

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

* * * *

TESSIE ELMA ALMARIO,

Petitioner,

vs.

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

Respondents,

And

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

Real Party in Interest,

And

PUBLIC EMPLOYEE'S RETIREMENT
SYSTEM OF NEVADA,

Real Party in Interest.

_____ /

Petition for Writ of Mandamus or Prohibition

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

Honorable Dawn R. Throne, District Court Judge

APPENDIX

VOL. 3

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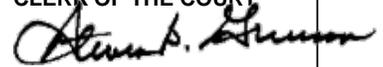
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Oct 25 2021 08:24 a.m.

CASE NO.: Elizabeth A. Brown
Clerk of Supreme Court

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

CHRONOLOGICAL INDEX OF APPENDIX

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



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6
7 **EIGHTH JUDICIAL DISTRICT COURT, FAMILY DIVISION**
8 **CLARK COUNTY, NEVADA**

9) CASE NO.: D-19-596071-D
10) DEPT NO.: U
11 TESSIE ELMA ALMARIO,)
12 Plaintiff,) **PLAINTIFF’S NOTICE OF MOTION**
13 vs.) **AND MOTION FOR SUMMARY**
14) **JUDGMENT AND RELATED RELIEF**
15) **ORAL AGRUMENT REQUESTED**
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TO: Defendant Sheryl Atterberg, on behalf of her ward Rodney Wilkinson
and your attorney of record, James W. Kwon, Esq.

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

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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I.**

3 **Introduction**

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

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

17 **II.**

18 **Statement of Facts**

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

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

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

12 **III.**

13 **STATEMENT OF UNDISPUTED FACTS**

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

20 The following facts are undisputed:
21

22

	Statement of Undisputed Fact	Source
23 24 25 26 27 28	This matter was tried to the Court on the 17th day of December 2020 on the Plaintiff's complaint for claim and delivery of certain personal property and the Defendant's counterclaim for breach of written contract and for foreclosure of liens. The trial was conducted by Zoom with the Plaintiff not appearing, but his legal guardians, Sheryl and Steven Atterberg, appearing by Zoom and the Defendant appearing	Judgment in the District Court of the Fort Berthold Indian Reservation Case No. CV-2020-0303 Exhibit “1”.

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

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

...

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

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

14.The February 21, 2020 contract admitted into evidence is an agreement between the parties wherein the Parties agreed that the purchase contracts for the 1979 Ford Truck 920 and 1980 Cozad Jeep Trailer would be deemed satisfied from the prior payments made to the Plaintiff for those vehicles as well as the salary paid to the Plaintiff (total amount of both was approximately\$65,000). The Defendant also testified that he provided the Plaintiff free lodging for himself for two months after he was terminated as well as two months free use of his wife's car which was also consideration for the February 21,2020 contract. The Plaintiff also agreed to remove all liens from these vehicles and to provide the titles to them. The Defendant testified that he was not aware that there were

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

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

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

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

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

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

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

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

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

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

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

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provisions that are unconscionable. The Court will not enforce that part of the contract that stipulates that failure on the part of the Plaintiff to remove the remaining items of property from the Defendant's leased lands within 30 days would result in title to said property being vested in Defendant. Such a provision would result in a \$200,000 drill and other property of substantial value defaulting to the Defendant. The Court notes that the Defendant does not seek enforcement of that provision of the contract in his counterclaim but instead seeks damages for storing the property as well as for loss of income and expenses of his wife;

4. The Court finds that the Defendant lawfully purchased the 1979 Ford Truck 920 VIN ID4429ICOLO (wrecker) and the 1980 Cozad Jeep Trailer YIN CC80062 (lowboy trailer) and the Plaintiff shall immediately transfer titles to that property to the Defendant. Failure to do so within 30 days may result in further orders directing that alternative titles be issued;

5. **The Court further finds that the remaining property of the Plaintiff referenced in the February 21, 2020 contract** remains the property of the Plaintiff but is subject to a storage lien that must be paid prior to removal of said property;

6. The Court finds for the Defendant in the amount of \$100 per day from the date of March 24, 2020 (the date the property was to be removed pursuant to the February contract) for a total amount of \$27,700. The amount of \$100 per day represents about half of the land lease the Defendant was required to pay to retain the lease where the property sits;

7. The Court finds for the Defendant in the amount of \$60,000 for loss of income due to the **Plaintiff's failure to comply with the February 24, 2020 contract** selling the lowboy and wrecker to the Defendant as he has not been able to use the lowboy since February or 2020 due to the Plaintiff not conveying lawful title in breach of the

1 2 3	agreement. The other claims for business expenses of his wife to prepare records is part of preparing for litigation and is not granted.	
4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19	<p>2 REQUEST FOR PRODUCTION NO. 20: Please provide any and all documentation showing a full and itemized accounting for any and all assets and property, including real property, that you owned between March 22, 2008 and February 12, 2020.</p> <p>RESPONSE TO REQUEST FOR PRODUCTION NO. 20: Objection. Defendant objects to this Request as vague, ambiguous, overbroad, and unduly burdensome on its face due to its use of “any and all” in order to identify a broad range of documents. Defendant further objects to this Request as vague and ambiguous as to the terms “showing,” “full,” “accounting,” “assets,” “property,” and “owned.” Without waiving said objections, Defendant responds as follows: None. Please refer <i>Plaintiff’s First Supplemental List of Witnesses and Disclosure of Documents</i>, electronically served May 24, 2021. Discovery is ongoing and Defendant will supplement this response if and when additional documentation becomes available in accordance with Nev.R.Civ.P. Rule 26(e).</p>	Defendant’s Responses to Plaintiff’s Second Set of Request for Production of Documents Numbers 20, 21, 29 , 30, 31, 32, & 36, Exhibit “2”.
20 21 22 23 24 25 26 27 28	<p>4 REQUEST FOR PRODUCTION NO. 21: Please provide any and all documentation showing a full and itemized accounting for any and all assets and property, including real property, that you sold between March 22, 2008 and February 12, 2020.</p> <p>RESPONSE TO REQUEST FOR PRODUCTION NO. 21: Objection. Defendant objects to this Request as vague, ambiguous, overbroad, and unduly burdensome on its face due to its use of “any and all” in order to identify a broad range of documents. Defendant further objects to this Request as vague and ambiguous as to the terms</p>	

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	<p>“showing,” “full,” “accounting,” “assets,” “property,” and “sold.” Without waiving said objections, Defendant responds as follows: Please refer to <i>Defendant’s First Supplemental NRCP 16.2 Disclosure</i>, served concurrently with this response. Discovery is ongoing and Defendant will supplement this response if and when additional documentation becomes available in accordance with Nev.R.Civ.P. Rule 26(e).</p>	
5	<p>REQUEST FOR PRODUCTION NO. 29: Please provide any and all documents evidencing all real property purchased during marriage, including purchase agreements, deeds, mortgages and mortgage applications, taxes and improvements made on the real property.</p> <p>RESPONSE TO REQUEST FOR PRODUCTION NO. 29: Objection. Defendant objects to this Request as vague, ambiguous, overbroad, and unduly burdensome on its face due to its use of “any and all” and “all” in order to identify a broad range of documents. Defendant further objects to this Request as vague and ambiguous as to the term “purchased.” Without waiving said objections, Defendant responds as follows: None in Sheryl Atterberg’s possession. If this documentation existed, it would either be in the Farmhouse in which Plaintiff has forbidden Sheryl Atterberg access to or were appropriated by Plaintiff and are, therefore, in her possession. Discovery is ongoing and Defendant will supplement this response if and when additional documentation becomes available in accordance with Nev.R.Civ.P. Rule 26(e).</p>	
6	<p>REQUEST FOR PRODUCTION NO. 30: Please provide any and all documents in support of your allegations contained in page 6, paragraph 12 of your motion titled Defendant’s Motion to Set Aside the Divorce Decree</p>	

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

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

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

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<p>PRODUCTION NO. 36: Objection. Defendant objects to this Request as vague, ambiguous, overbroad, and unduly burdensome on its face due to its use of “any and all” in order to identify a broad range of documents. Defendant further objects to this Request as vague and ambiguous as to the terms “support” and “contained.” Without waiving said objections, Defendant responds as follows: Please refer to <i>Defendant’s Initial NRCP 16.2 Disclosure</i>, served April 15, 2021. Additionally, please refer to <i>Defendant’s First Supplemental NRCP 16.2 Disclosure</i>, served concurrently with this response. Discovery is ongoing and Defendant will supplement this response if and when additional documentation becomes available in accordance with Nev.R.Civ.P. Rule 26(e).</p>	

IV.
Legal Analysis

A. Standards for a motion for summary judgment.

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

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

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

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

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

14 With respect to burdens of proof and persuasion in the summary judgment
15 context, Nevada courts have adopted the federal approach as outlined in *Celotex v.*
16 *Catrett*, 477 U.S. 317 (1986)⁶. Specifically, the party moving for summary
17 judgment bears the initial burden of production to show the absence of a genuine
18 issue of material fact⁷. Upon such a showing, *the party opposing summary*
19 *judgment assumes a burden of production to show the existence of a genuine*
20 *issue of material fact*⁸.

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

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

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

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

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

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

⁷ *Id.*

⁸ *Id.*

1 at trial⁹. If the moving party will bear the burden of persuasion, that party must
2 present evidence that would entitle it to a judgment as a matter of law in the
3 absence of contrary evidence¹⁰. But if the non-moving party will bear the burden of
4 persuasion at trial, the party moving for summary judgment may satisfy the burden
5 of production by either (1) submitting evidence that negates an essential element of
6 the non-moving party's claim or (2) pointing out ... that there is an absence of
7 evidence to support the non-moving party's case¹¹. In such instances, in order to
8 defeat summary judgment, the non-moving party must transcend the pleading and,
9 by affidavit or other admissible evidence, introduce specific facts that show a
genuine issue of material fact¹².

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

15 Indeed, the nonmoving party may *not* rely on "the gossamer threads of
16 whimsy, speculation and conjecture."¹⁵ When the nonmoving party bears the
17 burden of persuasion, the moving party can submit evidence that negates an
18 element of the nonmoving party's claim or point out the lack of evidence to support
19 the nonmoving party's claims¹⁶. The nonmoving party is unable to successfully
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21 ⁹ *Id.*

22 ¹⁰ *Id.*

23 ¹¹ *Id.*

23 ¹² *Id.*

24 ¹³ *Anderson, supra*, 477 U.S. at 248.

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

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

28 ¹⁶ *Cuzze*, 123 Nev. at 602-3.

1 rebut the motion for summary judgment unless he is able to point to facts supported
2 by the record which demonstrate a genuine issue of material fact¹⁷. In this case,
3 Rodney is unable to meet his burden.

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

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

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

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

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

¹⁸ See *Celotex*, 477 at 327; *Wood* at 1030

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

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

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

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

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

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

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

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

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

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

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

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

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

12 Additionally, EDCR 7.60 provides, in relevant part:

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

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

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

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

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

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1. If a court finds that an attorney has:

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

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

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

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

Thus, “NRS 7.085 allows a district court to make an attorney personally liable for the attorney fees and costs an opponent incurs when the attorney files, 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.”¹⁹

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

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

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

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

6 Dated this 16th day of June, 2021.

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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 Plaintiff

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DECLARATION OF TESSIE ELMA ALMARIO

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

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

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

DATED this 16th day of June, 2021.

/s/ Tessie Elma Almario
Tessie Elma Almario

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AFFIDAVIT OF BRADLEY J. HOFLAND, ESQ.

