, 1944 Dec. Comm'r Pat. 675
25

26 ¹⁰ NRCP 60(d)(1) and (3) also allow for relief from a judgment through an independent action and to set
27 aside a judgment due to fraud, which are not barred by the six-month limitations described in NRCP
28 60(c), "Other Powers to Grant Relief. This rule does not limit a court's power to: (1) entertain an
independent action to relieve a party from a judgment, order, or proceeding; (3) set aside a judgment for
fraud upon the court.

1 (1944) (discussing “the historic power of equity to set aside fraudulently begotten
2 judgments” and canvassing cases and treatises and vacating a judgment entered nine
3 years earlier), *overruled on other grounds by Standard Oil Co. v. United States*, 429 U.S.
4 17, 18, 97 S. Ct. 31, 50 L. Ed. 2d 21 (1976). It is, of course, true that “in most instances,
5 society is best served by putting an end to litigation after a case has been tried and
6 judgment entered.” *Id.* At 244, 97 S. Ct. 31, 50 L. Ed. 2d 21. For this reason, a final
7 judgment, once entered, normally is not subject to challenge. However, the policy of
8 repose yields when “the court finds after a proper hearing that fraud has been practiced
9 upon it, or the very temple of justice has been defiled.” *Universal Oil Prods. Co. v. Root*
10 *Refin. Co.*, 328 U.S. 575, 580, 66 S. Ct. 1176, 90 L. Ed. 1447 (1946). “[A] case of fraud
11 upon the court [calls] into question the very legitimacy of the judgment.” *Calderon v.*
12 *Thompson*, 523 U.S. 538, 557, 118 S. Ct. 1489, 140 L. Ed. 2d 728 (1998). Put another
13 way, “[w]hen a judgment is shown to have been procured” by fraud upon the Court, “no
14 worthwhile interest is served in protecting the judgment.” Restatement (Second) of
15 Judgments § 70 cmt. B (1982).

16 The concept of “fraud upon the court” embraces only that species of fraud which
17 does, or attempts to, subvert the integrity of the Court itself, or is a fraud perpetrated by
18 officers of the Court so the judicial machinery cannot perform in the usual manner its
19 impartial task of adjudging cases and relief should be denied in the absence of such
20 conduct. *NC-DSH, Inc. v. Garner*, 125 Nev. 647, 649, 218 P.3d 853, 855 (2009).

21 While a motion under NRCP 60(b)(3) must be made “not more than 6 months after
22 the proceeding was taken or the date that written notice of entry of the judgment or order
23 was served,” NRCP 60(b) does not specify a time limit for motions seeking relief for
24 “fraud upon the court.” *Id.* At 651, 218 P.3d at 856. Nevermind, that such deadlines
25 should be equitably tolled given Rodney’s incompetence.

26 Fraud upon the Court has been held to exist when the unsuccessful party is kept
27 away from the Court by such conduct as prevents a real trial on the issues. *Price v. Dunn*,
28 106 Nev. 100, 104, 787 P.2d 785, 787 (1990).

1 Tessie committed a fraud upon the Court by preparing and having Rodney sign an
2 Answer and Divorce Decree knowing full well Rodney was incompetent.

3 Rodney was legally incapacitated and otherwise lacked contractual capacity when
4 Tessie filed for and obtained the Divorce. Tessie knew that and sought to exploit such an
5 advantage by having Rodney's Answer, and the Stipulated Decree prepared according to
6 her terms for Rodney to sign. Tessie kept the fact that Rodney had suffered a Traumatic
7 Brain Injury in 2017 from the Court and her counsel, and she otherwise concealed that
8 Rodney, due to his cognitive impairments, was legally incapacitated and otherwise lacked
9 contractual capacity.

10 Tessie did so to circumvent public policy and Nevada law that requires that a court
11 "to the extent practicable, make an equal disposition of the community property of the
12 parties." *See Nev. Rev. Stat. § 125.150(1)(b).*