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

1. That I am an attorney for Plaintiff *Tessie Elma Almario* (“Tessie”) in this action.

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

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

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

DATED this 16th day of June, 2021.



Bradley J. Hofland, Esq.



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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 NRCPC 5(b), on the 16th day of April, 2021, I served the forgoing **PLAINTIFF’S NOTICE OF MOTION AND MOTION FOR SUMMARY JUDGMENT 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 Warren
An Employee of HOFLAND & TOMSHECK

EXHIBIT “1”

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

Each side will bear their own costs and fees.

Duly executed this ____ day of December 2020.

Clerk of District Court

WILK000432

ROA000480

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

Rodney Wilkinson,

Plaintiff,

vs.

Darrell Fontenot,

Defendant.

Case No. CV-2020-0303

FINDINGS OF FACT AND CONCLUSIONS OF LAW AND ORDER FOR JUDGMENT

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

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

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

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

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

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

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

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

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

10. The Defendant estimated at trial that it would cost about \$150,000 to make the equipment operational for the oil fields. The Plaintiff's guardians disputed this and believed that the equipment was all in working condition but the evidence demonstrates that they had no personal knowledge of this but were relying upon the statements made to them by the Plaintiff;
11. The Parties entered into several contracts for the use/purchase of the Plaintiff's property so it could be utilized. The first contract dated August 21, 2019 was offered into evidence and was between the Plaintiff and Synergy Oil Services and pertained only to a 1979 Ford Truck 920 VIN ID4429IC0LO (wrecker) and was to be purchased in 24 months at the rate of \$333.33 per month. There was a second purchase agreement the same date between the

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

CONCLUSIONS OF LAW

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

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

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

ORDER FOR JUDGMENT

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

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

ORDERED, ADJUDGED AND DECREED that the Defendant has lawfully purchased the 1979 Ford Truck 920 VIN ID4429ICOLO (wrecker) and the 1980 Cozad Jeep Trailer VIN CC80062 (lowboy trailer) and the Plaintiff shall immediately transfer titles to that property to the Defendant. Failure to do so within 30 days may result in further orders directing that alternative titles be issued and it is further

ORDERED, ADJUDGED AND DECREED that the Plaintiff shall have 120 days from the date of this order to remove his remaining property, the 1993 Western Star WS-4964S, VIIN 2WKPDCCH1PK31154, the 1983 Auto Truck 315 VIN# 1WBRHCVH1DU094972, and the Peerless Drill CH-48-12S provided he satisfies the judgment amount of \$87,700 plus \$100 per day for each day after this order is entered until the property is removed. The Defendant shall have a lien on said property until the judgment amount is paid and failure to pay the amount owed within 120 days shall result in the Defendant being granted leave to execute on his lien and sell said property at a public auction or private sale.

Each side will bear their own costs and fees

LET JUDGMENT BE ENTERED ACCORDINGLY.

So ordered this 29th day of December 2020.

BY ORDER OF THE COURT:

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

ORDERED, ADJUDGED AND DECREED that the Plaintiff shall have 120 days from the date of this order to remove his remaining property, the 1993 Western Star WS-4964S, VIIN 2WKPDCCH1PK31154, the 1983 Auto Truck 315 VIN# 1WBRHCVH1DU094972, and the Peerless Drill CH-48-12S provided he satisfies the judgment amount of \$87,700 plus \$100 per day for each day after this order is entered until the property is removed. The Defendant shall have a lien on said property until the judgment amount is paid and failure to pay the amount owed within 120 days shall result in the Defendant being granted leave to execute on his lien and sell said property at a public auction or private sale.

Each side will bear their own costs and fees

LET JUDGMENT BE ENTERED ACCORDINGLY.

So ordered this 29th day of December 2020.

BY ORDER OF THE COURT:

13

B. J. Jones

Associate Judge BJ Jones WILK000446

ROA000494

EXHIBIT “2”

1 **RESP**
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 Sheryl Atterberg,*
11 *On behalf of her Adult Ward,*
12 *Defendant, Rodney Wilkinson*

13
14
15 **EIGHTH JUDICIAL DISTRICT COURT**
16 ***FAMILY DIVISION***
17 **COUNTY OF CLARK, STATE OF NEVADA**

18 TESSIE E. WILKINSON a/k/a TESSIE
19 ELMA ALMARIO,
20 Plaintiff,
21 vs.
22 RODNEY WILKINSON,
23 Defendant.

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

24
25 **DEFENDANT RODNEY WILKINSON'S RESPONSES TO**
26 **PLAINTIFF TESSIE ELMA ALMARIO'S SECOND SET OF REQUESTS**
27 **FOR PRODUCTION OF DOCUMENTS TO DEFENDANT RODNEY**
28 **WILKINSON**

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

JAMES KWON, LLC

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

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

2 **GENERAL OBJECTIONS**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

12 **REQUESTS FOR PRODUCTION OF DOCUMENTS**

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

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

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

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

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

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

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

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

13 Please produce and identify by bates stamp number copies of all retirement,
14 401k, pension or retirement accounts from March 22, 2008 through February 12,
15 2020.

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

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

1 objections, Defendant responds as follows:

2 None.

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

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

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

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

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

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

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

20

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

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

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

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

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

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

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

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

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

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

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

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

17 **REQUEST FOR PRODUCTION NO. 14:**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

17 **REQUEST FOR PRODUCTION NO. 18:**

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

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

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

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

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

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

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

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

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

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

7 Please refer to *Defendant’s Initial NRCP 16.2 Disclosure*, served April 15,
8 2021, specifically WILK000325 to WILK000328. Additionally, please refer to
9 *Defendant’s First Supplemental NRCP 16.2 Disclosure*, served concurrently with
10 this response.

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

14 **REQUEST FOR PRODUCTION NO. 20:**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1 Rule 26(e).

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

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

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

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

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

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

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

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

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

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

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

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

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

20

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

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

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

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

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

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

18 ///

19 ///

20 ///

1 **REQUEST FOR PRODUCTION NO. 27:**

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

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

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

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

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

17 **REQUEST FOR PRODUCTION NO. 28:**

18 Please provide any and all documents which regarding any education you
19 have obtained during the marriage, including an updated resume, and copies of any
20

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

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

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

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

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

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

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

20

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

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

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

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

13 **REQUEST FOR PRODUCTION NO. 30:**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1 objections, Defendant responds as follows:

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

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

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

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

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

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

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

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

1 *Disclosure*, served concurrently with this response.

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

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

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

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

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

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

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

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

1 Rule 26(e).

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

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

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

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

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

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

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

1 Rule 26(e).

2 DATED this 14th day of June 2021.

3 JAMES KWON, LLC

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

JAMES KWON, LLC

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

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CERTIFICATE OF SERVICE

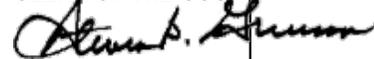
Pursuant to NRCP 5(b) I certify that I am an employee of James Kwon, LLC, and that on this 14th day of June 2021, I caused the above and foregoing document entitled *Defendant Rodney Wilkinson’s Responses to Plaintiff Tessie Elma Almario’s Second Set of Requests for Production of Documents to Defendant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

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

- | | |
|--------------------------|--|
| Dina DeSausa Cabral | DinaD@HoflandLaw.com |
| Bradley J. Hofland, Esq. | BradH@HoflandLaw.com |
| Nikki Woulfe | Clerk@HoflandLaw.com |

DATED this 14th day of June 2021.

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



1 **OPPC**
JAMES W. KWON, ESQ.
2 Nevada Bar No. 8146
JAMES KWON, LLC
3 6280 Spring Mountain Rd., Suite 100
Las Vegas, Nevada 89146
4 P: (702) 515-1200
F: (702) 515-1201
5 jkwon@jwklawfirm.com
Attorney for Sheryl Atterberg,
6 *on behalf of Her Adult Ward,*
Defendant, Rodney Wilkinson

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

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

Plaintiff,

Case No.: D-19-596071-D

Dept.: U

11 vs.

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

Defendant.

Date of Hearing: July 7, 2021

Time of Hearing: 11:00 AM

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

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

JAMES KWON, LLC

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

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

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

9 Dated this 30 day of June 2021.

10 JAMES KWON, LLC

11 
12 _____
13 JAMES W. KWON, ESQ.

14 Nevada Bar No. 8146

15 6280 Spring Mountain Rd., Suite 100

16 Las Vegas, Nevada 89146

17 *Attorney for Sheryl Atterberg,*

18 *on behalf of Her Adult Ward,*

19 *Defendant, Rodney Wilkinson*

20 **MEMORANDUM OF POINTS AND AUTHORITIES**

I.

STATEMENT OF FACTS

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

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

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

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

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

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

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

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

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

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

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

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

Tessie was accurate in stating that the Court had:

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

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

II.
LEGAL ANALYSIS

A. SUMMARY JUDGMENT STANDARD

NRCP Rule 56. Summary Judgment
(a) Motion for Summary Judgment or Partial Summary Judgment. A party may move for summary judgment, identifying each claim or defense — or the part of each claim or defense — on which summary judgment is sought. The court shall grant summary judgment if the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law. The court should state on

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the record the reasons for granting or denying the motion.

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

(c) **Procedures.**

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

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

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

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

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

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

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

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

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

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

- (1) give an opportunity to properly support or address the fact;
- (2) consider the fact undisputed for purposes of the motion;
- (3) grant summary judgment if the motion and supporting materials — including the facts considered undisputed — show that the movant is entitled to it; or
- (4) issue any other appropriate order.

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

- (1) grant summary judgment for a nonmovant;
- (2) grant the motion on grounds not raised by a party; or
- (3) consider summary judgment on its own after identifying for the parties material facts that may not be genuinely in dispute.

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

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

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

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

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

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

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

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

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

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

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

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

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

1 Issue Preclusion.

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

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

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

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

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

(a) “[T]here has been no evidence presented to this Court to show that the Plaintiff was incompetent or not able to enter into a binding contract at that time.” *See* Plaintiff’s Motion, specifically p. 7, lines 7-9.

(b) “Plaintiff at all relevant times related to his cause of action and the counterclaim was competent to contract and had not been found incompetent by a court of law.” *See* Plaintiff’s Motion, specifically p. 8, lines 15-17.

(c) The North Dakota Tribal Court even hypothesized that “[e]ven if [Rodney] were operating under some limitations on his cognitive functioning nothing in the record before this Court reveals that the Defendant or his agents knew or should have known of this.” *See* Plaintiff’s Motion, specifically p. 8, lines 20-24.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1. The qualities of the advocate

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

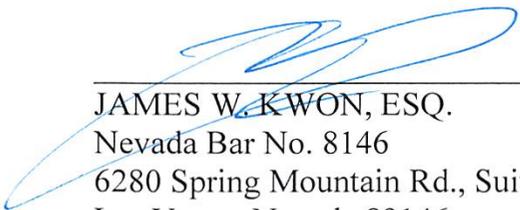
2. The Character of the Work to be Done.

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

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

4 Dated this 30 day of June 2021.

5 JAMES KWON, LLC

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

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DECLARATION OF JAMES W. KWON, ESQ
IN SUPPORT OF
DEFENDANT’S OPPOSITION TO PLAINTIFF’S NOTICE OF MOTION
AND MOTION FOR SUMMARY JUDGMENT AND RELATED RELIEF
AND COUNTERMOTION FOR ATTORNEY’S FEES AND COSTS AND
ALL OTHER RELATED RELIEF

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

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

2. I have read the foregoing *Defendant’s Opposition to Plaintiff’s Notice of Motion and Motion for Summary Judgment and Related Relief and Countermotion for Attorney’s Fees and Costs and All Other Related Relief* 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 *Opposition* 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 the 30 day of June 2021.



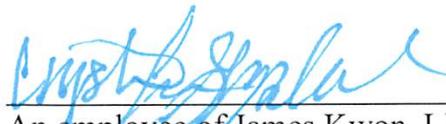
JAMES W. KWON, ESQ.

CERTIFICATE OF SERVICE

1
2 I hereby certify that on the 30th day of June 2021, pursuant to NRCP 5, I
3 caused service of a true and correct copy of the foregoing *Defendant's Opposition*
4 *to Plaintiff's Notice of Motion and Motion for Summary Judgment and Related*
5 *Relief and Countermotion for Attorney's Fees and Costs and All Other Related*
6 *Relief* to be made electronically via the Eighth Judicial District Court electronic
7 filing system upon the following parties at the e-mail addresses listed below:

8 Dina M. DeSousa-Cabral, Esq. DinaD@HoflandLaw.com
9 Bradley J. Hofland, Esq. BradH@HoflandLaw.com
10 Nikki Woulfe Clerk@HoflandLaw.com

11 Dated this 30th day of June 2021.

12
13 
14 An employee of James Kwon, LLC

11/12/2011

30/11

30/11

EXHIBIT A

EXHIBIT A

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



Jayne 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).

Jayne Seymour
Probate Registrar / (Deputy) Clerk of Court

WILK000324

ROA000553

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

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

The court finds that:

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

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

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

The court further finds by a preponderance of evidence that:

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

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

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

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

WILK000325

ROA000554

k9ui@icloud.com

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

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

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

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

The court orders the following:

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

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

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

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

WILK000326

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

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

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

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

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

9. The court further orders:

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

H. Clay Hunt
 Judge Magistrate

November 23, 2020
Date

WILK000327

ROA000556

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 Beich
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 Beich
Probate Registrar/(Deputy)Clerk of Court

MOFI

DISTRICT COURT
FAMILY DIVISION
CLARK COUNTY, NEVADA

TESSIE E. WILKINSON
Plaintiff/Petitioner

Case No. D-19-596071-D

Dept. U

v.
RODNEY WILKINSON (Sheryl Atterberg as
Defendant/Respondent Co-Guardian for her Adult Ward,
Defendant, Rodney Wilkinson)

**MOTION/OPPPOSITION
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>Opp for SJ</u>

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

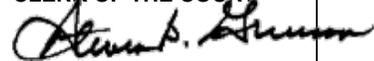
<input checked="" type="checkbox"/>	\$0	The Motion/Opposition being filed with this form is not subject to the \$129 or the \$57 fee because:
<input checked="" type="checkbox"/>		The Motion/Opposition is being filed in a case that was not initiated by joint petition.
<input type="checkbox"/>		The party 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 6/30/2021
Defendant, Rodney Wilkinson

Signature of Party or Preparer /s/ Crystal Ann Garzalski



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

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

13 TESSIE ELMA ALMARIO,)
14) Case No.: D-19-596071-D
15 Plaintiff,) Dept No.: U
16)
17 -vs-)
18) **PLAINTIFFS' PRE-TRIAL**
19) **MEMORANDUM**
20)
21 SHERYL ATTERBERG, ON)
22 BEHALF OF HER WARD)
23 RODNEY WILKINSON,)
24)
25 Defendant.)
26)

27 COMES NOW, Plaintiff Tessie Elma Almario (“Tessie”), by and through her
28 attorney Bradley J. Hofland, Esq. of Hofland & Tomscheck and submits this Pre-
Trial Memorandum for this Court’s consideration and reference:

1 **I.**

2 **STATEMENT OF ESSENTIAL FACTS**

3 Name of Parties:

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

5 Plaintiff: TESSIE ELMA ALMARIO

6 Defendant: RODNEY WILKINSON

7 Guardian: SHERYL ATTERBERG

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II.

STATEMENT OF RESOLVED ISSUES*

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

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

III.

STATEMENT OF UNRESOLVED ISSUES*

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

IV.

MEMORANDUM OF POINTS AND AUTHORITIES.

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

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

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

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

21 The dispositive facts and findings are set forth in greater detail in Plaintiff's
22 motion for summary judgment¹, and for purposes of brevity, those will be
23 incorporated herein by reference.

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

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V.

LEGAL ANALYSIS

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

22 Additionally, EDCR 7.60 provides, in relevant part:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

- 19 2. Sheryl Atterberg, On Behalf Of Her Adult Ward Rodney Wilkinson,
20 Defendant
21 c/o James W. Kwon, Esq.
22 JAME KWON, LLC
23 6280 Spring Mountain Rd., Suite 100
24 Las Vegas, NV 89146

25 Mrs. Atterberg is expected to testify as to all relevant facts and
26 circumstances.

- 27 3. Gregory P. Brown, MD
28 1489 West Warm Springs road, Suite 110
Henderson, NV 89014
(702) 232-3256

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

- 4 4. Rodney Wilkinson
5 Aspen Leaf Assisted Living Residence
6 2050 6th Street
7 Limon, Colorado 80828

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

10 **VI.**
Exhibits

- 11 1. Gregory P. Brown, M.D. Curriculum Vitae (TW000001-000005);
12 2. Gregory P. Brown, M.D. Court Testimony and Deposition History:
13 Expert Witness History (TW000006-000010);
14 3. Gregory P. Brown, M.D. Fee Schedule (TW000011);
15 4. Medical Records for Rodney Wilkinson dated May 19, 2020
16 (TW000012-TW000013);
17 5. The Rodney E. Wilkinson Trust dated August 14, 2007 (TW000014-
18 TW000022);
19 6. Purchase Agreement dated February 21, 2020 (TW000023-
20 TW000029);
21 7. Order Appointing Guardian for Adult filed in Colorado Case No.
22 2020PR30016 on November 23, 2020 (TW000030-TW000035);
23 8. Medical Records (Dr. Lick at the Medical Center of Aurora) for
24 Rodney Wilkinson dated July 01, 2020 (TW000036);
25 9. Audio Recordings of Rodney Wilkinson and Tessie Wilkinson;
26 10. 2017 Taxes (TW000037-TW000042);
27 11. 2018 Taxes (TW000043-TW000046);
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- 12. W2's for Rodney Wilkinson (TW000047-TW000053);
- 13. Settlement Statement for Farm in KS (TW000054);
- 14. Sales Tax on the Farm in KS paid via check no.'s 1031 & 1032 (TW000055);
- 15. Purchase Agreement from Synergy dated February 21, 2020 (TW000056-TW000057);
- 16. Memo from Rodney Wilkinson regarding Synergy Oil Services (TW000058);
- 17. Memo from Tessie Wilkinson regarding Synergy Oil Services (TW000059);
- 18. Letter from Tessie to Dan at Synergy Oil Services (TW000060);
- 19. Tribal Employment Rights Ordinance Office Complaint of Charging Party dated November 26, 2019 (TW000061-TW000064);
- 20. Receipts for Tessie Wilkinson (TW000065-TW000091);
- 21. Banner Life Insurance Company for Rodney Wilkinson (TW000092-TW000098);
- 22. E-mail from Tessie to Sheryl regarding Rodney Wilkinson (TW000099-TW000102);
- 23. The Eastern Colorado Bank Statements for Account ending in 0288 from 2013 to 2016 for Rodney Wilkinson (and Jill Strand) (TW000103-TW000204);
- 24. Bank of the West Statements for Account ending in 7690 for Tessie Wilkinson from 2012 to 2014 (TW000205-TW000256);
- 25. The Eastern Colorado Bank Statements for Account ending in 0299 from 2013 to 2015 for Tessie Wilkinson (TW000257-TW000286);
- 26. Cornerstone Bank Statements for Account Ending in 1655 for

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Rodney Wilkinson and Tessie Wilkinson from August 2019 to November 2019 (TW000287-TW000306);

27. Forensic Psychiatric Report from Dr. Gregory P. Brown (TW000307-TW000320);

28. Documents disclosed by Defendant (WILK000001-WILK002325).

Dated this 2nd day of July, 2021.

HOFLAND & TOMSHECK

By: /s/ Bradley J. Hofland
Bradley Hofland, Esq.
State Bar of Nevada No. 6343
228 South 4th Street
Las Vegas, Nevada 89101
(702) 895-6760
Attorney for Tessie Almario

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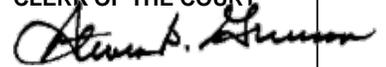
CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I am an employee of Hofland & Tomscheck, that pursuant to Administrative Order 14-2, NEFCR 9, and NRCP5(b), on the 2nd day of July, 2021, I served the forgoing **PLAINTIFF’S PRE-TRIAL MEMORANDUM** 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 Warren
An Employee of Hofland & Tomscheck

EXHIBIT “1”



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
4 Facsimile: (702) 731-6910
bradh@hoflandlaw.com
5 *Attorney for Plaintiff, Tessie Elma Almario*

6
7 **EIGHTH JUDICIAL DISTRICT COURT, FAMILY DIVISION**
8 **CLARK COUNTY, NEVADA**

9) CASE NO.: D-19-596071-D
10) DEPT NO.: U
11 TESSIE ELMA ALMARIO,)
12 Plaintiff,) **PLAINTIFF’S NOTICE OF MOTION**
13 vs.) **AND MOTION FOR SUMMARY**
14) **JUDGMENT AND RELATED RELIEF**
15) **ORAL AGRUMENT REQUESTED**
16)
17)
18)
19)
SHERYL ATTERBERG, ON)
BEHALF OF HER WARD)
RODNEY WILKINSON,)
Defendant.)

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

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

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

1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I.**

3 **Introduction**

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

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

17 **II.**

18 **Statement of Facts**

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

28

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

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

12 **III.**

13 **STATEMENT OF UNDISPUTED FACTS**

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

20 The following facts are undisputed:
 21

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

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

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

...