13 In doing so, Tessie has subverted the integrity of the Court itself, and therefore
14 relief is warranted.

15 **C. THE DECREE OF DIVORCE IS VOID AB INTIO BECAUSE RODNEY LACKED**
16 **CONTRACTUAL CAPACITY.**

17 Nevada courts have retained "the discretion to apply lack of diligence principals
18 to NRCP 60(b)(4) void judgment challenges." *Teriano v. Nev. State Bank (In re Harrison*
19 *Living Tr.)*, 121 Nev. 217, 222, 112 P.3d 1058, 1061 (2005). A judgment is considered
20 void when there is a defect in the Court's authority to enter the judgment due to lack of
21 jurisdiction over the subject matter or parties. *See Gassett v. Snappy Car Rental*, 111 Nev.
22 1416, 1419, 906 P.2d 258, 261 (1995), *superseded by rule on other grounds as stated*
23 *in Fritz Hansen A/S v. Eighth Judicial Dist. Court*, 116 Nev. 650, 654-56, 6 P.3d 982,
24 984-85 (2000); *see also Lindblom v. Prime Hosp. Corp.*, 120 Nev. 372, 377, 90 P.3d 1283,
25 1285-86 (2004).

26 The six-month limitation is inapplicable to a void judgment. *Moore v. Moore*, 75
27 Nev. 189, 193 n.2, 336 P.2d 1073, 1075 n.2 (1959); *but see Teriano*, 121 Nev. At 222,
28 112 P.3d at 1061 (adopting reasonableness requirement).

1 Tessie initiated a case against Rodney even though he was legally incapacitated and
2 otherwise lacked contractual capacity. In doing so, the Decree of Divorce is *void* ab initio
3 not only because Rodney lacked the capacity to sign said Decree, but because this the
4 Family Court never properly obtained personal jurisdiction over Rodney. Rodney lacked
5 the legal capacity to accept services and to answer the Divorce complaint.

6 Therefore, relief is warranted and should be granted forthwith.

7 **IV. CONCLUSION**

8 Based on the foregoing, this Court should deny Tessie's motion to dismiss in its
9 entirety, or in the alternative, grant Rodney leave to amend his complaint within 14 days
10 and/or transfer this matter back to Family Court.

11
12 Dated this 15th day of January 2021.

13 JAMES KWON, LLC

14 /s/ James W. Kwon, Esq.

15 JAMES W. KWON, ESQ.

16 Nevada Bar No. 8146

17 6280 Spring Mountain Rd., Suite 100

18 Las Vegas, Nevada 89146

19 *Attorney for Plaintiff*

VERIFICATION

STATE OF NEVADA)

) ss:

COUNTY OF CLARK)

SHERYL ATTERBERG, under penalty of perjury, deposes and says:

That I am the Rodney Wilkinson's lawfully appointed guardian; that I have read the foregoing *and* know the contents thereof; that the same is true of my own knowledge, except for those matters therein contained stated upon information and belief, and as to those matters, I believe them to be true.

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

Executed this 15th day of January 2021.

/s/ Sheryl Atterberg

SHERYL ATTERBERG

VERIFICATION

STATE OF NEVADA)

) ss:

COUNTY OF CLARK)

STEVEN ATTERBERG, under penalty of perjury, deposes and says:

That I am the Rodney Wilkinson's lawfully appointed co-guardian; that I have read the foregoing *and* know the contents thereof; that the same is true of my own knowledge, except for those matters therein contained stated upon information and belief, and as to those matters, I believe them to be true.

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

Executed this 15th day of January 2021.

/s/ Steven Atterberg**STEVEN ATTERBERG**

JAMES KWON, LLC

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

CERTIFICATE OF SERVICE

Pursuant to NRCP 5(b), I hereby certify that the *Opposition to Defendant's Notice of Motion and Motion to Dismiss Complaint Pursuant to NRCP 12(B)(1), NRCP 12(B)(5), and NRCP 12(H)(2) and Countermotion for Relief pursuant to NRCP 60(b)* in the above-captioned Case was served this date as follows:

[X] pursuant to Rule 9 of the Nevada Electronic Filing and Conversion Rules and Administrative Order 20-17 p. 12 Captioned "In the Administrative matter Regarding All Court Operations in Response to COVID-19," by mandatory electronic service through the Eighth Judicial District Court's electronic filing system:

BRADLEY J. HOFLAND, ESQ.

228 South 4th Street, 1st Floor

Las Vegas, Nevada 89101

Attorney for Defendant

Dated this 15th day of January 2021.

/s/ Crystal Ann Gorzalski

An employee of the Law firm James Kwon, LLC

EXHIBIT 1

Submitted Under Seal

PLT000119
ROA000252

EXHIBIT 2

Submitted Under Seal

PLT000120

ROA000253

EXHIBIT 3

PLT000121

ROA000254