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

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

14.The February 21, 2020 contract admitted into evidence is an agreement between the parties wherein the Parties agreed that the purchase contracts for the 1979 Ford Truck 920 and 1980 Cozad Jeep Trailer would be deemed satisfied from the prior payments made to the Plaintiff for those vehicles as well as the salary paid to the Plaintiff (total amount of both was approximately\$65,000). The Defendant also testified that he provided the Plaintiff free lodging for himself for two months after he was terminated as well as two months free use of his wife's car which was also consideration for the February 21,2020 contract. The Plaintiff also agreed to remove all liens from these vehicles and to provide the titles to them. The Defendant testified that he was not aware that there were

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

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

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

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

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

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

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

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

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

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

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

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provisions that are unconscionable. The Court will not enforce that part of the contract that stipulates that failure on the part of the Plaintiff to remove the remaining items of property from the Defendant's leased lands within 30 days would result in title to said property being vested in Defendant. Such a provision would result in a \$200,000 drill and other property of substantial value defaulting to the Defendant. The Court notes that the Defendant does not seek enforcement of that provision of the contract in his counterclaim but instead seeks damages for storing the property as well as for loss of income and expenses of his wife;

4. The Court finds that the Defendant lawfully purchased the 1979 Ford Truck 920 VIN ID4429ICOLOR (wrecker) and the 1980 Cozad Jeep Trailer YIN CC80062 (lowboy trailer) and the Plaintiff shall immediately transfer titles to that property to the Defendant. Failure to do so within 30 days may result in further orders directing that alternative titles be issued;

5. **The Court further finds that the remaining property of the Plaintiff referenced in the February 21, 2020 contract** remains the property of the Plaintiff but is subject to a storage lien that must be paid prior to removal of said property;

6. The Court finds for the Defendant in the amount of \$100 per day from the date of March 24, 2020 (the date the property was to be removed pursuant to the February contract) for a total amount of \$27,700. The amount of \$100 per day represents about half of the land lease the Defendant was required to pay to retain the lease where the property sits;

7. The Court finds for the Defendant in the amount of \$60,000 for loss of income due to the **Plaintiff's failure to comply with the February 24, 2020 contract** selling the lowboy and wrecker to the Defendant as he has not been able to use the lowboy since February or 2020 due to the Plaintiff not conveying lawful title in breach of the

1 2 3	agreement. The other claims for business expenses of his wife to prepare records is part of preparing for litigation and is not granted.	
4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19	<p>2 REQUEST FOR PRODUCTION NO. 20: Please provide any and all documentation showing a full and itemized accounting for any and all assets and property, including real property, that you owned between March 22, 2008 and February 12, 2020.</p> <p>RESPONSE TO REQUEST FOR PRODUCTION NO. 20: Objection. Defendant objects to this Request as vague, ambiguous, overbroad, and unduly burdensome on its face due to its use of “any and all” in order to identify a broad range of documents. Defendant further objects to this Request as vague and ambiguous as to the terms “showing,” “full,” “accounting,” “assets,” “property,” and “owned.” Without waiving said objections, Defendant responds as follows: None. Please refer <i>Plaintiff’s First Supplemental List of Witnesses and Disclosure of Documents</i>, electronically served May 24, 2021. Discovery is ongoing and Defendant will supplement this response if and when additional documentation becomes available in accordance with Nev.R.Civ.P. Rule 26(e).</p>	Defendant’s Responses to Plaintiff’s Second Set of Request for Production of Documents Numbers 20, 21, 29 , 30, 31, 32, & 36, Exhibit “2”.
20 21 22 23 24 25 26 27 28	<p>4 REQUEST FOR PRODUCTION NO. 21: Please provide any and all documentation showing a full and itemized accounting for any and all assets and property, including real property, that you sold between March 22, 2008 and February 12, 2020.</p> <p>RESPONSE TO REQUEST FOR PRODUCTION NO. 21: Objection. Defendant objects to this Request as vague, ambiguous, overbroad, and unduly burdensome on its face due to its use of “any and all” in order to identify a broad range of documents. Defendant further objects to this Request as vague and ambiguous as to the terms</p>	

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	<p>“showing,” “full,” “accounting,” “assets,” “property,” and “sold.” Without waiving said objections, Defendant responds as follows: Please refer to <i>Defendant’s First Supplemental NRCP 16.2 Disclosure</i>, served concurrently with this response. Discovery is ongoing and Defendant will supplement this response if and when additional documentation becomes available in accordance with Nev.R.Civ.P. Rule 26(e).</p>	
5	<p>REQUEST FOR PRODUCTION NO. 29: Please provide any and all documents evidencing all real property purchased during marriage, including purchase agreements, deeds, mortgages and mortgage applications, taxes and improvements made on the real property.</p> <p>RESPONSE TO REQUEST FOR PRODUCTION NO. 29: Objection. Defendant objects to this Request as vague, ambiguous, overbroad, and unduly burdensome on its face due to its use of “any and all” and “all” in order to identify a broad range of documents. Defendant further objects to this Request as vague and ambiguous as to the term “purchased.” Without waiving said objections, Defendant responds as follows: None in Sheryl Atterberg’s possession. If this documentation existed, it would either be in the Farmhouse in which Plaintiff has forbidden Sheryl Atterberg access to or were appropriated by Plaintiff and are, therefore, in her possession. Discovery is ongoing and Defendant will supplement this response if and when additional documentation becomes available in accordance with Nev.R.Civ.P. Rule 26(e).</p>	
6	<p>REQUEST FOR PRODUCTION NO. 30: Please provide any and all documents in support of your allegations contained in page 6, paragraph 12 of your motion titled Defendant’s Motion to Set Aside the Divorce Decree</p>	

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

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

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

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<p>PRODUCTION NO. 36: Objection. Defendant objects to this Request as vague, ambiguous, overbroad, and unduly burdensome on its face due to its use of “any and all” in order to identify a broad range of documents. Defendant further objects to this Request as vague and ambiguous as to the terms “support” and “contained.” Without waiving said objections, Defendant responds as follows: Please refer to <i>Defendant’s Initial NRCP 16.2 Disclosure</i>, served April 15, 2021. Additionally, please refer to <i>Defendant’s First Supplemental NRCP 16.2 Disclosure</i>, served concurrently with this response. Discovery is ongoing and Defendant will supplement this response if and when additional documentation becomes available in accordance with Nev.R.Civ.P. Rule 26(e).</p>	

IV.
Legal Analysis

A. Standards for a motion for summary judgment.

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

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

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

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

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

14 With respect to burdens of proof and persuasion in the summary judgment
15 context, Nevada courts have adopted the federal approach as outlined in *Celotex v.*
16 *Catrett*, 477 U.S. 317 (1986)⁶. Specifically, the party moving for summary
17 judgment bears the initial burden of production to show the absence of a genuine
18 issue of material fact⁷. Upon such a showing, *the party opposing summary*
19 *judgment assumes a burden of production to show the existence of a genuine*
20 *issue of material fact*⁸.

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

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

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

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

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

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

⁷ *Id.*

⁸ *Id.*

1 at trial⁹. If the moving party will bear the burden of persuasion, that party must
2 present evidence that would entitle it to a judgment as a matter of law in the
3 absence of contrary evidence¹⁰. But if the non-moving party will bear the burden of
4 persuasion at trial, the party moving for summary judgment may satisfy the burden
5 of production by either (1) submitting evidence that negates an essential element of
6 the non-moving party's claim or (2) pointing out ... that there is an absence of
7 evidence to support the non-moving party's case¹¹. In such instances, in order to
8 defeat summary judgment, the non-moving party must transcend the pleading and,
9 by affidavit or other admissible evidence, introduce specific facts that show a
genuine issue of material fact¹².

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

15 Indeed, the nonmoving party may *not* rely on "the gossamer threads of
16 whimsy, speculation and conjecture."¹⁵ When the nonmoving party bears the
17 burden of persuasion, the moving party can submit evidence that negates an
18 element of the nonmoving party's claim or point out the lack of evidence to support
19 the nonmoving party's claims¹⁶. The nonmoving party is unable to successfully
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21 ⁹ *Id.*

22 ¹⁰ *Id.*

23 ¹¹ *Id.*

23 ¹² *Id.*

24 ¹³ *Anderson, supra*, 477 U.S. at 248.

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

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

28 ¹⁶ *Cuzze*, 123 Nev. at 602-3.

1 rebut the motion for summary judgment unless he is able to point to facts supported
2 by the record which demonstrate a genuine issue of material fact¹⁷. In this case,
3 Rodney is unable to meet his burden.

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

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

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

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

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

¹⁸ See *Celotex*, 477 at 327; *Wood* at 1030

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

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

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

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

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

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

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

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

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

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

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

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

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

17 Additionally, EDCR 7.60 provides, in relevant part:

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

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

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

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

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

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1. If a court finds that an attorney has:

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

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

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

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

Thus, “NRS 7.085 allows a district court to make an attorney personally liable for the attorney fees and costs an opponent incurs when the attorney files, 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.”¹⁹

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

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

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

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

6 Dated this 16th day of June, 2021.

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HOFLAND & TOMSHECK

By: /s/ Bradley J. Hofland
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(702) 895-6760
Attorneys for Plaintiff

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DECLARATION OF TESSIE ELMA ALMARIO

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

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

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

DATED this 16th day of June, 2021.

/s/ Tessie Elma Almario
Tessie Elma Almario

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AFFIDAVIT OF BRADLEY J. HOFLAND, ESQ.

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

1. That I am an attorney for Plaintiff *Tessie Elma Almario* (“Tessie”) in this action.

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

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

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

DATED this 16th day of June, 2021.



Bradley J. Hofland, Esq.



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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I am an employee of HOF LAND & TOMSHECK, that pursuant to Administrative Order 14-2, NEFCR 9, and NRCP 5(b), on the 16th day of April, 2021, I served the forgoing **PLAINTIFF’S NOTICE OF MOTION AND MOTION FOR SUMMARY JUDGMENT 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 Warren
An Employee of HOF LAND & TOMSHECK

EXHIBIT "1"

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

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

JUDGMENT

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

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

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

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

WILK000431

ROA000601

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

Each side will bear their own costs and fees.

Duly executed this ____ day of December 2020.

Clerk of District Court

WILK000432

ROA000602

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

Rodney Wilkinson,

Plaintiff,

vs.

Darrell Fontenot,

Defendant.

Case No. CV-2020-0303

FINDINGS OF FACT AND CONCLUSIONS OF LAW AND ORDER FOR JUDGMENT

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

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

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

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

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

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

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

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

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

10. The Defendant estimated at trial that it would cost about \$150,000 to make the equipment operational for the oil fields. The Plaintiff's guardians disputed this and believed that the equipment was all in working condition but the evidence demonstrates that they had no personal knowledge of this but were relying upon the statements made to them by the Plaintiff;
11. The Parties entered into several contracts for the use/purchase of the Plaintiff's property so it could be utilized. The first contract dated August 21, 2019 was offered into evidence and was between the Plaintiff and Synergy Oil Services and pertained only to a 1979 Ford Truck 920 VIN ID4429IC0LO (wrecker) and was to be purchased in 24 months at the rate of \$333.33 per month. There was a second purchase agreement the same date between the

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

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

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

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

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

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

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

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

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

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

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

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

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

((

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

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

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

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

CONCLUSIONS OF LAW

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

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

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

ORDER FOR JUDGMENT

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

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

ORDERED, ADJUDGED AND DECREED that the Defendant has lawfully purchased the 1979 Ford Truck 920 VIN ID4429ICOLO (wrecker) and the 1980 Cozad Jeep Trailer VIN CC80062 (lowboy trailer) and the Plaintiff shall immediately transfer titles to that property to the Defendant. Failure to do so within 30 days may result in further orders directing that alternative titles be issued and it is further

ORDERED, ADJUDGED AND DECREED that the Plaintiff shall have 120 days from the date of this order to remove his remaining property, the 1993 Western Star WS-4964S, VIIN 2WKPDCCH1PK31154, the 1983 Auto Truck 315 VIN# 1WBRHCVH1DU094972, and the Peerless Drill CH-48-12S provided he satisfies the judgment amount of \$87,700 plus \$100 per day for each day after this order is entered until the property is removed. The Defendant shall have a lien on said property until the judgment amount is paid and failure to pay the amount owed within 120 days shall result in the Defendant being granted leave to execute on his lien and sell said property at a public auction or private sale.

Each side will bear their own costs and fees

LET JUDGMENT BE ENTERED ACCORDINGLY.

So ordered this 29th day of December 2020.

BY ORDER OF THE COURT:

ORDERED, ADJUDGED AND DECREED that the Defendant has lawfully purchased the 1979 Ford Truck 920 VIN ID4429ICOLO (wrecker) and the 1980 Cozad Jeep Trailer VIN CC80062 (lowboy-trailer) and the Plaintiff shall immediately transfer titles to that property to the Defendant. Failure to do so within 30 days may result in further orders directing that alternative titles be issued and it is further

ORDERED, ADJUDGED AND DECREED that the Plaintiff shall have 120 days from the date of this order to remove his remaining property, the 1993 Western Star WS-4964S, VIIN 2WKPDCCH1PK31154, the 1983 Auto Truck 315 VIN# 1WBRHCVH1DU094972, and the Peerless Drill CH-48-12S provided he satisfies the judgment amount of \$87,700 plus \$100 per day for each day after this order is entered until the property is removed. The Defendant shall have a lien on said property until the judgment amount is paid and failure to pay the amount owed within 120 days shall result in the Defendant being granted leave to execute on his lien and sell said property at a public auction or private sale.

Each side will bear their own costs and fees

LET JUDGMENT BE ENTERED ACCORDINGLY.

So ordered this 29th day of December 2020.

BY ORDER OF THE COURT:

13

B. J. Jones

Associate Judge BJ Jones WILK000446

ROA000616

EXHIBIT “2”

1 **RESP**
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 Sheryl Atterberg,*
11 *On behalf of her Adult Ward,*
12 *Defendant, Rodney Wilkinson*

13
14
15 **EIGHTH JUDICIAL DISTRICT COURT**
16 ***FAMILY DIVISION***
17 **COUNTY OF CLARK, STATE OF NEVADA**

18 TESSIE E. WILKINSON a/k/a TESSIE
19 ELMA ALMARIO,
20 Plaintiff,
21 vs.
22 RODNEY WILKINSON,
23 Defendant.

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

24
25 **DEFENDANT RODNEY WILKINSON'S RESPONSES TO**
26 **PLAINTIFF TESSIE ELMA ALMARIO'S SECOND SET OF REQUESTS**
27 **FOR PRODUCTION OF DOCUMENTS TO DEFENDANT RODNEY**
28 **WILKINSON**

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

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

2 **GENERAL OBJECTIONS**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

12 **REQUESTS FOR PRODUCTION OF DOCUMENTS**

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

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

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

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

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

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

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

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

13 Please produce and identify by bates stamp number copies of all retirement,
14 401k, pension or retirement accounts from March 22, 2008 through February 12,
15 2020.

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

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

1 objections, Defendant responds as follows:

2 None.

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

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

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

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

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

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

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

20

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

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

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

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

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

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

18 ///

19 ///

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

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

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

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

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

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

17 **REQUEST FOR PRODUCTION NO. 14:**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

17 **REQUEST FOR PRODUCTION NO. 18:**

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

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

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

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

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

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

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

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

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

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

7 Please refer to *Defendant’s Initial NRCP 16.2 Disclosure*, served April 15,
8 2021, specifically WILK000325 to WILK000328. Additionally, please refer to
9 *Defendant’s First Supplemental NRCP 16.2 Disclosure*, served concurrently with
10 this response.

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

14 **REQUEST FOR PRODUCTION NO. 20:**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1 Rule 26(e).

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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1 **REQUEST FOR PRODUCTION NO. 27:**

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

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

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

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

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

17 **REQUEST FOR PRODUCTION NO. 28:**

18 Please provide any and all documents which regarding any education you
19 have obtained during the marriage, including an updated resume, and copies of any
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1 degrees, certificates or other documents indicated what training, certification or
2 licensing you currently possess or are entitled to possess.

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

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

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

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

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

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

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

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

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

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

13 **REQUEST FOR PRODUCTION NO. 30:**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1 objections, Defendant responds as follows:

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

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

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

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

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

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

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

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

1 *Disclosure*, served concurrently with this response.

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

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

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

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

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

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

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

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

1 Rule 26(e).

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

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

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

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

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

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

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

1 Rule 26(e).

2 DATED this 14th day of June 2021.

3 JAMES KWON, LLC

4 /s/ James W. Kwon, Esq.

5 JAMES W. KWON, ESQ.

6 Nevada Bar No. 8146

7 6280 Spring Mountain Rd., Suite 100

8 Las Vegas, Nevada 89146

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

JAMES KWON, LLC

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

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CERTIFICATE OF SERVICE

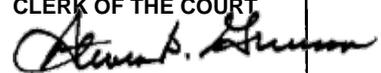
Pursuant to NRCP 5(b) I certify that I am an employee of James Kwon, LLC, and that on this 14th day of June 2021, I caused the above and foregoing document entitled *Defendant Rodney Wilkinson’s Responses to Plaintiff Tessie Elma Almario’s Second Set of Requests for Production of Documents to Defendant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

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

- Dina DeSausa Cabral DinaD@HoflandLaw.com
- Bradley J. Hofland, Esq. BradH@HoflandLaw.com
- Nikki Woulfe Clerk@HoflandLaw.com

DATED this 14th day of June 2021.

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



1 **PMEM**
2 JAMES W. KWON, ESQ.
3 Nevada Bar No. 8146
4 **JAMES KWON, LLC**
5 6280 Spring Mountain Road, Suite 100
6 Las Vegas, Nevada 89146
7 T: (702) 515-1200
8 F: (702) 515-1201
9 jkwon@jwkfirm.com
10 *Attorney for Sheryl Atterberg, on Behalf of*
11 *Her Adult Ward, Defendant, Rodney Wilkinson*

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

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

13 Plaintiff,

14 vs.

15 SHERYL ATTERBERG, ON BEHALF
16 OF HER ADULT WARD, RODNEY
17 WILKINSON,

18 Defendant.

Case No.: D-19-596071-D

Dept.: U

Date of Evidentiary Hearing: 7/16/2021

Time of Evidentiary Hearing: 9:00 AM

19 **DEFENDANT RODNEY WILKINSON'S PRE-TRIAL MEMORANDUM**

20 COMES NOW Sheryl Atterberg, for and on behalf of Her Adult Ward,
21 Defendant, Rodney Wilkinson, in her capacity as his permanent Co-Guardian and
22 Co-Conservator, by and through their attorney of record, James W. Kwon, Esq., of
23 the law firm JAMES KWON, LLC, and hereby submits the following *Defendant*
24 *Rodney Wilkinson's Pre-Trial Memorandum.*

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I.
STATEMENT OF ESSENTIAL FACTS

A. Names and Ages of the Parties:

Plaintiff, Tessie Elma Almario f/k/a Tessie Wilkinson, age 58.

Defendant, Rodney Edward Wilkinson, age 66.

B. Date of Marriage:

The parties were married on or about March 22, 2009; however, it is important to note that Plaintiff did not reside with Defendant or even in the same state as Defendant for the vast majority of their marriage. Beginning in 2009, when the parties were married, to end of 2012, Tessie resided in New Mexico, which is evidenced by her annual tax returns that she filed with the IRS stating that her residence was in New Mexico. Then, in January 2013, Plaintiff relocated to Las Vegas, Nevada after absconding with approximately \$1.5 million of Defendant's inheritance. It is believed that Plaintiff's boyfriend, Steve, whom she introduces as her husband, has continuously resided with her in her residence, that she purchased with the ill begotten funds, since 2013. Subsequently, Plaintiff intentionally had no contact with Defendant from 2013 until 2019 when presumably her \$1.5 million dollars was exhausted.

C. Resolved Issues:

None.

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D. Statement of Unresolved Issues:

1. If *Defendant's Motion to Set Aside Decree of Divorce* should be granted based on Plaintiff's fraud;
2. If *Defendant's Motion to Set Aside Decree of Divorce* should be granted because the Decree of Divorce is unconscionable from the grossly inequitable distribution of assets and debts; or
3. If *Defendant's Motion to Set Aside Decree of Divorce* should be granted because Defendant was incompetent and lacked the capacity to contract at the time he notarized the Decree of Divorce and Plaintiff knew or should have known that Defendant was incompetent and lacked capacity.

**II.
CHILD CUSTODY**

There are no children stemming from the parties' marriage, no children were adopted by the parties, and Plaintiff is not now pregnant.

**III.
CHILD SUPPORT**

There are no children stemming from the parties' marriage, no children were adopted by the parties, and Plaintiff is not now pregnant.

**IV.
SPOUSAL SUPPORT**

The Evidentiary Hearing in this matter is to assist the Court in deciding

1 whether to set aside the Decree of Divorce, filed February 12, 2020, wherein the
2 provision regarding spousal support requires Defendant, Rodney Wilkinson, to pay
3 Plaintiff, Tessie Elma Almario, spousal support in the amount of \$3,000.00 per
4 month. Defendant would not be able to comply with said provision considering
5 Defendant has been found to be incompetent by a court in a competent jurisdiction
6 and is unable to work or even care for himself.
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V.
PROPERTY AND DEBTS

The distribution of the parties' assets and debts as delineated in the Decree of Divorce, filed February 12, 2020, is unconscionable and wholly one-sided. The *Decree of Divorce* divided the community assets and debts as follows:

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

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

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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;
5. The Service Truck VIN 2GCFK29K951206963;
6. The 1977 Kenworth Winch Truck VIN 155197SG2;
7. The following heavy equipment:
 - a. P & H 140 Ton crane , Model 9125-TC;
 - b. Manitowac 100 ton crane, Model 3900A, SN 39670;
 - c. Lima 90 ton crane, Model 990TC;
 - d. P & H 90 ton crarAc, Model 8115TC, SN 35419;
 - e. P & H 50 ton crane;
 - f. P & H 25 ton crane;
 - g. P & H 70 ton crane;
 - h. 2 bulldozers;
 - i. 1977 Kenworth YIN 055097SGL;
 - j. 1972 Peterbilt ID 41337P, FHP364802;
 - k. 1955 Mack VIN B70511209;
 - 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. 2WKIIDCCHIPK931154;
 - s. 750 Holmes Wrecker Tow Truck;
 - t. Autocar Winch Truck;
 - u. Maritime Hydraulic Drilling Rig;
 - v. Any and all tools located at 5730 Road 10, Goodland, Kansas 67735.
14. Any and all rights assigned to Rodney Wilkinson through the contract with Da Fontenot of Synergy Oil Field Services, LLC.
8. All personal property owned prior to the marriage;
9. Any and all current and future retirement accounts, savings plans, IRA, pension plans or otherwise in her name only;

- 1 10. Any and all wearing apparel, personal ornaments, and
- 2 jewelry belonging to her;
- 3 11. Any and all bank accounts in her name only; and
12. Any personal items currently in her possession.

4 The *Decree of Divorce* divided the community debts as follows:

5 IT IS FURTHER ORDERED that the following

6 community debts shall be set over and hereby awarded to

7 Rodney Wilkinson as his sole and separate debts:

- 8 1. The loan on the real property located at 5730 Road 10,

9 Goodland, Kansas 67735;

- 10 2. The loan through Dorman Renewable Fuels, LLC in

11 the approximate amount of \$20,000;

- 12 3. Any and all tax debts in his name only;
- 13 4. Any and all student loan debts in his name only;
- 14 5. Any and all credit card debt in his name only;
- 15 6. Any and all credit instruments in his name only.

16 IT IS FURTHER ORDERED that the following

17 community debts shall be set over and hereby awarded to

18 Tessie Wilkinson as her sole and separate debts:

- 19 1. The Chase credit account ending in the numbers 9416

20 with an approximate current balance of \$3,860;

- 21 2. The US Bank credit account ending in the numbers

22 9270 with an approximate current balance of \$4,300;

- 23 3. Any and all student loan debts in her name only;
- 24 4. Any and all credit card debt in her name only;
5. Any and all credit instruments in her name only.

 This is the division of assets and debts for a marriage wherein Tessie brought

no assets into the marriage and contributed absolutely nothing during the marriage

that lasted less than 12 years. It is important to note that Tessie did not live with

Rodney or even in the same state as Rodney for the vast majority of the marriage

and had no contact with Rodney from at least February 2013 until sometime in

1 2019 when, presumably, the approximate \$1.5 million dollars that Tessie had
2 absconded with had run out. Even after a cursory review of the foregoing division, a
3 reasonable person with no legal training would determine that this division is not
4 fair or equitable by any means. Tessie’s argument that “Rodney disclosed he no
5 longer wanted to own or be responsible for anything – he simply wanted to live at
6 the farmhouse and work” is profoundly ridiculous, especially taking into
7 consideration that Tessie was awarded the farmhouse in the *Decree of Divorce* and
8 then proceeded to evict Rodney from the farmhouse.
9

10 **VI.**
11 **ATTORNEY’S FEES**

12	Attorney’s Fees accrued as of 5.31.2021:	\$81,045.00
13	Costs incurred as of 5.31.2021:	\$ 1,443.62
14	Payments by Client as of 5.31.2021:	\$40,925.00
15	Balance Due and Owing by Client:	\$41,563.62 ***

16
17 *** Client has only received invoices up to and including 5.31.2021.

18 **VII.**
19 **DEFENDANT’S LIST OF WITNESSES**

- 20 1. Sheryl Atterberg, Co-Guardian & Co-Conservator for Defendant
21 c/o James W. Kwon, Esq.
22 JAMES KWON, LLC
23 6280 Spring Mountain Road, Suite 100
24 Las Vegas, Nevada 89146
(702) 515-1200

Mrs. Atterberg is the permanent Co-Guardian and permanent Co-Conservator

1 of her Adult Ward, Defendant, Rodney Wilkinson, in the above-stated matter. She
2 may be called to testify as to her knowledge of the facts and circumstances
3 surrounding this matter.

- 4
5 2. Steven Atterberg, Co-Guardian & Co-Conservator for Defendant
6 c/o James W. Kwon, Esq.
7 JAMES KWON, LLC
8 6280 Spring Mountain Road, Suite 100
9 Las Vegas, Nevada 89146
10 (702) 515-1200

11 Mr. Atterberg is the Co-Guardian and Co-Conservator of his Adult Ward,
12 Defendant, Rodney Wilkinson, in the above-stated matter. He may be called to
13 testify as to his knowledge of the facts and circumstances surrounding this matter.

- 14 3. Dr. Paul H. Janda, Esq., FAAN
15 Las Vegas Neurology Center
16 1930 Village Center Circle #3-717
17 Las Vegas, Nevada 89134
18 (702) 432-2233

19 Dr. Janda is expected to testify as to his expert report regarding his review and
20 analysis, opinions, and conclusions regarding the competency of Defendant, Rodney
21 Wilkinson, at the time he signed his Answer to Complaint and Decree of Divorce in
22 January 2020.

- 23 4. Gregory P. Brown, M.D.
24 1489 W. Warm Springs Road, Suite 110
Henderson, Nevada 89014
(702) 232-3256

Dr. Brown is expected to testify as to his expert report regarding his review

1 and analysis, opinions, and conclusions regarding the competency of Defendant,
2 Rodney Wilkinson, at the time he signed his Answer to Complaint and Decree of
3 Divorce in January 2020.

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5 5. Tessie Elma Almario, Plaintiff
6 c/o Bradley J. Hofland, Esq.
7 HOFLAND & TOMSHECK
8 228 South 4th Street, 1st Floor
9 Las Vegas, Nevada 89101
10 (702) 895-6760

11 Ms. Almario is the Plaintiff in the above-stated matter and may be called to
12 testify as to her knowledge of the facts and circumstances surrounding this matter.

13 6. Steven Zahradnik
14 8382 Hollywood Hills Avenue
15 Las Vegas, Nevada 89178

16 Mr. Zahradnik has been intimately acquainted with and living with Plaintiff
17 since approximately 2013 and may be called to testify as to his knowledge of the
18 facts and circumstances surrounding this matter.

19 7. Susan Perks
20 8391 Hollywood Hills Avenue
21 Las Vegas, Nevada 89178

22 Mrs. Perks is Plaintiff's neighbor and may be called to testify as to her
23 knowledge of the facts and circumstances surrounding this matter.

24 8. Bethany Haan, Business Banking Associate and Notary
Cornerstone Bank
2280 45th Street South
Fargo, North Dakota
(701) 364-9630

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Ms. Haan was the notary utilized by Plaintiff and Defendant when Defendant notarized the Decree of Divorce on or about January 17, 2020 and may be called to testify as to her knowledge of the facts and circumstances surrounding this matter.

- 9. Erica Sarai Bell, Plaintiff's Daughter
Address Unknown
(415) 806-3533

Ms. Bell is Plaintiff's daughter and may be called to testify as to her knowledge of the facts and circumstances surrounding this matter.

- 10. Derrin M. Bell, Plaintiff's Son
Address Unknown
(719) 360-1983

Mr. Bell is Plaintiff's son and may be called to testify as to his knowledge of the facts and circumstances surrounding this matter.

- 11. Person Most Knowledgeable
Cornerstone Bank
323 South Main Street
New Town, North Dakota 58763
(701) 627-4717

The Person Most Knowledgeable for Cornerstone Bank may be called to testify as to his or her knowledge of the facts and circumstances surrounding this matter, specifically regarding Plaintiff's and/or Defendant's bank accounts, the contents thereof, and any and all other financial accounts Plaintiff and/or Defendant currently holds therewith.

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- 12. Heather Licke, M.D.
Cheyenne County Clinic
221 W. 1st Street
Saint Francis, KS 67756
(785) 332-2682

Dr. Licke has previously treated Defendant and may be called to testify as to her knowledge of the facts and circumstances surrounding this matter.

- 13. Person Most Knowledgeable
Cheyenne County Hospital
210 W. 1st Street
Saint Francis, KS 67756
(785) 332-2104

The Person Most Knowledgeable for Cheyenne County Hospital may be called to testify as to his or her knowledge of the facts and circumstances surrounding this matter.

- 14. Person Most Knowledgeable
Swedish Medical Center
501 East Hampden Avenue
Englewood, CO 80113
(720) 570-3304

The Person Most Knowledgeable for Swedish Medical Center may be called to testify as to his or her knowledge of the facts and circumstances surrounding this matter.

- 15. Person Most Knowledgeable
Goodland Regional Medical Center
220 W. 2nd Street
Goodland, Kansas 67735
(785) 890-3625

1 The Person Most Knowledgeable for Goodland Regional Medical Center may
2 be called to testify as to his or her knowledge of the facts and circumstances
3 surrounding this matter.

4
5 16. John E. Fox, M.D.
6 Aspen Leaf Assisted Living Residence
7 2050 6th Street
8 Limon, CO 80828
9 (719) 775-9412

10 Dr. Fox is a resident at Aspen Leaf Assisted Living Residence and may be
11 called to testify as to his knowledge of the facts and circumstances surrounding this
12 matter.

13 17. Person Most Knowledgeable
14 Aspen Leaf Assisted Living Residence
15 2050 6th Street
16 Limon, CO 80828
17 (719) 775-9412

18 The Person Most Knowledgeable for Aspen Leaf Assisted Living Residence
19 may be called to testify as to his or her knowledge surrounding the facts and
20 circumstances of this matter.

21 18. Kathy Dyer
22 Aspen Leaf Assisted Living Residence
23 2050 6th Street
24 Limon, CO 80828
(719) 775-9412

Kathy Dyer is the Administrator and LPN for Aspen Leaf Assisted Living
Residence and may be called to testify as to his or her knowledge surrounding the

1 facts and circumstances of this matter.

- 2 19. Person Most Knowledgeable
3 Lincoln Community Hospital and Care Center
4 111 6th Street
5 Hugo, CO 80821
6 (719) 743-2421

7 The Person Most Knowledgeable for Lincoln Community Hospital and Care
8 Center may be called to testify as to his or her knowledge surrounding the facts and
9 circumstances of this matter.

- 10 20. Person Most Knowledgeable
11 Medical Center of Aurora
12 1501 S. Potomac Street
13 Aurora, CO 80012
14 (303) 695-2600

15 The Person Most Knowledgeable for Medical Center of Aurora may be called
16 to testify as to his or her knowledge surrounding the facts and circumstances of this
17 matter.

- 18 21. Person Most Knowledgeable
19 CHI Hospital / St. Alexius Dickinson Medical Center
20 2500 Fairway Street
21 Dickinson, ND 58601
22 (701) 456-4000

23 The Person Most Knowledgeable for CHI Hospital / St. Alexius Dickinson
24 Medical Center may be called to testify as to his or her knowledge surrounding the
25 facts and circumstances of this matter.

- 26 22. Person Most Knowledgeable
27 Cheyenne County Clinic

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221 W. 1st Street
Saint Francis, KS 67756
(785) 332-2682

The Person Most Knowledgeable for Cheyenne County Clinic may be called to testify as to his or her knowledge surrounding the facts and circumstances of this matter.

23. Person Most Knowledgeable
Larnard State Mental Hospital
1301 KS-264
Larnard, KS 67550
(620) 285-4380

The Person Most Knowledgeable for Larnard State Mental Hospital may be called to testify as to his or her knowledge surrounding the facts and circumstances of this matter.

24. Jeffrey Laird, MMS, PA-C
Goodland Regional Medical Center Emergency Department
220 West 2nd Street
Goodland, KS 67735
(720) 987-5822

Mr. Laird has previously treated Defendant and may be called to testify as to his or her knowledge surrounding the facts and circumstances of this matter.

25. Jeff Henderson
Jeff Henderson Farms, Inc.
5850 Road 8
Goodland, KS 67735
(785) 821-0084

Mr. Henderson was a neighbor of Defendant in Goodland, Kansas and may be

1 called to testify as to his knowledge surrounding the facts and circumstances of this
2 matter.

3 26. Mike Dorman
4 19230 County Road 55
5 Burlington, CO 80807
6 (719) 340-7970

7 Mr. Dorman is an acquaintance of Defendant and may be called to testify as to
8 his knowledge surrounding the facts and circumstances of this matter.

9 27. Terry Richardson
10 Homestead Realty and Action
11 1023 Main Street
12 Goodland, KS 67735
13 (785) 899-3060

14 Mr. Richardson was hired by Plaintiff to list the Goodland, Kansas residence
15 for sale after Plaintiff evicted Defendant therefrom and may be called to testify as to
16 his knowledge surrounding the facts and circumstances of this matter.

17 28. Steven O. Brown
18 Address Unknown
19 Albuquerque, NM

20 Mr. Brown was an acquaintance of Plaintiff and may be called to testify as to
21 his knowledge surrounding the facts and circumstances of this matter.

22 29. Mark Gambino
23 Address Unknown

24 Mr. Gambino was an acquaintance of Plaintiff and may be called to testify as
to his knowledge surrounding the facts and circumstances of this matter.

1 30. Danielle Dawson, Esq.
2 Nevada Family Law Group
3 10120 S. Eastern Avenue, Suite 140
4 Henderson, NV 89052
5 (702) 910-4300

6 Ms. Dawson represented Plaintiff and drafted the Decree of Divorce in the
7 above-stated matter. Ms. Dawson may be called to testify as to her knowledge
8 surrounding the facts and circumstances of this matter.

9 31. Tanika Stevenson
10 Address Unknown

11 Ms. Stevenson was an acquaintance of Defendant and may be called to testify
12 as to her knowledge surrounding the facts and circumstances of this matter.

13 32. Jill E. Strnad
14 Address Unknown

15 Ms. Strnad was an acquaintance of Defendant and may be called to testify as
16 to her knowledge surrounding the facts and circumstances of this matter.

17 33. Dan Fontenot
18 Synergy Oil Field Services, LLC
19 BIA Road 17
20 Mandaree, ND
21 (701) 509-7086

22 Mr. Fontenot was a prior employer of Defendant, has purchased equipment
23 from Defendant, and may be called to testify as to his knowledge surrounding the
24 facts and circumstances of this matter.

34. Any witnesses identified and/or called by Plaintiff.

35. Any rebuttal witnesses.

VIII.
DEFENDANT'S LIST OF EXHIBITS

Defendant Rodney Wilkinson's List of Exhibits is as follows:

Exhibit Letter	Description of Exhibit	Bate Stamp No.
A	Medical Records from Goodland Regional Medical Center	WILK000001 – WILK000104
B	Medical Records from Cheyenne County Hospital	WILK000105 – WILK000107
C	Medical Records from Medical Center of Aurora	WILK000108 – WILK000143
D	Long Term Care Professional Medical Information by Dr. Heather Licke	WILK000144 – WILK000145
E	Letter from Aspen Leaf Assisted Living Residence	WILK000146
F	Medical Records from Lincoln Community Hospital and Care Center	WILK000147 – WILK000225
G	MRI Reports from June 2020	WILK000226 – WILK000237
H	Medical Records from Swedish Medical Center	WILK000238 – WILK000278
I	CHI Hospital Records from March 2, 2020	WILK000279 – WILK000308
J	Newspaper Article regarding Auto Accident involving Rodney Wilkinson (age 19 at time of accident)	WILK000309 – WILK000310
K	Curriculum Vitae of Dr. Paul H. Janda, Esq., FAAN	WILK000311 – WILK000319
L	Fee Schedule of Dr. Paul H. Janda, Esq., FAAN	WILK000320
M	Order Appointing Guardian for Adult dated November 23, 2020	WILK000321 – WILK000323
N	Letters of Permanent Co-Guardianship for an Adult dated November 23, 2020	WILK000324
O	Proposed Order Appointing Permanent Conservator for Adult dated November 23, 2020	WILK000325 – WILK000327

Exhibit Letter	Description of Exhibit	Bate Stamp No.
P	Amended Letter of Permanent Co-Conservatorship for an Adult dated December 1, 2020	WILK000328
Q	Letter from Tessie Almario evicting Rodney Wilkinson dated September 29, 2020 and mailing envelope	WILK000329 – WILK000330
R	Statement by Co-Guardians regarding Social History of Defendant, Rodney Wilkinson	WILK000331
S	Expert Report by Dr. Paul H. Janda, Esq., FAAN	WILK000332 – WILK000347
T	Letter from John E. Fox, M.D. dated May 13, 2021	WILK000348
U	Montreal Cognitive Assessment (MoCA) Test for Dementia by Andrew Rosenzweig, M.D. dated September 23, 2020	WILK000349 – WILK000361
V	Invoices from Ritchie Bros Auctioneers (America) Inc.	WILK000362 – WILK000376
W	Defendant Rodney Wilkinson's 2010 Federal Income Tax Return	WILK000377 – WILK000395
X	Subpoenaed Records produced by Cornerstone Bank, N.A.	WILK000396 – WILK000414
Y	Conservator's Financial Plan with Inventory – Initial Report Inventory Values as of Date of Appointment as of November 23, 2020	WILK000415 – WILK000425
Z	Cornerstone Bank Statement Ending January 15, 2021 for Account Ending 950	WILK000426 – WILK000430
AA	Judgment and Order for Judgment Against Rodney Wilkinson in the District Court for the Fort Berthold Indian Reservation Case No. CV-2020-0303 dated December 29, 2020	WILK000431 – WILK000446
BB	Medical Records for Rodney Wilkinson from Cheyenne County Clinic and Hospital	WILK000447 – WILK000816
CC	Subpoenaed Records produced by U.S. Bank	WILK000817 – WILK001526
DD	Elite Investigation's Confidential Report dated January 6, 2021	WILK001527 – WILK001530
EE	Samples of Rodney Wilkinson's drawing abilities prior to 2017	WILK001531

Exhibit Letter	Description of Exhibit	Bate Stamp No.
FF	Master Care Plan by Aspen Leaf Assisted Living Residence - Limon dated May 24, 2021	WILK001532 – WILK001538
GG	Kansas Guardianship Order for Dismissal, filed October 1, 2020	WILK001539 – WILK001540
HH	Medical Records for Rodney Wilkinson from Larnard Mental Hospital	WILK001541 – WILK001842
II	Records from Silver Spring Pharmacy for Rodney Wilkinson	WILK001843 – WILK001847
JJ	Deposition Transcript of Tessie Elma Wilkinson taken May 27, 2021	WILK001848 – WILK002136
KK	Plaintiff Tessie Elma Almario’s Response to Defendant Rodney Wilkinson’s First Set of Requests for Admissions to Plaintiff Tessie Almario served April 1, 2021	WILK002137 – WILK002143
LL	Plaintiff Tessie Elma Almario’s Response to Defendant Rodney Wilkinson’s First Set of Interrogatories to Plaintiff Tessie Almario served April 1, 2021	WILK002144 – WILK002160
MM	Plaintiff Tessie Elma Almario’s Response to Defendant Rodney Wilkinson’s First Set of Requests for Production of Documents to Plaintiff Tessie Almario served April 1, 2021	WILK002161 – WILK002171
NN	Plaintiff Tessie Elma Almario’s [Supplemental] Response to Defendant Rodney Wilkinson’s First Set of Requests for Admissions to Plaintiff Tessie Almario served May 24, 2021	WILK002172 – WILK002177
OO	Plaintiff Tessie Elma Almario’s Supplemental Response to Defendant Rodney Wilkinson’s First Set of Interrogatories to Plaintiff Tessie Almario served May 24, 2021	WILK002178 – WILK002195
PP	Plaintiff Tessie Elma Almario’s Supplemental Response to Defendant Rodney Wilkinson’s First Set of Requests for Production of Documents to Plaintiff Tessie Almario served May 24, 2021	WILK002196 – WILK002207

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Exhibit Letter	Description of Exhibit	Bate Stamp No.
QQ	Eight Authorizations for the Release of Protected Health Information notarized by Sheryl Atterberg, in her capacity as Defendant, Rodney Wilkinson's Co-Guardian, on May 25, 2019	WILK002208 - WILK002223
RR	Complaint for Divorce filed September 9, 2019	WILK002224 - WILK002227
SS	Answer to Complaint for Divorce filed January 28, 2020	WILK002228 - WILK002229
TT	Decree of Divorce filed February 12, 2020	WILK002230 - WILK002244
UU	Plaintiff's Eight (8) Notices of Intent to Serve Subpoena Duces Tecum served on Defendant on May 18, 2021	WILK002245 - WILK002325
VV	Purchase Agreement dated February 21, 2020	TW000023 - TW000029
WW	Plaintiff's 2017 IRS Federal Tax Return	TW000037 - TW000042
XX	Plaintiff's 2018 IRS Federal Tax Return	TW000043 - TW000046
YY	Defendant's IRS Federal Tax Documents	TW000047 - TW000053
ZZ	Settlement Statement for Farm in Kansas	TW000054
AAA	Check No. 1031 and 1032	TW000055
BBB	Purchase Agreement from Synergy dated February 21, 2020	TW000056 - TW000057
CCC	Tribal Employment Rights Ordinance Office Complaint of Charging Party dated November 26, 2019	TW000061 - TW000064
DDD	Plaintiff's Receipts	TW000065 - TW000091
EEE	Emails from Plaintiff to Sheryl Atterberg	TW000099 - TW000102
FFF	Bank of the West Statements for Account Ending in 7690 from 2012 to 2014	TW000205 - TW000256
GGG	Eastern Colorado Bank Statements for Account Ending in 0299 from 2013 to 2015	TW000257 - TW000286

Exhibit Letter	Description of Exhibit	Bate Stamp No.
HHH	Cornerstone Bank Statements for Account Ending in 1655 from August 2019 to November 2019	TW000287 - TW000306

Defendant, Rodney Wilkinson, reserves the right to use any document and/or item designated or disclosed by any other party to this action. Defendant, Rodney Wilkinson, further reserves the right to use any document filed or served at any time during the instant matter.

IX.
UNUSUAL LEGAL OR FACTUAL ISSUES PRESENTED

A. Issues for Evidentiary Hearing:

On or about February 4, 2021, the Court set an Evidentiary Hearing to assist in its decision on *Defendant’s Motion to Set Aside the Divorce Decree Pursuant to NRCP 60(b)*, filed January 25, 2021. On or about April 28, 2021, the Court clarified the issues to be decided at the present Evidentiary Hearing as follows:

1. Whether Defendant was incompetent and lacked the capacity to contract, on or about January 17, 2020, when Defendant notarized the *Decree of Divorce*, filed February 12, 2020; and
2. Whether Plaintiff knew or should have known about Defendant’s incompetency at or around the time the terms of the *Decree of Divorce* were discussed and agreed upon by the parties.

1 The Court conveyed that evidence of whether the division of assets and debts
2 was fair, whether Plaintiff's contention regarding marital waste can be
3 substantiated, whether Plaintiff was overreaching, the extent of Plaintiff's
4 overreaching, if any, as well as Defendant's capacity are all relevant in deciding on
5 a motion to set aside a decree of divorce. The Court noted that Defendant's capacity
6 and the degree to which the division of assets and debts in the Decree of Divorce is
7 equal are tied together. The Court further noted that the evidence from discovery of
8 the parties' finances at the time of entry of the Decree of Divorce or prior to said
9 entry may evince that there was no marital waste by Defendant and Plaintiff's
10 contention of marital waste was a cover for why the assets and debts were
11 distributed significantly unequal. The Court acknowledged that the Decree of
12 Divorce on its face looks very skewed in favor of Plaintiff, which may substantiate
13 whether there was overreaching and fraud by Plaintiff, and whether the asset and
14 debt distribution in the Decree of Divorce is as skewed as it looks on its face is
15 relevant.
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18 **B. Legal Authority & Position of Law**

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20 1. Defendant's Motion to Set Aside Decree of Divorce should be granted based on Plaintiff's fraud.

21 Fraud upon the court has been recognized for centuries as a basis for setting
22 aside a final judgment, sometimes even years after it was entered. *Hazel-Atlas Co.*
23 *v. Hartford Co.*, 322 U.S. 238, 245, 64 S. Ct. 997, 88 L. Ed. 1250, 1944 Dec.
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1 Comm'r Pat. 675 (1944) (discussing "the historic power of equity to set aside
2 fraudulently begotten judgments" and canvassing cases and treatises and vacating a
3 judgment entered nine years earlier), *overruled on other grounds by Standard Oil*
4 *Co. v. United States*, 429 U.S. 17, 18, 97 S. Ct. 31, 50 L. Ed. 2d 21 (1976). A final
5 judgment, once entered, normally is not subject to challenge. However, the policy
6 of repose yields when "the court finds after a proper hearing that fraud has been
7 practiced upon it, or the very temple of justice has been defiled." *Universal Oil*
8 *Prods. Co. v. Root Refin. Co.*, 328 U.S. 575, 580, 66 S. Ct. 1176, 90 L. Ed. 1447
9 (1946). "[A] case of fraud upon the court [calls] into question the very legitimacy of
10 the judgment." *Calderon v. Thompson*, 523 U.S. 538, 557, 118 S. Ct. 1489, 140 L.
11 Ed. 2d 728 (1998). Put another way, "[w]hen a judgment is shown to have been
12 procured" by fraud upon the court, "no worthwhile interest is served in protecting
13 the judgment." Restatement (Second) of Judgments § 70 cmt. B (1982). Fraud upon
14 the court has been held to exist when the unsuccessful party is kept away from the
15 Court by such conduct as prevents a real trial on the issues. *Price v. Dunn*, 106 Nev.
16 100, 104, 787 P.2d 785, 787 (1990).

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20 Tessie committed fraud upon the Court by preparing and demanding Rodney
21 sign the Answer and Decree of Divorce in the present matter despite and more
22 likely because of Plaintiff knowing and being fully aware that Rodney was an
23 incompetent person at the time he signed the Decree of Divorce. Rodney was
24

1 incompetent and lacked the capacity to contract when Tessie filed for and obtained
2 the Divorce. Tessie knew that and willfully sought to exploit such a malignant
3 advantage by having Rodney's Answer and the Decree of Divorce prepared
4 according to her terms and for Rodney to simply sign. Tessie kept the fact that
5 Rodney had suffered a Traumatic Brain Injury in 2017 from the Court and her
6 counsel, and she otherwise concealed that Rodney, due to his severe and palpably
7 evident cognitive impairments, was incompetent and lacked the capacity to
8 contract. Tessie did so to circumvent public policy and Nevada law that requires
9 that a court "to the extent practicable, make an equal disposition of the community
10 property of the parties." Nev. Rev. Stat. § 125.150(1)(b). Tessie has subverted the
11 integrity of the Court itself and, therefore, warrants *Defendant's Motion to Set Aside*
12 *the Divorce Decree Pursuant to NRCP 60(b)* to be granted.

15 2. *If Defendant's Motion to Set Aside Decree of Divorce should be*
16 *granted because the Decree of Divorce is unconscionable from*
17 *the grossly inequitable distribution of assets and debts.*

18 Unconscionability involves both procedural and substantive
19 unconscionability in order for a court to exercise its discretion to refuse
20 enforcement of an agreement under the premise of unconscionability. If the case
21 involves predominately procedural unconscionability, then less evidence of
22 substantive unconscionability is required. *D.R. Horton, Inc. v. Green*, 120 Nev. 549,
23 551, 96 P.3d 1159, 1160 (2004) (overruled on other grounds by *United States Home*
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1 *Corp. v. Ballesteros Tr.*, 415 P.3d 32, 41 (Nev. 2018); see also *Burch v. Second*
2 *Judicial Dist. Court*, 118 Nev. 438, 439, 49 P.3d 647, 648 (2002).

3 Here, we have both procedural and substantive unconscionability. Tessie,
4 being fully aware of Rodney’s medical conditions and his mental limitations
5 resulting therefrom, willfully exploited those limitations to Rodney’s detriment in
6 order for Tessie to secure a windfall of millions of dollars while leaving Rodney
7 destitute. *It is important to note that, in January 2013, Tessie similarly absconded*
8 *with approximately \$1.5 million dollars of Rodney’s inheritance, immediately*
9 *relocating to Las Vegas, Nevada, and intentionally had no contact with Rodney*
10 *until her ill begotten nest egg had been depleted and she required another “pay*
11 *day” in order to maintain her unencumbered lifestyle.* Tessie knew Rodney’s
12 severely diminished and continued downward deterioration of his mental faculties
13 precluded Rodney from comprehending the implication of the provisional terms
14 themselves or any consequences and/or long-term effects of said provisions
15 included in Rodney’s Answer to Complaint for Divorce and the Decree of Divorce.
16 *It is also important to note that Tessie prepared Rodney’s Answer in its entirety,*
17 *only requiring Rodney to sign, and likely without explaining what the cited*
18 *paragraph numbers actually referred to, as well as Tessie solely providing each*
19 *and every term of the Decree of Divorce to her former attorney of record.* Then,
20 Tessie immediately began enforcing the provisions in the Decree of Divorce,
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1 entered February 12, 2020, even though she knew it was significantly unfair and
2 procured by fraud. Tessie argues that “Rodney disclosed he no longer wanted to
3 own or be responsible for anything – he simply wanted to live at the farmhouse and
4 work” is profoundly ridiculous, especially considering that Tessie was awarded the
5 farmhouse in the *Decree of Divorce* and then proceeded to evict Rodney from the
6 farmhouse.
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8 Unconscionability is said to exist when enforcement of the agreement results
9 in one spouse having insufficient property to provide for his or her reasonable
10 needs. There are a number of factors that this Court may consider when determining
11 the fairness of an Agreement:
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- 13 • Duration of the marriage.
- 14 • Assets owned by each party.
- 15 • Income and earning capacity of each party.
- 16 • Property each party brought to the marriage.
- 17 • Children of prior marriage(s).
- 18 • Future support needs of each party.
- 19 • Age and health of each party.
- 20 • Standard of living during the marriage.
- 21 • What each party would have received in the absence of the agreement.
- 22 • Each party’s contribution to the marriage, including homemaker and
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1 childcare contributions.¹

2 Here, all factors point to unconscionability. At the time Tessie filed her
3 Complaint for Divorce, the parties had been legally married, at least on paper, for
4 ten (10) years with the parties living in separate states for the vast majority of those
5 years, Tessie basically “visiting” Rodney from time to time. When the parties
6 married, Rodney brought substantial wealth into the marriage, while Tessie brought
7 *nothing* but her love of Rodney’s money. However, when they divorced, Tessie left
8 the marriage unjustly enriched financially speaking, while Rodney was left
9 destitute, with a mountain of debt, and only social security to survive on.

10 Nevada Policy and Law are clear that a Court must, absent a compelling
11 reason otherwise, make an equitable distribution of the marital estate. Nev. Rev.
12 Stat. Ann. § 125.150. The policy is so strong that the Nevada Supreme Court has
13 consistently reversed a District Court’s decision not to set aside a decree under
14 NRCP 60(b) when an inequitable distribution was made. For example, in *Petersen*
15 *v. Petersen*, 105 Nev. 133, 771 P.2d 159 (1989), the Wife figured out about 90 days
16 after the Divorce she had received about 10 percent of the parties’ property, but her
17 motion to set it aside was not filed until the day before the six months would have
18 elapsed. The Supreme Court rejected the trial court’s conclusion that the motion
19 was untimely and held that when such a motion is filed at any time within the six
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24 ¹ See *Del Vecchio v. Del Vecchio*, 143 So. 2d 17 (Fla. 1962); *Button v. Button*, 131 Wis. 2d 84, 86, 388

1 months allowed by NRCP 60(b), alleging fraud or mutual mistake, and seeks for the
2 first time to address the fairness of the Decree of Divorce, the motion should be
3 considered on its merits. The Supreme Court specifically stated, “the trial judge’s
4 denial of Wife’s motion on the basis that it was not filed within a ‘reasonable time’
5 produces harsh results which are inconsistent with the spirit of Rule 60(b).” Id. at
6 134.
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8 In *Carlson v. Carlson*, 108 Nev. 358, 832 P.2d 380 (1992), the Supreme
9 Court reversed the district court’s refusal to set aside a property distribution under
10 NRCP 60(b), where a private pension had been greatly undervalued in the original
11 divorce proceedings. Both parties were represented by counsel, but the Wife
12 discovered (just days before the six-month period of NRCP 60(b) expired) that the
13 representation by the husband and his counsel that the property division was
14 “essentially equal” was false because the pension was worth much more than had
15 been thought. The Wife received about 29 percent property and moved to set aside
16 the property distribution under NRCP 60(b). On property and moved to set aside the
17 property distribution under NRCP 60(b). On appeal, the Supreme Court reversed
18 the district court’s order refusing to set aside the Decree as an abuse of discretion.
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21 In *Cook v. Cook*, 112 Nev. 179, 912 P.2d 264 (1996), the husband drafted a
22 property settlement agreement providing that he received the law practice as his
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24 N.W.2d 546, 547 (1986); *Austin v. Austin*, 62 Mass. App. Ct. 719, 719, 819 N.E.2d 623, 624 (2004)

1 separate property and including the Wife’s waiver of any interest in his firm’s
2 income. The Wife had an attorney review the property settlement agreement, but
3 she signed it in proper person. The husband filed for Divorce, and the Wife signed a
4 proper person answer. The Decree was granted the same day. Days before the six-
5 month NRCP 60(b)-time limit ran, the Wife filed a motion to “vacate the divorce
6 decree and for a new trial.” The Wife’s expert evaluated the community property
7 and concluded that the Wife had received approximately \$100,000 to the husband’s
8 \$600,000 in net community property assets, that in his “professional opinion, the
9 [agreement] was grossly inequitable and unfair to the wife.” 112 Nev. at 181, FN 1,
10 912 P.2d at 265. The Nevada Supreme Court found an abuse of the lower court’s
11 “wide discretion in deciding whether to grant or deny” a motion under NRCP 60(b)
12 and reversed the lower court’s denial of her motion to set aside the Decree.
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15 In the case at hand, the Decree of Divorce on its face violates Nevada Policy.
16 Not only does it award Tessie assets worth millions of dollars, but it gives Rodney
17 nothing but the entirety of the debt. Furthermore, there was no compelling reason to
18 make such a grossly disproportionate award. Not only was such an award obtained
19 by fraud, but the Court failed to hold a Prove Up hearing to determine the validity
20 of such an award and if there was, in fact, a compelling reason to award one person
21 millions and leave the other completely destitute. Accordingly, this Court must set
22 aside the Decree of Divorce.
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3. Defendant's Motion to Set Aside Decree of Divorce should be granted because Defendant was incompetent and lacked the capacity to contract at the time he notarized the Decree of Divorce and Plaintiff knew or should have known that Defendant was incompetent and lacked capacity at that time, which renders Rodney's alleged agreement with and signing of the Decree of Divorce as well as the Court never actually obtaining personal jurisdiction over Rodney in this matter.

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

Tessie initiated a case against Rodney even though he was incompetent and lacked the capacity to contract despite Tessie knowing or should have known of Rodney’s incompetence. In doing so, the Decree of Divorce is *void ab initio* not only because Rodney lacked the capacity to sign said Decree but because the Family Court never properly obtained personal jurisdiction over Rodney. Rodney lacked the legal capacity to accept services and to answer the Divorce complaint.

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X.
LENGTH OF EVIDENTIARY HEARING

The Court has allocated one full day for the present Evidentiary Hearing.

Dated this 2 day of July 2021.

JAMES KWON, LLC



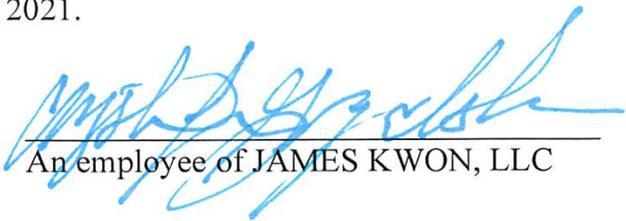
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Nevada Bar No. 8146
6280 Spring Mountain Road, Suite 100
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*Attorneys for Sheryl Atterberg, on Behalf of
Her Adult Ward, Defendant, Rodney Wilkinson*

CERTIFICATE OF SERVICE

Pursuant to NRCP 5(b), I hereby certify that service of the foregoing
Defendant Rodney Wilkinson's Pre-Trial Memorandum was made this 2ND day
of July 2021 via the Court's electronic filing system upon the following:

Dina DeSausa Cabral	<u>DinaD@HoflandLaw.com</u>
Bradley J. Hofland, Esq.	<u>BradH@HoflandLaw.com</u>
Nikki Woulfe	<u>Clerk@HoflandLaw.com</u>

DATED this 2ND day of July 2021.



An employee of JAMES KWON, LLC

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Large handwritten signature or name in blue ink, written in a cursive style.